



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

“But we know that the law is good, if a man use it lawfully”
-- 1 Timothy 1: 8

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Talofa and welcome to the Legislative Drafting Update Newsletter, Vol. 2, Issue 4.

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.

This Issue also provides reports on events undertaken and

attended by members of our Division.

We hope this Newsletter will provide you with a refreshed outlook on legislative reform and its developments in Samoa. May it continue to keep you aware, informed 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 Team—happy reading!

Mary Victoria Lanola Petelō-Faasau

(State Solicitor and Lead Editor for this Issue)

PACIFIC ISLAND LAW OFFICERS' NETWORK (PILON) 28TH ANNUAL MEETING—SAMOA, DECEMBER 2009



The Honourable Deputy Prime Minister, Misa Telefoni, the Attorney General, Ming C. Leung Wai, and delegates of the 28th Meeting of the PILON, which was held at Aggie Grey's Resort in Faleolo from 12—16 December 2009.

(Please refer to pages 4—5 for full story)

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PARLIAMENTARY SITTINGS FOR OCTOBER—DECEMBER 2009

MONTH	Monday (Week commencing)	Tuesday	Wednesday	Thursday	Friday
OCTOBER	19	20	21	22	23
NOVEMBER	-	-	-	-	-
DECEMBER	7	8	9	10	11

CURRENT LEGISLATION

BILLS PASSED FROM OCTOBER—DECEMBER 2009	BILLS BEFORE PARLIAMENT UP TO 31 DECEMBER 2009	
	TITLE	STATUS
<ol style="list-style-type: none"> Taking of Land Amendment Act 2009—21 October International Transfer of Prisoners Act 2009—21 October Narcotics Amendment Act 2009—21 October Ministry of Women Affairs (Sui Tamaitai o le Nu'u) Amendment Act 2009—21 October Unit Titles Act 2009—21 October Accident Compensation Amendment Act 2009—21 October Electoral Amendment Act 2009—21 October <p>(Note—No legislation was passed in the December Parliament session)</p>	Constitution Amendment Bill 2009	Second reading complete and referred to Select Committee
	National Provident Fund Amendment Bill 2009	Second reading complete and referred to Select Committee
	Supplementary Appropriation Bill 2009	First and second reading on 7 December
	Development Bank of Samoa Bill 2009	First reading on 7 December; second reading scheduled for 3 meeting days later
	Yazaki Samoa Enterprise Bill 2009	First reading on 7 December; second reading scheduled for 3 meeting days later
	Waste Management Bill 2009	First reading on 7 December; second reading scheduled for 3 meeting days later
	Samoa Qualifications Authority Bill 2009	First reading on 7 December; second reading scheduled for 3 meeting days later

SUBSIDIARY LEGISLATION

TITLE	DATE MADE/SIGNED	COMMENCEMENT DATE
Notice of Charge on Base Tariff for Supply of Electricity (No.8) 2009	15/09/09	1/10/09
Ministerial Directive under Land Titles Registration Act 2008	16/09/09	1/10/09
Declaration of Public Holiday (Half Day) for National Mourning	7/10/09	7/10/09
Notice of Charge on Base Tariff for the Supply of Electricity (No.9) 2009	23/10/09	1/11/09

SUMMARIES

TAKING OF LAND AMENDMENT ACT 2009

The Act amends the Taking of Land Act 1964 (principal Act). Currently under section 7 of the principal Act, customary land and freehold land may be taken for certain public purposes. Also, under section 8 of the principal Act, particular estates and interests in such land can also be taken separately.

The Act amends section 8 to provide that the power to take separately any particular estate or interest (including a leasehold estate or interest) in the land, also applies to public land and freehold land acquired by the Government or a public body, as if that public land or freehold land were freehold land taken or to be taken under the principal Act.

The Act also permits the Minister to offset any debt relating to the land taken owed to the Government or to a public body in arriving at a compensation offer figure. ■

NARCOTICS AMENDMENT ACT 2009

This Act amends the Narcotics Act 1967 ("Principal Act").

