

Review of natural resources and environmental related legislation - Phases 1 and 2

By Graham Bruce Powell

*IWP-Pacific Technical Report (International
Waters Project) no. 10*



Global
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Abbreviations and Acronyms

DSLE	Department of Lands, Survey and Environment
ToR	Terms of Reference
IW	International Waters
EEZ	Exclusive Economic Zone
MAFF	Ministry of Agriculture, Forestry and Fisheries
UNCLOS	United Nation Convention on Law of the Sea
SPREP	South Pacific Regional Environment Programme
EIAs	Environment Impact Assessment
MoT	Ministry of Transport
MARPOL	International Convention on Marine Pollution from Ships

1 Background and Purpose

The Department of Lands, Surveys and Environment has commissioned a review of Samoa's laws relating to natural resources and the environment. This has been done through the International Waters (IW) Programme based in the Environment Division.

This report is submitted as Phase 1 of the review. The Terms of Reference (ToR) for Phase 1 are:

“Provide a comprehensive review of current legislation covering environmental and natural resources (marine and terrestrial) and other legislation which has a bearing on such resources. The review will include the objectives of relevant legislation, its administration, its regulatory and planning provisions as well as a summary of the functions of bodies established by the legislation”.

The (ToR) for Phase 2 require:

- (a) the identification of deficiencies in the current legislation;
- (b) a consideration of the effectiveness of the legislation; and
- (c) an assessment of proposed changes to the laws.

These (ToR) will be fully stated in the separate report prepared for Phase 2.

2 Methodology

The task calls for a review of all current laws covering environmental and natural resources (marine and terrestrial) and other relevant legislation.

It is not easy in every case to determine whether a particular law falls within or outside the scope of this Review. For example, the *Fisheries (Ban of Driftnet Fishing) Act* has been included because of its obvious environment protection focus. Whereas the *Fisheries (Vessels Monitoring System) Regulations*, which form part of a useful system of environmental monitoring, have not been included because they are essentially of an operational nature.

Specific attention is given to laws that facilitate community involvement. This is because the ToR note that “the principal focus of the IW Programme is community-based activities associated with the conservation and preservation of freshwater, community-based waste management and the sustainable use of coastal resources”. The village inspired by-laws under the *Fisheries Act* are an illustration of this approach being adopted in another context. The *Internal Affairs Act* and the *Village Fono Act* both make relevant provision in this regard.

In relation to each law reviewed in this report, the following details have been noted:

- The year of enactment;
- The date of its coming into effect;
- The number of amendments and the years these were made;
- Any laws repealed by the Act; and
- The Ministry, and where relevant the Authority, responsible for the administration of the Act.

In the review of the Acts, the following approach has been taken:

- A brief indication of the matters of relevance to the review is noted.
- The substance of each of the relevant provisions is stated.

These matters are not generally discussed in this report, as that is the intent of the second aspect of the review.

3 Legislative Process in Samoa

Recent years have seen a remarkable level of legislative reform in Samoa. Table A indicates the number of Acts passed by the Samoan Parliament in the years 1997 – 2001. Table B notes the regulations and other subsidiary legislation that have been made by the Head of State acting on the advice of the Cabinet.

1997	21
1998	41
1999	20
2000	13
2001	13

Table A: *Number of laws passed by the Samoan Parliament*

1997	11
1998	8
1999	24
2000	11
2001	3

Table B: *Number of regulations and subsidiary legislation made in Samoa*

These reforms have modernised legal arrangements applying to such matters as civil aviation, mercantile shipping, corporate affairs, the accountability of public bodies and government revenue raising.

Of more relevance to this report, these reforms have included major changes to the laws relating to Samoa's territorial jurisdictions, fisheries, public works (including seawalls), and ports and harbours. Significant changes to the laws relating to Samoa's water resources are currently before the Parliament.

Accordingly, when considering the state of Samoa's laws at any given time, the following matters should not be overlooked:

- It is possible that the printed version of any particular law most readily available might not be the current law. Comprehensive legislative reprints are generally done at intervals of about 10 years and so they can be quite out of date.
- It is also possible that significant changes to the law are already being contemplated.
- The reform process usually proceeds expeditiously and it is quite common for major legislation to be finally enacted within a few months of its final drafting.
- The pre-colonial laws (called Ordinances) are being progressively replaced by modern Acts, but in excess of 65 remain on the statute books, even if a number of these are only of purely historical interest.

It may be of interest to briefly state some of the key matters relating to the legislative process in Samoa. These include the following:

- The formulation and development of policy leading to legislative reform has always been the responsibility of the relevant Department or Ministry. In 2002 a Law Reform Commission was established by Act of Parliament. It is not clear what the actual extent of its role shall be in this regard.
- The drafting of the necessary legislation, or the final vetting and approval of legislative drafts prepared by consultants, is vested with the Attorney General. The Office of Attorney General employs a qualified Parliamentary Counsel. The Attorney General will certify a Bill or Regulation as being appropriate prior to it being submitted to Cabinet.
- The sponsoring Department or Ministry will prepare a Cabinet Paper, including the Attorney General's certificate. Once Cabinet approves a draft Bill it will be automatically referred to the Legislative Department at the Parliament. Here it is translated into Samoan and placed on the Parliamentary agenda.
- Parliament refers all major legislation to the Bills Committee, or other select committee. The committee will invite submissions from all interested Departments, agencies and individuals and consider its provisions in the light of these submissions. It is then referred back to Parliament for its final reading and approval.
- The Head of State must give assent to an Act before it becomes law. In many cases it comes into force upon assent, but it is possible to delay implementation by requiring notification of commencement to be published in the Government newspaper "Savali".
- Copies of recently enacted laws can be purchased from the office of the Clerk of the Parliament.

4 Review of the Laws

4.1 Sovereignty and Jurisdiction

4.1.1 The Constitution of the Independent State of Samoa

Year passed – 1960

Effective from – 1st January 1962

Amended – 1991 (3 Acts) and 1997 (2 Acts)

The Constitution is the underlying law and no individual, body or Department has specific administrative responsibility for it.

Objective

To make provision for the constitutional framework of Samoa.

Relevance to this Review

- Clause 1(2) describes the territory of Samoa.
- Clause 14 protects property from compulsory acquisition.
- Part IX provides for land ownership and land below the high-water mark.

Substance of relevant provisions

Clause 1(2) The State of Samoa comprises the islands of Upolu, Savaii, Manono and Apolima and all lands lying between 13th and 15th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich.

Clause 14 No property or any right over or interest in any property may be compulsorily acquired except under a law that must:

- require the payment of adequate compensation within a reasonable time;
- give a right to the property owner to have recourse to the Supreme Court; and
- provide for the same right of appeal as in any other civil proceedings.

Part IX

Clause 101 Classifies all land as customary, freehold or public land.

Clause 102 Prevents the alienation of customary land (except by way of the grant of a lease or licence, or by compulsory acquisition for a public purpose).

Clause 103 Provides for the establishment of a Land and Titles Court with jurisdiction over customary land.

4.1.2 Maritime Zones Act

Year passed – 1999

Effective from – upon assent of Head of State (1999)

Laws repealed – Territorial Sea Act 1971 and Exclusive Economic Zone Act 1977

Never amended

Administered by the Ministry of Foreign Affairs

Objectives

To make provision in relation to the sovereignty of Samoa, including its internal waters, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf.

Relevance to this Review

- It makes comprehensive provision in relation to the sovereignty of Samoa and the areas of its waters over which it asserts rights in accordance with international law.
- Certain acts within the territorial sea by foreign vessels that may harm the environment or affect its resources are deemed to be “prohibited passage”.
- Prior approval must be given for vessels carrying hazardous substances or substances harmful to the environment in the territorial sea.

Substance of relevant provisions

Delineation of Samoa’s jurisdiction:

Section 3 Describes the internal waters of Samoa.

Section 4 Extends the territorial sea of Samoa to 12 nautical miles from the baselines on Samoa’s coast.

Section 9 Deems the seabed and subsoil of the territorial sea to be public land.

- Section 18** Extends the contiguous zone to 24 nautical miles from the baselines on Samoa's coast.
- Section 19** Extends the EEZ to 200 nautical miles from the baselines on Samoa's coast.
- Section 24** Describes the continental shelf of Samoa.

