

EFFICIENT AND POLITICALLY NEUTRAL STATE SERVICES

14.1 In this chapter, we focus on measures for ensuring an efficient, politically neutral civil service, police force and military force. We describe these various components of the executive arm of government collectively as the 'state services' and their members as 'state servants'. In particular, this chapter reviews the sections of the 1990 Constitution which provide for independent service commissions to exercise power to appoint, remove and exercise disciplinary control over state servants. We have looked at the nature of the military forces in Chapter 12 and considered the constitutional rules which should apply to the Judiciary (including magistrates) in Chapter 13. They are referred to in this chapter only for the purpose of discussing general principles.

ROLE OF STATE SERVICES

14.2 In Chapter 12 we discussed both the rules which vest the authority and the duty to direct executive government in ministers and the rules by which they are appointed and periodically may change office. Subject to ministerial direction, it is the state servants, however, who are responsible for the actual work of running of the country. Unlike ministers, their tenure is not affected by political processes and normally lasts for a term fixed by law or contract. It is they who make day-to-day decisions; implement government plans, policies and programmes; carry out public works; and perform the many public services and administrative tasks which are expected of modern governments. Ministers are said to be responsible for policy, and state servants for administration. Even then, given their specialised skills and experience, most government policies are based on the technical and professional advice of senior state servants.

EFFICIENT AND POLITICALLY NEUTRAL STATE SERVICES

14.3 In the Westminster system, a vital corollary to the power of politically appointed ministers to direct government policy is the expectation that the administration of that policy will be carried out economically, efficiently and effectively by politically neutral and impartial state servants.

14.4 There are good reasons for requiring political neutrality and impartiality. In their absence, the considerable powers and resources of the State, which are

directly administered by state servants, might become the instruments of patronage or victimisation. Such abuse would contradict the basic democratic principle that although a government should be chosen by the majority, it should govern for the benefit of all. A state servant is also expected to be politically neutral in order to serve successive ministers with the same loyalty.

14.5 Economy, efficiency and effectiveness are equally important. As the source of most public revenue and, in a broad sense, the ultimate employer of all state servants, citizens are entitled to receive services of the highest possible standard for the least possible cost. In short, they are entitled to good government for their money.

14.6 It is clear to us from the submissions that these expectations are shared by all of the people of the Fiji Islands. Many expressed opinions about ways of ensuring the effectiveness and economy of state services, the impartiality and efficiency of state servants and their use of public resources.

14.7 A major issue in any democratic system is how to ensure that state servants carry out the policies of a politically elected government in an efficient and effective way, while remaining politically neutral and impartial. Most countries expressly require that their personnel authorities strive to attain economy, efficiency and effectiveness in the state services. They also mandate that all appointments and promotions should be made on merit. Another very common device is to establish independent service commissions responsible for the appointment, disciplinary control, and removal of state servants. In these ways, political factors are prevented from influencing decisions on appointments, promotions and other related matters. They also ensure that employment decisions are not only fair to the individuals concerned, but also promote the interests of efficient and effective government.

Efficiency, economy and effectiveness

14.8 Although the objectives of economy, efficiency and effectiveness in the state services have a long history in Fiji, they have never been expressly required by the Constitution. We believe that these objectives are so fundamental to the functioning of all state services that they should be reflected in a constitutional provision.

14.9 Recognition is particularly important in the circumstances of the Fiji Islands. Although always implicit they have been overshadowed by constitutional provisions providing for other objectives, such as localisation and the fair representation of communities, to be attained in making state service appointments.

Constitutional requirements

14.10 Section 105(9)(b) of the 1970 Constitution required that in selecting candidates for entry into the public service, the Public Service Commission should:

- (a) give preference, other things being equal, to local candidates who, in its opinion are suitably qualified and shall not select persons who are not citizens of Fiji except to the extent that the Prime Minister has agreed that such persons may be selected; and
- (b) ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of offices to which candidates of that community are appointed on entry.

14.11 Paragraph (a) allowed efficiency and effectiveness to be moderated by the objective of localisation, while paragraph (b) imposed the relatively broad objective that each 'community' should receive 'fair treatment' in the 'number and distribution' of entry appointments. As paragraph (b) referred only to appointments on entry, it did not apply to promotion decisions about candidates already in the public service. In those cases, the implication was that efficiency and effectiveness were the sole objectives of the service and merit was the criterion for selection.

14.12 Although they were required to promote localisation, the Judicial and Legal Services Commission as well as the Police Service Commission and the Commissioner of Police were not required to consider the fair distribution of offices to communities. In part, the absence of a provision applicable to the police force may have reflected the fact that, at independence, the force was broadly representative of the population as a whole. The absence of any obligation on the Judicial and Legal Services Commission perhaps arose from the view that merit appointments were necessary to achieve the highest standards of justice.

14.13 The 1990 Constitution retained the requirements for the Public Service Commission and in section 124(3) extended them to the Judicial and Legal Services Commission. While section 129(4) continued the requirement that the Prime Minister should consent to an appointment of a non-citizen to any position in the police force, the obligation to ensure a fair distribution of offices still does not apply to that force.

14.14 The Constitution also introduced an additional, more stringent obligation on the Public Service Commission and Judicial and Legal Services Commission, but again, not on the Police Service Commission or the Commissioner of Police.

Sections 124(4) and 127(11) oblige the two Commissions to ensure that, in making appointments (which includes those on promotion and transfer), each level of each department comprises not less than fifty percent Fijians and Rotumans, and not less than forty percent members of other communities. Appointments of "other suitably qualified persons" may be made in contravention of this obligation, only in circumstances beyond the relevant Commission's control and then only with the concurrence of the Prime Minister.

Representation of ethnic communities

14.15 In Chapter 8, we analysed the submissions which the Commission received on ethnic representation in the civil service, army and police force, as well as the facts and perceptions upon which they were based. In summary, we found that the provisions which were introduced by the 1990 Constitution were a response to the concerns of those indigenous Fijians who felt that, although they were well represented in the police and predominated in the army, by 1987 they were lagging behind other communities in other spheres, specially at the higher levels of the civil service and in the judicial and legal services. The 1990 provisions reflected expectations about what would constitute adequate Fijian representation at all levels. The 1970 provisions, which focused on entry to the civil service, had apparently not been sufficient to meet those expectations.

14.16 We also found that over the last ten years, there has been a significant reduction in the proportion of Indo-Fijians employed in the state services, particularly at the senior levels. This reduced representation in the civil service was consistently referred to in most Indo-Fijian submissions. Many linked it to the new provisions although the Commission believes the reduction may also be partly attributed to a variety of other factors mentioned in Chapter 8.

14.17 Current figures show that it has not been possible to comply with the proportional formula introduced in the 1990 Constitution for the allocation of civil service posts at all levels of all departments. As at 25 June, 1996, disregarding the levels *within* departments, only eight out of forty-four departments complied as a whole with the stated proportions. The provisions, however, require *every level within every department* to meet the stated proportions. In that regard, only two departments comply.

14.18 We were informed by the Public Service Commission that for reasons such as the particular technical responsibilities of departments, occupational preferences and availability of candidates, it had been impossible to achieve the stipulated proportions within every level of every department as required by subsection 127(11).

14.19 The Public Service Commission pointed out that the stated proportions cannot always be fulfilled in view of the number of posts at a particular level of department. For example, where a department comprises only one post or three posts at a particular level, as most do at the upper levels, it is impossible for the Commission to comply with the 50% - 40% formula.

14.20 In posts controlled by the Judicial and Legal Services Commission, our own research also found some non-compliance with the proportions set out in subsection 124(4).

