



**ANNUAL REPORT  
CROWN LAW DEPARTMENT  
2006**

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## **1. GENERAL**

### **1.1 Role**

The Crown Law Department is under the Ministerial direction of the Attorney General and Minister of Justice, Hon. 'Alisi Taumoepeau. The Department however is headed by the Solicitor General, Mrs. Linda Folaumoetu'i.

The Attorney General is the Crown's First Law Officer. She is vested with wide common law powers that include: filing of *ex officio* information, entering of a *nolle prosequi* in certain criminal prosecutions, and maintaining relator actions in matters affecting the general public.

These powers are exercised by the granting of the Attorney General's *fiat*. As such, she decides whether or not and in what precise circumstances, she will issue her certificate.

In conjunction with these common law powers, the Attorney General has certain statutory responsibilities. The instigation of criminal proceedings in an increasing number of offences is now contingent upon the Attorney General's consent being first obtained. As such, all prosecutions under the Criminal Offences Act, subject to section 197 of that Act, are the responsibility of the Attorney General. She has similar statutory responsibilities under various statutes such as the

- Section 3: Crown Proceedings Act;
- Section 4: Maintenance of Illegitimate Children Act;
- Section 8: Defamation Act;
- Section 84: Quarantine Act;
- Sections 19, 20, 21 Electoral Act; and
- The Public Enterprises Act 2002.

The Department's role is based upon the accepted traditional functions of Government Law Officers. Generally, these functions revolve around the following basic categories:

- 1) Providing legal advice to Government;
- 2) Representing Government in all Litigation;
- 3) Criminal Prosecutions;
- 4) Law Officer functions;
- 5) Legislation Drafting.

### **1.2 Office**

The Department was housed in the Roy Cocker Building, Fatafehi Road, Nuku'alofa until the incident of 16 November 2006. The Department is now based from the Head office of the Ministry of Justice at Lavinia Rd, Nuku'alofa. At Roy Cocker Building, the

Department occupied first floor of the building. The occupied space was divided into offices for professionals and support staff, a library, interview and conference rooms.

### **1.3 Department Budget**

The budget expenditure of the Department for the 2005/2006 financial year was \$1,026,544. For the 2006/2007 financial year the Department was granted \$1,091,335.

## **2. STAFF**

### **2.1 Staff during 2006**

In January 2006 the Department had a total of 9 established staff. Five (5) of those staff made up the legal staff, and the remaining four (4) made up the support staff. During the year, one legal officer left the Department.

Later in 2006, two legal officers were recruited but one was on daily paid basis. One legal officer of the Ministry of Justice has continued to attach with the Department.

There are three other people who are employed by the Department but are on daily paid basis.

As at 31<sup>st</sup> December 2006, there were a total of 15 people working for the Department.

The legal officers hold law degrees from various universities in New Zealand and the University of the South Pacific. These legal officers have been admitted to practice law in the jurisdictions where they studied and also here in Tonga.

The Department continues to struggle with the shortage of legal officers, and more so, of experienced legal officers.

The Acting Solicitor General conducted weekly meetings with the legal staff in order to coordinate the Department's work. The Acting Solicitor General also conducted monthly meetings with the support staff for administrative matters.

The support staff continues to carry out mainly administrative and clerical duties. Both the legal and support staff contributed well to the efficient operation of the Department as at 31<sup>st</sup> December 2006.

### **2.2 Staff Matters**

After the appointment of the current Attorney General & Minister of Justice on 16 May 2006, Mrs. Linda Folaumoetu'i was appointed Acting Solicitor General.

In April 2006, Assistant Legal Officer, Ms. Fine Titaa resigned.

In May 2006, Miss Lesieli Mafi was recruited as Legal Officer.

On 22 July 2006, Miss Sela Moa, Assistant Registrar of Companies and Intellectual Property of the Ministry of Labour, Commerce and Industries, was confirmed and appointed Crown Counsel.

In July 2006, Mrs. Seinimili Fonua returned after completing her studies with a Bachelor of Laws (LLB) degree.

In August 2006, Mrs. Simaili Ma'ake, Computer Operator Grade I, was confirmed as Assistant Secretary of the Ministry of Justice.

In July 2006, Mr. Suiti Leilani Fekau, Driver, was made redundant.

### **2.3 Regional and International Meetings and Workshops**

In 2006, members of the legal staff attended various regional and international meetings and workshops representing Government on legal matters.

