



PILON LEGISLATIVE DRAFTERS' STEERING COMMITTEE

MEETING MINUTES – APPROVED 29 JANUARY 2024

These minutes are more detailed than usual to document discussion on the new PLDC Work Plan 2024-26, Implementation Plan and Budget

Monday 30 October 2023

4-5:00pm Nauru time

Format: Hybrid event

1. Welcome

2. **Attendance/apologies** – Su'a Hellene Wallwork, Chair of the PLDC and PLDC Steering Committee and Attorney General of Samoa

PLDC Steering Committee attendance:

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| 1. Leigh Talamaivao | - | Parliamentary Counsel, New Zealand |
| 2. Tristan Karae | - | Deputy Prosecutor, Vanuatu |
| 3. Lyanne Vaurasi | - | Senior Legislative Drafter, Nauru |
| 4. Glenys Andrews | - | Principal Legal Officer, Fiji |
| 5. Sosefina Faamausili | - | Assistant Attorney General, Samoa |
| 6. Rebecca Vonthethoff | - | Assistant Secretary, Attorney General's Department, Australia |

PLDC members in attendance

- | | | |
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| 7. Linda Folaumoetui | - | Attorney General, Tonga |
| 8. Bernadette Uutau | - | Assistant Crown Counsel, Tonga |
| 9. Tauvasa Tanuvasa | - | Solicitor General, Papua New Guinea |

Apologies

- | | | |
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| 10. Cassie Nicholson | - | Chief Parliamentary Counsel, New Zealand |
| 11. Loretta Teueli | - | Director, Legislative Drafting, Nauru |

3. Substantive items

- a. **Chair’s Report – PLDC delegation at the Australasian Parliamentary Counsel’s Committee (PCC) and Commonwealth Association of Legislative Counsel (CALC) Regional Drafting Conference, Sydney, 2-4 August 2023**

The Chair provided a report on the Conference to the Steering Committee.

The Chair thanked Australia and New Zealand for helping to fund Pacific delegates.

The Chair also thanked Australia (Heseltine) for facilitating introductions between the Pacific delegates and other CALC members/legislative drafters as well as eminent speakers including The Hon Michael Kirby AC CMG, and for ensuring Pacific drafters were featured.

Nauru (Vaurasi) emphasised the value of attending the Conference and networking with the other drafters to share their experiences and best practices. It was valuable to hear about the challenges faced by other drafters at the Conference. NZ agreed with the value of hearing from other drafting professionals.

Outcome for Item 3(a):

Steering Committee members discussed the the Australasian PCC and CALC Regional Drafting Conference and noted the update provided by the Chair and Nauru (Vaurasi).

- b. **Draft PLDC Work Plan 2024-2026 and Draft Implementation Plan and Budget**

The Chair thanked Steering Committee members for their contributions in 2023. The Chair introduced the Draft Work Plan 2024-2026 to extend the current PLDC Work Plan to 2026, this timing being in line with the new proposed PILON Strategic Plan.

Members noted the Goals and Strategies:

- i. Enhanced Regional Networking.
- a. Strengthen networking, information sharing, and awareness raising in legislative development and drafting. This includes reporting and awareness raising to the broader PILON community.

- ii. Development/Update of Legislative Development & Drafting Resources.

Provide support for all member countries to develop and utilise legislative drafting resources to improve quality and in accordance with best practice.

This includes developing clear guides and tools for the legislative implementation of treaty obligations.

- iii. Improve quality of legislative drafting services sourced externally.

iv. Access to legislation.

Australia (Vonthehoff) spoke to some minor changes proposed to maintain the Work Plan's currency.

New Zealand (Talamaivao) noted that the last in-person Drafters' Conference in 2017 was good and proposed online webinars on core skills in drafting in interim before next planned in-person PLDC Drafter's Conference in 2025. New Zealand adopted a similar approach with online interactive sessions with Tonga and noted that webinars could be used to mutually upskill and share Pacific ideas and experiences. New Zealand took this as an action item to explore with Australia and proposed one webinar per year.

