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

### **Report on the Review of the Fiji Institute of Chartered Accountants Bill 2021 (Bill No. 35 of 2021)**



**Parliament of the Republic of Fiji  
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## CHAIRPERSON'S FOREWORD

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This Committee Report focuses on the aim of democratising the accounting profession by providing existing qualified accountants with the opportunity to be able to provide accounting services, without having to attain a full certificate in public practice or being a chartered accountant.

This Committee Report will provide details of the Committee's review process, which includes initial deliberation, public consultation and identification of key findings, and outcome of the review.

In the initial stages of the review the Committee conducted preliminary deliberations and noted certain matters, which the Committee discussed at length. These matters touched on issues such as provisions of the Bill and the implementation of these provisions.

The Committee also conducted public consultation on the Bill by inviting interested persons to send in their views on the Bill through written submissions and also inviting the public, including the three political parties represented in Parliament to make verbal submissions through virtual means. The Committee also visited several communities in Viti Levu and held in-person public consultation meetings with the members of public.

Support from the public on the introduction of the Bill was one of the key highlights of the public consultation. However there were also concerns and suggestions for improvements from numerous participants of the public consultation, which were also deliberated on by the Committee.

This Report will also cover the Committee's consideration given to the impact of the Bill on Fiji's efforts in meeting its targets of the national development plan, which in turn contributes to Fiji's obligations towards the global agenda (the sustainable development goals).

At the final stage of the review, the Committee acknowledged that there were issues identified in the contents of the Bill and in addressing these issues, the Committee sort legal clarifications on the same and this ensured that the primary objectives of the Bill are preserved. The Committee deliberated extensively on the issues and the legal clarifications provided and made efforts in coming to a conclusion that would preserve the main intention of the Bill while at the same time giving due consideration to the public's input.

The Committee is of the opinion that majority of the provisions of the Bill, as they are currently worded, would enable the preservation of the key objectives of the proposed law and also clarifies some of concerns raised during the public consultation.

Despite these adequate provisions in the Bill; the Committee also believes that a few changes can be made to the Bill, which are necessary and would contribute to the preservation of the objectives of the proposed law. These relevant changes have been put

forward by the Committee and are incorporated in magenta coloured texts in the copy of the Bill tabled with this Report.

The Committee also believes that there is a need for continuous review of the legislation governing the accounting profession in Fiji and recommends that once this law comes into place; that a review of its impact and related provisions be undertaken after **3** years.

The review was greatly assisted by the participation of the key stakeholders and the public, thus, on behalf of the Committee, appreciation goes to all the members of the public, the Fiji Institute of Accountants, and entities that provided their views on the Bill and for taking an interest in the proceedings of the Committee and Parliament.

I also would like to commend the work of the Members of the Committee, Hon. Rohit Sharma (Hon. Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Dr. Salik Govind, and Hon. Mosese Bulitavu.



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

## **ACRONYMS/ABBREVIATIONS AND PHRASES USED IN THE REPORT**

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AA	-	Associate Accountant
AT	-	Accounting Technician
CA	-	Chartered Accountant
CAPP	-	Chartered Accountant in Public Practice
CALPP	-	Chartered Accountant in Limited Public Practice
CPP	-	Certificate in Public Practice
CLPP	-	Certificate in Limited Public Practice
FIA	-	Fiji Institute of Accountants
SDG	-	Sustainable development goals

## COMMITTEE COMPOSITION

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**Hon. Alvick A. Maharaj (Chairperson)**

- Assistant Minister of Employment, Productivity, Industry Relations, Youth and Sports
- Chairperson of Public Accounts Committee
- Government Whip
- Pharmacist



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

- Former Civil Servant – Education Sector
- Deputy Chairperson of the Standing Committee on Justice, Law and Human Rights
- Deputy Government Whip



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

- Shadow Minister for Youth and Sports
- Former State Minister of Fijian Affairs
- Territorial Military Officer – Republic of Fiji Military Forces



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

- Public Health Specialist – United Nations (World Health Organisation)
- Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence Committee



**Hon. Mosese Bulitavu (Member)**

- Shadow Minister for Defense, National Security, Immigration and Correction Services
- Former Opposition Whip
- Business Consultant/Farmer
- Territorial Military Officer – Republic of Fiji Military Forces
- Law Graduate and Researcher

### **Committee Secretariat Team**

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat and are delegated by the Secretary-General to Parliament, pursuant to Standing Order 15 (3)(i). The Secretariat team is made of the following Parliament officers:

- Mr. Ira Komaisavai – Senior Committee Clerk
- Mr. Jackson Cakacaka – Deputy Committee Clerk
- Ms. Darolin Vinisha – Committee Assistant

# PART 1 - INTRODUCTION

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## 1.1 Background

From the explanatory notes to the Bill and the remarks made by the Honourable Attorney-General when tabling the Bill; the Fiji Institute of Accountants Act of 1971 ('**FIA Act**') was amended twice, once in May 1982 and in June 1997, as a way to keep the framework governing the accountancy industry up to date with the changes to the accounting environment. However, the changes in the business environment and the developments within the accounting profession in the past 50 years have highlighted the need to review the FIA Act and replace it with a new legislation to align with today's legislation and practices<sup>1</sup>.

