



THE REFORMER

THE OFFICIAL QUARTERLY NEWSLETTER OF THE SAMOA LAW
REFORM COMMISSION

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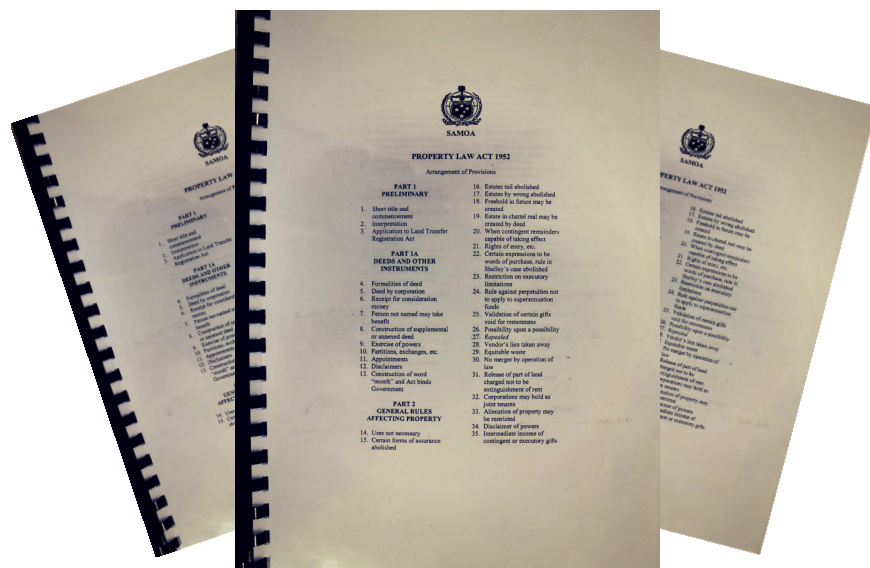
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PROPERTY LAW ACT 1952 REVIEW

In August 2014, the Samoa Law Reform Commission (SLRC) received a Terms of Reference (TOR) from the Office of the Attorney General (OAG) to review the Property Law Act 1952 (PLA 1952).

Following Cabinet's approval of Discussion Papers 1-4 in 2017, SLRC commenced consultations with Samoa Law Society and the Chamber of Commerce in February 2018. Public Notices were circulated throughout the media inviting written submissions from the public on this review.

SLRC welcomed written submissions from the public on this important review. The due date for all submissions was 13 April 2018. The SLRC is now working on the Final Report for Cabinet endorsement.

It is anticipated that an updated Property Law Act will replace Samoa's current PLA 1952.

WELCOME MESSAGE FROM THE EXECUTIVE DIRECTOR



PROJECT UPDATES

Review of the Law Reform Commission Act 2008

This year marks the 10th anniversary of the SLRC since its establishment in October 2008. To mark this milestone, the Samoa Law Reform Commission (SLRC) is reviewing its developments and the work of the Commission to date. On 16 March 2018, a Terms of Reference (TOR) on the Review of the Law Reform Commission Act 2008 (Act) was approved by the Commission's Minister, the Honourable Prime Minister. The Office of the Attorney General (OAG) endorsed the same on 20 March 2018. The SLRC is working closely with the OAG, as required by the directives under the Terms of Reference. The review is divided into 3 phases: -

- 1) where we are,
- 2) where we want to be, and
- 3) how do we get there.

a) Where we are – involves research on for example the current 2008 Act; the Law Reform Projects of the SLRC in the first 10 years; the statutory functions, composition, law reform process and the challenges faced by the same and how the SLRC responded to those; the budget and staff turnover.

b) Where we want to be – requires research on for example the literature on law reform commissions around the world, a jurisdictional comparative analysis of law reform commissions in the Pacific region and elsewhere in terms of LRCs' functions, composition and processes.

c) How do we get there – will be substantially informed by an analysis of both (a) and (b). A Law Reform Handbook setting out an updated 'law reform process' of the SLRC will also inform how we envisage to "get there".

