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Session 8: Lawmaking in the Fijian Parliament since 2014 – a snapshot of the constitutional and procedural framework by Joeli Ditoka

ABSTRACT

The Parliament of the Republic of Fiji (**'Fijian Parliament'**) was re-established by the Constitution of the Republic of Fiji (**'Constitution'**) in 2014 after General Elections that year; after 8 years without a Parliament.

This paper endeavours to set out the relevant provisions in the Constitution and the Standing Orders of the Parliament of the Republic of Fiji (**'Standing Orders'**) that relate to the passage and enactment of Bills since the re-establishment of Parliament in 2014.

INTRODUCTION AND OVERVIEW

Fiji has had a number of Constitutions before and after Independence in 1970, however, this paper will focus on the legislative process as set out in the Fijian Constitution which was promulgated by His Excellency the President of the Republic of Fiji on 6 September 2013 and commenced at midnight on 7 September 2013¹. The Constitution gave the Government of Prime Minister Bainimarama roughly a year in which they would need to pass legislation (by Decree as the process then was²) to give effect to the relevant constitutional provisions³ and hold General Elections⁴ for a new 50 Member unicameral Parliament⁵. For the provisions in the Constitution or the Standing Order which are not footnoted, they can be found in the **Annexure**.

A brief overview:

- (i) Constitutional and procedural framework and the referral process;
- (ii) Legislative functions of committees;
- (iii) Powers of committees;

¹ Section 162(2) of the Constitution

² Section 4(c) of the Executive Authority of Fiji Decree 2009 (A Decree which provided for the passage of laws in the absence of a Parliament and Constitution which was abrogated by the Military in 2009; before that point, the President was authorising legislation known as Promulgations. So in Fiji we have three types of Primary legislation, Acts, Promulgations and Decrees)

³ These took the shape for example the Electoral Decree 2014, Registration of Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 and other related legislation and Constitutional Instruments such as the Writ for Elections. This list is in no way exhaustive and serves a purely illustrative purpose (indeed some of the legislation has since the initial commencement has undergone one or more amendments).

⁴ Section 170(1) of the Constitution

⁵ Section 54(1) of the Constitution

- (iv) Rules about public participation;
- (v) Procedures during legislative scrutiny; and
- (vi) What happens once a Committee Reports back.

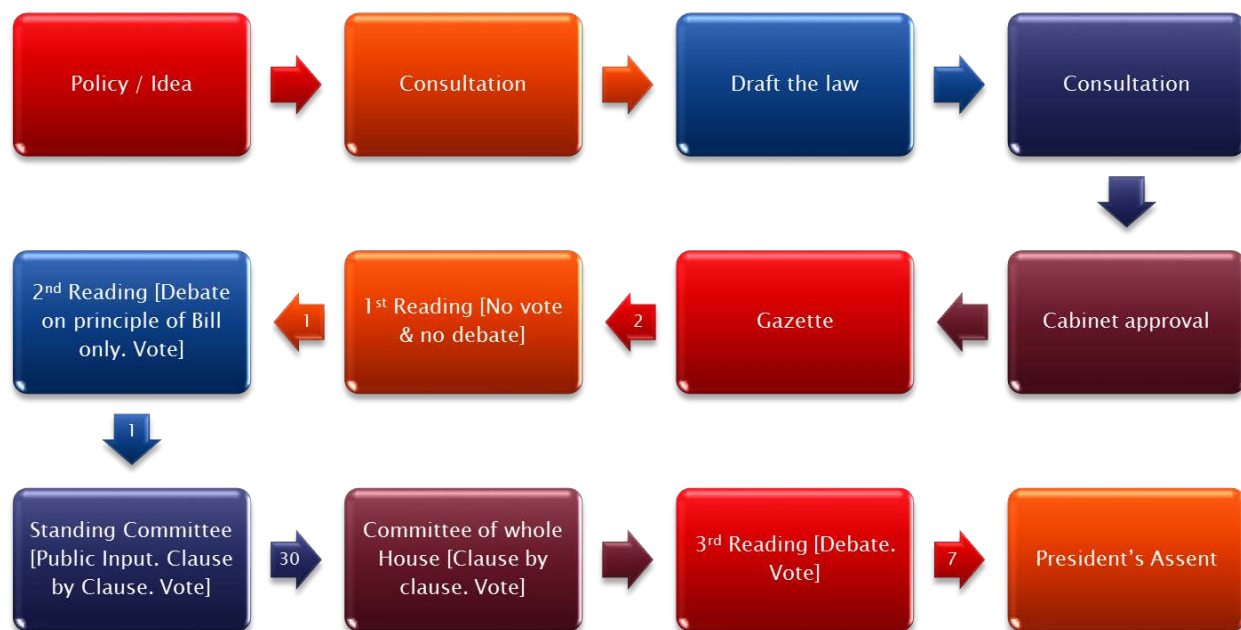
(This paper does not deal with Standing Order 51 which is the procedure for dealing with legislation with abridged timeframes and procedures pursuant to section 47(3) of the Constitution).

