

Office of the Attorney General

LEGISLATIVE DRAFTING DIVISION NEWSLETTER

VOLUME 11, ISSUE 4

1 OCTOBER TO 24 DECEMBER 2016



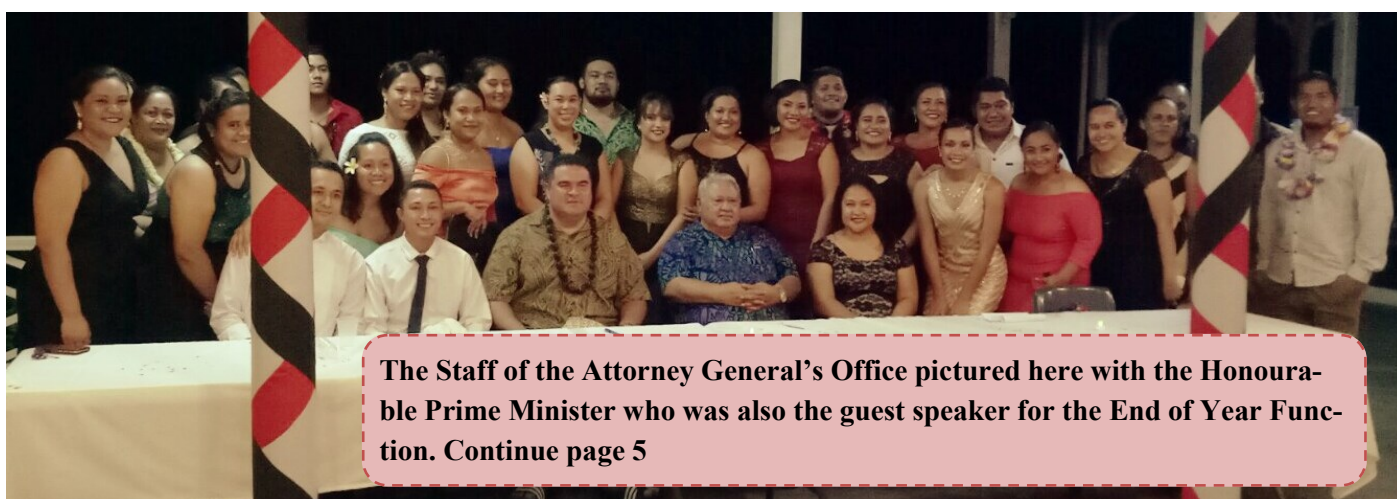
Warm greetings and Talofa Lava! Welcome to the last edition of the Legislative Drafting Newsletter for 2016. This edition will provide you with the remaining updates of Legislation passed, workshops and consultations, parliamentary sittings and other events that officers of the Legislative Drafting Division participated in from 1 October to 24 December 2016. On that note, happy reading and have a very Merry Christmas and a prosperous New Year.

Lizatalei Hakai & Kylie Wilson

EDITORS NOTE



ATTORNEY GENERAL'S OFFICE END OF YEAR FUNCTION



The Staff of the Attorney General's Office pictured here with the Honourable Prime Minister who was also the guest speaker for the End of Year Function. Continue page 5

The Office of the Attorney General ended the year in style, with its glamorous end of the year Christmas party. The function was held on the 16th December 2016, at the Robert Louis Museum, Vailima. The theme of the night was "Red Carpet" and all those present were dressed according to the theme. This year's Christmas party is a special one, as it is the Office's first Christmas party with the new Attorney General, Lemalu Hermann P. Retzlaff who was appointed earlier this year.

During his remarks, the Attorney General acknowledged the hard work the management and all the employees put in this year. He conveyed his gratitude to the staff for their never ending support. The function was even more special with the presence of the Honourable Prime Minister, who was the special guest of the night.

The highlight of the night were the Teams competition, whereby the teams were asked to perform a Christmas item, either a song or a dance. All the teams displayed great talent, however it was the Corporate Services Division that took first prize. The Civil and Legislative Drafting Division were equal in second place.

A BIG FAAMALO to everyone for their hard work this year and to our Social Committee for putting together a memorable and fun Christmas party.

