



**PARLIAMENT OF THE REPUBLIC
OF FIJI**

**STANDING COMMITTEE ON JUSTICE, LAW AND
HUMAN RIGHTS**

**Review report on the Independent Legal Services
Commission Annual Report 2016**



Parliamentary Paper No. 41 of 2019

April, 2019

Published and Printed by the Department of Legislature, Parliament House, SUVA



PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Review report on the Independent Legal Services Commission Annual Report 2016



Parliamentary Paper No. 41 of 2019

April, 2019
Published and Printed by the Department of Legislature, Parliament House, SUVA

TABLE OF CONTENTS

CHAIR'S FOREWORD	3
1.0 INTRODUCTION	5
2.0 COMMITTEE'S DELIBERATION AND FINDINGS	6
3.0 GENDER ANALYSIS.....	10
4.0 RECOMMENDATIONS	10
5.0 CONCLUSION	11
APPENDICES.....	13

CHAIR'S FOREWORD

The Independent Legal Services Commission is a constitutionally mandated office tasked with carrying out the functions as prescribed in the *Legal Practitioner Act 2009*. These functions include:

- carrying out disciplinary proceedings against a legal practitioner, law firm or agent of a legal practitioner or a law firm;
- carrying out educative role by providing continuing legal education;
- publishing of the Commission's judgment and orders;
- formulating Rules of Procedure for the Commission such as issuing Practice Directions;

The Commission has had a lapse of 5 years in reporting on its functions and work done from 2009 to 2015. Therefore the current Commission has endeavored to submit a consolidated report on these lapsed years.

The Standing Committee on Justice, Law and Human Rights of the last term of Parliament was referred the *Independent Legal Services Commission Annual Report 2016*. The same report had been re-introduced in this new Parliament and have been referred to the current Standing Committee on Justice, Law and Human Rights. Just as the previous Committee, the current Committee was mandated by Parliament to review the Commission report and report back to Parliament on its findings.

The Committee took note of and deliberated on the previous Committee's concise work and deliberation done on the mentioned report. This Report will reiterate the work done by the previous Committee in reviewing and highlighting the contents of the Independent Legal Services Commission Annual Report and make recommendations on the anomalies noted therein. It will also highlight the discussions held by the Committee with the Commission with regards to the issues noted from the Commission's report.

Some of the main anomalies noted are discussed in detail in this Report, which concerns the finances of the Commission and the lack of accountability of the responsible officers entrusted with the day-to-day running of the Office of the Independent Legal Services Commission.

Consideration was also given to the requirements of the Standing Orders of Parliament pertaining to the impact on gender when deliberating on the Annual Reports, however appreciated the apparent hiatus in placing emphasis on such requirements when the Report was drafted and tabled in Parliament.

At this juncture I would like to acknowledge the Members of the Standing Committee on Justice, Law and Human Rights in the last term of Parliament for their efforts and input, which has greatly assisted our Committee in the formulation and completion of this report.

I would also like to thank the Honourable Members of the current Standing Committee on Justice, Law and Human Rights, the Secretariat staff and all other support staff for their valuable input and support. I would also like to acknowledge the Commissioner

of the Independent Legal Services Commission and his team for their commitment in supporting the Committee in its work.

I, on behalf of the Standing Committee on Justice, Law and Human Rights, commend the *Independent Legal Services Commission Annual Report 2016* and the contents of the Committee's report, to this August House.



Hon. Alvick Avhikrit Maharaj
Chairperson

1.0 INTRODUCTION

The Standing Committee on Justice, Law and Human of the last term of Parliament, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the *Independent Legal Services Commission Annual Report 2016* (“**ILSC AR/2016**”) for review on 5 March, 2018.

The same report had been re-introduced in this new Parliament and had been referred to the current Standing Committee on Justice, Law and Human Rights. Just as the previous Committee, the current Committee was mandated by Parliament to review the Commission’s report and report back to Parliament on its findings.

Procedure and Program

The previous Committee began its review of the Report on 25 May 2018. The Committee’s procedure and program for the review started with first reading through the Report and noting issues and findings which were mainly based on the contents of the Report. The Committee then invited the Commissioner to submit on the issues noted from its review. Further deliberations on the Annual Report were then carried out where additional issues were noted and clarification was sought from the Commissioner’s Office.

