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

**Report on the Public Enterprises Bill 2019  
(Bill No. 4 of 2019)**



**PARLIAMENT OF THE REPUBLIC OF FIJI  
Parliamentary Paper No. 71 of 2019**

<b>TABLE OF CONTENTS</b>	
<b>CHAIRPERSON’S FOREWORD .....</b>	<b>3</b>
<b>1.0 INTRODUCTION.....</b>	<b>5</b>
<b>1.1 Committee Remit and Composition .....</b>	<b>5</b>
<b>1.2 Procedure and Program .....</b>	<b>5</b>
<b>2.0 PUBLIC ENTERPRISES BILL (BILL NO. 4 OF 2019) .....</b>	<b>6</b>
<b>2.1 Introduction.....</b>	<b>6</b>
<b>2.2 Objective of the Bill .....</b>	<b>6</b>
<b>3.0 COMMITTEE’S DELIBERATION AND ANALYSIS OF THE BILL.....</b>	<b>6</b>
<b>3.1 Impact of the Bill.....</b>	<b>6</b>
<b>3.2 Committee’s Initial Reading and Findings.....</b>	<b>7</b>
<b>3.3 Oral and Written Evidence Received.....</b>	<b>7</b>
<b>3.4 Gender Analysis .....</b>	<b>8</b>
<b>3.5 Outcome of Deliberation .....</b>	<b>8</b>
<b>4.0 CONCLUSION .....</b>	<b>8</b>
<b>SIGNATURES OF THE MEMBERS OF THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS .....</b>	<b>9</b>

## CHAIRPERSON'S FOREWORD

From the outset it is vital for our country to keep up with our regional and international counterparts. Fiji recognised the benefits and need for a public enterprise reform programme in the 1990s and introduced a public enterprise reform framework through the introduction of the Public Enterprise Act 1996. However, since 1996 the dynamics of the public enterprise portfolio have changed and the understanding of international best practice, public enterprise governance, monitoring, reporting and accountability has also developed. Therefore in order to keep our public enterprises relevant, it is imperative that the legislation which governs Public Enterprises is urgently updated and aligned to international best practice.

The Fijian Government now intends to make this a reality and has introduced the Public Enterprises Bill 2019. The Bill was then introduced in Parliament and referred to the Standing Committee on Justice, Law and Human Rights, for review.

The Bill, among other things, aims to mandate that public enterprises operate on a commercial basis that is efficient and profitable. It will align the regulation of Public Enterprises in respect of governance and operations with the other legislation such as the current Companies Act 2015 to ensure that there is no inconsistency. It will also ensure our legal framework is consistent with international best practice and, if fully implemented, would result in improved public enterprise financial and operational performance.

The Committee in its review process, conducted extensive public consultations by holding meetings in various areas around Viti Levu and Vanua Levu, including rural, peri-urban and urban areas. It also relied on research support from the secretariat team. The Committee is also mindful of the role it plays in contributing to the commitment that Fiji has put in place in achieving its targets as set out in the National Development Plan, therefore also considered the Bill from a gender perspective and it noted that the Bill will apply equally to all Fijians.

The Committee also consulted the relevant Ministry and the drafters of the Bill so as not to overlook any pertinent policy and legal ramifications of the Bill. The Committee resolved that such a consultation was essential to properly achieve the objectives of the Bill. Necessary amendments were made to the Bill, which are marked in red in the copies of the Bill provided with this report.

This Report will cover the Standing Committees' role and the process it followed in reviewing the *Public Enterprises Bill 2019*. It was also ensured that all due process regarding the review of the Bill has been followed and that the provisions contained in the Bill would contribute to the achievement of the Bill's objectives.

At this juncture I would like to acknowledge the Members of the Standing Committee on Justice, Law and Human Rights, Hon. Rohit Sharma (Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Salik Govind and Hon. Mosese Bulitavu, for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and

the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I as the Chairperson, on behalf of the Standing Committee on Justice, Law and Human Rights commend the *Public Enterprises Bill 2019 (Bill No. 4 of 2019)* to the Parliament and seek support of all the members of this August house for the Bill since it is designed for the betterment of our beloved Fiji.



.....  
**Hon. Alvick Avhikrit Maharaj**  
**Chairperson**

## 1.0 INTRODUCTION

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, was referred the *Public Enterprises Bill 2019* for review on 1 April 2019. The Bill was referred to the Committee pursuant to Standing Order 51 of the Standing Orders of the Parliament of the Republic of Fiji, whereby the Committee was tasked with scrutinising the Bill and to report back on the Bill in the May Parliament Sitting.

