

## ELECTING THE MEMBERS OF PARLIAMENT

10.1 In this chapter we explain further three recommendations made in Chapter 9:

- that all elections of candidates for seats in the Bose Lawa and the Bose e Cake, as well as the election of the President and Vice-President, should be held under the preferential system known as the alternative vote;
- that the 45 open seats in the Bose Lawa should be filled by voting in 15 three-member heterogeneous constituencies in which there is a mixed population made up of members of the different ethnic communities;
- that, in voting for the reserved seats,
  - citizens of Pacific Island origin should again vote with members of the Fijian community rather than as general voters; and
  - citizens of mixed descent should have the option of regarding themselves as members either of their father's community or their mother's community for voting purposes (but not for any other constitutional purpose, and without any effect on any matter relating to the ownership of land).

In doing so, we make further recommendations for implementing these basic features of the electoral system. We also discuss and make recommendations on all other matters bearing on the election of members of Parliament.

### THE CHOICE OF VOTING SYSTEM

#### The main kinds of system

10.2 By *voting system*, we mean the system under which voters cast votes for candidates seeking election to Parliament, and the method for determining from the votes cast, which candidates have been elected. To put it more shortly, we are looking at how *votes* should be turned into *seats*. The voting system operates in the context of the wider *electoral* system which includes rules about who may

vote and who may be a candidate, and how the election is actually conducted. We deal with those matters in later sections of the paper.

### *Plurality systems*

10.3 In the Fiji Islands, as in most other former British colonies, it was taken for granted that the voting system used in Britain should be adopted. That is the plurality system known as first-past-the-post (FPP) under which the winning candidate is the one who gets the greatest number of votes. This is an entirely logical system when the choice is between only two candidates. One will not only have more votes than the other, but will have an absolute majority - that is more than 50%. The outcome must be regarded as fair.

10.4 If the choice is between more than two candidates, it can be shown mathematically that there is no *perfect* system of voting that fully reflects the possible range of preferences that all voters may have among them. In these circumstances, a plurality system may mean that the winning candidate receives less than 50% of the votes - that is fewer votes than those received by the competing candidates when their votes are added together. If there are three candidates, A, B and C, who receive 45%, 40% and 15% of the votes respectively, it is possible to imagine that some of the 15% who supported C might have preferred B to A, if it was impossible to elect C.

10.5 A further disadvantage of FPP as a method of voting for members of a legislature, and especially for electing the governing party under the parliamentary system, is that the number of successful candidates *belonging to a particular party* who are elected under FPP must be added up, to determine whether or not that party has a majority. It may then be found that, although a party may get a majority of the *votes* cast in the election, it does not get a majority of the *seats*. This is because the party's supporters are unlikely to be distributed evenly through all constituencies. Their candidates will be elected only if they obtain more votes than any other candidate in the constituency for which each is standing.

### *Majority systems*

10.6 Because of the disadvantages of plurality systems, various ways of modifying it have been devised to ensure that a winning candidate must get an absolute majority of the votes cast, that is more than 50%. One is to hold an election under FPP, but if no candidate in the constituency obtains more than 50% of the votes, a second ballot is held a week or so later, between the two highest-polling candidates, or those candidates who have received a specified percentage of the votes.

10.7 The alternative vote system (AV) is based on the same principle as second ballots, but avoids the need for a second election at a later date. It is a refinement of the FPP system in that it requires voters to rank candidates in the order of their preference. To be elected, a candidate must have a majority of the votes cast. It will produce the same result as the FPP system if one or more candidates receive 50% plus 1 of the first preference votes. If there is only one seat to be filled, the candidate who passes this threshold and has the greatest number of votes will be declared elected. Only if no candidate reaches the threshold when first preferences are counted, will it be necessary to count and allocate second and subsequent preferences.

10.8 Then, if the election is for a single member constituency, the candidate with the lowest number of first preferences is eliminated. In the second round of counting, the ballot papers giving a first preference to that candidate are re-examined, and votes are allotted to those of the remaining candidates for whom the voter has expressed a second preference. After the second preferences are added to the first preferences for the candidates still in the running, the candidate with the lowest number of votes is again eliminated, and so on, until one of the candidates has obtained the required quota. This is calculated in accordance with the following formula:

$$\frac{\text{total number of valid ballot papers}}{2} + 1$$

10.9 The affirmative vote system can be used in multi-member, as well as single-member constituencies. An analogous method of eliminating the candidate with the fewest votes applies.

10.10 Unlike the single transferable vote system (STV), which need not necessarily require voters to indicate preferences in respect of all candidates on the ballot paper, AV requires voters to indicate preferences in respect of all or most candidates. Otherwise, all ballot papers may be exhausted before any candidate obtains the quota. There must in any case be a fall-back provision under which the candidate with the greatest number of votes is elected, but if this happens regularly because voters have failed to indicate sufficient preferences, the advantages of AV as compared with FPP will be lost.

10.11 Under the AV system, the election of the successful candidates does not, as in proportional representation systems, depend on the proportion of votes cast for the candidate. However, it is argued that, like PR systems, AV mitigates the winner take all aspects of FPP and generally achieves better proportionality of seats to votes than the FPP system.

### *Proportional systems*

10.12 Plurality systems like FPP and majority systems like AV may be contrasted with proportional systems. These are designed to provide that the seats a party receives in Parliament bear a reasonable proportion to the number of votes that the party receives, either in all constituencies or in a separate vote treating the whole country as a single constituency.

10.13 Of the three main types of proportional system, the Commission received submissions in favour of two: a system based on *party lists* and STV. The latter had been recommended for open seats by the Royal Commission appointed in 1975 to consider the most appropriate method of electing members of the House of Representatives in Fiji (the *Street Commission*). The submissions expressed limited interest in the mixed member proportional system (MMP) adopted in post-war Germany, and recently in New Zealand. The general inclination was to wait and see how that system operates in New Zealand.

10.14 List system PR allocates seats to parties in proportion to the number of votes cast for the party. The system uses one or other of several recognised mathematical formulas for achieving the allocation. This is necessary because no party can be given a fraction of a seat. Generally speaking, the party managers decide whose names should appear on the lists and in what order. That gives better opportunities than most systems to include women and members of minority groups sufficiently high on the list to win a seat, but it is often seen as giving too much power to the party and not enough to individual voters.

10.15 If the system treats the whole country or major regions of a country as a single constituency, the list system also fails to provide the important links between a voter and his or her member. Measures to reduce the size of the constituency represented through the list, or to open the list to variation by individual voters deprive the system of the simplicity and proportionality it would otherwise have.

10.16 Under the STV system, the constituencies must be multi-member because the allocation is based on the range of preferences within the constituency. The greater the number of members, the greater the proportionality. As in the case of AV, the voter numbers the candidates in order of preference. But under STV, the underlying principle is the distribution of fractions of a single vote. If any fraction of the vote is not needed to help elect the candidate of the voter's first choice, or cannot be used because the candidate has been eliminated, it is transferred at a discounted value to help elect the candidate of second choice, and so on.

10.17 The quota needed to secure election is the lowest possible, taking account of the number to be elected. In a three member constituency it is just over 25%. If three candidates each get just over 25%, no other candidate can get more.

### **The criteria for choosing a voting system in ethnically divided societies**

10.18 Over the twenty years since the *Street Commission* made its recommendations, there has been intensive discussion and writing about the best voting systems for ethnically divided societies. This work is not concerned exclusively with the relative merits of plurality systems, majority systems and proportional systems as ways of turning votes into seats. It focuses on the extent to which each is likely to bring about the representation of different ethnic communities and give them the opportunity to participate in government. South Africa's accession to democracy, in particular, has produced extensive literature about how the choice of voting system is likely to affect the working of the political system in that country.

10.19 Through this literature and in the papers specially prepared for the Commission as well as in discussions with recognised experts in the field, we have had access to analyses of the advantages and disadvantages of the voting systems in use or proposed for use, in a number of ethnically divided societies. These include not only South Africa, but also Malaysia, Sri Lanka, various African and Caribbean states, Lebanon, Cyprus and Northern Ireland, as well as the consociational democracies of western Europe like Switzerland, the Netherlands and Belgium. Strangely, there is little literature about Mauritius, but our brief visit to that country provided insights into the effect of the electoral arrangements there.

10.20 The political scientists base their analysis of voting systems on the assumption that politicians are motivated by the desire to be elected and reelected. They see the voting system as probably the most powerful instrument for shaping the whole political system, because it encourages politicians to behave in ways that maximise their chances of electoral success. There is general agreement that, in an ethnically divided society, political parties, at least to begin with, are likely to be ethnically based. The objective is to find ways of encouraging all, or a sufficient number, of them to come together for the purpose of governing the country in a way that gives all communities an opportunity to take part.

10.21 However, there is some division of opinion about the kind of voting system that is likely to work best for this purpose. In part, the different views result from differing perceptions about the importance of proportionality, as compared with

other likely consequences of particular voting systems. In part, they reflect some differences of opinion about the consequences of particular voting systems. Where, in making proposals about a voting system for use in the Fiji Islands, we have given preference to one particular view we have done so because it seems to meet best the situation in Fiji as we see it.

10.22 Before setting out the criteria we see as relevant to the choice of a voting system, we make the point once again that the voting system is not the only mechanism through which the Constitution should provide the requisite assurances to all communities in Fiji. We foreshadowed the most important of these in Chapters 2 and 3, and summarised them comprehensively at the beginning of Chapter 9.

### **Identifying and ranking the criteria**

10.23 In identifying the criteria for judging voting systems for use in Fiji, we have focussed mainly, though not exclusively, on the voting system for electing candidates for the recommended 45 open seats in the Bose Lawa. We see the election of candidates for those seats as providing the main stimulus for the emergence of a multi-ethnic political culture in the Fiji Islands.

10.24 However, as we have explained, we think a single voting system should be used, not only for the election of members in the Bose Lawa and the Bose e Cake, but also for the election of the President and Vice-President, on a single ticket, by an Electoral College comprising all members of both houses. Therefore the system chosen has to be suitable for all these purposes.

10.25 The criteria we consider relevant take account of those set out in the New Zealand *Report of the Royal Commission on the Electoral System* (1986). However, in Fiji's different circumstances, we have included criteria not relevant in New Zealand and have left out or adapted some that relate particularly to New Zealand's circumstances. Because we consider it necessary to focus on the most important criteria, perhaps at the expense of others, we have ranked the criteria in what we consider to be the order of their importance.

10.26 This leads us to emphasise the Royal Commission's own conclusion about how a voting system should be chosen:

If a system is designed to achieve one particular objective, the likelihood of meeting other objectives may thereby be lessened. The best voting system for any country will not be one which meets any of the criteria completely but will be one which provides the most satisfactory overall balance between them, taking account of that country's history and current circumstances.

10.27 Our own list of the relevant criteria is as follows:

- Encouragement of multi-ethnic government
- Recognition of the role of political parties
- Incentives for moderation and cooperation across ethnic lines
- Effective representation of constituents
- Effective voter participation
- Effective representation of minority and special interest groups
- Fairness between political parties
- Effective government
- Effective opposition
- Proven workability
- Legitimacy

## EVALUATION OF VOTING SYSTEMS

10.28 In this section, we spell out the criteria just listed and evaluate our recommended voting system, the alternative vote (AV), against them. In doing so, we show how it compares with the existing first-past-the-post system (FPP), list system proportional representation (list system PR) and the single transferable vote (STV). We also fill out some details of the way we see AV working in practice.

### **Encouragement of multi-ethnic government**

10.29 The consistent theme of this report, developed in Chapters 2 and 3 and sustained throughout, is that the encouragement of multi-ethnic government should be the overriding objective of constitutional arrangements for the Fiji Islands. It must therefore appear at the head of the list of criteria. The voting system must be one which promotes the emergence of multi-ethnic governments.

### **Recognition of the role of political parties**

10.30 The Commission has explained, in Chapters 2 and 5, why it sees the role of political parties as a key element in the political process. The voting system should take full account of the fact that the goal of political parties is to be elected and to be re-elected. Everything in the experience of Fiji confirms that the nature of the voting system moulds the character of political parties. They respond to the forces which will determine their success or otherwise at the polls.

**Incentives for moderation and cooperation across ethnic lines**

10.31 Among political scientists there are two schools of thought about the best way of encouraging moderation and cooperation across ethnic lines. One view is that, in order to come together in stable multi-ethnic coalitions or perhaps a multi-ethnic party with broadly-based support, political parties must have strong electoral incentives to take real account of the interests of other communities. The voting system can provide these incentives by making it in a party's interests to enter into arrangements not only for *seat pooling*, but also for *vote pooling*.

10.32 The pooling of seats refers to the formation of coalitions through which parties that do not have a sufficient number of seats to govern alone agree to work together for the purpose of achieving a legislative majority. Vote pooling refers to arrangements under which parties exchange votes across party lines to secure the election of candidates who cannot expect to win if they receive the votes only of supporters of their own party. Parties will have incentives to pool votes if sufficient candidates of each ethnically based party, or component of a party, are marginally dependent on the support of voters in other ethnic communities.

