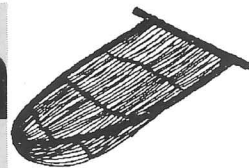


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PACIFIC COLLECTION



# Qolilawa Darpan



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NEWSLETTER OF THE FIJI LAW REFORM COMMISSION

ISSUE 10 MARCH 1999

## The Chairman's Report

*Mr Apisalome R Matebalavu*

Welcome to another year of law reform.

The central task for the Fiji Law Reform Commission "...to take and keep under review all the law applicable to Fiji with the view to its systematic development and reform..." continues to be critical as we approach the new millenium. This task enables the Commission to be an objective source of advice on a diverse range of legislative and policy proposals as will be seen below.

### Completed References

The two year work programme for the periods 1997 to 1998 have been completed and their recommendations are discussed below:

#### • Family Law Reform

The major recommendations of this report is a new legislative framework governing family relationships in Fiji.

#### • Company and Commercial Law Reform

A major component of this reference: the Copyright Bill was recently passed by the House of Representatives.

#### • Criminal Justice System Reform

The recommendations of this significant reference are geared to making all facets of the criminal justice system effective and efficient through:

- Various amendments to the Criminal

Procedure and Penal Codes which will expedite court practice and procedure;

- Reform of Sexual Offences;
- Draft legislative frameworks for Bail and Police Powers in Fiji ; and
- A Draft Evidence Bill

#### • High Court Act Reform

The High Court Act reforms is envisaged to clarify and have a positive impact on the practice and procedure in the High Court.

### Continuing References

The outstanding references are:

- Wills and Succession, and
  - Offences Against Children
- These references are due for completion in February 2000.
- Criminal Justice System Reform
- Given the breadth and scope of this reference, it has been unanimously agreed that this will be an on-going exercise for the Commission.

### Proposed References

These areas have been earmarked for review and reform:

#### • Domestic Violence

Government's commitment as spelt out in the National Plan of Action for Women to remove this escalating discriminatory practice makes this reference an urgent priority.

#### • Arbitration/Alternative Dispute Resolution

It would appear that the growing public dissatisfaction with the inefficiencies of the court system make this reference timely in that it will explore the feasibility of Alternative Dispute Resolution (ADR) in Fiji.

#### • Committal Proceedings, Sentencing and Defences against Property and Theft

These areas will form part of the on-going reforms of the Criminal Justice System.

#### • Land Transfer Act and Landlord & Tenant Relationships

The law governing landlord and tenant relationships in Fiji has not kept abreast with developments in this area of the law. The reform process will address the gaps and tailor proposals to suit Fiji conditions.

It is anticipated that the Attorney General will shortly announce new Commissioners for the 1999-2001 work programme.

I commend all the Commissioners for their expertise and dedication in ensuring the completion of these wide ranging references. I extend the gratitude of the Commission to all the individuals, organisations and government agencies that have assisted with the work of the Commission.

The Commission is confident of achieving its goals in 1999 with the able support of and contribution by its growing network of partner agencies and organisations.

## Completed References

### FAMILY LAW

Commissioner: Ms P Imrana Jalal  
Senior Legal Officer:  
Asenaca Uluiviti

Commissioner Ms Jalal has

submitted the final report on Family Law Reform to the Attorney General.

The report contains 297 recommendations which will constitute drafting instructions for new legislation which amongst other things will establish a new Family Court.

The Commission takes this oppor-

tunity to extend its gratitude to all those who have contributed to the work of this reference, both in Fiji and abroad. The Commission hopes that work on the drafting of the legislation, including the rules and procedures will begin in the next few months.

## EVIDENCE

Commissioner: Justice M D Scott  
Legal Officer: Yashveen Singh

The Criminal Evidence report under Commissioner Justice Michael Scott was formally completed in January 1999 and presented to the Attorney General.

The report is divided into nine key areas of discussion:

1. Hearsay Evidence;
2. Opinion and Expert Evidence;
3. Documentary Evidence;
4. Confessions (including right of silence);
5. Character Evidence (including conduct and similar facts, spent convictions, proof of previous convictions);

6. Credibility (including corroboration and recent complaint);
7. Competence and compellability (spousal, children, vulnerable, unsworn evidence);
8. Privilege (including public interest immunity);
9. Any other related matter including identification, anonymity, closed court and pre-trial conferences.

The absence of any scholarly work or commentary on the domestic application of evidence rules positively challenged FLRC at the start of this reference. The recommendations drew from the reform experience in the United Kingdom, Australia and New Zealand which were then tailored to suit Fiji's

conditions. The Evidence Report is a landmark for Fiji in that it fills a void in both criminal law (and to a limited extent) civil proceedings in Fiji.

A central feature of the Commission's work is its consultation process. In this regard, the few but detailed submissions received have assisted the Commission in shaping practical and realistic recommendations.

The final report which includes a draft Evidence (Amendment) Bill, aims to modernise and simplify the civil evidence regime. A criminal evidence code will build on this development. The report acknowledges that the criminal and civil evidence rules are complementary.

## CONTINUING REFERENCES

### Offences Against Children

Commissioner : Mere Pulea  
Legal Officer: Anare Tuilevuka

#### Children & Drugs

The Fiji Law Reform Commission has been working on the subject of children and drugs in close consultations with an insectoral working group. The group comprises representatives from the Police, the Department of Social Welfare, FCOSS and the Ministry of Education. These discussions with the working group are invaluable in shaping the recommendations for this reference.

There was overwhelming agreement by group members that curtailing the availability of drugs to Fiji children should be the subject of legislative and policy reform. Preventative strategies should be geared to shielding children against the dangers of illicit drugs.

A Social Welfare Department profile of these children reveals a common pattern: broken home, poverty, history of abuse etc. This however, is not to suggest that children from a more comfortable socio-economic background are immune.

Recent media reports have also highlighted a disturbing trend in the alleged use of children to smuggle drugs into prison.

In early February, the Commission

discussions with WHO Consultants: Dr Adrian Reynolds and Dr Tanimoto who were assisting the Ministry of Education to set up the Substance Abuse Advisory Council (SAAC) under of the SAAC Act 1998

The Consultants' highlighted that no preventative programme against tobacco, alcohol and drug abuse can be effectively pursued unless premised on changing the social and culturalist norms which glamorize these activities.

In particular Dr Reynolds cautions against mandatory counselling as it would appear to have potentially damaging consequences for child drug offenders. In supporting the initiatives for pre-trial diversion counselling, Dr Reynolds proposes that a more effective scheme is one which aims to provide various levels of counselling and remedial options to suit each individual case.

Such schemes have recorded benefits in other jurisdictions. The Commission will explore the potentials of these.

#### Mandatory Sentencing

Before 1990, Magistrates could exercise their discretion under section 44 of the Penal Code not to impose a custodial sentence on a drug offender.

The 1990 Dangerous Drugs Decree however removed that discretion in relation to drug offences. Since then, the violation of any drug law in Fiji has carried a mandatory custodial sentence with a minimum of three months. However the Commission is of the view that the policies behind these

laws should be revisited in light of new research data.

Although fully aware of the effect of both the 1990 decree and the 1997 High Court decision in *Alifereti Nakautoga* some magistrates have continued to exercise the discretion under s.44 in favour of drug offenders, strictness in the provisions has caused magistrates to excise leniency when sentencing a drug offender as a matter of personal conviction and conscience.

