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Message from the Executive Chairperson



THE Attorney-General and Minister for Justice, Senator Qoriniasi Bale has referred the **Penal Code (Cap.17) and Criminal Procedure Code (Cap.21)** for

review by the Fiji Law Reform Commission under section 5(2) of the Fiji Law Reform Commission Act (Cap. 26) (the Act).

Objectives

The objective is to comprehensively review the Penal Code and Criminal Procedure Code to update and recommend changes in relation to:

- Offences
- Penalties/Punishments
- Jurisdiction
- Defences
- Criminal Procedures

that are reflective of and responsive to, existing local and/or global conditions, circumstances, trends and practices.

In relation to the Penal Code, it is envisaged that the recommendations for reforms will provide Fiji with a legislation relating to criminal offences or crimes that is suitable to Fiji's current and future needs and circumstances.

In relation to the Criminal Procedure Code the law must ensure fair trial for persons accused of offences; protect the rights and freedoms of all persons suspected or accused of offences; provide fair, effective, speedy and efficient procedures for the investigation and prosecution of offences, and the hearing of criminal cases and meet the applicable international standards and obligations.

On January 17th, 2006 Cabinet had approved the continuation of this review as a priority for the Commission in 2006. The other priority references are the Charitable Trusts Act and the Religious Bodies Registration Act.

The Attorney-General has pursuant to Section 3(6) of the Act appointed Ross Ray QC, David Neal SC and Graham Powell to advise the Commission in this review to replace the Consultants who were appointed in 2005. The Consultants shall assist in the preparation of the Final Report and Recommendations for reform, and with the drafting of necessary legislation to achieve the objectives of the review. They should also facilitate the public and stakeholders consultation processes, and shall ensure the views that are expressed are reflected in the drafted outcomes.

The Consultants will be assisted by *Acting Senior Legal Officer Raramasi Salakubou* and *Legal Officer Cama Tuberi* of the Commission. There will also be a Project Management Committee comprising representatives of major stakeholders to monitor the activities and outputs of the review in accordance with the 5 stages of the work plan.

The Commission is to submit its Final Report with measures and recommendations for reform and appropriate draft Bills or draft provisions to the Attorney-General and Minister for Justice by the 31st day of December, 2006.

Discussion/Issues Papers are being prepared to assist in the making of submissions and to ensure they are focused. Issues papers on the following are now available on request:

- Issues Paper No. 1** – deals with specific offences of Homosexual Conduct, Abortion, Prostitution, Theft and Corruption in Public Office;
- Issues Paper No. 2** – deals with Compliance with International and Regional Obligations in the Criminal

Message from the Executive Chairperson *(continuation from page 1)*

Law Context;

•**Issues Paper No.3** – deals with Reforms Relating to Penalties and Sentencing;

•**Issues Paper No. 4** – deals with Options to Merge Formal Court Procedures with Traditional and Community Justice System;

•**Issues Paper No. 5** – deals with Reform to Police Powers and Procedures.

Readers are encouraged to assist the Commission in this review by making submissions on the TOR at the issues discussed in the Discussion and Issue Papers.

Further information on this may be obtained from the Commission. The review is funded by NZAID and the Government of Fiji.

Progress of the review of Penal Code and Criminal Procedure Code

THE review of the PC and CPC are long overdue and much needed, in order to bring the criminal law and criminal procedure in Fiji into line with modern standards practice, providing a system which also takes into account Fiji's unique culture and history and make recommendation suitable to Fiji's current and future needs.

The review had been on the pipeline since 2001 and major stakeholders are enthusiastic to have positive reform and changes take place. There have been previous sporadic reviews of the Penal Code and Criminal Procedure Code. Continuation of the review is part of the Commission's Work Programme for 2006 which was approved by Cabinet on 17th January 2006.

Work plan

A new work plan had been developed and is divided into five phases. The first phase will be devoted to review the work already undertaken, identification of relevant laws and preliminary meeting with key stakeholders. The objective of this phase is to provide an initial scoping of the project, review prepared documentation, identify the nature and extent of the reform and the full range of stakeholders.

The second phase is the comprehensive review of all relevant legislation and court judgments, consideration of Fiji's international obligations and considerations of priority areas and any additional areas that could be worthy of consideration. The objective of this phase is to identify all relevant laws and proposed laws in Fiji and their implications for the proposed reforms in the context of Fiji's criminal laws and procedures. In addition, to identify the full range of relevant international obligations and the



Executive Chairperson FLRC, Alipate Qetaki makes a point during a joint briefing between the Commission's professional staff and overseas consultants appointed to undertake the review of Penal Code and Criminal Procedure Code.

means by which they may be provided for in the proposed new law and to determine any gaps in Fiji's laws and any offences that are clearly obsolete or ineffective.

The third phase involves the preparation of a detailed action plan to take account of all the identified issues. The objective of the task is to scope the necessary legislative drafting, determine any other aspect of the reform requiring detailed consideration and assessment and to confirm the consultancy strategy.

The fourth phase will consist of workshops and public consultation. Workshops will be conducted with key stakeholders and representatives of the broader community. This process shall be facilitated by the preparation of Issues Papers to focus on and discuss issues that have been identified as areas of priority. The objective of this phase is to involve the stakeholders and the general public in the process, confirm areas of priority to be addressed in the law and generate awareness of the reform.

The final phase will involve the drafting of the appropriate laws and the amendment of the existing laws. The objective of this phase is to draft all necessary amendments and enactments to incorporate the Commission's recommendation for reform and to make appropriate provision in relation to Fiji's International obligation.

On site Consultation

The new Project Team conducted its first on-site consultation from 20th -24th March 2006. Major stakeholders which included the Chief Justice, Director of Public Prosecution, Commissioner of Police and Chief Executive Officer of the Ministry of Justice met with the team.

