



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

For time and the world do not stand still. Change is the law of life. And those who look only to the past or present are certain to miss the future

-John F. Kennedy-

It is of utmost importance that all involved in the legislative process pass off on the practicality of legislation before passing it.

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DRAFTER'S NOTE

It's that time again. The Office of the Attorney General is very much appreciative of the opportunity to bring you this latest edition of our newsletter. So much has happened during the period reported in this newsletter: firstly, with the departure of a long serving public servant who, as parliamentary counsel for a number of years, left her mark on the development of legislation in Samoa; secondly, and more usually, the

introduction of legislation in Parliament that has become such a topic for debate throughout Samoa; and finally the implementation of some parts of legislation that will forever mark a page in the history of Samoa involving the words "left" and "right". In keeping up with all that is required of the Drafting Division, a lot has been done to ensure demands are met as this Division very much recognizes

that "by much slothfulness the building decays; and through idleness of the hands the house drops through" [Ecc 10:18]. We also remember those who passed away and convey our condolences to survivors and those who lost loved ones in the 29/9 tsunami.

Lead Drafter for this Issue: Loretta Teueli

A DRAFTER'S FAREWELL — TELEIAI LALOTOA S. MULITALO PARLIAMENTARY COUNSEL 2005 — AUGUST 2009

Teleiai Lalotoa Sinaalamaimaleula Mulitalo worked at the Office of the Attorney General from 1999 to 2009. With some experience of criminal prosecution and civil litigation under her belt, she took up the job of Parliamentary Counsel (PC) in 2005. She was PC until she resigned in August this year.

At the time Teleiai became the PC, there were not many experienced drafters in the Office of the Attorney General (AGO) and she was one of the two PCs who were responsible for overseeing all legislation that required an input from the AGO.

Since that time, she had in her own way promoted and encouraged young legal practitioners straight out of law school to take up legislative drafting. While this aspect of being a legal practitioner was never popular throughout 4 years of law school or the period for which law students were required to undertake professional legal practice, Teleiai was able to obtain the interest of a few. That few has grown to what is now the Legislative Drafting Division (2 Parliamentary Counsel, 1 Principal Legislative Drafter, 2 Senior Legislative Drafters, 2 State Solicitors and 1 Law Clerk and support staff). Other members of the Office of the Attorney General (not in the Drafting Division) are involved with drafting some form of legislation; courtesy of the Attorney General.

As Parliamentary Counsel, Teleiai mentored, and very much in a "hands on" way, developed the skills of legislative drafting in the young members of the Drafting Division. Her experience proved to be valuable one way or another with more senior drafters also of the Drafting Division. She pushed for training in this area, which went through; one particularly which was held after she resigned. When the AGO first began the annual Consolidation of Laws in Samoa, it was under the supervision of Teleiai.

She is an advocate (if you will) for legislative drafting in Samoa and in more ways than one contributed to the way Samoa's legislation developed in the past 4 years. Teleiai is now, as a legislative drafting consultant, engaged in drafting legislation for one of the Government Ministries. She has also been awarded a scholarship to pursue PhD studies in Australia which involves legislative drafting. Congratulations Teleiai!

One lesson (amongst others) Teleiai has left behind is "when you get instructions to draft something, don't just draft, for the sake of drafting, make sure you have looked at all relevant legislation, analyse their practicality and draft the legislation well!!!!"

Thank you Teleiai for your service not only to Samoa, but to us, your colleagues here in the Legislative Drafting Division. May God Bless your future endeavours.



