



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

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EDITORS' NOTE

Talofa lava and welcome to the first ever Combined Issue (1 & 2) of the Legislative Drafting Update Newsletter, covering events involving the Legislative Drafting Division (LDD) from January to June 2011.

As previous, this Combined Issue provides an update of laws passed by, and before, Parliament, as well as Acts and regulations which have commenced. Reports are also provided of meetings, trainings, workshops and other activities involving members of the LDD.

This Issue also covers the dissolution of the 14th, and opening of the 15th, Parliament of Samoa, as both events impacted greatly on our work (e.g.

providing numerous legal advices and interpretations on, among other things, the electoral matters, the dissolution of boards of public bodies, and conventions relating to caretaker government).

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Editors:

Fetogi R. Vaai and Salote Peteru
(State Solicitors)

DISSOLUTION OF THE 14th PARLIAMENT OF SAMOA (2006 - 2011)

- 25 January 2011, Mulinu'u -

The five year term (2006 to 2011) of the Parliament of Samoa ended when Parliament was dissolved by *His Highness, O le Ao o le Malo* on 25th January 2011. The 14th Parliament consisted of 49 representatives, with four of its members as females (this being the highest number of females in Parliament, since the first Parliament in 1962). Another record set by the 14th Parliament includes having had the highest number of laws being passed and enacted (namely, 139 Acts and 209 subsidiary legislation). The same Parliament has been noted by the Head of State as "the most productive and successful" in making history in Samoa (e.g. in relation to infrastructure, etc.). In closing, the Head of State acknowledged the challenges faced in pursuit of the success, as "*making laws and governing policies that can best balance the competing realities of living according to the faa Samoa on the one hand, and on the other, the principles of equality and universal suffrage, the drivers of a centralized government, a monetary-based global economy and ideals of scientific professionalism.*".

PARLIAMENTARY SITTINGS IN JANUARY, MAY AND JUNE 2011

MONTH	Monday (Week beginning)	Tuesday	Wednesday	Thursday	Friday
JANUARY	24	25	-	-	-
MAY	-	31	-	-	-
JUNE	20	21	22	23	24

UPDATE OF LAWS

BILLS PASSED IN JANUARY AND JUNE 2011	
<u>Bills passed in January Parliament session:</u>	
1. Supplementary Appropriation Act (No.1) 2010/2011	
2. Public Records Act 2011	
3. Forestry Management Act 2011	
<u>Bills passed in June Parliament session:</u>	
1. Supplementary Appropriation Act (No.2) 2010/2011	
2. Appropriation Act 2011/2012	
3. International Date Line Act 2011	
<i>Remaining Parliamentary Sittings will be held on weeks beginning:</i>	
1. 9 August 2011	
2. 3 October 2011	
3. 19 December 2011	

BILLS BEFORE PARLIAMENT UP TO 30 JUNE 2011	
TITLE	STATUS
Land and Titles Amendment Bill 2010	Referred to Select Committee (since June 2010)
Liquor Bill 2011	2nd Reading and referred to Select Committee
Stamp Duty Amendment Bill 2011	2nd Reading and referred to Select Committee
Airport Authority Bill 2011	To be tabled in August Parliament session
Limitation Amendment Bill 2011	To be tabled in August Parliament session
Public Bodies (Performance and Accountability) Amendment Bill 2011	To be tabled in August Parliament session
Cluster Munitions Prohibition Bill 2011	To be tabled in August Parliament session

COMMENCED ACTS	
TITLE	COMMENCEMENT DATE
Supplementary Appropriation Act (No.1) 2010/2011, Public Records Act 2011 and Forestry Management Act 2011	28 January 2011 (date of assent)
Supplementary Appropriation Act (No.2) 2010/2011 and Appropriation Act 2011/2012	28 June 2011 (date of assent)
International Date Line Act 2011	Section 5(3) commenced on 28 June 2011 (date of assent), and the rest of the Act commences at 12 midnight on 29 December 2011

COMMENCED SUBSIDIARY LEGISLATION

TITLE	COMMENCEMENT DATE	TITLE	COMMENCEMENT DATE
Notice of Charge on Base Tariff for the Supply of Electricity (No.1) 2011	1 January 2011	Notice of Charge on Base Tariff for the Supply of Electricity (No.5) 2011	1 May 2011
General Price Order (No.1) 2011	10 January 2011	Notice of Charge on Base Tariff for the Supply of Electricity (No.6) 2011	1 June 2011
Notice of Charge on Base Tariff for the Supply of Electricity (No.2) 2011	1 February 2011	Notice of Charge on Base Tariff for the Supply of Electricity (No.7) 2011	1 July 2011
Notice of Charge on Base Tariff for the Supply of Electricity (No.3) 2011	1 March 2011	Notice of Charge on Base Tariff for the Supply of Electricity (No.8) 2011	1 August 2011
Notice of Charge on Base Tariff for the Supply of Electricity (No.4) 2011	1 April 2011	General Price Order (No.3) 2011	15 July 2011
General Price Order (No.2) 2011	11 April 2011		

