



GOVERNMENT OF SAMOA



ANNUAL REPORT No. 7

July 2015 – June 2016



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 7th Annual Report for the Samoa Law Reform Commission for the period of July 2015 to June 2016 for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the Act.

A handwritten signature in black ink, appearing to read 'Tuilaepa Sailele Malielegaoi', written over a horizontal line.

Hon. Tuilaepa Fatialofa Lupesoliai Aiono Ncioti Dr. Sailele Malielegaoi

PRIME MINISTER AND MINISTER OF THE SAMOA LAW REFORM COMMISSION



GOVERNMENT OF SAMOA

Honourable Tuilaepa Fatialofa Lupesoliai Aiono Neioti Dr. Sailele Mallelegaoi
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 7th Annual Report for the Samoa Law Reform Commission for the period of July 2015 - June 2016, for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the Act.

A handwritten signature in black ink, appearing to read 'Leota Theresa Potoi'.

Leota Theresa Potoi

EXECUTIVE DIRECTOR

SAMOA LAW REFORM COMMISSION

FOREWORD



I have great pleasure in presenting the 7th Annual Report of the Samoa Law Reform Commission for the financial year July 2015-June 2016.

This Annual Report presents the work carried out by the Commission in this financial year and highlights key achievements and challenges faced in carrying out its work. Consistent with Goal 6 (Improved Governance under the Law and Justice Sector) of the Strategy for the Development of Samoa 2012-2016, the Commission continues to play a vital role in the reform of Samoa's laws. The work of the Commission has resulted in robust laws that meet the needs of Government and the wider community, promotes Samoan customs and traditions, and enhances the social, cultural, economic and commercial development of Samoa. The law reform process allows for wide public consultations on each project to ensure that relevant stakeholders and the public are given the opportunity to contribute to the law making process.

In the past, the Commission has been instrumental in changing the legal landscape of Samoa through various laws that were referred to it for review. This is illustrated by the implementation of the Commission's reports into legislation, such as the *Media Council Act 2015*, the *District Court Act 2016*, and the *Criminal Procedure Act 2016*.

The completion of the Report on Alcohol Reform is a milestone for the Commission following a period of thorough research, analysis and wide public consultations. Recommendations by the Commission on Alcohol Reform will undoubtedly improve alcohol regulation and control in Samoa, and reduce harm caused by alcohol.

The completion of the Commission's report on a Sex Offenders' Register is also another significant milestone. If implemented, it would assist law enforcement and crime prevention particularly in relation to sex offences and may reduce the likelihood of re-offending.

The public and stakeholders are encouraged to take an interest in the work of the Commission and participate in the reform of laws in Samoa, by attending consultations and making submissions and on its various projects.

I congratulate the Executive Director and staff of the Commission for all their hard work and dedication.

A handwritten signature in black ink, appearing to read 'Tuilaepa Fatiafofa Lupesoliai Aiono Neioti Dr. Saiiele Mallelegaoi'.

Honourable Tuilaepa Fatiafofa Lupesoliai Aiono Neioti Dr. Saiiele Mallelegaoi
PRIME MINISTER/ MINISTER OF THE SAMOA LAW REFORM COMMISSION

EXECUTIVE DIRECTOR'S NOTE



The FY 2015/2016 has been a very challenging yet productive year for the Commission. It has seen significant law reform projects completed following extensive research, analysis, consultations and examination of comparative jurisdictions.

Implementation of the Commission's reports into legislation such as the *Media Council Act 2015*, the *District Court Act 2016* and the *Criminal Procedure Act 2016* are significant achievements. In addition, the Village Fono Amendment Bill and the Coroners Bill was tabled in 2016.

One of the Commission's significant achievements is the publication of the Alcohol Reform Report in April 2016 which discusses harm caused by excessive alcohol consumption particularly in relation to criminal offending; the alcohol licensing system; availability of alcohol and controls for its sale and supply; alcohol pricing and taxation; alcohol promotion and advertising; and enforcement by liquor inspectors, police and the *Village Fono*. The Commission drafted an Alcohol Control Bill 2016 reflecting its recommendations as part of the report to assist the implementing Government Ministry (Ministry for Revenue) in its legislative reforms. The report has been approved by Cabinet and will be submitted to the Office of the Legislative Assembly for presenting in Parliament before the end of 2016.

