

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

Terms and conditions of office

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

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

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

(4) In the performance of his or her duties or functions or the exercise of his or her powers, a person to whom this Part applies is not subject to the direction or control by any person, except as provided under this Constitution or by a written law.

Remuneration and allowances

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

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

Removal from office for cause

137.—(1) A person to whom this Part applies may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

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

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

- (a) the Constitutional Offices Commission appoints—
 - (i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected from amongst persons who hold or are qualified to hold the office of a Judge; and
 - (ii) in the case of alleged inability to perform the functions of office—a medical board, consisting of a chairperson and 2 other members, each of whom is a qualified medical practitioner;
- (b) the tribunal or medical board enquires into the matter and furnishes a written report of the facts to the President and advises the President of its recommendation whether or not the person concerned should be removed from office; and
- (c) in deciding whether or not to remove the person concerned from office, the President must act in accordance with the advice of the tribunal or medical board, as the case may be.

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

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

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

Performance of functions of commissions and tribunals

138.—(1) This section applies to—

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

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

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

(3) A decision of a commission, tribunal or board to which this section applies requires the concurrence of a majority of its members and the commission, tribunal or board to which this section applies may act despite the absence of a member but, if, in a particular case, a vote is taken to decide a question and the votes cast are equally divided, the person presiding must exercise a casting vote.

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

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

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

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

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

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

CHAPTER 7—REVENUE AND EXPENDITURE

Raising of revenue

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

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

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

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

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

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

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

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

Consolidated Fund

140.—(1) All revenue or moneys raised or received for the purposes of the State or Government must be paid into one Consolidated Fund.

(2) Subsection (1) does not apply to revenue or moneys that are payable by or under a written law into some other fund established for a specific purpose or that may, by or under a written law, be retained by the authority receiving them for the purposes of defraying the expenses of that authority.

Appropriations to be authorised by law

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

Authorisation of expenditure in advance of appropriation

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

(2) The total amount authorised for withdrawal under subsection (1) must not exceed one-third of the appropriations made for the ordinary services of Government in respect of the immediately preceding year.

Appropriation and taxing measures require ministerial consent

143. Any written law, that—

- (a) appropriates revenue or moneys or increases such an appropriation;
- (b) imposes taxation or an increase in taxation; or
- (c) reduces the amount of any debt due to the State,

may only be passed by Parliament with the consent of Cabinet, as signified by the Minister responsible for finance.

Annual budget

144.—(1) In respect of each year ending on 31 December or on such other day as Parliament prescribes, the Minister responsible for finance must cause to be laid before Parliament an annual budget, reflecting estimates of revenue and of capital and current expenditure for the year, in respect of the ordinary services of the Government and services of Parliament.

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

Guarantees by Government

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

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

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

Public moneys to be accounted for

146. All public moneys must be dealt with and accounted for in accordance with law and otherwise in accordance with accounting principles generally accepted in the public sector.

Standing appropriation of Consolidated Fund for payment of certain salaries and allowances

147.—(1) This section applies to—

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

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

(2) The salaries or allowances payable to a person to whom this section applies are payable out of the Consolidated Fund, which is appropriated accordingly.

Standing appropriation of Consolidated Fund for other purposes

148.—(1) All debt charges for which the State is liable and all pension benefits (except to the extent that they are a charge on another fund and have been paid out of that fund to the person or authority to whom payment is due) are payable out of the Consolidated Fund, which is appropriated accordingly.

(2) In this section—

“*debt charges*” means interest, sinking fund charges, amounts due in respect of repayment or amortisation of debt, and other expenditure incurred in connection with the raising of loans on the security of the revenue of the State or the Consolidated Fund;

“*eligible service*” means service in a public office but does not include service in a naval, military or air force; and

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

CHAPTER 8—ACCOUNTABILITY

Part A—CODE OF CONDUCT

Code of conduct

149. A written law shall—

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

Part B—FREEDOM OF INFORMATION

Freedom of information

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

Part C — AUDITOR-GENERAL

Auditor-General

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

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

(3) The President may, on the advice of the Constitutional Offices Commission, appoint a person to act as the Auditor-General during any period, or during all periods, when the office of the Auditor-General is vacant or when the Auditor-General is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

Functions of Auditor-General

152.—(1) At least once in every year, the Auditor-General shall inspect, audit and report to Parliament on—

- (a) the public accounts of the State;
- (b) the control of public money and public property of the State; and
- (c) all transactions with or concerning the public money or public property of the State.

