

SAMOA
LAW REFORM COMMISSION

COMMISSIONS OF INQUIRY ACT
1964
Report 06/11

October 2011

Afioga i le Alii Palemia
Ofisa o le Palemia

24 Oketopa 2011

SLRC Ripoti 06/11- Toe Iloiloina o le Tulafono o Komisi Suesue 1964

Ou te fiafia e tuuina atu le Ripoti a le Komisi o le Toefuataiga o Tulafono a Samoa 04/11 mo le *Toe iloiloina o le Tulafono o Komisi Suesue 1964*. E tusa ai o le Vaega e 6 o le Tulafono o le Komisi o le Toefuataiga o Tulafono 2008, ua tuuina atu I lau Afioga aua le tuuina atu I luma o le Laulau a Fono a le Palemene mo le talanoaina.

O le a faatalia sou finagalo aua le faatagaina o le faaliliuina ma le lolomiina o lenei Ripoti.

Ma le faaaloalo lava,

Leilani Tuala-Warren
Pule Faatonu

The Hon Tuila'epa Sailele Malielegaoi
Prime Minister
Office of the Prime Minister

24 October 2011

Dear Prime Minister

SLRC Report 06/11—*Review of the Commissions of Inquiry 1964*

I am pleased to submit to you Samoa Law Reform Commission Report 06/11, *Review of the Commissions of Inquiry Act 1964*, which we submit under section 6 of the *Law Reform Commission Act 2008*. In accordance with this Act, a copy of the Report should be laid before the Legislative Assembly as soon as practicable.

We look forward to receiving your approval to arrange for the translation and publication of this Report.

Yours sincerely

Leilani Tuala-Warren
Executive Director

Preface

In November 2008, the Samoa Law Reform Commission ('Commission') was given a reference into the laws regulating Commissions of Inquiry by Cabinet.

This Report sets out the Commission's recommendations for reform of the *Commissions of Inquiry Act 1964*.

Recommendations are based on the need for Commissions of Inquiry to be relevant to modern times and in line with international obligations and ensuring that they comply with rules of natural justice¹.

Samoan custom and traditions are paramount in all considerations. Changes have only been recommended where the Commission considers it appropriate in order to improve Commissions of Inquiry processes and enhance Samoa's society, culture and economy to better address the needs of the Government and community.

Recommendations also have been shaped by contributions and submissions from the public and members of previous Commissions of Inquiry.

The Commission is grateful for the assistance of the following people: Maiava Iulai Toma, Ombudsman and previous Chairman of a number of previous Commissions of Inquiry; Rebecca Wendt, Former Assistant Attorney General, Civil Division; and Peter Bednall, Principal State Solicitor, Attorney General's Office. The Commission is also grateful to the Internal Affairs Division of the Ministry of Women Community Social Development for their assistance in the Commission's public consultations in Upolu and Savaii.

¹ *Erebus Royal Commission; Air New Zealand Ltd v Mahon (No 2)* [1981] 1 NZLR 618; See also *Peters v Davison* (1998) 18 NZTC 14,027 (CA).

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1. Background

- 1.1 The introduction of commissions of inquiry into modern legal history was heralded by the signing of the Domesday Book in 11th Century Britain. The conception of the Domesday Book was the first time the Crown examined its own mechanisms and modified its powers accordingly. This is referred to as perhaps the first ‘Royal Commission’².
- 1.2 The Crown formally established Commissions in the 12th century to assist Government operations to ensure that appropriate balance is maintained between the rights of the citizenry and the duties of the Crown³. Since then Commissions of Inquiry have been seen as tools employed to inquire into and report upon particular affairs of a state that are of public concern⁴.
- 1.3 In Samoa, Commissions of Inquiry were introduced by the *Commissions of Inquiry Ordinance 1960* which was later repealed by the *Commissions of Inquiry Act 1964* (‘the Act’). The Law Reform Commission has identified numerous Commissions of Inquiry that have been established under the Act or in relation to the Act⁵.

