

PACIFIC ISLANDS LAW OFFICER'S NETWORK

36TH ANNUAL MEETING



COUNTRY REPORT: REPUBLIC OF FIJI

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Majuro, Republic of the Marshall Islands

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MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

Launch of the Revised Edition of the Laws of Fiji

Law Revision

Law revision is the process where written laws are updated and consolidated. This means that all written laws, including their subsequent amendments are revised and consolidated, and published into volumes of laws.

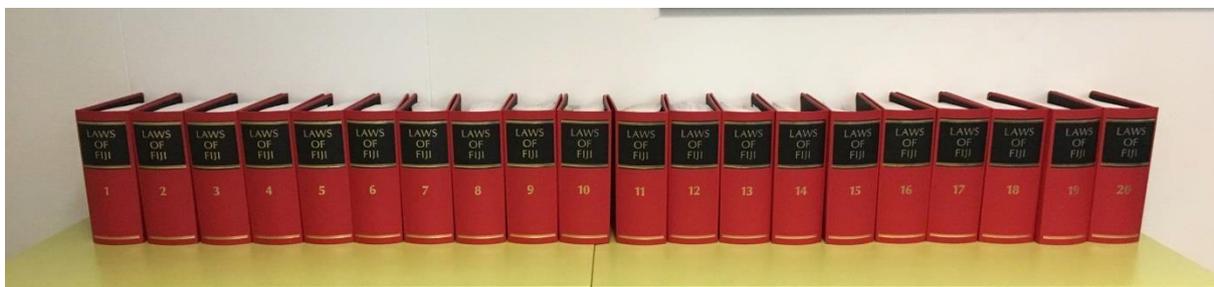
With the previous consolidation taking place in 1985, the Laws of Fiji had not been consolidated for a period of over 30 years. This resulted in time-consuming legal research, incorrect referencing of laws and incorrect legal analysis.

For the ordinary Fijian, reading and knowing the law is a daunting task if there is poor accessibility to the law given the myriad of amendments that have been made to those laws for more than 3 decades.

Revised Edition of the Laws of Fiji

The Fijian Government partnered with LexisNexis Australia in 2015 and 2016 to revise and consolidate the Laws of Fiji.

On 9 December 2016, the Fijian Government launched the Revised Edition of the Laws of Fiji which contributes to the advancement of the rule of law in Fiji.



Historical Reference

In the new consolidation, historical references are annotated within the text allowing the reader to trace the origin of that specific section of the law, for example, an annotation to a specific section of a law will show all previous amendments, insertions, substitutions or repeals made.

Annotations also provide the reader with a perspective of how the law has evolved since the 1970's.

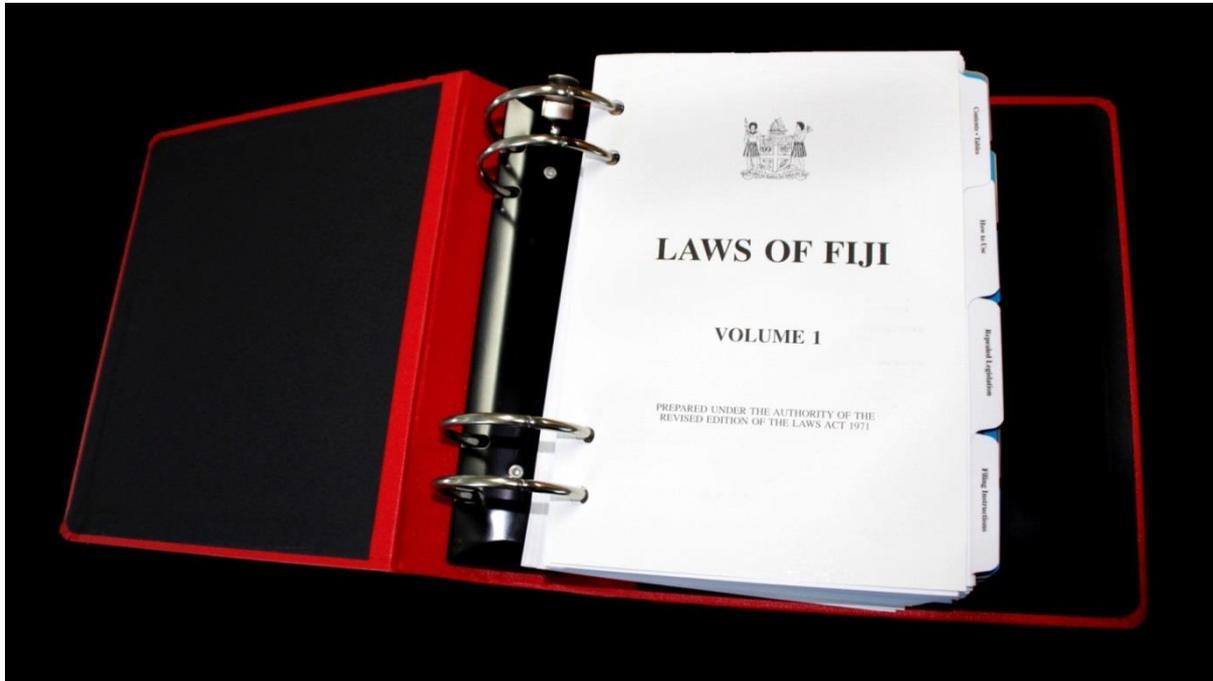
Gender Neutrality

Gender neutral terms are used to refer to positions and persons, for example the change from chairman to chairperson and the inclusion of 'she' and 'he' from the original usage of the terms "his", "him" and "he".

This ensures that Fijian laws reflect the goal of providing equality and justice for all Fijians.

Service Updates

The new consolidation was designed in such a way that it allows for pages to be updated. This means that a new law or an amendment made to a law will be included in the consolidation by inserting new pages into the consolidation or replacing existing pages.



This ensures that the consolidation is always current and up-to-date.

🚦 Duty Solicitor Scheme – Legal Aid Commission

First Hour Procedure

The First Hour Procedure commenced in November 2016 as a 6-month project but was soon extended. The First Hour Procedure is a joint partnership with the Judicial Department, Office of the Director of Public Prosecutions, Fiji Police Force, Legal Aid Commission ('LAC') and Human Rights and Anti-Discrimination Commission where the agencies agreed to undertake a Pilot of the First Hour Procedure and video recorded interviews. This initiative supports the reform of police procedures and practices in the wake of Fiji's ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in March 2016 with the focus to improve the overall effectiveness of the justice sector to deliver access to justice.

