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2011

VANUATU LAW COMMISSION Annual Report



VANUATU LAW COMMISSION

12/23/2011



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VANUATU LAW COMMISSION

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VANUATU LAW COMMISSION

The Hon. Jonas James MP
Minister for Justice and Community Services
PMB 9048
Port Vila

{Insert date}

Dear Minister:

Re: **Annual Report 2011**

The Law Commission is pleased to present its Annual Report for 2011 in accordance with section 11 of the *Law Commission Act* [Cap 115].

Yours Sincerely

Bertha Pakoasongi
SECRETARY, VANUATU LAW COMMISSION



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Annual Report of the Vanuatu Law Commission (VLC). The past year has resulted in some significant developments for the VLC. While the *Law Commission Act* [Cap 115] (the Act) has been in place since 1980, steps to formally establish the VLC were not taken until 2009. In August 2011, the first Secretary of the VLC, Mrs Bertha Pakoasongi, was appointed.

During the year, the VLC has been working on establishing the office of the Secretariat of the VLC. To this end, the VLC has established procedures by which the office will function. Procedures that have been established include those for submitting a reference to the VLC for consideration and for the acceptance of references by the VLC.

The VLC has also been developing a website and brochures informing the public of the VLC's functions. It is hoped that Government agencies as well as community organisations and the general public will be able to use this knowledge in order to utilise the VLC for law reform where appropriate.

This year has also seen the resignation of Mr Russell Nari from his role as Chairman of the VLC, leaving that position vacant.

The coming year promises to be a busy one for the VLC. Amendments to the *Law Commission Act* [Cap 115] have passed Parliament are expected to be gazetted early in 2012. We expect that a new Commission will be appointed.

We are aiming to recruit more support staff to assist the Secretary in 2012. There will be an emphasis on building a strong team of legal research officers to undertake research and develop working papers on law reform for the VLC. The VLC will utilise technical assistance from donors to assist with building the capacity of new staff where possible.

The VLC has to date received three proposals to undertake law reform reviews. Consideration of these reviews is on hold pending the outcome of amendments to the *Commission Act* [Cap 115].

The VLC has also received notice of our budget for the coming year, which will place some constraints on our ability to undertake some projects and recruit staff and will necessitate that we may need to shorten consultation processes or seek donor assistance for some projects.

Despite the challenges that we face, the VLC is confident that we will be fully established on 2012 and will be ready to begin the process of law reform.

Bertha Pakoasongi
SECRETARY, VANUATU LAW COMMISSION



The Chairman of the VLC, Russell Nari vacated this position on 8 July 2011. The position remains vacant.

Significant Events

On 1 August 2011, Mrs Bertha Pakoasongi commenced work as the first Secretary of the VLC.

Anticipated Developments in 2012

Amendments to the *Law Commission Act* [Cap 115] are expected to be gazetted early in 2012. These amendments are expected to lead to a change in composition of the membership of the VLC.

About the Law Commission

The Vanuatu Law Commission is an independent statutory body funded by the Government of Vanuatu and created under the *Law Commission Act* [Cap 115] to study and keep under review the laws of Vanuatu and recommend reforms where needed.

The functions of the Law Commission as provided under the *Law Commission Act* [Cap 115] is to study and keep under review the laws of Vanuatu with a view to recommending reforms and in particular:

- (a) the removal of anachronisms and anomalies;
- (b) the reflection in the law of the distinctive concepts of custom, the common and civil law legal systems and the reconciliation where appropriate of differences in those concepts; and
- (c) the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of Vanuatu Society, of groups within that society and of individual members of that society.

When a Government bill is published the VLC may also submit comments and recommendations on the bill by notice in writing to the Speaker before any debate on the bill is commenced.

Any recommendations made by the Law Commission are based on extensive research and public consultation as well as the principles of impartiality, equity and social justice. The VLC will also take into account both custom and our common and civil law traditions.

In carrying out its functions the VLC may:

- (a) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person including the Minister for Justice and Community Services;
- (b) on its own initiative carry out such studies and research of a legal nature as it may consider necessary for carrying out its functions including research relating to other legal systems; and
- (c) make proposals to the Minister for reforms in the law.



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a whether to undertake a particular inquiry that has been

Members

The position of Chairman of the VLC is currently vacant with the departure of Russell Nari in July this year.

Staff

<i>Secretary</i>	Bertha Pakoasongi
<i>Senior Legal Research Officer</i>	Megan Taylor

The VLC currently has two staff members, the Secretary Mrs Bertha Pakoasongi and one Research Officer provided through international technical assistance. The VLC is hoping to add two local Research Assistants and an Administration Officer in 2012.

Technical Assistance

Technical assistance has been provided by the Australian Youth Ambassadors for Development (AYAD) Program throughout 2011. The AYAD program places skilled young Australian volunteers, aged 18-30, on short-term assignments of between 3-12 months in developing countries throughout the Asia Pacific region.

