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# Fiji Consolidated Legislation

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## Fiji Independence Order 1970 and Constitution of Fiji [Cap 1]

### FIJI

#### THE FIJI INDEPENDENCE ORDER 1970

*At the Court at Balmoral*

The 30th Day of September, 1970

Present,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

#### *Citation and commencement*

1.-(1) This Order may be cited as the Fiji Independence Order 1970.

(2) This Order shall be published in the Gazette and shall come into operation on 10th October 1970:

Provided that subsections (2) and (3) of section 4 of this Order shall come into operation forthwith.

#### *Interpretation*

2.-(1) In this Order -

"the Constitution" means the Constitution of Fiji set out in the Schedule to this Order;

"the appointed day" means 10th October 1970;

"the existing Constitution" means the Constitution set out in Schedule 2 to the Fiji (Constitution) Order 1966(a) as amended by the Fiji (Constitution) (Amendment) Order 1967(b) and the Fiji (Constitution) (Amendment) Order 1970(c);

"the existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Fiji immediately before the appointed day but does not include any Order revoked by this Order;

"the existing Legislative Council" means the Legislative Council established by the existing Orders;

"the existing Orders" means the Orders revoked by section 3(1) of this Order.

(2) The provisions of sections **127, 128, 130(2) and 137** of the Constitution shall apply for the purposes of interpreting sections **1 to 16** of this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

#### *Revocations*

**3.**-(1) The Fiji (Constitution) Order 1966, the Fiji (Constitution) (Amendment) Order 1967 and the Fiji (Constitution) (Amendment) Order 1970 are revoked.

(2) The Emergency Powers Order in Council 1939(d) and any Order in Council amending that Order shall cease to have effect as part of the law of Fiji on 10th April 1971 or such earlier date as Parliament may prescribe.

#### *Establishment of Constitution*

**4.**-(1) Subject to the provisions of this Order, the Constitution shall come into effect in Fiji on the appointed day.

(2) The Governor (as defined for the purposes of the existing Constitution) may at any time after this subsection comes into operation exercise any of the powers conferred upon the Governor-General by section **5(3)** of this Order or section **45(1)** or **69(1)** of the Constitution, to such extent as may in his opinion be necessary or expedient to enable the Constitution to function as from the appointed day, and if the Governor directs that it is necessary on expedient for that purpose that any selection of persons under section **45(2)** of the Constitution should take place before the appointed day that selection may take place accordingly.

(3) For the purposes of the exercise by the Governor under the preceding subsection of the powers conferred by the said section **45(1)** the references therein to the Prime Minister and to the Leader of the Opposition shall be construed as if they were references respectively to the Chief Minister and the Leader of the Opposition as defined for the purposes of the existing Constitution.

#### *Existing laws*

**5.**-(1) The revocation of the existing Orders shall be without prejudice to the continued operation of any existing laws made, or having effect as if they had been made, under any of those Orders; and the existing laws shall have effect on and after the appointed day, as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Fiji Independence Act 1970(a) and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing Orders that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Fiji Independence Act 1970 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may, by order published in the Gazette, at any time before 10th April 1971 make such amendments to any existing law (other than the Fiji Independence Act 1970 or this Order) as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that, save as otherwise provided either expressly or by necessary implication, nothing in this Order shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Order or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

### *Parliament*

**6.**-(1) Notwithstanding anything in section 32 of the Constitution, the House of Representatives shall, until Parliament is first dissolved, consist of thirty-six elected members, and any person who immediately before the appointed day is an elected member of the existing Legislative Council shall on that day become a member of the House of Representatives (whether or not he becomes a citizen of Fiji on that day) and shall be deemed to have complied with the requirements of section 55 of the Constitution and shall hold his seat in the House in accordance with the provisions of the Constitution.

(2) If any vacancy among the members of the House of Representatives exists on the appointed day or occurs between that day and the first dissolution of Parliament the vacancy may be filled by an election held in the like manner as an election to fill that vacancy would have been held if the

vacancy had occurred among the members of the existing Legislative Council and the law applicable thereto were (subject to any such modifications, adaptations, qualifications and exceptions as are mentioned in section **5**(1) of this Order and to any amendments made under section **5**(3) of this Order) that in force immediately before the appointed day:

Provided that the provisions of sections **33**, **37** and **44** of the Constitution shall apply, and the provisions of paragraphs (b) and (c) of section **48**(1) and sections **49** and **53** of the existing Constitution shall not apply, in relation to that election.

(3) Any person who immediately before the appointed day holds the office of Speaker or Deputy Speaker of the existing Legislative Council shall on that day become the Speaker or, as the case may be, the Deputy Speaker of the House of Representatives and shall hold his office as such in accordance with the provisions of the Constitution.

(4) Notwithstanding anything in section **46**(1) of the Constitution, until Parliament is first dissolved a person shall be qualified to be appointed as a member of the Senate if, and shall not be so qualified unless, he is registered immediately before the appointed day as a voter on one of the rolls referred to in section **47**(2) of the existing Constitution and he shall be qualified to be so appointed whether or not he is a citizen of Fiji; but any member of the Senate who is not a citizen of Fiji on the date on which Parliament is first dissolved shall vacate his seat in the Senate on that date.

(5) The standing rules and orders of the existing Legislative Council as in force immediately before the appointed day shall, except as may be otherwise provided under section **54**(1) of the Constitution, be the rules of procedure of the House of Representatives and of the Senate, but they shall be construed in relation to each House of Parliament with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Any committee of the existing Legislative Council that stands constituted immediately before the appointed day by virtue of any resolution of the Council shall be deemed to have been constituted on that day by resolution of the House of Representatives as a committee of that House; and any elected member of the existing Legislative Council who immediately before the appointed day is a member of any committee of that Council (whether constituted as aforesaid or by the standing rules and orders of the Council) by virtue of any appointment made by the Speaker of the Council shall be deemed to have been appointed on that day to the corresponding committee of the House of Representatives by the Speaker of the House.

(7) Notwithstanding anything in subsection (2), (3) or (4) of section **70** of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 11th November 1971:

Provided that, if the Electoral Commission advises the House of Representatives that there is likely to be difficulty in holding the next ensuing general election of members of the House in accordance with any of the provisions of the Constitution or of any other law if Parliament is dissolved not later than 11th November 1971, the House of Representatives may resolve that the provisions of this subsection shall have effect as if there were substituted for that date such other date, not being more than six months thereafter, as may be specified in the resolution; and thereupon this subsection shall

have effect accordingly.

(8) Any person who immediately before the appointed day is registered as a voter on one of the rolls referred to in section **47**(2) of the existing Constitution shall, subject to the provisions of section **40**(2) of the Constitution, be qualified to be registered as mentioned in section **40**(1) of the Constitution for the purposes of the first general election of members of the House of Representatives after the appointed day notwithstanding that he is not a citizen of Fiji; but, notwithstanding anything contained in section **32** or **41** of the Constitution, a person who is registered as mentioned in section **40**(1) of this Constitution by virtue of the foregoing provisions of this subsection shall not be qualified to be elected as a member of the House of Representatives in that general election or any subsequent election of members of the House or to vote at any such subsequent election unless he has, before the date prescribed for the nomination of candidates or, as the case may be, for polling in the election concerned, become a citizen of Fiji.

(9) Until Parliament is first dissolved, paragraph (a) of section **58**(2) of the Constitution shall have effect as if the reference therein to seventeen members were a reference to fourteen members.

#### *Ministers*

**7.**-(1) Any person who immediately before the appointed day holds office as Chief Minister or any other Minister or Assistant Minister under the existing Constitution shall as from that day hold office as Prime Minister or, as the case may be, other Minister or Assistant Minister as if he had been appointed thereto under section **73** or **80** of the Constitution.

(2) Any person holding office as Prime Minister or other Minister by virtue of the preceding subsection who immediately before the appointed day was assigned responsibility for any business of the Government shall be deemed to have been assigned responsibility for such business under section **76** of the Constitution.

(3) Any person who holds office as Prime Minister, other Minister or Assistant Minister by virtue of subsection (1) of this section shall be deemed to have complied with the requirements of section **81** of the Constitution.

#### *Leader of the Opposition*

**8.** The person who immediately before the appointed day is the Leader of the Opposition (as defined for the purposes of the existing Constitution) shall as from that day hold office as Leader of the Opposition as if he had been appointed thereto under section **86** of the Constitution.

#### *Public officers*

**9.**-(1) Every person who immediately before the appointed day holds or is acting in a public office shall, as from the appointed day, hold or act in that office or the corresponding public office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution and shall be deemed to have taken any oaths required upon such appointment by any existing law:

Provided that any person who under the existing Constitution or any existing law would have been required to vacate office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution upon the expiration of that period or upon the attainment of that age.

(2) The provisions of the preceding subsection shall not apply to any person mentioned in paragraph (b)(i) of section **85**(1) of the existing Constitution who is serving as a judge of the Court of Appeal immediately before the appointed day.

(3) Until Parliament otherwise prescribes the number of puisne judges of the Supreme Court shall be two.

(4) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

#### *Legal proceedings*

**10.**-(1) All proceedings commenced or pending immediately before the appointed day before the Supreme Court or the Court of Appeal established by the existing Constitution may continue on and after that day before the Supreme Court or the Court of Appeal, as the case may be, established by the Constitution.

(2) Any decision given before the appointed day by the Supreme Court or the Court of Appeal established by the existing Constitution shall, for the purposes of its enforcement or of any appeal therefrom, have effect on and after that day as if it were a decision of the Supreme Court or the Court of Appeal, as the case may be, established by the Constitution.

#### *Jurisdiction of Court of Appeal in relation to Western Pacific*

**11.**-(1) Unless it is otherwise prescribed by Parliament, the Court of Appeal may exercise on and after the appointed day such jurisdiction and powers in relation to appeals from the High Court of the Western Pacific as may be conferred upon it by or in pursuance of section **19**(1) of the Western Pacific (Courts) Order in Council 1961(**b**) (as amended by the Western Pacific (Courts) (Amendment) Order 1966(**a**)) or of any other law in that behalf for the time being in force in any territory in or in relation to which jurisdiction is for the time being exercisable by the said High Court.

(2) The provisions of section **100** of the Constitution shall not apply in relation to decisions of the Court of Appeal given in exercise of any jurisdiction and powers conferred upon it in relation to appeals from the High Court of the Western Pacific, and appeals shall lie to Her Majesty in Council from such decisions in accordance with the Western Pacific (Appeals to Privy Council) Order 1970(**c**) or any other law for the time being in force in the territories in or in relation to which jurisdiction is for the time being exercisable by the said High Court.

(3) Section **19** of the Western Pacific (Courts) Order in Council 1961, as amended, shall cease to form part of the law of Fiji with effect from the appointed day.

*Magistrates' courts and magistrates*

**12.**-(1) Any person who immediately before the appointed day is a person appointed to hold a magistrate's court of the first, second or third class, shall, as from that day, hold the office of first, second, or third class magistrate, respectively, (which offices are hereby constituted and established), and accordingly as from the appointed day -

(a) the jurisdiction and powers under any existing law of persons appointed to hold magistrate's courts of the first, second or third class, or of magistrates' courts of such classes, shall vest in the offices of first, second or third class magistrate, respectively, as constituted and established as aforesaid:

Provided that a person who holds or is acting in the office of senior magistrate immediately before that day shall have and exercise all the powers and jurisdiction conferred upon a first class magistrate by the provisions of this subsection;

- 
- (a) S.I. 1961/1506 (1961 II.
  - (b) S.I. 1961/1183 (1966 III.
  - (c) S.I. 1970/1435

(b) references to persons holding the office of first, second or third class magistrate, or to magistrates courts of the first, second or third class, in any existing law, or in any instrument, document or legal proceedings subsisting or continuing upon the appointed day, shall be construed as references to first, second or third class magistrates, respectively.

(2) The terms of service which apply immediately before the appointed day to a person appointed to hold a magistrate's court of the first, second or third class shall apply to such person in respect of his tenure of the office of a first, second or third class magistrate by virtue of the provisions of the preceding subsection.

*Transitional provisions relating to Commissions*

**13.**-(1) Any person who immediately before the appointed day holds or is acting in any office to which this subsection applies shall, as from the appointed day, hold or act in the corresponding office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution:

Provided that any such person who under the provisions of the existing Orders would have been required to vacate his office on the expiration of any period or at any other time specified in the instrument by which he was appointed shall vacate his office at the expiration of that period or at that time.

(2) A person shall become and continue to be the holder of the corresponding office by virtue of the preceding subsection, and may be re-appointed under the Constitution to that office at any time,

notwithstanding that circumstances exist on the appointed day and continue to exist thereafter that under the Constitution would cause him to be disqualified for appointment to that office if the office to which that office corresponds was held by that person on 10th July 1970 and the like circumstances existed on that date.

(3) Subsection (1) of this section applies to the office of appointed member of the Judicial and Legal Services Commission established by the existing Constitution and to the office of any member of the Public Service Commission or the Police Service Commission established by that Constitution.

(4) Any power that, immediately before the appointed day, is vested in a Commission established by Chapter VII of the existing Constitution and that under that Constitution is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority on the appointed day in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the appointed day may be carried on before the corresponding Commission established by Chapter VIII of the Constitution.

(5) The references to the House of Representatives in sections **38(3)**, **101(3)**, **104(2)** and **106(2)** of the Constitution shall, until the expiration of five years from the appointed day in the case of section **38(3)** and of three years from that day in any other case, be construed as including references to the existing Legislative Council.

*Compulsory retirement to facilitate appointment of local candidates*

**14.**-(1) If the Prime Minister so requests, the Commission or other authority or person having power to make appointments in any branch of the public service (in this subsection referred to as "the appointing authority") shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and the appointing authority, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this section applies and whose retirement would in the opinion of the appointing authority cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected) the appointing authority shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall notwithstanding any provision of the Constitution, retire accordingly.

(2) A notice given under this section requiring an officer to retire from the public service shall be not less than six months from the date he receives the notice, at the expiration of which he shall proceed on leave of absence pending retirement:

Provided that, with the agreement of the officer or if the officer is on leave when it is given, a notice may specify a shorter period.

(3) This section applies to any officer who is the holder of a pensionable office in the public service and is a designated officer for the purposes of the Overseas Service (Fiji) Agreement 1961.



(4) Any notice given or other thing done under section **94A** of the existing Constitution shall, as from the appointed day, have effect as if it had been given or done under this section.

*Appeals in respect of certain decisions affecting pensions benefits*

**15.**-(1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:-

(a) a decision of the appropriate Commission to give such concurrence as is required by subsection (1) or (2) of section **111** of the Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer;

(b) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or

(c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any such decision as is referred to in the preceding subsection is taken by any authority, the authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the Prime Minister in writing of that application and the Prime Minister shall thereupon appoint an Appeals Board consisting of -

(a) one member selected by the Prime Minister;

(b) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and

(c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial and Legal Services Commission) who shall be the chairman of the Board.

