

STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

TUESDAY, 5TH FEBRUARY, 2019

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE LAW AND HUMAN RIGHTS HELD AT THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON TUESDAY, 5TH FEBRUARY, 2019 AT 10.05 A.M.

Submittee: Fijian Competition and Consumer Commission (FCCC)

In Attendance:

- | | | |
|-------------------------|---|-------------------------------|
| 1. Mr. Joel Abraham | - | Chief Executive Officer (CEO) |
| 2. Ms. Senikavika Jiuta | - | Manager Legal |

MR. CHAIRMAN.- Good morning everyone. First of all, I would like to welcome the team from the Fiji Competition and Consumer Commission (FCCC) and the media present here at this Committee meeting.

We have FCCC present before the Committee today to do their submission with regards to the Code of Conduct Bill, Bill No. 33 of 2018.

Without further delay, I would just like to introduce our team.

(Introduction of Committee Members by Chairman)

I would now like to give the floor to FCCC to introduce their team and start the presentation. Thank you.

MR. J. ABRAHAM.- Thank you, Sir. The FCCC is honoured to be here. I am accompanied today by our Manager Legal, Risk Management and Governance, Ms. Senikavika Jiuta. My name is Joel Abraham and I am the CEO of FCCC.

The FCCC is honoured to be invited and be given an opportunity to provide its comments and make submissions in regards to the proposed Code of Conduct Bill, Bill No. 33 of 2018. First and foremost, we believe that accountability and transparency are core ethos of public officials which are embedded in the Fijian Constitution.

The FCCC ensures that we regulate the market. Our job is to ensure that we look at markets where competition is lessened nor limited, to promote the interest of consumers and as such, fairness is a core principle at FCCC. Along with fairness, we believe in accountability and transparency. As such whenever we make any decisions, whether it be tariff or to do with consumer cases, we make sure that both parties are aware of what is happening.

We also ensure that in all our processes, especially when we do tariff settings, it is transparent and accountable because at the end of the day both, consumers and businesses alike, deserve to be treated fairly. Having said that the values of FCCC currently contains accountability and transparency's core values.

The Constitution preamble clearly states that the Constitution is the supreme law of the country and it provides a framework for the conduct of Government and all Fijians. This Bill gives effect to Section 149 of the Fijian Constitution. It legally binds public officials, including the CEO of FCCC, which is myself, and the Board.

Schedules 4 and 5 of the Bill clearly outlines the Board and the CEO's code of conduct respectively. I am pleased to inform the Committee that our Board Charter, we have compared the requirements in the Schedule 4 for Board conduct and there is no difference from what our Charter currently contains. As far as the CEO is concerned as a public official, every year under our HR Policy, I am required to make a declaration of all my assets and liabilities.

The fact that the Board and the CEO are bound by the Bill ensures a high degree of accountability, and I believe there is nothing for us to hide. As such, FCCC fully supports the call for making disclosures. As the CEO for FCCC, I fully support the Bill and commend the effort of the Fijian Government in realising Section 149.

Being a CEO for a statutory authority, given that FCCC protects consumer interests, promotes competition and regulates market where competition is lessened or limited, stakeholders, consumers and their agents need to be aware as an official. There is high degree of expectations and as such, we will respond and we will respond positively.

The consumers and stakeholders are given opportunities to report suspected breaches and the maximum penalty, if convicted, is a term of 10 years of imprisonment and not exceeding five years. Apart from the expected behaviour, there are also provision for declaring interests, financials, assets and liabilities every year. It encompasses not only the CEO but the immediate family as well. Again, it is not a problem to make those declarations.

Our summary of the submission is, when you look at, and if I can go Honourable Chair to the Parts, Part 2 - Clause 5(1), in here, there is a requirement for those that are bound by the Bill. It is crucial that Commission staff and the employees and consultants are bound not to disclose any information unless necessary to do so.

Part 2 - Clause 5(2) – a penalty of 10,000 not exceeding five years is both, fair and a reasonable deterrent provision.

Part 2 - Clause 6(2) - in the interest of confidentiality, the names of any complainant and person, the subject of the complaint, are not to be disclosed.

Part 3 - Clause 7(5) - Schedule 4 applies to all members of statutory authority

HON. N. NAWAIKULA.- Mr. Chairman, can you just take us slowly, please?

MR. J. ABRAHAM.- Oh, sure.

HON. N. NAWAIKULA.- So you are saying that you are happy with that?

MR. J. ABRAHAM.- Yes.

HON. N. NAWAIKULA.- Part 2 - Clause 5(2), you are happy?

MR. J. ABRAHAM.- Yes.

HON. N. NAWAIKULA.- Part 2 - Clause 6(2), you are happy?

MR. J. ABRAHAM.- Yes.

HON. N. NAWAIKULA.- Take us slowly.

MR. J. ABRAHAM.- Yes.

Part 3 – Clause 7(5) – This is to do with the application of the Schedule. So Schedule 4 applies to all members of Statutory Authorities and Boards of Statutory Authorities. And that is where we did the comparison to our current Board Charter under the governance framework that we have and we found that there is no need for additions. The principles that are contained in Schedule 4 is already contained in our Board Charter.

HON. N. NAWAIKULA.- ...(inaudible) are you happy with that or not?

MR. J. ABRAHAM.- Yes.

HON. N. NAWAIKULA.- (Inaudible)

MR. J. ABRAHAM.- Yes.

MR. CHAIRMAN.- CEO, I believe you are basically comparing the Bill itself to FCCC?

MR. J. ABRAHAM.- Yes.

MR. CHAIRMAN.- And what are already applicable in FCCC and what the Bill states?

MR. J. ABRAHAM.- Yes, Sir.

Part 4 - Clause 10(4) - Any complaints against a member of the Commission is submitted to the Chief Justice, ensures independence of complaints received. So we are happy with that as well.

Part 4 - Clause 11 - Verification of information and identification is crucial, given that allegations that can be made could be detrimental, so it is important that proper verifications need to be done. The fact that the Commission must verify ensures that the verification processes are done.

Part 4 - Clause 14(1) - 14 days to respond to the complainant, gives a degree of fairness and natural justice to the person, whom the complaint has been launched against.

