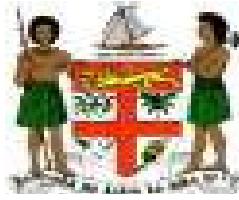


# MINISTRY OF INDIGENOUS AFFAIRS



## TERMS OF REFERENCE

### REVIEW OF THE QOLIQOLI (FISHING GROUND) COMPENSATION POLICY

#### **1.0 Introduction**

- 1.1 The ownership of Qoliqoli has always been an issue of concern for Indigenous Fijians prior to and after the Deed of Cession till now. This is because Qoliqoli like land is an integral component of the Vanua and is also a basic source of livelihood especially for rural iTaukei.
- 1.2 This concern was not fully addressed when ownership of the Qoliqoli or foreshore up to the high water mark was vested in the Crown/State and usage rights for Indigenous Fijians. These were legislated under Crown Land Act Cap 132 Section (2) and Fisheries Act Cap 158 Section 13(1). The co-existence of these two laws with differing interpretations based under the English and Customary Common Law has caused much confusion, tension and rivalries between stakeholders. This is further deepened by the absence of a clear guideline on the process in determining compensation or approving foreshore development claims and non-inclusion of compensable development work or other business activities carried out in the traditional Qoliqoli area.
- 1.3 The existing Qoliqoli Compensation policy requires that ownership of Qoliqoli be determined by the Native Lands and Fisheries Commission, value of compensation to be determined by an Arbitrator and monies from compensation be directed to a Trustee or Trust. Lately with an absence of an Arbitrator (Tribunal), the Qoliqoli owners and the investors are allowed to discuss and agree on the levels of compensation to be paid out. This arrangement is neither fair nor reasonable to either party because of the absence of a standard formula and marine resource inventory to determine the quantum of compensation.

#### **2.0 Objectives of the Review**

- 2.1 The main objective of the review is to provide an in-depth assessment of the existing Qoliqoli Compensation mechanism. In essence, this process is to determine the relevance of the Qoliqoli Compensation guideline in relation to the current development trends and to consider the constraints, bottleneck (if any), and other 'grey areas' and explore ways where any dealing between Qoliqoli rights owners and developers is fair and just to both parties.

### **3.0 Scope of Work**

- 3.1 The review will look at the operational processes, assessment and determination of compensation and relevance of the existing Qoliqoli Compensation in view of the current development trends. The consultant will therefore be required to perform the following tasks when carrying out the review of the Compensation policy:

- (i) Review the system/method of assessing the amount of compensation to be paid to Qoliqoli rights owners;
- (ii) **Consider the quantum of compensation amongst others, the following broad objectives:**
  - (a) **create wealth for both the qoliqoli and user of these resources;**
  - (b) **to maintain land and environmental sustainability for the generations still to come; and**
  - (c) **to maintain social stability amongst all communities in particular the qoliqoli owners.**
- (iii) Consider the possibility of codifying payment of compensation and the requirement of obtaining consent by the Qoliqoli rights owners in waiving their fishing rights before processing of applications in our legislation so that they are legally bound and not under an administrative arrangement as the current practice;
- (iv) The need to transfer a percentage of (%) income from foreshore development leases and other income-generating activities carried out to the qoliqoli rights owners;
- (v) Broadening the scope of compensation to cover all income generating activities that disturb the traditional fishing grounds and also those that restrict usage by qoliqoli rights owners;
- (vi) Consideration of the waiving of the payments of compensation on projects that promotes conservation and sustainability of the qoliqoli areas and supported by the qoliqoli rights owners;
- (vii) Review of the operational procedures and processes of compensation and recommend options and or strategies to improve the system and service delivery;

- (viii) Determination of the most appropriate Environmental Impact Assessment (EIA) approach. This should also include:
  - (a) Competing demands on coastal resources; and**
  - (b) Need of resource sustainability.**
- (ix) Consideration of the social impact of development and other income generating activities and determining the most appropriate social impact assessment approach to be undertaken;
- (x) Determination of the system of payments of compensation to ensure that all the rightful claimants and their future generations benefit from the compensation payments; and
- (xi) Consideration of the provisions of other benefits instead of compensation as determined by the qoliqoli rights owners. **Such benefits can include business partnership and upskilling of local communities;**
- (xii) Examine all possible and viable options that will secure and enhance long term sharing and wealth created by qoliqoli owners of their coastal resources;**
- (xiii) Consideration of the rights of landowners adjacent to the Qoliqoli area under development;
- (xiv) Consideration of the involvement of qoliqoli owners at the planning and implementation stages of development;
- (xv) Relevance of the United Nation Declaration on the Rights of Indigenous People and the United Nations Conventions on the Law of the Sea ;and
- (xvi) Experiences of practices in other jurisdiction, in particular New Zealand, relating to the Maori Fishing Rights, Canada, relating to the Fishing Rights of the Native Americans and Papua New Guinea.

#### **4.0 Methodology**

4.1 The Consultants shall take a multi-dimensional approach whereby Quantative and Qualitative Research Techniques are used to collect data. Documentary evidence such as relevant Acts and Regulations will be considered and wide consultations with all stakeholders are undertaken at three levels:

- (i) Government Agencies – Ministry of Lands & Mineral Resources; Native Lands and Fisheries Commission; Department of Environment; Ministry of Health; Department of Town & Country Planning; Fiji Island Maritime Safety

Administration ; Fijian Affairs Board; Native Land Trust Board and Ministry of Fisheries & Forest .

- (ii) the Recipient communities (Qoliqoli owners, Developers/Investors ); and
- (iii) other Stakeholders( e.g. Municipalities )

## **5.0 Duration of the Study and Presentation of Report**

5.1 The Review will be undertaken over a period of 13 weeks during which progress reports should be submitted followed by progress payments to the Consultant. These will be as follows :

	<b>Description</b>	<b>Week</b>	<b>Percentage of Payments</b>
Pay 1	Signing of the Contract	1	25%
Pay 2	Presentation of the Progress Report	8	25%
Pay 3	Presentation of Draft Report	11	45%
Final Payment	Adoption of the Report by the Review Steering Committee	13	5 %

## **6.0 Qualifications**

The Consultant should have relevant professional qualification, wide experience in marine research and development and having adequate knowledge of the Indigenous customary practices relating to Qoliqoli.

## **7.0 Agreement**

A Memorandum of Understanding (MOU) will be signed between the Ministry of Indigenous Affairs for and on behalf of the Government of Fiji and the successful applicant conduct of the review and its outcomes.