Samoa's jurisdiction concerning natural resources and the protection of the environment:

- Section 12** Deems passage through the territorial sea by a foreign vessel as being prejudicial to the peace, good order and security of Samoa if it:
- does any act of willful and serious pollution to the marine environment;
 - carries out any fishing activities without a license; and
 - carries out any scientific research or hydrographic research activities.
- Section 14(2)** Requires all vessels carrying radioactive or other inherently dangerous, noxious or hazardous wastes, or substances harmful to the environment, through the territorial sea to have prior authorisation.
- Section 18** The government may exercise any powers and take any measures in relation to the contiguous zone to enforce any laws relating, inter alia, to environment protection.
- Section 20(2)** The government has jurisdiction in the exclusive economic zone in relation to the following;
- the establishment and use of artificial islands, installations and structures;
 - marine scientific research; and
 - the protection and preservation of the marine environment.
- Section 22** Deems any offence in relation to the matters listed in section 20 within the EEZ to have been done within Samoa.
- Section 27** Regulations may be made in relation to:
- the conduct of scientific research within the EEZ;
 - regulating the exploration and exploitation of the EEZ for the production of energy from waters, currents and winds, and for other economic purposes,
 - regulating the construction, use and operation of artificial islands, installations and structures within the EEZ,
 - prescribe measures for the protection and preservation of the marine environment.

4.2 Government Authority and Administration

4.2.1 Lands, Surveys and Environment Act

Year passed – 1989

Effective from – 5th March 1990

Amended in 1992/1993

Repealed the Land Ordinance 1959, the Land Amendment Act 1964 and the Land Amendment Act 1976.

Administered by the Department of Lands, Surveys and Environment

Objectives

To establish the Department of Lands, Surveys and Environment and to make comprehensive provision in relation to land and the management of the environment.

Relevance to this Review

- This is the principal law relating to administration of land matters in Samoa and to the management and protection of the environment.

Substance of relevant provisions

Part I Provides for the administration of land matters, including:

- The appointment of the Minister (section 3);
- The establishment of the Department (section 4);
- The appointment of Director (section 5);
- The establishment of a Land Board (section 6); and
- The appointment of Land Committees (section 8).

(Part II deals with land surveys. Part III deals with the purchase of land for development purposes. Part IV deals with the classification and alienation of government land. Parts V - VII deal with leases.)

Part VIII Makes detailed provision concerning conservation and protection of the environment, including:

- The appointment of a Principal Environment Officer as a deputy to the Director of Lands (section 93);
- The Department is given broad ranging functions and powers in relation to conservation and environment protection (sections 95 and 96);
- An Environment Board is established and its membership and functions provided for (sections 97 - 103);
- The Minister is given broad powers in relation to the management of the environment, including assessments, monitoring and the approval of guidelines (section 104). The Minister may authorise special investigations (section 105);
- Provision is made for the appointment of conservation officers and for their duties and powers (sections 106 – 115);
- The Director may prepare draft Management Plans in relation to a range of aspects of the environment. These must be considered by the Board and can be approved by the Minister (sections 116 – 118);
- Provision is made for the protection of foreshores and coastal waters (sections 119 – 122);
- Pollution of Samoa's waters is controlled (section 123);
- An Environment fund is established (section 124); and
- Provision is made in respect of the control of litter (section 125 – 134);

Section 146 A very broad range of matters over which Regulations may be made is provided for. These are listed in the Appendix 1.

4.2.2 Agriculture, Forests and Fisheries Ordinance

Year passed – 1959

Effective from – 24 August 1959

Amended – 1989 and 1992/1993

Administered by the Ministry of Agriculture, Forests and Fisheries

Objective

To establish the Department (now Ministry) of Agriculture, Forests and Fisheries

Relevance to this Review

- Ministry of Agriculture, Forests and Fisheries (MAFF) is charged with responsibility for many important functions relating to conservation and the management of the environment.

Substance of relevant provisions

Section 4(b) Ministry of Agriculture, Forests and Fisheries MAFF is required “to promote in conjunction with Lands, Surveys and Environment the conservation, production and development of the natural resources of Samoa, especially soil, water and forest”. Particular obligations concerning the forest resource are stated.

Section 4(c) MAFF is required to “regulate fishing” and promote the “conservation of fish”.

Section 4(d) MAFF is required to “regulate, control and supervise” the storage and use of pesticides.

4.2.3 Ministry of Works Act

Year passed – 2002

Effective from – upon assent by the Head of State (2002)

Laws repealed – Road Clearing Ordinance 1950, Road Crossing Ordinance 1952, Special Projects Development Corporation Act 1972, Public Works Ordinance 1959, main Roads Development Act 1972 and Faleolo Airport Road Act 1969.

Never amended.

Administered by the Ministry of Works.

Objectives

To reform the law relating to public works and to permit the restructuring of the Ministry.

Relevance to this Review

- General powers relating to planning and urban management are provided for, and comprehensive provision is made in relation to building regulation.
- Comprehensive provision is made for the construction and management of roads, road reserves, footpaths, bridges, drains and seawalls.
- Provision is made for the taking of land required for quarries and gravel pits.

Substance of relevant provisions

Planning and urban management

Part VI Regulations may provide for Planning and Urban Management Schemes.

Building Regulation

Part IV Comprehensive provision is made in relation to building regulation. This includes:

- Existing building regulations made under colonial health ordinances are adopted until they are replaced by Regulations made under this Act (Sections 27 and 28);
- A National Building Code is adopted (Section 29);
- Regulations may impose requirements on buildings in accordance with the needs of the environment in which they are to be constructed (Section 28(2); and
- Issues relating to building alignments and the certification of land ownership remain the responsibility of DLSE (Section 28(3)).

Public assets (including road reserves and seawalls):

Part V With some exceptions, a road reserve is declared for each road in the area of 11 metres on each side of the centre of the carriageway. Road reserves can be regulated by Regulations.

Other assets, including seawalls can be declared to be public assets. It is only in respect of these assets that the Ministry will assume a responsibility for construction and maintenance.

Other powers:

Section 46 Land may be identified for quarrying or the taking of gravel. DLSE remains responsible for the acquisition of this land.

Section 48 Landowners can be required to clear land adjacent to roadways.

Section 49 Permission is required to construct access ways from private land to roadways.

4.2.4 Water Authority Act

Note: At the time of preparation of this Report a revised Water Authority Bill was under consideration by relevant Departments.

Year passed – 1993/1994

Effective from – 15 September 1993

Repealed the Second Schedule to the Water Act

Never amended

Administered by the Ministry of Works and the Samoa Water Authority

Objectives

The Act establishes the Samoa Water Authority and makes provision for the provision of water supplies and related services.

Relevance to this Review

- The Water Authority has responsibilities and powers relating to the conservation and safeguarding of the Samoa's water resources.

Substance of relevant provisions

Section 4 The functions of the Water Authority include:

- To formulate and recommend to the Minister, national policies relating to the control and use of water resources (d);
- To ensure that water in any watershed area from which it draws water is kept from pollution (g);and
- To encourage the conservation of water (j).

Section 5 The powers of the Water Authority include:

- To draw water ... from lakes, waterfalls, rivers, streams, wells and bores (b); and
- To utilise any natural watercourse for the discharge of storm water overflows from its sewers or pumping stations (f).

Section 45 Restrictions are placed on the disposal off trade wastes in Sewerage areas.

Section 88(2) Regulations may be made in relation to the following prohibit discharges into public sewers.

4.2.5 Ports Authority Act

Year passed – 1998

Effective from – by notice published in the Savali 1998.

Amended – 1998

Administered by the Ministry of Transport and the Samoa Ports Authority

Objectives

To establish the Samoa Ports Authority and to provide for the management of ports and harbours.

Relevance to this Review

- Some provision is made for the protection of the environment in port areas.
- Some provision is made for reclaiming, excavating and raising land.

Substance of relevant provisions

Section 9(2)(f)(ix) The Ports Authority is empowered to recover wrecks.

Section 9(2)(l) The Ports Authority is empowered to reclaim, excavate, enclose or raise any part of its land. This is subject to any other provision of any law.

Section 57 Provides for offences relating to the pollution of waters in a port.

Section 64 Regulations may be made in relation to: –

- Keeping the waters and basins of the ports clean and preventing the discharge of oil and rubbish (1)(p);
- The cleaning, fumigation and disinfecting of buildings, wharves, vessels and containers (1)(t);
- Regulation of the use and occupation of the foreshore and lagoon tidal area of any port area, including port approaches (1)(v);
- Regulation of the use of any pleasure craft in a port area (1)(w); and
- Prohibition of any other thing which in the opinion of the Authority is undesirable (1)(aa).

