



GOVERNMENT OF SAMOA



Samoa
Law Reform Commission
Komisi o le Toefuataiga o Tulafono a Samoa



ANNUAL REPORT

July 2014 – June 2015



GOVERNMENT OF SAMOA

The Honourable Speaker

The Legislative Assembly of Samoa

In accordance with section 9 (2) of the *Law Reform Commission Act 2008*, I lay before you copies of the sixth Annual Report for the Samoa Law Reform Commission for the period of July 2014 to June 2015 for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the Act.

Hon. Tuilaepa Fatialofa Lupesoliai Aiono Neioti Dr. Sailele Malielegaoi

PRIME MINISTER AND MINISTER OF THE SAMOA LAW REFORM COMMISSION



GOVERNMENT OF SAMOA

Honourable Tuilaepa Fatialofa Lupesoliai Aiono Neioti Dr. Sailele Malielegaoi
PRIME MINISTER AND MINISTER FOR THE SAMOA LAW REFORM COMMISSION

In accordance with section 9 (2) of the *Law Reform Commission Act 2008*, I have the pleasure to present you with copies of the sixth Annual Report for the Samoa Law Reform Commission for the period of July 2014 - June 2015, for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the Act.

(Leota Theresa Potoi)

EXECUTIVE DIRECTOR

SAMOA LAW REFORM COMMISSION

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I am pleased to present the 6th Annual Report of the Samoa Law Reform Commission for the financial year, 1 July 2014 to 30 June 2015.

As with earlier reports, this report summarizes the activities carried out by the Commission as well as provides background to the role of the Commission and its various projects.

Though there have been many challenges relating to the complexity and diversity of projects undertaken, and the recruitment and selection of staff, the Commission continues to function through the good will and commitment of its staff.

For this I wish to thank the Executive Director and her staff for their hard work and significant achievements this year, and acknowledge the Advisory Board for their contribution to the Commission's work.

I also wish to acknowledge stakeholders, members of the public and civil society that take the time to attend consultations and make submission on the Commission's projects, contributing significantly to law reform in Samoa.

Soifua ma ia manuia.

Hon. Tuilaepa Fatialofa Lupesoliai Aiono Neioti Dr. Sailele Malielegaoi
**PRIME MINISTER/ MINISTER RESPONSIBLE FOR THE SAMOA LAW REFORM
COMMISSION**

EXECUTIVE DIRECTOR'S NOTE



I am pleased to present the 6th Annual Report of the Commission for the financial year, 1 July 2014 to 30 June 2015.

The work of the Commission is about improving and updating the state of the law so that it better meets and serves the changing needs of Samoa and its people.

In developing our reports and recommendations to Government for reform, we strive to provide high quality research and analysis in our reviews looking also at comparative jurisdictions. We also carry out extensive consultations with the public and persons that may be affected by proposed reforms.

In terms of the heavy work load of the Commission, diversity and complexity of projects, this year has been no exception. Likewise the ongoing challenge of staff shortages and difficulty in obtaining relevant data and statistics. I thank the staff of the Commission for their hard work and effort to rise above these challenges.

We thank the Advisory Board for their assistance and guidance on the Commission's projects, and in particular the unwavering support of its Chair, Aumua Ming Leung Wai. We would also formally to acknowledge and thank the various government agencies, academia, industry, the non-government sector, the community and from our stakeholders for their contribution to our work, through consultations and by taking the time to make submissions and provide valuable input.

Faafetai tele.

Leota Theresa Potoi
EXECUTIVE DIRECTOR

ABOUT THE COMMISSION

The Samoa Law Reform Commission was established in 2008 by the *Law Reform Commission Act 2008* (the Act) as an independent body corporate to undertake the review, reform and development of the laws in Samoa.

The Commission is mandated to facilitate the review, reform and development of the laws of Samoa in order to promote Samoan customs and traditions; enhance the social, cultural, economic and commercial development of Samoa; and ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community. The Commission's functions include:

