

# **OFFICE OF THE ATTORNEY GENERAL**

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## **ANNUAL REPORT**

**1 JULY 2011 - 30 JUNE 2012**

## Foreword

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As Minister for the Office of the Attorney General, it is a pleasure to present the Annual Report for the Office of the Attorney General.

In the face of global economic changes, regional unrest and national developments, the Office of the Attorney General, in its role as the sole Principal Legal Advisor to Government, plays an important role in decision-making through the legal advice it provides. It is an even remarkable feat when the current Office is staffed by relatively young solicitors, prosecutors and drafters who have already been involved in high profile criminal and civil cases and in drafting groundbreaking legislation.

The Office of the Attorney General has been a strong advocate in fostering regional relationships not only between the Pacific but also with its New Zealand and Australian counterparts through conferences hosted locally, attendances at overseas workshops and meetings and secondment programmes not only to expose but also to continuously build the capability of its solicitors in handling complex matters.

The Office of the Attorney General uses the vision "*to ensure a safe and just society through the provision of quality and effective legal services*", to steer the path forward for the Office for the next three years.

Ia Manuia.

Tuilaepa Fatialofa Lupesoliai Sailele Malielegaoi  
**PRIME MINISTER / MINISTER OF THE OFFICE OF THE ATTORNEY  
GENERAL**

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# Attorney General's Note

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

The mission above is that which I use to achieve the goal of the vision, set out in the Prime Minister's note to this report. The Attorney General is appointed under Article 41 of the Constitution of the Independent State of Samoa 1960 (Constitution). The Attorney General is the Principal Legal Advisor of the Government in accordance with common law principles and is responsible for criminal prosecutions and civil law suits involving Government. The Attorney General's Office has also become the leading pacific island with local capacity to apply the technical skill of legislative drafting.

Of notable developments in the past year, one that stands out is the move of our Office from the old Government building to the new Tui Atua Tupua Tamasese Efi Building at Sogi at the end of 2011. The new Office space has assisted my staff with more effective execution of their work with the easier access to the new court house complex as well as closer access to the Legislative Assembly Offices in Mulinuu.

My Office, in fulfilling its obligations as stipulated in the Constitution, has been kept busy for the past 12 months with notable civil law suits, criminal prosecution and legislation drafted. Also with the Sector Coordinator of the Law and Justice Sector (Sector) reporting directly to the Attorney General, leading and monitoring the Sector is a task which adds to the schedule kept by the Office.

In the past, the annual Country Report to PILON was treated as the Annual Report for my Office. But with the move to be independent from the Public Service and the formulation of a Bill to setting out in some detail the work involving my Office, it is felt that an Annual Report is necessary. This is the first annual report for the Office of the Attorney General and it is my pleasure to be the incumbent in presenting such for the period of 1 July 2011 – 30 June 2012.

To God be all the glory.

*Soifua ma ia manuia.*

Ming C. Leung Wai  
**ATTORNEY GENERAL**

# Introduction

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The duties and responsibilities of the Attorney General are as follows:

- i. Principal Legal Advisor to the Head of State, the Prime Minister and Cabinet;
- ii. Responsible for all civil claims involving Government;
- iii. Responsible for all Commercial and International legal opinions involving Government
- iii. Responsible for criminal proceedings;
- iv. Protector of the Judiciary;
- v. Drafting all forms of legislative instruments;
- vi. Common law protector of charitable trusts.

The objectives of the Office of the Attorney General are as follows:

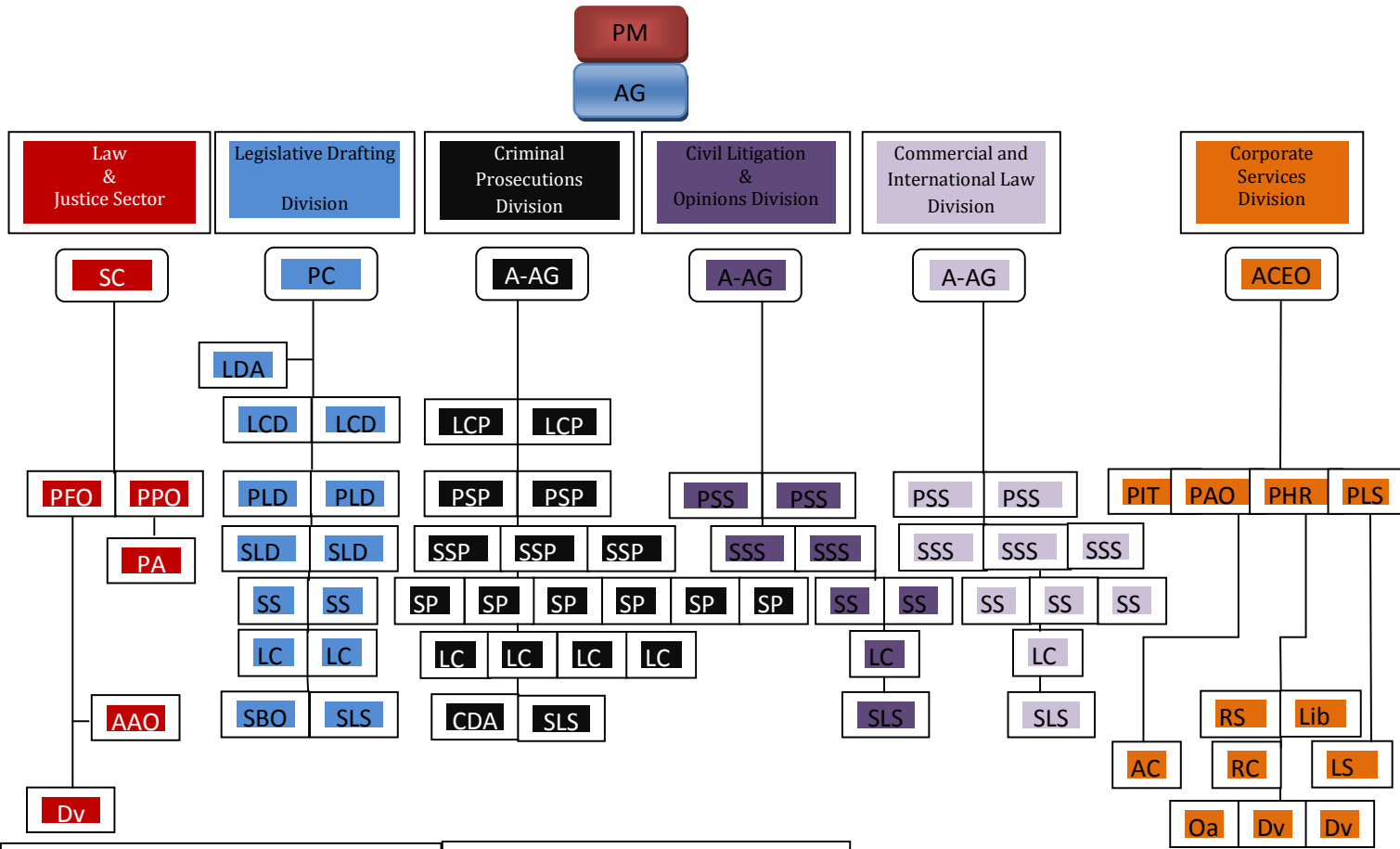
1. To provide professional legal opinions and advice in a timely and efficient manner to Government Ministries and Agencies;
2. To negotiate, review and draft all Government contracts/deeds and other related legal documents both domestic and international to ensure that Government's interest is advanced and/or protected;
3. To supervise and conduct civil proceedings involving Government and provide legal support to or representation for Government in other formal enquiries;
4. To supervise and conduct criminal prosecutions and appeals in a fair and just manner.
5. To draft any legislative instrument, and provide legal advice on legislation administered by Government Ministries and Agencies as instructed.
6. To ensure that the law reform is properly and independently carried out in relation to legislation that requires reform and areas or issues that need legislative intervention or governance.