(2) In the report, the Auditor-General must state whether, in his or her opinion—

- (a) transactions with or concerning the public money or public property of the State have been authorised by or pursuant to this Constitution or any written law; and
- (b) expenditure has been applied to the purpose for which it was authorised.

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

(4) In the performance of his or her duties, the Auditor-General or a person authorised by him or her has access to all records, books, vouchers, stores or other Government property in the possession, custody or control of any person or authority.

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

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

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

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

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

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

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

(11) A written law may provide that the accounts of a specified body corporate are not subject to audit by the Auditor-General but are to be audited as prescribed in that written law.

(12) If the written law under subsection (11) so provides, it must also empower the Auditor-General to review those audits and report the results of a review.

(13) The Auditor-General must submit a report made by him or her to the Speaker of Parliament and must submit a copy to the Minister responsible for finance.

(14) Within 30 days of receipt, or if Parliament is not sitting, on the first day after the end of that period, the Minister responsible for finance must lay the report before Parliament.

Part D—RESERVE BANK OF FIJI*Reserve Bank of Fiji*

153.—(1) The Reserve Bank of Fiji is the central bank of the State, whose primary objects are—

- (a) to protect the value of the currency in the interest of balanced and sustainable economic growth;
- (b) to formulate monetary policy;
- (c) to promote price stability;
- (d) to issue currency; and
- (e) to perform other functions conferred on it by a written law.

(2) In pursuing its primary objects, the Reserve Bank of Fiji must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Reserve Bank of Fiji and the Minister responsible for finance.

(3) The powers and functions of the Reserve Bank of Fiji are those customarily exercised and performed by central banks.

(4) The Governor of the Reserve Bank of Fiji shall be appointed by the President on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for finance.

(5) A written law must provide for the composition, powers, functions and operations of the Reserve Bank of Fiji.

(6) The Reserve Bank of Fiji must deliver quarterly and annual reports to Parliament, and any other reports when required by law, or requested by resolution.

CHAPTER 9—EMERGENCY POWERS*State of emergency*

154.—(1) The Prime Minister may, on the recommendation of the Commissioner of Police and the Commander of the Republic of Fiji Military Forces, declare a state of emergency in Fiji, or in a part of Fiji, and may make regulations relating to a state of emergency, if there are reasonable grounds to believe that—

- (a) the security and safety of all or part of Fiji is threatened; and
- (b) it is necessary to declare a state of emergency to deal effectively with the threatening circumstances.

(2) If the declaration of a state of emergency is made when Parliament is sitting, the Prime Minister must, within 24 hours upon making the declaration, refer the declaration to Parliament for confirmation of the declaration.

(3) If the declaration of a state of emergency is made when Parliament is not sitting, the Speaker must, within 48 hours upon the making of the declaration, seek confirmation of the declaration from the members of Parliament through such measures of communication as necessary.

(4) If a majority of the members of Parliament confirm the declaration made by the Prime Minister, then the declaration shall continue for a period of one month from the date of confirmation, and may be renewed by a further vote in Parliament.

(5) If a majority of the members of Parliament do not confirm the declaration made by the Prime Minister, then the declaration and any actions taken under the declaration shall be deemed to be of no effect.

CHAPTER 10—IMMUNITY

Immunity granted under the Constitution of 1990 continues

155. Notwithstanding the abrogation of the Constitution Amendment Act 1997 and despite the repeal of the Constitution of 1990, Chapter XIV of the Constitution of 1990 continues in force in accordance with its tenor, and the immunity granted in Chapter XIV of the Constitution of 1990 shall continue.

Immunity granted under the Limitation of Liability for Prescribed Political Events Decree 2010 continues

156.—(1) The immunities granted to prescribed persons for prescribed political events under the Limitation of Liability for Prescribed Political Events Decree 2010 shall continue in existence.

(2) Notwithstanding anything contained in this Constitution, the Limitation of Liability for Prescribed Political Events Decree 2010 shall, in its entirety, continue in existence and shall not be reviewed, amended, altered, repealed or revoked by Parliament.