Part 4 - Clause 17 - given the nature of the proceedings, it is important that the process that is conducted is private because we do not want to have an incident where complaints keep coming and there is almost like a perception that someone has done something as opposed to ensuring that the person is in fact found guilty by assessing all the evidences.

Part 6 - Clause 26 - only the CEO to declare income, assets and other interests, however, it is to include spouse and children. This declaration needs to be done every year, so currently at FCCC, I do make the declarations. It is not a problem to make a declaration for my spouse and the dependent children as well.

Part 6 - Clause 27 - Any person can pay a fee and request information. This ensures transparency.

So, Mr. Chairman and Honourable Members, we have assessed the requirements under the Code of Conduct and I have always said this, even in media statements that as a regulator, we believe

that we must carry ourselves with a standard higher than what we expect of a market. So, yes, this Code of Conduct Bill puts a requirement to ensure that there is a standard put in place, and we have no issues on complying with that.

As such, we are quite happy to fully support the Bill because FCCC currently does most of the things that are contained in the Bill anyway. So with those words, thank you Honourable Chairman and Honourable Members for according us an opportunity and that is the submission from FCCC.

MR. CHAIRMAN.- Thanks a lot CEO for your time and actually availing yourself before the Committee to do this brief presentation. Just looking at your presentation, what does FCCC think with regards to declaration to be made by children and spouse?

I believe all this while as you stated, you actually making declaration and your spouse and kids were making declaration to FCCC Board. So now with this Code of Conduct Bill coming into place because we had some submitters appear before the Committee, who actually did question the need for spouse and children to do the declaration. What are some of the views of the Commission itself with regards to this particular provision in the Code of Conduct Bill?

MR. J. ABRAHAM.- As I have said, we have no issues. Currently, FCCC undertakes various investigations, one of the investigations that we are currently conducting is, we are also looking at people who are trying to circumvent the system by not accepting money directly but obtaining kickbacks on family members' accounts. So, I think that is a risk from a risk management stand point, being a public official. I think we understand the job we are getting into. I personally when I took the role, I knew what I was getting myself into, that we will be under public scrutiny because the role that we have in terms of looking at deciding prices for certain things could have a national impact and there is a high degree where people could come to us and say, "why do we not do something."

It is not just about me being in the position but it is about ensuring that the systems and processes are proper and whoever comes into the position, we are able to hold them to a degree of transparency and accountability. I think people who will take the position need to understand that.

I personally have no issues in making the declaration for my wife and children. There is really nothing to hide, so it is not an issue. The question that people may have is whether that is required. I think what the Commission would do and this is my understanding is that, they would take this information and be able to look at variances that come up and be able to come back and ask; how was this derived? What did we get?

As far as I see for me personally, I do not see any issues with that. I think it holds people accountable and I think it is a good thing. We should be in a state where people should be able to give answers, especially if you are in a position of power, you should be able to give answers. At the end of the day, we are all answerable to the Fijian people and if the people want to know, then we should tell the people. There is basically nothing to hide.

MR. CHAIRMAN.- Thank you, Mr. Abraham for that.

Another view that I would like to seek from the Commission since we are doing a Bill that is going to affect another Commission or regulator as to how they are going to perform their duties. What is the Commission's views with regards to any complainant who presents a complaint to the Commission and they have to reveal their identity?

MR. J. ABRAHAM.- Sir, under the process of natural justice, a person ought to know who his accuser is. We do have whistle-blowing policies both, in our HR system and Compliance for Market systems. We do want to know because eventually if the matter does go to court, we will require the person to provide evidence. And I always say that triumph of evil is for a good man to say nothing, but they must be able to have the courage to stand up and speak. It is not about the fear of victimisation or anything, I think we must have faith in the systems and processes.

Actually from FCCC's perspective if I am a trader and someone is putting a complaint against me, complaints can be of two types, usually we find a lot of anonymous complaints coming through our desk and one, there could be malicious intent behind it because it is anonymous, we will investigate it and if you have nothing to hide, it is not a problem.

What happens is, the person that has to continuously respond to this gets burdened by responding to things that he does not even know where it came from. Secondly, there could be complaints that have some substance and all of these needs to be corroborated with evidence. So, speaking purely from an enforcement perspective, being a Commission ourselves we must ensure that if any allegation has come forth, we make it known to the respondent. Even when we perform caution interviews we say, "It is alleged that this was done", and we are able to then take evidence or any information that is given and then we need to corroborate it with evidence, sometimes especially in these instances, the evidence could be the person's statement itself. So, I think it is important that, at least, the Commission knows the identity of the person, that verification needs to happen.

As far as whistle-blowing whether this needs to be disclosed to the person as well, that is for the Commission to decide on a case by case basis, what is important and what is not. But the Commission must know where the information is coming from. We live in the day and age where we constantly question the credibility of sources, especially with social media being rampant, people having unprecedented access to technology, people are able to now communicate like never before.

It is important to be able to understand and know what is the substance of the matter or else, when the Commission is set up, it will just be looking at complaints coming day and night and they will not really be sure what the complaint is for and what to do with it because sometime you could just receive a letter. In the last few weeks, we have received some letters that said, "This particular person is doing such and such" and then we have to under our process find information and there is no evidence, nothing else but just information.

When there is information not supported by any form of evidence, it becomes really difficult and it has an implication on resources, time that we could spend serving consumers, ensuring that price monitoring is done in the market and ensuring proper surveillance is done. We would get tied down by just responding to anonymous letters and complaints. At least for the Commission per se, they should know the identity, so I am a firm believer that proper verifications needs to happen.

MR. CHAIRMAN.- Thank you very much, CEO for that deliberation on the questions. I would give time, we have actually five minutes to the floor, if anyone wants any clarification or any questions from the Commission, they may do so now.

HON. R.R. SHARMA.- Thank you. Mr. Chairman, regarding the declaration of assets and liabilities. Few of the submittees have suggested that people should declare, which you have agreed to, but only to the Commission and not to public because there is that possibility of crime or people noticing their wealth, what is your stand on that?

MR. J. ABRAHAM.- Thank you, Honourable Sir. Personally speaking when I looked at the Bill, I thought it was a good thing and I do understand where people may be coming from. It may have implications on things such as when making public declarations, if you are going into any negotiation to purchase any assets, the other party knows your financial position, so it makes it difficult for you to negotiate because they know your ability to pay. You could lose that leverage.