- Nauru (Vaurasi) agreed with the value of online legislative drafting courses tailored for Pacific island countries.
- Fiji (Andrews) agreed that webinars/online sessions are really practical and a great way to connect with other legislative drafters across the Pacific region.
- Samoa (Wallwork) suggested two per year rather than one.
- New Zealand (Talamaivao) envisaged online interactive training, aiming for two sessions per year. Will work with Australia to develop an outline of the proposed training for the PLDC Steering Committee to consider at a future meeting.
- Tonga noted the need to de-conflict the timing of the proposed training with the University of the South Pacific's Pacific Legislative Drafters' Diploma (six-month course, full-time).
- Papua New Guinea (Tanuvasa) noted that a legislative drafting course is currently available as part of the law degree; not compulsory but it should be. All law students would benefit from understanding the basics on how to draft legislation. PLDC could share information about available legislative drafting training. Another matter for PNG is the translation of legislation in country. It is also good for prosecutors and litigators to know the thinking that sits behind legislation from drafters.
- Australia (Vonthehoff) expressed that it was most willing to support the priorities of the PLDC. Australia will need to manage its resources (Heseltine being the lead in Australia) to support additional activities and will collaborate with New Zealand on how to facilitate two webinars per year, noting this means that Australia will have less resources to dedicate to other items on the Work Plan e.g. posts to the Legislative Drafting in the Pacific Facebook Group.

Possible training topics raised included:

- Drafters to think like litigators.
- Final interpretations by the judges.
- Independent Commission Against Corruption laws.

The Chair (Wallwork) invited Australia (Vonthehoff) to speak to the proposed Implementation Plan and Budget.

Australia (Vonthehoff) provided an overview of the proposed Implementation Plan and Budget which Australia has developed to support the delivery of the PLDC Work Plan 2024-2026.

Implementation Plan

This Implementation Plan and Budget for the PLDC guides the delivery of the PLDC's Work Plan 2024-2026. The PLDC Chair and Steering Committee agreed on responsibility for the implementation of the Work Plan actions with support from the PILON Secretariat.

Encouraging Regional Network

- 1.1 Facilitate a Drafters' Conference (virtual or in person).
- 1.2 Explore and facilitate networking opportunities with other drafting bodies, in particular the Commonwealth Association of Legislative Counsel (CALC).
- 1.3 Use social media: Create a Facebook group for everyday networking, sharing of information, and raising awareness on issues and opportunities
- 1.4 Develop annual circular on general drafting aspects and development in the Pacific. Suggest half yearly might be a lot of work. Views sought on frequency.
- 1.5 Provide update and report to PILON Annual Meeting.

Development/Update of Legislative Development & Drafting Resources

- 2.1 Develop country specific legislative drafting develop guides/manuals and templates (e.g. drafting instructions).
- 2.2 Use dedicated drafters' area of Members Zone on PILON website (www.pilonsec.org) to share country information and legislative drafting tools (e.g. guides, directives, templates, checklists, model provisions, best practices, precedents, training materials, links)
- 2.3 Develop clear guidance material on process for developing compliant legislation.
- 2.4 Develop a precedent bank in order to share best practices and standard legislative provisions (e.g. offence/liability provisions). Once finalised, can be published on the Drafters' section of the PILON website.

Australia (Vonthehoff) sought volunteers for a mini-reference group to arrange the 2025 Drafters' Conference.

The Implementation Plan proposes to support attendance at a CALC Conference or equivalent event once in the three years of the Work Plan.

The Implementation plan has a proposed schedule for social media posts and an annual circular to facilitate engagement by all Steering Committee member countries.

The Work Plan retains the item for the PLDC Chair to provide updates to each PILON Annual Meeting.

