



Legislative Drafting Division Newsletter Update

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June 2018

EDITOR'S NOTE:

Talofa and Welcome,

Welcome to the 2nd edition of the Legislative Drafting Division Newsletter 2018. This edition will cover an update of all the events occurring from April to June 2018.

These events include workshops, conferences, trainings, farewells and recruits attended and hosted by the Legislative Drafting Division.

From the Attorney General and the Legislative Drafting Division we wish everyone an enjoyable and safe remainder of the year.

Jasmine Faleafaga & Beau Jacek Tuala
(Editors)

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Digital Pacific Samoa
“Getting our Government and Economy Ready for the Digital Age”

The Government of Samoa through the Ministry of Communications and Information Technology promoted regional connectivity and collaboration in technologies to capitalize on the infrastructure investments and has vowed to move towards a knowledge-based economy. This commitment was illustrated in the Government of Samoa partnering with the UNDP in hosting the Digital Pacific Conference in Samoa on 11th-12th June 2018.

The realization of the matter comes to reveal the possibility and readiness of the public service for the digital age, thereby acting on a vision of a “professional and competent public administration that provides quality, efficient and transparent services for and to its people”, and recognizes the importance of leveraging the opportunities of increased connectivity and the 4th Industrial Revolution, for fostering a digital economy and helping its private sector to adapt new technologies that build on existing strengths, generate employment and make its businesses more competitive.

The regional conference brought together influential development thinkers, practitioners, and relevant public stakeholders, private and civil society organizations to learn about international experience in digital transformation and to envision how the region and its small island developing states might benefit and identify common development objectives that can be pursued to leverage the opportunities of the 4th Industrial Revolution.

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PARLIAMENT UPDATE APRIL-JUNE 2018



ACTS PASSED IN APRIL TO JUNE

TITLE	DATE PASSED	COMMENCEMENT DATE
Appropriation Act 2018/2019	21/06/18	Date of assent by the Head of State (25 th June 2018)
Supplementary Appropriation (No.2) 2017/2018	21/06/18	Date of assent by the Head of State (25 th June 2018)
Money Laundering Prevention Amendment Act 2018	22/06/18	Date of assent by the Head of State (22 nd June 2018)
Excise Tax Rates Amendment Act (No.3)2018	25/06/18	Column 3 of the Schedule to commence on 1 st July 2018 & Column 4 of the Schedule to commence on 1 st July 2019
Income Tax Amendment Act 2018	25/06/18	Date of assent by the Head of State (25 th June 2018)

BILLS REFERRED TO SELECT COMMITTEE

TITLE	STATUS
Education Amendment Bill 2018	2 nd Reading on 29/05/18 and referred to Social Sector Parliamentary Committee for further deliberation and to report back on 2 nd July 2018.
Tobacco Control Amendment Bill	2 nd reading on 22 nd March and still with the Select Committee for further consideration.
Alienation of Customary Land Amendment Bill 2018	2 nd reading on 21 st March 2018 and referred to Select Committee for further consideration.

Next Parliamentary Sitting
8th October 2018

SUMMARIES OF LEGISLATION PASSED APRIL-JUNE 2018

Appropriation Act 2018/2019

The Act authorises the appropriation of certain sums of money out of the Treasury Fund and the Public Trustee's Account and their specific application to outputs and sub-outputs delivered by Ministries/ Departments, outputs delivered by third parties and transactions undertaken on behalf of the state for the Financial Year ending on the



Money Laundering Prevention Amendment Act 2018

The Act amends the Money Laundering Prevention Act 2007 with the objective to implement Samoa's obligations and adherence to anti-money laundering and countering terrorist financing international standards under Sa-



Supplementary Appropriation Act (No.2) 2017/2018

The Act authorises the issue and application of certain sums of money out of the Treasury Fund to Ministerial and Departmental outputs and sub-outputs, outputs provided by third parties and transactions on behalf of the State for the Financial Year ending on the 30th day



Excise Tax Rate Amendment Act (No.3) 2018

The Act amends the Excise Tax Rates Act 1984 by increasing the excise tax rates for tobacco products to 5% and also provide for the same increase which will be effective in July 2019.



