



# THE REFORMER

THE OFFICIAL QUARTERLY NEWSLETTER OF THE SAMOA LAW REFORM COMMISSION

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## EXCHANGE OF INFORMATION IN THE PUBLIC SECTOR

In **March 2017**, the Samoa Law Reform Commission ('**SLRC**') in accordance with its mandate under the *Law Reform Commission Act 2008*, initiated a project on the review of 'freedom of information' in Samoa. This was confirmed by the Office of the Attorney General on **5 May 2017**.

Following extensive preliminary research, as this review was primarily initiated for a better flow of information within the Government sector, the SLRC considered that a focus specifically on information exchange in the public sector (information exchange amongst Government Ministries, Public Bodies, Constitutional Authorities and Statutory Bodies), would be more relevant rather than attempting a full 'freedom of information' review.

In **May 2018**, the SLRC submitted its Discussion Paper on the Exchange of Information in the Public Sector for Cabinet's endorsement. This Discussion Paper was approved on **30 May 2018** for consultations.

Given the nature and scope of this project (on the public sector), comments and feedback were sought from Government Ministries, State Owned Enterprises, Constitutional Offices and Statutory Bodies. These were due on **31 August 2018**. Two day consultation sessions were then held on the **18 - 19 September 2018** at the TuiAtua Tupua Tamasese Efi Convention Center.

It is anticipated that a Final Report will be completed and published by **December 2018**. The SLRC wishes to express sincere gratitude to all government ministries, public sector agencies and constitutional authorities for their participation, kind support and assistance rendered through the conduct of SLRC's consultation stage for this important Project.

# WELCOME MESSAGE FROM THE EXECUTIVE DIRECTOR



I le ava e tatau ai e toe faatalofa atu ai le Komisi i le paia ma le mamalu o le au faitau i nei laupepa o faamatalaga o galuega a le Komisi mo lenei foi kuata, **Iuni – Setema 2018**. Ua faataatia atu ni nai oototoga o galuega fai a le Komisi mo lo outou silafia.

These past 3 months has seen the Samoa Law Reform Commission ('SLRC') embark on a variety of tasks in the performance of its functions. For the work of the SLRC in this quarter, the following excerpts are relevant.

(1) There will be law reform projects that may not receive much public input due to the nature and scope of that project, e.g. the *Property Law Act 1952* Review. The area regulated by this Act is implemented by a minority population, however, the input from those outside of this sector must be sought. Legal pluralism purports that views of both the implementing and non-implementing population must be sought. How a legal transplant has taken root if at all in the receiving country must be researched, considered, addressed and the findings appreciated and understood, to allow Samoa to make informed decisions on moving on from today.

(2) The review of the *Law Reform Commission Act 2008* commences on the records of 1997 where an Institutional Strengthening Project for the Ministry of Justice and Courts Administration (then Department of Justice) identified the need for a Law Reform Commission for Samoa.

Following those first 10 years' discussions (1997-2007), inclusive of an enacted law in 2002 which was not implemented, the successes and records of the next 10 years after establishment (2008-2018) paved by the then first two hard working Managements and officers provide an excellent guide for the SLRC in moving forward. The result of this review will be useful in determining Samoa's way forward with the SLRC being a necessary part of the justice system for Samoa, as it was originally (and always) envisaged. We continue to find the best way to serve the public of Samoa.

We hope this 'The Reformer' issue will enlighten the public on the work of the SLRC in this quarter. We thank you for reading this Issue and for all your contribution in the work of the SLRC.

Faalagolago pea i le alofa o le Atua e fesoasoani mai i galuega fai.

Fa'amanuia pea le Atua ia Samoa.

## PROJECT UPDATES

### 1. Property Law Act 1952 Review (PLA)

The initial stages of the *Property Law Act 1952* review was reported in 'The Reformer' - Issue 1 of 2018. The Final Report is now nearing finalisation. This project was initiated with the support of the Samoan Judiciary. Notably, the provisions of this Act are practiced by a minority population in Samoa (e.g. individual freehold and private property owners, private businesses sector etc.) This portion however significantly contributes to the development of the economy of Samoa. It is a project that has not attracted many substantive submissions despite ample time and reminders given, in the hope of submissions being made. This is perhaps due to the fact it is on the principles of modern property law as opposed to communal property principles prevalent in Samoa's context. The SLRC aims to submit the Final Report for Cabinet's approval in **October 2018**.

### 2. Exchange of Information Review

This Review is reported in the Main Article section (above). The SLRC is compiling and analyzing all information from the consultations and research to inform recommendations in the Final Report.

