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Authors: Gracelyn Tasso, Charlie Mangawai, Powrie Vire, and Nadya Robert

Editors: Gracelyn Tasso, Charlie Mangawai, Powrie Vire and Nadya Robert

Design and layout: Nadya Robert

Printing:

For further information and request for copies, contact:

Vanuatu Law Commission  
Top Floor, Melitco House  
PO Box 3380, Port Vila, Vanuatu  
Tel: +678 33 620  
Email: [lawcommission@vanuatu.gov.vu](mailto:lawcommission@vanuatu.gov.vu)

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## **Vanuatu Law Commission (VLC)**

Mary Grace Nari (Chairlady)- Nari Lawyers  
Joe Kalo (Member)- Department of Youth and Sports  
Christopher Tavoia (Member)- State Law Office  
Kiel Loughman (Member)- Loughman & Associates Lawyers  
Chief Meameadola (Member)- National Council of Chiefs (Malvatumauri)

## **Others:**

The staff and Heads of Departments in some of the Government departments, non-governmental organizations and statutory bodies as listed in Appendix 1.

## **Vanuatu Law Commission Team:**

Bertha Pakoasongi (Secretary), Gracelyn Tasso (Legal Researcher), Charlie Mangawai (Legal Researcher), Nadya Robert (Senior Legal Researcher), Powrie Vire (Senior Legal Researcher) and Lessy Joel Tavala (Administrative Assistant).

# FOREWORD

The *Law Commission Act* [Cap 115] came into force in 30 July 1980. However the Vanuatu Law Commission (VLC) Office was only set up in 2011, with the current Secretary as its first staff. Since then, the office has slowly grown with the appointment of additional staff and relocation of **office to a bigger and more neutral space. The Vanuatu Law Commission's** primary functions are to:

- (a) Remove anachronisms and anomalies; and
- (b) Reflect within the laws and distinct concepts of custom, the common and civil law legal systems and also reconcile where appropriate differences which may occur between the afore mentioned concepts; and
- (c) Develop new approaches to new concepts of the law whilst taking into account the responsive changing needs of Vanuatu society, and of groups within the society as well as individual members of that society.<sup>1</sup>

To date, the VLC has been involved in reviewing the *Public Health Act*, *Dangerous Drugs Act*, *Water Resource Management Act*, *Water Supply Act*, *Penal Code*, *Civil Status Act* and *Marriage Act*. With the exception of the *Penal Code* review, reports have been published, distributed to respective institutions and recommendations within these reports have been taken into account when amending these laws.

On 28 January 2014, during one of its meetings, the members of the Law Commission expressed the need for the *Law Commission Act* to be reviewed. The reasons provided for this were mainly that the current Act was unsatisfactory, as it was too general and vague especially as to what powers the Commission had among other reasons.

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<sup>1</sup> Section 7, *Law Commission Act* [Cap 115].

An issues paper was formulated, highlighting the issues that were found within the current *Law Commission Act* and questions were raised within this issues paper about what could be done with these issues and what measures were best to address these issues. The main areas that were highlighted in need of addressing were with regards to centralising all legislative review under the VLC office, the functions and powers of the VLC members and the Secretary and her services in relation to the Commission.

Due to the fact that the VLC office is a fairly new office that was just established in 2011, consultations were carried just within Port Vila with all the relevant stakeholders. From these consultations, the Law Commission has finalised its report with the hope that the results and recommendations clearly reflect the views of those whom participated in the reform process. Where there was a conflict of opinion or view, the VLC has tried its best to find a neutral and balance view that would be suitable for those concerned.

Powrie Vire  
Acting Secretary of the Law Commission

# ABBREVIATIONS

ALAC	Advocacy and Legal Advice Centre
DCO	Development Committee of Officials
LRC	Law Reform Commission
NSW	New South Wales
SRBJ	Stretem Rod Blong Jastis
PNG	Papua New Guinea
PSC	Public Service Commission
VLC	Vanuatu Law Commission
VLS	Vanuatu Law Society

In 2015, the Vanuatu Law Commission took the initiative to review its governing legislation, the *Law Commission Act*. This followed several

annual meetings that the Commission members had held, where it was expressed that the Act needed reviewing.

Due to the fact that the VLC office is a fairly new office that was just established in 2011, consultations only took place in Port Vila with all the concerned stakeholders. The main messages to the VLC were that the Act needed to be redefined and restructured with regards to some of the terms used, the processes that were being followed and the functions and powers of the Commission.

With the consultation, there was wide support that the current name of the office is confusing as people do not really know the purpose or work of the office and it should be changed along with some of the terms that are not defined within the Act. The VLC recommends that along with providing definitions for the terms that have yet to be defined, the current name of the VLC office should be changed **to the 'Law Reform Commission'**.

It was also found during the consultations that a lot of people felt that the current process in which the Commission members were appointed needed to be changed to allow more transparency and accountability, instead of allowing just the Minister of Justice and Community Services have full power to appoint. The VLC recommends that it should be made compulsory for the Minister to consult with the relevant bodies and the Director General before making a selection.

**Many also spoke of the need to have the Secretary's services** to be better defined. Currently, the *Law Commission Act* provides that the Secretary is to be appointed by the Minister on the recommendation of the Commission. Furthermore, the functions of the Secretary are also stated in the Act but at **times, there is often confusion between the Secretary's role and the Commission's role.** The VLC recommends that the functions of the Secretary be better redefined and for a proper organizational structure to be established within the VLC with regards to its Commission members, the Secretary and the Law Reform Commission Staff.

A lot of people also felt that the procedures concerning the meetings carried out by the Commission should be better

established, especially with regards to the absence of the Chairperson during meetings. Currently, the Act provides that the Commission should meet at least 6 times a year but it does not say what is to happen if the Chairperson was absent. The VLC recommends that a Deputy Chairperson should be elected by the Commission members in the absence of the Chairperson.

Many people were of the view that there was lack of control over law reform issues within Vanuatu. This often results in duplication of work and waste of resources and finance. The VLC is the only office that is mandated by law to carry out legislative reviews and provide recommendations for law reform. The VLC recommends that all law reform issues must be centralized with the VLC and any office wanting to carry out their own independent review must get approval from the VLC office.

Consultations also showed that the people wanted the current Act to be changed so that the functions and powers of the Commission are better defined and structured. As stated earlier, there is often confusion between **the Commission's role and the Secretary's role which leads to uncertainty** in the running of the institution. Furthermore, the provisions that provide **for the Commission's role and functions in the Act are placed all over the Act** which makes it hard for people to follow. The VLC recommends that **there should be a clear distinction between the Secretary's role and the Commission's role and that the functions and powers of the Commission should be set out clearly under only two separate sections** so as to make it easier for the Commission as well as the general public to follow.

One major area of contention that the majority of the people felt needed to **be dealt with was with regards to the Commission's part in commenting on Government and private member's bills that go before Parliament**. While the Act mandates the Commission to provide for comments, there is no proper procedure and format that has been set up for the Commission to follow. Furthermore, the Departments or Private Member sponsoring a Bill **are not obligated to follow the Commission's comments or respond to these comments**. Some people felt that the process of making Bills should be left at the Executive level and that the Commission should not interfere with this while many felt that the Commission should keep this provision as there needed to be a mechanism in place to check the contents of the Bill before it is passed by Parliament and becomes law. The VLC recommends that the VLC is to comment on Bills only if requested by the Speaker of Parliament, Office of the Clerk of Parliament or the Department or Ministry sponsoring the Bill.



The Minister of Justice is also responsible for making regulations under the Act. However a lot people were of the view that it would be better if the Minister was to consult the Commission prior to making these regulations. Thus the VLC recommends that the Minister should consult with the Commission before making these regulations.

It was also felt by the majority of the people that the work and staff of the VLC office should be protected when carrying out their work. Currently there is no protection clause in the Act which leaves the staff and their work in relation to law reform open to law suits by people or departments who are not happy or disagree with the work. To avoid fear in carrying out their work properly, the VLC recommends that a protection clause should be inserted into the Act to protect the staff and their work.

Other recommendations include the making and submission of the VLC annual reports. Currently, even though the Act provides that annual reports should be submitted by the Commission three months after the end of the annual year, it is silent on who is to write up these reports and the format that is to be used. The VLC recommends that the Secretary is to prepare these annual reports and the Commission is to go through it before endorsing it and then formally hand it over to the Minister for the Justice and Community Services.

