

Submissions to the Constitution Commission on the Constitution of Fiji 20XX

Explanatory
Notes

October 10th 2012

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1.0 Introduction and Background

For ease of reference these submissions on Constitution 20XX take the form of a draft text with explanatory notes to assist with the interpretation process and provide elaboration of the key points with references.

The draft text takes as its terms of reference the 1997 Constitution of Fiji. It is also founded on Fiji's '*grundnorm*'- from its origins in our early Constitutions of the 19th century, and continued with the 1970 and 1990 Constitutions. These Constitutions contained a Bill of Rights, with each giving different emphases on the extent and quality of protection of rights coinciding with the needs and demands of the social milieu within which each Constitution was drafted.

The **structure** of this draft of the Constitution of 20XX is based on that of the 1970 Constitution which set out a comprehensive Bill of Rights in Chapter II, that is, immediately after the very first chapter which stated that 'Fiji shall be a sovereign democratic State', and 'Constitution is supreme law':

The important part of that first Chapter made the 1970 Constitution the ultimate law.

This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency be void

Thus the **structure** of the first part of the 1970 Constitution is the point of departure for my draft text in these Submissions due to the fact that the correct and appropriate positioning of a Fundamental Rights and Freedoms Chapter of any modern Constitution should be at the very beginning of the Constitution, to

See Schedule to the Independence Order, the 1970 Constitution of Fiji.

'*grundnorm*' defined in the Kelnesian sense of 'basic rule'.

Schedule; Art. 2 1970 Constitution.

Fundamental Rights and Freedoms Chapter of the 1970 Constitution comes directly after Chapter 1.

indicate that the key relationship between the **individual and/or groups** in any country and the **State** is that of a **Social Contract**.

However, while the **structure** of the first few articles of the 1970 Constitution is followed in my draft, rather more attention is paid to the **text** (contents) of the rights and responsibilities sections of the 1997 Constitution for the simple reason that the Chapter 4 Bill of Rights continues to be supported in most constitutional submissions to date. Given that the 1997 Constitution has not yet been declared by a court of law to have been abrogated, due to the significant number of decrees preventing justiciability¹, it is clearly a matter of importance that the 1997 Constitution be examined for its shortfalls in the relationship between the State and the People.

Aside from the significant fact that it was adopted by all the communities of Fiji in unison, one of the remarkable aspects of the 1997 Constitution is the centrality and supremacy of the rights provisions within the structure of the Constitution as a whole. A good example is the following highlighted section 3 (b) (i) and (ii) ‘Interpretation’:

3. In the interpretation of a provision of this Constitution:

(a) a construction that would promote the purpose or object underlying the provision, taking into account the spirit of this Constitution as a whole, is to be preferred to a construction that would not promote that purpose or object; and

(b) regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments, especially:

(i) developments in the understanding of the content of particular human rights; and

(ii) developments in the promotion of particular human rights.

Another section of the 1997 Constitution that makes rights central to the Constitution is Chapter 4 Bill of Rights, ‘Application’

21.-(1) This Chapter binds:

(a) the legislative, executive and judicial branches of government at all central, divisional and local; and

¹ See for example the Administration of Justice (Amendment) Decree 2009.

“Social Contract” used here in the Lockean (John Locke) sense of being justiciable as well as having political implications.

The 1997 Constitution exhibits some elements of equality between State and People and these should be retained.

Sub-section 3 (b) means that the entire Constitution and all laws of Fiji must be interpreted in human rights terms- an unusual feature in constitutions and indicating a ‘modern’ view of state/people relations.

The highlighted sections in the text reflect primacy of the Bill of Rights within the 1997 Constitution.

(b) all persons performing the functions of any public office.
(2) The rights and freedoms set out in this Chapter apply according to their tenor and are subject only to the limitations under laws of general application permitted by this Chapter and to such derogations as are authorised under Chapter 14.

(3) Laws made and administrative and judicial actions taken after the commencement of this Constitution are subject to the provisions of this Chapter.

(4) In considering the application of this Chapter to particular legislation, a court must interpret this Chapter contextually, having regard to the content and consequences of the legislation, including its impact upon individuals, groups or communities.

(5) This Chapter applies to all laws in force at the commencement of this Constitution.

(6) To the extent that it is capable of doing so, this Chapter extends to things done or actions taken outside Fiji.

All laws of Fiji are to be read consistently with Bill of Rights or made void if they are inconsistent.

The 1997 Constitution was not only the supreme law of Fiji, it also gave specific primacy to the Bill of Rights chapter and applied it to all institutions of the State, including the Head of State, Parliament (both Houses), all local government and all officers of the State. Further to this, the Human Rights Commission Act 10/99, enacted pursuant to section 42, extended the application of the Bill of Rights Chapter to non-state actors, that is, the private sector.

Within Chapter 4, the interpretation section (section 43) gave additional emphasis to the rights focus of the Constitution and places this within international law, as follows:

Interpretation

43.-(1) The specification in this Chapter of rights and freedoms is not to be construed as denying or limiting other rights and freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.

(2) In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because the wording of the law exceeds the limits imposed by this Chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits. In that case, the law must be const

Above all, the **Preamble** of the Constitution affirmed rights in unequivocal language:

WE, THE PEOPLE OF THE FIJI ISLANDS.....

(inter alia)

COMMITTING ourselves anew to living in harmony and unity, promoting social justice and the economic and social advancement of all communities, **respecting their rights and interests** and strengthening our institutions of government

REAFFIRMING our **recognition of the human rights and fundamental freedoms of all individuals and groups**, safeguarded by adherence to the rule of law, and our respect for human dignity and for the importance of the family

....

WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION

1.1 Social Contract and the Constitution

Two other chapters make reference to the rights' focus, in the **social contract** sense, within the 1997 Constitution; the first is Chapter 2 **Compact** (undertaking

The Social Contract already exists in the 1997 Constitution and signifies equality between the State and body politic

of government) and the second is Chapter 5 **Social Justice** (right to social development).

Given the primacy and supremacy of rights and freedoms in Fiji’s constitutional history which was consolidated in the 1997 Constitution, it is appropriate that the next Constitution of Fiji should give effect to these preferences, decided since the 1800s, firstly in the Kingdom of Fiji; secondly, democratically after independence in 1970; thirdly, on the basis of majoritarian and autocratic rule in 1990; fourthly, by consensus and enactment in 1997 and, finally, within the terms of the People’s Charter in 2008.

To give effect to the centrality of rights approved by the people for the 1997 Constitution, the text of Constitution 20XX is proposed on the following principles:

- (i) the relationship between the State and the People is based on non-autocratic governance to be protected by laws and policy
- (ii) there are checks and balances between the different arms of the state which, nevertheless, shall be independent in accordance with the ‘separation of powers’ doctrine; and
- (iii) self-determination and autonomy underpin the power-sharing mechanisms established for the political and public service milieu and is extended to the private spheres under the principle of egalitarianism or equality.

2.0 Proposed text of the Constitution of Fiji as amended.

The point of reference being the 1997 Constitution of Fiji, this draft amended text makes it clear what needs to be changed, as well as the additional matters that are required for a 21st century ‘modern’ Constitution.

Constitution Amendment Act 20XX

An Act to Amend the Constitution of the Sovereign Democratic Republic of Fiji.

Enacted by the Parliament of Fiji

WE THE PEOPLE OF THE FIJI ISLANDS

Including in the family and community life

Methodology of Amendments:

1997 Const.-
black font

Amendments
Blue Font

Const Ass. Red
font in this
column

Green font-
1997 text to be
considered by
Const.
Assembly

SEEKING the blessing of God who has always watched over these islands:

RECALLING the events in our history that have made us what we are, especially the settlement of these islands by the ancestors of the indigenous Fijian and Rotuman people; the arrival of forebears of subsequent settlers, including Pacific Islanders, Europeans, Indians and Chinese; the conversion of the indigenous inhabitants of these islands **from heathenism** to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution, along with that of other faiths, to the spiritual **sustenance** of Fiji

:

ACKNOWLEDGING our unique constitutional history:

(a) first, the Deed of Cession of 10 October 1874 when Ratu Seru Epenisa Cakobau, Tui Viti and Vunivalu, together with the High Chiefs of Fiji, signifying their loyalty and devotion to Her Most Gracious Majesty, Queen Victoria, and their acceptance of the divine guidance of God and the rule of law, ceded Fiji to Great Britain, which cession was followed in November 1879 by the cession to Great Britain of Rotuma by the Chiefs of Rotuma;

(b) secondly, our becoming an independent sovereign state when Her Majesty Queen Elizabeth II promulgated the Fiji Independence Order 1970 under which the Fiji Constitution of 1970 came into being;

(c) thirdly, the abrogation of that Constitution in 1987 by the Constitution Abrogation Decree 1987;

(d) fourthly, after a period of 3 years, the giving to Fiji of the 1990 Constitution by His Excellency the President, Ratu Sir Penaia Kanatabatu. Ganilau, Tui Cakau, GCMG, KCVO, KBE, DSO, KSt J, ED, with the blessings and approval of the Great Council of Chiefs;

(e) fifthly, the review of that Constitution undertaken under its provisions in 1997; and

(f) sixthly, the review of the 1997 Constitution undertaken in pursuance of the 2008 People's Charter for Change, Peace and Progress

RECOGNISING that the descendants of all those who chose to make their homes in these islands form our multicultural society:

AFFIRMING the contributions of all communities to the well-being of that society, and the rich variety of their faiths, traditions, languages and cultures:

The word 'heathenism' needs to be changed- perhaps to 'traditional religions' (Const Assembly to decide)

TAKING PRIDE in our common citizenship and in the development of our economy and political institutions:

COMMITTING ourselves anew to living in harmony and unity, promoting social justice and the economic and social advancement of all communities, respecting their rights and interests and strengthening our institutions of government:

COMMITTING ourselves to the express provisions of the Fiji Constitutional Process (Constitution Commission) Decree 2012 (Decree No 57 of 2012), in particular, section 7 (4) of the Decree on immunities and exceptions, while acknowledging the need for reparation towards achieving forgiveness.

REAFFIRMING our recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, our respect for human dignity and for the importance of the family and the **Community of Fiji**:

RECOGNISING that the relationship between the people of Fiji and their State is one of justiciable Social Contract within the framework of this Constitution, where the conduct of Government is based on the core principle that the rights, responsibilities and interests of all individuals, communities and groups are fully respected and protected, and where the conduct of the People is based on the spirit of collective harmony and unity, and an undertaking to live peaceably with others, as well as to respect the State, and the roles, functions and responsibilities of the **representative** Government **lawfully** elected to represent the State.

AFFIRMING our commitment to uphold and protect at all times by whatever legitimate means necessary this Social Contract in the form of our Constitution

Given the non-negotiable principle in Decree No 57 but the reluctance in most submissions for immunity, this conciliatory clause may assist with getting back to constitutional governance.

Community of Fiji- refers to the people of Fiji.

The words 'representative' and 'lawfully' are key words given issues with past elections- Lala, Vakatale and Neilson: Commission of Inquiry into the Fiji 2006 Elections

AFFIRMING that the right of the Fijian people as a whole to national self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right to autonomy and self-determination of any community sharing a common cultural and language heritage within a territorial entity in the Republic or in any other way, determined by national legislation, subject to the Bill of Rights provisions of the Constitution and public international law.

Balance between national self-determination and group autonomy in international law.

WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION

CHAPTER 1

THE STATE

Republic of the Fiji Islands

1. The Republic of the Fiji Islands is a Sovereign, Democratic State.

Supremacy of Constitution

2.-(1) This Constitution is the supreme law of the State

(2) Any law inconsistent with this Constitution is invalid to the extent of the inconsistency.

Interpretation of Constitution

3. In the interpretation of a provision of this Constitution:

(a) a construction that would promote the purpose or object underlying the provision, taking into account the spirit of this Constitution as a whole, is to be preferred to a construction that would not promote that purpose or object; and

(b) regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments, especially:

- (i) **international** developments in the understanding of the content of particular human rights; and
- (ii) **international** developments in the promotion of particular human rights.

Languages

4.-(1) The English, Fijian and Hindustani languages have equal status in the State.

(2) This Constitution is to be adopted in English but translations in Fijian and Hindustani are to be available.

(3) If, in the interpretation of a provision of this Constitution, there is an apparent difference between the meaning of the English version of the provision and its meaning in Fijian or Hindustani, the English version prevails.

(4) Every person who transacts business **with any arm of the State, in particular:**

- (a) a department;
- (b) an office in a state service; or
- (c) a local authority;

has the right to do so in English, Fijian or Hindustani, either directly or through a competent interpreter.

CHAPTER 2

BILL OF RIGHTS

Fundamental Principles

Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind.

Recalling that Fiji is a member of the United Nations and is bound by the principles contained in the Universal Declaration of Human Rights, the international human rights instruments it has ratified, and public international law.

Committing itself to respecting and promoting the rights and freedoms of all its peoples pursuant to the Social Contract between People and the State,

Recognising the obligation of the State to monitor corporate responsibility to respect all human rights, and the necessity to establish a regime of accountability pursuant to the United Nations Global Compact initiative for businesses that are committed to aligning their operations and strategies with universally accepted

Should consider whether 'sign language' should have significance here (Const. Assembly)

principles in the areas of human rights, labour, environment protection and anti-corruption

and therefore,

Emphasizing that the Bill of Rights Chapter represents the core constitutional principles determining the duties, rights, obligations, responsibilities, commitments, functions, and interests of both the People and the State of Fiji.

Application

5 (1) This Chapter binds:

- (a) the legislative, executive (Cabinet and Presidential), and judicial branches of government at all levels, central, divisional and local; and
- (b) all persons performing the functions of any public office.

(2) The rights and freedoms set out in this Chapter are pronounced to be natural and God-given rights, applying according to their tenor, and are subject only to the limitations under laws of general application permitted by this Chapter and to such derogations as are authorized under **Chapter 13**.

(3) Laws made and administrative and judicial actions taken after the commencement of this Constitution are subject to the provisions of this Chapter.

(4) In considering the application of this Chapter to particular legislation, a court must interpret this Chapter contextually, having regard to public international law, and the content and consequences of the legislation, including its impact upon individuals, groups and communities.

(5) This Chapter applies to all laws in force at the commencement of this Constitution.

(6) To the extent that it is capable of doing so, this Chapter extends to things done or actions taken outside Fiji.

(7) After the enactment of the Constitution, all laws of Fiji enacted, promulgated or decreed shall be made consistent with this Chapter.

Basic Principle

Checks and Balances between the State and People in the manner of a social contract.

Life

6. (1) Every person has the right to life. A person must not be arbitrarily deprived of life.

(2) For the avoidance of doubt the death penalty in Fiji is abolished by this Constitution.

Personal liberty

7 (1) A person must not be deprived of personal liberty except:

(a) for the purpose of executing the sentence or order of a court, whether handed down or made in Fiji or elsewhere, in respect of an offence of which the person has been convicted;

(b) for the purpose of executing the order of a court punishing the person for contempt of the court or of another court or tribunal;

(c) for the purpose of executing the order of a court made to secure the fulfilment of an obligation imposed on the person by law;

(d) for the purpose of bringing the person before a court in execution of the order of a court;

(e) if the person is reasonably suspected of having committed an offence;

(f) with the consent of the person's parent or guardian or upon an order made by a court, for the purpose of the person's education or welfare during any period ending not later than the date of his or her eighteenth birthday;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) for the purpose of the person's care or treatment or for the protection of the community if he or she is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a **homeless person**; or

(i) for the purpose of preventing the unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji.

(2) Paragraph (1)(c) does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax unless the court considers that the person has willfully refused to pay despite having the means to do so.

The pejorative word 'vagrant' in the 1997 Const. to be replaced by 'homeless'.

(3) If a person (*detainee*) is detained pursuant to a measure authorised under a state of emergency:

(a) the detainee must, as soon as is reasonably practicable and in any event within 24 hours days after the start of the detention, be given a statement in writing, in a language that the detainee understands, specifying the grounds of the detention;

(b) notice of the detention must be published in the Gazette within 14 days and the news media within 48 hours after the start of the detention, giving particulars of the law under which the detention is authorised;

(c) the detainee must be given the opportunity to communicate with, and to be visited by:

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counsellor or social worker;

(d) the detainee must be given reasonable facilities to consult with a legal practitioner of his or her choice;

(e) the detention must, within one month and thereafter at intervals of not more than 1 month, be reviewed by an independent and impartial tribunal established by the Judicial Service Commission and presided over by a person qualified to practise as a barrister and solicitor in Fiji; and

(f) at a hearing before the tribunal the detainee may appear in person or be represented by a legal practitioner.

(4) Following a review by a tribunal under subsection (3), the tribunal may make recommendations to the appropriate authority as to the continued detention of the detainee.

Freedom from servitude and forced labour

8 (1) A person must not be held in slavery or servitude and must not be required to perform forced labour.

(2) In this section:

forced labour does not include:

(a) labour required in consequence of the sentence or order of a court;

(b) labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison;

(c) labour required of a member of a disciplined Force as part of his or her duties or, in the case of a person who has a conscientious objection to

7 days in the
1997
Constitution
giving grounds
for detention is
too long

6 months in the
1997 Const. for
review of
detention is too
long

military service, labour that the person is required by law to perform in place of that service; or

(d) labour reasonably required as part of reasonable and normal communal or civic obligations.

Freedom from cruel or degrading treatment

9 (1) Every person has the right to freedom from **torture** of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

(2) Every person has the right to freedom from scientific or medical treatment or procedures without his or her informed consent or, if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.

(3) For the avoidance of doubt, any court before which this section is invoked must refer to all international law on the subject, in particular, on any *jus cogens* and peremptory norm nature of such law.

Freedom from unreasonable searches and seizure

10 (1) Every person has the right to be secure against unreasonable search of his or her person or property and against unreasonable seizure of his or her property.

(2) Search or seizure is not permissible otherwise than under the authority of law.

Arrested or detained persons

11(1) Every person who is arrested or detained has the right:

(a) to be informed promptly in a language that he or she understands of the reason for his or her arrest or detention and of the nature of any charge that may be brought;

(b) to be promptly released if not charged;

Freedom from torture is an absolute right in international law.

A '*jus cogens*' norm is one where no derogations are permitted in international law- not even in times of emergency.

(c) to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, and the interests of justice require legal representation to be available, to be given the services of a legal practitioner under a scheme for legal aid;

(d) to be given the opportunity to communicate with, and to be visited by:

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counsellor or social worker;

(e) to challenge the lawfulness of his or her detention before a court of law and to be released if the detention is unlawful; and

(f) to be treated with humanity and with respect for his or her inherent dignity.

(2) The authorities holding a person who has been arrested or detained must promptly take all reasonable steps to inform his or her spouse, partner or next-of-kin of his or her arrest or detention.

(3) Every person who is arrested for a suspected offence has the right:

(a) to be informed promptly in a language that he or she understands that he or she has the right to refrain from making a statement;

(b) to be brought before a court no later than 24 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter but no later than 48 hours; and

(c) to be released from detention on reasonable terms and conditions pending trial, unless the interests of justice otherwise require.

(4) A person who is ordered to be detained pending trial is, so far as practicable, to be kept apart from convicted persons

.

(5) A detained child is, so far as practicable, to be kept apart from adults, unless that is not in the child's best interests.

Rights of charged persons

12 (1) Every person charged with an offence has the right:

(a) to be presumed innocent until proven guilty according to law;

1997 Const. provisions have been amended to reflect international law on access to justice.

(b) to be given details in legible writing, in a language that he or she understands, of the nature of and reasons for the charge;

(c) to be given adequate time and facilities to prepare a defence, including, if he or she so requests, a right of access to witness statements;

(d) to defend himself or herself in person or to be represented, at his or her own expense, by a legal practitioner of his or her choice or, if the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid;

(e) not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;

(f) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

(g) to be given, on payment of a reasonable fee prescribed by law, a copy of the record of proceedings of the court and of the decision of the court within a reasonable time;

(h) not to have the trial take place in his or her absence unless:

(i) the court is satisfied that the person has been served with a summons or other process requiring his or her attendance and has chosen not to attend; or

(ii) his or her conduct in the proceedings is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;

(j) not to be found guilty in respect of an act or omission unless the act or omission constituted an offence at the time it occurred, and not to be sentenced to a more severe punishment than was applicable when the offence was committed;

(k) not to be tried again for an offence of which he or she has previously been convicted or acquitted; and

(l) if found guilty, to appeal to a higher court.

(2) Subparagraph (1)(h)(i) does not apply if the offence with which the person has been charged is an offence punishable by a term of imprisonment.

(3) A law is not inconsistent with paragraph (1)(k) to the extent that it:

(a) authorises a court to try a member of a disciplined Force for a criminal offence despite his or her trial and conviction or acquittal under a disciplinary law; and

(b) requires the court, in passing sentence, to take into account any punishment awarded against the member under the disciplinary law.

Access to courts or tribunals

13(1) Every person charged with an offence has the right to a fair trial before a court of law.

