



# **PACIFIC ISLANDS LAW OFFICER'S NETWORK**

## **37<sup>TH</sup> ANNUAL MEETING**



### **COUNTRY REPORT: REPUBLIC OF FIJI**

9 – 11 October 2018

Rarotonga, Cook Islands

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# MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

## Significant Law Reforms

Parliament, *inter alia*, passed the following Acts this year—

- Rights of Persons with Disabilities Act 2018
- Information Act 2018
- Succession, Probate and Administration (Amendment) Act 2018
- Online Safety Act 2018
- Employment Relations (Budget Amendment) Act 2018
- Environment and Climate Adaptation Levy (Budget Amendment) Act 2018

## Access to Justice

### **Expansion of Legal Aid Commission**

The Legal Aid Commission has opened new offices in, and has extended its legal services to, Levuka, Labasa, Nabouwalu and Savusavu.

### **Expansion of Ministry of Justice**

The Ministry of Justice has opened new offices in, and has extended its registration of births, deaths and marriages services to, Korovou, Kadavu and Nabouwalu.

### **Swearing-in of Justices of the Peace**

In June and August 2018, a total of 241 individuals were sworn in as Justices of the Peace ('JPs'), taking the total number of JPs in Fiji to 505.

## SIGNIFICANT COURT DECISION

### Sun Insurance Company Ltd v Attorney General [2018] FJHC 342; HBM031.2018 (25 April 2018)

The Plaintiff filed a motion dated 28 February 2018 in the High Court seeking constitutional redress on the grounds that its constitutional rights under section 26(1) and (2) and section 27(1) of the Constitution of the Republic of Fiji (**'Constitution'**) were contravened as a result of the repeal of the Motor Vehicles (Third Party Insurance) Act 1948 (Cap. 177) (**'Third Party Insurance Act'**) and the Motor Vehicles (Third Party) Regulations 1949 section 31 of the Accident Compensation Act 2017 (**'AC Act'**).

The AC Act established no fault compensation for accidents in Fiji with a staggered application beginning with third party motor vehicle accidents. By repealing the Third Party Insurance Act the AC Act also removed the legal requirement that motor vehicle owners take out third party insurance. The Plaintiff was an insurance company that sought declaratory orders claiming, in essence, that the removal of mandatory third party insurance would lead to the extinction of their business and was in fact the appropriation of their property by the Defendant. The Defendant filed a strike out application on the grounds that *inter alia* the Plaintiff's motion was filed beyond the prescribed 60 day time period set out in rule 3(2) of the High Court (Constitutional Redress) Rules 2015 (**'Redress Rules'**).

In considering whether the Plaintiff's motion was time barred the court was tasked with interpreting rule 3(2) of the Redress Rules read in conjunction with section 44(1) of the Constitution. The Redress Rules prescribed a 60 day time period beginning from the point at which the "matter at issue first arose", however there was no binding authority in Fiji which established a definitive point at which a matter at issue for constitutional redress first arises. The court found that the matter at issue first arose when the Plaintiff *became aware that its rights would be contravened in the future*. The court referred to the fact that section 44(1) of the Constitution states that a person may apply for constitutional redress if the person considers that a person's right "has been **or is likely to be** contravened" finding that the word "or" was disjunctive and not conjunctive and that the words "likely to be" referred to a point in the future.

The court thus ruled in favour of the Defendants and struck out the Plaintiff's motion for constitutional redress.

# SIGNIFICANT LAW REFORMS

## ACTS OF PARLIAMENT

### **Rights of Persons with Disabilities Act 2018**

Section 42 of the Constitution guarantees the rights of persons with disabilities.

The Rights of Persons with Disabilities Act 2018 gives effect to these rights that are already set out in the Constitution and our obligations under the United Nations Convention on the Rights of Persons with Disabilities.

### **Information Act 2018**

The Information Act 2018 is a fulfilment of the requirement under section 150 of the Constitution, which states—

*“Freedom of information*

150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.”

The Act also gives effect to the right to access information under section 25 of the Constitution—

*“Access to information*

25.—(1) Every person has the right of access to—

- (a) information held by any public office; and
- (b) information held by another person and required for the exercise or protection of any legal right.

(2) Every person has the right to the correction or deletion of false or misleading information that affects that person.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.”

The Act is an initiative to provide for a more transparent, accountable and democratic system.

