



# TUSI TULAFONO

## Newsletter

VOLUME 14 | ISSUE 3

1 JULY—30 SEPTEMBER  
2019

### EDITOR'S NOTE

TALOFA

Welcome to the third edition of the *Tusi Tulafono Newsletter* for 2019.

Whilst the slight parliamentary sojourn in the last quarter has given the Legislative Drafting Division ("LDD") just a moment to breathe, it has not meant a slow down of work (or play) with July hitting off the quarter with the success of the Pacific Games with LDD members both volunteering and cheering on Team Samoa. August was a busy month of important domestic and regional conferences, workshops and events, including the signing ceremony of the United Nations Convention on International Settlement Agreements resulting from Mediation in Singapore. Finally, to end an eventful quarter, the Attorney-General's Office enjoyed time outside the office flexing our physical muscles with our annual Sports Day held in September.

An understated but incredibly valuable aspect of the practice of law (and indeed all disciplines) includes critical self-reflection. Inside this issue, you will be updated on the latest conferences and workshops attended by the LDD and be informed on the status of subsidiary instruments that have been signed and finalised in this quarter and previous quarters. You will also find a special contribution from LDD's law clerk, Ned Asani who takes a moment to critically reflect upon his 4 month experience with the Criminal Prosecution's Division, and sharing his personal insights on how laws drafted by LDD are applied everyday by the courts and legal practitioners.

On that note and on behalf of the LDD and the Attorney-General's Office, I commend you on your hard work thus far and pray for God's continued wisdom and grace over each of you as we strive together for the excellence of Samoa in law reform and development. Manuia ~

Editor | Kimri Thetadig

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"The draft must have the majesty of law, the authority of a command, the neutrality of good prose and yet must strive for limpid grace."

~ P.M. BAKSHI, *The Discipline of Legislative Drafting*

### DATE CLAIMER

Next Parliament sitting | 8 Oct 2019

PILON Annual Meeting hosted by AGO | 4-7 Nov 2019

PILON Litigation Skills Training hosted by AGO | Dec 2019



## PARLIAMENT UPDATE

### BILLS BEFORE PARLIAMENT

TITLE	STATUS
<i>Land and Titles Bill 2019</i>	With Select Committee
<i>Alcohol Control Bill 2019</i>	With Select Committee
<i>Road Traffic Amendment Bill 2019</i>	With Select Committee
<i>Returning Offenders Bill 2019</i>	Withdrawn from Parliament

### COMMENCED SUBSIDIARY INSTRUMENTS (JULY-SEPT 19)

TITLE	COMMENCEMENT
<i>Broadcasting (Standards and Policy, Licence Categories and Conditions) Rules 2019</i>	10 September 2019

