



THE REFORMER

The Official Quarterly Newsletter of the Samoa Law Reform Commission.

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10th Anniversary Celebration

In **December 2018**, the Samoa Law Reform Commission (Commission) celebrated its 10th year anniversary. The 2008 establishment of the Commission itself was a significant milestone for Samoa, as it made efforts to develop contextualised laws to ensure its customs and traditions are not ignored in law making. The Commission's 10th year anniversary celebration in 2018 was to offer thanksgiving for God's guidance and to commemorate the achievements of the Commission in its first 10 years.

This event was led in prayer devotion by Rev Elder Utufua Naseri of EFKS Apia. The Keynote address was delivered by the Hon. Prime Minister and the Commission's Minister, Tuilaepa Dr. Sailele Malielegaoi. In attendance were members of the Office of the Attorney General and representatives from Government Ministries and agencies.

Significantly acknowledged was God's guidance on the work of the Commission, the support of Government, the support of the people of Samoa, the past leaderships, the Honourable Justice Tafaoimalo Leilani Tuala-Warren, Afioga Leota Theresa Potoi and the Commission's Advisory Board of the past 10 years; those who all paved the way towards this 10th year celebration. The Commission takes this opportunity to thank you all for your support and contribution to the work of the Commission in the course of the last 10 years.

Welcome Message from the Executive Director



Telei'ai Dr. Lalotoa Mulitalo Ropinione Seumanutafa.

**Welcome to the Samoa Law Reform Commission (Commission)!!!
Please join me in wishing the Commission a Happy 10th Anniversary, and a future of law reforms that is just as colourful, eventful and successful as its first 10 years!**

This last quarter has seen the Commission complete some long outstanding reviews e.g. Review the Property Law Act 1952; take on long term reviews e.g. Review of the Family Laws of Samoa; and update its own enabling legislation, the *Law Reform Commission Act 2008*.

Of interest also is the Review of the Judgment Summonses Act 1965. It requires us to raise the question with our people – Are our people debt paying people?

From the REACH Program preliminary consultations, while there was overwhelming support that a debtor who has been given many opportunities to pay up a debt but does not do so should be committed to prison, there is also the heart to “faamagalo”. This is then followed by the baffled “*But how are the (small) businesses to grow?*” Some with unhappy retorts “*Paying in kind? But how can I make repayments to the Bank with a laui'a or ato talo? Businesses need payment in cash!*” Perhaps debtors themselves would say “*After serving the brief imprisonment term, the debtor should be free from having to pay up the debt.*” Others would retaliate “*Do that and you are responsible for an increase of seasoned debtors!*”

Such are some examples of the interesting exchanges in this Review. The Commission is seeking the views of our people on matters typical of a cash economy, as opposed to the informal barter system economy (exchange of goods and services) of traditional Samoa. We look forward to the completion of this Review.

We hope you are constructively informed of the work of the Commission in this quarter by reading this Newsletter.

Faamanuia pea le Atua ia Samoa!

PROJECT UPDATES

1. Review of the Family Laws.

Significantly supported by members of the judiciary, the Review of the Family Laws of Samoa is a project initiated by the Commission following its Review of the Fabric Laws of Samoa in **2017**. It focuses on reviewing and updating the six (6) core 'family' laws of Samoa:

- (1) Infants Ordinance 1961;
- (2) Marriage Ordinance 1961;
- (3) Divorce and Matrimonial Causes Ordinance 1961;
- (4) Maintenance and Affiliation Act 1967;
- (5) Family Safety Act 2013; and
- (6) Family Court Act 2014.

This is the first comprehensive review of the core family legislation of Samoa. It covers a broad range of 'family' matters ranging from adoption, marriage, divorce, custody of children, matrimonial property, maintenance and affiliation, safety in families and protection orders and the role of the Family Court.

Following the approval of the Terms of Reference by the Office of the Attorney General in **October 2018** and with the support of the Hon. Chief Justice and the Ministry of Justice and Courts Administration, the Commission commenced this Review. It is envisaged that the Review will be conducted over a period of 3 years (**2019-2021**). As “family” is a central institution in the Samoan society, this Review requires significant attention to ensure that any resulting reforms are necessary and for the benefit of our people.