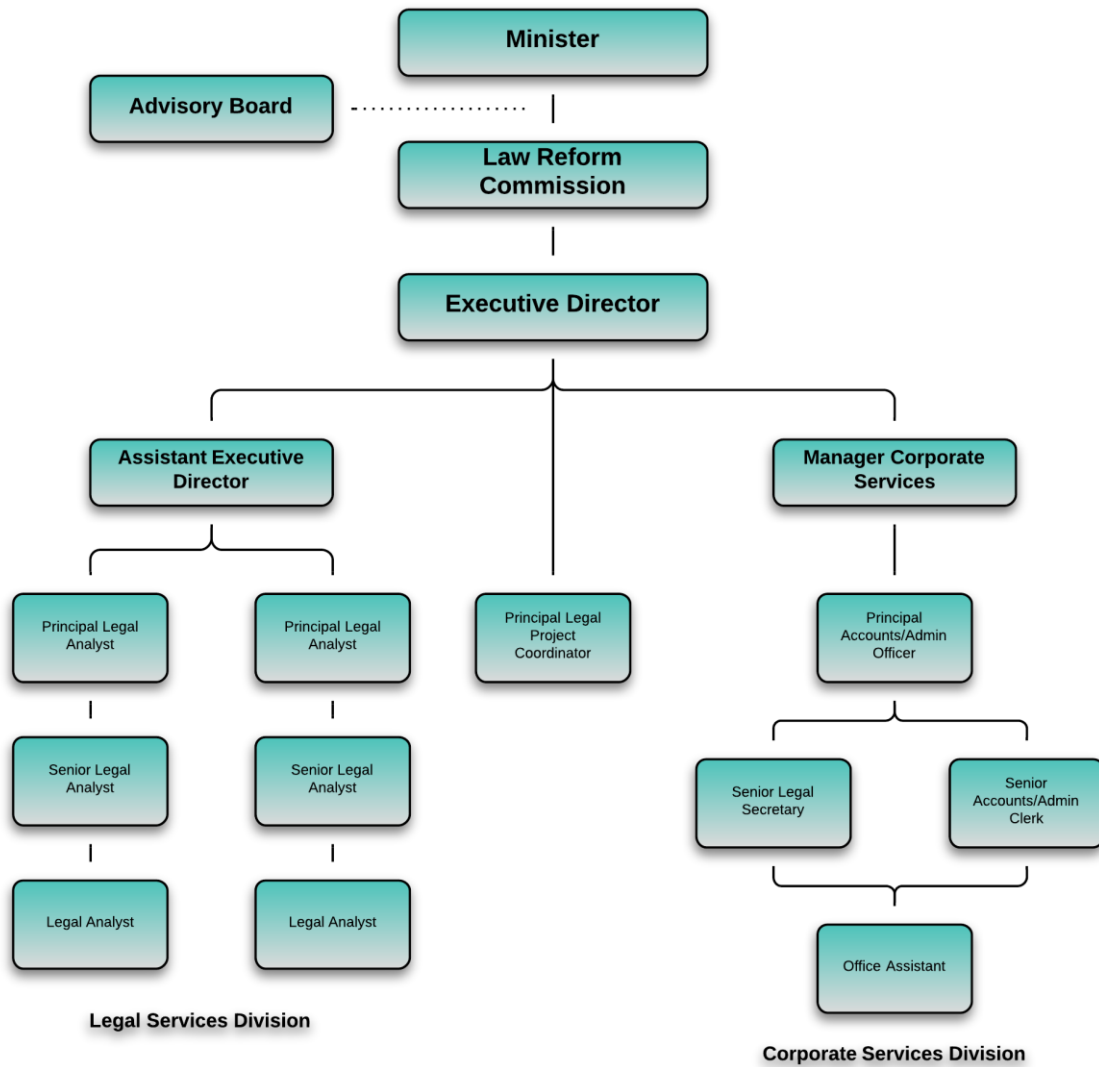
- researching and analysing areas of law considered to be in need of reform and making recommendations for reform to the Prime Minister and the Attorney General;
- advising Government Ministries and agencies on any reviews of the law conducted by them; and
- consulting with the public about its work.

The Commission is assisted by an Advisory Board chaired by the Attorney General that meets four times a year.

The Commission consists of the Executive Director and 13 staff. The Executive Director is the administrative head of the Commission who supervises and directs its work. The Commission is divided into the Legal Services Division and the Corporate Services Division.

- I. The Legal Division is responsible for carrying out research and analysis relating to projects and developing reports with recommendations for reform, and providing legal advice to government Ministries on their proposed reviews.
- II. The Corporate Service Unit provides support services for the Commission, which includes administration, human resource, finance, and information technology. The CSU also assists in translating reports to the Samoan language and in the editing of reports.

ORGANISATIONAL STRUCTURE



KEY ACHIEVEMENTS

The following is a snapshot of the Commission's key achievements for the financial year July 2014 – June 2015.

FINAL REPORTS PASSED BY PARLIAMENT

1. Review of the District Court Act 1969

The Final Report was tabled in Parliament on 19 August 2014 and passed by Parliament on 21 October of the same year. As a result of this review, a Bill was drafted. The *District Court Bill* is now at its 2nd reading in Parliament.

2. National Heritage Board

The Final Report was tabled in Parliament on 29 May 2015 and was passed by Parliament on 22 January 2015. This report examines the feasibility and appropriateness of setting up a National Heritage Board to preserve Samoa's various significant heritage sites. It has recommendations for the establishment of such a board, its composition, proposed functions and roles.

