



REQUEST FOR PROPOSALS

HEC 02/2022 - REVIEW OF THE HIGHER EDUCATION LEGISLATION

TERMS OF REFERENCE

Release Date: 26th March 2022.

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Terms of Reference

Table of Contents

1. About the Higher Education Commission	3
2. Background	4
3. Purpose of Review	4
4. Objectives of the Legislative Review	5
5. Scope of the Review	6
6. Achievement of the Sustainable Development Goals (SDGs) and meeting long-term national development objectives.	7
7. Consultations	7
9. Review Schedule	8
10. Duration of the Review	11
11. Steering Committee	11
12. Governance Arrangements	12
13. Working Relationships	13
14. Proposal Requirements	14
15. Instructions	14
16. Terms and Conditions	16

1. About the Higher Education Commission

The Higher Education Commission (Commission) was established in 2010 pursuant to Section 5 of the Higher Education Act 2008 (the Act) as a body corporate with perpetual succession and a common seal with 11 functions as stipulated in Section 7 of the Act.

The purpose of the Act, as per its preamble, is to regulate the establishment, recognition, operation, and standards of higher education institutions (HEIs) and for related matters.

"Higher education institution" means an educational institution in or operating in Fiji that provides award-conferring post-secondary education or educational support services for students of other higher education institutions, including overseas institutions, as further defined in Section 4 of the Act.

The Regulations provide additional specifications related to applications for recognition, registration, and Review of HEIs. The Commission also reviews HEIs registered with the Commission for quality assurance in accordance with the Higher Education Regulations 2009.

Quality Standards have been developed to meet Fiji's current and future needs and expectations. The Quality Standards outline the quality assurance of HEIs, and qualifications provided in Fiji. Each Quality Standard will be supported by an information guide to assist HEIs in meeting these standards.

Moreover, the Higher Education (Qualifications) Regulations 2010¹ (Regulations 2010) established the Fiji Qualifications Council (Council).

The Council is the custodian of the Fiji National Qualifications Framework (FNQF)² and is mandated to develop, implement, and maintain the criteria and processes for the accreditation³ and registration of qualifications⁴ on the FNQF.

This is to ensure that the standard of the programme of study is appropriate to the qualification and that qualifications are compatible with the knowledge and skills that are necessary for sustainable economic and social development.

¹ Application: Regulations shall apply to all higher education institutions, overseas institutions, the Higher Education Commission and its secretariat, and any person intending to establish a new institution (reg.2 of the Regulations 2010).

² "Fiji National Qualifications Framework" means the framework approved by the Commission for the registration of national standards and qualifications (reg.3 of the Regulations 2010).

³ The accreditation (an institution that is not constituted under its own Act must apply to the Commission for accreditation of its qualifications (reg.15 of Regulations 2010) and recording of qualifications is a quality assurance process to ensure that the accredited qualification meets the requirements of the FQF and can be recorded on the National Register for Fiji Higher Education.

⁴ "Qualification" means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the Fiji National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the Fiji Qualifications Council (reg.3 of the HE Regulations 2010).

The Council is also responsible for functions pursuant to reg.6 of the Regulations 2010.

2. Background

In 2014, the Commission approached the Ministry of Foreign Affairs and Trade, New Zealand (MFAT, NZ) to assist in strengthening the organisation to be better able to direct and facilitate an effective higher education sector that meets Fiji's current and future needs. The programme of support is called the Fiji Higher Education Improvement Programme (Programme). The Programme officially commenced in January 2017 and has supported the Commission's move toward being an effective, efficient, strategically focused, and directed organisation.

Through the Programme, the internal impact areas identified include the improvement of plans, strategies, policies, systems, and processes. The sector-wide focus areas include improving equity and access, improving and developing linkages to employment, and strengthening the higher education system.

3. Purpose of Review

As the regulator of higher education in Fiji, the Commission intends the Review to ensure that the Commission is vested with strengthened legal powers in regulating HEIs, including all award-conferring post-secondary education institutions in Fiji or operating in Fiji. This is to enable the Commission to hold the post-secondary education institutions accountable to foster and safeguard the national interest, the interests of students and parents, and local higher education providers. To achieve this, the Commission and the Higher Education Appeals Tribunal established under the Act need legal powers and mechanisms for more independent, effective monitoring and imposing sanctions.

