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CHAIRPERSON'S FOREWORD

The Standing Committee on Justice, Law and Human Rights of the last term of Parliament was referred the Fijian Electoral Commission Annual Report 2014. The same report had been re-instated in this new Parliament and has been referred to the current Standing Committee on Justice, Law and Human Rights. Just as the previous Committee, the current Committee was mandated by Parliament to review these report and report back to Parliament on its findings.

The Committee took note of and deliberated on the previous Committee's extensive deliberation and reviewed the Report and noted its content. The Committee took note of all the evidence received so as to ensure that all possible point of views and suggestions that were received is given relevant consideration. It was also noted that the previous Committee independently formed its own view and stance on the issues noted in the FEC Annual Report 2014.

In its pursuit to form an independent view and stance, the previous Committee addressed all issues noted in the Annual Report and came up with its own recommendations to some of the main issues. My committee also shares the view of the previous Committee in that some of the suggestions made are either impractical or have already been addressed in some way or the other since the initial tabling of the Annual Report in Parliament in 2016. For example the suggestion for a ballot paper to have candidate pictures, party symbols and names would be impractical, as this would see a ballot paper the size of a workstation desk. Such an issue has been dealt with in a more practical way and so have most of the issues noted in the 2014 Report.

This Report will reiterate the previous Committee's findings and recommendations to the issues noted from the content of the Fijian Electoral Commission Annual Report.

This Report is divided into three main parts as follows:

- the introduction;
- the Committee's observation and findings; and
- the recommendations.

Some of the main areas of discussion addressed in this Report are as follows:

- The realisation of independence of the Fijian Electoral Commission by having and controlling its own budget, being able to utilise independent legal services and having clear demarcation on the governance structure of Fiji's electoral management body;
- The realisation of the above by considering proposed amendments to the electoral laws (Constitution of the Republic of Fiji (2013), Electoral Act 2014 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013; and
- Addressing of issues noted in the FEC Annual Report with reference to the Multinational Observer Group Report on the 2014 Election and the consideration given to the proposed recommendations to address these issues.

There was also a comparative analysis of various foreign jurisdictions conducted to see the electoral practices of their electoral management bodies. With that I wish to advice

of a caveat to the result of the comparative analysis; and that is that there is no perfect model or right practice for electoral management bodies – the result was used as a mere guidance for the Committee, in making its own independent view of what it thought best, for Fiji’s circumstance.

At this juncture I would like to acknowledge the Members of the Standing Committee on Justice, Law and Human Rights of the last term of Parliament for their efforts and input, which has greatly assisted our Committee in the compilation of this report.

I would also like to thank the Honourable Members of the Justice, Law and Human Rights Committee, Hon Rohit Sharma (Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Salik Govind and Hon. Mosese Bultavu, for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the secretariat, the voters, elected politicians and representatives of Fiji’s electoral management bodies who accepted the invitation of the previous Committee and made themselves available to make submissions and for taking an interest in the proceedings of the Committee and Parliament.

I, on behalf of the Committee, commend the Committee’s Report on the *Fijian Electoral Commission Annual Report 2014* to the Parliament and seek support of all the members of this August house for the recommendations by the Committee.


.....
Hon. Alvick Avhikrit Maharaj
Chairperson

1.0 INTRODUCTION

The Standing Committee on Justice, Law and Human Rights of the last term of Parliament was referred the Fijian Electoral Commission Annual Report 2014. The same report had been re-instated in this new Parliament and has been referred to the current Standing Committee on Justice, Law and Human Rights. Just as the previous Committee, the current Committee was mandated by Parliament to review these report and report back to Parliament on its findings.

Procedure and Program

The Committee began its review of the Annual Report on 12 July 2016. The Committee's procedure and program for the review started with first reading through the Report and noting issues which were mainly based on the recommendations made by the Fijian Electoral Commission. The Committee invited numerous key stakeholders and interested individuals to submit on the Annual Report. Further deliberations were then conducted and submissions were received by the Committee. Issues were noted and clarification was then sought from the Fijian Electoral Commission (both the 2014 and 2017 Commission), the Fijian Elections Office (via the Supervisor of Elections) and the Minister responsible for Elections.

