

THE FUNCTIONING OF PARLIAMENT

11.1 In this chapter we review those provisions of the 1990 Constitution concerned with the functioning of Parliament. Some relatively minor changes are proposed, reflecting the changes in its composition and other relevant considerations. We also set out in detail our foreshadowed proposals for the introduction of standing select committees with the functions of overseeing all sectors of Government administration and considering and making recommendations on most if not all Bills before they are passed by Parliament.

SESSIONS, MEETINGS AND SITTINGS OF PARLIAMENT

11.2 Section 79(4) of the 1990 Constitution, when read with section 79(1), requires the President, acting on the advice of the Prime Minister, to appoint a date, not more than thirty days after the date prescribed for polling, for the commencement of the first session of Parliament after any general election. The substance of this important constitutional requirement should be retained. Occasionally, as we explain in Chapter 12, it may not be clear until Parliament meets whether the Prime Minister in office before the general election can still command the support of a majority of the members of the Bose Lawa. In any case it is desirable that, whether or not the Government changes, Parliament should meet promptly after a general election.

11.3 Otherwise, sessions of Parliament commence at a time appointed by the President on the advice of the Prime Minister. Under section 79(2), there must not be an interval of more than six months between the end of one session and the first sitting of Parliament in the next session. During the period when Parliament is not in session, the President, under section 79(5), may call a session in the exercise of his own deliberate judgment

if he receives a request in writing for the summoning of a session of Parliament from not less than one-quarter of the members of the House of Representatives and he considers that the Government no longer commands the confidence of a majority of the members of that House or that it is necessary for the two Houses of Parliament to consider without delay a matter of public importance.

The need for such a provision is well-recognised. Its purpose is to prevent a Prime Minister from staving off a no-confidence motion or avoiding any other kind of political challenge by not advising the President to appoint a time for the commencement of a session of Parliament.

11.4 Its substance, though not its detail, should be retained. It seems invidious to require the President to summon Parliament if he considers that the Government no longer commands the confidence of a majority of the members of the Bose Lawa. This may be a matter that only the members of the Bose Lawa themselves can determine. The need to consider without delay a “matter of public importance” should be regarded as including an intention to move a no-confidence motion.

11.5 These existing constitutional provisions about sessions of Parliament are designed for a country in which Parliament meets regularly during the whole of the time for which it is in session, and then remains out of session for up to six months. That is not the practice here. Each session of Parliament lasts approximately a year. The current session ends when Parliament is prorogued, and the next session ordinarily commences shortly afterwards. But, during the period when Parliament is in session, sittings are held only during “meetings” of each House.

11.6 Standing Order 15 of the House of Representatives provides as follows:

Meetings of the House other than the first meeting of any session shall begin on such day and at such hour as the Speaker may determine after consultation with the Prime Minister.

Although only 14 days notice of a meeting is required, in practice the dates of meetings throughout the year are fixed at the beginning of the year. Meetings take place at intervals of about two months or less, and generally last from one to two weeks.

11.7 Theoretically, however, it would be possible for the Prime Minister to seek to extend the time between *meetings* to more than the minimum 6 months period between sessions. In such a case section 79(5) would not apply, because Parliament would already be in session.

11.8 The fact that the Speaker determines the time of meetings “after consultation with the Prime Minister” and not on the Prime Minister’s advice, affords a substantial safeguard. Even so, we consider that the Constitution should

provide that, if, while Parliament is in session, more than two months have elapsed since the last meeting of the Bose Lawa, the Speaker should be required to call a meeting of that House for a date not more than two weeks after receiving a written request to do so from not less than one-quarter of the members of the Bose Lawa, on the ground that a specific matter of public importance requires urgent consideration. The substance of section 79(6), allowing the sittings of each House to be held in accordance with its Standing Orders, should be retained.

RECOMMENDATIONS

330. The Constitution should make the following provisions for sessions of Parliament:

- (a) the President, acting on the advice of the Prime Minister, should be required to appoint, as the date for the commencement of the first session of Parliament after any general election, a date not more than thirty days after the date for the commencement of polling prescribed in the writs.**
- (b) Otherwise, sessions of Parliament should commence at a time appointed by the President on the advice of the Prime Minister, but there should not be an interval of more than six months between the end of one session and the first sitting of Parliament in the next session.**
- (c) During the period when Parliament is not in session, the President should be empowered to call a session in the exercise of his own deliberate judgment if he is so requested in writing by not less than one-quarter of the members of the House of Representatives on the ground that it is necessary for the two Houses of Parliament to consider without delay a matter of public importance. A "matter of public importance" should be regarded as including a no-confidence motion.**

331. The Constitution should provide that, if, while Parliament is in session, more than two months have elapsed since the last meeting of the Bose Lawa, the Speaker should be required to call such a meeting for a date not more than two weeks after receiving a written request to do so from not less than one-quarter of the members of the Bose Lawa, on the ground that a specific matter of public importance requires urgent consideration.