This Review aims to analyse and assess the Act and the subsidiary legislation, including the Policies made under the Act and make recommendations for improvements to ensure that the Act and the subsidiary legislation are current, fit-for-purpose, meet the regulator's stakeholders needs.

The Review is also intended to make recommendations on the higher education sector to meet the aims and objectives of the Government's National Development Plan and commitment for the achievement of the Sustainable Development Goals (SDGs), Ambitions for Education meeting long-term goals of national development.

The Act was drafted when there was an unregulated higher education system in Fiji. Under its improvement programme, the Commission recognises that the higher education sector in Fiji needs to be modernised and supported to become more future-focused to deliver the skills and knowledge needs of the 21st century. Therefore, to support the current higher education system, the Commission needs a more robust regulatory framework that would reflect the increasingly competitive and diverse higher education landscape.

We acknowledge that education is a public good, a fundamental human right and a basis for guaranteeing the realisation of other rights.

Moreover, maintenance, advancement, and dissemination of knowledge and lifelong learning, enhancing skills through post-secondary education and research would contribute to creating employment and enhancing productivity. A well-regulated higher education system would assist in realising and maximising the potential of achieving the key goals of decent and sustainable work, higher living standards, poverty eradication, economic growth, peace, tolerance, human fulfilment, and well-being for all Fijians.

Also, quality post-secondary education and higher education sector and the system will promote the necessity of the learners to be job creators rather than job seekers. Within this context, higher education is viewed to improve the quality of life and address major local and global challenges for inclusive socio-economic development.

In this backdrop, the Act and subsidiary legislation review will also provide an overview of the current legislative and organisational mechanisms and regulatory frameworks for oversight of the higher education sector in Fiji to address any gaps.

As such, there is an urgent need for enabling legislation to facilitate the Commission's capacity to drive the higher education sector to meet increasing expectations, demands and challenges focusing on access, equity, and inclusion of relevant, quality and learning outcomes within a lifelong learning approach.

4. Objectives of the Legislative Review

The Review is intended to achieve a balance between the interests of students (and their parents) on the one hand and; the concerns and suggestions of the Commission, being the regulator, and various stakeholders, on the other.

To ensure that the higher education enabling environment is structured to improve the image of higher education in Fiji, in terms of its significance in the world of work and in improving economic growth and sustainability, the legislative Review is expected to:

- (i) provide recommendations for the improvement of Fiji's higher education legislations benchmarked against best practices.
- (ii) provide an overview of the current legislative and organisational mechanisms for oversight of the higher education sector in Fiji;
- (iii) provide recommendations for improvements to better support the strategic direction of the Commission and higher education institutions;

- (iv) empower learners to have and provide decent and gainful employments locally and internationally with additional attention to the role of qualifications in furthering student mobility. This will be enabled by making recommendations for improvements in alignment with regional and international Conventions to enhance international cooperation in higher education and outcomes for students.
- (v) the proposed Review Schedule in Part 9 is to be further explored.

5. Scope of the Review

This activity includes the review of the current legislation and the drafting of recommendations as explained in this ToR, among other things;

- (i) to strengthen the legal framework for Higher Education to ensure inclusive, equitable quality education and lifelong learning opportunities for all.
- (ii) analysis of national, regional, and global education challenges to provide measures for more effective legal and policy frameworks for higher education to foster and safeguard the national interest, the interests of students and parents. Also, higher education providers and other current and future mandated functions of the Commission.
- (iii) analysis and recommendations for improvement on Fiji's higher education sector, the progress of the Commission's direction, relevant international best practice, rigorous monitoring, evaluation and quality assurance.
- (iv) consider stakeholder perspectives benchmarked against other organisational transformations both in Fiji and internationally, as to how the Commission or any formed entity or entities can be improved upon in the context of higher education and its contribution to social, economic, and personal development that is holistic, ambitious, aspirational, and leaving no one behind.
- (v) the process and outcome of the Review should be inspired inter alia by development based on human rights and dignity; equity, social justice; inclusion; protection; cultural, linguistic, and ethnic diversity; founded on good governance principles including shared responsibility and accountability.
- (vi) report fully on all the above matters and recommend changes to the higher education legislation to achieve the strategic fit for the Commission to manage the higher education sector as contained in terms of Reference understanding the important role of education as a main driver of development and in achieving the other proposed SDGs.

