



Fiji Law 

Reform Commission

FINAL REPORT: RECOMMENDATIONS FOR REFORM

**REVIEW OF THE GOVERNANCE
LAWS: INFORMATION ACT
2018, CODE OF CONDUCT BILL
2025 AND ACCOUNTABILITY
AND TRANSPARENCY
COMMISSION BILL 2025**

**FLRC REPORT 1
FEBRUARY 2025**

Fiji Law Reform Commission

The Fiji Law Reform Commission is an independent statutory body that is established under section 3 of the *Fiji Law Reform Commission Act 1979*.

The main purpose of the Fiji Law Reform Commission is to resolve difficulties in the law by conducting systematic development and reform of the law through consultations with the public and relevant stakeholders, comparing our laws with other countries and making proposals to the Attorney-General for the modernisation and simplification of the laws.

Functions of the Fiji Law Reform Commission

The main functions of the Fiji Law Reform Commission are contained in section 5(1) of the *Fiji Law Reform Commission Act 1979* and are essentially to take and keep under review all the laws applicable of Fiji with a view to its systematic development and reform including in particular:

- the codification of such law;
- the elimination of anomalies;
- the repeal of obsolete and unnecessary enactments;
- the reduction of separate enactments;
- the making of new laws;
- the adoption of new or more effective and economical methods for the administration of the law and the dispensation of justice; and
- generally the simplification, improvement and modernisation of the law, and subject to section 6, the Fiji Law Reform Commission may in these respects act of its own volition.

The Project

This Report has been prepared by a committee appointed under section 3(6) of the *Fiji Law Reform Commission Act 1979* and comprises Mr David Solvalu and Ms Lyanne Vaurasi, with significant support and contributions from the Fiji Law Reform Commission through its Director, Ms Raijeli Lebaivalu Vasakula Tuivaga and Legal Officers Ms Joyce Hicks and Ms Magdalena Ramoala, and administrative support from the rest of the Fiji Law Reform Commission team.

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Letter of Transmittal



FIJI LAW REFORM COMMISSION



FLRC 1/25

18th February 2025

The Honourable Graham E. Leung
Attorney General
Suvavou House
Suva

Dear Mr. Attorney General,

RE : REVIEW OF GOVERNANCE LEGISLATION: FINAL REPORT 2025

In accordance with the Terms of Reference, transmitted to the Fiji Law Reform Commission on the 21st of January 2025, the Commission has great pleasure in submitting to you the Final Report 2025 for the Review of the Governance Laws specifically the: *Information Act 2018, Code of Conduct Bill 2025 and Accountability and Transparency Commission Bill 2025* for consideration and review.

The Commission wishes to express its gratitude to the Part-time Commissioners, Mr David Solvalu and Ms Lyanne Vaurasi for their tireless efforts and dedication in completing this Review. The Commission also acknowledges the combined technical support from UNESCO, through Consultants Mr Toby Mendel and Mr Abel Caine, as well as the support of Ms Natalie Plumstead, Legal Drafter from the Attorney-General's Chambers, in particular to the *Code of Conduct Bill 2025*.

Drawing on a tapestry of contributions, the Final Report presents succinct suggestions for reform based on a comprehensive analysis of the Information Act 2018, the proposed *Code of Conduct Bill 2025* and the *Accountability and Transparency Bill 2025*. This analysis has been shaped by extensive research, invaluable feedback from our Pacific island neighbours and key Fijian stakeholders, gathered during the December 2024 workshops and the February 2025 public consultations.

This Report is hereby submitted for your consideration.

Yours sincerely,

Raijeli V Lebaivalu Tuivaga.
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A1. Terms of Reference

On 21 January 2025, the Attorney-General of Fiji, Hon. Mr Graham Leung, issued a reference to the Fiji Law Reform Commission.

The reference is attached to this Report as **Annexure A - Terms of Reference**.

In summary, the reference required the Fiji Law Reform Commission to inquire into, and report on, the following matters:

1. Review of the *Information Act 2018*
2. The Role of the Accountability and Transparency Commission
3. The *Code of Conduct Bill 2018*

A draft of this Report was submitted to the Attorney-General on 17 February 2025, with the Final Report officially presented to the Hon. Mr Graham Leung on 18 February 2025.

A2. Acknowledgement

The Fiji Law Reform Commission notes with gratitude the particular assistance and advice given by the following individuals and organisations that made written submissions to the Fiji Law Reform Commission, which were instrumental in the preparation of this Report:

1. The Office of the United Nations High Commissioner for Human Rights
2. The University of Fiji
3. The Fiji Women's Crisis Centre
4. The Fiji Women's Rights Movement
5. Mr Akuila Yabaki
6. The Reserve Bank of Fiji
7. The Consumer Council of Fiji

These submissions are provided at the end of this Report at **Annexure L**.

The Fiji Law Reform Commission is also deeply grateful to the individuals who took the time out of their busy schedules to attend the in-person and virtual consultations held in various locations around the country.¹ Attending public consultations is a vital civic duty that empowers every citizen to shape the future of our community and nation, ensuring that our collective voices are heard and valued. By actively engaging in these forums, we contribute to a transparent, inclusive, and accountable governance system that reflects our shared hopes and challenges.

A list of attendees can be found at the end of this Report at **Annexure I**.

¹ See **Annexure F** for chronology of consultations.

B. Glossary

In this Report, unless the context otherwise requires:

Act or **Information Act** means the *Information Act 2018*;

ATC or **Commission** means the Accountability and Transparency Commission established under section 121 of the Constitution;

Constitution means the *Constitution of the Republic of Fiji*;

FLRC or **Fiji Law Reform Commission** means the Fiji Law Reform Commission established under section 3 of the *Fiji Law Reform Commission Act 1979*;

FWCC means the Fiji Women's Crisis Centre;

FWRM means the Fiji Women's Right Movement;

JSC means the Judicial Services Commission established under the *Administration of Justice Decree 2009* and continued in existence under section 104 of the Constitution;

Minister means the Minister responsible for the administration of the Act;

OHCHR means the Office of the United Nations High Commissioner for Human Rights;

RTI means the right to information;

Standing Committee means the Standing Committee on Justice, Law and Human Rights;

TOR means the Terms of Reference on the Review of the *Information Act 2018*, *Accountability and Transparency Bill 2025* and *Code of Conduct Bill 2025* that was issued by the Attorney-General, Hon. Mr Graham Leung, on 21 January 2025 pursuant to section 5(2)(a) of the *Fiji Law Reform Commission Act 1979*.

C. Introduction

This Report comprehensively examines Fiji's State governance framework by exploring the fundamental right to information, the need for a robust code of conduct for our leaders, and clarifying the role and powers of the Accountability and Transparency Commission. It underscores the importance of transparency and accountability as cornerstones of good governance, ensuring that citizens have access to crucial information and that leaders adhere to ethical standards.

The right to information is a fundamental pillar of democracy, empowering citizens to access public information, hold institutions accountable, and participate meaningfully in governance. By ensuring transparency, it strengthens trust between the government and the people, curbs corruption, and promotes informed decision-making. As societies evolve and digital transformation reshapes communication, it is crucial to refine legal frameworks and institutional mechanisms to guarantee accessibility, efficiency, and responsiveness in information disclosure.

Fiji's right to information is embedded in its constitutional framework, international obligations, and domestic legislative instruments, all of which were intended to promote transparency, accountability, and good governance.

The *Constitution of the Republic of Fiji* explicitly guarantees the right to access information, ensuring that citizens can seek and obtain information relevant to governance, policy-making, and public administration, subject to necessary restrictions such as protecting national security, public order, and individual privacy. This is further reinforced by section 150, which establishes the ATC, an independent oversight body designed to uphold ethical standards within government institutions by monitoring compliance with integrity laws and preventing corruption, maladministration, and abuse of power.

Fiji's ratification of the *International Covenant on Civil and Political Rights* (ICCPR) in 2018 further strengthened its commitment to international human rights standards, particularly in relation to Article 19 of ICCPR, which recognises access to information as a fundamental component of freedom of expression and underscores the necessity of government transparency to facilitate public participation, informed decision-making, and institutional accountability. These principles are also reflected in Article 10 of the UN Convention Against Corruption (UNCAC) which requires states to “*take such measures as may be necessary to enhance transparency in its public administration*” including ... *information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public*” and Target 16.10 of the UN Sustainable Development Goals, which urges all nations to implement legislation or policies ensuring the right to information.

In an effort to operationalise these constitutional and international commitments, the Fijian government enacted the *Information Act 2018*, which provides the framework for accessing government information, requiring all public agencies to proactively disclose key information

while also establishing procedures through which individuals can formally request access to specific documents or records within prescribed timeframes. The Act is available at the end of this Report at **Annexure C**.

Complementing the *Information Act 2018*, the *Code of Conduct Bill 2018* was tabled in Parliament to strengthen ethical governance by setting standards of integrity for public officials, requiring them to disclose their financial assets, maintain transparency in decision-making processes, and adhere to strict guidelines governing the use of public resources to prevent conflicts of interest and corruption. This Bill, in alignment with the broader transparency agenda, attempted to reinforce the disclosure obligations under the *Information Act 2018* while expanding the role of the ATC to include active oversight of ethical compliance among government officials, thereby ensuring that those in positions of power remain accountable to the people they serve. The Bill is available at the end of this Report at **Annexure D**.

However, the *Information Act 2018*, though enacted never commenced and the *Code of Conduct Bill 2018* did not proceed through later readings of Parliament and lapsed pursuant to the Standing Orders of Parliament. Numerous policy issues were noted in the Act and Bill and so a review was initiated to ensure that the Act is upgraded to meet international best practice standards and gives full effect to the constitutionally guaranteed right of every person to access information held by the State.

Given the extensive review and substantial modifications recommended in this Report, the FLRC is strongly of the view that it would be prudent to repeal the entire *Information Act 2018* and move beyond the lapsed *Code of Conduct Bill 2018*. This Report proposes that the following three new Bills be drafted by the Office of the Attorney-General in line with the recommendations provided here, subject to the right of the Government to determine legislative policy: a *Right to Information Bill 2025*, to repeal and replace the current *Information Act 2018*; *Code of Conduct Bill 2025*, to replace the lapsed *Code of Conduct Bill 2018*; and an *Accountability and Transparency Commission Bill 2025*, to prescribe the roles, functions and powers of the ATC in relation to each of the aforementioned frameworks.

D. The Information Act 2018 and the Role of the Accountability and Transparency Commission

Right of Access to Information

In Fiji, there is full constitutional recognition of a public right of access to information under section 25 of the Constitution. Every person in Fiji has the right of access to information held by any public office, including information held by any other person that the first-mentioned person would require for the exercise or protection of their legal rights. Under the same provision, every person also has the right to the correction or deletion of false or misleading information that affects that person².

However, this right may be limited by law, and the Constitution allows a law to limit the right of access to information and regulate the procedure under which information held by a public office may be made available³. This law was enacted by Parliament as the *Information Act 2018*.

Objectives of Right to Information Legislation

This Report considers the objectives outlined in section 4 of Fiji's *Information Act 2018* and whether the objectives support the right of access to information and fully reflect the purpose of right to information legislation.

Before considering the objectives outlined in section 4, it is important to first understand what an objectives provision is. An objectives provision is one that is often located at the beginning of a piece of legislation⁴. It is also one that outlines the underlying purposes of the legislation and can be used to resolve uncertainty and ambiguity⁵. Some objectives provisions give a general understanding of the purpose of the legislation while others set out general aims or principles that help the reader interpret the detailed provisions of the legislation⁶.

Under international best practice standards, right to information legislation should contain an objectives provision that sets out a statement of principles calling for a broad interpretation of the legislation, as well as the benefits of the right of access to information. So, an ideal objectives provision in right to information legislation would not only mention that the legislation gives effect to the right of access to information in that jurisdiction, but it would also outline the benefits of the right of access to information and promote the broad

² Written submissions by OHCHR.

³ Ibid.

⁴ Australian Law Reform Commission, *The objects of the Act* (2010) <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/5-the-privacy-act-name-structure-and-objects/the-objects-of-the-act/> (Accessed 10 February 2025).

⁵ Ibid.

⁶ Ibid.

interpretation of the provisions of the legislation in order to give the best effect to the benefits.

It is clear from section 4 that the objectives give effect to the right of access to information held by public agencies pursuant to sections 25 and 150 of the Constitution⁷. The objectives also focus on ensuring that a person is informed of the operations of public agencies, and on allowing a person to make a request to public agencies to correct or delete personal information so that the information held by the public agencies is correct, accurate, complete and not misleading⁸.

There is, however, no mention in the provision of the benefits of the right of access to information.

What then are some of the benefits of the right of access to information? According to the Model Law on Access to Information for Small Island Developing States (SIDSs)⁹ (**Model Law for SIDSs**), the right of access to information has the following benefits:

- (a) assisting in the fight against corruption;
- (b) fostering more effective participation in governance;
- (c) holding government and public authorities to account;
- (d) supporting sound and sustainable development;
- (e) enabling the pursuit of personal goals; and
- (f) creating a fair, level-playing-field environment for business.¹⁰

According to the feedback received by FLRC, other benefits include increased public trust, better governance and more citizen engagement¹¹.

In Australia, for example, section 3 of their *Freedom of Information Act 1982*¹² sets out the general objects of the Act. Section 3(1) gives effect to the right of access to information held by the Government of the Commonwealth of Australia by requiring agencies to publish the information and to provide for a right of access to documents¹³. Section 3(2) and (3) outline the benefits of the right of access to information. One of the benefits of the right of access to information is that it promotes representative democracy by contributing towards an increase

⁷ Section 4 of Fiji's Information Act 2018.

⁸ Ibid.

⁹ Toby Mendel, Centre for Law and Democracy, *Model Law on Access to Information for Small Island Developing States (SIDSs)* (2024).

¹⁰ Ibid.

¹¹ Written submissions by Mr Akuila Yabaki.

¹² *Freedom of Information Act 1982* (Australia) <https://www.legislation.gov.au/C2004A02562/latest/text> (Accessed 8 February 2025).

¹³ Section 3 of Australia's Freedom of Information Act 1982.

in public participation in government processes in order to promote better-informed decision-making, and also by increasing scrutiny, discussion, comment and review of the Government's activities¹⁴. Another benefit is that it increases the recognition that information held by the Government is a national resource and should be managed for public purposes¹⁵.

In New Zealand's *Official Information Act 1982*¹⁶, section 4 sets out the purposes of the Act. Similar to Australia's approach, section 4(a) and (b) refer to purposes which give effect to the right of access to information by increasing progressively the availability of official information to the people of New Zealand and by also providing for proper access by each person to official information¹⁷. Section 4(a) also refers to the benefits of the right of access to information in that the availability of information to the people of New Zealand would enable their more effective participation in the making and administration of laws and policies, as well as promote the accountability of Ministers of the Crown and officials which, in turn, would enhance respect for the law and promote good governance¹⁸.

In Vanuatu's *Right to Information Act 2016*¹⁹, section 1 outlines the purpose of the Act. This provision refers to both the 'internal objectives' and the 'external benefits' of the Act. It gives effect to the constitutional right to freedom of expression and states that the purpose of the Act is to provide access to information held by government agencies and private entities²⁰. It also states the benefits of the right of access to information in that the Act promotes transparency, accountability and national development by empowering and educating the public to understand and act upon their right to information²¹. The provision also mentions another benefit which is the increased public participation in governance²².

Some of the participants at the consultations were of the view that there is no need for the objectives in section 4, and that the provision should be removed altogether.

After having compared the objectives outlined in section 4 of Fiji's Act to the corresponding provisions in the right to information legislation in Australia, New Zealand and Vanuatu, it appears that section 4 does not fully reflect the purpose of right to information legislation.

While it mentions that the Act gives effect to the right of access to information, it does not outline the benefits of the right of access to information, nor does it promote the broad

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ *Official Information Act 1982* (New Zealand) <https://www.legislation.govt.nz> (Accessed 8 February 2025).

¹⁷ Section 4 of New Zealand's *Official Information Act 1982*.

¹⁸ Ibid.

¹⁹ *Right to Information Act 2016* (Vanuatu)

http://www.paclii.org/cgi-bin/sinodisp/vu/legis/num_act/rtia2016234/rtia2016234.html?stem=&synonym_s=&query=right%20to%20information (Accessed 8 February 2025).

²⁰ Section 1 of Vanuatu's *Right to Information Act 2016*.

²¹ Ibid.

²² Ibid.

interpretation of the provisions of the Act in order to also give effect to the benefits of the right of access to information.

Recommendations

1. The objectives should:
 - (a) give effect to the right of access to information under sections 25 and 150 of the Constitution;
 - (b) outline the benefits of the right of access to information; and
 - (c) promote the broad interpretation of the provisions of the Act in order to give the best effect to the benefits of the right of access to information.
2. The wording used in corresponding objectives provisions in right to information legislation in Australia, New Zealand and Vanuatu should be considered when amending the existing objectives provision or when drafting a new objectives provision altogether.
3. The benefits of the right of access to information as outlined in the Model Law for SIDSs should also be considered when amending the existing objectives provision or when drafting a new objectives provision altogether. The benefits are as follows:
 - (a) assisting in the fight against corruption;
 - (b) fostering more effective participation in governance;
 - (c) holding government and public authorities to account;
 - (d) supporting sound and sustainable development;
 - (e) enabling the pursuit of personal goals;
 - (f) creating a fair, level-playing-field environment for business.²³

Scope of Application

Scope of application - requesters for information

This Report considers whether those entitled to request for information under Fiji's Act should:

- (a) only be natural persons; or

²³ Toby Mendel, Centre for Law and Democracy, *Model Law on Access to Information for Small Island Developing States (SIDSs)* (2024).

- (b) be both natural and legal persons.

Presumption in favour of access to all information held by public agencies

Public agencies should always proceed from a presumption in favour of disclosure without requiring the demonstration of a particular interest in the information or of the reasons for the request for the information.

In addition to the constitutional guarantees for the right of access to information, the Act sets out the presumption in favour of access to all information held by public agencies. This presumption is contained in sections 5 and 6(1) of the Act where a person may access any information that is held by a public agency and can request for the information to be made available to him or her. It should be noted, however, that under these provisions in the Act, only natural persons who are either citizens or permanent residents of Fiji can make such a request. So, while the presumption in favour of access to all information held by public agencies exists under these provisions, the presumption does not extend to all natural persons nor does it extend to legal persons.

The following questions then arise:

- (a) Should the Act only allow citizens and permanent residents of Fiji to make a request for information or should any natural person be allowed to make such requests?
- (b) If any natural person is allowed to make a request, should the natural person be in Fiji in order to make the request or can the natural person be outside of Fiji and be allowed to make the request?
- (c) Should the Act only allow natural persons to make a request for information or should legal persons also be allowed to make such requests?
- (d) If a legal person is allowed to make a request, should all legal persons be allowed to do so or should this be limited to bodies that are incorporated in Fiji?
- (e) Should bodies incorporated outside of Fiji with a place of business in Fiji be allowed to make a request?
- (f) Should unincorporated bodies formed outside of Fiji with a place of business in Fiji be allowed to make a request?

Obstacles to access to information can undermine the enjoyment of both civil and political rights, in addition to economic, social and cultural rights²⁴. Under international best practice standards, everyone (including non-citizens and legal entities) has the right to file requests for information.

²⁴ Written submissions by OHCHR.

In Australia, the right of access to information is accorded to every person²⁵. Similarly, in the United Kingdom²⁶ and Ireland²⁷, every person, whether natural or legal, has the right of access to information.

In New Zealand, the following persons can request for information:

- a New Zealand citizen
- a permanent resident of New Zealand
- a person who is in New Zealand
- a body corporate which is incorporated in New Zealand
- a body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand²⁸

Some participants at the consultations expressed concerns with the limitation on the right of access to information - that only Fijian citizens and permanent residents can request for information. Submissions received by FLRC also expressed concerns with the Act not allowing foreigners to get information and also not allowing entities, media or companies²⁹. Fiji should avoid limiting who may make requests to obtain information, just as article 19 of ICCPR guarantees everyone's access to information, without limiting or defining "everyone"³⁰. Hence, section 6 of the Act should be revised accordingly to conform to international standards³¹.

Scope of application - public agencies

This Report also considers whether the scope of application of the Act should extend to:

- (a) private sector bodies;
- (b) government business enterprises;
- (c) legislative bodies; and
- (d) bodies owned, controlled or funded by public agencies.

The issue is really about whether the abovementioned entities should be considered as public offices or public agencies for the purposes of disclosure under sections 25 and 150 of

²⁵ Section 11 of Australia's Freedom of Information Act 1982.

²⁶ Section 1(1) of the United Kingdom's Freedom of Information Act 2000.

²⁷ Section 11(1) of Ireland's Freedom of Information Act 2014.

²⁸ Section 12 of New Zealand's Official Information Act 1982.

²⁹ Written submissions by OHCHR.

³⁰ Ibid.

³¹ Ibid.

the Constitution. It is not about whether they should have the right to make requests for information under those provisions. This clarification is being made given that some of the feedback received from the consultations on this particular issue focused more on the latter rather than the former.

Meaning of ‘public agency’ under the Act

Under Fiji’s Act, the right of access to information applies to any public agency that falls within the ambit of the following definition:

“public agency” means—

- (a) an office created by, or continued in existence under, the Constitution;*
- (b) an office in respect of which the Constitution makes provision;*
- (c) a commission established by, or continued in existence under, the Constitution or any written law;*
- (d) a Government ministry, department, division or unit;*
- (e) a disciplined force;*
- (f) a court or tribunal established by, or continued in existence under, the Constitution or any written law;*
- (g) a statutory authority;*
- (h) a Government company; or*
- (i) an office established by written law,*

but does not include a public agency that is exempted under section 21 from the provisions of this Act”

This means that the right of access to information applies to constitutional offices and commissions, government ministries, divisions and units, statutory commissions, authorities and offices, disciplined forces, courts and tribunals, and government companies. However, any of these public agencies may be exempted from the provisions of the Act by the responsible Minister under section 21.

Private sector bodies

Fiji’s Act does not provide for the right of access to information applying to private bodies³², in that private bodies are not listed in the definition of ‘public agency’ under section 2.

³² Section 2 of Fiji’s Information Act 2018.

International best practice standards also do not require the right of access to information to extend to private bodies unless the private bodies perform a public function or receive significant public funding. This will be discussed in greater detail when considering whether the right of access to information should apply to the bodies owned, controlled or funded by public agencies.

Government business enterprises

Under international best practice standards, the right of access to information should apply to State-owned enterprises i.e. commercial entities that are owned and controlled by the State.

In Fiji, the right of access to information under the Act applies to Government companies. The term ‘Government company’ refers to *“a company where all of the stock or shares in the capital is or are beneficially owned by the Government, whether such shares are held in the name of a Minister, public officer, nominee of the State or otherwise”*. This means that only wholly-owned Government companies are subject to the provisions of the Act. Other Government companies, including those where the Government has more than 50% ownership are not considered as public agencies and are therefore not subject to the provisions of the Act.

In New Zealand, the right of access to information also applies to certain State-owned enterprises that are owned and controlled by the State³³.

In Vanuatu, the right of access to information applies to relevant private entities which include an entity that is owned, controlled or substantially financed directly or indirectly by funds provided by the Government, but only to the extent of that financing³⁴.

According to the feedback received from the consultations on this issue, there seems to be a strong desire for government business enterprises in Fiji to be subject to the right of access to information. It was, however, unclear from the feedback whether this should remain as it is with wholly-owned government companies as per the current situation in the Act or whether the right of access to information should apply to all commercial entities that are government-owned and controlled.

Legislative bodies

In Fiji, while there exists a broad definition of the term ‘public agency’ under section 2 of the Act, it is unclear from the definition whether the right of access to information applies to Parliament and other legislative bodies. The definition mentions *“an office created by...the Constitution”* and *“an office established by written law”* but it is unclear whether these include Parliament and other legislative bodies. Unlike the courts and tribunals in paragraph (f) of the definition, Parliament and other legislative bodies are not specifically mentioned.

³³ Part 2 of Schedule 1 of New Zealand’s Ombudsmen Act 1975 and Schedule 1 of New Zealand’s Official Information Act 1982.

³⁴ Sections 3 and 8 of Vanuatu’s Right to Information Act 2016.

Freedom of information legislation that extends to Parliaments is enacted in India, Ireland and the West Indies³⁵. The United Kingdom also included Parliament within their *Freedom of Information Act 2000*³⁶. In the United Kingdom, both houses of Parliament are subject to their *Freedom of Information Act 2000*³⁷. Part 1 of Schedule 1 to the Act lists the House of Commons and the House of Lords as public authorities to which the right of access to information applies.

In Vanuatu, government agencies are subject to their *Right to Information Act 2016*. The definition of 'government agency' in section 3 of the Act is quite broad and covers the State, the Government, constitutional entities and any other prescribed government agency, which includes the Legislature.

On the contrary, most Westminster-style parliaments are not subject to such legislation³⁸. For example, Australia, Canada and New Zealand parliaments are not covered by right to information legislation³⁹.

According to the feedback received from the consultations on this issue, the right of access to information should apply to Parliament and all legislative bodies in Fiji. It is unclear, however, from the feedback whether the definition of the term 'public agency' as it stands in section 2 of the Act is sufficient to include Parliament and other legislative bodies in Fiji, or whether the definition needs to be amended to specifically refer to Parliament and all legislative bodies.

Bodies owned, controlled or funded by public agencies

As previously mentioned, Fiji's Act does not provide for the right of access to information applying to private bodies.

Under international best practice standards, the right of access to information should apply to private bodies that perform a public function or receive significant public funding.

The obligation to provide access to information applies to the executive, legislative and judicial branches of government, and extends to all organs of the State, including all de facto entities and private entities carrying out elements of governmental functions⁴⁰. The Model

³⁵ New Zealand Parliament, '*Parliament and official information*', (2007) <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/speeches/parliament-and-official-information/> (Accessed 12 February 2025).

³⁶ Ibid.

³⁷ *Freedom of Information Act 2000* (United Kingdom) <https://www.legislation.gov.uk/ukpga/2000/36/contents> (Accessed 8 February 2025).

³⁸ New Zealand Parliament, '*Parliament and official information*', (2007) <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/speeches/parliament-and-official-information/> (Accessed 12 February 2025).

³⁹ Ibid.

⁴⁰ Office of the United Nations High Commissioner for Human Rights (UNOHCHR), *Freedom of opinion and expression - Report of the Office of the United Nations High Commissioner for Human Rights* (10 January 2022) A/HRC/49/38.

Inter-American Law on Access to Public Information and its Implementation Guidelines of the Organization of American States applies to non-State bodies that are owned or controlled by government and to private organisations that operate with substantial public funds or benefits or that perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake⁴¹. The Model Law on Access to Information for Africa goes further, and includes private bodies more broadly, giving access to “any information held by a private body that may assist in the exercise or protection of any right”⁴².

In Vanuatu, for example, section 2(1)(a) of their *Right to Information Act 2016* states that the Act applies to information held by a ‘relevant private entity’ and this includes private entities that are owned, controlled or substantially financed directly or indirectly by funds provided by the Government, but only to the extent of that financing. It also includes private entities that carry out statutory or public services or functions, whether financed directly or indirectly by funds provided by the Government or other sources, but only to the extent of the statutory or public services or functions. Section 2(1)(b) goes further, and includes private entities more broadly, giving access to information held by a private entity that may assist in the exercise or protection of the rights of a person.

In Ireland, as another example, section 6(1) of their *Freedom of Information Act 2014*⁴³ lists a higher education institution that receives public funding as a private body to which the right of access to information applies.

In South Africa, under section 50 of their *Promotion of Access to Information Act 2000*, the right of access to records applies to private bodies if the records are required for the exercise or protection of any rights⁴⁴. By including private bodies in its scope when they perform public functions, it has increased transparency in sectors like healthcare and utilities, leading to better public oversight of service delivery⁴⁵.

According to the feedback received from the consultations on this issue, Fiji’s Act should be amended to include private bodies that perform a public function or receive significant public funding, as seen in particular in South Africa, enhancing transparency where government services are outsourced⁴⁶.

According to the Office of the United Nations High Commissioner for Human Rights, as highlighted by the Human Rights Committee in General Comments No. 31 and 34, the right of access to information applies to all branches of government and may include other entities

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Freedom of Information Act 2014* (Ireland)

<https://www.irishstatutebook.ie/2014/en/act/pub/0030/index.html?q=freedom+of+information> (Accessed 9 February 2025).

⁴⁴ *Promotion of Access to Information* (South Africa)

https://www.saflii.org/za/legis/consol_act/poatia2000366.pdf (Accessed 9 February 2025).

⁴⁵ Written submissions by Mr Akuila Yabaki.

⁴⁶ Ibid.

carrying out public functions⁴⁷. It should also cover government business enterprises, legislative bodies, independent commissions funded by government funds and bodies that are owned, headed and controlled by government entities. The right applies irrespective of the content of the information and the manner in which it is stored.⁴⁸

After having compared the approach in Fiji's Act against the approaches taken in other jurisdictions, as well as the feedback received from the consultations, the right of access to information should:

- (a) not be extended to private sector bodies unless they perform a public function or receive significant public funding;
- (b) not be limited to wholly-owned Government companies but should be extended to government business enterprises that are owned and controlled by the Government;
- (c) be extended to Parliament and other legislative bodies; and
- (d) be extended to bodies owned, controlled or funded by public agencies.

There may be exceptions that should be carefully examined when extending the scope of application, such as the private information and records of members of Parliament.

Recommendations

1. Every person, whether natural or legal, should have the right to access information.
2. The scope of application of the Act should be extended to private bodies but only if the private bodies perform a public function or receive significant public funding.
3. The scope of application should not be limited to wholly-owned Government companies. It should also be extended to commercial entities that are owned and controlled by the Government.
4. The scope of application should be extended to Parliament and other legislative bodies. The definition of 'public agency' should be amended to specifically mention Parliament and other legislative bodies.
5. The scope of application should be extended to bodies owned, controlled or funded by public agencies.
6. There are, however, exceptions that should be carefully examined when extending the scope of application.

⁴⁷ Written submissions by OHCHR.

⁴⁸ Ibid.

Power of the Minister to Exclude Public Agencies

Under section 21 of Fiji's Act, the Minister and the ATC have wide discretionary powers to refuse access to information. The Minister and the ATC have the power to exempt a public agency from the provisions of the Act and they also have the power to revoke any exemption that has been made. These wide discretionary powers enable the Minister and the ATC to decide whether any or even all of the public agencies listed in the definition of the term in section 2 of the Act are subject to the provisions of the Act.

According to the Office of the United Nations High Commissioner for Human Rights, legitimate grounds for restricting the right of access to information are the respect of the human rights or reputations of others, as well as the protection of national security, public order and public health or morals⁴⁹.

States may impose restrictions on access to information held by public authorities only when they meet the three-part test of legality, necessity and proportionality, with a legitimate objective⁵⁰. The requirement of legality ("provided by law") requires that regular procedures be followed in the adoption of restrictions and that there be clarity and specificity in the rules⁵¹. They must not be drafted so generically that they provide unfettered discretion on the power of the decision makers to refuse disclosure of information (CCPR/C/GC/34, para. 25)⁵². Similarly, the requirement of necessity, which implies proportionality, means that the policies of intergovernmental organisations should permit non-disclosure only when disclosure would indeed cause likely harm to a legitimate interest (CCPR/C/GC/34, para. 38)⁵³. Information regarding alleged violations of human rights or violations of international humanitarian law is subject to an overriding public interest in disclosure and cannot be withheld on grounds of national security⁵⁴. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that widespread secrecy justified on national security grounds is particularly problematic in the context of investigations of human rights violations because it may represent one of the main obstacles to the clarification of responsibilities and consequences of serious violations, ultimately becoming a barrier to the promotion of justice and reparation⁵⁵.

When restricting access to information, it must be ensured that the restricting measure is in compliance with international human rights law, should adhere to standards and recommendations established by international and regional human rights mechanisms and be guided by best practices⁵⁶.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

Other feedback received from the consultations suggested that these powers are concerning because they are subjective and can be easily abused, in particular for political gain⁵⁷. This undermines the democratic principles of human rights, good governance, rule of law, transparency and accountability. There are also no criteria to be applied for the exemption of public agencies⁵⁸. The exemptions should be strictly defined, limited and subject to review⁵⁹.

In Australia's *Freedom of Information Act 1982*, certain persons and bodies, that would be considered public agencies, are listed or referred to in the Act as not being subject to requests for information⁶⁰. Access to information and documents held by these persons and bodies cannot be sought. This type of exemption or exclusion is different from that in Fiji's Act because the legislation in Australia lists or refers to those that it exempts or excludes, presenting a more objective and transparent approach. In Fiji's case, one individual with the ATC wields broad powers to decide who is not required to disclose information.

Recommendations

1. The powers given to the Minister and the ATC under section 21 of the Act are wide and discretionary. There are no criteria to govern the exemptions made by the Minister and the ATC. Hence the powers are considered to be subjective and therefore open to abuse.
2. Any restrictions on access to information held by public agencies may be imposed only when they meet the three-part test of legality, necessity and proportionality, with a legitimate objective.
3. Any exemption or exclusion of a public agency from the application of the provisions of the Act should be one that not only meets the three-part test in paragraph 2 but that is also listed or referred to specifically in the Act.

Information Accessible by Requester

This Report considers whether the scope of information should be amended so that any information held by a public agency, irrespective of direct interest and regardless of the date of its existence, should be subject to Fiji's Act.

Under section 6(1) and (2) of the Act, a person may access information held by a public agency if the information requested for 'directly affects' the person making the request, and the 'information exists on or after the commencement of the Act'.

Section 6(4) goes on to clarify that information 'directly affects' a person if the information is about the person or a determination or decision made by a public agency regarding the person making the request, provided that information relating to the determination or decision of a public agency or an approval or authorisation granted by a public agency to a

⁵⁷ Written submissions by Fiji Women's Crisis Centre.

⁵⁸ Ibid.

⁵⁹ Written submissions by Mr Akuila Yabaki.

⁶⁰ Section 7 of Australia's Freedom of Information Act 1982.

person does not directly affect another person (“second person”), or a determination or decision regarding the second person, merely because the public agency has denied or refused an application, approval, claim or request made by the second person.

Any information existing before the commencement of the Act cannot be sought under the provisions of the Act, even if the information does, in fact, directly affect the person requesting for the information.

The only information that can be requested for is information within the ambit of the definition of the term in section 2, and in particular information existing on or after the commencement of the Act.

“‘Information’ means any material in any form, including a record, report, correspondence, opinion, recommendation, press statement, circular, order, logbook, agreement, sample, model, data or document such as—

- (a) a map, plan, drawing or photograph;*
- (b) any paper or other material on which there is a mark, figure, symbol or perforation that is capable of being interpreted;*
- (c) any article or material from which a sound, image or writing is capable of being reproduced with or without the aid of any other article or device; or*
- (d) any article on which information has been stored or recorded either mechanically or electronically,*

provided that the material directly affects a determination or decision made by a public agency in relation to the person making a request under section 6.”

According to the feedback received, requests are limited to cases where the information directly affects a decision regarding the requester, and only if the information came into existence after the law enters into force. This should be broadened⁶¹.

