



**Office of the Attorney General of Samoa
LEGISLATIVE DRAFTING UPDATE**

THE LAW IS NOT SO MUCH CARVED IN STONE AS IT IS WRITTEN IN WATER, FLOWING IN AND OUT WITH THE TIDE
- JM

I will venture to affirm, that what is commonly called the *technical* part of legislation, is incomparably more difficult than what may be styled the *ethical*. In other words, it is far easier to conceive justly what could be useful law, than so to construct that same law that it may accomplish the design of the lawgiver.

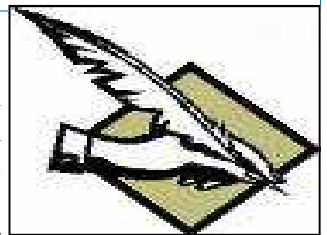
ABOUT THIS NEWSLETTER

The Office of the Attorney General had in the past issued newsletters providing updates of legislation considered by Parliament as well as those that were recently enacted. This practice has lapsed for some 10 years but has now been revived.

The aim is to provide information on the current policies of government being given legislative status, the draft laws put before Parliament for debate, and what Parliament has recently approved to become legislation. The dissemination of such information will hopefully keep those involved in the legal arena informed, and where appropriate, involved. It is also hoped that it will be a helpful source to the public on updates from the highest decision making authority in Samoa — the Parliament of Samoa.

Aside from providing updates on recent Acts and promulgated regulations made pursuant to Acts of Parliament and any By Laws, Orders and Notices made under the authority of either Acts of Parliament or regulations, we hope to provide brief explanations on Acts recently passed highlighting the gist of each piece of legislation.

The Legislative Drafting Team has, with the support of the Public Service Commission, been strengthened by the addition in the last year of more lawyers. This will allow the implementation of a viable succession plan to be implemented for the first time, and



hopefully, the shortage of drafters will be a thing of the past. But more importantly, instructions from Government to draft laws will be carried out more quickly and efficiently. Relevant trainings for the team continues as well.

This is the first Newsletter for 2008, and it is hoped that subsequent issues will follow quarterly i.e. every 3 months.

From the Attorney General and Legislative Drafting Team—ENJOY.

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WHO MAKES UP THE OFFICE OF THE ATTORNEY GENERAL?

The Attorney General, the Assistant Attorney General (*Civil Team* – 5 solicitors + AYA), the Assistant Attorney General (*Criminal Team*— 7 solicitors 2 law clerks), 2 Parliamentary Counsels (*Legislative Drafting Team*—3 solicitors, 2 law clerks) and the Manager for Corporate Services (*Corporate Services Team*—1 budget officer, 4 legal secretaries, 1 librarian, and 2 office assistants).

This Newsletter is and will be another drafting product of the Legislative Drafting Team.

THE ROLE OF A LEGISLATIVE DRAFTER

The drafting legislation of legislation is sometimes said to be an art and not a science. A well drafted bill results, not from slavishly following numerous arbitrary rules, but rather from thorough knowledge of the subject, careful attention to detail, and adherence to such common-sense principles as simplicity, clarity and good organization.

The role of a drafter is to therefore implement this art in translating policy into law and to provide good sound draft legislations efficiently and accurately as possible.

The Legislative Drafter is responsible for eliminating any inconsistencies that exist between instructions given and the Supreme Law of the land i.e. the Constitution. This is to ensure that the practi-

cal application of the law is reflected in the first draft produced.

A drafter must keep in mind that during the production of a fine piece of art there will be an iterative process with the instructing client where ideas are thrown back and forth in order to reach the goals set. A drafter's role should be limited to producing a product that withstands examination in Parliament and in the courts and not during the process prior to that engage in developing policy. In performing his or her role, the drafter's actions can be summed up neatly with two rules which are [1]decide what you want to say and [2] say it. Above all, a Legislative Drafter must be guided by no less than the legal ethics a legal practitioner is guided by.