SUMMARIES OF LAWS PASSED

SUPPLEMENTARY APPROPRIATION ACT (No.1) 2010/2011

This Act contains the First Supplementary Appropriation for the 2010/2011 financial year. It authorises the issuing of the grant and appropriation of **\$13,165,804** out of the Treasury Fund to be separately appropriated according to, the outputs or sub-outputs to be delivered by individual Ministry/Department, and the outputs provided by third parties and transactions on behalf of the State, in the manner specified in the First Schedule of this Act. The Act further provides for the reduction of **\$3,589,300** from amounts earlier appropriated for particular departments and Ministries in the Second Schedule and for such funds to be re-appropriated in the manner set out in the First Schedule.

SUPPLEMENTARY APPROPRIATION ACT (No .2) 2010/2011

This Act contains the Second Supplementary Appropriation for the 2010/2011 financial year. It authorises the issuing of the grant and appropriation of **\$8,307,655** out of the Treasury Fund to be separately appropriated according to, the outputs and sub-outputs to be delivered by individual Ministry/Department, and the outputs provided by third parties and transactions on behalf of the State in the manner specified in the First Schedule to this Act. The Act further provides for the reduction of **\$2,695,972** from amounts earlier appropriated for particular departments and Ministries in the Second Schedule and for such funds to be re-appropriated in the manner set out in the First Schedule.

APPROPRIATION ACT 2011/2012

This Act provides the Appropriation for the 2011/2012 financial year. It authorises the issuing of certain grants and appropriations out of the Treasury Fund and the Public Trustee's Account. The grant and appropriation of **\$430,950,822** is approved to be issued out of the Treasury Fund for outputs and sub-outputs delivered by Ministries/Departments, and outputs delivered by third parties and transactions undertaken on behalf of the State for the financial year ending on 30 June 2012. The grant and appropriation of **\$576,003** is approved to be issued out of the Public Trustee's Account for the use of the Public Trust Office (outputs and sub-outputs, salaries and other outgoings, and charges and expenses lawfully incurred or payable in administering the Public Trust Office). Another grant and appropriation of **\$12,928,525** is also issued out of the Treasury Fund for Unforeseen Expenditures.

PUBLIC RECORDS ACT 2011

This Act provides for the custody, control, management, preservation and use of public records. It also provides for the establishment, operation and management of the National Archivist and the National Archives and Records Authority ("the Authority") which is responsible for the management of the public records. Importantly, the Act requires that all Chief Executive Officers of the respective public entities, must take reasonable measures, firstly, to ensure that those public entities comply with the requirements of the Act, and secondly, to create and maintain complete and accurate records of activities in of those public entities, in accordance with the codes of best practice established under this Act. These codes of best practice are to be used by all public entities for the proper management, development, transfer and disposal of public records. Moreover, the Authority is entitled to have access to public records of any public entity, except where the Attorney General or the Minister certifies that such access is deferred because the records contain confidential or privileged information or information that may adversely affect the national interest or security. For those same reasons, the deposit of public records (which are 25 years old or more) with the Authority may be deferred, and the provision of access to public records by the Authority to any person is limited and subject to restrictions. Offences and penalties are also created under the Act. However, a person having the authority to act on behalf of a public entity (which has, under its authority records that are required to be kept secret under this Act) does not commit an offence if that person refuses to submit such records to the Authority or to dispose of such records where it is reasonable to do so for Samoa's national interest or security.

SUMMARIES OF LAWS PASSED (Cont'd...)

FORESTRY MANAGEMENT ACT 2011

The Forestry Management Act 2011 provides for the effective and sustainable management of Samoa's forestry resources. It also replaces the Forests Act 1967, the Forests Regulations 1969 and certain provisions of the Alienation of Customary Land Act 1965. This new Act puts into place a legal framework for forestry in Samoa, based on principles of forestry management, and not land tenure. It is also intended to meet the needs of a modern, environmentally sustainable Samoan forestry sector.