Submission

Five Issues Papers had been prepared to assist in the making of submission. Issues Papers are available at the Commission and all the stakeholders including NGOs, Religious groups, CEOs of Government Ministries,

Department and Agencies, Provincial, District and Advisory Councils, Corporate bodies and other groups, and members of the public are invited to make written or oral submissions, or both, to the Commission.

Those intending to make oral submissions are to contact the Commission giving details of their name(s) or that of the group or organization they represent, address and telephone number. Those making written submission may be requested to also meet with the Commission for elaboration and clarification purposes if necessary. The submission must address the Term of Reference and the issues raised in the Issues Papers. Stakeholders are urged to make their submission as soon as possible but not later than **Wednesday, 31st May 2006**.

Further information on the Reference (including the Term of Reference) may be obtained from the Commission at Level 5, Civic Towers, Suva, Telephone number 3303900 and fax 3303646 or Salakubou Vunivalu Raramasi on email raramasi.salakubou@lawreform.gov.fj or Cama Tuberi on email address cama.tuberi@lawreform.gov.fj.

Religious Bodies Registration Act

Background

THE review of the Religious Bodies Registration Act (the Act) is part of the Commission's Work Programme for 2006 as approved by Cabinet on 17th January this year.

Religious bodies operating in Fiji are registered under the Act which has been a part of Fiji's laws since 1881 and provides for the registration of the trustees of religious bodies. Registration under the Act enables religious bodies to have recognized legal status and to hold land. Currently, there are **1482** such registered religious bodies.

The review of the Act is generated out of concerns that the current law does not provide any means by which religious bodies can be legislatively regulated in relation a

number of aspects including the criteria, procedure and requirements for registration.

The Act covers the registration of religious bodies wanting to establish themselves in Fiji. The constitutional right to freedom of conscience, religion and belief as provided for under section 35 of the Constitution lends support to the Act and protects the right to one's religious belief. The Act is administered by the Office of the Registrar of Titles.



About 1482 religious bodies in Fiji.. Left- The Catholic Church's Sacred Heart Cathedral. Top right - Toorak Jame Masjid Mosque. Near right- Muanivatu Hindu temple at Laucala Bay Road.

The only criteria, procedure and requirement for registration are those provided for under section 3 of the Act, that being, any three people, on condition that they can demonstrate proof of having secured land for the purposes of the religious body (Certificate of Title), sign as trustees for the religious body. The only other requirement is the production of police clearance certificates by the trustees.

The Act is not adequate in regulating the functions and

Religious Bodies Registration (cont'd)

objectives of religious bodies in that it does not provide the Registrar with any power to investigate or scrutinize applications for registration, require the production of the objectives of the association, refuse the application for registration or cancel the registration of any religious body after being duly accepted. Further, there is no restriction or limitation upon the exercise of the fundamental right to freedom of religion.

With the increasing number of registered religious bodies, the Act does not effectively provide for the protection of their members and the public from mismanagement and abuse of resources by trustees of such bodies.

The Situation in Other Jurisdictions

In Australia and New Zealand the law reorganizes a person's freedom to one's own conscience, belief and religion.

There are no specific piece of legislation that provides for the registration of religious bodies. A religious body is considered a charitable trust following the common law definition that a trust is charitable where its assets and properties are used for the advancement of religion, relief of poverty, advancement of education or for other purposes beneficial to the community thus always in the public benefit. There are however, statutory definitions which to varying degrees expand or modify the common law definition.

Religious bodies follow the same registration process as that of charitable organizations. This is provided for under individual state and territory charity legislation (e.g. the NSW Charitable Trusts Act 1993, South Australia Charitable Trusts Procedure Act)

In Samoa, Tonga, Solomon Islands and Vanuatu, the practice has been to monitor the operations of religious bodies so as to keep a tab on the new religions and sects emerging in these countries.

The United Kingdom, (like Australia and New Zealand) do not have a separate legislation providing for the registration of religious bodies. Religious bodies fall under the category of charitable trusts.

Comparative Analysis

These appear to be two models emerging in relation to the registration of religious bodies. One is that which require strict monitoring which infringes human rights laws (as in the case of Ghana) and the other which recognizes religious freedom with no express monitoring (as in New Zealand).

In Fiji the Constitution protects the right to hold religious belief. As regards the latter in the United Kingdom, Australia and New Zealand, religious bodies are registered as charitable trusts.

The applications for registration and their subsequent approval or denial follows the same procedure as that



Suva's Centenary Church is home to believers from the Methodist Church of Fiji, a pioneer of the Christian faith .

of which apply to other charitable trusts. This is following the notion that a religious organization/body promotes the advancement of religion – one of the four categories that define a charitable trust.

Which model should Fiji follow bearing in mind the section 35 of the Constitution?

Shortfalls: Legislation

There are a number of loopholes in the Act. Firstly, there is no clear guideline or criteria/requirement that any organization wanting to register has to comply with and adhere to. *Should there be guidelines and specified criteria? What criteria and guideline should be prescribed?*

Secondly, there is no definition of the term 'religious body' which makes it difficult to draw a perimeter in terms of which organizations qualify to be registered as 'religious bodies' per se. *Should the term religious body be defined?*

What body(ies) should the definition cover?

