



Please address all correspondence to the Chief Executive Officer

30 January 2019

The Chairman  
Standing Committee on  
Justice, Law and Human Rights  
Parliament of Fiji  
P.O Box 2353  
Government Buildings  
SUVA

**RE: FRCS Submission on Code of Conduct Bill 33**

1. Fiji Revenue & Custom Service welcomes the bill which is designed to cover the behavior of government officials on a daily basis.

The Fiji Revenue & Customs Service has its own Code of Conduct Policy which covers all the officers/employees and contractors. The FRCS Code of Conduct Policy 2017 issued by the CEO under the section 28 of the FRCS Act. The FRCS Code of Conduct Policy sets out the standards by which officers/employees and contractors are expected to maintain. These standards are:

Standard 1	-	Fair
Standard 2	-	Impartial
Standard 3	-	Responsible
Standard 4	-	Truthworthy

The Code of Conduct Bill regulates conduct of:

Schedule 1	-	President, PM, all Ministers
Schedule 2	-	Speaker, Deputy Speaker, MPs
Schedule 3	-	Judicial officers
Schedule 4	-	members of a commission under the Constitution and all members of a Statutory authority (board members of FRCS)
Schedule 5	-	all public officials (covers FRCS employees)

Therefore, under schedule 4 and 5 the Bill covers FRCS Board and employees. **There is no mention in the Bill if the Bill will also cover the conduct of the contractors, agents or consultants in the schedules 1 to 5.** However, under Part 2 section 5 it stipulates as offence by agents or consultants of the Commission.

*Commission to maintain confidentiality*

5.— (1) Any member, staff, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act,

- **We suggest that Bill covers the conduct of the contractors, agent consultants as well.**
- **We suggest/seek clarification that members of the commission will be covered by the Bill too as they will be deemed as civil servants as well**

2. FRCS currently has its own teams to conduct internal investigations and disciplinary hearings. These powers are vested to the respective teams under the FRCS Act and powers of the CEO. The complaints are received from members of public and the whistle-blowers against FRCS employees, customs and Tax Agents. The CEO then endorses the complaint if it has merit for investigation. The Ethical Standards Unit has experienced investigators who carry out the Ethical related investigations. During the course of the investigations or at the conclusion of an investigation, it is determined that the allegations are criminal in nature then the matters immediately reported to law enforcement agencies (Police & FICAC). FRCS People Capability & Culture (HR) Team is empowered to carry out disciplinary proceedings against staff for any breaches under the FRCS Code of Conduct Policy or Disciplinary Policies and Procedures. Gross misconduct under the Disciplinary Policies and Procedures may result in staff dismissals. Behavioral or performance related investigations are handled by the PCC team in accordance with Employment Relations Act (ERA). As per the ERA, employees not satisfied with the investigation and disciplinary outcomes may then take the matter to mediation and Employment Relations Tribunal. FRCS then has to defend its actions and decisions within the ER Tribunal.

**FRCS suggests that the Bill stipulate clear guidelines for the following:**

- **If a simultaneous complaint is received by both FRCS & the Commission who will then investigate? We have experienced that complainants prefer to complain to more than one agency or under circumstances where they believe it is taking too long for an investigation by one particular party. This is to take into accountability for Part 2 Section 5:**
- *Commission to maintain confidentiality*
  - 5.— (1) Any member, staff, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act, unless—
    - (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function of the Commission under this Act;
    - (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of civil or criminal proceedings or proceedings under this Act or any other written law;
    - (c) it is necessary to do so for reporting a suspected offence to the prosecuting authority, or assisting the prosecuting authority in its investigations; or
    - (d) it is necessary to do so for reporting a breach of the Code of Conduct by any person to the appointing authority of that person.
  - (2) Any person who breaches subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years, or to both.
- **Based on the above FRCS seeks clarification on the status of the FRCS Code of Conduct Policy when the powers will be vested to the commission to investigate the complaints, whether the FRCS code of Conduct will become Null and Void or the Commission will only investigate complaints reported to them. This is based on the fact that the bill applies to all FRCS employees.**