A pre-trial diversion-counselling programme will be suggested, mindful of course of the suggestions highlighted by Dr Reynolds and Dr Tanimoto. There is already wide support for this in various sectors, including the Police and the Criminal Justice Council.

#### Working Children

Work on this part of the reference continues and the Issues Paper is looking very interesting, particularly after our second Working Group meeting on January 28.

Some useful suggestions arising out of the meeting and which have influenced the direction of the Commission's work are:

- better and more wholesome support system for child beggars. The Department of Social Welfare is to provide the FLRC with information relevant to this.
- closer scrutiny of government education policies and the guarantee of the "right to basic education" and

## Continuing References..

enshrined in the Constitution - recognising that compulsory education is most effective tool for combating child labour.

Other Papers in the progress include:

- Children in Court and
- Child Abuse (Sexual Abuse and Neglect)

## Criminal Procedure Code and Penal Code Reform

Commissioner: Anthony Gates  
Legal Officer: Raijeli Vasakula

Commissioner Gates is to shortly complete and submit his report on Sexual Offences to the Attorney-General.

As part of this reference, the Commission held consultations with representatives of major stakeholders namely: the judiciary, magistracy, DPP's Office, Sexual Offences Unit of the Fiji Police Force, Ministry of Women and Culture, Fiji Women's Rights Movement, the Fiji Women's Crisis Centre and the

Pacific Regional Human Rights Education Resource Team (RRRT).

Discussions centred on the following key reform issues:

- Widening the definition of rape
- The grading of indecent assault offences according to severity/seriousness of the assault
- Statutory definition of "consent"
- Division of age of consent into three categories
- Sexual acts in public to be made a criminal offence
- Strengthening the current provisions governing sexual offences against mentally impaired persons
- The effect of removing the Accused's right to election
- Reconcilable provision under s163 CPC
- Increasing the maximum 7 year imprisonment
- Creation of new offences for example attempted rape
- the merits of an anti-stalking provision.

The flow-on effects of the proposed reforms were raised:

- (1) The economic costs of implementing the proposed amendment to the s222

CPC must take into account the DPP's right to control and preside over prosecutions. Therefore, if the High Court is given exclusive jurisdiction to try rape cases, it is expected that up to 80 rape cases of indecent assault and child abuse will be handled yearly. This will require additional human resources to cope with the increased work load.

- (2) The impact of Article 38(2) of the Constitution (Amendment) Act on the offences of indecent practices between males as set out in the Penal Code.
- (3) A recommendation to protect a sex worker from assault when selling his/her services.

The fundamental freedom from cruel or degrading treatment entrenched in Article 25 of the new Constitution provides the benchmark against which victim protection proposals will be measured.

Arguably Article 43(2) of the new Constitution which enables the courts to have regard to relevant international conventions could result in test cases being brought before the Courts.

FLRC would welcome your further views and comments on this areas.

## CONFERENCE CIRCUIT

In order to keep abreast of developments in the law, the Commission aims to participate in conferences, meetings or training workshops that have a bearing on its various work references.

### 6<sup>th</sup> National Prosecutors Conference

13-17 December 1998,

Fiji Mocambo Hotel, Nadi

by Legal Officer Daiana Buresova

An annual event on the prosecutor's diary is the National Prosecutors Conference. This forum provided an opportunity for networking and raising the profile of the Commission.

The theme of the conference: "The Prosecution Process and Good Governance" fitted in well with the Commis-

sion's Police Powers reference which was at its final stages of completion. More importantly, the new Constitution provides a detailed template of rights against which police powers must be measured. As part of raising awareness of the Commission's work programme; the Commissioner in charge of this reference: Professor Mark Findlay delivered a paper on "The Constitutional Implications on the Investigative Process". This presentation was used as an opportunity to expose and obtain feedback on the Commission's proposal for a draft Police Powers Bill to an important stakeholder: the State and Police Prosecutors.

Although the topics discussed were of practical relevance to the participants, it was useful for the Commission to have this insight. This insight provided the Commission with a glimpse of the problems that they encountered in their daily operations as prosecutors. Topics

ranged from the New Bill of Rights and its impact on the Criminal Justice System in Fiji to Corruption, Risk Recognition and Management. It was evident that technological advances and evolving face of the law pose significant challenges to stakeholders in the criminal justice system.

### Attorney General's Chambers Conference

17-19 December 1998,

Centra Resort, Pacific Harbour

by Legal Officer Daiana Buresova

The inaugural Attorney General's Chambers Conference marked the first ever gathering of government legal advisors. It was an opportunity to engage in informed discussion and debate on pertinent legal issues confronting Fiji's legal system.

The first day of the conference saw the Commission make a presentation on the progress and development of its vari-

ous references. Despite his heavy work commitments we were fortunate to have Commissioner Professor Mark Findlay who joined with the staff in its presentation. For his invaluable input, we are grateful.

The theme: "Approaching a New Millennium" was reflected in the choice and range of topics discussed at the meeting. These touched on areas such as the New Electoral Process to the Role of the Auditor-General. This conference also saw the launching of the Attorney General's Law Bulletin *The Legal Lali* and the conference ended with the AG's 1998 Christmas Party.

The challenges that lie ahead for policy makers was succinctly stated by the Attorney General in his closing remarks: "As we enter the new millennium, it is important that in the new institutions we create, re-emphasise the importance of striking the right balance between traditional values and modern day need for change. Central to this is the emphasis placed on the rights of women and children."

### **Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Culture**

February 1999, Noumea

by Senior Legal Officer Asenaca Uluiviti

The Symposium was attended by 22 Pacific states and territories each having different needs in the area of intellectual prop-

erty protection. The discussions emphasised the inflexibility of classical intellectual property rights systems in protecting traditional knowledge and indigenous cultural expressions. The option of developing its own "law" for such protection was well received. However the Symposium also explored the option of adapting the classical intellectual property regime for protection of traditional knowledge and expressions of indigenous cultures.

The approaches could be spearheaded at regional and national levels. The prospects for such innovative remedies under the existing intellectual property regime are challenging.

The Symposium was particularly timely for Fiji which is preparing to enact new legislation and its implementation which would involve a new regime. There are plans to also reform the industrial property rights regime.

### **National Seminar on Intellectual Property Protection for Development in Fiji**

8-11 March 1999, Pacific Community Headquarters, Suva  
by Legal Officer Yashveen Singh

The World Intellectual Property Organisation (WIPO) recently held a national seminar in Fiji hosted jointly by the Attorney

General's Chambers and the Ministry of Justice.

The Attorney General Hon Ratu Etuave Tavai, officially opened the seminar. The seminar is a follow up to the WIPO proposals for further co-operation between the Fiji Government and WIPO.

This seminar focussed on four broad themes:

- (1) Basic Notions of Intellectual Property;
- (2) WIPO Co-operation for Development Programme;
- (3) The National Dimension of Intellectual Property; and
- (4) The TRIPS Agreement and its implications.

The seminar was attended by stakeholders representatives in the wider intellectual property rights regime. These included recording artists, performers, record companies, collecting society, customs, police, Ministry of Trade and Commerce, other government departments, legal practitioners and educational establishments.