Overall, this report contains detailed recommendations for the amending of the *Law Commission Act*.

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“In order for us to really understand how law reform came about in Vanuatu, we would need to really understand the origins of law in Vanuatu and how it came about.”<sup>2</sup>

Prior to Independence on 30 July 1980, Vanuatu had been jointly governed as a condominium by Britain and France. The British and French laws applied in the country and both British and French nationals opted to be subject under those laws. All other residents and indigenous people were governed by the joint laws and regulations made by the British and French Resident Commissioners and these were **known as the joint laws. Overall, Vanuatu’s** legal system is a common law system that consists of the French and British law that was applicable prior to independence and legislation and case law that has evolved in Vanuatu since 1980. The Constitution also recognises customary law.<sup>3</sup>

At the time these laws were adopted in Vanuatu, a number of them were already out-dated in their original jurisdiction and since then, have been amended or replaced in their original jurisdiction. Due to the fact that Vanuatu, along with most of the other island countries within the South Pacific region, has chosen to stop using these laws has prevented legislative reforms on these particular Acts applying in Vanuatu. This eventually led to the Council of Ministers endorsing the need to constitute the Law Commission in 2007, to ensure that a dedicated body is constantly reviewing and recommending changes to the laws to ensure that Vanuatu is responding to social and economic issues, expanding access to justice and addressing new international standards and obligations.<sup>4</sup>

In 2011, the office of the Law Commission was established and located in the same building as the Ministry of Justice and Community Services. The first staff member was the

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<sup>2</sup> Ishmael Kalsakau (Attorney General of Vanuatu), Thursday 11 September 2008, ‘The Birth and Rebirth of Law Reform Agencies: The Establishment of Vanuatu’s Law Reform Commission’ *Australia Law Reform Agencies Conference*

[http://www.paclii.org/other/conferences/2008/ALRAC/Papers/Session%202/Session%202%20\(Kalsakau\).pdf](http://www.paclii.org/other/conferences/2008/ALRAC/Papers/Session%202/Session%202%20(Kalsakau).pdf) (Accessed 22/7/2015).

<sup>3</sup> *Ibid*.

<sup>4</sup> *Ibid*.

current Secretary and as of this year, it currently has 5 more staff. Since the establishment of the VLC in 2011, it has undergone two reviews, the first being in 2011 and then again in 2012. There were some reservations with the 2011 amendments and so whilst it has been assented to by the President, these changes have not been Gazetted. The amendments made in 2012 focused mainly on the membership of the Law Commission, the powers and functions of the Secretary along with that of the Law Commission itself and other minor factors such as commenting on Bills and a transitional phase.

Since these changes were made in 2013, the Law Commission felt that it was timely to review this important piece of legislation and this is the purpose of this report. Issues relevant to this Act will be identified along with key areas that require improvement. The report will identify the limitations in the current law in this regard and further provide recommendations for possible and practical changes.

Discussions within the report will be structured under specific headings and in a format so as to address the following limitations and the issues under each of the following headings:

- Terms and Definitions
- Membership of the Commission
- Secretary, Services and Staff
- Meetings
- Centralising Law Reform with VLC and Revenue Collection
- Functions and Powers of the Law Commission
- Comments on Bills
- Regulations
- Protection for the VLC Office and Work
- Annual Reports
- Other Laws

Consultations were carried out just within Port Vila with all the relevant **stakeholders. This report considers Vanuatu's obligations internationally** and nationally and the recommendations made are based on findings from all the stakeholders that were consulted.

## **TERMS AND DEFINITIONS**

The idea of law reform and the establishment of an office or body representing this idea were first established in England and Scotland, with the Law Commission of England and Wales and the Scottish Law Commissions being formed in June 1965. These commissions were the first permanent, institutional law reform bodies staffed by fulltime commissioners and supported by fulltime research and administrative staff. <sup>5</sup>It was recognised at that time that government resources could not achieve comprehensive law reform and recognised the importance of law reform being conducted independently of the political agenda of the government of the day.<sup>6</sup>

The establishment of these first Law Reform Commissions led to the eventual establishment of other Law Reform Commissions in other countries and most importantly in the South Pacific region. Australia took the first steps in establishing the first Law Reform Commission within the South Pacific region with the establishment of the New South Wales Law Reform Commission.<sup>7</sup>Other states and territories within Australia soon followed.<sup>8</sup>

Papua New Guinea, Samoa and Fiji soon followed and formed their own law reform agencies. In the Solomon Islands, the Law Reform Commission was established in 1995 but after its first Chairman departed in 1998, the Commission became dormant. It was revived again in 2005 and since then has been functioning to this date.<sup>9</sup> Vanuatu soon followed in their steps by establishing the Vanuatu Law Commission in 2011.

The functions of all the law reform agencies within the South Pacific are similar in that its main task is to take and keep under review all the laws within its country. Each

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<sup>5</sup> Neil Rees 2008 'The Birth and Rebirth of Law Reform Agencies' *Australasian Law Reform Agencies Conference 2008* [http://www.lawreform.vic.gov.au/sites/default/files/ALRAC%2BPaper%2B\\_NeilRees.pdf](http://www.lawreform.vic.gov.au/sites/default/files/ALRAC%2BPaper%2B_NeilRees.pdf) (Accessed 23/7/2015).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Solomon Islands Law Reform Commission (2007) 'The Commission's History' <http://www.lawreform.gov.sb/index.php/about-us/commissions-history> (Accessed 3/8/2015).

country has its own Act establishing its law reform agency and its functions. The only difference between the other South Pacific law reform agencies and the Vanuatu Law Commission is in the name. While the other countries **have the term 'Reform' as part of the office's title, Vanuatu does not.** This has caused confusion as there is often a mistake made between the Vanuatu Law Society and the Vanuatu Law Commission.

## WHAT PEOPLE SAID

### *Name of office should be changed to reflect the work of the office*

- *During the consultation, everyone was of the view that the name of the office should be changed from 'Vanuatu Law Commission' to 'Vanuatu Law Reform Commission'. This is so that it can reflect the work that is carried out by the VLC office.*
- *All the other law reform agencies in the South Pacific region that carry out a similar work to that of VLC, has 'reform' as its office heading or title, so Vanuatu should follow in their lead.*
- *The name should also be changed so as to avoid the office being confused from the Vanuatu Law Society so as to give the public a better understanding of the office work and purpose.*

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## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the Vanuatu Law Commission should change its title or heading to **'Vanuatu Law Reform Commission'**.
2. That this change should be reflected in the title of the *Law Commission Act* and also in the Interpretation section of the Act.

## **MEMBERSHIP OF THE LAW COMMISSION**

In the old *Law Commission Act*, section 3 generally provided that the Commission shall consist of a Chairman and four other members. With the amendments that were made in 2012 to the Act, this provision was expanded and detailed to provide that members of the Commission must consist of a legal officer from the State Law Office, 2 unconditionally registered legal practitioners, a representative from the National Council of Chiefs and another representative from the National Council of Youths. It also makes reference that at least one of the unconditionally registered legal practitioners must be female. Section 4 provides for the circumstances with which a Commission member may be removed or may resign from the Commission. In both situations, the Minister of Justice has full power to appoint and remove the Commission members.<sup>10</sup>

The appointment of the Commission members within other law reform agencies within the South Pacific region differs. In Samoa, section 13 of its *Law Reform Commission Act* provides that any appointment of Commissioners or Consultants must be provided by the Advisory Board. Section 12 provides for the composition of this Advisory Board, which includes Ministers from different sectors and Presidents and leaders of other organizations.<sup>11</sup>In the Solomon Islands, its *Law Reform Commission Act* states that the Chairman of the Commission shall be appointed by the Judicial and Legal Service Commission on the recommendation of the Minister.<sup>12</sup>However with the other Commission members, similarly to Vanuatu, the Minister has full power to appoint them.<sup>13</sup>

A similar approach to the selection of Commission member within these different South Pacific countries can also be

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<sup>10</sup> *Law Commission Act* [Cap 115] (Vanuatu).

<sup>11</sup> *Law Reform Commission Act 2008* (Samoa) [http://www.paclii.org/cgi-bin/sinodisp/ws/legis/WS-consol\\_act\\_2012/lrca2008242/lrca2008242.html?stem=&synonyms=&query=law%20and%20reform%20and%20commission](http://www.paclii.org/cgi-bin/sinodisp/ws/legis/WS-consol_act_2012/lrca2008242/lrca2008242.html?stem=&synonyms=&query=law%20and%20reform%20and%20commission) (Accessed 8/6/2015).