CONSTITUTIONAL AND PROCEDURAL FRAMEWORK

In reference to (i) Constitutional and procedural framework above, the relevant provisions in the Constitution and the Standing Orders are set out in the **Annexure**.

THE LEGISLATIVE PROCESS AT A GLANCE

The diagram below depicts the typical process for the passage and enactment of Government Bills.



ABSENCE OF PROVISIONS FOR PRIVATE LEGISLATION

Proposed legislation introduced by Members other than a Minister, in Fiji are called Private Bills⁶, which should not be confused with private legislation; they are in fact

⁶ Standing Order 94 and Standing Order 3(1) under “Private Bill”

also public legislation as there is no provision in the Fijian jurisdiction for private Bills as understood in other jurisdictions such as Westminster.

The difference is only in the process which needs to be followed by Members before the First reading and is more involved as set out in Standing Order 94.

LEGISLATIVE SCRUTINY

First Reading

There is no debate at first reading and once the provisions of the Standing Order are complied with, the Bill is set down for Second Reading at a future sitting pursuant to Standing Order 84(1). The Member must table 4 copies of the Bill pursuant to Standing Order 84(2) and pursuant to 84(3), each Member must be provided a copy as soon as practicable thereafter; in practice, each Member is immediately provided a copy and the electronic version is also made available on the Parliament's website⁷.

Second Reading

The Legislative scrutiny functions begin at Second Reading, a general debate where the contributions are limited to the merits and principles of the Bills pursuant to Standing Order 85(1).

Rules of Debate

Rules of general debate apply as set out in Chapter 6 of the Standing Orders [Standing Orders 57 through 69 (inclusive)]. Each Member may speak only once for 20 Minutes, the first 20 Minutes given to the Member moving the reading and after each Member has spoken, 20 Minutes given to the mover to give a right of reply before the question is put.

Standing (or Special) Committee Stage

Referral (also called committal) occurs after second reading, Speaker refers to the Committee with the corresponding mandate as set out in SO 109 pursuant to SO85(4)(a) or a special committee pursuant to SO85(4)(b)

Bill scrutiny and referral to Committees is a function of all Standing Committees.

The mandate of the Standing Committees in relation to legislative scrutiny is set out in Standing Order 110 (and subject to mandates spelt out in Standing Order 109):

⁷ www.parliament.gov.fj

- (a) examine each Bill referred to the committee by Parliament, and make amendments to the Bills, to the extent agreed by the committee; and
- (b) examine any subordinate legislation **tabled in Parliament**⁸ within its category of affairs.

Powers of Committees to effect their mandates outlined above – are spelt out in Standing Order 112.

Gender mainstreaming is a requirement for all Committees pursuant to Standing Order 110(2).

PUBLIC ACCESS

Public access to Parliament and all its Committees is guaranteed by section 72 of the Constitution and set out in Standing Order 111.

PROCEDURE IN COMMITTEE

Standing Order 119(6) specifies that Committees must follow the procedure set out in Standing Order 87 (which deals with Committee of the Whole stage, with necessary adjustments). This means clause by clause scrutiny and a duty to strive for consensus and where not possible – vote and record results as set out in Standing Order 118(b)(i)(ii).

Rules relating to the presentation of Committee Reports

Committees need to report back no later than 30 days after referral pursuant to Standing Order 121(1)(a); although, in practice this is often extended by what is usually considered a procedural motion moved either by the Committee Chair or one of the Whips.

Committees are also permitted to table interim reports pursuant to Standing Order 121(2); in practice this is not something that has been done since the reestablishment of Parliament in 2014.

Standing Order 121(3) prohibits minority reports. Reports are tabled by the Chair or a delegate pursuant to Standing Order 121(4)(a). Minutes of the meetings must be annexed pursuant to Standing Order 119(2) and a copy of the amended Bill (if any amendments are made) is annexed the report.

