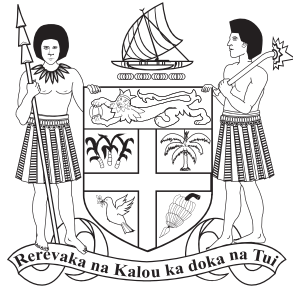


# CONSTITUTION OF THE REPUBLIC OF FIJI



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# CONSTITUTION OF THE REPUBLIC OF FIJI

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SCHEDULE

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**PREAMBLE**

WE, THE PEOPLE OF FIJI,

RECOGNISING the indigenous people or the *iTaukei*, their ownership of *iTaukei* lands, their unique culture, customs, traditions and language;

RECOGNISING the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language;

RECOGNISING the descendants of the indentured labourers from British India and the Pacific Islands, their culture, customs, traditions and language; and

RECOGNISING the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language,

DECLARE that we are all Fijians united by common and equal citizenry;

RECOGNISE the Constitution as the supreme law of our country that provides the framework for the conduct of Government and all Fijians;

COMMIT ourselves to the recognition and protection of human rights, and respect for human dignity;

DECLARE our commitment to justice, national sovereignty and security, social and economic wellbeing, and safeguarding our environment,

HEREBY ESTABLISH THIS CONSTITUTION FOR THE REPUBLIC OF FIJI.

## CHAPTER 1—THE STATE

### *The Republic of Fiji*

1. The Republic of Fiji is a sovereign democratic State founded on the values of—
  - (a) common and equal citizenry and national unity;
  - (b) respect for human rights, freedom and the rule of law;
  - (c) an independent, impartial, competent and accessible system of justice;
  - (d) equality for all and care for the less fortunate based on the values inherent in this section and in the Bill of Rights contained in Chapter 2;
  - (e) human dignity, respect for the individual, personal integrity and responsibility, civic involvement and mutual support;
  - (f) good governance, including the limitation and separation of powers;
  - (g) transparency and accountability; and
  - (h) a prudent, efficient and sustainable relationship with nature.

### *Supremacy of the Constitution*

- 2.—(1) This Constitution is the supreme law of the State.
  - (2) Subject to the provisions of this Constitution, any law inconsistent with this Constitution is invalid to the extent of the inconsistency.
  - (3) This Constitution shall be upheld and respected by all Fijians and the State, including all persons holding public office, and the obligations imposed by this Constitution must be fulfilled.
  - (4) This Constitution shall be enforced through the courts, to ensure that—
    - (a) laws and conduct are consistent with this Constitution;
    - (b) rights and freedoms are protected; and
    - (c) duties under this Constitution are performed.
  - (5) This Constitution cannot be abrogated or suspended by any person, and may only be amended in accordance with the procedures prescribed in Chapter 11.
  - (6) Any attempt to establish a Government other than in compliance with this Constitution shall be unlawful, and—
    - (a) anything done to further that attempt is invalid and of no force or effect; and
    - (b) no immunities can lawfully be granted under any law to any person in respect of actions taken or omitted in furtherance of such an attempt.

*Principles of constitutional interpretation*

3.—(1) Any person interpreting or applying this Constitution must promote the spirit, purpose and objects of this Constitution as a whole, and the values that underlie a democratic society based on human dignity, equality and freedom.

(2) If a law appears to be inconsistent with a provision of this Constitution, the court must adopt a reasonable interpretation of that law that is consistent with the provisions of this Constitution over an interpretation that is inconsistent with this Constitution.

(3) This Constitution is to be adopted in the English language and translations in the *iTaukei* and Hindi languages are to be made available.

(4) If there is an apparent difference between the meaning of the English version of a provision of this Constitution, and its meaning in the *iTaukei* and Hindi versions, the English version prevails.

*Secular State*

4.—(1) Religious liberty, as recognised in the Bill of Rights, is a founding principle of the State.

(2) Religious belief is personal.

(3) Religion and the State are separate, which means—

- (a) the State and all persons holding public office must treat all religions equally;
- (b) the State and all persons holding public office must not dictate any religious belief;
- (c) the State and all persons holding public office must not prefer or advance, by any means, any particular religion, religious denomination, religious belief, or religious practice over another, or over any non-religious belief; and
- (d) no person shall assert any religious belief as a legal reason to disregard this Constitution or any other law.

*Citizenship*

5.—(1) All citizens of Fiji shall be known as Fijians.

(2) Subject to the provisions of this Constitution, all Fijians have equal status and identity, which means that they are equally—

- (a) entitled to all the rights, privileges and benefits of citizenship; and
- (b) subject to the duties and responsibilities of citizenship.

(3) Citizenship of Fiji shall only be acquired by birth, registration or naturalisation.

- (4) Citizens of Fiji may hold multiple citizenship, which means that—
- (a) upon accepting the citizenship of a foreign country, a person remains a citizen of Fiji unless he or she renounces that status;
  - (b) a former citizen of Fiji, who lost that citizenship upon acquiring foreign citizenship, may regain citizenship of Fiji, while retaining that foreign citizenship unless the laws of that foreign country provide otherwise; and
  - (c) upon becoming a citizen of Fiji, a foreign person may retain his or her existing citizenship unless the laws of that foreign country provide otherwise.
- (5) A written law shall prescribe—
- (a) the conditions upon which citizenship of Fiji may be acquired and the conditions upon which a person may become a citizen of Fiji;
  - (b) procedures relating to the making of applications for citizenship by registration or naturalisation;
  - (c) conditions relating to the right to enter and reside in Fiji;
  - (d) provisions for the prevention of statelessness;
  - (e) rules for the calculation of periods of a person's lawful presence in Fiji for the purpose of determining citizenship;
  - (f) provisions relating to the renunciation and deprivation of citizenship; and
  - (g) such other matters as are necessary to regulate the granting of citizenship.

## CHAPTER 2—BILL OF RIGHTS

### *Application*

6.—(1) This Chapter binds the legislative, executive and judicial branches of government at all levels, and every person performing the functions of any public office.

(2) The State and every person holding public office must respect, protect, promote and fulfil the rights and freedoms recognised in this Chapter.

(3) A provision of this Chapter binds a natural or legal person, taking into account—

- (a) the nature of the right or freedom recognised in that provision; and
- (b) the nature of any restraint or duty imposed by that provision.

(4) A legal person has the rights and freedoms recognised in this Chapter, to the extent required by the nature of the right or freedom, and the nature of the particular legal person.

(5) The rights and freedoms set out in this Chapter apply according to their tenor and may be limited by—

- (a) limitations expressly prescribed, authorised or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;
- (b) limitations prescribed or set out in, or authorised or permitted by, other provisions of this Constitution; or
- (c) limitations which are not expressly set out or authorised (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorised or permitted by a law or by actions taken under the authority of a law.

(6) Subject to the provisions of this Constitution, this Chapter applies to all laws in force at the commencement of this Constitution.

(7) Subject to the provisions of this Constitution, laws made, and administrative and judicial actions taken, after the commencement of this Constitution, are subject to the provisions of this Chapter.

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

### *Interpretation of this Chapter*

7.—(1) In addition to complying with section 3, when interpreting and applying this Chapter, a court, tribunal or other authority—

- (a) must promote the values that underlie a democratic society based on human dignity, equality and freedom; and

(b) may, if relevant, consider international law, applicable to the protection of the rights and freedoms in this Chapter.

(2) This Chapter does not deny, or prevent the recognition of, any other right or freedom recognised or conferred by common law or written law, except to the extent that it is inconsistent with this Chapter.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because 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, and in that case, the law must be construed in accordance with the more restricted interpretation.

(4) When deciding any matter according to common law, a court must apply and, where necessary, develop common law in a manner that respects the rights and freedoms recognised in this Chapter.

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

*Right to life*

8. Every person has the right to life, and a person must not be arbitrarily deprived of life.

*Right to personal liberty*

9.—(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 had been convicted;
- (b) for the purpose of executing an order of a court punishing the person for contempt of the court or of another court or tribunal;
- (c) for the purpose of executing an 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 an 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 lawful 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 18th 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) Subsection (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 is detained pursuant to a measure authorised under a state of emergency—

- (a) the person 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 person understands, specifying the grounds of the detention;
- (b) the person must be given the opportunity to communicate with, and to be visited by—
  - (i) his or her spouse, partner or next-of-kin;
  - (ii) a legal practitioner;
  - (iii) a religious counsellor or a social worker; and
  - (iv) a medical practitioner;
- (c) the person must be given reasonable facilities to consult with a legal practitioner of his or her choice;
- (d) the detention must, within one month and thereafter at intervals of not more than one month, be reviewed by a court; and
- (e) at any review by a court, the person may appear in person or be represented by a legal practitioner.

(4) At any review of the detention under subsection (3), the court may make such orders as to the continued detention of the person.

*Freedom from slavery, servitude, forced labour and human trafficking*

10.—(1) A person must not be held in slavery or servitude, or subjected to forced labour or human trafficking.

(2) In this section, “*forced labour*” does not include—

- (a) labour required in consequence of a 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; or
- (c) labour required of a member of a disciplined force as part of his or her duties.

*Freedom from cruel and degrading treatment*

11.—(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 security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

(3) Every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or 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 search and seizure*

12.—(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 the law.

*Rights of arrested and detained persons*

13.—(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—
  - (i) the reason for the arrest or detention and the nature of any charge that may be brought against that person;
  - (ii) the right to remain silent; and
  - (iii) the consequences of not remaining silent;
- (b) to remain silent;
- (c) to communicate 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 so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;



- (d) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (e) to be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;
- (f) to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter;
- (g) at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released;
- (h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;
- (i) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (j) to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition, and medical treatment; and
- (k) to communicate with, and be visited by,—
  - (i) his or her spouse, partner or next-of-kin; and
  - (ii) a religious counsellor or a social worker.

(2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.

(3) A person who is deprived of liberty by being detained, held in custody or imprisoned under any law retains all the rights and freedoms set out in this Chapter, except to the extent that any particular right or freedom is incompatible with the fact of being so deprived of liberty.

*Rights of accused persons*

14.—(1) A person shall not be tried for—

- (a) any act or omission that was not an offence under either domestic or international law at the time it was committed or omitted; or
- (b) an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

(2) Every person charged with an offence has the right—

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

- (b) to be informed 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 own choice, and to be informed promptly of this right or, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission, and to be informed promptly of this right;
- (e) to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;
- (f) to a public trial before a court of law, unless the interests of justice otherwise require;
- (g) to have the trial begin and conclude without unreasonable delay;
- (h) to be present when being tried, unless—
  - (i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or
  - (ii) the conduct of the person 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;
- (i) to be tried in a language that the person understands or, if that is not practicable, to have the proceedings interpreted in such a language at State expense;
- (j) to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from the exercise of any of these rights;
- (k) not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;
- (l) to call witnesses and present evidence, and to challenge evidence presented against him or her;
- (m) to a copy of the record of proceedings within a reasonable period of time and on payment of a reasonably prescribed fee;

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing; and

(o) of appeal to, or review by, a higher court.

(3) Whenever this section requires information to be given to a person, that information must be given as simply and clearly as practicable, in a language that the person understands.

(4) A law is not inconsistent with subsection (1)(b) 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*

15.—(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 unless the interests of justice require otherwise.

(5) Subsection (4) does not prevent—

(a) the making of laws relating to the trials of children, 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 a person other than parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of children, 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.

(10) The State, through law and other measures, must provide legal aid through the Legal Aid Commission to those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.

(11) If any fee is required to access a court or tribunal, it must be reasonable and must not impede access to justice.

(12) In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted.

*Executive and administrative justice*

16.—(1) Subject to the provisions of this Constitution and such other limitations as may be prescribed by law—

- (a) every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;
- (b) every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and
- (c) any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with law.

(2) The rights mentioned in subsection (1) shall not be exercised against any company registered under a law governing companies.

(3) This section shall not have retrospective effect, and shall only apply to executive and administrative actions taken after the first sitting of the first Parliament elected under this Constitution.

*Freedom of speech, expression and publication*

17.—(1) Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes—

- (a) freedom to seek, receive and impart information, knowledge and ideas;
- (b) freedom of the press, including print, electronic and other media;

- (c) freedom of imagination and creativity; and
- (d) academic freedom and freedom of scientific research.

(2) Freedom of speech, expression, thought, opinion and publication does not protect—

- (a) propaganda for war;
- (b) incitement to violence or insurrection against this Constitution; or
- (c) advocacy of hatred that—
  - (i) is based on any prohibited ground of discrimination listed or prescribed under section 26; and
  - (ii) constitutes incitement to cause harm.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of—

- (a) national security, public safety, public order, public morality, public health or the orderly conduct of 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 rights 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 of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons;
- (e) maintaining the authority and independence of the courts;
- (f) imposing restrictions on the holders of public offices;
- (g) regulating the technical administration of telecommunications; or
- (h) making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organisations.

(4) In this section, “*hate speech*” means an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26.

*Freedom of assembly*

18.—(1) Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket and to present petitions.

(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purpose of protecting the rights and freedoms of others; or
- (c) for the purpose of imposing restrictions on the holders of public offices.

*Freedom of association*

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

(2) A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purpose of protecting the rights and freedoms of others;
- (c) for the purpose of imposing restrictions on the holders of public offices;
- (d) for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
- (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or
- (f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

*Employment relations*

20.—(1) Every person has the right to fair employment practices, including humane treatment and proper working conditions.

(2) Every worker has the right to form or join a trade union, and participate in its activities and programmes.

(3) Every employer has the right to form or join an employers' organisation, and to participate in its activities and programmes.

(4) Trade unions and employers have the right to bargain collectively.

(5) A law may limit, or may authorise the limitation of, the rights mentioned in this section—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purposes of protecting the rights and freedoms of others;
- (c) for the purposes of imposing restrictions on the holders of public offices;
- (d) for the purposes of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
- (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or
- (f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

*Freedom of movement and residence*

21.—(1) Every person has the right to freedom of movement.

(2) Every citizen has the right to apply for and be issued a passport or similar travel document, in accordance with any condition prescribed by written law.

(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 responsible for immigration 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 any child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of his or her parent or lawful 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 country of the person's citizenship 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 or property owned or occupied by others.
- (7) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights mentioned in this section—
- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
  - (b) for the purpose of protecting the rights and freedoms of others;
  - (c) for the purpose of protecting the ecology of any area;
  - (d) 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
  - (e) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment.
- (8) Section 9(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.

*Freedom of religion, conscience and belief*

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



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

(3) Every person has the right not to be compelled to—

- (a) act in any manner that is contrary to the person’s religion or belief; or
- (b) take an oath, or take an oath in a manner, that—
  - (i) is contrary to the person’s religion or belief; or
  - (ii) requires the person to express a belief that the person does not hold.

(4) Every religious community or denomination, and every cultural or social community, has the right to establish, maintain and manage places of education whether or not it receives financial assistance from the State, provided that the educational institution maintains any standard prescribed by law.

(5) In exercising its rights under subsection (4), a religious community or denomination has the right to provide religious instruction as part of any education that it provides, whether or not it receives financial assistance from the State for the provision of that education.

(6) Except with his or her consent or, in the case of a child, the consent of a parent or lawful 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.

(7) To the extent that it is necessary, the rights and freedoms set out in this section may be made subject to such limitations prescribed by law—

- (a) to protect—
  - (i) the rights and freedoms of other persons; or
  - (ii) public safety, public order, public morality or public health; or
- (b) to prevent public nuisance.

*Political rights*

23.—(1) Every citizen has the freedom to make political choices, and the right to—

- (a) form or join a political party;
- (b) participate in the activities of, or recruit members for, a political party; and
- (c) campaign for a political party, candidate or cause.

(2) Every citizen has the right to free, fair and regular elections for any elective institution or office established under this Constitution.

(3) Every citizen who has reached the age of 18 years has the right—

- (a) to be registered as a voter;
- (b) to vote by secret ballot in any election or referendum under this Constitution;
- (c) to be a candidate for public office, or office within a political party of which the citizen is a member, subject to satisfying any qualifications for such an office; and
- (d) if elected, to hold office.

(4) A law may limit, or may authorise the limitation of, the rights mentioned in this section—

- (a) for the purpose of regulating the registration of voters, and prescribing persons who do not have or have ceased to have the right to be registered as a voter;
- (b) for the purpose of regulating the registration of political parties and prescribing persons who do not have the rights prescribed under subsection (1) and subsection (3)(c) and (d);
- (c) for the purpose of regulating persons who are not eligible to contest for a place in Parliament or in a public office, or an office within a political party; or
- (d) for the purpose of imposing restrictions on the holders of public offices (as defined in any such law) from the rights set out in this section.

*Right to privacy*

24.—(1) Every person has the right to personal privacy, which includes the right to—

- (a) confidentiality of their personal information;
- (b) confidentiality of their communications; and
- (c) respect for their private and family life.

(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).

*Access to information*

25.—(1) Every person has the right of access to—

- (a) information held by any public office; and

(b) information held by another person and required for the exercise or protection of any legal right.

(2) Every person has the right to the correction or deletion of false or misleading information that affects that person.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.

*Right to equality and freedom from discrimination*

26.—(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.

(3) A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her—

(a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; 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.

(4) A law or an administrative action taken under a law may not directly or indirectly impose a limitation or restriction on any person on a prohibited ground.

(5) Every person has the right of access, membership or admission, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, clubs, education institutions, public transportation services, taxis and public places.

