**ERBATIM 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 THURSDAY 10TH JANUARY, 2019 AT 9.08 A.M.**

**Interviewee/Submittee: Land Transport Authority**

In Attendance:

1. Mr. Navilesh Chand - General Manager Legal
2. Mr. Faiyum Ali - General Technical Operations
3. Ms. Litea Tikoinayau - Legal Officer
4. Ms. Piniana Drova - Legal Officer

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MR. CHAIRMAN.- Good morning and bula to you all and Happy New Year. I believe all of us are doing fine this morning. Today we have the Land Transport Authority (LTA) with us to present their submission with regards to Bill No. 33 which is the Code of Conduct. We have Mr. Navilesh Chand-General Manager Legal, Mr. Faiyum Ali-General Manager Technical Operations, Ms. Litea Tikoinayau-Legal Officer and Ms. Piniana Drova-Legal Officer.

On this side on my far right, we have Honourable Ratu Suliano Matanitobua-Opposition Member, next to him is Honourable Rohit Sharma-Deputy Whip and Government Member. On my far left we have Honourable Mosese Bulitavu-Opposition Member and myself; Alvick Maharaj-Chairman of Justice, Law and Human Rights. On my left we have our Secretariat team and on my right we have our Hansard team.

So further do, I would like to give the floor to the team from LTA to present your submission and if need be, if there is any question, my Members will through me, ask questions in between or if not then we will have a question-answer session right at the end of the submission. Thank you.

MR. N. CHAND. - Thank you Chair, our submission is pretty brief and we have gone through the Bill. We had the opportunity to look at the various provisions of the Bill. One of the suggestions that the Land Transport Authority would want to recommend to the Bill is with regards to Part 4 of the Bill, Clause 12 (1) (b) which is on page 8 of the Bill.

The Bill already talks about and I quote:

*“The Commission must investigate any complaint received by the Commission unless the Commission is of the opinion that -*

1. *the complaint is trivial, frivolous, vexatious, lacking in substance or not made*

*in good faith;*

1. *the complaint is malicious or is politically motivated or is made for the purpose of discrediting, defaming, or causing reputational damage to the person, the subject of the complaint;*

We are also of the view to insert the word “fictitious” after “malicious” then it will read:

1. *“that the complaint is malicious and fictitious or politically motivated”.*

There is not much difference between the word “malicious”, “fictitious” the fact that it already says that the complaint is vexatious or frivolous. However, we are of the view that the word “fictitious” carries a different meaning and context to it; it basically covers a whole range of issues which basically means that “fictitious” meaning that the person is able to fabricate or make up any complaint.

We have made the suggestion with respect to looking at our own organization; the Land Transport Authority. The LTA is currently both the service provider; it is the regulator and it is also the enforcer at the same time. Having these spectrum of duties that it has to carry out, what actually happens is that obviously everyone knows; all the Members of the Committee knows that LTA is always subject most of the time to criticism.

One of the difficulties that we found is that when we do try to enforce rules, regulations, this is with respect to our Enforcement Officers carrying out any other duties with respect to the operations of the LTA in terms of customer service and many other various functions that the LTA has. There are often rules and regulations which may not be pleasing to our customers, for instance I will give an example, if an officer is booking or issuing a Traffic Infringement Notice (TIN) to a person who is driving a defective vehicle. For the various reasons, the person who is the offender will try to reason with the officer issuing the TIN basically saying, “we have got this issue, we have got that issue”; he will come up with his own explanation. The fact is that the LTA Enforcement Officer will merely be carrying out his statutory duty which is required under the law. What actually happens most of the time, these people do turn back to LTA and say that we are not happy with this particular person. He is doing this and they try to make up issues. This is just one of the hypothetical examples that I am giving, if put in context of this, there are lot of people who may be affected by this.

We are of the view that if there can be processes and procedures to filter down. The complaint should come through the channels of filtrations to ensure that the complaints are genuine in absolute form and content; that these complaints are not only frivolous, vexatious or trivial in any manner but also not fictitious complaint which are fabricated complaint because for the reasons I have stated. That is the submission we basically have from the Land Transport Authority.

MR. CHAIRMAN.- Thank you very much for that. Honourable Members, do you have any questions to LTA?

HON. M.D. BULITAVU.- Through you Honourable Chair, thank you Team LTA, Mr. Faiyum and the team for the submission this morning that was brief to the point and to the specific provision that LTA is recommending some further amendments. Given what you have proposed; “fictitious” and “malicious”, and I will you the difficulties faced by our officers who are actually doing duties according to what the law empowers them to do. What are some of the common cases of conduct that normally, members of the public complaint against officers at LTA? That will help us to formulate the justification of adding the words “fictitious” and “malicious” to Clause 12 (1) (b). What are some of the most common complaints that come in and the pattern that comes in that you will know that some of them are motivated by other things that really happen at the scene?

MR. N. CHAND.- Thank you Sir. I will give an example for an early morning then I will hand it over to our General Manager Operations who is very well aware of day-to-day activities and he will further highlight. Just this morning, I received a call from Labasa. An officer has given a Traffic Infringement Notice (TIN) to one of the passengers in the bus for violating the e-ticketing. The person somehow got hold of my mobile number and he called and said “I think the officer has a personal issue with me, I think he is taking out a personal grudge on me”. That is one side of the story, we will have to ask the officer and to ensure that the officer was carrying out his duty with all necessary due diligence. That is just an example.

Our main content is that when it comes to Land Transport Authority, we also had another issue with respect to the issuance of taxi permits that has lately been issued. There were also people that may have given false information in trying to obtain taxi permit through false declaration. When we do try to explain to them that their income surpasses the required threshold for making an application, that they are already in a position earning well above the required threshold and do not qualify under criteria, there are members of the public and certain customers who would not be very pleased with the decision and they will still say, “please process my application”. While on the other hand, our officers are caught with the fact that they cannot be processing such applications because those applications are contrary to the requirements under the criteria that is set out. Then there is the possibility that you will have a complaint that will be coming thereafter saying that they are not happy with the performance of the officer and they are not happy, “I think the officer had an issue”.

These are the daily encounters but these are just few examples that I am giving but on a day-to-day operation, I will give to the GM Operations where we serve customers on a daily basis, where people would come up with different complaints. Our main concern is that as far as the complaint is justifiable, genuine and valid, obviously it is a non-issue then of course it goes to the Commission to through the normal process.

However, there must be some mechanisms to filter down that these complaints are not fictitious or are not based on some fabricated basis because the person is not happy with the performance of the Land Transport Authority’s officers. These are our concerns and I will give to GM Operations who will give some further examples.

MR. F. ALI.- Thank you, Mr. Chairman. Good morning to you all Honourable Members. Most of the things has been said by our GM Legal. Just a few examples we are facing in terms of operations in LTA. As has been said, the uniqueness of LTA compared to other organisations and to benchmark with overseas, LTA is a regulatory body, we are service provider and of course we are the enforcer. For example, when we provide service in terms of vehicle owners coming for vehicle inspection, as we call it, Certificate of Road Worthiness or Certificate of Fitness, the examiners upon checking full compliance in terms of code of practice for vehicle inspection, they issue a certificate. When the customer goes to a service provide, they pay registration and road levy, they are happy but after they go on the road for few weeks, our Enforcement Officers on the road charge them in terms of maybe unforeseen circumstances in terms of defective lights or so forth. The , customer is not happy in terms of violation of traffic offences on the road and that is where complaints come in to LTA.

In between the line they know have done wrong; violation of traffic offence, however in few days or within a minute or even a day, they will either text or use our free platform (582) or even give in writing in terms of complaints against those officers. The complaints may be the TIN issuance in terms of defective vehicles, but in between the line they will put assumptions, allegations that the officer requested for some corruption practise because they were not happy with the issuance of TIN but it comes to us and these are some of the challenges we are facing.

Currently, the worst case scenario is in Labasa which you may have seen and has gone viral in terms of e-ticketing where officers issuing tickets, but the complaint has gone to a higher level including us, so we are doing some preliminary and it is amended law in terms of issuance of e-ticketing where the fine is $150, but two years back it was a fine on drivers if violating by taking cash - the fine was $1,000. The customers are taking those advertisements but are asking why the LTA officers have issued fine of $150

In fact all fines issued prior to August or September, 2018; there is an amendment prior to that, the fines issued would be cancelled. They are thinking that LTA officers cancelling the fine or there is some in between the line, but we are following all due diligence process in terms of how our work is done. We as LTA are always under public scrutiny. We are telling our officers to be honest, doing work with due diligence.

In this Code of Conduct, as per other organisations including LTA, this is in our HR Policy, also in terms of how we perform our work. The other one is, most of the time permits are open; all kinds of permits including RRL, taxis, rentals, hire, the eight types of permit. In terms of permit, customers using other officer’s names to gain in terms of acquiring the permit, it will be difficult because any permit issuance needs due process to be followed and fees to be paid at any LTA office. What they will do behind, they use other officer’s name and when we report the matter to the police, the police will also conduct their investigation and they will be charging lots of people on this. That is how our officer’s name also go down in terms of names used by complainants.

For customer service complaints, when officers are taking their time in terms of servicing, like waiting time, serving time. The customers will complain that the officer was asking for something or pretending which is why there was a delay; but it is the system where due process needs to be followed and procedures are there. Without any process, we cannot obtain any legislation, for example, there is a process in terms of appointment, application, fees to be paid, inspections to be done. In between the line, they will go against each officer and these are some of the challenges we always find. We hope this Code of Conduct Bill will also assist us in terms of how our officers will be= doing their best in terms of performing tasks for the Land Transport Authority.