- 332. The substance of section 79(6), allowing the sittings of each House to be held in accordance with its Standing Orders, should be retained.**

THE PRESIDING OFFICERS

The Speaker

Election of the Speaker

11.9 Several submissions expressed support for the provision in the 1990 Constitution under which the Speaker is elected by the House of Representatives from among persons who are not members of the House. They saw it as enhancing the Speaker's independence and impartiality. The Commission proposes that this arrangement be retained. The eligible persons should be those who are qualified to be candidates for election as members of Parliament. The term of office should be the life of Parliament, so that every newly-elected House has the opportunity to elect its own Speaker. A Speaker should be elected whenever the office of Speaker is vacant. The Speaker should be required to take the Oath of Allegiance before entering on the duties of the office.

When the office becomes vacant

11.10 The Speaker should remain in office after a dissolution of Parliament. The office should become vacant on the day immediately preceding the first day on which the House meets in accordance with its Standing Orders after a general election. It should also become vacant if the Speaker resigns from office, or in any circumstance in which, if the Speaker were a member of the House, his or her seat would become vacant. The office should also become vacant if the House removes the Speaker from office by a resolution supported by not less than two-thirds of the total number of its members.

The Deputy Speaker

11.11 At present the Deputy Speaker is also elected from outside Parliament. The Commission considers that this requirement is unnecessary. The Bose Lawa should elect a Deputy Speaker from among its members, other than those who are Ministers or Assistant Ministers. Our later proposal that any member of either House, presiding in the absence of the Speaker or of the President of the Bose e Cake, should have a deliberative vote but not a casting vote, will avoid any disadvantage to the member concerned or to the constituents that the member represents.

11.12 The Constitution should provide that, if the Speaker is unable to exercise any of the functions of that office, they may be exercised by the Deputy Speaker. All references to the Speaker can then be read as including the Deputy Speaker. The person elected to the office of Deputy Speaker will take the Oath of Allegiance in his or her capacity as a member of the Bose Lawa.

11.13 The office of Deputy Speaker should become vacant on the day immediately preceding the first day on which the House meets in accordance with its Standing Orders after a general election. It should also become vacant if the Deputy Speaker resigns from office, is appointed as a Minister or an Assistant Minister, or vacates his or her seat in the House. As in the case of the Speaker, the House should be able to remove the Deputy Speaker from office by a resolution supported by not less than two-thirds of the total number of its members.

11.14 If neither the Speaker nor the Deputy Speaker is available to preside over a sitting of the House, the Constitution should, as now, permit the members of the House to elect one of their number to preside over the sitting.

The President and Vice-President of the Bose e Cake

11.15 We propose that the constitutional provisions relating to the President and the Vice-President of the Bose e Cake should parallel those relating to the Speaker and Deputy Speaker. The President of the Bose e Cake should continue to come from outside Parliament but the Vice President should be elected from among the members of the Bose e Cake.

11.16 The provisions concerning election and vacation of office of the President and Vice-President of the Bose e Cake should correspond to those applying to the election and vacation of office of the Speaker and Deputy Speaker. So also should provision for a member of the Bose e Cake to be elected to preside at a sitting of that House in the absence of both the President and the Vice President of the Bose e Cake.

Voting by the presiding officer

11.17 The Commission proposes some changes in the present rules in section 69(2) about the votes which may be cast by the person presiding in either House at the time of a vote. At the moment, such a person does not have a deliberative vote, that is, a right to vote for or against the proposal under consideration or to record an abstention. However, if the votes cast are equally divided, the presiding officer is entitled to exercise a casting vote.

11.18 That does not mean that such a vote should be cast in accordance with the presiding officer's personal views or any allegiance to a party. Under the Westminster system, there are well-developed guiding principles for the exercise of a casting vote, including its use to keep discussion open whenever that is possible. A more modern approach is that the value of keeping the discussion going is outweighed by the cost of using the time and resources of the House for that purpose if the matter has not received majority support.

11.19 We consider that no presiding officer should have a casting vote. As provided in section 69(1), all questions, other than those in respect of which the Constitution makes a different provision, should be decided by a majority of the votes of the members of the House present and voting. If a vote is tied, it has not received a majority and is therefore lost.

11.20 This proposed rule fits in well with the fact that the Speaker and the President of the Bose e Cake will continue to be elected from outside those Houses. Accordingly, neither should have a deliberative vote. However, as members of Parliament, the Deputy Speaker and the Vice President of the Bose e Cake, as well as a member of either House elected to preside at a sitting in the absence of any other presiding officer, should have a deliberative vote. This will allow them both to represent their constituents, and, to support the positions of their parties. We do not think that they themselves, or other members, will see the exercise of such a vote as affecting their impartiality in carrying out their duties in the chair.