The resource persons for the seminars included WIPO officials, technical experts from Australia and Fiji Government officials.

### **Staff Movement**

The Director Ms Florence Fenton will be in the United States for the month of April for a US sponsored International Visitor Programme. This programme will enable her to directly assess the potential for similar legal institutional frameworks in Fiji. This is particularly important from a law reform perspective.

As we go to print Senior Legal Officer Asenaca Uluiviti is attending the 3<sup>rd</sup> Asia and Pacific Seminar on Copyright and Neighbouring Rights in Tokyo, Japan.

Legal Officer Yashveen Singh will represent FLRC at the NZ Triennial Law Conference in April.

FLRC also hopes to confirm brief overseas attachments for Legal Officer Anare Tuilevuka and FLRC Librarian David Waqanivalu. All these opportunities build capacity within the Commission.

FLRC Senior Clerical Officer Tamari Marawa will be temporarily based at AG's Chambers on promotion as Acting Assistant Accountant.

### **Library Corner**

Recent publications received by the FLRC Library

#### **UNITED KINGDOM Law Commission**

*Land registration for the twenty-first century: A Consultative Document No. 254* offers a blueprint for the development of conveyancing in England and Wales over the next century.

#### **AUSTRALIA NSWLRC IP 15**

*Review of the Community Services Complaints, Appeals and Monitoring Act 1993 (NSW) September 1998* discusses the appropriateness of the complaints mechanism under the Act.

#### **NSWLRC IP 16**

*Review of the Disability Services (DSA) Act 1993 (NSW), September 1998* examines aspects of the DSA

such as whether the object remains valid, whether other terms of the DSA are appropriate. It questions the operation of the DSA provisions and its resource implications.

#### **NEW ZEALAND**

##### **NZLRC 51**

*Dishonestly Procuring Valuable Benefits, December 1998* reports on the problem area highlighted in the Court of Appeal decision in *R v Wilkinson* (13/10/98, CA 122/98) and recommends the urgent adoption of proposals contained in this report.

##### **NZLRC PP35**

*Shared ownership of Land: A discussion paper, January 1999* examines the methods employed that enable the granting of ownership to parts of a single allotment in New Zealand.



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## From the Executive Chairperson



Work on the Penal Code (PC) (Cap.17) and Criminal Procedure Code (CPC) (Cap. 21) reference commenced in mid-May, 2005 when the first round of consultations with major stakeholders was carried out.

The consultation enabled the Commission to hear from the law enforcement agencies their insights, and particularly the difficulties they face in the administration and enforcement of the two Codes and how this constrains the responsiveness of the criminal justice system.

The two Codes are outdated and in need of a complete overhaul. A piecemeal approach is unhelpful.

The TOR for the review of the Codes issued by the Attorney-General and Minister for Justice may be summarized as follows:-

*".....to review in a holistic manner the Penal Code and Criminal Procedure Code to update and recommend changes in relation to offences; penalties/punishment; jurisdiction, defences and criminal procedures and matters incidental thereto which are reflective of and responsive to existing local and global conditions, circumstances, trends and practices"*

The first round of consultation was a great success. It enabled the finalization of a "work

*The Review Team for the Penal and Criminal Procedure Codes meeting with the Attorney General and Minister on 18th May 2005. Clockwise: Professor Gerard McCoy QC, Attorney General Senator Qoriniasi Bale, Executive Chairperson Mr. Alipate Qetaki and Legal Officer Mr. Raramasi Salakubou.*

plan" for the reference following discussion between the Commission and Consultants; signing of the Consultancy Agreement, and detailed discussions with major stakeholders on strategy and approach to the review, including the prioritization of issues highlighted in the very detailed TOR.

The DPP had described the PC as "suffering from chronic over-specificity". One has to look at the law of larceny to understand what is meant here. Part XXVII of the Code describes no less than 14 offences of larceny, from 'larceny of will' to 'larceny of dog'. In reality the underlying mischief being punished is simply the criminal act of theft.. The law is quite capable of distinguishing between various types of theft at the sentencing stage".

Reforms in the area of fraud is of special importance to law enforcement agencies in Fiji, as it is a major weapon in the fight against corruption. As well, the incidence of cyber crime must be accounted for, and a

## From the Chairperson (cont)

legislation creating appropriate offences is being considered.

In relation to the CPC, the DPP has suggested that changes be considered in the following areas: *provision for pre-trial directions hearing; provisions for taking evidence on any hearing by telephone or video link with all necessary deeming provisions to accommodate oaths administered extra-territorially; facilitating the issue of warrants for the use of covert surveillance devices – audio, video, and telephone intercepts.*

The TOR reflects these concerns amongst 35 distinct enumerated priorities or limbs for the review to focus on. The review is to be completed by the end of June, 2006.

For any review consultations with the community and stakeholders is crucial. The Commission is mindful of the wide range of issues that the review will address (example constitutional, legal, conceptual, policy, technical, technological and social). In relation to social issues there is a need to be sensi-

tive and culturally appropriate to ensure that any measure recommended will be effective (that is, practical and workable) within Fiji. Issues and Discussion Papers will be prepared and distributed to assist in the consultation process. The review will not be successful without the support of all major stakeholders in the criminal justice system, Fiji's diverse communities and citizens generally.

The reference is undertaken as a joint project of the Fiji Government through the Commission and the New Zealand Government through NZAID. I thank NZAID for the generous funding assistance to the Commission to enable it undertake this important work.

*A full copy of the Terms of Reference may be viewed on the FLRC website at: <http://www.lawreform.gov.fj/common/default.aspx?page=CriminalTOR> or from the FLRC upon request*

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## Commission News

### APPOINTMENT OF PART-TIME COMMISSIONERS

To assist the Commission with its work, discussions are continuing with the Honourable Attorney-General and Minister for Justice for the appointment of part-time Law Reform Commissioners under Section 3(2)(b) of the Fiji Law Reform Commission Act.

The Act requires the appointment of not less than 3 other Commissioners by the Attorney-General for a period of not exceeding 3 years on such term, as may be specified in their instruments of appointment. Part-time Commissioners are eligible for reappointment. It is envisaged that when appointed the Commissioners will perform the following functions:

1. Assist the Chairperson of the Commission in making policy decisions.
2. Assist the Chairperson of the Commission in vetting and scrutinizing reports from Consultants and Commission's draft final reports.
3. Assist in the management, supervision and examination of laws referred to them by the Chairperson of the Commission.
4. Attend to other matters referred to a Part-Time Commissioner by the Chairperson.

Commissioners will be paid such remuneration or allowances, or both, as may be determined by the Public Service Commission in consultation with the Attorney-General; and will be subject to the PSC and Finance regulations.

### CIVIL RULES AND PROCEDURE COMMITTEE

A proposal for the revival of the Civil Rules and Procedure Committee is under consideration by the Honourable Attorney-General and Minister for Justice. The Commission's work programme for 2005 as approved by Cabinet include the review and reform of civil rules and procedure.

The review is to be undertaken by a Committee to be appointed by the Attorney-General in accordance with Section 3(6) of the Fiji Law Reform Commission Act. As to composition, it is proposed that members of the Committee are to be drawn from the Judiciary, Fiji Law Society and the Office of Solicitor-General with the Commission performing the Secretariat functions.

