

LAW REFORM COMMISSION ACT 2008

SAMOA

Arrangement of Provisions

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2008, No. 8

AN ACT to establish the Samoa Law Reform Commission for the review and development of the laws of Samoa.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Law Reform Commission Act 2008.

(2) This Act comes into force upon the assent of the Head of State.

2. Interpretation - In this Act:

“Advisory Board” means the Law Reform Commission Advisory Board established by section 12:

“Commission” means the Samoa Law Reform Commission established by section 5:

“Cabinet” means the Cabinet established under Article 32 of the Constitution:

“public servant” means any person employed under the Public Service Act 2004:

“Public Service” means the Public Service as defined in Article 83 of the Constitution.

3. Act to bind the Government - This Act binds the Government.

4. Purpose of the Act - The purpose of this Act is to facilitate the review, reform and development of the laws of Samoa in order to:

- (a) promote Samoan custom and traditions;
- (b) enhance the social, cultural, economic and commercial development of Samoa; and
- (c) ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.

5. Establishment of the Commission-(1) The Samoa Law Reform Commission is established.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

6. Functions of the Commission - The functions of the Commission are:

- (a) to recommend to the Attorney General suggested programs for the reform of the laws of Samoa;

- (b) in accordance with references made to it by the Prime Minister, Cabinet or the Attorney General (whether at the Commission's suggestion or otherwise), to 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;
- (c) to advise Government Ministries and agencies on the manner or content of reviews of the law conducted by those Ministries and agencies; and
- (d) to consult with and advise the public (and any specific sectors of the community) about its work.

7. Powers of the Commission-(1) The Commission shall have all such powers as are necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1), the Commission shall have the power:

- (a) to conduct or sponsor such studies and research as it thinks expedient for the preparation of reports and associated documents relating to a matter referred to it under the provisions of this Act;
- (b) to consult any Government Ministry or agency concerning the review of any aspect of the law and to request and receive from any Government Ministry or agency such information relating to any review as is appropriate;
- (c) to publicise its work, to conduct public hearings, to seek comments from the public on its proposals, and to consult with any person or groups of persons;
- (d) to hire or otherwise obtain the services of suitably qualified persons to assist with its work; and
- (e) to delegate, in writing, to a member or members of staff any specific function of the Commission.

8. Procedure of the Commission - Subject to the provisions of this Act the Commission may regulate its procedure in such manner as it thinks fit.

9. Responsibilities of Commission and Prime Minister-(1) The Commission shall:

- (a) prepare and provide to the Prime Minister and the Attorney General, at least once a year, a forward plan of the Commission's work;
 - (b) provide to the Prime Minister, Cabinet and the Attorney General reports prepared by it in response to terms of reference approved by the Prime Minister, Cabinet and the Attorney General, and arrange for their publication if approved by the Prime Minister, Cabinet or the Attorney General; and
 - (c) provide an annual report to the Prime Minister on the Commission's operations and expenditure.
- (2) Where the Commission provides to the Prime Minister a report, the Prime Minister shall lay a copy of the report before the Legislative Assembly as soon as practicable after receipt of the report.
- (3) The Prime Minister, Cabinet and the Attorney General may at any time require the Commission to examine any aspect of the laws of Samoa and the Commission shall review the law accordingly and report to the Prime Minister with its recommendations.
- (4) The Attorney General may give the Commission directions about the order in which it is to deal with references made to it under this section.

10. The Executive Director-(1) The Executive Director shall be the administrative head of the Commission and shall supervise and direct the work of the Commission.

- (2) The Executive Director shall be a person who:
- (a) holds a recognized law degree;
 - (b) has at least five years experience as a barrister and/or solicitor, or in other legal work (including suitable academic positions); and

(c) meets any further skill and character requirements required by the Attorney General.

(3) The Executive Director shall be a public servant and shall be appointed and hold office in accordance with the provisions and procedures applying to public servants.

(4) Notwithstanding subsection (3) no appointment of the Executive Director shall be effective until it is approved by the Attorney General as meeting the requirements of subsection (2).

11. Staff of the Commission - All staff of the Commission shall be appointed and employed in accordance with the laws and practices applying to public servants.