Since its commencement to October 2017, LAC's records indicate that a total of 1,140 persons were attended to under the First Hour Procedure. The number desegregates into 126 for females and 1014 for males during this period. For male and female clients, there is a further desegregation into adults and juveniles where 18 male juveniles and 2 female juveniles were attended to.

Court Appearances

For court appearances under the Duty Solicitor Scheme, LAC officers enter appearances in court at the consent of the applicant client in both family and criminal law matters. These appearances occur in instances of pre-approved applications and custodial or first appearance matters.

From August 2016 to July 2017, LAC appeared for a total of 2,122 matters under the Duty Solicitor Scheme. The Duty Solicitor Scheme is being implemented in all 16 branches of LAC, including the major centres of Suva, Nausori, Nadi, Lautoka, Ba, Rakiraki, Labasa, Sigatoka, Navua, Savusavu, Nasinu and Tavua.

Advice

Advice under the Duty Solicitor Scheme allows members of the public to receive free legal advice from LAC officers in criminal matters, family matters, civil matters, eviction matters, probate and wills.

The total number of persons who have come in for legal advice from August 2016 to July 2017 is 19,984.

The 16 branches where LAC offices are implementing the Duty Solicitor Scheme for advice include Suva, Nausori, Nadi, Lautoka, Ba, Rakiraki, Labasa, Sigatoka, Navua, Savusavu, Nasinu, and Tavua.

Public Awareness and Workshops

LAC conducts various public awareness programmes and workshops throughout Fiji as part of its community awareness and education campaigns with the aim of empowering the citizens especially the most vulnerable members of our community. The awareness programmes include talkback shows on both radio and television, publication and distribution of legal literacy pamphlets, workshops, community awareness and village visits to mention a few. LAC has also partnered with REACH (Rights, Empowerment and Cohesion for rural and urban Fijians) Project.

The total number of public awareness programmes conducted between January to August, 2017 is 134 public engagements. The public awareness programmes were run out of major centres including Suva, Nausori, Nadi, Lautoka, Ba, Rakiraki, Labasa, Sigatoka, Navua, Savusavu, Nasinu, Tavua, Korovou, Nabouwalu, Levuka and Taveuni. The public awareness programmes continue into the rural and village communities where LAC corporate and legal officers inform and educate the public on available services and for consultation with members of the public on the law.

SIGNIFICANT COURT DECISION

State v Speaker of Parliament, Ex-parte Isoa Tikoca (Judicial Review No. HBJ 4 of 2016)

Background

On 5 July 2016, the Applicant made comments in Parliament which were likely to raise animosity between different ethnic or religious groups and the Government Whip, Honourable Ashneel Sudhakar, (**'Government Whip'**) raised a Point of Order objecting to the Applicant's comments.

The Deputy Speaker of Parliament, Honourable Ruveni Nadalo, was presiding over the session in question in the Speaker's absence and allowed the Applicant to continue his response to the 2017 Budget on the condition that the Applicant bear in mind that budget responses must be confined to the budget and members of Parliament must not make implications against other members. The Deputy Speaker also warned the Applicant that he would not allow him to continue making such statements.

On 6 July 2016, the Speaker returned to Parliament and presided over the day's session. The Speaker referred to the Point of Order raised by the Government Whip on 5 July 2016 and her previous ruling on 4 July 2016 that budget responses must be focused on substantive matters relating to the Head being discussed.

On 9 August 2016, the Speaker sent a letter to the Applicant to reiterate with emphasis that *"when responding to debates in the House, Honourable members are indeed urged to focus their responses to the substance of the debate and relate their contributions to the issue at hand"*.

The Honourable Prime Minister, Rear Admiral Josaia Voreqe Bainimarama (**'Prime Minister's Letter'**) sent a letter of complaint to the Speaker against the Applicant. The Prime Minister's Letter emphasised the integrity and sanctity of Parliament and the need to protect such principles by limiting comments which promote feelings of ill-will and hostility between communities or ethnic groups within Fiji.

The Prime Minister's Letter also referred to the disingenuous nature of the Applicant's statements in the media where the Applicant claimed that his comments on 5 July 2016 were in reference to the FijiFirst Party and SODELPA.

On 26 September 2016, the Speaker advised the House of Parliament in session that she had received a notification on a matter of privilege which she needed time to consider and on 27 September 2016 the Speaker referred the matter of privilege to the Privileges Committee in accordance with Standing Order 127(2)(c) and advised the House of Parliament in session of the same.

On 29 September 2016, the Privileges Committee tabled its report on the matter of privilege that had been referred to it.

Having received the report of the Privileges Committee, a Motion was moved by the Leader of the Government in Parliament pursuant to Standing Order 37 that Parliament endorses the findings of the Privileges Committee (**'Motion to Endorse'**) that:

- (i) the Applicant contravened Standing Order 62(4)(a) and (d) in circumstances that were grave and in serious breach of privilege;
- (ii) the Applicant issue a public apology;
- (iii) the Applicant must be suspended for the remainder of the term of Parliament with immediate effect;
- (iv) during the period of suspension the Applicant not be allowed to enter the Parliamentary precincts, including the Opposition Office and immediately upon the Applicant's suspension, that he be ordered to leave the parliamentary precincts and to remain outside of parliamentary precincts; and
- (v) if the Applicant fails to comply with the above, the necessary enforcement measures be imposed to ensure compliance.

During the debate on the Motion to Endorse a motion for an amendment to the Motion to Endorse was moved by the Honourable Viliame Gavoka (**'Amendment Motion'**) to the effect "That the recommendation be reduced to 30 days suspension, and that the Honourable Ratu Tikoca makes an apology".

The Amendment Motion was debated on by the House of Parliament and with 12 ayes, 30 Noes and 8 not having voted, the Amendment Motion was defeated.

The Motion to Endorse was debated on by the House of Parliament and with 30 Ayes, 13 Noes and 7 not having voted, the Motion to Endorse was agreed to.

Ruling

The applicant filed an application for judicial review seeking the following reliefs:

- (i) a declaration that Parliament is subject to the Constitution and has no constitutional authority to punish the applicant by permanent suspension from Parliament for the remainder of the term of Parliament;
- (ii) a declaration that the respondent's action in allowing the parliamentary procedures of majority vote to be used to suspend the applicant from Parliament for the remainder of Parliament was and is unlawful;
- (iii) a declaration that the resolution Parliament adopted on 29 September 2016, which purports to suspend the applicant from Parliament is void and to be set aside;
- (iv) general damages;
- (v) other declarations and mandamus orders as the court may decide;
- (vi) indemnity costs.

