

PUBLIC REVENUE AND EXPENDITURE

16.1 Every government needs the power to raise and spend public money in order to pay for its own administration, for the services it provides and for its development activities. In this chapter, we review the provisions of the 1990 Constitution which govern how public revenue should be raised and spent. These are found in sections 71 to 73 and sections 141 to 147 of the Constitution.

SUBMISSIONS

16.2 Many submissions expressed concern, in a general way, about how public resources are utilised. They sought greater efficiency and accountability in the use of public funds, as well as new or strengthened institutions and rules to deter and punish their misuse, or the abuse of office or corruption. In the previous chapter, we made specific recommendations on how these could be addressed through a new integrity code and through independent constitutional institutions. Those institutions include the Auditor-General, whose function is to examine and report on the extent to which the Government has complied with the laws regulating public finance. We have also kept the concerns of the submissions in mind in reviewing the provisions which are the subject of this chapter.

16.3 Few submissions, however, directly addressed the provisions of the Constitution specifying the constitutional powers and processes to raise and spend public money. The lack of direct reference may partly be attributable to the lack of understanding of the meaning and effect of the provisions, and to the very technical way in which they are drafted. As with other chapters of the Constitution, we believe that public appreciation of the important safeguards provided by the public finance sections would be greatly enhanced if the provisions were written more simply.

Accrual accounting

16.4 The main submission which the Commission received on the finance provisions was from the Ministry of Finance. It sought to ensure that nothing in the Constitution would prohibit the progressive implementation of a new system of public accounting and budgeting which

it proposes to introduce throughout government. The reform has been generally referred to in public discussion as the accrual accounting system. The Ministry's proposed reform, however, goes further than merely changing in the way internal records of government transactions are kept.

16.5 At present all Government accounts are kept on what is called a cash basis. This means that they show government's expenses only when they are *paid for* in cash. In contrast the accrual system focuses on recording expenses as they are *incurred*, whether or not they have been paid for. All expenses for which money has been paid or is owed must be reflected in the accounts. Under the accrual system, the person accounting must also record, on a regular basis, expenses such as depreciation of assets which do not involve the expenditure of cash. It is generally acknowledged that the accrual system gives a fairer and more accurate picture of an entity's financial position at any particular time. Most business enterprises use the accrual system.

16.6 Consistently with the proposed change in internal government accounting practice, the Ministry of Finance also proposes to change the form in which the Government's budget estimates are presented to Parliament for approval, from a cash to an accrual basis. At present, the Constitution requires budgets to contain only estimates of the amount of cash revenue the government expects to receive and the amount of cash it expects to spend in the next financial year. By requiring all expenses which will be *incurred*, but not necessarily paid for, by the Government in any particular financial year to be presented to Parliament, the proposed budgeting system aims to give Parliament a fairer picture of the Government's overall financial position. It also aims to make Government more accountable for its use of public finance and give Parliament a greater degree of control.

16.7 The final part of the proposed reform which is relevant to the public finance provisions of the Constitution relates to appropriations. The Constitution requires the Government to seek Parliamentary authority to spend public money by presenting an appropriation bill. At present, in keeping with the traditional cash basis of public accounting, such a bill is required to contain the main heads of estimated cash expenditure set out in the annual budget estimates. When passed by Parliament, the bill becomes an Appropriation Act. It authorises the payment from Government funds of the cash needed to meet the estimated expenses. The expenditure

authorised in an Appropriation Act can only be spent in the year to which that Act applies. Under accrual budgeting, all expenses to be incurred by the Government in a financial year, whether or not to be paid for in cash in that financial year, must be authorised in the Appropriation Act for that year.

16.8 In addition to limited accountability and Parliamentary control, the present cash appropriation system has at least two other weaknesses. First, it permits and therefore encourages government departments, towards the end of the financial year, to incur expenses ahead of Parliamentary approval, in the hope that the necessary appropriation will have taken place by the time payment is due. Secondly, it encourages those who have overestimated their expenditure for the year, and in effect have a cash surplus, to look actively for ways to use the money before the authority to spend lapses at the year's end. It is therefore a disincentive to economy in the use of public resources.