14.21 A number of submissions expressed a concern at falling Indo-Fijian representation in the police force and their almost total absence from the armed forces. Neither force is subject to any general or specific requirement which makes ethnicity a consideration in appointments. As we said in Chapter 8, the police and armed forces are the state agencies which are permitted to use force. These submissions reflected concerns not only about fair representation in state services, but also about whether the two forces are impartial as between members of different communities.

14.22 In discussions with the Commissioner of Police and his senior officers, it was explained that although Indo-Fijians were well represented amongst recruits and therefore at the lower levels of the police, there were imbalances at the higher levels resulting from historical factors, such as events which occurred immediately after the 1987 *coups*, as well as current emigration patterns and subsequent occupational choices made by Indo-Fijian policemen and policewomen.

14.23 We were given to understand that occupational preferences are an important reason for very low Indo-Fijian representation in the armed forces. We were also told that current disparities are not the result of deliberate discrimination, but instead result from low enlistment and very high voluntary attrition by members of that community.

14.24 Nonetheless, it is clear to us that fair representation in all state services is very important to the communities in Fiji. The submissions led us to the conclusion that although efficiency, economy and effectiveness should be the principal objectives in managing state services, some more appropriate account must be taken of the overall representation of different ethnic communities at all levels in all the various state services.

14.25 In Chapter 8, we gave our reasons for not favouring the reservation of specific public positions for members of particular ethnic groups. We are also

convinced that both the "entry level" approach initially mandated by the 1970 provisions and the specified proportion approach introduced to supplement it in 1990, are not desirable on the grounds of efficiency and effectiveness. Nor are they workable in practice. They should be repealed. Our review of the existing provisions and their effect, together with the comments of those who are presently obliged to enforce them, leads us to conclude that this objective must be achieved in a broader and more flexible way.

New constitutional provision

14.26 In order to address the concerns of the different communities about fair representation at all levels of all state services, without subordinating economy, efficiency, effectiveness and merit, we propose that the Constitution should contain a general provision along the following lines:

In recruiting and promoting members of all state services belonging to the executive branch of government, including the public service, the Fiji Police Force and the Republic of Fiji Military Forces, and in the management of those services, the factors to be taken into account shall include:

- (a) the need to ensure that government policies can be carried out effectively;
- (b) the need to achieve efficiency and economy in all the state's services;
- (c) the need to make appointments and promotions on the basis of merit;
- (d) the need to provide men and women and the members of all ethnic groups, with adequate opportunities for training and advancement;
- (e) the need for the composition of each service, at all levels, broadly to reflect the ethnic composition of the population, taking account, however, of occupational preferences.

14.27 As drafted, the provision applies to all state offices and services within the executive branch. It binds both Government and the independent appointing authorities. For the first time, there will be governing principles applying to recruitment and promotion in the military and police forces. The provision will also apply to those exercising personnel powers under a delegation.

14.28 The provision allows economy, efficiency and effectiveness to be the main objectives, and merit to be the main basis for appointment, but it is flexible enough to allow other relevant factors to be taken into account. We refer to the appointment of women, as well as of members of all ethnic groups, because their fair representation in the state services is also important.

14.29 Our approach to the representation of ethnic communities deliberately avoids the existing mathematical formula and the previous limited focus on entry appointments. We also consider that the different occupational preferences of various communities and the different professional responsibilities of the various government departments, require that specific references to 'departments' be avoided. The approach should allow practical limitations to be considered and balanced against the principle of fair representation of communities.

14.30 The words "recruiting and promoting" and the references to "management" and "opportunities for training and advancement" are deliberate. They are used to indicate that as an objective, the fair representation of different groups involves more than decisions taken for the purposes of appointments. It requires good management. Those responsible for appointments to a state service would be under an obligation to keep the composition of the service under review and take active steps, through proper planning, training and recruitment drives, to redress any undue disproportionality within the service.

14.31 We see this provision as a necessary addition to those provisions recommended in Chapter 8. Those provisions authorise the Government to take appropriate affirmative action in respect of particular groups if they are found to be under-represented in any aspect of the service of the state and at any level of that service. We envisage that the affirmative action provisions will mandate Government-sponsored programmes which will focus on increasing the pool of individuals from under-represented communities who are eligible for appointment to the particular services or levels. Such programmes would include special scholarship or training schemes. These programmes and other government policies must also effectively address the loss of skilled persons of all communities to more well-paid employment overseas.

14.32 Given the constitutional independence of service commissions, a constitutional provision on affirmative action could not and should not authorise the government to give directions on individual employment decisions. The new provision recommended in this chapter places the duty squarely on all responsible for appointments and management of the state services, without compromising their independence.

Localisation

14.33 We received no submissions seeking any change to the rule requiring the Prime Minister's concurrence to the initial appointment of non-citizens. We believe that localisation remains an important goal in the state services. The Constitution

should therefore continue to contain a provision requiring the Prime Minister's concurrence to any appointment of a non-citizen who is not already in the service of the state. The provision should apply to all offices in all state services, regardless of the body or person responsible for appointments.

RECOMMENDATIONS

460. The Constitution should contain a provision along the following lines:

In recruiting and promoting members of all state services belonging to the executive branch of government, including the public service, the Fiji Police Force and the Republic Fiji Military Forces, and in the management of those services, the factors to be taken into account shall include:

- (a) the need to ensure that government policies can be carried out effectively;
- (b) the need to achieve efficiency and economy in all the state's services;
- (c) the need to make appointments and promotions on the basis of merit;
- (d) the need to provide men and women and the members of all ethnic groups with adequate opportunities for training and advancement;
- (e) the need for the composition of each service, at all levels, broadly to reflect the ethnic composition of the population, taking account, however, of occupational preferences.

461. The Constitution should no longer contain provisions such as those contained in subsections 124(3), (4) and (5) and 127(10), (11) and (12) of the 1990 Constitution.

462. The Constitution should provide that no person or authority exercising a power to appoint any person to any office may appoint a person who is not a Fiji citizen and not already in the service of the State, unless the Prime Minister has agreed that person may be appointed.

INDEPENDENT SERVICE COMMISSIONS

14.34 Fiji has for many years had a system of independent service commissions with responsibility for appointments, discipline and removal of state servants. Apart from the Judicial and Legal Services Commission, the 1990 Constitution provides for two other service commissions with separate responsibilities for the general civil service and police officers respectively. Members of both commissions are at present appointed by the President on the advice of the political executive. The Constitution requires them to act independently in considering recruitments, promotions, transfers, disciplinary matters and the removal of state servants under their jurisdiction. In order to isolate the commissions from political influence, the Constitution disqualifies various categories of people from being appointed to them. There are also other constitutional rules concerning the remuneration and removal of commissioners which are designed to guarantee their independence. We will consider the latter rules in the next chapter when we consider independent constitutional institutions in general.

14.35 Although we received some submissions seeking changes in the composition, membership and appointment of service commissions, as well as in their areas of responsibility, there was general support for their continued existence. People see them as a means of insulating decisions on state service employment from political pressure and favouritism. We recommend that the Constitution should continue to provide for independent service commissions with responsibility for the appointment, disciplinary control over, and removal, of state servants, other than members of the armed forces. Responsibility in that area should continue to rest with the Commander of the Republic of Fiji Military Forces, within the ambit of overall ministerial responsibility for the armed forces.

14.36 For constitutional purposes, under section 152 of the 1990 Constitution, the power of appointment includes any power to appoint any person to any state office on promotion or transfer, or on an acting basis. In describing the responsibility of service commissions, we use the expression "power of appointment" and the word 'appoint' in that wide sense.