<sup>12</sup> *Law Reform Commission Act* [Cap 15] (Solomon Islands) [http://www.paclii.org/cgi-bin/sinodisp/sb/legis/consol\\_act/lrca242/lrca242.html?stem=&synonyms=&query=law%20and%20reform%20and%20commission](http://www.paclii.org/cgi-bin/sinodisp/sb/legis/consol_act/lrca242/lrca242.html?stem=&synonyms=&query=law%20and%20reform%20and%20commission) (Accessed 8/6/2015).

<sup>13</sup> *Ibid.*



found in Papua New Guinea (PNG). The PNG *Constitutional and Law Reform Commission Act 2004* states that while all other members of the Commission are to be appointed by the Minister, the Chairman is to be appointed by the Head of State acting on the advice of the Prime Minister. The Chairman is also to be a full time member of the Commission. In addition, the members of the Commission also get to elect a Deputy Chairman amongst their own number.<sup>14</sup>

While most of the law reform agencies have an appointment and removal provision in their Acts with regards to the Commission members, there is no mention of what is to happen should a Commission member be removed or resign from their position as a Commission member prior to the end of their term. This includes Vanuatu as well. In Australia, section 14 of the *Australia Law Reform Commission Act* provides that the Attorney-General may appoint a part-time member to act as a full-time member when the full-time member is unable to perform the functions of the office. Section 13 is similar, providing for situations where there is a vacancy in office, but is applicable only to the President and Deputy President of the Australia Law Reform Commission.<sup>15</sup>

## WHAT PEOPLE SAID

### *Minister should not have sole power to appoint Commission members*

- *The majority of the stakeholders felt that while it was proper for the Minister to have power to appoint the members of the Commission including the Chairman, they felt it would be better if there was a body or another person that would be consulted for transparency and accountability.*
- *Most people pointed out that while advisory boards may be an option, there are often difficulties faced with this option as it is often hard to get the members together on a regular basis for meetings.*
- *It was also felt by some that it would be best if it was made compulsory for the Minister to have to consult with another person or*

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<sup>14</sup> *Constitutional and Law Reform Commission Act 2004* (Papua New Guinea)  
[http://www.paclii.org/pg/legis/consol\\_act/calrca2004436/](http://www.paclii.org/pg/legis/consol_act/calrca2004436/) (Accessed 28/7/2015).

<sup>15</sup> *Australian Law Reform Commission Act 1996* (Australia)  
[http://www.austlii.edu.au/au/legis/cth/num\\_act/alrca1996348/s3.html](http://www.austlii.edu.au/au/legis/cth/num_act/alrca1996348/s3.html) (Accessed 17/6/2015).

*body, prior to making a final decision as to who the Commission members would be.*

- *Since the Act already provides the bodies from which the Commission members are to be selected from, it was felt that it would be best if the Minister were to consult with them before making a selection.*
- *The majority of the people consulted also felt that the Minister should consult with the Director-General of the Ministry of Justice and Community Services before appointing the members of the Commission.*

### **Vacancy of a Commission member's seat**

- *The general consensus with the stakeholders that were consulted was that there should be a provision that deals with the vacancy of a Commission member's seat rather than just leaving it open.*
- *Whether a Commission member vacates his seat temporarily or on a permanent basis, the same procedures that were used to appoint a Commission member in the first place should be used again to appoint a person replacing a Commission member.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

3. That a provision should be inserted into the Act making it compulsory for the Minister to consult with the relevant bodies that are stated in the *Law Commission Act* before making a selection.
4. That the Minister must also consult with the Director General of the Ministry of Justice and Community Services before appointing the Commission members.
5. That there should be a provision inserted to provide for situations **where Commission member's seat becomes vacant due to either** that Commission member being removed or resigning from his position.

# CHAPTER THREE

## **SECRETARY, SERVICES AND STAFF**

Vanuatu Law Commission has a similar organizational structure to that of other Law Reform agencies both regionally and internationally. The composition of some of these agencies are more complex than others and terms used vary but all seemed to serve a similar purpose. Justice Michael Kirby somewhat exceptionally highlighted in his speech with regards to institutional law reforms which was trying to maintain the order and predictability in the law whilst making sure that it (law) constantly evolves, changes and adapts to new times<sup>16</sup>.

Within these Law Reform agencies there is a Chairman and Commission members appointed in these respectable positions with specified period terms outlined within each Acts as is the approach taken in Vanuatu. The basic structural composition of these Law Reform Agencies comprises of a Chairman and Commission members and an Executive Officer also known as the Secretary of the Law Reform Commission.

**PNG has a similar structure to that of Vanuatu's, although it's Constitutional and Law Reform Commission comprises of six prominent citizens with various backgrounds<sup>17</sup>.** The candidates whom make up the Commission come from respectable backgrounds with ample qualifications. The Constitutional and Law Reform Commission is headed by a Chairman<sup>18</sup> and it also has a Secretary/Executive Officer<sup>19</sup>.

The primary functions of the Secretary as outlined in the *Constitutional and Law Reform Act* is to basically manage the affairs of the Commission upon the directions of the Commission, advise the Commission on matters concerning the affairs of the Commission, and if required by the Commission, prepare or obtain legal opinions and so

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<sup>16</sup> Justice MD Kirby, 'More Promises of Law Reform – an Antipodean Reflection' (Speech delivered at the Law Reform Commission of Ireland, Dublin, 17 July 2007) 33 [http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj\\_17jul07.pdf](http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_17jul07.pdf) (Accessed 4/8/2015).

<sup>17</sup> Subsection 3(3) of the *Constitutional and Law Reform Commission Act 2004*.

<sup>18</sup> Section 8 of the *Constitutional and Law Reform Commission Act 2004*.

<sup>19</sup> Section 17 of the *Constitutional and Law Reform Commission Act 2004*.

forth<sup>20</sup>. The functions of the Secretary are explicitly outlined within the *Constitutional and Law Reform Act*.

**Furthermore PNG's Act also provides for instances whereby a Secretary's** appointment may be automatically terminated<sup>21</sup>. By way of example some of the instances which may warrant the Secretary vacating the office are if the Head of State of PNG acting on the advice terminates the appointment of the Secretary due to inability, inefficiency, incapacity or misbehavior. Some other reasons could be if the Secretary engages in any outside employment without the consent of the Head of State or becomes permanently incapable of performing his duties<sup>22</sup>.

Solomon Islands, like Vanuatu, establish a Secretary under its respective Act<sup>23</sup>. However, the Secretary is appointed by the Public Service Commission of Solomon Islands and is known as the Executive Officer. The **Secretary's terms and condition of appointment and services are specified** in the instrument of appointment<sup>24</sup>. The Solomon Islands Law Reform Commission also consists of a Chairman as well four other Commission Members<sup>25</sup>.

Within these Law Reform Commissions a provision in each respective Acts also caters for its staff and some state that the staffs of the Law Reform Commissions are to be Public Servants like in PNG<sup>26</sup> and Solomon Islands<sup>27</sup>. **Although Vanuatu's Act simply states that the Commission may appoint** other staff of the Office for the proper performance of the functions of the Commission<sup>28</sup>.

## WHAT PEOPLE SAID

### *Appointment of the Secretary*

- *The appointment of the Secretary must be done in such a way so as to avoid political interference and the appointment must be transparent.*

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<sup>20</sup> Section 20 of the *Constitutional and Law Reform Commission Act 2004*.

<sup>21</sup> Section 18 of the *Constitutional and Law Reform Commission Act 2004*.

<sup>22</sup> *Ibid.*

<sup>23</sup> Section 7 of the *Law Reform Commission [CAP 15]* (Solomon Islands).

<sup>24</sup> *Ibid.*

<sup>25</sup> Subsection 3 (2) of the *Law Reform Commission [CAP 15]* (Solomon Islands).

<sup>26</sup> Section 21 of the *Constitutional and Law Reform Commission Act 2004*.

<sup>27</sup> Section 8 of the *Law Reform Commission [CAP 15]* (Solomon Islands).

<sup>28</sup> Section 5A of the *Law Commission (Amendment) Act NO.24 of 2012* (Vanuatu).

