



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

EDITORS' NOTE

Welcome to our usual update of laws, meetings, workshops, trainings, attachments, and other events from 1 July 2012 - 30 September 2012 involving members of the Legislative Drafting Division.

Editor: Salote Peteru (Senior Legislative Drafter)

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Other Events of July-September 2012

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Upcoming Events:

1. Regional Health Promotion Leadership Training Programme in Bangkok, Thailand
2. International Refugee Protection Learning Programme for the Pacific in Solomon Islands
3. Regional Meeting on the Implementation of the Pacific Forum Regional Unexploded Ordnance Strategy in Palau

THIRD PACIFIC LEGISLATIVE DRAFTERS' TECHNICAL FORUM - PACIFIC ISLANDS FORUM SECRETARIAT (PIFS)

- 23-25 July 2012, Suva, Fiji -

Rupeni Nawaqakuta (Legislative Drafting Advisor) was invited to attend the Pacific Drafters' Forum as a regional expert in legislative drafting. According to Rupeni, this was an opportunity to meet drafters from other jurisdictions in the Pacific, including other policy persons from other regional organisation. Drafters shared their experiences in the area of legislative drafting in their respective jurisdictions. As an important tool for implementation and giving effect to government policies, drafting of legislation requires adequate and quality training in order to carry out this important task.

The meeting highlighted problem areas that are endemic to or typical to drafting units or offices in the region. But with the formal training conducted by the University of the South Pacific and other short-term training available from other agencies, there is "light at the end of the tunnel". Hopefully, these measures will help young drafters in the region in harnessing their skills and knowledge in legislative drafting. Proposal for an advanced formal training is welcomed. So much so, is the assistance by New Zealand and Australia to assist in secondment of junior drafters to their drafting offices. Capacity building is also critical. A role played by senior drafters to transfer their skills and experiences to junior drafters. As noted by Rupeni, this is a process that should continue to wheel itself over and over again until the junior drafter can say: "Yes! I am an experienced drafter".

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Ms Loretta Teueli (Legal Consultant, Legislative Drafting) also attended the Pacific Drafters' Forum on behalf of the Attorney General's Office. As a developing Pacific island drafter, she says that the Forum has allowed her to see how, as Pacific island drafters, we can learn to benefit from each other. One of the notable aspects that came through in the Forum was the need to make sure one's culture is not lost in our development in legislative drafting. Adopting different styles and approaches of other leading countries in this area is good. However, it is also important to remember that as specific island drafters, we are a cultural people and that all skills taught must be one way or another adapted to our local economy, infrastructure and culture. The Forum also provided a better idea and understanding of the different assistance and procedures that are available to Forum Island Countries (FICs) and to encourage FICs to make use of this.

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PARLIAMENTARY SITTINGS IN JULY AND AUGUST 2012

MONTH	Monday	Tuesday	Wednesday	Thursday	Friday
JULY	-	-	-	-	20
AUGUST	-	21	-	-	-

Next Parliament sitting is on 23 October 2012

PARLIAMENT UPDATE FROM JULY & AUGUST 2012 SESSIONS

Parliament sitting on 20 July 2012:

◆ Nomination of the Head of State

◆ Acts passed:

1. Casino and Gambling Control Amendment Act 2012
2. Financial Institutions Amendment Act 2012

Parliament sitting on 21 August 2012:

◆ Bills introduced and completed 1st Reading:

1. Customary Land Advisory Committee Bill 2012
2. Prisons and Corrections Bill 2012
3. Ombudsman Amendment Bill 2012
4. Attorney General's Office Bill 2012

◆ Bills completed 2nd Reading and referred to Select Committee:

1. Samoa Institute of Accountants Amendment Bill 2012

ANY OTHER BILLS AT PARLIAMENT?

YES, there are Bills which were referred to Parliamentary Select Committees for consideration (since June 2012 session):

1. Samoa International Finance Authority Amendment Bill 2012
2. Personal Property Securities Bill 2012
3. Labour and Employment Relations Bill 2012
4. Electric Power Corporation Amendment Bill 2012
5. Constitution Amendment Bill 2012
6. Crimes Bill 2012
7. Proceeds of Crime Amendment Bill 2012
8. Counter Terrorism Bill 2012
9. Family Safety Bill 2012

... AND there are also other Bills at Parliament awaiting introduction:

1. Constitution Amendment (No.2) Bill 2012
2. Audit Bill 2012
3. Fisheries Management Bill 2012
4. Central Bank of Samoa Amendment Bill 2012

IMPORTANT NOTE:
The Intellectual Property Act 2011 commenced on 1st October 2012.