### 3. Law Reform Commission Act 2008 Review

The Terms of Reference for this review was endorsed by the Honourable Prime Minister on **15 March 2018** and by the Office of the Attorney General ('OAG') on **20 March 2018**. The SLRC is currently drafting its Discussion Paper. The objective of this review is for the SLRC and the OAG to provide a framework that will continue to improve the law review and reform services of the SLRC, and to ensure that it continues to strive towards its purpose of establishment: to meet the needs of Samoa and its people.

### 4. Toe Timata le Upega - O Tulafono a Samoa (The Review of the Fabric of Laws of Samoa)

One of the major projects completed by the SLRC in **December 2017** and its Final Report approved by Cabinet in **January 2018** is the Review of the Fabric of Laws of Samoa. As reported in 'The Reformer' - Issue 1 of 2018, the SLRC then conducted Confirmation Sessions to confirm with the relevant Ministries their outstanding matters from the Final Report. An Information Paper outlining the results and outcomes of these Confirmation Sessions was submitted to the Honourable Prime Minister and was approved on **9 May 2018**.

In the month of **June**, upon endorsement by the SLRC's Minister, the Honourable Prime Minister, the SLRC carried out a series of Fabric of Laws Awareness Sessions with the Samoan Judiciary, the Government Sector and the Samoa Law Society, to inform of the current fabric of Samoa's laws and which office is responsible for which laws. In the hope of reaching a wider audience, the SLRC also presented on this project on the **TV1 'E Te Silafia** Programme'. Conducted entirely in the Samoan language, this session was appropriately entitled '*Toe Timata le Upega - O Tulafono a Samoa*'.

The SLRC was invited to present and did present on **23 August 2018** on the Fabric of the Laws of Samoa at the Center for Samoan Studies ('CSS') at the National University of Samoa. With regards to this request by the CSS, it was believed that the SLRC's presentation would be helpful to guide and inform researchers who may wish to inform their research with the laws of the Parliament of Samoa. The younger generation would also be informed and (it was hoped) take interest in pursuing studies on 'laws' and in particular the laws of Samoa.

### 5. Foreign Investment Law Review

During a meeting with the Ministry of Commerce, Industry and Labour ('MCIL') and their Technical Assistance ('TA') on the Foreign Investment Law Review on **9 May 2018**, the SLRC provided its preliminary research to the TA. Following this meeting, the SLRC then made an informed decision that its Terms of Reference ('TOR') in this Review is sufficiently covered under the TA's TOR. Thereafter, on **15 May 2018**, the SLRC advised the MCIL and the Office of the Attorney General that the work of the SLRC in this Review has thereafter ceased. However, the SLRC still stands by to assist MCIL in their review, in the event assistance is needed.

### 6. Narcotics Act 1967 Review (Drugs Review)

As reported in 'The Reformer' - Issue 1 of 2018, the Final Report for the Drugs Review was endorsed by Cabinet on **5 January 2018**. That Final Report was tabled before Parliament in **June 2018**. On **31 July 2018**, the SLRC was summonsed before the Parliamentary Committee for Standing Orders, Electoral, Petitions & Offices of Parliament Committee, to respond to the Committee's questions on this Final Report. A proposed Working Draft Illegal Drugs Control Bill has been finalised by the SLRC to reflect its Final Report recommendations, in anticipation of Parliament's endorsement, and to assist the drafting capacity of the Drafting Division of the Office of the Attorney General.



## PROJECT UPDATES (Cont'd)

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

Following two meetings of the SLRC with the Samoa Law Society (then) Council and the Legislative Drafting Division of the Office of the Attorney General ('OAG') on the (i) Draft Supreme Court Rules (Civil Procedure); and (ii) Draft District Court Rules (Civil Procedure) earlier in **2018**, on **5 September 2018**, the OAG submitted these Draft Rules to His Honour, Chief Justice Sapolu and the Legislative Drafting Committee of the Samoa Law Society, in anticipation of these Rules being approved under the processes stipulated under section 40 of the *Judicature Ordinance 1961* and section 87 of the *District Courts Act 2016*. The Final Report for this review was tabled in Parliament on Friday **5 October 2018**.