10.33 A contrary view is that the voting system need not itself be directed to producing inter-community accommodations. The consociational model, as it is called, assumes that people will continue to vote communally. The voting system should ensure that, through its party or parties, each community is represented in proportion to its number in the population. However, unlike the communal system of representation, the system should not channel members of communities into monolithic blocks. It should allow the emergence of cross-cutting interests and identities, so that no one community is likely to gain sufficient electoral support to govern alone.

10.34 The parties representing different communities will still need to come together in a coalition in order to govern. Ideally, all ethnic parties will be members of an all-embracing "grand coalition". This, it is said, calls for sufficient willingness to compromise and accommodate each others' interests to make coalition possible. The viability of the coalition should be reinforced by giving communities maximum autonomy in the things that concern them most. When this is not practicable, then each should have a veto power.

10.35 The difference between the two approaches is that the first uses incentives that are essentially self-serving in order to induce or reinforce accommodations. The second uses agreements to cooperate and constraints in the form of exclusive or veto powers. These rely for their effectiveness on the wisdom and tolerance of political leaders.



10.36 In the circumstances of the Fiji Islands, the Commission considers that electoral incentives are necessary to reinforce accommodations reached by agreement among ethnic communities. The system in force since before independence has, in effect, focussed on the need for their adequate representation. It is evident that such representation alone has not brought about multi-ethnic governments.

10.37 In part, this may reflect an artificial solidarity within communities resulting from representation through communal seats filled by voting on a communal roll. But because present realities require the retention for the time being of some reserved seats, it is more important than ever to have strong incentives for political parties to exercise moderation and take initiatives to cooperate. We consider that, if such incentives can be provided through a particular voting system then that would be a strong reason for adopting it.

10.38 That does not mean that the Commission favours the incentives approach to the exclusion of relevant aspects of the consociational model. We have made it clear that the important interests of communities or groups should be safeguarded by veto powers. We have recommended a *Compact* enshrining agreement about principles and process designed to secure respect for the interests of all communities, but not about specific outcomes that over time may need to change to reflect changing circumstances. We do not wish to discount the value of far-sighted leadership. That will be needed in reaching agreement to put new arrangements in place and will always be valuable.

*The ability of AV to provide incentives for moderation and cooperation*

10.39 The three criteria just discussed can be considered together in evaluating the AV system. It is because we recognise the role of political parties in bringing about multi-ethnic government that we consider it so important to provide incentives for moderation and cooperation through the voting system. In the following paragraphs we show how the AV system can provide such incentives, and compare its ability to do so with that of the other systems mentioned.

10.40 If the AV voting system is to provide incentives for moderation and cooperation among ethnically based parties, two pre-conditions must be met. These are

- a multiplicity of parties based in the various communities, and
- heterogeneous constituencies.

*A multiplicity of parties*

10.41 In Chapter 2, we showed that ethnic communities in Fiji have not remained united in support of a single political party. While their members would come together politically to combat what they saw as a serious threat to the interests of the community, we think it reasonable to assume that, ordinarily, there will continue to be a multiplicity of parties. Some parties are already committed to encouraging multi-ethnic membership. The willingness of members of the various communities to support such a party depends on a perception that it will take account of the interests of all communities.

10.42 There is already a base for cooperation among communities and parties. This base could be strengthened by electoral incentives for communities to cooperate rather than compete. We think that, in Fiji, the existence of such incentives, rather than the existing disincentives, might lead to the formation of a widely-supported multi-ethnic party. But even if this did not happen, they would encourage cooperation among moderate parties based in the different communities.

10.43 The spread of parties apparent in Fiji suggests that not all may wish to reach out for multi-ethnic support. Some may remain firmly embedded within a particular community. But this is not a disadvantage if it makes moderate parties based in another ethnic community more attractive to some voters than more extreme parties within their own community. As we have mentioned, the parties based only in one community still have a useful role in preventing multi-ethnic parties or coalitions from going too far in fostering the interests of any one community.

*Heterogeneous constituencies*

10.44 Heterogeneous constituencies are required because the incentive for cooperation across the ethnic divide is the likelihood that the candidate or candidates of a community-based party will be unable to succeed if supported only by the votes of members of that community. This likelihood is all the greater if there is competition with other parties also based in that community.

10.45 The design of constituencies deliberately to *improve* the chances of success of a particular party, or to *exclude* the effective representation of a particular community is widely condemned as "gerrymandering". But it is wrong to suppose that constituency design cannot also be a legitimate element of a voting system, specially in an ethnically diverse society. Everything depends on the purpose for which constituencies are designed in a particular way. We discuss below the mechanism for drawing constituency boundaries.

10.46 The use of constituencies in Malaysia and Mauritius illustrates these points. In both countries the constituencies originally drawn by the British administrators were relatively homogeneous. Their purpose was to secure the representation of all ethnic groups in proportion to their number in the population. It was assumed that each constituency would elect a member from the predominant ethnic group.

10.47 In Malaysia, enough constituencies nevertheless had a sufficiently mixed population to give Chinese voters an effective influence on the election of some Malay candidates. They could not dominate, but they could not be ignored. However, since the race riots of 1969, constituencies have been more heavily weighted in favour of Malays. The ability of Chinese voters to influence electoral outcomes has decreased, although Chinese-based parties continue to form part of the ruling coalition.

10.48 In Mauritius, every two of the original ethnically based constituencies were combined to form heterogeneous constituencies, each electing three members. As mentioned earlier, elections largely take the form of contests between coalitions of ethnically-based parties which put up a multi-ethnic slate of candidates in each constituency. As a result, ethnicity has become far less important than political philosophy and policy in determining the outcome of elections and the composition of Parliament.

10.49 The Commission looked at whether, given the distribution of the different communities within the Fiji Islands, it would be possible to divide the country into heterogeneous constituencies. We took as criteria that each constituency should have roughly the same number of inhabitants, within a tolerance of 10% - 15%. We also applied the existing rule in section 48(3) of the 1990 Constitution that the principle of equality may be departed from to the extent 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.

One exercise involved the drawing of 45 single-member constituencies. The other was directed to producing 15 constituencies, each of which could be represented by three members.

10.50 These exercises showed that the choice between single-member and three-member constituencies did not affect the potential for heterogeneity in the more densely-populated areas in the Western Division, Macuata and the greater Suva and Nausori area. Using three-member constituencies made it marginally easier

to achieve a reasonable degree of heterogeneity by combining the less densely populated areas, such as the maritime provinces, with other areas having similar interests.

10.51 We took as the measure of heterogeneity the inclusion within the constituency of a mixed population ranging from a more or less equal balance between Fijians and Indo-Fijians, to a proportion as high as 85-90% of one community and 15-10% of the other. This last figure represented the limit of what was reasonably possible in constituencies which included island populations consisting mainly of Fijians. The average distribution was 60% of one community and 40% of the other.

10.52 We conclude that it is entirely possible to draw constituency boundaries in Fiji in a way that achieves reasonable heterogeneity. We now turn to how the AV system of voting, coupled with heterogeneous constituencies and a multiplicity of parties, can provide strong electoral incentives for cooperation among communities.

#### *The nature of the incentives*

10.53 We evaluate the ability of the AV system to promote the goal of multi-ethnic government by looking at the extent to which it encourages cooperation among parties based in different communities, or support for a multi-ethnic party, through vote pooling. We therefore look at whether voters will have both the opportunity and incentives to vote for some candidates not of their own ethnicity.

10.54 Obviously, the best method of inducing vote-pooling is to avoid inter-ethnic competition. A multi-ethnic party or pre-election coalition can put up a multi-ethnic slate of candidates. Ethnic parties based in different communities can agree not to contest a particular seat in a constituency where one community is outnumbered, in return for a corresponding favour in another constituency where that same community predominates. Such arrangements are more likely to be made between moderate parties than between those with more extreme policies.

10.55 One way in which AV provides incentives for vote-pooling is by requiring the winning candidate to obtain more than 50% of the votes. In a heterogeneous constituency, this threshold increases the need for the winning candidate to have multi-ethnic support. The second is by requiring voters to rank candidates in the order of their preference. The candidates with the lowest totals of preferences at each level are eliminated and preferences at the next level are allocated to those still in contention until a candidate is found who has more than 50% of the votes.

Although the successful candidate may not have been everybody's first choice, he or she must be relatively acceptable to over half of the voters in the constituency.

10.56 The AV system allows parties to agree to trade preferences. They may decide to put up competing candidates because they realise that most of their supporters will wish to give their first preferences to candidates of their own party and ethnicity. However, the party least likely to succeed may be willing to encourage its supporters to give their second or third preferences to the candidate of the other party, again in return for reciprocal support, not merely in the same constituency but also in another constituency where the ethnic balance is reversed. The effect of a preferential system like AV is to bring second, third and subsequent preferences into play as the weakest candidate is eliminated after each round of preferences is counted.

10.57 Again, only moderate parties with conciliatory policies will agree to trade preferences and be able to persuade their supporters to honour the agreement. The system therefore encourages the emergence of such parties. Some people may fear that, in response to the perceived pressures created by open seats and heterogeneous constituencies, ethnically based parties will not be willing and able to cooperate across the ethnic divide, but may coalesce into single ethnically-based parties, one or other of which might be able to win an outright majority. Any prolonged maintenance of such united positions would, however, be a reversal of the evident tendencies for ethnic communities to divide their support among two or more parties based in that community, as discussed at length in Chapter 2.

10.58 It would also run counter to what has happened in at least some other ethnically divided countries. There is no actual experience of AV, with open seats filled by voting in heterogeneous constituencies in an ethnically divided country, but an analogy can be drawn from the experience of Mauritius and Malaysia with open seats under FPP. The Malaysian experience is relevant, even though there has always been a large Malay party in a dominant electoral position, and constituencies have become less heterogeneous since 1969. In neither country, have small, ethnically-based parties coalesced into larger ethnic parties. Even a large ethnic party, like the main Malay party UMNO, which almost certainly would have the numbers to govern alone, is committed to the perpetuation of the multi-ethnic coalition now called the National Front.

10.59 The potentiality of AV to afford electoral incentives to moderation and cooperation in the ways we have suggested may be contrasted with that under other voting systems. As we have seen, under FPP, a candidate can be elected with substantially less than 50% of the votes. Once a vote is given to a particular

candidate, it is exhausted. The voter has no way of indicating a second or third choice if the candidate who is the voter's first choice is unsuccessful. Some voters may, however, decide not to vote for their most preferred candidate, if that candidate has a very poor chance of success. They may feel that such a vote would be "wasted".

10.60 Preferences may be expressed under some proportional representation systems, but their effect is quite different. The object is to elect a number of candidates in proportion to the number of votes received by the party. List-system PR requires that votes be cast for a single party list. Although some systems have been devised under which voters may make choices across party lists, it is argued that, if parties are ethnically-based, there is no practicable way of inducing voters to exercise such an option.

10.61 STV has the advantage of allowing voters to express second, third or subsequent preferences for individual candidates in the same way as under AV. But because STV is designed to be proportional in its outcomes, the quota that each candidate must obtain in a three member constituency is just over 25%. This may be compared with the just over 50% required under AV.

10.62 The overall effect of proportional systems compared with AV or even FPP, is that, if people vote communally, ethnic parties can expect to succeed in getting a number of candidates elected in proportion to the number of their community members in the constituency, and therefore in the country. This is irrespective of whether they are moderate and seek to reach accommodations with the ethnic parties of other communities. If a party wishes to appeal to voters in other communities by putting up a multi-ethnic list, it has to calculate whether this will attract more voters from those other communities than the number it will lose from its own. Set alongside the reserved seats that we propose be retained in Fiji as a transitional measure, any proportional system would, in our view, offer few incentives to parties to become more multi-ethnic in their composition or more willing to take account of the interests of all communities.

10.63 In terms of the extent to which it provides electoral incentives for moderation and compromise, we conclude that AV is greatly to be preferred to either list system PR or STV, the proportional representation systems advocated in submissions. AV is also to be preferred to FPP, though we see FPP as more conducive to moderation and compromise than PR systems. For this reason alone we favour the adoption of AV. We find also that it adequately meets the other criteria we have adopted for judging electoral systems.

## **Effective representation of constituents**

10.64 Experience in Fiji shows that voters expect close links and accountability between individual members of Parliament and their constituents. It is important for voters to see themselves as represented not only by the member elected to the seat reserved for their community, but also by the member for their open seat constituency. Communal representation has obscured the usual expectation that a member of Parliament serves all the people in the constituency whether or not they support the member's party, and does so regardless of the community to which they belong.

### *The ability of the AV system to represent constituents effectively*

10.65 The AV system requires the election of candidates to represent territorial constituencies. It is suited to the recommended single member reserved seat constituencies and also the three-member open seat constituencies. In this respect it compares with FPP and STV (except that STV requires multi-member constituencies). It is to be contrasted with list system PR if, as was suggested in one submission, the whole country were treated as a single constituency.

