

PacLII FIRST PRESENTATION

The Big Picture - and how PacLII fits into it.

1. Explain why we are here:

The purpose of this workshop is to explore the future of online legal publishing in the Pacific Islands. PacLII has been at the forefront of the development of online legal publishing in the region thus far. The development and operation of PacLII has been supported by international aid agencies. However, we cannot be assured that the present level of funding will be continued into the future.

There has been enormous progress in the availability of legal materials worldwide since the inception of PacLII. The legal resources are free to the users. However, the journey from the courts and legislatures to the website is not free. The benefits of free access to legal information accrue to lawyers and judges, legislators, as well as to the interested general public. From a broader perspective access to legal information contributes to access to justice, transparency of governments and regional integration.

We are here to explore the issue of the sustainability of online legal publishing in the Pacific Islands. We hope to be able to examine the importance of PacLII from the perspective of the top echelon of the legal community. We will present several options for a future PacLII and encourage your valuable opinions and suggestions as to how you see the future of online legal publishing in the region.

2. Outline

I am approaching this presentation today by starting with the big picture. I will begin by looking at World LII and the world network of LIIs; how they evolved and why the network is important from the point of view of legal as opposed to other kinds of research; then I will examine how PacLII processes and its member jurisdictions contribute to and benefit from this network.

3. What IS a Legal Information Institute?

What is a LII? It has been defined as a provider of legal information that is independent of government and which provides free access on a non-profit basis to multiple sources of legal information. Generally, LIIs are aggregators of public legal information at a national or sometimes regional level. The primary motivation and rationale of a LII is to promote free access to law as matter of good public policy.

Diagram - the Free Access to Law Network.

There is a world network of LIIs which is growing all the time. What makes them unique is that they are all interlinked, as opposed to the “silos” of information contained on the average website. The information on one LII is accessible through a simple link to another. If you read a document on one that refers to a document on another you can view it with a simple click of your mouse. You do not have to leave one site to visit the other. We will see examples of this in the course of this mornings presentation.

The interlinking of all the LII websites through the use of similar or complementary software also allows for the creation of “Virtual” websites such as CommonLII or WorldLII which are operated by AustLII. These are not separate offices or organizations. In reality they are re-collections of information drawn from materials already published on the national or regional LIIs.

The technology involved is shared among the LIIs allowing searches that span as many or as few jurisdictions as specified by the search parameters.

It is similar to a Google search, but there are important differences. PacLII along with most other LIIs uses technology to exclude spiders and robots from their case law. What this means is that if you perform a Google search looking for information about a friend or colleague for example, your results will not include the case law where your friend is either named as a party or mentioned in the body of a judgment.

PacLII began life in 1998 as a project at the USP School of Law.

Slide: Diagram showing development of PacLII from small project with ultimate aim of a network of LIIs in the Pacific, with PacLII as a central publishing hub

It has evolved into an institution that in 2001 became PacLII and part of this worldwide network and which has opened up opportunities for free access to legal materials originating from many countries in the world, and contributing the body of Pacific Islands law to the global library of legal materials. The ultimate vision would be for each country to manage its own online publication through its own LII with PacLII becoming a publishing hub.

4. Genesis of the LII network

The development of non commercial access to law on the internet owes its beginning to the World-Wide-Web. The web provided an almost no cost distribution mechanism for publishers, as well as an easily learned system of access for users.

The **Cornell Legal Information Institute** was created in 1992 and today remains a landmark for lawyers on the Internet by providing a highly reliable non commercial source of information on American law. Currently Cornell LII offers 300,000 pages to 20 million visitors per year.

AustLII was founded in 1995 by a team of legal and computer science researchers. By this time, the Cornell Legal Information Institute was already well respected, and the Australian team requested permission to use the name Legal Information Institute. And so the LIIs were born.

AustLII's original policy statement objectives aspired to:

- i) Provide legal researchers, via the internet, effective access to Australasian legal materials that are in the public domain or for which licenses can be obtained at minimal charge.
- ii) Provide access to the legal materials at no charge.
- iii) Become part of the expanding international network of internet servers which are providing public domain legal materials on the internet.

