

PACIFIC ISLANDS LAW OFFICERS' NETWORK

38TH ANNUAL MEETING

COUNTRY REPORT: REPUBLIC OF FIJI

5 – 7 November 2019

Apia, Samoa

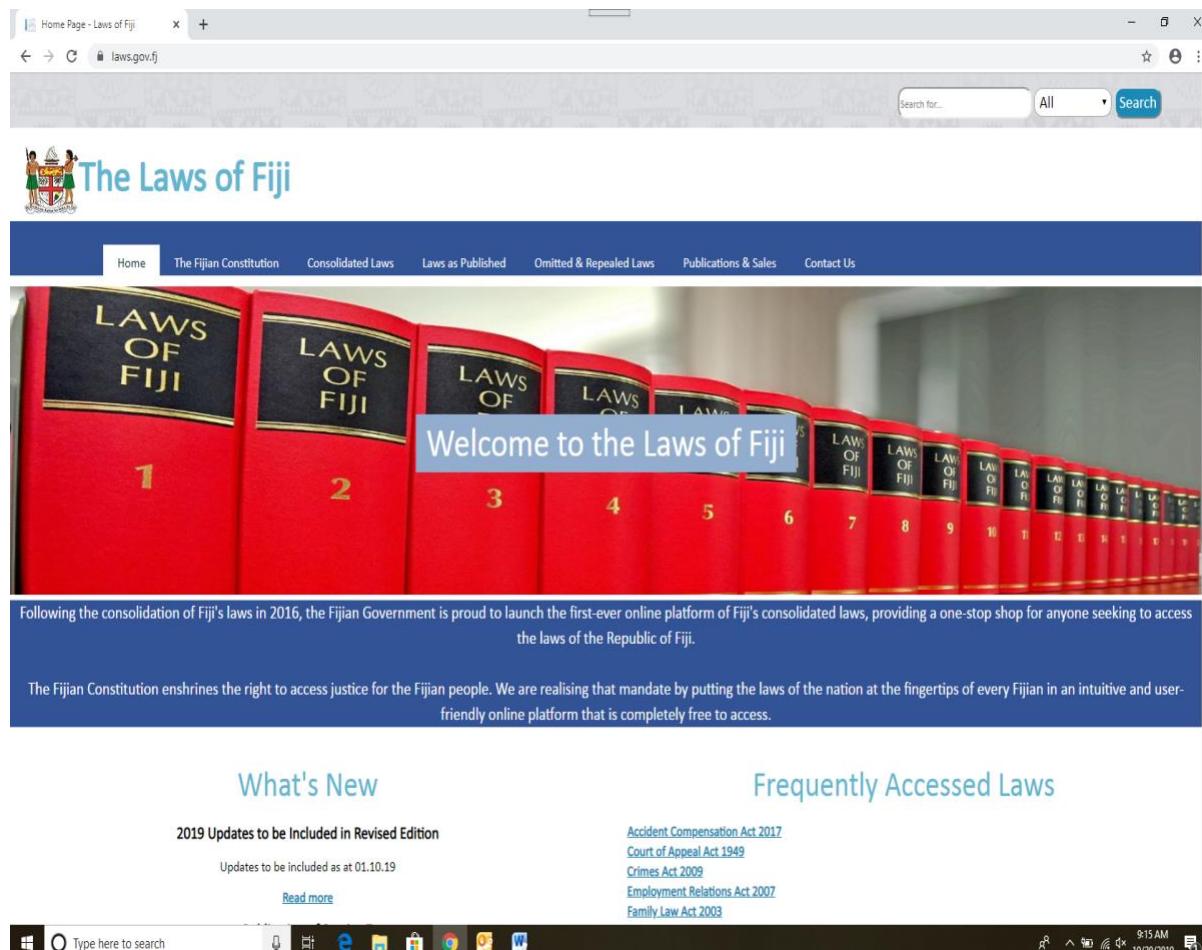
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MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

Launch of the Laws of Fiji Website

On 29 March 2019, the official website of the Laws of Fiji was launched by the then Honourable Mr Chief Justice Anthony H. C. T. Gates.¹



Judicial Department – Launch of Strategic Plan 2019-2023

The Judicial Department Strategic Plan 2019-2023, launched on 6 June 2019 by the Judicial Department of the Republic of Fiji ('Fiji'), prioritises judicial reforms to improve the efficiency and effectiveness of the administration of the courts and improve citizens' access to justice, particularly access to justice for vulnerable groups.²

Expansion of Legal Aid Commission

The Legal Aid Commission has opened new offices in, and has extended its legal services to, Keyasi, Taveuni and Seaqaqa.