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose -

(a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

(b) may hear any other person who, in the opinion of the Board, is able to give, the Board information on the case; and

(c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When the Appeals Board has completed its consideration of the case, then -

(a) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (a) of subsection (1) of this section the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision but -

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he had so retired; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(6) The provisions of subsections (1), (2), (3) and (4) of section **135** of the Constitution shall apply with the necessary modifications in relation to an Appeals Board established under this section as they apply in relation to a Commission established by the Constitution.

(7) In this section -

"pensions benefits" has the meaning assigned to that expression in section **110** of the Constitution; and

"legal representative" means a person lawfully in or entitled to be in Fiji and entitled to practise in Fiji as a barrister and solicitor.

(8) This section applies to an officer who is the holder of a pensionable office in the public service and -

(a) who is a member of Her Majesty's Overseas Civil Service or of Her Majesty's Overseas Judiciary;

(b) who has been designated for the purposes of the Overseas Service (Fiji) Agreement 1961; or

(c) who was selected for appointment to any office in the public service, or whose appointment to any such office was approved, by a Secretary of State.

(9) This section also applies to any officer who is employed as a public officer on contract and who has been designated for the purposes of the Overseas Service (Fiji) Agreement 1961 or any agreement replacing that agreement; and for the purposes of the application of this section to such an officer -

(a) references in this section to pensions benefits shall be construed as including references to any gratuity or other payment to which the officer is entitled under his contract on the expiration of the term of employment for which it provides;

(b) references in this section to the grant of such benefits under any law or to any law with respect to pensions benefits shall be construed as including references respectively to the payment of such benefits under that contract and to that contract; and

(c) references in this section to the removal of the officer from office and to his voluntary retirement shall be construed as references respectively to the termination of his contract and to the expiration of the term of employment for which it provides.

#### *Alteration of this Order*

**16.**-(1) Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of the Constitution not specified in section **67(2)** of the Constitution:

Provided that subsections (1), (2) and (7) of section **6**, section **9**, subsections (1), (2) and (3) of section **13** and this section may be altered by Parliament only in the same manner as the provisions

so specified.

(2) Section **67**(6) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in section **67** of the Constitution to any provision of the Constitution and to the alteration of any such provision.

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### THE CONSTITUTION OF FIJI

Whereas on 10th October 1874 Cakobau, styled Tui Viti and Vunivalu, and other High Chiefs signified their loyalty to Her Most Gracious Majesty Queen Victoria and their dedication to God and

to the rule of law by the solemn agreement known as the Deed of Cession made and concluded by them of the one part and Sir Hercules George Robert Robinson, the representative of Her Majesty, of the other part:

And Whereas in November 1879 the Chiefs of Rotuma similarly signified adherence to such principles by the Deed of Rotuma Cession:

And Whereas many persons of all races and creeds have come from divers countries and have desired peace and prosperity under the precepts and principles of such Cessions:

And Whereas all the peoples of Fiji have ever since acknowledged their allegiance to the Crown and their reverence for God and the rights and freedoms of the individual secured and safeguarded by adherence to the rule of law:

And Whereas those peoples have become united under a common bond, have progressively advanced economically and politically and have broadened their rights and freedoms in accordance with the dignity of the human person and the position of the family in a society of free men and free institutions:

Now, therefore, the people of Fiji do affirm their allegiance to Her Most Excellent Majesty Queen Elizabeth II, Her heirs and successors, their reverence for God and their unshakeable belief that all are entitled to fundamental human rights and freedoms based upon and secured by the rule of law and to that end desire that the following provisions shall take effect as the Constitution of Fiji:-

## CHAPTER I

### THE STATE AND THE CONSTITUTION

#### *The State*

1. Fiji shall be a sovereign democratic State.

#### *Constitution is supreme law*

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

## CHAPTER II

### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

#### *Fundamental rights and freedoms of the individual*

3. Whereas every person in Fiji is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

*Protection of right to life*

**4.-(1)** No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

*Protection of right to personal liberty*

**5.-(1)** No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say -

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Fiji or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;

- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Fiji, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Fiji; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Fiji or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Fiji in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

- (a) for the purpose of bringing him before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried

within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person, or from any other person or authority on whose behalf that other person was acting.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

#### *Protection from slavery and forced labour*

6.-(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include -

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

(b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

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

#### *Protection from inhuman treatment*

7. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

#### *Protection from deprivation of property*

**8.-(1)** No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of a law that -

(a) requires the acquiring authority to give reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition;

(b) requires the acquiring authority to apply to the Supreme Court for an order authorising such taking of possession or acquisition or to apply thereto within thirty days of such taking of possession for such an order as aforesaid;

(c) requires the Supreme Court not to grant such an order unless it is satisfied that the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or utilisation of any property in such a manner as to promote the public benefit;

(d) requires the acquiring authority to pay damages in respect of such taking of possession prior to an application to the Supreme Court when such an order is not granted and requires the prompt payment of adequate compensation for the taking of possession or acquisition where such an order is granted;

(e) requires the acquiring authority, if no agreement as to the amount and manner of payment of compensation has been concluded with any claimant to compensation within thirty days of the grant of the order referred to in paragraph (b) of this subsection, to apply to the Supreme Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation); and

(f) requires the acquiring authority to pay the costs reasonably incurred by any other party in connection with the proceedings before the Supreme Court for any of the aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court or the Court of Appeal given for those purposes.

**(2)** Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question authorises the taking of possession of property compulsorily during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community and makes provision that -

(a) requires the acquiring authority promptly to inform any person owning the property of the taking of possession;

(b) enables any such person to notify the acquiring authority that he objects to the compulsory possession of the property by that authority;

(c) requires the acquiring authority, in the case of any such notification, to apply within thirty days thereafter to an independent and impartial tribunal, appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji, for a determination of the authority's entitlement to compulsory possession of the property;

(d) requires the tribunal to order the acquiring authority to return the possession of the property unless the tribunal is satisfied that its possession by that authority is reasonably justifiable, in the circumstances of the situation existing, for the purpose of dealing with that situation;

(e) requires the prompt payment of adequate compensation for the taking of possession; and

(f) enables application to be made by any claimant to compensation to the tribunal for the determination of the amount and manner of payment of compensation in relation to that claimant (including, where necessary, any question as to his entitlement to compensation).

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question authorises -

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property -

(i) in satisfaction of any tax, duty, rate, cess or due;

(ii) by way of penalty for breach of the law, or forfeiture in consequence of a breach of the law;

(iii) as an incident of a grant, lease, tenancy, mortgage, charge, bill

of sale, pledge, contract, permission or licence;

(iv) in the execution of judgments or order of a court;

(v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;

(vi) in consequence of any law with respect to the limitation of actions or acquisitive prescription; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say -

(i) enemy property;

(ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the Crown of the ownership of underground water or unextracted minerals.



(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided from public funds.

(8) For the purposes of subsections (1) and (2) of this section "acquiring authority" means the person or authority intending to take possession of, or acquire the right or interest in, the property compulsorily or who has taken possession of, or acquired the interest or right in, the property compulsorily, as the context may require.

*Protection for privacy of home and other property*

9.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government, or of a local authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

*Provisions to secure protection of law*

10.-(1) if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial;

and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the preceding subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

(a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) to this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) For the purposes of subsection (2) of this section a person who has been served with a summons or other process requiring him to appear at the time and place appointed for his trial and who does not so appear shall be deemed to have consented to the trial taking place in his absence.

#### *Protection of freedom of conscience*

**11.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of

conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community, whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance designed, to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of eighteen years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision -

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

(b) for the purpose of protecting the rights or freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

(c) with respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

#### *Protection of freedom of expression*

**12.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

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

(b) for the purpose of protecting the reputations, rights or freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

*Protection of freedom of assembly and association*

**13.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

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

(b) for the purpose of protecting the rights or freedoms of other persons; or

(c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

*Protection of freedom of movement*

**14.**-(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Fiji, the right to reside in any part of Fiji, the right to enter Fiji, the right to leave Fiji and immunity from expulsion from Fiji.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) for imposing restrictions on the movement or residence within Fiji of any person or on any person's right to leave Fiji that are reasonably required in the interests of defence, public safety or public order;

(b) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) for imposing restrictions, by order of a court, on the movement or residence within Fiji of any person or on any person's right to leave Fiji either in consequence of his having been found guilty of a criminal offence or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Fiji;

(d) for imposing restrictions on the movement or residence within Fiji of any person who is not a citizen of Fiji or for excluding or expelling any such person from Fiji;

(e) for imposing restrictions on the acquisition or use by any person of any property in Fiji;

(f) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of any public officer;

(g) for the removal of a person from Fiji to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

(h) for imposing restrictions on the right of any person to leave Fiji that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (a) of the preceding subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji.

(5) On any review by a tribunal in pursuance of the preceding subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

*Protection from discrimination on the grounds of race, etc.*

**15.-(1)** Subject to the provisions of this section -

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(3) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1)(a) of this section to the extent that the law in question makes provision -

(a) for the appropriation of revenues or other funds of Fiji;

(b) with respect to persons who are not citizens of Fiji;

(c) for the application, in the case of persons of any such description as is mentioned in the preceding subsection (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;

(d) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law;

(e) whereby persons of any such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society;

(f) for standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to, or to act in, any public office, any office in the service

of a local authority or any officer in a body corporate established by any law for public purposes; or

(g) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

(4) Subsection (1)(b) of this section shall not apply to -

(a) anything that is expressly or by necessary implication authorised to be done by any provision of law that is referred to in the preceding subsection; or

(b) the exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

(a) if the law in question was in force immediately before 23rd September 1966 and has continued in force at all times since that day; or

(b) to the extent that it repeals and re-enacts any provision which has been contained in any written law at all time since immediately before that day.

(6) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (2) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections **9**, **11**, **12**, **13** and **14** of this Constitution, being such a restriction as is authorised by section **9**(2), section **11**(5), section **12**(2), section **13**(2), or section **14**(3)(a) or (b), as the case may be.

#### *Protection of persons detained under emergency laws*

**16.**-(1) Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, the following provisions shall apply, that is to say -

(a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in



writing, in a language that he understands, specifying in detail the grounds upon which he is detained;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter, during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons qualified to practise as barristers and solicitors in Fiji;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(e) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or (e) of this section shall be construed as entitling a person to legal representation at public expense.

#### *Enforcement of protective provisions*

**17.-(1)** If any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction -

(a) to hear and determine any application made in pursuance of the preceding subsection;

(b) to determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of the last foregoing subsection, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) No appeal shall lie from any determination by the Supreme Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred on it by this section.

(7) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the Supreme Court (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

### *Interpretation of Chapter II and savings*

**18.-(1)** In this Chapter, unless the context otherwise requires -

"contravention", in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Fiji, including Her Majesty in Council, but excepting, save in sections **4** and **6** of this Constitution, a court established by a disciplinary law;

"criminal offence" means a criminal offence under the law of Fiji;

"legal representative" means a person lawfully in or entitled to be in Fiji and entitled to practise in Fiji as a barrister and solicitor;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in sections **12**, **13** or **14** of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as

to their communication or association with other persons or as to their movements or residence.

(3) In relation to any person who is a member of a disciplined force of Fiji, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(4) In relation to any person who is a member of a disciplined force that is not a disciplined force of Fiji and who is present in Fiji in pursuance of arrangements made between the Government of Fiji and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(5) No measures taken in relation to a person who is a member of a disciplined force of a country with which Fiji is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) In this Chapter "period of public emergency" means any period during which -

(a) Fiji is engaged in any war; or

(b) there is in force a proclamation by the Governor-General declaring that a state of public emergency exists.

(7) Without prejudice to the power of the Governor-General to revoke at any time a proclamation made for the purposes of the last foregoing subsection, such a proclamation shall lapse at the expiration of six months from the date it was made unless it has in the meantime been approved by a resolution of each House of Parliament, and a proclamation that has been so approved shall remain in force so long as those resolutions remain in force and no longer.

(8) A resolution of either House of Parliament passed for the purposes of the preceding subsection shall remain in force for such period not exceeding six months as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension being for such period not exceeding six months from the date of the resolution effecting the extension as maybe specified therein.

### CHAPTER III

#### CITIZENSHIP

##### *Persons who become citizens on 10th October 1970*

**19.**-(1) Every person who, having been born in Fiji is on 9th October 1970 a citizen of the United Kingdom and Colonies shall become a citizen of Fiji on 10th October 1970.

(2) Every person who, on 9th October 1970, is a citizen of the United Kingdom and Colonies -

(a) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalised by the Governor of the former colony of Fiji as a British subject before that Act came into force;

(b) having become such a citizen by virtue of his having been naturalised by the Governor of the former colony of Fiji under that Act; or

(c) having become such a citizen by virtue of his having been registered by the Governor of the former colony of Fiji under that Act before the 6th May 1970,

shall become a citizen of Fiji on 10th October 1970.

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(a) 1948 c. 56

(3) Every person who, having been born outside Fiji, is on 9th October 1970 a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Fiji by virtue of subsection (1) of subsection (2) of this section, become a citizen of Fiji on 10th October 1970.

*Persons entitled to be registered as citizens*

**20.**-(1) Any woman who, on 10th October 1970, is or has been married to a person -

(a) who becomes a citizen of Fiji by virtue of the preceding section; or

(b) who, having died before 10th October 1970 would, but for his death, have become a citizen of Fiji by virtue of that section,

shall be entitled, upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Fiji:

Provided that, in the case of any woman who on 10th October 1970 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Fiji under this subsection shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any person who is a Commonwealth citizen (otherwise than by virtue of being a citizen of Fiji) and who immediately before 10th October 1970 was a person deemed to belong to Fiji for the purposes of Chapter I of the Constitution set out in schedule 2 to the Fiji (Constitution) Order 1966 by virtue of such residence in Fiji as is mentioned in paragraph (b) of section 16(3) of that Constitution may, at any time before 10th October 1972, apply to be registered as a citizen of Fiji; and any person who applies under this subsection shall be entitled to be registered as such a citizen:

Provided that a person who, at the time of his application is a citizen of any country to which section 24 of this Constitution applies and has attained the age of twenty-one years shall not be registered as a citizen of Fiji under this subsection unless he has renounced his citizenship of that country or, if

the law of that country does not permit him to renounce his citizenship thereof, has made such declaration as may be prescribed.

(3) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of twenty-one years and is not a woman who is or has been married but shall be made on behalf of that person by a parent or guardian of that person.

*Persons born in Fiji after 9th October 1970*

**21.** Every person born in Fiji after 9th October 1970 shall become a citizen of Fiji at the date of his birth:

Provided that a person shall not become a citizen of Fiji by virtue of this section if at the time-of his birth -

(a) his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Fiji and neither of his parents is a citizen of Fiji; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

*Persons born outside Fiji after 9th October 1970*

**22.** A person born outside Fiji after 9th October 1970 shall become a citizen of Fiji at the date of his birth if at that date his father is a citizen of Fiji otherwise than by virtue of this section or section 19(3) of this Constitution.

