

# **LEGAL SERVICES COUNTRY PROFILE**

## **FIJI**

**International Legal Services Advisory Council**

Attorney-General's Department

Australia

January 1998

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# Introduction

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The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. <b>General information:</b>	key data, legal language, form of government and economic indicators.
2. <b>Basic legal information:</b>	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. <b>Legal services market:</b>	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. <b>Market access requirements:</b>	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. <b>Australian legal services:</b>	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. <b>References/sources:</b>	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

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# 1 General information

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## Official name

The Sovereign Democratic Republic of Fiji. A new Constitution was enacted in July 1997. It is expected to come into force in 1998. When it does, the name of the State will change to the Republic of the Fiji Islands.<sup>10</sup>

In December 1995 there were a total of 796,078 inhabitants registered in Fiji of which 403,288 were ethnic Fijians, 346,523 of Indian origin; and 46,267 persons of other races. Migration rates of Fijian Indians were very high following the military coup d'états of 1987, with an average of 32 Fijian Indians per 1000 migrating each year from 1986 to 1990 compared to a rate of 4 per 1000 indigenous Fijians. Since 1990 the rate of Fijian Indian migration has slowed to about 10 per 1000. As a result, the population growth rate has risen to around 1.5 per cent per annum, double the average growth rate between 1986 and 1990. By 2001 it is estimated the population of Fiji will be 800,000.<sup>2/7</sup>

## Languages

English, the official language, is widely used in business circles. Fijian and Hindustani are used extensively by the indigenous Fijian and Fiji-Indian communities and Rotuman and Cantonese are also commonly spoken among the respective ethnic groups.<sup>3</sup>

## Legal language

English is the official language of all the courts, but interpreters are attached to every court.<sup>4</sup>

## Form of government

Fiji has a parliamentary form of government. The President, who is chosen by the Great Council of Chiefs, appoints the Prime Minister. Following the two military coups in 1987, Fiji was declared a Republic and the 1970 Constitution abrogated. The Interim Government under Prime Minister Ratu Sir Kamisese Mara ruled for four and a half years before the General Election in May 1992 under the 1990 Constitution. The 1990 Constitution gave 'indigenous Fijians' the right to hold the Prime Ministership and a guaranteed 37 seats in the 70 seat House of Representatives. Under the 1990 Constitution, the President was to be an indigenous Fijian, chosen by the Great Council of Chiefs.<sup>1/9</sup>

Mr Sitiveni Rabuka formed a coalition government between the Soqosoqo ni Vakavulewa ni Taukei (SVT) and the General Voter's Party. Another election was held in 1994 after the defeat of the 1994 Budget motion in 1993, which resulted in

members of the Fijian Association Party sitting on the cross-benches. The next election is due in 1999.<sup>1/7/9</sup>

On 25 July 1997, the new Fijian Constitution was signed into law by President Ratu Sir Kamisese Mara. Mr Denis O'Brien, Partner, Minter Ellison, Canberra, Australia, began redrafting the Constitution in March 1997, following the acceptance of a report on the 1990 Constitution prepared by a three-person Constitution Review Commission, chaired by a former Governor-General of New Zealand, Sir Paul Reeves.<sup>10</sup>

The redrafted Constitution marks a new beginning as the Pacific island republic was removed from the Commonwealth after the military coups in 1987. After the first military coup toppled the government of Dr Timoci Bavadra, which was seen to be dominated by Indo-Fijians, a Constitution was put in place by decree. It was seen to be biased in favour of indigenous Fijian interests.<sup>10</sup>

The 1997 Constitution was unanimously approved by both houses of the Fijian Parliament and is non-discriminatory in nature. It includes a Bill of Rights that outlaws racial discrimination and guarantees the right to equality before the law. It also guarantees freedom of speech, freedom of association, the separation of powers and the independence of the judiciary.