I am a finance person by background. If you go back a few years, companies would safeguard their financial statements like precious gold. If you notice the trend now, companies are required to publish their reports because of various reasons, for example, people want to know how the company is performing, what is the price that they are charging, is the price fair to the consumer, the employee wants to know whether the business is profitable enough and if the business is profitable enough, are they paying me right? The unions want to know, should we go and negotiate? In this day and age, information becomes key. As far as I have seen the Bill, the declaration goes to the Commission and anyone can pay a fee and access it.

Of course, I understand the Commission will ask them, “Why do you need the information?” It is not like anyone can come off the street and say, “I just want this just for fun sake.” There is a mechanism there. I think people usually when they are required to give information and things like that, people get very touchy about this subject. My personal opinion is simple, if I have an asset, so what if people know about it? Maybe what I can do is, if they know about it, I can share my success story, maybe they get inspired and they can acquire the same asset. Let us not look at it from a negative standpoint that if someone knows, what happens. If I have a house or my wife owns a house or I own this and I own that, how much money I have in my bank account, it is not a problem; if it is acquired through proper means, it should not worry anyone.

Of course, the requirement is not, if you look at Clauses 26 and 27 of the Code of Conduct Bill, it says that you are required to give information and when you give information, if anyone wants to access it, they will pay a fee and of course, I think, the fee will be stipulated by a proper regulation because the fee is currently is not stipulated in the Act itself. The regulations will come and clarify what the fee should be or what the process should be or what the procedure should be. I am not a legal person, but my understanding of the law is, the Act will contain the principles and the regulation will basically outline what the procedures will be.

The framework is currently contained and the Bill should it become an Act, I think has the necessary provisions, the regulations will come in and clarify all those things, so, again I have no course of concern neither does my wife and my kids are too small to have an opinion right now. But, personally speaking, I have got no issues and the submittees that do have an issue, I think, probably they should see what the Bill says. I think they are looking at it from a negative side, I always look at the glass half full and in this case the glass is full, full, so it is not even half full. It has got all the elements of accountability and transparency that is required. From my side and again, I give a disclaimer that I am not a legal person but from what I read, I am quite happy to do or fulfil and abide by the requirements.

MR. CHAIRMAN.- Thank you very much, CEO.

HON. N. NAWAIKULA.- I think what will be very important here is the investigation aspect. Receiving the investigation, deciding whether it is on merit and making sure that it proceeds to make this Act worthy. For example, this is very important, this will be the Transparency Commission. We have like this also, what we call FICAC which is also doing similar things and the Human Rights Commission. The problems that we have raising from our side of the House is that, very good intention, but the problem has been that we feel, or some feel that, only certain complaints are going

through. From the Opposition we are saying, it is protecting the Government. So it is very important that when you come to the investigation side, you decide that it has merit, that it follows through because you have a similar role, just speaking on that generally.

So how do you think that aspect can be handled to make the Code of Conduct Bill worthy? Because under this, any person from any aspect of the village can hold the President accountable, and even coming right down to the Directors. There will be floods and floods of complaints coming in, so how do you address that aspect to make sure those that have merit will go forward and be taken care off?

MR. J. ABRAHAM.- Sure, I can totally relate to your question. *Vinaka* Sir, for your question.

The FCCC also receives complaints and again maybe it is not against the public official but definitely it is against the private sector. The complaint is of a similar nature it is public holding the business community or the private sector accountable. What we did was, FCCC is the only organisation of its type in Fiji, so we looked to our counterparts in New Zealand, Australia and other jurisdictions.

In the US, it has an Anti-Trust Division, the ACCC in Australia, the New Zealand Commerce Commission, just last year we were at the New Zealand Commerce Commission looking at their complaints mechanisms. One of the important things that we found or one of the learning curves for FCCC is the screening process.

At FCCC, we have got a few officers, we were able to divide a team into percentage, we would say that we have got 20 percent people in the screening process and 80 percent in the investigation process. We were surprised that in New Zealand it is the opposite, most of their resources is at the screening process and then they go in and look at investigations. Currently as we speak, Honourable Nawaikula, we are developing a system of case classification to see what cases have merits and what do not. What I found is, there could be instances where cases do not have merit, it is a perception problem.

What we want to do at FCCC is, we want to hold the private sector accountable for any breach of the Act. I think in this instance if I could relate is holding public officials accountable for the breach of Code of Conduct. What I find on a day to day basis is quite a lot of it is a perception problem. People do not have access to information or people do not ask the right questions, they are very quick to judge, so what they do is they come in and say, "This business is doing it in this particular way".

A recent one was, we received a complaint from Labasa on fuel prices and they said that kerosene was being sold for around \$2 and they pointed out Mr. Charan Jeath Singh's business. They said Charan Jeath Supermarket is ripping the consumers off and they are doing this and that. So one of the questions I had, they failed to ask was what the regulated price was. The regulated price for dispensing kerosene out of a drum is in fact \$2.01. So the business was following the law correctly.

But the complaint did come in and so it is up to us as a Commission whether we impose that burden on Charan Jeath Supermarket and say, "now come and explain why you have done this." Of course, they will come back and say, "Alright, no we have followed the law." But what that does is, it places an unnecessary burden on the private sector which means that the person could be doing something else but he is spending time responding to a complaint that has no merit.

If I could relate that to the Accountability and Transparency Commission, say I am a public official and people say, for example, the person who lodged the complaint say, “I lodged the complaint with FCCC and they have taken action, and I think they are in a cahoos with the supermarket.” And then the Transparency Commission writes to me and of course, I have to get my Manager Legal involved and say, “Alright, from a risk management standpoint, now let us respond to that.”

The implication of that, Sir is, I will spend less time serving the people of Fiji and more time responding to complaints that are frivolous, that have really no merit. Here we need to concentrate on the opportunity cost of our public officials. The reason the public official is in that role is they need to serve the people and if they are spending too much time responding to complaints that really have no merit, but maybe is an issue of perception then we are not really being fair on the public official. I am putting myself in the shoe and I am saying if it was done to me, what would I rather be doing.