3. Media Regulation

The Final Report was tabled in Parliament in June 2014 and was passed by Parliament on 8 February 2015. This report examines the need for a regulatory body in respect of the media in Samoa, and made recommendations for the establishment of such a body, resulting in the *Media Council Act 2015*.

4. Legislation for the Care and Protection of Children

The Final Report was passed on 17 March 2015. This report considered Samoa's obligations under the United Nation Convention on the Rights of a Child (UNCRC), focusing on the *Constitution of Samoa*, the *Infants Ordinance 1961* and the *Young Offenders Act 2007*. As a result of this review, the *Child Care and Protection Bill* was drafted. MWSCD and the Attorney General's Office are working on finalizing the Bill.

FINAL REPORTS APPROVED BY CABINET (YET TO BE TABLED IN PARLIAMENT)

5. Protection of Traditional Knowledge

The Final Report was approved by Cabinet on 22 April 2015 and is yet to be tabled in Parliament. This report looks at the extent in which traditional knowledge is protected under existing Intellectual Property related legislation in Samoa, and recommends legislative measures on how to best protect traditional knowledge in Samoa.

6. Sex Offenders' Register

The Final Report was approved by Cabinet on 22 April 2015 and is yet to be tabled in Parliament. This report assesses whether a sex offenders' register would be appropriate for Samoa and whether such a register would deter sexual re-offending. The report recommends the establishment of such a register in Samoa to assist in the investigation and prosecution of sex offences in the community, as well as to reduce recidivism amongst sexual offenders.

PUBLIC CONSULTATIONS COMPLETED

7. Alcohol Reform

This is a comprehensive review of Alcohol related laws in Samoa with the objective of reducing harm caused by alcohol abuse. Key issues include liquor licensing and enforcement, alcohol taxation and pricing, availability of cheap liquor, advertising and promotions, age restrictions, and responsibilities of village councils and others. Public consultations were carried out in September/October 2014. The Final Report is currently being drafted with the aim to be completed in early 2016.

ISSUES PAPERS/DISCUSSION PAPERS

8. Review of Supreme Court (Civil Procedure) Rules, and Magistrate Court (Civil Procedure) Rules – Issues Paper 2

The civil procedure rules govern practice and procedure in the Supreme and District Court exercising civil jurisdiction. The review looks at comparative jurisdictions particularly New Zealand, Australia and Vanuatu.

A second Issues Paper was approved by Cabinet on 23 December 2014. Consultations on Issues Paper 2 are currently being undertaken, and input from the Judiciary and members of the Samoa Law Society sought.

9. CEDAW Legislative Review- Discussion Paper

The Discussion Paper was approved by Cabinet on 22 July 2015. Public and Stakeholder Consultations will be conducted in September 2015. This review investigates the level of compliance of Samoa legislation with the Convention on the Elimination of Discrimination against Women (CEDAW) and provides suggestions on how Samoa should meet its international obligations under this important convention.

NEW REFERENCES

10. Review of the Property Law Act 1952

This programme for reform was referred to the Commission by the Attorney General in August 2014. The Commission commenced the initial stage of this review undertaking preliminary research and analysis. Further consultations and research are being carried out on this complex review.

11. Review of Drugs related legislation

The Commission received a reference from the Attorney General in March 2015, to review drugs related legislation in Samoa (including Narcotics Act 1967). This project requires the review of:

- a) the adequacy of the statutory regime to control and regulate drugs (ie the *Narcotics Act*);
- b) which drugs the statutory regime should cover;
- c) the appropriate classification of drugs;
- d) the appropriate offence and penalty structure, eg appropriate penalty for low level offending;
- e) medicinal use of certain drugs in controlled situations;
- f) minimization of drug related harm;

- g) support and treatment services and rehabilitation facilities (including education);
- h) monitoring of prisoners released after serving their terms or early on parole, for example via mandatory drug testing;
- i) the proposed establishment of a Drugs and Alcohol Court;
- j) rehabilitation as a sentencing option;
- k) responsibilities of parents, village councils and church with respect to drug use.

The Commission is currently in the initial stage of this review undertaking preliminary research and analysis.

12. Review of the Ministerial and Departmental Arrangements Act 2003

This project was referred to the Commission for review in 2012, however was put on hold until mid 2015. The aim of this review is review the umbrella legislation (Miisterial and Departmental Arrangement Act 2003) governing the various Government Ministries for consistency of general functions and powers of Chief Executive Officer. The Commission is in the initial stage of this review undertaking preliminary research and analysis. The aim is to complete the Issues Paper by next Financial Year 2015 - 2016.

CONSTRAINTS & CHALLENGES

The volume, diversity and technicality of the subject matter of references, coupled with shortage of both legal and support staff, and the difficulty in obtaining relevant data/ statistics and information, proves to be very challenging for the Commission.