PARLIAMENT UPDATE

INSIDE THIS ISSUE

AGO END OF YEAR FUNCTION Pg 1

PARLIAMENT UPDATE Pg 2

October sitting update

December sitting update

Acts passed from October to December 2016

SUMMARIES OF LEGISLATION Passed PG 3

EVENTS FROM OCTOBER TO DECEMBER 2016
Pgs 4—5

CONGRATULATIONS & UPCOMING EVENTS
Pg 6

OCTOBER SITTING UPDATE

1. **Fees and Charges (Miscellaneous Amendments) Bill 2016**
1st reading, 2nd reading & referred to Select Committee on 18/10/16
2. **Foundations Bill 2016**
1st reading, 2nd reading, Consideration In Detail (“CID”) & Passed on 18/10/16 (**urgency certificate**)
3. **Trust Amendment Bill 2016**
1st reading, 2nd reading, CID & Passed on 18/10/16 (**urgency certificate**)
4. **International Partnership and Limited Partnership Amendment Bill 2016**
1st reading, 2nd reading, CID & Passed on 18/10/16 (**urgency certificate**)

ACTS PASSED FROM OCTOBER - DECEMBER

DECEMBER SITTING UPDATE

1. **Supplementary Appropriation Bill (No.1) 2016/2017**
1st & 2nd reading
2. **Constitution Amendment Bill (No.1) 2016**
1st reading
3. **Constitution Amendment Bill (No.2) 2016**
1st reading
4. **Police Service Amendment Bill 2016**
1st reading, 2nd reading and referred to Select Committee
5. **Customs Tariff Amendment Bill 2016**
1st reading, 2nd reading and referred to Select Committee
6. **Coroners Bill 2016**
Consideration in detail completed
7. **Village Fono Amendment Bill 2016**
Consideration in details completed

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1. **FOUNDATIONS ACT 2016**
 2. **TRUSTS AMENDMENT ACT 2016**
 3. **INTERNATIONAL PARTNERSHIP AND LIMITED PARTNERSHIP AMENDMENT ACT 2016**

SUMMARIES OF LEGISLATION PASSED

TRUSTS AMENDMENT ACT 2016

The Trusts Amendment Act 2016 ("Act") amends the Trusts Act 2014 ("Principal Act"). The objects of the Act are:

- (a) to re-define the definition of "foreign benefitting trusts" to remove reference to a "citizen of Samoa";
- (b) to insert new section 51A to include a provision which relates to further additions of property to a Samoan International Special Trust Arrangement (SISTA);
- (c) to amend section 63 of the Principal Act to provide combination of trust with limited partnerships;
- (d) to amend section 80(2) of the Principal Act to address instances whereby if a request is properly and legally made for information in respect of a Double Taxation Agreement (DTA) or Tax Information Exchange Agreement (TIEA) then, subject to the provisions of the DTA or TIEA, the information must be provided;
- (e) to insert the new section 80A to the Principal Act to provide that, where the trustee or one of the trustees of a Samoan trust is either a trust corporation or a natural person, who is a tax resident of Samoa, that trustee is required to obtain and retain such accounting and other information concerning the trust as may be required under the laws of Samoa. This Act commence on the date of assent.

FOUNDATIONS ACT 2016

The object of the Foundations Act 2016 is to create foundation as a legal entity to manage properties. This Act commence on the date of assent. The Act covers the following:

- (a) creation, registration and establishment of a foundation;
- (b) appointments and removal of members of the Council, a Supervisory Person and Guardian;
- (c) duties and powers of the Court regarding a foundation;
- (d) registration of overseas foundation in Samoa and vice-versa.
- (e) revocation or variation of any power regarding a foundation and the variation of terms of Constitution of a foundation;
- (f) winding-up of a foundation by its Council or an official liquidator appointed by the Court or the Registrar upon written request of the Council.

INTERNATIONAL PARTNERSHIP AND LIMITED PARTNERSHIP AMENDMENT ACT 2016

The International Partnership and Limited Partnership Amendment Act 2016 ("Amendment Act") amends the International Partnership and Limited Partnership Act 1998 to provide for the use of limited partnership by Samoan residents, provide for the use of international partnership and limited partnership for business and investment, and also to provide for the use of foreign characters in firm names. The Amendment Act was passed on 18 October 2016 and commences on the date of assent.

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USER
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LEGAL
POLICY
LIABILITY
AGREEMENT
TERMS-OF-SERVICE
USE
OPT-OUT
WEBSITES
SUBSCRIPTION
TERMS
TERMINATION
SPECIFICATION
OFFERED
LOCALLY
RATING
REMOVAL
USED
THIRD-PARTY
CONTAINS
TRANSPARENCY
DATA
AVAILABILITY
SERVICES
CHANGES
ACTION



EVENTS FROM OCTOBER - DECEMBER

PACIFIC IMMIGRATION DIRECTORS CONFERENCE

5—8 DECEMBER 2016

LEVEL 3, DEVELOPMENT BANK OF
SAMOA

The Pacific Immigration Directors Conference (“PIDC”) 2016 focuses on assisting member countries in assessing their existing legislation and where appropriate in developing effective, modern legislation for immigration purposes that is in line with national strategy. It is also intended to assist members to address the gaps in their existing immigration legislation. Model provisions to address immigration issues were discussed and proposed during the workshop. A Senior Policy Analyst together with Senior Solicitor Iain McColl facilitated the discussion. The following core areas of immigration were discussed in the workshop:

- (a) permissions required to travel to or be in your country;
- (b) arrivals and departures – passenger responsibilities;
- (c) arrivals and departures – carrier responsibilities;
- (d) decisions and refusal of permission;
- (e) turnaround, removal and deportation;
- (f) people smuggling and human trafficking;
- (g) refugee and protection status determination;
- (h) appeal and review measures;
- (i) designation of powers;
- (j) powers;
- (k) arrest, detention and monitoring.

