



OFFICE OF THE ATTORNEY GENERAL LEGISLATIVE DRAFTING DIVISION UPDATE

01 JANUARY– 31 MARCH 2013

VOLUME 6, ISSUE 1.

Editor's Note

Talofa lava and Warm greetings! Welcome to the first edition of the Legislative Drafting Division newsletter for 2013. This edition will cover an update of all the events from January to March 2013. Those events include Bills passed by Parliament and workshops attended by members of the Drafting Division held internationally and nationally and an update on Consolidation of Laws 2012 project which was officially released on Wednesday 20th of February 2013. The first quarter of this year has certainly been busy for the Legislative Drafting Division, but you will see that in the details to follow. On that note, we wish everyone an enjoyable 2013!

(Editor for this issue of Newsletter: Martha Papalii)

Legal Framework In Samoa On Cybercrime



Participants of the Cybercrime Workshop held in Apia, Samoa from 11 to 15 March 2013. The Attorney General (Ming C. Leung Wai) opened the workshop with remarks on the Legal Framework in Samoa on Cybercrime. Three members of the Drafting Division attended the Workshop, Principal Legislative Drafter, Fetogi Rosita Vaai, and Law Clerks, Leitu Moananu and Nina Tala. (Full report on page 7)

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PARLIAMENTARY SITTINGS 2013

Months	Monday (Week Beginning)	Tuesday	Wednesday	Thursday	Friday
January	-	22nd	23rd	24th	25th
March	-	26th	27th	-	-
May	-	-	-	30th	-
June	-	18th	-	-	-
August	-	06th	-	-	-
October	-	08th	-	-	-
December	-	17th	-	-	-

PARLIAMENT UPDATE OF LAWS

BILLS BEFORE PARLIAMENT UP TO 31 MARCH 2013

Bills introduced in Parliament and completed 1 st Reading	Bills completed 2 nd Reading and referred to Select Committee	(JANUARY—MARCH)	
		JANUARY	
<u>January</u> Canine Control Bill 2013 (21 January 2013) <u>March</u> Ombudsman Amendment Bill 2012 (26 March 2013) National Health Services Bill 2012 (26 March 2013) 3. Road Traffic Amendment Bill 2013 (26 March 2013)	<u>January</u> Income Tax Amendment Bill 2013 (25 January 2013) 2. Lawyers and Legal Practice Bill 2013 (25 January 2013) <u>March</u> Canine Control Bill 2013 (27 March 2013 - this Bill did not go to a Select Committee; the Bill was referred to 3rd reading after consideration in detail process)	1. Supplementary Appropriation Act (No. 1) 2012/2013	
		2. Unit Trust of Samoa Loans Act 2013	
		3. Samoa International Finance Authority Amendment Act 2013	
		4. Samoa Institute of Accountants Amendment Act 2013	
		MARCH	
		5. Personal Property Securities Act 2013	
		6. Labour and Employment Relations Act 2013	
7. Family Safety Act 2013			

BILLS WITH SELECT COMMITTEE SINCE 2012

Constitution Amendment Bill 2012 Counter Terrorism Bill 2012 Electric Power Corporation Amendment Bill 2012 Police and Prisons Correction Bill 2012	Attorney General Bill 2012 Samoa Language Commission Bill 2012 Ombudsman Amendment Bill 2012 Audit Bill 2012 Constitution Amendment Bill (No.2) 2012	BILLS REFERRED TO PARLIAMENT THAT ARE YET TO BE TABLED
		1. Refugee Determination Bill 2012 2. Central Bank Amendment Bill 2011 3. Fisheries Management Bill 2012 4. Public Finance Management Amendment Bill 2012 5. National Provident Fund Amendment Bill 2012

REGULATIONS & SUBSIDIARY LEGISLATIVE INSTRUMENTS MADE IN 2013

General Price Order No. 1 2013 Forestry Management Act 2011—Order for Fees	Notice of Changes Tariff per unit of Electricity—Order of the Regulator/E10 Notice of Commencement—Casino and Gambling Control Act 2010
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SUMMARY OF ACTS

Unit Trust of Samoa Loans Act 2013

The purpose of this Act is to enable the Government to borrow from the Unit Trust of Samoa (UTOS) established under the Unit Trust Act 2008.

