



Legislative Drafting Division Newsletter Update

VOLUME 10, ISSUE 1

1 JANUARY - 31 MARCH

EDITOR'S NOTE

TALOFA

Welcome to the first edition of the Legislative Drafting Division ("LDD") Newsletter for 2017. This edition covers an update of all the events occurring from January to March 2017. These events include Acts passed by Parliament, workshops, trainings and other events attended by members of LDD.

From the Attorney General and the LDD team, we wish you all a safe and sound 2017.

EDITORS: Jasmine Faleafaga (Senior Legislative Drafter) & Jacek Tuala (Law Clerk)



Members of the LDD with the Attorney General

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PARLIAMENT UPDATE 2017 JANUARY-MARCH

Remaining Parliamentary Sittings 2017-2018

MONTH	DATE
May 2017	Tuesday 30 th
June 2017	Tuesday 20 th
August 2017	Tuesday 22 nd
October 2017	Tuesday 17 th
December 2017	Tuesday 19 th
January 2018	Tuesday 23 rd



Acts Passed 2017

ACTS	DATE PASSED	COMMENCEMENT DATE
Supplementary Appropriation Act (No.1) 2017	26 January 2017	26 th January 2017
Police Service Amendment Act 2017	26 January 2017	26 th January 2017
Coroners Act 2017	26 January 2017	26 th January 2017
Village Fono Amendment Act 2017	26 January 2017	26 th January 2017
Police Powers Amendment Act 2017	7 March 2017	9 th March 2017
Tax Information Exchange Amendment Act 2017	7 March 2017	9 th March 2017 (Offences provision) & 31 st December 2016 (all other provision)

Bills in Parliament 2017

BILLS	STATUS
Constitution Amendment Bill (No.1) 2017 (25/1/2017)	Second reading and referred to Select Committee
Constitution Amendment Bill (No.2) 2017 (25/1/2017)	Second reading and referred to Select Committee
Fees and Charges (Miscellaneous Amendment) Bill 2017 (25/1/17)	Withdrawn to redraft
Casino and Gambling Control Amendment Bill 2017 (7/03/17)	Second reading and referred to Select Committee
Public Service Amendment Bill 2017 (7/03/17)	Second reading and referred to Select Committee

A BILL IN PARLIAMENT





Summaries of Legislation Passed in January—March 2017

Supplementary Appropriation Act 2017 (Act)

The Act authorizes the issue and appropriation of certain sums of money out of the Treasury Fund to Ministerial/Departmental Outputs and Sub-outputs, Outputs provided by Third Parties and Transactions on Behalf of the State for the Financial Year ending on the 30th day of June 2017.



Coroners Act 2017 (Act)

The Act repeals the Coroners Ordinance 1959 and provides a coronial system to investigate sudden or unexplained deaths or deaths in special circumstances through inquiries and inquests to help prevent deaths in circumstances similar to those deaths and for related purposes.



Village Fono Amendment Act 2017 (Act)

The Act seeks to amend the Village Fono Act 1990 to strengthen our culture to ensure stability in Samoa by strengthening the role of the Village Fono and to ensure that the exercise of the powers of the Village Fono are in accordance with the Constitution.



The Act covers the following:

- the granting of a specific power to impose curfews and banishment;
- the inclusion of limited jurisdiction over those living in government, lease or freehold land located within village lands;
- the provision of specific power to Village Fono to make their own faiga faavae or iugafono and register them at the Ministry of Women, Community and Social Development in order for them to be recognized by the Court. However, the registration of faiga faavae or iugafono do not necessarily mean that they are consistent with the Constitution;
- the requirement to consult and obtain the approval of the Village Fono before any building or activity can be undertaken. If the Alii and Faipule decline the proposed activity or building, the decision can be appealed to the Land and Titles Court.