PARLIAMENTARY SITTINGS REMAINING FOR THE YEAR 2008

May	June	July	August	September	October	November	December
3	1	1	1	1	1	1	1
4	2	2	2	2	2	2	2
5	3	3	3	3	3	3	3
6	4	4	4	4	4	4	4
7	5	5	5	5	5	5	5
8	6	6	6	6	6	6	6
9	7	7	7	7	7	7	7
10	8	8	8	8	8	8	8
11	9	9	9	9	9	9	9
12	10	10	10	10	10	10	10
13	11	11	11	11	11	11	11
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17	15	15	15	15	15	15	15
18	16	16	16	16	16	16	16
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21	19	19	19	19	19	19	19
22	20	20	20	20	20	20	20
23	21	21	21	21	21	21	21
24	22	22	22	22	22	22	22
25	23	23	23	23	23	23	23
26	24	24	24	24	24	24	24
27	25	25	25	25	25	25	25
28	26	26	26	26	26	26	26
29	27	27	27	27	27	27	27
30	28	28	28	28	28	28	28

ACTS PASSED BY PARLIAMENT FROM 2007 UP TO 31ST MARCH 2008

1. Supplementary Appropriation Act (No. 1) 2006/2007
2. Money Laundering Prevention Act 2007
3. Mutual Assistance in Criminal Matters Act 2007
4. Proceeds of Crime Act 2007
5. Mental Health Act 2007

6. Pharmacy Act 2007
7. Healthcare Professions Registration and Standards Act 2007
8. Nursing and Midwifery Act 2007
9. Public Service Amendment Act 2007



10. Fire and Emergency Service Act 2007
11. Dental Practitioners Act 2007
12. Income Tax Amendment Act 2007
13. Disaster and Emergency Management Act 2007
14. South Pacific Games (Taxation Incentives) Act 2007
15. South Pacific Games Authority Act 2007
16. Insurance Act 2007
17. Land Transport Authority Act 2007
18. Customs Amendment Act 2007
19. Police Service Amendment Act 2007
20. Supplementary Appropriation Act (No. 2) 2006/2007
21. Appropriation Act 2007/2008
22. Loan Authorization Act 2007
23. Telecommunications Amendment Act 2007
24. Samoa Sports Facilities Authority Act 2007
25. Young Offenders Act 2007
26. International Criminal Court Act 2007

27. Police Powers Act 2007
28. Public Trust Officer Amendment Act 2007
29. Medical Practitioners Act 2007
30. Alternative Disputes Resolution Act 2007
31. Supplementary Appropriation Act 2007/2008
32. Marine Pollution Prevention Act 2008
33. Public Holidays Act 2008
34. Samoa Trust Estates Corporation Amendment Act 2008
35. Community Justice Act 2008
36. Revision and Publication of Laws Act 2008
37. International Mutual Funds Act 2008
38. Unit Trusts Act 2008
39. Law Reform Commission Act 2008

Copies of these Acts may be purchased from the Clerk of the Legislative Assembly or viewed on Parliament's website—
<http://www.parliament.gov.ws/>

REGULATIONS, ORDERS AND NOTICES MADE IN 2008

1. Road Traffic Regulations 2008
2. Order of Prohibited Imports 2008 (Section 49)
3. Electric Power Corporation (Imposition of Temporary Additional Charge) Regulations 2008
4. Electric Power Corporation (Amended Imposition of Temporary Additional Charge) Regulations 2008

5. Trustee Companies Act 1987 (Section 6 (3)) - Notice
6. Fair Trading Act 1998 Special Prince Order (No. 1) 2008
7. Fire and Emergency Services (Risk Abatement) - Notice 2008
8. Public Service Regulations 2008

BILLS BEFORE PARLIAMENT UP TO 31ST MARCH 2008

1. Land and Titles Registration Bill 2007
2. Customs Amendment Bill (No.2) 2007
3. Tobacco Control Bill 2007
4. Samoa Broadcasting Repeal Bill 2008
5. Electronic Transactions Bill 2008

6. Land and Titles Amendment Bill 2008
7. Robert Louis Stevenson Amendment Bill 2008
8. Road Transport Reform Bill 2008
9. Constitutional Amendment Bill 2008

SAMOA SPORTS FACILITIES AUTHORITY ACT 2007



In light of Samoa successfully hosting the South Pacific Games last year, a need arose in the process to cater for the maintenance of the sporting facilities that Samoa now has, of international standards. They are a valuable asset to the nation and for the people of Samoa. In seeking to ensure that all these facilities are managed and utilised appropriately, the Samoa Sports Facilities Authority Act 2007 replaces the Apia Parks and Sports Facilities Board Act 1995 and the South Pacific Games Authority Act 2007.

