



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

Volume 5, Issue 2

01 April — 30 June 2012

In this Issue

- i. Parliamentary Meetings & Sitings 2012 pg 2
- Bills before parliament
- ii. Summaries of Acts passed pg 2
- Appropriation Act 2012/2013
- Supplementary Appropriation Act 2011/2012
- Income Tax Act 2012
- Tax Administration Act 2012 pg 3
- iii. Events April—June pg 3
- ♦ Commonwealth Maritime Boundaries and Ocean Governance Forum
- ♦ Pacific Appliance and Labelling Standards Workshop pg 3
- ♦ Cybercrime Legislation and Policy pg 4
- ♦ Pacific Regional Roundtable on Montreux Document on PMSCs pg 5
- ♦ Professional Placement—PIFS pg 6
- iv. Other events April—June
- Attorney General's Office farewells Le'afa Donald Kerslake pg 7
- Admission to Supreme Court Bar pg 9
- v. Use of singular "they" (Canada's experience) pg 8
- vi. Upcoming Events pg 10

Ia Manuia Samoa i lona 50 tausaga o le tutoatasi!!!!



His highness *late* Malietoa Tanumafili II and His highness *late* Tupua Tamasese Meaole II taking their oaths in 1962 as the first co—Heads of State for the newly independent nation of Samoa

Talofa lava! This is the second issue of our newsletter for this year and before delving into our usual bulletin on legislative drafting related topics, we would like to congratulate Samoa on her reaching a 50 year milestone in her history as an independent nation for which we give GOD all the glory! We acknowledge the legislative drafters responsible for drafting the Constitution that has so ably guided Samoa to where she is today as it was not an easy task to encapsulate within that Supreme Law an identity of a people, unique in its culture and heritage; *ia manuia Samoa!*

In this issue, we will be providing information on legislation tabled in Parliament as well as upcoming events impacting on the Division.

We will also take a peek at an interesting article impacting legislative drafting practices in other countries; compliments of Mr. Rupeni Nawaqakuta—Legislative Drafting Advisor to the Division.

We would also like to congratulate Sioa Sioa on being admitted to the bar! *O ou mama na!*

From the Attorney General and the Legislative Drafting Division; pleasant reading.

Loretta Vaa Teueli (Editor)
Principal Legislative Drafter
Legislative Drafting Division.

"Gulliver said "This society has peculiar cant and jargon of their own that no other mortal can understand and wherein all their laws are written, which they take care to multiply"

A bumper sticker in Queensland says "Do it today, tomorrow it may be illegal"

The two quotations taken together speaks volumes about the fast changing pace and complexity of laws and the need for settling principles of legislative drafting and the uncertainty which is likely to prevail in the absence of clarity and precision in legislative drafting"

G.C. Thornton

"...the work of legislative drafters are conducted largely in the background, far from the limelight ..."

**Justice V.C.R.A.C. Crabbe
Ghanna**

Remaining Parliamentary Meetings & Sitzings for 2012

Months	Monday Week Beginning	Tuesday	Wednesday	Thursday	Friday
May	-	31 st May	-	-	-
June	-	12 th June	13th June	14th June	15th June
July					20th July (Special Sitting to hear Head of State nomina- tions)
August	-	21 st August	-	-	-
October	-	23 rd October	-	-	-
December	-	18 th December	-	-	-

UPDATE OF LEGISLATION

STATUS OF BILLS TABLED IN PARLIAMENT FROM APRIL—JUNE 2012

1st Reading

Samoa Institute of Accountants Amendment Bill

2nd Reading and referred to *Select Committee*

Proceeds of Crime Amendment Bill
Personal Property Securities Bill
Electric Power Corporation Amendment Bill
Labour and Employment Relations Bill
Electric Power Corporation Amendment Bill

ACTS PASSED IN PARLIAMENT FROM APRIL—JUNE 2012

Appropriation Act 2012/2013
Supplementary Appropriation Act (No.2) 2011/2012
Income Tax Act 2012
Tax Administration Act 2012

Passed 14 June 2012
Passed 14 June 2012
Passed 15 June 2012
Passed 15 June 2012

SUMMARY OF ACTS

Appropriation ACT 2012/2013

This Act provides the appropriation of funds of \$454,967,161 for the Financial Year ending 30th June 2013 for Government purposes.