The Independent Legal Services Commission

The Independent Legal Services Commission (also referred to as “the Commission”) was constituted by Section 114(1) of the *Constitution of the Republic of Fiji* (2013) (hereinafter also referred to as “the Constitution”) and mandated to carry out the responsibilities as stated in Section 114(8) and (9).

The Independent Legal Services Commission is required by law to provide an annual report on the Commission’s functions during the year. The *Independent Legal Services Commission Annual Report 2016* (“**ILSC AR/2016**”) was tabled in Parliament and was referred to the Committee for review. The ILSC Report looks at the activities of the Commission together with its financial report 2016.

The Committee was advised that the ILSC AR/2016 was a culmination of work done by the Commission for years 2009 to 2016. The Committee was also advised there was only one other report done for the mentioned years apart from the ILSC A/R 2016, and this was for the period 1 September 2009 to 31 December 2010 and was provided to the relevant authority.

This Committee report will also provide details on the other reasons provided by the Commission that made reporting quite a daunting task.

The ILSC AR/2016 covers the work done by the Commission and majority of the content is focused on the cases that the Commission had heard and those that are pending dating from 2009 to 2016. The regulatory functions of the Commission that had been provided through 2009 to 2016 as stated under section 126(2) of the Legal Practitioners Act 2009. Despite the report only covering much of the cases recorded by the Commission, it was ideal in the sense that it gave the reader a better sense of the

actual work done by the Commission. There were also some insights provided by the Commissioner vis-à-vis the audited financial statements of 2013, Forensic Audit of the 2010 to 2016 Accounts, a summary of the types of cases dealt with by the Commission from 2009 to 2016, facilitation of Continuing Legal Education (CLE) trainings, Disciplinary Functions, Volunteer Student Interns, Judgement and orders, and the Rules of Procedures for the ILSC.

2.0 COMMITTEE'S DELIBERATION AND FINDINGS

This part of the Report covers the Committees' deliberation and the findings, which include points extracted from the ILSC/Annual Report 2016 and the submission by the Independent Legal Services Commission. As part of its review the Committee read and deliberated on the Reports and identified a few issues. These issues were then brought to the attention of the Independent Legal Services Commission for clarification. The main issues and queries noted and its responses are summarised below. A copy of the documented issues sent to the Commission and the response is attached as Appendix A.

- The Committee sought comments and clarification on the status of the investigations into the fire at the Commission's Office back in 2014 – the main reason for the Committees concern was because the fire caused substantial loss in vital documentations pertaining to the Commissions financials and other vital accountability processes;
- Clarification on the measures that the Commission has put in place to address such issues as the documents that went missing in the 2014 fire.
- Clarification was also sought on the reason for the anonymity of certain names in cases stated in the report.
- Clarification on the submission of Practice Direction enclosed as Appendix 1 to the Report and soft copy of documents filed.
- Clarification was sought on the revenue earning activities by the Commission.
- Clarification was sought on how the fees for Practicing Certificates received by the ILSC were appropriated and whether this was something that was captured in the financial statement of the Commission?

The Committee invited the Independent Legal Services Commission to respond to the queries on the above issues. The following is a summary of the discussion between the Committee and the Commissioner of the ILSC:

Issue on the status of the investigations into the fire at the Commission's Office on October 2014?

The Commission/Commissioner advised that it last received a response on the case from the Police Department was on the 5th of December 2016 which stated that the file has been closed for now and will be reopened once any information is received to advance the investigation.

The fire in 2014 destroyed majority of the Commission's vital accounting and financial documentations for the year 2012, 2013 and 2014f, which was also one of the reason

Clarification on what measures the Commission has undertaken to address such issues as the 2014 fire, which cause loss of vital documents?

The Commission/Commissioner advised that measures have been put in place and these include:

- Engaging an advisory and assurance company that also specialises in forensic audit (Ernst & Young (Fiji)) to undertake a forensic audit of the Commission's accounts of 2013, 2014 and 2015 (reference is made to page 6 of the ILSC AR/2016). As a result of that, a second forensic audit was undertaken for 2009, 2010, 2011, 2012 and 2016.
- Ernst & Young reconstructed the accounts from the Commission's bank statements.
- This audit report led to a new system being implemented as from December 2017 whereby no member or staff was to be a signatory to the ILSC account.

Clarification on the reason for the anonymity of certain names in cases stated in the report.

It was advised that the cases have been anonymised on the basis that the:

The case went to the Court of Appeal on *case stated*¹ and whether publicly reprimanded meant that a practitioner's private medical condition that is mentioned in the judgment should be published on the internet (via the Pacific Legal Information Institute and the Commission's website).

