

**STANDING COMMITTEE ON**  
**JUSTICE, LAW AND HUMAN RIGHTS**

**[Verbatim Report of Meeting]**

**HELD IN THE**

**COMMITTEE ROOM (EAST WING)**

**ON**

**TUESDAY, 7TH MAY, 2019**



**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 7TH MAY, 2019 AT 9.05 A.M.**

**Interviewee/Submittee: Department of Public Enterprises**

In Attendance:

- |    |                      |   |                                 |
|----|----------------------|---|---------------------------------|
| 1. | Ms. Makereta Konrote | - | Permanent Secretary for Economy |
| 2. | Ms. Laisa Bolalevu   | - | Director Monitoring             |
| 3. | Mr. Sujeet Chand     | - | Director Policy & Divestments   |
| 4. | Mr. Narend Prasad    | - | Principal Policy Analyst        |

Office of the Solicitor-General

- |    |                     |   |                          |
|----|---------------------|---|--------------------------|
| 1. | Ms. Tracy Wong      | - | Deputy Solicitor-General |
| 2. | Ms. Leanne Vaurasi  | - | Senior Draftsperson      |
| 3. | Ms. Valerie Narayan | - | Legal Officer            |

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MR. CHAIRMAN.- Good morning, ladies and gentlemen. I would like to welcome the Team from the Department of Public Enterprises, who are here this morning to make submissions with regards to the Public Enterprises Bill 2019 (Bill No. 4 of 2019).

On behalf of the Committee, I would like to thank you all for taking out your time and availing yourselves to be present here this morning. Before we go any further, I would just like to introduce my team.

(Introduction of Committee Members and Secretariat by Mr. Chairman)

Without any further delay, I give the floor to you to do your presentation. Thank you.

MS. M. KONROTE.- Thank you very much, Honourable Chairman and Honourable Members. Thank you again for the opportunity for the Department of Public Enterprises under the Ministry of Economy, to make submissions on the Public Enterprises Bill 2019 this morning.

Let me just briefly introduce the team that is here with me.

(Introduction of Department of Public Enterprises Officials by PS for Economy)

Also together with us is the team from the Solicitor-General's Office. I think you are all familiar with the Deputy Solicitor-General, Ms. Tracy Wong; next to her is Ms. Leanne Vaurasi, the Senior Draftsperson in the team; and also Ms. Valerie Narayan, a Legal Officer from the Solicitor-General's Office.

Mr. Chairman, with those introductions, we just want to say from the outset that the Department is fully supportive of this Bill, as has been highlighted by the Honourable Minister in the Parliament session. The current Public Enterprises Act 1996 focusses on the formation and monitoring of commercial entities that were created under the Act. The review, in this instance,



makes an opportunity for us to be able to revise the Act and to put in place a new, modern and simplified Bill.

We have worked in close collaboration with the Solicitor-General's Office and also with the initial Advisor Board from the Asian Development Bank (ADB). Also, the Honourable Minister had mentioned in Parliament that this is part of the reform policies that Government is required to undertake in order to access policy-based financing from the ADB.

What are some of the motivations of reviewing the Act? One of it is to ensure that the Act remains relevant. Since 1996, there were some, I suppose reviews, but no major changes so in order to ensure that the Act is on par in terms of the business environment and changes in technology, we think that it is timely that the legislation governing all public enterprises is reviewed.

Another aspect is to ensure that we strengthen the legal framework for public enterprises. So the Bill seeks to improve corporate governance, the ownership monitoring, reporting and accountability, as well as the monitoring of the Non Commercial Obligations (NCOs) under the Bill.

The Bill, you will notice, has also removed the distinction between Government Commercial Companies (GCCs) and the Commercial Statutory Authorities (CSAs). So in the Bill there is only one category of entities which simply referred to as public enterprises.