Supplementary Appropriation ACT 2011/2012

This Act contains the second supplementary Appropriation of \$17,678,507 for the 2011/2012 Financial Year .

Income Tax ACT 2012

The Income Tax Act 2012 (the Act) provides for the imposition of the income tax. It aims to simplify, modernise, and amend the current Acts relating to income tax, and to replace the Income Tax Act 1974 (Act No. 15 of 1974) and the Income Tax Rates Act 1974 (Act No. 16 of 1974) with effect from 1 January 2013. This Act was passed in 1 parliament sitting on the issuing of a Certificate of Urgency by the Clerk of the Legislative Assembly.

Tax Administration ACT 2012

The Tax Administration Act 2012 provides a common set of procedural rules applicable to the taxes that the Commissioner of Inland has responsibility to administer. The Act replaces the Income Tax Administration Act 1974. This Act was passed in 1 parliament sitting on the issuing of a Certificate of Urgency by the Clerk of the Legislative Assembly.

Commonwealth Maritime Boundaries and Ocean Governance Forum: 17—19 April 2012—

Marlborough House, London, UK

“The Commonwealth Maritime Boundaries and Ocean Governance Forum from 17 to 19 April 2012 was held at the Secretariat’s headquarters in Marlborough House, London, UK. The event brought together over 20 Commonwealth countries to explore the role of ocean governance in protecting and utilising ocean resources.

Commonwealth countries that attended the forum were: Antigua and Barbuda, The Bahamas, Bangladesh, Belize, Cameroon, Dominica, The Gambia, Grenada, Jamaica, Kiribati, Maldives, Mauritius, Namibia, Nauru, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Sri Lanka, Tanzania, Tuvalu and Vanuatu. Principal Legislative Drafter—Ms. Constance Tafua Rivers attended with Legal Consultant Sala Josephine Stowers of the Ministry of Natural Resources and Environment on behalf of Samoa.

Commonwealth Secretary-General Kamalesh Sharma addressed the delegates at the start of the conference, which is being held under the theme ‘Benefiting from the Ocean Economy’.

The forum will help to extend participation by member states in the Secretariat’s recently established ‘Oceans Governance’ programme, which aims to complement the work on maritime boundaries by advising member states on how to position themselves to benefit from marine resources by better managing ocean space.”



Pacific Appliance Labeling and Standards (PALS) Programme’s Work Plan and Implementation Workshop; Suva, Fiji: 11—13 April 2012

Ms. Loretta Vaa Teueli attended the above workshop in Fiji. The purpose of the workshop was to consultatively design with the National Coordinators the work plan for their respective countries. Samoa’s national coordinator for this programme is Mr. Henry Ah-Ching who was represented by Ms. Heremoni Supaia of the Ministry of Finance at the workshop.

The workshop was also an opportunity to ensure that PALS work plans and activities are consistent with the respective national energy roadmaps and policies and are complementary to other related national and regional effort on energy efficiency, for instance, ADB’s Promoting Energy Efficiency in the Pacific (Phase 2 Project).

The relevance of a legislative drafter attending a highly technical workshop was to gauge ideas on how a legislative framework will be adopted and set up in Samoa to cater for energy efficiency labeling of appliances. It was conducive in that countries that have already implemented similar legislation were able to provide insight into how Samoa can go about setting up its legislative framework. There is therefore possible amendments to legislation regulating this area.



*Principal Legislative Drafter Loretta Va'a Teueli (front row: 4th from the right)
PALS Workshop*

Cybercrime Legislation and Policy: Norfolk Island 17th—21st April 2012

The Attorney General's Office was invited to join a small working group meeting to finalise the regional Cybercrime Legislation and Policy in the Norfolk Island. This meeting was supported by the European Union, through their financial contribution; Pacific Island Telecommunication Association and the Pacific Island Forum Secretariat. This is part of the Capacity Building and ICT Policy, Regulatory and Legislative Frameworks support for the Pacific Island Countries (ICB4PAC) project which is coordinated by the International Telecommunication Union (ITU). The five days meeting was basically to go through the draft cybercrime legislation and policy that was drafted during the workshop which was held here in Samoa in August 2011.