The other matter was whether the previous Commissioner was *functus officio*² when he signed a judgment and order. The Court sent both matters back to the Commission as unfortunately there is no power under the Legal Practitioners Act to refer case stated matters to the Court of Appeal.

The matter concerning the private medical condition was anonymised as this was the appropriate thing to do and also the non-publication depended on the determination of the Court of Appeal decision.

As of 5 June, 2018, both matters are before the Court of Appeal.

Clarification on the reason for providing both hard copy and a soft copy of documents when filing with the Commission as prescribed in Practice Direction No. 1 of 2016.

It was noted that such a practice direction was introduced firstly as a consequence of the fire that took place in 2014. This would allow the permanent record to be kept on-

¹ **Case stated** is a procedure in law whereby a court or tribunal can ask another court for its opinion on a point of law. Retrieved from: <https://www.collinsdictionary.com/dictionary/english/case-stated>.

² **Functus officio** is a term meaning, of no further official authority or legal effect; mainly used for an officer who is no longer in office or a legal instrument that has fulfilled its purpose. Retrieved from <https://www.merriam-webster.com/legal/functus%20officio>.

site and off-site. Secondly a large amount of material before the Commission is in written form thus this allows for copying of excerpts rather than having to retype the document. Furthermore in many jurisdictions now, filing is now e-filing.

Clarification on the revenue earning activities by the Commission.

There are no revenue earning activities for the Commission. The Commission is funded by the Trust Account Act - Contribution Fund.

The Commissioner also advised the Committee of the role and functions of the Independent Legal Services Commission. The Commission was established pursuant to section 84(1) of the *Legal Practitioners Decree 2009* and hears disciplinary proceedings, complaints against legal practitioners or a law firm and employees and agents of the legal practitioner and law firm. The Commission also has an educational role in providing continuing legal education role.

In view of what was raised in the past by Ernst & Young, Continuing Legal Education will only be held by the Commission where the cost is covered by the Commission.

Clarification was sought on how the fees for Practising Certificates received by the ILSC were appropriated and whether this was something that was captured in the financial statement of the Commission?

The Commissioner advised that the Commission does not receive any fees from the Practising Certificate and this is something that the Chief Registrar would be able to clarify. The Commissions only source of funds is the 10% according to the Trust Account Act – Contribution Fund.

The table below summaries the distribution ratios of funds from the Contribution Fund under the Trust Account Act:

Fund	Distribution ratios in 2016 based on the Trust Account Act (as amended from time to time)
(a) Legal Aid Fund	65%
(b) Fiji Law Society	5%
(c) Stabilisation Fund	5%
(d) Fidelity Fund	5%
(e) Independent Legal Services Commission	10%
(f) Legal Practitioners Unit Fund	10%
(g) Judiciary Fund	10%
Total	100%

Apart from the issues highlighted from the report, the Committee also noted that the current ILSC took necessary steps to address these issues and one of which was the procurement of Ernst & Young to conduct a forensic audit on all the accounts and processes of the Commission. From this, certain recommendations and mechanisms for addressing the issues were put forth which were then implemented by the Commission.

There were also supplementary questions noted by the Committee and these were clarified as follows:

Financial performance

In an endeavour to answer the financial performance questions raised by the Parliament Standing Committee previously on the Audit of Statutory Authorities, **the Commission contacted BDO Chartered Accountants who were responsible for the distributions respectively from the Stabilisation Fund in 2009 and the Contribution Fund in 2010.** BDO provided to the Commission a ‘background’ explanation concerning the two funds. As well as an explanation as to the distribution to the Commission from the Stabilisation Fund in 2009 and the Contribution Fund in 2010.

In addition, BDO also assisted the ILSC in the compilation of the Commission’s financial statements for the 2010 and 2011 accounts so as to be in an appropriate annual reporting format for auditing by the Office of the Auditor General.

Background (BDO’S Explanation)

The Commission provided a brief background of the explanation by BDO, which was based on the provisions of the *Trust Accounts Act 1996* and this Act provided for the distribution proportion from the ‘Contribution Fund.

Accordingly, **funds available in the Stabilisation Fund as at 30 June 2009 were distributed to the ILSC and the Judiciary Fund in equal proportions. A final distribution was made to ILSC and Judiciary Fund during March 2012 and Stabilisation Fund was completely closed.**

The table below summarises the distribution ratios prior to the establishment of ILSC in 2009 and distribution after the establishment of the ILSC made in accordance with the Act (as amended from time to time).’