Committee members will be appointed soon, and the proposed terms of reference is:-

*"The Civil Rules and Procedure Committee is to review Civil Rules and Procedure applicable to Courts in Fiji and report and make recommendations to the Attorney-General and Minister for Justice for their development and reform".*

While this will be an *ad hoc* Committee it is the intention to have a permanent and ongoing Committee given its specified area of focus and the need to continually review and improve civil rules and procedures.

# Commonwealth Working Group on Asset Repatriation

The Executive Chairperson, Alipate Qetaki attended the 4<sup>th</sup> and final meeting of the *Commonwealth Expert Working Group on Asset Repatriation (Group)* held in London from Wednesday 29<sup>th</sup> June, to Friday 1<sup>st</sup> July, 2005.

The other three meetings were held in June and November, 2004, and March, 2005 respectively, all at Malborough House, London.

The Group completed its final report on 1<sup>st</sup> July, 2005 which was submitted to the *Secretary-General of the Commonwealth, the Rt. Honourable Donald McKinnon*. The Report will be presented to the Commonwealth Law Ministers in October 2005, and then to the Commonwealth Heads of Governments in November, 2005.

The report is a comprehensive one responding to the terms of reference issued by the Commonwealth Secretariat. It contains recommendations in each of its 12 Parts, with "10 Key Recommendations" for consideration by Law Ministers and Heads of Governments.

The 12 Parts of the Report are: *Introduction; Misap-*

*propriation of Assets; Preventing the Movement of Funds; Serving Heads of State; Mechanisms for Asset Confiscation; Tracing, Tracking of Assets; Mutual Legal Assistance (General); Availability of Mutual Assistance; Mutual Assistance for Freezing/Restraint/Confiscation of Assets; Mutual Assistance (the Harare Scheme); Restraint of Assets and General Recommendations for Implementation.*

Commenting on his participation Mr. Qetaki said:

"I believe I have discharged my responsibilities to the Group and Secretariat with diligence, and contributed significantly to the discussion of issues [from the point of view of small Island economies and States (South Pacific) and generally], and in the finalization of the report and recommendations".

Mr. Qetaki also thanked the Honourable Attorney-General and Minister for Justice for designating him as member. He added that it is indeed a privilege to have served as member and to share views, knowledge and experience with other members (drawn from 11 other jurisdiction) on such an important and complex subject. For him, it has been a professionally rewarding experience.

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## PROMOTION OF NATIONAL RECONCILIATION, TOLERANCE AND UNITY BILL 2005 (BILL NO. 10 OF 2005)

The Commission was invited to make oral and written submission to the Sector Standing Committee on Justice, Law and Order (Committee) on the *Promotion of National Reconciliation, Tolerance and Unity Bill 2005*. The Bill has been a topic of wide raging debate in Fiji and subjected to rigorous scrutiny both in Fiji and abroad.

A written submission has been issued by the Commission on Friday 26<sup>th</sup> August, 2005 which highlighted the following issues:-

- Need to review the Bill and its structure; redraft a number of provisions for clarity and consistency and correct errors;

- Need to establish/confirm the constitutional mandate of the Bill;
- Need for the Bill to be consistent with the Constitution, international law and international Treaties and Conventions, and
- Restorative justice concept.

The Commission welcomes the opportunity to make its views known to the Committee as part of the democratic process of consultation, a process which the Commission values, as through such process, ownership is established and stakeholders and citizens generally can comment and seek clarification on the provisions of the Bill.

## Corrections Bill to be tabled in Parliament

The Commission's review of the Prisons Act and Subordinate legislation which completed in April 2005 moves closer towards implementation with the expected tabling of the Corrections Bill in Parliament after Cabinet approved the Bill in August 2005. The Commission expects that the Attorney General will also table the two-part Final Report on the Review in Parliament later this year.

### Background

On November 27th 2003, the Attorney General and Minister for Justice, referred the Prisons Act (Cap 86), the Prisons Regulations, Prisons Standing Orders and Prisons Operational Standards to FLRC for review. The review was pursuant to Section 5 (2) of the FLRC Act. The review is made possible with the generous assistance of the United Nations Development Program (UNDP) and the United Nations Development Fund for Women (UNIFEM).

### Terms of Reference

The objective of the review (as in the terms of reference) is to: "revise and reform with a view to updating the Prisons Act and subordinate legislation to improve the quality of service delivery within Prison institutions in Fiji in conformity with international standards of human rights in International Conventions and Treaties and related legislation such as the UN Declaration on Human Rights and the UN Minimum Rules and Standards for the Treatment of Prisoners." The review is guided by our own constitutional requirements to honour treaty obligations and minimum international standards that Fiji has entered into, when having regard to its own domestic laws.

The Terms of Reference also points to previous work done in this area. There have been eight commissioned Reports in the past; notably the Bale Report (1980), the Nash Report (1981), the Sisarich Report (1986), the Steele Report (1991), the Potch Report (1992), the Buadromo Report (1994), the UNDP/IJALS Report on HIV (1999) and the recent organisational review of the Prisons Department (the Biles Report 2003). The findings and recommendations of these previous inquiries were considered carefully and discussed the Final Report of both Phases 1 & 2 of the current FLRC review.

Whilst the FLRC review is intended not to duplicate the work of these previous inquiries, they have provided a firm platform for further research in this area. The key aim of the current review being to implement the recommendations of these inquiries.

The review objectives are also consistent with the provisions of Fiji's Strategic Development Plan 2003-2005 (Parliamentary Paper No. 72 of 2002). The plan concedes that "the prison population exceeds capacity and the staff



*Left to Right : Acting O/C Natabua Prison – Semisi Hapati and Supervisor Western Leliki Tokoniono. Graham Powell and Tony Kelly at the Natabua Remand Block in Lautoka during the Prisons Review Consultations process.*

prisoner ratio of 1:10 is well above the international standard of 1:4". The review has borne in mind the National Strategic Development Plan's goals to provide efficient and cost effective and rehabilitation corrective services.

Four Issues Papers were published and disseminated in February 2004 to assist those who wished to make submissions during the public Consultation process which ran from February to March 2004. Oral submissions were received during the four public hearings held in Suva, Labasa, Levuka and Lautoka. As well, forty comprehensive written submissions were received from the stakeholder agencies, community organisations and members of the community.

The first draft of the Corrections Bill was distributed to the key stakeholders on the Project Advisory Committee in May 2004. The following month, in June, a three day workshop was organised for senior officers from the Fiji Prison Service to allow them to discuss





*OC Maximum Prison Sitiveni Raitamata explaining to the Review Team during the Prisons Act Review consultations process.*

the draft clauses and make suggestions for improvement. The Bill was also distributed to the members of the Project Advisory Committee and further comprehensive submissions were received from the key stakeholder agencies which included the Commissioner of Prisons, the Solicitor General, the Public Service Commission, the Ministry of Finance and the Human Rights Commission.

The Phase One Report was then submitted with the Draft Bill to the Attorney General in September 2004. In October, the Attorney General obtained Cabinet approval for the Phase One Report and the Corrections Bill. Work then began on drafting the Regulations and Commissioner's Orders under the Draft Corrections Bill.



