

# **FIJI ISLANDS**

## **CONSTITUTION AMENDMENT ACT 1997**

### **CONTENTS**

#### **PREAMBLE**

#### **CHAPTER 1-THE STATE**

1. The Republic of the Fiji Islands
2. Supremacy of Constitution
3. Interpretation of Constitution
4. Languages
5. State and religion

#### **CHAPTER 2-COMPACT**

6. Compact
7. Application of Compact

#### **CHAPTER 3-CITIZENSHIP**

8. Retention of existing citizenship
9. Way in which citizenship may be acquired
10. Citizenship by birth
11. Infant found abandoned in Fiji
12. Citizenship by registration
13. Citizenship by naturalisation
14. Loss of citizenship
15. Renunciation of citizenship
16. Rights to enter and reside in Fiji
17. Powers of Parliament concerning citizenship
18. Laws relating to calculation of periods in Fiji
19. Deprivation of citizenship
20. Prevention of statelessness

#### **CHAPTER 4-BILL OF RIGHTS**

21. Application
22. Life
23. Personal liberty
24. Freedom from servitude and forced labour
25. Freedom from cruel or degrading treatment
26. Freedom from unreasonable searches and seizure
27. Arrested or detained persons

28. Rights of charged persons
29. Access to courts or tribunals
30. Freedom of expression
31. Freedom of assembly
32. Freedom of association
33. Labour relations
34. Freedom of movement
35. Religion and belief
36. Secret ballot
37. Privacy.
38. Equality
39. Education
40. Protection against compulsory acquisition of property
41. Enforcement
42. Human Rights Commission
43. Interpretation

## **CHAPTER 5-SOCIAL JUSTICE**

44. Social Justice and affirmative action

## **CHAPTER 6-THE PARLIAMENT**

### **Part 1-GENERAL**

45. Legislative power
46. Way in which legislative power exercised
47. Passage of Bills
48. Urgent Bills
49. Limitation on powers of Senate with respect to money Bills

### **Part 2-HOUSE OF REPRESENTATIVES**

50. Members
51. Seats
52. Boundaries
53. Redistributions
54. Voting and other matters
55. Registration as voter
56. Compulsory voting
57. Registration of voters
58. Nomination as candidate for election
59. Term of House of Representatives
60. Writs for elections
61. Date of nomination.
62. Dates of polling
63. By-elections

### **Part 3-SENATE**

- 64. Members
- 65. Terms of Senate
- 66. Vacancies

### **Part 4-BOTH HOUSES**

- 67. Candidates who are public officeholders
- 68. Sessions of Parliament
- 69. Voting in both Houses
- 70. Quorum
- 71. Vacation of place of member of Parliament
- 72. Vacancies in the House membership
- 73. Court of disputed returns
- 74. Proceedings of the Parliament

### **Part 5-INSTITUTIONS AND OFFICES**

- 75. Constituency Boundaries Commission
- 76. Appointments to Constituency Boundaries Commission
- 77. Disqualification for Appointment
- 78. Electoral Commissions
- 79. Supervisor of Elections
- 80. Speaker and Deputy Speaker
- 81. President and Vice-President of the Senate
- 82. Leader of the Opposition
- 83. Parliamentary Emoluments Commission
- 84. Secretary-General to Parliament and Staff

## **CHAPTER 7-EXECUTIVE GOVERNMENT**

### **Part 1-EXECUTIVE AUTHORITY**

- 85. President
- 86. Head of State
- 87. Commander-in-Chief
- 88. Vice-President

### **Part 2-PRESIDENT AND VICE-PRESIDENT**

- 89. Qualifications for President and Vice-President
- 90. Appointment of President and Vice-President
- 91. Term of office
- 92. Vacancy in office of Vice-President
- 93. Removal from office of President or Vice-President
- 94. Oath of office by President and Vice-President

95. Legislation relating to President or Vice-President

### **Part 3-CABINET GOVERNMENT**

96. President acts on advice

97. Responsible government

98. Appointment of Prime Minister

99. Appointment of other Ministers

100. Attorney-General

101. Oath of office by Minister

102. Responsibility of Ministers and Cabinet

103. Functions of Ministers

104. President to be kept informed

105. Vacation of office of Minister

106. Acting Ministers

107. Defeat of Government at polls or on floor of House

108. Advice to dissolve Parliament by Prime Minister defeated on confidence vote

109. Dismissal of Prime Minister

### **Part 4-GOVERNMENT ADMINISTRATION**

110. Secretaries of departments

111. Commissioner of Police

112. Republic of Fiji Military Forces

113. Solicitor-General

114. Director of Public Prosecutions

### **Part 5-PREROGATIVE OF MERCY**

115. Prerogative of mercy

### **CHAPTER 8-BOSE LEVU VAKATURAGA (GREAT COUNCIL OF CHIEFS)**

116. Bose Levu Vakaturaga

### **CHAPTER 9-JUDICIARY**

117. Judicial power

118. Independence of judicial branch

119. Jurisdiction of courts of State

120. Jurisdiction of High Court

121. Jurisdiction of Court of Appeal

122. Jurisdiction of Supreme Court

123. Advisory jurisdiction

124. Contempt of court

- 125. Rules of court
- 126. Composition of High Court
- 127. Composition of Court of Appeal
- 128. Composition of Supreme Court
- 129. Disqualification of judge
- 130. Qualifications for appointment
- 131. Judicial Service Commission
- 132. Appointments of judges
- 133. Other appointments
- 134. Criteria for appointment to judicial office
- 135. Oath of office
- 136. Judges' remuneration
- 137. Retirement ages for judges
- 138. Removal of judges for cause
- 139. Existing appointments

## **CHAPTER 10-STATE SERVICES**

- 140. Recruitment and promotion policy
- 141. Public officeholders must be citizens
- 142. Independent service commissions
- 143. Appointments to independent service commissions
- 144. Vacancies in office
- 145. Disqualification for appointment
- 146. Functions of Constitutional Offices Commission
- 147. Functions of Public Service Commission
- 148. Public Service Commission must consult or get agreement in certain cases
- 149. Appointment of ambassadors, etc.
- 150. Public Service Commission may delegate
- 151. Appeals against decisions of Public Service Commission
- 152. Functions of Disciplined Services Commission
- 153. Powers of Commissioner of Police
- 154. Disciplined Services Commission may delegate
- 155. Interpretation