The Bill also provides a clear mandate for all public enterprises to operate on a commercial basis and to ensure that they are efficient and profitable. Notwithstanding this, the provision of NCOs are protected in the Bill. The type and level of the NCOs will be discussed between Government and the respective public entity and, of course, there will be a separate accounting of those NCOs.

Another important aspect of the Bill is the emphasis that has been placed on Board of Directors. You will note that there are sections outlining the Board appointments, details of Directors conduct and the entire management of the public enterprises. The Bill also aligns with the Companies Act 2015, so that would address any inconsistencies without a legislation.

The Bill also streamlines the re-organisation process that relates to Government Departments that have been re-organised into commercial entities.

Mr. Chairman, in line with the Bill, the Department will in due course, update its Policy Frameworks, in particular the Monitoring Framework and the Corporate Governance Framework.

Finally, Mr. Chairman, there is the list of currently 11 public enterprises under Schedule 1 of the Bill, but on this note, we would like to add here that we are of the view that there are other entities that should be considered in terms of the monitoring under the Bill, for example, the Fiji Roads Authority (FRA). So while they are not covered, we think that in terms of the Board appointments, they should be added. It should follow the provisions of the Bill and should come under the Minister responsible for Public Enterprises, together with the Honourable Prime Minister's approval.

Mr. Chairman, I will stop here and we welcome questions, if there are any from the Honourable Committee Members. Thank you.

MR. CHAIRMAN.- Thank you, PS, for that presentation. If I am getting correctly, would you like to actually incorporate FRA to that Schedule 1? Are you saying that?

MS. M. KONROTE.- What we are saying is the Board appointments for FRA, should be aligned to the appointments for entities covered under the Public Enterprises Bill.

MR. CHAIRMAN.- So how do you propose we incorporate that in this particular Bill?

MS. T. WONG.- Thank you, Mr. Chairman. Similar to the provisions in the consequential amendments in the Bill, for WAF, MSAF and BAF, FRA being a similar entity should follow that same procedure in terms of the consequential amendment in Schedule 2.

MS. M. KONROTE.- Mr. Chairman, just to add, I think one of the reasons why we feel that it is appropriate to include the entity, such as FRA simply because we are in the process of preparing the budget for 2019-2020. So, we think it is appropriate that there is greater monitoring through the respective Boards.

MR. CHAIRMAN.- Honourable Members, the floor is open now, if you have any further comments.

PS, now that we have the Department of Enterprises based at the Ministry of Economy, so it will fall under your jurisdiction. There was something that was quite common when we spoke to these public enterprises, and that was having alternate directors because most of the time the directors are not present or they are not able to avail themselves, especially the civil servants who are sitting in Boards, so they do not have a quorum.

Mostly, the CEOs are saying that their work is hindered as a public enterprise and as a commercial entity. What is your suggestion of having alternate directors because I believe directors are appointed as a person, so they cannot say that they are alternative if they are not available but having alternate directors, what are your thoughts with regards to that?

MS. T. WONG.- Mr. Chairman, in respect to statutory bodies, the actual governing legislation itself would prescribe whether or not an alternate could be appointed. My understanding is that, in most cases with the statutory bodies, you will not be able to appoint an alternate to sit on that Board unless it specifically says, for example, "That the Permanent Secretary for Economy or his or her representative", that is in the case of statutory bodies.

In the case of companies, alternate directors under the Companies Act may be appointed. So if it is a company registered under the Companies Act, an alternate may be appointed but they would actually have to be appointed as an alternate director.

MR. CHAIRMAN.- I believe that is something we cannot incorporate into the Bill itself because that would be the policy decision at the end of the day whether the Government of the day wants to have an alternate or not.

MS. T. WONG.- As the shareholder, yes, that is correct. But also it cannot apply to all public enterprises because some public enterprises, such as FMIB are statutory bodies.

