



TUSI TULAFONO NEWSLETTER UPDATE

OFFICE OF THE ATTORNEY GENERAL

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TALOFA LAVA,

Welcome to the first edition of our quarterly newsletter for 2019.

Our year started with Parliament sittings in January and March of this year.

In this issue you will find all the Laws that were passed by Parliament in the January and March sittings, and updates on the laws currently in Parliament.

You will also find reports of conferences, workshops and trainings our Legislative Drafting Team took part in for this quarter.

On that note, may the good Lord continue to bless each and everyone of you throughout 2019.

Shalon Sophia Time (Editor)

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ACTS PASSED IN JANUARY SITTING

ACTS	DATE PASSED	COMMENCEMENT DATE
Community Law Centre Amendment Act 2019	28/01/2019	Date nominated by the Minister.
Constitution Amendment Act 2019	29/01/2019	31/01/2019
Constitution Amendment Act (No. 2) 2019	29/01/2019	31/01/2019
Constitution Amendment Act (No. 3) 2019	29/01/2019	Section 4—31/01/2019 Other provisions—commenced on the day the HOS dissolved the legislative assembly pursuant to Article 63(4) of the Constitution.
Education Amendment Act 2019	29/01/2019	Date nominated by Minister
Electoral Act 2019	29/01/2019	31/01/2019
Electoral Commission Act 2019	29/01/2019	31/01/2019
Electoral Constituencies Act 2019	29/01/2019	Section 4—31/01/2019 Other provisions—commenced on the day the HOS dissolved the legislative assembly pursuant to Article 63(4) of the Constitution.
Ministry of Health Amendment Act 2019	28/01/2019	01/02/2019
Supplementary Appropriation Act (No. 1) 2019	25/01/2019	28/01/2019
Tobacco Control Amendment Act 2019	29/01/2019	Date nominated by Minister



ACTS PASSED IN MARCH SITTING

ACTS	DATE PASSED	COMMENCEMENT DATE
Accident Compensation Amendment Act 2019	19/03/19	Date of assent
Samoan Language Commission Amendment Act 2019	19/03/19	Date of assent
Tax Information Exchange Amendment Act 2019	19/03/19	Date of assent

SIGNED SUBSIDIARY LEGISLATION

TITLE	SIGNED DATE
Conventional Arms (Fees) Regulations 2018	9/08/18
Electricity Rules 2018	14/02/19
Food (Ava) Regulations 2018	6/06/18
Radio Spectrum Fees Amendment Regulations 2018	20/10/18
Road Traffic Amendment Regulations 2018	26/10/18
Telecommunications Licence Fee Regulations 2018	26/10/18
Waste (Plastic Bag) Management Regulations 2018	26/10/18



FINALISED SUBSIDIARY LEGISLATION



TITLE	FINALISED DATE
Broadcasting (Standards and Policy, Licence Categories and Conditions) Rules 2019	22/03/19
Competition and Consumer (Fees) Regulations 2018	24/05/18
Energy Efficiency (Approved Energy Using Products Standards) Regulations 2018	12/02/18
Energy Efficiency (Approved Energy Using Products Standards) Amendment Regulations 2018	17/02/18
Film Production Regulations 2018	18/05/18
Film Production (Manumalo Limited) Regulations 2019	18/03/19
Land Transport Authority (Parking Meters) Regulations 2018	25/09/18
Marine Wildlife Protection Amendment Regulations 2018	19/02/18
Public Finance Management (Government Vehicles) Amendment Regulations 2019	18/03/19
Telecommunications (Radio equipment technical standards and type approval) Rules 2018	19/02/18
Trustee Companies Regulations 2018	11/09/18

BILLS IN PARLIAMENT

TITLE	STATUS
Alcohol Control Bill 2018	<ul style="list-style-type: none">• 1st Reading on 5/10/18• 2nd Reading on 28/01/19• Referred to Select Committee on 28/01/19
Alienation of Customary Land Amendment Bill 2018	<ul style="list-style-type: none">• 1st Reading on 20/03/18• 2nd Reading on 22/03/18• Referred to Select Committee on 22/03/18
Head of State Amendment Bill 2018	<ul style="list-style-type: none">• 1st Reading on 5/10/18• 2nd Reading on 5/10/18• Referred to Select Committee on 5/10/18
Land and Titles Bill 2019	<ul style="list-style-type: none">• 1st Reading on 25/01/2019• 2nd Reading on 28/01/2019• Referred to Select Committee on 28/01/2019
Returning Offenders Bill 2019	<ul style="list-style-type: none">• 1st Reading on 25/01/2019• 2nd Reading on 28/01/2019• Referred to Select Committee on 28/01/2019
Road Traffic Amendment Bill 2019	<ul style="list-style-type: none">• 1st Reading on 19/03/2019• 2nd Reading on 19/03/2019• Referred to Select Committee on 19/03/2019
USP Amendment Bill 2019	<ul style="list-style-type: none">• 1st Reading 19/03/2019• 2nd Reading 19/03/2019• Referred to Select Committee on 19/03/2019