It was also submitted that the limitation in section 6 limits broader public access and reduces transparency making it harder for journalists, researchers, and civil society organisations to access public information and hold the Government accountable⁶². This falls short of the constitutional provision to ensure public access to information which is crucial for governance, human rights, and the scrutiny of public policy⁶³. In addition, the meaning of ‘directly affects’ should be amended to take into account the role of journalists, researchers and civil society organizations to access public information to hold the Government accountable.⁶⁴

⁶¹ Written submissions by OHCHR.

⁶² Written submissions by Fiji Women’s Rights Movement.

⁶³ Ibid.

⁶⁴ Ibid.

Additionally, it was submitted that information held by a public agency should be subject to disclosure unless the public agency is an exempt one in law or the information requested for is also exempt. This is regardless of whether the information requested directly affects the person making the request.

Recommendations

1. A person should be able to access information from a public agency regardless of whether the information directly affects the person.
2. The right of access to information should apply to information existing before and after the commencement of the Act.

Requesting Procedures

Requesting Procedures under the Information Act 2018

Under Part 2 of the *Fiji Information Act 2018*, the process for requesting access to information follows the following structured and time-bound procedure. Any individual who is a citizen or permanent resident of Fiji⁶⁵ has the right to request information from the ATC. To initiate a request, the applicant must submit an application in the prescribed format⁶⁶, clearly identifying the specific information sought⁶⁷ and the public agency that holds it.⁶⁸

The ATC must determine whether to accept or refuse the request within 10 days from receipt⁶⁹ and if it does accept the request, must notify the requester,⁷⁰ forward the request to the relevant public agency⁷¹ and direct the agency to make the information available⁷² within 20 days from receipt of the request. If the ATC refuses the request, it must also notify the requester of its decision to refuse within 20 days from receipt of the request.⁷³

If the information requested is not actually held by the public agency to which the ATC forwarded the request (the first agency) and is held by or closely connected to the functions of a different agency (the second agency), the first agency must notify the ATC of these circumstances within 10 days of receipt of the ATC's referral.⁷⁴ The ATC then has 10 days to notify the requester of this change, transfer the request to the second agency and request that the second agency provide the information.

If the request concerns urgent matters related to the life or liberty of an individual, the information must be provided as soon as reasonably practicable and in the manner

⁶⁵ Section 6(1) of the Information Act 2018.

⁶⁶ Section 6(3)(a) of the Information Act 2018.

⁶⁷ Section 6(3)(c) of the Information Act 2018.

⁶⁸ Section 6(3)(b) of the Information Act 2018.

⁶⁹ Section 7 of the Information Act 2018.

⁷⁰ Section 8(c) of the Information Act 2018.

⁷¹ Section 8(a) of the Information Act 2018.

⁷² Section 8(b) of the Information Act 2018.

⁷³ Section 9(2) of the Information Act 2018.

⁷⁴ Section 10(1) of the Information Act 2018.

determined by the ATC.⁷⁵ Additionally, if the requested information is voluminous, requires extensive retrieval or cannot be provided within the prescribed period, the Commission may extend the period to up to 90 days.⁷⁶ However, the applicant must be notified of the extension and the reasons for it.⁷⁷

A request may be denied by the public agency if it is satisfied, after reasonable measures have been taken to locate the information, that the information does not exist or cannot be located, takes too much work⁷⁸ or is exempt material.⁷⁹ If a request is denied, the public agency must provide a written statement to the ATC as well as the requester outlining the decision and the reason for it.

The requesting process is outlined in Figure 1 below:

⁷⁵ Section 11 of the Information Act 2018.

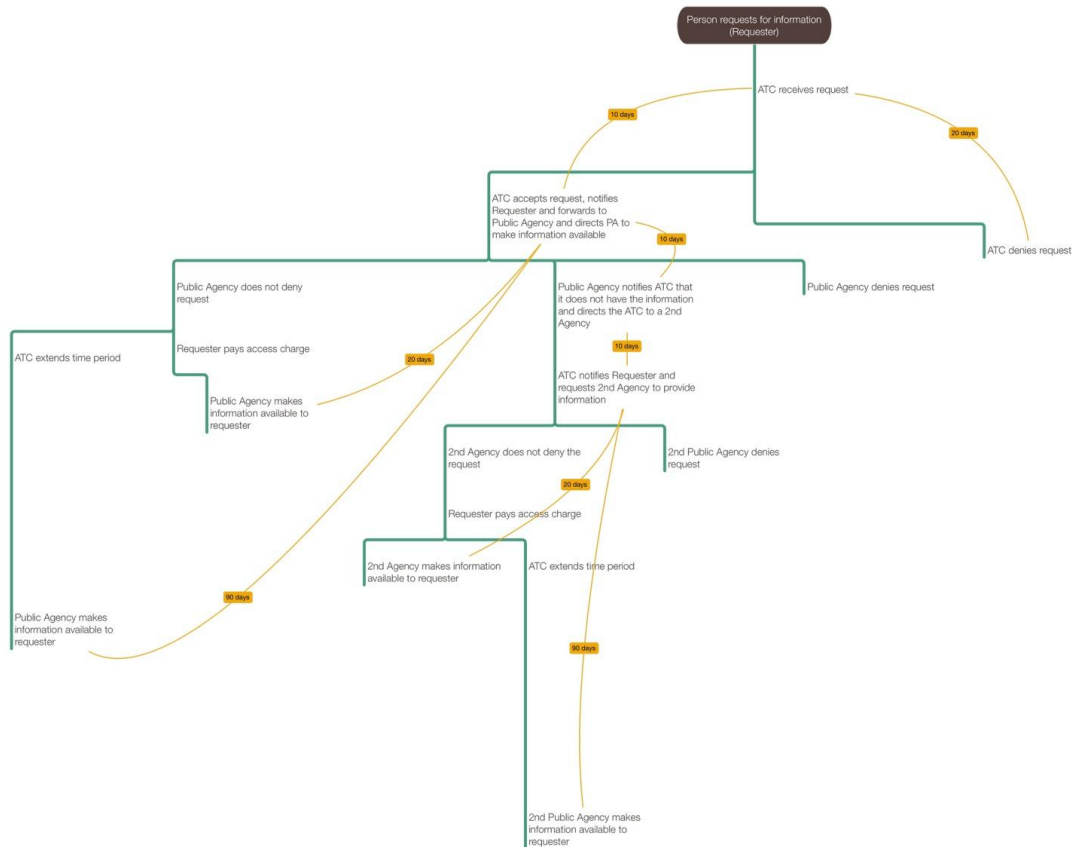
⁷⁶ Section 18(2) of the Information Act 2018.

⁷⁷ Section 18(3) of the Information Act 2018.

⁷⁸ Section 19(1) of the Information Act 2018.

⁷⁹ Section 19(2) of the Information Act 2018.

Figure 1 - Requesting Procedure



Can the ATC play a role in the RTI framework?

The ATC is established under section 121 of the Constitution as an independent Office “not... subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law”⁸⁰, with the following roles and functions:

1. to receive and investigate complaints against permanent secretaries and all persons holding a public office;⁸¹
2. to implement⁸² and monitor⁸³ the code of conduct;

⁸⁰ Section 121(10) of the Constitution (See also section 138(5) of the Constitution).

⁸¹ Section 121(9) of the Constitution.

⁸² Section 149(b) of the Constitution.

⁸³ Section 149(c) of the Constitution.

3. to investigate alleged breaches of the code of conduct⁸⁴ by the “President, Speaker, Deputy Speaker, Prime Minister, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution or under any written law, members of commissions, permanent secretaries, ambassadors or other principal representatives of the State, and persons who hold statutory appointments or governing or executive positions in statutory authorities, and to such other offices (including public offices) as may be prescribed by written law”⁸⁵;
4. to enforce the code of conduct, “including through criminal and disciplinary proceedings”⁸⁶;
5. to “provide for the removal from office of those officers who are found to be in breach of the code of conduct”⁸⁷;
6. to receive the annual declarations of the assets and liabilities and financial interests of the officers and direct relatives of these officers.⁸⁸

In public consultations, some participants were of the view that as the Constitution’s focus for the ATC appeared to be centered on the code of conduct, extending that role to include enforcement of the RTI framework may be beyond its scope. If this position were to be accepted, the *Information Act 2018* would need to be amended to extricate the ATC entirely from the RTI framework.

However, the authors of this Report are of the view that despite the conduct-focused framing of the Constitution in regard to the ATC, the ATC may still play a role in the RTI framework as either a conduct-related matter or otherwise on the basis of other enabling provisions of the Constitution.

Firstly, it is possible to see the RTI framework as an inherent part of the broader Conduct framework. The values and principles for State service under section 123 of the Constitution specifically states that transparency in State service includes “timely, accurate disclosure of information to the public”⁸⁹ and “prompt response to requests and questions from the public”⁹⁰, indicating that a values based system, of which the code of conduct is certainly a part, would include transparency and access to information. As such, a conduct-focused body such as the ATC, in carrying out such roles and functions, would also consider the availability of and access to information held by the State and the failure to provide information could be viewed as a conduct-breach, particularly if the Code of Conduct is drafted in such a way so as to make this relationship clear.

⁸⁴ Section 149(d) of the Constitution.

⁸⁵ Section 149(a) and (d) of the Constitution.

⁸⁶ Section 149(d) of the Constitution.

⁸⁷ Section 149(d) of the Constitution.

⁸⁸ Section 149(f) of the Constitution.

⁸⁹ Section 123(g)(i) of the Constitution.

⁹⁰ Section 123(e) of the Constitution.

Secondly, even if the RTI framework is not seen as an inherent part of the conduct framework, it may still be possible to include the ATC as a part of the RTI framework if one considers the following enabling provisions of the Constitution -

1. Section 121(8) of the Constitution provides that the “authority, functions and responsibilities of the Commission shall be prescribed by written law, and a written law *may make further provisions for the Commission.*” This provision empowers Parliament to enact legislation which prescribe the functions and responsibilities of the ATC, and the specific use of the word “further” implies a legislative discretion to extend the roles beyond that already specifically mentioned in the Constitution; and
2. Section 138(7) of the Constitution, which applies to several constitutional offices, including the ATC, states that “*In addition to the functions conferred on it by or under this Constitution, a commission, tribunal or board to which this section applies has such powers and other functions (if any) as are prescribed by written law.*” This provision expressly empowers the legislature to go beyond the prescribed functions under the Constitution.

Clearly the ATC may be empowered under written law to play a role in the RTI framework. However, the question remains as to whether that role should be as the request receiving and processing body as is currently provided under the *Information Act 2018* under a centralised system as well as the ‘appellate body’ for denied requests, or if the ATC should be limited to only one of these roles. This is considered below.

If the ATC plays a dual role under the RTI framework, is it really independent?

In considering what role the ATC should play, it is important to note that because the *Information Act 2018* currently designates the ATC as the initial receiving authority for information requests as well as the complaints receiving body tasked with taking action when requests are denied, the role of the ATC under that Act may not be seen as sufficiently independent. The Act assigns the ATC a dual role, which raises concerns about its ability to impartially consider a complaint from a denied request, when it was the original body that tasked the public agency with providing such information to the requester.

Written submissions received during public consultations emphasised the need to ensure that the ATC is an independent body.⁹¹ As such, to avoid the possibility of partiality (or the perception of bias), it may be worth isolating the ATC to a high-level facilitative or appellate body (whichever is more appropriate), and removing its role as the initial receiving authority for information requests. This role is also more in line with the enabling provisions of the Constitution, as described above. This position was supported in in-person consultations as well as noted in written submissions.⁹²

⁹¹ See e.g., OHCHR written submission, received 14 February 2025, page 10.

⁹² See e.g., FWCC written submission received February 10, page 10.

Should requests be centralised?

If the ATC is to be elevated to the status of only a high-level facilitative body or an appellate body under the *Information Act 2018*, the question remains as to whether Fiji should continue on the current path of having a centralised authority receiving and facilitating requests or if requests should be made directly to public agencies.

In a decentralised system an RTI framework may prescribe shorter time frames. As **Figure 1** above shows, centralised requesting procedures under the current Act may range from 30 to 120 days, depending on the specific circumstances of the case. If a request is denied, additional appeals processes could extend this process by an additional 40 to 90 days depending on the circumstances of the appeal. As such, in the worst case scenario under the *Information Act 2018*, an information request could take 210 days for information to be provided if the information is ultimately information which a person is entitled to under that Act. Decentralising the framework cuts out the central body and enables requests to be made directly to the public agencies, which may, at least on paper, allow for a quicker process. In practice, there would need to be a culture shift to ensure public agencies receive direct requests and process them in a timely manner.

However, in a decentralised system, as the requester would be making the request to the agency directly, the direct relationship would require the requester to consistently liaise with the agency to get that information. This places the burden of ensuring compliance at the initial stages directly on the requester, and if there are administrative hurdles, like the absence of the agency's responsible officer or avoidance tactics employed by the agency, it would require greater effort on the part of the requester to ensure compliance. Also, each public agency would need to develop an administrative process for receiving and processing information directly from the public, which could include dedicated information collecting officers and either training for public interface officers or dedicated frontline workers. Dedicated officers and processes in each State entity would carry cost implications if such systems are to run efficiently.

Conversely, a centralised system would establish a core agency or department to process requests, which could ultimately lead to the development of an efficient system in practice. A central agency would in time develop expertise in information processing and retrieval, which could include expertise on vetting requests and applying consistent processes and rules around exceptions and exemptions. Developing this expertise and consistent rule application in a single agency would be easier, quicker and more reliable than expecting all State entities (of which there are many) to do so independently. A central agency could also develop or be assigned contacts or focal points in each agency to better coordinate their work, and would take on the role or administrative burden of liaising with public agencies directly.

With either option, it will be important to ensure that the roles of responsible agencies and officers are clearly defined and the right to information is "integrated into major planning

processes, such as budgeting, human resource allocation, and other public sector management systems”.⁹³

Recommendations

1. Create a central agency, unit or department to receive, vet and facilitate information requests, including coordinating with public agencies to ensure the information is provided.
2. Clearly define the powers and responsibilities of the central agency under legislation.
3. Designate the ATC as an independent body tasked with receiving complaints for the failure or refusal of a public agency to provide information.
4. Empower the ATC to make decisions on complaints or appeals from decisions of public agencies in relation to information requests.

International Best Practice Procedures for Making and Processing Requests

This part of the Report considers whether the procedures for making and processing requests for information under Fiji’s Act are aligned to international best practice standards. In doing so, the following indicators will be examined:

- (a) Requesters are not required to provide reasons for their requests;
- (b) Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery);
- (c) There are clear and relatively simple procedures for making requests;
- (d) Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification;
- (e) Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled;
- (f) Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days;
- (g) Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information;

⁹³ See OHCHR written submissions received 14 February 2025, page 9.

- (h) Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record);
- (i) Public authorities are required to respond to requests as soon as possible.

Requesters are not required to provide reasons for their requests

Section 6(3) of Act sets out the requirements for a request for information as follows:

“(3) A request made under subsection (1) must—

- (a) be made in the form prescribed by regulations made under this Act;*
- (b) specify the public agency with which the information is held;*
- (c) specify the particulars of the information requested or such other particulars as are necessary for the identification of the information requested;*
- (d) subject to section 12, specify the form preferred by the person making the request for accessing the information;*
- (e) comply with any other requirement of the Commission; and*
- (f) be accompanied by such fee as prescribed by regulations made under this Act.”*

There is no requirement in the Act for the reasons for the request to be provided. However, the Act states that a person can only request for information if the information directly affects him or her. So while there is no need to provide the reasons for the request, having the right of access to information limited only to information that directly affects a person, arguably, has the same effect as requiring a person to provide the reasons for the request because in order for the public agency to determine whether the information requested for directly affects the person, the public agency would have to make some inquiries into the request that may require an explanation on the requester's part.

International best practice standards require that requesting procedures explicitly state that the reasons for a request for information are not required to be made known when making the request. This is emphasised by the landmark case of *Toktakunov v Kyrgyzstan*⁹⁴ where the Human Rights Committee of the ICCPR reaffirmed that information should be provided without requiring direct interest or an explanation.

⁹⁴ *Toktakunov v Kyrgyzstan*, Communication No. 1470/2006, 21 April 2011 (accessible at <https://juris.ohchr.org/casedetails/1632/en-US>).

Requesters are only required to provide the details necessary for identifying and delivering the information

Section 6(3) of the Act does not require any extraneous material at the moment.

The list is reasonably complete and appears to only require from the person making the request for information, the details necessary for the public agency to identify and disclose the information.

There are clear and relatively simple procedures for making requests

Under Fiji's Act, section 6(3)(a) states that "*a request made...must be made in the form prescribed by regulations made under this Act*". This means that a person can only make a request for information if he or she uses the official prescribed form.

Given that the Act has not entered into force and regulations have not been made, it is unclear at this stage whether the prescribed form can be electronically submitted to the public agency.

The following matters should be considered if Fiji's requesting procedure is to align with international best practice standards:

- a person making a request for information should be allowed to make the request without using an official form
- a person making a request for information should be allowed to make the request through electronic means

Both instances promote a clear and relatively simple procedure for making requests for information.

In New Zealand, requests may be submitted by any means of communication and there is no requirement to use an official form or to state that the request is made pursuant to their *Official Information Act 1982*.

In India's *Right to Information Act 2005*⁹⁵, requests may be submitted in writing or electronically or orally⁹⁶. In Jamaica's *Access to Information Act 2002*⁹⁷, requests may be submitted in writing, by telephone or electronic means⁹⁸.

⁹⁵ *Right to Information Act 2005* (India) <https://rti.gov.in/rti-act.pdf> (Accessed 15 February 2025).

⁹⁶ Section 6 of India's *Right to Information Act 2005*.

⁹⁷ *Access to Information Act 2002* (Jamaica) <https://laws.moj.gov.jm/library/statute/the-access-to-information-act> (Accessed 15 February 2025).

⁹⁸ Section 7(2) of Jamaica's *Access to Information Act 2002*.

Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification

Fiji's Act has provisions requiring public officials to provide assistance to persons making requests for information.

Section 12(1)(a) of the Act states that a "public agency to which a request has been forwarded by the Commission under section 8 or 10 must render effective and timely assistance".

Section 36(2)(c) of the Act states that the "information officer must assist persons seeking information or the correction or deletion of information under this Act".

Although these provisions for assistance exist, they are rather general. The Act can go further and specify the type of assistance that may be rendered by public officials to persons making requests for information. It can also specify the circumstances around which public officials may need to contact persons making requests for information, for clarification of the materials or details they had provided with their requests.

Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled

Section 13(7) of the Act states that "in giving access to information, a public agency must take such measures as reasonably practicable to ensure that persons with disabilities are able to access such information in accordance with the rights of persons with disabilities as prescribed under section 42 of the Constitution".

The Act only mentions assistance being rendered by public officials to those who require it due to disabilities.

This indicator requires public officials to provide assistance to persons who make requests for information, if they require the assistance due to special needs i.e. illiteracy and disabilities.

Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days

Section 8(c) of Fiji's Act requires the ATC to, within 20 days from the receipt of the request, inform the person who made the request that the request has been accepted, and that the relevant public agency has been directed to make the information available to the person. The following matters should be considered if Fiji's requesting procedure is to align with international best practice standards:

- persons making requests for information should be provided with a receipt or acknowledgement upon the lodgement of their request to a public agency
- the requirement for a receipt or acknowledgement to be provided should be set out in the Act or in regulations or in guidelines or operating procedures
- the receipt or acknowledgement should set out the timeframe within which the request will be processed and finalised
- a request for information should be acknowledged within a timeframe of 5 working days

All the above instances ensure that requesters are provided with a receipt or acknowledgement within a reasonable timeframe upon lodging a request.

Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information

Under Fiji's Act, there are procedures in place for the redirection of a request for information from one public agency to another if the public agency that initially received the request does not have the information requested for or if they reasonably believe that the information requested is "more closely connected" with the functions of another public agency.

These procedures include an obligation on the part of the ATC to inform the person who made the request that the information is not held by the first public agency and that the request is being redirected to another public agency.

Section 10 of the Act states:

"(1) Notwithstanding section 12, where the Commission forwards a request to a public agency under section 8 or this section and the information to which the request relates is—

(a) not held by that public agency but is, to the knowledge of that public agency, held by another public agency ("second public agency"); or

(b) reasonably believed by that public agency to be more closely connected with the functions of the second public agency,

the public agency to which the request is forwarded must notify the Commission in writing within 10 days from the receipt of the request from the Commission.

(2) The Commission must, within 10 days from the receipt of the written notice under subsection (1) -

(a) transfer the request to the second public agency;

(b) direct the second public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and

(c) inform the person who made the request that the request has been transferred to the second public agency and that the second public agency has been directed to make the information available to that person.”

With the system under section 10 of the Act, the time limits add another 20 days onto the process (10 days to notify the ATC and another 10 days to forward to the second agency). So, it takes even longer for information requested to be disclosed.

If Fiji's requesting procedure is to align with international best practice standards, then the grounds for the transfer should be made clearer, and the timelines should be shortened to allow for a more efficient process for disclosure.

Public authorities are required to respond to requests as soon as possible

Fiji's Act requires public agencies to provide the information requested for as soon as possible.

As mentioned above, there is an initial 20 days after a request is made and an added 20 days if the request is redirected from one public agency to another.

Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record)

Section 13(1) of Fiji's Act requires public agencies to make available the requested information in a number of different ways and in the form preferred by the person who made the request:

- by giving the person making the request a reasonable opportunity to inspect the information
- by giving the person a copy of the information
- in the case of information that is an article or material from which sounds or images are capable of being reproduced, by giving the person a copy of the article or material or by making arrangements for the person to hear those sounds or view those images
- in the case of information that is a document where words are recorded in a way in which the words are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing

the person with a written transcript of the words recorded or contained in the document

The above are subject to clear and limited overrides which are contained in section 13(2) of the Act.

Recommendations

1. The Act should explicitly state that the reasons for a request for information are not required to be made known when making the request.
2. A person making a request for information should be allowed to make the request without using an official form.
3. A person making a request for information should be allowed to make the request through electronic means.
4. The Act should specify the type of assistance that may be rendered by public officials to persons making requests for information. It should also specify the circumstances around which public officials may need to contact persons making requests for information, for clarification of the materials or details they had provided with their requests.
5. Public officials should provide assistance to persons who make requests for information, if they require the assistance due to special needs i.e. illiteracy and disabilities.
6. A person making a request for information should be provided with a receipt or acknowledgement upon the lodgement of their request to a public agency.
7. The requirement for a receipt or acknowledgement to be provided should be set out in the Act or in regulations or in guidelines or operating procedures.
8. The receipt or acknowledgement should set out the timeframe within which the request will be processed and finalised.
9. A request for information should be acknowledged within a timeframe of 5 working days.
10. The grounds for the transfer of a request from one public agency to another should be made clearer, and the timelines should be shortened to allow for a more efficient process for disclosure.

Exemptions

Exemptions under the Information Act 2018

Section 20 of the Act provides that the following 15 types of information are exempt from disclosure and requests for access must be refused:

1. information, the disclosure of which would adversely affect the sovereignty, security or scientific or economic interests of the State;
2. information, the disclosure of which would lead to the incitement or commission of an offence;
3. information expressly forbidden to be published by any court of law or tribunal or which would constitute a contempt of court;
4. information, the disclosure of which would cause a breach of the privileges of Parliament or a committee or subcommittee of Parliament;
5. information that is subject to legal professional privilege;
6. information available to a person in the exercise of the person's fiduciary duty, unless the Commission is satisfied that the disclosure of such information is in the public interest;
7. information received in confidence from a foreign government or an international organisation;
8. information, the disclosure of which would endanger the life or safety of any person or identify the source of information or assistance given in confidence for the purposes of law enforcement or security;
9. information which would impede the process of investigation, apprehension or prosecution of an alleged offender;
10. Cabinet documents, including records of deliberations of meetings or decisions of Cabinet;
11. information which relates to personal information, the disclosure of which has no relationship to or does not affect any public activity or interest, or which would cause the unwarranted invasion of privacy of the person, unless the Commission is satisfied that the disclosure of such information is in the public interest;
12. information which is classified by Cabinet as an official or State secret and certified in writing by the Secretary to Cabinet;
13. information, the disclosure of which would endanger or harm any protected site or the environment;
14. a trade secret, business know-how, commercially sensitive information and proprietary information relating to the intellectual property of a business; and
15. any other information, the disclosure of which, the Commission deems is not in the public interest.

Additionally, section 19(1) includes additional grounds under which a public agency may refuse a request, which in practice would amount to an exemption. These two additional grounds are that the information does not exist or cannot be located and the "work involved

in processing the request would substantially and unreasonably divert the resources of the public agency from its other operations”.⁹⁹

This part of the Report will analyse these exemptions to assess whether they meet international best practice standards, whether they are justifiable, and whether they are or should be subjected to standard harm and public interest tests.

Exemptions under international best practice standards

The right to information is sourced under international law from Article 19 of the UDHR and Article 19 of the ICCPR. It is an aspect of the right to freedom of opinion and expression, which requires the ability to “seek, receive and impart information and ideas”.¹⁰⁰ The ICCPR provides limitations to this right, expressed as follows:

*“3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are **necessary**:*

*(a) For **respect of the rights or reputations of others**;*

*(b) For the protection of **national security** or of **public order** (ordre public), or of **public health or morals**.”*

The Human Rights Committee of the ICCPR further affirmed that the right to information under Article 19 may only be limited by the exceptions under Article 19(3) above.¹⁰¹

Flowing from this, the Global RTI Rating, which is the leading global tool for assessing the strength of national legal frameworks for accessing information held by public authorities, utilises the following list of permissible exemptions when analysing national legislation:

1. national security;
2. international relations;
3. public health and safety;
4. the prevention, investigation and prosecution of legal wrongs;
5. privacy;
6. legitimate commercial and other economic interests;
7. management of the economy;
8. fair administration of justice and legal advice privilege;
9. conservation of the environment; and
10. legitimate policy making and other operations of public authorities.

The Global RTI rating’s specific assessment of Fiji, finds the following exemptions under section 20 of the *Information Act 2018* as beyond the scope recognised for this indicator –

⁹⁹ Section 19(1)(b) of the Information Act 2018.

¹⁰⁰ Article 19 of the UDHR.

¹⁰¹ *Toktakunov v Kyrgyzstan*, Communication No. 1470/2006, 21 April 2011 (accessible at <https://juris.ohchr.org/casedetails/1632/en-US>).

1. that the work involved in processing the request would substantially and unreasonably divert the resources of the public agency from its operations;¹⁰²
2. scientific interests;¹⁰³¹⁰⁴
3. privileges of Parliament;¹⁰⁵
4. Cabinet documents, including records of deliberations of meetings or decisions of Cabinet;¹⁰⁶ and
5. The public interest catch-all exemption, which is information deemed to not be in the public interest by the ATC.¹⁰⁷

The first is clearly beyond the scope of international best practice standards. A ‘substantial and unreasonable diversion of work’ exemption, particularly one operating under a court enforcement framework (as the ATC does not have hard enforcement powers under the Information Act) stands a serious risk of nullifying the very purpose of the right. It is a difficult standard to assess and most private citizens may be more likely to simply accept the public agency’s excuse that it would take too much work to comply with the information request rather than, on their own initiative, seek a court order to mandate release. Furthermore, if a request may involve substantial work, this could be sufficient reason for a deadline extension, a charge or a more robust proactive disclosure framework - but it is perhaps not sufficient justification for a flat refusal.

The second exemption, that of scientific interest, is a somewhat niche exemption. It can be found in some jurisdictions, for example under the India Right to Information framework, but is not considered prevalent enough to be a best practice standard.¹⁰⁸ In Fiji, it may not be practical to place so much emphasis on protecting the scientific interests of the State, to the detriment of a person’s constitutional right to information. It is also an exemption which may not be justifiably “necessary”, which is a prerequisite for limiting the constitutional right.

The third exemption, that of Parliamentary privilege, is also an exemption in the United Kingdom¹⁰⁹ and Australia¹¹⁰; however, it is worth noting that in the United Kingdom there are additional safeguards in place, such as the requirement that a certificate signed by the Speaker of the House of Commons or the Clerk of the Parliaments for the House of Lords be provided to activate the exemption.¹¹¹ Section 20(d) of the Fiji *Information Act 2018* is perhaps too broadly worded and may allow the ATC to exercise its own discretion in determining whether a request could cause a breach of the privileges of Parliament.

¹⁰² Section 19(1)(b) of the Information Act 2018.

¹⁰³ Section 20(a) of the Information Act 2018.

¹⁰⁴ Note: The Global RTI Rating for Fiji lists scientific and **economic interests** as beyond the scope; however, as “legitimate... economic interests” is included in their own list of permissible exceptions, only scientific interests will be considered in this report.

¹⁰⁵ Section 20(d) of the Information Act 2018.

¹⁰⁶ Section 20(j) of the Information Act 2018.

¹⁰⁷ Section 20(o) of the Information Act 2018.

¹⁰⁸ Section 24 of the India Right to Information Act 2005.

¹⁰⁹ Section 34 of the UK Freedom of Information Act 2000.

¹¹⁰ Section 46(c) of the Australian Freedom of Information Act 1982.

¹¹¹ Section 34 of the UK Freedom of Information Act 2000.

The fourth exemption is that of Cabinet documents, which is also an exemption in Australia.¹¹² However, in Australia not all aspects of a Cabinet document are exempted - purely factual material are spared, unless the disclosure would reveal a Cabinet deliberation or decision and the existence of that deliberation or decision has not been officially disclosed.¹¹³ Interestingly, Fiji has two Cabinet exemptions - a specific one for “information which is classified by Cabinet as an official or State secret and certified in writing by the Secretary to Cabinet”¹¹⁴ and a general one for “Cabinet documents, including records of deliberations of meetings or decisions of Cabinet.”¹¹⁵ Double exemptions are perhaps overkill and the more specific exemption which requires certification of its status as a State secret is more in line with an enabling and transparent framework. However, if a general exemption is to remain, it may be worth incorporating the Australian proviso for factual materials.

The fifth exemption is documents in the public interest. Ideally, under best practice standards, public interest is treated as a mandatory override that may **overcome** an exemption. However, under the Fiji Act, the lack of public interest is a ground for denying a request, making it an exemption ground itself. This a complete flip on the existing standard, grants a great deal of discretion to the deciding authority, does not incorporate an element of harm as a limiting factor and is ultimately unjustifiable as a “necessary” limitation to a constitutional right.

As additional points, some jurisdictions have additional exceptions, such as “information held by the system of custom, traditions and practices throughout Vanuatu”¹¹⁶ and “information which for the purposes of journalism, art or literature is held by a publicly owned media body in relation to its program content”¹¹⁷ - also in Vanuatu. However, despite drawing attention to these exemptions in the FLRC Discussion Paper there was no engagement on this matter. As such, they need not be considered further here.

Should there be a harm test for exceptions?

Under international standards, and given the presumption in favour of disclosure, disclosure must not just relate to an exempted ground but rather should pose a risk of actual harm to a protected interest for it to be refused.¹¹⁸ Four exceptions under the Information Act are not subject to the harm test – fiduciary duty, information received in confidence from other States, Cabinet documents and commercial information.

Should there be a mandatory public interest override?

Under international best practice, information must be disclosed where it is in the overall public interest, even if to do so could harm a protected interest as public interests triumph over personal or specific interests. Essentially, information about human rights, corruption or

¹¹² Section 34 of the Australian Freedom of Information Act 1982.

¹¹³ Section 34(6) of the Australian Freedom of Information Act 1982.

¹¹⁴ Section 20(f) of the Fiji Information Act 2018.

¹¹⁵ Section 20(j) of the Fiji Information Act 2018.

¹¹⁶ Section 4(1)(a) of the Vanuatu Right to Information Act 2016.

¹¹⁷ Section 4(1)(c) of the Vanuatu Right to Information Act 2016.

¹¹⁸ See UN Standards, note 305.

crimes against humanity must be released as it is in the public interest to do so and such interest overrides personal protections. This is recognised in Principle IV(2) of the Council of Europe Recommendation, which states:

“Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.”¹¹⁹

The Information Act only sets up a mandatory override for two out of its 15 exceptions – information available to a person in the exercise of their fiduciary duty (section 20(f)) and personal information which does not affect public activity or public interest or would cause an unwarranted invasion of privacy.

Recommendations

1. Remove the exemption for substantial work under section 19(1) of the *Information Act 2018*
2. Remove the exemption for scientific interests of the State
3. Amend the exemption for parliamentary privilege to require certification of the same from the Speaker of Parliament
4. Remove the general exemption for Cabinet documents or incorporate an exception for purely factual materials
5. Apply a harm test across all exemptions
6. Apply a public interest override for all exemptions

Promotion of Proactive Disclosures by Public Agencies

Proactive disclosure of information

In the context of the right of access to information, proactive disclosure refers to the practice where public agencies make information readily available on their own initiative without a request being made under right to information legislation. Public agencies voluntarily release information to the public without being prompted to do so by a request for that information.

Benefits of proactive disclosure of information

Proactive disclosure of information can:

- strengthen the accountability of government decision makers

¹¹⁹ Council of Europe Recommendation (2002) (accessible at <https://rm.coe.int/16804c6fcc>).

- inform public understanding of the reasons for decisions
- facilitate informed participation in government decision-making
- improve public trust and confidence in government¹²⁰

For public agencies, proactive disclosure of information can:

- reduce the burden of responding to individual requests by signposting requesters to information that has already been published
- reduce the need for some requests altogether
- manage expectations about when information will become available
- help requesters narrow what they are asking or looking for
- ensure that information reaches a wider audience
- enable more consistent messaging¹²¹

Public agencies also have greater flexibility to decide when and how information is released, and what additional context to put around it so that readers can derive greater meaning¹²².

Proactive disclosure allows public agencies to become a reliable and authoritative source for their own information¹²³.

Proactive disclosure of information under the Act

In Fiji, the Act promotes proactive disclosure of information by public agencies. This can be seen in section 35 of the Act which requires public agencies to proactively disclose certain information. They can always disclose more than what is required of them under section 35, however, all the information that is listed for disclosure in that provision must be made available within 12 months from the application of the Act to the public agencies. The list includes the following information:

- the structure, functions and responsibilities of the public agency
- a list of the entities falling under the public agency, including the location of the public agency, opening hours and subjects handled

¹²⁰ Office of the Ombudsman, *Proactive release - Good practices for proactive release of official information* (2020) <https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information> (Accessed 15 February 2025).

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

- the title, business address and contact details of the head of the public agency and the information officer
- a directory of the public agency's officers and employees and a brief description of the powers and duties of the officers and employees
- the particulars of the public agency's finances
- the types of documents held by the public agency, including the categories of documents that are available for inspection only, purchase or free of charge
- all manuals and similar types of documents that contain policies, principles, rules or guidelines in accordance with which the public agency makes decisions or recommendations
- the process to be followed by members of the public who wish to obtain information from the public agency or correct or delete personal information held by the public agency

Under the same provision, the list may also be expanded by the ATC to require public agencies to proactively disclose other additional information. This, however, would have to come by way of a notice in the Gazette.

Section 38(2)(a) of the Act then goes on to mention that the ATC is responsible for publishing guidelines on minimum standards and best practices for public agencies to proactively publish information. Again, it can be seen that the responsibility for promotional measures for proactive disclosure by public agencies is vested in the ATC in that the ATC can expand on the list of information under section 35 and must establish guidelines on proactive disclosure to be followed by public agencies.

States should seek to proactively disclose information in the public interest¹²⁴. States should also implement general policies for the proactive publication of information as a measure to complement the right of individuals to access information¹²⁵. In addition, states have a positive obligation to put information in the public domain as may be necessary to comply with international human rights obligations, such as information required for the exercise of other human rights.¹²⁶

Public agencies should also disclose information of relevance to the public proactively and on a timely basis, and also ensure consistent and usable updates, especially of websites¹²⁷.