4.3 Natural Resources

4.3.1 Fisheries Act

Year passed – 1988

Effective from – 18 July 1988

Amended – 1999 and 2002

Administered by the Ministry of Agriculture, Forests and Fisheries

Objectives

To provide for the conservation, management and development of Samoa's fisheries, and for the licensing of foreign fishing vessels.

Relevance to this Review

- The Act aims to promote the conservation, management and development of Samoa's fisheries and the protection and preservation of the marine environment.
- Marine scientific research and exploration of the living marine resources are promoted.

Substance of relevant provisions

Section 3(1) States the purposes of the Act in relation to the conservation of Samoa's fisheries and the protection of the marine environment.

Section 3(3) Empowers the Director to:

- Collect and analyse statistical information;
- Monitor activities for their effect on the fisheries; and
- Consult with industry and village representatives to make by-laws aimed at the conservation and management of the fisheries.

Section 3(4) Prescribes the requirements for village based by-laws.

Section 4 Prohibits certain fishing methods (e.g. the use of explosives and poisons).

Section 10 The Minister may authorise marine scientific research and impose conditions.

Section 11 Conditions may be imposed on any fishing licence in relation to the type of fishing method, the area of operation and the species of fish allowed to be taken. Conditions may be varied in order to ensure the proper conservation and management of the fisheries.

Section 25 Regulations may be made in relation to the following:

- Measures for the conservation and management of fisheries, including closed seasons and areas, prohibited methods and gear, and the species and sizes of fish not allowed to be taken;
- The provision of statistical information; and
- Prevention of marine pollution.

The 1998 amendments made specific provision for the licensing of:

- Commercial and experimental aquaculture operations.
- The export or import of certain fish or fish products.
- Fish processing establishments.

4.3.2 Fisheries (Ban Of Driftnet Fishing) Act

Year passed – 1999

Effective from – upon assent by the Head of State (1999)

Never amended.

Administered by the Ministry of Agriculture, Forests and Fisheries.

Objectives

To ban the practice of driftnet fishing in all waters over which Samoa claims jurisdiction and in the area of the Wellington Convention.

Relevance to this Review

- All driftnet fishing activities in Samoan waters and by Samoan vessels are banned.

Substance of relevant provisions

Section 3 Prohibits vessels from engaging in, or assisting with, driftnet fishing activities in Samoan waters, and prohibits such activities by Samoan vessels in the area covered by the Wellington Convention.

Section 4 Driftnet vessels are banned from entering Samoan ports.

4.3.3 Fisheries By-Laws

By-laws made under section 3 of the Fisheries Act apply to the following villages:

Tafitoala and Fusi Safata, Tuanai, Moamoa Falesiu, Satitua, Mutiatele, Tauaoo Falesiu, Salua-uta Manono, Satui Fasitoota, Lotopue Aleipata, Malaela Aliepata, Ulutogia Aleipata, Faleu Manono, Lepuai Manono, Salua Manono, Mulivai Safata, Poutasi, Apai Manono, Puapua, Falealupo, Tafua, Satoalepai, Saleula, Auala, Utufa'alalafa Aleipata, Vailoa Aleipata, Vailuutai, Faleapuna, Fasitootai, Faleu Manono, Asaga Savaii, Faala, Fagasa, Papa Palauli le Falefa, Sapapalii, Vaisaulu Iva, Vaitoomuli Savaii, Samatau, Safaatoa, Satapuala, Saanapu, Gafaifo, Nofaalii, Saoluafata, Solosolo, Fausaga, Matafaa Lefaga, Eva, Fagalii, Faleula, Asau and Lelepa.

Made after consultation with village representatives these by-laws impose restrictions aimed at conserving the marine resources on village reefs and sea areas. These include restrictions on the taking of certain resources and on certain fishing methods.

At the time they were made penalties for the breach of by-laws were fines not exceeding 100 tala. Therefore some of these by-laws have taken the innovative approach of empowering a court to order the re-instatement of the marine environment at the expense of the person found guilty of breaching a by-law. This has not yet been tested in the courts.

4.3.4 Forests Act 1967

Year passed – 1967

Effective from – 12 December 1967

Never amended.

Repealed the Forestry Regulations 1963.

Administered by the Ministry of Agriculture, Forests and Fisheries

Objectives

To make provision for the conservation, protection and development of the soil, water and forests of Samoa.

Relevance to this Review

- The Act makes diverse provision in relation to the forest and related resources of Samoa.

Substance of the relevant provisions

Administration

Part II Establishes the Forestry Division as a part of the “Department” (now the Ministry of Agriculture, Forests and Fisheries) and provides for the appointment of a Chief Forest Officer and other officers.

State Forest Land

Part III The Government may acquire or set aside land to be State Forest Land.

Rights to undertake forestry activities

Part IV Leases, licences and permits may be given in relation to forestry activities. Powers of enforcement are generally limited to the recovery of rents and royalties. No specific mention of environmental management or sustainable forestry practice is made.

Part IX Makes provision for the Minister to act as trustee for the owners of private forests on freehold land.

Ownership of forest produce

Section 32 Where there is any doubt about the ownership of forestry produce it is presumed to belong to the State.

Protection against fire

Part IV Prohibitions may be imposed in relation to the lighting of fires where a risk of extreme fire hazard is present. Offences are created in relation to the lighting of fires that spread to forest areas.

Protected land

Part VIII Land may be declared to be protected for a period of up to 5 years. Protected land cannot be disposed of without the consent of the Minister and may not be cleared or cultivated.

Historical Places

Section 68 The Minister may require the preservation of any place of historic, traditional, archaeological or national interest on forest land.

Quarantine provisions

Section 70 Certificates are required in relation to the import of any tree, tree seed, timber or timber product to certify that it does not contain any injurious insect, fungus, bacterium or virus.

Section 71 Regulations may be made aimed at controlling and eradicating any disease affecting trees.

Regulations

Section 73 Provision is made for very broad powers to make Regulations, including those relating to:

- The management of forest land (2)(a);
- Conditions to be attached to licences and permits, including those relating to the protection and preservation of trees, timber and other growth (2)(f);
- Regulating the establishment and conduct of recreation and camping areas on State forest land (2)(o);
- Providing for the appointment of advisory committees (2)(p);
- Regulating the management of any land reserved for forestry and restricting the public's use of such land (2)(v); and
- Regulating the management of any protected land (2)(w).

4.3.5 Water Act

Note: A draft Water Resources Bill was under consideration at the time of preparation of this Report.

Year passed – 1965

Effective from – 10 December 1965

Repealed 7 Ordinances (or parts of them) as listed in the Fifth Schedule and 8 Regulations listed in the Sixth Schedule.

Amended in 1992/1993 and 1993/1994.

Administered by the Ministry of Works.

Objectives

To make provision in relation to the conservation, supply and use of water.

Relevance to this Review

- Provisions relate to the use of the water resource and to protecting it from pollution.

Substance of relevant provisions

Section 7 The Head of State may grant rights to use water from any river, stream, lake or pool for the purpose of domestic water supply, the generation of electricity, and for agricultural, pastoral, industrial or commercial use.

Section 43 It is an offence to allow any pollutant into any water or watershed being part of the water supply system, or to allow livestock to trespass on any waterworks.

Section 45 It is an offence to draw off any water so as to diminish the supply to any waterworks.

Section 48 The Minister may prohibit the cutting of trees and bush from riverbanks that may affect the flow of water into the river.

Section 49 The use of water may be prohibited or restricted.

Section 54(2) Regulations may be made to control streams and other waters, and also in relation to watersheds and catchment areas.

4.4 Environment Protection

Note: Other laws in this review have provisions relating to environment protection.

4.4.1 National Parks and Reserves Act

Year passed – 1974

Effective from – 30 December 1974

Repealed Part VIII of the Land Ordinance 1959

Never amended.

Administered by the Ministry of Agriculture, Forests and Fisheries.

Objectives

To provide for the establishment, preservation and administration of national parks and reserves.

Relevance to this Review

- The Act makes provision in relation to national parks, reserves and places of national or historical interest.

Substance of relevant provisions

Section 4 Public land may be declared to be a national park.

Section 5 Every national park shall preserved in perpetuity for the benefit and enjoyment of the people so that it is preserved as far as possible in its natural state and its conservation value is maintained.

Section 6 Nature reserves may be declared.

Section 7 Public land may be declared to be a recreation reserve.

Section 8 Public land of national, historic, legendary or archaeological interest can be declared to be a historic reserve.

Section 9 Public land can be declared to be a reserve for any other purpose.