16.9 The Ministry's proposals are only part of an overall review of the public financial system aimed at improving the operation of the government's accounting system, the accountability relationships within that system, and the incentives for more economic and efficient performance within government. The review is modelled on public sector reforms in other countries. However, much work remains to be done in devising the new financial rules and procedures necessary to implement the system in Fiji. Reform of state service management structures and consultation with the various service commissions and departments will also be necessary. In its submission, the Ministry of Finance explained that it proposes a phased implementation over a 5 year period beginning with a trial introduction in some departments.

16.10 In principle, the Commission supports all measures to improve the accountable, economic and efficient use of public funds. But we do not consider it necessary to recommend that the Constitution should expressly require or mandate the introduction of accrual budgeting and appropriation as a national practice. This is a matter for the Government and Parliament to decide after all necessary trials have been conducted, and after the supporting structures and rules appropriate to Fiji's conditions have been worked out. In due course, these can be provided by or under an Act of Parliament. However, there should be nothing in the Constitution which prevents the introduction of the proposed system, especially in a phased way.

16.11 In recent years, many new ideas have emerged about how best to manage the public sector and public finance in particular. More can be expected in the future. There should be no need to invoke the relatively complicated procedures for constitutional amendment every time improvements are to be adopted. The more detailed the rules in a constitution, the less flexibility governments and parliaments have in introducing desirable reform. The Constitution should therefore contain the fundamental principles governing public finance in Fiji. In addition, the Constitution should contain only basic procedural and accounting rules necessary to allocate clearly the responsibility for estimating and accounting for revenue and expenditure among the relevant state institutions and to ensure the disciplined and accountable use by the Government of public funds. It should leave the detail to Acts of Parliament and such subsidiary legislation as Parliament may authorise.

16.12 In view of the technicalities involved, we also propose that the drafting of new constitutional provisions governing public finance take place in close consultation with officials of the Ministry of Finance and other officials involved in public sector management.

RECOMMENDATIONS

592. The public finance chapter of the Constitution should be re-written to provide for public finance in a simple, non-technical way. The Constitution should state the fundamental principles which should govern public finance in Fiji. It should also provide only those basic procedural and accounting rules which are necessary to allocate clearly among the relevant state institutions, the responsibility for estimating and accounting for revenue and expenditure, and to ensure the disciplined and accountable use of public funds.

593. The drafting of new constitutional provisions governing public finance should take place in close consultation with officials of the Ministry of Finance and other officials involved in public sector management.

PUBLIC REVENUE AND EXPENDITURE

16.13 We now review the present constitutional provisions and make recommendations on the basic principles and procedures which should be contained in the Constitution.

Public revenue

16.14 Because it is the people who bear the burden of any taxation under threat of punishment, the general principle applicable to the raising of revenue is that no tax may be imposed or collected by the Government without the consent of the people's representatives in Parliament. Its corollary is the other well known principle that there should be no taxation without representation. Many countries, including Fiji, recognise a wider principle under which other specific ways of raising revenue, such as government borrowing must be authorised by Parliament. In some places, the raising of all public revenue in any form requires Parliamentary approval.

16.15 The Government's main sources of revenue are taxes and borrowing. Other sources include rents from state lands, fees for licences and government services, profits from the commercial activities of statutory bodies and state-owned companies, and proceeds from the sale of the state's assets. Foreign assistance also provides the Government with substantial sums of money.

16.16 The 1990 Constitution contains very few rules regarding the raising of public revenue. Chapter XI, which is devoted to public finance, mentions public revenue only twice. The first is in section 141 which is an accounting rule. It requires that all revenues or other moneys raised or received for the purposes of the Government, unless exempted by an Act of Parliament, must be paid into the Consolidated Fund. The other mention is in section 143(1) which requires the annual budget to include estimates of the revenues for the following financial year. Notably, it does not expressly require the estimates to be approved nor does it require that they be included in any bill.

16.17 The raising of revenue is covered in more detail in sections 71, 72 and 73 of the Constitution. They set out the specific roles and powers of the Cabinet, the House of Representatives and the Senate in relation to appropriation bills and other bills and motions providing for financial measures.

16.18 Our review of the constitutional provisions governing public revenue leads us to the conclusion that the existing provisions are inadequate. The Constitution does not anywhere state or require in clear terms that the raising of revenue whether generally or in any particular form, is subject to the approval and control of Parliament. We believe

that it would be improved if it contained a provision like that in the Constitutions of Papua New Guinea and Tuvalu. This states the principle that the raising of revenue by the Government, including the imposition of taxation and the raising of loans, is subject to the authorisation and control of Parliament, and should be regulated by an Act of Parliament.