A need for change

- 1.4 Commissions of Inquiry are recognised as an important check and balance on the mechanisms of the Executive Government and, despite being established by Executive Government, must remain independent of it⁶.
- 1.5 Therefore, it is important that legislation enacted for the purposes of establishing and regulating the activities of Commissions of Inquiry ensures that they are conducted

² The Department of Internal Affairs of New Zealand, *Setting up and Running Commissions of Inquiry* (February 2001) 7.

³ Ibid.

⁴ Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 5.

⁵ *Commission of Inquiry into the claims by the people of Falealili to Government owned land at Falealili* (1973); *Commission of Inquiry into the report of the Samoa Health Service* (1978) (also see *Vermeulen v Attorney-General* [1985] WSSC 1 (2 May 1985) and *Matatumua v Medical Council* [2000] WSCA 3); *Misc 87 2000* (18 August 2000); *Commission of Inquiry into the Controller and Chief Auditor’s Report* (1994)(also see *Ah Chong v The Attorney General* [1997] WSSC 9; CP 210-96 (24 March 1997); *Commission of Inquiry into the Doctor’s Strike* (2002); *Commission of Inquiry into Matters relating to the divergence between the decisions making power authority of the Alii and Faipule and Formal Courts* (2005); *Inquiry into the Grievance of the Family of Taumulimaleiasa Tofaeono Taulima II – Tuvale against the Ministry of Health* (2005); *Commission of Inquiry into the Review of the Electoral Act 1963* (2006) (also see *Samoa Party v Attorney General* [2010] WSCA 4 (7 May 2010); *Commission of Inquiry into the illegal importation of firearms from American Samoa aboard the MV Nafanua* (19 April 2008); *Commission of Inquiry into the Freedom of Religion* (2010); and *Commissions of Inquiry into the working of section 20 of the Land and Titles Act 1981 in relation to the appointment of a holder of matai name or title* (2010).

⁶ Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Report No 3 (2003) 5.

fairly, that witnesses are treated equitably, and that there are sufficient safeguards to prevent any unchecked exercise of the supreme executive power of inquiry⁷.

1.6 The Law Reform Commission noted the absence of clear guidance regarding the administration and conducting of Commissions of Inquiry. The Act also fails to provide specific requirements for Commissions of Inquiry reports to ensure that such reports are acted upon by relevant authorities and concerns raised are addressed accordingly. The Act has remained substantially unchanged since its inception.

1.7 The Law Reform Commission therefore is of the view that certain changes must be made to ensure that Commissions of Inquiry properly fulfil their functions and guarantee good governance and accountability in the Executive Government.

Focus of recommendations for reform

1.8 In its review of the Act, the Commission has focused on:

- *updating outdated provisions and language;*
- *responding to submissions from stakeholders;*
- *developing a guideline for the setting up and running of commissions of inquiry;*
and
- *improving reporting requirements.*

2. The Nature of Commissions of Inquiry

Purpose

2.1 Commissions of Inquiry are established to provide independent investigation of matters of public concern. They are often employed to⁸:

- obtain a full and fair account of what happened, especially in circumstances where the facts are disputed, or the course and causation of events is not clear;
- learn from events and to help prevent their recurrence by synthesising or distilling lessons which can be used to change normal practice;
- provide an opportunity for reconciliation and resolution, by bringing protagonists face to face with each other's perspectives and problems;
- rebuild public confidence after a major failure by showing that the government is making sure it is fully investigated and dealt with;
- hold people and organisations to account, sometimes indirectly contributing to the assignation of blame and to mechanisms for retribution; and
- serve a wider political agenda for government either in demonstrating that 'something is being done' or in providing leverage for change.

⁷ Tasmania, *Parliamentary Debates*, House of Assembly, 30 June 1995, <<http://www.parliament.tas.gov.au:8000/ISYSquery/IRL91F6.tmp/1/doc>>.

⁸ House of Commons Public Administration Select Committee, *Government by Inquiry: Volume 1* (2005) The Stationery Office Limited, London, 9–10.

Jurisdiction

2.2 In Samoa, Commissions of Inquiry are established by order of the Head of State acting on the advice of Cabinet⁹ and are given certain powers and functions under the Act. Once established, Commissions of Inquiry undertake extensive investigation in line with their terms of references.