On 8 May 2017, the respondent filed summons under Order 18 rule 18(1)(a), (b) and (d) and Order 33 rule 3 of the High Court Rules 1988 seeking the following orders:

- (i) that the applicant's application for leave to apply for judicial review be struck out on the following grounds:

- i. it discloses no reasonable cause of action;
 - ii. it is scandalous, frivolous or vexatious; and
 - iii. it is an abuse of the court process;
- (ii) in the alternative, whether the internal proceedings of Parliament and/or the exercise of established parliamentary privilege falls within the jurisdiction of the court.

The decision of Parliament which the applicant is seeking to challenge by way of judicial review fails for the reason that the court has no jurisdiction to inquire into the decision of Parliament to suspend.

The application seeking leave for judicial review is struck out.

SIGNIFICANT LAW REFORMS

BILLS AND ACTS OF PARLIAMENT

This year, the Fijian Government tabled a total of 41 Bills in Parliament. The Bills *inter alia* sought to give legal effect to certain government policies as well as address the challenges faced by Fijians, in every sector of the economy.

The Bills are listed below:

- Public Order (Amendment) Bill 2017
- Financial Transactions Reporting (Amendment) Bill 2017
- Workmen’s Compensation (Amendment) Bill 2017
- Value Added Tax (Amendment) Bill 2017
- Electoral (Amendment) Bill 2017
- COP 23 Presidency Trust Fund Bill 2017
- Electricity Bill 2017
- Land Transport (Amendment) Bill 2017
- Employment Relations (Amendment) Bill 2017
- Income Tax (Amendment) Bill 2017
- Diplomatic Missions and International Organisations Bill 2017
- Medical and Dental Practitioner (Amendment) Bill 2017
- Pharmacy Profession (Amendment) Bill 2017
- Fiji Servicemen’s After-Care Fund (Amendment) Bill 2017
- 2017-2018 Appropriation Bill 2017
- Water Resource Tax (Budget Amendment) Bill 2017
- Superyacht Charter (Budget Amendment) Bill 2017
- Service Turnover Tax (Budget Amendment) Bill 2017
- Income Tax (Budget Amendment) Bill 2017
- Tax Administration (Budget Amendment) Bill 2017
- Pensions (Budget Amendment) Bill 2017
- Tertiary Scholarship and Loans (Budget Amendment) Bill 2017
- Stamp Duties (Budget Amendment) Bill 2017
- Financial Management (Budget Amendment) Bill 2017
- Land Transport (Budget Amendment) Bill 2017
- Value Added Tax (Budget Amendment) Bill 2017
- Excise (Budget Amendment) Bill 2017
- Omnibus Electronic Fare Ticketing (Budget Amendment) Bill 2017
- Environmental Levy (Budget Amendment) Bill 2017
- Customs Tariff (Budget Amendment) Bill 2017
- Accident Compensation Bill 2017
- Commerce Commission (Budget Amendment) Bill 2017
- Regulations of Building Permits Bill 2017
- International Financial Organisations (Amendment) Bill 2017

- Personal Property Securities Bill 2017
- Land Transport (Amendment) (No. 3) Bill 2017
- Fiji Revenue and Customs Service (Amendment) (No. 2) Bill 2017
- Tax Administration (Amendment) (No. 2) Bill 2017

Parliament passed a total of 48 Acts this year.

In addition to the 41 Bills that were tabled by the Fijian Government this year, Parliament passed the following 7 Bills that were tabled by the Fijian Government in 2016:

- Fiji Interchange Network (Payments) Bill 2016
- Electronic Transactions (Amendment) Bill 2016
- Public Order (Amendment) Bill 2016
- Endangered and Protected Species (Amendment) Bill 2016
- National Employment Centre (Amendment) Bill 2016
- Higher Education (Amendment) Bill 2016
- National Research Council Bill 2016

Listed below are the significant law reforms:

Electricity Act 2017

Background

The Electricity Act 2017 is a result of the Fijian Government's intention to corporatise the Fiji Electricity Authority ('**FEA**') and create a company ('**Company**') that will be registered under the Companies Act 2015. The Company will subsequently be partially divested.

Under the Electricity Act 1966 ('**existing Electricity Act**'), FEA is currently enjoying monopolistic status in the retail, transmission and distribution of electricity in Fiji. Additionally, FEA also performs regulatory functions of approval of licences and compliance with safety standards. A key feature of the Electricity Act 2017 is the proposed regulatory reform in the electricity industry in Fiji.

Given the proposed partial divestment, it is not appropriate for the Company to regulate the electricity industry or to issue electricity related licences. The objective of establishing an independent regulator ('**Regulator**') is to deregulate the electricity industry and to further enhance the Fijian Government's policy for good governance, transparency and accountability.

The primary roles and responsibilities of the Regulator will be to (with the consent of the Minister) issue licences in relation to generation, transmission and supply of electricity, to determine tariffs and price methodology for electricity, to protect the interests of consumers and the administration, enforcement and regulation of the electricity industry.

The Electricity Act 2017 also includes consequential amendments to the Fijian Competition and Consumer Commission Act 2010 to give effect to the proposed role of the Regulator to the Fijian Competition and Consumer Commission ('FCCC').

Divestment of FEA

As the Fijian economy continues to grow, and with that, power demand and consumption, the primary goals of the Fijian Government from the partial divestment of the Company are to:

- meet the long-term electricity industry development goals while encouraging enhanced private sector participation, particularly in renewable energy
- align the Fijian electricity industry to international best practices
- ensure a more stable and affordable supply of electricity
- increase participation of ordinary Fijians in the development of capital markets
- ensure that the Fijian Government realises optimal value through partial divestment of its interest in FEA

The purpose of the Electricity Act 2017 is to set up the structure of an independent electricity regulator. It is important for Fiji to establish the independent regulator by the Electricity Act 2017 as it will ensure transparency and will encourage investors, particularly foreign investors to participate in the divestment of FEA.

Accident Compensation Act 2017

Background

The Accident Compensation Act 2017 is a result of the review of the Motor Vehicles (Third Party Insurance) Act 1948.

The Motor Vehicles (Third Party Insurance) Act 1948 provides for compulsory insurance against third party risks arising out of the use of motor vehicles. It makes it compulsory for all registered motor vehicles to have compulsory third party insurance cover, unless exempted by the Minister responsible for transport.