Police Service Amendment Act 2017 (Act)

The Act seeks to amend the Police Service Act 2017 to allow the Head of State, on the advice of the Cabinet, to suspend or terminate the Commissioner or Assistant Commissioner under certain circumstances without the need to establish a Commission of Inquiry if it is clear and substantial there are grounds for suspension or removal. The Act inserts same provisions into the Prisons and Corrections Act 2013 and the National Prosecution Office Act 2015 for uniformity. These new changes are an exception to the general rule which is a Commission of Inquiry or Tribunal may still be held if there is a need to do so.

"A good compromise, a good piece of legislation is like a good sentence; or a good piece of music. Everybody can recognize it. They say 'Huh. It works. It makes sense.'" - Barack Obama

Tax Information Exchange Amendment Act 2017 (Act)

The Act seeks to amend the Tax Information Exchange Act 2012 with the objective to implement the obligations of Samoa under an agreement for the implementation of the Standard on Automatic Exchange of Financial Account Information in Tax matters.



Police Powers Amendment Act 2017 (Act)

The Act seeks to amend section 13 of the Police Powers Act 2007. It authorises the Minister responsible for the Samoa Police Service to approve a police officer to be armed under exceptional circumstances, in accordance with relevant police internal orders or prescribed rules and after consultations with the Attorney General.



EVENTS OF JANUARY-MARCH 2017

JUDICIAL CHURCH SERVICE

The Judiciary of Samoa started off the year 2017 with their annual church service on 13 January 2017 that was attended by members of the Ministry of Justice and Courts Administration, government officials and members of the Samoa Law Society. The service was conducted by Afioga Patele Paulo Filoialii to bless the work of the Judiciary service for the year. His Honour Chief Justice Patu Falefatu Maka Sapolu in delivering the keynotes of the service acknowledged the hand of God over the past years.



INTERNATIONAL ESTATE PLANNING COURSE

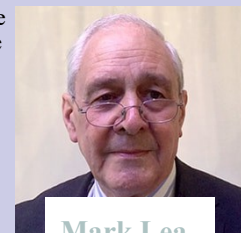
The Samoa International Finance Authority hosted a 2 weeks Course from 6th-17th February on International Estate Planning ("IEP") at their Conference room basically to further knowledge and understanding of the attendees on the different types of IEP available in Samoa. Comparisons and contrasting were made between the types of IEP such as Trusts, Companies, Special Purpose International Companies and especially Foundations which is a new entity that has just been recently introduced in Samoa under the Foundations Act 2016.

The presentation by Mark Lea who conducted the Course covered all details of each IEP's, their aspects, implications, impacts and their natures.

It was a good learning experience for the attendees to refresh and further knowledge on the different IEP's and their natures especially with Foundations law that has just been enacted in Samoa.

The Course will be commenced again next year in August 2018.

State Solicitor Terina Sefo and Law Clerk Jacek Tuala attended the Course on behalf of the Office of the Attorney General.



Mark Lea

EU-GIZ Adapting to Climate Change and Sustainable Energy (ACSE) Programme Technical Group Meeting for the Energy Bill & Sustainable Bioenergy in Samoa Project

The Ministry of Finance under the EU-GIZ ACSE Programme for the Energy Bill and Sustainable Bioenergy in Samoa Project invited representatives from various Government Ministries and Agencies who are assisting in supervising and monitoring the implementation of the projects to a Technical Working Group on Thursday, 2nd February 2017.

The purpose of the meeting was for the Technical Working Group to discuss any challenges key implementing agencies are facing and review the existing Working Plan. Input from all key implementing agencies is vital to ensure that the Project activities remain on track and to address any issues hindering completion of Project activities within the allocated timeframes.

Senior Legislative Drafter Mearold S. Viliamu attended on behalf of the Office of the Attorney General.