12. Law Reform Commission Advisory Board-(1) The Commission shall be assisted by an Advisory Board.

(2) At the direction of the Prime Minister or the Attorney General, the Executive Director shall convene at least four meetings of the Advisory Board each year.

(3) The Advisory Board shall be composed as follows:

(a) members, appointed by virtue of their office, namely-

(i) the Attorney-General;

(ii) the Chief Executive Officer of the Ministry of the Prime Minister and Cabinet;

(iii) the Chief Executive Officer of the Ministry of Justice and Courts Administration;

(iv) the Chief Executive Officer of the Ministry of Finance;

(v) the Chief Executive Officer of the Ministry of Women, Community and Social Development;

(vi) the Commissioner of Police Services;

(vii) the President of the Samoa Law Society or nominee from time to time;

(viii) the President of the Samoa Chamber of Commerce and Industry Inc. or nominee from time to time;

- (ix) the President of the National Council of Churches, or nominee from time to time; and
 - (x) the President of the Public Service Association, or nominee from time to time.
- (b) four (4) members appointed by the Head of State, on the advice of the Prime Minister (after consultation with the Minister responsible for community development), who are able to represent community interests by reason of their-
- (i) active representation of non governmental organisations;
 - (ii) understanding of an interest in the work of the Commission; and
 - (iii) ability to contribute to the work of the Commission.
- (4) Each member appointed under subsection (3)(b):
- (a) shall be appointed for a term of up to three years and shall be eligible for reappointment;
 - (b) may at any time resign his or her appointment by notice in writing to the Head of State; and
 - (c) may at any time be removed from his or her appointment by the Prime Minister on the grounds of disability, bankruptcy, neglect of duty, or misconduct.
- (5) The members of the Advisory Board may be paid such fees and allowances in accordance with Cabinet policy.

13. Appointment of Commissioners and Consultants

- (1) In accordance with subsection (2) the Commission may appoint Commissioners or consultants to manage and undertake law reform projects that are referred to the Commission by the Prime Minister, Cabinet or the Attorney General under this Act.
- (2) Any appointment made under subsection (1).
- (a) must be approved by -
 - (i) the Advisory Board, if it is an appointment as Commissioner; or
 - (ii) the Attorney General, if it is an appointment as consultant;

- (b) must be in accordance with procedures applying under any law or any regulations made under this Act (which, if made, shall prevail over any other law in the event of any inconsistency).
- (3) In the event that a law reform project is undertaken for the Commission by a Commissioner appointed under this section -
 - (a) the Report of the Commissioner shall be prepared and given to the Commission in the name of the Commissioner;
 - (b) the work of the Commissioner shall be undertaken in accordance with any requirements or terms of reference imposed by the Prime Minister, Cabinet or the Attorney General;
 - (c) the Commissioner shall give due regard to any views expressed by the Advisory Board as to process or the outcomes that are desired for the project.
- (4) Where the Commission is assisted by a consultant appointed in accordance with this section, the consultant shall undertake such work and activities as are directed by the Executive Director to facilitate the review and reform of any specific area of the law as directed by the Prime Minister, Cabinet or the Attorney General. -

14. Appointment of Judicial Officers as a Commissioner-(1) A judicial officer may, with the approval of the Chief Justice, be appointed as a Commissioner for any law reform project undertaken by the Commission.

(2) Subject to subsection (3), in the event that a judicial officer is appointed as a Commissioner, that appointment shall not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's services as Commissioner shall be taken to be service as a Judge.

(3) A judicial officer who is appointed as a Commissioner shall be entitled to receive allowances and reimbursement of expenses as are approved by the Prime Minister.

15. Protection from civil actions-(1) An action or other proceedings for damages does not lie against the Commission (or any member, staff, employee, Commissioner or consultant of or engaged by the Commission) in relation to anything done, or not done in good faith:

- (a) in the performance, or purported performance, of any of the Commission's functions; or
- (b) in the performance, or purported performance, of any of its powers.

(2) An action or other proceedings for damages does not lie against the Commissioner or any officer or employee of the Commission in relation to anything done, or not done, in good faith by the Commissioner, officer or employee, as the case may be, in the performance, or purported performance, of his or her duties under this Act.

16. Regulations - The Head of State acting on the advice of Cabinet may from time to time make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

17. Repeal - The Samoa Law Reform Commission Act 2002 is repealed.