PARLIAMENTARY SITTINGS FOR JULY TO SEPTEMBER 2009

MONTH	Monday (Week beginning)	Tuesday	Wednesday	Thursday	Friday
AUGUST	17 24	18 -	19 -	20 -	- -

CURRENT LEGISLATION

BILLS (ACTS) PASSED IN AUGUST 2009	COMMENCED LEGISLATION AND SUBSIDIARY LEGISLATION	
	TITLE	COMMENCEMENT DATE
Police Service Act 2009	Education Act 2009	10 August 2009
Patents Amendment Act 2009	Road Traffic (Amendment) Regulations 2009	7 September 2009
Public Service Amendment Act 2009	Road Transport Reform Act 2008, sections 4—7	7 September 2009
Daylight Saving Act 2009		

BILLS BEFORE PARLMENT UP TO 30 SEPTEMBER 2009

TITLE	STATUS
Accident Compensation Amendment Bill 2009	2nd read & referred to Select Committee on 19/08/09
Broadcasting Bill 2009	2nd read & referred to Select Committee on 19/06/09
Customs Amendment Bill 2009	2nd read & referred to Select Committee on 19/08/09
Electoral Amendment Bill 2009	2nd read & referred to Select Committee on 24/08/09
Internal Affairs Amendment Bill 2009	2nd read & referred to Select Committee on 24/08/09
International Transfer of Prisoners Bill 2009	2nd read & referred to Select Committee on 19/08/09
Ministry of Women's Affairs (Sui Tamaitai o le Nuu) Bill 2009	2nd read & referred to Select Committee on 19/08/09
Narcotics Amendment Bill 2009	2nd read done & referred to Select Committee on 23/06/09
Unit Titles Bill 2009	2nd read done & referred to Select Committee on 19/06/09

NB: Next Parliament Session will commence on 19 October 2009.

Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced
-Albert Einstein-
...all the more reason to ensure practicality during its development stage...

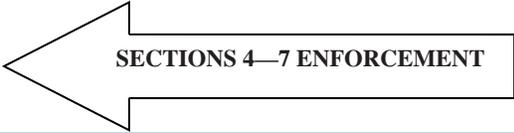
SUMMARIES

SECTIONS 4-7: ROAD TRANSPORT REFORM ACT 2008

Some called it history in the making, and while a controversial issue, here is what many were not aware of. On Road Switch Day i.e. 7th September 2009, sections 4 to 7 of the Road Transport Reform Act 2008 came into effect. This was necessary to legalize the switch. Other provisions that came into force dealt with consequential amendments made to regulations, orders and other pieces of legislation by deleting the word “left” and replacing it with the word “right” and *vice versa* wherever relevant.

PATENTS AMENDMENT ACT 2009

The Patents Amendment Act 2009 clarifies who is responsible for the roles and functions of the Registrar in terms of intellectual property. Previously there was a legislative gap that caused uncertainty as to who was responsible. By enacting this amendment to the Patents Act 1972 it is now clearly provided that the Registrar is the Chief Executive Officer (CEO) of the Ministry of Commerce, Industry and Labour.



SECTIONS 4—7 ENFORCEMENT

POLICE SERVICE ACT 2009

The Police Service Act (‘the Act’) repeals the Police Services Act 1977 and comprehensively provides for the continuation of the Samoa Police Service (‘the Service’). As such it covers matters relating to the establishment of a structure for the Service, and in particular, it deals with the appointment, promotions, resignation and dismissal of members of the Service. The Act also details the appointment of the Police Commissioner, Deputy Commissioners, Assistant Commissioners and other members of the Service. As well as making provision for the duties and powers of the members of the Service, the Act provides for benefits of its members and imposes duties on members of the Service. There are also provisions addressing poor work performance and matters relating to the disciplining of members for breach of duty. A disciplinary Tribunal is established and the means of appointing members is set out under the provisions of the Act.

Further it provides for a Board of Appeal which deals with any appeals which may be lodged with it by any of the members of the Service. Certain offences are also addressed in the Act which deals with members of the public impersonating or bribing a member of the Service. Regulation-making powers are also included which provide for the Head of State to make regulations relating to the salaries, allowances and other benefits and entitlements of the members of the Service. Detailed matters relating to benefits and entitlements of members of the Service are left for General Instructions which are to be issued by the Police Commissioner from time to time. The Act also provides for the power of the Minister to enquire into the Service. It also provides for transitional matters and savings of acts of members of the Service.

EDUCATION ACT 2009

With the enforcement of the Education Act 2009 children between the ages of 5 to 14 also known as “compulsory aged children” now have to attend school. This Act ensures that children (whether or not their parents are able to pay school fees) must attend school. There is an obligation placed upon parents to ensure children attend and an option to waive school fees is available if parents can’t afford the fees. Enforcement officers will be appointed to ensure children attend school and the Ministry of Education Sports and Culture will work in collaboration with the Village Fono of each village to implement this legislation.