ACTS PASSED BY PARLIAMENT IN 2012 (FROM JANUARY 2012, TO DATE)

SUBSIDIARY LEGISLATION

(Signed/promulgated by Head of State, Cabinet, Minister, Board or other appropriate authority)

1. General Price Order (No.1) 2012, commenced 18 January 2012
2. Notice of Charge on Base Tariff for the Supply of Electricity (No.1) 2012, commenced 01 January 2012
3. Notice of Charge on Base Tariff for the Supply of Electricity (No.2) 2012, commenced 01 February 2012
4. Notice of Charge on Base Tariff for the Supply of Electricity (No.3) 2012, commenced 01 March 2012
5. Stamp Duty Amendment Act 2012—Notice of Commencement
6. Composition of Boards of Public Bodies Act 2012—Notice of Commencement
7. Notice of Change in Tariff per Unit of Electricity 2012, Order of the Regulator (No.1) 2012, commenced 06 April 2012
8. General Price Order (No.2) 2012, commenced 18 April 2012
9. Customs Tariff Amendment Act 2012—Notice of Commencement
10. Excise Tax Rate Amendment Act 2012—Notice of Commencement
11. Cluster Munitions Prohibitions Act 2012—Notice of Commencement
12. Declaration of Public Holiday for 50th Independence Day Celebration 2012

TITLE	DATE PASSED	COMMENCEMENT DATE	TITLE	DATE PASSED	COMMENCEMENT DATE
Public Bodies and Accountability Act 2001	24 January 2012	26 January 2012	Excise Tax Rate Amendment Act 2012	07 March 2012	01 May 2012
Airport Authority Act 2012	24 January 2012	26 January 2012	Incorporated Societies Amendment Act 2012	07 March 2012	16 March 2012
Limitation Amendment Act 2012	24 January 2012	26 January 2012	Composition of Boards of Public Bodies Act 2012	07 March 2012	01 April 2012
Stamp Duty Amendment Act 2012	24 January 2012	02 April 2012	Special Purpose International Companies Act 2012	07 March 2012	To be nominated by Minister
OPEC Fund Loans Act 2012	24 January 2012	26 January 2012	Customs Amendment Act 2012	07 March 2012	01 July 2012
Tax Information Exchange Act 2012	24 January 2012	26 January 2012	Appropriation Act 2012/2013	14 June 2012	25 June 2012
Supplementary Appropriation Act 2011/2012	23 January 2012	26 January 2012	Supplementary Appropriation (No.2) Act 2011/2012	14 June 2012	25 June 2012
Land and Titles Amendment Act 2012	07 March 2012	16 March 2012	Tax Administration (No.2) Act 2012	15 June 2012	01 January 2013
Tourism Development Act 2012	07 March 2012	16 March 2012	Income Tax Act 2012	15 June 2012	01 January 2013
Cluster Munitions Prohibition Act 2012	07 March 2012	30 April 2012	Casino and Gambling Control Amendment Act 2012	20 July 2012	The date which the Principal Act comes into effect (which is a date to be nominated by Minister)
Accident Compensation Amendment Act 2012	07 March 2012	13 March 2012	Financial Institutions Amendment Act 2012	20 July 2012	26 July 2012
Customs Tariff Amendment Act 2012	07 March 2012	01 May 2012			

SUMMARIES OF LAWS PASSED

(There were 2 Acts passed in the July 2012 session but none passed in the August 2012 session)

(1) Casino and Gambling Control Amendment Act 2012

This Act amends the Casino and Gambling Control Act 2010 to allow the Totalisator Agency Board (TAB) to act as the Casino and Gambling Control Authority ('Authority') and assume the powers, duties and functions of the Authority for a period of 2 years whilst the Authority is formally set up. During those 2 years, the Authority may be set up anytime while TAB ceases to act as the Authority.

This is needed so that only 1 body regulates gambling. Bringing the Authority into existence alongside TAB will mean there are 2 bodies regulating different forms of gambling under different legislation.

Allowing TAB to act as the Authority and then phased out while the Authority comes into existence will mean only 1 body conducts the regulatory role for gambling as well as give time for the reform of all other different gambling legislation that need to be brought under 1 regulatory body for gambling i.e. the Authority.

(2) Financial Institutions Amendment Act 2012

This Act amends the Financial Institutions Act 1986. the policy objective of the Act are to deal with the following:

- to regulate activities of securities dealers and securities brokers;
- to provide duties of securities dealers and securities brokers;
- to provide the role of the Central Bank of Samoa in regulating securities dealers and securities brokers;
- to facilitate the establishment and operation of a stock exchange in Samoa for the purposes of developing capital markets in Samoa to attract investors in stocks, bonds and other securities.