Further, the Registrar of Titles has a very limited scope of authority which restricts his ability to effectively examine applications and monitor the operations of the religious bodies before and after they are registered. *Should the power and authority of the Registrar of Titles be expanded to cater for the proper examination of applications and monitoring of the operations of religious bodies?*

Fiji could possibly have an independent body whose prerogative would be to investigate applications and

subsequently approve or deny applications on justified grounds. Most foreign jurisdictions have special bodies that are set up to specifically look into applications for registration as religious bodies. *Should Fiji have an independent body (or an appropriate mechanism) set up to solely look into applications for registration by religious bodies? Or should there be a legal framework that covers not-for-profit organizations, charitable trusts as well as religious bodies?*

The legal framework may include provisions that intending bodies should be required to produce their organization's constitution and by-laws which a possible special committee could then use as a gauge with which to monitor the organization's activities. *Should there be a legal requirement for religious bodies to produce annual account statements, obligations to keep accounting records, requirements to identify the sources of funding for the organization's activities and the production of annual reports?*

The Attorney-General and Minister for Justice has issued a Terms of Reference for the review which requires the Commission to examine and consider the Act and the laws governing the registration, regulation and conduct the religious bodies and their trustees with a view to their reform. The reviews must consider the following :

(i) Whether the Act is an appropriate framework for the registration and regulation of religious bodies and their

trustees.

(ii) The variety of religious bodies rejected under the Act, their purpose and activities.

(iii) Laws in other jurisdictions and how such laws confer duties and obligations on trustee eg. The duty to be transparent and accountable to member of religious bodies.

(iv) Effect of other laws other than the Act.

(v) The meaning/definition of religious bodies.

(vi) The most appropriate mechanism for approving registration and monitoring of religious bodies.

(vii) The Registrar's power to examine application and monitor.

(viii) Reporting requirements relevant to accounts/finances and annual report.

(ix) Taxation issues; and

(x) The most appropriate legal framework for registration and regulation.

Preliminary views, comments or alternative suggestions for reform can be emailed to Legal Officer, Katalaini Ziru at Katalaini.ziru@lawreform.gov.fj; or faxed to Fax: (679) 3303646.

Charitable Trusts Act

THE Charitable Trusts Act (CTA) was enacted in 1945. Over the last 61 years, Fiji has seen an increase in the registration of Civil Society Organizations (CSOs) as the community responds to modernization, economic development, social dislocation and change. This contributes to various social ills including increasing poverty that are part and parcel of development. CSOs

are recognized as social and development partners to Government and the Private Sector.

Today CSO's influence social, economic and policy issues to encourage public benefit. They assist government in numerous social sectors including housing, welfare, poverty alleviation, education and health. As unelected bodies that are sponsored by donors outside the jurisdiction, the role and activities of CSO's are often viewed as gratuitous and without the people's mandate. They are also sometimes viewed as having an agenda of their own and in some cases have been accused of acting and supporting causes that are irresponsible, if not illegitimate.

While development and the socio-economic landscape, in Fiji have changed, the law governing these non government organizations (NGOs) has not.

In 2000, the Citizen's Constitutional Forum was de-registered



The Fiji Council of Social Services a non-government organisation that focus primarily on areas of social services.

under the CTA as it was acting outside of the scope of its objectives and purpose under the Act. It did not appeal the deregistration but registered itself as a company.

The Commission identified the following issues governing charitable organizations:

- The definition of charitable purpose does not recognise the social and development realities of the 21st century.
- There is no provision for those who have been refused registration to seek recourse.
- The Registrar is the sole authority determining charitable status by granting or withholding registration.
- The CTA lacks clear guidelines on how registered trusts are to operate. For instance, the Registrar has no authority to inquire into the mechanisms governing charities, such as sources of funding and auditing of accounts.

•Failure to remain on par with international practices governing charitable organizations within the ACP and EU states.

On the 17th of January, 2006, Cabinet approved the review of CTA by the Commission. The objective of this review is:

•To examine the current laws governing charitable trusts in Fiji with the intention of providing a workable legislative framework that will promote accountability and transparency for all CSO's operating in Fiji;

•To also view the pros and cons of existing collaborative frameworks between NGO's and Government and seeing how these can be effectively maximized with a view to ensuring that the benefits arising out of these laws, policies and frameworks translate to promote public development and progress.

The Attorney General issued the Commission's Terms of Reference which outline the parameters of the review to the Commission on the 8th of March, 2006. The review must consider the following:

•The relevance and adequacy of the CTA and whether it is an appropriate framework to regulate charitable trusts and not-for-profit bodies (CSO's).

•Relevant laws in other jurisdictions regulating the formation, management, termination and dissolution of CSO's.

•The effect of other legislation including the Bill of Rights (Chp.4 of the 1997 Constitution) and international instruments, For example, the Cotonou Agreement which encourages the development of guidelines for consultation



Fiji Womens Rights Movement a non-government organisation based in Suva.

and co operation between governments and CSO's.

•The desirability of establishing an alternative body, Committee or Commission with a view to monitoring CSO activities.

•Imposition of taxes/statutory charges on CSO's.

•Transparency and accountability to members, shareholders, creditors and donors.

•Facilitating a Code of Ethics to guide CSO management, activities and dissolution.

•That schemes or activities of CSO's are not intended, designed or otherwise carried out for the purpose of financing

terrorism or any other criminal activity in Fiji or abroad.

The consultative phase of the review encourages stakeholders to make submissions on issues of concern. This law reform process engages a wide range of Ministries, NGO's, community organizations, churches and other religious bodies, Advisory Councils and members of the public to equally present their submissions. This is crucial to determining which areas of the law require changes.

A workplan is being finalized where a Project Advisory Committee would be set up to oversee the overall progress of the review. The review is expected to run till the 31st of December, 2006.

Further information or views on the Reference (including the Terms of Reference) may be obtained or forwarded to the Commission at Level 5, Civic Towers, Suva, Telephone: 3303900 Fax: 3303646 or from Kavita Naidu on email kavita.naidu@govnet.gov.fj.

Mental Treatment Act

THE Mental Treatment Act is part of the Commission's Work Programme for 2006.