Despite third party insurance being compulsory for all registered motor vehicles, not all victims of motor vehicle accidents receive compensation. The exclusion provisions within the insurance contracts do not provide protection to all third parties who are injured from accidents involving motor vehicles and not all insurance claims are redressed.

As a result, many Fijians who have been victims of motor vehicle accidents have been denied compensation. As an example, an innocent pedestrian who was hit by a car was denied compensation by the insurance company simply because the driver of the vehicle did not have a driver's licence or was drunk-driving. Claims for compensation have also been unduly delayed with insurance companies or in the courts, and victims of motor vehicle accidents have often waited for years to get compensation, if any.

Another example is the bus fire accident in Sigatoka in 2008 which left 12 people dead. The insurance cover for 60 passengers in the bus was for \$40,000 for all the passengers collectively – an inadequate sum for the fallen victims.

The Accident Compensation Act 2017, which is intended to come into force on 1 January 2018, remedies this injustice. The Accident Compensation Act 2017 establishes a commission to be known as the Accident Compensation Commission Fiji (**'ACCF'**) and provides for a 'no fault compensation scheme' through which victims of accidents will be compensated without having to prove fault or negligence.

From 1 January 2018, the Accident Compensation Act 2017 will be applicable to motor vehicle accidents and will provide no fault compensation for personal injuries and deaths arising from motor vehicle accidents. Under the Accident Compensation Act 2017, any person who suffers personal injury or death as a result of a motor vehicle accident on our roads will be provided with a lump sum compensation payment in a prompt and timely manner under the no fault scheme. Victims of motor vehicle accidents no longer have to pay large amounts of legal fees to a lawyer and then wait for years to get any compensation from the insurance companies. As in New Zealand, Fijians will be able to claim compensation without a lawyer, potentially saving years of litigation and obtaining speedy justice.

From 1 January 2018, owners of motor vehicles no longer have to take third-party insurance with an insurance company. A levy will instead be paid into the Accident Compensation Fund, and will be payable through the Land Transport Authority (**'LTA'**). This will make LTA a one-stop shop for the payment of all motor vehicle registration costs. The Accident Compensation Fund will be administered by the Ministry of Economy and the Reserve Bank of Fiji will assist with such re-insurance arrangements as necessary.

The proposed no fault compensation scheme is similar to the scheme in place for motor vehicle accidents in New Zealand.

The no fault compensation is intended to make the redress for accident victims simple by providing compensation that the victims deserve by way of application to the ACCF. This is less adversarial than the current system and more efficient as it saves costs, time and lessens the impact of the trauma suffered by victims.

At present, the Accident Compensation Act 2017 only provides compensation for personal injury or death as a result of a motor vehicle accident in Fiji. However, the Accident Compensation Act 2017 facilitates expansion on the type of accident and would cater for other types of accidents over a period of time.

As an alternative, if any person who suffered personal injury or the legal representative of any person who suffered death, as a result of motor vehicle accident, decides not to accept the compensation by the ACCF, that person is at liberty to institute a proceeding, claim or action in court for compensation under the common law.

International Arbitration Act 2017

Background

Fiji acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the 'New York Convention' on 27 September 2010. The New York Convention is widely considered as the foundational instrument for international arbitration.

The International Arbitration Act 2017 was drafted to implement Fiji's obligations and commitments under the New York Convention.

The Fijian Government, through the United Nations Commission on International Trade Law ('**UNCITRAL**') and the Asian Development Bank ('**ADB**'), worked with consultants in the field of international arbitration to review the comparable laws on arbitration and recommend the best model for Fiji.

Fiji has an existing Arbitration Act 1965 that covers arbitration at a domestic level. The International Arbitration Act 2017 however, covers arbitration at international level.

The International Arbitration Act 2017 was drafted according to the Model Law on International Commercial Arbitration adopted by UNCITRAL on 21 June 1985 and as amended by UNCITRAL on 7 July 2006 ('**Arbitration Model Law**') to have legislation based on international standards on arbitration.

The International Arbitration Act 2017 mirrors the laws in Australia, New Zealand, Singapore and Hong Kong. Recognising the importance of international arbitration as a means of settling international commercial disputes, the International Arbitration Act 2017 was drafted to provide for uniformity in its application and the observance of international best practices.

It is envisioned that the International Arbitration Act 2017 will contribute directly to economic growth by providing a gateway to increasing regional and international investor confidence, which in turn will lead to greater economic development potential.

Additionally, the International Arbitration Act 2017 will provide an alternative, cost effective and time efficient means of dispute resolution between parties, and is recognised in 157 countries, which include Fiji's major sources of foreign direct investment such as the People's Republic of China, Australia, the United States of America and New Zealand.

By enacting the International Arbitration Act 2017, Fiji would have modern legislation on international arbitration, with the potential for Fiji to become a regional hub for international arbitration, while fulfilling with our obligations and commitments under the New York Convention. Moreover, complying with the New York Convention and other relevant instruments signifies our commitment to create the right environment for investment and thus creating new jobs.

There are 3 Parts and 57 sections in the International Arbitration Act 2017 which highlights the key principles in international arbitration.

Some key principles in international arbitration are as follows:

Party autonomy

The parties are able to agree on most aspects of the arbitration proceedings. This agreement may be recorded in:

- the arbitration agreement
- the arbitral rules that the parties have agreed apply to the arbitration (e.g. the International Chamber of Commerce (ICC) Rules, the Australian Centre for International Commercial Arbitration (ACICA) Rules or the Singapore International Arbitration Centre (SIAC) Rules)
- the arbitration legislation of the seat of the arbitration (e.g. the Australian International Arbitration Act 1974 if the seat is Sydney) - this is the procedural law of the arbitration

Arbitration agreement is separable

The arbitration clause (or arbitration agreement) is separable from the main contract. This means that if there is an allegation about the validity, existence or legality of the main contract, that allegation is still to be referred to arbitration pursuant to the arbitration clause. It is only if the allegation (e.g. an allegation of corruption) impacts on the arbitration clause itself that the dispute is not referred to arbitration.

The principle of competence-competence

The Tribunal has the power to determine its own jurisdiction. This is referred to as the principle of competence-competence. This means that if there is a question as to the scope of the arbitration clause or whether the arbitration clause is valid, for example, the Tribunal has the power to determine that question and thus, whether or not the Tribunal has jurisdiction to hear the dispute.