(2) Every party to a civil dispute has the right to have the matter determined by a court of law or, if appropriate, by an independent and impartial tribunal.

(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time **as determined by public international law**.

(4) The hearings of courts (other than military courts) and tribunals established by law must be open to the public.

(5) Subsection (4) does not prevent:

(a) the making by the Parliament of laws relating to the trial of juveniles, or to the determination of family or domestic disputes in a closed court; or

(b) the exclusion by a court or tribunal from particular proceedings (except the announcement of the decision of the court or tribunal) of persons other than the parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of persons under the age of 18, personal privacy, national security, public safety or public order.

(6) Every person charged with an offence, every party to civil proceedings and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands.

(7) Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.

(8) To give effect to the rights referred to in subsections (6) and (7), the court

International human rights law has now determined what is 'reasonable time' in all the circumstances

or tribunal concerned must, when the interests of justice so require, provide, without cost to the person concerned, the services of an interpreter **or of a person competent in the sign language.**

Sign language is a minority language to be promoted and protected.

(9) If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

Freedom of expression

14(1) Every person has the right to freedom of speech and expression,

including:

- (a) freedom to seek, receive and impart information and ideas;
- (b) freedom of the press and other media; and
- (c) **freedom of political expression, including the right to vote**

(2) A law may limit, or may authorise the limitation of, the right to freedom of expression in the interests of:

- (a) national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;
- (b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including:
 - (i) the right to be free from hate speech, whether directed against individuals or groups; and
 - (ii) the right of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law;
- (c) preventing the disclosure, as appropriate, of information received in confidence;
- (d) preventing attacks on the dignity of individuals, groups or communities or respected offices or institutions in a manner likely to promote ill will between races or communities or the oppression of, or discrimination against, any person or persons;
- (e) maintaining the authority and independence of the courts;

Political expression is a right limited, as with others, by section 14 (2) (b) (i)

(f) imposing reasonable restrictions on the holders of public offices in order to secure their impartial and confidential service; or

(g) regulating the technical administration of telecommunications;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

(3) In this section:

hate speech means an expression in whatever form that encourages, or has the effect of encouraging, discrimination on a ground proscribed by [section 30](#).

Freedom of assembly

15 (1) Every person has the right to assemble and demonstrate with others peacefully.

(2) A law may limit, or may authorise the limitation of, the right to freedom of assembly:

(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;

(b) for the purpose of protecting the rights and freedoms of others; or

(c) for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

Freedom of association

16 (1) Every person has the right to freedom of association.

(2) A law may limit, or may authorise the limitation of, the right to freedom of association:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of others; or

Freedom of
Association
and
Dissociation?

Const.
Assembly to
decide whether
there should be
a 'right of
dissociation'

(c) for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

Labour relations

17 (1) Workers have the right to form and join trade unions, and employers have the right to form and join employers' organisations.

(2) Workers and employers have the right to organise and bargain collectively.

(3) Every person has the right to fair labour practices, including humane treatment and proper working conditions as ratified by Fiji pursuant to the International Labour Convention.

(4) A law may limit, or may authorise the limitation of, the rights set out in this section:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of others; or

(c) for the purpose of imposing reasonable restrictions on members of a disciplined force;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society and is in conformity with the International Labour Convention's exceptions and limitations.

Freedom of movement

18 (1) Every citizen has the right to enter and remain in Fiji.

(2) Every citizen who satisfies the conditions (if any) prescribed by the Parliament has the right to be issued with a passport.

(3) Every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.

Ref: S. Shameem: [Employment Decrees since the 2007 ERP: An Assessment of Rights and Protections-](#) paper for Const. Commission 5th September 2012.

(4) Every citizen, and every other person who has a right to reside in Fiji, has the right to reside in any part of Fiji.

(5) Every person who is not a citizen but is lawfully in Fiji has the right not to be expelled from Fiji except pursuant to an order of a court or a decision of the Minister on a ground prescribed by law.

(6) A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law:

(a) provides for the detention of the person or enables a restraint to be placed on the person's movements, whether:

(i) for the purpose of ensuring his or her appearance before a court for trial or other proceedings;

(ii) in consequence of his or her conviction for an offence; or

(iii) for the purpose of protecting another person from apprehended violence;

(b) provides for a person who is a non-citizen to be detained or restrained as a consequence of his or her arrival in Fiji without the prescribed entry documentation;

(c) provides for the extradition, on the order of the High Court, of a person from Fiji;

(d) provides for the removal from Fiji, on the order of the High Court, of a child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of a parent or guardian;

(e) provides for the removal from Fiji of a person who is not a citizen for the purpose of enabling the person to serve a sentence of imprisonment in the person's own country in relation to a criminal offence of which he or she has been convicted in Fiji; or

(f) regulates, controls or prohibits the entry of persons on to land owned or occupied by others.

(7) A law may limit, or may authorise the limitation of, the right of a person to freedom of movement:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the economy of a particular area or the ecology or distinctive culture of the area;

(c) for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfilment of an obligation imposed on the person by law; or

(d) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

(8) If a court has made an order requiring a person to pay tax or maintenance, a further order of the court restricting his or her freedom of movement is to be taken as reasonable for the purposes of paragraph (7)(c) if the person has wilfully refused to pay despite having the means to do so.

(9) If action has been taken pursuant to paragraph (7)(b) restricting the movements of persons in order to protect the economy, ecology or distinctive culture of an area, a person whose interests are affected may request the Judicial Service Commission, in writing, to establish an independent and impartial tribunal to investigate the merits of the need to protect the economy, ecology or culture of that area.

(10) Upon receipt of the request, the Judicial Service Commission must establish the tribunal and must appoint as its chairperson a person qualified to practise as a barrister and solicitor in Fiji.

(11) Subsections (3) and (4) apply to a person whose right to freedom of movement is restricted pursuant to a measure authorised under a state of emergency in the same way as they apply to a person detained pursuant to such a measure.

Religion and belief

Fundamental Principle

Fiji is a secular State within which every person's religious rights, personal beliefs and matters of conscience are respected, promoted and protected by the State.

19 (1) Every person has the right to freedom of conscience, religion and belief.

(2) Every person has the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching.

(3) The right set out in subsection (2) extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.

(4) The right set out in subsection (2) may be made subject to such limitations prescribed by law as are necessary:

(a) to protect:

(i) the rights or freedoms of other persons; or

(ii) public safety, public order, public morality or public health;

(b) to prevent a public nuisance; or

(c) to prevent sacrilege or expression defined as hate speech in section 14 (3)

(5) Except with his or her consent or, in the case of a person under the age of 18, the consent of a parent or guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

(6) A person must not be compelled to take an oath, or to take an oath in a manner, that is contrary to his or her religion or belief or that requires him or her to express a belief that he or she does not hold.

Good Governance and Administration

Fundamental Principle

Every person who has the right to vote as a form of political expression has the right to take part in the governance of the country and to expect that government at all levels, central, divisional and local, will be administered according to the fundamental principles of transparency, good governance, accountability, and non-corrupt practices.

Good governance is considered in international law to be a matter of human rights and an important social contract device.

Right to Secret ballot

20 . Every person who has a right to vote in any elections has the right to do so in secret.

Right to register as voter

21 (1) Every person who:

- (a) has reached the age of 18; and
 - (b) is a citizen of Fiji
- has a right to be registered as a voter.

22 A person who:

- (a) is serving a sentence of imprisonment of 12 months or longer;
- (b) is serving a sentence of imprisonment of 12 months or longer imposed by a court of another country prescribed by the Parliament for the purposes of this paragraph;
- (c) is under a law in force in Fiji, adjudged or declared to be of unsound mind; or
- (d) is serving a period of disqualification from registration as a voter under a law relating to electoral offences;

does not have a right to be, or ceases to have a right to be, registered as a voter

Compulsory voting

23. Every person registered as a voter whose right to registration has not ceased must, as prescribed by the Parliament and subject to such exceptions as the Parliament prescribes, vote in every election in the constituencies in respect of which he or she is enrolled.

Parliament, voting mechanisms and elections procedures consistent with this Chapter

24. (1) Every enactment and procedure of Parliament shall conform with the rights and freedoms set out in this Chapter.

(2) The voting mechanisms devised for each election and all elections procedures employed in national or other elections shall be consistent with this Chapter

(3) Any Act or procedure of Parliament, voting mechanisms, or elections which are inconsistent with this Chapter are invalid to the extent of the inconsistency.

Parliamentary and election Processes

25 (1) Every person taking part in national or other elections does so on the basis of the right to equal suffrage.

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whether
voting should
be
compulsory

(2) The election of members of Parliament shall be based on a voting mechanism that emphasizes democracy and representation as a human right and shall ensure representation on the principle that all votes have equal value irrespective of the minority and majority status of all communities and groups of Fiji.

Parliament and the Executive bound by the Bill of Rights

26. Chapter 3 on the constitution, roles and functions of Parliament and the Executive shall be interpreted consistently with the Bill of Rights Chapter to give effect to its provisions in the sphere of Parliamentary and Executive Government.

Conduct of Public Officers.

Application

This section applies to the President, Vice-President, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution or by law, members of commissions, secretaries of departments, the Secretary to the Cabinet, persons who hold statutory appointments or governing or executive positions in statutory authorities, all public officials, and all civil servants and others employed at all levels whether permanently, on contract, or in any other capacity, in institutions of the State.

27 (1) Every person in Fiji has the right to expect public officers and employees of the State to conduct their duties with the utmost integrity, good faith and transparency.

(2) Persons to whom this section applies must so conduct themselves in relation to the performance of their public duties as not:

- (a) to place themselves in positions in which they have, or could be seen as having, a conflict between their private interests and their public duties;
- (b) to compromise the fair exercise of their public duties;
- (c) to use their offices or their employment for private gain;
- (d) to allow their integrity to be called into question; or
- (e) to cause respect for, or confidence in, the integrity of the Government to be diminished.

(3) All public institutions must, immediately after the enactment of the Constitution, adapt a Code of Conduct modeled on the Public Service (Amendment) Decree 2011 for their own offices and provide training for their employees on the requirements of the Code, including on penalties for infringements.

Recruitment and promotion policy in State Services

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method
to give
full effect
to all
rights of
the
people of
Fiji. See
Chapter 3
Part 2.

28. The recruitment of persons to a state service, the promotion of persons within a state service and the management of a state service must be based on the following principles:

(a) government policies should be carried out effectively and efficiently and with due economy;

(b) appointments and promotions should be on the basis of merit;

(c) men and women equally, and the members of all minority groups and communities, should have adequate and equal opportunities for training and advancement;

(d) the composition of the state service at all levels should reflect as closely as possible the composition of the population, taking account, when appropriate, of occupational preferences.

(e) In establishing the policy pursuant to the section, the requirements of section 30 of the Constitution (right to equality and to be free from unfair discrimination) shall be paramount.

Privacy

29 (1) Every person has the right to personal privacy, including the right to privacy of personal communications.

(2) The right set out in subsection (1) may be made subject to such limitations prescribed by law as are reasonable and justifiable in a free and democratic society.

Equality

30 (1) Every person has the right to equality before the law. The term ‘equality’ for the purposes of this section includes ‘equality of opportunity’

.

(2) A person must not be unfairly discriminated against, directly or indirectly, in public or in private, on the ground of his or her:

(a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or

The State is responsible for ensuring equality in the private spheres.

(b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;

or on any other ground prohibited by this Constitution.

(3) Accordingly, neither a law, an administrative action taken under a law, nor a policy may directly or indirectly impose a disability or restriction on any person on a prohibited ground.

(4) Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

(5) The proprietor of a place or service referred to in subsection (4) must facilitate reasonable access for disabled persons to the extent prescribed by law.

(6) A law is not inconsistent with subsections (1), (2) or (3) on the ground that it:

(a) appropriates revenues or other moneys for particular purposes;

(b) imposes on persons who are not citizens a disability or restriction, or confers on them a privilege or advantage, not imposed or conferred on citizens;

(c) permits a person who has a discretion to institute or discontinue criminal proceedings to take account in the exercise of that discretion of traditional procedures in the State for the settlement of disputes; or

(d) makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters as the personal law of any person or the members of any group;

but only to the extent that the law is reasonable and justifiable in a free and democratic society.

(7) A law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of:

(a) providing for the application of the customs of all communities;

- (i) to the holding, use or transmission of, or to the distribution of the produce of, land or fishing rights; or
 - (ii) to the entitlement of any person to any **traditional** title or rank;
- (b) imposing a restriction on the alienation of land or fishing rights held in accordance with Fijian or Rotuman custom or in accordance with Banaban custom; or
- (c) permitting the temporary alienation of that land or those rights without the consent of the owners.

(8) To the extent permitted by subsection (10), a law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of providing for the governance of Fijians or Rotumans or of the Banaban community and of other persons living as members of a Fijian, Rotuman or Banaban community.

(10) A limitation referred to in subsection (8) is valid only if it:

- (a) accords to every person to whom it applies the right to equality before the law without discrimination other than on the ground of race or ethnic origin; and
- (b) does not infringe a right or freedom set out in any other section of this Chapter.

(11) For the avoidance of doubt, the right to equality protected and promoted in this section includes the right of every person to political expression and equal suffrage in all state and community elections.

Education

31 (1) Every person has the right to education and to equal access, without discrimination, to all educational institutions.

(2) Every religious community or denomination and every cultural or social community has the right to establish and maintain places of education and to manage them, whether or not it receives financial assistance from the State.

(3) Every provider of education, whether or not it receives assistance from the State, must provide access to their educational institutions to all without discrimination on any of the grounds prohibited by this Constitution.

(4) Nothing contained in, or done under the authority of, a law prescribing standards

or qualifications for educational institutions is inconsistent with this section or is unfair discrimination to the extent that the requirements of the law are reasonable and justifiable in a free and democratic society.

(5) Parliament shall enact a law providing for a scheme of National Service as part of the compulsory educational curriculum.

Protection against compulsory acquisition of property

32 (1) Every person has the right not to be deprived of property by the State otherwise than in accordance with a law.

(2) The acquisition of property under a law referred to in subsection (1):

(a) is permissible for public purposes only; and

(b) is subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as is determined by a court or tribunal to be just and equitable taking into account all relevant factors including:

(i) the use to which the property is being put;

(ii) the history of its acquisition;

(iii) its market value;

(iv) the interests of those affected; and

(v) any hardship to the owner.

(3) In this section:

property includes an interest in property.

Right to Development and Social Justice

33. Every person has the right to development and to social justice, particularly the development of just economic, social and cultural rights as provided in international human rights law.

(1) Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to:

(a) education and training;

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form an ad hoc
Committee to
hear views on
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further steps.
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A Development
and Social
Justice
Commissioner
within the
Human Rights
Commission is
proposed for
monitoring this
right.

- (b) land and housing;
- (c) participation in commerce and in all levels and branches of service of the State, and
- (d) social and cultural development as promoted in international human rights law.

(2) An Act that establishes a program under subsection (1) must specify:

- (a) the goals of the program and the persons or groups it is intended to benefit;
- (b) the means by which those persons or groups are to be assisted to achieve the goals;
- (c) the performance indicators for judging the efficacy of the program in achieving the goals; and
- (d) if the program is for the benefit of a group, the criteria for the selection of the members of the group who will be entitled to participate in the program.

(3) A person may take special measures in accordance with this section for the purpose of achieving substantial equality and social justice between different groups or different categories of persons.

(4) A person does not discriminate against another person under section 30 by taking those special measures.

(5) Subsection (3) does not authorise the taking, or further taking, of special measures for a purpose referred to in that subsection that is achieved.

(6) The administering department or other agency in consultation with the Human Rights Commission must monitor the efficacy of a program established under this section by reference to the specified performance indicators. The Minister must make an annual report to Parliament on the results revealed by the monitoring. The Minister's report shall include a report from the Human Rights Commission.

(7) Unless it has sooner expired in accordance with its terms or has been repealed, an Act establishing a program under this section expires on the tenth anniversary of its commencement, but the program may be re-established, unless the benefited persons or groups have demonstrably ceased to be in need of it.

(8) A program established under this section must not, directly or indirectly, deprive any person not entitled to its benefits of:

- (a) any position or seniority in the service of the State;
- (b) any place in an educational or training institution;
- (c) a scholarship or other financial support; or
- (d) a right to carry on any business or profession or to enjoy any other opportunity, amenity or service;

to which that person has already become, and would otherwise remain, entitled.

(9) For the purposes of this section, a community is to be taken as having effective equality of access to a level or branch of service of the State only if it is represented there in a number broadly proportionate to its number in the adult population as a whole, unless its under-representation is due solely to its particular occupational preferences.

(10) In this section:

service of the State means service in any capacity on appointment:

- (a) by the President, a Minister, the Cabinet, a commission or the holder of a public office;
- (b) by resolution of the Parliament or a committee of the Parliament; or
- (c) by or on behalf of any local authority;

whether or not the appointee is remunerated wholly or partly by public money, but does not include service as a member or employee of a body provided for in an Act referred to for the purposes of requiring the cultural or linguistic familiarity of those referred to in group rights in section 38, subject to other rights in the Bill of Rights chapter.

Right to Environment

34. Every person has the right

- (a) to an environment that is not harmful to their health or well-being; and

For example people living with disabilities should be actively recruited, based on merit, in the public service.

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Freedom of trade, occupation and profession

35. Every person has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Health care, food, water and social security

36. (1) Every person has the right to have access to –

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

(4) At its first session Parliament shall set into motion an independent review of the Fiji National Provident Fund Decrees 2011 for the purposes of considering their impact on the right to social security in Fiji.

Children

37 (1) Every child has the right –

(a) to a name and a nationality from birth;

FNPF Decrees to be reviewed forthwith from the human rights perspective.

A Children's Commissioner is proposed to monitor this right

- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to proper nutrition, shelter, proper health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that –
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, subject to the principle that the child may be detained only for the shortest appropriate period of time, and has the right to be –
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, and to have the Human Rights Commission informed by the State regarding any proceedings affecting the child.
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict
- .
- (2) A child's best interests are of paramount importance in every matter concerning the child and the Child Rights Convention will be used as the benchmark for monitoring this right.
 - (3) In this section "child" means a person under the age of 18 years.

GROUP RIGHTS

Fundamental Principle:

In affirmation of the right to self-determination as an international human right, every person has the right to protect his or her autonomy expressed in concert with his or her community.

Consequently,

38 (1) A Bill that alters any of the following Acts, namely:

- (a) Fijian Affairs Act;
- (b) Fijian Development Fund Act;
- (c) I-taukei Lands Act;
- (d) Native Land Trust Act;
- (e) Rotuma Act;
- (f) Rotuman Lands Act;
- (g) Banaban Lands Act; or
- (h) Banaban Settlement Act;

including a Bill prepared in consequence of the enactment of this Constitution:

- (i) must be expressed as a Bill for an Act to alter the Act concerned;
- (j) must not be presented for the President's assent unless it has been read 3 times in each House and motions for the second and third readings are carried in each House; and
- (k) is deemed not to have been passed unless at its third reading in both Houses it is supported by the votes of at least two thirds of the members of each House.

(2) A Bill that alters the Agricultural Landlord and Tenant Act:

- (a) must be expressed as a Bill for an Act to alter that Act; and
- (b) must not be presented for the President's assent unless:
 - (i) it has been read 3 times in each House and motions for the second and third readings are carried in each House; and

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determine
legislation to be
added or
subtracted from
the list.

(ii) at its third reading it is supported by the votes of at least two-thirds of the members of each House.

(3) The President must not assent to a Bill referred to in this section unless it is accompanied by a certificate of the Secretary-General to Parliament certifying that, in relation to the particular House, the approval required by this section has been given.

Customary group rights

39 (1) The Parliament must make provision for the application of any customary laws for any of the groups or communities in Fiji, and for dispute resolution in accordance with customary processes.

(2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of all the people of Fiji as long as these are just and fair in a free and democratic society and comply with the Bill of Rights Chapter of the Constitution and any relevant international law.

(3) The Parliament must make provision granting to the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed, subject to public international law on such matters.

(4) A law fixing amounts under subsection (3) must require that account be taken of:

(a) any benefits that the owners are likely to receive as a result of the mineral exploitation;

(b) the risk of environmental damage;

(c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;

(d) the cost to the State and tax-payers of administering exploitation rights;

(e) the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights; and

(f) the public interest in equitable distribution to all the people of the revenues to be earned by such exploitation.

Customary law, with limitations placed on it from the human rights perspective, is considered to be an aspect of non-discrimination in international law in major UN conventions a ‘non-assimilationist’ policy is promoted.

There may be argument that there is no need for a group rights chapter in the new Constitution; however, the kind of democratic governance proposed in Constitution 20XX depends on both autonomy (self-determination) and power-sharing as being the most effective for providing a voice for everyone in complex societies such as Fiji.

Right to Judicial Independence

40. (1) Every person has the right to an independent judiciary whose members are appointed in accordance with and conform to the United Nations Basic Principles on the Independence of the Judiciary.

(2) The judges of the State are independent of the legislative and executive branches of government in accordance with the doctrine of separation of powers in international law.