## **CHAPTER 11-ACCOUNTABILITY**

### **Part 1-CODE OF CONDUCT**

- 156. Code of Conduct

### **Part 2-Ombudsman**

- 157. Ombudsman
- 158. Functions of Ombudsman
- 159. Discretion not to investigate
- 160. Investigations

- 161. Reports by Ombudsman
- 162. Reports to the Parliament
- 163. Appointment of Ombudsman
- 164. Annual report
- 165. Interpretation

### **Part 3-AUDITOR-GENERAL**

- 166. Auditor-General
- 167. Functions of Auditor-General
- 168. Appointment of Auditor-General

### **Part 4-GENERAL PROVISIONS RELATING TO CERTAIN CONSTITUTIONAL OFFICES**

- 169. Interpretation
- 170. Terms and conditions of office
- 171. Remuneration and allowances
- 172. Removal from office for cause
- 173. Performance of functions of commissions and tribunals

### **Part 5-FREEDOM OF INFORMATION**

- 174. Freedom of information

### **CHAPTER 12-REVENUE AND EXPENDITURE**

- 175. Raising of revenue
- 176. Consolidated Fund
- 177. Appropriations to be authorised by law
- 178. Authorisation of expenditure in advance of appropriation
- 179. Appropriation and taxing measures require ministerial consent
- 180. Annual budget
- 181. Guarantees by Government
- 182. Public moneys to be accounted for
- 183. Standing appropriation of Consolidated Fund for payment of certain salaries and allowances
- 184. Standing appropriation of Consolidated Fund for other purposes

### **CHAPTER 13-GROUP RIGHTS**

- 185. Alteration of certain Acts
- 186. Customary laws and customary rights

### **CHAPTER 14-EMERGENCY POWERS**

- 187. Emergency powers
- 188. Summoning of House of Representatives
- 189. Powers of House of Representatives

## **CHAPTER 15-AMENDMENT OF CONSTITUTION**

- 190. Alteration of Constitution
- 191. Special parliamentary majorities
- 192. Veto power of certain members

## **CHAPTER 16- COMMENCEMENT, INTERPRETATION AND REPEALS**

- 193. Short title and commencement
- 194. Interpretation
- 195. Repeals and transitional

## **SCHEDULE-OATHS AND AFFIRMATIONS**

-----

### **ACT NO. 13 OF 1997**

I assent

K.K.T. MARA  
President

[25th July 1997]

### **AN ACT**

### **TO ALTER THE CONSTITUTION OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI**

**ENACTED** by the Parliament of Fiji -

**WE, THE PEOPLE OF THE FIJI ISLANDS,**

**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 life 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; and

(f) sixthly, the conferral by the High Chiefs of Fiji in their abundant wisdom of their blessings and approval on this Constitution:

**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:

**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:

**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**

## **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) developments in the understanding of the content of particular human rights; and

(ii) 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:

(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.

### *State and religion*

5. Although religion and the State are separate, the people of the Fiji Islands acknowledge that worship and reverence of God are the source of good government and leadership.

## **CHAPTER 2**

### **COMPACT**

#### *Compact*

6. The people of the Fiji Islands recognise that, within the framework of this Constitution and the other laws of the State, the conduct of government is based on the following principles:

(a) the rights of all individuals, communities and groups are fully respected;

(b) the ownership of Fijian land according to Fijian custom, the ownership of freehold land, and the rights of landlords and tenants under leases of agricultural land are preserved;

(c) all persons have the right to practise their religion freely and to retain their language, culture and traditions;

(d) the rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems;

(e) as citizens, the members of all communities enjoy equal rights, including the right to make their permanent homes in the Fiji Islands;

(f) the rights of a citizen include the right to form and join political parties, to take part in political campaigns, and to vote and to be a candidate in free and fair elections of members of the House of Representatives held by secret ballot and ultimately on the basis of equal suffrage;

(g) the formation of a government that has the support of a majority in the House of Representatives depends on the electoral support received by the various political parties or pre-election coalitions, and, if it is necessary or desirable to form a coalition government from among competing parties, depends on their willingness to come together to form or support a government;

(h) in the formation of a government, and in that government's conduct of the affairs of the nation through the promotion of legislation or the implementation of administrative policies, full account is taken of the interests of all communities;

(i) to the extent that the interests of different communities are seen to conflict, all the interested parties negotiate in good faith in an endeavour to reach agreement;

(j) in those negotiations, the paramountcy of Fijian interests as a protective principle continues to apply, so as to ensure that the interests of the Fiji an community are not subordinated to the interests of other communities;

(k) affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities;

(l) the equitable sharing of political power amongst all communities in Fiji is matched by an equitable sharing of economic and commercial power to ensure that all communities fully benefit from the nation's economic progress.

#### ***Application of Compact***

7.-(1) The principles referred to in section 6 are non-justiciable, except to the extent that they are made the subject of other provisions of this Constitution or of a law made under this Constitution.

(2) In the interpretation of this Constitution or a law made under this constitution consideration must be given to those principles, when relevant.

### **CHAPTER 3**

#### **CITIZENSHIP**

##### ***Retention of existing citizenship***

8. The coming into effect of this Constitution does not affect the citizenship of a person who was a citizen immediately before it came into effect.

##### ***Way in which citizenship may be acquired***

9.-(1) Citizenship may be acquired by:

(a) birth;

(b) registration; or

(c) naturalisation.

(2) The Parliament may not make a law providing for the acquisition of citizenship in any other way.

### ***Citizenship by birth***

**10.** Every child born in Fiji on or after the date of commencement of this Constitution becomes a citizen at the date of birth unless, at the date of birth:

- (a) a parent of the child has the diplomatic immunity accorded to envoys of foreign sovereign powers accredited to Fiji; and
- (b) neither parent is a citizen.

### ***Infant found abandoned in Fiji***

**11.** An infant found abandoned in Fiji is deemed to have been born in Fiji, in the absence of proof to the contrary.

### ***Citizenship by registration***

**12.**-(1) A child born outside Fiji on or after the date of commencement of this Constitution may become a citizen by registration if, at the date of the child's birth, either parent was a citizen.

(2) A foreign child adopted by a citizen when the child was under the age of 18 may become a citizen by registration.

(3) A child who was under the age of 21 when either parent became a citizen may become a citizen by registration.

(4) An application for registration under subsection (1), (2) or (3) maybe made at any time during the child's lifetime and, if he or she is under the age of 21 at the date of the application, may be made on his or her behalf by a parent or guardian.

(5) An application for registration under subsection (1), (2) or (3) made by the child concerned after he or she has reached the age of 21 must not be granted unless he or she has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application.

