

## Contents Annual Report 2008

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## **Highlights 2008**

The Law Reform Commission moved from its temporary office at Panatina Plaza to its new home in Kalala House in January, 2008.

2008 saw the recruitment of the Office manager and the Clerk both of whom are females. A Research Manager, a female, was also recruited which enabled the review of the Penal Code and the Criminal Procedure Code to commence.

The lawyers and the Secretary to the Law Reform Commission attended an attachment training program with the New Zealand Law Commission for one week in August. The Chairman and the lawyers all attended the Australasian Law Reform Commission Agencies (ALRAC) in September, 2008 in Port Vila, Vanuatu.

A Corporate Strategic Plan for 2008-2010 was drafted, adopted and implemented.

The Law Reform Commission had participated in the Trade Show in July. There is a Law Reform Commission website to be located in the Paclii website. This will enable the Law Reform Commission work to be displayed via the internet.

The Penal Code Issues Paper was launched on 27<sup>th</sup> November. Two new lawyers were interviewed for two posts within the Law Reform Commission to take up office in 2009.

The Law Reform Commission website was set up and is in operation.

## **Comments from the Chairman**

The consolidation of efforts to launch out into the activity of law reform was complete in 2008.

Ms K. Halliday took up her duties as the Research Manager/ Principal Legal Office in April and commenced the review of the Penal Code and the Criminal Procedure Code. The Research Manager is responsible for the day to day running of the research team and any issues to do with research. The responsibility for research includes the planning of the research, identifying the stakeholders, producing timetables for different parts of the review, identifying research needs and determining the provincial consultation timetables.

The review of the acquisition procedure for timber rights on customary land was suspended because the Forestry Bill, 1994 has addressed the same issues.

The review of the law regarding the ownership of land below the high water mark continued in addition to the review of the Penal Code and the Criminal Procedure Code.

The first Issues Paper on the Penal Code was launched on 27, November to be followed up with a consultation program, commencing in early 2009. The Issues Paper was the result of research work undertaken by the research officers in the LRC and had been put together by them for the consultation program.

The communication plan for the consultation program had been done in terms of engaging the media to communicate the message of law reform to the people at large.

The Corporate Strategic Plan for 2008-2010 had been done and is in place as a guide to fulfilling the objectives of the LRC.

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Training of staff in various computer skills had been carried out both in-house and externally of the LRC office. Attachment for one week to the New Zealand Law Commission for the LRC research staff had been done and found to be useful to enhance their skills and ability to carry out their work effectively and efficiently.

The lawyers in the LRC also attended the Australasian Law Reform Commission Agencies Conference in Port Vila, Vanuatu, to enhance their ability to learn to meet others in the same occupation and exchange or learn new ideas from them and be able to establish useful contacts.

The Chief Executive Officer, Anna Guthleben, from Australia had left at the end of her contract. The Samoan lawyer also left at the end of his fixed term appointment for one year.

The LRC had interviewed five candidates for two posts to be filled in 2009 and had recommended two candidates for the two vacant posts. The vacant post for the Chief Executive Officer still remained vacant at the time of writing this report.

The consolidation of efforts to launch out into the work of law reform continued into 2008 with the commencement of the review of the Penal Code and the Criminal Procedure Code.

## **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 Solomon Islanders in the renewal of the law to ensure 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 role is to review the existing laws of Solomon Islands to bring it into 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.

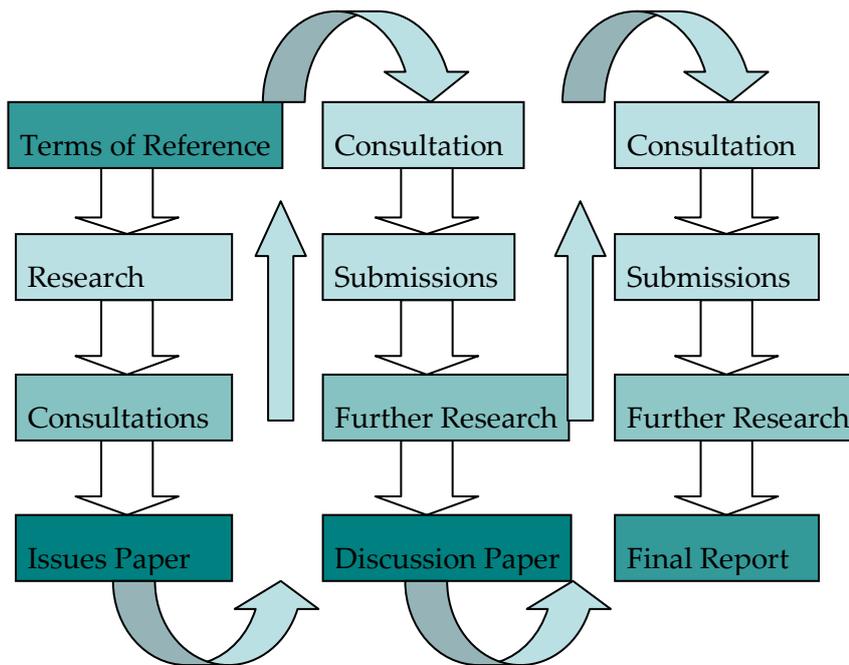
As soon as the consultation process is completed the Commission will develop a series of recommendations on how the law should be modernised, amended, or repealed. These recommendations are developed by the Commission's research lawyers. The recommendations then go before the four Commissioners and

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.

