



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

Volume 5, Issue 1

01 January —31 March 2012

In this Issue

i. Parliamentary Meetings & Sitzings 2012 pg 2

- Bills before parliament
- ii. **Summaries of Acts passed** pg 2
- * Excise Tax Amendment Act
- * Accident Compensation Corporation Amendment Act
- * Cluster Munitions Prohibition Act
- * Incorporated Societies Amendment Act pg 3
- * Customs Amendment Act
- * Customs Tariff Amendment Act
- * Land And Titles Amendment Act
- * Public Bodies (Performance and Accountability) Amendment Act 2012.
- * Samoa Tourism Development Act pg 4
- * Limitation Amendment Act
- * OPEC FUND Loans Act
- * Airport Authority Act pg 5
- * Special Purpose International Companies Act
- * Supplementary Appropriation Act 2011/2012
- * Stamp Duty Amendment Act 2012.
- * Tax Information Exchange Act 2012.

iii. Events January-March

- ◆ INTERNATIONAL CRIMINAL COURT PACIFIC OUTREACH ROUNDTABLE pg 6
- ◆ Executive Summary and Introduction
- ◆ Commission of Inquiry, Matai Titles
- ◆ 9th TECHNICAL WORKSHOP ON ASSISTING PACIFIC ISLAND COUNTRIES WITH MARITIME BOUNDARY DELIMITATION pg 7
- ◆ CITES Works Shop pg 8
- ◆ Deep Sea Minerals (DSM) Project – National Stakeholders Consultation
- ◆ Legislative Drafting Division Lauga Samoa Training pg 9
- ◆ Legislative Drafting Division Training pg 10

iv. Other events January- March

- New Staff pg 10
- Admission to Bar pg 11
- Attorney General's Office Induction Training
- Annual Judicial prayer Service
- Completion and Release of Consolidation of Laws Project 2011
- Australia Governor General Addresses Parliament pg 12

v. Upcoming Events

International Criminal Court Pacific Outreach Roundtable held in Sydney, Australia and attended by Parliamentary Counsel Papalii Malietau Malietoa. Samoa has indicated its willingness to assist other Pacific Countries in implementing legislation regarding the Rome Statute Obligations.



Talofa lava and welcome to the first issue of the Legislative Drafting Division newsletter for 2012. For this issue we will be covering events including the laws that were passed by parliament. We will also be looking at workshops that our members attended. It has certainly been a very busy time for the Drafting Division with 17 pieces of legislation being passed in this quarter alone. The Drafting Division is also ever expanding with the addition of new members to the team. For this quarter the Drafting Team also held trainings aimed at improving their skills and performance. For this issue we are pleased to also announce the completion of our consolidation of Laws of Samoa for 2011. It is the goal of our team that through this newsletter you are informed as Samoa continues its legislative development. We hope that you will enjoy reading this issue of our Newsletter. May God almighty continue to bless Samoa as we continue our Journey throughout 2012.

From the Attorney General and the Legislative Drafting Division-Pleasant Reading.

Sioa.Sioa
(Editor)
Law Clerk
Legislative Drafting Division.

“learning in legislative drafting is ongoing, just as the law is speaking all the time, drafting skills are required to allow that law to speak, in an effective manner”

**Teleiai Lalotoa Sinaalamaimaleula Mulitalo
(FORMER PARLIAMENTARY COUNSEL)**

Parliamentary Meetings & Sitzings for 2012

Months	Monday Week Beginning	Tuesday	Wednesday	Thursday	Friday
January	-	17 th January	-	-	-
March	-	6 th March	7 th March	29 th March (Special Session)	30 th March (Special Session)
May	-	31 st May	-	-	-
June	-	19 th June	-	-	--
August	-	21 st August	-	-	-
October	-	23 rd October	-	-	-
December	-	18 th December	-	-	-

UPDATE OF LAWS

BILLS BEFORE PARLIAMENT UP TO 30 MARCH 2012

First Reading:

Tax Administration Bill
Personal Property Securities Bill
Labour and Employment Relations Bill
EPC Amendment Bill
Proceeds of Crime Amendment Bill
Income Tax Bill

Second Reading Completed (referred to Select Committee)

Family Safety Bill
Counter Terrorism Bill
Crimes Bill
Constitutional Amendment Bill
SIFA Amendment Bill

SUMMARY OF ACTS

Excise Tax Amendment ACT 2012

The Act proposes to amend the Schedule of the Excise Tax Rates Act 1984 to increase the rates of excise for soft drinks, alcoholic beverages, cigarettes and petroleum. The tariff items with applicable excise tax rates that are amended are specified in section 2 (a) of the Act. Some of the amendments include the excise tax rate for mineral water and aerated water which is now free and the excise tax rate for alcoholic beverages, cigarettes and other manufactured tobacco are increased.

