

SAMOA LAW REFORM COMMISSION

SAMOA

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2002, No. 4

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

[28th March 2002]

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

1. Short title and commencement-(1) This Act may be cited as the Samoa Law Reform Commission Act 2002.

(2) This Act shall come into force on the date to be determined by the Minister and published in the Savali.

2. Interpretation – In this Act:

“Act” means the Samoa Law Reform Commission Act 2002:

“Advisory Board” means the Law Reform Commission Advisory Board established by section 13:

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

“Commissioner” means the Law Reform Commissioner appointed in accordance with section 11:

“Executive Council” means the Executive Council established under Article 39 of the Constitution:

“Government Department” means a department named in Part I of the Schedule to the Komesina o Sulufaiga (Ombudsman) Act 1988:

“Government Organisation” means an organisation named in Part II of the Schedule to the Komesina o Sulufaiga (Ombudsman) Act 1988:

“Law Reform Appointment Council” means the Law Reform Appointment Council established by section 12:

“Minister” means the Minister of Justice:

“public servant” means any person employed under the Public Service Act 1977:

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

3. Act to bind the State – This Act shall bind the State.

4. Purpose – The purpose of this Act is to allow for the review, reform and development of the laws of Samoa in order to promote Samoan custom and traditions and enhance the social, cultural, economic and commercial development of Samoa.

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

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

6. Functions – The functions of the Commission are:

- (a) To recommend to the Minister suggested programs for the reform of the laws of Samoa;
- (b) In accordance with references made to it by the Minister (whether at the Commission's suggestion or otherwise) to research and analyse areas of law considered to be in need of reform and report its recommendations for reform to the Minister;
- (c) As the Commission considers appropriate, to advise Government Departments or other Government Organisations on the manner or content of reviews of the law conducted by those Departments or Organisations; and
- (d) As the Commission considers appropriate, to consult with and advise the public about its work.

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

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

- (a) To employ staff;

- (b) To conduct or sponsor such studies and research as it thinks expedient for the proper discharge of its functions;
- (c) To consult any Government Department or Government Organisation concerning the review of any aspect of the law and to request and receive from any Government Department or Government Organisation such information relating to any review as is appropriate;
- (d) To publicise its work, to conduct public hearings, to seek comments from the public on its proposals, and to consult with any person or groups of persons;
- (e) To hire or otherwise obtain the services of suitably qualified persons to assist with its work; and
- (f) To delegate, in writing, to a member or members of staff the day to day management of the Commission.

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

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

- (a) Prepare and provide to the Minister, at least once a year, a forward plan of the Commission's work;
- (b) Provide to the Minister, and publish, reports prepared by it in response to terms of reference approved by the Minister; and
- (c) Provide an annual report to the Minister on the Commission's operations and expenditure.

(2) Where the Commission provides to the Minister a report, the Minister shall lay a copy of the report before the Legislative Assembly as soon as practicable after receipt of the report.

(3) The Minister may at any time:

- (a) Require the Commission to examine any aspect of the laws of Samoa and the Commission shall review the law accordingly and report to the Minister with its recommendations;
- (b) Give the Commission directions about the order in which it is to deal with references.

10. Membership-(1) The Commission shall consist of the Law Reform Commissioner.

(2) The Commissioner shall be the chief executive and shall supervise and direct the work of the Commission.

11. Law Reform Commissioner-(1) The Law Reform Commissioner shall be appointed by the Executive Council on the advice of the Law Reform Appointment Council.

(2) The Commissioner shall be a person who:

- (a) Holds a recognized law degree;
- (b) Has at least eight years experience as a barrister and/or solicitor or in other legal work; and
- (c) Has the personal and professional qualities for eligibility for appointment to judicial office; and
- (d) Meets any further skill and character requirements prescribed by the Executive Council on the advice of the Law Reform Appointment Council.

(3) The position of Commissioner shall be advertised before any appointment or reappointment is made.

(4) The Commissioner's appointment shall be for a term of up to five years, the terms and conditions to be fixed by the Executive Council on the advice of the Law Reform Appointment Council.

(5) The Commissioner shall be eligible for one further term of appointment of up to five years, the terms and conditions to be fixed in accordance with subsection (4).

12. Law Reform Appointment Council-(1) There is established the Law Reform Appointment Council.

(2) The Law Reform Appointment Council shall have the same membership and procedures as apply to the Judicial Service Commission under Article 72(1) and (2) of the Constitution.

(3) The Executive Council and the Law Reform Appointment Council shall have the power to do everything necessary or convenient to be done for, or in connection with, the performance of their respective functions under this Act.

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

(2) The Commissioner shall convene at least four meetings of the Advisory Board each year.

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

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

(i) the Attorney-General;

(ii) the Secretary of Internal Affairs;

(iii) the Secretary of Justice;

(iv) the Secretary of Women's Affairs;

(v) the Commissioner of Police, Prisons and Fire Services;

(vi) the President of the Samoa Law Society, or nominee from time to time; and

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

(viii) the President of the National Council of Churches, or nominee from time to time; and

(ix) the President of the Public Service Association, or nominee from time to time.

(b) Four members appointed by the Head of State, on the advice of the Minister of Justice (after consultation with the Minister of Internal Affairs and Women's Affairs), who are able to represent community interests by reason of their -

(i) active representation of non-governmental organizations;

(ii) understanding of an interest in the work of the Commission; and

(iii) ability to contribute to the work of the Commission.

