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## **Highlights 2007**

2007 saw the recruitment and induction of new lawyers into the Law Reform Commission. The process was difficult but by November, 2007 the Commission had three lawyers at post.

The newly recruited LRC lawyers attended a two week training secondment with the Australian Law Reform Commission (ALRC) which was highly successful both for the Solomon Islands lawyers and the ALRC.

The LRC Commissioners held their first meeting where they were updated on the progress and plans of the LRC Office.

Work commenced on the first reference under review.

The establishment of the post of Office Manager LRC was supported and interviews of candidates were held.

## **Comments from the Chairman**

The Law Reform Commission began to take shape in earnest in the beginning of 2007 in terms of further acquisition of office furniture, stationary and other office equipment. The recruitment process was put into gear but the results were not encouraging as local lawyers had not shown interest in law reform. Not until June did we saw a glimmer of hope when we were able to recruit Michael Pitakaka as the first local lawyer recruit to the Law Reform Commission.

The training of local lawyers is fundamental in order to attain maximum benefit from the expatriate expert at hand. A policy manual has been developed as a training tool for local lawyers to introduce them to the technical aspects of law reform. The manual is a self-directed learning tool that enables new lawyers to develop their skills over a period of time. The Law Reform Commission being newly established from scratch requires contact with the already well-established Law Reform Commissions elsewhere to enhance its ability to work more effectively in law reform. This means sending our local lawyers overseas for short-term attachment training.

After all year effort to recruit local lawyers, we partly succeeded in November when we recruited one more local lawyer. The other lawyer is a Samoan of good standing being a fixed term appointment thus filling in the last vacant post.

The first attachment was in November with the Australian Law Reform Commission for a period of two weeks. We paid for this training. The other one is being scheduled for sometime in 2008 with the New Zealand Law Commission.

We have commenced preliminary work on the reform of the Penal Code which will take us into subsequent years. We have also done work on one of our references being the ownership of trees on customary land. We will be going out for consultation in the course of 2008. The law at the moment is that ownership of the trees for the purpose of logging has no connection with the ownership of the customary land on which the trees stand. The current law does not seem to be consistent with the concept of ownership of customary land. That is, the one who own the land also owns the trees that grow on that customary land.

The year 2007 had been the year of starting up, mobilization of resources and consolidation of efforts to launch out into the activity of law reform.

## **Corporate Overview**

### **Vision and Mission Statement for the Law Reform Commission**

The vision of the Law Reform Commission is law reform for peace, good governance and sustainable development.

The mission of the Solomon Islands Law Reform Commission is to engage the Solomon Islanders in the renewal of the law to endure that it is relevant, responsive, effective, equally accessible to all, and just.

### **Role and Functions of the Solomon Islands Law Reform Commission**

The Solomon Islands Law Reform Commission (the Commission) is a statutory body established under the *Law Reform Commission Act 1994* (the “LRC Act”). The Commission is headed by the Chairman and four Commissioners.

The Commission’s cardinal role is to review the existing laws of the Solomon Islands to bring it in current accord with current conditions, stamp out defects, simplify the law and assume new and more efficient methods for the administration of the law and the dispensation of justice. In addition, the Commission makes recommendations with regards to the creation, consolidation, and revocation of laws.

The Commission receives references from the Minister of Justice directing the Commission to review specific areas of law. There are currently 10 outstanding references before the Commission. [Please see Appendix 1 for a complete list of references currently before the Commission.]

### **Powers of the Commission**

The powers of the Commission are provided for under section 6 of the LRC Act 1994. It gives the Commission the power to consult all parties that may be affected by any proposed change in the law. This extends from Government entities to non-government organisations and members of the public.

In addition, the Commission has the power to provide advice and information to any Government department and any other Government institution, authority, organisation, instrumentality or body concerned with proposals for the reform or amendment of any branch of the law but this is subject to the approval of the Minister.

Moreover, the Commission has the power to receive and consider any proposal for the reform of the law which may be referred to it.

Additionally, in conducting its research work, the Commission is also given general powers to gather information not only within the local jurisdiction but also from relevant jurisdictions outside the Solomon Islands.

The Commission is also given powers to do all things necessary or convenient to be done for or in connection with the successful performance of its specified functions.

Finally, when the Commission convenes an inquiry for the purpose of effectively fulfilling its functions, it enjoys powers and authorities of accorded to a commissioner under the Commission of Inquiry Act.

### **Independence and Impartiality**

Law Reform Commissions are established under statute partly to preserve their independence and impartiality. The Commission's views and recommendations are based on independent and impartial research. This is guaranteed by the research methodology it has adopted. The law provides that when the Commission carries out its functions, it is confined to the limits set by each reference made by the Minister.

As part of the Commission's mandate and research methods, it will publish reports and consultation papers based on careful and thorough research. In the course of research particular attention will be given to case law, legislation, jurisprudence and academic writings. The Commission will also consider the laws of comparable jurisdictions, as well as to proposals presented by law reform bodies in other jurisdictions.

The Commission will also request submissions from members of the public who may wish to make their point of view known on a particular research reference. These submissions will be taken into account in the drafting of the final report on the subject, and any issues or concerns they raise will be addressed.

Consultation is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission will meet with professionals working in a particular area, and representatives of various interest groups.

Once the main issues are identified the Commission will prepare an Issues Paper which will be used as the basis of consultation with the people of the Solomon Islands. It is likely that the Commission will consult in the provinces in a number of ways. That is, through television and radio broadcasting to reach people and stimulate discussion and ideas about law that is under review. Moreover, the

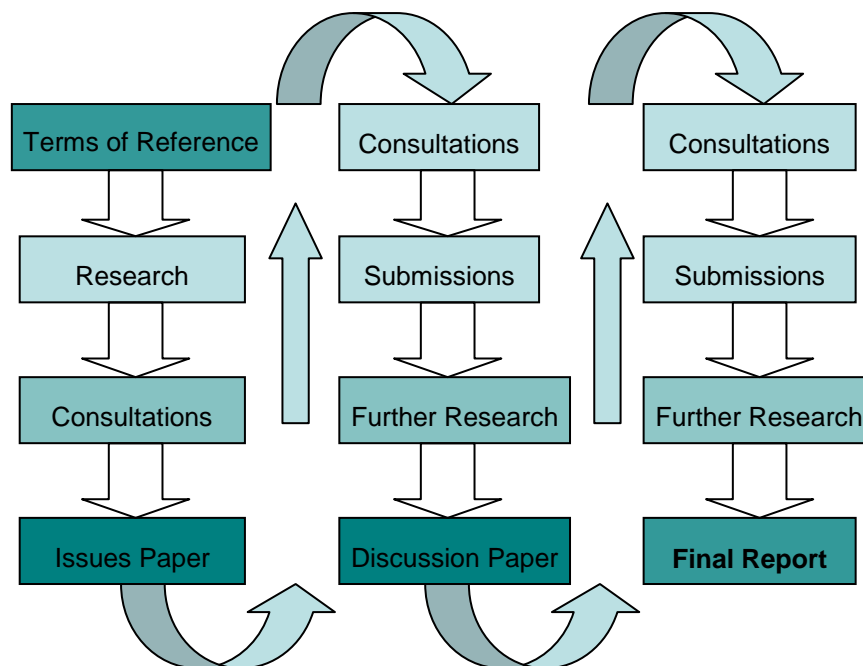
lawyers from the Commission will visit the provinces and meet with people face to face to receive submissions.

As soon as the consultation process is completed the Commission will develop a series of recommendations on how the law should be modernised, amended, or repealed. These recommendations are developed by the Commission's research lawyers. The recommendations then go before the four Commissioners and Chairman for their comments and endorsement. Finally the body of work is released as a Final Report that goes to the Minister of Justice.

The Commission hopes to be able to present a draft Bill to the Government as part of the Final Report. In this way the Government will easily be able to act on the Commission's recommendations if it so chooses. It is entirely the Government's prerogative as to whether they support the Commission's recommendations and enact or amend the draft Bill.

In abiding by this methodology it is assured that the information which the Commission's views and recommendations is based on, is balanced and unbiased. This guarantees the Commission's successful adherence to its vision and fulfilment of its mission.

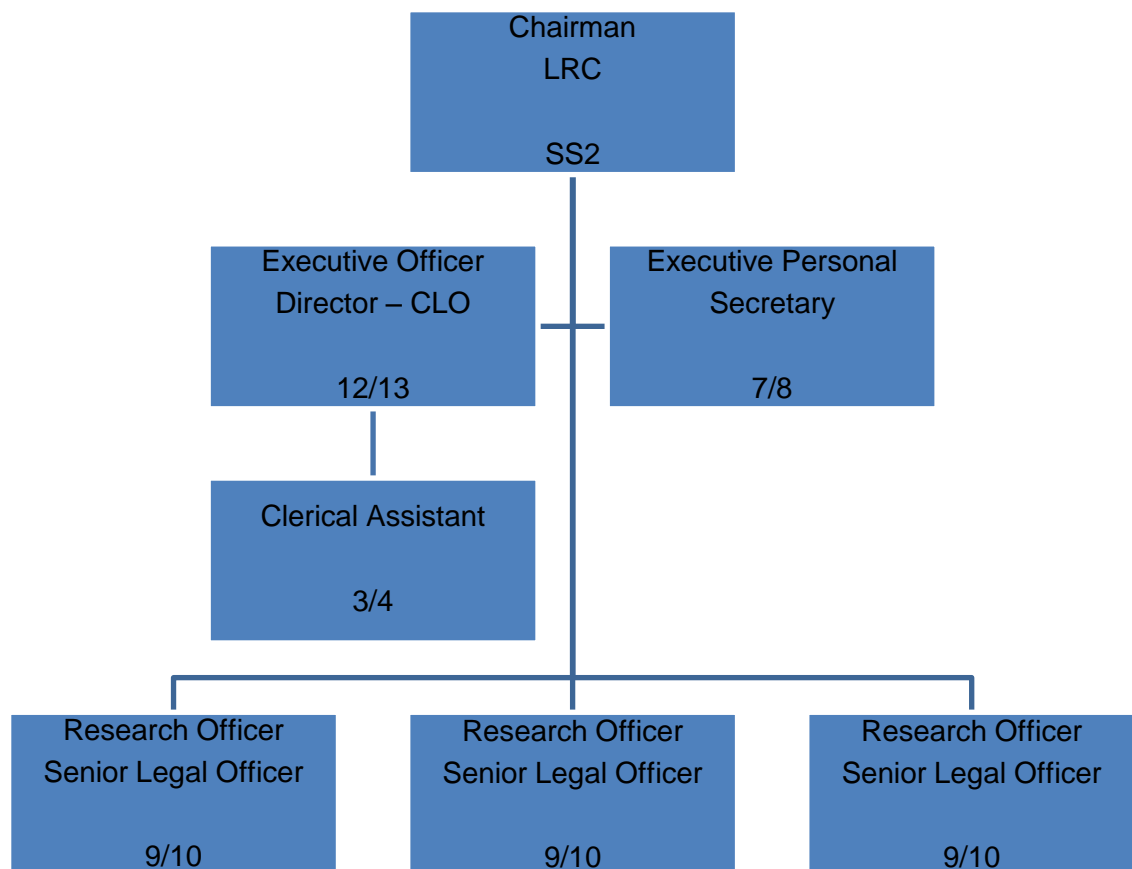
### A Typical Law Reform Inquiry Process



## Law Reform Commission Organisational Structure

There were two rounds of recruitment to the Senior Legal Officer (Research) Positions during 2007. The first round attracted two candidates but there was a long delay between interviewing the applicant and appointment to the position. Unfortunately only one candidate accepted a position within the Commission. Another recruitment round was held in July, which again attracted two applicants to the Commission.