To date, the Commission is undertaking its preliminary legal and doctrinal research, literature review, comparative analysis of local material and that of overseas jurisdictions, and preliminary consultations; all of which are envisaged to be completed by **June 2019**. The preliminary consultations include those with the members of the Judiciary, relevant Divisions of the Ministry administering these laws (Ministry of Justice and Courts Administration), and the members of the Samoa Law Society. These preliminary research and consultations will inform a Discussion Paper for Cabinet approval.

The Commission plans to carry out public consultations in the year **2020**, and we look forward to seeing this Review unfold, as Samoa moves towards the development of (what we pray and work hard towards) more contextualized family laws.

2. Review of the Property Law Act 1952.

As reported in ‘The Reformer’ – Issue 2 of 2018, the Review of the Property Law Act 1952 Final Report was submitted for Cabinet approval in **November 2018**. On **20 December 2018**, Cabinet approved the Final Report. An external Consultant was engaged to translate the Final Report. Eighty (80) copies (in English and Samoan) were delivered to the Office of the Clerk of the Legislative Assembly on **1 April 2019** for tabling in Parliament at the next Parliament session.

3. Review of the Judgment Summonses Act 1965.

The Commission received a Terms of Reference from the Office of the Attorney General on **20 November 2018** to review the *Judgment Summonses Act 1965* (JSA 1965). The reference stems from concerns surrounding the administration of the JSA 1965 with a view of possible reforms to ‘imprisonment’ as a punishment for non-payment of debt and alternative methods of debt repayment to be introduced. The Commission carried out its preliminary research and consultations which informed its Discussion Paper. The Discussion Paper was submitted to Cabinet on **8 April 2019** and was approved by Cabinet on **17 April 2019**. The Commission is now preparing 'public consultations' on this Review.

4. Exchange of Information in the Public Sector.

As reported in ‘The Reformer’ – Issue 2 of 2018, the Commission carried out targeted consultations with Government Ministries, State Owned Enterprises, Constitutional Offices and Statutory Bodies in **September 2018**. The feedback from these consultations guided the Commission in the development of its Final Report. This Final Report was endorsed by Cabinet on **6 March 2019**. In the Directive endorsing the Final Report, the Commission was also instructed to work with Ministry of Communications, Information and Technology to implement the Commission's recommendations. The Final Report is now being translated into the Samoan language before it is tabled before the Parliament.

5. Review of the Law Reform Commission Act 2008.

In commemoration of the Commission's 10th year anniversary, the Commission proposed a Terms of Reference (TOR) for the Review of its enabling Act, the *Law Reform Commission Act 2008*. This TOR was endorsed by the Hon. Prime Minister on **15 March 2018** and by the Attorney General on **20 March 2018**.

PROJECT UPDATES (Cont'd)

This Review is guided by the lessons and research on the work of the Commission in the last 10 years. An improved legislative 'framework' will continue to enhance the Commission's law reform services to meet its statutory mandates. This Review commenced in **February 2018**. The Discussion Paper was approved by Cabinet on **16 January 2019**. As this Review requires Executive Decisions, a Draft Amendment Bill informed by the Cabinet approved recommendations was developed and is now with the Office of the Attorney General for final review. This Review will also inform a "Law Reform Process Handbook", setting out the process of law reform adopted by the Commission in the review and reform of the laws of Samoa.

6. Update Consultations of Outstanding Projects (UCOP).

In the course of the Commission's review of its enabling Act, the Commission reaffirmed the status of its past Law Reform Projects undertaken in the past 10 years since establishment. The Commission sought confirmation from the Office of the Clerk of the Legislative Assembly (OCLA) on the status of some of its outstanding Final Reports tabled in Parliament in the past years.

These are namely the:

- (a) Review of the Commissions of Inquiry Act 1964 Final Report;
- (b) Review of the Judicature Ordinance 1961 Final Report;
- (c) Protection of Samoa's Traditional Knowledge Final Report; and
- (d) National Heritage Board Final Report.

On **12 November 2018**, the OCLA confirmed that all four (4) Final Reports in question had already been approved by Parliament. Further research showed that for the first two approved projects ((a) and (b)), draft amendment laws had already been developed. For the last 2 approved projects ((c) and (d)), **there has been no movement on the recommendations made to these projects following Parliament approval.**

Given the significant time and resources spent on these projects and the time lapse since Parliament approval, on **15 November 2018** the Commission recommended to the Hon. Prime Minister (its Minister) that a refresher one round of discussions be taken with the relevant stakeholders in Government to, where feasible take the Commission's recommendations to realisation.