RECOMMENDATIONS

- 333. Whenever the office of Speaker is vacant, a Speaker should be elected by the Bose Lawa from among persons who are not members of that House but are qualified to be candidates for election as members of Parliament. The Speaker should be required to take the Oath of Allegiance before entering on the duties of the office.**
- 334. The office of Speaker should become vacant on the day immediately preceding the first day on which the House meets after a general election. It should also become vacant**
- (a) if the Speaker resigns from office, or**
 - (b) in any circumstance in which, if the Speaker were a member of the House, his or her seat would become vacant, or**

- (c) if the House removes the Speaker from office by a resolution supported by not less than two-thirds of the total number of its members.
335. The Bose Lawa should elect a Deputy Speaker from among its members, other than a Minister or Assistant Minister. The Constitution should provide that, if the Speaker is unable to exercise any of the functions of that office, they may be exercised by the Deputy Speaker.
336. The office of the Deputy Speaker should become vacant on the day immediately preceding the first day on which the House meets after a general election. It should also become vacant if the Deputy Speaker resigns from office, vacates his or her seat in the House, is appointed as a Minister or an Assistant Minister, or is removed from office by a resolution supported by not less than two-thirds of the total number of its members.
337. If neither the Speaker nor the Deputy Speaker is available to preside over a sitting of the House, the Constitution should permit the members of the House to elect one of their number to preside over the sitting.
338. The Constitution should provide that the President of the Bose e Cake should continue to be elected from among persons who are not members of Parliament but the Vice President should be elected from among the members of the Bose e Cake.
339. The provisions concerning election and vacation of the offices of President and Vice-President of the Bose e Cake, and for a member of the Bose e Cake to be elected to preside at a sitting of that House in the absence of both the President and the Vice President of that House should correspond to those applying to the election, vacation of office and absence of the Speaker and Deputy Speaker.
340. No presiding officer in the Bose Lawa or the Bose e Cake should have a casting vote. All questions, other than those in respect of which the Constitution makes a different provision, should be decided by a majority of the votes of the members of the House present and voting.
341. Neither the Speaker nor the President of the Bose e Cake should have a deliberative vote, but the Deputy Speaker and the Vice

President of the Bose e Cake, as well as a member of either House elected to preside at a sitting in the absence of any other presiding officer, should be entitled to exercise a deliberative vote.

PROCEDURE AND ADMINISTRATION

Quorum

11.21 The usual practice is for a quorum of a House of Parliament to consist of about one-third of the total number of members. We propose the retention of a quorum of 24 members for the Bose Lawa and 12 members for the Bose e Cake. The number should exclude the Speaker and the President of the Bose e Cake, who are not members of Parliament. Other presiding officers should be counted for the purpose of determining whether the members present constitute a quorum.

Procedure

11.22 The Constitution should continue to make provision for the matters at present dealt with in section 63. Each House should be empowered to regulate its own procedure consistently with the Constitution. A vacancy among its members, or the participation of a person who is not a member, should not invalidate its proceedings. Parliament should be empowered to make provision for the exercise of the powers of each House and its Committees and for the privileges and immunities of their members.

Parliamentary salaries, allowances and benefits

11.23 In any democratic country, the fixing of Parliamentary salaries, allowances and benefits can give rise to difficult issues. One set of questions is philosophical and practical. In most countries, those who serve the state accept that the material rewards are likely to be less than those of people who achieve success in the private sector. An element of sacrifice is involved. In the case of non-elective office, however, the lower levels of remuneration have been seen as offset by greater certainty of continued employment. Politicians have no such certainty. They serve at the will of their constituents.

11.24 Historically, membership of Parliament was the preserve of those with other sources of income. However, universal franchise led to the election of persons who had to give up their employment to carry out their parliamentary duties. They needed to be paid a living wage. Yet the duties of a member of Parliament are not necessarily full-time, though they certainly take up more time than the hours during which Parliament is actually sitting.

11.25 A second set of questions is fiscal and political. Provision needs to be made in the budget for the salaries, allowances and other benefits of members of Parliament. That, in itself, is a useful constraint. Remuneration levels need to be in accord with the Government's overall economic policy. Few Governments will risk the political consequences of increasing the salaries, allowances and other benefits of Members of Parliament unless an increase is thoroughly justified. But even when it is, the Government may not be willing to face the likely public criticism.

11.26 For reasons of this kind, the 1990 Constitution made provision for an Independent Parliamentary Emoluments and Benefits Committee. As provided in section 64(2), the Committee is responsible for reviewing from time to time, at intervals determined by it, the salaries, allowances and benefits, financial or otherwise, (including personal accident insurance, pensions or retirement benefits) of the following persons:

- (i) the Prime Minister;
- (ii) Ministers;
- (iii) Assistant Ministers;
- (iv) the Speaker;
- (v) the Deputy Speaker;
- (vi) the President of the Senate;
- (vii) the Vice-President of the Senate;
- (viii) Members of Parliament;

and for making recommendations thereon. We have already recommended that the Leader of the Opposition should be included in this list.

11.27 The Commission considers that an independent body should continue to have the task of reviewing parliamentary emoluments. It should have the power to gather relevant information and consider submissions. It should be required to set out its recommendations in a report to the Speaker who should, in turn, be required to table the report in Parliament.

