



17 March 2020

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence & Trade
PO Box 6021
Parliament House
Canberra ACT 2600

By Email: jscfadt@aph.gov.au

RE: Strengthening Australia's relationships with the Pacific Islands

The Bar Association of Queensland welcomes the opportunity to offer this submission. This submission was prepared by the Association's South Pacific Region Legal Education Committee.

Executive Summary

Following a request made by the then Chief Justice of Papua New Guinea (PNG), in 2012, the Bar Association of Queensland (BAQ) has, since 2013, run a successful Commercial Litigation Workshop (Workshop) for law graduates in PNG.

Australia has had a close historical relationship with PNG. The stability and prosperity of that country is in the interests of PNG and Australia. The viability of the law and justice sector in PNG is an integral part of that stability and prosperity. The Workshop is designed to address a gap identified by the Chief Justice in the training of prospective members of PNG's legal profession to meet the demands of its growing economy.

The Australian government's aid program to PNG is significant. The Workshop has previously been funded through that aid program but its funding for this year has recently been significantly reduced.

In recent years the budget for the Workshop has been K200,000 (AUD\$80,000) but this year that budget has been reduced by 50% to K100,000 (AUD \$40,000). Such a limited budget has the effect that the effective delivery of the Workshop will be compromised.

Conducting the Workshop only every second year would be an unfortunate compromise as it means that many law graduates in PNG will not obtain the benefits which the Workshop provides.

Further an option of halving the team travelling to PNG is an option that would significantly

reduce the capacity of the trainers to effectively teach which should be avoided at all costs.

This submission is made with the aim of encouraging the Committee to:

- (a) ensure funding of the Workshop this year and into the future to the same level as previous funding ; and
- (b) consider ways of securing the provision of further funding to support a one day Criminal Law Workshop in PNG; and
- (c) to considering ways of securing the provision of further funding to support a four to five day Commercial Litigation Workshop and/or a one day Criminal Law Workshop in the Solomon Islands.

Introduction and Background to the Workshop

The Workshop has been conducted in the first week of September since 2013. It has been conducted at the PNG Legal Training Institute (LTI) which is discussed in more detail below. It is usually conducted by approximately 9 Queensland barristers and two judges who travel to Port Moresby to conduct a weeklong intensive workshop. The barristers and judges volunteer their time but flights, accommodation, transport and security are funded out of the Australian Government aid program.

In the past the Workshop has been conducted over four days – Monday to Thursday. On the Friday a Criminal Law Workshop has been conducted led by a Supreme Court judge or experienced Queensland criminal law silk assisted by some of the Workshop trainers. The South Pacific CLE Committee (which has organised the Workshop and the Criminal Law Workshop on behalf of the BAQ) has recently determined that the Workshop should if possible be extended into the Friday taking the place of the Criminal Law Workshop.

This would enable the Friday to be utilised to tie all of the training conducted in the first four days together. The plan is to conduct a Q & A type session with all the students in plenary session rather than in their separate training groups. The session will be based on a new focused commercial litigation scenario designed to emphasise the issues dealt with in the first four days with one of the trainers moderating other trainers acting out the roles (in opposing teams) of clients, lawyers and witnesses with Justice Logan as judge with questions constantly being posed to the students as this activity unfolds.

This additional session will greatly assist students in understanding the complex legal and practice issues covered by the Workshop. That being said it needs to be emphasised that the Criminal Law Workshop has been highly successful and very popular with the students.

The one day Criminal Law Workshop should still be offered at the LTI but at a different time.

The Criminal Law Workshop also would be of particular assistance to legal practitioners in the Solomon Islands where the need for a commercial litigation workshop is not as great as it is in PNG.

From 2016 to 31 December 2019 the aid program from which the Workshop and the Criminal Law Workshop has been funded has been the Justice Sector and Security for Development program (JSS4D). The JSS4D had a budget for that four year period of AUD \$90M. That program has been extended beyond 31 December 2020, however, we are not aware of any of the details surrounding that extension either in terms of the period covered or the amount of further funding provided.

The Workshop is run through the LTI a post-graduate/pre-admission practical legal training statutory authority. The class size each year varies from 90 to 110 students. Law graduates in PNG have to attain a minimum set GPA to qualify for the right to attend the LTI.

