

LEGISLATIVE DRAFTING, DISTANCE EDUCATION AND ITS CONTRIBUTION TO GOOD GOVERNANCE IN THE PACIFIC

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1. The shortage of drafters in drafting offices in small island jurisdictions in the Pacific is a persistent problem that has remained since the colonies gained independence from their colonial rulers. Even after independence, many regional countries continued to rely on expatriates for legislative drafting. Often lack of interest from young qualified lawyers to commit to drafting as a career means that regional governments rely on donor friendly countries to send experienced drafts people to undertake legislative drafting work.

All pacific nations are now members of many international organisations. With an increase in economic development, demands of international organisations and new challenges such as national security and environmental change have left many nations to grapple with the increasing workload of new and complex legislations.

2. Good governance is inter-alia equated with sufficient, modern and good quality of enacted laws. There is an expectation from international agencies, foreign governments and potential investors that the laws of a country are clear so that the executive and the law enforcement agencies can apply the law and the judiciary can

interpret it. The countries in the Pacific have experienced that turning government policy into clear legislation is not an easy task. Those responsible for giving instructions to the legal drafters are often middle to lower level managers in government departments who have no training in the law and are often handicapped in giving quality instructions to the legislative drafter.

Some drafting offices clearly however have shortage of trained drafters. Many of those required to undertake drafting assignments lack necessary skills and experience. The cumulative effect of using under-qualified drafters has led to inconsistencies in laws, policies and practices. This in turn has led to ambiguity around some Acts of Parliaments in a few countries and in Fiji one judge has criticised the drafter in his judgement as being lazy in putting together one piece of legislation.

3. In addition to personnel constraints, ministers, heads of departments and senior government officials do not always realise the time, patience and skill required for good drafting. Often it is assumed (and wrongly so) that legislation could materialise instantly. In addition, smaller jurisdictions do not have a specific person who performs the drafting role. The draftsperson often doubles up to prosecute, advise and act as a member and adviser to boards and committees.

4. University of the South Pacific (hereinafter referred to as USP) has played a pivotal role in building capacity in legislative drafting in the Pacific region since the inception of the program in 1998. In the 1980s there were short courses run regionally by the Commonwealth Secretariat. Pacific Islands Law Offices Forum (PILOM) in the 1990s also ran short courses with assistance from Australia. These courses however were not structured and offered only when donor funding was forthcoming. The USP started its own Professional Diploma in Legislative Drafting (hereinafter referred to as PDL) in 1998, which is now regarded as the premier qualification in legislative drafting in the South Pacific region.

5. The PDL is a 30-week program designed for a beginner, as well as the seasoned drafter, to acquire knowledge in the art and science of legislative drafting. Most of the students that have completed the program have held a wide variety of legal and government legal positions. They include legal officers in Attorney-General's Chambers, legal officers in the Office of the Director of Public Prosecution, magistrates, police officers, academics, barristers and solicitors and members of parliament. The admission requirements are:

- LLB from USP; or
- Equivalent tertiary qualification; or
- Equivalent professional qualification; or
- Demonstrated experience or achievement (exceptional cases)

6. The PDL D is therefore open to lawyers and non lawyers. The 30-week program was developed by using material from the Commonwealth of Learning. It is assessed by means of 24 projects completed over the 30-weeks. Of these, eight are externally examined and account for 60% of the assessment. The remaining 40% is based on work completed in the intensive drafting workshop. A short description of the program is as follows:

The PDL D comprises seven modules:

LAD11 Back to basics

This module provides a formal introduction to the system of legislative drafting and what is legislation. It outlines the responsibilities of a legislative drafter, the importance of grammar, and why legislative drafts take the form they do.

LAD12 Working within Limits

This module examines the rules followed by courts when interpreting legislative provisions, and teaches students to consider those rules when drafting legislative provisions. It also looks at the role of drafters in relation to constitutional provisions, Bills of rights and international treaties.

LAD 13 Making the right expression

The aim of this module is to provide students with the fundamental knowledge and skills on how to write legislative sentences to create particular legal rules (legislative syntax) and the pitfalls that should be avoided.

LAD14 Putting on the style, getting organised

This module is designed to provide an understanding that legislation is more than a set of random legislative sentences. The proposer's requirements must be converted into a complete instrument that is effectively organised and structured in accordance with the legislative practice that is conventional in the student's particular jurisdiction.