There are two key factors of the Act. The first is with regards the list of precursors. The Principal Act was last amended in 2006 in which controlled precursors were introduced into the Principal Act making it illegal to have the possession of controlled precursors to manufacture narcotics. However there was no list of precursors in the Act by regulation or order. The committee therefore agreed to a list of precursors which is listed in the 4th Schedule of the Act. The precursors are used to make methamphetamine and considering the fact that methamphetamine is now found in Samoa, this is necessary to limit widespread methamphetamine on the streets of Samoa.

The second is with regards the classification of narcotics. The Act classifies narcotics into three classes and imposes different maximum penalties for each class. The most harmful class of narcotics is listed in the 1st Schedule and a maximum penalty of life imprisonment is imposed. Examples of narcotics in the 1st Schedule are cocaine and methamphetamine.

The second class of narcotics is listed in the 2nd Schedule and a maximum penalty of 14 years is imposed. An example of a narcotic in the 2nd Schedule is marijuana, which is the most common form of narcotic in Samoa.

The third class of narcotic is the least harmful of narcotics, with a maximum penalty of 7 years imprisonment. An example of a narcotic in the 3rd Schedule is codeine.

The increase in penalty is necessary due to the fact that the offence of possession of narcotics is the most prevalent of offences in Samoa. This is something the Courts of Samoa have

INTERNATIONAL TRANSFER OF PRISONERS ACT 2009

The Act allows the transfer of prisoners between Samoa and countries which Samoa has entered into Agreements with so that the prisoners may serve their sentences of imprisonment in their countries of nationality. The Act sets out the mechanisms to facilitate the transfers.

A prisoner in Samoa or his/her representative may apply to the Minister responsible for the Office of the Attorney General to be transferred to a country which the prisoner is a national of. A national of a country is a citizen of a country in accordance with the laws of that country. The Minister upon receipt of a request must obtain all the necessary consents and any information he/she requires in order to assess the request for a transfer before the request is referred to Cabinet for its approval. Upon approval, the Minister must send a formal request to the country which the prisoner wants to be transferred to, seeking their consent to the transfer.

Cabinet may consent to a request from a transfer country for the transfer of a prisoner serving an imprisonment sentence in that country to Samoa to complete serving the sentence on terms agreed to under the Act. The Minister may request from the transfer country any information that is relevant to the assessment and for Cabinet to provide its consent. ■

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

continuously acknowledged when delivering sentencing decisions. There is also the fact that in the last two years, the police and courts started to see new narcotics in Samoa. These narcotics are cocaine and methamphetamine. Methamphetamine is a significant problem in New Zealand and Australia, causing health issues and draining immense resources for enforcement. The Government, by acting at an early stage in Samoa and increasing the penalty, sends out a strong message to deter narcotic users and abusers. The current maximum penalty of 7 years is now ineffective considering the current circumstances in Samoa. The most recent case of cocaine in Court is illustrative of the fact that the Principal Act requires higher maximum penalties. The case concerned one kilogram of cocaine with a worth of almost \$1 million tala if sold on New Zealand streets. The Courts commented that this part of the law requires a review.

This Act also amends the Criminal Procedure Act 1972. Section 87 of the Act requires the Supreme Court to sit with assessors on the trial of any person for an offence punishable by imprisonment for more than 5 years if the person pleads "not guilty". The penalties under the Act will therefore mean that assessor trials will be necessary for all drug related offences under the Narcotics Act 1967. If the Criminal Procedure Act 1972 is not amended, the Court system is likely to be burdened with having to seek assessors to sit in all drug related trials. The Act therefore amends section 87 of the Criminal Procedure Act 1972 to allow trials under the Narcotics Act 1967 for offences relating to Class B and C drugs with a punishment of imprisonment for a term not exceeding 14 years, to be tried by a Judge alone. ■

MINISTRY OF WOMEN AFFAIRS (SUI TAMAITAI O LE NUU) ACT 2009

This Act amends the Ministry of Women Affairs Act 1990. The amendment defines and establishes a Sui Tamaitai o le Nuu for each traditional village in Samoa. The Act also sets out the term and conditions of the appointment, duties and functions of the Sui Tamaitai o le Nuu, and provides for the remuneration of such position to be determined by Cabinet. ■

ACCIDENT COMPENSATION CORPORATION AMENDMENT ACT 2009

This Act amends the Accident Compensation Act 1989 (‘the Principal Act’). The amendments, inter alia, relate to the refining of the definition of the term “accident” under the Principal Act.