- *The structure should be clearly defined so as to clearly define the functions of the Secretary and the Commission.*
- *The post of Secretary should be a public servant same as the staff but having the post of Secretary as a public servant would mean the post would be open ended. Again this could also open up political interferences.*
- *However there was a different view given by some others whom were consulted and they stated that if the post of the Secretary was to go under the PSC her post would be on a contractual basis just like the Director Generals of different Ministries. They would only go under the PSC on a temporary basis until VLC establishes their structure properly.*
- *Majority of those that were consulted opposed the idea of doing away with the position of Secretary, as most felt the Chairman taking on such a role would be overwhelming thus the administrative duties of the Law Commission should be left with the Secretary.*

### *Functions of the Secretary*

- *The functions of the Secretary should be clearly redefined so as to avoid any clashes between the functions of the Secretary and the Commission.*
- *The Secretary is answerable to the Commission and the functions should be similar to that of the Public Service Commission Secretary.*
- *The Vanuatu Law Commission is to have the last say in any decision making regarding the Vanuatu Law Commission.*
- *The functions of the Secretary should be limited to administration matters, but any additional functions must be made subject to the **board's approval. Although the Secretary may seek advice from the Attorney- General if the matter is urgent.***
- *The Secretary must have other qualifications other than a law degree such as a **master's degree in either public policy or public administration** and must have extensive experience and be able to stimulate constructive discussion.*

### *Provision warranting the removal of the Secretary from office*

- *There was a general consensus from the populace consulted that there should be a provision which details instances which may warrant for the removal of the Secretary from office.*
- *The Secretary may be removed from office for instances such as lack of performance with regards to his or her duty.*

### **Provision to cater for temporary appointments of Secretary's position**

- *There should be a provision in the Act to cater for temporary appointments, during such times when the Secretary is away from office due to other commitments or for medical reasons.*
- *The provision should clearly state that the Commission should be the only appropriate body to make such part time appointments.*
- *The Secretary may make such temporary appointments prior to temporarily vacating the office but it must be upon the approval of the Commission and it must be endorsed.*

## RECOMMENDATION

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

6. That a section or part titled Staff shall cater for any provisions relating to the Secretary as well as the staff of the Law Reform Commission and all current sections or subsections currently existing under the *Law Commission Act* as well as the *Law Commission (Amendment) Act of 2012* to come under this new section/part.
7. That a section titled Appointment of Secretary to be inserted replacing the **current section 5 titled as 'Secretary of Commission' under the current *Law Commission (Amendment) Act of 2012***. The new section will have current subsections 5(1) (2) (3) as they appear in the *Law Commission (Amendment) Act of 2012*.
8. **Add a provision that states that the Secretary to have at least 2 years' experience in a managerial post prior to applying for the role of Secretary.**
9. That the functions of the Secretary be better redefined as there is no clear cut definition between the two distinctive roles of the Secretary and Commission. The provision is to clearly outline or is to establish a proper organizational structure within the Law Reform Commission of Vanuatu with regards to its Commission members, the Secretary and the Law Reform Commission Staff.
10. That a new provision be inserted into the Act to cater for any instances which may warrant the Secretary vacating the office.
11. That a provision to cater for temporary appointments which should explicitly allow for only the Law Reform Commission Board to be eligible to carry out such appointments.



## **MEETINGS**

*"A great strategy meeting is a meeting of minds."* (Max McKeown, *The Strategy Book*)

Strategic and proper planning of meetings coupled with open minded discussions and creative yet critical thinkers are a perfect combination to achieving progressive results.

Law Reform Agencies have mandated meetings outlined within their respective legislations. The *Law Commission Act* [CAP 115] of Vanuatu under section 6 states that the Commission is to meet not less than 6 times a year and the *Law Commission (Amendment) Act No. 24 of 2012* under subsection 6(2) states that the quorum at a meeting of the Commission is 3 members present at that meeting<sup>29</sup>. Subject to preceding subsections and any regulations made by the Minister, the Commission shall adopt and regulate its own procedures.

In Samoa the Law Reform Commission is empowered by the *Law Reform Commission Act 2008* and under subsection 12(2) it states that the Executive Director shall convene at least 4 meetings of the Advisory Board each year<sup>30</sup>.

In Australia under section 36 of the *Australian Law Reform Commission Act 1996* it states that the President must convene at least 2 meetings each financial year and any other meetings that the President thinks necessary for the efficient performance of the **Commission's functions. It is further** stated in the section that the President must convene a meeting on receiving a written request to do so signed by a majority of the other members and that the President must preside over all the meetings<sup>31</sup>. In the absence of the President, members present must elect any present to preside. Like Vanuatu a quorum constituted by a majority of members of the Commission must be met and that majority of votes of the members present and voting must be evident to decide on any matters which may arise in the meetings. Subsection 36(8) further states that the person presiding at

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<sup>29</sup> Subsection 6(2) of the *Law Commission (Amendment) Act NO.24 of 2012* (Vanuatu).

<sup>30</sup> Subsection 12(2) of the *Law Reform Commission Act 2008* (Samoa).

<sup>31</sup> Section 36 *Australia Law Reform Commission Act 1996*.

a meeting has a deliberative vote and, if there is an equality of votes, also has a casting vote.

By way of comparison Solomon Islands under clause (2) of the *Law Reform Commission Regulations*, which is a complimentary subsidiary legislation to the *Law Reform Commission Act [CAP 15]*, puts Solomon Island's on a rather different approach. It does not dictate nor state the number of mandatory meetings to be held in a year but rather generally states that the Commission shall meet from time to time at such places and times as the Chairman directs and that a quorum of 3 Commissioners are to be present before a meeting may commence<sup>32</sup>.

## WHAT PEOPLE SAID

### *Number of Meetings*

- *Majority of those consulted agreed that 6 meetings per year as stated in the Act is fine as it is.*
- *The Chairman/ Chairlady may call any necessary urgent meetings when appropriate.*

### *Absence of Chairman/Chairlady during meetings*

- *There should be a Deputy Chair so that if for any reason the Chairperson is absent the deputy may take over conducting meetings.*
- *If during meetings the Chairperson is present but wishes not to conduct a meeting he/she may allocate the duty to another board member.*
- *If no deputy present board members may elect someone to chair meeting in the absence of the Chairperson.*
- *A provision in the Act must cater for such instances.*

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<sup>32</sup> Clause 2 *Law Reform Commission Regulations* (Solomon Islands).

## RECOMMENDATION

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

12. That a new provision allowing the Chairperson of the Vanuatu Law Reform Commission be able to call for any meetings apart from the mandated six meetings provided for in the Act.
13. There should be provision stating that the Commission is to also elect one of the Commission members as a Deputy Chairperson.
14. That there should be a provision allowing board members to elect a board member to chair a meeting if for any reason the Chairperson or their Deputy Chairperson is unable to preside over the meetings.

## **CENTRALISING LAW REFORM ISSUES WITH THE VANUATU LAW COMMISSION- REVENUE COLLECTION**

Prior to the establishment of the Vanuatu Law Commission, any legislative review was often undertaken by the different Governmental Departments and Ministries with regards to their respective Acts. In most cases, foreign consultants were often contracted to carry out these legislative reviews. There have been instances where there has been a duplication of work on the same issues carried out by different Departments.

As discussed in the earlier chapters, the current mandate of the VLC is to review, recommend and reform the laws of Vanuatu. It is the only Government Department with the sole responsibility of reviewing and recommending changes for the laws of Vanuatu. However even after its establishment in 2011, there were still other Departments and Ministries that were still carrying out their own legislative reviews. This has led to the arising need for a central body to oversee law reform in order to maintain control over legislative reform and avoid duplication of work on the same issues being faced by Vanuatu.