I think the onus is on the Commission. They need to develop a proper screening process. The process needs to make sure that again verification needs to happen, we need to be able to gather and corroborate some evidence and then be able to proceed. While we are giving unprecedented access through this Commission, as you have said, a farmer in a village can now hold the CEO of FCCC accountable, or the Prime Minister or the President accountable.

But at the same time, the onus is also on the Commission to ensure that only meritorious complaints need to be assessed and need to be looked at and that screening process becomes quite vital otherwise this will almost be like a witch hunting exercise where it would be like, if you do not like someone, lodge 10 complaints against him. In today’s day and age it is very easy to lodge 10 complaints against him and then 90 percent of the time in his day his just responding to complaints and then providing responses.

If I am a public official and 10 complaints come against me, I will be required to respond to each and every one of them, I cannot just brush them aside. That will use up the resources and so the question we need to ask is, “Do the people of Fiji want me to continuously respond to frivolous complaints or would they rather have me look at issues that affect consumer interest, and resolve their complaints?”

So as an official who will be part of this code of conduct exercise is subject to investigations. I would rather there be a stringent screening process in place where complaints need to be looked at properly. And it is not that it protects Government or anyone, the issue here really is regardless of who is in the position, we need to ensure that we are able to look at issues and say, “is this the most productive use of our time, have we checked all the boxes that warrants any investigation.” If not, then I think the Commission needs to make a call on that.

MR. CHAIRMAN.- Thank you CEO. We have reached our time. There is another entity waiting outside for another submission. I would like to take this opportunity on behalf of my Committee to thank FCCC for availing themselves before the Committee and present their presentation. We will take a short break to see off CEO and welcome Water Authority of Fiji. Thank you.

MR. J. ABRAHAM.- *Vinaka*, Sir.

The Committee adjourned at 10.35 a.m.

The Committee resumed at 10.41 a.m.

Interviewee/Submittee: Water Authority of Fiji (WAF)

In Attendance:

- | | | | |
|----|----------------------|---|-----------------------|
| 1. | Ms. Akosita Matakaca | - | Acting Manager, Legal |
| 2. | Mr. Vilisoni Tuicolo | - | Legal Officer |

MR. CHAIRMAN.- Honourable Members, I would like to welcome the team from the Water Authority of Fiji as they are here to present their submission on the Code of Conduct Bill, Bill No. 33 of 2018. We have in front of us Ms. Akosita, Acting Manager, Legal Department; and Mr. Vilisoni, Legal Officer, representing the Water Authority of Fiji.

Madam, before we actually start, I would like to introduce my team.

(Introduction of Committee Members by the Chairman)

Without further delay, I would like to give the floor to the team from the Water Authority of Fiji to do their submission. If there is any question that needs to be asked during the submission, we shall intervene in between otherwise at the end, we will be asking questions and clarification with regards to the submission itself. Thank you.

MS. A. MATAKACA.- Thank you, the Honourable Chairman and the Honourable Members of the Standing Committee, our submission this morning is based on the Code of Conduct Bill, Bill No. 33 of 2018.

Our submission is that, the Code of Conduct Bill, Bill No. 33 of 2018 is a compilation of codes of conduct to be applicable for all public office holders, which relates to Section 149 of the Constitution which says, and I quote:

“We shall establish a Code of Conduct applicable to the persons who hold statutory appointments and governing positions in statutory authorities, including public offices as prescribed by the written law.”

There are five Codes of Conduct that are applicable to different groups of officials and these codes are composed off in the schedules. The Bill also sets up an Accountability and Transparency Commission to monitor, receive and investigate any complaints for breach of Code of Conduct by public office holders.

The Bill also sets out in Part 6 a provision on the Declaration of Income, Assets, Other Interest and Liabilities in Fiji or abroad, relating to the public office holder, the public office holder’s spouse, defacto spouse and children.

The provision for declaration as per Part 6 of the Bill is applicable only to public office holders who are stated in Schedule 6 of the Bill. However, the provisions under Section 25(2) of the Bill states, and I quote:

“The Minister may also amend and prescribe other public officials or employees of statutory authorities or State entities to whom the declaration in Part 6 may also apply.”

The question is: is it relevant to Water Authority of Fiji? Yes, it is relevant to Water Authority of Fiji as it is a commercial statutory authority under the Water Authority of Fiji Act 2007.

How does this Bill affect the Water Authority of Fiji? Schedule 4 is the Code of Conduct for members of Commissions and statutory authorities.

Since Water Authority of Fiji is a statutory authority, this Schedule applies to employees of WAF.

Schedule 5 is the Code of Conduct for public officials. This would also apply to WAF employees. The Code of Conduct, as stipulated in the Schedules, provides for a general conduct for all personnel to which that specific schedule is for. Thus, if this Bill is to be passed, this Code of Conduct, being a law at national level, will have to be adopted by Water Authority of Fiji, and its employees will have to abide by it.

The question is, is it relevant to Water Authority of Fiji? Yes, it is relevant to Water Authority of Fiji as it is a commercial statutory authority under the Water Authority of Fiji Act 2007.

How does this Bill affect Water Authority of Fiji? Schedule 4 is the Code of Conduct for members of Commissions and Statutory Authorities, and since Water Authority of Fiji is a statutory authority, this Schedule applies to employees of WAF. Schedule 5 is the Code of Conduct for public officials. This would also apply to WAF employees.

The Code of Conduct, as stipulated in the Schedules, provides for the general conduct of all personnel to which that specific Schedule is for. Thus if this Bill is to be passed, this Code of Conduct Bill, Bill No. 33 of 2018, being a law at national level, will have to be adopted by Water Authority of Fiji, and its employees will have to abide by it.

A complaint regarding the breach of this Code of Conduct to the Accountability and Transparency Commission will result in investigation being conducted by the Commission and prosecution authorities involved. This would be apart from internal investigation which is going to be carried out internally by Water Authority of Fiji.

The Code of Conduct Bill, Bill No. 33 are general provisions and some of its provisions may be similar or different from the Water Authority of Fiji internal code of conduct. Should there be any conflict with the Code of Conduct Bill, Bill No. 33 of 2018, Schedules and WAF internal code of conduct, the question is: how can this be resolved?

Part 6 of the Bill provides for the Declaration of Income, Total Assets and Liabilities for public office holders and immediate families.