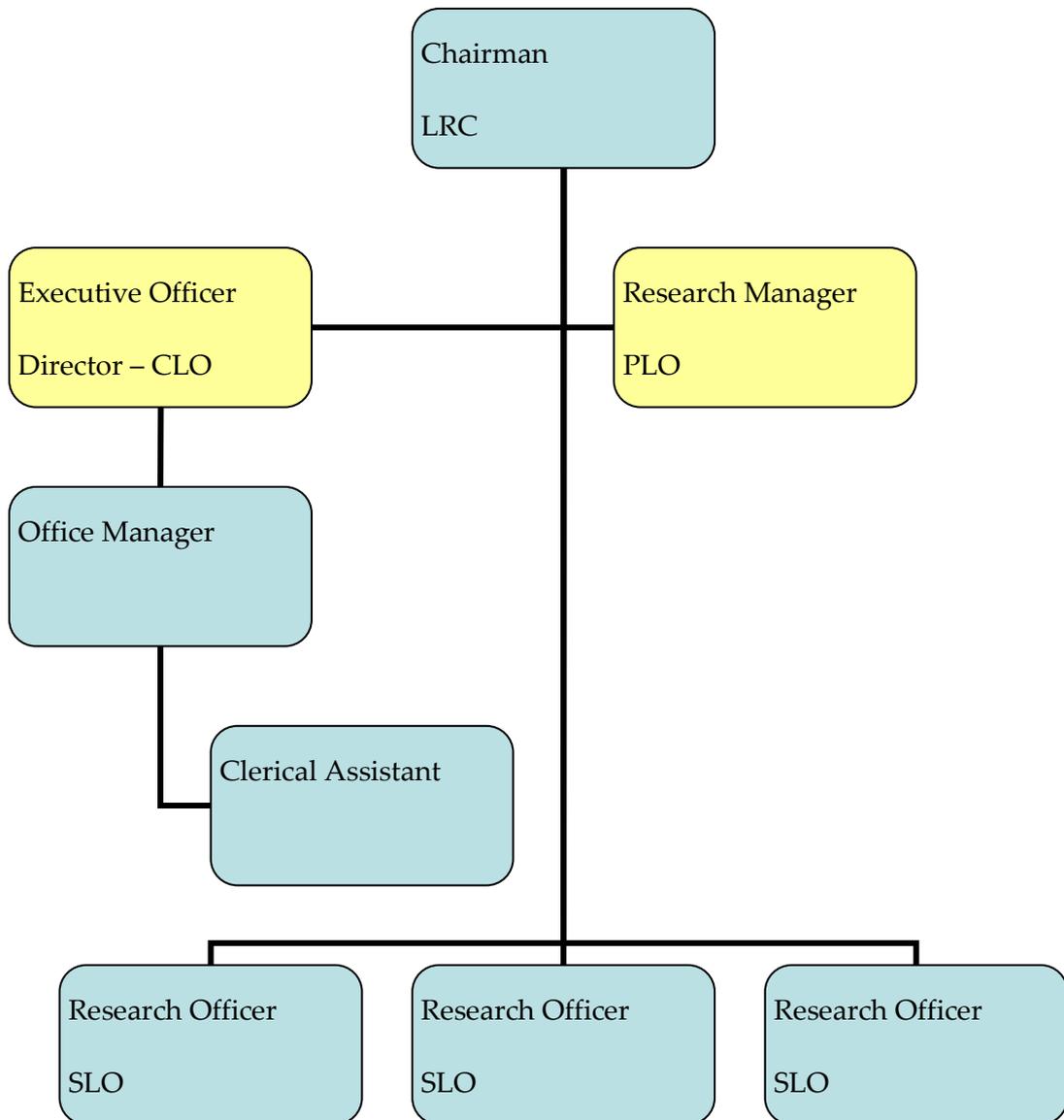
In abiding by this methodology it is assured that the information which the Commission's views and recommendations is based on, is balanced and unbiased. This guarantees the Commission's successful adherence to its vision and fulfilment of its mission.

#### A Typical Law Reform Inquiry Process



## Law Reform Commission Organisational Structure

In late 2008 the LRC successfully gained approval for an additional legal officer post.



## **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

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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.



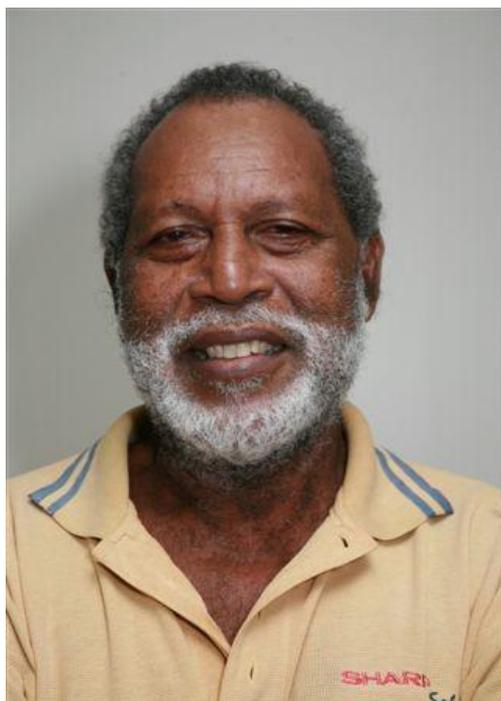
**Commissioner – Mr Leonard Maenu’u O.B.E.**

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.

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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.



### **Research Manager/Principal Legal Officer - Kate Halliday**

Kate Halliday has a BA (University of Newcastle), LLB (University of Sydney) and a LLM (University of New South Wales). Prior to working for the LRC she worked as a lawyer for community organisations and governments in Australia.

She commenced work at the LRC in April 2008.



### **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 the High Court 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.



**Office Manager –Matilda Dani**

Ms Dani is pursuing a Bachelor of Science degree majoring in Management and Public Administration and Information Systems from the University of South Pacific.

Matilda has gained a wider experience in leadership as she was one of the very active leaders for Solomon Islands Students Association at the University of South Pacific in Fiji, especially when she held the Secretary's position from 2006-2007. Ms Dani joined the Law Reform Commission in January, 2008



**Clerical Assistant – Hilda Ahikau**

Ms Ahikau was a sixth form graduate from King George IV Secondary School. Prior to working with the Law Reform Commission, she started to do some foundation units at the University of South Pacific Centre in Honiara.