The LTI is a nine-month post-degree training program. Attending and passing the LTI training is a requirement for admission to practice in PNG. It is akin to the Professional Legal Training courses Australian law graduates complete as a requirement of their admission. It operates from a compound on the western side of Port Moresby near the University of Papua New Guinea ten minute drive from the Parliament and National Court building.

The Workshop was designed to fill a need identified by the then Chief Justice of PNG, Sir Salamo Injia for training in commercial litigation after the creation in 2007 of the National Court Commercial List. The Commercial List was specifically introduced to resolve expeditiously commercial disputes in PNG. Since its creation, the number of matters heard on the Commercial List has increased considerably. This is not surprising given the ever increasing PNG resources, trade and commercial sectors in the 21st century.

Without being exhaustive, matters listed on the Commercial List, include cases that involve:

- Construing business contracts or commercial documents;
- Insurance and re-insurance;

- Banking and financial services;
- Provision and enforcement of securities;
- Business and commercial agents;
- Exploitation of or rights to technology;
- Entitlement to intellectual property;
- Takeovers;
- Exporting or importing of goods;
- Carriage of goods by land, sea, air or pipeline;
- Exploitation of natural resources;
- Conduct or operation of markets, exchanges or commodity boards or regulators;
- Application of the *Independent Consumer and Competition Commission Act 2000*;
- Proceedings under the *Income Tax Act* or other revenue legislation; and
- Corporations' law.

The vast majority of matters on the Commercial List are complex and require special skills. The Workshop case problems and lectures have been prepared specifically to assist PNG law graduates in dealing with such complex issues.

The Workshop was the culmination of a 2012 conversation between the then Chief Justice of PNG Sir Salamo Injia, and Justice John Logan RFD of the Federal Court of Australia. Justice Logan was appointed to sit on the Supreme and National Courts of PNG in 2011 under a mutual agreement between the Australian and PNG governments and those two Courts. He continues in that role. Sir Salamo, a strong advocate of legal reform in PNG, asked Justice Logan if the Queensland legal fraternity would be interested in offering a course focusing on commercial litigation to law graduates. The idea was also explored in conversations in early 2012 between Sir Salamo, Justice Logan and Roger Traves QC, the then President of the BAQ.

After an exploratory visit by John Bond QC (now Justice Bond) and Justice Logan in late 2012, the BAQ sought expressions of interest from its members. Along with Justice Logan, Justice Douglas of the Queensland Supreme Court joined the original teaching team of Queensland barristers. Like the Federal Court of Australia, the Queensland Supreme Court has a memorandum of understanding with the Supreme Court and National Court of PNG. Since then other judges of the

Queensland Supreme and District Courts have joined Justice Logan and the teams of Queensland barristers in conducting the Workshop and the Criminal Law Workshop.

Content and Format of the Workshop

The content of the Workshop was designed to meet the needs identified by Sir Salamo. It was written by the members of the original BAQ team including John Griffin QC and Mal Varitimos QC both of whom have appeared extensively in the PNG courts. Further the material was produced in consultation with LTI staff who gave input in areas where students required capacity building. It was approved by Sir Salamo. His successor as Chief Justice, Sir Gibbs Salika, fully and strongly supports the continuance of the Workshop.

The Workshop is both theoretical and practical. The students are given lectures followed by a related practical exercise. The facts of the practical exercise have been adapted from a real PNG dispute involving contract law and anticompetitive conduct. The Workshop follows the unfolding course of the fictitious litigation so as to allow the students to experience and understand issues as might arise in actual commercial litigation.

The practical exercises all stem from the same base factual matrix which is added to each day to accommodate the next aspect of the litigation. The students are progressively taken through: seeking interlocutory injunctive relief; an application seeking judicial review of an administrative decision; a contested discovery application; preparation of pleadings; preparation for trial and preparation for and running an appeal.

As part of the practical exercises the students prepare for and run moot hearings as counsel with trainers acting as judge. Accordingly, they are subjected to an intense program dealing with complex factual and legal issues moving from hearing to hearing in a way that provides a realistic experience of what actual commercial litigation is like.