In June 2007 Michael Pitakaka joined the Commission. In November 2007 Houlton Faasau and Kathleen Kohata both commenced with the Commission.



In July 2007 an assessment and some planning was undertaken around the current structure of the LRC and whether it needed to be amended going into the future. Two new establishment posts were identified as necessary for the efficient functioning of the Commission. There were the posts of Office Manager, and Research Manager. The support of the Permanent Secretary was sought and the proposal put to the Public Service Department.



## Commissioners Profiles

### **Chairman – Mr Frank Ofagioro Kabui C.S.I., C.M.G., O.B.E.**

Mr Kabui graduated with a Bachelor of Laws (LLB) from the University of Papua New Guinea in 1973. He entered Government Services as Crown Counsel in January 1975 in the Attorney-General's Chambers. He became Assistant Attorney-General in 1977 and Attorney-General in April 1980. He was Attorney-General for fourteen years. In 1995 Mr Kabui was appointed Chairman of the Law Reform Commission.

In May 1998 Mr Kabui was appointed a judge of the High Court and left the Commission. In 2005 Judge Kabui was appointed part-time Chairman to the LRC. On retirement from the Bench in 2006 he was again appointed full-time Chairman of the Law Reform Commission.

Mr Kabui also holds a Post-Graduate Diploma in International Law from the Australian National University (ANU) and a Certificate in Legislative Drafting from CFTC sponsored training in Colombo, Sri Lanka, 1976/77. He was an ex-officio member of the Investment Corporation of Solomon Islands (ICSI) for six years and director of ICSI portfolio companies during that same number of years.



**Commissioner – Mr Charles Levo**

Mr Charles Levo completed his primary education from 1982-1987 at Kariki and Vonunu Primary schools. His secondary education included attending from 1988-1992 Goldie College National Secondary School; 1993 Selwyn College National Secondary School; and in 1994 King George Sixth School.

Mr Levo undertook university studies from 1995 -1998 at the University of South Pacific (Suva and Port Vila), obtaining a LLB. In 2000 he graduated from USP (Suva), with a Professional Diploma in Legal Practice (PDLP).

In 1999-2000 he was the Clerk to the Central Magistrates Court. From 2000-2002 he worked as the Assistant Legal Advisor to the National Bank of Solomon Islands Limited. In 2003-2005 he was the Legal Advisor to the National Bank of Solomon Islands Limited. Currently he is a private Legal Practitioner with XPlain Lawyers.

Mr Charles Levo is also an Executive Member of the Solomon Islands Bar Association; a Member of the Law Reform Commission of Solomon Islands and a Member of the Solomon Island Constitutional Congress.



**Commissioner – Mrs Sarah Dyer**

Mrs Sarah Dyer holds a Certificate and Diploma in Special Education from Suva, Fiji in 1980 and University of the Philippines, Manila, in 1984, as a teacher for children with disabilities. She taught at the Solomon Islands Red Cross Centre for Special Disabilities from 1979-1984. From 1998-2000 she was the President of Soroptimist International Solomon Islands. In 1999 to 2003 she was the National Representative for Solomon Islands on the Soroptimist International, South West Pacific Federation.

In 2002-2005 she was the President, Solomon Islands National Council of Women. In 2004 she was appointed by the Government to the RAMSI Intervention Taskforce.

Mrs Dyer is also a member of various high level boards including: 2003-2006 Member, the University of the South Pacific (USP) Council; 2004-2006 Member of the National Education Board; 2005 (ongoing) Member, Women, Peace and Security; 2005 (ongoing) Member of the CEDAW Committee.



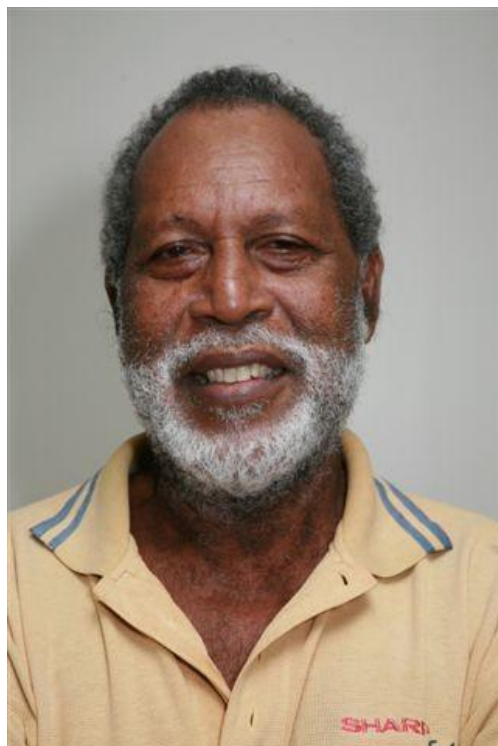
**Commissioner – Mr Leonard Maenu’u O.B.E.**

Mr Maenu’u holds a Certificate in Forestry (Forestry School of Fiji-1960), Diploma in Effective English (Regent Institute in England-1968), and a Diploma in Forestry (Papua New Guinea Forestry College-1970). Recently, he completed a Certificate (2002) and a Diploma (2004) in Theological Studies from the Pacific Theological College in Suva, Fiji.

Mr Maenu’u entered Government Services as a Forestry Officer in 1958, and he was appointed the Commissioner of Lands in 1974. He held the position of Permanent Secretary for the Ministry of Commerce, Trade and Industries (1976-1978, 1982-1984), Ministry of Health and Medical Services (1978-1980, 1992-mid 1993), Ministry of Youth Sports and Culture (1980-1982), Ministry of Police, National Security and Justice (1986-1987), Ministry of Post and Telecommunication (1987-1989) and Ministry of Finance (1989-1990).

Prior to his current appointment in 2006 as the Director of Land Reform, Mr Maenu’u also occupied other key positions such as Secretary to Cabinet (1991-1992), Chairman of the Leadership Code (1993-2001), part-time Chairman to the Committee for Prerogative Mercy (1993-2001), consultant for the Public Service Reform (2005) and Commissioner of Lands (2006).

He has also published a book on Kwara’ae Land Tenure and had contributed immensely to the drafting of instruments such as the Leadership Code [Cap 86], the National Disaster Council Act [Cap 148], and guide for the Committee on Prerogative Mercy.



**Commissioner - Rt. Rev. Philemon Riti O.B.E.**

Bishop Riti completed his primary education in the Western Province, and his secondary education at Goldie College, Munda. In 1966 he attended the British Solomon Islands Teachers College in Honiara. From 1967-1969 he taught at Sege and Gizo Primary Schools. In 1971 Bishop Riti completed Form 4 at George Brown High School, Rabaul, PNG.

In 1972-1977 Bishop Riti completed a Diploma in Theology at Rarongo Theological College, Rabaul PNG. He then was the parish Minister at Waigani United Church Congregation at Port Moresby, PNG. From 1980-1982 he was the Chaplain at the University of Technology, Lae, PNG, and then in 1983 he was the Circuit Minister for North Choiseul.

1984-1988 he held the post of General Secretary to SICA in Honiara. 1987-1988 he was a member of the National Constitutional Review Committee. In 1989-1990 he undertook post graduate theological studies at St John Trinity College in Auckland New Zealand.

In 1991 he was appointed bishop of Solomon Islands Region within the United Church of PNG and Solomon Islands, a post he held until 1996. From 1997-2005 he was the First Moderator of the United Church in Solomon Islands independent from the PNG United Church. He served as the Moderator of Pacific Conference of Churches from 2002-2007. He was appointed as General Secretary of SICA for the period 2006-2008.



## Staff Profiles

### **Chief Legal Officer/Secretary – Anna Guthleben**

Ms Guthleben graduated from Adelaide University with a Bachelor of Science (Jurisprudence) and Bachelor of Laws (Honours). She also has a Graduate Diploma in Legal Practice from Australian National University. Ms Guthleben has completed the LEADR Mediation Workshop in 2000. She is enrolled in a Masters of Laws at Melbourne University, and a Masters of Public Policy and Management at the Heinz Business School, Carnegie Mellon University.

She is currently in the Solomon Islands on leave from her position in South Australia's Attorney-General's Department Legislation and Legal Policy Section. Her experience includes working in private practice, for government statutory authorities and within government departments. Ms Guthleben also brings to the Commission excellent training skills gained over many years. She was also a Director of YWCA (Canberra) for 3 years.



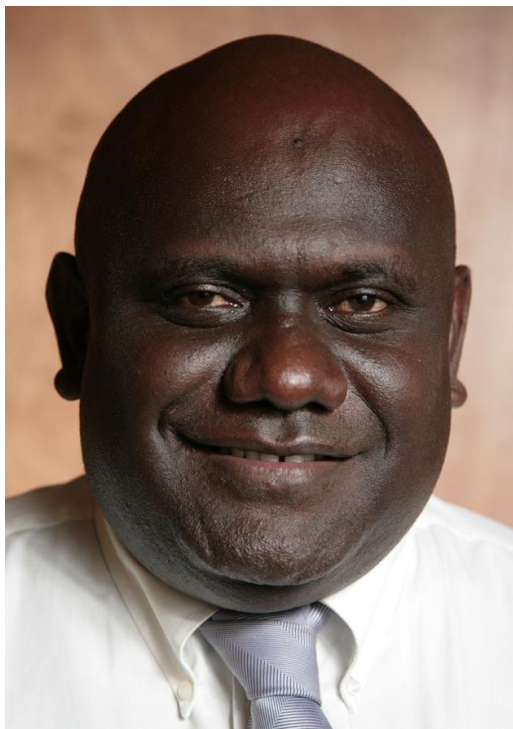


**Senior Legal Officer (Research) – Michael Pitakaka**

Mr Pitakaka comes from Zaru Village North East Choiesul. He attended his primary education at St Johns Primary School and at Ringi Cove Primary School. His secondary education was at King George VI National High School from 1985- 1989. From 1990-1992 he attended Solomon Islands College of Higher Education, School of Natural Resources, and graduated with a certificate in Forestry.