Ms Ahikau joined the Law Reform Commission in June, 2008.



## **Commission Activities**

### **Community Engagement**

*Stall at the trade show held in Honiara in July.*

This was an opportunity to generally promote the LRC, its roles and activities and to carry out some consultation on the reference on ownership and use of land below high water mark and low water mark.

*RAMSI Outreach Program*

LRC staff attended RAMSI outreach meetings at Fiu in Malaita, Rarumana in Western Province and Santa Ana in Makira Province. The LRC also attended meetings in Honiara with teachers and chiefs. These meetings provide convenient forums for the research staff of the LRC to explain the work of the LRC to the people and pave the way for future consultation program to be organised by the LRC.

Attendance at the National Council of Women Conference; August.

### **Policy development**

*National Advisory Committee for Children (NACC)*

Legal staff from the LRC regularly attended meetings of the NACC.

*Regional Implementation of the Convention on the Rights of the Child*

Kathleen attended a Legislative Reform and CRC sub-regional meeting held at the University of the South Pacific's Emalus Campus on 25<sup>th</sup> - 29<sup>th</sup> August. The meeting was between five pacific island countries namely Solomon Islands, Vanuatu, Cook Islands, Palau, Fiji and Kiribati and was conducted by UNICEF.

It was aimed at assisting the countries to develop action plans for legislative reform, the implementation of CRC and the realization of children's rights. During the meeting country specific challenges and constraints affecting the full realization of child rights domestically

were highlighted one of which was that existing mechanisms for ensuring leadership and sustainable interventions were weak despite increasingly strengthened partnership between the state and organizations, interests groups, NGOs and donor partners. Youth representatives also called for more dialogue and cooperation between youths and national leaders. In terms of law reform, awareness regarding the role and reach of Law Reform agencies as actors or catalysts for legislative change remains low amongst some state agencies and NGO's, and will require more effort to increase their profile, in particularly as organizations capable of engaging and connecting with the broader community.

*Domestic Implementation of the Convention on the Rights of the Child*

The LRC attended meetings and provided information to support the development of the periodic report by Solomon Islands on implementation of the UN Convention on the Rights of the Child

*Companies Bill*

The LRC provided comments on the draft Companies Bill..

*Evidence Bill*

A submission was made by the LRC on the Evidence Bill prepared by the Ministry of Justice and Legal Affairs;

**Capacity development/training**

*Gender and Human Rights Training*

The LRC invited the Regional Rights Resource Team to provide training on Gender and Human Rights. This was held in September/October and attended by legal officers from the LRC, Public Solicitors Office, Office of the Director of Public Prosecutions and the Ministry of Justice and Legal Affairs.

*Making a Difference Capacity Development Workshop*

This workshop held in Honiara was attended by two legal officers.

*International Humanitarian Law*

Kathleen attended training on International Humanitarian Law at the University of the South Pacific in Port Vila, Vanuatu from 7<sup>th</sup> -17<sup>th</sup> January 2008. The course was conducted by Dr. Helen Durham, former legal advisor to the International Committee of the Red Cross (ICRC) (Pacific). Kathleen was part of a team of government representatives from four pacific countries, Solomon Islands, Fiji, Tonga and Papua New Guinea who were invited and sponsored by the ICRC to audit the course which covered areas including basic concepts and philosophy of IHL, principles of IHL, the special role of the ICRC as guardian of IHL, various issues relating to the implementation of instruments and conventions, as well as enforcement for breaches and violations.

The training is important bearing in mind Solomon Islands recent experience of civil hostilities and tensions, and the environment of socio-political instability that continues to exist within the South Pacific region. Recognition of the Red Cross Society in Solomon Islands is important to for its role in ensuring that certain international rules are followed even during times of war or tensions that provide for the protection of civilians and combatants alike.

*Other training*

- Training on the use of Paclii and the Pacific Legal Gateway (presented by Paclii); held in Honiara; attended by all the legal officers.
- In house training on the use of Word, Excel and Power-Point programmes.
- Advocacy course (attended by two legal officers) presented by Queensland Law Society

- Mentoring Workshop; attended by one of the legal officers and the office manager.
- New Zealand Law Commission; training attachment 1 – 8 September; see report below.

**The Australasian Law Reform Commission Agencies Conference 10  
11 September; Port Vila.**

This conference was attended by all professional staff at the LRC. The Chairman and the Executive Officer presented a joint paper on the re-establishment and work of the LRC. Topics covered included rebirth of law reform agencies, regional cooperation in law reform, non-government actors as agents of law reform, law reform and customary law, challenges of law reform in an age of international obligations and law reform and environment.

The conference was attended by representatives from law reform and legal policy agencies from the Samoa, Papua New Guinea, Nauru, Vanuatu, Kiribati, New Zealand, Pacific Islands Forum Secretariat, Australia, South Africa, Canada and Scotland.

**Other activities and achievements**

- Recruitment of legal officers (two positions).
- Development of corporate plan and individual work plans for all staff.
- Student placement at LRC
- Derek Futaiasi, law student at the University of South Pacific, worked as a volunteer at the LRC in June/July.
- The LRC contributed an article on issues about children and criminal law to *Reform*, a journal of national and international law reform, published by ALRAC.

**Training Attachment with the New Zealand Law Commission in Wellington.**

Three legal officers and the Chief Executive Officer attended the attachment from 1 – 8 September. The aims of the attachment were to enable staff from the LRC to learn from the experiences of the New Zealand Law Commission, establish networks with the Commission and its staff and to obtain an overview of how other legal policy agencies operate in New Zealand.

Discussions during the attachment covered the establishment, structure, function and operation of the New Zealand Law Commission, the inquiry process, writing reports, conducting consultations, project management, the role and functions of the Maori Land Court, the role of the Ministry of Justice and the Te Puni Kokiri (a public sector department that is responsible Maori public policy). The attachment was also an opportunity for the LRC team to deepen their understanding of the law reform process which in most cases is a long term project involving a number of different stages.