For Work Plan Actions 2.1 through to 2.5, there is value in member countries contributing legislative drafting materials as a collective and ensuring these represent Pacific needs and experience.

Members agreed on the value of Action 2.6 to compile a list of consultant legislative drafters who have demonstrated the ability to draft legislation and associated material which is fit for purpose and shows contextual awareness for the commissioning Pacific island country.

- Members discussed the challenges presented by external drafters who do not account for local needs, are expensive and produce drafts that are not fit for purpose.
- Australia (Vonthehoff) and Tonga (Folaumoetui) noted how some countries have raised (for example, at a Pacific Islands Chiefs of Police meeting) that when legislative drafting sat under the Pacific Islands Forum Secretariat that Nola used to provide legislative drafting services and at-cost consultant legislative drafters.
 - Australia (Vonthehoff) noted that these resources and funding did not move across to PILON from PIFS when the PLDC came under PILON in 2020, meaning PILON is not in a position to provide legislative drafting services.
 - New Zealand noted that Work Plan Action 2.6 will allow the PLDC Steering Committee to maintain and share a list of legislative drafting consultants whom members countries have found to be skilled in drafting and contextual awareness to share with the PILON membership once developed.
 - New Zealand (Talamaivao) shared the value in members calling out issues and risks when donors require certain legislation to be in place before providing assistance, especially when a consultant drafter is used. Countries can end up with legislation that is not fit for their purposes, placing the burden on them to carry out the additional work to fix the problems.
 - Tonga (Folaumoetui) shared the practice of senior Tongan officials to closely review a consultant's Bill, clause by clause, to ensure the Bill will fit in with Tonga's Statute Book and to ensure that agencies are able to implement it (or if not, to include a deferral clause for commencement). The consultant must also deliver explanatory material. There is also a need to consider translation issues to ensure the consultant drafter collaborates with Tongan officials to achieve a mutual understanding of any language or concepts used by the drafter to ensure they can be translated into Tongan language.
 - The Chair (Wallwork) raised donor partner's requirements at home. There is a need for jurisdictions to indicate areas of drafting interest and a focus on areas where assistance is needed before funding can be accessed. There is pressure for countries to accept legislation that is not fully developed. It is now mandatory that drafters provide explanatory notes in their drafting, which is an important part of the legislative process.
 - Members notes the challenges of engaging very technical experts who drafted legislation that cannot be interpreted. Technical experts may use jargon, acronyms, or complex terms that are unfamiliar or confusing to non-technical stakeholders. They may also have different expectations and assumptions about the level of detail, frequency, and format of communication. To bridge the communication gaps, there is a need to establish clear and consistent communication channels, protocols, and

standards. There is also a need to encourage technical experts to explain their work in simple and relevant terms, and to use visual aids, examples, or analogies when possible. Finally, you need to provide feedback, ask questions, and verify understanding to ensure clarity and alignment.

Outcomes for Item 3(b):

Steering Committee members:

- 1. Agreed to add two online interactive legislative drafting webinars/training per year to the PLDC Work Plan 2024-26, Implementation Plan and Budget with those documents re-worked accordingly.**
- 2. Agreed that New Zealand will work with Australia and come back with a training proposal for consideration and input from other members at a future PLDC Steering Committee meeting.**
- 3. Agreed to discuss arrangements for the 2025 PLDC Drafters' Conference at the next Steering Committee meeting.**
- 4. Agreed to prioritise the delivery of Work Plan Action 2.6 in order to develop and share a list of consultant legislative drafters for consideration and independent vetting by PILON member countries.**

4. Other matters

Samoa sought nominations for a new Chair. Fiji volunteered. Samoa (current Chair) noted this and went on to raise chairing for endorsement at the PILON Annual Meeting.

Outcome for Item 4:

Steering Committee and PILON members endorsed Fiji as the new Chair of the PLDC and PLDC Steering Committee at the PILON Annual Meeting 2023.

5. Meeting closed