10.66 Voters usually feel strongly that they want to know who their member is and to have access to him or her both individually and as a group with common interests arising from their residence in a particular geographical area. At the time of our visit to South Africa, there were strong indications that, for this reason, the list system PR used as the only feasible way of conducting the first democratic election in that country was likely to be modified. (In its final form the constitution requires only that the electoral system must result, in general, in proportional representation, leaving the details of the system to national legislation.)

10.67 The introduction of list system PR in a Fiji-wide constituency might be acceptable if combined with representation through open seat constituencies, as under MMP, but we think that if list system PR were to be combined with reserved seats, the members for reserved seats would tend to be seen as people's "real" representatives. It might be hard for list system members to associate effectively with them, even though belonging to the same party, and it would be harder still if the member's ethnicity was different from that of the community to which the seat belongs.

10.68 STV has the defect of allowing constituency representation to become too much of a preoccupation. Because the threshold is so low, each party is likely to nominate more candidates than there are seats. Therefore, each candidate is

competing not only with candidates of other parties, but also with other candidates belonging to the same party. Consequently, members representing the same party in a particular constituency sometimes seek to outdo one another in their commitment to constituency work, to the neglect of other parliamentary duties. They may also concentrate on obtaining reciprocal support for constituency projects, to the detriment of a national outlook.

10.69 Under AV, the problem of intra-party competition in multi-member constituencies can be avoided by adding first, second and third preferences together before the candidate with the lowest number of votes is eliminated. This facilitates the adoption of party slates under which the party may ask voters to give their first preferences to A, their second preferences to B and their third preferences to C. As all preferences have equal weight when added together, it would be wrong to eliminate B or C before taking account of voters' second and third preferences, as well as first preferences. The Commission proposes that the AV system should be applied in this way in elections for the 3-member open seats in the Bose Lawa.

### **Effective voter participation**

10.70 If individual citizens are to play a full and active part in the political process, they should have a real choice among political parties and their candidates. They should feel that their vote will affect the outcome and will be of equal weight to the votes of other citizens. The voting system, and, in particular the ballot paper, should be one they can understand and use effectively in order to cast valid votes.

#### *The ability of the AV system to secure effective voter participation*

10.71 The choice of AV as the voting system would give citizens a considerable opportunity to affect the outcome of the poll by expressing preferences among individual candidates. It is sometimes argued that, by requiring voters to indicate preferences for all or most candidates, it forces them to give at least some support to candidates they would otherwise not be prepared to vote for. We see this as more of a philosophical than a practical problem, but to mitigate it we propose that votes should be treated as formal if voters express preferences for at least 75% of the candidates.

10.72 It is also possible to have rules preserving the validity of the ballot paper even if candidates accidentally fail to number preferences correctly beside the names on the ballot paper. For example they may put in the same number more than once, or omit one number in the numerical sequence.



10.73 To make sure that the election always produces a valid result, it should be provided that, if the requisite number of candidates has not reached the quota when all the preferences have been distributed, those with the highest number of votes should be deemed elected.

10.74 Generally, we think that the high level of literacy in the Fiji Islands will mean that few voters will have any difficulty in numbering the candidates in the order of their preference by writing the numbers 1, 2, 3, etc beside the names of particular candidates. Certainly, we envisage no difficulty in the elections of the single member for each reserved seat. The number of names on the ballot paper is not likely to be more than 3 or 4.

10.75 However, there are likely to be at least three times that number of candidates on the ballot paper for the three-member open seats. To assist people in marking the ballot paper, and also to encourage parties to exchange preferences and assist them in delivering them in accordance with the agreement, we propose that an "above the line / below the line" ballot paper should be used for elections to all seats. The ballot paper for the election of candidates for the multi-member seats in the Australian senate provides a model.

10.76 Voters wishing to vote on a "ticket" basis need only tick the name or symbol of the party, coalition or independent candidate whose ticket they wish to support. The effect is to allocate that voter's preferences in the order predetermined by the party, coalition or candidate, and registered with the Electoral Commission. If the voter wishes to indicate a different order of preferences, he or she is free to do so by putting numbers beside the names of the candidates in the bottom part of the paper. A specimen ballot paper for a three-member constituency is reproduced on the facing page.

10.77 There should be a statutory requirement that the Electoral Commission must ensure that voters are given full information about the consequences of choosing a particular ticket. The Act should provide that, if a ballot paper is marked both above and below the line, it should not, for that reason alone, be treated as informal. If the preferences indicated below the line are otherwise formal, they should be regarded as the expression of the voter's intentions and counted accordingly. If, however, the preferences below the line are themselves informal, the vote for the party ticket, if formal, should be treated as expressing the voter's choice.

10.78 The principle of eliminating the lowest-polling candidate in each round of preferences and redistributing the preferences of the voters whose candidates

You may vote  
in one  
of two ways

BALLOT PAPER FOR THE ELECTION OF THREE MEMBERS OF THE BOSE LAWA  
FOR THE VUNIVADRA OPEN CONSTITUENCY

**either**

By placing a single tick  
in one and only one of these  
squares to indicate the voting  
ticket you wish to adopt as  
your vote

A  
VITI LIBERAL PARTY



B  
FIJI FIRST PARTY



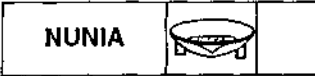
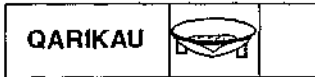
C  
NATIONAL/REPUBLICAN  
COALITION



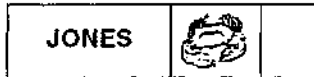
**or**

By placing the numbers 1 to  
15 in the squares next to the symbols  
and names of each  
of the candidates in the order  
of your preference

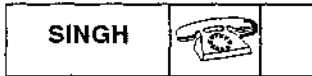
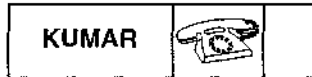
A  
VITI LIBERAL PARTY



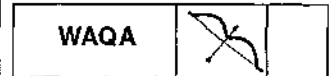
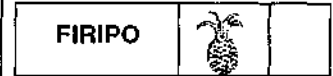
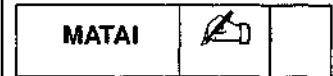
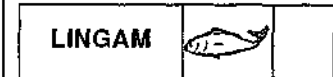
B  
FIJI FIRST PARTY



C  
NATIONAL/REPUBLICAN  
COALITION



D  
INDEPENDENTS



are eliminated, until one candidate reaches the quota, is easily understood. Voters do not need to concern themselves with the mechanics of counting and distributing the preferences. These are relatively complicated and time-consuming. However, they are less complex than the allocation of surplus votes at a discounted value under STV.

10.79 We foresee no great difficulty in training the requisite number of electoral officers for the purpose of conducting elections under the AV system. The process of vote-counting and distribution is done openly. Candidates' agents will quickly understand and follow how it is done.

### **Effective representation of minority and special interest groups**

10.80 The voting system should ensure that parties, candidates and members of Parliament are responsive to minority groups and special interests. This is particularly important in those cases where the minority group is required to belong to, or is in competition with, a larger ethnic community for the purposes of political representation.

#### *The ability of AV to represent minority and special interest groups*

10.81 AV does not have the same capacity as proportional systems to secure the election of representatives of every group in the country which chooses to organise politically and can win a minimum share of the votes. However, the need for a candidate to achieve an absolute majority means that no candidate can afford to neglect any small pocket of voters who might be willing to give their support in exchange for a policy which takes account of their interests. Just as AV encourages appeals across ethnic lines, so also it encourages appeals to women and to minorities with special interests.

10.82 In this respect it is greatly superior to FPP. However, it is difficult to gauge whether, under AV, parties would seek to gain wider support by nominating more women and members of minority groups as candidates than they do now under FPP. The evidence suggests that, under a proportional system, it is easier for candidates from disadvantaged or minority groups to win election. However, we think that this advantage is outweighed in the Fiji Islands by the disadvantages of a proportional system.

### **Fairness between political parties**

10.83 When they vote at elections, voters are choosing between alternative party governments as well as alternative constituency members. The voting system

should encourage competition between potential majority parties or pre-election coalitions, so that voters can make a clear choice about the identity of their future government. At the same time the voting system in its method of turning votes into seats should not have the effect of unfairly excluding the representation of small parties, provided they win a significant share of the vote.

10.84 However, the voting system does not need to allow for the representation of every small party with just enough votes to justify an allocation of a seat on a percentage basis - 1.4% in a house of 70 members. Carrying the representation of minority interests to extremes creates a danger that they will be able to exert pressure out of proportion to their number. It should also be kept in mind that some of the support for minority parties results from "protest" voting. A vote for the small party may not represent the voter's expectation that it will become the government or even win a seat. Rather it may express unwillingness to support any of the larger parties which have a realistic chance of winning the election or at least obtaining representation.

10.85 Finally, the voting system should not produce a consistent pattern of electing governments that have less than 50% of the total number of votes cast in the election. In contrast to the position in New Zealand, that has not happened in Fiji. Most if not all governments that have taken office in Fiji since 1970 have received a majority of the total number of votes.

*The ability of AV to achieve fairness between political parties*

10.86 AV is not designed to secure the representation of political parties in proportion to their share of the total votes cast in the election. In this respect it has some of the deficiencies of FPP, though not to the same extent, because of the need for a candidate to win majority support. Taking account of all preferences which become effective, it would be virtually impossible for a party to win an election without obtaining a majority of the overall votes.

10.87 Some argue that AV has the same tendency as FPP to favour larger parties at the expense of smaller ones. They consider that this tendency is exacerbated when AV is used in multi-member constituencies, as it was in the Australian Senate between 1919 and 1946. The AV system was then replaced by STV with the object of securing the fairer representation of all *political parties* in the Upper House. The question of encouraging the fair representation of *ethnic communities* was not in issue, so too much should not be read into the decision to make the change.

10.88 The Commission considers that, even if the disproportionality of AV is greater in multi-member seats than in single member seats, multi-member constituencies for open seats are nevertheless desirable. In our view, they are likely to encourage multiracial party slates, not only across the country as a whole, but also in individual constituencies. This seems likely to make individual voters more willing to cast their votes on the basis of party, not ethnicity. The encouragement of such a development is yet another essential building block in enabling parties to adopt moderate policies and to broaden their electoral support across ethnic lines. If the consequence is that, as now under FPP, smaller parties may not be represented in proportion to the number of votes they receive, that seems a small price to pay.

10.89 The Commission has also considered the question of fairness to parties in the context of drawing constituency boundaries. It accepts that problems of fairness would not arise under a proportional system of representation. Under such a system, parties will get a number of seats in proportion to the number of votes they receive, regardless of the way in which boundaries are drawn. However, the Commission considers that the advantages of putting in place heterogeneous constituencies for the open seats outweighs any difficulty that may arise in also being fair to parties.

10.90 That issue must be seen in context. Any change in the voting system, including the transition from a system of exclusively communal seats to a mixed system of reserved and open seats, will require all parties to rethink their policies and to decide on the groups to which they will appeal. The situation is quite unlike that which can arise when boundaries under an existing system need to be revised. In that circumstance there may be real questions about interfering with the representation of areas from which particular parties have traditionally drawn support.

10.91 The initial drawing of new constituency boundaries will be an essentially political process calling for both fairness and compromise, if the essential objective of homogeneous constituencies is to be achieved. The processes we propose are described later in this chapter. Once the new constituencies are in place, we envisage that only major changes in the distribution of the population would call for an adjustment of their boundaries.

10.92 We are aware that the objective of heterogeneous constituencies runs counter to the instinct of parties that constituencies should bring together the groups that have traditionally supported them. That instinct will have to be resisted. The

objective of heterogeneous constituencies will need to be agreed upon as part of the overall political settlement under which new constitutional arrangements are put in place.

### **Effective government**

10.93 The voting system should allow the election of Governments that have the support of a sufficient legislative majority to enable them to act decisively. In normal circumstances they should also be able to obtain parliamentary approval of their budgets and defeat Opposition no confidence motions, so that reasonable stability is assured. As we shall suggest in Chapter 12, the passage of other legislation should not normally be seen as an issue of confidence. The Government should have sufficient flexibility about the means of implementing its policies in legislation - if not the policies themselves - to allow the proposed parliamentary select committee system to function effectively.

#### *The ability of AV to promote effective government*

10.94 As a majoritarian, not a proportional system, AV is likely to encourage the emergence of a strong party or pre-election coalition government. AV, with its requirement that candidates win majority support, not a mere plurality as under FPP, should mean that relatively small swings in the electoral support for a particular parties will not have the effect of putting governments into or out of power. However, strong and stable Government should not, in itself, be seen as an overriding goal of the voting system.

10.95 First, in Chapter 5, we suggested that, even if an ethnically based party were to win a majority of the seats in the Bose Lawa, it should not necessarily signal immediately its ability and willingness to form a government on its own. Under the *Compact*, it would be bound to consider the objective of multi-ethnic government and the duty to take the interests of all communities into account. It would therefore need to consider whether other ethnic parties could and should be drawn into a coalition government.

