



GOVERNMENT OF SAMOA



Samoa
Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa



ANNUAL REPORT

July 2013 – June 2014



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 fifth Annual Report for the Samoa Law Reform Commission for the period of July 2013 to June 2014 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

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(Leota Theresa Potoi)

EXECUTIVE DIRECTOR

SAMOA LAW REFORM COMMISSION



Table of Contents

Foreword	5
Executive Director’s Note	6
About The Commission	7
Establishment	7
Mandate	7
Functions	7
Advisory Board	7
Organisational Structure	8
Staff Of The Commission	8
Legal Division	8
Corporate Services Unit.....	9
Part-Time Lawyers.....	9
Volunteers	9
Interns	9
Key Achievements.....	10
Final Reports	10
Issues Paper/ Discussion Paper.....	11
Advice On Bills.....	11
Australasian Law Reform Agencies Conference (Alrac)	12
Presentations	14
Slrc In-House Trainings	14
Constraints/ Challenges.....	15
Law Reform Process	16
References	16
Research	16
Consultation.....	17
Issues Paper	17
Final Report With Recommendations	17
Budget	18
Audit Report.....	19

FOREWORD



It is my pleasure to present the 5th Annual Report of the Samoa Law Reform Commission for the financial year July 2013-June 2014.

The Commission plays a vital role in the continuous reform of laws of Samoa. The review, reform and development of laws by the Commission contribute significantly to the priorities of Government. It results in updated laws which serve the needs of Samoa, based on research and analysis, submissions from the public, and consultations with relevant persons, groups and public.

Consultations carried out by the Commission, provides the public yet another avenue to participate in the development of laws of Samoa. I continue to encourage the public to take an interest in the work of the Commission, make submissions, and attend consultations held by the Commission to voice their views.

One of the highlights of this year and a milestone for the Commission was the hosting of the Australasian Law Reform Agencies Conference (ALRAC) in May 2014. This Conference enabled the Commission to create and strengthen networks, share information on effective law reform processes, experiences and challenges overcome. Very positive feedback was received in regards the hosting of this Conference which was mutually beneficial to both the Commission and the Conference participants. I wish to acknowledge the Commission for the successful hosting of this Conference.

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

EXECUTIVE DIRECTOR'S NOTE



I started as Executive Director of the Commission in January 2014 following the elevation of the former Executive Director to the Bench in August 2013 – Judge Leilani Tuala-Warren. I acknowledge the significant contribution by Judge Tuala-Warren to the Commission since its establishment in 2008, and to law reform in Samoa during that period. She was pivotal to the growth of the Commission from a team of 2, to a structure of 14.

One of the highlights on the Commission this year includes the successful hosting of the Australian Law Reform Agencies Conference (ALRAC) in May 2014. This is an extremely important achievement by an organisation still relatively in its infancy. A very important outcome of this Conference for the Commission, was the sharing of information, development of new networks and strengthening of existing relationships with its law reform counterparts.

I wish to acknowledge the Chairman of the Advisory Board and Board members for their support and valuable contribution to the work of the Commission. I also acknowledge funding received from the UNICEF and UNWOMEN which has assisted with the development of the UN Convention on the Elimination of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of a Child (UNCRC) Legislative Compliance Issues Papers.

I wish to convey my appreciation to the Commission's staff for their continuous hard work, despite various challenges in obtaining information and statistics, as well as shortages in senior legal staff. Their commitment to excellence in the Commission's work, has ensured a seamless transition in my commencement in this role.

Leota Theresa Potoi
EXECUTIVE DIRECTOR

ABOUT THE COMMISSION

ESTABLISHMENT

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.

MANDATE

Pursuant to Section 4 of the Act 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.

FUNCTIONS

The functions of the Committee as set out in section 6 of the Act are to:

- recommend suggested programs for the reform of the laws of Samoa;
- research and analyse areas of law considered to be in need of reform and report its recommendations for reform to the Prime Minister and the Attorney General;
- advise Government Ministries and agencies on the manner or content of reviews of the law conducted by them; and
- consult with and advise the public about its work.

