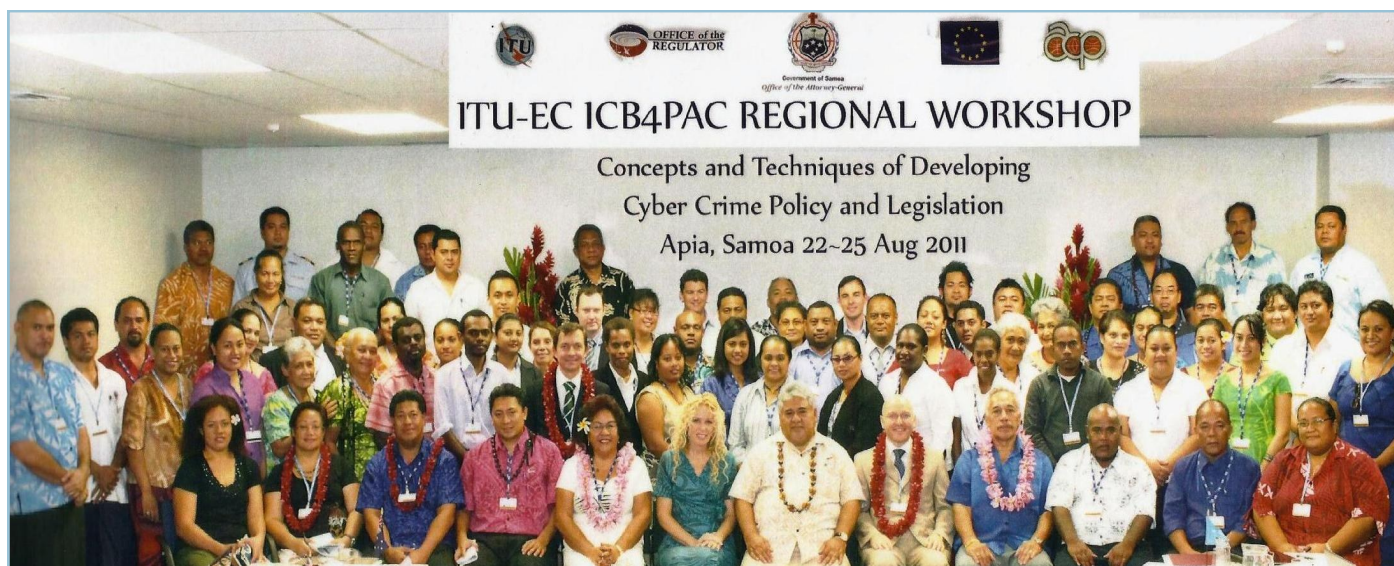




Office of the Attorney-General of Samoa LEGISLATIVE DRAFTING UPDATE

Pictured below is the Honourable Prime Minister, Tuilaepa Sailele Malielegaoi; Honourable Minister of Communications and Information Technology, Tuisugaletaua Sofara Aveau; the Attorney-General, CEOs of MCIT and CSL, and participants of the regional workshop co-hosted by our Office in August to develop cybercrime policies and legislative provisions for our Pacific region. (Please refer to p7 for the full story)



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Talofa lava,

This is our 3rd issue this year covering legislative updates and activities between July—September 2011.

The main events of this quarter range from the above pictured regional workshop co-hosted by our Office in August, to a number of urgent draft laws reviewed and finalised for the upcoming October and December Parliament sessions.

Like the previous issues, we continue to update you on the latest government policies that have been translated and approved as laws. We also continue to provide you with brief summaries of these laws because as one would find, reading a piece of legislation is almost as challenging as drafting it!

This issue also reports on events under taken and attended by members of our Division such as the launch of the South Pacific Lawyer's Association, and the final sub-regional consultation on advancing legislative change to address violence against women.

We hope this Newsletter continues to provide you with a refreshed outlook on legislative developments in Samoa and that it keeps you interested in our country's legislative progress, but most importantly may *we* continue to work together to ensure that **effective laws** are drafted and enforced for Samoa.

From the Attorney-General and the Legislative Drafting Division—happy reading!

