DRIVING THE HARMONISATION OF MARITIME LAW IN THE PACIFIC
“MARITIME & LEGISLATIVE DRAFTING - TO WHAT EXTENT ARE WE INVOLVED IN DETERMINING/DRAFTING OUR OWN MARITIME LAWS?”

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Pacific International Maritime Law Association

- Established 12 July 2005
- Core group IMO / IMLI graduates + other interested lawyers from the Pacific
- Membership – 51
- Secretariat SPC (Acknowledge SPC hosting as Secretariat of PIMLA)
- Areas of expertise – advice on maritime Conventions, drafting maritime legislation incorporating IMO/ILO Conventions, shipping laws, maritime boundaries legal issues
• Affiliates:
  - International Maritime Organization (IMO)
  - Maritime Law Association of Australia and NZ (MLAANZ)
  - Western and Central Pacific Fisheries Commission (Tuna Commission)
  - Comite Maritime International (CMI)
MANDATE IN DRAFTING GENERIC WORKING DRAFT LAWS (MODEL LAWS)

• Regional Meeting of Ministers for Maritime Transport (19 April 2007) – *Navigating a Sea of Change – Challenges and Opportunities*

• Regional Meeting of Ministers for Maritime Transport (14 May 2009) – *Steering a Safe Course Through Stormy Seas*

• Maritime Ministerial Communiques
Maritime Ministerial Communiqué 2007

No. 7. Ministers agreed to support the review of national maritime legislation in country to ensure compliance with relevant international instruments and the review of penalties for breaching laws to encourage compliance. They supported the need to encourage the use of maritime legal expertise available in the Pacific Islands regional through PIMLA.
Maritime Ministerial Communiqué 2009

• No. 14. Ministers acknowledged that administration of the maritime sector is strengthened through the development of generic maritime legislation in the form of PIMLaws – Pacific Islands Maritime Laws, and the provision of advice.

• No. 16. Ministers supported and encouraged the use of maritime legal expertise available in the Pacific Islands region and considered reforming where necessary internal ratification procedures so as to effectively enforce legislation with appropriate solutions to address breaches.
SPC/RMP – PIMLA

• Where there are such endorsements or directions from the Pacific Islands Maritime Ministers, for PIMLA to be involved in reviewing of national maritime legislation etc. with the support of SPC/RMP, PIMLA sets out to review and draft generic working draft laws to be made available to the Pacific Islands.

• First, a look at the nature of laws we are to draft. Mainly technical, developed from Conventions, international instruments and the like. List as follows:
### PICs and IMO Conventions

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<tr>
<th>Country</th>
<th>Australia</th>
<th>NZ</th>
<th>Cook Is</th>
<th>Fiji</th>
<th>Kiribati</th>
<th>Marshall Islands</th>
<th>Nauru</th>
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<th>Palau</th>
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Features of Maritime International Instruments

• From international Conventions, Protocols, Amendment to Protocols, Regulations and other international instruments
• E.g. IMO, SOLAS, MARPOL, SUA – Convention maritime language, much more specialised
• Laws to be developed for maritime are far different from laws developed for other matters and of other nature e.g. land, air, environment, public utilities, public authorities etc...
Drafting generic maritime laws

• PIMLA consists of Pacific international maritime experts familiar with the existing international maritime instruments – to explain the policy from the international instrument

• Pacific islands legislative drafters – to translate the policies into law (generic working draft)

• PIs are provided with a generic working draft + a Background Paper to the g.w.d.
Background Paper to the Generic Working Draft sets out:

• who we are – will go out in the cover letter
• why a generic working draft is developed (mandate)
• summary of the international instrument/s addressed by the generic working draft, including where the international instrument/s evolved from
• Note from the Drafting/Review Team
Note from the PIMLA Review Team explains:

- What the generic working draft attempts to do e.g. from SUA Convention - *This generic working draft Bill attempts to incorporate all the obligations of a State Party to the SUA Convention 1988 and its related protocols as of 22 September 2008.*
Note from the PIMLA Review Team

• Although this is developed as a working draft Bill, should any of your current laws authorise the making of regulations (or otherwise) to comply with the SUA Conventions and related protocols, it is up to your law drafters to make such regulations (or otherwise). You may even draw from the substantive provisions of this generic working draft Bill to create the substantive provisions (as drawn from the SUA Convention) of your regulations.
Note from the PIMLA Review Team

In drafting this generic working draft Bill, the Review Team appreciates that all Pacific island countries have their own practices and conventions in drafting legislation. Further that all Pacific island countries have their own unique features pertaining to government authorities, government policies, judiciary, specific powers, etc.
Note from the PIMLA Review Team

This generic working draft Bill therefore is only a guide to incorporating the obligations under the SUA Convention and you may adopt, adapt and discard at your discretion to suit your own local circumstances and in particular to be in compliance with your own Constitution and existing law. *(Example taken from developing generic working draft from the SUA Convention)*
Where do the drafted laws go?

