



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

EDITOR'S NOTE

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Talofa and welcome to the Legislative Drafting Update Newsletter, Vol. 3, Issue 3. We continue to update you on the latest government policies that have been translated and approved as laws, as well as provide you with brief summaries of these laws.

It has been a busy quarter with 1 intensive Parliament session, a number of Parliament Select Committee meetings and legislative drafting events attended by our Division members. August and September also saw the depletion of our Division members from 8 drafters to 3 (at least until the end of this year)!

However, this has not hindered the work of the Division as we continue to strive to provide the best legislative drafting service for Samoa.

We hope this Newsletter will continue to keep you aware of, informed of and interested in our country's legislative progress, but most importantly may we continue to appreciate the importance of our working together to assure compliance with the laws of Samoa.

From the Attorney General and the Legislative Drafting Division—happy reading!

Nola Petelō Faasau
(Lead Editor for this Issue)

FAREWELLS

We farewelled former Parliamentary Counsel, Sarona Rimoni Ponifasio, and Legislative Drafting Advisor, Heather Holt in August.

Mrs Ponifasio started at the Office of the Attorney General in 2004 as a State Solicitor of the Civil Division until she moved to the Legislative Drafting Division as Principal Legislative Drafter in 2008, later becoming Parliamentary Counsel. She has had extensive experience in all Divisions of the Office of the Attorney General, having represented the Government in a number of Criminal and Civil matters, and having carried out a number of legislative drafting responsibilities as Parliamentary Counsel. She is now in private practice.

Ms Holt joined the Legislative Drafting Division from September 2008 as the Legislative Drafting Advisor. She moved here

from the Victorian WorkCover Authority where she was the Legislative Drafting Advisor, Senior Legislation Officer, and Senior Legal Officer. She was with us under a 2 year Australian Aid program, during which time we gained a lot from her extensive experience and knowledge in legislative drafting.

Even though they are greatly missed by the Office of the Attorney General, we were indeed blessed to have learnt a lot from working with and (for most) being supervised by them.

We congratulate them for all their success and wish them all the best in their future endeavours!



PARLIAMENTARY SITTINGS FOR JULY—DECEMBER 2010

MONTH	Monday (Week commencing)	Tuesday	Wednesday	Thursday	Friday
AUGUST	-	10	11	12	13
OCTOBER	4	5	6	7	8
DECEMBER	6	7	8	9	10

CURRENT LEGISLATION

BILLS PASSED AT AUGUST 2010 PARLIAMENT SESSION	BILLS BEFORE PARLIAMENT UP TO 30 SEPTEMBER 2010	
	TITLE	STATUS
1. Waste Management Bill 2010 2. Maintenance and Affiliation Amendment Bill 2010 3. Bankruptcy Amendment Bill 2010 4. Divorce and Matrimonial Causes Amendment Bill 2010 5. Film Control Amendment Bill 2010 6. Electoral Amendment Bill 2010 7. Stamp Duty Amendment Bill 2010 8. Parliamentary Pension Scheme Amendment Bill 2010	1. Casino and Gambling Control Bill 2010	Referred to Select Committee 16/3/10
	2. Land and Titles Amendment Bill 2010	Referred to Select Committee 14/6/10
	3. Housing Corporation Bill 2010	Referred to Select Committee 14/6/10
	4. Electricity Bill 2010	Referred to Select Committee 14/6/10
	5. National University of Samoa Amendment Bill 2010	Referred to Select Committee 14/6/10
	6. Survey Bill 2010	Referred to Select Committee 12/8/10
	7. Land Valuation Bill 2010	Referred to Select Committee 12/8/10
	8. Spatial Information Agency Bill 2010	Referred to Select Committee 12/8/10
	9. Plebiscite Amendment Bill 2010	Referred to Select Committee 12/8/10
	10. Ministerial and Departmental Arrangements Amendment Bill 2010	Referred to Select Committee 13/8/10
	11. Chemical Weapons Bill 2010	Referred to Select Committee 13/8/10
	12. Postal Services Bill 2010	Referred to Select Committee 13/8/10

(Note: Please refer to pages 3 and 4 for brief summaries of these new Acts.)