Editor for this Issue
Nola Petelō Faasau (Senior State Solicitor)
Legislative Drafting Division

PARLIAMENTARY SITTINGS JUL—DEC 2011

MONTH	Monday (Week beginning)	Tuesday	Wednesday	Thursday	Friday
AUGUST	-	9	10	-	-
OCTOBER	3	4	5	6	7
DECEMBER	19	20	21	22	23

PARLIAMENTARY UPDATE OF LAWS

BILLS PASSED IN AUGUST PARLIAMENT SESSION	BILLS BEFORE PARLIAMENT UP TO 30 SEPTEMBER 2011	
	TITLE	STATUS
1. SEG International Enterprise Bill 2011	Airport Authority Bill 2011	1st reading 9 August 2011
	Limitations Amendment Bill 2011	1st reading 9 August 2011
2. Foreign Investment Amendment Bill 2011	Cluster Munitions Prohibition Bill 2011	1st reading 9 August 2011
<p>Both Bills were tabled and passed under Certificate of Urgency on 9 August 2011. The SEG International Enterprise Bill 2011 was required in order for a commercial television production enterprise to film in Samoa. The Foreign Investment Amendment Bill 2011 as well as the Foreign Investment Regulations 2011 (below) are 3 of a number of draft legislation that must be enacted prior to Samoa's accession to the WTO in December 2011.</p> <p>Please refer to the next page for a summary of the Bills.■</p>	Accident Compensation Amendment Bill 2011	1st reading 9 August 2011
	Customs Tariff Amendment Bill 2011	1st reading 9 August 2011
	Excise Tax Rate Amendment Bill 2011	1st reading 9 August 2011
	Incorporated Societies Amendment Bill 2011	1st reading 9 August 2011
	Composition of Boards of Public Bodies Bill 2011	1st reading 9 August 2011
	Customs Amendment Bill 2011	1st reading 10 August 2011
	Public Bodies (Performance and Accountability) Amendment Bill 2011	Referred to Select Committee (SC) on 9 August 2011
	Stamp Duty Amendment Bill 2011	Referred to SC on 9 August 2011
	Tourism Development Bill 2011	Referred to SC on 9 August 2011
	Liquor Bill 2011	Referred to Select Committee
	Land and Titles Amendment Bill 2011	Referred to SC on 9 August 2011

TITLES OF REGULATIONS & NOTICES MADE	DATE SIGNED	COMMENCEMENT DATE
Land Transport Authority (License Fees & Other Charges) Regulations 2011	22 July 2011	8 Aug 2011 (regs 1, 2, 4—7); 1 Jan 2012 (regs 3 and 8)
Foreign Investment Regulations 2011	22 July 2011	To be nominated
Customs Amendment Regulations 2011	9 August 2011	1 July 2011
Excise Tax (Domestic Administration) Regulations 2011	9 August 2011	1 July 2011
Notice of Charge on Base Tariff for the Supply of Electricity (No. 9) 2011	25 August 2011	1 September 2011
Notice of Charge on Base Tariff for the Supply of Electricity (No. 10) 2011	12 September 2011	1 October 2011
Notice—Immigration act 20004, Amendment Fees and Charges	16 August 2011	16 August 2011
Notice—Citizenship Act 2004, Amendment Forms, Fees and Charges	16 August 2011	16 August 2011

SUMMARIES OF LAWS PASSED AND REGULATIONS MADE

FOREIGN INVESTMENT AMENDMENT ACT 2011

The Foreign Investment Amendment Act 2011 amends the Foreign Investment Act 2000 (“Act”), which is administered by the Ministry of Commerce, Industry and Labour (“the Ministry”). The new Act incorporates new Schedules 1 and 2 into the Act to specify reserved and restricted activities respectively. Such activities, where applicable, are clarified under the United Nations Central Product Classification Code.

The new Act allows the making of regulations to provide the criteria and procedures for removing or adding an economic activity to the Reserved List (Schedule 1) or the Restricted List (Schedule 2) and both lists are also allowed to be amended accordingly by regulations.

