

APPENDIX 5

(FAKALAH 5)

ROYAL LAND COMMISSION OF INQUIRY
(INTO ALL MATTERS WHATSOEVER CONCERNING THE LAND LAWS AND PRACTICES IN THE KINGDOM OF TONGA IN ORDER TO PROVIDE MORE EFFECTIVE AND EFFICIENT PRACTICES, *WITHOUT* CHANGING THE BASIC LAND TENURE OF THE KINGDOM OF TONGA)

AN INTERIM REPORT ON PHASE ONE
OF THE ROYAL LAND COMMISSION'S INQUIRIES
(THE MINISTRY OF LANDS, SURVEY & NATURAL RESOURCES)

25 February 2010

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FOREWORD

For over a century and half, the forefather of modern Tonga, King George Tupou I's foresight granted His subjects many privileges that were well ahead of their time including land rights truly unique in the world – especially that of granting of land to Tongan males over 16 years, without cost.

Time has moved on and many outside influences continue to affect Tonga's cultural and world views. His Gracious Majesty, King George V, 'the Architect of Change' has taken His reign in an atmosphere of many changes facing Tonga. And, by His Majesty's Will, I have been humbly blessed and honoured with the task of Chairman of the Royal Land Commission.

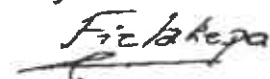
Not unlike my predecessor Chairman of the 1983 Royal Land Commission, the late Baron Tuita I was also a former Minister of Lands, Survey and Natural Resources and am also 'intimately' aware of the working of that Ministry. This honorable task has been given to the Royal Land Commission with a wide scope provided in our terms of reference to consider *all* matters concerning the land laws and practices in Tonga to provide more effective and efficient practices and to recommend changes so long as they do not alter our basic land tenure system.

I would like to humbly thank my fellow Commissioners, our Secretariat and our loyal staff for their encouragement and the many hours of work already committed, in allowing the completion of this interim report for Phase One of the Royal Land Commissions Inquiries – a general inquiry into the overall performance and practice of the Ministry of Lands, Survey and Natural Resources.

I would also like to sincerely thank all members of the Ministry of Lands, Survey and Natural Resources for all their contributions by way of evidence and documentary exhibits that have been very valuable and give great insight to enable the Royal Land Commission to determine its findings on our review of the overall performance and practice of the Ministry of Lands, Survey & Natural Resources.

To this end, I finish with an old Tongan proverb that remind us to all stand up, be counted and contribute to the building and well being of our country - 'Takitaha tauhi hono vaha'a ngatae' – 'Everyone should maintain their property between their Ngatae tree boundary' – that is: All Tongans should attend to their duties and serve our people.

May God Bless Tonga



Chairman Baron Fielakepa

CHAPTER 1 - INTRODUCTION

1.1 BACKGROUND – ROYAL LAND COMMISSION

1.1.1 Appointment

His Majesty King George Tupou V, in Council appointed a Royal Land Commission on 10th October 2008, pursuant to the Royal Commission Act (Cap 41) Laws of Tonga, which empowers such appointment to inquire into matters of importance to the public welfare.

1.1.2 Terms of Reference

The Royal Land Commission is empowered to inquire into and report on all matters whatsoever, concerning the land laws and practices in Tonga in order to provide more effective and efficient practices, *without* changing the basic land tenure of the Kingdom of Tonga.

1.1.3 Time Frame

The Royal Land Commission is required to make its inquiries and furnish to His Majesty, King George Tupou V, in Council its report on or before 30th November 2011. This provides a three year duration for the Royal Land Commission to enable completion of its Terms of Reference.

1.1.4 Royal Commissioners

Baron Fielakepa PC GCQS	Chairman
Lord Tupou KC PC KGCQS	Commissioner
Kahungunu Barron Afeaki SC CRH	Commissioner
Gloria Pole'o MRH	Secretary

1.2 APPROACH

1.2.1 Three Phases

In light of the terms of reference, careful consideration was given to identifying and prioritizing a range of land issues into order of importance. It became clear from initial consultations with His Majesty King George V, the Honourable Prime Minister Dr. Fred Sevele, the Honourable Minister of Lands, Survey & Natural Resources, Lord Tuita and other key community leadership figures that there were a series of pressing issues that were clearly of national concern.

These priority areas have been divided into three key phases of the inquiry process over the Royal Land Commission's three year life. The Royal Land Commission has also however, not limited itself to these three general phases only and reserves the right to consider any other aspect relating to land practices in Tonga that may arise throughout its inquiries.

The three phases identified, in order of priority are:

- i) inquiries into the Ministry of Lands, Survey & Natural Resources ('the Ministry') – an overall performance review of the Ministry;
- ii) Vava'u Land Dealings – inquiries into purported and ongoing illegal land dealings; and
- iii) General Public Consultations – wide scope inquiries into the public's views and concerns relating to land laws and practices in Tonga. These General Inquiries are to be conducted in both Tonga and in New Zealand, Australia and the USA, where the largest foreign concentrations of Tongan population exist.

The Royal Land Commission has now completed Phase One of its inquiries, being a 12 month internal inquiry and performance review of the Ministry, from January 2009 to January 2010. Phase One has inquired into the overall structure, functions, services, products, efficiencies and in-efficiencies of the Ministry and its general performance in providing these essential land related services and products to the public and Government of the Kingdom of Tonga.

Completion of Phase One has also focused on identifying issues of concern, problems faced in the execution of the Ministry's duties and how these may be improved. Crucial consideration has also been given to the improvement of the Land Registration system to make it more user-friendly, speedy and accessible to the public.

Phase One also included visits to New Zealand, Samoa, Cook Islands, Singapore and Australia (NSW) to study their respective land systems and practices to compare with our land system and practices with a view to adapting those that would be appropriate to Tonga.

1.2.2 Interim Reports

As a practice, the Royal Land Commission has determined to provide interim reports, upon completion of inquiries into each priority land related areas identified above. A final report will then be furnished to His Majesty King George V, upon completion of all three phases of the inquiry.

Providing interim reports will enable the contents of each report to be considered soon after their completion and to remain applicable to current issues raised at the time.

1.3 METHODOLOGY

The Royal Land Commission processes undertaken under Phase One are discussed below with a view to ensuring fairness and transparency in how the inquiries have been conducted over the past year. Two main inquiry processes were utilised being:

- i) inquiry hearings; and
- ii) country studies.

Upon completion of these two stages of inquiry, the observations and findings drawn from the hearing inquiry stage of this inquiry have then been compared and contrasted with the observations taken from studies of land registration systems observed overseas.

This two stage analysis methodology has enabled the Commission to more rigorously consider all evidence tabled before the Royal Land Commission. Undergoing this analysis process has also enabled the Royal Land Commission to benefit from years of trial and error and development within the countries studied.

Having taken into account the evidence drawn from the Royal Land Commission inquiry hearings, site inspections, documentary exhibits filed and the observations and findings determined from the country studies – the recommendations are made with a view to improving the Ministry's overall performance, efficiency and that of its land registration system.

1.3.1 Inquiry Hearings – Process

A series of inquiry hearings with the Ministry staff were held over a period of five months from April – August 2009. The Royal Land Commission sat through hearings over a total number of 20 days and met regularly to review evidence collected over a total 12 month period.

The Royal Land Commission Inquiry hearings were conducted in the following manner:

i) Witness-by-Witness Examination

A total of 60 witnesses were called, sworn under oath and provided testimony regarding their work related duties, roles, experiences and views within the Ministry and also with bank personnel regarding mortgages. These hearings were conducted on a confidential basis to encourage honesty and no fear of

reprisal for all Ministry's staff, in being able to freely give evidence that would assist the Royal Land Commission in its inquiries.

Fairness in the conduct of the Royal Commission hearings is also paramount, and therefore all witnesses giving evidence were guaranteed confidentiality.

A list of all witnesses summonsed and examined (gave evidence under oath), by the Royal Land Commission is provided in *Table 1* below.

The sequence of witness testimony was determined by the 17 Divisions and Sections that make up the Ministry, with the addition of evidence given from two commercial banks and also from three Town Officers from the Nuku'alofa area.

The total of 60 witnesses gave evidence of which 54 were Ministry staff, three bank officials and three town officers. It is also important that the names of these witnesses are listed, in the order of appearance to ensure openness and transparency of all Royal Land Commission proceedings.

Table 1 – List of witnesses interviewed

	Division/Section	Name	Post
1.		Lord Tuita	Minister of Lands, Survey & Natural Resources
2.	Registration	Salesi Fotu	Deputy Secretary
3.		Sione Uele	Land Registration Officer
4.		Fataua Halatanu	Land Registration Officer
5.		Silia Kalaniuvalu	Computer Assistant
6.		Tafolosa Talia'uli	Computer Assistant
7.	CEO	Dr Nailaisikau Halatuituia	CEO – Ministry of Lands, Survey & Natural Resources
8.	Registration	Semisi Moala	Assistant Land Registration Officer
9.		Warrick Vea	Draughtsman
10.		Haulakiono Fotu	Land Registration Trainee
11.		Lousa Takai	Land Registration Trainee
12.	Banks	Sefa Pulu (Westpac)	Team Leader/Loan and Processing Unit
13.		Rob Yeoman (ANZ)	Head of Relationship Banking/Lending Department
14.		Fifita Vakalahi (ANZ)	Lending Security Officer
15.	Acting CEO	'Asipeli Palaki	Deputy Director of Environment
16.		Siale 'Eti Teumohenga	Deputy Secretary
17.		Lupeolo Fisi'ikaile	Human Resources
18.		'Ana Ma'ufualu	Senior Land Clerk