Mr Pitakaka undertook Preliminary and Foundation courses at University of the South Pacific Centre in Honiara 1993-1995. He then attended Bond University, Queensland, Australia and graduated with a Bachelor of Laws (LLB) in 1999. He commenced private practice with the law firm Pacific Lawyers as an Articled Clerk from 1999 to 2001 and became a Senior Associate Barrister & Solicitor after being admitted to the bar of the High Court and Court of Appeal of Solomon Islands in February 2002 to March 2007. Mr Pitakaka practiced law in Criminal, Civil and Admiralty litigation.

In February 2005 Mr Pitakaka was appointed by the then Honourable Minister of Home Affairs as a member of the Competent Authority of the Honiara City Council following the decision to dissolve the elected council. Mr Pitakaka has also attended Advocacy Workshop conducted by the Queensland Law Society from October 15-16, 2003, and Alternative Dispute Resolution workshop conducted by the Federal Court of Australia from May 31, 2005 – June 2, 2005.



**Senior Legal Officer (Research) – Houlton Faasau**

Mr Faasau graduated with a Bachelor of Law (LLB) from the University of the South Pacific in 2005. As the top graduating law student he was granted the Angelo Award to continue on to do post graduate studies. Mr Faasau graduated with a Masters of Law (LLM) from the Victoria University of Wellington in Wellington New Zealand in 2006.

Prior to his undergraduate studies in law, Mr Faasau was one of the founding legal researchers for the University of the South Pacific Law School Internet Project which has now developed into PACLII. He acted as the project manager in a number of occasions when the manager was on leave.

Mr Faasau also holds a Bachelor of Education (B.Ed.) (1997) from the University of the South Pacific majoring in Chemistry. He has experience teaching in Fiji, Vanuatu and Samoa and has taught in secondary, foundation and tertiary levels.





**Senior Legal Officer (Research) – Kathleen Kohata**

Miss Kohata graduated with a Bachelor of Laws (LLB) from the University of the South Pacific (USP) in 2006 and holds a Professional Diploma in Legal Practice also from the University of the South Pacific, 2007.

In 2006 Miss Kohata had a brief opportunity to work as a graduate trainee at the USP Community Legal Centre in Vanuatu, which operates in conjunction with the Vanuatu Public Solicitors Office.

Prior to joining the Law Reform Commission Miss Kohata spent a short period of time with the Office of the Director of Public Prosecutions.



**Executive Personal Secretary - Mrs Detta Fafe**

Mrs Fafe has been working with the Ministry of Justice for the past fourteen years. She brings to the Commission extensive administration and word processing skills gained from working as part of the Law Revision Commission where she was responsible for producing the manuscripts for the Solomon Islands Statute Books (the Green Books). Prior to joining the Law Reform Commission Mrs Fafe worked in the Attorney-General's Chambers.



## **Collaborations and Cooperation**

### **Overseas Law Reform Commissions and International Organisations**

Early in 2007 the Chairman wrote to all the Law Reform Commissions in the Commonwealth informing them that the Solomon Islands LRC was re-established, and letting them know of the ten outstanding references currently before the Commission. This introduction letter has also allowed the Solomon Islands LRC to be put on the mailing list for most overseas Commissions resulting in many publications being received, both in hardcopy and by email.

### **Commonwealth Law Conference 2007**

The Chairman was invited to attend the Commonwealth Law Conference 2007 in Nairobi. This conference is held bi-annually and concurrently the Commonwealth Association of Law Reform Agencies Conference (CALRAC) is held as a satellite conference. This meeting of all the Law Reform Commissions is a forum where common problems were discussed and understood. There are old and big Law Reform Commissions as well as new ones. There are also small Law Reform Commissions with special problems such as inadequate resources in terms of manpower, finances and supporting services. The main themes of the main conference were constitutionalism, human rights, governance and the rule of law. These themes are all relevant to law reform within the Commonwealth.

The Chairman was asked to Chair one of the opening sessions on the second day of the CALRAC conference. This was an excellent opportunity for the Solomon Islands LRC to meet and engage with representatives of the all the Law Reform Commission's from around the world.

### **Australian Law Reform Commission**

The Solomon Islands LRC continues to have a very productive and close relationship with the Australian LRC (ALRC). The President of the ALRC extended an invitation to the Solomon Islands LRC for the lawyers to visit Sydney and undertake a two week secondment. This invitation was taken up in November, 2007. For a detailed report on the ALRC trip please see Appendix 3.

During 2007 the Executive Officer met with her counter-part at the ALRC Mr Alan Kirkland on two occasions to discuss progress the Solomon Islands Commission was making in re-establishing itself.

These visits were undertaken at the Executive Officers expense whilst on annual leave in Sydney.

### **New Zealand Law Commission**

The New Zealand Law Commission has also offered to host the Solomon Islands Commission lawyers for a two week attachment. Originally this was planned to take place in 2007. However delays in recruitment meant that the trip had to be postponed until mid 2008.

### **International Centre for Not-For-Profit Law**

The ICNL is an international non government organisation that works to support civil society organisations in countries. Chairman Kabui and the Executive Officer were invited to attend the regional conference on Civil Society and Law Reform jointly hosted by the University of South Pacific (USP) and ICNL. The conference was held in Pt Vila, with ICNL sponsoring the Chairman's attendance and the LRC covering the costs of the Executive Officer's attendance.

Topics that were covered included:

- Practical linkages between custom and introduced law;
- Legislation giving legal recognition to customary associations such as village committees and councils of chiefs;
- The roles of customary and religious leaders in relation to legally registered community organisations;
- Regional law reform process and structures;
- Accountability procedures for CSOs such as "codes of conduct";
- Consistent and beneficial tax treatment and other means to promote CSO sustainability; and
- Boundaries between for-profit and not-for-profit activities especially in rural areas.

This conference was an opportunity to speak formally and informally with officers from the Fiji Law Reform Commission, previous Commissioners from the Queensland, New Zealand Law Commission and Australian Law Reform Commission.

### **University of South Pacific**

Whilst attending the ICNL conference the Executive Officer had an opportunity to meet with Professor Brian Opeskin who is the current head of Law School at USP in Pt Vila. Prior to Professor Opeskin moving to USP he was Deputy President of the ALRC, and had been a Commissioner for six years. Discussions centred on how the USP Law School and SI LRC could collaborate together to advance the policy

skills of law graduates in the Pacific region. Suggestions for future collaborations included:

- a policy subject being offered at USP as part of the undergraduate LLB degree;
- criminal law subjects having a component that links in with a current reference before the LRC;
- contribution of USP academics to current LRC reviews; and
- access to the USP Law Library.

The USP is facing some unexpected budgetary constraints so progress on these items will take some time to bear fruit.

### **Human Rights Conference – RRRT**

The Chairman attended a conference in Brisbane in December on human rights. The conference was organised by Regional Rights Resource Team (RRRT) and funded by the United National Development Program (UNDP) Office in Suva. Law reform inevitably touches on all aspects of the law; any of which concern human rights and how they apply to persons whose rights are affected by any change in the law.

### **Presentation to Solomon Islands Parliament Lawyers**

The UNDP Parliamentary Strengthening Project Manager, Mr Warren Cahill and the Speaker of Parliament invited the LRC Chairman and legal officers to make a presentation to the Parliament lawyers. The presentation took place on 13<sup>th</sup> November, 2007 and was well received by the Parliamentary Officers.



### **Making a Difference Capacity Development Workshop**

In the latter part of 2007 Michael Pitakaka and Anna Guthleben attended the Making a Difference Capacity Development Workshop conducted in three blocks of two day sessions. The workshop was very beneficial in bringing to the fore the amount of capacity development that was already occurring in the LRC. As a result all planning activities that occur in the LRC are based on identified capacity building tools, that are introduced and to the staff who then use the process to fill in the content. For example the lawyers were introduced to 'mind mapping' which they then used to develop the research methodology for the LRC.

### **Participation in Ministry and Departmental Committees**

As an independent Commission it is expected that the LRC will, over time, participate and provide advice to various Government and Ministerial Committees.

#### **Ministry of Commerce - Business Law and Administrative Reform Steering Committee**

The LRC has been a representative on the Business Law and Administrative Reform Steering Committee through the Ministry of Commerce. The Companies Bill and Insolvency Bill are expected to be released for consultation purposes early in 2008. It is anticipated that the LRC will provide extensive comments at that time.

#### **Ministry of Women, Youth and Children's Affairs**

The LRC has been asked to provide comments of the National Children's Policy and Plan of Action by the Ministry of Women, Youth and Children's Affairs.

The Ministry of Women, Youth and Children's Affairs is also involved in the Project "Socio-Cultural research on Gender-Based Violence and Child Abuse in Micronesia and Melanesia". The LRC is a member of the task force and has contributed to the initial stages of the research including the questions that are to be asked of the people in the provinces and villages. The results of this research will be able to be used by the LRC as it undertakes the review of the Penal Code and Criminal Procedure Code.

#### **Working with the Justice Sector**

The Chairman and the Executive Officer have made several presentations to the Magistrates. The first presentation was an introduction to the LRC, who we are and what we do. The second

presentation was in the form of an interactive seminar that involved the Magistrates in considering Part XVI of the Penal Code and how these sections worked from the view of the Magistrates.

#### **Alumni consultation scheme**

Over the recent past there have been many expatriate lawyers who have come to the Solomon Islands from their home jurisdiction to work as prosecutors, defence attorney's and to join the Solomon Islands judiciary. These lawyers have the unique experience of being able to compare the procedures and substantive aspects of the criminal law across two jurisdictions. As these lawyers come to the end of their time in the Solomon Islands they are invited to be on a consultation list compiled by the LRC. In this way as the LRC works through the Penal Code and Criminal Procedure Code the Commission will be able to access by email a group of lawyers who would be able to act as an advisory body to the work that the Commission is undertaking. Everyone who has been approached has immediately embraced the concept and passed on their contact details to the LRC.

## **Report on Operations**

### **LRC Corporate Plan 2007 and Achievements**

The year 2007 saw the Law Reform Commission move from Phase 1 through to Phase 2. Phase 1 involved equipping the office and designing and implementing the administration and management systems, policies and procedures. Phase 2 involved the recruitment and training of the new lawyers.

Recruitment was a serious challenge for the LRC. Initially we identified two suitable candidates who were duly interviewed and approved as suitable for the legal research positions. Unfortunately only one lawyer took up the position. This may have been because of the large delay between the interview and the appointment letter from the Public Service Commission being received by the candidate. Whatever the reason, the lack of research staff held up the work of the LRC.