Further, the Bill aims:

- to restructure the relationships between landowners and forestry operators to give landowners more control over forestry operations on their land and more control over the profits from those operations;
- to appropriately address unsustainable logging of indigenous forests for commercial purposes (a key environmental issue in Samoa) through native forest conservation initiatives and incentives;
- to replace the system of forestry royalties with natural resource fees, as well as updating and clarifying how the fees are to operate within the forestry sector;
- to promote and support the establishment of commercial plantation and agro-forestry enterprise to provide opportunities for employment and investment, and facilitating sustainable rural income generation; and
- to remove legislative disincentives or obstacles to plantation and farm agro-forestry for all key stakeholders, farmers and millers through to end user markets.

INTERNATIONAL DATE LINE ACT 2011

This Act introduces the change to standard time in Samoa and to the position of the International Date Line (IDL). This change will enable Samoa to be on the same side of the IDL as New Zealand (NZ) and therefore will share the same day as NZ. This will make for ease of business transactions and international travel between Samoa and its other major trading partners. As a result of the change in day, Samoa will

lose Friday 30th December 2011, which means we will be waking up to Saturday 31 December 2011 after Thursday 29 December 2011. The Act makes proper provision and consequences for the day lost. For example:

- for any deadline or time limit in any statute based on a number of days which falls on the day which is lost, the next consecutive day shall be counted as the day lost.
- for any statute, regulation, decision of the Court or other instrument specifying a period of time within which an action must take place, that period expires on the next day or the next business day

whichever is relevant.

- where under any instrument of loan it is required to calculate the interest on a daily basis, there is no interest calculated for the day lost;
- every employee must be paid for the normal or usual hours on the day lost, as if that employee would normally have worked on that day;
- after the commencement of the Act, all maps, charts and atlases prepared in Samoa or for the Government of Samoa must accurately depict the International Date Line at 171 degrees longitude west of Greenwich.



EVENTS FROM JANUARY TO JUNE 2011

SAMOA NATIONAL CONSULTATION ON ADVOCACY STRATEGIES FOR ADVANCING LEGISLATIVE CHANGE TO ADDRESS VIOLENCE AGAINST WOMEN

- 18 - 21 January 2011, Apia, Samoa -

The above Consultation took place from 18th - 21st January 2011 in Apia, and our Office was invited by the organizers (the Ministry of Women Community and Social Development (MWCSO) and the Pacific Regional Rights Resource Team (RRRT)) to present on the Family Safety Bill. In that regard, Principal Legislative Drafter, Loretta Teueli presented on the substance of the Bill and how it relates to the issues raised in relation to the protection of domestic violence victims. Other participants were from non-government organisations in Samoa and government stakeholders. This Consultation took place under the 3 year project awarded through the UN Trust Fund for Violence Against Women (nationally known as CLVAW), and housed under MWCSO. The 6 priority countries for this project are Tonga, Samoa, Tuvalu, Vanuatu, Kiribati, and Solomon Islands, and the 3 countries included in sub-regional activities are Nauru, the Federated States of Micronesia, and Cook Islands.

The main focuses of the Consultation were on issues arising from domestic and gender based violence, including: the review of existing laws (relating to general assault) and other discriminatory provisions and practices (relating to violence against women) in Samoa, as well as developing practical strategies for legislative changes (relating to violence against women); understanding the concept of “violence against women” and the discriminatory elements of the law; discussion of past, current and proposed legislative initiatives, challenges and strategies to address violence against women; enhancing capacity of the participants to effectively challenging discriminatory violence against women and laws and practices in the respective countries, using a human rights based approach; enhancing capacity of advocates to apply international covenants and providing precedents to develop on legislative changes (relating to violence against women); and discussion, review and endorsement of a 3 year legislative strategy and framework. Overall, the 4 day Consultation aimed at improving legislation to protect women, through the development of appropriate policy papers, and researching and examining legislation that address violence against women and family law.

CYBER LEGISLATION WORKSHOP FOR PACIFIC ISLAND STATES

- 2 - 4 March 2011, Port Vila, Vanuatu -

Senior Legislative Drafter, Nola Petelō Faasau, attended the above Workshop, which was hosted and funded by the ITU (International Telecommunication Union) with the support of the Government of Vanuatu and funding assistance from the European Union. The Workshop took place from 2nd - 4th March 2011, in Port Vila, Vanuatu. The Workshop was the first of its kind, aiming at addressing issues relating to the drafting and finalising of national policies and legislation on cyber crimes in the Pacific. The main objective of the workshop was to develop and promote capacity building in areas related to ICT policies, and regulatory and legislative frameworks for the Pacific Islands, through a range of targeted training, education and knowledge sharing measures. Part of this project involves the availability of workshops focusing on cyber security in the Pacific region. The Project also covered a research conducted by Professor Dr. Marco Gercke (Director of the Cyber Crime Research Institute, in Germany).