EVENTS OF JULY-SEPTEMBER 2012

Completion of Professional placement—Political Governance and Security Programme of the Pacific Islands Forum Secretariat (PIFS)

- 30 January 2012-30 August 2012, Suva, Fiji -

With the support of the Greg Urwins Awards, Ms Nola Petelo Faasau, who was one of the fortunate Pacific Islands recipients, was placed under the Drafting Unit at the Pacific Islands Forum Secretariat (PIFS), from 30th January 2012 to 31st August 2012. The placement aimed at professional development and capacity building in certain areas.

Having completed her placement, Ms Faasau has no doubt been exposed to new opportunities, new ideas and networks within the Pacific region. Some of her responsibilities included providing legislative drafting assistance to Forum Island Countries (FICs), providing assistance and facilitating legislative drafting assistance to FICs for purposes of capacity building and support of legislative drafters in the region, and providing legal services in relation to corporate matters. As part of her placement, Ms Faasau has also recently been involved in, and deliberated with other senior experts and lawyers in the region on, discussion of important issues such as the Pacific Drafters' Forum, security and counter terrorism issues and approaches in the Pacific, and other activities under the portfolio of the PIFS.

With this experience and a greater understanding of regional matters, Ms Faasau has developed professionally as an individual and team worker, and is proven to be a potential leader who strives for excellence in her chosen profession. Ms Faasau's placement will be beneficial to the development of other lawyers within our Office who may be interested in undertaking the same placement.

EVENTS OF JULY-SEPTEMBER 2012 (Cont'd...)

THIRD PACIFIC LEGISLATIVE DRAFTERS' TECHNICAL FORUM

(Continued from pg. 1)

Following the first 2 meetings in Port Vila, Vanuatu (2007) and in Canberra, Australia (2009), the 3rd Pacific Legislative Drafters' Technical Forum was hosted by the Pacific Islands Forum Secretariat (PIFS) in Suva, Fiji, from 23-25 July 2012. Those who attended included Parliamentary Counsel, senior legislative drafters and senior government lawyers from Cook Islands, the Federated State of Micronesia, Kiribati, Palau, Papua New Guinea, Nauru, Niue, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Other participants included members from national, regional and international organisations that provide legislative drafting assistance to the Forum Island Countries (FICs) or work with FICs on projects involving law reform (e.g. the Australian Attorney General's Department and Office of Parliamentary Counsel, the New Zealand Parliamentary Counsel Office, the Commonwealth Secretariat, the Secretariat of the Pacific Islands Law Officers' Network, the Secretariat of the Pacific Community (specifically the Regional Rights Resource Team and the SOPAC Deep Sea Minerals Project), the Secretariat of the Pacific Regional Environment Programme, the Oceania Customs Organisation, the University of the South Pacific, the Pacific Immigration Directors' Conference, and the International Telecommunications Union. Other organisations that also attended included the Pacific International Maritime Law Association and International Union for Conservation of Nature.



The Pacific Drafters' Forum aimed at:

- (i) sharing, discussing and recording current legislative drafting issues and experiences faced by FICs;
- (ii) briefing regional legislative drafters on the developments in the Action Plan and other regional legislative drafting capacity development initiatives;
- (iii) eliciting feedback and generating active discussions on these developments, and obtaining Members' preferences for ways forward for the Pacific Drafters' Forum;
- (iv) promoting a better understanding of current regional legislative drafting assistance and procedures available to Members, and encouraging Members to make use of available resources.

The relevance of the Pacific Drafters' Forum to Samoa is that it is a platform for which Samoa can update the region of its developments in legislative drafting. For instance, since the 1st Pacific Drafters' Forum, Samoa has developed ahead of other FICs in terms of legislative drafting, evidently, in prioritising the development of such skill with the growth in the Legislative Drafting Division in the Attorney General's Office, and the development of the Legislative Drafting Handbook which was launched in 2008 (with 2 legislative drafting directives released as per the Handbook in 2010) and is currently being reviewed. Other FICs have adopted the Handbook for possible development of their own.

During the discussions, the FICs shared about the issues faced in the development of local legislative drafting capacity in their respective countries, and although these problems are familiar to Samoa, other FICs can learn from Samoa's experience and development through these problems. At the end of the discussions, a Revised Regional Action Plan was developed for sustainable legislative drafting capacity building in FICs. This Action Plan is in draft form and has been circulated to the FICs for comments before finalisation. Because all FICs are different in their development in legislative drafting, the Action Plan requires each FIC to develop its own National Action Plan which will assist the respective countries in identifying what it wants to do within 2 years before the next Pacific Drafters' Forum meeting.