A second round of recruitment commenced by way of advertisement in July 2007. Only two candidates applied for the two vacant positions. This was disappointing for the LRC but luckily both candidates were of very good quality and suitable for the research positions. Hopefully as local lawyers become more aware of the work of the Commission they might be inclined to pursue a career with the Commission.

At the conclusion of the recruitment process the Commission had one local lawyer at post in June 2007, who was then joined by two more lawyers in November, 2007.

An assessment of the current and future needs of the Commission in terms of establishment posts was undertaken. This resulted in a proposal to create two new establishment posts for an Office Manager and a Research Manager.

An induction manual for all staff was developed. As well, a policy manual for the legal research staff was developed to enable the lawyers to develop their policy skills and analysis. These tools combined with the two week secondment to the Australian LRC allowed the lawyers to quickly get a grasp on the different skill-sets and requirements for running a Law Reform Commission.

Immediately upon returning from the ALRC trip the Commission spent two days in a strategic planning workshop to capture everything that had been learnt whilst at the ALRC. This resulted in the development of the LRC Methodology including our consultation plan, research methodology and an outline of our Communication plan. As well, the draft vision and mission statement was finalised with the local lawyers



providing much animated input into the process. The LRC Work Plan for 2008 framework was established, and the concept of individual work plans for the lawyers was introduced. The structure and headings for the Commission's Annual Report was identified.

At the conclusion of the two days it was possible to see the linkages between the individual work plans, the LRC work plans and corporate plans and how they feed into the Ministry corporate plans and strategic outcomes. As well, the weekly meeting format was designed to assist all reporting requirements to maximise their usefulness and effectiveness for the Commission.

**Strategic objective 1 – Re-establish the Law Reform Commission**

<b><i>Anticipated Outcomes and Outputs</i></b>	<b><i>Activities</i></b>	<b><i>Performance Indicators</i></b>	<b><i>Timeline</i></b>
LRC office is functioning and effective	Office equipment needs identified Financial budgets, funding & procurement processes understood	Office equipment sourced Procurement process for the LRC working well	May 2007 Ongoing
	Develop, implement and review the LRC's administrative and management systems, policies and procedures LRC internal staff meetings held regularly Induction policies for new lawyers drafted Mentoring and policy development plan drafted	Bibliographic management process implemented  No. of internal staff meetings held and meeting notes/task lists produced  Records management process implemented for minutes of consultation meetings and submissions	Sept 2007  Ongoing  Sept 2007
Recruitment of local lawyers to LRC	Open & competitive merit based recruitment of 2 local lawyers Second round of advertisements for legal research officers	% of vacant posts filled by 30 June 2007 Applications close 27 Aug 2007 2 lawyers appointed to LRC	June 2007  Nov 2007
	All office equipment, IT hardware & software identified	Office equipment, computers & software sourced and procured	June 2007
Legal resources are identified, indexed and accessible	Identify all legal resources necessary to undertake the review of the Penal Code Stock-take what is currently available on-line and in hard copy in the Solomon Islands Compile a list of necessary texts & resources	Legal resources identified  Stock-take completed  Source necessary texts and resources	July 2007  June 2007  July 2007
PSC approves new establishment post of Office Manager & Research Manager	Seek approval and support of the PS Justice, Chief Accountant & Chief Administration Officer	New establishment post arguments put to PSD Recruitment for Office Manager post commences	Aug 2007  Sept 2007

**Strategic objective 2 – Mentor and Build Capacity in the Commission**

<i><b>Anticipated Outcomes and Outputs</b></i>	<i><b>Activities</b></i>	<i><b>Performance Indicators</b></i>	<i><b>Timeline</b></i>
Administration staff familiar with SIG Public Service processes Administration staff competent with Word 2003 and Excel 2003 Administration staff able to use EndNote templates	Administration staff booked to attend IPAM Public Service training courses Administration staff booked to Office 2003 computer training Administration staff trained in using relevant aspects of EndNote	Administration staff successfully complete IPAM training Administration staff successfully complete Office 2003 training Administration staff able to use EndNote	*Dec 2007 *Dec 2007 *Dec 2007 *IPAM courses not available so training postponed till 2008
Legal officers able to independently undertake research in relation to a particular topic	Stock-take legal officers: <ul style="list-style-type: none"> <li>• research skills</li> <li>• internet skills</li> <li>• computer skills</li> </ul> Develop legal officers policy skills	Legal officers able to use Internet for legal research purposes Legal officers able to use EndNote for bibliographic and referencing all research materials Legal officers computer research skills updated Legal officers hard-copy research skills updated Legal officers able to formulate policy positions on a particular topic	Nov 2007 Sept 2007 Nov 2007 Dec 2007 Dec 2007 Ongoing

**Strategic objective 3 – Development and Reform of the law**

<i><b>Anticipated Outcomes and Outputs</b></i>	<i><b>Activities</b></i>	<i><b>Performance Indicators</b></i>	<i><b>Timeline</b></i>
Engagement of stakeholders and wider community in law reform discussion and consultations Formal planning process institutionalised as part of normal operations	Consult widely within the Justice Sector to position the LRC as an important part of the law review and reform process Work in partnership to design the law reform process for Solomon Islands Agendas and minutes become institutionalised Plan & draft strategic plan	Record of meetings Design for the law reform process Lead and contribution to team effort in designing the law reform processes for the initial reference Development of Vision, Goals, Strategies & Work Plan/s	Ongoing Nov 2007 Dec 2007

**Strategic objective 4 – Develop research skills**

<i><b>Anticipated Outcomes and Outputs</b></i>	<i><b>Activities</b></i>	<i><b>Performance Indicators</b></i>	<i><b>Timeline</b></i>
<p>Plan for the Penal Code reference is drafted</p> <p>Review of Penal Code broken down into various parts (1-8)</p> <p>Part 1 of the review commences; examining penalties and punishments under the Penal Code</p> <p>Part 2 of the review commences</p>	Identify information & research needs	Plan drafted	June 2007
	Identify EndNote reference areas	Information & research needs identified	June 2007
	Undertake Literature review	EndNote reference areas identified	Sept 2007
	Compile stakeholder consultation list	Literature review completed	Ongoing
	Compile expert consultation list	Stakeholder consultation list compiled	
	Initial issues research	Expert consultation list compiled	
	Prepare questions for consultation	Initial issues research undertaken	
	Initiate consultation & round table discussions with expert group	Questions prepared for consultation	
	Draft chapter on Part 1 for issues paper	Consultation & round table discussions with expert group initiated	
	Draft chapter on Part 2 for issues paper	Chapter on Part 1 drafted for issues paper	
		Chapter on Part 2 drafted for issues paper	

**Strategic objective 5 – Consultations and relationship building**

<i><b>Anticipated Outcomes and Outputs</b></i>	<i><b>Activities</b></i>	<i><b>Performance Indicators</b></i>	<i><b>Timeline</b></i>
Solomon Islands Government, Ministries & Departments understand the role of the LRC	<p>Presentation to the PS meeting to facilitate understanding of the role of the LRC</p> <p>Presentation to the Ministerial Advisors to facilitate understanding of the role of the LRC</p>	<p>Meeting arranged</p> <p>Presentation completed</p> <p>Meeting arranged</p> <p>Presentation completed</p>	<p>Ongoing</p> <p>Ongoing</p> <p>Oct 2007</p>
Solomon Islands community understands the role of the LRC and how to engage in the process of law reform	<p>Engage the community in dialogue about law reform</p> <p>Promote awareness of the on-going importance of law reform</p> <p>Specific publicity material developed</p>	<p>Consultation Plan drafted</p> <p>No. of presentations to Key Stakeholder Groups</p> <p>Distribution of publicity materials including to provincial areas</p>	

**Strategic objective 6 – Partnerships & Collaboration overseas law reform agencies, USP and NGOs**

<b>Anticipated Outcomes and Outputs</b>	<b>Activities</b>	<b>Performance Indicators</b>	<b>Timeline</b>
Increase awareness of legal policy work (and career) with law undergraduates Links built with the University of South Pacific Law School Involvement of USP with LRC criminal law reform work	Develop relationship with USP Law School Presentation to USP law graduates about law reform and the development of legal policy  Proposal for collaboration with USP academics and law students in criminal law reform work of the LRC	Introduction letter sent to USP Ongoing dialogue with USP about promoting law reform & policy skills within the undergraduate LLB  Meet with Head of Law School Brian Opeskin to discuss proposals to collaborate	Feb 2007 Ongoing  Sept 2007
Links built with other law reform agencies to ensure the long term sustainability of the LRC  Share information and experiences in the work of law reform with overseas and regional law reform agencies	Draft a letter to all overseas Law Reform Commissions introducing the Solomon Islands LRC  Develop relationships with regional law reform agencies  Second Officers on short-term attachments to gain skills and experience in established law reform agencies  Invite overseas senior legal officers to mentor the Solomon Islands LRC legal officers	Introduction letters sent to overseas Law Reform Commissions  Responses received from overseas LRCs  Offers of assistance from regional LRCs  ALRC Secondments organised  New Zealand Law Commission invitation to host LRC officers	Feb 2007  Ongoing  Aug 2007 Aug 2007  Ongoing
Links built with other overseas NGOs	Build relationship with Pacific Region Rights Resource Team  Collaborate and learn from RRRT experiences in the area of Family Law and Human Rights	RRRT to make a presentation to the LRC about the experience of the Family Law Act (Fiji)  Collaborate with Pacific RRRT to jointly audit the Penal Code in terms of human rights	Ongoing  Ongoing
International Centre for Not-for-Profit Law	Build relationship with ICNL	Invitation to participate in conference on strengthening civil society	Sept 2007

## Financial Statements

The Commission's financial statements are presented as three tables. The first two tables give an overall picture of the allocated budget and actual spending. The final table gives a detailed breakdown of the allocated budget lines for 2007.

### Allocated Budget and Spending 2007

#### Budget Performance 2007

2007	Revenue		Expenditure	
Budget Performance	Final Budget (\$)	Actual (\$)	Final Budget (\$)	Actual (\$)
	N/A	N/A	581,127	604,760

#### Composition of Expenditure 2007

2007	Personnel Costs		Operating Costs		Total Expenditure	
Expenditure Composition	Final Budget	Actual	Final Budget	Actual	Final Budget	Actual
	208,826	247,435	372,301	357,325	581,127	604,760

The Law Reform Commission did not have an opportunity to fully utilise the 2007 budget because virements that were required at the end of the year to reallocate funds were not signed by the Minister of Finance, and thus the Commission funds were not released to fulfil requisitions and local purchase orders. Late in 2007 the LRC received \$70,600 in the form of supplementary budget (please see budget vote table penultimate line).