Section 10 The Minister is given various powers in relation to the administration of national parks and reserves.

Section 11 Regulations may be made for purposes including the following:

- Providing for the further protection of any natural feature, flora, fauna or aquatic life; and
- Authorising the appointment of Rangers.

4.4.2 Police Offences Ordinance

Year passed – 1961

Effective from – 29 December 1961

Repealed 7 Ordinances listed in the Schedule.

Amended in 1988 and 2002.

Administered by the Department of Justice.

Objectives

To prescribe a variety of criminal offences.

Relevance to this Review

- Certain offences prescribed by this Act relate to the protection of the environment.

Substance of relevant provisions

Section 3 Offences include the following:

- throwing rubbish in a public place (a);
- burning litter etc in a public place (c);
- casts into Apia harbour or onto any foreshore place or stream any log or floating thing that could be a danger to boats (d);
- spilling any night soil or other offensive matter in a public place (k);
- throws or leaves any dead animal, animal remains or other offensive matter upon any public place, or into any river, stream or other water (m);
- creates any noise pollution (p);
- removes any sand, boulders or stone from any foreshore or from the bed or bank of any stream (s); and
- places any poison in any place so as to be a danger to humans or animals (w).

Section 6 Cruelty to animals is an offence.

Section 20 Polluting water is an offence.

4.4.3 Watershed Protection and Management Regulations

Year made – 1992

Effective from – 20th October 1992

Never amended.

Administered by the Ministry of Agriculture, Forests and Fisheries and the Department of Lands, Surveys, and Environment.

These Regulations are made under the Forests Act and the Lands, Surveys and Environment Act.

Objectives

To make provision for a coordinated approach to the protection and management of watershed areas.

Relevance to this Review

- The protection and management of watershed areas is comprehensively provided for.

Substance of relevant provisions

Regulation 4 Establishes a Watershed Management Committee comprising senior officers of MAFF and DLSE.

Regulation 5 The Committee is responsible for the formulation and implementation of watershed management plans.

Regulation 8 The Chief Forest Officer is principally responsible for the formulation of watershed management plans dealing, inter alia, with:

- the treatment and proper disposal of waste in the watershed (2)(d);

- the protection of the watershed from activities likely to cause damage to its soil and water (2)(e); and
- monitoring of soil and water resources (2)(f).

Regulation 14 A management plan may provide for any land to be protected for up to 5 years. Cultivation or disturbance of the soil can be prohibited for up to 5 years.

4.4.4 Health Ordinance

Year passed – 1959

Effective from – 28th September 1959

Amended – 1969 and 1981.

Administered by the Ministry of Health.

Objectives

To make provision for the Department of Health and for matters relating to public health.

Relevance to this Review

- Certain provisions relate to pollution, and to diseases affecting land and rivers.

Substance of relevant provisions

Section 9 Establishes a Board of Health. The Director of Lands is a member.

Section 12 Requires buildings to be constructed with suitable appliances for the disposal of refuse water in a sanitary manner.

Part III Deals with health nuisances which include any land or water source that may constitute a danger to health.

Section 29 Very broad powers are given to the Director-General of Health to act in relation to infectious diseases, including the power to declare land to be unsanitary and powers of a quarantine nature. He may order the destruction of animals and may forbid the keeping of certain animals. He may forbid the discharge of sewerage and offensive matter in watercourses and rivers.

4.4.5 Animals Ordinance

Year passed – 1960

Effective from – 26th August 1960

Repealed 5 Ordinances listed in Schedule 2.

Amended in 1989.

Administered by the Ministry of Agriculture, Forests and Fisheries.

Objectives

To make comprehensive provision in relation to animals and game, and to control the importation of animals and animal products.

Relevance to this Review

- Controls are placed in relation to the keeping of animals and orders can be made for the protection of certain species.

Substance of relevant provisions

Part II Deals with the impounding and control of animals.

Part V Deals with controls over the importation of animals and animal products.

Section 41 Certain animals can be declared to be absolutely or partially protected.

Section 43A The exportation of birds, feathers and eggs requires prior authorisation.

Animals (Protection of Wild Birds) Regulations have been made in 1981 and 1993.

4.5 Laws Facilitating Community Involvement

Refer to Fisheries by-laws page 16

4.5.1 Internal Affairs Act

Year passed – 1995

Effective from – 10th July 1995

Repealed the Pulenuu and Sui-ole-Malo Act 1978.

Never amended.

Administered by the Ministry of Internal Affairs.

Objectives

To establish the Ministry of Internal Affairs and to make provision for the recognition and organisation of village authority.

Relevance to this Review

- The Act makes basic but comprehensive provision with respect to village authority, which is to stand as a system of local government throughout Samoa.

Substance of relevant provisions

Functions of the Ministry

Section 5(1) The functions of the Ministry include:

- To formulate policies in relation to the recognition and organisation of village authority based upon Samoan custom (a);
- To advance local government through the development of village authority (b) – (d), (g), (i);
- To prepare by-laws for recommendation to the Minister as proposed by the village authorities (f);
- To receive, assess and approve requests from village authorities for development assistance (k); and
- To assist village authorities with social and economic projects and village development (n) and (o).

Creation of committees and offices

Section 10 Creates an Executive Committee for Upolu, Manono and Apolima, and another for Savaii.

Section 11 Executives Committees are to consult with village authorities concerning the implementation of government policies and projects, and to assist village authorities.

Section 14 Villages are to nominate a Pulenuu to be appointed by Cabinet on the advice of the Minister. Government representatives known as Sui-ole-Malo may also be appointed under this section.

Section 15 Pulenuu and Sui-ole-Malo are given extensive functions relating to the maintenance of good order in villages (and areas under their authority) and liaison with government. Some interesting obligations are:

- To encourage health and sanitation activities;
- To report to the police the use by any person of dynamite or chemicals for fishing;
- To inform of new pests and disease present in a village;
- To assist government with the implementation of its projects; and
- To do any duty imposed upon them by Regulation.

Section 18 By-laws may be made and enforced in villages by Regulation made under this Act.

4.5.2 Village Fono Act

Year passed – 1990

Effective from – 30 July 1990

Never amended.

Administered by the Parliament.

Objectives

To empower the exercise within a village by the Village Fono of authority in accordance with Samoan custom and tradition.

Relevance to this Review

- A Village Fono may exercise authority over any person ordinarily resident in a village. This includes the exercise of any power as provided in any other law.

Substance of relevant provisions

Section 3 Recognises the existence and authority of Village Fonos. It empowers them to exercise authority in accordance with Samoan custom and as provided for in any law.

Section 4(2) Village Fonos have the specific power to:

- To make rules for the maintenance of hygiene in the village;
- To make rules governing the development and use of village land for the economic betterment of the village; and
- To require persons to perform work in relation to the above two matters.

Section 6 The authority to impose punishments includes the power to:

- To impose a fine in money, fine mats, animals of food; and
- To order an offender to undertake work on village land.

4.6 Other Relevant Laws

4.6.1 Quarantine Related Laws

Numerous laws impose quarantine restrictions aimed at protecting the environment generally, or at protecting certain parts of it. These include:

- Animals Ordinance 1960 (especially Part V – Control of Animal Importation)
- Cocoa Disease Ordinance 1961;
- Noxious Weeds Ordinance 1961 and Plants Act 1984;
- Pesticides Regulations 1990;
- Samoa Quarantine Order 1920; and
- Land for Quarantine Purposes Ordinances 1921 and 1924.

In addition to these, Regulations have been made under the following Acts:

Agriculture, Forests and Fisheries Act 1959

- Animal Diseases Prevention Regulations 1968;
- Pesticides Regulations 1990; and
- Eradication of African Snails Regulations 1996.

Plants Act 1984

- Plants and Soils Importation (Disease Control) Regulations 1951; and
- Plants and Soils (Disease Control) (Steam cleaning of Imported Items) Regulations 1999.

Customs Act 1977 and Animals Ordinance 1960

- Bee and Bee Products Prohibition Order 1999; and
- Animal Disease Prevention Regulations 1968.

5 Summary of Bodies Established Under the Laws

This Part identifies the laws that create bodies and authorities that play a role in the regulation and management of activities affecting natural resources and the environment. In each case the body or authority is identified and the provisions of the law relating to the composition and functions of each body or authority are noted.

5.1 The Constitution of Samoa

5.1.1 The Land and Titles Court (Clause 103)

Composition

- As provided by Act of Parliament. (Supreme Court Judges and Land and Titles Court Judges)

Functions

- Jurisdiction in relation to matai titles and customary land as provided by Act of Parliament.