In attempting to achieve the above objectives, the Office of the Attorney General strives to adhere to all human resource policies and financial requirements as set out by the relevant governing agencies (Ministry of Finance, Audit Office & the Public Service Commission).

The Office of the Attorney General is made up of 5 Divisions; the Legislative Drafting Division, the Civil Litigation and Opinions Division, the Commercial and International Law Division, the Criminal Prosecution Division and the Corporate Services Division. Also, as the Office of the Attorney General is at the forefront of the Law and Justice Sector; the Office of the Secretariat responsible for the implementation of such plan has been set up and also reports to the Law and Justice Sector Steering Committee which is chaired by the Attorney General.

Finally, of notable change for this year, is the intention of the Office of the Attorney General to become independent from the supervision of the Public Service Commission. This is effected by the introduction of the Constitutional Amendment Bill (No. 1) 2012 and the Attorney General's Bill 2012 into Parliament. The intention for independence is to give the Attorney General more control over the employment of his staff. However, the Attorney General will continue to report to the Executive arm of Government as per normal duties expressed in the Constitution.

# Organisational Structure



**SC: Sector Coordinator**  
**PFO: Principal Finance Officer**  
**PPO: Principal Projects Officer**  
**PA: Projects Assistant**  
**Dv: Driver**

**PC: Parliamentary Counsel**  
**LDA: Legislative Drafting Advisor**  
**LCD: Legislative Drafting Consultant**  
**PLD: Principal Legislative Drafter**  
**SLD: Senior Legislative Drafter**  
**LC: law Clerk**  
**SBO: Senior Bills officer**  
**SLS: Senior Legal Secretary**

**A-AG: Assistant Attorney General**  
**LCP: Legal Consultant Prosecutor**  
**PSP: Principal State Prosecutor**  
**SSP: Senior State Prosecutor**  
**SP: State Prosecutor**  
**LC: Law Clerk**  
**CDA: Case Database Assistant**  
**SLS: Senior Legal Secretary**

**A-AG: Assistant Attorney General**  
**PSS: Principal State Solicitor**  
**SSS: Senior State Solicitor**  
**SS: State Solicitor**  
**LC: Law Clerk**

**ACEO: Assistant Chief Executive Officer**  
**PIT: Principal Internet Technician**  
**PAO: Principal Accounts Officer**  
**PHR: Principal Human Resource Officer**  
**PLS: Principal Legal Secretary**  
**RS: Records Supervisor**  
**Lib: Librarian**  
**Accounts Clerk**  
**RC: Records Clerk**  
**LS: Legal Secretary**  
**Dv: Driver**  
**Oa: Office assistant**



# Legislative Drafting Division

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## Structure

Not all the positions in the Legislative Drafting Division have been filled. There are currently 8 legislative drafters and 2 support staff employees to cater for instructions to draft and review legislation for Samoa. One of the drafters is Rupeni Nawaqakuta who is a Legislative Drafting Advisor offering mentoring to the Division. The Legislative Drafting Division (Drafting Division) is responsible for achieving objectives 5 and 6 alluded above which are:

- To draft any legislative instrument, and provide legal advice on legislation administered by Government Ministries and Agencies as instructed.
- To ensure that law reform is properly and independently carried out in relation to legislation that requires reform and areas or issues that need legislative intervention or governance.

Every law which is to be approved by Cabinet and passed by Parliament is initially reviewed and cleared by the Attorney General through the Drafting Division, after which the Attorney General's Certificate is issued as verification that such laws are proper as to form and content.

## Achievements

In meeting its first objective, the Drafting Division has drafted and vetted legislation between the period of 1 July 2011 and June 2012 as set out below. (For the purposes of confidentiality communication covered under lawyer client privilege, legal advice provided by the Drafting Division cannot be specifically set out in this report.)

### *(A) Acts passed by Parliament in 2011 and 2012*

- |  |  |
|--|--|
| • Supplementary Appropriation Act (No.1) 2010/2011 | • Food and Drugs Amendment Act 2011                    |
| • Supplementary Appropriation Act (No.2) 2010/2011 | • Excise Tax Amendment Act 2012                        |
| • Appropriation Act 2011/2012                      | • Accident Compensation Corporation Amendment Act 2012 |
| • Public Records Act 2011                          | • Cluster Munitions Prohibitions Act 2012              |
| • Forestry Management Act 2011                     | • Incorporated Societies Amendment Act 2012            |
| • International Dateline Act 2011                  | • Customs Amendment Act 2012                           |
| • SEG International Enterprise Act 2011            | • Customs Tariff Amendment Act 2012                    |
| • Foreign Investment Amendment Act 2011            | • Land and Titles Amendment Act 2012                   |
| • Liquor Act 2011                                  | • Composition of Boards of Public Bodies Act 2012      |
| • Intellectual Property Act 2011                   | • Tourism Development Act 2012                         |
| • Copyright Amendment Act 2011                     |  |
| • Customs Tariff Amendment (No.2) Act 2011         |  |