Given that the LRC is new to the Solomon Islands, and has only reached its full staff compliment by mid November, 2007 it has been difficult to estimate the budget for running the Commission. It is expected that by the end of 2008 a full picture of what it costs to run the Commission, included the costs of consultations in the provinces should emerge.

**Breakdown of LRC Budget Votes 2007**

0159	Law Reform Commission				
Code	Item	Vote	Virements	Adjusted Budget	Actuals
	Payroll				
1000	Statutory Salary	107,120		107,120	120,000
1001	Housing Allowance	6,180		6,000	6,000
1004	Other Allowances	8,240		8,240	21,600
1005	NPF (7.5%)	9,116		9,116	0
1010	Civil Service Salaries	52,756		52,756	62,234
1011	Housing Allowance	4,801		4,801	7,648
1014	Other Allowances	15,160		15,160	13,911
1015	NPF (7.5%)	5,453		5,453	991
1020	Wages	0		0	8,750
1021	Housing Allowance	0		0	1,750
1024	Other Allowances	0		0	3,500
1025	NPF (7.5%)	0		0	1,050
	Personnel Costs	208,826		208,826	247,435
2010	Office Expenses	55,464		55,464	80,377
2011	Electricity & Gas	0		0	0
2012	Water	0		0	0
2013	Telephones	0		0	0
2051	Freight - Surface	8,487		8,487	0
2070	Staff Travel & Transport	31,827		31,827	6,247
2071	Tours & Travel	50,000	-50,000	0	0
2191	Office Equipment	0	38,550	38,550	29,990
4001	Training	100,000	-98,550	1,450	0
4030	Conferences & Seminars	100,000	200,600	300,600	240,711



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6028	Commissioners Allowance	26,523	-20,000	6,523	0
	Operating Costs	372,301	+70,600	442,901	357,325
	Grand total	581,127		651,727	604,760

## Appendix 1

### Terms of Reference

WHEREAS section 5C of the Forest Resources and Timber Utilisation Act (Cap.40) sets out the procedure for the acquisition of timber rights in Solomon Islands.

AND WHEREAS the determination of timber rights on customary land is not the same thing as the determination of the ownership of customary land.

AND WHEREAS the High Court in Allardyce Lumber Company Limited, Bisili, Roni, Sakiri, Hiele, Sasae, Poza, Zengahite, Daga, Pato and Zingihite v Attorney-General, Commissioner of Forests Resources, Premier of Western Province and Paia [1988/89] S.I.L.R. 78 confirms that ownership of customary land and ownership of timber rights are not the same thing.

AND WHEREAS this position has been disputed as not representing the true position in customary land in that persons who own customary land also own the timber on that land.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The effectiveness/appropriateness of the timber acquisition procedure under section 5C of the Forest Resources and Timber Utilisation Act (Cap. 40);
2. The true position in customary law regarding ownership of customary land and timber on customary land in view of section 5C of the Forests Resources and Timber Utilisation Act (Cap. 40) and the High Court ruling above;
3. Whether or not the Area Council is the appropriate authority to determine ownership of timber on customary land;
4. Any reforms necessary to make the law more suited to the aspirations of Solomon Islanders.

Dated at Honiara this 1<sup>st</sup> day of May 1995

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: The procedure for the acquisition of timber right on customary land is prescribed by section 5C of the Forests Resources and Timber Utilisation Act (Cap. 90). This position is further endorsed by the High Court when it remarked that ownership of customary land is not the same thing as ownership of timber rights. This position has been questioned on the basis that it does not represent the customary law position in the determination of ownership of customary land and the timber sitting on it. Also, the area council as the authority to decide who is entitled to grant timber rights has been questioned on the basis of its appropriateness in the context of customary land tenure ownership system in Solomon Islands. It is therefore in the public interest to review section 5C above and bring about change if necessary.

WHEREAS the Islanders Marriage Act (Cap.47) is based upon the Native Marriage King's Regulation 1945 which recognised custom marriages to this day.

AND WHEREAS there is also the Pacific Islands Civil Marriages Order of 1907 still recognised by the Islanders Marriage Act (Cap. 47) above.

AND WHEREAS these multiple laws have caused confusion and the need for rectification as soon as possible is but obvious.

AND WHEREAS the law relating to divorce in Solomon Islands is also in need of review to bring it in line with modern approach to divorce settlement in Commonwealth countries.

AND WHEREAS in so doing regard should also be given to the aspirations of the people of Solomon Islands in terms of giving them the choice between alternatives, if any, of available approaches to divorce settlement.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

**A.**

1. The need to have one single civil marriage law for all persons resident in Solomon Islands.
2. The recognition of marriage conducted according to custom in Solomon Islands.
3. The need for registration of customary marriages for the purposes of proof in Court etc.
4. Reforms that may be necessary to meet the aspiration of the people of Solomon Islands.

**B.**

1. The review of the law relating to divorce in Solomon Islands.
2. Reforms as may be necessary bearing in mind the aspirations of the people of Solomon Islands in the context of Solomon Islands circumstances.

Dated at Honiara this 1<sup>st</sup> of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

(Continues...)

NB: Explanation: There are three systems in the law for marrying, namely, marriage under custom, marriage under the Islander's

Marriage Act (Cap.47) and marriage under the Pacific Islands Civil Marriages Order of 1907. Not only are these systems discriminatory in some ways but they are apart from customary marriage, confusing also. It is therefore necessary to review the present marriage law with the view of having one marriage law for every one apart from customary marriage in Solomon Islands.

The law relating to divorce in Solomon Islands is based upon the English divorce law. However, the concept which forms the basis of the English divorce law has undergone some fundamental changes over the years. These changes have come about as a result of social and economic circumstances in England and elsewhere within the Commonwealth. It is therefore necessary to look again at the divorce system in Solomon Islands in the light of these changes with the hope that Solomon Islands' divorce system benefits from useful changes in these other countries through their experiences over the years. However, whatever these changes may be, must be acceptable to the people of Solomon Islands.

WHEREAS the present building code in Solomon Islands is out of date and is totally inadequate.

AND WHEREAS the safety standard of all buildings in Solomon Islands must be of the highest order in order to provide a reasonable quality of life to the users thereof.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994 I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the law relating to building standard in Solomon Islands.
2. Reforms necessary to meet the current needs of Solomon Islands in terms of safety for all.

Dated at Honiara this 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: The building code currently in use under the authority of Honiara Town Council is totally inadequate to meet the needs of Solomon Islands. This code should now be reviewed and further improved.

WHEREAS there is a need to review the law relating to the treatment of mental patients in Solomon Islands in view of the gradual increase in mental cases and the need to provide effective care and treatment for the benefit of the community.

AND WHEREAS the effective administration of the law in this regard is an essential component of the effective treatment of mental patients in Solomon Islands.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the law relating to the treatment of mental patients in Solomon Islands;
2. Reforms necessary to fulfil the needs of Solomon Islands.

Dated at Honiara this 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: Persons who suffer from mental illness are often forgotten and mistreated by society perhaps other than members of their own families. There is a law in Solomon Islands which governs the medical treatment of persons who are mentally sick. Although the number of mental patients in Solomon Islands is not that high, the law governing their treatment must be reviewed with the view of improving it for the welfare of persons or potential persons in this category.

WHEREAS the Penal Code and the Criminal Procedure Code are in need of reform after many years of operation in Solomon Islands.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the Penal Code and the Criminal Procedure Code;
2. Reforms necessary to reflect the current needs of the people of Solomon Islands.

Dated at Honiara this 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: The criminal law system in Solomon Islands has now been in operation for many years. Developments in new crimes, their nature and complexity have made it necessary to overhaul criminal law in general to keep it abreast with the modern needs of Solomon Islands.



WHEREAS the law of treason in Solomon Islands is the common law offence of treason inherited from the common law of England.

AND WHEREAS there is a need to reassess the suitability of the law of treason in view of the changing needs of Solomon Islands.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the law of treason in Part VII of the Penal Code in view of the changing needs of Solomon Islands.
2. Recommend changes in the law of treason to reflect the needs as the case may be.

Dated at Honiara this 30<sup>th</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: The law of treason is about overthrowing the Head of State or the Government by force. Our law of treason represents the common law position of England which may be unsuitable for the current needs of Solomon Islands. It is therefore necessary to reassess the suitability of this law in Solomon Islands.

WHEREAS there is a need to review the current law of sedition to reflect the needs of Solomon Islands.

AND WHEREAS the present law of sedition may well be regarded as part of the criminal law system of Solomon Islands and should become part of the Penal Code.

NOW THEREFORE, in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the sedition law in Solomon Islands
2. Recommend changes, if any, to reflect the current needs of Solomon Islands.

Dated at Honiara this 30<sup>th</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: The law of sedition is about unlawful behaviour against the Head of State or the Government or causing hatred amongst the citizens of Solomon Islands against the good order and security of Solomon Islands and its citizens. The time has now come to review this law and bring about changes if necessary.

WHEREAS land in Solomon Islands is a resources of fundamental importance to the life of the people as well as to the Government of Solomon Islands.

AND WHEREAS land in Solomon Islands would include beaches/shores and land under the sea as far as the extremities of the continental shelf.

AND WHEREAS it is in the national interest that the ownership and control of land between mean high water mark and mean low water mark are clearly stated by the law in view of the public interest versus the call for return of such land to customary landowners as the case may be.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on the following –

1. The current legal position regarding the ownership/control of beaches/shores and land below high water mark and low water mark;
2. The true position of ownership of beaches/shores and land below high water mark and low water mark in terms of customary land tenure;
3. Right of use of beaches/shores and land below high water mark and low water mark in custom;
4. The pros and cons pertaining to the current legal position in this regard;
5. Changes in the law to reflect the true aspirations of the people of Solomon Islands.

Dated at Honiara this 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: Beaches/shores and land under the sea are currently owned by the Commissioner of Lands on behalf of the State under statutory law. This position has been questioned as not representing customary law. What then is customary law regarding ownership of beaches/shores and land below low water-mark?

There are also two conflicting interests at stake, namely, call for change in the law so that all land in this category be returned to customary landowners as opposed to other developments associated with the tourist industry in Solomon Islands. The position should therefore be further investigated to find a permanent position based upon compromise or otherwise.

WHEREAS it is necessary to review the penalty provisions in the Customs and Excise Act (Cap. 58) with the view of increasing them to accord with the current needs of the country.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The review of the penal provisions in the Customs and Excise law in Solomon Islands;
2. Reforms necessary to reflect the need of the Customs & Excise Division and the country as a whole.

Dated at Honiara this 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: Penalties for offences against Customs & Excise law were prescribed many years ago and now are out of tune with the current needs in the country. It is therefore necessary to overhaul them with the view of increasing them to acceptable levels.

WHEREAS the penal provisions of the Customs & Excise Act (Cap.58) are already under review by the Commission by virtue of a previous reference dated 1<sup>st</sup> May, 1995.

