

STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

WEDNESDAY, 30TH JANUARY, 2019

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON MONDAY, 30TH JANUARY, 2019 AT 9.00 A.M.

Interviewee/Submittee: Fiji Commerce and Employers Federation

In attendance

1. Mr. Nesbitt Hazelman - Chief Executive Officer
2. Mr. Noel Tofinga - Industrial Relation Consultant

MR. CHAIRMAN.- I would like to welcome the team from the Fiji Commerce and Employers Federation, who are present before the Committee this morning to actually give their submission and present on the Code of Conduct Bill, Bill No. 33 of 2018.

(Introduction of Committee Members by Mr. Chairman)

Without further delay, I will give the floor to you to introduce yourselves and make your presentation to the Committee. Thank you, Sir.

MR. N. HAZELMAN.- Mr. Chairman and Honourable Members, I would like to, first of all, thank you very much for availing your time and allowing us to come in. I know there was a bit of misunderstanding with the times that was allocated to us but having said that, I know I have a meeting with the Ministry of Labour at 10 o'clock. So I am going to rush through this before I go down to the PSC Board meeting in Nadi later on this afternoon.

Honourable Members, the Fiji Commerce and Employers Federation is the largest private sector organisation in Fiji. We represent over 500 companies from large corporations to single consultants, who represent Small and Medium Enterprise (SMEs) and those in the micro areas also. As such we have interest in some aspects of this Bill.

Having said that, Honourable Members, first of all, we just like to make a statement. The Bill is a good Bill. It covers aspects that need to be covered. The only things that we are asking and I think it should be taken on board is that, does this harmonise with other Bills or other Acts like the Public Service Act in terms of the Code of Conduct in the Public Service or the Companies Act of 2015? And this refers to directors' liability and their fiduciary duties. That is very, very well covered under the Companies Act. I think it is important that these things harmonise. If not, there will be a lot of confusion amongst Board of Directors and those who serve on Government Boards.

Why we will not comment much on the body of the Bill in terms of Civil Service or the part that covers the Prime Minister and the Attorney-General, we have given you a matrix that we have made some comments on the matrix that will help you with your deliberations moving forward. I will be very brief and I would like to comment on Schedule 4 and Part 6 of the Bill where they basically deal with statutory bodies, board members, commission members, et cetera.

The issue we have with that Bill is an issue of the areas where it is required that we need to disclose our assets, our wife's assets, our children's assets, et cetera. And to me personally, I sit on a number of Government Boards and I have spoken to a number of people who sit on Boards. I am a Public

Service Commissioner, I also sit on the President's Honours Board. These sort of things will act against the spirit of this particular Bill.

Why I say that is that, a lot of our spouses are professional spouses, and I have spoken to a couple of Board Members who actually serve on Government Boards and most of these Board Members serve free of charge. They want to contribute to their country. They bring their expertise from the private sector into these Boards and offer their service free of charge. So their spouses work professionally and most of them would not want their assets to be declared.

I mean, if it is a requirement, you declare it, but the part we are very concerned about is that, anyone can apply to the Commission, pay a fee and source all that information. This is what concerns us and I think if Government is keen on drawing on private sector experience, on people out there, I think they need to add some more protection into this Bill where that is concerned in terms of privacy. I think it is a constitutional right also to some level of privacy.

The other aspect is the practicality of some of these clauses, especially when there is an immediate conflict of interest, you have to inform the appointing authority which is normally the Minister. Take for instance, if you are sitting on a Board, you get your papers and there is a conflict of interest, what would you do, stop the meeting?

I sit on the Board of Housing Authority trying to get hold of, and this was last last year, Honourable Bala who was the Minister, and it was almost impossible. So these are the practicalities of the Bill. I think it has to be a bit flexible because most of these statutory bodies have their own Code of Conducts. We get the papers, we sign, is there a conflict of interest of each paper? We sign off on it and we are held responsible under the Company's Act. This is our fiduciary duty to ensure that there is no conflict of interest. But it prescribes here that we need to inform the appointing authority which, in this case, is the Minister. And for practical reasons, I think that needs to be seriously looked at and something done about that.

The other area has to do with the conflict of interest itself, and we note that if there is a complaint against the Attorney-General, you have to get a certificate from the Prime Minister's Office and the Prime Minister needs to have a look at it. But they are both covered under this Bill. Can we not move all that say, to the Solicitor-General, have a totally independent party to look at it and remove any conflict of interest whatsoever that may exist or may perceive to exist? We talk about transparency and accountability, I think these are the sort of things that will really shine through if we were to do that.

Honourable Members and Honourable Chairman, I think from the private sector's point of view, our concerns basically lie around those two aspects. One is the issue of the declaration of interest and the other issue is basically on the practicality of some of these rules within Schedule 6 and Part 4 of the Bill that deals with statutory authorities and Boards and Commissions.

I will just introduce Mr. Noel Tofinga, who is our Industrial Relations Consultant and he has been to your Committee several times last year. Noel, you may just want to add one or two things that we have highlighted. It is all in the matrix, we have highlighted the areas, just for your ease of reference.