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

(7) Treating one person differently from another on any of the grounds prescribed under subsection (3) is discrimination, unless it can be established that the difference in treatment is not unfair in the circumstances.

(8) A law, or an administrative action taken under a law, is not inconsistent with the rights mentioned in this section on the ground that it—

- (a) appropriates revenues or other moneys for particular purposes;
- (b) imposes a retirement age on a person;
- (c) imposes a restriction on persons employed or engaged in a State service, or confers on them a privilege or advantage not imposed or conferred on other persons;
- (d) imposes restrictions on persons who are not citizens, or confers on them a privilege or advantage, not imposed or conferred on citizens;
- (e) makes provision with respect to adoption, marriage, devolution of property on death, and pension;
- (f) excludes persons from holding certain public offices; or
- (g) to the extent necessary and without infringing the rights or freedoms set out in any other section of this Chapter, gives effect to the communal ownership of *iTaukei*, Rotuman and Banaban lands and access to marine resources, or the bestowing of *iTaukei*, Rotuman and Banaban chiefly title or rank.

*Freedom from compulsory or arbitrary acquisition of property*

27.—(1) Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property.

(2) A written law may authorise compulsory acquisition of property—

- (a) when necessary for a public purpose; and
- (b) on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including—
  - (i) the public purpose for which the property is being acquired;
  - (ii) the history of its acquisition by the owner;
  - (iii) the market value of the property;
  - (iv) the interests of any person affected by the acquisition; and
  - (v) any hardship to the owner.

(3) Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of—

- (a) taxation;
- (b) sequestration of bankrupt estates;
- (c) confiscation of the proceeds of crime;
- (d) penalty for breach of the law;
- (e) satisfaction of a mortgage, charge or lien; or
- (f) execution of a judgment of a court or tribunal.

*Rights of ownership and protection of iTaukei, Rotuman and Banaban lands*

28.—(1) The ownership of all *iTaukei* land shall remain with the customary owners of that land and *iTaukei* land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(2) Any *iTaukei* land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

(3) The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(4) Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

(5) The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(6) Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

*Protection of ownership and interests in land*

29.—(1) All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before the commencement of this Constitution shall continue to exist under this Constitution.

(2) No law shall be made to diminish or adversely affect the rights and interests in land leases and land tenancies, whether existing immediately before the commencement of this Constitution or made or issued after the commencement of this Constitution.

(3) All land lessees and land tenants have the right not to have their land leases or land tenancies terminated other than in accordance with their land leases or land tenancies.

(4) Parliament and Cabinet, through legislative and other measures, must ensure that all land leases and land tenancies provide a fair and equitable return to the landowners whilst protecting the rights of land lessees and land tenants, including security and protection of tenure of land leases and land tenancies and terms and conditions of land leases and land tenancies which must be just, fair and reasonable.

(5) All land that existed as freehold land immediately before the commencement of this Constitution shall remain as freehold land even if it is sold or purchased, unless it is sold to the State or is acquired by the State for a public purpose under section 27.

(6) For the purposes of this section—

“*land leases*” or “*land tenancies*” includes sub-leases, sub-tenancies and tenancies-at-will, but shall not include leases, agreements or tenancies for any building, structure or dwelling, whether used for residential, commercial, industrial or for tourism purposes, and shall not include any leases, agreements or tenancies for any fixture, equipment, plant or fittings on any land; and

“*land lessees*” or “*land tenants*” includes sub-lessees, sub-tenants or tenants-at-will of land leases or land tenancies.

*Right of landowners to fair share of royalties for extraction of minerals*

30.—(1) All minerals in or under any land or water, are owned by the State, provided however, that the owners of any particular land (whether customary or freehold), or of any particular registered customary fishing rights shall be entitled to receive a fair share of royalties or other money paid to the State in respect of the grant by the State of rights to extract minerals from that land or the seabed in the area of those fishing rights.

(2) A written law may determine the framework for calculating fair shares under subsection (1), taking into account all relevant factors, including the following—

- (a) any benefit that the owners received or may receive as a result of mineral exploration or 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 exploration or exploitation rights; and
- (e) the appropriate contribution to the general revenue of the State to be made by any person granted exploration or exploitation rights.

*Right to education*

31.—(1) Every person has the right to—

- (a) early childhood education;
- (b) primary and secondary education; and
- (c) further education.

(2) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right—

- (a) to free early childhood, primary, secondary and further education; and
- (b) to education for persons who were unable to complete their primary and secondary education.

(3) Conversational and contemporary *iTaukei* and Fiji Hindi languages shall be taught as compulsory subjects in all primary schools.

(4) The State may direct any educational institution to teach subjects pertaining to health, civic education and issues of national interest, and any educational institution must comply with any such directions made by the State.

(5) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to economic participation*

32.—(1) Every person has the right to full and free participation in the economic life of the State, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.

(2) The State must take reasonable measures within its available resources to achieve the progressive realisation of the rights recognised in subsection (1).

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).

*Right to work and a just minimum wage*

33.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to work and to a just minimum wage.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to reasonable access to transportation*

34.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to have reasonable access to transportation.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to housing and sanitation*

35.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to adequate food and water*

36.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to social security schemes*

37.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to social security schemes, whether private or public, for their support in times of need, including the right to such support from public resources if they are unable to support themselves and their dependents.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Right to health*

38.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care.

(2) A person must not be denied emergency medical treatment.



(3) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

*Freedom from arbitrary evictions*

39.—(1) Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.

(2) No law may permit arbitrary evictions.

*Environmental rights*

40.—(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.

*Rights of children*

41.—(1) Every child has the right—

- (a) to be registered at or soon after birth, and to have a name and nationality;
- (b) to basic nutrition, clothing, shelter, sanitation and health care;
- (c) to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child—
  - (i) whether or not the parents are, or have ever been, married to each other; and
  - (ii) whether or not the parents are living together, have lived together, or are separated;
- (d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and
- (e) not to be detained, except as a measure of last resort, and when detained, to be held—
  - (i) only for such period of time as is necessary; and
  - (ii) separate from adults, and in conditions that take account of the child's sex and age.

(2) The best interests of a child are the primary consideration in every matter concerning the child.

*Rights of persons with disabilities*

42.—(1) A person with any disability has the right—

- (a) to reasonable access to all places, public transport and information;
- (b) to use sign language, Braille or other appropriate means of communication; and
- (c) to reasonable access to necessary materials, substances and devices relating to the person's disability.

(2) A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights.

(3) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.

*Limitation of rights under states of emergency*

43.—(1) Any law enacted or promulgated in consequence of a declaration of a state of emergency under this Constitution—

- (a) may limit a right or freedom set out in this Chapter (with the exception of the rights and freedoms set out in sections 8, 10, 11, 13, 14, 15, 16, 22 and 26) only to the extent that—
  - (i) the limitation is strictly necessary and required by the emergency; and
  - (ii) the law is consistent with Fiji's obligations under international law applicable to a state of emergency; and
- (b) takes effect only when it has been published in the *Gazette*.

(2) A person detained under a law contemplated in subsection (1) retains all the rights recognised in this Chapter, subject only to the limitations referred to in subsection (1).

*Enforcement*

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

(8) If the 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 and Anti-Discrimination Commission*

45.—(1) The Human Rights Commission established under the Human Rights Commission Decree 2009 continues in existence as the Human Rights and Anti-Discrimination Commission.

(2) The Commission consists of—

- (a) a chairperson, who must be a person who is or is qualified to be appointed as a judge; and
- (b) 4 other members,

appointed by the President on the advice of the Constitutional Offices Commission.

(3) In advising the President as to the person to be appointed as chairperson or other members of the Commission, the Constitutional Offices Commission must have regard not only to their personal attributes but also to their knowledge or experience of the various aspects of matters likely to come before the Commission.

(4) Subject to this Constitution, the Commission is responsible for—

- (a) promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Fiji;
- (b) education about the rights and freedoms recognised in this Chapter, as well as other internationally recognised rights and freedoms;
- (c) monitoring, investigating and reporting on the observance of human rights in all spheres of life;
- (d) making recommendations to Government concerning matters affecting the rights and freedoms recognised in this Chapter, including recommendations concerning existing or proposed laws;
- (e) receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or for other forms of relief or remedies;
- (f) investigating or researching, on its own initiative or on the basis of a complaint, any matter in respect of human rights, and make recommendations to improve the functioning of public or private entities;
- (g) monitoring compliance by the State with obligations under treaties and conventions relating to human rights; and
- (h) performing any other functions or exercising any powers as are conferred on the Commission by a written law.

(5) Subject to this Constitution, any person has the right to lodge a complaint with the Commission, alleging that a right or freedom in this Chapter has been denied, violated or infringed, or is threatened.

(6) Subject to this Constitution, the Commission has other powers, duties and functions, as set out in the Human Rights Commission Decree 2009 or in any other written law.

(7) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(8) The Commission shall have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.

(9) The Commission has the authority to determine all matters pertaining to the employment of all staff in the Commission, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(10) The salaries, benefits and allowances payable to any person employed by the Commission are a charge on the Consolidated Fund.

(11) Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

(12) The Commission shall have control of its own budget and finances, as approved by Parliament.

## CHAPTER 3—PARLIAMENT

### Part A—LEGISLATIVE AUTHORITY

#### *Legislative authority and power of Parliament*

46.—(1) The authority and power to make laws for the State is vested in Parliament consisting of the members of Parliament and the President, and is exercised through the enactment of Bills passed by Parliament and assented to by the President.

(2) No person or body other than Parliament has authority to make any law in Fiji, except under authority conferred by this Constitution or by a written law.

#### *Exercise of legislative powers*

47.—(1) Any member of Parliament may introduce a Bill in Parliament, but only the Minister responsible for finance, or another Minister authorised by Cabinet, may introduce a Money Bill, as described in subsection (4).

(2) Parliament may proceed to consider any Bill in accordance with its standing orders, which must provide—

- (a) a structured process for the introduction, deliberation, amendment and enactment of Bills; and
- (b) sufficient time to elapse between the steps in the process for members and committees to give due consideration to each Bill.

(3) A Bill may proceed more quickly than permitted by the standing orders if—

- (a) when the Bill was introduced, the mover requested that Parliament approve consideration of the Bill without delay; and
- (b) a majority of the members of Parliament voted in support of that request.

(4) In this section, a Money Bill is any Bill that—

- (a) imposes, increases, alters, remits, grants exemptions from, reduces or abolishes taxes;
- (b) imposes charges on a public fund or varies or repeals any of those charges;
- (c) appropriates public money or otherwise relates to public moneys;
- (d) raises or guarantees any loan, or its repayment;
- (e) deals with the receipt, custody, investment, issue or audit of money; or
- (f) deals with anything incidental to those matters.

*Presidential assent*

48.—(1) When a Bill has been passed by Parliament, the Speaker must present it to the President for assent.

(2) Within 7 days after receipt of a Bill, the President must provide his or her assent.

(3) If the President does not assent to a Bill within the period set out in subsection (2), the Bill will be taken to have been assented to on the expiry of that period.

*Coming into force of laws*

49.—(1) Within 7 days after a Bill has been assented to, the Attorney-General must publish the Bill in the *Gazette* as an Act of Parliament.

(2) An Act of Parliament comes into force—

(a) on a date determined by or in accordance with the Act; or

(b) on the 7th day after its publication in the *Gazette*, if the Act does not determine a date or does not provide for a date to be determined.

*Regulations and similar laws*

50.—(1) No person may make regulations or issue any other instrument having the force of law, except as expressly authorised by this Constitution or a written law.

(2) A person making any regulations or issuing any instrument having the force of law must, so far as practicable, provide reasonable opportunity for public participation in the development and review of the law before it is made.

*Parliamentary authority over international treaties and conventions*

51. An international treaty or convention binds the State only after it has been approved by Parliament.

**Part B—COMPOSITION***Members of Parliament*

52. The members of Parliament shall be chosen by secret ballot in free and fair elections administered by the Electoral Commission, in accordance with this Constitution and any written law governing elections.

*Proportional representation system*

53.—(1) The election of members of Parliament is by a multi-member open list system of proportional representation, under which each voter has one vote, with each vote being of equal value, in a single national electoral roll comprising all the registered voters.

(2) Subject to subsections (3) and (4), in each general election of members of Parliament, the seats in Parliament must be awarded to candidates in proportion to—

- (a) the total number of votes cast for each political party contesting the general election, which shall be determined by totalling the number of votes cast for each candidate of that political party; and
- (b) the total number of votes cast for each independent candidate, if any, provided however that an independent candidate shall only be eligible to be awarded one seat in Parliament.

(3) A political party or an independent candidate shall not qualify for any seat in Parliament unless the political party or the independent candidate receives at least 5% of the total number of votes cast.

(4) A written law shall make provisions relating to the election of members of Parliament, including prescribing rules for awarding seats in Parliament under subsection (2), that accord with an internationally accepted method for awarding seats to candidates within an open list system of proportional representation.

#### *Composition of Parliament*

54.—(1) For the first general election of members of Parliament held under this Constitution, Parliament shall consist of 50 members, elected in accordance with this Constitution.

(2) For each general election of members of Parliament after the first general election held under this Constitution, the Electoral Commission shall, at least one year before any such general election, review the composition of Parliament and may, if necessary, increase or decrease the total number of members of Parliament to ensure that, as far as practicable, at the date of any such review, the ratio of the number of members of Parliament to the population of Fiji is the same as the ratio of the number of members of Parliament to the population of Fiji at the date of the first general election held under this Constitution.

(3) In conducting a review under subsection (2), the Electoral Commission shall have regard to the population of Fiji as ascertained from the most recent census, the Register of Voters or any other official information available.

(4) If the Electoral Commission makes a determination to alter the composition of Parliament in exercise of its powers under subsection (2), then the composition of Parliament shall, for the purpose of the general election of members of Parliament to be held after the date of the determination, be deemed to be amended to such number of members as determined by the Electoral Commission.

(5) A written law may make further provisions to give effect to the review under subsection (2).



*Voter qualification and registration*

55.—(1) Every citizen who is or will be the age of 18 years and over on or before the date of the issue of the writ for the next election of members to Parliament, has the right to be registered as a voter, in the manner and form prescribed by a written law governing elections or registration of voters.

(2) A person who—

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

does not have the right to be registered as a voter.

(3) A person who is registered as a voter and who, after his or her registration as a voter—

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

ceases to be a registered voter.

(4) Every person who is registered as a voter has the right to vote in the election of members of Parliament.

(5) The Electoral Commission must maintain a single, national common Register of Voters.

(6) Every citizen who is registered as a voter and who is—

- (a) resident in Fiji on the day of the elections is entitled to vote in that election; or
- (b) not a resident of Fiji or is not present in Fiji on the day of the elections, but is the holder of a valid Fijian passport, is entitled to vote to the extent provided in any written law governing elections.

*Candidates for election to Parliament*

56.—(1) A candidate for election to Parliament must be either nominated by a registered political party or nominated as an independent candidate in accordance with the laws governing elections.

(2) A person may be a candidate for election to Parliament only if the person—

- (a) is a citizen of Fiji, and does not hold citizenship of any other country;
- (b) is registered on the Register of Voters;
- (c) is ordinarily resident in Fiji for at least 2 years immediately before being nominated;
- (d) is not an undischarged bankrupt;
- (e) is not a member of the Electoral Commission, and has not been a member of that Commission at any time during the 4 years immediately before being nominated;
- (f) is not subject to a sentence of imprisonment when nominated;
- (g) has not, at any time during the 8 years immediately before being nominated, been convicted of any offence under any law for which the maximum penalty is a term of imprisonment of 12 months or more; and
- (h) has not been found guilty of any offence under a law relating to elections, registration of political parties or registration of voters.

(3) The total number of candidates which a political party may nominate for any general election must not be more than the total number of seats in Parliament, and the total number of candidates which a political party may nominate for any by-election must not be more than the total number of vacant seats in Parliament for which the by-election is being held.

(4) A written law may make provision relating to the nomination of candidates for election to Parliament.

(5) Every candidate, and every political party nominating a candidate, must comply with any written law governing elections.

*Candidates who are public officers*

57.—(1) A person who holds a public office is deemed to have vacated that office at the time at which his or her signed nomination as a candidate for election to Parliament is delivered to the relevant returning officer or to the person who under the laws governing elections is authorised to receive nominations of candidates.

(2) A person who has held office as a member of the Electoral Commission or as the Supervisor of Elections is ineligible to be nominated as a candidate for election to Parliament for 4 years after ceasing to hold that office.

- (3) For the purposes of this section, “*public office*” means—
- (a) any office in, or as a member of, a statutory authority, a commission, or a board established by or continued in existence by this Constitution or any written law;
  - (b) an office in respect of which this Constitution makes provision;
  - (c) an office established by written law;
  - (d) an office of a judicial officer or an office of any court or tribunal established by this Constitution or any written law;
  - (e) any office in a State service, including public service and the disciplined force;
  - (f) any office in a trade union registered under the Employment Relations Promulgation 2007 or any other written law (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from a trade union);
  - (g) any office in any federation, congress, council or affiliation of trade unions (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from any federation, congress, council or affiliation of trade unions); or
  - (h) any office in any federation, congress, council or affiliation of employers (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from any federation, congress, council or affiliation of employers).

(4) Notwithstanding anything contained in subsection (3), for the purposes of this section, “*public office*” does not include the office of the Prime Minister, the office of a Minister, the office of the Deputy Speaker, the office of the Leader of the Opposition or an office held by a Minister by virtue of his or her appointment as a Minister.