AND WHEREAS the Controller of Customs & Excise has further requested that the whole of the current Customs & Excise Act be reviewed at the same time together with the previous reference.

AND WHEREAS in view of this further request, a supplementary reference now becomes necessary.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following:-

To enquire and report to me on-

1. The review of the provisions of the Customs & Excise Act (Cap.58);
2. Reforms necessary to reflect the needs in the country of an effective customs and excise law.

Dated at Honiara 2<sup>nd</sup> day of February 1996.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation: Apart from the need to increase the penalties in the Customs & excise Act, the review of the main Act itself is also overdue. It is therefore necessary to review the main Act as well.

WHEREAS in terms of Section 76 and Schedule 3 of the Constitution, the Acts of Parliament of the United Kingdom of general application and in force on 1<sup>st</sup> January, 1961 shall have effect as part of the law of Solomon Islands subject to minor non-substantive changes as may be deemed necessary.

AND WHEREAS the High Court has grappled with this situation in a number of cases brought before it on several occasions in this jurisdiction.

AND WHEREAS it is time the National Parliament enacted legislations to replace these often out-dated and inappropriate Acts of the Parliament of the United Kingdom.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I, OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following –

To enquire and report to me on –

1. The study of each Act of the Parliament of the United Kingdom from time to time in terms of section 76 and Schedule 3 to the Constitution;
2. Desirability for modernising the relevant Act as far as the circumstances in Solomon Islands may allow;
3. Reforms as may be necessary to ensure the continuance or otherwise of that law in the current context of the needs of Solomon Islands.

Dated at Honiara 1<sup>st</sup> day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

NB: Explanation : Section 76 (a) of the Constitution as read with paragraph 1 of Schedule 3 to the Constitution are transitional provisions allowing Acts of the Parliament of the United Kingdom which are of general application and are in force on 1<sup>st</sup> January, 1961 to be part of the law of Solomon Islands subject to cosmetic changes. Identifying which Acts these are is a practical problem for Solomon Islands. Also, these Acts have already been replaced in the United Kingdom with modern modifications to suit modern circumstances. Such modifications though useful and necessary would not be part of the law of Solomon Islands if they are in force after 1<sup>st</sup> January, 1961. These are the problems that need immediate attention. The Acts must therefore be identified, studied and if required, modernised to suit the current needs of Solomon Islands.



## Appendix 2

### Law Reform Commission Legislation

#### **LAWS OF SOLOMON ISLANDS**

[1996 EDITION]

#### **CHAPTER 15**

#### **LAW REFORM COMMISSION**

#### **AN ACT TO ESTABLISH A LAW REFORM COMMISSION IN SOLOMON ISLANDS**

[18th February 1994]

*4 of 1994*

#### **Short title**

1. This Act may be cited as the Law Reform Commission Act.

#### **Interpretation**

2. In this Act, unless the context otherwise requires—

"Commission" means the Law Reform Commission appointed under section 3;

"Commissioners" means the Commissioners appointed under section 3; and

"Minister" means the Minister for the time being charged with responsibility for Justice.

#### **Establishment of the Commission**

3. (1) There is hereby established a Commission to be known as the Law Reform Commission.

- (2) The Commission shall consist of—

(a) a Chairman appointed by the Judicial and Legal Service Commission on the recommendation of the Minister; and

(b) four other Commissioners who shall be appointed on a part-time basis by the Minister.

- (3) In appointing the four Commissioners referred to in paragraph (2)(b) of this section the Minister shall appoint persons who appear to him to have knowledge and interest in the following—

- (a) social welfare and religious affairs;
- (b) criminal administration; or
- (c) sociology, anthropology or Solomon Islands culture.

(4) The Chairman shall be a person qualified to practise as a barrister or solicitor in any country in the Commonwealth and has been so qualified for not less than five years.

#### **Term of office of Chairman and the other Commissioners**

4. (1) The Chairman shall hold office for a period of five years.

(2) The Commissioners excluding the Chairman shall be appointed for a period of four years.

(3) The Commissioners including the Chairman shall be eligible for re-appointment.

(4) The Chairman and Commissioners shall be paid such salaries and allowances as specified in the instruments of appointment.

#### **Functions of the Commission**

5. (1) The functions of the Commission are, in accordance with references to the Commission made by the Minister, whether at the suggestion of the Commission or otherwise—

(a) to review laws with a view to the systematic development and reform of the law, including—

- (i) the modernisation of the law by bringing it into accord with current conditions;
- (ii) the elimination of defects in the law;
- (iii) the simplification of the law; and
- (iv) the adoption of new and more effective methods for the administration of the law and the dispensation of justice;

(b) to make recommendations in relation to the making of laws to which this Act applies;

(c) to make recommendations in relation to—

- (i) the consolidation of laws; and
- (ii) the repeal of laws that are obsolete or unnecessary;

(d) to make recommendations in relation to the restatement, codification, amendment or reform of traditional or customary laws; and

(e) to make recommendations in relation to the development of new approaches to and new concepts of

the law in keeping with the changing needs of Solomon Islands society and of individual members of that society.

(2) The Minister may—

- (a) modify the terms of any references; and
- (b) give directions to the Commission as to the order in which it is to deal with references.

(3) The Commission may for the purpose of this section hold and conduct such inquiries as it thinks fit.

(4) For the purposes of any inquiry under this section the members of the Commission shall have all the powers, authorities, protections and immunities conferred on a commissioner under the Commissions of Inquiry Act.

*Cap. 5*

### **Powers of the Commission**

6. Subject to this Act, the Commission has power—

(a) to consult with—

- (i) any Government department;
- (ii) any Government institution, authority, organisation, instrumentality or body;
- (iii) any other institution, organisation or body that, in the opinion of the Commission, would be affected by any proposed change in the law; and
- (iv) any member of the public;

(b) with the approval of the Minister, to provide advice and information to any Government department and any other Government institution, authority, organisation, instrumentality or body concerned with proposals for the reform or amendment of any branch of the law;

(c) to receive and consider any proposal for the reform of the law which may be referred to it;

(d) to hold seminars and conferences on legal issues;

(e) to undertake research and study programmes in order to provide itself with material upon which to base its recommendations on law reform matters, particularly in the field of customary law;

(f) to use any information, advice or assistance available to it from any source whether within or outside the Government;

(g) to obtain information on the laws and legal systems of other countries as a means of providing ideas for the reform and development of the law of Solomon Islands; and

(h) to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **Appointment of Secretary**

7. (1) There shall be a Secretary to the Commission who shall be the Executive Officer appointed by the Public Service Commission.

(2) The terms and conditions of appointment and service of the Secretary shall be as specified in the instrument of appointment.

### **Other staff**

8. (1) Subject to subsection (2), any staff (other than the Secretary) required for the purposes of this Act shall be officers or employees of the Public Service.

(2) Nothing in subsection (1) prevents any person from being employed on contract or otherwise, under any other law to perform functions in relation to the Commission.

### **Expenses of the Commission**

9. The expenses of the Commission, including the remuneration and allowances of Commissioners, and all other expenses incurred in the working and administration of this Act, shall be defrayed out of moneys provided by Parliament for the purpose.

### **Annual report**

10. (1) The Commission shall prepare and submit to the Minister an annual report of its operations during the year.

(2) The report submitted pursuant to subsection (1) shall be laid before Parliament by the Minister.

### **Regulations**

11. The Minister may in consultation with the Commission make such regulations as may be necessary for the purpose of giving effect to the principles and provisions of this Act and particularly in respect of the procedure for the submission of proposals for review and reform.

## **CHAPTER 15**

### **LAW REFORM COMMISSION**

Subsidiary Legislation

#### **THE LAW REFORM COMMISSION REGULATIONS**

*LN 47/1995*

(Section 11)

[26th May 1995]

#### **Citation**

1. These Regulations may be cited as the Law Reform Commission Regulations.

#### **Proceedings of the Commission**

2. (1) The Commission shall meet from time to time at such places and times as the Chairman directs.

(2) The quorum for a meeting shall be three Commissioners.

(3) In the absence of the Chairman from a meeting the Commissioners present may choose one of themselves to preside.

(4) The Commission may regulate and conduct the proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

(5) The Chairman shall preside at all meetings at which he is present and, in the event of the votes being equal, shall have a casting as well as deliberative vote.

#### **Delegation**

3. Subject to the provisions of the Act, the Commission may delegate to any of the Commissioners any of its powers, authorities, duties and functions.

#### **Reports**

4. (1) The Commission may from time to time make to the Minister an interim report on its work under any reference.

(2) The Commission shall at the completion of its work under any reference make a final report to the Minister on its work under the reference.

(3) A report signed by the Chairman shall be a report of the Commission for the purposes of the Act.

#### **Decision by circulation of papers**

5. (1) Subject to paragraphs (2) and (3), where it is so agreed by a majority of members of the Commission that any

business of the Commission be despatched by circulation of papers, the Secretary shall circulate papers to all the members of the Commission who may signing their decision in writing addressed to the Secretary.

(2) If a member requests, in writing addressed to the Secretary, a meeting to discuss any business so circulated the decision of the Commission shall not be reached until such a meeting has been held.

(3) A decision may be reached as a result of circulation of papers notwithstanding that a member does not respond if a majority of the members concur in the decision.

### **Legal Research by Commission**

6. The Commission may institute and conduct legal research through its officers for the purposes of carrying out its functions.

### **Individuals and Committees**

7. The Commission may appoint individuals or committees, of persons who may or may not be members of the Commission and may refer any matter to such individuals or committees for consideration and report to the Commission.

### **Inquiries**

8. When the Commission is of the opinion with respect to any matter under reference under section 5 of the Act that it would be desirable to ascertain the views of any person, body or the public, the Commission may—

- (a) receive representations and submissions from any person, body or the public; or
- (b) hold a public hearing for the purpose of receiving representations and submissions.

### **Submissions and public hearings**

9. The Commission may prescribe the terms and conditions under which representations or submissions may be received or a public hearing held and may prescribe the procedure at any public hearing.

### **Views may be sought through communication**

10. Nothing in regulations 7, 8 or 9 shall prevent the Commission from seeking or ascertaining the views of any person or body on any matter through direct communication.

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## **Appendix 3**

### **Australian Law Reform Commission Training Report**

**27 November – 6 December 2007**

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## **Executive Summary**

On the 26<sup>th</sup> November 2007 the Solomon Islands Law Reform Commission (SILRC) left for attachment with the Australian Law Reform Commission (ALRC) in Sydney Australia which was held over a period of 8 days from the 27<sup>th</sup> November -6<sup>th</sup> December 2008. The attachment was attended by three (3) Senior Legal Officer and the Executive Director of the SILRC. Throughout the attachment period the SILRC also had the opportunity of meeting with various other government departments and agencies as well as the New South Wales Law Reform Commission (NSWLRC). As an organisation still in the infant stages of development the attachment was part of the SILRC initial growth and developmental process.