### **Succession, Probate and Administration (Amendment) Act 2018**

The Succession, Probate and Administration (Amendment) Act 2018 amended the Succession, Probate and Administration Act 1970 to allow persons in *de facto* relationships to apply for grants of letters of administration and to set out their entitlement in the scheme of property distribution upon intestacy.

## **Online Safety Act 2018**

In 2016, a study was carried out which showed that about 50% of cyberbullying victims in Fiji were children while 50% were other members of the general public.<sup>1</sup>

According to an online article published by the Fiji Times this year (15 March 2018), the Fiji Women's Crisis Centre received 7 cyberbullying cases in 2017, 5 of which were by husbands or former boyfriends who threatened to post or who actually posted intimate images of their partners. As a result, some of these victims were suicidal or suffered from anxiety attacks, while others live in fear.<sup>2</sup> In another incident also in 2017 in Fiji, a video of students engaging in sexual activity at a school dormitory went viral on social media, much to the detriment of the students themselves and their families. The male student in the video was 17 years old at the time and the female student was 14 years old<sup>3</sup>. More recently in April of this year, pictures of a 14 year old female student went viral on social media.<sup>4</sup>

This is only a fraction of the actual number and type of online harmful activities happening around us. It highlights just how real these kinds of online activities are in our everyday lives and how much of an impact they have in our homes particularly on our children and vulnerable members of our society.

With Fiji's internet penetration at about 48%, there is a need for a mechanism to address and curb these issues.

The Online Safety Act 2018 provides a mechanism to help address these issues.

## **Employment Relations (Budget Amendment) Act 2018**

Fiji is one of the few countries in the region that guarantees comprehensive legal rights and entitlements to our female workforce. Under the Employment Relations Act 2007, women currently have a 12-week maternity leave entitlement at full pay for the first 3 pregnancies, guaranteed legal protection against discrimination on the grounds of gender, pregnancy or marital status and a 'return to work guarantee' ensuring that no employer may dismiss a woman if she chooses to take maternity leave.

Maternity leave entitlements will be extended for a further 2 weeks at full pay to ensure that our working women have more quality time to spend with their new-born children. It is of utmost importance to us that we promote the fact that having children is a natural part of life and choosing to have a family should not deter anyone from actively participating in the workforce. This also brings us into alignment with the International Labour Organization's ('ILO') standards for maternity leave under ILO Convention No. 183.

Paternity leave entitlement of 5 working days in a leave year will be introduced to ensure that fathers and partners are also able to take time out from work to help their partners during this very important time. We must discard the view that child bearing is solely a

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<sup>1</sup> <http://www.ijstr.org/final-print/dec2016/Recent-Cybercrimes-In-Fiji.pdf>

<sup>2</sup> <http://www.fijitimes.xom/cyberbullying-relates-to-the-use-of-technology>

<sup>3</sup> <http://fijivillage.com/news/2-students-charged-in-relation-to-a-video-going-viral-on-social-media-to-take-their-plea-in-April-k92r5s/>

<sup>4</sup> <http://www.fijitimes.com/defilement-suspect-remanded/>

mother's job and instead promote the active engagement of both parents in nurturing and caring for their children.

Family care leave entitlement of 5 working days in a leave year will also be introduced. This is a general entitlement applicable to all workers in Fiji for the purpose of allowing them to care for or support their family members.

#### **Employment Relations (Budget Amendment) Act 2018**

The Employment Relations (Budget Amendment) Act 2018 seeks to amend the Act to increase the ECAL charged on plastic bags from 10 cents to 20 cents a plastic bag and to extend the minimum annual gross turnover threshold to all prescribed services.

## INTERNATIONAL TREATIES

TREATY	DATE APPROVED BY PARLIAMENT FOR RATIFICATION/ ACCESSION/ ACCEPTANCE
International Covenant on Economic, Social and Cultural Rights	Approved by Parliament on 17 May 2018.  Yet to be ratified.
International Covenant on Civil and Political Rights	Approved by Parliament on 17 May 2018.  Yet to be ratified.
Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	Approved by Parliament on 12 July 2018.  Yet to be ratified.
Protocol to Eliminate Illicit Trade in Tobacco Products	Approved by Parliament on 12 July 2018.  Yet to be ratified.



