



Pacific Judicial
Integrity Program

Judicial Officers' Fraud and Corruption Online Course

Via Zoom - 18, 25 & 31 May, 8 & 15 June 2023

Facilitator: Ms. Margaret Barron



**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence

Pacific Judicial Integrity Program **PJIP**



- Funded by the Australian Government
- Implemented in partnership between the Papua New Guinea Centre for Judicial Excellence & the Federal Court of Australia
- Working with 12 partner courts
- March 2022-April 2025



**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence



Goal & Outcomes

- To support judicial officers to preside over corruption-related cases
- Specialist in-person & online training
- Mentoring, networking & resources

PJIP Website



URL: <https://www.fedcourt.gov.au/pjip>



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- Online Courses
- Judicial Officers' Online Course



The Pacific Judicial Integrity Program (PJIP) launched in March of 2022 for three years. Funded by the [Australian Department of Foreign Affairs and Trade](#), it is being delivered in partnership by the [Federal Court of Australia](#) and [Papua New Guinea's Centre for Judicial Excellence \(PNGCJE\)](#). The Program collaborates with 12 Pacific Island partner nations: Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga and Vanuatu.

The program aims to strengthen partner courts response to corruption-related cases through a suite of specialist training, mentoring and other development activities. The Program also aims to promote efficiencies and effective case management and reporting of corruption-related cases.

Pacific Judicial Network Newsletter

Stay updated and receive quarterly communiques on fraud and corruption resources and upcoming events.

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Participants of PJIP's inaugural Judicial Officers' Fraud and Corruption Workshop in Papua New Guinea, December 2022

Judicial Officers' Fraud and Corruption Online Course

The objective of this online specialist training course is to build the competence of Judicial Officers to hear some of the most prevalent types of fraud and corruption-related cases in the region, specifically fraud and bribery cases.

At the conclusion of this online course participating Judicial Officers will be able to:

- 
- A large, solid red arrow pointing downwards, positioned to the left of the list of learning objectives.
- Apply generally applicable principles, standards and approaches to hearing and disposing of prevalent types of fraud and corruption-related cases.
 - Define, interpret and apply domestic law and due process.
 - Identify the elements of prevalent fraud and corruption-related offences and the evidence required to prove them.
 - Apply law to a set of facts regarding prevalent fraud and corruption-related offences and detail the rationale for their decision making including imposing appropriate criminal penalties.
 - Strengthen judicial identity and continue to build the region's professional network by sharing and exchanging professional experiences with hearing fraud and corruption-related cases.

PJIP recognises that it is not always possible for judicial officers to be available to attend in-person training. For this reason, this course will be delivered via weekly live Zoom sessions of approximately 2 hours' duration. The following topics will be covered during the five-week course:

Week 1: *Thursday 18 May* - Course introduction and judicial ethics

Week 2: *Thursday 25 May* - Fraud and related offences

Week 3: *Wednesday 31 May* - Bribery and official corruption

Week 4: *Thursday 8 June* - Case management

Week 5: *Thursday 15 June* - Evidence and course wrap-up

Participants will be invited to participate in weekly readings, case scenarios/activities, and to share experiences and responses to the presentations in a facilitated discussion.

Week 1: Thursday 18 May - Introduction & judicial ethics

Introduction to Judicial Officer's Online course including participant introductions, course objective, learning outcomes and how to use Zoom technology. This session will include a summary presentation on The Construct of Impartiality and Unconscious Bias by Helen Burrows, Technical Director of PJIP and how this may impact judicial decision making, including a discussion on:

- What are unconscious biases?
- How are unconscious biases formed?
- Types of unconscious biases
- The challenges presented to judicial officers in the Pacific regarding unconscious biases
- Mitigating unconscious biases
- Intuitive and deliberative decision making
- Auditing decisions
- Stereotypes-incongruent models.

Participants will consider questions related to the presentation and a discussion will be facilitated by PJIP adviser Ms Margaret Barron.