## **Objectives**

The Objective of the attachment was threefold:

- To enable the SILRC to learn from a well established law reform organisation experiences. The ALRC was the most appropriate as the longest and undoubtedly most well established law reform organisation in the Pacific Region.
- To network and develop contacts with other Law Reform and Government policy agencies.
- To achieve an overview of how other policy agencies within the government operated. This included meetings with the NSWLRC, the NSW Attorney Generals Legislative Policy Division, NSW Attorney Generals Criminal Law Division, NSW Bureau of Crime Statistics and Research.

## **Subject Matters**

Discussions during the attachment essentially covered the following topics:

- the establishment, structure, function and operation of the ALRC and the NSWLRC;
- the inquiry process, how it begins, the various stages of an inquiry and how these are managed, writing up reports and conducting consultations;
- importance of communication and the communication needs of a Law Reform agency;
- the role and functions of the NSW AG Legislative and Policy Division;
- the NSW AG Criminal Law Division;



- role and functions of the NSW Bureau of Crime, Statistics and Research as a stakeholder in the criminal justice arena.

### **Outcomes**

The important outcomes of the attachment included valuable insights into the framework and operation of the ALRC both from an administrative and reform perspective. One of the measures of the ALRC's outstanding success has been their rate of implementation. It is a challenge for the SILRC to aspire to such. Ensuring that the SILRC reports and consultation documents are tabled in Parliament will be an endeavour which the SILRC is challenged to push for in the not too distant future.

SILRC officers have gained immense knowledge and insight in a number of vital areas such as the process of conducting and managing an inquiry from initial research to consultation to final publication.

The challenge for the SILRC is to develop a methodology to suit challenges and circumstances it faces particular to its setting.

Valuable knowledge and insight into the function and role of particular NSW governmental policy agencies was also obtained as a result of the visit.

The challenge of SILRC is to remain impartial, independent and robust in an often challenging unpredictable political environment.

### **Introduction to the ALRC**

Following a brief orientation session at the first meeting, the SILRC met with all the members of the ALRC team. Those present included the President of the ALRC, Legal officers, Communications team, Research manager, Executive director, Commissioners, ALRC staff. Several areas of discussion were covered during the meeting including a brief overview of the history, structure and functions of the ALRC. Currently the ALRC has a total of 25 staff comprising of the President, Executive Director, Research manager, Librarian, Legal Officers, corporate and communications team. There are 3 full time Commissioner however the ALRC also has 3 part-time Commissioners who are engaged depending on the inquiry in question. Advisory committees are selected and also engaged for time to time during an inquiry.

The ALRC internal framework contrasts to that of state law reform agencies such as the NSWLRC. Although the ALRC has a long history

being established 30 years ago, it is not as old as the New South Wales Law Reform Commission (NSWLRC) which was established much earlier. A further distinction is evident in terms of the types of laws the ALRC is called to address under its references. The ALRC deals with commonwealth rather than state laws, and as such can be called to review, social security, taxation, immigration, national security, intellectual property, evidence, fundamental rights, banking and finance. The ALRC does not deal with reforming criminal laws which remains a matter for the state agencies such as the NSWLRC.

The ALRC receives terms of reference from the Attorney General and advises the Parliament and the Australian Government on the reform of these areas of law. At the end of an inquiry the reports produced by the ALRC are tabled in Parliament. The ALRC approach to any term of reference is impartiality. It is therefore free to approach any term of reference in a robust and critical manner taking into account the wishes and aspirations of the society.

### **Building a Law Reform Commission: The SILRC Story**

Since conception the SILRC has faced many hurdles, many of which were highlighted during the SILRC's presentation to the ALRC. These included; the history and establishment of the SILRC, numerous outstanding references, difficulties experienced with the staff recruitment process and other anticipated challenges relating to the conducting of inquiries and consultations. The latter relating to physical and social factors, for example the impact of the country's topographical, demographic and cultural diversity to the logistics and strategies employed in the inquiry process. The fact that many Solomon Islands do not have a University Degree but may only have the most basic of education is also an inhibiting factor in terms of consultation. Despite these there is light at the end of the tunnel. The Solomon Islands does not have a strong media influence in determining political issues and political direction, although there is evidence that Solomon Islanders are well informed in terms of their interaction with the media and there is a keen interest to extract from the media issues affecting the country. The fact that the Solomon Islands has only 3 newspapers the Solomon Star being the most widely read is both a disadvantage and an advantage. Such can also be said in terms of radio stations where there is the Solomon Islands Broadcasting Cooperation (SIBC) and only four other FM stations.

The constraints faced by the ALRC in terms of conducting community consultation and reaching the stakeholders can be compared to that faced by the SILRC, Australia being a large and diverse jurisdiction

both in terms of its peoples, communities and physical geography. However the main difference is that SILRC is limited in its ability to carry out wide consultation by budget constraints. The SILRC is also faced with the daunting task of trying to manage and work effectively through 10 terms of references which stretch way back to the 1990's. One of the main terms of references that the SILRC is faced with is reviewing the Penal Code and the Criminal Procedure Code.

Certainly there are some differences between the ALRC and the SILRC. However in terms of structure, the SILRC aspires to be modelled after the ALRC.

## **Demonstration of updated version of TRIM**

### **Records management software.**

Articulate organisational as well as personal information and records management is vital for the smooth operation of any organisation. The launch of the updated version of the TRIM Software, distributed and developed by Towersoft Expert, Australia is expected to improve the information and records management system of the ALRC. The session was attended by the ALRC Commissioners: Prof David Weisbrot (Pres.), Prof Les McCrimmon, Prof Rosalind Croucher, Executive Director and the Research Manager. The SILRC was invited to observe.

The new updated TRIM software is all about managing information in sizeable quantities. This software depends largely on accurate or consistent classification of data and this is where its importance lies. It is advantageous as a tool for managing emails and other electronic documents and records. In an organisation where a person may receive a hundred emails a day the updated version of TRIM would be vital data management software to implement. However since the SILRC would not expect to encounter such a volume of emails, it should be content to use other efficient forms of records management software. It is unlikely that the SILRC will ever need TRIM. At the moment the software is a bit too advanced for the SILRC.

## **Meeting the Commissioners**

The SILRC had a meeting with the ALRC Commissioners wherein the following formed the points of discussion: the history, role and structure of the ALRC; the Commissioners' role, the relationship with

the government and other organisations; selection and prioritization of references; the relationship of references to other ALRC functions and activities; the ALRC inquiry process including consultation and empirical research. It is important to learn how the ALRC has developed from the embryonic stage to where it is currently. These include how it has dealt with consultations with the aboriginal communities.

The ALRC Commissioners role will be different from that of the SILRC Commissioners, especially since most of the current SILRC Commissioners are from various social backgrounds and only one has a legal background. It will be interesting to see how this system operates.

## **The New South Wales Law Reform Commission**

### **Law Reform at the State Level**

Discussions the President of NSWLRC, Peter Hennessey with the SILRC centered on the structure of the NSWLRC, who the NSWLRC receives terms of references from, and the structure and quantity of reports. The NSWLRC has 18 Staff in total. In terms of size it is much smaller than ALRC, however by comparison it receives more references than the ALRC. Some of these references are small and discrete reviews of a particular area of law, for example the use of deaf and blind jurors in jury trials.

The NSWLRC publishes its reports within a shorted timeframe. Consistent with its view that reports must be reader friendly, the NSWLRC publications therefore diverge from the ALRC style preferring them to a more manageable size. Unlike that of the ALRC, the inquiry process of the NSWLRC does not have a mandatory structure in the sense that whereas the ALRC has a set three stage processes to any inquiry, the NSWLRC can choose to go straight from an Issues paper to a consultation document.

One of the points raised was that it is demoralizing for staff if their work is not implemented or considered. That said it cannot be guaranteed that all reports compiled by the LRC will eventually be used or considered by stakeholders and the primary decision makers such as government departments and the national legislature. In reality it may take years before consultation documents produced by the Commission finally become of relevance depending on the political agenda and direction of the government of the day. Thus reports may be shelved and it is up to the Commission to ensure that such work is not forgotten.

In terms of the follow –up required by the SILRC, there is a wealth of hard copy resources that the NSWLRC might be discarding. These include copies of earlier reports and numerous sets of journals which may have outlived their usefulness in Australia but will still be of use in the Solomon Islands at the present stage.

## **Implementing Government Legal Policy**

### **The New South Wales Attorney Generals Department**

#### **Legislative and Policy Division**

The session with Maureen Tangney, Director of NSW Legislative and Policy Division highlighted how the AG's office processes the recommendations made by the Law reform agencies as well as the legislative policy making process and approaches to sentencing.

In terms of practicability the piece meal approach to any form of policy implementation is favoured and advised. It is not necessary to attempt to go the whole way, but bit by bit so that implementation is more practicable and relevant to time and society. The important task from the agency's point of view is to get the work done but get it done reasonably well. Documents must be practicable meaning that those which are too large are good to look at but they are not reader friendly especially to legislative personnel who do not have the time to shift through a great deal of information to locate the necessary information that they are looking for. It was also imperative that reports be timely. An inquiry process that takes too long to complete may outlive its relevance and use. Working within a reasonable time frame is therefore important. However quality should not be a victim to timeliness.

The test for law reform agencies is to avoid being far removed from the political arena. Their recommendations need to be grounded in reality so that they are responsive to and serve the needs of the community. At times the approach to addressing societal problems is not in creating new laws or amending current ones but in ensuring that the systems that are put in place are functioning properly. Studies of assaults happening in Sydney showed that the number of assaults happening in a particular area happened on particular days and at particular times for example when the night clubs were closing. The point is that people had no access to necessities and transportation was also difficult during this particular time period. Allowing bathrooms to stay open and public transport to run longer than usual resulted in a marked decrease in crime in that area. This demonstrates an example of how a change in policy may be necessary instead of a change in legislation.

In another example relating to sentencing, a new approach known as 'circle sentencing' was introduced to indigenous Aboriginal communities in NSW. Circle sentencing is an approach where a magistrate sits with the main parties in the dispute and the community sentencing group which usually consists of the community elders. Here a suitable sentence is arrived at by involving the indigenous community justice systems with the magistrate's. This approach has proved effective in Aboriginal Communities. The advantage of this approach is that it harnesses the power of the community to fix community problems. Nevertheless one of the main issues to be considered is who are the appropriate elders?

Brendan Thomas of the NSW Crime prevention unit was influential reaching these Aboriginal communities. He will be an important point of contact on the methodology and approach to consulting with indigenous communities. These methods will provide insight on developing our own approaches to consulting with distant communities in the country. In terms of the penal code and considering SI customary practice, his work on 'circle sentencing' in Aboriginal Communities will also be important.