- PART 4 — MONITORING COMPLIANCE AND ENFORCEMENT OF CODE OF CONDUCT
- *Monitoring compliance*
  - 9.— (1) The Commission monitors compliance with a Code of Conduct by investigating any complaint made to the Commission under this Act concerning an alleged or suspected non-compliance with a Code of Conduct by any person to whom a Code of Conduct applies.
  - (2) The investigation of any complaint made to the Commission concerning an alleged or suspected non-compliance with a Code of Conduct by any person to whom a Code of Conduct applies must be done in accordance with the procedures set out in this Act.
- **Based on the above FRCS suggests that clear guidelines be stipulated pertaining to the powers of investigation of the commission. During the course of investigation, the Commission may seek information from FRCS regarding a particular complaint and this may involve Tax Payer information which is confidential and can only be released through use of a search warrant.**
- *Right to access material*
  - 15. Subject to section 16, when carrying out an investigation of a complaint which has not been summarily dismissed by the Commission under this Act, the Commission —
    - (a) is entitled to full access at all convenient times to all minutes, records, contracts, documents, books, accounts and other material of any Government ministry or department, that relate to and are relevant to the investigation; and
    - (b) may take extracts from, or make copies of, any such material.
- **Based on Section 149 (d) of the constitution, FRCS seeks clarification:**
  - Part A—CODE OF CONDUCT**
  - 149. A written law shall—
    - (d) make provision for the investigation of alleged breaches of the code of conduct and enforcement of the code of conduct by the Accountability and Transparency Commission, including through criminal and disciplinary proceedings, and provide for the removal from office of those officers who are found to be in breach of the code of conduct;
- **Will the commission engage in disciplinary proceedings or refer to the appointing authority (FRCS) to conduct the disciplinary proceedings?**
- **If the disciplinary proceedings are referred to the appointing authority, then will the Commission provide full disclosure of all evidences and findings to enable a fair disciplinary proceeding by the appointing authority**
- **FRCS suggest that based on section 149 (a, b, c, d,) that Misconduct and Gross Misconduct be defined and covered in the Bill to assist the Commission in making a final decision and for disciplinary proceeding purposes.**

**FRCS further suggests that the scope of prosecuting authority be expanded to include Police as well as we have experienced that complainants first report matters to law enforcement agencies and later report to FRCS. This would avoid any duplication of work by the Prosecuting Authority if such a situation arises.**

3. FRCS welcomes Part 6 of the Bill pertaining to declaration of assets.

## PART 6—DECLARATION OF INCOME, ASSETS, OTHER INTERESTS AND LIABILITIES

### *Application of this Part*

**25.—** (1) This Part applies to all persons holding the positions prescribed in Schedule 6, including any person acting in any such position.

(2) The Minister may, by regulations, amend Schedule 6 and prescribe other public officials or civil servants or members or employees of statutory authorities and other State entities to which this Part applies.

- **FRCS suggests that Schedule 6 and particular provision should also apply to Executive leadership officer holders such as Directors and Deputy Directors.**
  - **FRCS suggests that Judicial Officers of high Ranking should also be included**
  - **FRCS suggests that such information shall be disclosed to the CEO of FRCS as well or both the Commission and The FRCS shall enter into an MOU to share such information and verification.**
4. FRCS under its Code of Conduct Policy and Conflict of Interest Policy has its own Declaration of Interest and a designated form where all employees of FRCS including the Executive Leadership Team declares in the prescribed form all their interest including personal and business which may pose a potential situation for a conflict of interest. This also covers interest of spouse and children.

**FRCS suggests that for those not captured in part 6, that it be mandatory for all employees to declare their nature of interests both personal and business which may pose a situation of conflict of interest in relation to their employments. This information becomes vital for the Commission when conducting an investigation against the employees.**

**FRCS further suggests to the Commission to align itself to the Employment Relations Act when dealing with disciplinary cases as these may affect ones continued employment and livelihood.**

The Fiji Revenue & Customs Service gives its assurance that once the Bill becomes as Act, FRCS will align its own Code of conduct Policy to the said Code of Conduct Act.



[Visvanath Das]  
**CHIEF EXECUTIVE OFFICER**