2.0 FIJIAN ELECTORAL COMMISSION ANNUAL REPORT 2014

The Fijian Electoral Commission ("FEC") was constituted by Section 75 of the *Constitution of the Republic of Fiji (2013)* (hereinafter also referred to as "the *Constitution*") and mandated to carry out the responsibilities as stated in Section 75(2), (3) and (4).

The *Fijian Electoral Commission Annual Report 2014* ("FEC Report") was tabled in the last term of Parliament and was referred to the previous Committee on February 2016. The FEC Report looks at the activities of the Commission together with its financial report 2014.

The FEC Report does not cover the detailed operational aspects of the 2014 General Election; this was captured in the Supervisor of Elections October 2014 Report and the Joint Report by the Supervisor of Elections and the Fijian Electoral Commission.

The FEC Report covers topics such as a brief background of the Fijian Electoral Commission, the Legislative Framework of the Commission and the Supervisor of Elections ("SoE"), the structure of the Commission, the institutional support, the budgetary allocation, the independent legal advisor, the support from development partners, minor details of the work of the Commission, the appointment of the SoE, the relationship between the Commission and the SoE, the governance of the Commission and the SoE, the meetings with stakeholders, voter education, the Notice of Nomination, the Notice of Poll, complaints during the election period, the numerous issues that arose during the election period and the recommendations by the Commission.

This Report will focus on the issues and recommendations highlighted in the FEC Report 2014 and the Committee's views on these.

3.0 DELIBERATION AND FINDINGS BY THE COMMITTEE

3.1 INITIAL DELIBERATION BY THE COMMITTEE

From the previous Committees deliberation the main issues noted were as follows:

Issues and recommendations noted from the FEC Report.

Independence of the Fijian Electoral Commission (FEC):

The FEC Report highlighted the issue pertaining to independence of the Commission and the main arguments pertaining to this issue can be summarised as follows:

- to assist in maintaining independence of the FEC, it should have its own budget and be allowed to determine without interference how to utilise the budget, and only subject to scrutiny by the Auditor-General's Office;
- the Commission should be able to procure its own independent legal adviser and legal services and not to solely rely on the Solicitor-General;
- there needs to be clarification on the roles and governance structure of the Commission and the SoE, since the governance structure in 2014 limited the FEC from fulfilling its role.

Appointment of the Supervisor of Elections

The FEC Report also highlighted the issue of the filling of the position of the Supervisor of Elections. This was specifically with respect to the position being left vacant for a long period of time before the appointment was made. The Commission had reservations on the appointment since it had recommended for re-advertisement of the position.

The FEC Report further noted that certain pieces of legislation needed to be reviewed and amended. These include the *Constitution*, the *Electoral Act 2014* and the *Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013*.

Amendments to the Constitution

- Sections 53(3), 61 and 64(1) and (2).

Amendments to the Electoral Act

- Sections 23(4)(g), 36(2)(c), 52(2), 43, 53(1A), 67(7)(a), 79(4), 81(3), 83(1), 86(1), 88(2) and (4), 102, 103, 104(6) and (8), and 119.

Amendment to the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.

- Section 6(3)(i).

It was also noted that it was prudent to also look into the 2014 General Elections Final Report by the Multinational Observer Group (“MOG Report 2014”) for reference purposes for the FEC Report. The MOG Report was also read in conjunction with the FEC Report and this laid the foundation for the issues to be deliberated on and clarification sought by the Committee.

Furthermore it was noted that these issues were discussed extensively by the previous Committee and the three political parties represented in the Parliament were also invited to submit their views on the FEC Report before other key stakeholders such as the public, the Fijian Electoral Commission, the Fijian Elections Office and other political parties were also invited present their views.