Finally, in the light of a lack of legislative policy officers in the government departments, the SILRC must somehow play the role of both a purely reform agency but also a legislative policy agency though not in equal amounts, lesser in terms of the latter. The piecemeal approach to reform is perhaps the best strategy to employ especially because society is developing so rapidly compared to the law both in terms of legislation and judicial pronouncements lagging behind.

## **The ALRC Communications Team**

### **Communications needs and issues during an inquiry**

The ALRC Communications team is a hybrid between marketing and communications. One of its main functions is to identify the ALRC's current and probable communication needs. This involves identifying the public's expectations of what law reform is about, the problems with law reform, as well as perceptions of what law reform involves. Underlying all this is the constant consideration of how people will read these messages. A strategy will be to develop a communications plan involving the ALRC's communications objective. This strategy will also consider the kinds of communication produced by the ALRC and how these are produced or intended to be produced. It was determined that the SILRC has several communication layers.

Generally these may be identified as; (1) awareness ;( 2) identifying stakeholders; and (3) determining the message that should be communicated to the greater public.

Due to the structure of the organisation, the ALRC's communications needs tend to fluctuate. Furthermore different categories of work may exist depending on the type of inquiry. An example of such would be the Privacy Inquiry. Communication within the ALRC is therefore subdivided into two categories (1) internal; and (2) external. Internal Communication includes a chat room newsletter and a chat room set up by the communications team. Chat rooms are set up once per month and serve as an internal means of updating legal officers working on different inquiries with what other teams are involved in at any given time.

'External' communication deals with databases that are set up to send out reform publications and news. A database is created for all stakeholders and another for journalists and media releases. Media releases are made for every issues paper and final report with the Commissioners available for interview at these times. Importantly there is much in-house collaborating before media releases made. Publications involve networking for contributions. The communications officer is responsible for typesetting the layout of pamphlets and reports, public relations, creating certificates which serve to reward and encourage submissions to the commission. The Research manager is responsible for the overall style guide which ensures consistency in branding.

Student seminars and the internship program draw on exceptional students both from within Australia and abroad also serve as methods of increasing publicity. The Kirby Cup is an example of a competition designed to increase awareness and identify potential recruits into the law reform commission.

Presently the ALRC is in the process of redesigning its webpage making it more user friendly. AUSTLII looks after publications and statistics for the number of hits on the ALRC webpage. These statistics are particularly helpful in putting together the annual report.

Currently the SILRC does not have a web page. Establishing and maintaining one will be an achievement for a small organisation limited by budget constraints and human resource. However the establishment of a website would facilitate with budget and human resource constraints awareness as well as encouraging interest and participation from a range of parties, particularly academics and the "educated elite".

As access to internet in the provinces increases it will also provide an effective way for people in the Solomon Islands to contribute and participate in the work of the SILRC.

## **The New South Wales Attorney Generals Department**

### **Criminal Law Division**

Discussions were held with Daniel Noll in which he raised that, from a legislative policy perspective one of the major differences and difficulties between working in a LRC and a policy division is the dilemma of having to implement something which you have advised against. Valuable discussion on the Victoria review of sexual assaults and offences will provide background material on the approach adopted by the state to these areas of criminal law which will be beneficial to the SILRC review of the criminal laws of Solomon Islands. There is therefore a need to review and compare these analyses with the current situation in Solomon Islands. In relation to Corruption, Samoa was identified as providing a thorough background on the issue. During the meeting the SILRC identified that one of its terms of reference was in relation to the laws of Treason and Sedition. The Gibbs Report of 1970s dealt with the issue of sedition and Treason.

These information need to be collected as soon as the work on the Penal Code starts especially in terms of the priority areas such as Sexual offences and Corruption. Re-classification of categories of offences is inevitable. There is a need to liaise with this Division in the near future potentially to function as part of the Law Reform advisory Committee when reviewing the Penal Code and the Criminal Procedure Code.

### **ALRC Research and Records Team**

The role of the research manager and the librarian are complementary. It involves identifying relevant sources of background information before an inquiry starts and developing a consultation strategy.

The research manager is responsible for a Management Plan covering the initial stage of the inquiry. The Management Plan is general and identifies key cases, journal articles and legislation. The Research Manager also develops a timeframe for each inquiry. The Librarian is responsible for setting up an intranet which is a database of sources for a particular inquiry'. This involves identifying, collecting and organising desirable resources before work on an inquiry starts. It



enables the sharing information for the whole inquiry team and it limits the time legal officers spend on initial research. Information collected can also be used for other inquiries later on. The only issue of course is with regards to how regularly the intranet should be updated.

On a positive note, it is desirable that an intranet should be set up for the SILRC for each reference. As the SILRC over time collects more data overtime it will need to create data base of information and resources. Implementing a sound system for data management and data sharing in the first instance ensures that the organisation is not only up to date in terms of data management but also allows for efficiency in research. Furthermore a central classification system should make information readily and easily accessible for all and The ALRC may be able to further assist the SILRC in setting up such a facility in future should such be desired.

## **The ALRC Executive Director Role in an Inquiry**

Further discussions on management structure involved the executive director's role in handling administrative matters of the ALRC. This included determining resource allocation; internal human resource management; the use of consultants in an inquiry; recruiting interns and contributing to general awareness of the ALRC's role and functions. Advance strategic and financial planning is essential to the operations of a well functioning organisation and the ALRC is a perfect example of such. When dealing with budget constraints it is possible to work with other government departments especially when conducting consultations and conducting media releases. For example when the ALRC was conducting an inquiry into the Protection of Human Genetic Information it was able to acquire funding from the Health Department who also had an interest in the matter at the time the inquiry was conducted. This could be an approach to be considered by the SILRC in the light of budget constraints.

## **The ALRC Privacy Inquiry Team**

### **The Practicalities of running an inquiry**

The meeting with the Privacy Inquiry team covered many aspects of running an inquiry. Using the Privacy Inquiry as an example to an inquiry process four (4) key areas were discussed;

- Research

- Methodology
- Consultations
- Write -up

The 'buddy system' is where a Senior Legal Officer and one of the legal officers work together on a particular inquiry. The system operates in such a way that the Legal Officer has their buddy as the first point of discussion as well as editing the final document at each different stage.

Another vital aspect of an inquiry process is the team meetings. Team meetings are held once the inquiry starts to enable each legal officer who is responsible for a chapter to a report to discuss their views and position, with the benefit of having a second opinion from the team. Due to the fact that the Privacy inquiry was such a huge inquiry, more people were required to work on the enquiry.

Final touches in the writing process involve editing grammar and layout. Previously, Inquiry teams have often experienced friction within the team because different people have different spelling and grammar styles. The use of a uniform style guide developed by the ALRC research manager was important in eliminating discrepancies and ensured consistency in writing style. Editing reports is usually a three stage process. Generally final editing is performed by the Commissioner in charge of the inquiry.

SILRC to work on developing a buddy system for each inquiry developing, conducting of team meetings as well as addressing issues of style adopted in writing up reports.

## **The NSW Bureau of Crime Statistics and Research**

Dr Don Weatherburn (Director of Bureau of Crime Statistics and Research (BOCSAR ) discussed; (1) the history, structure and functions of the Bureau; (2) method of collecting data; (3) how these are transposed into reports; and (4) how BOSCAR reports are relevant to the work of the ALRC and the NSWLRC and the work of the Parliamentary Counsel in formulating government policies.

The two main functions of the Bureau are statistics and evaluation ;( 1) Statistics are important as they display that changes that occur. (2) Evaluate. For example the lack of community service order led to the prevalence of convictions especially for petty crimes.

BOSCAR assists law reform by way of evaluating crime and its occurrence. Initially it was difficult to get the courts to record data and statistics. The Bureau thus developed a reward scheme for clerks of the

court to record properly and this led to a major improvement in statistical information. Statistical Data of court process consists of (1) offences ;(2) whether there were convictions; and (3) a record of the circumstances of the offending. Given the cost of carrying out such statistical investigation and the fact that there is no local equivalent to BOSCAR, at the initial stage of the SILRC, statistical data which will be important to the SILRC will be data relating to the court process. The problem of course is who should be responsible for this. Identifying such will be a task in itself.

## **The ALRC Research Techniques: Writing Law Reform Publications**

At the initial research and writing stage one of the most difficult tasks is to identify the relevant issues. This workshop was based on how to compile law reform publications and also included a demonstration of the Endnote software.

### **Steps to writing law reform publications**

Determine the structure of the Issues Paper.

Conduct background research on the existing law and how it operates.

Determine the structure of the Discussions Paper. This includes conducting more research and refining proposals and recommendations put forward in the issues paper.

Determine the structure of the Final Report. More refining is carried out at this stage and the views of the LRC are included. It is important at this stage that dissenting views are also placed within the text to ensure that it is impartial and informative.

Conducting consultations and inviting submissions will also involve formulating questions, proposals and recommendations which can be responded to.

### **Managing Submission and the use of Endnote software**

The ALRC uses a purpose built Access database for its submissions database. Originally the researchers would enter the content of the submission into the database. Over time it was found to be an inefficient way of managing the information received. It has been modified and now functions as a catalogue to enable access to the hard copy of submissions.

The ALRC uses Endnote to manage and insert its citations into all of the papers that are produced. In terms of SILRC it should be noted that when using Endnote one has to be careful when importing citations. Where the program doesn't recognise certain information, corrections have to be inserted manually as required.

Finally the SILRC can adopt the ALRC structure when writing up an Issues Paper, Discussion Paper and a Final Report. The benefit of this structure is that it limits the amount of work required between the Discussion Paper and the Final Report. However SILRC may opt for a more flexible approach and allow this to be determined by the size and type of inquiry. The language style of reports must be neutral. Nevertheless when proposals are transpired into recommendation the language use then takes on a firmer tone.

## **Conclusion**

Finally the SILRC officers have gained immense knowledge and experience from their attachment with the ALRC. The SILRC is an organisation still in its embryonic stage of development and as such much remains to be done. Yet exciting times are anticipated for the organisation's development, capacity building and law reform. The SILRC aims to further develop its relationship with other law reform organisations in the coming years and it is hoped that this initial visit to the ALRC, including NSWLRC, NSW Legislative and Policy Division, NSW Criminal Law Division and BOSCAR will provide a stepping stone. Some of the challenges facing the SILRC will be to develop a methodology and conduct an inquiry process taking into account the country's diversity in people, culture and geography. Issues of budget constraints and the ever present but often unpredictable political environment have the potential of impinging on the SILRC's effectiveness. However the SILRC has a mandate for impartiality and independence and strives to be robust in the light of these challenges.

27 February 2008

Kathleen Kohata with assistance from Houlton Faasau