

SUBMISSION BY THE FIJI INSTITUTE OF ACCOUNTANTS TO THE FIJI CONSTITUTION COMMISSIONERS

“Na Dina Ga” (Only the Truth) is the motto of the Fiji Institute of Accountants, and we believe that this is a maxim that should apply to all those who offer accounting services to the public. Accountants should be truthful, ethical and professional in all their dealings with their clients, employers and the general public, and they should be held to account if they fail to live up to these principles. Honesty and Truth are not mere words, nor should they be subject to manipulation on the basis of legal argument. If accountants are to be respected, they must earn that respect through their conduct.

We believe that these principles should be upheld – probably are upheld – by all those who perform professional services, whether they be architects, doctors, economists or engineers, lawyers, pharmacists or teachers. The public has a right to expect truthful, ethical and professionally competent service from such professionals.

But this principle should extend well beyond those who may be described as professional practitioners. It should apply equally - if not more importantly - to those who hold any public office – whether as civil servants, employees of statutory institutions or politicians.

We believe that no institution or individual should hold or be granted unfettered powers, nor enjoy unlimited authority to make decisions that will affect, positively or adversely, the public or public institutions. Conversely, no institution or person should be immune to criticism, or to prosecution where that is warranted. Rules of slander and defamation should be upheld, but those in public office should be prepared to answer for their actions or statements – if necessary before a Court of Law.

And, speaking of the Law, we believe that all the Laws of Fiji should apply equally and without exception to all individuals and institutions. We also believe that laws should be written in plain language for plain people, so that all can understand. We believe that all laws should be exposed with sufficient time for public comment before they are enacted and that no legislation should have retrospective effect; this is particularly important not just for individuals, but for companies and corporations, both public and private, and for local and foreign investors.

We also support the doctrine of the “separation of powers” between the legislature, the executive and the judiciary, with no one arm having powers to overrule the powers of the others or to prohibit the exercise of the legitimate powers of the others, with a right for all individuals and institutions to challenge the decisions or actions of any of the three arms of government.

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The new Constitution should contain provision for its provisions to be amended by any new Parliament, but this should only be entertained if the motion for its amendment is supported by a substantial (two-thirds) majority of the parliamentary members. The rule imposed by section 7(4) (a) of the Fiji Constitutional Process (Constitution) Decree 2012 for the new Constitution to include a mandatory provision for certain immunities and that any future Parliament is to be disbarred from reviewing, amending or revoking any such immunity provisions in a draft Constitution prepared by the Constitution Commission is the antithesis of a democratic Constitution.

Any person seeking to benefit from immunity provisions that may be contained in a new Constitution should be required to have his/her name entered into a register which is to be published and any such persons should not be eligible either to stand for or be elected to any parliamentary seat for a period of 15 years from the dates stipulated to apply to and upon which their actions would otherwise earn immunity.

The appointment to certain key civilian positions such as the Auditor General, Director of Public Prosecutions, Ombudsman, Supervisor of Elections, Commissioner of Police and Governor of the Reserve Bank of Fiji should be the sole responsibility of a Constitutional Offices Commission (cf. S.146 of the 1997 Constitution), appointed by the President and should be independent of any political influence. Similarly, appointments to key judicial or civil service positions should be governed by independent Commissions appointed by the President. No military personnel should be appointed to executive civilian positions in the public service unless they renounce fully their military ranks and privileges.

The person occupying the position of Attorney General should act as the legal adviser to Government and to both Houses of Parliament (if there are to be two houses) and should not occupy any additional executive ministerial office other than Minister for Justice (cf. s.100 of the 1997 Constitution).

Any provisions contained in decrees enacted since 2008 which seek to prevent citizens from challenging decisions made by officials or institutions and preventing magistrates or judges from hearing such challenges should be repealed.

The Constitution should contain express provision reserving exclusively the ownership of all land other than land in state ownership or freehold land to the itaukei community.

No Fiji citizen should be compelled by law to register to vote, or to vote, in any General Election, By-Election or referendum; any such decision should be left to the free will of the individual.