19.		Talilotu Liliti	Cadet Draughtswoman
20.		'Ofa Takai	Clerk Class III
21.		'Ilaisaane 'Akimeta	Clerk Class III
22.		Lavinia Fonokalafi	Chief Clerk
23.	Information Technology	Vinod Dhayananda	Daily paid labourer (IT)
24.		Sione Peau Tu'imana	Assistant Computer Programmer
25.		Sione Ulakai	Assistant Computer Programmer
26.	Planning Division	Hon. Kalaniuvalu	Deputy Physical Planner
27.		Makakaufaki Matekitonga	Town Planner
28.		Leipi Falemaka	Physical Planner
29.		'Atunaisa Fetokai	Town Planner
30.		Tukua Tonga	Director of Spec. Planning & Urban Management
30A.	Environment Department	'Asipeli Palaki (recall)	Deputy Director of Environment
31.		Eritabeta Foliaki	Conservation Officer
32.		Seini Fotu	Conservation Officer
33.	Energy	Holomeesi Malolo	Energy Technician
34.		Kakau Foliaki	Energy Officer
35.		Kipola So'otanga	Energy Officer
36.		'Ofa Sefana	Energy Officer
37.	Geology	Kelepi Mafi	Principal Geologist
38.		Rennie Vaiomo'unga	Assistant Geologist
39.		'Apai Moala	Senior Geological Assistant
40.		Sefita Faiva	Assistant Coastal Area Officer
41.	Head of Survey & Draughting	Fetu'u Ve'a	Deputy Secretary
42.	Draughting	Tevita So'otanga	Chief Draughtsman
43.		Petelo Vivili	Senior Survey Draughtsman
44.		Samuela Lolohea	Computer Graduate
45.		Viliani H Tupou	Assistant Senior Draughtsman
46.		Salesi Faka'osilea	Assistant Land Registration Officer
46A.		Sione Peau Tu'imana (recall)	Assistant Computer Programmer
47.	GIS	Richard 'Atelea Kautoke	Senior GIS Specialist
48.		Seli Taufu	Senior GIS Specialist
49.		Halalilika 'Etika	Assistant Geodetic Surveyor
50.	Survey	'Aleksanita Pongi	Senior Surveyor
51.		Pupunu Talanoa Vaea	Field Survey Assistant
52.		Graham Ma'ilei	Surveyor Graduate
53.		'Aisake Niutoni	Assistant Surveyors
54.		Siaosi Mafi	Assistant Surveyors
55.		Semisi Tulikihakau	Field Survey Assistant

56.		Netane 'Ahofono	Survey Trainee
57.		He-'i-Vahanoa Tolu	Field Survey Assistant
58.	Town Officers	Sio Tu'iono	Town officer of Kolomotu'a
59.		'Alotaisi Takau	Town officer of Ma'ufanga
60.		Tevita Manu Fasi	Town officer of Kolofo'ou

ii) Site Visits and On-the-Spot Examinations

The Royal Land Commission visited all Divisions and Sections of the Ministry and examined the staff of each Division/Section in their respective work environment. Details of the site visits conducted are provided in *Table 2*.

Table 2 – Details of Site visits conducted

Date	Division/Section of the Ministry of Lands, Survey and Natural Resources
24/04/2009	Land Management Division offices Strong Room
07/05/2009	Strategy & Corporate Management Division offices Office of CEO
08/05/2009	IT section
30/07/2009	Planning & Urban Management Division Land Information Management: General Draughting & Computation Section, Land/Geographic Information System Section (GIS) and Survey & Geodesy Section
04/08/2009	Environment Division Planning Section Energy Section Geology Section

iii) Production of Exhibits (Documentation Formerly Submitted)

The Royal Land Commission received and considered documentary exhibits during Phase One of the inquiry both during the interview of Ministry staff and the country studies. Details of the exhibits tendered are provided in *Table 3* and *Table 4*.

Table 3 – List of documentary exhibits received from staff of the Ministry

No.	Particulars of Exhibit	Submitted by
1.	Copies of assignments from 2007	Sione Uele
2.	Copies of assignments from 2008	Sione Uele
3.	Hon. Minister of Lands Inward/Outward register 2008	Talilotu Litili

4.	Details of staff absence from duty	'Ofa Takai
5.	Details of complaints & disciplinary against staff	'Ofa Takai
6.	Maps (GIS)	'Atelea Kautoke
7.	Flow chart of Land Information Division	'Atelea Kautoke
8.	Proposed new structure for MLSNRE	'Atelea Kautoke
9.	Maps	'Atelea Kautoke
10.	Flow chart: land information registration & valuation	'Asipeli Palaki
11.	Flow chart: registry, mapping & survey section	'Asipeli Palaki
12.	Urban Planning Guidelines: August 2007	Tukua Tonga
13.	Feasibility Study Report of Vuna Road: December 2008	Tukua Tonga
14.	Architecture designs (Taumoepeau Building, O G Sanft etc)	Tukua Tonga
15.	List of Projects currently carried out by the Energy Division	'Ofa Sefana
16.	Cabinet Minute: Abolished Critical positions, 6 July 09	Lupeolo Fisi'ikaile
17.	CD no. 526/09 dated 8 July 2009	Lupeolo Fisi'ikaile
18.	Briefing note: Abolished 2008/2009 critical posts	Lupeolo Fisi'ikaile
19.	Ministry's presentation to PSC in meeting on 21/7/09	Lupeolo Fisi'ikaile
20.	Correspondence to and from Kramer Group re complaints	Lupeolo Fisi'ikaile
21.	Documents re redeployment	Lupeolo Fisi'ikaile
21A.	Draft Contracting Process for non-established posts in 09/10	Lupeolo Fisi'ikaile
22.	Proposed revised fees	Lupeolo Fisi'ikaile

Table 4 – List of documentary exhibits received during country visits

No.	Particulars of Exhibit	Submitted by
1.	Presentation - LINZ's Purpose and Function	LINZ (New Zealand)
2.	Presentation - New Zealand Survey System	LINZ (New Zealand)
3.	Digital Survey Plan DP329839	LINZ (New Zealand)
4.	Revised Cadastral Outcomes, Objectives, and Sub-Objectives	LINZ (New Zealand)
5.	E-cadastral - Automation of the New Zealand Survey System	LINZ (New Zealand)
6.	Cadastral outcomes and the Surveyor-General's Rules for the Cadastral Survey	LINZ (New Zealand)
7.	E-survey processes: Figure 1	LINZ (New Zealand)
8.	Presentation - Land Registration in New Zealand: Regulation of the Land Titles System	LINZ (New Zealand)
9.	Presentation - Rating Valuation	LINZ (New Zealand)
10.	Presentation – Landonline	LINZ (New Zealand)
11.	Presentation - Business and Regulatory Assurance	LINZ (New Zealand)
12.	Assurance Manual: Audit Methodology & Audit Toolkit	LINZ (New Zealand)
13.	E-dealing Audit Methodology	LINZ (New Zealand)
14.	Strategic Review of e-dealing Compliance Methodology	LINZ (New Zealand)
15.	Summary Report on e-dealing Pilot	LINZ (New Zealand)
16.	Law Firm e-dealing Audit	LINZ (New Zealand)
17.	Template – Business and Regulatory Assurance	LINZ (New Zealand)

	Report	
18.	Business and Regulatory Assurance – Terms of Reference	LINZ (New Zealand)
19.	Business and Regulatory Assurance – Law Firm e-dealing audit information	LINZ (New Zealand)
20.	Business and Regulatory Assurance – Registrar-General of Land	LINZ (New Zealand)
21.	Business and Regulatory Assurance – Property Regulatory Group	LINZ (New Zealand)
22.	Business and Regulatory Assurance – Office of the Surveyor General	LINZ (New Zealand)
23.	Filing Reference – RGL-AC/PO	LINZ (New Zealand)
24.	Customer Services Group – Quality Assurance Plan, May 2006	LINZ (New Zealand)
25.	E-dealing guidelines (for Electronic Registration), October 2008	LINZ (New Zealand)
26.	E-dealing Workflow guidance for Solicitors, October 2006	LINZ (New Zealand)
27.	Land Titles Registration Process	LINZ (New Zealand)
28.	Landonline and the Path to Change	LINZ (New Zealand)
29.	Digital Survey Plan – DP 406920	LINZ (New Zealand)
30.	Computer Freehold Register – Search Copy	LINZ (New Zealand)
31.	City Council Consent Notice	LINZ (New Zealand)
32.	Rating Valuation Rules 2008	LINZ (New Zealand)
33.	Statement of Intent 2009/2012	LINZ (New Zealand)
34.	Presentation – CPG	CPG (New Zealand)
35.	Presentation 1: Filisita Ikenasio-Heather	Ministry of Natural Resources & Environment (Samoa)
36.	Presentation 2: Sala Josephine Stowers-Fiu	Ministry of Natural Resources & Environment (Samoa)
37.	Brief on Samoa Land System	Ministry of Natural Resources & Environment (Samoa)
38.	Handout listing legislation relevant to land management	Office of the Attorney General (Samoa)
39.	Constitution of Samoa	Office of the Attorney General (Samoa)
40.	Taking of Land Act 1964	Office of the Attorney General (Samoa)
41.	Alienation of Customary Land Act 1965	Office of the Attorney General (Samoa)
42.	Land Titles Investigation Act 1966	Office of the Attorney General (Samoa)
43.	Alienation of Freehold Land Act 1972	Office of the Attorney General (Samoa)
44.	Land and Titles Act 1981	Office of the Attorney General (Samoa)
45.	Lands, Survey and Environment Act 1989	Office of the Attorney General (Samoa)
46.	Land for Foreign Purposes Act 1992/1993	Office of the Attorney General (Samoa)
47.	Planning and Urban Management Act 2004	Office of the Attorney General (Samoa)
48.	Land Titles Registration Act 2008	Office of the Attorney General (Samoa)

49.	Survey Bill 2009	Office of the Attorney General (Samoa)
50.	Land Valuation Bill 2009	Office of the Attorney General (Samoa)
51.	Unit Titles Bill 2009	Office of the Attorney General (Samoa)
52.	Land and Titles Registration Regulations 2009	Office of the Attorney General (Samoa)
53.	Survey Regulations 2009	Office of the Attorney General (Samoa)
54.	Strata Certificate Title	Straits Law (Singapore)
55.	Presentations	Singapore Land Authority (Singapore)
56.	Transfer of Leasehold Estate	Singapore Land Authority (Singapore)
57.	Application to notify total discharge of CPF Charge(The Land Titles Act)	Singapore Land Authority (Singapore)
58.	Total Discharge of mortgage (The Land Titles Act)	Singapore Land Authority (Singapore)
59.	Transfer (The Land Titles Act)	Singapore Land Authority (Singapore)
60.	Application to notify charge (The Land Titles Act)	Singapore Land Authority (Singapore)
61.	Mortgage (The Land Titles Act)	Singapore Land Authority (Singapore)
62.	Caveat (The Land Titles Act)	Singapore Land Authority (Singapore)
63.	Lodgment receipt	Singapore Land Authority (Singapore)
64.	Due Diligence Search: Court of Appeal (LawNet2)	Singapore Land Authority (Singapore)
65.	Due Diligence Search: Bankruptcy Petitions, Supreme Court (LawNet2)	Singapore Land Authority (Singapore)
66.	Due Diligence Search: Composite Search, Both Courts (LawNet2)	Singapore Land Authority (Singapore)
67.	Presentation	UDIA (Australia)
68.	Presentation 1: Pedro Harris	LPMA (Australia)
69.	Presentation 3: Kel O'Keefe	LPMA (Australia)
70.	Presentation 4: David Job	LPMA (Australia)
71.	Presentation 5: Bruce Helman	LPMA (Australia)
72.	Presentation 6: Alan Garside	LPMA (Australia)
73.	Presentation 7: Shern Semple	LPMA (Australia)
74.	Presentation 8: Adrian White	LPMA (Australia)
75.	Submission: Mr David Singh	Conveyancing & Property Lawyers Pty. Ltd. (Australia)
76.	Processes of buying and selling a property	Conveyancing & Property Lawyers Pty. Ltd. (Australia)
77.	Cook Islands Land Law – an overview	Tim Arnold P.C (Cook Islands)

iv) Audio Recordings – Transcripts

The Royal Land Commission recorded on audio the evidence from interview of all witnesses summoned. Details of audio recordings are provided in *Table 5*.