It is expected that the new Constitution will mean that Fiji will be re-admitted to the Commonwealth and will be able to re-establish its links with the British Crown. Fijian officials hope that Fiji will be re-admitted at the next Commonwealth Head of Government Meeting at Edinburgh in October 1997. The new Constitution is expected to come into force by July 1998, as soon as new electoral arrangements can be put in place. The new Constitution is written in a plain English style, with the aim of making its provisions more widely understood by Fiji Islanders.<sup>10</sup>

- Head of State: President, Ratu Sir Kamisese Mara, GCMG, KBE, KStJ.
- Prime Minister: The Hon Major General Sitiveni Rabuka, OBE (Mil), OStJ, MSD.
- Chief Justice: Sir Timoci Tuivaga
- Attorney-General & Minister for Justice: Ratu Etuate Tavai

- Main political parties include the:
  - Fijian Political Party—the Soqosoqo ni Vakavulewa ni Taukei (SVT);
  - National Federation Party (NFP)
  - Fiji Labour Party (FLP); and
  - General Voter’s Party.<sup>1/10</sup>

## Economic information

Basic indicators	1993	1994	1995	1996	1997 (est)
Nominal GDP	2.35	2.33	2.41	2.52	2.68
Real GDP growth (%)	1.8	4.5	1.4	4.4	3.3
Inflation rate (%)	5.2	0.6	2.2	3.0	3.0

Source: Country Economic Brief, Fiji, December 1996, Department of Foreign Affairs and Trade, Canberra. Details provided by the Fiji Bureau of Statistics, the Reserve Bank and the Supplement to the 1997 Budget Address.<sup>6</sup>

NB: All figures are in Fijian (F) \$ million. GDP is at current factor cost and inflation is assumed at 3 per cent for the purposes of the projection. Financial/business services represented 12.5 per cent of the GDP in 1995.

The Fiji economy grew by a sluggish 1.4 per cent in 1995, with a large downturn in sugar output following a record performance in 1994. During 1996, real Gross Domestic Product (GDP), is estimated to have grown by a more healthy 4.4 per cent, with mining output up by almost 50 per cent and accounting for well over one quarter of total growth during the year. Sugar production and tourism arrivals are expected to grow by 2.4 and 3.1 per cent respectively. The economy is estimated to grow 3.2 per cent in 1997, and by around 3 per cent through to the year 2000, with healthy increases in tourist arrivals but a stagnant sugar sector is expected.

The construction industry is set to pick up from 1998 onwards due largely to the anticipated construction of tourism facilities in response to the Government’s Short Life Investment Package for the construction of tourism-related facilities.<sup>2/3</sup>

The 1997 Budget adopted for the first time, a medium-term focus. The document *Preparing for the 1997 Budget—Action Now*, released in April 1997, outlined the strategy, process and timetable for the 1997 Budget and established the priority goals for the Government during the next three years as well as setting a number of targets for modest improvements in the areas of economic growth, Government finances, employment and social indicators such as poverty alleviation, health and education.<sup>3/6</sup>

The 1997 Budget, in looking at ways to improve the operation of domestic markets, foreshadowed the corporatisation of a number of Government authorities. This is possible following the passing of the redrafted Public Enterprises Bill by Parliament in December 1996. The Water and Sewerage section of the Public Works Department, telecommunications, the Ports Authority, road construction and maintenance and the

generation of electricity have all been identified as possible areas where competition could be introduced, making possible efficiency gains, lower prices and improved service provision. Better management systems and incentives for improved performance in the public sector are also being put in place.<sup>3</sup>

The need to lessen the economy's heavy dependence on the sugar industry has become more urgent as a result of the attenuation of Fiji's preferential status in its export markets. Diversification of the economy will require much stronger attention to the problem of remedying the services shortages of professional and technical personnel that have resulted from the high rates of emigration of skilled labour in recent years. The business services sector is continuing to expand although relatively expensive and at times unreliable telecommunications are a constraint.<sup>3/5/6</sup>

In December 1996, the Capital Market Development Authority was to be established to provide investors with a wide range of access to financing options and to assist in the development of the Suva Stock Exchange. Owing to the healthy position of Fiji's foreign reserves and the high level of banking liquidity, the 1997 Budget contained further relaxation of exchange controls as of 1 January 1997, including in the level of remittances of profits and retained earnings by foreign companies operating in Fiji. The entire financial sector is to be reviewed in 1997.<sup>3</sup>

## **Australia's trade with Fiji**

Australia is Fiji's major trading partner, taking one quarter of all merchandise exports and supplying approximately one third of Fiji's imports. Fiji is Australia's twenty-fifth largest export destination and its major exports include petroleum, food, textiles and a range of manufacture, in addition to around one quarter of all tourists.

