

Food Safety Act and Regulations

Laws of Fiji – a Broad Overview

Broadly, the laws of Fiji comprise:

- national legislation; and
- the common law (aka case law).

International law obligations need to be incorporated into national law – 69(1), Food Safety Act – “Codex Alimentarius ... for standards and codes regarding food safety ... are deemed to be regulations made under this Act ...”

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Legislation (1/3)

Broadly, two kinds:

- primary legislation (Acts of Parliament, Promulgations)
- subsidiary legislation – made using powers in the PL – will have details which are not covered by the PL under which it is made.

Not all PL have or need SL.

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Legislation (2/3)

SL may be called:

- regulations
- local laws
- by-laws
- planning schemes
- rules.

Different names do not mean different effects.

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Legislation (3/3)

SL is made 'under' primary PL – the PL will usually state who has the power to make SL and what things (scope) the SL can deal with.

See, for example, section 70, FSA.

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Common Law (aka Case Law) (1/3)

Judge-made law via decisions / judgments – sometimes called ‘case law’.

Fijian case law can be informed by other jurisdictions.

Legislation and the common law exist side by side.

Legislation prevails over the CL if conflict between them.

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Common Law (aka Case Law) (2/3)

Courts sometimes interpret legislation – court decision becomes the CL – interpretation will (in most cases) relate only to the legislation (or part of) relevant to the case.

BUT, CL may sometimes contain general statements on how to interpret legislation more broadly.

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Common Law (aka Case Law) (3/3)

Resultmost CL decisions judgments relate to only a particular Act(s) or part of an Act(s)

.... some CL decisions judgments which can be used in interpreting legislation generally.

Limited case law in Fiji on the substantive parts of FSA – cases largely confined to Part 3 (Licensing) and in particular section 16.

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Inter-relationship between Legislation (1/8)

Individual piece of legislation is sometimes affected by one or more other legislation – it will usually be stated in the legislation (but not always).

Example, the FSA is affected by the Interpretation Act.

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Inter-relationship between Legislation (2/8)

Section 2(1), Interpretation Act: “In this Act and in every other written law ... before or after ... the following words and expressions shall have the meanings hereby assigned ... unless there is something in the subject or context inconsistent with such construction or unless it is ... otherwise expressly provided.”

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Inter-relationship between Legislation (3/8)

Section 2(1) of the Interpretation Act defines words which are found in the FSA – for example, ‘aircraft’, ‘amend’, ‘city’, ‘court’, ‘document’, ‘financial year’, ‘land’, ‘offence’, ‘public place’, ‘writing’ etc ...

Question: What does this mean for the FSA?

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Inter-relationship between Legislation (4/8)

Note inter-relationship with the Public Health Act.

FSA defines the 'Board' as the Central Board of Health constituted under section 3 of the Public Health Act.

Section 28, FSA important – vests administration of the FSA in the Central Board of Health.

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Inter-relationship between Legislation (5/8)

FSA states that 'local authority' has the meaning in section 10 of the Public Health Act.

Need to understand the make-up, powers, etc of the Central Board of Health and local authority under the Public Health Act.

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Inter-relationship between Legislation (6/8)

Note reference in section 3(1), FSA to the Fijian Affairs Act.

Note reference in section 21(3)(n), FSA to Health & Safety at Work Act and its Regulations.

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Inter-relationship between Legislation (7/8)

Where this conflict between two pieces of legislation – usually resolved by statutory interpretation – if cannot, then generally the more recently enacted legislation prevails.

Likewise if the conflict between two pieces of SL.

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Inter-relationship between Legislation (8/8)

Where there is conflict between a PL and its SL – the PL prevails unless the PL says otherwise.

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Inter-relationship between Legislation and Common Law

Courts often interpret a part(s) of a piece of legislation – this interpretation becomes CL.

Be careful when reading CL because a decision may have been overruled or modified by a later case.

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Part / Not Part of Legislation? (1/3)

Not part of the legislation:

- table of contents;
- headings and footnotes to individual sections, regulations, clauses, by-laws, etc
- notes at the end of reprints of legislation, including the compilation table.

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Part / Not Part of the Legislation? (2/3)

Schedules and appendices in legislation are part of the law – section 12, Interpretation Act

Note: FSA has 2 schedules while the Regulations have 29 schedules.