Other amendments relate to the increase of amounts which can be claimed for certain entitlements. Additional claims can be made under the Principal Act. In relation to the new entitlements which can be claimed under the Principal Act, certain criteria have to be met before such claims may be made. Certain timeframes and criteria are also addressed in the amendments for existing and additional claims which may be made under the Principal Act. Moreover, a new Schedule is included under this Amendment for the listing of certain diseases which will enable workers and their family members to claim for entitlements under the Principal Act. ■

The Act facilitates the subdivision, both of freehold and public land and of leasehold (including customary land leases), into units to be owned by individual proprietors, and into common property to be owned by all the unit proprietors as tenants in common. This form of subdivision will be subject to control by the Registrar of Land who will issue certificates of title with respect to those units, either freehold or leasehold as necessary.

The Act also provides for the control, management, administration, use and enjoyment of the units and common property, and for related purposes.

The mechanisms required to subdivide a fee simple or leasehold estate into unit titles

in freehold or leasehold, through the deposit of a complying plan with the Registrar of Land are set out in Part 2 of the Act. On the deposit of a unit plan the registered proprietor of the land becomes a body corporate for the purposes of this Act, followed by the proprietors of all the units on the plan becoming the members of the body corporate. The Act details the responsibilities of such a body.

Part 3 of the Act makes special provisions in relation to leasehold land subdivided under the Act, including the responsibilities of the Registrar of Land in relation to the unit plan and the certificates of title following the expiry of the term of a lease. ■

ELECTORAL AMENDMENT ACT 2009

After the General Elections of 2006, an independent Commission of Inquiry was invited to review the conduct of those elections and other matters arising that should be addressed to improve the Electoral Process. The collated views of the Commissioners and the general public who made submissions before the Commission were incorporated in a Report on the findings of the Commission of Inquiry to Cabinet. This Amendment Act is a result of the recommendations and findings of the Commission.

The Act was vetted by the Office of the Electoral Commissioner on the practicalities of the provisions of the Act, particularly in relation to administration practicalities and the procedure leading up to Election Day. The Amendment Act attempts to provide clearer procedures. ■

PILON 28TH ANNUAL MEETING—SAMOA, DECEMBER 2009 (FROM PAGE 1)

The 28th annual meeting of PILON was hosted by Samoa at the Aggie Greys Resort from 12-16 December. Senior law officers from Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, New Zealand, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Tonga, Tuvalu and Vanuatu attended to discuss and progress significant legal issues of concern in the Pacific. The offer to host PILON in 2009 was proposed at the 27th PILON meeting co-hosted by New Zealand and Vanuatu in Port Vila 2008. The offer was gratefully accepted by PILON members and the PILON Secretariat together with the Attorney General’s Office of Samoa successfully coordinated preparations for last month’s meeting.

The purpose behind PILON is to provide a forum for addressing law and justice issues common to countries within the Pacific region. Meetings are usually attended by Attorneys-General, Solicitors-General and senior Crown Counsel or representatives of each. Although PILON is an independent body, it has close relationships with regional and international organisations. Observer members include: the Commonwealth Secretariat, International Committee of the Red Cross (ICRC), Pacific Islands Forum Secretariat (PIFS), Pacific International Maritime Law

Association (PIMLA), Pacific Legal Information Institute (PACLII), South Pacific Regional Environment Program (SPREP), the Pacific Islands Forum Fisheries Agency, the University of the South Pacific (USP) and the Secretariat of the Pacific Community (SPC).