- Limitation Amendment Act 2012
- OPEC Fund Loans Act 2012
- Airport Authority Act 2012
- Special Purpose International Companies Act 2012
- Supplementary Appropriation Act 2012
- Stamp Duty Amendment Act 2012
- Tax Information Exchange Act 2012
- Appropriation Act 2012/2013
- Supplementary Appropriation Act (No. 2) 2011/2012
- Income Tax Act 2012
- Casino and Gambling Control Amendment Act 2012
- Financial Institutions Amendment Act 2012

*(AA) Regulations drafted and signed by the Head of State 2011 – 2012*

- Excise Tax (Domestic Administration) Regulations 2011
- Customs Amendment Regulations 2011
- Pesticides Regulations 2011
- Foreign Investment Regulations 2011
- Land Transport Authority (National Road Account) Regulations 2008
- Land Transport Authority (Licence Fees and Other Charges) Regulations 2011

*(AB) Notices drafted and finalised*

- Commencement Notice – Spatial Information Agency Act 2010
- Commencement Notice – Survey Act 2010
- Commencement Notice – Land Valuation Act 2010
- Commencement Notice – Electricity Act 2010
- Commencement Notice – Foreign Investment Regulations 2011
- Commencement Notice – Composition of Public Bodies Act 2012
- Commencement Notice – Cluster Munitions Prohibitions Act 2012
- Commencement Notice – Stamp Duty Amendment Act 2012
- Commencement Notice – Customs Tariff Amendment Act 2012
- Commencement Notice – Excise Tax Rate Amendment Act 2012
- Immigration Fees and Charges Amendment Notice 2011
- Citizenship Fees and Charges Amendment Notice 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 1) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 2) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 3) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 4) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 5) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 6) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 7) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 8) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 9) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 10) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 11) 2011
- Notice of Charge on Base Tariff for the Supply of Electricity (No. 12) 2011

- Notice of Charge on Base Tariff for the Supply of Electricity (No.2) 2012
- Notice of Charge on Base Tariff for the Supply of Electricity (No.3) 2012
- Notice of Change in Tariff per Unit of Electricity 2012, Order of the Regulator (No.1) 2012
- Notice of Charge on Base Tariff for the Supply of Electricity (No.1) 2012

*(AC) Orders drafted and finalised*

- General Price Order (No. 1) 2011
- General Price Order (No. 2) 2011
- General Price Order (No. 3) 2011
- General Price Order (No. 4) 2011
- General Price Order (No. 1) 2012
- General Price Order (No. 2) 2012
- General Price Order (No. 3) 2012
- Sale of Turkey Tails Prohibition Order 2011
- Special Price Order (No. 1) 2012

*(AD) Other legislative instruments*

- Declaration of a public holiday for the 50<sup>th</sup> Independence Celebrations
- Prime Minister's Directive 2012
- Warrants of Appointment (for Chief Executive Officers/General Managers, Boards, Committees, Councils, Commissions, etc.)

*(B) Summaries of significant legislation*

*i. Excise Tax Amendment Act 2012*

The Act proposes to amend the Schedule of the Excise Tax Rates Act 1984 to increase the rates of excise for soft drinks, alcoholic beverages, cigarettes and petroleum. The tariff items with applicable excise tax rates that are amended are specified in section 2 (a) of the Act. Some of the amendments include the excise tax rate for mineral water and aerated water which is now free and the excise tax rate for alcoholic beverages, cigarettes and other manufactured tobacco are increased.

*ii. Customs Tariff Amendment Act 2012*

The Act amends the First Schedule of the Customs Tariff Act 1975 to reflect the new rates of customs duty and excise for soft drinks, alcoholic beverages, cigarettes and petroleum fuels.

*iii. Customs Amendment Act 2012*

The Act amends Parts I and II of the Second Schedule to the Customs Act 1977 to increase the annual fees for various warehouse licenses.

*iv. Stamp Duty Amendment Act 2012*

The amends the Stamp Duty Ordinance 1932 ("Ordinance") to increase the stamp duty rates for land conveyancing.

**Note:** The Amendment Acts in i-iv were drafted as a financial strategy by the Government to raise additional revenue (by increasing certain taxes, fees and charges) and minimise deficit.

*v. Accident Compensation Corporation Amendment Act 2012*

This Act amends the Accident Compensation Act 1989 (the Principal Act"). The sole amendment is to section 56 of the Principal Act. It provides the Accident Compensation Corporation with additional powers of investment to purchase personal property. This provision intends to allow

the Corporation to buy an interest in the Unit Trust of Samoa if desirable for investment purposes.

*vi. Cluster Munitions Prohibitions Act 2012*

The Cluster Munitions Prohibition Act 2012 gives effect to the Convention on Cluster Munitions (“the Convention”) and emphasizes Samoa’s commitment to the partnerships for international peace and security, and support for and the promotion of the principles of, the international humanitarian law, and general disarmament and non-proliferation of weapons that continue to kill and maim people indiscriminately.

The objective of this Act is to implement Samoa’s obligations under the Convention by prohibiting a number of activities in relation to cluster munitions. These include the use, development, production, acquisition, possession, retention, stockpiling, transfer, importation and exportation of cluster munitions in Samoa as well as outside Samoa by Samoan citizens, residents, corporations or members of the Samoa Police Service.

The Act also specifically sets out certain circumstances in which activities relating to cluster munitions may be done so lawfully. Furthermore, the Act requires the provision of relevant information to the Chief Executive Officer of the Ministry to assist with the relevant reporting obligations so that Samoa is able to fulfill its obligations under the Convention.

*vii. Incorporated Societies Amendment Act 2012*

This Act amends the Foreign Investment Act 2000 to promote foreign investment and to regulate such investment by guaranteeing the rights of citizens to participate in the economy of Samoa. This includes the clear definition of the Reserved and Restricted list and provide for a transparent mechanism for the review of criteria for the selection of restricted and reserved sectors.

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

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

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

The new Act also authorises the confidentiality of relevant in-formation provided in an application for foreign investment registration. Furthermore, foreign investors are required to provide an annual report of its operations to the Chief Executive

Officer in order for the Chief Executive Officer to assess and report on the status of foreign investment in Samoa to Cabinet.

