

PacLII SECOND PRESENTATION

Focus on Sustainability

As remarked during this morning's presentation, Free Access to legal materials is not free to produce.

We have a staff to pay; equipment to purchase and maintain; travel costs and communication costs to meet and then in addition development costs of new projects.

Yet PacLII has become part of the legal fabric of the South Pacific region. As noted it is used by many organizations, and there is no comparable, comprehensive source of legal information in the region. However, is the provision of free access to law a sustainable endeavour?

This is not a new issue and nor is it one that is unique to PacLII. It is my intention therefore in this presentation to examine the experience of some other LIIs to see if we can learn anything from them and to then outline some possible strategies that PacLII has identified over the recent years.

Part of the purpose of this meeting is to put our heads together and identify and discuss other strategies which we may not have as yet considered.

So what are we talking about when we talk about "Sustainability"? SAFLII (the South African Legal Information Institute explained it as

"the ability to deliver services that provide sufficient value to their target audience, so that either that audience or other stakeholders acting on its behalf choose to fund the ongoing operation and evolution of that service."

They identified 4 key factors as essential in a sustainability chain:

(SLIDE - Four Key Factors in Sustainability)

- i) Does PacLII address a **need** in the region?
- ii) Does PacLII have the **organizational and technological ability** to respond to the need for legal information?
- iii) Is the **environment** conducive to a thriving LII? That is, is the data available for publication and is there a policy and legal framework which establishes an obligation on the states to publish?
- iv) Are **financial resources** available and predictable?

The first two factors have been addressed. The first being “**need**” - it is clear that PacLII addresses a need in the region. We know from the number of users, the excellent feedback that we receive from users, and of course from the paucity of alternate legal resources in the region.

As to the second, “**organizational and technical ability**”, PacLII has proven software from AustLII that allows PacLII to be part of an international web of accessible and searchable legal information. We also have access to AustLII’s new software developments such as LawCite and Virtual databases which we will use to expand and improve our website. We are also working on an offline device to service the unique needs of the Pacific Islands. Further, PacLII has developed expertise over the years - we have advised jurisdictions on every step of the process - from set up to formatting of individual documents to ensure full search functionality.

The third factor “**Environment**” - this is all to do with the producers of the information. PacLII is working on developing a favourable environment, and that is one of the purposes of this workshop.

PacLII requires a policy and legal framework that will ensure that legal data is made available to PacLII in an efficient and timely method that will not only guarantee reliable and comprehensive coverage, but will also keep operating costs to a minimum. These issues have not been well addressed to date. When this project started it was way too early to have a conversation with each jurisdiction about whether they wanted online publication. As the internet has developed over time and we can see that it is not something that is a passing phase but is going to take increasing prominence in our lives, the time is now right to consider it. To create an environment that is conducive to online publication there are several steps a state would need to take. First, as discussed there needs to be by each producer of legal information a clear and unequivocal statement on record that they support the publication of their legal materials on line. This could be by way of a Court Direction, by the signing of an MOU, exchange of letters with PacLII or even by Act of Parliament. The formulation and statement of policy would underpin the development of in-country systems and processes leading to systematic publication. It tends to be the clerical staff on whom responsibility falls for transmission of documents and they are understandably reluctant to send us documents without a clear statement from the top. Also they do not have the power or authority to set up the necessary processes that will ensure sustained flows of information, nor to establish uniform judgment formats. It can also be said that donors are probably more likely to fund online legal publishing if there is an obligation on the State to provide legal data for publication.

Secondly, as regards internal organisation, we would like to see every jurisdiction have a system in place in order to collate and transmit the information for publication. Presently, the collection of legal data for publication is largely ad hoc- PacLII receives digitized documents as well as cardboard boxes of paper documents from a variety of different offices and individuals within those offices. To achieve this every jurisdiction could have a committee

responsible for the co-ordination of publication of its legal materials – either within courts or within the legislature or a combined one. The role of overseeing the processes and implementation of publication needs to be clearly identified within a jurisdiction with staff either recruited from amongst existing staff or newly recruited to undertake the work.

Finally - the issue of **financial resources** must be addressed because the provision of free access to online legal information comes at a cost. If PacLII is to have a sustainable future we must establish a diversified source of funding - we cannot rely on a few international donors to fund PacLII forever. PacLII would like to attract financial support from institutional users and private users while retaining a non profit status.