The Act will see the formation of a new Authority with the responsibility of managing and controlling all the sports facilities outlined in the schedule to this Act. It also provides for the financial management of the new Authority and other statutory responsibilities relating to financial reporting and keeping of proper accounts.

This Act will also provide for how these facilities are to be used and managed with a view of allowing access to them by the general public in certain circumstances and under certain conditions.

COMMUNITY JUSTICE ACT 2008



This Act replaces the Offenders Probation Act 1971 which was found to be outdated, based on a model of 30 years ago from another jurisdiction and does not meet the Court's or Ministry of Justice and Court Administration's current needs. The result of the ISP review process has been the preparation of this Act, which encompasses provisions appropriate for Samoan community justice practices while still incorporating best practice provisions. The Act fosters a community based justice system that strengthens the relationship between the State and the community. This Act encourages Courts to seek alternatives to imprisonment and to take account of reconciliation and reparation already achieved in accordance with Samoan custom and tradition.

Specifically it provides to the

Courts a range of community based sentencing options as an alternative to the imposition of fines and imprisonment. New sentences of supervision and community work have been introduced which expand upon former sentences of probation and community service. Unlike the current Act, these sentences can now be imposed individually. In imposing supervision the Court can impose conditions designed to rehabilitate an offender so that the core reasons for the offending can be addressed and then help prevent further offending, thus benefiting the community. Community work means that worthwhile work can be done for non profit organisations such as NGOs, church groups, village councils and for old infirmed or disabled persons. The Court may also refer an offender for diversion. When subject to a diversion programme an

offender must sign an agreement with the Probation Service. In the agreement the offender must acknowledge his or her guilt. The offender will also be required to undertake some restorative action such as making reparation for any loss suffered by the victim, make an apology and where appropriate, undertake a reconciliation process with the victim and the victim's family or undertake some form of community work. If diversion is successfully completed the charge against the offender will be dismissed and no conviction will be entered. Diversion is to be applied in the case of first time offenders or where the offence is not considered by the Court to be a serious one. This Act also places new responsibilities on the Probation Service and enables the Service to operate in such a way so as to meet the

purposes and objectives of the Act.

It also creates the new position of community justice supervisors.

Community justice supervisors will be appointed by MJCA to supervise offenders undertaking diversion, supervision or community work. This means the community will play a role in supervising offenders and be in a position to positively influence the rehabilitation of the Offender. It also means an offender must give something back to the community upon which he or she has inflicted harm.

LAW REFORM COMMISSION ACT 2008



This Act repeals and replaces the Samoa Law Reform Commission Act 2002 which was never implemented. This Act is an attempt to set up a workable Law Reform Commission for Samoa taking account of its current resources and circumstances.

This Act will establish a restructured Law Reform Commission with an Executive Director and all staff of the Commission are public servants. The Law Reform Commission is to be assisted by an Advisory Board. This Board is made up of diverse expertise in the government and the private sector. The role of the Board is to assist the Commission with the carrying out of its functions.

The functions of the Commission are to recommend programs for the reform of laws of Samoa, to research and analyse areas of laws in need of reform, to advise Government on the

reviews carried out and to consult with the public on the law reform being carried out.

The powers of the Law Reform Commission include conducting studies and research for the preparation of reports and consulting with government agencies on law reform reviews and to publicise its work and conduct public hearings. The Law Reform Commission recommends to the Attorney General suggested programs for law reform and only carries out reviews or reforms in areas of laws as directed by the Prime Minister, Cabinet and the Attorney General.

The Law Reform Commission is to provide, forward plan Reports and reports responding to the terms or reference and annual reports to the Prime Minister on its work, operations

and expenditure. The Law Reform Commission may appoint Commissioners or consultants to manage and undertake law reform projects that have been referred to the Commission by the Prime Minister, Cabinet or the Attorney General.

With the approval of the Chief Justice, a Judicial Officer may also be appointed as a Commissioner for any law reform project undertaken by the Law Reform Commission.

It is hoped that an Executive Director will be appointed before the end of the financial year so that the Law Reform Commission can start recruiting its staff in July 2008 so it may finally start its operations.

Its office will be located at the 1st level FMFMII Building at Eleele Fou.



REVISION AND PUBLICATION OF LAWS ACT 2008

The Revision and Publication of Laws Act was drafted as a proposed replacement to the Reprint of Statutes Act 1972.