*Corrections Expert, the late Tony Kelly who drafted the Regulations and Commissioners Orders at the Suva Prison.*

A two day consultation workshop was held for Senior Prison Officers again in March 2005 to discuss the draft Regulations and Commissioners Orders and Commissioners Local Orders prepared by FLRC. What resulted from this was a comprehensive submission made to FLRC by Prisons on the recommendations which were considered.

The Phase Two Final Report was then completed and submitted to the Attorney General at the end of April 2005 with the Draft Regulations, Commissioners Orders and Commissioner's Local Orders. The Commission expects that the Attorney General will shortly table the Corrections Bill 2005 in Cabinet and subsequently Parliament later this year.



*Participants at the two day workshop for the review of the Prisons Act, this time held at the Tanoa Hotel in March 2005. A third follow up workshop was held over five days earlier in August 2005 at the Raffles Tradewinds with senior prisons officers from all over the country.*

## Commencement of the Review of the Penal and Criminal Procedure Codes

The Penal Code and Criminal Procedure Codes which are the cornerstones of Fiji's criminal justice system were first enacted as Colonial Ordinances on 1<sup>st</sup> May, 1945, about 60 years ago. Over the years, there have been sporadic amendments to the two Codes, as well as specialised reviews by the Fiji Law Reform Commission, but the recommendations were not fully reflected in the amendments of the Codes.

In 2003 the Commission was instructed by the Cabinet to undertake the review of the two Codes in a holistic manner; in accordance with Section 5 of the Fiji Law Reform Commission Act Cap. 26.

The main objective of the review is to "update and recommend changes in relation to Offences or Punishments; Jurisdiction; Defences and Criminal Procedures, and other matters associated to these." The changes envisaged are to be reflective of, and responsive to, existing local and/or global conditions, circumstances, trends and practices.

### Term of Reference

The formal Terms of Reference (TOR) which define the parameters of the review was issued by the Honourable Attorney General and Minister for Justice Senator Qoriniasi Bale (AGMJ) in March 2004. It is anticipated that the Review will propose law reform measures and recommendations resulting in;

- Legislation governing and relate to criminal offences / crimes which would be suitable to Fiji's current, as well as future needs and circumstances; and
- Legislation governing criminal procedures that ensure the fair trial of persons accused of offences and protection of their rights and freedoms. It must also provide a fair, effective, and speedy procedure for the investigation and prosecution of offences and hearing of criminal cases.

Since the Royal Commission on the Treatment of Offenders of 1981, the Commission over the years, has been required to review with a view to reforming, a number of important areas in the criminal justice system, the most recent of these include the following references: Prisons Act and related subordinate legislation; domestic violence laws; bribery and corruption; sexual offences; sentencing laws; evidence law; Juvenile Act; police powers; committal proceedings and bail laws



*Professor McCoy meeting with the Director for Public Prosecutions, Mr. Josaia Naigulevu during the initial focused consultations for the Penal Code/CPC review.*

to name only a few of the areas covered.

Recent amendments in the area of criminal law emanating from the Commission's Reports include the: Juvenile Amendment Act (29/97); Criminal Procedure Code Amendment Act (37/98); Penal Code Amendment Act 42/99); Bail Act 2002; Penal Code Amendment Act 2003 and Criminal Procedure Code Amendment Act 2003.

### Review Team

The Commission invited expressions of interest from individuals and organizations wishing to undertake the review. A team comprising Professor Gerard McCoy QC, Dr. Neil Boister and Mr. Raymond Pierce were appointed in August 2004 by the Attorney General to undertake the review. The team have vast experience in the criminal justice system in various parts of the Commonwealth as well as the South Pacific region, including Fiji.

### Work Activity

The review will be undertaken in six phases within the prescribed period. This will include the:-

- Initial and comprehensive review of the relevant local, Commonwealth and international literature.
- Engagement with the community through consultations
- Preparation and distribution of Discussion Papers to gauge public feedback.
- Analysis of the written and oral submissions received during the consultation process .
- Recommendations will then be drafted along with im



*The Review Team meeting with a few Suva Magistrates in May 2005: clockwise: Magistrate Viliame Nadakuitavuki, Magistrate Ajmal Khan, Chief Magistrate David Balram, Mr. Qetaki, Professor McCoy and Legal Officer Raramasi Salakubou.*

-plementing draft legislation in consultation with the key stakeholder agencies

#### **Commencement**

The review of the Penal Code and Criminal Procedure Code formally commenced on Tuesday 17<sup>th</sup> May 2005 when Professor Gerard McCoy signed the Consultancy Agreement on behalf of the Consultants. This was a useful exercise mapping out the scope of the work, and clarifying the approach to be followed during the Review. While it is encouraging that the two legislations are being reviewed, stakeholders acknowledge that the review and reform of the two Codes are only a first step towards curing the ills facing Fiji's criminal justice system.

In the first phase of the Review, the stakeholders were invited to list specific problems with the Codes and invited to become members of the Project Monitoring Committee and Project Advisory Committee.

During this first on-site visit by Professor McCoy, discussions were held in Suva with the Attorney General and Minister for Justice, Chief Executive Officer, Ministry of Justice, Chief Justice, Commissioner of Police, Director of Public Prosecutions, Fiji Law Society, Chief Magistrate, Chief Executive Officer Ministry of Women, Social Welfare and Poverty Alleviation, Chief Executive Officer, Ministry of Reconciliation, Multi-Ethnic



*Mr. Qetaki and High Court Judge Gerard Winter at their meeting in May 2005.*

Affairs and High Court Judge Justice Gerard Winter. Meetings were also held with Judges and Magistrates based in Lautoka in the Western Division.

#### **Current stage of the review**

The Commission is preparing Discussion Papers exploring various issues highlighted in the TOR and raised by the stakeholder agencies. The Discussion Papers will be translated into Fijian and Hindustani and then distributed to stakeholders and members of the public. The Commission will then hold public hearings throughout the country in November 2005, an opportunity for the community to discuss with the Review Team their experience and difficulties with the two Codes. Views on the two Codes can also be sent in to the Commission by a written submission.

#### **Completion in June 2006**

The views in the submissions from the agencies in the Criminal Justice System, NGOs and members of the public will then be collated and analysed before drafting of the formal recommendations and amending legislation. The Review will be completed by 30<sup>th</sup> June 2006 when the Commission will submit its Final Report and amending Bills to the Attorney General for consideration.

## Drafting of the Domestic Violence Bill 2005

The law is only one of the State's responses to a complex social phenomenon like domestic violence. While the law cannot be employed as a fix-all panacea, it is critical that when violence does occur, and victims turn to the law for protection, the law be effective and efficient in its response.

The Terms of Reference received by the Commission on 15 December 2003 envisaged that there must be reform of laws and procedures in the laws relating to domestic violence. The TOR also required that the review be *holistic* and include consideration of the steps that may be taken to bring the problem of domestic violence to greater public awareness.

### Outcomes

The outcomes of the Review are a comprehensive 3-part Final Report which annexes five related draft legislation. There are 392 recommendations made in the Report to respond to the requirement for a holistic review of not only the law, but the criminal justice system processes and the surrounding support, health and welfare services.

By necessity, this article is not an in-depth discussion of the various improvements proposed to the system, but will only skim through the main changes which the Commission is recommending to the Attorney General and Government.

### A concerted multi-sectoral approach

Submissions received by the Commission broadly acknowledged that laws in relation to domestic violence are one aspect of a multi-sectoral and multi-level approach aimed at reducing and preventing domestic violence.