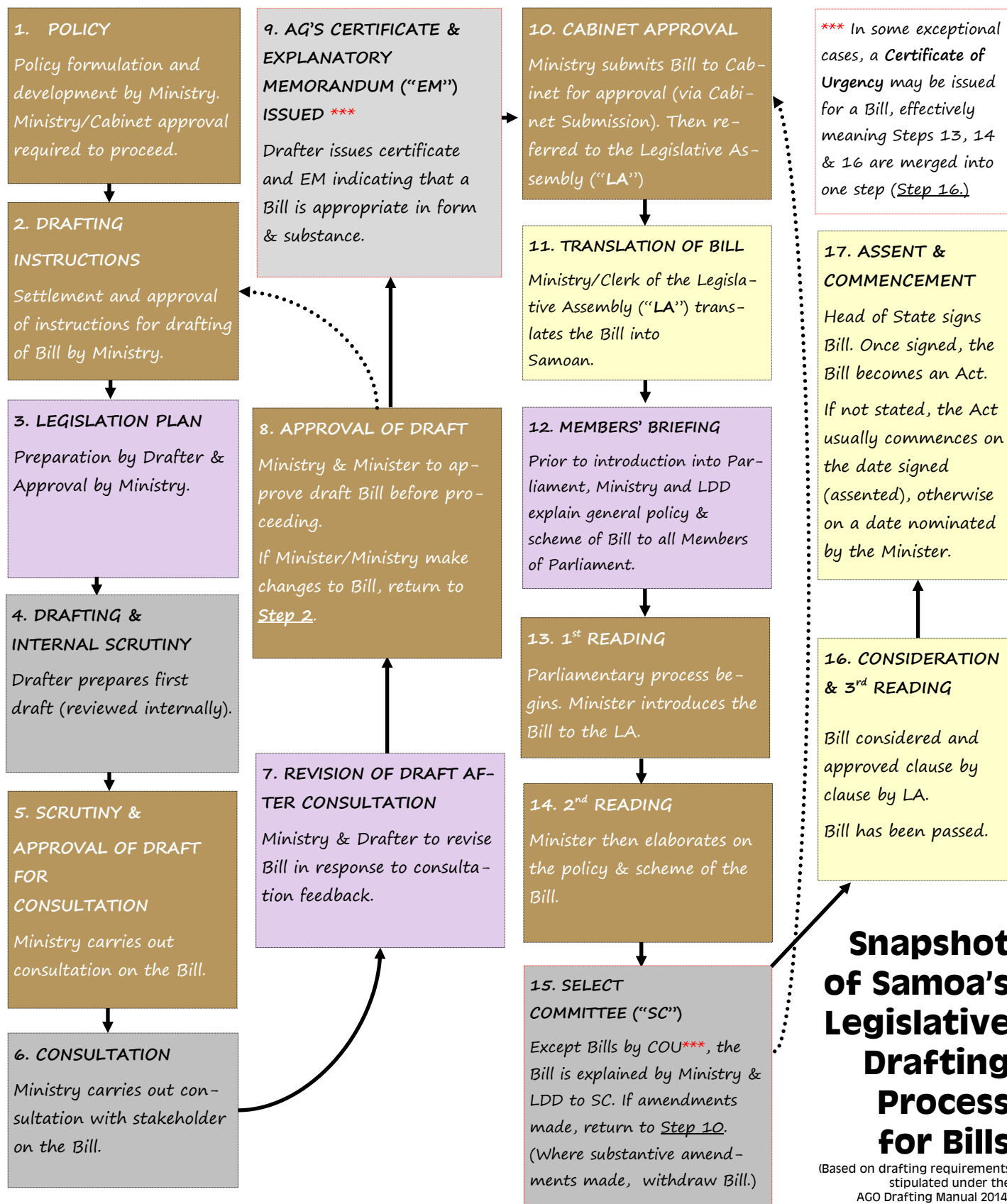
### SUBSIDIARY INSTRUMENTS FINALISED BY AGO (MARCH - SEPT 19)

TITLE	FINALISED BY LDD
<i>Customs (Tourism and Manufacturing) Amendment Regulations 2019</i>	11 September 2019
<i>Tobacco Control (Licensing) Regulations 2019</i>	31 July 2019
<i>Customs Amendment Regulations 2019</i>	30 July 2019
<i>Customs (Rules of Origin for Pacer Plus) Order 2019</i>	30 July 2019
<i>Diplomatic Privileges and Immunities (Declared International Organisations) Amendment Order (No. 2) 2019</i>	15 July 2019
<i>Public Finance Management (Government Vehicles) Amendment Regulations 2019*</i>	18 March 2019

### UPDATE OF COMMENCED SUBSIDIARY INSTRUMENTS (MAR-NOV 18)

(not previously included in LDD Newsletter from Vol 11, Issue 4: Oct– Dec 2018)

TITLE	COMMENCEMENT
<i>Telecommunications (Radio Equipment Technical Standards and Type Approval) Rules 2018</i>	6 November 2018
<i>Land Transport Authority (Parking Meters) Regulations 2018</i>	1 month from 26 October 2018
<i>Competition and Consumer (Fees) Regulation 2018</i>	23 August 2018
<i>Energy Efficiency (Approved Energy Using Products Standards) Regulations 2018</i>	Various commencement dates for different sections all within 12 months of 5 March 2018
<i>Energy Efficiency (Approved Energy Using Products Standards) Amendment Regulations 2018</i>	5 March 2018
<i>Marine Wildlife Protection Amendment Regulations 2018</i>	1 March 2018



## Snapshot of Samoa's Legislative Drafting Process for Bills

(Based on drafting requirements stipulated under the AGO Drafting Manual 2014)



## CONFERENCES, WORKSHOPS & EVENTS

### PACIFIC LEGISLATIVE DRAFTERS' TECHNICAL FORUM PACIFIC ISLANDS FORUM SECRETARIAT SUVA, FIJI 20 JUNE 2019



Senior Legislative Drafter, Ms. Titilua Aiono (pictured, second row second from left), together with participants from other Pacific Island countries attended the Pacific Legislative Drafters' Technical Forum hosted in collaboration with the Pacific Island Forum Secretariat and Australia's Attorney General's Department.