2.3 The Act expressly provides that Commissions of Inquiry are appointed to inquire into and report questions arising out of or concerning: the administration of the Government; the working of any existing law; the necessity or expediency of any legislation; the conduct of any employee of the Government; or any disaster or accident (whether due to natural causes or otherwise) in which any citizen or ordinary resident of Samoa was killed or injured or was or might have been exposed to risk of death or injury¹⁰.

Submissions

2.4 Stakeholders suggested that the jurisdiction of Commissions of Inquiry set out under s 4 of the Act be extended. In their view this may minimise the number of cases brought before the Courts.

2.5 The stakeholders, however, failed to clarify the scope of the suggested extension to the jurisdiction of the Commissions of Inquiry.

Commission's views

2.6 It is unclear how extending the jurisdiction of Commissions of Inquiry would minimise the number of cases that would be brought before the Courts given that the purpose and nature of determinations made by Commissions of Inquiry and formal Courts are distinguishable. However, extending the jurisdiction of Commissions of Inquiry would allow them to investigate other matters of public concern.

Recommendation 1: The jurisdiction of Commissions of Inquiry, set out in section 4 of the *Commissions of Inquiry Act 1964*, should be extended to include 'other matters of public concern'.

Please refer to section 4(f) of the *Commissions of Inquiry Act 1908* (NZ) for an example.

2.7 The Law Reform Commission also understands that Commissions of Inquiry have been established in the past to inquire into questions regarding the workings of existing legislation and/or the necessity or expediency of any legislation¹¹. The Law Reform Commission however is mandated under the *Law Reform Commission Act 2008* to undertake such functions¹².

Recommendation 2: When there is a question concerning the *workings of any existing*

⁹ *Commissions of Inquiry Act 1964* s 4.

¹⁰ *Commissions of Inquiry Act 1964* s 4.

¹¹ *Commission of Inquiry into the Electoral Act; Commission of Inquiry into Freedom of Religion*.

¹² *Law Reform Commission Act 2008* ss 4, 6 and 7.

legislation or the necessity or expediency of any legislation, this should be referred to the Law Reform Commission as this is its mandate under sections 4, 6 and 7 of the Law Reform Commission Act 2008. This will prevent duplication of work and save resources. Therefore, it is recommended that subsections 4(b) and (c) of the Commissions of Inquiry Act 1964 be repealed, and that section 6 of the Law Reform Commission Act 2008 be amended to clearly provide for the functions set out in the repealed subsections of the Commissions of Inquiry Act 1964.

Powers

2.8 Commissions of Inquiry are empowered to hold hearings either in public or in private or partly in public and partly in private¹³. They are also empowered to prohibit the publication of names of witnesses or any report or account of the evidence given at an inquiry¹⁴.

2.9 Commissioners appointed under the Act are also given the powers and status of Judges of the Supreme Court specifically in relation to citing parties interested in the inquiry, summoning witnesses, administering oaths, hearing evidence, and conducting and maintaining order at the inquiry¹⁵. It is important, however, to note that a Commission of Inquiry is not a court of law, even though it has many similar powers and may often be presided over by a member or former member of the judiciary.

Submissions

2.10 Stakeholders suggested that a separate provision be enacted expressly vesting Commissioners of an Inquiry with a power to issue summons.

Commission's views

2.11 The scope of subs 6(2) of the Act is wide enough to empower Commissioners of an Inquiry to issue summons. However, the Law Reform Commission believes that having separate provisions clearly outlining the extent and limitations of the powers of Commissioners of an Inquiry, relative to those of Judges of the Supreme Court, would provide certainty and clear guidance.

Recommendation 3: Amend sections 6(2) and 7 of the *Commissions of Inquiry Act 1964* to expand the powers of Commissioners of Inquiry. This will provide better guidance with regards to: who is entitled to be heard; the hearing of evidence; powers of investigation; and powers to summon witnesses. The Law Reform Commission recommends that amendments to subsection 6(2) of the *Commissions of Inquiry Act 1964* be made in line with sections 4A (Persons entitled to be heard), 4B (Evidence), 4C (Powers of Investigation) and 4D (Powers to summon witnesses) of the *Commissions of Inquiry Act 1908 (NZ)*.

Submissions

¹³ *Commissions of Inquiry Act 1964* s 6.