11.28 The Constitution should also provide that the salaries, allowances and benefits of those referred to in the provision should be as prescribed by Act. This will give Parliament, as well as the Government, the clear responsibility of implementing - or deciding not to implement - any recommendations that the independent body may make about the desirable levels of parliamentary emoluments.

11.29 In the light of its functions, the Commission considered the present composition of the Committee and the method of appointing its members. At the moment, the Committee consists of a Chairperson and not less than two nor more than four other members. No qualifications are specified. All members are appointed by the Speaker. As the Committee is required to review the Speaker's salary, this arrangement lacks the desirable degree of transparency.

11.30 We therefore consider that the Committee should be replaced by a Parliamentary Emoluments Commission. That body should be a constitutional commission to which the general rules recommended in Chapter 15 should apply, including the duty to act independently in the exercise of its functions. It should consist of a Chairperson and two other members, one of whom should be a qualified actuary with at least five years' practical experience. No person whose remuneration is reviewable by the Commission should be qualified to be a member.

11.31 The members of the Commission should be appointed by the President on the recommendation of the sector Standing Committee of the Bose Lawa responsible for overseeing administrative services. (We propose below the creation of such a committee, among others.) That Committee should make its recommendation after considering names placed before it by the Speaker.

The Secretary-General and staff of Parliament

11.32 The Commission proposes that, as at present under section 81 of the Constitution, there should continue to be a Secretary-General to Parliament, a Secretary to the Bose Lawa and a Secretary to the Bose e Cake. In view of the status of the Secretary-General to Parliament and the fact that the holder of the office must serve all members in both Houses, we think that appointments to that office should be made by the Constitutional Offices Commission proposed in Chapter 14. That Commission should consult the Speaker and the President of the Bose e Cake before the appointment is made or the Commission exercises any other power in respect of the office of Secretary-General to Parliament.

11.33 As at present, there should be similar consultations before the Public Service Commission exercises any power in relation to any public officer appointed to the staff of the Secretary-General or of either House. Later in this chapter, we make detailed proposals about the use of sector Standing Committees in the Bose Lawa. We mention there the staffing requirements that will need to be met if the Committees are to function effectively.

RECOMMENDATIONS

342. The quorum for the Bose Lawa should continue to be 24 members and the quorum for the Bose e Cake should continue to be 12, including in each case a presiding officer other than the Speaker and the President of the Bose e Cake.
343. The Constitution should continue to empower each House to regulate its own procedure consistently with the Constitution, provided that a vacancy among its members or the participation of a person who is not a member should not invalidate its proceedings, and empower Parliament to make provision for the exercise of the powers of each House and its Committees and for the privileges and immunities of its members.
344. The Constitution should continue to give an independent body the task of reviewing parliamentary emoluments. That body should have the power to gather relevant information and consider submissions, and should be required to set out its recommendations in a report to the Speaker who should table it in Parliament.
345. The Constitution should provide that the salaries, allowances and benefits of those referred to in the provision should be as prescribed by Act.
346. The present Independent Parliamentary Emoluments and Benefits Committee should be replaced by a Parliamentary Emoluments Commission. That body should be a constitutional commission to which the general rules later recommended should apply. It should consist of a Chairperson and two other members, one of whom should be a qualified actuary with at least five years' practical experience. No person whose remuneration is reviewable by the Commission should be qualified to be a member.
347. The members of the Commission should be appointed by the President on the recommendation of a sector Standing Committee of the Bose Lawa responsible for overseeing Administrative Services. That Committee should make its recommendation after considering names placed before it by the Speaker.
348. There should continue to be a Secretary-General to Parliament, a Secretary to the Bose Lawa and a Secretary to the Bose e Cake.

349. **The Secretary-General to Parliament should be appointed by the recommended Constitutional Offices Commission after consultation with the Speaker and the President of the Bose e Cake.**
350. **The Public Service Commission should be required to consult the Speaker and the President of the Bose e Cake as appropriate, before exercising any power in relation to any public officer appointed to the staff of the Secretary-General or of either House.**

THE LEGISLATIVE POWER

Vesting of the legislative power

11.34 Section 61 of the 1990 Constitution provides:

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

This is the formula traditionally used in colonial constitutions. Case law establishes that it confers plenary legislative powers, once the limits on the powers of a colonial legislature are removed. In the case of Fiji this was done by section 1 of the Fiji Independence Act 1970 and Schedule 1 to that Act. In itself, the reference to “laws for the peace, order and good government of Fiji” is misleading. It suggests that a law may be challenged on the ground that it does not serve any of those purposes, but that is not the case.

11.35 Parliament’s law-making powers are required to be exercised in conformity with the Constitution. But that flows from the provision in section 2 that the Constitution is the supreme law of Fiji and that any inconsistent law is void to the extent of the inconsistency. We return to the significance of that provision in Chapter 20. Here we make the point that there is no need for the provision conferring the law-making power to be “subject to the provisions of this Constitution”. The *grant* of that power, as distinct from its *exercise*, should be unqualified.