Income Tax Amendment Act 2018

The Act amends the Income Tax Act 2012 in order to:

- allow sponsors a deduction to their assessable income for a tax year at 200% for sponsorship for the 2019 Pacific Games; and
- provide that monetary gifts received by religious ministers during funerals, weddings and other traditional, government or family occasion is not subject to income tax under the Act.



EVENTS: APRIL–JUNE 2018



PARLIAMENTARY COUNSEL COMMITTEE AND COMMONWEALTH CALC (PACIFIC) DRAFTING CONFERENCE 2018 and DRAFTING WORKSHOP

**4 -6 April 2018 and 9 April 2018
Canberra, Australia**

The 8th Parliamentary Counsel's Committee Drafting Conference ("Conference") was held on the 4th to 6th April 2018, followed by a drafting workshop on the 9th of April 2018, on the theme "*Drafting in the 21st Century: towards 2050.*" This year (2018) the Commonwealth Association of Legislative Counsel (CALC) from the Pacific were privileged to be invited to be part of the Conference. The Conference and workshop was attended by Principal State Solicitor Steffany Meredith of the Legislative Drafting Division.

Participants for the conference included participants from different Parliamentary Counsel's Office in the Australian region, Asian region (Hong Kong and Singapore), New Zealand and the Pacific Region (Fiji, Nauru, Solomon Islands, Tonga, Samoa, Vanuatu, Papua New Guinea, Kiribati, Federated States of Micronesia and Tuvalu).

The Conference was delivered through a series of presentations over a period of 3 days by experts in the field of drafting. The conference was also hosted by the Australian Office of the Parliamentary Counsel with the host being Mr. Peter Quiggin (First Parliamentary Counsel, Australian Office of the Parliamentary Counsel).

Presenters included Chief Parliamentary Counsel's and Assistant Parliamentary Counsel's from all over the Australian region. There were also members from the Judiciary who presented papers such as Honourable Justice Hilary Pinfold (QC) and Honourable Justice Gageler AC (Justice of the High Court of Australia). Furthermore, there were also presenters from outside the Australian realm who presented papers from their designated countries such as Ms Beng Ki Owi (Chief Legislative Counsel heading the Legislation Division) from the Singapore Attorney General's Chambers and Ms Theresa Johnson from Hong Kong (Law Draftsman for the Hong Kong Special Administrative region and former Queensland Parliamentary counsel).



The 3 day conference was divided into sessions on the following topics:

- ◆ Computer says NO! administering legislation using computers;
- ◆ The Singapore Experience of automated decision making;
- ◆ Drafting expertise in the public sector environment- a square peg in a round hole;
- ◆ Tales from the other side: Policy Officers using the statute book;
- ◆ How legislative procedures affects Bills structure and quality- collaborating for improvements?;
- ◆ The changing nature of the drafting process in the 21st century;
- ◆ A tale of 2 systems: Griffiths code v fault element criminal law systems, and the ramifications of maintaining both into the 21st century;
- ◆ National Uniform legislation simplified;
- ◆ Illusions of understanding: don't let your mind play tricks on you;
- ◆ Plain language drafting: are naming conventions for provisions one of the final frontiers;
- ◆ Better ways of deciding whether a contested usage is permissible in legislation;
- ◆ Sharing knowledge within a drafting Offices;
- ◆ Legislation: what is it good for?
- ◆ Legislation in 2050-what might the world look like?

The conference was followed by a 1 day workshop held at the Office of the Parliamentary Counsel (OPC, Canberra). The workshop was a follow on from the conference conducted specifically for those who travelled from outside Australia and was divided into 3 sessions with presenters (OPC drafters) presenting on the following topics:

- ◆ The small drafting Office: making a little go a long way;
- ◆ Finding gaps in your instructions?;
- ◆ Reducing complexity in legislation;
- ◆ Avoiding drafting mistakes;
- ◆ Automation in legislative drafting and publishing amendments and legislative history.