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*Marriage to citizen of Fiji*

**23.** Any woman who after 9th October 1970 marries a person who is or becomes a citizen of Fiji shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected, person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Fiji:

Provided that the right to be registered as a citizen of Fiji under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

*Commonwealth citizens*

**24.**-(1) Every person who under this Constitution or any other law is a citizen of Fiji or under any enactment for the time being in force in any country to which this section applies is a citizen of that

country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965(a) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, \* the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda., Kenya, Malawi, Malta, Zambia, The Gambia, Singapore, Guyana, Lesotho, Botswana, Barbados, Mauritius, Swaziland, Tonga and Southern Rhodesia.

(4) Parliament may, subject to the provisions of this Constitution, make provision prescribing the rights, privileges, duties and liabilities of persons having the status of Commonwealth citizen.

### *Powers of Parliament*

**25.** Parliament may make provision -

(a) for the acquisition of citizenship of Fiji by persons who are not eligible or who are no longer eligible to become citizens of Fiji by virtue of the provisions of this Chapter;

(b) for depriving of his citizenship of Fiji any person who is a citizen of Fiji otherwise than by virtue of section 19, 20(2), 21 or 22 of the Constitution;

(c) for the renunciation by any person of his citizenship of Fiji;

(d) for the maintenance of a register of citizens of Fiji who are also citizens of other countries; or

(e) for depriving of his citizenship of Fiji any citizen of Fiji who has attained the age of 21 years and who, being a citizen of some other country, has not, within such period as may be prescribed, renounced his citizenship of that other country or, if the law of that other country does not permit him to renounce his citizenship of that other country, made such declaration as may be prescribed.

### *Interpretation*

**26.-(1)** In this Chapter -

"alien" means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948.

(2) Any reference in this Chapter to the father of a person shall, in relation to a person born out of

wedlock, be construed as a reference to the mother of that person.

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 10th October 1970 and the birth occurred before 9th October 1970 the national status that the father would have had if he had died on 10th October 1970 shall be deemed to be his national status at the time of his death.

## CHAPTER IV

### THE GOVERNOR-GENERAL

#### *Establishment of office of Governor-General*

**27.** There shall be a Governor-General and Commander-in-Chief of Fiji who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Fiji.

#### *Acting Governor-General*

**28.** Whenever the office of Governor-General is vacant or the holder of the office is absent from Fiji or is for any other reason unable to perform the functions of his office, those functions shall be performed by such person as Her Majesty may appoint or, if there is no such person in Fiji so appointed and able to perform those functions, by the Chief Justice.

#### *Oaths to be taken by Governor-General*

**29.** A person appointed to the office of Governor-General or assuming the functions of that office under the preceding section shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath of office as prescribed by schedule 1 to this Constitution, such oaths being administered by the Chief Justice or such other judge of the Supreme Court as may be designated by the Chief Justice.

## CHAPTER V

### PARLIAMENT

#### PART 1

#### *Composition of Parliament*

#### *Establishment of Parliament*

**30.** There shall be a Parliament for Fiji which shall consist of Her Majesty, a House of

Representatives and a Senate.

## PART 2

### *The House of Representatives*

#### *The House of Representatives to consist of elected members*

**31.** The House of Representatives shall consist of persons elected in accordance with the provisions of this Constitution and, subject thereto, in such manner as may be prescribed.

#### *Number and method of election of members*

**32.**-(1) There shall be fifty-two members of the House of Representatives and they shall be elected to represent constituencies.

(2) For the purpose of electing the members of the House, voters shall be registered on one of three separate rolls, that is to say -

- (a) a roll of voters who are Fijians;
- (b) a roll of voters who are Indians; and
- (c) a roll of voters who are neither Fijians or Indians;

and all voters so registered shall also be registered on one additional roll (in this Constitution referred to as "the national roll").

(3) Twenty-two members of the House shall be elected from among persons who are registered on the roll of voters who are Fijians, and of those members -

- (a) twelve shall be elected by voters registered on that roll; and
- (b) ten shall be elected by voters registered on the national roll.

(4) Twenty-two members of the House shall be elected from among persons who are registered on the roll of voters who are Indians, and of those members -

- (a) twelve shall be elected by voters registered on that roll and
- (b) ten shall be elected by voters registered on the national roll.

(5) Eight members of the House shall be elected from among persons who are registered on the roll of voters who are neither Fijians nor Indians, and of those members -

- (a) three shall be elected by voters registered on that roll; and



(b) five shall be elected by voters registered on the national roll.

*Disqualifications for election as a member*

**33.**-(1) No person shall be qualified to be elected as a member of the House of Representatives who

(a) is by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the Commonwealth;

(b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth;

(c) is, under any law in force in Fiji, adjudged or otherwise declared to be of unsound mind;

(d) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(e) is disqualified for membership of the House under any law in force in Fiji relating to offences connected with elections;

(f) subject to any exceptions prescribed by Parliament, holds or is acting in any public office;

(g) has at any time during the immediately preceding three years held or acted in the office of a member of the Constituency Boundaries Commission, the Electoral Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission or the office of Supervisor of Elections or Ombudsman;

(h) subject to any exceptions or limitations prescribed by Parliament, has any such interest in any such government contract as may be so prescribed; or

(i) holds or is acting in an office the functions of which involve any responsibility for, or in connection with, the conduct of any election to the House.

(2) For the purposes of paragraph (d) of the preceding subsection -

(a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(3) In paragraph (h) of subsection (1) of this section "government contract" means any contract made with the Government or with a department of the Government or with an officer of the Government contracting as such.

*Vacation of seats of members*

**34.-(1)** A member of the House of Representatives shall vacate his seat therein -

(a) upon a dissolution of Parliament;

(b) if he ceases to be a citizen of Fiji;

(c) if he is absent from three consecutive meetings of the House without having obtained from the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the deputy Speaker) before the termination of any of those meetings permission to be or to remain absent from that meeting;

(d) if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election thereto by virtue of paragraphs (a), (b), (c), (e), (f), (h) or (i) of subsection (1) of the preceding section.

(2) A member of the House may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules of procedure of the House.

(3) For the purposes of paragraph (c) of subsection (1) of this section, "meeting" means the sittings of the House commencing when it first meets after being summoned at any time or after an adjournment *sine die* and terminating when it is adjourned *sine die* or at the conclusion of a session of Parliament.

*Vacation of seat on sentence*

**35.-(1)** Subject to the provisions of this section, if a member of the House of Representatives is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the House and his seat in the House shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the House

signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the House shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the House.

(3) Paragraphs (a) and (b) of section **33**(2) of this Constitution shall apply for the purposes of this section as they apply for the purposes of paragraph (d) of section **33**(1).

#### *Speaker and Deputy Speaker*

**36.**-(1) The House of Representatives shall at its first sitting after any general election elect from among its members a Speaker and a Deputy Speaker.

(2) A member of the House shall not be qualified for election as Speaker or Deputy Speaker if he is a Minister or an Assistant Minister.

(3) The office of the Speaker or the deputy Speaker shall become vacant -

(a) if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;

(b) if, under the provisions of the preceding section, he is required to cease to perform his functions as a member of the House;

(c) if he becomes a Minister or an Assistant Minister;

(d) if the House passes a resolution supported by the votes of not less than two-thirds of all the members thereof requiring his removal from office; or

(e) in the case of the Deputy Speaker, if he is elected as Speaker.

(4) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the House and the office shall become vacant when the writing is received by the Clerk to the House.

(5) The office of the Speaker shall also become vacant when the House first sits after any general election; and the office of the Deputy Speaker shall also become vacant on a dissolution of Parliament.

(6) If the office of Speaker or Deputy Speaker becomes vacant under subsection (3) or (4) of this section the House shall, unless Parliament is sooner dissolved, elect one of its members to fill the vacancy at its next sitting after the occurrence of the vacancy or, in the case of the Deputy Speaker, as soon as practicable thereafter.

(7) No business shall be transacted in the House (other than the election of a Speaker) at any time when the office of Speaker is vacant.

*Determination of questions of membership*

**37.**-(1) The Supreme Court shall have jurisdiction to hear and determine any question whether -

(a) any person has been validly elected as a member of the House of Representatives;

(b) any member of the House has vacated his seat or is required, under the provisions of section **35** of this Constitution, to cease to perform his functions as member of the House.

(2) An application for the determination of any question under the preceding subsection may be made by any person registered as a voter for the purpose of electing members of the House or by the Attorney-General; and, if any such application is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) A determination by the Supreme Court in proceedings under this section shall not be subject to an appeal.

(4) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

*Constituency Boundaries Commission*

**38.**-(1) There shall be a Constituency Boundaries Commission consisting of a Chairman and two other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as the Chairman of the Commission unless he holds or has held high judicial office in some part of the Commonwealth.

(3) A person shall not be qualified to be appointed as a member of the Commission if he is, or has at any time during the five years preceding his appointment been -

(a) a member of the House of Representatives, a member of the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or any local authority;

(c) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of five years sponsored or otherwise supported a candidate for election as a member of the House of Representatives;

or if he is a public officer or a local government officer.

(4) Subject to the provisions of the next following subsection, a member of the Commission shall vacate his office -

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) The provisions of section 108 of this Constitution shall apply to a member of the Constituency Boundaries Commission as they apply to the appointed member of the Judicial and Legal Services Commission except that subsection (7)(a) shall apply as if for the words "in accordance with the advice of the Chief Justice" there were substituted the words "in his own deliberate judgment".

### *Constituencies*

**39.**-(1) Subject to the provisions of this section, the boundaries of constituencies for the purpose of the election of members of the House of Representatives shall be such as may be prescribed by order made by the Constituency Boundaries Commission.

(2) Fiji shall be divided -

(a) into twelve constituencies each returning one of the members referred to in paragraph (a) of section **32**(3) of this Constitution;

(b) into twelve constituencies each returning one of the members referred to in paragraph (a) of section **32**(4) of this Constitution;

(c) into three constituencies each returning one of the members referred to in paragraph (a) of section **32**(5) of this Constitution;

(d) into ten constituencies each returning one of the members referred to in paragraph (b) of section **32**(3) and one of the members referred to in paragraph (b) of section **32**(4) of this Constitution; and

(e) into five constituencies each of which shall consist of two of the constituencies referred to in the last foregoing paragraph and shall return one of the members referred to in paragraph (b) of section **32**(5) of this Constitution.

(3) When the Constituency Boundaries Commission, prescribes the boundaries of the constituencies or, following a review of those boundaries, prescribes new boundaries for any constituencies, it shall do so in such a manner that -

(a) the constituencies referred to in paragraph (a) of the preceding subsection

contained as nearly equal numbers of adult Fijian inhabitants;

(b) the constituencies referred to in paragraph (b) of that subsection contain as nearly equal numbers of adult Indian inhabitants;

(c) the constituencies referred to in paragraph (c) of that subsection contain as nearly equal numbers of adult inhabitants who are neither Fijians nor Indians; and

(d) the constituencies referred to in paragraph (d) of that subsection contain as nearly equal numbers of adult inhabitants,

as appears to the Commission to be reasonably practicable:

Provided that the Commission may depart from the foregoing principles to such extent as it considers expedient in order to take account of geographical features, the boundaries of existing administrative and recognised traditional areas, means of communication and density and mobility of populations.

(4) The boundaries of the constituencies shall be prescribed by the Commission as soon as practicable after the commencement of this Constitution; and thereafter the Commission may review the boundaries of the constituencies whenever it considers this to be desirable and shall do so not later than ten years after it first prescribed those boundaries or, as the case maybe, last reviewed them.

(5) Every order made by the Commission under this section shall be published in the Gazette and shall take effect for the purpose of elections to the House of Representatives subsequent to the next dissolution of Parliament after it was made.

(6) In subsection (3) of this section "adult" means of or over the age of twenty-one years.

*Qualifications and disqualifications for registration as a voter*

**40.**-(1) Subject to the provisions of the next following subsection, a person shall be qualified to be registered on one of the rolls referred to in paragraphs (a), (b) and (c) of section 32(2) of this Constitution if, and shall not be so qualified unless, he is a citizen of Fiji and has attained the age of twenty-one years.

(2) No person shall be qualified to be so registered who -

(a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the Commonwealth;

(b) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(c) is, under any law in force in Fiji adjudged or otherwise declared to be of unsound mind; or

(d) is disqualified for registration as a voter under any law in force in Fiji relating to offences connected with elections.

(3) The allocation of persons qualified to be registered on any roll to any particular constituency for the purpose of being registered as voters in that constituency shall be made in such manner as may be prescribed.

(4) Paragraphs (a) and (b) of section 33(2) of this Constitution shall apply for the purposes of subsection 2(b) of this section as they apply for the purposes of paragraph (d) of section 33(1) of this Constitution.

#### *Right to vote at elections*

41.-(1) Any person who is registered as a voter in any constituency shall be entitled to vote in such manner as may be prescribed at any election for the constituency unless -

(a) on the date appointed for polling he is under such a sentence of death or serving such a sentence of imprisonment as is referred to in paragraph (b) of section 40(2) of this Constitution or (except in so far as may be otherwise prescribed) he is for any other reason unable to attend in person at the place and time appointed for polling; or

(b) he is prohibited from so voting by any law in force in Fiji because he holds or is acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of that election or because he has been convicted of any offence connected with elections.

(2) No person shall vote at any election for any constituency who is not registered as a voter in that constituency.

#### *Electoral Commission*

42.-(1) There shall be an Electoral Commission consisting of a Chairman appointed by the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission and not less than two nor more than four other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the House of Representatives, a member of the Senate, an elected member of any local authority, a candidate for election as a member of the House of Representatives or of a local authority nominated as such with his consent, a public officer or a local government officer.

(3) Subject to the provisions of the next following subsection, a member of the Commission shall

vacate his office -

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) The provisions of section **108** of this Constitution shall apply to a member of the Electoral Commission as they apply to the appointed member of the Judicial and Legal Services Commission except that subsection (7)(a) shall apply as if for the words "in accordance with the advice of the Chief Justice" there were substituted the words "in his own deliberate judgment".

#### *Supervisor of Elections*

**43.**-(1) There shall be a Supervisor of Elections whose office shall be a public office.

(2) Power to make appointments to the office of Supervisor of Elections shall vest in the Judicial and Legal Services Commission:

Provided that the Commission shall not select for appointment to hold that office a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(3) A person shall not be qualified to hold or act in the office of Supervisor of Elections unless he is qualified to practise as a barrister and solicitor in Fiji.

(4) Without prejudice to the provisions of the next following section, in the exercise of his functions under this Constitution the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

#### *Functions of Electoral Commission and Supervisor of Elections*

**44.**-(1) The Electoral Commission shall have general responsibility for, and shall supervise, the registration of votes for the election of members of the House of Representatives and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Supervisor of Elections shall have such powers and other functions relating to such registration and elections as may be prescribed; and he shall keep the Electoral Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission, and he shall comply with any directions that the Commission may give to him concerning the exercise of his functions:

Provided that the question whether the Supervisor of Elections has acted in accordance with the directions of the Electoral Commission shall not be enquired into in any court of law.