¹²⁴ Office of the United Nations High Commissioner for Human Rights (UNOHCHR), *Freedom of opinion and expression - Report of the Office of the United Nations High Commissioner for Human Rights* (10 January 2022) A/HRC/49/38.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

Recommendations

1. The Act promotes the proactive disclosure of information by public agencies.
2. The Act mandates the proactive disclosure of certain information by public agencies. There is a list of information in section 35 of the Act that must be proactively disclosed by public agencies within 12 months from the application of the Act to the public agencies. This list can be expanded by the ATC to include other additional information for proactive disclosure by public agencies.

Act to prevail?

Should the Information Act 2018 explicitly provide that it overrides conflicting provisions in other laws including secrecy provisions?

Although the Act does not expressly declare its superior legislative ranking, the right to information is enshrined in the Constitution and the Constitution is the supreme law of Fiji¹²⁸. However, even this constitutional guarantee may be limited by laws which are “necessary”.¹²⁹

As the Information Act is the specific law related to information disclosures it stands to reason that its framework would be the most appropriate. This may be addressed by inserting a standard ‘Act to Prevail’ clause under the Information Act, similar to section 5 of the Vanuatu *Right to Information Act 2016*.

The UK *Freedom of Information Act 2000* does not prevail over other laws, and in fact specifically states otherwise.¹³⁰

Recommendation

Insert an “Act to prevail” clause

Sanctions

Should the Act provide for sanctions for those who wilfully obstruct access to information contrary to its provisions?

As the right to information is constitutionally guaranteed, willfully undermining such a right may be considered severe enough to warrant some form of sanction. The Information Act, however, does not create any such sanction, whether by civil or criminal penalty. Instead, offences seem to focus more on restricting disclosure, though not unreasonably. These

¹²⁸ See section 2 of the Constitution.

¹²⁹ Section 25(3) of the Constitution.

¹³⁰ Section 44(1)(a) of the UK Freedom of Information Act 2000.

include restrictions for the purposes of maintaining confidentiality¹³¹ and an offence provision for gaining unlawful access to information.¹³²

In the region, Vanuatu's *Right to Information Act 2016* establishes the following criminal offences:

86. Offences

(1) A person who:

- (a) **refuses to receive an application for information**; or
- (b) *in bad faith, denies an application for information*; or
- (c) *knowingly gives incomplete, misleading or wrong information*; or
- (d) *destroys information, without lawful authority*; or
- (e) *obstructs access in any way to any information*; or
- (f) *obstructs the performance of a Government agency, relevant private entity or private entity from carrying out a duty under this Act*; or
- (g) *interferes with or obstructs the work of the Information Commissioner, a Right to Information Officer or any other officer assisting the Information Commissioner or the Right to Information Officer*; or
- (h) *directs, proposes, counsels or causes any person in any manner to do any of the above,*

commits an offence punishable on conviction by a fine not exceeding VT500,000 or by a term of imprisonment not exceeding 1 year, or both.

(2) If a Right to Information Officer, without reasonable cause:

- (a) *refuses to receive an application*; or
- (b) *has not responded to an application within the time specified in this Act*; or
- (c) *has vexatiously denied an application*; or
- (d) *has given **incorrect**, incomplete or misleading information*; or
- (e) *refuses to render any assistance under this Act*; or
- (f) *obstructed in any manner the release of information,*

he or she commits an offence punishable on conviction by a fine of VT500,000.

These offences appear to criminalise willful obstructions by external parties as well as by the State authority or its officers. Some of these carry elements of intention and bad faith but it is particularly interesting that under subsection (2)(d), an RTI officer who gives incorrect information without reasonable cause also commits a criminal offence.

This approach, where a State authority may be criminally liable for what may ultimately be a single failure or refusal to perform its statutory duty, is not common in the Fiji jurisdiction except for notable and rare exceptions, such as the *Registration of Skilled Professionals Act 2016*, which makes it an offence if the Director of Immigration does not comply with a written directive of the Skilled Professionals Evaluation Committee¹³³ and the *Regulation of Building*

¹³¹ Section 39(2) of the Information Act.

¹³² Section 41 of the Information Act.

¹³³ Section 10(3) of the Registration of Skilled Professionals Act 2016.

Permits Act 2017 which similarly criminalises the non-compliance of an approval agency with a directive of the Building Permits Evaluation Committee.¹³⁴

The United Kingdom takes a more limited approach under section 77 of their *Freedom of Information Act 2000*, which states:

“77.—(1) Where—

(a) a request for information has been made to a public authority, and
(b) under section 1 of this Act or section 7 of the Data Protection Act 1998,
the applicant would have been entitled *(subject to payment of any fee) to*
communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

The element of intention applies to the entire offence and the offence appears to only activate if the requester would have been entitled to the information. The offence does apply to the public agency as well as its officers but the restrictive elements may create an appropriate balance.

These two options are worth considering if Fiji is to create sanctions for willfully undermining the right to information, however it is also worth noting that in the region neither Australia nor New Zealand have done so under their respective RTI laws.

Recommendations

1. Create an offence for wilfully undermining the right to information by altering, defacing, blocking or obstructing, erasing, destroying or concealing any information to which a person is entitled.
2. Ensure the offence carries the element of intention
3. Apply the offence to any person who is employed by, is an officer of, or is subject

¹³⁴ Section 12(3) of the Regulation of Building Permits Act 2017.

to the direction of, the public agency.

Should these sanctions include systematic failure to disclose information or systematic underperformance?

This issue considers whether a public agency should be held accountable for the systematic failure to disclose information or systematic underperformance. The Information Act does not create sanctions for systematic failure but given what may be described as a noted propensity for public agencies to sometimes operate rather lethargically, creating a redress mechanism may be worth considering.

The UK *Freedom of Information Act 2000* empowers the Lord Chancellor to issue codes of practice “providing guidance to relevant authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the keeping, management and destruction of their records”. This is similar to the guidelines the ATC may issue under the Fiji *Information Act 2018* “on information and records management, including the manner in which access to information can be made more efficient by public agencies.”¹³⁵ However, the UK goes further by empowering their Commissioner to give practice recommendations to the agencies when their conduct falls short of the codes of practice¹³⁶ and an enforcement notice.¹³⁷ If the agency fails to comply with the enforcement notice, the Commissioner may certify that non-compliance to the High Court where the agency may be dealt with “as if it had committed a contempt of court”.¹³⁸

In the region, Australia and Vanuatu do not have redress mechanisms for systematic failures or underperformance, but New Zealand does. The New Zealand *Ombudsmen Act 1975* empowers the Ombudsman to make recommendations for altering practice¹³⁹ and if these are not complied with, subsequent administrative proceedings commence for a report to the Prime Minister and the House of Representatives.

For Fiji, section 138(9) of the Constitution provides that a “commission, tribunal or board to which this section applies has the same powers as the High Court in respect of attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of production of documents.” Section 138(9) lists the ATC as one of the Commissions to which it applies and so it is clear that the ATC was intended to wield significant legal authority. This is further supported by section 149(d) of the Constitution which enables the making of written law to enforce the Code of Conduct through criminal and disciplinary proceedings. Systematic failures of a public agency, if drafted into the Code of Conduct Bill as a conduct issue may then be enforced through these mechanisms.

¹³⁵ Section 38(2)(b) of the Information Act.

¹³⁶ Section 48 of the UK Freedom of Information Act 2000.

¹³⁷ Section 52 of the UK Freedom of Information Act 2000.

¹³⁸ Section 54 of the UK Freedom of Information Act 2000.

¹³⁹ Section 22(3)(d) of the New Zealand Ombudsmen Act 1975.

It is also worth noting that “assigning enforcement responsibilities to oversight bodies such as Information Commission(er)s, rather than the courts, typically offers requesters a less time-consuming, costly, and intimidating process compared to judicial avenues¹⁴⁰ As such, it may be worth prescribing such power under written law to enable the ATC to issue enforcement notices, similar to the UK system described above; however, when such notices are not complied with, to also empower the ATC to order compliance with such orders rather than seeking a court order.

In consultations, some participants also supported the view that mandatory pre and post training¹⁴¹ measures for access to information processes as well as for conduct issues generally may need to be put in place. Mandatory enforcement powers, including through investigations and penalties were also proposed.¹⁴² These may also be incorporated under the ATC’s powers under written law.

Recommendations

1. Establish systematic failure or non-performance as a breach of law
2. Draft the above into the Code of Conduct as a conduct breach
3. Empower the ATC to make enforcement and compliance orders to mandate compliance, which may include mandatory pre and post training for staff or, for conduct issues generally - for persons subject to the code of conduct, and the review of processes.

Whistleblower Protection

This issue considers whether legal protections should exist to prevent the imposition of sanctions on or retaliatory against those who, in good faith, release information which discloses wrongdoing. The Information Act does not provide for whistleblower protection although the enactment of written law to “provide for the protection of whistleblowers, being persons who, in good faith, make disclosures that an officer ... has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices” is mandated under section 149(e) of the Constitution.

This appears to have been attempted via the *Code of Conduct Bill 2018* which was tabled in Parliament in 2018 but has since lapsed for lack of progress through the parliamentary process. Part 5 of the Bill sets out a framework which protects complainants from civil or criminal liability, disciplinary action and breaches of confidentiality or secrecy provisions¹⁴³ as well as making it an offence to take detrimental action against complainants¹⁴⁴ or to disclose

¹⁴⁰ Enforcement of the right to information: challenges and best practices, pg 7.

¹⁴¹ See submission from Akuila Yabaki in **Annexure L**.

¹⁴² See in-person consultations in **Annexure K**.

¹⁴³ Clause 20 of the Code of Conduct Bill 2018.

¹⁴⁴ Clause 21 of the Code of Conduct Bill 2018.

information that might identify the complainant.¹⁴⁵ Under the Bill, the ATC may also seek remedial or injunctive orders from the High Court to stop any detrimental action taken against a complainant.¹⁴⁶

Additionally, there are specific laws which set out whistleblower protections in limited circumstances which, taken together, may create a bare, incomplete whistleblower protection framework. These include informer protection for information connected to offences under the *Prevention of Bribery Act 2007*¹⁴⁷ and breaches under tax laws.¹⁴⁸ However, given the inadequacy of the current framework, it is clear that the lapsing of the *Code of Conduct Bill 2018* has left a significant lacuna.

In the United Kingdom, Australia and New Zealand separate laws provide these protections – namely the UK *Public Interest Disclosure Act 1998*, Australia *Public Interest Disclosure Act 2013* and New Zealand *Protected Disclosures Act 2000*. In Vanuatu, the following provision is couched within the *Right to Information Act 2016*:

“83. Whistleblowers

(1) A person is not liable to any civil or criminal action or any administrative or employment related sanction or detriment for:

(a) releasing information on any wrongdoing; or

(b) releasing information which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For the purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious mal-administration regarding a Government agency, relevant private entity or private entity.”

For Fiji, it is worth noting that under the Fiji Code of Conduct Bill, whistleblower protections were designed to cease to apply if:

(a) the complainant fails, without reasonable excuse, to assist the Commission in its investigation;

(b) the complainant discloses the details of their complaint to another person;

(c) the complaint is malicious, politically motivated or intended to defame; or

¹⁴⁵ Clause 23 of the Code of Conduct Bill 2018.

¹⁴⁶ Clause 22 of the Code of Conduct Bill 2018.

¹⁴⁷ Section 30A of the Prevention of Bribery Act 2007.

¹⁴⁸ Section 51A and 51B of the Fiji Revenue and Customs Service Act 1998.

(d) the complainant breaches provisions of the Bill.

In in-person consultations¹⁴⁹ this issue was discussed quite extensively with participants proposing that:

- Standard whistleblower protections should be put in place to prevent detrimental or retaliatory action from being taken against complainants
- Whistleblower protections may incorporate incentives, such as provided under section 51B of the *Fiji Revenue and Customs Service Act 1998*, which allows the CEO to award payment to informers upon the recovery of any payments;
- Protections should not cease if the complainant informs another person or if the complaint is “politically motivated”.¹⁵⁰

Additionally, written submissions recommended that detrimental action, as defined in section 2 of the Code of Conduct Bill 2018 be extended to include action causing, comprising or involving or likely to cause, comprise or involve injury, damage or loss.¹⁵¹

Recommendations

1. Standard whistleblower protections should be put in place to prevent detrimental action from being taken against complainants.
2. The definition of detrimental action should be extended to include likely damage, injury or loss.
3. Whistleblower protections may incorporate incentives, such as provided under section 51B of the *Fiji Revenue and Customs Service Act 1998*, which allows the CEO to award payment to informers upon the recovery of any payments.
4. Protections should not cease if the complainant informs another person or if the complaint is “politically motivated”.

Sunset Clause

A sunset clause in legislation is a provision that automatically terminates a law or specific part of a law after a predetermined date, essentially setting an expiration date, unless further legislative action is taken to extend it. It is included in legislation when it is felt that Parliament should have the chance to decide on its merits again after a fixed period¹⁵².

¹⁴⁹ See summary of consultations in **Annexure K**.

¹⁵⁰ See also FRWM written submission in **Annexure L**.

¹⁵¹ Ibid..

¹⁵² UK Parliament, *Sunset clause*

<https://www.parliament.uk/site-information/glossary/sunset-clause/#:~:text=A%20provision%20in%20a%20Bill,again%20after%20a%20fixed%20period.> (Accessed 16 February 2025).

According to the feedback received from the consultations, the Act should have a sunset provision for exemptions that would set the expiration date after a period of 50 years.

However, the authors of this Report are of the view that the notion of expiration is more applicable to the exemptions specifically, rather than the law or its provisions as whole. As the right to information is a constitutional guarantee only limited by necessary laws, information should be released if the necessary exception which prevented its increase ceases to apply. Additionally, and in line with international standards after at most 20 years, information exempted in the public interest should automatically become available. In the United Kingdom, historical records, information held for 20 years,¹⁵³ are not exempted for investigations and proceedings conducted by public authorities, court records, audit functions, formulation of government policy, legal professional privilege and prejudice to the effective conduct of public affairs.¹⁵⁴ However, certain exemptions in relation to Northern Ireland, relations within the UK and commercial interests expire after 30 years, exemptions for information relating to the conferring by the Crown of any honour or dignity expire after 60 years and exemptions for information relating to law enforcement expire after 100 years.¹⁵⁵

The Information Act does not have any provision of this nature, however, the *Public Records Act 1969* prohibits the destruction of public records without the permission of the Archivist.¹⁵⁶ Additionally, public records over 15 years of age may be deposited with the Archives Office if the Archivist is of the opinion that the records warrant preservation.¹⁵⁷ These records may then be accessed by the public, however there is broad discretion for the Minister responsible for that Act to prohibit access.¹⁵⁸ It is thus important that these provisions be amended to align it with the RTI framework recommended under this Report and in line with international standards.

Recommendations

1. The Act should provide that exemptions expire under a tiered system, similar to the UK, or for 20 years generally. .
2. The *Public Records Act 1969* should be amended to align it with the RTI framework under this Act and to enable mandatory access and release.

Consultation with third parties

In circumstances where a third party has provided the information held by a public agency, processes may be put in place to ensure that such persons are consulted, and their objections are considered.

¹⁵³ Section 62(1) of the Freedom of Information Act 2000. (Note that this was originally 30 years when enacted but was subsequently amended to 20 years in 2010)

¹⁵⁴ Section 63 of the Freedom of Information Act 2000.

¹⁵⁵ Ibid.

¹⁵⁶ Section 12 of the Public Records Act 1969.

¹⁵⁷ Section 7 of Public Records Act 1969.

¹⁵⁸ Section 14 of Public Records Act 1969.

The Information Act does not provide this.

Recommendation

Ensure that third parties are consulted by public agencies before release of information provided to the agency by such parties

Fees and Charges

This Report considers the appropriateness and necessity of the existing regime of fees and charges and whether section 19(1)(b) of the Act should be repealed.

Fiji's Act does not refer to an existing regime of fees and charges. Instead, section 6(3)(f) broadly refers to a fee that would have to be prescribed by regulations made by the Minister at some point in the future. This has not been done, perhaps, due to the fact that the Act itself has not entered into force. Be that as it may, the prescribed fee referred to is applicable when a request for information is made to a public agency. So, it is similar to an application fee.

Aside from this, section 12(2) and (3) of the Act refer to the powers of public agencies to impose charges for the expenses involved in making the requested information available. However, section 12(4) of the Act ensures that the charges imposed by a public agency are reasonable. While the test of reasonableness would apply here, this could still result in the imposition of exorbitant charges that the requester of the information would have to pay in order to access the requested information, or in worst cases, may not be able to afford.

Section 14 of the Act also mentions that a charge must not be made for making available personal information, unless the charge is a requirement under a written law.

In terms of section 19(1)(b) of the Act, this provision allows a public agency to refuse a request for information if the request would substantially and unreasonably divert the resources of the public agency from other operations. While this approach may seem practicable in a resource-constrained jurisdiction like Fiji, this may also lead to public agencies conveniently closing their doors to requests that may not necessarily require the use of substantial resources.

According to some feedback received from the consultations on this issue, requests for access to information should be made available at a reasonable cost¹⁵⁹. The Human Rights Committee in its General Comments has held that fees for requests for information should not be such as to constitute an unreasonable impediment to the right of access to information¹⁶⁰. Others had strong views that the right to information should be as cost-free as possible and that any costs imposed on the community's access to information must be fair and equitable¹⁶¹. There should also be different categories of costs depending on the reason

¹⁵⁹ Written submissions by OHCHR.

¹⁶⁰ Ibid.

¹⁶¹ Written submissions by Fiji Women's Crisis Centre.

for the request of information, however, these costs should be as minimal as possible¹⁶². If it is costly to access information, then the objects of the Act and the constitutional guarantees will be undermined¹⁶³. Similarly, there were comments that also strongly suggested that any charges imposed under the Act be free and/or nominal in nature¹⁶⁴.

Given that the fee under section 6(3)(f) is yet to be prescribed by the Minister, and that charges to be imposed (if any) under section 12(2) can only be determined by a public agency after a request for information has been made, it is difficult, at this stage, to comment on the appropriateness of the existing regime of fees and charges. What can be said with a great deal of certainty is that there is strong preference for zero or minimal fees and charges imposed for any request for information made to a public agency. Any imposition to the contrary may be seen as diminishing the right of access to information. As for section 19(1)(b), the provision may be necessary given resource-constraints, but if it is to be retained or if a similar provision is to be drafted, then the provision should be clearly ring-fenced.

Recommendations

1. The right of access to information should not be costly.
2. It may not be practicable to have zero fees and charges, given that fees and charges assist the State in the provision of its services. However, any fees and charges for requests for information should not be such as to constitute an unreasonable impediment to the right of access to information.
3. Section 19(1)(b) may be necessary to retain, and if it is to be retained or if a similar provision is to be drafted, then the provision should be clearly ring-fenced.

Does the Act require modifications?

As highlighted in the introduction to this Report, the Act seems to require substantial modifications to its provisions.

Given the extensive review and substantial modifications recommended in this Report, it would be prudent to repeal the entire Act and have a Bill, together with any necessary regulations to implement the legislation, drafted simultaneously to address the concerns raised during the consultations and from the written submissions. This view was also supported by participants during consultations.¹⁶⁵

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Written submissions by Fiji Women's Rights Movement.

¹⁶⁵ See University of Fiji submissions and consultations report for in-person consultations in **Annexure K**.

Recommendation

The entire Act should be repealed and a Bill, together with any necessary regulations to implement the legislation, should be drafted simultaneously to address the concerns raised during the consultations and from the written submissions.

E. The Code of Conduct Bill 2018

Introduction

The Code of Conduct Bill was initially tabled in April 2016 but was later re-introduced in 2018 and referred to the Parliament Standing Committee on Justice, Law and Human Rights which presented its Report to Parliament in 2019.

Public consultations were carried out in Suva from 28 to 30 January 2019 where several stakeholders had made their submissions on the Bill. However, whilst still under review by the Standing Committee, Parliament was dissolved and the Bill then lapsed. The Bill was never debated or enacted.

In July 2024, the Attorney-General, Hon. Mr Graham Leung announced plans to seek Cabinet's approval for the drafting of legislation to implement the code of conduct and to enact the *Information Act 2018*. The FLRC included this review on its priority list and in its Cabinet Memorandum, and it was tasked with reviewing the three issues outlined in the TOR.

Breakdown of the Code of Conduct Bill 2018 (Bill No. 33 of 2018)

Objectives of the Bill

The foundation of the Bill lies in the objectives outlined under section 149 of the Constitution. These objectives are generally to —

1. Establish a code of conduct (s.149(a)): to create a written code which shall be applicable to a wide range of public officials, including the President, Speaker, Deputy Speaker, Prime Minister, Ministers, members of Parliament, permanent secretaries, and those in statutory bodies.
2. Establish rules (s.149 (b)): to establish clear rules, processes and procedures for the implementation of the code of conduct by the ATC.
3. Monitoring compliance (s.149(c)): to provide for the monitoring of compliance with the code by the officers mentioned in paragraph 1.
4. Investigation and enforcement (s. 149(d)): to make provision for the investigation of alleged breaches of the code of conduct and enforcement of the code of conduct by the ATC.
5. Whistleblower protection (s.149 (e)): to provide for the protection of whistle-blowers, who in good faith, make disclosures that an officer has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices.

6. Annual declarations (s.149 (f)): to provide for the annual declaration by the officers of their assets, liabilities and financial interests, and of such other direct relatives of the officers as may be prescribed, to the ATC, and for such declarations to be accessible to the public.

Therefore, the proposed *Code of Conduct Bill 2025* aims to build upon this established framework outlined in the Constitution, address any gaps and strengthen provisions to ensure effective implementation and public trust.

Initial Discussions

During some of the initial discussions on the *Code of Conduct Bill 2018*, the FLRC noted the following issues which were considered with the assistance of UNESCO's consultant and Executive Director of Center for Law and Democracy Mr. Toby Mendel.

These were in relation to:

1. *Discretion Not To Investigate (Disclosure to Third Parties)*

Clarify Discretionary Powers: Ensure that section 12(1)(c) and (f) grant the ATC discretion, not an obligation, to decide whether to investigate a complaint. The ATC should have the flexibility to consider the context and potential implications of each case. Guidelines must also be developed and published which outline the factors the ATC should consider when exercising its discretion under section 12(1)(c) and (f). This transparency will help build trust in the ATC's decision-making processes.

2. *Malicious Complaints and Penalties*

Discretionary Referral for Prosecution: Amend section 12(4) and section 13 to grant the ATC the discretion, not the obligation, to refer malicious or politically motivated complaints for prosecution. Referral should be reserved for only the most flagrant cases of demonstrably false and harmful accusations. Additionally, section 13 should clearly indicate that criminal penalties are reserved for extreme cases of malicious complaints, ensuring that the ATC and the judicial system focus on the most serious offences.

Narrow Definition of Malicious Complaints: Clarify the definition of malicious complaints in section 13 to ensure its application is narrow and objective. This will prevent the misinterpreting legitimate complaints as malicious.

3. *Grounds for Dismissal after Investigation*

Substantiated Grounds for Dismissal: The ATC should be given powers to dismiss a complaint if, following an investigation, it determines that the complaint is not warranted by the evidence. This change will enable the ATC to efficiently close cases lacking merit.

4. Scope of Access to Records

Expanded Access to Records: Amend section 15(a) to expand the ATC's authority to access records to include any entity whose staff is bound by a code of conduct. This broader access will facilitate more comprehensive investigations.

5. Exceptions to Providing Information (Security Concerns)

Reconsider Broad Exceptions: Reconsider and narrow the scope of exceptions in section 16(1) regarding non-provision of information due to security, defence, international relations, or cabinet deliberations. The ATC operates under strict confidentiality obligations, and its members can be subjected to security vetting if necessary.

Exceptions Should Not Apply to Investigations: Ensure that these exceptions do not apply to investigations related to failures to provide information under the Information Act, maintaining the integrity of the investigative process.

6. Authority to Hold Hearings

Explicit Power to Hold Hearings: Add a provision to the Act explicitly granting the ATC the power to hold hearings when it determines that a hearing is necessary for an effective investigation. This clarity will ensure that the ATC can utilise hearings as a tool when needed.

7. Consequences of Upholding a Complaint

Avoid Criminal Prosecution: Shift away from criminal prosecution as the primary means of enforcing codes of conduct. Consider disciplinary measures that are more appropriate for addressing breaches of ethical standards. In addition, empower the ATC to impose disciplinary measures directly on certain individuals who violate a code of conduct, or at a minimum, require the ATC to make recommendations regarding appropriate disciplinary action to the relevant authority.

8. Scope of Identity Protection

Limit Identity Protection: Limit the scope of identity protection under section 23 to the ATC, officials involved in the investigation, complainants, and the subjects of complaints. This focused approach will protect those directly involved while avoiding unnecessary restrictions on others.

9. Loss of Protection for Lack of Assistance

Remove Provision: Remove the provision in section 24 that strips complainants of protection if they fail to assist the ATC. Complainants should not be penalised for refusing to cooperate, as this could undermine the effectiveness of the whistleblowing system.

Clarify Minister's Powers: Amend the language of section 25(2) to explicitly state that the Minister's authority extends only to adding "other" officials to Schedule 6, ensuring transparency and preventing potential abuses of power.

10. Disclosure of Asset Declaration

Re-Evaluate Disclosure: Re-evaluate the scope of permissible disclosure under section 26(5) to ensure that legitimate inquiries by other bodies, such as Parliament, are not unduly hampered. The balance between confidentiality and transparency must be carefully maintained.

Remove Prohibition on Publication: Remove the prohibition on publication by third parties in section 27(3) and the associated penalties in section 27(5). The ATC should be responsible for protecting the confidentiality of asset declarations, and third parties should not be held liable for leaked information.

11. Section 13 Definitions

Definitions: Define "Malicious" and ensure its application is narrow and objective to prevent the misuse of this term against legitimate complaints.

Consultations Feedback

During the public consultations, the participants raised several issues on the Code of Conduct Bill and also made suggestions to improve the current framework. Some of the key points raised include:

1. **Accountability for Public Officials:** There was general consensus on the need for clearly defined standards that hold all public officials accountable. Participants emphasised that well-established standards would provide guidance to officers, shaping their professional conduct and interactions. These standards encompass respect for colleagues, subordinates, and, most importantly, the public they serve, alongside impartiality, honesty, and integrity. Furthermore, submittees highlighted that upholding high standards for all public officers, including the President, Prime Minister, and Parliamentarians, would serve as an inspiration for future generations, enhance the quality of public service delivery, and attract talented individuals to careers in the public sector.
2. **Civil Servants' Capacity and Enforcement:** Concerns were raised on the capacity of civil servants to handle requests or complaints in relation to the Bill along with the need for comprehensive training. In Fiji, there are existing delays in complaints-resolution and service delivery across public agencies which prompted reservations on the potential administrative burden the Bill may impose during implementation. Submittees emphasised that while the legislative intent may be sound, adequate training and support for public officials is crucial for ensuring effective implementation and achieving the Bill's objectives. Furthermore, the

definition of "public officials" was questioned, with suggestions for clarification to ensure consistent application.

3. **Independent Body for Complaints:** A significant number of participants advocated for the ATC to serve as an independent body where the public can file complaints regarding government misconduct and transparency issues.
4. **Investigative and Enforcement Powers:** To ensure effectiveness, the ATC should be legally empowered to investigate allegations of misconduct and enforce penalties for violations of transparency and accountability laws.
5. **Proactive Assistance and Education:** There was a suggestion that the ATC should actively assist government departments in improving their services and educate both the public and government employees of their rights and responsibilities under the proposed framework.
6. **Addressing Untimely Responses:** The ATC should have the authority to address complaints about untimely responses from agencies and to take corrective action where standards are not met.
7. **Annual Reporting:** An annual reporting requirement for the ATC was suggested to track its findings and activities and to ensure transparency in its operations.
8. **Addressing Implementation Challenges in the Pacific Context:** Raised concerns about the implementation, monitoring, and investigation processes of the ATC, particularly how kinship ties and potential conflicts of interest can create challenges in transparency.

Written Submissions:

1. **Standards of Accountability:** Suggestion was made to adopt the OECD's Guidelines for Managing Conflict of Interest in the Public Service to establish clear and comprehensive ethical standards.
2. **Establish Open Registers:** It was suggested that Fiji should develop a system, similar to the Register of Members' Financial Interests, where information on any financial interest that a member of Parliament has, or any benefit they receive, or assets they possess, should be declared, registered, and made public. Additionally, the system should allow for real-time or periodic updates to the declarations made which would ensure that the information available to the public remain current and relevant.
3. **Schedule 5 clause 13 concerns:** An independent institution has expressed concerns regarding a legislative provision aimed at preventing public officials from taking improper advantage of their positions. Clause 13 is intended to ensure that former public officials do not misuse confidential information or create conflicts of interest.

The institution's concern is that clause 13 may be overly broad and could unnecessarily limit the career mobility of its employees. It also highlighted that:

4. The provision requires former public officials to refrain from acting on matters they previously worked on, and from using or disclosing confidential information, for an unspecified period.
5. The provision may be perceived as creating a blanket restriction on all employees, rather than just those with access to sensitive information.
6. Potential employers may be deterred from hiring former employees due to concerns about the misuse of confidential information.
7. The provision may be overly restrictive, limiting the ability of employees to transition to new roles within the industry.
8. The University of Fiji (UniFiji): highlighted the need for the Bill to reflect the values and principles stipulated under section 123 of the Constitution and to specify how the Code of Conduct would be enforced by the ATC.
9. The Fiji Women's Crisis Center (FWCC): Handling Complaints (section 12(c) and 24): The FWCC raised significant concerns regarding section 24 of the proposed legislation, particularly the provisions that allow the ATC to dismiss complaints deemed "malicious," "politically motivated," "frivolous," "inappropriate," or "inexpedient." A key concern is the lack of defined standards or procedures by which the ATC would reach such determinations, potentially leading to inconsistent application and discouraging legitimate complaints.
10. FWCC also noted that the Bill's limited immunity for complainants is further undermined by section 24. Complainants risk losing protection if they:
 - Fail to cooperate with the ATC's investigation (e.g., by withholding information without a good reason)
 - Disclose complaint details to unauthorised parties (anyone other than the ATC)
 - Make a complaint that is malicious, politically motivated, or intended to damage the reputation of the subject of the complaint
 - Violate any part of the Act itself.
11. FWCC argues that the current provisions may deter victims of wrongdoing from coming forward, creating an environment of fear and restricting freedom of expression. The potential for losing protection, especially when the definition of "malicious" or "politically motivated" is unclear, could silence legitimate concerns.

12. Section 24 presents particular challenges for complainants who have experienced trauma as a result of the actions they are reporting. Victims of gender-based violence, for example, often seek initial support from organisations like FWCC, sharing sensitive personal information and receiving counselling. Section 24, along with section 12(c), could inadvertently undermine women's empowerment by discouraging reporting and limiting access to justice.
13. The provisions also create barriers to seeking legal advice. Complainants may be discouraged from discussing the details of their experiences with lawyers to determine if the actions constitute corruption or misconduct, or to understand their legal options, fearing they might forfeit the opportunity to have their complaint investigated or lose legal protection. It was also highlighted that the Bill must strengthen Protection for Whistleblowers in cases of Gender-based violence and discrimination.

Fiji Women's Crisis Centre

1. Clearer Definitions: Develop clear, objective, and narrowly defined criteria for determining whether a complaint is "malicious," "politically motivated," "frivolous," "inappropriate," or "inexpedient." These definitions should be included in the legislation or accompanying guidelines.
2. Procedural Safeguards: Establish a transparent process for assessing complaints under section 24, including opportunities for the complainant to respond to concerns raised by the ATC.
3. Protection for Seeking Advice: Explicitly protect complainants who seek legal advice or counseling from losing their immunity or the opportunity for investigation.
4. Contextual Considerations: When assessing cooperation, take into account potential trauma or vulnerability experienced by the complainant.
5. Focus on Good Faith: Emphasise that the intent of the complainant should be a primary consideration. Good faith complaints should be protected, even if they contain inaccuracies or are ultimately unsubstantiated.
6. Enhanced Confidentiality Protections: Strengthen confidentiality measures for whistleblowers, with special attention to women's needs.
7. Safe and Accessible Reporting Mechanisms: Establish safe, anonymous reporting options for women and third parties, with clear guidelines for investigation and protection.

Fiji Women's Rights Movement

1. Relationship to Existing Legislative Frameworks: The Bill needs to clearly define its relationship with existing legislative frameworks that address breaches of governance, such as the Human Rights and Anti-Discrimination Act, specific provisions of the Employment Relations Act (e.g., section 75), the FICAC legislation, and the Electoral Act.

2. **Articulation of Specific Conduct:** the Bill uses broad phrasing like "detrimental action" without clearly defining what constitutes such action. It may be useful to articulate specific conduct instead of relying on the broad phrase "detrimental action." Insert the term "likely" in paragraph (a) to read as "injury or likely to injure, damage or likely to damage or loss or likely to cause loss" to account for the potential mental health impact of threats.
3. **Clarity in Interpretation and Definitions:** The current Bill lacks clear definitions which can lead to ambiguity, hindering enforcement and potentially undermining protections, particularly regarding gender-based misconduct. The Bill must provide clear definitions for physical and non-physical forms of harassment and define direct and indirect forms of discrimination as well.
4. **Inconsistency in Post-Employment Clauses (Schedules 1 & Other Schedules):** A 12-month stand-down period for post-employment restrictions (Schedule 1) is insufficient due to the sensitive information held by public officials and the close-knit nature of Fijian communities. Post-employment restrictions only apply to Schedule 1 and not Schedules 2, 3, 4, 5 and 6. It is recommended to extend the post-employment stand-down period to a minimum of three to five years to minimise risk to the government. Also, the post-employment provision in Schedule 1 should apply to all public officials listed in Schedules 2, 3, 4, 5, and 6.
5. **Strengthening Protections for Complainants & Addressing Retaliation:** Section 24 (forfeiture of protection) undermines the protections offered to whistleblowers in section 20, especially with the inclusion of "malicious" or "politically motivated" complaints. To address this, section 21 should be removed entirely, as it discourages people from bringing an action under the proposed law. Also, to remove section 24(c) (malicious or politically motivated complaints) as it can be abused to prevent action against public officials. Rely on common law principles of malicious prosecution, slander, libel, or defamation instead. Since section 24(d) as it defeats the protections afforded in Clause 20 and Clause 23. It is also recommended to include strong safeguards against all retribution, whether direct or indirect, which may have a disproportionate effect on women. This may include explicit provisions against the unfair treatment of complainants.

Consumer Council of Fiji

1. The ATC should have direct enforcement powers, including the ability to refer cases to the judiciary without needing approval from appointing authorities. Ensure its financial and operational independence through a dedicated funding mechanism.
2. The Bill does not explicitly mandate public access to the ATC's annual reports, potentially leading to selective disclosure and misuse for personal or political gain.