Accordingly, the Report makes recommendations for a concerted approach across both the public and private sector, including amendments to legislation, improvements in services and procedures and programs offered by various Ministries and by non-government organisations.

### Awareness Raising and Attitudinal Change

Attitudes that seek to justify violence in family relationships are still prevalent in Fiji. Most submissions emphasised the need for education and other measures to change individual and community attitudes. The Commission endorses this approach which involves many forms of education and awareness raising, including among those in leadership roles and many agencies.

### The need for specialized services and programs

Particular issues include the need for more crisis support, counselling and education programs as well as emergency accommodation for victims of domestic violence and separately for perpetrators.

### A national framework

It is clear that many of the ways forward must come from the community but that a national framework is also needed. The Commission has recommended that a properly resourced process be established to prepare and implement a National Strat



*DV Consultant Judy Harrison and FLRC Executive Chairperson, Mr. Qetaki listening during discussions at the Community Hall in Naviyago, Ba.*

-egy to Prevent Domestic Violence. This was strongly endorsed in submissions and it is clearly needed.

### The law and law enforcement agencies

The role of the law is also critical. The Police response to domestic violence is still problematic and examples of continuing difficulties were given in many submissions received by the Commission. Problems in relation to the responsiveness of the Courts were also highlighted. It was clear that resource constraints are contributing to these difficulties but also that the law itself is not tailored to Fiji's needs and it is not providing an adequate framework.

### Amendments to the law

The Commission reviewed criminal and civil law and recommends reforms to both. These are detailed in Part 2 of the Final Report: Legal Response to Domestic Violence: Criminal Justice System and in Part 3 of the Final Report on Civil Laws and Procedures, respectively.

### Improvements in the criminal law

While some issues relating to criminal law require further consideration, which will be undertaken during the separate reference on the Penal Code and Criminal Procedure Code, the Commission has reached a concluded position on a number of key aspects. This includes the need for:

- a definition of 'domestic violence offence' to be inserted in the Penal Code. This would list existing offences and name them as a 'domestic violence offence' if there is a domestic or family relationship between the accused and the victim/s. This measure would provide a definitional reference point that would be used for several purposes (sentencing considerations, bail, police powers etc),
- inclusion in the Penal Code of factors that must be considered by the Courts when deciding what penalty to apply for a 'domestic violence offence'. This measure, which was widely

endorsed, would ensure that relevant factors are considered in each case, and

- reference to domestic violence offences in the Bail Act to strengthen the role that bail can play in protecting the victim/s

To this end, there are draft amending legislation to the current Penal Code, Criminal Procedure Code and Bail Act.

### **New Civil Protection: A new Domestic Violence Act**

Civil law responses to domestic violence are different from criminal law responses. While criminal law responses primarily aim to hold the offender criminally responsible, civil law responses mainly aim to provide early intervention and protection for victims. Civil law responses also deal with other matters such as the relevance of domestic violence to custody and access determinations and compensation. Civil law provisions are not a substitute for criminal charges and criminal charges do not overcome the need for civil law measures.

In Fiji, the need for additional legislation was highlighted in the Law Reform Commission's Family Law Report 1999 and the Family Law Act 2003 anticipates that there will be domestic violence restraining order legislation. The FLA contains a definition of "family violence order" that means "an order (including an interim order) made under a written law to protect a person from family violence."

The overwhelming majority of submissions received by the Commission expressed support for the enactment of more effective domestic violence restraining order legislation that provides greater protection for victims of domestic violence and treats breach of a domestic violence restraining order as a new criminal offence

As noted in the Discussion Paper, Fiji does not yet have specific civil laws to provide fast, inexpensive, and effective *protection* to victims of domestic violence. These laws are now common in countries around the world. It is appropriate that families in Fiji are to receive the same protection from domestic violence if the Domestic Violence Bill is approved by Cabinet and Parliament.

The Commission noted that it is accepted in other jurisdictions that have domestic violence restraining order legislation, that the purpose of this legislation is to ensure the safety of those who are at risk of domestic violence. Also, that in most cases applications that are made under the new legislation would relate to violence that has occurred very recently, for example within the last few days and an application for a restraining order would generally be an expression of the victim's level of fear and perception of risk of further violence.

The Commission is recommending that the new domestic violence restraining order legislation should be introduced as stand alone legislation that confers jurisdiction on particular courts, including jurisdiction that can be exercised in the course of other proceedings before those courts. Stand alone legislation would be more visible, easier to find and easier to work with. Additionally, community education and training could largely focus on a single piece of legislation.



*Non Government Organisations during their work group session at the Final DV Workshop held in April 2005 to study the Draft DV Bill and the Draft Recommendations. Anti-Clockwise: Katherine Gilbert (Australian Youth Ambassador with UNICEF Pacific); Dwayne Ah Sam (Save the Children Fiji); Mrs. Asela Naisara (National Council of Women/Catholic Womens League); Mrs. Salote Malo (FWCC); Joanne Kumatuba (FWCC); Lata (Disabled Peoples Association); Anaseini (FDPA).*

The Domestic Violence Act proposed by the Commission begins with a Preamble and it contains a statement of objectives and principles. In addition to giving new and much needed powers to the Courts to make domestic violence restraining orders, the proposed Act would include powers in relation to urgent monetary relief, compensation, attendance at counseling or re-education programs etc.

The primary purpose of the new domestic violence restraining order legislation would be to enable the court to make domestic violence restraining orders. In summary the Commission recommends that:

- breach of a domestic violence restraining order should be a new criminal offence
- when making a domestic violence restraining order the court should also have the power to make urgent orders about children, urgent monetary relief, compensation and other matters

The Commission recommends that all relevant courts should have jurisdiction to make restraining orders under the new legislation. Despite clear powers it sometimes happens that legal myths or practices develop that treat certain powers as ones that are normally or only exercised *in practice* by particular courts. Stand alone legislation should help ensure that a legal culture like this does not develop in relation to the new domestic violence legislation. For example, courts that normally deal with family law, juvenile or criminal matters should be equally comfortable exercising jurisdiction under the new legislation. Likewise lawyers who practice frequently in particular areas, such as those indicated, should all be familiar with the new legislation.

The Final Report, Recommendations and five draft Bills are to be submitted shortly to the Attorney General for consideration.

## *Librarians are information links, and bridges between Law and Order Agencies*

The Commission again hosted Ms. Lorraine Weinman, Law Library Adviser, Australia/Fiji Law & Justice Sector Program from March to June 2005. Ms. Weinman's 2005 visit to the Fiji Law Libraries included assistance to the Fiji Law Reform Commission's specialist Library established in 1996. This is a brief provided by Ms. Weinman on her experience in Fiji.

The year 2005 to date has been a bright one for the Fiji Law Librarians. They are employed in every agency in the law and justice sectors, and they see the importance of the work they do in driving change and promoting integration and cooperation across agencies. They understand and appreciate their importance in the scheme of the whole Law & Justice Program, and are very conscious of the responsibilities they carry as bridges between agencies, and links and connectors in the flow of information.

In 2004, Ms. Weinman, found that the law libraries of Fiji were in a depleted condition with some serious deficiencies such as:

- their lack of legal texts and other materials,
- their inefficient methods of information access and retrieval,
- the lack of necessary equipment,
- and the need for professional development and training for their librarians.