AustLII has been very successful in reaching its goals. Today AustLII is the world's largest provider of free access to legal information, providing over 400 databases of Australasian legal materials for free access. Additionally, it operates the Asian LII, the Commonwealth LII and the World LII.

AustLII was instrumental in moving PacLII from its first role as a Law School project into a fully fledged LII in 2001. AustLII used its search engine SINO and other software to establish PacLII with a similar functionality as that of AustLII. Around the same time AustLII also assisted in the development of LIIs in Britain, Hong Kong, South Africa and New Zealand.

The idea of a collaborative LII portal was first discussed at a meeting in 2000 which was attended by representatives

from the United States, Australia and Canada, which had also by this time established its own LII. It was envisioned that a collaborative portal would allow legal research across the different LIIs, and in effect would become an international World LII. The World LII is now a reality, operated by AustLII and offering access to over 11,000 legal databases from 123 countries and territories.

It is interesting to note that world wide there is an overall trend towards free access. The Civil Law countries in Europe and Latin America originally created on line editions of their official Law Gazettes in the mid - 1990's and most of them were fee based. However, by 2009 almost all of these could be accessed free of charge.

5. The Law and Connectivity - why bother with a network?

Why does the law require a uniquely fully linked and searchable website?

Christopher Langdell, dean of Harvard Law School from 1870-1895 once said that "the law is a science, and the library is its laboratory". In other words, the law is grounded in information, and the development of jurisprudence depends on access to primary sources - the constitution, statutes, regulations, and judicial opinions. This sets the development of law apart from that of any other scholarly discipline. Furthermore the large volumes of primary sources in law are often publicly available, and the issue of collation and searchability becomes a paramount consideration. The concerns for accuracy and authenticity are also important considerations that may not figure as prominently in other disciplines, so constant maintenance of online legal databases becomes crucial in this context.

Old primary sources in law do not become obsolete as they may do in medicine or the natural sciences. They retain their importance as possible future legal precedent. The

nature of the practice of law means that there will always be two sides to every issue making it difficult to reach a consensus as to the usefulness of old primary sources.

There is a lot of law freely accessible on the internet. Websites have been created by Courts, Universities, law firms and governments. However, a comprehensive search may involve visits to numerous websites, AND this process assumes that you are aware of the various websites that may be available in each jurisdiction. The development of LIIs as part of an international movement has provided a means to avoid this problem of numerous independent websites which lack compatible methods of browsing and searching. So you can go to one comprehensive website eg WorldLII which will provide access across the full network of LIIs

So I will show you an example on WorldLII:

(SLIDE - R v Oakes [1986] 1 S.C.R 103

Slide 1 = home page of World LII - you enter the search words "Oakes + Canada"

Slide 2 = R v Oakes Case - this is considered a leading authority in constitutional law for the question of what constitutes a "reasonable limit" in a "free and democratic society" as such, it has been considered in a multitude of courts around the world.

This slide demonstrates the wide number of courts that have considered this case. If you look at the list and scroll down it you will see Australia, England & Wales, Hong Kong, Ireland, International Court of Justice, Jamaica, Fiji, Vanuatu, Samoa....etc. The point being that Pacific materials sit alongside materials from all around the world which have been pulled together through the medium of WorldLII

There is a number beside each of the results and if you click on this it will take you direct to the documents.

In this era of increasing regionalization and globalization the need to consult legislation other than one's own is often necessary. Back in 1991, Wallace Baker* commented that "foreign law has become the daily bread of lawyers everywhere who formerly had totally domestic practices." Almost 20 years later, the importance of global access to foreign laws on the internet has exploded as a result of the convergence of the internet revolution and the E-government initiatives being undertaken worldwide.

Indeed, there are many law and justice organizations in the South Pacific that take this multi-country approach:- the Pacific Prosecutors Association, The Oceania Customs Organisation, the Pacific Islands Law Officers Network, the Pacific Judicial Conference, the Pacific Ombudsmen Alliance and the Pacific Islands Chiefs of Police. Further, every country in the Region is a signatory to a number of Conventions which deal with important global issues such as fisheries, banking, human rights, and the environment.