3.2 EVIDENCE VIA SUBMISSIONS RECEIVED AND HEARD

The previous Committee sent out invitations for submission on the Report and received and heard submissions from numerous organisations and individuals. The current Committee deliberated on this evidence and resolved that the evidence received are sufficient. Names of organisations and individuals that presented before the previous Committee are as follows:

- i. Citizens’ Constitutional Forum
- ii. Fijian Electoral Commission (Mr. Chen B. Young’s Commission – January 2014 – January 2017);
- iii. Fijian Electoral Commission (Mr. Suresh Chandra’s Commission – January 2017 – till present day);
- iv. Fijian Elections Office (Supervisor of Elections and team);
- v. Fiji First Party (FFP);
- vi. Fiji United Freedom Party (FUFPP);
- vii. Inter-Party Group (NFP, FLP, SODELPA, PDP, FUFPP, Unity Fiji);
- viii. Mr. Mick Beddoes;
- ix. Mr. Sharveen Chaudhary;
- x. Media Industry Development Authority of Fiji (MIDA);
- xi. National Federation Party (NFP);
- xii. Social Democratic Liberal Party (SODELPA);

These submissions covered a range of issues which were noted from the Report itself, the MOG Report 2014 and first-hand accounts of what transpired during the 2014 General Election. Written copies of the submissions and Verbatim Reports of the submissions are uploaded along with this Report onto the Parliament website: www.parliament.gov.fj.

3.3 COMPARATIVE ANALYSIS OF FOREIGN JURISDICTIONS

Apart from the submissions received, the previous Committee also looked into foreign jurisdictions to see how their electoral systems and electoral management bodies operate. It relied on its own research based evidence and also the assistance of a consultant, Mr. Kevin Deveaux for this part of its deliberation. It looked into the electoral systems and electoral management bodies of numerous foreign jurisdictions including: Queensland (Australia), Nova Scotia (Canada), New Zealand, India, Singapore, Scotland and South Africa.

The Committee's main objective for conducting the comparative analysis was to see what the practice is in the electoral management bodies of other jurisdictions, when it comes to the issues noted in the FEC Report. The Committee zoned in on the main issues noted in the FEC Report and compared the situation in Fiji to the practice in the other jurisdictions. A complete tabulated format showing the different comparisons of other jurisdictions is provided as 'Appendix B' to this Report.

This jurisdictional research included Reports and journal articles compiled on electoral management bodies of various countries in the world including the above mentioned countries. These Reports and journal articles were very comprehensive and highlighted and addressed some of the main contentious issues also noted from the Fijian Electoral Commission Annual Report 2014.

The Committee wishes to invoke a caveat to the result of the comparative analysis; that there is no perfect model or right practice for electoral management bodies. The Committee used its result of the analysis as a reference and guidance to what it thought best for Fiji's circumstance.

According to the electoral laws, the respective electoral management body websites and the annual reports of the electoral management bodies of the jurisdictions reviewed by the Committee, the electoral systems in the above mentioned respective jurisdictions had various differences. However it should be noted as stated in the research study commissioned by Elections Canada that "there is no such thing as a perfect model for electoral management bodies" (Thomas & Gibson, 2014).

The above statement should be the basis for understanding the main purpose for the Committee's analysis of other jurisdictions; the Committee sought to see if the issues that were raised in the FEC Annual Report 2014 are also present in other jurisdictions. There are various forms of practices across the jurisdictions, however one vital aspect that was noted was that the fundamental principles behind the election processes remained the same – that an election should be impartial, independent, free and fair (Thomas & Gibson, 2014).

The Committee focused on the main issues noted from the FEC Annual Report 2014 and compared these with the practice in other jurisdictions. These comparison can be summarised as follows:

Structure (Governance)

From the countries analysed, most countries had different structures of their electoral it was noted that South Africa had a similar set up to that of Fiji, in that there is a 5-person Commission (the Independent Electoral Commission) which is headed by the Chairperson. There is also a Chief Electoral Officer who is not part of the IEC, but is appointed by it. There is one aspect of the structure that stands out in the jurisdictions looked into by the Committee, and that is that the Parliament or Cabinet has a role in the appointment of the Commission.