Despite continuing to raise awareness of its work and promoting the Commission as an excellent legal career path, the Commission faces difficulties in attracting and recruiting senior legal staff with relevant experience. This is largely due to the level of remuneration for legal staff, which is not comparable to that offered in private practice. The Commission is exploring with the Public Service Commission ways this may be addressed and the creation of legal analyst positions of a senior level to encourage highly qualified experienced personnel to join the Commission.

LAW REFORM PROCESS

The law reform process generally follows set steps:



REFERENCES

The Commission receives a reference either from the Attorney-General, Prime Minister or Cabinet. The terms of the Reference set out the scope of the review. The Commission works within the boundaries set by this framework, but may also advise on related issues not specifically identified in the Reference.

RESEARCH

The Commission carries out research on all issues identified in the Reference to prepare an Issues Paper. Further research and analysis is carried out to prepare the Final Report. This often requires examination of the laws and practices of Samoa and comparison with other jurisdictions.

CONSULTATION

The Commission identifies all groups and individuals that may be interested and ultimately affected by any change to the law. It invites consultation with these people to hear their views about the law, and how it could be improved or changed. Experts may also be consulted about a particular issue.

The consultations may take place in a central location to allow all members of the public to attend, or where the affected area or people are more remotely located; the Commission's representatives may go to those locations.

As part of its consultation process, the Commission calls for submissions on the issues identified in the Issues Paper. All submissions are considered by the Commission.

ISSUES PAPER

The Commission prepares and publishes an Issues Paper, which usually highlights problems and includes a series of questions about the main issues under consideration. Sometimes options will be included in these papers and further submissions will be invited from all affected people and groups. The Issues Paper is intended to stimulate discussion and to encourage interested persons to provide feedback, so that their views can be considered by the Commission before recommendations for reform are made.

FINAL REPORT WITH RECOMMENDATIONS

The Commission prepares and publishes a Final Report following its extensive research and consultations. Final Reports include recommendations as to proposed reform.

As the Final Report must be tabled in Parliament, it is translated into the Samoan language and edited. This final part of the process is often very time consuming and may extend the time frame in which a project is completed, due to the inherent complexities of endeavouring to accurately translate nuance and meaning.


Ultimately, Parliament decides whether there is to be any change to the law.

BUDGET

**STATEMENT OF MINISTRY RECEIPTS BY REPORTING CATEGORY
AND EXPENDITURE BY OUTPUT
APPROPRIATION ACCOUNT**
for the financial year ended 30 June 2014

	2014	Estimate	(Over)/ Under
	\$	\$	\$
LAW REFORM COMMISSION			
RECEIPTS			
Ordinary Receipts			
Other Receipts	6,838	40,000	33,162
TOTAL RECEIPTS	<u>6,838</u>	<u>40,000</u>	<u>33,162</u>
PAYMENTS			
Outputs			
1. Legal Research Analysis and 0 Recommendations	860,365	950,812	90,446
Total Outputs	<u>860,365</u>	<u>950,812</u>	<u>90,446</u>
Transactions on Behalf of State			
Hosting of Regional Meetings/Conferences Australasian Law Reform Agencies - ALRAC Conference (27-29 May 2014)	46,930	98,175	51,245
Rent and Lease (Government Building)	116,202	133,632	17,430
VAGST Output Tax	62,386	73,496	11,110
Total Transactions on Behalf of State	<u>225,518</u>	<u>305,303</u>	<u>79,785</u>
TOTAL PAYMENTS -LAW REFORM	<u>1,085,884</u>	<u>1,256,115</u>	<u>170,231</u>
RECEIPTS OVER PAYMENTS	<u>(1,079,046)</u>	<u>(1,216,115)</u>	<u>(137,069)</u>

(Source: Ministry of Finance Public Accounts Unaudited)



There was an unachievable amount of Budgeted Revenue in the amount of \$33,162.00 due to the following reasons:

- The number of anticipated participants for the ALRAC convention was not met as many were unable to secure funding;
- There was difficulty for the participants in organizing travel arrangements;
- Participants were not available during the time of the convention

The Commission under spent \$51,245.00 for the ALRAC convention due to the number of participants available for the meeting which meant reduction in expenses.

It was identified that the Commission under spent \$17,430.00 for Rent and Lease (Government Building) however this was a result of the VAGST of \$17,430.00 that should have been reflected under the VAGST account.

Similarly with regards to the under spending of \$11,110.00 under the VAGST Output Tax which is the VAGST for the Office Vehicle (SLRC02) to which this amount should have been automatically deducted and reflected, however it was not.

These issues were raised with MOF and have been resolved.

AUDIT REPORT

The first full audit of the Commission's accounts from July 2011 – June 2013 was conducted from February to April 2014. The Commission welcomes the recommendations in the Audit report and will be strengthening its internal control of its processes and procedures.

The Office of the Auditor has yet to submit its report for Financial Year 2014 – 2015.