



## **COOK ISLANDS PILON 2018 COUNTRY REPORT**

### **1. Major law and justice sector achievements**

During 2017 the Cook Islands prepared for its third round mutual evaluation by the Asia/Pacific Group on Money Laundering (“APG”) of its compliance with the 40 Financial Action Taskforce (“FATF”) recommendations. The onsite visits were held in November 2017 and in early 2018. The report setting out the APG’s ratings for the Cook Islands technical compliance and implementation was presented to the APG Plenary held in Kathmandu, Nepal in July 2018. The Cook Islands was assessed to have been compliant in 38 out of the 40 FATF recommendations, making it one of the top countries in the world prepared with legislation, policies and procedures to address money laundering and terrorist financing. Cook Islands was able to show it had implemented its laws and policies in the context of a small country with a small population which is low risk for terrorist activity but high risk for money laundering due to its financial services industry. The weakness identified by the APG was in the Police investigation of financial crimes and the lack of collaborative investigations. The final draft report can be found online at:

<http://www.fatfgafi.org/countries/ac/cookislands/documents/mutualevaluationofthecookislands.html>

### **2. Significant court decisions**

*Browne (Respondent) v Munokoa and another (Appellants)* [2018] UKPC 18

The Privy Council had to decide on a question involving Maori customary law and the rights of a child (adopted from outside the blood family) to succeed to land. The Privy Council determined that a non-blood adoptee is entitled to succeed to the lands of his or her adoptive parents if the adoption is complete or “mature”. A complete or “mature” adoption is if the adoptive parents and the near family (i.e. those who would be entitled to succeed in the absence of the adoption) have accepted the adoptee as part of the family for the purpose of succession in the same way as if he had been the natural child of his adoptive parents.

*Framhein v Attorney-General* [2017] CKHC 37

The Cook Islands Government made three decisions increasing the potential volume of purse seine catches within the Cook Islands exclusive economic zone. Those decisions were challenged on the basis that the decisions made by the Government were unlawful having regard to the Marine Resources Act 2005 and the Constitution (Customary Law).

The High Court ultimately dismissed the challenge but was somewhat critical of the Government's decision making process.

The case has been appealed to the Court of Appeal (argued in May 2018) and a decision is pending.

### **3. PILON strategic priorities**

#### **(a) Cybercrime**

##### *Crimes Bill*

The Crimes Bill 2017 provides a comprehensive criminal code including cybercrime offences and procedure for retaining electronic evidence. There are also new offences using mobile phones, laptops and iPads such as voyeurism and distribution of child abuse material.

The Crimes Bill was before select committee at the time Parliament was dissolved and we are waiting on a new Government to be formalised before this Bill can be further progressed.

##### *Financial crimes*

The Financial Intelligence Unit ("FIU") has worked in conjunction with their foreign counterparts on several cases and has several ongoing domestic cases.

The Police are being assisted by New Zealand's Serious Fraud Office in terms of one fraud investigation involving overseas third party entities. This case is still active.

The Crown Law Office is becoming more proactive in identifying files where a proceeds of crime element should be considered and investigated further by authorities.

#### **(b) Environmental Crime and Corruption**

##### *Fisheries*

Since the last report there have been no additional commercial fishing cases that have resulted in a settlement however there is one active case in which settlement discussions have commenced.

There is currently an active case before the Courts involving an allegation of forgery relating to an agreement signed with a foreign company over fishing access rights.

The Ministry of Marine Resources (offshore division) have opened an Ocean Monitoring Centre in Avarua, Rarotonga which will increase their ability to detect illegal fishing.

The Marine Resources Bill to reform law in this area is ready to be considered by Parliament.

#### National Environment Service

National Environment Service (“NES”) lack of capacity for enforcement of law for pollution of the environment, sand mining, enforcement of standards and Environment Impact Assessment enforcement is a serious concern. There have been no prosecutions by NES.