This small working group consisted of 11 representatives from around the region, including Samoa, who was represented by Ms. Fetogi Vaai, Cook Island, Niue, Palau, Papua New Guinea and Tonga.

This working group reviewed draft regional model legislation and made changes before being sent out to all Pacific Island countries for their feedback with the hope that by July, Pacific countries will endorse this draft. The meeting was held back to back with the annual Pacific Island Telecommunication Association Conference. The main objectives are:

- to review comments received from countries on the skeleton cybercrime legislation and identify which comments are legislative and which are policy related;
- amend the draft skeleton legislation accordingly;
- to review comments from countries on the skeleton cybercrime policy;
- amend the draft skeleton cybercrime policy accordingly;
- agree on the final draft for the model cybercrime legislation and policy.

It was found and considered that adopting the commonwealth model law is not the best option because it may not address the relevant circumstances of each country. This was shown in the experience of Tonga which is the first of the Pacific Island countries to implement the cybercrime legislation based on the commonwealth model legislation where gaps were found in contrast to domestic legislation. Tonga is now looking at making changes to their law according to this model law regionally prepared and drafted. The five days meeting concluded with a final draft of the model cybercrime policy and legislation which will be circulated within the region and hopefully be regionally endorsed by the end of July.



State Solicitor Fetogi R. Vaai: 2nd from the left

Pacific Regional Roundtable on the Montreux Document on Private Military and Security Companies (PMSCs) Canberra, Australia 8—9 May 2012

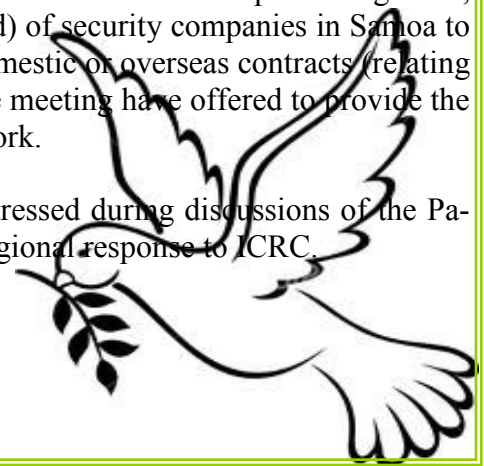
The above Roundtable Meeting took place in Canberra, Australia from 8-9 May 2012. The Roundtable was hosted jointly by the International Committee of the Red Cross (ICRC) and the Australian and Swiss governments.

By way of background, the Pacific Regional Roundtable is part of a series of regional meetings on PMSC and the Montreux Document organized by the Swiss government and others. The aim of the Roundtable was to share expertise and experience of PMSCs and their regulation in the Pacific.

Representatives were invited from different Pacific governments, and those who attended included representatives from Tonga, Solomon Islands, Papua New Guinea, Cook Islands, Australia, New Zealand and Switzerland. The Roundtable was a mixture of experts in the area as well as lawyers. During the Roundtables representatives from each government was invited to speak briefly on the national experiences of regulation of PMSC (in any context-domestic or international, in armed conflict or peacetime, or in relation to individuals from the respective countries joining PMSCs overseas).

Some recommendations included that a proper national legal framework is in place to govern, regulate and monitor the activities (whether armed or unarmed) of security companies in Samoa to cover potential involvement of local security companies in domestic or overseas contracts (relating to PMSCs). Other organisations represented at the Roundtable meeting have offered to provide the necessary documents to assist Samoa in drafting such framework.

A further recommendation would be for such issue to be addressed during discussions of the Pacific Islands Forum to create more awareness and provide a regional response to ICRC.