Upon approval, consultations took place from **6 - 14 February 2019** following which a 'Consultation Report' was developed and submitted to the Hon. Prime Minister for his approval on **22 March 2019**. Following approval, it was submitted to Cabinet on **25 March 2019** for Cabinet's endorsement and was subsequently endorsed on **17 April 2019**.

AD-HOC REFERENCES

From **October 2018 to April 2019**, the Commission has undertaken legal and doctrinal research on some eight (8) ad hoc references from Government. These references usually require that the Commission researches, make analysis and recommendations on a query or issue referred, and such references are at times 'urgent' and a 'priority'. These references have required the Commission to review immigration laws, criminal laws, communication laws, tax laws, customs laws, contract laws and sports law. The Commission has endeavored to respond speedily and effectively following extensive research and analysis.

Public Awareness Activities/Involvement

1. 10th Year Anniversary Clip.

A brief video clip of the 10th Anniversary of the Commission was aired for public viewing on the local TV1 on **27 & 29 March 2019**. The Commission is now working on English subtitles to accompany the Samoan language employed by the presenters, before the video clip (in Samoan and English) is again released for the benefit of a wider public audience. We hope you enjoy this summary of the Commission's work in the last 10 years (2008-2018).

2. Customary Land Law Awareness Project (CLLAP).

Initiated by the Commission, this project is to raise further awareness of the laws that regulate matters pertaining to Samoa's customary land.

Article 101 of the *Constitution of Samoa 1960* says there are 3 types of land in Samoa:

- (1) Customary land;
- (2) Freehold land;
- (3) State land.

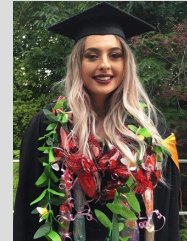
Of the 287 laws of Samoa up to **December 2018**, some 19 laws regulate matters pertaining to those 3 types of land. From that 19, 5 laws regulate further matters pertaining to customary land.

Of these 5 laws, 2 laws the subject of persistent confusion are the **Land Titles Registration Act 2008** and the **Alienation of Customary Land Act 1965**. There is confusion, especially amongst overseas Samoans, on the purposes and provisions of these laws. The short video clip will explain why and how these laws are incapable of alienating customary land, with the hope that those who do wish to understand will indeed 'hear' and 'digest' and 'understand' the meaning of those laws.

NEW RECRUITS



Masinamua Maselusi Ah Poe -
Manager Corporate Service
(Commenced work on 7 January 2019)



Ysatis Leafa - Legal Analyst
(Commenced work 18 March 2019)



Ernest Aмосa - Senior Information Technology
Officer
(Commenced work 23 April 2019)



Touale Filipo -
Executive Legal Assistant
(Commenced work on 22 October 2018)

FAREWELLS



Aogamalie Bureieta Leauga -
Manager of Corporate Services
(Resigned 26 October 2018)



Charlie Don Reed -
Senior Information Technology Officer
(Resigned 1 February 2019)

INTERNSHIP



In **January 2019**, the Commission hosted two interns from TC Beirne School of Law, University of Queensland: Susanna Connolly and Josephine Vidler.

Susanna is a fourth year student studying a double major in Law and Arts at the University of Queensland. Josephine is a fifth year student studying a double major in Law and Science.

Both interns assisted in carrying out preliminary research on the Commission's Review of the Family Laws of Samoa.

The Commission would once again like to wish them all the best with their studies.

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

HAVE YOUR SAY



Q -
How to give the Commission my Feedback?

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

Contact us

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Public Awareness Activities/Involvement (Cont'd)

3. Rights Empowerment and Cohesion (REACH) Program, Upolu (4-8 March 2019) & Savaii (11-15 March 2019).

In **March 2019**, representatives from the Commission took part in the Rights Empowerment and Cohesion (REACH) Program through the Law and Justice Sector. This program is aimed at raising awareness of the general public, specifically those in the more isolated rural areas, of the relevant services available and offered by Offices and Ministries in the Law and Justice Sector (PSC, AGO, Ombudsman, SLRC, MOP, MWCSO, SPCS, SUNGO, Matai Rep, NC Churches, SLS, Sui o Nuu, Sui Tamaitai, MOF). For its first pilot sessions, the program was taken to selected villages in Upolu and Savaii. The Commission used this opportunity to offer the community participants a general overview of the Fabric of Laws of Samoa; the mandates of the Commission; and the 'inclusive law making' approach the Commission adopts in the reform of laws for Samoa. The Commission also presented on and sought views on the *Review of the Judgment Summons Act 1965* and the *Review of the Family Laws of Samoa*. This Program was made possible with funding from the UN Women and the UNDP (Fiji).