MR. N. TOFINGA.- The provision that is of concern, I will start back to front. I will not go through all, I will just stick to, at least, five salient points that Mr. Hazelman had commented on. Let us look at Clause 27. In Clause 27, Mr. Hazelman did touch on this. In the private sector what we earn, to us, to have those personal information disclosed is like a breach of privacy and we believe that it is very close to our constitutional rights.

There are pros and cons, I can understand why you would like to have that. It would be good to know that a person, a judicial officer is earning \$30,000 and how come he has a \$160,000 home. I mean, it acts as a deterrent in that sense. But to Board members, and not only for Board Members, but the very fact that the information you disclose can be accessed, that is our concern. Section 27 allows for that, you just pay a little fee and the world knows what you are getting.

Private sectors, these are business people and the threat to their life and to their families can encourage crimes, like kidnapping or holding their children or something like that for ransom. That is going to the far extreme, but the crux of the matter is that we believe that it is an invasion of privacy.

If you look at Clause 20 of the Bill, we say that it is inconsistent with Clause 13. In Clause 20 it says that you cannot; and where it says, and I quote:

“Subject to the provisions of this Act, a person who makes a complaint under this Act concerning an alleged or suspected non-compliance with a Code of Conduct by any person —

(a) incurs no civil or criminal liability...”

So there is no liability there.

Then you look at Clause 13 which states, and I quote:

“Any person who makes a complaint which is malicious or is politically motivated...”

Here you have a *sasa* broom, one hand you are saying no one is going to get anything, no one is going to get whacked by the *sasa* broom but on the other hand, someone is saying; “You will be whacked.”

To have this provision, it is an indicator that the drafter of this Bill has no faith in the inbuilt mechanism to safeguard the processing of complaints. You have a process where all complaints come through and in that process, you should be able to determine whether it is malicious or not, from the very outset.

Having this provision shows that the drafter himself has no faith in the process that he has drafted that. All you simply need to do is just tweak it and ensure that there will not be any leakages in terms of maliciousness, et cetera.

Mr. Chairman, that is basically our submission. We had no intention of touching on anything that was said previously. We have been reading the newspapers, et cetera, and our approach was just to bring to the Committee’s attention the concern raised by our members in the public sector and the big concern that they raised is the invasion of privacy, what they perceive to be a great invasion of their privacy.

MR. N. HAZELMAN.- Thank you, Mr. Tofinga and Honourable Chairman and Honourable Members, excuse the pun, we are both from Savusavu. So some of this *sasa* broom, et cetera, always come up but anyway, having said that, I would like to thank the Committee for taking on our submissions and like I said, we had made some notes on the matrix that we have taken on board.

Like I said, the private sector would like to assist Government authorities and boards in any area. In the Ministry of Labour, they have three or four Boards - ERAB Board, OHS, NECB, you have all

these Boards. And just imagine going to the trade unions asking them for their assets! I mean, it will breakdown right there and then. Then we are going to have another problem with ILO. These are some practicalities of this.

Maybe, you can define the Boards that need to come under this Act and some of these Boards may not need to come under this. But once again, I would just like thank to you and if there are any questions, we are happy to respond to them. Thank you very much, Honourable Chairman.

MR. CHAIRMAN.- Thank you very much, Sir, for your time and that deliberation on the Bill itself, I will open the floor to the Honourable Members now, if they have any questions, queries or comments that they would like to ask at this point in time, they may do so.

While they are actually thinking about their question, just on Schedule 6. At this point in time, whatever you said about a Directors sitting in the Boards or as the Board Directors, is it covered in the list of 64?

MR. N. HAZELMAN.- Yes it is, it talks about Directors or Assistant Directors, Commissioners, anything under the Constitution. I sit on the Public Service Commission, so we are covered under that.

MR. CHAIRMAN.- I believe that is the portion that was actually removed. That is why some people are actually coming in harping about to include all those especially with regards to statutory authorities, board directors.

MR. N. HAZELMAN.- There is board of directors on statutory authorities. As we sit now, the board of directors on statutory authorities is very thin, we rarely have a quorum. I see it on Housing Authority we have only three members and that is to make decision on quite a large organisation and if you are to bring in credible members, they would not come. I spoke to a number of board members of other entities from the private sector and they said, "if this comes to worse, we really need to reconsider our positions." Because like I said, some of them have professional spouses.

(Laughter)

MR. CHAIRMAN.- Thank you for that comment. That is something that we have been discussing a lot about who should be included and who should be excluded. Because all the submitters that have been coming in before this Committee, they want each and everyone but you have very clearly stated why the directors sitting on certain boards, especially the statutory authorities or bodies or commercial arm of the Government they should not be included in this particular Bill.

MR. N. HAZELMAN.- Why we are saying that Honourable Member is that, the fact that these things are covered under the Companies Act, very very well covered. We can go to jail under the Companies Act. So, that is why I said, we need to check whether it harmonizes with the Companies Act and if the Companies adequately covered it and it is law, why impose it?

MR. CHAIRMAN.- These are some of the things that we want the media to cover and they are not here and whatever they are not supposed to cover, they are always present here to actually cover all those things. Honourable Members any questions or queries? I was also in a rush to attend a meeting at 10 this morning but since you are sitting here, I can relax until you go to Tanoa Plaza.