10.96 Secondly, if a multi-ethnic pre-election coalition wins an election, it is still a coalition, though we believe it is likely to have a stronger base for remaining united than a coalition which comes into existence after an election because no party has the necessary majority to govern alone. Thirdly what cannot be excluded, even under AV, is the need for parties, none of whom has a sufficient majority to govern alone, to form a governing coalition after an election.

10.97 For some time to come, the people of the Fiji Islands will be juggling the two variables of party and ethnicity. It would not be surprising if the introduction not only of a new voting system but also the reconstitution of both houses of Parliament took some time to settle down. But it can be said that AV is just as likely as FPP, and more likely than a proportional system, to produce strong and stable governments.

### **Effective opposition**

10.98 The voting system should ensure that, as well as effective government, there is also effective opposition. It should not be one under which relatively small swings in electoral support can have the effect of unduly reducing or eliminating the representation of the Opposition party or parties.

#### *The ability of AV to promote effective opposition*

10.99 We acknowledged in Chapter 9 that it is difficult to foresee the character and composition of future Opposition parties if the goal of multi-ethnic government is achieved. We believe that AV is less likely than FPP to allow relatively small swings in voter support not only to bring about a change of government but also to give it an overwhelming majority. The equitable representation of Opposition parties is more assured under proportional representation, but, in the circumstances of Fiji, we see the greatest need as the encouragement of multi-ethnic government through the AV system in the manner described above.

### **Proven workability**

10.100 The Commission considers that the people of Fiji should adopt a voting system that has been successfully used elsewhere, preferably in the region. No unexpected problems would be likely to arise, and there would always be ready access to technical advice and help.

#### *AV as a proven system*

10.101 As already explained, AV is used for the election of candidates to single member seats in the Australian House of Representatives and the lower houses of most Australian states. From 1919 to 1946 it was used in the Australian Senate to elect candidates to multi-member constituencies. Apparently it is also used in multi member constituencies in Nauru. STV is used in electing the members of the Australian Senate, the lower house in Tasmania and the single chamber legislature in the Australian Capital Territory. New Zealand, in implementing

MMP, is gaining experience with party lists. All three systems have shown themselves to be workable in actual operation in other countries over a considerable period.

### **Legitimacy**

10.102 Under this heading the New Zealand Royal Commission said:

Members of the community should be able to endorse the voting system and its procedures as fair and reasonable and to accept its decisions, even when they themselves prefer other alternatives.

The Royal Commission saw this criterion as a test of whether the requirements of all of its preceding criteria had been adequately met. In a society like Fiji, legitimacy means that the members of all communities must be able to accept election results as fair and needing to be upheld, even when they themselves would have preferred another outcome. On this basis, legitimacy as a criterion deserves a higher priority, but we have left it at the end of the list because it still measures the overall effect of the voting system.

#### *The legitimacy of elections under AV*

10.103 This Commission's basic argument is that multi-ethnic government is in the interests of all communities. If this is accepted, then the electoral arrangements must not be unfairly weighted in the interests of any one community. In any event, as we have shown in Chapter 2, there is no guarantee that a weighted system will produce the desired result in all circumstances. If it does not, the reaction is to think that the electoral system has failed the interests of the community which sees itself as disadvantaged. Their likely response is that in order to remedy the situation, the system should be made even more lopsided.

10.104 Our approach is that the electoral system should not favour one community more than another, but that this alone is not sufficient. If the goal was the certainty that all communities will be proportionally represented, there might be no reason to move away from a system under which all seats are reserved on a fair basis. But that would not in itself lead to multi-ethnic government.

10.105 As our high priority criteria indicate, the Commission considers that, within a fair electoral system, the people of the Fiji Islands should put in place a voting system that helps to dissolve the present link between ethnicity and party. If all ethnic groups are adequately represented in the Government party or parties and in the Cabinet, then, so far as that outcome is facilitated by the voting system, that system should be seen as legitimate.



10.106 In our analysis of the way in which the criteria for choosing a voting system apply, we have concentrated on the election of candidates for the 45 open seats in the Bose Lawa, because we expect the voting system to have its most important effect in that context. However, we also see AV as encouraging multi-ethnicity in the election of members to represent at least some of the provinces in the Bose e Cake.

10.107 In the election of the President and Vice President by the Electoral College constituted by the members of both houses, the need for an absolute majority under AV provides a necessary guarantee that the choice will have widespread support across the political spectrum. For that reason it will be regarded as legitimate.

10.108 We are not the first Commission to propose AV as the system for electing members for the reserved seats which need to be retained for the time being. In both respects our recommendations coincide with those of the *Street Commission*. That body saw the need for the successful candidate for a reserved seat to obtain more than 50% of the votes as an advantage, compared with the possibility of election by a minority of the votes cast in the constituency under FPP. We share the view that AV will add to the legitimacy of the election of reserved seat members.

10.109 We also think that the dynamics affecting elections for reserved seats will be changed, not only by the move to the AV system, but also by all the other changes affecting the composition of the two houses of Parliament and the election of their members. Overall, we believe that the incentives for moderation applying to the election of other members of Parliament will also affect the election of members for the reserved seats.

10.110 The conclusions reached in this section of this chapter show how the Commission arrived at the recommendations made in Chapter 9 (and summarised in paragraph 10.1)

- that all elections of candidates for seats in the Bose Lawa and the Bose e Cake, as well as the election of the President and Vice-President, should be held under the preferential system known as the alternative vote.
- that the 45 open seats in the Bose Lawa should be filled by voting in 15 three-member heterogeneous constituencies, that is, constituencies in which there is a mixed population made up of members of the different ethnic communities; and

We now make several further recommendations concerning the implementation of these arrangements.

## RECOMMENDATIONS

- 268. The details of conducting elections by the preferential system of voting known as the Alternative Vote, should be provided for in an Electoral Act. Among other things, that Act should make provision for the following matters:**
- (a) In elections for the 3-member open seats in the Bose Lawa, the first, second and third preferences given to each candidate should be added together, before the candidate with the lowest number of votes is eliminated.**
  - (b) Votes should be treated as formal if voters express preferences for at least 75% of the candidates.**
  - (c) There should be rules for preserving the validity of the ballot paper, so far as possible, even if candidates fail to number preferences in the correct numerical sequence.**
  - (d) If the requisite number of candidates has not reached the quota when all the preferences have been distributed, those with the highest number of votes should be deemed elected.**
  - (e) In the elections for all seats, an "above the line / below the line" ballot paper should be used. In the top part of the ballot paper voters should be given the opportunity to vote on a "ticket" basis, indicating support for the candidates in an order of preference registered by a party, coalition of parties or independent candidate. If the voter wishes to indicate a different order of preferences, he or she should be free to do so by putting numbers beside the names of the candidates in the bottom part of the paper.**
  - (f) The Electoral Act should require the Electoral Commission to ensure that voters are given full information about the consequences of choosing a particular ticket.**

- (g) **The Act should also provide that, if a ballot paper is marked both above and below the line, it should not for that reason alone, be treated as informal. If the preferences indicated below the line are otherwise formal, they should be regarded as the expression of the voter's intentions and counted accordingly. If, however, the preferences below the line are themselves informal, the vote for the party ticket, if formal, should be treated as expressing the voter's choice.**

## THE DETERMINATION OF CONSTITUENCY BOUNDARIES

### **Constituencies for the election of members of the Bose Lawa**

10.111 As recommended in Chapter 9, the constituency boundaries for all seats in the Bose Lawa should be drawn so as to divide the Fiji Islands into the requisite number of territorial constituencies for each category of seats. So far as possible, each should contain an equal number of inhabitants of the relevant category, and should ensure that the inhabitants of every constituency can be effectively represented, taking into account geographical features, the boundaries of existing administrative and recognised traditional areas, means of communication and density and mobility of population. In addition, the constituencies for the open seats should be required to be heterogeneous, as already mentioned.

10.112 This recommendation departs from the criteria in section 48 of the 1990 Constitution by referring to "inhabitants" rather than "adult inhabitants". The Commission proposes the change as to reflect the principle that members of Parliament represent all inhabitants of their constituencies, regardless of age or eligibility to vote. Another relevant factor is that the census data relating to the distribution of the total population is readily available.

10.113 The Constitution allows the principle of equality of the population to be departed from in order to take account of other relevant factors. We consider that, in principle, the variation should not be greater than 10% on either side of the norm obtained by dividing the relevant population figure by the number of constituencies. However, we think it would be too restrictive to impose this target as a constitutional limit, particularly in drawing the boundaries of the open seat constituencies which are required to be heterogeneous. That requirement is basic to the idea that the open seats should act as a catalyst for a move away from ethnic politics. If need be, we therefore see it as overriding the requirement for equality.

*Reserved seat constituencies*

10.114 There will need to be 12 reserved seat constituencies for Fijian voters, 10 for Indo-Fijian voters, 1 for Rotuman voters and 2 for general voters. The starting point will be the number and distribution of the members of the population regarded as belonging to a particular community for representation purposes. In the next main section of this chapter we propose rules for determining who is entitled to register as a voter in a reserved seat constituency of each of the four communities. However, it would not be practicable to apply these rules when determining the distribution of the population belonging to each community. The Constitution should therefore refer to the distribution of inhabitants classified for census purposes as Fijians or Pacific Islanders, Indo-Fijians, Rotumans, and persons not belonging to any of those ethnic communities.

*Open seat constituencies*

10.115 There will also need to be 15 open seat constituencies, each electing three members. Although the distribution of the ethnic communities will not be relevant for the purpose of applying the principle that constituencies should have an equal number of inhabitants, it will be relevant in fulfilling the requirement that open seat constituencies must also be heterogeneous. Again, account should be taken of the distribution of the population as classified for census purposes.

10.116 The Commission does not think it feasible to specify the degree of heterogeneity required, but wishes to stress that the open seat constituencies should be as heterogeneous as possible. In some cases this criterion may need to be fulfilled in innovative ways, for example by placing more weight on lines of communication than on traditional ties. We made the point in Chapter 9 that, through their elected members in the reserved and open seats in the Bose Lawa and the provincial seats in the Bose e Cake, all the people of Fiji will have the opportunity to be represented in a variety of ways which will take full account of their range of interests.

**Constituencies for the election of members of the Bose e Cake**

10.117 There will be no need to determine the boundaries of constituencies for the purpose of electing members of the Bose e Cake. The boundaries of the provincial constituencies should be the provincial boundaries prescribed under the Fijian Affairs Act. The boundaries of Rotuma should be those referred to in the definition of "Rotuma" in the Rotuma Act.

## CONSTITUENCY BOUNDARIES COMMISSION

### **Functions and powers**

10.118 The task of determining the boundaries of constituencies for the election of members of the Bose Lawa should continue to be carried out by a Constituency Boundaries Commission. The Constitution should require the Constituency Boundaries Commission to determine the initial boundaries of all constituencies on the basis described above.

10.119 It should also require the Constituency Boundaries Commission, in the year following each census, to review the boundaries of all constituencies and decide whether or not they require revision to take account of changes in the distribution of the population as a whole, or of the members of any community. The Constitution should also empower the Constituency Boundaries Commission to review and redetermine all or any constituency boundaries at any other time during the intervals between each census (at present 10 years), if it has reason to think that such a review and redetermination might be desirable on those grounds. After the Constituency Boundaries Commission has reviewed constituency boundaries on any occasion, it should be required to report its findings to Parliament with an explanation of the reasons why it has decided either to redetermine boundaries or not to do so.

10.120 The procedures to be followed by the Constituency Boundaries Commission in determining or redetermining constituency boundaries should be prescribed by Act. We envisage that, among other things, such an Act would require the Constituency Boundaries Commission to give notice of its proposed determinations and hear objections before making a final determination.

10.121 The Commission's determinations of constituency boundaries, once made, should continue to be final. They should not be subject to appeal, but judicial review should be available to test whether the Commission has acted within its powers and in accordance with the prescribed procedures.

### **Constitution and membership**

10.122 Although the Constituency Boundaries Commission will only need to exercise its functions periodically, we consider that it should be a standing Commission. Otherwise there is a risk that constituency boundaries will not be reviewed as and when necessary. Its membership should be entirely separate from that of the Electoral Commission. The functions of the two bodies are quite distinct.

10.123 The composition of the Constituency Boundaries Commission should take account of the fact that, although constituency boundaries should be drawn as impartially and fairly as possible and in accordance with the constitutionally prescribed principles, any determination of boundaries inevitably has political implications. We therefore propose that the Constituency Boundaries Commission should consist of three members holding office for terms of three years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court in the Fiji Islands, and should be appointed by the President acting in his or her own deliberate judgment, after consultation with both the Prime Minister and the Leader of the Opposition. The two other members should be appointed by the President on the nomination of the Prime Minister and the Leader of the Opposition respectively.