SUBSIDIARY LEGISLATION

TITLE	DATE MADE/SIGNED	COMMENCEMENT DATE
National Provident Fund Regulations 2010	17 May 2010	1 July 2010
Notice of Charge on Base Tariff for the Supply of Electricity (No.8) 2010	9 July 2010	1 August 2010
Broadcasting Act 2010—Notice of Commencement	30 July 2010	10 August 2010
Daylight Saving Act 2009—Notice of Commencement	11 June 2010	25 September 2010
Police Service Regulations 2010	6 September 2010	27 September 2010

SUMMARIES

BANKRUPTCY AMENDMENT ACT 2010

This Act amends the *Bankruptcy Act 1908* to provide for matters relating to the appointment of an Official Assignee.

The objective of this new Act is to ensure the proper appointment process for an Official Assignee. Sections 20 to 24 of the principal Act which provided for the appointment of and general provisions relating to the Official Assignee were repealed by the Samoa Bankruptcy Order 1922 (NZ) (“the Order”). The Order provided for the appointment of an Official Assignee, but the Order was repealed by the Reprint of Statutes Act 1972.

Therefore, this new Act will now provide for the Official Assignee’s appointment so that the principal Act as well as other Acts which an Official Assignee has powers under (such as the Companies Act 2001) can be implemented more effectively.■

MAINTENANCE AND AFFILIATION AMENDMENT ACT 2010

This Act introduces a number of amendments into the *Maintenance and Affiliation Act 1967*. The major amendments are: to provide that the Court may make such orders as it considers appropriate in relation to the custody of a child; to provide that in determining the sum that is reasonable for the purposes of the maintenance of a person, the Court must take into account a range of matters such as the proper needs of the person; to allow the court to recognise as being binding on the parties to that agreement, a maintenance arrangement that has been varied by written agreement permitting one party to leave Samoa; to allow the court to direct a person to give security for obedience to a maintenance order of such amount and in such form as the Court thinks appropriate; to allow the Court to require the parties to proceedings to undergo such mediation as the Court may direct; and to provide that in considering an application for a maintenance order, the Court may direct the defendant or the applicant to provide such further information as the Court considers necessary.■

*All official laws of Samoa
may be found online:
www.parliament.gov.ws*

FILM CONTROL AMENDMENT ACT 2010

This Act amends the *Film Control Act 1978* to update it with current developments in the film industry.

These amendments include: reclassifying banned films to ensure that harmful material are not approved and that informative, educative and entertaining films are made available to suitable audiences; updating the definition of “film” to keep pace with new technology; empowering the Film Control Board to suspend exhibitors’ and lenders’ licenses; empowering the Board to direct any person to submit a film for classification under the principal Act; providing seizure powers for officials inspecting cinemas and video stores; making officers of a company liable for offences committed by a company; and revising penalties in the principal Act.■

PARLIAMENTARY PENSION SCHEME AMENDMENT ACT 2010

This Act was drafted to ensure that the Parliament Pension Scheme legislated under the *Parliamentary Pension Scheme Act 1998* should fulfill the purpose of providing pensions to longer serving members in their old age while still recognizing the desire of members

to have part of the overall benefits payable in lump sum form and on flexible terms.

This Act also provides greater transparency of the Scheme in that the features of the Scheme details are to be found in the principal Act and in regulations made under it. The principal Act is administered by the Samoa National Provident Fund.■

ELECTORAL AMENDMENT ACT 2010

This Act consists of two changes to the *Electoral Act 1963* intended to provide both clearer procedures and improvements to the electoral process. The first change is to restrict those registered as electors from being qualified for the individual voters’ roll unless they are married to an individual voter. The second change is to provide for those entitled to transfer registration to take into account the recent change in closure time of the rolls.■

SUMMARIES (CONT'D)

STAMP DUTY AMENDMENT ACT 2010

This Act amends the *Stamp Duty Ordinance 1932* prescribing officers to stamp instruments charged with stamp duty, and other related matters.