Schedule 6 of the Bill states that public office holders to whom Part 6 applies and this is applicable to the CEO of Water Authority of Fiji, which is named in the Schedule.

Furthermore, clause 25(1) states that public officials stated under Schedule 6 including any person acting in any position have to follow provisions for the declaration of income, assets and liabilities. So, for WAF, this provision will affect our four officers who are currently acting for the

Office of the CEO. That means that office holders who have been appointed will also have to provide declaration of their spouses and children.

The relevant notes seen in this particular issue is that, there is “Rights to privacy” and “Access to information” in Section 24 and Section 25 of the 2013 Constitution. Rights to privacy protects personal privacy and family life while access to information is to acquire information held by any public office. These two rights are relevant in relation to Part 6 of the Bill requiring declaration of income, assets and liabilities; the protection of information relating to the private life of an officer’s family, their assets, income and liabilities and the need to know these information.

Public office holders would have normally updated Fiji Revenue and Customs Services (FRCS) of their income, assets and liabilities for relevant tax to be deducted.

Members of Parliament and candidates for Elections would have to abide by the declaration of income and assets as per the Electoral Decree. It is our submission that if the officers have to declare their interest, income, assets and liabilities then this would create duplicity, waste of time and resources as the Commission can access these information from FRCS, the employee’s office and the Fiji Elections Office.

We are submitting if Part 6 of the Bill be removed as this would create more time and resources in creating another Commission which its roles are already covered under authorities such as FRCS, prosecuting and investigating bodies. This would result in the use of more money which are taxpayers’ money which we are trying to be accountable for in the first place.

As much as a person has freedom of speech and expression of reporting a breach of conduct relating to the Bill, the complainant should also be held accountable for false reporting, malicious or frivolous or aimed at defaming or causing reputational damages for the officer’s subject of the complaint under the same Bill. Clause 13 has a provision for malicious complaints and the applicable penalties. This is a safeguard provision and will encourage complaints reporting that are true and credible. Now, the Bill states that any person may make a complaint against any public office holder, public officer for breach of Code of Conduct.

The question is, how will the Commission enforce investigation or prosecute and penalise a complainant who lives abroad or is a citizen of another country? On the time of breach to the time of lodging of the complaint, Section 12 of the Bill stipulates some of the conditions which the Commission will consider when investigating a complaint of breach of Code of Conduct. One of them is the time factor, delay in time of the actual breach to the time of lodging report. The delay does not have a stipulated timeframe and thus is open to interpretation. It can be one month, a year or 3 years.

Our suggestion is, if a timeframe to be given so that it can be interpreted when considering the delay in reporting conditions, for example, any reports of breach should be reported within 6 months from the time of the officers breaching the Code of Conduct. Any report lodged after 6 months will not be investigated. That is respectfully our submission.

MR. CHAIRMAN.- Thank you very much, Madam for that presentation. I literally open the floor now for my Members if they want any more clarity or any questions they would like to ask.

HON. N. NAWAIKULA.- Thank you, I like your submission because you have some very radical and firm views on the Code of Conduct Bill, for example, you want Part 6 removed and rightly so, because in a way that is a repetition of what FICAC is doing. A lot of people have that view also.

You also have a view on a point we have just raised earlier to the Water Authority. We were worried about the influx of reporting and some of them will be malicious because any private person can take someone accountable.

The question that I want to ask you, Sir, is: Water Authority has been attacked left, right and centre by the Auditor-General for a lot of wrongdoings. Do you feel that this legislation therefore, given your view on Part 6 will help in the way that you conduct your role or this Bill will not help you?

MS. A. MATAKACA.- Thank you, Honourable Member, for the question. Basically, part of our provision is, where will our internal disciplinary guidelines and procedures go to? What we want to have, is we want to limit things from a certain level, instead of things coming right up to a higher level. We have provisions, that is why we have certain policies in place internally as much as we want to have watchdogs internally. We want to be accountable as well. That is why we are trying to mandate provisions that is also strict in a sense internally so that we can account for our employees as well.

In terms of public offices, reputation, for example, Water Authority of Fiji is the talk of the media. You have people prosecuted left, right and centre for certain corrupted activities. That is why internally, we want to work on our policies, streamline that, we have strong policies internally, we also have WAF Act, we also have the police to do the policing activities, we also have FICAC, which is an independent body. These are some of the things that we want to consider as much as we have a legislation that is the governing body in terms of codes of conduct outside, we also want to ensure that we also have certain provisions that are governing employees apart from their contracts.

(Inaudible)

MR. CHAIRMAN.- Madam, you just actually stated that WAF, everyone being given left, right and centre and people are being prosecuted and yet, you are actually before this Committee, asking us to actually repeal Part 6 of this Bill?

You stated that people are being prosecuted because of corrupt practices and this Bill is coming into force to ensure that these corrupt practices are removed from our Ministries and Authorities. Yet, you are with the same view at this point in time that you want to remove Part 6 where the declaration of income and assets are stated.

It is contradicting to what you are actually saying with regards to the Bill itself and then what you are saying about WAF because quoting from what you just said, people are being prosecuted, left, right and centre because of corrupt practices. Then we have a Bill that is ensuring that these corrupt practices move away from the Authorities, so it is not actually matching to the two statements you have just said in front of the Committee.

Can you elaborate further on that?

MR. V. TUICOLO.- Thank you, Mr. Chairman. If I could answer that question; I believe for WAF, our suggestion was for the removal of the Declaration of Income, Assets and Liabilities. The Code of Conduct is different, it is another Part, the 5 Parts.

MR. CHAIRMAN.- Part 6 is part of the Code of Conduct Bill. So the Code of Conduct Bill will actually ensure that people will declare their assets, income and liabilities so that once a person

joins in, the general public knows where they stand and in four years' time, for example, as a CEO, where do they stand?

Whether their progress in life is equivalent to their income that they actually get per year. That is why we have this particular Bill coming into place to actually stop corruption, and unless and until we have that information from senior civil servants, we will not be able to compare them going back on the day of appointment.

How can you say that removing Part 6 will ensure that corrupt practices will decrease in Ministries, Statutory Authorities and Departments?