¹⁴ *Commissions of Inquiry Act 1964* s 6.

¹⁵ *Commissions of Inquiry Act 1964* s 6.

2.12 Stakeholders pointed out that Commissioners of an Inquiry should be empowered to postpone or temporarily suspend the inquiry if an investigation or person interested in the investigation would likely be prejudiced.

Commission's views

2.13 The Law Reform Commission believes that Commissions of Inquiry should be empowered to postpone or temporarily suspend an inquiry but only under circumstances where the commencement or continuation of an inquiry would prejudice the right to a fair trial of an individual.

2.14 On that note, the Law Reform Commission is of the view that the Act should clarify the relationship between Commissions of Inquiry and any case/trial in progress. The approach adopted in Ireland is that inquiries are adjourned until related criminal proceedings are concluded. This is demonstrated in *Cherryville Rail Inquiry*¹⁶, where the inquiry into the cause of a railway accident near Cherryville was adjourned until the criminal proceedings were concluded. This is a reasonable approach given that testimonies made by witnesses in an inquiry can be privileged and hence may not be admissible in Court¹⁷.

2.15 The Courts in Ireland have also been active in preventing the infringements of a defendant's right to a fair trial due to pretrial publicity through a tribunal¹⁸.

2.16 The obvious competing interests present in the context of Commissions of Inquiries and criminal prosecutions in session at the same time are that of the right to a fair trial of an accused¹⁹ versus the public's right to have alleged crimes prosecuted (public safety)²⁰. Therefore, the Law Reform Commission acknowledges the difficulty in determining whose rights should prevail.

Recommendation 4: Commissioners of an Inquiry should be empowered under the *Commissions of Inquiry Act 1964* to postpone or temporarily suspend an inquiry upon an applicant's request where its commencement or continuation would seriously prejudice a criminal trial that is in progress or about to commence. An exception to the exercise of such a power should be allowed particularly with regard to cases where there is a reasonable belief that adjourning an Inquiry would have serious consequences on the safety or security of the public.

Reporting

2.17 Mandatory reports prescribed by the Act are made only to Cabinet upon the completion of every Commission of Inquiry²¹. The reports must state the findings and

¹⁶ *Report of the Investigation into the Railway Accident near Cherryville Junction, County Kildare, on the 21st August 1983* (December 1984 Prl 2904) [2].

¹⁷ *Phillips v Nova Scotia (Commissions of Inquiry into the Westray mine Tragedy)* [1995] 2 S.C.R. 97.

¹⁸ *Goodman International v Hamilton* [1992] 2 IR 542, 591 as per Chief Justice Finlay.

¹⁹ *D v Director of Public Prosecutions* [1994] 2 IR 465; see also *Attorney General v X* [1992] 1 IR 1.

²⁰ *D v Director of Public Prosecutions* [1994] 2 IR 465-474.

²¹ *Commissions of Inquiry Act 1964* s 4.

recommendations of Commissions of Inquiry which ideally should resolve the matters at hand and bring an end to public controversies²².

Submissions

2.18 During public consultations there were strong views with regards to the timeliness of Commissions of Inquiry reports and the need for such reports to be publicised and tabled before Parliament. Stakeholders also pointed out that a tentative due date for Commissions of Inquiry reports must be set by the Head of State on the advice of Cabinet and included in their terms of reference when establishing such Commissions of Inquiry.

Commission's views

2.19 The Law Reform Commission believes that the reasoning behind the need for Commissions of Inquiry to report to Cabinet only is to expedite any action to be taken based on recommendations made by Commissions of Inquiry rather than delay this because of the need to table such reports before Parliament.

2.20 However, the reporting process must provide for protection against inactivity and/or Executive corruption, and promotion of accountability and good governance particularly in relation to inquiries into the administration of the Government and the conduct of employees of the Government. The Law Reform Commission therefore sees the need for reports to be tabled before Parliament within a certain period of time, and to be accompanied by a report of any resulting actions undertaken by the Executive Government. This raises the question of how to deal with reports containing sensitive information that should not be publicised.