MR. CHAIRMAN.- Sir for clarity sake, I believe this Code of Conduct Bill is actually not intended for civil servants or anyone working for an organisation. The Schedule that you will find which is Schedule No. 6 is very specific to certain positions within the structure of the Ministry or Public Office. For example, if you are looking at LTA, it is applicable to the Chief Executive Officer of LTA and not to the staff. This is designed in such a way that it targets specific positions.

As far as the submission is concerned, I would like to get clarity on that as well. When we say “malicious” what the Committee actually means is if someone comes with a complaint and the facts and figures they are providing is not matching with what the complaint is, that can be malicious. For example, if I come and complain about Honourable Mosese Bulitavu but the fact that I am providing is just from the air, or I am talking about someone else or something else and is not relevant to the complaint that I want to lodge with regards to Honourable Mosese Bulitavu but when it comes to “fictitious”, any complaint would either be true or false. How do we determine before doing an investigation whether the complaint that is coming to the Commission is factually correct or not. I believe that is why we have put the word “malicious” there and not “fictitious” because without any investigation, we will not be able to separate or identify whether the complaint is genuine in nature or not. What are your views, do you still say that it should be in that context or removed?

MR. N. CHAND.- Thank you Chair. Our suggestion was to include the word “fictitious” after “malicious” obviously is entirely up to the Committee but we are of the view that “malicious” basically means that a person making a complaint with a particular intent and “fictitious” being that intent being fabricated meaning that it is a made up and is based on false materials or false assumptions.

We thought that what it would actually do and the idea is of course the law once it is made, it is supposed to be as precise, clear and concise as possible to avoid any difficulty with respect to interpretation. We thought that it might just provide more clarity with respect to filtering down of the complaints whether the complaints are actually with good faith and intent or not, but we will entirely leave that to the Committee in terms of how …..

MR. CHAIRMAN.- Definitely the submission is here and Committee will deliberate on that. We are going to have further discussions with regards to the submission that is in front of us by LTA. Just as I said, for example, this Code of Conduct Bill cannot be used to complain with regards to the officers who are working for LTA. It is very specific, I believe if you look at Schedule 6, there are 64 categories to which the Bill actually applies; starting from the President, Prime Minister, Attorney-General, Ministers, Assistant Ministers, Speaker, Deputy Speaker, et cetera. For example, if someone comes into the Commission complaining about an LTA Officer of what he or she was doing on the road with regards to inspection, the Commission will not be entertaining all those complaints.

This is also with regards to what they are supposed to declare and not declare. Even the complaints is very much to the point of what you are actually allowed to complain to the Commission as well.

Any more questions, Members?

HON. M.D. BULITAVU.- Through you Honourable Chair, just to make it more easy for General Manager Legal and the LTA team, I think the Honourable Chair has raised very specific issue in regards to the Schedule that is mentioned but again it does not take away the fact that the team here also plays an advisory role to the CEO; also the main advisors in terms of decision making of the CEO and all other complaints that would be related to the CEO.

Probably I do not know at what capacity you can give more to this, in terms of your submission, probably that you have now given to the Committee will not change, given the words that you have added which is a big difference. Malicious is related to a harmful or evil kind of or when you are malice to someone. Fictitious is when you fabricate things, which is untrue. That is the difference between these words. Because of LTA’s role in interacting with the public and the public will now be open to come directly to a particular Commission to lodge a complaint whether it is true or false, without merit or merits, or frivolous or whatever the grounds the Commission will investigate, what are some of the issues that LTA would raise on behalf of the CEO and whoever, given that anyone can be CEO. After the CEO, another one comes in and if another one acts, whoever acts in that capacity at that time could be liable at any time if the complaint is done at that time. That will understand the context of the question and in that, I would like to refer the team to Clause 13. How do we treat these kinds of malicious complaints? Would you like those untrue and fabricated complaints to be subject to the penalties that are there in Clause 13?

MR. N. CHAND.- Sir thank you very much. Our response to that would be of course we do not want any malicious or any fictitious complaint. Definitely yes, we have submitted, we would want the complaint to be as genuine as possible because the Code of Conduct then applies to the person and then it trickles down to the whole process that it is going to take thereafter.

With respect to the application of the Code of Conduct, I think the Code of Conduct with respect to Part 3 of the Code of Conduct, clause 7; it describes the process and the manner in which the Code of Conduct applies. For example, clause 7 (1) says that “the Code of Conduct is established pursuant to the Constitution and then it applies to the President, Prime Minister, Ministers and clause 7 (3) says that it applies to Speaker, Deputy Speaker then goes to clause 7 (4) (5) and then comes (6) which states that the Code of Conduct contained in Schedule 5 applies to all public officials. Then we look at the definition of the “public officials” on page 5 which says “*a public official means the holder of the following office:*

*c) an officer or employee of any statutory authority (* of course the Land Transport Authority is a statutory authorit*y) or of any Commission established by, or constituted in existence under the Constitution.”*

So, basically, Schedule 5 applies to all employees of the Land Transport Authority right from the officer to the Chief Executive Officer including all the Board of Directors of the LTA as well. And then in Schedule 5, basically it describes the Code of Conduct for public officials which talks about observance of the code, conflict of interest, declaration of interest, improper advantage which is continued till page 36 in terms of integrity and the last one in 19 in terms of reporting.

MR. CHAIRMAN.- It is Schedule 6 which applies to Part 6 - Declarations of income, assets, other interests and liabilities. Code of Conduct actually does apply to everyone but what we are actually trying to come up with is the type of complaint to the Commission should be very specific.

Any public officer need to follow the code of conduct which is in this particular Bill, particularly for asset declaration, that is another reason with regards to Part 6. The way the Committee thinks is, for example, Part 6, we would like to hear from the people who are sitting on those positions like, for example, declaration of assets to be coming from the person who is going to be affected by that. Now we cannot get the position to do the submissions so it will definitely be the person sitting on that position to do the submission with regards to Part 6. As far as other parts are concerned, it does apply to all Government officials either in Ministries or in statutory offices as well.

For clarity sake, when this Bill comes into place, does LTA still expect the complaints to be still coming to LTA or directly to the Commission with regards to its officials?

MR. N. CHAND.- Sir, when the Bill comes into effect as an Act, we have discussed to take a very proactive approach to the whole situation. We have discussed to formulate and transverse whatever is contained in Schedule 5 of the Code of Conduct into actual policies and that these policies are then to be integrated into the LTA Human Resource Policies so that each and every officer is aware of the Code of Conduct. So there is proper awareness, training with respect to the Code of Conduct and also to ensure that the Land Transport Authority Code of Conduct which is going to be contained in the Human Resource Policy is not deviating from the Code of Conduct that is contained in Schedule 5 of the proposed Bill. The reason being is, definitely just to ensure that it is integrated, synchronised and consistent with whatever is contained in this.

Obviously we will do training, we will do awareness and once it is trickled down to the complaint level, we do hope and we do believe that there should not be complaints coming to the Commission. However, once these are going to be embedded in our Code of Conduct as well, the internal HR process is different from the administrative process. I think with respect to the complaints that is going to be made by any member of the public, obviously, it will come to the Commission; then the Commission will carry out its necessary due diligence. But we will ensure that through our training, awareness and education no complaints will come before the Commission so that the integrity is maintained at all times.

MR. CHAIRMAN.- Thank you very much for that. Any views from LTA with regards to, let us say a particular complaint was lodged to LTA with regards to an officer who had already been dealt by LTA already and after the setting up of that Commission, that same complainant comes to the Commission and the Commission has a different outcome compared to the outcome that LTA carried out in the first place. What is LTA’s view on that?

MR. N. CHAND.- Thank you very much, Sir. If a complaint is going to be investigated by LTA internally; we have got our own audit team, we have got our own HR department. Obviously, the guideline and the framework within which they would be working would be very different to the Commission. I believe, Part 2, clause 4 sets the guidelines and the directions of “The Commission which the Commission from time to time may issue with respect to the performance of the Commission’s functions and handling of the complaints.”

Obviously we will try to synchronise the Code of Conduct but the guidelines, the operating procedure and the process for the Commission would be different from the Land Transport Authority. If a complaint is received before the LTA, the outcome is different. Of course, it will be dealt with according to the HR process that is in place by the Land Transport Authority. We obviously do not have powers to refer such complaints, if we can refer such complaints if they are related to bribery, corruption or et cetera, we can refer to the appropriate authorities whether it be the Police or FICAC. Should it come to the Commission, I believe the Commission has got different guidelines, they would do their own internal investigations and then refer these complaints to the prosecuting authorities which in this case is the Fiji Independent Commission Against Corruption (FICAC).

We will carry out our internal process with all the necessary due diligence with the approved policy that is going to be in place bearing in mind that it should not affect the independence of the operations of the Commission. The Commission would definitely operate independently from the internal process of the LTA.

In the consequences and the penalties imposed through the findings and the referral to the complaint for the prosecution by the Commission, is different from the internal administrative process. So we will ensure that both processes are kept separate, internal process remains internal and the Commission’s process is independent of the LTA process.

MR. CHAIRMAN. - Thank you very much for that presentation. Honourable Mosese Bulitavu?

HON. M.D. BULITAVU. - Through you Honourable Chairman. I think the General Manager Legal has raised a very important issue there. Given that, say a particular person lodges a complaint against an LTA officer twice, one at the Commission and one at LTA. It will be a very difficult position given that there will be two investigations running separately and the outcomes will be different and ….

MR. CHAIRMAN.- Outcome may be different.

HON. M.D. BULITAVU.- May be different and yet this person will be trialled twice in the legal principle of double jeopardy. What is your view on this whether there should be certain limitations of things that should come before the Commission? Some specific issues that are related to LTA officials in regards to operations, should it be referred to LTA only? Why do we provide that demarcation? Just generally speaking, your views just to help the Committee also on how we might later recommend to the drafters of the Bill or where do we separate these cases and also the Commission is not flooded with all sorts of complaints.