The overall objective of the Forum is to improve access to high quality legislative drafting services, and in turn strengthening the rule of law throughout Forum Island Countries in the Pacific region. The keynote address was by Dr. Filimon Manoni, International Legal Adviser of the Pacific Island Forum Secretariat. The key objective of the Forum was to formulate and discuss a way forward for advancing country ownership of the Drafters' Forum network and outcomes of the Forum included:

- ◇ Discussion and recommendations on the draft proposal to bring the Drafters' Forum under the PILON committee;
- ◇ Providing feedback on the draft *Pacific toolkit* presented by Australia's Attorney-General's Department before its launch at the next meeting of the Drafters' Forum. The toolkit seeks to provide valuable tools to assist drafters in turning policy into draft legislation;
- ◇ Providing, and being updated on the region's progress in terms of the Regional Action Plan from 2017 to date. The development update indicated improvements in five areas: (1) enhanced regional networking; (2) development/update of legislative development and drafting resources; (3) strengthening knowledge, skills and capacity in legislative development and drafting; (4) improved regional resources to support legislative implementation of treaty obligations; and (5) improved access to laws. In closing, Mrs. Nola Faasau, the Legal Drafting Officer for the Pacific Island Forum Secretariat, discussed the next steps for the Drafters' Forum and congratulated the participants.

## CONFERENCES, WORKSHOPS & EVENTS

### NZ RED CROSS EMERGING HUMANITARIAN LEADERS' WORKSHOP WELLINGTON, NEW ZEALAND

4 - 6 August 2019

To mark the 70th anniversary of the Geneva Conventions of 1949 and their additional protocols, the New Zealand Red Cross invited a delegation of young leaders from across the Pacific and Aotearoa New Zealand for a 2-day workshop covering the basics of international humanitarian law ("IHL") and the continued prevalence of IHL in the protection of human lives and dignity at the worst of times: times of war and conflict.

The workshop aimed to support and empower humanitarian leadership among young adults from university students, diplomats, aid workers and volunteers to scientists, artists, policy makers and lawyers. Participants developed awareness of the importance of the rules of war (IHL), and were encouraged to develop and analyse situations from a humanitarian perspective which could be applied in any line of work and community involvement they were committed to.

As part of the anniversary celebrations, the Right Honourable Jacinda Arden hosted an event in New Zealand's Parliament House, where she reaffirmed her support for IHL, saying of the Geneva Conventions and their additional protocols, that "[t]ogether, they are a great legal, moral and political achievement...[that] records a baseline for our common humanity—that no matter what conflicts divide us, we are united in basic shared dignity and treatment of our fellow humans."

During one of the workshop sessions, International Disaster Law specialist, Finau Heuifanga Limulua Leveni, commented on the significant overlap beginning to emerge between IHL and disaster law catalyzed by the climate crisis. As nations and entire communities across the Pacific face forced relocation from their indigenous homelands (perhaps the most devastating humanitarian consequence of climate change), an urgent need for responsive and unified leadership across political, social, environmental and legal disciplines is called for. This workshop provided participants with a rare opportunity to build a network of expertise across international borders constituting young voices eager to dialogue and respond to practical solutions to such humanitarian issues facing the Pacific today.

Legislative Drafter, Kimri Thetadig was part of the Pacific delegation that participated in this workshop.



Young Humanitarian Leaders and NZ Red Cross Activators outside the Beehive, New Zealand's Parliament House in Wellington before an address on the Geneva Conventions made by the Right Honourable Jacinda Arden.