Presentation

Course Introduction and Judicial Ethics

Readings

- Keynote Address: [The Construct of Impartiality and Unconscious Bias \(PDF, 230 KB\)](#) | [\(DOCX, 173 KB\)](#)
- Keynote address recordings by Chief Justice Salika:
 - [Challenges in the Pacific \(MP4, 433 MB, 2:52 minutes\)](#)
 - [True Impartiality is an aspiration \(MP4, 126 MB, 0:50 minutes\)](#)
 - [Use a checklist \(MP4, 173 MB, 1:09 minutes\)](#)
 - [Other useful practices \(MP4, 338 MB, 2:15 minutes\)](#)
 - [Concluding remarks on unconscious bias \(MP4, 138 MB, 0:55 minutes\)](#)
- [Discussion Activity \(DOCX, 90 KB\)](#)

Additional Resources:

The following are additional resources that you may find helpful in understanding how unconscious bias may impact judicial decision making:

- [What is Unconscious Bias? \(MP4\)](#)
- [Recording of Chief Justice Salika's Keynote Address \(MP4, 3.5 GB, 16:42 minutes\)](#)

Using Zoom – The Basics



This button mutes your audio, so that no one can hear you

This button allows you to choose to display your webcam, or not

This button lists all of the participants in the Zoom meeting

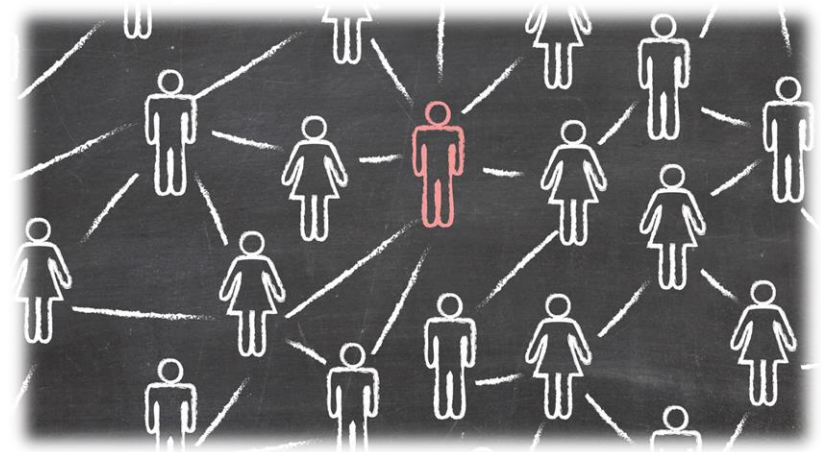
This button allows you to text chat with all the participants

This button allows you to share your phone or computer screen with the other participants

Introductions



- Please introduce yourself and what court you are from?
- Is there a particular question that you would like answered about presiding over fraud and corruption related cases from this online course?
- Introduction of the course facilitators



Objective of the Online Course

The objective of this online specialist training course is to build the competence of Judicial Officers to hear some of the most prevalent types of fraud and corruption-related cases in the region, specifically fraud and bribery cases.



Outcomes of the Online Course

At the conclusion of this online course participating Judicial Officers will be able to:

- Apply generally applicable principles, standards and approaches to hearing and disposing of prevalent types of fraud and corruption-related cases.
- Define, interpret and apply domestic law and due process.
- Identify the elements of prevalent fraud and corruption-related offences and the evidence required to prove them.
- Apply law to a set of facts regarding prevalent fraud and corruption-related offences and detail the rationale for their decision making.
- Strengthen judicial identity and continue to build the region's professional network.

Online Course



- Live online sessions each Thursday afternoon for 2 hours for 5 weeks on Zoom
- First session **Thursday 18 May 2023 12-2pm (GMT+10:00)**
- You will be emailed a link and instructions to access the online sessions
- The course will focus on two (Fraud and Bribery) of the five identified most prevalent fraud and corruption-related case types/categories heard across the Pacific.