10.124 No qualifications should be specified for members other than the Chairperson, but no person should be qualified to be a member of the Commission if at any time during the four years preceding appointment he or she has been a member of Parliament or an elected member of the council of any municipality, as defined in the Local Government Act (Cap. 125). A serving member of the public service, the police or the military forces should also be disqualified. The Constituency Boundaries Commission should also be subject to the general principles and rules applying to all Commissions established by the Constitution, as proposed in Chapter 15.

#### THE NAMES OF CONSTITUENCIES

10.125 It is fair to say that not much imagination has been shown in naming constituencies in Fiji. The names of the main cities and the provinces have been used, with the addition of a reference to the relevant point of the compass if it was necessary for a geographic area to be subdivided. In addition, the designation of a member for a communal seat has included a reference to his or her community.

10.126 The names of the provinces and Rotuma should be used exclusively to describe the constituencies for elections to the Bose e Cake. As now, the members for a particular province will each be entitled to use the designation "Senator for Rewa", or whatever the province might be.

10.127 However, the constituencies in the Bose Lawa will take account of, but will not be based on, provincial boundaries. Although some seats in the Bose Lawa will continue to be reserved, we believe that the member should no longer be identified by reference to his or her community. This not only puts undue emphasis on communal identity, but will also become less practicable in the light of our recommendations for identifying the voters belonging to each community for voting purposes.

## SUGGESTED BOSE LAWA CONSTITUENCY NAMES

### Open Seat constituencies

- |                                      |  |
|--------------------------------------|--|
| 1. Uluiqalau (Cakaudrove)            | 9. Medrau Sucu (Naitasiri North)           |
| 2. Seatara (Bua)                     | 10. Toma ni Ivi (Ra)                       |
| 3. Babasiga (Macuata)                | 11. Suka (Ba - Lautoka)                    |
| 4. Veiyanyanu (Lau-Lomaiviti-Rotuma) | 12. Dovu (Ba-Tavua)                        |
| 5. Tebara ni Siga (Tailevu)          | 13. Naloto (Nadi Yasawa)                   |
| 6. Vunivadra (Rewa)                  | 14. Voma-Cakaubalavu (Namosi-Serua-Kadavu) |
| 7. Korobaba (Rewa)                   | 15. Maseki (Nadroga-Navosa)                |
| 8. Waimanu (Naitasiri South)         |  |

### Reserved Seat constituencies

#### *Fijians including Other Pacific Islanders (Local Flowers)*

- |             |              |
|-------------|--------------|
| 1. Mocelolo | 7. Seniuci   |
| 2. Kukuwalu | 8. Tomole    |
| 3. Lagakali | 9. Buasala   |
| 4. Cevuga   | 10. Maba     |
| 5. Sinu     | 11. Makosoi  |
| 6. Senibua  | 12. Misimisi |

#### *Indo-Fijians (Local Fish)*

- |             |           |
|-------------|-----------|
| 1. Babale   | 6. Ulavi  |
| 2. Saqa     | 7. Walu   |
| 3. Kawago   | 8. Kanace |
| 4. Kawakawa | 9. Nuqa   |
| 5. Kurukoto | 10. Saku  |

#### *General Voters (Local Fruit Trees)*

- |         |           |
|---------|-----------|
| 1. Dawa | 2. Kavika |
|---------|-----------|

#### *Rotumans*

1. [To be chosen by Rotumans]

10.128 We also consider that Fiji should do what is done in other countries and give constituencies distinctive names that prevent them from being confused with areas having recognised geographic boundaries. We therefore propose that constituencies for all seats in the Bose Lawa should be named after well-known physical features, like mountains or rivers, or after local flora and fauna. By way of example, we set out on the facing page a list of names that might be suitable. The people of Rotuma should be invited to propose a suitable name for their reserved seat constituency.

## RECOMMENDATIONS

- 269.** In applying the criteria for the determination of constituency boundaries for seats in the Bose Lawa set out in Recommendation 264, the distribution of members of communities, when relevant, should be determined by reference to the classification of the inhabitants of the Fiji Islands for census purposes as Fijians or Pacific Islanders, Indo-Fijians, Rotumans, and persons not belonging to any of those ethnic communities.
- 270.** The boundaries of the provincial constituencies in the Bose e Cake should be the provincial boundaries prescribed under the Fijian Affairs Act. The boundaries of the Rotuma constituency should be those referred to in the definition of "Rotuma" in the Rotuma Act.
- 271.** The task of determining the boundaries of constituencies for the election of members of the Bose Lawa should continue to be carried out by a Constituency Boundaries Commission. The Constitution should require the Constituency Boundaries Commission to determine the initial boundaries of all constituencies.
- 272.** The Constitution should require the Constituency Boundaries Commission, in the year following each census, to review the boundaries of all constituencies and decide whether or not they require revision to take account of changes in the distribution of the population as a whole or of the members of any community. If so, it should redetermine the constituency boundaries accordingly. The Constituency Boundaries Commission should be empowered to review and redetermine all or any constituency boundaries at any other time, if it has reason to think that such a review and revision might be desirable on the grounds mentioned.



273. **After the Constituency Boundaries Commission has reviewed constituency boundaries on any occasion, it should be required to report its findings to Parliament with an explanation of the reasons why it has decided either to redetermine boundaries, or not to do so.**
274. **The procedures to be followed by the Constituency Boundaries Commission should be prescribed by Act. Among other things, the Act should require the Constituency Boundaries Commission to give notice of its proposed determinations and hear objections before making a final determination.**
275. **The Constituency Boundaries Commission's determinations of constituency boundaries should continue to be final. Judicial review should be available to test whether it has acted within its powers and in accordance with the prescribed procedures.**
276. **The Constituency Boundaries Commission should be a standing commission with a membership entirely separate from that of the Electoral Commission. It should consist of three members holding office for terms of three years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court in the Fiji Islands, and should be appointed by the President acting in his or her own deliberate judgment, after consultation with both the Prime Minister and the Leader of the Opposition. The two other members should be appointed by the President on the nomination of the Prime Minister and the Leader of the Opposition respectively.**
277. **No person should be qualified to be a member of the Constituency Boundaries Commission if at any time during the four years preceding appointment he or she has been a member of Parliament or an elected member of the council of any municipality, as defined in the Local Government Act (Cap. 125). A serving member of any state service, including the police and the military forces, should also be disqualified.**
278. **The constituencies for seats in the Bose Lawa should be named after well-known physical features, like mountains or rivers, or after local flora and fauna, as in the examples supplied.**

## THE RIGHT TO VOTE

10.129 The right to vote is one of the most precious attributes of citizenship. It is a human right, clearly recognised by the international instruments and

should be explicitly stated in the Constitution to facilitate and encourage its exercise.

### **Registration as a voter**

10.130 Registration as a voter should continue to be a precondition for the exercise of the right to vote. There should therefore be a clear constitutional right to be registered as a voter, as well as to vote.

10.131 A number of submissions expressed the view that the voting age should be lowered from 21 to 18. That is already the voting age in many other countries in the region. We therefore propose that everyone should have the right to be registered as a voter and to vote at the age of 18, though a person should still need to attain the age of 21 before becoming eligible to be a candidate.

### *Disqualification from being registered as a voter*

10.132 The Commission proposes that a person should be disqualified from being or remaining registered as a voter in any of the following circumstances:

- (a) if the person has not been resident in the Republic of the Fiji Islands at any time during the preceding two years, unless his or her absence was for a reason prescribed by law; or
- (b) if the person is serving a sentence of imprisonment for a period of twelve months or more imposed by a court of the Republic, or is under a sentence of death, or is serving a sentence of imprisonment for a period of twelve months or more, imposed by a court in any other country prescribed by law; or
- (c) if, in accordance with the law of the Republic, the person has been found to be of unsound mind; or
- (d) if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections.

10.133 Paragraph (a) deals with the question of residence in Fiji. The Commission considers that a person should be disqualified from becoming or remaining registered as a voter if he or she has not been resident in Fiji during the preceding two years. In such a case it can usually be assumed that the person has lost the close contact with the country that gives meaning to the exercise of the right to vote.

10.134 On the other hand, the Commission considers that citizens who have lost the right to be registered as a voter by reason of residence outside Fiji should regain it immediately on their return. The intention of the section 49(2) of the 1990 Constitution may have been to require a 24 month period of residence before registration. However, its actual effect is far from clear as it deals with registration but specifies periods of time preceding a particular election. In any event, we believe the Constitution should regard a period during which a citizen was not resident in Fiji as a disqualification. It should not require a person to have a period of prior residence in Fiji in order to qualify for registration.

10.135 The concept of residence should not be qualified by the words “normal” or “continuous” which do nothing to assist the authorities in determining whether or not a person has become disqualified. Absences for the purpose of study, training or service to the Republic or to an international organisation should not give rise to disqualification, but the details should be prescribed by the Electoral Act, not in the Constitution. The protection should extend to spouses and other persons living as part of the family of the person concerned.

10.136 Paragraphs (b) corresponds to section 49(3)(b) of the 1990 Constitution, except for the inclusion of words making it clear that the person must actually be *serving* the prison sentence, and the new safeguard that Parliament should prescribe the countries which should be recognised for the purposes of the section. Paragraphs (c) and (d) correspond to section 49(3)(c) and (d) the substance of which should be retained.

10.137 The present section 49(3)(a) disqualifies a person who

is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or State outside Fiji.

This provision is adapted from one in the 1970 Constitution which referred to a “power or state outside the Commonwealth”. It was included because that Constitution did not outlaw dual citizenship. In effect, the provision meant that a citizen of Fiji who became a citizen of a country outside the Commonwealth would lose the right to vote in Fiji. In the light of our recommendations in Chapter 6 about the circumstances in which a citizen of Fiji who acquires another citizenship will automatically lose his or her Fiji citizenship, we consider that it is unnecessary to keep the substance of section 49(3)(a). It should therefore be omitted in all contexts where it now appears.

### **Constituency rolls**

10.138 Our proposals for the composition and membership of the Bose Lawa and the Bose e Cake mean that a registered voter will have the right to vote in three constituencies - reserved seat and open seat constituencies in elections for members of the Bose Lawa, and provincial constituencies in elections for members of the Bose e Cake. In speaking of provincial constituencies, we include Rotuma. The boundaries of these different kinds of constituencies will not coincide with one another, so there will have to be a roll for each constituency. The Constitution should make it clear that a registered voter must be entered on a roll for a reserved seat constituency, an open seat constituency and a provincial constituency.

10.139 The present terminology that identifies rolls with the right to vote for a particular category of communal seats will no longer be appropriate, though it will still be necessary to have rules about who is entitled to register on a roll for a reserved seat constituency of a particular community. We consider that these rules should continue to be included in the Constitution, but that all other rules about when a person becomes entitled to be registered in one constituency rather than another should be left to the Electoral Act.

10.140 As now those statutory rules will determine that entitlement on the basis of a person's place of residence. To avoid registration in a particular constituency on the basis of purely temporary residence, as a general rule a person should be regarded as having become resident in a constituency only after having resided there for six months. To avoid hardship, the Act should allow bona fide residence to be established on the basis of other evidence.

10.141 Voters should be eligible for enrolment for a particular provincial constituency, including Rotuma, because they reside there. The Electoral Act should so provide.

### **The right to be entered on a roll for a reserved seat constituency**

10.142 The Commission received a number of submissions expressing concerns about the present rules governing registration on the various communal rolls. First, a number of Fijians raised questions about linking registration in the Vola ni Kawa Bula, which is a register of customary rights in land, with the classification of a person as a "Fijian" for voting and other constitutional purposes. We agree that this link puts too much strain on the integrity of both systems and should be removed.

10.143 The Constitution should deal only with the right to be entered on a roll for a Fijian reserved seat constituency. It should not define a "Fijian" for any other purpose. For example, it should not be concerned with the question of who is a "Fijian" for the purpose of being eligible for nomination as President - a matter safely can be left to the Bose Levu Vakaturaga - nor with the duty of the government to establish programmes promoting ethnic justice for "Fijians". If necessary, the requisite Act can set out exactly who is eligible to benefit from a particular programme.

10.144 Secondly, many members of the various Pacific Island communities in Fiji expressed unhappiness about the fact that the 1990 Constitution had removed them from the Fijian roll and included them on what is usually called the "general" roll. They considered that they had little community of interest with most of the other voters on that roll. None of them had succeeded in being elected to a seat belonging to the general voters' community. One suggested solution was the allocation of a communal seat to their community, an idea the Commission was unable to accept for the reasons explained in Chapter 9. Alternatively, they suggested that they should be restored to the Fijian roll, on the ground that many of them were *vasu* and lived closely with the Fijian community. Because we view the retention of the reserved seats as a transitional measure, we consider this solution is the better one. We therefore propose that Pacific Islanders should be eligible to vote in the Fijian reserved seat constituencies.

10.145 Thirdly, a number of submissions from members of all communities expressed unhappiness about the fact that persons have always been classified as "Fijians" and "Indians" for constitutional purposes by reason of descent through the male line. The only exception allowing for descent to be traced through the mother has been if the identity of a person's father is not known. We are satisfied that, in those cases where persons of mixed descent have been brought up in their mother's community rather than their father's, the provision has inflicted personal hardship by requiring people to vote as members of a community to which they do not belong.