From this review, the SLRC and the OAG hope to provide a framework that will continue to improve the services of the SLRC, to ensure that the SLRC continues to strive towards meeting its mandate, i.e. for Samoa's laws to meet the needs of our country.

Toe timata le Upega- O Tulafono a Samoa

The Review of the Fabric of Laws of Samoa

Following consultations from November to December 2017, the Final Report on the review of the Fabric of Laws of Samoa was submitted to Cabinet for approval on 5 January 2018. Cabinet approved the Final Report on 17 January 2018. Translation of the Final Report has now been completed for tabling to Parliament. The Samoa Law Reform Commission (SLRC) looks forward to the discussions with the relevant Parliamentary Committee on this Report.

To continue the momentum and in anticipation of discussions with the Parliamentary Committee, from February to March 2018, the SLRC carried out awareness sessions with relevant Ministries, to assist Ministries pursue the recommendations relevant to their laws.

The SLRC has received positive feedback from the ministries, constitutional offices and corporations that participated in these Awareness Sessions. The review has provided staff awareness and clarity of the mandatory functions/duties for each of these Offices which will assist service delivery to the community. The SLRC also encourages all the people of Samoa to: a) Know our Laws; and b) Have a say in our Laws.

Property Law Act Review 1952

Consultations with relevant stakeholders on the Property Law Act 1952 review have been completed. Samoa Law Reform Commission (SLRC) welcomed written submissions from the public on this important review. The due date for all submissions was 13 April 2018. The SLRC is now working on the Final Report for Cabinet endorsement.

Narcotics Act 1967 Review

Cabinet approved the Final Report submitted on 5 January 2017. The translation of the Final Report is now complete and it will now be tabled in Parliament. After discussions with the Drafting Team of the Office of the Attorney General (OAG), to assist with the drafting capacity of the OAG, legislative drafting training is underway in the Samoa Law Reform Commission (SLRC) on a Working Draft Illegal Drugs Control Bill to reflect the Final Report recommendations. It is envisaged that a working Draft Bill will be reviewed by the OAG, which has the final say on the form and content of the Working Draft before endorsement. The SLRC strives to be in compliance with the OAG's Legislative Drafting Manual 2014, which guides the drafting of laws in Samoa.

Welcome to your Law Reform Commission Newsletter No 1 for 2018.

If there is a message I would like to convey to you towards the end of my first year at the Samoa Law Reform Commission (SLRC), it is this. Having studied and researched on law reform commissions around the world, the literature shows that formal Law Reform Commission setups is a recent phenomenon, and only received formal recognition as an established formal institution for law reform in the 1970s.

Before this, countries substantially carried out law reform reviews and reform through ad hoc commissions, such as Commission of Inquiries for specific reforms in a specific period of time.

Now one of our biggest challenges, not experienced by many Law Reform Commissions in western based countries is how to operate a western setup in a cultural setting. Unlike other Law Reform Commissions, e.g. in Australia, Samoa's Law Reform Commission (like other Pacific Islands) **is mandated by law to review and reform laws in the context of Samoa, and to give recognition to its cultural and traditional context.** And how do we hope to achieve this?

A significant contribution is from the community, through public and stakeholder consultations. Like many other developing post-colonial countries around the world, the accommodation of the values and principles of the modern and cultural worlds will take time. We are proud to say that at least Samoa is addressing it, and has been doing so over the years. But we need a holistic community approach.

The SLRC therefore appreciates your continuing support as we undertake this onerous task as best as possible. We continue to be grateful for your input during public and stakeholder consultations, to assist the Commission meet this unique mandate, and to serve Samoa as best as possible through the revision, reform and update of Samoa's laws.

Fa'afetai lava!

INTERNSHIP



Adam & Kirra in True Samoan style
(Samoan Shirt Design & Samoan Puletasi)
~ Compliments of the SLRC

Earlier in January and February 2018, SLRC hosted two interns from TC Beirne School of Law, University of Queensland namely Adam Connolly and Kirra Uren. Both Adam and Kirra assisted in carrying out research on SLRC's Property Law Act 1952 Review.