“PILON members supported PIMLA’s recommendation to establish a Pacific Islands Legislative Drafter’s Forum”

The opening address for PILON was delivered by Acting Prime Minister, Honourable Misa Telefoni. The 3 day meeting that followed covered discussions on: lack of capacity in prosecution and law offices, the Pacific prosecutors conference, illegal fishing, legal preparedness for international disaster, maritime boundary delimitation, climate change, maritime legislative drafting and human rights relating to prisoners to name a few. The main resolutions reached by PILON members are in relation to the following:

- **Transition to a permanent, independent PILON Secretariat**—The interim Secretariat has been housed in the Australian Attorney-Generals’ Department since 2007. PILON members have now agreed, upon proposal by the Executive Committee, that the independent Secretariat be based in Samoa for an initial 3 years with funding provided mostly by Australia. The Executive Committee is responsible for approving transition of the Secretariat, identifying the most effective *(cont’d next page)*

EVENTS OF OCTOBER—DECEMBER 2009

PACIFIC DRAFTERS TECHNICAL FORUM ON LEGISLATIVE DRAFTING—

CANBERRA, AUSTRALIA, 13—15 OCTOBER 2009

Parliamentary Counsel, Papalii Malietau, and State Solicitor, Nola Petelō Faasau, attended this Forum, which is the second of its kind since the first in 2007. The Forum is a meeting of legislative drafters from around the region to address and discuss a way forward for the improvement of legislative drafting capacity and more importantly for the improvement in the drafting of laws in the region.

The Forum was funded by the Commonwealth Secretariat and conducted by the Office of Legislative Drafting and Publishing (OLDP) of the Australian Attorney General's Department in Canberra. Present were members from New Zealand, the Pacific Islands Forum Secretariat, Tonga, Solomon Islands, Cook Islands, Kiribati, Niue, Vanuatu, and Samoa.

The programme for the Forum was divided into 10 sessions—an overview of the structure of legislation; common legislative provisions; stages in the legislative process; drafting instructions; plain language drafting; definitions; composing legislative sentences; planning a draft; composing and checking the legislative text; and drafting sections. The Forum was therefore mainly training on the basic skills of legislative drafting. The sessions provided a refresher course for few who had undergone similar training. For most, it was all quite new as they did not have any drafting background nor experience.

On the final day of the Forum, participants were given the opportunity to discuss challenges or issues faced by legislative drafters in the region. The major issue identified was regarding the lack of legislative drafters in most Pacific countries. A majority of those who attended were not drafters or had never drafted legislation at all. This is an ongoing issue resulting from the size of the law offices in each jurisdiction as well as resources available and priority given to legislative drafting.

Most Pacific countries engage consultant drafters. With the exception of Samoa, it was identified that there were no clear procurement processes for appointment of con-

sultants in most countries. Again with the exception of Samoa which has its own Legislative Drafting Handbook, there was no clear guideline used by other Pacific countries to draft their laws. Samoa, therefore, stood out as an example for other Pacific jurisdictions to follow with regards our Legislative Drafting Handbook, which provides the legislative drafting process for Samoa.

At the end of the Forum, there were quite a number of recommendations from the member representatives with regards improving on the skill of legislative drafting in the region. Firstly was with regards the need to analyse legislative drafting trainings that were provided for Pacific countries. It was recommended that 2 regional centres should provide further legislative drafting training to the Pacific – the University of the South Pacific (USP) and the University of Papua New Guinea. Currently the USP offers the Professional Diploma in Legislative Drafting, which is the core course for legislative drafting in the Pacific.

The Advanced Course in Legislative Drafting that was conducted by Professor Bates for Samoa in July 2009 was also recommended to be offered on a regional basis. The need to obtain the assistance of Legislative Drafting Advisors was also raised as a way to improve legislative drafting capacity in the region. The procurement of their services in-country (such as in Samoa) will assist in mentoring and transferring the skills to new and developing legislative drafters. These all of course depend on resources but more importantly on the commitment by regional countries to these programmes. ■

PILON 28TH ANNUAL MEETING—SAMOA, DECEMBER 2009 *CONT'D (FROM P4)*

employment of Secretariat staff and reviewing the location and structure of the Secretariat after two years. The Secretariat is tasked with identifying sources of funding both for the long term and employment of additional staff. Opportunities will be given for the Secretariat to be staffed by personnel from PILON member countries.

- **Sexual and Gender Based Violence**—PILON members supported the presentation made by the Regional Rights Resource Team (RRRT) on their efforts to tackle gender based violence in the Pacific. It was agreed that PILON members would consider and review their respective domestic legislation to enhance a regional commitment to eradicate sexual and gender based violence, particularly through legislative responses. The Secretariat was tasked with providing an update on legislative efforts at the 29th PILON meeting.