Preceding the Act, the Government was prohibited under section 75 of the *Public Finance Management Act 2001* (PFMA) to borrow any money from a bank or person except as provided by that Act or any other Act. This Act enables the Government to borrow from UTOS and authorises the Government to borrow in accordance with any terms and conditions agreed to between the Government and UTOS. Therefore, in addition to section 81 of the PFMA, the amount that can be borrowed from the Fund pursuant to this Act, is determined by the Minister in section 3(2); to be effected by an agreement under section 4. Section 5 clarifies that the loan money is 'statutory expenditure' and section 6 deals with arbitration procedures should a dispute arises.

Supplementary Appropriation Act (No. 1) 2012/2013

This Act authorises the issue and application of certain sums of money out of the Treasury Fund to Ministerial/Departmental Outputs and Sub-outputs, Outputs provided by Third Parties and Transactions on Behalf of the State for the Financial Year ending on the 30 day of June 2012.

Samoa International Finance Authority Amendment Act 2013

This Act amends the Samoa International Finance Authority Act 2005 to provide for the composition, functions, terms, remuneration and meetings of the Board of Directors. The Board is comprised of the following members:

- Chief Executive Officer of the Ministry of Finance;
- Governor of the Central Bank;
- Attorney General; and
- four other directors appointed by the Head of State, acting on the advice of Cabinet.

The Board of Directors is responsible for the policy and general administration of the Authority; and report to Cabinet through the Minister.

Customary Land Advisory Commission Act 2013

This Act establishes the Customary Land Advisory Commission. The objectives of the Act are to establish a Commission to encourage, facilitate and promote the economic use of customary land and to enhance social, cultural, economic and commercial development. It also provides for the functions, powers, duties, staff and funds of the Commission. The Commission will operate for seven years to carry out its purpose and then dissolve unless extended by a resolution of Parliament.

Samoa Institute of Accountants Amendment Act 2013

The Act amends the Samoa Institute of Accountants Act 2006 in relation to the use of the term 'chartered accountant'. This amendment is a result of concerns raised by the Samoa Institute of Accountants that the term 'public accountant' is confusing at times and is not in conformity with designations used widely by overseas accounting professional bodies. This amendment is progress for the Accounting profession as per relevant international standards and best practices.

Labour and Employment Relations Act 2013

The Labour and Employment Relations Act 2013 (LERA) repeals the Labour and Employment Act 1972 so as to provide for matters relating to Samoa's obligations under the International Labour Organization ('ILO') core Conventions and relating to employment of workers and establishing their rights, privileges and duties. It provides assurance that the rights of the employee are balanced with an employer's ability to provide the necessary measures to ensure that both parties enjoy a proper working relationship. The ILO core Conventions' requirements are addressed in the Act to ensure that Samoa meets the minimum requirements as an ILO member.

The Act provides for fundamental principles required to be met by employers and to provide for the safeguard and protection of workers' rights established under the Act. The most important aspect addressed in the Act is the advancing and promotion of women's rights, regarding maternity protections and measures.

The enforcement of collective bargaining and the establishment and the safeguarding of the establishment and operation of worker and employer unions are inaugurated in the Act. It also establishes a new forum called the National Tripartite Forum responsible for providing advice relating to minimum wage and also to provide advice to the Minister in relation to labour and employment issues. The Forum is specially created in order to assist the Government in making inquiries into proper and fair employment terms for employees as well as employers. The Forum is also empowered with investigative and inquiry powers, with proper assistance from the Attorney General's Office (should the Attorney General desire to be involved with an inquiry).

The Act also provides for more comprehensive conciliation measures and a three tiered dispute settlement phase commencing from the CEO, to a Conciliation Committee, and finally to a special Court for hearing of employment and industrial relations disputes. It also endeavours to address foreign employment, and provides for a more comprehensive approach in order to deal with foreigners wishing to be employed in Samoa.

Personal Property Securities Act 2013

The objective of this Act's is to increase economic activity in Samoa by making it easier and less expensive to obtain credit by providing an efficient means by which movable property may easily serve as collateral for a loan. The Act provides for the creation of "security interests" in movable collateral in favour of secured parties, typically institutional lenders. These security interests are then recorded into a centralized electronic registry where "notices" of security interests may be filed so that others may determine whether a proposed debtor has previously pledged particular collateral to secure a previous loan. The ability to perform this sort of search against a would-be borrower results in lenders feeling more confident about extending credit, knowing that the collateral for their loan has not been previously pledged. The Act provides clear rules for establishing priority between parties that may have competing interests in the collateral, thus bringing certainty to lending transactions. It also simplifies the expedited enforcement against collateral when a debtor defaults. This Act repeals the Chattels Transfer Act 1975 and sections of the Companies Act 2001 pertaining to company charges.