During the course, some intensive discussions by participants were put through on some of the issues developing countries are facing in developing immigration policies. The most common one is the lack of infrastructure in place to facilitate policies and proposed legislation. The only resources available are often day-to-day processing of permit, border management and enforcement. There is a need for extra capacity in order to successfully introduce new legislation. The model policy framework is taken from New Zealand and participating countries focused on what is useful to their local circumstance given the resources available. Immigration Directors from Cook Island, Tuvalu, Federated States of Micronesia, Fiji and Principal Immigration Officers from Ministry of the Prime Minister and Cabinet attended the workshop. Principal Legislative Drafter Siovia Florina Liu, Senior Legislative Drafter Mearold Viliamu and Law Clerk Ann Matalasi from the Legislative Drafting Division attended the workshop.

CONSULTATION ON ANTI MONEY LAUN- DERING (AML) NATIONAL STRATEGY PA- PER AND POLICY PAPER 05TH, 06TH, AND 07TH OCTOBER 2016 CBS, CONFERENCE ROOM, LEVEL 6, CBS BUILDING

The purpose of the three day extensive Consultation was to invite all members of the Anti-money Laundering (AML) task force to identify, discuss any issues and to provide recommendations on the AML and Counter Terrorist Financing (CTF) Strategy Paper and the draft Policy Paper of the same. This also gave an opportunity for the members to discuss a way forward with the implementation stage of the National AML Strategy in terms of implementing the strategies and plans set out in the same. The Consultation also provided an opportunity to discuss possible legislative amendments to some of the legislation in order for Samoa to be compliant with international standards. The emphasis was raised throughout the consultation that the two papers discussed is crucial for Samoa, not only in terms on strengthening our anti-money laundering and countering financing of terrorism systems to combat money laundering and terrorist financing activities, but also to strengthen Samoa’s level of compliance with the AML/CTF international standards. Associate Legislative Drafter Ms Leitu Moananu and State Solicitor Ms Kylie Wilson of the Legislative Drafting Division attended this consultation.



EVENTS FROM OCTOBER - DECEMBER

CONTINUED

FAREWELL MR. RUPENI NAWAQAKUTA

The Legislative Drafting Division bid farewell to Legislative Drafting Advisor, Mr. Rupeni Nawaqakuta who has been a mentor, tutor, advisor and most importantly a father figure to the Legislative Drafting Division. He commenced work in the Office of the Attorney General in October 2011 and is the longest serving Legislative Drafting Advisor the Office of the Attorney General has ever had. Mr. Rupeni Nawaqakuta has contributed greatly not just to the development of the drafting of legislation in Samoa, but also in terms of statutory interpretation. He has trained, mentored and built capacity for members of the Legislative Drafting Division which has contributed greatly to the development of the Division.

We are very saddened to see Rupeni leave however, we hope this is not good bye but a see you later. Until then, we wish Mr. Rupeni Nawaqakuta all the very best with future endeavours. We cannot thank you enough for all that you have done for the Division. Vinaka Vaka Levu!!



Every end
is a new
beginning.

GOOD

BYE &

GOOD

LUCK!

Congratulations



Congratulations Beau Jacek Tuala (Law Clerk, Legislative Drafting Division and Elenor Bronwyn Fruean (Law Clerk, Civil Division) on being admitted to the Bar!

Lemalu Hermann P. Retzlaff—
Attorney General

Noumea Loretta Teueli— Assistant Attorney General/ Chief Legislative Drafter

Leitu Moananu— Associate Legislative Drafter

Steffany Meredith— Principal Legislative Drafter

Siovia Florina Liu— Principal Legislative Drafter

Mearold Viliamu— Senior State Solicitor

Jasmine Faleafaga—Senior State Solicitor

Lizatalei Hakai— State Solicitor

Kylie Wilson— State Solicitor

Titilua Aiono— State Solicitor

Ann Matalasi— Law clerk

Jacek Tuala— Law Clerk

Losa Kelekolio— Senior Legal Secretary

Upcoming

EVENTS

- ◆ Parliament resumes—January 24 2017

DISCLAIMER

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