The Fiji Institute of Chartered Accountants Bill 2021 ('**Bill**') therefore seeks to address this aforementioned changes and the gap in the current framework governing accounting. The Bill aims to update the categories and requirements for membership to the Fiji Institute of Accountants, and also change the name of the Institute to the "Fiji Institute of Chartered Accountants".

## 1.2 Committee's Review Procedure

The Committee's review process was through the resolution of the Committee and the following provides brief summary of the agreed upon procedure and program.

The first step in the Committee's review process was the formulation of its program with regards to its review process. The Committee's agreed upon review program was as follows:

i) Initial Analysis of the Bill

The Committee began with an initial reading of the Bill and conducting its own deliberation of the Clauses in the Bill. An in-depth deliberation of the Bill was conducted by the Committee, whereby pertinent issues were identified.

ii) Identification of mode of public consultation

The Committee then discussed, which mode of public consultation would be suitable for the review the Bill. The Committee resolved to rely on two main modes of public consultation, which is to call for written submission and conducting in-person verbal public consultation.

iii) Awareness on the Committee's public consultation through advertisement

The Committee then conducted awareness on its proposed public consultations, through advertisements via newspaper advertisements.

iv) Conducting of public consultation

The Committee began by reviewing the consultation conducted by the Fiji Institute of Accountants, whereby it was noted that the consultation began in the form of the review

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<sup>1</sup> *Fiji Institute of Chartered Accountants Bill 2021* (Bill No. 35 of 2021).



of the current Act, the Fiji Institute of Accountants Act 1971. It was also noted that that this consultation had begun in 2005.

The Committee was also committed to upholding public trust in Parliament, by ensuring that there is public participation and that all such participation is given due consideration. The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

The Committee called for written submissions from the public and other interested stakeholders by placing an advertisement through the Parliament website and Parliament social media pages on social media platforms; Facebook, Twitter and Instagram. The Committee received written submissions on the Bill from relevant stakeholders. A summary of these submissions is provided in a later part of this report, under the heading '*Committee's Deliberation and Analysis of the Bill*'.

The Committee also endeavoured to conduct public consultation via in-person submissions, thus visited several communities in Viti Levu, both in urban and rural areas. All the verbal submissions conducted during the public consultation were recorded and open to the public and the media.

v) Review of evidence collected and seeking legal clarification on pertinent issues

The Committee reviewed all the evidence received from the public consultation and to maintain due diligence, the Committee also relies on legal clarification on technical issues identified from the Bill, which is obtained from the Office of the Solicitor-General. The Committee also conducted a round-table discussion with the key stakeholders of the Bill and the Office of the Solicitor-General whereby the issues identified from the review were extensively discussed and tried to be resolved. These clarifications also assist the Committee in deliberating on these pertinent issues and in deciding whether there would be recommendations for any changes to the Bill.

vi) Drafting of Committee Report

The final step of the review process is the compilation of all issues identified from the evidence received from the public consultation. This is then deliberated on with the necessary legal clarifications and the Committee forms its own independent view on all issues identified.

## **PART 2 - COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL**

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### **2.1 Initial Deliberation/Analysis**

At the commencement of the review, the Committee read through the Bill, Clause by Clause, and identified matters, which it felt merit further deliberation. These matters pertained to each part of the Bill, focusing on issues relating to the provisions of the Bill, the implementation of the provisions, and the role of Parliament in the determination of vital aspects of climate change.

Some of the specific matters highlighted in the initial deliberation stage included the following.

Firstly it was identified that the title of the Bill and the proposed title of the Institute seems to project that the framework is only for a specific category of accountants within the accounting sector/industry; which is 'chartered accountants'.

The Committee also queried the proceeds and funds collected by the Institute, through the subscription fees and penalties prescribed by a disciplinary committee of the Institute.

There was also a query on the potential of there being a conflict of interest in the leadership of the Institute since the President is also the chairperson of the Council and the powers of chairperson of the Council in regard to position holder's voting power. Additionally, there was a query on the role of the Executive Director in the hierarchy of the Institute as stipulated under Clause 15 of the Bill.

It was noted that there will be new categories that will be recognised in the Institute, which includes Associate Accountants and Accounting Technicians and it was queried what these two categories of accountants can and cannot perform and what type of qualifications are needed for each category.

It was also noted that there will be a new category introduced by the Bill, known as 'Fellow', and a query was raised on the requirement of being recognised as a fellow is that a member must have paid his or her annual fee for a period of not less than 15 years.

There were also other matters noted from the initial deliberation including

- the role of tax agents and where they fit in the accountancy framework;
- what are the reasons for removing a Member from the Assessment Committee, Disciplinary Panel and a disciplinary committee;
- query raised on the duration of the validity of the Certificates of Practice for accountants; and
- certain grammatical errors in the provisions of the Bill.

### **2.2 Bill Summary**

By way of consensus, the Committee during the drafting of this Report believed that it be prudent to also capture, the necessary objectives the proposed law is intending to bring

about, by providing a summary of what the Bill is about. This would conveniently provide the reader of this Report with the aforementioned information about the Bill. The Bill summary is provided below.