The review is long overdue as the existing legislation was enacted in 1940 and had been amended sporadically in 1945, 1948, 1962, 1964, 1966, 1971, and the last amendment in 1975 more than 30 years ago. The law may be viewed as reactive rather proactive. It focus on the treatment of those with mental illness in the hospital but fails to address their rehabilitation and integration into the community.

The review is obviously needed as there are stringent demands that a new legislation ought to take into account the emergence of more sophisticated systems of patient advocacy and the increasingly complex medico – legal demands of clinical practice.

Previously lawyers had a relatively minor role to play in the process of involuntary hospitalization and its outcome however, today those processes are now subject to significant legal involvement, including the process of committal, judicial review, patient rights advocacy and official inspection. The increasing intrusion of law into



Saint Giles Psychiatric Hospital, the only hospital in the country that tends to treat mentally ill patients.

clinical practice has forced clinicians and managers to acquire a deeper understanding of relevant legislation. For many mental health practitioners some knowledge of the law has become a necessity of modern clinical practice.

People with mental disorders are vulnerable members of the society and they are often stigmatised, discriminated and marginalised. This increases the likelihood that their human rights will be violated.

A proposed Mental Health legislation can provide a legal framework for addressing critical issues such as the community integration, of person with mental disorders, the provision of care of high quality, the improvement of access to care and breaches of human right.

The current legislation is more focused on the treatment in the institution or based on health service but it fails to address vital issues in the promotion of mental health and prevention of mental disorder of patients.

In March 1998, the Mental Health Technical Working Party established by the National Health Promotion Council had proposed the full and formal Ministerial review of the Act based on the following recommendations:-

- It had been over 20 years since the Act was amended and substantially longer (over 50 years) since it was originally enacted. The Act was likely based on legislation enacted in the UK in the 1930s, making philosophies upon which the Act is based, more than half a century old.

- Since then, there have been major changes in the treatment of mental illness, public awareness and philosophical basis which now govern social policies in this area of mental health care.

- New psychiatric and psychological diagnosis and therapies have been developed. New counseling skills, group work skills and community intervention strategies should now be an important component of mental health services delivery.

- There have been significant advances in pharmacological and therapeutic resources. More importantly, the role that psychopharmacology should play in the treatment of mental

health disorders has been considered revised.

- Hospital management systems and health administration have changed dramatically and the potential roles of both institutional and community care have been redefined. Most importantly, large scale institutional care typified by St. Giles had been strongly challenged by the professions involved, who now place much greater emphasis on community based care and rehabilitation, public awareness and prevention through health promotion.

- Since the Act was legislated, there have been new international legal instrument concerning various aspects of human right which need to be addressed by the legislative regime and social policy in terms of patients' rights.

- The Act has now fallen behind minimally acceptable international standards.

- Any review should be recognizant of the following considerations:

- o There should be respect for individuals and their social, cultural, ethic, religious and philosophical values;

- o Individual need should be taken into account;

- o Care and treatment be provided in the least restrictive environment compatible with the care and safety of the family, community and public;

- o The provision of care and treatment should be aimed at promoting each individual's self – determination and personal responsibility;

- o There should be a provision of care and responsibility aimed at achieving the individual's own highest attainable level of health and well being.

The Commission is aware of the urgency for a review and has prepared a project paper to secure funding which was submitted to NZAID. The proposal is now being analysed before a final decision is reached.

12th Annual Prosecutor's Conference

THE 12th Annual Prosecutors Conference was organized by the Director of Public Prosecution on 12th to 14th December 2005 at the Fijian Hotel. Participating in the Conference were the State Prosecutors, Police Prosecutors, legal practitioners in firms and other organizations. Legal Officer Salakubou Vunivalu Raramasi attended the Conference on behalf of the Commission.

The Conference was opened by his Excellency Ratu Jone Madraiwiwi, Vice President of the Republic of Fiji. Major presentation focused on the following areas; Fraud Prosecution, Sentencing in fraud cases, Changing Trends in Serious Fraud, Building a Fraud Prosecution Case, Pitfalls in Prosecuting Serious Fraud, Identity Fraud, Fraud Risk Management in Financial Institutions, Finance Sector Fraud Management, Forensic Accounting, Fraud and Demise of the NBF, Fraud in the Public Sector and its Implication for Poverty Reduction and Good Governance, Legislative and Structural Needs and Phone Banking Fraud Operation.

The theme of the Conference was, "COMPLEXITIES

OF FRAUD – ITS CHALLENGES FOR PROSECUTORS" and dealt with issues that are relevant to the Term of Reference on the review of Penal Code and Criminal Procedure Code, particularly consideration of:

(a) *"The need for the creation of new offences and penalties relating to fraud and any fraudulent activities, including commercial fraud, trans-border and high-tech crime such as computer and electronic crime."*

Issues discussed at the conference were comprehensively presented by speakers within and outside the country. The Conference was a success as participants were able to discuss, exchange views and ideas focussed on the theme and the experience in Fiji.

Fraud in today's world is increasingly becoming complex and trans-jurisdictional in scope. There is an increase in the use of computer technology and internet as tools of fraud. Internet has enabled fraudsters to promote schemes to a wide audience of unsophisticated investors. The law needs to move

with these changes to modern commercial realities and prosecutors and investigators have to familiarize themselves with the methods to deal with these challenges. There is an increased need for specialisation

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COMMISSION NEWS UPDATES...

Taking law reform to the people

ADVISORY Councillors were introduced to the process of law reform as District Advisory Councils set up by the Ministry of Multi-Ethnic Affairs began their roundtable meetings from February 27 to March 31.

The Commission viewed the series of meetings as an opportunity to launch an awareness campaign driven towards sensitising the councillors on



Information Officer, Viliame Tikotani speaks at the District Advisory Council.