(3) The roles and functions of the judicial branch established by Chapter 9 shall conform to the Bill of Rights Chapter of the Constitution.

(4) The Courts are subject only to the Constitution and the law which judges must apply impartially and without fear, favour and prejudice.

State Accountability

41. (1) Every person has the right to hold the State accountable for its performance through institutional offices and mechanisms established for this purpose.

(2) The mechanisms and institutions of accountability include but are not limited to the following Constitutional offices:

(a) The Human Rights Commission

(b) The Ombudsman

(c) The Auditor General

(d) Supervisor of Elections;

(e) Director of Public Prosecutions;

(f) Secretary-General to Parliament;

(g) All Security Services of the State

(h) Governor of the Reserve Bank of Fiji; and

(i) Any other office of accountability established by the Constitution or by law.

(3) Every person has the right to expect all state services to be accountable in their roles, functions, duties and performance.

(4) This section also includes the duty of accountability of the following independent services commissions:

- (a) Constitutional Offices Commission;
- (b) Public Service Commission
- (c) Disciplined Services Commission,
- (d) Police Service Commission
- (e) Constituency Boundaries Commission;
- (f) Electoral Commission;
- (g) Parliamentary Emoluments Commission;
- (h) Commission on the Prerogative of Mercy
- (i) Charities Commission

and all other independent commissions established by this Constitution and by law.

Public moneys to be accounted for

42. Every person has the right to have all public moneys dealt with and accounted for in accordance with law and otherwise in accordance with accounting principles generally accepted in the public sector.

Freedom of information

43 (1) Every person has the right to freedom of information.

(2) Parliament shall without delay enact a law to give members of the public rights of access to official documents of the Government and its agencies

Enforcement

44 (1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the Constitutional Court for redress.

(2) The right to make application to the Constitutional Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

(3) The Constitutional Court has original jurisdiction:

(a) to hear and determine applications under subsection (1); and

(b) to determine questions that are referred to it under subsection (5);

and may make such orders and give such directions as it considers appropriate.

(4) The Constitutional Court may exercise its discretion not to grant relief in relation to an application or referral made to it under this section if it considers that an adequate alternative remedy is available to the person concerned.

(5) If in any proceedings in any other court any question arises as to the contravention of any of the provisions of this Chapter, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the Constitutional Court. In that reference an opinion on whether the member considers any request for a reference to be made to the Constitutional Court to be frivolous or vexatious may be included and, in that event, the Constitutional Court shall first make a ruling on whether the request was frivolous or vexatious.

(6) When the Constitutional Court gives its decision on a question referred to it under this section, the court in which the question arose must dispose of the case in accordance with the decision which is final.

(7) The Attorney-General may, on behalf of the State, intervene in proceedings before the Constitutional Court that relate to a matter concerning a provision of this Constitution.

(8) In proceedings before the Constitutional Court the Court must not proceed to hear and determine the matter until it is satisfied that notice of the matter has been given to the Attorney-General and a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the question of intervention in the proceedings.

(9) A notice under subsection (8) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

(10) A Constitutional Judicial Panel of 3 members, including the President of the Constitutional Court and the Chief Justice, may make rules for the purposes of this section with respect to the practice and procedure of the Constitutional Court (including rules with respect to the time within which applications are to be made to the Constitutional Court).

Human Rights Commission

45(1) This section establishes a Human Rights Commission.

(2) Its functions are:

(a) to educate the public about the nature and content of the Bill of Rights, including its origins in the Universal Declaration of Human Rights, international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other committees and organs of the General Assembly of the United Nations and the Human Rights Council for promoting respect for human rights;

(b) to make recommendations to the Government about matters affecting compliance with human rights, including that a particular question about the legal effect of a provision of the Bill of Rights shall be referred to the Constitutional Court for its decision;

(c) to institute legal proceedings in the Constitutional Court at its discretion; and

(d) to perform such other functions as are conferred on it by a law made by the Parliament.

(3) The Human Rights Commission consists of 7 members who are appointed for 5 years and are not eligible for re-appointment.:

(a) A Chairperson who is qualified to be a judge, and is a full time appointment;

(b) One person with the legal qualifications of a senior member of the Fiji Bar will be appointed as the Proceedings Commissioner on a full time basis; and

(c) Five other members with relevant experience in human rights law and policy each of whom shall be appointed to have responsibility for the following mandates:

(i) Commissioner for Children

(ii) Commissioner for Race Relations and Conciliation

Added
Universal
Declaration of
Human Rights
and Human
Rights Council-
missing from
1997
Constitution

- (iii) Commissioner for Gender Equality
- (iv) Commissioner for Development and Social Justice
- (v) Commissioner for Persons living with Disabilities

(4) The Chairperson and members of the Human Rights Commission referred to in paragraphs (3) (a) (b) and (c) are appointed by the President after consultation with the Prime Minister following advice taken by the Prime Minister from the Leader of the Opposition, independent members of Parliament and the sector standing committee of the House of Representatives responsible for matters concerning human rights.

Interpretation

46 (1) The specification in this Chapter of rights and freedoms is not to be construed as denying or limiting other rights and freedoms recognised or conferred by international law, common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.

(2) In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom, equality, good governance and accountability and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter and the United Nations instruments ratified by Fiji.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because the wording of the law exceeds the limits imposed by this Chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits. In that case, the law must be construed in accordance with the more restricted interpretation.

CHAPTER 3

PARLIAMENT

Part 1-GENERAL

Fundamental Principle of Parliamentary Governance

The Republic of Fiji is a Sovereign Constitutional Democracy where the Constitution has supreme authority over all arms and branches of the State and Government.

The President of the Republic of Fiji has ultimate executive authority, duty and responsibility to ensure that Parliament and all arms and branches of the State and Government at all levels confirm to the Constitution.

Legislative power

47. (1) The power to make laws for the State vests in a Parliament consisting of the President, the House of Representatives and the Senate.

(2) Any laws passed by Parliament shall conform to the provisions of the Constitution.

Way in which legislative power exercised

48 (1) Subject to this Constitution, the power of the Parliament to make laws is exercised through the enactment of Bills passed by both Houses of the Parliament and assented to by the President.

(2) The President must not refuse to assent to a Bill duly presented for his or her assent unless the Bill is not in conformity with the provisions of the Constitution.

(3) If in doubt concerning a matter to be determined in relation to subsection (2), the President shall seek legal opinion from a specially constituted ad hoc 5 member Committee of Inquiry to establish whether a Bill which is duly presented for his or her assent is in conformity with the Constitution.

(4) The membership of the ad hoc Presidential Committee of Inquiry shall be one-third from outside Fiji and two-thirds from within Fiji to be selected from senior members of the Bar as well as eminent retired judges.

(5) The members of the ad hoc Committee of Inquiry shall be appointed by the Judicial Services Commission after consultation with the President, the Prime Minister, the Leader of the Opposition, independent members of Parliament and the Chairperson of the Human Rights Commission.

(6) Any bill referred by the President to the Committee of Inquiry must be considered and its opinion provided to the President within 14 days of the bill being referred to it.

(7) The Chief Justice shall make rules for the composition, appointment, emoluments and procedures of the ad hoc Committee of Inquiry.

1997
Constitutional
supremacy is
extended to
Constitution
20XX

(7) A law made by the Parliament does not come into operation before the date on which it is published in the Gazette.

Passage of Bills

49 (1) All Bills originate in the House of Representatives.

(2) Following passage of a Bill by the House of Representatives, the Bill is sent to the Senate.

(3) The Senate may pass the Bill with or without amendment or may reject it.

(4) If the Bill is amended by the Senate, the House of Representatives may agree to the amendment, reject it or agree to it in an amended form.

(5) If the House of Representatives does not agree to an amendment made by the Senate, the Bill is returned to the Senate in the form in which it has again been passed by the House of Representatives.

(6) If.:

(a) the House of Representatives passes a Bill in 2 successive sessions;

(b) an interval of at least 6 months elapses between its passage on each occasion; and

(c) on each occasion the Senate rejects it or passes it with an amendment to which the House of Representatives does not agree;

the Bill may be presented to the President for assent.

(7) Subsection (6) does not apply to a Bill referred to in [section 38](#) or where the [Constitutional Court is invoked](#), or where the bill has been stood down by the

Speaker of the House of Representatives or the Senate to facilitate consensus subject to the relevant provisions of the Constitution.

(8) If the House of Representatives thinks fit, it may, on the passage by it of a Bill which the Senate has rejected or unacceptably amended, include with the Bill suggested amendments that, if agreed to by the Senate, would be acceptable to the House of Representatives.

(9) if the Senate passes the Bill with those suggested amendments, they are taken to be amendments made by the Senate and agreed to by the House of Representatives.

Application by members of Parliament to Constitutional Court

50. (1) Members of Parliament may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.

(2) An application –

(a) must be supported by at least one third of the members of the Parliament; and

(b) must be made within 30 days of the date on which the President assented to and signed the Act.

(3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if –

(a) the interests of justice require this; and

(b) the application has a reasonable prospect of success.

(4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

(5) In its consideration of an application pursuant to this section, the Constitutional Court shall consider any opinion of the Presidential ad hoc Committee of Inquiry referred to section 48 (3).

(6) The Constitutional Court may not hear an application if an enactment in its bill form had been referred to the Court by the President and the court had delivered a decision that the bill was constitutional, unless there are exceptional circumstances which would permit the Court to do so.

Urgent Bills

51.-(1) If:

(a) the Prime Minister certifies in writing to the President of the Senate that a Bill passed by the House of Representatives is an urgent measure;

(b) the Bill is sent to the Senate at least 7 sitting days before the end of the session; and

(c) the Senate does not pass the Bill within a period of 7 sitting days after the Senate received it, or the Senate passes it with an amendment to which the House of Representatives does not agree within that period;

the Bill (with amendments, if any, agreed to by both Houses) may be presented to the President for assent.

(2) This section does not apply to a Bill referred to in [section 38](#).

(3) This section does not limit the operation of [section 52](#).

Limitation on powers of Senate with respect to money Bills

52.-(1) The Senate may not amend Bills imposing taxation or appropriating revenue or moneys.

(2) The Senate may not amend any Bill so as to increase any proposed charge or burden on the people.

(3) If:

(a) a Bill passed by the House of Representatives is certified by the Speaker as an appropriation Bill, and

(b) the Bill is not passed by the Senate without amendment by the end of the sitting day after the day on which it was sent to the Senate;

the Bill must, unless the House of Representatives otherwise resolves, be presented to the President for assent

(4) If:

(a) a money Bill (other than a Bill referred to in subsection (3)) passed by the House of Representatives is certified by the Speaker as a money Bill;

(b) the Bill is sent to the Senate at least 21 sitting days before the end of the session; and

(c) the Bill is not passed by the Senate without amendment within 21 sitting days after it was sent to the Senate;

the Bill must, unless the House of Representatives otherwise resolves, be presented to the President for assent.

(5) In this section:

money Bill means a Bill that:

(a) imposes, alters, remits or reduces taxation;

(b) imposes, alters, remits or reduces a charge or impost;

(c) alters or reduces a grant of moneys to any person;

(d) deals with the granting of a guarantee or the making of a loan on the security of the revenue of the State or the Consolidated Fund, the repayment of such a loan or the abolition of a sinking fund in connection with such a loan; or

(e) otherwise relates to public moneys.

Part 2-HOUSE OF REPRESENTATIVES

Members

53. The House of Representatives consists of (???) members elected in accordance with this Constitution to represent (???) member constituencies.

Seats

(1) The XXX members are elected as follows:

The voting System shall be²

53.-(1) The Constituency Boundaries Commission must determine the boundaries of constituencies for the election of members to the House of Representatives and the Senate.

(2) In determining the boundaries of the constituencies for the election of members to both Houses of Parliament, the Constituency Boundaries Commission:

(a) must give due consideration, in relation to each proposed constituency, to:

- (i) the physical features of the proposed constituency;
- (ii) the boundaries of existing administrative and recognised traditional areas;
- (iii) means of communication and travel within the proposed constituency; and
- (iv) the principle that the voters should comprise a good proportion of members of different ethnic communities.

Redistributions

54 (1) The Constituency Boundaries Commission must, in the year following each official census, and may, at other times, review the boundaries of constituencies and determine whether or not the boundaries should be changed to give effect to the requirements of this Constitution, especially Chapter 2.

(2) The Parliament may make laws relating to reviews conducted by the Commission under subsection (1), including laws requiring the Commission to

² I am grateful to Dr Stephen Winter and Dr Chris Wilson of Auckland University's Political Studies Department for pointing me in the right direction on consociational democracy and to Dr David Neilson and Mr Logan Moss of Waikato University for engaging in a lively discussion with me on the various methods of voting suitable for Fiji.

Const. Assembly to decide number of members and voting system after presented with technical choices.

Political theorists say the best method for ensuring democracy in societies similar to Fiji is the Multiple Proportional Vote and Centripetal Consociationalism. (see also Fr Arms suggestions)

give notice of proposed redistributions and to hear objections before making a determination.

(3) Upon the making of a determination on a redistribution, the Commission must report its findings to the House of Representatives, together with:

- (a) a summary of any objections made to it; and
- (b) the reasons for its determination.

(4) Subject to the jurisdiction of the High Court to entertain an application for judicial review, **or the Constitutional Court to entertain an application on a human rights matter**, a determination of the Commission is final.

Voting and other matters

55 (1) The election of a member for each constituency is conducted under the system of voting known asxxxx

(2) The Parliament **shall** make laws relating to elections for the House of Representatives consistent with the system of voting referred to in this section.

(3) Subject to such exceptions as the Parliament prescribes, every person who has a right to be registered as a voter must forthwith apply to the Supervisor of Elections for registration **as soon as he or she becomes eligible to vote in accordance with the registration qualifications required by the Constitution.**

Registration of voters

56. The functions of the Electoral Commission and the Supervisor of Elections include the function of promoting public awareness of electoral and parliamentary matters with a view to encouraging the registration as voters of persons who have a right to be registered.

Nomination as candidate for election

57.-(1) A person is not eligible to be elected as a member of the House Representatives unless duly nominated.

The method of voting, constituency boundaries and question of 'open' or 'closed' systems etc will be some of the key features of the Constitution 20XX; **however**, in the past, the method of voting was over-stated since Fiji had not been able to decide the principles of representation

My suggestion is that once the people of Fiji **(through the Const. Assembly)** have committed themselves to the basic principles of rights and duties to be expressed in the Constitution, and to the idea of 'social contract' between people and the state, they will adopt the voting system that best gives effect to these fundamental principles of governance. **The Constituent Assembly** should determine these fundamentals first.

(2) A person is not qualified to be nominated as a candidate for election to the House of Representatives if he or she:

(a) is not a registered voter or has ceased to have a right to be registered as a voter;

(b) is an undischarged bankrupt;

(c) has been convicted of an indictable offence.

(d) has an interest in an agreement or contract entered into with the Government or a government authority, being an interest of a kind prescribed by the Parliament as an interest that must not be held by a member of the Parliament or a presiding officer of a House of the Parliament.

(3) A law made by the Parliament may make provision relating to the nomination of candidates.

(4) If, at the close of nominations for 2 or more elections to the House of Representatives, there exist nominations of a person for 2 or more of those elections, each of the nominations is invalid.

Term of House of Representatives

58. The House of Representatives, unless sooner dissolved, continues for 3 years from the date of its first meeting after a general election of members of the House.

Writs for elections

59 (1) Writs for the election of members of the House of Representatives are issued by the President on the advice of the Prime Minister.

(2) The writs for a general election issue within 7 days from the expiry of the House of Representatives or from the proclamation of its dissolution.

Date of nomination

60. The last day for the receipt of a nomination of a candidate for election to the House Representatives is 14 days after the date of the writ or writs.

Once the Const. Assembly has committed itself to a rights-based Constitution, the discussions on the voting systems and mechanisms will very quickly be concluded to everyone's satisfaction.

References for consideration are:

Laurent de Brey: 'Centripetalism in Consociational Democracy'; D.L Horowitz, A. Lijphart and Fr Arms June 2012 paper.

Constituent Assembly should decide how long the term of the House of Representatives should be; many people believe that Parliament should only have a 3 year term to make it easier for democracy to flourish.

Dates of polling

61. Polling commences not later than 30 days after the last day for the receipt of nominations.

By-elections

62.. If the place of a member of the House of Representatives becomes vacant before the end of his or her term of service, an election maybe held in the constituency concerned for the purpose of filling the place of the member for the remainder of the term unless the vacancy occurs more than 2 years and 6 months after the first meeting of the House following the last general election

Part 3

SENATE

Members

63.-(1) The Senate consists of XXX members elected under the system of voting known as xxxx , (or appointed by political parties elected with more than 5% of votes in the House of Representatives ???)

(4) A person is not eligible to be elected as a member of the Senate unless he or she is eligible to be a candidate in elections to the House of Representatives.

Term of Senate

64. The term of the Senate expires on:

- (a) the expiry of the House of Representatives; or
- (b) its earlier dissolution.

Vacancies

65. If the place of a Senator becomes vacant before the end of his or her term of

Senate is another matter for the Const. Assembly to decide.

The Senate should be elected and the system of voting should be the same as for the House of Reps.

But there are other choices for democratizing the Senate.

Under the 1997 Constitution Fiji had an autocratic Senate.

service an election to fill the vacancy shall be held under the election provisions of the Constitution.

Part 4-BOTH HOUSES

Candidates who are public officeholders

66.-(1) A person who holds a public office is deemed to have vacated that office immediately before the time at which his or her signed nomination as a candidate or election to the House of Representatives is delivered to the relevant returning officer.

(2) A person who holds a public office is deemed to have vacated that office immediately before the time at which he or she is appointed by the President as a member the Senate.

(3) A person who has held office as:

- (a) a member of the Constituency Boundaries Commission;
- (b) a member of the Electoral Commission;
- (c) a member of the Parliamentary Emoluments Commission;
- (d) the Supervisor of Elections; or
- (e) a member of the Constitutional Offices Commission;

is ineligible to be nominated as a candidate for election to the House of Representatives for 4 years after ceasing to hold that office.

(4) In this section:

public office does not include:

- (a) the office of a Minister;
- (b) the office of Leader of the Opposition; or
- (c) an office held by a Minister by virtue of his or her appointment as a Minister.

Sessions of Parliament

67.-(1) After a general election of members of the House of Representatives, the Parliament is summoned to meet by the President on the advice of the Prime Minister not later than 30 days after the last day of polling.

(2) Other sessions of the Parliament commence on a date appointed by the President on the advice of the Prime Minister but no longer than 6 months must elapse between the end of one session and the start of another.

(3) If:

(a) the Parliament is not in session; and

(b) the President receives a request in writing from not less than 18 members of the House of Representatives requesting that the Parliament be summoned to meet to consider without delay a matter of public importance;

the President may, acting in his or her own deliberate and considered judgment, and stating his reasons, summon the Parliament to meet.

(4) If:

(a) the Parliament is in session but more than 2 months have elapsed between sittings of the House of Representatives; and

(b) the Speaker receives a request in writing from not less than 18 members of the House requesting that a sitting be held to consider without delay a matter of public importance;

the Speaker must call a sitting of the House for a date not later than 2 weeks after the date on which the request was made.

(5) Subject to this section, the sittings of each House of the Parliament are held at such time and place as the House determines in accordance with its rules and orders.

Could be less than 18 members- Const. Assembly to decide.

Voting in both Houses

68.-(1) Subject to **special voting provisions** provided by this Constitution, all questions proposed for decision in either House of the Parliament are determined by a majority vote of the members of the House present and voting.

(2) If there is an equality of votes, the person presiding does not have a casting vote and the question concerned is deemed to be **lost unless the person presiding decides, upon application by any member of any of the Houses and put to a vote, to stand down the matter to allow the different opinions to be ventilated outside of the House, to be mediated by an independent person appointed by the person presiding for that purpose, and another vote taken on the same matter within 2 days of having being stood down to attempt a mediated outcome.**

(3) **The time-frame referred to in subsection (2) may be extended for a further 2 days by the person presiding unless there are special circumstances permitting him or her to extend the time further, but no longer than the session of parliament during which the matter first arose.**

(4) Before the adjournment of the session of Parliament where the matter first arose, if the person presiding perceives that the matter requires even further discussion, he or she may call for an application by a member to move that the question shall be deferred to the next session of parliament, and the motion shall be put to the vote.

(5) If the motion referred to in subsection (4) is lost, the person presiding shall ask for a conclusive vote to be put on the matter and the vote shall be won or lost as the case may be.

Quorum

69.-(1) If at a sitting of either House of the Parliament:

- (a) a quorum of the House is not present;
- (b) a member of the House objects on that account to its transacting business; and
- (c) after such interval as is prescribed in rules and orders of the House the person presiding ascertains that a quorum is still not present;

Const Ass.
Special voting may be envisaged for bills on mining, the environment, or fundamental state policy

The aim of s68(2)- (5) is to allow consensus to be achieved on controversial issues to make parliament less divisive and gain the confidence of the people.