## Ministry Legislative Review

### Immigration Act 2004 Internal Review

Lizatalei Hakai Stanley, Principal Legal Analyst, represented the SLRC at this review. Following the Ministry of the Prime Minister and Cabinet's ('MPMC') consultations on its internal review on their *Immigration Act 2004*, the MPMC's Technical Assistant ('TA') then prepared a Report outlining the outcomes of the review, and made recommendations for the MPMC to consider. The Report will be finalized by the TA and submitted to the MPMC to decide on a way forward. It is available to the MPMC whether an Amendment Bill is ideal; or a whole new Bill will be drafted supplemented by a new set of Regulations, to address the (especially arising novel) immigration issues in Samoa. Once the MPMC chooses a way forward, Phase 2 (drafting) will commence. The SLRC stands by for any further assistance required by MPMC.

## Ad-hoc Advice

### Land and Titles Bill 2018

In **28 June 2018**, the Assessors of the Land and Titles Court wrote a letter to the Honourable Prime Minister (copying the SLRC and the Office of the Attorney General ('OAG')), raising some concerns on a proposed Land and Titles Bill 2018 ('LT Bill 2018'). As both the OAG and the SLRC were copied in this letter, the two offices met on **16 July 2018** on how these concerns may best be addressed. Following these discussions, in the spirit of collating an independent review, the OAG (in a letter of **24 July 2018**) officially referred the Bill and some specific questions, for the SLRC's legal opinion.

The SLRC understands that customary lands and titles are some of Samoa's most treasured possessions and any advice concerning or affecting the same requires extensive and comprehensive research, review and analysis to develop a well-informed advice that will effectively address any issues raised. As such, the SLRC reviewed, analyzed, and coordinated rounds of internal discussions, on various materials including: (i) the (then) Draft version of the Land and Titles Bill 2018 itself; (ii) the Report of the Special Inquiry Committee 2016 on Land and Title matters; (iii) the Judiciary's Responses to the LT Bill 2018; (iv) the Judiciary's Responses to the Report of the Special Inquiry Committee; and (v) the Hansard Record on Parliamentary proceedings on the Land and Titles Bill 1981. On **22 August 2018**, in a multi-faceted in-depth legal opinion, the SLRC provided to the OAG responses to the specific questions given, and overall general views on the provisions of the draft LT Bill 2018.

## Parliamentary Summons

On **29 September 2018**, the SLRC was invited by the Standing Orders, Electoral, Petitions & Constitutional Offices Parliamentary Committee to attend and provide comments on the following Bills:

1. **Electoral Commission Bill 2018** – This Bill sets up the Electoral Commission Office.
2. **Electoral Bill 2018** – This Bill will repeal and replace the *Electoral Act 1963*.

These 2 Bills were discussed together. The SLRC advised on the benefits of a holistic Bill i.e. its provisions must be compact and complete and sufficiently portray the framework intended; on the drafting principles; and also on the inclusion of a consideration of relevant court decisions in the drafting of Bills/laws.

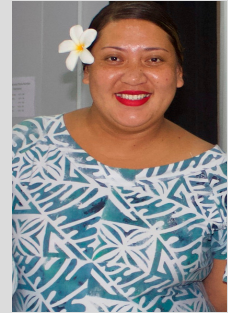
## Launch of Projects the Result of SLRC's Review

### Sex Offenders Register Launch, 9 August 2018 @Ministry of Police.

The SLRC was invited to the launch of the Sex Offenders Registry housed by the Ministry of Police. The SLRC was instrumental in this initiative in that it completed the Sex Offenders Registration Review in **May 2015** with a Draft Bill resulting in the *Sex Offenders Registration Act (SOR Act)* passed by Parliament in **2017**. The SOR Act empowers the police to track sex offender's movements within Samoa. The SLRC looks forward to this Act and Registry working well, for the benefit of Samoa.

## NEW RECRUITS

Senior Legal Officer, Hana Āuta - Ketī  
(Commenced work on 28 May 2018)



Senior IT Officer, Charlie Don Reed -  
(Commenced work on 6 August 2018)



## FAREWELLS

Executive Legal Assistant, Asonei Florida Isaraelu -  
(Resigned on 10 August 2018).



## TELEI'AI DR. LALOTOA MULITALO & GALUMALEMANA NOUMEA L. TEUELI IN LONDON



## Public Awareness Presentations

**Alienation of Customary Land Act Awareness Session with Mafutaga Matagaluega Apia, 26 July 2018 @ EFKS Apia.**

The SLRC was requested by the Mafutaga Matagaluega Apia (EFKS) to explain the customary land laws and the provisions of the Alienation of Customary Land Amendment Bill 2017 currently with Parliament.