4. Samoa's 6th Period Reporting Session (UN CEDAW Committee), 26 October 2018.

On **26 October 2018**, the Commission was part of Samoa's delegation to Samoa's 6th Periodic Session to the United Nations CEDAW Committee. For this Reporting Session, the Commission responded to all legal issues and questions raised by the CEDAW Committee on how Samoa has taken steps to implement and comply with CEDAW. The Commission's responses were informed by its CEDAW Review and Final Report 2016 as well as additional information provided by other participating Offices and Agencies. The Commission is thankful for the invaluable experience to be part of Samoa's CEDAW Reporting Team 2018.

Conferences, Workshops & Training

| No. | CONFERENCE/WORKSHOP/TRAINING | DATE | SLRC REPRESENTATIVE(S)/ PARTICIPANT(S) |
|---|--|---------------------|--|
| <i>International Conferences & Training</i> | | | |
| 1. | Australasian Law Reform Agencies Conference 2018 | 23 – 25 Oct 2018 | Tele'iai Dr. Lalotoa Mulitalo (ED) Tapuala Ulupale Fuimaono (AED) |
| 2. | Young Leaders from Pacific Island Countries | 15 Oct – 2 Nov 2018 | Mearold Solofa Viliamu (Executive Legal Officer) |
| <i>In-Country Conferences, Workshops & Training</i> | | | |
| 3. | Leadership in the Public Sector | 5 – 9 Nov 2018 | Lizatalei Hakai-Stanley (Principal Legal Analyst) |
| 4. | Formulation of a National Child Care & Protection Policy | 8 Feb 2019 | Faapale Telesia Lemalu (Principal Legal Analyst) |
| 5. | Human Resource Management Development in the Singapore Public Service for Samoa Senior Executives Course | 12 – 14 Mar 2019 | Tele'iai Dr. Lalotoa Mulitalo (Executive Director) |
| 6. | Gender Mainstreaming Training For Government Of Samoa | 27 Feb – 1 Mar 2019 | Lizatalei Hakai –Stanley (Principal Legal Analyst) |
| 7. | Presentation Skills Training | 5 – 7 Mar 2019 | Fugala'au Siaki (Senior Accounts & Admin Officer) |
| 8. | Sexual and Gender Based Violence Workshop | 25 – 27 Mar 2019 | Ysatis Leafa (Legal Analyst), Ruta Masinalupe (Legal Analyst), Faapale Telesia Lemalu (Principal Legal Analyst). |

SLRC Capacity Building

| LEGAL TRAINING | | |
|--|---|------------------------------------|
| TOPIC | COORDINATOR | DATE |
| Pacific Law Reform Commissions in the Digitalised World – the case of Samoa | Teleiai Dr. Lalotoa Mulitalo | 30 Nov 2018 (SLRC Nov Training). |
| Taking of Customary Land for Public Purposes – the Law and Case Law | Teleiai Dr. Lalotoa Mulitalo | 22 Feb 2019 (SLRC Feb Training). |
| Interpreting Drafting and Policy Instructions | Teleiai Dr. Lalotoa Mulitalo | 5 Apr 2019 (SLRC Mar Training). |
| Understanding Finance Laws of Samoa | Salote Peteru, ACEO Legal MOF | 26 Apr 2019 (Govt. Lawyers). |
| Research and Developing a Working Draft (Ad Hoc) Bill | Sheliza Tapuai, Lizatalei Hakai-Stanley, Teleiai Dr. Lalotoa Mulitalo | 30 April 2019 (SLRC Apr Training). |
| CORPORATE SERVICE UNIT TRAINING | | |
| New Determination 13J PDL added into Working Conditions and Entitlements Manual 2015 | Public Service Commission. | 18 Apr 2019 |