Fund	Distribution ratios prior to Establishment of ILSC	Distribution ratios immediately after Establishment of ILSC (during quarter ended September 2009)	Distribution ratios in 2016 based on the Trust Account Act (as amended from time to time)
a) Legal Aid Fund	60%	40%	65%
b) Fiji Law Society	15%	-	-
c) Stabilisation Fund	20%	-	-
d) Fidelity Fund	5%	5%	5%

e) Independent Legal Services Commission Fund	-	30%	10%
f) Legal Practitioners Unit Fund	-	-	10%
g) Judiciary Fund	-	25%	10%
Total	100%	100%	100%

3.0 GENDER ANALYSIS

The Committee took into account the provisions of SO 110(2) which states when a committee conducts an activity listed in clause (1), the Committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

From the discussion with the Commission’s representatives, it was noted that the Commission has endeavoured to ensure that the principle of gender equality is captured in every activity carried out by it. It was also advised that there has been efforts done to ensure that the human resources aspect of the Commission complies with the gender equality principle.

4.0 RECOMMENDATIONS

After its extensive deliberation, the Committee notes and acknowledges the new system put in place by the current Commissioner to address the anomalies noted in the ILSC AR/2016. However, based from its findings, the Committee raises its concern on how the accounts of the Commission were handled, therefore the Committee recommends:

- a. That a proper qualified accounting professional be appointed to handle finances of the Commission in a timely manner;
- b. Proper accounting procedures be followed in accordance with prescribed Finance legislation and guidelines;
- c. There should be monitoring or supervision of the day-to-day running of the Office of the Commission by a Senior Officer or an Officer with a Managerial position;
- d. That there should be a full-time Commissioner based at the Independent Legal Services Commission’s office; and
- e. That the Government of the day allocate an additional funding to the Commission to adequately address the issue of insufficient resources.

These recommendations, according to the Committee could help cure the anomalies and problematic issues that were noted from the Committees deliberation of the ILSC AR/2016.


5.0 CONCLUSION


After reviewing the *Independent Legal Services Commission 2016*, the Committee recommends that the House take note of its recommendations.

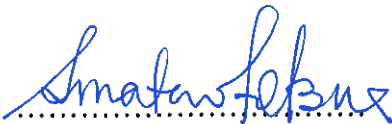
The Standing Committee on Justice, Law and Human Rights has fulfilled its mandate approved by Parliament, which is to examine and review the *Independent Legal Services Commission 2016* with due diligence.

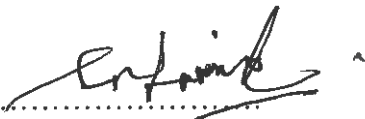
The Committee's review findings showed some contentious matters which were addressed by the Commission/Commissioner and this was reflected in the Committee's recommendations.

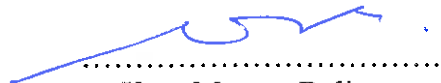
**SIGNATURES OF THE MEMBERS OF THE STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS**



.....
Hon. Alvick Maharaj
(Chairperson)


.....
Hon. Rohit Sharma
(Deputy Chairperson)


.....
Hon. Ratu Suliano Matanitobua
(Member)


.....
Hon. Dr. Salik Govind
(Member)


.....
Hon. Mosese Bultavu
(Member)


.....
(Date)

APPENDICES

- **APPENDIX A: ISSUES BY THE COMMITTEE AND RESPONSE BY THE COMMISSIONS**



INDEPENDENT LEGAL SERVICE COMMISSION

Level 5, Civic Tower Victoria Parade, Suva. P.O.Box 2516, Government Building Suva.

Telephone: 330 9015 Fax: 330 9013 E-mail: secretary@ilsc.com.fj

20th June 2018

The Hon. Ashneel Sudhakar
Parliament of the Republic of Fiji
Standing Committee on Justice, Law
And Human Rights
Government Buildings
Suva

Dear Sir,

**RE: Submissions on Additional Issues Raised by the Committee with
regards to the Commission's Annual Report 2016**

I refer to the Commissioner's letter of 7th June 2018 to the Committee.

I confirm that the Commissioner and I met with Mr Pradeep Patel of BDO and Mr Minay Prasad of Ernst & Young on Monday, 11th June 2018 to go through the additional Issues raised by the Committee with regards to the Commission's Annual Report 2016.