In carrying out its functions, the Commission strives to adhere to Government policies and requirements set out by the relevant Government agencies, such as the Public Service Commission, Ministry of Finance and the Audit Office, and internal policies of the Commission.

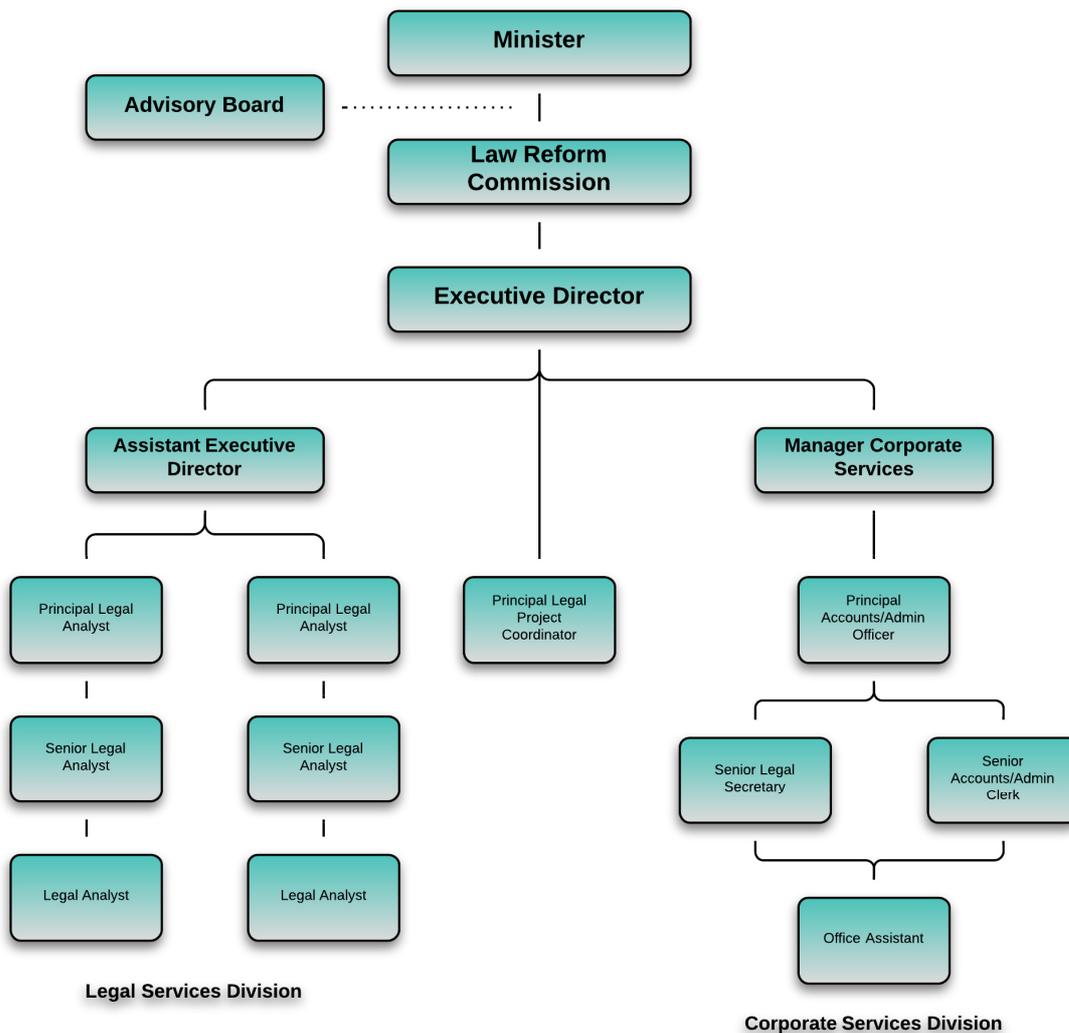
ADVISORY BOARD

The Commission is assisted by an Advisory Board chaired by the Attorney General that convenes at least four times a year. A new Advisory Board member Afioga Lio Foleni, representing matai in Savaii was appointed by Cabinet.

ORGANISATIONAL STRUCTURE

STAFF OF THE COMMISSION

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.