MR. N. HAZELMAN.- I can ask you the questions now, Mr. Chairman.

MR. N. TOFINGA.- Mr. Chairman, if I may just on the part where you are allowed to disclose information. We would like to come on strong when we say that if the Bill does go in, then at the very least let those information be for the purpose of the Commission and not to be released in any way or whatever part to any other organisation unless there is a court order, et cetera. Whatever is disclosed to the Commission should remain in the Commission and should be used only for the purpose of the Commission. We would like to come on strong on that.

MR. CHAIRMAN.- Just a comment on that, would you actually say, let us say for example, for prosecuting purposes. If there is an investigation and the case goes to FICAC, should that information about spouse and children be released to FICAC?

MR. N. TOFINGA.- Sir, I do not see why they should come to the Commission and get that information. Let FICAC do what they are supposed to do, they are investigators. They get a court order and the person will have to give it to him anyway. They should not use the Commission as something that they can lean on for information. The Commission should be aloof, I believe that if the Commission does that then the Commission itself is acting in conflict, that in itself is a conflict of interest.

MR. CHAIRMAN.- I believe that point is taken well on board. Once we do our deliberation at the Committee stage, we will definitely consider what you have told us today and we will see how best we can incorporate these thoughts of yours into the Bill, considering that we definitely need private sector's input to improve the public sector these days.

Thank you very much and thanks a lot for your time.

The Committee adjourned at 9.20 a.m.

The Committee resumed at 10.00 a.m.

Interviewee/Submittee: Mr. Manu Korovulavula

MR. DEPUTY CHAIRPERSON.- Thank you, ladies and gentlemen, and media personnel. Sorry for a little delay.

(Introduction of Committee Members by the Chairman)

Thank you for coming this morning, Sir and availing your time for the Standing Committee on Justice, Law and Human Rights. Now, for the information of all the Members and media personnel, he is Mr. Korovulavula. Now I allow Mr. Korovulavula to submit his presentation.

MR. M. KOROVULAVULA.- Thank you very much, Mr. Deputy Chairperson. I have two submissions. The subject is the same but I divided them into issues so that the issues I will elaborate will clarify itself to you so that you understand why I separated them. The subject here is land transport. I have provided the Chairman a copy of the same. I am sorry I have only one extra copy.

I would like to start off by referring to this report which was my last report before I retired as the Chief Executive of the Land Transport Authority after establishing it. I established that in 2000. The first one that I established was the Department of Road Transport way back in the 1990s. You would have noticed everyday when you come to work the congestion on the road, motor traffic congestion and quite often, members of the public have written their comments on the paper or even written letters to the authority and they do not seem to give some urgency to the problem.

The problem really, what makes them move is logistics transport system. That is the movement of goods in order to earn income from the point of production to the point of sale where the consumer buys it. We go back to some of my submissions, I have made. I have presented in different areas but the topic is still the same, the subject is still the same. I hope I would not bore you with this.

After the Second World War from 1939 to 1945, a large number of United States and British Military surplus goods vehicles were left behind in Fiji when the soldiers returned to their countries when Japan surrendered. Burns Philip and Carpenters did not let out their goods vehicle for hire or reward to the public. What I am trying to bring out here is that there were no goods vehicles or commercial goods vehicles, only the ones owned by these companies. They used their vehicles to distribute to their customers and owners' own goods. There was an owner of a shop close to the hospital, his name if I could remember was Sahu Khan. He used to use his vehicle to distribute to their customers and own goods. As far as I can remember, he was only the goods vehicle owner who hired his vehicle out primarily for the purpose of carrying passengers.

Several years later, various demands for commercial use of goods vehicles was recognised. In that embryonic transport industry, some were surplus goods vehicles like Dodge 1500 weight, Ford 1-tonne and Bedford 3-tonne were purchased by individuals and modified to suit their own purposes. Some of the military surplus vehicles were stripped and their chassis were rebuilt and mounted with bus bodies. The first one I remember when I used to go to school, the Suva Methodist Boys School, I still have my school badge with me. We used to call it the atomic power.

In 1955, the Transport Control Board was established under the Ordinance Cap. 235. Its primary and sole function was to control, regulate and administer the operation of public service vehicles and bus services under Road Service Licence.

In 1962 the Commissioner of Police handed over the functions and responsibilities of registration and licensing of motor vehicles and drivers of the Principal Licensing Authority to the Department of Road Transport and Civil Aviation. The latter was until then, the responsibility of the Colonial Secretary.

In 1965, the Traffic Ordinance No. 11 of 1965 was consolidated and subsequently by Ordinance No. 21, the same year defined goods vehicle to mean a motor vehicle which is constructed or adapted for the conveyance of goods, merchandise or any burden of any description or is primarily use for the conveyance of goods, merchandise or any burden of any description in connection with trade, business or agriculture. For the purpose of this definition, the performance by Government or a Local Authority or any of its functions shall be deemed to be the carrying on of a business”

Regulation 54(2) of the Traffic Regulations 1967 prescribed conditions under which the goods vehicle permitted to carry passengers. These mandatory conditions would not have been prescribed if the vehicle were to carry goods only of any description because it is designed and constructed to do just that. These regulation was put into effect on the 1st May, 1967.