MR. N. CHAND.- Thank you, Mr. Chairman and thank you, Sir. Our response to that would be, of course, I know we are talking about a situation where a person has been dealt with twice once by the Land Transport Authority and then another time by the Commission. I will give just a hypothetical example, should a person working in an organisation whether it be a Government official or whether it be within a statutory authority is found to have been disciplined of any offence relating to corruption. Obviously, the statutory authority of the Government official will deal with the matter and some of the penalties that they can impose is of course to terminate the employment. But, obviously I do not think that they would be in a position to actually charge and prosecute a person.

In that circumstances they will refer the matter to FICAC for FICAC to independently deal with it. Likewise in similar situation, we will have our Code of Conduct and it will describe minor offences, major offences, gross misconducts and their penalties imposed under the HR Policy and the manner in how the officials should be dealt with and it will only be limited to that. I do not think the policies would go to the extent of saying that we will be charging or prosecuting for obvious reasons, we do not have powers to do that.

So, my response to that would be again that the functions of the Commission is quite separate from the functions of the LTA. The Land Transport Authority will deal with the complaint under the HR Policy in the manner best described in the policy and of course will try to synchronise all of the Code of Conduct into our policies so that there are no duplication of work so we are able to bring about standard within our organisation as well, but at the same time that will be so far as with respect to the HR process.

And as far as reporting of the matter is concerned, we may report the matter either to the appropriate authorities which in case may be the Police, FICAC or the Commission, or the Commission receiving a complaint from a member of public. We will deal with the complaint within the guidelines and the criteria that will be set and of course the penalties and the outcomes will be very different from the administrative approach that the LTA will take.

MR. CHAIRMAN.- So it will be basically on the regulations as per the Act that will actually define where the complaint will go to once it comes into force?

MR. N. CHAND.- Yes.

MR. CHAIRMAN.- That makes sense actually.

HON. M.D. BULITAVU.- Honourable Chairman, it would be good if the LTA reviews its HR policies and internal Code of Conduct that they have and do it in such a way that it really connects with the Commission and how the Commission when it receives a particular complaint, it refers it to LTA or whichever official of what authority has been complained to for that to be dealt from within that, is brought back rather than two investigations going at the same time. It will be very good. If that is done, I think the Committee is really supportive of amendments being done internally to compliment this.

MR. N. CHAND.- Sir, I think with respect to that, from the LTA, we are of the view that not only LTA perhaps other statutory organisations although I cannot speak on behalf of them, but LTA being a statutory organisation it will have to definitely align its policies and procedures with respect to the proposed Code of Conduct Bill and Schedule 5 of the Bill to ensure that both are consistent with each other so that we are able to achieve a common outcome that is provided for in the law and that will be complimented by the internal policies of the Land Transport Authority.

MR. CHAIRMAN.- Honourable Mosese Bulitavu, I believe normal complaints would be actually directed by the Commission to the relevant ministries or authorities concerned. They will not be entertaining any complaints coming to them. It is just with regards to the Code of Conduct that actually fits in the criteria of the Commission will be addressed by the Commission. Otherwise the complainant would be asked to go and lodge the complaint with the proper authority so that actually they can carry out the investigation internally.

HON. M.D. BULITAVU.- It would be important for those who will be receiving the complaints where to refer those complainants to; to refer them to the right authority.

Honourable Chairman, just probably my last question. In terms of awareness, in terms of this Bill within LTA given that public officials who will be affected. How far has the legal team so far gone into trying to create awareness on your internal code of conduct which are probably in- built in them now and the external one that we have here and how they should also be more cautious?

MR. N. CHAND.- Thank you very much, Sir. Like we have submitted, once we have received the notification to come and present before the Parliamentary Standing Committee, we have also managed to obtain a copy of the Bill. The legal team have gone through the Bill. Currently, we are working with the HR Department and the relevant Policy Managers firstly to study and to understand the Schedules, the Code of Conduct and then thereafter we are already in the process of formulating policies. Once we are able to formulate those policies, we will create awareness, education and training throughout the country and we will ensure to do that before the Bill comes into effect so that our officers are up-to par with the latest Code of Conduct Bill so they are very much aware of the process procedures and the Code of Conduct and their expectations from them from the proposed law.

MR. CHAIRMAN.- *Vinaka,* Sir. Any more questions from this side?

Thank you members of LTA for availing yourselves this morning to present your submission to this Committee. I would like to thank you for your time and the submission. Thanks a lot.

The Committee adjourned at 9.50 a.m.

The Committee resumed at 9.56 a.m.

**Interviewee/Submittee: Office of the Auditor-General**

In Attendance:

1. Mr. Ajay Nand - Auditor-General
2. Mr. Sairusi Dukuno - Deputy Auditor-General
3. Mr. Dineshwar Prasad - Director
4. Mr. Abele Saunivalu - Director

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MR. CHAIRMAN.- Thank you team from Auditor-General’s Office for your presence this morning to present your submission with regards to Bill No. 33, Code of Conduct Bill.I would like to give the floor to the Auditor-General team to present their submission to the Committee

MR. A. NAND.- Thank you Honourable Chairman and the Members for the invitation. We will always make ourselves available to the Committee even at short notice to provide our submission, our comments and advisory which the Committee may need from the Office of the Auditor-General. We have submitted our written submission, and I will deliberate on that on behalf of my team.

We have considered a number of things when reviewing the submission. We have looked at the practicality of application within this public service or within the statutory authorities and from the people’s perspective as well. How practical if it were to become a law? We have also considered compliance by individuals and entities referred to in the legislation. The impact of our potential findings which is the findings of the Office of the Auditor-General on alleged breaches of the Code of Conduct and the need for proper accountability and controls in public institutions. Finally the provisions in the proposed legislations as they appear against the overall intent of the proposed law.

As mentioned in the explanatory material to the proposed legislation of the Bill has not been defined in the legislation, though child and spouse appear as separate definitions. Those are not linked and we thought if that is done, it would enhance the [*inaudible*].

In the same part of the clause the definition of “public official” does not extend beyond the employees of statutory authorities. We are mindful of the requirements of Section 149 of the Constitution which specifies the various class of people who should be making those declarations but we also note that the Bill contains some entities such as Provincial Councils and Municipal Councils which do not appear under Section 149 of the Constitution which we are really happy about because it reflects the intention to cover broadly the people who hold positions in public institutions.

If the Bill could provide the definition of “public official” to cover employees of organisations. The provision can be extended to include, we will come to the ones for GCC’s and CSA’s shortly.

Statutory Authorities are not defined, there is no definition, sometimes the reference is made to the Financial Management Act where all statutory authorities, because there are many. So we thought if there is a list which could be a Schedule to the proposed Bill would enhance and sort of remove any confusion which the authorities may have in terms of its application to them.

Reference is made to the Annual Report by the Commission in Part 2, Clause 6. However there is no reference. Normally Annual Reports, we understand the wording there says that the complaints received need to be reported in the Annual Report but normally in an Annual Report it is mandatory or as a matter of practice, the need for financial statements to be included as well as the external auditor who would be carrying out the audit of the Accountability and Transparency Commission would be stated under Annual Reports. We do not see that in the Bill, and if that is done, it will also enhance accountability of the Commission.

The Code of Conduct for Appointees of the State, to State entities such as Government Commercial Companies, Commercial Statutory Authorities, there is no code for them. We think it would be appropriate because the Directors of Government Commercial Companies manage significant investments of Government and they have to be held accountable. Our submission is to create a separate schedule for a Code of Conduct for Government appointees on Government Commercial Companies, Commercial Statutory Authorities and the like.

Part 4, Clause 12 - Review the clause so as to determine the intent of the complaint. We note that the law on one hand proposes to enhance accountability but the different provisions which are there, which are Penalty Clauses, for example, for people who may be making complaints for political gain on things like that, that may act as a deterrent. When people think about the penalties they may not come forward and make the complaints. On the same note we also note that under Part 5, there are a lot of protection provided to the complainant. So these two in the Bill may be contradictory and may not be according to the intent of the Bill which seeks to promote accountability and transparency in public institutions.

In sub-clause 1(a), reference made to the scope of the Act, but there is no reference to what the scope is, there is no clarity in that, so we thought if that is clarified, it would sort of remove any confusion which may arise on what is the scope of that.

MR. CHAIRMAN.- Sir, just a clarity, you said something about penalty, with regards to Part 4, Clause 12 (1)(b), where is this penalty coming from?

MR. A. NAND.- This refers to what would happen to complainants which are for political gain to defame an individual. In some of these cases, this may be consequential because if there is an allegation of corruption, it may result in defaming the person if it is proven to be correct. It may also be political. We are a small country, we are almost related to everyone else and everyone would have a political stand point. How does the Commission decide which complaint is politically motivated, intend to defame a particular individual? Those are the things we thought, if they can be reviewed and some clarity. At the same time a complainant is also protected by Part 5. We thought that there are lot of deterrence in the beginning of the legislation. As an ordinary person, would I want to make a complaint? Because if my complaint is found to be malicious for political gain or politically motivated or intend to defame, I will not make a complaint, because I might go to jail or I may have to pay a fine of $10,000. The intent of the Bill is to make people complain.