Staff and Commissioners from the New Zealand Law Commission, the Ministry of Justice and Judge Coxhead from the Maori Land Court generously gave their time to share experiences with the team from the LRC. The LRC would also like to acknowledge the generous support of NZ Aid and Brigid Corcoran the General Manager of the New Zealand Law Commission.

### **Research Manager's Report**

In 2008 the legal research team worked on one major reference, the review the Penal Code and Criminal Procedure Code, and a smaller reference looking at land below high water and low water mark. The professional staff were also involved in formal and informal training, professional development and capacity building.

### **Work on references**

In 2008 the Chairman identified the review of the Penal Code and Criminal Procedure Code as a priority for the research team. This is one reference, given to the LRC in 1995. It is a significant reference because the Penal Code contains many of the important criminal offences in Solomon Islands, there have been few changes to the two Codes since they were introduced in Solomon Islands in the early 1960's, and there have been many changes in criminal law that have taken place in other countries that share the same legal heritage as Solomon Islands. The two Codes were passed prior to Independence and the review is an opportunity to reform the criminal law so that it meets the expectations and needs of people of Solomon Islands. It is also an opportunity to improve the efficiency and fairness of the criminal justice system in Solomon Islands.

The review of the Penal Code and Criminal Procedure Code has been broken down into a number of stages. The first stage was completed with the release of an Issues Paper on the Penal Code in November 2008. This Issues Paper considers the Penal Code except for sentencing. The Paper gives information about the provisions in the Penal Code, some comparative information about reform in other jurisdictions and asks questions about possible changes.

Stage two of the review consists of consultation on the Issues Paper, and the research and preparation of a series of shorter, technical papers on sentencing and the Criminal Procedure Code. These papers will address preliminary inquiries, police powers, criminal justice process, including processes for dealing with accused who are not fit to plead, and sentencing. This stage will also include consultation on reform of sentencing and the Criminal Procedure Code. In 2008 some work on this part of the review was commenced.

The final stage of the review will be the development of recommendations for reform of both the Penal Code and Criminal Procedure Code and draft legislation. The review will take a minimum of three years to complete.

The LRC formed an advisory committee to assist with the review of the Penal Code and Criminal Procedure Code. The Committee consists of Judge Mwanosalua, Police Commissioner Peter Marshall, Chief Magistrate Leonard Maina, Mr Douglas Hou the Public Solicitor, the Director of Public Prosecutions Mr Ronald Talasasa and two academics from the School of Law, University of South Pacific, Dr Miranda Forsyth and Lionel Aingimea.

In 2008 we also advanced another reference looking at ownership and use of beaches, shores and land below high water mark and low water mark. This reference was also given to the LRC in 1995. Since the reference was given the High Court of Solomon Islands has considered some of the legal issues that apply to this type of land. Prior to this court decision it was assumed that ownership and control of land below high water and low water mark was vested in the Commissioner on behalf of the state under the Lands and Titles Act [Cap 133]. In 1997 in the case of *Combined Fera Group v Attorney-General* the High Court

decided that customary ownership and control of land below high water and low water mark could be recognised.

The LRC did some consultation on this reference at the 2008 Trade Show in Honiara. This was an opportunity to talk to people from the provinces about this reference.

### **Training and capacity development**

During 2008 the LRC had three legal research officers. Training and capacity development of the legal research officers was addressed by a mix of formal and informal activities. Information about two formal activities (the visit to the New Zealand Law Commission, and attendance at the ALRAC conference) is given in separate reports.

Other activities included:

- Weekly individual supervision by the Legal Research Manager;
- LRC team meetings (with tasks of chairing and minute taking shared by all staff);
- Preliminary consultation meetings with stakeholders on the review of the Penal Code;
- Participation in a sub-committee on implementation of the Convention on the Rights of the Child (convened by the Ministry of Women, Youth and Children's Affairs);
- Training in computer applications (Word, Powerpoint, Endnote).
- A workshop on law reform, gender and human rights (presented in partnership with the Pacific Regional Rights Resource Team).

Research and writing of the Issues Paper for the Penal Code was an important capacity development exercise. Each lawyer was allocated a

particular area to research and write (for example, sexual offences, corruption). Early drafts were considered by the Research Manager and feedback was given. A later draft was then considered by all of the research team and the Chairman. Comments from the group then had to be incorporated into each section. Legal research officers were also given tasks related to editing or preparation of the Issues Paper for publication.

## Financial Report

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 2008.

### Allocated Budget and Spending 2008

#### Budget Performance 2008

2008	Revenue		Expenditure	
Budget Performance	Final Budget (\$)	Actual (\$)	Final Budget (\$)	Actual (\$)
	N/A	N/A	793,335	772,180

#### Composition of Expenditure 2008

2008	Personnel Costs		Operating Costs		Total Expenditure	
Expenditure Composition	Final Budget	Actual	Final Budget	Actual	Final Budget	Actual
	239,264	290,464	554,071	481,716	793,335	772,180

The Law Reform Commission did not have an opportunity to fully utilise the 2008 budget because virements that were required at the end of the year to reallocate funds were not approved by the Minister of

Law Reform Commission Annual Report 2008

Finance, and thus the Commission funds were not released to fulfil requisitions and local purchase orders.