TALK BY HAMPTON QC

The Office of the National Prosecutions Office made use of Hampton's QC time here in Samoa who was involved in some of the Government Court proceedings and invited him to give a talk about basic skills and knowledge of what every prosecutor should acquire. Members of the Attorney General's Office were also invited to sit in the session. The Attorney General himself, Mr. Lemalu Hermann P. Retzlaff was also present and talked side by side with Hampton QC on the purpose of the session. It was a good chance especially for young lawyers who attended the session to learn from a person with expertise in prosecutions. The Attorney General thanked Hampton QC after the session and wished him well.



Hampton QC (standing) with Attorney General



EVENTS OF JANUARY-MARCH 2017 cont

PERSONAL PROPERTY SECURITY REGISTER SYSTEM SESSION

The Ministry of Commerce, Industry and Labour (MCIL) organised a special session in relation to the Personal Property Securities Act 2013 (PPSA) that commenced on 27 February 2017 and also the new online personal property security register system. One of the main objective of the new system is to improve access to finance and to increase economic activities by way of online registration. The session was conducted by three lawyers from New Zealand who are experts in this particular area of law.

Demonstrations were made as to how to register online on the MCIL Online Samoa Company Registry, and was followed by questions and discussions as to how the system will work. Representatives who attended the session were mostly private lawyers, and Tacy Sasagi and Jacek Tuala of the LDD team attended on behalf of the Office of the Attorney General.



CUSTOMARY LAND ADVISORY COMMITTEE STAKEHOLDER CONSULTATION ("CLAC Consultation") 21 February 2017 MNRE Conference Room

The CLAC Consultation aimed to discuss two aspects of the project, first is the update from public consultations the CLAC carried out throughout the country in relation to the mortgage of customary leases, and second is the development of the CLAC strategic plan for the next three years.

As follow were the major issues discussed during the Consultation:

- Payment of lease funds to beneficial owners;
- Minister signing customary land lease agreements on behalf of beneficial owners; and
- Terms of leases including right to renewal.

The public raised concerns about the payment of lease funds and they are urging the Taskforce to look at ways to equally distribute lease funds amongst beneficial owners. The Samoa Law Reform Commission responded that they are currently working on the Pule a le matai Sa'o issue and most of these issues will be addressed (hopefully) when the report is finalised.

Moreover, the beneficial owners indicated that one of them should sign the lease together with the Minister. The taskforce indicated they will take this into account but having the Minister to sign these leases is to safeguard the beneficial owners from legal actions against them.

The public also raised that the terms of leases of customary land and right of renewal might end up in the alienation of customary land. Pursuant to Alienation of Customary Land Act 1965, for hotels and industrial purposes, the lease of customary land can be made up to 30 years and 20 years for all other public purposes. The taskforce assured the public that Article 102 of the Constitution of Samoa prohibits the alienation of customary land.

Representatives from all relevant stakeholders including heads of several Government Ministries and Corporations, they voiced some of the issues faced by their respective Ministries in relation to customary land matters. Senior Legislative Drafter Jasmine Fa-leafaga and Law Clerk Ann Matalasi from the Legislative Drafting Division attended the CLAC Consultation on behalf of the Office of the Attorney General.

LDD BEGINNERS TRAINING

Chief Legislative Drafter Noumea L. Teveli conducted a 2 hours training on 14 February 2017 at the AGO Conference room to the advantage of new drafters of the LDD team. The main objective of the training was to teach new drafters on basic aspects and requirements of legal drafting. The following were some of the issues discussed:

- ◇ Legislation: Primary, Subsidiary and By-laws
- ◇ Purpose of Consultation
- ◇ Acts to be considered when drafting any legislation.

It was also a good opportunity for senior drafters to refresh knowledge.

LDD MONTHLY TRAINING

The LDD team has been conducting internal trainings particularly in relation to each Drafters' legislation or any legislative instrument they are currently working on. Trainings are conducted monthly, and 2 Drafters have to present and discuss with the team and the Office the purpose of the matter they are working on, the status of the matter, and also issues that may be raised during the presentation. The following is the list of drafters who have already presented on the matters they are working on:

24 February 2017

- Ann Matalasi – Tobacco Control Amendment Bill 2017
- Titilua Aiono – Extradition Bill 2017

3 March 2017

- Kylie Wilson – Education (Corporal Punishment) Amendment Bill 2017

31 March 2017

- Jacek Tuala – Sex Offenders Registration Bill 2017.