# PILON STRATEGIC PRIORITIES

## Cybercrime

### **Cybercrime Workshop**

The focus of the PILON Cybercrime Workshop in June this year was mainly on the enforcement and prosecution of child abuse actual crimes and child abuse cybercrimes.

There was a legislative gap analysis carried out by the Australian Attorney-General's Department on Fiji's current legislation on child abuse actual crimes and child abuse cybercrimes.

This legislative gap analysis focused on Fiji's Juveniles Act 1973, Crimes Act 2009 and the new Online Safety Act 2018 with the benchmark being the Budapest Convention on Cybercrime.

### **Online Safety Act 2018**

In May this year, Parliament passed the Online Safety Act 2018<sup>5</sup>.

### **Fiji Cybersecurity Work Programme<sup>6</sup>**

As its name suggests, the Fiji Cybersecurity Work Programme sets out Fiji's work programme for cybersecurity.

## Sexual and Gender Based Violence

### **State v Lolohea [2018] FJHC 376; HAC099.2017S (7 May 2018)**

The defendant, Timoci Lolohea, was charged with the murder of his *de facto* partner Elenoa Divoci.

The defendant had stabbed the victim multiple times with two knives with the intention of killing her, for having an affair.

The High Court convicted the defendant for murder and sentenced him to mandatory life imprisonment, where he must serve a minimum period of 18 years before he can apply for presidential pardon.

### **Registration of Sex Offenders Bill 2018**

In its efforts to reduce sexual and gender based violence, the Fijian Government introduced the Registration of Sex Offenders Bill 2018 ('**Bill**'). The Bill provided 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.

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<sup>5</sup> See brief summary of the Online Safety Act 2018 above

<sup>6</sup> The Fiji Work Programme is a separate document which may be produced upon request

## **Environmental Crime and Corruption**

### **Environment and Climate Adaptation Levy (Budget Levy) Act 2018**

For every plastic bag that is purchased from a designated place, 20 cents Environment and Climate Adaptation Levy is payable for a plastic bag.

# **SIGNIFICANT INITIATIVES/PROJECTS IN THE LAW AND JUSTICE SECTOR**

## **Access to Justice**

### **Expansion of Legal Aid Commission**

The Legal Aid Commission intends to open new offices in, and extend its legal services to, the islands of Rotuma and Kadavu.

### **Expansion of Ministry of Justice**

There are also plans to open more offices in the districts for members of the public to access these services without having to travel long distances.

### **Digitisation of Records**

The Ministry of Justice is currently working on digitising all official records in the office of the Registrar of Titles, the office of the Registrar of Companies and the Births, Deaths and Marriages Unit.

## TECHNICAL LEGAL ASSISTANCE

### **World Intellectual Property Organization**

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

### **International Monetary Fund – Pacific Financial Technical Assistance Centre**

Fiji has received technical legal assistance from the International Monetary Fund through the Pacific Financial Technical Assistance Centre on the review of the Financial Management Act 2004.

## 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"> <li>(a) Office of the Administrator-General;</li> <li>(b) Office of the Registrar-General;</li> <li>(c) Office of the Registrar of Companies;</li> <li>(d) Office of the Official Receiver; and</li> <li>(e) Office of the Registrar of Titles.</li> </ul>	<p><b>Mr Sharvada Sharma</b> Acting Permanent Secretary for Justice and Anti-Corruption</p> <p><b>Ms Kamni Naidu</b> 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"> <li>(a) providing legal advice to the Government and the holder of a public office, on request;</li> <li>(b) preparing draft laws on the request of Cabinet;</li> <li>(c) maintaining a publicly accessible register of all written laws;</li> <li>(d) representing the State in court in any legal proceedings to which the State is a party, other than criminal proceedings; and</li> <li>(e) performing any other functions assigned by this Constitution, any written law, Cabinet or</li> </ul>	<p><b>Mr Sharvada Sharma</b> Solicitor-General</p> <p><b>Ms Tracey Wong</b> 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>	<b>Mr Christopher Pryde</b> 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.	<b>Mr Shahin Ali</b> 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.	<b>Ms Lavenia Waqaniburotukula</b> 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:	<b>Hon. Mr Justice Kamal Kumar</b> 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 (<b>'Constitution'</b>), 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>	<b>Mr George Langman</b> Deputy Commissioner	T: (+679) 3310290 F: (+679) 3310297