Therefore, international arbitration is based on the agreement of the parties to refer their disputes to arbitration rather than to the courts. If the parties have agreed to arbitration, then:

- a Tribunal consisting of one or three arbitrators will be constituted to hear the dispute
- the parties will agree a procedural timetable for the proceedings with the Tribunal providing for:
 - the parties to submit their factual and legal arguments (submissions)
 - witness statements, expert reports and documentary evidence
 - disclosure process
 - hearing on the merits

- the Tribunal will then issue an award which is enforceable in any State that is party to the New York Convention (provided that the award has been made in a State that is party to the New York Convention)

Personal Property Securities Act 2017

Background

In 2014, the Fijian Government initiated work on a secured transactions reform to facilitate the financing of movable or personal property, in order to provide access to credit for micro, small and medium enterprises and individuals.

A personal property securities law allows lenders to secure their interests in collateral concurrent with disbursement of loan funds, and also to determine without any delay whether a proposed debtor has previously pledged particular collateral to secure a previous loan.

The ability to perform this sort of search against a would-be borrower results in generating much greater confidence in lenders in extending credit, knowing that the collateral for their loan has not been previously pledged. Due in large part to the efficiency of this regime, most asset-based lending in developed economies is based upon personal property serving as collateral, not land.

By implementing this reform and the Personal Property Securities Act 2017, Fiji will be able to take advantage of new financing procedures and products which in turn improve the lives of ordinary Fijians without administration restrictions to accessing credit.

The Personal Property Securities Act 2017 applies to all transactions that have traditionally been used to create security in personal property. These transactions include bills of sale, pledges, chattel mortgage, hire-purchases, retention of title financing, and company charges.

The Personal Property Securities Act 2017 also applies to non-traditional lending transactions such as dealer financing.

The Personal Property Securities Act 2017 is intended to be applied as broadly as possible, covering a variety of types of property and transactions. However, it is crucial to note that the Personal Property Securities Act 2017 does not apply to land (immovable property).

Creation of Security Interests in Movable Property

The Personal Property Securities Act 2017 sets out rules for the creation of security interests in movable property that can be used as collateral. Movable property is defined broadly and can include not only tangible things such as inventory and equipment, but also intangible property like accounts receivable, patents and property to be acquired in the future.

The Personal Property Securities Act 2017 also does not intrude into the business deal to be struck between parties. The parties to a transaction are free to set the terms of their

underlying contract as they see fit, including setting the payment terms, designation of the collateral and the definition of default.

Establishing Priority in Collateral

The Personal Property Securities Act 2017 sets out specific rules for establishing priority in collateral. Priority is a term that means one party has first rights in the collateral over all others. Consider the situation where a business becomes insolvent. It is likely such a business will have many creditors. The creditor with priority will have the first claim on the debtor's collateral.

The Personal Property Securities Act 2017 contains priority rules covering a multitude of possible business scenarios, which is extremely important as this brings clarity and certainty to lending transactions. When lenders are confident that no other creditors can jump ahead of them in the event of a default, they are more likely to extend credit.

In practice, by far the most common method of establishing priority in collateral is through filing a notice of security interest in the online electronic registry established under the new law.

The Registry and its Contents

The Personal Property Securities Act 2017 provides for the establishment of an online, exclusively electronic registry where notices of security interest are filed. By filing this notice the secured party establishes its priority as of the date and time of filing. All filings made into the registry are completed by the users (lenders), not by registry staff.

This means that filings can be made in real time and are automatically uploaded to the live database once made. This also means that searches can be made in real time as all notices filed in the registry are public records and may be searched via the internet. Currently in Fiji there can be significant delays when attempting to file a bill of sale or a company charge, and searching these registries is not efficient. This online registry represents a significant improvement over current conditions.

The Personal Property Securities Act 2017 only requires limited information to be provided in the notices that are filed in the registry, enough to give notice to a searcher that a particular debtor and some particular property may be subject to a security interest.

The notice filed in the registry need only identify the debtor, the secured party and the collateral. There is no requirement to supply the confidential details of a loan transaction, including the amount of the debt and the payment terms. Unlike current practice, the underlying loan documents are not filed which will greatly simplify the administrative side of fully documenting loans.

In most cases a general description of the collateral is sufficient. However, with regard to motor vehicle financing, the serial number or vehicle identification number (VIN) of the motor vehicle will need to be entered into the registry database to ensure priority because the serial number is a searchable field in the registry, making it very easy to learn if a particular car has a charge over it.

The technology inherent in modern registry systems allows frequent users of the registry (like institutional lenders) to establish client accounts with the registry. In order to become a client of the registry, the Registrar is empowered to authenticate the person or institution that seeks to use the registry. This is a safeguard to make certain that the registry is not misused. Each client account may have one or more individual users who may file notices or request certified search reports and otherwise use the account.

The client account also serves as a tool by which clients may monitor the status of their filings and reconcile their own books as the registry will generate statements to clients on a monthly schedule. Each client will have one administrative user that will be able to see all activity of that client within the registry as full audit trails are created with each filing.

Filing notices within the registry is straightforward and intuitive, and with minimal training, users will be able to easily navigate their way around the registry interface.

Enforcement

The Personal Property Securities Act 2017 generally allows for the following enforcement procedures:

- all rights contained in the security agreement (i.e., the loan documents) may be deployed
- the secured party has the right to possess or control the collateral
- the secured party has the right to sell the collateral and apply the proceeds against the debt
- any other rights provided in the Personal Property Securities Act 2017 or under any other law of Fiji

The Personal Property Securities Act 2017 adds to the body of law in Fiji pertaining to enforcement of debts. Therefore, the current practices in use today can continue.

With regard to the sale of collateral after it has been seized, the Personal Property Securities Act 2017 states that the secured party may act in any commercially reasonable manner. This includes conducting a public or private sale and will also allow the secured party to buy the collateral at the sale if it is the highest bidder. To protect the debtor and other creditors, the Personal Property Securities Act 2017 requires a secured party to give notice of a proposed sale to the debtor, other secured parties and other persons known to have an interest in the collateral.

The Personal Property Securities Act 2017 protects debtors by granting them the right to redeem the collateral at any time prior to its sale by paying the costs of enforcement and fulfilling the remaining obligation on the underlying transaction. Once there is no remaining dispute about rights in the collateral, the secured party may distribute the proceeds of disposition in order of priority established by the law. The Personal Property Securities Act 2017 then sets out the distribution scheme according to the relative priorities of all interested parties in the collateral.