This Act aims to grant the Office of the Attorney General the power to revise and consolidate the Samoan Acts of Parliament (and incorporating changes from 1997 to 2007) annually so as to ensure that Samoa's laws remain up-dated in a manner which has not been achieved until now, while simultaneously regulating the Clerk of the Legislative Assembly's right to publish the laws so as to permit a commercial return on official publications and to preserve the integrity of the published laws. The copyright for the reprint is to be vested in the Government, and the rights arising from this is to be exercisable by the Clerk of the Legislative Assembly. It is a timely opportunity to comprehensively modernize

the formatting and terminology used in many of the ageing laws which have application in Samoa. By the application of skilful legislative drafting techniques a range of useful changes can be made to all Acts currently in force in Samoa, without affecting the substance of their provisions in any way.

This Act also makes appropriate provisions for the utilization of information technology, especially the publication and distribution of the revised laws in printed and electronic formats. This will enable the electronic back-up copies of the revised Samoan Acts to be kept in a secure location.

UNIT TRUSTS ACT 2008



The specific aim of a unit trust is to give small investors in Samoa an opportunity to own shares and other investments while at the same time spreading their risks and leaving the management of their funds in the hands of experts. In addition, it should also assist Government in promoting wider participation of local investors in the future sustained development of Samoa.

In a unit trust, the money of many investors is pooled together and invested on their behalf by a team of professional investments managers. The Unit Trust Act provides for one company to manage the unit trust, the Manager and a separate and independent trustee company, the Trustee, to hold title to all investments of the unit trust. There must also be a trust deed, which sets forth the relationship between the Manager and the trustee.

In addition to returns on their investments in the Trust through cash dividends, unit holders also benefit from the capital growth of the Trust's investment portfolio, when this increases in value. This growth can be realized by unit holders when they sell their units. Regular dividend payments, and the ease with which unit holders can sell back their units to the Trust, will ensure that the Unit Trust of Samoa is an attractive investment option for investors, in particular local investors.

SAMOA TRUST ESTATES CORPORATION AMENDMENT ACT 2008



Realising that the current timeframe of ten years in the Samoa Trust Estates Corporation Act 1977 for leasing land has been a disincentive for investors interested in leasing the Corporation's lands due to its short lease duration, the Corporation decided to increase term of lease to 30 years. The increase in the terms or durations of lease of the Corporation's lands will hopefully encourage private sector development and act as an inducement for foreign investors to establish operations in Samoa and contribute to the national economy.

PUBLIC HOLIDAYS ACT 2008

The purpose of the Public Holidays Act 2008 is to review public holidays that are currently observed in Samoa and to provide for shops to be open during public holidays.

There are 14 public holidays that are currently observed in Samoa, 9 of which fall within the first 6 months of the year. Certain shops are also currently closed during public holidays pursuant to the provisions of the Shops Ordinance 1961. Accordingly, the residents of and visitors to Samoa are unable to access shops and buy the goods and obtain services that are needed.

The closing of certain shops during a public holiday also impacts on our tourism industry especially when a cruise ship arrives on a public holiday. The tourists are unable to access shops and more importantly, the services that are available in Samoa that are essential for the promotion of Samoa as a tourist destination.

In addressing the above concerns and consistent with the Government's plans to develop the private sector, the number of public holidays are now reduced to 11, and that all shops now have the option to open during a public

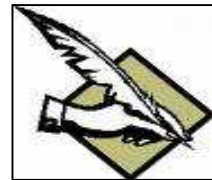
*No more public
holiday for AN-
ZAC and Arbour
Day*

holiday.

The public holidays that have been removed are the ANZAC Day and Arbour Day holidays. These days will continue to be commemorated in Samoa but will no longer be public holidays.

This Act also amends the definition of "public holidays" in the Shops Ordinance 1961 by referring to this

Act and removes the provision relating to the hours of employment of shops' assistants, the persons to be employed as shop assistants and the keeping of wages and time book for each shop assistant.



INTERNATIONAL MUTUAL FUNDS ACT 2008

In 2002, International Monetary Fund (IMF) undertook a comprehensive assessment of the regulation and supervision of Financial Services within Samoa. At the conclusion of the Assessment a report was issued by the assessors recommending that Samoa enact appropriate legislation introducing a regulatory framework for Collective Investment Schemes, while simultaneously prohibiting the establishment of unlisted Collective Investment Schemes.