The Ministry of Finance (MOF) has been and continues to implement the Ordinance, particularly the stamping of all instruments that are charged with stamp duty. Since passage of the *Land Titles Registration Act 2008* and its coming into force in March 2009, the Government has considered ways to make it easier and convenient for members of the public to register all instruments relating to land and for the stamping of those instruments.

The amendments in this Act hopes to ensure that all matters relating to the registration of instruments relating to land and the stamping of those instruments is performed by the Register of Land at the Ministry of Natural Resources and Environment (MNRE), thus effectively creating a “one-stop shop” for the registration and stamping of all instruments relating to land. The stamping of all other instruments charged with stamp duty under the Ordinance are to remain with the Chief Executive Officer of the MOF.

All duties collected by the MNRE for the stamping of instruments relating to land are to be deposited in bank accounts designated by the Chief Executive Officer of the MOF and such accounts are to form part of the General Revenue Fund.■

COMMISSION OF INQUIRY (MATAI TITLES)

Following on from the last Issue, the Commission of Inquiry (Matai Titles) held further consultations in the month of July for the remaining areas of Savaii and Upolu. Consultations in Savaii were held: 5th July – Safotu, for villages from Manase to Aopo; 6th July – Vaisigano, Vaisala, for villages from Asau to Falelima; 7th July – Vailoa, Palauli, for villages from Foalalo to Tafua; 8th July – Saleaula, for villages from Patamea to Saleia. Consultations in Upolu were held: 13th July – Mulifanua, for Aiga i le Tai only; 14th July – Maota o Pulenuu, Matagalalua, for those residing in Apia.

WASTE MANAGEMENT ACT 2010

This Act makes comprehensive provision in relation to the management of wastes and the provision of waste management services in Samoa.

It regulates the handling and disposal of certain wastes that cause particular problems. It defines the regulatory functions relating to waste management, and comprehensively provides for the provision of waste management services. This Act also hopes to ensure that Samoa implements the obligations arising under international waste related conventions. The dumping and incineration of wastes at sea is to be regulated in accordance with international standards.■

DIVORCE AND MATRIMONIAL CAUSES AMENDMENT ACT 2010

This Act makes a number of amendments to the *Divorce and Matrimonial Causes Ordinance 1961*. The major amendments are to provide: that an application for a decree of divorce must be based on the grounds that the marriage has broken down irretrievably and the parties have lived separately for a continuous period of not less than 12 months; that certain limited powers and jurisdiction given to the court can in certain circumstances be exercised by a Registrar; for when a decree of divorce takes effect; for the possibility of reconciliation of the parties to divorce proceedings and the possibility of rescission of divorce where there is such reconciliation; for a decree of divorce where there is consent or no opposition; for a range of orders relating to alimony or maintenance; and for restraining orders to restrain a respondent to divorce proceedings from engaging in conduct that constitutes domestic violence in relation to the aggrieved person.■

The last part of consultations was given to invitees and special guests to present oral submissions before the Commission, which took place on 15th, 20th, 21st, and 23rd July. A report to Cabinet regarding the findings of the Commission, recommendations based on the findings, and consolidation of views from the consultations, as well as those of the members of the Commission, is yet to be completed.■

EVENTS OF JULY—SEPTEMBER 2010

PACIFIC ISLANDS LEGISLATIVE DRAFTING TWINNING PROGRAM: 28 SEPTEMBER 2010—24 DECEMBER 2010

Principal State Solicitor (Legislative Drafting), Loretta Teueli, has been chosen to undertake a 3 months placement at the Office of Legislative Drafting and Publishing (OLDP) of the Australian Attorney General's Department in Canberra, Australia as part of the Pacific Islands Legislative Drafting Twinning Program. The program is scheduled to begin on Tuesday 28 September 2010 and end on 24 December 2010.