Another significant achievement is the development of the Sex Offender's Registration Bill 2016 reflecting the Commission's recommendations in the Sex Offenders' Register Report. If implemented, it would assist in law enforcement and crime prevention by requiring serious recidivist sex offenders to be registered, and reduce the likelihood of re-offending. The report has been approved by Cabinet and is expected to be submitted to the Office of the Legislative Assembly for presenting in Parliament before the end of 2016.

The Commission successfully carried out Public Consultations for its report on Samoa's legislative compliance with its obligations under CEDAW, which evidently was the biggest public turnout the Commission has witnessed to date for one of its projects. At the time of this annual report, a comprehensive report on this review was completed and approved by Cabinet and is expected to be submitted to the Office of the Legislative Assembly before the end of 2016.

The FY 2015/2016 has also seen the commencement of new complex projects such as the review of the *Property Law Act 1952*, the review of drug related laws aimed at reducing the harm caused by drugs in Samoa, as well as a culturally complex and sensitive review of laws aimed at reducing any abuse of power by Matai Sa'o within families and communities.

Despite ongoing challenges such as the difficulty in obtaining current, accurate data and information, as well as the constant shortage of senior staff, the Commission carries out its mandated functions and achieves its goals effectively.

I would like to acknowledge the support of our Minister, the Prime Minister, Honourable Tuilaepa Fatialofa Lupesoli'ai Aiono Neioti Dr. Sailele Malielegaoi. I also thank the Commission's Advisory Board members, stakeholders and partners that have contributed to the Commission's work through the provision of data and information, and by taking the time to make submissions and provide valuable input. To the staff of the Commission, malo le tautua ma le lē faalogologo liga.

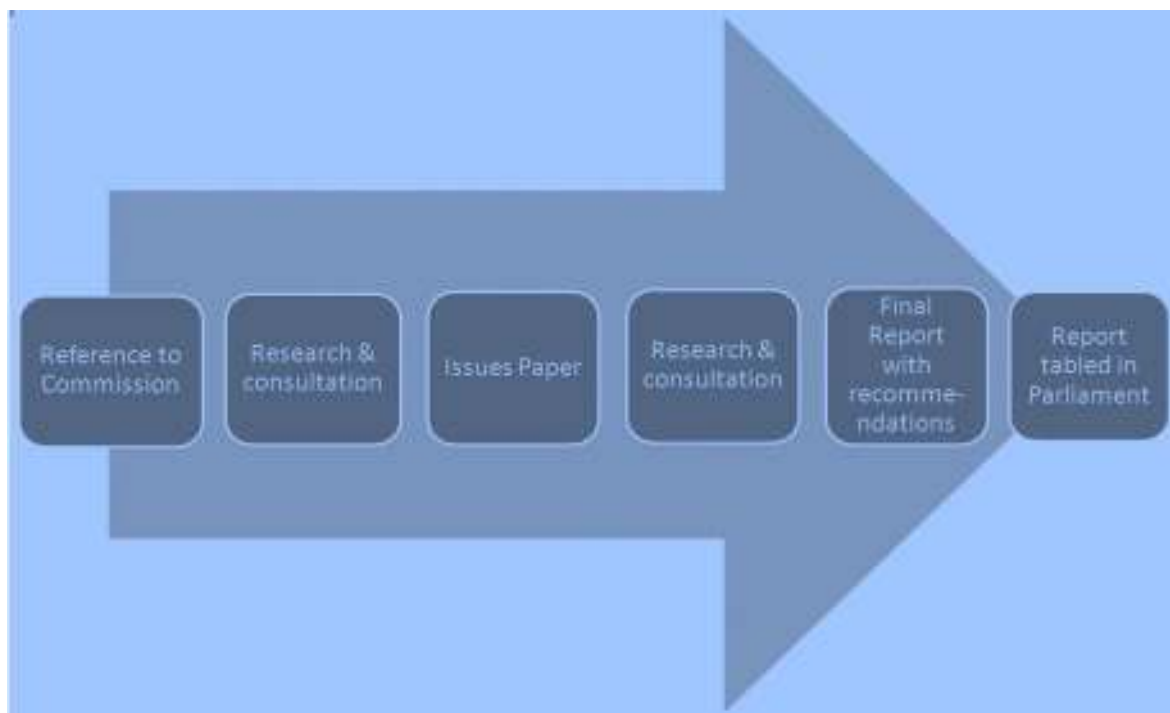


Leota Theresa Potoi
EXECUTIVE DIRECTOR

A. SAMOA LAW REFORM COMMISSION

The Samoa Law Reform Commission is an independent body corporate established to undertake the review, reform and development of laws in Samoa. Such reviews are facilitated in a manner that aims to promote Samoan customs and traditions; enhances the social, cultural, economic and commercial development of Samoa; and ensures that the laws of Samoa are modern and meet the needs of Government and the community.