Family Safety Act 2013

The Family Safety Act 2013 aims to address violence occurring within the home. It provides for greater protection of families and the handling of violence within the domestic context. It lays out the procedure by which a person may apply for a Protection Order and the different processes by which all involved in the issuing of such an order are to follow. This involves members of the Samoa Police Service as well as the Registrar of the Courts. Samoa has obligations as a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as well as the Convention on the Rights of the Child (CRC) to implement such obligations through legislation. This Act domesticates some of those obligations. Such obligations are not gender biased as evident in the Act. This is because violence within the home does not affect just women and children, it also in one way or another affects men.

Canine Control Act 2013

This Act repeals the Dog Registration and Control Act 1955 and provides for the powers and duties of canine control officers under reformed arrangements in relation to canine control. The Samoa Police Service will be responsible for the implementation of this Act with the assistance of the Ministry responsible for health and recognized non-government organisations familiar with canine control.

The Act essentially deals with the problem of stray and dangerous canines that poses a threat to the safety and health of the public. The Act will therefore benefit not only Samoans but also visitors to Samoa.

Crimes Act 2013

The Crimes Act 2013 is a result of the review of the 52 year old Crimes Ordinance 1961 (Ordinance) which has been in existence since before the Independence of Samoa. This review is timely considering the development of criminal offences, and criminal law within those 52 years, thus bringing Samoa's Crimes legislation up to date with the current situation, pertaining to crime and criminal law. This Act repeals the Ordinance and will commence on **1 May 2013**.

The Act comprehensively provides for new criminal offences that are now in existence but were not considered as crime in the past and therefore not catered for under the Ordinance.

This Act is a result of a project conducted by a government working group that was formed to review and reform all the criminal laws in Samoa. The Ordinance is the first of the criminal related laws to be reviewed and reformed to be followed by, the Criminal Procedure Act 1972, Evidence Ordinance 1961 and a proposed Sentencing Bill due to be finalised soon. The Government working group consists of representatives from the Ministry of Police and Prison Services, The Ministry of Justice and Courts Administration, the Attorney General's Office, the Samoa Law Reform Commission, the Ministry of Health and the National Health Services, Ministry of Women, Community and Social Development and the Audit Office.

This Act introduces many new offences such as computer related offences, people smuggling and trafficking, offences that cater for complex fraud offences such as stealing land, offences relating to invasion of sexual privacy.

On sexual crimes, the Act aims to minimise the increasing number of sexual offending occurring within families, by increasing penalties in cases such as incest and rape. A new all encompassing definition of rape or sexual violation covers male and female sexual violations. Presently sexual connection in terms of indecent assault on a male or female under the age of 12 does not exceed 10 years imprisonment. The new maximum penalty provides for life imprisonment when a child under 12 is sexually violated and an attempt to commit the same offence provides for 14 years. The penalties are doubled from 7 to 14 years for sexual violation of a young person aged 12 to 16 years and the existing exemptions are continued when the offender is under 21. The present law regarding unlawful sexual violation does not apply to consenting women over 16 and this has been extended to men over 16.

Adultery and sodomy are retained as offences but penalties have been increased. The Act also hopes to provide for better protection of victims who are children, in cases of sexual offending, by increasing penalties for sexual offending, particularly against such victims. The Act now recognizes that male children are as vulnerable to sexual crimes as victims as much as female children are.

The AGO is very pleased to see this Act passed and had carried awareness training for its lawyers especially prosecutors with regard to new offences and penalties that are set to become effective as of **1 May 2013** when the Act is enforced. These trainings are carried out in collaboration with the relevant Ministries and Agencies.

CYBERCRIME WORKSHOP FROM 11 TO 15 MARCH 2013—APIA

As technology overpowers the world today, so too are Cyber related crimes empowered. This was the focus of the five day workshop held in Apia. The workshop focused on what constitutes cybercrime; how cybercrime can be investigated; and recommendations on how to deal with such crimes. Cybercrime originates from the use of : computers, phones, i-pads, ATM machines, photocopies, printers and other related items. It is possible to email, text, photocopy, print, buy and sell



online, send money online, deposit money online and many more activities can be done by using these items. When these activities were

activated on technology, criminals also activated criminal activities called cybercrimes which may be committed and they are; identity theft, verbal bullying, child pornography, forging documents, auction fraud, data protection violation, data inference and many others.