Online Session Topics



Session

Topic & Facilitator

Session 1: *Thursday 18 May*

Introduction & Ethics

Helen Burrows

Session 2: *Thursday 25 May*

Fraud & Related Offences

Justice Teresa Berrigan

Session 3: *Wednesday* *31 May*

Bribery & Corruption

Justice Teresa Berrigan

Session 4: *Thursday 8 June*

Case Management

Chief Judge Brian Devereaux/Judge Brad Farr

Session 5: *Thursday 15 June*

Evidence

Chief Judge Brian Devereaux/Judge Brad Farr

Questions or Scenario Discussion



- Questions or fact based scenario will be based on the presentation topic of the week
- Emailed to you at the end of the session
- Individually or in a group with fellow-participants from your court, you will work through the questions or scenario over the course of the week before the next session
- You will apply your local law/legislation to the questions or scenario facts
- Questions or scenario will be discussed in detail online as a group with the support of the judicial facilitator in the next week's session





Session 1: Thursday 18 May 2023
Introduction & Ethics

Facilitators: Helen Burrows and Margaret Barron

Session 1: Agenda



1. Welcome & Introduction (10 minutes)
2. Presentation on Unconscious Bias paper (20-30 minutes)
3. Questions & Answers on presentation (20 minutes)
4. Discussion Questions on Unconscious Bias (20 minutes)
5. Introduction to next week's scenario (5 minutes)
6. Session Wrap-Up (5 minutes)



The Construct of Impartiality and Unconscious Bias

Synopsis of Keynote Address

delivered by

Hon. Chief Justice Sir Gibbs Salika

for the Pacific Judicial Integrity Programs'

Judicial Officers' Fraud and Corruption Workshop

Port Moresby, Papua New Guinea: Monday 28 November, 2022



Overview

- What are unconscious biases
- How they are formed
- Key types of unconscious bias
- The challenges presented to us by unconscious biases
- Mitigating unconscious bias



Introduction



- Judges are required by law, oath and codes to make decisions that are correct, fair, ethical and unfettered by the influence of bias and prejudice.
- From reading many judgments, it is clear that judges spend considerable time consciously avoiding personal biases and prejudices.
- However, being **truly** impartial is far more complicated than we realise.
- The reason is the existence and operation of **biases** and **prejudices** that we are unaware of.



What are these unconscious biases?

- The science of **unconscious cognition** suggests that we do not have conscious, intentional control over our processes of the perceptions, impressions and judgments that motivate our actions.
- Instead, they arise from mental processes beyond our conscious focus. They include memories, experiences, attitudes and stereotypes.
- These perceptions displace true neutrality and result in one of a spectrum of possible judgments, opinions and assessments we might assign.
- Biases can be **favourable or unfavourable but** their existence has the potential to impair our ability to reach impartial decisions.



Unconscious bias formation



- Biases accumulate throughout our lifetime. We all have them. Many were formed when we were young - from what we saw, heard and experienced within our families, schools, friend, peer and community groups.
- These experiences were infused with layers and generational knowledge, assessments, opinions and judgements about all facets of life and the people within it passed on to us by the people we interacted with.
- This complex web was then overlaid by associations. Associating items that commonly go together – such as thunder and rain, or grey hair and older people, we learn to expect these associations to co-exist in other settings – which sometimes they do, and sometimes, they do not.



Unconscious bias formation

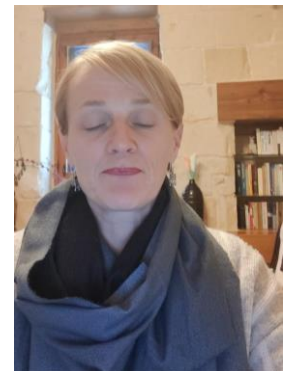


- More broadly than our familial and community interactions, biases also form from structural, societal inequalities defined by gender, religion, ethnicity and social class, for example.
- We know that structural inequalities exist in all our societies. Governments try to remedy them through policies and law such as anti-discrimination statutes that judicial officers must apply in courts.
- This affirmative action is not however, enough to counter the subterranean impact of our unconscious biases.



Types of unconscious biases

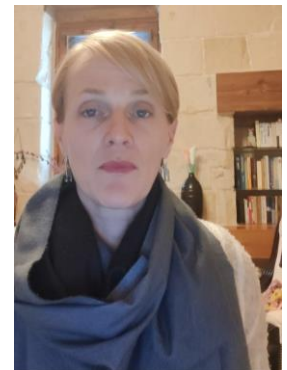
- There are many types of unconscious biases. They vary greatly in nature, magnitude and impact.
- Three key biases that impact judicial officers include:
 - In-group bias;
 - Overconfidence bias; and
 - Anchoring.