The Const. Assembly shall decide what the quorum of Parliament shall be.

the person presiding must adjourn the sitting.

(2) For the purposes of this section:

(a) the quorum for the House of Representatives is XXX members; and

(b) the quorum for the Senate is XXX members.

Vacation of place of member of Parliament

70.-(1) The place of a member of the House of Representatives becomes vacant if the member:

(a) resigns by giving to the Speaker a signed resignation;

(b) with the member's consent, becomes the holder of a public office;

(c) ceases to have a right to be registered as a voter in an election to the House of Representatives;

(d) is an undischarged bankrupt;

(e) is absent from 2 consecutive meetings of the House of Representatives without having obtained the permission of the Speaker to be absent;

(f) has an interest in an agreement or contract entered into with the Government or a government authority, being an interest of a kind prescribed by the Parliament as an interest that must not be held by a member of the Parliament or a presiding officer of a House of the Parliament;

(g) resigns from the political party for which he or she was a candidate at the time he or she was last elected to the House of Representatives;

(h) is expelled from the political party for which he or she was a candidate at the time he or she was last elected to the House of Representatives and:

(i) the political party is a registered party;

(ii) the expulsion was in accordance with rules of the party relating to party discipline; and

(iii) the expulsion did not relate to action taken by the member in his or her capacity as a member of a parliamentary committee;

(i) is nominated as a candidate for election to the House of Representatives in a constituency other than the constituency for which he or she is the member; or

(j) is appointed as a member of the Senate.

(k) is convicted of an indictable offence and all appeals have been exhausted.

(2) The place of a member of the Senate (other than the President of the Senate) becomes vacant if the member:

- (a) resigns by giving to the President of the Senate a signed resignation;
- (b) with the member's consent, becomes the holder of a public office;
- (c) would, if he or she were a member of the House of Representatives, vacate his or her place by reason of the operation of [section 70 paragraph \(1\) \(d\) \(f\); \(g\), \(h\) and \(k\)](#).
- (d) is absent from 2 consecutive meetings of the Senate without having obtained the permission of the President of the Senate; or
- (e) is nominated as a candidate for election to the House of Representatives.
- (f) is nominated as a candidate for election to the Senate in a constituency other than the constituency for which he or she is a member
- (g) ceases to have the right to be registered as a voter in an election to Parliament.

(3) For the purposes of paragraph (1)(g), the place of the member of the House of Representatives becomes vacant only upon the receipt by the Speaker of a certificate, signed by the president and secretary of the member's former party, certifying the member's resignation.

(4) For the purposes of paragraph (1)(h), the place of the member of the House of Representatives becomes vacant only after the expiration of 28 days from the receipt by the Speaker of a certificate, signed by the president and secretary of the member's former party, certifying the member's expulsion.

(5) Despite subsection (4), if a member of the House of Representatives or Senate who is expelled from his or her political party brings proceedings in the courts challenging the validity of the expulsion, his or her place in the House of Representatives or Senate does not become vacant unless and until those proceedings, including any appeal, are determined adversely to him or her and, pending their determination, the member is taken to be suspended from the service of the House or Senate.

(6) In this section:

public office does not include:

These sections apply if the Senate is to be elected.

- (a) the office of a Minister;
- (b) the office of Leader of the Opposition;
- (c) the office of Deputy Speaker of the House of Representatives, President of the Senate or Vice-President of the Senate; or
- (d) if the member concerned is a Minister - an office held by him or her by virtue of his or her appointment as a Minister.

Vacancies in House membership

71. Each House of the Parliament may act despite a vacancy in its membership, and the presence at, or the participation in, its proceedings of a person not entitled to be a member does not invalidate the proceedings.

Court of disputed returns

72.-(1) The High Court is the Court of Disputed Returns and has original jurisdiction to hear and determine:

- (a) a question whether a person has been validly elected as a member of the House of Representatives; and
- (b) an application for a declaration that the place of a member of the House of Representatives or the Senate has become vacant.

(2) The validity of an election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise.

(3) The petition:

(a) may only be brought by:

- (i) a person who had a right to vote in the election concerned;
- (ii) a person who was a candidate in that election; or
- (iii) the Attorney-General; and

(b) except if corrupt practice is alleged, must be brought within 6 weeks of the declaration of the poll.

(4) If the petitioner is not the Attorney-General, the Attorney-General may intervene in the proceedings.

(5) Proceedings pursuant to paragraph (1)(b) may only be brought by:

- (a) a member of the Parliament;
- (b) a voter registered on any electoral roll; or
- (c) the Attorney-General.

(6) If the proceedings are not brought by the Attorney-General, the Attorney-General may intervene in them.

(7) A determination by the High Court in proceedings under paragraph (1)(a) is final.

Proceedings of the Parliament

73.-(1) The official language of the Parliament is English but a member of either House may address the person presiding in Fijian or Hindustani or any other language, including sign language, with the permission of the person presiding.

(2) The Secretary General to Parliament shall ensure that simultaneous interpretation is available in the event that a member of either House addresses the person presiding in any other language apart from English.

(3) In the event that a member wishes to address Parliament in another language and requires the services of simultaneous interpretation he or she shall give the person presiding and the Secretary General to Parliament adequate notice for technical arrangements to be made.

(4) The Parliament may prescribe the powers, privileges and immunities of the Houses of the Parliament.

(3) The House of Representatives must, under its rules and orders, establish not less than 5 sector standing committees with the functions of scrutinising Government administration and examining Bills and subordinate legislation and such other functions as are specified from time to time in the rules and orders of the House.

Const. Assembly
to decide if more
than 5 sector
standing
committees are
needed.

(4) Ministers are not eligible for election to sector standing committees of the House of Representatives.

(5) Each House of the Parliament may make rules and orders with respect to:

(a) the way in which its powers, privileges and immunities may be exercised and upheld; and

(b) the order and conduct of its business and proceedings either separately or jointly with the other House.

(6) Any such rules and orders made by each House of Parliament shall conform to the Constitution.

Part 5 - INSTITUTIONS AND OFFICES

Constituency Boundaries Commission

74. The Constituency Boundaries Commission established under the Constitution of 1997 continues in existence.

Appointments to Constituency Boundaries Commission

75.-(1) The Constituency Boundaries Commission consists of:

(a) a chairperson; and

(b) 4 other suitably qualified members selected to represent a cross-section and suitable proportion of the communities of Fiji.

(c) In selecting members for the Commission section 30 shall be the constitutional guideline for appointments.

(2) The chairperson must be a person who is qualified to be, a judge.

(3) The chairperson is appointed by the President, acting in his or her own judgment, following consultation with the Prime Minister and the Leader of the Opposition.

(4) The 4 other members are appointed by the President, two on the nomination of the Prime Minister and the Leader of the Opposition in consultation with each other and the other two after consultation by the President with all political parties and independent members of both Houses of Parliament.

All references to the 1990 Constitution in the 1997 Constitution should be reviewed by the AG's office and advice provided to the Const. Assembly.

Disqualification for appointment

76. A person must not be appointed as a member of the Commission if:

- (a) he or she is, or has at any time during the immediately preceding 4 years been, a member of either House of the Parliament, of a local authority or of another representative body prescribed by the Parliament for the purposes of this section; or
- (b) he or she is a member of a state service.

Electoral Commission

77.-(1) The Electoral Commission established under the Constitution of 1997 continues in existence.

(2) The Electoral Commission has general responsibility for the registration of voters for elections of members of the House of Representatives, the conduct of those elections [and the review of the processes, methods and outcomes of elections subsequent to any elections having taken place.](#)

(3) The Electoral Commission has such other functions as are conferred on it by a written law.

(4) The Electoral Commission must make an annual report to the President concerning the operations of the Commission, [including making specific reference in the report to compliance in the Commission's work with the Constitution,](#) and must submit a copy to each House of the Parliament for laying before that House.

(5) The Electoral Commission may at other times make such reports to the President and the Parliament as it thinks fit.

(6) The Electoral Commission consists of:

- (a) a chairperson who is qualified to be a judge; and
- (b) 4 other members.

There need not be a permanent Electoral Commission; however, each election requires an analysis by the Commission of whether the aims of the elections system were achieved and to recommend amendments (see Fr Arms June 2012).

(7) The chairperson and other members are appointed by the President, after consultation with the Prime Minister and the Leader of Opposition and independent members of Parliament.

(8) A person is not qualified for appointment as a member if he or she is:

(a) a member of the House of Representatives;

(b) a Senator;

(c) the holder of a public office

(d) a member of the judiciary.;

(e) a member of a local authority, other statutory authority or a local government officer; or

(f) a candidate for election to the House of Representatives or to a local authority.

Supervisor of Elections

78-(1) The office of Supervisor of Elections established under the Constitution of 1997 continues in existence.

(2) The Supervisor of Elections:

(a) administers the registration of voters for elections of members of the House of Representatives;

(b) conducts:

(i) elections of members of the House of Representatives; and

(ii) such other elections as the Parliament prescribes; and

(c) may perform such other functions as are conferred by a written law.

(3) The Supervisor of Elections has the right to attend meetings of the Electoral Commission and must comply with any directions that the Commission gives him or her concerning the performance of his or her functions.

(4) The Supervisor of Elections is appointed by the Constitutional Offices

Commission following consultation by it [with the Prime Minister, Leader of Opposition and independent members of Parliament.](#)

(5) The Supervisor of Elections must be a person who is qualified to practise as a barrister and solicitor in Fiji [and is, or has been, a senior member of the Bar.](#)

(6) The Minister must ensure that all Bills or proposed subordinate legislation relating to electoral matters are referred to the Supervisor of Elections and the Electoral Commission for comment before their introduction in the House of Representatives or their making, as the case may be.

Speaker and Deputy Speaker

79.-(1) The members of the House of Representatives must, at their first meeting after a general election and whenever the office of Speaker is vacant, elect as Speaker a person [who is a member of the House](#) but who is qualified to be a candidate for election to the House.

(2) A person elected as Speaker must make the Oath of Allegiance before the Secretary-General to the Parliament.

(3) The members of the House of Representatives must, at their first meeting after a general election and whenever the office of Deputy Speaker is vacant, elect a Deputy Speaker from among their number (excluding Ministers).

(4) The Deputy Speaker must perform the duties of Speaker if the Speaker is absent from duty or from Fiji or is, for any other reason, unable to perform those duties.

(5) If neither the Speaker nor the Deputy Speaker is able to perform the duties of Speaker, the members of the House of Representatives must elect one of their number to preside at meetings of the House.

Const. Assembly
to decide
whether the
Speaker is to be a
member of the
House.

(6) The office of Speaker becomes vacant:

(a) on the day immediately before the first meeting of the House of Representatives after a general election; or

(b) if, before that day, the Speaker:

(i) resigns by giving to the Secretary-General to the Parliament a signed resignation;

(ii) becomes the holder of another public office;

(iii) ceases to have a right to be registered as a voter in an election to the House of Representatives;

(iv) is absent from 2 consecutive meetings of the House;

(v) has an interest in an agreement or contract referred to [in paragraph 70\(1\)\(f\)](#);

(vi) is appointed as a member of the Senate; or

(vii) is removed from office by a resolution supported by not less than two-thirds of the members of the House of Representatives.

[\(viii\) is convicted of an indictable offence and all appeals have been exhausted.](#)

(7) The office of Deputy Speaker becomes vacant if the Deputy Speaker:

(a) resigns by giving to the Speaker a signed resignation;

(b) vacates his or her place in the House of Representatives;

(c) is appointed as a Minister; or

(d) is removed from office by a resolution supported by not less than two thirds of the members of the House of Representatives.

[\(e\) is convicted of an indictable offence and all appeals have been exhausted.](#)

President and Vice-President of the Senate

80.-(1) The members of the Senate must, at their first meeting after a general election for members of the House of Representatives and whenever the office of President of the Senate is vacant, elect from among their number (excluding Ministers) a President of the Senate.

(2) A person elected as President of the Senate must make an Oath of Allegiance before the Secretary-General to the Parliament.

(3) The members of the Senate must, at their first meeting after a general election for members of the House of Representatives and whenever the office of Vice-President of the Senate is vacant, elect from among their number (excluding Ministers) a Vice-President of the Senate.

(4) The Vice-President of the Senate must perform the duties of President of the Senate if the President of the Senate is absent from duty or from Fiji or is, for any other reason, unable to perform those duties.

(5) If neither the President nor the Vice-President of the Senate is able to perform the duties of President of the Senate, the members of the Senate must elect one of their number to preside at meetings of the Senate.

(6) The office of President of the Senate does not become vacant on the expiry of the term of the Senate but becomes vacant:

(a) on the day immediately before the first meeting of the Senate after a general election for members of the House of Representatives; or

(b) if, before that day, the President of the Senate:

(i) resigns by giving to the Secretary-General to the Parliament a signed resignation;

(ii) with the consent of the President of the Senate, becomes the holder of another public office;

(iii) vacates his or her place by reason of the operation of the [relevant paragraphs 70 \(1\) or \(2\)](#)

(iv) is absent from 2 consecutive meetings of the Senate;

(v) has an interest in an agreement or contract referred to in [paragraph 70\(1\)\(f\)](#);

(vi) is nominated as a candidate for election to the House of Representatives;

(vii) is appointed as a Minister; or

(viii) is removed from office by a resolution supported by not less than two-thirds of the members of the Senate.

(ix) is convicted of an indictable offence and all appeals have been exhausted.

(7) The office of Vice-President of the Senate becomes vacant if the Vice-President:

(a) resigns by giving to the President of the Senate a signed resignation;

(b) vacates his or her place in the Senate;

(c) is appointed as a Minister; or

(d) is removed from office by a resolution supported by not less than two-thirds of the members of the Senate.

(e) convicted of an indictable offence and all appeals have been exhausted.

Leader of the Opposition

81.-(1) The Leader of the Opposition is appointed by the President.

(2) The President, after consultation with all the members of the opposition party or parties of the House of Representatives, appoints as the Leader of the Opposition the member of the House whose appointment as Leader would be acceptable to the majority of the members in opposition.

(3) Subject to subsection (5), the office of Leader of the Opposition becomes vacant if he or she ceases to be a member of the House of Representatives.

(5) Upon the expiry or dissolution of the House, the Leader of the Opposition continues in office until the next appointment of a Prime Minister.

(6) If the President is unable to make an appointment under subsection (2) because:

(a) an opposition party does not exist in the House of Representatives; or

(b) the President has been informed by the Opposition party or parties that there does not exist in the House a person whom the opposition party or parties would regard as acceptable to be appointed as Leader of the Opposition; then, for so long as the appointment is unable to be made, the provisions of this Constitution providing for;

(c) the President to act on the advice of the Leader of the Opposition;

This clause amended from the 1997 Constitution; in the past the President has been able to appoint the Leader of Opposition non-transparently. The amendment allows the President to consult fully.

It is not enough for the President to form an opinion about this (see 1997 Const); **he must be informed.**

- (d) the Leader of the Opposition to be consulted in relation to certain matters; or
- (e) the Leader of the Opposition to nominate a person for appointment to an office;

are of no effect and an appointment may be made or action may be taken without reference to the Leader of the Opposition.

(7) In the exercise of functions under this section the President acts in his or her own judgment.

Parliamentary Emoluments Commission

82.-(1) This section establishes a Parliamentary Emoluments Commission.

(2) Its functions are to review from time to time, as determined by it, allowances and benefits payable to:

- (a) the Prime Minister;
- (b) other Ministers (including Assistant Ministers);
- (c) the Leader of the Opposition;
- (d) the Speaker of the House of Representatives;
- (e) the Deputy Speaker of the House of Representatives;
- (f) the President of the Senate;
- (g) the Vice-President of the Senate; and
- (h) members of the House of Representatives and the Senate.

(3) The Parliamentary Emoluments Commission consists of:

- (a) a chairperson; and
- (b) 4 other members, one of whom must be a qualified and experienced actuary or accountant.

(4) A person whose remuneration is reviewable by the Commission is not eligible to be appointed as a member of the Commission.

(5) The members are appointed by the President on the recommendation of the

Increase from 2 members to 4- to give a good mix of qualified members

sector standing committee of the House of Representatives that is responsible for matters relating to administrative services.

(6) The sector standing committee must make its recommendation under subsection (5) after considering names of potential appointees that are placed before it by the Speaker of the House of Representatives.

(7) For the purpose of conducting a review, the Commission may consider submissions made to it and other relevant material.

(8) Upon the completion of a review, the Commission must furnish a determination in writing to the Speaker of the House of Representatives for tabling in that House.

(9) The Speaker must cause the determination to be tabled in the House within 5 sitting days of receipt.

(10) If, within 15 sitting days after the tabling of the determination, the House passes a resolution disapproving it, the determination does not come into operation

.

(11) Subject to subsection (10), remuneration and allowances to which a determination applies are payable in accordance with the determination out of the Consolidated Fund, which is appropriated accordingly.

(12) The entitlement to remuneration and allowances of members of the Parliament starts on the date of their election or appointment and, subject to subsections (13) and (14), ends on the day on which they cease to be members of the Parliament.

(13) The remuneration and allowances payable to a member of the House of Representatives who is a member of the House immediately before its dissolution or expiry are to be reckoned to and including the day next before the day of his or her re-election or, if he or she is not re-elected, the day next before the polling day in that general election.

(14) The remuneration and allowances payable to a member of the Senate who is a member of the Senate immediately before the dissolution or expiry of the House of Representatives are to be reckoned to and including the day next **before the day on which a member is elected to the Senate.**

(15) The entitlement to remuneration and allowances of the Speaker of the House of Representatives and the President of the Senate starts on the day of their election to the office concerned and ends on the day on which they vacate office.

Secretary-General to Parliament and staff

83.-(1) The offices of Secretary-General to the Parliament, Secretary to the House of Representatives and Secretary to the Senate established under the Constitution of 1997 continue in existence.

(2) The Secretary-General to the Parliament is appointed by the Constitutional Offices Commission following consultation by it with the Speaker.

(3) The Secretary to the House of Representatives and Secretary to the Senate are appointed by the Public Service Commission or by another body prescribed by the Parliament.

(4) **Nothing in this section prevents:**

(a) the appointment of one person to the offices of Secretary-General to the Parliament, Secretary to the House of Representatives and Secretary to the Senate; or

(b) the appointment of one person to an office on the staff of Secretary to the House of Representatives and to an office on the staff of Secretary to the Senate.

Const. Assembly
to decide
whether the two
Houses should
share the
services of the
Sec-Gen to
Parliament's
office.

CHAPTER 4

EXECUTIVE GOVERNMENT

Part I-EXECUTIVE AUTHORITY

President

84. This section establishes the office of the President. The executive authority of the State is vested in the President.

Head of State

85. The President is the Head of State and symbolises the unity of the State.

86. The President has the executive authority, duty and responsibility to promote and protect the Constitution of Fiji by all or any legitimate means at his disposal.

President is Commander-in-Chief

87. (1) The President is the Commander-in-Chief of the military forces.

(2) The President is Chief Authority of the Police and Prisons Departments.

(3) In the exercise of his or her functions in relation to section 86 the President shall consider advice from the Prime Minister, the Leader of Opposition, independent members of Parliament, the Commander of the RFMF, and any other person in his discretion which shall be formally recorded as the person from whom the President in his discretion sought advice.

(3) The President has other functions as enacted by Parliament subject to the provisions of the Constitution.

President's assent to Parliamentary Bills

(1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the Houses of Parliament for reconsideration.

The Constitutional Court provides the checks and balances for executive action and performance.

(2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the parliament

(3) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either –

(a) assent to and sign the Bill; or

(b) refer it to the ad hoc Committee of Inquiry established for this purpose pursuant to 48 (3) for an opinion on its constitutionality and, upon receiving that opinion, if the President is still not satisfied, after taking account of public opinion, he must refer the Bill to the Constitutional Court for a decision.

(5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

(6) Parliament must defer debate on a Bill if the President has referred it to the ad hoc Committee of Inquiry for an opinion or the Constitutional Court for a decision.

Vice-President

88.-(1) This section establishes the office of Vice-President.

(2) The Vice-President performs the functions of President if the President is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of his or her office.

(3) If neither the President nor the Vice-President is available to perform a function of the President, it may be performed by the Speaker of the House of Representatives.

(1) If none of the officers, the President, Vice President or Speaker of the House of Representatives, is available to perform the functions of his or

her office, the President of the Senate, the Prime Minister and the Leader of Opposition shall perform the President's functions collectively and in doing so shall take advice from the members of the House of Representatives, the Senate and the security services to conduct State business.

(4) If the office of President becomes vacant, a new President and Vice-President must be appointed in accordance with Part 2, but the incumbent Vice-President has the authority under this section to perform the functions of President, for a period of no longer than 3 months, pending the filling of the vacancy.

Part 2-PRESIDENT AND VICE-PRESIDENT

Qualifications for President and Vice-President

89.-(1) Candidates for the offices of President and Vice-President must be citizens who have had a distinguished career in any aspect of national or international life, whether in the public or private sectors, and must have the qualifications required of candidates for election to the House of Representatives.