*viii. Land and Titles Amendment Act 2012*

This Act introduces a number of amendments into the Land and Titles Act 1981.

The major amendments are:

- to allow for the appointment of Deputy Registrars and Assistant Registrars who will be able to exercise and perform the same powers, functions and duties as the Registrar;
- to revise and clarify the law in relation to the intention to appoint a person to be the holder of a matai name or title;
- to set out the circumstances in which a person is not qualified to hold a matai title or be registered as a matai;
- to provide that each party to a matter in the Court is required to make a genuine effort to resolve the dispute before starting a case and to give the Registrar the power to conduct Samoan conciliation in relation to any proceedings at any stage in those proceedings.

Amendments have been made to section 2 that relates to the interpretation of terms used in the Principal Act. It omits the definition of “*Pulefaamau*” and inserts a definition of “Samoan conciliation”. Samoan conciliation means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement.

This Act also:

- allows the Court to advise the parties to a dispute to use a dispute resolution process if the Court considers that a dispute resolution process may help the parties to resolve that dispute;
- gives a power to the President or a Deputy President to order that proceedings be discontinued;
- provides for the making of Land and Title Court Rules for the purpose of regulating the practice and
- provides for the procedure of the Court;
- provides that some functions of the Court may, if the President or a Deputy President directs, be exercised by a Registrar.

A person is not qualified to hold a matai title or be registered as a matai unless the person is at least 25 years of age and is also prepared to carry out the obligations of his/her matai title according to the Samoan culture.

Gives the Court power in special circumstances and in accordance with Samoan customs and usage upon petition by a Sa’o or a Suli, permit a person who is not yet 25 but is at least 21 years old to have the age qualification to be a matai title holder.

*ix. Composition of Boards of Public Bodies Act 2012*

This Act amends the composition of boards of public bodies under various Acts to conform to current legal requirements and new Government policies relating to public bodies, and to update the composition of boards of public bodies, the selection and appointment criteria of director on those boards, as well as clarifying the separation of the roles of governance (Board) and management (Chief Executive

Officers/General Managers). The amendments include the removal of Members of Parliament, public servants and full-time salaried officers, from boards of those public bodies, with the exception of some boards which still require public servants as members given their expertise (e.g. Board of the Development Bank of Samoa, Board of Directors of the Samoa National Provident Fund, and the Board of Directors of the Samoa Sports Facility Authority).

For these exempted boards, public servants who are appointed as directors shall not receive remuneration. Further amendments to the various Acts require fewer or more members on the boards than as currently provided.

In addition, the appointment process is made clearer in that the directors are to be selected in accordance with applicable law relating to the management of public bodies, (except for ex officio members, a representative of a joint venture partner of the DBS Bank, and a representative of SASNOC who are appointed under relevant sections of their respective Acts), and appointed by Head of State acting on advice of Cabinet, and are removed by Cabinet.

The various Acts have also been amended to include the requirement for administrative heads (i.e. the Chief Executive Officers and General Managers) to attend board meetings but shall have no voting rights. Lastly, the Act also provides a timeframe for appointments to current boards to be revoked.

*x. Limitation Amendment Act 2012*

The Limitation Amendment Act 2012 amends the Limitation Act 1975 to remove the concept of adverse possession from application in Samoa. Until 2012, registered owners of freehold land could not recover possession of their property after 12 years, and for Government land, after 60 years. These Amendment Act does not apply to relevant cases filed with the Supreme Court before the commencement of the Amendment Act. Also, to avoid the problem of a potential influx of cases, the Amendment Act provides for claims to be filed before the Court by a certain time.

The objective of the Act is to remove the unfair concept of adverse possession, which limits the right of a dispossessed owner of freehold or government land to recover his, her or its land.

The 1975 Act sets up adverse possession as a shield against the registered owner of freehold or government land who seeks to recover possession of their property after the relevant limitation period has expired. However, the application and effect of adverse possession is a relatively complex legal and negative legal notion that can often have unforeseeable effects. Adverse possession claims generally compel all parties to commit to a full hearing of all matters in dispute.

Available evidence suggests that adverse possession is a highly significant doctrine in practice in Samoa. For instance, reported decisions in Samoa over the last decade where adverse possession claims were considered are numerous. A large number of cases have been heard by the Courts and in the main; the cases are largely determined by the facts of each particular claim defence.

The 2012 Act therefore aims to amend the relevant sections of the Limitation Act 1975 to ensure that adverse possession no longer applies in Samoa. This means that the rights of a dispossessed owner of freehold or government land to recover his, her or its land is not limited by any limitation period.

*xi. OPEC Fund Loans Act 2012*

The purpose of this Act is to facilitate borrowing of money by the Government of Samoa from the Organization for Petroleum Exporting Countries (OPEC) Fund for International Development (OFID). Without this Act, the Government is barred under section 75 of the Public Finance Management Act 2001 from borrowing money. Under section 75 of the *Public Finance Management Act 2001* it is unlawful for Government to borrow or for any bank or person to lend any money to the Government except as provided by that Act or any other Act. To enable Government to borrow from OFID (or the “Fund”) the Act authorizes Government to borrow from OFID in accordance with any terms and conditions agreed to between the parties.

The sum amount that can be borrowed from the Fund is determined by the Minister in section 3 and an agreement between the parties is legally valid and enforceable under section 4. Section 5 deals with arbitration procedures should a dispute arise.

*xii. Special Purpose International Companies Act 2012*

This new Act sets up an entirely new form of hybrid company, so as to provide a solution to the difficulty of introducing the benefits of the civil law concept of the Foundation into common law environments, such as Samoa; which difficulty is caused by the lack of any precedent upon which common law courts could rely on to resolve disputes concerning the operation of such entities and by the lack of any similar entity to which reference might be made.

This Act creates special purpose international companies which can be regulated/overseen by the Court in areas of legislative and jurisprudential familiarity. The Act also provides for incorporation, registration, the constitution, management and administration, auditing and other accounting and financial provisions, relating to special purposes international companies in Samoa. The Act further makes provision for winding up and other matters (e.g. servicing of documents, records of companies, right of appeal, procedural matters, confidentiality issues, as well as provisions for penalties for contravention of the Act, the making of regulations and rules, etc.)

*xiii. Tax Information Exchange Act 2012*

The Act implements Samoa’s obligations under the Tax Information Exchange Agreements (TIEAs) by facilitating the exchange of tax information and providing for international cooperation with competent authorities under TIEAs.