A Foreign Investment Advisory Committee is established by the new Act to review the Restricted and Reserved Lists in accordance with criteria and procedures set out in regulations. Such criteria and procedures can also be reviewed by the Committee. The membership of the Committee consists of 11 members with the Chief Executive Officer of the Ministry as the Chairperson. The Act also specifies the functions of the Ministry in relation to foreign investment. Further such functions may be prescribed by regulations.

The new Act also authorises the confidentiality of relevant information provided in an application for foreign investment registration. Furthermore, foreign investors are required to provide an annual report of its operations to the Chief Executive Officer in order for the Chief Executive Officer to assess and report on the status of foreign investment in Samoa to Cabinet.■



SEG INTERNATIONAL ENTERPRISE ACT 2011

The Act provides for customs duty and tax and other exemptions to assist a certain commercial television production in Samoa during 2011. The Act provides these exemptions to the commercial television production enterprise to film in Samoa for the potential economic and promotional benefits to Samoa. The Act is generally limited to those exemptions which require legislative backing; where there are administrative processes already in place in Samoa which can be used to facilitate the television production, these will be used.■

LAND TRANSPORT AUTHORITY (LICENSE FEES & OTHER CHARGES) REGULATIONS 2011

These regulations are made pursuant to sections 27, 36(2)(c) and 54(2) of the Land Transport Authority Act 2007 to prescribe increased fees payable to the Authority for vehicle licenses, driving licenses and permits, as well as other matters associated with the issuing of such fees and licenses. The First Schedule to the Road Traffic Ordinance is replaced by a new Schedule under these regulations to prescribe these fees. It also sets new fees for testing, inspection and registration.

Regulations 1, 2, 4, 5, 6 and 7 commenced on 8 August 2011, and regulations 3 and 8 will commence on 1 January 2012.■

FOREIGN INVESTMENT REGULATIONS 2011

These regulations were made pursuant to section 18 of the Foreign Investment Act 2000 to prescribe matters including the following: conditions to be met in order for a business or economic activity under the Restricted List to be undertaken by non-citizens; the criteria and procedures for removing or adding to the Reserved and Restricted Lists; the form for an application for foreign investment registration. These regulations will commence on a date to be nominated by the Minister.■

CUSTOMS AMENDMENT REGULATIONS 2011; EXCISE TAX (DOMESTIC ADMINISTRATION) REGULATIONS 2011

The **Customs Amendment Regulations 2011** is made pursuant to section 279 of the Customs Act 1977 to increase: licence fees prescribed under regulation 87 of the Customs Regulations 1986; and rates for certain customs fees prescribed in the Schedule to the Customs Amendment Regulations 1998. The **Excise Tax (Domestic Administration) Regulations 2011** is made pursuant to section 96(d) of the Excise Tax (Domestic Administration) Act 1984 to prescribe the fees payable for a warehouse licence granted under section 18 of the Act, and a licence to manufacture excisable goods pursuant to section 6 of the Act.■



LEGISLATIVE EVENTS OF JULY—AUGUST 2011

FINAL SUB-REGIONAL CONSULTATION ON ADVANCING LEGISLATIVE CHANGE ON VIOLENCE AGAINST WOMEN—NADI, FIJI, 25-28 JULY 2011

The Pacific Regional Rights Resource Team (RRRT) hosted a 4 days consultation which was the final sub-regional activity under the 3 year project funded under the UN Trust Fund in Support of Actions to Eliminate Violence Against Women.

This project which began in 2009 is entitled “Changing Laws; Protecting Women” and aims to support existing national level committees working in the area of domestic violence or gender based violence; and to establish such committees through regional partnerships. These regional partnerships focused on 6 priority countries, namely Tonga, Samoa, Tuvalu, Cook Islands, Kiribati and Solomon Islands and 3 sub-regional country partners of Nauru, Vanuatu and FSM.

The main objective of this final consultation was for all focal countries to congregate and report on their status in relation to the legislative review and changes that encompass all aspects of law which impact on women, and lessons learnt on national committees formed, and national consultation conducted to develop quality and effective lobbying campaign.

