

INTRODUCTION TO SOUTH PACIFIC LAW

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Jennifer CORRIN
Vergil NAROKOBI

5th edition



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FOREWORD

I welcome the opportunity to write the foreword for this fifth edition of *Introduction to South Pacific Law*, particularly as its reach has been extended to cover not only twelve Pacific Islands, but also Papua New Guinea. All these countries share a common colonial history, which has resulted in some similarities in their legal systems, including the inheritance of the common law. This creates an abundant field for comparisons and the opportunity for Pacific nations to learn from each other.

Whilst the State systems all follow the common law model, they do so with an overlay of customary laws and processes and in this area there is great diversity. Each Pacific nation had its own traditional legal system before settlers came from overseas and these systems have survived the colonial era, although no doubt heavily influenced by the introduction of foreign practices and ideas. This book does not ignore these traditional laws; a whole chapter is dedicated to customary laws, their interrelationship with State laws, and an exploration of some of the problems that have arisen at the interface of those diverse systems. This includes coverage of Papua New Guinea's unique approach to this duality, both in its Constitution and the Underlying Law Act 2000. In many of the other ten chapters, there is discussion of the impact of customary laws on substantive State law. In these chapters, the authors have managed to cover a broad range of topics: South Pacific law and jurisprudence, State laws, constitutional law, administrative law, criminal law, family law, contract law, torts law, land law, and the hierarchy and constitution of State courts.

As the authors have pointed out, Pacific countries have been slow in developing their own jurisprudence, but there are certainly signs that this is evolving. Whilst State courts are dominated by the common law they are forging their own paths, as can be seen by the increased tendency to cite their own judgments and those of their Pacific neighbours in preference to those of the former colonial powers. Similarly, a more mature approach to legislation may be discerned, with some jurisdictions having enacted statutes specifically drafted to accommodate local conditions, as opposed to relying on overseas models.

The publication of secondary works plays a role in the development of Pacific jurisprudence. *Introduction to South Pacific Law* provides an up-to-date and accessible introduction to the laws of the Pacific and to the court systems within which those laws are administered. This furnishes students of law with a handy text. It also provides a reference book for jurists both from within and outside

the region, forming a pathway for debate about the issues facing Pacific nations, which is a vital part of this development.

The first four editions of this book were written by Professors Jennifer Corrin and the late Don Paterson. This new edition has been co-authored by Jennifer and my colleague, Justice Vergil Narokobi. Both are well placed to write about the issues covered in this book, having practical experience and many years of researching Pacific legal systems and surrounding issues.

The breadth and detailed coverage in this book is an outstanding achievement and a valuable contribution to the literature in this field. I commend *Introduction to South Pacific Law* to law students in universities, both in the Pacific and beyond. I also recommend it to legal scholars and practitioners and others with an interest in the fascinating common law systems of the South Pacific.

The Honourable Chief Justice Sir Gibuma Gibbs Salika, GCL KBE CSM OBE
August 2022

PREFACE

Introduction to South Pacific Law is, as the name suggests, an introductory text. It was written primarily for University of South Pacific (USP) students and alumni. The current (fifth) edition extends its content to make it an appropriate text for law students in Papua New Guinea. Additionally, the book is intended to assist overseas students, practitioners, academics, members of the judiciary and others interested in acquiring information about South Pacific law or a foundation for more detailed research. The book deals mainly with State laws and legal systems, but also reflects the prevailing legal pluralism, not only in a specific chapter on customary laws, but also by referring to the customary system throughout the book.

This edition covers Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu (being the member countries of the University of the South Pacific). For the first time it also covers Papua New Guinea in sections authored mainly by Justice Narokobi. The law of Marshall Islands is not comprehensively discussed, as the influence of the American legal system takes it outside the parameters of this text.

As in previous editions, *Introduction to South Pacific Law* commences with a chapter on the origins of South Pacific legal systems and their embryonic jurisprudence. The second chapter gives an extensive review of State laws, from the colonial era to the modern day. This is followed by a chapter on customary laws, with a discussion of the interaction between the two systems. The book goes on to give an overview of a wide range of substantive areas of law including constitutional, administrative, criminal, family, contract, torts and land law. It also contains a chapter on courts and procedure. In addition to extending the coverage of Papua New Guinea, which has provided material for some valuable comparisons, this revised edition updates the law stated in the fourth edition, which was published in 2017. In the legislative field, significant changes include a range of changes to criminal laws; the Adoption Act 2020 in Fiji; and the Constitution Amendment Act 2020, the Land and Titles Act 2020 and the Village Fono Amendment Act 2017 in Samoa. Consolidations of the law have taken place in Fiji, Tonga and Tuvalu, which have necessitated revised referencing, but made research on the current state of the law in those countries far easier. There has also been a large number of landmark cases, including *Suveinakama v Council for the Ongoing Government of Tokelau* [2019] TKHC 1, the first trial in the

High Court of New Zealand sitting as a court of Tokelau, and other noteworthy decisions made by regional courts. However, whilst this book highlights some interesting decisions expressing a desire to develop local jurisprudence, neither a regional, sub-regional nor even a national jurisprudence has emerged. In many countries there is still an enduring tendency to defer to overseas models of law and legal systems.