Part 1: Preliminary; this Part of the Bill would provide for the short title, commencement, interpretation and objectives of the Bill that will guide its implementation.

Part 2: this part of the Bill provides for the continuation of the establishment of the Institute of Accountants, which will now be named the ‘Fiji Institute of Chartered Accountants’. It also provides for the functions, powers and the membership of the Institute.

Part 3: this part of the Bill provides for how the Council is formed, and the election of the President and vice president. It also provides for matters related to the Council including how a member vacates his or her office, the continuation of the council notwithstanding vacancy, functions, powers and meetings of the Council. The part also provides for the appointment and functions of the Executive Director.

Part 4: this part of the Bill provides for the registration of members of the Institute, including the keeping of a register of members, how one applies to be a member of the institute and the different categories of accountants to be recognised by the proposed law. It also provides the fees payable by members, how a member resigns from the Institute and reinstatement of members.

Part 5: this part of the Bill provides for the regulation of conduct of members of the Institute. It sees the setting up of appropriate committees that will look into the regulation of conduct of members, such as the Assessment Committee, Disciplinary Panel, and disciplinary committees. It provides for the powers of a disciplinary committee, its procedures and the procedures for appeal.

Part 6: this part of the Bill provides for what constitutes an offence under the Bill and the penalties for such offences.

Part 7: this part of the Bill provides other relevant matters such as the powers of the Minister to make regulations; the powers of the Institute, through the approval of the Minister, to make rules; the recovery of moneys by Council; what constitutes being served with a notification by the Institute; and the Office of the Institute and availability of the address of the Office of the Institute. It also provides the transitional provisions; the repeal of the Fiji Institute of Accountants Act 1971 and the proposed amendments to other Acts as a consequence of this Bill becoming law.

### **2.3 Evidence received via public consultation**

The Committee conducted public consultation on Bill and received numerous submissions by members of the public and a summary of the key issues noted from the submissions is provided below.

There was clarification sought on why the phrase “Chartered Accountant” is used in the title of Bill and the Institute. It was argued that the title of the Institute and the Bill, seems

to project that it is only for a specific category of accountants within the accounting sector/industry. It was noted that there are other categories of membership for example associate accountants and accounting technicians. Thus it may seem that member who is not a Chartered Accountant ('CA') but is a member of the proposed Fiji Institute of Chartered Accountants, might give the indication that the person is a ('CA').

Certain submitters noted that there is lack of liability protection for Members of the Council. It was noted that Clause 4 provides for the continuation of the establishment of the Fiji Institute of Accountants as the "Fiji Institute of Chartered Accountants" and provides for other characteristics of the Institute such as being a body corporate and having the powers and vulnerabilities of a body corporate, such as being able to sue or being sued, being able to institute, conduct, defend, compound or abandon any legal proceedings by or against the Institute, compound and allow time for payment or satisfaction of any debt due or of any claim or demand made by or against the Institute. It was noted that the Bill does not have a "limitation of liability clause" to protect the members of the Council for actions taken in good faith. The clause for protection only applies to the disciplinary committee in Section 31(7).

There were suggestions for inclusion of specific references to certain phrases in the Bill, which would ensure clarity of the provisions of the Bill and help with lessening the confusion between what is accounting and auditing. These suggestions included:

- the inclusion of a reference to 'external auditing' in the definition of Certificate of Public Service and/or Certificate of Limited Public Service;
- the inclusion of specific reference to external auditors be included in Clause 3 (c) as it was argued that Accounting and external auditing are distinct professions which must be discussed separately for clarity. Auditors are not permitted by the Sarbanes–Oxley Act, which was enacted in the US following major corporate collapses in early 2000, to provide accounting and other non-audit work of a client which is audited by the auditor and vice versa;
- recommendation for a definition of the term 'profession', which is referenced in Clause 5 (f), as it was argued that here should be a clear definition of the term 'profession' and that it should include accounting and auditing;
- inclusion of auditors in private practice in Clause 5 (b), since it was commented that the provision is not clear whether it covers public sector accounting as well and whether the institute is the national standard setting authority in Fiji covering accounting and auditing in both public and private sectors; and
- inclusion of the term "auditing" in Clause 12 (a); thus it would also mean that the institute to be responsible for the development of the auditing profession as well.

Comments were also raised on certain Clauses of the Bill, in that these Clauses were either vague or ambiguous. These include:

- Clause 8 (1)(c), whereby it was raised by submitters that the provision needs to be made specific by including the terms 'accountants and auditors representing public service', since this inclusion will ensure that public sector representation is present in the Council, which will allow for development of the profession in the public sector;
- Clause 12, it was commented that there is something missing from the functions of the Council which relates to a more strategic function, such as the promotion of good governance and transparency;