Three representatives from Samoa attended this consultation, Mrs Lina Chang of the Samoa Victim Support Group representing the Non Government Organisations, Mrs Mema Motusaga from the Ministry of Women, Culture and Social Development and **Ms. Fetogi Vaai** from our office. Mrs. Motusaga as a former Country Focal Officer (CFO) for Samoa presented on the roles and challenges as being a CFO, and those encountered by their Ministry and Samoa under this project.

Our Office presented on the background and status of the Family Safety Bill 2011 which addresses some of the objectives of this project, and the legislative drafting process in Samoa. One feature of our Bill that was noted is that it does not protect only women but both gender. This was based on the result of consultation that found domestic violence victims are not specifically women but all members of the family. Another aspect of the Bill was the recognition of referral to traditional structures existing in Samoa in particular where a reference to the village authorities such as the Alii and Faipule to lodge a complaint with the consent of the victim. In other Pacific Island Countries who have already legislated issues related to violence against women, for example Vanuatu and Fiji, it still faces problems of domestic violence with women being victims. This is due to the lack of resources to effectively implement their legislations. Cook Islands, Nauru, and Tuvalu laws are in the draft stage whereas the FSM is still in a policy stage.

The consultation concluded with the presentations from different aid donors such as Secretariat Pacific Community (SPC), UN Trust Fund, and the NZ Domestic Violence Division.■

8TH PACIFIC ISLANDS ADVANCED MARITIME BOUNDARIES DEVELOPMENT WORKSHOP— UNIVERSITY OF SYDNEY, AUSTRALIA, 18-22 JULY 2011

The *Secretariat of the Pacific Community* (SPC) has long provided its Pacific Island members with technical/policy advice and assistance and training/research services. The *Applied Geoscience and Technology Division* of SPC (SOPAC) particularly provides assistance through focusing on 3 important areas. Maritime boundary development is a part of the *Ocean and Islands Programme* (OIP).

As a **Principal Legislative Drafter** involved in previous international maritime law issues and a recent masters qualification in international maritime law, **Constance Tafua-Rivers**, was nominated to attend the workshop. She attended with Mr. Pau Ioane, Principal Mapping Officer of the Ministry of Natural Resources and Environment (MNRE). Other participants of the Workshop represented: Cook Islands, Kiribati, Federated States of Micronesia, Palau, Papua New Guinea, Solomon Islands, Tuvalu, Vanuatu, Niue and Nauru. Samoa has not confirmed any of its' functional zones beyond the territorial sea under the *United Nations Convention on the Law of the Sea 1982* (UNCLOS). This is because negotiation and agreement is needed to resolve overlapping maritime claims with all its neighbours - American Samoa, Tonga, Tokelau and Wallis and Futuna. Samoa chose to attempt delimitation with American Samoa first. To assist, the Commonwealth Secretariat (*continued next page*)

EVENTS (Cont'd)

8TH PACIFIC ISLANDS ADVANCED MARITIME BOUNDARIES DEVELOPMENT WORKSHOP— UNIVERSITY OF SYDNEY, AUSTRALIA, 18-22 JULY 2011 (CONT'D)

(continued from previous page) (ComSec) employed Mr. Brian Murphy from 2003-2005 as a Consultant for the maritime boundary negotiation project between Samoa and American Samoa. The groundwork data and information compiled by Mr. Brian Murphy has since been revived and adopted for preliminary declarations confirming the baseline, territorial sea zone and contiguous zone. For this, technical area assistance is continuing between Mr. Pau Ioane of MNRE and Officers volunteering their services through SOPAC.

The legal framework in Samoa for maritime boundary development is the *Maritime Zones Act 1999* (the Act). As part of the assistance offered during the workshop, relevant members of the Office of International Law of the Australia Attorney-General's Department conducted a review of the Act. From the feedback provided at the workshop, the majority of the Act was in line with Samoa's international obligations under UNCLOS with a few suggestions for clarity and consistency with international law. Technical assistance is still ongoing in terms of finalizing the data for the baseline, territorial sea and contiguous zone. An Amendment Bill is in preparation stages should the Ministry of Foreign Affairs and Trade (MFAT) wish to make the recommended changes to the Act as the administering authority. A maritime boundaries assistance programme operated by the Economic and Legal Section (ELS) in the Special Advisory Services Division of ComSec is also available for assistance.