EVENTS OF JANUARY-MARCH 2017 cont

PACIFIC DISABILITY FORUM

The 5th Pacific Disability Forum was held on 20th-24th February 2017 at the Hotel Tanoa Tusitala Hotel Conference Room in Apia, Samoa, whereby Titilua Aiono, State Solicitor and Tacy Sasagi, Part-time Law-Clerk attended on behalf of the Office of the Attorney General for the last two days of the workshop.

The discussions and activities were based according to the theme: “Build a more inclusive and equitable Pacific for all persons with disabilities”. The Pacific Disabilities Forum (PDF) has convened four regional conferences and have contributed and assisted in shaping and progressing their work at the national, regional and international level.

There was a division of small meetings amongst different forums that focuses on a specific group with disabilities that was discuss each day of the conference that mainly focuses on targeted objectives of each meetings and the expected outcomes. These involved:

(i) The youth forum, the main objective for the forum was to provide opportunities and space for young persons with disabilities from Pacific Island Countries and territories to discuss how they can contribute to and benefit from the building of an inclusive and equitable Pacific; and

(ii) The women forum to bring together women leaders with disabilities to share thoughts, insights and experiences on priority areas of focus to build an inclusive and equitable Pacific for women and girls with disabilities.

The meeting output prepared a final report from all the discussions from the Forums that concentrate mainly on the key discussions and recommendations presented by this forum and to provide an action plan to guide PDF’s work programmes to be shared with members, partners and interested stakeholders on improving priority areas for disability





EVENTS OF JANUARY-MARCH 2017 cont

SAMOA LAW SOCIETY FAREWELL FOR JUSTICE LESATELE RAPI VAAI

The Samoa Law Society organized a cocktail function on 18 March 2017 at the Orator Hotel to bid farewell and honour Justice Lesatele Rapi Vaai on his retirement. Justice Lesa has been a long serving member of the Judiciary of Samoa, who served the Courts for more than 20 years. He was sworn in as a District Court Judge in 1996, became a Supreme Court Judge in 2014 and retired in the beginning of this year.

The function was attended by members of the Law Society together with family and friends of Justice Lesa. The following is part of Justice Lesa's farewell speech during the function:

'Power and beauty of the law is within your grasp and understanding. We are members of the legal profession which plays a vital role in our democracy through the administration of justice and upholding the rule of law. Use the power and the beauty of the legal profession and the quality to set the standards of your profession and the quality of your conduct.'

'To the younger generations, your destiny will be determined by the choices you make now, if you want to succeed, make the right choice. Do not hesitate to make mistakes, we all make mistakes...'

Happy retirement from the Office of the Attorney General and may the years ahead of the new journey bring you great joy and relaxation.



Justice Lesatele Rapi Vaai during his farewell speech



Madam Secretary of the Samoa Law Society (right), and other members of the Samoa Law Society during the function

NEW DISTRICT COURT JUDGE

Alalatoa Rosella Viane Papalii was sworn in on 31 March 2017 as a District Court Judge making her the fourth Samoan female Judge. As an addition to the Judiciary of Samoa, Judge Papalii thanked the Judicial Service Commission for the trust and support on her appointment. She acknowledged the help and assistance of her work colleagues, friends, family, her husband and kids, and was emotional when she remembered her mother and late father Viane Papalii.

She was reminded by Chief Justice Patū Tiava'asu'e Falefatu Sapolu of the oath she took to serve Samoa in accordance with the Constitution and the Law, and to serve without prejudice, fear, love or anger.

Attorney General Lemalu Hermann P. Retzlaff and President of the Samoa Law Society Su'a Hellene Wallwork congratulated Judge Papalii and encouraged her on the new appointment.