16.19 We recommend the special mention of taxes and loans for several reasons. These are sources of revenue which most directly affect the citizens of Fiji. In addition to their direct impact on taxpayers, through their effect on the national economy, taxes also have a substantial indirect effect on all citizens' lives. Government borrowing, whether domestic or foreign, can have similar general impact, albeit in the longer term. Almost without exception, all loans will eventually have to be paid out of future taxes. In the meantime, interest has to be paid on the debt. The effect of loans on money supply and the general economy can also be considerable.

16.20 Our recommendations about taxes and loans merely state in an explicit way, principles already recognised in Fiji. All taxes are at present imposed by statute. Similarly there is an existing Act of Parliament, the Finance Act (Cap. 69), which authorises Government to borrow money. The Act sets out procedures for each loan including the requirement of authorisation by a resolution of the House of Representatives.

16.21 Under our proposal, however, Parliament's constitutional authority and control would be extended to cover other sources of revenue such as the sale of state assets. They would need to be regulated by or under an Act. We believe this is desirable to ensure accountability.

Public expenditure

16.22 All public money spent by the Government is classified as public expenditure. It is well-established that the Government may not spend public money without Parliament's consent. Most constitutional systems require the Government, at least once every year, to seek Parliamentary authority to spend money by presenting estimates of revenue and expenditure for the next financial year in its 'annual budget'. The authority to spend for the year is conveyed in an Appropriation Act passed by Parliament.

16.23 These principles are central to Parliament's role and its control over the Government. The requirement that there must be an appropriation

at least once annually means that the Government cannot govern unless it continues to have the confidence of the people's representatives in Parliament. Furthermore, because almost all of the government's policies and programmes require the raising and expenditure of revenue, the debate on an Appropriation Bill gives members of Parliament the opportunity to scrutinise the Government's policies and hold it accountable for its activities.

16.24 If the amount appropriated in accordance with the estimates of expenditure proves inadequate, further Parliamentary approval is sought through the supplementary appropriation procedure.

16.25 The Constitution contains far more detailed rules about public expenditure than public revenue. Nevertheless, as with public revenue, the Constitution does not state the basic principle that the spending of public money is also subject to authorisation and control by Parliament and should be regulated by an Act of Parliament. We consider that the Constitution should state in a single provision that the raising of revenue by the Government, including the imposition of taxation and the raising of loans, and the spending of money, shall be under the authority and control of Parliament and shall be regulated by an Act.

RECOMMENDATION

- 594. The Constitution should provide that the raising of revenue by the Government, including the imposition of taxation and the raising of loans, and the spending of money by the Government, shall be under the authority and control of Parliament and shall be regulated by an Act.**

GUARANTEES

16.26 The Constitution does not at present make any provision for guarantees issued by the Government, although it frequently issues guarantees for money or credit advanced to statutory bodies and state-owned companies.

16.27 Authority exists under the Finance Act (Cap 69). Section 149 of the Act empowers the Government to "guarantee the financial liability of any person in respect of a loan or otherwise" with "authority of a resolution of the House of Representatives".

16.28 The Government's liability under a guarantee is contingent. This means that liability will only arise if the body or person whose debt is guaranteed fails to perform their obligations. Once this occurs, however, the Government's liability automatically becomes a debt due to the person who advanced the money or credit. As we explain later, this debt is a "charge on the Consolidated Fund". As such, Parliament is not required to authorise the payment of public money which is necessary to honour the guarantee.

16.29 The contingent liability existing under Government guarantees can be considerable. Since this liability may eventually be met out of public funds without further authorisation by Parliament, we consider that the Constitution should contain a general provision ensuring that Parliament has a role in the issue and regulation of government guarantees.

16.30 The Constitution should provide that the issue by the Government of any guarantee of the financial liability of any person shall be under the authority and control of Parliament and shall be regulated by an Act. As now, it should leave Parliament the discretion to prescribe, in the Act, the procedures to be followed for authorising guarantees.

RECOMMENDATION

- 595. The Constitution should provide that the issue by the Government of any guarantee of the financial liability of any person shall be under the authority and control of Parliament and shall be regulated by an Act.**

ANNUAL BUDGETS AND APPROPRIATIONS

16.31 Earlier we noted the important principle that estimates of all government revenue and expenditure for any financial year must be prepared by the Government and laid before both Houses of Parliament before the beginning of that financial year. This principle is reflected in section 143(1) of the Constitution which specifically charges the minister responsible for finance with the duty of ensuring that it is complied with.