(3) Every proposed bill and every proposed regulation or other instrument having the force of law



relating to the registration of voters for the election of members of the House of Representatives or to the election of such members shall be referred to the Electoral Commission and to the Supervisor of Elections at such time as shall give them sufficient opportunity to make comments thereon before the bill is introduced in the House or, as the case may be, the regulation or other instrument is made.

(4) The Electoral Commission may make such reports to the Governor-General concerning the matters under their supervision, or any draft bill or instrument that is referred to them, as they may think fit, and if the Commission so requests in any such report other than a report on a draft bill or instrument that report shall be laid before the House of Representatives.

### PART 3

#### *The Senate*

##### *Composition of the Senate*

**45.**-(1) The Senate shall consist of twenty-two members, of whom -

- (a) eight shall be appointed by the Governor-General acting in accordance with the advice of the Great Council of Chiefs;
- (b) seven shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister;
- (c) six shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition; and
- (d) one shall be appointed by the Governor-General acting in accordance with the advice of the Council of Rotuma.

(2) In selecting persons for appointment under paragraph (a) of the preceding subsection the Great Council of Chiefs shall act in accordance with such procedure as the Great Council may determine; and in selecting a person for appointment under paragraph (d) of that subsection the Council of Rotuma shall act in accordance with such procedure as, subject to any provision in that behalf that may be prescribed by Parliament, the Council of Rotuma may determine.

##### *Qualifications and disqualifications for membership*

**46.**-(1) Subject to the provisions of the next following subsection, a person shall be qualified to be appointed as a member of the Senate, if, and shall not be so qualified unless, he is registered as a voter on one of the three separate rolls referred to in section 32(2) of the Constitution.

(2) No person shall be qualified to be appointed as a member of the Senate who -

- (a) is a member of the House of Representatives;
- (b) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the Commonwealth;

(c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth;

(d) is, under any law in force in Fiji, adjudged or otherwise declared to be of unsound mind;

(e) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(f) is disqualified for membership of the Senate under any law in force in Fiji relating to offences connected with elections;

(g) subject to any exceptions prescribed by Parliament, holds or is acting in any public office;

(h) has at any time during the immediately preceding three years held or acted in the office of a member of the Constituency Boundaries Commission, the Electoral Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission or the office of Supervisor of Elections or Ombudsman.

(3) For the purposes of paragraph (e) of the preceding subsection -

(a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

#### *Tenure of seats of members*

**47.**-(1) Subject to the provisions of this section, the term of office of a member of the Senate shall be six years, and his tenure thereof shall not be affected by a dissolution of Parliament:

Provided that the term of office of a member appointed to fill a vacancy occurring because a person has vacated his seat in the Senate for a reason other than the expiration of his term of office shall be the unexpired portion of the term of office of that person.

(2) Of the members of the Senate first appointed, the term of office of -

(a) four of those appointed by the Governor-General acting in accordance with the advice of the Great Council of Chiefs, who shall be designated by the Governor-General acting in the same manner at the time of their appointment;

(b) three of those appointed by the Governor-General acting in accordance with the advice of the Prime Minister, who shall be designated by the Governor-General acting in the same manner at the time of their appointment;

(c) three of those appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition, who shall be designated by the Governor-General acting in the same manner at the time of their appointment; and

(d) the member appointed by the Governor-General acting in accordance with the advice of the Council of Rotuma, shall be three years.

(3) For the purpose of reckoning the date on which the term of office of a member of the Senate expires -

(a) the term of office of the members first appointed shall be deemed to have begun on the date of the commencement of this Constitution; and

(b) the term of office of a member appointed to fill a vacancy occurring by reason of the expiration of the term of office of a member shall be deemed to have begun immediately after the expiration of that term.

(4) A member of the Senate shall vacate his seat therein -

(a) upon the expiration of his term of office;

(b) if he ceases to be a citizen of Fiji;

(c) if he is absent from the sittings of the Senate for such period and in such circumstances as may be prescribed in the rules of procedure of the Senate;

(d) if any circumstances arise that, if he were not a member of the Senate, would cause him to be disqualified for appointment as such by virtue of paragraphs (a), (b), (c), (d), (f), or (g) of subsection (2) of the preceding section.

(5) A member of the Senate may resign his seat therein by writing under his hand addressed to the President of the Senate and the seat shall become vacant when the writing is received by the President or, if the office of President is vacant or the President is for any reason unable to perform the functions of his office, by the Vice-President or such other person as may be specified in the rules of procedure of the Senate.

#### *Vacation of seat on sentence*

**48.**-(1) Subject to the provisions of this section, if a member of the Senate is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Senate and his seat in the Senate shall become vacant at the expiration of a period of thirty days

thereafter:

Provided that the President of the Senate (or, if the office of President is vacant or he is for any reason unable to perform the functions of his office, the Vice-President) may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Senate signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Senate shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Senate.

(3) Paragraphs (a) and (b) of section 46(3) of this Constitution shall apply for the purposes of this section as they apply for the purposes of paragraph (e) of section 46(2).

#### *Filling of vacancies in the Senate*

49. Whenever a member of the Senate vacates his seat therein this vacancy shall be filled as soon as practicable by an appointment under the paragraph of section 45(1) of this Constitution under which that member was appointed:

Provided that no appointment shall be made under paragraph (b) or (c) of section 45(1) -

(a) during any period between a dissolution of Parliament and the next ensuing general election of members of the House of Representatives; or

(b) during any period following such an election for which the Governor-General, acting in his own deliberate judgment, may consider it desirable to postpone the making of such an appointment by reason of it appearing to the Governor-General that it is likely to be necessary to make a new appointment to the office of Prime Minister or the office of Leader of the Opposition in consequence of changes in the membership of the House of Representatives resulting from that election.

#### *President and Vice-President*

50.-(1) The Senate shall at its first sitting after the commencement of this Constitution elect from among its members a President and a Vice-President; and whenever the office of President or Vice-President becomes vacant the Senate shall elect one of its members to fill the vacancy at its next sitting after the occurrence of the vacancy or as soon as practicable thereafter.

(2) A member of the Senate shall not be qualified for election as President or Vice-President if he is a Minister or Assistant Minister.

(3) The office of the President or Vice-President shall become vacant -

- (a) if he ceases to be a member of the Senate;
- (b) if, under the provisions of section **48** of this Constitution, he is required to cease to perform his functions as a member of the Senate;
- (c) if he becomes a Minister or an Assistant Minister;
- (d) if the Senate passes a resolution supported by the votes of not less than two-thirds of all the members thereof requiring his removal from office; or
- (e) in the case of the Vice-President, if he is elected as President.

(4) A person holding the office of President or Vice-President may resign his office by writing under his hand addressed to the Senate and the office shall become vacant when the writing is received by the Clerk to the Senate.

#### *Determination of questions of membership*

**51.**-(1) The Supreme Court shall have jurisdiction to hear and determine any question whether -

- (a) any person has been validly appointed as a member of the Senate;
- (b) any member of the Senate has vacated his seat or is required, under the provisions of section **48** of this Constitution, to cease to perform his functions as a member of the Senate.

(2) An application for the determination of any question under the preceding subsection may be made by any person registered as a voter for the purpose of electing members of the House of Representatives or by the Attorney-General; and, if any such application is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) A determination by the Supreme Court in proceedings under this section shall not be subject to an appeal.

(4) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

### **PART 4**

#### *Powers and Procedure*

##### *Power to make laws*

**52.** Subject to the provisions of the Constitution, Parliament may make laws for the peace, order and good government of Fiji.

*Mode of exercise of legislative power*

**53.**-(1) The power of Parliament to make laws shall be exercised by bills passed by both Houses of Parliament (or, in the cases mentioned in sections **62**, **63**, **64** and **65** of this Constitution, by the House of Representatives) and assented to by the Governor-General on behalf of Her Majesty.

(2) A bill may originate only in the House of Representatives.

(3) When a bill has been passed by the House of Representatives it shall be sent to the Senate, and it shall be presented to the Governor-General for assent -

(a) when it has been passed by the Senate and agreement has been reached between the two Houses on any amendments made to it by the Senate; or

(b) when it is required to be so presented under section **62**, **63**, **64** or **65** of this Constitution.

(4) When a bill is presented to the Governor-General for assent in pursuance of the preceding subsection he shall signify that he assents or that he withholds assent.

(5) When the Governor-General assents to a bill that has been so presented to him the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as a law.

(6) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(7) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Fiji".

*Regulation of procedure in each House*

**54.**-(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including in particular the orderly conduct of its own proceedings.

(2) Each House of Parliament may act notwithstanding any vacancy in its membership (including in the case of the House of Representatives any vacancy not filled when the House first meets after a general election) and the presence or participation of any person not entitled to be present at or participate in the proceedings of the House shall not invalidate those proceedings.

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of the two Houses, make provision for the powers, privileges and immunities of those Houses and the committees and members thereof.

*Oath of allegiance*

**55.** No member of either House of Parliament shall take part in the proceedings of the House, other than the election of the Speaker or President of the House or proceedings necessary for the purposes of this section, until he has made and subscribed before the House the oath of allegiance.

*Official language*

**56.** The official language of Parliament shall be English, but any member of either House may address the chair in the House of which he is a member in Fijian or Hindustani.

*Presiding*

**57.**-(1) The Speaker or in his absence the Deputy Speaker or in their absence a member of the House of Representatives (not being a Minister or Assistant Minister) elected by the House for the sitting shall preside at any sitting of the House.

(2) The President or in his absence the Vice-President or in their absence a member of the Senate (not being a Minister or Assistant Minister) elected by the Senate for the sitting shall preside at any sitting of the Senate.

*Quorum*

**58.**-(1) If at any sitting of either House of Parliament a quorum of the House is not present and any member of the House who is present objects on that account to the transaction of business and, after such interval as may be prescribed by the rules of procedure of the House, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the House.

(2) For the purposes of this section -

(a) a quorum of the House of Representatives shall consist of seventeen members in addition to the person presiding; and

(b) a quorum of the Senate shall consist of seven members in addition to the person presiding.

*Voting*

**59.**-(1) Save as otherwise provided in this Constitution, all questions proposed for decision in either House of Parliament shall be determined by a majority of the votes of the members of the House present and voting.

(2) The person presiding in either House of Parliament shall not vote upon any question before the House that fails to be determined by a majority of the members of the House present and voting unless the votes cast are equally divided, in which case he shall exercise a casting vote.

*Right of Attorney-General to attend either House*

**60.** The Attorney-General shall be entitled to attend and take part in any proceedings of either House of Parliament notwithstanding that he is not a member of that House and whether or not he is then a

member of the other House, but he shall not cast a vote in any proceedings of either House which he attends by virtue of the provisions of this section and shall not be regarded as a member of that House for the purposes of any provision of this Constitution other than sections 54(3) and 56.

*Restrictions with regard to certain financial measures*

**61.**-(1) Except upon the recommendation of the Cabinet signified by a Minister, the House of Representatives shall not -

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes -

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) the imposition of any charge upon the Consolidated Fund or any other public fund of Fiji or the alteration of any such charge otherwise than by reduction;

(iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Fiji of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) the composition or remission of any debt to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

(2) The Senate shall not -

(a) proceed upon any amendment to a bill that, in the opinion of the person presiding, is an amendment that makes provision for any of the following purposes-

(i) the imposition, repeal or alteration of taxation;

(ii) the imposition, repeal or alteration of any charge upon the Consolidated Fund or any other public fund of Fiji;

(iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Fiji of any moneys not charged thereon or any alteration in the amount of such payment, issue or withdrawal;

(iv) the composition or remission of any debt to the Government;

(b) proceed upon any amendment to any provision contained in the bill that, in the



opinion of the person presiding, is a provision for any of those purposes;

(c) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision should be made for any of those purposes.

*Limitation on powers of the Senate with respect to appropriation bills*

**62.**-(1) If a bill that has been passed by the House of Representatives and certified by the Speaker under the next following subsection as an appropriation bill is not passed by the Senate without amendment by the end of the day after the day on which it was sent to the Senate, the bill shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent.

(2) When a bill that in the opinion of the Speaker is an appropriation bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker that it is an appropriation bill.

*Limitation on powers of the Senate with respect to other money bills*

**63.**-(1) Subject to the next following section, if a bill that has been passed by the House of Representatives and certified by the Speaker under the next following subsection as a money bill other than an appropriation bill, having been sent to the Senate at least twenty-one days before the end of the session, is not passed by the Senate without amendment within twenty-one days after the bill was sent to the Senate, the Bill shall, unless the House of Representatives otherwise resolves be presented to the Governor-General for assent.

(2) When a bill that in the opinion of the Speaker is a money bill other than an appropriation bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker that it is a money bill other than an appropriation bill.

(3) In this section "money bill" means a bill that contains only provisions dealing with all or any of the following matters, that is to say -

(a) the imposition, repeal, remission, alteration or regulation of taxation;

(b) the imposition of charges on the Consolidated Fund or any other public fund of Fiji or the alteration or repeal of any such charges;

(c) the grant of money to the Crown or to any other person or authority or the alteration or revocation of any such grant;

(d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;

(e) the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or

(f) subordinate matters incidental to any of the matters aforesaid:

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local authorities or other local bodies.

*Limitation on powers of the Senate with respect to urgent bills*

**64.**-(1) If the Governor-General, acting in accordance with the advice of the Prime Minister, by writing under his hand certifies to the President of the Senate that the enactment of a bill that has been passed by the House of Representatives is a matter of urgency and the bill, having been sent to the Senate at least seven days before the end of the session, is not passed by the Senate within seven days after it is so sent or is passed by the Senate with any amendment to which the House of Representatives does not agree within seven days after the bill was sent to the Senate, the bill (with such amendments, if any, as may have been agreed to by both Houses) shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent.

(2) This section does not apply to any bill for the purposes mentioned in section 67 or 68 of this Constitution.

*Limitation on powers of the Senate with respect to other bills*

**65.**-(1) This section applies to any bill other than -

(a) a bill certified under section **62**(2), **63**(2) or **64**(1) of this Constitution; or

(b) a bill for the purposes mentioned in section **67** or **68** of this Constitution.

(2) If any bill to which this section applies is passed by the House of Representatives in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that bill shall, on its rejection for the second time by the Senate, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent:

Provided that the foregoing provisions of this subsection shall not have effect unless at least six months have elapsed between the date on which the bill is passed by the House of Representatives in the first session and the date on which it is passed by that House in the second session.

(3) For the purposes of this section, a bill shall be deemed to be rejected by the Senate if it is not passed by the Senate without amendment, or it is passed by the Senate with any amendment which is not agreed to by the House of Representatives.

(4) For the purposes of this section, a bill that is sent to the Senate in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former bill or to

represent any amendments which have been made by the Senate in the former bill in the preceding session and agreed to by the House of Representatives.