- reference to documentation required for membership application seems to be missing from Clause 17, that is, there is no mention of documentation to be provided with the application, thus there is suggestion to include the wordings “*and the relevant documents as required by the FIA*”.
- Clause 18; it was commented that this provision is vague in that it seems that an important aspect is missing from the “application” as provided in this provision , and that is, who approves the applications, what are the requirements for admission and who sets the requirements?;
- Part 4, it was commented that the provisions relating to the duration of the validity of registration and Certificates of Practice, is quite vague in that it does not specify the duration of validity of a Certificate of Practice;
- Clause 32 (2) seems ambiguous, since it provides for the powers of the disciplinary committee to impose penalties, but then sub-clause (3) does not allow the penalties to be imposed if the member has been convicted by the Court and which is punishable by imprisonment or fine;
- Clause 32 also appears to be vague in that this clause (and others) enables the disciplinary committee to impose fines but it is unclear as to whether these fines are paid to the institute or to Government;

There were other comments, suggestions and concerns raised by the public, which relate to:

- the inclusion of a provision on Finance in the Bill, which provides types of revenues and accounting of revenues and expenditures of the Institute including appointment of auditors;
- amendment to the provisions of the Bill, which provides that the names of the members under the CPP and CLPP category are to be included in the register and also published and that the register is to also be available online via the FIA website.
- amendment to Clause 18 (3)(d), whereby it was suggested that this particular provision needs to be a standalone provision and be separate from Clause 18 (3) (a), (b) and (c);
- the rationale for having such a requirement for payment of annual fees for 15 years as prescribed in Clause 23 (2) (b) in order to be eligible to be a ‘Fellow’ of the Institute and whether this refers to either a member having already paid the fees for the prescribed number of years or that a member is to pay for the fees for 15 years.
- suggestion for advance notice to be given to members of the institute before cancellation of their membership in relation to non-payment of arrears, given that some members may have genuine reasons for non-payment of arrears and the advanced notice will allow them to make arrangements for payment;
- the concern raised on the provisions of Bill in that it seems provides for specific provisions relating to membership disqualification and removal from being a member of the Assessment Committee, Disciplinary Panel and disciplinary committees (Clauses 29, 30 & 31). Specific concern was raised on the wide scope of power given to the Council to remove a member from the Disciplinary Panel (Clause 30 (4)), without giving any criteria or reasons for which a member of the Disciplinary Panel can be removed;
- amendment to Clause 30 (1)(a), so that the Disciplinary Panel does not consist of a Council Member;

- suggestion for the membership and quorum for a disciplinary committee to be specific in that it is mandatory that while forming a quorum for the meeting; that one of the member needed for the quorum of the Committee is to be a member who is not a member of the institute. This would meet the purpose of having members from outside of profession being part of the Committee;
- there was a suggestion that there be a provision included in the Bill to allow for the auditing of the books of the Institute and the appointment process of the auditor for the Institute. This will promote accountability of the Institute.
- also there was a suggestion received for the inclusion of a provision, which provides for timelines for the publication of the annual report for the Institute.
- it was also suggested that any reference in the Bill to the “disciplinary committee” is to be capitalised.
- it was argued that the Institute is the body corporate and every monetary penalty imposed and all costs and expenses payable under this section are recoverable as a debt due to the Council. It should be noted that the debt due is to the Institute and not the Council, which is the body corporate.
- there was a query on what happens to the funds, being collected by the Institute via membership fees prescribed in Clause 24 and the penalties collected through Clause 32;
- there was a suggestion that Clause 32 (1) (e) to be amended whereby the phrase “gross neglect” is to be replaced by “gross negligence” since this would enable the alignment with the terminology currently in use for such conduct.
- relevant references to Part 33 of the *Companies Act 2015*, which relates to the regulation of auditors is needed in the Bill;

There were also grammatical errors and issues noted in the provisions of the Bill, and which include:

- Clause 24 (5), whereby there was an additional word in the provision, the word “to” and needs to be deleted;
- Clause 28 (4)(a), it was noted that there seems to be a typo in regard to the words, “...electronically e-mail...”, since the word “electronically” used seems out of place in this sentence, given that the portmanteau/blended word “e-mail” already means electronic mail”, thus suggesting that this would mean a correspondence/mail sent via electronic means. It was argued that the term “electronic means” sounds more appropriate, given the need to communicate decisions in a more efficient and timely manner, electronic communication is to be considered. Rules relating to this is addressed in the *Electronic Transactions Act 2008*;
- Clause 34 (1), it was suggested that the provision would be more standardised if the words “electronic means” is used instead of the words “electronic email”;
- Clause 32 (3), it seems that there is something missing from this Clause and it was suggested that Clause 32 (3) to be amended by adding “(c)” in the provision after the word and number “subsection (2)”;

Furthermore there was a comment on the term ‘disqualification’, which was referenced in Clause 32 (5) (h) whereby the disciplinary committee’s powers include what the consequence are of being found guilty of “professional misconduct” or “unsatisfactory professional conduct”, which in this case refers to “...*disqualification from managing or*

*being involved in the management of a company.*” It was noted that there is no definition of the word “disqualification”. The provision 32 (5) (h) seems to rely on the definitions used by different **employers**. There may be implementation issues due to inconsistent definition/ application by different employers. It was also noted that this term is not defined in *Employment Relations Act 2007* (**‘ERA’**) as well.