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Part / Not Part of the Legislation? (3/3)

Headings to sections etc, are *not part* of the law and it is unwise to rely on a section's heading to tell you what is in the section.

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Definitions Words & Phrases (1/7)

1st – legislation

2nd – Interpretation Act

3rd – case law

4th – ordinary, everyday meaning.

If ordinary, everyday meaning is in dispute, the courts can be asked to define – courts' definition can be informed by expert evidence and / or decisions outside of Fiji (eg, Australia and New Zealand) = definition becomes part of the CL in Fiji.

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Definitions Words & Phrases (2/7)

Careful:

Normally, words and phrases are defined for the purposes of the whole of the legislation – but sometimes they are defined for the purposes of only a Part, Division, section or subsection of the Act.

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Definitions Words & Phrases (2/7)

Example: Section 4(2) FSA states: “*For the purpose of this Act*, a food is deemed to be adulterated if”

Example: Section 8(2): “*For the purposes of subsection (1)*, the following are deemed to be false, misleading or deceptive ...”

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Definitions Words & Phrases (3/7)

If an Act defines a word or phrase, the definition applies also in the SL made under the Act ...

‘Food’ is defined and used in the FSA – same definition applies when the word is used in the FS Regulations.

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Definitions Words & Phrases (4/7)

If an Act defines a word or phrase, the definition does not apply in other Acts which use the word or phrase unless there is some law that says it does or unless the definition is in the Interpretation Act.

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Definitions Words & Phrases (5/7)

If a word or phrase is defined to mean something, the definition closes off the meaning and excludes other meanings – it puts a barrier around what the word or phrase means.

If a word or phrase is defined to *include* something, the definition does not close off the meaning and other ordinary, everyday, current meanings of the word or phrase apply.

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Definitions Words & Phrases (6/7)

Example:

In the FSA: “advertisement” means (a) any written or spoken word; (b) any symbolic, pictorial representation or design; (c) any other form of representation or expression published, used or apparently used to directly or indirectly promote the sale or disposal of any food.

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Definitions Words & Phrases (7/7)

In the FSA: “animal” *includes* any quadruped or bird whether domesticated or wild, fish crustaceans, molluscs, shellfish, octopus, jelly-fish, turtles, reptiles, insects or worms and their products such as eggs, caviar or milk, the whole or part of which are consumed or presented for consumption.

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‘Purposive Approach’ to Reading Legislation (1/3)

Sometimes, a part(s) within an Act is not clear – read the whole Act to understand the purpose of the Act and then interpret the part(s) consistent with that purpose – ‘purposive approach’

Understanding the purpose of an Act may be helped by the long title and any provisions which set out the purpose – but sometimes the only way is to read it from start to end to get a complete understanding of what it is trying to do.

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‘Purposive Approach’ to Reading Legislation (2/3)

Long title of the FSA:

“[a] To promote public health and safety with regard to food, [b] to regulate the preparation, sale and use of food, [c] to assist consumers make informed choices on food, [d] to promote fair trading practices in relation to food and [e] for related matters.”

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‘Purposive Approach’ to Reading Legislation (3/3)

Section 2, FSR:

“The purpose ... is to protect the health of the public and to protect the consumer against deception and from food of unacceptable and poor quality, by establishing minimum standards on food products.”

The Regulations apply to “... food imported into, or produced and processed in Fiji for domestic consumption or export / re-export.”

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Explanatory Memorandum

The reason for a piece of legislation is usually explained during the process of enacting it via an explanatory memorandum which explains each clause of the bill.

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Hierarchy of Legislative Provisions (1/2)

Each section has the same weight and importance as every other section.

But sometimes an Act may say two things which conflict and has to clarify which dominates – this is done by stating that provision (1) is ‘subject to’ provision (2) – another way is to say provision (3) operates ‘despite’ or ‘notwithstanding’ provision (4).

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Hierarchy of Legislative Provisions (2/2)

Example, section 13(1), FSA states:

“Subject to subsection (4) or (5), the label of every package of food intended to be sold must contain the following

Section 13(4) states: “The Board may make regulations ... (b) to exempt any food or class of food from the requirements of subsections (1) ...”

Section 13(5) states: “If any food (a) is offered for sale to the ultimate consumer without pre-packaging; or (b) is packed on the sale premises at the consumers request, the requirements of this section are deemed to have been satisfied.