3. The annual reports should be made publicly available online to ensure full transparency. Reports should focus on compliance trends, enforcement actions, and institutional integrity rather than naming individuals unless legally necessary. A clear framework should be established to prevent misuse of reports for personal vendettas or selective targeting.
4. The Code of Conduct only applies to public officials, excluding state-owned enterprises (SOEs) and government contractors, which are also vulnerable to ethical breaches. The scope should be extended to cover executives and board members of SOEs and public-private partnerships.
5. While the Code of Conduct requires officials to declare conflicts of interest, it lacks strong enforcement mechanisms. Provision should be made to require annual conflict-of-interest declarations for all public officials. Establish penalties for non-disclosure, including fines or suspension.
6. The Bill does not allow anonymous complaints, which could deter whistleblowers who fear retaliation. Provision to allow anonymous reporting should be considered. This can be done through secure digital platforms to encourage more reporting of unethical behavior. Implement whistleblower protections, including legal immunity and job security.
7. The Code of Conduct Bill lacks clearly defined consequences for non-compliance, leading to inconsistent enforcement and diminished public trust. There should be defined and clear sanctions for violations, introducing graduated penalties based on the severity of the breach (monetary fines for minor violations, suspension or demotion for moderate violations, and job disqualification, legal prosecution, or imprisonment for serious violations).
8. Consideration should be given to establishing an independent Ethics Tribunal to oversee cases of misconduct, composed of legal experts, former judges, and independent auditors, with the authority to review cases, impose sanctions, and refer serious violations for criminal prosecution.
9. Strengthen the role of the ATC, providing it with the legal power to investigate misconduct independently, increased resources, including forensic auditors and trained investigators, and introduce mandatory reporting requirements, ensuring that all findings and penalties are publicly disclosed in an annual report.
10. The Code of Conduct Bill's whistleblower protections are not comprehensive and do not offer incentives for whistleblowing, leading to hesitations and unchecked unethical behavior. The Bill should offer financial rewards for high-value corruption cases, where whistleblowers who expose corruption leading to significant financial recovery receive a percentage of recovered funds.

11. Provide full legal immunity for whistleblowers, ensuring that individuals cannot be sued for defamation or breach of confidentiality after reporting corruption, even if the complaint does not lead to a conviction, as long as the whistleblower acted in good faith and did not fabricate evidence. Additionally, a Witness Protection Program should be implemented for Whistleblowers, establishing a Whistleblower Protection Office within the ATC to provide temporary relocation, security assistance, and psychological and legal support. Also, ensuring that Fiji's courts recognise whistleblower retaliation as a criminal offence.
12. Allow anonymous and confidential reporting through secure digital platforms where whistleblowers can anonymously report misconduct. Introduce sealed testimony mechanisms where whistleblowers can testify in corruption cases without public exposure.
13. The Bill requires public officials to declare assets but does not mandate public disclosure. Make asset declarations publicly available online and conduct random audits to verify the accuracy of declared assets.
14. Officials leaving government positions can immediately join private firms, increasing corruption risks. It is recommended to impose a 1-2-year cooling-off period before ex-officials can work for companies with government contracts and establish criminal liability for revolving-door corruption cases.
15. The Bill does not address political lobbying, which can lead to undue influence over policymakers. The ATC should, in compliance with the provisions provided for in the Electoral Act and Political Parties Act, create and maintain a public lobbying registry where all lobbying activities and donations to politicians must be disclosed. Impose strict limits on corporate donations to political parties.
16. The Office of the United Nations High Commissioner for Human Rights: raised several concerns with the current Bill and recommendations for its review. These were mainly:
17. Section 12 Biasedness - Section 12 of the Code of Conduct Bill allows the ATC to dismiss complaints based on its "opinion" (e.g., "politically motivated") without factual findings, leading to potential abuse and hindering access to justice. The Bill appears biased against people with strong political beliefs.
18. Vague Provisions - The Bill has some provisions that are vaguely worded and require clear definitions, defined scope, regime of exceptions and procedures for processing requests. There was also concern expressed on the lack of clarity surrounding the rules, procedures or limits on the way the ATC will function or process the implementation of the Code of Conduct.
19. Duplication of Judicial Services Commission - The Code of Conduct Bill risks duplicating the functions of the JSC, potentially interfering with the impartiality and

independence of the judiciary as guaranteed by international standards (Article 14 ICCPR) and the Fijian Constitution. The requirement for judicial officers to submit financial disclosures to a body that can also investigate complaints against them, with public access to these statements upon payment of a fee, raises concerns about undue influence and compromises the separation of powers.

- a. Exempt the Judiciary from the Code of Conduct Bill: Given the constitutional mandate and established role of the JSC in regulating and investigating judicial conduct, judicial officers should be explicitly exempt from the Code of Conduct Bill. The JSC is already equipped to handle complaints and ensure ethical conduct within the judiciary.
- b. Strengthen the JSC: Instead of duplicating efforts, resources should be directed towards strengthening the JSC, ensuring it has the necessary capacity and independence to effectively perform its functions. This may include providing additional funding, resources, and training for JSC members.
- c. Clarify the Scope and Jurisdiction of the ATC: To avoid any overlap or confusion, the mandate of the ATC should be clearly defined to exclude matters related to judicial conduct and the JSC's responsibilities.
- d. Ensure Alignment with International Standards: Any code of conduct or regulations pertaining to the judiciary must fully comply with international standards regarding judicial independence, as outlined in General Comment 32 of the ICCPR and the UN Special Rapporteur's report on the Independence of the Judiciary. This includes ensuring that disciplinary procedures are established by law, offer adequate procedural guarantees, and are adjudicated by an independent authority or court.
- e. Review Public Disclosure Requirements: Reconsider the provision allowing public access to judicial officers' asset declarations, as this could be used to exert undue influence or pressure on the judiciary. If disclosure is deemed necessary, strict safeguards should be put in place to protect the privacy and security of judicial officers and prevent misuse of the information.

Annexure A - Terms of Reference



TERMS OF REFERENCE **REVIEW OF THE INFORMATION ACT 2018, ACCOUNTABILITY AND** **TRANSPARENCY BILL 2025, CODE OF CONDUCT BILL 2025**

I, . Graham Leung, Attorney-General of Fiji, by virtue of the power conferred on me by section (5)(2)(a) of the Fiji Law Reform Commission Act 1979, refer as follows:

1. Review of the Information Act 2018

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the *Information Act* 2018:

A. Basic Purposes and Principles -

- i) to evaluate whether the basic purposes of, and benefits of the *Information Act* 2018 aligns with the Act's intended purpose concerning the right of access to information established under sections 25 and 150 of the Constitution;
- ii) to assess whether the Act requires modifications to better achieve these purposes;

B. Proposed Amendments to *Information Act* 2018 -

- i) to determine if the objectives outlined in section 4 of the Act fully reflects its purpose and supports the right of access to information;
- ii) to explore whether the scope of the application of the Act should be extended to cover:
 - private sector bodies;
 - Government Business Enterprises;
 - Legislative bodies; and
 - Bodies owned, controlled or funded by public agencies;
- iii) to review whether the power of the Minister to exclude public agencies should be amended;
- iv) to review the scope of information covered to consider whether it should be amended so that any information held by a public agency, irrespective of direct interest and regardless of the date of its existence should be subject to the Act.
- v) to revise the requesting procedure allowing requests to be made directly to the public agency, or a central processing unit, rather than through the Accountability and Transparency Commission (ATC);
- vi) otherwise, to align the procedures for making and processing requests with international standards;
- vii) to evaluate the existing exemption provisions, including the potential to remove or amend any existing grounds for exemption, identifying which exemptions should be subject to a public interest test and the need for standardization of that test;
- viii) to promote proactive disclosure and mandate public agencies to publish information contained on the list in section 35 of the Act, to expand the list in section 35, and enabling ATC to expand this list;

- ix) to explore whether the Act needs to explicitly provide that it overrides conflicting provisions in other laws including, secrecy provisions;
- x) to determine whether the Act should provide for sanctions for those who wilfully obstruct access to information contrary to its provisions;
- xi) to provide whistle-blower protections for good faith disclosures of wrongdoing;
- xii) to examine the possibility of incorporating a sunset clause that automatically release information of public interest after a certain period;
- xiii) to provide for a system for consulting third parties where information provided by them in confidence has been requested;
- xiv) to evaluate the appropriateness and necessity of the existing regime of fees and charges and whether section 19(1)(b) should be repealed;
- xv) to strengthen the regime for records management in the Act;
- xvi) to require public agencies to ensure that their staff receive proper training on access to information and to report annually on how they have implemented the Act;
- xvii) to consider any consequential amendments to the Official Secrets Act 1922 and Public Records Act 1969 and any other relevant legislation; and
- xviii) to address any related matters.

2. **Accountability and Transparency Commission (“ATC”) Bill 2025**

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the **Accountability and Transparency Commission (“ATC”) Bill 2025**:

- i) to set out clear objectives or a clear purpose of the ATC Bill 2025;
- ii) to give effect to the provisions set out in Section 121 of the Constitution of Fiji regarding the establishment of the Accountability and Transparency Commission whilst proposing additional provisions to enhance the effectiveness of the Bill;
- iii) to consider repealing the provisions relating to the ATC under the existing Information Act 2018 (e.g. Part 5 of the Act, sections 6-11, 22-25, 45 and 47 of the Act) and the Code of Conduct Bill 2018 (e.g. Parts 2 and 4 of the Bill), so that the same can be reflected in the ATC Bill instead;
- iv) to address any other related matters.

3. **Code of Conduct Bill 2025**

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the **Code of Conduct (“CoC”) Bill 2025**:

- i) to set out clear objectives or a clear purpose of the CoC Bill 2025;
- ii) to give effect to the provisions set out in Section 149 of the Constitution regarding the establishment of a code of conduct for public office holders and the standards of accountability and transparency required of those persons;
- iii) to consider the role of the ATC in handling complaints about the conduct of public office holders and the enforcement of a code of conduct;
- iv) to consider the role of declarations made by public office holders and the most effective way to make the information accessible to the public;
- v) to address any other related matters.

4. Joint Review

The Commission shall conduct this review in cooperation with the Office of the Attorney-General.

5. Timeline

A Final Report, is to be presented to the Attorney-General by 17th February 2025

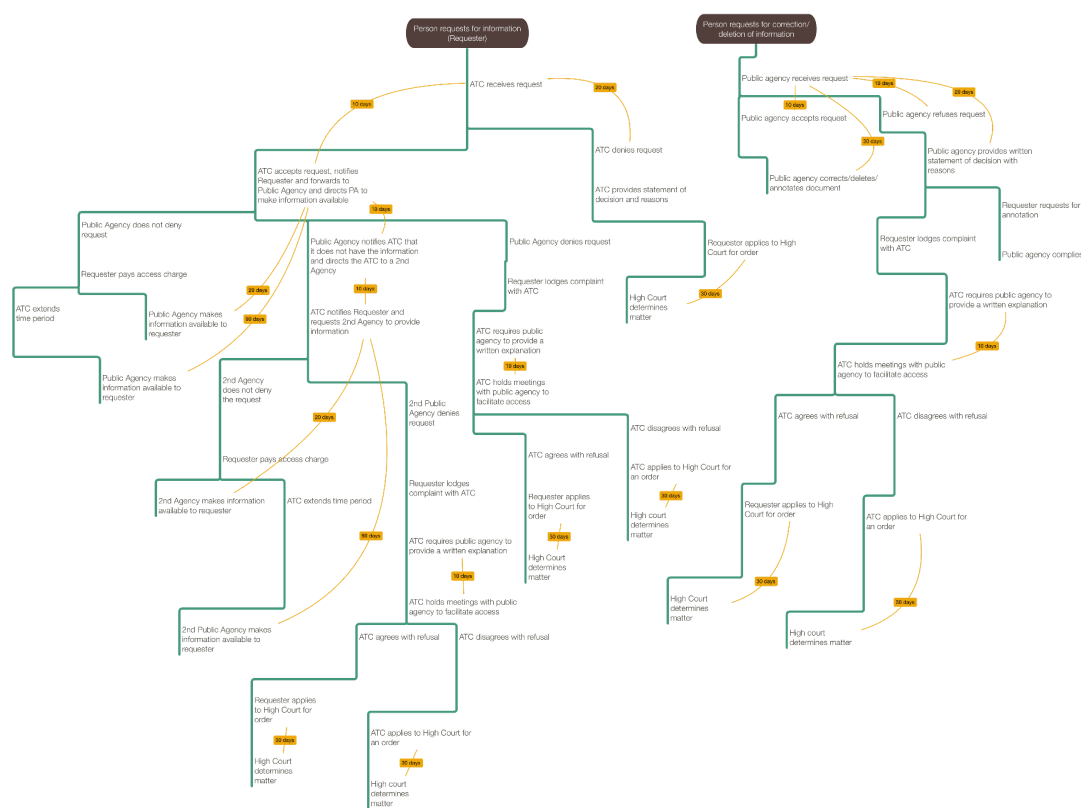
Issued this 21 day of January 2025.



.....
Mr. Graham Leung

ATTORNEY- GENERAL

Annexure B - Process Map for current Information Act 2018



Annexure C - Information Act 2018

INFORMATION ACT 2018
(ACT NO. 9 OF 2018)

SECTIONS

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application
4. Objectives

PART 2—RIGHT TO INFORMATION

Division 1—Access to information

5. Right of access to information
6. Request for access to information
7. Determination of request by the Commission
8. Acceptance of request by the Commission
9. Refusal of request by the Commission
10. Transfer of request to another public agency
11. Urgent requests

Division 2—Facilitation of request

12. Public agency to provide assistance and information
13. Forms of access
14. No charge for requests for personal information
15. Information stored electronically etc
16. Deletion of exempt matter from documents
17. Information provided out of time
18. Extension of time
19. Refusal of request by public agency

Division 3—Exemption from disclosure

20. Exemption from disclosure of information
21. Exempt public agencies

Division 4—Failure to provide access

22. Complaint to the Commission
23. Commission to facilitate access to information

Division 5—Application and appeal

24. Application to the High Court by the Commission
25. Appeal to the High Court against the Commission

PART 3—RIGHT TO CORRECTION AND DELETION OF INCORRECT
PERSONAL INFORMATION

- 26. Request for correction or deletion of personal information
- 27. Determination of request for correction or deletion of personal information
- 28. Acceptance of request for correction or deletion of personal information
- 29. Refusal of request for correction or deletion of personal information
- 30. Notations to be included in documents
- 31. Incomplete requests
- 32. Complaints regarding correction or deletion of information
- 33. Commission to facilitate correction or deletion of information
- 34. Application to the High Court by the Commission for correction or deletion of information

PART 4—PROMOTING ACCESS TO INFORMATION

- 35. Public agencies to make information publicly available
- 36. Public agencies to designate information officers

PART 5—ACCOUNTABILITY AND TRANSPARENCY COMMISSION

- 37. Functions and powers of the Commission
- 38. Guidelines and directions
- 39. Commission to maintain confidentiality
- 40. Annual report

PART 6—MISCELLANEOUS

- 41. Unlawful access
- 42. Relationship with other written laws
- 43. Defunct public agencies
- 44. Documents in certain public agencies
- 45. Protection in respect of actions for defamation or breach of confidence
- 46. Protection in respect of certain criminal actions
- 47. Indemnity
- 48. Regulations

ACT NO. 9 OF 2018

I assent.

J. K. KONROTE
President

[18 May 2018]

AN ACT

TO GIVE EFFECT TO SECTIONS 25 AND 150 OF THE CONSTITUTION OF THE REPUBLIC OF FIJI, TO FACILITATE THE RIGHT OF ACCESS TO INFORMATION HELD BY THE GOVERNMENT AND PUBLIC AGENCIES, TO CORRECT OR DELETE FALSE OR MISLEADING INFORMATION THAT DIRECTLY AFFECTS A PERSON, TO PROMOTE ACCESS TO INFORMATION AND FOR RELATED MATTERS

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 Information Act 2018.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette, provided however that the Minister may, by notice in the Gazette, prescribe different dates as to when this Act comes into force with respect to a public agency.

Interpretation

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

“Commission” means the Accountability and Transparency Commission established under section 121 of the Constitution;

“Constitution” means the Constitution of the Republic of Fiji;

“day” means any day other than a Saturday, Sunday or public holiday;

“directly affects” has the meaning given to that term in section 6(4);

“disciplined force” has the meaning given to that term under section 163(1) of the Constitution;

“exempt matter” means any matter or information that is exempt from disclosure under this Act;

“Government” means the Government of the State;

“Government company” means a company where all of the stock or shares in the capital is or are beneficially owned by the Government, whether such shares are held in the name of a Minister, public officer, nominee of the State or otherwise;

“information” means any material in any form, including a record, report, correspondence, opinion, recommendation, press statement, circular, order, logbook, agreement, sample, model, data or document such as —

- (a) a map, plan, drawing or photograph;
- (b) any paper or other material on which there is a mark, figure, symbol or perforation that is capable of being interpreted;
- (c) any article or material from which a sound, image or writing is capable of being reproduced with or without the aid of any other article or device; or
- (d) any article on which information has been stored or recorded either mechanically or electronically,

provided that the material directly affects a determination or decision made by a public agency in relation to the person making a request under section 6;

“information officer” means a person designated under section 36;

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

“permanent resident” means a person who has been granted a permanent residence permit by the permanent secretary responsible for immigration;

“personal information” means any information held in respect of a natural person, excluding any information that is held in respect of the person in the person’s capacity as an officer or employee of a public agency or as an independent contractor engaged by a public agency;

“public agency” means—

- (a) an office created by, or continued in existence under, the Constitution;
- (b) an office in respect of which the Constitution makes provision;
- (c) a commission established by, or continued in existence under, the Constitution or any written law;
- (d) a Government ministry, department, division or unit;
- (e) a disciplined force;
- (f) a court or tribunal established by, or continued in existence under, the Constitution or any written law;
- (g) a statutory authority;
- (h) a Government company; or
- (i) an office established by written law,

but does not include a public agency that is exempted under section 21 from the provisions of this Act; and

“State” means the Republic of Fiji.

Application

3. This Act binds the State in such manner, and subject to such limitations, as prescribed in this Act.

Objectives

4. The objectives of this Act are to—

- (a) give effect to the right of access to information under sections 25 and 150 of the Constitution;
- (b) recognise the right of a person to access information held by a public agency in accordance with the procedures prescribed in this Act;
- (c) ensure that a person is informed of the operations of a public agency, including, in particular, the rules and practices followed by the public agency in its dealings with members of the public; and
- (d) allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure that the information is correct, accurate, complete and not misleading.

PART 2—RIGHT TO INFORMATION

Division 1—Access to information

Right of access to information

5. Subject to this Act, a person may access any information held by a public agency.

Request for access to information

6.—(1) Subject to subsection (2), any person who is a natural person and is a citizen or a permanent resident of the State may request the Commission to make available to the person any information held by a public agency.

(2) Notwithstanding any other provision in this Act, the information requested by a person under subsection (1) must be information which—

- (a) directly affects the person making the application; and
- (b) comes into existence upon or after the commencement of this Act.

(3) A request made under subsection (1) must—

- (a) be made in the form prescribed by regulations made under this Act;
- (b) specify the public agency with which the information is held;
- (c) specify the particulars of the information requested or such other particulars as are necessary for the identification of the information requested;
- (d) subject to section 12, specify the form preferred by the person making the request for accessing the information;
- (e) comply with any other requirement of the Commission; and
- (f) be accompanied by such fee as prescribed by regulations made under this Act.

(4) For the purposes of this Act, information “directly affects” a person if the information is about the person or a determination or decision made by a public agency regarding the person making the request under this section, provided that information relating to the determination or decision of a public agency or an approval or authorisation granted by a public agency to a person does not directly affect another person (“second person”), or a determination or decision regarding the second person, merely because the public agency has denied or refused an application, approval, claim or request made by the second person.

Determination of request by the Commission

7. Subject to this Act, the Commission must, within 10 days from the receipt of the request, determine whether the request is to be accepted or refused.

Acceptance of request by the Commission

8. If the Commission accepts the request made under section 6, the Commission must, within 20 days from the receipt of the request—

- (a) forward the request to the relevant public agency;
- (b) direct that public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and

- (c) inform the person who made the request that the request has been accepted by the Commission and that the public agency has been directed to make the information available to that person.

Refusal of request by the Commission

9.—(1) The Commission must refuse a request made under section 6 if the Commission is satisfied that the—

- (a) information requested does not comply with the requirements in section 6(2);
- (b) request does not substantially comply with the requirements in section 6(3);
- (c) information requested is exempt from disclosure under section 20; or
- (d) information requested is held by a public agency that is exempt under section 21.

(2) If a request is refused under subsection (1), the Commission must, within 20 days from the receipt of the request, provide the person who made the request with a written statement of the decision and the reason for the refusal.

Transfer of request to another public agency

10.—(1) Notwithstanding section 12, where the Commission forwards a request to a public agency under section 8 or this section and the information to which the request relates is—

- (a) not held by that public agency but is, to the knowledge of that public agency, held by another public agency (“second public agency”); or
- (b) reasonably believed by that public agency to be more closely connected with the functions of the second public agency,

the public agency to which the request is forwarded must notify the Commission in writing within 10 days from the receipt of the request from the Commission.

(2) The Commission must, within 10 days from the receipt of the written notice under subsection (1)—

- (a) transfer the request to the second public agency;
- (b) direct the second public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and
- (c) inform the person who made the request that the request has been transferred to the second public agency and that the second public agency has been directed to make the information available to that person.

Urgent requests

11. Where the information requested in a request made under section 6 is strictly a matter of urgency concerning the life or liberty of a person, the particulars of the information specified in the request must, subject to this Act, be provided as soon as reasonably practicable from the receipt of the request and in the manner determined by the Commission.

*Division 2—Facilitation of request**Public agency to provide assistance and information*

12.—(1) A public agency to which a request has been forwarded by the Commission under section 8 or 10 must—

- (a) render effective and timely assistance;
- (b) provide, where reasonably practicable, all the particulars of the information specified in the request; and
- (c) provide access to the information, as soon as reasonably practicable and within 20 days from the receipt of the request from the Commission,

to the person who made the request under section 6.

(2) Notwithstanding subsection (1), a public agency may impose a charge for the expenses involved in making the requested information available.

(3) Pursuant to subsection (2), the public agency must notify the person who made the request of the charge required to be paid and the person must pay such charge in order to access the information.

(4) Any charge under subsection (2) must be reasonable and based on—

- (a) in the case of information contained in documents, the nature and estimated quantity of documents;
- (b) the estimated expenses involved in making the information available;
- (c) the estimated time for preparing the information; and
- (d) in the case of an urgent request under section 11, any expenses incurred pursuant to that urgent request.

Forms of access

13.—(1) Subject to subsection (2), any information which a public agency is directed under section 8 or 10 to make available to the person who has made the request may be made available in any of the following ways—

- (a) by giving the person a reasonable opportunity to inspect the information;
- (b) by giving the person a copy of the information;
- (c) in the case of information that is an article or material from which sounds or images are capable of being reproduced, by giving the person a copy of the article or material or by making arrangements for the person to hear those sounds or view those images; or

- (d) in the case of information that is a document where words are recorded in a way in which the words are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document.

(2) A public agency must make the information available in the form preferred by the person who made the request unless to do so would—

- (a) impair the efficient administration of the public agency;
- (b) be detrimental to the preservation of the information or, having regard to the physical nature of the information, would otherwise not be appropriate; or
- (c) involve an infringement of copyright, other than copyright owned by the State or a public agency, subsisting in matter contained in the information.

(3) If information cannot be made available in the form preferred by the person who made the request, the public agency—

- (a) may provide the information in another form as determined by the public agency; and
- (b) must give the person a written statement of the reason for not making the information available in the form preferred by the person who made the request.

(4) If the person who made the request has indicated that access to information be given in a particular form and access in that form is refused but given in another form, the person is not required to pay a charge in respect of the giving of access that is greater than the charge that the person would have been required to pay had access been given in the form preferred by the person who made the request.

(5) This section does not prevent a public agency from giving access to information in any other form agreed upon between the public agency and the person who made the request.

(6) A public agency must refuse to give access to information unless any charge payable in respect of dealing with the request, or giving access to the information, has been paid.

(7) In giving access to information, a public agency must take such measures as reasonably practicable to ensure that persons with disabilities are able to access such information in accordance with the rights of persons with disabilities as prescribed under section 42 of the Constitution.

No charge for requests for personal information

14. A charge, other than the prescribed fee, must not be made for making available personal information about the person who made the request unless the charge is a requirement under a written law that regulates information about that personal information.

*Information stored electronically etc***15. If—**

- (a) it appears to a public agency that a request relates to information of a kind that is not contained in a written document held by the public agency; and
- (b) the public agency may create a written document containing information of that kind by the use of equipment that is usually available to it for retrieving or collating stored information,

the public agency must deal with the request as if it were a request for a written document so created and the public agency is deemed to hold such a document.

*Deletion of exempt matter from documents***16. If—**

- (a) a request is made for access to a document containing any exempt matter;
- (b) it is reasonably practicable to give access to a copy of the document from which the exempt matter has been deleted; and
- (c) it appears to the public agency concerned, whether from the particulars of the information specified in the request or after consultation with the person who made the request, that the person would wish to be given access to such a copy,

the public agency must give access to the person accordingly.

Information provided out of time

17. Where a public agency fails to provide the person who made the request with the particulars of the information specified in the request within the period prescribed in section 12 or the extended period determined by the Commission in section 18, the information must be provided free of charge by the public agency to the person, and any payment of any charge paid to the public agency must be reimbursed to the person.

Extension of time

18.—(1) The Commission may extend the period prescribed in section 12 if—

- (a) the request is made to access a large quantity of documents, or necessitates a search through a large quantity of documents, and complying with the prescribed period would unreasonably interfere with the operations of the public agency;
- (b) consultations are necessary to make a determination on the request; or
- (c) the information cannot be reasonably provided to the person who made the request within the prescribed period.

(2) Any extension under subsection (1) must be reasonable having regard to the nature of the circumstances and must be for a further period not exceeding 90 days.

(3) The Commission must provide the person who made the request with a written notice of the extension as soon as reasonably practicable after a decision has been made to extend the prescribed period, and such notice must specify the period of the extension and state the reason for the extension.

Refusal of request by public agency

19.—(1) A public agency may refuse a request if the public agency is satisfied that—

- (a) all reasonable measures have been taken to locate the information requested and no such information exists or the information cannot be located; or
- (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public agency from its other operations.

(2) A public agency must refuse a request if the public agency is satisfied that the information requested is exempt matter.

(3) If a public agency refuses a request under subsection (1) or (2), the public agency must provide the Commission and the person who made the request with a written statement of the decision and the reason for the decision.

Division 3—Exemption from disclosure

Exemption from disclosure of information

20. Notwithstanding anything contained in this Act, the following information is exempt from disclosure and any request made under section 6 for such information must be refused by the Commission—

- (a) information, the disclosure of which would adversely affect the sovereignty, security or scientific or economic interests of the State;
- (b) information, the disclosure of which would lead to the incitement or commission of an offence;
- (c) information expressly forbidden to be published by any court of law or tribunal or which would constitute a contempt of court;
- (d) information, the disclosure of which would cause a breach of the privileges of Parliament or a committee or subcommittee of Parliament;
- (e) information that is subject to legal professional privilege;
- (f) information available to a person in the exercise of the person's fiduciary duty, unless the Commission is satisfied that the disclosure of such information is in the public interest;
- (g) information received in confidence from a foreign government or an international organisation;
- (h) information, the disclosure of which would endanger the life or safety of any person or identify the source of information or assistance given in confidence for the purposes of law enforcement or security;

- (i) information which would impede the process of investigation, apprehension or prosecution of an alleged offender;
- (j) Cabinet documents, including records of deliberations of meetings or decisions of Cabinet;
- (k) information which relates to personal information, the disclosure of which has no relationship to or does not affect any public activity or interest, or which would cause the unwarranted invasion of privacy of the person, unless the Commission is satisfied that the disclosure of such information is in the public interest;
- (l) information which is classified by Cabinet as an official or State secret and certified in writing by the Secretary to Cabinet;
- (m) information, the disclosure of which would endanger or harm any protected site or the environment;
- (n) a trade secret, business know-how, commercially sensitive information and proprietary information relating to the intellectual property of a business; and
- (o) any other information, the disclosure of which, the Commission deems is not in the public interest.

Exempt public agencies

21.—(1) The Minister may, following consultation with the Commission, exempt a public agency from the provisions of this Act by notice in the Gazette and the exemption will take effect on the date prescribed in the notice.

(2) The Minister may, following consultation with the Commission, revoke an exemption made under subsection (1) by notice in the Gazette and the revocation will take effect on the date prescribed in the notice.

Division 4—Failure to provide access

Complaint to the Commission

22.—(1) If a public agency fails or refuses to provide any person with the information which the public agency has been directed by the Commission to make available to that person, that person may lodge a complaint with the Commission.

(2) The Commission, upon receipt of a complaint under subsection (1), may require the public agency to provide a written explanation for the failure or the refusal to provide the information.

(3) A public agency that is required by the Commission under subsection (2) to provide a written explanation must provide the written explanation to the Commission within 10 days from the receipt of the requirement from the Commission to provide the written explanation.

Commission to facilitate access to information

23. Subject to section 19, upon receipt of the written explanation from a public agency under section 22, the Commission may undertake such steps as the Commission deems necessary, including holding meetings with the public agency and the person who made the request for the information, to facilitate the access to the information which has been requested by the person.

*Division 5—Application and appeal**Application to the High Court by the Commission*

24.—(1) If the Commission, after receipt of the written explanation from a public agency under section 22 and after undertaking such steps as necessary to facilitate access to the information, is satisfied that the public agency has failed or refused to provide access to the information contrary to this Act, the Commission may make an application to the High Court for an order requiring the public agency to provide access to the information.

(2) The High Court must, upon receipt of an application from the Commission under subsection (1), make a determination on the application within 30 days from the date of the application.

Appeal to the High Court against the Commission

25.—(1) Any person who is aggrieved by a decision of the Commission under this Act has the right to appeal that decision to the High Court on a question of law.

(2) The High Court, upon receipt of an appeal under subsection (1), must make a determination on the appeal within 30 days from the date of the appeal.

**PART 3—RIGHT TO CORRECTION AND DELETION OF INCORRECT
PERSONAL INFORMATION**

Request for correction or deletion of personal information

26.—(1) If—

- (a) whether under this Act or any other written law, personal information contained in a document has been made available to a person by a public agency; and
- (b) the person claims that, or in the person's opinion, the personal information in the document is incorrect, inaccurate, incomplete or misleading,

the person may request the public agency to—

- (i) correct the document;
- (ii) delete incorrect, inaccurate or misleading information; or
- (iii) annotate the document.

(2) A request under subsection (1) must—

- (a) be in writing;

- (b) specify the particulars that are reasonably necessary to enable the document to be identified;
- (c) specify the particulars that the person claims are necessary to correct, or delete information in, the document; and
- (d) specify a postal address to which notices under this Part are to be sent.

Determination of request for correction or deletion of personal information

27. When a public agency receives a request under section 26, the public agency must, within 10 days from the receipt of the request, determine whether the request is to be accepted or refused.

Acceptance of request for correction or deletion of personal information

28.—(1) If the public agency accepts the request made under section 26, the public agency must, in accordance with the particulars of the request—

- (a) correct the document;
- (b) delete incorrect, inaccurate or misleading information; or
- (c) annotate the document,

within 30 days from the receipt of the request.

(2) The public agency may include written comments on the document when annotating personal information under this section.

Refusal of request for correction or deletion of personal information

29.—(1) A public agency may refuse a request under section 26, if—

- (a) the public agency is satisfied that the information in the document is correct, accurate, complete and not misleading;
- (b) the public agency is satisfied that the request contains particulars that are incorrect, inaccurate, incomplete or misleading; or
- (c) the procedures for correcting or deleting the information in the document are specified by or provided for under any other written law, whether or not the correction or deletion of the information in the document is subject to a fee or charge.

(2) If a request is refused under subsection (1), the public agency must, within 20 days from the receipt of the request, provide the person with a written statement of the decision and the reason for the refusal of the request.

Notations to be included in documents

30.—(1) If a public agency has refused to correct or delete information in a document under section 29, the person may, by notice in writing, request the public agency to include in that document a notation—

- (a) specifying the particulars in which the person who made the request claims that the information is incorrect, inaccurate, incomplete or misleading; and

- (b) if the person claims that the information is incorrect, inaccurate, incomplete or misleading, setting out such information as the person claims is necessary to ensure that the information is correct, accurate, complete and not misleading.

(2) A public agency must—

- (a) comply with the request made under subsection (1); and
- (b) inform the person who made the request in writing of the nature of the notation.

(3) If a public agency discloses to any other person or public agency any information contained in a document to which a request under this section relates, the public agency—

- (a) must provide to that other person or public agency, when the information is disclosed, a statement—
 - (i) that the person to whom the information relates claims that the information is incorrect, inaccurate, incomplete or misleading; and
 - (ii) setting out particulars of the notation included in the document under this section; and
- (b) may include in the statement the reason for the refusal by the public agency to correct or delete the information in the document in accordance with the notation.

Incomplete requests

31. In relation to section 26, the public agency must—

- (a) accept a request even if the request does not contain sufficient particulars to enable the document to be identified; and
- (b) take reasonable steps to assist the person in providing such particulars.

Complaints regarding correction or deletion of information

32.—(1) If a public agency fails or refuses to comply with this Part, the person who made the request under section 26 may lodge a complaint with the Commission.

(2) The Commission, upon receipt of a complaint under subsection (1), may require the public agency to provide a written explanation for the failure or the refusal to correct or delete the information.

(3) A public agency that is required by the Commission under subsection (2) to provide a written explanation must provide the written explanation to the Commission within 10 days from the receipt of the requirement from the Commission to provide the written explanation.

Commission to facilitate correction or deletion of information

33. Upon receipt of the written explanation from a public agency under section 32, the Commission may undertake such steps as the Commission deems necessary, including holding meetings with the public agency and the person who made the request for the correction or deletion of the information, to facilitate the correction or deletion of the information which has been requested by the person.

Application to the High Court by the Commission for correction or deletion of information

34.—(1) If the Commission, after receipt of the written explanation from a public agency under section 32 and after undertaking such steps as necessary to facilitate correction or deletion of the information, is satisfied the public agency has failed or refused to correct or delete the information contrary to this Act, the Commission may make an application to the High Court for an order requiring the public agency to correct or delete the information.

(2) The High Court must, upon receipt of an application from the Commission under subsection (1), make a determination on the application within 30 days from the date of the application.

PART 4—PROMOTING ACCESS TO INFORMATION

Public agencies to make information publicly available

35. A public agency must, within 12 months from the application of this Act to that public agency, ensure that the following information is available upon request to any member of the public—

- (a) the structure, functions and responsibilities of the public agency;
- (b) a list of the entities falling under the public agency, including the location of the public agency, opening hours and subjects handled;
- (c) the title, business address and contact details of the head of the public agency and the information officer;
- (d) a directory of the public agency's officers and employees and a brief description of the powers and duties of the officers and employees;
- (e) the particulars of the public agency's finances;
- (f) the types of documents held by the public agency, including the categories of documents that are available—
 - (i) for inspection only;
 - (ii) for purchase; or
 - (iii) free of charge;
- (g) all manuals and similar types of documents that contain policies, principles, rules or guidelines in accordance with which the public agency makes decisions or recommendations;

- (h) the process to be followed by members of the public who wish to obtain information from the public agency or correct or delete personal information held by the public agency; and
- (i) such other information as may be prescribed by the Commission by notice in the Gazette,

provided that the public agency is not required to make exempt matter available.