In-group bias



- We all identify with others, be they the same gender, religion, ethnicity, social group or profession, for example.
- In-group bias occurs when we favour members of our own group, or a group we identify with, over members of a group that we do not identify with.
- It manifests when we place trust in members of our group, or we infer positive attributes to them irrespective of whether they objectively deserve our trust or confidence. In the judicial context, this would include the testimony of a police officer being considered more credible than that of a convicted felon.
- The flip side of this bias is that we may be more likely to distrust or accept the assignment of negative characteristics to those who are not in our group.



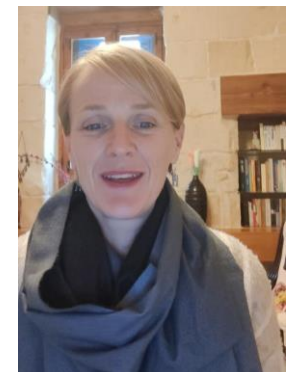
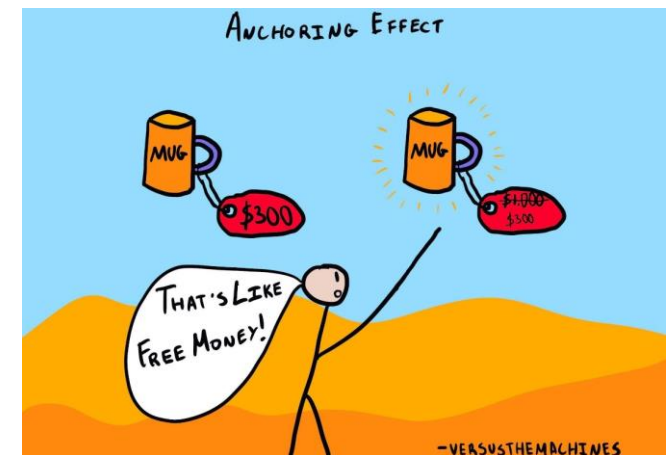
Overconfidence Bias

- Overconfidence bias relates to the view we privately hold about ourselves.
- While many people are self-aware, including of their own capabilities, others may be more confident in our own ability than is objectively reasonable.
- Extending this to the application of law, we cannot assume that intelligence, education and experience and a strong moral compass are enough to make correct decisions according to law.
- In order to ensure our decisions are not imbued with bias, it is important to reflect on them and the thought processes that led to them.



Anchoring

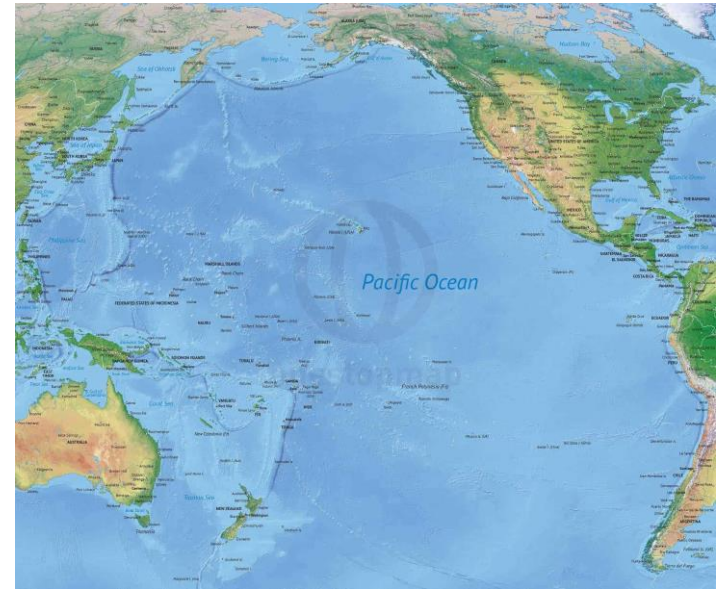
- Anchoring refers to the mental shortcuts we take to make decisions.
- For example, imagine there are two suits are on sale for \$200. One is reduced from \$500. Many of us will have a favourable, anchor bias towards the reduced item and will buy it thinking we are getting a better deal - irrespective of whether it is actually the best product, and therefore, the best decision.
- Applying the concept to judging, research into sentencing decisions among a group of German trial judges found that the judges were influenced by the sentencing recommendations made by prosecutors. Where longer sentences were recommended, they were often given, and vice versa.