Given its mandate, the VLC is in a better position to be responsible for all law reform issues and dealings within the country. Any reform on any law in Vanuatu must be directed to the office of the VLC **to obtain the Commission's approval. The Commission may then take on board the review or may approve and refer the proposed law for reform back to a private consultant of the institution's choice. Having this idea, any responsible departments or institutions can still review their own laws. This can be done only after seeking advice and approval from the central office. Given this situation, it is suggested that a fee is to be paid to the central office.**

It is also suggested that the requesting department or institution wishing for the Law Commission to carry out its review will solely be responsible for sponsoring that review. The department or institution will be responsible to fund the consultation phase of the review leading up to the printing of the **final reports with the VLC's recommendation for change.**

The Law Reform Commission Acts within the region are silent on the issue of centralising law reform together with the idea of having to pay a fee to the central body in the course of hiring a private consultant to carry out a review on any law(s). However, the New South Wales Law Reform Agency had taken the step in trying to work with the idea of centralising law reform issues with the hope to improve public access to information about law reform including information about opportunities to participate. In the paper on Law and Justice Foundation of NSW - By the people, for the people, it was stated that the volume of law reform activity, fragmented across different government departments and agencies, makes it difficult for stakeholders or the general public to monitor particular issues. Thus, **one of the central institution's functions is to develop and maintain an up-to-date centralized website which acts as a portal to coordinate and manage information about the range of law reform activities across the NSW government.**<sup>33</sup>

Centralising law reform also may help better manage law reform issues in a country as well as promotes or contribute to the idea of improving transparency, accountability and rigour of law-making practices.<sup>34</sup>

#### WHAT PEOPLE SAID

##### *Centralising Law Reform Issues with the Vanuatu Law Commission*

- *During the consultation, everyone was of the view that the Law Commission Act should cater for the idea to centralise all law reform issues and dealings with the office of the VLC to avoid future duplication of work and waste of resources.*
- *Most people felt that the idea to centralise law reform with the VLC will help control the issue of political interference in law reform within the country.*
- *There will be due diligence in every work done with regard to law reform in Vanuatu.*
- *A general consensus from the consultation showed that the idea to centralise law reform with Law Commission and how to better manage*

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<sup>33</sup> Law and Justice Foundation of NSW – By the people for the people, Community Participation in Law Reform (2010) <http://www.lawfoundation.net.au/ljf/app/F875F900C28C06A7CA2577F1001A98DC.html> (Accessed 5/8/2015).

<sup>34</sup> *Ibid.*

*law reform should and must be treated as an important function of the Law Commission.*

- *The idea to centralise law reform will uphold the integrity of VLC as an institution for Law Reform.*

### *Revenue Collection or Fee*

- *During the consultation, most of the people agreed to the idea of establishing a fee within the VLC for law reform in order to assume control over every law reform dealings within the country.*
- *The idea of establishing a fee with the Law Commission should be treated as a revenue collection of the institution.*
- *Some people felt that a standard fee should be set to cater for the idea of institutions or private individuals hiring private consultants to carry a review on any of our Vanuatu law(s).*
- *Others felt that a standard fee should be paid to the VLC for every review(s) regardless of whom (Law Commission or private consultant) to carry out the review.*
- *Some people during the consultation felt that the fee should not be a standard fee but must be charged in percentage (%) depending on the urgency of the review at hand, the amount of work needed to be done on each review and so forth. This should apply if the Law Commission or a private consultant is carrying out the review.*
- *Whilst agreeing to this idea, some people felt that if fees are to be paid to the VLC, then hiring of consultants to carry out a review on a particular law must be done and controlled by the VLC. The hiring of consultants will depend mainly on the need to hire, for instance an area of specialty that the Law Commission lacks or shortage of human resources within the Law Commission and so forth.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

15. That all law reform issues and dealing must be centralized with the office of the Vanuatu Law Commission and only the office of the Law Commission will have the power to regulate issues of law reform within Vanuatu.
16. That no government office, private institutions or private individuals shall have the right to carry out a review without the Law Commission's approval.
17. That one of the functions of the Law Commission is to make sure every request for proposed law for reform must have the approval of the Commission.
18. That the Law Commission shall be able to regulate and make sure that all reforms of our Vanuatu law(s) are made with due diligence.
19. That the Law Commission must uphold its integrity as the only law reform institution of Vanuatu.
20. That upon request for a review of any of our Vanuatu Law(s), a fee is to be paid to the Law Commission by the requesting department, institution or private individual.
21. That the fee should be treated as a revenue collection of the office of the Vanuatu Law Commission.
22. That the fee should be charged in percentage (%) depending on the amount of work needed to be done and the urgency of the work.

## **FUNCTIONS AND POWERS OF THE COMMISSION**

The functions of the Commission under the 2012 amendment Act is restricted and limited only to study and keep under review the laws of Vanuatu and to recommend for reforms<sup>35</sup>. The 2012 amendment of the *Law Commission Act* does not add **or delete any of the Commission's function stated under section 7 of the old Act**<sup>36</sup> (1980 Law Commission Act). However, in making sure the functions of the Commission are well carried out, provides additional functions to the Secretary.

Whilst the current Act acknowledges the functions of the Commission, it fails to provide the Commission with the power(s) to carry out those functions. The powers of the Commission were once provided for under the *Law Commission Act* [Cap 115] of 1980. However the 2012 amendment to the Act deleted the section<sup>37</sup> on power(s) of the Commission without substituting those power(s) in the Amended Act.

Sections 7 and 8 of the 1980 *Law Commission Act* clearly outlined the functions and powers of the board or the Commission. The functions and powers are limited only to law reform and only the Board or the Commission has exclusive power to make proposals to responsible Minister(s) for law reforms in Vanuatu. Both sections state that the functions of the Commission are to study and keep under review the laws of Vanuatu with a view to recommending reforms and that in carrying out its functions the Commission may:

(a) receive and consider any proposals for the reform of the law that may be made or referred to it by anybody or person including the Minister;

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<sup>35</sup> Subsections 7 (a-c) of the *Law Commission (Amendment) Act No. 24 of 2012* [http://www.paclii.org/cgi-bin/sinodisp/vu/legis/num\\_act/lca2012253/lca2012253.html?stem=&synonyms=&query=law%20and%20commission%20and%20act%20and%202012](http://www.paclii.org/cgi-bin/sinodisp/vu/legis/num_act/lca2012253/lca2012253.html?stem=&synonyms=&query=law%20and%20commission%20and%20act%20and%202012) (Accessed 3/8/2015).

<sup>36</sup> *Law Commission Act* [Cap 115] of Vanuatu [http://www.paclii.org/vu/legis/consol\\_act/lca173/](http://www.paclii.org/vu/legis/consol_act/lca173/) (Accessed 3/8/2015).

<sup>37</sup> Section 8 of the *Law Commission Act* [Cap 115] of Vanuatu [http://www.paclii.org/vu/legis/consol\\_act/lca173/](http://www.paclii.org/vu/legis/consol_act/lca173/) (Accessed 3/8/2015).



(b) on its own initiative carry out such studies and research of a legal nature as it may consider necessary for carrying out its functions including research relating to other legal systems;

(c) make proposals to the Minister for reforms in the law.<sup>38</sup>

The current situation with regard to the issue of limited functions and powers of the Board or the Commission raised a lot of uncertainty with regard to the running of the institution. For instance uncertainties with regard to issues of staff appointments and staff terminations, whether the Secretary or the Commission is responsible to seek legal advice from the **Attorney General's office when needed and so forth. There are also** uncertainties with regard to other administrative matters.

By way of comparison, section 7 of the Solomon Islands *Law Reform Commission Act*<sup>39</sup> and section 17 of the *Constitutional and Law Reform Commission Act 2004* of PNG<sup>40</sup>, the functions of the Secretary are limited only to administrative matters (Executive Officer). The Commission on the other hand has the overall power to oversee law reform and its surrounding issues and challenges. A similar provision is found through-out the region.

The *Law Reform Commission Act* of Mauritius has a similar provision with regards to functions of the Commission. However, one of its functions is to advise the Attorney General on ways in which the law of Mauritius can be made as understandable and accessible as is practicable.<sup>41</sup>

The Victorian *Law Reform Commission Act* also has a similar provision to that of the other countries mentioned above. However, one of its Commission functions that may be missing in the law reform Acts of other countries is to monitor and co-ordinate all law reform activities in Victoria as well as undertake educational programs on any area of the law relevant to a reference whether past or current.<sup>42</sup> This provision gives the Law

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<sup>38</sup> Section 7 and 8 of the *Law Commission Act* [Cap 115] of Vanuatu

[http://www.paclii.org/vu/legis/consol\\_act/lca173/](http://www.paclii.org/vu/legis/consol_act/lca173/) (Accessed 3/8/2015).

<sup>39</sup> Section 7 of the *Law Reform Commission Act* [Cap 15] of Solomon Islands

[http://www.paclii.org/sb/legis/consol\\_act/lrca242/](http://www.paclii.org/sb/legis/consol_act/lrca242/) (Accessed 3/8/2015).

<sup>40</sup> Section 17 of the *Constitutional and Law Reform Commission Act 2004* of Papua New Guinea

[http://www.paclii.org/pg/legis/consol\\_act/lrca1975242/](http://www.paclii.org/pg/legis/consol_act/lrca1975242/) (Accessed 3/8/2015).