LEGISLATIVE DRAFTING SECONDMENT TO PARLIAMENTARY COUNSEL OFFICE

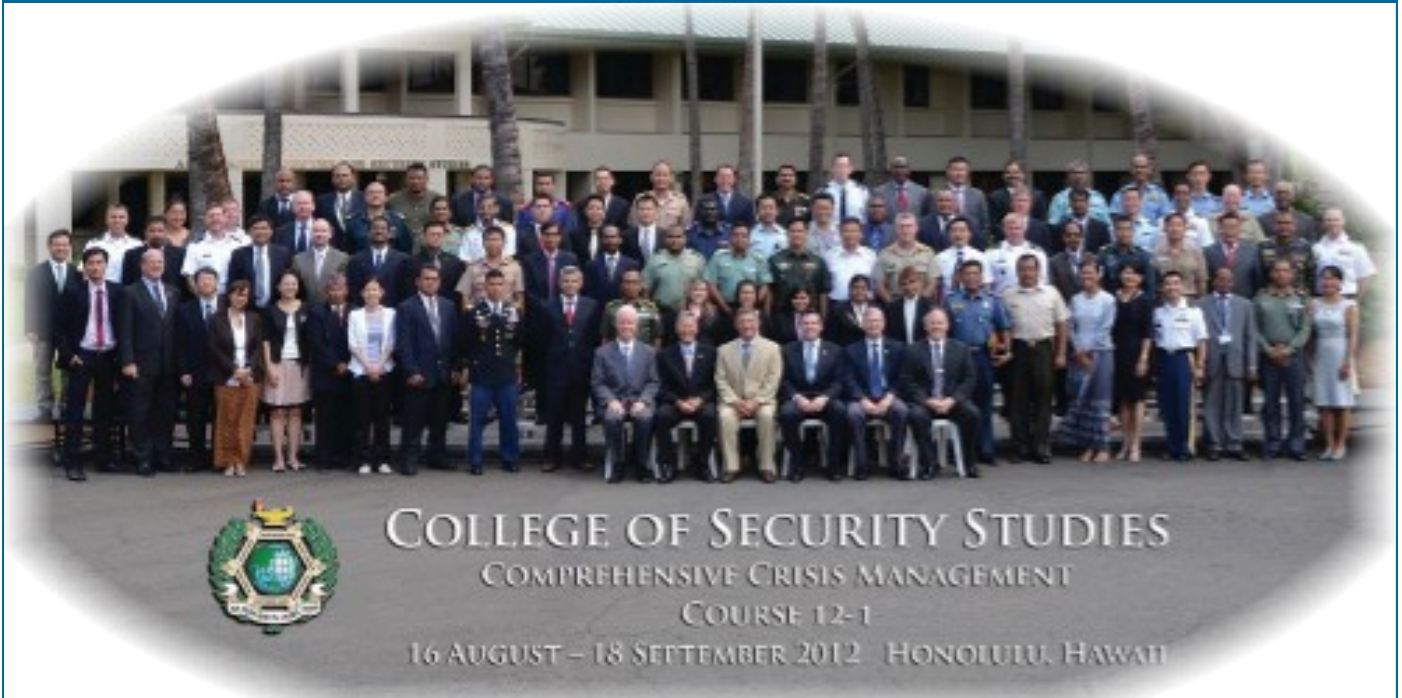
- 13 August 2012 - 12 October 2012, Wellington, New Zealand -

Fetogi R. Vaai (State Solicitor) is seconded to the Parliamentary Counsel Office in Wellington, New Zealand from 13 August 2012 to 12 October 2012. The Secondment aims at developing legislative drafting skills, expertise and experience; building legislative capacity in the Samoan government; enhancing the relationship between the Attorney General's Office in Samoa and contributing to New Zealand's celebration of the 50th anniversary of Samoa's independence from New Zealand and the Treaty of Friendship between our countries. A full report of the Secondment will be provided in the next issue (for Oct-Dec 2012) upon Ms Vaai's return in mid-October 2012.

EVENTS OF JULY-SEPTEMBER 2012 (Cont'd...)

COMPREHENSIVE CRISIS MANAGEMENT COURSE

- 15 August 2012 - 18 September 2012, Honolulu, Hawaii -



Constance Tafua Rivers (Legal Consultant, Legislative Drafting) attended the above 4-weeks Course, which was held at the Asia Pacific-Center for Security Studies (APCSS) in Honolulu, Hawaii from 15 August 2012 to 18 September 2012. By way of background, the APCSS is an academic institution established by the United States Pacific Command to enhance cooperation and build relationships through mutual understanding and study of comprehensive security issues. Participants to the Course included highly qualified government officials from Ministries of police, Foreign Affairs, Trade, Commerce, Fisheries, Customs and Environment who are involved in regional security matters.