LAD15 Topping and Tailing

In this module students will look in detail at the technical features of legislation such as writing definitions and those things that are typically covered in preliminary and final provisions.

LAD16 Particular cases

This module covers particular types of legislative provisions that are typical in Commonwealth legislation. Detailed consideration is given to legislative amendments and repeals, penal provisions, delegated powers to legislate, and the drafting of subsidiary legislation.

LAD17 Drafting workshop

This is a practical and interactive module that applies skills learned throughout the whole program. The workshop involves preparation and submission of an assignment that forms the basis of group discussions and presentations.

7. Although the course has been offered in the Pacific Region for over 10 years now, the core material has been in use in Commonwealth countries for quite a number of years earlier. The course content was produced by Professor Keith Patchett and supplied for use in the Pacific by the Commonwealth of Learning. The material comprises the following:

- Printed material;
- Audio transmission
- Face-to-face tutorials
- Video-conference tutorials via USPnet
- Face-to-face workshop

The material which has been used by course coordinators for many years now are satisfactory in content and is relevant to distance learning.

8. Since the inception of the course in 1998, the chart below summarises the student numbers/completions for the course.

Student Numbers/Completions		
Year	New Entrants	Completions
1998	22	7
1999	12	13
2000	5	-
2001	19	-
2002	4	19
2003 – 2005	Not offered	Not Offered
2006	21	12
2007	16	16
2008	28	

Most of the students who have completed the program come from a legal background. The gender parity is about 60/40 in favour of men and the largest regional group came from Fiji.

9. Over the years we have gained some insights into the course delivery, student motivation and technology used. Legislative drafting is a technical legal process involving policy assessment and its clear understanding of it followed by drafting, in most cases in the English language.

All students need as much face-to-face training and assessment as is possible. The current method of delivering the course poses practical difficulties as students often do not have that personal touch in assessments and do not have the benefit of regular discussions and are also deprived of an opportunity of re-drafting a given drafting project.

Students in the past have often encountered difficulties in being able to attend to the allocated tutorial times due to prior work commitment in their respective countries. It has been noticed that students who are not self-motivated often lose interest a few short weeks after showing early enthusiasm. The course as presently designed requires a student to be a self-starter and work through the material within a managed time frame.

The technology used is multi medial and there are few problems associated with it.

Those who have completed the course have obtained a basic knowledge of legislative drafting. It is the first step in a learner's

knowledge of drafting. PDL D should act as the foundation of those embarking on a drafting career. A qualification in PDL D is actively encouraged by the Attorney's General's Chambers in Fiji and is a basic requirement for those working in the drafting section.

The trained legislative drafters have had an impact in drafting offices across the region. Most drafting offices are small, of no more than two to three lawyers. Armed with a PDL D certificate, the drafter is often able to draft minor bills and subsidiary legislations a lot better than before.

11. The current approach to the course has its own strengths and weaknesses. As the Pacific basin comprises small jurisdictions spanning a vast ocean, the present structure, design of the course and its teaching approach is the best that can be offered for now. A legislative drafting meeting in Auckland, New Zealand in 2006 sponsored by the Commonwealth Secretariat rated the PDL D program as excellent. The program is such that it fits around people's professional lives since most drafting officers will not be able to spare their lawyers away from the offices for three to six months at a time. This course is also taken by non lawyers from government departments. It is hoped that people with this training will be used by their respective governments to give drafting instructions to legislative drafting offices. It will go some way towards alleviating the present difficulties associated with inadequate drafting instructions given by a government's line ministry.

12. On the converse, there are many challenges to the course. These can be summarised as follows:

- Narrow staffing base
- Attracting quality students
- Access, costs and sponsorships (Commonwealth of Learning has sponsored 15 students in 2008)
- Attendance and work commitments
- Attrition and non-compliance
- Travel to Regions for workshops

13. The long term solution for the region will be to have a full-time program. Drafting students need a classroom atmosphere to undertake intensive training which should be for at least 6 weeks. It should be run at an educational institution and USP is uniquely located in the region to do that. It has the ability to screen the applicants with the quality of assurance and accreditation. USP also has the infrastructure facilities and a decade long experience of offering PDL through distance learning.

The short-term solution is to have additional regional staff (for example from Australia/New Zealand) to help run the current program. Student sponsorship needs to be increased and there also should be a review to look into the present method and content of delivering the program. It is also important for the regional countries

to commit themselves to the course by agreeing to release their employees to attend all tutorials and workshops.