<sup>41</sup> The Work of the Law Reform Commission of Mauritius September 2012 pg 4

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=7&ved=0CEMQFjAGahUKewirx46Rj47HAhVkf6YKHfrBAtA&url=http%3A%2F%2Firc.govmu.org%2FEnglish%2FDocuments%2FReform%2520Round%2520Up%2FOne%2520Booklet.pdf&ei=lwDAVeupNuSumAX6g4uADQ&usg=AFQjCNGIV-9eTmnmv4n4OjHrzwj05tDJlmw&sig2=LB9ELmDMP-SMlgDzhJnOgQ> (Accessed 4/8/2015).

<sup>42</sup> Subsection 5(1) (d)(e) of the *Victorian Law reform Commission Act* of 2000

[http://www.austlii.edu.au/au/legis/vic/consol\\_act/vlrca2000344/s5.html](http://www.austlii.edu.au/au/legis/vic/consol_act/vlrca2000344/s5.html) (Accessed 4/8/2015).

reform Commission of Victoria exclusive right over law reform activities in Victoria.

Also, the Fijian *Law Reform Commission Act* has similar provisions. However, subsection 5 (e) of the *Fiji Law Reform Commission Act* provides that the functions of the Commission shall be to take and keep under review all the laws applicable of Fiji with a view to its systematic development and reform including in particular the making of new laws for Fiji.<sup>43</sup> **Fiji's** legislation had broadened its scope not only to concentrate on reform but to also look into creating new laws for the Fiji people.

With regard to the power(s) of the Commission or Board, section 6 of the *Law Reform Commission Act* of Solomon Islands provides its Commission with the power to receive and consider proposal for reform, consult and provide advice to the government or other agencies on proposed law reform issues and undertake research and study programmes particularly in the field of customary law. Additional powers were also given to the Commission to use information, advice or assistance available to it from any source whether within or outside the government as well as 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.<sup>44</sup>

Similar provisions can be found in New Zealand<sup>45</sup> as well as in Papua New Guinea's (PNG) *Constitutional and Law Reform Commission Act*<sup>46</sup>. Section 7 of Samoa's *Law Reform Act* provides its Commission with a power to hire or otherwise obtain the services of suitably qualified persons to assist with the work of the Commission.<sup>47</sup>

The Law Reform Commission of Mauritius has similar powers to that of the Solomon Islands and other countries in the Pacific. However, one of the standing powers of their Commission provides that the Commission has the power to request any information from any government department, any

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<sup>43</sup> Subsection 5 (e) of the *Law Reform Commission Act* of Fiji  
[http://www.paclii.org/fj/legis/consol\\_act\\_OK/flrca272/](http://www.paclii.org/fj/legis/consol_act_OK/flrca272/) (Accessed 4/8/2015).

<sup>44</sup> Section 6 of the *Law Reform Commission Act* [Cap 15] of Solomon Islands  
[http://www.paclii.org/sb/legis/consol\\_act/lrca242/](http://www.paclii.org/sb/legis/consol_act/lrca242/) (Accessed 3/8/2015).

<sup>45</sup> Section 6 of the *Law Commission Act 1985* of New Zealand  
<http://www.legislation.govt.nz/act/public/1985/0151/latest/DLM87304.html> (Accessed 10/8/2015).

<sup>46</sup> Section 11 of the *Constitutional and Law Reform Commission Act 2004* of PNG  
[http://www.paclii.org/pg/legis/consol\\_act/calrca2004436/](http://www.paclii.org/pg/legis/consol_act/calrca2004436/) (Accessed 10/8/2015).

<sup>47</sup> Section 7 of the *Law Reform Commission Act 2008* of Samoa  
[http://www.paclii.org/ws/legis/consol\\_act/lrca2008242/](http://www.paclii.org/ws/legis/consol_act/lrca2008242/) (Accessed 3/8/2015).

organization or person in relation to the review, reform or development of any aspect of the law of Mauritius.<sup>48</sup>

Unlike the Law Reform Legislations in other countries mentioned above, subsection 6 (1) of the Victorian *Law Reform Commission Act* provides the Commission full power over issues surrounding law reform in Victoria. Subsection 6 (1) states that the Commission has the power to do all things necessary or convenient to be done for, or in connection with performing its functions.<sup>49</sup>

## WHAT PEOPLE SAID

*There should be a clear distinction between the functions and powers of the Commission and that of the Secretary*

- *During the consultation, everyone was of the view that there should be a clear distinction between the function(s) and power(s) of the Commission and that of the Secretary in order to avoid uncertainty in the running of the institution.*
- *Some felt that a clear distinction of function(s) and power(s) will provide a clear procedure for the Commission and the Secretary to follow for the betterment of the running of the VLC.*

*Functions of the Commission should expand and be spelled out clearly under one section within the Act*

- *A general consensus during the consultation showed that the function(s) of the Commission must be spelled out clearly under one section so it makes it easier for people to follow.*
- *Some people felt that the function(s) of the Commission should not only be concentrated on the issues of law reform but be expanded to cover other issues like appointments and terminations of staff and so forth.*

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<sup>48</sup> Information Booklet - The Work of the Law Reform Commission of Mauritius September 2012 pg 4  
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=7&ved=0CEMQFjAGahUKewirx46Rj47HAhVkf6YKHfrBAtA&url=http%3A%2F%2Flrc.govmu.org%2FEnglish%2FDocuments%2FReform%2520Round%2520Up%2FOne%2520Booklet.pdf&ei=lwDAVeupNuSumAX6g4uADQ&usg=AFQjCNGIV-9eTmrv4n4OjHrzwj05tDJlmw&sig2=LB9ELmDMP-SMlgDzhJn0gQ> (Accessed 4/8/2015).

<sup>49</sup> Section 6 of the *Law Reform Commission Act* of Victoria  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/vlrca2000344/s6.html](http://www.austlii.edu.au/au/legis/vic/consol_act/vlrca2000344/s6.html) (Accessed 4/8/2015).

- *Most people stressed that the Commission is to be the head and its responsibility covers the Secretariat as well as is answerable to the public on any given issue(s) with regard to law reforms.*
- *The Commission is to have full control over law reform issues or dealings in Vanuatu and is responsible to approve any review regarding any Vanuatu Laws.*
- *Every end product of the work from the office of the Secretariat to the Law Commission must be put forward to the Commission for endorsement before being made a public document.*
- *The Commission is to appraise the Secretary as well as the staff of the VLC.*
- *Some people felt that the function(s) of the Commission should be broadened to not only concentrate on law reform but to include making of new laws.*
- *The function(s) of the Board of the VLC should be made similar to that of the Board of the Public Service Commission.*

*The powers of the Commission must be restored and be spelled out clearly under one section within the Act*

- *Through-out the consultation most people felt that it is highly important to restore the power(s) of the Commission in the Act in order to assist the Commission in carrying out its work effectively and efficiently.*
- *Most people during the consultation felt that the power(s) of the Commission must be restored fully and be spelled out clearly under one section.*
- *The power(s) of the Commission should extend to include making of new laws within the country and to seek legal advice from the Attorney **General's office if need be.***
- *A general consensus from the consultation stressed the fact that the Commission must have the power to oversee all law reform issues as well as law reform dealings in Vanuatu in order to maintain control over law reform as well as sustain the integrity of the Law Commission office and to avoid duplication of resources and time spent in terms of review(s) of laws.*

- *The Commission should be given the power to approve request for reform particularly those that are happening outside of the office of Secretariat to the Law Commission.*
- *The Commission should have the overall power and the Secretary should report back to the Commission on any issues of concern happening within the office of the Secretariat.*
- *Some people felt that it is important for the Commission to have the power to request for any information from any institution or any private person in the course of law reform.*

## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

23. That there should be a clear distinction between the function(s) and power(s) of the Commission and that of the Secretary within the Law Commission Act so as to cater for better and clear work procedures.
24. That the function(s) and power(s) of the Commission must be spelled out clearly under only two separate sections under the heading **'function(s) of the Commission'** and **'power(s) of the Commission'** so as to make it easier for the Commission as well as the general public to follow.
25. That the function(s) and power(s) of the Commission within the current Act over the issue of the appointment should extend to cover the issue of termination of staff as well as staff and Secretarial appraisals.
26. That the function(s) and power(s) of the Commission should not only concentrate on law reform but to include making of new laws within the country. This can be done by better detailing or simplifying subsection 7 (c) of the current Act.
27. That the Commission should have the full control and power over all law reform issue(s) and dealing(s) in order to maintain control over law reform in Vanuatu. This is to avoid the issue of duplication of work as well as confusion amongst institutions to ascertain what procedures to follow and who to go to for law reform.
28. That the Commission should have the power to review all reference forms submitted to the Vanuatu Law Commission by respective institutions and to decide the priority(ies) of the Commission based on the references submitted before handing over the list of priority(ies) to the office of the Secretariat for implementation purposes.
29. That the Commission should have the power to endorse any product of the Law Commission before the said product becomes a public document.
30. That the function(s) and power(s) of the Commission should extend to include seeking advice from the Attorney General's office.