(5) The House of Representatives may, if it thinks fit, on the passage through that House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the bill, and any such amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Representatives; but the exercise of this power by the House of Representatives shall not affect the operation of this section in the event of the rejection of the bill by the Senate.

(6) There shall be inserted in any bill that is presented to the Governor-General for assent in pursuance of this section any amendments to it that are certified by the Speaker to have been made or recommended by the Senate in the second session and agreed to by the House of Representatives.

#### *Functions of Speaker*

**66.**-(1) When a bill is presented to the Governor-General for assent in pursuance of the provisions of section **62**(1), **63**(1), **64**(1) or **65** of this Constitution, as the case may be, it shall bear a certificate of the Speaker that those provisions have been complied with.

(2) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred upon him by this section or by section **62**, **63**, **64** or **65** of this Constitution, that function may be performed by the Deputy Speaker.

(3) A certificate given by the Speaker or Deputy Speaker under this section shall be conclusive for all purposes and shall not be questioned in any court of law.

#### *Alteration of Constitution*

**67.**-(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament under this section that alters any of the following provisions of this Constitution, that is to say -

(a) this section;

(b) Chapters I, 11 and III;

(c) Sections **27**, **28**, **30**, **31**, **42**, **43**, **44**, **45**, **52**, **53**, **68**, **69**, **74**, **72**, **78** and **85**;

(d) Chapters VII, VIII and IX (including Schedules 2 and 3);

(e) Sections **124** and **126**; and

(f) Chapter XI to the extent that it relates to any of the provisions specified in the preceding paragraphs,

shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by the votes of not less than three-quarters of all the members of the House.

(3) A bill for an Act of Parliament under this section that does not alter any of the provisions specified in the preceding subsection shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by the votes of not less than two-thirds of all the members of the House.

(4) Notwithstanding anything in the foregoing provisions of this section, Parliament shall not have power to alter sections **32**, **38** or **39** of this Constitution until three months after a copy has been laid before each House of Parliament of a report of a Commission appointed on behalf of Her Majesty by the Governor-General at any time after the first general election of members of the House of Representatives held after this Constitution comes into force for the purpose of making recommendations as to the most appropriate method of electing members to, and representing the people of Fiji in, the House of Representatives; and, if Parliament subsequently makes any alteration to section **32**, **38** or **39** of this Constitution, subsection (2) (c) of this section shall, as from the time the bill making that alteration becomes law, have effect as if sections **32**, **38** and **39** were specified therein.

(5) Without prejudice to the provisions of subsection (2) of this section, a bill for an Act of Parliament that alters this subsection or paragraph (a) of section **45** (1) or section **68**(2) of this Constitution shall not be passed by the Senate unless it is supported at the final voting thereon in the Senate by not less than six of the members of the Senate referred to in paragraph (a) of the said section **45**(1).

(6) In this section -

(a) references to this Constitution or to any particular provision thereof include references to any other law in so far as that law alters the Constitution or, as the case may be, that provision; and

(b) references to altering this Constitution or any particular provision thereof include references -

(i) to repealing it, with or without re-enactment thereof or the making of different provision in lieu thereof;

(ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise;

(iii) to suspending its operation for any period, or terminating any such suspension; and

(iv) to making any other provision that is repugnant to or otherwise inconsistent with it.

*Alteration of certain laws*

**68.**-(1) A bill for an Act of Parliament that alters any of the provisions of the following laws, that is to say -

- (a) the Fijian Affairs Act;
- (b) the Fijian Development Fund Act;
- (c) the Native Lands Act;
- (d) the Native Land Trust Act;
- (e) the Rotuma Act;
- (f) the Rotuma Lands Act;
- (g) the Agricultural Landlord and Tenant Act;
- (h) the Banaban Land Act; and
- (i) the Banaban Settlement Act,

shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by the votes of not less than three-quarters of all the members of the House.

(2) Without prejudice to the provisions of the preceding subsection, a bill for an Act of Parliament that alters any provision of -

- (a) the Fijian Affairs Act;
- (b) the Fijian Development Fund Act; (c) the Native Lands Act;
- (d) the Native Land Trust Act; (e) the Rotuma Act;
- (f) the Rotuma Lands Act;
- (g) the Agricultural Landlord and Tenant Act;
- (h) the Banaban Lands Act; or
- (i) the Banaban Settlement Act,

that is a provision that affects Fijian land, customs or customary rights shall not be passed by the Senate unless it is supported at the final voting thereon in the House by the votes of not less than six of the members of the Senate referred to in paragraph (a) of section 45(1) of this Constitution.

(3) Subsections (1) and (2) of this section (except for the reference therein to the final voting) shall apply to a resolution of either House of Parliament that by virtue of any Act of Parliament, either of

the resolution's own force or in conjunction with a corresponding resolution of the other House, alters any provision referred to in those subsections as those subsections apply to a bill for an Act of Parliament that alters any such provision.

(4) In this section -

(a) references to the provisions of any law include references to any other law, whether made before or after the commencement of this Constitution, in so far as that law alters those provisions; and

(b) references to altering the provisions of any law include references -

(i) to repealing it with or without re-enactment thereof the making of different provision in lieu thereof;

(ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise;

(iii) to suspending its operation for any period, or terminating any such suspension; and

(iv) to making any other provision that is repugnant to or otherwise inconsistent with it.

## PART 5

### *Sessions, prorogation and dissolution*

#### *Sessions of Parliament*

**69.**-(1) Each session of Parliament shall be held at such place and commence at such time as the Governor-General may by proclamation appoint.

(2) The time appointed for the commencement of any session of Parliament shall be such that a period exceeding six months does not intervene between the end of one session and the first sitting of Parliament in the next session.

(3) Writs for a general election of members of the House of Representatives shall be issued within sixty days of the date of any dissolution of Parliament and a session of Parliament shall be appointed to commence within thirty days of the date prescribed for polling at any general election.

(4) The Governor-General may exercise his powers under subsection (1) of this section in his own deliberate judgment if he receives a request in writing for the summoning of a session of Parliament from not less than one-quarter of the members of the House of Representatives and he considers that the Government no longer commands the confidence of a majority of the members of that House or that it is necessary for the two Houses of Parliament to consider without delay a matter a public importance.

(5) Subject to the provisions of subsection (1) of this section, the sittings of each House of Parliament shall be held at such time and place as that House may, by its rules of procedure or otherwise, determine.

*Prorogation and dissolution of Parliament*

**70.**-(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that -

(a) if the House of Representatives passes a resolution that it has no confidence in the Government and the Prime Minister does not within three days either resign from his office or advise the Governor General to dissolve Parliament within seven days or at such later time as the Governor-General, acting in his own deliberate judgment, may consider reasonable, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament;

(b) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament.

(2) Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of Parliament after any general election of members of the House of Representatives and shall then stand dissolved.

(3) At any time when Fiji is at war Parliament may from time to time extend the period of five years specified in the preceding subsection by not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) At any time when there is in force under section 18 of this Constitution a proclamation by the Governor-General declaring that a state of public emergency exists Parliament may from time to time extend the period of five years specified in subsection (2) of this section by not more than six months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than one year.

(5) If, after a dissolution and before the holding of the next following general election of members of the House of Representatives, the Prime Minister advises the Governor-General that, owing to the existence of a state of war or of a state of emergency in Fiji or any part thereof, it is necessary to recall Parliament, the Governor-General shall summon the Parliament that has been dissolved to

meet.

(6) Unless the life of Parliament is extended under subsection (3) or subsection (4) of this section, the general election of members of the House of Representatives shall proceed notwithstanding the summoning of Parliament under the preceding subsection and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day prescribed for polling at that election.

## PART 6

### *Parliamentary staff*

#### *Clerks to House of Representatives and the Senate and their staffs*

**71.**-(1) There shall be a Clerk to the House of Representatives and a Clerk to the Senate.

(2) The offices of the Clerk to the House of Representatives and the Clerk to the Senate and of the members of their staffs shall be public offices.

(3) Nothing in this section shall be construed as preventing the appointment of one person to the offices of Clerk to the House of Representatives and Clerk to the Senate or the appointment of one person to any office on the staff of the Clerk to the House of Representatives and any office on the staff of the Clerk to the Senate.

(4) The Clerk to the House of Representatives or a member of his staff shall not perform the functions of any public office other than an office referred to in subsection (2) of this section without the concurrence of the Speaker; and the Clerk to the Senate or a member of his staff shall not perform the functions of any public office other than an office referred to in that subsection without the concurrence of the President of the Senate.

## CHAPTER VI

### THE EXECUTIVE

#### *Executive authority of Fiji*

**72.**-(1) The executive authority of Fiji is vested in Her Majesty.

(2) Save as otherwise provided in this Constitution, that authority may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorities other than the Governor-General from exercising such functions as may be conferred upon them by any law.

#### *Ministers*

**73.**-(1) There shall be a Prime Minister, an Attorney-General and such other offices of Minister of the Government, not exceeding such number, if any, as Parliament may prescribe, as may be



established by the Governor-General acting in accordance with the advice of the Prime Minister.

(2) The Governor-General, acting in his own deliberate judgment, shall appoint as Prime Minister the member of the House of Representatives who appears to him best able to command the support of the majority of the members of that House:

Provided that if occasion arises for making an appointment between a dissolution of Parliament and the next following general election of members of the House of Representatives the persons who were members of that House immediately before the dissolution shall be regarded for the purposes of this subsection as continuing to be members thereof.

(3) The Ministers other than the Prime Minister shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister:

Provided that -

(a) a person shall not be qualified to be appointed as Attorney-General unless he is entitled to practise as a barrister and solicitor in Fiji; and

(b) a person who has vacated office as a Minister under subsection (4) or paragraph (a) or (b) of subsection (5) of the next following section shall not be reappointed as a Minister before the next dissolution of Parliament unless at the time of his appointment he is a member of either House of Parliament.

(4) If the person holding the office of Attorney-General is for any reason unable to perform the functions of his office, those functions may be performed by such other person, being a person entitled to practise as a barrister and solicitor in Fiji (whether or not he is a member of either House of Parliament), as the Governor-General acting in accordance with the advice of the Prime Minister, may direct.

#### *Tenure of office of Ministers*

**74.**-(1) If a resolution of no confidence in the Government is passed by the House of Representatives and the Prime Minister does not within three days resign from his office the Governor-General shall remove the Prime Minister from office unless, in pursuance of section **70**(1) of this Constitution, Parliament has been or is to be dissolved in consequence of such resolution.

(2) If at any time between the holding of a general election and the first sitting of the House of Representatives thereafter the Governor-General, acting in his own deliberate judgment, considers that, in consequence of changes in the membership of the House resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the House, the Governor-General may remove the Prime Minister from office.

(3) The office of Prime Minister shall also become vacant -

(a) if he ceases to be a member of the House of Representatives otherwise than by

reason of a dissolution of Parliament;

(b) if, at first sitting of the House of Representatives after any general election of members thereof, he is not a member of the House.

(4) If a Minister (other than the Prime Minister) -

(a) was a member of the House of Representatives immediately before a dissolution of Parliament and is not elected as a member of the House at the next following general election of members thereof; or

(b) was not a member of either House of Parliament at the date of his appointment as a Minister,

he shall vacate his office as a Minister on the expiration of three months from the date prescribed for polling in that general election or; as the case may be, from the date of his appointment as a Minister unless he is then a member of either House of Parliament.

(5) The office of a Minister (other than the Prime Minister) shall also become vacant -

(a) if, in the case of a Minister who is a member of the House of Representatives, he ceases to be such a member otherwise than by reason of a dissolution of Parliament;

(b) if, in the case of a Minister who is a member of the Senate, he ceases to be such a member;

(c) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;

(d) if a Prime Minister resigns from office after the passage by the House of a resolution of no confidence in the Government or is removed from office in pursuance of the provisions of subsection (1) or (2) of this section; or

(e) upon the appointment of any person to the office of Prime Minister.

### *The Cabinet*

**75.**-(1) There shall be a Cabinet for Fiji consisting of the Prime Minister and such of the other Ministers as the Prime Minister may from time to time designate.

(2) The functions of the Cabinet shall be to advise the Governor-General in the government of Fiji and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of the preceding subsection shall not apply in relation to -

- (a) the appointment and removal from office of Ministers and Assistant Ministers, the assigning of responsibility to any Minister under the next following section, or the authorisation of another Minister to perform the functions of the Prime Minister during illness or absence;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section **88** of this Constitution (which relate to the prerogative of mercy).

#### *Assignments of responsibilities to Ministers*

**76.**-(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of the Government.

(2) Without prejudice to the assignment of any responsibility to him under the preceding subsection, the Attorney-General shall be the principal legal adviser to the Government.

#### *Performance of Prime Minister's functions during illness or absence*

**77.**-(1) Whenever the Prime Minister is unable, by reason of illness or absence from Fiji, to perform the functions conferred on him by this Constitution, the Governor-General may, by directions in writing, authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, the Governor-General may exercise those powers without that advice and in his own deliberate judgment.

#### *Exercise of Governor-General's functions*

**78.**-(1) In the exercise of his functions under this Constitution or any other law, the Governor-General shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) Where the Governor-General is required by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the Governor-General is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

*Governor-General to be kept informed*

**79.** The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Fiji and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of Fiji.

*Assistant Ministers*

**80.**-(1) The Governor-General may appoint Assistant Ministers, not exceeding such number, if any, as Parliament may prescribe, to assist Ministers in the performance of their duties.

(2) The provisions of sections **73**(3) and **74**(4) and (5) of this Constitution shall apply in relation to Assistant Ministers as they apply in relation to Ministers other than the Prime Minister.

*Oaths to be taken by Ministers*

**81.** A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by schedule 1 to this Constitution.

*Direction, etc, of government departments*

**82.** Where any Minister has been charged with responsibility for the administration of any department of the Government he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or of some other supervising officer whose office shall be a public office:

Provided that -

(a) any such department may be under the joint supervision of two or more supervising officers; and

(b) different parts of any such department may respectively be under the supervision of different supervising officers.

*Secretary to the Cabinet*

**83.**-(1) There shall be a Secretary to the Cabinet, whose office shall be a public office.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister for arranging the business for, and keeping the minutes of, the Cabinet or any committee thereof and for conveying the decisions of the Cabinet or any committee thereof to the appropriate person or authority, and shall have such other functions as the Prime

Minister may direct.

*Commissioner of Police*

**84.**-(1) There shall be a Commissioner of Police, whose office shall be a public office.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 76(1) of this Constitution for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

*Director of Public Prosecutions*

**85.**-(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

Power to make appointments to the office of Director of Public Prosecutions shall vest in the Judicial and Legal Services Commission:

(2) Provided that the Commission shall not select for appointment to hold that office a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a judge of the Supreme Court.