## CONFERENCES, WORKSHOPS &amp; EVENTS

**SAMOA SIGNS THE UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION  
("Singapore Convention on Mediation")****6 - 7 August 2019****Singapore**

On 6 – 7 August 2019, 1500 delegates descended into Singapore for the signing of the Singapore Convention on Mediation. The Honourable Minister of Justice and Courts Administration, Hon. Faaolesa Katopau Tuasivi Ainuu, who attended the signing Ceremony and Conference of the Singapore Convention on Mediation signed the Convention on behalf of Samoa.

Samoa was amongst 46 countries that signed the Singapore Convention on Mediation inclusive of two neighbouring Pacific Island States, Fiji and Palau.

In his opening address, Singapore Prime Minister Hon. Lee Hsien Loong described the Convention as a "powerful statement in support of multilateralism" and further noted that the "treaty would help advance international trade, commerce and investment at a time when multilateralism was under pressure."

Samoa's show of support for the Singapore Convention on Mediation by signing it also supports the move to improve multilateralism as this is an important step in ensuring that we as a nation are able to participate and contribute to the advancement of trade, commerce and investment in the international arena.

The signing ceremony was followed by a roundtable discussion on the importance of multilateralism and the international rule of law, and its role in advancing international trade and investment.

The Honourable Minister of Justice and Courts Administration attended the Roundtable discussion and offered Samoa's sentiments of support of the importance of multilateralism and the international rule of law.

Samoa's delegation included Hon. Faaolesa Katopau Tuasivi Ainuu Minister of Justice and Courts Administration, Hon. Acting Chief Justice Vui Clarence Nelson, Acting Chief Executive Officer Leota Paulo Pelenato and Assistant Attorney General Galumalemana Noumea L. Teueli.

***Why is the Convention important?***

The Singapore Convention on Mediation provides parties to it with the certainty that cross-border mediated settlement agreements resulting from the mediation of international commercial disputes, are enforced in convention countries. Its introduction further raises awareness of the benefits of mediation as an efficient, conciliatory and party-driven process, in alternative to court/arbitration.

Samoa's next step in the treaty-making process is ratification by way of enactment of domestic legislation recognizing Samoa's intention to be bound by the Convention.



## CONFERENCES, WORKSHOPS &amp; EVENTS



**ABOVE:** Hon. Faaolesa Katopau Tuasivi Ainuu (Minister of Justice and Courts Administration), signs the Singapore Convention on Mediation on behalf of Samoa.

**BELOW:** Samoa's delegation for the signing ceremony and conference of the Singapore Convention on Mediation held in Singapore from 6—7 August 2019.

(Pictured, from left) Acting Chief Executive Officer Leota Paulo Pelenato, Assistant Attorney-General Galumalemana Noumea L. Teueli, Hon. Minister of Justice and Courts Administration Faaolesa Katopau Tuasivi Ainuu, Singapore's 2nd Minister of Finance & Education and Minister in the Prime Minister's Office Hon. Indranee Rajah, Hon. Acting Chief Justice of Samoa Vui Clarence Nelson and attendant.



## CONFERENCES, WORKSHOPS & EVENTS

### **PACIFIC ISLANDS CYBER CAPACITY BUILDING ENGAGEMENT STRATEGIC CYBER PLANNING AND IMPLEMENTATION**

**19-20 AUGUST 2019**

**NADI, FIJI**

This inaugural Conference was organized under the United States Digital Connectivity and Cybersecurity Partnership (DCCP) to enhance cybersecurity capacity across the Pacific island regions and to support secure communications infrastructure development through public-private partnerships, promoting regulatory reforms, and building the cybersecurity capacity of partners. The purpose of the conference was to assist civilian cybersecurity personnel in the Pacific to identify approaches for developing and implementing National Cybersecurity Policies and Strategies to build capacity to address the increasing cybersecurity concerns across the region.

The Conference was held at the Sheraton Resort in Denarau, Nadi, Fiji from 19 to 20 August 2019 and was attended by delegates from Samoa (three senior officials from the Office of the Attorney General, the Ministry of Communication and Information Technology, and the Ministry of the Prime Minister and Cabinet), Tonga (Computer Emergency Response Team), Fiji (Digital Transformation Authority and Attorney General's Office), Kiribati (Telecommunications sector) and Papua New Guinea (telecommunications sector). Special guest speakers were also present from the US Federal Communications Commission, Australian Department of Foreign Affairs and Trade, New Zealand Department of Foreign Affairs and Trade, World Bank and the Asian Development Bank.