MR. CHAIRMAN.- Madam, you also said that there are certain State-Owned Entities that are not part of this particular Bill. Just thinking broadly because this Bill covers a lot of social responsibilities and we have some State-Owned Entities which are not making a considerable amount of profit at this point in time, is that one of the hindrance factors that they are not part or they are not recognised as a public enterprise at this point in time?

MS. T. WONG.- Honourable Chairman, yes, that is correct. In order to be a public enterprise, the elements require that they are to be State-controlled, that is one of the elements. One of the other elements is that, the Minister must be of the view, I think it is under Clause 9 that the relevant entity should be operated in line with public enterprise principles and principles are set out in Clause 6 of the Bill.

As you have said, the main principles are the principle of:

1. commercial objective where they must operate on a commercial basis that is efficient and profitable;
2. measurable performance, that they must identify business goals;
3. responsible management where they must be competent, honest and accountable.
4. transparent performance; and
5. monetary performance.

But the main one there that relates to whether or not you should be or should not be a public enterprise is whether or not the entity has a commercial objective. So, for example, an SOE such as WAF, its main focus is to ensure that there is supply of water to the Fijian public and not necessarily that they are charging commercial rates.

MR. CHAIRMAN.- I believe the last one from my side is with regard to the submission that came from the Office of the Auditor-General, and most likely public enterprises. What mostly OAG says is, "The Ministries that delay in providing information for the audit to be carried out."

When we actually spoke to the Department of Public Enterprises, they complained that OAG always delay in the auditing of their accounts.

In this particular context when we are dealing with the commercial companies, can these commercial companies or public enterprises that are listed in this Bill can go ahead with an external auditor and prepare their financial report without OAG auditing the entity itself?

MS. M. KONROTE.- Honourable Chairman and Honourable Members, I think there is an Act that requires most of the public enterprises to be audited by the Auditor-General. I think the complaint is coming when their accounts are being delayed when audited. We can get back to you, Sir, and the Committee on how we can get around that. There have been some requests from the entities that they go directly to the external auditors rather than through the Auditor-General.

MR. CHAIRMAN.- Yes, that was one of the major concerns that was raised when we were getting public submissions from all those entities, that the OAG takes too long to audit their accounts.

MS. T. WONG.- Honourable Chairman, I believe the Office of Solicitor-General had provided some feedback on this particular point in our letter of 24th April, 2019. Clause 56 of the Bill requires that a public enterprise have its financial statements prepared and audited in accordance with the Financial Management Act.

Under the Financial Management Act it states in Section 52 that the Annual Financial Statement of an Off-Budget State Entity is required to be audited under the applicable requirements of the Audit Act 1969.

And that Act in Section 6 states that the Auditor-General is responsible by law for auditing the accounts of all State entities. So under the law, the Office of the Auditor-General is required to

audit those financial statements, unless that particular public enterprise is exempted by regulations. So there are avenues for entities to be exempted from the requirements of the Audit Act 1969. But separately, there is nothing to prevent a public enterprise from engaging an external auditor. However, there is obviously a cost factor in doing so, in terms of engaging a separate auditor and having to obviously expend money.

Sir, in section 6(1)(b)(i), there is an option for Off-Budget State Entities to be exempted by regulations from being audited by the Auditor-General. So if the situation arose where a particular public enterprise was having issues in having their accounts audited by the Auditor-General, there are avenues for which regulations can be prescribed under the Audit Act to be exempted from the Audit Act requirements and for them to be able to engage an external auditor, specifically to audit their accounts. But in any event under the Public Enterprises Bill, their accounts will still need to be audited.

MR. CHAIRMAN.- So that would mean they can go ahead with their Annual Reports with an external auditor, provided the regulation allows them and they are actually exempted to be audited an external auditor?

MS. T. WONG.- Correct, yes, Sir.

MR. CHAIRMAN.- Thank you.

MS. T. WONG.- And Permanent Secretary Economy just reminded me that they are also able to meet the cost of engaging that external auditor.

MR. CHAIRMAN.- Honourable Bulitavu?