16.32 Section 143(2) requires the heads of expenditure contained in the budget (apart from charges on the Consolidated Fund) to be included in an appropriation bill which is to be introduced into the House of Representatives. Appropriation bills seek to authorise that expenditure and to appropriate the necessary money out of the Consolidated Fund.

16.33 We have already referred to the Ministry of Finance's proposal to introduce accrual budgeting and appropriation. We are informed that although the term "revenues" currently used in section 143(1) is capable of meaning either cash or accrued revenue, the existing term "expenditure" refers only to cash payments. To that extent, the budget, in the form required, precludes budgeting and appropriation on an accrual basis.

16.34 We propose that the Constitution continue to contain a provision requiring the Government to present a national budget to the Bose Lawa and the Bose e Cake before the beginning of each financial year. The budget should contain estimates of its revenues and expenses for that year, and other such information as might be required by or under an Act of Parliament. The provision should be flexible enough to allow the progressive introduction of the proposed accrual accounting reforms as well as any other subsequent reforms that are in accordance with recognised accounting practices in the public sector.

16.35 We propose using the word *expenses* in the provision because we are informed that it is capable of referring to either cash expenses or all cash and incurred expenses.

16.36 The Constitution should also contain a provision requiring annual appropriation bills to be introduced in the Bose Lawa. The provision should be general enough to ensure that, as a minimum, the bills contain the matters presently required. But it should allow Parliament to pass an Act requiring other matters to be contained in appropriation bills. The procedure for the passage of appropriation bills is dealt with, when later, in respect of finance, the respective roles of the Cabinet, the Bose Lawa and the Bose e Cake are discussed.

RECOMMENDATIONS

- 596. The Constitution should contain a provision requiring the Government to present a national budget to the Bose Lawa and the Bose e Cake before the beginning of each financial year.**
- 597. The Constitution should require the budget to contain estimates of all government revenues and expenses for the year. It should require it to contain any other information that may be required by or under an Act of Parliament. The language of the provision should be flexible enough to permit the introduction**

of the proposed accrual accounting reforms as well as any other subsequent reforms, in accordance with recognised accounting practices in the public sector.

- 598. The Constitution should also require annual appropriation bills to be introduced in the Bose Lawa.**
- 599. The Constitution should require appropriation bills, as a minimum, to contain the Government's estimated expenditure for the following year.**
- 600. The Constitution should allow Acts of Parliament to prescribe the level of detail at which estimates are to be specified and to prescribe other matters, including estimates of the year's accrued expenses, which should be contained in appropriation bills.**

SUPPLEMENTARY APPROPRIATIONS

16.37 Supplementary appropriations are provided for by subsections 143(3) and (4) of the 1990 Constitution. These are needed if any estimated head of expenditure contained in an annual Appropriation Act proves insufficient for the purpose, or if a need arises for expenditure for an unanticipated purpose. One or more supplementary appropriations are thus likely to be needed every year. The provisions allow a supplementary appropriation to be sought either before or after the money has been spent.

16.38 The latter possibility does not provide as wide a licence as might appear. The person or persons responsible for the unauthorised spending would be liable to penalties under the general law, especially if subsequently supplementary appropriation is not approved. In our view, the Constitution should continue to provide for supplementary appropriations in this flexible way.

16.39 The provisions at present provide an expedited procedure for supplementary appropriations compared to that required for annual appropriations. We deal with the desirable procedure for dealing with supplementary appropriations later.

RECOMMENDATION

- 601. The Constitution should continue to provide for supplementary appropriations in a general way which allows Parliament to approve both unanticipated and unauthorised spending.**

THE CONSOLIDATED FUND

16.40 The Consolidated Fund established by section 141 is a vital part of the mechanisms for ensuring Parliamentary control over public finance. The section requires that, with two exceptions, all revenues or other moneys received by the Government are to be paid into and form one Consolidated Fund. The first exception allows revenues to be paid into some other fund established for a particular purpose, if this is permitted by or under a law. The second exception applies to revenue received by an authority which is permitted by or under any law to retain money in order to meet its own expenses.