¹ The website can be accessed at <https://www.laws.gov.fj/>

² See https://eeas.europa.eu/delegations/fiji/64035/judicial-department-strategic-plan-2019-2023-launched_en

Ministry of Justice Online Birth Registration

Birth registration and request for reprints of certificates can be made online.

Office of the Director of Public Prosecutions Basic Prosecution Course 2019

The Basic Prosecution Course is a mixture of theory and practical exercises designed to equip prosecutors with basic trial preparation and advocacy at the bar table.³

³ See press release at <http://odpp.com.fj/wp-content/uploads/2019/02/ODPP-Press-Release-1-of-2019-DPP-launches-Basic-Prosecution-Course-2019.pdf>

SIGNIFICANT COURT DECISIONS

- Attorney-General of Fiji v Rajendra Chaudhary – Sentence [2019] FJHC 488; HBC 313. 2018 (31 May 2019)
- Timo v State [2019] FJSC 1; CAV0022.2018 (25 April 2019)⁴
- Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019)⁵

⁴ See <http://www.paclii.org/cgi-bin/sinodisp/fi/cases/FJSC/2019/1.html?stem=&synonyms=&query=nacani%20timo>

⁵ <http://www.paclii.org/cgi-bin/sinodisp/fi/cases/FJSC/2019/22.html?stem=&synonyms=&query=nacani%20timo>

SIGNIFICANT LAW REFORMS

ACTS OF PARLIAMENT

1.0 Public Enterprises Act 2019

- 1.1 The Act improves corporate governance, ownership monitoring, reporting, accountability and monitoring of non-commercial obligations ('NCOs'). The Act also eliminates the distinction between Government commercial companies, commercial statutory authorities and reorganisation enterprises and treats all public enterprises in the same manner.
- 1.2 The Act further mandates that all public enterprises should operate on a commercial basis that is efficient and profitable and to this end, the Act also highlights the significance of the role of the board of directors in ensuring that a public enterprise adheres to this mandate.
- 1.3 In contrast to the repealed Public Enterprise Act 1996, the Act specifically provides for the duties and responsibilities of a director appointed to the board of a public enterprise. The Act requires directors to act honestly and in good faith, with reasonable care and diligence and to comply with the code of conduct of the public enterprise. The Act also requires directors to avoid insolvency, not to use information obtained as a result of being a director on the board of a public enterprise for an improper purpose and to properly declare and register interests and to avoid conflicts of interest.
- 1.4 Additionally, the oversight of the regulatory functions of a public enterprise remains with the relevant line ministry. The Act also formalises the current process for board appointments, whereby board appointments are made by the Minister responsible for public enterprises ('Minister') with the approval of the Prime Minister. This is due to the significant commercial and financial responsibilities and requirements of members of the board of a public enterprise.
- 1.5 The Act also aligns the regulation of the governance and operation of public enterprises with the Companies Act 2015 and ensures that inconsistencies with other legislation are addressed.
- 1.6 Part 1 of the Act contains sections 1 to 5 and provides preliminary provisions. These provisions state the short title and commencement, define certain terms used in the Act, state the purpose of the Act and its application to other laws and specify that the Act, if enacted by Parliament, will bind the State.
- 1.7 Part 2 of the Act incorporates in section 6 of the Act the 5 public enterprise principles, the principles being commercial objective, measurable performance, responsible management, transparent performance and monitored performance. These public enterprise principles are also expanded throughout the Act. Section 7

states that the Act must be applied in accordance with the public enterprise principles.