DEPUTY CHAIRPERSON.- Excuse me Sir, if you do not mind, is your submission based on Code of Conduct or is it on LTA or something?

MR. M. KOROVULAVULA.- Because I see the Committee Members in a different generation, I thought I might like to bring you to the forming of the laws about traffic control in this country.

DEPUTY CHAIRPERSON.- Sir, if you do not mind, this is the Standing Committee on Justice, Law and Human Rights and we are taking submissions on the Code of Conduct Bill.

MR. M. KOROVULAVULA.- Yes, I consider this issue that I bring up is one of the Code of Conduct.

HON. M.D. BULITAVU.- Probably Honourable Chair, the submittee can jump into his substantive presentation on the Code of Conduct on how it is linked with the LTA provisions or the laws concerning transportation in Fiji to make it more specific for the Committee to deliberate.

MR. M. KOROVULAVULA.- The thing is that what I am trying to highlight to you, I am sorry that you thought differently that this might not be relevant to what you expect me to tell you. In my mind, I think this is relevant because it is through the parliamentarians as you make laws to improve and unless you know the basis of these legislations that were implemented at that time, why it was not implemented in the right way as intended by Parliament; that is the issue here.

It is the conduct of how this was implemented, the way it was implemented is not in line with the intention of the law. I will then see that you are concerned about more time, you need more time and you think that my submission is not relevant.

DEPUTY CHAIRPERSON.- Sorry Sir, your submission is relevant but I think this is not the right forum. We will take your written submission but we are mainly concerned on the Code of Conduct Bill at the moment, and if you have anything relevant to the Code of Conduct Bill regarding all those people affected or if you are affected in any way or the public or anybody, feel free to talk on that.

MR. M. KOROVULAVULA.- Now, I will skip a few pages. I will talk about Commercial Goods Vehicle.

When I commenced work in October, 1999, I noticed there was conspicuous submission in the Land Transport Act, 1998. There was no provision in the Act to control, regulate and administer the operation of Commercial Goods Vehicles.

In view of that, I prepared a paper and submitted it at the time when I was the Minister for Transport. I presented it in Cabinet and it was endorsed by Cabinet. To this day, this law has not been implemented. The question I am asking: why? Why has this not been implemented? If anything that affects the people every day, coming and going back home, coming to work and going back home every afternoon, it is the system of transport that we are implementing presently.

I was trying to show you how to get it right, but it appeared to the Committee that my topic or the issue that I am raising may not be relevant. I am afraid my view on this issue, as a practical man, this is a very important Bill, the Code of Conduct Bill. So if you look at the Report that I have given to you there, I am sorry I could not distribute more to others.

From pages 29, 30, 31,32 (indicating from submission), these are tables, the Appendices shown there - Appendix A, Appendix B, Appendix C, what they are showing us here are the figures. Figures tell more facts than writing words. You cannot disguise the fact with figures. What we have here are the number of vehicles on the road - Central, Eastern, Western, Northern and the total, in different classes. What is absent from the statistics or the data which is presented by the Transport Department or LTA presently, is that they do not have any statistics for the rural maritime provinces. That to me, is a serious matter.

It appeared to be concentrating on the Northern Division, Western Division and Central Division. What about the Eastern Division? So, are we going to allow this to go on this way because Eastern Division is part of this country and we contribute to the Consolidated Fund too? If you see, what I have prepared here is my Report at that time. It does not show anything about the maritime islands or maritime provinces. My concern is this, that in isolating the maritime provinces, you are isolating one part of Fiji from knowing what is happening and not caring about them. This is proven in the statistics here, it is not shown here.

The other thing that I want to highlight is that, in the transport system, to provide the service to the people, you need to have two categories of transport: one for passengers and the other one for goods. We have licences on buses, taxis, hire cars and rental cars. The goods vehicle are not licenced as such. The question is this, I prepared the paper or submission myself and was endorsed by Cabinet. There is nothing done about it, why is that?

I will go to the second point. I could elaborate more on this but I think I feel awkward because you have mentioned that the topic that I am talking about might be irrelevant to what you are expecting from me.

DEPUTY CHAIRPERSON.- Sorry, to interrupt you, Sir,

MR. M. KOROVULAVULA.- Sorry?

DEPUTY CHAIRPERSON.- I am sorry to interrupt you, you have only four minutes to submit, Sir.

MR. M. KOROVULAVULA.- Four minutes?

DEPUTY CHAIRPERSON.- Yes, Sir. There are three other presenters who are still waiting and we have given them times from 10.00; 10.30; 11.00 to 12.00.

MR. M. KOROVULAVULA.- So you are giving time for the person to submit and you limit the time. But in your advertisement about inviting people to come in, you did not advertise in the paper that it should be 20 minutes, 30 minutes, 40 minutes, and here, while I am submitting, you said, first of all, that I am overstepping the time limit that you have allocated to me.