The following is a summary of the various meetings the legal staff attended:

- **June**

Mrs. Linda Folaumoetu'i, Acting Solicitor General, attended a workshop on the Regional Security held in Nadi, Fiji.

Miss Lesieli Mafi, Assistant Legal Officer also attended a meeting on Intellectual Property and Access to Medicine held in Suva, Fiji.

- **July**

Mr. Sione Sisifa, Crown Counsel, attended the seminar for Pacific Islands Maritime Legal Officers held in Suva, Fiji.

- **August**

Miss Sela Moa and Mrs. Seinimili Fonua attended a three day workshop on Legal Drafting in Canberra, Australia.

Mr. 'Aminiasi Kefu attended a IMF seminar on Designing Effective Legal Frameworks for Problem Banks and Resolving Banking Crises held in Singapore.

- **September**

Miss Lesieli Mafi attended a workshop on Fisheries and building capacity which was held in Apia, Samoa.

- **October**

Mr. 'Aminiasi Kefu attended a meeting to report on review of Pacific Islands Legislation and Regulations (PIMLAR) and ILO seminar and workshop on Maritime Labour Convention 2006 and the Seafarers' Identity Documents Convention (Revised) 2003 held in Suva, Fiji.

- **November**

Miss Lesieli Mafi attended a meeting on Anti-Money Laundering and Anti-Terrorism held in Indonesia.

## **2.5 Legal Education**

Mrs. Seinimili Fonua, Senior Interpreter and Mr James Bruce Lutui, Interpreter, completed their studies respectively for a Bachelor of Laws at the University of the South Pacific, Vanuatu Campus. They are expected to complete their professional diploma on legal practice in 2007.

## **3. LEGAL ADVICE**

The Department continued to provide legal advice to various Government Ministries and Departments. The various topics included opinions on company documents, memorandum of understandings, international conventions, employment and on the application of the law to certain situations.

The fire on the 16 November 2006 destroyed the register of all the legal advices received from and were given to Government Ministries and Departments. Oral advices were given where appropriate but are discouraged within the Department.

## **4. LEGISLATION**

### **4.1 The Law Reform Committee**

The Law Reform Committee continued to meet during the year to consider amendments to existing laws and to evaluate new Bills to be approved by His Majesty's Cabinet and the Privy Council for tabling before the Legislative Assembly.

In 2006, several new Acts and amendment Acts were enacted by the Legislative Assembly after being considered by the Law Reform Committee.

The permanent members of the Law Reform Committee are as follows:

- Attorney General & Minister of Justice (Chairwoman)
- Minister of Health

- Minister of Police
- Chief Justice
- Chief Secretary and Secretary to Cabinet
- Solicitor General
- Senior Crown Counsel
- Representative of the Tonga Law Committee
- Secretary, Law Committee

Depending on the issues discussed, the Law Committee occasionally co-opted staff from the relevant Government Ministries and Departments to assist with the Law Committee's deliberations.

## **4.2 Acts of the Legislature**

The legislative Assembly enacted the following legislations in 2006:

### **1. 2006/2007 Supplementary Appropriation Act 2006**

This Act provides for the appropriation of money from the General Revenue and other funds of Kingdom of Tonga to supplement the expenses of Government for financial year 2006/2007.

### **2. Income Tax Act 2006**

This Act provides for the imposition of the income tax. It replaces the Income Tax Act (Cap. 68).

### **3. 2006/2007 Appropriation Act 2006**

This Act appropriated money to the service of the Government for the financial year 2006/2007.

### **4. Government (Amendment) Act 2006**

This Act amended *section 26* of the Principal Act to raise the penalty for infringement of any District Regulations made pursuant to that section. The penalty for first infringement is raised from \$1 to \$100 and the penalty for subsequent offences rose from \$10 to \$200.

### **5. Criminal Offences (Amendment) Act 2006**

This Act was amended to include any person who attempts to solicit support from any foreign government or international organization to overthrow, destabilize or destroy the Government of Tonga commits the offence of sedition.

### **6. Judicial Services Act 2006**

This Act establishes the Judicial Services Commission of Tonga. The Commission's principal functions relate to the terms of employment of judicial officers, organization of continuing legal education for judicial officers and handling of complaints relating to judicial officers.