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**Breakdown of LRC Budget Votes 2008**

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Code	Item	Vote	Virements	Adjusted Budget	Actuals
	Payroll				
1000	Statutory Salary	110,334		116,351	110,000
1001	Housing Allowance	0		915	5563
1004	Other Allowances	14,853		14,853	21050
1005	NPF (7.5%)	9,389		9,840	0
1010	Civil Service Salaries	54,339		62,644	124,238
1011	Housing Allowance	4,945		6,208	6,294
1014	Other Allowances	15,615		15,615	19,686
1015	NPF (7.5%)	5,617		6,240	0
1020	Wages	18,738		18,738	3,633
1021	Housing Allowance	0		0	0
1024	Other Allowances	3,748		3,748	0
1025	NPF (7.5%)	1,686		1,686	0
1148	Clothing Allowance				0
	<b>Personnel Costs</b>	<b>239,264</b>		<b>256,838</b>	<b>290,464</b>
2010	Office Expenses	57,128		97,128	95,817
2017	Printing	0		0	0
2011	Electricity & Gas	0		0	0
2012	Water	0		0	0

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2013	Telephones	0		0	0
2018	Publicity and promotion	0		20,000	21,994
2050	Fuel	20,000		17,000	0
2051	Freight - Surface	8,742		8,742	2,413
2070	Staff Travel & Transport	32,782		32,782	18,532
2071	Tours & Travel	31,500		31,500	4,287
2191	Office Equipment	20,000		20,000	17,855
4001	Training	103,000		103,000	77,979
4030	Conferences & Seminars	253,000		253,600	234,104
6028	Commissioners Allowance	27,319		27,319	8,735
	Operating Costs	554,071		611,071	481,716
	Grand total	793,335		867,909	772,180

## Appendix 1

### Law Reform Commission 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 –

The review of the law relating to building standard in Solomon Islands.

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.

## Law Reform Commission Annual Report 2008

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.

Law Reform Commission Annual Report 2008

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-

The review of the provisions of the Customs & Excise Act (Cap.58);

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.

## Law Reform Commission Act

(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—

## Law Reform Commission Act

(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.

## Law Reform Commission Act

(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;

## Law Reform Commission Act

(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.

## Law Reform Commission Act

### 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.

# Law Reform Commission Regulations

## 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

## Law Reform Commission Regulations

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

## Law Reform Commission Regulations

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.

## **Appendix 3**

### **New Zealand Law Commission Trip**

#### **Executive Summary**

- a. On the 1 September 2008, the Solomon Islands Law Reform Commission (SILRC) left for attachment with the New Zealand Law Commission (NZLC) in Wellington, New Zealand. The duration of the attachment was for a period of 8 days (1<sup>st</sup> September – 8<sup>th</sup> September 2008). Three Senior Legal Officers and the Executive Director of the SILRC attended.
- b. The SILRC also met with other government departments and agencies and visited the Maori Land Court, Parliament House (“The Beehive”) and the Te Papa (the National Museum).
- c. The attachment was part of the SILRC’s growth and developmental process. It was an opportunity for the legal officers to consolidate some of the knowledge and research skills they had developed through the SILRC’s current work on the Penal Code Issues Paper.

#### **Objectives**

The objectives of the attachment were:

To enable the SILRC to learn from NZLC experiences. The NZLC has changed its approach to reform in recent years and it has been very successful in getting its recommendations through to parliament and implemented.

## Law Reform Commission Regulations

To consolidated the work that the Legal Officers have been doing by comparing how their counterparts in the NZLC approached those similar areas.

To establish networks and contacts with counterparts in the NZLC and other NZ Government policy agencies.

To achieve an overview of how other policy agencies within the government operated. This included meetings with the Ministry of Justice.

### **Subject Matter**

Discussions during the attachment covered the following topics:

the establishment, structure, function and operation of the NZLC;

The challenges between independence and implementation;

the inquiry process, how it begins, the various stages of an inquiry and how these are managed, writing reports and conducting consultations;

Legal research and policy development;

Project Management, planning, scoping, doing the work, monitoring, reporting and managing risks;

the role and functions of the Maori Land Court;

the Ministry of Justice, its role and relationship with the NZLC;

The Te Puni Kokiri.

### **Outcomes**

- d. The important outcomes included valuable insights into the framework and operation of the NZLC both from an administrative and reform perspective. The measure of the NZLC outstanding success in recent years has been their rate of implementation. It is a challenge for the SILRC to ensure that the SILRC reports and consultation documents are tabled in Parliament.

## Law Reform Commission Regulations

- e. SILRC officers have gained immense knowledge and insight in a number of vital areas such as policy making and development; drafting cabinet papers; project planning and management; monitoring, reporting and managing related risks.
- f. The challenge for the SILRC is to constantly review its strategies and methodologies to allow for flexibility in order to effectively address the constraints and difficulties it may face in terms of reforming the law both for the present and the future.
- g. Valuable knowledge and insight into the function and role of the Maori Land Court was also obtained during the visit. This will be particularly important when the SILRC embarks on the review of the law affecting foreshores and beaches.
- h. The challenge for SILRC is to remain impartial and independent but more importantly to be robust and effective in a challenging political environment. The visit to the NZLC has highlighted some important strategies that can assist in ensuring not only that the Law Reform Commission can still remain independent but still be effective in bringing about changes to the law.

### **Daily Reports**

#### **Monday 1<sup>st</sup> September 2008**

- i. On the first day of SILRC's secondment to the New Zealand Law Commission their counterparts warmly welcomed them to windy Wellington with a customary Maori chant. With the SILRC operating in a jurisdiction

## Law Reform Commission Regulations

with a strong customary setting the cultural welcome was a significant indication of NZLC's trustworthiness and willingness to share their vast knowledge and great experience with the SILRC.

### *i. SILRC Presentation*

- j. When the formalities ended the Executive Director (Anna Guthleben) on behalf of the SILRC made a presentation to the NZLC. The presentation focused mainly on the SILRC's work in the Solomon Islands. Anna talked about the history of the SILRC and its current references. She discussed a number of the difficulties that the SILRC has been facing and is still experiencing at present. An example of this is the process and the time taken when processing documents required in approving the legal officers overseas travel for training.
- k. The presentation was supported by a slide show of photographs of the panoramic views of the Solomon Islands landscape and people. The idea behind the slide show was to give NZLC an idea of SILRC physical surrounding to emphasise some of the points made during the presentation about the challenges anticipated during consultations in rural areas.