Further immunity

157. Absolute and unconditional immunity is irrevocably granted to any person (whether in their official or personal or individual capacity) holding the office of, or holding the office in, as the case may be—

- (a) the President;
- (b) the Prime Minister and Cabinet Ministers;
- (c) Republic of Fiji Military Forces;
- (d) Fiji Police Force;
- (e) Fiji Corrections Service;
- (f) Judiciary;
- (g) public service; and
- (h) any public office,

from any criminal prosecution and from any civil or other liability in any court, tribunal or commission, in any proceeding including any legal, military, disciplinary or professional proceedings and from any order or judgment of any court, tribunal or commission, as a result of any direct or indirect participation, appointment or involvement in the Government from 5 December 2006 to the date of the first sitting of the first Parliament elected after the commencement of this Constitution, provided however any such immunity shall not apply to any act or omission that constitutes an offence under sections 133 to 146, 148 to 236, 288 to 351, 356 to 361, 364 to 374, and 377 to 386 of the Crimes Decree 2009 (as prescribed in the Crimes Decree 2009 at the date of the commencement of this Constitution).

Immunity entrenched

158.—(1) Notwithstanding anything contained in this Constitution, this Chapter and any immunity granted or continued in this Chapter shall not be reviewed, amended, altered, repealed or revoked.

(2) Notwithstanding anything contained in this Constitution, no court or tribunal shall have the jurisdiction to accept, hear or make any decision or order with respect to any challenge against the provisions of this Chapter and any immunity granted or continued in this Chapter.

(3) No compensation shall be payable by the State to any person in respect of damage, injury or loss to his or her property or person caused by or consequent upon any conduct from which immunity has been granted under this Chapter.

CHAPTER 11 — AMENDMENT OF CONSTITUTION

Amendment of Constitution

159.—(1) Subject to subsection (2), this Constitution, or any provision of this Constitution, may be amended in accordance with the procedure prescribed in this Chapter, and may not be amended in any other way.

(2) No amendment to this Constitution may ever—

- (a) repeal any provision in Chapter 10 of this Constitution or in Part D of Chapter 12 of this Constitution;
- (b) infringe or diminish the effect of any provision in Chapter 10 of this Constitution or in Part D of Chapter 12 of this Constitution; or
- (c) repeal, infringe or diminish the effect of this Chapter.

Procedure for amendment

160.—(1) A Bill for the amendment of this Constitution must be expressed as a Bill for an Act to amend this Constitution.

(2) A Bill for the amendment of this Constitution must be passed by Parliament in accordance with the following procedure—

- (a) the Bill is read 3 times in Parliament;
- (b) at the second and third readings, it is supported by the votes of at least three-quarters of the members of Parliament;
- (c) an interval of at least 30 days elapses between the second and third readings and each of those readings is preceded by full opportunity for debate; and
- (d) the third reading of the Bill in Parliament does not take place until after the relevant committee of Parliament has reported on the Bill to Parliament.

(3) If a Bill for the amendment of this Constitution is passed by Parliament in accordance with subsection (2), then the Speaker shall notify the President accordingly, who shall then refer the Bill to the Electoral Commission, for the Electoral Commission to conduct a referendum for all registered voters in Fiji to vote on the Bill.

(4) The referendum for the purposes of subsection (3) shall be conducted by the Electoral Commission in such manner as prescribed by written law.

(5) The Electoral Commission shall, immediately after the referendum, notify the President of the outcome and shall publish the outcome of the referendum in the media.

(6) If the outcome of the referendum is that three-quarters of the total number of the registered voters have voted in favour of the Bill, then the President must assent to the Bill, which shall come into force on the date of the Presidential assent or on such other date as prescribed in the Bill.

(7) In this section, the use of the word “*amend*” or “*amendment*” is intended to be understood broadly, so that the section applies to any proposal to repeal, replace, revise, or alter any provision of this Constitution.

Amendments before 31 December 2013

161.—(1) Notwithstanding anything contained in this Chapter, on or before 31 December 2013, the President acting on the advice of Cabinet may, by Decree published in the *Gazette*, make such amendments to this Constitution, as are necessary to give full effect to the provisions of this Constitution or to rectify any inconsistency or errors in any provision of this Constitution.

(2) Cabinet can only advise the President for an amendment to this Constitution under subsection (1) if Cabinet obtains certification of the Supreme Court for the amendment.

(3) For the avoidance of doubt, this section shall expire on, and be of no effect after, 31 December 2013.