The Act provides for entering into tax information exchange agreements; the procedure for receiving and approving a request, and the powers for the collection of information requested. Secrecy and confidentiality obligations are taken into account as well as restricting the disclosure of information. The offences under the Act are directed at failing to provide information where requested; making false representations; affecting the quality of the information requested or intentionally impeding submission of information requested. Criminal liability of directors, officers, abettors and others are also covered under the Act.

**Significant Legal Reform**

*(A) Refugee Determination Bill*

In giving full effect to the Convention relating to the Status of Refugees 1951 and the 1967 Protocol this Bill was drafted to provide for the process by which refugee status may be determined in Samoa.

*(B) Counter Terrorism Bill*

In light of the legislative requirements for Samoa, this Bill was drafted to repeal the Prevention and Suppression of Terrorism Act 2002 and fully implement the United Nations Security Council Resolutions in relation to terrorism. This new law provides up-to-date offences under new and current arrangements as required by the United Nations. These offences (as provided under the respective counter terrorism Conventions) cover the unlawful seizure of aircraft, diplomatic agents, hostages, unlawful movement of nuclear materials and unmarked plastic explosives, crimes at an airport, ships and fixed platforms, plastic explosives, terrorist bombing, terrorist financing, and nuclear terrorism. Because the current laws in Samoa also do not make provisions for the restraint/forfeiture of suspected terrorist assets, the Bill provides for the management, forfeiture and restraining of suspected terrorist property. In addition to other matters, this law also provides general powers relating to delivery of terrorist property, detention of goods of suspected terrorist property, exchange of information relating to terrorist groups and acts, etc.; the prosecution and extradition of suspected foreign terrorists, and extra-territorial jurisdiction of Samoan courts; empowers Cabinet with the power to establish a Committee for purposes of the legislation, savings and transitional arrangements, and consequential amendments to the Civil Aviation Act 1998, and provides an up to date list (under Schedule 1) of the Conventions relating to terrorism.

*(C) Prisons and Corrections Bill*

The Prisons Act 1967 is outdated and fails to take into account current developments in prison administration, rehabilitation of prisoners and rehabilitative programmes to ensure participation and benefit for the welfare of prisoners. To improve prison facilities (including rehabilitation of prisoners) this proposed law aims to separate the operation of the Prisons Service from the Ministry of Police and facilitate major reforms to the prisons system. This proposed law comprehensively provides for a modernised management of prisons and prisoners, provide prisons and correction facilities that are community-safe and crime preventive but focusing on human rights containment, supervision and rehabilitation of prisoners. This reform shifts the focus from the containment of prisons to a greater focus on the corrections and rehabilitation of prisoners so that they can return to their communities as better and law abiding citizens. The reforms are also that administration and management of the prisons is in accordance with accepted standards relating to the treatment of prisoners, and taking into account the Samoan customs, tradition and community values. This is the most comprehensive reform in relation to prisons that has ever been done in Samoa.

**Gender Based Violence**

*(A) Family Safety Bill 2012*

The Family Safety Bill is a major step by Samoa towards dealing with issues pertaining to family violence. Over the years there has been a recent increase of reported cases of violence occurring within the home. The Family Safety Bill has been drafted to address such an issue.



This Bill attempts to provide for greater protection of families and the handling of violence within the domestic context. It lays out the procedure by which a person may apply for a protection order and the different processes by which all involved in the issuing of such an order are to follow. Government involvement in the implementation will be through the Samoa Police Service and the Registrar of the Courts. Samoa as a signatory to the Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child has certain obligations which require the domestication of the same. The Bill is gender neutral and wide enough to address violence affecting both genders within the home. This is because violence within the home does not affect just women and children, it also in one way or another affects men. This Bill has progressed to the stage where it looks likely for it to be tabled in Parliament sometime early next year.

*(B) Crimes Bill 2011*

Also of significant in legal reform on gender based violence is the ‘catch – all’ drafting approach used for the offence of ‘sexual violence’ in the Crimes Bill 2011 (which will replace the Crimes Ordinance 1961). Particularly in that the scope of the offence of ‘sexual violence’ is wide enough to protect a spouse in a legal marital relationship from ‘marital rape’. The Bill does not specify ‘marital rape’ but it is wide enough to prosecute a husband for sexual violation of his wife. This is a significant change because under the Crimes Ordinance 1961, section 47 (3) specifically exempts a man from being prosecuted for raping his wife.

**Labour and Commercial Law Review**

*(A) Personal Properties Securities Bill 2011*

The purpose of this Bill is to increase economic activity in Samoa by making it easier and less expensive to obtain credit by providing an efficient means by which movable property may easily serve as collateral for a loan. The Bill accomplishes this by providing for the creation of “security interests” in movable collateral in favour of secured parties, typically institutional lenders. These security interests are then recorded into a centralized electronic registry where “notices” of security interests may be filed so that others may determine whether a proposed debtor has previously pledged particular collateral to secure a previous loan. The ability to perform this sort of search against a would-be borrower results in lenders feeling more confident about extending credit, knowing that the collateral for their loan has not been previously pledged. The Bill provides clear rules for establishing priority between parties that may have competing interests in the collateral, thus bringing certainty to lending transactions. It also provides for simplified, expedited enforcement against collateral when a debtor defaults. The Bill proposes to repeal the Chattels Transfer Act 1975 and sections of the Companies Act 2001 which pertain to company charges.

*(B) Labour and Employment Relations Bill*

This Bill will repeal the Labour and Employment Act 1972 (‘the Act’). It provides for matters relating to Samoa’s obligations under the International Labour Organisation core Conventions and matters relating to employment of workers, and establishing their rights and privileges and duties. The Bill proposes to provide for fundamental principles required to be met by employers and to provide for the safeguard and protection of worker rights established under this Bill. Of significance in this new law are the rights relating to the advancing and promotion of women’s rights, with particular regard to maternity protections measures. The

new Bill also provides for the enforcement of collective bargaining and the establishment and the safeguarding of the establishment and operation of worker and employer unions. A National Tripartite Forum will be established to provide advice relating to minimum wage and also for providing advice to the Minister in relation to labour and employment issues. The National Tripartite Forum is specially created in order to assist the Government in making inquiries into proper and fair employment terms for employees as well as employers. This includes advice from it in relation to the setting of the minimum wage. The Forum is also empowered with investigative and inquiry powers, with assistance from the Attorney General's Office (should the Attorney General desire to be involved with an inquiry). More comprehensive conciliation measures are provided for and a three tiered dispute settlement phase commencing from the CEO, to a Conciliation Committee, and a special Court for hearing of employment and industrial relations disputes is established. The Bill endeavours to address foreign employment, and provides for a more comprehensive approach when dealing with foreigners wishing to be employed in Samoa. Employment permits are also to be issued under the Ministry. The aims to ensure that the right of the employee is balanced with an employer's ability to provide the necessary measures to ensure that both parties enjoy a proper working relationship is included. The International Labour Organisation (ILO) Core Conventions requirements are addressed to ensure that Samoa meets the minimum requirements as an ILO member. This Bill is now before Parliament.