### *i. NZLC presentation*

- l. In the afternoon session a general presentation was made by the NZLC to the legal staff of the SILRC lead by the Deputy President of the NZLC (Dr Warren Young) with the assistance of some of the members of their staff,

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including Ms Brigid Corcoran (General Manager) and Claire Browning (Policy Advisor)).

- m. The presentation focused on the role and processes involved in the law reform work of the NZLC. That is, to review in a systematic way the laws of New Zealand for the reform and development of the laws of New Zealand; advice on the review of any aspect of a law of New Zealand conducted by another government agency; and advice to the Minister.
- n. Commissioner Warren reflected on the independence of the Law Commission and its distinction from a government department. That is, it is an independent Crown Agency; not subject to Ministerial direction; projects may be referred by government or self referred (but the NZLC must give “appropriate” priority to any project to which the Minister of Justice requests); the NZLC is less driven by electoral cycle.
- o. The Commission also plays a quality control role through servicing of the Legislative Design Committee (LDC) and Legislation Advisory Committee (LAC) by advising on legislative proposals generated by other government agencies.
- p. Commissioner Warren also enlightened the SILRC legal staff on the relationship between independence and effectiveness of the Law Commission. That is, while all Law Reform agencies wish to be independent, there is a risk that they will be forgoing their effectiveness. The enthusiasm to distant themselves from the Government ministries makes it difficult for Government ministries to

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work with together with them, whether it be to work together in a partnership for the purposes of a project or to get recommendations adopted and consequently transposed into legislation. Commissioner Warren believes that a healthy relationship between Law Reform agencies and Government Ministries needs to be achieved.

### Tuesday 2<sup>nd</sup> September 2008

#### *i. Legal research writing and policy development*

- q. On the second day the NZLC policy advisors (Rachel Hayward, Lecretia Seales, Jo Hayward, Zoe Prebble) conducted a session on legal research writing and policy development. The Commission's recent work on the Evidence Act was used in this session as an example and to emphasise points made.
- r. When starting a project, at least one or two commissioners can be assigned to head and assist. In addition, it is always their aspiration to have an attached bill to their final report. The NZLC explained that they firstly looked at the relevant sources of laws of New Zealand, the history of the relevant sources and then an analysis of comparative jurisdictions. The jurisdictions commonly referred to are the United Kingdom, Canada and Australia. The NZLC also conducts preliminary consultations to identify pressing issues. The SILRC followed the same research methodology when working on the Penal Code reference.
- s. In their general work, the NZLC usually produces issues papers and reports. They also conduct case reviews as

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well as a literature reviews. One of their aims when writing issues papers is to make them accessible; address the current law of New Zealand; and provide some history of legislation in NZ.

- t. When writing issues papers it is more effective when working against a structure (for the report) and identifying gaps as they write. They also review each other work while working on their issues papers (peer review groups). The SILRC aspires to use such a strategy but given the size and the experience of the legal staff, at the moment the research manager generally edits works.
- u. When preparing for consultation the NZLC predetermines their stakeholders and then tries to engage as many as they can. They also identify effective mediums of publicising their papers and promoting upcoming consultations.
- v. NZLC explained that given the efficiency of information technology and the internet, they would be drifting away from face to face consultations towards using electronic means to conduct their consultations.
- w.
- x. The team from NZLC also talked about policy formulation. It is important to identify objectives, problems, and options. Then analyse options and recommendations.
  - i. *Project Management: planning, scoping, doing the work, monitoring, reporting, managing risk.*

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- y. This session was lead by the General Manager and the legal policy advisors, Brigid Corcoran (GM), Jo Dinsdale, Ewan Morris, and Zoe Prebble.
- z. In this session the staff from the NZLC talked about how they manage their projects. It generally involves different steps. One of the key tasks that the Commission usually undertakes at the outset of each review is that the President of NZLC meets with the Minister of Justice and the advisors working on the project. The NZLC then reports to the Minister every four months on the current work plan. This ensures that the Minister is kept up-to-speed on the progress of the review but it also ensures that the Minister is not distanced from the review process. This enables the Minister concerned to claim a greater responsibility in enabling and ensuring that the review process runs smoothly.
- aa. The NZLC works with a planning checklist which highlights the key elements of any project. The checklist is a comprehensive, for example the size (how much consultation; how controversial; construction of teams; managing risks associated); timeframe (overall detailed plan and specific plan (two plans for whole project); and the collaboration with agencies and deciding who should be invited to the project planning.

### *i. Using legal research resources*

- bb. The Principal Librarian (Peter Adamson) led this session with the SILRC legal team. He had recently joined the Commission from private practice. Mr Adamson

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discussed how the SILRC staff are dealing with the lack of resources in the Solomon Islands such as big libraries and slow internet connections.

- cc. Peter Adamson went over some of the common websites that the NZLC have been using in its legal research. Websites such as Thomson Brookers, Westlaw, Lexis Nexis and PACLII. The SILRC had the rare opportunity of attending one of sessions held by the Pacific Legal Information Institute (PACLII) in Honiara, which touched on all of these legal databases. The discussions with Mr Adamson complemented the knowledge received from these PACLII trainings.
- dd. The discussion also confirmed some of the things that SILRC officers had observed during the secondment with the Australian Law Reform Commission and the New South Wales Law Reform Commission. That is, a librarian is vital in the research work of a law reform and needs to work closely with research managers. It also highlighted some of the research resources that might be of relevance to the SILRC in future.

### **Wednesday 3<sup>rd</sup> September**

#### *i. Communication with Ministers*

- ee. Sir Geoffrey Palmer conducted a session on how to communicate with Ministers. Sir Geoffrey is a former Prime Minister of New Zealand and a former Law Professor and the current president of the NZLC. He possesses both academic and vast practical experience.