14.37 Similarly, under section 154, the power to remove includes any power conferred by law to require or permit an officer to retire. It also includes a power to terminate a contract of employment, or to determine whether a contract should or should not be renewed. Our references to the power to remove are intended also to include these powers.

14.38 The recommendation made above distinguishes between the responsibility for deciding on the appointment, removal and discipline of individual officers

and the more general responsibility for policy in respect of the state services that is a proper function of the executive government. The Government's general responsibilities would include matters relating to the machinery of government, the allocation of resources, levels of remuneration in terms of overall budgeting allocation and other such policy matters. As is made clear by section 98 and subsection 154(2) of the 1990 Constitution, the creation or establishment of positions in the state services and their abolition are not included within the constitutional powers of any service commission.

14.39 Insofar as a service commission exercises any of these general responsibilities under an Act of Parliament, as the Public Service Commission at present does, they are not required to be exercised independently. We think it should be made clear in the Constitution that the Government remains responsible for the structure of the state services and for the general policies involving their management.

14.40 We have already recommended in Chapter 12 that the Judicial and Legal Services Commission should be replaced by a Judicial Service Commission with responsibilities concerning the appointment of judges and magistrates. We now recommend that the Constitution should also provide for:

- a new Constitutional Offices Commission (the composition and the functions of which we discuss in detail in Chapter 15);
- a new Disciplined Services Commission, in place of the Police Service Commission, with responsibility for the police force and the prisons service; and
- a Public Service Commission with responsibility generally for all state servants, who are not subject to the appointing jurisdiction of any other commission or for whom no other provision is made by or under the Constitution.

RECOMMENDATIONS

- 463. The Constitution should continue to provide for independent service commissions with responsibility for the appointment, disciplinary control over, and removal of, state servants. It should provide that, subject to the Constitution, in the exercise of its powers, the commissions should not be subject to the direction or control of any other person or authority.**

464. The Constitution should provide for:

- a new Constitutional Offices Commission, (the functions, powers and composition of which should be as recommended in the next Chapter);
- a new Disciplined Services Commission to replace the existing Police Service Commission;
- a Public Service Commission.

465. Responsibility for the appointment, discipline and removal of members of the Republic of Fiji Military Forces should continue to rest with the Commander, subject to ministerial responsibility for the armed forces.

466. The Constitution should make it clear that Government remains responsible for the structure of state services and, subject to any Act, the general policies involving their management.

APPOINTMENT AND TENURE OF SERVICE COMMISSIONERS

14.41 We now discuss the general principles that should govern the appointment of members of all service commissions as well as the qualifications and disqualifications for membership. The proposed arrangements for the Judicial Service Commission which are described in Chapter 13, depart from these principles only to the extent necessary to take account of the separate provision for its membership and the nature of its functions.

Appointment

14.42 Under section 126(1) of the 1990 Constitution, the chairperson and all the members of the Public Service Commission are appointed by the President on the advice of the Prime Minister. The Police Service Commission, on the other hand, is required to be appointed in accordance with the general rule that the President is to act on the advice of the Cabinet or a minister generally authorised by the Cabinet.

14.43 Both methods of appointment reflect the principle that the Cabinet and government ministers are collectively and individually responsible to Parliament and the people for executive government. Therefore, although commissions are constitutionally required to act independently when making decisions on individual appointments, they should be generally accountable to the government for the exercise of their functions.

14.44 We received submissions expressing concern about a perceived lack of transparency and accountability in the existing arrangements for the appointment of service commissions. Many of these were based on the view that the system permitted the appointment of partisan commissioners, thus infusing political considerations into the appointment, discipline and removal of state servants. Impartiality and political neutrality, as well as efficiency and effectiveness, were thus likely to be compromised. We agree that transparency and accountability are important goals.

14.45 Some proposed that the Constitution should give the Leader of the Opposition the right to be consulted on appointments to commissions, either by the Prime Minister before advising the President, as was the case under the 1970 Constitution, or directly by the President. Others proposed that he or she should have the right to nominate a certain number of members directly.

14.46 Given the underlying Westminster principles, we do not favour giving the Leader of the Opposition a direct role in appointing service commissioners. Such an approach might give the impression that these commissions are intended to be bipartisan rather than nonpartisan. However, the method of appointing service commissioners can be improved in a way which respects the principles of ministerial responsibility, while at the same time improving accountability and transparency.

14.47 In Chapter 13, we recommended that the appointed member of the proposed Judicial Service Commission should be appointed by the President but should first be nominated by the Minister responsible for justice subject to confirmation by the appropriate sector standing committee of the Bose Lawa. This is the procedure that we consider should be followed in appointing the members of all the service commissions. The Minister to whom ministerial responsibility for a commission has been assigned should have the power to select and nominate the persons whom he or she believes are best qualified to be the chairperson and members of the relevant commission. Their names should be submitted to the appropriate sector standing committee of the Bose Lawa. The committee would have authority only to confirm or reject the Minister's nominations. In the event of confirmation, the Minister would then advise the President accordingly. But if a name is rejected, the Minister would have to find another suitable candidate.

14.48 Under our recommendation, therefore, the President would still appoint the chairperson and commissioners on the advice of a Minister. The Minister

retains authority for selecting and advising on the appointment of commissioners, but the accountability and transparency of the process is enhanced by requiring the approval of the sector standing committee of the Bose Lawa.

Tenure

14.49 The 1990 Constitution provides that appointed members of service commissions are to serve for three years from the date of their appointment. In our view, three years is a reasonable tenure to achieve independence. It is within the shorter four year term of Parliament, which we recommended in Chapter 10. In normal circumstances, it will allow each government to make at least one set of appointments to the various service commissions.

14.50 At present, a member who is appointed to replace someone who has prematurely vacated office serves for a full term of three years and not the unexpired term of the previous office holder. Under section 153 of the 1990 Constitution, which applies to all constitutional appointments, members may be re-appointed on the expiry of their terms of office. There are desirable provisions which allow for the continuity of the work of commissions. The provision should continue to apply to service commission members.

Performance of chairperson's functions:

14.51 The 1990 Constitution provides that where the office of chairperson of the Public or Police Service Commission is vacant, or where either chairperson is unable to perform his or her functions, the President may appoint another existing member to exercise the chairperson's functions. In so doing, the President must act on the advice of the Prime Minister.

14.52 Because of our recommendations for the appointment of commissioners, we believe the power to appoint a member to perform the chairperson's functions should be exercised by the members themselves. They will be limited to choosing from among persons already selected by the responsible Minister and approved by the sector standing committee of the Bose Lawa responsible for administrative services. We also believe that this will provide an incentive for the Minister to initiate the appointment of a new substantive chairperson through the recommended process in a timely manner.

Acting members

14.53 Subsections 123(6), 126(8) and 128(7) of the 1990 Constitution allow the President to appoint acting members to the Judicial and Legal Services

Commission, the Public Service Commission and the Police Service Commission, when there is a substantive vacancy or when a member cannot perform his or her functions. An acting member serves until the appointment is revoked by the President. In making or revoking acting appointments to the Police and Public Service Commissions, the President is required to act on the advice of the Prime Minister. In appointing an acting member of the Judicial and Legal Services Commission, the President must act in his own deliberate judgement.

14.54 The Constitution should continue to provide that acting members may be appointed when a member cannot for any reason perform the functions of his or her office. We propose, however, that an acting member should be appointed by the President acting on the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.

14.55 The Commission also proposes that the Constitution no longer provide for the appointment of acting members to fill vacancies. Service commissions should continue to be empowered to exercise their functions despite the vacancy in their membership but subject to the requirement of a quorum. The absence of a provision for the appointment of acting members should encourage the making of substantive appointments as quickly as possible.