A reflection on the experiences of other LIIs:

It is useful at this point to briefly survey the fund raising approaches of other LIIs to see what if anything can be learned from them. In 2009 **AustLII** was split into 2 parts, one was comprised of a research institute facility attached to a university and governed by a management company, and the other, the AustLII Foundation which is a charitable organization governed by a Board of Directors. The stakeholders are all represented on the Board and these include university professors, lawyers in private and public practice, and a representative from the Attorney General's office. The decision to create the non-profit entity was made after a number of potential external contributors to AustLII indicated that they would be more likely to contribute funding if AustLII was structured as a non-profit company.

BAILII, although hosted by universities in England and Ireland, is constituted as a charitable trust and managed by a Board of Trustees.

CanLII is also an independent non-profit organization that is hosted by a university. It is funded by contributions from all members of the Canadian Bar.

The first LII at **Cornell** University is also run as a non profit organization. It receives 60% of its funding from Cornell Law School, 20% from a lawyer directory and online advertising on its website and 20% from donations.

LIIs are funded through institutional contributors, individual contributors (usually lawyers), and academic funding and academic institutional support. Generally LIIs have been constituted as independent non profit organizations with a host university. This allows the LII to solicit donations from its users on its website, apply for donor funding on its own, and also provides greater transparency through company accounting than through University accounting conventions- so that donors know exactly where their money was spent.

The nature of PacLII has changed since it began. It was developed as a project of the School of Law in order to provide cases, legislation and other legal resource material to the teaching programme. Now it has the potential to increase the accessibility of law to the legal community as well as to the general public; to help develop an integrated regional jurisprudence; and to strengthen the position of the Pacific Island states in the economic/ business world.

It remains an important component of the Law School, but today PacLII provides a vital service throughout the region, and it is in the interest of its many stakeholders to sustain its continued operation. It has outgrown its designation as a School of Law project and now seeks a new direction that will allow PacLII to continue to serve the Law School as well as the regional stakeholders.

For the last few years PacLII has been virtually fully donor funded with 100% of incoming funds coming from AusAID and NZAID. In addition small grants have been received from

the Sasakawa Peace Foundation, the Queensland Law Society and the Commonwealth Secretariat. The University supplies some structural and office support through the offices of its Development Office in Suva and its HR and Finance departments. The maximum funds PacLII has received in any one year is \$600,000AUD. PacLIIs principal costs are on staff, website infrastructure and maintenance of the databases, and travel in the region.

The international aid donors cannot be expected to payroll PacLII indefinitely. That is not what they do. The organisation is expected to develop strategies which will eventually see it stand on its own two feet and become self supporting.

It seems that the options may be roughly divided into two categories which are complementary to each other. The first would be the obvious one of securing and increasing income and the second which is just as important may be baldly termed reducing costs.

Income:

There are a number of ways that PacLII can begin to build an income, and these are in no particular order but fall into 3 main categories

1. Secure annual contributions from Member Jurisdictions: In much the same way that the University itself is funded perhaps the 20 member jurisdictions could agree to vote a specific amount to PacLII each year in order to maintain the service. This could be established not as an additional cost to those jurisdictions but as a replacement cost. That is, moneys which might previously have been set aside for publishing series of law reports or printing sets of new legislation could be re-directed to maintaining an online legal publishing service. Traditionally for the Courts, publication of their materials has been through the production of series of Law Reports. This has proved time-consuming and very expensive to the extent that many countries do not publish

at all or are several years behind in the process. It is recognised also that in a scenario of member jurisdictions contributing to online publication that they would require a greater stake in the ownership of the service. Therefore it may be appropriate to consider the model adopted by other Legal Information Institutes around the world as they have grappled with the same issues. It is feasible to establish an independent regional organisation with a Council with stakeholder representatives drawn from the law agencies of the Member Jurisdictions. This in fact was the model of a registered charity originally envisioned by the late Professor Bob Hughes Dean of the Faculty of Law and founder of PacLII

2. Call for and manage donations: This is a practice which has proved quite successful for AustLII. Indeed they investigated a couple of years back the proposal to carry advertising but even within a country of that size it was deemed to be unviable but the donations route was an attractive one. PacLII is widely used by organisations around the world. We exist to serve the Pacific Islands but we know from information gleaned through a range of enquiries we received and an examination of the Internet Service Provider addresses that access us, that the information we provide is very widely used around the world. Universities in Australia and the USA; Law agencies in Australia such as the Australian Attorney Generals Department; The Australian Refugee Review Tribunal; the 'Doing Business Project' of the World Bank based in Washington DC; mining companies; foreign investors; the Asian Development Bank; private law firms doing business in the Pacific; tax offices; The Regional Rights and Resources Team of SPC; SPREP; The Child Rights Initiative (CRIN) based in the UK; the Australian Broadcasting Corporation and so on all use the material published on PacLII. Based on the Australian experience it is entirely viable that funds can be attracted via donations.