Professor Gercke’s research involves an assessment and review of the frameworks (policies and legislation) and practices relating to cyber crime legislation in 15 Pacific Island Countries (i.e. Cook Islands, Fiji, Kiribati, Republic of Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu, and Vanuatu). The findings of Professor Gercke’s research was the main focus of the Workshop, which was largely conducted by Professor Gercke himself. The Workshop addressed issues relating to the introduction of the term “cyber crime”, its development, phenomena and challenges of drafting cyber crime legislation, the types of cyber crimes, challenges to enforcement and investigation, and regional and international approaches to addressing cyber crime. One relevant matter provided by this assessment (and which was also part of Professor Gercke’s presentation) was the identification of the main types of cyber crime offences which are: (i) child pornography, (ii) illegal access, hacking, breaking into a PC without right, (iii) illegal remaining (continuing to use a computer system after the permission expired), (iv) illegal interception, (v) illegal data interference, (vi) illegal system interference, (vii) copyright violations, (viii) data theft, (ix) identity theft and (x) SPAM. The assessment report also found that Samoa is one of the only two Pacific Island Countries to have legislation showing the strongest similarities to regional and international standards with regards to substantive criminal law. However, Samoa’s provisions regarding procedural law have limited application, and are provided by the Telecommunications Act 2005

(Continued on next page...)

EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)

Professor Gercke also presented on ways to combating cyber crime. This follows special attention of investigators in the Pacific Islands to the challenges, one mainly being, the availability of resources and enforcement.

At the end of the workshop, ITU sought interested Pacific Island Countries to host an upcoming workshop of similar nature to follow up on the development of cyber crime legislation in the Pacific. It was highly recommended that Samoa should host the next workshop.

As such, Nola Faasau (along with Fetogi Vaai) has worked closely with relevant Ministries and Authorities (e.g. MCIT, Office of the Regulator, etc.) to bringing about the next workshop in Samoa.



“the need for digital evidence is not confined to obvious cyber crime events such as hacking , fraud and denial of service attacks...its also required when transactions are disputed, in employees disputes, and almost all forms of non-cyber crime, including murder, forgery, industrial espionage and terrorism” (Professor Peter Sommer, Legal expert in criminal and civil digital evidence and computer security: London School of Economics and Political Science)

BUSINESS REGISTRIES IN THE PACIFIC—STUDY TOUR & WORKSHOP

- 4 - 5 March 2011, Auckland New Zealand -

The above Study Tour and Workshop was funded and organized by the Asian Development Bank in conjunction with the Companies Office of the New Zealand Ministry of Economic Development. It was held from 4th - 5th March 2011 in Auckland, New Zealand, and attended by Parliamentary Counsel, Papalii Malietau.

The Study Tour and Workshop were designed for and targeted at senior government officials and private sector representatives of Pacific Island Countries (PICs) undertaking, or planning to undertake, reforms of their business laws and registries, including secured transactions (personal property securities) and company registries. The participants were expected to present on the status quo and reform plans of the business registries in their respective countries. The Study Tour focused on the NZ Companies Office (internationally recognised for its effectiveness and the efficiency of operations). The workshop covered: (i) the need and benefits of business law and registry reform in PICs; (ii) discussion of reform progress and issues in jurisdictions of participating countries; and (iii) identification and discussion of reform options and recommendations to optimise reform outcomes.

EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)



The Parliament
of Samoa

SWEARING IN & OPENING, OF THE 15th PARLIAMENT OF SAMOA

- 18 March 2011 and 31 May 2011, Mulinu'u -

Following the swearing in of Members, and the announcement of Cabinet Ministers on Friday 18th March 2011, *His Highness, le Ao o le Malo* officially opened the 15th Parliament of Samoa on 31 May 2011. The new Parliament will serve in the next 5 years (2011-2016), with 49 representatives (including 2 females, as opposed to the 4 females in the last term of Parliament).