*Term of Parliament*

58.—(1) Subject to this section, Parliament, unless sooner dissolved in accordance with this Constitution, continues for 4 years from the date of its first meeting after a general election of the members of Parliament.

(2) The President may, acting on the advice of the Prime Minister, from time to time in the like manner prorogue Parliament by proclamation.

(3) The President may, acting on the advice of the Prime Minister, dissolve Parliament by proclamation, but only after a lapse of 3 years and 6 months from the date of its first meeting after a general election of the members of Parliament.

*Writ for election*

59.—(1) The writ for the election of members of Parliament shall be issued by the President on the advice of the Prime Minister.

(2) The writ for a general election must be issued within 7 days from the expiry of Parliament or from the proclamation of its dissolution by the President.

(3) The writ for a by-election must be issued within 7 days from the date when a seat or seats in Parliament become vacant, or within 7 days from the date of determination by the Court of Disputed Returns if an application is made to it under section 63(5) or section 66.

*Date of nomination*

60. The last day for the receipt of a nomination of a candidate for election to Parliament is 14 days after the date of the issue of the writ.

*Date of polling*

61. Polling commences no later than 30 days after the last day for the receipt of nominations.

*Early dissolution of Parliament*

62.—(1) Notwithstanding section 58(3), the President must declare Parliament dissolved early if Parliament has adopted a resolution to dissolve early, supported by at least two-thirds of the members of Parliament.

(2) A resolution for early dissolution of Parliament under subsection (1) may be moved—

- (a) only on the grounds that the Government lacks the confidence of Parliament;
- (b) only by the Leader of the Opposition; and
- (c) only if Parliament has first rejected a motion of no confidence in the Prime Minister under section 94.

(3) No motion for early dissolution may be moved within—

- (a) 18 months immediately after the beginning of Parliament's term; or
- (b) 6 months immediately before the end of Parliament's ordinary 4 year term.

*Vacation of seat of member of Parliament*

63.—(1) The seat of a member of Parliament becomes vacant if the member—

- (a) dies, or resigns by giving to the Speaker a signed resignation;
- (b) with the member's consent, becomes the holder of a public office (as defined in section 57);

- (c) ceases to have the right to be a registered voter in an election to Parliament;
- (d) ceases to have the right to be nominated as a candidate for election to Parliament under section 56;
- (e) is an undischarged bankrupt;
- (f) is absent from 2 consecutive meetings of Parliament without having obtained the permission of the Speaker;
- (g) resigns from the political party for which he or she was a candidate at the time he or she was elected to Parliament;
- (h) votes or abstains from voting in Parliament contrary to any direction issued by the political party for which he or she was a candidate at the time he or she was elected to Parliament, without obtaining the prior permission of the political party; or
- (i) is expelled from the political party for which he or she was a candidate at the time he or she was elected to Parliament and—
  - (i) the expulsion was in accordance with the rules of the political party relating to party discipline; and
  - (ii) the expulsion did not relate to any action taken by the member in his or her capacity as a member of a committee of Parliament.

(2) For the purposes of subsection (1)(g), the seat of the member of Parliament becomes vacant only upon receipt by the Speaker of a written notification signed by the leader and the secretary of the political party notifying the Speaker that the member has resigned from the political party.

(3) For the purposes of subsection (1)(h), the seat of the member of Parliament becomes vacant only upon receipt by the Speaker of a written notification signed by the leader and the secretary of the political party notifying the Speaker that the member has voted or abstained from voting in Parliament contrary to any direction issued by the political party, without obtaining the prior permission of the political party.

(4) For the purposes of subsection (1)(i), the seat of the member of Parliament becomes vacant only upon receipt by the Speaker of a written notification signed by the leader and the secretary of the political party notifying the Speaker that the member has been expelled from the political party.

(5) If a member of Parliament whose seat becomes vacant under subsection (1) seeks to question or challenge the validity of his or her seat in Parliament becoming vacant, the member must, within 7 days of the member's seat becoming vacant, by way of a proceeding, make an application to the Court of Disputed Returns for a declaration on whether the seat of the member has become vacant.

(6) Any application made to the Court of Disputed Returns under this section must be determined by the Court of Disputed Returns within 21 days of the date when the application is made to it.

(7) A determination by the Court of Disputed Returns under this section is final and not subject to any appeal.

(8) If the member of Parliament whose seat becomes vacant under subsection (1) makes an application to the Court of Disputed Returns under subsection (5), the member is taken to be suspended from Parliament pending the determination by the Court of Disputed Returns.

*Next candidate to fill vacancy*

64.—(1) Subject to subsection (3), if the seat held by a member of Parliament who is a member of a political party becomes vacant, then the Electoral Commission must award that seat to the candidate of the same party who, in the most recent general election, is the highest ranked out of those candidates of that party who did not get elected to Parliament and who is still available to serve at the time of the vacancy (as may be determined by a written law governing elections), provided however that if no candidate in the most recent general election from that same political party is available, then a by-election must be held to fill the vacancy.

(2) Subject to subsection (3), if the seat held by a member of Parliament who is an independent member becomes vacant during the term of Parliament, then a by-election must be held to fill the vacancy.

(3) If the seat held by a member of Parliament becomes vacant more than 3 years and 6 months after the first meeting of Parliament following the most recent general election, then the seat so vacated shall remain vacant until the next general election.

*Vacancies in membership*

65. 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*

66.—(1) The High Court is the Court of Disputed Returns and has original jurisdiction to hear and determine—

- (a) by way of a petition, a question whether a person has been validly elected as a member of Parliament; and
- (b) by way of a proceeding, an application for a declaration on whether the seat of a member of Parliament has become vacant.

(2) The validity of an election of a person as a member of Parliament may only be disputed by petition addressed to the Court of Disputed Returns and not otherwise.

(3) The petition under subsection (1)(a)—

(a) may only be brought by—

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

(b) except if corrupt practice is alleged, must be brought within 21 days of the declarations of the poll.

(4) If the petitioner in a petition under subsection (1)(a) is not the Attorney-General, the Attorney-General may intervene in the petition.

(5) Proceedings pursuant to subsection (1)(b) may only be brought by—

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

(6) If the proceedings under subsection (1)(b) are not brought by the Attorney-General, the Attorney-General may intervene in the proceedings.

(7) Notwithstanding anything contained in subsection (5), proceedings under subsection (1)(b) cannot be brought under this section by the member of Parliament whose seat is the subject of the proceeding, and any proceeding by any such member which seeks to question or challenge the validity of his or her seat in Parliament becoming vacant must only be brought under section 63.

(8) The Court of Disputed Returns must make a determination on any petition or proceeding within 21 days of the date when the petition or proceeding is brought before it.

(9) A determination by the Court of Disputed Returns under this section is final and not subject to any appeal.

*Sessions of Parliament*

67.—(1) After a general election of members of Parliament, the Parliament shall be summoned to meet by the President no later than 14 days after the announcement of the results of the general election.

(2) At the first meeting, the agenda of business shall include—

- (a) swearing-in of members, presided over by the Secretary-General to Parliament;
- (b) the election of the Speaker in accordance with section 77, presided over by the Secretary-General to Parliament;

- (c) swearing-in of the Speaker, presided over by the Secretary-General to Parliament;
- (d) the election and swearing-in of the Deputy Speaker, presided over by the Speaker;
- (e) in the event that the Prime Minister has not assumed office under section 93(2), the appointment of the Prime Minister by the members of Parliament in accordance with section 93(3); and
- (f) the election of the Leader of the Opposition, presided over by the Speaker, and conducted in accordance with section 78.

(3) Other sessions of 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.

(4) If—

- (a) Parliament is not in session; and
- (b) the President receives a request in writing from not less than one-third of the members of Parliament requesting that Parliament be summoned to meet to consider without delay a matter of public importance,

the President shall summon Parliament to meet.

(5) If—

- (a) Parliament is in session but more than 2 months have elapsed between the sitting of Parliament; and
- (b) the Speaker receives a request in writing from the Prime Minister or from not less than one-third of the members of Parliament requesting that a sitting be held to consider without delay a matter of public importance,

the Speaker must call a sitting of Parliament within one week of the date on which the request was made.

(6) Subject to this section, the sittings of Parliament are held at such times and places as Parliament determines in accordance with its rules and orders.

#### *Quorum*

68.—(1) A sitting of Parliament may not begin, or continue, unless at least one-third of the members of Parliament are present.

(2) A vote on a Bill may not be held in Parliament unless a majority of the members of Parliament are present.

(3) The Speaker must adjourn a sitting if a quorum is not present.



*Voting*

69.—(1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament must be determined by a majority vote of the members present and voting.

(2) On a question proposed for decision in Parliament—

- (a) the person presiding does not have a casting vote; and
- (b) in the case of an equality of votes, the question is deemed to be lost.

(3) The person presiding must not be counted when considering the number of members for the purpose of voting, or determining if a quorum is present.

*Committees*

70. Parliament must, under its rules and orders, establish 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 Parliament.

*Standing orders*

71.—(1) Parliament may make standing orders and rules for the order and conduct of business and proceedings in Parliament and its committees and for the way in which its powers, privileges and immunities may be exercised and upheld.

(2) Before the first sitting of the first Parliament elected under this Constitution, the Prime Minister shall, in consultation with the Attorney-General, prepare, and publish in the *Gazette*, the standing orders of Parliament, for adoption by Parliament at its first sitting.

*Petitions, public access and participation*

72.—(1) Parliament must—

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and
- (b) facilitate public participation in the legislative and other processes of Parliament and its committees.

(2) Parliament and its committees may not exclude the public, including any media, from any sitting unless, in exceptional circumstances, the Speaker has ordered the exclusion of the public on grounds that are reasonable and justifiable.

*Powers, privileges, immunities and discipline*

73.—(1) Every member of Parliament, and anyone else speaking in Parliament, has—

- (a) freedom of speech and debate in Parliament or its committees, subject to the standing orders; and

(b) parliamentary privilege and immunity in respect of anything said in Parliament or its committees.

(2) Parliament may prescribe the powers, privileges and immunities of members of Parliament and may make rules and orders for the discipline of members of Parliament.

*Power to call for evidence*

74.—(1) Parliament, and each of its committees, has the power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of subsection (1), Parliament and each of its committees has the same powers as the High Court to—

- (a) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise; and
- (b) compel the production of documents or other materials or information as required for its proceedings.

**Part C—INSTITUTIONS AND OFFICES**

*Electoral Commission*

75.—(1) The Electoral Commission established under the State Services Decree 2009 continues in existence.

(2) The Commission has the responsibility for the registration of voters and the conduct of free and fair elections in accordance with the written law governing elections and any other relevant law, and in particular for—

- (a) the registration of citizens as voters, and the regular revision of the Register of Voters;
- (b) voter education;
- (c) the registration of candidates for election;
- (d) the settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding election petitions and disputes subsequent to the declaration of election results; and
- (e) monitoring and enforcing compliance with any written law governing elections and political parties.

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

(4) The Commission must make an annual report to the President concerning the operations of the Commission and must submit a copy of its annual report to Parliament.

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

(6) The Commission consists of a chairperson who is or is qualified to be a Judge, and 6 other members.

(7) The chairperson and the members of the Commission shall be appointed by the President, on the advice of the Constitutional Offices Commission.

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

- (a) a member of Parliament;
- (b) the holder of a public office (other than an office of Judge);
- (c) a member of a local authority; or
- (d) a candidate for election to Parliament.

*Supervisor of Elections*

76.—(1) The office of the Supervisor of Elections established under the State Services Decree 2009 continues in existence.

(2) The Supervisor of Elections, acting under the direction of the Electoral Commission,—

- (a) administers the registration of voters for elections of members to Parliament;
- (b) conducts—
  - (i) elections of members of Parliament; and
  - (ii) such other elections as Parliament prescribes; and
- (c) may perform such other functions as are conferred by written law.

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

(4) The Supervisor of Elections is appointed by the President on the advice of the Constitutional Offices Commission following consultation by the Constitutional Offices Commission with the Electoral Commission.

*Speaker and Deputy Speaker of Parliament*

77.—(1) At its first sitting after a general election, and whenever required to fill a vacancy, Parliament must elect, by simple majority vote—

- (a) a Speaker, who is not a member of Parliament but who is qualified to be a candidate for election as a member of Parliament; and

(b) a Deputy Speaker from amongst the members of Parliament (excluding Ministers).

(2) The Speaker and the Deputy Speaker assumes office by taking the oath or affirmation of allegiance and office set out in the Schedule, as administered by the Secretary-General to Parliament.

(3) The Speaker shall preside over every sitting of Parliament.

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

(5) If the Speaker or the Deputy Speaker is unable to perform the duties of the Speaker, the members of Parliament must elect one of their members to preside at meetings of Parliament.

(6) The Speaker, Deputy Speaker, or any other person presiding at any time, in the performance of the functions of the Speaker—

(a) is independent and subject only to this Constitution and any other law;

(b) serves to secure the honour and dignity of Parliament;

(c) is responsible for ensuring—

(i) the rights and privileges of all members; and

(ii) public access to the proceedings of Parliament and its committees;

(d) has authority to maintain order and decorum in Parliament, in accordance with its standing orders and parliamentary tradition; and

(e) must act impartially, and without fear, favour or prejudice.

(7) The office of the Speaker becomes vacant—

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

(b) if, before that day, the Speaker—

(i) resigns by giving to the President a written notice of resignation;

(ii) becomes the holder of another public office;

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

(iv) is absent from 2 consecutive meetings of Parliament; or

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

(8) The office of the Deputy Speaker becomes vacant if the Deputy Speaker—

- (a) resigns by giving to the Speaker a written notice of resignation;
- (b) vacates his or her seat as a member of Parliament;
- (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 Parliament.

*Leader of the Opposition*

78.—(1) The members of Parliament who—

- (a) do not belong to the Prime Minister's political party and are members of the opposition party or a coalition of opposition parties;
- (b) do not belong to any party which is in coalition with, or which supports, the Prime Minister's political party; or
- (c) are independent candidates who do not support the Prime Minister or the Prime Minister's political party,

must elect a person from amongst themselves to be the Leader of the Opposition, in accordance with this section.

(2) At the first sitting of Parliament after a general election, the Speaker must call for nominations from those members of Parliament mentioned in subsection (1), and, if only one person is nominated and seconded, the Speaker shall declare that person elected as the Leader of the Opposition, but if more than one person is nominated and seconded, the Speaker must conduct a vote, as follows—

- (a) if after the first vote, any nominee has the support of the majority of the members of Parliament mentioned in subsection (1), the Speaker shall declare that person elected as the Leader of the Opposition; and
- (b) if no nominee in the first vote receives the support of the majority of the members of Parliament mentioned in subsection (1), a second vote must be held within 24 hours of the first vote and the nominee who has the support of the majority of the members of Parliament mentioned in subsection (1) in the second vote shall be declared by the Speaker as being elected as the Leader of the Opposition.

(3) If after the second vote held under subsection (2), no person receives the support of the majority of the members of Parliament mentioned in subsection (1), the position of the Leader of the Opposition shall remain vacant until such time the majority of the members of Parliament mentioned in subsection (1) write to the Speaker requesting him or her to call for fresh nominations for the election of the Leader of the Opposition in accordance with the procedure set out in subsection (2).

(4) If a majority of the members mentioned in subsection (1) consider that the person who is the Leader of the Opposition should no longer hold the position of the Leader of the Opposition, then they shall inform the Speaker of their decision and they may elect another member of Parliament mentioned in subsection (1), in accordance with the procedure set out in subsection (2).

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

(6) If a Leader of the Opposition is unable to be elected in accordance with this section, then the provisions of this Constitution providing for any action by the Leader of the Opposition, including any advice, nomination or consultation of the Leader of the Opposition, are of no effect, and an appointment may be made or action may be taken under a provision of this Constitution without reference to the Leader of the Opposition.

*Secretary-General to Parliament*

79.—(1) This section establishes the office of the Secretary-General to Parliament.

(2) The Secretary-General to Parliament shall be appointed by the President on the advice of the Constitutional Offices Commission.

(3) The Secretary-General to Parliament has the same status as that of a permanent secretary and shall be responsible to the Speaker for the efficient, effective and economical management of Parliament.

(4) The Secretary-General to Parliament is the principal procedural advisor to the Speaker, and to all members of Parliament and committees of Parliament.

(5) The Secretary-General to Parliament is responsible for all the functions as may be conferred on him or her by the standing orders of Parliament.

(6) In the performance of the functions or the exercise of the authority and powers, the Secretary-General to Parliament shall be independent and shall not be subject to the direction or control of any person or authority, except the Speaker, a court of law or as otherwise prescribed by written law.

(7) The Secretary-General to Parliament shall have the authority to appoint, remove and discipline all staff (including administrative staff) in Parliament.

(8) The Secretary-General to Parliament has the authority to determine all matters pertaining to the employment of all staff in Parliament, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;

- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(9) The salaries, benefits and allowances payable to the Secretary-General to Parliament and any person employed in Parliament are a charge on the Consolidated Fund.

(10) Parliament shall ensure that adequate funding and resources are made available to the Secretary-General to Parliament, to enable him or her to independently and effectively exercise the powers and perform the functions and duties of the Secretary-General to Parliament.