16.41 Section 142 sets out the exclusive circumstances in which withdrawals may be lawfully made from the Consolidated Fund or other special public funds. Money may not be “withdrawn” unless it is to meet expenditure that is either “charged on the Fund by the Constitution or by another law”, or has been authorised either by an Appropriation Act or by a supplementary estimate approved by the House of Representatives, or in accordance with section 144 of the Constitution. The last-mentioned section provides for the situation in which an Appropriation Act has not been passed by the beginning of a financial year. We discuss it in detail later. Any withdrawal from the Consolidated Fund must be in the manner prescribed by a law.

16.42 Lastly, the section provides that the deposit with a bank, or the Crown Agents, of any moneys forming part of the Consolidated Fund, or its investment in securities in which trustees generally are allowed by law to invest, or the making of advances to departments from the Fund, are not to be considered withdrawals from the fund. The section also provides that moneys cannot be withdrawn from the special funds outside the Consolidated Fund, unless the issue has been authorised by or under a law. It does not require the manner of withdrawal of these funds to be prescribed.

16.43 The references in the section to expenditure which is “charged” upon the Fund and to expenditure which needs to be authorised by Appropriation Acts and supplementary estimates, reflect the traditional distinction in Westminster constitutional law between two types of public expenditure. Those expenses described as “charges upon the Consolidated Fund” are deemed to have a single, continuous Parliamentary authorisation. Once an expense is charged on the Consolidated Fund by the Constitution or an Act of Parliament, Parliament need not give any further authority to pay. These expenses are therefore not subject to the requirement of annual appropriation. We discuss the constitutional charges on the Consolidated Fund below. All other expenditure is traditionally classified as “supply services” and is constitutionally subject to the annual appropriation procedure.

16.44 Although the Constitution refers to ‘withdrawals’ from the Consolidated Fund, it is not an actual central bank account or treasury. This is made clear by the provision allowing any money forming “part of the Consolidated Fund” to be deposited with banks, or invested in trustee securities, or advanced, without having to be treated as a withdrawal.

16.45 Instead the Consolidated Fund is a device to achieve three important purposes. First, it is a means of implementing the principle that any expenditure of public money is subject to either continuous or annual Parliamentary approval. In that sense, it is a constitutional method of securing Parliamentary control of the use of public funds. Secondly, it provides a convenient way of accounting for payments out of Government funds, especially for audit purposes. Thirdly, it effectively requires that, apart from exceptional special accounts, the Government should keep one running central cash account in its books of account. This ensures that it is able to keep abreast of its liquidity position and that Parliament is informed of that at least annually.

16.46 In the light of these important purposes, we consider that sections 141 and 142 should be replaced by less technical provisions reflecting the basic principles and rules which they contain. We set out these principles in the following paragraphs.

16.47 To control the use of public money, the Constitution, in addition to the general principle applicable to spending, should also state the principle that no money of or under the control of the Government shall be spent except as provided by the Constitution or by or under an Act.

16.48 To ensure that this spending, as well as all money received is properly accounted for, the Constitution should also require that all money of or under the control of the Government shall be dealt with and properly accounted for in accordance with the law and in accordance with generally accepted accounting principles in the public sector.

16.49 Finally, to ensure that there is a central cash account, the Constitution should continue to provide for a Consolidated Fund into which, subject to an Act of Parliament, all public money shall be paid. It should continue to provide that no money from the Consolidated Fund may be spent

- except to meet expenses which are charged on the Fund by the Constitution or by or under an Act of Parliament,
- where the spending has been authorised by an Appropriation Act or a Supplementary Appropriation Act or
- in advance of appropriation as authorised by the Constitution. We explain our reference to 'Supplementary Appropriation Acts' when we deal with the procedure for supplementary appropriation.

16.50 The Constitution should continue to allow Acts of Parliament to provide for other public funds not forming part of the Consolidated Fund to be administered and dealt with in accordance with Acts of Parliament.

16.51 By shifting the focus to the concept of 'spending' rather than 'withdrawals' from the Consolidated Fund, it should no longer be necessary to include special constitutional authorisation to open bank accounts, hold trustee investments or advance money to departments.