In conclusion, the Workshop was useful in reviving interest into Samoa's maritime boundaries and what could be done despite lack of negotiation and agreement in delimitation with neighbouring countries. 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 the revision of the Act; 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. While maritime boundary development for Samoa was a priority during the week long workshop, it may not be an immediate priority in Samoa. Steering capacity for the way forward is with MFAT as the administering authority. It is therefore encouraging to note that should MFAT wish to take this further as a priority, steps towards maritime boundary development have been made legally and technically. ■



The participants of the 8th Pacific Islands Advanced Maritime Boundaries Development Workshop, which was attended by Principal Legislative Drafter, Ms Constance Tafua-Rivers (middle row, 3rd from left) and Pau Ioane, Principal Mapping Officer of the Ministry of Natural Resources and Environment (front row, 5th from left).

EVENTS (Cont'd)

LAUNCH OF THE SOUTH PACIFIC LAWYERS' ASSOCIATION; YOUNG PACIFIC LAWYERS' FORUM SYDNEY, AUSTRALIA, 10 JULY 2011



Young lawyers, **Senior Legislative Drafter, Salote Peteru** (pictured above 4th from left), and **Senior State Prosecutor, Fetuliai Lagaia** (pictured above 1st from left), attended the first ever Young Pacific Lawyers' Forum, which followed the official launching of the South Pacific Lawyers' Association (SPLA). The SPLA was established in 2007 by the International Bar Association in partnership with the Law Council of Australia and the New Zealand Law Society. It is housed within the Law Council of Australia Secretariat in Canberra and aims at providing assistance to developing law societies and bar associations, and promoting the interests of the legal profession in the South Pacific region.

Since the Forum was an opportunity to voice issues and challenges faced by young lawyers in the legal profession, it is hoped that further consideration by the SPLA and Commonwealth will assist the Pacific region in improving areas in which young and newly admitted Pacific lawyers need support the most (e.g. resources, training, technical assistance, attachments, etc.). The Forum was facilitated by Jonathan Beaumont of Gillian Beaumont Legal and consisted of 2 sessions: (1) Professional ethics and model conduct; and (2) Pro Bono assistance to the Pacific. Each session was facilitated by a panel consisting mainly of Pacific young lawyers, with open discussions from the audience.

The Law Council of Australia/SPLA gave the opening address, followed by discussions by Pacific young lawyers of their experiences as young lawyers, ethics and model conduct, and what it means to each young lawyer to be a professional in their own jurisdictions. Each experience (shared at the Forum or provided by written submission prior the Forum) was considered and members at the Forum who had most experience (including representatives from various legal firms and agencies in Australia) provided ways to enhance professionalism in the Pacific, obligations of each legal professional to the other, and the opportunities needed to contribute effectively to the legal profession.

The second session was facilitated also by a panel, focusing on a presentation by a member of the International Pro Bono Advisory Group on their experience in providing pro bono assistance to the Pacific and exploring ways in which Pacific young lawyers could be assisted in this area. Further discussions were held on how valuable pro bono assistance is, and how it should be provided. In groups, we updated on the status of pro bono work in our respective jurisdictions. Some interesting ideas (e.g. "law week", community advisory groups, legal (training) centre, legal clinic, etc) were proposed to by some to encourage young lawyers in jurisdictions that did not have pro bono activity to work for the public good and promoting the rule of law.