#### Elections

The 2018 Election resulted in four petitions alleging treating and/or bribery by candidates. Two of these petitions have been dismissed and decisions on the other two petitions are pending.

### **(c) Sexual and Gender-Based Violence**

#### Crimes Bill

The Crimes Bill 2017 provides a comprehensive criminal code which will modernise Cook Islands criminal law in the area of sexual offences.

The Crimes Bill was before select committee at the time Parliament was dissolved and we are waiting on a new Government to be formalised before this Bill can be further progressed.

#### The Family Protection and Support Act 2017 (“FPS”)

The FPS came into effect on 1 December 2017. It is a comprehensive piece of legislation which addresses no fault divorce, domestic and child support, parenting arrangements, care and protection of children and domestic violence in Part 6. The purposes of Part 6 of the FPS are to ensure the protection of victims of domestic violence, to recognize that domestic violence in all its forms is unacceptable behaviour and to prevent domestic violence. Domestic violence is defined to include economic abuse, emotional, verbal and psychological abuse and stalking. There is a regime of civil procedures for the making of protection orders, police safety orders, provisions for the service of protection orders to ensure the continued safety of victims, authorising the occupation of the family home and compensation for injuries losses and expenses. If the respondent challenges the making of the orders there is provision for evidence to be taken from the protected person at the discretion of the Court in writing, orally behind a screen, or from a different locality using technology. The Police have statutory

obligations under Part 6. Applicants under Part 6 are exempt from payment of fees for proceedings. Parliament passed the Harassment Act 2017 to provide protection against violence and abuse when there is no domestic relationship.

The Family Protection and Support Act 2017 (Rules and Regulations) provides user friendly forms so that applicants in the outer islands in particular are able to make applications with the assistance of the Court Registrar in those islands due to the lack of legal advisers. It also enables applicants in Rarotonga to make applications without having to go to a lawyer and for applications to be dealt with by Justices of the Peace.

#### Alternative modes of giving evidence

There is no express statutory provision governing how witnesses/victims are to give evidence however it is now established that the Court has jurisdiction to make such orders and the Court continues to take guidance from New Zealand jurisprudence in this area.

Alternative modes of giving evidence are becoming increasingly common in criminal cases for children and victims of sexual offending. Police videotaped interviews of vulnerable witnesses are being used as evidence in chief and the use of screens is also common.

#### PILON guidelines

##### *Principle 1 (Dignity and Respect):*

This principle is already enshrined in Cook Islands Law by virtue of s4 of the Victims of Offences Act 1999.

It is apparent that there is a general misunderstanding within the Cook Islands as to how victims of sexual offences behave both during an alleged sexual assault and in the aftermath. This can have some impact on how victims are treated/perceived.

In March 2018 Professor Seymour gave a talk on counter-intuitive evidence to a number of professionals in the health, education and government sector.

More education is needed on this (including to the community in general).

##### *Principle 2 (Best Information):*

This principle is already enshrined in Cook Islands Law by virtue of s6 of the Victims of Offences Act 1999.

The need for a formal protocol between the Crown and the Police has been identified and is a work in progress.

*Principle 3 (Coordinated Assistance):*

Part of this principle is already enshrined in Cook Islands Law by virtue of s5 of the Victims of Offences Act 1999.

Issues around delay in the progression of cases (especially in the area of child abuse cases) has been identified.

*Principle 4 (Safety):*

There are issues around the size of the Cook Islands and the ability to keep victims and offenders separated.

The Victims of Offences Act 1999 requires the victim's views in sexual cases to be put before the Court on the issue of bail. Section 5(2) provides that victims should be told of available protection against unlawful intimidation.

The protections afforded by the FPS are also available for those victims who are in a domestic relationship with the offender.

*Principle 5 (Privacy):*

The size of the Cook Islands can prove challenging when dealing with privacy.

There are issues around confidentiality of complaints / perceived lack of confidentiality.

Closed Court and Name Suppression for victims is now routine.