31. That the Commission should be given the power to approve any law reforms that are to happen outside the Vanuatu Law Commission office.
32. That the Commission shall be responsible to answer any query from the general Public on law reform issues in Vanuatu.
33. That the Secretary to the Law Commission must at all times report to the Commission on any pressing matters with regard to law reform within the country.
34. That the Commission must be given the power to request for any information from respective institutions or any private person in the course of law reform in Vanuatu.
35. That upon the request of the Commission, respective institutions are obligated to provide to the Commission any necessary information required by the Commission.

## **COMMENTING ON BILLS BEFORE PARLIAMENT**

The Law Commission is mandated by the *Law Commission Act* to comment on Government and Private Members Bills. Section 9A of the Amended Act of 2012 provides that the Ministry or Department sponsoring a Government Bill must provide a copy of the Bill prepared by the State Law Office to the Commission for its comments on the Bill. The Bill, after comments is to be submitted to the Council of Ministers for approval.<sup>50</sup> Section 10 of the Amended Act also provides for the Procedure concerning Private Members Bill where a Private Members Bill must be submitted to the Commission for its Consideration and comments before submitting back to the Speaker.<sup>51</sup>

By way of comparison, no other Act relating to law reform in other Pacific countries provide for their Law Reform Commission to consider and comment on Bills.

On this note, it is important for one to be aware of the processes by which a Bill becomes law in order to effectively implement these provisions of the *Law Commission Act*. For a Bill to become law, it has to pass through certain stages. It begins with consultation and is later followed by a Policy Paper and drafting instructions. A Policy Paper begins by a political decision and contains the general principles by which a government is guided in its management of public affairs, or the Parliament in its measures.<sup>52</sup> It is created within the requesting ministry or department then approved by the Development Committee of Officials (DCO) which is comprised of Director Generals and first political advisors. Once the DCO has approved of the Policy paper, it is then taken before the Council of Ministers who then approves the Policy paper. After approval, the Policy paper and the drafting instructions are then submitted to the State Law office for drafting of the Bill.

When the Bill is drafted, it passes through three other stages. There is the first reading where the Bill is debated

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<sup>50</sup> Section 9A of *Law Commission (Amendment) Act 2012* (Vanuatu).

<sup>51</sup> Section 10 of *Law Commission (Amendment) Act 2012* (Vanuatu).

<sup>52</sup> The Free Dictionary by Farlex, <http://legal-dictionary.thefreedictionary.com/policy> (Accessed 29/7/2015).



in Parliament on its principles and merits, and then it is followed by the Committee stage where the Bill is referred to the Committee of the Parliament to consider the Bill. If a motion is raised, then the Bill must be referred to an ad hoc committee. In this second stage, the Parliament considers and votes on the Bill section by section. The last stage is the second reading where the Bill is considered by the Parliament. The Parliament may read the Bill for a second time on whether the Bill is to pass. This is done by a simple majority vote of the members voting.<sup>53</sup> This is the process by which a Policy paper becomes a Bill to a Law.

To date, no Ministry or department sponsoring a government Bill has provided a copy of the Bill prepared by the State Law Office to the Commission for its comments. In 2013, the Vanuatu Law Commission provided comments on a few occasions and submitted it to the sponsoring department. There is still no indication however as to whether or not the comments were used as recommendations for making laws.

The Act does not authorise for subsidiary legislations to be created for a proper format as to how the comments should be made. The Act also does not make it an obligation for other government agencies and institutions to work together to implement these provisions making it difficult for the Law Commission to consider and provide comments on Bills. Thus, up to this date, no proper implementation of these provisions was carried out.

#### WHAT PEOPLE SAID

##### *The provisions of Section 9A and Section 10 must not be repealed*

- *Most people voiced their view that that the VLC must consider and comment on the Bills.*
- *The Secretary and the office of the VLC must comment on the Bills but the Board will have the final say on the comments.*
- *All legislations involved with Bills will have to be amended so they coincide with each other on the process of commenting on Bills. For instance, the State Law Act, Parliamentary Act, VLC Act and so forth.*

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<sup>53</sup> State Law Office, 'The Legislative Drafting process workshop' (Hand out provided at a workshop held on the 22 July 2015 in Vanuatu).

- *Most of the interviewees suggested for a proper format to be set out for the VLC to use for its comments.*
- *It is also important to have a measure or mechanism in place to deal with Bills before tabled in parliament.*
- *Every MP must have a fair idea on each **Bill before tabled so that MP's can vote in the interest at hand and not in the interest of their respective parties.***
- *Comments must be made at an earlier stage before reaching Parliament. When it reaches the Parliament, it is ready for debate.*
- *The provision should be amended so that the 7 days or 14 days in the **current Act be given to MP's as a time to familiarize themselves with the Bills so they can effectively vote in the interest of Bills.***
- *Majority of the people also said that having another separate committee in place to consider and comment on the Bills instead of just the VLC will be hard work for the office.*

*The current process for making law will not allow for the Vanuatu Law Commission to comment on Bills*

- *Some people also said to remove the provision as the **Law Commission's functions is primarily to review legislations.** They stated that the Government Bills are drawn from government policies which do not link closely with the functions of the Law Commission and that the Government Bills must follow its process and let the VLC focus on its functions. Following on from this, they said that once a Bill is made, it is ready for approval by the Council of Ministers and nothing can change the Bill at these final stages.*

## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

36. That subsection 9A (1) must be amended and provide that the VLC may provide assistance with drafting the Policy Paper only when a Department or Ministry sponsoring a government Bill has issues with drafting the Policy

# CHAPTER EIGHT

## **REGULATIONS**

A regulation is a type of subsidiary legislation which is made by a Government Minister or certain bodies. The power to enact a subsidiary

legislation of any sorts is usually provided for within the respective Act. It is an empowering provision in the Act which authorises a person or body to make regulations and on what scope. One of the functions of the State Law Office is to check whether or not the regulation is made within the authority of the empowering provision.<sup>54</sup> A regulation is created under the authorising Act and may expand on or supplement the provisions of the principal Act. The authorising Act dictates what must be done whereas a regulation dictates how it must be done.<sup>55</sup> Unlike legislations, regulations are not submitted to Parliament for approval and enforcement. A Regulation is enforced once the responsible authority signs it and has it Gazetted. Regulations are used to regulate matters that are less important such as creating forms and fees, procedural matters and so forth.

In the *Law Commission Act*, it is the Minister responsible for Justice and Community Services who is required to make regulations and the regulations made must be consistent with the Act. The regulations must be made for the procedures of the Commission, the manner of reimbursement of expenses of members of the Commission and the form in which the annual report of the Commission shall be made.<sup>56</sup> Hence it is the Ministers mandated function to make regulations within the scope of these provisions.

Since the establishment of the office of the Vanuatu Law Commission, no regulations have been created under section 12 of the Act.

**By way of comparison to other Pacific Island countries, Vanuatu's approach** slightly differs. In the Solomon Islands for example, the Minister can make regulations but after consultations with the Commission.<sup>57</sup> Another approach in Samoa is seen where the Head of State is the authorised person to make regulations on the advice of the Cabinet.<sup>58</sup>

There are also gaps within the *Law Commission Act* that are required to be filled in for the better carrying out of the Act. For instance, there is the provision for the Law Commission to provide comments on Bills; there is however no proper format as to how these comments must be made. There is also no mention in the Act for the creation of a staff manual. Since the

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<sup>54</sup>State Law Office, 'The Legislative Drafting process workshop' (Hand out provided at a workshop held on the 22 July 2015 in Vanuatu).

<sup>55</sup>Definition: Subsidiary Legislation,

<http://www.slp.wa.gov.au/faq.nsf/Web/Topics/97122C9860FE02FC48256CC9002A2895?opendocument>

(Accessed 23/7/ 2015).