Transition Period

There are pre-existing transactions that will now fall within the Personal Property Securities Act 2017, and those existing transactions must be migrated into the Personal Property Securities Act 2017 registry in a fair way so as not to prejudice the rights of the parties to these earlier transactions.

The Personal Property Securities Act 2017 contains transition rules that will permit the lender in a prior transaction to file a notice of that prior transaction in the registry within six months from the commencement of the new law.

If a secured party in a prior transaction files a notice within this six month transition period, then that notice will establish the lender's priority as it existed under the prior law. The lender will therefore be given the same priority as it already had.

However, if the notice is filed after the transition period, priority will date from the date of filing. It is therefore strongly recommended that all entities that hold a pre-existing security interest in collateral should file a notice for that transaction during the six month transition period.

To help ease the burden the ADB PSDI is willing to pay for the first year of operation of the registry so that there is no need to charge a filing fee for these transition filings.

Consequential amendments to existing Fijian laws

The Personal Property Securities Act 2017 provides for consequential amendments to the following laws that the Personal Property Securities Act 2017 impacts:

- Bankruptcy Act 1944
- Companies Act 2015
- Cooperatives Act 1966
- Fiji Development Bank Act 1966
- Fiji National Provident Fund Act 2011
- Indemnity, Guarantee and Bailment Act 1881
- Land Transfer Act 1971
- Land Transport Act 1998
- Marine Insurance Act 1961
- Property Law Act 1971
- Registration Act 1879
- Sale of Goods Act 1979
- Stamp Duties Act 1920
- Sugar Cane Growers Fund Act 1984
- Tax Administration Act 2009

The Personal Property Securities Act 2017 also repeals the Crops Lien Act 1904 and the Bills of Sale Act 1879 given that the Personal Property Securities Act 2017 will be the authority under which securities on personal property are administered.

Electoral (Amendment) Act 2017

Background

In 2014, Fiji saw one of the highest turnouts of voters in the 2014 General Elections and recorded the lowest number of invalid votes in Fiji's electoral history.

The Fijian Elections Office ('**FEO**'), committed to continuously improving its standards and operations, carried out a review on existing electoral laws as well as its procedures shortly after the 2014 General Elections. This was also carried out to identify and improve procedures and processes, in light of the challenges faced throughout the entire election process, in preparation for the next general elections and other elections carried out by the FEO.

The FEO, in its review, identified operational procedures that needed to be streamlined and provisions in the Act that needed to be simplified. It also considered recommendations made by the Multinational Observer Group ('**MOG**') that was co-led by Australia, India and Indonesia.

The recommendations include the following:

- that Fiji review and finalise its existing electoral laws well in advance of the next general elections
- that the division of the responsibilities between the Electoral Commission (EC) and the FEO should be clarified
- that the rules regarding the use of paper in polling stations should be clarified, and observers and party polling agents should be able to carry paper into polling stations

The recommendations and other amendments to existing procedures were intended to ensure the efficiency and effectiveness of the electoral processes and procedures.

INTERNATIONAL TREATIES

TREATY	DATE APPROVED BY PARLIAMENT FOR RATIFICATION/ ACCESSION/ ACCEPTANCE
World Trade Facilitation Agreement	9 February 2017
Protocol Amending the World Trade Organization Trade Related Aspects of Intellectual Property Rights Agreement	9 February 2017
United Nations Convention on the Use of Electronic Communications in International Contracts	9 February 2017
United Nations Convention on the Rights of Persons with Disabilities (CRPD)	22 March 2017
United Nations Convention on Contracts for the International Sale of Goods (CISG)	23 March 2017
Hague Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996 Convention)	23 March 2017
United Nations Convention against Transnational Organized Crime (UNTOC) and Supplementing Protocols	26 April 2017
Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting	24 May 2017
Asian Infrastructure Investment Bank Articles of Agreement	14 July 2017
Doha amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change	14 July 2017
Framework Agreement on the Establishment of the International Solar Alliance	14 July 2017

PILON STRATEGIC PRIORITIES

National Cybersecurity Strategy

1. Overview

The Ministry of Communications hosted Fiji's Cybersecurity Assessment and Strategy Consultations from 9-13 November 2015 in collaboration with the Commonwealth Telecommunications Organisation (CTO).

The following stakeholders from across the sector we invited to be part of the consultations:

- Government Ministries
- Regional Organisations
- Academia
- Telecommunication Operators and ISPs
- Technical Experts
- Legislators/Policy makers

The key aspects of this consultation were to align Fiji to its cybersecurity capacity needs and work on developing a National Cybersecurity Strategy.

2. Phase I : 9-13 November 2015

Established an Active Working Group from 5 distinct work areas from the industry:

1. Policy, Legal and Regulatory
2. Technical
3. Capacity Building, Outreach and Awareness
4. National Security
5. Government Institutions and Agencies

The Working Group meets to discuss matters of concern in Fiji's cyberspace. The WG will advise on the drafting requirements and areas of need that should be highlighted in National Cybersecurity Strategy.

Cybersecurity Capacity Review of Fiji

Cybersecurity Capacity Assessment was carried out by the Commonwealth Telecommunications Organisation in conjunction with the University of Oxford during their in-country mission to Fiji.

The Cybersecurity Capacity Maturity Model (CMM) defines five distinct areas of cybersecurity capacity in Fiji's context:

- Cybersecurity policy and strategy

- Cybersecurity culture and society
- Cybersecurity education, training and skills
- Cybersecurity legal and regulatory frameworks
- Cybersecurity standards, business models and technologies

3. Review of Cybersecurity Maturity Model

The Cybersecurity Maturity Model is composed of five distinct areas of cybersecurity capacity:

- Dimension 1 : Cybersecurity Policy and Strategy
- Dimension 2 : Cyber Culture and Society
- Dimension 3 : Cybersecurity Education, Training and Skills
- Dimension 4 : Legal and Regulatory Frameworks
- Dimension 5 : Standards, organisations, and technologies

A draft report on ‘Cybersecurity Capacity Review of Fiji’ was prepared by University of Oxford based on their 1st phase reviews.

4. Phase II : 25-29 July 2016

The 2nd phase was held from 25-29 July 2016 with the focus on getting comments and feedback on the draft Strategy of May 2016. Further amendments were done throughout the course of industry consultations with major stakeholders.

After completion of this phase, CTO and MOC further worked on finalising the draft National Cybersecurity Strategy.