Accident Compensation Corporation Amendment ACT 2012

This Act amends the Accident Compensation Act 1989 ('the Principal Act'). The sole amendment is to section 56 of the Principal Act. It provides the Accident Compensation Corporation with additional powers of investment to purchase personal property. This provision intends to allow the Corporation to buy an interest in the Unit Trust of Samoa if desirable for investment purposes.

Cluster Munitions Prohibitions ACT 2012

The Cluster Munitions Prohibition Act 2012 gives effect to the Convention on Cluster Munitions ("the Convention").

The objective of this Act is to implement Samoa's obligations under the Convention by prohibiting a number of activities in relation to cluster munitions. These include the use, development, production, acquisition, possession, retention, stockpiling, transfer, importation and exportation of cluster munitions in Samoa as well as outside Samoa by Samoan citizens, residents, corporations or members of the Samoa Police Service.

The Act also specifically sets out certain circumstances in which activities relating to cluster munitions may be done so lawfully. Furthermore, the Act requires the provision of relevant information to the Chief Executive Officer of the Ministry to assist with the relevant reporting obligations so that Samoa is able to fulfill its obligations under the Convention.

Incorporated Societies Amendment ACT 2012

This Act amends the Incorporated Societies Ordinance 1952 ('the Principal Act'). The Act provides for the establishment of an Incorporated Societies Dispute Tribunal and related matters (the process for referral of disputes, the appointment of panel members and tribunal members, the process for convening a Tribunal hearing and proceedings, assistance to be provided by Government ministries and agencies to the Tribunal, orders that can be made by a Tribunal for the resolution of a dispute, and enforcement provisions).

The Act also provides new matters such as renewal of registration of a society, removal from and restoration to the register of a society, appointment of an investigator and investigation of complaints, registration of charges, remuneration of Tribunal members, and other annual documents to be delivered to the Registrar, and fees to be determined by the Minister. Further amendments to the Principal Act include appeals from the Registrar to be made to the Court instead of the Head of State, and new conditions for issuance of certificate to change the name of a society.

Customs Amendment ACT 2012

The Act proposes to amend Parts I and II of the Second Schedule to the Customs Act 1977 to increase the annual fees for various warehouse licenses.

Customs Tariff Amendment ACT 2012

The Act proposes to amend the First Schedule to the Customs Tariff Act 1975 to reflect the new rates of customs duty and excise for soft drinks, alcoholic beverages, cigarettes and petroleum fuels.

Land and Titles Amendment ACT 2012

This Act introduces a number of amendments into the Land and Titles Act 1981. The major amendments are:

- to allow for the appointment of Deputy Registrars and Assistant Registrars who will be able to exercise and perform the same powers, functions and duties as the Registrar;
- to revise and clarify the law in relation to the intention to appoint a person to be the holder of a matai name or title;
- to set out the circumstances in which a person is not qualified to hold a matai title or be registered as a matai;
- to provide that each party to a matter in the Court is required to make a genuine effort to resolve the dispute before starting a case and to give the Registrar the power to conduct Samoan conciliation in relation to any proceedings at any stage in those proceedings;
- Amendments have been made to section 2 that relates to the interpretation of terms used in the Principal Act. It omits the definition of "Pulefaamau" and inserts a definition of "Samoan conciliation". Samoan conciliation means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement.
- to allow the Court to advise the parties to a dispute to use a dispute resolution process if the Court considers that a dispute resolution process may help the parties to resolve that dispute;
- to give a power to the President or a Deputy President to order that proceedings be discontinued;
- to provide for the making of Land and Title Court Rules for the purpose of regulating the practice and procedure of the Court;
- to provide that some functions of the Court may, if the President or a Deputy President directs, be exercised by a Registrar.
- A person is not qualified to hold a matai title or be registered as a matai unless the person is at least 25 years of age and is also prepared to carry out the obligations of his/her matai title according to the Samoan culture.
- Gives the Court power in special circumstances and in accordance with Samoan customs and usage upon petition by a Sa'o or a Suli, permit a person who is not yet 25 but is at least 21 years old to have the age qualification to be a matai title holder.