LEGAL DIVISION

The Legal Division consisting of 7 staff is headed by Ulupale Fuimaono, who started in this role in July 2013. The Legal Division is responsible for carrying out research and analysis of matters referred to the Commission for review; providing technical legal advice to government Ministries on proposed legislation review; facilitating



consultations between government and the community in matters of law reform; and drafting reports that include recommendations for reform.

As all reports must be tabled in Parliament, the Legal Division also assists in translating reports to the Samoan language and in the editing of reports. Where a Bill is developed to reflect recommendations of a report for legislative reform, the Legal Division is responsible for providing drafting instructions to the drafter, and reviewing the Bill to ensure that policy recommended is accurately reflected in the Bill.

CORPORATE SERVICES UNIT

The Corporate Services Unit (CSU) provides administrative support to the Legal Division of the Commission. CSU handles a range of matters including the Commission's budget, human resources, information technology, library services, secretarial services, and general administration. This Unit consists of 5 staff, led by the Manager Corporate Services, Malaea Feterika. CSU also assists in translating reports to the Samoan language and in the editing of reports.

PART-TIME LAWYERS

The Commission employed 2 part-time Vanuatu law graduates Kathleen Taituave and Chrisanthy Amosa, in December 2013.

VOLUNTEERS

Australian Volunteers for International Development (AVID) Jocelyn Cole and Duncan Jepson commenced work in April 2014 for 12 months. Jocelyn Cole is an experienced practitioner, having practiced law for over 25 years. Duncan Jepson has broad experience across IT Systems, which includes working on network security of public infrastructure. Other volunteers included Fiona Jackson, an Australian law graduate (June to July 2013); Susana Leota, an Auckland law graduate (July-September 2013); and Violina Leilua, a Vanuatu law graduate (from June – September 2014).

INTERNS

On occasion, lawyers volunteer their time to work for the Commission. Interns included Marcus Morgan (July, 2013), and Claire Bamford (January- February 2014). These internships resulted from an arrangement with the University of New South Wales.

KEY ACHIEVEMENTS

The following is a snapshot of the Commission's key achievements for the financial year July 2013 – June 2014.

FINAL REPORTS

REFERENCE	DETAILS	STATUS
1. Review of the District Court Act 1969	This review was part of the Commission's broader review and reform of legislation governing the courts of Samoa.	Sent for tabling in Parliament 11/03/14
2. National Heritage Board	This review was to examine the feasibility and appropriateness of setting up a National Heritage Board to preserve Samoa's various significant heritage sites, (looking also at approaches by comparative jurisdictions).	Sent for tabling in Parliament 04/04/14
3. Media Regulation	This review was to examine the need for a regulatory body in respect of the media in Samoa, and to make recommendations for the establishment of such a body.	Sent for tabling in Parliament 05/06/14.
4. Legislation for the care and Protection of Children	Legislation relating to the care and protection of children, in light of Samoa's obligations under the Convention on the Rights of a Child was reviewed. The Report focused on the Constitution of Samoa, the Infants Ordinance 1961 and the Young Offenders Act 2007.	Currently being edited for tabling in Parliament.
5. Protection of Traditional Knowledge	This review is to examine Samoa's traditional knowledge and expressions by intellectual property legislation to protect was reviewed (looking also at approaches by comparative jurisdictions), and to determine an appropriate approach to Samoa	Further targeted consultation to be carried out before finalized.
6. Sex Offenders Register	This review is to assess whether the establishment of a sex offenders' register would be appropriate for Samoa, and if it would likely result in a reduction of sex offenders' recidivism.	Being finalized.

ISSUES PAPER/ DISCUSSION PAPER

REFERENCE	DETAILS	STATUS
7. Supreme Court (Civil Procedure) Rules, and Magistrate Court Rules	The Supreme Court (Civil Procedure) Rules 1980 and the Magistrates' Court Rules 1971 are being reviewed.	Issues Paper No. 1 completed. Issues Paper No. 2 is being finalized.
8. Alcohol Reform	This review is of the sale and consumption of alcohol, 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.	Issues Paper was approved by Cabinet on 22/01/14. Submissions on Issues Paper close on 7/11/14. Consultation of key Government agencies carried out 04/14. Focus groups and public consultations will be carried out 2 nd half of 2014.
9. CEDAW Legislative Compliance	This review is of Samoa's legislative compliance with its obligations under the Convention on the Elimination of Discrimination against Women (CEDAW)	Working Group Meetings with key Government ministries carried out 3/14. Discussion Paper currently being finalized.