Public agencies to designate information officers

36.—(1) A public agency must, within 20 days from the application of this Act to that public agency, designate an employee of that public agency to be the information officer of that public agency to facilitate and process requests for access to information and correction and deletion of information.

(2) The information officer must —

- (a) promote, within the respective public agency, best practices in relation to —
 - (i) the right of access to information, its importance and the role of the information officer in facilitating that right;
 - (ii) the right to correct and delete information that is incorrect, inaccurate, incomplete or misleading; and
 - (iii) record management and the archiving and disposal of records;
- (b) serve as a central contact for receiving applications under this Act;
- (c) assist persons seeking information or the correction or deletion of information under this Act;
- (d) receive complaints under this Act; and
- (e) carry out any other functions as set out in this Act or any other written law.

PART 5— ACCOUNTABILITY AND TRANSPARENCY COMMISSION

Functions and powers of the Commission

37. The Commission has such power, authority, duty and function as prescribed in this Act.

Guidelines and directions

38.—(1) The Commission may from time to time issue guidelines and directions for the performance of the Commission's functions and for the handling of requests for access to information.

(2) In addition to the powers and functions prescribed in this Act, the Commission is also responsible for —

- (a) publishing guidelines on minimum standards and best practices for public agencies to proactively publish information and make information publicly available;

- (b) publishing guidelines to public agencies on information and records management, including the manner in which access to information can be made more efficient by public agencies;
- (c) publishing guidelines on the creation, management and disposal of records and, subject to the availability of resources, the digitising of records and use of the internet as far as possible to publish information by public agencies;
- (d) training information officers and other employees of public agencies on the right to information and the effective implementation of this Act;
- (e) promoting public awareness in relation to the application of this Act; and
- (f) disseminating information to the public in relation to the framework and procedures for the exercise of a person's rights under this Act, including publishing material in relation to exempt matter.

Commission to maintain confidentiality

39.—(1) Any member, staff, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act, unless—

- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function of the Commission under this Act;
- (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of civil or criminal proceedings or proceedings under this Act or any other written law; or
- (c) it is necessary to do so for reporting a breach of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Annual report

40. The annual report published by the Commission must—

- (a) include a report on the exercise of the Commission's functions under this Act during the year; but
- (b) not contain the names of any person making a request under this Act.

PART 6—MISCELLANEOUS

Unlawful access

41. A person who, in order to gain access to personal information of another person, knowingly deceives or misleads the Commission or any public agency to provide such information commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Relationship with other written laws

42. This Act does not affect the operation of any written law that—

- (a) requires information held by a public agency to be made available;
- (b) enables a person to obtain access to information held by a public agency; or
- (c) enables a person to ensure that the person’s personal information held by a public agency is accurate, complete and not misleading.

Defunct public agencies

43. Any information held by a public agency that has ceased to exist is deemed to be held—

- (a) if the former public agency’s functions have been transferred to another public agency, by the other public agency;
- (b) if the former public agency’s functions have been transferred to 2 or more other public agencies, by the public agency to which the information most closely relates; or
- (c) if the former public agency’s functions have not been transferred to another public agency, by such other public agency to which the information most closely relates as determined by the Commission.

Documents in certain public agencies

44. Any information held by—

- (a) the National Archives of Fiji;
- (b) the Fiji Museum;
- (c) a library of a public agency; or
- (d) any other prescribed public agency,

but that has been produced by a public agency other than those in paragraphs (a) to (d) are deemed to be held by the other public agency.

Protection in respect of actions for defamation or breach of confidence

45.—(1) If access to information is given pursuant to this Act, and the person providing access to the information believes in good faith that this Act permits or requires the access to be given—

- (a) no action for defamation or breach of confidence lies against—
 - (i) the Commission;
 - (ii) the public agency;
 - (iii) an employee or officer of the public agency or the information officer of the public agency; or

(iv) a person acting under the direction of the Commission, the public agency or information officer of the public agency,

by reason of the giving of access to the information; and

(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the producer of the information or any other person by reason of the producer or other person having supplied the information to the public agency.

(2) The giving of access to information pursuant to this Act is not to be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information or its contents by the person to whom access is given.

Protection in respect of certain criminal actions

46. If access to a document is given pursuant to this Act, and the person by whom the access is made believes in good faith that this Act permits or requires the access to be given, neither the person who provides access to the information nor any other person concerned in giving access to the information commits an offence merely as a result of the giving of access to the information.

Indemnity

47. No matter or thing done by—

(a) the Commission;

(b) a public agency; or

(c) any person acting on behalf, of or under the direction, of the Commission or a public agency,

will, if the matter or thing was done in good faith for the purposes of this Act, subject the Commission, the head of the public agency or any person so acting, personally to any action, liability, claim or demand.

Regulations

48. The Minister may, in consultation with the Commission, make regulations prescribing 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.

Passed by the Parliament of the Republic of Fiji this 16th day of May 2018.

Annexure D - Code of Conduct Bill 2018

CODE OF CONDUCT BILL 2018
(BILL No. 33 OF 2018)

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BILL NO. 33 OF 2018**A BILL**

FOR AN ACT TO ESTABLISH A CODE OF CONDUCT AND FOR OTHER MATTERS
AS PRESCRIBED UNDER SECTION 149 OF THE CONSTITUTION OF THE
REPUBLIC OF FIJI

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 Code of Conduct Act 2018.

(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—

“appointing authority” means a person or entity which is responsible for appointing or advising on the appointment of any person to whom a Code of Conduct applies or a person or entity which has the authority to take disciplinary action against, or remove from office, any person to whom a Code of Conduct applies;

“child” means a biological child, an adopted child or a stepchild who is—

- (a) under the age of 18 years; or
- (b) over the age of 18 years and is dependent on his or her parent for support;

“civil service” has the same meaning given to the term ‘public service’ under section 163(1) of the Constitution;

“Code of Conduct” means a Code of Conduct contained in schedules 1 to 5;

“Commission” means the Accountability and Transparency Commission established under section 121 of the Constitution;

“complainant” means a person who has made a complaint;

“complaint” means a complaint made to the Commission under section 10;

“Constitution” means the Constitution of the Republic of Fiji;

“detrimental action” includes action causing, comprising or involving—

- (a) injury, damage or loss;
- (b) intimidation or harassment;
- (c) adverse discrimination, disadvantage or adverse treatment in relation to a person’s career, profession, employment, trade or business;
- (d) any disciplinary action;
- (e) dismissal or having his or her services or employment dispensed with or otherwise terminated; or
- (f) a reprisal;

“disciplined force” has the same meaning given to that term under section 163(1) of the Constitution;

“FICAC” means the Fiji Independent Commission Against Corruption established by the Fiji Independent Commission Against Corruption Act 2007 and continued in existence by section 115 of the Constitution;

“FNPF” means the Fiji National Provident Fund;

“judicial officer” includes the Chief Justice, a Judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, a Judge of the High Court, a Master of the High Court, the Chief Registrar, the Chief Magistrate, a Magistrate, other judicial officers and members of tribunals appointed by or on the advice of the Judicial Services Commission;

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

“property” means real property and personal property of every description whether tangible or intangible, whether situated inside or outside Fiji, and includes—

- (a) cash in a bank, building society, credit union or other financial institution;
- (b) an interest of any kind in property; and
- (c) shares or interests in any business, company, partnership, trust or scheme;

“prosecuting authority” means FICAC, provided however that for any complaint against the Commissioner or the Deputy Commissioner of FICAC, the prosecuting authority is the Director of Public Prosecutions;

“public official” means the holder of the following offices—

- (a) an office created by, or continued in existence, under the Constitution;
- (b) an office in respect of which the Constitution makes provision;
- (c) an officer or employee of any statutory authority or of any commission established by, or continued in existence, under the Constitution;
- (d) an office in the civil service or the disciplined force or a non-judicial office in the Judiciary; or
- (e) an office established by written law,

but does not include a judicial officer, the President, the Prime Minister, members of Parliament, a member of a statutory authority, or a member of a commission established by, or continued in existence, under the Constitution, or any person to whom schedule 1, 2, 3 or 4 applies;

“spouse” includes a *de facto* partner; and

“statement” means a statement made under section 26(1).

PART 2—ACCOUNTABILITY AND TRANSPARENCY COMMISSION

Functions and powers of the Commission

3. The Commission has such power, authority, duty and function as prescribed in this Act.

Guidelines and directions

4. The Commission may from time to time issue guidelines and directions for the performance of the Commission’s functions and for the handling of complaints.

Commission to maintain confidentiality

5.—(1) Any member, staff, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act, unless —

- (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function of the Commission under this Act;
- (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of civil or criminal proceedings or proceedings under this Act or any other written law;
- (c) it is necessary to do so for reporting a suspected offence to the prosecuting authority, or assisting the prosecuting authority in its investigations; or
- (d) it is necessary to do so for reporting a breach of the Code of Conduct by any person to the appointing authority of that person.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Annual report

6.—(1) The Commission must, as soon as practicable after the end of each financial year, publish an annual report on the exercise of the Commission's functions under this Act during the year, and must submit a copy to the Minister who must table the annual report in Parliament.

(2) The annual report published by the Commission under subsection (1) must not contain the names of any complainant or of any person the subject of a complaint, or specific details of any particular complaint.

PART 3—CODE OF CONDUCT*Code of Conduct*

7.—(1) In accordance with section 149(a) of the Constitution, the Codes of Conduct contained in schedules 1 to 5 are hereby established.

(2) The Code of Conduct contained in Schedule 1 applies to the President, Prime Minister and all Ministers.

(3) The Code of Conduct contained in Schedule 2 applies to the Speaker, Deputy Speaker and all members of Parliament.

(4) The Code of Conduct contained in Schedule 3 applies to all judicial officers.

(5) The Code of Conduct contained in Schedule 4 applies to all members of a commission established by, or continued in existence, under the Constitution and all members of a statutory authority or a board of a statutory authority.

(6) The Code of Conduct contained in Schedule 5 applies to all public officials.

(7) For the purposes of this section and Schedule 1, “Minister” includes an Assistant Minister and an Acting Minister.

Compliance

8. Every person to whom a Code of Conduct applies has a duty to conduct himself or herself in accordance with the Code of Conduct and to keep himself or herself informed of the provisions of the relevant Code of Conduct and any amendment to such Code of Conduct.

PART 4—MONITORING COMPLIANCE AND ENFORCEMENT
OF CODE OF CONDUCT

Monitoring compliance

9.—(1) The Commission monitors compliance with a Code of Conduct by investigating any complaint made to the Commission under this Act concerning an alleged or suspected non-compliance with a Code of Conduct by any person to whom a Code of Conduct applies.

(2) The investigation of any complaint made to the Commission concerning an alleged or suspected non-compliance with a Code of Conduct by any person to whom a Code of Conduct applies must be done in accordance with the procedures set out in this Act.

Complaints

10.—(1) Any person may make a complaint to the Commission concerning an alleged or suspected non-compliance with the Code of Conduct by any person to whom a Code of Conduct applies.

(2) A complaint under subsection (1) must be made in writing.

(3) The Commission must neither accept nor investigate any complaint from an anonymous person.

(4) Any person who seeks to make a complaint against a member of the Commission for an alleged or suspected non-compliance with the Code of Conduct by that member, may make a complaint to the Chief Justice.

(5) The Chief Justice, upon receipt of any complaint under subsection (4), must investigate any such complaint in accordance with the procedures set out in this Act and the powers vested upon the Commission under this Act.

(6) For the purposes of subsections (4) and (5), unless the context otherwise requires, the powers vested in the Commission by virtue of this Act are deemed to be vested in the Chief Justice and any reference made in this Act to the Commission must be construed as a reference to the Chief Justice.

(7) The Chief Justice may appoint a person who has the appropriate knowledge, skills and experience to carry out the functions or exercise the powers under this section.

Further information and verification by the complainant

11.—(1) Upon receipt of a complaint, the Commission must notify the complainant in writing of the receipt of the complaint as soon as practicable.

(2) Upon receipt of the complaint, the Commission may require the complainant to provide such further information and details about the complaint as the Commission deems appropriate.

(3) The Commission must verify that every complainant is a person, including verification of the identification and address of the complainant.

(4) The Commission may require the complainant to verify the complaint or any matters referred therein by way of a statutory declaration.

Investigation by the Commission

12.—(1) The Commission must investigate any complaint received by the Commission, unless the Commission is of the opinion that—

- (a) the complaint is trivial, frivolous, vexatious, lacking in substance or not made in good faith;
- (b) the complaint is malicious or is politically motivated or is made for the purpose of discrediting, defaming, or causing reputational damage to, the person the subject of the complaint;
- (c) the complainant has disclosed the nature, substance or details of his or her complaint or has disclosed the name or office of the person the subject of the complaint to any other person or entity apart from the Commission;
- (d) there has been such a delay between the conduct complained of and the complaint to the Commission as to render an investigation unreasonable;
- (e) the subject matter of the complaint does not come within the scope of this Act;
- (f) further information and verification as required by the Commission are not provided by the complainant;
- (g) the subject matter of the complaint has been the subject of a previous complaint that has been dismissed by the Commission; or
- (h) an investigation of the complaint would be inappropriate or inexpedient.

(2) The Commission may, without having to seek any explanation from the person the subject of the complaint, summarily dismiss a complaint for any reason set out in subsection (1).

(3) If the Commission summarily dismisses a complaint under this section, then the Commission must notify the complainant in writing and provide reasons for its decision.

(4) If the Commission believes that a complaint which has been summarily dismissed under this section was malicious or was politically motivated against a person the subject

of the complaint or was made for the purpose of discrediting or defaming, or causing reputational damage to, a person the subject of the complaint, then the Commission must refer the complaint to the prosecuting authority for the prosecuting authority to institute such criminal proceeding under section 13 or under any other written law against the complainant as the prosecuting authority may deem appropriate.

Malicious complaints

13. Any person who makes a complaint which is malicious or is politically motivated against the person the subject of the complaint or is made for the purpose of discrediting or defaming, or causing reputational damage to, the person the subject of the complaint commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Commission to require explanation

14.—(1) If the Commission, after consideration of a complaint, makes a decision under section 12 not to summarily dismiss a complaint, the Commission must refer the substance of the complaint in writing to the person the subject of the complaint, and must require that person to provide a written explanation of the matters referred to in the complaint within such time, not less than 14 days, as specified by the Commission.

(2) The Commission may, after receipt and consideration of the written explanation from the person the subject of the complaint, summarily dismiss a complaint for any of the reasons set out in section 12(1) without the need for any further investigation.

(3) If the Commission summarily dismisses a complaint under this section, then the Commission must notify the complainant in writing and provide reasons for its decision, and must also notify the person the subject of the complaint.

(4) If the Commission believes that a complaint which has been summarily dismissed under this section was malicious or was politically motivated against a person the subject of the complaint or was made for the purpose of discrediting or defaming, or causing reputational damage to, a person the subject of the complaint, then the Commission must refer the complaint to the prosecuting authority for the prosecuting authority to institute such criminal proceeding under section 13 or under any other written law against the complainant as the prosecuting authority may deem appropriate.

Right to access material

15. Subject to section 16, when carrying out an investigation of a complaint which has not been summarily dismissed by the Commission under this Act, the Commission—

- (a) is entitled to full access at all convenient times to all minutes, records, contracts, documents, books, accounts and other material of any Government ministry or department, that relate to and are relevant to the investigation; and
- (b) may take extracts from, or make copies of, any such material.

Disclosure of certain matters not to be required

16.—(1) Where a person asserts that the giving of any information, the answering of any question or the production of any document, paper or thing is likely to—

- (a) prejudice the security, defence or international relations of the State (including the State's relations with any other State or country or with any international organisation); or
- (b) involve the disclosure of proceedings, deliberations or decisions of Cabinet or of any committee of Cabinet which relate to matters of a secret or confidential nature and the disclosure of which would be injurious to the public interest,

that person must produce a certificate signed by the Attorney-General certifying the matters specified in paragraph (a) or (b).

(2) Upon the production of a certificate referred to in subsection (1), the Commission must not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced.

(3) The Commission must not require production of any document, paper or thing or require answers to any question from any person if a written law authorises or requires the withholding of any document, paper or thing or the refusal to answer any question by that person.

(4) If the person the subject of a complaint is the Attorney-General, then a certificate under subsection (1) must be signed by the Prime Minister.

Proceedings of the Commission

17.—(1) Any investigation of any complaint by the Commission under this Act must be conducted in private.

(2) Any member, staff, employee, agent or consultant of the Commission must not disclose or report to any person or entity any details concerning an investigation of any complaint by the Commission under this Act, including the name of the complainant and the name of the person the subject of a complaint.

(3) Any person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(4) Nothing in this Act compels the Commission to hold any hearing and no person, other than the person whose conduct is being investigated, is entitled as of right to be heard by the Commission.

Decision after investigation

18.—(1) Upon completing its investigation into any complaint which has not been summarily dismissed by the Commission under this Act, the Commission must, by written notice, either—

- (a) dismiss the complaint and provide a copy of the written notice to the complainant and the person the subject of the complaint; or

- (b) refer the complaint to the prosecuting authority and the appointing authority of the person the subject of the complaint if the Commission decides that the conduct of that person warrants further investigation, and must provide a copy of the written notice to the complainant and the person the subject of the complaint.
- (2) If the Commission refers a complaint under subsection (1)(b)—
 - (a) the appointing authority of the person the subject of the complaint may take such disciplinary action against that person as the appointing authority may deem appropriate; and
 - (b) the prosecuting authority may institute such criminal proceedings against the person the subject of the complaint as the prosecuting authority may deem appropriate.

Effect of investigation by the Commission

19. The result of any investigation under this Act by the Commission is not a bar to proceedings in respect of the same conduct under any other written law.

PART 5—PROTECTION OF COMPLAINANTS

Immunity for making complaints

20. Subject to the provisions of this Act, a person who makes a complaint under this Act concerning an alleged or suspected non-compliance with a Code of Conduct by any person—

- (a) incurs no civil or criminal liability for doing so; and
- (b) is not, for doing so, liable—
 - (i) to any disciplinary action; or
 - (ii) for any breach of duty of secrecy or confidentiality (whether or not imposed by a written law) applicable to that person.

Offence of taking detrimental action

21.—(1) Any person who takes or threatens to take any detrimental action against another person because anyone has made, or intends to make, a complaint under this Act for an alleged or suspected non-compliance with a Code of Conduct by any person commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(2) Any person who—

- (a) attempts to commit an offence under subsection (1); or
- (b) intending that an offence under subsection (1) be committed, incites another person to commit that offence,

commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Order preventing detrimental action

22.—(1) Any person who believes that detrimental action has been taken or may be taken against him or her in reprisal for a complaint made by him or her under this Act to the Commission may make a report to the Commission.

(2) If the Commission, upon receipt of a report under subsection (1) is satisfied that a person has taken or intends to take detrimental action against the person making the report under subsection (1) in reprisal for a complaint made to the Commission, the Commission may make an application to the High Court for an—

- (a) order that the person who took the detrimental action remedy that action; or
- (b) injunction and such other orders against the person who has taken or intends to take the detrimental action in such terms as the High Court thinks appropriate.

Protection of identity

23.—(1) A person must not disclose any information that might identify or tend to identify anyone as a person who made a complaint under this Act unless—

- (a) the person who made the complaint under this Act consents to the disclosure of information that might identify or tend to identify him or her;
- (b) the disclosure is made in accordance with an order of a court; or
- (c) the disclosure is made for the purposes of any criminal proceeding by the prosecuting authority or for the purposes of any disciplinary action by an appointing authority.

(2) Any person who discloses any information contrary to subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person must not disclose any information that might identify or tend to identify anyone as a person the subject of a complaint under this Act unless—

- (a) the person the subject of the complaint under this Act consents to the disclosure of information that might identify or tend to identify him or her;
- (b) the disclosure is made in accordance with an order of a court; or
- (c) the disclosure is made for the purposes of any criminal proceeding by the prosecuting authority or for the purposes of any disciplinary action by an appointing authority.

(4) Any person who discloses any information contrary to subsection (3) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Protection forfeited in certain cases

24. Any person who has made a complaint under this Act and—

- (a) who fails, without reasonable excuse, to assist the Commission in investigating the complaint in any way, including failing to provide the Commission with any information requested by the Commission;
- (b) who discloses the details of his or her complaint to any other person or entity other than the Commission;
- (c) the substance of the complaint was malicious or was politically motivated against the person the subject of the complaint or was made for the purpose of discrediting or defaming, or causing reputational damage to, the person the subject of the complaint; or
- (d) who breaches any provision of this Act,

forfeits the protection given to that person under this Part.

PART 6—DECLARATION OF INCOME, ASSETS, OTHER INTERESTS AND LIABILITIES

Application of this Part

25.—(1) This Part applies to all persons holding the positions prescribed in Schedule 6, including any person acting in any such position.

(2) The Minister may, by regulations, amend Schedule 6 and prescribe other public officials or civil servants or members or employees of statutory authorities and other State entities to which this Part applies.

Statement of income, assets, other interests and liabilities

26.—(1) A person to whom this Part applies must provide the Commission, in the prescribed form and in accordance with the guidelines or a directive issued by the Commission, with a statement setting out, to the best of the person's knowledge, the matters specified in subsection (2) in respect of that person and his or her spouse and any child—

- (a) within 3 months after the commencement of this Act; or
- (b) within 3 months after being appointed to a position prescribed in Schedule 6,

whichever is the later, and thereafter, while he or she remains the holder of an office prescribed in Schedule 6, on or before 31 January of each year, a statement as at 31 December of the previous year.

(2) The matters referred to in subsection (1) are—

- (a) total assets whether in Fiji or abroad (including money and other property but excluding any FNPF or superannuation fund whether in Fiji or abroad) owned by or in possession of each of them;

- (b) the total income whether in Fiji or abroad, and the source of such income, received by each of them during the period to which the statement relates;
- (c) any directorship or other office in a corporation or other organisation whether in Fiji or abroad held by each of them;
- (d) any business transaction over an amount prescribed by regulations whether in Fiji or abroad entered into by each of them during the period to which the statement relates whether in Fiji or abroad;
- (e) any asset acquired by each of them whether in Fiji or abroad during the period to which the statement relates; and
- (f) the liabilities incurred, or discharged, by each of them whether in Fiji or abroad during the period to which the statement relates, and the amount of each such liability (including any outstanding credit card balance as at the date of the statement).

(3) Regulations made under this Act may specify items which are minor items for which it will be sufficient compliance with this section if the statement shows the general nature of such items.

(4) The Commission may by written notice require a person to whom this Part applies to explain or give details or further details of any matter relating to the statement including—

- (a) items mentioned in subsection (2);
- (b) omissions or apparent omissions; or
- (c) discrepancies in the statement or between it and other statements or other information available to the Commission.

(5) Subject to section 27, statements and any other information given to the Commission under this section must not be revealed to any person to whom this Part applies except—

- (a) by the Commission, or any other member of the Commission's staff authorised by the Commission, in the course of the Commission's duties with respect to any proceedings or preparatory to proceedings under this Act; or
- (b) under an order of a court.

(6) Any person who contravenes subsection (5) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Disclosure of statement

27.—(1) Any person or entity may, upon making a written request to the Commission and upon payment of such fees as may be prescribed by regulations, obtain a copy of a statement and any other information given to the Commission by any person to whom this Part applies.

(2) Upon receipt of a written request under subsection (1), the Commission must within 14 days of the receipt of the request, provide to the person or entity making the request a copy of a statement and any other information given to the Commission with respect to the person to whom this Part applies whose statement is being sought by the person or entity making the request.

(3) Any person or entity who obtains a copy of a statement given to the Commission by any person to whom this Part applies must not publish or broadcast by any medium whatsoever or make available to the media in any way whatsoever the contents of the statement obtained under this section.

(4) Any person or entity who contravenes subsection (3) commits an offence and is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; and
- (b) in the case of an entity, a fine not exceeding \$50,000.

(5) If an entity contravenes subsection (3), an officer also commits the offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both, whether or not the entity has been prosecuted or convicted, if the officer fails to prove that he or she had taken all reasonable steps to prevent the commission of the offence by the entity.

(6) For the purposes of subsection (5), in determining whether things done or omitted to be done by an officer constitute reasonable steps, a court must have regard to—

- (a) what the officer knew, or ought to have reasonably known, about the commission of the offence by the entity;
- (b) whether the officer was in a position to influence the conduct of the entity in relation to the commission of the offence; and
- (c) any other relevant matter.

(7) For the purposes of subsections (5) and (6), “officer” means a director, officer, employee, agent or consultant of the entity.

Failure to provide statement

28. Any person to whom this Part applies who—

- (a) fails without reasonable excuse (the proof of which is upon him or her) to give to the Commission a statement in accordance with section 26 or to give any explanation or details required under section 26; or
- (b) knowingly, recklessly or negligently gives a statement or explanation required under section 26, or any other detail, that is false, misleading or incomplete in a material particular,

commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

PART 7—MISCELLANEOUS

Regulations

29. The Minister may, in consultation with the Commission, make regulations prescribing 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 7(2))

CODE OF CONDUCT FOR PRESIDENT, PRIME MINISTER AND MINISTERS

1. Observance of this Code

- 1.1 A person to whom this Code applies has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments.

2. Conflicts of Interest

- 2.1 So as to protect and uphold the public interest, a person to whom this Code applies must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between his or her personal interests and his or her official duties.
- 2.2 A person to whom this Code applies should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
- 2.3 A person to whom this Code applies must declare any such conflict of interest in writing to the appointing authority as soon as possible after becoming aware of the conflict.
- 2.4 A person to whom this Code applies is individually responsible for preventing conflicts of interest.
- 2.5 A conflict of interest arises from a situation in which the person to whom this Code applies has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
- 2.6 Since the person to whom this Code applies is usually the only person who knows whether he or she is in that situation, the person to whom this Code applies has a personal responsibility to—
- (a) be alert to any actual or potential conflict of interest; and
 - (b) take steps to avoid such conflict.

3. Divestment of Personal Interests

- 3.1 A person to whom this Code applies, upon assuming office, must take transparent steps to deal with the financial and other interests of himself or herself, or his or her spouse or child, which could create the impression of a material conflict with his or her public duties.

4. Improper Advantage and Misuse of Official Position

- 4.1 A person to whom this Code applies should never take undue advantage of his or her position for his or her private interest.

- 4.2 A person to whom this Code applies must undertake, upon assuming office, not to use his or her position improperly to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public.
- 4.3 A person to whom this Code applies should not offer or give any advantage in any way connected with his or her position, unless lawfully authorised to do so.

5. Confidentiality

- 5.1 Having due regard for the right of access to official information, a person to whom this Code applies has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her appointment and during the course of his or her official duties.
- 5.2 A person to whom this Code applies must undertake, upon assuming office, not to use any information obtained in the course of his or her official duties so as to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public, whether during the course of his or her appointment or upon resignation, retirement or dismissal from office.

6. Improper Use of Public Resources

- 6.1 A person to whom this Code applies must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.
- 6.2 A person to whom this Code applies must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.
- 6.3 A person to whom this Code applies must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any remuneration or allowance he or she makes on the public purse.
- 6.4 A person to whom this Code applies must regard the skills and abilities of civil servants as a public resource to be utilised appropriately.

7. Gifts and Benefits

- 7.1 A person to whom this Code applies must not solicit, encourage or accept gifts, benefits or favours either for himself or herself or for another person in connection with performing or not performing his or her official duties, contrary to any gift and benefit policy issued by the person's appointing authority.

8. Susceptibility to Influence by Others

- 8.1 A person to whom this Code applies should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

9. Lobbyists

- 9.1 A person to whom this Code applies must handle any dealings with lobbyists so as to avoid giving rise to a conflict of interest between his or her public duty and personal interests.

10. Directorships and Other Forms of Employment

- 10.1 A person to whom this Code applies must not engage in any outside employment that involves a substantial commitment of time and effort such as to interfere with his or her official duties.
- 10.2 Except with the express approval of the appointing authority, a person to whom this Code applies will resign or decline directorships of public or private companies and businesses on taking up office.
- (a) A person to whom this Code applies may hold a directorship in a private company operating a family farm, business or investment with the express approval of the appointing authority.
- (b) Approval to retain a directorship of a private company or business will be granted only if the appointing authority is satisfied that no conflict of interest is likely to arise.
- 10.3 A person to whom this Code applies will resign from all positions held in business (or professional) associations or trade unions on taking up office. Individual membership of such business or professional association and of a trade union does not constitute a ‘position’.
- 10.4 A person to whom this Code applies shall not act as a consultant or adviser to any company, business or other interest, whether paid or unpaid, or provide assistance to any such body, except as may be appropriate in his or her official capacity.

11. Shareholdings

- 11.1 A person to whom this Code applies, must declare all shares or interests in any business, company, partnership, trust or scheme, to the appointing authority and must relinquish any shareholding or interest if directed to do so by the appointing authority.

12. Post-office Employment

- 12.1 A person to whom this Code applies must undertake that upon leaving office and for a period of 12 months thereafter, he or she will not take up any employment with, accept a directorship of, or act as a consultant to any company, business or organisation with which he or she has had official dealings in his or her last 12 months in office.
- 12.2 A person to whom this Code applies must undertake that upon leaving office he or she will not use official information which is not in the public domain, or information obtained in confidence in the course of his or her official duties, for the private advantage or benefit of himself or herself or another person or persons.

13. Duty to Act Lawfully

- 13.1 In decision making, a person to whom this Code applies should act lawfully and exercise his or her discretionary powers, taking into account only relevant matters.

14. Respect for Persons

- 14.1 A person to whom this Code applies is to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination in accordance with section 26(3) of the Constitution.

15. Respect for Rights

- 15.1 In the performance of his or her duties, a person to whom this Code applies should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

16. Public Officials

- 16.1 A person to whom this Code applies must not by his or her decisions, directions or conduct in office encourage or induce public officials to break the law, or to fail to comply with a code of ethical conduct applicable to such public officials.

SCHEDULE 2
(Section 7(3))

CODE OF CONDUCT FOR SPEAKER, DEPUTY SPEAKER AND MEMBERS OF
PARLIAMENT

1. Observance of this Code

- 1.1 A person to whom this Code applies has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments.

2. Conflicts of Interest

- 2.1 So as to protect and uphold the public interest, a person to whom this Code applies must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between his or her personal interests and his or her official duties.
- 2.2 A person to whom this Code applies should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
- 2.3 A person to whom this Code applies must declare any such conflict of interest in writing to the appointing authority as soon as possible after becoming aware of the conflict.
- 2.4 A person to whom this Code applies is individually responsible for preventing conflicts of interest.
- 2.5 A conflict of interest arises from a situation in which the person to whom this Code applies has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
- 2.6 Since the person to whom this Code applies is usually the only person who knows whether he or she is in that situation, the person to whom this Code applies has a personal responsibility to—
- (a) be alert to any actual or potential conflict of interest; and
 - (b) take steps to avoid such conflict.

3. Improper Advantage and Misuse of Official Position

- 3.1 A person to whom this Code applies should never take undue advantage of his or her position for his or her private interest.
- 3.2 A person to whom this Code applies must undertake, upon assuming office, not to use his or her position improperly to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public.

- 3.3 A person to whom this Code applies, during and after leaving public office, must not use his or her influence improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of himself or herself or another person or persons.

4. Confidentiality

- 4.1 Having due regard for the right of access to official information, a person to whom this Code applies has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her appointment and during the course of his or her official duties.
- 4.2 A person to whom this Code applies must undertake, upon assuming office, not to use any information obtained in the course of his or her official duties so as to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public, whether during the course of his or her appointment or upon resignation, retirement or dismissal from office.

5. Improper Use of Public Resources

- 5.1 A person to whom this Code applies must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.
- 5.2 A person to whom this Code applies must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.
- 5.3 A person to whom this Code applies must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any remuneration or allowance he or she makes on the public purse.

6. Gifts and Benefits

- 6.1 A person to whom this Code applies must not solicit, encourage or accept gifts, benefits or favours either for himself or herself or for another person in connection with performing or not performing his or her official duties, contrary to any gift and benefit policy issued by the person's appointing authority.

7. Susceptibility to Influence by Others

- 7.1 A person to whom this Code applies should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

8. Lobbyists

- 8.1 A person to whom this Code applies must handle any dealings with lobbyists so as to avoid giving rise to a conflict of interest between his or her public duty and personal interests.

9. Outside Employment

- 9.1 A person to whom this Code applies must not engage in any outside employment that involves a substantial commitment of time and effort such as to interfere with his or her duties as the Speaker, Deputy Speaker or a member of Parliament.

10. Duty to Act Lawfully

- 10.1 In decision making, a person to whom this Code applies should act lawfully and exercise his or her discretionary powers, taking into account only relevant matters.

11. Respect for Persons

- 11.1 A person to whom this Code applies is to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination in accordance with section 26(3) of the Constitution.

12. Respect for Rights

- 12.1 In the performance of his or her duties, a person to whom this Code applies should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

SCHEDULE 3
(Section 7(4))

CODE OF CONDUCT FOR JUDICIAL OFFICERS

1. Observance of this Code

- 1.1 A judicial officer has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments.

2. Independence

- 2.1 Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judicial officer shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- 2.2 A judicial officer shall exercise the judicial function independently on the basis of the judicial officer's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 2.3 A judicial officer shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judicial officer has to adjudicate.
- 2.4 A judicial officer shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of Government, but must also appear to a reasonable observer to be free therefrom.
- 2.5 In performing judicial duties, a judicial officer shall be independent of judicial colleagues in respect of decisions which the judicial officer is obliged to make independently.
- 2.6 A judicial officer shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the Judiciary.
- 2.7 A judicial officer shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary which is fundamental to the maintenance of judicial independence.

3. Impartiality

- 3.1 Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
- 3.2 A judicial officer shall perform his or her judicial duties without favour, bias or prejudice.

- 3.3 A judicial officer shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judicial officer and of the Judiciary.
- 3.4 A judicial officer shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judicial officer to be disqualified from hearing or deciding cases.
- 3.5 A judicial officer shall not knowingly, while a proceeding is before, or could come before, the judicial officer, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judicial officer make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 3.6 A judicial officer shall disqualify himself or herself from participating in any proceedings in which the judicial officer is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judicial officer is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where—
 - (a) the judicial officer has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - (b) the judicial officer previously served as a legal practitioner or was a material witness in the matter in controversy; or
 - (c) the judicial officer, or a member of the judicial officer's family, has an economic interest in the outcome of the matter in controversy, provided that disqualification of a judicial officer shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

4. Integrity

- 4.1 Integrity is essential to the proper discharge of the judicial office.
- 4.2 A judicial officer shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 4.3 The behaviour and conduct of a judicial officer must reaffirm the people's faith in the integrity of the Judiciary. Justice must not merely be done but must also be seen to be done.

5. Propriety

- 5.1 Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judicial officer.

- 5.2 A judicial officer shall avoid impropriety and the appearance of impropriety in all of the judicial officer's activities.
- 5.3 As a subject of constant public scrutiny, a judicial officer must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judicial officer shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 5.4 A judicial officer shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judicial officer's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 5.5 A judicial officer shall not participate in the determination of a case in which any member of the judicial officer's family represents a litigant or is associated in any manner with the case.
- 5.6 A judicial officer shall not allow the use of the judicial officer's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 5.7 A judicial officer, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judicial officer shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.
- 5.8 A judicial officer shall inform himself or herself about the judicial officer's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judicial officer's family.
- 5.9 A judicial officer shall not allow the judicial officer's family, social or other relationships to improperly influence the judicial officer's judicial conduct and judgement as a judicial officer.
- 5.10 A judicial officer shall not use or lend the prestige of the judicial office to advance the private interests of the judicial officer, a member of the judicial officer's family or of anyone else, nor shall a judicial officer convey or permit others to convey the impression that anyone is in a special position improperly to influence the judicial officer in the performance of judicial duties.
- 5.11 Confidential information acquired by a judicial officer in the judicial officer's judicial capacity shall not be used or disclosed by the judicial officer for any other purpose not related to the judicial officer's judicial duties.