5. Key Outcomes

5 Strategic Goals which are essentially addressed in the National Cybersecurity Strategy (Working document):

1. Protect critical infrastructure, ICT and related services;
2. Combat cybercrime and manage cyber threats;
3. Develop capability, legal framework and expertise in cybersecurity;
4. Promote cybersecurity awareness, collaboration, information and knowledge sharing; and
5. Enable secure use of Fiji’s cyberspace for promotion of human rights and socio-economic development.

With a clear national vision and mission as outlined below:

Vision

To enable a secure, resilient and available Cyberspace that will enhance awareness and socio-economic development of all Fijians.

Mission

To create a resilient, safe and secure cyber environment for an informed and educated society in Fiji, thereby promoting socio-economic development.

6. The Way Forward

Other Projects

- Suggestions on further works to be carried out in establishing a National Computer Incident Response Team (CIRT).
- A 'Readiness Assessment Report to Establish a National CIRT for Fiji' was developed with the assistance from International Multilateral Partnership against Cyber Threats (IMPACT) under the direction of the International Telecommunication Union (ITU) in November 2014.

This document outlines Action Plans to Establish Fiji CIRT- implementation in phases and further highlights the functions and services, capacity requirements for the managing staff, resources, funding, etc.

- Further works to continue in the area of Electronic Transactions Policy and Cybercrime Strategy to be developed in the near future to be incorporated and in-line with frameworks of the Budapest Convention on Cybercrime, UN Electronic Communications Convention, etc.
- National Computer Emergency Response Team (CERT) implementation to begin in July as this would fall into place with the deadlines as stated in our National Cybersecurity Strategy. Realistic timelines have to be outlined in the NCS which have to be met.

Following this, further work will be carried out in aligning Fiji to be a party to the Budapest Convention on Cyber Crime before the end of 2018. Government has already initiated an advisor for this and this would be our first priority once the National CERT is implemented.

- Capacity Development for CERT staffing in specialised areas of Incident Response, Threat Mitigation, Compliance and Standards Implementation, Frameworks, etc.
- Fiji to become a member of regional and international organisations such as FIRST, ApCERT, etc.
- Financing to be requested for this in next year's budget if we are to meet NCS timelines.

Imposition of Environment and Climate Adaption Levy

The Environmental Levy was renamed as the Environment and Climate Adaptation Levy (**'ECAL'**) on 1 August 2017.

ECAL is now set at 10% of the turnover of a business providing a prescribed service. ECAL is also applicable to individual taxpayers earning \$270,000 and above. The Superyacht Charter Fee was also replaced with 10% ECAL. Also, for every plastic bag that is purchased from a designated place, 10 cents ECAL is payable.

ECAL collected is paid into a trust fund for environment and climate adaptation purposes.

SIGNIFICANT ISSUES AFFECTING THE LAW AND JUSTICE SECTOR

While LAC is making strides in the promotion of greater access to justice, women, persons with disability and children are significant areas of focus.

Women

LAC proactively assists women where they may be victims and or survivors of Domestic Violence and or other similar matters. This includes legal advice and legal representation in Court either to defend or to seek an order. The Domestic Violence Restraining Order is an example of the avenues that assist vulnerable women. We ensure that each case is treated on its own individual merits and where there is an urgent need to seek orders, the Court is moved as soon as possible to obtain the relevant orders even if it is after hours.

The *Total DVRO Applications Received from 01st January 2015 to 30th June 2017* confirms more female applications over male applications each year with a difference of 313 applications in total during this period.

LAC also offers advice and legal representation on family matters that range from Spousal and Child Maintenance, Residence or Child Custody and Adoption.

Persons with Disability

LAC focuses on greater access to free legal services for all persons including persons with disability. This includes infrastructural adaptability of our offices to cater for the needs of persons with disability. Where access to LAC offices may be difficult or restricted, we ensure to take our services to that person affected. There are plans for other offices throughout Fiji to achieve a uniform standard for accessibility.

LAC services for persons with restricted mobility also include home and hospital visits at the request of the client.

Children

The LAC has taken initiatives to train staff on how to deal with issues concerning children. Such capacity building activities are important to keep up to date with the current developments in law in relation to children. In April, 2017 the UN Office of the High Commissioner of Human Rights together with the Office of the Director of Public Prosecutions and LAC conducted a series of workshops on the topic of the Child and the Criminal Justice System. These Workshops engender staff to understand new developments and on how to deal with young children either as clients or as witnesses.

LAC also ensures that a safe and friendly environment for children accompanying parents to the LAC offices. LAC has taken measures and continues to do so in providing children's sitting and playing area when waiting with guardians or parents in LAC offices. We have also made provisions for mothers to breastfeed in a private setting and in some offices we have also provided changing rooms.

SIGNIFICANT INITIATIVES/PROJECTS IN THE LAW AND JUSTICE SECTOR

LAC is taking significant steps to ensure greater access to justice through the expansion of offices throughout Fiji. These include the opening of offices in Kadavu, Seaqaqa (Vanua Levu), Rotuma, Keiyasi (Nadroga) and Vunidawa (Naitasiri).

Expansion of Services

Some of the new LAC offices that opened in 2015 and 2016 were Tavua, Korovou, Levuka (Ovalau), Nabouwalu (Vanua Levu), Taveuni and Savusavu to allow for greater access to justice throughout Fiji. Under the Judicial Department Island Court Sitting, LAC also provides services for Kadavu, Taveuni, Rotuma, Lau and Lomaiviti. In the island court sittings, legal matters that are dealt with include both Family and Criminal Law. The Duty Solicitor Schemes for Court Appearance and Advice also provided in the island court sittings in communities and villages.

Staff Training

There is ongoing training for both legal and corporate staff. Recently, there was knowledge sharing programme to train and upskill staff. Developments also include the upgrading of our database system and a strong drive toward new case management.

The current establishment for LAC is 209 employees out of which 50 are males and 86 females with recruitments still in the process for 73 vacant positions bringing the current active workforce to 136 staff. This underscores LAC's commitment to equal opportunity, gender empowerment and equality.

TECHNICAL LEGAL ASSISTANCE

Commonwealth Secretariat

Upon the request of the Fijian Government, the Commonwealth Secretariat engaged a legislative drafting consultant, Ms Victoria Aitken, to provide capacity building for, and work with, the Legislative Drafting Department for a period of 6 months. During this period, Ms Aitken conducted trainings and assisted the drafters with the drafting of laws.