The purpose of the placement is to improve the drafter's knowledge and capacity in drafting, through practical experience, training and mentoring. Funding for the placement covers travel, accommodation and living expenses. To date, officers from Tuvalu, Tonga, Samoa, Papua New Guinea, Kiribati and Solomon Islands have participated in the placement program. OLDP anticipates that it will continue hosting two placements per year. ■

SUB REGIONAL WORKSHOP ON THE NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION FOR PACIFIC ISLAND STATES—NADI, 5—7 JULY

The Organisation for the Prohibition of Chemical Weapons (OPCW) and the Pacific Islands Forum Secretariat (PIFS) jointly organised a 3-day sub-regional workshop on national implementation of the Chemical Weapons Convention (CWC) for the Pacific Island States in Nadi, Fiji from 5—7 July 2010. The workshop was funded by a voluntary contribution from the Republic of Korea.

Samoa was represented by Senior State Solicitor (Legislative Drafting), Nola Petelō Faasau, and Principal Foreign Service Officer (Ministry of Foreign Affairs and Trade (MFAT)), William Nickel.

The workshop addressed issues related to the drafting and finalisation of national implementing legislation and adoption of enforcement regulations which are Article VII requirements of the CWC. It also provided an opportunity for participants to discuss a wide range of topics concerning the work of National Authorities and their efforts in implementing the provisions of the CWC.

Speaking at the opening, the International Legal Adviser at the PIFS, Ms Lorraine Kershaw, noted that promoting universal adherence to the CWC contributes tangibly to global security by enlarging the area of the world in which chemical weapons are banned. She said the CWC offers the best mechanism for preventing the profoundly destabilising

effects that would accompany any spread in the region of chemical weapons. She also noted that more needs to be done in terms of implementation of the CWC in the Pacific and that both policy and legislative drafting officials need to take further steps to ensure the effective and necessary implementation of the CWC in the region.

The OPCW participants presented and discussed a wide range of topics relating to the work of the National Authorities and their efforts in implementing the provisions of the CWC. The main topics covered were: Status of implementation of the CWC; Plan of action regarding the implementation of Article VII obligations; The effective running of a National Authority; Elements of comprehensive national implementing legislation, including regulations; and an overview of the declaration and verification requirements under the CWC.

Participants from each Pacific Island State presented on the status of their national implementation legislation and other administrative measures relating to the CWC. In particular, presentations were made under 4 main headings. To date, there is no specific implementing legislation in force in Samoa. However, Samoa has a Chemical Weapons Bill 2010, which was referred to the relevant Select Committee on 13 August 2010 for its consideration in detail. The Bill implements Samoa's relevant obligations under the CWC and designates the MFAT as the National Authority for the CWC. ■

ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS REGIONAL SEMINAR—**NADI, FIJI, 15—16 SEPTEMBER**

The ICRC Regional Delegation in the Pacific hosted and funded a regional seminar on the Additional Protocols to the Geneva Conventions of 1949 in Nadi, Fiji from 15 – 16 September 2010. There were altogether 15 participants from 10 Pacific Island States (Federated States of Micronesia, Fiji, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu), 3 members from the ICRC, 1 member from the Fiji Red Cross and 1 representative from the Pacific Islands Forum Secretariat. Samoa was represented by Senior State Solicitor (Legislative Drafting), Nola Petelō Faasau, and State Solicitor, Elemesi Schmidt.

The seminar addressed issues related to the drafting and finalisation of national legislation to implement international humanitarian laws (IHL) which are mainly found under the 1949 Geneva Conventions and Additional Protocols, which Samoa have ratified. It also provided an opportunity for participants to discuss a wide range of topics and share experiences concerning international humanitarian law in the region. The ICRC delegation presented on the following topics: Introduction to the Additional Protocols and their history and why they are relevant globally; the important provisions of the Additional Protocols and how to accede to the Additional Protocols; a discussion of a Pacific ICRC research titled ‘Under the Protection of the Palm’: personal reflections on the relevance of IHL to the Pacific; discussion on how IHL is relevant to the Pacific; Fiji’s experience in acceding to and implementing the Additional Protocols; Particular issues of concern in the Pacific related to IHL: Private Military security companies; Repression of international crimes – the Additional Protocols and the International Court; the necessity of protecting the emblems; Introduction to Additional Protocol III; Experiences of common law

states in implementing the Additional Protocols; National IHL Committees to assist in Additional Protocol implementation; Group Discussions: Developing a “Pacific model” implementing law and other requirements for implementation; Other treaties relevant to the Additional Protocols: weapons treaties in the Pacific – a view from the PIFS; and a discussion of outcomes and ways forward.