In this way, you will not be able to exhaustively know everything that we have to tell you in order to assist you in governing the country properly.

DEPUTY CHAIRPERSON.- Thank you, Sir. If you wish to submit anything regarding LTA or something like that or this, you can make arrangements with the Committee here, and feel free to come again any time.

MR. M. KOROVULAVULA.- I think the query that I have is: why is it that the paper that I presented on the Introduction of Commercial Goods Vehicle which was endorsed by Cabinet is not implemented? That is the question, and that was way back about 15 years ago. There are so many kinds of vehicles that are coming in, not only that, but different machines and the congestion, the traffic control are in disarray.

DEPUTY CHAIRPERSON.- Thank you, Sir. We will take your views and if you have a written submission regarding this, we will forward it to the relevant people concerned. Thank you for availing your time, I am sorry to interrupt in the middle here.

As I have informed you, feel free to come again with your submission. We have the Secretariat here and you can discuss the timing and we will avail ourselves for it. Thank you very much, Sir. We will have a short adjournment and then after this we will have the next team for the next submission.

MR. M. KOROVULAVULA.- Thank you very much, Deputy Chairperson.

DEPUTY CHAIRPERSON.- Thank you, Sir.

MR. M. KOROVULAVULA.- I am not satisfied with what I have been told just now by you, and I think it is a waste of time coming here.

DEPUTY CHAIRPERSON.- Thank you very much, Sir, we can stop it here now. Thank you. We will adjourn for five minutes.

The Committee adjourned at 10.25 a.m.

The Committee resumed at 10:30 a.m.

Interviewee/Submittee: Hope Party

In Attendance:

1. Ms. Tupou Draunidalo - Party Leader
 2. Ms. Daiana Buresova - Party Volunteer
 3. Ms. Tavaita
 4. Mr. Necani
 5. Mr. Raduva
 6. Ms. Eta
 7. Ms. Karalaini
 8. Mr. Ratu Sailosi
-

DEPUTY CHAIRPERSON.- Thank you, ladies and gentlemen. Good morning to you all. Before we proceed, I would like to welcome the Hope Party this morning.

For your information, on my far right, we have Honourable Ratu Suliano Matanitobua - Opposition MP (Member of Parliament); followed by Honourable Sanjay Kirpal - Government MP; on my far left is Honourable Moses Bulitavu - Opposition MP; and we have Honourable Selai Adimaitoga - Government MP. Also, you must have heard yesterday that she has been appointed as Assistant Minister for iTaukei Affairs. So, we congratulate you, Madam, on this.

We also welcome the members of the media and the supporters of Hope Party.

Over here in front me is the Party Leader, Ms. Tupou Draunidalo and Ms. Daiana Buresova; the Party volunteers, we have Tavaita, Necani, Raduva, Eta, Karalaini and Ratu Sailosi. Thank you for availing your time this morning in front of this Standing Committee on Justice, Law and Human Rights and myself, the Deputy Chair, Honourable Rohit Ritesh Sharma, and our Chairman has just left a while ago to attend another meeting in Suva but he will be back after the meeting.

So I would like to give this opportunity to the Hope Party to submit their submission. Thank you, Madam.

MS. D. BURESOVA.- Good morning, Honourable Deputy Chairperson and Honourable Members of the Committee. Thank you for allotting time to ask the Hope Party to make submissions to the Code of Conduct Bill, Bill No. 33 of 2018.

Just by way of background, my name is Daiana Buresova. I work in the area of International Trade and Investment Law and I also serve as a Party Volunteer for the Hope Party. I appear here with, as you know, our Party Leader, Roko Tupou Draunidalo and some of our Party supporters.

At the outset, we wish to emphasise that we are here because we care about the purpose, functions and powers of this Bill and what it seeks to do. Our submissions are therefore aimed at improving the Bill so that it works better and keeping our public officials and some private persons dispersing public funds accountable and better accountable to Fijian taxpayers for how they spend their money, and as the Committee well knows, about one-third of public moneys collected by the Government from Fijians come from direct deductions of taxes from their pay and around two-thirds of the public moneys for Government are collected from indirect taxes, charges and fees levied by Government to everyone in this

country. That includes the taxes and duties in a packet of noodles or a loaf of bread. Every time a Fijian buys some goods or services, the Government collects its share from shopkeepers. Fijians pay all of that money so that Government can use it within the law for things that we all need like education, health services, roads and support to those less fortunate in society.

It is against that background that this Bill comes in to ensure that those individuals who disperse or spend those moneys that Fijians give to Government every day and every year are individuals who will abide by certain standards of conduct to ensure accountability to Fijians for how their moneys are used. Therefore our suggestions for amendments are to improve the Bill after enactment so that it works and it works very well, that is has teeth so that those who need to account for spending public moneys do account because a badly drafted constitutionally incorrect or not well-thoughtout law will hold no one to account or indeed hold the wrong or irrelevant people to account. That would, in our respectful opinion, defeat the whole purpose for having this Bill and defeat the noble constitutional mandate for making people account for how public moneys are spent.