⁸ This provision (purportedly?) gives effect to section 70 of the Constitution, although it may be argued that it narrows the constitutional provision or does not give full effect to the same. There is no ruling of the Speaker or indeed the Courts that interprets this in the Fijian jurisdiction. The author advances no opinion either way.

A Committee reports back pursuant to either Standing Order 121 or 129(5). Once a Committee has reported back, the Bill is set down for consideration by Committee of the Whole Parliament ('CoW') on a future sitting day pursuant to Standing Order 86.

Committee of the Whole

Procedure for CoW is identical to that set out for the Standing Committee above ie clause by clause reading pursuant to Standing Order 87(2), provisions first before schedules. Pursuant to Standing Order 87(3), clauses can be grouped together and this has been done with one Bill since 2014⁹, which is also the only Bill since then to go through CoW stage at all. After the CoW, the Third Reading is moved pursuant to Standing Order 88. For this stage, just as in the Standing (or Special Committee) each Member may speak more than once for as many times as they want.

Third Reading

Third Reading debate is a general debate with the ordinary rules of debate as previously explained. The contributions at this stage are limited to whether or not the Bill (as amended or otherwise at any of the previous stages) ought to pass. The procedure is set out in Standing Order 88.

PRESIDENTIAL ASSENT OR DEEMED ASSENT

The enacted legislation is thereafter conveyed by the Speaker of the Parliament of the Republic of Fiji (in practice delegated to the Secretary-General) to the President of the Republic of Fiji (in practice delegated to the Official Secretary) pursuant to section 48(1) of the Constitution.

The President then has 7 days to Assent pursuant to section 48(2) of the Constitution and failure to assent during the specified time, will result in the Act being considered deemed assented to pursuant to section 48(3) of the Constitution.

⁹ Companies Bill 2015

ANNEXURE

Relevant sections of the Constitution:

Legislative authority and power of Parliament

46. – (1) The authority and power to make laws for the State is vested in Parliament consisting of the members of Parliament and the President, and is exercised through the enactment of Bills passed by Parliament and assented to by the President.

(2) No person or body other than Parliament has authority to make any law in Fiji, except under authority conferred by this Constitution or by a written law.

Exercise of legislative powers

47. – (1) Any member of Parliament may introduce a Bill in Parliament, but only the Minister responsible for finance, or another Minister authorised by Cabinet, may introduce a Money Bill, as described in subsection (4).

(2) Parliament may proceed to consider any Bill in accordance with its standing orders, which must provide –

(a) a structured process for the introduction, deliberation, amendment and enactment of Bills; and

(b) sufficient time to elapse between the steps in the process for members and committees to give due consideration to each Bill.

(3) A Bill may proceed more quickly than permitted by the standing orders if –

(a) when the Bill was introduced, the mover requested that Parliament approve consideration of the Bill without delay; and

(b) a majority of the members of Parliament voted in support of that request.

(4) In this section, a Money Bill is any Bill that –

(a) imposes, increases, alters, remits, grants exemptions from, reduces or abolishes taxes;

(b) imposes charges on a public fund or varies or repeals any of those charges;

(c) appropriates public money or otherwise relates to public moneys;

(d) raises or guarantees any loan, or its repayment;

(e) deals with the receipt, custody, investment, issue or audit of money; or

(f) deals with anything incidental to those matters.

Committees

70. Parliament must, under its rules and orders, establish committees with the functions of scrutinising Government administration and examining Bills and subordinate legislation and such other functions as are specified from time to time in the rules and orders of Parliament.

Standing orders

71. – (1) Parliament may make standing orders and rules for the order and conduct of business and proceedings in Parliament and its committees and for the way in which its powers, privileges and immunities may be exercised and upheld.

Petitions, public access and participation

72. – (1) Parliament must –

(a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and

(b) facilitate public participation in the legislative and other processes of Parliament and its committees.

(2) Parliament and its committees may not exclude the public, including any media, from any sitting unless, in exceptional circumstances, the Speaker has ordered the exclusion of the public on grounds that are reasonable and justifiable.

Relevant Standing Orders:

83 Who may introduce Bill

(1) A Minister may introduce a Bill but only the Minister responsible for Finance, or another Minister authorised by Cabinet, may introduce a Money Bill.

(2) A member may only introduce a Private Bill provided that Standing Order 94 is complied with by the member.