Access to a WorldLII has given Drafters of legislation the opportunity to search worldwide for successful models of legislation or legislative implementation of treaty obligations. As to case law, PacLII has the potential to be the cornerstone of the development of a unique South Pacific jurisprudence as the PacLII website provides easy accessibility and searchability of legal precedents across the region.

Taken from another perspective, the inclusion of PacLII on the WorldLII provides potential investors or visitors with a legal window on the region. Laws from a variety of jurisdictions can be easily accessed for comparison and evaluation. For example, enter the terms "Vanuatu and Taxation" on the WorldLII website and this will link the user to a range of relevant information on the PacLII website.

(SLIDE of World LII front page – point to the search box. Slide 2 would show the result of a search for Vanuatu)

Slide 1 = worldlii home page showing a search - vanuatu and taxation

Slide 2 - show results by relevance

Note these highlighted links are links to the PacLII website.

PacLII has enabled the South Pacific region to partake in this modern development of accessible law on the internet. PacLII is part of a larger worldwide movement, and without PacLII the region would not be represented on WorldLII. Membership in the network of LIIs provides opportunity for greater back-up of legal data as it is stored in more than one place. PacLII is part of and contributes to the growing economic integration of the region, and can be instrumental in the creation of a unique South Pacific jurisprudence.

How important is PacLII to the region?

We can say that it has become an integral tool for many organizations, as it is the only comprehensive collection of legal materials for the region. There are no alternate commercial collections (either online or in print) that users can turn to. A quick internet search reveals many examples of the broad dependence on the service:

Slide here = PacLII the silent partner slide

The Pacific Plan's Political Governance and Security Programme Strategic Plan 2009-2011 provides that "In its promotion of regional legal cooperation the programme works closely with Attorneys-General, State Law and Crown Law offices in member countries and maintains close relations with the Pacific Islands Law Officers Network, the Pacific Judicial Conference, the USP Law school, **The Pacific Islands Legal Information Institute (PacLII)** and other regional networks and organizations."

The Report of the Commonwealth Secretary-General 2009 discussed the important international legal partnerships initiated as part of its work to address the lack of judicial capacity in the region: “The secretariat has forged relationships with the UN Office in Drugs and Crime (UNODC), UNDP, **The Pacific Islands and Commonwealth Legal Information Institutes (PacLII and Common LII)** to facilitate the required assistance in these areas.”

The Asian Development Bank published a report in 2009 entitled “Reforming Pacific Contract Law”. In the course of preparation of the report the authors visited many Pacific island countries and interviewed business people, lawyers, accountants, judges and politicians. The report found “The out of touch and inaccessible nature of Pacific contract law is compounded by poor access to the modern reference material required to operate a common law system effectively. Many lawyers made joking references to the antique editions of important legal texts held in local libraries. To find the law often involves a huge research effort and many practitioners do not have the time... In this context the importance of **PacLII** was widely acknowledged by lawyers and non-lawyers alike.”

The Secretariat of the Pacific regional Environment Programme (SPREP) states: “The best online source of laws for Pacific island countries and territories is the **PacLII site.**”

The Law Library of Congress in the United States is the world’s largest law library. PacLII figures very prominently in their online database where **PacLII** is listed as the online resource for legal information for Marshall Islands, Cook Islands, Nauru, Vanuatu, Fiji, FSM, Kiribati, Niue, Samoa, Solomon Islands, Tonga, Tuvalu, and Papua New Guinea.

The FAO website lists **PacLII** as one of 33 “links of interest” to Small Island Developing States. Other links include the Forum fisheries Agency; Pacific Islands Development Program and the Pacific Islands Forum Secretariat- the

inclusion of PacLII in this list indicates the fundamental importance of this legal resource to the region.

6. How does PacLII participate in and contribute to this functionality

In publishing the legal materials on the website, PacLII uses the standard software developed by the LIIs. This converts our documents to html (this stands for 'hypertext mark-up language') It is a very simplified technical format designed to be human readable but which can also be interpreted by machines to enable formatting, the insertion of links to link information together and permit searching by the SINO search engine.