Challenges in the Pacific

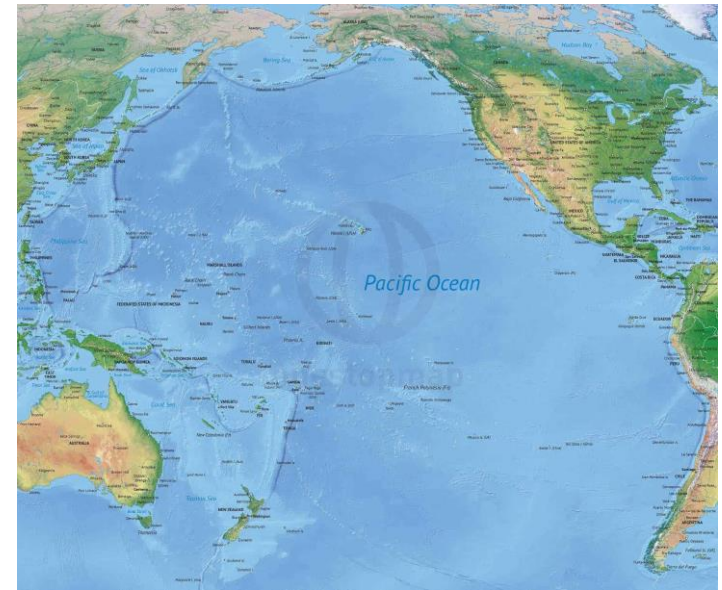


- These and other biases are compounded by a number of contextual realities faced by courts and judges in every region.
- In the Pacific, Chief Justice Salika spoke of the challenges of adopting imported legal codes that are normatively different in some key areas from traditional and cultural norms.
- He said, the reconciliation of competing norms required examination of local cultures and practices and, in some instances, setting it aside, giving precedence to norms that were, at first, quite alien – such as refusing customary gifts.



Challenges in the Pacific

- Another challenge facing the Pacific, is the plethora of informal systems of justice operating where the formal system does not physically reach.
- These systems dispense justice according to local, cultural norms, many of which are rooted in deeply held inequalities and biases.
- Yet, a lack of sufficient human and capital investment in court, justice and legal representation systems render people to the mercy of these informal systems.
- Even those who can physically or financially reach court, the vast majority are afraid of and lack familiarity with it.



Mitigating Bias



- True judicial impartiality is perhaps better described as an aspiration.
- Adopting a neutral perspective and a professional commitment to equality is not enough.
- We need the capacity to acknowledge and mitigate the effects of our unconscious biases.
- We need to actively check that our decisions and the thought processes that led to them are not unconsciously biased.
- Building awareness of our own unconscious biases and navigating the cognitive path to correcting ourselves, is not a skill we are necessarily born with. We need to be trained.



Intuitive and deliberative decision-making



- Another strategy to prevent bias is to quieten our intuition and rely instead on deliberative decision-making.
- An intuitive approach enables us to make decisions spontaneously, automatically, and effortlessly. Our instinctive decision is later rationalised and deliberately explain. Put more simply, we retrofit our logic to fit our instinctive response.
- The deliberative approach however requires the application of the law to the facts in a *logical* and *mechanical* manner. These decisions must be made slowly and self-critically.



Intuitive and deliberative decision-making



- Decisions for example, made during pre-trial and motions hearings are more likely to be intuitive and impressionistic rather than deliberative. Minimising the number of ‘in-the-moment’ decisions a judge is required to make, can assist.
- Similarly, evidentiary rulings made during hearings or trials would be better considered if they were made based on written briefs, and with time for the judge to conduct any necessary research and reflect on them.
- Taking the time to write down reasons, even if a decision will be delivered orally, will assist to gather and organise thoughts coherently, logically and defensibly.