The main aim of the Course was to bring together international fellows from the Asia-Pacific region to build an intellectual foundation in crisis management, and to enhance professional networking for cooperation in crisis planning and response. The Course develops a comprehensive understanding of crises and management with a focus on the strategic impact of decisions and actions before, during and after crises. It aims also at enhancing knowledge and skills in leadership for crisis management in 5 main areas: (i) an ability to form comprehensive understanding of the situation at the strategic level, reflecting all aspects of its complexity and risks; (ii) an ability to devise accurate strategic assessments and solutions within this context of complexity; (iii) an ability to cooperate and collaborate effectively with partners in a whole of society, multinational and cross-cultural setting; (iv) an ability to influence the public and other interested stakeholders through effective communications; and (v) an ability to leverage appropriate technology to support all phases of crises management.

The Course was structured into 3 main Parts: Part I – Framing the problem and strategy development with emphasis on developing skills in forming a comprehensive understanding of crises as complex phenomena, and designing strategies for assessments and approaches to solutions appropriate to such situations; Part II – Core functions in a whole-of-society approach to comprehensive crisis management, building on this foundation by introducing a framework to help guide thinking on the multidimensional nature of such solutions and consequently, the critical importance and challenges of coordination amongst government agencies and all of civil society; Part III – Collaboration and communication in crisis management, introducing an additional lawyer of complexity to such coordination by drawing attention to the broad range of actors, national and international, with whom practitioners are likely to find themselves working in their capacities as crisis managers (various agencies of the United Nations, regional and international organisations, the private sector and NGOs, etc). Emphasis was also placed on skills in negotiations and influence communications, as well as the critical qualities of leadership in such settings.

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EVENTS OF JULY-SEPTEMBER 2012 (Cont'd...)

COMPREHENSIVE CRISIS MANAGEMENT COURSE *(Continued from pg. 5)*

Lectures covering topics relevant to crisis management were delivered by faculty and experts (who were invited to speak). These lectures were followed by discussions with hands-on group exercises and an individual project to help participants in developing key leader skills which would assist in confronting complex crisis situations. Participants also had the opportunity to further refine their skills in problem analysis, framing and strategy development. In groups, the participants had the opportunity to pursue a project focused on a specific crisis management challenge faced in their home agencies or countries. This project allowed the participants to apply what they had learnt during the Course to devise a plan of action addressing the identified challenge on their return to their agencies or country.

According to Ms Rivers, the Course is beneficial for those working in fields related to prevention of, response to and recovery from, crises. So from law enforcement to disaster management authorities to local communities, each party has a vital role to play in resilience.

THIRD MEETING OF STATES PARTIES TO THE CONVENTION ON CLUSTER MUNITIONS

- 11-14 September 2012, Oslo, Norway -

Papalii Malietau Malietao (Parliamentary Counsel) was nominated to attend the above Meeting, which was held in Oslo, Norway from 11 to 14 September 2012. The Meeting took place, following 4 years after the Convention on Cluster Munitions (CCM) Signing Conference in Oslo in 2008. The main objective of this third meeting was to allow States Parties to take stock of the progress achieved and discuss how to further enhance universalisation and implementation of the CCM. The Meeting was funded and facilitated by the UNDP with support of donor countries. All States Parties, signatories and other observer states as well as relevant international organisations and civil society organisations participated in and contributed to the meeting.

Norway has sought to emphasise international humanitarian law (IHL), civilians against harm. As such, Nor-
 tions to add weight to this ambition
 general statements. Such meeting
 sions at the Meeting and drew atten-
 ed to the strengthening and develop-

On the 1st day of the Meeting, the States Parties to the CCM gave expectations for the Meeting. Following introduction, participants were engaged to make statements on areas including, general ideas on implementative role of the CCM for the protection for the strengthening of the IHL.



the CCM as part of the body of international law and its preventive role in protecting civilians. In this way, invited states and organisations were able to sharpen the focus of the discussion to how the CCM has contributed to the development of the IHL.

President of the Third Meeting of opening remarks outlining the ex-his opening remarks, the President key draft decisions. After the intro-in a general discussion and invited ing political commitments, universal-tation of the CMM, and the preven-tion of civilians and its importance

On the 2nd and 3rd days of the Meeting, the issues of *victim assistance, stockpile destruction and retention, clearance and risk reduction, universalisation, transparency measures, national implementation measures, Work Plan 2013, cooperation and assistance, compliance, and extension request* were discussed in more detail, following presentations by Working Groups and experts. The ICRC, UN and the Cluster Munitions Coalition also presented on their activities and aims to facilitate victim assistance, stockpile destruction and retention, clearance and risk reduction, universalisation, transparency measures, national implementation measures, Work Plan 2013, cooperation and assistance, compliance, and extension requests.

The presentations dealt with each of the issues including the progress, challenges faced and efforts taken, by the different States Parties to the CCM. Participants at the Meeting also shared their views on the issues and identified challenges faced by their respective countries. At the end of each session, recommendations as to how efforts taken to address the issues discussed can be sustainable, adequate and more effective and efficient.