5.2 Lands, Surveys And Environment Act

5.2.1 The Land Board (Section 6)

Composition

- Minister of Lands (Chairman)
- Director of Lands (Deputy Chairman)
- The Attorney-General
- The Financial Secretary
- The Director of Agriculture
- The Director of Works
- Not more than 5 other members appointed by the Minister

Functions

- To carry out the provisions of the Act for the administration, management, development, alienation, settlement, protection and care of government land;
- To undertake all negotiations for the purchase of land by the government;
- To perform and complete all contracts for the purchase of government land; and
- To conduct inquiries under section 10.

5.2.2 Land Committee

Section 8 – (Established by the Land Board)

Composition

- Director of Lands (Chairman)
- 2 other members appointed by the Land Board

Functions

- To assist the Land Board in the administration of the Act.
- To exercise any powers delegated by the Land Board.

5.2.3 The Environment Board (Sections 97 – 103)

Composition

- The Director-General of Health;
- The Director of Agriculture (or his nominee);
- The Director of Works (or his nominee);
- The Director of Education (or his nominee);
- The Manager of the Visitor's Bureau (or his nominee);
- The Secretary of Transport (or his nominee);
- The Director of Economic Development (or his nominee); and
- 4 persons nominated by the Prime Minister to represent manufacturing industries, hotel industries, the Pulenuu Committee and the general public.

Functions

- Review and report on any matter referred by the Minister;
- Act as conciliator in disputes between the Department and developers;
- Review Annual Reports;
- Review and endorse corporate plans of the Department relating to the environment; and
- Inform the Minister of development projects adversely affecting the environment.

5.2.4 Environment Fund (Section 124)

This is to be established by the Minister of Lands in consultation with the Minister for Finance. It is to be administered by the Treasury.

5.3 Ministry of Works Act

5.3.1 Building Committee (Section 28(2)(a))

Composition

- To be specified by Regulation.

Functions

- To be specified by Regulation.

5.4 Water Authority Act

5.4.1 Water Authority (Sections 3, 4 and 11)

Composition

- Minister of Works (Chairman);
- Director of Works (Deputy Chairman);
- Financial Secretary;
- Director of Lands;
- Director of Agriculture;
- Director-General of Health;
- Three persons appointed by the Head of State, acting on the advice of Cabinet.

Functions

- 23 functions relating to the supply of water and related services are stated.

5.5 Ports Authority Act

5.5.1 Samoa Ports Authority (Sections 4 – 10)

Composition

- Minister of Transport (Chairman)
- Four members appointed by the Head of State, acting on the advice of Cabinet.

Functions

- The provision, management and maintenance of port services, facilities and security in ports and approaches;
- The regulation of navigation and the maintenance of navigational aids within ports.; and
- The coordination of all activities within ports and their approaches.

5.6 Watershed Protection and Management Regulations

5.6.1 Watershed Management Committee (Regulation 4)

Composition

- Director of Agriculture (Chairman);
- Director of Lands (or a nominee);
- Director-General of Health (or a nominee);
- Director of Works (or a nominee);
- General Manager of the Electric Power Corporation (or a nominee);
- Secretary of Internal Affairs (or a nominee); and
- Chief Forest Officer (Secretary) .

Functions

- Advise the Minister on the need to prepare a watershed management plan.
- Finalise watershed management plans.
- Inform nearby residents of the existence of plans.
- Implement plans.
- Review the effectiveness of plans and recommend variations.

5.7 Health Ordinance

5.7.1 Board of Health (Section 9)

Composition

- Minister of Health (Chairman);
- Director-General of Health (Deputy Chairman);
- Director of Works;
- Director of Lands;
- 1 Medical Practitioner nominated by the Minister; and
- 1 Medical Practitioner nominated by the Samoan Medical Association.

Functions

- To consider, advise and make recommendations in relation to any matter referred to it by the Minister relating to health policy, the administration of hospitals or any other matter affecting the health of the people of Samoa.

5.8 Internal Affairs Act

5.8.1 Executive Committee (Upolu, Manono and Apolima, and Savaii) (Section 10)

Composition

- A Member of Parliament representing an electorate in each respective area may be appointed as Chairman by Cabinet, acting on the advice of the Minister.
- Other members of each committee are as determined by Cabinet, on the advice of the Minister.

Functions

- To consult with Pulenuu and Sui-ole-Malo on the needs of villages;

- To solicit village assistance for the implementation of government programmes;
- To solicit assistance to prevent drug abuse;
- To provide affirmative action programmes.
- To monitor the performance of Pulenuu and Sui-ole-Malo; and
- To provide other assistance to villages with a view to implementing government initiatives.

5.9 Relevant Divisions of DLSE and MAFF

5.9.1 Division of Environment

No provision of any law establishes the Division of Environment. Section 93 of the *Lands, Surveys and Environment Act* appoints a Principal Environmental Officer to be a deputy to the Director of Lands.

5.9.2 Fisheries Division

No specific provision is made in relation to the establishment and functions of the Fisheries Division.

5.9.3 Forestry Division

The Forestry Division is established by section 3 of the *Forests Act*. Its functions are prescribed by section 8 of that Act.

Appendix 1

Regulation Making Powers Under the Lands, Surveys and Environment Act

The power to make Regulations is provided for in section 146 of the Act. The matters that relate to natural resources and environment protection include the power to:

- regulate the occupation of outlying islands, and the preservation of their indigenous and introduced flora and fauna;
- regulate the use of urban, commercial or industrial land;
- prohibit the construction of classes of buildings and fences on urban, commercial and industrial land;
- protect forests, bush and timber on government lands, and to prevent fires;
- (k) regulate the burning of timber on government land;
- provide for the management and protection of reserves and unoccupied government land;
- (r) provide for the functions and powers of conservation officers;
- (s) protect and conserve wildlife and regulate or prohibit trade and commerce in relation to wildlife;
- (t) regulate or prohibit pollution;
- (u) prevent or control soil erosion;
- (v) prevent or control the clearing of trees and plants;
- (w) prohibit the collection of specimens in national parks and reserves;
- (x) regulate or prohibit the import of environmental pollutants.
- (y) provide for the undertaking of environment impact assessments; and
- (z) regulate the use of and entry to national parks.

Review of natural resources and environmental related legislation - Phase 2

By Graham Bruce Powell

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1 Background and Purpose

This Report complements the *Review of Natural Resource and Environment Related Legislation* submitted as phase 1 of the ToR for the project commissioned by the Department of Lands, Surveys and Environment (DLSE) through the IW Programme.

Phase 1 identified resource and environment related laws in Samoa and briefly stated the substance of their relevant provisions.

Phase 2 requires a more detailed analytical assessment of the effect and worth of these laws, and of any relevant reform proposals currently under consideration.

The ToR for phase 2 are:

- (a) Identify any overlaps, conflicts and gaps in current legislation and recommend areas of conflict that need to be addressed;
- (b) Identify potential in the current legislation to support the Samoan Government in its effective implementation of responsible management of the environment and the sustainable use and conservation of its resources;
- (c) Identify barriers to the effective implementation to achieve the potential referred in (b);
- (d) Provide a profile on environment and natural resource related Bills and analyse the status of each Bill. Assess the prospects and necessity for the entry into force of these Bills. Recommend other measures to be taken (based on existing legislation) should these Bills not be enacted or should the Consultant feel these particular Bills are unnecessary;
- (e) Identify any proposed reviews of relevant legislation and explain the intent of such reviews.”

For the purpose of paragraph (d) the word “Bills” has been read to include proposed Regulations, of which there are more of direct relevance.

This Report begins with some general observations arising from the review of laws reported on for Phase 1. Number 3 of this Report briefly notes the laws that are considered to be generally satisfactory. Number 4 highlights those laws that are considered to have defects or deficiencies. Number 5 considers the specific new or amending laws that are currently proposed in this field, while Number 6 deals with the more comprehensive legislative reviews that are currently being undertaken.

The ToR have not been addressed in the sequence that they are stated. As a guide, the substance of the ToR can be found in the following sections of this Report:

- Overlaps, conflicts and inconsistencies – **(4)**;
- Effective implementation of responsible management – **(3 & 7)**;
- Barriers to effective implementation – **(2,4)**;
- Proposed Bills – **(5)**; **and**
- Legislative Reviews – **(6)**.