#### *Remunerations*

80. The remuneration, including salaries and allowances and benefits, payable to, the President, the Prime Minister, other Ministers, the Leader of the Opposition, the Speaker and the Deputy Speaker of Parliament and a member of Parliament shall be prescribed by a written law, and must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

## CHAPTER 4—THE EXECUTIVE

### Part A—THE PRESIDENT

#### *The President of Fiji*

81.—(1) This section establishes the office of the President.

(2) The President is the Head of State, and the executive authority of the State is vested in the President.

(3) The President shall perform the ceremonial functions and responsibilities as the Commander-in-Chief of the Republic of Fiji Military Forces.

(4) The President shall open each annual session of Parliament with an address outlining the policies and programmes of the Government.

#### *President acts on advice*

82. In the exercise of his or her powers and executive authority, the President acts only on the advice of 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.

#### *Qualification for appointment*

83.—(1) A person shall not be qualified to be nominated for the office of the President unless he or she —

- (a) has had a distinguished career in any aspect of national or international life, whether in the public or private sector;
- (b) holds only a Fijian citizenship;
- (c) is not a member of, or holds any office in, any political party;
- (d) is not a candidate for election to any other office in the State; and
- (e) has not, at any time during the 6 years immediately before being nominated, been convicted of any offence under any law.

(2) A person holding a public office is not required to resign from that office before accepting nomination for President, but the appointment of the person as the 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 the President, under any written law.



*Appointment of President*

84.—(1) The President shall be appointed by Parliament in accordance with this section.

(2) Whenever a vacancy arises in the office of the President, the Prime Minister and the Leader of the Opposition shall nominate one name each to the Speaker who shall put both the names to the floor of Parliament for voting by the members of Parliament.

(3) The person who receives the support of the majority of the members of Parliament present shall be appointed as the President, and the Speaker shall publicly announce the name of the President.

(4) In the event that both persons nominated receive the same number of votes, the Speaker shall conduct the voting again after 24 hours, and voting shall continue until such time a person nominated as the President receives the support of the majority of the members of Parliament, provided however that if after 3 rounds of voting, no person receives the support of the majority of the members of Parliament, then the person nominated by the Prime Minister shall be announced by the Speaker as being appointed as the President by Parliament.

(5) If the Prime Minister and the Leader of the Opposition nominate the same person, then no voting shall take place and the Speaker shall publicly announce that person as being appointed as the President by Parliament.

*Term of office and remuneration*

85.—(1) The President holds office for 3 years, and is eligible for re-appointment for one further term of 3 years, but is not eligible for re-appointment after that.

(2) For the purposes of subsection (1), in determining whether a person is eligible for appointment or re-appointment, any period served before the commencement of this Constitution shall be taken into account.

(3) The President shall receive such remuneration, allowances and other benefits, as prescribed by a written law made under section 80.

*Oath of office*

86. Before taking office, the President must take before the Chief Justice the oath or affirmation of allegiance and office as set out in the Schedule in a public ceremony.

*Resignation*

87. The President may resign from office by delivering a written notice of resignation to the Prime Minister who shall table the notice in Parliament.

*Chief Justice to perform functions in absence of President*

88. If the President is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of the President or if the office of the President becomes vacant for any reason, then the functions of the office of the President shall be performed by the Chief Justice.

*Removal from office*

89.—(1) The 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 from office must only be done pursuant to this section.

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

(a) the Prime Minister shall request the Chief Justice to establish—

- (i) in the 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; or
- (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,

and the Prime Minister shall notify the President of the request;

- (b) the Chief Justice, who must act on the request, shall establish the tribunal or medical board, as the case may be; and
- (c) the tribunal or medical board shall enquire into the matter and furnish a written report, including its advice on whether the President should be removed from office, to the Chief Justice, who shall refer the report to the Prime Minister for tabling in Parliament.

(4) In deciding whether to remove the President from office, Parliament must act in accordance with the advice given by the tribunal or the medical board, as the case may be.

(5) The 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 receives notification under subsection (3)(a) and ending on the day a decision is made under subsection (4).

(6) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (3) shall be made public.

## Part B—CABINET

### *Responsible Government*

90. Governments must have the confidence of Parliament.

### *Cabinet*

91.—(1) Cabinet consists of the Prime Minister as chairperson, and such number of Ministers as determined by the Prime Minister.

(2) Cabinet members are accountable individually and collectively to Parliament, for the exercise of their powers and the performance of their functions.

(3) A Minister must appear before Parliament, or a committee of Parliament, when required, and answer any question concerning a matter for which the Minister is responsible.

(4) Cabinet members must provide Parliament with full and regular reports concerning matters for which they are responsible.

(5) Cabinet may seek an opinion from the Supreme Court on any matter concerning the interpretation or application of this Constitution.

### *Office of the Prime Minister*

92.—(1) The Prime Minister is the head of the Government.

(2) The Prime Minister shall keep the President generally informed about the issues relating to the governance of Fiji.

(3) The Prime Minister—

(a) appoints Ministers with such titles, portfolios and responsibilities as the Prime Minister determines from time to time;

(b) dismisses Ministers; and

(c) by notice published in the *Gazette*, assigns to any Minister or to himself or herself responsibility for the conduct of a specified part of the business of the Government, including responsibility for the general direction and control over a branch or branches of the public service or over a disciplined force and responsibility for the implementation and administration of each Act, provided however that the responsibility for any part of the business of Government that is not specifically assigned shall remain with the Prime Minister.

(4) The Prime Minister shall appoint a Minister to act in the office of the Prime Minister during any period, or during all periods, when the Prime Minister is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office, and a notification of the appointment of the Acting Prime Minister must be published in the *Gazette*.

*Appointment of Prime Minister*

93.—(1) The Prime Minister must be a member of Parliament.

(2) After a general election, the member elected to Parliament who is the leader of one political party which has won more than 50% of the total number of seats in Parliament assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule.

(3) After a general election, if no one political party has won more than 50% of the total number of seats in Parliament, then, at the first sitting of Parliament, the Speaker must call for nominations from members of Parliament and, if only one person is nominated and seconded, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule; but if more than one person is nominated and seconded, the Speaker must conduct a vote, as follows—

- (a) if after the first vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule;
- (b) if after the first vote, no person who is nominated receives the support of more than 50% of the members of Parliament, a second vote must be held within 24 hours of the first vote and, if after the second vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule;
- (c) if after the second vote, no person who is nominated receives the support of more than 50% of the members of Parliament, a third vote must be held within 24 hours of the second vote and, if after the third vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule; and
- (d) if after the third vote, no person receives the support of more than 50% of the members of Parliament, the Speaker shall notify the President in writing of the inability of Parliament to appoint a Prime Minister, and the President shall, within 24 hours of the notification, dissolve Parliament and issue the writ for a general election to take place in accordance with this Constitution.

(4) A vacancy arises if the Prime Minister—

- (a) resigns, by written notice to the President;
- (b) ceases to be, or ceases to qualify to be, a member of Parliament; or
- (c) dies.

(5) If a vacancy arises in the office of the Prime Minister under subsection (4), then the Speaker shall immediately convene Parliament and call for nominations from members of Parliament for the office of the Prime Minister and, if only one person is nominated and seconded, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule, but if more than one person is nominated and seconded, the Speaker must conduct a vote, as follows—

- (a) if after the first vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule;
- (b) if after the first vote, no person who is nominated receives the support of more than 50% of the members of Parliament, a second vote must be held within 24 hours of the first vote and, if after the second vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule;
- (c) if after the second vote, no person who is nominated receives the support of more than 50% of the members of Parliament, a third vote must be held within 24 hours of the second vote and, if after the third vote, a person who is nominated has the support of more than 50% of the members of Parliament, then that person assumes office as the Prime Minister by taking before the President the oath or affirmation of allegiance and office (which the President must administer) as set out in the Schedule; and
- (d) if after the third vote, no person receives the support of more than 50% of the members of Parliament, the Speaker shall notify the President in writing of the inability of Parliament to appoint a Prime Minister, and the President shall, within 24 hours of the notification, dissolve Parliament and issue the writ for a general election to take place in accordance with this Constitution.

(6) The Prime Minister shall serve for the full term of Parliament, unless dismissed in a motion of no confidence under section 94, and shall not be otherwise dismissed.

(7) The Prime Minister and other Ministers continue in office until the next Prime Minister assumes office after a general election in accordance with this section.

*Motion of no confidence*

94.—(1) The Prime Minister may only be dismissed by a motion of no confidence, which must also propose the name of another member of Parliament to be the Prime Minister.

(2) A motion of no confidence must be called for a vote within 24 hours of it being introduced.

(3) A motion of no confidence passes if it is supported by at least a majority of the members of Parliament.

(4) If a motion of no confidence passes—

- (a) the incumbent Prime Minister immediately ceases to hold office;
- (b) every other member of Cabinet is deemed to have resigned; and
- (c) the person proposed to be the Prime Minister, in the motion, assumes that office immediately upon being sworn in by the President.

(5) If a motion of no confidence fails against the incumbent Prime Minister, no further motion of no confidence may be introduced against him or her for at least 6 months.

*Appointment of Ministers*

95.—(1) Subject to section 96(3), a Minister must be a member of Parliament.

(2) Each member of Cabinet assumes office by taking the oath or affirmation of allegiance and office set out in the Schedule, as administered by the President.

(3) Each Minister continues in office unless he or she—

- (a) is removed by the Prime Minister;
- (b) ceases to be, or ceases to qualify to be, a member of Parliament; or
- (c) resigns by delivering a written notice of resignation to the Prime Minister.

(4) The Prime Minister may appoint a Minister to act in the office of another 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, and a notification of the appointment of an Acting Minister must be published in the *Gazette*.

*Attorney-General*

96.—(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 the Attorney-General unless he or she—

- (a) is admitted as a legal practitioner in Fiji and has had not less than 15 years post-admission practice as a legal practitioner whether in Fiji or abroad; and
- (b) has not been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad, including any proceeding by the Independent Legal Services Commission or any proceeding under the law governing legal practitioners, barristers and solicitors prior to the establishment of the Independent Legal Services Commission.

(3) If the Prime Minister considers that there are no members of Parliament who—

- (a) belong to the Prime Minister's political party;
- (b) belong to any political party in coalition with the Prime Minister's political party; or
- (c) are independent candidates who support the Prime Minister,

who are qualified, suitable or available to be appointed as the Attorney-General, then the Prime Minister may appoint a person who is not a member of Parliament as the Attorney-General if that person—

- (i) is a legal practitioner who is qualified to be appointed as the Attorney-General under subsection (2); and
- (ii) is qualified to be a candidate for election to Parliament under section 56.

(4) A person appointed as the Attorney-General under subsection (3) shall be entitled to take part in Cabinet as a Minister, and to sit in Parliament, provided however that he or she shall not be eligible to vote in Parliament.

(5) Any person appointed as the Attorney-General must not, during the term of his or her appointment as the Attorney-General, practice as a legal practitioner in a law firm or have any interest in a law firm or have any law firm practice under his or her name.

(6) The Prime Minister may appoint a Minister or a member of Parliament or another person (in accordance with subsection (3)) who is qualified to be appointed as the Attorney-General to act as the Attorney-General during any period, or during all periods, when the Attorney-General is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office, and a notification of the acting appointment must be published in the *Gazette*.

(7) Subsection (5) does not apply to any person appointed to act as the Attorney-General under subsection (6).

## CHAPTER 5—JUDICIARY

### Part A—COURTS AND JUDICIAL OFFICERS

#### *Judicial authority and independence*

97.—(1) The judicial power and authority of the State is vested in the Supreme Court, the Court of Appeal, the High Court, the Magistrates Court, and in such other courts or tribunals as are created by law.

(2) The courts and all judicial officers are independent of the legislative and executive branches of Government, and are subject only to this Constitution and the law, which they must apply without fear, favour or prejudice.

(3) No person may interfere with the judicial functioning of the courts, or unreasonably interfere with the administrative functioning of the courts.

(4) Parliament and Cabinet, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, accessibility and effectiveness.

(5) Parliament must ensure that the Judiciary has adequate financial and other resources to perform its functions and exercise its powers properly.

(6) The Judiciary has control of its own budget and finances, as approved by Parliament.

#### *Supreme Court*

98.—(1) The Supreme Court consists of—

- (a) the Chief Justice, who is the President of the Supreme Court; and
- (b) such other Judges as are appointed as Judges of the Supreme Court, to serve as the occasion requires.

(2) If deemed necessary by the Chief Justice, any of the Justices of Appeal may sit on a matter being heard by the Supreme Court.

(3) The Supreme Court—

- (a) is the final appellate court;
- (b) has exclusive jurisdiction, subject to such requirements as prescribed by written law, to hear and determine appeals from all final judgments of the Court of Appeal; and
- (c) has original jurisdiction to hear and determine constitutional questions referred under section 91(5).

(4) An appeal may not be brought to the Supreme Court from a final judgment of the Court of Appeal unless the Supreme Court grants leave to appeal.



(5) In the exercise of its appellate jurisdiction, the Supreme Court may—

- (a) review, vary, set aside or affirm decisions or orders of the Court of Appeal; or
- (b) make any other order necessary for the administration of justice, including an order for a new trial or an order awarding costs.

(6) Decisions of the Supreme Court are, subject to subsection (7), binding on all other courts of the State.

(7) The Supreme Court may review any judgment, pronouncement or order made by it.

*Court of Appeal*

99.—(1) The Court of Appeal consists of—

- (a) a Judge, other than the Chief Justice, who is appointed as the President of the Court of Appeal; and
- (b) such other Judges as are appointed as Justices of Appeal.

(2) If deemed necessary by the President of the Court of Appeal, any of the Judges of the High Court, other than the Chief Justice, may sit on a matter being heard by the Court of Appeal.

(3) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as prescribed by written law, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by written law.

(4) Appeals lie to the Court of Appeal as of right from a final judgment of the High Court in any manner arising under this Constitution or involving its interpretation.

(5) A written law 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 prescribed in that written law or under the rules pertaining to the Court of Appeal.

*High Court*

100.—(1) The High Court consists of—

- (a) the Chief Justice;
- (b) such other Judges as are appointed as Judges of the High Court;
- (c) Masters of the High Court; and
- (d) Chief Registrar of the High Court.

(2) The jurisdiction and powers of the Masters of the High Court and the Chief Registrar of the High Court shall be prescribed by written law.

(3) 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 or any written law.

(4) The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation.

(5) The High Court has jurisdiction, subject to conferral by written law of rights of appeal and to such requirements as may be prescribed by written law, to hear and determine appeals from all judgments of the Magistrates Court and other subordinate courts.

(6) The High Court has jurisdiction to supervise any civil or criminal proceedings before a Magistrates Court or other subordinate courts 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 Magistrates Court and other subordinate courts.

(7) If in any proceedings in a Magistrates Court or a subordinate court, a question arises as to the interpretation of this Constitution, the Magistrates Court or a subordinate court may decide the matter, and its decision may be appealed as of right to the High Court.

*Magistrates Court*

101.—(1) The Magistrates Court consists of—

- (a) the Chief Magistrate; and
- (b) such other Magistrates as are appointed by the Judicial Services Commission.

(2) The Magistrates Court has such jurisdiction as conferred by a written law.

*Other courts*

102. A written law may establish and determine the authority of other courts, tribunals or commissions, which may have a status similar to the High Court, the Magistrates Court, or other subordinate courts.

*Court rules and procedures*

103.—(1) The President of the Supreme Court may make rules of court and issue directions, consistent with this Constitution or a written law, for regulating and prescribing the practice and procedure to be followed in the Supreme Court.

(2) The President of the Court of Appeal may make rules of court and issue directions, consistent with this Constitution or a written law, for regulating and prescribing the practice and procedure to be followed in the Court of Appeal.

(3) The Chief Justice may make rules of court and issue directions, consistent with this Constitution or a written law, for regulating and prescribing the practice and procedure to be followed in the High Court and the Magistrates Court.

*Judicial Services Commission*

104.—(1) The Judicial Services Commission established under the Administration of Justice Decree 2009 continues in existence, and shall consist of—

- (a) the Chief Justice, who is to be the chairperson;
- (b) the President of the Court of Appeal;
- (c) the Permanent Secretary responsible for justice;
- (d) a legal practitioner to be appointed by the President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General and who—
  - (i) has not less than 15 years post-admission practice; and
  - (ii) has not been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad, including any proceeding by the Independent Legal Services Commission or any proceeding under the law governing legal practitioners, barristers and solicitors prior to the establishment of the Independent Legal Services Commission; and
- (e) a person, not being a legal practitioner, appointed by the President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General.

(2) In addition to the functions conferred on it elsewhere in this Constitution, the Commission may investigate complaints about judicial officers.

(3) In addition to the functions conferred on it by or under this Constitution, the Commission has such other powers and functions as may be prescribed by a written law.

(4) The Commission shall be responsible for promoting programmes for the continuing education and training of Judges and judicial officers.

(5) The Commission shall be responsible for the efficient functioning of the Judiciary.

(6) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(7) The Commission shall provide regular updates and advice to the Attorney-General on any matter relating to the Judiciary or the administration of justice.

(8) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(9) The secretary of the Commission shall be the Chief Registrar, or any other person performing the functions of that office.

(10) The quorum for the meetings of the Commission shall consist of the chairperson and 2 other members.

(11) The members of the Commission referred to in subsection (1)(*d*) and (*e*) shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(12) The members of the Commission referred to in subsection (1)(*d*) and (*e*) shall be entitled to such remuneration as determined by the President acting on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(13) The members of the Commission referred to in subsection (1)(*d*) or (*e*) 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.