### **Significant initiatives/projects**

#### *(A) Human Rights Commission Project*

The Drafting Division has committed to drafting the legislation that will establish a human rights commission in Samoa. This project was normally intended to be outsourced to a private legislative drafting consultant to undertake, however proving that it will be a useful capacity building activity, the Drafting Division decided to draft this legislation. This is project in which the Drafting Division works on together with the Civil Division and the Office of the Ombudsman.

#### *(B) Acts Interpretation Act Review*

With the availability of the Legislative Drafting Advisor providing mentoring to the Drafting Division, the Attorney General's Office is intending to conduct a review of the Acts Interpretation Act 1974 (Act). This Act is now 38 years old and with the many developments seen generally in drafting of legislation, it has become clear that there are now matters in the Act that need to be revised and amended. As a text used to interpret other legislation, this Act needs to undergo reform to meet the developments in the style, form and general practices used in the drafting of legislation today. It is hoped that this project will be completed in late 2013.

#### *(C) Legislative Drafting Advisor*

The Drafting Division is fortunate to have a Legislative Drafting Advisor who is funded by AVI (check) to provide the Drafting Division capacity building with the transfer of his knowledge to the Division. The Advisor for the next 2 years is Mr. Rupeni Nawaqakuta from Fiji who was formerly a Parliamentary Counsel of Fiji and a Drafter who provided technical drafting assistance to the

Solomon Islands prior to coming to Samoa. He is one of the most esteemed drafters in the Pacific and Samoa is fortunate to have for a mentor, a Pacific islander who can understand the intricacies of drafting legislation for a highly cultural society.

Since joining the Division Mr. Nawaqakuta has conducted in house training for those interested in drafting and is assigned a junior drafter for most of the matters allocated to him to settle. The Drafting Division has developed in capacity since he joined and it is the hope that this type of capacity building will propel Samoan drafters to a stage where they can conduct the technical skill of legislative drafting without the assistance of aid.

*(D) Legislative Drafter Samoan Language Workshop*

As the government puts more and more emphasis on the use of our own Samoan language for dialogue, the Legislative Drafting Division took the initiative of holding trainings for its members on the art of Samoan oratory which was also open to other divisions of the Attorney General's Office. The trainings were held by Samoan Language Consultant and well known academic Mr Leaula Maulolo Tavita Aмоса. The trainings were held over a period of two weeks. (30 January 2012 to 9 February 2012, and on 21 February 2012). With the increasing number of legislation passed in parliament followed by numerous select committee meetings the sessions were also a good opportunity to prepare for such meetings. The Training taught the basic skills of Samoan Oratory including its history and valuable tips and skills needed for effective and clear dialogue in various situations (including meetings with stakeholders during consultations as well as dealing with scrutiny of Bills in Parliamentary Select Committees).

*(E) 6 weeks Legislative Drafting Training*

The Legislative Drafting Division initiated a 6 Weeks Legislative Drafting Training to be carried out from 14 February-22 March 2012, for the benefit of the team and especially the new members who joined this year, and was open to Government lawyers (including lawyers in Government Corporations and Law Reform Commission). The trainings were conducted by the Legislative Drafting Advisor, Mr Rupeni Nawaqakuta. The Workshop was to further improve drafting skills for the participants amongst other things, and covered the basics of legislative drafting and a brief history on legislative drafters. This evolved into how to effectively translate policy into legislation.

*(F) Completion of Consolidation of Laws 2011 project*

The Consolidation of Laws for 2011 as conducted by the Legislative Drafting Division was officially completed and released at the end of March 2012. The project which started in November 2011 was supervised by Parliamentary Counsel, Papalii Malietau Malietoa.

**Issues**

*Capacity Building of support staff*

One of the issues identified by the Drafting Division this year, is the need to build the capacity of the support staff. Much training has been conducted into this specialized area of law and as the legal staff developed it quickly became apparent that the support staff for the Division also needed

training. If the support staff undergoes further training, they would be able to contribute to the effective execution of the Drafting Division's obligations as mandated in the objectives of the Office. The Division has a Senior Bills Office tasked with the formatting of legislative instruments and conducting cross checking of legislative instruments. The senior legal secretary provides secretarial support for the Division. Training needs identified for the senior legal secretary includes not just opening of files but to settle them once legislative instruments are at the stage of finalisation.

# Criminal Prosecutions Division

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## Structure

The Criminal Prosecutions Division (Division) is one of the busiest Divisions of the Office as not all positions within the Division are filled. However, with 6 prosecutors, 1 part time graduate and 2 support staff to assist them in meeting their assigned tasks, the Division has made many sacrifices to meet its targets.

The Criminal Prosecution Division (Division) is responsible for meeting objective number 4 as referred to under the objectives of the Attorney General's Office which is:

- To supervise and conduct criminal prosecutions and appeals in a fair and just manner.

The Division continues to handle all Supreme Court prosecutions and criminal appeals to the Court of Appeal, and also criminal appeals from the District Court; they also handle some District Court matters including prosecution against police officers and complex theft matters. Lastly, all other government ministry matters relating to prosecution are handled by the Division.