- **Legislative Drafting**—PILON members supported PIMLA's recommendation to establish a Pacific Islands Legislative Drafter's Forum. The Secretariat and Vanuatu will work together with the intention of establishing a Legislative Drafters Forum, either online or by meeting by the 2010 PILON meeting.

- **Climate Change**—Discussion was held on what role PILON can have in providing a regional response to legal implications of climate change. It was resolved that the Secretariat would be tasked with working with relevant partners such as SPREP to develop a discussion paper focussed on key legal areas where a regional approach to both mitigation and adaptation would be worthwhile to members. ■

REGIONAL SEMINAR FOR COUNTRIES IN ASIA AND THE PACIFIC FOR PROMOTING DISCUSSION ON AN ARMS TRADE TREATY UNIDIR—EUROPEAN UNION PROJECT

13—14 OCTOBER 2009, KUALA LUMPUR, MALAYSIA

State Solicitor, Salote Wright, attended this Seminar, which was organised by the United Nations Institute for Disarmament Research (UNIDIR) in cooperation with the European Union (EU). It was attended by high-level representatives from relevant Ministries of participating States, international and regional organisations, and civil society. The overall objective of the seminar was to promote participation of all Asia-Pacific member countries in the discussions around an Arms Trade Treaty (ATT), integrate national and regional approaches to the international process underway, and to contribute to identifying the scope and implications of an ATT.

Following opening remarks by officials from the European Union and the United Nations, discussions were made on the different patterns in international trade of conventional arms and processes underway at the United Nations, as well as analysing issues of priority and concern from the Asia-Pacific member countries participating.

Presentations were held throughout the 2 day period, prepared by experts from the United Nations regional centre for Peace and Disarmament, civil society (Non-Violence International), Stockholm International Peace Research Institute (SIPRI), Fondation pour la Recherche Stratégique (FRS), EU, International Committee of Red Cross (ICRC), UNIDIR, as well as from Australia and Japan.

At the end of each presentation there were open discussions on matters such as the following—non-proliferation of Weapons of Mass Destruction; development and Processes within the United Nations; civil society's Contribution to the ATT process in the region; overview of Arms Transfers-globally and in the region; parameters, scope and implications of an arms trade treaty; ATT and related work by Pacific Islands Forum; Example of operationalising of arms transfer criteria-EU Common Position; Government perspectives to an ATT; Impacts of illicit arms on human and states security; and ATT and International Humanitarian Law (IHL).

The final session of the Forum involved working groups where participants shared and discussed their knowledge on the trends in conventional arms transfers, their impact on our countries (i.e. on peace, security and development) as well as proposing new, effective and practical initiatives towards regulating arms trade. After recognising that all countries are affected, directly and indirectly by arms related conflicts, certain recommendations were made for the ATT:

- We need an effective global system that establishes the highest possible common international standards to regulate export, import and transfer of conventional arms, and the diversion of weapons into illegal markets.
- An ATT must provide effective reporting requirements, capacity building assistance, a review process, and consider including broader activities (e.g. production and deployment).
- We suggested guidelines made for the implementation of an ATT at the development stage.
- To improve arms transfer controls and the proposed ATT, countries need to have better control measures, improve enforcements, harmonise customs regulations and capacity building, and strengthen control systems.

It was recommended that the Government of Samoa support the proposed Arms Trade Treaty as a commitment to preventing the uncontrolled production, use and possession of arms and small weapons. Upon becoming a party to an ATT, states will need to comply, but will still have the national prerogative to accept or refuse exports from other countries.

Given the work and consistent effort required to combat uncontrolled and illicit arms trade globally, it is recommended also that a Disarmament Unit be set up (as a direct authority in Samoa) to carry out research and provide an assessment of arms related issues in Samoa and to work constantly together with PIFS, UN and other regional and international authorities in controlling any potential conflicts, diversion of the weapons into illicit market, instability, terrorism and transnational organised crime.■



State Solicitor (Legislative Drafter), Ms Salote Wright (Back row—6 from left), and delegates of the Regional Seminar (above), which was held in Kuala Lumpur from 13—14 October 2009.

