



**PACIFIC WORKING GROUP ON LEGISLATIVE DRAFTING
HYATT REGENCY HOTEL, AUCKLAND, NEW ZEALAND**

28 - 30 NOVEMBER, 2006

**CONCLUSIONS, RECOMMENDATIONS
AND
FRAMEWORK FOR CAPACITY BUILDING FOR LEGISLATIVE DRAFTING
IN THE PACIFIC REGION**

1. BACKGROUND

The shortage of drafters in drafting offices is a persistent problem in developing Commonwealth countries. The Commonwealth Secretariat was mandated by Commonwealth Law Ministers to come up with solutions to alleviate the problem and to consider shorter training courses to reduce long absences from drafting offices to undertake training. In response to that mandate, a curriculum for a short twelve week course was developed under the auspices of the Commonwealth Secretariat

On November 28 – 30 November 2006, the Commonwealth Secretariat convened a Pacific Working Group on Legislative Drafting in Auckland, New Zealand.

2. OBJECTIVES

The objectives of the Meeting were to:-

- Identify and examine the underlying cause(s) for the shortage of drafters in drafting offices and possibly solutions to alleviate them.
- Identify the training needs of Drafting Offices/Units in Commonwealth Pacific Island countries.
- Examine the curriculum for a short term course developed by the Commonwealth Secretariat, its relevance to the Pacific region, and possible modifications to it.
- Consider existing training programmes in legislative drafting offered in the region and the capacity of appropriate Regional or National Institutions to conduct the short course.
- Determine modes of capacity building other than the short term course.

- Examine how the Commonwealth Secretariat could effectively assist in building the capacity of legislative drafters and officials who provide drafting instructions; and strengthening drafting offices/units.

3. CONCLUSIONS & RECOMMENDATIONS OF THE WORKING GROUP

i. Meeting Legislative Drafting Needs in the Pacific Region

A presentation by Tony Lawson of the Pacific Islands Forum Secretariat, on *Meeting Legislative Drafting Needs in the Pacific Region: Issues to consider*, was followed by an open floor discussion on legislative drafting needs in the Pacific. The discussion identified the challenges experienced by countries. They included: under-resourced offices; heavy demand placed on drafters who were also expected to multi-task and perform duties other than drafting; high turnover of staff in drafting offices; lack of proper policy and adequate drafting instructions and legislative procedures; lack of appropriate recognition of the value of the role of the drafter; lack of properly structured offices and a career path for drafters; and the seemingly low level of command of the English language in a number of jurisdictions.

The Group concluded that there was diversity within the region, that certain problems were unique to each jurisdiction depending on size and variation of resources, and that there was no single solution to a very complex problem. A range of different strategies should therefore be adopted to address the challenges.

The Group recommended:-

- There should be a regional network of drafters to provide support and sharing of expertise, and to facilitate the exchange of experience and lessons learned
- Drafting should be promoted and effectively marketed as a career to attract lawyers
- There should be structures within a drafting/legal office which create an enabling environment for the development of legislative drafting expertise

- There should be a pool of experienced drafters for countries to draw on from time to time
- Trainee drafters should work with experienced drafters as part of a learning process
- Drafting and style manuals should be developed for each jurisdiction as a valuable resource for drafting
- There should be training for government officials and instructing officers on legislative processes, policy development, reforms, and the preparation of proper drafting instructions
- The recruitment of experienced lawyers, not necessarily with a background in drafting, with the capacity to analyse and draft well can be part of a recruitment strategy

ii. Dealing with the Shortage of Legislative Drafters in Drafting Offices

The Group examined the root causes for drafters leaving drafting offices. The Group concluded that some of the factors contributing to the problem include: lack of a structure within drafting/legal offices; lack of a structured career path; lack of status; poor remuneration and other terms and conditions of service; isolation in the performance of their work; and being overworked.

The Group recommended:-

- The status and profile of drafters should be raised
- The financial rewards for drafters should be increased
- The administrative/work environment and support for drafters should be improved
- A mentoring scheme be devised for trainee drafters
- A network of drafters should be established to provide support and recognition.

iii. Perceived Training Needs of Drafting Office in the Pacific Region – What do we want?