Table 5 – Details of Audio recordings

Tape/CD No.	Date	Location	Recording Duration
1.	20/04/2009	RLC Conference Room, Nuku'alofa	60mins
2.	20/04/2009	RLC Conference Room, Nuku'alofa	120mins
3.	20-21/04/2009	RLC Conference Room, Nuku'alofa	120mins
4.	21/04/2009	RLC Conference Room, Nuku'alofa	120mins
5.	21/04/2009	RLC Conference Room, Nuku'alofa	120mins
6.	21-22/04/2009	RLC Conference Room, Nuku'alofa	120mins
7.	22-23/04/2009	RLC Conference Room, Nuku'alofa	60mins
8.	23-24/04/2009	RLC Conference Room, Nuku'alofa	120mins
9.	24/04/2009	RLC Conference Room, Nuku'alofa	60mins
10.	05/05/2009	RLC Conference Room, Nuku'alofa	120mins
11.	06/05/2009	RLC Conference Room, Nuku'alofa	120mins
12.	06/05/2009	RLC Conference Room, Nuku'alofa	120mins
13.	07/05/2009	Legislative Assembly Conference Room, Nuku'alofa	60mins
14.	08/05/2009	RLC Conference Room, Nuku'alofa	60mins
15.	22/06/2009	RLC Conference Room, Nuku'alofa	120mins
16.	23/06/2009	RLC Conference Room, Nuku'alofa	120mins
17.	20-21/07/2009	RLC Conference Room, Nuku'alofa	120mins
18.	21/07/2009	RLC Conference Room, Nuku'alofa	120mins
19.	21-22/07/2009	RLC Conference Room, Nuku'alofa	120mins
20.	22/07/2009	RLC Conference Room, Nuku'alofa	120mins
21.	23/07/2009	RLC Conference Room, Nuku'alofa	120mins
22.	23-24/07/2009	RLC Conference Room, Nuku'alofa	120mins
23.	24/07/2009	RLC Conference Room, Nuku'alofa	120mins
24.	24/07/2009	RLC Conference Room, Nuku'alofa	60mins
25.	27/07/2009	RLC Conference Room, Nuku'alofa	80mins
26.	28/07/2009	RLC Conference Room, Nuku'alofa	80mins
27.	28/07/2009	RLC Conference Room, Nuku'alofa	80mins
28.	29/07/2009	RLC Conference Room, Nuku'alofa	80mins
29.	04/08/2009	RLC Conference Room, Nuku'alofa	80mins

v) Special Reports

Special reports were directed by the Royal Land Commission in relation to a range of duties and functions within the Ministry. As an example, a special report was undertaken by Mr. Warrick Vea assessing the number of outstanding and incomplete files (backlog) within various Divisions of the Ministry.

The following Special Reports were considered:

- a. 'Initial Analysis of Information Received from the Ministry of Lands, Survey and Natural Resources', February 2009, Kahungunu Barron Afeaki SC (attached as *Annex 1*);
- b. 'Analysis of Minister of Lands, Survey and Natural Resources Inward and Outward Register', May 2009, Kahungunu Barron Afeaki SC (attached as *Annex 2*);
- c. 'Ministry of Lands, Survey and Natural Resources Back Log Report', October 2009, Warrick Vea (attached as *Annex 3*).

1.3.2 Country Study Inquiry Processes

The Royal Land Commission travelled *to a total* of five countries to study their land registration systems along with an additional individual study of the Cook Island conducted by a single Commissioner using the opportunity while attending the Pacific Mini Games.

The countries studied were:

- i) New Zealand – Government - LINZ (Land Information NZ) & Private Sector
- ii) Samoa – Government - Land Registration System & Private Sector
- iii) Singapore – Government - Singapore Land Authority & Private Sector
- iv) Australia – Government - Department of Lands & Private Sector
- v) Cook Islands – Government - Land Registration System & Private Sector

The Process utilized during the Royal Land Commission country studies included travel arrangements to Country; attendance of presentations by various government land authorities such as Surveyor General, Registrar General, CEOs and a range of key private sector stakeholders and Land Court and Customary Land Court Judges; attendance of presentations by various private sector authorities and key stakeholders – surveyors, conveyancing solicitors, land agents; discussions, question/answer sessions; review of information gathered; and report on each country study.

Each county study was reviewed and a report of findings compiled over a range of aspects considered relevant to the Royal Land Commission's terms of reference and the objectives of Phase One. A copy of each country report is annexed as follows:

- ANNEX 4 - New Zealand Country Visit Report
- ANNEX 5 - Samoa Country Visit Report
- ANNEX 6 - Singapore Country Visit Report
- ANNEX 7 - Australia Country Visit Report
- ANNEX 8 - Cook Islands Country Visit Report

Given the large volumes that make up these Annexes, they are available upon request.

CHAPTER 2 – EXECUTIVE SUMMARY

Completion of Phase One of the Royal Land Commissions inquiries has focused on identifying issues of concern, problems faced in the execution of the Ministry's duties and how these may be improved. Crucial consideration has also been given to the improvement of the Land Registration system to make it more user-friendly, speedy and accessible to the public.

It is important to note that the Ministry's, Division of Environment was separated and transferred from the Ministry of Lands, Survey, Natural Resources and Environment to the new Ministry of Climate Change & Environment in June 2009. This move also correlates with the Royal Land Commission's finding that the Division of Environment should not be part of the overall Ministry of Lands, Survey and Natural Resources, prior to its transfer and therefore commends the architects of this change which is considered highly appropriate.

2.1 Performance Review of the Ministry of Lands, Survey & Natural Resources

The Royal Land Commission's considerations have led to a number of findings that strongly indicate systemic failure across the existing Ministry's overall structure and practices. The following key issues therefore need to be considered:

2.1.1 Too Many Core Functions

- i) The Ministry carries out too many functions to be able to properly cope with the wide range of demands placed upon it. Increased interest from Tongans living abroad, availability of mortgages against land and increased perceived value of acquiring land by Tongans have amplified the demand for a range of land related registration and transfers of title;
- ii) While trying to attend to these essential land related services, the Ministry is also engaged in other time consuming functions that should not be part of its core functions such as dealing with complaints received from the public in a Quasi-court manner;

- iii) The Ministry's current state of affairs is generally one of underfunding, continual equipment shortages, under computerization, a poor administrative and manual filing system, lacking the initiative and drive for changes to an old and archaic land registration system;
- iv) The Ministry's current state of affairs has no doubt led to general low staff morale and a general poor staff performance that pervades the Ministry which also hinders the motivation of new and young well qualified staff. Pockets of higher levels of professionalism and morale do however exist in the Geology and GIS divisions and to a lesser extent in the Draughting division;
- v) At present, the Ministry's current core functions are fivefold;

Core Function # 1

The administering of the *Minister of Lands' duties* under the Land Act and in the allocation of land, without cost to any Tongan male over the age of 16 years and all other consequences laid out in the Land Act that flow from this key and distinguishing land right – the Minister is duty bound to ensure these unique lands rights are properly administered and complied with.

Core Function # 2

Administering the *registration* process of all land transfers and titles – transfer of titles, leases, land exchanges, surrendering of lands, mortgage registrations, heir inheritances, widow inheritances, provision of documentation for applications, conducting title searches.

The above two core functions are predominantly carried out by the Registration and Strategy & Corporate sections of the Ministry.

Core Function # 3

Surveying and Draughting of all land plots for all of Tonga and includes the manual clearing of land to enable surveys to be completed. These functions are carried out by the Draughting, Surveying and GIS divisions of the Ministry.

Core Function # 4

'Quasi court' role – considers and provides 'decisions' and 'advice' to a large and growing volume of public 'enquiries/complaints' – this advisory role amounts to playing a quasi-court role.

This function is generally carried out by the Registration Division but, the workload often spreads out amongst almost any other Ministry Divisions,

depending on the nature of the 'query/complaint' – this function consumes a large portion of the Ministry's resources and time.

Core Function # 5

Planning and Urban Management Division – regulates all town planning related matters in Tonga and has very little to do with administering the Minister of Lands' duties nor with registration of all land titles and transfers.