ADVICE ON BILLS

Part of the Commission's functions under the Act is to advise Government Ministries and agencies on the manner or content of reviews of law conducted by them.

Technical advice was provided by the Commission on the following:

- Child Care and Protection Bill
- Coroners Bill
- Citizenship by Investment Bill
- Sentencing Bill 2014
- Evidence Bill 2014
- EPC's proposed base tariff adjustment and rate structure 2014

The Commission is also involved in the Village Governance Project of the Ministry of Women, Community and Social Development, and informs villages involved in this project on the review of the Village Fono Act that was undertaken by the Commission.

AUSTRALASIAN LAW REFORM AGENCIES CONFERENCE (ALRAC)

ALRAC was hosted by the Commission on 28th – 30th May 2014. The conference theme was 'Challenges of Law Reform in the Pacific'. A total number of 26 overseas participants attended, with over 50 local participants. Distinguished speakers from around the Pacific Region (including Samoa, New Zealand, Solomon Islands, Tonga, Vanuatu and Australia) presented on various topics. The key note speech was presented by the Hon. Prime Minister, whilst a general overview highlighting the necessity of law reform in Samoa was presented by the Hon. Chief Justice Patu Sapolu.

An outline of the Conference programme is as follows:

Day 1: Theme: 'Western Laws versus Customary Laws'

Presenters included:

- Tuatagaloa Aumua Ming C. Leung Wai, Attorney General, '*Harmonising Customary Laws and Western Laws*'.
- Dr Helen Cockburn, Tasmania Law Reform Institute, '*The Admission of Customary Law in Common Law Courts: Some Regional Comparisons*'.
- Professor Kate Warner, University of Tasmania, '*The Relevance of Aboriginality to Sentencing in Australia*'.
- Justine Clarke and Julie Mckenzie, Senior Legal Officers, Australia Law Reform Commission, '*Looking Backward, Looking Forward: The ALRC's inquiries about Customary Law*'.
- Leasiolagi Dr. Malama Meleisa, Director for Center of Samoan Studies, National University of Samoa, '*Compromises and Accommodation – Culture and Legal co-existence in Samoa*'.

Day 2: Theme: 'Challenges to Customary Law'

Presenters included:

- Hon. Tafaoimalo Leilani Tuala-Warren, District Court Judge of Samoa, '*Challenges of Law Reform in Samoa*'.
- Hon. Wayne Mapp, Law Commissioner of New Zealand Law Commission, '*How Customary Law Influenced the Review of the Law Burials and Cremations in New Zealand*'.

- Prof. Geoff McLay, Law Commissioner of New Zealand Law Commission, *'How Emerging Technologies are Impacting on Law Reform – focusing on NZ review of Media and Cyber Bulling'*.
- Hon. Neil Adsett, Attorney General of Tonga, *'Practical Law Reform Strategies in the Pacific'*.
- Bertha Esau Paloasongi, Executive Director of Vanuatu Law Commission, *'Customary Land and its Challenges in Vanuatu'*.
- Phillip Kanairara, Acting Chief Legal Officer & Executive Officer of Solomon Island Law Commission, *'Challenges of Law Reform in the Solomon Islands'*.
- Prof. Fui Le'apai Tu'ua Ilaoa Asofou Soo, Vice Chancellor of the National University of Samoa, *'Tampering with Customary Law for the Sake of the Common Good: the Case of Samoa'*.

The first Administration and support staff session in ALRAC was also carried out. Corporate Service Unit members from respective government ministries and overseas speakers shared their experiences on their support role in a law reform agency.