Access to Independent Legal Counsel

In most of the jurisdictions, the electoral management body can directly seek counsel and experts and/or has powers to do all things necessary or convenient to perform its functions and to meet the objectives of the electoral laws.

Independence – Accountability and Budgetary Independence

When it comes to independence, some form of autonomy of the budget is seen as a contributing and critical factor in achieving independence since requiring the electoral management body (EMB) to discuss its budget with the political executive and/or the central budgetary agencies in government could create a risk interference in decision-making (Thomas & Gibson, 2014, page 23).

In Canada, the electoral management body's annual appropriation budget is debated and voted on by Parliament but the EMB it is given the authority to draw from the Consolidated Revenue Fund without Parliamentary approval for its statutory budget, which is used for elections and referendums. Elections Canada reports directly to Parliament and not to a minister of the Crown.

Other countries such as Australia, the electoral management body reports to Parliament through a Parliamentary Committee, but such a committee only has an advisory role and does not give binding directives. The budget of the EMB in Australia is submitted to Parliament through the Department of Finance budgetary portfolio just like other government departments. Once budget is approved, the EMB has the discretion to spend it as it sees fit within the limits approved by Parliament.

India is quite unique in this aspect, as it does not have any legal obligations to report to Parliament, but does provide papers and reports to the public and Parliament and its finances is scrutinised by both the Comptroller and Auditor General. The budget of India's EMB is through a voted allotment approved by Parliament, and the Secretariats expenses are met by budget grants through the central government's Ministry of Law and Justice.

Disqualification from candidacy due to conviction

In the jurisdictions analysed, it was noted that disqualification from being a candidate due to a conviction was a norm. Disqualification criteria ranged from serving of a current prison sentence of 12 months or more, convicted of corrupt or illegal election practices, convicted of criminal offence with a maximum sentence of 5 years or more. Therefore Fiji was not alone in this aspect but it was seen that the criteria for disqualification was unique in every jurisdiction.

Disqualification from candidacy due to public office holder

In the jurisdictions analysed, it was noted that candidacy disqualification due to the fact of holding a public office was also a norm. Criteria for such disqualification seem to focus public office holders and this can be expanded to include persons who are trade union officials who are public servants. Therefore this aspect of disqualification of a candidate from elections is seen as a uniform practice.

3.4 FINDINGS

The Committee has reviewed the deliberation by the previous Committee and the recommendations under the FEC Annual Report 2014 with reference to the MOG Report on the Election 2014. The FEC Annual report is the first time the previous Committee had reviewed annual reports from the Government of Fiji and provided its recommendations to the Parliament. As such we view our mandate with regard to the review of annual reports as follows. Our mandate is to review the content of an annual report, seek public input into the contents of the report and to comment on such contents, including any recommendations provided in a report.

In the case of this annual report, the Committee reiterates the position of the previous Committee that our mandate was fulfilled by reviewing the recommendations of the FEC (as it was then constituted) with reference to the MOG Report. Any submissions from the public and stakeholders that were relevant to the contents of the report was also considered. The Committee does not see this process as a review of the entire electoral system, but the specific issues raised in the annual report.

The Committee notes the numerous submissions that were provided to the previous Committee by stakeholders and the public in response to the annual report. The Committee appreciates the time taken to provide inputs from all submitters. The Committee also appreciates the engagement of the Supervisor of Elections in reply to the recommendations and submissions made.

Having noted the Committee's mandate with regard to this annual report, the Committee also recognises that such a comprehensive review of the current system should occur since the 2018 general election has been done. The Committee notes that progress has been made with regard to addressing many of the concerns raised in the annual report, yet every system has room for improvement. After the 2018 general election, two election cycles have been completed under our new electoral system and this gives us a fuller understanding of the challenges of this new system and an opportunity to gather and consider lessons learned. The 2018 election is now complete, and it would be an opportune time for a Parliamentary Committee to conduct a full review of the electoral system to ensure all aspects of the system are considered.