MR. CHAIRMAN.- From our understanding, politically motivated would be something that you know is factually incorrect but still you go ahead and lodge the complaint. It is not that it is politically motivated, you cannot lodge a complaint. You can still lodge the complaint provided it is factually correct and you have facts and documentation to prove your case to the Commission. It is not that I just want to defame, let us say, Honourable Mosese Bulitavu without facts and figures, I just go ahead and lodge a complaint. Once that complaint is lodged, the Commission then will actually with whatever evidence is provided will determine whether it was politically motivated or not. It is not that they will not accept, but they will accept and assess and then they will actually decide whether it is politically motivated or not. It can be against a politician, provided I have my evidence. I cannot just walk into the Commission without any evidence, try to lodge a complaint, “Honourable Mosese Bulitavu has an asset worth $15 million and he has not declared it”*.* I need to provide certain evidence because that would be basically defaming Honourable Mosese Bulitavu in that case.

MR. A. NAND.- I thought that was not very clear. If that could be sort of clarified because for me as a citizen, I will not make a complaint because of that particular clause as it is quite a broad clause. But I am sure the Committee will consider our submission.

On Part 15 (a) - Right to Access Material. We thought there is a significant limitation because it just goes to the Government Ministries and Departments and that may prohibit or prevent the Commission from carrying out its duties and do comprehensive investigation of complaints. We thought if that provision is extended, it can make it stronger and make the work of the Commission easy.

Part 6, Clause 26 - Statement of Assets and Liabilities, individuals holding positions are required to declare their assets and liabilities. The assets have a market value, for example, a building, whatever the cost they were constructed on. Generally there is no clarity, if I built a building at a cost of $20,000 and the current market price is $100,000, what do I declare, do I declare $20,000 or declare $100,000? If there is some clarity on that, I think it will promote consistency between person X making a declaration and person Y making a declaration, perhaps that could be clarified?

Schedule 5 - Declaration of Conflict of Interest. If there is a form in one of the Schedules. For the information of the Honourable Chairman and Members, in our office we have designed a self-compliance document which I send to the Secretary of the Constitutional Offices Commission every year, and the staff also submits to the office any conflict of declarations. We use a standard form but if there is no standard form, we think the key points may be left out deliberately by organisations who are required to prepare this conflict of interest policies or declarations. So if there is some guidance provided, that will enhance consistency. Guidance can be minimal; the minimal content of the conflict of interest policy should be this.

MR. CHAIRMAN.- I believe with regard to declaration, for example, we have one for MPs and candidates when we are going for elections from the Electoral Commission itself, they do have a format but whether it is going to be part of the Act or it can come in as a regulation, that is something for the Committee to deliberate further on, but it is duly noted that we need to have a standard format for everyone.

MR. A. NAND. – Thank you, Mr. Chairman.

Still on Clause 8 - Gifts and Benefits. This is generally defined. We note a similar provision is in the General Orders on this, because gifts and benefits are in many ways now, like in the hospitality and entertainment. If that can be included in the definition or we expand it to cover that because some businesses offer accommodation that provides meals, drinks and the like to public officials. Even in the procurement process, that is happening, and procurement fraud is quite the biggest fraud in any organisation in the world. We thought that if this is covered, those in the hospitality and entertainment sectors will have to make declarations for that as well.

Each appointing authority is expected to prepare a gift and benefit policy. It is not mandatory, if a particular organisation, for example, our office does not make a gift and benefit policy, is the employee held liable? Sometimes organisations do not have policies, because if they have policies, they need to comply with it. If it is mandatory, it would promote the intent or essence of the Bill because self-compliance sometimes can be challenging; self-compliance by public officials can be sometimes challenging, they may not want to prepare a gifts and benefits policy or if the policy is prepared, organisations A and B may have different policies.

The provisions in the Code of Conduct itself does not cover the requirement by public officers to maintain honest, accurate and timely records and reporting of information. Record keeping, as we have noted through our audits that some organisations need to improve their record keeping. If that is included as one of the elements of the provisions of the code of conduct it will enhance accountability and improve record keeping in public institutions.

MR. CHAIRMAN.- Going back to gifts and benefit, just thinking out loud, is it not a general practice that anything outside the entitlement is a gift and benefit? Drink and dinner whilst holding public office is not to be accommodated.

MR. A. NAND.- As I mentioned Honourable Chairman, there are no clear policies, people tend to go away because there is nothing to charge them against.

MR. CHAIRMAN.- Because under normal circumstances a Government official cannot be seen with the stakeholders having dinner and drinks then definitely that rings a bell that something is happening somewhere. Under normal circumstances, anything outside your entitlement, even like for us at an official engagement anything that we get goes to the Ministry, it is not to the person, it is to the position, and it is in our capacity as Ministers or Assistant Ministers that we are invited to that official engagement so everything goes to the Ministry, even the *salusalu* we deposit it to the Ministry.

MR. A. NAND.- I fully agree, Mr. Chairman. I think the policy normally puts a limit of $50, which is the value or something you could receive; there is no standard guideline on that. A company may have $10. It is common knowledge that company’s offer accommodation, they offer trips to people especially who are handling tenders not specifically in Fiji but that is happening as corruption around the world and we are coping a lot of things which are not good.

MR. CHAIRMAN.- Basically the Code of the Conduct Bill now will ensure that these kinds of things are not practised by Government officials, especially as you said like, who areworking in the tender sector in the departments. They will be aware that now they have the Code of Conduct Bill which does not allow them to go for dinners with the stakeholders especially.

MR. A. NAND.- Thank you, Mr. Chairman. Public officials should also ensure that proper economical, effective and efficient use of public resources are there. We thought that that could be included in the actual Code of Conduct in the Schedules and comply with the respective agency’s policy in relation to financial and asset management which is public money and public property and prevention and detection of fraud. The responsibility for prevention and detection of fraud and putting policies is the role of management as we say or those charged with governance in institutions and if fraud happens, they would be held accountable for that.

The overall intent of the Code of Donduct is to deter fraudulent activities and public officials are also responsible putting in the necessary controls to prevent fraud and if it is incurred, is detected early so we thought if that is included, it would enhance the Code of Conduct.

In Schedule 6, in our office we have the Deputy Auditor-General and the Directors Audit and they have also said that we should be included in Schedule 6 as some other Directors in other institutions, other Government ministries and departments have been included. We would like to set a high standard of accountability and transparency. We plead with the Committee that the positions and Deputy Auditor-General and Directors are included in Schedule 6, and we also note that the Deputy Solicitor-General is not included in Schedules 6, while the Deputy Permanent Secretaries and the like are appearing in Schedule 6.

Some statutory authorities are not listed or included in Schedule 6 and that is the point we made when we thought that the statutory authorities be defined so it is encompassing and all organisations are captured fully in Schedule 6 for consistency. Likewise Government Printer and Government Statistician have not been included. We have not also seen the Commissioner of Accountability and Transparency, maybe it comes under Commissioners, so t is covered there but as it is, there is no specific requirement to declare these assets and liabilities by the Commissioner of Accountability.

It is also not clear in the proposed legislation on alleged breaches of code of ethics which are discovered during the audits we carry out. If we carry out an audit and we discover that there has been a breach of the code of conduct, how do we deal with it? Do we report to the Commission? And we thought there is a bit of clarity on that and any entity, Honourable Chairman and Members, there are a lot of investigations carried out for breaches of code of conduct.

What could happen is that some of them have their own employees. I have worked for FNPF and we had an Investigation Section as part of the internal audit and we had an Ethical Investigations Officer who would also investigate that. When the law becomes law, what would happen, if a breach is discovered, do we report it to the Commission? FNPF was in a similar position, take their own course of action, which is not clearly stated.

MR. CHAIRMAN.- What happens at the moment, for example, we have FICAC. If you do an an investigation and you find out that there was a breach, so what is the OAG’s position with regards to those kind of breaches? What is the normal practice at the moment?

MR. A. NAND.- We recommend to the entity to report to FICAC.

MR. CHAIRMAN.- If the entity does not report?

MR. A. NAND.- It is entirely up to the entity and it goes as a recommendation in our report.

MR. CHAIRMAN.- So at the moment the Office of the Auditor-General does not have the teeth to go directly to FICAC and report that breach.

MR. A. NAND.- We thought in time to come the Commission would look at some of our reports and ask questions or we could refer them to the Committee some cases where we believe and we would have the recommendation to support. If there is some flexibility in that, I think it will sort of assist us.

Finally, as I mentioned, if the management discovers a breach of the code of conduct within the organisation, do they investigate or refer it to the Commission? It states that a person should be making a complaint. It is not an entity or an organisation or institution, it is a person who is the head of the organisation. Sometimes when a serious breach of code of conduct happens the employee is suspended, in some cases he is terminated or preliminary investigation done by the entity and then the matter is reported to the Police or FICAC. In this case if the matter is referred to the Commission, the Commission may investigate, some investigation may take time, so what happens to the employee? We are just thinking out aloud, Honourable Chairman. The intent of our presentation is not to, we looked at the Bill critically but it is not intended to sort of create any scenario which the Committee may think that we are not in favour of the Bill.

MR. CHAIRMAN.- Definitely some of the comments are very sensible in the manner that you have presented before the Committee which is why we are calling for public submissions.

As we were discussing before the meeting that this is a very critical Bill that will affect almost each and every public official either employed within our ministries or our statutory authorities and at the end of the day the benefit is going to be with the general public. The better the Code of Conduct is the better service delivery to the general public and more transparency with regards to that.

MR. A. NAND.- I fully agree, Honourable Chairman. With your permission, if I can continue with our presentation.

There is no penalty if required declarations or conflicts are not made. In some cases, one applicable to public officials is that it has to be made to the appointing authority which we presume is the Permanent Secretary and if it is not made to the Permanent Secretary, what happens? From our experience, compliance cannot be consistent, sometimes compliance is not fully made so there is a requirement that every public official, I am focussing more on public officials, is required to make a conflict of interest declaration and if only one employee does it, what happens?