Senior State Solicitor Ms. Salote Peteru: 2nd row-2nd from the left



Professional placement - Political Governance and Security Programme of the Pacific Islands Forum Secretariat (PIFS) Suva; Fiji 30th Jan—30th August 2012

Nola Petelō Faasau, Senior State Solicitor (LDD), is currently undertaking an 8 months' professional placement with the Political Governance and Security Programme (PGSP) of the Pacific Islands Forum Secretariat (PIFS) in Suva, Fiji.

Her placement involves the following main tasks:

- provide legislative drafting assistance to Forum Island Countries (FICs) to advance national activities under the Nasonini and Honiara Declaration, as well as other priority areas under the Pacific Plan;
- facilitate legislative drafting assistance to FICs, including working with development partners to facilitate capacity building, focusing on continuing recruitment, retention and support of legislative drafters in the region;
- provide legal services in relation to corporate matters, including vetting Secretariat contracts and reviewing policies and procedures.

Nola undertakes this placement as 1 of 6 Pacific Island recipients of the 2011-2012 Greg Urwin Awards (GUA). By way of background, Greg Urwin was the Secretary General of the PIFS from 2003 until his passing in August 2008. Prior to his appointment at PIFS, Mr. Urwin had an esteemed career with the Australian Department of For-

eign Affairs and Trade where he held numerous senior diplomatic postings in the Pacific region. Mr. Urwin's capable and strategic leadership of PIFS led to many major achievements, including the establishment of the Pacific Plan as a platform for strengthened regional cooperation for the benefit of Pacific peoples.

In August 2008 at the Leaders' Forum in Niue, the Chair of the Pacific Leaders' Forum, President Toke Talagi of Niue, and then Australian Prime Minister, Mr Kevin Rudd, jointly announced the establishment of the Greg Urwin Awards to honour Mr. Urwin's memory. The Awards are funded by Australia and co-administered by the PIFS and the Pacific Leadership Programme in Suva. GUAs are annually available, upon application, to Pacific Islanders with the potential to become eminent leaders in their chosen field of excellence. GUAs provide financial and administrative support for scholars and professionals to undertake 3 – 6 months' placement with a regional organisation in the Pacific, including Australia and NZ, relevant to the recipient's development and leadership potential. Recipients are those with exemplary academic achievement and leadership experience in their field. The placement provides valuable experience and exposure to a region-wide canvass and helps recipients develop their leadership capacity in the Pacific.

OTHER EVENTS...



We will miss you Donald!!



**Moving onto greener pastures— Le’afa Donald Kerslake
With the Attorney General’s Office from January 2002—June 2012**



Former Assistant Attorney General Le’afa Donald Kerslake, has left the Attorney General’s Office (AGO) and whilst he was in charge of manning the Civil Division, Mr. Kerslake also did his fair share of legislative drafting. With a Professional Diploma in Legislative Drafting (PDLD), Mr. Kerslake assisted the Division with some legislative drafting tasks when he was able to do so.

Mr. Kerslake was with the AGO from January 2002 until June 2012 upon the coming to the end of his last contract. Mr. Kerslake’s invaluable experience benefited all who sought his assistance both within the Office and outside and his mentoring of young lawyers in the Office has under the Attorney General’s supervision been highly constructive. Mr Kerslake was one of the few remaining lawyers within the Office of vast and distinguished experience and the staff of the AGO is indeed sad to see him leave.

There is no doubt however, that whoever takes up Mr. Kerslake’s former duties will be able to fill the gap left behind, if not do more.

Faafetai Le’afa, ua malie le faatolotologatama, ua malie le papa faamaliegata, ua malie le papa-i-galagala, ua malie le lai to-i-va. Ia suluina pea ou ala i le upu o le tusi ma ia sana fa’au’u pea lou ulu i le suauu a le Agaga; ia taumasuasua lau ipu. O le Alii i lo tatou va.



USE OF SINGULAR "THEY" (CANADA)

Introduction

The use of the singular "they" is becoming more common not only in spoken but in written English and can prove to be useful to drafters in a legislative context to eliminate gender-specific language and heavy or awkward repetition of nouns.

Recommendations

1. Consider using the third-person pronouns "they", "their", "them", "themselves" or "theirs" to refer to a singular indefinite noun, to avoid the unnatural language that results from repeating the noun.
2. Do not use "they" to refer to a definite singular noun.
3. Ensure that the pronoun's antecedent is clear.