So, I think we are going to jump right into the substance of some of our suggestions. The long title of the Bill at the very start says that the Bill is established under Section 149 of the 2013 Constitution. It is, therefore, our submission that we will use Section 149 as the yardstick to identify legislative gaps and propose solutions to address these gaps.

The Constitution is the supreme law so it will override or take precedence over any written law in the case of any inconsistency and it is only methodical that we consider it in this manner. So I draw your attention to Clause 7(4). If you look at Section 149(a) of the 2013 Constitution, it lists the public offices that the Code of Conduct Bill must capture and that language is mandatory.

That Section, Section 149 uses the term, “shall” and not the term, “may”, to give Parliament an opt in, so there is no such thing as an opt out option. It says that Parliament shall make this law and this law shall apply to those persons set out in that subsection. There are no “ifs”, there are no “buts”, the Constitution says, “shall”.

Again, the Constitution is the Bible for all laws. It has to be obeyed by all laws and nowhere in Section 149(a) is there as specific reference to the Judiciary or Judicial Offices. And granted it refers to offices established or continued by the 2013 Constitution or created by any written law, all of which also includes the Judiciary. But that has to be seen in the context of a democratic Constitution and the separation of powers doctrine of constitutional law.

If you look at Chapter 5 of the Constitution itself, it deals specifically with the Judiciary, including removal of Judicial Offices for cause.

The Committee, we urge, has to research and consult further to see how foreign Jurisdictions deal with this delicate issue of another layer of possible executive oversight by the Fiji Independent Commission Against Corruption (FICAC), the prosecuting authority over the independent Judiciary. This is particularly pressing for us in Fiji where powers and forces in various parts of the executive and the legislative like to wield the power without clear or enforceable limits. We suggest that this Code of Conduct for Judicial Offices to be a guide and reference point for the Judicial Services Commission only.

In relation to Clause 7 of the Bill, we do not think it is wide enough. Again, in reference to Section 149(a) of the Constitution, it is so wide that it captures anything under the law enacted pursuant to it. We believe that it tries to capture any person in public or even in a company funded by public money and dispersing public moneys. We refer to the last part of Section 149(a) of the Constitution which states, and I quote:

“...and to such other offices (including public offices) as may be prescribed by written law.”

This as you can see is a very broad definition indeed, and is not limited to public offices *per se*.

The Hope Party proposes that Clause 7 of the Bill be enlarged to give full effect to Section 149(a) of the Constitution to include, officials and employees of companies established pursuant to Acts or to which public funds are given to secure a public service.

Our next point is the definition of prosecuting authority as set out in Clause 2 and its general reference in the Code of Conduct Bill. I refer you to Section 149(d) of the 2013 Constitution, which makes it mandatory that a written law must empower the Accountability and Transparency Commission to investigate alleged breaches of the Code and an enforcement through criminal and disciplinary proceedings.

The Bill, in its current form, is unclear about the role of FICAC, the Director of Public Prosecution (DPP) and indeed that of the Commission. It is in our view that there are two prosecuting entities which are constitutionally entrenched, performing largely the same functions, clearly a duplication of resources which is a waste of Government resources. In some jurisdictions, for example, in Queensland, loss of government revenue is a form of corruption, so the codes in the Bill have similar concerns.

Warning bells are right there about enacting this Bill with its overlaps, lack of clarity and duplicity. Ideally, the Accountability and Transparency Commission is established first, to articulate or set out the standards. That means too, that the Bill will have consequential amendments to streamline and clarify all of the other existing and related laws so that there is more clarity, there is more certainty with no overlap and duplication to waste Government resources which is, in itself, a breach of the Code and a form of corruption in certain overseas jurisdictions.

If the said Commission is to be truly independent, it must have its own prosecution arm. But this means, consequential amendments and some amendments to the Constitution where all three exist - the DPP, FICAC and the Accountability and Transparency Commission.

And the Hope Party, again, we refer, Deputy Chairperson and the Honourable Members of this Committee to:

- Section 115 of the Constitution which spells out the functions and purposes of FICAC;
- Section 117 of the Constitution which spells out the functions and purposes of the DPP; and again
- Section 149(d) of the Constitution relating to the Accountability and Transparency Commission.

A lack of clarity as to the confusion, duplicity and creation of another legal and political mess.

Australian lawyers, our Party Leader and I are very familiar, having studied in Australia, we call it ‘a dog’s breakfast’. It confirms the lack of planning, proper processes and consultation in the design and evolution of these laws. Clearly a FICAC-type body was meant to complement or be a part of the Accountability and Transparency Commission.

We also believe that in relation to Clause 7(4) and Schedule 3, if we were to have it in its current form, that the Judiciary will be subject to the Commission under the Bill - FICAC and the Judicial Services Commission. Again, it is dog’s breakfast.

It would appear that a constitutionally legislature and it also gives rights to a powerful executive having way too much power over the Judiciary. At the end of the day justice and the rule of law is always in two substantive parts of the whole; one is the doing of the justice or enactment of the law in itself; and two, the appearance of justice and law in the doing of justice and the enactment of that law, and appearances and perceptions as we all know, matter and they matter plenty. For the law to have credibility in the eyes of those who have elected you, and they who have also paid for all of you and Government and all of its parts and operations.