We thought that there be some penalty clauses for the head of organisations. Otherwise, people who are most affected or involved in cases like procurements may not be making the declarations.

Finally we thought there is no provision to appeal the decision of the Commission as in the system of natural justice or even in a court of law where people are allowed to appeal. If that is done, it will actually improve fairness; that is our opinion.

That is the short submission we have compiled, Honourable Chairman and Members. We thank you very much for giving us an opportunity to come before the Committee and present. We thought that it is our foremost duty. We have always responded to the call of the Committee so if there is anything, we will be also proactive in some of the cases and making submissions going forward. Thank you very much.

MR. CHAIRMAN.- Thank you, Auditor-General and team from the office. Now I would like to open the floor to Members if they have any questions, queries with regards to the submission or to the Bill, or any other clarification that they would like to get from the Office of the Auditor-General’s Office, you may ask now.

HON. M.D. BULITAVU.- Thank you and through you Honourable Chairman. Just the last point, Auditor-General in terms of the appeal provisions that you seek to be part of the Bill to create that fairness. I refer you to Clause 8 (1) (a) and (b) of the Bill. When you look at the Bill, the Commission receives the complaint, it investigates, and then after it investigates it decides whether it dismisses or refers the complaint to the appointing authority of that official or it refers to the FICAC.

At that point, the Commission is discharged of their duty. It goes to the relevant appointing authority and FICAC and that public official is dealt by those two institutions. The appeal mechanism should be placed where exactly, within that institution or at another place or within ….

MR. A. NAND.- Thank you, Honourable Chairman. I think it is more so when a complaint is dismissed. If I make a complaint and the Commission decides to dismiss it, not to investigate it, can I appeal? Because I would like to argue that my intent was good, I supplied all the information.

MR. CHAIRMAN.- Auditor-General, you mean to say if the complaint is dismissed?

MR. A. NAND.- Yes.

MR. CHAIRMAN.- So there should be an appeal process for that? Are you saying that or if a decision is not in the favour of an employee then we are talking about the appeal?

MR. A. NAND.- Our point is more on that part, when a complaint is dismissed, can a person appeal to the Commission and say that the Commission needs to review the decision.

MR. CHAIRMAN.- Should be an interesting concept if we start having appeals for the complaints.

(Laughter)

MR. A. NAND.- I think in all fairness sometimes we get caught in these things, because in any court of law the Commission is like, from a layman’s perspective it is like a High Court. There are senior courts perhaps where we can complain. I think we are all layman sitting here, all accountants and auditors, our minds are very critical sometimes and we came up with that and we would like to leave it with the Committee. But the other point is that the appointing authority may take an action against the recommendation of the Commission as per the Bill. I think we understand the difference between “may” and “shall”. If a Commission deliberates and spends time and resources to make an investigation and the appointing authority decides not to implement the decision of the Commission then the whole intent of the Bill is fraud; fraud in the sense that the intent is not achieved. We accountants and auditors think logically and I think that is the reason we have submitted our submission.

HON. M.D. BULITAVU.- Thank you, Honourable Chairman. Still on the appeal, you raised a very important point, Auditor-General and say for example, in a case where the Commission refers it to the appointing authority and the complaint was made by a citizen of Fiji, being a public official and at the end, say the complainant is not satisfied by the penalty that the appointing authority made. You could say that, “that is not a fair decision, it is not enough, and the penalty should be more”. Somehow the re-alignment of human resource policies and their mechanisms of disciplinary within has to be realigned with this Commission so when people come in to complain, they are told, “the balance is that you seek will be in accordance with the jurisdiction of whatever the disciplinary body that will be there.” What are your views on that?

MR. A. NAND.- That is a very strong point Honourable Bulitavu. It is true that the appointing authority should have some guidelines to action the decisions of the Commission and it should be done in a transparent manner so as promote consistency. Perhaps the law should include that the appointing authority should develop a policy to deal with when the decisions of the Commission are received. Otherwise the Commission may be indifferent when dealing with the complaints with the decision of the Commission received from person “A” and the decision of the Commission received from person “B” may be a different application of the penalty or whatever the charges which the appointing authority wishes to have made.

HON. M.D. BULLITAVU.- When the Commission refers a particular case back to the appointing authority, it has to set out guidelines on how they will deliberate with that, so what is the quantum of penalty that they should set out according to the summary of facts that they have collected to be further investigated by them? You look at the mechanism, it is normally coming from internal investigation to external prosecution but in this case, it is an external complaint dealt within the Commission, then it is taken back internally; how do we balance this out?

MR. CHAIRMAN. – This will give some teeth to the Auditor-General’s Office as well, with regard to your recommendation not adhered to by the Permanent Secretaries and Ministries.

MR. A. NAND.- Thank you, Honourable Chairman. I think we would like to develop a good relationship, though will also have a conflict, everyone will have a conflict when dealing with the Commission but we would like to develop a good working relationship with the Accountability and Transparency Commission so as to promote accountability because that is the intent of the Commission, and that is the intent of the Bill. We are aware and it is reported in our reports the various cases which may already exist which the breaches of Code of Conduct.

MR. CHAIRMAN.- Because I believe nothing will stop you under this Act to report directly to the Commission if you find any breaches, it is all about transparency within the system.

Honourable Ratu Matanitobua any questions?

Honourable Sharma?

HON. R. SHARMA.- Honourable Chairman, just a general comment. I think we have thoroughly studied the Code of Conduct Bill and the suggestions are really positive and I would like thank you for that.

MR. CHAIRMAN.- Thank you, Honourable Sharma.

HON. M.D. BULITAVU.- Thank you Honourable Chairman. Refer to Clause 12(1)(b), I think you had alluded to some of the things that are there in regards to malicious complaints that are politically motivated. When such complaints are made most of the public officials including everyone, including you and I, we are already subject to public opinion already before it comes out. So we are either found guilty or not guilty already before even the authorised body to investigate on a particular issue. In terms of another word that was suggested earlier, not only to include malicious, malicious more onto ill-will and malice, to also include fictitious, untrue or something that is incorrect, misinformation. How do we deal with this kind of complaint, whether it should be also included in Clause (12((1)(b)?

MR. A. NAND.- Thank you, Honourable Bulitavu. I think from our reading as accountants and auditors, when you look at it, the Commission receives a complaint and how does the Commission decide whether it is political motivated. It may be consequential when it is investigated and then there is a, it may be politically motivated but it may defame a person as a result or the other things which I had mentioned. I had the benefit of carrying out a number of investigations, so if a complaint is received in the cases where I was involved in those investigations, if complete information is there, of course in this case the person has to sign or put his name there. If complete information is there - date, time, where, what, if all these things are there, the complaint has merit. The subject of the complaint is the issue, we do not understand how would it be determined that it is one of those things which are malicious. The intention may be good but the dilemma of the Commission is deciding then that is the challenge.

MR. CHAIRMAN.- Those are the kinds of things that would actually come after this Bill becomes an Act through regulation as to how they are going to treat some of the complaints that are coming in, which complaints are referred back to the authorities for their investigation and which complaints are going to be administered by the Commission itself.

HON. M.D. BULITAVU.- If a particular complaint is categorised as malicious because there are consequences faced by that complainant in the Act, that complainant will be prosecuted because his complaint was categorised as malicious and that is something that will be very open to debate.

MR. A. NAND.- I believe there needs to be some safeguards put into place, even FICAC came in. A lot of complaints which are not criminal were put to FICAC, they used to receive the complaints and then they sought it out, which are criminal, which are not criminal; they were inundated with with complaints. There are no safeguards, then the same thing will happen, people will make things personal. There are some safeguards which need to be put in, we are saying that that particular clause should be reviewed and strengthened.

HON. M.D. BULITAVU.- If you look at the Bill that is before us, in terms of conduct and transparency and accountability, that is the jurisdiction that the Commission can investigate but it might start up with an issue on a breach of conduct but the real issue of the investigation could come up related to what the schedule say that boarders into corrupt practices. Why the laws will actually interchange when the investigation is finally dealt with, I think that is an area probably we should also look at seriously.

MR. A. NAND.- I believe that, as the Honourable Chairman has stated, a lot of things will come out in the regulation, perhaps we have noted the issues but just some of these technicalities; how the Commission carries out its investigation, some details will come out in the regulations and that will make things a bit more clearer. At this moment, it is very difficult to understand because the Act is at a very high level.

MR. CHAIRMAN.- Just a last point, I believe from my side, which is Part 2, Clause 6(1) and (2) with regards to the Annual Report. I believe the Annual Report will carry on the same format as other ministries and statutory authorities follow, it is just that we need to put in the specification with regards to the complaints, that the nature of the complaint or the complainant because we are protecting the complainant under Clause 5 of this Bill. If someone comes up with that information, will not have anything to guide us that it was not supposed to be done in the first place so I believe that is why Clause 2 came into place where were are very specific. They can put the number of complaints received, number of complaints addressed and those kind of things but not the specification of the complaints in the Annual Report. But as far as other things with regards to the financial report, Auditor-General’s Report and all those things, which will be part of that Annual Report.

MR. A. NAND.- On that point, Honourable Chairman, the law says that the Commission should report to Parliament, how many complaints were received, how many complaints were investigated and no names, they may put the nature which as you rightly said is protected by the identity of the complainant as protected by the law.

MR. CHAIRMAN.- It may come as general context about the nature of the complaint received, but not the specification of each and every complaint that is received. I think a similar thing is done by FICAC as well in the Annual Reports, they give the number of complaints and the general nature of complaints that they receive.

MR. A.NAND.- We have not seen the Accountability and Transparency Commission Act or Bill, we were worried about the audit part, that is why we made that comment. Normally in the Act which establishes a body corporate, these provisions are there under a section called audit and it says who audits and ….