It is expected that the VLC will receive follow-on technical assistance from Australian Volunteers for International Development from the end of 2011 through to 2014. Australian Volunteers for International Development work with local people to reduce poverty by sharing knowledge, developing sustainable skills and building the capacity of individuals, organisations and communities in line with partner governments and Australian Government development priorities, and the Millennium Development Goals (MDGs). These volunteer programs are funded by AusAID.

Ministerial Powers

The Minister responsible for the VLC is the Minister for Justice and Community Services. Under section 12 of the *Law Commission Act* [Cap 115] the Minister may for the better carrying out of the provisions of the Act by Order make regulations not inconsistent with the Act. These regulations may provide for, among other things, the procedures of the Commission; the manner of reimbursement of expenses of the members of the Commission; and the form in which the annual report shall be made.

The Minister is also able in accordance with section 3(2) of the Act to appoint the members of the VLC for a term of not more than 3 years as well as a secretary to the VLC under section 5(1). The Minister may remove from office members of the Commission in accordance with section 4 of the Act where the Minister is satisfied that a member of the VLC has been absent from 2 consecutive meetings of the VLC without the consent of the Chairman or without reasonable excuse; has been convicted of a crime involving moral turpitude; or is otherwise unable or unfit to discharge the functions of a member.

The Minister may refer proposals for the VLC to receive and consider any proposals for the reform of the law.



The VLC has been concentrating on establishing the Office of the Secretary throughout 2011.

The first Secretary, Mrs Bertha Pakoasongi, was appointed on 1 August 2011.

The Office of the Secretary has set up an office within the Ministry of Justice building and equipment has been procured.

During 2011, the VLC has also established procedures by which the VLC will operate in the future. Procedures that have been adopted include those that relate to the referral of potential areas of review to the VLC for reform. Under the procedures adopted under the current *Law Commission Act* [Cap 115], the VLC will consider any references for review made using an endorsed template that can be obtained from the Office of the Secretary of the VLC. The VLC has also adopted guidelines that will be used to guide decisions about what references will be accepted.

The VLC has distributed a survey to stakeholders to ascertain the depth of knowledge about the role of the VLC within Government and the law and justice sector. A website is currently being set up that will explain the work of the VLC and inform the public about the work of the VLC and how they can make references for a review or make submissions to any inquiry. Publications have also been produced for public distribution providing this information. However, there has been a delay in their distribution due to the need to incorporate changes in accordance with the amendments that are expected to be gazetted in 2012.

Work Program

Topics for the VLC's research program are brought before the members of the VLC for consideration. The VLC may choose whether to undertake a particular reform project or not. Once the research into a particular area has been completed, the issue is placed before the VLC for discussion and consideration. The VLC may decide to issue background papers for public consultation. The VLC will make its recommendations in a final report to the Minister for Justice and Community Services.

The VLC has received proposals to undertake the following reviews:

- Land Law Reform Working Group
- *Citizenship Act* [Cap 112]
- Law regarding the collection, analysis and dissemination of statistical information in Vanuatu.

Consideration of these reviews is on hold pending the outcome of amendments to the *Commission Act* [Cap 115].

Meetings of the Commission

The VLC has met twice since its inception. Under section 6(1) of the Act, the VLC is obligated to meet not less than six times per year. This statutory obligation has not been fulfilled by the members.

	VT4,650,400
<i>Spent funds</i>	VT3,855,013
Remaining funds	<u>VT795,387</u>

Spending Breakdown

Fuel	VT64,000
Electricity	VT28,042
Office goods	VT40,000
Office Refurbishing	VT394,165
Stationery	VT35,425
Office furniture	VT43,010
Office Equipment	VT 305,000
Additional Vehicle	VT2,900,000
Miscellaneous	VT45,371
<i>Total funds spent</i>	VT3,855,013
Remaining balance	<u>VT795,387</u>

Virements committed from Law Commission NPP

- VT4,000,000 released 26/07/11 for funding of Law and Justice National Consultation
- VT2,000,000 released 02/08/11 for funding of Law and Justice National Consultation

Total VT6,000,000 released for funding of Law and Justice National Consultation .

Priorities for 2012

In 2011, the VLC has been planning, designing and developing a website. The website will provide information for the public on the work of the VLC and is expected to be launched in 2012. Brochures will also be distributed to the public.

The VLC will also finalise the establishment of the office by focussing on the recruitment of staff to the Office of the Secretary. The Public Service Commission has approved two Research Officers positions and for an Administrative Assistant. As the staff structure had not been approved by the Public Service Commission prior to decisions on the Budget for 2012, the Law Commission does not have sufficient funding to cover the salaries of additional staff. Funding will need to be sourced from elsewhere within Government or using donor assistance in order to recruit the required staff members.

Once the Office is fully staffed, the VLC will be in a position to focus on its research program.