From this Forum, our young lawyers learnt that the development of young lawyers, promoting the rule of law and encouraging access to justice in Samoa, should be further addressed through improved regulatory measures (to sustain legal professionalism, and possibly for the Law Society/legal professionals to hold more regular legal education/training (rather than having such biannually or annually). Samoa also needs to quickly move forward to finally setting up a legal centre for pro bono work to be carried out by experienced lawyers for the public who cannot afford legal assistance, and at the same time becoming a training centre for young lawyers. ■

EVENTS (Cont'd)

REGIONAL WORKSHOP ON CONCEPTS AND TECHNIQUES OF DEVELOPING CYBERCRIME POLICY & LEGISLATION, APIA, 22—25 AUGUST 2011

(From front page) The ITU-EC regional “ICB4PAC workshop on Concepts and Techniques of developing cybercrime policy and legislation” was held from Monday 22 to Thursday 25 August 2011 at the Conference Room of the Development Bank of Samoa Building. The workshop was co-hosted by the Office of the Attorney-General and the Office of the Regulator in collaboration with the Ministry of Communications and Information Technology, the Samoa Tourism Authority, CSL (Computer Services Ltd), BlueSky SamoaTel Ltd, and the Samoa Police Service. In attendance were 30 regional and international participants (from Australia, Cook Islands, Niue, Fiji, Kiribati, Micronesia, New Zealand, Palau, Papua New Guinea, Solomon Islands, Vanuatu, Tuvalu, Tonga, Secretariat of the Pacific Community, the International Telecommunications Union, and the Council of Europe) and 50 national participants from various organisations including Government, private sector, NGOs, and ISP providers.

The objective of the workshop was to bring together a wide range of stakeholders from the region to discuss and formulate model policies and legislative provisions common to our region to address problems of cybercrime regarding the abuse of technology (e.g. electronic devices) for criminal purposes. Main types of cybercrime include SPAM, hacking, and child pornography. The Honourable Prime Minister, in his opening keynote address, said that the wrongful use of ICT should be “criminalised or punished to protect the integrity and safety of our electronic information and computer systems. An efficient penal legislation that criminalises forms of cybercrime is an essential requirement for the involvement of law enforcement agencies in the fight against cybercrime”. More importantly, for Samoa, he also stated that this workshop was very timely as our Crimes Ordinance 1961 is currently under review and the outcomes of this workshop will be used to assist with the drafting of relevant cybercrime provisions for the draft Crimes Bill for Cabinet’s consideration.

At the conclusion of the workshop, the participants agreed that the workshop highly achieved its objective. Ms Amelia Pasikala-Faasau, Assistant Manager Legal for Samoa National Provident Fund, said the workshop was “very informative and helpful. I appreciated quality discussions rendered during the workshop and I look forward to great success in tackling cybercrime in Samoa and the region.”. Kora Nou of the PNG Department of Communication and Information Technology said that the “presenters were experts in their own fields and I hope their collective input will assist us Pacific Islanders to finally develop and adopt our own cybercrime legislation. Not only did we learn much more, but we felt the issues and ideas developed were certainly our own”.

The facilitator of the workshop, Professor Marco Gercke, who has done similar work in Europe and in the Caribbean, was very impressed with the outcomes of the workshop. He thanked the participants for the “wonderful feedback and fruitful input” to his presentations. “For me this is the key motivation for my work. And I got so much of it. If there had been a chance for me to say one sentence at the end, it would have been: “Always remember that these documents [draft cybercrime policies and legislative provisions] are your documents – you developed them and you deserve the credit for it”. Your work was truly impressive.”. It is now up to each Pacific island country to move forward with integrating the relevant outcomes and recommendations from the workshop to develop cybercrime policies and legislation relevant to each Pacific island country.■

NEW LDD MEMBER

The newest member to join us is our Senior Bills Officer, **Ms Makereta Va’aelua** who joined us on 1 August 2011. Her tasks mainly involve editing and doing final checks of all our draft laws before our drafters can final each draft with the AG’s certificate.■

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Fetogi R. Vaai, State Solicitor
Losa Kelekolio, Senior Legal Secretary
Makereta Va’aelua, Senior Bills Officer

NEXT ISSUE

In our next issue, we will report on the upcoming October and December Parliament sessions, and other upcoming events, including the Consolidation of Laws 2011 project, the Regional Seminar on the 2010 Manila Amendments to the STCW Convention and Code, and the welcoming of our new Legislative Drafting Advisor.■



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.