11.36 For all of these reasons, we propose a more modern, though still standard, formulation of Parliament’s power to make laws. Instead of retaining the formula in section 61, the Constitution should provide that the legislative power of the Republic of the Fiji Islands is vested in Parliament. Section 62 is already entitled “Mode of exercise of legislative power”. The express grant of that power would be in conformity with that usage and would correspond with the language of section

82(1) vesting the executive authority of Fiji in the President. In Chapter 13 we propose a corresponding provision vesting the judicial power in the courts.

Exercise of the legislative power

11.37 Section 62 makes it clear that the legislative power must be exercised by Act. To become law, a Bill for an Act must be passed by both Houses of Parliament unless the Constitution provides otherwise, and must be assented to by the President. The substance of these basic rules should be retained. We have already recommended the retention of the provision making it clear that the President has no discretion to refuse assent.

11.38 Coupled with the vesting of the legislative power in Parliament, the provisions just referred to make it clear that, under the Constitution, no Minister or other organ of the executive branch of government has any inherent law-making power. However, Parliament may delegate such a power to a Minister or other person or body by Act, so long as it retains its own power to withdraw or alter the terms of the delegation.

11.39 The Constitution should also retain the safeguard that no Act shall come into operation until it has been published. It is hardly necessary to spell out that Parliament may postpone the coming into operation of all or part of an Act or make laws with retrospective effect. In the last-mentioned case, the law must comply with the prohibition in the Bill of Rights on the retrospective creation of offences or imposition of a more severe penalty.

The roles of the Bose Lawa and the Bose e Cake

The power to initiate Bills

11.40 Section 62(2) and (3) set out the basic rules about the roles of the two Houses of Parliament in enacting legislation. They raise the important question of whether both Houses should have the power to initiate Bills, or only the Bose Lawa. Under the 1970 Constitution, all Bills had to originate in the House of Representatives. The 1990 Constitution gives the Senate the power to initiate Bills for both public and private Acts. However, that power has never been exercised.

11.41 A number of submissions argued that it was wrong for Bills to originate in the Senate, but this argument was based on the fact that the Senate is an appointed, not an elected, body. Nevertheless, we consider that, although under our proposals the Bose e Cake will be predominantly an elected body, it should be exclusively a House of review. All Bills should originate in the Bose Lawa.

11.42 We take this view because we see the role of the Bose e Cake as essentially protective of the interests which it represents. As we explained in Chapter 9, a second chamber is justified if the interests of the people can be represented there on a different basis from the way in which they are represented in the Lower House. The Upper House should be able to exercise a significant influence on legislation and Government policy generally.

11.43 However, this does not mean that the Upper House should have the power to initiate policy in the form of legislative proposals. The Government has effective control of the Bose Lawa, as long as it commands the confidence of the majority of its members. The Government may or may not also have a majority in the Bose e Cake. If it does not, there would be little likelihood that Bills passed there despite the opposition of Government members would receive majority support when they were considered in the Bose Lawa. Even if the Government has a majority in the Bose e Cake, its control of legislative initiatives would require quite elaborate machinery and the application of the Party Whip in a way that would perhaps frustrate the expression of the interests that the Bose e Cake is designed to represent.

11.44 Although those interests stem from the distinct identity of the Fijian provinces and Rotuma, as well as the communities and groups represented through appointed members, the provinces are not the units of a federal state. Therefore the role of the Senate in a state like Australia or the United States does not provide a guide. We consider that the Constitution should seek to make the influence of the Bose e Cake as effective as possible, but should not increase the possibility of its coming into conflict with the Bose Lawa by allowing it to initiate Bills.

The power to amend or reject Bills passed by the Bose Lawa

11.45 The present role of the Senate in respect of ordinary Bills passed by the House of Representatives is set out in sections 62(3) and 75 of the Constitution. The procedures are spelt out in the Standing Orders of each House. By “ordinary” Bills, we mean Bills other than the following:

- Bills that are the responsibility of the Cabinet because they make provision about financial matters - often called “money Bills”;
- Appropriation Bills, as a special category of money Bills;
- Bills altering the Constitution or entrenched legislation;
- Urgent Bills.

Ordinary Bills

11.46 The essential steps in the passage of an ordinary Bill are as follows:

- Every Bill passed by the House of Representatives is sent to the Senate.
- The Senate may pass the Bill with or without amendment or may reject the Bill.
- Where the Senate amends a Bill, the House of Representatives considers the amendments. It may agree to them, reject them or agree to them in amended form.
- If the House of Representatives does not agree to the amendments, the Bill is then returned to the Senate, in the form again passed by the House of Representatives. The process of consideration by the Senate is then repeated.
- In order to avoid deadlock, the Constitution provides that if
 - the House of Representatives passes a Bill in two successive sessions, and
 - there is an interval of at least six months between the dates on which the Bill is passed in each session, and
 - on each occasion the Senate rejects the Bill, or passes it with amendments to which the House of Representatives does not agree,
 the Bill shall nevertheless be presented to the President for assent, unless the House of Representatives resolves otherwise.
- There is a provision under which the House of Representatives can help break a deadlock between the two Houses by suggesting to the Senate amendments which will be taken as having been agreed to by the House of Representatives if they are approved by the Senate.