Qualifications and disqualification for appointment to service commissions

14.56 At present the only affirmative qualification prescribed by the Constitution is in relation to the chairperson and one member of the Police Service Commission. Section 128(2) requires the chairperson and one member of that Commission to be Fijians. In light of the conclusions which we reached in Chapter 8 against the policy of reserving any position for members of any ethnic group, we propose that that requirement be repealed.

14.57 The 1990 Constitution prescribes disqualifications, some of which apply to appointments to both the Public Service and the Police Service Commissions, and some to one Commission. We believe that apart from the special case of the proposed Judicial Service Commission, the Constitution should prescribe the same disqualifications for all appointments to service commissions.

14.58 We propose that the Constitution should provide that a person is not qualified for appointment as chairperson or member of the Public Service Commission or the Disciplined Services Commission or the Constitutional Offices Commission if he or she is, or, in the three years immediately prior to appointment, has been:

- a member of either House of Parliament or an elected member of any municipal council or other similar body prescribed by Parliament;
- nominated with his or her consent as a candidate for election as a member of either House of Parliament or any municipal council or other similar body prescribed by Parliament;
- a national office bearer in any political organisation that sponsors or supports or in the previous three years has sponsored or supported a candidate for election to either House of Parliament;
- a public officer or a local government officer.

14.59 Under the 1990 Constitution the first three of these disqualifications apply to the Public Service and Police Service Commissions. They are essential to ensure politically neutral service commissions, and through them politically neutral, impartial and efficient state services.

14.60 The reference to “any municipal council or other similar body prescribed by Parliament” represents a slight change from the existing provision. At present the disqualification applies also to elected members of the Council of Rotuma, provincial councils and township boards. In our opinion, the application of this provision to members of the Council of Rotuma and provincial councils is too wide. It is also inconsistent in not including other similar bodies such as the Bose Levu Vakaturaga and the Rabi Council of Leaders.

14.61 The clear object of the disqualification is to keep party politics out of state service appointments. Although parties endorse candidates for election as members of city and town councils, they do not do so for the purposes of election of members of the Council of Rotuma or provincial councils. Furthermore, many Fijians of ability and integrity serve on provincial councils in order to contribute to the development of their provinces, as do Rotumans on the Council of Rotuma. They do so in an apolitical capacity. We do not see any good reason why their talents and qualities should not be used for the greater public good.

14.62 We consider that the restriction should be limited to municipal councils under the Local Government Act (Cap. 175) which includes city and town councils. That Act abolished the system of township boards so that particular reference is no longer necessary. We give Parliament the discretion to prescribe ‘other similar bodies’ and so take account of any later developments in local government in Fiji.

14.63 The disqualification of public officers and local government officers, at present applies only to appointment to the Police Service Commission. It does not apply to the Public Service Commission. Apart from the proposed Judicial Service Commission, we believe that this disqualification should apply to all service commissions. Since public officers and local government officers are subject to the direction of ministers and politicians in their everyday duties, their appointment to serve on commissions would be incompatible with the objectives of independence and impartiality. The possibility of personal conflicts of interest arising out of their own status and career prospects would also threaten their impartiality.

14.64 Candidates for selection by the Bose Levu Vakaturaga or the Council of Rotuma for appointment to the Senate are at present disqualified from appointment to the Police Service Commission under section 128(3) of the 1990 Constitution. In view of our recommendation for the membership of the Bose e Cake, this disqualification will no longer be necessary.

14.65 Under the 1990 Constitution, a person who is a member of one service commission is disqualified from appointment to any other service commission. There are two exceptions to this rule. First, the chairperson of the Public Service Commission is also an *ex-officio* member of the Judicial and Legal Services Commission. Secondly, the same person may simultaneously hold appointments as the chairperson of the Public Service Commission and the Police Service Commission.

14.66 Subject to the exception discussed below, we recommend the retention of a general rule disqualifying persons from being a member of more than one service commission at the same time. This will help to ensure that the power over state service appointments is not concentrated in the hands of a few. It will also allow a greater opportunity for all able citizens to be appointed to service commissions.

14.67 In Chapter 13, we recommended that the chairperson of the Public Service Commission should be an *ex-officio* member of the new Judicial Service Commission. We are also in favour of an exception to the general rule which would allow the chairperson of the Public Service Commission to be appointed also to the Disciplined Services Commission as well as to the Constitutional Offices Commission.

14.68 This special exception is justified on the basis that it may be desirable to give a service-wide perspective to the work of each commission. As the Public

Service Commission has responsibility for most state offices, we believe its chairperson would be best able to provide the link between the various service commissions. We do not, however, favour any rule like the present one which requires, that if the chairperson of the Public Service Commission is to be appointed to be a member of Police Service Commission, he or she can only be appointed as its chairperson. We believe that the Constitution should allow some flexibility in that area.

Post-membership disqualification

14.69 Section 126(5) of the 1990 Constitution disqualifies a member of the Public Service Commission from being appointed to hold or act in any office in the state services for a period of twelve months after he or she was last a member of the Commission or acted as such. Section 123(4) similarly disqualifies an appointed member of the Judicial and Legal Services Commission from being appointed as a state servant for three years. A similar provision which applied to members of the Police Service Commission was removed in the 1990 Constitution.

14.70 A post-membership disqualification exists to secure impartiality. The disqualification prevents commissioners from making particular decisions in their own self-interest or being accused of so doing. It also strengthens the independence of a commission by making it impossible to offer any commissioner an appointment to a public position as a reward for making a particular decision.

14.71 For these reasons, we believe that a post-membership disqualification is essential. Apart from the special case of the Judicial Service Commission, it should be applied to members of all service commissions. We consider, however, that the present twelve month period for the Public Service Commission is insufficient. In our opinion, the period should be a standard three years for all service commissions. This would be consistent with the term of appointment of commission members. It would also be consistent with the period of disqualification from appointment to commissions which we recommended should apply to former politicians.

RECOMMENDATIONS

- 467. Apart from the special case of the Judicial Service Commission, the Constitution should provide for the same procedure to be followed for selecting and appointing the chairpersons and members of all of the independent service commissions.**

468. The Constitution should continue to provide that the chairperson and members of independent service commissions be appointed by the President. The Minister responsible for the particular commission should nominate a candidate to the appropriate sector standing committee of the Bose Lawa. The committee should have authority only to confirm or reject the Minister's nominations. If a nomination is confirmed, the Minister should advise the President accordingly, but if it is rejected, the Minister would have to nominate another suitable candidate.
469. The tenure of the chairperson and members of independent service commissions should remain three years. Persons who are appointed to fill casual vacancies should be appointed for a full term of three years. Commissioners should be eligible for re-appointment.
470. The Constitution should provide that if the office of chairperson of any service commission is vacant or if the holder is unable to perform the functions of the office, the members may elect one of their number to perform the functions of the chairperson.
471. The Constitution should provide that an acting member may be appointed when a member cannot for any reason perform the functions of his or her office. An acting member should be appointed by the President, acting on the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.
472. The Constitution should no longer allow the appointment of a person to act as a member of a service commission in the case of a vacancy. Subject to the presence of a quorum, service commissions should continue to be empowered to act despite a vacancy in their membership.
473. The Constitution should no longer reserve any position on a service commission for members of any particular ethnic group and it should no longer contain provisions like those in subsections 128(2) and (6).
474. The Constitution should provide that a person is not qualified to be appointed to be a member of the Constitutional Offices

Commission, the Disciplined Services Commission, or the Public Service Commission if he or she is, or, in the immediately preceding three years, has been:

- **a member of either House of Parliament or an elected member of any municipal council or other similar body prescribed by Parliament;**
- **nominated with his or her consent as a candidate for election as a member of either House of Parliament or any municipal council or other similar body prescribed by Parliament;**
- **a national office bearer in any political organisation that sponsors or supports or in the previous 3 years has sponsored or supported a candidate for election to either House of Parliament;**
- **a public officer or a local government officer.**

475. The Constitution should also disqualify a person who is a member of a service commission, other than the chairperson of the Public Service Commission, from being a member of another service commission at the same time. It should, however, allow the person who is the chairperson of the Public Service Commission also to be the chairperson or a member of the Constitutional Offices Commission or the Disciplined Services Commission.