(3) No less than two days before the sitting day at which the Bill is intended to be read, the Minister or a member as the case may be must –

(a) give notice to the Secretary-General of his or her intention to introduce a Bill; and

(b) publish a notice of the Bill together with a copy of the Bill in the Gazette.

(4) Clause (3) does not apply if the Bill is a Money Bill.

(5) A Bill is introduced by being read a first time under Standing Order 84.

94 Private Bill

(1) Before a Private Bill is introduced, the member intending to introduce the Bill must –

(a) give notice of his or her intention to introduce the Bill by publishing, in the Gazette, the general nature and objectives of the Bill; and

(b) publish the Bill in three successive editions of the Gazette.

(2) When giving notice to the Secretary-General of the member's intention to introduce the Bill, the member must also provide to the Secretary-General –

(a) a letter endorsing the Bill's introduction from the person or persons that will be affected by, or benefit from, the Bill; and

(b) evidence that the member has satisfied the requirements of clause (1).

84 First reading

(1) Where a motion is moved “That [name of Bill] be now read a first time”, it shall be passed without debate and without the question being put. The Secretary-General shall then read the title of the Bill and the Bill is then set down for second reading on a future sitting day.

(2) At the time of moving First reading of a Bill, the member must table four copies of the Bill in Parliament.

(3) Copies of the Bill shall be made available to each member as soon as is practicable.

85 Second reading

(1) On a motion being moved and seconded “That [name of Bill] be now read a second time”, a debate may take place on the principles and merits of the Bill.

(2) To the question “That [name of Bill] be read a second time”, an amendment may be moved and seconded to leave out all the words after the word “that” and the words “the second reading of [name of Bill] be deferred until [date]” be inserted. If the amendment is seconded, the question “That the amendment be made” must be proposed and a debate may take place on the amendment until the question is put.

(3) The amendment described in clause (2) is the only amendment permitted to be moved at a second reading.

(4) If the question that the Bill be read a second time is carried, the Secretary-General then reads the title of the Bill and the Speaker refers the Bill to –

(a) the standing committee with jurisdiction over the subject-matter of the Bill; or

(b) if Parliament resolves, a special committee (whether existing or established for the purpose of considering the Bill).

112 Powers of standing committees

(1) For the purposes of performing its functions and subject to section 74 of the Constitution and any other written law governing Parliament, a standing committee has the power to –

(a) summon any person to appear before it to give evidence or provide information;

(b) compel the production of documents or other materials or information as required for its proceedings and deliberations;

(c) determine if it will accept oral or written evidence;

(d) determine the extent, nature and form of its proceedings;

(e) conduct its proceedings or any aspect of its work at any venue it deems to be most suitable, including, where Parliament is not sitting, a venue beyond the precincts of Parliament;

(f) appoint sub-committees in accordance with Standing Order 122;

(g) consult and liaise with any government department falling within its category of affairs;

(h) in accordance with section 91(3) of the Constitution, compel the attendance of a minister to testify or to produce documents or other materials; and

(i) exercise such other powers as may be prescribed or assigned to it by the Constitution, any law, these Standing Orders or a resolution of Parliament.

(2) For the purposes of clause (1)(a) and (b), a standing committee has the same powers as those of the High Court.

111 Access to standing committee meetings

(1) Standing committees must –

- (a) ensure all meetings are open to the public and the media;
- (b) in order to encourage public access to committee meetings, provide notification of its meetings through the media, websites accessible to the public, advertisements and other means of promotion; and
- (c) unless otherwise directed by Parliament, provide sufficient time, notification and an adequate opportunity for public representations and input into its activities prior to finalising its report and recommendations.

(2) Despite clause (1)(a) and (b) and in accordance with section 72(2) of the Constitution, a committee may, after consultation with the Speaker, conduct a meeting that is closed to the public and media where the committee is considering a matter related to –

- (a) National security;
- (b) Third party confidential information;
- (c) Personnel or human resources; or
- (d) Deliberations and discussions conducted in the development and finalisation of committee recommendations and reports.

REFERENCES

Constitution of the Republic of Fiji, available online: <http://parliament.gov.fj/Our-Democracy/Constitution.aspx>

Standing Orders of the Parliament of the Republic of Fiji, available online: <http://parliament.gov.fj/Parliament-Business/Rules-of-the-House>

Executive Authority of Fiji Decree 2009, available online: http://www.fiji.gov.fj/getattachment/947d878c-0651-4f08-82ff-c2bd4ac14599/Decree2_Executive-Authority-of-Fiji-Decree-2009.aspx