11.47 The Commission considers that the Bose Lawa and the Bose e Cake should each have the same roles as the House of Representatives and the Senate have at present in passing ordinary Bills. The Constitution should set out the governing principles, leaving as much of the detail as possible to be filled out in the Standing Orders of each House.

11.48 We would expect the Bose Lawa to make every effort to reach agreement with the Bose e Cake if that body is not willing to pass a Bill in the form in which it was first passed by the Bose Lawa. The Standing Orders of both Houses could make provision for the setting up of ad hoc Joint Committees to consider such Bills and endeavour to recommend amendments which would make the Bill acceptable to both Houses.

Urgent Bills

11.49 Section 74 makes provision for the President, acting on the advice of the Prime Minister, to certify that a Bill is a matter of urgency. In that case, the Senate has seven days in which to pass it in its original form or with amendments to which the House of Representatives agrees. Otherwise, at the expiry of the seven days, the Bill is to be presented to the President for assent unless the House of Representatives resolves otherwise. That provision, too, should be retained in substance. The involvement of the President seems to reflect formal responsibilities originally vested in the Governor-General, and may be unnecessary. The essential point is that the Bose Lawa should have decided, if necessary by a special majority, that the Bill is a matter of urgency.

Other Bills

11.50 To the extent that they differ from the arrangements governing the passage of ordinary Bills, the role of the Bose e Cake in passing Appropriation Bills and money Bills other than Appropriation Bills is discussed in Chapter 16. In Chapter 20, we deal with its role in passing Bills amending the Constitution or entrenched legislation.

RECOMMENDATIONS

351. **The Constitution should provide that the legislative power of the Republic of the Fiji Islands is vested in Parliament.**
352. **It should continue to provide that**
 - (a) **the legislative power must be exercised by Act;**
 - (b) **to become law, a Bill for an Act must be passed by both Houses of Parliament unless the Constitution provides otherwise, and must be assented to by the President; and**
 - (c) **no Act shall come into operation until it has been published.**

353. **The Constitution should provide that all Bills must originate in the Bose Lawa.**
354. **The Constitution, supplemented by the Standing Orders of each House, should continue to provide that Bills, other than Appropriation Bills and other money Bills, urgent Bills, and Bills altering the Constitution or other entrenched legislation, must be passed in accordance with the following procedures:**
- (a) **Every Bill passed by the Bose Lawa is sent to the Bose e Cake.**
 - (b) **The Bose e Cake may pass the Bill with or without amendment or may reject the Bill.**
 - (c) **Where the Bose e Cake amends a Bill, the Bose Lawa considers the amendments. It may agree to them, reject them or agree to them in amended form.**
 - (d) **If the Bose Lawa does not agree to the amendments, the Bill is then returned to the Bose e Cake, in the form in which it was again passed by the Bose Lawa. The process of consideration by the Bose e Cake is then repeated.**
 - (e) **If,**
 - (i) **the Bose Lawa passes a Bill in two successive sessions, and**
 - (ii) **there is an interval of at least six months between the dates on which it is passed in each session, and**
 - (iii) **on each occasion the Bose e Cake rejects the Bill, or passes it with amendments to which the Bose Lawa does not agree,****the Bill shall nevertheless be presented to the President for assent, unless the Bose Lawa resolves otherwise.**
355. **The provision under which the Bose Lawa can help break a deadlock by suggesting to the Bose e Cake amendments which the Bose Lawa will be taken as having agreed to if they are approved by the Bose e Cake, should be retained. The Standing Orders of both Houses should make provision for the setting**

up of ad hoc Joint Committees to consider Bills which are not acceptable to the Bose e Cake in their original form. The Joint Committee should endeavour to recommend amendments which would make the Bill acceptable to both Houses.

- 356. The Bose e Cake should continue to have seven days in which to pass an urgent Bill in its original form or with amendments to which the Bose Lawa agrees. Otherwise, at the expiry of the seven days, the Bill must be presented to the President for assent unless the Bose Lawa resolves otherwise.**
- 357. The role of the Bose e Cake in passing Appropriation Bills and other money Bills and Bills altering the Constitution or other entrenched legislation should be as recommended later.**

SECTOR STANDING COMMITTEES

The nature of sector Standing Committees

11.51 During its visits to South Africa and New Zealand, the Commission had the opportunity of learning about the strong sector parliamentary select committee system which has been put in place in each of those countries. By "sector" select committees, we mean standing select committees concerned with particular areas of Government policy and administration. In New Zealand especially, the sector select committees are structured in such a way that all departments and other Government agencies come within the supervision of some committee. In each country, the view was expressed that a strong standing select committee system enables Parliament to exercise a measure of influence and control over the executive in a way that is not otherwise possible when the Government has a majority in the House.