MR. V. TUICOLO.- Our submission is that the Code of Conduct as listed out in the Schedules would assist, which is a bit different from the actual declaration to be done by those named in Schedule 6. The 5 Codes of Conduct would relate to how the officers would act, or their conduct during their term in office.

MR. CHAIRMAN.- The other thing you stated in your statement, and again I quote from what your team submitted is that, you have an internal Code of Conduct and we are bringing in the Code of Conduct Bill to diminish the corrupt practice that is going on. And on the other side, your team just said that people are prosecuted with your internal Code of Conduct and yet, the question is being asked; how do you fit in this Code of Conduct with the Code of Conduct that is internal?

Definitely the internal Code of Conduct is not working, that was why there was a lot of corrupt practices for which people are prosecuted as your team had stated in your submission itself. That is why we are bringing this Code of Conduct so that we make people and public officials adhere to this Code of Conduct so that we can minimise and end corrupt practices at Government level.

The submission is coming from all directions in relation to what your team is stating over here. It is not matching to what the Code of Conduct Bill is all about. We cannot be saying that one side we are being prosecuted and the other side all our ethics are in place and had people not being prosecuted as stated earlier by your team, then it would have been a different case. But people are being prosecuted as stated in your submission. So any comments on that?

MR. V. TUICOLO.- Mr. Chairman, we submit that if this Bill is passed, it becomes an Act at national level. What happens with our internal policies? We have been trying to follow our internal policies and with this Code of Conduct coming at national level, how will our employees react to this Bill, which is why we are submitting that we follow our internal policies and guidelines that are already in place.

HON. N. NAWAIKULA.- I would just like to comment. I like your comment because to me as you are saying, what is the use of all these? Just improve whatever we have. Sometimes we agree with you, we are asking the same too. What is the use of FICAC? What is the use of Human Rights Commission, when you can just improve on whatever you have that is already there - bureaucracy and bureaucracy, it does not deliver.

If I am reading you right, that is what you are saying, and I agree with that. Improve on what is there, instead of making another commission this, commission that, a lot more bureaucracy and it does not deliver anything.

MR. CHAIRMAN.- When a Bill is actually enacted as an Act, all the internal policies are to be in line with the Act that actually comes into place. We are not saying that the internal code of

conduct moves away, but it needs to be in line with the Bill coming into place. We cannot say that we have a Bill, passed by Parliament, comes into force and every public official needs to abide by this Act when it actually comes into place or for that matter Code of Conduct Bill at this point in time and then we have an internal code of conduct. That internal code of conduct needs to be in line with this Bill once it comes into force as an Act, just like what happens to all the Acts. They need to be in line with the Constitution. Likewise, the internal code of conduct needs to be in line with the code of conduct that is prescribed in this Bill itself. Honourable Prakash, do you have some comments?

HON. V. PRAKASH.- Honourable Chairman, thank you very much. I think you represent one of the most important entities, that includes basic necessity of any human being at anywhere in this nation. And I think people have the right to question your authority, if those basic necessities are not fulfilled or they do not receive them.

As far as the Part you are asking to repeal, for any organisation to be transparent and accountable, I do not see any reason why if any Bill comes for transparency and ask people to declare their assets and liabilities, it will try to do any harm. In fact, it will really protect the worker of that organisation because indeed, whatever he has, he has to be accountable. We have seen people that they have more than what they get, so what is wrong here, as far as this Bill is concerned in terms of transparency and accountability if someone has to declare his or her assets?

MR. V. TUICOLO.- Thank you. To answer the question, for declaration, we submit that that is already being done. That is being done annually, every time. For tax it is submitted to FRCS and also I believe for Members of Parliament during voting, you have to declare as according to the Electoral Act. That is already being done. That is something that will create duplicity if you are going to declare again to the Commission and resources.

HON. V. PRAKASH.- What is wrong, I am asking?

MR. CHAIRMAN.- Tax return and income declaration are not same thing, they are totally different things. We cannot compare the tax returns to FRCS with asset declaration that is prescribed in this particular Code of Conduct Bill at this point in time, just for the clarity.

HON. V. PRAKASH.- What is wrong there, if more information is needed for a person to try and declare his assets and liabilities? If it is something which is genuine, if it is something that you have earned for, why not? What is wrong in declaring that?

HON. R.R. SHARMA.- Honourable Chairman, just to add on to what Honourable Prakash said, for your information FRCS only declares the income not the assets and the liabilities of a person. And sometimes when you declare income, who makes the income return? It is the accountant. So how sure are you that what you are declaring to FRCS is correct?

Secondly, sometimes you must know and everyone has seen that the income of the CEO, for example, the CEO of WAF, his annual income is \$100,000. But you see the wife and children who are not working, they have more than \$100,000 in their account. I am giving an example, so where is transparency? Where is a accountability? You got what I am saying? You can give your suggestion.

HON. V. PRAKASH.- That is why I believe in rights of any worker and I believe in honesty and truth. It is not going to be of any harm, if any organisation would like to know about any public officer or any person to declare his assets, income and liability. It will, in fact, strengthen that organisation. I see that there is more accountability and more transparency.

We also have to note about the public concept of various organisations, what they feel and then the number of people who are prosecuted from organisations. That reflects, in itself, that there is a need to try and strengthen that organisation with better qualities or Bills that come and try to prohibit any person or any worker there, to try and beat the system.

When something comes where we want the truth to prevail and honesty is there at the workplace and with any assets, I think we should be proud enough to declare. That is what I feel. As far as I am concerned, I see no reason why, because the organisation is also at stake when a number of people are being prosecuted and how you see that organisation. Thank you, Honourable Chairman.

MR. CHAIRMAN.- Thank you, Honourable Prakash. That brings us to the end of this particular submission by WAF. I would like to take this time on behalf of my Committee and my secretariat team to thank the team from WAF for availing themselves to be present before the Committee.

We have another submission to be done after this, so thank you very much for coming over and your views are noted. We are definitely going to deliberate further on that, once we actually come to the deliberation stage of the Committee. Thank you.

MS. A. MATAKACA.- Thank you.

The Committee adjourned at 11.08 a.m.

The Committee resumed at 11.12 a.m.