During the last few years, the pandemic and associated border closures caused difficulties for legislatures, the judiciary and practitioners and also for law students and academic researchers. This may partly account for the fact that some of the reforms predicted in the last edition of the book have not come to fruition. For example, in Solomon Islands, the draft federal constitution and the Tribal Land Panels Bill have still not moved beyond the consultation stage and the highly anticipated Adoption Bill has not yet been passed in Vanuatu.

This year marks 30 years since the establishment of USP's Law School (which has quite recently become a discipline in the School of Law and Social Sciences). From the first graduation in 1997 to the end of 2021, just over 2,000 students have graduated with law degrees¹ and most have dispersed to their various countries to join the legal professions, government bodies and business organisations there. Some of those graduates have gone on to further study and have Masters' degrees or Doctorates in law; some have returned to the USP to teach the next generation of law students. Whilst it is still true to say that Pacific jurisprudence is in its infancy, there are clear signs that a new generation of Pacific researchers are producing outstanding scholarship, which in many cases is enhanced by the authors' 'insider' perspective on legal issues, stemming from their Pacific Islander heritage. Whilst the emergence of an increased number of Pacific scholars and practitioners has contributed to a dramatic rise in Pacific legal research, the fertile ground for research and writing is still underexplored and there is a scarcity of empirical work. The authors are hopeful that this book will continue to be of use in promoting the development of law and local jurisprudence in the region, reflecting the Indigenous values proclaimed in many independence constitutions.

The authors would like to thank Intersentia for publishing this fifth edition of *Introduction to South Pacific Law*. They would also like to thank Professor Tony Angelo of Victoria University of Wellington, New Zealand, for his advice regarding aspects of the law in Cook Islands, Niue and Tokelau, and Ms Lucy Duke for her research assistance. We should both like to thank our respective colleagues in the School of Law at The University of Queensland and the courts of Papua New Guinea. Finally, and most importantly, we wish to pay tribute to

¹ There were 192 graduates from the combined BA/LLB and 1,816 from the LLB.

the late Professor Emeritus Don Paterson, until this edition the co-author of this book, and from whose extensive Pacific scholarship the current authors, together with more than one generation of Pacific lawyers and scholars, continue to benefit.

Jennifer Corrin
Justice Vergil Narokobi
27 May 2022

Authors' Note:

Where reference is made to overseas legislation that has been applied or adopted in countries of the region, the country of origin is indicated by the abbreviation in brackets after the name of the statute. However, it should be borne in mind that in some cases such legislation may have come to differ from the original Act, due to reform in the originating or in the adopting country, or both. For this reason, some legislation appears in the List of Legislation both in the list for the originating country and the list for the regional country that has amended it locally.

NB Since the date of writing, Queen Elizabeth II has passed away, necessitating a change to King Charles III in certain parts of the text.

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LIST OF ABBREVIATIONS*

AC	Appeal Cases
Art	Article
BCR	British Columbia Reports
CI	Cook Islands
Civ App	civil appeal case
Civ Cas	civil case
CLB	Commonwealth Law Bulletin
CLR	Commonwealth Law Reports, Australia
Cooks	The Cook Islands
Crim App	criminal appeal case
Crim Cas	criminal case
Fiji	Fiji Islands
Fiji LR	Fiji Law Reports
FJET	Fiji Employment Relations Tribunal
FSM Intrm	Federated States of Micronesia, Interim Reports
IPS	Institute of Pacific Studies, USP
JPacS	Journal of Pacific Studies
JSPL	Journal of South Pacific Law
LN	Legal Notice
MLJ	Melanesian Law Journal
NZ	New Zealand
PacLII	Pacific Islands Legal Information Institute
PNG	Papua New Guinea
PNGLR	Papua New Guinea Law Reports
Sch	Schedule
SI	Solomon Islands
SILR	Solomon Islands Law Reports
SPLR	South Pacific Law Reports

* The abbreviations used on the PacLII site for decisions of Pacific Islands courts are not reproduced here.

Tonga LR	Tonga Law Reports
Tongan LR	Tonga Law Reports (second series)
UCQB	Upper Canada (Ontario) Queen's Bench Reports
UK	United Kingdom
UPNG	University of Papua New Guinea
USP	University of the South Pacific
Van	Vanuatu
Van LR	Vanuatu Law Reports
WSLR	Western Samoan Law Reports
WWR	Western Weekly Reports, Canada