476. A person who is appointed to any service commission should be disqualified from appointment to any office in any state service for a period of three years after he or she was last the chairperson or a member of a service commission.

PUBLIC SERVICE COMMISSION

Composition

14.72 Section 126 of the 1990 Constitution prescribes the composition of the Public Service Commission. Under subsection (1), the Public Service Commission consists of a chairperson and not less than three nor more than five other members. In view of its relatively large area of responsibility, we believe that the Constitution should continue to provide for a Commission of this size.

Functions

14.73 The Public Service Commission is at present established by section 126(1) of the 1990 Constitution. The Commission is vested, under section 127(1), with power to make and confirm appointments to all state offices and to remove and to exercise disciplinary control over the holders of all state offices, other than those for which the Constitution makes other provision.

14.74 As we mentioned earlier, by virtue of section 152(1), the power to appoint to an office also includes the power to make appointments on promotion and transfer, and to make acting appointments to that office; and the power to remove includes the power to make decisions on contracts of employment.

14.75 We propose that the Public Service Commission should continue to be vested with broad appointing, removal and disciplinary powers over all state service positions and officers other than those which are specifically made the responsibility of some other commission or authority, or which, by or under the Constitution, are not to be subject to any service commission.

14.76 This residual approach to defining the Public Service Commission's area of responsibility means that all state offices will fall within the responsibility of a service commission except where the Constitution, itself, for special reasons otherwise provides or allows. Decisions on appointments to almost all offices, and on the discipline and removal of the holders of these offices are therefore protected from political considerations.

14.77 In Chapter 13, we recommended that the Judicial and Legal Services Commission should be replaced by a Judicial Service Commission with a narrower constitutional responsibility only for judicial officers (including magistrates). At present, the Judicial and Legal Services Commission, in addition to its responsibility for judges and magistrates, has responsibility also for the various non-judicial offices listed in Schedule 2 of the 1990 Constitution.

14.78 These comprise government's legal officers, senior court officers and the heads of the departments which have traditionally fallen within the Attorney-General's area of ministerial responsibility. In Chapter 12, we recommended that responsibility for making appointments to the offices of the Solicitor-General and the Director of Public Prosecutions should be vested in the Constitutional Offices Commission. We now propose that all other non-judicial officers should fall within the responsibility of the Public Service Commission.

Requirements for consultation or concurrence

14.79 Subsections (5) to (9) of section 127 at present require the Public Service Commission to consult or to obtain the concurrence of specified persons before exercising its powers in respect of certain offices. We have the following comments to make.

14.80 Under subsection 127(5), the Commission must consult the Prime Minister before making a substantive or acting appointment to the office of Auditor-General. In the next Chapter, we propose that the Auditor-General should, with other constitutional officers, come under the appointing jurisdiction of the Constitutional Offices Commission. The existing provision will therefore no longer be necessary.

14.81 Under the same subsection, the Commission must also consult the Prime Minister before making appointments to an office of agricultural tribunal. These tribunals decide, at first instance, claims brought under the Agricultural Landlord and Tenant Act (Cap. 270). Given their importance, we consider that, as before, they should be appointed by the Public Service Commission after consultations with the Prime Minister and the Leader of the Opposition. In Chapter 13, we made recommendations on the appointment of the Central Agricultural Tribunal which is responsible for hearing appeals from decisions of the agricultural tribunals.

14.82 Subsection (6) prohibits the Commission from making any substantive or acting appointment to the offices of Secretary to the Cabinet or any permanent secretary or head of any government department or ministry without the concurrence of the Prime Minister. There is good reason for requiring the concurrence of the political executive for *appointments* to these offices. However, the Commission should not consult or seek the concurrence of the Prime Minister in exercising its powers of *removal* and *discipline* over these offices.

14.83 We explained in Chapter 12 how the permanent secretaries and comparable officers function as the pivot in the division of responsibilities between Ministers and the state servants in their departments. We have also discussed how, even though most administration is carried out by state servants, Ministers are individually, and the Prime Minister and his Cabinet are collectively, responsible to Parliament for their actions. They are also accountable to the people at a general election for the performance of the government. For these reasons, we propose retaining the existing requirement of the Prime Minister's concurrence.

14.84 In the next chapter, we deal with independent officers whose appointment

we propose should be the responsibility of the Constitutional Offices Commission. All of these offices hold the rank of permanent secretary or have management responsibilities for a department. The recommendation just made should not be interpreted to suggest that these managerial responsibilities should bring them also within the area of responsibility of the Public Service Commission.

14.85 Under subsection (7), as in 1970, the Public Service Commission may not make substantive or acting appointments to any office on the staff of the Ombudsman without prior consultation. Because the Ombudsman must act through subordinate officers, we consider that the Ombudsman should have the right to *concur* in the exercise by the Public Service Commissions of any of its constitutional powers over any office on his or her staff, so that the independence and effectiveness of the office is not compromised. This is necessary in view of our proposal in Chapter 15 that, subject to an Act of Parliament, the Ombudsman should investigate the exercise of statutory functions by the Public Service Commission.

14.86 Similarly, the Auditor-General must also act through his or her officers and has the responsibility of auditing the accounts of the Public Service Commission. We propose that this officer should also be required to concur in the exercise by the Public Service Commission of any of its constitutional powers over offices on the staff of the Auditor-General's department.

14.87 The Public Service Commission may not under subsection 127(8) exercise "any of its powers" over any of the President's personal staff without the President's concurrence. The provision is very widely worded to suggest that it covers not only those powers conferred on the Commission by the Constitution, but also any other powers that the Commission might enjoy under statute. The requirement is a mark of respect for the country's head of state. It should be retained subject to the express requirements that it is limited to the exercise of constitutional powers and that in deciding whether or not to concur the President acts in his own deliberate judgement.

14.88 A slightly narrower provision applies to the staff of Parliament. Subsection (9) at present requires the Commission to "consult" the Speaker before exercising "any of its powers" in relation to the offices of Secretary-General to Parliament, Secretary to the House of Representatives and any member of the Speaker's staff, and to persons holding or acting in those offices. It also requires the Commission to consult the President of the Senate in respect of the Secretary to the Senate or any member of the Senate's staff.

14.89 Unlike the President, who must concur in decisions affecting his personal staff, the Speaker and the President of the Senate need only be consulted. The reasons for this courtesy lie in the idea of the separation of powers and the legislature's independence from the executive. The provision balances this principle against the other principle of a central, independent personnel authority for all state officers. We consider that the provision should be retained subject to limitation to the exercise of the Commission's constitutional powers.

14.90 In Chapter 11, we recommended and stated why the power to make appointments to the office of the Secretary-General to Parliament should be exercised by the Constitutional Offices Commission. It is our contention that the Public Service Commission should continue to be required to consult the Speaker before exercising any of its powers in respect of Secretary to the Bose Lawa and all other offices on the staff of the Bose Lawa which remain its responsibility. Similarly, it should be required to consult the President of the Bose e Cake in respect of the Secretary to the Bose e Cake and other staff of that House.