*Principle 6 (non-discrimination):*

Until about 2010 Court proceedings were held in Maori and translated into English for the benefit of the New Zealand Judge. Since that time there has been a distinct shift away from using Maori and Criminal Court proceedings are now principally conducted in English (despite Maori being the first language of the majority of Cook Islanders). Use of the Maori language is encouraged for victims/witnesses if this is their first language.

Interpreters for other languages will be arranged by the Court (if needed).

Police will pay for victims (and in some instances they also pay for a support person) to return to Rarotonga for trial (if they have left the island) and cover their accommodation whilst here. There is also the ability for victims/witnesses to give their evidence remotely (eg. via Skype) if this is considered appropriate.

*Principle 7 (Individual Expression):*

The questioning of victims/witnesses in a manner that is understood by the victim/witness is well established. Judges will pull up both prosecutors and defence counsel if questioning is inappropriate or done in a manner that would not be understood by a witness. However,

the need for further training in the area of questioning child witnesses would likely be beneficial.

The Police have received training and continue to develop their evidential interviewing skills for video recorded interviews. To date the Court has expressed no concern over the questions used by the Police although the issue of whether the Police appropriately questioned a child victim has been raised as an appeal point in the case of *R v Marsters*. This appeal is to be heard in the week commencing 29 October.

*Principle 8 (Victim impact and Compensation Principle):*

The Victims of Offences Act 1999 provides for the provision of victim impact statements to inform the Judge about any physical or emotional harm, any loss or damage to property and other effects on the victim.

The Court has the jurisdiction to order reparation where there has been actual financial loss.

#### **4. Significant issues affecting the law and justice sector, and options to address these issues**

*Recruitment and the future of the Cook Islands legal profession*

There has been an ongoing drive by the Government to encourage Cook Island lawyers back to the country. There has been limited success partly because Cook Islanders hold New Zealand passports and are able to take advantage of opportunities in New Zealand and Australia and partly because the Cook Islands is not able to meet the pay expectations that those lawyers have as a result of working in New Zealand, Australia and elsewhere.

There are a number of young Cook Island lawyers who have returned home and their ongoing professional development is being addressed by the recruitment of highly experienced lawyers from overseas, who understand the important role of mentoring these lawyers. Some of these lawyers are also being employed in private practice where they are benefiting from the expertise of senior lawyers there.

*Funding, Resources and capability of Police and Justice*

The Police and Ministry of Justice continue to be the subject of serious deficits in their funding and resources.

There is a proposed restructuring plan for the new Government to consider which may see the Prison and Probation Service separated out from the Ministry of Justice and into their own Ministry.

## 5. Significant initiatives/projects involving the member country and its law and justice sector

### Consolidation of Laws

The last consolidation of Cook Islands Law took place in 1994. Prior to going into caretaker mode Parliament, with the assistance of Crown law and an offer of assistance from the New Zealand Government, has taken the first steps to consolidate the laws of the Cook Islands and make them accessible to the public. A scope of works is still to be completed.

### Immigration law reform

The Cook Islands is in the process of reviewing its immigration laws. It is expected that a Bill will be tabled in Parliament in 2019.

### Review of the Rarotonga Prison

New Zealand is assisting with a full review of the systems, systems procedures and facilities at the Rarotonga Prison. That review is expected to be completed by February 2019.

### Prosecution Guidelines

The Cook Islands has generally taken guidance from the New Zealand Solicitor-General Guidelines in respect of the prosecution of offences. Crown Law is in the process of developing prosecution guidelines specifically tailored for use in the Cook Islands.

### Ongoing legal training and development

The Cook Islands Law Society ("CILS") held a series of lectures over 2018 for their members on differing aspects of Cook Islands law in order to assist with the professional development of its members.

The Ministry of Justice delivered training, with the assistance of the Chief Justice at the first session and with Judge Adams of the New Zealand Family Court at the second session, to the Justices of the Peace on the implementation of the Family Protection and Support Act 2017.