As requested, please find enclosed the Commission's further Submissions to assist the Committee in relation to the Additional Issues raised. You will note that the Commission's financial statements for the years 2010-2012 inclusive were provided in the Commissioner's letter to you of 5th June 2018 to assist the Committee with regards to the additional issues raised.

I hope that this will assist.

Yours sincerely,

.....
Ms Watilala Bula
Secretary
on behalf of
Dr Thomas V. Hickie
Commissioner

Parliament Standing Committee on Justice, Law and Human Rights
INDEPENDENT LEGAL SERVICES COMMISSION

Annual Report 2016
(Parliamentary Paper No. 104 of 2017)

**Additional Issues raised by the Committee with Regards to the
Independent Legal Services Commission Annual Report 2016
and
Commissioner's Response**

Response on the Issues and Queries Raised by the Committee on 6 June 2018

The response as below has been provided based on the incomplete information and incomplete source documents available with the Commission and based on the incomplete books of account for the years 2012 and 2013. These financial statements were subject to limitations and qualifications by the Commission's external accountants and also by Office of the Auditor General. In this regard, the Commissioner's statement is provided on page 165 of the Annual Report.

The response summarised below is based on the above limitations and qualifications, and to the best of the Commission's information and understanding of the background as to what occurred in 2012 and 2013 after recently obtaining further assistance from BDO accountants who prepared the 2012 and 2013 accounts to answer the Standing Committee's further questions.

1. Held – To - Maturity investments

- These are investments in term deposits with financial institution Merchant Finance and Investment Company Limited for a term of 12 months. Brief details are provided under Note 5 of the financial statements (page 172 of the Annual Report).
- As term deposits were for fixed term and the intention of the committee then was to maintain these term deposits for the fixed term, these were classified as 'held-to-maturity investments' as required under 'International Financial Reporting Standards for Small – Medium Sized Entities' (IFRS for SMEs).

2. Current Liabilities and Non-Current Liabilities

- The liabilities are required to be classified as Current Liabilities and Non-Current Liabilities in accordance with generally accepted accounting principles and also IFRS for SMEs.
- Current liabilities are those liabilities which are required or expected to be settled within 12 months from the balance date.
- Non-current liabilities are those liabilities which are required or expected to be settled or realised after 12 months from the balance date.
- Non-current liability comprises of Deferred Capital Grant in respect to furniture and equipment provided by Attorney General's office. In accordance with IFRS, given that these fixed assets have useful life of more than 1 year, in accordance with the accounting standard,

Response on the Issues and Queries Raised by the Committee on 6 June 2018

the benefit of this capital grant is required to be deferred and recognised as income statement over their estimated useful lives systematically. The relevant accounting policy note on Deferred Capital Grant is provided under Note 2.4 (on page 171) and under Note 7 (on page 173).

3. Professional Fees

- Professional fees principally comprise of professional fees paid to part-time Commissioner of the Independent Legal Services Commission and may include other professional fees.
- Due to incomplete books of account and records, full detailed breakdown is unavailable.

4. Operating Losses

- The operating losses in 2012 and 2013 were funded from accumulated funds (included accumulated profits) carried forward from years prior to 2012. This position is summarised under Statement of Cash Flows (page 170) showing utilisation of cash and cash equivalent balance of \$201,410 as at 1 January 2012 (balance carried forward from 2011) (Page 170).

5. Accumulated Funds – 1 January 2012 and 2013

- Accumulated funds at the beginning of each year comprise of accumulated funds carried forward from previous years, and principally represents operating surplus accumulated over the years.
- The net surplus in prior years were as follows:

- 2009 surplus	-	\$702,720
- 2010 surplus	-	294,972
- 2011 deficit	-	<u>(\$3,474)</u>
Balance as at 31 December 2011	-	<u>\$994,218</u>