(2) A person holding a public office is not required to resign from that office before accepting nomination for President or Vice-President, but the appointment of the person as President or Vice-President has the effect of terminating his or her service in that office.

Election of President and Vice-President

90. (1) The President and Vice-President shall be appointed by consensus by the two Houses of Parliament, the House of Representatives and the Senate.

(2) In the event that after 7 days of deliberations, the two Houses of Parliament cannot reach a consensus on the persons to be appointed as President and Vice President, an election will be held and the President and Vice President shall be elected by simple majority vote by both Houses convened together for the purpose of the presidential elections.

(3) Any election of the President and Vice President for the purposes of section 90 (2) shall be by secret ballot which shall be supervised jointly by the Supervisor of Elections and the Secretary General of Parliament.

(4) Nominations to the offices of President and Vice President shall not be accepted unless they are made in writing to the Secretary General to Parliament by

If the President of Fiji is to be supported by all the people of Fiji and by taxpayers' funds he or she must be elected by the people through this type of parliamentary 'electoral college'

any member of Parliament with written endorsement by at least 10 other members of Parliament including at least 4 members from political parties other than the nominee's own and at least 1 independent member if there are any independent members of Parliament.

(5) In submitting nominations for the position of President and Vice President, the nominee and those endorsing the nomination shall provide evidence that they have consulted with a significant representative proportion of their respective constituencies.

Term of office

91.-(1) The President holds office for 6 years, and is not eligible for re-appointment.

(2) The Vice-President holds office for 6 years, and is not eligible for re-appointment.

Vacancy in office of Vice-President

92.-(1) If the office of Vice-President becomes vacant, the appointment of the new Vice-President takes place in accordance with the rules for the appointment of the President.

(2) A person appointed as Vice-President pursuant to subsection (1) serves as Vice-President for the remainder of the term of office of his or her predecessor.

Removal from office of President or Vice-President

93.-(1) The President or Vice-President may be removed from office for inability to perform the functions of office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

(2) Removal of the President or Vice-President from office must be by consensus of both Houses of Parliament.

(3) In the event that a consensus cannot be reached in relation to the removal of the President or Vice President, an election to remove the President or Vice President shall be held by both Houses of Parliament convened together for that purpose.

If Parliament is to have a 3 year term, this period of 6 years for the presidency would allow the President and V.P. to work with 2 successive governments for the sake for continuity and sustainability

(3) Any election for removal of the President or Vice President for the purposes of section 93 (3) shall be by secret ballot which will be supervised jointly by the Supervisor of Elections and the Secretary General of Parliament.

(3) If the Prime Minister considers that the question of removing the President or Vice-President from office ought to be investigated, then:

(a) the Prime Minister consults the Leader of Opposition, independent members of Parliament and the President of the Senate on the matter and obtains their views and, subsequently,

(b) the Prime Minister requests the Chief Justice to establish:

(i) in a case of alleged misbehaviour—a tribunal, consisting of a chairperson and 2 other members each of whom is, or is eligible to be, a judge; and

(ii) in a case of alleged inability to perform the functions of office—a medical board, consisting of a chairperson and two other members, each of whom is a qualified medical practitioner;

and notifies the President or Vice-President, as the case may be, of the request;

(4) the Chief Justice, who must act on the request, establishes the tribunal or medical board, as the case may be;

(i) the tribunal or medical board enquires into the matter and furnishes a written report to the Chief Justice;

(ii) the Chief Justice refers the report to the Prime Minister together with, in the case of a report on alleged misbehaviour, written recommendations of the Chief Justice;

(iii) the Prime Minister considers the report and any recommendations and consults the President of the Senate and the Leader of Opposition and independent members of Parliament; and

(iv) if he or she considers that the matter should be considered by both Houses of Parliament – he or she refers the report and any recommendations to the President of the Senate and the Speaker of the House of Representatives, with a request that both Houses consider the matter, and notifies the President or Vice-President, as the case may be, accordingly; and

(v) upon receipt of a request from the Prime Minister under subparagraph (iv), the President of the Senate and the Speaker of the House of Representatives shall convene both Houses of Parliament to consider and determine whether the President or Vice-President, as the case may be, should be removed from office.

(5) The President or Vice-President is taken to be unable to perform the functions

Unlike in the 1997 Constitution, in Constitution 20XX the President or VP have the right to have investigations completed and a determination by parliament before he or she is removed from office.

or his or her office during the period starting on the day on which the President or Vice-President received notification under paragraph 4(iv) and ending on:

(a) the day on which the President or Vice-President receives notification of any determination under subparagraph (4)(v)

Oath of office by President and Vice-President

94. Before taking office, the President and Vice-President must make before the Chief Justice the Oath of Allegiance and the oath set out in Part B of the Schedule relating to their respective offices.

Legislation relating to President or Vice-President

95. Subject to this Constitution, the Parliament shall make laws relating to the terms and conditions of office, namely on entitlements, including pension entitlements, and emoluments.

Part 3-CABINET GOVERNMENT

President acts on advice

96.- (1) In the exercise of his or her powers and executive authority, the President acts only on the advice of body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.

Responsible government

97. Governments must have the confidence of the House of Representatives.

Appointment of Prime Minister

98. (1) The President, after consultation with the leader of the party with the majority members in the House of Representatives, appoints as Prime Minister the member of the House of Representatives who, in the President's opinion, can form a government that has the confidence of the House of Representatives.

(2) In exercising the function set out in this section, the President shall consider all of the following:

(i) The appointment or election of a leader by the party with the majority votes in Parliament;

(ii) The views of independent members of Parliament

(iv) Any power-sharing mechanisms proposed by the leaders of the main parties in Parliament, or views expressed by other members of Parliament, specifically in relation to minority representation in Parliament, in accordance with the Bill of Rights provisions of the Constitution.

(v) The views of the members of the Senate

(3) The President shall appoint a Prime Minister within 48 hours of the results of the national elections being announced.

Appointment of other Ministers

99.-(1) The President appoints and dismisses other Ministers on the advice of the Prime Minister or, in the case of any power-sharing arrangements decided by the leaders of the parties represented in Parliament, on the advice of the leaders of the other parties and of the independent members of Parliament.

(2) To be eligible for appointment, a Minister must be a member of the House of Representatives or the Senate.

(3) In selecting persons from parties other than his or her own party for appointment as Ministers, the Prime Minister must consult with the leaders of those parties.

(4) In selecting Ministers under a power-sharing arrangement, consensus must be reached by all parties and independent members on the choice of persons to be appointed as Ministers.

Attorney-General

100.-(1) The Minister appointed as the Attorney-General is the chief legal adviser to the Government.

(2) A person is not qualified to be appointed as Attorney-General unless he or she is qualified to practise as a barrister and solicitor in Fiji, is a senior member of the Fiji Bar, and would be eligible to be elected to Parliament.

(3) The Attorney-General may attend and take part in the proceedings of either House of the Parliament but may only vote in the House of which he or she is a member and is not to be regarded as a member of the other House except for the purpose of enjoying the privileges and immunities of a member of that other House.

(4) If the person holding the office of Attorney-General is, for any reason, unable to perform the functions of that office:

(a) the President may appoint another Minister, or a member of either House of the Parliament, who is legally qualified to act as Attorney-General; and

(b) the Solicitor-General may perform all the duties and exercise all the powers imposed or conferred on the Attorney-General by virtue of the Attorney-General's membership of a body created by a written law; and

(c) In the event that the Solicitor General is appointed pursuant to section 100 (4) (b), he or she can only act in the position of the Attorney General for a maximum period of 60 days.

Oath of office by Minister

101. Before taking office, a Minister must make, before the President, the Oath of Allegiance and the Oath of Office set out in [Part D of the Schedule](#)

Responsibility of Ministers and Cabinet

102.-(1) The Cabinet is collectively responsible to the House of Representatives for the governance of the State.

(2) A Minister is individually responsible to the House of Representatives for all things done by or under the authority of the Minister in the execution of his or her office.

Functions of Ministers

103.-(1) Ministers (including the Prime Minister) have such titles, portfolios and responsibilities as the Prime Minister determines from time to time.

(2) In the case of a power-sharing parliamentary arrangement, the Prime Minister shall consult the leaders of the parties or independent members involved in the arrangement in the exercise of the Prime Minister's function provided in this section.

(3) On the advice of the Prime Minister, the President, by direction in writing, assigns to the Prime Minister and to each other Minister responsibility for the conduct of a specified part of the business of the Government, including responsibility for general direction and control over a branch or branches of the public service or over a disciplined Force, as the case may be.

(4) (a) The Prime Minister has responsibility for any part of the business of the Government that is not specifically assigned under subsection (3).

(c) In the exercise of his or her function under a power sharing arrangement, the Prime Minister shall consult the leaders of the other parties and any independent members.

(5) Nothing in this section limits provisions in this Constitution conferring on specified persons or bodies freedom from direction or control by any person or authority in relation to the performance of specified functions.

President to be kept informed

104. The Prime Minister, on a weekly basis, shall keep the President informed about issues relating to the governance of Fiji and shall, without delay, and as a priority, supply the President with such information as the President requests concerning matters relating to the governance of Fiji.

Vacation of office of Minister

105.-(1) Subject to subsection (2), the appointment of a Minister terminates if:

- (a) the Prime Minister resigns in the circumstances set out in [section 107](#)
- (b) the Prime Minister is dismissed;

It is essential that Fiji's Head of State is kept briefed by the Prime Minister. These briefings should be similar to those of Downing Street with H.M. the Queen.

- (c) the Minister tenders his or her resignation to the President; or
- (d) the Minister ceases to be a member of the Parliament.

(2) If a Minister ceases to be a member of the Parliament because of the expiry or dissolution of the House of Representatives, he or she continues in office as a Minister until the next appointment of a Prime Minister.

Acting Ministers

106.-(1) The President may appoint a Minister to act in the office of another Minister (including the Prime Minister) during any period, or during all periods, when the other Minister is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office.

(2) *In the exercise of his or her function in this section, the President shall consult members of Parliament and shall consider any power-sharing arrangements that exist.*

(3) Notification of the appointment of an Acting Minister must be published in the Gazette.

Defeat of Government at polls or on floor of House

107. If:

- (a) the Government is defeated at a general election; or
- (b) the Government is defeated on the floor of the House of Representatives in a vote:
 - (i) after due notice, on whether the Government has the confidence of the House of Representatives;
 - (ii) that the Government treats as a vote of no confidence; or
 - (iii) the effect of which is to reject or fail to pass a Bill appropriating revenue or moneys for the ordinary services of the Government;

and the Prime Minister considers that there is another person capable of forming a Government that has the confidence of the House of Representatives, the Prime Minister must immediately advise the President of the person whom the Prime Minister believes can form a Government that has the confidence of the House and must thereupon resign.

Advice to dissolve Parliament by Prime Minister defeated on confidence vote

108. -(1) If a Prime Minister who has lost the confidence of the House of Representatives (*defeated Prime Minister*) advises a dissolution of the House of Representatives, the President shall, after taking advice from other members of the House, ascertain whether or not there is another person who can get the confidence of the House of Representatives (*alternative Prime Minister*) and:

(a) if the President ascertains that an alternative Prime Minister exists- ask the defeated Prime Minister to resign, dismiss him or her if he or she does not do so and appoint the alternative Prime Minister; or

(b) if the President cannot ascertain that an alternative Prime Minister exists- grant the dissolution advised by the defeated Prime Minister.

(2) If the President appoints the alternative Prime Minister pursuant to paragraph (1)(a) but the alternative Prime Minister fails to get the confidence of the House of Representatives, the President must dismiss him or her, re-appoint his or her predecessor and grant that person the dissolution originally advised.

Dismissal of Prime Minister

109.-(1) The President may not dismiss a Prime Minister unless the Government fails to get or loses the confidence of the House of Representatives and the Prime Minister does not resign or get a dissolution of the Parliament.

(2) If the President dismisses a Prime Minister, the President shall, after considering advice from other members of the House of Representatives, and giving due consideration to the Bill of Rights chapter of the Constitution, including by way of seeking the opinion of the ad hoc Committee of Inquiry or a decision of the Constitutional Court, appoint a person as a caretaker Prime Minister to advise a dissolution of the Parliament.

Part 4-GOVERNMENT ADMINISTRATION

Secretaries of departments

110.-(1) Each department for which a Minister has responsibility for general direction and control is managed by a person designated as a Permanent Secretary, Secretary, head of department or other appropriate name (*Secretary*).

(2) The Secretary of a department is responsible to the Minister concerned for the efficient, effective and economical management of the department.

(3) In this section:

department does not include the Fiji Police Force, or the Republic of Fiji Military Forces.

Commissioner of Police

111. This section establishes the office of Commissioner of Police.

(2) The Commissioner of Police is appointed by the Constitutional Offices Commission following consultation by it with the Minister.

(3) The Fiji Police Force is under the command of the Commissioner of Police.

(4) The Commissioner of Police is responsible for:

- (a) the organisation and administration of the Fiji Police Force; and
- (b) its deployment and the control of its operations;

and, subject to subsection (5), and [section 87 \(2\)](#) is not subject to direction or control by any other person or authority in relation to those matters

.

(5) The Minister may from time to time issue general Policy directions with respect to the maintenance of public safety and public order and, if such a direction has been issued, the Commissioner of Police must act in accordance with it.

(6) The Parliament may make laws relating to the Fiji Police Force.

Republic of Fiji Military Forces

112.-(1) The military force of Fiji called the Republic of Fiji Military Forces is continued by this Constitution

(2) The President, after consultation with the Prime Minister, the Leader of Opposition, independent members of Parliament, members of the Senate and the Constitutional Officers Commission, must appoint a Commander of the Republic of Fiji Military Forces to exercise military executive command of the Forces subject to the direction of the President as Commander-in-Chief of the Forces, as symbol of unity of the State of Fiji and as protector and defender of the Constitution of Fiji.

(3) The Commander of the Republic of Fiji Military Forces is responsible in his executive role for:

- (a) making appointments of members of the Forces;
- (b) taking disciplinary action against members of the Forces; and
- (c) removing members from the Forces.
- (d) chairing the meetings of the Military Council referred to in subsection (6)

(4) The Commander of the Republic of the Fiji Military Forces is responsible in his constitutional role for supporting the President in his duty to protect and defend the Constitution of Fiji

(5) The Commander of the Republic of the Fiji Military Forces is constitutionally responsible for the protection of both Houses of Parliament as institutions representing Fiji's constitutional sovereign democracy.

(6) In consultation with the President, who shall seek an opinion from the Vice President, the Commander of the Republic of the Fiji Military Forces shall appoint senior officers of the RFMF to a Military Council whose purpose is to provide advice to the Commander in his role to support the President as protector and defender of the Constitution and as protector of both Houses of Parliament as institutions representing Fiji's constitutional sovereign democracy.

(7) The Military Council may, from time to time as the need arises, invite non-military persons to attend Council meetings and provide advice to it in order to

properly exercise its civic duties and responsibilities established by subsections (3), (4), (5) and (6) and any others established by the Constitution.

(8) The Parliament may make laws relating to the Republic of Fiji Military Forces subject to the provisions of the Constitution.

Solicitor-General

113.-(1) This section establishes the office of Solicitor-General.

(2) The Solicitor-General must be a person who is qualified to be appointed as a judge.

(3) The Solicitor-General is appointed by the Judicial Service Commission following consultation by it with the Attorney-General.

Director of Public Prosecutions

114.-(1) The office of Director of Public Prosecutions is established by this Constitution.

(2) The Director of Public Prosecutions must be a person who is qualified to be appointed as a judge.

(3) The Director of Public Prosecutions is appointed by the Constitutional Offices Commission following consultation by it with the Attorney-General.

(4) The Director of Public Prosecutions may:

(a) institute and conduct criminal proceedings;

(b) take over criminal proceedings that have been instituted by another person or authority; and

(c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public prosecutions or another person or authority.

(5) The powers of the Director of Public Prosecutions may be exercised by him or her in person or through other persons acting on his or her instructions.

(6) In this section:

criminal proceedings means criminal proceedings before any court of law (other than a military court), and includes an appeal, case stated or question of law reserved.

Part 5-PREROGATIVE OF MERCY

Prerogative of mercy

115.-(1) The President may:

- (a) grant to a person convicted of an offence under the law of the State a pardon or a conditional pardon;
- (b) grant to such a person a respite, either indefinitely or for a specified period, of the execution of the punishment imposed for the offence;
- (c) substitute a less severe form of punishment for the punishment imposed; or
- (d) remit the whole or a part of:
 - (i) the punishment imposed; or
 - (ii) a penalty or forfeiture otherwise due to the State in respect of the offence.

(2) This subsection establishes a Commission on the Prerogative of Mercy consisting of:

- (a) the Attorney-General who is to be its chairperson; and
- (b) 4 other members appointed by the President, acting in his or her own judgment.

The Prerogative of Mercy is one of the last prerogatives left to a Head of State to determine in his or her own judgment.

(3) In be exercise of his or her powers under subsection (1), the President acts on the advice of the Commission.

CHAPTER 8

COUNCILS OF INFLUENCE

Bose Levu Vakaturaga

116. The Bose Levu Vakaturaga established under the Fijian Affairs Act (or Decree) continues in existence and its membership, functions, operations and procedures are as prescribed from time to time by or under that Act/Decree.

Councils of Elders

117 the President shall establish Councils of Elders with responsibility for advising the Government and the President on issues relating to their respective communities in Fiji.

118 Parliament shall make laws as necessary for the membership, functions, operations and procedures of the Councils of Elders.

119. In relation to the operation of sections 117-121 the Bill of Rights provisions of the Constitution shall be complied with in all respects.

120. In the selection of members of the Councils referred to in section 117, the President shall take into account the views of the communities on the membership of the Councils subject to the Bill of Rights provisions of the Constitution.

121. (1) From time to time, and at least 3 times a year, the President shall formally open and address each or all of the Councils established pursuant to this Chapter.

(2) The President shall once a year convene, address and participate in a joint conference of the Bose Levu Vakaturaga and all other Councils

(3) The conference referred to in subsection (2) shall be for the purposes of discussing issues of interest concerning all the Councils of Influence.

This Chapter ensures that reconciliation and healing may take place in the communities of Fiji but, more importantly provides a venue for ventilation of significant views in relation to majority and minority communities in Fiji

CHAPTER 9

JUDICIARY

Judicial power

122.-(1) The judicial power of the State vests in the High Court, the Court of Appeal, the Supreme Court, [the Constitutional Court](#), and in such other courts as are created by law.

(2) The Supreme Court is the final appellate court of the State.

(3) [The Constitutional Court has the jurisdiction for hearing applications on, or providing opinions on its own motion, subject to this Constitution, on any matter relating to the Constitution of Fiji.](#)

Independence of judicial branch

123. (1) The judges of the State are independent of the legislative and executive branches of government.

(2) [The doctrine of separation of powers as provided for in the Bill of Rights of the Constitution is the fundamental principle determining the independence of the courts of Fiji and all public officers exercising a judicial function.](#)

Jurisdiction of courts of State

124. Each of the High Court, the Court of Appeal, the Supreme Court and [the Constitutional Court](#) has the jurisdiction, including the inherent jurisdiction, conferred on it (or, in the case of the Court of Appeal, conferred on the Fiji Court of Appeal) immediately before the commencement of this Constitution and any further jurisdiction conferred on it by this Constitution or by any written law.

Jurisdiction of High Court

120.-(1) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution.

(2) The High Court has jurisdiction, subject to the conferral by Parliament of rights of appeal and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgments of subordinate courts.

(6) The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court.

Jurisdiction of Court of Appeal

121.-(1) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law.

(2) Appeals lie to the Court of Appeal as of right from a final judgment of the High Court in any matter arising under this Constitution or involving its interpretation.

(3) The Parliament may provide that appeals lie to the Court of Appeal, as of right or with leave, from other judgments of the High Court in accordance with such requirements as the Parliament prescribes.

Jurisdiction of Supreme Court

122.-(1) The Supreme Court has exclusive jurisdiction, subject to such requirements as the Parliament prescribes, to hear and determine appeals from all final judgments of the Court of Appeal.

(2) An appeal may not be brought from a final judgment of the Court of Appeal unless:

(a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or

(b) the Supreme Court gives special leave to appeal.

(3) In the exercise of its appellate jurisdiction, the Supreme Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

(4) Decisions of the Supreme Court are, subject to subsection (5), binding on the courts of the State.

(5) The Supreme Court may review any judgment, pronouncement or order made by it.

Jurisdiction of the Constitutional Court

123 (1) The Constitutional Court consists of a President, a Deputy President, and 5 other judges.

(2) A matter before the Constitutional Court must be heard by at least 5 judges.

(3) The Constitutional Court

(a) is the highest court in all constitutional matters;

(b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and

(c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.