Interviewee/Submittee: **Fiji Council of Social Services (FCOSS)**

In Attendance:

1. Ms. Vani Catanasiga - Executive Director
 2. Ms. Esther Suchit - Team Leader Finance
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MR. CHAIRMAN.- Good morning Honourable Members without any further delay we have Fiji Council of Social Services (FCOSS) in front of us to actually do their submission with regards to the Code of Conduct Bill, Bill No. 33 of 2018. Madam, before we continue I would like to briefly introduce my team.

(Introduction of Committee Members by the Chairman)

Without further delay I give the floor to you to do your submission. If there are any questions or clarifications in between your presentation, we will interrupt otherwise we will ask questions at the end of your submission. Thank you and the floor is yours.

MS. V. CATANASIGA.- *Bula vinaka* Committee members and thank you for allowing the Fiji Council of Social Services (FCOSS) to make a submission. My name is Ms. Vani Catanasiga and I am the Executive Director of FCOSS. I think most of you will be familiar with what FCOSS is. It is a Non-Government Organisation that was first established in the 1950s. I was supposed to be here with our Board Chairman, Mr. Sitiveni Kunaika who would have been here representing the Nadroga District Council of Social Services (DCOSS), just one of the nine DCOSS that make up the Fiji Council of Social Services.

I am pleased to make this submission on their behalf and to perhaps motivate you in this effort of good governance by sharing that FCOSS also recently established its Code of Accountability in December, 2018. This took four years to develop and many consultations with our national and district members. It started out as a draft CSO Code of Minimum Standards and by the time our DCOSS were ready to vote on it, it had become the Code of Accountability, emphasising that any standards of ethical behaviour (welcome Esther) must be first modelled by ourselves and institutionalised and practiced within our networks before our sector can embrace and adopt it.

Just very briefly, I want to introduce Esther Suchit, she leads our Administration and Finance Unit in Fiji Council of Social Services (FCOSS) and has been doing so for several years.

In this slide, while FCOSS acknowledges the wider scope of public integrity that this Bill and other policies may contain, our submission today is based on insights from our own experiences on the issue of CSO accountability, public transparency and development effectiveness which we hope will give this august Committee some valuable ideas about improving the current draft.

To begin, FCOSS believes the Code of Conduct Bill indicates political will for better standards of political leadership and integrity in our public officers, so that in itself must be commended and encouraged. That for us is already a positive thing, however FCOSS believes that this proposed law is still ad hoc in nature and that Government must shift its focus to what the Organisation for Economic, Co-operation and Development (OECD) recommendation on Public

Integrity Report describes as context dependent behavioural and risk-based approach, an approach that also places emphasis on cultivating a culture of integrity across the whole of Government.

Therefore, FCOSS requests the Committee to review Part 4 – Monitoring, Compliance and Enforcement on the Code of Conduct, Clause 12(1)(a), (b), (c), (d), (g) and (h); Clause 12(4) and Clause (13). FCOSS believes that this Act acts

HON. N. NAWAIKULA.- Mr. Chairman, could you just repeat that?

MS. V. CATANASIGA.- Part 4 - Clause 12 (1)(a), (b), (c), (d), (g) and (h).

HON. N. NAWAIKULA.- What was your reason?

MS. V. CATANASIGA.- Just going into that Honourable Nawaikula, sub-clause 4 and clause 13. FCOSS believes that this Act against openness, a key tenet to fostering a culture of public integrity. Our suggestion would be to remove the clauses completely particularly clauses that propose to penalise complainants. FCOSS would like to suggest that this could be more effectively reflected in complaints, procedures at organisational or implementation level that vets each complaint against (a), (b), (c), (d), (g) and (h). Example, a Standard Operating Procedure (SOP) could easily do that. Sub-clause 4, we think is ill-advised. Fostering a culture of integrity should also be an important component in this proposed law as I had mentioned earlier.

However, subclauses mentioned in FCOSS's view are counterproductive to this aim due to:

- a) The fact that the Bill actually proposes to make it unsafe to report on suspected violations of integrity;
- b) The vagueness of Schedules 1 to 6, but the dedication to details describing what constitutes an invalid complaint.

This FCOSS believes fosters a climate of fear and doubt which undermine any attempt to build comprehensive public integrity systems such as what we believe this Bill attempts to do.

Secondly, FCOSS believes Schedules 1 to 6 needs to be reviewed particularly clauses on confidentiality and information held by public authorities as it need to better articulate the responsibility of public officials to transparency and openness. FCOSS feels these clauses could effectively emphasise levels of accountability, responsibility and access to information of the public.

To end, FCOSS feels without these changes, the Bill falls short especially in building citizens Fijian citizen's trust and confidence in public institutions and in promoting integrity as a key pillar to economic and social wellbeing in the country. Thank you.

MR. CHAIRMAN.- The Committee notes your brief submission, especially with regards to, I believe, No. 4 that you have stated. Would there be any comments or queries from the Members?

HON. N. NAWAIKULA.- Firstly, Mr. Chairman, I wish to thank Vani, especially for the works that you have been doing over these years. Just a clarification; you were saying in my view that Part 4(12) should be improved to remove the climate of fear which you feel are present there in (a), (b), (c) and (d). So, removal is enough or do you have any other suggestions to put in? Secondly, to remove this climate of fear that you are speaking about.

MS. V. CATANASIGA.- Thank you, Honourable Nawaikula. I had made a suggestion that a Standard Operation Procedure (SOP) could inculcate this. I think that when you mention it in the Act it creates that sort of doubt. I think that if we have an SOP where it processes complaints that come in, naturally or organically it will remove complaints that might fit into this particular criteria.

HON. N. NAWAIKULA.- Thank you for that and I must add that the Fijian Competition and Consumer Commission (FCCC) holds the same view and they deal with this all the time, like complaints in relation to the private sector and one of their concerns was attending to investigation and filtering those that are meritorious, et cetera. So, that more or less tie into it or the same thing. Thank you.

HON. RATU S. MATANITOBUA.- Mr. Chairman, Part 6 of the Bill on Declaration of Income, Assets, other Interest and Liabilities. What is your view as stated in the Bill that a person who holds public position declare his income and also his spouse and child? What is your view on that? Because they do not hold a public office. It is the person who holds the public office but it is stated in the Bill, the spouse and child.