This Report will first give a background of the Bill, then lay out the Committee's deliberation on it and then state the outcome of this deliberation.

### 1.1 Committee Remit and Composition

The Standing Committee on Justice, Law and Human Rights was established under SO 109 and is mandated to, among other things as prescribed in SO 110, examine each Bill referred to the committee by Parliament, and make amendments to the Bills, to the extent agreed by the committee and examine any subordinate legislation tabled in Parliament within its category of affairs.

The Committee is made up of Members of both the Government and Opposition Members and are as follows:

- Hon. Alvick A. Maharaj (Chairperson)
- Hon. Rohit Sharma (Deputy Chairperson)
- Hon. Ratu Suliano Matanitobua (Member)
- Hon. Salik Govind (Member)
- Hon. Mosese Bulitavu (Member)

During the duration of the review, the following Hon. Member assisted the Committee as alternate members, pursuant to SO 115 (5):

- Hon. Niko Nawaikula (Alternate Member for Hon. Ratu Suliano Matanitobua and Hon. Mosese Bulitavu).

### 1.2 Procedure and Program

The Committee read through the Bill and did its own deliberation of the Clauses in the Bill. The Committee called for submissions from the public and other interested stakeholders by placing advertisements through the local newspapers (Fiji Times and Fiji Sun) on 6 April and 18 April 2019. The Committee also relied on technology and social media to assist it in the awareness of its review of the Bill. Certain key stakeholders were also invited to make submissions on the Bill.

The Committee was mindful of the provisions in SO 111(1)(a) and ensured that its meetings were open to the public and the media, except during such meetings where deliberations and discussions were done on the evidence received in order to develop and finalise this Report.

The Committee received numerous submissions on from relevant stakeholders, on various dates falling between and including 8 April 2019 and 7 May 2019. Names of organisations and individuals that made submissions to the Committee are listed in Appendix A.

The submissions of the above-mentioned organisations are summarised and provided in heading 3.4 of this report. Written copies of the submissions are uploaded along with this report onto the parliament website ([www.parliament.gov.fj](http://www.parliament.gov.fj)).

## **2.0 PUBLIC ENTERPRISES BILL (BILL NO. 4 OF 2019)**

### **2.1 Introduction**

The Public Enterprises Bill (Bill No. 4 of 2019) (“Bill”) is a result of the Fijian Government’s vision in moving the country towards relevancy by ensuring that public enterprises are in line with international best practices and modern systems of public enterprise governance.

### **2.2 Objective of the Bill**

The objective of the Bill is derived from Clause 3 of the Bill, which is to provide for the regulation and governance of public enterprises according to public enterprises principles.

## **3.0 COMMITTEE’S DELIBERATION AND ANALYSIS OF THE BILL**

### **3.1 Impact of the Bill**

The Committee noted that the Bill aims to lift the standards of public enterprises in Fiji so that it is on par with international standards. It removes the different categorisation of entities where there are government commercial companies and there are commercial statutory authorities; there will only be one category, and that is, public enterprises.

The Bill aims to formalise the current process for Board appointments and requires Directors to act honestly and in good faith, with reasonable care and due diligence and comply with the Code of Conduct of Public Enterprises.

The Bill introduces provisions that clarify Ministerial responsibilities and accountabilities; define and strengthen directors’ duties and responsibilities, improve transparency and accountability by strengthening public enterprises’ forward planning requirements and their reporting against these planning documents; and enhances public enterprise monitoring. The Bill also requires public enterprises to adopt a code of conduct and standardises expectations dealing with conflicts of interest.<sup>1</sup>

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<sup>1</sup> Explanatory Note to the Public Enterprises Bill 2019 (page 37).

### **3.2 Committee's Initial Reading and Findings**

At the commencement of its deliberation, the Committee took into consideration the limited timeframe for the review, and resolved that it would read the Bill and receive submissions simultaneously.

### **3.3 Oral and Written Evidence Received**

The Committee was mindful of the impact of the Bill on the public, therefore, as part of its review, conducted public consultation in key areas around Fiji. Evidence received from the submissions highlighted both benefits and shortfalls pertaining to the Bill and these are summarised below.

