

## **SUBMISSION TO PARLIAMENTARY STANDING** **COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS**

### **A. INTRODUCTION**

1. There is a recent upsurge in public demand for the accountability of Public Officials, Judicial Officers, Parliamentary Speaker and Members of Parliament (“**the Appointees**”) at all levels.
2. It has emerged from greater acceptance of democratic values and traditions around the globe.
3. Although on a first look the idea of holding the Appointees accountable seems attractive, yet a closer look unravels several issues which require discussion and policy recommendations for making the concept of accountability of the Appointees operational and to avoid any potential officeholders from being deterred or unnecessarily paranoid from taking up the position.
4. The Code of Conduct Bill in its present form seeks to set the dimensions of accountability and obligations toward financial disclosure so as to maintain transparency and trust in the offices of the Appointees.
5. The Water Authority of Fiji welcomes the Bill and is committed to working with Government in seeing that public offices and appointees are well monitored and every appointee’s prime responsibility remains placing public interest above their own personal interests, and conduct themselves in accordance with the Code of Conduct.
6. The Water Authority of Fiji considers the Code of Conduct as a proposed legislative measure to ensure accountability through mutually agreed Codes of Conduct applicable to relevant Appointees. This proposed legislation is line with Sections 129 and 149 of the Fijian Constitution which establish the Accountability and Transparency Commission and prescribe the application of a written law on Code of Conduct.

### **B. Unambiguity of the Law**

1. The proposed legislation seeks prescribe standards of personal and professional accountability applicable to Appointees in the interests of transparency and good governance.
2. Proper accountability ensues from accountability laws. The laws should be **unambiguous** about organization and personal accountabilities.

### **C. Proposed Amendments**

Water Authority of Fiji proposes the following amendments the existing Bill:

#### **I. The definition of Public Officials**

- Presently, the Bill defines Public Officials as those persons who are holders of the following offices:

*(a) an office created by, or continued in existence, under the Constitution;*

*(b) an office in respect of which the Constitution makes provision;*

*(c) an officer or employee of any statutory authority or of any commission established by, or continued in existence, under the Constitution;*

*(d) an office in the civil service or the disciplined force or a non-judicial office in the Judiciary; or*

*(e) an office established by written law,*

*but does not include a judicial officer, the President, the Prime Minister, members of Parliament, a member of a statutory authority, or a member of a commission established by, or continued in existence, under the Constitution, or any person to whom schedule 1, 2, 3 or 4 applies;*

- While this definition may not seem ambiguous in isolation, however its application under Schedule 7 needs to be relooked.
- Section 7 sets out the 6 Schedules which include Codes of Conduct and List of Appointees to whom the Financial Disclosure requirements under Section 25 apply to.
- The prominent ambiguity under Section 7 are subsections 7(5) and, 7(6). These state:

Section 7(5):

(5) The Code of Conduct contained in **Schedule 4** applies to *all members of a commission established by, or continued in existence, under the Constitution* and *all members of a statutory authority or a board of a statutory authority*.

- What Section 7(5) does not set out is as follows:
  - i. That the definition of Public Officer as described under (c) and (e) above, is what has been inserted in Section 7(5).
- Section 7(6) then goes a step further and states:

(6) The Code of Conduct contained in Schedule 5 applies to all **public officials**.

- i. Schedule 5 now includes all such persons as under the definition of public officials – pretty much all persons named in (a) to (e) in the definition of **public officials**.
- Which particular Schedule is applicable to WAF? Schedule 4 or Schedule 5?