<sup>56</sup> Section 12 of the *Law Commission Act* [CAP 115] of Vanuatu.

<sup>57</sup> *Law Reform Commission Act* [CAP 15] (Solomon Islands).

<sup>58</sup> *Law Reform Commission Act* 2008 (Samoa).

establishment of the VLC, there has been no staff manual created to regulate the staffs employed by the VLC. And as the Act is undergoing reform, recommendations are made for the centralising of law reform with the office which makes it timely for a staff manual to be created that will work towards the better carrying out of the Act.

#### WHAT PEOPLE SAID

#### *Regulations should be made by the Minister after consultations with the Commission*

- *All interviewees were of the opinion that in order for consistency to be seen in all the regulations, the Minister should make regulations upon consulting with the Commission.*

#### RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

43. That subsection 12(1) must be amended to state that the Minister must consult with the Commission before making regulations.
44. That the provision relating to regulations authorise the creation of a proper format for commenting on the bills.
45. That a staff manual must be created for the staffs as a regulation for the better carrying out of the Act.

### **PROTECTION FOR THE VANUATU LAW COMMISSION OFFICE AND WORK**

It is common practice for a statutory body to be protected by a legal provision in its authorising Act. Lawyers will be able to achieve goals if they were protected against interference from executive or legislative pressure or pressure from financial or religious power. This is where a lawyer is free to make decisions with his assessment of the facts and his understanding

of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for whatever reasons.<sup>59</sup>

Having a comparable provision in the Act would allow the VLC to perform their mandated task efficiently without fear of being sued. The scope of the protection of the body and its work extends only to work that is performed in good faith. A clear example is seen in section 21 of the *Vanuatu Financial Service Commission Act* and section 41 of the *Ombudsman Act*. Section 41 of the *Ombudsman Act* states:

#### IMMUNITIES

41. (1) *Neither the Ombudsman nor an officer or employee of the Ombudsman is liable for any act or omission done or ordered to be done or made in good faith and without negligence under or for the purposes of the Constitution or this Act.*

(2) *Neither criminal nor civil proceedings are to be issued against the Ombudsman, or an officer or employee of the Ombudsman, for anything done, said or omitted by the Ombudsman, or the officer or employee, under or for the purposes of the Constitution or this Act.*

(3) *However, subsection (2) does not apply if it is shown that the Ombudsman, or the officer or employee, acted in bad faith.*<sup>60</sup>

#### WHAT PEOPLE SAY

*There should be a provision to protect the work of the Vanuatu Law Commission*

- *The Law Commission Act should include a provision to protect the Commission, the Secretary and the office of the VLC and the work they carry out in implementing the Law Commission Act. The Work must be in good faith for the provision to apply.*

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<sup>59</sup> Adama Dieng, 'Role of Judges and Lawyers in Defending the Rule of Law' <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2262&context=ilj> (Accessed 25/6/ 2015).

<sup>60</sup> *Ombudsman Act 1998* (Vanuatu).

- *Suggestion was also made for the Commission to look at the Ombudsman Act for similar provision on this.*

## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

44. That the Act be amended and include a new clause which provides for the protection for action taken under the Act.

45. That the new section will be added as section 13.

46. That the new section will include a subsection which will provide protection from any action or other proceeding for damages against the

## **ANNUAL REPORTS**

The Act provides for the Commission to present an Annual report which contains the activities for the previous years to the Minister within three months after the end of each year.<sup>61</sup> The Act furthermore states for the Commission to make the report available to any member of the public upon request.<sup>62</sup>

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<sup>61</sup> *Law Commission (Amendment) Act 24 of 2012.*

<sup>62</sup> *Ibid.*



# CHAPTER TEN

An Annual report serves the purpose of communicating wider information in activities carried out, services provided and for comparing actual service delivery with forecast service delivery.<sup>63</sup> The information in Annual reports will allow rate payers, the community, and the wider public to assess how local authorities have performed in relation to management of public assets, and the efficiency, effectiveness and cost-effectiveness of operations.<sup>64</sup> These include providing financial information, highlighting achievements, promoting the work of the local body and other information.<sup>65</sup>

The work, staff and administrative running of the VLC are funded by the Vanuatu Government and other donor agencies such as the Stretem Rod Blong Justis (SRBJ) program. This is authorised by section 9 of the *Law Commission (Amendment) Act* which provides that the funds of the Commission consists of monies appropriated by Parliament and any other monies received by the Commission from other persons.<sup>66</sup> It should be noted that providing Annual Reports on the activities of the Law Commission to these donor agencies and the Vanuatu Government is a beneficial way of sustaining the work of the Commission in the long run.

While subsection 12(C) provides for regulations to be made for the forms in which the Annual report of the Commission to be made, it is not clear who is responsible for writing these reports, whether it be the Commission or the Secretary.

## WHAT PEOPLE SAID

*Annual Reports must be placed under the functions of the Commission*

- *The Secretary must prepare the Annual Report and the Commission must endorse the Annual Report after going through the report.*

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<sup>63</sup>Controller and Auditor General, New Zealand Tumuaki o te mana Arotake, <http://www.oag.govt.nz/2011/local-government-annual-reports/part2.htm> (Accessed 29/7/2015).

<sup>64</sup> *Ibid.*

<sup>65</sup>Chrono Small Business <http://smallbusiness.chron.com/purpose-company-annual-reports-57428.html> (Accessed on the 29/7/2015).

<sup>66</sup> Section 9 of the *Law Commission Act* [CAP 115] of Vanuatu.

- *The report should be presented to the Minister to be tabled in Parliament.*
- *The whole Annual report format must be spelled out clearly in the regulations.*
- *There should be a few copies made and left at the reception area but an electronic copy must be kept for any interested members of the public.*
- *Have a line or two in the report stating that the information's provided in the report are mere recommendations and that the law may have changed.*

## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

48. That the responsible authority makes a regulation to create for a clear format for the Annual Report. This would include a line in the report that the content in the report may have changed.
47. That the Secretary must prepare the Annual Report and the Commission is to go through the report, endorse and formally hand it over to the Minister for Justice and Community Services.

This review was done to assist the work of the Vanuatu Law Commission (VLC). The office of the VLC, since its establishment has undergone two reviews. However, only the 2012 changes made to the Act were formally Gazetted. The focus of the 2012 Amendment was generally to further improve the work of the Law Commission as an agency responsible for law reform.

# CONCLUSION

Since these changes were made, the Law Commission felt and sees the need for further improvement. On its own initiative, the Commission identified significant support for changing the Act once again to address the issues that are missing and that are in need to be addressed in the new Act. It has become apparent that the *Law Commission Act* needs to clearly define the roles and responsibilities of the Secretary and the Commission as well as their respective power(s). The review also focusses on the issue of centralizing law reform with the VLC, the issue of staffing, comments on Bills, Commission and meetings, protection for the VLC office and its work and other minor issues. It became clear through the review that the above mentioned areas must be dealt with in the new proposed amended *Law Commission Act* in order to acquire acceptable standards as well as assist in the better management and enhancement of the work of the Law Commission in Vanuatu.

The Law Commission hopes this review has covered the necessary aspects that need to be addressed. It is the sincere hope of the Commission that the recommendations **in this review will assist the Commission's effort in strengthening and improving law reform in Vanuatu.**

Name/Community	Office
1.	Angelyne Dovo Parliamentary Counsel – Office of the Attorney General

2.	Chris Tavoia	Office of the Attorney General/ Vanuatu Law Commission Board Member
3.	Colin Leo	Vanuatu Law Society Rep – Leo & Partners
4.	Douglas Tamara	Transparency Vanuatu
5.	Jimmy Meameadola	Malvatumauri Rep/ Vanuatu Law Commission Board Member
6.	Joe Kalo	Department of Youth and Sport Rep/ Vanuatu Law Commission Board Member
7.	Judith Melsul	Secretary Public Service Commission
8.	Kiel Loughman	Private Legal Practitioner/ Vanuatu Law Commission Board Member
9.	Louis Kalnpel	Clerk of Parliament of the Republic of Vanuatu
10.	Mary Grace Nari	Nari & Co – Barristers & Consultants/ Chairlady, Vanuatu Law Commission
11.	Mina Popovi	Legal Officer ALAC Vanuatu
12.	Wilson Aru	CEO Transparency Vanuatu
13.	Willie Rex	Officer Department of Finance

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