RECOMMENDATIONS

- 602. The Constitution should state that no money of or under the control of the Government shall be spent except as provided by the Constitution or by or under an Act.**
- 603. The Constitution should also state in general terms that all money of, or under the control of, Government shall be dealt with and accounted for in accordance with the law and generally accepted accounting principles in the public sector.**

- 604. The Constitution should continue to provide for a Consolidated Fund into which, subject to any Act of Parliament, all public money shall be paid. It should also provide that no money forming part of the Fund may be spent except**
- **to meet expenses which are charged on the Fund by the Constitution or by or under an Act of Parliament**
 - **where spending has been authorised by an Appropriation Act or Supplementary Appropriation Act, or**
 - **in advance of appropriation as authorised by the Constitution.**
- 605. The Constitution should provide that Acts of Parliament may make provision for all other public funds not forming part of the Consolidated Fund. It should require these to be administered and dealt with in accordance with Acts of Parliament.**

CHARGES ON CONSOLIDATED FUND

16.52 Subsection 146(2) of the Constitution charges the salaries of all judges, independent commissioners and independent officers on the Consolidated Fund. As earlier explained, expenditure charged on the Fund does not need *annual* parliamentary approval. A once-off approval is given when Parliament prescribes these salaries. If these salaries and allowances required annual approval, this would leave the recipients continuously open to pressure from persons in the executive government and the legislature. The provision is an important aspect of constitutional independence and should be retained in the Constitution.

16.53 All debt charges for which Fiji is liable, as well as all civil service and judicial pension payments due from the Government, are charged on the Consolidated Fund by sections 147(1) and 132(4) of the 1990 Constitution. The provision charging public debt on the Consolidated Fund is an important assurance to the country's creditors, both locally and internationally, that the timely repayment of the country's debt which has been lawfully incurred will not depend on political forces in Parliament. Pensioners should have a similar assurance. We therefore recommend that the Constitution should continue to charge this expenditure on the Consolidated Fund.

RECOMMENDATIONS

- 606. The Constitution should continue to charge the Consolidated Fund with the salaries of the Judiciary and all independent constitutional office holders and commissioners.**
- 607. All debt charges for which Fiji is liable, as well as all civil service and judicial pension payments due from the Government, should also remain charged on the Fund.**

POWERS AND PROCEDURE IN RESPECT OF APPROPRIATION AND OTHER MONEY BILLS

16.54 While the Westminster principle that Parliament has authority and control over public revenue and expenditure is broadly true, in bicameral systems it is overlaid by other constitutional principles and procedural rules dividing authority between the Cabinet and the two Houses of Parliament. The roles and powers of each institution have a historical basis. They reflect the specific application in the area of public finance of the principle of the separation of powers. Some rules have the effect of avoiding deadlock between the institutions of government.

16.55 The rules at present contained in the Constitution are largely adaptations of the rules in England. Erskine May, the leading authority on English parliamentary practice, describes that practice, in the following terms:

The Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers.

16.56 In Fiji's context, three general principles apply at present. The first is that proposals imposing or increasing taxes, or increasing or imposing charges on public revenue, or authorising any spending, or adversely affecting any debt due to the Government, must be recommended by a Minister on behalf of the Cabinet. This principle is embodied in section 71 of the Constitution. It reflects the responsibility of the Government for the management of the country and its finances. It also demonstrates the control which the Cabinet has over expenditure and taxation since it prevents back-bench Members of Parliament from proposing additional expenditure or taxation. In the absence of the Cabinet's recommendation, neither House can proceed on any such bill or motion. Members

of the House of Representatives but not the Senate, are always free, however, to propose reductions in taxation, charges or appropriations without Cabinet approval. This exception is vital to debate in the House of Representatives on the Government's proposals.

16.57 Secondly, any proposal to raise or spend public money must be introduced in the House of Representatives. The principle is explicitly stated in section 143(2), in regard to annual appropriation bills. It is implicit, but not clearly stated in sections 71, 72 and 73 in regard to other financial bills generally. The rule arose out of the historic struggles of the English House of Commons. It also follows from the fact that the Prime Minister and most, if not all, of his or her Ministers, sit in the Lower House.

16.58 Thirdly, and following on from the first two principles, the Senate has no right to propose any finance or money bills under the Constitution. Nor may it amend finance bills passed by the House of Representatives. It is restricted only to passing, delaying or rejecting them. Under section 72, however, any rejection or delay of any appropriation bill by the Senate is only effective for a maximum of two days. The provision allows an appropriation bill passed by the House of Representatives to be presented to the President for assent, if it is not passed by the Senate without amendment "by the end of the day after the day on which it was sent to the Senate". Under section 73, other money bills can be similarly held up for a maximum of 21 days. The House of Representatives may, however, waive its privileges and resolve to reconsider the bill. These rules have been contained in the Constitution since 1970 and are well established in our system of government in Fiji.