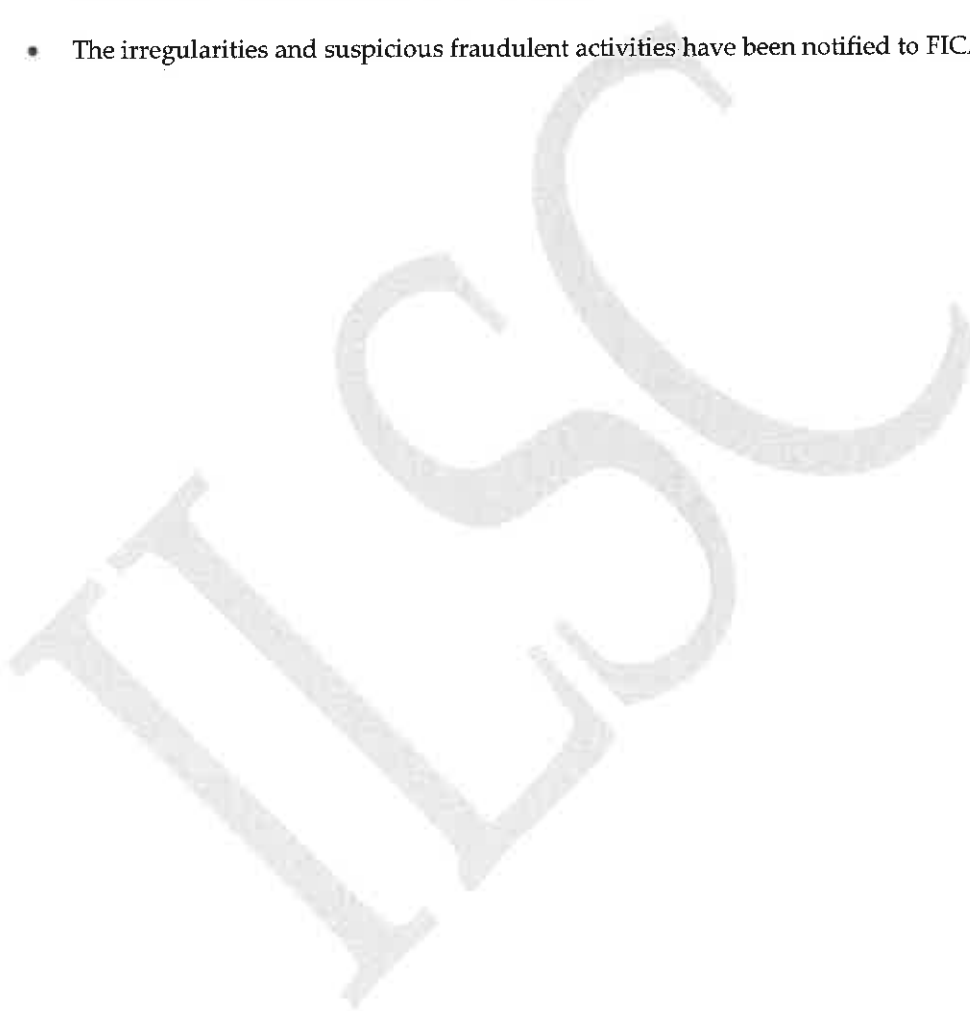
- The surplus in prior years were principally from distribution from Contribution Fund in prior years and Stabilisation Fund in 2009.

6. Sundry Expense

- This comprise of number of payments for which supporting documents are missing and not available. The payments have generally been identified from the bank statements, and in absence of adequate details or supporting documents, these payments have been classified under sundry category.
- These payments are suspected to be suspicious fraudulent payments already noted and reported by the Commission, and also reported by the Commission's external accountants and Office of the Auditor General.
- The irregularities and suspicious fraudulent payments have been notified to FICAC and DPP. (Refer Commissioner statement on page 165).

7. Fines and Penalties

- The Commission has also noted fines and penalties receipted by the Commission during 2013 but not recorded in the books of account. This issue and discrepancy is suspected to be part of irregularities already noted and reported by the Commission, and also reported by the Commission's external accountants and Office of the Auditor General.
- The irregularities and suspicious fraudulent activities have been notified to FICAC.



INDEPENDENT LEGAL SERVICES COMMISSION

Annual Report 2016

(Parliamentary Paper No. 104 of 2017)

**Issues raised by the Commission with Regards to the Independent Legal Services
Commission Annual Report 2016**

and

Commissioner's Response

1. Is the Commission in a position to comment on the status of the investigations into the fire at the Commission's Office on October 2014?

The last response we received from the Police Department was on the 5th of December 2016 saying that the file has been closed for now and will be reopened once any information is received to advance the investigation.

2. Whilst it is understood that some of the documents have gone missing, what are some of the measures that the Commission has undertaken to address such issues?