Sir Ronald Young and Enoka Puni delivered a "Fundamentals of Judging" workshop for Justices of the Peace which was funded by the Institute of Judicial Studies (NZ).

## INTERNATIONAL OBLIGATIONS

The Cook Islands was selected by ballot at the United Nations Convention against Corruption ("UNCAC") conference of States Parties to review compliance of Tajikistan, Bhutan and Honduras with the articles of UNCAC. Cook Islands was also drawn from the ballot to be reviewed by Oman and the Maldives. The review of Tajikistan was concluded in January 2017 although the report is not yet available. Catherine Evans attended to the desk review of Bhutan's self-assessment and joined in the onsite visit with representatives of UNODC and

the representative from Tajikistan. That report is about to be published by UNODC. Cook Islands recommends that PILON members read the Bhutan Constitution which was adopted in 2006 and which has very modern provisions for a country with strong religious and cultural values.

The Cook Islands Public Service Commissioner will be responsible for reviewing the Honduras self-assessment on Chapter II (preventive measures).

The Cook Islands self-assessment has been translated into Arabic and arrangements have yet to be finalised for the on-site visit.

In November 2017 Catherine Evans attended the Conference of States Parties to UNCAC in Vienna, Austria and delivered a presentation to the Conference on the progress that the Cook Islands has made with implementing the UNCAC provisions.



*Panel discussion at the UNPRAC side event with the President of Kiribati, Taneti Mamau at right and the Nauru Secretary of Justice, Graham Leung centre.*

There remains some challenges for the Cook Islands in progressing the robust implementation of UNCAC from the establishment of the Anti-Corruption Committee in 2011.

## **6. Technical legal assistance**

### *Training Undertaken by Crown Law Staff*

In October 2017 the Solicitor-General attended the Intellectual Property training in Singapore.



In October 2017 Alison Mills attended the international humanitarian law training in Fiji.

In December 2017 Alex Herman attended the Cybersecurity Forum in Dhaka, Bangladesh.

In 2018 CILS delivered a weekly lecture series on various Cook Islands laws. This is the first time that CILS has delivered professional development on a regular weekly basis using the experience, knowledge and skills of the Cook Islands Bar. All Crown Counsel attended these lectures when they were available to do so.

In January 2018 the Solicitor-General attended the FATF Workshop for Judges and Prosecutors in Shenzhen, China.

In February 2018 Catherine Evans attended the inaugural South Pacific International Arbitration Conference in Fiji with a team of representatives from civil society. Networks were established and information shared on approaches to international arbitration including the passing of Arbitration legislation. The Cook Islands has had in place an Arbitration Act since 2009, Fiji has recently passed its arbitration legislation and other Pacific nations were encouraged to pass similar legislation.

In June 2018 Alex Herman attended the Foreign Fisheries Regional Prosecutors and Observers workshop in the Solomon Islands.

In June 2018 Kathy Bell and Alex Herman attended the Cybercrime conference in Tonga.

In August 2018 Catherine Evans attended the assessor training delivered by the APG in Kuala Lumpur, which involved preparation and an onsite visit of a hypothetical country mutual evaluation.

### Training Needs

Public law advocacy – advice and litigation

Document drafting

Prosecuting child sex abuse cases

Prosecuting illegal fishing cases

Applications to forfeit proceeds of crime

## 7. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
Crown Law Office	Advice, Litigation and Legislation drafting for the Crown. Mutual Legal Assistance	TBA	+682 29337
Police	Investigation and Enforcement	Maara Tetava Commissioner of Police	+682 22449 <a href="mailto:maara.tetava@police.gov.ck">maara.tetava@police.gov.ck</a>
Ministry of Justice	Registry and Enforcement	TBA Secretary of Justice	+682 29410
Financial Intelligence Unit	Investigation and Enforcement	Phil Hunkin Head of FIU	+682 29182 <a href="mailto:phil.hunkin@cifu.gov.ck">phil.hunkin@cifu.gov.ck</a>

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