Slide of the Search PacLII page

<http://www.pacii.org/form/search/search1.html>

1. SINO

PacLII currently has 158 databases. A database is a single collection.

Slide - Vanuatu Laws - showing variety of databases listed under Vanuatu Laws

<http://www.pacii.org/databases.html#VU>

For example the Vanuatu Court of Appeal judgments are a single collection or database and the Vanuatu Supreme Court is another collection or database. The SINO search engine permits the user to search by individual database through to all databases simultaneously. Therefore if one is interested in researching murder cases that have reached the Court of Appeal in Vanuatu, the user can search only the Vanuatu Court of Appeal database. If the user is interested in researching appeals in murder cases in Melanesia, they could select Court of Appeal databases in PNG, Solomon Islands, Fiji and Vanuatu. If they want to search murder in general terms they could simultaneously search every

database in the PacLII collections to cover not only judgments but also legislation and journal articles.

2. Hypertext Links

The insertion of links allows the user to instantly leap from document to document without having to leave one website and enter another, which is the disadvantage of having materials in 'silos' which we mentioned earlier. Therefore if a judgment refers to another judgment or piece of legislation the user can instantly travel to that document by clicking on the blue link. A document referred to can be linked to if it is housed on PacLII or any other Legal Information Institute website.

Example: - Slides :

Police v Vailopa [2009] WSSC 69 – one of J Nelsons cases

<http://www.paclii.org.vu/cgi-bin/disp.pl/ws/cases/WSSC/2009/69.html>

Citations to another LII: [1999] NZCA 292

Cases cited within jurisdiction : [2007] WSSC 66; [2008] WSSC 1996

Legislation cited: Evidence Ordinance 1961 Young Offenders Act 2007

Cases cited within the Pacific : [2007] PGDC 63; [2005] FMKSC 11; [2006]

NRSC 8; [2008] TVHC 3; [2006] TOSC 37

NB These are hypertext links and if you click on them it will take you direct to that document

3. LawCite – the latest feature to be installed is LawCite which has been developed by AustLII. This is an automatically generated international legal case and journal citator. You can use it to find out what legislation or cases were referred to in a judgment and also if the judgment has been referred to and / or commented on in a subsequent judgment. (there is a hand out on LawCite in your folders)

Example: 1st slide :*Kelton Investments Ltd v Civil Aviation Authority of Fiji [1995] FJCA 15*

2nd Slide shows LawCite result

[http://www.paclii.org.vu/cgi-bin/disp.pl/fj/cases/FJCA/1995/15.html?query=\[1995\]%20FJCA%2015%20+%20Kelton%20Investments%20Ltd](http://www.paclii.org.vu/cgi-bin/disp.pl/fj/cases/FJCA/1995/15.html?query=[1995]%20FJCA%2015%20+%20Kelton%20Investments%20Ltd)

Click on law cite and you get a long list of what other cases have referred to this judgment. You will also find out what legislation and cases were cited during the case and instantly link to them - two are held on the AustLII website.

PacLII Processing:

PacLII receive documents in two basic forms. Either as electronic word documents in a CD or attached to an email or in Hard Copy - a photocopy or a pdf image. There are different processes involved in converting each to html. It is in these processes that much of PacLII editorial work lies. As already mentioned if the documents were uploaded as PDF images then it would be impossible to fully subject them to the SINO search engine or insert hypertext links.

The process of converting hard copy documents (a paper or pdf) to an electronic format is often referred to as digitisation. PacLII is sometimes referred to as a digitisation project but digitisation is only one part of what we do. When documents are received in Hard Copy they have to be first scanned using an Optical Recognition software in a scanning machine. This is not the failsafe method that it might appear. PacLII uses the same OCR software as Google, widely reputed to be the most accurate in the world, but sometimes the condition of documents is poor and the OCR is not able to recognise many of the characters so that each word has to be carefully checked. In a few cases this can sometimes amount to practically re-typing it. It is not too much of a trial to do a document which is a few pages long but we do come across the odd piece of legislation (especially) which can run into 6 or 700 pages! The need for accuracy is also paramount in legal documents. There must be integrity of the system or it becomes unreliable. Therefore PacLII documents are each proof read three times.