Process



The Commission receives a term of reference from the Attorney-General and/or the Prime Minister or Cabinet which sets out the scope of the review.

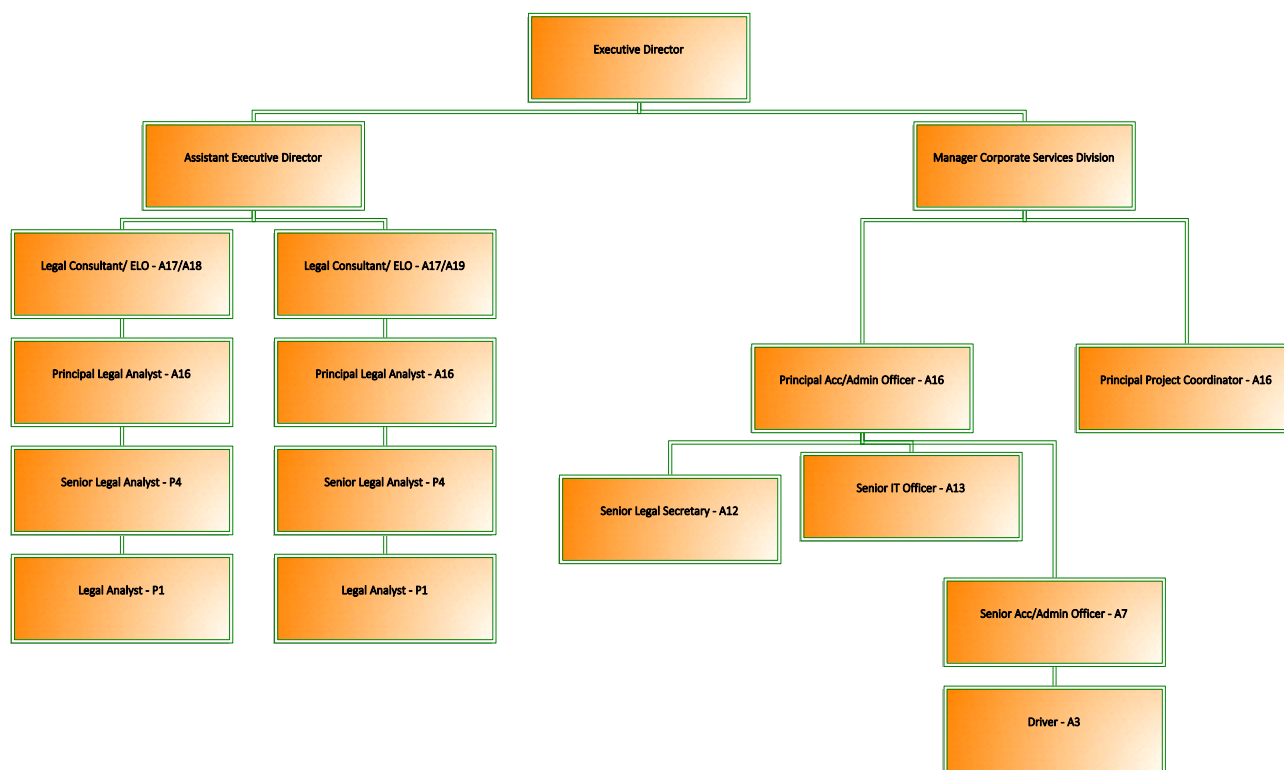
Preliminary research is then carried out to prepare an Issues Paper or Discussion Paper, which includes a series of questions about the key issues under consideration. Consultations are then carried out on issues raised in the Issues Paper. The intention is to stimulate discussion and to encourage the public, stakeholders and any persons and groups that may be affected by any potential reforms, to provide feedback or written submissions.

Following extensive research, analysis and public consultation, the Commission reports its recommendations for reform to the Prime Minister and the Attorney General. Sometimes a Bill reflecting the Commission's recommendations is drafted as part of the report to assist the implementing Government agency. The report is then tabled in Parliament.

Although Government decides whether any or all of the Commission's recommendations are to be implemented, Parliament ultimately decides whether there is to be any change to the law.