6. Achievement of the Sustainable Development Goals (SDGs) and meeting long-term national development objectives.

The Fijian Government is committed to the transformative and the development ambition of the Sustainable Development Goals (SDGs), particularly SDG 4, devoted to education: "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030". Moreover, SDG 8, which aims to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all", is also aligned with inclusive and equitable quality education (which includes higher education).

While the SDGs represent a global response to global challenges, the Government, together with the Ministry (MEHA) and the Commission, promotes these goals to be nationally relevant and capable of having a transformative impact on the quality of life of all Fijians. The MEHA and the Commission have been striving to ensure inclusive, affordable, and equitable quality higher education and promote lifelong learning opportunities in the best interest of all Fijians.

It is timely and critical that Fiji reviews its higher education legislative and policy framework to align with the adoption of SDG 4 and SDG 8, the education goal and Education 2030, Incheon Declaration on Education for All and Framework for and Action, Pacific Regional Education Framework for sustainable regional agenda, other relevant Conventions / Declaration, long-term national development objectives that address global and national education challenges.

7. Consultations

Consultation for this Review will be conducted to reflect the aspirations of the Fijian people and the Government's commitment inter alia to delivering on SDGs, Ambitions for education and the Fiji National Development Plan.

The purpose of the consultations (where applicable), inter alia, is to understand the concerns and implementation issues of the present higher education laws in Fiji. The consultations will include, but are not limited to, first-hand interaction and dialogue, both individually and group interviews with the following sectors:

- (i) students including past, current, and prospective students and their parents;
- (ii) the MEHA, Commission, Secretariat, and the past and current consultant(s).
- (iii) HEIs and various key stakeholders in the public and private sector such as non-profit government organisations, regional and international bodies; and
- (iv) community groups and the public.

8. Required changes to the Higher Education Legislation

The consultant (s) will consider the review requirements identified in the ToR, proposal, and contract.

The proposed "Required changes to the Higher Education Legislation" (which has been prepared by the Commission's Legal Officer and shall be included as a part of the signed contract) should be further explored by the selected consultant (s).

9. Review Schedule

This Review is expected to commence from late May to early June, 2022.

The Schedule below lists the Commission's requirements but includes the essential requirements. (Please note that this is an estimated schedule. The selected consultant(s) may propose different requirements based on previous knowledge and experience of similar work. The final review schedule will be included as a part of the signed contract.

Inception and Planning Inception Meeting & Initial Consultation with the Selection Panel in consultation with the Steering Committee Finalisation of the deliverables and Work Plan Finalisation of the Contract (Service Agreement).	Work Plan
Phase 1: Research and Review of Legislation Key consideration 1: Identify assumptions. Key consideration 2: Identify legislation objectives. Key consideration 3: Identify issues. Key consideration 4: Identify stakeholders. Key consideration 5: Examine other jurisdictions and review international good practices.	Prepare: Inception Report Desk review report. As an initial step, the parties will undertake a comprehensive review of relevant literature, examine and synthesise the material, and use the information to inform the shape and design of the final report.
Phase 2: Consultation Key consideration 6: Plan consultation Key consideration 7: Stakeholder engagement	Stakeholder Consultation The expected outcome of the stakeholder engagement is to <i>inter alia</i> Recommend that:

<p>Key consideration 8: Stakeholder relationship management</p> <p>Key consideration 9: Expert consultations</p>	<p>The purpose of the stakeholder consultation will be to understand the concerns and implementation issues of the present higher education legislation in Fiji. The nationwide consultation will include first-hand interaction and dialogue, both individually and in group interviews with the stakeholders mentioned as (including, not limited to) stated in Part 7.</p> <ul style="list-style-type: none"> • the legislation is current, fit-for-purpose, meets the needs of the regulator and stakeholders and enables the higher education sector to meet national development goals; • the higher education environment is structured to improve the contribution and image of higher education in Fiji, in terms of its significance in the world of work and in improving economic growth and sustainability. <p>The legislative Review is expected to, <i>inter alia</i>:</p> <ul style="list-style-type: none"> • provide recommendations for the improvement of Fiji's higher education legislation benchmarked against best practices. • provide an overview of the current legislative and organisational mechanisms for oversight of the higher education sector in Fiji. • provide recommendations for improvements to better support the strategic direction of the Commission and higher education institutions; • empower learners to have and provide decent and gainful employment locally
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	<p>and internationally with additional attention to the role of qualifications in furthering learner mobility. This will be enabled by making recommendations for improvements in alignment with regional and international Conventions to enhance international cooperation in higher education and outcomes for the learners.</p> <ul style="list-style-type: none"> • Further, explore "Required changes to the Higher Education Legislation." <p>Presentation of draft findings back to the Steering Committee and stakeholders (where necessary).</p> <p>The consultant (s) plan to provide an additional opportunity for stakeholders to comment on the draft reports.</p>
<p>Phase 3: Analysis</p> <p>Responsibility (Phase 1 and 2): The consultant (s) under the direct supervision of the Commission's Director, the Legal Officer and the Steering Committee as per the TOR.</p> <p>Key consideration 10: Identify value judgments. Key consideration 11: Form guiding principles. Key consideration 12: Consider all relevant information. Key consideration 13: Analysis of potential improvements Key consideration 14: Make findings. Key consideration 15: Formulate recommendations.</p>	<p>Review report 1 (Draft Report)</p> <p>Obtain feedback on the report from the Commission, Secretariat, and relevant stakeholders.</p> <p>Review report 2 (Final report)</p> <p>Finalise report 2, considering the feedback where necessary.</p> <p>Presentation of report 2 findings back to the Steering Committee, Commission, Secretariat, and relevant stakeholders.</p> <p>Two stakeholder consultations are to be held for Access and Equity and (Technical Vocational Education and Training(TVET) inclusion in HE legislation, and two reports are also to be produced and submitted to the steering committee for inclusion in the Policy and Legal framework.</p>

<p>Phase 4: Conclusion</p>	<p>Obtain approval of the final review report detailing policy recommendations and draft recommendations'/proposed amendments to current legislation from the Steering Committee.</p> <p>Obtain approval of the report from the Commission.</p> <p>Obtain approval of the report from the Hon. Minister for Education, Heritage, and Arts.</p> <p>Submit the final report with a Cabinet memorandum to the Office of Solicitor-General for vetting.</p> <p>Assist MEHA to submit the Cabinet Paper alone with the Review Report to the Cabinet Office.</p>
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The consultant(s) are expected to provide fortnightly progress reports outlining progress in the past, any issues and plans to address issues, any support requested and key tasks for the upcoming fortnight.

10. Duration of the Review

This Review is expected to commence tentatively in late May or early June, 2022. A total of (6) months is allocated to complete the Review. The contract comes into effect tentatively in late May or early June, 2022 and expires on the satisfactory completion of the services described in part 9 of this TOR and the Contract.,

11. Steering Committee

11.1 A Steering Committee will be established to provide support to undertake the Review, peer review and implementation support. The functions of the Steering Committee are to:

1. promote the importance of the Review with stakeholders.
2. facilitate conversations between the consultant(s) and key stakeholders where practical.
3. review, advise and comment on draft report documents.
4. participate in stakeholder feedback consultations(s)workshops, and
5. support and promote the implementation report recommendations.

11.2 The Steering Committee will consist of:

1. the MEHA – the Minister, Permanent Secretary, and key advisers as nominated by the Minister.
2. the Commission - The Chairperson or member(s) as nominated by the Chairperson, Director, Legal Officer and nominated staff member(s) from the Commission's Secretariat.

11.3 The following individuals or organisations will be invited to participate in the Steering Committee to promote social dialogue and policy dialogue as and when required at the discretion of the Steering Committee.