Majority of the submitters welcome the Bill and the purpose that it aims to achieve. Apart from this, evidence extracted from the submissions also revealed suggestions to be taken into consideration before the Bill becomes an Act. Suggestions include social responsibilities by public enterprises be considered as dividends and that civil servants continue to sit as Board Members as they have the relevant experience that is valuable to the public enterprise.

Additionally it was also raised that quorums for Board meetings was an issue and whether it would be possible to have members send in substitutes to sit in Board meetings? There was question on the application of standards and liability as prescribed in the Companies Act on Director and CEO's of public enterprises and whether approval should be obtained by the Minister prior to seeking the Directors and Officers Liability Insurance Cover. It was raised that the disclosure of statement of corporate intent to the public by businesses having sensitive information was a concern.

It was also noted that the minimum number of board members is not specified and the Bill does not set a timeframe for which the Minister must appoint the board members after a vacancy. There is no provision which mandates the formation of sub-committees such as the Board Audit and Risk Sub-committee which can be used as a line of deference and an integral part of good corporate governance.

The Bill should place emphasis on human capital development such as competency/upskilling, organisation structure to accommodate business objectives and development and thus this should be reflected in the Bill by adding specific wording such as "strategic directions" in the relevant part of the Bill. Also clarification was sought with respect to clause 57 on financial statements, and whether the public enterprise board can engage an external auditor to audit financial statements of public enterprises.

Furthermore, it was noted that certain entities most probably meet the definition of an entity that should be included as a public enterprise, however are not and whether these should be included and that the audited financial statements and audit report. There was also a suggestion that certain entities needed to be encompassed by this framework for public enterprises, in that, the appointment of its board members should fall under the jurisdiction of the Minister responsible for public enterprises with the approval of Prime Minister.

### 3.4 Gender Analysis

The Committee took into account the provisions of Standing Order 110(2), where 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.

During its deliberation the Committee noted that the Bill will apply equally to every Fijian irrespective of gender.

The Bill follows the principle in other laws that the law will apply equally to all Fijians.

### 3.5 Outcome of Deliberation

After extensive deliberation on the issues noted from the evidence received, the Committee then considered the implications of the issues with the assistance of the initiating Ministry and the drafting team. This ensured that all relevant issues raised before the Committee was appropriately addressed and that no policy issue or legal ramifications were overlooked.

From the consultation with the drafters, the issues noted were adequately addressed and it was noted that there was no need for substantial amendments to be made. However, after further deliberation, the Committee believed that the Bill had to ensure that the laws relating to public enterprises were all aligned, therefore certain necessary amendments had to be made, which are reflected in the amended copy of the Bill presented with this Report.

Copies of the correspondence with the drafting team are provided in this Report as Appendix B.

## 4.0 CONCLUSION

After adhering due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation saw that there was a need for the Bill. It also made observations on the Bill as highlighted above. These deliberations led to consultations with the drafters so as not to upset the objectives of the Bill. The Committee made necessary amendments to the Bill as a result of the deliberation and this is reflected in red text in the amended copy of the Bill presented with this report.

The Committee through this report commends, with the mentioned amendment, the *Public Enterprises Bill (Bill No. 4 of 2019)* to the Parliament.



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



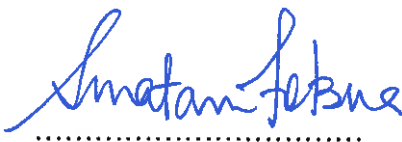
.....

Hon. Alvick Maharaj  
(Chairperson)



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Hon. Rohit Sharma  
(Deputy Chairperson)

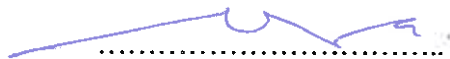


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Hon. Ratu Suliano Matanitobua  
(Member)

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Hon. Dr. Salik Govind  
(Member)



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Hon. Mosese Bulitavu  
(Member)



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(Date)