Asian Development Bank

The Asian Development Bank ('ADB') engaged experts, Mr Daniel Meltz, Mr Greg Born, Mr Jonathan Lim and Ms Christina Pak, on international arbitration to assist the Legislative Drafting Department with the drafting of the International Arbitration Bill 2017, which was tabled in Parliament and later passed in the September sitting of Parliament this year.

These experts also provided clarification to the parliamentary Standing Committee on Justice, Law and Human Rights, to which the International Arbitration Bill 2017 had been referred for review.

On 28 August 2017, ADB hosted a workshop in Suva on An Introduction to International Arbitration for Lawyers in Fiji. In February 2018, there will also be a regional conference, co-hosted by ADB and the Fijian Government in respect of international arbitration.

ADB, through its Private Sector Development Initiative with the Reserve Bank of Fiji, also provided technical legal assistance on the drafting of the Personal Property Securities Bill 2017.

United Nations Commission on International Trade Law

The United Commission on International Trade Law ('UNCITRAL') also worked with ADB on the International Arbitration Bill 2017.

In 2016, UNCITRAL engaged a consultant, Mr Jayantha Fernando, to assist the Legislative Drafting Department with the drafting of the Electronic Transactions (Amendment) Bill 2016, which was tabled in Parliament and later passed in the February sitting of Parliament this year.

Australian Attorney-General's Department

In 2016, the Pacific Legal Policy Programme was held from 22 October 2016 to 16 December 2016 in Canberra, Australia.

The Programme, facilitated by the International Legal Assistance branch at the Australian Attorney-General's Department ('AGD'), comprised two main parts i.e. on policy

development and policy project identifying gaps and areas in Fiji's laws and draft Cybercrime Bill.

Four participants were selected for the Programme in 2016, one representative each from Fiji, Papua New Guinea, the Solomon Islands and Vanuatu. Fiji was represented by Ms Glenys Andrews who is an officer at the Office of the Solicitor-General.

CONTACT INFORMATION FOR KEY LAW AND JUSTICE AGENCIES

AGENCY	KEY RESPONSIBILITIES	CONTACT PERSON(S) AND DESIGNATION	CONTACT INFORMATION
Ministry of Justice and Anti-Corruption	<p>The Ministry of Justice and Anti-Corruption is responsible for maintaining records of births, deaths and marriages, companies registered in Fiji and the transfers of ownership of freehold land and property, as well as <i>inter alia</i> the development of policies in the law and justice sector.</p> <p>The following offices exist within the Ministry of Justice and Anti-Corruption:</p> <ul style="list-style-type: none"> (a) Office of the Administrator-General; (b) Office of the Registrar-General; (c) Office of the Registrar of Companies; (d) Office of the Official Receiver; and (e) Office of the Registrar of Titles. 	<p>Mr Sharvada Sharma Acting Permanent Secretary for Justice and Anti-Corruption</p> <p>Ms Sangeeta Chand Acting Administrator-General</p>	<p>T: (+679) 3309866 F: (+679) 3305421</p> <p>T: (+679) 3308600 F: (+679) 3303676</p>
Office of the Solicitor-General	<p>The Office of the Solicitor-General is responsible for:</p> <ul style="list-style-type: none"> (a) providing legal advice to the Government and the holder of a public office, on request; (b) preparing draft laws on the request of Cabinet; (c) maintaining a publicly accessible register of all written laws; (d) representing the State in court in any legal proceedings to which the State is a party, other than criminal proceedings; and (e) performing any other functions assigned by this Constitution, any written law, Cabinet or 	<p>Mr Sharvada Sharma Solicitor-General</p> <p>Ms Tracey Wong Deputy Solicitor-General</p>	<p>T: (+679) 3309866 F: (+679) 3305421</p> <p>T: (+679) 3309866 F: (+679) 3305421</p>

	the Attorney-General.		
Office of the Director of Public Prosecutions	<p>The Office of the Director of Public Prosecutions is responsible for:</p> <p>(a) instituting and conducting criminal proceedings;</p> <p>(b) taking over criminal proceedings that have been instituted by another person or authority (except proceedings instituted by the Fiji Independent Commission Against Corruption);</p> <p>(c) discontinuing, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority (except proceedings instituted or conducted by the Fiji Independent Commission Against Corruption); and</p> <p>(d) intervening in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations.</p>	Mr Christopher Pryde Director of Public Prosecutions	T: (+679) 3211250 F: (+679) 3302780
Legal Aid Commission	The Commission provides free legal aid services to members of the public who earn not more than \$15,000 per annum and cannot afford the services of a legal practitioner.	Mr Shahin Ali Acting Director	T: (+679) 3311195 F: (+679) 3303023
Fiji Intellectual Property Office	The Fiji Intellectual Property Office is responsible for the registration of trademarks and patents, as well as copyright disputes.	Ms Lavenia Waqaniburotukula Acting Administrative Officer	T: (+679) 3309866 F: (+679) 3303646
Human Rights and Anti-Discrimination Commission	The Human Rights and Anti-Discrimination Commission is responsible for:	Mr Ashwin Raj Chairman	T: (+679) 3308577 F: (+679) 3308661

	<p>(a) promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Fiji;</p> <p>(b) education about the rights and freedoms recognised in the Constitution of the Republic of Fiji ('Constitution'), as well as other internationally recognised rights and freedoms;</p> <p>(c) monitoring, investigating and reporting on the observance of human rights in all spheres of life;</p> <p>(d) making recommendations to the Government concerning matters affecting the rights and freedoms recognised in the Constitution, including recommendations concerning existing or proposed laws;</p> <p>(e) receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or for other forms of relief or remedies;</p> <p>(f) investigating or researching, on its own initiative or on the basis of a complaint, any matter in respect of human rights, and make recommendations to improve the functioning of public or</p>		
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	<p>private entities;</p> <p>(g) monitoring compliance by the State with obligations under treaties and conventions relating to human rights; and</p> <p>(h) performing any other functions or exercising any powers as are conferred on the Commission by a written law.</p>		
Fiji Independent Commission Against Corruption	<p>The Fiji Independent Commission Against Corruption is responsible for:</p> <p>(a) investigating, instituting and conducting criminal proceedings;</p> <p>(b) taking over investigations and criminal proceedings that fall under its responsibility and functions as prescribed by law, and which may have been initiated by another person or authority; and</p> <p>(c) discontinuing, at any stage before judgment is delivered, criminal proceedings instituted or conducted by it.</p>	Mr George Langman Deputy Commissioner	T: (+679) 3310290 F: (+679) 3310297