(6) An application for citizenship by registration made by an adult who is a citizen of another country must be granted if:

- (a) the person was formerly a citizen of the State; and
- (b) he or she renounces the other citizenship.

(7) An application for citizenship by registration made by an adult who is or has been married to a citizen must be granted if the applicant:

- (a) has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application; and

(b) complies with such other conditions as the Parliament prescribes.

(8) If, in accordance with this Constitution, a person is required to renounce the citizenship of another country in order to become a citizen of the State but the law of that other country effectively prevents renunciation of that citizenship, the person is deemed to have renounced that citizenship if he or she declares, in a form prescribed by the Parliament, an intention not to exercise the entitlements of that citizenship.

#### ***Citizenship by naturalisation***

**13.**-(1) A person may become a citizen by naturalisation.

(2) A condition of naturalisation is that the person has been lawfully present in Fiji for a total of 5 of the 10 years immediately before the application for naturalisation is made.

#### ***Loss of citizenship***

**14.**-(1) Subject to this section, a person forfeits citizenship if he or she voluntarily acquires the citizenship or nationality of another country.

(2) A citizen of the State who, while a minor, acquires the citizenship of another country forfeits his or her citizenship of the State at the age of 22 unless, after reaching the age of 21 and before reaching the age of 22, he or she renounces the other citizenship.

(3) An adult who involuntarily acquires the citizenship of another country does not forfeit his or her citizenship of the State unless he or she fails to renounce the other citizenship within 12 months of:

(a) becoming aware of it; or

(b) being required by the Minister to renounce it; whichever first occurs.

#### ***Renunciation of citizenship***

**15.** A person may renounce his or her citizenship only if he or she:

(a) has reached the age of 21; and

(b) has been since birth a citizen of another country or has acquired the citizenship of another country by registration or naturalisation.

#### ***Rights to enter and reside in Fiji***

**16.** The following persons may enter and reside in Fiji so long as they comply with conditions prescribed by the Parliament governing entry and residence:

(a) former citizens;

(b) a foreign wife or widow or foreign husband or widower of a citizen;

(c) a child of a citizen.

***Powers of Parliament concerning citizenship***

**17.** Subject to subsections 9(2) and 12(6), the Parliament may make laws:

(a) prescribing conditions upon which a person may become a citizen that are in addition to the conditions set out in this Constitution; and

(b) relating to the making of applications for citizenship by registration or naturalisation.

***Laws relating to calculation of periods in Fiji***

**18.** For the purpose of calculating under this Constitution periods of lawful presence in Fiji, the Parliament may make laws specifying certain periods that are not to be taken into account.

***Deprivation of citizenship***

**19.**-(1) The Parliament may make laws depriving a person of citizenship in the following circumstances only:

(a) if citizenship was obtained by fraud, misrepresentation or the concealment of a material fact;

(b) if the person, in accordance with subsection 12(8), declared an intention not to exercise the entitlements of citizenship of another country but has, since making that declaration, exercised such an entitlement.

(2) A law made under subsection (1) must provide for the according of procedural fairness to the person concerned.

***Prevention of statelessness***

**20.** Despite anything in Chapter IV of the Constitution of 1990:

(a) a person born in Fiji in the period that began on 28 September 1987 and ended on 24 July 1990 is taken to have become a citizen on the date of birth;

(b) a person born outside Fiji in the period that began on 28 September 1987 and ended on 6 October 1987 is taken to have become a citizen on the date of birth if his or her father was a citizen on that date and was not himself born outside Fiji; and

(c) a person born in Fiji in the period that began on 25 July 1990 and ended on the date of commencement of this Constitution is taken to have become a citizen on the date of birth if he or she would otherwise be stateless.

**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

(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.

### ***Life***

**22.** Every person has the right to life. A person must not be arbitrarily deprived of life.

### ***Personal liberty***

**23.**-(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 vagrant; 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 wilfully refused to pay despite having the means to do so.

(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 7 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 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 6 months, 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 service and forced labour***

**24.**-(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 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***

**25.**-(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.

#### ***Freedom from unreasonable searches and seizure***

**26.**-(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***

**27.**-(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;

(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, if he or she does not have sufficient means to engage a legal practitioner 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 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter; 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***

**28.**-(1) Every person charged with an offence has the right:

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

(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***

**29.**-(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.

(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 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 sign language.

(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***

**30.**-(1) Every person has the right to freedom of speech and expression, including:

(a) freedom to seek, receive and impart information and ideas; and

(b) freedom of the press and other media.

(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;

(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 38.

### ***Freedom of assembly***

**31.**-(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***

**32.**-(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

(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***

**33.**-(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.

(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.

***Freedom of movement***

**34.**-(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.

(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 23(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***

**35.**-(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: or

(b) to prevent a public nuisance.

(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.

#### ***Secret ballot***

**36.** Every person who has a right to vote in an election of a member of the House of Representatives has the right to do so in secret.

#### ***Privacy***

**37.**-(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***

**38.**-(1) Every person has the right to equality before the law.

(2) A person must not be unfairly discriminated against, directly or indirectly, 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

(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 nor an administrative action taken under a law 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, or an administrative action taken under a law, is not inconsistent with the right to freedom from discrimination on the ground of:

(a) language;

(b) birth;

(c) economic status;

(d) age; or

(e) disability;

during the period of 2 years after the date of commencement of this Constitution if the law was in force immediately before that date and has remained continually in force during that period.

(7) 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 a retirement age on a person who is the holder of a public office;

(c) 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;

(d) 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

(e) 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.

(8) 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 Fijians or Rotumans or of the Banaban community:

(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 chiefly 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.

(9) 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 (9) 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.

### ***Education***

**39.**-(1) Every person has the right to basic education and to equal access to 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) The admission policy of a place of education referred to in subsection (2) may be administered on the basis of the need to maintain its special character but, subject to that, those concerned in its management must ensure that it is open to all qualified students without discrimination on any ground 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 to the extent that the requirements of the law are reasonable and justifiable in a free and democratic society.

#### ***Protection against compulsory acquisition of property***

**40.**-(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.

#### ***Enforcement***

**41.**-(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 High Court for redress.

(2) The right to make application to the High Court under subsection (1) is without

prejudice to any other action with respect to the matter that the person concerned may have.

(3) The High 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 High 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 a subordinate 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 High Court unless, in the member's opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious.

(6) When the High 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:

(a) the decision; or

(b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court decision of the Court of Appeal or Supreme Court, as the case may be.