Background

Most dictionaries and grammars deal with the singular usage of "they" and its other grammatical forms ("their", "them", "themselves" or "theirs"). This usage is also reflected in the legislative practices of other jurisdictions.

In Practice

1. Consider using the third-person pronouns "they", "their", "them", "themselves" or "theirs" to refer to a singular indefinite noun, to avoid the unnatural language that results from repeating the noun. Examples of singular indefinite nouns are:

- o anyone/anybody
- o no one/nobody
- o everyone/everybody
- o person
- o every applicant
- o any officer
- o every judge
- o manufacturer
- o officer
- o taxpayer

2. Do not use "they" to refer to a definite singular noun. Examples of definite nouns are:

- o Minister
- o Commissioner
- o Solicitor General
- o Chief Electoral Officer
- o Receiver General
- o Attorney General

(Pronouns for definite nouns are discussed in the article on **Gender-neutral Language**.)

3. Ensure that the pronoun's antecedent is clear.

For example, "When an applicant notifies the other residents, they must lodge a section 12 notice within 14 days." The use of "they" in this sentence is ambiguous; it is not clear if the antecedent is "residents" or "applicant". In this case, use of

the pronoun is not advised and it would be better to repeat the noun "applicant", replace it with "he or she", or re-write the sentence to avoid the use of the pronoun altogether, as follows: "When notifying the other residents, an applicant must lodge a section 12 notice within 14 days".

Examples

Not using "their"

Using "their"

Subject to this Act, every person who is qualified as an elector is entitled to have the person's name included in the list of electors.

Subject to this Act, every person who is qualified as an elector is entitled to have **their** name included in the list of electors.

...that person has no other residential quarters that the person considers to be the person's residence.

...that person has no other residential quarters that **they** consider to be their residence.

Between the date of issue of the writ and polling day, each returning officer shall update the Register of Electors from the information that the returning officer obtains in the course of duty.

Between the date of issue of the writ and polling day, each returning officer shall update the Register of Electors from the information that **they** obtain in the course of duty.

Each revising agent shall take an oath in the prescribed form before beginning the revising agent's duties.

Each revising agent shall take an oath in the prescribed form before beginning **their** duties.

...the person against whom the objection is made, where that person wishes to present the person's position,...

...the person against whom the objection is made, where **they wish** to present **their** position,...

A person who knowingly makes a false or misleading statement, orally or in writing, relating to the person's qualification as an elector...

A person who knowingly makes a false or misleading statement, orally or in writing, relating to **their** qualification as an elector...

...whether those tasks are performed by that person or on that person's behalf.

...whether those tasks are performed by **them** or on their behalf.

The exporter of a device shall maintain, at the exporter's principal place of business in Canada, ...

The exporter of a device shall maintain, at **their** principal place of business in Canada, ...

Dictionaries

The Canadian Oxford Dictionary:

They: 4. disputed as a third person sing. indefinite pronoun meaning 'he or she'.

The use of *they* instead of 'he or she' is common in spoken English and increasingly so in written English, although still deplored by some people. It is particularly useful when the sex of the person is unspecified or unknown and the writer wishes to avoid the accusation of sexism that can arise from the use of *he*. Similarly, *their* can replace 'his' or 'his or her' and *themselves* 'himself' or 'himself or herself', e.g. *Everyone must provide their own lunch; Did anyone hurt themselves in the accident?*

The Shorter Oxford English Dictionary:

They: 2. Often used in reference to a singular noun made universal by every, any, no, etc., or applicable to either sex (= 'he or she')

Their: 3. Often used in relation to a singular noun or pronoun denoting a person, after each, every, either, neither, no one, everyone, etc. Also so used instead of 'his or her', when the gender is inconclusive or uncertain.

Themselves: 2. In concord with a singular pronoun or noun denoting a person, in cases where the meaning implies more than one, as when the noun is qualified by a distributive, or refers to either sex: = 'himself or herself'.

The New Shorter Oxford Dictionary of English:

They: 4. In relation to a singular noun or pronoun of undetermined gender: he or she.