The Workshop does not merely expose the students to sophisticated commercial dispute resolution ideas and practices. It also exposes students to key ethics concepts which underpin commercial practice specifically and legal practice generally. The Workshop emphasises the importance of diligence and skill in taking instructions, working hard in considering the law which applies and giving independent and impartial advice at all stages of commercial dispute resolution.

The lectures are delivered to the full cohort of between 90-110 students but the practical exercises are conducted in five tutorial groups of about 20 students. Each tutorial has two barristers (or judges) assigned to it for the week. As a result, the students are able to be given

individual attention. The tutorial groups allow the Queensland bar team to gain some understanding of students' strengths and weaknesses so that the teaching can be individually tailored. Having two trainers for each group is crucial to the effective conduct of the Workshop.

The role of an effective commercial litigation system in promoting efficient and effective economic growth cannot be overstated. Effective, diligent and ethical commercial dispute resolution does more than provide an environment for large commercial enterprises to invest with greater confidence. Indeed, they are not the primary beneficiaries of the improved commercial litigation expertise the BAQ team seek to create. To date the BAQ has trained approximately 650 students at the workshops conducted at the LTI. These young lawyers have gone to all parts of PNG and have provided improved legal services to PNG society.

The Workshop has provided resources that can be reused

One of the many difficulties encountered by PNG lawyers is the lack of research tools both electronic and in hard copy. Queensland barristers and judges have produced detailed papers on the lecture topics identified above. Each lecture contains useful references to relevant PNG statutes and cases. The material produced is of such quality that it has been provided to the judges of the Supreme and National Court.

Further Capacity Building opportunities

On a number of occasions while in Port Moresby the BAQ team have conducted Continuing Professional Development lectures for the local profession. The worth of CPD lectures has been identified by former PNG Attorneys General and former Presidents of the PNG Law Society. The BAQ team have remained happy to conduct such an event every year but the local professional body does not always successfully manage the logistics of the CPD event. Apart from the lecture content itself, an aim of the CPD lectures has been to demonstrate by example to the PNG legal profession the responsibility of a learned profession for lifelong learning.

Further the engagement of the BAQ with the LTI has led to places in the Bar Practice Course (the six-week barristers training course run by the BAQ) for several PNG students each year. This program has been running annually since 2016.

Finally, on several occasions the BAQ team has donated legal textbooks to both students and the LTI for use of the individuals when in practice and future students of the LTI.

Broader Benefits for Regional Security

The rule of law in PNG supports a public culture which is resilient in the face of attempts to subvert public institutions such as the Courts, the legal profession, the Parliament and the government. Such subversion is not in the interests of PNG nor Australia nor the region. Not only does the Workshop teach Commercial Litigation, it also exposes every lawyer likely to be admitted to practice in PNG to the values and ethics of an independent legal profession and judiciary with a respect for, and duty to, the rule of law. Such engagement with the emerging members of the legal profession should be a high priority.

Details of Team Membership and Logistics

The teaching team comprises approximately 9 volunteer members of the BAQ, together with Justice Logan (and his Associate) and usually at least one other Queensland resident judge. The barristers take a week out of their practice and the judges on the teaching team volunteer personal leave or allocated judgment writing time in order to attend. No member of the teaching team receives any remuneration for conducting the Workshop. Travel and accommodation expenses have been met by the Australian Government through various programs the most recent of which has been JSS4D. The airfares for Justice Logan and his Associate are not funded as Justice Logan arranges his affairs such that he is in Port Moresby sitting on the Supreme Court in the week immediately prior to the Workshop. He then attends the Workshop with the full support of the Chief Justice of PNG and the Chief Justice of the Federal Court.

Team members including Justice Logan and his Associate are accommodated at The Airways Hotel. The Airways is the accommodation venue of choice for visiting Australian government officials and Australian Defence Force members. It offers a safe standard of security, food and accommodation. Thanks to Queensland Team member Mr Varitimos QC, who knows the owners, the hotel has thus far given a special deal to the Qld Bar Team.