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

(8) If proceedings before the High Court relate to a matter concerning a provision of this Chapter, the High 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) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications are to be made to the High Court).

### ***Human Rights Commission***

**42.**-(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 international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other organs of the General Assembly of the United Nations for promoting respect for human rights;

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

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

(3) The Human Rights Commission consists of 3 members:

(a) the Ombudsman, who is to be its chairperson;

(b) a person who is qualified to be a judge; and

(c) one other member.

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

#### ***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 construed in accordance with the more restricted interpretation.

## **CHAPTER 5**

## SOCIAL JUSTICE

### *Social justice and affirmative action*

**44.**-(1) The 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;

(b) land and housing; and

(c) participation in commerce and in all levels and branches of service of the State.

(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 between different groups or different categories of persons.

(4) A person does not discriminate against another person under section **38** 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 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.

(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, an ethnic 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 in section 185.

## CHAPTER 6

### THE PARLIAMENT

#### Part 1-GENERAL

##### *Legislative power*

**45.** The power to make laws for the State vests in a Parliament consisting of the President, the House of Representatives and the Senate.

##### *Way in which legislative power exercised*

**46.**-(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.

(3) 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*

**47.**-(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 **185**.

(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.

(10) This section does not limit the operation of section **48** or **49**.

### *Urgent Bills*

48.-(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 185.

(3) This section does not limit the operation of section 49.

### *Limitation on powers of Senate with respect to money Bills*

49.-(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) Subsections (3) and (4) do not apply to a Bill referred to in section **185**.

(6) 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***

**50.** The House of Representatives consists of 71 members elected in accordance with this Constitution to represent single member constituencies.

### ***Seats***

**51.**-(1) The 71 members are elected as follows:

(a) 46 are elected by voters registered on one of 4 separate electoral rolls, namely:

(i) a roll of voters who are registered as Fijians;

(ii) a roll of voters who are registered as Indians;

(iii) a roll of voters who are registered as Rotumans; and

(iv) a roll of voters who are registered otherwise than as Fijians, Indians or Rotumans;

(b) 25 are elected by voters from all communities registered on an open electoral

roll.

(2) The number of members elected under subparagraph (1)(a)(i) is 23.

(3) The number of members elected under subparagraph (1)(a)(ii) is 19.

(4) The number of members elected under subparagraph (1)(a)(iii) is 1.

(5) The number of members elected under subparagraph (1)(a)(iv) is 3.

### ***Boundaries***

**52.**-(1) The Constituency Boundaries Commission must determine the boundaries of constituencies for the election of members to communal seats and open seats.

(2) In determining the boundaries of the constituencies for the election of members to the communal seats to be filled in accordance with subparagraph **51**(1)(a)(i), the Constituency Boundaries Commission:

(a) must ensure that the boundaries for 17 of the constituencies are in accordance with the provincial boundaries prescribed under the Fijian Affairs Act and that, subject to paragraph (b):

(i) the provinces of Ba, Tailevu and Cakaudrove comprise 2 constituencies each; and

(ii) the other provinces comprise 1 constituency each;

(b) must ensure that the remaining 6 constituencies comprise predominantly urban or peri-urban areas in which the number of voters is, as far as reasonably practicable, the same; and

(c) subject to paragraphs (a) and (b), must give due consideration, in relation to each proposed constituency, to:

(i) the physical features of the proposed constituency;

(ii) the boundaries of existing recognised traditional areas; and

(iii) means of communication and travel within the proposed constituency.

(3) In determining the boundaries of the other constituencies, the Constituency Boundaries Commission:

(a) must try to ensure that the number of voters in each communal seat (other than a communal seat referred to in subsection (2)) is, as far as reasonably practicable, the same;

(b) must try to ensure that the number of voters in each open seat is, as far as reasonably practicable, the same; and

(c) subject to paragraph (a) or (b), 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) if the proposed constituency relates to an open seat- the principle that the voters should comprise a good proportion of members of different ethnic communities.

(4) In this section:

*communal seat* means a seat to be filled in accordance with paragraph 51(1)(a);

*open seat* means a seat to be filled in accordance with paragraph 51(1)(b)

### ***Redistributions***

**53.**-(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 subsections 52(2) and (3).

(2) The Parliament may make laws relating to reviews conducted by the Commission under subsection (1), including laws requiring the Commission to 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 a court to entertain an application for judicial review, a determination of the Commission is final.

### ***Voting and other matters***

**54.**-(1) The election of a member for each constituency is conducted under the preferential system of voting known as the alternative vote.

(2) The Parliament may make laws relating to elections for the House of Representatives.

***Registration as voter***

**55.**-(1) Subject to this section, all persons who:

(a) have reached the age of 21 or such other age as the Parliament prescribes;

(b) are citizens of Fiji; and

(c) have been resident in Fiji for the 2 years immediately before their application for registration (unless their absence from Fiji for all or a part of that period is for a reason prescribed by the Parliament for the purposes of this paragraph);

have a right to be registered as voters.

(2) Each person who has a right to be registered as a voter has a right to be registered on:

(a) one of the 4 rolls referred to in paragraph **51(1)(a)**; and

(b) the roll referred to in paragraph **51(1)(b)**.

(3) A person:

(a) who has a right to be registered as a voter; and

(b) any of whose progenitors in the male or female line is or was a native inhabitant of Fiji (other than Rotuma);

has a right to be registered on the roll referred to in subparagraph **51(1)(a)(i)**.

(4) A person:

(a) who has a right to be registered as a voter; and

(b) any of whose progenitors in the male or female line is or was a native inhabitant of the sub-continent of India;

has a right to be registered on the roll referred to in subparagraph **51(1)(a)(ii)**.

(5) A person:

(a) who has a right to be registered as a voter; and

(b) any of whose progenitors in the male or female line is or was a native inhabitant of Rotuma;

has a right to be registered on the roll referred to in subparagraph **51(1)(a)(iii)**.

(6) A person:

(a) who has a right to be registered as a voter; and

(b) who:

(i) does not have a right to be registered on a roll referred to in subparagraph **51(1)(a)(i)**, (ii) or (iii); or

(ii) has a right to be registered on such a roll by reason of descent through the male or female line but chooses not to exercise that right;

has a right to be registered on the roll referred to in subparagraph **51(1)(a)(iv)**.

(7) A person who has not been resident in Fiji for 2 years (except for a reason prescribed by the Parliament for the purposes of this subsection) ceases to have a right to be registered as a voter.