Composition of Boards of Public Bodies ACT 2012

This Act amends the composition of boards of public bodies under various Acts and for other related purposes. The amendments include the removal of Members of Parliament, public servants and full-time salaried officers, from boards of those public bodies, with the exception of some boards which still require public servants as members given their expertise (e.g. Board of the Development Bank of Samoa, Board of Directors of the Samoa National Provident Fund, and the Board of Directors of the Samoa Sports Facility Authority). *continue to page 4*

Composition of Boards of Public Bodies ACT 2012 *from page 3*

For these exempted boards, public servants who are appointed as directors shall not receive remuneration. Further amendments to the various Acts require fewer or more members on the boards than as currently provided.

In addition, the appointment process is made clearer in that the directors are to be selected in accordance with applicable law relating to the management of public bodies, (except for ex officio members, a representative of a joint venture partner of the DBS Bank, and a representative of SASNOC who are appointed under relevant sections of their respective Acts), and appointed by Head of State acting on advice of Cabinet, and are removed by Cabinet.

The various Acts have also been amended to include the requirement for administrative heads (i.e. the Chief Executive Officers and General Managers) to attend board meetings but shall have no voting rights. Lastly, the Act also provides a timeframe for appointments to current boards to be revoked.

Tourism Development ACT 2012

The Government of Samoa continues to prioritize tourism as one of the key sectors at the forefront of the country's economic development. Tourism is a leading sector for foreign exchange earnings, employment and revenue generation for Samoa. The Samoa Tourism Authority works nationally and internationally with specific reference to the region. The key priorities for the sector and the Samoa Tourism Authority are:

- Participation in regional forums and building partnerships with tourism providers within Samoa and internationally;
- Seeking methods to increase investment and the retention of tourism income in Samoa;
- Improve Governance and planning of the tourism sector to benefit the private sector and the people of Samoa;
- Achieve the priorities for the Sector as outlined in the Samoa Development Strategy;
- Promotion of the uniqueness of Samoa's culture and environment in a sustainable and non-exploitative manner.

The objectives of this Act and the Guiding Principles for its implementation include references to sustainable development of tourism, promoting its orderly development through planning and regulation, involving both industry and government in the development of the industry and enforcing approved standards within the industry.

When this law is implemented proper regard must be had to ensuring that Samoans benefit from the development of tourism, protecting Samoan culture, traditions and institutions, and protecting the environment and the public from any adverse impacts of tourism.

Limitation Amendment ACT 2012

The Limitation Amendment Act 2012 amends the Limitation Act 1975 to remove the concept of adverse possession from application in Samoa.

The objective of the Act is to remove the unfair concept of adverse possession, which limits the right of a dispossessed owner of freehold or government land to recover his, her or its land.

The 1975 Act sets up adverse possession as a shield against the registered owner of freehold or government land who seeks to recover possession of their property after the relevant limitation period has expired. However, the application and effect of adverse possession is a relatively complex legal and negative legal notion that can often have unforeseeable effects. Adverse possession claims generally compel all parties to commit to a full hearing of all matters in dispute.

Available evidence suggests that adverse possession is a highly significant doctrine in practice in Samoa. For instance, reported decisions in Samoa over the last decade where adverse possession claims were considered are numerous. A large number of cases have been heard by the Courts and in the main; the cases are largely determined by the facts of each particular claim defence.

The 2012 Act therefore aims to amend the relevant sections of the Limitation Act 1975 to ensure that adverse possession no longer applies in Samoa. This means that the rights of a dispossessed owner of freehold or government land to recover his, her or its land is not limited by any limitation period.

OPEC FUND LOANS ACT 2012

The purpose of this Act is to facilitate borrowing from the Organization for Petroleum Exporting Countries (OPEC) Fund for International Development (OFID).

Under section 75 of the *Public Finance Management Act 2001* it is unlawful for Government to borrow or for any bank or person to lend any money to the Government except as provided by that Act or any other Act. To enable Government to borrow from OFID (or the "Fund") the Act authorizes Government to borrow from OFID in accordance with any terms and conditions agreed to between the parties. *Continue to page 5*

The sum amount that can be borrowed from the Fund is determined by the Minister in section 3 and an agreement between the parties is legally valid and enforceable under section 4. Section 5 deals with arbitration procedures should a dispute arise.

Airport Authority Act 2012

The Act repeals the Airport Authority Act 1984 and makes comprehensive provision in relation to the management and operations of the Airport Authority under a modern and reformed legislative framework. The Airport Authority Act 1984 is 25 years old and has not been amended in any way since it was enacted.