• The SPC/RMP circulates the generic working draft Bill/Regulations to the PIs (AGO, SG, Crown Law Office, relevant Maritime Administrative Authorities i.e. Ministry of Maritime Transport or equivalent

• Where do they go?
Do we have a role to play?

- Ownership of driving a law on a govt Ministry
- Ministry responsible for providing policy instructions to develop a law
- Ministry responsible for reviewing the generic draft law and confirm it is in line with Ministry policies, objectives, implementable, approve it, or approve with amendments etc.
- If there is inaction on the part of the Ministries, up to PILON members to assist.
- Competing demands on office, govt priorities
- Not to repeat past mistakes caused by laxity
- PIs vulnerable to maritime incidents & natural disasters

• **Recommendation**

• PILON members to be proactive, be in dialogue with Ministry, what needs are there for the Ministry in terms of maritime issues, does the generic working draft need improvement, or does the Ministry instruct otherwise
PIMLA generic working drafts - features

- Free service, delivered to your door & the Ministry’s door
- Political will already there, Ministers Communiqué
- Drafted by Pacific island maritime experts and Pacific island legislative drafters
- As close to a local draft as possible
- Recognizes the unique characteristics of PIs
- Half the work already done, incorporation of international obligations, duties etc. into a generic working draft, in the attempt to make adoption easier within the local environments.
- Offers recommendations eg: Bill or Regulations
- Though there is a generic working draft, still reminds of ownership (PI) re: adopt/adapt as see fit, in line with your Constitution & laws
Taken those features of a generic working draft or ‘model law’ developed by PIMLA, if our legal leaders are in favour of supporting and adopting the generic working drafts developed by PIMLA, the answer to the question posed as the title to this paper is, there is substantial involvement, because it is developed by Pac Is expertise for Pacific island people.

Title - “MARITIME & LEGISLATIVE DRAFTING - TO WHAT EXTENT ARE WE INVOLVED IN DETERMINING OUR OWN MARITIME LAWS?”
Recommendation 2 – Legislative Drafting
Pacific Islands Forum

• Well accepted that there is a great need for capacity development in the Pacific region, in the area of legislative drafting.

• Acknowledge efforts made to this end by:

  ➢ Pacific Is Forum Secretariat, currently the main sponsors of the PDLD students;

  ➢ Commonwealth Secretariat and the number of Drafters Forums where we have met, and the efforts/attempts made to fund legislative drafting trainings in the Pacific;

  ➢ The Pairing Program by the Department of Attorney General, Australia;
the sponsors of short term drafting trainings e.g. Institute of Advanced Legal Studies, University of London, UK, the International Program in Legislative Drafting, Parliament of India;

Office of Parliamentary Counsels of NZ and Australia both in the state and federal level;

short term in country trainings funded by Australia and NZ;

sponsors of short term trainings for particular issues e.g. ICC legislation (International Committee of the Red Cross), tax legislation, health related legislation (Latrobe Uni – Australia), environment legislation etc. etc. etc.
• A fortunate recipient of all this training. PIs have benefitted from training, should take a step further...

• **Recommendation** - To set up a Pacific Islands Legislative Drafters Forum. Continue with the Forum already developed by Commonwealth Secretariat.

• OR

• Have a Discussion Forum for all Pacific Island drafters e.g. the South Africa Legislative Drafting Program - Discussion Forum (net) – avoid physical movement

• If only to facilitate better legislative drafting service, this is sought by PIMLA at this Forum
Recommendations

Recommendation 1
PILON members to be proactive, be in dialogue with Ministry, what the Ministry requires to develop a working draft forward, or does the Ministry instruct otherwise

Recommendation 2
To set up a Pacific Islands Legislative Drafters Forum.
FAAFETAI LAVA!

MANUIA LE KERISIMASI MA LE TAUSAGA FOU!