- vi) Of these five core functions, the Ministry should only be engaged in core function # 1 – the Minister of Lands' duties and core function # 2 - all land registration and title transfers;
- vii) All other core functions # 3, # 4 and # 5 should be separated from the Ministry's core duties;

2.1.2 Ministry Staff – Heavily Overstaffed/Under skilled

- i) The Ministry is over-staffed with employees and burdened with a majority of lower skilled staff, who are ranked at the lower end of the Civil Service level rankings – some 75% of the Ministry's total 77 staff (since severance of Environment Division in June 2009) are comprised up of Civil Service levels 9 – 14;
- ii) This over-staffing of the Ministry by mainly lower skilled staff has also been partly the result of a large recruitment drive undertaken by the Ministry, over the past decade;
- iii) This staff overpopulation is also partly the result of a lack of strategic and long term planning by the Ministry;
- iv) Ongoing and sometimes unilateral influence by the Public Services Commission (PSC) in appointing staff to the Ministry has also added to the Ministry's ongoing demise in not being able to independently select and develop its own staff;

2.1.3 Weak 'Middle Management'

- i) The Ministry lacks in a sufficient number of 'middle management' staff (civil service levels 3-8), with sufficient experience and management skills who are

also computer literate to the standards required to efficiently provide basic land services and products to the public;

- ii) The lack of this key middle management strata has left a strategic vacuum in the overall leadership of the Ministry;
- iii) This weakened leadership position was partly the result of the Government Voluntary Redundancy Programme in 2006 that effectively stripped the Ministry of its important 'middle management' that provided much day-to-day leadership and direction;
- iv) Their absence left a large gap that was replaced from an even more limited pool of 'middle management' that were either under-skilled or less experienced staff;
- v) With a much weakened 'middle management' to rely upon, the senior roles of CEO and Heads of Divisions had become dramatically weakened in their ability to effectively delegate and properly carry out standard daily duties;

2.1.4 Leadership Issues

- i) Added to the 'middle management' demise has been the ineffectual leadership of the CEO lacking in delegating skills and not being able to properly manage and motivate the Heads of Divisions and other senior land officers down the hierarchy;
- ii) Ongoing absences by the CEO for overseas travel (some three months annually) also compounded this leadership issue;
- iii) Various Heads of Divisions also appear to lack basic leadership skills and qualities and have also failed to provide effective and efficient leadership to their respective divisions and sections;
- iv) The extent to which this leadership vacuum was fueled by the recent 2006 redundancies and the exodus of many skilled staff remains unclear however, this does not in itself provide reasonable excuse for ongoing and poor leadership;
- v) Some divisions appear to be led by a culture of deceit whereby individuals are encouraged to underperform and minimize the pace of any work conducted – and thereby gain maximum remuneration for the minimum work completed - this negative culture appears to have thrived overtime and there is no

evidence to indicate that this behavior has not been directly questioned nor inquired into in the recent past;

- vi) There also appears to be a culture of 'shielding' and/or 'protecting' the Minister of Lands, Survey and Natural Resources Lord Tuita from a large number of internal issues and problems;
- vii) With the Minister of Lands, Survey and Natural Resources having a range of information deliberately withheld from him – it is understandable that Lord Tuita has not been directly privy to the unexposed cultures of laziness and deception;
- viii) The absence of the Honourable Minister and that of the CEO have also been regularly exploited as an excuse not to progress a wide range of applications – this has particularly been the case with the banks pressing to complete a back-log of vital mortgage documents;
- ix) Evidence exists of these cultures of laziness and deception that will no doubt be the subject to further inquiries by the Royal Land Commission when it opens up to consultations with the public in 2010 and 2011;
- x) Pockets of reasonable levels of professionalism and morale do however exist in the Geology and GIS Divisions and to a lesser extent in the Draughting and Registration Divisions;

2.1.5 Outer Island Land Offices and Governor Roles

- i) There has been an overall lack of regular attendance by the Ministry to the land registration requirements of the Outer Islands of the Kingdom of Tonga. The Outer Islands of the Kingdom are comprised of the Ha'apai, Vava'u, 'Eua, Niuatoputapu and the Niuafu'ou islands groups;
- ii) There was also a lack of regular attendance to the Outer Islands by the Governors of Vava'u and Ha'apai, in their respective duties as Deputy Ministers of Lands;
- iii) Almost all Ministry land related duties and functions were currently conducted from Nuku'alofa, Tongatapu with land officers travelling to the Outer Islands on an irregular basis. Ministry offices existed in Vava'u and Ha'apai but, were not attended full time by any Ministry staff;

- iv) Irregular attendance to the Outer Islands has led to a large backlog of incomplete land related work. It is noted that an analysis was not conducted to quantify the extent of the Outer Island backlog given time and resource limitations placed upon the Royal Land Commission. It is however, considered sufficient for the purposes of this Phase One, Interim Report that the findings of the backlog analysis completed on the Ministry in Tongatapu, by Mr W. Vea can be deemed as representative of similar backlog problems experienced in the Outer Islands;
- v) Attendance to the land registration needs of the Outer Islands appear to have been conducted on a 'reactive' basis, thereby responding to demand and the number of land inquiries made by the public of these Outer Islands at any point in time;
- vi) The lack of a regular presence by the Ministry and both the Governors in the Outer Islands have contributed to an ongoing backlog of incomplete files, mismanagement, much public frustration and possible unlawful land transactions. The outcome of these possible unlawful land transactions is to be inquired into during Phase Two of the Royal Land Commissions inquiries;

2.1.6 Staff Morale

- i) Since completion of recent staff redundancies in 2006 and a lack of 'middle management' core staff to provide leadership, the Ministry has suffered from general low staff morale;
- ii) Poor public relations have worsened over time which have resulted from a predominately low performing staff trying to cope with an archaic, cumbersome and manual administrative system, a continuously mounting back-log of files, constant delays and hence provision of low quality service to the public;
- iii) Communication between almost all divisions remains 'civilised' but, is also fueled by low inter-staff morale and varying levels of distrust- there is an overall lack of 'team spirit';
- iv) Good staff morale has also been hindered by poor delegation of authority from some current heads of divisions and sections (lack of 'middle management' quality) and in particular, the CEO;

2.1.7 Underfunding

- i) The Ministry has received inadequate funding to enable it to carry out its core functions (the existing five forms) of providing all land related services and products to the public;
- ii) Underfunding has also led to serious lack or shortages of basic asset and equipment availability;
- iii) Seriously hinders training and re-training of staff at all levels – this has also partly led to the poor computer culture that pervades the Ministry – almost all computer training undertaken by staff has been at their own cost and in their own time;
- iv) Has had a rippling effect throughout the Ministry that has caused general ongoing internal and external frustration and delays to processing basic land transactions;

2.1.8 Lack of Training

- i) The Ministry requires re-training and/or update training in almost all divisions;
- ii) An overall lack of training and re-training hinders overall performance of the Ministry and partly explains the serious lack of computer literacy within the Ministry;
- iii) Constant taking of leave (for a range of reasons including overseas education and conferences) also hinders the consistency of staff presence to providing a reliable quality service to the public;

2.1.9 Uneven Staff Distributions

- i) The Ministry has an uneven spread of employees across the Kingdom with the vast majority of Ministry staff being based in Tongatapu (87% of all Ministry staff are based in Tongatapu) that serve the whole of the Kingdom of Tonga;
- ii) This 87% dominance of staff presence in Tongatapu has led to an uneven and ad hoc service to all outer island groups such as Vava'u, Ha'apai, 'Eua and the Niua Islands;

- iii) The Ministry is also heavily male dominated, both numerically (some 75% males and 25% females) and in males dominance of almost all high level positions;

2.1.10 Complaints to the Ministry – an Inappropriate ‘Quasi Court’

- i) A large proportion of the Registration and Corporate Management Divisions of the Ministry has been consumed in attending to a large number of public queries/particularly follow up on applications that have been lodged with the Ministry;
- ii) Although commonly referred to as ‘complaints’ (launga), a large proportion of these are in fact enquiries or seeking of legal advice on land related issues and conflicts from the Ministry;
- iii) These queries/complaints range in nature, for example from a follow up request by a leasor to cancel a lease to an application to cancel a prior application to surrender interests in land;
- iv) Dealing with these queries/complaints appears to have become a standard part of the core functions of the Ministry over the past century and have never been questioned accordingly;
- v) Although appropriate to socio-economic circumstances over a century ago, this practice of dealing with a wide range of land related queries/complaints must now cease;
- vi) Dealing with land related complaints amounts to the Ministry the conducting of a ‘quasi-court’ role which is highly inappropriate;
- vii) Dealing with such queries/complaints also amounts to a conflict of interest to the Ministry’s core functions – the Minister of Lands’ duties and registration of all land transfers for Tonga;
- viii) Most land related enquires/complaints from the public need to be firstly considered by legal counsel or appropriate community leadership and if required, remedies sought through the existing Land Court jurisdiction of the Supreme Court;
- ix) Upon proper discernment by legal counsel or community leadership, land related complaints can be identified, rectified and progressed in a more efficient and professional manner through more appropriate channels;

- x) No doubt, some of these complaints may be appropriately directed back to the Ministry and others dealt with by community fono, mediation, land court and other alternatives;
- xi) Ceasing to deal with the large and continual inflow of public queries/complaints to the Ministry, will immediately free up large amounts of staff time to attend to their two core functions being i) the Minister of Lands' duties and ii) all land registration and title transfers;

2.1.11 Difficulty of Public Access to Land Information

- i) Access by the public to land information and titles is difficult under the present system. It is also likely that a large portion of the inquiries made to the Lands office are with regard to the title of particular allotments;
- ii) It is envisaged that with the introduction of the computerizing of land titles (as recommended later in this report), service to the public will be made easier and quicker;

2.1.12 Excessive Back-Log of Incomplete Files

- i) A serious back-log of Ministry work files exists;
- ii) A special internal Ministry report provided by an employee of the Ministry, Mr. Warwick Vea found that back-log figures as at 22 October 2009 were:
 - a. 6192 outstanding assignments with the Draughting Division;
 - b. 893 outstanding assignments with the Survey Division;
 - c. over 10,000 outstanding assignments with the Registration Division;
- iii) Included in this growing back-log are crucial registrations of bank mortgages against land titles. These constant and undue delays have continued to hamper the public and commercial industry and have further eroded public confidence;
- iv) A common excuse provided to the banks that the 'Minister is overseas' or otherwise unavailable had added fuel to an already frustrated and vital commercial mechanism to serving the economy - the banks;

A key number of factors have contributed to the large and growing back-log being:

- a. poor administrative systems, manual processing and a lack of rapid, efficient computerized data processing;
- b. a lack of any quality assurance process to protect the integrity of the overall administrative and registration processes;
- c. lack of sound leadership, especially at the 'middle management' levels;
- d. an over-staffing of large number of lower skilled staff;
- e. high staff stress in dealing with a large number of public complaints that continually fuels the existing back-log of outstanding files;
- f. attending to this growing back-log, takes staff focus from their essential core duties of assisting the Minister of Lands in his duties and processing all land registration and title related matters;
- g. general low staff morale;
- h. poor provision of basic working equipment to allow staff to complete day-to-day work loads – draughtsman (no specialist pens to draw with), shortages of ink cartridges;
- i. shortage of transport to carry survey staff to and from daily work sites, materials and equipments – no cement to build basic survey marker pegs – no power tools to rapidly clear bush for surveying;