Next Parliament sitting: 28/05/19

SUMMARY OF ACTS PASSED IN JANUARY - MARCH SITTING

SUPPLEMENTARY APPROPRIATION ACT (No. 1) 2019

The Act contains the First Supplementary Appropriation for the financial year 2018/2019 ending on 30 June 2019.

The Act authorises the issue and application of certain sums of money out of the Treasury Fund to Ministerial and Departmental output and sub-outputs, outputs provided by third parties and transactions on behalf of the State



MINISTRY OF HEALTH AMENDMENT ACT 2019



The Ministry of Health Amendment Act 2018 amends the Ministry of Health Act 2006 and repeals the National Health Services Act 2014. It also provides for the functions, roles and responsibilities of the Director General and Deputy Director General of Health as the heads of the Ministry.

Furthermore, the Act will provide for the additional functions, roles and responsibilities to be carried out by the Ministry of Health once the National Health Services Act 2014 is repealed.

EDUCATION AMENDMENT ACT 2019

This Act amends the Education Act 2009 by increasing the compulsory school-age from 5 to 14 years to 4 to 16 years old. The Act also to merges the interchangeable use of the terms village school and Ministry school to Government school.



COMMUNITY LAW CENTRE AMENDMENT ACT 2019

The Act amends the Community Law Centre Act 2015 to change the title of the office holder from "Public Advocate" to "Public Defender" and also intends to limit the work of the Public Defender to just criminal representation in Court.



"If we desire respect for the law, we must first make the law respectable." - Louis D. Brandeis

SUMMARY CONTINUED

ELECTORAL COMMISSION ACT 2019

The Electoral Commission Act 2018 provides the following:

- to establish the Electoral Commission;
- to provide for the establishment of the position of Electoral Commissioner (the terms of appointment, resignation, termination and vacancy); and
- to set out the appointment of staff of the Electoral Commission.



ELECTORAL CONSTITUENCIES ACT 2019

The Electoral Constituencies Act 2019 repeals the Constituencies Act 1963.

The Act prescribes 51 previously 49 Constituencies for the purpose of Article 44(1) of the Constitution and prescribe the names of these 51 Electoral Constituencies that comprise of villages and sub-villages.



ELECTORAL ACT 2019

This Act repeals the Electoral Act 1963. It is a re-write of the Act in simpler language, comprising of provision of the Act as well as new rules that will be used to govern and regulate the procedure for elections in Samoa.

The Act sets out clearly the process and procedures for the conduct of elections in Samoa. The Act consists of 17 Parts, and 156 sections.



TOBACCO CONTROL AMENDMENT ACT 2019

This Act amends the Tobacco Control Act 2008 to establish a tobacco licensing regime to regulate tobacco licensing fees for manufacturers, importers, distributors, nightclubs owners and to prescribe these tobacco annual licensing fees through Regulations.



At his best, man is the noblest of all animals; separated from law and justice he is the worst. (Aristotle)

SUMMARY CONTINUED

CONSTITUTION AMENDMENT ACT 2019

The Act amends the Constitution of the Independent State of Samoa 1960.

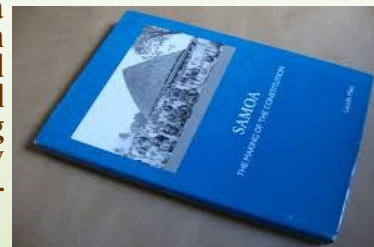


To provide that a person may only hold the office of Head of State for two terms.

CONSTITUTION AMENDMENT ACT (No. 2) 2019

The Act amends the Constitution of the Independent State of Samoa 1960.

This is to provide for a reform to coincide with the reform of the Land and Titles Court as well as other reforms being prepared by the Ministry of Justice and Courts Administration.



The purpose of the Act is to include three (3) additional members to the Judicial Service Commission by amending Article 72 of the Constitution, and to allow the further prescription by Act, the processes of the Judicial Service Commission.

CONSTITUTION AMENDMENT ACT(No. 3) 2019

The Act amend sthe Constitution to increase the number of electoral constituencies. The Legislative Assembly shall comprise of one member elected from 51 electoral constituencies. This does not affect the requirement that 10% of membership of the LA must comprise of women.