10.146 Rotumans are not affected in the same way, because section 156(b) of the 1990 Constitution classifies a person as Rotuman if of Rotuman descent through either the father or the mother. This gave persons of mixed Rotuman and Fijian or Indian descent through the father a choice of rolls.

10.147 We believe that the original 1970 provisions were unduly preoccupied with having clear rules which could be applied automatically. Recognition

of descent through the father was acceptable to Fijians because the customary right to land is usually based on descent through the father rather than the mother. However, as proposed above, we believe that the right to vote in a Fijian reserved seat constituency should not depend on having a customary right to land.

10.148 By returning Pacific Islanders to the Fijian roll, many persons descended from an indigenous Fijian through their mother will acquire the right to vote in Fijian reserved seat constituencies. It would be unfair if other citizens also descended from an indigenous Fijian through their mother were not given the option of voting as members of the Fijian community.

10.149 We therefore propose that a person should be allowed to be registered on the roll for a Fijian reserved seat constituency if descended, through either the male or the female line, from an indigenous inhabitant of the Fiji Islands (other than Rotuma) or any other island in Melanesia, Micronesia or Polynesia. Similarly, a person should be permitted to register on the roll for an Indo-Fijian reserved seat constituency, if descended, through either the male or the female line, from a person who was originally from the sub-continent of India. A person who is descended, through either the male or the female line, from an indigenous inhabitant of Rotuma should have the right to be entered on the roll for the Rotuman reserved seat constituency.

10.150 A reference to "the male line or the female line" would allow descent to be traced back through the generations on either side of the family. Our proposals obviate any question of discrimination on the ground of a person's sex and give persons of mixed descent a choice. In our view, people will only want to change their present registration if it cuts across their sense of personal identity. The number is likely to be very small.

10.151 The right to be registered on the roll for a general reserved seat constituency should remain residual, so that registration is open to all persons who have no other options or, if they have the option of registering on another roll by reason of descent through the male line or the female line, but not both, have chosen not to exercise it.

10.152 No one may be registered on the roll for more than one reserved seat, open seat or provincial constituency. We believe that our proposals will foster a stronger sense of shared identity among all those who are registered on the roll for a particular constituency.

### **Facilitation of registration as a voter**

10.153 The *Street Commission* noted that there was no statutory duty imposed on registration officers to compile a register of all eligible voters. Nor was there a statutory duty on eligible citizens to apply for registration. It compared this situation with the system commonly employed in other countries under which electoral officials have a legal obligation to ensure that all eligible voters are duly registered. All election officials have since been required by statute to ensure that all eligible voters are included on the rolls.

10.154 This Commission received a number of submissions that registration should be made compulsory. We are aware of the practical difficulties in ensuring that all eligible persons are registered. Even so, we consider the right to vote is so important that the Constitution should require the Electoral Commission, the Supervisor of Elections and all other officers concerned with the registration of voters to take all steps reasonably necessary to ensure that all persons who are eligible to be registered as voters are in fact so registered. It should be left to Parliament to decide whether it is also necessary to impose an obligation on eligible citizens to apply for registration.

### **Exercise of the right to vote**

10.155 We also received submissions that voting should be made compulsory, as it is in some other countries including Australia. Such a proposal gives rise to greater difficulties of principle than compulsory registration, as well as the practical difficulties of enforcement. As a first step, we believe that the *right to vote* should be set out much more clearly and less ambiguously than it is now in section 50(1). The Constitution should provide that every person who is a registered voter has the right to vote in the manner prescribed by law in every election in a constituency on the roll for which that person is registered, unless that person is disqualified from voting on the grounds provided in the Constitution.

10.156 In particular, we consider that the *right to vote* should not itself be qualified by providing that it will be lost if “on the date appointed for polling [the person] is ... for any ... reason unable to attend in person at the place and time appointed for the polling”. We realise that it is necessary to have strict rules about such matters, but we believe that their imposition should be authorised by providing that a registered voter has the right to vote “in the manner provided by law”. The Electoral Commission and the Supervisor of Elections should make every effort with the help of modern technology, to ensure that registered voters have ample opportunities to cast their votes without undue inconvenience or hardship.

Again, it should be left to Parliament to decide whether it is also desirable to impose on registered voters a legal obligation to vote.

*Disqualification from voting*

10.157 There should continue to be provision that registered voters are disqualified from voting on any ground which would have disqualified them from remaining registered as voters. The Constitution continue to provide that, in accordance with the law of the Republic, a person is disqualified from voting by reason of his or her responsibilities in connection with the conduct of the election.

RECOMMENDATIONS

279. **There should be a clear constitutional right to be registered as a voter, as well as to vote.**
280. **Everyone should have the right to be registered as a voter and to vote at the age of 18 ( though a person should still need to attain the age of 21 before becoming a candidate).**
281. **A person should be disqualified from being or remaining registered as a voter**
- (a) **if the person has not been resident in the Republic at any time during the preceding two years, unless his or her absence was for a reason prescribed by law; or**
  - (b) **if the person is serving a sentence of imprisonment for a period of twelve months or more imposed by a court of the Republic of the Fiji Islands, or is under a sentence of death, or is serving a sentence of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in any other country prescribed by law; or**
  - (c) **if, in accordance with the law of the Republic, the person has been found to be of unsound mind; or**
  - (d) **if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections.**
282. **The Constitution should not require a person to have a period of prior residence in Fiji in order to qualify for registration.**



283. In view of the Commission's recommendations that Fiji citizens will lose that citizenship automatically if they become citizens in another country, the ground for disqualification in Section 49(3)(a) of the 1990 Constitution is unnecessary in the context of the right to be registered as a voter, to become a candidate and to be a member of Parliament.
284. The Constitution should make it clear that a registered voter must be entered on a roll for a reserved seat constituency, an open seat constituency and a provincial constituency.
285. The rules about who is entitled to register on a roll for a reserved seat constituency belonging to a particular community should continue to be included in the Constitution, but all other rules about when a person becomes entitled to be registered in one constituency rather than another should be left to legislation.
286. The Electoral Act should provide, among other things, that the right to be entered on the roll for reserved, open seat or provincial constituencies should continue to be based on residence in that constituency. As a general rule, a person should be regarded as having become resident in a constituency only after having resided there for six months, but, to avoid hardship, it should allow bona fide residence to be established on the basis of other evidence.
287. The Constitution should deal only with the right to be entered on a roll for a Fijian reserved seat constituency. It should not define a "Fijian" for any other purpose.
288. A person should be entitled to be registered on the roll for a Fijian reserved seat constituency if descended, through either the male or the female line, from an indigenous inhabitant of the Fiji Islands (other than Rotuma) or any other island in Melanesia, Micronesia or Polynesia.
289. A person should be permitted to register on the roll for an Indo-Fijian reserved seat constituency if descended, through either the male or the female line, from a person who was originally from of the sub-continent of India.
290. A person who is descended, through either the male or the female line, from an indigenous inhabitant of Rotuma should

have the right to be entered on the roll for the Rotuman reserved seat constituency.

291. The right to be registered on the roll for a general reserved seat constituency should be open to all persons who are not entitled to register on a roll for a Fijian, Indo-Fijian or Rotuman reserved seat constituency, or, if they have the option of registering on such a roll by reason of descent through the male or the female line, but not both, have chosen not to exercise it.
292. The Constitution should make it clear that no one may be registered on the roll for more than one reserved seat, open seat or provincial constituency.
293. The Constitution should require the Electoral Commission, the Supervisor of Elections and all other officers concerned with the registration of voters to take all steps reasonably necessary to ensure that all persons who are eligible to be registered as voters are in fact so registered.
294. It should be left to Parliament to decide whether it is necessary to impose an obligation on eligible citizens to apply for registration.
295. The Constitution should provide that every person who is a registered voter has the right to vote in the manner prescribed by law in every election in a constituency on the roll for which that person is registered, unless that person is disqualified from voting on the grounds provided in the Constitution.
296. The Electoral Commission and the Supervisor of Elections should make every effort, with the help of modern technology, to ensure that registered voters have ample opportunities to cast their votes without undue inconvenience or hardship. It should be left to Parliament to decide whether it is also desirable to impose on registered voters a legal obligation to vote.
297. The Constitution should continue to provide that registered voters are disqualified from voting on any ground which would have disqualified them from remaining registered as a voters, or if, in accordance with the law of the Republic, they are disqualified from voting by reason of responsibilities in connection with the conduct of the election.

## ELIGIBILITY TO BE A CANDIDATE

10.158 Once again, the Constitution should clearly state that every registered voter who has attained the age of 21 years is eligible to be nominated as a candidate for election as a member of the Bose Lawa or the Bose e Cake, unless that person is disqualified on a ground provided in the Constitution. It should go on to state that only a person registered on a roll for a Fijian, Indo-Fijian, Rotuman or general reserved seat constituency is eligible to be nominated as a candidate for a reserved seat of the relevant community.

10.159 There should be no constitutional requirement that a person can be nominated for a particular constituency only if on the roll for that constituency. The question whether a person has a sufficient connection with a constituency to be elected to represent it should be left to parties, candidates and the voters themselves.

10.160 The Commission has carefully considered the grounds on which a person should be disqualified from being a candidate. In particular, it examined closely section 42(1)(f) of the 1990 Constitution which disqualifies a person who, "subject to any exceptions prescribed by Parliament, holds or is acting in any public office". The principle behind the provision is a sound one. People who wish to stand for Parliament have to be prepared to give up any other office in the service of the state.

10.161 However, the provision has given rise to considerable practical difficulties. The Constitution does not make it clear whether the disqualification applies at the time of nomination, or only at the date of election. In addition, it may sometimes be difficult to determine on the facts whether a person "holds or is acting" in a public office. It is also wrong in principle to allow Parliament to make exceptions to the rule. The rule itself should be drafted so as to exclude persons who should not be caught by it. In this connection, it should be noted that the drafting device of defining "public office" widely enough to include judicial office for the purposes of this particular provision, among others, has led to confusion in other contexts because it seems to equate members of the judiciary with other servants of the state.

10.162 The Commission therefore proposes a different approach. All persons holding an office in the service of the state coming within the terms of the present definition of "public office" (including the office of the

Commander of the Fiji Military Forces, contrary to the provision in section 150(b)(ii), should be treated as having vacated that office immediately before the time their signed nomination as a candidate for election as a member of the Bose Lawa or the Bose e Cake is filed. Office-holders appointed to the Bose e Cake by the President should be treated as having vacated office immediately before being so appointed.

10.163 The provisions just proposed need to be complemented by a further provision that persons whose nominations as candidates for election as members of the Bose Lawa or the Bose e Cake have been filed become disqualified for election if, with their consent, they are appointed to an office in the service of the state. Sitting members of either House of Parliament should be treated as vacating their seats if, with their agreement, they are nominated as a candidates for another seat, either in the same House or the other House.

10.164 There are a small number of offices that should be regarded as carrying a continuing disqualification for election as a Member of Parliament, for a period after the person concerned has ceased to hold the office. Provision to this effect was included in the 1970 Constitution but was omitted from the 1990 Constitution. It should be restored. The offices affected should include those in which persons might, directly or indirectly, be able to put in place arrangements that would give them an advantage in contesting an election or in their capacity as members of Parliament. The Commission considers that a person who has held office as a member of the Electoral Commission, the Constituency Boundaries Commission, the Parliamentary Emoluments and, or the Constitutional Offices Commission or as Supervisor of Elections should be disqualified from being a candidate for election as a member of Parliament for a period of four years after ceasing to hold office.

10.165 The other grounds for disqualification should include any which would disqualify a person from being or remaining registered as a voter or from voting. As at present, they should include the fact that a person is an undischarged bankrupt (section 42(1)(b)).

10.166 The 1970 Constitution also disqualified a person who "subject to any exceptions or limitations prescribed by Parliament, has any such interest in any such government contract as may be so prescribed". This rather awkwardly drafted provision, which left it to Parliament to prescribe the circumstances in which a person with an interest in a government contract should be disqualified, was omitted from the 1990 Constitution. The term "government contract" was not defined. The principle behind the former provision is closely linked to our recommendations

in Chapter 15 about an integrity code. We consider that the Constitution should include, as a ground for disqualification, the fact that the person has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by law.

10.167 The Constitution should also make it clear that a person should be disqualified from being a candidate if any ground for disqualification applies to that person at the time of filing his or her nomination or becomes applicable at any time after that date and before the declaration of the results of the poll.