2.1.13 Corruption (Under the Table Cash Payments)

- i) The combination of overstaffing, weak middle management, poor leadership, low staff morale and a very large and growing back-log of incomplete files has also led to allegations of corrupt practices in some divisions of the Ministry;
- ii) In particular, these allegations of corruption have been consistently directed at the Survey and Registration Divisions of the Ministry;
- iii) The corruption alleged relates to land services provided by the Ministry staff to the public, that would only be carried out or accelerated if anonymous payments of cash ("under the table cash payments") were made to the Ministry staff worker assisting;

- iv) These corrupt payments were a common complaint made by Ministry staff during the Royal Commission hearings however, upon being queried all the staff of the Survey and Registration divisions, denied any such activity;
- v) In the absence of direct or circumstantial evidence to support these allegations, the Royal Land Commission has acknowledged but, not made any further recommendations until such time that supporting evidence is forthcoming;

2.1.14 Computerization and Administration

- i) The Ministry seriously lacks in a single national, centralized computer database that reliably monitors and controls all land records for Tonga;
- ii) The absence of a national, centralized computer database system gives rise to very poor document security and ultimately unreliable and vulnerable land records and titles;
- iii) The Ministry therefore directly suffers from an ongoing negative reputation for unreliable land record keeping, coupled with undue (sometimes excessive) time delays in processing many land transactions;
- iv) Persists with an inefficient administrative and information system that is archaic and cumbersome;
- v) Ongoing delays have accumulated over time in processing basic land transactions due to this cumbersome and poorly administered processing system;
- vi) A serious back-log of work, as previously discussed has accumulated over time;
- vii) Is backward in its use of basic computer systems, databases, recording technology and modern communication such as internet and email;
- viii) The staff have generally poor or limited in broad computer literacy skills;
- ix) There is a weak computer culture and reasonable staff resistance to computerizing and a heavy reliance on manual filing and processing;

2.1.15 Document Storage, Safety and Security

- i) The Ministry has very poor document storage facilities in Nuku'alofa (known as the 'strong room') that *stores the majority of all of Tonga's original hard copy land records of the past 135 years*;
- ii) Amongst these land records are some priceless and historical documents that should in fact be housed separately in very strict environmental control conditions to ensure their survival for future generations – this has not been carried out;
- iii) These critical land records are constantly at severe risk in the 'strong room' from a range of catastrophes such as fire, flood, earthquake, tsunami and human intervention (arson, theft, vandalism, forgery and fraud);
- iv) The 'strong room' has *no* fire alarm, *no* sprinkler system, *no* smoke detectors, *no* humidity control, inadequate air conditioning, poor file storage facilities and an inadequately administered index reference system;
- v) The 'strong room' floor does not have any water pumping facility in the event of a flood and there are no apparent drain holes for water to drain toward. The 'strong room' floor level of the room also sits at ground level – some 1.5 meters above sea level;
- vi) Poor humidity control has led to many documents displaying significant deterioration from fungus and other climate/humidity related conditions;
- vii) Improper storage placement and sub-standard shelving/storage facilities has led to many documents displaying significant damage from bent pages resulting in cracks, upturned corners of documents and fraying;
- viii) The 'strong room' also has a sub-standard security system that immediately compromises most international document security standards for documents of such vital strategic importance to a nation such as original land title and ownership records;
- ix) A manual search for a file in the 'strong room', with its poorly administered index reference system can take a staff member between a half hour to one and half hours, sometimes more;
- x) So, a staff conducting only five file searches a week – will lose between two and half to seven and a half hours weekly on conducting manual searching alone. This is an extremely inefficient use of staff resource and time;
- xi) Ongoing delays have therefore accumulated over time due to this cumbersome and poorly administered manual file search system;

- xii) This regular and time consuming manual search for files has also added to the serious back log of incomplete files that have plagued the Ministry;
- xiii) There is an urgent need of national strategic interest to immediately construct (or upgrade or re-locate) the Nuku'alofa 'strong room' that stores all original hard copies of most of Tonga's land records;
- xiv) Sub-standard electrical work caused a fire in the strong room in 2008 – this was fortunately extinguished at an early stage however, an overall safety check of all electrical wiring is now essential;
- xv) There are *no* other separate hard copies, *nor* digital copies of all these critical land records in existence stored on-location;
- xvi) There are also *no* copies (hard copy nor electronic copies) stored off-location – as back-up copies, in the event of a catastrophe;
- xvii) There are also no proper and secure document storage facilities ('strong rooms') in Ha'apai, Vava'u, Niuatoputapu, Niufo'ou nor the 'Eua islands – storage rooms do exist however, fall well below any reasonable safety and security standards outlined;
- xviii) All other Tongan island groups require a quality 'strong room' to ensure document safety and security when in possession of such critical documents as land records;
- xix) The implications of not immediately improving storage safety and security of the Nuku'alofa 'strong room' would be devastating upon the public and the interests of the nation;
- xx) Should a catastrophe take place and these original land records are lost – there are no back-up records available to validate most of Tonga's land record;

2.1.16 Surveying & Draughting

Work efficiency within the Surveying and Draughting Divisions has been constantly hampered by frustratingly minor causes such as:

- i) The Survey and Draughting Divisions seriously lack in general funding which has led to a lack of basic quality equipment to enable proper attendance and completion of day-to-day duties;

- ii) The draughtsman cannot afford to purchase the standard specialist draughting pens required to properly undertake their daily draughting duties (properly completing maps requires these specialist pens);
- iii) Ink cartridges for copiers and printers would run out on a regular basis and no copying could occur due to a lack of funding to replace these;
- iv) A lack of vehicle availability has caused ongoing delays in the completion of survey jobs – the surveyor staff having to wait up to several hours to be simply picked up and dropped off to various survey sites;
- v) Survey staff have not been able to complete surveys because there has not been enough budget to pay for the cement to build the (standard mould) concrete survey pegs that mark a surveyed plot of land – the public have often been asked to fund this cost, if they wished to have their surveys completed;
- vi) Survey staff use manual tools to clear bush instead of utilizing chainsaws that could complete the same work in about a third of the time;
- vii) All surveying and draughting are carried out manually and there is little use, nor inclination to use of computer assisted equipment to speed up these processes;
- viii) Although high tech GPS and Total Station survey equipment exists, this equipment is not regularly made available for a range of reasons influenced by senior survey staff;
- ix) All the above factors have contributed to the serious and continually growing back-log of work of some:
 - a. 6192 draughting assignments recorded between January 1976 and November 2009;
 - b. 893 survey jobs dated between March 1964 and July 2009;
- x) There is a strong view expressed from the Surveying and Draughting Divisions that all draughting and surveying should be privatized to allow the private sector to take over this ill equipped, time consuming and poorly managed service (as is successful and a standard practice in many other countries).

2.2 OVERSEAS LAND REGISTRATION SYSTEM STUDIES

The Royal Land Commission also travelled to and studied four separate jurisdictions to observe and gain insight into other possible systems/methods Tonga could consider toward improving its own land registration system and the overall efficiency of the Ministry.

The Royal Land Commission completed study visits to; i) the Head Office of Land Information New Zealand (LINZ), Wellington, New Zealand, ii) offices of the President of the Samoa Native Land Court, Attorney General, Chief Justice of the Supreme Court, Samoa Land Corporation and the Land Registry Office, Apia, Samoa, iii) the Head Office of the Singapore Land Authority (SLA) and the Singapore Institute of Surveyors and Valuers (SISV), Singapore and iv) the Head Office of the Department of Lands, Sydney, New South Wales, Australia. The Royal Land Commission also met with a range of leading private sector stakeholders in all countries.

A fifth and smaller scale individual study visit was also carried out by a Commissioner on the Cook Islands land registration system. The findings of this study have also been considered.

A wide range of insights have been gained from these study visits. Observing successful models of land registration and land processing systems in operation by overseas countries, has served to support the range of recommendations considered and presented later in this interim report.

The study visits also served to clarify models and systems that would *not* be appropriate for Tonga, given its unique circumstances.

Much additional insight and understanding were also gained from the study visits that would become very useful to the Royal Land Commissions inquiries in Phases Two and Three of 2010 and 2011.

The following key findings were drawn from these study visits, which are considered important to improve Tonga's land registration system and the Ministry's overall performance. The findings for each category identified are then followed by proposed applications (of these findings) to the Ministry in Tonga. These proposed applications are not however, finalized until the Recommendations Chapter that immediately follows this discussion.

2.2.1 Centralised Computer Database

- i) All study countries possessed a centralized computer database for all land registrations and titles;
- ii) This centralized database dramatically increased land record safety and security – public confidence and economic growth are encouraged;
- iii) High level security systems strictly control access, compliance and validity of all land records – public confidence and economic growth are therefore encouraged and maintained;
- iv) The speed of processing all land transactions by a centralised computer database have also dramatically increased – public confidence and economic growth are encouraged and maintained;
- v) All study countries rely on a well developed and high capability internet system (fiber optic capacity) to enable reliable central database management and online (internet) processing;

Proposed Application to Tonga

- vi) Tonga must develop a centralized computer database, with reliable land record safety and security systems;
- vii) The possibility of destruction, loss, theft, forgery or tampering with land records is dramatically reduced – an issue that is increasingly affecting Tonga – resulting in a range of illegal land related dealings;
- viii) Public confidence and economic growth would be greatly encouraged and maintained upon creating this basic and stable land registration and titles database;

2.2.2 Document Safety

- i) All countries have high safety level, storage facilities for all original hard copies and electronic copies of land records;
- ii) Standard features for storage of hard copies include fire proofing structures, fire alarms, alarm links to local fire station, police and key staff, fire sprinkler systems, smoke alarms, extinguishers and humidity control;

- iii) In terms of file storage - efficient and highly maintained index reference filing systems and strict security access systems protects such;
- iv) All study countries maintain full back-up copies of all land records in hard copy and electronic form – several copies of these are stored securely on-site and off-site and are regularly updated;

Proposed Application to Tonga

- v) Tonga must adapt standard document similar safety procedures in order to ensure reliability and security of all land records;
- vi) Protection and preservation of the quality of all land records (hard copy and electronic) is essential to provision of a reliable and trustworthy registration system;