(8) A person who:

(a) is serving a sentence of imprisonment of 12 months or longer, or is under sentence of death, imposed by a court in Fiji;

(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.

(9) A law made by the Parliament may impose conditions on the extent to which a person who becomes registered on one of the rolls referred to in the subparagraphs of **51(1)(a)** may choose to cease to be registered on that roll in order to become registered on another of those rolls.

(10) 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.

### ***Compulsory voting***

**56.** 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.

### ***Registration of voters***

**57.** 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***

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

(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; or

(c) 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) Only a person registered on a roll referred to in subparagraph **51(1)(a)(i)**, (ii), (iii) or (iv) is qualified to be nominated as a candidate for election by the voters on that roll.

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

(5) 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***

**59.** The House of Representatives, unless sooner dissolved, continues for 5 years from the date of its first meeting after a general election of members of the House.

### ***Writs for elections***

**60.**-(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***

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

***Dates of polling***

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

***By-elections***

**63.** 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 may be 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 4 years and 6 months after the first meeting of the House following the last general election

**Part 3 -SENATE**

***Members***

**64.**-(1) The Senate consists of 32 members, of whom:

- (a) 14 are appointed by the President on the advice of the Bose Levu Vakaturaga;
- (b) 9 are appointed by the President on the advice of the Prime Minister;
- (c) 8 are appointed by the President on the advice of the Leader of the Opposition;  
and
- (d) 1 is appointed by the President on the advice of the Council of Rotuma.

(2) The leaders of each of the parties entitled to be invited to participate in the Cabinet under section 99 nominate a person or persons for appointment under paragraph (1)(c) and, in tendering advice to the President pursuant to that paragraph, the Leader of the Opposition must ensure that the 8 persons proposed for appointment comprise such number of nominees of those parties as is proportionate to the size of the membership of those parties in the House of Representatives.

(3) If, at the time when an appointment is, or appointments are, to be made to the Senate under this section, the position of Leader of the Opposition is vacant, the Prime Minister must adopt the role of the Leader of the Opposition under subsection (2) in tendering advice to the President as to the 8 persons proposed for appointment under paragraph (1)(c).

(4) A person is not eligible to be appointed 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*

**65.** The term of the Senate expires on:

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

#### *Vacancies*

**66.** If the place of a Senator becomes vacant before the end of his or her term of service an appointment to fill the vacancy may be made under the paragraph of subsection **64(1)** under which the Senator was appointed.

### **Part 4-BOTH HOUSES**

#### *Candidates who are public officeholders*

**67.**-(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*

**68.**-(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 judgment, 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.

### *Voting in both Houses*

**69.**-(1) Subject to 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.

### *Quorum*

**70.**-(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;

the person presiding must adjourn the sitting.

(2) For the purposes of this section:

- (a) the quorum for the House of Representatives is 24 members; and
- (b) the quorum for the Senate is 12 members.

### *Vacation of place of member of Parliament*

**71.**-(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.

(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 paragraph (1)(c), (d) or (f);

(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.

(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 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 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.

(6) In this section:

*public office* does not include:

- (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***

**72.** 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***

**73.**-(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***

**74.**-(1) The official language of the Parliament is English but a member of either House may address the person presiding in Fijian or Hindustani.

(2) 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.

(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.

## **Part 5 - INSTITUTIONS AND OFFICES**

### ***Constituency Boundaries Commission***

**75.** The Constituency Boundaries Commission established under the Constitution of 1990 continues in existence.

### ***Appointments to Constituency Boundaries Commission***

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

- (a) a chairperson; and
  - (b) 2 other members.
- (2) The chairperson must be a person who is, or 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 2 other members are appointed by the President, one on the nomination of the Prime Minister and the other on the nomination of the Leader of the Opposition.

***Disqualification for appointment***

**77.** 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***

**78.**-(1) The Electoral Commission established under the Constitution of 1990 continues in existence.

- (2) The Electoral Commission has general responsibility for the registration of voters for elections of members of the House of Representatives and the conduct of those elections.
- (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 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, or is qualified to be, a judge; and
  - (b) 4 other members.
- (7) The chairperson is appointed by the President, acting in his or her own judgment.

(8) The other members are appointed by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Leader of the Opposition.

(9) 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 (other than an office of judge);

(d) a member of a local authority a local government officer; or

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

### *Supervisor of Elections*

**79.**-(1) The office of Supervisor of Elections established under the Constitution of 1990 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 Minister.

(5) The Supervisor of Elections must be a person who is qualified to practise as a barrister and solicitor in Fiji.

(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*

**80.**-(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 not 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.

(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 71(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.

(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.

***President and Vice-President of the Senate***

**81.**-(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) would, if he or she were a member of the House of Representatives, vacate his or her place by reason of the operation of paragraph 71(1)(c) or (d);

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

(v) has an interest in an agreement or contract referred to in paragraph 71(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.

(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.

### ***Leader of the Opposition***

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

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

(3) If the President considers that the person who is Leader of the Opposition is no longer the person who, if the office of Leader of the Opposition were vacant, should be appointed to that office under subsection (2), the President may terminate his or her appointment and appoint another person in his or her place.

(4) 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 is of the opinion 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;
- (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) Nothing in this section affects the operation of section **64**.

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

#### *Parliamentary Emoluments Commission*

**83.**-(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) 2 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 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 appointments are next made to the Senate under section 64.

(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***

**84.**-(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 1990 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.

**CHAPTER 7**

**EXECUTIVE GOVERNMENT**

**Part I-EXECUTIVE AUTHORITY**

***President***

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

***Head of State***

**86.** The President is the Head of State and symbolises the unity of the State.

***Commander-in-Chief***

**87.** The President is the Commander-in-Chief of the military forces.

***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.

(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.

(3) Nothing in this section prevents the President from holding a public office, by virtue of his or her appointment as President, under any legislation in force at the commencement of this Constitution.

### ***Appointment of President and Vice-President***

**90.** The President and Vice-President are appointed by the Bose Levu Vakaturaga after consultation by the Bose Levu Vakaturaga with the Prime Minister.

### ***Term of office***

**91.**-(1) The President holds office for 5 years, is eligible for re-appointment for one other term of 5 years but is not eligible for re-appointment after that.

(2) The Vice-President holds office for 5 years, is eligible for re-appointment for one further term of 5 years but is not eligible for re-appointment after that.