Digitisation to html is a labour intensive, tedious and time-consuming business. Currently we have a total of 640 pieces of Hard Copy Legislation and 1742 judgments (figure

includes 1508 Fiji Law Reports) waiting to be processed by the respective teams.

In Vanuatu, at the request of the Chief Justice, we have adapted our software to publish judgments in both html and in pdf showing the official court stamp where we are provided with both the word and pdf image documents.

Slide - Vanuatu Court - example showing html with option to download the pdf

<http://www.paclii.org.vu/vu/cases/VUSC/2010/8.html>

Processing of electronic documents is much faster. However it is not instant either. Most documents are received as Word Documents. These must be changed to rtf (means Rich Text Format) as an interim step in the conversion to html. Editors have to format them to fit the PacLII template to ensure consistency in the site. This is important because a variety of different styles and layouts would reduce the accessibility of the material to the user and make it nearly impossible for our software to work consistently.

As each jurisdiction and even each person within each jurisdiction tends to use a different format this adds to the complexity of the formatting task. Some formats used by the producers of judgments cannot readily be converted to html and therefore have to be manually formatted by PacLII staff. If all jurisdictions were to work with PacLII in the development of a standard judgment template for the Pacific Islands that was easy to convert to html then this would go quite some way to reducing the processing involved. It would also pave the way for the eventual automated upload and publication of judgments direct from the Court office to the website.

Another intervention by PacLII with regard to judgments is the allocation to each one of a medium neutral citation. Medium Neutral Citations are now the universal standard for the online publication of judgments. Many jurisdictions use

case numbers to identify the case but there may be several interim decisions or orders within each case. A Medium Neutral Citation (MNC) is a unique and standardised code for each interim decision that allows the instant creation of a link to that decision. The MNC is composed of the year in square brackets the country and court code combined eg VUCA (Vanuatu Court of Appeal) and the number that it is automatically given by the system when it is uploaded to the website.

Sourcing the information:

How the material reaches us is also an issue for PacLII and this is largely an issue of organisation within jurisdictions. I think it may safely be said, though I do stand to be corrected on this, that there is no one mechanism within any of the jurisdictions we represent that is responsible for collating, indexing and publishing all the legal materials of that jurisdiction. Often even within a particular agency there is no central collection of the information produced. There is also often little in the way of indexing - so it is not possible to know whether ALL the primary legal materials have been collected or not. The role of the collation and organisation of the material therefore falls to PacLII. Some of our materials are still collected manually in hard copy. Our Editors, on a recent tour, took with them a scanning machine and physically scanned as much material as they could get their hands on. If the scanner isn't taken then material has to be photocopied and physically carried back.

We also of course receive materials by email, in cd and also by downloading them from standalone sites eg Solomon Islands Parliament and the Fiji Government websites. And some of you have brought materials for publication with you to this workshop.

There is another important point to be made here with regard to the role of PacLII and that is the preservation of legal materials. Many paper materials are vulnerable to fire, flood, humidity, insects and time. PacLII is the sole source of

an important number of court documents whose original copies were destroyed when the Joint Court building here in Port Vila burnt down. Fiji have taken the opportunity to scan and send us 1500 Court of Appeal judgments from the Fiji Law Reports dating 1875 to 2000 for conservation and digitisation to html.

Many electronic materials are stored on single computers and not backed up on a server, so that if that computer breaks down there is a real risk of the material being lost forever. When we collect material (even if it sits in our backlogs waiting for processing) then it is preserved for posterity. PacLII stores documents for archival purposes using 'vendor-neutral' formats that will remain readable for generations to come. Storing electronic documents in Microsoft word or other proprietary format guarantees difficulties reading the documents in years to come and risks them becoming completely inaccessible because the software needed to view them will no longer be available - and why is that - because companies who manufacture and sell the software (eg Microsoft word) constantly update and sell new versions to ensure an ongoing market and the old versions become obsolete. The vendor neutral format does not have these issues.