(14) Removal from office of the members of the Commission referred to in subsection (1)(*d*) or (*e*) must be pursuant to subsection (15).

(15) If the Chief Justice, following consultation with the Attorney-General, considers that the question of removal of the member of the Commission referred to in subsection (1)(*d*) or (*e*) from office ought to be investigated, then—

(*a*) the Chief Justice appoints—

(i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or are qualified to hold the office of a Judge; 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 of its recommendation whether or not the member of the Commission referred to in subsection (1)(*d*) or (*e*) should be removed from office; and

(*c*) in deciding whether or not to remove the member of the Commission referred to in subsection (1)(*d*) or (*e*) from office, the President must act in accordance with the advice of the tribunal or medical board, as the case may be.

(16) The President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General may, on such terms and conditions as he or she deems fit, suspend the member of the Commission referred to in subsection (1)(d) or (e) from office pending investigation and pending referral to and appointment of a tribunal or a medical board under subsection (15), and may at any time, revoke the suspension.

(17) The suspension of the member of the Commission referred to in subsection (1)(d) or (e) from office under subsection (16) ceases to have effect if the President determines that the person should not be removed from office.

(18) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (15) shall be made public.

*Qualification for appointment*

105.—(1) The making of appointments to a judicial office is governed by the principle that judicial officers should be of the highest competence and integrity.

(2) A person is not qualified for appointment as a Judge unless he or she—

- (a) holds, or has held a high judicial office in Fiji or in another country prescribed by law; or
- (b) has had not less than 15 years post-admission practice as a legal practitioner in Fiji or in another country prescribed by law, and has not been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad, including any proceeding by the Independent Legal Services Commission or any proceeding under the law governing legal practitioners, barristers and solicitors prior to the establishment of the Independent Legal Services Commission.

(3) A person is not qualified for appointment as a Magistrate unless he or she—

- (a) holds, or has held a judicial office in Fiji or in another country prescribed by law; or
- (b) has had not less than 10 years post-admission practice as a legal practitioner in Fiji or in another country prescribed by law, and has not been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad, including any proceeding by the Independent Legal Services Commission or any proceeding under the law governing legal practitioners, barristers and solicitors prior to the establishment of the Independent Legal Services Commission.

*Appointment of Judges*

106.—(1) The Chief Justice and the President of the Court of Appeal are appointed by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Attorney-General.

(2) The Judges of the Supreme Court, the Justices of Appeal and the Judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General.

(3) The President may, on the advice of the Prime Minister following consultation by the Prime Minister with the Attorney-General, appoint a Judge or a person who is qualified for appointment as a Judge to act as the Chief Justice during any period, or during all periods, when the office of the 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.

(4) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as a Judge of the High Court during any period or during all periods, when an office of a Judge of the High Court is vacant or when a Judge is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(5) A person is not eligible to be appointed under subsection (4) unless he or she is qualified for appointment as a Judge.

*Other appointments*

107.—(1) The Judicial Services Commission has the authority to appoint Magistrates, Masters of the High Court, the Chief Registrar, and other judicial officers as may be prescribed by any written law.

(2) In making appointments under subsection (1), the Judicial Services Commission must consult with the Attorney-General.

*Judicial department employees*

108.—(1) The Judicial Services Commission has the authority to appoint, remove and take disciplinary action against all non-judicial officers employed in the Judiciary.

(2) The Judicial Services Commission has the authority to determine all matters pertaining to the employment of non-judicial officers employed in the Judiciary, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of non-judicial officers that are required to be appointed, in accordance with the budget as approved by Parliament.

(3) The Judicial Services Commission may by written notice delegate its powers and authority under this section to the Chief Registrar.

*Oath of office*

109. Before taking office, a Judge or Magistrate must take before the President, the oath or affirmation of allegiance and office set out in the Schedule.

*Term of office*

110.—(1) A person who is not a citizen of Fiji and who is appointed to be a Judge in Fiji serves for a period not exceeding 3 years determined in each case by the Judicial Services Commission at the time of appointment, and may be eligible for re-appointment.

(2) Any other appointment as a Judge continues until the Judge reaches retirement age, which is—

- (a) for the Chief Justice, President of the Court of Appeal, Judges of the Supreme Court and Justices of Appeal—the age of 75; and
- (b) for the Judges of the High Court—the age of 70.

(3) A person who retired as a Judge of the High Court, but has not reached the age of 75, is eligible for appointment as a Judge of the Supreme Court or as a Justice of Appeal.

*Removal of Chief Justice and President of the Court of Appeal for cause*

111.—(1) The Chief Justice or the President of the Court of Appeal 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.

(2) Removal of the Chief Justice or the President of the Court of Appeal from office must be by the President pursuant to this section.

(3) If the President, acting on the advice of the Prime Minister considers that the question of removing the Chief Justice or the President of the Court of Appeal from office ought to be investigated, then—

- (a) the President, acting on the advice of the Prime Minister, shall appoint—
  - (i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or have held high judicial office in Fiji or in another country; 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 of its recommendation whether or not the Chief Justice or the President of the Court of Appeal should be removed from office; and
- (c) in deciding whether or not to remove the Chief Justice or the President of the Court of Appeal, the President must act on the advice of the tribunal or medical board, as the case may be.

(4) The President may, on the advice of the Prime Minister, suspend the Chief Justice or the President of the Court of Appeal from office pending investigation and pending referral to and appointment of a tribunal or a medical board under subsection (3), and may at any time, revoke the suspension.

(5) The suspension of the Chief Justice or the President of the Court of Appeal from office under subsection (4) ceases to have effect if the President determines that the Chief Justice or the President of the Court of Appeal should not be removed from office.

(6) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (3) shall be made public.

*Removal of judicial officers for cause*

112.—(1) A Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission 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.

(2) Removal of a Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission from office must be by the President pursuant to this section.

(3) If the President, acting on the advice of the Judicial Services Commission, considers that the question of removing a Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission from office ought to be investigated, then—

- (a) the President, acting on the advice of the Judicial Services Commission, shall appoint—
  - (i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or have held high judicial office in Fiji or in another country; 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 of its recommendation whether or not the Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission should be removed from office; and
- (c) in deciding whether or not to remove a Judge, the President must act on the advice of the tribunal or medical board, as the case may be.

(4) The President may, acting on the advice of the Judicial Services Commission, suspend the Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission from office pending investigation and pending referral to and appointment of a tribunal or a medical board under subsection (3), and may at any time, revoke the suspension.

(5) The suspension of the Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission from office under subsection (4) ceases to have effect if the President determines that the Judge, Magistrate, Master of the High Court, the Chief Registrar or any other judicial officer appointed by the Judicial Services Commission should not be removed from office.

(6) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (3) shall be made public.

(7) This section does not apply to the Chief Justice or the President of the Court of Appeal.

*Remuneration of judicial officers*

113.—(1) The salaries and benefits payable to, or in respect of, a judicial officer must not be varied to the disadvantage of that judicial officer, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(2) The salaries and benefits payable to the Chief Justice and the President of the Court of Appeal shall be determined by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Attorney-General.

(3) The salaries and benefits payable to any person appointed as a Judge (other than the Chief Justice and the President of the Court of Appeal), Magistrate, Master of the High Court, the Chief Registrar or other judicial officers appointed by the Judicial Services Commission shall be determined by the Judicial Services Commission, following consultation with the Prime Minister and the Attorney-General.

(4) The remuneration and benefits payable to or in respect of a judicial officer are a charge on the Consolidated Fund.

(5) A judicial officer is protected from civil or criminal action for anything said or done, or omitted to be done, in the performance of a judicial function.

**Part B—INDEPENDENT JUDICIAL AND LEGAL INSTITUTIONS***Independent Legal Services Commission*

114.—(1) The Independent Legal Services Commission established by the Legal Practitioners Decree 2009 continues in existence.

(2) The Commission shall consist of a Commissioner, who is, or is qualified to be appointed as a Judge.

(3) The Commissioner shall be appointed by the President, on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

(4) The Commissioner shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(5) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as the Commissioner during any period or during all periods, when the office of the Commissioner is vacant or when the Commissioner is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(6) The Commissioner 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.

(7) The procedure for removal of the Commissioner from office shall be the same as the procedure for removal of a judicial officer under section 112.

(8) The authority, functions and responsibilities of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.

(9) In the performance of his or her functions or the exercise of his or her authority and powers, the Commissioner shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(10) The Commissioner shall be entitled to such remuneration as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(11) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(12) The Commission shall provide regular updates and advice to the Attorney-General on any matter relating to its functions and responsibilities.

*Fiji Independent Commission Against Corruption*

115.—(1) The Fiji Independent Commission Against Corruption established by the Fiji Independent Commission Against Corruption Promulgation 2007 continues in existence.

(2) The Commission shall consist of a Commissioner, Deputy Commissioner and such other officers as may be appointed by law.

(3) The authority, functions and responsibility of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.

(4) Without prejudice to subsection (3), the Commission may—

- (a) investigate, institute and conduct criminal proceedings;
- (b) take over investigations and criminal proceedings that fall under its responsibility and functions as prescribed by law, and which may have been initiated by another person or authority; and
- (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by it.

(5) The powers of the Commissioner and the Deputy Commissioner may be exercised by him or her personally, his or her delegate, or through other persons acting on his or her instructions.

(6) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(7) In exercising its powers and performing its functions and duties, the Commission shall be guided by the standards established under the United Nations Convention Against Corruption.

(8) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(9) The Commission shall provide regular updates and advice to the Attorney-General on any matter relating to its functions and responsibilities.

(10) The Commissioner and the Deputy Commissioner have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.

(11) The Commissioner and the Deputy Commissioner have the authority to determine all matters pertaining to the employment of all staff in the Fiji Independent Commission Against Corruption, including—

- (a) the terms and conditions of employment;

- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(12) The Commissioner and the Deputy Commissioner shall be entitled to such remuneration as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(13) The salaries, benefits and allowances payable to any person employed in the Commission are a charge on the Consolidated Fund.

(14) Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

*Solicitor-General*

116.—(1) The office of the Solicitor-General established by the State Services Decree 2009 continues in existence.

(2) The Solicitor-General is responsible for—

- (a) providing independent legal advice to Government and to the holder of a public office, on request;
- (b) preparing draft laws on the request of Cabinet;
- (c) maintaining a publicly accessible register of all written law;
- (d) representing the State in court in any legal proceedings to which the State is a party, other than criminal proceedings; and
- (e) performing any other functions assigned by this Constitution, any written law, Cabinet or the Attorney-General.

(3) The Solicitor-General, with the permission of the court, may appear as a friend of the court in any civil proceedings to which the State is not a party.

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

(5) The Solicitor-General shall be appointed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

(6) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as the Solicitor-General during any period or during all periods, when the office of the Solicitor-General is vacant or when the Solicitor-General is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(7) The Solicitor-General has the same status as that of a permanent secretary and shall be responsible as the Permanent Secretary for the Office of the Attorney-General and may be assigned such additional responsibilities as permanent secretary.

(8) The Solicitor-General shall have the same term of office as a Judge of the High Court, and shall be paid such remuneration as determined by the Judicial Services Commission in consultation with the Attorney-General, provided however that such remuneration shall not be less than that payable to a Judge of the High Court or a permanent secretary and any such remuneration must not be varied to his or her disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(9) The Solicitor-General 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.

(10) The procedure for removal of the Solicitor-General from office shall be the same as the procedure for removal of a judicial officer under section 112.

(11) The Solicitor-General shall have the authority to appoint, remove and institute disciplinary action against all staff (including administrative staff) in the Office of the Attorney-General.

(12) The Solicitor-General has the authority to determine all matters pertaining to the employment of all staff in the Office of the Attorney-General, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(13) The salaries, benefits and allowances payable to any person employed in the Office of the Attorney-General are a charge on the Consolidated Fund.

(14) Any functions assigned to the Solicitor-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

*Director of Public Prosecutions*

117.—(1) The office of the Director of Public Prosecutions established under the State Services Decree 2009 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 shall be appointed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

(4) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as the Director of Public Prosecutions during any period or during all periods, when the office of the Director of Public Prosecutions is vacant or when the Director of Public Prosecutions is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(5) The Director of Public Prosecutions shall be appointed for a term of 7 years and is eligible for re-appointment, and shall be paid such remuneration as determined by the Judicial Services Commission in consultation with the Attorney-General provided however that such remuneration shall not be less than that payable to a Judge of the High Court and any such remuneration must not be varied to his or her disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(6) The Director of Public Prosecutions 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.

(7) The procedure for removal of the Director of Public Prosecutions from office shall be the same as the procedure for removal of a judicial officer under section 112.

(8) 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 (except proceedings instituted by the Fiji Independent Commission Against Corruption);

- (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 (except proceedings instituted or conducted by the Fiji Independent Commission Against Corruption); and
- (d) intervene in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations.

(9) The powers of the Director of Public Prosecutions may be exercised by the Director personally, or through other persons acting on the Director's instructions.

(10) In the exercise of the powers conferred under this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority, except by a court of law or as otherwise prescribed by this Constitution or a written law.

(11) The Director of Public Prosecutions may appoint any legal practitioner whether from Fiji or from another country to be a public prosecutor for the purposes of any criminal proceeding.

(12) The Director of Public Prosecutions shall have the authority to appoint, remove and institute disciplinary action against all staff (including administrative staff) in the office of the Director of Public Prosecutions.

(13) The Director of Public Prosecutions has the authority to determine all matters pertaining to the employment of all staff in the office of the Director of Public Prosecutions, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(14) The salaries, benefits and allowances payable to any person employed in the office of the Director of Public Prosecutions are a charge on the Consolidated Fund.

(15) Parliament shall ensure that adequate funding and resources are made available to the office of the Director of Public Prosecutions, to enable it to independently and effectively exercise its powers and perform its functions and duties.

*Legal Aid Commission*

118.—(1) The Legal Aid Commission established by the Legal Aid Act 1996 continues in existence.

(2) The Commission shall provide free legal aid services to those members of the public who cannot afford the services of a legal practitioner, in accordance with such rules and guidelines as may be prescribed by or under a written law.

(3) The authority, functions and responsibility of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.

(4) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(5) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(6) The Commission shall have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.

(7) The Commission has the authority to determine all matters pertaining to the employment of all staff in the Commission, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(8) The salaries, benefits and allowances payable to any person employed in the Commission are a charge on the Consolidated Fund.

(9) Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

(10) The Commission shall have the control of its own budget and finances, as approved by Parliament.

(11) The Commission shall provide regular updates and advice to the Attorney-General on any matter relating to its functions and responsibilities.



*Mercy Commission*

119.—(1) The Commission on the Prerogative of Mercy established under the State Services Decree 2009 continues in existence as the Mercy Commission.

(2) The Commission consists of—

- (a) the Attorney-General who is to be its chairperson; and
- (b) 4 other members appointed by the President, acting on the advice of the Judicial Services Commission, following consultation by it with the Attorney-General.

(3) On the petition of any convicted person, the Commission may recommend that the President exercise a power of mercy by—

- (a) granting a free or conditional pardon to a person convicted of an offence;
- (b) postponing the carrying out of a punishment, either for a specific or indeterminate period; or
- (c) remitting all or a part of a punishment.

(4) The Commission may dismiss a petition that it reasonably considers to be frivolous, vexatious or entirely without merit, but otherwise—

- (a) must consider a report on the case prepared by—
  - (i) the Judge who presided at the trial; or
  - (ii) the Chief Justice, if a report cannot be obtained from the presiding Judge;
- (b) must consider any other information derived from the record of the case or elsewhere that is available to the Commission; and
- (c) may consider the views of the victims of the offence.

(5) The President must act in accordance with the recommendations of the Commission.

(6) The members of the Commission referred to in subsection (2)(b) shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(7) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as a member of the Commission during any period or during all periods, when there is a vacancy in the membership of the Commission or when a member is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(8) The members of the Commission referred to in subsection (2)(b) 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.

(9) The procedure for removal of the members of the Commission referred to in subsection (2)(b) from office shall be the same as the procedure for removal of a judicial officer under section 112.

(10) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(11) The members of the Commission referred to in subsection (2)(b) shall be entitled to such remuneration as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(12) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(13) The quorum for the meetings of the Commission shall consist of the chairperson and 2 other members.

(14) The Commission shall provide regular updates and advice to Parliament on any matter relating to its functions and responsibilities.

*Public Service Disciplinary Tribunal*

120.—(1) This section establishes the Public Service Disciplinary Tribunal.

(2) The Tribunal shall consist of a chairperson and 2 other members, appointed by the President, on the advice of the Judicial Services Commission following consultation by it with the Attorney-General.

(3) The chairperson of the Tribunal must be a person who is, or is qualified to be appointed as a Judge.

(4) The members of the Tribunal shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(5) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as a member of the Tribunal during any period or during all periods, when there is a vacancy in the membership of the Tribunal or when a member is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(6) The members of the Tribunal 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.

(7) The procedure for removal of the members of the Tribunal from office shall be the same as the procedure for removal of a judicial officer under section 112.

(8) The authority, functions and responsibilities of the Tribunal shall be prescribed by written law, and a written law may make further provisions for the Tribunal.

(9) In addition to such other functions as may be conferred by written law, the Tribunal shall have the function of hearing and determining disciplinary action instituted by—

(a) the Public Service Commission—against any permanent secretary; or

(b) a permanent secretary, the Solicitor-General, the Director of Public Prosecutions or the Secretary-General to Parliament—against any person employed in their respective ministries or offices.