**APPENDICE:**

- **APPENDIX – NAMES OF SUBMITTERS**
- **APPENDIX – COPIES OF CORRESPONDENCE WITH DRAFTERS**

## **APPENDIX A – NAMES OF SUBMITTERS**

**Organisations and Individuals that submitted on Bill No. 4 of 2019**

1. Ministry of Economy – Department of Public Enterprise
2. Airports Fiji Pte Limited
3. Energy Fiji Limited
4. Fiji Broadcasting Corporation Pte Limited
5. Fiji Hardwood Corporation Pte Limited
6. Fiji Meat Industry Board
7. Fiji Public Trustee Corporation Pte Limited
8. Fiji Rice Pte Limited
9. Food Processors (Fiji) Pte Limited
10. Post Fiji Pte Limited
11. Unit Trust of Fiji (Management) Limited
12. Yaqara Pastoral Company Pte Limited
13. Mr. Jese Saukuru (MP)
14. Fiji Law Society
15. Office of the Auditor-General

**APPENDIX B – COPIES OF CORRESPONDENCE  
WITH DRAFTERS**

## RESPONSE TO QUESTIONS ON PUBLIC ENTERPRISES BILL 2019

### **1. What is the ramification if social responsibility is considered as a dividend?**

We note that dividends are declared and paid out in accordance with Division 5 of Part 17 of the Companies Act 2015. Accordingly, we advise that social responsibility cannot be considered as a dividend.

### **2. What is the ramification if civil servants continue to sit as Board Members?**

We advise that a civil servant that is a director of a public enterprise that is employed in a ministry that has direct regulatory or operational responsibility for the principal business of the public enterprise may have a conflict of interest between his or her duties as a civil servant and his or her duties as a director of the public enterprise.

**A major concern raised was on the quorum for Board meetings where in such instances, the Permanent Secretary and Senior Civil Servants are not available during meetings and therefore quorum is not met. What would be the ramification if members or civil servants send in substitutes to sit in Board meetings?**

We advise that the appointment of a director is a personal appointment and therefore a director would not be permitted to appoint a substitute to attend a board meeting or deliberate on the affairs of the public enterprise on behalf of the director, unless an alternate director is appointed in accordance with the Companies Act 2015.

### **3. Clarification is sought on whether the Directors and CEOs of public enterprises are subjected to the same standard and liability of Directors of private companies under the Companies Act with the purpose to perform duties diligently?**

We advise that directors of public enterprises are subjected to the same standards and liability of directors as specified under the Companies Act 2015 pursuant to section 11 of that Act. Generally, chief executive officers are not subject to the same standard and liability as directors of a private company as they are not considered to be directors of a company unless they fall within the definition of a 'director' under section 3 of the Companies Act 2015.

### **4. A concern was raised with the Committee on the disclosure of statement of corporate intent with business having sensitive information to be disclosed to the public. Therefore, what is the ramification of amending Clause 22(3) to read as "may be made publicly available with the approval of the Minister"?**

Statements of corporate intent are a form of public accountability and transparency for public enterprises.

The proposed amendment to clause 22(3) of the Bill would remove the absolute requirement for public enterprises to make publicly available their statements of corporate intent as it would confer on the Minister responsible for public enterprises discretionary power to control and determine the statements of corporate intent that are to be made publicly available, thereby restricting public accountability and transparency

for the public enterprises. Furthermore, a statement of corporate intent generally does not include sensitive business information.

We advise that clause 22(3) of the Bill should remain as currently drafted.

5. **Emphasis is placed on human capital development such as competency/upskilling, organisation structure to accommodate business objectives and development. Should Clause 27(1) be amended to provide additional words “human capital development” after the words “strategic directions” and before the words “and financial projections...”.**

Under clause 27 of the Bill, a business plan must contain information on the operations, strategic directions and financial projections of a public enterprise and the information must be sufficient enough to demonstrate that the public enterprise will achieve its primary objective of becoming a successful business.

The terms ‘operations’, ‘strategic directions’ and ‘financial projections’ are generic and are to be broadly interpreted. Information on a public enterprise’s human capital development may be included as part of the information required on the operations, strategic directions and financial projections of the public enterprise.

We advise that clause 27(1) of the Bill should remain as currently drafted.

6. **Clarification is sought on Clause 55 whether approval should be obtained by the Minister prior to seeking the Directors and Officers Liability Insurance Cover.**

We advise that clause 55 of the Bill requires a public enterprise or the subsidiary of a public enterprise to *inter alia* obtain the approval of the Minister responsible for public enterprises before the public enterprise or the subsidiary indemnifies a director or executive officer of the public enterprise or the subsidiary in respect of a liability owed by the director or executive officer, including through the purchase of liability insurance to indemnify a director or executive officer.