HON. M.D. BULITAVU.- The Auditor-General referred to a very important role he plays in terms of auditing and when in the conduct of your audit you will find find some cases of breach of conduct and whether there needs to be a referral power used to be a referable of the Auditor-General’s Office to this particular Commission; is that what you are also requesting? The other thing that you are requesting, just to give you the second question before you answer both, in terms of Government Owned Companies that are not specifically listed in these public officials list, given the experience that the office is done in terms of auditing, that comment has come out of the experience that you were faced with. Just to elaborate more on that and why it is very important to include them too specifically in broadening those definitions.

MR. A. NAND.- Through you Honourable Chairman, as we mentioned in our submission, the Directors control a large amount of public monies. If you take an example of Airports Fiji Limited, it is wholly owned by Government and the Directors are both representatives of Government and all appointed by Government but they are not required to make any declarations. It is a very big company, AFL is one of the most successful companies of Government, and then there are so many companies that Government has. We thought the Directors, the senior executives and the employees should all be covered by this. The Constitution gives the minimal but the drafters of this Bill have been very open and they have included municipal councils, provincial councils which is good if they include the Directors and senior management and employees of GCCs and CSAs.

MR. CHAIRMAN.- We will take note of that, Auditor-General and I believe the Committee will deliberate further on that.

MR. A. NAND.- Yes, thank you.

MR. CHAIRMAN.- Thank you for your comprehensive presentation to the Committee. It was very nice of you and your team to come over and deliberate on the Bill itself. It was a very fruitful discussion for the Committee as well, you and your team coming in will play a major role with regards to this Bill as well because you are the ones who are actually experiencing a lot of things with regards to transparency and accountability, with regards to Government Departments, Ministries and Statutory Authorities. Thank you very much for making yourselves available.

MR. A. NAND.- Thank you, Honourable Chairman.

The Committee adjourned at 10.50 a.m.

The Committee resumed at 11.58 a.m.

**Interviewee/Submittee: National Federation Party**

In Attendance:

1. Hon. Lt. Col. Pio Tikoduadua - President
2. Mr. Kamal Iyer
3. Mr. Dylan Kava
4. Mr. Apenisa Vatuniveivuke
5. Ms. Seini Nabou

MR. CHAIRMAN.- I would like to welcome the team from National Federation Party (NFP) who are here in front of the Committee to present their submission with regards to the Code of Conduct Bill 2018, Bill No. 33 of 2018.

(The Chairman welcomes the officials of the National Federation Party)

They will actually deliberating further on, on the Code of Conduct Bill. Mr. Chairman, introduced the Justice, Law and Human Rights Members. Without further delay I would like to give the floor to the team from NFP to do their submission.

HON. LT. COL. P. TIKODUADUA.- Thank you very much Honourable Chairman and to you the Honourable Members of the Justice, Law and Human Rights Committees, on this New Year I wish you well in your work and the due deliberations.

Honourable Chairman, thank you for allowing the National Federation Party to make a submission on this very important piece of proposed legislation. We regret that as usual we were being given a short time to make a submission and given the time for our appearance before this Committee has been moved forward by a day; this means that we have less time to consult our members and advisors. This consultation is to be meaningful, the Committee has to review its process to allow sufficient time for clear thoughts to be given to the submissions.

Mr. Chairman, NFP agrees that the Code of Conduct is needed for officers such as the Head of State, Prime Minister, Cabinet Ministers, Assistant Ministers, Speaker of Parliament, Members of Parliament and Heads of organisations as listed in Schedule 6 of the Bill, and we will come later to the need for more inclusion. We believe in the principles of transparency and accountability and it is our belief that a proper legislative framework is key to achieving this.

Mr. Chairman, the first area that of the Bill that we would like to discuss with the Committee today is on anonymous complainants which is covered under Clause 10(3). Owing to Fiji’s complex political climate, a majority of people are afraid to lodge complaints against people in positions of authority for fear of victimisation and prejudice even in the cause of the election campaign. Wecame across several people who witnessed breaches of the Electoral Act but were too afraid to come forward on the record to give evidence about them. It is true that if an anonymous complaint is received, it is sometimes hard to investigate it if the complainant will not identify himself or herself to give the relevant evidence. But that is not always so, sometimes the truth of a complaint can be established through other sources.

In Clause 10(3) of rights as an absolute bar against anonymous complaints and that is unnecessary. The Commission should not be restricted from investigating a complaint merely because it is anonymous. If anonymous complaints cannot be investigated for lack of evidence it can be dismissed, but it should not be dismissed just because it is anonymous. We submit that Clause 10(3) be deleted so that the Commission has the power to investigate anonymous complaints if it wishes to do so. The moderation for the complaint is irrelevant; the substance of the complaint it is what is importance.

Next, Mr. Chairman, I refer to Clause 12(1)( c) where the Commission will not investigate a complaint which has been disclosed to any other person or entity apart from the Commission. This means, for example, where a complaint has first been aired in the media, the Commission will then say, “I cannot investigate it.” The clause also means that even if an allegation is raised in Parliament (the people’s house), the Commission can say, “I cannot investigate it.” This is the opposite of transparency. Institutions like the media and Parliament should play a critical role in monitoring the accountability and transparency of public officials. If the complaints chooses to go to the media to highlight a complaint, the Commission should not be barred from investigating it.

Finally, the suggestion that the Commission cannot investigate because the investigation would be inappropriate or inexpedient leaves wide open the circumstances in which the Commission can hear no complaints.

Mr. Chairman, I would like to refer to Clause 13 of the Bill. The Government continues to be obsessed with political motivation. We have seen from its many public sponsors the criticism, the accusation that critics are politically motivated. The Government changes the rules to prevent an Opposition MP being the Chair of the Public Accounts Committee of Parliament because it is accused the then Chair, our Leader Professor Biman Prasad of political motivation. Now this obsession is finding its way into laws about transparency and accountability. Now, a person can actually be prosecuted because the Commission holds the view that a person’s complaint is politically motivated or designed to discredit or defame the subject of a complaint. There is no need for this because according to the Commission’s own rules, nothing will become public anyway. So if a complaint is made, no one else will hear about it. How can a person be discredited or defamed except for the members of the Commission? So this section will achieve the exact opposite of transparency, it will make people fearful of making complaints.

In Part 5 the Whistle-blower protection in Clause 13(5) are meaningless, Mr. Chairman. They should, for example, protect civil servants who witness and wish to report on unlawful actions of Ministers. In theory, that civil servant is protected from dismissal or demotion in theory. In practice, however, all that has to happen is for the Commission to find that the civil servants complaint is malicious or politically motivated, the civil servant loses all protections under Clause 24 and the civil servant can be prosecuted under Clause 13. The tone and content of these provisions are a painful example of how legislations has been framed in this country for the last 12 years with the sole objective of discouraging genuine public dissent within the legal framework as well as acting as a Sword of Damocles’” and the deterrent for raising genuine grievances for fear of victimisation. Our submission, Mr. Chairman and to the Committee, the above provisions need to be comprehensively reviewed, having a regard to the need for genuine transparency and accountability. The Government needs to go back to the drawing board and re-think the purpose and the effects of this provision as I am saying.

Mr. Chairman and Honourable Members of the Committee on the disclosure of the outcomes and investigations. If the Commission is to be truly transparent and accountable, it must disclose the outcome of its investigation. It is fair that any such disclosure or reporting should balance the rights of an individual against the public’s right to know about matters under investigation. There should not be an absolute bar on disclosure. The Commission should have the right to report on the outcome of investigations having regard to the above factors. For example, the roles for disclosure of investigation outcome in Australia and so the link to that is going to be provided to the Committee after this.

Mr. Chairman and Honourable Members of the Committee I am going to talk a little bit about the extension of Code of Conduct which is under Schedule 6. Schedule 6, Mr. Chairman omits a very important taxpayer funded organisations such as the Chairs and the Chief Executive Officers of Fiji Sugar Corporation and Fiji Broadcasting Commission. These are either fully owned Government Commercial Companies or continued to be funded by taxpayers. For example, FSC to all intents and purposes is now fully controlled by Government; FSC owes over $170 million to Government and that was guaranteed by Government. Under FSC’s 2018 to 2022 Strategic Plan which has not been made public, FSC is seeking the conversion of loans into shares, in other words writing off the debt. Similarly, Fiji Broadcasting Commission is given $11.3 million annually as their so called public service broadcast grant. So, Mr. Chairman whatever these entities may be called….

MR. CHAIRMAN.- Honourable Member just a correction on that, I believe in the last term of Parliament, it was agreed that it is a fee and not a grant to FBC, so we cannot recognise it as a grant; it is a fee.

HON. LT. COL. P. TIKODUADUA.- Very well, Mr. Chairman. Then this is our submission, the Committee will take that into consideration as it sees fit. Thank you.

So if you will allow me, I will just go back to that paragraph which I was reading. Similarly, FBC is given $11.3 million annually as a so-called public service broadcast grant, so whatever these entities may be called, they are in reality no different from publicly-funded statutory authorities.

Our submission, Mr. Chairman, to this Committee, to review Schedule 6 to include Commercial Statutory Authorities and Government Commercial Companies that receive significant funding from Government. In essence, an extension of the Code of Conduct Bill to include people who are charged with managing large sums of taxpayers money to fund their organisations.