Presenters included:

- Tina O'Brien, Executive Project Assistant, Australian Law Reform Commission, *'Project Management'*.
- Malaea Feterika, Manager Corporate Services Unit, Samoa Law Reform Commission, *'Keeping the engine running'*.
- Florita Tupa'i, Principal Legal Project Coordinator, Samoa Law Reform Commission, *'Caught in the Middle, Bridging the Gap'*
- Manusamoa Christine Saaga, Manager Corporate Services Unit, Attorney General's Office, *'Effective Administration – what works, what doesn't...'*
- Jocelyn Cole, Legal Advisor (Australian Volunteer), Samoa Law Reform Commission, *'Challenges in the role of Administrative Support'*.

Day 3: Theme: 'Way Forward'

Presenters included:

- Hon. Fiamē Naomi Matā'afa, Minister of Justice and Courts Administration, *'Samoa National Leadership Development Forum – an overview'*.
- Sir Grant Hammond, Law Commissioner of New Zealand Law Commission, *'The Practical Importance of Law Reform Agencies'*

- Taulapapa Brenda Heather-Latu, Honorary Consul of Great Britain and Northern Ireland, and Former Attorney General of Samoa, *'Legal Policy Development for Effective Outcomes'*.
- April Howley, Senior Legal Officer, Australian Government Attorney General Department, *'Legal Policy Development for Effective Outcomes'*.

Some of the positive feedback received by the Commission, included the following:

'...I was proud of the way the Conference was organized because it gives a good impression not only of the Samoa Law Reform Commission but also of our country...' (**Hon. Chief Justice Patu**).

'...The conference was carefully and excellently organized. The facilities were splendid and the hospitality warm and inviting, in the best Samoa tradition. My delegation and I am sure everybody else who attended, was deeply appreciative of the considerable effort which must have gone in to organizing this venture. You and your colleagues feel justifiably proud of what you achieved for the law reform movement in the South Pacific.' (**Hon. Sir Grant Hammond, President New Zealand Law Commission**).

PRESENTATIONS

The Commission was invited to present at the following:

- Samoa Law Society Continuous Legal Education (CLE), Media Regulation review, 27-28 November 2013 (Ulupale Fuimaono, Acting Executive Director)
- Pacific Library Twinning Program, Connecting people to Information, 4 – 6 June, 2014 (Ulupale Fuimaono, Assistant Executive Director)
- Legislative Lobbying: Building Skills in Governance and Leadership, 06 May, 2014 (Kaisarina Salesa, Principal Legal Analyst). The Commission took this opportunity to create awareness about its work and to also assist in building capacity of the SNYC youth members in anticipation of the United Nations Small Island Developing States Conference on presented at Samoa National Youth Council Inc (SNYC) in partnership with the SPC/RRRT workshop.

SLRC IN-HOUSE TRAININGS

The Commission values opportunities for capacity building and professional development. The staff of the Commission attends various overseas and in-country training, workshops and conferences. The Commission also conducts regular in-house training and up-skilling sessions (once or twice a month) to build capacity of its staff, including ongoing trainings on current policies, policy development, letter writing, analytical skills. As a new initiative, the Commission also invites guest speakers from Government agencies. This included Ms. Hai Yuean who presented on the *Ombudsman (Komesina o Sulugfaiga) Act 2013* and the functions of the

National Human Rights Institute (19 March, 2014) and Tim Fadgen, a Fulbright-Clinton Fellow attached to the Attorney General's office who presented on Public Policy Analysis (26th March 2014)

CONSTRAINTS/ CHALLENGES

The Commission faces a number of challenges in its work. 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 challenging for the Commission to meet timeframes. This also means that the Commission is unlikely to recommend programmes for reform (which is one of its core functions), as its ability to take on more work would be limited.

Other challenges faced by the Commission include the amount of human resources and time incurred when translating Final Reports into the Samoan language for tabling in Parliament. Previously, translations of the Final Reports was carried out by the Office of the Legislative Assembly or outsourced. However this was extremely time consuming and delays were always incurred. Furthermore, often the spirit and context of a report would not be clearly or accurately captured in the Samoan translation and would require further translating and editing work, which the staff of the Commission would then carry out to expedite matters. This would result in delays in the completion of other work, and slippages in time frames.