**CHAPTER 12—COMMENCEMENT, INTERPRETATION,
REPEALS AND TRANSITIONAL**

Part A—SHORT TITLE AND COMMENCEMENT

Short title and commencement

162.—(1) This Constitution may be cited as the Constitution of the Republic of Fiji.

(2) This Constitution shall come into force on 7 September 2013.

Part B—INTERPRETATION

Interpretation

163.—(1) In this Constitution, unless the contrary intention appears—

“*Act*” means an Act of Parliament, a Decree or a Promulgation;

“*adult*” means an individual who is 18 years of age or over;

“*Bill of Rights*” means the rights and freedoms set out in Chapter 2;

“*child*” means an individual who has not reached the age of 18 years;

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

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

“*corrupt practices*” includes—

- (a) any attempt to improperly influence a public officer;
- (b) to influence peddling, bribery, or extortion;
- (c) misuse of inside information for personal gain;
- (d) requesting or accepting any benefit to which a person is not lawfully entitled;
- (e) withholding any service, benefit, decision or judgment, or threatening a person with the exercise of a lawful power against that person, or implying any such practice, in order to extort a personal benefit or to improperly obtain the person’s consent to any action or omission;
- (f) unlawfully taking or demanding any private property;
- (g) misuse or misapplication of public property for personal purposes, or theft of public property; and
- (h) converting or selling public assets for personal gain;

“*criminal proceedings*” means proceedings before any court, other than a military court, in which a person is prosecuted for allegedly committing an offence, including an appeal, a case presented on the basis of agreed facts, or a question of law reserved;

“*department*” means a department of the public service, under a ministry;

“*disability*” includes any physical, sensory, mental, psychological or other condition, or illness that—

- (a) has, or is perceived by significant sectors of the community to have, a significant adverse effect on an individual’s ability to participate fully and effectively in society on an equal basis with others; or
- (b) forms the basis of unfair discrimination;

“*disciplinary law*” means a written law regulating the discipline of any disciplined force;

“*disciplined force*” means—

- (a) the Republic of Fiji Military Forces;
- (b) the Fiji Police Force; or
- (c) the Fiji Corrections Service;

“*electoral offences*” includes an offence under a law governing elections and includes any offence under any law governing registration of voters and registration of political parties;

“*Fiji*” or “*Republic of Fiji*” means the territories which immediately before 10 October 1970 constituted the Colony of Fiji and includes any other territory declared by Parliament to form part of Fiji;

“*Gazette*” means the Government of the Republic of Fiji Gazette published by order or under the authority of the Government, or a supplement to the *Gazette*;

“*Government*” means the Government of the State;

“*human trafficking*” includes trafficking of persons as defined or prescribed by a written law;

“*Judge*” means a Judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal) or a Judge of the Supreme Court;

“*judicial officer*” includes a Judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal), a Judge of the Supreme Court, Magistrate, Masters of the High Court, the Chief Registrar and other judicial officers appointed by the Judicial Services Commission;

“*law*” includes all written law;

“*minerals*” includes all minerals extracted from land or seabed and includes natural gases;

“*oath*” includes affirmation;

“*oath or affirmation of allegiance and office*” means the oath or affirmation of allegiance and office as set out in the Schedule;

“*person*” means a natural or legal person, including a company or association or body of persons whether corporate or unincorporated;

“*political party*” means an organised group or association of persons striving for participation in the political life or Government of the Republic of Fiji that has been registered under a written law regulating the organisation of political parties;

“*prescribed*” means prescribed in, by or under a written law;

“*President*” means the President of the Republic of Fiji appointed under Chapter 4 and includes any person appointed or holding office under Part D of this Chapter;

“*property*” includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money or negotiable instruments;

“*public office*” means—

- (a) an office created by, or continued in existence under, this Constitution;
- (b) an office in respect of which this Constitution makes provision;
- (c) an office of a member of a commission;
- (d) an office in a State service;

- (e) an office of Judge;
- (f) an office of Magistrate or an office in a court created by written law;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by written law;

“*public officer*” means the holder of a public office;

“*public service*” means the service of the State in a civil capacity but does not include—

- (a) service in the judicial branch;
- (b) service in the office of a member of a commission; or
- (c) service in an office created by, or continued in existence under, this Constitution;

“*session*”, in relation to Parliament, means a sitting of Parliament starting when it first meets after a prorogation of Parliament or a dissolution of Parliament and ending when Parliament is next prorogued or Parliament is next dissolved;