(4) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do -

(a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(6) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(7) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(8) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (4) (c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

### *Leader of Opposition*

**86.**-(1) There shall be a Leader of the Opposition who shall be appointed by the Governor-General.

Whenever the Governor-General has occasion to appoint a Leader of the Opposition he shall appoint

(a) if there is one opposition party whose numerical strength in the House of Representatives is greater than the strength of any other opposition party, the member of the House of Representatives who is the leader in the House of that party; or

(b) if there is no such party, the member of the House whose appointment would, in the judgment of the Governor-General, be most acceptable to the leaders in the House of the opposition parties:

Provided that, if occasion arises for making an appointment between a dissolution of Parliament and the next following general election of members of the House of Representatives, the persons who were members of that House immediately before the dissolution shall be regarded for the purposes of this subsection as continuing to be members thereof.

(3) If the Governor-General considers that the Leader of the Opposition is no longer the person who, if the office of Leader of the Opposition were vacant, should be appointed thereto under the preceding subsection, the Governor-General may remove the Leader of the Opposition from office.

(4) The office of Leader of the Opposition shall also become vacant -

(a) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament;

(b) if, at the first sitting of the House of Representatives after any general election, he is not a member of the House.

(5) During any period in which the office of Leader of the Opposition is vacant by reason that there is no such opposition party as is referred to in subsection (2) (a) of this section and the Governor-General is of the opinion that no member of the House would be acceptable to the leaders of the opposition parties for the purposes of subsection (2) (b) of this section or by reason that there are no opposition parties for the purposes of this section, the operation of any provision of this Constitution shall -

(a) to the extent that it requires the Governor-General to act in accordance with the advice of the Leader of the Opposition have effect as if it required the Governor-General to act in his own deliberate judgment; or

(b) to the extent that it requires the Governor-General, the Prime Minister or any Commission to consult the Leader of the Opposition,

be suspended.

(6) For the purposes of this section "opposition party" means a group of members of the House of Representatives in opposition to the Government, whose number includes a leader who commands their support.

(7) In the exercise of his functions under this section the Governor-General shall act in his own deliberate judgment.

#### *Constitution of offices*

**87.** Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Fiji, make appointments to any such office and terminate any such appointment.

#### *Prerogative of Mercy*

**88.**-(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf -

(a) grant to any person convicted of any offence under the law of Fiji a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, of the

execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or

(d) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to the Crown on account of such an offence.

(2) There shall be a Commission on the Prerogative of Mercy (hereinafter in this section referred to as "the Commission") consisting of a chairman and not less than two other members appointed by the Governor-General, acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission -

(a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or

(b) if his appointment is revoked by the Governor-General, acting in his own deliberate judgment.

(4) In the exercise of the powers conferred upon him by subsection (1) of this section, the Governor-General shall act in accordance with the advice of the Commission.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Whenever any person has been sentenced to death (otherwise than by a court martial) for an offence, a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commission shall be taken into consideration at a meeting of the Commission, which shall then advise the Governor-General whether or not to exercise his powers under subsection (1) of this section in that case.

(7) A Minister having responsibility for any matters relating to the treatment of offenders may consult the Commission with respect to such matters.

## CHAPTER VII

### THE JUDICATURE

#### PART I

#### *The Supreme Court*



*Establishment of Supreme Court*

**89.**-(1) There shall be a Supreme Court for Fiji which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) Subject to the provisions of the next following section, the judges of the Supreme Court shall be the Chief Justice and such number of puisne judges as may be prescribed by Parliament\*:

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\* Seven by Act 5 of 1972

Provided that the office of a judge shall not be abolished while any person is holding that office unless he consents to its abolition.

*Appointment of judges of Supreme Court*

**90.**-(1) The Chief Justice shall be appointed by the Governor-General acting after consultation with the Prime Minister and the Leader of the Opposition.

(2) The puisne judges shall be appointed by the Governor-General acting after consultation with the Judicial and Legal Services Commission.

(3) A person shall not be qualified to be appointed as a judge of the Supreme Court unless -

(a) he holds, or has held, high judicial office in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament; or

(b) he is qualified to practise as an advocate in such a court and has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(4) In computing, for the purposes of the preceding subsection, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(5) Whenever the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the holder thereof has resumed those functions, as the case may be, those functions shall be performed by such one of the puisne judges or (subject to the provisions of the next following section) by such other person qualified for appointment as a judge of the Supreme Court as the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, may appoint for that purpose:

Provided that a person appointed under this subsection who is not a puisne judge may, notwithstanding the assumption or resumption of the functions of the office of Chief Justice by the holder of that office, continue to act as a judge of the Supreme Court for so long thereafter as may be

necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(6) If the office of any puisne judge is vacant or if a person holding the office of puisne judge is acting as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the Governor-General that the state of business in the Supreme Court requires that the number of judges should be temporarily increased, the Governor-General, acting after consultation with the Judicial and Legal Services Commission, may appoint a person qualified for appointment as a judge of the Supreme Court to act as a puisne judge.

(7) Any person appointed under the preceding subsection to act as a puisne judge shall, subject to the provisions of subsection (1) of the next following section and unless he is removed from office under that section, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General acting in accordance with the advice of the Chief Justice:

Provided that a person whose period of appointment has expired or whose appointment has been revoked may continue to act as such for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

#### *Tenure of office of judges of Supreme Court*

**91.**-(1) Subject to the provisions of this section, a judge of the Supreme Court shall vacate his office on attaining the retiring age:

Provided that a person who has attained the retiring age may continue in office for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) A judge of the Supreme Court shall be removed from office by the Governor-General if the question of his removal has, at the request of the Governor-General made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 (a) or under any other enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Chief Justice or, in relation to the removal of the Chief Justice, the Governor-General, considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Governor-General from among

persons who hold or have held high judicial office in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether he should request that the question of the removal of that judge from office should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor-General shall request that the question should be referred accordingly.

(5) if the question of removing a judge of the Supreme Court from office has been referred to a tribunal under the preceding subsection, the Governor-General may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect -

(a) if the tribunal advises the Governor-General that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(6) Except where the context otherwise requires, the functions of the Governor-General under this section shall be exercised by him in his own deliberate judgment.

(7) The retiring age for the purposes of subsection (1) of this section shall be the age of sixty-two years or such higher age as may be prescribed by Parliament\*:

Provided that a provision of any Act of Parliament, to the extent that it alters the age at which judges of the Supreme Court shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect.

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\* Sixty-eight by Act 60 of 1971.

(a) 1883 c. 41

#### *Oaths to be taken by judges of Supreme Court*

**92.** A judge of the Supreme Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by schedule 1 to this Constitution:

Provided that no person shall be required to take either such oath if he shall have taken such oath within Fiji on any previous occasion.

## PART 2

### *The Court of Appeal*

#### *Establishment of Court of Appeal*

**93.** There shall be a Court of Appeal for Fiji having such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

#### *Composition of Court of Appeal*

**94.**-(1) The judges of the Court of Appeal shall be -

- (a) the Chief Justice, who shall be the President of the Court of Appeal;
- (b) such Justices of Appeal as may be appointed under the next following subsection;  
and
- (c) the puisne judges of the Supreme Court.

(2) The Justices of Appeal shall be appointed by the Governor-General acting after consultation with the Judicial and Legal Services Commission.

(3) A person shall not be qualified to be appointed under the preceding subsection unless he is qualified for appointment as a judge of the Supreme Court.

(4) A judge of the Court of Appeal shall not sit as a judge of the Court on the hearing of an appeal -

- (a) from any decision given by himself or any decision given by any court of which he was sitting as a member; or
- (b) against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

(5) If each House of Parliament resolves that the provisions of schedule 2 to this Constitution (which contain alterations to subsection (1) of this section and to certain other provisions of this Constitution relating to the judges of the Court of Appeal) shall have effect, those provisions shall have effect accordingly as from such date as may be specified in the resolutions passed by the two Houses for the purposes of this subsection or, if no date is so specified, as from such date, not being later than three months after the date on which the second of those resolutions is passed, as may be appointed by the Governor-General by proclamation:

Provided that the two Houses may resolve that only the provisions of part I of the said schedule shall have effect, and where they do so they may subsequently resolve that the provisions of part 2 of that schedule shall also have effect, and in any such case the foregoing provisions of this subsection shall apply in relation to part I or, as the case may be, part 2 of that schedule accordingly.

#### *Tenure of office of judges of Court of Appeal*

**95.**-(1) Subject to the provisions of this section, a Justice of Appeal shall vacate his office upon the expiration of the period of his appointment to that office:

Provided that a person whose period of appointment has expired may continue in office for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before the expiration of that period.

(2) Except in the case of a Justice of Appeal who, at the time of his appointment also holds office as a judge of a court in some other part of the Commonwealth or in any country outside the Commonwealth, the period for which a Justice of Appeal is appointed shall be not less than three years.

(3) A Justice of Appeal may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(4) A Justice of Appeal shall be removed from office by the Governor-General if the question of his removal has, at the request of the Governor-General made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 (a) or under any other enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the President of the Court of Appeal considers that the question of removing a Justice of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Governor-General from among persons who hold or have held high judicial office in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether he should request that the question of the removal of that judge from office should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor-General shall request that the question should be referred accordingly.

(6) If the question of removing a Justice of Appeal from office has been referred to a tribunal under the preceding subsection, the Governor-General may suspend him from performing the functions of his office, and any suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect -

(a) if the tribunal advises the Governor-General that he should not request that the

question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) Except where the context otherwise requires, the functions of the Governor-General under this section shall be exercised by him in accordance with the advice of the President of the Court of Appeal.

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(a) 1883 c. 41

### *Oaths to be taken by judges of Court of Appeal*

**96.** A Justice of Appeal shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by schedule 1 to this Constitution:

Provided that no person shall be required to take either such oath if he shall have taken such oath within Fiji on any previous occasion.

## **PART 3**

### *Jurisdiction of the Supreme Court and appeals*

#### *Original jurisdiction of Supreme Court in constitutional questions*

**97.**-(1) Subject to the provisions of sections **44** (2), **78** (3) and **117** (1) of this Constitution, if any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the person by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(3) Where the Supreme Court makes a declaration in pursuance of the preceding subsection that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme

Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Fiji, as the Court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section **37** or **51** of this Constitution.

#### *Supreme Court and subordinate courts*

**98.**-(1) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) Where any question as to the interpretation of any provision of this Constitution other than Chapter 11 arises in any subordinate court and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the Supreme Court.

(3) Where any question is referred to the Supreme Court in pursuance of the preceding subsection, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

#### *Appeals to Court of Appeal*

**99.**-(1) An appeal to the Court of Appeal shall lie from decisions of the Supreme Court in the following cases, that is to say -

(a) as of right from final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;

(b) as of right from final decisions given in exercise of the jurisdiction conferred on the Supreme Court by section **17** or **97** of this Constitution;

(c) as of right from final decisions given in exercise of jurisdiction conferred on the Supreme Court in pursuance of section **8**(1) of this Constitution; and

(d) in such other cases as may be prescribed.

(2) The foregoing provisions of this section shall be subject to the provisions of sections **37**(3) and **51**(3) of this Constitution.

(3) In this section the references to final decisions of the Supreme Court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

*Appeals to Her Majesty in Council*

**100.**-(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases, that is to say -

(a) from final decisions in any appeal to the Court of Appeal by virtue of paragraph (a) or (b) of section **99**(1) of this Constitution;

(b) from final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the value of 1,000 dollars or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 1,000 dollars or upwards; and

(c) in such other cases as may be prescribed.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of that court in the following cases, that is to say -

(a) from decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and

(b) in such other cases as may be prescribed.

(3) Nothing in this or the preceding section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

## CHAPTER VIII

### SERVICE COMMISSIONS AND THE PUBLIC SERVICE

*Judicial and Legal Services Commission*

**101.**-(1) There shall be a Judicial and Legal Services Commission which shall consist of -

(a) the Chief Justice, who shall be chairman;

(b) the chairman of the Public Service Commission; and

(c) one other member (in this section referred to as "the appointed member") appointed by the Governor-General acting in accordance with the advice of the Chief Justice.



(2) A person shall not be qualified to be appointed as the appointed member unless he is qualified to be appointed as a judge of the Supreme Court:

Provided that a person who is in active practice as a barrister and solicitor in Fiji shall be disqualified for appointment.

(3) A person shall not be qualified to be appointed as the appointed member if he is, or has at any time during the three years immediately preceding his appointment been -

(a) a member of the House of Representatives or the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or of any local authority or as a candidate for selection by the Great Council of Chiefs or the Council of Rotuma for appointment by the Governor-General as a member of the Senate;

(c) a public officer other than a Justice of Appeal or a local government officer; or

(d) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of three years sponsored or otherwise supported a candidate for election as a member of the House of Representatives.

(4) The appointed member shall not, within the period of three years commencing with the day on which he last held or acted in the office of appointed member be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of section 108 of this Constitution, the appointed member shall vacate his office -

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not the appointed member, would cause him to be disqualified for appointment as such.

(6) If the office of the appointed member is vacant or the appointed member is for any reason unable to perform the functions of his office, the Governor-General, acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such to act as the appointed member, and any person so appointed shall, subject to subsection (5)(b) of this section, continue to act until his appointment is revoked by the Governor-General, acting in accordance with the advice of the Chief Justice.

*Appointment, etc., of judicial and legal officers*

**102.**-(1) Power to make appointments to the offices to which this section applies (including power to

confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Services Commission:

Provided that:-

(a) before making any appointment to hold or act in the office of a central agricultural tribunal the Commission shall consult the Prime Minister and the Leader of the Opposition; and

(b) the Commission shall not select for appointment to hold an office to which this section applies a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(2) The offices to which this section applies are the offices specified in schedule 3 to this Constitution and such other offices as may be prescribed by Parliament:

Provided that:-

(a) if the name of any such office is changed, or any such office is abolished, the provisions of this section and that schedule shall have effect accordingly;

(b) this section shall also apply to such other offices, being offices that in the opinion of the Judicial and Legal Services Commission are offices similar to those specified in schedule 3 to this Constitution, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

*Appointments, etc. of principal representatives of Fiji abroad and appointment on transfer of certain other officers*

**103.**-(1) Power to make appointments to the offices of Ambassador, High Commissioner or other principal representative of Fiji in any other country or accredited to any international organisation and to remove persons holding or acting in such offices shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that before advising the Governor-General to appoint to or to act in any such office, a person who holds or is acting in some other public office the Prime Minister shall consult the Public Service Commission.

(2) The powers conferred by the preceding subsection shall not be construed as including any power to remove from the public service or any power conferred by any law to require or permit the retirement from the public service of a person who is the holder of an office referred to in that subsection and whose service therein may be taken into account for the purpose of computing his pension under any law relating to the grant of pensions in respect of his service in the public service; and any such power in relation to such a person or to a person who has ceased to be such a person by reason of his removal from office and who has not been appointed to some other public office shall, subject to the provisions of the next following subsection, vest in the Public Service Commission.