It was identified at the workshop that there are 3 ways in which cybercrime can be committed by a person, which are, through software; hard-drive or internet access. Evidently, the status of technology in Samoa is very high and the current legal framework that covers cybercrime is inadequate. For this reason, Samoa has included new cybercrimes offences in the recently passed Crimes Act 2013.

To assist in charging cyber offenders, the workshop recognised some ways to detect cybercrime. For example, there are websites such as www.the41.com which serves as a fraud detective agent in which it investigates and detects fraudulent activity that is occurring on the internet; there are also search websites for internet protocol addresses of users to trace back to all persons involved in providing the access for the user to go online and the location of the person who uploaded the illegal content onto the internet. The law enforcement agency may enlist the assistance of overseas law enforcers in an attempt to gather evidence and catch the offender. It is not an easy task however, to combat cybercrime, it is in fact difficult to detect and investigate and it is time consuming.

This is however an attempt by Samoa to deal with this now prevailing issue in the country. Passing this Act places Samoa as the first country in the Pacific to address and legislate for cybercrime.

EXTRACT FROM THE ATTORNEY GENERAL'S SPEECH ON CYBERCRIME

Sāmoa being a traditional society has embraced with open arms the rapid development of technology.

However, the rapid development of information technology does come with problems, particularly cybercrime. Cybercrime as you all know is any illegal activity conducted using a computer as its primary means of commission. Sāmoa, like most developing countries is starting to take the issue of cyber-security more seriously since more citizens are now using computers and mobile phones as well as the services available online, such as online banking.

Sāmoa has recognized that its current laws are not adequate to combat cybercrime and has therefore acted to update its laws.

Engaging in workshops of this kind is vital in obtaining the type of knowledge needed to properly enforce our cybercrime laws. Also equally important is the support offered by and networking with relevant international organisations and law enforcement groups.



**PACIFIC ACP STATES REGIONAL TRAINING WORKSHOP ON DSM LAW
AND CONTRACT NEGOTIATIONS**
(FA'ONELUA CONVENTIONS, NUKUALOFA, TONGA FROM 11–15 MARCH 2013)



Legal Consultant, Constance Tafua-Rivers of the Drafting Division attended the workshop on Deep Sea Minerals (DSM) Law and Contract Negotiations. The workshop focused on legal aspects for States engaging in DSM and negotiating commercial agreements with DSM operators. The workshop was comprehensive given the number of activities that participants executed. In order to move forward with DSM mining, it was recommended that each country look into its national policy and approach to DSM mining and to make the most of the Project assistance available.



For Samoa, a decision has to be made first as to whether our interest in DSM mining lies within our EEZ or in the international seabed area or both. Based on this direction, policy needs to be developed as to how DSM will be conducted or managed. This will lead to an analysis of Samoa's regulatory framework, and the changes required to be made for Samoa's involvement in DSM mining.

LEGISLATIVE DRAFTING DIVISION '6-WEEKS TRAINING' : FEBRUARY–20 MARCH 2013

BY RUPENI NAWAQAKUTA

The Legislative Drafting Division held a follow-up Drafting Training following from the one held during the same time last year. The training was conducted by Rupeni Nawaqakuta, the Legislative Drafting Advisor for the AGO, (trainer) and was held every Wednesday for 6 weeks. The Training covered the materials from the Professional Diploma in Legislative Drafting. In addition, the Team was divided into 2 groups and given drafting exercises to do during the training.



The exercise was designed to allow group discussions of issues on a topic covered during the training. The final project was to draft a Bill assed by the trainer. Generally, the training covered the following:

- How to analyse policies;
- How to analyse drafting instructions;
- How to prepare legislative plans;
- Role of drafters and policy officers;
- Drafting processes and styles.

COMPLETION OF CONSOLIDATION OF LAWS 2012 PROJECT



The Consolidation of Laws for 2012 as conducted by the Legislative Drafting Division was completed and officially released on 20 February 2013. The Project which started in November 2012 was undertaken and supervised by the Legislative Drafting Division.

DRAFTING TIPS

The usage of “shall/must”

- ◇ Use of “shall/must” - for plain English, “must” is preferred. It is to be used only when a duty or obligation is intended. It should not be used if a statement of law is made.