3. Charging for additional services: The development of PacLII as a one stop shop for all things legal in the Pacific Islands would be of benefit not only to users who can use it

as a portal to find whatever they might be looking for but also can be an opportunity for other small projects working in the legal field to make their materials available to their particular audience and also the wider public. Thus we can manage the publication of materials for small and specialised projects such as the Pacific Judicial Development Programme (which is funded by NZAID) and small national agencies such as the Law Reform Commission. Charges can be set for these services which would help to cover PacLII costs but also would be cheaper for the project or agency than establishing and maintaining their own website. Other services such as tracking down elusive or missing materials on request could also be charged for. So could the provision of online legal research training to private law firms and businesses across the Pacific Islands. There is certainly scope to examine all the aspects of PacLII business to see if and where charges can be made to generate an income that would ensure the central tenet of the LII which is to provide free access to the primary legal materials - the legislation, treaties and cases produced by each of our member jurisdictions.

Reducing costs:

As previously mentioned PacLIIs main cost is its staffing. The main reason we need so many in the way of staffing is because of the amount of processing that the materials require when they arrive at PacLII, the training and attendant travel that is required in such a vast geographical region and the specialist IT support to maintain the databases and help deliver new and innovative features.

Jurisdictions doing it for themselves:

The way of the future would be that ultimately each jurisdiction would fully collate, authenticate and process its own legal materials for online publication to the extent of establishing their own Legal Information Institutes and so that the process of upload to the website would be fully

automated. This already happens in other LII's such as CanLII and AustLII. So the technology already exists to allow this to happen. The issue is not the technology so much as the policy and organisation. First the establishment of national policies with regard to free access to the legal information they produce and what they want to publish on line. Second the establishment of an organisational structure to identify, authenticate and process the information to be published.

Third, Agreement needs to be reached on the adoption of standard templates which will ensure that if a document adheres to particular standards such as font size and typeface, that it will appear properly when uploaded to the website.

This all takes time, awareness and training. It is quite a long road for many here but most of you have already started down that road either by a recognition of the value of online publishing and a curiosity of what must be done to achieve it; or by establishing small projects to digitise old law report collections or by setting up of committees and agencies within a jurisdiction to oversee the collation and publication of the jurisdictions materials. What is certainly true is that the more countries do themselves the less input that will be required from PacLII in the publication process. What would need to be ensured of course is the harmonisation of whatever technical processes a country would adopt so that the material could still be successfully linked through PacLII to CommonLII and WorldLII as already described in this morning's presentation.

Reduction in scope of PacLII:

The processes involved in transforming a hard copy document into html are lengthy and consequently expensive. While it is acknowledged that conversion of such material into pdf image files helps to preserve the material it has been mooted that it could be uploaded to the website in that format without the lengthy processing into html.

This is certainly an option. It would mean however that such material could not be fully searched by the SINO search engine and therefore would probably not show up in a subject search; it would also mean that it could not be linked by hypertext to other legal materials either on the PacLII website or on other websites. This could cut out a significant body of material from the scope of the online legal researcher. However, this is something for states to consider - the degree of functionality they require.

We have set out a number of themes. It may well be that no single strategy is the answer but rather a combination of elements.

We need to recognise in all of this the varying capacity and resources of the 20 different jurisdictions across the region.

There are however commonalities to be addressed:

- a) provision of legal data for publication
- b) development of standard templates and formats to streamline publication processes to keep costs to a minimum and prepare for automated upload
- c) sustainable funding

Also, I think some countries may be in a position to implement these processes earlier than others, but for those who are not PacLII could undertake a greater share of the responsibilities while capacity is being developed. Perhaps the international aid donors would be more amenable to provide interim or transitional funding if they could see a planned move towards a sustainable future.