REGIONAL LAWYERS AND MAGISTRATES TRAINING ON ADVANCING LEGISLATIVE CHANGE ON VIOLENCE AGAINST WOMEN, UNIVERSAL PERIODIC REVIEW, HIV/AIDS AND HUMAN RIGHTS AND NATIONAL AND HUMAN RIGHTS MECHANISMS—

19—23 OCTOBER, AUCKLAND, NEW ZEALAND

Senior Legislative Drafter, Loretta Teueli, and State Solicitor, Sine La-faiali'i, attended the above named 1 week training, which was held at the Copthorne Hotel in Auckland. The training was conducted by the Regional Resources Rights Team (RRRT) and focused mainly on: Legislative Reform (and guidelines for legislation) on the issue of Violence Against Women (VAW); Universal Periodic Review (UPR); and HIV/AIDS and human rights.

In discussing the issue of legislative reform on VAW, the training looked at Human Rights in the Pacific, Human Rights and the Law and Human Rights Framework and VAW. The training looked in detail into Samoa's VAW laws and current existing legislative provisions that are used to deal with VAW. A comparison was then made with other Pacific regional countries and it was found that there was not much difference around the region. With the exception of Vanuatu, Samoa is the only country that has developed a Bill that will deal with 'domestic violence'. So in this way, Samoa is ahead.

Discussed also under this issue was good practices or legislative guidelines for VAW legislation. The said guidelines were often referred to as a "Rolls Royce" version of legislation, something the Pacific Region cannot afford (because we work with Daihatsu versions that are affordable to our systems), it was suggested however that it can be something that can be set as a goal to work towards. In looking at these guidelines, Samoa has already met some areas. So, even if we have not met all these guidelines at least we have done something about the issue of domestic violence in Samoa i.e. Samoa is not not doing anything about it!

The UPR is a reporting mechanism introduced by the Human Rights Council in the United Nations to ensure that all nations, both signatories to Human Rights Conventions and those not (i.e. rogue States (USA)) come under scrutiny on human rights issues in respective countries. All 48 members of the UN are required to report to under the UPR. So far countries in the region that have reported are Tonga, Tuvalu and Vanuatu. Samoa will be reporting in 2011.

According to Vanuatu's feedback on their report under the UPR, the UPR is a mechanism where countries are placed on the international arena to be scrutinized by their peers. The Human Rights Council will usually use Non-Government Organisations' Reports to question Governments. Questions will range from work done to comply with conventions already ratified and reasons for non-ratification of other human rights conventions. (RRRT provides support and technical assistance in this area. They accompanied Tuvalu when Tuvalu went before the UPR in 2008).

This area of HIV/AIDS and human rights was covered to highlight the need for legislative reform in this area, specifically with respect to the rights of people living with HIV/AIDS (PLWHA). The area of human rights discussed in relation to this issue includes protecting PLWHA's right to privacy and not to have mandatory testing due to stigma related to identifying PLWHA.

The main goal of safeguarding rights of PLWHA is to assist with the prevention of the spread of HIV/AIDS. This may not be done if people are too afraid to come forward for testing due to fear of stigma. It will also assist with people already living with the virus to have proper access to treatment.

If there is going to be legislation allowing mandatory testing for certain group of people i.e. seafarers, army officers, pregnant mothers then a rights based approach should be adopted. Testing (not mandatory) should also have a rights based approach i.e. should respect a person's rights:

- Right to security of person – to decide which medical procedures should be conducted on self;
- Right to information – to make informed decisions;
- Right to privacy – to decide when, how, who to reveal medical conditions to; not to be interfered with without consent;
- Right to equality – NOT to be treated in a way that discriminates against a group of people.

"With the exception of Vanuatu, Samoa is the only Pacific country that has developed a Bill that will deal with 'domestic violence'."

With regards to Samoa's Domestic Violence legislation (Family Safety Bill 2009), suggestions were made for its improvement:

(a) studies have shown that domestic violence is on the rise, and current provisions do not work in dealing with the problem. An attempt to deal with this is a proposal for a specific domestic violence (dv) offence.