HON. M.D. BULITAVU.- Thank you, Honourable Chairman, through you, *vinaka vakalevu* PS and Team from the Department of Public Enterprises and also from the Solicitor-General's Office, for coming this morning and presenting or giving your views on the Bill.

Moving around the country in our visit to various Government State-Owned enterprises, some are of the view that the Non-Commercial Obligation that they have in the Bill, that they be exempted from paying dividends to Government because that will substitute their social responsibility. For example, Airports Fiji Limited (AFL), which also manages some non-commercial or non-profitable airports, if that could be incorporated to be part of their social responsibility and they do not pay dividend to the State. What is your view on that?

MS. T. WONG.- Thank you, Honourable Member, for the question. The purpose of this Public Enterprises Bill is that, we move away from enterprises providing social responsibility merely because they are SOEs. So if an entity, for example, WAF is charging rates for water that are not commercial, that can be seen as being a non-commercial obligation. What the intention is of this particular Bill is to separate commercially run enterprises from general State-Owned Enterprises.

In the example of AFL where they are providing services to Government that maybe not commercial, such as airport services out in the outer islands, the intention under the Bill is that those services (I think it is under Clause 20 or 21) or particular obligations and what they are providing are negotiated between that particular public enterprise (AFL) and then Government actually cost that to determine how much that is actually costing the relevant entity. And the intention or the requirement under the Bill is that, the Government has to compensate or pay for that particular service. So if I am AFL, I am getting compensated for the non-commercial services that I have to provide.



As we were talking about before, not all State-Owned Enterprises will be public enterprises for that reason because many Stated-Owned Enterprises do not provide services on commercial terms.

The policy basis of public enterprises is that, they are supposed to be successful businesses. While they do provide services to their shareholders, that is, the Government, if they are not on arm's length on commercial terms, they should be properly compensated for that.

In terms of the social responsibility dividend, that was something that was raised by the Asian Development Bank (ADB) in their discussions with us in terms of the development of this Bill, in that, there was a need to move away from that because the NCOs were not being properly costed under the current 1996 Public Enterprises Act which was an issue in terms of ensuring that public enterprises were operating as commercial businesses.

You will see that Clauses 20 and 21 make it very clear that where there is going to be the provision of an obligation that is non-commercial, there must be a written agreement that is approved by Cabinet in terms of how much development that the public enterprise should have been paid for providing that service, and it must cover the cost to that public enterprise.

HON. M.D. BULITAVU.- Thank you for the answer. I think the intentions of those SOEs is trying to expand into internal commercial activities.

One of the reasons that was given by AFL was that, they want to invest more into modern technologies for their airspace monitoring. So how relevant are they in the current business that they are in and also in meeting international standards that they would like to buy some very expensive equipment? One of the deal was that if Government could look into that and that more of the profits that they rope in could be directed to buying those equipment.

How are we monitoring that, the sharing of profits, with what they should return back to Government? How are they coming into par with other technologies in their own field?

MS. L. BOLALEVU.- Thank you, Honourable Member. The dividend policy is highlighted under the Corporate Governance Policy. Right now, upon approval of the Minister, it is 50 percent of net profit.

Apart from that, public enterprises submit their Corporate Planning Documents before the beginning of the new year. So any capital expenditure or any investment proposal that they wish to go into, should be highlighted there and is discussed with the Government being the shareholder. Along with that, their Forecasted Financial Profits and Dividend Shareholders, so it is something that could be discussed with Government instead of just taking it out of the dividend when there is audited or unaudited profit.

HON. M.D. BULITAVU.- Some have raised their concerns in terms of the Statement of Corporate Intent that they have to make now, given that they are fearful of their own secrets that they will reveal to other competitors, and if there could be requirements in there whereby it should not give out a full disclosure of themselves. What is your view on that? That is in Clauses 22 and 23.