2.21 To address this concern, the Law Reform Commission suggests that where a report contains sensitive information that should not be publicised, an edited version of such a report must be prepared excluding that information. It is important, however, to clearly state the reason(s) for excluding parts of such reports in the edited version to be tabled before Parliament. The Commission considers that this would ensure that the proposed procedure for dealing with sensitive information cannot be misused to avoid the tabling before Parliament of Commissions of Inquiry reports, or parts thereof, for reasons other than legitimate confidentiality.

²² See *Vermeulen v Attorney-General* [1985] WSSC 1 (2 May 1985) and *Matatamua v Morris Hedstrom (Samoa) Ltd* [2003] WSSC 45 (19 December 2003).

Recommendation 5: Amend section 4 of the *Commissions of Inquiry Act 1964* to empower the Head of State to set a date for the delivery of Commissions of Inquiry reports to Cabinet and clearly state that such dates are subject to change upon a reasonable request by the Commission of Inquiry.

Recommendation 6: Amend section 4 of the *Commissions of Inquiry Act 1964* to require Cabinet to table before Parliament exact copies of Commissions of Inquiry reports delivered to them within a set period of time commencing from time of receipt. In the case of emergencies the Executive Government should be allowed to act on any recommendation by Commissions of Inquiry before they are tabled before Parliament.

Recommendation 7: Amend section 4 of the *Commissions of Inquiry Act 1964* to provide that where sensitive information needs to be kept confidential, an edited version of the report may be produced for tabling in Parliament, with reasons for the exclusion of any sensitive information clearly stated. .

3. Rules and Procedures

3.1 The Act does not provide clear guidelines for the setting up of its secretariat, for administration or for conducting of Commissions of Inquiry. This is generally left to each Commission of Inquiry to determine its own procedures²³.

Submissions

3.2 The Ombudsman, Maiava Iulai Toma, pointed out that each inquiry is distinctive therefore creating standard rules and procedures might be difficult given the unique nature of each matter.

3.3 Tamati Law Firm in their submission revealed that they did not want Commissions of Inquiry to be restrictive like the formal Courts. Hence they did not support the idea of devising rules to guide Commissions of Inquiry. In their view, Judicial Review is available to remedy any improper use of powers available to Commissions of Inquiry.

Commission's views

3.4 The Law Reform Commission acknowledges the validity of such concerns, but it believes that providing rules and procedures to guide Commissions of Inquiry would be very helpful to both members and parties to Commissions of Inquiry. Specific rules and procedures should also be devised for inquiries dealing with questions concerning the 'administration of Government' or 'conduct of employees of the Government' which would likely affect the rights of individuals²⁴. This would avoid the subjection of their findings and recommendations to judicial review for lack of

²³ This was revealed in a preliminary consultation with the Ombudsman (Maiava Iulai Toma) who has been sitting in the capacity of Chairman in a number of Commissions of Inquiry.

²⁴ See Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 12-14.

procedural fairness²⁵. The principles of procedural fairness or natural justice apply to quasi judicial bodies such as commissions of inquiry and tribunals²⁶. Non-compliance with those principles may render a decision by the quasi judicial and tribunals void.

Natural Justice and Procedural Fairness

- 3.5 The rules of natural justice or procedural fairness were originally developed by the courts of equity to control the decisions of inferior courts and gradually extended them to apply equally to decisions of administrative and domestic tribunals and of any authority exercising an administrative power that affects a person's status, rights or liabilities. A decision reached in contravention of natural justice is invalid²⁷.
- 3.6 There are two principal rules accommodated under the rules of natural justice. The first is the rule against bias²⁸. The rule against bias operates to invalidate any decision, however fair it may seem, if made by a person with any financial or hidden interest in the outcome of the case.
- 3.7 The second rule operates to give a person to be affected by a decision the opportunity to be heard and to hear any evidence against him or her²⁹. It provides that a decision cannot stand unless the person directly affected by it was given a fair opportunity both to state his or her case and to know and answer to the opposing side's case.
- 3.8 The creation of Commissions of Inquiry rules and procedures would also assist inquiries conducted under other Acts³⁰ which refer to the *Commissions of Inquiry Act 1964* for guidance.