“*sentence of imprisonment*” does not include a suspended sentence or a sentence of imprisonment with the option of a fine;

“*sitting*”, in relation to Parliament, means a period during which Parliament is sitting continuously without adjournment, and includes any period during which Parliament is in committee;

“*Speaker*” means the Speaker of Parliament;

“*State*” means the Republic of Fiji;

“*state of emergency*” means a state of emergency proclaimed under Chapter 9;

“*State service*” means the public service and the disciplined force;

“*subordinate court*” means any court of law established for the State other than the High Court, Court of Appeal, Supreme Court or a court established by a disciplinary law;

“*subordinate law*” means any instrument made in exercise of a power to make the instrument conferred by an Act, and includes regulations, rules, orders, by-laws or declarations;

“*this Constitution*” means the Constitution of the Republic of Fiji; and

“*written law*” means an Act, Decree, Promulgation and subordinate law made under those Acts, Decrees or Promulgations.

(2) A reference in this Constitution to a power to make appointments to a public office includes a reference to—

- (a) a power to make appointments on the promotion or transfer to the office; and
- (b) a power to appoint a person to act in the office while it is vacant or its holder is unable to perform the functions of the office.

(3) In this Constitution, unless the contrary intention appears, a reference to the holder of an office by the term designating his or her office includes a reference to any person for the time being acting in the office.

(4) A person who has been appointed to an office established by this Constitution may resign from the office by notice in writing signed by him or her addressed to the person or authority by whom he or she was appointed, and the resignation takes effect—

- (a) at the time or on the date specified in the notice; or
- (b) when the notice is received by the person or authority to whom it is addressed,

whichever is the later.

(5) A reference in this Constitution to a power to remove a person from a public office includes a reference to—

- (a) a power to require the person to retire from office;
- (b) a power to terminate the contract on which the person is employed; or
- (c) a power not to renew the contract on which the person is employed.

(6) A reference in this Constitution to amending any law (including this Constitution) is a reference to—

- (a) repealing it with or without replacing it by another law;
- (b) modifying, varying, revising or altering it by amendment or otherwise;
- (c) suspending its operation; or
- (d) making other provision that is inconsistent with it.

(7) A person, authority or body upon whom the functions are conferred by this Constitution has power to do everything necessary or convenient to be done for, or in connection with, the performance of those functions.

(8) A reference in this Constitution to the Minister in relation to the doing of anything, the participation in any consultation or the receipt of any report is a reference to the Minister who, for the time being, has been assigned responsibility for the part of the business of the Government relating to the subject matter of the activity concerned.

(9) Unless the contrary intention appears, a reference in this Constitution to a Minister includes a reference to the Minister for the time being acting for and on behalf of the first mentioned Minister.

(10) A provision of this Constitution to the effect that a person or authority is not subject to the direction or control of any other person or authority in the performance of functions or the exercise of powers is not to be construed as precluding a court of law from exercising jurisdiction in relation to a question whether the first mentioned person or authority has performed the functions or exercised the powers in accordance with this Constitution or whether that person or authority should or should not perform the functions or exercise the powers.

(11) A power conferred by this Constitution to make, grant or issue any instrument (including a proclamation, order, regulation or rule), or to give any direction, includes the power, exercisable in the like manner, to repeal, rescind, revoke, amend or vary the instrument or direction.

(12) For the avoidance of doubt, use of the word “*must*” in this Constitution imports obligation to the same extent as if the word “*shall*” were used.

(13) A reference in this Constitution to an office named in this Constitution is to be read with any formal alteration necessary to make it applicable in the circumstances.

(14) In this Constitution, unless the context otherwise requires—

- (a) if a word or expression is defined in this Constitution, any grammatical variation or cognate expression of the word or expression has a corresponding meaning, read with the changes required by the context; and
- (b) the word “*includes*” means “*includes, but is not limited to*”.

(15) In calculating time between 2 events for any purpose under this Constitution, if the time is expressed—

- (a) as days, the day on which the first event occurs is to be excluded, and the day by which the last event may occur is to be included;
- (b) as months, the time period ends at the beginning of the day in the relevant month—
 - (i) that has the same number as the date on which the period began, if that month has a corresponding date; or
 - (ii) that is the last day of that month, in any other case; or
- (c) as years, the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.

(16) If a period of time prescribed by this Constitution for any purpose is 6 days or less, Sundays and public holidays are not to be counted when calculating the time.