- 5.12 Subject to the proper performance of judicial duties, a judicial officer may —
- (a) write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - (b) appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - (c) serve as a member of an official body, or other Government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judicial officer; or
 - (d) engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 5.13 A judicial officer shall not practise law whilst being the holder of a judicial office.
- 5.14 A judicial officer may form or join associations of judicial officers or participate in other organisations representing the interests of judicial officers.
- 5.15 A judicial officer and members of the judicial officer's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judicial officer in connection with the performance of judicial duties.
- 5.16 A judicial officer shall not knowingly permit court staff or others subject to the judicial officer's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 5.17 Subject to law and to any legal requirement of public disclosure, a judicial officer may receive a token gift, award or benefit as appropriate to the occasion on which it is made in accordance with the gift policy issued by the judicial officer's appointing authority, provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judicial officer in the performance of judicial duties or otherwise give rise to an appearance of partiality.

6. Equality

- 6.1 Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
- 6.2 A judicial officer shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, culture, ethnic or social origin, colour, place of origin, sex, gender,

sexual orientation, gender identity and expression, birth, primary language, economic, social or health status, disability, age, religion, conscience, marital status, pregnancy and other like causes (“irrelevant grounds”).

- 6.3 A judicial officer shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 6.4 A judicial officer shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

SCHEDULE 4
(Section 7(5))

CODE OF CONDUCT FOR MEMBERS OF COMMISSIONS AND STATUTORY
AUTHORITIES

1. Observance of this Code

- 1.1 A person to whom this Code applies has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments.

2. Conflict of Interest

- 2.1 So as to protect and uphold the public interest, a person to whom this Code applies must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between his or her personal interests and his or her official duties.
- 2.2 A person to whom this Code applies should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
- 2.3 A person to whom this Code applies must declare any such conflict of interest in writing to his or her appointing authority as soon as possible after becoming aware of the conflict.
- 2.4 A person to whom this Code applies is individually responsible for preventing conflicts of interest.
- 2.5 A conflict of interest arises from a situation in which the person to whom this Code applies has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
- 2.6 Since the person to whom this Code applies is usually the only person who knows whether he or she is in that situation, the person to whom this Code applies has a personal responsibility to—
- (a) be alert to any actual or potential conflict of interest; and
 - (b) take steps to avoid such conflict.

3. Improper Advantage and Misuse of Official Position

- 3.1 A person to whom this Code applies should never take undue advantage of his or her position for his or her private interest.
- 3.2 A person to whom this Code applies must undertake, upon assuming office, not to use his or her position improperly to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public.

- 3.3 A person to whom this Code applies should not offer or give any advantage in any way connected with his or her position, unless lawfully authorised to do so.
- 3.4 A person to whom this Code applies should not seek to influence for private purposes any person, including public officials, by using his or her official position or by offering him or her personal advantages.

4. Confidentiality

- 4.1 Having due regard for the right of access to official information, a person to whom this Code applies has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her appointment and during the course of his or her official duties.
- 4.2 A person to whom this Code applies must undertake, upon assuming office, not to use any information obtained in the course of his or her official duties so as to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public, whether during the course of his or her appointment or upon resignation, retirement or dismissal from office.

5. Information Held by Public Authorities

- 5.1 A person to whom this Code applies should only disclose information in accordance with the rules and requirements applying to the entity by which he or she is appointed.
- 5.2 A person to whom this Code applies should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.
- 5.3 A person to whom this Code applies should not seek access to information which it is inappropriate for him or her to have. A person to whom this Code applies should not make improper use of information which he or she may acquire in the course of, or arising from, his or her appointment.
- 5.4 Equally the person to whom this Code applies has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has a reasonable ground to believe is false or misleading.

6. Improper Use of Public Resources

- 6.1 A person to whom this Code applies must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.
- 6.2 A person to whom this Code applies must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

- 6.3 In the exercise of his or her discretionary powers, a person to whom this Code applies should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.
- 6.4 A person to whom this Code applies must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any remuneration or allowance he or she makes on the public purse.

7. Gifts and Benefits

- 7.1 A person to whom this Code applies must not solicit, encourage or accept gifts, benefits or favours either for himself or herself or for another person in connection with performing or not performing his or her official duties, contrary to any gift and benefit policy issued by the person's appointing authority.

8. Susceptibility to Influence by Others

- 8.1 A person to whom this Code applies should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

9. Duty to Act Lawfully

- 9.1 A person to whom this Code applies should carry out his or her duties in accordance with the Constitution and all laws, and with those lawful instructions and ethical standards which relate to his or her functions.
- 9.2 A person to whom this Code applies should not and should not attempt to frustrate the lawful policies, decisions or actions of the State.
- 9.3 In decision making, a person to whom this Code applies should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

10. Respect for Persons

- 10.1 A person to whom this Code applies is to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination in accordance with section 26(3) of the Constitution.

11. Respect for Rights

- 11.1 In the performance of his or her duties, a person to whom this Code applies should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

SCHEDULE 5
(Section 7(6))

CODE OF CONDUCT FOR PUBLIC OFFICIALS

1. Observance of this Code

- 1.1 A public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments.

2. Conflict of Interest

- 2.1 So as to protect and uphold the public interest, a public official must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between his or her personal interests and his or her official duties.
- 2.2 A public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
- 2.3 A public official must declare any such conflict of interest in writing to his or her appointing authority as soon as possible after becoming aware of the conflict.
- 2.4 A public official is individually responsible for preventing conflicts of interest.
- 2.5 A conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
- 2.6 Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to—
- (a) be alert to any actual or potential conflict of interest;
 - (b) take steps to avoid such conflict;
 - (c) disclose to his or her appointing authority any such conflict as soon as he or she becomes aware of it; and
 - (d) comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.
- 2.7 Any conflict of interest declared by a candidate to the civil service or to a new post in the civil service should be resolved before appointment.

3. Declaration of interests

- 3.1 A public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties

should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur to the nature and extent of those interests.

4. Improper Advantage and Misuse of Official Position

- 4.1 A public official should never take undue advantage of his or her position for his or her private interest.
- 4.2 A public official must undertake, upon assuming office, not to use his or her position improperly to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public.
- 4.3 A public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so.
- 4.4 A public official should not seek to influence for private purposes any person, including other public officials, by using his or her official position or by offering him or her personal advantages.

5. Confidentiality

- 5.1 Having due regard for the right of access to official information, a public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment and during the course of his or her official duties.
- 5.2 A public official must undertake, upon assuming office, not to use any information obtained in the course of his or her official duties so as to gain a direct or indirect personal advantage for himself or herself, or any other person or entity, not enjoyed by the general public, whether during the course of his or her appointment or upon resignation, retirement or dismissal from office.

6. Information Held by Public Authorities

- 6.1 A public official should only disclose information in accordance with the rules and requirements applying to the entity by which he or she is employed.
- 6.2 A public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.
- 6.3 A public official should not seek access to information which it is inappropriate for him or her to have. A public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.

- 6.4 Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has a reasonable ground to believe is false or misleading.

7. Improper Use of Public Resources

- 7.1 A public official must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.
- 7.2 A public official must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.
- 7.3 In the exercise of his or her discretionary powers, a public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.
- 7.4 A public official must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any remuneration or allowance he or she makes on the public purse.

8. Gifts and Benefits

- 8.1 A public official must not solicit, encourage or accept gifts, benefits or favours either for himself or herself or for another person in connection with performing or not performing his or her official duties, contrary to any gift and benefit policy issued by the public official's appointing authority.

9. Susceptibility to Influence by Others

- 9.1 A public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

10. Political Neutrality

- 10.1 A public official should carry out his or her duties in accordance with the Constitution and all laws, and with those lawful instructions and ethical standards which relate to his or her functions.
- 10.2 A public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the State.

11. Political or Public Activity

- 11.1 Subject to respect for fundamental and constitutional rights, a public official should take care that none of his or her political activities or involvement

in political or public debates impairs the confidence of the public and his or her employer in his or her ability to perform his or her duties impartially and loyally.

- 11.2 In the exercise of his or her duties, a public official should not allow himself or herself to be used for partisan political purposes.
- 11.3 A public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of his or her position or the nature of his or her duties.

12. Incompatible Outside Interests

- 12.1 A public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her appointing authority.
- 12.2 A public official is required to notify and seek the approval of his or her appointing authority to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her civil service employment.
- 12.3 A public official should declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

13. Leaving the Public Office

- 13.1 A public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the civil service.
- 13.2 A public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose any concrete offer of employment that could create a conflict of interest. He or she should also disclose his or her acceptance of any offer of employment.
- 13.3 In accordance with such guidelines set by the appointing authority, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the civil service and which would result in a particular benefit to that person or body.
- 13.4 The former public official should not use or disclose confidential information acquired by him or her as a public official and must undertake that upon leaving public office he or she will not use official information which is not in the public domain, or information obtained in confidence in the course of his or her official duties, for the private advantage or benefit of himself or herself or another person or persons unless required by law.

- 13.5 A public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the civil service.

14. Dealing with Former Public Officials

- 14.1 A public official should not give preferential treatment or privileged access to the civil service to former public officials.

15. Duty to Act Lawfully

- 15.1 In decision making a public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

16. Respect for Persons

- 16.1 A public official must take all reasonable steps to observe relevant standards of procedural fairness in decisions made by him or her. Such decisions are to be unaffected by bias or irrelevant considerations.
- 16.2 A public official is to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination in accordance with section 26(3) of the Constitution.

17. Respect for Rights

- 17.1 In the performance of his or her duties, a public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

18. Integrity

- 18.1 A public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the civil service are preserved and enhanced.

19. Reporting

- 19.1 A public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter as a complaint to the Commission.
- 19.2 A public official should make a complaint to the Commission if he or she becomes aware of breaches of this Code by other public officials.

SCHEDULE 6
(Section 25)

OFFICES AND OFFICIALS TO WHOM PART 6 APPLIES

1. President
2. Prime Minister
3. Attorney-General
4. Ministers (including Assistant Ministers and Acting Ministers)
5. Speaker
6. Deputy Speaker
7. Members of Parliament
8. Supervisor of Elections
9. Secretary-General to Parliament
10. Deputy Secretary-General to Parliament
11. Official Secretary, Office of the President
12. Secretary to Cabinet
13. Commissioner of the Independent Legal Services Commission
14. Commissioner of FICAC
15. Deputy Commissioner of FICAC
16. Solicitor-General
17. Director of Public Prosecutions
18. Director of the Legal Aid Commission
19. Director of the Human Rights and Anti-Discrimination Commission
20. Permanent secretaries
21. Ambassador or principal representative of Fiji to another country or international organisation
22. Commissioner of the Fiji Police Force
23. Deputy or assistant Commissioner of the Fiji Police Force
24. Commissioner of the Fiji Corrections Service
25. Deputy or assistant Commissioner of the Fiji Corrections Service
26. Commander of the Republic of Fiji Military Forces

27. Auditor-General
28. Governor of the Reserve Bank of Fiji
29. Deputy Governor of the Reserve Bank of Fiji
30. Administrator-General
31. Registrar-General
32. Official Receiver
33. Registrar of Companies
34. Registrar of Titles
35. Chief Pharmacist
36. Deputy Chief Pharmacist
37. Chief Accountant
38. Deputy permanent secretaries
39. Directors in any Government ministry or department
40. Deputy or assistant directors in any Government ministry or department
41. Divisional commissioners
42. Deputy or assistant divisional commissioners
43. Provincial administrators
44. Deputy or assistant provincial administrators
45. Chairperson of each Provincial Council
46. Roko Tui of each Provincial Council
47. District officers
48. Deputy or assistant district officers
49. Special administrator of any town or city council
50. Chief executive officer and the town clerk of any town or city council
51. Chief executive officer of the Biosecurity Authority of Fiji
52. Chief executive officer of the Civil Aviation Authority of Fiji
53. Chief executive officer of the Fijian Competition and Consumer Commission
54. Chief executive officer of the Fiji Meat Industry Board
55. Chief executive officer of the Fiji Revenue and Customs Service
56. Chief executive officer of the Fiji Roads Authority

57. Chief executive officer of the Housing Authority
58. Chief executive officer of Investment Fiji
59. Chief executive officer of the iTaukei Land Trust Board
60. Chief executive officer of the Land Transport Authority
61. Chief executive officer of the Maritime Safety Authority of Fiji
62. Chief executive officer of the Public Rental Board
63. Chief executive officer of Tourism Fiji
64. Chief executive officer of the Water Authority of Fiji

*Office of the Attorney-General
Suvavou House
Suva
November 2018*

CODE OF CONDUCT BILL 2018

EXPLANATORY NOTE

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

1.0 BACKGROUND

1.1 Section 149 of the Constitution of the Republic of Fiji (**‘Fijian Constitution’**) provides that a written law shall—

- (a) establish a code of conduct which shall be applicable to the President, Speaker, Deputy Speaker, Prime Minister, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution or under any written law, members of commissions, permanent secretaries, ambassadors or other principal representatives of the State, and persons who hold statutory appointments or governing or executive positions in statutory authorities, and to such other offices (including public offices) as may be prescribed by written law;
- (b) establish rules, processes and procedures for the implementation of the code of conduct by the Accountability and Transparency Commission;
- (c) provide for the monitoring by the Accountability and Transparency Commission of compliance with the code of conduct by the officers mentioned in paragraph (a);
- (d) make provision for the investigation of alleged breaches of the code of conduct and enforcement of the code of conduct by the Accountability and Transparency Commission, including through criminal and disciplinary proceedings, and provide for the removal from office of those officers who are found to be in breach of the code of conduct;
- (e) provide for the protection of whistle-blowers, being persons who, in good faith, make disclosures that an officer mentioned in paragraph (a) has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices; and

- (f) provide for the annual declaration by the officers mentioned in paragraph (a) of the assets and liabilities and financial interests of the officer, and of such other direct relatives of the officer as may be prescribed, to the Accountability and Transparency Commission, and for such declarations to be accessible to the public.

1.2 The Fijian Government is therefore constitutionally bound to enact legislation which gives effect to section 149 of the Fijian Constitution.

1.3 For that reason, the Code of Conduct Bill 2018 (**‘Bill’**) is established to give effect to section 149 of the Fijian Constitution.

2.0 FEATURES OF THE BILL

2.1 Part 1 of the Bill provides for the preliminary provisions such as the short title, commencement and interpretation provisions.

2.2 Part 2 of the Bill provides for the functions and powers of the Accountability and Transparency Commission (**‘Commission’**) established under section 121 of the Fijian Constitution.

2.3 Part 3 of the Bill prescribes the Codes of Conduct which are set out in the schedules to the Bill in accordance with section 149(a) of the Fijian Constitution applicable to—

- (a) the President, Prime Minister, and all Ministers;
- (b) the Speaker, Deputy Speaker and all members of Parliament;
- (c) judicial officers;
- (d) all members of a commission established by, or continued in existence, under the Constitution and all members of a statutory authority or a board of a statutory authority; and
- (e) all public officials not covered by a Code of Conduct for officials in paragraphs (a) to (d) above.

2.4 Part 4 of the Bill provides provisions for the investigation of complaints made to the Commission and for the referral of complains to the appointing authority and the prosecuting authority.

2.5 Part 5 of the Bill provides protection for complainants. It ensures that a person who makes a complaint to the Commission is given immunity and that the person’s identity is protected.

2.6 Part 6 of the Bill provides for the making of mandatory statement of income, assets, other interests and liabilities by persons prescribed in Schedule 6 to the Bill. Part 6 also imposes penalties for failure to declare income, assets, other interests and liabilities.

- 2.7 Part 7 of the Bill empowers the Minister in consultation with the Commission to make regulations necessary for the implementation of the Bill.

3.0 MINISTERIAL ASSIGNMENT

- 3.1 This Act comes under the responsibility of the Attorney-General.

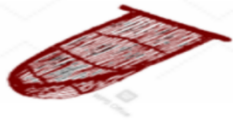
A. SAYED-KHAIYUM
Attorney-General

ANNEXURE E – STAKEHOLDER LETTER



Fiji Law Reform Commission

P.O. Box 2519, Govt Buildings, Suva
3303646 | 3303900
<https://flrc.gov.fj/>



Dear ,

Subject: Requesting input at the Public Consultations for Governance Review – Information Act 2018, Accountability and Transparency Commission Bill 2025 and Code of Conduct Bill 2018

We hope this letter finds you well.

The Fiji Law Reform Commission (FLRC) is organizing public consultations to review the Information Act 2018, Accountability and Transparency Commission Bill 2025 and Code of Conduct Bill 2018 (collectively referred to as the 'Governance Laws').

The duration of the review is from 28 January to 8 February 2025, with in-person sessions scheduled across various locations in Fiji from 3 February to 8 February 2025 (refer to attached consultation schedule).

Additionally, individuals are encouraged to make preliminary and/or substantive written submissions throughout the consultation period (28 January – 8 February 2025) through:

- Online Portal submissions on the FLRC website at www.flrc.gov.fj
- Email at fijilawreformc@gmail.com
- Hand-delivered submissions at our Office Level 5 Civic Tower Suva, or
- Post at Fiji Law Reform Commission, P.O Box 2519, Government Buildings, Suva.

Kindly note that all written in submissions should specify the subject as "FLRC Governance Law Reform Project".

The Commission will also conduct a virtual consultation session on 8 February 2025 at 10am – 1pm. The link can be accessed through the Commission's website at www.flrc.gov.fj and on the Commission's Facebook page at <https://www.facebook.com/share/1X9YpqhFJj/>. You can also obtain the Discussion Paper and Terms of Reference including details on the review through the Commission's website at <https://flrc.gov.fj/>.

Additionally, we kindly request your assistance in disseminating this information to your relevant contacts and networks. We believe that community engagement is crucial for a successful review, and therefore, we invite all stakeholders to participate and help shape the law reform process.

For any queries or further clarification, please reach out to Ms. Joyce Hicks, Legal Officer at (+679) 9905560 or Ms. Magdalena Ramoala, Legal Officer at (+679) 9989498 or 3303646. You can also email the Commission at fijilawreformc@gmail.com or at magdalena.ramoala@flrc.gov.fj.

Thank you very much for your support and collaboration in this important initiative.

Yours faithfully,

Ms Rajeli Lebaivalu Tuivaga

DIRECTOR

ANNEXURE F – CHRONOLOGY OF CONSULTATIONS

	Venue	Proposed Dates	Time	Venue
1.	Labasa	3-Feb	10am – 1pm	Friendly North Inn (Bure)
2.	Savusavu	4-Feb	9am – 12pm	Hot Springs Hotel, Conference Room
3.	Lautoka	5-Feb	9:30am – 12:30 pm	Ex Servicemen Hall (RSL Hall)
4.	Nadi	5-Feb	3pm – 6pm	Nadi Civic Centre
5.	Sigatoka	6-Feb	10am – 1pm	Sigatoka Town Council Chambers
6.	Suva	7-Feb	9am – 1pm	Level 9 Suvavou House
7.	Virtual session – Google Meet	8-Feb	10am – 1pm	

ANNEXURE G – PRESS STATEMENT: 28 JANUARY 2025

The Fiji Law Reform Commission, under the direction of Attorney General Graham Leung, has announced the commencement of a comprehensive review of the Information Act 2018, as well as the Accountability and Transparency Commission Bill 2025 and the Code of Conduct Bill 2025.

They say this undertaking seeks to enhance governmental transparency and accountability by evaluating existing laws against constitutional rights and international standards.

The Fiji Law Reform Commission says key objectives of the review include the Information Act 2018: Assessing alignment with constitutional rights to access information, proposed amendments to broaden its scope, and ensuring that the process for requesting information is streamlined and user-friendly.

They say the Accountability and Transparency Commission Bill 2025: Establishing clear objectives, reinforcing constitutional provisions, and considering the integration of existing ATC provisions under the Constitution into the new legislation.

The Commission says the Code of Conduct Bill 2025: Setting out standards of accountability for public office holders, enhancing ethical conduct and making declarations accessible to the public.

They say to facilitate public engagement, the Commission will receive submissions from January 28 to February 8, 2025, culminating in a virtual session on February 8.

The Commission says submissions can be made through the following methods on their online Portal: available on the FLRC website at www.flrc.gov.fj or emailed to them on fijilawreformc@gmail.com. They say hand-delivered submissions: Fiji Law Reform Commission Office, Level 5 Civic Tower, Suva (located behind the Suva City Library).

The Commission says it can also be mailed to: Fiji Law Reform Commission, P.O. Box 2519, Government Buildings, Suva

They say all written submissions should specify the subject as "FLRC Governance Law Reform Project."

Public consultations will take place from January 28 to February 8, 2025, and will be held in various locations across Fiji as follows:

- Labasa: February 3, 2025, 10 AM- 1 PM, Friendly North Inn (Bure)
- Savusavu: February 4, 2025, 9 AM- 12 PM, Hot Springs Hotel, Conference Room
- Lautoka: February 5, 2025, 9:30 AM- 12:30 PM, Ex Servicemen Hall (RSL Hall)
- Nadi: February 5, 2025, 3 PM - 6 PM, Nadi Civic Center
- Sigatoka: February 6, 2025, 10 AM- 1 PM, Sigatoka Town Council Chambers
- Suva: February 7, 2025, 9 AM- 1 PM, Level 9 Suvavou House

In addition, a virtual consultation session will be held on February 8, 2025, from 10 AM - 1 PM.

The hyperlink to join can be accessed directly through the Commission's website at www.flrc.gov.fj and on the Commission's Facebook page.

ANNEXURE H – PUBLIC NOTICE ADVERTISEMENT IN THE DAILIES



PUBLIC CONSULTATION – REVIEW OF THE INFORMATION ACT 2018, CODE OF CONDUCT BILL 2025 & ACCOUNTABILITY AND TRANSPARENCY COMMISSION BILL 2025

The Fiji Law Reform Commission will hold public consultations from **28 January 2025 to 08 February 2025** for the review of the Information Act 2018, Code of Conduct Bill 2025 and Accountability and Transparency Commission Bill 2025 (**‘Governance Laws’**). The review is to assess its alignment with constitutional rights and consider potential amendments, including expanded coverage and revised procedures.

The drop in consultations from **03 to 07 February 2025** will be conducted as follows:

	Venue	Proposed Dates	Time	Venue
1.	Labasa	3-Feb	10am – 1pm	Friendly North Inn (Bure)
2.	Savusavu	4-Feb	9am – 12pm	Hot Springs Hotel, Conference Room
3.	Lautoka	5-Feb	9:30am – 12:30 pm	Ex Servicemen Hall (RSL Hall)
4.	Nadi	5-Feb	3pm – 6pm	Nadi Civic Center
5.	Sigatoka	6-Feb	10am – 1pm	Sigatoka Town Council Chambers
6.	Suva	7-Feb	9am – 1pm	Level 9 Suvavou House

The Commission will also conduct a virtual consultation session on 8 February 2025 at 10am – 1pm via Zoom. The link can be accessed through the Commission’s website at www.flrc.gov.fj and on the Commission’s Facebook page at <https://www.facebook.com/share/1X9YpqhFJj/>. You can also obtain the Discussion Paper and Terms of Reference including details on the review through the Commission’s website at <https://flrc.gov.fj/>.

Interested persons are also encouraged to make preliminary and/or substantive written submissions with recommendations for review or reform via the Fiji Law Reform Commission through the following methods:

- Online Portal submissions on the FLRC website at www.flrc.gov.fj
- Email at fijilawreformc@gmail.com
- Hand-delivered submissions at the FLRC Office, Level 5 Civic Tower Suva (located behind the Suva City Library), or
- Post at Fiji Law Reform Commission, P.O Box 2519, Government Buildings, Suva.

Please note that all written in submissions should specify the subject as **“FLRC Governance Law Reform Project”**.

Any queries or further clarification on the above may be directed to Ms. Joyce Hicks at joyce.hicks@flrc.gov.fj or on mobile at 9905560 or Ms Magdalena Ramoala at magdalena.ramoala@flrc.gov.fj or on mobile at 9989498 or by telephone on 3303900 or 3303646.

.....
Ms Raijeli Lebaivalu Tuivaga
Director
Fiji Law Reform Commission

ANNEXURE I

List of Submitters – Oral Communication

Labasa – 3/02/2025

1. Ms Jese Drova (AG's office, Labasa)
2. Ms Jacinta Renu (Retired)
3. Mr Isoa Kotoivanuabalavu (Retired army officer)
4. Mr Tevita Kalou (Macuata Provincial Council)
5. Mr Revoni Rakasalu (PA Macuata Office)
6. Mr Prameshwar Prasad (Seaqaqa District Advisory Council)
7. Mataiasi T
8. Mr Oripa Davavalu (ADO Seaqaqa)

Savusavu – 4/02/2025

9. Mr Aren Nunnink (Ki-Maren [Fiji] Pte Limited)

Nadi – 5/02/2025

10. Mr Etonia Vuli (Fiji Police)
11. Ms Inimere Ratulevu (DO's office)
12. Ms Nai Vuli (Domestic duties)
13. Ms Repeka Nasiko (Fiji Times)

Suva – 7/02/2025

14. Ms Mereoni Mili (Fiji Television)
15. Ms Shaista Shameem (UniFiji)
16. Ms Sainiana Radrodro (UniFiji)
17. Ms Sanjana Dutt (UniFiji)
18. Ms Patricia Chand (UniFiji)
19. Mr Aziz Mohammed (UniFiji)
20. Mr Nalini Singh (Fiji Women's Rights Movement)
21. Ms Ala - Cassandra Singh (FWRM)
22. Mr James Baledrokadroka (RBF)
23. Ms Crystal Ali (RBF)
24. Ms Alena Vakaloloma (Office of the Auditor General)
25. Ms Rosalinda Walolo (FBC Legal)
26. Mr Abel Caine (UNESCO Consultant)
27. Vimal S (UniFiji)
28. Ms Marica Hussain (Marsh Legal)
29. Mr Patrick Samuela (Self-employed)
30. Ms Priyanka Chandra (FWRM)
31. Mr Jofiliti Veikoso (Transparency International)

ANNEXURE J

List of Individuals and Organisations who made written submissions

1. Mr Akuila Yabaki
2. The University of Fiji
3. Office of the High Commissioner for Human Rights
4. Fiji Women's Rights Movement
5. Fiji Women's Crisis Centre
6. Reserve Bank of Fiji
7. Consumer Council of Fiji

ANNEXURE K

Summary of Submissions

1.0 3/02/25 - Labasa Friendly North Inn (Bure)

1.1 Concerns Regarding Fees for Accessing Information:

- (a) Concerns were raised regarding fees for accessing information, with suggestions that fees should be reasonable or ideally waived to ensure unrestricted access.

1.2 Proactive Disclosure:

- (a) The proactive disclosure of essential information is deemed critical, with an emphasis on making information readily available on websites to reduce individual requests and enhance transparency.

1.3 Inadequate Responsiveness from Agencies:

- (a) Submittees expressed frustration over the inadequate responsiveness from agencies, leading to significant delays in addressing issues. Many shared personal experiences where knowing the right contacts was necessary to expedite help.

1.4 Transparency in Government Operations:

- (a) A call for greater transparency in government operations was made, including clearer timelines for public service delivery and more accessible information.

1.5 Digitalized Processes:

- (a) There is a call for digitalized processes to enhance public access to essential documents and services, similar to the efficient systems used by the Fiji National Provident Fund (FNPf).

1.6 Accountability for Public Officials:

- (a) Submittees highlighted the need for clearly defined standards that hold both public officials and parliamentarians accountable for their actions, especially regarding recent allegations against them.

1.7 Regular Audits and Performance Evaluations:

- (a) Mechanisms for regular audits and performance evaluations of public officials were proposed to ensure compliance with established standards and improve overall public service integrity.

1.8 Role of the Accountability and Transparency Commission (ATC):

- (a) There is strong advocacy for the ATC to serve as an independent body where the public can file complaints regarding government misconduct and transparency issues.

1.9 Assistance from the ATC:

- (a) It was suggested that the ATC should actively assist government departments in improving their services and educate both the public and government employees about their rights and responsibilities under the proposed frameworks.

1.10 Authority to Address Complaints:

- (a) Calls were made for the Commission to have the authority to address complaints about untimely responses from agencies and to take corrective actions where standards are not met.

1.11 Annual Reporting Requirement for the ATC:

- (a) An annual reporting requirement for the ATC was suggested to track its findings and activities, ensuring transparency in its operations.

1.12 Need for Clear Guidelines:

- (a) Many submittees expressed a need for clear guidelines and straightforward processes for accessing information and reporting misconduct, believing that current processes are often confusing.

2.0 4/02/25 – Savusavu Hot Springs Hotel Conference Room

2.1 Need for Stronger Whistleblower Protections:

- (a) Emphasis made on the importance of guaranteeing protection for whistleblowers to encourage reporting of corrupt activities.
- (b) Proposed legislation should be clear and allow for flexibility in reporting, permitting whistleblowers to choose whether to remain anonymous or to publicly disclose their information while ensuring protection against retaliation.

2.2 Public Awareness Campaigns:

- (a) The government should implement campaigns that highlight the bravery of whistleblowers, thereby shifting the cultural perception surrounding reporting.

2.3 Concerns About Legislative Gaps:

- (a) Previous complaints to parliament about the effectiveness of corruption oversight have gone unaddressed, revealing a need for renewed focus on accountability.
- (b) The current proposed laws (Code of Conduct Bill) must avoid provisions that undermine whistleblower protections, such as losing protection for disclosing information to bodies like FICAC or for politically motivated complaints.

2.4 Cultural Barriers to Reporting:

- (a) It was pointed out that in Fiji there is a prevailing culture discouraging individuals from reporting wrongdoing. There must be a change in societal attitudes to recognize whistleblowers as heroes rather than outcasts.
- (b) He suggests that public campaigns should promote the benefits and courage associated with reporting corruption.

2.5 Accountability and Transparency in Government:

- (a) There is a call for a more transparent justice system that investigates and prosecutes corruption among public officials rigorously.
- (b) It was noted that there are inadequacies in the systems currently in place for handling reports of corruption, with a notable lack of action following reports to agencies like FICAC and the FIU.

2.6 Incentives for Reporting:

- (a) The establishment of reward systems for whistleblowers based on recovered funds or successfully prosecuted cases is advocated as a way to motivate individuals to come forward.
- (b) Drawing from personal experiences, he emphasizes the importance of ensuring that whistleblowers are acknowledged and compensated for their disclosures.

2.7 Strengthening of Regulatory Bodies:

- (a) Regulatory bodies like FICAC should be resourced adequately and held accountable for investigating complaints and maintaining public trust.

3.0 5/02/25 – Nadi Civic Center

3.1 Fees for Information Requests:

- (a) Opinions on whether information requests should be free or charged were discussed, with some advocating for a reasonable fee to cover processing costs.

3.2 Cultural Attitudes Toward Reporting:

- (a) There is a need to create a culture in Fiji that encourages reporting of wrongdoing, emphasizing the heroic role of whistle-blowers rather than stigmatizing them.

3.3 Accountability and Transparency:

- (a) A transparent system is needed for investigating and prosecuting corruption among public officials to ensure accountability.
- (b) Suggestions included having time limits for responding to complaints and mechanisms for follow-up on complaint outcomes.

3.4 Whistle-blower Protections:

- (a) Strong protections for whistle-blowers are essential to prevent retaliation and to encourage reporting of misconduct.
- (b) It is suggested that legislation should allow whistle-blowers to choose whether to remain anonymous.

3.5 Incentives for Reporting:

- (a) Reward systems for whistle-blowers, based on recovered funds or successful prosecutions, are proposed to motivate individuals to come forward with information on misconduct.

3.6 Additional Concerns:

- (a) There are concerns regarding legislative gaps and the efficiency of current oversight mechanisms, highlighting the need for timely audits and accountability.
- (b) Media representatives emphasize the importance of timely access to information, particularly around annual reports and audits, to hold officials accountable before issues are buried.

4.0 07/02/25 – Suva Suvavou House Level 9

4.1 Repeal Information Act 2018:

- (a) The current Information Act 2018 should be repealed because it attempts to consolidate the two sections of the 2013 Constitution (sections 25 and 150) into one piece of legislation, resulting in confusion and gaps in the system. The media have a right to information in the public interest and they may be affected by this lack of clarity.
- (b) Section 150 allows individuals to request official information or documents related to government accountability, highlighting the importance of transparency and access to information for both the media and the public.

4.2 Reconsider proposed timeline for the Review:

- (a) Emphasized the importance of giving adequate time and consideration to the review of Freedom of Information (FOI) legislation, which has similarities to frameworks in Australia and New Zealand.
- (b) Suggested that the Attorney-General should reconsider the proposed timeline for this review, as rushing could undermine its significance.
- (c) Advocated for a contextual adaptation of FOI legislation to Fiji's specific government systems and calls for a thorough evaluation of the effectiveness of existing mechanisms in other jurisdictions before adopting them. The submittees warns against implementing systems that may not function well within Fiji's context, as this could lead to confusion and ineffectiveness.

4.3 Civil Servants' capacity and clarity needed for the enforcement of the Code of Conduct:

- (a) Raised concerns about the capacity of civil servants to handle requests or complaints related to the 3 laws. Emphasis was made on the need for robust training for civil servants, as they currently lack the necessary knowledge to appropriately manage information requests.
- (b) The definition of "public officials" in the Code of Conduct (COC) Bill was questioned, suggesting it may encompass a broader range of individuals than just government executives. The submittees advocated for extensive consultations with all stakeholders to clarify their roles, including aspects related to information access and asset declaration.
- (b) Highlighted the need for clarity on the enforcement of the COC Bill, particularly regarding which bodies will be responsible for addressing violations—suggesting a potential role for the Accountability and Transparency Commission or the Privileges Committee in Parliament.
- (c) The importance of articulating these roles and the consequences for infringements was also stressed, as well as the necessity for integrity and proper values among public officials.

4.4 Importance of timely responses:

- (a) Emphasized the importance of timely responses from public officials regarding information requests. It was suggested that legislation should clearly define response timelines to ensure requests are acknowledged promptly and managed efficiently.
- (b) The need for training officials was also mentioned to facilitate quicker handling of requests. The submittees advocated for a structured process within the legislation to prevent delays and ensure accountability, rather than allowing officials to postpone responses at their convenience.

4.5 Inclusive approach and addressing literacy and disability challenges:

- (a) Emphasized the need for a more inclusive approach in the dissemination of information through periodic publications, arguing that this should be explicitly addressed in legislation to enhance transparency and accessibility. The submittees points out the limitations of the ATC framework, noting its non-quasi-judicial nature, which, while allowing for more effective operations, renders it primarily facilitative rather than authoritative.

- (b) Highlighted the importance of accommodating individuals with literacy challenges and disabilities by providing necessary support for initiating information requests.
- (c) The inclusion of provisions in the Act that mandate public offices to assist these individuals—such as offering translation services, auditory assistance, and other forms of support—to ensure equitable access to information, particularly for people like landowners and *mataqali* landowners who may face barriers when seeking information in urban centers. Overall, the submittees called for legislative improvements to boost transparency and empower all citizens to access information effectively.