Australia enjoys a substantial trade surplus with Fiji, the overall trade surplus in 1994-5 being \$A192.5 million. As the Fiji economy continues to develop, it is expected that there will be substantial opportunities for Australian exporters, with the education field and service industries constituting areas of promise for Australian exporters.

In 1995, Fiji's exports grew from \$US547 million (1994) to \$US629 million, with a growth rate of 15 per cent. Australia's exports to Fiji in 1995 were worth \$US308 million. Australia's major exports to Fiji have been refined petroleum, textile yarns and fabrics and other 'confidential' items.<sup>3/7/8</sup>

## Legal Services Country Profile: Fiji

<b>Total two-way trade with Australia</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>
A\$ millions	457.6	486.4	561.9
as % of total Australian trade	0.4	0.4	0.4
rank in total Australian trade	30	31	30
<b>Value of Australian exports A\$ million</b>	<b>327.5</b>	<b>324.7</b>	<b>377.3</b>
as % of Australian exports	0.5	0.5	0.6
market ranking in Australian exports	27	26	23
% growth (five-year trend)	17.0	13.2	12.6
<b>Value of Australian imports A\$ million</b>	<b>130.0</b>	<b>163.4</b>	<b>184.5</b>
as % of Australian imports	0.2	0.3	0.2
market ranking in Australian imports	37	36	36
% growth (five--year trend)	6.6	16.2	21.0

Source: Composition of Trade, Australia 1994-95, Department of Foreign Affairs and Trade, Canberra.

## 2 Basic legal information

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### Legal system

The laws of Fiji are based on statute, common law principles and customary law.

### Sources of law

The legal system of Fiji derives from:

- *The Constitution of Fiji 1990* ('the Constitution') and the laws of Parliament (now re-written);
- the common law, rules of equity and statutes of general application in force in England on 2 January 1875, so far only as the circumstances of Fiji and its inhabitants permit (*Supreme Court Act Revised Laws 1978*, Cap. 13 ss. 22 and 24); and
- Customary law (the customs of the indigenous people of Fiji relating to the holding of customary land and aspects of chiefly authority and provincial government).<sup>9</sup>

### Structure of the legal profession

The legal profession in Fiji is governed largely by the provisions of the *Legal Practitioners Act 1965*. Lawyers in Fiji practise as both barristers and solicitors, i.e. the profession is fused. Under Section 4 of the Act, the only persons eligible to practise as barristers and solicitors in Fiji are those persons admitted to practice by the High Court of Fiji. The Chief Justice may appoint any person he/she considers fit and proper to be a Notary Public.

Partnerships follow the English pattern. All partnerships must contain one member of three years' standing who has been given leave of the Chief Justice to practice on his/her account. Newly admitted barristers and solicitors can appear in any Magistrate Courts (court of first instance which has limited jurisdiction in both civil and criminal matters), but must have three years' standing before they can appear unassisted in the High Court, Court of Appeal or Supreme Court. Otherwise assistance from a senior advocate of at least three years' standing is required. In Chambers appearances there are no such restrictions.

Non-resident lawyers, who have not been admitted to practise in Fiji but have been admitted in other Commonwealth countries, may be permitted to appear in the various courts. In order to obtain the requisite temporary admission to appear in relation to a specific case, the legal practitioner must submit to the court registry a petition supported by Affidavit providing details of the particular matter. Should permission be granted,

the foreign practitioner must appear in court with a practitioner admitted to practise in Fiji.<sup>4/10/11</sup>

## **Regulation of the legal profession**

The legal profession within Fiji is subject to the provisions of the *Legal Practitioners Act 1965*. Under the legislative provisions of this Act, barristers and solicitors admitted to practise in Fiji are subject to rulings of the Fiji Law Society and a Disciplinary Committee, comprised of members of the legal profession.