Minister for the Multi-Ethnic Affairs, George Shiu Raj. As the District Advisory Council meetings moved to the Central and Western Division, Mr. Tikotani spoke at all venues which include Korovou, Navua, Nausori, Vunidawa, Suva, Ra, Tavua, Ba, Lautoka and Nadi.

The Commission is grateful to the Minister for Multi-Ethnic Affairs for allowing it to be part of the formal District Advisory Council meetings. The opportunity has

the functions of the Commission. Information Officer Viliame Tikotani stated that the focus was to trigger thoughts into the process of law reform and get the Advisory Committees to understand what the Commission is about and importantly on their roles as councillors in encouraging participation and contributions from the people.

Mr Tikotani further stated that the law reform process allows for consultations with the stakeholders and members of the public and this is the idea for people to know and become aware of.

The Commission first provided an information paper to the Northern District Advisory Councils, which was chaired by

allowed the Commission to make contacts with various advisory councillors on the grounds which is essential and of assistance when it carries out formal public consultations leading with the Penal Code and Criminal Procedure Code around Fiji.

The Commission's presence at the DAC has ensured the highlighting of the 2006 Work Programme which priorities on the Penal Code and Criminal Procedure Code, Religious Bodies Registration Act, Charitable Trusts Act.

The strategy will slowly and gradually lay the platform for a conducive and highly interactive environment for consultation.

12th Annual Prosecutors Conference (cont'd from page 7)

in this area of law in order to adequately meet the challenges that are prevalent in the country to day.

The changing trends in serious fraud create difficulty in prosecution particularly in trans-jurisdictional transaction. The complex environment requires the development of specialised skills in order to meet the challenges that has

become increasingly difficult for the general prosecutor to meet those challenges. Modern commercial practice is extremely complex and contains within itself many areas of speciality. Prosecution work will also, demands specialisation if we are to provide an adequate response to new developments in the area of serious fraud.

STAFF ON THE MOVE.....

Professional Staff

SENIOR Legal Officer, Mrs Raijieli Vasakula Tuivaga resigned from the Commission and is now with the office of the European Union based in Suva as a Legal Development Advisor.

Mrs Tuivaga has been with the Commission for ten years and was Senior Legal Officer when she resigned. The Commission's staff wish Mrs Tuivaga the best in her new appointment.

Meanwhile, Legal Officer Salakubou Vunivalu Raramasi has been appointed to act as Senior Legal Officer.

Legal Officer Ms. Preetika Prasad has been transferred to the Office of the Attorney General in Lautoka and the Commission welcomed her replacement Ms. Kavita Naidu.

She is a law graduate of the Waikato Law School, NZ. She commenced her official duties on 17/02/06 and is responsible for the review of the Charitable Trusts Act.



The Commission welcomes the appointment of Mrs. Katalaini V. Ziru as its new Legal Officer. Mrs. Ziru is a law graduate of the University of the South Pacific.

STAFF ON THE MOVE(cont'd)

She commenced her official duties on 10/1/06 and is now responsible for the review of the Religious Bodies Registration Act.

The Commission also welcomes back the Law Librarian Advisor, Mrs. Lorraine Weinman who will be based in the Commission Office for three (3) months.

Corporate Staff

Executive Officer Vanavasa Tabaka who was with the Commission for three (3) years has been promoted to the position of Acting Administration Officer and transferred to the Ministry of Public Enterprise in early January this year.

The Commission welcomes his replacement Mr. Jone Naituivau who was transferred from the Office of Solicitor General and congratulated him and his wife on their wedding in Vatulele Island.

The Commission also welcomes Mrs. Anita Mani who has been appointed as its new Clerical Officer, and Mrs. Damyanti Chand, a new typist, who was transferred from



Lorraine Weinman



Vanavasa Tabaka



Viliame Tikotani



Damyanti Chand



Jone Naituivau



Anita Mani

the Attorney General office from Labasa.

Mr. Viliame Tikotani is the new Information Officer, a project post funded by the NZAID. He was transferred on secondment from Ministry of Information and brought with him valuable knowledge and experience that is much needed in the Commission.

Library Corner

THE Commission role and work requirement has made it necessary that it improves its ability to develop the capacity to use research material from whatever resources that are available. In response to that process, the library needs to increase its efficiency in meeting time frames and publication dates in its quest to assist in the dissemination of information and the publication of the Commission's report. The Commission's Library, at present, is under-going e-cataloguing using the CDS-ISIS software.

The Commission is privileged and grateful to provide office space to Ms. Lorraine Weinman who is the Law Library Advisor – Fiji Law & Justice Sector Programme. She is helping the Law Librarians in setting up their priorities and provides relevant information that assists them in creative area of their Library. This includes electronic judgments, relevant texts for LRC, cataloguing, better equipment, website for all libraries, electronic texts and coordination between libraries. She also assist the Fiji Law Librarians Interest Group (FLLIG) is a strong unit of confident librarians who influence opinions, organizes useful group work, and has also begun to lobby for itself. It has raised awareness of its useful existence in both the government and the professional circles. The 2006 work programme for FLLIG is:-

- i) Cataloguing Projects (ongoing) for all Law Libraries
- ii) Automation of Law Libraries
- iii) Web Presence
- iv) Law Librarians Retreat/Workshop for 2006
- v) Newsletter for FLLIG

vi) Developing of Strategic Plan

Law Librarians have faced daily ethical dilemmas when dealing with members of the public as they are not practicing attorneys and not in a position to give legal advice. The Law librarian has the duty to:

- diplomatically direct the patron to helpful materials and explain how to use those materials. Whereas Law Librarians in law firms differ as they provide services for the lawyers and staff in their own firm but not the general public.