PacLII works hard to meet these challenges with the result that today there are nearly 110,000 individual documents on the PacLII website with an average of just under 4000 being added each year.

The website receives just under 12 million hits per year - this number has nearly tripled since 2006.

We expect to be visited by over 350,000 individuals in 2010, up from about 145,000 in 2006. The average visitor views about 17 pages of content while visiting PacLII.

The maintenance of the website and the document processing requires significant infrastructure, so that the information remains both reliable and current, and this obviously is another funding consideration.

PacLII Additional contributions

Yet the publication of documents on PacLII is but one part of the work involved in promoting free access to legal materials in the Pacific Islands.

Training - PacLII conducts extensive awareness and training work. The use of a computer search engine is quite different from the traditional concept of browsing shelves. Computer literacy although growing still needs development and PacLII can assist in this.

Over the last three years, 2008 - 2010, PacLII has conducted 72 training sessions covering PNG, Solomon Islands, Nauru, Kiribati, Fiji, Samoa and Tonga. These trainings have been attended by a total of 1001 participants (includes 605 USP students) and have additionally comprised court staff, police, judiciary, private and government lawyers, parliament staff, librarians, Law Reform Commission staff, Transparency International staff and insurance company staff.

Pacific Legal Gateway. PacLII hosts information for regional organisations which have material of interest to the legal sector but are too small to host their own website. We can do it for them. Thus we host materials for the Pacific Judicial Development Department and the Solomon Islands Law Reform Commission and hope to expand this to include others such as the soon to be formed Vanuatu Law Reform Commission. We host these materials on the Pacific Legal Gateway which is a sister site to PacLII

www.paclii.org/gateway and also in there are grouped together and maintained a host of links to other sites which we have traced and vetted and which are valuable to the legal researcher.

Within this site is also a project worthy of pursuit and that is to create a Pacific consortium to provide low cost access to commercial sites such as Thomson Reuters.

PITS (Pacific Islands Treaty Series) - this is a database of mainly international treaties to which Pacific countries are signatories or which significantly affect them. There is also

scope to include bilateral treaties. An accurate record of what the relevant treaties are and what they contain is very much needed to enable legislative implementation of treaty obligations.

Implementation of Innovative processes - LawCite which was rolled out on PacLII within the last two months has already been mentioned.

New technology has also been developed by AustLII to create virtual subject databases - it is planned to develop the first one on PacLII within the next six months on Maritime Law. AustLII does not charge PacLII for access to these new technologies and indeed also freely provide their time and support in managing the implementation of the new software onto the PacLII website.

Offline delivery of materials - PacLII through its travels and experience in the region is aware that the internet is really taking off. However we are also aware of ongoing connectivity issues. These can result from poor internet connections or lack of access to a computer with internet connection for a variety of reasons. It seems that there is a real demand for a product that will provide all the PacLII databases and yet be fully searchable by the PacLII search engine. The basic pattern for such a device has been written and we are now ready to develop a prototype. This would revolutionise access for students who are in particularly remote areas but also the courts, their officers and the lawyers who travel outside the main centres to hear cases or indeed for office access where there is only one computer with internet access.

The PacLII website also seeks to maintain up-to-date information about jurisdictions - their court and legislative systems; the different government offices with legal or quasi legal functions etc. It is a challenge to keep this information up to date.

Finally: 'advocacy and communications'. PacLII still has a major and ongoing role to play in promoting the need for free access to legal information in the region; in encouraging the participation in the process and in sharing expertise and experience with those who seek to do it for themselves.

This session has endeavoured to examine what it means to be a Legal Information Institute, how PacLII contributes to that fraternity and how the member jurisdictions contribute to the process. In the next presentation we will deal with the central issue of sustainability – free access cannot be provided at no cost, and how can we as the main stakeholders begin to address this conundrum.

*Founded Baker & McKenzie in Paris