## II. Section 25

- The Authority welcomes Section 25 of the Bill which requires financial disclosure by Appointees named under Schedule 6 thereof.
- Section 25(1) in its entirety states as follows:

*This Part applies to all persons holding the positions prescribed in Schedule 6, “including any person acting in any such position”.*

- Perhaps including the term “appointment” could be considered to ensure that the application of this provision to a person acting in such positions is indeed to those who are **Appointed as Acting**. A role in an Acting capacity infers that the Acting Officer is receiving the base salary or Acting allowance of the person who is intended to take up the position or is indeed receiving benefits for temporarily occupying the said position.
- **Acting** can also infer the delegation of responsibilities of an officeholder while the incumbent is away from office for work purposes or is ill or for any other such reason. Unless the Legislature has intended for all persons carrying out the duties and responsibilities of the Appointees named under Schedule 6, it is Water Authority of Fiji’s humble submission that the inclusion of the term “**Appointed**” be inserted.
- **This is also in-line with other terms of the proposed Bill such as “Appointing Authority etc”**

### **Financial disclosure requirements**

There should be a requirement for all public officials beyond a certain level and those dealing with such sensitive subjective as procurement and human resource management to file details of the assets and liabilities of themselves and their close family members such as spouses, sons, and daughters. The statements of financial disclosure should be subject to audit in such a manner that all such statements would undergo scrutiny in a given cycle.

## III. Schedule 6

- Water Authority of Fiji has noted that Schedule 6 contains a total of 63 Appointees who are Public Officials as defined in the Bill.
- Water Authority of Fiji understands the nature of their appointments and proposes the following for inclusion in Schedule 6:
  1. Director of Fiji Intelligence Unit – we understand that this has been previously proposed by Governor RBF and we agree with his submission.
  2. Deputy Solicitor General (Deputy Commissioner for FICAC is inserted?) – unless Deputy SG’s roles in the views of Legislature do not require her

to be subjected to disclosure requirements under Schedule 6, she should be included.

**CEOs of the following Statutory Commissions State Owned Enterprises and Government Commercial Companies:**

3. Commissioner for Fiji Higher Education Commission.
4. CEO Consumer Council.
5. CEO Fiji Public Trustee Corporation.
6. CEO Fiji Development Bank.
7. Fiji Airports Limited.
8. Fiji Broadcasting Corporation Limited.
9. Food Processors Limited
10. Post Fiji Limited
11. Fiji Rice Limited
12. Unit Trust of Fiji (Management) Limited
13. Viti Corp Corporation Limited.
14. Yaqara Pastoral Company Limited.
15. Fiji Hardwood Corporation Limited.
16. Energy Fiji Limited.
17. Assets Fiji Limited.
18. Housing Authority.
19. Biosecurity Authority of Fiji
20. Maritime Safety Authority of Fiji
21. Fiji Pine Limited
22. Pacific Fishing Company Limited
23. Copra Millers of Fiji Limited.
24. Fiji Sugar Corporation.
25. Fiji Airways.
26. Air Terminal Services.
27. Amalgamated Telecom Holdings Limited.
28. Fiji Ports Corporation Limited.

**D. Definition of Accountability**

Some more common definitions of Accountability are as follows:

*“Accountability is the obligation to render an account for a responsibility conferred. It presumes the existence of at least two parties: one who allocates responsibility and one who accepts it with the undertaking to report upon the manner in which it has been discharged.”*

*“[A]ccountability is synonym for responsibility.*

*“Accountability is a relationship based on the obligation to demonstrate and take responsibility for performance in the light of agreed expectations.”*

**Accountability requires a relationship of conferring responsibility and reporting back on the expected and agreed performance and on the manner in which the responsibility was fulfilled.** The rendering of account and acting in accordance with mutually agreed Codes

of Conduct, whether obligatory or on a voluntary basis, establishes the relationship of accountability. A robust framework of accountability, thus, moves away from the traditional outlook of blameworthiness or ‘catching a thief’ toward reporting on results achieved as compared to agreed expectations, highlighting practical constraints and willingness to improve in the light of experience.

#### **E. In Defence of the Appointees**

- The concept of public accountability should be enforced in such a manner that it encourages public officials to improve effectiveness of their positions rather than deter them from doing so.
- The following are some of the challenges that public officials face in complying with accountability requirements.

