

COURTS AND CIVIL
PROCEDURE IN THE
SOUTH PACIFIC

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2nd edition



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Courts and Civil Procedure in the South Pacific. 2nd edition

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FOREWORD

One is beginning to see more complex litigation in the island nations of the Pacific Region than was the case ten years ago when the first edition of this work was published. By way of illustration, judgment was given in October 2014 in the High Court of the Solomon Islands in a case which was commenced in 2011 involving seven claimants, nine defendants and numerous other parties. The matter was the subject of two interlocutory appeals prior to trial. The hearing, involving local lawyers, Australian lawyers (including senior counsel) and lawyers from elsewhere, was spread over some twelve months and resulted in a judgment covering 375 pages. Fortunately that has not been replicated in other countries in the region, but each jurisdiction has noted an increase in the complexity of litigation and there has been a growing use of lawyers from countries such as Australia and New Zealand.

In his excellent foreword to the first edition Justice Gordon Ward concluded by saying: 'I would expect, very soon, to see this book on the desk of every lawyer with a Pacific wide practice...' There is anecdotal evidence the work has not been used to the extent it deserved. Whilst it is difficult to generalise where diverse jurisdictions are concerned, the pattern appears to be that a claim is made, a defence is delivered, and nothing more is done until the matter comes to trial. Clearly in many instances more use could be made of interlocutory steps provided for by rules of court to clarify issues and to facilitate the final trial. Some of the problem is no doubt due to the fact the necessary resources are not available. In many jurisdictions a judge is not readily available to hear an interlocutory application on short notice, or to case manage the matter. Also, though the rules in many of the jurisdictions provide for alternative dispute resolution, there are simply no personnel to act as mediators.

But despite those difficulties, much more could be achieved if practitioners were better aware of how to make use of the applicable Rules of Court to facilitate their case. That is where this work can be of great assistance. It contains an easy-to-read comprehensive coverage of the Rules governing litigation in each of the jurisdictions in question. For example, the chapter on execution provides a step-by-step analysis of each of the methods of enforcing a judgment, giving at each stage a reference to the relevant rule in each jurisdiction.

The fact that one of the authors, Professor Jenny Corrin, has had extensive practical experience in the region has meant that the text is readily understandable by local practitioners across the various jurisdictions.

The work will provide students, local practitioners and visiting practitioners from other jurisdictions with a vital tool to the understanding of the procedural rules relevant to the jurisdiction in question.

I commend the work to all lawyers practising in the Pacific region.

Honourable Glen N. Williams AO, QC
Judge of the Solomon Islands Court of Appeal, 1993–2014

PREFACE

This is the second edition of *Courts and Civil Procedure in the South Pacific* and the first to be published by Intersentia and co-authored by Jennifer Corrin and David Bamford. While this edition builds on the previous edition, published by Cavendish in 2004, it has been significantly restructured as well as updated. Like its predecessor, this book compares the main rules of procedure that govern the conduct of civil cases in a selection of small island countries of the South Pacific. It explains their practical application in the context of the courts in which they operate. The text focuses on the rules operating in Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu, but also makes some reference to the rules in less populous countries of the region such as Cook Islands and Tokelau. The text deals with the procedure that governs the conduct of civil cases. This edition takes a functional approach to civil procedure and also includes a new chapter on settlement and alternative dispute resolution. The book also places the developments in the South Pacific in the context of broader procedural reforms occurring across the common law world.

The book outlines the constitution and jurisdiction of the regional courts in which the civil process takes place. It describes recent changes to the rules and in some places suggests further changes. Legislative and case law developments and tactical considerations in the use of the rules are also discussed.

Since the last edition, there have been significant developments in civil procedure in the South Pacific. The Solomon Islands Courts (Civil Procedure) Rules 2007 were brought into force on 1 March 2008. These Rules replaced the High Court (Civil Procedure) Rules 1964 in the Solomon Islands, leaving the 1964 Rules to apply only in Kiribati and Tuvalu. It is understood that both those countries are considering introducing new rules within the near future. The Solomon Island Rules are quite similar to the Civil Procedure Rules 2002, Vanuatu, and introduce simpler, more up to date procedures than those contained in the High Court (Civil Procedure) Rules 1964. The Rules state their overriding objective to be 'to enable the courts to deal with cases justly with minimum delay and expense.' They introduce case management techniques and opportunities for settlement through conferences and mediation. The Vanuatu Rules, which came into force on 31 January 2003, and were therefore very new when the last edition came out, have now been interpreted by Vanuatu courts in a number of cases, many of which are discussed in this edition. Tokelau introduced the Crimes, Procedure and Evidence Rules in 2003, providing a

simple procedural framework, specifically drafted for the circumstances of Tokelau. Tonga has introduced the Supreme Court Rules 2007, which came into effect on 1 January 2007. However, they do not make such a dramatic change from Tonga's previous rules as Solomon Islands' and Vanuatu's new rules do from the High Court (Civil Procedure) Rules 1964. Whilst the Supreme Court (Civil Procedure) Rules 1980 of Samoa remain mainly the same, the Mediation Rules 2013 (Samoa), made under the Alternative Disputes Resolution Act 2007 (Samoa) came into force on 4 December 2013. These have made extensive changes to procedure by introducing a compulsory mediation requirement once a defence has been filed. The High Court Rules 1988 remain in force in Fiji, but have been quite extensively amended.

There have also been changes in relation to appeals. Two countries have new rules: the Court of Appeal Rules 2009 in Tuvalu and the Court of Appeal Rules 2012 in Cook Islands.

The book is designed for use by legal practitioners and anyone interested in the civil procedure or courts in the South Pacific region. It may also be of use to teachers and students of South Pacific civil procedure, both at degree level and in professional legal training programmes.

The excellent research assistance from Ms Camille Boileau is gratefully acknowledged. Ms Eleanor Foote and Mr Jess Owens also provided valuable assistance with early drafts. As with previous editions, gaining access to primary materials from the small island countries of the Pacific has been a challenge. For example, attempts at gaining Practice Directions from some jurisdictions have been unsuccessful, in spite of personal visits and long waits in the registries concerned. It is hoped that readers will keep these difficulties in mind if they encounter any omissions in the discussion of the adjectival law in force. We should like to thank all those who have helped us in our collection endeavours. In particular, assistance from the Paclii officers and the library staff at USP's Emalus Campus Library has been invaluable.

April 2015

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