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THIRD MEETING OF STATES PARTIES TO THE CONVENTION ON CLUSTER MUNITIONS

(Continued from pg. 6)

Here is a summary of views, challenges and efforts discussed at the Meeting pertaining to the issues of *victim assistance, stockpile destruction and retention, clearance and risk reduction, universalisation, transparency measures, national implementation measures, Work Plan 2013, cooperation and assistance, compliance, and extension request* :

- i) **Victim assistance** – there have been efforts to provide age and gender sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.
- ii) **Stockpile destruction and retention** – some States have plans to deal with safe and rapid destruction of cluster munitions, reporting on and keeping records of the number and types of cluster munitions stockpiled, and further plans pertaining to storage, stockpile, destruction and retention of cluster munitions.
- iii) **Cluster munitions clearance and risk reduction** – other States have prioritised the clearance of cluster munitions and undertaken efforts to minimise the risks(by identifying the location and size of all areas contaminated by cluster munitions as well as efforts to clear or otherwise release such areas as soon as possible. Information was also shared on the magnitude and structure of the contamination, plans for addressing the contamination and for ensuring the safety of the exposed populations.
- iv) **Universalisation** – States commented on activities they had undertaken to promote universal adherence to the CCM and others on the domestic process to ratify and deposit instruments of ratification.
- v) **National transparency measures** – some commented on the reporting format, the importance of transparency reporting, the transparency measures or reporting already undertaken, and the difficulties encountered with transparency reporting.
- vi) **National implementation measures** – States provided update on the specific implementation measures they have taken and shared their experiences with national legislation for the CCM.
- vii) **Work Plan 2013** – the President of the Third Meeting of the States Parties to the CCM made remarks on the draft decisions, the implementation architecture and intersessional work in 2013, and invited the States Parties to give their views on the same.
- viii) **Cooperation assistance** – States seeking assistance to implement their obligations under the CCM updated on their plans and needs as well as measures they have taken to facilitate the provision of assistance by other States and to promote cooperation between States and other actors. States that are in a position to provide assistance responded to the needs and gaps identified by other States during earlier sessions.
- ix) **Facilitation and Clarification of Compliance** – If any State Party has a concern regarding compliance with the CCM by another State Party, that State Party may submit a 'Request for Clarification' to the Secretary-General of the UN. Participants shared their views on interpretation of provisions of the CCM.
- x) **Extension requests** – States Parties may request an extension to their deadlines for the destruction of stockpiled cluster munitions and the clearance of affected areas.

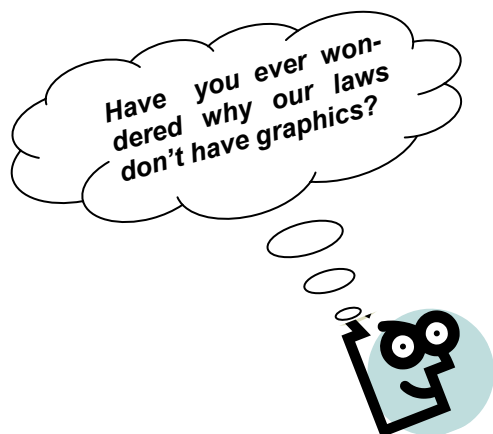
At the end of the 3rd day of the Meeting, a general discussion was aimed at providing an opportunity for delegations to raise any other matters that do not fall under the agenda items (as discussed above). On the 4th and last day of the Meeting, thoughts were provided on consideration and adoption of the final documents. Final presentation of the outcome documents of the 3rd Meeting was made by the Presidency. Delegations were also asked to make final remarks relating to the outcome documents. In concluding the meeting, the Presidency spoke in relation to the work of States Parties and other delegations in 2013, including preparation towards a 4th Meeting of States Parties.

Well, here's why.....

Graphics are useful for identifying patterns and relationships, summarising processes, or organising large amounts of information. But the problem with graphics, is that:

- ◆ some readers don't feel comfortable with, or are unfamiliar with graphics;
- ◆ it describes a diagram that has too much information in it (excessive complexity);
- ◆ there are elements of a diagram that have no relevance to the information sought to be conveyed (irrelevant complexity); and
- ◆ Graphics can go wrong because they don't require verbs in the way ordinary legislative text does

[Notes from Nick Horn's Training]



EVENTS OF JULY-SEPTEMBER 2012 (Cont'd...)

INVEST SAMOA CONFERENCE

- 20-21 September 2012, Auckland, New Zealand -



Papalii Malietau Malietoa (Parliamentary Counsel) also attended the 'Invest Samoa Conference' which was held in New Zealand, from 20-21 September 2012. Parliamentary Counsel spoke on Samoa's land reform legislation, land tenure, land lease and strata title laws.