Judge Papalii's appointment brings the number of Judges to 9, 5 District Court Judges and 4 Justices of the Supreme Court.





EVENTS OF JANUARY-MARCH 2017 cont

AGO Valentine's Day Event 2017

The Attorney General's Office ("AGO") celebrated Valentine's Day as its first event for the year 2017 with an Office competition of best red wear followed by a photo-shoot.

Mr Attorney General, Lemalu Hermann P. Retzlaff won the best male wear while Mrs Elizabeth Tagi from Civil Division won the best female wear.

The Female 1st runner-up was awarded to Pisila Tikeri and male 1st runner-up was awarded to Ierome Tanielu.

The competition was rounded up with the Office photo-shoot to remember the starting of event for the year 2017.





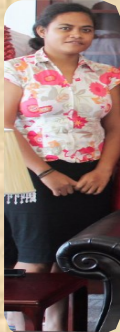
EVENTS OF JANUARY-MARCH 2017 cont

CONGRATULATION

NEW MEMBER OF THE LDD TEAM

The LDD recruited another addition to the team, part-time Law Clerk Tacy Sasagi and welcomed her to the start of her working career as a legislative drafter. Tacy Sasagi is from the village of Vaitele-fou, and she completed her Bachelor of Laws from the University of the South Pacific at Emalus Campus, Vanuatu last year 2016 and graduated this year at Laucala Campus in Fiji.

She is now pursuing her dream as a lawyer in the drafting area. Congratulations and welcome to LDD team.



BABY MAKARIOS

Senior Legislative Drafter Jasmine Faleafaga was blessed with another addition to her family a new born baby boy Makarios.

Congratulations from your LDD family to you and your bundle of joy.



FAREWELL

The Office of the Attorney General bid farewell to Brigitta Faafiti-Lo Tam on 3rd March 2017. Brigitta started in the Office in 2013 as a Law Clerk for the Criminal Prosecution Division and departed as a Principal State Solicitor for the Civil Litigation team.

We wish you all the best in your future endeavors.



Chief Public Solicitor Sefo J. Ainuu, Brigitta and Chief Legislative Drafter Noumea L. Teueli



Office of the Attorney General

Our Vision:

To ensure a safe and just society through the provision of quality and effective legal services .

Our Missions:

To serve the people of Samoa by upholding the Constitution and providing the highest quality legal services to Government

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Upcoming events

Next Parliament Sitting: 30 May 2017

Next Newsletter Issue: End of June 2017

Roles of the Legislative Drafting Division

- ◇ *Ensure legislation drafted reflect instructions submitted by sponsoring Government Ministries/Agencies and consistent with the Constitution and other legislation*
- ◇ *Ensure effective legal advice and support is afforded to Parliament in relation to Bills*
- ◇ *Prepare orders, notices, warrants and other legal instruments in accordance with instructions and within the authority of primary legislation*
- ◇ *Provide legal support to projects which have legal component(s) by drafting Terms of Reference, sitting on evaluation panel, and reviewing drafts provided.*

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION

Lemalu Hermann P. Retzlaff—Attorney General

Noumea L. To'omata-Teueli—Chief Legislative Drafter

Leitu Moananu—Associate Legislative Drafter

Steffany Meredith—Principal Legislative Drafter

Siovia Florina Liu—Principal Legislative Drafter

Mearold Viliamu—Senior Legislative Drafter

Jasmine Faleafaga—Senior Legislative Drafter

Lizatalei Hakai—State Solicitor

Kylie Wilson—State Solicitor

Titilua Aiono—State Solicitor

Ann Matalasi—Law Clerk

Jacek Tuala—Law Clerk

Tacy Sasagi—Part-time Law Clerk

Losa Kelekolio—Senior Legal Secretary

DISCLAIMER

Please note that the information contained in this Newsletter is not intended to be taken as legal advice and therefore should not be relied upon as such. Any fault in the accuracy of the information in this Newsletter is ours alone.