Samoa had the privilege of making a presentation on the second day in relation to our achievements and challenges faced in implementing IHL treaties. As was largely addressed with regards to the general history of IHL in the Pacific, humanitarian law is not a new area in Samoa. Samoan history shows that there were some forms of traditional warfare prior to or during first European contact which saw the application of certain IHL principles.

Samoa has ratified 11 IHL treaties—4 Geneva Conventions of 1949 and 2 Additional Protocols of 1977; the Convention on the Rights of the Child 1989; the Chemical Weapons Convention 1993; the Anti-Personnel Land Mines Convention 1997; the Rome Statute of the International Criminal Court 1998; and the Cluster Munitions Convention 2008. Of these 11, Samoa currently has only 1 domestic implementation legislation specifically for the Rome Statute and is still in the process of drafting domestic implementation legislation for other IHL treaties. Other current implementing legislation include the Constitution, the Samoa Red Cross Act 1993 and the International Criminal Court Act 2007. We also addressed the establishment and current functioning of Samoa’s IHL Committee, which is one of only very few in the Pacific.

To date, Samoa also has draft IHL implementing legislation, namely, the Cluster Munitions Prohibition Bill 2010 and the Chemical Weapons Bill 2010. ■

3 MONTHS ATTACHMENT PROGRAM WITH THE OFFICE OF THE ATTORNEY GENERAL

Ms Delphina Taoa Kerslake, Legal Consultant for the Ministry of Health, commenced her 3-month attachment in the beginning of September. She will be attached to the Office 2 times a week every Mondays

with the Legislative Drafting Division and every Wednesdays with the Civil Division. The purpose of the attachment is to help build her capacity in undertaking legislative drafting and civil work. ■

UPCOMING EVENTS

PACLII WORKSHOP—OCTOBER

The Pacific Islands Legal Information Institute will host a 2 day workshop at the University of the South Pacific, Emalus Campus, Port Vila, Vanuatu from 1—2 October. Representatives from Samoa will be Assistant Attorney General, Donald Kerslake, Justice Vui Nelson and Fepuleai Attila Ropati (Clerk of the Legislative Assembly).

The focus of the workshop will be to discuss the sustainability of PacLII and the future of online legal publishing in the Pacific Islands. Participants will workshop the relevant issues and challenges with a view to developing a consensus on whether there is a need for online legal publishing, if so what form(s) it should take and how it might be sustained. ■

29TH ANNUAL PILON MEETING—DECEMBER

The Attorney General, Aumua Ming C. Leung Wai, will be attending the 29th Pacific Islands Law Officers' Network (PILON) meeting which is expected to be held in Brisbane, Australia from 8—10 December. This is a follow up on the 28th PILON meeting, which was hosted by Samoa from 12—16 December 2009.

PILON was established in 1982 and is a network of senior public law officers from Pacific Island countries, including Australia and New Zealand. PILON focuses on common legal issues within the Pacific region. These legal issues include legislative drafting issues faced by each Pacific country. ■

PROFESSIONAL DIPLOMA IN LEGISLATIVE DRAFTING (PDL) WORKSHOP—NOVEMBER

As reported in the previous Issue, the PDL Course is a 30 week program in which participants learn practical skills in translating government policies into clear and effective laws that can be understood and applied by a variety of stakeholders.

It has been realised that the need for high quality legislative drafters is one of the most pressing legal needs in the Pacific region. Several international and regional organisations provide practical support for specific legislative drafting projects, but there is also a need to build the legislative drafting capacity of those working in various government sectors. The University of the South Pacific has for many years offered this Course as the premier qualification in legislative drafting in the South Pacific, and in the previous years this Course was undertaken by all members of the Legislative Drafting Division.