- 1.8 Part 3 of the Act deals with the establishment of public enterprises. Section 8 defines what a public enterprise is while section 9 empowers the Minister, after the approval of Cabinet, to designate an entity as a public enterprise where the Minister considers it in the public interest that the entity is governed by the public enterprise principles.
- 1.9 Section 10 provides that the constitution of a public enterprise must be consistent with the provisions of the Act while section 11 defines when an entity is controlled by the State (being controlled by the State is one of the requirements for a ‘public enterprise’ under section 8). Section 12 makes it clear that acts or transactions undertaken by public enterprises cannot bind the State, unless the State agrees to be bound or it is expressly bound by a written law. Section 13 empowers the State to buy shares and other securities issued by public enterprises and section 14 specifies restrictions on how those shares and securities may be dealt with.
- 1.10 Public enterprises have the powers and capacity to undertake any act for the purposes of performing their functions as set out in section 15. Section 16 requires that a public enterprise must not be a party to an agreement to form a joint venture that is inconsistent with the provisions of the Act or the constitution of the public enterprise and section 17 ensures that a subsidiary of a public enterprise provides the public enterprise with all necessary information.
- 1.11 Part 4 of the Act includes provisions that detail the principle of commercial objective. Section 18 defines the primary objective of every public enterprise, that is, to be a successful business. This primary objective is at the heart of the Act; all decisions made by the board of a public enterprise must be consistent with the primary objective and directors who are selected to sit on these boards must be able to assist the public enterprise to achieve the primary objective. The performance of the board or a public enterprise will be measured against the attainment of the primary objective.
- 1.12 Section 19 introduces the concept of the statement of corporate intent which is expanded in sections 22 and 23. Each public enterprise must strive to give effect to its statement of corporate intent and not do anything that is inconsistent with it.
- 1.13 Section 20 provides for NCOs, which are services or activities that the State requires public enterprises to undertake but which are not commercially justifiable. The section establishes a process whereby the Government and a public enterprise can negotiate an arrangement in relation to an NCO while section 21 sets out the requirements for an NCO agreement.
- 1.14 Part 5 of the Act deals with the principle of measurable performance and section 22 sets out the period that the statement of corporate intent must cover. Sections 23 to 25 set out the required content of the statement of corporate intent, the process through which the Minister must be consulted on its content and when the

statement of corporate intent must be adopted by the board of a public enterprise.

- 1.15 Under the Act, the statement of corporate intent is one of the primary accountability documents between the board of a public enterprise and the Minister, the other being the business plan which is set out in section 26. The period that the business plan must cover, its content, the process through which the Minister must be consulted on its content and when the business plan must be adopted by the board of a public enterprise is detailed in sections 27 to 29.
- 1.16 Part 6 of the Act covers the principle of responsible management. Section 30 deals with the appointment of the board of a public enterprise and provides for the requirement that the directors appointed to the board of a public enterprise must be people who have the skills, knowledge and experience to assist the public enterprise to achieve its primary objective. Section 31 sets out the eligibility criteria for the directors of the board of a public enterprise. In section 32, the Minister is empowered to appoint the chairperson while the board of a public enterprise appoints its deputy chairperson. Section 33 prescribes the term of office for directors, while section 34 specifies when a director ceases to hold office. Directors may resign at any time by written notice and the Minister may remove a director by written notice, subject to the approval of the Prime Minister as detailed in section 35. Section 36 provides for when anything done by or in relation to a person purporting to act under an appointment is not merely invalid due to defect or irregularity in the appointment.
- 1.17 Directors' duties and responsibilities are specified in sections 37 to 44. The Act brings directors' duties in line with international best practice, requiring directors to act honestly and in good faith, with reasonable care and diligence and to comply with the code of conduct required by section 45. The Act also requires directors to avoid insolvency, not to use information obtained as a result of being a director on the board of a public enterprise for an improper purpose and to properly declare and register interests and to avoid conflicts of interest.
- 1.18 Sections 46 and 47 extend the application of the code of conduct of a public enterprise and interest disclosure requirements to employees. Sections 48 to 50 deal with board administration matters such as frequency of meetings, quorum and passing resolutions.
- 1.19 The requirement to appoint and the basic requirements of the chief executive officer's contract are set out in section 51. Section 52 deals with the power of the board of a public enterprise to delegate and the restrictions placed on that power. Section 53 specifies restrictions on the ability of a public enterprise to indemnify directors and executive officers, while section 54 deals with restrictions on the subsidiaries of public enterprises to provide indemnities to directors and executive officers. Conditions when indemnities are permitted are specified in section 55.
- 1.20 Part 7 of the Act deals with the principle of transparent performance. Sections 56 and 57 specify requirements dealing with financial records and financial statements

of public enterprises. The requirement to produce an annual report is provided for in section 58 and the Minister must table the annual report in Parliament, as required by section 59.