So just to go back to that issue, we again recommend that the Committee reconsider the inclusion of Clause 7(4) and Schedule 3, pending further research, consultation and independent legal advice as they relate to Section 149(a) and Chapter 5 of the Constitution.

And I think it is also important to point out that we are not saying that the Judiciary be without accountability and standards, 'no'. No one is above the law and those standards in the Code are very good but also universal expectations of Judges of which they are well aware. Judicial Officers are already bound by various codes, standards, local and international, even including the Public Service Commission has its standards, financial dealings and these have been articulated by the Ministry of Economy in the relevant regulations.

We are going to propose something very radical that FICAC be repealed to streamline all the enforcement functions in Section 149 of the Constitution under the Commission in this Bill. However, as we all know, that would mean a Constitutional amendment which requires a two third majority in the first place, and the FijiFirst Government would need the support of the Opposition. It is our contention that DPP should be the soul prosecution arm for all other offences under the Constitution.

A lot has been said in the media about the application of Clause 12(1)(b), Clause 12(1)(h) and Clause 12(4) of the Code of Conduct Bill. In our view, those sections defeat the purpose of this proposed law, that is, this Accountability and Transparency Commission is a competent, complaint-handling practice which demands that if a complaint appears to have substance, it should be investigated irrespective of the motives of the complainant. In our view, you should focus on the message and not the messenger. The primary purpose of motive in such circumstances is usually to increase the investigator's scepticism of the complainant's veracity.

The Hope Party also wishes to point out Clause 12(1)(h) of the Bill, where it says the Commission is of the opinion that an investigation of the complaint would be inappropriate or inexpedient. What does that mean - inappropriate or inexpedient?

This provision appears to us like the State is not genuinely committed to ensuring that this Commission works. So do we take it that this law is designed to use lack of resources, including finances as an excuse or a bar to prevent the investigation of a genuine complaint? As far as the solution, the Hope Party would like to allay the fears about Clause 12(4) of the Bill, as Section 149(c) of the 2013 Constitution nullifies Clause 12(4), Clause 13 and Clause 14. Section 149(c) of the 2013 Constitution mandates that a written law for the Commission must provide for the protection of whistle-blowers referred to in the Bill as complainants. It is mandatory, it is not discretionary nor does it allow for the limitations and exceptions articulated in Clause 12.

And as far as Clause 20 is concerned, the Code of Conduct Bill is subject to and subservient to Section 149 of the 2013 Constitution. The Hope Party recommends that at the beginning of Clause 20 where it reads, and I quote: "Subject to the provisions of this Act...", we suggest that, that phrase be removed, so that now Clause 20 should read, and I quote:

“Any person who makes a complaint under this Act...”

In relation to Clause 23(1)(b) and (c), we again respectfully submit that for the same reasons, it is in direct contravention of Section 149(e) of the 2013 Constitution. Our solution is, it demands that the proposed law protect whistle-blowers or complainants, and removal of the said provisions in the Bill will ensure that constitutional protection of whistle-blowers becomes a reality.

In relation to Clause 26(3) concerning statement of income, assets, other interests and liabilities, the Hope Party notes that this is a badly drafted legislative provision. Regulations made under this Act may specific items which are minor items for which it will be sufficiently in compliance with the section, if the statement shows the general nature of such items. I asked the Committee, what does all these mean?

We believe that this subsidiary legislation making or commit power to the Minister is too broad. It has got too much discretion and power given. So, we propose that this Clause be removed as Clause 29 adequately covers the regulation-making power of the Minister for matters that are captured in Section 26(3).

In relation to Clause 29, the regulation-making power of the Minister, the Hope Party expresses grave concerns at the potential and actual conflicts of interest that will arise with the Minister responsible for this Act. That is, the Attorney-General, whose office will have administrative responsibility for this Act.

As we all know he has way too many portfolios which already means conflicts or potential of conflicts using the words that are contained in the Code of Conduct Bill. It is our proposal that we remove the administrative responsibility of this Act from the Attorney-General and place it under the remit of the Office of the Prime Minister.

We read with interest Clause 17 where it says that proceedings regarding complaints under this Bill will be conducted in private. We submit that this clause is restrictive. Private investigations or hearings should be the exception and not the rule as it is public funds and public matters that are at issue. So our proposal, as a rule, complaints and investigations are to be reported publicly except for the Constitutional protection to the complainants and where the integrity of the investigation needs protecting.

Further hearings are to be in public except where confidential Government information needs preserving and hearings should hear from all competent and relevant witnesses.

We also have a few things to say about the actual content of the Code of Conduct Bill. The whole Party expresses concern at specific aspects of it. We refer you to Article 12, Schedule 1 - Post Office Employment. This is essentially a restrictive trade practice provision as it relates to the employment of former Presidents, Prime Ministers and Ministers. The Hope Party recognises the importance of safeguarding the interest of Government from the post-Government work of former heads of State, Prime Ministers, Ministers and their dealings with third parties.