2 General Observations

This Report makes judgments about the worth of nearly every law that applies in the natural resource and environment protection fields. The assessment of a law as being generally satisfactory or as being defective in some way is a subjective one, and views on this may well differ. However, the following matters relevant to drawing such conclusions can be stated with some certainty:

- (a) Credit should be given to attempts made to keep laws up to date by periodic review and amendment. This is true in every field but particularly in the environment context where greater scientific understandings of matters, and increasing numbers of international treaty obligations, give rise to entirely new areas in which law making is necessary.
- (b) In the absence of clear indications to the contrary, it should be assumed that judicial processes and levels of government authority are functioning as they are intended too. It is beyond the scope of this Report to inquire into these matters in any event. In this Report it has been assumed for example, that village fonos and the system of regulation and control within Samoan villages are functioning in an appropriate manner. The point is made, however, that these are village based systems and attempts to extend their authority beyond the village may be problematic.
- (c) Older laws may not necessarily be defective. However it has been noted that Samoa has achieved a commendable ability to review its laws and to enact new laws where such needs are identified. It is assumed that laws dating back to the independence period in the early 1960's, and which have not been comprehensively reviewed, may warrant some review. The point is made that such laws fall outside of the current trend in Samoa to keep laws up to date.
- (d) Where the administration of governmental responsibility differs from the actual legal authority given under law then it must be considered that a defect arises. For example, the responsibility for managing national parks has shifted from the Ministry of Agriculture to the Division of Environment within the Department of Lands. No such changes have been made to the laws. Whether or not problems actually flow from this situation is not the point. The fact that the law, and the administration of it, is not consistent is cause in itself to conclude that a defect exists.
- (e) The enforcement of government policy is a key element of the legislative function. Where policy is applied in the absence of law by the application of voluntary codes of practice and the publication of guidelines then problems with enforcement must be anticipated. This is currently the case in Samoa in relation to environment impact assessments (EIAs) even though clear regulation making power in this regard exists in the *Lands, Surveys and Environment Act*. A developer which opts not to conform to the expected practices may avoid any legal sanction.

In relation to Samoa's laws relating to natural resources and environment related matters, the Review conducted for Phase 1 tends to indicate the following:

- i. It might be said that there are simply too many laws making some relevant provision in this regard. For example, offences relating to pollution of the environment, or a power to make Regulations or by-laws in this regard, exist in the following laws:
 - Maritime Zones Act;
 - Lands, Surveys and Environment Act;
 - Water Authority Act;

- Ports Authority Act;
- Fisheries Act;
- Fisheries by-laws;
- Forests Act;
- Water Act;
- Police Offences Act;
- Health Act; and
- Internal Affairs Act.

- ii. This necessarily involves a multitude of government departments and agencies. The Review notes that 9 Ministries or Departments, and 2 statutory authorities, are responsible for the administration of the relevant laws.

Interestingly, the balance of authority is in favour of the MAFF rather than the DLSE. The former is said to be responsible for the administration of 7 laws, excluding the myriad of quarantine related legislation. The latter seems to have the lawful responsibility for only one law. The *Watershed Protection and Management Regulations* are technically a joint responsibility of both MAFF and DLSE. Even the Ministry of Works features more than does DLSE. And both MAFF's and Ministry of Work's responsibilities generally relate to the promotion of activities that might be thought at times to have detrimental impacts on the environment. Some scope for conflicting interests might be thought to exist in this scenario.

- iii. The laws reported on in the Review do not reflect the otherwise generally modern and up to date nature of Samoa's legislation. It is a little worrying to note that:

- Excluding the quarantine related laws, more than one-third of the laws reviewed were passed in the 1960s. (And the quarantine legislation is almost entirely from that era also)
- Excluding the Constitution, the laws reviewed appear to have been amended on only about 12 occasions. The *Forests Act 1967* and the *National Parks and Reserves Act 1974* have never been amended.

- iv. This situation appears even worse when it is considered that some very important legislation has not progressed beyond the drafting stages. These include:

- Environment Impact Assessment Regulations;
- Authorisation of Bio-prospecting Regulations; and
- Ozone Layer Protection Regulations.

Some impacts of this situation may be that:

1. It may not always be clear which Ministry, Department or agency is primarily responsible for taking action in any given circumstance.
2. In the absence of a coordinated response, the result may be that no action is taken at all.
3. Laws that have not been up-dated in accordance with experience learnt in Samoa or within the region may not be adequate for an effective response in any given circumstance.

4. There may be a tendency for some functions to be performed on a *de facto* basis by arms of the government that have no legal authority and ultimately no power of enforcement.
5. There may be a tendency to think that appropriate action can be taken on an informal basis by using Policy, Memorandums of Understanding or Guidelines that have no firm legal basis and that may tend to give an appearance of authority that does not exist in reality.
6. When put to the test the rule of law may be found wanting.

2.1 Recommendations

2.1.1

Reform to the environment related laws in Samoa should be a top priority. The aim should be to consolidate relevant provisions in a comprehensive act.

2.1.2

Consideration should be given to the current obstacles to achieving legislative reform and these should be addressed.

3 Areas Where the Laws are Generally Satisfactory

3.1 Sovereignty and Jurisdiction

The laws in this category are generally relevant and workable.

Subject to some observations in the next section concerning a reference to the environment in the Constitution and the need to define roles in relation to Samoa's international obligations in respect of the environment, there does not appear to be an urgent need for these laws to be reviewed.

3.2 Government and Administration

The *Ministry of Works Act* and the *Ports Authority Act* are examples of recent legislative reforms. Revision of the laws relating to the Samoa Water Authority is also in an advanced stage.

The reviews involving MAFF and DLSE are commented on later in this report.

3.3 Natural Resources

3.3.1 Fisheries laws

There have been numerous attempts to keep these laws up to date.

Subject to one minor observation in the next section of this Report these laws are relevant, workable and not in need of major review.

3.3.2 Water Resources

The *Water Act* has been reviewed recently and legislative changes have been drafted. It is important that the current obstacle to its enactment (noted on page 19) be overcome.

3.4 Laws Facilitating Community Involvement

These *Internal Affairs Act* and *Village Fono Act* appear to be relevant and workable and not in need of major review. However it was pointed out during final consultations with stakeholders that these laws are primarily aimed at asserting control rather than at facilitating involvement. It was noted that no specific provision is made in relation to the role of women and youth. Women's Councils, it has been noted, are quite distinct from the village councils.

More generally it was noted that there are no formal protocols or arrangements for effecting broad community consultation during law reform processes. It has been suggested that this must be addressed. It would be an appropriate matter for the proposed Law Reform Commission to consider and implement.

4 Some Notable Defects or Deficiencies

4.1 The Constitution Of Samoa

There can be no doubt that the Constitution of Samoa has stood the test of time. In recent times it has not been comprehensively reviewed or substantively amended. There has been little or no reason to do so. For this reason it is not likely that any Constitutional amendment can be seriously suggested in this Review.

However, it might be said that the Constitution is deficient in that no mention is made in its text of the importance of the environment. This must be contrasted with the Constitution of Papua New Guinea which states in its preamble the importance of conserving the nation's resources, and of having regard to the rights of future generations.

The value of this is a moot point of course. In Papua New Guinea the existence of the constitutional references to responsible environmental management and sustainability have done nothing to stop the wholesale and reckless exploitation of that country's significant forest resource. In Samoa on the other hand, despite the absence of any comforting provisions in the Constitution, log exports have been banned since 1990.

However it might be said that there is a need to focus some attention in Samoa on the importance of the rule of law applying in the environment context, and so some revision of the Constitution might be a desirable goal.

4.2 Recommendation

Advantage should be taken of any opportunity for seeking an amendment to Samoa's Constitution to acknowledge the importance of sound environmental management and the rights of future generations in this regard.

4.2.1 The Implementation of International Obligations

The Multilateral Environment Agreements which have been signed and/or ratified by Samoa at the time of the preparation of this Report include:

- Convention on Biological Diversity (Rio de Janeiro 1992)
- UN Convention to Combat Desertification (1994)

- UN Convention on the Law of the Sea (Montego Bay 1994)
- Agreement for the Implementation of UNCLOS relating to the conservation of straddling fish stocks and highly migratory fish stocks. (New York 1995)
- UN Framework Convention on Climate Change (New York 1992)
- Vienna Convention for the Protection of the Ozone Layer (Vienna 1983)
- Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal 1987)
- World Heritage Convention (Paris 1972)
- Apia Convention on the Conservation of Nature in the South Pacific (Apia 1976)
- Niue Treaty on Cooperation in Fisheries in Surveillance and Law Enforcement in the South Pacific (Honiara 1992)
- SPREP Convention (Noumea 1986)
- Agreement establishing SPREP (Apia 1993)
- South Pacific Nuclear Free Treaty (Rarotonga 1985)
- Waigani Convention on the Movement of Hazardous Wastes (Waigani PNG 1995)
- Wellington (Driftnet Fishing) Convention (Wellington 1989)

(This list was obtained from SPREP but may not constitute the full list of relevant treaties.)