- 1.21 Part 8 of the Act covers the principle of monitored performance. Section 60 authorises the Minister to exercise the powers that shareholders have and in section 61, to pass shareholder resolutions by recording those resolutions in writing for public enterprises that are wholly-owned by the State. This provides for a more efficient method of passing shareholder resolutions for public enterprises that are wholly-owned by the State without the loss of transparency and accountability. Section 62 empowers the Minister to direct a public enterprise to disclose specified information after consulting with the board of the public enterprise.
- 1.22 Section 63 provides the functions of the Ministry for the purposes of providing financial, commercial and public policy advice to the Minister. Sections 64 and 65 allow the permanent secretary of the Ministry to require a public enterprise to disclose information that will assist the Ministry to perform its functions under the Act and provide reports to the Minister on the performance of the public enterprise.
- 1.23 Part 9 of the Act authorises the Minister in section 66 to make regulations for the purposes set out in that section. Section 67 repeals the existing Public Enterprise Act 1996 while section 68 contains the transitional provisions. Section 69 notes that the Acts listed in Schedule 2 are consequently amended as specified in Schedule 2.

2.0 Environment and Climate Adaptation Levy (Budget Amendment) Act 2019

- 2.1 The Environment and Climate Adaptation Levy (Budget Amendment) Act 2019 amended the Environment and Climate Adaptation Levy Act 2015 ('ECAL Act') to *inter alia* increase the Environment and Climate Adaptation Levy ('ECAL') on plastic bags from 20 cents to 50 cents from 1 January 2020.

3.0 Environment Management (Budget Amendment) Act 2019

- 3.1 The Environment Management (Budget Amendment) Act 2019 amended the Environment Management Act 2005 to prohibit the manufacture and sale of single use plastic bags of a thickness of up to 50 microns. This means that from 1 January 2020, ECAL will be applicable to the other bags on the market, these being bags of a thickness of more than 50 microns, such as those provided by, e.g., clothing retailers.
- 3.2 These bags are not "single-use" in nature and are often reusable. Their effect on the environment is thus much less harmful than single-use plastic bags which are often easily discarded and damaging to marine eco-systems. However, though these thicker bags are not as damaging to the environment as single-use plastic bags, plastic in itself still remains an environmental concern and thus we have opted to increase ECAL on the remaining bags in the market.

INTERNATIONAL TREATIES

TREATY	DATE APPROVED BY PARLIAMENT FOR RATIFICATION/ ACCESSION/ ACCEPTANCE
United Nations Convention on International Settlement Agreements Resulting from Mediation	Approved by Parliament on 16 May 2019 Signed on 7 August 2019
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Approved by Parliament on 16 May 2019 Acceded to on 19 August 2019
International Convention for the Protection of All Persons from Enforced Disappearance	Approved by Parliament on 16 May 2019 Acceded to on 19 August 2019

PILON STRATEGIC PRIORITIES

4.0 Cybercrime

- 4.1 The Fijian Government is currently working towards setting up a National CERT (Cyber Emergency Response Team) within the Ministry of Communications. This was endorsed by Cabinet early this year along with the need to facilitate Cybercrime legislation with the objective of enabling Fiji to become a state party to the Budapest Cybercrime Convention.
- 4.2 Given the Council of Europe's expertise in the area of cybercrime, as custodian of the Budapest Cybercrime Convention, Fiji has partnered with them to assist in the legislative drafting of the bill alongside the consultant Mr Jayantha Fernando.
- 4.3 A 3-day legislative drafting workshop, facilitated by the Council of Europe under its Global Action Cybercrime Extended (GLACY+) Project, was held from 30 October 2019 to 1 November 2019 in Suva, Fiji. The mission aimed at the gathering of specific information regarding the existing legislation on cybercrime and electronic evidence in Fiji as well as provide advice on how to align legislation to international standards, and in particular, to the provisions of the Budapest Convention, the Rule of Law and Human Rights.
- 4.4 The workshop comprised some 20 participants from government agencies as well as representatives from the private sector, to discuss cybercrime related issues and the practical challenges faced in their day-to-day work.