PACIFIC REGIONAL WORKSHOP ON CYBERCRIME LEGISLATION:

"Strengthening cyber crime legislation in the Pacific"

- 27 - 29 April 2011, Nuku'alofa, Tonga -

Fetogi Vaai (State Solicitor) attended the Pacific Cyber Crime Legislation Workshop which was held from 27th - 29th April 2011, in Nuku'alofa, Tonga. The Workshop was organised by the Secretariat of the Pacific Community (SPC), the Australian Attorney General's Department (AAGD) and the Council of Europe (CoE), in response to the Tonga Declaration made by officials at the Pacific Regional Information and Communication Technology Meeting on 18 June 2010. Participants included senior government officials who dealt with, legislation and policy relating to cyber crime and law enforcement, ICT policies, and/or cyber security. By way of background there is a great need for countries to have proper and effective measures in place, to protect citizens from the threats imposed by cyber crime and attacks experienced by other countries around the world. Most island states of the Pacific region are not sufficiently equipped to protect their societies against cyber crime through criminal law nor are they in a position to engage in efficient international cooperation in this respect. The Budapest Convention on Cyber Crime (the international standard of reference) of the CoE allows countries to prepare sound and effective legislation aimed at criminalizing conduct, providing criminal justice authorities with means to investigate cyber crime and secure volatile evidence and to engage in efficient international cooperation.

The objective of the Workshop was to support Pacific Islands nations in strengthening cyber crime legislation in their respective countries in line with international standards. Participants were expected to: carry out an analysis of their current and draft laws on cyber crime against the standards of the Budapest Convention, identify steps to be taken to further strengthen domestic legislation, have a better understanding on how to draft legislation on cyber crime using the Budapest Convention as a guideline, and identify further needs in view of building capacities to meet the challenge of cyber crime. Participants were also expected to provide and present on, their respective country profile with recommendations and plan of action regarding institution building and other measures during the workshop.



EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)

REGIONAL TRAINING ON THE LEGAL IMPLEMENTATION OF THE BALLAST WATER MANAGEMENT CONVENTION (BWC)

- 16 - 18 May 2011, Suva, Fiji -

Principal Legislative Drafter, Loretta Teueli, attended the above Training which was held from 16th - 18th May 2011, in Suva, Fiji. The Training was funded and organized by SPREP. It looked at legal ways to implementing, monitoring, enforcing and complying with, the provisions of the BWC. Partly, the focus was on a model legislation prepared by the SPREP for Ballast Water Management developed specifically for the South Pacific.

For Samoa, this Training helps prepare for any future compliance issues that may arise, particularly if we intend to later ratify the BWC. As drafters, the Training has been an advantage, as it will assist our Office in ensuring that laws drafted for Samoa, and model legislation introduced in the South Pacific, are sound and practical when applied to Samoa.

APPLYING HUMAN RIGHTS BASED APPROACH TO LAW REFORM (TRAINING)

- 23 - 27 May 2011, Apia, Samoa -

Parliamentary Counsel and State Solicitors (Fetogi Vaai and Salote Peteru) along with other solicitors from our Office attended the above Training which was organised by the Samoa Law Reform Commission, MWCSO and RRRT. The Training took place from 23rd - 27th May 2011 in Apia, Samoa. Participants included government and private lawyers, as well as NGO representatives. The keynote speech was given by the Attorney General, followed by group discussions and exercises. Topics included: the sources of human rights laws (conventions, customary international law, case law precedents); applying principles of the rights based approach and law reform; human rights analysis of legislation; and human rights law reform issues that need to be addressed in Samoa. The Training focused on laws that Samoa needs to comply with in relation to human rights, as well as drafting of laws from a gender equality perspective.

UNITED NATIONS HUMAN RIGHTS COMMITTEE MEETING

- 9 - 11 May 2011, Geneva, Switzerland -

Parliamentary Counsel, Papalii Malietau Malietoa (along with Hon. Fonotoe Pierre Lauofo (Deputy Prime Minister), Leituala Kuiniselani Toelupe Tago (Chief Executive Officer of MWCSO), and Faalavaau Perina Sila of the Ministry of Foreign Affairs and Trade) attended the above meeting in May 2011, to present the National Report on progress of human rights and related issues in Samoa.

FORUM REGIONAL SECURITY MEETING

- 1 - 2 June 2011, Suva, Fiji -

Nola Petelō Faasau (Senior Legislative Drafter) attended the above Meeting which was held from 1st - 2nd June 2011, in Suva, Fiji. The meeting was funded and organised by the Pacific Islands Forum Secretariat (PIFS). Samoa was invited to present on the progress of its activities regarding criminal deportees, and Mrs. Faasau carried this through, on behalf of the Attorney General and the Samoa Returnees Charitable Trust.

Mrs Faasau's presentation assisted members at the meeting in advancing possible initiatives modeled around the Samoan experience. The presentation covered the experience and progress made by the Samoan Government in relation to managing criminal deportees in Samoa, as well as the challenges and areas that Samoa needs support with to better progress with this matter.