As per the wordings of the provision, it only includes disqualification from a “company” – what about members of the institute employed in other areas – partnerships and Government offices? In addition, this disqualification clause does not extend to members of boards and is limited to management of company. In the current situation, where staff/management may have been terminated or summarily dismissed from employment due to non-vaccination, employers may have used clauses of the ERA when taking this action. Thus it was queried; would that action also impact on the person’s status with Fiji Institute of Accountants? Employers may have considered non-vaccination as a conduct issue. ERA has clauses like 33 (1) (b) “for wilful disobedience to lawful orders given by the employer.”

There was also a comment that the Auditor-General is to be considered under the CPP category and that there is an inclusion in the provision which allows public officers who are not employed by a CPP or CLPP to apply for and be registered as such provided that they have gone through mentoring for a period as determined by the Council. It should be noted that Section 413 of the Companies Act provides provisions that the Auditor-General is registered as an Auditor including persons delegated by the Auditor-General.

Clause 43 specifies that a body corporate or firm carrying out services and implying accountancy qualifications, such as a Chartered Accountant in Public Practice or Chartered Accountant in Limited Public Practice, commits an offence. In this provision, the words “officer” and “member” are used inconsistently and may need to be aligned.

Moreover, there were other suggestions, which included:

- that the penalty provision relating to fraudulent practices and activities as provided in Clause 44 needs to be aligned to the *Crimes Act 2009*, since it was noted that the fine and imprisonment term prescribed in the Bill is different and lesser than that which was provided in the *Crimes Act 2009*;
- inclusion of a new provision in the consequential amendments provision, Clause 52, to include a new paragraph whereby reference is made to section 111(b) of the Tax Administration Act 2009, which relates to the appointment of Tax Agents Board, since the composition of the said Board includes a member of the Fiji Institute of Accountants.
- inclusion of a Standard Setting Body for Auditors and Accountants, such as Australian Accounting Standards Board (AASB) being an Australian Government Agency that develop and maintain financial reporting standards. Also the Australia Auditing and Assurance Standards Board (AUASB) is an independent statutory authority responsible for making auditing and assurance standards and approving those auditing standards to be adopted in Fiji. Australia and New Zealand have separate bodies that are set up to for setting of standards for accountants and auditors.
- suggestion that FRCS is also be a member of the disciplinary committee under this proposed law; and

- that tax agents be brought under the FIA umbrella, since this will ensure transparency and effective monitoring of the functions carried out by tax agents.

A copy of the written submissions and transcripts (Verbatim Reports) of the verbal submissions received can be obtained from the online Appendices of this Report, which can be accessed via the parliament website: [www.parliament.gov.fj](http://www.parliament.gov.fj).

## **2.4 Sustainable Development Goals/National Development Plan Impact Analysis**

In reviewing the Bill, the Committee was mindful of the Bill's impact on Fiji's efforts in achieving the targets set out in the national development plan, which in turn contributes to Fiji's overall commitment and obligation towards the global agenda, which is known as the sustainable development goals (SDGs).

To begin with, the Committee identified from the review that the provisions of the Bill are drafted using gender-neutral language and the contents of Bill including its objectives are aimed at benefiting all persons living in Fiji, specifically all persons in the accounting profession. Therefore, the Committee believes that the Bill was designed based on the principles of gender equality.

Additionally, it was noted that this Bill and its objectives contribute to the efforts prescribed in SDG 8, which is to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. The descriptions of this particular goal sees that one of the key concern that was noted during the formulation of this goal was that there is 'widespread deficit or lack of available decent work opportunities<sup>2</sup>.

Thus, from close examination of the objectives of the Bill, it is noted that this Bill aims to open up the market for the provision of accounting services by accountants in Fiji. The current framework governing the accounting profession had been restricted and controlled by a handful of few, which left a large number of accountants not being able to meet their full potential and have a share in this so-called closed-off fraternity.

Once there is an increase in the number of accountants that can freely, but with lawfully prescribed limitations, provide accounting services, the general public, especially, persons doing business (including macro, medium and small enterprises) or intending to do business, will also benefit since there will be more options available to them in terms of obtaining accounting services, which is vital to doing business.

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<sup>2</sup> United Nations Department of Economic and Social Affairs: SDG 8 - <https://sdgs.un.org/topics/employment-decent-work-all-and-social-protection>



## **PART 3 - KEY ISSUES IDENTIFIED**

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At the closing stages of the review, after reviewing the evidence received in written form from the public and those that participated in-person in the public consultation and also taking into consideration the Committee's deliberation on the Bill; the Committee identified certain pertinent issues, which the Committee believes is vital to mention in this Report. The following are these key issues that were identified from the review.