The Group recommended:

- A short intensive course should be complementary to what is already offered at the University of the South Pacific

iv. **Recruitment of Candidates for Training**

The Group concluded from its discussions, that there was no set selection criteria and process for the recruitment of candidates for in-house or in-service training. More often than not, candidates were selected because they were the only officers available at the time, or because it was their turn to attend training.

The Group recommended:

- There should be a proper selection process with the appropriate criteria set for the recruitment of candidates for in-house or in-service training in legislative drafting
- To ensure the retention of a trained candidate in a drafting office post training, it should be a condition of an award for training that the candidate returns to their drafting office and serve for a defined period of time after being trained. Alternatively, Governments may oblige the candidate to enter into a bond with Government to secure their return to office after training.
- The qualities to look for in a drafter are to include:-
 - a good lawyer with good written and oral skills
 - ability to project manage
 - should be solution focused and not afraid to make policy decisions
 - ability to conduct a meeting in a constructive way
 - at least six months experience in a drafting/legal office

v. **Presentation by Brian Opeskin**

The Group heard a presentation by Professor Brian Opeskin on the Professional Diploma in Legislative Drafting (PDL) offered by the University of the South Pacific and

concluded that the PDDL was a good start up programme which formed a foundation for legislative drafting. The Group also noted that other jurisdictions offered the degree of Master of Laws in Legislative Drafting or Master of Laws in Public law with a legislative drafting component.

vi. Delivery of Drafting Training

The Group considered the issue of whether having a formal qualification was necessary to improve a drafter's performance in the drafting office. The Group concluded that acquiring formal drafting qualifications coupled with in-house practical short training courses and attachment to other drafting offices and exchange programmes, were desirable.

The Group recommended:

- In-house training is essential
- A formal drafting qualification should be provided to enhance the career of the drafter
- Attachment in another drafting office was a valuable process notwithstanding concern that absence from the office could create a backlog
- Exchange programmes should be considered to address any concerns of backlogs being formed
- Support for a short term intensive course should be seen as part of a broader programme including other flexible modes of training and that there should also be financial and practical support for those programmes

vii. Presentation by Deana Silverstone

The Group noted the presentation.

viii. Developing Training Programmes

In its discussion, the Group considered the possibility of the short course developed under the auspices of the Commonwealth Secretariat (short course) being delivered as a stand

alone course with accreditation or cross credits to the PDL. The Group concluded that the short course could be a stand alone course but it needs to identify the more critical areas to teach to more experienced drafters such as administrative and constitutional laws.

The Group recommended:-

- The PDL should continue as a foundation course
- the short intensive course would be the advanced course
- accreditation should be sought for the short course through the University of the South Pacific

ix. Implementation and Financing of a Short Training Programme

The Group was informed of the Commonwealth experience in Ghana where the short course has been conducted, with respect to funding and cost-sharing with Governments and the preparation of course materials. The Group concluded that local circumstances in the region be taken into account. Training should include lectures, tutorials, and practical exercises and there should be a full time programme co-ordinator who would also teach. For small jurisdictions such as Kiribati where it would be difficult to find candidates who meet the entry requirements for the short course, or where the interests and circumstances of countries so require, funding should be considered for the PDL.

The Group recommended:-

- Course materials should be relevant to the region
- Administrative law and constitutional law should be included in the curriculum
- There should be a committee formed to evaluate the course materials from a drafter's perspective
- The course should be an annual course to be funded by the Commonwealth Secretariat for a period of three years at the end of which it will review its funding assistance

- There should be a full time programme coordinator with extensive legislative drafting experience and appropriate academic qualifications, who also would teach.
- Participants in the course should be bonded to their Governments to ensure that the skills acquired be used within the relevant departments
- That the University of the South Pacific collaborate with the National University of Samoa and other institutions in the implementation of the programme.

x. Support Structures for Legislative Drafters

The Group concluded that there should ongoing support for legislative drafters including networking and conference.

The Group recommended:-

- There should be a network of drafters in the Pacific, the form of that network and level of secretarial support that may be required, to be decided
- The use of computer technology and the development of a website would be beneficial
- The use of the precedent bank offered by New Zealand which will assist in consistency in drafting styles
- There should be an annual technical drafting forum for Pacific Island countries

xi. Structure and Evaluation of the Pilot Programme

The general consensus was that the Group was happy with the content of the curriculum for a short course that was developed under the auspices of the Commonwealth Secretariat: Annex 1. However, the Group concluded that the curriculum should be modified to suit the needs of the Pacific.