(4) Only the Constitutional Court may –

(a) decide disputes between organs of state in the national sphere concerning the constitutional status, powers or functions of any of those organs of state;

(b) decide on the constitutionality of any parliamentary Bill, but may do so only in the circumstances anticipated by this Constitution;

(c) decide applications envisaged by this Constitution;

(d) decide on the constitutionality of any amendment to the Constitution;

(e) decide that Parliament or the President has failed to fulfil a constitutional obligation

(5) The Constitutional Court makes the final decision whether an Act of Parliament or decision of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or any other court, before that order has any force.

(6) The rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court –

(a) to bring a matter directly to the Constitutional Court; or

(b) to appeal directly to the Constitutional Court from any other court.

(7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

124. (1) The Constitutional Court has original jurisdiction in any matter arising under this Constitution or involving its interpretation.

(2) If in any proceedings in any other court a question arises as to the interpretation of this Constitution and the member presiding in the

proceedings considers that a substantial question of law is involved, the member presiding must refer the question to the Constitutional Court.

(3) When the Constitutional Court gives its decision on a question referred to it under subsection (2), the court in which the question arose must dispose of the case in accordance with the decision which is final.

Powers of courts in constitutional matters

125 (1) When deciding a constitutional matter within its power, a court -

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including -

(i) an order limiting the retrospective effect of the declaration of invalidity; and

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

(2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, or any decision of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

(b) A court which makes an order of constitutional invalidity may grant temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.

(3) Parliament shall enact a law to provide for the referral of an order of constitutional invalidity to the Constitutional Court.

(4) Any person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

(5) The Constitutional Court has the authority to determine, upon application by any person, including whether the application is frivolous or vexatious, or on its own motion, whether the President has legitimately exercised his authority, duty and responsibility to promote and protect the Constitution of Fiji pursuant to section 86.

- (6) The Constitutional Court is not confined to a specific location to be able to conduct its work.

Section 126 Inherent power and jurisdiction

The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent jurisdiction to protect and regulate their own process, and to develop the common law, taking into account the interests of justice and the Constitution.

Determinative jurisdiction

127. The President may, in the public interest, refer to the Constitutional Court for its decision any question as to the effect of a provision of this Constitution that has arisen or appears likely to arise, and the Constitutional Court must pronounce in open court its decision on the question.

Contempt of court

128. (1) The Supreme Court, the Constitutional Court, the Court of Appeal and the High Court have power to punish persons for a contempt of court in accordance with the law.

(2) A subordinate court or tribunal may refer a question of contempt of court to the High Court for a hearing on contempt of court and the High Court must only consider the reference on contempt and rule accordingly.

Rules of court

129. The President of the Supreme Court may make rules of court, not inconsistent with this Constitution or a law made by the Parliament, for regulating and prescribing the practice and procedure to be followed in the Supreme Court.

Composition of High Court

130.-(1) The High Court consists of the Chief Justice and a number of puisne judges that is not less than 10 or such greater number as the Parliament prescribes.

(2) The Parliament may make provision for the appointment of Masters of the High Court and may prescribe their jurisdiction and powers.

Composition of Court of Appeal

131. The Court of Appeal consists of.

- (a) a judge, other than the Chief Justice, who is appointed as President of the Court of Appeal;
- (b) such other judges as are appointed as Justices of Appeal; and
- (c) the puisne judges of the High Court.

Composition of Supreme Court

132. The Supreme Court consists of:

- (a) the Chief Justice, who is to be President of the Supreme Court;
- (b) such other judges as are appointed as judges of the Supreme Court; and
- (c) the Justices of Appeal.

Disqualification of judge

133. A judge who has sat in a trial of a matter that is the subject of appeal to a higher court must not sit in the appeal.

Qualifications for appointment

134. A person is not qualified for appointment as a judge unless he or she:

- (a) holds, or has held, high judicial office in Fiji or in another country prescribed by the Parliament; or
- (b) has had not less than 7 years' practice as a barrister or solicitor in Fiji or in another country prescribed by the Parliament.

Judicial Service Commission

135.-(1) This section establishes a Judicial Service Commission consisting of:

- (a) the Chief Justice who is to be its chairperson;
- (b) the chairperson of the Public Service Commission; and
- (c) the person who is from time to time the President of the Fiji Law Society.
- (d) [The Chairperson of the Human Rights Commission](#)

(2) In addition to the functions conferred on it elsewhere in this Constitution, the Judicial Service Commission may investigate complaints about judges and judicial officers of courts subordinate to the High Court and may take disciplinary action against them.

(3) The members of the Judicial Services Commission are entitled to such allowances as the Parliament fixes.

Appointments of judges

136.-(1) The Chief Justice is appointed by the President on the advice of the Prime Minister following consultation by him or her with the Leader of the Opposition **and independent members of Parliament.**

(2) The judges of the Supreme Court, the Justices of Appeal (including the President of the Court of Appeal) and the puisne judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission following consultation by it with the Minister and the sector standing committee of the House of Representatives responsible for matters relating to the administration of justice.

(3) The President may, on the recommendation of the Judicial Service Commission following consultation by it with the Minister:

(a) appoint a judge or a person who is qualified for appointment as a judge to act as Chief Justice during any period, or during all periods, when the office of Chief Justice is vacant or when the Chief Justice is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office; and

(b) appoint a person to act as a puisne judge of the High Court during any period, or during all periods, when an office of puisne judge of the High Court is vacant or when a puisne judge is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(4) A person is not eligible to be appointed under paragraph (3)(b) unless he or she is qualified for appointment as a judge.

Other appointments

137.-(1) Appointments to the following offices are made by the Judicial Service Commission:

- (a) an office of Magistrate;
- (b) the office of central agricultural tribunal under the Agricultural Landlord and Tenant Act;
- (c) the office of the Chief Tribunal of the Employment Tribunal
- (d) all Employment Tribunal members after consultation with the Chief Tribunal
- (e) all judicial offices and officers acting in a judicial capacity for which provision is made by the Parliament.

(2) In making appointments under paragraph (1)(a) or (b), the Judicial Service Commission must consult with the Prime Minister, the Leader of the Opposition and independent members of parliament.

(3) If a written law so provides, the Judicial Service Commission may also make appointments of persons to offices that are not judicial offices.

(4) The Judicial Service Commission must get the consent of the Prime Minister, the Leader of the Opposition and independent members of parliament before recommending a non-citizen for appointment to a judicial office (other than an office of judge).

Criteria for appointment to judicial office

138. The making of appointments to judicial office is governed by the principles, first, that judges should be of the highest quality and, secondly, that the composition of the judiciary should, as far as practicable, and subject to qualifications established by section 134, reflect the requirement of fair representation of all minority groups in Fiji to reflect balance of the community and elimination of unfair discrimination in judicial appointments.

Oath of office

139. Before taking office, a judge must make before the President, the oath of office set out in Part D of the Schedule.

Judges' remuneration

140. The remuneration of judges must not be reduced during their terms of office.

Retirement ages for judges

141.-(1) Subject to subsection (2), the term of appointment of the Chief Justice, a Justice of Appeal (including the President of the Court of Appeal) or a judge of the Supreme Court expires upon his or her reaching the age of 75.

(2) A Justice of Appeal (including the President of the Court of Appeal) or a judge of the Supreme Court may be appointed for a term of years, or for the duration of one or more sessions of the court concerned, expiring after the date on which he or she reaches the age of 75.

(3) The term of appointment of a puisne judge of the High Court expires upon his or her reaching the age of 70, and a person must not be appointed if he or she has reached that age.

(4) Nothing in subsection (3) prevents the appointment of a puisne judge of the High Court for a term of not less than 4 nor more than 7 years, but any such appointment must not extend beyond the date on which he or she reaches the age of 70.

(5) The Chief Justice, a judge of the Supreme Court, a Justice of Appeal (including the President of the Court of Appeal) or a puisne judge of the High Court who has reached the applicable retiring age is eligible for appointment as a judge of the Supreme Court or a Justice of Appeal (including the President of the Court of Appeal) for a term not exceeding 3 years or for the duration of one or more sessions of the court concerned if he or she has not reached the age of 75 years for the Chief Justice, judge of the Supreme Court or Appeal Court, and 70 years for puisne judges of the High Court at the date of appointment.

(6) The applicable retiring age under this section does not apply to a person appointed as an acting judge under subsection 136(3).

Removal of judges for cause

142.-(1) A judge maybe removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

(2) Removal of a judge from office must be by the President pursuant to subsection 3.

(3) If the President considers that the question of removing a judge from office ought to be investigated, then:

(a) the President appoints:

(i) in the case of alleged misbehaviour a tribunal, consisting of a chairperson and not less than 2 other members, selected by the President from among persons who hold or have held high judicial office in Fiji or in another country prescribed by the Parliament; and

(ii) in the case of alleged inability to perform the functions of office a medical board, consisting of a chairperson and 2 other members, each of whom is a qualified medical practitioner;

(b) the tribunal or medical board enquires into the matter and furnishes a written report of the facts to the President and advises the President whether or not the judge should be removed from office; and

(c) if the tribunal or medical board advises that the judge should be removed from office, the President may remove the judge from office.

(4) If the question of removing a judge from office has been referred to a tribunal or medical board under subsection (3), the President may suspend the judge from office and may; at any time, revoke that suspension.

(5) The suspension of the judge from office ceases to have effect if the tribunal or medical board advises the President that the judge should not be removed from office.

Existing appointments

143. Nothing in this Chapter affects the continuance of a person in office as a judge under an appointment made before the commencement of this Constitution.

CHAPTER 10

STATE SERVICES

Recruitment and promotion policy

144. The recruitment of persons to a state service, the promotion of persons within a state service and the management of a state service must be based on the following principles:

- (a) government policies should be carried out effectively and efficiently and with due economy;
- (b) appointments and promotions should be on the basis of merit;
- (c) men and women equally, and the members of all ethnic communities, and members of all other minority groups should have adequate and equal opportunities for training and advancement;
- (d) the composition of the state service at all levels should reflect as closely as possible the representative balance and composition of the population, taking account, when appropriate, of occupational preferences.

Public officeholders must be citizens

145. A person or authority exercising power to appoint a person to a public office, (other than the office of judge) must not appoint a person who is not a citizen except with the agreement of the Prime Minister, the Leader of the Opposition and independent members of parliament.

Independent service commissions

146. This section:

- (a) establishes a Constitutional Offices Commission;
- (b) continues in existence the Public Service Commission established under the Constitution of 1997; and
- (c) continues in existence the Disciplined Services Commission, and the Police Service Commission established under the Constitution of 1997.

Appointments to independent service commissions

147.-(1) The Constitutional Offices Commission consists of:

- (a) a chairperson; and
- (b) 4 other members;

appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and independent members of parliament.

(2) The Public Service Commission consists of:

- (a) a chairperson; and
- (b) not less than 4 nor more than 6 other members;

appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and independent members of Parliament.

(3) The Disciplined Services Commission consists:

- (a) a chairperson; and
- (b) 4 other members;

appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and independent members of parliament.

(4) Appointments to all independent service commissions must be made on the nomination of the Minister and each nomination must be approved by the appropriate sector standing committee of the House of Representatives before the Minister submits the nomination to the President.

(5) The sector standing committee may confirm or reject a nomination made by the Minister.

(6) If a nomination is rejected by the sector standing committee, the Minister may make a fresh nomination.

Vacancies in office

148.-(1) If the office of chairperson of an independent service commission is vacant or the chairperson is absent from duty or from Fiji, the remaining members may elect one of their number to preside at meetings of the commission.

(2) The President may, on the advice of the Prime Minister following consultation by the Prime Minister with the Leader of the Opposition and independent members of parliament, appoint an acting member of an independent service commission to act as a member during any period, or during all periods, when the member is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office.

Disqualification for appointment

149.-(1) A person must not be appointed as a member of an independent service commission if he or she is, or has at any time during the immediately preceding 3 years been:

(a) a member of either House of the Parliament or a member of a local authority or of another representative body prescribed by the Parliament for the purposes of this section;

(b) a candidate for election as a member of the House of Representatives, a local authority or of another representative body prescribed by the Parliament for the purposes of this section;

(c) a national office bearer in a political party that promotes, or has during that 3 years promoted, the election to the House of Representatives of a candidate endorsed by the party;

(d) the holder of a public office

(e) a local government officer; or

(f) convicted of an indictable offence

(2) A person who is a member of one independent service commission must not be appointed to another independent service commission.

(3) A member of an independent service commission is ineligible to be appointed to a state service for 3 years after ceasing to be such a member.

Functions of Constitutional Offices Commission

150.-(1) The Constitutional Offices Commission has the function of making appointments, in accordance with this Constitution, to the following offices:

- (a) Supervisor of Elections;
- (b) Ombudsman;
- (c) Auditor-General;
- (d) Director of Public Prosecutions;
- (e) Secretary-General to Parliament;
- (f) Commissioner of Police;
- (g) Governor of the Reserve Bank of Fiji.

Any others??

Const. Assembly to decide if others are to be included

(2) Before making an appointment to the office of Governor of the Reserve Bank of Fiji, the Constitutional Offices Commission must consult the Minister and the Board of the Reserve Bank.

(3) The office of Governor of the Reserve Bank of Fiji is a public office.

(4) The Constitutional Officers Commission has consultative powers in relation to the appointment of the Commander of the RFMF.

Functions of Public Service Commission

151.-(1) The Public Service Commission has the following functions:

- (a) to make appointments to public offices;
- (b) to remove persons from public offices;
- (c) to take disciplinary action against holders of public offices.
- (d) to ensure that decisions of the Permanent Secretary of the Public Service Commission in the exercise of his or her duties comply with the provisions of this Constitution.

(2) The functions of the Public Service Commission do not extend to:

(a) an office of judge;

(b) an office that is the responsibility of the Constitutional Offices Commission, Disciplined Services Commission, Judicial Service Commission or a body prescribed by the Parliament **as not being responsible to the Public Service Commission;**

(c) an office in the Republic of Fiji Military Forces;

(d) an office in respect of which this Constitution makes provision **for making appointments, removing persons, or taking disciplinary action by another body or authority.**

(e) an office or class of office prescribed for the purposes of this paragraph by regulations made by the Public Service Commission, with the agreement of the Minister, as an office or class of office to which subsection (1) does not apply.

(3) Regulations made under paragraph (2)(e) must be laid before the House of Representatives within 2 sitting days after they are made.

(4) If:

(a) notice of a motion to disallow the regulations is given in the House within 2 sitting days of the House after the regulations were laid before it; and

(b) within 2 sitting days of the House after the giving of that notice, the House passes a resolution, in pursuance of the motion, disallowing the regulations;

the regulations so disallowed cease to have effect.

(5) If:

(a) notice of a motion to disallow regulations made under paragraph (2)(e) is given in the House within 2 sitting days of the House after the regulations were laid before it; and

(b) at the end of 2 sitting days of the House after the giving of that notice:

(i) it has not been withdrawn or the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the regulations are thereupon taken to have been disallowed and cease at that time to have effect.

Public Service Commission must consult or get agreement in certain cases

152. Before exercising a power set out in a paragraph or clause of column 1, the Public Service Commission must take the step set out in column 2 opposite to that paragraph or clause.

Column 1	Column 2
1. Appointment of a person to, removal of a person from, or the taking of disciplinary action against the holder of: (a) an office under the control of the president; (b) the office of Secretary to the House of Representatives or an office under his or her control; (c) the office of Secretary to the Senate or an office under his or her control; (d) an office under the control of the Ombudsman or the Auditor-General	Get the agreement of the President Get the agreement of the Speaker of the House of Representatives Get the agreement of the President of the Senate Get the agreement of the Ombudsman or the Auditor-General as the case may be
2. Appointment of a person to be a Secretary of a department or the Secretary to the Cabinet	Get the agreement of the Prime Minister
3. Appointment of a person to be an agricultural tribunal (other than the Central Agricultural Tribunal) under the Agricultural Landlord and Tenant Act	Consult the Prime Minister and the Leader of the Opposition and the Central Agricultural Tribunal.

Appointment of ambassadors, etc.

153.-(1) The President may, on the advice of the Prime Minister, the Leader of the Opposition and [consultation with independent members of Parliament](#) make appointments to offices of ambassador, or of other principal representative, of Fiji to another country or an international organisation.

(2) The President may, after consultation with the Prime Minister, the Leader of the Opposition and independent members of Parliament remove a person from an Office referred to in subsection (1).

(3) The Prime Minister must consult the Public Service Commission in relation to the appointment to an office referred to in subsection (1) of a person who is a member of a state service.

(4) Nothing in subsection (2) permits the President to remove from a state service a person who was, immediately before his or her appointment under subsection (1), the holder of a public office.

(5) The Parliament may make laws relating to:

- (a) the pension entitlements of a person referred to in subsection (4); and
- (b) the making by the Prime Minister, or by another Minister specified by the Prime Minister, of appointments by way of transfer to:
 - (i) certain offices in the department responsible for the foreign affairs of Fiji; and
 - (ii) specified public offices the holders of which are required to live outside Fiji in order to properly discharge their duties.

Public Service Commission may delegate

154. Subject to conditions prescribed by the Parliament, the Public Service Commission may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a member or officer of the Commission or to the holder of a public office all or any of the functions or powers of the Commission, other than its power to appoint or remove, or to take disciplinary action against:

- (a) an agricultural tribunal established under the Agricultural Landlord and Tenant Act, **except the Central Agricultural Tribunal**
- (b) a Secretary of a department or the Secretary to the Cabinet; or
- (c) any other person having the powers of a Secretary of a department in relation to staff under his or her control.

Appeals against decisions of Public Service Commission

155. The Parliament may make laws:

- (a) providing for appeals against specified decisions of the Public Service Commission in accordance with the protections provided in the Bill of Rights section of the Constitution, including the right of the public officer affected by any decision of the Commission to be represented by a lawyer;
- (b) constituting the body to hear the appeals; and
- (c) making such other provision as is necessary or desirable in connection with the operation of the appeals system.

Functions of Disciplined Services Commission

156.-(1) The Disciplined Services Commission has the following functions:

- (a) to make appointments to the Fiji Police Force or Fiji Prisons Service;
- (b) to remove officers from the Fiji Police Force or Fiji Prisons Service;
- (c) to take disciplinary action against officers of the Fiji Police Force or Fiji Prisons Service.

(2) The functions of the Disciplined Services Commission do not extend to:

- (a) the office of the Commissioner of Police; or
- (b) an officer of the Fiji Police Force having the rank of senior inspector (or its equivalent) or a lesser rank.

Powers of Commissioner of Police

157.-(1) The Commissioner of Police has equivalent powers to the Disciplined Services Commission in respect of officers of the Fiji Police Force having the rank of senior inspector (or its equivalent) or a lesser rank.

(2) The exercise by the Commissioner of Police of his or her powers to:

- (a) remove a person from the Fiji Police Force; or
- (b) reduce the rank of an officer of the Fiji Police Force;

requires the concurrence of the Disciplined Services Commission.

Disciplined Services Commission may delegate

158.-(1) Subject to conditions prescribed by the Parliament, the Disciplined Services Commission may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a member of the Commission or, subject to subsection (3), to the Commissioner of Police all or any of its functions or powers in relation to the Fiji Police Force.

(2) Subject to conditions prescribed by the Parliament, the Disciplined Services Commission may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a member of the Commission or to the Commissioner of Prisons all or any of its functions or powers in relation to the Fiji Prisons Service.

(3) The Prime Minister must approve, in writing, any delegation under subsection (1) to the Commissioner of Police.

CHAPTER 11

The Charities Commission

The Commission

159 (1) There shall be established an independent Commission known as the Charities Commission for Fiji.

(2) The functions of the Commission are performed on behalf of the State.

(3) In the exercise of its functions the Commission is not subject to the direction or control of any Minister or of any government department.

(4) But subsection (3) does not affect—

(a) any administrative controls exercised over the Commission's expenditure by the Minister of Finance

(b) any scrutiny exercised by the Sector Standing Committee of the House of Representatives responsible for public accountability.

(5) Parliament shall without delay enact a law relating to the Commission.

Objectives

(6) The Commission has the following objectives—

This Chapter on the Charities Commission has been adapted from the UK law.

NZ law also has made provision for a Charities Commission.

Charities Commissions are now considered to be an important independent mechanism for protecting charities and not-for-profit organizations.

(i) The public confidence objective :

The public confidence objective is to increase public trust and confidence in charities.

(ii) The public benefit objective

The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

(iii) The compliance objective

The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

(iv) The charitable resources objective

The charitable resources objective is to promote the effective use of charitable resources.

(v) The accountability objective

The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

In this section 'public benefit' means any activity, programme, funding or similar focus that as its objective brings or has the intention of bringing a charitable benefit to members of the public.

The Commission's general functions

(7) The Commission has general functions to—

(i) Determine whether institutions are or are not charities.

(ii) Encourage and facilitate the better administration of charities.

(iii) Identify and investigate apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities.

(iv) Determine whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.

(v) Obtain, evaluate and disseminate information in connection with the performance of any of the Commission's functions or meeting any of its objectives.

(vi) Give information or advice, or make proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives.

(vii) The Commission may, in connection with its second general function, give such advice or guidance with respect to the administration of charities as it considers appropriate.