(4) Each member appointed under section 13(3)(b):

(a) Shall be appointed for a term of up to three years and shall be eligible for reappointment;

(b) May at any time resign his or her appointment by notice in writing to the Head of State; and

(c) May at any time be removed from his or her appointment by the Executive Council, acting on the advice of the Law Reform Appointment Council, for disability, bankruptcy, neglect of duty, or misconduct.

14. Vacation of Office of Law Reform Commissioner-

(1) The Commissioner may at any time be removed from office by the Executive Council, acting on the advice of the Law Reform Appointment Council, for disability, bankruptcy, neglect of duty, or misconduct.

(2) The Commissioner may at any time resign the office of Commissioner by notice in writing to the Head of State.

15. Salary and Allowances of Law Reform Commissioner-(1) Subject to section 16 the salary, allowances and benefits for the position of Commissioner shall be fixed at 80% of the salary, allowances and benefits paid to the Chief Justice of the Supreme Court of Samoa.

(2) The salary, allowances and benefits of the Commissioner shall not be reduced during his or her period of office unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

16. Appointment of Judge as Commissioner-(1) Subject to subsection (2) of this section, in the event that a judicial officer is appointed Commissioner, that appointment shall not

affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's services as Commissioner shall be taken to be service as a Judge.

(2) If at any time the salary and allowances fixed for the position of Commissioner are higher than those of any Judge who is appointed Commissioner, that Judge shall receive, during his or her term of office as Commissioner, the salary and allowances fixed for the position of Commissioner.

17. Payment of Advisory Board Members – The members of the Advisory Board may be paid such fees and allowances as prescribed by Cabinet.

18. Staff of Law Reform Commission-(1) Subject to the provisions of this section, the Commissioner may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as the Commissioner thinks necessary for the efficient carrying out of the Commission's functions, powers and responsibilities under this Act or any other enactment.

(2) Subject to the Commission's terms and conditions of employment, the Commissioner may at any time terminate or suspend the employment of any of the Commission's officers or employees.

(3) The number of officers and employees who may be appointed under subsection (1) of this section, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister.

(4) Officers and employees appointed under subsection (1) of this section, shall be employed on such terms and conditions as the Commissioner from time to time determines.

19. Appointment of Public Servants-(1) Notwithstanding any provision of the Public Service Act 1977 or any other Act a public servant may be appointed as Commissioner, officer or

employee of the Commission and upon completion of his or her appointment with the Commission shall be entitled to return to the Public Service without loss of salary, allowances, payments, benefits (including those in relation to a pension or superannuation), seniority or rank.

(2) Subject to this Act a public servant appointed as Commissioner, officer or employee of the Commission shall not be subject to the direction or control of the Minister of any Department, the Public Service Commission or Permanent Head of a Department during the period of his or her appointment with the Commission.

(3) Subject to this section and in the event that a public servant is appointed Commissioner or as an officer or employee of the Commission that appointment shall not affect his or her employment as a public servant or his or her rights and privileges as a public servant and for all purposes service as Commissioner, officer or employee shall be taken to be service as a public servant.

(4) During the period of appointment as Commissioner, officer or employee of the Commission a public servant shall only be entitled to receive the salary, allowances, payments and benefits provided under this Act and shall not be entitled to receive any salary, allowance or other payment by virtue of his or her status as a public servant.

(5) Nothing in this section shall be taken to limit or exclude a public servant from any entitlement which he or she may have to a pension or superannuation.

(6) Nothing in this section shall limit the Public Service Commission or a Permanent Head exercising their normal managerial and budgetary responsibilities where a public servant returns to the Public Service following a period of service with the Commission.

20. Superannuation or retiring allowance-(1) There may from time to time be paid sums by way of contributions or subsidies to any Fund or Scheme approved by the Executive Council for the purpose of providing superannuation or retiring allowances for the Commissioner and any officer or employee appointed under this Act.

(2) Where a Fund or Scheme is approved by the Executive Council under this section the governing legislation for such Fund or Scheme is amended accordingly to provide for the Commission to be an employer and the Commissioner and any officer and any employee to be employee.

21. Protection from civil actions-(1) An action or other proceedings for damages does not lie against the Commission in relation to anything done, or not done in good faith:

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

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

22. Money to be appropriated by Legislative Assembly for purposes of this Act - All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money appropriated by the Legislative Assembly for the purpose.

23. Fund of the Commission-(1) The funds of the Commission shall consist of:

- (a) Any money appropriated by the Legislative Assembly for the purposes of the Commission and paid to the Commission for the purposes of the Commission;
- (b) All other money lawfully received by the Commission for the purposes of the Commission;
- (c) All accumulations of income derived from any such money.

(2) The funds of the Commission shall be administered in accordance with the provisions of the Public Finance Management Act 2001.

(3) For the purposes of the Public Finance Management Act 2001 the Commission shall be regarded as a Department.

24. Jurisdiction of Komesina o Sulufaiga (Ombudsman) over the Commission -

Part II: Other Organisations of the Schedule to the Komesina o Sulufaiga (Ombudsman) Act 1988 is amended by the addition of the words “the Law Reform Commission” immediately below the words “the Land Board”.

25. Power to make regulations – The Head of State acting on the advice of Cabinet may from time to time make regulations prescribing matters:

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