Organisational Structure

As of the end of the Financial Year 2015/2016 (FY15/16), the Commission's Organisational Structure stands as follows:



Legal Division

The Legal Division consist of 9 staff and is managed by the Assistant Executive Director, Ulupale Fuimaono. The number of legal staff was recently increased to 9 with the addition of 2 Legal Consultant positions. The Legal Division is responsible for carrying out legal research and analysis, providing legal advice to government Ministries on reviews of law, facilitating consultations with the community in matters of law reform and drafting reports that include recommendations for reform.

Corporate Services Unit

The Corporate Services Unit (CSU) provides administrative support to the Legal Division. It handles matters including the Commission's budget, human resources, information technology, library services, secretarial services, and general administration. The CSU consists of 6 staff, led by the Manager Corporate Services, Leopold Bureieta Lemuelu Leauga. CSU also assists in translating reports to the Samoan language and editing reports.

Advisory Board

The Commission is assisted by an Advisory Board that convenes four times a year, comprising 14 members. Permanent members include the Attorney General (Chairman); Commissioner of Police Services; Chief Executive Officers of the Ministry of the Prime Minister and Cabinet, Ministry of Justice and Courts Administration, Ministry of Finance, the Ministry of Women, Community and Social Development; Presidents of the Samoa Law Society, Samoa Chamber of Commerce and Industry Inc and National Council of Churches or nominees. Appointed members include the President of Samoa Umbrella for Non-Governmental Organisations and the Medical Association; Matai representatives from Upolu and Savaii.

B. ACHIEVEMENTS

Reports Implemented

1. The *Media Council Act 2015* was passed by Parliament on the 9th July 2015. Many, if not most of the recommendations in the Commission's Media Regulation Final Report are implemented in this new Act. The Final Report was passed by Parliament in February 2015.
2. The *District Court Act 2016* was passed by Parliament on the 9th February 2016. Many, if not most of the Commission's recommendations in the District Court Act 1969 Final Report passed by Parliament on the 21st October 2014 are implemented in this new Act.
3. The *Criminal Procedure Act 2016* was passed by Parliament on the 9th February 2016. Many, if not most of the Commission's recommendations in the Criminal Procedure Act 1972 Final Report are implemented in this new Act.
4. The Village Fono Amendment Bill was tabled in 2016.
 - The Commission's Final Report on the review of *Village Fono Act 1990* was approved by Cabinet in 2012 and was subsequently passed by Parliament in 2014.
 - Many, if not most of the Commission's recommendations in the review of the Village Fono Act 1990 Final Report are implemented in this new Act.
 - In October 2016, the Commission was invited by the Health & Social Services, Internal Affairs, Community and Social Development Select Committee to discuss the Village Fono Bill.
5. The Coroners Bill was tabled in 2016.
 - In 2008, the Commission was directed to review the *Coroners Ordinance 1959*. The objective of the review was to update and improve the legislation governing the work of coroners in Samoa.
 - The Final Report was approved by Cabinet in 2011 and sent for tabling in Parliament in 2012. A Draft Bill was drafted by the Attorney General's Office reflecting many, if not most of the recommendations in the Commission's Final Report.
 - In October 2016, the Commission was invited by the Health & Social Services, Internal Affairs, Community and Social Development Select Committee to discuss the Coroners Bill.

Reports Tabled

6. The Alcohol Reform Final Report was completed and sent for tabling in Parliament in June 2016. Cabinet has directed the Ministry for Revenue to reform alcohol laws, and work in collaboration with the AGO and Commission (see FK(16)17 and FK(16)21).
7. The Sex Offenders Register Final Report was completed and is currently being bound for tabling in Parliament. Cabinet has directed the Ministry of Police to implement recommendations (see FK(16)21).

Public Awareness & Input

8. The Commission completed its public consultations on CEDAW Legislative Compliance Review in September – October 2015. The public consultation stage of our Law Reform Process is very significant to the work of the Commission as the Commission highly values the public's views and comments in relation to our projects. CEDAW public consultations revealed a significant turnout by the public due to increased public awareness, as well as due to assistance from the Ministry of Women, Community and Social Development (MWCSO) through Sui Tamaitai o Nuu and Sui o Nuu's meetings. Over 650 attended and a significant number of written submissions were also received.

C. CHALLENGES

1. Obtaining relevant data/statistics

An ongoing challenge for the Commission is obtaining up to date and accurate statistics from stakeholders to assist with its projects. All projects require consideration of current data/statistics and many Ministries often do not have complete statistics, or up to date and accurate information. A good example of incomplete data is in relation to crime statistics. Furthermore, information received by one Ministry was sometimes inconsistent with information received from another Ministry.