The new Act has therefore been drafted to assist the Authority to maximise its commercial opportunities, whilst ensuring that its facilities and services are maintained and provided in the most efficient and effective manner.

The Act therefore has the following core objectives:

- To create a strong and relevant law as the basis for the Authority to operate in the modern operational and corporate environment.
- To review and apply operational and technical requirements applying to the Authority.
- To meet best accounting and corporate management practice, and facilitate greater compliance with corporate supervision requirements.
- To eliminate questionable or improper practices, and enhance transparency and good governance in the Authority's processes.

Special Purpose International Companies Act 2012

This legislation is intended to introduce an entirely new form of hybrid company, so as to provide a solution to the difficulty of introducing the benefits of the civil law concept of the Foundation into common law environments, such as Samoa; which difficulty is caused by the lack of any precedent upon which common law courts could rely in resolving disputes concerning the operation of such entities and by the lack of any similar entity to which reference might be made. The mere passing of a law to introduce Foundations is not the solution, but rather the start of the problems.

This legislation aims to provide a corporate form, capable of being recognized in both common and civil law jurisdictions (as is the long-established International Company, upon the law governing which key components of the new legislation are based), along with the benefits seen in Foundations of there being no ownership of the entity itself, through the removal of shareholders/members altogether; whilst retaining the concept of the ultimate benefit of the company's activities being for other than the company itself (the shareholders of a normal company, or the beneficiaries of a trust or Foundation), so as to ensure that the directors are responsible to another authority.

This is achieved through the requirement that all such companies can only be established, and must always be administered, for the ultimate/eventual benefit of charity, which also enables ultimate enforcement rights to vest in the Attorney-General. Samoa will be the first jurisdiction to introduce this new type of hybrid company.

Supplementary Appropriation Act 2012

This Act contains the First Supplementary Appropriation for the 2011/2012 Financial Year.

It authorises the issue and application of **\$22,327,459** 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 30th day of June 2012 ("2011/2012 financial year").

Stamp Duty Amendment Act 2012

The Act amends the Stamp Duty Ordinance 1932 ("the Ordinance") to increase the stamp duty rates for land conveyancing, which is provided under Item No.10 of the Schedule to the Ordinance.

Tax Information Exchange Act 2012.

The purpose of this Act is to facilitate the exchange of tax information pursuant to Tax Information Exchange Agreements (TIEAs) signed between Samoa and foreign countries.

The Samoa International Finance Authority (SIFA) and the Ministry for Revenue have been persistent in the negotiation of TIEAs with various countries to comply with Organisation for Economic Cooperation and Development (OECD) standards on the exchange of information.

Continue to page 6

Compliance with OECD standards strengthens Samoa's reputation and integrity as a provider of international financial services and promotes continual economic growth for Samoa.

To date, Samoa has signed TIEAs with 13 countries. To ensure that Samoa can meet its obligations under the various agreements, the legal framework for exchange is clearly described in the Act. Provision is made for: entering into tax information exchange agreements; the procedure for receiving and approving a request, and the powers for the collection of information requested. Secrecy and confidentiality obligations are taken into account as well as restricting the disclosure of information.

The offences under the Act are directed at failing to provide information where requested; making false representations; affecting the quality of the information requested or intentionally impeding submission of information requested. Criminal liability of directors, officers, abettors and others are included in section 13.

INTERNATIONAL CRIMINAL COURT PACIFIC OUTREACH ROUNDTABLE 16 February 2012

Executive Summary and Introduction

On 16 February 2012 the Government of Australia, the Government of New Zealand and the Commonwealth Secretariat convened a Roundtable in Sydney, Australia to discuss issues relating to the accession of Pacific States to the Rome Statute of the International Criminal Court (Rome Statute) and the implementation of Rome Statute obligations under domestic law. The Roundtable was held immediately after the University of New South Wales-hosted Justice For All Conference, the very first event held to mark the ten year anniversary of the entry into force of the Rome Statute, in which all Roundtable attendees participated. .

At present, within the Pacific, Australia, Cook Islands, Fiji, Marshall Islands, Nauru, New Zealand, Samoa and Vanuatu are State Parties to the Rome Statute. Australia, New Zealand and Samoa have also adopted implementing legislation. The purposes of the Roundtable were twofold: to provide information to assist Pacific States in their consideration of accession and/or the development and adoption of implementing legislation, and to learn more about Pacific States' views on the Rome Statute system and the challenges they face in considering accession and implementation.