5.0 Sexual and Gender Based Violence

- 5.1 **Office of the Director of Public Prosecutions Establishes Sexual Crimes Division and Issues Guidelines on Prosecuting Child Sexual Abuse Cases⁶**

- 5.2 **Registration of Sex Offenders Bill 2018**

In its efforts to reduce sexual and gender based violence, the Fijian Government re-introduced the Registration of Sex Offenders Bill 2018 ('Bill') in the 2018 November sitting of Parliament. The Bill provides for the establishment of the Register of Sex Offenders ('register') to help monitor sex offenders in the community.

The Bill was referred to, and is still before, the Standing Committee on Justice, Law and Human Rights for review.

⁶ See press release at http://odpp.com.fj/wp-content/uploads/2019/08/ODPP-Press-Release-8-of-2019-DPP-issues-Guidelines-on-Prosecuting-Child-Sexual-Abuse-Cases_6.8.19.pdf

SIGNIFICANT INITIATIVE/PROJECT IN THE LAW AND JUSTICE SECTOR

6.0 Fiji National Identification Card Project

- 6.1 The goal of the Fiji National Identification Card Project ('**FNIC Project**') is to give every Fijian a national identification card replacing several identification cards and numbers that are currently being used by Fijians.
- 6.2 The FNIC Project is expected to be rolled out over the next two years.

TECHNICAL LEGAL ASSISTANCE

Australian Office of Parliamentary Counsel

With the assistance of the Australian High Commission in Fiji and the Australian Attorney-General's Department, the Australian Office of Parliamentary Counsel will be conducting a 2-day legislative drafting training on 13 and 14 November 2019 for legislative drafters at the Fijian Office of the Attorney-General.

World Intellectual Property Organization

Fiji has received technical legal assistance from the World Intellectual Property Organization on the review of the draft Designs Bill, Patents Bill and Trade Marks Bill.

Council of Europe

See paragraph 4.3.

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 Permanent Secretary for Justice and Anti-Corruption</p> <p>Ms Kamni Naidu 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 	Mr Sharvada Sharma Solicitor-General	<p>T: (+679) 3309866 F: (+679) 3305421</p>

AGENCY	KEY RESPONSIBILITIES	CONTACT PERSON(S) AND DESIGNATION	CONTACT INFORMATION
	the Attorney-General.		
Office of the Director of Public Prosecutions	<p>The Office of the Director of Public Prosecutions is responsible for:</p> <ul style="list-style-type: none"> (a) instituting and conducting criminal proceedings; (b) taking over criminal proceedings that have been instituted by another person or authority (except proceedings instituted by the Fiji Independent Commission Against Corruption); (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 (d) intervening in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations. 	Mr Christopher Pryde Director of Public Prosecutions	T: (+679) 3211250 F: (+679) 3302780
Legal Aid Commission	The Legal Aid 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 Sophina Ali Acting Director	T: (+679) 3309866 F: (+679) 3303646

AGENCY	KEY RESPONSIBILITIES	CONTACT PERSON(S) AND DESIGNATION	CONTACT INFORMATION
Human Rights and Anti-Discrimination Commission	<p>The Human Rights and Anti-Discrimination Commission is responsible for:</p> <ul style="list-style-type: none"> (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; (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; (c) monitoring, investigating and reporting on the observance of human rights in all spheres of life; (d) making recommendations to the Government concerning matters affecting the rights and freedoms recognised in the Constitution, including recommendations concerning existing or proposed laws; (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; (f) investigating or researching, on its own initiative or on the basis of a complaint, any 	Hon. Mr Justice Kamal Kumar Chairman	T: (+679) 3308577 F: (+679) 3308661

AGENCY	KEY RESPONSIBILITIES	CONTACT PERSON(S) AND DESIGNATION	CONTACT INFORMATION
	<p>matter in respect of human rights, and make recommendations to improve the functioning of public or 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 Rashmi Aslam Acting Deputy Commissioner	T: (+679) 3310290 F: (+679) 3310297