(3) Where a person -

(a) has been removed from his office under subsection (1) of this section but has not been removed from the public service and his service in that office may be taken into account for the purpose mentioned in the preceding subsection; and

(b) he is not appointed, within such time as the Public Service Commission considers to be reasonable, to some other public office -

(i) that, in the opinion of the Commission is a comparable office,  
and

(ii) that is an office service in which, in the circumstances of his appointment thereto may be taken into account as aforesaid, that person shall be deemed to have retired from the public service on such date as the Public Service Commission may specify for the purposes of any law relating to the grant of pensions in respect of his service in the public service, and he shall be eligible for the grant of a pension thereunder notwithstanding that he may not have attained any qualifying age specified therein or that he may not have completed any qualifying period of service specified therein:

Provided that where a person such as is mentioned in paragraph (a) of this subsection accepts, within such time as the Public Service Commission considers to be reasonable, appointment to some other public office that is not such an office as is mentioned in paragraph (b)(i) of this subsection, he may elect that the provisions of this subsection shall not apply to him.

(4) The power to make appointments to any office to which this subsection applies on transfer from another such office carrying the same salary shall vest in the Prime Minister or such other Minister as the Prime Minister may designate by directions in writing.

(5) The Minister in whom the power referred to in the preceding subsection is for the time being vested may, subject to such conditions and in respect of such offices as he thinks fit, delegate that power by directions in writing to any public officer.

(6) The offices to which subsection (4) of this section applies are -

(a) such public offices (other than those referred to in subsection (1) of this section) the holders of which are required to reside outside Fiji for the proper discharge of their functions; and

(b) such public offices in the department responsible for the foreign affairs of Fiji, as may be prescribed by the Prime Minister.

*Public Service commission*

**104.**-(1) There shall be a Public Service Commission which shall consist of a chairman and not less than three nor more than five other members appointed by the Governor-General.

(2) A person shall not be qualified to be appointed as a member of the Public Service Commission if he is, or has at any time during the three years immediately preceding his appointment been -

(a) a member of the House of Representatives or the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or of any local authority or as a candidate for selection by the Great Council of Chiefs or the Council of Rotuma for appointment by the Governor-General as a member of the Senate;

(c) a public officer or a local government officer; or

(d) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of three years sponsored or otherwise supported a candidate for election to the House of Representatives.

(3) A person shall not be qualified to be appointed as a member of the Public Service Commission if he is a member of the Police Service Commission: Provided that a person shall not be disqualified for appointment as the chairman of the Public Service Commission if he is the chairman of the Police Service Commission.

(4) A member of the Public Service Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of section **108** of this Constitution, a member of the Public Service Commission shall vacate his office -

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other members of the Commission as the Governor-General may appoint.

(7) If at any time there are less than three members of the Public Service Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to perform the functions of his office, the Governor-General may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to

subsection (5)(b) of this section, continue to act until his appointment is revoked by the Governor-General.

(8) The functions of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

*Appointment, etc., of public officers*

**105.**-(1) Subject to the provisions of this Constitution, power to make appointments to public offices (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(2) Except in relation to any office referred to in subsection (4) or (5) of this section, the Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or, subject to any limitations that Parliament may prescribe, to any public officer or class of public officer.

(3) The provisions of this section shall not apply in relation to -

- (a) the office of any judge of the Supreme Court or the Court of Appeal;
- (b) except for the purpose of making appointments thereto or to act therein, the office of Auditor-General;
- (c) the office of Ombudsman;
- (d) any office appointments to which are within the functions of the Judicial and Legal Services Commission;
- (e) any office referred to in section **103**(1) of this Constitution;
- (f) the office of any member of the Police Force or of any naval, military or air force;  
or
- (g) a teacher employed in pursuance of a scheme of cooperation with the Government of New Zealand;
- (h) any office or class of office in the public service prescribed by regulations made by the Public Service Commission with the concurrence of the Prime Minister as being an office or class of office to which this section does not apply.

(4) Before making any appointment to hold or act in the office of Auditor-General or to an agricultural tribunal, the Public Service Commission shall consult the Prime Minister and the Leader of the Opposition.

(5) The Public Service Commission shall not make any appointment to hold or act in the office of

Secretary to the Cabinet or of a Permanent Secretary or of any other supervising officer within the meaning of section **82** of this Constitution unless the Prime Minister concurs in the appointment.

(6) Before making any appointment to hold or act in any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(7) The Public Service Commission shall not exercise any of its powers in relation to any office on the personnel staff of the Governor-General or in relation to any person holding or acting in any such office without the concurrence of the Governor-General, acting in his own deliberate judgment.

(8) Before exercising any of its powers in relation to the offices of the Clerk to the House of Representatives or of any member of his staff or in relation to any person holding or acting in any such office, the Public Service Commission shall consult the Speaker; and before exercising any of its powers in relation to the office of the Clerk to the Senate or of any member of his staff or in relation to any person holding or acting in any such office, the Public Service Commission shall consult the President of the Senate.

(9) In selecting candidates for entry into the public service the Public Service Commission shall -

(a) give preference, other things being equal, to local candidates who, in its opinion, are suitably qualified and shall not select persons who are not citizens of Fiji except to the extent that the Prime Minister has agreed that such persons may be selected; and

(b) ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of offices to which candidates of that community are appointed on entry.

(10) Parliament may provide for appeals to lie from such decisions of the Public Service Commission to such person or authority as Parliament may prescribe.

#### *Police Service Commission*

**106.**-(1) There shall be a Police Service Commission which shall consist of a chairman and two other members appointed by the Governor-General.

(2) A person shall not be qualified to be appointed as a member of the Police Service Commission if he is, or has at any time during the three years immediately preceding his appointment been -

(a) a member of the House of Representatives or the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or of any local authority or as a candidate for selection by the Great Council of Chiefs or the Council of Rotuma for appointment by the Governor-General as a member of the Senate;

(c) a public officer or a local government officer; or

(d) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of three years sponsored or otherwise supported a candidate for election to the House of Representatives.

(3) A person shall not be qualified to be appointed as a member of the Police Service Commission if he is a member of the Public Service Commission: Provided that a person shall not be disqualified for appointment as the chairman of the Police Service Commission if he is the chairman of the Public Service Commission.

(4) A member of the Police Service Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of section **108** of this Constitution, a member of the Police Service Commission shall vacate his office -

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) Whenever the office of chairman of the Police Service Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other members of the Commission as the Governor-General may appoint.

(7) If the office of a member of the Police Service Commission other than the chairman is vacant or if any such member is acting as chairman or is for any reason unable to perform the functions of his office, the Governor-General may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (5)(b) of this section, continue to act until his appointment is revoked by the Governor-General.

(8) The functions of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

*Appointment, etc., of members of the Police Force*

**107.**-(1) Power to make appointments to offices in the Police Force above the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that before making any appointment to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police the Police Service Commission shall consult the Prime Minister.

(2) Power to make appointments to offices in the Police Force of or below the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Commissioner of Police:

Provided that the Commissioner of Police shall not remove such a person from office or reduce him in rank unless the Police Service Commission concurs in the removal or reduction.

(3) The Police Service Commission may, subject to such conditions as it thinks fit, delegate by directions in writing -

(a) any of its powers under this section to any member to the Commission; or

(b) to such extent as the Prime Minister may prescribe by directions in writing, any of its powers under subsection (1) of this section to the Commissioner of Police.

(4) The Police Service Commission or the Commissioner of Police shall not select for appointment to hold any office in the Police Force a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(5) If provision is made by or under any law altering the ranks into which the Police Force is divided, the Police Service Commission may by order specify some other rank in the Police Force as being equivalent to the rank of Senior Inspector as it existed before such alteration, and the references in subsections (1) and (2) of this section to the rank of Senior Inspector shall then be construed as if they were references to the rank for the time being so specified.

#### *Removal from office of members of Commissions*

**108.**-(1) A person holding an office to which this section applies (in this section referred to as "a Commissioner") may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(2) A Commissioner shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(3) If the Governor-General considers that the question of removing a Commissioner ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal in accordance with the provisions of subsection (6) of this section; and

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether the Commissioner ought to be removed under this section.



(4) If the question of removing a Commissioner has been referred to a tribunal under this section, the Governor-General may suspend the Commissioner from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General, and shall in any case cease to have effect if the tribunal advises the Governor-General that the Commissioner should not be removed.

(5) The offices to which this section applies are those of appointed member of the Judicial and Legal Services Commission, member of the Public Service Commission and member of the Police Service Commission.

(6) A tribunal appointed under this section shall consist of a chairman and two other members, and -

(a) in the case of a tribunal to investigate the removal of the appointed member of the Judicial and Legal Services Commission, all members of the tribunal shall be persons who hold or have held high judicial office in some part of the Commonwealth; and

(b) in any other case, the chairman and one other member shall be persons who hold or have held such office.

(7) Except as provided in subsection (2) of this section, the functions of Governor-General under this section shall be exercised by him -

(a) in relation to the appointed member of the Judicial and Legal Services Commission, in accordance with the advice of the Chief Justice; and

(b) in relation to a member of the Public Service Commission or the Police Service Commission, in accordance with the advice of the Prime Minister.

*Tenure of office of Supervisor of Elections, Director of Public Prosecutions  
and Auditor-General*

**109.**-(1) Subject to the provisions of this section, a person holding or acting in an office to which this section applies shall vacate that office on attaining the age of sixty years:

Provided that the Governor-General, acting after consultation with the Prime Minister and the Public Service Commission may permit an Auditor-General to continue in office for a period not exceeding six months after he has attained that age.

(2) Any person holding an office to which this section applies may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) Any such person shall be removed from office by the appropriate Commission if the question of his removal from that office has been referred to a tribunal appointed under the next following

subsection and the tribunal has advised the Commission that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the appropriate Commission considers that the question of removing any such person ought to be investigated then -

(a) the Commission shall appoint a tribunal which shall consist of a chairman and not less than two other members, being persons who hold or have held high judicial office in some part of the Commonwealth; and

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Commission and advise the Commission whether he ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the appropriate Commission may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Commission and shall in any case cease to have effect if the tribunal advises the Commission that he should not be removed.

(6) Any person appointed to act in an office to which this section applies shall, subject to the provisions of subsection (1) of this section, continue to act until his appointment is revoked by the appropriate Commission.

(7) The offices to which this section applies are those of Supervisor of Elections, Director of Public Prosecutions and Auditor-General.

(8) In this section "the appropriate Commission" means -

(a) in relation to the office of Supervisor of Elections or Director of Public Prosecutions, the Judicial and Legal Services Commission; and

(b) in relation to the office of Auditor-General, the Public Service Commission.

(9) Except as provided in subsection (3) of this section, the functions of any Commission under this section shall be exercised by it after consultation with the Prime Minister and the Leader of the Opposition.

#### *Pensions laws and protection of pension rights*

**110.**-(1) The law to be applied with respect to any pensions benefits that were granted to any person before 10th October 1970 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which the preceding subsection applies) shall -

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 10th October 1970, be the law that was in force immediately before that date; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 9th October 1970, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service, and references to service as a public officer do not include references to service in any naval, military or air force.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

*Power of Commissions in relation to pensions, etc.*

**111.**-(1) Where under any law any person or authority has a discretion -

(a) to decide whether or not any pensions benefits shall be granted; or

(b) to withhold, reduce in amount or suspend any such benefits that have been granted, those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this

section in action taken on the ground that any person who holds or has held the office of any judge of the Supreme Court or the Court of Appeal, Supervisor of Elections, Director of Public Prosecutions, Ombudsman or Auditor-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means -

(a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial and Legal Services Commission, that Commission;

(b) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of the Police Force, the Police Service Commission; and

(c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Fiji may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji:

Provided that nothing in this subsection shall be construed as preventing -

(a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or

(b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section "pensions benefits" has the same meaning as in the preceding section.

## CHAPTER IX

### THE OMBUDSMAN

#### *Office of Ombudsman*

**112.**-(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the

Governor-General, acting in his own deliberate judgment, to be leaders of parties in the House of Representatives.

(3) A person shall not be qualified to be appointed as Ombudsman if he is a member of the House of Representatives, a member of the Senate, a member of any local authority, a candidate for election as a member of the House of Representatives or a local authority nominated as such with his consent or a local government officer.

(4) The Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the Prime Minister in each particular case, hold any other office of emolument other than the office of Ombudsman or engage in any occupation for reward outside the duties of his office.

(5) Subject to the provisions of the next following subsection, the Ombudsman shall vacate his office -

(a) at the expiration of four years from the date of his appointment; or

(b) if any circumstances arise that, if he were not the holder of that office, would cause him to be disqualified for appointment as such.

(6) The provisions of subsections (1) to (6) of section 108 of this Constitution shall apply to the office of Ombudsman as they apply to the office of appointed member of the Judicial and Legal Services Commission; and, except as provided in subsection (2) of that section, the functions of the Governor-General under those subsections shall be exercised by him in relation to the Ombudsman in his own deliberate judgment.

#### *Investigation by Ombudsman*

**113.**-(1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which -

(a) a complaint under this section is made alleging that a person or body of persons has suffered injustice in consequence of that action;

(b) he is invited to do so by any Minister or any member of the House of Representatives or the Senate; or

(c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities-

(a) any department of the Government or officer of such a department;

(b) the Police Force or any member thereof;

(c) the Fiji Prisons Service, Aerodromes Fire Service or any other service maintained and controlled by the Government or any officer or authority of any such service;

(d) any authority empowered to determine the person with whom any contract or class of contract is to be entered into by or on behalf of the Government or any such officer or authority;

(e) such other officers or authorities as may be prescribed by Parliament: Provided that it shall not apply in relation to any of the following officers and authorities -

(i) the Governor-General or his personal staff;

(ii) any Commission established by this Constitution or the staff of any such Commission;

(iii) any other person or authority in so far as that person or authority exercises power to make appointments to offices in the public service, disciplinary control over or power to remove persons holding or acting in such offices, power to grant, withhold, reduce in amount or suspend pensions benefits in respect of service as public officers or powers in respect of similar matters affecting public officers;

(iv) the Director of Public Prosecutions or any person acting in accordance with his instructions.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being -

(a) a department or authority of the Government or any authority or body constituted for purposes of the public service or local government; or

(b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds:

(4) Where any person by whom a complaint might have been made under the preceding subsection had died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Fiji (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Fiji or in relation to rights or obligations that accrued or arose in Fiji.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say -

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Fiji; or

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that -

(i) the Ombudsman may conduct such an investigation notwithstanding, that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister or Assistant Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him -

(a) that the complaint is merely frivolous or vexatious;

(b) that the subject matter of the complaint is trivial;

(c) that the person aggrieved has no sufficient interest in the subject matter of the complaint; or

(d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Fiji.

(10) In this section "action" includes failure to act.

*Procedure of respect of investigations*

**114.**-(1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 118 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by a barrister and solicitor or otherwise, in the investigation.

*Disclosure of information, etc.*

**115.**-(1) For the purposes of an investigation under section 113 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who is in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Fiji or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so



specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 113 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

*Proceedings after investigation*

**116.**-(1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject matter of investigation was -

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If in any case to which this section applies the Ombudsman; is of opinion -

- (a) that the matter should be given further consideration;
- (b) that the omission should be rectified;
- (c) that the decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may

thereafter make such further report on the matter as he thinks fit to the House of Representatives and the Senate.