The *Legal Practitioners Act* is about to be replaced by a new Legal Profession Act, which was expected to pass through the Fiji Parliament in August 1997.<sup>10/12</sup>

## **Law-making bodies**

Fijian laws are made by the Parliament comprising the House of Representatives and the Senate. The Law Reform Commission advises on law making in Fiji.<sup>13</sup>

## **Law derived from Australia**

The Fiji Government has adopted, and is planning to adopt, several pieces of Australian legislation and regulations (both Federal and State). These include the Australian Industrial Relations legislation and Consumer Protection legislation. It is reported that the Family Court of Australia is presently assisting the Fiji Law Reform Commission in the review and reform of Family Law in Fiji.<sup>11</sup>

## **Court structure**

The judicial arrangements were regularised by the 1990 Constitution of Fiji. In 1994, a major Commission of Inquiry into the Court System of Fiji was undertaken, the Committee being headed by the Hon Sir David Stuart Beattie. The Committee's recommendations for change were published in its report dated August 1994.<sup>12</sup>

The Beattie Report identified the need for the appointment of additional magistrates and judges, the establishment of new court houses in Suva and Lautoka, and an emphasis on the introduction of electronic technology. In addition, the Commission recommended a number of changes to the *Legal Practitioners Act* and the regulations governing the legal profession in Fiji, including a major revision to the regulations governing the operation of Solicitors Trust Accounts.<sup>12</sup>

A number of major legislative changes were recommended in the report, the most significant being the re-drafting of the *Matrimonial Causes Ordinance 1968* so as to bring Family Law in Fiji in line with comparable legislation in Australia and New Zealand. Many of the recommendations of the

Commission are presently before the Parliament for consideration and are expected to be implemented in the near future.<sup>12</sup>

As at June 1996, the Fiji Judiciary consisted of:

- the *Supreme Court*. Following the abolition of appeal rights to the Privy Council in 1987, the Supreme Court of Fiji is the final court of appeal in civil and criminal cases, in addition to being the final arbiter of the Constitution; and
- the *Fiji Court of Appeal* and the *Magistrate Courts*.
- the *High Court*. The High Court has unlimited original jurisdiction and conducts indictable trials. Actions concerning the Constitution begin in the High Court.
- the *Small Claims Tribunal* was established by decree early in 1996. It has jurisdiction to hear civil actions involving claims up to F\$2,000. It sat in Suva for the first time in July 1996.

## Professional legal education

### Primarily trained

In 1994, in response to a growing demand for the means by which the region could educate its own lawyers, the regional University of the South Pacific (USP) commenced a law degree programme and as a result, the USP region's first home-grown law graduates will appear in November 1997. From 1997, year I of this programme will be offered on Laucala Campus, Suva, Fiji and also through University Extension (a distance learning program). Years II, III and IV will be offered at the Port Vila Campus, Vanuatu. Prior to 1994, all lawyers were educated overseas and some Fijian lawyers continue to be trained abroad.<sup>15</sup>

There is a relatively small but real and continuing need for the training of local lawyers. There has also been a clear indication of need in almost all states of the Pacific for people with skills in a number of specialist law areas, in particular, legislative drafting; international law and international relations as it affects the law of the sea; natural resources, air and sea transport; and international trade.

Quite apart from the meeting of the practical need of the region, the LLB degree presents some innovative prospects in terms of the development of law within the region and also for developing the knowledge of the international community about the law of the Pacific.<sup>16</sup>

## **Qualifications for practice**

Overseas trained law graduates are required to undertake twelve months of pupillage with a “Master Solicitor” prior to admission. However, practical experience in designated countries suffices if the person has been admitted in that jurisdiction.<sup>15</sup>

## **Principal universities**

See Primarily Trained above and Other Domestic Legal Qualifications below.

## **Other domestic training institutions**

From 1998 a postgraduate Diploma in Legal Practice will be offered to intending practitioners. This course will be based in Suva, Fiji. It may be offered in other countries of the USP region.<sup>15/16</sup>

## **Post-graduate legal courses**

There are presently no formal post-graduate courses offered by the University of the South Pacific. Early in 1996, the University of the South Pacific established the Institute of Justice and Applied Legal Studies (IJALS), which has the responsibility of overseeing post-graduate courses and continuing legal education (CLE) for lawyers within the South Pacific region.<sup>15</sup>

## **Other domestic legal qualifications**

The regional University of the South Pacific has since 1985 offered through its distance learning program a Certificate in Law, targeted at those with an active vocational interest in law, such as para-legal staff and a Diploma in Law, at sub-degree level. However, with the advent of the law degree offered by the USP, the Diploma in Law is to be phased out.<sup>15/16</sup>

## **Continuing legal education**

Fiji has been actively involved in the Continuing Legal Education Committee (CLEC), under the auspices of Pacific Island Law Officers’ Meeting (PILOM). In conjunction with the CLEC and the Fiji Law Society, the IJALS is developing a series of continuing legal education courses, with the aim of providing a sustainable program of legal education relevant to the countries of the region.<sup>15</sup>