Accident Compensation Amendment Act 2019

The Act amends the Accident Compensation Act



1989 and to provide for Cabinet's approval if the amount to be paid by the Corporation for treatment overseas (in special cases) exceeds \$150,000tala.

Samoan Language Commission Amendment Act 2019

An Act to amend the Samoan Language Commission Act 2014 to increase the number of members of the Board of Commission to include representatives from New Zealand, American Samoa and a Samoan language teacher from the Teacher's Council. It is also to provide for the change in the quorum and matter which clarifies allowances in which the New Zealand and American Samoa representatives are entitled to.



Tax Information Exchange Amendment Act 2019

The Act amends the Tax Information Exchange Act 2012 to incorporate the list of foreign governments that Samoa has entered into an agreement with in relation to exchange of information regarding tax matters and related purposes.



WORKSHOP/CONFERENCE

Rights, Empowerment and Cohesion Pilot Project ("R.E.A.C.H.")

The Samoa Law and Justice Sector in collaboration with United Nations Development Program and UN Women conducted a R.E.A.C.H mission from 4th March to 14th March 2019. The R.E.A.C.H. pilot project is a Mobile Delivery Service to specific selected villages in Upolu and Savai'i. The objective of the pilot project was to deliver knowledge through awareness raising and by taking the members of the Law and Justice sector's services to remote and isolated areas of Samoa. The hope is to enhance citizen awareness and access to justice by delivering and making the services easily available for those who live in the selected remote rural communities.

The R.E.A.C.H. pilot project visited the villages of Uafato at Fagaloa, Sapunaoa at Falealili, Matafa'a at Lefaga, Faleasi'u-uta at Aana and Leualesi at Leauva'a uta in Upolu; and for Savai'i the R.E.A.C.H project visited Tapueleele at Fa'asaleleaga, Samalaeulu at Gagae'emauga, Paia at Safotu, Falealupo at Falealupo, and Samata uta at Samata.

The Office of the Attorney General as a member of the Samoa Law and Justice sector was represented by Galumalemana Noumea L. Teueli, Liufau Ioata Tanielu and Shalon Sophia Time of the Legislative Drafting Division. Other sector members that were present include the Ministry of Justice and Courts Administration, Ministry of Police, Samoa Prison and Corrections Services, Ministry of Women, Community and Social Development, Samoa Law Reform Commission, Office of the Ombudsman and the two members of the steering committee, Samoa Umbrella for Non-Government Organisation and Sui Tamaitai.



Second Preparatory Conference for the Mutual Legal Assistance Initiative 11-14 March 2019, Noordwijk, The Netherlands

Samoa received an invitation from the Kingdom of Netherlands, with the Argentine Republic, the Kingdom of Belgium, Mongolia, the Republic of Senegal, and the Republic of Slovenia (members of the Core Group) to attend the Second Preparatory Conference of the Mutual Legal Assistance (MLA) Initiative held at Noordwijk, Netherlands from 11-14 March 2019.

Siovia Florina Liu, Principal Legislative Drafter and Sala Sapolu-Margraff, State Solicitor attended the Conference on behalf of the Attorney General's Office and Samoa.

The Conference was attended by participants from 50 supporting States from all over the world and civil societies (Amnesty International, Coalition for the ICC, Civitas Maxima, EU Genocide Network, FIDH, International Commission of Jurists, Open Society Justice Initiative, Parliamentarians for Global Action, Human Rights Watch, and Redress). Samoa was the only Pacific country that attended the Conference. The Conference is a build up from the first Preparatory Conference held in October 2017 in Doorn (The Netherlands). The Conference proved to be successful and very productive with great input and comments from supporting States and civil society on the draft Multilateral Treaty on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity and War Crimes.

Presenters at the Conference included former President of International Criminal Court (ICC) and experts from ICC. It also included academics on international law and practitioners from the different Core Group Countries who directly deal with MLA for crimes of genocide, crimes against Humanity and war crimes.

The outcome of the Conference was comments made on the Draft Rules of Procedure were taken into account and incorporated in the draft Rules. The revised Rules have been circulated to the States for any further comments to be submitted to the Core Group by 8th April 2019. The Aim of the Core Group is to reach an agreement with the States on the draft Rules by the next Strategic meeting scheduled on the 8th May at the Netherlands Ministry of Justice and Security.

Furthermore, comments on the draft Treaty were also considered and will be taken into account.