- (i) That the proposed law will repeal the current *Fiji Institute of Accountants Act 1971*.
- (ii) That the Bill will bring about certain changes to the accountancy framework, starting with the title of the Fiji Institute of Accountants and it was identified that the title of Bill and its implication on the title of the Institute seems to project that it is only for a specific category of accountants within the accounting sector.
- (iii) Lack of liability protection for Members of the Council.
- (iv) That there needs to be inclusion of terms and definitions of certain terms in the Bill.
- (v) That there are vague and ambiguous provisions in the Bill that are quite substantive in nature.
- (vi) That the Bill will benefit from the inclusion of provisions which relate to matters such as finance of the Institute; changes to the composition of the Council; the discipline committee and its quorum; submission of the Institute's annual report and the timelines for this; and references to other Acts that make reference to the Institute.
- (vii) Additionally, that there were certain drafting issues noted in the Bill, specifically that regarding grammatical issues.
- (viii) Furthermore, there were other issues identified, which included:
  - disqualification of members found guilty of an act under the purview of the disciplinary committee;
  - that the Auditor-General is to be considered as having a Certificate of Public Practice;
  - that the penalties prescribed for fraudulent acts prescribed in the Bill should mirror those penalties prescribed in the Crimes Act 2009;
  - that there be a Standard Setting Board for Auditors and Accountants, separate from the Fiji Institute of Accounts;
  - that the Fiji Revenue and Customs Service be represented in the disciplinary committee of the Institute; and
  - that tax agents be included under the Bill and the Fiji Institute of Accountants.

## **PART 4 - OUTCOME OF REVIEW**

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After extensive deliberation, the following outlines some of the main outcomes of the Committee's deliberation and review.

The pertinent issues identified during the review were deliberated on at length by the Members of the Committee, after which the Committee sought clarification from the Fiji Institute of Accountants and also legal assistance from the Office of the Solicitor-General so as to ensure that all these relevant issues were appropriately addressed and that the objectives of the Bill were preserved.

The Committee weighed all options concerning these issues that had been identified and the clarifications provided on the same. The following provides the Committee's stance on each issue identified and this has been reached through consensus.

In regard to the issue on the title of the Bill and proposed change to the name of the Institute, it was noted that the title of the Bill and the proposed new name of the Institute is derived from international practice, whereby the term 'chartered accountant' is commonly used for similar professional bodies around world. It should also be noted that the Bill provides *inter alia* for the membership of qualified persons in the area of accountancy according to the various categories of membership the 'Institute' has in place.

Although the Institute will expand its lawfully recognised categories of members, the continued education experience requirements under other categories that do not have voting rights ultimately lead to qualifications necessary for the person to be a chartered accountant. The Committee thus resolves that; given that Fiji is pursuing to be on par with and to meet international best practices, the title of the Bill and proposed name of the Institute needs no change.

For the issue on lack of limitation of liability protection for Members of the Council, it was noted that protection of liability was only provided to the disciplinary committee. The risks associated with not having a limitation of liability clause for the Members of the Council could impede on the Council in performing its functions. The Committee feels that having such a protection for Members of the Council, who are considered the management team of the Institute, can assist with minimising this risk. The Committee thus resolves that; there is a need to amend the provisions of the Bill and incorporate a protection from liability clause, specifying that the liability is limited if the functions are performed in good faith.

In terms of the suggestions raised for the inclusion of references and definitions to certain terms and words, which would help solve the confusion about accounting and auditing; it was noted that accountants holding either Certificates of Public Practice or Certificates of Limited Public Practice are also authorised to provide external audit service. The Committee thus resolves that the insertion of the new terms in the Bill and the inclusion of its definitions will assist in solving some of the issues, which relate to the confusion that arises when it comes to accounting and auditing.

It was also noted that the other suggestions for references to auditing may not be applicable at this point in time. The *Sarbanes-Oxley Act of 2002* prohibits a registered public accounting firm and any associated person of that firm, as determined appropriate by the Commission that performs audit from contemporaneously performing non-audit service as listed in the provision. The Act however does allow for such accounting firms to provide other non-audit services that are not specifically prohibited under the Act if pre-approval is obtained for these other non-audit services.

Additionally, in terms of other suggestions such as the inclusion of the definition of the term “profession”, inclusion of the terms such as “auditors in private practice”, “auditors representing public service”; it is noted that since the Bill is largely on the regulation of accountancy and membership to the Institute, the word ‘profession’ is taken to mean those that are engaged in or otherwise providing accounting services and this is further supported by current practice which includes auditing in accounting services. The Bill provides a general function of the Institute to register its members and regulate the practice of accountancy in Fiji, in so far as its members are concerned and the membership of the Institute is not restricted, provided such persons meet the eligibility criteria for membership in the Institute. The Committee thus resolves that there is no need to make amendments to the provision of the Bill for the purpose of the issue raised.

The Committee further notes the importance of the membership of the Council, whereby representation of all qualified accountants (whether it be from private practice or public practice) is vital and as such the Committee resolves to make changes to the Bill to capture this issue by amending Clause 8.

With regard to the issues highlighted pertaining vague or ambiguous provisions, the following were noted:

- For the issue on Clause 12, it was noted that the Council is the operative arm of the Institute and as such its functions are operational and this is further supported by clause 13(1) of the Bill which empowers the Council to do all things necessary or convenient in connection with the effective management and control of the Institute. The Committee thus resolves that changes are not need for the purpose of the issue raised.
- In terms of the issue raised on Clause 17, it was noted that 17(1)(a) provides for a written application to be made to the Council in the approved form, which may or may not include any additional documentation that the Council may require as part of the application form. But for clarity, the Committee believes that sub-clause (2) be amended to reflect approvals made by the Council. The Committee thus resolves that amendment to the provision is needed to provide clarity for the application process.
- In regard to the issue raised on Clause 18, it was noted that Clause 18(3)(b), provides that the necessary qualifications and required experience are approved by the Council for the various categories. The Committee thus resolves that no change is needed for the purpose of the issue raised.

