



GOVERNMENT OF NIUE

CROWN LAW OFFICE

P.O Box 70 Alofi, Niue

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Country Report

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Introduction

The Niue Crown Law Office (CLO) is currently staffed by 4 Lawyers and 1 support staff. Generally the majority of the legal issues that arise in relation to the Niue Government are dealt with by the CLO, however legal consultants and counsel is acquired from time to time to deal or assist with matters that are beyond the scope or capacity of the current staff.

There are many challenges but one of the primary issues of concern has been in the drafting of Legislation fortunately the CLO has been supported with drafting assistance and expertise from the New Zealand Parliamentary Counsels Office (PCO). Some training has also been undertaken by PCO with Government Department Heads in relation to the development of policy that will ultimately guide the drafting of relevant legislation.

The most recent piece or draft legislation that is nearing completion is the Family Law Bill. Drafting assistance has also been received from a number of regional CROP agencies such as WHO, RRRT, SPREP, UNDP, APG and SPC to name a few.

Major law and justice sector achievements

Tobacco Control Bill 2018

Tabling of the Niue Tobacco Control Bill 2018 to the Niue Assembly (Parliament) on the 15th August 2018. The Bill has proceeded through its first reading (16 votes for and 2 votes against) and is now proceeding through to the select committee stage.

Niue became signatory to the Framework Convention on Tobacco Control (FCTC) in 2006. The Tobacco Control Bill was drafted in 2011 with assistance from WHO. One aspect that caused delays in progressing the draft Bill was attributed to reconciling a certain policy direction from Cabinet relating to a proposed initiative referred to as “smoke free villages” which proposed that the consumption of tobacco or tobacco products within the boundaries of a village was to be prohibited. This had implications for what person could do within their own homes so eventually this was watered down to apply only to public places within the villages.

The CLO following current Government policy and the objectives of the FCTC, has also drafted regulations allowing for the recent increase in tariffs on Tobacco and Tobacco products, which has increased the retail price of cigarettes from \$17 - \$18 per pack of 25 cigarettes to \$30 per pack.

Family Law Bill

The new Family Law Bill proposes to formally consolidate all provisions relating to family relationships into one legislation. The relevant family law related provisions were consolidated into the Family Law Code in 2007. The majority of these provisions were derived from the Niue Amendment Act 1966, and as a result a number of policy decisions had to be made by Government to amend and reflect the current norms and behaviours and to comply with the requirements of the Convention on the Rights of the Child (CRC) and the Convention on the elimination of discrimination against women (CEDAW).

Of note the Niue Government approved the following policy directives for the following amendments:

- Adoption of a no fault divorce regime with a period of separation of 12 months;
- Age of majority is established at 18 years of age;
- Recognition of de facto relationship to the extent that the new legislation will allow, that the separation of property of a de facto relationship be resolved through the family law jurisdiction;
- Incorporate all of the provisions of the draft Family Protection bill, into the Family Law Bill rather than to remain as a stand-alone Legislation;
- Incorporate the provisions for Adoption into the Family Law Legislation. The adoption of children is currently incorporated within the Niue Amendment (No 2) Act 1968 which was enacted to aid the titling of Niuean land.

Mental Health Bill

Have recently received a response from WHO, they were requested to peer review the Draft Mental Health Bill in relation to aspects pertaining to human rights.

The review indicated that the provisions in the Draft Mental Health Bill that relate to the involuntary treatment of patients were not appropriate by their definition. The Niue Government has at this stage opted to proceed with the draft Bill in its current form.

The issue of treating patients without their consent has been problematic for the Niue Health Department in the recent past, there have been a number of instances where the Department has had to wait until the formal processes required by the Niue Act 1966 to have a patient declared medically unsound be completed, before the Department is able to proceed with treatment.

The administration of treatment by medical practitioners without consent raises the possibility of assault charges being filed, and creates a reluctance by medical practitioner to treat patients who refuse treatment.

Unfortunately the delay to provide treatment has meant that patients presenting with mental health symptoms or disorders have become progressively worse over the period required to attain the appropriate court orders. It is believed that by incorporating the immediate family, next of kin or guardians into this decision making process as to whether or not treatment may be administered, and the additional provisions that have been proposed in the Mental Health Bill, it is believed this will provide the necessary checks and balance to ensure that the best interests of the patient is maintained.

It is believed that the specific context of Niue needs to be taken into consideration in determining whether or not the proposed Mental Health Bill is appropriate.

The need to treat patient versus the rights of the patient still remains of paramount concern however the following factors were taken into consideration in developing the underlying policy objectives such as the limited capacity of the Niue Health Department to treat or care for such patients, the need to act as quickly as possible and overcoming the stigma of mental illness in a small isolated community.

Biological Weapons Act 2018

The Biological Weapons Act was enacted in May 2018, Niue acceded to the Biological Weapons Convention in June 2018. The model legislation template was provided by the Biological Weapons Secretariat and adapted /amended / formatted with the assistance of the NZ PCO.

United Nations Convention against Corruption (UNCAC)

Since Niue acceded to the UNCAC in November 2017, the CLO has been required to undertake the ongoing engagement with the UNCAC Secretariat, in regard to Niue's commitments under the Convention such as the requirement to provide members to allocated review panels. Limited capacity in other Government Departments has meant that the CLO has had to intervene or been directed to undertake the work required.