Examples:

- * The Board “must” give the Minister any information requested by the Minister—a duty
- * A person must not import turkey tail except for personal consumption or use—a prohibition
- * Say: *“This Act commences on 1 January 2014”, and not: “This Act shall commence on 1 January 2014”*
- * Say: *“This section does not affect section 20,” and not: “This Act shall not affect section 20”.*

- ◇ Use “may” when the intention is to confer a power (discretion) or give an entitlement, benefit or right

Examples:

- * *“The Minister may appoint a lawyer as Registrar of Companies”* - power
- * *“A member may be paid [is entitled to] remuneration when attending a meeting of the Board—entitlement [“is entitled to” can be used]*
- * *“A person may apply to the Board for a licence to import turkey tail”* - a right to apply for a licence

ANNUAL JUDICIAL PRAYER SERVICE

The Samoa Judiciary held its annual prayer service at Mulinuu on the 7th of January 2013. The event was to officially start off another year for our Judiciary. It was held at the Court Complex in Supreme Court Room 1. The service was attended by members of the Judiciary and Law profession as well as Government Ministers and officials. His Honour Chief Justice Patu Falefatu Sapolu gave the keynote address. This was followed by morning tea prepared by the Ministry of Justice and Courts Administration.

MORE DRAFTING TIPS

Punctuation tidbits:

- Beware of, commas, brackets, hyphens and 'em and en rules'
- For commas, do not over-use them. If in doubt do not use them
- For brackets, use them if for additional information
- Hyphens are used to put 2 or 3 words together into one word.

Examples:

- ♦ Subject Noun: *"The Officer-in-charge of a prison must..."*
- ♦ Distinguish work from similar ones: *re-form (reform), co-op (coop), re- sort (resort)*
- ♦ Words with pre-fixes: *self-employed, anti-aircraft, ante-natal*
- ♦ Written numbers between 21 and 99: *twenty-one, fifty-six, ninety-nine, three hundred and seventy-six*

- Em rule (—) is used to separate information.

Examples:

- ♦ *"A person may apply to the Minister for a hawkers licence—the application is to be sent to the CEO."*
- ♦ *"The driver—except a passenger in the vehicle—is entitled to free entry when driving a vehicle into the ground."*

- En rule (-) is used to link time, distance and figures.

Examples:

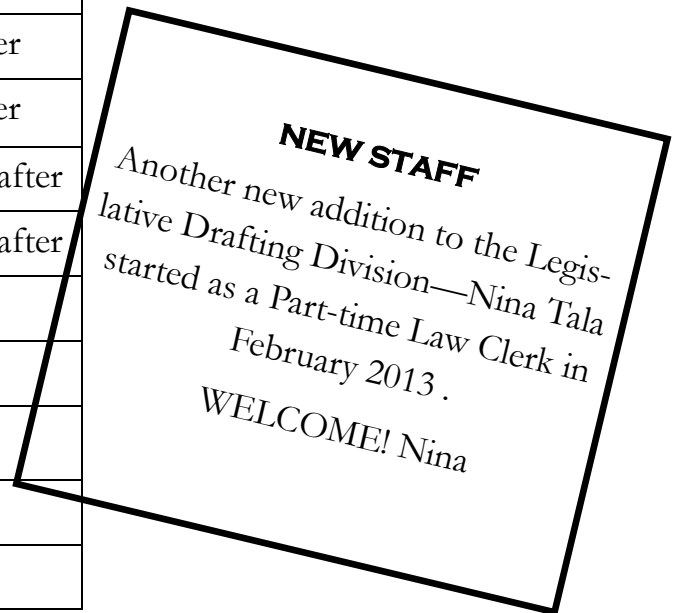
- ♦ *"This section does not apply unless 2-4 members of the Board are present."*
- ♦ *"A shop is to be closed from 10-12 noon."*
- ♦ *"This Act applies to the ABC Convention of the Asia-Pacific Region."*

"The laws of a state change with the changing times" (Aeschylus)

"Every new time will give its law"
(Maxim Gorky)

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION (LDD)

Ming C. Leung Wai	Attorney General
Rupeni Nawaqakuta	Legislative Drafting Advisor
Loretta Teueli	Legal Consultant Drafter
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Fetogi R. Vaai	Principal Legislative Drafter
Sioa Sioa	State Solicitor
Martha Papalii	Law Clerk
Theodora F. Matalavea	Law Clerk
Leitu Moananu	Law Clerk
Nina Tala	Part-time Law Clerk



UPCOMING EVENTS

- ◆ Instructors Training on Legislative Process
- ◆ Aganuu Faasamoa Training by Maulolo Amosa Tavita

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.