MR. S. CHAND.- Honourable Chairman and Honourable Members, I think if you refer to Clause 23(2), there is provisions that confidential or sensitive matters can be excluded from the Statement of Corporate Intent. I believe if there is a situation such as that, we do encourage our

entities to discuss with the Government or the Ministry, and I think that should be accepted as well in such circumstances.

HON. M.D. BULITAVU.- Just to take note of that, Honourable Chairman, that the Department of Public Enterprises can also clear that up with relevant stakeholders.

MR. CHAIRPERSON.- Honourable Member, I believe we went through that particular point that you have actually raised and the Committee did deliberate on it. There were two things raised; the confidential information in the Statement of Corporate Intent and the other one is, if they actually have to go to the Minister.

So, both concerns were actually dealt with. Firstly, we cannot actually get the Minister to be involved with regards to the Statement of Corporate Intent of a particular entity. That would actually see much interference of the Minister which the Bill is avoiding at this point in time. Secondly, the Statement of Corporate Intent does not carry too many confidential information about the entity itself. So, that was actually deliberated and agreed upon by the Committee.

With regards to social obligation being regarded as dividend, it is very interesting to see when CEOs and Chairpersons of Boards actually came and did their submission, on how they think commercially and to what extent they can go in order to make profit for their entities. One of them actually went on to say that a particular project which was actually funded by Government was supposed to be regarded as a social obligation from the entity. So, that is to that extent whereby some of the CEOs and the Chairpersons actually say that social obligations are regarded as dividend so that they can basically have more money seen in their bank accounts rather than paying out dividends. So, that was the gist of the first question.

Honourable Ratu Suliano Matanitobua or Honourable Rohit Sharma, any further comments? Madam DSG any further clarification? Any last comment from the submittees?

MS. M. KONROTE.- Mr. Chairman, thank you.

HON. M.D. BULITAVU.- This is just an easy question. Mr. Chairman, through you, again, Drafters and the Deputy Solicitor-General have explained about the Bill and the Department of Public Enterprises Senior Management and the PS, as stated in your presentation, the current Act of 1996 was more focussed on the reorganisation. Now, time has moved on and we are at this day and era where we are trying to be in line with other international standards, the position or status of our State-Owned Entities and how this Bill will actually make them relevant. You have stated that. However, what are some of the advantages that this particular Bill, if passed and becomes an Act, will make the operations of the Ministry easier and also with the various stakeholders that come under it - monitoring or through various stakeholders that come it - monitoring or through other divestments?

MR. S. CHAND.- Thank you, Honourable Member. Mr. Chairman, through you, I think that is a very valid question.

Firstly, if we look at the current 1996 Act, it was quite competency in terms of reorganisation processes which the Honourable Member has highlighted. It was something that was there which was the focus of the Government some time back. But I understand, like you have mentioned, that we are moving ahead in terms of other areas, such as divestment. So to answer your question, Honourable Member, this Bill does not prevent us from monitoring other enterprises which has been under reorganisation or divestment. As long as it is declared as a public enterprise under this Act, I

think we still can monitor those enterprises and some provisions of this current Bill can still apply to those enterprises as well. Thank you.

HON. M.D. BULITAVU.- Some of the divestment partners that have come in, they only come and take the managerial part of the shares that they own. Do you also monitor the whole entity and the other partner?

MR. S. CHAND.- Mr. Chairman, through you, for example, if I may refer to one of the Schedules for the Public Enterprises Bill, with Energy Fiji Limited (EFL), as you know we have already divested or allocated shares to those ordinary Bill payers. So EFL is still there, I mean, we can still monitor those enterprises, so as long as it is declared as public enterprise and listed under this Act.

MR. CHAIRMAN.- Thank you, Honourable Members and thank you, submittees, who are present here this morning. On behalf of the Standing Committee on Justice Law and Human Rights, I would like to thank you all for being present here this morning and for your submission. Thank you very much.

The Committee adjourned at 9.42 a.m.