A specific dv offence will deal with dv in the situation in which it occurs. For instance, it will take into account the access of the offender to the victim, the relationship, whether the offence was random or not, and it will not treat dv the same as a grievous bodily harm offence that occurs in a bar between two drunks;

(b) removing the immunity of "marital rape" in the Crimes Ordinance from the offence of rape. Mapusaga o Aiga studies in 1995 showed that of 75% of women that suffered from domestic violence in Samoa, 11% suffered from sexual abuse. That should be a significant number to account for women who need protection in the law from rape occurring within marriage; and

(c) ensuring the Bill is a "one stop shop", one where other relief may be sought under the Family Safety Bill instead of having to apply for it under other legislation, such as maintenance, divorce etc. The Bill has already taken some of these into account, such as orders under the Maintenance and Affiliation Act as well as the Infants Ordinance. The policy argument here in relation to women, is to make things as simple as possible for women, to assist with victims mentally in not being frustrated and vulnerable in having to re-live stories repeatedly.

Samoa ratified the CEDAW 17 years ago (1992). Article 2 of CEDAW places an obligation on Samoa to immediately take steps to eliminating violence against women. Samoa may be questioned during the UPR in 2011 to justify the delay in meeting its obligation under Article 2. Having the above suggestions in the Bill will justify the delay as Samoa was constantly developing its policy.

Earlier in 2008 at the Cairns Communiqué, Samoa made an undertaking to address gender-based violence as an issue, and to take action in addressing the issue. Making the above changes to the Bill will go directly to meeting this undertaking. This will also be brought up in the UPR in 2011.

The training overall was useful especially in seeing what challenges will be posed to the Government in terms of preparing for and undertaking our national obligations under Conventions. ■

PROFESSIONAL DIPLOMA IN LEGISLATIVE DRAFTING (PDL D) WORKSHOP—

5 NOVEMBER 2009, SUVA, FIJI

The above workshop was held at the University of the South Pacific, School of Law, Laucala Campus, Suva. It was attended by 4 State Solicitors who took the Course—Salote Wright, Fetogi Vaai, Loukinikini Vili, and Fetuliai Lagaia.

The PDL D programme is funded by the Commonwealth of Learning (‘COL’) to promote and enhance knowledge of legislative drafting in the Pacific region. The course is offered through flexible learning and is also compiled within a CD-ROM consisting of course texts and audio materials.

The workshop was one of the compulsory components to completing the PDL D programme. It was attended by participants from various government and private sectors of participating countries (those of which who were fortunate to have funds to attend the workshop).

Following a brief opening by the Course Coordinator, Daiana Buresova, at 9:00a.m. participants were divided into groups to discuss how to design a legislative plan and later prepare a draft Bill to reflect the plan.

At the end of the workshop, participants raised and discussed issues from the 8 drafting projects and provided suggestions for the improvement of the course (including an update on legislative templates, consistency of drafting style, and to reduce course materials given the availability and commitment allowed for participants).

The PDL D programme offers many skills and knowledge, which include: developing on office materials and legislative precedents; how to write and draft proper legislative sentences and expressions; working with rules of interpretation; analysing and brainstorming policy instructions and making legal considerations as drafters; how to work consistently with the Constitution and the fundamental rights provisions; preparing an effective legislative plan before drafting legislation; knowing how to repeal and amend legislation; and knowing when it is required to draft saving and transitional provisions.

The role of a legislative drafter is demanding and complex, and being a drafter requires responsibility and effort as well as commitment.

We recommend more solicitors/participants undertake the PDL D programme as it helped us to understand and develop the knowledge and skills needed to become a legislative drafter. Samoa (particularly the Office of the Attorney General) is in need for legislative drafters, and the PDL D programme is a great opportunity to advance further the skills necessary to become effective drafters. ■



JUDICIARY & SAMOA LAW SOCIETY BI-ANNUAL SEMINAR—LEGAL DEVELOPMENTS AND CHALLENGES

9—11 DECEMBER 2009, APIA

The Samoa Law Society conducted a 3 day seminar for all members of the Bar at the Development Bank of Samoa Building, Conference Room, Level 6, Apia. The major sponsor of the Seminar was the Australian Government (AusAID) through the Law and Justice Sector programme.

The theme for the Seminar was to: (a) encourage lawyers to research and write in their legal areas of interest; and (b) inform members of the development of various areas of the law.