She also ran workshops in law library management, and in professional development. The librarians were enthusiastic for improvement, and formed the Fiji Law Libraries Interest Group, as an aid to cooperation and self-help.

Now in 2005, Lorraine notes the libraries have changed, and the Group is a strong unit of confident librarians. It is able to voice forceful opinions, organise very useful group work, and has begun to lobby for itself. It has raised consciousness of its existence in government and professional circles. All four problems noted last year have been addressed and improved, with the continuing help of the Australia/Fiji Law & Justice Sector Program.

The Australia/Fiji Law & Justice Sector Program has funded the purchase of new legal texts, and some computers and associated equipment; thus greatly improving the availability of legal information for lawyers and judges throughout the country.

A Retreat was held for all law librarians, this was a highly unifying event, bringing all agencies together again, and strengthening professional connections. This networking is the strong base of continuous improvement to information service delivery.

The Program is also funding the employment of a professional librarian to assist with cataloguing law library collections. This will improve access to information in all libraries.



*The Fiji Law Librarians at their Retreat:  
Standing: L-R: Vasiti Manivora (Police), Fane Buadromo (Parliament), Aisake (High Court), Salote (Parliament), Loraine Bhan (Munro Leys), Deepak (AG's Chambers), Maca Pasi (Police Academy), Navinesh (FLRC), Susana Macanawai (IJALS)  
Sitting: L-R: Salochna (High Court, Lautoka), Kesaia Tuikoro (High Court, Suva), Yuen Yee (Library Services), Lorraine Weinman, Verenaisi Bavadra (Human Rights Commission).*

Lorraine says the Fiji Law Library group is working very effectively, crossing all sectoral boundaries of Law & Justice agencies. She believes access to formal study programs, specialised training in legal research methods, plus targeted assistance for more development planning is still needed. Librarians must also be trained to market their libraries and their own information retrieval skills to their users.

The law librarians of Fiji are an unusual group. They cross ten sectoral and agency boundaries with the utmost efficiency and discretion. They are a thoroughly professional group, with professional ideals, aspirations, behaviour and attitudes. Cooperation and assistance is unstintingly given, there is natural leadership and mentoring. Through them, access to legal information in Fiji has a bright future.



*Law Librarians in discussion at their Workshop*

# Development of the Commonwealth Model Competition Law

Mr. Janmai J Udit, the State Solicitor in the Attorney General's Chambers, and Acting Director of the Commission is an expert member of the Commonwealth Working Group which is revising the Model Competition Law. Mr. Udit recently returned from the July meeting of the Working Group.

The Commonwealth Heads of Government at their meeting in Durban in 1999 (CHOGM) recognized the importance of a robust competitive atmosphere in a global economy. This recognition gave the genesis of Commonwealth Model Competition Bill.

As directed by CHOGM the Legal and Constitutional Affairs Division of the Secretariat developed a model Bill which was submitted to the Commonwealth Law Ministers meeting in St. Vincent and Grenadines in 2002. In their meeting, the Law Ministers considered the Bill should include a provision to particularly cater for small and vulnerable sectors of the economy. The 2002 Bill was re-drafted in line with the recommendations of the Law Ministers. In 2003 the Bill was circulated to the Law Ministers, followed by Experts Groups regional meetings in Asia, Pacific, Caribbean and Africa.

After having reviewed the comments of all the regions, the Secretariat held a Final Expert Group Meeting selecting a representative each from Belize, Fiji, Jamaica, Kenya, Malaysia, Mauritius Maloline, Papua New Guinea, Seychelles and Singapore in London to finalise the Model Bill. After an intensive deliberation over 5 days, the Expert Group finalised the Bill.

The objective of the Bill as stated in the long title is to 'promote, maintain and encourage competition, to prohibit anti-competition activities and unfair competition'. It is drafted to optimize public benefit and enhance economic development. It incorporated the participation of a large number of small enterprises in a market, whilst ensuring that a monopolistic trader in so much as rejuvenating economic activity, do not overly influence the price or product thus eliminating competition or attempting to phase out small and medium enterprises. Through competition it is anticipated the resources in an economy will be equitably distributed.

## WHAT DOES THE BILL CONTAIN?

The draft Model Bill regulates both competition and provides a limited degree of consumer protection.

On the competition front, the Bill regulates :-

- The abuse of dominant positions
- Restrictive trade agreements
- Mergers

## (a) Abuse of Dominant Positions

Monopolies and large enterprises are a hallmark of many small island states. During the consultation process, it was felt that monopolies will still play a vital role in the economic development of small island states. In light of their importance, the Bill, does not from the outset prohibit the existence or practice of monopolies. However, the Bill primarily restricts any abuse of the dominant position which ordinarily a monopoly enjoys. As long as the monopolies do not distort competition, they will be behaving in accordance with the law. Therefore there is no immediate fear of the existing monopolies being driven out from a country or region. These monopolies have and will continue, to play a significant role, except that they will have to share the market with other small, medium and large competitors. The monopolies will have to adjust and be responsible in allowing other competitors to emerge.

## (b) Restrictive Trade Agreements

Any agreement between enterprises, which is likely to cause any appreciable adverse effect on competition in a market is prohibited. The model competition law prohibits any agreement which has the effect of lessening competition. These are agreements which:-

- directly or indirectly fix prices
- control production, market, technical development or investment
- provide for artificial dividing up of markets or sources of supply
- affect tenders
- apply dissimilar conditions to equivalent transactions
- conditional conclusion of contracts with supplementary obligations

## (c) Mergers

During the meeting in London, the group felt it important to include mergers. This was discussed but not resolved in the regional meetings. However, merger was considered to be an integral part of the law of competition. After a thorough discussion, its inclusion became necessary.

There are very limited number of traders in small economies. As such a merger is a real threat to any effective competition in the market place. Accordingly, any merger has to be monitored and approved by a regulatory body. The Bill vests this power to the Competition Commission.

## PROMOTION OF COMPETITION IN SMALL AND MEDIUM ENTERPRISES

One of the key objectives of the Bill is to promote and enhance the ability of small and medium enterprises to compete effectively. In the regional meetings, the participants felt it important that some small enterprises should be excluded from the Bill. This has now become part of the Bill. Small and vulnerable sectors are protected under the Bill. This includes affirmative action programmes. The underlying objective of this provision is to regulate competition whilst protecting small and developing enterprises.

Also, there is provision for block exemptions of certain businesses to be gazetted by the Minister. In addition, provision is also made for authorization of certain business activities by the Competition Commission.

## ESTABLISHMENT OF A COMMISSION

In order to enforce the Competition Law, a Commission needed to be established. Due to economic and human

resources demand, the Bill proposes to establish a Commission which will have part time members. It will also perform dual functions; Investigation and Adjudication.

A precise procedure and structure has been created to ensure that the small island countries will be able to establish the Commission without much administrative and financial havoc.

A administrative fine (*financial penalty*) is the penalty for breach of any of the provisions relating to competition.

## CONSUMER PROTECTION

Whilst provisions relating to consumer protection are not directly relevant to the regulation of competition in a market place, it was felt that this be incorporated within the Bill. The reason for the incorporation was that in many smaller countries particularly, it maybe difficult to legislate on both competition and consumer protection. Acceptance of the Model Competition Law will cater for both the areas of law.