##### **(i) Neutrality**

- Good public administration practice requires that the Appointees should be neutral in terms of collecting and analyzing facts, reaching conclusions and implementing decisions.
- They should not take sides with politicians, while performing their jobs. The accountability of the Appointees involves accountability against being neutral.
- Their actions should conclusively show that they acted without bias, political partisanship or personal objectives and in an explicitly expert manner.
- The Appointees should support the elected government within the broader framework of constitution and law.

##### **(ii) The problem of inconsistency of time**

- One of the problems in accountability is created by what is called ‘inconsistency of time.’ In public administration, the Appointees base their plans and policies on the known facts.
- However, in actual practice, there is always a time lag between the time plans are conceived and the time they are implemented.
- In the intervening period, situation may change, requiring adjustments to the original plans.
- Sometimes, these adjustments are significant, leading to major changes to what was originally conceived. Holding the Appointees accountable for non-achievement of the original plans cannot be termed as good accountability. Had the Appointees followed their original plans, they would have been blamed for greater inefficiency, waste or impropriety.

(iii) **Limitations of the team leader**

- In certain cases, program delivery is the responsibility of a team working together.
- However, sometimes the team leader has a limited say in the selection and retention of the team members or in assigning tasks to individuals or in getting supplementary resources on a timely basis. In such situations, holding the team member accountable makes little sense.

(iv) **Incumbents defend the predecessors**

- The public officials act in the name of the office they hold, even though they may have acted with ulterior motives or gone beyond the applicable rules.
- Subsequently, if they are transferred out, the person who replaces the outgoing public officials find himself or herself forced to defend the actions of his predecessor. On forums like public accounts committee, the incumbent public officials comes up with all sorts of excuses and justifications for the actions of his predecessor, as he or she acts on behalf of the organization.
- The accountability of the predecessors would remain lukewarm until theory of public administration takes a strategic departure from one of its basic percepts.

(v) **Others include:**

- **Incompetence or negligence of the staff**

Public organizations have grown in size, employing hundreds or thousands of persons. There is no mechanism to ensure that all employees are efficient and competent at all times. Here and there somebody could be negligent, willfully or inadvertently. The question arises, who is accountable for the acts or omissions of the lower staff? Should we ask the secretary (senior public officials) to answer for acts of their subordinates? If we do that, it is certainly not possible for senior management to operate effectively. There is no easy answer to this dilemma. If it is result of non-implementation of internal controls, the operational public officials should accept the responsibility. However, if it is sheer negligence of the operating staff, then they should be held accountable.

- **Risks in public performance reporting**

Public performance reporting is a significant tool for enforcing accountability. However, by its very nature, it makes public officials resistant to it. Some honest public officials may like to state everything truly and honestly. However, they are not sure how their reports would be taken. These very reports in which they mention their performance truly and admit any shortcoming may be used as a beating stick to punish them. Moreover, not all public officials would be honest. Those who are able to fabricate their

performance and boast about it may score a point over the honest ones. Thus public performance reporting has its risks. Until guidelines for reporting are established and until independent verification is done, the reports could cause more harm than good to the cause of accountability.

- **Blackmail by media thugs**

Public officials are vulnerable before the media thugs. Honest public performance reporting or transparency in decision-making may provide hot stuff to the media thugs for blackmail or insinuation. Public officials are genuinely nervous about that. There are no safeguards against this blackmail except an effective code of ethics enforced by the media itself.

- **Honest error in use of discretion**

No set of rules can cover all possible scenarios. Situations keep on emerging that make it difficult to apply existing rules in a cut and dried fashion. Public administration thus recognizes a positive role for discretion of the decision-makers. However, the decision-makers can err in all sincerity. Holding them accountable for those sincere errors, committed not to serve any vested interest or with any bad intentions would be unfair to them. It would give a signal to the decision-makers that taking decisions is risky, leading to lethargy, sloth and inefficiency, which also have a cost.