

FIJI TRUTH AND RECONCILIATION COMMISSION BILL 2024
(BILL NO. 19 OF 2024)

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BILL NO. 19 OF 2024**A BILL****FOR AN ACT TO ESTABLISH THE FIJI TRUTH AND RECONCILIATION
COMMISSION**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Fiji Truth and Reconciliation Commission Act 2024.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“civic education” means programmes of education, whether conducted by governmental or non-governmental bodies, to enable the people of Fiji to understand the nature and role of the Commission and to participate effectively in the reconciliation process;

“Code of Conduct” means the Code of Conduct for the Commission set out in Schedule 1;

“Commission” means the Fiji Truth and Reconciliation Commission established under section 5;

“Commissioner” means a member of the Commission appointed under section 5(2);

“coup periods” means the periods of past political upheavals in Fiji from the year 1987;

“Minister” means the Minister responsible for the administration of this Act;

“reconciliation process” means the process of truth sharing and reconciliation undertaken and facilitated by the Commission under this Act; and

“survivors” includes any person, whether in Fiji or abroad—

- (a) who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss, or a substantial impairment of human rights—
 - (i) as a result of a gross violation of human rights during any of the coup periods; or
 - (ii) as a result of an act associated with a political motive or objective for which immunity has been granted under the Constitution of the Republic of Fiji;
- (b) who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss, or a substantial impairment of human rights, as a result of assisting a person contemplated under paragraph (a) who was in distress or to prevent victimisation of such person; or
- (c) relatives or dependants of survivors as may be prescribed.

Purpose

3.—(1) The purpose of the Commission is to promote social cohesion through healing and reconciliation.

(2) The purpose of this Act is to facilitate open and free engagement in truth-telling regarding the political upheavals during the coup periods and to promote closure and healing for the survivors of these events.

Act binds the State

4. This Act binds the State.

PART 2—FIJI TRUTH AND RECONCILIATION COMMISSION

Fiji Truth and Reconciliation Commission

5.—(1) This section establishes the Fiji Truth and Reconciliation Commission.

(2) The Commission consists of 5 Commissioners appointed by the President, 3 of whom must be citizens of Fiji.

- (3) The chairperson is appointed by the President from among the Commissioners.
- (4) A Commissioner must be—
 - (a) a person of integrity and credibility who is impartial in the performance of the Commission’s functions and who receives the confidence of the people of Fiji; and
 - (b) a person with high standing and competence in the social sciences, medical profession, legal profession, religious vocation, transitional justice, peace-building or other professions or disciplines which may be relevant to the functions of the Commission.
- (5) The chairperson must preside over the meetings of the Commission, guide its deliberations, and ensure that the objectives of the Commission are effectively pursued, including facilitating truth-telling, promoting reconciliation, and ensuring that all voices are heard and respected.

Functions of the Commission

6. The functions of the Commission are to—
 - (a) facilitate enabling spaces and a conducive environment for survivors to share their stories, experiences and trauma;
 - (b) engage all relevant stakeholders in the reconciliation process;
 - (c) examine the nature, antecedents, root causes and accountability for the human rights violations or abuses which occurred during the coup periods;
 - (d) create a platform for social accountability for acts done during the coup periods through constructive interchange between survivors;
 - (e) acknowledge and promote the significance of cultural, traditional and religious forms of reconciliation, healing and justice;
 - (f) facilitate trauma support services, faith-based or pastoral support, counselling, translators, sign-language interpreters or other support mechanisms for survivors;
 - (g) consider sectoral impacts of human rights violations or abuses which occurred during the coup periods on health, education, legal and other sectors, without diminishing the emphasis on individual survivors;
 - (h) recommend policy options or measures to prevent similar situations such as those that occurred during the coup periods, from being repeated in the future;
 - (i) create a platform that promotes a culture of truth, reconciliation and healing for any person affected by events that occurred during the coup periods; and
 - (j) do all things that contribute to the fulfilment of the objectives of the Commission.