4.6 Stalling of legal work:

- (a) Raised concerns about the difficulties faced in accessing important documents for clients due to policy changes that are not legislated, yet are being implemented by certain agencies. Specifically, the submittees mentioned the following (below) which leads to unnecessary complexity of the process, thus delaying their work and causing additional costs for clients:
 - a need now for clients to authorize their lawyers to access birth certificates, marriage certificates, and death certificates, which was not required before.
 - a requirement for written consent letters and a signed form from clients to access their tax portal information through FIRCA (*now known as 'FRCS'*).
 - the need for consent from multiple parties to obtain certification for CGT applications and birth certificates thus delaying conveyancing deals.
- (b) Requests for a review of the legislation to allow lawyers to access these documents more easily and efficiently, as it will be in the best interest of clients and the public.

4.7 Establishing ATC within the Pacific context:

- (a) Raised the complexities of establishing an Accountability and Transparency Commission in the Pacific context, specifically referencing kinship ties and potential conflicts of interest in places like Fiji. The submittees raised concerns about the implementation, monitoring, and investigation processes of such a Commission, particularly how these issues can create challenges in transparency.
- (b) Emphasized the importance of protecting sensitive information, especially regarding victims, while navigating public scrutiny, such as that seen on social media platforms like Facebook and questioned how the Law Reform Commission or this revision process can address these issues while considering legal limitations on information disclosure, particularly under section 20 of the Information Act.
- (c) Sought a balance between ensuring accountability and protecting the rights and privacy of individuals involved.

4.8 Appeal processes, Inconsistencies and Disinformation:

- (a) Questioned whether the legal costs associated with primary and secondary appeals are borne by the ATC and if they are, then it should be disclosed in the Act.
- (b) In providing a stronger framework for promoting information disclosure by agencies, whether inconsistencies with other legislation can be considered by having the Information Act override other laws that contradict it and this be articulated well in the Act.

- (c) Sought clarity on how the Information Act addresses the pervasive issue of disinformation, particularly in the context of social media, which is a significant concern in Fiji.
- (d) Advocated for clearer processes and protections within the Information Act to enhance transparency and address emerging challenges in information dissemination.

4.9 Whistle-blower Protection, Accountability and Economic climate:

- (a) Raised the issue of a young whistle-blower (e.g. a minor or child), or a person who is under significant distress and whether or not considerations have been given to determine whether or not the person has the capacity to waive that protection.
- (b) Questioned whether the concerns raised by human rights monitoring bodies which have constituencies who are raising concerns from the grassroots-level, civil society groups and the public, will be taken seriously and not just dismissed by members of the executive as there is no body holding them to account.
- (c) Suggested that the ATC take in all the complaints that they receive and weed out what would require further investigation.
- (d) Highlighted that consideration should be given to the economic climate that we have in Fiji and whether we can use existing structures after looking at other jurisdictions and reshaping a model that's fit-for-purpose for us, especially since taxpayers' money are funding these new commissions. Bearing in mind that members of the public also have to pay for their own transportation costs, fees involved in getting the information and then seeking relief via court, if it comes to it.

5.0 [07/02/25 continued] Auditor-General inquiry (Audit Bill vs Governance Laws and definitions):

- (a) Inquired about the impact of governance laws on the Audit Bill upon implementation, particularly the definition of "public sector." This definition is important to accurately reflect the Auditor-General's mandate as outlined in various pieces of legislation, such as the Financial Management Act.
- (b) Clarification was sought on the definition of a public agency and information within the governance laws, and the applicability of the Code of Conduct Bill to the Auditor-General and the Office of the Auditor-General staff.

5.1 Key issues for the Information Act 2018 raised and recommendations suggested:

- (a) The Information Act 2018 has improved transparency but requires several enhancements. It lacks coverage for all public entities, including State-owned Enterprises and Public-private partnerships.
- (b) Bureaucratic obstacles lead to delays in processing information requests, and broad exemptions enable officials to withhold information on unclear grounds.
- (c) The lack of an independent oversight body weakens the public's ability to contest access denials.
- (d) Public agencies should be more proactive in publishing key documents, and adopting open-data principles is crucial for modernizing the information framework.

- (d) Recommendations: extending the coverage of the Act to include all public entities, strengthening oversight and appeal mechanisms, enhancing proactive disclosure and open-data practices, protecting whistle-blowers, and safeguarding press freedom, particularly regarding the dissemination of information to the public.

5.2 Proposed recommendations for the Code of Conduct Bill:

- (a) Enhance accountability mechanisms for a proposed Code of Conduct for public officials by proposing that there should be clear enforcement provisions and independent oversight bodies to ensure accountability for violations.
- (b) Have precise definitions of ethical standards that are aligned with international anti-corruption laws like UNCAC, and improved public access to information about the Code and disciplinary actions.
- (c) Necessitate a robust whistle-blower protection and effective implementation and monitoring of the Code so as to foster integrity and combat corruption.
- (d) Ensure there are transparent processes and that there is civil society involvement in overseeing the Code's enforcement so as to build trust between the government and citizens while ensuring ethical governance.

5.3 Proposed recommendations for the Accountability and Transparency Commission:

- (a) Institutional Independence: The Commission should operate free from political influence and must be sufficiently funded to ensure impartial investigations.
- (b) Commissioner Appointment Process: Public consultation and multi-stakeholder engagement should be integral to the appointment process to prevent political biases.
- (c) Mandate and Enforcement Powers: The Commission must be empowered legally to investigate corruption allegations against public officials and enforce penalties for violations of transparency and accountability laws.
- (d) Public Reporting and Information Access: There should be clear mechanisms in place for public reporting, protection, and access to information.
- (e) Alignment with International Standards: The Commission's operations should comply with Fiji's obligations under international standards, particularly the United Nations Convention against Corruption (UNCAC), which Fiji has recently reviewed.

ANNEXURE L

Written Submissions

1.0 Akuila Yabaki (Colaisuva, Suva)

Title: Enhancements based on world best practices to improve governmental transparency and accountability in relation to the mentioned pieces of legislation.

Summary: The proposed reform aims to enhance transparency and accountability through amendments to the Information Act 2018, the Accountability and Transparency Commission Bill 2025, and a new Code of Conduct Bill 2025. Objectives include aligning with constitutional rights, broadening access to information, and setting ethical standards for public officials. Benefits include increased public trust, better governance, and more citizen engagement. Challenges involve legal harmonization, resistance from entrenched interests, privacy concerns, and ensuring effective implementation amidst limited resources. The reform seeks to streamline information access, establish a robust oversight commission, and enforce ethical behavior, but it must navigate the complexities of privacy, cultural resistance, and bureaucratic inertia.

Here are some enhancements based on world best practices to improve governmental transparency and accountability in relation to the mentioned pieces of legislation:

Information Act 2018:

1. Alignment with Constitutional Rights:

- **Proactive Disclosure:** Implement a policy where government institutions must proactively publish information of public interest, similar to practices in countries like Canada (with Bill C-58) or the UK's Freedom of Information Act. This reduces the necessity for individual requests and aligns with the right to information.
- **Review of Exemptions:** Ensure exemptions are strictly defined, limited, and subject to review. Compare with the EU's GDPR, where exemptions must be justified under specific conditions like public interest or data protection.

2. Proposed Amendments to Broaden Scope:

- **Include Private Entities:** Amend the act to cover private entities performing public functions, as seen in South Africa's Promotion of Access to Information Act, enhancing transparency where government services are outsourced.
- **Digital Transformation:** Encourage digital access to information, drawing from Estonia's e-Government model, where all public data is accessible online, making the process more inclusive and user-friendly.

3. Streamlining and User-Friendliness of Information Requests:

- **Single Portal for Requests:** Inspired by Australia's FOI system, create an integrated online platform for all information requests to simplify the process.
- **Response Time Standards:** Set and monitor strict timelines for information requests, similar to Mexico's transparency laws, with penalties for non-compliance or delays.
- **Appeals and Oversight:** Strengthen the appeal process with an independent body similar to Ireland's Information Commissioner, ensuring decisions are reviewed fairly and swiftly.

Accountability and Transparency Commission Bill 2025:

1. Clear Objectives:

- **Define Mandate:** Clearly outline the Commission's roles akin to the UK's Independent Commission Against Corruption or Hong Kong's ICAC, focusing on prevention, investigation, and education.
- **Performance Metrics:** Establish measurable goals and benchmarks for transparency and accountability, similar to Singapore's CPIB, which reports annually on its activities.

2. Reinforcing Constitutional Provisions:

- **Constitutional Alignment:** Ensure the Commission's authority and operations are explicitly supported by constitutional provisions, drawing from Brazil's Federal Constitution which supports transparency bodies.
 - **Incorporation of Existing Provisions:** Integrate existing ATC provisions under the Constitution into the new legislation to avoid redundancy and ensure legal coherence.
3. **Integration of Existing ATC Provisions:**
- **Harmonization:** Align the new bill with current laws and constitutional mandates to avoid conflicts, taking cues from Germany's approach where federal and state laws work in concert.

Code of Conduct Bill 2025:

1. **Standards of Accountability:**
 - **Benchmark Against Global Standards:** Use the OECD's Guidelines for Managing Conflict of Interest in the Public Service to set high ethical standards.
 - **Mandatory Training:** Implement mandatory ethics training for all public officials, similar to practices in New Zealand, enhancing understanding and compliance with the Code.
2. **Enhancing Ethical Conduct:**
 - **Public Participation:** Allow public input in the formulation or amendment of the Code, much like in the U.S. where public ethics oversight bodies often include public members.
 - **Whistleblower Protection:** Ensure robust whistleblower protections are part of the Code, drawing inspiration from Australia's Public Interest Disclosure Act, which offers strong safeguards.
3. **Public Accessibility of Declarations:**
 - **Open Registers:** Make asset and interest declarations publicly accessible, as in the UK where MPs' financial interests are published online.
 - **Real-Time Updates:** Adopt a system for real-time or periodic updates to these declarations, akin to Lithuania's requirement for annual updates by public officials.

By leveraging these best practices, these legislative proposals can be significantly enhanced to better serve the principles of transparency, accountability, and constitutional rights, aligning with both national values and international standards.

Here are some pieces of evidence that justify the proposed enhancements for improving governmental transparency and accountability:

For the Information Act 2018:

- **Global Benchmarking:**
 - **Canada's Bill C-58:** Introduced in 2019, it mandates proactive disclosure of government information, significantly reducing the need for FOI requests. This has led to a 20% increase in public access to government data ().
- **Effectiveness of Digital Platforms:**
 - **Estonia's e-Government:** Estonia's digital services have made government information widely accessible, with 99% of public services available online, contributing to high transparency ratings and public satisfaction ().
- **Impact of Broadening Scope:**
 - **South Africa's PAIA:** By including private bodies in its scope when they perform public functions, it has increased transparency in sectors like healthcare and utilities, leading to better public oversight of service delivery ().

For the Accountability and Transparency Commission Bill 2025:

- **Clear Objectives and Performance Metrics:**
 - **Singapore's CPIB:** The Corrupt Practices Investigation Bureau's annual reporting system has been instrumental in maintaining Singapore's reputation for low corruption, with clear performance metrics contributing to its effectiveness ().
- **Constitutional and Legal Integration:**
 - **Brazil's Federal Constitution:** It explicitly supports transparency bodies, which has facilitated the operation of entities like the Comptroller General's Office, ensuring that anti-corruption measures are constitutionally reinforced ().
- **Examples of Independent Oversight:**
 - **UK's Independent Commission Against Corruption:** It has shown how an independent body can effectively monitor government actions, leading to higher public trust and accountability ().

For the Code of Conduct Bill 2025:

- **Setting High Ethical Standards:**
 - **OECD Guidelines:** These have been used by countries like Australia to manage conflicts of interest, with clear benefits in reducing corruption and enhancing public sector integrity ().
- **Public Participation and Transparency in Ethics:**
 - **New Zealand's Public Service Commission:** Mandatory ethics training has been part of their strategy, leading to a culture of integrity and a public sector ranked high in global corruption perception indices ().
- **Whistleblower Protections:**
 - **Australia's Public Interest Disclosure Act:** Since its introduction, there's been an increase in whistleblowing activities without the fear of retaliation, promoting a culture of openness and accountability ().
- **Public Accessibility of Declarations:**
 - **UK's Register of Members' Financial Interests:** Public access to this register has allowed for greater scrutiny of elected officials' financial dealings, enhancing accountability ().

Potential Challenges and Supporting Evidence:

- **Legal Harmonization:**
 - **Germany's Federal-State Cooperation:** Despite challenges in aligning federal and state laws, their system shows that with careful legislative design, transparency can be maintained across levels of government ().
- **Cultural Resistance and Privacy Concerns:**
 - **Sweden's Freedom of the Press Act:** One of the oldest FOI laws, it demonstrates how cultural acceptance of transparency can be fostered over time, though it still navigates privacy issues carefully ().
- **Implementation Amidst Limited Resources:**
 - **Mexico's Transparency System:** Despite resource constraints, their system has shown that strategic prioritization and international aid can help implement transparency reforms effectively ().

These examples illustrate how similar reforms have led to tangible benefits in transparency and accountability, providing a foundation for the proposed enhancements in the context of the legislation discussed.

2.0 The University of Fiji



The University of Fiji

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OFFICE OF THE VICE-CHANCELLOR



7th February 2025

Review of the Information Act 2018, Code of Conduct Bill 2025 and Accountability and Transparency Commission (ATC) Bill 2025.

Submission by the University of Fiji Justice Devendra Pathik School of Law

Presenters:

Professor Shaista Shameem, Dean and Vice Chancellor

Professor Aziz Mohammed

Ms Sainiana Radrodoro

Mr. Vinil Sharma,

Ms Sanjana Datt, and

Ms Patricia Chand

Introduction

- (i) Overview of the relevant provisions of the Constitution of the Republic of Fiji*

The University of Fiji JDP School of Law academics, all lawyers with considerable legal experience, carefully reviewed sections 25 and 150 of the **Constitution of the Republic of Fiji** for their scope for application of the Information Act 2018. The legal

team also reviewed the relevant provisions of the Constitution for the Accountability and Transparency Bill 2025 (ATC) and the Code of Conduct Bill 2025.

The views presented in these submissions were drafted in an easily accessible format in order to make the point that there are some serious issues arising from, firstly the Information Act 2018, even with the possible amendments proposed, and, secondly, as an ancillary issue relating to the proposed Accountability and Transparency Bill 2025 and the Code of Conduct Bill 2025.

(ii) Information Act 2018: general observations in accordance with the Constitution.

With respect to the Information Act 2018, including its possible amendments, the University of Fiji's legal team is of the view that sections 25 and 150 of the Constitution must be considered very carefully **separately** and interpreted in accordance with the respective purposes or aims (and targets) of these sections. In particular, the Chapter 2 Bill of Rights section 25, titled '**Access to information**', refers in (1) to '*every person*' having right of access to **information** held by (a) *any public office* and (b) **information** held by '*another person*' and required for the exercise or protection of *any legal right*. '*Person*' is defined by section 163 of the Constitution as a '*natural or legal person including any company or association or body of persons whether corporate or unincorporated*'. '*Public Office*' is defined in the same section in the scope of section 163 (a) to (h). Mainly these include offices for which a written law applies and includes commissions (ad hoc commissions e.g. COIs, would be included). The reference to '*written law*' in (h) would include the Constitution. Section 25 (3) allows for limitation by law **if necessary** to that access and to regulate the procedure regarding the extent of that availability to the person seeking access.

Section 150, on the other hand, coming under Chapter 8 Accountability covers information of a specific type, namely **official information and documents**. Titled **‘Freedom of information’** that section states that a written law must make provision to a **member of the public** of the right to access **official information and documents held by the government and its agencies**. ‘Agencies’ is not defined in section 163 of the Constitution but is defined in a list in section 2 of the Information Act 2018 and includes an expanded list that is not in the Constitutional provisions defining a public office, for example it covers a **‘Government Company’** (not in the Constitution).

Thus, to use an example of who can access information, section 25 can cover the media (any person) but section 150 cannot (member of the public). These are two different sets of people who can access information in different scenarios, namely whether it is general information or official information.

So any Information Act for Fiji needs to take such variance into account. Any amendment to the Information Act 2018 must consider the different wordings of sections 25 and 150 which are very specific for the purpose. The provisions of the current draft of the Information Act 2018 do not appear to be in concert with these two separate constitutional sections as they are jumbled up.

Under these circumstances it is not possible to make meaningful adjustments to the Act or provide straight answers to the general questions posed by the Law Reform Commission. The UniFiji legal team decided therefore that the best way to provide any assistance would be to address the Terms of Reference provided in *Annex 1* by the Hon. Attorney General as the only logical way to proceed.

Information Act 2018

A. Basic Purposes and Principles

- (i) NO, section 4 objectives do not fully reflect its purpose as the purpose should be the constitutional provisions section 25 and 150 which are different in purpose.
- (ii) YES, the ACT requires major redrafting to better achieve the sections 25 and 150 purposes.

B. Proposed Amendments to Information Act 2018

- (i) NO. Needs more clarity for the different sections of the Constitution.
- (ii)
 - Private sector bodies, YES if section 25 is invoked.
 - Government Business Enterprises: YES if it is an agency of the government (section 25 and section 150 both apply).
 - Legislative bodies, YES.
 - Public agency bodies: YES.
- (iii) Minister to exclude public agencies, YES but only to the extent necessary (define this).
- (iv) 'direct interest' does not have to be shown for either section 25 or section 150 compliance and time limits do not matter for seeking information.
- (v) Does not matter how this information is to be accessed.
- (vi) International standards are important for interpreting both section 25 and section 150.
- (vii) Careful analysis of the exemption reasons is required depending on whether section 25 or section 150 is invoked. 'Direct interest' is not explicitly stated in section 25 or section 150. However, other limitations are present in the Bill of Rights, e.g. national security, public safety, public order etc.
- (viii) YES, public information is necessary.
- (ix) Refer to section 22 (4) of the Constitutions on 'limitations' on the grounds given.
- (x) YES, sanctions should be imposed.
- (xi) YES whistleblower protection required.
- (xii) YES, say 50 years.
- (xiii) YES must consult 3rd parties.
- (xiv) YES, access must be affordable.
- (xv) YES
- (xvi) YES, training.
- (xvii) YES, to make them consistent with section 25 and 150 but limitations clauses for protection in the public interest.

2. ATC 2025

The functions are not clear in the Constitution and the Legal Team did not have the advantage of considering any detailed bill.

However, the main issue is whether the ATC should have responsibility for the Information Act 2018 and our view is that it should not because the Constitution does not make provision for that.

However, it does for the Code of Conduct in section 149.

3. Code of Conduct Bill 2025

- (i) Requires the values and principles in section 123 to be included.
- (ii) ATC 2025 needs to be specific on how it will apply the Code of Conduct Act.

Conclusion

In summary the most important observation is that once sections 25 and 150 are analyzed for their application in all given situations and for all persons for the right to access to information generally, as covered by section 25, and official information, as covered by section 150, the other two bills will be easier to draft.

Note that section 2 (2) of the Constitution makes it mandatory for all laws to comply with the Constitution or they will be invalid.

The University of Fiji's JDP School of Law's legal team is grateful for the opportunity to make general submissions regarding constitutional principles to be incorporated in the three pieces of legislation proposed.

3.0 Fiji Women's Rights Movement (FWRM)



FWRM Submission on Governance Laws 2025

The Fiji Women's Rights Movement (FWRM) is a feminist organization committed to removing all forms of discrimination against women and girls through advocacy, research and legislative reform. FWRM acknowledges the importance of an accessible rule of law, upheld through the promotion of human rights, democracy and the feminist principles of good governance, transparency and accountability.

As a starting point, the overall purpose of the draft Bills is to empower the public to access and use information to hold the Government to account for its actions. FWRM stresses that the rule of law, ethics, integrity, democracy and human rights are non-negotiables and underpin the proper functioning of any Government including these draft laws.

FWRM expresses its dismay at the short timeframe given for public consultation to read, digest and comment on these draft legislative frameworks. FWRM hopes that the expediting of these draft Bills is not simply a tick box exercise as these draft Bills demand public scrutiny and intellectual rigour due to its wide implications on the governance of Fiji. FWRM hopes that the Government's approach to limiting consultation times does not become the accepted practice on upcoming legislative proposals as this will in our view further erode public confidence in Government and its processes.

FWRM appreciates the opportunity from the Fiji Law Reform Commission (FLRC) to make a submission on the important governance laws.

This submission will provide FWRM's analysis and recommendations on:

- The Information Act 2018
- The Code of Conduct Bill 2018;
- The Accountability and Transparency Commission Bill 2025

Wastage of limited public resources and the ethics and integrity of persons in charge of governance institutions

While FWRM commends the Government's efforts to reconstruct and or establish new institutions, this has been made against the backdrop of mounting public debt, a debilitating health system, the unethical pay increase of Members of Parliament, public furore on the unethical functioning of an anti-corruption institution, inter alia. This begs the question about the establishment of the proposed Accountability and Transparency Commission as anyone who takes the helm of this important office must in our view exercise the highest level of integrity, ethics and competence. The recent media reports about the controversy of the FICAC and the Commission of Inquiry for example brings this issue into sharp focus. In our view, this does not inspire public confidence and trust in such an institution to carry out its legislative mandate, without fear or favour. Further the significant financial and time investment in setting up commissions as history has shown that it has resulted in the misuse

of taxpayer funds and seen the neglect or marginalisation of critical national priorities. The Government should seriously consider putting on hold the establishment of such an institution. FWRM considers it a more effective approach to invest in strengthening the capacity of these institutions by allocating, inter alia, increased budgets to improve their effectiveness and impact.

Specific comments on the Information Act 2018

FWRM recognizes that the right of the public to access and use information as a critical component of the rule of law, human rights and democracy. Since its establishment, FWRM has had extensive experience in undertaking evidence based research, the outcomes of which are used by FWRM to advocate for legal, institutional and policy reform to the legislature and the Government of the day. As mentioned earlier and further unpacked, FWRM monitors the effectiveness of human rights mechanisms and access to publicly held information is essential for ensuring government accountability. However, the establishment of this proposed law is not matched by appropriate information infrastructure which is hampered by bureaucratic obstacles, outdated digital records, and unmaintained public databases. These barriers impact FWRM's ability to undertake a critical feminist and gender analysis of information systems and processes as they exist in the Fiji Government machinery.

The Information Act in its current form adopts an overly bureaucratic approach to information access, which can act to stifle the public's access to information. FWRM hopes that Government puts in place the critical policies and practices such as standard operating procedures to facilitate implementation prefers that the regulations that will facilitate the operationalization of the Act. To do otherwise will reinforce systematic barriers which disproportionately impacts women, human rights defenders, and marginalized communities.

Archaic language (Sections 12, 13, 14), poor structuring (Sections 8(b), 8(c), 12(2), 12(3) and vague provisions Section 18(1)(a) create unnecessary complexity, limiting accessibility, while financial barriers further restrict access for those who live with meagre resources and make up a significant amount of those who live below the poverty line in Fiji . Without clear exemptions, the potential conflicts of interest and power imbalances may lead to arbitrary denials and the undermining of transparency in the implementation of the Act.

Section 150 of the 2013 Constitution provides-

“ A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government”.

Recommendation

- FWRM recommends that section 12(2) and (3) be combined into one provision – its superfluous and a duplication. FWRM further recommends that any charges imposed under the Act be free and or nominal in nature.

FWRM draws attention to section 6(2) of the Act which states-

6.— (2) Notwithstanding any other provision in this Act, the information requested by a person under subsection (1) must be information which—

(a) directly affects the person making the application; and

(b) comes into existence upon or after the commencement of this Act.

Section 6(2) restricts access to information only to individuals directly affected and we note that the definition of “directly affects” is provided for in section 6(4). We are of the view that this limits broader public access and reduces transparency making it harder for journalists, researchers, and civil society organizations to access public information and hold the Government accountable. This in our view falls short of the Constitutional provision to ensure public access to information which is crucial for governance, human rights, and the scrutiny of public policy.

Recommendation

- FWRM urges that the definition of “directly affected” be amended to take into account the role of journalists, researchers and civil society organizations to access public information to hold the Government accountable.

FWRM notes section 20 of the Act which sets out 15 categories where the right to information may be refused. This section uses broad and vague phrasing, allowing excessive discretion in denying access to information, disproportionately affecting women and human rights defenders, and marginalised communities.

Recommendations

- **FWRM requests the Act to incorporate the use of precise language to ensure that the section is fairer. Adding “likely” may help define exemptions more precisely, preventing arbitrary refusals while balancing transparency and security. This will additionally make the section more specific.**
- FWRM strongly recommends the inclusion of clear safeguards to prevent misuse for example the inclusion of the doctor-patient privilege in a separate paragraph alongside legal privilege which is spelt out in section 20(e).

Specific comments on the Code of Conduct Bill 2025

This Bill aims to give effect to section 149 of the 2013 Constitution.

This Bill must establish clearly its relationship to legislative frameworks that deal with breaches of Governance such as the Human Rights and Anti-Discrimination Act, specific provisions of the Employment Relations Act such as section 75 and the FICAC legislation, the Electoral Act, inter alia.

Recommendation(s)

- The FWRM recommends that the Bill needs to articulate specific conduct rather framing it under the broad phrase “detrimental action”. Further FWRM recommends that the term “likely” be inserted for example in paragraph (a) which means it will read as “injury or likely to injure, damage or likely to damage or loss or likely to cause loss” as actual action and or threats of detrimental action can undermine the mental health of a victim placing them in mental trauma which can profound effects on all aspects of their lives including their physical health.
- FWRM reiterates the importance of clarity in interpretation and definitions to avoid ambiguity. This will help the enforcement of and offer greater protection from gender-based

misconduct. The definitions should cover both physical and non-physical forms of harassment, direct and indirect forms of discrimination and different forms of misconduct for clarity.

- FWRM additionally calls out for the Bill to clearly outline reporting mechanisms as well as fines and penalties to layout the possible ways to access justice.

Inconsistency in clauses under all schedules

Schedule 1 to the Bill provides in respect of Post-office Employment

12.1 A person to whom this Code applies must undertake that upon leaving office and for a period of 12 months thereafter, he or she will not take up any employment with, accept a directorship of, or act as a consultant to any company, business or organization with which he or she has had official dealings in his or her last 12 months in office.

Schedule 1 Code of Conduct for president, prime minister and ministers

10.2 Except with the express approval of the appointing authority, a person to whom this Code applies will resign or decline directorships of public or private companies and businesses on taking up office.

We emphasise that Fiji's smallness means that we are closely-knit communities and having a stand down period of 12-month period is insufficient time as FWRM notes that public officials have in their possession highly confidential and sensitive information which they may use for their financial or non-financial gain.

Recommendation(s)

- FWRM suggests that the term should be extended for a minimum of three to five years to prevent and or minimize risk to the Government of the day.
- FWRM recommends that the provision related to Post Employment in Schedule 1 should also apply to public officials who fall under Schedules 2, 3, 4, 5 and 6.

Strengthening protections for complainants

Part 5 Protection of Complainants

20. Subject to the provisions of this Act, a person who makes a complaint under this Act concerning alleged or suspected non-compliance with a Code of Conduct by any person— (a) incurs no civil or criminal liability for doing so; and (b) is not, for doing so, liable— (i) to any disciplinary action; or (ii) for any breach of duty of secrecy or confidentiality (whether or not imposed by a written law) applicable to that person.

Offence of taking detrimental action

21.—(1) Any person who takes or threatens to take any detrimental action against another person because anyone has made, or intends to make, a complaint under this Act for an alleged or suspected non-compliance with a Code of Conduct by any person commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(2) Any person who— (a) attempts to commit an offence under subsection (1); or (b) intending that an offence under subsection (1) be committed, incites another person to commit that offence, commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

24. Any person who has made a complaint under this Act and— (a) who fails, without reasonable excuse, to assist the Commission in investigating the complaint in any way, including failing to provide the Commission with any information requested by the Commission;

(b) who discloses the details of his or her complaint to any other person or entity other than the Commission;

(c) the substance of the complaint was malicious or was politically motivated against the person the subject of the complaint or was made for the purpose of discrediting or defaming, or causing reputational damage to, the person the subject of the complaint; or

(d) who breaches any provision of this Act, forfeits the protection given to that person under this Part.

Section 20 of the bill provides protection to whistleblowers which is crucial for any form of violations around discrimination and harassment or misconduct. However, this is forfeited in section 24 if there are any form or malicious or politically inclined motives associated to the complaints, which may restrict or discourage complainants/victims/survivors from speaking out. Section 21 further criminalises retaliation against complainants. FWRM consider Clause 21 to be problematic as it defeats the legislative purpose of the Code of Conduct and it will have the adverse impact of discouraging people for bringing an action under this proposed law despite the Whistleblower provisions.

Recommendations

- FWRM recommends that this provision be removed and it may be more effective to link it to existing criminal offences in the Crimes Act and any other related legislation.
- FWRM recommends that Clause 24(c) be removed as it will be abused and little or no detrimental action can be taken against a public official. The better approach is to apply common law principles of malicious prosecution and or slander, libel or defamation. Noting that truth is a defence to defamation.
- FWRM also recommends that Clause 24(d) be removed as it defeats the protections afforded in Clause 20 and Clause 23.
- FWRM suggests that regulations include strong safeguards against all retribution, whether direct or indirect, which may have a disproportionate effect on women. This may include explicit provisions against the unfair treatment of complainants.

Accountability and Transparency Commission Bill

Concerns Regarding Oversight and Enforcement Mechanisms

The effectiveness of the Accountability and Transparency Commission in addressing abuse of power remains uncertain, particularly if oversight bodies lack independence or are vulnerable to political interference. A truly independent and impartial body is essential to ensure that misconduct, including gender-based discrimination and abuse, is thoroughly investigated and addressed without external influence. Without sufficient autonomy, the Commission may struggle to hold powerful individuals accountable, undermining the Bill's legislative mandate as spelt out in the objectives.

Additionally, Clause 5 of the CoC emphasizes confidentiality, which, while important for protecting complainants, may also restrict public transparency regarding the handling of complaints and investigations. This lack of transparency could reduce public trust in the Commission's ability to enforce the Code of Conduct effectively, particularly if cases of misconduct are handled behind closed doors without adequate reporting mechanisms.

Furthermore, section 12 grants the Commission authority to dismiss complaints it deems “frivolous” or “malicious.” Without clear criteria for such determinations, there is a risk that legitimate concerns, particularly those related to gender-based misconduct, could be dismissed prematurely. This provision could discourage individuals, especially women from reporting violations due to fears that their complaints will not be taken seriously or will be unfairly dismissed.

Recommendations

- FWRM requests that the Proposed Bill outline the specific requests and more information, time and clarity be provided to the public.
- FWRM additionally requests a clear criterion to clarify what constitutes “frivolous” or “malicious” complaints. Such a criteria would increase public transparency and may create a system of addressing complaints fairly.

Ends.

If there are any further questions on the submission, we can be contacted on the following:

Fiji Women’s Rights Movement Level 2,

TAF House 76 Gordon St, Suva

Email: info@fwrn.org.fj

Facebook: www.facebook.com/fwrn1

Instagram: [@fwrn1](#)

LinkedIn: <https://www.linkedin.com/company/7596711>

YouTube: <https://www.youtube.com/user/FWRM2011>

4.0 Fiji Women's Crisis Centre (FWCC)



FIJI WOMEN'S CRISIS CENTRE

PO Box 12882, Suva, Fiji
Ph: (679) 331 3300

E-mail: fwcc@fijiwomen.com
Fax: (679) 331 3650

12 February 2025

The Director
Fiji Law Reform Commission
Suva

Dear Madam,

RE: FLRC GOVERNANCE LAW REFORM PROJECT

We write in regards to the above subject.

We acknowledge and thank the Commission for the opportunity to make written submissions in regards to the abovementioned project.

Please find attached the submission from Fiji Women's Crisis Centre with regards to the same.

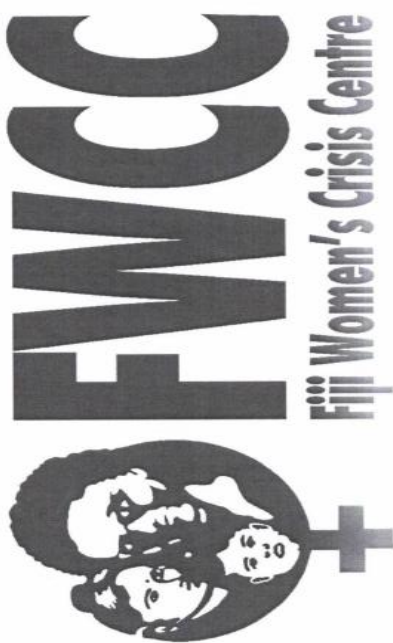
Should you have any queries then please do not hesitate to contact me on phone number (+679)9992875 or email fwcc.shamima@gmail.com.

Yours faithfully,

Shamima Ali
Coordinator

Acronyms

COC	Code of Conduct Bill 2018
CSO	Civil Society Organisation
FWCC	Fiji Women's Crisis Centre
GBV	Gender Based Violence
RTI	Right to Information
VAWG	Violence against Women and Girls



FIJI WOMEN'S CRISIS CENTRE SUBMISSION:

- REVIEW OF THE INFORMATION ACT 2018, ACCOUNTABILITY AND TRANSPARENCY BILL 2025, CODE OF CONDUCT BILL 2025.

1. BRIEF ON FIJI WOMEN'S CRISIS CENTRE

The Fiji Women's Crisis Centre (FWCC) is a human rights organisation, based on the principles of human rights, democracy and the rule of law, which has been in existence for over 40 years.

The goal of FWCC is to eliminate all forms of violence, in all spheres of life, against women and girls in Fiji and the Pacific. FWCC implements this vision through an integrated and comprehensive program designed to prevent and respond to violence, by reducing individual and institutional tolerance of violence against women, and increasing available and appropriate services for survivors.

FWCC addresses the problem of violence against women using a human rights and development framework. This focus on human rights includes a feminist analysis of the problem and permeates all aspects of FWCC's work, recognising that the root causes of violence against women are unequal gender power relations, imbedded in Patriarchy.

2. INTRODUCTION

The right to access to information is a critical right in a democratic state; a state that embodies the principles of rule of law, human rights, good governance, accountability and transparency. At international law level, the right to freedom of information is part of the right to freedom of expression and is found in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

One of the ultimate goals of any society striving for human development is the empowerment of all its citizens through the access to and the use of the relevant and updated information¹. Achieving this objective constitutes a paramount requirement considering the emergence of knowledge societies, where more and more information is being produced, particularly by governmental bodies². Right to information laws play a critical role in facilitating

¹ UNESCO Development and promotion of the right to information in national frameworks: policy guidelines
<https://unesdoc.unesco.org/ark:/48223/pf0000385179>

² Ibid

public access to information which can strengthen the transparency and accountability of state institutions and support anti-corruption efforts³.

The government of Fiji has called for a review of the Information Act 2018 and proposals for the Accountability and Transparency Commission (ATC) Bill 2025 and Code of Conduct (COC) Bill 2025.

The FWCC welcomes the opportunity to make submissions on the proposed governance laws framework which is essential to the proper functioning of our national democracy embodying Good Governance⁴, Transparency⁵, Accountability⁶ and Rule of Law⁷. However, it is concerning that the time given for submissions and consultations are limited and short in nature.