16.59 We support the retention of the rules requiring the Cabinet's initiative on money matters. We favour, however, a more flexible provision than the present section 71. In view of our recommendations in Chapter 11 regarding sector standing committees, it is essential that the new constitutional rules are broad enough so as not to unduly hinder the work of the committees. Almost all bills, regardless of their subject matter, require some spending of public money for their implementation. It would seem that the rule as presently drafted would require ministerial endorsement of a committee's proposals on any bill, even if only a small increase in government spending was involved. We believe that the constitutional rules should be written so that committees can report on bills referred to them and make proposals in the House without need for ministerial endorsement.

16.60 We have already recommended in Chapter 11 that the Bose e Cake should have no power to *initiate* legislation. This would include finance bills of any form.

16.61 In light of our proposal for an elected Bose e Cake the Commission has considered the question whether any change is desirable in the respective powers of the Bose Lawa and the Bose e Cake to *consider* finance bills. The present rules reflect the relative importance of the Lower House in the Fiji system of government and the present situation that, as in England, the Upper House is not elected. Apart from this, we understand the real practical significance of the rules to be the avoidance of deadlock between the two Houses of Parliament. This is especially important with regard to appropriation bills, since without supply, government services cannot be paid for.

16.62 On the other hand, an appropriate balance must be struck with the new purposes and functions of the elected Bose e Cake. In our scheme, the Bose e Cake will continue to be a House of review. Essentially, it is to play a watchdog role over the Bose Lawa and the Government. Its members will represent the interests of the people of Fiji as members of provinces and otherwise unrepresented groups, and, if necessary, seek the reconsideration by the Bose Lawa of any proposal that they might consider to have an adverse impact on those interests. We discussed this role in Chapter 11 in making recommendations about the distribution of the legislative power between the two Houses in passing ordinary legislation.

16.63 Because an annual appropriation bill provides the financial authority for the Government's programmes for the next financial year, it is likely to have a greater impact on the interests which are to be represented in the Bose e Cake than most ordinary legislation. We therefore considered whether the Bose e Cake should have the power to amend an appropriation bill or other money bills. However, the Cabinet's responsibilities for public finance depend on retaining the confidence of the Lower House. To avoid deadlock, the Commission considers that the Bose e Cake should continue to have only a delaying power over appropriation and other money bills.

16.64 Nevertheless, in recognition of its new role as an elected House, the period for which it is constitutionally entitled to consider appropriation bills should be extended from the existing two days to seven days beginning on the day on

which the Bill was presented to the Bose e Cake. This extension will allow more meaningful and effective debate on the Government's appropriation proposals than at present, in a way which does not risk undue interruption of government services.

16.65 We propose that the present twenty-one day delay for other money bills should be retained.

16.66 Earlier, we noted that under the present rules, if the Senate rejects or delays an appropriation bill or other financial bill for the prescribed periods, the Government may present the bill for Presidential assent, unless the House of Representatives earlier resolves to waive its privileges and reconsider the bill. We propose that this rule be retained in the Constitution.

RECOMMENDATIONS

- 608. The Constitution should provide that any proposals to raise or spend public money may be introduced only in the Bose Lawa.**
- 609. The Constitution should continue to provide that any proposal:**
- **imposing or increasing taxes**
 - **increasing or imposing charges on public revenue**
 - **authorising or increasing any spending, or**
 - **adversely affecting any debt due to the Government**
- cannot be proceeded upon in the Bose Lawa without the recommendation of a Minister acting on behalf of the Cabinet.**
- 610. The Constitution should allow Members of the Bose Lawa to propose reductions in taxation, charges and appropriations.**
- 611. The provisions should be drafted in such a way that the work of the proposed sector standing committees of the Bose Lawa will not be hampered.**
- 612. The Constitution should continue to provide that the Bose e Cake should have no power to amend appropriation bills and other money bills.**
- 613. The period for which the Bose e Cake should have the right to consider or delay any appropriation bill should be seven days beginning on the day the bill was sent to that House.**