For each presentation participants were given opportunities to ask questions on the topics discussed. The topics and presentations gave an overview of the advanced level of drafting that the Australian, New Zealand and Asian regions have reached in terms of the skills, expertise and knowledge

EVENTS: APRIL–JUNE 2018



Legal Policy Development

Training Course

10th to 16th April 2018

Attorney General's Office, Conference Room

Senior Legislative Drafter, Kylie Wilson conducted a four day training on Legal Policy Development in the Conference room of the Attorney General's Office. This training was part of the key deliverables Ms. Wilson was required to undertake following her return from two month attachment with the Australian Attorney General's Department ("AGD"). The legal policy development course has been designed by the AGD to assist regional partner counties to build capacity in developing public policy proposals for government.



The Training was attended by lawyers of the Attorney General's Office and other government agencies. The training course provided an insight on the following:

*What is 'policy development';
the role of public servants in development policy;
how to develop policy and what tools can assist;
why stakeholders are important;
the importance of implementation and evaluation;
why recordkeeping matters.*

This training course helps public servants to better understand how they can support ministers and develop robust policy solutions. Participants were able to learn new tools to improve their capacity to work together to develop, consult on and assess the relative merits of alternative policy approaches, and test their ideas with the community. The course can also be used to promote cross agency discussion of current policy issues as well as those anticipated on the horizon, or as a foundation for developing specific law reform projects. The course included interactive group exercises based on a hypothetical policy issue; "cyber bullying via social media". It also covered key steps officials need to undertake in order to develop robust, evidence based policy proposals for government.

The training was an overall success which ended with a certificate ceremony for all those who attended the four day

EVENTS: APRIL–JUNE 2018



LEGISLATING FOR CLIMATE SMART DISASTER RISK MANAGEMENT IN THE PACIFIC

The Pacific Islands Forum Secretariat in partnership with the International Federation of Red Cross and Red Crescent Societies (IFRC), the Commonwealth Secretariat, with funding support provided by the British Red Cross and Australian Red Cross, hosted a workshop from 6th to 8th June in an attempt to strengthen governance frameworks on Climate Change and Disaster Risk Management (DRM) in the Pacific Region. One of the objectives of the Workshop is trying to identify the regulatory issues that hinders effective climate smart disaster risk management systems domestically and internationally. These issues starts from laws and regulations, roles and responsibilities pertaining to risk reduction and effective institutional basis to recover from disasters, response operations, liability, coordination and legal preparedness for international disaster assistance.

The workshop utilised expertise, instruments and learning tools on disaster law from the IFRC Disaster Law Programme, as well as technical expertise on climate change law from the Commonwealth Secretariat. Officials discussed rights, roles and responsibilities in the climate smart DRM process, covering global, regional and national governance frameworks pertaining to disaster risk reduction, preparedness, response (including international disaster response), and recovery. Integration of protection and inclusive approaches in governance frameworks, and the application of global and regional commitments into practical national level law to support and strengthen institutional resilience was also an important part of the discussion.

Participants during the workshop were also assigned to work in country delegation to map progress against commitments relating to DRM and climate change frameworks, and to develop individual country action plans for reviewing and strengthening their respective legal frameworks. These plans stressed the importance of maintaining strong and inclusive engagement and partnerships with all stakeholders throughout the full legislative review and development process, including through consultations, Parliamentary processes, and ongoing awareness, education and capacity development for effective implementation of these legal frameworks.

EVENTS: APRIL–JUNE 2018

Criminal Prosecution Training

The Office of the Attorney General conducted a prosecution training before His Honour Justice Nelson (“His Honour”), on 5th May 2018, for lawyers of its Office who are handling criminal matters and who are interested to take on criminal matters. Training materials were distributed a week before the training in order for participants to prepare their submissions. Participants were required to prepare for a hearing where they were grouped into four teams to conduct an examination in chief of witnesses in a set up of an actual Court hearing. The training was carried out in His Honour’s Court room, and it was a good refresher for prosecutors who are handling criminal matters and was also an interesting experience for lawyers from other legal divisions of the Office, who have never appeared in an actual criminal case.

This training also provided a great opportunity for all

lawyers of the Office of the Attorney to ask questions to His Honour. His Honour provided great feedback to the lawyers who participated in the training. His Honour then closed off the training with a talk on the challenges of the work of a prosecutor and the strategies to overcome those challenges.