- **Course content**

The Group recommended that the curriculum should include:-

- Administrative law, public finance management, public service law, search and seizure, cross border issues, appeal procedures
 - The analysis of drafting instructions if the short course was to be conducted as an advanced course
 - How to draft in the absence of any or adequate drafting instructions
 - The structure of government and how government works
 - Oral presentation skills
 - The objectives and outcomes of the course. One of those outcomes should be seen to increase the status of the drafter.
 - A “study guide” as part of the course information material
 - Flexibility to add special topics as necessary
- **Timing**
The course will be taught over an approximate period of twelve weeks.
 - **Numbers**
An ideal range will be ten to twenty students although the Group recognised that numbers may fluctuate
 - **Assessment**
 - The participants should be assessed, the method of assessment to be determined
 - There should be a component for orally defending or explaining a draft
 - **Evaluation of course by trainer, trainee and implementing institution**
 - There should be an appropriately designed evaluation (including confidential evaluation) of the course by trainer, trainee, and implementing institution, the method to be formulated
 - **Evaluation by countries’ Parliamentary counsel whether training has been of benefit to trainee**

- There should be also an evaluation by employers and other stakeholders

4. PLAN OF ACTION

Action	Proposed responsible entity	Timeframe
Establish a properly accredited short term course at the University of the South Pacific and appropriate national institutions	University of the South Pacific	Provisionally approved by July 2007. First course to take place November 2007 – February 2008
<p>Create networks of legislative drafters</p> <p>1. Annual Technical Forum</p>	<p>1. Commonwealth Secretariat, Forum Secretariat, NZ Parliamentary Counsel Office would consider assisting in co-ordination of 1st forum</p>	<p>1. By June 2007 subject to funding [New Zealand Parliamentary Counsel, Fiona Leonard, volunteered to establish an email list of legislative drafters in the Pacific starting with those present. This was to be a practical and immediate step to forming a drafters network]</p>
<p>--</p> <p>2. Develop a website which will contain a database of mentors and quality drafters known to drafting offices in the Pacific, database of students participating in the course, select model laws, link to different drafting manuals</p>	<p>---</p> <p>2. Commonwealth Secretariat, Forum Secretariat and possibly the University of the South Pacific</p>	<p>---</p> <p>2. To be considered after a network of drafters has been established – provisionally December 2007</p>
<p>Produce legislative drafting manuals:</p> <p>1. development of a model</p> <p>2. model adapted for individual jurisdictions</p>	<p>Commonwealth Secretariat</p> <p>Forum Secretariat</p>	<p>June 2007 (1st stage complete)</p>
Raise and market the profile of the drafting profession	Drafting Offices	Ongoing

Effect placements and attachments	Individual employers (AG or SG Offices)	Ongoing
Develop and/or enhance in-house training and mentoring	AGs, SGs, Parliamentary Counsel	Ongoing
Develop flexible recruitment strategies to attract experienced lawyers to the drafting profession	AGs, SGs and Drafting Offices in conjunction with Public Service Commissions and Judicial Service Commissions	Ongoing
Improve Terms & Conditions of Service	AG or SG Offices	Ongoing
Reform the structure of drafting offices and improve work environment	AG, SG and Drafting Offices	Ongoing
Train government/officials/policy makers in the preparation of adequate drafting instructions	Commonwealth Secretariat	Ongoing
Compile a precedent bank	Chief Parliamentary Counsel of New Zealand (possibly in collaboration with the Australian Parliamentary Counsel Office) in association with Forum Secretariat	June 2007
Introduce computer technology and use of templates	Commonwealth Secretariat & Forum Secretariat to look for potential funders	June 2007
Long distance assistance to fill gaps in the absence of staff attending training	AGs, SGs, development partners and possibly corresponding attachment drafting offices	Ongoing

MONITORING STRATEGY

The Group concluded that the monitoring strategy for the Plan of Action would be left to the Commonwealth Secretariat as they would be reporting back to Law Ministers on this capacity building initiative for legislative drafting offices.