Mr. Chairman and Members of the Committee, I draw your attention to Schedule 1 – Clause 9 (9.1) which is on lobbyists. The provisions in relation to lobbyists seems to be an afterthought. First of all, there is no definition of what a lobbyist is. This could be an NGO, representatives seeking law changes or a business seeking incentives for a particular industry. Lobbyists are therefore not necessarily a bad thing. But the provision is meaningless until the law defines what the lobbyist is. Our submission, Mr. Chairman, the Bill must define the term “lobbyist” to give this provision any meaning and I refer in particular to the Australian Government Department of the Office of the Prime Minister lobbying Code of Conduct 2013 in which their major learning was that a registry for lobbyists was established containing their names, contacts and the company or entity that they represent. Also, I draw your attention in the State of Alabama, Title 36, Section 21 (Part 1) in which they provide a proper definition of the word “lobbyists” and in New Zealand, the New Zealand study on the dangers of unregulated lobbyist which is Thailand 2015.

Mr. Chairman and Members of the Committee, I draw attention now to the declarations to be made public. We strongly recommend that the declarations made by the executive and Members of Parliament are registered with the Secretary-General and made public. In essence, this would limit what this Bill would deem as frivolous or politically-motivated complaints as having access to information such as this, complainants are able to fairly adjudicate the authenticity and correctness of a claim before bringing it before the Commission.

Finally, Mr. Chairman and Members of the Committee, the Bill, a toothless tiger. I say this because the end result of the Code of Conduct is that the Government will promote the Commission as an example of so-called transparency and accountability, however, in reality, the Commission will be a toothless tiger and will be seen as such. This will only encourage greater cynicism about transparency and accountability which is dangerous in a country such as Fiji where democracy, good governance, accountability and transparency are not well-established concepts. The Commission has few powers against those it is supposed to watch. Complaints can be easily dismissed, worse, complainants can be prosecuted or victimised. A Code of Conduct law and an Accountability and Transparency Commission should set the standard for good governance. The people should be confident that there are laws and institutions that promote good governance. This law, Mr. Chairman, will promote the exact opposite sentiment. No one will report anything to the Commission for fear of being victimised. It will mean that complaints about public officials will continue to find their way to what is left of the independent media or to unregulated social media where important information on corruption and abuse of power are mixed with half-baked rumours and untruths. So in short, no change, Mr. Chairman.

With that, we thank you, Honourable Members and Mr. Chairman for your time. We hope that our concerns are taken into consideration and are reflected in your Committee’s report. *Dhanyavaad, vinaka vakalevu*, thank you and Happy New Year.

MR. CHAIRMAN.- Thank you, Honourable Member. Before I actually open the floor to my Members for any queries or questions, can we get a hard copy of that submission, please?

HON. LT. COL. P. TIKODUADUA.- Absolutely. Can you just give that out?

Sorry, Mr. Chairman, I know you had already drawn your attention to the Members of the Committee for questions. I would just like to raise an issue before you and the Committee. I have just been informed by my people that you have directed that a copy of our submission should not be made public to the press. Is there an issue with that?

MR. CHAIRMAN.- Honourable Member, it is just the normal procedure of the Committee where any submission coming into the Committee, right before we actually do a proper deliberation (by the Committee), is not released to the media. Any documentation is not released from the Committee to the media. If you actually wish to do this as a press release or anything, that can be done from your office but not at this Committee stage, at this point in time.

HON. LT. COL. P. TIKODUADUA.- But, Mr. Chairman, I just draw your attention because the media is here and this is a public forum.

MR. CHAIRMAN.- Yes, it is a public forum. The media is always invited to actually capture whatever they want to, right, but we do not actually give anything in writing or anything at this point in time from …

HON. LT. COL. P. TIKODUADUA.- I stand to be corrected here but if you will sort of, my thinking is that the Committee will not release to the media this submission that I have just made, however, it is alright for us …

MR. CHAIRMAN.- Yes.

HON. LT. COL. P. TIKODUADUA.- … given that this is a public forum, the media is here for us to release it to the forum. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Because unless and until we do a deliberation on the submission that is presented to us and in agreement with the Members of the Committee, we do not do any release to the media. They can capture whatever they want to during the submission and report but not as an official correspondence from the Committee to the media.

HON. LT. COL. P. TIKODUADUA.- Of course, I am guided by that. Thank you.

MR. CHAIRMAN.- So Members, do you have any questions or query to the NFP.

HON. LT. COL. P. TIKODUADUA.- We are sorry to keeping the Committee waiting, Mr. Chairman.

MR. CHAIRMAN.- No, that is fine. The time was 12 p.m. so it is our responsibility to accommodate anyone coming in. Honourable Mosese, any questions with regards to the submission?

HON. M.D. BULITAVU.- Thank you, Honourable Chairman. Thank you, Honourable Tikoduadua, President of NFP, the vice-president and Mr. Kamal. I think you have highlighted some of the very important areas in the Bill that is being deliberated by the Committee and we will look into the submission, the written submission is available to the Committee to deliberate and we will make our decision after that.

But to the issue of lobbyists that the presentation had highlighted, given the Bill has not provided a definition for lobbyists and given the comparison, comparative legislations from Australia, dated 2013 from the Prime Minister’s lobbyist.

Do you really think that a register to be set up within the Commission or anywhere else to register these lobbyists, their roles and function to create ease to this particular legislation when it is applied at application level?

HON. LT. COL. P. TIKODUADUA.- Thank you. Mr. Chairman, through you, just to address the question on the bit about lobbyists raised by the Honourable Bulitavu, I think we made suggestions about two things in particular. One, we asked for a definition to be defined under the Bill on what a lobbyist is and the precedence in other jurisdictions such as that, for accountability and transparency, it is always good for the proper authority to maintain a list of lobbyists just to avoid insinuations on corruption and all that stuff. It is something that should be considered and I think it has merit. I know Government has announced on the corridors that it would like to emulate precedence in Australia and New Zealand about what we should have here, I mean these are good things also, I do not see any harm having that.

HON. M.D. BULITAVU.- Honourable Chairman, just through you again. Given that there could be situations where, I do not know if there is no definition of “lobbyist” in the Bill and if a complaint is made against a person who is labelled to be a lobbyist and if that particular person says, “I am not a lobbyist”; how do you classify that complaint to fall under the status and capacity of a lobbyist if that particular lobbyist or that person is not a registered lobbyist. So I suggest whether there could be a registration of lobbyists, identify people so when people come and make their complaint, they identify, he is a lobbyist because he is a registered lobbyist. Just like a bailiff, he is a registered bailiff so I am coming to make this complaint against a person that is listed and that will sort of create some ease to the application, are you coming on that same view?

MS. S. NABOU.- Honourable Member, I think in relation to the issue of lobbyists. Lobbyists themselves are not bad people. It is important though for the section that provides for those who do engage with lobbyists that they be made aware, that the public is made aware because lobbyists often have their own agenda. It is mostly money and the public needs to know who they are, especially if they are influencing laws.

MR. K. IYER.- Adding on to my colleague, the Madam Vice-President of NFP, Mr. Chairman, given Fiji’s political climate in the last 12 years, lobbyists have many shapes and forms. Schedule 1 talks of seeking lawful advantage. That is in respect of the President, Prime Minister, Cabinet Ministers and Assistant Ministers, that one should not seek lawful advantage without authority. That itself is confusing with sub-clause 9 on lobbyists. Lobbyists can be businessmen, different capacities. There is no definition of lobbyists and Mr. Chairman, we are talking of victimisation here. People have fear of reprisal and victimisation because they do not want to come forward with evidence. But one such brave soul has given us evidence that we will report to Fiji Independent Commission Against Corruption (FICAC) where a so-called lawful advantage was taken by a Minister acting on behalf of what we perceive to be a lobbyist in the past which is as recent as 2017 that we will report to FICAC. So that is one example that gives us great concern regarding this clause. There has to be a definite definition of a lobbyist and what is right and what is wrong.

MR. CHAIRMAN.- We do note that concern. The Committee will deliberate on it further and come up with suggestions.

HON. M.D. BUILTAVU.- Just through you again, the suggestion to delete the anonymous complainant. I think the Honourable President of NFP had highlighted comprehensively and given that some people that do not want to be named when they complain and you had raised the issue of validity of the complaint rather than the identity of the complainant. The suggestion to delete that and how the mechanism of the Bill works to identify that particular person, and also the protection that that particular person is covered. Do you remain firm that that particular clause should be deleted?

HON. LT. COL. P. TIKODUADUA.- In particular, Mr. Chairman, through you on the issue raised by the Honourable Bulitavu. In the Bill, the Committee is specifically instructed not to take any complaints from someone that remains anonymous. That is what we say should be deleted merely because it is not so much as in the identity of the person that is complaining, it is in the nature of the complaint and we also suggested that there are also other avenues to ascertaining the truth or the context of the complaint. This whole thing about anonymity, Clause 17 states the Committee must deliberate anything in secrecy. If you look at it, there is nothing public about it, so if it is as such that the Committee is not allowed to conduct its service work publicly then there is no need to be concerned about anonymous complaints because it is already private anyway. So, why is it prohibiting anonymous complaints anyway? Nothing is made public so nobody should really be feeling victimised about anything. It is the Committee’s job, the Commission’s job to investigate a complaint. So it is the complaint that is important as we have submitted, not necessarily about the identity of the person.

MR. CHAIRMAN.- Honourable Member, looking at the way the Code of Conduct Bill is actually designed, this is a Commission that we are going to set up. At this point in time, that Commission would be resourced with staffing and everything to conduct this investigation but we are not talking about like for example, the structure that FICAC has or the structure that police might have to carry out an investigation. If we allow any unidentified person to lodge a complaint with the Commission, just your thoughts on it what about fake accounts, lodging a complaint to Commission? What would be your views? Should they be actually going ahead and carrying out those investigations and the number of complaints coming in as such with unidentified people? Or, this Commission should actually be engaged with legitimate complaints with regards to what is embedded in this particular Bill for the Commission to act upon?