His Honour Justice Nelson with participants from the Attorney General's Office

EVENTS: APRIL–JUNE 2018



From front page

Digital Pacific Samoa **“Getting our Government and Economy Ready for the Digital Age”**

The three (3) core objectives of the workshop included:

1. Prepare the ground for greater collaboration on digital technologies in the Pacific, in view of leveraging the increase in connectivity and potential for creating a regional digital economy which enjoys greater integration and prosperity;
2. Share lessons learnt with its own decision-makers, generate a shared vision on digitalization and identify priority areas on which the Government can focus its implementation efforts, thereby launching a process of organizational, cultural and technological change that will ready the nation for the digital age.
3. Identify key partners and financing mechanisms for the e-Governance reform in Samoa and in the region to expedite progress in digitalizing public and commercial services through relevant legislation, institutional design and capacity development.

The regional conference forms part of a Programme of events that will carry forward and contextualize the regional discussion to the national context, producing concrete follow-up activities towards an actionable digital transformation agenda.

The conference determined the cornerstones of a digital transformation agenda, producing a sound basis for the design and resourcing of an action plan for Samoa specifically with regards to the National Identification System that is in progress plan of the Government of Samoa. During the two-day conference, Senior State Solicitor of the Legislative Drafting Division, Ms. Titilua Aiono was present of the Office of the Attorney General.

The Presentations from international expertise included:

- (i) remarks was presented by the UN Resident Coordinator and UNDP Resident Representative, Dr. Simona Marinescu;
- (ii) recap and reflection on Digital Pacific Conference, mapping and sharing of insights by UNDP Global Centre for Public Service Excellence, Singapore, Arndt Husar;
- (iii) Estonia’s Transformation Experience: Challenges and Elements of Success, Director (Strategy and Development) e-Governance Academy, Government of Estonia, Mr. Hannes Astok; and
- (iv) Professor Graham Hassall from Victoria University.

Samoa Law Reform Commission Review of the “Fabric of Laws of Samoa” Awareness

A consultation by the Samoa Law Reform Commission (“Commission”) and the Law Society was held at the Ministry of Justice and Courts Administration on Monday, 11 June 2018 followed by another consultation by the Commission with its Stakeholders on Friday, 15 June 2018.

The awareness was to summarise the Commission’s final report on their review. It was also an opportunity for the participants to hear of the Commission’s findings and how it can benefit their respective Offices.

The term of reference of the review was to identify all the existing laws in Samoa. It was also to identify all the Government Ministries, State Owned Enterprise or Constitutional Offices that are administering each law, and to further identify and confirm from these entities any laws that are outdated under their administration and to consult their views whether to update, remove or replace these outdated laws.

Some findings of the Commission’s reviews are as follows:

There are currently 285 Acts of Parliament inclusive of Acts and Ordinances from 1908 to Dec 2016.

Of the 285 existing laws, 2007 was the year with most number of laws passed.

There are currently 14 pre-Constitution laws (before 1960); and 30 pre-independence laws (before 1962) with Bankruptcy Act 1908 as the oldest law still in existence.

Office of the Attorney General

Our Vision:

To ensure a safe and just society through the provision of quality and effective legal services .

Our Mission:

To serve the people of Samoa by upholding the Constitution and providing the highest quality legal services to Government

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Upcoming events:

**Next Newsletter:
end of
September 2018**

Roles of the Legislative Drafting Division

- ◇ *Ensure legislation drafted reflect instructions submitted by sponsoring Government Ministries/Agencies and consistent with the Constitution and other legislation*
- ◇ *Ensure effective legal advice and support is afforded to Parliament in relation to Bills*
- ◇ *Prepare orders, notices, warrants and other legal instruments in accordance with instructions and within the authority of primary legislation*
- ◇ *Provide legal support to projects which have legal component(s) by drafting TOR sitting on evaluation panel, and reviewing drafts provided.*

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION

Lemalu Hermann P. Retzlaff—Attorney General

Galumalemana Noumea L. Teueli—Chief Legislative Drafter

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Jasmine Faleafaga—Principal Legislative Drafter

Kylie Wilson—Senior Legislative Drafter

Titilua Aiono—Senior Legislative Draft er

Jacek Tuala—State Solicitor

Ioata Tanielu—State Solicitor

Shalon Time—State Solicitor

Tacy Sasagi—Law Clerk

DISCLAIMER

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