The Seminar was opened by His Honour Chief Justice Patu Tiavaasu'e Falefatu Maka Sapolu, after which presentations were made by different members from the Samoa Law Society as well as overseas members from Lexis Nexis and the Australian Attorney-General's Department. Presentations on the 1st day covered legal areas concerning: Summary Judgments; Judicial Review proceedings; Similar Fact evidence; the applicability of the Convention on the Rights of a Child to

admissibility of a Youth Offender's Caution Statement; and the Law and Justice Sector Plan.

The 2nd day involved presentations and discussions on: the emergence of Specialised Tribunals; Firearm Inquiry regarding the previous Commissioner of Police; the road to Copenhagen—a comprehensive legal agreement on climate change; legitimate expectation; overview of the Receiverships Act 2006; and Main Challenges to Legislative Drafting in the Pacific.

Issues presented and discussed on the 3rd day included: experiences with alternative dispute resolution in PNG; Cross examination; the impact of technology on the practice of law; and presentations on projects undertaken by the Samoa Law Reform Commission.

The Seminar was of great value to Judges and members of the society who attended, and strengthened the development of the Law and Justice within Samoa. ■

SARONA RIMONI—NEW PARLIAMENTARY COUNSEL

Previously the only Principal Legislative Drafter of our Team, Ms Sarona Rimoni was appointed and commenced her role as Parliamentary Counsel on 22 October 2009. She has been with the Office of the Attorney General since June 2004, and has had experience in all Divisions of the Office—Criminal Prosecution, Civil Litigation, and Legislative Drafting. We wish to congratulate Ms Rimoni in the new position.

She now assists Papalii Malietau in supervising the work of the Legislative Drafting Division. ■

UPCOMING EVENTS/NEXT ISSUE

In our next Issue, we will continue to update you on the status of those laws tabled in Parliament. We will also provide reports on upcoming events which include the **Consolidation of Laws 2009**.

Pursuant to the Revision and Publication of Laws Act 2008, we conducted the 2009 Consolidation of Laws in December. The Consolidation is to constantly update the Samoan public on the changes to our laws, as well as making it easier for correct reference and use.

After each consolidation project, the unofficial copies of all of Samoa's consolidated principal enactments are sent to the Pacific Legal Institute of Information in Port Vila, Vanuatu. You may access Samoa's laws on their website—www.paclii.org. Otherwise they are sold at the Legislative Assembly or you can view them on the website www.parliament.gov.ws.

The next Issue will also include a report on the **Meeting for the Organisation for the Prohibition of Chemical Weapons**, which was attended by Parliamentary Counsel, Papalii Malietau. ■

SAMOA LAW REFORM COMMISSION

ISSUES PAPERS

The Samoa Law Reform Commission, a division of the Office of the Attorney General, has now produced 5 Issues Papers on the following:

1. Crimes Ordinance 1961;
2. Commissions of Inquiry Act 1964;
3. Law Practitioners Act 1976;
4. Coroners Ordinance 1959;
5. Care and Protection Legislation (to protect children).

These Issues Papers are available to the public free of charge. The papers ask a series of questions that the public is welcome and encouraged to comment upon. The end date for any public submissions is **19 March 2010**.

The comments which you provide will form the basis of the Commission's recommendations to government on how to reform these laws to meet the needs of the community and government.

Members of the public are welcome to visit the Commission on the Ground Floor of the Government Building to uplift a copy of these papers, or telephone the Commission on **28493 or 28494**, for papers to be sent out to you.

The papers are also available on the Office of the Attorney General's website: www.ag.gov.ws. ■

LEGISLATIVE DRAFTING DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL



Front Row—left to right -

Tasha Sagapolutele (Senior Bills Officer), **Papalii Malietau** (Parliamentary Counsel), **Ming C. Leung Wai** (Attorney General), **Heather Holt** (Legislative Drafting Advisor), **Sarona Rimoni** (Parliamentary Counsel).

Back Row—left to right -

Salote Wright (State Solicitor), **Phaedra Valoia** (State Solicitor), **Constance Tafua-Rivers** (Senior Legislative Drafter), **Nola Petelō-Faasau** (State Solicitor), **Loretta Teueli** (Senior Legislative Drafter), **Lynn Namulau'ulu** (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.