Auditing decisions

- Some jurisdictions have opted to randomly and anonymously review judicial officers' decisions to ensure they are not based on any biases.
- This could, of course, only be done by fellow judges and is a time-consuming task. It has nonetheless demonstrated opportunities for more proactive attention on unconscious biases within the courts where the method has been deployed.



Stereotype-incongruent models

- Stereotype incongruence is another approach that has been found to be effective in enabling judges to acknowledge and address their biases.
- An example of this approach is found in the US where pictures of judges and other inspiring leaders were hung in the corridors between judges offices and court. The pictures were of judges from marginalised races, genders, ethnicities and other groups.
- Not only did these pictures help judges recognise stereotypes they had developed, and promote greater diversity on the bench, but also, activity acknowledge and mitigate their biases in court.



Conclusion



- Despite what we know, the existence, impact and mitigation of unconscious bias has not yet been thoroughly studied.
- We are therefore on the precipice of a new level of insight, thought and judicial craft.
- The interplay between law, psychology and anthropology is very clear.
- Just as we learn and apply new areas of law and procedure as they emerge, it is incumbent on us all to learn about our biases and how to mitigate them.
- Only then, can true judicial impartiality move beyond an aspiration to become a reality.



Discussion Activity



1. Before hearing the presentation, were you familiar with the concept of unconscious bias?
2. What unconscious biases do you think might be present within Judges of your court/country?
3. Are there any elements of Pacific culture that create or compound unconscious biases?
4. How can you acknowledge and mitigate the effects of unconscious bias on your decision making?
5. How useful was the keynote address and this discussion in alerting you to the existence and impact of unconscious biases on judicial decision making?

Introduction to Week 2 Case Scenario

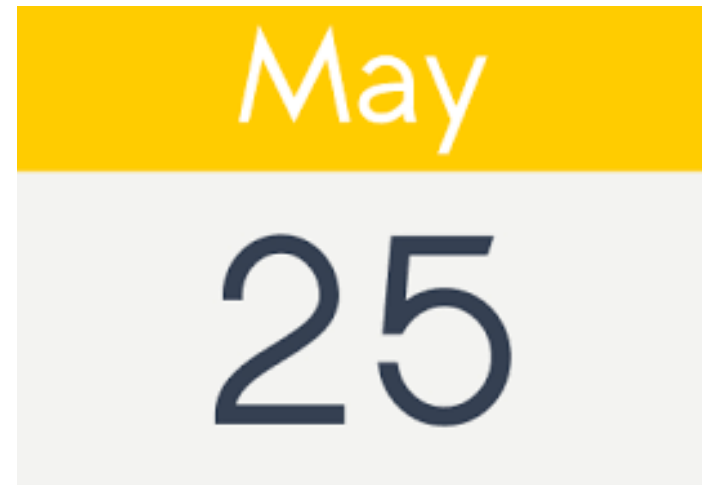


- Focus of next week is on Fraud and related offences
- Facilitated by Justice Teresa Berrigan
- A case scenario will be discussed allowing you to apply the law in your jurisdiction to a factual situation
- Please read through the case scenario prior to joining the next online session
- Case scenario is available on the website under Week 2 materials

Next Week: Session 2 – Fraud and related offences



- Thursday 25 May
- **12-2pm (GMT+10:00)**
- Use same Zoom link
- You will be emailed a scenario on fraud and related offences. Please come ready to discuss this scenario
- Judicial Facilitator: Justice Berrigan



Due to varying locations, **local time zones for the discussion** are as follows:

Thursday 25 May, 2023

11:00am	Koror, Palau
11:30am	Adelaide, Australia
12:00pm	Brisbane, Australia Port Moresby, Papua New Guinea
1:00pm	Pohnpei, Federated States of Micronesia Honiara, Solomon Islands Port Vila, Vanuatu
2:00pm	Suva, Fiji Tarawa, Kiribati Yaren, Nauru Majuro, Republic of Marshall Islands
3:00pm	Nukualofa, Tonga Apia, Samoa Fakaofu, Tokelau

PJIP



See you next week!