## **Practical legal training**

Presently, there is no practical legal training in an institutional setting. Under section 5 of the *Legal Practitioners Act*, law graduates are required to undertake twelve months of pupillage

or legal work in a barrister's chambers, solicitor's office or government department before being admitted to practice. It is intended that, from 1998, the IJALS will offer a postgraduate practical legal training course for the purpose of entry to practice in Fiji. The course is designed to equip law students with lawyering skills in an operational setting, involving experiential learning through the use of simulation and community legal work.<sup>12/17</sup>

Further details concerning the University of the South Pacific, and the subjects to be offered within the four year law course, may be found in the Lawasia Directory of Law Courses, published by the Centre for Legal Education, Sydney. The contact details for the centre are:

**GPO Box 232  
Sydney NSW 2001  
Australia  
Telephone: (02) 9221 3699  
Facsimile: (02) 9221 6280**

## **Foreign legal training**

### **Sources**

Prior to the establishment of the law degree course by the department of law within the University of the South Pacific, aspirant lawyers have obtained their legal education/training mainly from the Universities of Australia, New Zealand and the United Kingdom.<sup>18</sup>

### **Skills obtained**

Bachelor of Laws, Masters and Doctorate in law, practical legal training and post qualification continuing legal education.<sup>15</sup>

### 3 Legal services market

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#### Professional associations/ law societies/bar associations<sup>15</sup>

**The Fiji Law Society**  
**GPO Box 14385**  
**Suva, Fiji**  
**Telephone: 679 302 004**  
**Facsimile: 679 302 904**

#### Local legal firms

##### Local legal firms

In May 1996 there were 65 law firms in Fiji. The majority of these firms are sole practitioners.<sup>18</sup>

##### Local lawyers

Prior to the military coups in 1987, Fiji had some 169 practising lawyers. There has been a regular outwards migration of professional people, including lawyers, from Fiji to more developed countries though this trend appears to be easing. As at June 1996, there were approximately 70 lawyers based in private practice and approximately 55 in government, practising within Fiji.<sup>19</sup>

As at June 1996, the Government employed 17 lawyers within the Attorney-General's Office, 16 lawyers within the Crown Law Office and the Office of the Director of Public Prosecutions and an additional 22 lawyers within other government departments. The majority of these lawyers are based in Suva, with two government lawyers based in each of Lautoka and Labasa.<sup>12/20</sup>

##### Per cent in international commerce

Information not available.

##### Dollar value of legal services

Information not available.

##### Local legal firms involved in international work

Information not available.

##### Practice mix

Information not available.

## **Australian and other foreign legal firms**

### **Australian firms**

There are no Australian law firms with branch offices in Fiji. However, reportedly some local firms have correspondent arrangements with Australian law firms and one large Australian firm is presently investigating the possibility of establishing a branch office in Suva.<sup>19</sup>

### **Australian lawyers**

There are a number of lawyers practising in Fiji who are also admitted to practice in Australia. There are also one or two Australian citizens practising in Fiji under work permits.<sup>18</sup>

### **Local lawyers**

Not applicable.

### **Foreign legal firms**

No foreign law firms have offices in Fiji. It has been reported that firms wishing to establish a commercial presence in Fiji may experience difficulty in meeting local requirements. Firms should liaise closely with the Fiji Law Society. There are, however, some local correspondent law firms of foreign law firms. Furthermore, some law firms and other companies in Fiji have employed non-Fiji citizens on work permits. Such “lawyers” have no powers to sign legal documents or appear in court unless admitted to practice in Fiji.<sup>12</sup>

## **Status of lawyers employed**

### *Local lawyers*

Not applicable.

### *Foreign lawyers*

There are no foreign lawyers in Fiji, except those already mentioned (see *Foreign Legal Firms* and *Australian Lawyers* above) and foreign lawyers employed in government.

### *Principal home countries*

Not applicable.

### *Practice mix*

Not applicable.