Salmon Rules

- 3.9 In the United Kingdom in 1966, Lord Justice Salmon, in his report, *Royal Commission on Tribunals of Inquiry*³¹, identified what are known today as the 'cardinal' principles for a fair commission of inquiry. These are known as the 'Salmon Rules'. His Lordship suggested that injustice would arise to those appearing

²⁵ *Keil v Land Board* [2000] WSSC 41 (21 December 2000). See also *Digicel (Samoa) Ltd v Telecommunications Tribunal* [2009] WSSC 101 (23 October 2009).

²⁶ *Esera v National University of Samoa* [2003] WSSC 12 (8 August 2003).

²⁷ Elizabeth A Martin (2003) *A Dictionary of Law (5th Ed)* 325-326.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Accident Compensation Act 1989* s 14; *Broadcasting Act 2010* s 15; *Charitable Trusts Act 1965* s 37; *Commerce Act 1978* s 9; *Computer Services (Security of Information) Act 1980* s 8.; *Development Bank of Samoa Act 2010* s 32; *Fair Trading Act 1998* s 50; *Housing Corporation Act 2010* s 37; *Land Titles Investigation Act 1966* subs 8(4); *Law Practitioners Act 1976* s 39; *Medical Practitioners Act 1975* s 23; *Pharmacy Act 1976* s 20; *Planning and Urban Management Act 2004* s 73; *Poisons Act 1998* s 48; *Professional Engineers (Registrations) Act 1998* s 20; *Public Service Act 2004* s 6(2); *Remuneration Tribunal Act 2003* s 6; *Samoa Institute of Accountants Act 2006* subs 9(2); *Samoa Qualifications Authority Act 2010* s 35; *Shipping Act 1998* s 83(5); *Sports Dispute Resolution Act 2008* s 16; *Telecommunication Act 2005* s 11E.

³¹ The Rt Hon Lord Justice Salmon, *Royal Commissions on Tribunals of Inquiry*, UK 1966.

before a commission of inquiry if the following six principles were not strictly observed:

1. *Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate;*
2. *Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which were made against him and the substance of the evidence in support of them;*
3. (a) *He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers;*

(b) *His legal expenses should normally be met out of public funds;*
4. *He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry;*
5. *Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard;*
6. *He should have the opportunity of testing by cross examination conducted by his own solicitor or counsel any evidence which may affect him*³².

3.10 The main rationale behind these six considerations put forward by Lord Justice Salmon is the delivery of procedural fairness, in particular to those called to give evidence before such an inquiry.

3.11 These principles have been described by the Tasmanian House of Assembly as ‘fundamental’ to a fair Commission of Inquiry³³.

3.12 The Tasmania Law Reform Institute acknowledged public concerns regarding the wide powers given to commissions of inquiry and how improper uses of such powers will adversely affect the rights of individuals involved in such commissions of inquiry. Thus, there is a grave need for better safeguards to protect personal reputations, interests and rights³⁴. Therefore, rather than relying on the protections that have developed under the common law, the Tasmanian Parliament saw fit, upon recommendation of the Law Reform Commissioner, to provide a statutory guarantee

³² Ibid 17-18.

³³ Tasmania Law Reform Institute, *Report on the Procedural Aspects of Royal Commissions and Boards of Inquiry*, Report No 70 (1993) Government Printer, Tasmania, 24; see also Tasmania, *Parliamentary Debates*, House of Assembly, 14 April 2000.

³⁴ See Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 6.

of procedural fairness by incorporating all of the *Salmon Rules* in the *Commissions of Inquiry Act 1995* (Tas)³⁵.

3.13 The Canadian Law Reform Commission recommended a different approach to combat procedural unfairness. It recommended the categorisation of commissions of inquiries into ‘advisory inquiries’ and ‘investigative inquiries’ to ensure that such wide powers given to commissioners of inquiries are not readily abused³⁶. The basis for such categorisation was to differentiate between inquiries that needed powers to issue summons or take evidence and those that did not³⁷. The Alberta Law Reform Institute recommended a similar approach through an alternate categorisation that depended on whether an inquiry was acting ‘judicially’ or whether its role was ‘purely administrative’³⁸. Canadian courts have asserted that such categorisation is of paramount importance in determining what common law principles of natural justice are applicable³⁹.