Powers of the Commission

7.—(1) The Commission has the following powers—

- (a) to examine under oath any witness;
- (b) to consider any written or oral evidence in its hearings regardless of whether such evidence would be admissible in a civil or criminal proceeding;
- (c) to consider whether to exclude the presence of a member of the public, including the media from any proceedings or meetings of the Commissioners;
- (d) to exclude any person, if necessary, to ensure the due conduct of the hearings or to preserve order; and
- (e) to engage consultants with specific expertise in an area related to the functions of the Commission.

(2) A person who intentionally misleads or gives false information to the Commission is deemed to have committed contempt of court and may, at the discretion of the Commission, be referred to the Magistrates' Court.

Cooperation with the Commission

8. The Government and the agencies of the State must cooperate with the Commission to assist with its functions under this Act.

Procedure

9.—(1) Subject to this section, the Commission must regulate its own procedures.

(2) A quorum for a meeting of the Commission must consist of 3 Commissioners, including a minimum of 2 Commissioners who are citizens of Fiji.

(3) Notwithstanding subsection (2), a hearing may be held with at least 2 Commissioners present and that at least one of these Commissioners is a citizen of Fiji.

(4) Notwithstanding section 15(11), the Commission must endeavour at all times to make its decisions by consensus.

General provisions

10.—(1) The Commission must be independent and not be subject to the directions of the Government or any agency of the State, or of any other person or organisation, other than as is necessary to ensure compliance with any written law.

(2) Before the commencement of the Commission's work, the Commissioners must take, before the President, the oath or affirmation of office as set out in Schedule 2.

Secretariat

11.—(1) The Commission may appoint its staff or, by agreement with the Permanent Secretary responsible for civil service and the Permanent Secretary for the civil servant concerned, engage the services of existing civil servants through secondment.

(2) The Secretariat must be managed by a Secretary appointed by the Commission, acting under the guidance of the chairperson of the Commission.

Code of Conduct

12.—(1) The Commissioners, including staff of the Commission and any consultant engaged by the Commission must be apolitical and must uphold their terms of office.

(2) The Commissioners must adhere to the Code of Conduct.

(3) Any breach of the Code of Conduct may, depending upon its seriousness, be the basis for—

- (a) a formal warning;
- (b) removal from office in the case of a Commissioner, including the chairperson of the Commission;
- (c) termination of contract in the case of directly appointed staff or a consultant; or
- (d) termination of secondment in the case of a seconded civil servant.

(4) An action under subsection (3) may be instituted—

- (a) in the case of an action against the chairperson of the Commission, by 2 or more Commissioners;
- (b) in the case of an action against a Commissioner, by the chairperson of the Commission and at least 2 other Commissioners; or
- (c) in the case of an action against the Secretary, staff or consultant of the Commission, by the chairperson, with the support of at least one other Commissioner.

(5) A Commissioner, who is absent without good reason for more than 3 consecutive meetings of the Commission, may be removed under the procedure prescribed in subsection (4).

(6) A person accused of breaching the provisions of the Code of Conduct must be given an opportunity to defend himself or herself.

Commission immunities

13.—(1) A Commissioner, including the Commission’s staff and any consultant or agent engaged by the Commission, is not liable in any civil or criminal proceedings for anything done or said, or omitted to be done, in good faith in the execution of his or her functions under this Act.

(2) The immunity granted under subsection (1) applies to any actions, statements, or decisions made in the course of their duties, including—

- (a) the collection of testimonies;
- (b) the conduct of public and private hearings;
- (c) the preparation of reports; and
- (d) any other acts performed in fulfilment of the Commission’s mandate.

(3) This section does not apply to any act or omission that constitutes gross negligence or wilful misconduct.

(4) Nothing in this section affects the right of any person to seek redress in respect of any breaches of the law or violations of his or her personal rights not connected to the functions of the Commission.

PART 3—CONDUCT OF HEARINGS

Term of operation

14.—(1) The Commission must commence preparations for operations under subsection (2) within 14 days after the appointment of the Commissioners.

(2) During a preparatory period of 3 months from the date of the appointment of the Commissioners, the Commission may undertake all tasks necessary to ensure that it can work effectively from the commencement of its operations, including—

- (a) procuring office space, if required;
- (b) preparing a budget;
- (c) securing funds for its operations;
- (d) appointing staff;
- (e) determining a detailed methodology for the reconciliation process;
- (f) designing and undertaking a public or civic education campaign on the purposes and procedures of the Commission;
- (g) designing and putting in place a reporting mechanism; and
- (h) undertaking preliminary background research.