Other Samoan delegates who attended the above Conference, included the Honourable Prime Minister, the Chief Executive Officers and/or representatives from the Ministry of Commerce, Industry and Labour, Samoa Tourism Authority, Ministry of Agriculture and Fisheries, Ministry Natural Resources and Environment, Ministry of Foreign Affairs and Trade, Ministry for

Revenue, Scientific Research Organisation of Samoa, Samoa National Provident Fund, Unit Trust of Samoa, Chamber of Commerce, SAME and other members from the private business sector.

Issues discussed at the Conference ranged from requirements and laws relating to the establishment of a business in Samoa, tourism, agriculture and fisheries development, organic farming, bio-fuel development, development in food production and processing, Samoa's environment protection and sustainable development policies, planning and urban management, climate change adaption and mitigation programmes, issues with land owners, world trade agreement, networking and partnerships, and other issues related to promoting foreign investment and foreign exchange in Samoa. Members from businesses in Samoa's private sector attended the Conference to share their experiences and some of the challenges to businesses in Samoa.

Legislative Drafting Training by Nick Horn

- 31 July 2012 - 03 August 2012, Attorney General's Office, Apia, Samoa -

Nick Horn, Senior Assistant Parliamentary of the Office of Parliamentary Counsel in Australia carried out a legislative drafting training from 31 July 2012 to 03 August 2012. By way of background, the Office of Parliamentary Counsel (OPC) is one of the 2 drafting offices that service the Australian federal government. It is a government drafting office rather than one that services a legislature. The OPC contains of a small number of staff in the parliamentary service who do drafting for individual Members of Parliament, but the OPC do all drafting for the government, and also routinely involved in any legislation drafted for individual Members of Parliament that is expected to pass. The OPC is one of 2 drafting offices providing such services, with the luxury of only drafting primary legislation (Bills for consideration in Parliament). The other drafting office drafts regulations and other subordinate instruments.

Topics covered in Mr Horn's training sessions included: shaping policy into law, complexity in legislation, section headings and plain language drafting, template drafting plan (legislative drafting plan or blueprint), drafting instructions, graphics and tables in legislation, Acts of general application, basic features of an Act, the instructor's role in the legislative process, the drafter's role and consultations on drafts. Here are some interesting points on shaping policy into law and the use of section headings, taken directly from Mr Horn's training materials:

Shaping policy into law:

A useful tool for shaping policy into law is by applying a "legislative drafting plan" or a "blueprint". The policy comes first, and the drafter's first and most crucial task (and probably the more difficult job) is not to draft, but to shape policy into a form that can be drafted as law. Some of the checklist of matters to be considered by the drafter includes defining the problem to be addressed, establishing the policy objective, locating evidence and research on which the policy proposed is based, setting out the state of the law and constitutional issues. For a project for which a "junior" drafter is primarily responsible, the junior drafter's conceptual capacity and project management ability can be developed more systematically by using a "legislative drafting plan" rather than the junior drafter going straight to a draft. In considering what topics should go into the structure of a Bill, a drafter may need to look at (i) framing provisions (title, commencement, definitions, and other general considerations); (ii) primary rules (provisions that intend to mod-

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Legislative Drafting Training by Nick Horn

(Continued from pg. 8)

ify behavior e.g. dealing what, how, by whom and with what permission?); (iii) implementation rules (administration or implementing agency); (iv) compliance rules (include inspection, monitoring and reporting rules designed to encourage compliance and support enforcement action where necessary); (v) enforcement rules (sanctions—penalties or other direct conformity-inducing measures with regard to prescribed behaviours); (vi) dispute settlement rules (administrative and judicial review or conciliation); (vii) finance rules (provides for resources (the necessary funds) to implement the provisions of the Bill); (viii) miscellaneous provisions (e.g. powers to make regulations and other executive powers, provisions safeguarding constitutional validity, etc.).

Section headings:

Section headings can be used in 3 dimensions: (i) vertical (descriptive); (ii) horizontal (structural); and (iii) section headings framed as questions.