(viii) Any advice or guidance so given under section 7 (vii) may relate to—

(a) charities generally,

(b) any class of charities, or

(c) any particular charity,

and may take such form, and be given in such manner, as the Commission considers appropriate.

(8) The Commission's general function includes (among other things) the maintenance of an accurate and up-to-date register of charities.

(9) The Commission's general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a member of Parliament for information or advice on any matter relating to any of its functions.

(10) In this section "public charitable collection" and "public collections certificate" shall be defined by an Act of Parliament which specifies the operations of the Charities Commission.

The Commission's general duties

(11) The Commission has the following general duties—

(1) The Commission must, in performing its functions, act in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

(2) The Commission must, in performing its functions, act in a way which is compatible with the encouragement of—

- (a) all forms of charitable giving, and
- (b) voluntary participation in charity work.

(3). In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.

(4) In performing its functions the Commission must have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).

(5) In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.

(6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Guidelines on operation of public benefit requirement

(12) (1) The Commission must issue guidelines in pursuance of its public benefit objective.

(2) The Commission may from time to time revise any guidelines issued under this section.

(3) The Commission must carry out such public and other consultation as it considers appropriate—

- (a) before issuing any guidelines under this section, or
- (b) (unless it considers that it is unnecessary to do so) before revising any guidelines under this section.

(4)The Commission must publish any guidelines issued or revised under this section in such manner as it considers appropriate.

(5)The charity trustees of a charity must have regard to any such guidelines when exercising any powers or duties to which the guidelines are relevant.

Supply by Commission of copies of documents

(13) The Commission must, at the request of any person, provide that person with copies of, or extracts from, any document in the Commission’s possession which is for the time being open to or available for inspection under any provision of any legislation enacted by Parliament pursuant to this Chapter.

Incidental powers

(14) (1)The Commission may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2)But nothing in this Act authorises the Commission—

(a)to exercise functions corresponding to those of a charity trustee in relation to a charity, or

(b)otherwise to be directly involved in the administration of a charity.

Membership of the Commission

160. (1) There shall be 5 members appointed to the Charities Commission by the President after consultation with the Prime Minister, the Leader of the Opposition, independent members of Parliament, the Constitutional Offices Commission and charities listed under the Charitable Trusts Act or similar legislation making provision for charities or not-for-profit organizations of Fiji.

(2) The members of the Commission shall be appointed for a period of 2 years and may be re-appointed for a further term of 2 years but shall not be eligible for re-appointment after that.

(3) In appointing members of the Commission the President may consider any nominations received by him or her from the registered charities and not-for-profit organizations of Fiji.

The Official Custodian for Charities

161. (1) There shall be appointed an officer known as the Official Custodian for charities (in this Constitution referred to as “the Official Custodian”).

(2) The Official Custodian’s function is to act as the Registrar of Charities, to act as a Trustee of any particular charitable organization that does not at any time have trustees, or where the trustees are for any reason not available, and to provide secretariat support to the Charities Commission.

(3) The Official Custodian shall be appointed by the Commission and must have legal qualifications at sufficiently senior level.

(4) The Official Custodian’s duties must be performed in accordance with such general or special directions as may be given by the Commission according to law.

(5) Parliament shall pass a law containing provisions relating to the Charities Commission and terms, duties and conditions of the Official Custodian.

Interpretation

162. In this Chapter:

independent service commission means the Constitutional Offices Commission, the Public Service Commission, the Charities Commission or the Disciplined Services Commission.

CHAPTER 12

ACCOUNTABILITY

Part 1-CODE OF CONDUCT

Code of Conduct

163.-(1) This section applies to the President, Vice-President, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution, members of commissions, Secretaries of departments, the Secretary to the Cabinet and persons who hold statutory appointments or governing or executive positions in statutory authorities.

The Official Custodian should also act as a receiver in the event that a Charity has become insolvent, to protect public funds collected by that Charity.

(2) Persons to whom this section applies must so conduct themselves in relation to the performance of their public duties as not:

- (a) to place themselves in positions in which they have, or could be seen as having, a conflict between their private interests and their public duties;
- (b) to compromise the fair exercise of their public duties;
- (c) to use their offices for private gain;
- (d) to allow their integrity to be called into question; or
- (e) to cause respect for, or confidence in, the integrity of the Government to be diminished.

(3) The Parliament must, as soon as practicable after the commencement of this Constitution, make a law:

- (a) to implement more fully the conduct rules set out in subsection (2);
- (b) to provide for the monitoring of standards of conduct in relation to the performance of public duties; and
- (c) if the Parliament considers it appropriate, to make provision in relation to the investigation of alleged breaches of those standards and the enforcement of those standards.

Part 2- OMBUDSMAN'

Ombudsman

164.-(1) This section establishes the office of Ombudsman.

(2) The Parliament may make a law establishing other offices of Ombudsman. If it does so:

- (a) the persons appointed to the offices have all the powers, privileges and immunities conferred on the Ombudsman under this Part; and
- (b) the person appointed as Ombudsman under this Part is to be known as Chief Ombudsman, with responsibility for controlling the staff of the Ombudsman's office and for allocating work amongst the Ombudsmen.

Functions of Ombudsman

The Const. Assembly may decide whether the term Ombudsman ("man") should be retained or whether the title should be "Ombuds" or "Ombuds-persons"

The word Ombudsman is not regarded as being 'sexist' in the countries where ombuds exist due to its origins in old Norse. In Denmark the title is *Ombudsmand*

165.-(1) Subject to this Part, the Ombudsman:

(a) must investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Constitution by a department or by a prescribed authority, and in respect of which a complaint has been made to the Ombudsman; and

(b) may, of his own motion or at the request of a member of the Parliament or of a committee of the Parliament, investigate any action, being action that relates to a matter of administration, taken either before or after the commencement of this Constitution by a department or by a prescribed authority.

(c) shall chair the meetings of all Ombudsmen

(1) In the absence of the Chief Ombudsman, the other Ombudsmen shall elect an Ombudsman from among those present to chair the meetings.

(2) The Chief Ombudsman shall determine how often all Ombudsmen shall meet but meetings shall take place at no less than 3 month intervals.

(2) Complaints under this section in relation to action that relates to a matter of administration may be made:

(a) by any person or body whose interests are affected by the action, not being a person or body:

(i) established for a public purpose by; or in accordance with, an Act.; or

(ii) who is, or whose members are, appointed by the President or a Minister; or

(b) by a member of the Parliament on behalf of such a person or body.

(3) The Ombudsman may entertain a complaint made on behalf of another person if the Ombudsman is satisfied that the other person cannot, for any reason, make the complaint in person.

(4) The authority of the Ombudsman to investigate complaints in relation to action relating to a matter of administration extends to action taken by a commission to the extent that:

(a) the action relates to a function conferred on it otherwise than by this Constitution; and

Plural can be changed to Ombuds.

(b) the authority to investigate is conferred by a law made by the Parliament.

(5) The Ombudsman is not authorised to investigate:

(a) action taken by a Minister;

(b) action taken by a judge; or

(c) action taken by any body or person with respect to the appointment of a person to, or the removal of a person from, a public office, the taking of disciplinary action against the holder of a public office or the pension entitlement of a person who is or was the holder of a public office.

(6) The proceedings of the Ombudsman may not be called into question in any court.

(7) A court may request a report from the Ombudsman in relation to any matter before it where the Ombudsman had conducted an investigation and where the Ombudsman's report was not yet publicly available.

Discretion not to investigate

166.-(1) If a complaint has been made to the Ombudsman with respect to action taken by a department or a prescribed authority, the Ombudsman may, in his or her discretion, decide not to investigate the action or, if he or she has started to investigate the action, decide not to investigate it further if, in the opinion of the Ombudsman, an investigation, or further investigation, is not warranted having regard to all the circumstances of the case.

(2) The Parliament may prescribe other circumstances in which the Ombudsman has a discretion not to investigate a complaint or not to investigate it further.

(3) If the Ombudsman considers that a complainant has or had a right to cause the action concerned to be reviewed by a court or tribunal, the Ombudsman must not investigate the complaint or investigate it further unless he or she is satisfied that:

(a) the complainant could not reasonably exercise, or could not have reasonably exercised, that right; or

(b) the action involves a breach of the Bill of Rights.

Investigations

167. The Parliament may make laws relating to the conduct of investigations by the Ombudsman.

Reports by Ombudsman

168.-(1) If, after an investigation into action taken by a department or prescribed authority has been completed, the Ombudsman is of the opinion that the action:

- (a) was contrary to law;
- (b) was based wholly or partly on a mistake of law or fact;
- (c) was unreasonable, unjust, oppressive or improperly discriminatory; or
- (d) was otherwise, in all the circumstances, wrong;

this section applies to the decision, recommendation, act or omission constituting that action.

(2) If the Ombudsman is of the opinion:

- (a) that a decision, recommendation, act or omission to which this section applies should be referred to the appropriate authority for further consideration;
- (b) that a particular step should be taken to rectify, mitigate or alter the effects of a decision, recommendation, act or omission to which this section applies;
- (c) that a decision to which this section applies should be cancelled or varied;
- (d) that a rule of law, or a provision of a written law, on which a decision, recommendation, act or omission to which this section applies was based should be altered;
- (e) that reasons should have been, but were not, given for a decision to which this section applies; or
- (f) that any other thing should be done in relation to a decision, recommendation, act or omission to which this section applies;

the Ombudsman must report accordingly to the department or prescribed authority concerned.

(3) The Ombudsman must give a copy of the report to the Prime Minister and Minister concerned and:

(a) if the investigation was undertaken as a result of a complaint to the complainant; or

(b) if the investigation was undertaken at the request of another person or body to that person or body.

(4) The Ombudsman may ask the department or prescribed authority to which the report is given to give to the Ombudsman, within a specified time, particulars of action that proposes to take with respect to the matters, including any recommendations, in the report.

(5) The department or authority may give the Ombudsman such comments on the report as it wishes to make.

Reports to the Parliament

169. If within a reasonable time after the making of a report under [section 168](#) action that is, in the opinion of the Ombudsman, adequate and appropriate has not been taken, the Ombudsman may give a further report on the matter to the House of Representatives and Senate, enclosing with the report any comments made by the department or prescribed authority under [subsection 168\(5\)](#).

Appointment of Ombudsman

170.-(1) The Chief Ombudsman is appointed by the President following consultation by him or her with the Prime Minister, the Leader of the Opposition and independent members of Parliament.

(2) The Chief Ombudsman must not perform the functions or duties of another public office and must not hold any other paid office or engage any paid occupation or calling outside the duties of his or her office.

(3) The President may, following consultation by it with the Prime Minister, the Leader of the Opposition, independent members of Parliament and the other Ombudsmen appoint a person to act as Ombudsman during any period, or during all periods, when the office of Ombudsman is vacant or when the Ombudsman is

absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

171 All other Ombudsmen are appointed by the Constitutional Officers Commission following consultation by it with the President, the Chief Ombudsman and the parliamentary Standing Sector Committee for Public Accounts.

Annual report

172. (1) The Chief Ombudsman must make an annual report to the President concerning the operations of the Ombudsman and must submit a copy to each House of the Parliament for laying before that House.

(2) In his or her report to parliament, the Chief Ombudsman shall refer to reports of other ombudsmen.

Interpretation

173-(1) In this Part:

prescribed authority means:

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with, an Act;
- (b) a person holding, or performing the duties of, an office established by an Act;
- (c) a local authority; or
- (d) a person or body prescribed by the Parliament for the purposes of this paragraph;
- (e) the Bose Levu Vakaturaga established by section 116
- (g) other Councils of Interest established by section 117.

but does not include:

- (e) the President;
- (h) a commission;
- (i) a court;
- (j) the Director of Public Prosecutions;
- (l) an incorporated company over which the Government is not in a position to exercise control; or
- (n) a person or body prescribed by the Parliament to be exempt for the purposes of this paragraph.

(2) In this Part, a reference to the taking of action includes a reference to:

- (a) the making of a decision or recommendation;
- (b) the formulation of a proposal; and
- (c) a failure or refusal to take any action, to make a decision or recommendation or to formulate a proposal.

(3) For the purposes of this Part, action that is taken by an officer of a department is deemed to be taken by the department if the officer takes the action by virtue of being an officer of the department, whether or not the taking of the action is within the duties of the officer.

(4) For the purposes of this Part, action that is taken by an officer of a prescribed authority is deemed to be taken by the authority if the officer takes the action by virtue of being an officer of the authority, whether or not the taking of the action is within the duties of the officer.

(5) For the purposes of this Part, action that is taken by a member of the Fiji Police Force or Fiji Prisons Service is deemed to be taken by the Force or the Service, as the case may be, if the member takes the action by virtue of being a member of the Force or Service whether or not the taking of the action is within the duties of the member.

(6) If a person who is not an officer of a department or of a prescribed authority takes action in the performance of a function that the person is authorised to perform because he or she is a member of the President's personal staff, the action is deemed to be taken by the department responsible for dealing with the matter in connection with which the action is taken.

(7) For the purposes of this Part, the Fiji Police Force and the Fiji Prisons Service are deemed to be prescribed authorities.

(8) In the application of this Part in relation to the Fiji Police Force and the Fiji Prisons Service, references to an officer of a prescribed authority are to be read

as references to a member of the Fiji Police Force or the Fiji Prisons Service, as the case may be.

Part 3-AUDITOR-GENERAL

Auditor-General

174. This section establishes the office of Auditor-General.

Functions of Auditor-General

175.-(1) At least once in every year, the Auditor-General must inspect and audit, and report to the Parliament on:

- (a) the public accounts of the State;
- (b) the control of public money and public property of the State; and
- (c) all transactions with or concerning the public money or public property of the State.

(2) In the report, the Auditor-General must state whether, in his or her opinion:

- (a) transactions with or concerning the public money or public property of the State have been authorised by or pursuant to this Constitution or an Act of the Parliament; and
- (b) expenditure has been applied to the purpose for which it was authorised.

(3) The Parliament may make further provision in relation to the office of the Auditor-General and may confer further functions and powers of the Auditor.

(4) In the performance of his or her duties, the Auditor-General or a person authorised by him or her has access to all records, books, vouchers, stores or other government property in the possession or control of any person or authority.

(5) A law made by the Parliament may provide that the accounts of a specified

body corporate are not subject to audit by the Auditor-General but are to be audited as prescribed in that law.

(6) If the law so provides, it must also empower the Auditor-General to review those audits and report the results of a review.

(7) The Auditor-General must submit a report made by him or her to the Speaker of the House of Representatives and must submit a copy to the Minister.

(8) Within 30 days of receipt, or if the Parliament is not then sitting, on the first sitting day after the end of that period, the Speaker must cause the Leader of each House of the Parliament to lay the report before the House.

Appointment of Auditor-General

176.-(1) The Auditor-General is appointed by the Constitutional Offices Commission following consultation by it with the relevant sector standing committee of the House of Representatives.

(2) The Constitutional Offices Commission may, following consultation by it with the Minister, appoint a person to act as Auditor-General during any period, or during all periods, when the office of Auditor-General is vacant or when the Auditor-General is absent from duty or from Fiji or is, for any reason unable to perform the functions of office.

Part 4-

GENERAL PROVISIONS RELATING TO CERTAIN CONSTITUTIONAL OFFICES

Interpretation

177. This Part applies to:

(a) the Supervisor of Elections;

- (b) the Ombudsman;
- (c) the Auditor-General;
- (d) the Director of Public Prosecutions;
- (e) the Secretary-General to Parliament;
- (f) the Commissioner of Police;
- (g) the Chief Commissioner of the Human Rights Commission

- (h) the members of the Human Rights Commission referred to in paragraphs [45\(3\)\(b\)](#) and [\(c\)](#);
- (i) the members of the Constituency Boundaries Commission;
- (j) the members of the Electoral Commission;
- (k) the members of the Parliamentary Emoluments Commission;
- (l) the members of the Commission on the Prerogative of Mercy referred to in paragraph [115\(2\)\(b\)](#);
- (m) the members of the Constitutional Offices Commission;
- (n) the members of the Public Service Commission; and
- (o) the members of the Disciplined Services Commission.

Terms and conditions of office

178.-(1) Subject to this section, a person to whom this Part applies referred to in any of paragraphs [177\(a\) to \(g\)](#) inclusive or in paragraph [177\(j\)](#) holds office for 4 years and is eligible for re-appointment for a further term of 4 years but is not eligible for re-appointment after the second 4 year term has ended.

(2) Subject to this section, a person to whom this Part applies referred to in paragraph [177\(h\)](#), [\(j\)](#), [\(k\)](#), [\(l\)](#), [\(m\)](#) and [\(o\)](#) holds office for 2 years, is eligible for re-appointment for one further term of 2 years but is not eligible for re-appointment after that.

(3) The term of appointment of a person to whom this Part applies referred to in any of paragraphs [177\(a\) to \(g\)](#) inclusive expires upon his or her reaching the age of 70, and a person must not be appointed or re-appointed if he or she has reached that age.

(4) The appointment of a person to whom this Part applies is subject to the terms and conditions (if any) set out in it.

(5) In the performance of his or her duties or functions or the exercise of his or her powers, a person to whom this Part applies is not subject to direction or control by any person or authority.

(6) Subsection (5) does not limit:

(a) the obligation of the Supervisor of Elections to act in accordance with directions of the Electoral Commission, as contemplated by [section 78](#); or

(b) the obligation of the Commissioner of Police to act in accordance with general policy directions of the Minister, as contemplated by [subsection 111\(5\)](#).

Remuneration and allowances

179. A person to whom this Part applies referred to in any of paragraphs [177\(a\)](#) to [\(g\)](#) inclusive is entitled to such remuneration and allowances as the Parliament fixes, and the remuneration and allowances must not reduce during his or her term of office.

Removal from office for cause

180.-(1) In this section:

prescribed authority means:

(a) in relation to persons to whom referred to in paragraphs [177\(a\)](#) to [\(g\)](#) inclusive - the appointing authority.

(2) A person to whom this Part applies may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

(3) Removal from office must be by the prescribed authority pursuant to subsection (4).

(4) If the prescribed authority considers that the question of removal from office ought to be investigated, then:

(a) the prescribed authority appoints a tribunal, consisting of a chairperson and not less than 2 other members;

(b) the chairperson and at least one of the other members are selected by the prescribed authority from among persons who hold or have held high judicial office in Fiji or in another country prescribed by the Parliament;

(c) the tribunal enquires into the matter and furnishes a written report of the facts to the prescribed authority and advises the prescribed authority whether or not the person concerned should be removed from office; and

(d) if the tribunal advises that the person should be removed from office, the prescribed authority may remove the person from office.

(5) If the question of removing from office a person to whom this Part applies has been referred to a tribunal under subsection (4), the prescribed authority may suspend the person from office and may, at any time, revoke the suspension.

(6) In the exercise by the President of a power under this section, he or she must act on the advice of the Prime Minister following consultation by the Prime Minister with the Leader of the [Opposition and independent members of Parliament](#).

(7) The suspension from office of a person to whom this Part applies ceases to have effect if the tribunal advises the prescribed authority that the person should not be removed from office.

Performance of functions of commissions and tribunals

181.-(1) A commission may by regulation make provision for regulating and facilitating the performance of its functions.

(2) A decision of a commission requires the concurrence of a majority of its members and the commission may act despite the absence of a member but, if, in a particular case, a vote is taken to decide a question and the votes cast are equally divided, the person presiding must exercise a casting vote.

(3) Subject to this section, a commission may regulate its own procedure.

(4) In the performance of its functions or the exercise of its powers, a commission is not subject to the direction or control of any other person or authority, except as otherwise provided by this Constitution.

(5) Nothing in subsection (4) limits the responsibility of the Government for the structure of the public service or the Fiji Police Force, nor the Government's general policy responsibility for the management of the public service or the Fiji Police Force.

(6) In addition to the functions conferred upon it by or under this Constitution, a commission has such powers and other functions (if any) as are prescribed.

(7) The validity of the transaction of business of a commission is not affected if someone who was not entitled to do so took part in the proceedings.

(8) Subsections (1), (2), (3) and (4) apply in relation to a tribunal established for the purposes of subsection [7\(3\)](#), [18\(9\)](#), [93\(3\)](#), [142\(3\)](#) or [180\(4\)](#) in the same way as they apply in relation to a commission and such a tribunal has the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(9) In this section:

tribunal includes a medical board referred to in [subsections 93\(3\) or 142\(3\)](#).

CHAPTER 12

REVENUE AND EXPENDITURE

Raising of revenue

182. The raising by the Government of revenue or moneys, whether through the imposition of taxation or otherwise, must be authorised by or under an Act.

Consolidated Fund

183.-(1) All revenue or moneys raised or received for the purposes of the Government must be paid into one Consolidated Fund.

(2) Subsection (1) does not apply to revenue or moneys that are payable by or under a written law into some other fund established for a specific purpose or that may, by or under a written law, be retained by the authority receiving them for the purposes of defraying the expenses of that authority.

Appropriations to be authorised by law

184. Money must not be withdrawn from the Consolidated Fund or from a fund referred to in subsection **176**(2) except under an appropriation made by law.