14.91 We also propose that there should be a constitutional requirement that the Public Service Commission should consult Permanent Secretaries and similar officers who are charged with managing their departments effectively, on appointments to the offices in their departments. We understand that, in practice, the Commission consults departmental heads before making appointments. Our recommendation therefore does not depart from the existing procedures. We believe that stating this as a constitutional requirement will better reflect the shared management responsibilities of the Commission and departmental heads.

Exceptions

14.92 Section 127(4), at present, lists specific offices and classes of office which are outside the appointing authority of the Public Service Commission.

14.93 The Constitution should continue to provide that the Public Service Commission's power to appoint, discipline or remove does not extend to offices which are the responsibility of another service commission or any offices in the Police Force, Republic of Fiji Military Forces or any naval or air force, or offices for which other provision is made by or under the Constitution.

14.94 Paragraph (g) of section 127(4) at present allows the Public Service Commission, by regulation, to exempt any office or class of office from its own jurisdiction. The regulations must receive the agreement of the Prime Minister. This is a useful provision which allows the Commission to decline responsibility

for offices which might be caught by the residual definition of the Commission's jurisdiction, but which, given their nature and responsibilities, should be within the responsibility of some other commission or authority. Possible examples include offices which combine judicial and civil characteristics. In that regard, the Public Service Commission's power would be exercised in conjunction with the Judicial Service Commission's power to add offices to their responsibility by regulations. Another possible example might occur if Ministers were allowed, as in many countries, to appoint political assistants paid directly out of state funds. In that case, as it is prohibited from delegating appointing power to a Minister, the Commission might decide it is best to relinquish control over those positions, by regulation.

14.95 We view the requirement of the Prime Minister's concurrence as a necessary check on this wide discretion and recommend the Constitution should continue to contain a provision in these terms.

RECOMMENDATIONS

477. **The Constitution should continue to provide that the Public Service Commission comprise a chairperson and not less than three nor more than five other members appointed in accordance with the procedure outlined in recommendation 468.**
478. **The Public Service Commission should have constitutional responsibility for appointing, removing and exercise of disciplinary control over, all offices and officers in the state services that are not specifically made the responsibility of some other commission, or other authority by or under the Constitution. The Constitution should provide that the Public Service Commission should not have the power to appoint, remove or exercise disciplinary control over the offices and officers that are the responsibility of another service commission, or any in the Fiji Police Force, Republic of Fiji Military Forces, or any naval or air force, or for which other provision is made by or under the Constitution.**
479. **The Constitution should continue to permit the Public Service Commission to make regulations with the concurrence of the Prime Minister by which any office or class of office is exempted from its constitutional responsibility.**
480. **Apart from the offices of the Director of Public Prosecutions**

and the Solicitor-General, the Public Service Commission should have responsibility for all non-judicial offices which are at present the responsibility of the Judicial and Legal Services Commission. These would include the State's legal officers, the heads of departments within the portfolio of the Ministry for Justice and senior officers in the administration of the courts.

481. The Constitution should require the Commission to consult both the Prime Minister and the Leader of the Opposition before appointing an agricultural tribunal.
482. The Constitution should continue to require the Public Service Commission to obtain the concurrence of the Prime Minister before making any appointment to the office of Secretary to the Cabinet, or any office of Permanent Secretary, or head of any government department or ministry.
483. The Constitution should require that the Public Service Commission should obtain the concurrence of the Ombudsman and the Auditor-General before exercising any of its constitutional powers over any office on their staff.
484. The Constitution should continue to require the Public Service Commission to obtain concurrence of the President before exercising any of its constitutional powers over any of the President's personal staff.
485. The Constitution should provide that the Commission should consult the Speaker before exercising any of its constitutional powers over the Secretary to the Bose Lawa and any member of the staff of the Bose Lawa. Similarly, it should be required to consult the President of the Bose e Cake in respect of the offices of Clerk to the Bose e Cake or any other member of the staff of the Bose e Cake.
486. The Constitution should require that all Permanent Secretaries and heads of departments should be consulted prior to any appointment or removal of a member of their staff.

AMBASSADORS AND FOREIGN SERVICE OFFICERS AND OTHERS SERVING OVERSEAS

14.96 Under section 125(1) of the 1990 Constitution, power to appoint and

remove ambassadors or principal representatives of Fiji in other countries or to any international organisation is vested in the President acting on the advice of the Prime Minister. The section repeats the provisions of section 103(1) of the 1970 Constitution. It reflects the well-accepted convention that power to appoint envoys is a function of the executive which is vested in the Head of State, acting on the advice of the political chief executive. We propose that the Constitution should continue to so provide.

14.97 Prior to advising the President, the Prime Minister is, however, required by the proviso to the subsection (1) to consult the Public Service Commission if the relevant person at the time is holding or acting in a “public office”. Subsection (2) specifically provides for the rights of these officers in the event of their removal as ambassadors or principal representatives. It provides that the power to remove any person from his or her position as an ambassador or principal representative does not include the power to remove such a person from the state services. We favour the retention of this principle in the Constitution.

14.98 The subsection at present allows the Public Service Commission to place the person in a comparable job or, failing that, to grant him or her an early government pension. As most officers are no longer eligible for government pensions, the pension protection aspects should be removed from the Constitution and, to the extent that they may still be necessary, placed in ordinary legislation.

14.99 Subsections (4) to (6) of section 125 allow the Prime Minister to prescribe specific state offices which involve residence overseas (whether in the Ministry of Foreign Affairs or in some other department), to which the Prime Minister, and not the Public Service Commission, may make appointments on transfer. This power is limited to transferring officers between prescribed overseas posts carrying the same salary. This power to transfer may be delegated by the Prime Minister to another Minister and by the Minister exercising the power, to a public officer.

14.100 We consider that the provision allows those charged with responsibility for Fiji’s foreign affairs a degree of flexibility in arranging their staffing matters. It does so without unduly affecting the employment protection provided to individual state servants by independent service commissions. We therefore believe it should be retained with a slight change.

RECOMMENDATIONS

487. The Constitution should continue to vest in the President,

acting on the advice of the Prime Minister, power to appoint and remove ambassadors and principal representatives of Fiji to other countries and to international organisations. It should provide that before recommending the appointment of a person who is a state servant to be an ambassador or principal representative, the Prime Minister shall first consult the Public Service Commission.

- 488. The Constitution should also provide that the power to remove an ambassador or principal representative from office does not include the power to remove a person from the state services, if that person was already a state servant when appointed to be an ambassador or principal representative.**
- 489. The Constitution should no longer empower the Public Service Commission to grant such officers early pensions. To the extent that it may be desirable to provide for pensions, provision should be made in an Act.**
- 490. The Constitution should continue to allow the Prime Minister to prescribe specific state offices requiring residence overseas. Once prescribed, the power to make appointments on transfer between these offices should vest in the Prime Minister. The Constitution should allow this power to be delegated to a minister public officer. The power should be limited to transferring between offices carrying the same salary.**

DELEGATION

14.101 Section 127(3) permits the Public Service Commission, by directions in writing, to delegate any of its powers to appoint, remove, or exercise disciplinary control, other than its powers over the Auditor-General, an agricultural tribunal, the Secretary to Cabinet or any Permanent Secretary, head of a department or comparable officer, to any member of the Commission, or to any public officer or class of public officer. Delegations to public officers may be limited by an Act of Parliament. In keeping with the principle of political neutrality, powers cannot be delegated to ministers. The Commission may impose conditions on delegations and may withdraw a delegation if it thinks fit.