2.2.3 Privatize – Surveying and Draughting & Legal Counsel

- i) All surveying, draughting and legal processing of land transactions (conveyancing by legal counsel) were privatized in all the study countries;
- ii) This has taken a very large and burdensome work load off the study countries Land Ministry and has empowered the free market (private sector) forces of competition to actively engage in providing these vital strategic services;
- iii) Privatizing the survey, draughting and land related legal advice industries has constantly succeeded in all the study countries over long periods of time;
- iv) The overall efficiency from privatizing the survey industry has improved in a relatively short period of time;
- v) The addition of encouraging proper legal advice to the public has increased the efficiency of advice provided and hence enable more fluid information flow and processing of land transactions;
- vi) Each study country has however, maintained its monopoly over the regulation of all land registrations and titles;

Proposed Application to Tonga

- vii) The Ministry no longer needs to hold on to the surveying and draughting divisions;

- viii) Privatizing of these services will create a new and strategic relationship between the public and private sectors that has been a continuing success in all study countries;
- ix) Surveyors from study countries have clearly indicated that all qualified surveyors are now able to undertake short term computer programme courses and are then able to use basic survey equipment with the assistance of basic surveyor computer programmes (very reasonably priced) which will also automatically print out survey maps thereby doing away with the need for the traditional, manually drawn survey maps Tonga has grown used to;
- x) These new private sector industries will also provide new and vital resource and energy to the current cumbersome and inefficient survey and draughting system – this could therefore increase the efficiency of the Ministry's registration system by minimizing traditional delays in this area;
- xi) Other new industries such as the valuations and land related legal advice sectors would also be encouraged to grow;
- xii) Public confidence and economic growth will be encouraged and maintained upon creating this new strategic relationship between public and private sector;
- xiii) Historically, the Ministry's providing all survey and draughting services, as well as core function registration processing and approvals has constantly burdened and hindered its overall performance;

2.2.4 State Guarantee of Land Titles

- i) The well known Torrens Land Title system developed in Australia has been adapted in varying degrees by each study country;
- ii) However, adaptations of the Torrens Land Title system have all been motivated by the certainty and guarantee of the registered titles provided by the Torrens system which are commonly known as freehold land titles;
- iii) This guarantee to land titles provides a fundamentally stable and reliable platform for all land ownership, within all countries studied upon which all other essential services, practices of a nation can properly function;

Proposed Application to Tonga

- iv) The state guarantee would be funded by a proposed 10% deduction from all land related revenues received by the Ministry and the proposed new Land Registry Office;
- v) Any such revenues would be deposited into a strictly controlled 'National Land Guarantee Trust Fund' that would act as security for all land registrations issued by the Land Registration Office;
- vi) It is also of note that a similar approach has been adopted in Samoa and Singapore;
- vii) Any possible payment from National Land Guarantee Trust Fund would have to be effected on the basis of current market value of land leases and any commercial losses involved and can be effected only by an Order of the Land Court;
- viii) Land, being *the* key strategic physical asset base for the Kingdom of Tonga, it is essential to provide some form of State guarantee;
- ix) Ongoing instability and uncertainty of title ownership in Tonga has eroded the general public's trust in the current land registration system because of its numerous inadequacies;
- x) The basic Deeds land system of Tonga would not be changed however, the introduction of the Torrens system style state guarantee would go far in providing the required certainty and reliability of title that has made all study countries gain the stable platform for land ownership and titles that Tonga is pursuing;
- xi) International confidence in the current land registration system due to the uncertainty of title has also consequently deterred numerous major foreign investments – much to the demise of Tonga;
- xii) Public confidence and economic growth would be greatly encouraged upon creating and guaranteeing a basic, reliable and stable land registration of titles;

2.2.5 Strategic Approach to the Future – Strata Titles

- i) All study countries have implemented key land ownership developments that have anticipated increased pressure on limited land availability – an issue Tonga is vulnerable to in the future;

- ii) Smaller countries of Samoa and Cook Islands have embraced strata titles particularly to encourage foreign investment;
- iii) All study countries have, for example developed strata title ownership concepts and, particularly Singapore, New Zealand and Australia, have enabled ownership of floor levels (or part thereof) within multi-story buildings and shares in a relatively small land area upon which the building sits, with shared cooperative costs to maintain all commonly shared facilities (car parking, driveways, caretakers, lifts);
- iv) Strata titles have also been adopted in Samoa and the Cook Islands but have been developed to a lower scale than more developed countries of Singapore, New Zealand and Australia;

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- v) An adapted form of strata title may also be more applicable to Tonga, not limiting ownership to floor levels (or part thereof) but, to sub-sections of a shared development, again with shared cooperative costs to maintain all shared facilities;
- vi) Strata title style ownership needs to be considered and developed in the Tongan context, with a view to Tonga's future;
- vii) The Ministry would need to ensure, within its new restructuring that there is not only focus on current efficiencies but that there is also focus of *future developments*;
- viii) To this end, the Ministry needs to also anticipate such developments and ensure it has the necessary capacity within its revamped systems to enable (and not hinder, as has been one of its perfunctory roles in the recent past), economic development and foreign investment – any considered changes must of course, comply and fall within the auspices of the Land Act;
- ix) Improved efficiencies and performance must however, not hinder the Ministry attending to current demands but, it is also essential the new Ministry takes a strategic approach to the future in anticipating changes;

However, strata titles are something to be mindful of but, not put into effect or recommend to be put into effect without further studies. The Cook Island experience bears out the futility of having strata title available by legislation, with no practical use or effect.

2.2.6 Strategic Approach to the Future – Limited Coastal, Freehold Land Ownership

- i) Almost all study countries have engaged in reclaiming 'new lands' along their coastal areas;
- ii) Singapore, in particular may provide a snapshot of Tonga's future with a growing population (some 4.5 million at present) and a limited total land area of 750sq/km. This is close in size to the total land mass of all the Kingdom of Tonga's lands with a total consolidated land area of 718 sq/km;
- iii) Singapore is therefore experiencing increasing population pressures on its very limited land areas;
- iv) It has hence undertaken reclaiming 'new lands' along its coastal areas and has become expert at such land reclamation;

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- v) Tonga may be able to consider similar coastal reclamations with view to creating limited pockets of freehold land for the first time in Tonga's history;
- vi) It is mooted that reclamation effectively creates new 'lands' that are not subject to the provisions of the Land Act which can therefore be declared under a new regime of land ownership – freehold title;
- vii) Reclamation is of course subject to the various environmental impact assessments and town planning regulations under Tongan law;
- viii) Such limited pockets of coastal freehold land would also become subject to the Ministry's registration system;
- ix) The newly privatized survey, draughting and legal advice (conveyancing) industries would immediately play key roles;
- x) The Ministry would need to ensure, within its new restructuring that there is not only focus on current efficiencies but that there is also focus of *future developments*;
- xi) To this end, the Ministry needs to also anticipate such developments and ensure it has the necessary capacity within its revamped systems to enable (and not hinder, as has been one of its perfunctory roles in the recent past)

economic development and foreign investment – any considered changes must of course, comply and fall within the auspices of the Land Act;

- xii) Improved efficiencies and performance must however, not hinder the Ministry attending to current demands but, it is also essential the new Ministry takes a strategic approach to the future in anticipating changes.

CHAPTER 3 – RECOMMENDATIONS AND THE WAY FORWARD

The observations and findings drawn from the hearing inquiry stage have been compared and contrasted with the observations taken from studies of land registration systems observed overseas. This two stage analysis process has enabled the Royal Land Commission to make findings and recommendations that have benefitted from years of trial and error and development of the countries studied.

Several areas of discussion in this chapter repeat subject matter already observed and commented upon in the previous country study chapter. Although repeated, it is considered important to clearly spell out observations and findings drawn each separate stage of the phase one inquiry.

Most important, is that these areas of subject overlap serve to add weight to the priority issues and recommendations made by the Royal Land Commission toward improving the Ministry's overall efficiency and performance.

Having taken into account the evidence drawn from the Royal Land Commission inquiry hearings, site inspections, documentary exhibits filed and the observations and findings determined from the country studies – the following recommendations are made with a view to improving the Ministry's overall performance, efficiency and that of its land registration system.

3.1 RECOMMENDATIONS – RESTRUCTURE THE MINISTRY

The Ministry must be substantially restructured in the following manner to achieve an efficient and reliable standing – that provide the core functions of assisting the Minister of Lands in his duties, registration of all land title transfers (Registry Office) and surveys of all land (Surveyor Generals' Office).

3.1.1 Introduction of the Ministry's Three Core Functions

The Ministry must function with focus on three clear core functions:

- i) Minister of Lands - assistance to the Minister of Lands in carrying out his duties under the Constitution and Land Act, especially in relation to those uniquely Tongan rights to allocation of land to Tongan males over 16 years of age, all other ownership and inheritance rights that ensue, leases and all

other ownership and inheritance rights of the Royal family, Nobles, Matapule Ma'utofi'a and the public of Tonga;

- ii) Land Registry - all land registration and transfer of titles in Tonga;
- iii) Surveyor General Office – regulation, approval and registration of all surveying conducted in Tonga;

3.1.2 Minister of Lands

- i) The Minister of Lands remains as sole office holder of both the role of the Minister of Lands, as well as the Registrar-General of all land titles;
- ii) The Minister, under the Land Act has special and unique duties to allocate lands, at no cost to any Tongan male over the age of 16 years and to administer all consequent rights and obligations that flow on from this fundamental land right;
- iii) The Minister of Lands also delegates authority to create a new and separate office of the Surveyor General;
- iv) The new and segregated offices of the Registrar General and Surveyor General are separately administered, funded, staffed and with clear separate delegated authority under the Minister of Lands;

3.1.3 Separate and New Office of the Registrar General (Land Registry Office)

- i) A completely separate Land Registrar Office is created which functions by way of administration, funding, staff and clear separation of delegated authority from any other function of the Ministry;
- ii) The Registrar General deals with the day-to-day administrative workloads related to all land registration thereby freeing the Minister of Lands' time up to addressing issues of policy and overall Ministerial strategy;
- iii) The Registrar General is empowered to regulate all land related transfers and registrations for Tonga;
- iv) It is therefore recommended that the Minister of Lands continues to hold the office of Registrar General to ensure that not only are the unique land rights

to Tongans properly administered, but that any transfer of titles and registration process are also properly applied;