11.52 Submissions, too, stressed the importance of using such committees as a way of permitting all members of the Bose Lawa who are not Ministers or Assistant Ministers, and whether belonging to the Government or the Opposition, to take part in national decision-making. They saw it as allowing the members of all ethnic communities to take part in the political process. The Commission sees much merit in this approach. The work of select committees tends to be carried out on a less partisan basis than the proceedings of the whole House. They therefore mitigate the adversarial nature of the Westminster system and allow the House to use the talents of all its members to good advantage in a collaborative way. Very often a consensus will emerge - a process in keeping with deeply-rooted Pacific traditions.

New sector Standing Committees of the Bose Lawa

11.53 At present, the Standing Orders of the House of Representatives make provision for two Select Committees with responsibilities for matters not internal to the House: the Public Accounts Committee (chaired by a member of the Opposition) and the Standing Select Committee on Sugar. The Commission proposes that, in addition, the Standing Orders of the Bose Lawa should establish standing Select Committees which, among them, should have responsibilities for all areas of Government policy and administration. We believe that these responsibilities could be allocated among five standing Select Committees, each dealing with one of the following sectors:

- economic services
- social services
- natural resources
- foreign relations
- administrative services.

This tentative structure needs to be re-examined to make sure that is capable of including all areas of Government responsibility.

11.54 A sector standing committee system in the Fiji Islands should be allowed to operate in a way that suits local conditions. Committees should be allowed to develop their own working methods. The following matters will need to be considered.

Functions of sector Standing Committees

11.55 The Commission sees the sector Standing Committees as having two responsibilities. The first is the systematic scrutiny of all areas of government activity. The second is the legislative function of considering Bills referred to them by Parliament, hearing submissions on them from members of the public and reporting them back to Parliament with the amendments recommended by the Committee. The timetable of meetings of Parliament should allow sufficient time for the work of the sector Standing Committees. They should not normally meet while the House itself is sitting. Time must also be allowed to debate their reports.

The scrutiny function

11.56 The single most important aspect of the scrutiny role is that it allows Committees the initiative to take up matters within their sectors. Such scrutiny

could include all or any of the following activities:

- examining the estimates of expenditure prepared by departments and other government agencies;
- financial reviews of departments;
- reviews of regulations and other subordinate legislation made under the authority of Acts administered by departments;
- reviews of the performance and current operations of statutory bodies;
- follow-up and in-depth inquiries into particular matters;
- reviews of State-owned enterprises;
- reviews of audit reports and the responses made to them;
- in-depth policy inquiries.

We believe that, in these ways, sector Standing Committees should be able to make a major contribution to Government policy-making and accountability.

11.57 If, in the course of an inquiry, the conduct of an individual comes under scrutiny, the procedures followed must be fair, and take account of the principles of natural justice. However, because a sector Standing Committee hearing is a parliamentary proceeding, it should not be reviewable by the courts. A sector Standing Committee should not investigate the possible commission of a crime. Any relevant evidence should be referred to the police.

The legislative function

11.58 The legislative function of sector Standing Committees should be carried out by providing in Standing Orders that every Bill, other than an Appropriation Bill, stands referred to a sector Standing Committee unless the House has accorded urgency to its passing. The Standing Orders should also require the House to determine the sector Standing Committee to which a particular Bill should be sent.

11.59 Until recently, the practice in the New Zealand Parliament was to refer Bills to Select Committees before the Second Reading. The new Standing Orders of that Parliament provide for the Second Reading debate on a Bill to be held before the Bill is referred to a Select Committee. This change allows members of the Committee to have “an understanding of the mind of the House”, before they consider the Bill. We believe the practice has much to commend it and should be considered here.

11.60 The task of the sector Standing Committees should be to examine the Bill, and determine whether it should be passed in its existing form. It should be empowered to recommend amendments that are relevant to the subject-matter of the Bill and consistent with its purposes and objects. Care should be taken that the constitutional provisions which preserve the Cabinet's responsibility for financial matters do not unnecessarily require amendments proposed by a Committee to be ruled out of order because they have minor financial implications - a matter we discuss more fully in Chapter 16.

11.61 The House should indicate the time-frame within which the Bill should be reported back. The sector Standing Committee's report on a Bill would be considered by the Committee of the Whole House, after which the motion would be put that the Bill be read a second time.

11.62 A main aspect of the sector Standing Committee's work should be to hear submissions on the Bill. This gives members of the public who are likely to be most affected by the Bill a valuable opportunity to make a direct input. Care should be taken to allow those wishing to make submissions enough time to prepare them. Unless there are special reasons for hearing submissions in private, all submissions should be heard in public.

Committee proceedings and reports

11.63 Other proceedings of sector Standing Committees should not be open to the public, and should remain confidential until the committee reports to the House. Confidentiality fosters a non-partisan approach and may encourage the emergence of a consensus. However, sector Standing Committees may not always agree. Although minority reports should not be permitted, the report itself should record the range of views.