Anyone without any identity can lodge any complaint they want to knowing that nothing will happen. So instead of 10 legitimate complaints coming in per day we might receive 500 complaints. What actually happens in those kind of scenarios, because anywhere you lodge a complaint, even with FICAC or police, it is a global trend that people need to identify themselves so that we get legitimate complaints, because there will be a lot of resources that will go to waste to try to identify whether the complaints are legitimate or not coming from an unidentified person in the first place.

Well what you are saying, in future that can be an option, but to actually set things upright in the first place, we might need to go small and then grow bigger, rather than opening the door to everyone to come up with anything to everything.

MS. S. NABOU.- Honourable Chairperson, your points are valid but in that same token I would draw your attention to FRCA and the whistle blower provisions there where the complainants are anonymous which has resulted in a whole lot of monies being obtained or re-obtained back FRCA. In that aspect, you cannot completely write it off because there are provisions and that we presume would be for the Commission and whoever chairs it to look through procedurally.

MR. CHAIRMAN.- I stand to be corrected on that, complaints from an unidentified person and keeping the identity hidden are two different things. With regards to whistle blowers, I think the identity is kept secret but they have to identify themselves when they are actually blowing a whistle. It is not from anyone who can actually blow a whistle without identifying him or herself.

MS. S. NABOU.- But the point is a person can feel protected by the Commission, that is the point. Whether they are fake person, the Commission has someone to reference the complaint against, even if it is an email account.

MR. CHAIRMAN.- Which is why we have Clause 5 whereby we are actually protecting the complainant itself which is embedded in this particular Bill. We are protecting the complainant, whoever the complainant may be, they are well protected in Part 5 - Protection of Complainants. It is well embedded inside the Bill itself. So why do you want to encourage an unidentified person and as I have speculated earlier, instead of 10 legitimate, we might receive 500 illegitimate complaints per day. And who has the resources to go an investigate these 500 or so whatever the numbers they start coming in?

MR. K. IYER.- Honourable Chairperson, while Part 5 protects complainants, the grounds on which Commission can dismiss a complaint makes that part meaningless where it also gives provision to the Commission to refer the complainant for prosecution if it finds the complaints so called frivolous.

MR. CHAIRMAN.- Which section you are talking about?

MR. K. IYER.- So that is why given these provisions, if the Committee does not recommend that these provisions be removed, then that anonymity of complainants is paramount. The complainants will be anonymous. Their identities will have to be protected just as you had rightly said about whistle blowers, but you really have to encourage people to come out and complain. If you say that they cannot make a complaint by withholding your identity, people fear victimisation given the other provisions in this Bill in its current form.

MR. CHAIRMAN.- We note and we will deliberate on that.

HON. M.D. BULITAVU.- Through you Honourable Chairman, refer something from the submittees. The line that I am getting is this, either the Bill deletes the anonymous complainant or it keeps it there but removes Clause 12 (1) (b) in terms of malicious and politically motivated; either one. That is how it is in operation, is that the point are you trying to raise?

This is the last one from me. In terms of Clause 12 (1) (c), in terms of complaints that the Commissioner may not investigate where certain issues that cannot be complained later, it has been made public in other forums and other entities, do you think that is fair?

HON. LT. COL. P. TIKODUADUA.- Would you like to just repeat that again, I am looking at Clause 12 (c) right now?

HON. M.D. BULITAVU.- Clause 12 (1) (c), says and I quote: *“The Commission must investigate any complaint received by the Commission unless the Commission is of the opinion that - that the complainant has disclosed the nature, substance or details of his or her complaint or has disclosed the name or office of the person the subject of the complaint to any other person or entity apart from the Commission.”* So if that particular issue has been raised earlier in the floor of Parliament of in the media or in difficult situations where someone goes into complain and another person or two persons comes in and tells the Commission, “he has shared that story to us” so that invalidates his complaint, is that fair?

HON. LT. COL. P. TIKODUADUA.- Whistling is not fair, like for instance, Parliament which is a public forum and the Members of Parliament are there to represent the people in different capacities and different issues, and if a particular issue arises out of Parliament pointing at a particular issue and then that becomes a subject of a complaint later by someone, meaning that, that issue has already been made public, through that it would invalidate that particular point and would invalidate that particular issue to come before the Commission because the Commission can rule it out because it has already been made public. We say it should not be because it should not impinge on the other.

HON. RATU S. MATANITOBUA.- Thank you Honourable Chairman. President of the NFP and your members, thank you very much for your presentation. In your submission you mentioned about Schedule 6 on the Commercial Statutory Authorities and Government Commercial Companies. Can you list some of the names which are not in Schedule 6? Thank you.

HON. LT. COL. P. TIKODUADUA.- Thank you. I think I mentioned two, much of Schedule 6 actually just talks about purely public service. We are making references to institutions under Schedule 6 that actually are either wholly or partly funded by Government and have to be accountable asset because in terms of public office holders people are using public funds.

So they are not here, I mentioned two in particular, FBC and FSC and of course there is FEA, Water Authority of Fiji and AFL. Any place or institution that gets funded by Government, where they recipients funds from public office.

MR. CHAIRMAN.- What about those commercial arms which are not funded by the Government?

HON. LT. COL. P. TIKODUADUA.- Do you have any example of that?

MR. CHAIRMAN.- We have some stand-alone companies now, like for example the one mention; FBC. We do not give them any grant, they are commercial arm operating on their own.

HON. LT. COL. P. TIKODUADUA.- Are you sure you are on the right band, Chairman?

MR. CHAIRMAN.- As we said, the grant that you are talking about is no longer a grant, it is a fee that we pay to FBC for the work carried out for the Government and it was well deliberated in the previous Parliamentary term when the report was presented.

MR. K. IYER.- Honourable Chairman, the grant was turned into a fee after FBC started making losses and this was clarified by the current CEO of FBC that what is being received is not a grant but a fee, but on the same note, if you are dismissing FBC as a Government Commercial Company...

MR. CHAIRMAN.- I am not dismissing them as a Government Commercial Company…

MR. K. IYER.- Then why is the Minister for Economy or the Ministry for Economy authorises payment of a bonus to the FBC – CEO?, Government is responsible for FBC.

MR. CHAIRMAN.- Honourable Iyer when the Chairman speaks….

MR. K. IYER.- I am not an honourable Member of Parliament

(Laughter)

MR. CHAIRMAN.- Mr. Iyer, I think we are in a Committee stage and when one person is speaking, especially when the Chairman is speaking, it would be an honourable gesture from your side to listen as well. I never said that I am omitting FBC as a commercial entity of Government, it is a commercial entity, what we are talking about here is, in a submission it was said that we actually give grant which is not a grant it is a fee and it has been clarified in Parliament. Coming over here and saying something that has already been presented and approved by Parliament will not actually make the note.

MR. K. IYER.- Honourable Chairman, we are saying that it is a Government Commercial Company.

MR. CHAIRMAN.- Yes that is what I am also saying that it is a Government Commercial Company and we do not give grants to them, we pay fees to them for the work they carry out for the Government.

HON. M.D. BULITAVU. – Let me come in. We are going into a particular Government company, whether it is Government funded or Government fee or Government granted, what the submitters are suggesting is to expand the definition of public officials to also cater for those working in Government companies and also to clarify the definition to also include them. That could be considered by the Committee rather than we going onto a full debate of the company.

MR. CHAIRMAN.- That is what I stated. We will be deliberating on what has been presented to us but if the fact and figures are not correct, it is our responsibility to correct it. This is not the forum to come and discuss what is right and what it wrong, if there is an incorrect information given and if we correct it, it is not a forum to justify.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman I think the **Lord** has been passed around whether it is actually a fee or a grant and we will stand here today discussing all this whole day, but the point we are saying, that Government has given a grant which you now refer and say that it is a fee, it can be accepted because it has been made a law, but our submission is that Schedule 6 should be extended to places where Government gives money. Maybe it should even now include fee because I find it now a bit funny that Government owns FBC and it is paying money to itself for it to do its job which is another discussion we can have in another forum, but I raise it now. But we are saying, review Schedule 6, include there, companies now, maybe I can say now those that are receiving fees from Government.

Government is paying itself fees for its own job. I am now making that submission that it should also either grant or fee should also be included in Schedule 6 and the Committee I think should consider that.

MR. CHAIRMAN.- Honourable Member, we pay fee to a lot of other companies as well, private companies as well.

MR. K. IYER.- Honourable Chairman, what we are saying, Government Commercial Companies, we are not nitpicking here because it is FBC.

HON. LT. COL. P. TIKODUADUA.- But it is a good example.

MR. K. IYER.- Just as we named Fiji Sugar Corporation that Parliament guarantees loans and here FSC has got $173 million of taxpayers funds invested in that company which is now wholly owned Government company despite the fact that others have minority shares. The fact is that Government appoints the Chairperson of FSC, Government appoints the Chairpersons of FBC just as Government appoints the Chairpersons of many other Government commercial companies, so the taxpayers of Fiji through Government have an interest in those companies.

MR. CHAIRMAN.- Mr. Iyer, is it the Government or the Board? It is the Board. That is what I am saying, if you come in to do your submissions, please come with facts. FBC- CEO is appointed by the Board and not by the Government.

MR. K. IYER.- We are saying the Chairman, Honourable Chairman. We said the Chairman of FBC is appointed by the Government. That is what we said, I did not say the CEO.

HON. LT. COL. P. TIKODUADUA.- Honourable Chairman, our point is made, we should not entertain any further discussion on fees or grants. You can deliberate on that. I think they mean the same thing anyway.

MR. CHAIRMAN.- Thank you Members, thank you for your presentation. I now invite members to come and have tea with us. Thank you very much.

The Committee adjourned at 12.47 p.m.