Librarianship is about the processes of selecting, procuring, organizing, preserving, and making available data, information, and literature. These empower patrons to avail themselves to these, usually for the purposes of personal enrichment or for expanding the sphere of knowledge.

World Wide Weblink

THE website had played an instrumental role in the dissemination of the Commission's reports and legal changes since it launch last year. The site can be accessed on <http://www.lawreform.gov.fj>. The site is regularly updated.

Domestic Violence Review

The Commission's report on the review of Fiji's Laws relating to Domestic Violence has been placed on the website. The report is divided into the following sections:-

- 1) Volume 1 - Introduction & Executive Summary.

2)Volume 2 – Part 1: Legal Response to Domestic Violence: Context & Approach.

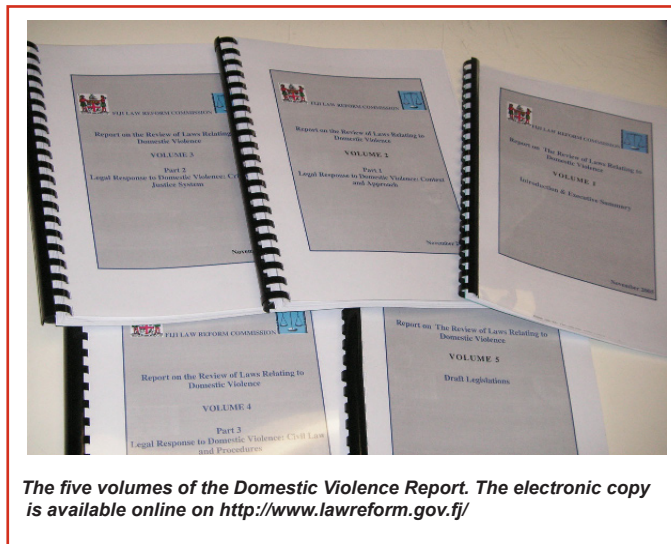
3)Volume 3 – Part 2: Legal Response to Domestic Violence: Criminal Justice System.

4)Volume 4- Part 3:Legal Response to Domestic Violence: Civil Law & Procedures.

5)Volume 5 – Draft Legislations.

Prison Review

The Final Report on the Prison review will shortly be placed on the website however, Issues paper one to four are already in the website.



Law Reform Roundup

THIS column was intended to outline briefly other law reform initiatives undertaken by other Government Departments, legislation recently enacted by Parliament and those Bills recently gazetted for consideration by Parliament.

1. Real Estate Agents Bill 2005 - Referred on 29/11/05 to Sector Standing Committee on Administrative Services and to report back in May 2006
2. Customer Credit (Amendment) Bill 2005 - Enacted 22/3/06
3. Fiji Public Trustees Corporation Bill – Bill No. 1 of 2006 - Enacted 22/3/06
4. Income Tax (Budget Amendment) Bill 2006 – Bill No. 2 of 2006 - Enacted 22/3/06
5. Hotels Aid (Budget Amendment) act 2006 – Bill No. 3 of 2006 - Enacted 22/3/06
6. Hotel Turnover Tax Decree 2006 – Bill No. 4 of 2006 - Enacted 22/3/06
7. Local Govt Bill 2006 – Bill No. 5 of 2006 - Referred on 22/2/06 to Sector Standing Committee on Administrative Services
8. 2006 appropriation act 2005 - Enacted 21/12/05
9. Income Tax (FEA AMDT) act 2005 - Enacted 9/11/05
10. Prisons & Corrections Act 2006.

11. Hotel and Guest House (Amendment) Act 2006.
12. Public Private Partnership Act 2006.
13. Liquor Act 2006.
14. Consumer Credit Amendment Act 2006.

These Bills and Acts may be viewed on the Fiji Parliament website (www.parliament.gov.fj). Briefs prepared by the Parliamentary Secretariat on the Bills may also be available on the site. Other online sources of Fiji legislation include the Ministry of Finance ITC website (http://www.itc.gov.fj/lawnet/fiji_laws.html) or the University of the South Pacific School of Law website (<http://law.vanuatu.usp.ac.fj>). Hard copies may be purchased from the Government Printing and Stationary Department.

The Commission's Research Papers, Bills and Final Reports

1981 Final Report of the Royal Commission on the Treatment of Offenders Part I.

1983 Final Report & Bill: Unit Titles.

1983 DP* on The Problems of Child Abuse.

1983 DP: Alternatives to Imprisonment.

1983 DP: The Duty Solicitor Scheme.

1984 DP: Review of the Prisons Act and subsidiary legislation.

1984 DP: The revision of laws relating to

copyright in Fiji.