THE INFORMATION ACT 2018

In Fiji, the right to information and the right to freedom of expression are both constitutionally guaranteed rights. The Fijian constitution additionally requires that the right to information be enshrined in legislation in this case the Information Act 2018, Fiji. These constitutional guarantees can only be effective when the institutional mechanisms are available, accessible, understood, usable and enforceable by all stakeholders in a thriving democratic society.

In response to the review FWCC submits the following:

1. **Right to Information Officer** - That the role of receiving requests for information should with the Right to Information Officer. The Commission should be an independent body with oversight role over the Act and to which complaints can be lodged for refusal to disclose/compliance issues and the hearing of appeals.
2. **Language** – language is a barrier to accessing information. Information held by government agencies in its various forms should be made available in the three common languages of I'Taukei, Hindi and English as the right to freedom of information and expression “includes the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers”. It is therefore important that requesters of information are able to access the information in a language that is understood by them. Information request forms should therefore include the medium through which the person requesting wishes to receive the information and the language preferred.
3. **Public Awareness** – The Constitutional right to information and expression should be published on all government agency websites and at government agency office sites as this promotes community awareness of the right, accountability and transparency.

³ Transparency International: Enforcement of the Right to Information: challenges and best practices;

https://knowledgehub.transparency.org/assets/uploads/helpdesk/RTI_Enforcement_FINAL.pdf

⁴ Good governance refers to legitimate, accountable, and effective ways of obtaining and using public power and resources in the pursuit of widely-accepted social goals. *Good Governance: Rule of Law, Transparency, and Accountability*, by Michael Johnston Department of Political Science, Colgate University

⁵ Transparency refers to official business conducted in such a way that substantive and procedural information is available to, and broadly understandable by, people and groups in society, subject to reasonable limits protecting security and privacy. Ibid.

⁶ Accountability refers to procedures requiring officials and those who seek to influence them to follow established rules defining acceptable processes and outcomes, and to demonstrate that they have followed those procedures. Ibid.

⁷ Rule of law refers to the exercise of state power using, and guided by, published written standards that embody widely-supported social values, avoid particularism, and enjoy broad-based public support. Ibid.

4. **Duty to publish** - That there be a standardised list of information that **must** be published and made available by public agencies on their websites for ease of access to the public or made available upon request. These would include information such as policies, regulations, guidelines, fee structures, application forms, codes of conduct, procedures, board of trust membership, terms of references for appointments, governance frameworks or structures, gender disaggregated data and so on. These information should not require any processing period or fee however a record of these requests should be maintained by the public agency.
5. **Time limits to avoid delays** - That the time frame for responding to requests is too lengthy, the process is laborious and can be deemed to be "frustrating" for the person seeking information. Most of the time resources are wasted money and time, in waiting for a response from government agencies when seeking information. For example, citizens travelling from the outer islands, highlands or rural areas spend large sums of money on transportation costs, meals and waiting time (even staying overnight with relatives) to access "information" at the nearest town or the city. Mostly, information needed in order to initiate legitimate claims and to access justice or for closure, only to be delayed for days/weeks or even months or no response at all. A time limitation ensures "certainty" or finality. A timeframe of seven days to receive a response is sufficient as ten days is too long.
6. **Refusal to disclose** - The language used for the description of the 15 instances in which disclosures may be denied are vague. This leaves the Commission with a wide range of grounds for them to conveniently refuse disclosure.
7. **Failure to disclose within the time limit** - In addition, if the information is not disclosed within 7 days from the date of request and there has been no communication to the person requesting information of an extension then the request should be deemed "refused". Any extensions should be for the same period with the agreement of the person requesting the information.
8. **Requirements** – The Act requires the person requesting information to comply with 'any other requirement' of the agency. Section 6 (e) of the Information Act should be amended as the use of the word "any other requirement" is open to abuse and can be conveniently used to decline a request thus we submit that that any other requirement be a "**reasonable requirement**".
9. **Prudent record keeping/management** - All "information" should be stored in a form that is easily retrievable by all agencies since all agencies have internal guidelines that requires the preparation of relevant reports and record keeping/management. This will make the process more efficient avoiding delays.

10. **Need to give “proper reasons”** – The act requires that reasons must be given where information is not provided however FWCC is of the view that this is not sufficient and that “proper reasons” must be given in writing and must also contain information on the appeal procedure should there be dissatisfaction with the decision.
11. **Exemptions** – The right to know and to obtain information is critical to the principles of human rights, good governance, rule of law, transparency and accountability. Section 20 provides an exhaustive list of exemptions with regard to disclosures. It is submitted that there be more clarity in terms of exemptions with clear guidelines on which exemptions are conclusive and which are conditional, as this is very critical as exemptions may be used cape to evade disclosure. Such an exemption was claimed (but denied) in the matter of **Commander of the Republic of Fiji Military Forces v Denarau [2022] FJCA 170; ABU0063.2019 (25 November 2022)**⁸ where the Fiji Military refused to disclose a Report of a Board of Inquiry on the grounds that it was a matter of national security. The Court of first instance, accepted that there are many aspects of the Fiji Military pertaining to national security which will be sensitive and documents relating its operations which would, quite justifiably, attract immunity and privilege in the interest of national security. However, it did not see how a Report of a Board of Inquiry relating to the death of (the deceased officer) was remotely a matter of national security. In the particular case, the Court of Appeal considered the Constitutional right to information, obiter, “However, in my view, those limitations taken in the context of the facts of the instant case I could not see, how they could have been brought under the concepts of “state privilege” linked to “National Security” as well, which brought to my mind the necessity for the Fijian legislature to enact a Right to Information Act taking in the “concept of the public interest override,” perhaps by creating a Right to Information Commission...” It is therefore critical that the law provides clarity in terms of exemptions to avoid its use as a “cloak” to evade disclosure. It is submitted that the list of exemptions in section 20 needs to be revised as some of the exemptions are generally worded and some of the exemptions have the effect of conveniently barring access to information sabotaging the institution of legal proceedings against the government agencies avoiding accountability. For example, pursuing legitimate claims of environmental damage/exploitation where agencies have issued approvals/licenses will be impossible because information on dealings is exempted from disclosure as it is detrimental to the “economic interests” of the State. Such exemptions do not foster accountability and transparency but legitimates corruption. Another example is Section 20 (f) which can have a detrimental effect on beneficiaries themselves for instance, from a gendered perspective, female members of landowning units often face barriers accessing information from the iTaukei Land Trust Board (TLTB), a fiduciary, because of male gatekeepers. Women sometimes require the assistance of male members to be heard, especially when seeking information on land “dealings”. Male counterparts also face the same barriers but not as much as women, even though both are beneficiaries and therefore

⁸*Commander of the Republic of Fiji Military Forces v Denarau* [2022] FJCA 170; ABU0063.2019 (25 November 2022)⁸ <https://www.paclii.org/cgi-bin/sinodisp/fj/cases/FJCA/2022/170.html?stem=&synonyms=&query=Right%20to%20information>

should be able to have access to information on land dealings and annual financial reporting "as of right". In 2018, Three hundred and forty-five landowners took the TLTB to Court after they were refused access to information where negotiations and conclusion of the deed of settlement over hotel sites on their lands was not disclosed to them and the documents were not made available to them either⁹. This is why it is essential that there be clarity with regards to exemptions.

Moreover, the Act also gives the Minister the discretion of exempting a public agency from disclosures after consultation with the Commission. In balancing power and interest, section 21 allows the Minister to wield a wide discretion that can be used for political gain. This undermines the democratic principles of human rights, good governance, rule of law, transparency and accountability. The Act is also silent on the criterion that can be applied for the types of public agencies that can be exempted.

12. **Sanctions** – that there should be sanctions for those who willfully obstruct access to information for the very reason that it is a denial of a fundamental right that is constitutionally guaranteed and tantamount to unethical conduct. Women, particularly domestic violence survivors, women workers, and rural women, are disproportionately harmed when officials: Deny them access to legal documents (e.g., protection orders, child custody records, employment contracts); Withhold information about government aid programs; Refuse to process right to information (RTI) applications due to bias or corruption. Fiji should criminalize deliberate gendered obstruction of RTI requests, ensuring: RTI officers can be penalized for withholding information that directly affects women's rights, safety, or access to justice; a complaint mechanism that allows women to report RTI violations anonymously.
13. **Reasonable Costs** – The FWCC submits that the right to information should be as cost free as possible. Any costs imposed on community access to information must be fair and equitable. There should be different categories of costs depending on the reason for the request of information however these costs should be as minimal as possible. If it is costly to access information than the objects of this legislation and the constitutional guarantees will be undermined.
14. **Recognising access to information as a Women's Rights Issue** - Fiji's Information Act does not explicitly address the gendered barriers to accessing information. Women especially survivors of domestic violence, single mothers, and those in rural areas struggle to obtain critical legal, financial, and public service information due to:
 - a. Low digital literacy and lack of internet access.
 - b. Fear of surveillance, stigma, and retaliation.
 - c. Complex bureaucratic procedures that disadvantage women with caregiving responsibilities.

⁹ TLTB and Denarau landowners agree to share documents. <https://www.fijitimes.com.fj/tltb-and-denarau-landowners-agree-to-share-documents/>

15. **Women suffer the most when government institutions fail to disclose information due to bureaucratic inefficiency, corruption, or deliberate negligence.** For example:

- a. Delays in processing gender-based violence cases can put survivors at greater risk.
- b. Lack of transparency in government aid programs disproportionately harms single mothers and women-headed households.
- c. Lack of proactive disclosure of gender-related data: The Act does not require government agencies to publish gender-disaggregated data, making it difficult to track gender-based violence cases, workplace harassment complaints, or women's access to public services.
- d. Failure to recognize the link between RTI and gender justice: Access to information is critical for women seeking justice in cases of domestic violence, land disputes, and workplace discrimination. Yet, bureaucratic delays and gatekeeping by male-dominated institutions hinder women's access to timely and relevant information.

THE CODE OF CONDUCT BILL 2018

While FWCC welcomes the concept of a Code of Conduct Bill 2018 (hereinafter referred to as the "COC") however, the Bill in its current form is likely to perpetuate an environment that restricts freedom of speech and expression.

FWCC submits the following:

1. **Decision not to investigate complaints** - The COC does not allow the Commission to investigate a complaint if they are of the opinion that the complaint is "*malicious*" or "*politically motivated*", or if it is "*frivolous*", or if it is "*inappropriate or inexpedient*". However, the COC does not indicate how the Commission would come to this decision. FWCC submits that there should be clarity provided defining those standards to ensure consistency of outcomes.
2. **Whistleblower protection** – The COC does provide some form of immunity for a complainant, however this right does not extend to complaints which fall below the standard as mentioned in (1) above. This places complainants falling in these category in a very difficult situation as they may face prosecution or discipline, especially if the complaint was made against their bosses. This is especially true for victims of sexual harassment or gender based violence in the workplace whose employers or bosses hold influential positions or positions of immense power. In its current form the COC acts as deterrent to victims speaking out, creating an environment of fear and thereby restricting freedom of expression.

Whistleblowing empowers citizens to report against corruption, fraud and misconduct while offering them legislative protection. In Australia and New Zealand, whistleblowers are awarded immunity and are not faced with the threat of imprisonment. This aspect of the COC needs to be reviewed to ensure that those who report wrongdoing are assured the full protection of the law.

3. **Complaints** – Section 24 of the COC states, "Any person who has made a complaint under this Act and — (b) who discloses the details of his or her complaint to any other person or entity other than the Commission; or (d) who breaches any provision of this Act, forfeits the protection given to that person under this Part." FWCC submits that this part of the COC does not consider that complainants will also face trauma either as a result of the acts/actions complained of or because of detrimental action for raising a complaint. Women in particular face many barriers in accessing avenues of assistance because of gender, patriarchy and power dynamics. FWCC's core business is in the provision of free and confidential Counselling services. This service is often the first point of access for women to share their personal information of their experiences and to receive empowerment and options for referral to appropriate agencies for assistance. Women are often victims of gender based violence including domestic violence and sexual indecencies, which makes it harder for women to speak out. Women need to have confidence in the law especially that should be able to confidentially make a complaint without having to deal with the notion that their complaint is rendered useless simply because they have discussed it with someone else already. Therefore, section 12 (c) of the Bill undermines women empowerment.

In addition, Fiji still has some citizens who are not well versed with the law. Most of our citizens would be unaware of what constitutes corruption or a public official misconduct and they will most likely be made aware once they have sought legal advice. In seeking legal advice, a person would need to discuss details about their complaint with another person, or a lawyer.

Furthermore, Section 10(2) of the Bill specifies that a complaint "must" be made in writing. An illiterate person would need to relay his or her complaint to a literate person in order for the complaint to be made out in writing. In this sense, the Bill acts discriminates against certain complainants.

4. **Strengthen Protection for Whistleblowers in cases of Gender based violence and discrimination -**

Fiji must center gender justice, the lived realities of women and marginalized groups, and the structural barriers that prevent them from accessing information, justice, and protection from retaliation. Women especially those experiencing domestic violence, workplace discrimination, and corruption in public service delivery face higher risks when seeking information or exposing wrongdoing. RTI laws and protections must, therefore, be designed with a gender-sensitive framework to ensure women's safety, access to justice, and meaningful participation in governance. Women face unique risks when reporting wrongdoing. The COC does not explicitly recognize gender-based misconduct as a key area for whistleblower protection. The governance laws therefore need to be strengthened to provide:

- a. Stronger confidentiality protections for women whistleblowers, particularly survivors of gender-based violence (GBV) and workplace harassment.
- b. Safe and accessible reporting mechanisms, including options for anonymous or third-party disclosures, recognizing that women may fear retaliation, stigma or social exclusion.
- c. Protection against workplace retaliation for women whistleblowers, including job security, financial assistance, and psycho-social support for those who face backlash.

THE ACCOUNTABILITY AND TRANSPARENCY COMMISSION (ATC) 2025

1. **Appointment of Commissioners (ATC)** – that the Terms of Reference for the appointment of ATC Commissioners must be made public and the position for Commissioners must be advertised. In addition, members of the public should be allowed to express their objections to appointments, with evidence, in this way it maintains the integrity of the Commission. Although the Constitution does not make provisions for these, there is nothing stopping the Government from adopting a process that promotes transparency and accountability.
2. **Independence** - The Commission should not accept requests for information, it should be an independent body with oversight role over the Act and to which complaints can be lodged for refusal to disclose/compliance issues and the hearing of appeals.

MONITORING OF IMPLEMENTATION AND COMPLIANCE

Implementation will be a challenge and therefore government must also ensure that it has the capacity to implement the governance laws. Government officials need to be trained on human rights especially on the training of agency personnel on the right to information and the duty to assist.

To ensure the effectiveness of the proposed legislations it is essential to also provide a framework for continuous monitoring and compliance through annual reporting on the implementation of governance laws in the true spirit of transparency and accountability.

CONCLUSION

As mentioned above, good governance involves far more than the power of the state or the strength of political will. The rule of law, transparency, and accountability are not merely technical questions of administrative procedure or institutional design¹⁰. They are outcomes of democratizing processes driven not only by committed leadership, but also by the participation of, and contention among, groups and interests in society—processes that are most effective when sustained and restrained by legitimate, effective institutions¹¹. The right to information and expression is an essential right to ensuring that the wheels of democracy - good governance, transparency and accountability are functioning properly and that adherence to human rights and the rule of law is maintained at all times.

¹⁰ Ibid.

¹¹ Ibid.

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**SUBMISSION BY THE OFFICE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR HUMAN RIGHTS**

TO THE

**FIJI LAW REFORM COMMISSION &
THE OFFICE OF THE ATTORNEY GENERAL**

**REVIEW OF INFORMATION ACT 2018, CODE OF CONDUCT BILL, AND
THE ACCOUNTABILITY & TRANSPARENCY COMMISSION BILL 2025**

I. INTRODUCTION

The Office of the United Nations High Commissioner for Human Rights, Pacific Regional Office (OHCHR) presents its submission on the review of the Information Act 2018, Code of Conduct Bill 2018 (Bill No.33 of 2018) and the Accountability & Transparency Commission Bill 2025 collectively referred to hereinafter as “the Bills”.

OHCHR welcomes the opportunity to comment guidance on the Bills through these written submissions and seeks an opportunity to be heard before the Fiji Law Reform Commission if any further clarifications may be needed.

OHCHR notes that the review of the Information Act 2018, the Code of Conduct Bill 2018, and the Accountability & Transparency Commission Bill 2025 stems out of a legal requirement for legislation to be made under section 121 of the 2013 Constitution of Fiji which establishes an Accountability & Transparency Commission and section 149 constitutionally binding the Government to enact legislation to bring a Code of Conduct into effect as well as a review of the Information Act 2018.

Legislation requiring a Code of Conduct to be established has been mentioned in Section 149 of the 2013 Constitution. Section 149 (b) allows the Act to establish rules, processes and procedures for the implementation of the code of conduct by the Accountability & Transparency Commission; and 149 (c) provides for the monitoring by the Accountability & Transparency Commission of compliance with the code of conduct by officers. Sections 121 (9), (14) and (15) of the 2013 Constitution gives powers to the Commission to receive and investigate complaints against Permanent Secretaries and all persons holding a public office.

Pursuant to Section 149 of the 2013 Constitution, this Bill also brings about Code of Conducts governing different levels of officials such as the President, Speaker, Deputy



Speaker, Ministers, members of Parliament, Permanent Secretaries, ambassadors or other principal representatives of the state, heads of Commissions and statutory bodies and other public officers.

This Code of Conduct Bill was tabled in Parliament in 2016 but its parliamentary review had lapsed due to criticisms over the proposed provisions and efforts were being made to table it again in 2019. Public consultations were held at the national level concluding with a final round of consultations held in Suva from 28- 30 January 2019, with OHCHR making related submissions requesting the Commission to consider the detailed submissions and critical comments made by civil society representatives, women's groups and other stakeholders.

The review of the Bills is being jointly conducted by the Fiji Law Reform Commission and the Attorney General's Office as per the Terms of Reference issued by the Attorney General on 21 January 2025. As the Bills are inter-related to each other, OHCHR makes a single submission on the three Bills.

This submission highlights selected human rights issues arising from the Bills, from the perspective of international human rights law. This submission is therefore intended to provide guidance to the drafters to ensure that the Bills are in compliance with Fiji's international human rights obligations. It highlights the provisions that require adjustment to bring the Bills into compliance with international human rights law.

Fiji is the first Pacific Island nations to have ratified all core nine international human rights treaties and therefore has an obligation to implement related obligations and translate them into national legislation.

For national normative frameworks to best foster access to information, their compatibility with a State's human rights obligations are preferably ensured already at the drafting stage. In this process, Fiji should be guided by international law norms and standards, as well as by good practices in the design of national normative frameworks on access to information. As discussed below, in accordance with international human rights law, the normative framework should be recognized by law, based on a principle of full disclosure, provide for publication to guarantee access, incorporate procedures that facilitate access and include independent oversight and review. It should ideally also include access to the internet and the steps that are necessary to facilitate access for marginalised individuals or groups (e.g. people with disabilities).

In 2022, OHCHR produced a report No. A/HRC/49/38, in accordance with Human Rights Council resolution 44/12, that focuses on good practices for establishing national normative frameworks that foster access to information held by public entities. The said OHCHR report is attached to these submissions as **Annex 1**.



II. Right to Meaningful Participation

The UN is committed to supporting and promoting inclusive, participatory and transparent law-making processes given the impact of inclusivity and meaningful participation on the legitimacy of legislation.

OHCHR notes that the Bills may not have been subject to adequate public consultations at initial stages. The right to participate in public affairs, protected under article 25 of the ICCPR (which Fiji has ratified), guarantees the right to take part in policy-making at all levels. This includes the right to participate in law review processes. States should provide adequate opportunities for public debate and exchanges with civil society on constitutional amendments and draft legislation, including the possibility to provide comments and opinions to the relevant public authorities.

OHCHR thanks the Fiji Law Reform Commission for extending the time to make this submissions. However, providing limited notice and timeframes such as two weeks for public consultation on legislative reviews as important as these risks undermining human rights principles of transparency and participation. The expedited process not only restricts meaningful public engagement but also hinders comprehensive analysis and informed feedback on the three proposed laws.

Practical guidance on the measures to be taken to ensure public participation in decision-making processes, including on the use of ICTs may be found in the **Guidelines for states on the effective implementation of the right to participate in public affairs**, adopted by the Human Rights Council in 2018 through resolution 39/11. (**Annex 2**)

III. REVIEW OF THE INFORMATION ACT 2018

The right to access to information is a human right guaranteed under Section 25 of the 2013 Constitution. Every person in Fiji has the right of access to information held by any public office; and information held by another person and required for the exercise or protection of any legal right. Under Section 25 of the Fiji Constitution 2013, every person has the right to the correction or deletion of false or misleading information that affects that person as well.

However, this right is limited by law, and the 2013 Constitution allows a law to limit the right to access to information and may regulate the procedure under which information held by a public office may be made available.

Section 150 of the 2013 Constitution allows a written law to make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.



A. Scope of the Application of access to Information

The right of access to information is recognized in international human rights law. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), echoing article 19 of the Universal Declaration of Human Rights (UDHR), protects everyone's right to seek, receive and impart information of all kinds. States have the obligation to respect and ensure the right of access to information to everyone within their jurisdiction without distinction of any kind. States must take all necessary measures, legislative and otherwise, to give effect to human rights within their domestic systems. The right of access to information covers information held by public authorities.

Article 19, paragraph 2 ICCPR embraces the right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.

As highlighted by the Human Rights Committee in General Comments No. 31 and 34, the obligation applies to all branches of government and may include other entities carrying out public functions. It should also cover government business enterprises, legislative bodies, independent commissions funded by the government funds and bodies that are owned, headed and controlled by the government entities. The right applies irrespective of the content of the information and the manner in which it is stored.

As the Committee observed in its General Comment No. 16 regarding article 17 of ICCPR, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified.

Human Rights Committee General Comment No. 34 is attached as **Annex 3**.

B. Request for Information

To request information under the Information Act 2018, a person has to be a Fijian (citizen) and also be directly affected. It does not allow for foreigners to get information and neither does it allow for entities, media or companies. It does not cover persons who are in association with the affected person.

Fiji should avoid limiting who may make requests to obtain information. Just as article 19 ICCPR guarantees everyone's access to information, without limiting or defining "everyone".



Hence Section 6 of the Information Act 2018 should be revised accordingly to conform to international standards.

The right to access information has many aspects. It encompasses both the general right of the public to have access to information of public interest from a variety of sources and the right of the media to access information, in addition to the right of individuals to request and receive information of public interest and information concerning themselves that may affect their individual rights. The right to freedom of opinion and expression is an enabler of other rights (A/HRC/17/27, para. 22) and access to information is often essential for individuals seeking to give effect to other rights such as the right to truth.

Article 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as the Declaration on Human Rights Defenders), adopted by the General Assembly in resolution 53/144, expressly provides for access to information on human rights, stating that everyone has the right, individually and in association with others, (a) to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or 13-46476 6/23 A/68/362 administrative systems; and (b) as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others

Everybody has a right to truth especially when it comes to seeking information on human rights violations and the State has an obligation to inform the public and collective dimension of the right to truth. Please find attached the **2013 Annual Report by the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression** emphasizing the right to access information and its interrelationships with the right to truth. He describes principles that may guide the design and implementation of laws on access to information and examines common obstacles noted in existing experience. He also makes recommendations for the better translation of international human rights standards into national laws and practices that promote access to information.

The 2013 Report by the Special Rapporteur is attached as **Annex 4**.

C. Restrictions on Access

Obstacles to access to information can undermine the enjoyment of both civil and political rights, in addition to economic, social and cultural rights.

Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information.



Combating and responding to corruption, for example, require the adoption of procedures and regulations that allow members of the public to obtain information on the organization, functioning and decision-making processes of its public administration.

Sections 20 and 21 of the Information Act 2018 provide wide discretionary powers to the Minister and the Commission to refuse access to information – on more grounds than is permissible under the ICCPR. There are more than twenty grounds where the Commission and the Minister can expressly refuse information under the Information Act 2018. Article 19 (2) ICCPR is clear in that the right may be restricted only in accordance with the requirements provided in article 19 (3) ICCPR.

Legitimate grounds for restricting the right of access to information are the respect of the human rights or reputations of others, as well as the protection of national security, public order and public health or morals. States may impose restrictions on access to information held by public authorities only when they meet the three-part test of legality, necessity and proportionality, with a legitimate objective.

The requirement of legality (“provided by law”) requires that regular procedures be followed in the adoption of restrictions and that there be clarity and specificity in the rules. They must not be drafted so generically that they provide unfettered discretion on the power of the decision makers to refuse disclosure of information (CCPR/C/GC/34, para. 25). Similarly, the requirement of necessity, which implies proportionality, means that the policies of intergovernmental organizations should permit non-disclosure only when disclosure would indeed cause likely harm to a legitimate interest (CCPR/C/GC/34, para. 38).

Information regarding alleged violations of human rights or violations of international humanitarian law is subject to an overriding public interest in disclosure and cannot be withheld on grounds of national security. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that widespread secrecy justified on national security grounds is particularly problematic in the context of investigations of human rights violations because it may represent one of the main obstacles to the clarification of responsibilities and consequences of serious violations, ultimately becoming a barrier to the promotion of justice and reparation.

When restricting access to information, it must be ensured that the restricting measure is in compliance with international human rights law, should adhere to standards and recommendations established by international and regional human rights mechanisms and be guided by best practices.

The Human Rights Committee in its General Comments No. 34 stated that secrecy laws should define national security limitations precisely and indicate clearly the criteria to be used in determining whether information can be appropriately declared non-disclosable on such grounds.

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information provide that the protection of national security cannot be used to justify restrictions on the right to freedom of expression unless the Government can demonstrate that the expression is intended to incite imminent violence, that it is likely to incite such violence or that there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

D. Accessibility to persons with disabilities, women and children

The right of access to information is also enshrined in other international and regional human rights treaties. The Convention on the Rights of the Child (CRC), in article 13, reaffirms that the right of access to information applies to children. The Convention on the Rights of Persons with Disabilities (CRPD) sets forth a general principle on accessibility in articles 3 (f) and 9, and includes specific obligations concerning the right of access to information in its article 21. Currently the implementation of the Information Act shows bureaucratic obstacles, outdated digital records, and unmaintained public databases. There has to be much investment to make information accessible to persons with disabilities, women and children and those who are unable to read or write.

An effective right of access to information depends on the manner in which information is handled, including for its recording, preservation and ease of retrieval. The Convention on Access to Official Documents thus for instance imposes an obligation on States to manage their documents efficiently, so that they are easily accessible, and to apply clear and established rules for the preservation and destruction of their documents.

In practice, to create and keep such records, it is necessary to invest in data and records management. The obligation to fulfil the right of access to information thus requires establishing practices to ensure that information is recorded and preserved and facilitating the public's access to that information. In this regard, the use of modern technologies as a means to archive information held by public authorities represents a good practice facilitating access to official documents. Some States reportedly provide access to public sector information on online databases. The digital management of information facilitates access, research and reporting.

E. Maximum Disclosure

All information held by public bodies should be subject to disclosure, and this presumption may be overcome only in very limited circumstances. As a threshold consideration, requests for access should be available at a reasonable cost.



The Human Rights Committee in its General Comments has held that fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.

The law as it stands does not address how conflicts with secrecy provisions in other laws will be handled, and the only ground for appeal is where access is denied. Clarification for enhanced accountability is required here.

F. Requesting Procedure

Under the Information Act, requests are limited to cases where the information directly affects a decision regarding the requester and only if the information came into existence after the law entered into force. This should be broadened.

The procedure for making requests could be simpler and more clearly defined, and exemptions are broad. In particular, article 21 (a) ICCPR stipulates that information intended for the general public should be disseminated in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. Without clear exemptions for refusing information and accountability mechanisms, conflicts of interest and power imbalances may lead to arbitrary denials, undermining transparency.

The procedure for making requests should be simple and readily understandable, allowing for fair and rapid processing, while respecting the rights of others.

G. Denial of Request to be Subject to Review by Court

Currently under the Information Act 2018, grounds for appeal to the oversight body is limited to refusal by a State agency to provide requested information.

The denial of a request to access information should be subject to review by an impartial body established by law and/or by a court. The Global Principles on National Security and the Right to Information (Tshwane Principles) provide that the requirements of timeliness and low cost should apply to the review process and that the relevant authority should have the competence and resources necessary to ensure an effective review, including full access to all relevant information, even if classified. The competent court or body should give the reasons for a refusal of access to information to the requesting individual and it should make publicly available fact-specific reasons and its legal analysis in writing, except in extraordinary circumstances.

An accessible and independent appeals system is essential to prevent undue administrative and deliberate misuse of discretionary powers in interpreting the scope of exceptions to the right to access information.



IV. COMMENTS ON ACCOUNTABILITY & TRANSPARENCY COMMISSION AND NEED FOR INDEPENDENT OVERSIGHT SAFEGUARDS OF THE COMMISSION

Independent oversight provides an important safeguard against abuse. The guidelines for States on the effective implementation of the right to participate in public affairs recommend that States establish independent and impartial oversight mechanisms with a mandate to monitor and report on the implementation of the right of access to information.

The reports of such a mechanism should be made public.

The process of appointing Commissioners to the Accountability & Transparency Commission should be transparent, based on merit and inclusive with diverse membership.

The right to information is not likely to be successful if it is not integrated into major planning processes such as budgeting, human resource allocation, and other public sector management systems. Without proper integration, public agencies may be left without information officers/ units to respond to requests and adequate resources to perform their duties.

Consideration should also be given to structural features such as the designation of information officers or nodal agencies, their relationship with the rest of the public body, incentives and sanctions. For example, the responsibilities and powers of the information officer, and the obligations of other officers to assist that officer when requested, should be clearly defined.

V. COMMENTS ON THE CODE OF CONDUCT BILL

H. The Code of Conduct Bill, in its current form, appears biased against people holding political beliefs and opinions

From a human rights perspective, Section 12 of the Code of Conduct Bill raises concern. It which states: :

- “12.—(1) *The Commission must investigate any complaint received by the Commission, unless the Commission is of the opinion that—*
- (a) *the complaint is trivial, frivolous, vexatious, lacking in substance or not made in good faith;*
 - (b) *the complaint is malicious or is politically motivated or is made for the purpose of discrediting, defaming, or causing reputational damage to, the person the subject of the complaint;”*

(Underlining for emphasis)

This provision stipulates that the Commission has discretion not to investigate a complaint based on its “opinion” and not upon any actual finding of fact. The Commission can dismiss any complaint solely based on its opinion in this regard without any accountability.

Such a provision leaves ground for abuse of power or interference by the members of the Commission in access to justice and should be amended. The Bill is meant to bring transparency and accountability of public office holders but there is no transparency in the way complaints will be handled or dismissed. The terms ‘malicious’ as well as ‘frivolous’ should be properly defined in the Bill, otherwise they may lend themselves to broad interpretation and abuse. It is submitted that the words “malicious” be properly defined within the boundaries and aspirations of the human rights conventions. The drafters should consider omitting or removing the words “politically motivated” from the Bill entirely.

Section 23 of the 2013 Constitution enshrines freedom to make political choices and the right to people to campaign for a political party, participate in the activities for a political party and / or join a political party of their choice. The constitution does not allow a limitation of this right for the purposes described under the Code of Conduct Bill.

Article 26 ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

In this respect, the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as holding political or other opinion amongst others. Therefore, the Code of Conduct Bill that includes provisions such as being politically motivated as a ground for criminal prosecution should be amended to conform to the standards and principles of the UDHR and ICCPR to which Fiji is a party. Section 26 of the 2013 Constitution states that every person is equal before the law and has the right to equal protection, treatment and benefit of the law. However, the Code of Conduct Bill seems to be biased against people holding strong political views or opinions.

I. Vague and undefined provisions can potentially result in abuse or misinterpretation

Vaguely worded laws create uncertainty about their application and can lead to the greater exercise of discretion by administrators. This, in turn, can result in public bodies applying the law differently and interpreting the laws in favor of non-disclosure.

The Bills have some provisions that are vaguely worded. Provisions on definitions and the scope of the laws, regime of exemptions, and the procedures for processing requests should be well articulated to limit discretionary interpretation.



Neither the Bill nor its Schedules provide clarity on the rules, procedures or limits on the way the Commission will function or process of implementation of the Code of Conduct or the Information Act.

Section 4 of the Bill does provide discretion to the Commission to make ad hoc guidelines and directions from “time to time” for the performance of the Commission’s functions and for the handling of complaints but this is not the intention under Section 149 (b) of the 2013 constitution as there is no transparency.

The terms ‘secret and confidential’ needs to be defined properly in the Bill. There should be a presumption against governmental information being secret and confidential. Otherwise, it will be very easy for Government officials to decline providing information based on what they consider “State secrets”. The Bill as is worded and by virtue of section 16 (4), requires either the Attorney General or the Prime Minister to decide whether the information falls under “State secrets” or is confidential in nature.

It is respectfully submitted that for clarity, the terms be properly defined in the Bill.

J. The body established under the Code of Conduct Bill risks duplication with the functions of the Judicial Services Commission

It is submitted that any codes of conduct should reflect the requirement for the independence and impartiality of the judiciary in line with article 14 ICCPR as interpreted in General Comment (CCPR/C/GC/32).

The 2020 Annual Report by the Special Rapporteur on the Independence of the Judiciary (A/75/172), sets out the international standards and the jurisprudence of regional courts and independent advisory bodies on disciplinary proceedings against judges. **(Annex 5)**

and provide that: (a) the disciplinary procedure should be established by law; (b) the behaviour that may give rise to disciplinary liability should be expressly defined by law; (c) disciplinary proceedings should be adjudicated by an independent authority or a court; (d) the disciplinary procedure should afford adequate procedural guarantees to the accused judge, and the decision of the disciplinary authority should be motivated and subject to review by a higher judicial authority; and (e) sanctions should be previously established by law and their imposition should be subject to the principle of proportionality.

Judicial officers must be kept independent of the legislative and executive branches of the Government and are subject only to the provisions set out in the Constitution and in Fiji’s case, the 2013 Constitution. Judicial independence safeguards the judiciary against any interference by state organs or private persons with the performance of judicial duties and describes functional and structural safeguards against extraneous intrusion into the administration of justice.

The judiciary should be able to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Under this Bill, the judicial officers are required to submit their assets, income and finances to a body that can also investigate complaints against them and a lay person can obtain these statements upon payment of a fee. Independence safeguards against such situations where there is legitimate doubt that the court acts in an independent and impartial manner.

It is trite to repeat that judicial independence is based on the idea of separation of powers and that it is therefore, mainly, a characteristic of the legal institutions. To maintain separation of powers, the 2013 Constitution, under its section 104, set up a Judicial Services Commission that could receive and investigate complaints against the judicial officers. The Judicial Services Commission can regulate its own procedures and processes and has several obligations to regulate and facilitate the performance of the functions of the judiciary.

It is submitted that the Bill interferes with the impartiality and independence of the Judiciary by duplicating the work of the Judicial Services Commission and seeking disclosures from the judicial officers. There was no need for a duplication of the code of conduct and neither a need for a body that duplicates the work of the Judicial Services Commission.

Respectfully submitted by UN Human Rights (OHCHR) Pacific Regional Office.

Dated this 14th day of February 2025