(10) Any decision of the Tribunal shall be subject to review by the High Court.

(11) A written law may make further provision for the Tribunal, including rules and procedures for the hearings before the Tribunal.

(12) In the performance of its functions or the exercise of its authority and powers, the Tribunal shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(13) The members of the Tribunal shall be entitled to such remuneration as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(14) The Tribunal may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(15) The Tribunal shall provide regular updates and advice to Parliament on any matter relating to its functions and responsibilities.

(16) The salaries, benefits and allowances payable to the members of the Tribunal are a charge on the Consolidated Fund.

(17) Parliament shall ensure that adequate funding and resources are made available to the Tribunal, to enable it to independently and effectively exercise its powers and perform its functions and duties.

*Accountability and Transparency Commission*

121.—(1) This section establishes the Accountability and Transparency Commission.

(2) The Commission shall consist of a chairperson and 2 other members appointed by the President, on the advice of the Judicial Services Commission following consultation by it with the Attorney-General.

(3) The chairperson of the Commission must be a person who is, or is qualified to be appointed as a Judge.

(4) The members of the Commission shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(5) The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney-General, appoint a person to act as a member of the Commission during any period or during all periods, when there is a vacancy in the membership of the Commission or when a member is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(6) The members of the Commission 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.

(7) The procedure for removal of the members of the Commission from office shall be the same as the procedure for removal of a judicial officer under section 112.

(8) The authority, functions and responsibilities of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.

(9) A written law shall provide the Commission with the jurisdiction, authority and powers to receive and investigate complaints against permanent secretaries and all persons holding a public office.

(10) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(11) The members of the Commission shall be entitled to such remuneration as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(12) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(13) The Commission shall provide regular updates and advice to Parliament on any matter relating to its functions and responsibilities.

(14) The Commission shall have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.

(15) The Commission has the authority to determine all matters pertaining to the employment of all staff in the Commission, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(16) The salaries, benefits and allowances payable to any person employed in the Commission are a charge on the Consolidated Fund.

(17) Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

(18) The Commission shall have control of its own budget and finances, as approved by Parliament.

*Existing appointments*

122. Nothing in this Chapter affects the continuance of a person in an office for which this Chapter makes provision for, under an appointment made before the commencement of this Constitution.

## CHAPTER 6—STATE SERVICES

### Part A—PUBLIC SERVICE

#### *Values and principles*

123. The values and principles of State service include—

- (a) high standards of professionalism, including professional ethics and integrity;
- (b) prompt and faithful implementation of Government policies and administration of laws;
- (c) being free from corruption;
- (d) efficient, effective and economic use of public resources;
- (e) prompt response to requests and questions from the public, and delivery of service to the public, in a manner that is respectful, effective, impartial, fair, and equitable;
- (f) accountability for administrative conduct;
- (g) transparency, including—
  - (i) timely, accurate disclosure of information to the public; and
  - (ii) prompt, complete and candid reporting to Parliament, as required by law;
- (h) cultivation of good human resource management and career development practices, to maximise human potential; and
- (i) recruitment and promotion based on—
  - (i) objectivity, impartiality and fair competition; and
  - (ii) ability, education, experience and other characteristics of merit.

#### *Public officers must be citizens*

124. A person or authority exercising power to appoint a person to a public office (other than an office for which Chapter 5 makes provision) must not appoint a person who is not a citizen except with the approval of the Prime Minister.

#### *Public Service Commission*

125.—(1) The Public Service Commission established under the State Services Decree 2009 continues in existence.

(2) The Public Service Commission consists of—

- (a) a chairperson; and
- (b) not less than 3 and not more than 5 other members,

appointed by the President on the advice of the Constitutional Offices Commission.

(3) If the position of the chairperson of the Public Service Commission is vacant or the chairperson is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office, the President may, on the advice of the Constitutional Offices Commission, appoint a person to act as the chairperson of the Public Service Commission.

(4) The President may, on the advice of the Constitutional Offices Commission, appoint a person to act as a member of the Public Service Commission 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.

*Functions of the Public Service Commission*

126.—(1) Subject to this section and other sections of this Constitution, the Public Service Commission has the following functions—

- (a) to appoint permanent secretaries, with the agreement of the Prime Minister;
- (b) to remove permanent secretaries, with the agreement of the Prime Minister;
- (c) to institute disciplinary action against permanent secretaries; and
- (d) to make such other appointments and perform such other duties, functions and responsibilities as may be prescribed by written law.

(2) The functions of the Public Service Commission do not extend to—

- (a) an office of a Judge or an office that is the responsibility of the Judicial Services Commission;
- (b) an office that is the responsibility of another body prescribed by written law;
- (c) an office in the Republic of Fiji Military Forces, Fiji Police Force or the Fiji Corrections Service; or
- (d) an office in respect of which this Constitution makes provision.

*Permanent secretaries*

127.—(1) There is established within each ministry the office of a permanent secretary, which is an office in the public service.

(2) Each ministry is to be under the administration of a permanent secretary, and any department of Government that is not part of any ministry shall be under the administration of the permanent secretary responsible for the Office of the Prime Minister.

(3) The permanent secretary of a ministry is responsible to the Minister concerned for the efficient, effective and economical management of the ministry or any department under the ministry.

(4) The Public Service Commission, with the agreement of the Prime Minister, may at any time re-assign one or more permanent secretaries amongst the various ministries of the State.

(5) A permanent secretary may resign from office by giving written notice to the Public Service Commission.

(6) A permanent secretary shall be entitled to such remuneration as determined by the Public Service Commission following the agreement of the Prime Minister, and any such remuneration must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(7) The permanent secretary of each ministry shall have the authority to appoint, remove and institute disciplinary action against all staff of the ministry, with the agreement of the Minister responsible for the ministry.

(8) The permanent secretary of each ministry, with the agreement of the Minister responsible for the ministry, has the authority to determine all matters pertaining to the employment of all staff in the ministry, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

*Appointment of ambassadors*

128.—(1) The Prime Minister may, on the advice of the Minister responsible for foreign affairs, make appointments to offices of ambassador, or of other principal representative, of the State to another country or an international organisation.

(2) The Prime Minister may, on the advice of the Minister responsible for foreign affairs, remove a person from an office referred to in subsection (1).



## **Part B—DISCIPLINED FORCE**

### *Fiji Police Force*

129.—(1) The Fiji Police Force established under a written law continues in existence.

(2) The office of the Commissioner of Police established under the State Services Decree 2009 continues in existence.

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

(4) The Commissioner of Police is appointed by the President, on the advice of the Constitutional Offices Commission following consultation with the Minister responsible for the Fiji Police Force.

(5) The Commissioner of Police is responsible for—

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

and, subject to subsection (6), is not subject to the direction or control by any other person or authority in relation to those matters.

(6) The Minister responsible for the Fiji Police Force may from time to time issue general policy directions to the Commissioner of Police and, if such a direction has been issued, the Commissioner of Police must act in accordance with it.

(7) The Commissioner of Police has the following powers in relation to the Fiji Police Force for all ranks, members and other employees, of the Fiji Police Force—

- (a) to appoint persons to the Fiji Police Force;
- (b) to remove persons from the Fiji Police Force; and
- (c) to take disciplinary action against persons in the Fiji Police Force,

and all written laws governing the Fiji Police Force shall be construed accordingly.

(8) The Commissioner of Police, with the agreement of the Minister responsible for the Fiji Police Force, has the authority to determine all matters pertaining to the employment of all staff in the Fiji Police Force, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;

- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(9) A written law may prescribe provisions relating to the Fiji Police Force.

*Fiji Corrections Service*

130.—(1) The Fiji Corrections Service established under a written law continues in existence.

(2) The office of the Commissioner of the Fiji Corrections Service established under the State Services Decree 2009 continues in existence.

(3) The Fiji Corrections Service is under the command of the Commissioner of the Fiji Corrections Service.

(4) The Commissioner of the Fiji Corrections Service is appointed by the President, on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for the Fiji Corrections Service.

(5) The Commissioner of the Fiji Corrections Service is responsible for—

- (a) the organisation and administration of the Fiji Corrections Service; and
- (b) the deployment and control of its operations,

and, subject to subsection (6), is not subject to the direction or control by any other person or authority in relation to those matters.

(6) The Minister responsible for the Fiji Corrections Service may from time to time issue general policy directions with respect to the Fiji Corrections Service and, if such a direction has been issued, the Commissioner of the Fiji Corrections Service must act in accordance with it.

(7) The Commissioner of the Fiji Corrections Service has the following powers in relation to the Fiji Corrections Service for all ranks, members and other employees of the Fiji Corrections Service—

- (a) to appoint persons to the Fiji Corrections Service;
- (b) to remove persons from the Fiji Corrections Service; and
- (c) to take disciplinary action against persons in the Fiji Corrections Service,

and all written laws governing the Fiji Corrections Service shall be construed accordingly.

(8) The Commissioner of the Fiji Corrections Service, with the agreement of the Minister responsible for the Fiji Corrections Service, has the authority to determine all matters pertaining to the employment of all staff in the Fiji Corrections Service, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(9) A written law may prescribe provisions relating to the Fiji Corrections Service.

*Republic of Fiji Military Forces*

131.—(1) The Republic of Fiji Military Forces established under the State Services Decree 2009 continues in existence.

(2) It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well-being of Fiji and all Fijians.

(3) The Commander of the Republic of Fiji Military Forces shall be responsible for exercising military executive command of the Republic of Fiji Military Forces.

(4) The Commander of the Republic of Fiji Military Forces is appointed by the President, on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for the Republic of Fiji Military Forces.

(5) The Commander of the Republic of Fiji Military Forces has the following powers in relation to the Republic of Fiji Military Forces for all ranks, members and other employees of the Republic of Fiji Military Forces—

- (a) to appoint persons to the Republic of Fiji Military Forces;
- (b) to remove persons from the Republic of Fiji Military Forces; and
- (c) to take disciplinary action against persons in the Republic of Fiji Military Forces,

and all written laws governing the Republic of Fiji Military Forces shall be construed accordingly.

(6) The Commander of the Republic of Fiji Military Forces, with the agreement of the Minister responsible for the Republic of Fiji Military Forces, has the authority to determine all matters pertaining to the employment of all staff in the Republic of Fiji Military Forces, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(7) A written law may prescribe provisions relating to the Republic of Fiji Military Forces.

### **Part C—CONSTITUTIONAL OFFICES COMMISSION**

#### *Constitutional Offices Commission*

132.—(1) This section establishes the Constitutional Offices Commission.

(2) The Commission shall consist of—

- (a) the Prime Minister, who shall be the chairperson;
- (b) the Leader of the Opposition;
- (c) the Attorney-General;
- (d) 2 persons appointed by the President on the advice of the Prime Minister; and
- (e) 1 person appointed by the President on the advice of the Leader of the Opposition.

(3) The Commission may regulate its own procedure and may make such rules and regulations as it deems fit for regulating and facilitating the performance of its functions.

(4) The Commission shall provide regular updates and advice to Parliament on any matter relating to its functions and responsibilities.

(5) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(6) The quorum for the meetings of the Commission shall consist of the chairperson and 2 other members.

(7) The secretary of the Commission shall be the Solicitor-General.

(8) The members of the Commission referred to in subsection (2)(d) and (e) hold office for a term of 3 years and are eligible for re-appointment.

(9) The members of the Commission referred to in subsection (2)(d) and (e) are entitled to such remuneration and allowances as determined by the President, and the remuneration and allowances must not be varied to their disadvantage during their term in office, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(10) The members of the Commission referred to in subsection (2)(d) or (e) 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.

(11) Removal from office of the members of the Commission referred to in subsection (2)(d) and (e) must be pursuant to subsection (12).

(12) If the Chief Justice, following consultation with the Attorney-General, considers that the question of removal of the member of the Commission referred to in subsection (2)(d) or (e) from office ought to be investigated, then —

(a) the Chief Justice appoints —

(i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or are qualified to hold the office of a Judge; 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 of its recommendation whether or not the member of the Commission referred to in subsection (2)(d) or (e) should be removed from office; and

(c) in deciding whether or not to remove the member of the Commission referred to in subsection (2)(d) or (e) from office, the President must act in accordance with the advice of the tribunal or medical board, as the case may be.

(13) The President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General may, on such terms and conditions as he or she deems fit, suspend the member of the Commission referred to in subsection (2)(d) or (e) from office pending investigation and pending referral to and appointment of a tribunal or a medical board under subsection (12), and may at any time, revoke the suspension.

(14) The suspension of the member of the Commission referred to in subsection (2)(d) or (e) from office under subsection (13) ceases to have effect if the President determines that the person should not be removed from office.

(15) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (12) shall be made public.

*Functions of the Constitutional Offices Commission*

133. The Constitutional Offices Commission has such functions and responsibilities as prescribed in this Constitution or by any other written law, and shall be responsible for providing advice to the President for the appointment of the following offices—

- (a) the chairperson and the members of the Human Rights and Anti-Discrimination Commission;
- (b) the chairperson and the members of the Electoral Commission;
- (c) Supervisor of Elections;
- (d) Secretary-General to Parliament;
- (e) the chairperson and the members of the Public Service Commission;
- (f) Commissioner of Police;
- (g) Commissioner of the Fiji Corrections Service;
- (h) Commander of the Republic of Fiji Military Forces;
- (i) Auditor-General; and
- (j) Governor of the Reserve Bank of Fiji.

**Part D—GENERAL PROVISIONS RELATING TO PUBLIC OFFICES**

*Application*

134. This Part applies to—

- (a) Supervisor of Elections;
- (b) Secretary-General to Parliament;
- (c) Commissioner of Police;
- (d) Commissioner of the Fiji Corrections Service;

- (e) Commander of the Republic of Fiji Military Forces;
- (f) Auditor-General;
- (g) Governor of the Reserve Bank of Fiji;
- (h) the members of the Human Rights and Anti-Discrimination Commission;
- (i) the members of the Electoral Commission; and
- (j) the members of the Public Service Commission.

*Terms and conditions of office*

135.—(1) Subject to this section, a person holding the office referred to in section 134(a) to (g) holds office for 5 years and is eligible for re-appointment.

(2) Subject to this section, a person holding the office referred to in section 134(h) to (j) holds office for 3 years, and is eligible for re-appointment.

(3) The appointment of a person to whom this Part applies is subject to the terms and conditions (if any) set out in it.

(4) 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 the direction or control by any person, except as provided under this Constitution or by a written law.

*Remuneration and allowances*

136.—(1) A person to whom this Part applies is entitled to such remuneration and allowances as determined by the President on the advice of the Constitutional Offices Commission, and the remuneration and allowances must not be varied to their disadvantage during his or her term in office, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(2) In advising the President on the remuneration and allowances payable to a person to whom this Part applies, the Constitutional Offices Commission must establish an independent committee (not comprising any holder of a public office) which shall advise the Constitutional Offices Commission on the appropriate remuneration and allowances that should be payable to a person to whom this Part applies.

*Removal from office for cause*

137.—(1) 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.

(2) Removal from office must be pursuant to this section.

(3) If the Constitutional Offices Commission considers that the question of removal from office ought to be investigated, then—

- (a) the Constitutional Offices Commission appoints—
  - (i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or are qualified to hold the office of a Judge; 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 of its recommendation whether or not the person concerned should be removed from office; and
- (c) in deciding whether or not to remove the person concerned from office, the President must act in accordance with the advice of the tribunal or medical board, as the case may be.

(4) The President on the advice of the Constitutional Offices Commission may, on such terms and conditions as he or she deems fit, suspend the person concerned from office pending investigation and pending referral to and appointment of a tribunal or a medical board under subsection (3), and may at any time, revoke the suspension.

(5) The suspension of the person concerned from office under subsection (4) ceases to have effect if the President determines that the person should not be removed from office.

(6) The report of the tribunal or the recommendations of the medical board, as the case may be, made under subsection (3) shall be made public.

*Performance of functions of commissions and tribunals*

138.—(1) This section applies to—

- (a) Human Rights and Anti-Discrimination Commission;
- (b) Electoral Commission;
- (c) Judicial Services Commission;
- (d) Legal Aid Commission;
- (e) Mercy Commission;
- (f) Public Service Disciplinary Tribunal;



- (g) Accountability and Transparency Commission;
- (h) Public Service Commission;
- (i) Constitutional Offices Commission; and
- (j) any tribunal or medical board established or appointed under this Constitution to consider the question of removal from office of any person.

(2) A commission, tribunal or board to which this section applies may by regulation make provision for regulating and facilitating the performance of its functions.

(3) A decision of a commission, tribunal or board to which this section applies requires the concurrence of a majority of its members and the commission, tribunal or board to which this section applies 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.

(4) Subject to this section, a commission, tribunal or board to which this section applies may regulate its own procedure.

(5) In the performance of its functions or the exercise of its powers, a commission, tribunal or board to which this section applies is not subject to the direction or control of any other person or authority, except as otherwise provided by this Constitution.

(6) Nothing in subsection (5) limits the responsibility of the Government for the structure of the State service, nor the Government's general policy responsibility for the management of the State service.

(7) In addition to the functions conferred on it by or under this Constitution, a commission, tribunal or board to which this section applies has such powers and other functions (if any) as are prescribed by written law.

(8) The validity of the transaction of business of a commission, tribunal or board to which this section applies is not affected if a person who was not entitled to do so took part in the proceedings.