Senior Legislative Drafter, Kylie Wilson (pictured, 8th from the right with fellow Conference participants), attended on behalf of LDD.





## CONFERENCES, WORKSHOPS & EVENTS



### WOMEN, PEACE AND SECURITY SUMMIT

Hosted by Samoa and New Zealand for the Pacific Region

22—23 August 2019

Sheraton Hotel, Apia

The Women, Peace and Security Summit ("Summit") held in Apia on the 22- 23 August 2019, was co-hosted by the Governments of Samoa and New Zealand to promote the United Nations Security Council Resolution (UNSCR) 1325 and the global Women, Peace and Security agenda in the Pacific region, as well as action under the *Boe Declaration on Regional Security*, endorsed by Pacific Islands Forum Leaders in 2018.

The UNSCR 1325 on Women, Peace and Security was adopted in 2000, along with six complementary UNSC resolutions. The key priorities outlined by these resolutions include representation and meaningful participation of women at all levels of peace and security governance; promotion of rights for women and girls; and the protection of rights for women and girls in fragile, conflict and post conflict situations.

It was a critical opportunity for the participants from various backgrounds to exchange lessons learnt on the concept of meaningful participation and representation of women at all levels of peace and security governance; and identify how best to promote and protect women's rights in the Pacific Island countries.

A diverse range of participants from across the Pacific region attended the Summit, including civilians, police and military personnel, civil society organisations and youth. Sessions also featured Pacific and international speakers from a range of backgrounds and disciplines.

Principal Legislative Drafter, Jasmine Faleafaga, and Legislative Drafter, Sharon Time, attended on behalf of LDD.

## LAW IN PRACTICE:

### *From a legislative drafter's perspective*

"The life of the law has not been logic; it has been experience."

– Oliver Wendell Holmes

## Time Away from Drafting and with Criminal Prosecution

By Ned Asani

\* \* \*

The everyday work of a legal drafter is worlds apart from the everyday work of a prosecutor.

While drafting consists of meticulous planning, sizable amounts of research and constant consultation before a first draft is even finalized; prosecution requires one to be hands on, light on their feet, always alert and your experience counts more than anything else. Although the day to day operations of the two disciplines may differ, the relationship shared by the two may be closer than one might think.

The time I spent with the Attorney General's Criminal Prosecution Division gave me invaluable insight on the practical application of the law and the contribution of drafting to that application. The 4 months spent with the Criminal Prosecution District Team proved very informative in how the different mechanisms of our legal system operates. First, the initial enforcement of the law is conducted by Police through their investigations. Once the investigation is complete, the prosecutorial role of the Criminal Prosecution Division comes into play. This is where the information gathered by Police is passed on to the Criminal Prosecution Division where it is carefully analyzed and assessed by the Prosecutor to ensure they meet the elements of the offending. The matter is then brought before the Court by the Prosecutor for mention where the defendant may take their plea. If the defendant pleads not guilty, the Prosecutor then prepares the case for hearing where the facts of the case are laid out and argued by the Prosecutor in the interest of justice. If the Court find the defendant guilty, the matter is then scheduled for sentencing where our Office assists the Court in preparation of the sentencing submissions to

ensure the defendants are adequately held accountable for their actions.

This experience was enriching as I saw how each mechanical part of this machine we call the legal system operates. Through this experience I learned that the drafter's consideration of every circumstance in which an offending may occur and ensuring that those circumstances are included in the legislation is a vital part of this intricate system. The skills and knowledge from the Drafting Team greatly assisted me in preparation of sentencing submissions, research on regulations stipulating offences not provided for in its Principal Act and interpretation of the law to analyse whether the circumstances of the offence does or does not meet the elements of the offending. Through this experience I've gained a unique appreciation for the practice of law in the Criminal Prosecution Division and encourage all lawyers to partake in criminal prosecution work to expand their own personal capacity and to undergo an experience they will never forget.