SLRC would again like to thank them for their contribution to the SLRC and we wish them the very best with their studies.

For more information about SLRC's Internship Programme, please visit our website at www.samoalawreform.gov.ws.

FAREWELLS



Senior Legal Analyst, Charles Leicester Dean
– resigned on 22 February 2018.



Information & Communications Advisor (Australian Volunteer Program), Irlene Mokaraka – Tu'ulama – completed her term on 22 February 2018.

PROJECT UPDATES

Review of Samoa's Civil Procedure Rules 1980 and Magistrate Court Rules 1971

The new (i) Draft Supreme Court Rules (Civil Procedure) and (ii) District Court Rules (Civil Procedure) were finalized and submitted to Office of the Attorney General (OAG) in November 2017. In March 2018, on an initiative by the Samoa Law Reform Commission (SLRC), a working group comprised of representatives from the OAG, the Council of the Samoa Law Society and the SLRC, perused and finalized both sets of Draft Rules. The (two) sets of Draft Rules are now with OAG for revision before submission to the Honourable Chief Justice and the Rules Committee for endorsement.

Foreign Investment Law Review

Proposed by the Samoa Law Reform Commission (SLRC) and approved by Office of the Attorney General in May 2017, this review assesses laws relating to foreign investment. Preliminary consultations were held with the administrative Ministry, the Ministry of Commerce, Industry and Labour (MCIL) in January 2018 to discuss the way forward for this review. MCIL advised that a Technical Assistance (TA) expert for investment laws have been endorsed by Government. It was agreed at this meeting that MCIL will conduct its initial review with the TA. The Review is now carried out by the TA. The Ministry will revert to the SLRC for any advice needed on this Review.

Information Exchange Project

Proposed by the Samoa Law Reform Commission (SLRC) and approved by Office of the Attorney General on 5 May 2017, this review examines existing 'information exchange' mechanisms in Samoa in the public sector. Initially, a Freedom of Information framework was explored but this option was re-assessed given Samoa's available resources and priorities of Government.

Consequently, the Terms of Reference (TOR) was narrowed down to focus on the following: (1) to consider and assess issues on 'exchange of information' in Ministries and Corporations; (2) to consider laws and policies in place on exchange of information' in Ministries and Corporations; (3) to consider similar laws and policies in other countries on exchange of information in Government and (4) to provide suitable options for Samoa. A Discussion Paper has been approved by the Honourable Prime Minister and has now been referred to Cabinet for endorsement.

Ministerial and Departmental Arrangement Act 2003 Review

The review of the Ministerial Departmental Arrangements Act 2003 (MDAA) Final Report was approved by Cabinet on 17 January 2018. Cabinet has since referred the Final Report to a Sub-Committee for further consideration. The Samoa Law Reform Commission stands by for any advice required on the MDAA Review.

Immigration Act 2004 Review

Led by the Ministry of Prime Minister and Cabinet (MPMC) through its Immigration Division (Immigration), the Review of the Immigration Act 2004 (Review) was conducted in 2 phases. A Review Team comprised of the Samoa Law Reform Commission, the Office of the Attorney General and Immigration assisted with Stakeholder Consultations for Phase 1 of this review that were held from 19 February to 23 February 2018. Following these consultations, the next phase (Phase 2) is to draft amending provisions based on legislative drafting instructions developed in Phase 1. The Technical Assistant engaged by the MPMC is now working on Phase 2.

Parliamentary Committee Summons

On behalf of the SLRC, Telei'ai Dr. Lalotoa Mulitalo was invited by the Parliamentary Committee to attend and provide comments for the following Bills:

1. **8 August 2017** - Conventional Arms Bill 2017 – This Bill is to implement the Arms Trade Treaty and related purposes.
2. **15 September 2017** - Energy Efficiency Bill 2017 - This Bill is to regulate energy efficiency of energy using products and consumer information on those products, and for related purposes.
3. **11 October 2017** – Police Service Amendment Bill 2017 – This Bill amends the Police Services Act 2009 (Principal Act) and other related purposes.
4. **16 April 2018** - Alienation of Customary Land Amendment Bill 2017 - This Bill provides for amendments to the Alienation of Customary Land Act 1965 with the objectives of:
 - a. Strengthening the provisions relating to leasing and licensing of customary land; and
 - b. Facilitating the mortgaging of leases over customary land.

