

**SUMMARY OF THE RESPONSE OF THE SUPREME COURT OF FIJI TO
QUESTIONS REFERRED TO IT BY CABINET UNDER SECTION 91(5) OF THE
2013 CONSTITUTION OF THE REPUBLIC OF FIJI**

On 11 June 2025 the Cabinet referred to this Court over the signature of the Prime Minister five questions under section 91(5) of the Constitution. That section says that:

Cabinet may seek an opinion from the Supreme Court on any matter concerning the interpretation and application of the Constitution.

The questions referred by Cabinet concerned sections of the Constitution providing for its amendment. They are to be found in Chapter 11 of the Constitution and in particular in sections 159 and 160. The Court was also asked for its opinion on whether the 1997 Constitution is still valid and applicable.

The Court considered that before it could answer any of these questions it had to be satisfied that it had jurisdiction to do so. It could only exercise jurisdiction under the 2013 Constitution if it recognised that Constitution as the legally effective Constitution of Fiji.

Even though the Courts of Fiji have heard cases arising under the 2013 Constitution before, they have not addressed the fundamental question whether it is the legally effective Constitution of Fiji.

The question whether the 2013 Constitution is the legally effective Constitution of Fiji is a question to be answered by applying the common law of Fiji, which has been part of the law of Fiji and its ultimate constitutional foundation since the Deed of Cession in 1874.

The common law to which we look to develop and apply criteria of recognition to the Constitution has been a constant part of the law of Fiji through all of the upheavals of the last four decades.

As a matter of common law, the Court holds that it should recognise the 2013 Constitution as the legally effective Constitution of Fiji. It so holds having regard to the time that has passed since its inception, the many laws that have been passed under it and the three popular elections that have been held under it. The Court takes judicial notice that individuals and businesses will have organised their affairs and made their arrangements in reliance upon it.

It does not follow that everyone admires or respects the 2013 Constitution, however. It was imposed on the people, not chosen by them. There is therefore a democratic deficit. We regard the amendment provisions of the Constitution as rendering it virtually unamendable by requiring three-quarter majorities in Parliament and of all registered voters at a subsequent referendum, voting or not. This mechanism effectively disempowers the people as a whole from effecting democratic change.

Our recognition of the Constitution is therefore qualified. We will not recognise the amendment provisions as they presently stand. We will recognise them as legally effective when interpreted to reduce the majority requirements to workable levels — two-thirds of all members of Parliament, coupled with a simple majority of electors voting at a referendum. In this way, we have recognised the basic structure of the amendment provisions, requiring approval from both members of Parliament and voters, and have remedially interpreted them only to the extent necessary to make democratic control possible.

In so doing we do not accept the contention of the State that the Constitution can be amended simply by a simple majority of the Parliament.

It is our view that the qualified recognition we give to the 2013 Constitution empowers the people of Fiji to undertake such changes as they think appropriate — making change feasible but not making it so easy that it can too readily be effected by one interest group or another.

In the interests of stability and continuity we recognise section 159(2)(a) that makes Chapter 10 relating to immunities not subject to amendment. We also recognise section 159(2)(b) which preserves the transitional provisions in Chapter 12. We do not recognise section 159(2)(c), which prevents amendments to the amendment provisions themselves.

Having recognised the 2013 Constitution by application of the common law including a remedial interpretation of the amendment provisions we have jurisdiction to answer the questions posed by the Cabinet.

The Court will make Declarations to reflect the fact that it recognises the 2013 Constitution and the terms on which it does so.

In light of those Declarations it will answer the questions posed by the Cabinet.

The declarations made by the Court and the answers given to the questions asked are as follows:

[1] We make the following Declarations:

1. Subject to Declaration 2, the Court recognises the 2013 Constitution as the legally effective Constitution of the Republic of Fiji.
2. In relation to Chapter 11, the recognition of the 2013 Constitution of the Republic of Fiji as legally effective is limited as follows:

2.1 Recognition does **not** extend to s 159(2)(c).

2.2 Section 160(2)(b) is recognised, but subject to the reading down of the words "three quarters" to "two thirds".

2.3 Section 160(6) is recognised, but subject to the reading down of the words "three quarters of the total number of registered voters" to "a majority of those registered voters who vote in the referendum".

In all other respects, ss 159 and 160 are recognised.

3. By reason of its recognition of the 2013 Constitution as set out in the preceding Declarations, the Supreme Court has the jurisdiction conferred upon it by s 98(3)(c) read with s 91(5).

[2] In the exercise of its jurisdiction under s 98(3)(c) of the 2013 Constitution, the Court expresses its opinion on the questions referred to it by Cabinet by way of the following answers.

Question (a): Are the provisions of Chapter 11 and of Part D of Chapter 12 of the Constitution of the Republic of Fiji binding on the people of Fiji, the Parliament of Fiji and the Supreme Court with the effect that none of those provisions can ever be amended, regardless of the will of Parliament or of the people voting in a referendum?

Opinion: The provisions referred to are binding to the extent that they have been declared by this Court to be legally effective.

Question (b): May the provisions referred to in [Question] (a) be amended following enactment of a Bill in Parliament to do so, in terms thought fit by Parliament?

Opinion: Amendment of the provisions of Chapter 11 recognised by the Court may be commenced by enactment of a Bill in accordance with the procedures set out in s 160(2) and supported at the second and third readings by the votes of at least two-thirds of all members of Parliament.

Question (c): Is approval of any amendment proposed in accordance with [Question] (b) effective only if approved by the people of Fiji at a referendum?

Opinion: Approval of any amendment to the Constitution by a majority of the registered voters voting in a referendum is necessary to make any amendment legally effective.

Question (d): Is any special majority, and if so in what proportion, necessary for an enactment under [Question] (b) or approval by referendum under [Question] (c)?

Opinion: Two-thirds of all members of Parliament must support an amending Bill at the second and third readings and a majority of voters voting in a referendum in relation the proposed amendment(s) must vote in favour of the amendment(s).

Question (e): Is the 1997 Constitution still valid and applicable?

Opinion: No.