## INTERNATIONAL CONFERENCES & TRAININGS

### Legal Team

**1. The 8th Pacific Law and Culture Conference, 2 – 4 July 2018 – University of Canterbury (Christchurch, NZ). Conference Theme: Voices of the Pacific in a Globalised World**

The Executive Director for the SLRC, Telei'ai Dr. Lalotoa Mulitalo, was invited to be one of the 3 key note speakers for this Conference, alongside Hon Justice Fatiaki, Supreme Court Justice of Vanuatu, and Dr. Claire Slatter, scholar and activist of Fiji. Dr. Mulitalo spoke on her chosen topic **'The Language of Indigenous Pacific Voices in Pacific Laws'**. Well attended by academics and students from Law Schools in the Pacific Islands, Australia and New Zealand, Dr. Mulitalo spoke on *the importance of Pacific laws being developed in a language that portrays the context of the Pacific people for the benefit of the Pacific people.*

**2. A Sea of Norms: Laws and Other Orders in the South Pacific Workshop, 9 –10 August 2018, The University of the South Pacific (Suva, Fiji).**

This Workshop was coordinated as part of the celebrations of the University of the South Pacific's 50th Anniversary. The Workshop brought together a number of legal researchers and legal practitioners to explore, through case studies of the region, the challenges for research on, and understanding of, the laws and norms of the Pacific.

Dr. Mulitalo, Executive Director of the SLRC was invited to give the Keynote Address at this Workshop. She spoke on **'The Challenges for Research on, and Understanding of, the Laws and Norms of the Pacific Islands.'** She highlighted that *"to understand 'Law and Norms' in the Pacific Islands, we must first appreciate that although they (laws and norms) originate from different foundations of principles and values, both share common goals, including that of social harmony and order in societies. They must therefore be given equal recognition in all areas of Pacific research and Pacific law making."*

As a Workshop participant, Dr. Mulitalo spoke on the topic **'A Double Hulled Alia – Calm in the Currents of Norms: Samoa's Bylaws'**. She pointed out that the majority of Samoa's by-laws are those in the fishing management area. She concluded that *"[T]he success of village by-laws is related to community ownership. Communities of villages which set their own by-laws are more likely to respect and abide by these rules than those set by a government authority. Village by-laws, therefore, represent a law making process that is kinder and accommodating to both modern legal principles and customary norms."*

**3. Environmental Dispute Resolution and Small Island States: Training Workshop and Conference, 3-7 September 2018 (London, England).**

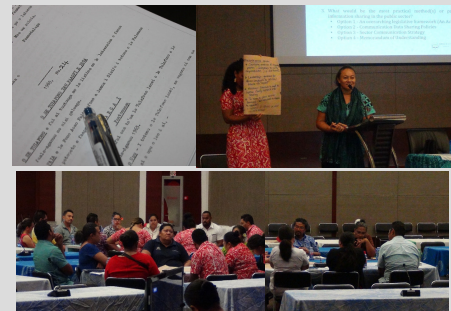
In **September 2018**, the Executive Director of the SLRC, Dr. Mulitalo and the Chief Legislative Drafter (Assistant Attorney General), Galumalemana Noumea L. Teueli, attended the two forums above as part the of initiatives coordinated by the Ministry of Foreign Affairs and Trade, New Zealand, the Queen Mary University of London and Victoria University of Wellington.

- **Training Workshop – 3-5 September, Centre for Commercial Studies, Queen Mary University of London** - Dr. Mulitalo was invited to coordinate the ½ day Legislative Drafting Workshop with a London based counterpart, on the last day of the 3 Day Workshop. She spoke on the topic entitled, **'Legislative Drafting Challenges in the Pacific Islands'**.

- **Environmental Dispute Resolution and Small States Conference: 6-7 September, Wilmer Hale Cutler Pickering Hale and Dorr, London** - Dr. Mulitalo was secondly invited to speak as a member of the Opening Panel, chaired by Sir David Baragwanath, KNZM QC. She spoke on **'Environmental Dispute Resolution and Small States – Law Drafting and Law Reform Perspective, the Pacific Islands.'**

- **Round Table on Women and Careers in Climate Change and International Environmental Law and Policy** - Dr. Mulitalo was further invited to speak as a Panellist at this Round Table, on the progress Samoa has made in terms of gender equality and women advancement in general. The Round Table was hosted by an internationally recognised law Firm Debevoise & Plimpton in London.