SUMMARIES (continued)

PUBLIC SERVICE AMENDMENT ACT 2009

This Act in force deals mainly with the disciplinary process set out in section 44 of the Public Service Act 2004. Section 44 has been amended to clarify the process where a Chief Executive Officer (“CEO”) of a Ministry carries out an investigation into alleged breach of the code of conduct by a public servant. Where a CEO suspects an employee of breaching the code of conduct the CEO has 3 options: of either charging the employee with an offence, issuing a warning or taking no further action after the CEO has carried out preliminary investigations. If an employee is charged with a breach of the code of conduct, the CEO must appoint an officer or contract employee of another Ministry to carry out complete investigations into the matter and make recommendations to the CEO who appointed him or her.

The person appointed to investigate must be approved by the Public Service Commission before carrying out the investigation and has the power to amend, withdraw or lay an additional charge.

Provisions of this Amendment Act also ensure that the person against whom a charge is brought is given the right to be informed of the charge and the penalty intended to be issued against him or her and to respond to evidence.

All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law -unknown-



DAYLIGHT SAVING ACT 2009

“Daylight saving is the convention of advancing clocks so that afternoons have more daylight and mornings have less. Typically clocks are adjusted forward one hour near the start of spring and are adjusted backward in autumn” [wikipedia.com] But that is for countries where those seasons occur. For Samoa, this event will most likely take place during the time in the year where the sun rises earlier than usual and sets early. So by advancing clocks this would allow us to have more sunlight during the day. Now that this Act was passed in August this year, we will begin to carry out this event when the Minister nominates a date for the Act to be in force, as currently it is still not in force.

The Daylight Saving Act 2009 provides for the introduction of a daylight saving period and a daylight saving time in Samoa to address concerns regarding the increased energy consumption in Samoa, in the face of rising global fuel and food prices.

The Act provides for an additional hour of daylight in the evening during the daylight saving period as declared by the Head of State.

Now, before everyone worries about salaries being reduced due to the sudden change in working hours or excess hours and low salaries, don't fret. The Act protects salaries and allowances of the working public at the start and end of “a daylight saving period and a daylight saving time”. It requires employees to be paid in accordance with hours they worked etc.

The Act will also not apply to any matter in relation to astronomy, meteorology or navigation purposes including any document mentioning or referring to a point of time in connection with astronomy, meteorology or navigation.

The Act does provide that Government will not be liable for any damage, injury or loss that may be suffered by any person as a result of the imposition of a daylight saving period or arising from any other matter in relation to a change of time in accordance with the Act.

So keep a lookout for when this Act will come into force or a daylight saving period is declared—which is likely to be sometime early next year.

UNITED NATIONS INTERNATIONAL LAW FELLOWSHIP PROGRAMME (UNILFP)

Senior Legislative Drafter Constance Tafua-Rivers (CTR) attended the UNILF programme from 6 July—14 August which was held in Netherlands.

As a Senior Solicitor involved in several aspects of international law including international criminal law, international humanitarian law and international investment law CTR was nominated from the Office of the Attorney General to apply for the fellowship. She was fortunate enough to be awarded a fully funded fellowship for the programme. Other participants of the Fellowship Programme represented: Bahamas, Belarus, Bhutan, Bolivia, Cape Verde, Fiji, Jordan, Lesotho, Liberia, Oman, Romania, Slovakia, Spain, Suriname, Swaziland, Tajikistan, Trinidad and Tobago, Timor Leste, Turkey and Uganda.

The list of speakers included Judge Abdul G. Koroma of the International Court of Justice (“ICJ”).

The workshop comprised of participation in seminars, attendance of lectures at the Hague Academy of International Law and study visits to different courts, tribunals and organisations based in the Hague including the ICJ.