# Launch of revamped website

The Fiji Law Reform Commission website was launched on Thursday 23<sup>rd</sup> June, 2005 at the FLRC Conference Room by the Acting Solicitor General, Mr. Savenaca Banuve. The website is one of the strands of the Commission's Communications Strategy to fully inform the community through Communication Services delivery about its functions, activities and recommendations.

The Executive Chairperson of the FLRC, Mr Qetaki said that the website "will be a vehicle for the dissemination of news and information about the Commission and its work."

The revamp of the site is in line with the establishment of the FLRC's Publications and Communications Unit and a project post of Information Officer funded by NZAID with its main focus to build and strengthen awareness in the community on the Commission's role so as to allow the community to be able to access and participate fully in the law reform process.

In addition to the Commission's quarterly newsletter, the site will be updated regularly to inform the public about upcoming public hearings and consultation processes for the various areas of the law currently under review and invite community participation in the law reform process. The site also allows interested members of the community to register on the Commission mailing list when Final Reports, Bills, Discussion Papers and Issues Papers as well as Newsletters and Annual Reports and other publications are placed on the site.



The Commission hopes to eventually place all its publications in the public domain online. However, the digitisation of the Commission's publications is an ongoing process and reports and papers will be placed online as the project continues.

For the Commission there is a direct correlation between its communications role, and the consultations process that it carries out as its final recommendations for reform which is presented to the Attorney General and Minister for Justice at the end of review. It is against this background that the Commission sees it necessary to strengthen its communications service delivery to complement its work.

The website can be accessed on [www.lawreform.gov.fj](http://www.lawreform.gov.fj)



## Law Reform Roundup

This column was introduced in Issue 9 of the QD. It is 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.

### Cabinet approval of Bills, Regulations and Reviews

Cabinet recently approved the following legislative and subordinate legislation developments:

- i. 19/7/05 - Amendments approved to Fair Trading Decree
- ii. 25/5/05 - Cabinet approves Audit (Amendment) Bill 2005
- iii. 12/4/05 - Cabinet approves amendment to Savusavu Town Council business licence fees
- iv. 30/3/05 - Cabinet approves review of Tobacco Control Act
- v. 30/3/05 - Nurses, Midwives and Nurse Practitioners Act to be reviewed
- vi. 30/3/05 - Cabinet approves drafting of Local Government (Amendment) Bill
- vii. 1/2/05 - Cabinet approves 2005 Budget amendments to the Hotels Aid Act
- viii. 19/1/2005 - Cabinet approves the Marine (Amendment) Bill
- ix. 18/1/2005 - Cabinet approves budget amendments to revenue legislations
- x. 15/12/2004 - Land Transport Act 1998 to be reviewed and its subsidiary legislation
- xi. 28/4/05 - Cabinet approves Chemical Weapons Convention Bill 2005
- xii. 5/4/005 - Formulation of a Bill on Allied Health Workers in the Ministry of Health

### Recently enacted legislation

1. Act No. 1 of 2005 – Environment Management Act (17th March 2005)
2. Act No. 2 of 2005 – Mutual Assistance In Criminal Matters (Amendment) Act (17th March 2005)
3. Act No. 3 of 2005 – Income Tax ( Budget Amendment ) Act 2005 (17th March 2005)
4. Act No. 4 of 2005 – Value Added Tax (Budget Amendment ) Act (17th March 2005)
5. Act No. 5 of 2005 – Gambling Turnover Tax Decree (Amendment) Act (17th March 2005)
6. Act No. 6 of 2005 – Hotel Aid (Budget Amendment ) Act (17th March 2005)
7. Act No. 7 of 2005 – Proceeds of Crime (Amendment ) Act (29th June 2005)
8. Act No. 8 of 2005 – Sea Ports Management Act (17th day of May 2005)
9. Act No. 9 of 2005 – Marine (Amendment ) Act (29th June 2005)
10. Act No. 10 of 2005 – Fiji National Provident Fund (Amendment) Act (29th June 2005)

11. Act No. 11 of 2005 – Miscellaneous Amendment (Provincial Administrators) Act (25th day of May 2005)
12. Act No. 12 of 2005 – 2004 Appropriation ( Supplementary ) Act (29th June 2005)
13. Act No. 13 of 2005 – 2005 Appropriation (Supplementary) Act (29th June 2005)

### 2005 BILLS

1. Bill No. 1 of 2005 – Sea Ports Management Bill
2. Bill No. 2 of 2005 – Marine Act (Amendment ) Bill
3. Bill No. 3 of 2005 – Income Tax (Budget Amendment ) Bill
4. Bill No. 4 of 2005 – Value Added Tax (Budget Amendment )
5. Bill No. 5 of 2005 – Gambling Turnover Tax Decree ( Amendment )
6. Bill No. 6 of 2005 – Hotels Aid Act (Budget Amendment ) Bill
7. Bill No. 7 of 2005 – Fiji National Provident Fund (Amendment) Bill
8. Bill No. 8 of 2005 – Sugar Research Institute of Fiji Bill
9. Bill No. 9 of 2005 – Miscellaneous Amendments (Provincial Administration) Bill
10. Bill No. 10 of 2005 – Promotion of Reconciliation, Tolerance and Unity Bill
11. Bill No. 11 of 2005 – Chemical Weapons Convention Bill
12. Bill No. 12 of 2005 – 2004 Appropriations (Supplementary) Bill
13. Bill No. 13 of 2005 – 2005 Appropriation (Supplementary) Bill
14. Bill No. 14 of 2005 – Audit (Amendment) Bill
15. Bill No. 15 of 2005 – Fair Trading Decree (Amendment) Bill
16. Bill No. 16 of 2005 – Employment Relations Bill
17. Bill No. 17 of 2005 – Income Tax ( Amendment Bill )
18. Bill No. 18 of 2005 – Income Tax (Fiji Electricity Authority Amendment) Bill

These Bills and Acts may be viewed on the Fiji Parliament website ([www.parliament.gov.fj](http://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](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 Stationery Department.

**Fiji Law Reform  
Commission**

Level 5 Civic Tower  
Victoria Parade  
Suva

Phone: 3303900

Fax: 3303646

E-mail: [info@lawreform.gov.fj](mailto:info@lawreform.gov.fj)

We're on the web:

[www.lawreform.gov.fj](http://www.lawreform.gov.fj)

Dr. Jimmie Rodgers  
Deputy Director General  
Pacific Community  
3 Luke Street, Nabua  
Private Mail Bag  
SUVA

*Qolilawa Darpan*  
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Contributors

Alipate Qetaki  
Janmai J Udit  
Rajjeli V Tuivaga  
Vukidonu Qionibaravi  
Salakubou Raramasi  
Lorraine Weinman

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## Why a newsletter

We decided to remind new readers of the QD 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 laws applicable to Fiji. Its primary role is the simplification, the improvement and the modernisation of the law.

Such objectives can be reached by maximising 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 purposes 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 modernisation 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 goals.

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 hearings provide invaluable guidance and context to issues under reform. Such a process permits the cross-fertilisation 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 people as possible. This process enables the Commission to arrive at recommendations for reform which are appropriate and representative of the diverse multi-cultural community of Fiji