### **7. Supreme Court (Amendment) Act 2006**

This Act amended the Principal Act to simplify provisions about the Court's jurisdiction; provide for the terms of employment of Judges, consistently with the proposed introduction of a Judicial Service Commission; and make amendments to court procedure to give effect to the decision of the Court of Appeal in *Pedras v. Rex* (10/00, July 2000).

**8. Magistrate's Court (Amendment) Act 2006**

This Act made several amendments to the Magistrates' Court Act (Cap. 11)

**9. Act of the Constitution of Tonga (Amendment) Act 2006**

This Act amended sections 1 and 2 of the Act of Constitution of Tonga. (Cap. 2)

**10. Retirement Fund (Amendment) Act 2006**

This Act was amended to give authority to the Retirement Fund Board to appoint its Chief Executive Officer and such other officers and employers as may be necessary to carry out the functions of the Fund Board; to allow the employees to be members of the Fund; and the Chief Executive Officer to be a member of the Board.

**11. Retirement Fund Board (Amendment) Act 2006**

This Act amended *sections 1,2 and 3* of the Retirement Fund Act 1998.

**12. Court of Appeal (Amendment) Act**

This Act amended the Court of Appeal Act by inserting a new section to provide for the terms of employment of Judges, consistently with the proposed introduction of a Judicial Service Commission.

**13. Criminal Offences (Amendment) Act No. 2, 2006**

This Act amended *sections 121 to 123* of the Principal Act to make it an offence to carnally know a girl between the ages of 12-16 years. It also removes the penalty of life imprisonment for the offence of carnal knowledge of a girl and replaces it with a maximum imprisonment term of 15 years.

**14. Post Office (Repeal) Act 2006** (*Yet to receive Royal Assent*)

This Act is intended to replace the Post Office Act (Cap. 95)

**15. Postal Service Act 2006** (*Yet to receive Royal Assent*)

This Act provides for various customer protection measures that will apply to the private postal sector as well as Tonga Post and for the continuation of regulation of the postal sector by the Minister of Finance or such other Minister as may be designated for that responsibility in the future.

## **5. COURT WORK**

### **5.1 The Judiciary**

By 31<sup>st</sup> December 2006, Tonga had only one Supreme Court Judge. Hon. Chief Justice Webster left Tonga in early September 2006 and was replaced by Hon. Justice Ford who used to assist him.

During the year, both Supreme Court judges alternated in sitting in the Supreme Court Circuit in 'Eua, Ha'apai and Vava'u. The Crown had matters in all the Circuits.

The Court of Appeal sat on 7<sup>th</sup> – 18<sup>th</sup> August 2006. The Court of Appeal consisted of the Chief Justice as President, the Hon. Justice Burchett of Australia, the Hon. Justice Salmon of New Zealand, and Hon. Justice Moore of New Zealand. Justice Burchett and Justice Moore are retired members of the Australian Federal Court. Justice Salmon is a retired New Zealand High Court and Court of Appeal Judge.

### **5.2 Criminal Cases**

Criminal cases continued to take up most of the Court work of the legal staff. By 16 November 2006, a total of 237 new criminal cases were received. Only 131 criminal cases were dealt with during the year by the Courts. There were also 140 criminal cases from 2003, 2004 and 2005 that were dealt with during the same year.

### **5.3 Civil Cases**

A total of 8 new civil claims were filed involving the Crown.

### **5.4 Guardian Ad Litem Cases**

These Family Law matters continue to be a significant part of the Department's work. This involves legal staff making interviews and home visits and writing up reports for the Court on the suitability of applicants for adoption of illegitimate children or to take guardianship of legitimate children. A total of about 43 new applications were received and a total of about 21 cases were closed during the year.

### **5.5 Land Cases**

A total of 5 cases were received in the year 2006, where claims were made against the Ministry of Lands. There is a marked decrease in Land cases.

### **5.6 Summary of Significant Cases**

The following are summaries of some of the significant cases in the Court of Appeal and the Supreme Court where the Department's staff represented the Crown:

**1. Rex v. Hon. Veikune and Tu'ivai, Cr. 90-91/2005**

The two accuseds were charged with the offences of bribery and attempting to evade custom duties. Tu'ivai and Hon. Veikune were found guilty on the offence of attempting to evade Customs import duties on 600 cartons of over proof Bounty rum in a container and Hon. Veikune was also found guilty of the offence of bribery of a Government servant. Tu'ivai was sentenced to a penalty of \$20,000 and in default of payment of the whole amount, to a term of imprisonment of 1 year. Hon. Veikune was sentenced to a fine of \$20,000 and in default of payment of the whole amount, to a term of imprisonment of 1 year.