## Achievements/ significant matters in criminal law

### (A) Criminal matters prosecuted by the Division in 2011

Rape	146
Attempted Rape	25
Grievous Bodily Harm	19
Robbery	69
Murder	20
Theft as a Servant	777
Incest	11
Insulting Words	6
False Accounting by employee	103
Theft	40

Carnal Knowledge	107
Sexual intercourse with related female	31
Acts or Omission causing bodily harm	3
Indecent Assault	134
Assault	12
Armed with Dangerous Weapon	14
Possession of narcotics	351
Presenting firearm	4
Attempted Murder	4
Forgery	146

Assault with a dangerous weapon	4
Possession of unlawful weapon	6
Possession of explosives	6
Cultivating of narcotics	22
Actual Bodily Harm	5
Misleading	11
Sexual intercourse with an imbecile	1
Manslaughter	6
Receiving Stolen Property	1
Found by Night	9
Drunkenness	5
Throwing Stones	1
Dealing with Narcotics	5
Uttering forged documents	17
Obtaining by false pretences	5
Obtaining credit by fraud	2
Party to Murder	2
Threatening Words	1
False pretence	20
Counterfeit currency	9
Threat to kill	4
Party to Theft as a Servant	1
Breaking Prison	1
Abduction	33
Breaking and Entering	1

Parties to Forgery	2
<b>Total</b>	<b>2,222</b>

NB: this record does not include cases undertaken by the Police prosecution of the Samoa Police Service. The Prosecution Division appears before the Appeal Court, deals with matters before the Supreme Court and hardly ever, in the District Courts.

*(B) Cases*

***Court of Appeal***

*i. Attorney General v Faisaovale C.A. 06/11*

The Supreme Court Decision in *Attorney General v Faisaovale* [2011] WSSC 56 (24 June 2011) was appealed by the Prosecutors of the Office of the Attorney General, as there was forfeiture of cash but forfeiture of the vehicle was declined.

In the Court of Appeal the Prosecutors of the Office of the Attorney General (“AGO Prosecutors”) contended that the cash and the vehicle complement each other as instruments of crime and therefore are both “tainted properties” pursuant to the Proceeds of Crime Act 2007.

The Court of Appeal consequentially ordered the forfeiture of the vehicle to the State of Sāmoa. Proceeds of crime matters are rare in Sāmoa, and this was a significant case in Sāmoa.

*ii. Attorney General v Mr. A and Ms B C.A. 15/11, C.A. 08/12*

The AGO Prosecutors appealed the Supreme Court sentence for Ms B to be imprisoned for 3 years and for Mr A to pay Ms B \$5,000 to secure her release from prison and further \$5,000 within 15 months.

The AG appealed on the grounds of disparity with that of Ms B and of inadequacy.

This matter involved a father and an adult daughter who for sometime were involved in a sexual relationship. The issue in relation to this matter was what was the appropriate punishment or sentence for adult incestuous relationships.

The Court of Appeal was in favour of Ms B that she was the vulnerable party and a victim as her father should have protected her. Further, the Court concluded that such act was an infringement of Samoa’s moral standards. The Court therefore, ruled that Ms B’s eight months already served in prison paid her debt to society and her imprisonment was set aside.

This was a significant case because incest offenses in Samoa mainly concerned a father and young daughter or father and related step daughter. This matter concerned an adult daughter who was mature enough and was of the legal age to have sexual intercourse and decide who her sexual partner should be. However, the Court ruled that any incestuous relationships are frowned upon in Society and especially a society like Sāmoa and imprisonment should be warranted in relation to such offenses.

***Supreme Court Cases***

*i. Doctor Emosi Puni Convicted of Indecent Assault*

In the matter of *Police v Emosi Puni* 2012 (not yet reported), the Defendant who is a gynecologist was charged with the offence of Indecent Assault on his patient. The prosecution’s case was that the Defendant had gone beyond the consent to medically examine the complainant to using this medical examination for his sexual gratification.

The matter was recently heard in the Supreme Court and the Defendant was found guilty and the matter was adjourned for sentencing Friday 2nd November 2012. The Defendant has appealed his conviction.

This case is significant because it was the first of its kind in Samoa. The legal issue involved is at what point of the medical examination the patient’s consent no longer applies. This matter

had also made its appearance in the Court of Appeal this year on an application to stay Prosecution on the grounds that the Attorney General has conflict of interest and also on unreasonable delay. This application was dismissed.

*ii. Former MP Toluono Convicted of Fraud*

In *Police v Toluono* [2012] WSSC 12 (22 March 2012) the Defendant, who is a former member of Parliament, was charged with 15 counts of crimes all of which involved acts of dishonesty contrary to the Crimes Ordinance 1961 sections 89, 99, 107 and 108, two charges of forgery section 23 of the Crimes Ordinance, namely incitement, aiding and abetting. Also alleged were the crimes of false pretence, forgery and uttering a false document.

The Defendant was found guilty on all 15 counts and was accordingly convicted and sentenced to 5 years and 6 months imprisonment. The Co-defendant Vaselisa Stowers, who was dealt with separately, pleaded guilty in 2011, was convicted and sentenced to 2 years imprisonment for the two charges of forgery against her.

The case was significant as criminal charges laid against forgeries of deeds of conveyance to deprive the owners of their lands, are rare in Samoa. This case was the first of its kind in Samoa which highlighted the inadequacies of our criminal legislation to provide for these kinds of criminal offending.

The Defendant has appealed both his convictions and sentence. His appeal is scheduled to be heard in November 2012.

**Significant legal reform**

*Criminal Law Review*

The review of criminal law legislation has been completed, with the final draft of the Crimes Bill 2011 reforming and repealing the *Crimes Ordinance 1961* scheduled to be tabled in Parliament before the end of this year. This Bill has seen significant changes made, particularly to provisions addressing gender based violence. Whereas the current *Crimes Ordinance 1961* was restricted to the protection given to women for the crime of rape, the Crimes Bill 2011 has extended the scope of application; for instance, the exclusion of sexual violence within marriage will no longer exist and a person may be convicted of sexual violation despite that they were married at the time of such a violation; and “rape” has been included as a “sexual violation” under a general offence of sexual violation which allows recognition of both male and female as victims of a sexual offence.

The Criminal Procedure Bill and Evidence Bill are also being drafted which reforms the current *Criminal Procedure Act 1971* and the *Evidence Ordinance 1971*. A new addition to criminal legislation is the Sentencing Bill which is also currently being drafted. These projects have been outsourced to a consultant who is working together with the Criminal Prosecution Division to complete the drafting and consultations before referring such Bills to the Drafting Division for final vetting and finalization.

**Significant initiative**

*Mentoring Programme*



The Prosecution Division has been very fortunate in working with some very distinguished lawyers from New Zealand and Australia in the course of the Mentoring Programme funded through the Law and Justice Sector.