This Act therefore introduces a new form of International investment vehicle offered by Samoa's Offshore Finance Centre. This law seeks to introduce regulatory and licensing scheme for International Mutual Funds and their Fund Managers and Administrators. The

scope of the legislation is restricted to "offshore" mutual funds which can solicit and accept deposits only from non residents of Samoa. The main focus of this Act is to attract small and medium size private funds, including hedge funds to set up business in Samoa.

This Act was drafted primarily based on the British Virgin Islands (BVI) Mutual Funds legislation with parts of the Cayman Islands legislation. BVI and the Cayman Islands are two jurisdictions where Mutual Funds have long been established.

Samoa's Offshore Finance Centre whilst been in existence since the 1980s is a relatively small and still developing offshore jurisdiction when you compare it with larger

and more developed Offshore jurisdictions like British Virgin Islands, Anguilla, Bahamas, Seychelles, Panama to name a few. To ensure that Samoa competes effectively for its own share of the market, Samoa must regularly review its laws against international standards and also with a view to further diversify its product base and to further broaden the range of corporate vehicles already available to the international investor. Enacting this law provides yet another opportunity for increased revenue for Samoa's Offshore Centre through the collection of fees which are expressed in US currency. In recent years the Finance Centre has contributed enormously to the overall economy of Samoa with substantial contributions made

into the Government Treasury fund, to assist Government in realizing several projects and initiatives. As well as generation of additional revenue the Centre has also become a catalyst for increased employment and enhanced worker skills in the country, commissions and fees earned by commercial banks for money transfers, fees earned by lawyers and accountants for their professional services, rental, electricity and communication costs.

JAPAN BANK FOR INTERNATIONAL COOPERATION LOANS ACT 2008



The purpose of this Act is to authorise Samoa, through the Government of Samoa to borrow from the Japan Bank for International Cooperation on terms and conditions to be set out in an agreement. The sums to be borrowed are to be determined by the Minister of Finance to be required by Samoa from time to time. In the event of a dispute arising out of a loan agreement, the dispute is to be determined by arbitration as set out in the General Conditions of the Loan Agreement or Development Credit Agreement.

AVAILABLE TRAINING

Professional Diploma in Legislative Drafting (PDL D):

This course is offered at the Institute of Justice and Legal Studies in Suva, Fiji. It is a proposed 12 weeks advanced training conducted by the Commonwealth Secretariat offered through the University of the South Pacific at Institute of Justice and Legal Studies (IJALS).

Scholarships are offered by the Forum Secretariat and the course commences in March every year. The intake for this year has closed with four State Solicitors from the Office of the Attorney General participating. Three State Solicitors completed this course in 2007. This course will be available next year.

For more information on this course you may contact Miss Prem Shekhar at: shekhar_p@usp.ac.fj

LLM in Advanced Legislative Studies

This course is offered at the Institute of Advanced Legal Studies (IALS) in London, England. This course is based on the professional Course in Legislative Drafting which was first offered by Sir William Dale in 1964. It has since then grown to become one of the most renowned professional training programmes in legislative drafting.

The LLM course will build on this professional course by developing an academic and theoretical view on the technical issues dealt with in the professional course. The aim of this course is to analyse and explore the distinct problems faced by professional drafters in the Common Law world and to propose and promote best practices in statutory drafting.

For more information log onto :

http://ials.sas.ac.uk/pstgrad/courses/cls_MA_courses.htm

LEGISLATIVE DRAFTING TEAM (WITH ATTORNEY GENERAL)

Front Row (sitting left to right): Papalii Malietau Malietoa (Parliamentary Counsel), Ming C. Leung Wai (Attorney General) and Teleiai Lalotoa S. Mulitalo (Parliamentary Counsel).

Back Row (left to right): Fetogi Vaai (Law Clerk), Nola Petelo-Faasau (State Solicitor), Salote Wright (Law Clerk), Constance Tafua-Rivers (State Solicitor), Lynn Namulauulu (Senior Legal Secretary), Noumea Loretta Afamasaga (Senior Legislative Drafter) and Sarona Rimoni (Principal Legislative Drafter).



NEXT ISSUE

In our next issue, we will look at the Road Transport Reform Bill 2008 and the Land and Titles Registration Bill 2007.

The Consolidation of Laws Project is almost complete and we will accordingly provide an update on that.

DISCLAIMER

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