In the opening of her presentation, Mrs. Faasau provided a background of the criminal deportees situation in Samoa, highlighting that the Samoan government recognised the issue as an emerging law enforcement issue in Samoa. This issue is evident in Samoa in 3 cases:

- (I) in a Criminal Deportees Project undertaken by PIFS in 2008 (highlighting 3 main issues faced by Pacific in relation to criminal deportees: (i) the apparent disconnect within Pacific Island governments in managing criminal deportees; (ii) the stigmatization of criminal deportees by communities and societies; and (iii) the lack of resources provided for your youth/community services such as counseling and rehabilitation programs);
- (II) the occurrence of the first armed Westpac Bank robbery, involving 2 criminal deportees, in Samoa in April 2010; and
- (III) UNESCO's 'Return(ed) to Paradise: National Workshop on Deportees to Samoa' (the first national workshop to address issues faced by deportees (overseas Samoans who were returned to Samoa because they committed criminal offences in overseas countries). The Workshop consisted of a number of stakeholders from both government and non-government offices to discuss

EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)

ernment and non-government offices to discuss and find ways and means by which to address the relevant issues to achieve adequate reintegration and resettlement of deportees. The workshop presented a study made by UNESCO regarding issues faced by deportees to Samoa and Tonga. Six deportees were also present to represent the population of deportees in Samoa and present issues which they faced and how they have reintegrated into the Samoan society. All six deportees were deported between 2000 and 2007 and all have settled well with their own jobs and families.

Mrs. Faasau's presentation further noted that an estimate of 124 criminal deportees live in Samoa (not including those who may be included in missing and withheld data (UNESCO, 2010)). Also, according to the Ministry of Police and Prison Intelligence Unit, "approximately 4 - 6 criminal deportees are arriving each month", and without the necessary measures to provide support for the reintegration and resettlement of deportees into Samoan society, there is a greater concern that there may be an increase in crime and/or anti-social behaviour.

From a human rights perspective, the Samoan government believes in enabling the deportees to become responsible and contributing members of the Samoan community, by providing them (deportees) support at arrival, and resettlement, in Samoa. Such approach by the Samoan government is, from a security perspective, believed to help also in preventing the development of a cultural underclass linked to transnational criminal organisations and other criminal activity.

At the end of the presentation, Mrs. Faasau provided a layout of Samoa's Criminal Deportees Taskforce as well as the Samoa Returnees Charitable Trust, recently set up to oversee and manage the work required to resettle and reintegrate criminal deportees in Samoa.

4-WEEKS LEGISLATIVE DRAFTING COURSE

INSTITUTE OF APPLIED LEGAL STUDIES , UNIVERSITY OF LONDON

- 6 June 2011 - 1 July 2011, London, United Kingdom -

Nola Petelō Faasau (Senior Legislative Drafter) attended the above course at the University of London in the United Kingdom, for 4 weeks from 6 June 2011 to 1 July 2011. Those teaching the Course included various experienced lecturers, professors and lawyers from around the world, specialising in legislative drafting. The topics covered include: ethics and legislative drafting, drafting and the legislative process, clarity and ambiguity in drafting, drafting and good governance, the legislative sentence, drafting and the Constitution, drafting and human rights (judicial review), substantive and administrative provisions, delegated legislation and improving the law (to assist the reader).

The Course aimed at empowering our national legislative drafters to apply best international drafting practices to our legal system to

own political, cultural, and social problems better understood national drafters. It also promotes best practices in statutory drafting and modern techniques with on effective and friendly legislative drafting. The Course further exposes participants to a variety of drafting styles and lecturers with vast experience in the field of legislative



reflect our cultural, and which are by our own. It also promotes in and encourages drafting emphasis in user-tion. The exposes the variety of professional experiences in legislative

drafting. This allowed the participants to select the elements that best suit their national laws and their own traditions, cultures and jurisprudence. It also provided the participants with more updated and developed best international drafting practices to assist with Samoa's current practices and legislative drafting requirements.

Through Nola's experience, our Office can further enhance and develop on the basic skills of legislative drafting. The Course (like any other alike) also greatly assists Samoa's drafting capacity. It is important to note, that participation in the Course contributes to developing our skills and could lessen the burden of seeking and funding consult-

(Continued on next page....)

EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)

ants to draft our laws as over the years, our Legislative Drafting Division (LDD) have had to review and modify draft laws provided by Consultants (who are hired for their expertise and hope that they will assist our legislative drafters) that do not comply with our drafting requirements nor do they meet the most basic technical assistance and quality tests.

Large amounts of time and financial resources of our Office have been committed to the drafting of legislative reforms, and in too many cases the quality of

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work of the legislative drafters of our Office.

For the future of legislative drafting in Samoa (and the Pacific)

mended, as it educates us and develops our legislative drafting

best draft or reform our laws, as well as enabling us to better utilize our scarce resources.