(17) If, in any particular circumstance, the period of time prescribed by this Constitution ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.

(18) If a particular time is not prescribed by this Constitution for performing a required act, the act must be done without unreasonable delay, and as often as the occasion requires.

(19) If any person has authority under this Constitution to extend a period of time prescribed by this Constitution, the authority may be exercised either before or after the end of the period, unless a contrary intention is expressly mentioned in the provision conferring the authority.

(20) Except to the extent that this Constitution provides otherwise, if a person has vacated an office established under this Constitution, the person may, if qualified, again be appointed, elected or otherwise selected to hold the office in accordance with this Constitution.

(21) The Schedule is a part of this Constitution, and every use of the expression “*this Constitution*” includes the Schedule.

(22) Any person required under any law to take an oath or affirmation of allegiance and office must take the appropriate oath or affirmation set out in the Schedule.

Part C—REPEALS

Repeals

164. Subject to Part D of this Chapter and other provisions of this Constitution, the following written laws are repealed—

- (a) Executive Authority of Fiji Decree 2009;
- (b) Revenue and Expenditure Decree 2009;
- (c) State Services Decree 2009;
- (d) Office of the Vice-President and Succession Decree 2009; and
- (e) Administration of Justice Decree 2009.

Part D—TRANSITIONAL

Office of the President

165.—(1) Notwithstanding the repeal of the Executive Authority of Fiji Decree 2009, the President appointed under the Executive Authority of Fiji Decree 2009 shall continue to hold office for the term of his or her appointment made under the Executive Authority of Fiji Decree 2009, and any re-appointment to the office of the President must be done in accordance with the provisions of this Constitution.

(2) The President appointed under the Executive Authority of Fiji Decree 2009 shall continue to exercise executive authority of Fiji and exercise all the powers (including making laws by Decree on the advice of Cabinet) vested in him or her under the Executive Authority of Fiji Decree 2009, until the first sitting of the first Parliament under this Constitution.

(3) If any vacancy arises in the office of the President before the first sitting of the first Parliament under this Constitution, then another person shall be appointed to the office of the President in accordance with the Executive Authority of Fiji Decree 2009.

(4) Notwithstanding the repeal of the Office of the Vice-President and Succession Decree 2009, until the first sitting of the first Parliament under this Constitution, if the office of the President is vacant or if the President is absent from duty or from Fiji or is, for any reason, unable to perform the functions of the office of the President, then the functions of the office of the President shall be performed by the Chief Justice.

Prime Minister and Ministers

166.—(1) Notwithstanding the repeal of the Executive Authority of Fiji Decree 2009, the Prime Minister and other Ministers appointed under the Executive Authority of Fiji Decree 2009 shall continue in office until a Prime Minister assumes office under section 93 of this Constitution.

(2) The Prime Minister and other Ministers shall continue to exercise all the authority and powers vested in the Prime Minister and other Ministers under the Executive Authority of Fiji Decree 2009 until a Prime Minister assumes office under section 93 of this Constitution.

(3) Notwithstanding its repeal and notwithstanding anything contained in this Constitution, the Executive Authority of Fiji Decree 2009 shall continue to be in force until the first sitting of the first Parliament under this Constitution.

(4) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter and notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament under this Constitution, subordinate laws shall be made in accordance with laws, rules and procedures applicable prior to the commencement of this Constitution.

Public or Constitutional officers

167.—(1) Any person who immediately before the date of commencement of this Constitution holds or is acting in a public office shall, from the date of the commencement of this Constitution hold or act in that office or the corresponding public office established by this Constitution as if he or she had been appointed to do so in accordance with the provisions of this Constitution and shall be deemed to have taken any oath or affirmation required upon such appointment by any existing law.

(2) The provision of this section shall be without prejudice to any power conferred by or under this Constitution to make provision for the abolition of offices or for the removal from office of persons holding or acting in any office.

(3) Notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament elected under this Constitution, any function, power or duty that is conferred under this Constitution on the Constitutional Offices Commission shall be performed by the Prime Minister.

(4) For the avoidance of doubt, the members of the Constitutional Offices Commission referred to in section 132(2)(d) and (e) shall only be appointed after the first sitting of the first Parliament elected under this Constitution, and the Constitutional Offices Commission shall not hold any meeting until after the first sitting of the first Parliament elected under this Constitution.