1984 Issues Paper: Imprisonment and Community based alternatives to imprisonment.

1986 Final Report: An examination of the laws and practices relating to Penal Policy in Fiji.

1986 Final Report: A review of the laws and practice of copyright and neighbouring rights in Fiji.

1993 Position Paper: Abortion law in Fiji and Proposals for Change

1995 Final Report: Insurance Law Reform.

1996 Final Report: Legal Aid

1996 DP: Rehabilitation and the problem of old convictions

1996 Final Report: Solicitors Trust Accounts and Legal Practitioners Fidelity Fund Report.

1996 Working Paper: Family Law Working Group

1996 Position Paper: Abortion law in Fiji and Proposals for Change

1996 Final Report: Legal Practitioners Act Law Reform.

1997 DP: Family Law: Divorce

DP: Family Law: Affiliation

1997 DP: Family Law: De Facto Relationships

1997 DP: Family Law: Maintenance and Enforcement of Maintenance Orders

1997 DP: Family Law: Marriage and Separation

1997 DP: Family Law: Financial Support

1997 DP: Family Law: Custody and Access

1997 DP: Family Law: Structure of the Family/Domestic Court

1997 Final Report: Drink Driving Report.

1997 Draft Bill: Juveniles Act Amendment Bill 1997

1997 DP: Evidence law: Recent Complaint

1997 DP: Evidence law: Corroboration

1997 DP: Evidence law: Confessions

1997 DP: Evidence law: Competence and Compellability

1997 DP: Evidence law: Unsworn Evidence

1997 DP: Evidence law: Right to Silence

1997DP: Evidence law : Expert Opinion Evidence

1998 Final Report & Bill: Bail Law Reform Report.

1998 Issues Paper: Police Powers in Fiji

1998 DP: Police Powers: Sources of Police Powers in Fiji

1998 DP: Police Powers: Arrest and Detention

1998 DP: Police Powers: Search and Seizure

1998 DP: Police Powers: Investigation Procedures

1998 Final Report: Police Powers in Fiji

1998 Final Report & Bill: Intellectual Property and Copyright Law Reform in Fiji.

1998 Final Report & Bill: Consumer Credit, Hire Purchase; Bills of Sale Act & Sale of Goods Act.

1998 Final Report: Bankruptcy of Persons and Insolvency of Companies.

1998 Draft Bill: Criminal Procedure Code Amendment Bill 1998 (Bail can be appealed to the High Court)

1998 Draft Bill: Court of Appeal Act Amendment Bill 1998 (Bail) (jurisdiction of COA to entertain Bail appeals)

1998 Final Report: Swordsellers – Recommendations for law reform.

1998 DP: Cameras in the courtroom – televising coverage of court proceedings

1998 DP: Revision of the Part VI and VII High Court Act

1998 Final Report & Bill: Revision of the Part VI and VII High Court Act.

1999 Draft Bill: High Court Act Amendment

Bill 1999 (increase in number of Puisne Judges to 12)

1999 Draft Bill: Penal Code Amendment Bill (penalty increase for Sacrilege)

1999 DP: Sexual Offences Against Children in Fiji

1999 DP: Working Children in Fiji

1999 DP: Children and Drugs

1999 DP: Juveniles Justice in Fiji

1999 Bulletin 1: Sentencing in Fiji

1999 Bulletin 2: Sentencing in Fiji

2000 Issues Paper: Sentencing law reform in Fiji

2000 Final Report: Sexual Offences.

2000 DP: Wills and Succession law reform in Fiji

2000 Final Report: FLRC Report for Children 2000.

2001 Final Report: Wills and Succession Law in Fiji.

2002 Final Report: Committal Proceedings in Fiji.

2002 Issues Paper: Liquor Laws in Fiji

2003 Final Report: Bribery and Corruption.

2003 Final Report: Review of Liquor Laws in Fiji

2004 Issues Paper: Prisons: Aspects of Prisons Administration

2004 Issues Paper: Prisons: Matters promoting a shift from containment to corrections

2004 Issues Paper: Prisons: Human Rights Considerations

Issues Paper: Prisons: HIV/AIDs in the Prisons Context

2004 Discussion Paper: Domestic Violence, Legal response to Domestic Violence context and approach

Summary of Key Issues raised in the Discussion

Papers on Legal response to Domestic

Violence Final Report of Domestic Violence.

2005 Domestic Violence Final Report
 Volume 1-Introduction & Executive Summary
 Volume 2- Legal Response to Domestic Violence Part 1: Context and Approach
 Volume 3-Legal Response to Domestic Violence Part 2 Criminal Justice System
 Volume 4- Legal Response to Domestic Violence Part 3 Civil Law and Procedure
 Volume 5 -Draft Legislations

LEGISLATION & Subsidiary Legislation resulting from FLRC references

Unit Titles Act Cap.274 (No.13 of 1985)

Insurance Law Reform Act 1998;

Insurance Act 1998

Legal Aid Act 1996 Rehabilitation of Offenders Act 1997 (Irrelevant Convictions)

Trust Accounts Act 1996

Legal Practitioners Act 1997

Land Transport Act 1997 – breathalyser regulations

Juveniles Act Amendment Act 29/1997 (Child Pornography)