Mr Papalii Malietau Malietoa (Parliamentary Counsel) attended the Roundtable as Samoa's representative. Samoa is the only Pacific Island Country to have both ratified the Rome Statute and adopted implementing legislation. Papalii indicated during the roundtable that Samoa is able to assist Pacific colleagues with implementing legislation if assistance is needed. It was noted that Samoa has one of the largest drafting teams in the region (a team of 14). Samoa also clearly has experience in ensuring that model legislation is appropriately adapted to fit the context of a Pacific country.

Samoa's legislation was drafted with the assistance of a Commonwealth Secretariat drafter who worked with counterparts in Samoa to adapt the model law to the local situation. The most difficult issue encountered by Samoa was the immunity from prosecution enjoyed by Samoa's Head of State. The solution, developed in consultation with the Head of State, was to remove the immunity in relation to Rome Statute crimes only. It was observed that translation to the Samoan language was also challenging, as the English version of the Act addressed concepts not covered in Samoan.

Commission of Inquiry on the conferral of matai titles 10 February 2010 to 01 February 2012

On 10 February 2010, a Commission of Inquiry was established and appointed by the Head of State as per Cabinet Directive F.K.(10)05 and section 4 of the Commission of Inquiry Act 1964 to inquire into the working of section 20 of the Land and Titles Act 1981, particularly, investigating the customs of Samoa relating to the conferral of titles, and reporting to Cabinet on any amendments required to legislation in order to implement recommendations by the Commission. Members of the Commission were Le'apai Asofou So'o (Chairman), Tafa Sā, Le'aupepe Kasiano, So'oalo Fa'atoafe, Seve Imo, Atanoa Niu'ula Apulu Lio, Fuaolefau Lote Naseri, Le'aula Maulolo Tavita, Sarona Rimoni (Counsel Assisting) and Salote Peteru (Counsel Assisting). Upon Sarona's resignation, Papali'i Malietau Malietoa (Parliamentary Counsel) was appointed as replacement. Lynn Namulau'ulu (former Secretary for the Legislative Drafting Division) was the secretary to the Commission, and upon her resignation, Tasha Sagapolutele (Former Senior Bills Officer) stepped in as replacement.

Continue to page 7

Commission of Inquiry on the conferral of matai titles 10 February 2010 to 01 February 2012....from page 6

Through the Legislative Drafting Division, the Office of the Attorney General assisted the Commission in legal, secretarial and administration work, at Commission meetings and during consultations.

Consultations were carried out in April, May, June and July, throughout Samoa (at Vaimauga, Faleata, villages between Faleula and Tufulele, villages between Faleāsi'u and Falelātai, Aiga i le Tai, Lefaga, Anooma'a and Va'a o Fonoti, Lotofaga, Lepā and Aleipata, Sāfata, Si'umu and Flaealili, Pu'apu'a and Safotulāfai, Satupa'itea, villages from Manase to A'opo, villages from Asau to Falelima, villages from Foalalo to Tafua, villages from Patamea to Saleia, and Matagalalua for those residing in Apia). Further consultations were carried out towards the end of July for those invited and special guests who wished to present oral submissions before the Commission. The Commission based its inquiry on 3 main questions:

Should the number of candidates to hold a title be restricted?

What are the changes in customs and/or legislation that need to be put in place to help control the number of holders of the same title?

If there is a majority view to uphold the dignity of matai titles by controlling the number of holders per title, should that be restricted to particular foundation titles of villages (*suafa fa'avae*) and certain titles (*Sa'o or other paramount title*)?

Following consultations, the Commission compiled a Report of its findings and views of the public and members of the Commission. On 01 February 2012, the Commission presented its Final Report to the Honourable Prime Minister for submission to Cabinet. As per a Directive F.K.(12)Faapitoa 06 dated 22 February 2012, Cabinet endorsed the Report and directed for such to be forwarded to the Legislative Assembly for tabling in Parliament.

9th TECHNICAL WORKSHOP ON ASSISTING PACIFIC ISLAND COUNTRIES WITH MARITIME BOUNDARY DELIMITATION



The 9th Technical Workshop on Maritime Boundary Delimitation was held at the Madsen Building at the University of Sydney in February 2012 and was attended by Principle State Solicitor Ms Constance Tafua-Rivers.

The 9th Technical Workshop on Maritime Boundary Delimitation was held at the Madsen Building at the University of Sydney from 20th to 24th February 2012. The *Applied Geoscience and Technology Division* (SOPAC) of the *Secretariat of the Pacific Community* (SPC), is mandated to provide to Pacific Island members technical/policy advice and assistance and training/research services in 3 important areas. The *Ocean and Islands Programme* (OIP) is one of these areas with particular emphasis on **maritime boundary delimitation/development**.