There is no provision in any Samoan law that vests specific or general responsibility for the implementation of any of Samoa's international treaty obligations.

It is surprising that the *Foreign Affairs Act* makes no provision at all in this regard.

The *Maritime Zones Act* makes very useful provision in relation to the territorial jurisdiction of Samoa and in relation to aspects of the enforcement of the rights of the State in these areas. However it too makes no specific reference to the responsibility of implementing international obligations.

The *Lands, Surveys and Environment Act* establishes the Division of Environment but does not provide for its legal authority in relation to the growing number of environment related international obligations undertaken by Samoa.

A recent law drafted in the Kingdom of Tonga to establish its Department of Environment goes to some lengths to state the functions and powers of that Department in relation to the implementation of Tonga's treaty obligations.

The duties of the Department in this regard are said to be:

- To ensure the effective representation of the country at Convention meetings.
- To liaise with regional and international bodies.
- To assist any Department or agency of government to implement any treaty obligation.
- To prepare any necessary report, and to regularly report to the Minister and Cabinet.
- To share information and to provide such other cooperation as is required by a convention.
- To recommend the amendment of any Act to ensure that a treaty obligation is implemented.

(According to information obtained from SPREP, Palau has taken the step of establishing a National Environment Protection Council to manage that country's international environmental obligations.)

It is clear that the obligations undertaken in relation to the many multilateral agreements require a planned approach to achieve an appropriate process of implementation. There is no law that formally vests responsibility in this regard, or permits it to be vested. United Nations Convention on Law of the Sea (UNCLOS) has been implemented in some respects by the *Maritime Zones Act* and the Wellington Convention has been comprehensively implemented by the *Fisheries (Ban on Driftnet Fishing) Act*. In most other respects however there is considerable work to be done.

4.3 Recommendation

Any review of Samoa's environment related laws should include the vesting of clear responsibility in relation to the implementation of Samoa's international obligations in this context.

4.3.1 Fisheries by Laws

It has been noted in the Phase 1 report that the village based by-laws made under section 3 of the *Fisheries Act* could originally be enforced by fines of only \$100. An attempt was made to add to the gravity of these offences by including a power for the court to order reinstatement of the condition of the environment adversely affected by a breach of the by-laws.

In 2002 an amendment was made to section 3 which may have consequences beyond those that were intended. These are:

1. Maximum fines have been increased to 100 penalty units (\$10,000). This is a remarkable increase and may not be an appropriate penalty to be imposed by a village based Council acting in a quasi judicial way.
2. The problems that may arise from vesting such powers in a non-judicial body like a Village Fono are likely to be compounded by the apparent attempt to extend the authority of the Village Fono to non-residents of the village. This would seem to change the entire nature of the Village Fono from an institution of purely village authority to one more like that of a local court. In the absence of arrangements comprising due process in relation to the bringing of offenders before the Fono, the conduct of hearings, the rights of the accused and the enforcement of penalties against non-residents (and maybe visitors to Samoa) it is likely that the system will be compromised.

This may need further consideration.

4.4 Recommendation

The recent amendments to the *Fisheries Act* extending the authority of Village Fonos in relation to the enforcement of village by-laws might need re-consideration. Prosecution of non-residents is best done in the District Court

4.4.1 National Parks and Reserves

Administrative responsibility for national parks and reserves now rests with the Division of Environment in DLSE. This however is not reflected in the law. The *National Parks and Reserves Act* has not been amended to affect the change of responsibility from the Ministry of Agriculture.

It is unlikely that this clear defect will give rise to litigation or compromise the position of the government, but it gives a clear impression that the law is out of step with the actual position. It will certainly affect the validity of the appointment of rangers, for example.

Amendments to the Act need not be complex but a complete review may be called for. If the *Lands, Surveys and Environment Act* is to be thoroughly reviewed then it would be appropriate for comprehensive provision in respect of national parks and reserves (including marine reserves) to be made in the new Act.

4.5 Recommendation

Any review of Samoa's environment related laws should include review of and amendment to the administrative responsibility for national parks and reserves.

4.5.1 The Absence of Important Laws

It is clear that some very important aspects of environmental management are not given the necessary legal foundation. The most important of these is the need to undertake EIAs before certain activities are undertaken. No requirements for EIA are to be found in Samoa's laws. It seems to be another area where the undesirable practice of proceeding on an informal and non-legally enforceable basis has been considered to be sufficient.

There are no doubts many matters arising from Samoa's international treaty obligations that should be now stated in its domestic laws. Samoa has obligations in respect of the protection of the ozone layer but there is no legal basis upon which such obligations can be effectively implemented in accordance with law. The very worthy attempts to bring these matters to the attention of the public appear to have made remarkable achievements in achieving reductions in the use of ozone depleting substances but are not, in themselves, an adequate approach. The applicable Conventions anticipate that domestic laws will enforce the obligations that have been assumed under them.

4.6 Recommendation

There is a need, prior to any review of Samoa's environment related laws, to enact suitable laws to implement the more pressing obligations that arise under international law.

5 Laws that are Currently Proposed

5.1 General Observations

It cannot be said that an effective legislative reform process has been achieved in the context of the laws which are the subject of this review. It is not appropriate to attempt to identify or apportion responsibility for this. The important thing is that this deficiency in process be acknowledged and that the causes for it be identified and remedied by those who are part of the process. Legislative reform is not difficult to achieve in Samoa. However, the question remains as to why reform in the context of the environment has not proceeded as it has in so many other fields

5.2 Environment Impact Assessment Regulations

A real attempt has been made by the Division of Environment to formalise requirements and processes relating to the assessment of impacts on the environment.

Draft Regulations are in existence. The text of these Regulations has not been considered in this review. They have existed for a long time and were drafted by a person more experienced

in this field than the author of this Report. It is to be accepted that they are comprehensive, but the reasons stated below might explain why they have not proceeded.

It is often the case that laws such as this are drafted so as to appear to impose too onerous obligations, and to be likely to affect the course of economic development. If this is the case the problematic aspects should be identified and the draft altered to facilitate its enactment. No bona fide interests are served by having no law at all simply because a preferred draft is regarded as the only acceptable arrangement even though it meets with opposition from other quarters.

While it is true that voluntary Codes of Practice may achieve some useful result, there is really no substitute in this area for a firm legal requirement based in a clear law.

5.3 Recommendation

Any review of Samoa's environment related laws should make suitable provision for the assessment of environmental impacts. Ideally this should be addressed prior to the review if possible.

5.3.1 Access for Bio-Propecting Regulations

In response to circumstances arising in the late 1990s the Division of Environment acted promptly and appropriately to give substance to aspects of the Convention on Biological Diversity by requiring approvals to be given for persons or institutions attempting to collect biological samples for possible commercial exploitation.

Draft regulations were prepared after a proper consultative process was undertaken. There were some clear political sensitivity and the Regulations have not become law. It is difficult to say that Samoa's interests have been served by this.

Again there may be a tendency to think that voluntary Codes of Practice or informal Guidelines are a sufficient means of enforcing obligations. In the context of international treaties there is an assumption that the international obligations will be mirrored in a country's domestic laws. In fact it is only in this way that legally enforceable practices and procedures can be implemented.

5.4 Recommendation

Further attempts should be made for the draft regulations relating to authorising bio prospecting to be promulgated.

5.4.1 Ozone Layer Protection Bill and Regulations

It is well understood that time is fast running out for Samoa to be in compliance with its obligations under the Vienna Convention and the Montreal Protocol. The fact that Samoa will find itself exposed to criticism in this regard is in no way the fault of the Division of Environment. They have acted to have laws drafted and have undertaken effective public awareness in this regard. In fact they appear to have achieved remarkable reductions in the use of ozone depleting substances.

The fact remains however that there are still no legally enforceable obligations in Samoa that require a reduction in the use of ozone depletion substances.

A draft Act and Regulations have been prepared. These are convoluted and it is difficult to see that they will be workable. Little reference appears to have been made to the actual treaty documents. The drafts appear to be based on New Zealand provisions that are neither up to date nor of real relevance to Samoa's obligations, and the time-frames in which they are to be met.