This year, the 6 members undertaking this Course from our Office are Principal State Solicitor, Arthur Lesa, Senior State Solicitor, Kalameli Seuseu, and State Solicitors, Phaedra Valoia, Elemesi Schmidt, Cecily Fa'asau and Sine Lafaiali'i. They will be traveling to Suva, Fiji in November to attend a 1 day workshop, which is conducted as the final assessment component of the Course. The workshop and the program is currently tutored by the Legislative Drafting Officer of the Pacific Islands Forum Secretariat. ■

3RD UNIVERSAL MEETING OF NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW—OCTOBER

State Solicitor (Legislative Drafting), Salote Wright, will be attending the 3rd Universal Meeting of National Committees on International Humanitarian Law (IHL), which will be held in Geneva, Switzerland from 27th to 29th October.

The meeting will discuss 3 main topics: method of incorporation of IHL committees; challenges to incorporation; and jurisdictional perspective. Participants will also discuss how best to develop and incorporate these methods; legal obligations spread across various

IHL treaties, resource issues and other constitutional considerations; different jurisdictional regimes that are found in IHL treaties from universal jurisdiction; and acceptable limits to extraterritorial jurisdiction to make this form of jurisdiction more attractive to states.

This is a great opportunity for Samoa, which is one of few South Pacific countries with an IHL Committee, to benefit from hearing how other IHL Committees around the world function. ■

UPCOMING EVENTS (CONT'D)

MARITIME POLICY AND LEGISLATION DRAFTING WORKSHOP—NOVEMBER

The Secretariat of the Pacific Community (SPC) will host a 1 week workshop from 1—5 November in Suva, Fiji, regarding maritime policy and legislation drafting. Attending will be Senior State Solicitor, Rexona Titi, who is currently attached to the Legislative Drafting Division from the Criminal Division. The workshop aims to provide relevant legal and policy staff with an understanding of a number of international and regional maritime policies and issues, including IMO Conventions relevant to the Pacific and the drafting of appropriate maritime legislation. ■

CONSOLIDATION OF LAWS 2010—DECEMBER

The Legislative Drafting Division will finalise its annual consolidation of laws for 2010 towards the end of the year. Currently, Senior Bills Officer, Tasha Sagapolutele, constantly consolidates laws which are amended throughout the year. This consolidation is undertaken pursuant to the Revision and Publication of Laws Act 2008 and has been undertaken annually since the 2007-2008 consolidation project. The purpose of this annual consolidation is to constantly update the Samoan public on the changes to our laws, as well as assist with the correct usage of and reference to our laws. ■

OTHER

FURTHER STUDIES

Senior State Solicitor (Legislative Drafting), Constance Tafua-Rivers, was awarded a scholarship to pursue the LLM in International Maritime Law from the University of Malta from September 2010—May 2011. The unique Course covers a whole spectrum of international maritime law, consisting of numerous modules including international law, law of the sea, shipping law, marine environmental law, and legislative drafting. We wish Ms Rivers the best and look forward to her return. ■

NEW SENIOR LEGAL SECRETARY

The Legislative Drafting Division welcomed its new Senior Legal Secretary, Ms Losa Kelekolio, in August. Ms Kelekolio moved to our Office from the Ministry of Education, Sports and Culture where she was an Executive Assistant. She previously served for 10 years with the Samoa Housing Corporation and 2 years with the United Nations FAO. Ms Kelekolio's vast experience and knowledge in secretarial support services and record keeping will no doubt be of great benefit for the efficient performance of the Division. ■

PARLIAMENTARY COUNSEL VACANCY

The position of **Parliamentary Counsel** is currently re-advertised as of 21 September 2010.

The deadline for all applications is 4 October 2010.

Applicants must uplift the relevant Application Form and Job Description from the:

Public Service Commission,
Level 2, FMFM II Building,
Matagialalua

or website: http://www.psc.gov.ws/vacancies_contract.htm

LEGISLATIVE DRAFTING DIVISION

Ming C. Leung Wai (Attorney General)
Papalii Malietau (Parliamentary Counsel)
Loretta Teueli (Principal State Solicitor)
Constance Tafua-Rivers (Senior State Solicitor)
Nola Petelō Faasau (Senior State Solicitor)
Salote Wright (State Solicitor)
Tasha Sagapolutele (Senior Bills Officer)
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.