## RECOMMENDATIONS

298. **The Constitution should clearly state that every registered voter who has attained the age of 21 years is eligible to be nominated as a candidate for election as a member of the Bose Lawa or the Bose e Cake, unless that person is disqualified on a ground provided in the Constitution.**
299. **The Constitution should provide that only a person registered on a roll for a Fijian, Indo-Fijian, Rotuman or general reserved seat constituency is eligible to be nominated as a candidate for a reserved seat of the relevant community. There should, however, be no constitutional requirement that a person can be nominated for a particular constituency only if on the roll for that constituency.**
300. **The Constitution should provide that all persons holding an office in the service of the state coming within the terms of the present definition of “public office” (which should include the office of the Commander of the Fiji Military Forces) should be treated as having vacated that office immediately before the time at which their signed nomination as a candidate for election as a member of the Bose Lawa or the Bose e Cake is filed. It should also provide that office-holders appointed to the Bose e Cake by the President will be treated as having vacated office immediately before being so appointed.**
301. **There should be a further provision that persons whose nominations as candidates for election as a member of the Bose Lawa or the Bose e Cake have been filed become disqualified for election to that office if, with their consent, they are appointed to an office in the service of the state.**

302. **Sitting members of either House of Parliament should be regarded as vacating office as members if they file a nomination as a candidate for another seat, either in the same House or the other House.**
303. **A person who has held office as a member of the Electoral Commission, the Constituency Boundaries Commission, the Parliamentary Emoluments Commission, or the Constitutional Offices Commission or as Supervisor of Elections should be disqualified from being a candidate for election as a member of Parliament for a period of four years after ceasing to hold that office.**
304. **The grounds of disqualification should continue to include any ground which would disqualify a person from being or remaining registered as a voter or from voting, and the fact that a person is an undischarged bankrupt.**
305. **The Constitution should include as a ground of disqualification the fact that the person has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by law.**
306. **The Constitution should also make it clear that a person should be disqualified from being a candidate if any ground for disqualification applies to that person at the time of filing his or her nomination or becomes applicable at any time after that date and before the declaration of the results of the poll.**

## THE TIMING AND CONDUCT OF ELECTIONS

### The term of Parliament

10.168 At present the maximum term of Parliament is five years from the date of the first sitting of Parliament after a general election. Since independence Parliament has twice been dissolved prematurely, after the Government was defeated on an issue of confidence. Otherwise, Parliament has run its full term or has been dissolved only a few months before the time at which it would otherwise expire. There has been no disposition on the part of a Prime Minister to call an early election in an attempt to take advantage of propitious circumstances.

10.169 The submissions expressed a range of views about the duration of Parliament, some favouring the retention of a five-year term, and others suggesting

that it should be reduced to four years or even three. A study of the terms of parliaments in 39 democratic countries shows that 19 favour a four-year term, 17 favour a five-year term and only 3 have a three-year term. The present five-year term in the Fiji Islands is therefore not exceptional.

10.170 The New Zealand Royal Commission on the Electoral System examined the arguments for extending the present three-year term in that country to four or five years. In the absence of a controlled constitution (in contrast to Fiji), that Commission was cautious about any extension of the term, but concluded that a four-year term would give governments a good opportunity to embark upon sound policies and would not deprive voters of adequate opportunities to pass judgment on those policies and the government itself.

10.171 We consider that a four-year term would enhance government accountability without adversely affecting its ability to design and implement its policies. We propose, therefore that the maximum term of Parliament should be four years. The Constitution should retain the substance of the provision in section 80(4) of the 1990 Constitution by providing for the extension of the life of Parliament for up to one year during a state of "national emergency". The meaning of that term is discussed in Chapter 19. Section 80(3), providing for an extension of up to four years if Fiji is at war, should be repealed. If it should ever be necessary, such a postponement should be authorised by amendments of the Constitution.

### **The effect of dissolution**

10.172 As now, the automatic dissolution on the expiry of the term of Parliament or any earlier dissolution by the President acting on the advice of the Prime Minister, should have the effect of dissolving both the Bose Lawa and the Bose e Cake. Consequently general elections will always involve the election of the members of both Houses. We accept that the same party will not necessarily obtain a majority in each House but we consider it desirable that the elections to both should take place simultaneously, so that each is equally affected by the dynamics of the political situation at the time.

### **The timetable for elections**

10.173 The Constitution at present contains a very tight timetable for the holding of general elections. This reflects the democratic principle that, as soon as possible after one Parliament has been dissolved, another should be elected. However, the timetable also needs to take account of another democratic principle: parties and candidates should have adequate time to select their candidates and conduct an election campaign. There must also be time for proper arrangement to be put in place for the conduct of the general election.

10.174 Earlier in this chapter we explained the importance we place, in the circumstances in the Fiji Islands, on the idea that moderate parties should be encouraged to cooperate in putting up multiethnic slates and trading preferences. It is important that the timetable should allow sufficient time for arrangements of this kind to be negotiated. Such negotiations can occur in advance when Parliament runs for its full term but that will not necessarily be the case. The decision to dissolve the Parliament is in the hands of the Prime Minister, even if the Government retains the confidence of the lower house.

10.175 We believe that the timetable for holding a general election should be slightly extended, and responsibilities clarified. The Constitution should provide that, not later than 7 days after the date of the dissolution of Parliament, the President, acting on the advice of the Prime Minister, shall issue the writs for the election of members to fill all reserved and open seats in the Bose Lawa and all provincial seats in the Bose e Cake. We would expect that the Prime Minister will take into account the recommendations of the Electoral Commission about a timetable that is administratively feasible within the prescribed maximums.

10.176 The writs specify the dates on which nominations will be called for, the date, or the last date for filing nominations, the date on which polling may commence and the date by which it must end. The Commission considers that the Constitution should provide that the last date for filing nominations must be not more than 14 days after the date of the issue of the writs. It would be understood that nominations should be called for as soon as possible after the issue of the writs, to give parties time to choose their candidates through their own constitutional processes, and also to allow for the negotiations among parties that we envisage. Individual candidates must also have time to raise their deposits or collect signatures to evidence their support.

10.177 The Constitution should provide that polling must commence not more than 30 days after the last date for filing nominations. During this period, parties or candidates will need to register any tickets that they wish to appear above the line on the ballot paper. The Electoral Commission will have to ensure that the implications of voting for particular tickets are publicised, and the ballot papers will have to be printed and distributed. The election campaign will also be in full swing. If parties or coalitions put up tickets, they will need time to persuade their supporters to vote for the ticket.

10.178 For these reasons, we see the constitutional maximums as being a guide also to the minimum periods necessary to ensure that there is adequate time for



the democratic process to operate at all stages in the process of conducting a general election. We do not think that the Constitution needs to specify the maximum time over which polling should extend. That is likely to get shorter as transport and communications improve. Under present conditions it should be possible to complete polling within a maximum of 8 days.

10.179 The Constitution does not provide time limits within which by-elections must be held to fill a vacancy among elected members of Parliament. That should be regulated by legislation, using the constitutional timetable for general elections as a guide. Although it is important that constituencies should not be left without representation, there is not quite the same need for urgency as there is when Parliament has been dissolved. As a cost-saving measure, the Constitution should provide that no by-election to fill a vacancy need be held if there is less than six months between the date on which the vacancy arises and the date on which Parliament will stand dissolved automatically.

### **The Electoral Commission**

10.180 The Constitution should continue to provide for an Electoral Commission. That body should be given general responsibility for, and the power to supervise, the registration of voters for the election of members of Parliament and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake. It should continue to have such powers and functions as may be prescribed by law in relation to other elections, such as the election of the members of local authorities.

10.181 The main rules for the registration of voters and the conduct of Presidential and Parliamentary elections should be contained in a comprehensive Electoral Act. The Electoral Commission should have power to make regulations only in respect of administrative matters. The need for proposed electoral legislation to be referred to the Electoral Commission and the Supervisor of Elections for comment should be retained.

10.182 The Electoral Commission should consist of a Chairperson and four other members, all of whom should hold office for terms of four years. (The length of the term reflects the recommended reduction in the duration of Parliament from five years to four.)

10.183 The membership should not overlap with that of the Constituency Boundaries Commission. The Chairperson of the Electoral Commission should be a person who is, or is qualified to be, a judge of a superior court of the Republic

of the Fiji Islands. The appointment should be made by the President, acting in his own deliberate judgment. The four other members should be appointed by the President on the advice of the Prime Minister acting after consultation with the Leader of the Opposition. These arrangements should ensure that the Commission has a neutral and well-qualified Chairperson and its other members are acceptable to all political parties.

10.184 Sitting members of Parliament, members of the councils of municipalities under the Local Government Act (Cap. 125), candidates for any of those offices nominated with their consent, public officers and local government officers should be disqualified from membership.

10.185 In a recent decision on comparable provisions of the Constitution of Mauritius, the Privy Council held election officers are “public officers” and should therefore have been appointed by the Public Service Commission, not the Electoral Commission. The 1990 Constitution permits the Public Service Commission to delegate the appointing power to the Electoral Commission. The Public Service Commission should make such a delegation so that the Electoral Commission is able to recruit temporary election officers whenever the need arises.

10.186 In view of the recommended changes in the constitutional provisions about eligibility for registration on a roll for a Fijian reserved seat constituency, the provision requiring the Electoral Commission to consult with the Native Lands Commission will no longer be required.

10.187 There should be transparency and accountability in the work of the Electoral Commission. In addition to its obligation to make an annual report to the President and Parliament, it should be empowered to report whenever it considers that matters have arisen which ought to be brought to their attention.

### **The Supervisor of Elections**

10.188 The Constitution should continue to make provision for the office of Supervisor of Elections. It should provide that, under the general direction of the Electoral Commission, the Supervisor of Elections has administrative responsibility for the registration of voters for the election of members of Parliament, and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake, as well as such other elections as may be prescribed by law.

10.189 In view of our recommendation in Chapter 13 that the Judicial and Legal Services Commission be reconstituted as the Judicial Service Commission, the Supervisor of Elections should be appointed by the Constitutional Offices Commission recommended in Chapter 15. Otherwise the substance of section 52 of the 1990 Constitution should be retained.

## RECOMMENDATIONS

307. **The maximum term of Parliament should be four years from the date of the first sitting of Parliament after a general election. Parliament should be able to extend its life by up to a year during a state of national emergency.**
308. **The automatic dissolution of Parliament on the expiry of its term or any earlier dissolution by the President acting on the advice of the Prime Minister, should have the effect of dissolving both the Bose Lawa and the Bose e Cake.**
309. **The Constitution should provide that, not later than 7 days after the day of the dissolution of Parliament, the President, acting on the advice of the Prime Minister, shall issue the writs for the election of members to fill all reserved and open seats in the Bose Lawa and all provincial seats in the Bose e Cake.**
310. **The Constitution should provide that the last date for filing nominations must be not more than 14 days after the date of the issue of the writs, and that polling must commence not more than 30 days after the last date for filing nominations.**
311. **The Constitution should provide that no by-election to fill a vacancy need be held if there is less than six months between the date on which the vacancy arises and the date on which Parliament will stand dissolved automatically.**
312. **The Electoral Commission should continue to be given general responsibility for, and the power to supervise, the registration of voters for the election of members of Parliament and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake. It should continue to have such powers and functions as may be prescribed by law in relation to other elections.**

313. **The main rules for the registration of voters and the conduct of Presidential and Parliamentary elections should be contained in a comprehensive Electoral Act. The Electoral Commission should have the power to make regulations only in respect of administrative matters. The requirement that proposed electoral legislation should be referred to the Electoral Commission and the Supervisor of Elections for comment should be retained.**
314. **The Electoral Commission should consist of a Chairperson and four other members, who should hold office for terms of four years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court of the Republic of the Fiji Islands, and should be appointed by the President, acting in his own deliberate judgment. The four other members should be appointed by the President on the advice of the Prime Minister acting after consultation with the Leader of the Opposition.**
315. **Sitting members of Parliament, members of the councils of municipalities under the Local Government Act (Cap. 125), candidates for any of those offices nominated with their consent, public officers and local government officers should be disqualified from membership.**
316. **The Public Service Commission should delegate the power to appoint election officers to the Electoral Commission.**
317. **In addition to its obligation to make an annual report to the President and Parliament, the Electoral Commission should be empowered to make such a report whenever it considers that matters have arisen which ought to be brought to their attention.**
318. **The Constitution should provide that, under the general direction of the Electoral Commission, the Supervisor of Elections has administrative responsibility for the registration of voters for the election of members of Parliament, and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake, as well as such other elections as may be prescribed by law. The Supervisor of Elections should be ap-**

**pointed by the Constitutional Offices Commission recommended below. Otherwise the substance of section 52 of the 1990 Constitution should be retained.**

## CHALLENGES TO THE VALIDITY OF ELECTIONS OR MEMBERSHIP OF PARLIAMENT

10.190 Section 46 of the 1990 Constitution confers jurisdiction on the High Court to determine certain questions about the validity of a person's election to, or continued membership of the House of Representatives. An express provision is necessary because, historically, such questions were not regarded as coming within the jurisdiction of the courts but were matters to be determined by Parliament itself. However, modern Westminster constitutions recognise that the courts are better equipped than Parliament to make the findings of fact on which such questions often depend and to apply the law impartially.

10.191 The wording of the section, however, does not make a clear enough distinction between testing the validity of the *processes* followed in conducting an election and determining whether a person declared elected remains qualified to serve as a member of Parliament. These two questions need to be dealt with in different ways.