### ***Vacancy in office of Vice-President***

**92.**-(1) If the office of Vice-President becomes vacant, the President nominates for Vice-President another person who is eligible to become Vice-President and that person becomes Vice-President if the nomination is supported by the Bose Levu Vakaturaga.

(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 the Bose Levu Vakaturaga pursuant to this section.

(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 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;

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

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

(d) 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;

(e) the Prime Minister considers the report and any recommendations and:

(i) if he or she considers that the matter should be considered by the Bose Levu Vakaturaga - he or she refers the report and any recommendations to the Bose Levu Vakaturaga, with a request that it consider the matter, and notifies the President or Vice-President, as the case may be, accordingly; or

(ii) if he or she considers that the matter should not be considered by the Bose Levu Vakaturaga - he or she notifies the President or Vice-President, as the case may be, accordingly;

(f) upon receipt of a request from the Prime Minister under subparagraph (e)(i), the

Bose Levu Vakaturaga convenes to consider whether the President or Vice-President, as the case may be, should be removed from office.

(4) The President or Vice-President is taken to be unable to perform the functions of his or her office during the period starting on the day on which the President or Vice-President received notification under paragraph (3)(a) and ending on:

(a) if the matter is not referred to the Bose Levu Vakaturaga - the day on which the President or Vice-President receives notification under subparagraph (3)(e)(ii); or

(b) if the matter is referred to the Bose Levu Vakaturaga - the day on which the matter is finally dealt with by the Bose Levu Vakaturaga.

#### ***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 may make laws relating to the appointment, the terms and conditions of office, including pension entitlements, and the procedures for removal, of the President and Vice-President.

### **Part 3-CABINET GOVERNMENT**

#### ***President acts on advice***

**96.**-(1) Subject to subsection (2), in the exercise of his or her powers and executive authority, the President acts only on the advice of the Cabinet or a Minister or of some other 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.

(2) This Constitution prescribes the circumstances in which the President may act in his or her own judgment.

#### ***Responsible government***

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

#### ***Appointment of Prime Minister***

**98.** The President, acting in his or her own judgment 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.

#### ***Appointment of other Ministers***

**99.**-(1) The President appoints and dismisses other Ministers on the advice of the Prime Minister.

- (2) To be eligible for appointment, a Minister must be a member of the House of Representatives or the Senate.
- (3) The Prime Minister must establish a multi-party Cabinet in the way set out in this section comprising such number of Ministers as he or she determines.
- (4) Subject to this section, the composition of the Cabinet should, as far as possible, fairly represent the parties represented in the House of Representatives.
- (5) In establishing the Cabinet, the Prime Minister must invite all parties whose membership in the House of Representatives comprises at least 10% of the total membership of the House to be represented in the Cabinet in proportion to their numbers in the House.
- (6) If the Prime Minister selects for appointment to the Cabinet a person from a party whose membership in the House of Representatives is less than 10% of the total membership of the House, that selection is deemed, for the purposes of this section, to be a selection of a person from the Prime Minister's own party.
- (7) If a party declines an invitation from the Prime Minister to be represented in the Cabinet, the Prime Minister must allocate the Cabinet positions to which that party would have been entitled amongst the other parties (including the Prime Minister's party) in proportion, as far as possible, to their respective entitlements under subsection (5).
- (8) If all parties (apart from the Prime Minister's party and the party (if any) with which it is in coalition) decline an invitation from the Prime Minister to be represented in the Cabinet, the Prime Minister may look to his or her own party or coalition of parties to fill the places in the Cabinet.
- (9) 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.

#### *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.
- (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.

#### ***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 C 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) 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.

(3) The Prime Minister has responsibility for any part of the business of the Government that is not specifically assigned under subsection (2).

(4) 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 must keep the President generally informed about issues relating to the governance of Fiji and must 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;
- (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) 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 may, acting in his or her own judgment, 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 may, acting in his or her own judgment, 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), 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 called the Republic of Fiji Military Forces established by the Constitution of 1990 continues in existence.

(2) The President, acting on the advice of the Minister, must appoint a Commander of the Republic of Fiji Military Forces to exercise military executive command of the Forces, subject to the control of the Minister.

(3) The Commander of the Republic of Fiji Military Forces is responsible 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.

(4) The Parliament may make laws relating to the Republic of Fiji Military Forces.

#### ***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 established by the Constitution of 1990 continues in existence.

(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) 2 other members appointed by the President, acting in his or her own judgment.
- (3) In the exercise of his or her powers under subsection (1), the President acts on the advice of the Commission.
- (4) If a person is sentenced to death for an offence otherwise than by a court martial, the Commission must:
- (a) consider a report on the case prepared by:
- (i) the judge who presided at the trial; or
- (ii) if the report cannot be obtained from that judge - the Chief Justice;
- (b) consider such other information derived from the record of the case or elsewhere as is available to the Commission; and
- (c) advise the President whether or not to exercise his or her power under subsection (1).

## **CHAPTER 8**

### **BOSE LEVU VAKATURAGA (GREAT COUNCIL OF CHIEFS)**

#### *Bose Levu Vakaturaga*

**116.**-(1) The Bose Levu Vakaturaga established under the Fijian Affairs Act continues in existence and its membership, functions, operations and procedures are as prescribed from time to time by or under that Act.

(2) The Bose Levu Vakaturaga has, in addition to the functions set out in the Fijian Affairs Act, the functions conferred on it under this Constitution.

## **CHAPTER 9**

### **JUDICIARY**

#### *Judicial power*

**117.**-(1) The judicial power of the State vests in the High Court, the Court of Appeal and the Supreme Court and in such other courts as are created by law.

(2) The Supreme Court is the final appellate court of the State.

### ***Independence of judicial branch***

**118.** The judges of the State are independent of the legislative and executive branches of government.

### ***Jurisdiction of courts of State***

**119.** Each of the High Court, the Court of Appeal and the Supreme 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 also has original jurisdiction in any matter arising under this Constitution or involving its interpretation.

(3) 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.

(4) If in any proceedings in a subordinate court any 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, a member presiding must refer the question to the High Court.

(5) When the High Court gives its decision on a question referred to it under subsection (4), the court in which the question arose must dispose of the case in accordance with:

(a) the decision; or

(b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court - the decision of the Court of Appeal or Supreme Court, as the case may be.

(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.

### ***Advisory jurisdiction***

**123.** The President may, in the public interest and on the advice of the Cabinet, refer to the Supreme Court for its opinion any question as to the effect of a provision of this Constitution that has arisen or appears likely to arise, and the Supreme Court must pronounce in open court its opinion on the question.