## Commercial arbitration

### Firms/centres

There are no firms/centres in Fiji which deal with commercial arbitration. The establishment of a Pan-Pacific Arbitration Centre has been proposed but as at June 1996 was not in operation. However, the Australian Commercial Dispute Centre is presently investigating the establishment of a South-Pacific Dispute Centre, to be based in Fiji.<sup>21</sup>

### Principal coverage

*The Arbitration Act 1965* governs both domestic and international disputes. Under the legislative provisions, arbitrators are able to be appointed on an ad-hoc basis for the purpose of arbitrating in specific domestic or international disputes. Generally, commercial agreements/contracts contain an arbitration clause authorising the appointment of an arbitrator in the event of a dispute.<sup>18</sup>

### Foreign restrictions

If granted permission to practise law in Fiji, foreign lawyers are not prevented from appearing in arbitral proceedings.<sup>18</sup>

### International instruments

*The Convention on the Settlement of Investment Disputes between States and National of Other States 1965 (ICSID)* came into force for Fiji on 10 September 1977.

Fiji is not a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)*.

Fiji has not adopted the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.

Note: For Australian International Commercial Dispute Resolution Services see *Dispute Resolution Services under 5: Australian Legal Services* (pp. 16–17).

## 4 Market access requirements

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Fiji officially joined the World Trade Organization (WTO) on 14 January 1997.<sup>3</sup>

### Foreign lawyer/ firm regulation

#### Body responsible

The Chief Justice, Ministry of Finance and Economic Planning, the Ministry of Labour, and the Fiji Law Society.<sup>18</sup>

#### Laws & regulations

A major review of the *Legal Practitioners Act* has been completed and, in May 1996, the Law Commissioner's Report was submitted to the Government. Consequently, the new Legal Profession Act is to replace the previous legislation and was expected to pass through the Fiji Parliament in August 1997. There are also investment regulations, and the *Code of Ethics* (1984), adopted by the Fiji Law Society from the *International Bar Association Code* (1959) (Chap 6).<sup>10/18</sup>

### Foreign lawyer practice requirements

#### Citizenship

Anybody admitted as a barrister or a solicitor (or their equivalent) in England, Wales, Scotland, the Republic of Ireland, Australia, New Zealand, Malaysia, Singapore, Sri Lanka, Nigeria or Papua New Guinea may be admitted in Fiji. All applicants must be a Commonwealth citizen, must reside in Fiji for at least three months and must have such legal experience considered appropriate by the Chief Justice. It has been reported that foreign lawyers wishing to become admitted in Fiji may experience difficulty in meeting local requirements. Foreign lawyers should liaise closely with the Fiji Law Society.<sup>4/18</sup>

#### Educational qualifications

To be admitted in Fiji, foreign lawyers must be admitted to practice in the foreign jurisdiction and there must be reciprocal recognition of qualifications between Fiji and the overseas jurisdiction.<sup>18</sup>

#### Experience

To be admitted to practice in Fiji, all applicants must have at least one year of legal experience in Fiji or in any of the countries referred to in *Citizenship* above. To practise on

his/her own account, an applicant must have at least three years of such legal experience. The nature of experience required is at the sole discretion of the Chief Justice.<sup>11</sup>

### **Pupillage period**

See *Experience* above.

### **Residency requirements**

All applicants must reside in Fiji for at least three months immediately prior to making their application.<sup>18</sup>

### **Government approvals**

In order to practise as a barrister and solicitor in Fiji, a non-citizen of Fiji must, in addition to being admitted to practice in Fiji, obtain a work permit (see *Work Permits* below).

### **Other**

None known.

### **Admission authority**

The Chief Justice of Fiji, the High Court of Fiji and the Fiji Law Society.<sup>11</sup>

### **Special admission**

Foreign lawyers may be admitted temporarily on a case-by-case basis. It should be noted that as a result of the recommendations of the Law Commissioners Report on the *Legal Practitioners' Act* a change to the admission requirements is expected. This is likely to include the requirement of a demonstration of competency in the laws and procedures of Fiji, (probably by written examination).<sup>15</sup>

### **Additional requirements**

#### **Visa restrictions**

A minimum of formality is required for persons wishing to make short visits as tourists or to investigate investment opportunities. Visitors must produce proof of funds for maintenance and assured onward passage. Temporary visitors' visas which are valid for 30 days are issued on arrival and may be extended for up to six months. No visa is necessary for citizens of the United Kingdom, the United States, Australia, New Zealand and certain other countries. The Immigration Department of the Ministry of Home Affairs and Immigration is responsible for visa matters.<sup>1</sup>