The 4-weeks course ended with a reception and the awarding of certificates to the participants.



committed to their prepara-

All too often the exper-

not been evident and the

load of the LDD has

added to by deficient

The fact that Samoa has

joys pre-eminent posi-

reputation in the South

region in the context of

tive reform reflects, in a

large measure, the efforts

this Course is recom-

skills and capacity, how to

IMO INTERNATIONAL MARITIME LAW PROGRAMME

- 13 September 2010 - 12 May 2011, IMO International Maritime Law Institute, Malta -



Constance Tafua-Rivers (Senior Legislative Drafter) qualified as one of the candidates to undertake a Master of Laws in International Maritime Law from 13 September 2010 – to 12 May 2011 at the IMO International Maritime Law Institute ('the Institute'), in Malta. The LLM programme consists of post-graduate education in all areas of international maritime law, including law of the sea, marine environmental law and shipping law. The course is mainly addressed to lawyers, legal advisers, judges and legal draftsmen and women whose duties encompass maritime issues and who are seeking specialization. It is also offered to law graduates of any country who intend to pursue a legal career in the field of maritime law. The course was undertaken in a multicultural environment and delivered by renowned professors, and other staff of the Institute and eminent visiting fellows (who are practitioners and academics of international repute in various fields of maritime law). The Institute is a world recognized centre for

EVENTS FROM JANUARY TO JUNE 2011(Cont'd...)

the training of law graduates in international maritime law. As part of the LLM programme, students are provided with high-level facilities for advanced training, study and research in international maritime law. The programme also focused on legislative drafting techniques designed to assist participants in the process of incorporating international treaty rules into domestic law. This programme has been beneficial for Constance and our Office, as developing countries (such as Samoa) need well-trained legal personnel with specialization in maritime and shipping law, in order to maintain up-to-date legislative regime and to keep it in line with the changes in international maritime law and the latest developments in marine technology and shipping practices. The programme also provided the expertise and skills in the preparation and drafting of legislative instruments and the necessary subsidiary legislation at State and industry levels. Other than the need of a good maritime law regime, Constance's completion of her study has also added to the few Samoan legal personnel who are skilled to oversee, review and advise on maritime law and issues.



“CHALLENGES FACED BY LEGISLATIVE DRAFTERS IN SAMOA AND OTHER USP MEMBER COUNTRIES”

(Master of Laws, with a focus on legislative drafting)

- University of the South Pacific -



Nola Petelō Faasau (Senior Legislative Drafter) graduated with her LLM on 8 April 2011 from the University of the South Pacific (USP). Nola, who is of Tongan descent, is the first USP LLM graduate from Samoa or Tonga. The highlight of Nola's studies was her thesis, which is titled *“Challenges faced by legislative drafters in Samoa and other USP member countries”*, which advocates the importance of the role of the legislative drafter in Pacific legal systems. She was supervised by the recent former Head of School for the USP School of Law, Professor Peter MacFarlane. The purpose of her thesis was to identify and record an update on the challenges to legislative drafting in USP member countries. The study is focused on Samoa but reference is made to the USP member countries as a whole in order to reflect the standard of legislative drafting in the South Pacific. Because of lack of information on legislative drafting in the Pacific, her research was undertaken with the assistance of legislative drafters and other lawyers from Samoa and the region, whom she interviewed and obtained assistance via email. Her research targeted lawyers who undertook daily legislative drafting work, including Parliamentary Counsel, legislative drafting advisors and various other state law drafters. Her own experience as a young legislative drafter is also reflected in this research. The outcomes show that whereas legislative drafting as a specialised skill is recog-

nised by Pacific governments and interests have grown in pursuing legislative drafting as a career, the challenges faced by legislative drafters in the Pacific are commonly more diverse and complex. Her thesis discussed 5 main challenges faced by legislative drafters. These are: (1) keeping up to date with best drafting practices; (2) poor policy instructions; (3) the shortage of qualified and experienced legislative drafters; (4) drafting in the international context; and (5) the domestication of precedent laws including regional model laws. In relation to the first challenge, Nola's paper advocates that a legislative drafter's role is first and foremost technical in nature. Leaving aside the substance of the law or what a law should be about (as these are largely policy matters), a legislative drafter will mainly focus on how to word and frame each provision to minimise any dispute regarding it (unless a Court's discretion is required to further interpret or determine the provision). Because the skill of legislative drafting develops all the time, Pacific drafters need to continually develop in line with best drafting standards and requirements. As regards the second challenge, she argues that to draft effective legislation, it cannot be stressed enough how important it is for a legislative drafter to understand the policy background behind the law. Only then can a legislative drafter undertake his or her job efficiently. In other words, the effective translation of policy into a legislative framework can only be done if there are clear instructions from the policy maker. The third challenge discusses the need to draw more lawyers into the legislative drafting profession. The fourth and fifth challenges discuss the various difficulties of translating international conventions and other such documents into national legislation. In addition to analysing these challenges, Nola's thesis offers recommendations to combating them.