### **Election petition**

10.192 The Constitution should provide that the validity of the election of the President and Vice-President, or of any person declared elected as a member of Parliament can be called in question by means of an election petition, on the ground that the election, or the declaration of the result of the election, was unlawful. This ground includes a claim that the person was not qualified to be or remain a candidate, or that a person was wrongfully excluded from being a candidate, or that the electoral process itself was flawed.

10.193 In order to attain finality concerning the outcome of a particular election, the Constitution should provide that an election petition can be brought only within a specified time after the declaration of the result of the poll. This time limit should be six weeks from the date of the declaration, except in the case of fraud, when time should run from the date of the discovery of the fraud.

10.194 We also consider that the present provision allowing any registered voter to question the outcome of elections is too wide. The right should be limited to persons with an interest in the outcome of the particular election. It should therefore be provided that an election petition may be brought by any person entitled to

vote in the election to which it relates or by any person who was a candidate or who claims to have had the right to be a candidate at that election or by the Solicitor-General.

10.195 The Solicitor-General should also have standing to intervene if not a party. There should be a provision that the person whose election is complained of is the respondent, and, if the petition complains of the conduct of a returning officer or the Electoral Commission or the Supervisor of Elections, they should also be respondents. The procedures for the hearing of election petitions should be spelt out in the Electoral Act.

10.196 The decision of the High Court on an election petition should continue to be final. An election petition should be the exclusive means of questioning the outcome of an election. Provision to this effect should be re-inserted in what is now section 113 of the 1990 Constitution dealing with the original jurisdiction of the High Court in constitutional questions.

### **Determination of questions of membership of Parliament**

10.197 There should be a separate provision allowing an interested person to bring proceedings in the High Court, at any time after a person has been declared elected as a member of Parliament, claiming that the member's seat has become vacant, or, if it is so provided, that the person should cease to perform the functions of a member pending the determination of that question. It will then be clear that such proceedings can be brought at any time during which the person purports to be or to remain a member. The procedure should apply to the members of both Houses of Parliament.

10.198 Until the time for bringing an election petition expires, it may be possible to challenge a person's election under both procedures - for example on the ground that, as a non-citizen the person was not qualified to be a candidate and is not qualified to be a member. After the expiry of the time for bringing an election petition, it will still be possible to bring proceedings on the ground that the member's seat has been vacated.

10.199 Any other member of Parliament, and any registered elector, whether or not registered on the roll for the member's constituency, should have standing to bring such an action, as should the Solicitor-General. As in the case of an election petition, the Solicitor-General, if not a party, should have standing to intervene. Again, the decision of the High Court should be final, and the otherwise overlapping jurisdiction under section 113 should be excluded.

### **Circumstances in which a member's seat should become vacant**

10.200 Although the rules about the vacation of the seats of members of Parliament do not form part of the electoral process, in substance they overlap the rules which may disqualify persons from being registered as voters or becoming candidates. For that reason, it is convenient to deal with them here.

10.201 The Constitution should continue to provide that the seats of all members of Parliament become vacant upon a dissolution of Parliament. This does not affect the tenure of office of the Prime Minister and other Ministers, or after Parliament has been dissolved, prevent the appointment of a Prime Minister or Ministers from among persons who were members of Parliament immediately before the dissolution. The substance of the present provisions to this effect should be retained.

10.202 Similarly, the Constitution should continue to provide that the seat of a member becomes vacant on resignation which should continue to be effective when received by the Speaker of the Bose Lawa or by the President of the Bose e Cake, as appropriate.

10.203 The Commission proposes that the Constitution should also provide that the seat of a member becomes vacant

- (a) if the member is not, or has ceased to be, a citizen of the Republic of the Fiji Islands;
- (b) if the member is absent from two consecutive meetings of the Bose Lawa or the Bose e Cake without the permission of the Speaker or the President of the Bose e Cake, as the case requires;
- (c) if the member is an undischarged bankrupt;
- (d) if the member is under a sentence of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in the Republic or is under a sentence of death, or of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in any other country prescribed by law;
- (e) if, in accordance with the law of the Republic, the person has been found to be of unsound mind;
- (f) if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections;

- (g) if, with the member's consent, he or she is appointed to an office in the service of the state;
- (h) if, with the member's consent, he or she is nominated as a candidate for election to another seat in Parliament;
- (i) if the member has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by law;
- (j) if the member resigns from the registered political party for which he or she was a candidate at the time of election to Parliament, or, by reason of conduct in or relating to the proceedings of Parliament, the member is in breach of the rules concerning party discipline contained in the constitution of such a party, and is for that reason expelled from the party, under the rules about expulsion contained in that constitution, and in conformity with the requirements of natural justice.

10.204 We propose that paragraph (j) should be qualified by providing that the reference to "proceedings of Parliament", for the purposes of the paragraph, does not include proceedings in a select committee of the Bose Lawa or the Bose e Cake, or a joint select committee of those Houses. It will need to be supplemented also by a provision that the member's seat becomes vacant when the Speaker or the President of the Bose e Cake receives a certificate signed by the President and the Secretary of the party, setting out the details of the member's resignation or expulsion from the party.

10.205 We now comment on these proposals. Paragraphs (a) and (b) correspond to the present section 43(1) (b) and (c) and section 56(4)(b) and (c). Paragraphs (d) - (f) correspond to the grounds on which a person is disqualified from becoming or remaining registered as a voter. The only difference is that the seat of a member of Parliament becomes vacant on being sentenced to a term of imprisonment for 12 months or more, not when he or she begins to serve the sentence. The substance of the existing provisions allowing members to be relieved of their parliamentary functions without actually losing their seats, until all avenues of appeal have been exhausted, should be retained. Paragraph (g) corresponds to the existing section 42(1)(f) but takes account of Recommendation 301. Paragraphs (h) and (i) reflect our recommendations about the grounds on which a person is disqualified from becoming a candidate.



10.206 Paragraph (h), together with the provision which accompanies it, is a revised version of the present section 43(1)(e) providing that a member loses his or her seat on "crossing the floor". That provision was introduced by the 1990 Constitution. It reflected the view that a member of Parliament owes a duty of loyalty to the party whose support assisted him or her to succeed in the election. While it is true that most political parties insist that their members observe party discipline, and give themselves power to expel a member who breaches that discipline, it is unusual to provide that dismissal from the party will lead to vacation of a member's seat. A member who is expelled usually retains the seat until Parliament is dissolved. Then the party will not again nominate the renegade as a candidate. That is usually sufficient to deter casual breaches of party discipline.

10.207 A rule that may require a member to vacate his or her seat in Parliament as a result of resigning from the party or as a consequence of a breach of party discipline should be included in the Constitution only with the greatest of caution. Otherwise there is a risk of undermining the basic democratic principle that Members of Parliament have a free mandate to act in accordance with their consciences, without being bound by the instructions of their constituency supporters, or, on occasions, the decisions of the party to which the member belongs.

10.208 Under the Westminster system there is a tension between reliance on party unity and the recognition that, in extreme circumstances, party unity may have to be sacrificed to other concerns. The basic provisions about the formation and the fall of a Government reflect the expectation that, to enable a government to take office, it must have the support of a party or parties making up a majority in Parliament. A resolution of no confidence in the Government cannot be passed unless some or all members of the ruling party are prepared to vote for it. That implies the abandonment of the Prime Minister as party leader, a split within the party or the defection of some of its members. A famous British constitutional lawyer once wrote that "there is no loyal way to change a Prime Minister". The Commission considers that the inclusion of the proposed rule will not undermine the basic safeguard provided by the ability to move and carry a motion of no confidence in the Government.

10.209 In Chapter 10, we propose the inclusion in Standing Orders of new rules about sector standing committees, through which members of the Bose Lawa who are not members of the Cabinet should have the opportunity to play an influential role in the formulation of legislation and the monitoring of the executive. While the successful operation of such committees must depend on relaxing the

rules of party discipline so that committees do not customarily divide on party lines, the application of the party whip on occasions cannot be excluded. A failure to vote with the party in a select committee should not be treated as “crossing the floor”. Otherwise, the new procedures we propose may not have the effect we hope for.

10.210 We have also sought to devise a rule that achieves the desired purpose without exposing members to an undue risk of being deprived of their seats because of differences of opinion or contests for office within the party. Our proposed rule makes it clear that a member’s seat becomes vacant only as a result of his or her own decision to resign from the party, or the party’s decision to expel the member for a clear breach of party discipline. It also gives the expelled member a basis for contesting the legality of the expulsion in the courts.

10.211 The proposed safeguards include the following requirements:

- A party wishing to take advantage of the provision must register itself and its constitution with the Electoral Commission. This will avoid doubt about the identity of a “party”. It will also enable candidates standing for the party to obtain ready access to the party constitution.
- The party constitution must contain clear rules about the observance of party discipline by its parliamentary members and also empower an organ of the party to expel such a member for a breach of those rules.
- The expulsion must be effected in accordance with the party’s rules for expulsion and also in accordance with the requirements of natural justice. These include the need for the member to be given a fair hearing, and require the decision-making body to act within its powers and not to be motivated by bias.

As in the case of a person sentenced to imprisonment for more than 12 months, it should be provided that members who wish to challenge their expulsion in the courts should be relieved of their parliamentary functions until that remedy is exhausted. If the validity of the expulsion is upheld, the member’s seat will then become vacant.

## RECOMMENDATIONS

- 319. The Constitution should provide that the validity of the election of the President and Vice-President, or of any person declared elected as a member of Parliament can be called in question by**

- means of an election petition, on the ground that the election, or the declaration of the result of the election, was unlawful.
320. The Constitution should provide that an election petition can be brought only within a period of six weeks after the declaration of the result of the poll, except in the case of fraud, when time should run from the date of its discovery.
321. Any person entitled to vote in the election to which the petition relates, and any person who was a candidate or who claims to have had the right to be a candidate at that election, and the Solicitor-General should have standing to bring an election petition.
322. The Solicitor-General should have standing to intervene if not a party. The person whose election is complained of should be the respondent, and if the election petition complains of the conduct of a returning officer or the Electoral Commission or the Supervisor of Elections, they should also be respondents.
323. The decision of the High Court on an election petition should continue to be final. An election petition should be the exclusive means of questioning the outcome of an election
324. There should be a separate provision allowing an interested person to bring a proceeding in the High Court, at any time after a person has been declared elected as a member of Parliament, claiming that the member's seat has become vacant, or, if it is so provided, that the person should cease to perform the functions of a member pending the determination of that question.
325. Any other member of Parliament, and any registered elector, whether or not registered on the roll for the member's constituency, should have standing to bring such a proceeding. The Solicitor-General, if not a party, should also have standing to bring such a proceeding or to intervene. The decision of the High Court should be final. The proceeding should be the exclusive means of challenging the retention of office by a member of Parliament.
326. The Constitution should continue to provide that the seats of all members of Parliament become vacant upon a dissolution of Parliament. The substance of the present provisions that,

after Parliament has been dissolved, a Prime Minister or Ministers may be appointed from among persons who were members of Parliament immediately before the dissolution should be retained.

327. The Constitution should continue to provide that the seat of a member becomes vacant if he or she resigns the seat. The resignation should be effective when received by the Speaker or by the President of the Bose e Cake, as the case requires:
328. The Constitution should provide that the seat of a member becomes vacant
- (a) if the member is not, or has ceased to be, a citizen of the Republic of the Fiji Islands;
  - (b) if the member is absent from two consecutive meetings of the Bose Lawa or the Bose e Cake without the permission of the Speaker or the President of the Bose e Cake, as the case requires;
  - (c) if the member is an undischarged bankrupt;
  - (d) if the member is under a sentence of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in the Republic or is under a sentence of death, or of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in any other country prescribed by law;
  - (e) if, in accordance with the law of the Republic, the person has been found to be of unsound mind;
  - (f) if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections;
  - (g) if, with the member's consent, he or she is appointed to an office in the service of the state;
  - (h) if, with the member's consent, he or she is nominated as a candidate for election to another seat in Parliament;
  - (i) if the member has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by Act;

(j) if the member resigns from the registered political party for which he or she was a candidate at the time of election to Parliament, or, by reason of conduct in or relating to the proceedings of Parliament, the member is in breach of the rules concerning party discipline contained in the constitution of such a party, and is for that reason expelled from the party, under the rules about expulsion contained in that constitution, and in conformity with the requirements of natural justice.

329. Paragraph (j) should be qualified by providing that the reference to “proceedings of Parliament”, for the purposes of the paragraph, do not include proceedings in a select committee of the Bose Lawa or the Bose e Cake, or a joint select committee of those Houses. It should be supplemented also by a provision that the member’s seat becomes vacant when the Speaker or the President of the Bose e Cake, as the case requires, receives a certificate signed by the President and the Secretary of the party, setting out the details of the member’s resignation or expulsion from the party. But if the member wishes to challenge the validity of the expulsion in the courts the member should be relieved of parliamentary functions until the expulsion is overturned or that remedy is exhausted, whichever is the later.