(9) A commission, tribunal or board to which this section applies has the same powers as the High Court in respect of attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of production of documents.

## CHAPTER 7—REVENUE AND EXPENDITURE

### *Raising of revenue*

139.—(1) The raising by the Government of revenue or moneys, whether through the imposition of taxation or otherwise, must be authorised by or under a written law.

(2) No taxation or fee may be imposed, waived or varied by the State, except as provided by written law.

(3) If a written law permits the waiver or variation of any tax or fee—

(a) a record of each waiver or variation must be maintained together with the reason for it; and

(b) each waiver or variation, and the reason for it, must be reported to the Auditor-General.

(4) No law may exempt, or authorise the exemption of, a public officer from payment of any tax or fee by reason of—

(a) the office held by that public officer; or

(b) the nature of the work of the public officer.

### *Consolidated Fund*

140.—(1) All revenue or moneys raised or received for the purposes of the State or 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*

141. Moneys must not be withdrawn from the Consolidated Fund or from a fund referred to in section 140(2) except under an appropriation made by law.

### *Authorisation of expenditure in advance of appropriation*

142.—(1) Subject to any written law, if the Appropriation Act for a year has not come into operation by the beginning of the year, the Minister responsible for finance may, to the extent and subject to the conditions prescribed by any written law, authorise the withdrawal of moneys from the Consolidated Fund for the ordinary services of 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 Government in respect of the immediately preceding year.

*Appropriation and taxing measures require ministerial consent*

143. Any written law, 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 Parliament with the consent of Cabinet, as signified by the Minister responsible for finance.

*Annual budget*

144.—(1) In respect of each year ending on 31 December or on such other day as Parliament prescribes, the Minister responsible for finance must cause to be laid before Parliament 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 services of Parliament.

(2) A written law may prescribe the manner in which annual estimates are to be prepared.

*Guarantees by Government*

145.—(1) The Government must not guarantee the financial ability of any person or body in respect of a loan or otherwise unless the giving of the guarantee is authorised by Parliament in accordance with conditions prescribed by law.

(2) Parliament, by resolution, may require the Minister responsible for finance to present to Parliament, within 7 days after the resolution, information concerning any particular loan or guarantee, including all information necessary to show—

- (a) the extent of the total indebtedness by way of principal and accumulated interest;
- (b) the use made or to be made of the proceeds of the loan or the purpose of the guarantee;
- (c) the provisions made for servicing or repayment of the loan; and
- (d) the progress made in the repayment of the loan.

*Public moneys to be accounted for*

146. 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*

147.—(1) This section applies to—

- (a) the President;
- (b) a judicial officer;

- (c) the Supervisor of Elections;
- (d) the Secretary-General to Parliament;
- (e) the Solicitor-General;
- (f) the Director of Public Prosecutions;
- (g) the Commissioner and the Deputy Commissioner of the Fiji Independent Commission Against Corruption;
- (h) the Commissioner of Police;
- (i) the Commissioner of the Fiji Corrections Service;
- (j) the Commander of the Republic of Fiji Military Forces;
- (k) the Auditor-General;
- (l) the chairperson and members of the Human Rights and Anti-Discrimination Commission;
- (m) the chairperson and members of the Electoral Commission;
- (n) the chairperson and members of the Accountability and Transparency Commission;
- (o) the members of the Judicial Services Commission referred to in section 104(1)(d) and (e);
- (p) the members of the Mercy Commission referred to in section 119(2)(b);
- (q) the chairperson and members of the Public Service Disciplinary Tribunal;
- (r) the chairperson and members of the Public Service Commission;
- (s) the members of the Constitutional Offices Commission referred to in section 132(2)(d) and (e); and
- (t) the chairperson and members of any tribunal or medical board established or appointed under this Constitution to consider the question of removal from office of any person.

(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*

148.—(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 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; and

“*pension benefits*” means pensions, compensation, gratuities or other like payments payable to persons in respect of their eligible service or to their spouses, dependents, or personal representatives in respect of that service.

## **CHAPTER 8—ACCOUNTABILITY**

### **Part A—CODE OF CONDUCT**

#### *Code of conduct*

149. A written law shall—

- (a) establish a code of conduct which shall be applicable to the President, Speaker, Deputy Speaker, Prime Minister, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution or under any written law, members of commissions, permanent secretaries, ambassadors or other principal representatives of the State, and persons who hold statutory appointments or governing or executive positions in statutory authorities, and to such other offices (including public offices) as may be prescribed by written law;
- (b) establish rules, processes and procedures for the implementation of the code of conduct by the Accountability and Transparency Commission;
- (c) provide for the monitoring by the Accountability and Transparency Commission of compliance with the code of conduct by the officers mentioned in paragraph (a);
- (d) make provision for the investigation of alleged breaches of the code of conduct and enforcement of the code of conduct by the Accountability and Transparency Commission, including through criminal and disciplinary proceedings, and provide for the removal from office of those officers who are found to be in breach of the code of conduct;
- (e) provide for the protection of whistle-blowers, being persons who, in good faith, make disclosures that an officer mentioned in paragraph (a) has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices; and
- (f) provide for the annual declaration by the officers mentioned in paragraph (a) of the assets and liabilities and financial interests of the officer, and of such other direct relatives of the officer as may be prescribed, to the Accountability and Transparency Commission, and for such declarations to be accessible to the public.

### **Part B—FREEDOM OF INFORMATION**

#### *Freedom of information*

150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.

## Part C — AUDITOR-GENERAL

### *Auditor-General*

151.—(1) The office of the Auditor-General established under the State Services Decree 2009 continues in existence.

(2) The Auditor-General is appointed by the President on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for finance.

(3) The President may, on the advice of the Constitutional Offices Commission, appoint a person to act as the Auditor-General during any period, or during all periods, when the office of the 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.

### *Functions of Auditor-General*

152.—(1) At least once in every year, the Auditor-General shall inspect, audit and report to 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 any written law; and
- (b) expenditure has been applied to the purpose for which it was authorised.

(3) A written law may make further provisions in relation to the office of the Auditor-General and may confer further functions and powers on the Auditor-General.

(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, custody or control of any person or authority.

(5) In the performance of his or her functions or the exercise of his or her authority and powers, the Auditor-General shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(6) The Auditor-General shall have the authority to appoint, remove and discipline all staff (including administrative staff) in the office of the Auditor-General.

(7) The Auditor-General has the authority to determine all matters pertaining to the employment of all staff in the office of the Auditor-General, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(8) The salaries, benefits and allowances payable to any person employed in the office of the Auditor-General are a charge on the Consolidated Fund.

(9) Parliament shall ensure that adequate funding and resources are made available to the Auditor-General, to enable him or her to independently and effectively exercise his or her powers and perform his or her functions and duties.

(10) The Auditor-General shall have control of the budget and finances of the office of the Auditor-General, as approved by Parliament.

(11) A written law 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 written law.

(12) If the written law under subsection (11) so provides, it must also empower the Auditor-General to review those audits and report the results of a review.

(13) The Auditor-General must submit a report made by him or her to the Speaker of Parliament and must submit a copy to the Minister responsible for finance.

(14) Within 30 days of receipt, or if Parliament is not sitting, on the first day after the end of that period, the Minister responsible for finance must lay the report before Parliament.



**Part D—RESERVE BANK OF FIJI***Reserve Bank of Fiji*

153.—(1) The Reserve Bank of Fiji is the central bank of the State, whose primary objects are—

- (a) to protect the value of the currency in the interest of balanced and sustainable economic growth;
- (b) to formulate monetary policy;
- (c) to promote price stability;
- (d) to issue currency; and
- (e) to perform other functions conferred on it by a written law.

(2) In pursuing its primary objects, the Reserve Bank of Fiji must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Reserve Bank of Fiji and the Minister responsible for finance.

(3) The powers and functions of the Reserve Bank of Fiji are those customarily exercised and performed by central banks.

(4) The Governor of the Reserve Bank of Fiji shall be appointed by the President on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for finance.

(5) A written law must provide for the composition, powers, functions and operations of the Reserve Bank of Fiji.

(6) The Reserve Bank of Fiji must deliver quarterly and annual reports to Parliament, and any other reports when required by law, or requested by resolution.

**CHAPTER 9—EMERGENCY POWERS***State of emergency*

154.—(1) The Prime Minister may, on the recommendation of the Commissioner of Police and the Commander of the Republic of Fiji Military Forces, declare a state of emergency in Fiji, or in a part of Fiji, and may make regulations relating to a state of emergency, if there are reasonable grounds to believe that—

- (a) the security and safety of all or part of Fiji is threatened; and
- (b) it is necessary to declare a state of emergency to deal effectively with the threatening circumstances.

(2) If the declaration of a state of emergency is made when Parliament is sitting, the Prime Minister must, within 24 hours upon making the declaration, refer the declaration to Parliament for confirmation of the declaration.

(3) If the declaration of a state of emergency is made when Parliament is not sitting, the Speaker must, within 48 hours upon the making of the declaration, seek confirmation of the declaration from the members of Parliament through such measures of communication as necessary.

(4) If a majority of the members of Parliament confirm the declaration made by the Prime Minister, then the declaration shall continue for a period of one month from the date of confirmation, and may be renewed by a further vote in Parliament.

(5) If a majority of the members of Parliament do not confirm the declaration made by the Prime Minister, then the declaration and any actions taken under the declaration shall be deemed to be of no effect.

## CHAPTER 10—IMMUNITY

### *Immunity granted under the Constitution of 1990 continues*

155. Notwithstanding the abrogation of the Constitution Amendment Act 1997 and despite the repeal of the Constitution of 1990, Chapter XIV of the Constitution of 1990 continues in force in accordance with its tenor, and the immunity granted in Chapter XIV of the Constitution of 1990 shall continue.

### *Immunity granted under the Limitation of Liability for Prescribed Political Events Decree 2010 continues*

156.—(1) The immunities granted to prescribed persons for prescribed political events under the Limitation of Liability for Prescribed Political Events Decree 2010 shall continue in existence.

(2) Notwithstanding anything contained in this Constitution, the Limitation of Liability for Prescribed Political Events Decree 2010 shall, in its entirety, continue in existence and shall not be reviewed, amended, altered, repealed or revoked by Parliament.

### *Further immunity*

157. Absolute and unconditional immunity is irrevocably granted to any person (whether in their official or personal or individual capacity) holding the office of, or holding the office in, as the case may be—

- (a) the President;
- (b) the Prime Minister and Cabinet Ministers;
- (c) Republic of Fiji Military Forces;
- (d) Fiji Police Force;
- (e) Fiji Corrections Service;
- (f) Judiciary;
- (g) public service; and
- (h) any public office,

from any criminal prosecution and from any civil or other liability in any court, tribunal or commission, in any proceeding including any legal, military, disciplinary or professional proceedings and from any order or judgment of any court, tribunal or commission, as a result of any direct or indirect participation, appointment or involvement in the Government from 5 December 2006 to the date of the first sitting of the first Parliament elected after the commencement of this Constitution, provided however any such immunity shall not apply to any act or omission that constitutes an offence under sections 133 to 146, 148 to 236, 288 to 351, 356 to 361, 364 to 374, and 377 to 386 of the Crimes Decree 2009 (as prescribed in the Crimes Decree 2009 at the date of the commencement of this Constitution).

*Immunity entrenched*

158.—(1) Notwithstanding anything contained in this Constitution, this Chapter and any immunity granted or continued in this Chapter shall not be reviewed, amended, altered, repealed or revoked.

(2) Notwithstanding anything contained in this Constitution, no court or tribunal shall have the jurisdiction to accept, hear or make any decision or order with respect to any challenge against the provisions of this Chapter and any immunity granted or continued in this Chapter.

(3) No compensation shall be payable by the State to any person in respect of damage, injury or loss to his or her property or person caused by or consequent upon any conduct from which immunity has been granted under this Chapter.

## CHAPTER 11 — AMENDMENT OF CONSTITUTION

### *Amendment of Constitution*

159.—(1) Subject to subsection (2), this Constitution, or any provision of this Constitution, may be amended in accordance with the procedure prescribed in this Chapter, and may not be amended in any other way.

(2) No amendment to this Constitution may ever—

- (a) repeal any provision in Chapter 10 of this Constitution or in Part D of Chapter 12 of this Constitution;
- (b) infringe or diminish the effect of any provision in Chapter 10 of this Constitution or in Part D of Chapter 12 of this Constitution; or
- (c) repeal, infringe or diminish the effect of this Chapter.

### *Procedure for amendment*

160.—(1) A Bill for the amendment of this Constitution must be expressed as a Bill for an Act to amend this Constitution.

(2) A Bill for the amendment of this Constitution must be passed by Parliament in accordance with the following procedure—

- (a) the Bill is read 3 times in Parliament;
- (b) at the second and third readings, it is supported by the votes of at least three-quarters of the members of Parliament;
- (c) an interval of at least 30 days elapses between the second and third readings and each of those readings is preceded by full opportunity for debate; and
- (d) the third reading of the Bill in Parliament does not take place until after the relevant committee of Parliament has reported on the Bill to Parliament.

(3) If a Bill for the amendment of this Constitution is passed by Parliament in accordance with subsection (2), then the Speaker shall notify the President accordingly, who shall then refer the Bill to the Electoral Commission, for the Electoral Commission to conduct a referendum for all registered voters in Fiji to vote on the Bill.

(4) The referendum for the purposes of subsection (3) shall be conducted by the Electoral Commission in such manner as prescribed by written law.

(5) The Electoral Commission shall, immediately after the referendum, notify the President of the outcome and shall publish the outcome of the referendum in the media.

(6) If the outcome of the referendum is that three-quarters of the total number of the registered voters have voted in favour of the Bill, then the President must assent to the Bill, which shall come into force on the date of the Presidential assent or on such other date as prescribed in the Bill.

(7) In this section, the use of the word “*amend*” or “*amendment*” is intended to be understood broadly, so that the section applies to any proposal to repeal, replace, revise, or alter any provision of this Constitution.

*Amendments before 31 December 2013*

161.—(1) Notwithstanding anything contained in this Chapter, on or before 31 December 2013, the President acting on the advice of Cabinet may, by Decree published in the *Gazette*, make such amendments to this Constitution, as are necessary to give full effect to the provisions of this Constitution or to rectify any inconsistency or errors in any provision of this Constitution.

(2) Cabinet can only advise the President for an amendment to this Constitution under subsection (1) if Cabinet obtains certification of the Supreme Court for the amendment.

(3) For the avoidance of doubt, this section shall expire on, and be of no effect after, 31 December 2013.

**CHAPTER 12—COMMENCEMENT, INTERPRETATION,  
REPEALS AND TRANSITIONAL**

**Part A—SHORT TITLE AND COMMENCEMENT**

*Short title and commencement*

162.—(1) This Constitution may be cited as the Constitution of the Republic of Fiji.

(2) This Constitution shall come into force on 7 September 2013.

**Part B—INTERPRETATION**

*Interpretation*

163.—(1) In this Constitution, unless the contrary intention appears—

“*Act*” means an Act of Parliament, a Decree or a Promulgation;

“*adult*” means an individual who is 18 years of age or over;

“*Bill of Rights*” means the rights and freedoms set out in Chapter 2;

“*child*” means an individual who has not reached the age of 18 years;

“*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;

“*corrupt practices*” includes—

- (a) any attempt to improperly influence a public officer;
- (b) to influence peddling, bribery, or extortion;
- (c) misuse of inside information for personal gain;
- (d) requesting or accepting any benefit to which a person is not lawfully entitled;
- (e) withholding any service, benefit, decision or judgment, or threatening a person with the exercise of a lawful power against that person, or implying any such practice, in order to extort a personal benefit or to improperly obtain the person’s consent to any action or omission;
- (f) unlawfully taking or demanding any private property;
- (g) misuse or misapplication of public property for personal purposes, or theft of public property; and
- (h) converting or selling public assets for personal gain;

“*criminal proceedings*” means proceedings before any court, other than a military court, in which a person is prosecuted for allegedly committing an offence, including an appeal, a case presented on the basis of agreed facts, or a question of law reserved;

“*department*” means a department of the public service, under a ministry;

“*disability*” includes any physical, sensory, mental, psychological or other condition, or illness that—

- (a) has, or is perceived by significant sectors of the community to have, a significant adverse effect on an individual’s ability to participate fully and effectively in society on an equal basis with others; or
- (b) forms the basis of unfair discrimination;

“*disciplinary law*” means a written law regulating the discipline of any disciplined force;

“*disciplined force*” means—

- (a) the Republic of Fiji Military Forces;
- (b) the Fiji Police Force; or
- (c) the Fiji Corrections Service;

“*electoral offences*” includes an offence under a law governing elections and includes any offence under any law governing registration of voters and registration of political parties;

“*Fiji*” or “*Republic of Fiji*” means the territories which immediately before 10 October 1970 constituted the Colony of Fiji and includes any other territory declared by Parliament to form part of Fiji;

“*Gazette*” means the Government of the Republic of Fiji Gazette published by order or under the authority of the Government, or a supplement to the *Gazette*;

“*Government*” means the Government of the State;

“*human trafficking*” includes trafficking of persons as defined or prescribed by a written law;

“*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;



“*judicial officer*” includes a Judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal), a Judge of the Supreme Court, Magistrate, Masters of the High Court, the Chief Registrar and other judicial officers appointed by the Judicial Services Commission;

“*law*” includes all written law;

“*minerals*” includes all minerals extracted from land or seabed and includes natural gases;

“*oath*” includes affirmation;

“*oath or affirmation of allegiance and office*” means the oath or affirmation of allegiance and office as set out in the Schedule;

“*person*” means a natural or legal person, including a company or association or body of persons whether corporate or unincorporated;

“*political party*” means an organised group or association of persons striving for participation in the political life or Government of the Republic of Fiji that has been registered under a written law regulating the organisation of political parties;

“*prescribed*” means prescribed in, by or under a written law;

“*President*” means the President of the Republic of Fiji appointed under Chapter 4 and includes any person appointed or holding office under Part D of this Chapter;

“*property*” includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money or negotiable instruments;

“*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) an 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 written law;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by written law;

“*public officer*” means the holder of a public office;

“*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 Parliament, means a sitting of Parliament starting when it first meets after a prorogation of Parliament or a dissolution of Parliament and ending when Parliament is next prorogued or Parliament is next dissolved;

“*sentence of imprisonment*” does not include a suspended sentence or a sentence of imprisonment with the option of a fine;

“*sitting*”, in relation to Parliament, means a period during which Parliament is sitting continuously without adjournment, and includes any period during which Parliament is in committee;

“*Speaker*” means the Speaker of Parliament;

“*State*” means the Republic of Fiji;

“*state of emergency*” means a state of emergency proclaimed under Chapter 9;

“*State service*” means the public service and the disciplined force;

“*subordinate court*” means any court of law established for the State other than the High Court, Court of Appeal, Supreme Court or a court established by a disciplinary law;

“*subordinate law*” means any instrument made in exercise of a power to make the instrument conferred by an Act, and includes regulations, rules, orders, by-laws or declarations;

“*this Constitution*” means the Constitution of the Republic of Fiji; and

“*written law*” means an Act, Decree, Promulgation and subordinate law made under those Acts, Decrees or Promulgations.