3.14 The New Zealand Public and Administrative Law Reform Committee, which reported on Commissions of Inquiry in 1980, commented that the neat classification advocated by the Canadian Law Reform Commission is not workable⁴⁰.

Recommendation 8: The Law Reform Commission strongly believes that the *Commissions of Inquiry Act 1964* should provide procedures or rules to guide Commissions of Inquiry in their establishment and administration as well as the conducting of Commissions of Inquiry and tribunals established under various Acts⁴¹. It is highly recommended that the ‘*Salmon Rules*’ are incorporated into the Act to ensure that Commissions of Inquiry are conducted fairly and in line with rules for procedural fairness. Guidance in incorporating the ‘*Salmon Rules*’ into the Act may be sought from Tasmania. Please refer to *Commissions of Inquiry Act 1995* of Tasmania s17 (rule 1), subs 18(1) (rule 2), subs 18(2) (rule 3(a)), subs 6(1) (rule 3(b)), subs 18(3)(b) (rule 4), subs 18(3)(d) (rule 5), subs 18(3)(c) (rule 6).

Recommendation 9: The Law Reform Commission noted that some jurisdictions have hand books. In New Zealand the Department of Internal Affairs has developed a *Hand Book for the Setting up and running of Commissions of Inquiry* which sets out the guidelines for Officials, Commissioners, and Commission Staff⁴². This is an alternative

³⁵ *Commissions of Inquiry Act 1995* (Tas) s 17 (rule 1), subs 18(1) (rule 2), subs 18(2) (rule 3(a)), subs 6(1) (rule 3(b)), subs 18(3)(b) (rule 4), subs 18(3)(d) (rule 5), subs 18(3)(c) (rule 6).

³⁶ Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 6.

³⁷ *Ibid.*

³⁸ R A MacDonald, “The Commission of Inquiry in the Perspective of Administrative Law” (1980) 18 Alberta LR 366 at 387.

³⁹ See *Re Copeland and McDonald et al* (1978) 88 DLR (3d) 724 at 730. See also *Callahan v Newfoundland (Minister of Social Services) et al* 113 Nfld & PEIR 1.

⁴⁰ NZLC IP1 at 33 para 114.

⁴¹ See Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 6.

⁴² Available at: <<http://www.dia.govt.nz/Services-Commissions-of-Inquiry-Index>> (Accessed 1 July 2009).

to having rules and procedures in a Schedule to the *Commissions of Inquiry Act 1964* or a separate Regulation. Alternatively, perhaps matters of legal importance should be stipulated either in a Schedule to the Act or Regulation, and administrative matters in a hand book.

Note:

List of other Acts that refer to non-existent procedures under the Commissions of Inquiry Act 1964:

1. *Accident Compensation Act 1989* s 14; *Broadcasting Act 2010* s 15;
2. *Charitable Trusts Act 1965* s 37;
3. *Commerce Act 1978* s 9;
4. *Computer Services (Security of Information) Act 1980* s 8;
5. *Development Bank of Samoa Act 2010* s 32;
6. *Fair Trading Act 1998* s 50;
7. *Housing Corporation Act 2010* s 37;
8. *Land Titles Investigation Act 1966* subs 8(4);
9. *Law Practitioners Act 1976* s 39;
10. *Medical Practitioners Act 1975* s 23;
11. *Pharmacy Act 1976* s 20;
12. *Planning and Urban Management Act 2004* s 73;
13. *Poisons Act 1998* s 48;
14. *Professional Engineers (Registrations) Act 1998* s 20;
15. *Public Service Act 2004* subs 6(2);
16. *Remuneration Tribunal Act 2003* s 6;
17. *Samoa Institute of Accountants Act 2006* subs 9(2);
18. *Samoa Qualifications Authority Act 2010* s 35;
19. *Shipping Act 1998* subs 83(5);
20. *Sports Dispute Resolution Act 2008* s 16; and
21. *Telecommunication Act 2005* s 11E.

List of Recommendations:

Recommendation 1: The jurisdiction of Commissions of Inquiry, set out in section 4 of the *Commissions of Inquiry Act 1964*, should be extended to include ‘other matters of public concern’.