### ***Contempt of court***

**124.** The Supreme Court, the Court of Appeal and the High Court have power to punish persons for a contempt of court in accordance with the law.

### ***Rules of court***

**125.** 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***

**126.**-(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*

**127.** 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*

**128.** 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*

**129.** 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*

**130.** 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*

**131.**-(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.

(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*

**132.**-(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.

(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*

**133.**-(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) all judicial offices 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 and the Leader of the Opposition.

(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 before recommending a non-citizen for appointment to a judicial office (other than an office of judge).

#### *Criteria for appointment to judicial office*

**134.** 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, reflect the ethnic and gender balance of the community.

#### *Oath of office*

**135.** Before taking office, a judge must make before the President, the oath of office set out in Part D of the Schedule.

#### *Judges' remuneration*

**136.** The remuneration of judges must not be reduced during their terms of office.

#### *Retirement ages for judges*

**137.**-(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 70.

(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 70.

(3) The term of appointment of a puisne judge of the High Court expires upon his or her reaching the age of 65, 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 65.

(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 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 **132(3)**.

### *Removal of judges for cause*

**138.**-(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) 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*

**139.** 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*

**140.** 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 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 ethnic composition of the population, taking account, when appropriate, of occupational preferences.

***Public officeholders must be citizens***

**141.** 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.

***Independent service commissions***

**142.** This section:

- (a) establishes a Constitutional Offices Commission;
- (b) continues in existence the Public Service Commission established under the Constitution of 1990; and
- (c) continues in existence, under the name of the Disciplined Services Commission, the Police Service Commission established under the Constitution of 1990.

***Appointments to independent service commissions***

**143.**-(1) The Constitutional Offices Commission consists of:

- (a) a chairperson; and
- (b) 2 other members;

appointed by the President.

(2) The Public Service Commission consists of:

- (a) a chairperson; and
- (b) not less than 3 nor more than 5 other members;

appointed by the President.

(3) The Disciplined Services Commission consists:

(a) a chairperson; and

(b) 2 other members;

appointed by the President.

(4) Appointments 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***

**144.**-(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, 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***

**145.**-(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 (other than an office of member of a commission);  
or

(e) a local government officer.

(2) Subject to subsection (3), a person who is a member of one independent service commission must not be appointed to another independent service commission.

(3) The chairperson of the Public Service Commission may also be appointed as chairperson or other member of the Constitutional Offices Commission.

(4) 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***

**146.**-(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.

(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 not a public office.

#### ***Functions of Public Service Commission***

**147.**-(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.

(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;

(c) an office in the Republic of Fiji Military Forces;

(d) an office in respect of which this Constitution makes provision (other than the offices of Secretary to the House of Representatives and Secretary to the Senate); or

(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***

**148.** 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.

<b>Column 1</b>	<b>Column 2</b>
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

***Appointment of ambassadors, etc.***

**149.**-(1) The President may, on the advice of the Prime Minister, make appointments to offices of ambassador, or of other principal representative, of Fiji to another country or an international organisation.

(2) The President may, on the advice of the Prime Minister, 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***

**150.** 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;

(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***

**151.** The Parliament may make laws:

(a) providing for appeals against specified decisions of the Public Service Commission;

(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***

**152.**-(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***

**153.**-(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***

**154.**-(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.

#### ***Interpretation***

**155.** In this Chapter:

***independent service commission*** means the Constitutional Offices Commission, the Public Service Commission or the Disciplined Services Commission.

## **CHAPTER 11**

### **ACCOUNTABILITY**

#### **Part 1-CODE OF CONDUCT**

##### ***Code of Conduct***

**156.**-(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.

(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***

**157.**-(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*

**158.**-(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.

(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

(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.

in accordance with, an Act.

(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

(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.

#### ***Discretion not to investigate***

**159.**-(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***

**160.** The Parliament may make laws relating to the conduct of investigations by the Ombudsman.

#### ***Reports by Ombudsman***

**161.**-(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***

**162.** If within a reasonable time after the making of a report under section **161** 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 **161(5)**.

#### ***Appointment of Ombudsman***

**163.**-(1) The Ombudsman is appointed by the Constitutional Offices Commission following consultation by it with the Prime Minister.

(2) The Ombudsman must not perform the functions or duties of another public office (except the office of the chairperson of the Human Rights Commission) and must not, without the written approval of the Prime Minister, hold any other paid office or engage any paid occupation or calling outside the duties of his or her office.

(3) The Constitutional Offices Commission may, following consultation by it with the Prime Minister, 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.

#### *Annual report*

**164.** The 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.

#### *Interpretation*

**165.**-(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;

but does not include:

(e) the President;

(f) the Bose Levu Vakaturaga;

(g) a commission;

(h) the Native Fisheries Commission;

(i) the Native Lands Commission;

(j) a court;

(k) the Director of Public Prosecutions;

(l) an incorporated company over which the Government is not in a position to exercise control; or

(m) a person or body prescribed by the Parliament 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***

**166.** This section establishes the office of Auditor-General.

#### ***Functions of Auditor-General***

**167.**-(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 power 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*

**168.**-(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*

**169.** 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 members of the Human Rights Commission referred to in paragraphs **42(3)(b)** and (c);
- (h) the members of the Constituency Boundaries Commission;
- (i) the members of the Electoral Commission;
- (j) the members of the Parliamentary Emoluments Commission;
- (k) the members of the Commission on the Prerogative of Mercy referred to in paragraph **115(2)(b)**;
- (l) the members of the Constitutional Offices Commission;
- (m) the members of the Public Service Commission; and
- (n) the members of the Disciplined Services Commission.

### ***Terms and conditions of office***

**170.**-(1) Subject to this section, a person to whom this Part applies referred to in any of paragraphs **169(a)** to *(f)* inclusive or in paragraph **169(i)** holds office for 5 years and is eligible for re-appointment.

(2) Subject to this section, a person to whom this Part applies referred to in paragraph **169(g), (h), (j), (k), (l), (m)** or *(n)* 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 **169(a)** to *(f)* inclusive expires upon his or her reaching the age of 65, 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 **79**; 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***

**171.** A person to whom this Part applies referred to in any of paragraphs **169(a)** to *(f)* 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***

**172.**-(1) In this section:

***prescribed authority*** means:

*(a)* in relation to persons to whom referred to in paragraphs **169(a)** to *(f)* inclusive - the Constitutional Offices Commission; and

*(b)* in relation to any other person to whom this Part applies - the President.

(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). 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.