(3) The Commission must operate for 18 months after the preparatory period.

(4) The President, on the request of the Commission and being satisfied that there are sufficient grounds for doing so, may by notice published in the Gazette, extend the term of the Commission for a further period not exceeding one year.

(5) During the preparatory period and after it commences operations, the Commission must inform the public of its existence and the purpose of its work, and, where appropriate, must invite all interested parties who may wish to do so, to make statements or submit information to the Commission.

Hearings

15.—(1) The Commission must coordinate its work with civic education on the reconciliation process before permitting any person to provide his or her account of events.

(2) The Commission must ensure that sufficient public notice is given before it conducts any hearing.

(3) The Commission must ensure that—

- (a) individuals are able to give their views in any language of their preference; and

- (b) individuals with a disability are not hindered from expressing their views, through—
 - (i) the provision of sign language interpretation;
 - (ii) choosing disability accessible premises for hearings; or
 - (iii) assisting with physical access to premises.

(4) The Commission may seek assistance from traditional and religious leaders including community and political leaders, to facilitate its hearings.

(5) At the discretion of the Commission, a person may be permitted to provide information on a confidential basis.

(6) Subject to any other written law, the Commission must not be compelled to disclose any confidential information.

(7) The Commission may hold in-camera proceedings as necessary.

(8) The Commission must take into account the interests of survivors and witnesses when inviting them to give statements, including the security and other concerns of those who may not wish to recount their stories in public.

(9) The Commission must not name individuals in their events, activities, public statements, reports or recommendations or use personal information which identifies the individual, without the express consent of that individual, unless that information or the identity of the individual so identified has already been established through legal proceedings, by admission or public disclosure by that individual.

(10) The Commission may implement special procedures to address the needs of particular survivors such as children or those who have suffered sexual abuse, as well as in working with child perpetrators of abuses or violations.

(11) A decision of the Commission must, as far as possible, be taken by consensus and in the absence of consensus, by the majority vote of the Commissioners.

(12) At the discretion of the Commission, a person may be permitted to provide information virtually.

Survivor support and witness protection

16.—(1) The Commission must provide support to survivors before, during and after sharing their stories and experiences.

(2) In providing support under subsection (1), the Commission may consider offering a range of services tailored to the specific needs of survivors, including—

- (a) psychological and emotional support, which may include access to counselling services and support groups;
- (b) medical support, encompassing access to healthcare services for physical and mental well-being;

- (c) protective measures, which may include—
 - (i) transportation support to ensure safe travel to a Commission hearing;
 - (ii) security or escort services for survivors or witnesses facing threats or intimidation related to their participation in a Commission hearing; or
 - (iii) confidential arrangements, such as the option for anonymous testimony or private setting, to protect the identity and safety of survivors or witnesses; and
- (d) other forms of support that the Commission deems necessary based on the circumstances of a survivor or witness.

(3) No evidence taken under this Act is admissible against any person in any civil or criminal proceeding, except in the case of a person charged with—

- (a) intentionally giving false evidence before the Commission; or
- (b) intentionally misinterpreting evidence in a manner intended to mislead the Commission or other participants.

(4) For the purposes of subsection (3)(b), a misinterpretation of evidence is considered intentional if—

- (a) there is clear evidence of an intent to mislead or distort the truth; or
- (b) the misinterpretation occurs in a context where the person had knowledge or reasonable grounds to understand the correct interpretation.

(5) Notwithstanding subsections (3) and (4), a person may be liable for anything said that is irrelevant to the work of the Commission and is said maliciously, within the meaning of the law of defamation.

(6) Notwithstanding subsections (3) and (4), a person may be criminally liable for any statement made that constitutes an offence under any written law and is an abuse of the occasion in the sense of being irrelevant to the work of the Commission, and the burden of proof lies on the prosecution.

(7) Unintentional misinterpretation of evidence does not constitute grounds for legal liability but may be subject to educational measures, including clarifications and rebuttals during the proceedings, to ensure accurate representation of evidence.