- (i) Ernst & Young were engaged to undertake a forensic audit of the Commission's accounts of 2013, 2014 and 2015 (see page 6 of the Annual Report). As a result of that, a second forensic audit was undertaken for 2009, 2010, 2011, 2012 and 2016.
- (ii) Ernst & Young reconstructed the accounts from the Commission's bank statements.
- (iii) A new system was implemented as from December 2017 whereby no member or staff to be a signatory to the ILSC account. The new procedure now are as follows:
 - (a) the secretary receives the invoice which is then forwarded to the Commission for an email authorization copied to the Solicitor General and a nominated member of his staff for payment.
 - (b) The Admin Assistance/Court Office prepares the payment voucher.
 - (c) The Secretary prepares the payment cheques, signs the payment vouchers with the Administrative Assistant/Court Officer.
 - (d) One of the two administrative staff takes the payment vouchers together with the payment cheques and invoices to the Principal Accounts Officer for verification before the cheques are signed off by the Solicitor General and the Principal Accounts Officer.

3. **The Committee notes that some cases had been anonymised; can there be clarification on this? (Examples are on pg. 23 – case no.'s 006/2015 and 013/2015)**

Cases have been anonymised on the basis that:

- (a) went to the Court of Appeal on case stated and whether publicly reprimanded meant that a practitioner's private medical condition that is mentioned in the judgment should be published on the internet (via PacLII and the Commission's website).
- (b) The other matter was whether the previous Commissioner was *functus officio* when he signed a judgment and order. The Court sent both matters back to the Commission as unfortunately there is no power under the Legal Practitioners Act to refer case stated matters to the Court of Appeal.

One of the matters came back before me and I ordered as anonymised as I believe it was not appropriate that someone's private medical condition should be publicized on the internet hence why the non-publication depending on the determination of the Court of Appeal decision.

Both matters are now before the Court of Appeal.

4. **The Committee takes note of Appendix 1, which provides for the Independent Legal Services Commission – Practice Direction No. 1 of 2016 (pg. 159), and seeks clarification on the rationale for having to also submit a soft copy of documents filed?**

This is for the following reasons:

- (a) In view of the fire that took place in 2014 storage of soft copies allow the permanent record on site and one off-site
- (b) As a large amount of material before the Commission is in written form i.e. Submissions and other documents, it then allows for copying of excerpts rather than having to retype the document
- (c) In many jurisdictions now, filing is now e-filing.

5. What are some of the revenue earning activities for the Commission?

There are no revenue earning activities for the Commission. The Commission is funded by the Trust Account Act - Contribution Fund.

- *Role and functions of the Commission*

- (1) The Independent Legal Services Commission was established pursuant to section 84(1) of the *Legal Practitioners Decree 2009*.
- (2) The Commission hears disciplinary proceedings '*against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm*' brought by the Chief Registrar of the High Court pursuant to section 111(1) of the said Decree who makes '*an application to the Commission ... containing one or more allegations of professional misconduct or unsatisfactory professional conduct*'.
- (3) In addition, pursuant to section 111(2), '*Any complainant whose complaint has been summarily dismissed by the Registrar under section 110(1), may commence proceedings against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm by making an application directly to the Commission containing one or more allegations of professional misconduct or unsatisfactory professional conduct*'.
- (4) Pursuant to section 121(1), '*If, after completing the hearing of an application for disciplinary proceedings against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm pursuant to this Decree, the Commission is satisfied that the legal practitioner or law firm or any employee or agent of a legal practitioner or law firm has engaged in professional misconduct or unsatisfactory professional conduct, the Commission may make one or more*' orders as set out in section 121(1) paragraphs (a) to (r).
- (5) In addition, the Commission has an educational role to assist members of the legal profession in upholding the standards expected of them.

In view of what was raised in the past by Ernst & Young, Continuing Legal Education will only be held by the Commission where we cover cost

6. With respect to the fees for Practicing Certificates received by the ILSC, how are these funds appropriated? Additionally, where in the Commission's financial statement are the above captured?

The Commission does not receive any of these from the Practicing Certificate, you will need to clarify this with the Chief Registrar. Our only source of funds is the 10% according to the Trust Account Act - Contribution Fund.

The table below summaries the distribution ratios:

	Fund	Distribution ratios in 2016 based on the Trust Account Act (as amended from time to time)
(a)	Legal Aid Fund	65%
(b)	Fiji Law Society	-
(c)	Stabilisation Fund	-
(d)	Fidelity Fund	5%
(e)	Independent Legal Services Commission	10%
(f)	Legal Practitioners Unit Fund	10%
(g)	Judiciary Fund	10%
	Total	100%

Supplementary Submission:

In an endeavor to answer the financial performance questions raised by the Parliament Standing Committee previously on the Audit of Statutory Authorities, the Commission contacted BDO Chartered Accountants who were responsible for the distributions respectively from the Stablisation Fund in 2009 and the Contribution Fund in 2010. BDO provided to the Commission a 'background' explanation concerning the two funds. As well as an explanation as to the distribution to the Commission from the Stabalisation Fund in 2009 and the Contribution Fund in 2010.