14.102 We believe that politically neutral and efficient state services are best guaranteed by flexible constitutional provisions which provide for a central state service appointing authority which is vested with the power to delegate. This ensures that there is a single centralised body with responsibility and accountability

for the way appointment, removal and disciplinary powers are exercised by itself, or by its delegates across the various departments. The existing power to make conditional delegations and to withdraw a delegation ensures that the Commission can and should maintain control over its delegated powers. In our view, this system allows the greatest flexibility in responding to changing circumstances and management concepts in the public sector. We believe that the requirement for departmental needs to be balanced by a consistent, service-wide perspective, promotes impartiality and efficiency, without sacrificing fairness.

14.103 We propose that the existing power to delegate to individual commissioners or to state servants should be retained. The Constitution should continue to prohibit any delegation of the powers over agricultural tribunals, the Secretary to Cabinet or any Permanent Secretary, head of department or other comparable officer. It should also continue to allow Acts of Parliament to impose limitations, and the Commission to impose conditions on its delegations.

14.104 Concerns expressed to us regarding the concentration of power in the Public Service Commission and its possible detrimental effect on the management of departments, may be met, to a large degree, by effective delegations by the Public Service Commission to those responsible for management. Modern public sector management policies practised elsewhere involve significant appointing, disciplinary and removal power at the ministry or departmental level. The Public Service Commission informed us that it was in the process of drawing up appropriate delegations for Fiji. We believe that this process should be expedited.

RECOMMENDATIONS

491. **The Constitution should continue to allow the Public Service Commission to delegate any of its functions to an individual commissioner or a public officer. It should continue to prohibit any delegation of the powers over agricultural tribunals, the Secretary to Cabinet or any Permanent Secretary, head of department or other comparable officer. It should continue to allow Acts of Parliament to impose limitations on the power to delegate. It should allow the Commission to impose conditions on its delegations.**
492. **The Public Service Commission should expedite the consideration of the delegation of its powers.**

STATUTORY FUNCTIONS

14.105 In addition to its powers of appointment, removal and discipline, the

Public Service Commission, since 1974, has also been vested by various statutes with other functions and powers relevant to personnel matters in the state services.

14.106 Some submissions complained that the combination of the Commission's constitutional and statutory functions concentrated too much power in the hands of one commission and its secretariat. The submissions claimed that the need for the Commission to approve decisions on matters as trivial as office furniture and small training expenses had a stultifying effect on the management of departments and on their efficiency and effectiveness. Some department heads sought a constitutional provision to grant them greater autonomy from the Commission.

14.107 We appreciate that the centralisation of the powers which the Public Service Commission enjoys under statute promotes economy, consistency and accountability across all the departments of the government. Yet, at the same time we recognise that these objectives must be balanced against the real concerns and frustrations of departmental managers and their duty to be efficient and effective.

14.108 We propose that the Commission's statutory functions be reviewed by the Government. The review should examine whether all or any of the powers should be devolved and exercised by individual department heads under a new statute or by delegations under the existing statute. It should also examine whether they should remain centralised but be exercised by a Ministry or department of the Government instead of the Commission. The latter is the practice in some neighbouring countries.

RECOMMENDATION

- 493. The Government should re-examine the statutory functions of the Public Service Commission to see if all or any of these might be more efficiently, effectively or economically exercised either centrally by a Government ministry or by the individual departments and ministries.**

APPEALS

14.109 Section 127(2) of the 1990 Constitution provides that "no appeal should lie against decisions of the Public Service Commission with respect to matters concerning appointments, promotions and transfers". Although the provision prohibits any appeals against the merits of Commission decisions, it does not prevent the Courts from reviewing decisions on procedural and other grounds recognised in administrative law.

14.110 The 1970 Constitution had expressly authorised Parliament to provide for appeals to lie against “such decisions” of the Public Service Commission to “such body” as Parliament might prescribe. This express authorisation was necessary, as an appeal system, specially if outside the courts, compromises the freedom from direction and control which is the essence of constitutional independence enjoyed by the Public Service Commission.

14.111 Parliament provided for appeals in the Public Service Act of 1974. The Act established a Public Service Appeals Board consisting of a chairperson and one official member and two staff members, all of whom were public officers. The chairperson and members were appointed by the Minister responsible for the public service. The official member was nominated by the Public Service Commission, the service members by the unions recognised by the Commission and in appointing the chairperson, the Minister was required to consult both the Commission and the unions. Only one service member was entitled to sit at any particular hearing.

14.112 We received strong representations for the re-establishment of a system of appeals which allowed the reasons behind decisions as well as the procedures leading up to decisions to be challenged. The submissions expressed the view that the existing remedy of judicial review was expensive, time consuming and too narrowly focussed to provide an accessible method of challenging wrongful decisions of the Commission. They argued that an appeals system, as distinct from judicial review, was essential to ensure that employment decisions by the Public Service Commission were based on proper grounds. In particular, the submissions argued that appeals were essential to ensure that the Commission was accountable, its work transparent and its decisions non-discriminatory and fair.

14.113 We heard equally strong representations against the re-introduction of appeals. It was argued that the effect of the 1974 appeals procedure was a fractious and paralysed civil service. We were informed that under that system, appeals had been lodged against almost every appealable appointment, promotion or transfer. Consequently, there had been some disruptions to government services, particularly where appeals had been filed against transfers to rural areas.

14.114 It was also pointed out that decisions on appointments are rarely clear-cut. Invariably the requirements for any position have several dimensions. Individual candidates are likely to have different strengths and weaknesses. Identifying the most suitable candidate is often a matter of personal judgement

for the decision-makers. It is always possible that in the same circumstances someone else might make another, different decision but equally valid. In this view, a system of appeals on the merits invites frequent reversals of appointments, promotion and transfer decisions, causing uncertainty and low morale among officers, and consequently inefficiency and ineffectiveness in the state services.

14.115 Another criticism of the previous appeals system was that the former appeals body had comprised only public officers. This had sometimes resulted in the officers on the Appeals Board considering the appointments or promotions of officers senior to them. Furthermore, although the Public Service Act attempted to ensure some measure of impartiality by prohibiting members of the Appeals Board from considering any appeal on a position in their own department, it was possible for personal contacts and structural links across departments to colour the consideration of appeals.

14.116 We were also made aware of new methods of public sector management used in neighbouring countries that are being considered for adoption in Fiji. These are based on the idea that greater efficiency, effectiveness and economy can be achieved if the criteria for, and conditions of, state service appointments were made more like those in the private sector. It was argued that an appeals system reinforced the worst aspects of public sector employment practices. In particular, in regard to promotions, it favoured the rigid application of objective criteria such as seniority, over more important qualitative and subjective matters such as ability and suitability for a position. If decisions on the discipline and the removal of officers could also be appealed against, it would make the already difficult task of dealing with inefficient officers even harder.

14.117 We have given a great deal of consideration to this matter. In our view, a delicate balance must be struck between the State's need, as an employer, to be able to hire and fire in the interests of efficiency, effectiveness and economy, and the right of individual state servants, as employees, to be treated fairly. Although we endorse the measures to improve state services through the introduction of some private sector management techniques, we do not believe that analogies with private employers should be carried too far. Unlike positions in the private sector, those in the state services are public positions which require the highest standards of equity, accountability and transparency to be applied in respect of appointments. We believe that an appeals procedure is an important way of achieving those standards.

14.118 The Commission therefore proposes that the Constitution should again

authorise Parliament by Act to provide for appeals against decisions of the Public Service Commission. It should also expressly allow appeals against decisions of any person exercising any of the Commission's powers by delegation. As before, the provision should be broad enough to allow the types of decisions and the types of positions to which the right of appeal should apply to be prescribed by or under the Act. The provision should also allow Parliament a wide discretion to prescribe the body to which appeals should lie.