- With regard to the issue raised pertaining to Part 4 it was noted that a Certificate of Public Practice does not have specific period but is subject to several conditions such as payment of annual registration fees. Accordingly, it was noted that the specific details in relation to the duration of and conditions for a Certificate of Public Practice may be addressed in subsidiary legislation in detail. The Committee thus resolves that no change is needed.
- In regard to the issue raised on Clause 32 on whether the fines prescribed are paid to the institute or to Government; it was noted that the such fines, unless upon conviction, are paid to the Institute depending on the particular matter. The Committee thus resolves that no change is needed.
- In regard to the issue raised on Clause 32 (2), it was noted that there is indeed some ambiguity in the provision, thus it is recommended that this provision be made clear. The Committee thus resolves that an amendment be made to this provision to provide more clarity.

In regard to the issues noted regarding the inclusion of a provision on Finance in the Bill, it was noted that such matters are dealt with according to the Government policies in place and it may be better addressed by the Institute itself when reviewing its rules and processes in place.

For the issue noted on the inclusion of names of the members under the CPP and CLPP category in the register and also published and made available online; it was noted that Clause 16 of the Bill provides for the Register which must be available for public inspection and it does not limit the Institute from publishing names of registered members on their website however requires, as a minimum, an annual publication in the Gazette. Further, it is noted that currently the FIA website contains names of registered members. The Committee thus resolves that no change is needed.

In respect of the issue raised pertaining to Clause 18 (3)(d), to be a standalone provision, it was noted that this is needed for operational purposes to cater for *inter alia* potential foreign members. And as such the Committee thus resolves that Clause 18 be amended to cater for this requirement.

In terms of the issues raised on the rationale for having such a requirement for payment of annual fees for 15 years as prescribed in Clause 23 (2) (b), it was noted that the provision is there to ensure that a ‘fellow’ has been a member of the Institute for a substantive amount of time to be afforded this honorary status. However, for consistency purposes there is a need to make changes to this provision, thus the Committee resolves that an amendment is made to Clause 23 (1) and 23(2)(b).

In regard to the issue regarding the suggestion for advance notice to be given to members before cancellation of their membership, it was noted that the provisions of Clause 24 provides for the leeway to give members to address their membership fees and that other specifics of this process can be captured in the regulations to the Bill.

In regard to the issue regarding the concern raised on the disqualifications of members of the Assessment Committee, Disciplinary Panel and the disciplinary committee and

power to remove a member of the disciplinary committee or Disciplinary Panel, it was noted that the provisions of the Bill cater for the disqualifications of a member from the named Committees. However, for the removal of a member, it is recommended that there is a protection from undue removal by the Council, provided to the members of the Disciplinary Panel. The Committee thus resolves that Clause 30 (4) be amended to provide such a protection.

In regard to the issue raised on Clause 30 (1)(a), so that the Disciplinary Panel does not consist of a Council Member, it was not that this would ensure the independence of the disciplinary process. The Committee thus resolves that Clause 30(1)(a) be amended.

In regard to the suggestion for the membership and quorum for a disciplinary committee to be specific and mandatory for one of the member needed for the quorum of the disciplinary committee is to be a member who is not a member of the institute; the Committee recommends that this provision be amended. The Committee thus resolves that Clause 31 (3) be amended.

In regard to the issue on pertaining to the suggestion that there be a provision included in the Bill to allow for the auditing of the books of the Institute; it was noted that this a matter that is dealt with by Government policy, and that it would also be best dealt with by the processes and rules guiding the Institute's operations. The Committee thus resolves that there is no need to make changes for the purpose of the issues raised.

In regard to the issue noted on the inclusion of a provision, which provides for timelines for the publication of the annual report for the Institute; it was noted that will be provided under the rules and guidelines governing the day to day operation of the Institute. The Committee thus resolves that there is no need to make changes for the purpose of the issues raised.

In regard to the issue raised on the capitalisation of the words "disciplinary committee"; it was noted that since disciplinary committees are formed as and when there is a matter to investigate or look into, then the term should remain as is in the Bill. The Committee thus resolves that there is no need to make changes for the purpose of the issues raised.

In regard to the issue raised on Clause 32 in relation to the debt due is to the Institute and not the Council, which is the body corporate; it was recommended that this be amended. The Committee thus resolves that there is a need to amend Clause 32 (6) to address this issue.

In regard to the issue raised on Clause 32 in regards to the funds collected by the Institute, through subscriptions and fines imposed by the disciplinary committee, it was noted that these funds go to the Institute for its operation and running. The Committee thus resolves that there is no need to make changes for the purpose of the issues raised.

In regard to the issue on amending Clause 32 (1) (e) in changing the phrase "gross neglect" to "gross negligence" it was recommended that this provision be amended. The Committee thus resolves that Clause 32 (1)(e) be amended.