There were interactive seminars and discussions led by eminent scholars and practitioners in international law from different regions and legal systems on selected areas of international law

These areas were: International Humanitarian Law; International Criminal Law; International Human Rights System; International Law of the Sea; International Trade Law: The Multilateral Trading System; International Refugee Law; International Investment Law; International Environment Law; Regional Economic Integration Agreements; Participants also contributed by presenting on a particular area from the perspective of their home country.

The Fellowship Programme is a worthwhile endeavour that builds capacity to understand and appreciate the legal issues surrounding daily communications or negotiations at an international level. The speakers selected are respected professionals who have extensive experience and knowledge in their respective fields and the conduct of the fellowship was interactive and well coordinated. The substantive content was very relevant to current issues that Samoa is handling including multilateral trade, environment and investment. Awareness was also raised in the area of humanitarian law with useful discussion on humanitarian law commissions and development of domestic law. The fellowship members gained both within the fellowship group, and when meeting other officials or officers. These are valuable resources in keeping up to date with international law issues and for assistance in handling them.



Above: Constance Tafua-Rivers with delegation who attended the United Nations International Law Fellowship Programme in Netherlands

Australian and New Zealand International Law 17th Annual Conference (ANZSIL)

Papalii Malietau Malietoa had the privilege of being the nominated member of the Office of the Attorney General to attend this year’s ANZSIL conference held in Wellington from 2-4 July. ANZSIL, the Australian and New Zealand Society of International Law, brings together the region’s leading thinkers and practitioners in all spheres of international law. ANZSIL was established in 1992 with the goals to develop and promote international law, support the teaching of international law, provide a forum for NGOs, academics, Government lawyers, students and practitioners of international law to discuss research issues of practice in international law, increasing public awareness and

understanding of international law and liaising with other bodies in promoting any of these goals. The principal activity of ANZSIL in furtherance of these aims is the convening of an annual conference.

ADMISSION TO THE BAR

“You have given your families a good reason to celebrate—you have made them proud”

- Justice Lesa Rapi Vaai -



Lawyers admitted: 04 September 2009

From left are Elemesi Schmidt, Matthew Lemisio, Phaedra Valoia and Wendy Pogi with the Attorney General who moved their applications except for Elemesi. His application for admission was moved by Kosi Latu.

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION

Aumua Ming C. Leung Wai, Attorney General
Papalii Malietau Malietoa, Parliamentary Counsel
Heather Holt, Legislative Drafting Advisor
Sarona Rimoni, Principal Legislative Drafter
Loretta Teueli, Senior Legislative Drafter
Constance Tafua-Rivers, Senior Legislative Drafter
Janola Petelō-Faasau, State Solicitor
Salote Wright, State Solicitor
Phaedra Valoia, Law Clerk
Lynn Namulau’ulu, Senior Legal Secretary
Tasha Sagapolutele, Senior Bills Officer

RIGHT: Members of the Legislative Drafting Team farewell Teleiai Lalotoa S. Mulitalo. From left: Salote, Teleiai Lalotoa, Papalii Malietau, Nola, Lynn and Loretta



ADVANCED LEGISLATIVE DRAFTING COURSE 20 JULY—14 AUGUST 2009

The Office of the Attorney General was fortunate to take part in an advanced course in Legislative Drafting. This course was sponsored by the Commonwealth Secretariat and ran for a period of 1 month. This course was taught by Professor St John Bates who has his own Consultancy firm based in the Isle of Man. He was involved with teaching the LLM on Advanced Legislative Studies at the Institute of Advanced Legal Studies in London.

The advanced legislative drafting course looked at various areas rarely explored in this practice of law, such as the authority to draft regulations. A regulation-making provision if not properly applied, may result in a court finding the regulations to be void or beyond the scope of regulation making power. The course overall was constructive and capacity building not only for members of the Office of the Attorney General that attended, but also lawyers of various Government agencies and Ministries that were able to attend.

New member of the Drafting Division: Senior Bills Officer

We would like to welcome our Senior Bills Officer to the Drafting Division. Tasha Sagapolutele who once worked with the Office of the Clerk of the Legislative Assembly will now be responsible for clearing Bills in proper format before they are given to Cabinet for approval for passage to Parliament.

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.