Mr. Pau Ioane, Principal Mapping Officer of the Ministry of Natural Resources and Environment (MNRE) and Principle State Solicitor Ms Constance Tafua-Rivers attended the Workshop.

In her report Ms Rivers highlighted that the 9th Maritime Boundaries Development workshop was useful in continuing the groundwork revived from the previous workshop.

Continue to page 8

9th TECHNICAL WORKSHOP ON ASSISTING PACIFIC ISLAND COUNTRIES WITH MARITIME BOUNDARY DELIMITATION ... from page 7

Participants were able to share information and experience (in some cases having informal negotiations) and general presentations were provided to strengthen the foundation of maritime boundary work. The technical and legal support available was especially productive as participants were individually able to work on what needed to be done for their own countries.

In Samoa's case: assistance was provided in revision of the Maritime Zones Act 1999; guidance was offered in preparing declaration notices for confirming the baseline and appropriate maritime zones; and further assistance was offered or made available that could be used for negotiation.

Lack of maritime boundary development for Samoa has long been overlooked or ignored but with increasing importance of fisheries resources and a potential for deep seabed mining activities this may need to be prioritised once again.

National Workshop on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) from 5th to 9th March 2012.

The Ministry of Natural Resources and Environment in collaboration with the Department of Commerce (New Zealand) conducted a National Workshop on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) from 5th to 9th March 2012 (whole week session).

This was held at the Aggie Grey's hotel and participants from different Ministries including our Office were invited for this Workshop.

The Workshop was attended by Principal State Solicitor Loretta Vaa Teueli, State Solicitor Ane Iati (Civil Division) and Law Clerk Sioa Sioa. This workshop follows the May 2010 workshop on how to prevent illegal trade at border, wherein the government of Samoa through the participants of the Ministry of Natural Resources and Environment, Customs and Quarantine identified additional needs and requested further training.

Our Office became involved in both these workshops (May 2010 and March 2012) through our participation in the implementation of a domestic legislation for CITES.

Throughout most of the workshop it discussed the status of the draft Environmental and Conservation Management Bill which covers briefly this Convention (CITES). This Bill was drafted in 2008 after Samoa acceded to the Convention sometime in 2004 to 2005.

The Bill was also drafted by a Consultant who worked in collaboration with the MNRE lawyers at the time including Sala Josephine Stowers ACEO for the Legal Division for MNRE. At the discussions MNRE stated that a copy of the Bill will be sent to the Attorney General's Office for review.

A One day workshop hosted by MNRE/SOPAC at the TATTE Convention Centre on Deep Sea Minerals (DSM) Project – National Stakeholders Consultation

A Deep sea Minerals (DSM) National Stakeholder Consultation Workshop for Samoa was held on Thursday 8th March 2012 from 9am-5pm at the Samoa Convention Center, TATTE Building Complex Savalalo. A team from the SPC-EU EDF 10 Deep Sea Minerals (DSM) Project of the SOPAC Division, SPC hosted the workshop in collaboration with the MNRE. The objectives of the workshop were to:

- present the DSM project to stakeholders
- discuss DSM related issues with stakeholders particularly policy and legislation development, capacity building and collaboration mechanisms
- ascertain stakeholders' views and concerns in relation to offshore minerals exploration and seabed mining and;
- collectively determine the needs and priorities of Samoa in terms of addressing the challenges pertaining to deep sea minerals exploration and mining.

The Legislative Drafting Division was asked to present on the relevant national legal framework in response to questions posed by SOPAC in a questionnaire received 6 March 2012. Principal State Solicitor Ms Constance Tafua Rivers attended. Ms Tafua-Rivers presentation covered:

- Legal System – Executive, Legislative and Judiciary | Legislative Process | Legislation (Constitution)
- International Maritime Conventions – Conventions Samoa is a party to | Implementing legislation
- Specific legislation governing regulation of marine resources
- Maritime Zones
- Marine Environmental Protection administrators

Participants were divided into 2 groups (policy and technical) and asked to discuss specific issues. The policy issues included: development of offshore minerals policy and legislation and regulation, appropriate fiscal regimes, environmental management and development of marine scientific research. General issues were: benefits and adverse impacts of offshore exploration and mining and formation of a national offshore committee.

**Legislative Drafter Samoan language workshop
(30 January 2012-9 February 2012)**



Members of the Legislative Drafting Division during their Samoan Lauga Training with Samoan Academic Mr Maulolo Tavita Amosa. (Front Row– 2nd from the left).