Furthermore it was noted that the previous Committee also endeavored to learn the physical and actual election processes which are undertaken by the Fijian Elections Office (FEO) and this led the Committee to conduct a site visit to the FEO whereby the SoE, under the endorsement of the Fijian Electoral Commission, took the Committee through the election process. This greatly assisted the Committee in getting clarification on some of the issues noted on the election process.

The Committee's findings from its deliberation on the *Fijian Electoral Commission Annual Report 2014* are provided in the tabulated format below. The Committee believes that the recommendations would be a first step for going forward.

4.0 RECOMMENDATIONS

After its extensive deliberation, the Committee recommends the following as a way forward. Below is a table capturing the main recommendations proposed by the Committee.

<i>Main Recommendations proposed by the Committee</i>
<p>Recommendation 1: For a number of the recommendations noted in the FEC Annual Report (2014) and the MOG Report (2014) the Committee notes that there will be more evidence upon which to determine if there are still challenges after the 2018 election – which will be determined from the Commissions Annual Report. Therefore, after the upcoming election, Fiji will have had two electoral cycles completed and that will be a good time for Parliament, post-election, to do a comprehensive review of the system to gather lessons learned from previous two elections and to compare with best practices in election management, with the goal that Fiji have the best electoral system possible.</p>
<p>Recommendation 2: The Committee recognises that the FEC and the FEO require the resources and structures to be independent as an important part of the legitimating the election of a democratic government in Fiji. The Committee also recognises that similar jurisdictions have adopted a role for the Parliament as a means of ensuring that the electoral process is perceived as independent. Therefore the Committee recommends that a Parliamentary Committee be mandated to oversee the monitoring and review through the Commission’s Annual Report.</p>
<p>Recommendation 3: The Committee recommends that for a number of recommendations from the Fijian Electoral Commission Annual Report 2014 (and the MOG Report 2014) and notes that progress has been made towards addressing the issue(s) raised, however, that a Parliamentary Committee should continue to monitor and review the situation.</p>
<p>Recommendation 4: The Committee recognises that s. 64 of the Constitution (requirement for a by-election to fill one or more seats in Parliament) may result in an expensive by-election to fill one or more seats, but given this is a constitutional provision, any change would require further review and discussion.</p>
<p>Recommendation 5: The Committee notes that the process under s.104 of the Electoral Act is only used where two or more parties are allocated fractions of a seat. The Committee recommends that for these circumstances the party with the higher fraction should be allocated the seat. Where each party is allocated .5 then the current policy of drawing names from a hat should continue.</p>
<p>Recommendation 6: The Committee agrees with the FEO that the Political Parties Act should be amended to reflect that the FEO need not publish more than 7,500 names, no matter the number of members submitted, in order to comply with the notification provisions of registration of political parties.</p>

Recommendation 7:

The Committee notes that international standards allow both polling staff and a third party designated by the voter to assist where necessary. The Committee recommends that the international standard be reflected in the Act.

Recommendation 8:

The Committee recommends that the penalties for an offence under the Electoral Act should be reviewed to reflect international standards.

5.0 CONCLUSION

After reviewing the *Fijian Electoral Commission Annual Report 2014*, the Committee recommends that the House takes note of its contents.

The Standing Committee on Justice, Law and Human Rights has fulfilled its mandate approved by Parliament, which is to examine and review the *Fijian Electoral Commission Annual Report 2014* with due diligence.

The Committee's review findings showed some contentious matters which were addressed by the Committee and these were reflected in its findings and recommendations.

The Committee through this report commends the *Fijian Electoral Commission Annual Report 2014* and the contents of its Report to the Parliament.

SIGNATURES OF THE MEMBERS OF THE STANDING
COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS



Hon. Alvick Maharaj
(Chairperson)



Hon. Rohit Sharma
(Deputy Chairperson)



Hon. Ratu Suliano Matanitobua
(Member)



Hon. Dr. Salik Govind
(Member)



Hon. Mosese Bilitavu
(Member)

9/05/19

(Date)