(8) A person participating in the Commission's hearings must do so through respectful discourse and must refrain from posting any harmful electronic communication related to its processes or hearings which may cause harm to others.

(9) Notwithstanding subsection (8), a person who posts harmful electronic communication in relation to the Commission's processes or hearings—

- (a) with the intention to cause harm to any person, where posting would cause harm to an ordinary person; or

(b) where posting causes harm to any person, will be referred by the Commission to the Fiji Police Force for investigation and where applicable, prosecution.

Final report of the Commission

17.—(1) The Commission must submit a final report to the President detailing the work of the Commission under this Act, the views expressed by members of the public and recommendations for the State’s implementation.

(2) A final report must be submitted within 3 months from the end of the Commission’s working period referred to in section 14(3) or if the term of the Commission is extended under section 14(4), the end of the period of the extension.

(3) A copy of the final report must be provided to the State to allow for the implementation of the recommendations therein.

(4) The State must take reasonable measures within its available resources to implement the recommendations provided in the final report.

(5) If the State claims that it does not have the resources to implement the recommendations in the final report, it is the responsibility of the State to show that the resources are not available.

(6) The Commission automatically dissolves upon the presentation of the final report by the Commission to the President, but the Secretariat continues in existence solely to wind up the affairs of the Commission, in consultation with the chairperson of the Commission.

PART 4—MISCELLANEOUS

Records

18.—(1) The Commission must keep careful and accurate records of its meetings, hearings and decisions.

(2) The records of the Commission are to be kept confidential excluding its financial affairs, which may be made available to any member of the public who requests access to them subject to the reasonable decision of the Commission to withhold records in order—

- (a) to not jeopardise ongoing negotiations as to the content of the Commission’s final report and recommendations; or
- (b) to prevent the disclosure of information that is relevant to the work of the Commission and which may be damaging to individuals and to the cause of national reconciliation.

(3) The Commission’s members must maintain professional secrecy and are prohibited from disclosing or publishing the Commission’s works other than in reports and data published by the Commission.

(4) The prohibition under subsection (3) applies to the Commission’s staff and any person working with the Commission.

(5) All Commission members and staff must maintain the confidentiality of all the documents, data, testimonies, information or materials brought to their knowledge concerning issues falling within the ambit of the Commission.

(6) The prohibition under subsection (5) also applies to former members or staff of the Commission.

(7) The Commission's records pertaining to the hearings conducted must be deposited with the National Archives of Fiji.

Funds of the Commission

19.—(1) The funds of the Commission consist of—

- (a) all money appropriated by Parliament for the purposes of the Commission;
- (b) all grants received by the Commission for its purposes; and
- (c) all interest accrued from funds deposited with the Commission.

(2) The State must ensure that the Commission has the necessary financial resources to perform its functions effectively, taking into consideration the input of donors.

Audit

20. The Commission must cause proper accounts of all funds, property and assets of the Commission to be kept and to be audited under the Audit Act 1969.

Regulations

21. The Minister may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

SCHEDULE 1
(Section 2)

CODE OF CONDUCT

1. The basic principles that apply to the work of a Commissioner are—
 - (a) commitment to the best interests of the nation and people of Fiji as a whole;
 - (b) political neutrality;
 - (c) openness with both the Commission and subject to the provisions of this Code and any other written the law, the people of Fiji; and
 - (d) the scrupulous avoidance of any conflict between his or her interest and duty as Commissioner.
2. A Commissioner must attend all meetings of the Commission unless there is a very good reason for being unable to do so.
3. A Commissioner must rigorously avoid any involvement with political or otherwise partisan organisations.
4. A Commissioner is bound by the decisions of the Commission and should not express dissent, publicly or privately, other than in a meeting of the Commission.
5. A Commissioner must not accept any bribe, benefit or favour, including hospitality, from any person who would stand to gain from any decision the Commission might make. This rule will be interpreted with common sense and would not apply to hospitality offered by the Government at an official function or meeting.
6. Notwithstanding paragraph 5 of this Code of Conduct, if a Commissioner believes that to refuse a gift, other than money, would cause unnecessary offence and undermine public trust in the Commission, he or she may accept the gift while making it clear that the gift will be placed on public display at the office of the Commission, and the Commissioner must ensure that the gift is indeed displayed.
7. Commissioners must respect the role of the chairperson of the Commission as a spokesperson for the Commission. Any requests for information from the media or from individuals or organisations must be referred to the chairperson. Any invitation to attend any meeting should be cleared with the chairperson, who may refer the invitation to a meeting of the Commission. The Commission will discuss how to deal with invitations to write in the press, and appear on radio and television programmes and will develop guidelines, which Commissioners must respect.
8. Commissioners must take particular care not to reveal any details of discussions that might endanger the development of consensus.