- v) However, a separate Personal Secretary of high level experience should be appointed for the administration of the Minister of Lands – this will ensure proper management of the Minister’s more emphasized role on overall policy and strategy;
- vi) A separate Chief Executive Officer should also be appointed to the administration of the office of Registrar General – this will ensure separation of the Registry Offices day-to-day workings from any other Ministry functions;
- vii) With proper administrative systems and modern computer and electronic capabilities, the CEO should be more than able to attend to these duties;
- viii) This CEO will handle the majority of all land registration processes thereby freeing up the Registrar General’s valuable time to apply to leadership, policy and strategic matters;

3.1.4 Separate and New Office of the Surveyor General

- i) A new office of the Surveyor General needs to be established who is responsible for the overall regulating of all surveys conducted in Tonga;
- ii) The Surveyor General can report to, but does not answer to the Minister of Lands, nor the Registrar General;
- iii) The Surveyor General’s independence is important to the proper and independent vetting of all surveys conducted within the nation;
- iv) Being seen to be administering this important function with independence is vital to the rebuilding of public confidence which has been eroded over time. This is particularly in light of ongoing public complaints of corruption directed at the Ministry’s Survey Division;
- v) The Surveyor General would not only perform his duty with a high level of dignity but, would also be *seen* to be doing so;
- vi) In doing so, the Office of the Surveyor General would maintain a small number of senior surveyor officers to conduct all compliance checks on private sector surveys completed and to report to the Surveyor General;

- vii) The GIS section of the existing Ministry would be absorbed into the new Surveyor General Office providing useful and important survey related support;
- viii) This office does not require large numbers of support staff and with proper administrative systems and modern computer and electronic capabilities, an experienced Chief Executive Officer can properly attend to these duties;
- ix) A completely separate Surveyor General's functions by way of separate administration, funding, staff and clear separation of delegated authority from any other function of the Ministry;
- x) The Surveyor General deals with the day-to-day administrative workloads related to all land surveys thereby freeing the Minister of Lands' time up to addressing issues of policy and overall Ministerial strategy;

3.1.5 Privatize All Surveyor and Draughting

- i) Close down the Survey and Draughting Divisions of the Ministry;
- ii) All surveying and draughting should be privatized with the office of the Surveyor General providing all regulating and checking systems for validation of all privately conducted surveys;
- iii) Maintaining the Survey and Draughting Divisions amounts to a heavy and cumbersome burden on the Ministry;
- iv) Almost all study countries worldwide have successfully completed privatizing these two areas many years ago with continued success;
- v) A new Surveyor and Draughting Society should be created that would require the full support and approval from the office of the Surveyor General – this society would contribute to assuring compliance, quality assurance and providing internal sanctions where necessary;
- vi) Final authority to sanction would rest with the Surveyor General under a new and specific Surveyor General statute that would protect and enshrine many aspects of this new office;
- vii) Survey related fees would be collected by the Surveyor General's Office to contribute to its independent status and funding;

3.1.6 Regular Ministry and Governor Presence for Outer Islands

- i) Permanent Ministry offices, with at least two fulltime staff, should be re-established in the Outer Island posts of Vava'u and Ha'apai;
- ii) The permanent Vava'u Ministry office would service the Vava'u island group, as well as the Niutoputapu and Niufu'ou islands;
- iii) The permanent Ha'apai Ministry office would service the Ha'apai island group;
- iv) The main Ministry offices of Tongatapu would service the Tongatapu island group, as well as 'Eua island. All 'Eua island land registration matters can be readily managed from Tongatapu given its small population and close proximity to Tongatapu;
- v) A permanent presence of Ministry offices in the Outer Islands would much improve overall efficiency and public confidence in the Ministry and the proposed land registration system;
- vi) The Governors of Vava'u and Ha'apai, in their capacity as Deputy Minister of Lands need to remain present in their territories of responsibility for at least 60% of any given calendar year;
- vii) Regular and consistent presence of both Governors within their territories, will greatly assist in the proper governance and attendance to any land related matters required by the public and/or government;
- viii) The Governors of Vava'u and Ha'apai cannot simultaneously be Members of the Legislative Assembly, nor carry out any function that gives rise to a conflict of interest with their duties, as Governors and in particular (in relation to this Interim Report), as Deputy Minister of Lands;
- ix) Clarity of the roles and functions of both Governors, as Deputy Minister of Lands and that their duties are properly carried out is essential;
- x) To this end, transparency, independence and impartiality of the Governors roles, especially as Deputy Minister of Lands is vital toward improving efficiency and public confidence of the Ministry's functions;

- x) If the above recommendations are considered unobtainable, the role of Deputy Minister of Lands then needs to be reviewed in terms of its relevance toward meeting the overall duties and functions of the Ministry;
- xii) Bearing in mind the important historical significance of the role of the Governors of Vava'u and Ha'apai, their ability to realistically meet their duties as Deputy Minister of Lands may be due for review. This important question would however, be a matter for a separate inquiry in itself and could also be considered by the Royal Land Commission in Phase Three of its inquiries - General Inquiries;

3.1.7 'Quasi Court' Role to Cease

- i) The Ministry's long established practice of considering and providing 'decisions' and 'advice' to a large and growing volume of public 'queries/complaints' should immediately cease;
- ii) This advisory role amounts to the Ministry conducting a 'quasi-court' role which is highly inappropriate;
- iii) This advisory role also amounts to providing land related legal advice – a role much more appropriate for approved legal counsel;
- iv) All current and future queries/complaints should be properly referred to legal counsel or community leaders to appropriately advise upon and if required, remedy can be sought in the Land Court;
- v) The public seeking their own legal or other advice should also provide for a more efficient processing of problems and how these can be dealt with;
- vi) Diverting of all these complaints will immediately free up Ministry staff to attend to their two new core functions only;

3.1.8 Non-Voluntary Redundancies

- i) In restructuring the Ministry, non-voluntary redundancies are necessary in order to gain higher level efficiencies and performance of the Ministry's new core functions;

- ii) With the advent of closing down the survey and draughting divisions, some 16 staff will potentially be made redundant and/or some re-deployed elsewhere within the Ministry;
- iii) With the advent of removing the Ministry's large and time consuming role as a 'quasi court' much valuable work time will be freed up thereby reducing the current requirement for higher staff numbers;
- iv) The proposed computerization of the restructured Ministry and the creation of a centralized database for all land records will create demand for staff with high computerized literacy, specialized computer training and higher general office skills;
- v) Non-voluntary redundancy of the majority of lower skilled workers (75% of total staff numbers between civil scale levels 9-14) in the Ministry is essential to alleviate the Ministry's heavy over-staffing, especially with this lower skilled staff sector;
- vi) The last round of PSC led redundancies of 2006, which were voluntary left a large 'middle management' void in the leadership structure of the Ministry thereby causing a negative on-flow of sub-standard staff morale and performances;
- vii) It is therefore vital that the proposed redundancies are non-voluntary and can be focused around a basic skills and computer aptitude test administered to all those considered for redundancy;
- viii) The remaining staff who pass this basic skills test can then be re-deployed within the newly restructured Ministry, the other made redundant;
- ix) Re-training of these re-deployed and higher skilled staff can then commence in their new job roles;
- x) The role of the PSC in placing employees to the Ministry should be reviewed with view to enabling the Ministry to more independently select and develop its staff without constant outside (and sometimes unilateral) intervention, that has not necessarily assisted the Ministry's development;

3.1.9 Central Computerised Database System

- i) The Ministry must establish a central computerized database system –for all land registrations and titles;

- ii) The centralized database will dramatically increase land record safety and security;
- iii) Alongside computerization, a robust quality assurance system must be implemented to assure all land registration processes maintain minimum quality standards;
- iv) A high level security system that strictly controls access, compliance and validity of all land records must also be established
- v) Public access to registered land titles must be made easier both directly and through registered land conveyancers - approved legal counsel;
- vi) The speed of processing all land transactions by a centralised computer database will dramatically increase thereby providing reliable communications throughout all of Tonga;
- vii) The reliability of this database will directly rely on the Tongan government (in association with the private sector) to ensure a well developed and high capability internet (fiber optic capacity);
- viii) The possibility of destruction, loss, theft, forgery or tampering with land records will be dramatically reduced – an issue that is increasingly affecting Tonga – resulting in a range of illegal land related dealings;
- ix) Public confidence and economic growth can therefore be encouraged and maintained upon establishing a reliable and stable land registration system with registered titles being guaranteed;

3.1.10 Document Storage & Safety

- i) High safety level storage facilities are required for all original hard copies of land records in Tonga;
- ii) These storage facilities require a minimum standard of fire proofing structures, fire alarms, alarm links to local fire station, police and key staff, fire sprinkler systems, smoke alarms, extinguishers, humidity control, efficient and highly maintained index reference filing systems and strict security access to such facilities;
- iii) The Ministry also needs to establish and maintain full back-up copies of all land records in hard copy and electronic form – several copies of these to be stored securely on-site and off-site and regularly updated;

3.1.11 State Guarantee of Land Titles

- i) That the State provide a guarantee of all land title registrations to enable ongoing stability and reliability and confidence in land title ownership in the Kingdom of Tonga;
- ii) This guarantee provides a fundamentally stable and reliable bond and platform for all land ownership, upon which all other essential services, practices within a nation can properly function;
- iii) The State guarantee is funded by a proposed 10% deduction from all land related revenues to the Ministry and proposed Land Registry that would be deposited into a strictly controlled a 'National Land Guarantee Trust Fund' that would act as security for all land registrations issued by the Land Registration Office and a similar approach has been adopted in New Zealand, Samoa, Singapore and Australia;
- iv) Any possible payment from this trust fund would have to be on the basis of current market value of land leases and any commercial losses involved and can be effected only by an Order of the Land Court;
- v) The basic Deeds land system of the Kingdom of Tonga would not be changed but, the introduction of the Torrens system based State Guarantee of Title would go far in providing the required certainty and reliability of land titles that has been achieved by the study countries examined;
- vi) International confidence in the current land registration system due to the uncertainty of title has also consequently deterred numerous major foreign investments – much to the demise of Tonga;
- vii) Public confidence and economic growth would be greatly encouraged upon the creation of a basic, reliable and stable land registration of titles that is guaranteed by the State.

