

## **Federal Court of Australia**

### **Submission to**

### **An inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific region**

**June 2024**

This Submission is presented to the Joint Standing Committee on Foreign Affairs, Defence and Trade by the Federal Court of Australia. It addresses items 1, 2, and 4 of the Inquiry's Terms of Reference and offers recommendations to enhance Australia's response to the priorities of Pacific Island countries through their judicial branches.

#### **Introduction**

Robust and independent courts are fundamental to the rule of law, which underpins the legitimacy and functionality of democratic states. The Federal Court has collaborated with Pacific courts for decades to support justice and the rule of law. However, both remain fragile across the region, and engagement between Australian and Pacific judiciaries remains under-supported. This weakens Australia's position as the region's "partner of choice."

Despite DFAT awarding substantial funding to private contractors to manage its bilateral justice programs, the Australian judiciary's capacity to respond to Pacific Island judiciaries' priorities remains constrained by uncertain and inadequate grant funding. Moreover, collaboration with the region's courts is often confined to priority aspects of Australian Government foreign policy. This limits the autonomy of Pacific courts to address their own developmental and reform priorities independently and diminishes Australia's ability to support them directly and effectively.

To address these issues, the Federal Court submits two recommendations:

1. Establish a permanent Pacific Judicial Secretariat; and
2. Support successive strategic plans developed by the Pacific Judicial Secretariat.

#### **Items 1 and 2: Priorities and alignment of current engagements and initiatives**

There is no coordinated mechanism for Pacific Island judiciaries to engage with their Australian counterparts or address shared priorities. In contrast, the United States and New Zealand have established robust channels for judicial collaboration in the Pacific. Engagement between Australian and Pacific Island judiciaries currently occurs through direct and ad hoc connections between individual courts, which, despite yielding improvements, are undermined by the limitations of grant funding and the executive's foreign policy objectives.

The lack of coordination among bilateral justice-related initiatives has led to some courts being overwhelmed with initiatives, some of which are duplicative or inconsistent, while others face gaps in support. A Pacific Judicial Secretariat would mitigate these issues by fostering better communication and coordination, maximizing the benefits of shared resources and opportunities.

Australia should support the establishment of a permanent Pacific Judicial Secretariat as a platform for direct engagement between Australian and Pacific Island judiciaries. This Secretariat

should consist of heads of jurisdiction from interested Pacific Island and Australian courts and be managed by nominated court staff. The Secretariat would function remotely with periodic in-person roundtable meetings to discuss priorities and develop collaborative strategies.

**Recommendation 1: Establish a permanent Pacific Judicial Secretariat.**

Key areas of focus for collaborative strategies and plans would include:

- Substantive law and practice: to enhance the quality of justice, including support for the 2050 Strategy for the Blue Pacific by building expertise to handle environmental disputes.
- Court and case management: to foster efficiency and transparency, including support to the ongoing digitization of court functions.

The Federal Court recommends the Australian Government provide ongoing support for the implementation of strategic plans developed by the Secretariat, addressing members' priorities. This approach ensures that national and regional priorities are continually identified and addressed collaboratively, promoting institutional strengthening and capacity building across the region. This will be bolstered by the Secretariat coordinating its activities with other actors to reduce duplication and inconsistencies while optimising resource utilisation.

The Federal Court emphasises the importance of sustained support for the Secretariat's strategic plans. This commitment would ensure that the Pacific Island judiciaries can address their priorities continuously and derive ongoing benefits from their long-term partnership with Australia.

**Recommendation 2: Support strategic plans developed by the Pacific Judicial Secretariat.**

**Item 4: Strengthen People-to-People Links and Partnerships**

The Federal Court's international relationships are founded on the trust and respect built through strong people-to-people links and partnerships. The Federal Court has collaborated with successive Chief Justices, judges, and court staff among 15 Pacific Island judiciaries, several of which under Memorandum of Understanding on Judicial Cooperation.<sup>1</sup>

The proposed Secretariat and its strategic plans would provide the platform and vehicle to further strengthen these links, ensuring that national and regional priorities are addressed comprehensively. This would allow the Australian judiciary to support all participating Pacific Island judiciaries, sharing successful approaches, methods, and results to maximize positive outcomes across the region.

**Conclusion**

By establishing a Pacific Judicial Secretariat and supporting its strategic plans, Australia can significantly enhance its support for the priorities of Pacific Island judiciaries. This would strengthen the rule of law in the region and reinforce Australia's position as a preferred partner.

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<sup>1</sup> Papua New Guinea, Solomon Islands and Vanuatu.