The Commission has consistently recommended in its reports the need for Government Ministries to compile and keep current data/statistics relevant to their work to assist the Government in making informed and sound decisions, and in policy development. Such information is also necessary to assist with the Commission's research and analysis when formulating recommendations to Government.

2. Staff Recruitment and Retention

The numerous projects and diversity and complexity of each project requires highly qualified, experienced and skilled staff. This is a significant issue for the Commission in its work given constant staff shortages. The Commission has had difficulty recruiting suitably qualified and experienced senior legal staff.

Currently the Commission has multiple projects overseen by the Executive Director and the legal team. The numerous projects and diversity of each project along with the shortage in staff has seen the Commission fall short of some of its targets and some projects have taken longer to complete than initially anticipated. The Commission has been working closely with PSC and MoF to create new senior legal positions and offer improved remuneration packages to attract highly qualified experienced personnel to join the Commission.

3. Public Awareness

Public consultations are an essential part of the law reform process. As a young organisation with a limited budget the Commission continues to face challenges in encouraging the public and stakeholders to take an interest in the work of the Commission, and provide input and submissions on potential law reforms that may impact on them. Furthermore, the Commission's role is often not clearly understood by the public. To address this, the Commission uses all opportunities and various mediums to raise awareness and educate the public about its work.

D. LAW REFORM PROJECTS

The following are Projects undertaken by the SLRC from 1 July 2015 and their status as of 30 June 2016.

1. Final Report on Alcohol Reform - completed

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 promotion of alcohol; age restrictions; and responsibilities of village councils and others.

The Final Report was approved by Cabinet on the 27 April 2016. In addition the Commission submitted as part of its Final Report a draft Alcohol Control Bill reflecting its recommendations which was approved by Cabinet on 25 May 2016.¹ The Final Report along with the draft Bill has been submitted to Parliament for tabling on 15 July 2016.

2. Final Report on a Sex Offenders' Register- completed

The Final Report for the Sex Offenders Register (SOR) was approved by Cabinet on 22 April 2015. The Commission was able to secure funding from the United Nations Children's Emergency Fund (UNICEF) to draft the Sex Offenders Registration Bill reflecting recommendations in its Final Report.

3. Final Report on the Review of Supreme Court (Civil Procedure) Rules, and Magistrate Court (Civil Procedure) Rules - ongoing

The Civil Procedure Rules govern practice and procedure in the Supreme and District Courts exercising civil jurisdiction. The Final Report is being drafted. The Commission will consult with the AGO, Judiciary and members of the Law Society before finalising the report. New court rules are expected to be developed reflecting recommendations in the final report.

4. Public Consultations Convention on the Elimination of Discrimination Against Women (CEDAW)

This review investigates the level of compliance of Samoa's legislation with CEDAW and provides suggestions on how Samoa should meet its international obligations under this convention.

Following Cabinet approval of the Discussion Paper on 22 July 2015, the Commission held four Public Consultations in Upolu and Savaii in September and October 2015. These public consultations recorded the highest turnout by the public of any consultation the Commission has carried out. This was partially attributed to assistance by MWCSO informing Sui Tamaitai o Nuu and Sui o Nuu and distributing invitation letters as well as through advertising on traditional media modes (Newspaper, TV, radio) and contemporary means such as social media (Facebook, SLRC website). A significant number of written submissions were also received on this project.

The Final Report is being drafted and close to completion.

¹ The draft Bill serves as an illustration to assist the implementing Government Ministry (in this case, the Ministry for Revenue) in its legislative reforms.

5. Discussion Paper on Pule a le Matai Sa'ō - completed

The Commission received a reference from the Prime Minister on 28 April 2015 to consider legislative measures to address concerns about reported abuse of power by some Matai Sa'ō (normally over decisions relating to matai titles and customary land). Work commenced on this project in March 2016, resulting in a Discussion Paper which was submitted to Cabinet on 5 May 2016. Public consultations on this project will commence in October 2016.

6. Review of the Narcotics Act 1967 -Preliminary Consultations & Research - ongoing

The Commission received a reference from the Attorney General in March 2015, to review drugs related legislation in Samoa to minimise drug related harm. This includes reviewing the statutory regime to control and regulate drugs (ie the *Narcotics Act 1967*); the classification of drugs; appropriate offences and penalties; medicinal use of certain drugs in controlled situations; support and treatment services and rehabilitation facilities; and monitoring of offenders.