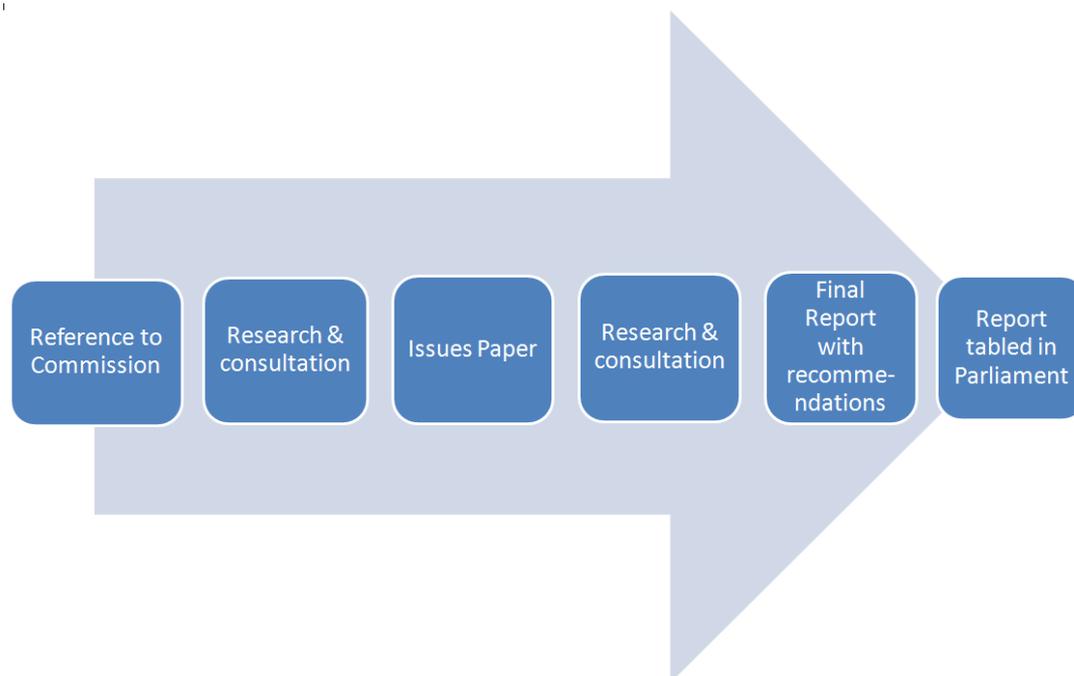
Despite continuing to raise awareness of its work and promoting the Commission as an excellent legal career path, the Commission faces difficulties in attracting and recruiting senior legal staff with relevant experience. This is largely due to the level of remuneration for legal staff, which is not comparable to that offered by many other Government agencies and in private practice. The Commission proposes to explore with the Public Service Commission ways this may be address.

The Commission also proposes to explore with the Public Service Commission the possibility of expanding the organisation by adding additional staff, such as a Cultural Liaison Officer and an IT officer. A Cultural Liaison Officer would be pivotal to the Commission's public consultations and awareness programmes (a core function of the Commission) and would also translate the Final Reports for tabling, expediting the law reform process and freeing up staff to do core business . The Commission would also benefit immensely from in-house IT personnel. The Commission not only raises awareness about its work through its website, but it receives electronic submissions on its Issues Papers via the website. As an organisation heavily reliant on research (including online research) for example on comparable legal systems, international obligations and international best practice, IT staff that can ensure an effective and efficient IT system is vital. The Commission's IT services are currently outsourced to one

of the Internet Service Providers and as such the Commission always faced numerous delays when any technical issues arose. Currently the Commission is assisted by an Australian Volunteer, Duncan Jepson, whose term will end in April 2015.

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 Recommendations	860,365	950,812	90,446
0			
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)



AUDIT REPORT

The first full audit of the Commission's accounts from July 2011 – June 2013 was conducted from February to April 2014. The audit highlighted areas for improvement to ensure that transactions are approved, recorded accurately and completely, and appropriate accountability is given for the office's operations. The Commission welcomes the recommendations in the Audit report and will be strengthening its internal control of its processes and procedures.