The logistics for the Workshop are arranged by Cardno which arranges for team members to travel by bus operated by a reliable security contractor from The Airways Hotel to the LTI and return each day. In addition, by virtue of Justice Logan's appointment as a judge of the Supreme and National Courts of PNG, there is an official car and driver from the National Judicial Staff Service and an assigned escort constable from the Royal PNG Force. These men are primarily responsible for Justice Logan but are also available to support the teaching team should that become necessary. The cost of this is not a cost met under the relevant aid program from time to time.

Current Funding Arrangement

The workshop is funded by Australian Government aid. The Department of Foreign Affairs and Trade allocated funds to the JSS4D program. The LTI (and other institutions in the Law and Justice Sector in PNG) submit proposals to the JSS4D program for funding.

Unfortunately as referred to earlier in this submission, the program for the September 2020 Workshop has been significantly cut back. Despite the LTI submitting the same funding budget for the Workshop as it has previously submitted the budget amount has been cut from approximately \$AUD80,000 to approximately \$AUD40,000.

This halving of the Workshop budget has come as a complete surprise to the BAQ and to Justice Logan. There was no prior consultation with the BAQ or his Honour seeking input as to the likely effects on the ability to conduct the Workshop should the budget be reduced.

The BAQ understands that funding is limited and that there are many competing needs for it.

It must be said however that to cut funding from the relatively modest amount of AUD\$80,000 to the even more modest amount of AUD\$40,000 does not make "commercial" sense. The Workshop has operated efficiently for 7 years and there is no reason for cutting its funding which can be attributed to the way in which it has been conducted. It is plain that it is for reasons external to the LTI and the conduct of the Workshop which have led to the drastic cut in the budget. What those reasons are are not known to the BAQ.

Further engagement through expansion of the Workshop to other Pacific Nations

The BAQ is seeking to expand the pro bono delivery of training of lawyers in the South Pacific. The BAQ has been approached by the Public Solicitor of the Solomon Islands seeking to have the Workshop (or similar program) conducted in Honiara. The Public Solicitor has identified deficiencies in the legal education of local lawyers which would improve through engagement with Australian lawyers. He identified that the skills taught in the Workshop would provide much needed training for Solomon Island lawyers.

Further the Criminal Law Workshop which has been conducted at the LTI would be of considerable relevance and assistance if it could be provided to Solomon Island legal practitioners. The BAQ is ready willing and able to increase its pro bono engagement in the South Pacific if appropriate funding to meet travel, accommodation, and local transport and security is available.

The Victorian Bar

The Committee should also be aware that the Victorian Bar has been conducting an annual Advocacy Workshop at the LTI in July of each year for many years. This is a week long workshop which focusses on the development of crucial advocacy skills. Funding for this has been provided on the same basis as funding provided for the BAQ Workshop. The BAQ workshop is deliberately designed to complement, not to duplicate the Victorian Bar Workshop.

The funding for the Advocacy Workshop for July this year has also been reduced by 50% - ie. from approximately AUD \$80,000 to AUD \$40,000.

Conclusion

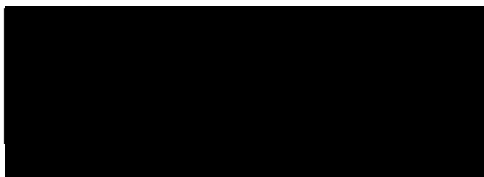
The BAQ Workshop is a tested and proven, effective capacity building mechanism for lawyers in PNG in the important area of commercial litigation, which opportunity is not otherwise provided. The Workshop is the only intensive training in commercial litigation that is provided to PNG law graduates prior to their admission as legal practitioners. It also engenders strong links between the PNG legal profession (and prospective national leaders in the judiciary, public sector and political class) and the Australian legal profession and judiciary.

It is submitted that the momentum of this initiative should not be curtailed by funding cuts but encouraged through proper funding (to the extent provided to date).

It is also submitted that funding should be made available so that the one day Criminal Law Workshop which has been conducted by the BAQ can be conducted at the LTI at a time other than in the first week of September each year.

Finally, it is submitted that the training should be expanded to other Pacific nations. As a starting point it is submitted that funding should be made available to allow a workshop similar to the Commercial Litigation Workshop and/or similar to the Criminal Law Workshop to be conducted in the Solomon Islands.

Yours faithfully

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Rebecca Treston QC
President