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- ff. It was an indeed an honour for SILRC to be invited to be take part in this training for the staff of the Ministry of Health. Sir Geoffrey's lecture broadened the SILRC's understanding on how machinery of government works in the NZ context.
- gg. He highlighted the need for public servants to provide precise and crisp advice when advising Ministers on policy matters. He pointed out that the Minister does not have time. Politics is not like a business and when putting through legislation, it takes time to pass and often with not a lot of support. He also stressed the importance for public servants to be politically neutral as they play their various key roles.
- hh. The advice given to the ministers needs to be accurate and precise otherwise he or she will be in danger of misleading Parliament as he or she presents cabinet papers and answer questions. This highlights the need to develop a collective and collaborative approach within the ministries to ensure accountability by ministers.

### *i. Crisp Writing*

- ii. Dr John Yeabsley conducted another session on crisp writing. This is a term used to describe the kind of writing involved when giving advice. The main focus was on writing advices to Ministers and how to be precise.
- jj. The essential elements to crisp writing are being able to:  
learn the craft by analysing other precedents available on advisory work and editing of own work;

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understand the issues by asking questions such as: how will the client use this advice; show evidence of risk assessment; be able to tell a logical and compelling story; prioritise, plan and follow through; determine how much: detail needs to be discussed in a Cabinet paper; consultation; and how much detail should be discussed; how to frame the responses; knowing the unwritten rules such as using a success story to illustrate the point you are making, taking into account that busy people need short papers that are convincing.

### Thursday 4<sup>th</sup> September

#### *i. Discussing the Consultation Processes*

- kk. This discussion centered on how the NZLC conducts its consultation process. This was also well discussed in the NZLC presentation to the SILRC on the first day. However, in this session the NZLC staff (Lecretia Seales, Janet November, Andrea King) who lead this went into detail on the stages involved.
- ll. Stage 1: Locating the stakeholders (including how best to consult and advertise the project). A team meeting is used to decide who should be consulted and to identify how feedback should be provided. This also involves determining the type of responses required and also where and how the reference should be advertised. Part of this stage will also be an opportunity to identify what sort of group will be working closely with the Commission. Whether this will be an advisory committee or an intergovernmental committee is decided at this stage. It also involves developing and setting time frames for the initial and later consultations,

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and if there is a need to collaborate with the ministries or departments this will also be determined.

mm. Stage 2: Ongoing initial consultation. Part of this stage is to ensure that the key stakeholders are continuously informed of the process and when they will be required to make submissions. It may also be an opportunity for interested persons or focus groups to participate.

nn. Stage 3: Publication of the Issues Paper. This can sometimes involve discussing the submissions with the collaborating agencies; advisory committee or the steering committee.

oo. Stage 4: Commissions Proposals. Sometimes this will involve providing feedback especially where the views of the stakeholder is not accepted but usually there will be further meetings with collaborating agencies and key stakeholders to finalise the proposals for reform. This process also involves liaising with the Parliamentary Council Office and the collaborating agency regarding any draft legislation for the report.

### *i. Converging currents – Customary Law and Human Rights in the Pacific*

pp. Those present at this session were Ewan Morris and Helen Aikman and members of the SILRC. The session centered on how the NZLC embarks on developing a paper that was not a part of its terms of reference. When the New Zealand abolished appeals to the Privy Council, many Maoris became worried and submitted their views that they wanted appeals to be brought to a Pacific Court

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of Human Rights. However, the establishment of such a body was considered premature.

qq. Part of the reason for this was that in the region most of the lower courts deal with custom matters. On the other hand, the higher courts tend to have more emphasis on Human Rights issues.

### *i. How to get your proposals implemented*

rr. The NZLC projects are generally large scale and long term. They also deal with projects that give rise to interagency issues, require consultation with public, and address controversial issues such as the reviewing of the Drugs Act.

ss. A restraining factor that needs to be identified in the early stages of the project is the available resources and identifying other agencies or Government Ministries which may be doing work on similar issues. This can provide some financial as well as technical assistance. For example in one of their recent projects the Commission reached an understanding with the Health Department to pool their resources to help the Commission with a project that the Health Department had an interest.

tt. It is important to have positive publicity around reports and recommendations and to make sure that the Ministers concerned provide prompt responses to recommendations made by the NZLC.

uu. The high success rate of the NZLC in getting recommendations accepted is attributed to a number of factors. These are: Cabinet considering and determining

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their annual work programme; the commitment of the resources of government agencies whose area of work is in line with projects the Commission is working on; Cabinet papers and published report drafted by the Commission. It should also be noted that the Government must table response in Parliament within 6 months and where Cabinet approves new legislation the Commission often prepares drafting instructions and works with the relevant government agency to draft bill.

### Friday 5<sup>th</sup> September

#### *i. SILRC with NZLC criminal team*

vv. This meeting was lead by the NZLC Criminal Team: Claire Browning, Andréa King, and Allison Bennett. There was a lot of discussion on the projects that these officers were working on. That is, Claire Browning – Simplification of Criminal Procedure; Allison Bennett – the Misuse of Drugs Act 1975; Andrea King – was working on Sexual Offences and sentencing guidelines.

ww. The SILRC officers for their part discussed the various parts of the issues paper that they were working on. One of the points that stood out was the fact that the review of the Penal Code and the Criminal Procedure Code is a huge project. The legal officers from the Law Commission highlighted that it was unusual for a commission to receive a reference of this scale and acknowledged that it would require an immense effort on the part of the SILRC to complete the reference in due course.