(5) Notwithstanding anything contained in this Constitution, sections 79(8), 108(2), 116(12), 117(13), 121(15), 127(8), 129(8), 130(8), 131(6) and 152(7) shall only take effect from 1 January 2014.

Finance

168. Notwithstanding the repeal of the Revenue and Expenditure Decree 2009 and the provisions of Chapter 7 of this Constitution, the Revenue and Expenditure Decree 2009 shall continue to be in force until the first sitting of the first Parliament under this Constitution.

Functions of Parliament and Speaker

169.—(1) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter, any function that has to be performed by the Speaker in this Constitution shall, until the first sitting of the first Parliament under this Constitution, be performed by the Prime Minister.

(2) Notwithstanding the repeal of the laws mentioned in Part C of this Chapter, any function that has to be performed by Parliament in this Constitution shall, until the first sitting of the first Parliament under this Constitution, be performed by Cabinet.

(3) Notwithstanding anything contained in this Constitution, until the first sitting of the first Parliament elected under this Constitution, any function, power or duty that is conferred under this Constitution on the Leader of the Opposition shall be performed by the Prime Minister.

Elections

170.—(1) Notwithstanding anything contained in Chapter 4 of this Constitution, the first general election for members of Parliament under this Constitution shall be held on a date to be determined by the President, on the advice of the Prime Minister, provided however that the first general election must be held no later than 30 September 2014.

(2) For the first general election of members of Parliament under this Constitution, the date on which such general election shall be held shall be publicly announced by the President at least 60 days before the date of the general election.

(3) The writ for the first general election of members of Parliament under this Constitution shall be issued by the President on the advice of the Prime Minister, at least 44 days before the date of the general election.

(4) For the first general election of members of Parliament under this Constitution, the last day for the receipt of a nomination of a candidate for election to Parliament shall be 30 days before the date of the general election.

(5) Until such time the Electoral Commission or a Supervisor of Elections is appointed under this Constitution, the functions of the Electoral Commission or the Supervisor of Elections shall be performed by the Permanent Secretary responsible for elections.

Succession of institutions

171.—(1) An office or institution established under this Constitution shall be the legal successor of the corresponding office or institution existing immediately before the commencement of this Constitution.

(2) Upon its appointment under this Constitution, the Supervisor of Elections shall be the legal successor to the office of the Registrar of Voters under the Electoral (Registration of Voters) Decree 2012 and to the office of the Registrar under the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013.

Preservation of rights and obligations

172.—(1) Except to the extent that this Constitution expressly provides otherwise, all rights and obligations, however arising, of the State and subsisting immediately before the commencement of this Constitution shall continue as rights and obligations of the State under this Constitution.

(2) All permits, licences, rights or similar undertakings of the State issued to any person, and in force immediately before the commencement of this Constitution shall continue in the same terms from that date.

(3) All delegations that had been given before the commencement of this Constitution by a person referred to any law repealed under Part C of this Chapter and which were in force immediately before the commencement of this Constitution, shall continue in force after the commencement of this Constitution, as if given by a corresponding commission or person referred to in this Constitution.

(4) All proceedings before a commission or a person referred to in any law repealed under Part C of this Chapter that had commenced but had not been determined on the date of the commencement of this Constitution shall continue after the commencement of this Constitution as if they had been commenced before the corresponding commission or person referred to in this Constitution.

(5) Any complaint lodged with the Human Rights Commission established under the Human Rights Commission Decree 2009 but which had not been determined by the date of the commencement of this Constitution shall continue to be dealt with by the Human Rights and Anti-Discrimination Commission established under section 45 of this Constitution, provided however that any complaint made to the Human Rights and Anti-

OATH FOR SPEAKER/DEPUTY SPEAKER OF PARLIAMENT

I,, swear that, as the Speaker/Deputy Speaker of Parliament, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, maintain the dignity and honour of Parliament to the best of my ability, and act without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law. So help me, God!

AFFIRMATION FOR SPEAKER/DEPUTY SPEAKER OF PARLIAMENT

I,, do solemnly and sincerely and truly declare and affirm that, as the Speaker/Deputy Speaker of Parliament, I will be faithful and bear true allegiance to the Republic of Fiji, and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, maintain the dignity and honour of Parliament to the best of my ability, and act without fear, favour or prejudice, in accordance with the Constitution of the Republic of Fiji and the law.