1. donors/funding agencies – MFAT, NZ.
2. representatives from HEIs.
3. representatives from faith-based organisations.
4. relevant local and international consultant(s) in the fields of education, education policy and employment, or from any other relevant field.
5. a representative from the Office of the Solicitor-General subject to the approval of the Solicitor-General.
6. a representative from the Judiciary subject to the approval of the Chief Justice.
7. representatives from; the United Nations Educational, Scientific and Cultural Organization (UNESCO), International Labour Organization (ILO), United Nations Development Programme (UNDP), Teacher/ Student Unions/ Associations, Trade Unions, and civil society organisations, and relevant community groups.
8. Any other individual or groups, at the discretion of the Chairperson of the Steering Committee, when and where necessary for social dialogue plus approach.

12. Governance Arrangements

The MEHA and the Commission will formulate the Selection Panel, which will then set out the matrix for selection and will evaluate each proposal (s) against the matrix. The Minister for Education Heritage and Arts, will appoint a suitably qualified individual(s) and/or firm, national, regional, or international organisation/entity in consultation with the Selection Panel.

Apart from the Steering Committee, the consultant (s) will work closely with the Permanent Secretary, the Commission's Director, the Legal Officer, or a nominated staff member from the Commission's secretariat.

12.1 Qualifications, Knowledge, Experience, Skills, and Abilities :

Qualifications

1. Admitted in the Bar as a Solicitor and/or Barrister/Legal Practitioner in Fiji jurisdiction or in another jurisdiction.

Knowledge

1. Extensive, sound professional knowledge in the Review of legislation. Knowledge and expertise in higher education are preferred.

2. Expertise that the review report, when drafted, can stand up to the Government, public, private, and judicial scrutiny.
3. Experience in working with stakeholders, including Government Ministries, Higher Education Institutions, Civil Society Organisations, and other relevant stakeholders.

Experience

1. At least 5 years experience after admission to the Bar in Fiji or an in a Commonwealth jurisdiction.
2. Experience in reviewing/ drafting legislation in a legislative drafting office of a government department, statutory authority, or other public bodies; and
3. Experience in the higher education sector and experience in the Review of written law is preferred.

Abilities/Skills

1. Ability to undertake research and produce quality results.
2. Ability to complete work within specified deadlines
3. Ability to draft major and complex reviews, legislation policies, and other legal documents.

Reputable firms, national or international organisations or entities with extensive experience in legislative reviews are also encouraged to apply.

13. Working Relationships

13.1 RFP Coordinator(s)

Upon the release of this ToR, all communications concerning the RFP, ToR and the selection process **must be in writing** and be directed to the RFP and emailed to legal@fhec.org.fj.

Unauthorised communication regarding the RFP and the ToR with MEHA and Commission's employees or representatives may result in disqualification. Any oral communications will be considered unofficial and non-binding on the MEHA and Commission's part. Applicants should rely only on written statements issued by the RFP Coordinator (s).

13.2 Steering Committee

The selected consultant(s) will communicate with the Steering Committee established for this purpose, official members of the Office of the Solicitor-General (where necessary) and the MEHA and the Commission.

The consultant(s) will also communicate with the relevant stakeholders, public, private sector consultative groups, and professional associations to provide submissions/contributions of existing and proposed legislation.

The consultant(s) may utilise the resources of the Commission's secretariat during the term of the Review.

All the deliverables will be assessed and must be acceptable to the Steering Committee.

14. Proposal Requirements

- Name, address, email, and mobile number of the person (s) responsible for submitting the proposal.
- A cover letter, curriculum vitae with at least 2 professional referees, details of relevant similar projects completed, and publications (if any).
- When expressing interest as an entity, the applicant (s) must provide the relevant statutory compliance.
- Detailed and curated proposal (of no more than ten pages) outlining the proposed methodology, deliverables, and timelines with a professional fee schedule per deliverable. **Interested individuals are encouraged not to include references, testimonials, company, and personnel profiles with their proposals.** However, these may be readily available to the Selection Panel upon request.
- If consultant(s) are submitting an RFP as a joint venture, the RFP will be submitted by the lead firm or lead partner and should identify each joint venture partner.