The Hope Party recommends that a timeframe of two or three years be incorporated into Schedule 1 as an appropriate time lapse following their departure from public office. In our view, one year is too short a period as there is highly confidential sensitive Government or Government-related information and issues that would have been dealt with by the former Prime Ministers and Ministers, and they would most probably be live with the relevant parts of Government. We would also like to point out that Cabinet

confidentiality binds former Prime Ministers and Ministers for lengthy periods of time and those are our submissions, respectfully submitted. *Vinaka*.

DEPUTY CHAIRPERSON.- Thank you very much, Madam, for your submission. We open this floor, if you have any questions. Members, if not ...

HON. M.D. BULITAVU.- Thank you, Honourable Deputy Chairperson. Through you, thank you very much, Party Leader for the Hope Party and the Hope Party for making the submission. Probably the Committee takes note of the submission and the suggestions that have been made and as also provided by other political parties too on the various reservations they have for the various provisions that you have cited and all other Constitutional inconsistencies that you see as affecting the Bill in its current form. I think the Committee will deliberate onto whatever will be submitted to the Committee to look into that. Just a clarification on Clause 26 or 27 of the Bill. Could you just repeat that because I could not take note, what needs to be removed? The whole of the Clause or

MS. D. BURESOVA.- Perhaps, we will start, Sir, with Clause 26 (3). It is spelt outright there. The regulations made under this Act may specify items which are items for which it will be sufficient compliance with this Section if the statement shows the general nature of such items.

I have worked in the Government for about 10 years and I used to be a legislative drafter. I can tell you now this is a very badly drafted provision. So the Hope Party is suggesting is that we remove that sub-clause (3) in Clause 26 because it is more than adequately covered in Clause 29.

DEPUTY CHAIRPERSON.- Thank you. Anymore ...

HON. M.D. BULITAVU.- Deputy Chairperson, I think the other issue that I would like to ask the view of the Party is in terms of broadening the definition of “public officials” and also to affect government companies and board members, but there is also an opposing view by many private sector people who are board members now that such a provision will prevent them from trying to join these boards because they do not want to subject their spouses to declarations on all other things.

MS. D. BURESOVA.- I will leave it to our Party leader to respond to that question.

MS. T. DRAUNIDALO.- Thank you for the question, Honourable Member. Our opinion is, well that is too bad because once you deal with public money you should be subject to scrutiny. Public money, taxes are like trust money; it is given to Government for certain purposes and if people on boards come from the private sector and they come with their expertise to make decisions about public money, they may recommend to sell off this arm, sell off that arm. What if it does not go right in five to ten years’ time? They should be subject to scrutiny so that they take these things very seriously. I am sure they do take it seriously, most if not all of them, but there should be this standard should apply to them as well. Otherwise the blame only falls on politicians.

Politicians should carry the blame because that is what we put ourselves out for, but I think persons who deal with public money even in companies and the Constitution makes it rather clear. I was stunned when I read it the first time only in preparation for this Bill. The more I read this 2013 Constitution, the more I love it. It has got some real nice slips in there and I think this is one, it is very broad definition. It actually says that part that Ms. Buresova referred to, it says “all of those officers including public” you would have thought that they would say including “private”, they said including “public”.

Clearly, they meant others as well and rightly so, whoever drafted that, the public of Fiji should be very grateful to them that they are going to bring certain standards. I know professionals in the private sector, there are many professionals joining these boards. They are subject to standards in their own professions. They know what they have to be put through. They should willingly accept those standards. I do know encroachment on things like disclosing assets in this country, a lot of people do not want to show how wealthy they are or whatever it is because it is one of those political things that if their country is not well off, and you are very wealthy, there must be something wrong with you or you are not doing something right.

I know people get put off by that. I know people in the private sector and the professions, they build up their assets and they do not want to share their private lives that is why they are not in politics. Many of them could run for politics, but they do not because they do not want this level of scrutiny.

Unfortunately, we have to subject them if they are dealing with public money and we are not talking about just a few millions, at times it runs into billions of assets, let us say FNPF and all of that, the investments that they make, they should be subjected to the scrutiny. That is our helpful opinion, others will differ.

HON. M.D. BULITAVU.- Honourable Deputy Chair, in terms of Clause 12 (1) (b) on the politically motivated complaints. What is the view of the Party in terms of that and the requirement that needs to be attached to that particular provision? What qualifies politically motivated?

MS. D. BURESOVA.- It is an interesting choice of words and as I said in our submission, Section 149 nullifies it. It will not stand in a court of law if challenged because the wording in Section 149 is very clear. You have to protect whistle-blowers or as is referred to in the Bill “the complainants”. The idea is to encourage people who have genuine complaints to come before the Commission and in fact what this Bill does by including that particular provision is acting as a deterrent when that should not be the case.

The Accountability and Transparency Commission is meant to facilitate the taking on board of these genuine complaints. In our view, Section 149 is very clear, you have to protect the whistle-blowers, though it is framed differently as complainants in the Bill. Those provisions, it does not allow for exceptions at all, does not allow for limitations and it is very clear.

DEPUTY CHAIRPERSON.- Thank you very much, Madam. If there is nothing from the Committee, thank you very much Party leader, volunteers and other supporters for coming forward with your submission.

The Committee adjourned at 11.00 a.m.