Finally, I would like to thank the Criminal Prosecution Division, especially the District Court Team for allowing me to be part of their camaraderie and for the time spent and knowledge gained from this invaluable experience. I thank the seniors for their constant mentorship and practical approach in teaching the juniors how to navigate the inner workings of the legal system. I want to thank the Police prosecutors for their insight on their approach in conducting hearings and for their assistance in understanding the procedures of how Police investigations are conducted. I would also like to thank all the staff members of the Criminal Prosecution Division and salute you all for your tireless efforts in maintaining the prosecutorial role of the Attorney General's Office, often under insurmountable amounts of pressure and stress coupled with a limited and narrow timeframe.

Malo le galulue malo le tauivi.

Ma le faaaloalo lava.





## SOCIAL EVENTS

### OFFICE OF THE ATTORNEY-GENERAL'S ANNUAL SPORTS

On 5 days of the week we are lawyers, secretaries, support staff, drivers and IT experts, but on one day of the year we become uniquely gifted sack-hoppers, egg-on-spoon racers, moon walkers and grass rollers. That day is the Attorney General's Annual Sports Day.

On Saturday, 21 September 2019, members of the Attorney-General's Office and their families gathered at Pesega sports grounds to unwind and enjoy each other's company outside the hectic 5 day working week with some social (but competitive) sporting activities including the classic sack and egg-on-spoon races, tug-of-war, and musical chairs.

The day ended at the swimming pools at Tuanaimato Sports Complex with a jumping castle for children and a delicious spread of dishes, including a barbeque supplied by the AGO's Social Committee and cooked by the Committee's president.



"People rarely succeed unless they have fun in what they are doing." ~ Dale Carnegie



CONGRATULATIONS TO  
THE 2019  
WINNERS:

**TEAM YELLOW-WHITE**





## SOCIAL EVENTS



Samoa Law Society ("SLS") hosted their annual Golf Day tournament on Friday, 30 August 2019. The day included a full on day of golf and culminating in a prize-giving function at Traveller's Point. Malo lava to the SLS Committee, including LDD's Kylie Wilson for an enjoyable tournament.







## ANNOUNCEMENTS

**Welcome** to LDD's newest member,

**Afoa Gagau Jerry Ah Kee** who joins LDD as a Law Clerk after previously working for the Samoa Police Service.

Afoa is completing his final semester at the National University of Samoa studying a Bachelor of Arts (majoring in Sociology and English with a minor in Management). We wish you all the best in your new role with the Attorney General's Office.



### Upcoming Parliament Sittings

Tuesday, 8 October 2019

Tuesday, 17 December 2019

Tuesday, 21 January 2020

**Fa'afetai lava** to

LDD intern, **Leilani Tafili**, who assisted the LDD from July—August 2019.

Leilani is currently completing studies in Political Science at Brigham Young University in Hawaii and hopes to enter law school upon completion of College studies.

We acknowledge Leilani's contributions to LDD.





## 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.

Our Postal Address:  
Office of the Attorney General  
P.O. Box 27  
Tel: +685 20295 / 20296  
Fax: +685 22118  
Email: [attorney.general@ag.gov.ws](mailto:attorney.general@ag.gov.ws)

**Our Website:**  
[www.ag.gov.ws](http://www.ag.gov.ws)

### ***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*  
Leitu Moananu—*Associate Legislative Drafter*  
Steffany Meredith—*Principal Legislative Drafter*  
Siovia Florina Liu—*Principal Legislative Drafter*  
Jasmine Faleafaga—*Principal Legislative Drafter*  
Titilua Aiono—*Senior Legislative Drafter*  
Kylie Wilson—*Senior Legislative Drafter*  
Ioata Tanielu—*Legislative Drafter*  
Shalon Time—*Legislative Drafter*  
Kimri Thetadig—*Legislative Drafter*  
Ned Asani—*Part-time Law Clerk*  
Gagau Jerry Ah Kee—*Part-time Law Clerk*  
Leilani Tafili—*LDD Intern (July-Aug 2019)*

### **DISCLAIMER**

The information contained in this Newsletter is not 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. The opinions and views expressed herein are the contributors' and editor's own, not those of the Attorney General's Office.