15. Instructions

Proposals: The Commission must receive responses to the RFP no later than the date specified in the advertisement. Proposals received after the due date will not be accepted. No additional time will be granted to any consultant (s) unless by an addendum to this ToR or at the discretion of the RFP Coordinator (s).

Consultant (s) are encouraged not to include company and personnel profiles with their proposal; however, this should be made available to the Selection Panel upon request of the RFP Coordinator (s). Consultant (s) **must submit two (2) electronic versions** of the proposal in Word and PDF versions and address the responses to the following address:

All proposals must meet the requirements as outlined in the TOR and are to be submitted electronically via email to proposals@fhec.org.fj, **no later than 4:00 pm Fiji Time (GMT +12), 29th April 2022**, and must be subjected as "**Proposal: HEC02/2022: Review of Higher Education Legislation**".

Applications should be addressed to the following:

**The Director,
Higher Education Commission,
P.O. Box 2583,
Government Buildings,
Suva,
Fiji.**

All proposals, bids and accompanying documentation will become the property of the Commission and will not be returned.

16. Terms and Conditions

The following terms and conditions apply to this RFP:

Pre-Submittal Questions – Questions regarding the RFP, please email to legal@fhec.org.fj. Unauthorised communication regarding the RFP with MEHA or Commission's employees or representative may result in disqualification. Any oral communications will be considered unofficial and non-binding on the MEHA and Commission's part. Applicants should rely only on written statements issued by the RFT Coordinator(s).

Rejection or Acceptance of Proposals – the MEHA and the Commission reserve the right to reject any or all proposals, waive any minor informalities or irregularities contained in any proposal, and accept any proposal deemed to be in the best interest of the MEHA, the Commission, and the nation.

Non-Obligation – Receipt of proposals in response to this RFP and the ToR does not obligate the MEHA and the Commission in any way. The right to accept or reject any proposal shall be exercised solely by the MEHA and the Commission (Selection Panel). The MEHA and the Commission shall retain the right to abandon the RFP process at any time prior to the actual execution of a contract with a consultant (s), and the MEHA and the Commission shall bear no financial or other responsibility in the event of such abandonment.

Copyright and Confidentiality – The selected consultant(s) shall maintain strict privacy of all records, data, and files. All physical and intellectual property, title rights, copyrights, and all other rights whatsoever in any materials produced or partly produced, published or unpublished to provide and complete the Services shall be the sole property of the MEHA and the Commission (for the avoidance of doubt this includes, without limitation, all reports, papers, electronic documents (including computer software, and recordings).

The selected consultant(s) agree/s that he/she/they will not at any time disclose to any person other than is necessary for the RFP and ToR or as required by law, any information it acquired or the substance of its recommendations or advice to provide and complete the Services.

Governing Law and Jurisdiction: Any contracts signed shall be read and constructed in all respect in accordance with the law in force in the Republic of Fiji.

Payments – The consultant(s) shall provide the Steering Committee/ nominated officer with invoices for the fees upon successful completion and acceptance of the deliverables by the Steering Committee. For clarity, the Commission will pay invoices submitted by the selected consultant(s) as progress is made on project implementation and agreed upon service stipulated in the final contract. Prior to payment, invoices will be reviewed to determine if billing is reflective of actual agreed-upon deliverables/ project progression and performance. Upon acceptance of the billing by the Commission's Director, payment will be processed and submitted to the Commission where necessary.

RFP Amendments -The MEHA and the Commission reserve the right to request clarification on any proposal or ask consultant (s) to supply any additional material deemed necessary to assist in evaluating the proposal. The MEHA and the Commission also reserve the right to change the schedule or issue amendments to the ToR and RFP at any time and reserves the right to cancel or reissue the ToR and RFP at any time without prior notification.

Disclaimers: This ToR is not a comprehensive list for evaluation criteria, the review schedule, proposed process, and requirements for the Review (the deliverables and all the MEHA's and Commission's requirements but includes the key requirements that will be used to evaluate the proposals).

--ENDS--