(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 the promotion or 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,

whichever 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 the person to retire from office;
- (b) a power to terminate the contract on which the person is employed; or
- (c) a power not to renew the contract on which the person is employed.

(6) A reference in this Constitution to amending any law (including this Constitution) is a reference to—

- (a) repealing it with or without replacing it by another law;
- (b) modifying, varying, revising or altering 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 whom the functions are conferred by this Constitution has power to do everything necessary or convenient to be done for, or in connection with, the performance of those functions.

(8) A reference in this Constitution to the Minister in relation to the doing of anything, the 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.

(13) A reference in this Constitution to an office named in this Constitution is to be read with any formal alteration necessary to make it applicable in the circumstances.

(14) In this Constitution, unless the context otherwise requires—

- (a) if a word or expression is defined in this Constitution, any grammatical variation or cognate expression of the word or expression has a corresponding meaning, read with the changes required by the context; and
- (b) the word “*includes*” means “*includes, but is not limited to*”.

(15) In calculating time between 2 events for any purpose under this Constitution, if the time is expressed—

- (a) as days, the day on which the first event occurs is to be excluded, and the day by which the last event may occur is to be included;
- (b) as months, the time period ends at the beginning of the day in the relevant month—
  - (i) that has the same number as the date on which the period began, if that month has a corresponding date; or
  - (ii) that is the last day of that month, in any other case; or
- (c) as years, the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.

(16) If a period of time prescribed by this Constitution for any purpose is 6 days or less, Sundays and public holidays are not to be counted when calculating the time.

(17) If, in any particular circumstance, the period of time prescribed by this Constitution ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.

(18) If a particular time is not prescribed by this Constitution for performing a required act, the act must be done without unreasonable delay, and as often as the occasion requires.

(19) If any person has authority under this Constitution to extend a period of time prescribed by this Constitution, the authority may be exercised either before or after the end of the period, unless a contrary intention is expressly mentioned in the provision conferring the authority.

(20) Except to the extent that this Constitution provides otherwise, if a person has vacated an office established under this Constitution, the person may, if qualified, again be appointed, elected or otherwise selected to hold the office in accordance with this Constitution.

(21) The Schedule is a part of this Constitution, and every use of the expression “*this Constitution*” includes the Schedule.

(22) Any person required under any law to take an oath or affirmation of allegiance and office must take the appropriate oath or affirmation set out in the Schedule.

### **Part C—REPEALS**

#### *Repeals*

164. Subject to Part D of this Chapter and other provisions of this Constitution, the following written laws are repealed—

- (a) Executive Authority of Fiji Decree 2009;
- (b) Revenue and Expenditure Decree 2009;
- (c) State Services Decree 2009;
- (d) Office of the Vice-President and Succession Decree 2009; and
- (e) Administration of Justice Decree 2009.

### **Part D—TRANSITIONAL**

#### *Office of the President*

165.—(1) Notwithstanding the repeal of the Executive Authority of Fiji Decree 2009, the President appointed under the Executive Authority of Fiji Decree 2009 shall continue to hold office for the term of his or her appointment made under the Executive Authority of Fiji Decree 2009, and any re-appointment to the office of the President must be done in accordance with the provisions of this Constitution.

(2) The President appointed under the Executive Authority of Fiji Decree 2009 shall continue to exercise executive authority of Fiji and exercise all the powers (including making laws by Decree on the advice of Cabinet) vested in him or her under the Executive Authority of Fiji Decree 2009, until the first sitting of the first Parliament under this Constitution.

(3) If any vacancy arises in the office of the President before the first sitting of the first Parliament under this Constitution, then another person shall be appointed to the office of the President in accordance with the Executive Authority of Fiji Decree 2009.

(4) Notwithstanding the repeal of the Office of the Vice-President and Succession Decree 2009, until the first sitting of the first Parliament under this Constitution, if the office of the President is vacant or if the President is absent from duty or from Fiji or is, for any reason, unable to perform the functions of the office of the President, then the functions of the office of the President shall be performed by the Chief Justice.

*Prime Minister and Ministers*

166.—(1) Notwithstanding the repeal of the Executive Authority of Fiji Decree 2009, the Prime Minister and other Ministers appointed under the Executive Authority of Fiji Decree 2009 shall continue in office until a Prime Minister assumes office under section 93 of this Constitution.

(2) The Prime Minister and other Ministers shall continue to exercise all the authority and powers vested in the Prime Minister and other Ministers under the Executive Authority of Fiji Decree 2009 until a Prime Minister assumes office under section 93 of this Constitution.

(3) Notwithstanding its repeal and notwithstanding anything contained in this Constitution, the Executive Authority of Fiji Decree 2009 shall continue to be in force until the first sitting of the first Parliament under this Constitution.

(4) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter and notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament under this Constitution, subordinate laws shall be made in accordance with laws, rules and procedures applicable prior to the commencement of this Constitution.

*Public or Constitutional officers*

167.—(1) Any person who immediately before the date of commencement of this Constitution holds or is acting in a public office shall, from the date of the commencement of this Constitution hold or act in that office or the corresponding public office established by this Constitution as if he or she had been appointed to do so in accordance with the provisions of this Constitution and shall be deemed to have taken any oath or affirmation required upon such appointment by any existing law.

(2) The provision of this section shall be without prejudice to any power conferred by or under this Constitution to make provision for the abolition of offices or for the removal from office of persons holding or acting in any office.

(3) Notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament elected under this Constitution, any function, power or duty that is conferred under this Constitution on the Constitutional Offices Commission shall be performed by the Prime Minister.

(4) For the avoidance of doubt, the members of the Constitutional Offices Commission referred to in section 132(2)(d) and (e) shall only be appointed after the first sitting of the first Parliament elected under this Constitution, and the Constitutional Offices Commission shall not hold any meeting until after the first sitting of the first Parliament elected under this Constitution.

(5) Notwithstanding anything contained in this Constitution, sections 79(8), 108(2), 116(12), 117(13), 121(15), 127(8), 129(8), 130(8), 131(6) and 152(7) shall only take effect from 1 January 2014.

#### *Finance*

168. Notwithstanding the repeal of the Revenue and Expenditure Decree 2009 and the provisions of Chapter 7 of this Constitution, the Revenue and Expenditure Decree 2009 shall continue to be in force until the first sitting of the first Parliament under this Constitution.

#### *Functions of Parliament and Speaker*

169.—(1) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter, any function that has to be performed by the Speaker in this Constitution shall, until the first sitting of the first Parliament under this Constitution, be performed by the Prime Minister.

(2) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter, any function that has to be performed by Parliament in this Constitution shall, until the first sitting of the first Parliament under this Constitution, be performed by Cabinet.

(3) Notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament elected under this Constitution, any function, power or duty that is conferred under this Constitution on the Leader of the Opposition shall be performed by the Prime Minister.

#### *Elections*

170.—(1) Notwithstanding anything contained in Chapter 4 of this Constitution, the first general election for members of Parliament under this Constitution shall be held on a date to be determined by the President, on the advice of the Prime Minister, provided however that the first general election must be held no later than 30 September 2014.

(2) For the first general election of members of Parliament under this Constitution, the date on which such general election shall be held shall be publicly announced by the President at least 60 days before the date of the general election.

(3) The writ for the first general election of members of Parliament under this Constitution shall be issued by the President on the advice of the Prime Minister, at least 44 days before the date of the general election.

(4) For the first general election of members of Parliament under this Constitution, the last day for the receipt of a nomination of a candidate for election to Parliament shall be 30 days before the date of the general election.

(5) Until such time the Electoral Commission or a Supervisor of Elections is appointed under this Constitution, the functions of the Electoral Commission or the Supervisor of Elections shall be performed by the Permanent Secretary responsible for elections.

*Succession of institutions*

171.—(1) An office or institution established under this Constitution shall be the legal successor of the corresponding office or institution existing immediately before the commencement of this Constitution.

(2) Upon its appointment under this Constitution, the Supervisor of Elections shall be the legal successor to the office of the Registrar of Voters under the Electoral (Registration of Voters) Decree 2012 and to the office of the Registrar under the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013.

*Preservation of rights and obligations*

172.—(1) Except to the extent that this Constitution expressly provides otherwise, all rights and obligations, however arising, of the State and subsisting immediately before the commencement of this Constitution shall continue as rights and obligations of the State under this Constitution.

(2) All permits, licences, rights or similar undertakings of the State issued to any person, and in force immediately before the commencement of this Constitution shall continue in the same terms from that date.

(3) All delegations that had been given before the commencement of this Constitution by a person referred to any law repealed under Part C of this Chapter and which were in force immediately before the commencement of this Constitution, shall continue in force after the commencement of this Constitution, as if given by a corresponding commission or person referred to in this Constitution.

(4) All proceedings before a commission or a person referred to in any law repealed under Part C of this Chapter that had commenced but had not been determined on the date of the commencement of this Constitution shall continue after the commencement of this Constitution as if they had been commenced before the corresponding commission or person referred to in this Constitution.

(5) Any complaint lodged with the Human Rights Commission established under the Human Rights Commission Decree 2009 but which had not been determined by the date of the commencement of this Constitution shall continue to be dealt with by the Human Rights and Anti-Discrimination Commission established under section 45 of this Constitution, provided however that any complaint made to the Human Rights and Anti-



Discrimination Commission after 21 August 2013 must be limited to matters, events or incidents which occurred or occur after 21 August 2013, and the Human Rights and Anti-Discrimination Commission must not in any way deal with any complaint made to it after 21 August 2013 if the complaint relates to matters, events or incidents occurring before 21 August 2013.

*Preservation of laws*

173.—(1) Subject to subsection (2), all written laws in force immediately before the date of commencement of this Constitution (other than the laws referred to in Part C of this Chapter) shall continue in force as if they had been made under or pursuant to this Constitution, and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) Notwithstanding anything contained in this Constitution, any Promulgation, Decree or Declaration (other than the laws referred to in Part C of this Chapter) and any subordinate laws made under any such Promulgation, Decree or Declaration—

- (a) made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution; and
- (b) which are in force and have not been repealed or replaced by another Promulgation, Decree or Declaration or by any subordinate laws made under any such Promulgation, Decree or Declaration (as the case may be),

shall continue to be in force in their entirety.

(3) Notwithstanding anything contained in this Constitution, any Promulgation, Decree or Declaration (other than the laws referred to in Part C of this Chapter) and any subordinate laws made under any such Promulgation, Decree or Declaration—

- (a) made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution; and
- (b) which are in force and have not been repealed or replaced by another Promulgation, Decree or Declaration or by any subordinate laws made under any such Promulgation, Decree or Declaration (as the case may be),

may be amended by Parliament after the commencement of this Constitution, provided however that no such amendment shall—

- (i) have any retrospective effect;
- (ii) in any way nullify any decision made under these laws; or
- (iii) grant any compensation, damages, relief, remedy or reparation to any person affected by these laws.

(4) Notwithstanding anything contained in this Constitution, no court or tribunal (including any court or tribunal established or continued in existence by the Constitution) shall have the jurisdiction to accept, hear, determine, or in any other way entertain, or to grant any order, relief or remedy, in any proceeding of any nature whatsoever which seeks or purports to challenge or question—

- (a) the validity or legality of any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution;
- (b) the constitutionality of any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution;
- (c) any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution, for being inconsistent with any provision of this Constitution, including any provision of Chapter 2 of this Constitution; or
- (d) any decision made or authorised, or any action taken, or any decision which may be made or authorised, or any action which may be taken, under any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution, except as may be provided in or authorised by any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution.

(5) Notwithstanding anything contained in this Constitution, despite the repeal of the Administration of Justice Decree 2009, subsections (3), (4), (5), (6) and (7) of section 5 of the Administration of Justice Decree 2009 shall continue to apply to any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution.

(6) All written laws that had been made but had not come into force on the date of the commencement of this Constitution may be brought into force in accordance with their terms and shall apply as if enacted or made under or pursuant to this Constitution.

*Judicial proceedings*

174.—(1) The courts established by the Administration of Justice Decree 2009 shall continue in existence.

(2) All proceedings in the courts established under the Administration of Justice Decree 2009 that had commenced but had not been determined on the date of the commencement of this Constitution shall continue as if the provisions of this Constitution were in force at their commencement.

(3) Notwithstanding anything contained in this Constitution, sections 23, 23A, 23B, 23C, and 23D of the Administration of Justice Decree 2009 shall continue in force and shall not be amended, revised, altered or repealed, and the courts established by, or continued in existence under, this Constitution shall not have jurisdiction to—

- (a) accept, hear or determine any matter for which the jurisdiction of the courts is excluded under the Administration of Justice Decree 2009 or under any Promulgation, Decree, Declaration or under any other written law; or
- (b) accept, hear or determine any proceeding which had been terminated under the Administration of Justice Decree 2009 or under any Promulgation, Decree, Declaration or under any other written law.

## SCHEDULE

### OATHS AND AFFIRMATIONS

#### *Part A—Allegiance*

##### **OATH OF ALLEGIANCE**

I, ....., swear that I will be faithful and bear true allegiance to the Republic of Fiji according to law, and I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji. So help me, God!

##### **AFFIRMATION OF ALLEGIANCE**

I, ....., do solemnly, sincerely and truly declare that I will be faithful and bear true allegiance to the Republic of Fiji according to law, and I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji.

#### *Part B—For Taking Office*

##### **OATH FOR PRESIDENT**

I, ....., swear that I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I will devote myself to the well-being of the Republic of Fiji and all Fijians, protect and promote their rights and well and truly serve the Republic of Fiji in the office of the President. So help me, God!

##### **AFFIRMATION FOR PRESIDENT**

I, ....., do solemnly and sincerely and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I will devote myself to the well-being of the Republic of Fiji and all Fijians, protect and promote their rights and well and truly serve the Republic of Fiji in the office of the President.

##### **OATH FOR MINISTERS**

I, ....., being appointed as Prime Minister/Minister, swear that I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability. So help me, God!

**AFFIRMATION FOR MINISTERS**

I, ....., being appointed as Prime Minister/Minister, do solemnly and sincerely and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability.

**OATH FOR JUDICIAL OFFICERS**

I, ....., swear that, as a judicial officer within the courts of Fiji, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will do justice to all persons without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law. So help me, God!

**AFFIRMATION FOR JUDICIAL OFFICERS**

I, ....., do solemnly and sincerely and truly declare and affirm that, as a judicial officer within the courts of Fiji, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will do justice to all persons without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law.

**OATH FOR MEMBERS OF PARLIAMENT**

I, ....., swear that, as a member of Parliament of Fiji, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will act with integrity and diligently carry out my responsibilities, in accordance with the Constitution of the Republic of Fiji and the law. So help me, God!

**AFFIRMATION FOR MEMBERS OF PARLIAMENT**

I, ....., do solemnly and sincerely and truly declare and affirm that, as a member of Parliament of Fiji, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will act with integrity and diligently carry out my responsibilities, in accordance with the Constitution of the Republic of Fiji and the law.

**OATH FOR SPEAKER/DEPUTY SPEAKER OF PARLIAMENT**

I, ....., swear that, as the Speaker/Deputy Speaker of Parliament, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, maintain the dignity and honour of Parliament to the best of my ability, and act without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law. So help me, God!

**AFFIRMATION FOR SPEAKER/DEPUTY SPEAKER OF PARLIAMENT**

I, ....., do solemnly and sincerely and truly declare and affirm that, as the Speaker/Deputy Speaker of Parliament, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, maintain the dignity and honour of Parliament to the best of my ability, and act without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law.

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