In addition, BDO also assisted the ILSC in the compilation of the Commission's financial statements for the 2010 and 2011 accounts so as to be in an appropriate annual reporting format for auditing by the Office of the Auditor General.

(1) Background (BDO'S Explanation)

'**Contribution Fund** was established under the Trust Accounts Act, 1996 (the Act) for collection of contribution from trust bank accounts of solicitors, and distribution of contribution income according to the provisions of the Act.

Each bank is required to pay on a monthly basis to the Funds Trustee, contribution calculated in accordance with the provisions of the Act.

In accordance with the Act, on a quarterly basis, distribution is made from Contribution Fund to different Funds as per the Act (as amended from time to time).

During or around 2009, in accordance with the Trust Accounts (Amendment) Decree 2009, section 22 of the Act was amended whereby share of distributions were required to be made to ILSC, and distribution to Fiji Law Society ceased.

Furthermore, in accordance with the transitional provisions in Section 30 of the Trust Accounts Act (as inserted by the Trust Accounts (Amendment) Decree 2009), the Stabilisation Fund was closed on 30 June 2009. Accordingly, effective from July 2009, no further distribution was made to the Stabilisation Fund. **Funds available in the Stabilisation Fund as at 30 June 2009 were distributed to the ILSC and the Judiciary Fund in equal proportions. A final distribution was made to ILSC and Judiciary Fund during March 2012 and Stabilisation Fund was completely closed.**

The table below summarises the distribution ratios prior to the establishment of ILSC in 2009 and distribution after the establishment of the ILSC made in accordance with the Act (as amended from time to time).'

Fund	Distribution ratios prior to Establishment of ILSC	Distribution ratios immediately after Establishment of ILSC (during quarter ended September 2009)	Distribution ratios in 2016 based on the Trust Account Act (as amended from time to time)
a) Legal Aid Fund	60%	40%	65%
b) Fiji Law Society	15%	-	-
c) Stabilisation Fund	20%	-	-
d) Fidelity Fund	5%	5%	5%
e) Independent Legal Services Commission Fund	-	30%	10%
f) Legal Practitioners Unit Fund	-	-	10%
g) Judiciary Fund	-	25%	10%
Total	100%	100%	100%

Graphic source: BDO Chartered Accountants

(2) In relation to the ILSC's distribution of \$595,000 in 2009 from the Stabilisation Fund, BDO have advised as follows:

'Distribution from Stabilisation Fund amounting to \$595,000 in 2009 relates to funds received in accordance with the transitional provisions in Section 30 of the Trust Accounts Act (as inserted by the Amendment Decree 2009). The transitional provisions provide for closure of the Stabilisation Fund and for monies available in the Stabilisation Fund on or before 30 June 2009 to be paid to the Independent Legal Services Commission Fund and the Judiciary Fund in equal proportions.

Accordingly, distribution was made to the Independent Legal Services Commission Fund in August 2009 and September 2009 amounting to \$1,000 and \$594,000, respectively.'

(3) In relation to the ILSC's distribution of \$565,428 in 2010 from the Contribution Fund, BDO have advised as follows:

'As per the audited financial statements of the Commission for the year ended 31 December 2010, Distribution from Contribution Fund amounting to \$565,428 in 2010 relates to funds received in accordance with Section 22 of the Trust Accounts Act. As per note 2 (page 7) of the audited financial statements of the Commission, Distribution from Contribution Fund were as follows:

First Quarter - (from 31 December quarter distribution)	\$130,308
Second Quarter - (from 31 March quarter distribution)	\$141,056
Third Quarter - (from 30 June quarter distribution)	\$143,768
Fourth Quarter - (from 30 September quarter distribution)	<u>\$150,296</u>
	<u>\$565,428'</u>

'The reduction in cash on hand and in bank was principally due to investment of \$750,000 in short term deposits with Credit Corporation \$250,000 and Merchant Finance \$500,000. This is disclosed under Note 5 of the audited financial statements for the year ended 31 December 2010.'