**2. Rex v Hon. Lasike, Cr. 99/06**

The accused, a noble, was charged with 1 count of rape and 2 counts of indecent assault. The alleged incident occurred at a motel in Nuku'alofa owned by the accused. The complainant had been working at the motel as a receptionist for a few weeks before the alleged incident. The Court found that the evidence did not establish that what occurred between the complainant and the defendant was done without the complainant's consent. The accused was acquitted of all counts.

**3. (i)Hon. Lasike, (ii) Samuela Pohiva, (iii) 'Isileli Pulu, (iv) William Edwards, (v) 'Ulitu Uata, (vi) Vili Helu, (vii) Sunia Fili, (viii) Lepolo Taunisila v (i)Hon. Tu'iha'angana, (ii) Hon. Sevele, (iii) Kingdom of Tonga, Cv. 431/06**

This case arose from the opening of the Legislative Assembly on 1 June 2006 by the Princess Regent, in the absence of His Majesty the King, who was abroad in Auckland. The legality of that opening was challenged by the Plaintiffs who were all members of Parliament, one of whom was a noble and seven People's Representatives. The Court did not uphold that challenge and found in favour of the Defendants.

**4. Rex v Tu'ivai, Cr. 182/05**

The accused, a licensed lawyer, was charged with bribery of a government officer under section 51 of the Criminal Offences Act (Cap.18). It was alleged that on 27 May 2005, the accused gave a cheque to the value of \$400.00 to a Senior Crown Counsel in order to induce him to abstain from executing his duty by adjourning *sine die* a criminal trial in which the accused was one of the three named defendants. There was no dispute that the accused paid the government officer \$400.00 but the Court did not find that the accused's purpose in making the payment was in order to incline the government officer to act contrary to his duty. The Court ruled that the Crown had failed to establish guilt on the part of the accused and acquitted him.

## SCHEDULE 1

### CROWN LAW DEPARTMENT STAFF AS AT 31 DECEMBER 2005

|   |   |
|---|---|
| <i>Attorney General &amp; Minister of Justice</i> | <b><i>‘Alisi N. A. Taumoepeau</i></b><br>LLB, LLM (Hons) Vict MA CM, Dip Litigation Skills, Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)              |
| <i>Solicitor General</i>                          | <b><i>Linda S. Folaumoetu’i</i></b><br>B.A. LL.B <i>Auck</i> LLM <i>Melbourne</i> Dip Litigation Skills, Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga) |
| <i>Senior Crown Counsel (2)</i>                   | <b><i>‘Asipeli ‘A. Kefu,</i></b><br>LLB <i>Waik</i> Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)  |
| <i>Assistant Senior Crown Counsel(1)</i>          | <b><i>Vacant</i></b>  |
| <i>Crown Counsel(1)</i>                           | <b><i>Sione F. Sisifa</i></b><br>LL.B <i>USP</i> Dip. Legal Practice <i>Fiji</i> Barrister & Solicitor of the High Court of Fiji, Law Practitioner (Tonga)                                |
| <i>Assistant Crown Counsel (2)</i>                | <b><i>Gloria Guttenbeil Pole’o</i></b><br>BComm LLB <i>Otago</i> Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)   |
|   | <b><i>Sela Moa</i></b><br>LLB <i>USP</i> Barrister & Solicitor of the High Court of Fiji, Law Practitioner (Tonga)  |
| <i>Assistant Legal Officer (1)</i>                | <b><i>Seinimili T. Fonua</i></b><br>LLB <i>USP</i>  |
| <i>Senior Interpreter</i>                         | <b><i>Vacant</i></b>  |
| <i>Interpreter</i>                                | <b><i>James Bruce Lutui</i></b>   |
| <i>Computer Operator Grade I</i>                  | <b><i>Savelina Vika ‘Ofahulu</i></b><br><b><i>Vacant</i></b>  |

*Clerk Class I*

*Taufa 'Otuhouma*

*Computer Grade III*

*Katalina F. Leha*

*Drivers*

*Vacant*

*Housekeeper*

*Siulolo Tu'itavuki*