Please refer to section 4(f) of the *Commissions of Inquiry Act 1908* (NZ) for an example.

Recommendation 2: When there is a question concerning the *workings of any existing legislation* or the *necessity or expediency of any legislation*, this should be referred to the Law Reform Commission as this is its mandate under sections 4, 6 and 7 of the *Law Reform Commission Act 2008*. This will prevent duplication of work and save resources. Therefore, it is recommended that subsections 4(b) and (c) of the *Commissions of Inquiry Act 1964* be repealed, and that section 6 of the *Law Reform Commission Act 2008* be amended to clearly provide for the functions set out in the repealed subsections of the *Commissions of Inquiry Act 1964*.

Recommendation 3: Amend sections 6(2) and 7 of the *Commissions of Inquiry Act 1964* to expand the powers of Commissioners of Inquiry. This will provide better guidance with regards to: who is entitled to be heard; the hearing of evidence; powers of investigation; and powers to summon witnesses. The Law Reform Commission recommends that amendments to subsection 6(2) of the *Commissions of Inquiry Act 1964* be made in line with sections 4A (Persons entitled to be heard), 4B (Evidence), 4C (Powers of Investigation) and 4D (Powers to summon witnesses) of the *Commissions of Inquiry Act 1908* (NZ).

Recommendation 4: Commissioners of an Inquiry should be empowered under the *Commissions of Inquiry Act 1964* to postpone or temporarily suspend an inquiry upon an applicant’s request where its commencement or continuation would seriously prejudice a criminal trial that is in progress or about to commence. An exception to the exercise of such a power should be allowed particularly with regard to cases where there is a reasonable belief that adjourning an Inquiry would have serious consequences on the safety or security of the public.

Recommendation 5: Amend section 4 of the *Commissions of Inquiry Act 1964* to empower the Head of State to set a date for the delivery of Commissions of Inquiry reports to Cabinet and clearly state that such dates are subject to change upon a reasonable request by the Commission of Inquiry.

Recommendation 6: Amend section 4 of the *Commissions of Inquiry Act 1964* to require Cabinet to table before Parliament exact copies of Commissions of Inquiry reports delivered to them within a set period of time commencing from time of receipt. In the

case of emergencies the Executive Government should be allowed to act on any recommendation by Commissions of Inquiry before they are tabled before Parliament.

Recommendation 7: Amend section 4 of the *Commissions of Inquiry Act 1964* to provide that where sensitive information needs to be kept confidential, an edited version of the report may be produced for tabling in Parliament, with reasons for the exclusion of any sensitive information clearly stated. .

Recommendation 8: The Law Reform Commission strongly believes that the *Commissions of Inquiry Act 1964* should provide procedures or rules to guide Commissions of Inquiry in their establishment and administration as well as the conducting of Commissions of Inquiry and tribunals established under various Acts⁴³. It is highly recommended that the ‘*Salmon Rules*’ are incorporated into the Act to ensure that Commissions of Inquiry are conducted fairly and in line with rules for procedural fairness. Guidance in incorporating the ‘*Salmon Rules*’ into the Act may be sought from Tasmania. Please refer to *Commissions of Inquiry Act 1995* of Tasmania s17 (rule 1), subs 18(1) (rule 2), subs 18(2) (rule 3(a)), subs 6(1) (rule 3(b)), subs 18(3)(b) (rule 4), subs 18(3)(d) (rule 5), subs 18(3)(c) (rule 6).

Recommendation 9: The Law Reform Commission noted that some jurisdictions have hand books. In New Zealand the Department of Internal Affairs has developed a *Hand Book for the Setting up and running of Commissions of Inquiry* which sets out the guidelines for Officials, Commissioners, and Commission Staff⁴⁴. This is an alternative to having rules and procedures in a Schedule to the *Commissions of Inquiry Act 1964* or a separate Regulation. Alternatively, perhaps matters of legal importance should be stipulated either in a Schedule to the Act or Regulation, and administrative matters in a hand book.

⁴³ See Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995*, Final Report No 3 (2003) Government Printer, Tasmania, 6.

⁴⁴ Available at: <<http://www.dia.govt.nz/Services-Commissions-of-Inquiry-Index>> (Accessed 1 July 2009).