As the government puts more and more emphasis on the use of our own Samoan language for dialogue, the legislative Drafting Division took the initiative of holding trainings for its members on the art of Samoan oratory and was also open to other divisions of the Attorney General's Office.

The trainings were held by Samoan Language Consultant and well known academic Mr Le'aula Maulolo Tavita Amosa. The trainings were held over a period of two weeks. (30 January 2012 to 9 February 2012, and on 21 February 2012).

With the increasing number of legislations passed in parliament followed by numerous select committee meetings the sessions were also a good way of preparing.

The Drafting Division were taught the basic skills of Samoan Oratory including its history and taught valuable tips and skills needed for effective and clear dialogue in various situations. (including meetings with stakeholders during consultations as well as dealing with scrutiny in Parliamentary Select Committees.



Parliamentary Counsel Papalii Malietau Malietoa showcasing a historical artefact, a fine mat of the Sa Malietoa family during one of the sessions with academic Mr Le'aula Maulolo Tavita Amosa.

The Training was an invaluable experience for the Drafting Division as it taught importance and value of being able to communicate properly and effectively in our own language.

6 weeks Legislative Drafting Division Training 14th February to 22 March 2012.

The Legislative Drafting Division conducted Drafting Trainings for the benefit of the team and especially their new members who joined this year. The trainings were conducted by the Legislative Drafting Advisor, Mr. Rupeni Nawaqakuta.

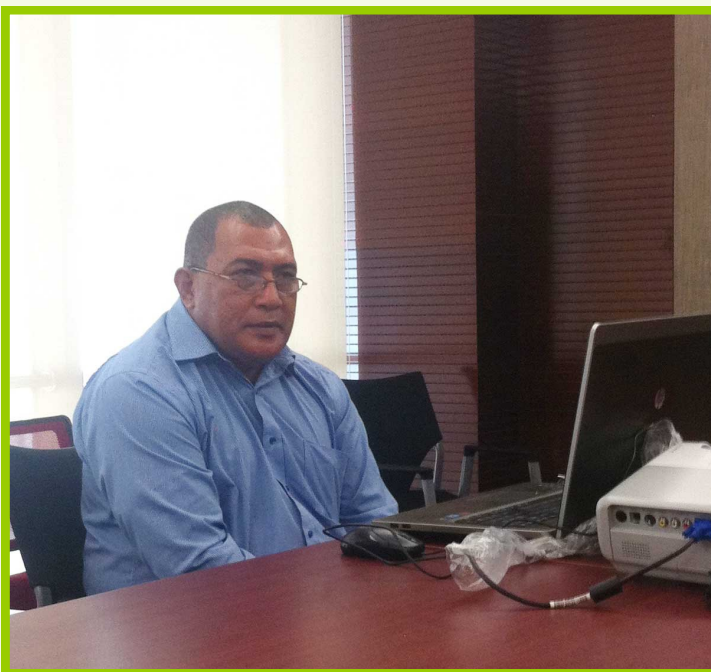
The aim of the Workshop was to further improve drafting skills for the participants amongst other things. The trainings was spread out through a period of 6 weeks on Tuesdays and Thursdays of each week. It covered the basics of Legislative Drafting and a brief history on legislative Drafters.

This evolved into how to effectively translate policy into legislation.

At trainings drafting exercises included identifying problems with certain legislation. The Drafting trainings were open Government lawyers and as such we had participants from the Ministry of Health, Electric Power Corporation and the Law Reform Commission

BRIEF HISTORY OF LEGISLATIVE DRAFTING. (Courtesy of Mr Rupeni Nawaqakuta)

- In the beginning of the 15th Century - committee of judges, counsellors and officials were responsible for Legislative Drafting (the practice of drafting **Bills or petitions** begun in the form of the **act** desired, thus the Common law name "Act") – development of present Legislative Drafting system
- In the Mid 15th Century – the use of Bills (petition ceased) became the established method, which is still retained today
- At the end of the 15th Century, Parliament appears to have handed over the drafting of Bills to conveyancers who developed long winded provision & use of all conceivable words to be used in a provision as they charge fees by the number of words used.
- By the first half of 19th Century, Government (UK) continued to brief out drafting of Bills to private lawyers who are experienced in that branch of the law, in addition to Parliamentary Drafters.
- The Legislative Drafting Pioneers -
 - ⇒ **George Coode** - revised poorly drafted laws
 - ⇒ **Sir Henry Thring (Lord Thring)** - founded the Office of Parliamentary Counsel
 - ⇒ **Sir Mackenzie Chalmers** - drafted major commercial statutes
 - ⇒ **Sir Courtenay Ilbert** - wrote Legislative methods and Forms



Legislative Drafting Legal Advisor Mr Rupeni Nawaqakuta

New Staff

The Legislative Drafting division during this quarter welcomed 3 new staff to the Division.