Niue Customs Tariff (Cigarettes and Tobacco) Regulations 2020

As noted previously the CLO has drafted these regulations to formalise the increase of the tariff on Tobacco and Tobacco products to 1,000%, this increased the retail price of cigarettes from NZ\$18.00 to NZ\$30.00 for a pack of 25's. Although the increase to the retail price has been implemented the regulations are still awaiting Ministerial signature to bring them into effect.

Pending legislation

Niue Public Service Bill – to clarify and further define the role of the Niue Public Service Commission, it is noted that subject to a recent public service reform it was found that many Government Departments and personnel had some difficulty in accepting the new reality so provisions were drafted to reflect the right of Government to determine the structure and nature of Government institutions as it see fit.

The NPSC Bill has been drafted and is currently being translated.

Maritime Bill – regional assistance has been acquired for the drafting of a Maritime Legislation that will endeavour to ensure that Niue remains compliant with the 25 IMO and IMO related Conventions that Niue has acceded to and to establish a domestic Maritime regime that will govern the operation of and safety requirements for vessels and water craft operating within the EEZ and territorial waters of Niue.

PILON strategic priorities

Cybercrime: The Niue Government adopted its cybercrime policy in 2015, currently the model legislation which was drafted in 2016 is being reviewed by the CLO, to determine its appropriateness, our capacity to enforce and to draft amendments as may be necessary.

Environmental Crime and Corruption: There have been no reports or cases of environmental crime or corruption at this stage however this must be reviewed in the context, that although the Environment Act was enacted in 2015, the Environment Department has not been in a position to undertake the administration of the Act.

The Act requires that all new developments that have been undertaken on Niue since 2015 are required to comply with the provisions of the Environment Act, however due to the inability of the Department to undertake its role as the administrator of the Act, all these developments have not acquired the relevant development consents and are therefore ultra vires of the Act.

Recent court cases relating to the actions of Government owned enterprises to undertake certain activities without first acquiring development consent as required by the Environment Act 2015 are currently on going. The CLO is representing these SOE's at these court cases.

Unfortunately a similar scenario has also become apparent for the Water Act 2012, where certain commercial activities are required to acquire an extraction licence which would allow them to extract water from the national water supply and pollution control licences that will endeavour to control the impact that these activities are having on the underground fresh water resources.

Recently it was found that the Department responsible for the administration of the Water Act 2012, have not been in a position to undertake the administration of the Water Act. Again the activities of all commercial enterprises or business that the Act applies to, since 2012 have been ultra vires of this Act.

The irony of the situation is that it is only the Government owned enterprises that have been highlighted or targeted as being ultra vires of the Environment and Water Acts at this stage.

It is likely that a legislative amendment may be required in order to incorporate exemption provisions into these legislations to address this shortfall in the administration of these legislations.

Sexual and Gender based violence: As noted previously there is a New Family Law bill that is in its final stages of drafting, Part 5 of the bill makes specific provisions targeting domestic violence. These provisions were incorporated from the Family Protection Bill that the Government was endeavouring to enact in the early 2000's.

Although Niue is not immune to incidents of domestic violence however it was not believed that the number or frequency of such incidents was of such a number that there was a need to have a specific legislation enacted.

Significant issues affecting the law and justice sector, and options to address these issues:

The limited number of legal practitioners practicing in Niue will always be a challenge, as noted the CLO has a current staff of 4 lawyers, however there is one lawyer working privately and one other who occasionally takes on cases, being a total legal fraternity of 6.

Occasionally the CLO engages outside counsel to assist with specific matters, the major concern with such counsel are the costs involved.

Prosecutions are undertaken by the Niue Police Department with the assistance of New Zealand Police prosecutors for the more serious matters.

In recent times the private law firm of Gerrard McCoy QC was providing pro bono legal advice and representation for litigants in the Niue High Court. However it is understood that this service has ceased recently.

The number of NZ based lawyers appearing in the Niue High Court has increased in recent times which has in turn increased the cost to the parties concerned. As many litigants represent themselves there are concerns that those who do not have or can't afford legal counsel may be disadvantaged as a result.

The majority of cases before the Niue High Court generally, are in relation to the determination of title of Niuean land in recent time the Court has been requiring more consultation and discussion between the parties before matters proceed through to the Court, it is hoped that an increasing number of these matters may be addressed through this process with the Court being the option of last resort.

Options such as formalising mediation into the land titling process may enable cases to proceed through the land titling process much quicker and reduce the antagonism and conflict that arises as a result of the adversarial nature of the Court proceedings.

Technical legal assistance

Legal assistance and training opportunities are always welcomed by the CLO for its staff, unfortunately due to the limited number of staff and with the competing priorities and requirements on the office, it can be challenging at times just to find available staff to attend.

On the completion of the Family Law bill and subsequent enactment, the CLO would welcome any assistance that PILON could provide to assist with the development of the relevant policy directives that will guide the drafting of a new Crimes Act for Niue. The current criminal provisions can be found in the Niue Act 1966 and the majority of these provisions can be easily transitioned. However there will need to be specific provisions established to take into account young offenders, as currently they are treated as adults from the age of 14.

With two young lawyers now on board opportunities such as the PILON litigation skills training would be very helpful for their development.

Contact information

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