Grammars and Style Guides

Webster's Dictionary of English Usage:

On pages 901 to 903, the authors provide quotations from great writers, from Austen, Chaucer, Shaw, Auden, Shakespeare and others, and go on to say:

"The examples here of the 'great ones' from Chaucer to the present are not lapses. They are uses following a normal pattern in English that was established four centuries before the 18th-century grammarians invented the solecism (whereby 'he' is to be used as the "gender-neutral" pronoun). The plural pronoun is one solution devised by native speakers of English to a grammatical problem inherent in that language -- and it is by no means the worst solution.

They, their, them have been used continuously in singular reference for about six centuries, and have been disparaged in such use for about two centuries.

Now the influence of social forces is making their use even more attractive."

Continued pg 8

Admission to the Supreme Court Bar



From far left: Sioa Atina'e Sioa, Sosefina Seiniorita Fa'amausili, Attorney General—Tuatagaloa Ming C. Leung Wai, Monique Emma Vaai, Salamo Carvin Salamo

Sioa Atina'e Sioa a member of the Division, was admitted along with Mr. Salamo Carven Salamo, Ms. Sosefina Seinorita Faamausili and Monique Emma Vaai to the bar of the Supreme Court by His Honor Chief Justice Tiavasu'e Falefatu Sapolu.



Sioa Atina'e Sioa and Monique Emma Vaai

*Ua fa'amalo fai o le faiva,
ua se togi le seu lagatila,
ua e faapulea i le tualima,
Malalo! "Fai o le faiva"*



Members of the Division with newly admitted barrister and solicitor of the Supreme Court—Sioa Atina'e Sioa

Congratulations!

A Comprehensive Grammar of the English Language:
Masculine and feminine gender (cf 6.9):

Difficulties of usage arise, however, because English has no sex-neutral 3rd person singular pronoun. Consequently, the plural pronoun *they* is often used informally in defiance of strict number concord, in coreference with the indefinite pronouns *everybody*; *someone*, *somebody*; *anyone*, *anybody*; *no one*, *nobody*.

Pronoun reference (cf 10.50):

The pronoun *they* is commonly used as a 3rd person singular pronoun that is neutral between masculine and feminine. It is a convenient means of avoiding the dilemma of whether to use the *he* or *she* form. At one time restricted to informal usage, it is now increasingly accepted even in formal usage, especially in AmE.

The Cambridge Grammar of the English Language:

Singular *they* (p. 426)

They is commonly used with a singular antecedent, as in *Someone has left their umbrella behind*. As such, it fills a gap in the gender system of the core personal pronouns by virtue of being neutral as to sex.

(e) Singular *they* (pp. 493-494)

The use of *they* with a singular antecedent goes back to the Middle English, and in spite of criticism since the earliest prescriptive grammars it has continued to be very common in informal style. In recent years it has gained greater acceptance in other styles as the use of purportedly sex-neutral *he* has declined. It is particularly common with such antecedents as *everyone*, *someone*, *no one*; indeed its use in examples like *No one felt that they had been misled* is so widespread that it can probably be regarded as stylistically neutral. Somewhat more restricted is its use with antecedents containing common nouns as head... The view taken here is that *they*, like *you*, can be either plural or singular.

"Language is perhaps the greatest of all human inventions. Most people think of it merely as the means of communication, but it is much more than that; it is the medium of thought.."

Glanville Williams: Language and the Law

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, Senior State Solicitor
Fetogi R. Vaai, State Solicitor
Martha Papalii, Law Clerk
Leitu Moananu, Law Clerk
Sioa.Sioa, Law Clerk
Makareta Vaelua Senior Bills Officer
Losa Kelekolio, Senior Legal Secretary

Upcoming Events.

- 23rd to 25th July 2012—Legislative Drafters Forum
- 25th—27th ICB4PAC Working Group for endorsement of Cybercrime Legislation and Policy
- Parliament sitting on Friday 20th July to hear nominations for Head of State
- Legislative Drafting Secondment with Office of the Parliamentary Counsel—New Zealand

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.