Membership of sector Standing Committees

11.64 The members of sector Standing Committees should be appointed at the beginning of a new Parliament. Every member who is not a Minister or an Assistant Minister should be a member of at least one Committee. In principle, their membership should remain relatively constant so that members can develop expertise in the relevant area and establish good working relationships that allow them to function in a relatively non-partisan way. The overall membership of sector Standing Committees should reflect the balance of the parties in the House. It is not necessary to have a Government majority, or a Government Chairperson. The Chairperson and the Deputy Chairperson should come from opposite sides of the House.

Role of Ministers

11.65 Although not members of sector Standing Committees, Ministers in charge of Bills must play a direct part in their legislative work. The practice elsewhere is to allow the Minister, while his or her Bill is being considered, to take part in the proceedings of the Committee but not to vote. This practice is seen as allowing the Minister to brief the Committee on the intended policy objectives of the Bill, hear the evidence, answer for the policy (rather than the departmental officials or the Chairperson) and take responsibility for any amendments the departmental officials may recommend.

11.66 Ministers should also be encouraged to cooperate with sector Standing Committees in the exercise of their scrutiny functions. They should be expected to attend Committee meetings if invited to do so. Committees should have the power to call for relevant information, and summon departmental and other officials. While Committees should identify and report on mismanagement, their focus should be on ensuring that government activities are as useful and productive as possible. Their general approach should be constructive.

Standing Joint Committee of the Bose Lawa and the Bose e Cake?

11.67 A submission was made to the Commission that there should also be standing Joint Committees of the two Houses, specially on financial matters. The Commission believes that this idea is worth exploring, perhaps by widening the role of the present Public Accounts Committee of the Bose Lawa and creating a Joint Finance and Expenditure Committee in its place. Such committees elsewhere play a useful role in the various stages of the annual budget cycle.

Servicing sector Standing Committees

11.68 The Secretary-General of Parliament will need to develop a permanent but flexible structure for servicing sector Standing Committees by providing them with their own staff, and access to researchers, policy analysts and experts to assist them in their work. This will prevent Committees from being too heavily dependent on departmental officials. Provision for these purposes should be included in Parliamentary appropriations.

RECOMMENDATIONS

- 358. The Standing Orders of the Bose Lawa should establish sector Standing Committees with responsibility for all areas of Government policy and administration.**

- 359. Sector Standing Committees should have**
- (a) the duty to scrutinise areas of government activity on a systematic basis, and**
 - (b) the legislative function of considering Bills referred to them by Parliament, hearing submissions on them from members of the public and reporting them back to Parliament with any amendments recommended by the Committee.**
- 360. The parliamentary timetable should allow sufficient time for the work of the sector Standing Committees.**
- 361. Their function of scrutinising should allow sector Standing Committees on their own initiative to take up matters within their subject areas. Their scrutiny could include all or any of the following activities:**
- examining the estimates of expenditure prepared by departments and other government agencies;**
 - financial reviews of departments;**
 - reviews of regulations and other subordinate legislation made under the authority of Acts administered by departments;**
 - reviews of the performance and current operations of statutory bodies;**
 - follow-up and in-depth inquiries into particular matters;**
 - reviews of State-owned enterprises;**
 - reviews of audit reports and the responses made to them;**
 - in-depth policy inquiries.**
- 362. The legislative function of sector Standing Committees should be carried out by providing in Standing Orders that every Bill, other than an Appropriation Bill, stands referred to a sector Standing Committee unless the House has accorded urgency to its passing. The Standing Orders should also require the House to determine the Committee to which a particular Bill should be sent.**
- 363. Consideration should be given to adopting the practice of holding the Second Reading debate before the Bill is referred to a sector Standing Committee, so that members of the**

Committee will have “an understanding of the mind of the House”, before they consider the Bill. Sector Standing Committees should be empowered to recommend amendments that are relevant to the subject-matter of the Bill and consistent with its purposes and objects.

364. Unless there are special reasons for hearing submissions in private, all submissions should be heard in public. Other proceedings of sector Standing Committees should not be open to the public, and should remain confidential until the Committee reports to the House.
365. The members of sector Standing Committees should be appointed at the beginning of a new Parliament. All members of the Bose Lawa who are not Ministers or Assistant Ministers should be members of at least one. The overall membership of sector Standing Committees should reflect the balance of the parties in the House. The Chairperson and the Deputy Chairperson of each Committee should come from opposite sides of the House.
366. The Minister in charge of a Bill, while his or her Bill is being considered, should be permitted to take part in the proceedings of a Committee but not to vote. Ministers should also be encouraged to cooperate with Committees in the exercise of their scrutiny functions.
367. Consideration should be given to the possibility of creating a standing Joint Finance and Expenditure Committee of the Bose Lawa and the Bose e Cake, with wider functions than the present Public Accounts Committee of the Bose Lawa, and perhaps replacing it.
368. The Secretary-General of Parliament should develop a permanent but flexible structure for servicing sector Standing Committees by providing them with their own staff, and access to researchers, policy analysts and experts.