*Discharge of functions of Ombudsman*

**117.**-(1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 113 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the House of Representatives and the Senate.

*Supplementary and ancillary provision*

**118.** Parliament may make, or provide, for the making of provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision -

(a) for the procedure to be observed by the Ombudsman in performing his functions;

(b) for the manner in which complaints under section 113 of this Constitution may be made (which may include provisions permitting such complaints to be transmitted to the Ombudsman through the intermediary of a member of the House of Representatives or the Senate);

(c) for the payment of fees in respect of any complaint or investigation;

(d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and

(e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

## CHAPTER X

### FINANCE

*Consolidated Fund*

**119.** All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may be or under any law be retained by the authority that received them

for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

*Withdrawals from Consolidated Fund or other public funds*

**120.**-(1) No moneys shall be withdrawn from the Consolidated Fund except -

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Fiji; or

(b) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Representatives or in such manner and subject to such conditions as may be prescribed in pursuance of section 122 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Fiji other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Fiji, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

*Authorisation of expenditure*

**121.**-(1) The Minister responsible for finance shall cause to be prepared and laid before the House of Representatives and the Senate before the commencement of each financial year estimates of the revenues and expenditure of Fiji for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an appropriation bill which shall be introduced into the House of Representatives to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the said bill.

(3) If in any financial year it is found -

(a) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation Act

or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Representatives and a motion or motions seeking approval of such supplementary expenditure shall be introduced into the House.

(4) Where in respect of any financial year any supplementary estimates have been laid before the House in accordance with the provisions of the preceding subsection and approved by resolution of the House, a supplementary Appropriation bill shall, as soon as practicable after the end of that year, be introduced into the House to provide for the appropriation for the purposes in question of the sums included in such estimates that have been expended for that year.

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

**122.** If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

#### *Contingencies Fund*

**123.**-(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the House of Representatives, and a motion shall be introduced therein as soon as possible for the purpose of replacing the amount so advanced.

#### *Remuneration of certain officers*

**124.**-(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous

to him than any others for which he might have opted.

(5) This section applies to the offices of Governor-General, any judge of the Supreme Court or the Court of Appeal, member of the Constituency Boundaries Commission, member of the Electoral Commission, appointed member of the Judicial and Legal Services Commission, member of the Public Service Commission, member of the Police Service Commission, Supervisor of Elections, Director of Public Prosecutions, Ombudsman and Auditor-General.

#### *Public debt*

**125.**-(1) There shall be charged on the Consolidated Fund all debt charges for which Fiji is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Fiji or the Consolidated Fund and the service and redemption of debt thereby created.

#### *Auditor-General*

**126.**-(1) There shall be an Auditor-General whose office shall be a public office.

(2) The public accounts of Fiji and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorised by him in that behalf shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other Government property in the possession of any officer:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before each House of Parliament.

(4) In the exercise of his functions under this Constitution the Auditor-General shall not be subject to the direction or control of any other person or authority.

### CHAPTER XI

### MISCELLANEOUS

#### *Interpretation*

**127.**-(1) In this Constitution, unless the context otherwise requires -

"the Commonwealth" means Fiji and any country to which section 24 of this Constitution for the time being applies, and includes the dependencies of any such country;

"the Crown" means the Crown in right of Fiji;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means -

(a) a naval, military or air force;

(b) the Police Force;

(c) the Fiji Prisons Service;

(d) a fire or forest guard service established by any law in force in Fiji;

"high judicial office" means the office of judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court;

"House of Parliament" means the House of Representatives or the Senate, as the context may require;

"Fiji" means the territories which immediately before 10th October 1970 constituted the colony of Fiji and includes any other territories declared by Parliament to form part of Fiji;

"financial year" means the period of twelve months ending on 31st December in any year or such other day as may be prescribed by Parliament;

"the Gazette" means the Fiji Royal Gazette;

"the Government" means Her Majesty's Government of Fiji;

"the Governor-General" means the Governor-General and Commander-in-Chief of Fiji;

"local authority" means the Council of Rotuma, a city council, town council, township board or provincial council and includes any other similar body prescribed by Parliament;

"local government officer" means a person holding or acting in any office of emolument in the service of a local authority but does not include a person holding or acting in the office of a member of any such authority;

"oath" includes affirmation;

"oath of allegiance" means such oath of allegiance as is prescribed in schedule 1 to this Constitution;

"Parliament" means the Parliament established by this Constitution;

"the Police Force" means the Fiji Police Force and includes any other police force established in accordance with such provision as may be prescribed by Parliament;

"prescribed" means prescribed in a law;

Provided that -

(a) in relation to anything that may be prescribed only by Parliament, it means prescribed in an Act of Parliament; and

(b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an order made by that other person or authority;

"public office" means, subject to the provisions of the next following section, an office of emolument in the public service;

"public officer" means a person holding or acting in any public office;

"the public service" means the service of the Crown, whether in a civil or military capacity, in respect of the government of Fiji;

"session" means, in relation to Parliament, the sittings of Parliament commencing when it first meets after this Constitution comes into force or after the prorogation or dissolution of Parliament at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to a House of Parliament, a period during which the House is sitting continuously without adjournment, and includes any period during which the House is in committee;

"the Speaker" means the Speaker of the House of Representatives;

"subordinate court" means any court of law established for Fiji other than the Supreme Court, the Court of Appeal or a court established by a disciplinary law.

(2) Save as otherwise provided in this Constitution, the Interpretation Act 1889<sup>(a)</sup> shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

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<sup>(a)</sup> 1889 c. 63.

*References to public office, etc.*

**128.-(1)** In this Constitution the expression "public office" shall be construed -

(a) as including the office of any judge of the Supreme Court or the Court of Appeal and the office of member of any other court of law in Fiji, unless the context otherwise requires;

(b) as not including -

(i) the office of any Minister or Assistant Minister, Leader of the Opposition, Speaker, Deputy Speaker or member of the House of Representatives or President, Vice-President or member of the Senate;

(ii) the office of member of any Commission established by this Constitution; or

(iii) except in so far as may be otherwise prescribed, the office of member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(2) For the purposes of this Constitution a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown or under a local authority.

*Appointments to terrain offices for terms of years*

**129.-(1)** It shall be lawful for a suitably qualified person to be appointed to hold any office to which this section applies for such term, not being less than four years and not expiring after the day on which he would attain the retiring age applicable to that office, as may be specified in the instrument of appointment, and the provisions of this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(2) This section applies to the office of any judge of the Supreme Court, Supervisor of Elections, Director of Public Prosecutions and Auditor-General.

(3) In this section "retiring age" means, in relation to any office, the age upon the attainment of which a person holding that office is required by the provisions of this Constitution to vacate that office.

*Powers of appointment and acting appointments*

**130.-(1)** Any reference in this Constitution to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable to perform the functions of that office.



(2) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(3) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

*Reappointments and concurrent appointments*

**131.**-(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make an appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

*Removal from office*

**132.**-(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that -

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any judge of the Supreme Court or the Court of Appeal, the Ombudsman, the Supervisor of Elections, the Director of Public Prosecutions or the Auditor-General to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service, shall in the case of any officer mentioned in the preceding paragraph or an officer who may be removed from office by some person or authority other than a Commission established by this constitution, vest in the Commission that, if that officer had retired, would be the appropriate Commission in relation to the pensions benefits of that officer under section **111** (4) of this Constitution.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to

abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

### *Resignations*

**133.** Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant -

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later.

### *Meaning of "Fijian" and "Indian".*

**134.** For the purposes of this Constitution -

(a) a person shall be regarded as a Fijian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of Fiji or any island in Melanesia, Micronesia or Polynesia; and

(b) a person shall be regarded as an Indian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of the sub-continent of India;

Provided that, where the identity of the father of any person cannot be ascertained, the male progenitors of that person may instead be traced through that person's mother.

### *Performance of functions of Commissions and tribunals*

**135.**-(1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any such Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the chairman shall have and shall exercise a casting vote.

(3) Subject to the provisions of this section, any such Commission may regulate its own procedure.

(4) In the exercise of its functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority, except where otherwise provided by this Constitution.

(5) In addition to the functions conferred upon it by or under this Constitution any such Commission shall have such powers and other functions (if any) as maybe prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) The provisions of subsections (1), (2), (3) and (4) of this section shall apply in relation to a tribunal established for the purposes of section 14(4), 16(1), 91(4), 95(5), 108(3) and 109(4) of this Constitution as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

*Saving for jurisdiction of courts*

**136.** No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

*Power to amend and revoke instruments, etc.*

**137.** Where any power is conferred by this Constitution to make any proclamation, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such proclamation, order, regulation, rule or direction.

*Consultation*

**138.** Where any person or authority other than the Governor-General is directed by this Constitution to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

**SCHEDULE 1 TO THE CONSTITUTION**

*Sections 29, 81, 92, 96 and 127(1).*

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**OATHS AND AFFIRMATIONS**

**OATH OR AFFIRMATION OF ALLEGIANCE**

I, ....., do swear [or solemnly affirm] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors, according to law. So help me God. [To be omitted in affirmation.]

#### OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF GOVERNOR-GENERAL

I, ....., do swear [or solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Governor-General. So help me God. [To be omitted in affirmation.]

#### OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF PRIME MINISTER, ATTORNEY-GENERAL, OR OTHER MINISTER OR ASSISTANT MINISTER

I, ....., being appointed Prime Minister/ Attorney-General/Minister/Assistant Minister, do swear [or solemnly affirm that I] will to the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor-General (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Fiji, and I do further swear [or solemnly affirm that I will not] on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister or Assistant Minister and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Fiji, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any documents communicated to me as the Prime Minister/Attorney-General/Minister/Assistant Minister or any matter coming to my knowledge in my capacity as such and that in all things I will be a true and faithful Prime Minister/Attorney-General/Minister/Assistant Minister.

So help me God. [To be omitted in affirmation.]

#### JUDICIAL OATH OR AFFIRMATION

I, ....., do swear [or solemnly affirm] that I will well and truly serve Our Sovereign Lady Queen Elizabeth II, Her Heirs and Successors, in the office of Chief Justice/judge of the Supreme Court/Justice of Appeal, and I will do right to all manner of people after the laws and usages of Fiji without fear or favour, affection or ill will.

So help me God. [To be omitted in affirmation].

### **SCHEDULE 2 TO THE CONSTITUTION**

*Section 94(5).*

#### ALTERATIONS TO THE PROVISIONS OF THE CONSTITUTION RELATING TO THE JUDGES OF THE COURT OF APPEAL

#### PART 1

*Provision of the**Constitution**Alteration*

Section 94 .....The substitution for paragraphs (b) and (c) of subsection (1) of the following:-

"(b) two Justices of Appeal or such greater number of Justices of Appeal as may be prescribed by Parliament:

Provided that the office of a Justice of Appeal shall not be abolished while any person is holding that office unless he consents to its abolition."

The insertion immediately before subsection (5) of the following new subsection:-

"(4B) If the office of any Justice of Appeal is vacant or if a person holding the office of Justice of Appeal is acting as the President of the Court of Appeal or is for any reason unable to perform the functions of his office, the Governor-General, acting after consultation with the Judicial and Legal Services Commission, may appoint a person qualified for appointment to that office to act as a Justice of Appeal; and any person so appointed shall, unless he is removed from office under the next following section, continue to act until his appointment is revoked by the Governor-General acting in accordance with the advice of the President of the Court of Appeal:

Provided that a person whose appointment has been revoked may continue to act for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto."

**PART 2**

Section 94 ..... The substitution for paragraph (a) of subsection (1) of the following:-

"(a) a President of the Court of Appeal; and".  
The insertion at the beginning of subsection (2) of the words "The President of the Court of Appeal shall be appointed by the Governor-General acting after consultation with the Prime Minister and the Leader of the Opposition, and".

The insertion immediately after subsection (4) of the following new subsection: -

"(4A) Whenever the office of President of the Court of Appeal is vacant or the person holding that office is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the holder thereof has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of Appeal or by such other person qualified for appointment to that office as the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, may appoint for that purpose:

Provided that a person appointed under this subsection who is not a Justice of Appeal may, notwithstanding the assumption or resumption of the functions of the office of President of the Court of Appeal by the holder of that office, continue to act as a judge of the Court of Appeal for so long thereafter as may be necessary to enable him to deliver judgment or do any other thing in relation to proceedings that were commenced before him previously thereto.

Section 95 ..... In subsections (1), (2), (3), (4), (5) and (6), the substitution of the words "judge of the Court of Appeal" for the words "Justice of Appeal".

In subsection (5), the insertion of the words "or, in relation to the removal of the President of the Court of Appeal, the Governor-General" after the words "President of the

## Court of Appeal".

*Provision of the**Constitution**Alteration*

In subsection (7), the insertion at the end of the words "in relation to the removal or suspension of a Justice of Appeal and in his own deliberate judgment in relation to the removal or suspension of the President of the Court of Appeal".

Section **96**..... The substitution of the words "judge of the Court of Appeal" for the words "Justice of Appeal".

Section **101**(1) ..... The insertion at the end of the following proviso:-

"Provided that whenever the Judicial and Legal Services Commission is exercising its functions under subsection (2) or (4B) of section 94 of this Constitution the reference to the Chief Justice in paragraph (a) of this subsection shall be construed as if it were a reference to the President of the Court of Appeal".

Schedule 1 ..... In the Judicial Oath or Affirmation, the insertion of "/President of the Court of Appeal" immediately after the word "Court".

**SCHEDULE 3 TO THE CONSTITUTION****OFFICES TO WHICH SECTION 102 APPLIES**

Central Agricultural Tribunal.  
 Chief Registrar of the Supreme Court.  
 Deputy Registrar of the Supreme Court.  
 Assistant Registrar of the Supreme Court.  
 Solicitor-General.  
 Crown Solicitor.  
 Chief Legal Draftsman.  
 Principal Legal Draftsman.  
 Senior Legal Draftsman.  
 Senior Magistrate.

First Class Magistrate.  
Second Class Magistrate.  
Third Class Magistrate.  
Principal Legal Officer.  
Senior Legal Officer.  
Legal Officer.

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**PRESCRIBED OFFICES TO WHICH SECTION 102 OF THE CONSTITUTION APPLIES**

*Prescribed by Act No. 57 of 1971:*

Administrator General.  
Registrar-General.  
Registrar of Titles.  
Public Legal Adviser.

*Prescribed by the Judicial and Legal Services Commission:*

Parliamentary Legal Draftsman.  
Registrar of Magistrates' Courts.  
Court Officer.  
(*Legal Notice No. 147 of 1973*)

Chief Legal Officer.  
(*Legal Notice No. 106 of 1974*)

First Parliamentary Counsel.  
Second Parliamentary Counsel.  
Senior Court Officer.  
Assistant Public Trustee.  
Senior Assistant Registrar.  
Assistant Registrar.  
(*Legal Notice No. 85 of 1982*)