14.119 We believe that many of the difficulties experienced under the former Public Service Appeals Board resulted from the composition and jurisdiction of that body. We consider that many difficulties would be avoided if state servants were prohibited from sitting on the appeals body. One alternative which Parliament might consider is a body comprising a member nominated by the unions, one nominated by the Public Service Commission and a chairperson selected by the Minister after consulting the Unions and the Commission, none of whom may be state servants.

14.120 In defining the jurisdiction and the procedural rules for the appeals body, great care must also be taken to avoid the disruptions which occurred in the past. We believe that special consideration must be given to the rules which should be applicable if appeals are allowed to be lodged against decisions involving transfers. They should ensure that government services, especially those in rural areas, are not disrupted. Special attention must also be paid to the grounds upon which appeals may be lodged and the factors which the appeals body should be entitled to take into account.

RECOMMENDATIONS

494. **The Constitution should authorise Parliament to provide by Act for a system of appeals against decisions of the Public Service Commission or any person exercising any of the Commission's powers by delegation. The provision should allow Parliament a discretion to prescribe the body to hear appeals and the types of decisions that may be appealed against.**
495. **In drafting new statutory provisions for appeals, care must be taken to avoid the difficulties experienced under the system established by the 1974 Public Service Act. State servants should be excluded from membership of the appeals body. Appeals against decisions involving transfers to rural areas should be provided for in a way which does not affect rural services unduly.**

DISCIPLINED SERVICES COMMISSION

Police force

14.121 Section 129(1) establishes a Police Service Commission with power to appoint, remove and exercise disciplinary control over police officers above the rank of senior inspector. These officers are generally known as the “gazetted officers”. They comprise the six most senior ranks of the Police Force, and at present include the office of Commissioner of Police. We do not deal with appointments to that office in this chapter.

14.122 Subsection 129(2) vests in the Commissioner of Police the power to appoint, remove or discipline officers of or below the rank of senior inspector. These officers are classified as the inspectorate and subordinate officers. However, the concurrence of the Police Service Commission is required before the Commissioner of Police can remove or reduce the rank of any inspectorate or subordinate officer.

14.123 Subsection 129(5) takes account of any subsequent alteration in the ranks into which the Police Force is divided. In that event, the Police Service Commission may, for the purpose of dividing responsibilities between itself and the Commissioner of Police, specify the new rank which is equivalent to senior inspector.

14.124 In principle, police officers, who are subject to a stringent code of discipline should continue to be dealt with separately from officers in the civil service proper.

Prisons service

14.125 Offices in the prisons service at present come under the appointing, disciplinary and removal jurisdiction of the Public Service Commission. We received a representation seeking to have jurisdiction over prison officers removed from that Commission.

14.126 The prisons service is a disciplined service. It is established and organised under the Prisons Act (Cap. 86). As with the police and military forces, the prisons service also exercises some of the State’s power to use force, in its case, with regard to convicted and detained persons. Like the other two forces, the

organisation and operation of the prisons service are based on the concept of command and a high degree of discipline. Section 11 of the Prisons Act (Cap. 86) requires every officer of the Prisons Service to "obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors".

14.127 We were told that because the Public Service Commission deals mainly with the discipline of civil servants, it did not appreciate the stricter standards of discipline which must apply to prison officers. This had caused some difficulty in maintaining an efficient and effective prisons service. We understand these concerns, particularly in view of recent events, and agree that the prisons service should no longer come under the jurisdiction of the Public Service Commission.

14.128 We propose that the Police Force and Prisons Service should be brought under the jurisdiction of a single commission. In view of this wider jurisdiction, the Commission should be called the Disciplined Services Commission.

Composition

14.129 The Disciplined Services Commission should comprise a chairperson and two other members. They should be appointed in accordance with the procedure and subject to the qualifications which we earlier recommended should apply to service commission appointees.

Functions of the Disciplined Services Commission

14.130 The Disciplined Services Committee should have responsibility for appointing, removing and exercising disciplinary control over officers in the police above the rank of senior inspector other than the office of Commissioner of Police. We make separate recommendations on appointments to that office in Chapter 12.

14.131 We also recommend that the present provision under which the Commissioner of Police has power to appoint, discipline and remove officers of or below the rank of senior inspector, should be retained. We believe that it is important for the discipline and efficient operation of the Force that these officers be directly subject to the Commissioner of Police. The important safeguard that removal from office and reduction in rank should be subject to the concurrence of a supervising service commission should remain. It should now be vested in the Disciplined Services Commission.

14.132 The Constitution should also continue to provide for the possibility of any alteration in the ranks of the Police Force. The Disciplined Services Commission should be empowered to specify the equivalent office to senior inspector for the purpose of determining the respective responsibilities of the Commission and the Commissioner of Police.

14.133 The new Commission should also exercise the powers now vested in the Public Service Commission in respect of all offices of the prisons service.

14.134 Section 129(3) at present allows the Police Service Commission to delegate any of its powers to any member of the Commission. To the extent that the Prime Minister directs in writing, it may also delegate any of its powers over gazetted officers to the Commissioner of Police. We consider that the Disciplined Services Commission should also have these powers subject to any conditions which it sees fit to impose and to such extent as the Prime Minister may direct in writing. We favour the retention of the Prime Minister's power because questions of law and order have wide ramifications. We are also mindful of the independence which the Constitution guarantees to the Commissioner.

14.135 In addition, the Constitution should provide that, as with the Public Service Commission, the power to delegate should be subject to any Act of Parliament.

14.136 We also recommend that the Commission should have a similar power to delegate any of its functions over prison officers to an individual commissioner or to the Commissioner of Prisons. This power should be subject to the same limitations as its power to delegate in regard to the police.

14.137 In recommending a single commission to deal with police and prison officers, it is necessary to stress that we do not thereby propose the amalgamation of the two services nor do we wish to suggest a common career path between the two. They each have a distinct responsibility in relation to those accused or convicted of committing offences. We believe that this distinction is essential to ensure accountability and transparency in the treatment of detained persons. It should therefore be maintained.

RECOMMENDATIONS

- 496. The Disciplined Services Commission should comprise a chairperson and two other members appointed in accordance with the procedure outlined in recommendation 468.**

497. **The Disciplined Services Commission should have constitutional responsibility for appointing, removing and exercising disciplinary control over all offices of the prisons service and all police officers above the rank of senior inspector. It should not be responsible for the office of Commissioner of Police.**
498. **The Constitution should continue to give the Commissioner of Police the responsibility for appointing, removing and disciplining police officers of, or below the rank of, senior inspector. It should provide that the Commissioner cannot remove or reduce the rank of any officer without the concurrence of the Disciplined Services Commission.**
499. **The Constitution should provide that in the event of any alteration in the ranks of the police force, the Disciplined Services Commission may by order specify the equivalent rank to senior inspector for the purpose of defining the extent of the respective responsibilities of the Commission and the Commissioner of Police.**
500. **The Disciplined Services Commission should have the power to delegate any of its powers to any member of the Commission. It may also, to the extent that the Prime Minister directs in writing, delegate any of its powers over gazetted officers to the Commissioner of Police.**
501. **The Constitution should also provide that, as with the Public Service Commission, the power to delegate should be subject to any Act of Parliament.**
502. **The Disciplined Services Commission should have a similar power to delegate any of its functions over prison officers to an individual commissioner or to the Commissioner of Prisons. This power should be subject to the same limitations as its power to delegate in regard to the police.**