SCHEDULE 2
(Section 10)

OATH OR AFFIRMATION OF OFFICE

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY A COMMISSIONER OF
THE FIJI TRUTH AND RECONCILIATION COMMISSION

I,, having been appointed on the day of
..... 20..., to be a Commissioner to inquire into the matters specified in the Fiji
Truth and Reconciliation Commission, do swear (or do solemnly and sincerely affirm)
that I will faithfully, fully, impartially, and to the best of my ability discharge the trust,
and perform the duties devolving upon me by virtue of the Fiji Truth and Reconciliation
Commission Act 2024.

[In the case of an oath here add] So help me God.

.....
Commissioner
Fiji Truth and Reconciliation Commission

Taken before me this..... day of 20.....

.....
President
Republic of Fiji

October 2024

FIJI TRUTH AND RECONCILIATION COMMISSION BILL 2024

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Fiji Truth and Reconciliation Commission Bill 2024 (**'Bill'**) seeks to establish the Fiji Truth and Reconciliation Commission (**'Commission'**) in order to facilitate open and free dialogue.
- 1.2 The Bill also seeks to provide a forum to address historical grievances and promote national unity and reconciliation in Fiji.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of the terms used in the Bill.
- 2.3 Clause 3 of the Bill provides for the purpose of the Bill.
- 2.4 Clause 4 of the Bill provides that the new legislation binds the State when implementing the provisions therein.
- 2.5 Clause 5 of the Bill establishes the Commission which comprises 5 members appointed by the President.
- 2.6 Clause 6 of the Bill provides the functions of the Commission.
- 2.7 Clause 7 of the Bill provides the powers of the Commission.
- 2.8 Clause 8 of the Bill requires Government and State agencies to assist and cooperate with the Commission in carrying out its functions.
- 2.9 Clause 9 of the Bill outlines the procedures of the Commission in its hearings under the new legislation.

- 2.10 Clause 10 of the Bill provides the general provisions in relation to the nature of the Commission and requires the Commissioners to take an oath or affirmation of office.
- 2.11 Clause 11 of the Bill provides for the Secretariat of the Commission.
- 2.12 Clause 12 of the Bill outlines the responsibilities of and manner and conduct to be upheld by the Commissioners.
- 2.13 Clause 13 of the Bill provides for the immunities of the Commission including its staff for anything done under the new legislation done in good faith.
- 2.14 Clause 14 of the Bill provides for the term of operation for the Commission to carry out its obligations under the new legislation.
- 2.15 Clause 15 of the Bill provides the process for hearings that the Commission may conduct.
- 2.16 Clause 16 of the Bill requires the Commission to provide support to the survivors of historical events under the new legislation.
- 2.17 Clause 17 of the Bill requires the Commission to submit a final report to the President.
- 2.18 Clause 18 of the Bill requires the Commission to keep records of its meetings and decisions reached.
- 2.19 Clause 19 of the Bill provides for the funds of the Commission.
- 2.20 Clause 20 of the Bill requires that the Commission be audited in accordance with the Audit Act 1969.
- 2.21 Clause 21 of the Bill empowers the Minister to make regulations as necessary to give effect to or generally to achieve the purposes of the new legislation.
- 2.22 Schedule 1 to the Bill provides the Code of Conduct for the Commission.
- 2.23 Schedule 2 to the Bill provides the oath or affirmation of office to be taken by a Commissioner.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The new legislation comes under the responsibility of the Minister responsible for truth and reconciliation.

G. E. LEUNG
Attorney-General