## Work permits

Foreign lawyers require work permits to practise law in Fiji on a permanent basis. In most cases, work permits are difficult to obtain. However, a number of more senior barristers, including members of the Australian Bar, have been admitted temporarily to appear in cases before the High Court and Court of Appeal, for which no work permit is required.<sup>1</sup>

## Regulation of foreign law firms \*

*(\* It has been reported that firms wishing to establish a commercial presence in Fiji may experience difficulty in meeting local requirements. Firms should liaise closely with the Fiji Law Society. For a foreign law firm to establish a branch office in Fiji, the firm may be required to show that it offers specialised expertise not available in Fiji.)<sup>12</sup>*

Use of firm names:	Not applicable.
Employment of local lawyers:	Not applicable.
Local firm association:	No restrictions known.
Government approvals:	Not known.
Other:	Not known.

## Restrictions on practice\*

*(\*There are no special regulations governing the practice of law by foreign lawyers in Fiji but there is a residency requirement for the admission of the lawyer to the Bar in Fiji.)<sup>15</sup>*

Local law:	Not applicable.
Home law:	Not applicable.
Foreign law:	Not applicable.
International law:	Not applicable.
Other:	Not applicable.

## Recent regulatory changes

### Recent regulatory changes

As at July 1997, there were no regulatory changes governing the legal profession within Fiji. However, the *Legal Practitioners Act* is was recently reviewed by the Fiji Law Reform Commission (FLRC). The Attorney-General has reviewed the recommendations of the Committee and a draft Amendment Bill is currently before the Parliament.<sup>15</sup>

## 5 Australian legal services

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### Australian law firms\*

(\**Australian law firms and lawyers providing services see 3—Legal Services Market p. 12*).

### Prospects for Australian legal services

#### Legal assistance required by Australian businesses

Legal assistance in commercial law is required by Australian firms setting up and doing business in Fiji. Australian-based law firms offer certain advantages to Australian companies (eg familiarity with practice, Fiji/Australia connections and so forth). Furthermore, there would be the added attraction for an Australian law firm in dealing with established Australian banks, insurance companies and other Australian enterprises in Fiji.<sup>11</sup>

#### Areas in which Australian legal services might be of value

There are several areas in which Australian legal services might be of value. These include:

- Consumer Affairs—with growing interest in consumer legislation awareness and practices in Fiji, Australian law firms may be able to provide a range of services for which there is local demand;
- Mining Legislation—this may be an area which Australian firms could provide services to the government or to the private sector;
- Arbitration services—the present situation is perceived to be inadequate in the area of commercial disputes by some businesses. Dispute resolution may be an area in which there is scope to develop specialised legal and related services; and
- Family Law—the Family Court of Australia is assisting the Fiji Law Reform Commission in the review and reform of Family Law in Fiji.<sup>19</sup>

#### Future prospects

There appear to be opportunities for the export of Australian legal services, especially given the existing and growing Australian commercial interest in Fiji and the similarities between the two legal systems.

It has been suggested that there is sufficient work in Fiji for all Fijian law firms and possibly room for two or three offshore law firms. However, barriers to entry for foreign law firms need to be overcome and local cost structures would make profitable operations difficult for Australian firms.

Educational services are an increasingly important part of Australia's trade with Fiji and should provide increasing opportunities.

## **Dispute resolution services**

### **Centres/firms**

Although, there have been proposals for the establishment of a Pan-Pacific Arbitration Centre, as at June 1996, there was no arbitration centre in Fiji. However, the Fiji Law Society maintains a listing of arbitrators and arbitrators are appointed in both domestic/international disputes pursuant to the arbitration clause which is generally included in standard commercial contracts. Under the provisions of the *Arbitration Act 1965*, arbitrators may be appointed on an ad-hoc basis to arbitrate in both domestic and international disputes.<sup>19</sup>

The Australian Centre for International Commercial Arbitration (ACICA) provides services and facilities for the conduct of international commercial arbitration within Australia. Hearing facilities are available in all States and Territories of Australia, with a large facility at Darwin providing convenient access for parties from the Asia-Pacific region. The major facility is located at ACICA head office in Melbourne. ACICA also offers facilities for mediation, conciliation, expert appraisal and other commercial dispute resolution processes. The Centre was established in 1985 on the initiative of the Institute of Arbitrators Australia. ACICA has entered into agreements with arbitral centres in over 20 countries, which allow for the use of legal and arbitration facilities. ACICA also has a Memorandum of General Agreements with the International Centre for Settlement of Investment Disputes (ICSID), under Article 63(a) of the ICSID Convention.<sup>24</sup>