Authorisation Of expenditure in advance of appropriation

185.-(1) Subject to laws made by the Parliament, if the Appropriation Act for a year has not come into operation by the beginning of the year, the Minister may, to the extent and subject to the conditions prescribed by the Parliament, authorise the withdrawal of moneys from the Consolidated Fund for the ordinary services of the Government.

(2) The total amount authorised for withdrawal under subsection (1) must not exceed one-third of the appropriations made for the ordinary services of the Government in respect of the immediately preceding year.

Appropriation and taxing measures require ministerial consent

186. A Bill, or an amendment of a Bill, that:

- (a) appropriates revenue or moneys or increases such an appropriation;
- (b) imposes taxation or an increase in taxation; or
- (c) reduces the amount of any debt due to the State;

may only be passed by the House of Representatives with the consent of the Cabinet, as signified by a Minister.

Annual budget

187.-(1) In respect of each year ending on 31 December or on such other day as the Parliament prescribes, the Minister must cause to be laid before the House of Representatives and the Senate an annual budget, reflecting estimates of revenue and of capital and current expenditure for the year, in respect of the ordinary services of the Government and the services of the Parliament.

(2) The Parliament may make laws prescribing the manner in which annual estimates are to be prepared.

Guarantees by Government

188. The Government must not guarantee the financial liability of any person in respect of a loan or otherwise unless the giving of the guarantee is authorised by the House of Representatives in accordance with conditions prescribed by law.

Public moneys to be accounted for

189. All public moneys must be dealt with and accounted for in accordance with law and otherwise in accordance with accounting principles generally accepted in the public sector.

Standing appropriation of Consolidated Fund for payment

of certain salaries and allowances

190.-(1) This section applies to:

- (a) the President;
- (b) the Vice-President;
- (c) a judge;
- (d) the [Chairperson and members](#) of the Human Rights Commission referred to in [paragraphs 45\(3\) \(a\) \(b\) and \(c\)](#);
- (e) the members of the Constituency Boundaries Commission;
- (f) the members of the Electoral Commission;
- (g) the Supervisor of Elections;
- (h) the members of the Parliamentary Emoluments Commission;
- (i) the Secretary-General to Parliament;
- (j) the Commissioner of Police;

- (k) the Director of Public Prosecutions;
- (l) the members of the Commission on the Prerogative of Mercy referred to in paragraph [115\(2\)\(b\)](#);
- (m) the members of the Constitutional Offices Commission;
- (n) the members of the Public Service Commission;
- (o) the members of the Disciplined Services Commission;
- (p) the Ombudsman;
- (q) the Auditor-General; and
- (r) the members of a tribunal or board established for the purposes of subsection [7\(3\)](#), [34\(9\)](#), [18\(3\)](#), [142\(3\)](#) or [180\(4\)](#).

(2) The salaries or allowances payable to a person to whom this section applies are payable out of the Consolidated Fund, which is appropriated accordingly.

Standing appropriation of Consolidated Fund for other purposes

191.-(1) All debt charges for which the State is liable and all pension benefits (except to the extent that they are a charge on another fund and have been paid out of that fund to the person or authority to whom payment is due) are payable out of the Consolidated Fund, which is appropriated accordingly.

(2) In this section:

debt charges means interest, sinking fund charges, amounts due in respect of the repayment or amortisation of debt, and other expenditure incurred in connection with the raising of loans on the security of the revenue of the State or the Consolidated Fund;

eligible service means service in a public office but does not include service in a naval, military or air force;

pension benefits means pensions, compensation, gratuities or other like payments payable to persons in respect of their eligible service or to their spouses, dependants or personal representatives in respect of that service.

CHAPTER 13

EMERGENCY POWERS

Emergency powers

192.-(1) The Parliament may make a law conferring power on the President, acting on the advice of the Prime Minister, the Leader of the Opposition, independent members of Parliament, and after consultation with the Commander of the Republic of the Fiji Military Forces to proclaim a state of emergency in Fiji, or in a part of Fiji, in such circumstances as the law prescribes.

(2) The law may include provisions conferring on the President the power to make regulations relating to the state of emergency.

(3) A measure authorised by or under the law may derogate from the rights and freedoms set out in [sections 7, 8, 14, 15, 16, 18, or 29](#) (but not from other rights and freedoms set out in the Bill of Rights) if each of the following conditions is satisfied:

(a) [Parliament has evidential and](#) reasonable grounds for believing that, because of the emergency described in the proclamation of the state of emergency, the life of the State is threatened and the exigencies of the situation are such that they cannot be dealt with effectively without derogating [from the sections referred to in subsection \(3\)](#).

(b) the proclamation of the state of emergency is laid before the House of Representatives, is confirmed by it within [3 sitting days](#) after the proclamation is made and remains in force at the time the measure is taken;

(c) the proclamation of the state of emergency remains in force for no longer than 3 months or for such further successive periods of up to 6 months as the House of Representatives determines;

(d) regulations relating to the state of emergency are laid before the House of Representatives within 2 sitting days after they are made, [for which Parliament shall be recalled for that purpose subject to subsection 193 \(2\) by the President after consultation with the Speaker of the House of Representatives and the President of the Senate](#), and remain in force at the time the measure is taken.

(4) A law made under this section that is inconsistent with the obligations of the State under an international convention, covenant [or a *jus cogens* peremptory norm](#) is invalid to the extent of the inconsistency.

(5) Regulations made pursuant to subsection (2) remain in force only so long as the proclamation of the state of emergency remains in force.

Summoning of House of Representatives

193.-(1) Upon the proclamation, of a state of emergency, the President must summon the House of Representatives to meet.

(2) If the proclamation is made during the period after a dissolution of the House of Representatives and before the holding of the next following general election of members of the House of Representatives, the President must, under subsection (1), summon the members of the dissolved House, and those members may exercise all the powers conferred on the House of Representatives under this Chapter.

(3) Despite the summoning under subsection (2) of members of the dissolved House of Representatives, the general election must proceed and the recalled House again stands dissolved on the day immediately before the day fixed for the polling at the general election.

(4) If, during a period while a state of emergency is in force, the term of the House of Representatives would, under [section 58](#), expire by effluxion of time, the President may, on the advice of [the Prime Minister, Leader of the Opposition and independent members of Parliament](#), proclaim an extension of the term for such period as is specified in the proclamation.

(5) The term of the House of Representatives must not be extended under subsection (4) for a total of more than 12 months.

Powers of House of Representatives

194.-(1) The House of Representatives may, at any time, disallow a proclamation of a state of emergency.

(2) The House of Representatives may at any time amend or disallow regulations relating to the state of emergency that are laid before it.

(3) If:

(a) notice of a motion to disallow a proclamation of a state of emergency or to amend or disallow regulations relating to the state of emergency has been given by at least **15 members** of the House of Representatives; and

(b) at the end of the period of 3 sitting days after the notice was given, the notice has not been withdrawn, the motion has not been called on and the House has not passed a resolution deferring its consideration,

the proclamation or the regulations, as the case may be, are taken to have been disallowed or amended, as the case may be.

CHAPTER 14

AMENDMENT OF CONSTITUTION

Alteration of Constitution

195. This Constitution may be altered in the way set out in this Chapter and may not be altered in any other way.

Special parliamentary majorities

196.-(1) A Bill for the alteration of this Constitution must be expressed as a Bill for an Act to alter this Constitution.

(2) Subject to subsection (3) the Bill, with or without amendments passed by either House of the Parliament, must be passed by both Houses in accordance with the following procedure:

(a) the Bill is read 3 times in each House and motions for the second and third readings are carried in each House;

(b) at the second and third readings it is supported by the votes of at least two-thirds of the members of each House;

(c) in the House of Representatives an interval of at least 60 days elapses between the second and third readings and each of those readings is preceded by full opportunity for debate;

(d) the third reading of the Bill in the House of Representatives does not take place until after the relevant standing committee has reported on the Bill to that House.

(3) If:

(a) the Prime Minister certifies that a particular Bill for the alteration of the Constitution is an urgent measure that ought to be dealt with by the House of Representatives under this subsection; and

(b) the giving of that certificate is supported by a resolution passed by consensus of the whole House or, in the event there is no consensus, by a vote of at least two-thirds members of the House, and voting by secret ballot at the request of at least 15 members of the House;

paragraphs (2) (d) does not apply in relation to the consideration of the Bill by that House and the Bill is deemed to have been duly passed by that House if, on its third reading, it is passed by at least two-thirds members of that House unless it is passed by consensus of the whole House.

CHAPTER 15

COMMENCEMENT, INTERPRETATION AND REPEALS

Short title and commencement

197.-(1) This Act may be cited as the Constitution Amendment Act 20xx.

(2) Subject to this section, this Act commences on XXX.

(3) The President may, by Proclamation published in the Gazette, fix a date earlier than the date referred to in subsection (2) as the date of commencement of this Act.

(4) Nothing in this section prevents the Constituency Boundaries Commission, the Electoral Commission and the Supervisor of Elections from taking all necessary steps to determine constituency boundaries or to register voters, as the case may be, in accordance with this Constitution as if the Constitution had come into force.

Interpretation

198.-(1) In this Constitution, unless the contrary intention appears:

(a) **Act** means an Act of the Parliament, a Promulgation or a Decree validated as an Act of Parliament after a review by the relevant Standing Sector Committee of the House of Representatives and voted on according to normal parliamentary processes established by the Constitution;

(b) **Bill of Rights** means the rights and freedoms set out in Chapter 2;

(c) **Bose Levu Vakaturaga** means the Great Council of Chiefs established under section 3 of the Fijian Affairs Act (or relevant Decree);

(d) **commission** means a commission established by, or continued in existence under, this Constitution;

(e) **Constitution of 1997** means the Constitution set out in the Constitution Amendment Act 1997

(f) **Council of Influence** means a Council established by this Constitution

Decree means:

(a) a Decree made by the President before the convening of the Parliament under the Constitution of 1990; or

(b) a Decree made before 5 December 1987 by the Commander and Head of the Fiji Military Government;

(c) A Decree made after 5 December 2006

department means a department of the public service;

disciplinary law means a written law regulating the discipline of an disciplined Force;

disciplined Force means:

(a) the Republic of Fiji Military Forces;

(b) the Fiji Police Force;

(c) the Fiji Prisons Service; or

(d) a fire or forest guard service established by a written law made by the Parliament;

Fiji means the territories which immediately before 10 October 1970 constituted the Colony of Fiji and includes any other territories declared by the Parliament to form part of Fiji;

Gazette means the *Fiji Republic Gazette* published by order of the Government;

Government means the Government of the State;

judge means a judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal), a judge of the Supreme Court, or a judge of the Constitutional Court.

local authority means a council of a city, town or district or any other similar body prescribed by the Parliament, and includes the Council of Rotuma under the [Rotuma Act](#) and the Council of Leaders under the [Banaban Settlement Act](#);

local government officer means a person holding or acting in any office of emolument in the service of a local authority but does not include a person holding or acting in the office of a member of any such authority;

meeting, in relation to a House of the Parliament, means a sitting of the House commencing when the House first meets at the beginning of a session or occurring at subsequent periods during a session and ending when the House is adjourned *sine die*;

oath includes affirmation;

Oath of Allegiance means the Oath of Allegiance set out in [Part A](#) of the Schedule;

person includes a company or association or body of persons whether corporate or unincorporated;

prescribed means prescribed in a written law;

President means the President of the State;

Promulgation means a law promulgated between December 5 2006 and April 9 2009

province means a province established under the Fijian Affairs Act (or relevant Decree);

public office means:

- (a) an office created by, or continued in existence under, this Constitution;
- (b) an office in respect of which this Constitution makes provision;
- (c) the office of a member of a commission;
- (d) an office in a state service;
- (e) an office of judge;
- (f) an office of magistrate or an office in a court created by the Parliament;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by a written law;

public service means the service of the State in a civil capacity but does not include:

- (a) service in the judicial branch;
- (b) service in the office of a member of a commission; or
- (c) service in an office created by, or continued in existence under, this Constitution.

session, in relation to the Parliament, means the sitting of the Parliament starting when it first meets after a prorogation or dissolution and ending when it is next prorogued or dissolved;

sitting, in relation to a House of the Parliament, means a period during which the House is sitting continuously without adjournment, and includes any period during which the House is in committee;

Speaker means the Speaker of the House of Representatives;

State means the Republic of the Fiji Islands;

state of emergency means a state of emergency proclaimed under [Chapter 13](#);

state service means the public service, the Fiji Police Force or the Republic of Fiji Military Forces;

subordinate court means any court of law established for Fiji other than the High Court, Court of Appeal, Supreme Court, **Constitutional Court** or a court established by a disciplinary law;

subordinate legislation means any instrument of a legislative character made in exercise of a power to make the instrument conferred by an Act;

this Constitution means the Constitution Amendment Act **20XX**

Vice-President means the Vice-President of the State;

written law means an Act or subordinate legislation.

(2) A reference in this Constitution to a power to make appointments to a public office includes a reference to:

(a) a power to make appointments on promotion and transfer to the office; and

(b) a power to appoint a person to act in the office while it is vacant or its holder is unable to perform the functions of the office.

(3) In this Constitution, unless the contrary intention appears, a reference to the holder of an office by the term designating his or her office includes a reference to any person for the time being acting in the office.

(4) A person who has been appointed to an office established by this Constitution may resign from the office by notice in writing signed by him or her addressed to the person or authority by whom he or she was appointed, and the resignation takes effect:

(a) at the time or on the date specified in the notice; or

(b) when the notice is received by the person or authority to whom it is addressed;

which ever is the later.

(5) A reference in this Constitution to a power to remove a person from a public office includes a reference to:

- (a) a power to require or permit the person to retire from office;
- (b) a power to terminate the contract on which the person is employed; and
- (c) a power not to renew the contract on which the person is employed.

(6) In this Constitution, a reference to altering any law (including this Constitution) is a reference to:

- (a) repealing it with or without replacing it by another law;
- (b) modifying it by amendment or otherwise;
- (c) suspending its operation; or
- (d) making other provision that is inconsistent with it.

(7) A person, authority or body upon which functions are conferred by this Constitution has power to do everything necessary or convenient to be done for, or in connection with, performance of those functions.

(8) A reference in this Constitution to the Minister in relation to the doing of anything, participation in any consultation or the receipt of any report is a reference to the Minister who, for the time being, has been assigned responsibility for the part of the business of the Government relating to the subject matter of the activity concerned.

(9) Unless the contrary intention appears, a reference in this Constitution to a Minister includes a reference to the Minister for the time being acting for and on behalf of the first mentioned Minister.

(10) A provision of this Constitution to the effect that a person or authority is not subject to the direction or control of any other person or authority in the performance of functions or the exercise of powers is not to be construed as

precluding a court of law from exercising jurisdiction in relation to a question whether the first mentioned person or authority has performed the functions or exercised the powers in accordance with this Constitution or whether that person or authority should or should not perform the functions or exercise the powers.

(11) A power conferred by this Constitution to make, grant or issue any instrument (including a proclamation, order, regulation or rule), or to give any direction, includes the power, exercisable in the like manner, to repeal, rescind, revoke, amend or vary the instrument or direction.

(12) For the avoidance of doubt, use of the word *must* in this Constitution imports obligation to the same extent as if the word *shall* were used.

Repeals and transitional

195. The following Acts are repealed:

Human Rights Commission Decree No 11 of 2009

Constituent Assembly to decide list of laws to be repealed including whether and how much of the Const of 1997 should be repealed.

(2) Despite the repeal of

(a) Chapter XIV of the Constitution of 1990 continues in force in accordance with its tenor;

(b) subsections **132**(1), (2), (3), (5) and (6) and section **133** of the Constitution of 1990 and continued in the 1997 Constitution continue in force according to their tenor as if:

(i) the offices referred to in subsection **133**(3) included references to the Secretary-General to the Parliament and *the Commissioner* of Police;

(ii) the reference in paragraph **133**(4)(a) to the Judicial and Legal Services Commission included a reference to the Judicial Service Commission; and

(iii) the reference in paragraph **133**(4)(b) to the Police services Commission were a reference to the Disciplined Commission;

Constituent Assembly to decide which aspects of the 1997 Constitution to be retained and which aspects to be repealed.

The paragraphs in green font in these submissions also need to be considered by the Const. Assembly, especially on issues of (i) citizenship; (ii) the provisions of the 1990 Const. which were incorporated into the 1997 Constitution and may not be necessary for Const. 20XX.

(c) writs for the first general election under this Constitution of members of the House of Representatives must issue within the period during which they would have been required to issue under the Constitution of 1997;

(d) every person (other than a member of the Judicial and Legal Services Commission appointed under paragraph 123(1)(c) of the Constitution of 1990) who immediately before that repeal holds or acts in a public office under an appointment made before that repeal continues to hold or act in the office in accordance with the terms of his or her appointment;

(e) all written laws in force in the State (other than the laws referred to in subsection (1)) continue in force as if enacted or made under or pursuant to this Constitution and all other law in the State continues in operation;

(f) all written laws that had been enacted or made but had not come into force by December 5 2006 may be brought into force in accordance with their terms and apply as if enacted or made under or pursuant to this Constitution subject to ;

(g) the courts established by the Constitution of 1997 continue in existence

(h) all proceedings in the courts established by the Constitution of 1997 that had commenced but had not been determined continue, as if the provisions of this Constitution were in force at their commencement;

(i) all delegations that:

(i) had been given by a commission or person referred to in the Constitution of 1997

continue in force, and

(j) all proceedings before a commission or person referred to in the Constitution of 1997 that had commenced but had not been determined continue as if they had commenced before the corresponding commission or person referred to in this Constitution.

(3) Subject to section 2, written laws referred to in paragraph (2)(e) or (f) are to be construed, on and from the commencement of this Constitution, with such modifications and qualifications as are necessary to bring them into conformity with this Constitution.

Many laws made immediately before December 2006 may not have come into force- others were promulgated (eg ERP).

These references will need to be addressed by a team from the AG's office for compliance with the Constitution and a report made to the **Const. Assembly** for reference to Parliament for amendment.

Const. Assembly should issue an instruction to the AG's office to provide a list of all decrees and promulgations made since 2006.

SCHEDULE

OATHS AND AFFIRMATIONS

PART A. OATH OR AFFIRMATION OF ALLEGIANCE

Oath

I, A.B..... do swear that I will be faithful and bear true allegiance to the Republic of the Fiji Islands, **and uphold the Constitution**. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of the Fiji Islands, **and uphold the Constitution**.

B. OATH OR AFFIRMATION FOR DUE EXECUTION OF OFFICE OF PRESIDENT OR VICE-PRESIDENT

Oath

I, A.B. do swear that I will well and truly serve the Republic of the Fiji Islands **and uphold the Constitution** in the office of []. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will well and truly serve the Republic of the Fiji Islands **and uphold the Constitution** in the office of [].

C. OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE COMMANDER OF THE REPUBLIC OF FIJI MILITARY FORCES, THE COMMISSIONER OF POLICE AND THE COMMISSIONER OF PRISONS.

Oath

I, A.B. do swear that I will well and truly serve the Republic of the Fiji Islands **and protect and defend the Constitution without fear or favour** in the office of [].
. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will well and truly serve the Republic of the Fiji Islands **and protect and defend the Constitution** in the office of [].

D. OATH OR AFFIRMATION FOR DUE EXECUTION OF OFFICE OF MINISTER

Oath

I, A.B. being appointed Prime Minister/Attorney-General/Minister/Assistant Minister, do swear that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the President (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Fiji, and I do further swear that I will not on any account, at any time whatsoever disclose the counsel, advice, opinion or vote of any particular Minister and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Fiji, directly or indirectly reveal the business or proceedings of the Cabinet and that in all things I will be a true and faithful Prime Minister/Attorney General Minister/Assistant Minister. **I do swear that I will up-hold the Constitution at all times.** So help me God!

Affirmation

I, A.B. , being appointed Prime Minister/Attorney-General/Minister/Assistant Minister, do solemnly, sincerely and truly declare that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the President (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Fiji, and I do further solemnly, sincerely and truly declare and affirm that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or

vote of any particular Minister and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Fiji, directly or indirectly reveal the business or proceedings of the Cabinet and that in all things I will be a true and faithful Prime Minister/Attorney-General/Minister/Assistant Minister. [I do affirm that I will uphold the Constitution at all times.](#)

E. OATH OR AFFIRMATION FOR DUE EXECUTION OF JUDICIAL OFFICE

Oath

I, A.B. do swear that I will well and truly serve the Republic of the Fiji Islands, in the office of [..]. I will in all things uphold the Constitution; and I will do right to all manner of people in accordance with the laws and usages of the [Republic and the United Nations Basic Principles of the Independence of the Judiciary](#), without fear or favour, affection or ill will. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will well and truly serve the Republic of the Fiji Islands, in the office of [...] I will in all things uphold the Constitution; and I. will do right to all manner of people in accordance with the laws and usages of the Republic, [and the United Nations Basic Principles of the Independence of the Judiciary](#), without fear or favour, affection or ill will.