Bail Act 26/2002

Copyright Act 1999

Consumer Credit Act 1999

Criminal Procedure Code Amendment Act 37/1998

Court of Appeal Amendment Act 38/1998

High Court Amendment Act 27/1998

High Court Amendment Act 37/1999

Penal Code Amendment Act 42/99

Civil Evidence Act 2002

Penal Code Amendment Act 2003

Criminal Procedure Code Amendment Act 2003

Family Law Act 2003

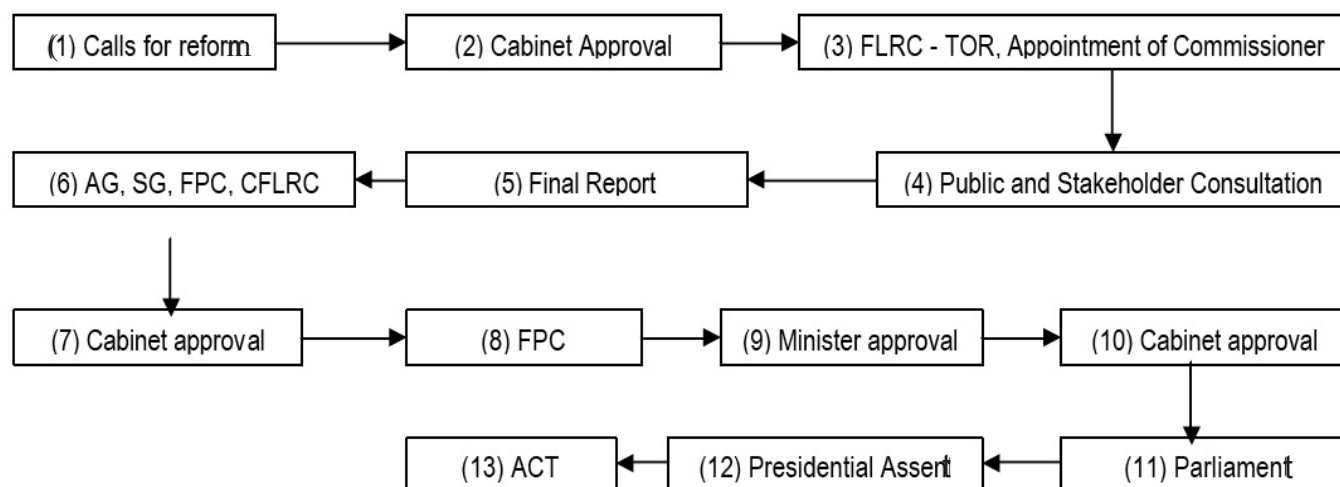
Liquor (Amendment) Act 2006

Prison & Corrections Act 2006

Succession, Probate and Administration Act 2004

FLRC Review Procedures and Process

The Commission's review process and procedures can be best described in the following diagram.



Notes

- (1) The call for the reform of legislation may be made by Parliamentarians, civil society organisations, stakeholders, Ministries, members of the public or other organizations.
- (2) In order for the Law Reform Commission to undertake a review, the Attorney General must first seek Cabinet approval, under the FLRC Act.
- (3) The Terms of Reference (TOR) is drafted by the FLRC before approval and issuance by the Attorney General. The TOR states the area of the law to be reviewed and the parameters, scope and the duration of the review. The Attorney General then appoints Advisor(s) from a pool of individuals or review teams well versed in the area of the law proposed for review who have expressed their interest in advising the Commission. The Attorney General can appoint a lone Advisor or a Team of Advisors to lead and undertake the review.
- (4) The Commission's consultation process involves drafting and distribution of Issues Paper to stakeholders, the public and community organisations. A Discussion Paper fleshes out the issues identified in the IP and puts forward for consideration possible changes to the law. The views and reactions of stakeholders, members of the public and community organisations are canvassed at public hearings and community consultations. They may also give written submissions to the Commission if they cannot attend community consultation hearings.
- (5) The Commission then considers the laws and law reform reports of other jurisdictions, takes into account the views of the public, stakeholders and community organisations, before drafting a Bill and a narrative Final Report with recommendations to the Attorney General on a new legislative regime that is appropriate for Fiji. The Final Reports contains the recommendations for reform.
- (6) The Advisor(s) then submits the Final Report and Bill to the Chairperson of the Commission. The Chairperson forwards a copy of the Report to the Attorney General, the Solicitor General, and the First Parliamentary Counsel (legislative drafter). The Advisor(s) formally present the Report to the Attorney General in the presence of the CFLRC, SG and FPC.
- (7) The Attorney General prepares a Cabinet Paper based on the recommendations on the Report and submits it to Cabinet for discussion and approval. If a Bill has not been prepared, the Cabinet Paper will seek approval of the recommendations and for the legislative drafter to begin drafting a Bill to implement the recommendations.
- (8) The Attorney General then authorises the First Parliamentary Counsel to draft necessary Bills incorporating the recommendations of the Report or those approved by Cabinet. If the Commission had drafted a Bill, then the FPC will vet it to be consistent with Fiji's drafting conventions and to be consistent with the Constitution, treaty obligations and existing laws.
- (9) The Attorney General must approve of the Bill.
- (10) The Bill is approved by Cabinet, through its Subcommittee on Legislation.
- (11) The Bill is tabled in Parliament and debated upon by both Houses.
- (12) The President must assent to the Bill before it becomes law.
- (13) The Bill becomes law. It may amend existing laws or create a new statute.

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Qolilawa Darpan

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Why a newsletter

WE decided to remind new readers of the Qolilawa Darpan of the raison d'être of the newsletter.

We have borrowed from the first issue of Qolilawa Darpan of December 1996.

The Law Reform Commission is the body empowered by the legislature to keep under review all law applicable to Fiji. Its primary role is the simplification, the improvement and the modernization of the law.

Such objectives can be reached by maximizing mutual consultations envisaged in section 5 of the FLRC Act Cap.26, between the Attorney General and the Commission.

Such a process exists and its continued exploitation will result also in the achievement of the positive purpose of the law for national growth.

The consultative process anticipated under the empowering enactment also provides a useful and necessary bridge between the Commission and the legislature. For the layman as well as the lawyer, the law should be certain and predictable.

Whenever possible improvements to and modernization of the law should be regarded as a single objective.

It follows that a new law or legal machinery needs to be substituted for the old, where the latter no longer has any practical application or has otherwise become an impediment to the achievement of national goal.

A distinctive feature of the procedure of the Fiji Law Reform Commission is its participatory nature.

“Taking Law reform to the people” has become a distinctive feature of our law reform process.

It is imperative that the Commission facilitate effective and productive consultation with specialist, professional and other public interest groups in the community.

Public hearing provide invaluable guidance and context to issues under reform. Such process permits the cross—fertilization of ideas from different levels within society and across boundaries as well.

To inform the public and raise awareness of the Commission's role and activities, the Fiji Law Reform Commission will continue putting out its newsletter.

To those of you who are not familiar with our newsletter, the Fijian term is derived from two words: Qoli (which means to fish) and Lawa (which means a net or indeed, the law). Darpan, means “mirror” or “to reflect”.

The concept which Qolilawa Darpan tries to capture is the process of dissemination of information, consultation and the gathering in of the views and opinions as many as possible. This process enable the Commission to arrive at recommendations for reform which are appropriate and representative of diverse multi—cultural community of Fiji.