In regard to the issues raised on the references to the Companies Act 2015, it was recommended that the provisions of the Bill be amended accordingly to reflect these references. The Committee thus resolves that amendments be made as follows; Clause 37 be amended by deleting the reference to the Companies Act 2015, since clause 40 provides the exception that clauses 37 and 39 do not apply to the Auditor-General. Additionally that clause 41 be amended after to ensure that the penalty provision also apply to clause 35 similar to clauses 36 to 39. And that Clause 2 be amended to include a definition of the term “holding out”.

In regard to the grammatical errors and drafting issues noted in the provisions of the Bill, the Committee recommends that these be amended accordingly and thus the Committee resolves that amendments be made to Clause 24(5), 28(4)(a) and 34(1) to fix these grammar and drafting issues.

In regard to the issue noted on the term ‘disqualification’, referenced in Clause 32 (5) (h), it was noted that with respect to membership of the Institute, a person must meet the eligibility criteria for registration and conditions set out in the law. Additionally, it was recommended that further amendments to Clause 32 is necessary to address the issue raised. The Committee thus resolves that amendments be made to Clauses 32 (5)(h), 32(7) and also adding a new sub-clause (3).

In regard to the issue pertaining to the suggestion for the penalty provision relating to fraudulent practices and activities to be aligned to the *Crimes Act 2009*, it was recommended that the provision is to be amended accordingly. The Committee thus resolves that Clause 44 be amended.

In regard to the suggestion to include of a new provision in the consequential amendments provision, it was recommended that the provision be amended accordingly. The Committee thus resolves that Clause 52 be amended to cater for this suggestion.

In regard to the suggestion for inclusion of a Standard Setting Body for Auditors and Accountants; it was noted that this is matter dealt with by Government policy and can be addressed by the internal processes within the FIA. The Committee thus resolves that there is no need for changes to the provision for the purpose of the issue raised.

It regard to the suggestion that FRCS is also be a member of the disciplinary committee under this proposed law; it was noted that this is matter dealt with by Government policy and can be addressed by the internal processes within the FIA. The Committee thus resolves that there is no need for changes to the provision for the purpose of the issue raised.

In regard to suggestion that tax agents be brought under the FIA umbrella, it was noted that this is best dealt with the Tax Administration Board. The Committee thus resolves that there is no need for change for the purpose of the issue raised.

A final recommendation is put forth by the Committee, with respect to the review of the law after a reasonable number of years has lapsed after this Bill becomes law and recommends that necessary changes be made to the law to address this. The Committee

thus resolves that there be a new provision included in the Bill to provide for the review of this legislation.

## **PART 5 - APPRECIATION**

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The Committee acknowledges all those that had provided great support to the Committee during the review of the Bill.

Firstly, the Committee acknowledges all the members of the public for their invaluable contribution, which assisted the Committee in the review. The Parliament of the Republic of Fiji for realising the vital aspect of public participation in the legislative making process, thus supporting the Committee in conducting public consultation. The Committee also acknowledges the Honourable Speaker of the Parliament of Fiji, for providing the Committee ample sitting days to carry out the review on the Bill and the Secretary-General to Parliament for supporting the Committee during the review period.

Furthermore, appreciation goes to the UNDP Fiji Parliament Support Project, for its generosity in supporting the Committee financially, which ensured that public consultation was conducted and this greatly assisted the Committee in the review.

The Committee would also like to show its appreciation to the Fiji Institute of Accountants for their timely feedback to queries by the Committee, during the review.

Moreover, the Committee would also like to acknowledge the Parliament IT Team for its support, which enabled the Committee to broadcast its public consultation meetings and enabled public access via virtual means during the review of the Bill.



## **PART 6 - CONCLUSION**

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After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation and review noted that there was great support for the Bill.

The review highlighted certain issues on the Bill, which were deliberated on extensively by the Committee. These issues were clarified with the legal team from the Solicitor-General's Office and the technical experts from the Fiji Institute of Accountants. The Committee believes that the clarifications provided, adequately addressed the issues identified.

The Committee is of the opinion that majority of the provisions of the Bill are adequate in ensuring the achievement of its ultimate objective, which is to modernise and democratise the framework governing the accountancy profession in Fiji. To contribute to the achievement of the aforementioned objective, the Committee is also of the opinion that certain key issues highlighted from the review needs to be addressed by making necessary changes to the provisions of the Bill. Therefore, the Committee recommended that amendments be done in relevant provisions of the Bill and these amendments are captured in magenta coloured texts in the Bill provided with this Report.

The Committee through this bipartisan Report commends the *Fiji Institute of Chartered Accountants Bill 2021* (Bill No. 35 of 2021), and the proposed amendments to the Bill, to the Parliament.

## **MEMBERS SIGNATURES**

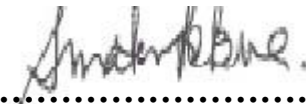
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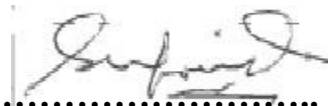
**HON. ALVICK MAHARAJ  
(CHAIRPERSON)**



**HON. ROHIT SHARMA  
(DEPUTY CHAIRPERSON)**



**HON. RATU SULIANO  
MATANITOBUA  
(MEMBER)**



**HON. DR. SALIK GOVIND  
(MEMBER)**



**HON. MOSESE BULITAVU  
(MEMBER)**

**DATE: 01 DECEMBER 2021**