(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*

**173.**-(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 23(3), 34(9), 93(3), 138(3) or 172(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 138(3).

## **Part 5 - FREEDOM OF INFORMATION**

### *Freedom of information*

**174.** As soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.

## **CHAPTER 12**

### **REVENUE AND EXPENDITURE**

#### *Raising of revenue*

**175.** 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*

**176.**-(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***

**177.** 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***

**178.**-(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***

**179.** 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***

**180.**-(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***

**181.** 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***

**182.** 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*

**183.**-(1) This section applies to:

- (a) the President;
- (b) the Vice-President;
- (c) a judge;
- (d) the members of the Human Rights Commission referred to in paragraphs **42(3)(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 **23(3), 34(9), 93(3), 138(3)** or **172(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*

**184.**-(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

### GROUP RIGHTS

#### *Alteration of certain Acts*

**185.**-(1) A Bill that alters any of the following Acts, namely:

- (a) Fijian Affairs Act;
- (b) Fijian Development Fund Act;
- (c) Native 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 by the Senate unless at its third reading in that House it is supported by the votes of at least 9 of the 14 members of the Senate appointed under paragraph 64(1)(a).

(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

(ii) at its third reading it is supported by the votes of at least two-thirds of the members of each House and, in the case of the Senate, by the votes of at least 9 of the 14 members of the Senate appointed under paragraph 64(1)(a).

(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 laws and customary rights*

**186.**-(1) The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes.

(2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people.

(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.

(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 of administering exploitation rights; and

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

## CHAPTER 14

### EMERGENCY POWERS

#### *Emergency powers*

**187.**-(1) The Parliament may make a law conferring power on the President, acting on the advice of the Cabinet, 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 section **23, 24, 30, 31, 32, 33, 34** or **37** (but not from other rights and freedoms set out in the Bill of Rights) if each of the following conditions is satisfied:

(a) the Cabinet has 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 Bill of Rights;

(b) the proclamation of the state of emergency is laid before the House of Representatives, is confirmed by it within 5 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 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 or covenant 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*

**188.**-(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 **59**, expire by effluxion of time, the President may, on the advice of the Cabinet, 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***

**189.**-(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 18 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 15**

### **AMENDMENT OF CONSTITUTION**

#### ***Alteration of Constitution***

**190.** 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***

**191.**-(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) and section **192**, 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) Subject to section **192**, 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 a majority of at least 53 members of the House;

paragraphs (2)(b), (c) and (d) do 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 a majority of at least 53 members of that House.

***Veto power of certain members***

**192.**-(1) A Bill to alter subsection **51**(2) or this subsection is deemed not to have been passed by the House of Representatives unless at its third reading in that House it is supported by the votes of at least 15 of the 23 members elected under subparagraph **51**(1)(a)(i).

(2) A Bill to alter subsection **51**(3) or this subsection is deemed not to have been passed by the House of Representatives unless at its third reading in that House it is supported by the votes of at least 13 of the 19 members elected under subparagraph **51**(1)(a)(ii).

(3) A Bill to alter subsection 51(5) or this subsection is deemed not to have been passed by the House of Representatives unless at its third reading in that House it is supported votes of at least 2 of the 3 members elected under subparagraph 51(1)(a)(iv).

(4) A Bill to alter section 185 or this subsection is deemed not to have been passed by the Senate unless at its third reading in that House it is supported by the votes of at least 9 of the 14 members appointed under paragraph 64(1)(a).

## CHAPTER 16

### COMMENCEMENT, INTERPRETATION AND REPEALS

#### *Short title and commencement*

193.-(1) This Act may be cited as the Constitution Amendment Act 1997.

(2) Subject to this section, this Act commences on 27 July 1998.

(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, on and from the date on which this Act receives the assent of the President, to determine constituency boundaries or to register voters, as the case may be, in accordance with this Act as if this Act had come into force on that date.

#### *Interpretation*

194.-(1) In this Constitution, unless the contrary intention appears:

*Act* means an Act of the Parliament or a Decree;

*Bill of Rights* means the rights and freedoms set out in Chapter 4;

*Bose Levu Vakaturaga* means the Great Council of Chiefs established under section 3 of the Fijian Affairs Act;

*commission* means a commission established by, or continued in existence under, this Constitution;

*Constitution of 1990* means the Constitution set out in the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990;

*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;

**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) or a judge of the Supreme 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;

***province*** means a province established under the Fijian Affairs Act;

***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 14;

**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 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 1997;

**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:

Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990  
Suppression of Terrorism Decree 1991  
Ombudsman Decree 1987  
Fiji Citizenship Act  
Fiji Citizenship Decree 1987  
Internal Security Decree 1988  
Internal Security (Suspension) Decree 1988  
Industrial Associations Act (Amendment) Decree 1991  
Trade Unions (Recognition) Act (Amendment) Decree 1991  
Trade Unions Act (Amendment) Decree 1991  
Sugar Industry (Special Protection) (Amendment) (No. 3) Decree 1991  
Protection of the National Economy Decree 1991.

(2) Despite the repeal of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990:

(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 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;

(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 1990;

(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 before that repeal may be brought into force in accordance with their terms and apply as if enacted or made under or pursuant to this Constitution;

(g) the courts established by the Constitution of 1990 continue in existence but the Fiji Court of Appeal is to be known on and after that repeal as the Court of Appeal and references to the Fiji Court of Appeal in any written law, any commission held by a judge or any proceedings are to be read as references to the Court of Appeal;

(h) all proceedings in the courts established by the Constitution of 1990 that had commenced before that repeal but had not been determined continue, on and after that repeal, as if the provisions of this Constitution were in force at their commencement;

(i) all delegations that:

(i) had been given before that repeal by a commission or person referred to in the Constitution of 1990; and,

(ii) were in force immediately before that repeal;

continue in force, on and after that repeal, as if given by the corresponding commission or person referred to in this Constitution; and

(j) all proceedings before a commission or person referred to in the Constitution of 1990 that had commenced but had not been determined, before that repeal continue, on and after that repeal, 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.

## **SCHEDULE**

### **OATHS AND AFFIRMATIONS**

#### **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, according to law. 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, according to law.

**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 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 in the office of [ ].

**C. 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. 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.

**D. 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, 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, without fear or favour, affection or ill will.

-----

Passed by the House of Representatives this third day of July in the year of our Lord one thousand, nine hundred and ninety-seven.

Passed by the Senate this tenth day of July in the year of our Lord one thousand, nine hundred and ninety-seven.