HAVE YOUR SAY

Q -

How to give the
Commission my
Feedback?

A -

Send your
feedback through letter,
email or join us at our
public consultations in
Upolu or Savaii.



#Follow us @ our web & facebook
pages for updates on our
consultations

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INTERNATIONAL ACTIVITIES Conferences & Legal Trainings

Pacific Law, Custom & Constitutionalism (PLCC) Series 2018-2020

Conference 1 Theme: Samoan Traditional Leadership, Customary Land Tenure & Religious Rights, 13-14 February 2018

Amongst a number of expert panellists was the Executive Director, Telei'ai Dr. Lalotoa Mulitalo, who presented on the topic: *Law, Custom, Constitutionalism "Customary Land Tenure in Samoa"*.

The University of Auckland's Faculty of Law, and Faculty of Arts (specifically: Criminology, and Centre for Pacific Studies), in association with AUT's Psychology programme, Massey University's School of Psychology, and the New Zealand Institute of Pacific Research (NZIPR) co-hosted the first of a three-part PLCC Conference series held at the Fale Pasifika, University of Auckland from the 13th - 14th of February, 2018.

The conference offered an opportunity for the New Zealand-based Pacific community and other New Zealanders interested in the connections between Pacific law, custom and constitutionalism, to dialogue with leading Pacific custom law experts and law professionals constitutions.

Regional International Arbitration Conference - Dawn of International Arbitration in the South Pacific, 12-13 February 2018 - Nadi, Fiji

Ulupale Fuimaono, Assistant Executive Director, attended this conference in Fiji. The conference was the first of its kind, South Pacific International Arbitration Conference, hosted by the Government of Fiji, in collaboration with the Asian Development Bank and the United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific. Participants at this conference included Government officials, policy makers, development partners, judges, law practitioners, private sector, and others who contract with foreign parties. The objective of the conference was to walk participants through the process of an international arbitration, the most common types of disputes in the region and how to draw up an effective Arbitration agreement. It also considered the relevant international instruments on international arbitration, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration.

ICT for the Improvement of Government Capacity and Services, Held in Japan from 10th January - 22nd May 2018

Launiusaelua Palea'ae, Senior ICT Officer, is attending this ICT Training in Japan. The program is designed for government officials to become capable of strengthening the organization's ability to plan and implement ICT strategies, to become capable of analysing ICT problems and constructing solutions and be able to design and manage information security systems. All costs are funded by the Government of Japan under its JICA assistance.

Why the 'Land Titles Registration Act 2008' is incapable of Alienating Customary Land

On 23 February 2018, Telei'ai Dr Lalotoa Mulitalo, Executive Director, carried out a training on the Land Titles Registration Act 2008, specifically on the issue of "WHY THE 'LAND TITLES REGISTRATION ACT 2008' IS INCAPABLE OF ALIENATING CUSTOMARY LAND". Participants in this training included in-house counsels from Government Ministries as well as solicitors from OAG.

'Statutory Interpretation' Training, 22 March 2018, Office of the Attorney General (Samoa)

On 22 March 2018, a training/refresher course on Statutory Interpretation was conducted by Executive Director, Telei'ai Dr Lalotoa Mulitalo at the Office of the Attorney General. There was a large turnout from in-house counsels and lawyers from Government Corporations. The aim of this training was to remind lawyers of the rules and canons of statutory interpretation and how they apply to every day legal work. Samoa has the Acts Interpretation Act 2015, but the common law rules of statutory interpretation i.e. the Literal Rule or the 'Plain Meaning' approach; the Golden Rule; and the Mischief Rule or the 'Purposive' approach are still applicable in the interpretation of laws and should not be disregarded.