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- xx. The staff also had an opportunity to talk to Ryan Malone who was part of the team working on the Review of Maximum Penalties: Sentencing Guidelines. Ryan said that the Sentencing Council is responsible for developing the appropriate penalties for certain offences. The Sentencing Council is a new body which is yet to come into existence. There are two areas for review: disparities in sentencing; and Sentencing Council Guidelines.
- yy. When looking at penalties the review team only focused on looking at penalties and not substance because the project would otherwise be too large. Ryan also highlighted that the Law Commission opted for the Victorian model which relied on a category system because it was easier to adjust penalties. There will be a base penalty for each offence, but where there are aggravating factors then these penalties will be topped up.
- zz. The review also looked at the method of calculating injury which gives a base value. The team also found that the best way to compare offences was by looking at the harm done.
- aaa. What is most important in Ryan's view is that the process of developing penalties (the system for developing penalty structure) must be defensible.

### Monday 8<sup>th</sup> September

#### *i. Maori Land Court*

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bbb. The SILRC had the opportunity to meet with Justice Craig Coxhead of the Maori Land Court. Justice Coxhead talked on the history of the Waitangi Treaty and how grievances of the Maori people lead to the establishment of various institutions to address this frustrations and the Maori Land Court was one of them.

ccc. In 2004 there was an application made by the Ngati Apa for a customary title to foreshore and seabed. The jurisdiction of the Maori Land Court to deal with this matter was challenged up to the Court of Appeal of New Zealand where it was held that the Maori Land Court had jurisdiction to deal with such matters (the vote was 5:1). This resulted in the Government passing legislation (2004 Foreshores and Seabed Act) regulating the foreshores and seabed of New Zealand which expressly stated that the Maori Land Court had no jurisdiction to deal with customary titles on foreshores and seabed.

ddd. Justice Coxhead also touched on the finalisation of claims under Waitangi Treaty that are to be addressed by the Waitangi Land Tribunal (the cut off date for claims is September 1<sup>st</sup> 2008). In addressing claims the Tribunal determines the claims by each Maori group by attempting to find a link between that group and the land that they were claiming compensation for. For example one Maori group was linked to a certain foreshore because it was the only place where they get stone for their hangi.

eee. The amount of money paid out by the New Zealand Government for these settlements has been in

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the millions. This raised the issue of how to effectively invest these monies. There has to be a vehicle to assist the governance of this process, and led to the work on the 'Waka Umanga'.

fff. The 'Waka Umanga' is a governance concept that attempts to deal with collectively owned assets.

### *i. Meeting with the Ministry of Justice*

ggg. In the afternoon, the SILRC met with the some of the senior members of the Ministry of Justice. The Ministry of Justice is a key stakeholder in any reform process and its involvement was highlighted during this discussion with the Ministry. The approach taken by Sir Geoffrey Palmer is cited as one of the main reasons for the success of the Commission from the Ministry's point of view. Not only has the president played a very hands on and key role in all parts of any review process but he has also ensured that the network and relationship he has with members of the Parliament, Cabinet and the Ministries exists and is quite visible.

hhh. It was highlighted during the meeting that in presenting any cabinet paper on the proposals for reform the President ensures that at least one member of the team working on the review will accompany him to ensure that Cabinet is well informed of the proposals. Often when Ministers do not fully understand the recommendations, or the basis of the recommendations, they are rejected. It helps to have some one on hand to explain this to Cabinet when a paper is being presented.

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iii. The other approach which the Ministry has attributed to the success of the Commission is that the Commission has developed a close relationship with departments and agencies both government and otherwise. For example certain members of the Ministry of Justice are on attachment with the Commission at the moment. This ensures that portfolio or groups with an interest in the area of law under review have an active role in developing the policy at an early but continuous stage. Working closely with these groups and stakeholders also ensures partnership but also ensures that support for proposals is forthcoming. It also ensures that the Commission takes advantage of existing expertise by having these persons on attachment for a certain period of time at the Commission.

### *i. Te Puni Kokiri*

jjj. This session was chaired by Tipene Crisp, Policy Director from Te Puni Kokiri. The session proved to be a very interesting one for the SILRC legal officers because it highlighted some challenges that were similar to those facing indigenous Solomon Islanders especially in terms of realising their potential not only as resourceful persons in their own right but also in terms of their potential to develop as a collective economic unit based on group affiliations (whether these be tribes, clans or family groupings) and harnessing existing resources .

kkk. Function and role of the Te Puni Kokiri – The Te Puni Kokiri is a public sector department that is responsible for Maori public policy and policy affecting

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Maori. It acts as the principle advisor to the Government on Crown - Maori relationships.

lll. The words "Te Puni Kokiri" means 'group moving forward together. It signifies the vision for Maori in New Zealand which is to realise Maori potential. The department aims to ensure that Maori develop and succeed without compromising Maori identity and what it means to be Maori.

mmm. An outcome which the Te Puni Kokiri hopes to encourage and achieve is assisting Maori to use their collective assets for economic transformation. There are many Maori 'iwi' groups that are involved in commercial ventures. Many have also formed commercial companies that own property rights around New Zealand. However often smaller groups may find themselves marginalized unless they affiliate with bigger 'iwi' groups. The 'Waka Umanga' aims to address this in some way.

nnn. How important is the Te Puni Kokiri in terms of dealing with Maori claims and disputes? – The Te Puni Kokiri assists in finalising Maori historical settlement claims by the 1st September 2008 as per the Treaty of Waitangi (Amendment) Act 2006.

ooo. How does it work with the Ministry of Justice - The department monitors policy and legislation affecting and impacting on Maori and their interests and as such works with many other agencies and departments including the Ministry of Justice. In Parliament,

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complaints can be brought before the Maori select committee by anyone on matters affecting Maori interest.

ppp. What lessons can be learnt from the Te Puni Kokiri? – Effectively the department is an organisation dedicated to addressing and meeting the needs of Maori and how they relate and operate in the wider setting which is New Zealand.

qqq. There are many lessons that the Solomon Islands government can learn from the approach that the department has formulated in terms of addressing factors important to both Maori and how contentious issues relating to the recognition of culture and can be harmonised with other competing systems. It was particularly important to listen to the presentation and to gain insight into the ideas behind developing policy in contentious areas, especially those dealing with land, culture and economic interests.

rrr.