7. **A point of clarification was raised with respect to clause 57 on financial statements, on whether the public enterprise board can engage an external auditor to audit financial statements of public enterprises?**

Clause 56(1)(b) of the Bill requires a public enterprise to have its financial statements prepared and audited in accordance with the Financial Management Act 2004 (‘FMA 2004’).

Under the FMA 2004, a public enterprise is an off-budget State entity. Section 52(2)(b) of the FMA 2004 states that the annual financial statement of an off-budget State entity is required to be audited under the applicable requirements of the Audit Act 1969 (‘AA 1969’).

Section 6(1)(b) of the AA 1969 states that the Auditor-General is responsible for auditing:

- (i) the accounts of all State entities, except the Office of the Auditor-General and off-budget State entities that are exempted by regulations made under section 19 from the audit by the Auditor-General; and
- (ii) the financial statements required to be included in such a State entity's annual report for a financial year.

We therefore advise that except where a public enterprise is exempted by regulations under section 19 of the AA 1969, a public enterprise would have to be audited by the Auditor-General. This however, does not prevent a public enterprise from separately engaging an external auditor.



## RESPONSE TO QUESTIONS ON PUBLIC ENTERPRISES BILL 2019

### **(a) In making reference to clauses 8, 9 and 11 of the Bill –**

- (i) a number of entities including PAFCO, Copra Millers Fiji Limited, Fiji Development Bank and FDB (Nominees) Limited, are currently audited by the Office of the Auditor-General but they are not included in Schedule 1. Should these be included?**
- (ii) there are other entities not included which meet the definition of State control in clause 11 of the Bill and these are Walesi Limited, Assets Fiji Limited, Fiji Investment Corporation Limited, Fiji Pine Limited, Fiji Sugar Corporation, Fiji Airways Limited and Air Terminal Services. Should these be included?**
- (iii) in view of (i) and (ii) above, the auditing provisions of these entities and the reasons for their exclusion is not clear.**

In order to be a public enterprise, an entity must be controlled by the State and be:

- (1) specified in Schedule 1 at the commencement of the new law; or**
- (2) designated as a public enterprise in accordance with clause 9(1) of the Bill.**

Merely because an entity is controlled by the State, does not make it a public enterprise. Only those entities that the Minister considers in the interest of the public should be governed by the public enterprise principles are to be designated as public enterprises. The current list of entities listed in Schedule 1 is based on the entities that are currently public enterprises under the Public Enterprise Act 1996.

Similarly, while PAFCO, Copra Millers Fiji Limited, Fiji Development Bank and FDB (Nominees) Limited may be audited by the Office of the Auditor-General, this does not automatically make them public enterprises.

Audit requirements for Government entities are set out in the Audit Act 1969.

- (b) Under clauses 6, 22 and 23 of the Bill, the provisions refer to setting of performance benchmarks and making these publicly available however, the Bill does not indicate whether an Annual Performance Statement should be prepared, audited and reported against the benchmarks in the annual report?**

Please clarify the question.

### **(c) Under clause 30 of the Bill –**

- (i) the minimum number of board members is not specified. A reasonable number of board members will assist it in meeting the good governance requirements such as formation of sub-committees. Should the minimum number of board members be specified?**

We advise that this is a matter of policy.

- (ii) the Bill also makes no provision for appointment of independent board members to assist sub-committees, to support accountability and transparency. Should this be specified?**

We advise that this is a matter of policy.

- (iii) the Bill does not mandate the formation of sub-committees such as the Board Audit and Risk Sub-committee. The requirement for independent internal audit functions in state entities, which act as the "Third Line of Deference" and a common requirement for listed companies (best practice), has not been stated. Independent internal audit functions are an integral part of good corporate governance. Should this be specified?**

We advise that this is a matter of policy.

- (iv) the Bill does not set a timeframe for which the Minister must appoint the board members after a vacancy. Should this be provided for?**

We advise that this is a matter of policy.

- (v) there is no mention of the remuneration of board members and authority for approval of the remuneration. Should this be provided for?**

Clause 66(b) of the Bill empowers the Minister to make regulations prescribing matters in relation to remuneration of directors.

- (vi) the Bill does not define "fit and proper person". Should this be provided for?**

We advise that the definition of this term is generally accepted and may change over time. Accordingly, the term need not be defined.

- (d) Under clause 58, it does not specify that the annual report should contain the audited financial statements and audit report. Should this be provided for?**

We advise that this is a matter of policy.