The Commission is currently undertaking preliminary research, analysis and consultation in preparation of an Issues Paper.

7. Discussion Paper on the Ministerial and Departmental Arrangements Act 2003 review - ongoing

The aim of this project is to review the *Ministerial and Departmental Arrangement Act 2003* governing various Government Ministries to achieve consistency in general functions and powers of Chief Executive Officers. The Commission is finalising the Discussion Paper.

8. Discussion Papers on the Property Law Act 1952 review - ongoing

This project was referred to the Commission on 18 August 2014 by the Attorney General and involves reviewing the *Property Law Act 1952 (Samoa)* and the *Property Law Act 2007 (NZ)*². Due to the sheer size and complexity of the reference and the lack of senior staff, this project was put on hold. Work resumed in April 2016 and currently the Commission is developing Discussion Papers (DP).

DPs 1 and 2 have been drafted and include a review of Parts 1-3 of the *Property Law Act 2007 (NZ)* (on preliminary provisions, general rules relating to dispositions, instruments, transactions & property, and mortgages) and parts of the *Property Law Act 1952 (Samoa)*. The DPs refer to specific provisions and make comments and recommendations concerning their suitability for inclusion in new property laws for Samoa, with any necessary modifications identified to make them applicable in the Samoan context. DPs 1 and 2 are close to completion.

² The *Property Law Act 1952 (Samoa)* replicated the now repealed *Property Law Act 1952 (New Zealand)* which was replaced by the *Property Law Act 2007 (New Zealand)*, following a review by the New Zealand Law Commission of the 1952 Act.

E. INTERNSHIPS & VOLUNTEERS

Due to the difficulty the Commission had in recruiting legal staff, it sought other avenues to attract, recruit and build relationships with various partners locally and internationally. One such programme that has been quite successful is our Internship Programme.

The Internship Programme aims to provide internship opportunities to law students to work with the Commission to develop a relationship based on goodwill and co-operation to ensure that the outcomes are achieved to the best of each party's ability. The Commission contributes to the education of law students by providing opportunities for students to undertake voluntary internships as a way of gaining experience in the practical application of the following areas:

Research assistance including:

- Looking up comparable laws and providing summaries/analysis to the project leader;
- Researching case law and providing summaries/analysis to the project leader;
- Providing assistance on the review of draft reports.

The Internship Programme has been very successful with interested candidates from the Pacific Region including Australia and New Zealand.

We have been fortunate to secure a volunteer for the Legal Division, Ms. Carly Price from Victoria, Australia. Ms. Price is currently assisting our legal staff in law maintenance as well as capacity building through internal staff trainings and workshops.

F. BUDGET

Expenditure

**STATEMENT OF MINISTRY RECEIPTS BY REPORTING CATEGORY
AND EXPENDITURE BY OUTPUT
APPROPRIATION ACCOUNT
FOR FINANCIAL YEAR ENDING 30 JUNE 2016**

	2016	Original Estimate	Final Estimate	(Over)/Under	2015
	\$	\$	\$	\$	\$
LAW REFORM COMMISSION					
RECEIPTS					
Ordinary Receipts					
Other Receipts	0	0	0	0	0
TOTAL RECEIPTS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
PAYMENTS					
Outputs					
1.0 Legal Research Analysis and Recommendations	843,581	976,246	976,246	132,665	804,840
Total Outputs	<u>843,581</u>	<u>976,246</u>	<u>976,246</u>	<u>132,665</u>	<u>804,840</u>
Transactions on Behalf of State					
Hosting of Regional					

Meetings/Conferences					
Australasian Law Reform Agencies - ALRAC Conference (27-29 May 2014)	0	0	0		0
Rent and Lease (Government Building)	167,900	167,900	167,900	0	167,900
VAGST Output Tax	40,365	54,307	51,077	13,942	48,505
Total Transactions on Behalf of State	208,265	222,207	218,977	13,942	216,405
TOTAL PAYMENTS -LAW REFORM	1,051,847	1,198,453	1,195,223	146,606	1,021,244
RECEIPTS OVER PAYMENTS	(1,051,847)	(1,198,453)	(1,195,223)	(146,606)	(1,021,244)

Personnel

The Commission's Personnel Budget that caters to staff salaries and Higher Duty Allowances has increased significantly. This is mainly due to the establishment of three new positions:

1. 2 Legal Consultant positions remunerated at A17/A19 of \$70,088.00 p.a.; and
2. Senior IT Officer remunerated at A13, \$31,582.00/ \$34,026.00 p.a.