- (i) Vertical (describing the section) avoids ambiguity and uncertainty, and provides direct reference to the section. There is another rule, that is, a heading should *describe* and not *summarise*, the contents of a section. On the other hand, a descriptive heading cannot fully communicate the relevant legislative rule. Either form of section heading can only indicate what the section says about the subject. The approach that has been recommended is applying different types of heading (including summary headings where appropriate) for different occasions (e.g. “Act to bind the Crown” (a summary)) rather than a form of description (e.g. “Act and Crown”).
- (ii) Horizontal (directing the reader, via the table of contents, across the rest of the Act) aims at clarity and transparency of the structure of the law. Section headings serve as a navigation guide to the arrangement of an Act as a whole. From the table of contents of an Act, the primary user should be given a sense of 3 aspects of the law: (i) scope (what the subject matter is covered, and the relative importance of various topics); (ii) narrative flow (the flow of the story told by the law from section to section); and (iii) organisation and logic (through the indication of the nesting of sections within subdivisions, divisions, parts and chapters). To take best advantage of the horizontal dimension, drafters should consider 5 horizontal drafting techniques: (i) strategic arrangement (the main structural challenge for the drafter is to arrange the sections of the Bill in an order that best enables primary users (or their advisors or representatives) to understand the way the statute affects such users and to find what they need in that law; (ii) narrative indications (indications of narrative flow can be included in the wording of section headings); (iii) consistent language (consistent language and phrasing in section headings helps the reader make implicit links across the statute); (iv) structural indications (explicit indications of structural relationships in the wording of section headings may be employed to show less formal cross-structures working within the formal structure of the Bill)—the internal division of the headings is an example mainly of this drafting technique—this kind of section heading is one way of linking a number of related sections without placing them under a Part heading or a cross heading; (v) contextual indications (section headings should not be duplicated elsewhere in the Bill (that is, each section heading should be unique)).
- (iii) Section headings in the form of questions, reach out of the page to echo questions the user is presumed to bring to the law for answers, and come out of the text to engage the reader in a dialogue. This technique emphasises direct communication with the public as the questions might actually be what members of the public want to ask. By simulating the exchange that occurs in “real” conversation, this question answer format creates a sense of immediacy. There are also some benefits in terms of accuracy and speed of recall. However, surveys and findings have shown there are different views about section headings in the form of questions (e.g. some found that it assisted students with relatively low academic capacity; others found that among professional users of Australian federal legislation there appears to be a reasonable level of support for the use of section headings in the form of questions; other findings proved that judges, magistrates, public service users and private practitioners preferred that the use of questions as section headings made the law easier to understand and read, whereas some respondents warned that it could be off-putting for frequent users of legislation, and that not all laws would lend themselves to this style, and some said it was patronising, and also that readers of the law might miss relevant information in a section not covered by the specific question). So although there is some basis for applying the use of questions as section headings, Mr Horn notes that care should be used when using this technique (for reasons mentioned).



OTHER EVENTS OF JULY-SEPTEMBER 2012 (Cont'd...)

Samoa Public Service Day

- 14 September 2012, Apia, Samoa -

Members from the Attorney General's Office (AGO) joined the "Samoa Public Service Day" celebrations with an early morning parade and flag raising at 7am. After the keynote address by the Honourable Prime Minister (and Minister for the Public Service Commission) the Samoa Public Service Day was officially declared open. At 10.30am-3pm, the Samoa Public Service Career and Awareness Exhibition took place at the TATTE Building. Ms Loretta Teueli organised the exhibition for the AGO, and presentations from each Division within the AGO were by Sioa Sioa (Legislative Drafting Division), Monique Vaai (Civil Division), Carvin Salamo (Criminal Prosecutions Division) and Leutu Leulualii (Corporate Services Division).



Admission to the Bar

- 6 September 2012,
Mulino, Samoa -



Martha Papalii was sworn in on 6 September 2012 by His Honour Chief Justice Patu F. M. Sapolu. Papalii Malietau Malietoa (Acting Attorney General at the time) moved the admission, which was supported by the Vice President of the Law Society.

"Integrity is an essential ingredient in the practice of law"

UPCOMING EVENTS:

- (1) Regional Health Promotion Leadership Training Programme in Bangkok, Thailand
- (2) International Refugee Protection Learning Programme for the Pacific in Honiara, Solomon Islands
- (3) Regional Meeting on the Implementation of the Pacific Forum Regional Unexploded Ordnance Strategy in Palau
- (4) Completion of the Legislative Drafting Secondment at the Parliamentary Counsel Office in Wellington, New Zealand
- (5) October 2012 and December 2012 Parliament sessions

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION (LDD)

Ming C. Leung Wai, Attorney General
 Papalii Malietau Malietoa, Parliamentary Counsel
 Rupeni Nawaqakuta, Legislative Drafting Advisor
 Loretta Teueli, Legal Consultant, Drafting
 Constance Tafua-Rivers, Legal Consultant, Drafting
 Nola Petelō Faasau, Senior Legislative Drafter
 Salote Peteru, Senior Legislative Drafter
 Fetogi R. Vaai, State Solicitor
 Sioa Sioa, State Solicitor
 Martha Papalii, Law Clerk
 Theodora Fipe Taleni Matalavea, Law Clerk
 Losa Kelekolio, Senior Legal Secretary
 Makereta Vaelua, Senior Bills Officer

Congratulations
 to Loretta Teueli and
 Constance Tafua Rivers for
 promotion to
 Legal Consultant, Drafting

Welcome
 to Theodora Fipe Taleni
 Matalavea, as the new
 Law Clerk for LDD