3.2 FUNDING AND COSTS ISSUES OF COMPUTERISATION

3.2.1 Australian Aid – Supportive Indication

- i) The Royal Land Commission had travelled to and studied the land registration systems of New South Wales, Australia in early November 2009;
- ii) The Royal Land Commission was informed that the Land Registry Office of the Samoan government was likely to receive further funding from Australian government Aid. Samoa had recently completed full computerization of their Land Registry Office that had also been funded by Australian government Aid. The Land Department of New South Wales, Australia has indicated that a request for funding, of a similar nature, would be favorably considered by the Australian government;
- iii) Fortunately, this process of conversion and upgrade from a manual database system to a central computerized database was recently and successfully completed in Samoa;
- iv) The Royal Land Commission had also travelled to and studied Samoa's new centralised computer database and land registration system in late August 2009;
- v) Samoa's computerizing of its land registration system was predominately funded by Australian Aid and with direct liaison with the Land and Property Management Authority, NSW;
- vi) It has been fortuitous that the Royal Land Commission had studied both country's systems and also gained a favourable indication of possible funding assistance via the Land and Property Management Authority, New South Wales;
- vii) Having just successfully completed a very similar computerizing project for the Samoan Land Registry Office, the pathway and many ensuing synergies have already been laid out for the Ministry to formally seek the same funding assistance from Australian Aid;
- viii) The Royal Land Commission has also discussed and confirmed support, if required from senior management within the Samoan Land Registry Office,

who successfully supervised their conversion and upgrade to full computerization;

3.2.2 New Zealand Aid – Supportive Indication

- i) The Royal Land Commission had also travelled to and studied the land registration system of New Zealand – LINZ (Land Information New Zealand) in early August 2009;
- ii) Senior management at Head Office of LINZ, Wellington, New Zealand had given positive indications to the Royal Land Commission, that it would support its seeking of funding from NZ Aid to assist the Ministry in revamping and upgrading its computer systems and creating a new single, centralized database for all Tonga;
- iii) Senior LINZ management had also indicated they had also taken a proactive step and discussed the Royal Land Commission's needs with NZ Aid and were informed NZ Aid were open to a formal approach for funding;
- iv) Senior LINZ management also confirmed that if funding from NZ Aid was forthcoming LINZ would actively assist in the conversion and upgrade process;
- v) Although LINZ support for seeking funding has been indicated, the Royal Land Commission recommends funding is initially sought from Australian Aid (as a more likely funder), as they had done for Samoa, with the support and assistance from the Department of Lands, New South Wales;

3.2.3 International Finance Cooperation – Favourable Indication

- i) The Royal Land Commission had met with the representative of the International Finance Cooperation (IFC) in Tonga in January 2010;
- ii) The IFC is the financial development arm of the World Bank that assists developing countries such as the Kingdom of Tonga;
- iii) The purpose of the meeting was to consider financial assistance to the Ministry, toward revamping and upgrading its computer systems and creating a new single, centralized land registration database for all of the Kingdom of Tonga;
- iv) IFC also indicated that they had recently and successfully completed a similar computerization project of the Companies Office involving the revamping and

upgrading its computer systems and creating of a new single, centralized companies registration database system for all of the Kingdom of Tonga;

- v) In light of discussions and the recent and successful computerization project (Companies Office), the IFC have indicated favourable support for the proposed computerization project of the Ministry land registration system;
- vi) A proposal has been subsequently provided in February 2010, by the Royal Land Commission to the Tongan representative of the IFC for consideration;
- vii) The Royal Land Commission therefore recommends funding is simultaneously sought from the IFC in conjunction with seeking financial assistance from Australian Aid, and New Zealand Aid to a lesser extent as likely financial contributors;

3.2.4 Improved Revenue Streams for Ministry and Registry Office

- i) Upon completion of the proposed computerization phase – public requests for basic title searches, copies of survey maps and all other land records can be rapidly and efficiently retrieved and copies produced;
- ii) Retrieval and production of copies can be made available to the customer/public within an hour of making a request and payment of the appropriate fee;
- iii) This is in direct contrast with the old Ministry regime, where requests for copies of land records would take between three weeks to three years;
- iv) A range of higher and more appropriate fees for various types of land record searches can therefore be applied;
- v) The Royal Land Commission recommends that these fees be set with view to enabling the restructured Ministry, Land Registry and Surveyor General Office to receive sufficient revenue to either reach 'self funding' status or to at least reasonably off-set the governments set annual budget for the restructured Ministry. Such fees could also be considered in assisting the funding of the State guarantee of land titles;
- vi) It is envisaged that the public will react positively and expect to pay reasonable land transaction fees, for rapid and efficient services and to reliably conduct basic land related business and transactions on a daily basis;

- vii) This again is in contrast with negative public experiences under the current Ministry regime that generally involved constant and undue delays with public confidence being low;

3.2.5 Improved Collection of Land Lease Revenues

- i) Approximately \$700,000 was the estimated revenue to be collected by the Ministry in the 2008/2009 financial year from annual lease rentals and other land related revenues for Tonga;
- ii) It appears the collection of annual lease fees and other land revenues are inefficient and that a large number of outstanding lease fees remain unpaid;
- iii) Estimates are not available of exactly how much revenue should be collected from annual lease rentals and this is partly due to the overall poor state of affairs of almost every Division of the Ministry;
- iv) It is however envisaged that upon computerization of the Ministry and the new Land Registry Office, that such figures can more easily be obtained to assist in more effective revenue collection systems;
- v) Although individually, annual lease fees amount to relatively minimal amounts, collectively it is envisaged that large amounts of land lease revenue are not reaching the Ministry;
- vi) The absence of this revenue hinders the overall maintenance, up keep and development of the Ministry and the new Registry and Surveyor Generals' Offices;

3.2.6 New Revenue Stream for Surveyor General's Office

- i) A range of surveyor related application and licensing fees will be charged out to the new private sector surveyor industry;
- ii) It is also envisaged that the public will also seek out the survey related services and products (survey plans) and appropriate fees will be charged out accordingly;
- iii) These revenue streams can then immediately assist in funding the independent running and maintenance of the Surveyor Generals Office;

- iv) The new Surveyor Generals Office will also own and control a range high tech equipment such as GPS and Total Station that can be hired out on a regular basis, to the new private sector surveyors;
- v) This revenue stream can also assist in funding the running and maintenance of the Surveyor Generals Office;

3.2.7 Divert Funds Saved from Survey and Draughting Division Closures

- i) A sizeable amount of funds will be saved by the Ministry in closing down the Draughting and Surveyor Divisions;
- ii) Monies saved from these closings can be diverted to the new and re-deployed Surveyor Generals Office staff and for their essential re-training;
- iii) Some of these funds saved from these Division closings can also be diverted to the new and re-deployed Ministry and Registrar General Offices staff and for their essential re-training;

3.2.8 Funds Saved Off-Set by Redundancy Payments

- i) Funds saved by the Ministry from laying off a reasonable number of lower skilled staff will be off-set, to some extent by the cost of lump sum redundancy payments;
- ii) Funds saved by the Ministry from making redundant, a number of lower skilled staff will also be off-set, to some extent by increased salaries for re-deployed and higher skilled staff and also by the cost of their re-training into their new job roles;

3.2.9 National Land Guarantee Trust Fund

- i) Collection of 10% of all land related revenues paid to the Ministry, Land Registry Office and the Surveyor General Office could be deposited into the proposed National Land Guarantee Trust Fund;

3.2.10 Funding Summary

- i) The annual government budget for the Ministry is not likely to dramatically change but, the overall structure, performance and efficiency of the Ministry is likely to dramatically improve;
- ii) With the proposed new revenue sources streaming into the new Ministry, the Registry Office and the Surveyor General Office – it is also possible the government may not have to increase its annual budget to support these new portfolios;
- iii) If the cost of computerizing is primarily funded by Australian Aid (or other aid) then, the government and the public of Tonga stand to benefit from a low cost restructuring that can result in a reasonably self-sustaining new Ministry, Registry Office and the Surveyor General Offices that are dramatically more efficient and reliable than their predecessors.

3.3 PROPOSED LEGISLATION - CONCEPTUAL

Draft legislation is required to assist in the implementation of all aspects of the Royal Land Commissions recommendations. However, being an interim report, it is considered premature to provide detailed drafts of proposed legislative amendments and new statutes. Upcoming public inquiries over the next two years will inevitably raise numerous issues that are also likely to further affect any proposed legislation.

The Royal Land Commission intends to inquire widely with the public in phases two and three of its inquiries. These inquiries will be conducted across all the major island groups of the Kingdom of Tonga and also internationally in New Zealand, Australia and the USA where the heaviest concentrations of Tongans reside. Upon completion of all three Phases of the Royal Land Commissions inquiries, further proposed changes and amendments to legislation are considered likely.

However, a conceptual layout of a range of statutory amendments and new proposed statutes are provided at this early stage in connection with Phase One of the work of the Royal Land Commission.

3.3.1 Surveyors Act – New Proposed Statute

- i) Appointment of the Surveyor General Post;
- ii) Powers, Duties and Independence of Surveyor General;
- iii) Implementation of Privatizing Surveying;
- iv) Compliance and Penalties for Non-Compliance;
- v) Prescribe Rules for Surveyors;
- vi) Establishment of the Surveyor Society – rules, authority, compliance and enforcement;
- vii) Ensure no conflicts with vital Statutes such as the Land Act or the Tongan Constitution – if so, to be reconciled;

3.3.2 Land Titles Guarantee Act – Proposed New Statute

- i) Prescribes rules for state guaranteeing registered titles but, that no other changes will be made to altering the Land Act and all its land rights and duties therein
- ii) Establishes the Land Titles Guarantee Trust Account and its rules
- iii) Establishes the Land Titles Guarantee Trust Account Board - its powers and duties
- iv) Prescribes composition of Land Titles Guarantee Trust Account Board members that will manage all related affairs
- v) No payment from this fund is to be made without an Order from the Land Court

3.3.3 Land Act - Amendments to section 19

Amendment to section 19 to ensure administrative separation of the Registry Office and the role of the Registrar General. Further, consequential amendments will also follow upon completion of Phases Two and Three of the Royal Land Commission's inquiries.

- i) Delegation of authority from Minister of Lands to separate administrative office of the Registrar General;
- ii) Guarantee administrative separation of Registrar Generals Office from all other Ministry functions;
- iii) Powers and Duties of the Registrar General;
- iv) Implementation of New Registry Office;
- v) Compliance and Penalties for Non-Compliance;
- vi) Prescribe Rules and Regulations for Registration Processes for all Land Titles;

Consequential amendments to the Land Act that may be required to bring the Act into line with the recommendations that are adopted by government. Such amendments are determined by what Government decides after due consideration.