- 614. For other money bills, the existing period of twenty-one days should be retained.**
- 615. After the relevant period has elapsed, the Government should have the right to present an appropriation or other money bill for the President's assent, unless the Bose Lawa has, in the meantime, resolved to reconsider the bill.**

PROCEDURE FOR SUPPLEMENTARY APPROPRIATIONS

16.67 Subsections 143 (3) and (4) of the Constitution allow Government to follow an expedited procedure for the approval of supplementary appropriations. Supplementary estimates may be laid only before the House of Representatives, and the expenditure may be authorised by a motion approved by resolution in that House alone. If this procedure is followed, a supplementary appropriation bill containing all supplementary spending authorised by resolutions during the year is required to be debated by both Houses as soon as practicable after the end of the financial year.

16.68 The present provisions mean that the Senate may be denied any opportunity to debate supplementary spending until well after the money has been spent. The provisions may also provide an incentive for a Government to keep controversial spending proposals, on which they can expect adverse Senate comment, out of the annual appropriation act which it is required to present to both Houses.

16.69 In view of the new role envisaged for members of the Bose e Cake, we recommend that the present rule allowing supplementary spending to be authorised solely by resolutions of the House of Representatives should be done away with. All supplementary appropriations should be authorised by a Supplementary Appropriation Act passed by both Houses of Parliament. Like annual appropriations, such acts would be subject to the seven day delay rule in or by the Senate.

RECOMMENDATIONS

- 616. The Constitution should no longer provide for any supplementary appropriation to be authorised by a resolution of the Bose Lawa alone. Supplementary spending should be authorised by Supplementary Appropriation Acts to be introduced into both Bose Lawa and the Bose e Cake.**

617. The Bose e Cake should have the right to consider or delay a supplementary appropriation bill for seven days.

**AUTHORISATION OF EXPENDITURE IN
ADVANCE OF APPROPRIATION**

16.70 At present, section 144 of the Constitution provides for the eventuality of an Appropriation Act not being passed by the beginning of a financial year. If this happened in the absence of a special rule, it would mean that no government spending could take place, and government services would come to a halt. To avoid this, the section allows the Minister responsible for finance to authorise such spending as is "necessary to carry on the services of the Government". This authority may continue for a maximum period of four months, during which time the relevant Appropriation Act should be passed. The Minister's powers must be exercised in accordance with any limits or conditions imposed by a law.

16.71 The ability to spend money in advance of appropriation is important. This was demonstrated in 1994 when the Appropriation Act for that year was defeated in the House of Representatives. We are informed that the present formula referring to "expenditure necessary to carry on the service of Government" without reference to any monetary limit caused some uncertainty. It was difficult to decide how much of ordinary government expenditure was 'necessary' in those terms.

16.72 We are concerned that because the present provision places a time, rather than a monetary, limit on spending, it would allow a Government to be far more liberal in its spending during this period than Parliament might have permitted. A more precise limitation on the amount which may be spent is preferable to the existing time limitation. As four months on average translates to one-third of a Government's budget, we propose that this fraction be used. The limitation, in our view, should also have some relationship to previous Parliamentary approvals.

16.73 We therefore favour the retention of the Minister's authority but subject to the limitation that the spending which he or she may authorise may not exceed one-third of the total expenditure of the Government authorised by Parliament for the previous year. Of course, the Minister's authority should lapse once the Appropriation Act for the year is finally passed.

RECOMMENDATION

- 618. Subject to an Act, the Minister responsible for finance should continue to have power, to authorise spending, if the Appropriation Act for any financial year has not come into force by the beginning of the year. However, the provision should limit the total amount which he or she can spend to one-third of the total authorised expenditure of the Government for the previous financial year. Under this section the authority to spend should lapse when the Appropriation Act comes into force.**

CONTINGENCIES FUND

16.74 Section 145 of the 1990 Constitution allows Parliament to establish a Contingencies Fund out of which money can be advanced to meet urgent, unforeseen and unbudgeted expenditure. Such a fund now exists under the authority of the Finance Act (Cap. 71). We do not see any real need for the Contingencies Fund to be provided for in the Constitution. The general constitutional authority to establish special funds under an Act, which we have recommended already, constitutes sufficient authority for the establishment and maintenance of the Contingencies Fund. We therefore recommend that the Constitution should no longer make express provision for a Contingencies Fund.

RECOMMENDATION

- 619. The Constitution should no longer make express provision for a Contingencies Fund.**