MS. V. CATANASIGA.- I support the Bill in its current form particularly with that clause. I think the decision to hold or to even vie for a public position is not a decision that is made solely by the individual that will participate. I think that it is a decision that is also reached within the family and it means a change perhaps in lifestyle when you make the decision to lead, to be able to lead effectively at the public level, you have to have your family support and that means the process of re-orientating your approach to life, your families take on leadership is where this is important and the whole family participates in there because any public fall-out will also affect family. So I actually support that portion of the Bill.

HON. V. PRAKASH.- Honourable Chairman, I think we have heard the presentation and they said that there is a climate of fear and doubt that undermines any attempt to build. What are some of your fears regarding this Bill that you say that if this Bill goes, what are some of the fears that you have and what are some of the doubts that you have? Because you also hold public positions and the Fiji Council of Social Services should be clear of any doubts in these functions, so what are your doubts?

MS. V. CATANASIGA.- Honourable Prakash, as I had shared with this august Committee that I had recently signed on to adopt the code of accountability, that is standards for FCOSS at this initial stage. Part of it is to pilot for the first year and to try and invite organisations from the CSO sector to also include that. We have actually imposed on ourselves a similar code of conduct, except it is called the code of accountability.

Having worked in communities, one of the hurdles for communities is the processes of Government, sometimes not being aware of what it involves to engage with Government, to interact or even to access services. It is not so much that it is not available, it is the ignorance of the processes of Government that discourages them from even attempting to access it.

I find that even this can also serve to discourage people from engaging. I had mentioned that we have nine district councils of Social Services, two are in Vanua Levu and seven are here in Viti Levu and in engaging with them, one of things that we had, I think we had five community dialogues last year and at least two national dialogues, and out of this we keep hearing from communities the vagueness or their inability to understand how to access Government Services or Government support.

It was not because Government did not have it, it was because they did not understand the processes of getting to it. For us having heard from that and seeing part of what this Bill proposes, we can only seek to advice and tell you what we are hearing from communities and to perhaps influence it so that this Code of Conduct actually serves to better how Government responds to community needs.

HON. V. PRAKASH.- Honourable Chairman, I also represent one of the largest NGOs in this country and I have got no objection at all as far as transparency and accountability, as far as our engagement with any Governments of the day, as long as we are very transparent in our process that we take and at the same time, we are accountable.

Where accountability comes, of course, I think there is a fear with some NGOs, I do not fear at all. I am asking in which area is your fear. You said there is a climate of fear. No one in my group will say that we should try and hold this information from giving to the public. Why? We should give all that we do, we should not hide any information. Any member that will align with you must be also free to speak, must be also free to pass his faith, must also be free to ask what they want for the improvement of their own communities.

There is a very strong statement that you are saying, that there is a climate of fear and doubt, and that is what I am trying to stick my question too. Is this Bill getting to that place where you are still having a lot of fear? I cannot not see where you are getting this one from. I want to know because I have been working throughout my working life in the NGO, and any Bills, any rules that become law, we have to be very transparent and we have to say that our organisation is affiliated to us, because at the end of the day, I think Government is also assisting all the NGOs that do ask for that, and Government is using taxpayers money as well, so they have to be accountable also to see that whatever assistance they provide, it is channelled to the legal recipients. Thank you, Honourable Chairman.

MR. CHAIRMAN.- Thank you, Honourable Vijendra Prakash. I also have one last question to the Fiji Council of Social Services. Actually, you have stated that in general observation, in view of the Code of Conduct Bill in symptomatic of Government's *ad hoc* approach to public integrity. The service over here is in front of the Committee with two specific submissions on Part 4 and its Schedules 1-6, how does it actually make the whole Bill as an *ad hoc* approach as per your submission?

You would actually come up with all 29 clauses of this Bill to be changed and to be done in a different approach. So how come you are saying that it is an *ad hoc* approach, would you be able to explain that to the Committee?

MS. V. CATANASIGA.- I thank you for the questions and I am acknowledging that around the room, I have seen people who have worked in communities like Honourable Prakash. I am quite familiar with your work with communities and through Sangam, Sanatan, thank you, Honourable Prakash.

But, yes, we did feel that the Code of Conduct Bill is a symptom of Government's *ad hoc* approach and public integrity. We feel that it is quite a good initiative but that we have provided sort of a general observation to say that the Commission or the ATC only investigates disciplinary action or prosecution undertaken by the appointing authority or the prosecuting authority, but it fails to clearly outline a link to FICAC, so where in this is the link between FICAC and ATC?

We feel that there needs to be a bit more linkage between the different components that Government is trying to set up in terms of building a comprehensive public integrity system and also, we feel that it can be improved in that sense. As we have said, we think that there is political will and it is demonstrated in this draft Bill, but that it needs to take a more consolidated approach, be comprehensive with risk-based approach and that it emphasises that the investments, the actions that Government make cultivates the culture of integrity right across Government. So a whole of Government approach leading on to a whole of society approach and across Fijian society. Just to perhaps answer some of the questions and I am sure Honourable Prakash will feel I have not answered his question adequately, let me just make it clear that we at FCOSS believe that it could foster a climate of fear and doubt, particularly when it comes to Part 4: Monitoring, Compliance and Enforcement Of Code Of Conduct.

It could create that climate of doubt because even before they make the complaint, there are particular categories or specifications that complainants have to vet some of their issues against to be able to say, "All right, we can actually complain", but, we have to consider that there are all kinds of people that exist in Fijian society and at community level, can you imagine someone who is perhaps in a rural community that is only accessible every two or three days because we have that kind of a membership in FCOSS? For example, we have people in Nadarivatu, so when they come down, they have limited time, how do they then say to themselves, "This is a valid complaint?" I am saying that we do not take that completely away, it can go into the Standard Operating Procedures so that the complaints are received and vetted against these particular categories that the Bill outlines.

MR. CHAIRMAN.- Thank you very much for those comments. This actually brings us to the end of this particular submission from Fiji Council of Social Services.

I would like to take this opportunity on behalf of the Committee, Honourable Members and secretariat team, to thank the team from FCOSS for availing yourselves here this morning to present your submission with regards to the Code of Conduct Bill 2018.

Thank you very much, Madam, and the team. We shall now adjourn for a while and then convene the meeting after that. Thank you.

The Committee adjourned at 11.36 a.m.