Copies of her thesis are deposited with the various USP libraries in Suva, Vanuatu and Alafua Campus.

OTHER EVENTS FROM JANUARY TO JUNE 2011

COMPLETION & RELEASE OF THE CONSOLIDATION OF LAWS PROJECT 2010

The Consolidation of Laws for 2010 which commenced in the first week of November 2010 was completed and released in March 2011.

ANNUAL JUDICIARY PRAYER SERVICE

- 14 January 2011, Mulinu'u, Apia -

The Judiciary held its annual judiciary prayer service at 9am at Mulinu'u to start the year 2011. The event was held at the new Court House, followed by light refreshment organised by the Ministry of Justice & Courts Administration.

ADMISSION TO THE BAR

- Mulinu'u, Apia,
17 March 2011 -

Regina Pereira (Criminal Prosecutions Divisions) was sworn in on 17 March 2011 by His Honour Chief Justice Patu F. M. Sapolu. The Attorney General moved the admission, which was supported by the Secretary of the Law Society.

UPCOMING EVENTS:

- (1) Pacific Young Lawyers Forum & Launch of the South Pacific Lawyers' Association (10 July 2011, Sydney)
- (2) Sub-regional Consultation on advancing Legislative Change on Violence against Women (25 - 29 July, Fiji)
- (3) Pacific Islands Advanced Art 76 & Maritime Development Workshop (18 - 22 July 2011, Sydney)
- (4) ICB4PAC Workshop on Concepts and Techniques of Developing Cyber Crime Policy and Legislation (22—25 August 2011, Apia)

ESTABLISHMENT OF PILON OFFICE IN SAMOA

At the outset, Senior State Solicitor, Constance Tafua-Rivers was involved with, and responsible for making arrangements to assist PILON's transition to Samoa. Following Constance's study leave, Salote Peteru was the liaison officer (along with Tusitala Sua (Manager, Corporate Services) and Chris Lei Sam (Principal Accountant)) to assist the PILON Secretariat with arrangements and setting up in Samoa. The PILON Secretariat is temporarily stationed at the Law and Justice Sector Office (at the NPF Building).

Following the signing of the contract between Tracey White (Secretariat Coordinator for PILON) and our Attorney General, she arrived in Samoa in late January 2011 to begin work (for a period of 2 years commencing 31 January 2011). The Secretariat Coordinator has the following duties: plan and coordinate the transition to an independent PILON Secretariat and proactively monitor its overall progress, resolve issues and initiate corrective action as appropriate; oversight of the various functions of the PILON Secretariat and performance of its work program; coordinate and organise the annual PILON meeting with the host country and PILON Executive Committee; coordinate PILON initiatives between meetings; cooperate with regional partners on other relevant activities; attend and contribute to relevant regional meetings; act as a coordination and focal point for connecting member countries with one another and with regional bodies; have responsibility for the progress of the PILON Work Plan; provide PILON members with a support and research resource; facilitate development assistance through cooperation with donors and development service providers in the region; identify strategies to source ongoing funding for the PILON Secretariat; maintain the overall integrity and coherence of the Secretariat, and develop and maintain the program environment to support each PILON initiative; liaise and maintain productive relationships with internal and external stakeholders; and any other duties as directed by the PILON Executive Committee.

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION (LDD)

Ming C. Leung Wai, Attorney General
Papalii Malietau Malietoa, Parliamentary Counsel
Loretta Teueli, Principal Legislative Drafter
Constance Tafua-Rivers, Senior Legislative Drafter
Nola Petelō Faasau, Senior Legislative Drafter
Salote Peteru, nee Wright, State Solicitor
Fetogi R. Vaai, State Solicitor
Losa Kelekolio, Senior Legal Secretary

Addition

Fetogi R. Vaai rejoined
LDD in January 2011

Farewell & Best Wishes

to Tasha Sagapolutele, former Senior
Bills Officer (resigned in March 2011)

Congratulations

to Nola Petelō Faasau for
completion of her Master
of Laws with a focus on
legislative drafting, at USP

Welcome back & Congratulations

to Constance Tafua-Rivers for comple-
tion of her Master of Laws in Interna-
tional Maritime Law, from Malta