For further information on ACICA, contact:

**Mrs L K Cunningham**  
**Secretary General**  
**Australian Centre for International Commercial Arbitration**  
**Level 1**  
**22 William Street**  
**Melbourne Vic. 3000**  
**Telephone (03) 9629 6799**  
**Facsimile: (03) 9629 5250**

The Australian Commercial Disputes Centre (ACDC) was established in 1986 to introduce independent, non-court dispute resolution procedures to Australia. ACDC provides mediation and expert determination/appraisal, and the Centre has a panel of experts, mediators and arbitrators. In 1993, ACDC concluded Memorandum of General Agreements with the International Centre for Settlement of Investment Disputes (ICSID) in accordance with the provisions of the ICSID Convention and is the Asia Pacific Registry for the London Court of International Arbitration. It is a member of the Council of Asia Pacific Commercial Disputes Centres and is affiliated with the American Arbitration Association (AAA).<sup>25</sup>

For further information on ACDC, contact:

**Ms Michelle McAuslan**  
**Chief Executive Officer**  
**Australian Commercial Disputes Centre**  
**Level 5**  
**50 Park Street**  
**Sydney NSW 2000**  
**Telephone: (02) 9267 1000**  
**Facsimile: (02) 9267 3125**

## **Legal education and training**

### **Overseas students studying in Australia**

In its third year in 1996, there were 237 students registered on the USP's LLB degree. It may be a few years before statistical data reflects any real shifts in the numbers of Fijian students undertaking a law degree in Australia, but it could be expected that the availability of a law degree at the University of South Pacific will see decreasing numbers travelling to Australia to study law.

As at 31 March 1996, there were 607 Fijian students *overall* studying at both Commonwealth-funded and private institutions within Australia. As at March 1995, there had been 694.<sup>2/23</sup>

In 1994, Fijian students comprised 11.4 per cent of international students studying award law courses in Australian universities and in 1995, Fijian students represented 8.9 per cent of all overseas student enrolments in law. As at 31 March 1996, Fijian students studying award law courses in Australia, comprised 8.7 per cent of all international law students.<sup>23</sup>

As at 31 March 1994, there were 37 Fiji students recorded as studying law and Legal Studies (both undergraduate and post-graduate level) in Australian publicly and privately funded tertiary institutions. In 1996, this figure was 66 students. In 1996, the majority of Fijian students undertook business

administration/economics (172) (1992: 213), followed by engineering/surveying (100) (1993:123).<sup>23</sup>

Unfortunately, the statistics cannot be broken down to distinguish undergraduate from postgraduate students. It is also possible that the number of Fijian students studying law in Australia is under-represented as overseas law students undertaking double degrees involving law, e.g. commerce/law, are often recorded as though they were undertaking one degree only, i.e. commerce. Other difficulties with recording have been noted. The Australian International Education Foundation (AIEF) of the Department of Employment, Education, Training and Youth Affairs (DEETYA), has been working to develop improved counting methodologies as concerns data on international education in Australia.

In 1997, there were 4 Fijian students studying law at Bond University, Queensland (all of whom had been enrolled in 1996). Two of these students is undertaking the bachelor of Commerce/Law degree and one in the Bachelor of Arts/Law.

In 1996, there were 11 Fijian students studying law at Bond University. Eight were enrolled in the LLB, one in the Bachelor of Commerce/Law, one in the Bachelor of Arts/law, and one in the Bachelor of Jurisprudence. Of the 41 Fijian students studying at Bond University, as at 31 March 1994, most were undertaking an LLB degree.

### **Qualifications recognised**

Fiji lawyers with an Australian law degree would be eligible for admission to practice in Australia .

### **Australian Education Centre representation**

**IDP Education Australia  
Suite 7A, 1st Floor  
Queensland Insurance Centre  
Victoria Parade  
Suva Fiji  
Telephone: (679) 30 3533  
Facsimile: (679) 30 3785**

### **Dollar value of educational services**

Information not available.

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