This is a particularly difficult area in which to legislate and any law should, if possible, be aimed to clarify rather than confuse the issues.

5.5 Recommendation

The promulgation of concise and workable regulations relating to Samoa's obligations in respect of the protection of the ozone layer should be a matter of top priority.

5.5.1 Marine Pollution Bill

Samoa is a signatory to international treaties dealing with marine pollution. The Ministry of Transport (MoT) has ensured that Samoa's shipping laws are up to date and that compliance with many important international obligations has been achieved.

In recent years MoT has attempted to secure the passage of comprehensive marine pollution legislation but has not been able to achieve this. This remains a significant gap in Samoa's legislative framework. The provisions that are proposed would implement all major aspects of the MARPOL Convention. The draft was prepared by experts in this field and it was originally hoped that something of a model law would be adopted throughout the Pacific.

While this has been an initiative of MoT and will remain under its authority, its environmental implications are clear.

5.6 Recommendation

The efforts to enact comprehensive marine pollution legislation to implement the relevant international obligations should be supported.

6 Current Legislative Reviews

6.1 Review of Land Related Laws

Steps have recently been taken, with World Bank support, to review the laws relating to land and the administrative structure of DLSE. These are in their earliest stages but the timing of this review could not be more appropriate. Along with the current reviews mentioned below it can be hoped that a rare degree of coordination may be achieved to ensure that legislative reform is as comprehensive as possible. Effort must be made to co-ordinate all these diverse reforms.

6.2 A New Comprehensive Environment Law

The need to comprehensively review the current core laws relating to the Division of Environment is well understood. Steps to achieve this are in their earliest stages.

It is clear from this Review that the following are aspects that should be considered within the ambit of such reforms:

- The consolidation of law of the environment related provisions appearing in the many Acts noted in this Review.
- Recognition of the Division of Environment.
- The vesting of clear responsibility for the implementation of Samoa's environment related international obligations.
- The administrative responsibility for national parks and reserves.
- Comprehensive provision for the assessment of environmental impacts within the framework of an approved process.

6.3 Recommendation

A comprehensive environment law is called for.

6.3.1 Urban Planning Initiatives

Much has been done recently to implement the first planning and urban management regime in Samoa.

A Bill has been drafted to provide comprehensively for planning schemes and approvals, and related matters. A Planning and Urban Management Authority is proposed and significant steps have been taken in respect of its establishment. It is likely that legislation will be finalised and considered this year.

Cabinet has given its approval in principle to the establishment of a planning authority. It is not completely clear however how its functions will be coordinated with those of the Division of Environment. Many of the objectives of the two bodies are similar.

The objectives of this major review are to:

- Improve the economic, social and physical environment of Apia by facilitating and guiding the development of an integrated framework for urban planning and management;
- Improve the management of urban institutions and infrastructure through the provision of processes to effectively and efficiently address urban growth challenges;
- Improve the Governments institutional capacity to undertake urban planning and management in the context of good governance; and
- Improve access to basic urban services and infrastructure for the disadvantaged and vulnerable urban households.

Section 116 of the *Lands, Surveys and Environment Act* requires that the Director of Lands prepare draft management plans for the conservation, management and control of national parks and reserves, water and water resources, coastal zones, indigenous forests, soil erosion, pollution and waste and litter disposal. The preparation of such plans may involve some overlap with the responsibilities exercised under the new planning laws. This may need some coordination. It highlights some potential problems if the proposed planning laws attempts to override other legislative provisions. It is difficult to see the justification for such a provision and sections with this purpose almost always arouse the suspicion of other departments.

6.4 Recommendations

The current plans to implement a comprehensive planning and urban management regime should be supported. Also, some careful consideration of the impact of these proposals on the current responsibilities of the division of environment is warranted.

6.4.1 Laws Relating to Water

In 2001 a comprehensive review of the *Water Authority Act* and the *Water Act* was undertaken as part of an AusAid funded Institutional Strengthening Project in the Samoa Water Authority.

A new *Water Authority Bill* was drafted to replace the 1992/1993 Act. A new *Water Resources Bill* was drafted to replace the antiquated *Water Act*. The Bills have been extensively considered by the current Board of the Water Authority and other interested persons, and the *Water Authority Bill* is likely to proceed to Parliament in the near future.

It seems that the *Water Resources Bill* has met opposition on the grounds that a Cabinet approved Water Policy already deals with the matters sought to be addressed by that Bill. If this is the case it is another example of the worrying misconception about the role of policy in the context of the rule of law. If the Policy makes similar provision then the obsolete *Water Act* should have been replaced or amended to reflect this. As no such legislative change was made it is now up to Cabinet to re-visit its previous decision in the light of the proposed *Water Resources Bill*. The simple solution to this is to make changes to the Bill that reflects the approved Policy. If the proposed Act is placed under the administrative responsibility of DLSE then the impasse might be averted. The *Water Act* no longer has a place in Samoa's legal regime. Unfortunately it remains current due to an inability to achieve legislative reform.

Some justifications for these reforms are as follows:

- There are clear inconsistencies between the two Acts. Some operational provisions remain in the *Water Act* when in fact all responsibility for this had been shifted to the Water Authority under its own Act.
- The *Water Act* requires that all payments for government supplied water be paid to the Director of Works and not the Water Authority.
- The Board of the Samoa Water Authority is broadly representative of all relevant government Departments when in fact it may be preferable for a more commercially experienced and broadly community representative Board to be appointed.
- On the other hand it appears very appropriate for a Water Resources Board comprising broad government representation to take charge of the nation's water resources under the new Act.

Enacting new water related laws is timely and should overcome the current contradictions and deficiencies.

6.5 Recommendations

The review of water related laws should be supported. Secondly, if the *Water Resources Bill* conflicts with the approved water policy then some accommodation should be made in either the bill or the policy, or both.

6.5.1 Quarantine Laws

An extensive review of Samoa's quarantine related laws has been undertaken in the Ministry of Agriculture. Again this had been assisted by support from AUSAid.

The objectives of this Review have been to:

- Include issues relating to plant and animal quarantine as well as to the broader environment;
- Permit a degree of flexibility by providing for the development of legally binding condition that can be imposed by the Director of Agriculture; and
- Permit the appointment of officers of any Department to be authorised officers under the Act.

A draft Quarantine Bill has been prepared. This report does not comment on its provisions as its release at this time is limited. It can be confidently said however that such a review is overdue and comprehensive reform is entirely appropriate. This will significantly add to the general up-dating of Samoa's legislation. Recent unfortunate experience in Samoa lends great weight to such reforms and to the priority given to legislative strengthening in this area.

It is debatable that much is achieved by dispensing with the well-known expression "quarantine" in favour of the Star Wars like terminology of "biosecurity". (Interestingly the computer picks this up in its spell check!)

6.6 Recommendations

The review of the quarantine related laws should be supported. In addition, some care should be taken to ensure that their broader environmental implications are not in conflict with other provisions of the laws covered by this review.

7 Conclusions Concerning Samoa's Capacity in Relation to Environment Matters

Samoa's environment related laws do not greatly assist the country's capacity to implement responsible management of the environment. That is not to say that responsible management is not achieved. The Division of Environment has clearly achieved some success in its public awareness campaigns on certain issues and its very presence lends weight to the government's ability to enforce some regulatory control over the environment. However the fact remains that Samoa's laws in this field are deficient in many respects. As has been noted in this Report, these deficiencies principally arise from:

- The lack of EIA requirements;
- The diversity of relevant legal provisions under the administrative responsibility of a multitude of Departments and agencies; and
- The delay in achieving legislative reform to implement international obligations and to effect changes to administrative responsibilities, such as in the area of national parks.

This Report has not attempted to assess the current role played by the bodies established under the laws that have been reviewed, such as the Environment Board. While the situation exists that so many laws involve so many Departments and agencies in the context of environmental regulation, the greater the degree of coordination that can be achieved the better.

Conclusions about Samoa's capacity to achieve sustainable use and conservation of its resources are more positive. While the *Forests Act* is dated and possibly largely irrelevant the decision made more than 10 years ago to ban the export of logs is a clear example of a legally enforceable decision aimed at ensuring ecological sustainability and conservation.

Legislative initiatives in the field of fisheries regulation have also enhanced the government's ability to effectively regulate the exploitation of this resource. And the *Fisheries By-Laws* have extended significant control mechanisms down to village level.

More effective control over the use of Samoa's water resources is called for, and efforts to repeal the dated *Water Act* and replace it with an acceptable legal regime should be renewed.