## EXCHANGE OF INFORMATION PUBLIC CONSULTATIONS



## AWARENESS PROGRAM FOR THE LANDS AND TITLES REGISTRATION ACT WITH THE MAFUTAGA MATAGALUEGA EFKS A APIA



## HONING THE YOUNG LEGAL MINDS OF TOMORROW!



## PUBLIC SERVICE DAY: SLRC AWARENESS DRIVE, MJCA & MNRE.





## SLRC INTERNAL CAPACITY BUILDING

**Legislative Drafting Training**  
22nd June 2018

**Language of Indigenous Pacific  
Voices in Pacific Laws**  
13th July 2018

**Legislative Drafting in the Pacific  
Context Guide : About the Guide**  
28th July 2018

**A Sea of Norms: Laws and other  
orders in the South Pacific: the  
Challenges for Research and  
understanding the Laws and Norms  
of the Pacific Islands**  
31st August 2018

**A Double Hulled Alia - Calm in the  
Current of Norms.**  
31st August 2018

## 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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## INTERNATIONAL CONFERENCES & TRAININGS (Cont'd)

### Corporate Service Unit

#### 4. Public Administration & Human Resource Management Seminar, 7 -23 May 2018 (China)

Asonei Isaraelu, Executive Assistant, attended this Seminar in Beijing China. Having expended for about 2-3 weeks, the Seminar allowed participant countries representatives to receive training on a range of human resource and administration topics such as administration management, crisis management, sustainable development and the administration of modern cities. It also touched on employment related topics such as international labor service cooperation, overseas employment and human resource management for modern enterprises.

#### 5. The Development of Finance & Economics for the Independent State Of Samoa of 2018, 4 – 23 July 2018 (China).

Fugala'au Siaki, Senior Accounts Officer, attended this 2 week training held in China. With an objective to examine participating countries' economic and financial development compared to that of China, participants were exposed to an overview of China's economic growth and the strategies China has and continues to implement that has contributed to its economic and financial growth.

## IN-COUNTRY WORKSHOPS & TRAININGS

### Legal Team

#### 1. Clandestine Laboratory & Methamphetamine Awareness, 28 May 2018 @ Development Bank of Samoa Building.

Mearold Viliamu, Executive Legal Consultant and Grace Esera, Senior Legal Analyst attended a training facilitated by liaison officers to the Pacific from the NZ Police and NZ Customs. Entitled the 'Clandestine Laboratory & Methamphetamine Awareness,' the training targeted law enforcement officers with a particular focus on building on the knowledge of the harm resultant from methamphetamine (meth) abuse and most importantly, how to detect clandestine labs (in which meth are made) in Samoa.

#### 2. Cybercrime Workshop, 2-3 July 2018 @ Taumeasina Island Resort.

Ulupale Fuimaono, Assistant Executive Director, Hana Gauta Ketu, Senior Legal Analyst and Ruta Masinalupe, Legal Analyst attended this Workshop. The objective of the workshop was to promote the need for consistency in legislation on cybercrime and electronic evidence by harmonizing domestic dispositions with the provisions of the Budapest Convention, rule of law and human rights, including data protection standards, with the aim to achieve an enhanced level of cooperation between countries on a regional and international level.

#### 3. Investment Policy & the Review of Foreign Investment Laws, 24 July 2018 @ Sanalele Business Complex.

Lizatalei Hakai Stanley, Principal Legal Analyst and Grace Esera, Senior Legal Analyst of the SLRC attended a workshop hosted by the Ministry of Commerce, Industry and Labour ('MCIL') regarding its Review of Samoa's Investment Policy & Foreign Investment Laws. The Workshop aimed to solicit participants' inputs/feedback regarding the Ministry's proposed options for reform of Samoa's current Foreign Investment laws.

### Corporate Service Unit

#### 4. Data Policy Integration, 5 – 8 June 2018 @ Development Bank of Samoa Building.

The SLRC's Senior Accounts Officer, Fugala'au Siaki, attended this Workshop conducted by Samoa's Bureau of Statistics. With the object to further emphasize the importance of record keeping and data maintenance within government Ministries, the Workshop aimed to enable participants link such information to the Strategic Development of Samoa, the Public Service and the Public Sector.

#### 5. Workforce Planning Training, 27 –29 August 2018 @ Public Service Commission Conference Room.

A refresher course on the Development and Maintenance of the Workforce Plan, the SLRC's Senior Accounts Officer, Fugala'au Siaki, attended this 3 day training hosted by the Public Service Commission. With a view to identify any gaps in staff's capacity, trainings and capacity building opportunities, the workshop identified what may be required to ensure that the staff not only carry out their duties and responsibilities efficiently and effectively but also, how the same can be done to boost their working morale.