- Ms Martha Papalii an LLB graduate from New Zealand, she joined the Attorney General's Office in 2011 as a law clerk with the Criminal Prosecutions Division before transferring to the Drafting Division this year.
- Ms Leitu Moananu a recent laws graduate from USP Vanuatu who joined the Drafting Division this year.
- Mr Alofa Aleta another recent law graduate from USP Vanuatu who also joined the Drafting Division this year. Alofa who is from Tokelau is currently attached with the Drafting team as part of his training experience. Welcome to the Drafting Division.

Admission to Court

Ms Ane Iati of the Civil Division was sworn in on the 3rd of February 2012 by his Honour Chief Justice Patu Falefatu Sapolu.

Ms Iati's admission was moved by the Attorney General and supported by Ms Mareva Betham (as representative of the Samoa Law Society).

She is a graduate of USP Vanuatu, and completed her Bar Practice in 2011 at USP Laucala Campus Fiji.



Induction Training for New Staff



New Staff: Ofisa Tagaloa & Liaina Mafaufau



Principal State Solicitor Loretta Vaa-Teueli & New Staff member Leitu Moananu

The Attorney General's Office also held induction training for new staff who have just recently joined the Office in 2012. The purpose of the training was to help the new members to better understand the structure of the Attorney General's Office as well as the Office procedures. The Attorney General Aumua Ming Leung Wai as well as senior representatives from each of the Divisions in the office presented at the training.

The new staff who have joined the Attorney General's Office in 2012 include:

- Ms Leitu Moananu (Legislative Drafting Division)
- Mr Alofa Aleta (Legislative Drafting Division)
- Mr Sioa.Sioa (Legislative Drafting Division)
- Mr Liaina mafaufau (Civil Division)
- Ms Monique Vaai (Civil Division)
- Ms Sosefina Faamausili (Civil Division)
- Ms Lucy Sio (Criminal Prosecutions Division)
- Mr Ofisa Tagaloa (Criminal Prosecutions Division)
- Ms Dora Schwenke (Corporate Services Division)

Annual Judicial prayer Service

The Samoa Judiciary held its annual prayer service at Mulinuu on the 7th of January 2012. The event was to officially kick 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 the 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.

Completion of Consolidation of Laws 2011 project

The Consolidation of Laws for 2011 as conducted by the Legislative Drafting Division was officially completed and is to be released by the end of March 2012. The project which started in November 2011 was supervised by Parliamentary Counsel Papalii Malietau Malietoa.

Australia Governor General addresses Parliament on 30 March 2012.

The Governor General of the Commonwealth of Australia her Excellency Ms Quentin Bryce during her state visit addressed the Parliament of Samoa. Ms Bryce was the first foreign leader to address the Parliament of Samoa since New Zealand Prime Minister Sir Robert Muldoon in 1980. Her Excellency highlighted the bright future of relations between Samoa and Australia, as well as the contributions of both countries to the development of the Pacific region.

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION (LDD)

Ming C. Leung Wai, Attorney General
Papalii Malietau Malietoa, Parliamentary Counsel
Rupeni Nawaqakuta Legislative Drafting Advisor
Loretta Vaa-Teueli, Principal Legislative Drafter
Constance Tafua-Rivers, Principal Legislative Drafter
Nola Petelō Faasau, Senior State Solicitor
Salote Peteru, nee Wright, Senior State Solicitor
Fetogi R. Vaai, State Solicitor
Martha Papalii, Law Clerk
John Maslin, Law Clerk
Leitu Moananu, Law Clerk
Alofa Aleta, Law Clerk
Sioa.Sioa, Law Clerk
Makareta Vaelua Senior Bills Officer
Losa Kelekolio, Senior Legal Secretary

Upcoming Events.

- 8th to 15th April 2012 Pacific Appliance Labelling Standards Workshop in Suva Fiji.
- 17th to 19th April 2012 Ocean Governance and Maritime Boundaries Forum London, England.
- 17th to 21st April 2012. ICB4PAC Working Group Meeting for finalizing Skeleton Cybercrime Legislation and Policy Norfolk Island.
- Parliament session in May 31st and June 19th 2012

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.