Way forward

The core group will meet after the closure of the conference in order to take stock of the very fruitful discussions made during the Conference. In the meantime and thereafter, they will continue their efforts to expand the number of supporting States in order to get as close as possible to universality. The Core Group was excited to announce that Silvia Fernández de Gurmendi will be put forward as chair of the Diplomatic Conference.

The goal for the conference was to receive the input of supporting States and civil society on the first Preliminary Draft Treaty, which was achieved as seen in the active participation and the countless valuable comments and ideas shared during the Conference. All these comments, as well as the written comments received, will be considered carefully in the redrafting process. The Core Group will provide a second Preliminary Draft Treaty as soon as possible in order to finally close the legal gap and provide practitioners with the tools they need in the important fight against impunity.



Pacific Island Law Officers Network – Sexual & Gender Based Violence Working Group 2019

Under the Pacific Island Law Officers Network (PILON) in collaborations with Samoa's Attorney General's Office, Aus Aid and the UK Government, the Sexual and Gender Based Violence (SGBV) Working Group meeting was held at the Tanoa Tusitala Hotel in Apia, Samoa from 25 – 28 March 2019. Meeting participants comprised of prosecutors, public defenders, policy officers, police officers, judges and social workers from Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The meeting was chaired by Samoa's Attorney General Mr. Lemalu Hermann P. Retzlaff. The principles that form the foundation of this workshop are the *General Principles for Obtaining the Best Evidence from Vulnerable Witnesses to SGBV* developed by the 2017 working group. These eight principles are Dignity and Respect; Best Information; Coordinated Assistance; Safety; Privacy; Non-Discrimination; Individual Expression; and Victim Impact and Compensation Principle. Over the course of this workshop, guest speakers from around the region were invited to share their experiences on how their own jurisdictions were implementing these different principles with the hope of getting the participants to talk amongst themselves about what things they are already doing to support vulnerable witnesses in their own country and share both the challenges they have had; and the successes. The guest speakers were;

Ane Iati (Assistant Attorney General – Commercial and International Law Division, Samoa);

Neomi Maravuakula (Senior Human Rights Advisor, Regional Rights Resource Team);

Folasaitu Dr Julia Ioane (Senior Lecturer Psychology/Clinical Psychologist, Auckland University of Technology)

Khylee Quince (Associate Professor, Director of Maori and Pacific Advancement – Auckland University of Technology)

Ofa Likiliki (Tongan Women's Crisis Centre)

Stephanie Dunn (Legal Advisor - Fiji Women's Crisis Centre)

Judge Jane Farish (District Court, New Zealand)

Justice Shane Gill (Family Court of Australia)

Charlotte Brook (Crown Counsel & Team Manager, Criminal Team Crown Law Office, New Zealand)

Kathy Bell (Deputy Solicitor-General, Cook Islands)

Natalie Walker (Crown Solicitor, Manukau South Auckland)

Kieran Raftery (Queens Counsel, New Zealand)

David Wells (Associate Professor, Victorian Institute of Forensic Medicine, Australia)

Ross Elwood (Detective Inspector, New Zealand)

Efo Moalele (Detective Senior Sergeant, Samoa Police Service)

Honourable Justice Judy Ryan (Family Court of Australia)

Tuifagatua Dr George Tuitama (Head of Mental Health Department, Ministry of Health Samoa)



OFFICE EVENTS

JANUARY—MARCH

NEW LDD MEMBER



We welcomed our new law clerk, Kimri Thetadig on the 4 March 2019 to our Legislative Drafting Team. Kimri graduated from the University of Queensland and had previously practiced law as a law clerk in Queensland Australia.

Members of the Legislative Drafting Division

Lemalu Hermann P. Retzlaff (Attorney General)
Galumalemana Noumea L. Teuli (Chief Legislative Drafter)
Leitu Moananu (Associate Legislative Drafter)
Steffany Meredith (Principal Legislative Drafter)
Siovia Florina Liu (Principal Legislative Drafter)
Jasmine Faleafaga (Principal Legislative Drafter)
Kylie Wilson (Senior State Solicitor)
Titilua Aiono (Senior State Solicitor)
Beau Jacek Tuala (State Solicitor)
Liufau Ioata Tanielu (State Solicitor)
Shalon Sophia Time (State Solicitor)
Kimri Thetadig (Law Clerk)
Ned Asani (Part-time Law Clerk)
Losa Kelekolio (Senior Legal Secretary)

DISCLAIMER

Please note that the information contained in this Newsletter is not intended to be taken as legal advice and therefore should not be relied upon as such. Any fault in the accuracy of the information in this Newsletter is ours alone.