In one of the Court of Appeal sittings, the Prosecution Division was privileged to work with Mr. Kieran Raftery from Meredith Connell Firm in Auckland, New Zealand. All preparations, appeal submissions and chronologies were filed by the prosecutors and Mr. Raftery appeared and presented and argued such submissions. He was also able to advise prosecutors as to different approaches and different arguments to use, and in witnessing his performance in Court, the prosecutors gained significant knowledge, training and insights on how to improve both their written and oral submissions.

The Prosecution Division was also privileged to have Mr. Mark Hobart of the Sydney DPP Office, who also invested a lot of effort in the Division and who took the time to learn each prosecutor's strengths and weaknesses, and thus able to advise each individual in how they could improve.

Mr. Ross Burns, also from Meredith Connell, appeared with a prosecutor in a murder hearing and again was able to demonstrate a higher level of court-room advocacy which benefitted the Division immensely.

## **Issues**

The Prosecution Division has enjoyed many successes in 2012 however there are issues that continue to impede the work of the Prosecution.

### *(A) Increase in fraud matters*

There is a notable increase in the number of fraud or theft cases each year. Competing with Fraud or theft, are possession of narcotic matters.

Possession of narcotics matters are going through court in hundreds. It has not seemed to slow down until the Faleatiu raid by the Police this year which is believed to be the major source of marijuana lay.

The Police have targeted areas and suspects that they believe are cultivating and dealing marijuana to the public and they have done so with great impact.

With fraud and theft matters, one or two Prosecutors have been trained to specialize in complex fraud cases and to oversee the investigation and preparation of all major fraud cases. The police have also received the necessary training to enable them to carry out investigations into complex fraud matters and also to ensure that younger prosecutors are consistently trained for prosecuting fraud cases.

### *(B) No Forensic Pathologist*

Dr. Rhaman, the permanent forensic pathologist employed at the National Hospital of Samoa passed away in 2010. With the invaluable assistance of the New Zealand Police through their Liaison Officer Superintendent Ross Arden, forensic pathologists are flown in almost every other month from New Zealand or Australia to either perform post mortem examinations for police

cases or to give evidence in Court in relation to homicide matters. However this exercise has put a great strain on resources for both the Ministry of Police and the Office Attorney General as the position for a pathologist at the National Health Services has not been filled since 2010. Costs if bringing pathologists into the country for cases handled by the Prosecution Division include airfares, accommodation and payment of services rendered while in Samoa.

# Civil Litigation & Opinions Division and Commercial Law and International Law Division

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## *Structure*

The Attorney General's Office had one civil division. However as of July 2012 this year, 2 Divisions have been approved in which to splits the Civil Division into the Civil Litigation & Opinions Division and the Commercial Law and International Division. Not all positions in both Divisions have been filled but are in the process of being filled. There are currently within the entire Civil Division as a whole 11 legal professional staff and 1 support staff employee.

Overall the Civil Division is responsible for meeting objectives 1, 2 and 3 referred to earlier which are

- To provide professional legal opinions and advice in a timely and efficient manner to Government Ministries and Agencies;
- To negotiate, review and draft all Government contracts/deeds and other related legal documents both domestic and international to ensure that Government's interest is advanced and/or protected;
- To supervise and conduct civil proceedings involving Government and provide legal support to or representation for Government in other formal enquiries;

## *Achievements*

### *(A) Cases*

#### *Court of Appeal*

For 2011, the Civil Division appeared for and responded on behalf of the *Land and Titles Court* ("LTC") in relation to appeals on applications for Judicial review of LTC decisions which were originally struck out in the Supreme Court. The following are the two (2) LTC decisions that the Civil Division appeared for in the first Court of Appeal sitting for 2012.

#### *i. Mulitalo Tialino Saena Penaia II & Ors v LTC & Ors*

The Appellants applied to the Supreme Court for judicial review of decisions of Trial and Appeals Division decisions of the LTC from 1987-2009. The Supreme Court struck out the matter at our application.

The Appellants appealed the strike out decision of the Supreme Court.

Eventually the Court of Appeal concluded that the application is in essence barred by ouster provisions of the Land and Titles Act 1981 and duly dismissed the appeal.

*ii. Salaileulufa Siologa Mapuilesua v LTC & Ors*

The Appellant in this matter appealed against a decision of the Supreme Court striking out an application for judicial review of a decision of the Appellate Division of the LTC. The Chief Justice in that circumstance held that the application is barred by the ouster provisions of the Land and Titles Act 1981.

This appeal was argued immediately after *Mulitalo Tialino Saena Penaia II & Ors v The LTC CA 7/11* (cited above) in which the same legal issues were argued.

***Supreme Court Cases***

*iii. Alii ma Faipule o Satapuala v Samoa Trust Estate Corporation (AG)*

In this matter the Ali'i & Faipule of Satapuala ("Plaintiffs") had brought an action for recovery of land against the Sāmoa Trust Estate Corporation [AG] ("Defendant"). The Plaintiffs in effect alleged that the lands (affected in this matter) were acquired by way of fraud by foreigners in 1865, 1872 and 1886 and therefore are still 'customary lands' in the sense that they still belong to the plaintiff's village of Satapuala.

Sapolu CJ struck out the plaintiff's statement of claim on 26 January 2012 with his written reasons on 17 April 2012 on the basis that:

- (a) the plaintiffs cause of action for trespass to land is struck out as the statement of claim did not disclose a reasonable cause of action;
- (b) a potential action by the plaintiffs for recovery of land in respect of the lands in the plaintiffs statement of claim is frivolous, vexatious, and an abuse of process for being out of time;
- (c) all potential claims by the plaintiffs for recovery of land struck out on the ground of abuse of process due to the plaintiffs non-compliance with the orders made in the 2008 proceedings between the plaintiffs and the defendant.

*iv. Fuimaono Esera Rimoni v LTC & Te'o Su'a Rimoni Puleimanufiu Tito Fuimaono Faasopo*

This matter concerned a motion seeking that a LTC (Appeal Division) decision LC be quashed and set aside or held void and also sought an order for the appeal to be re-heard before a differently constituted bench on the basis that there was an infringement to article 9(1) (right to a fair trial by an independent and impartial tribunal)

The motion for judicial review was ultimately struck out.

*v. Leaana Afereti & Mulitalo Tialino v LTC & Ors*

His Honour Sapolu CJ struck out the motion for Judicial Review by Counsel for Mulitalo Penaia on the basis that all the grounds in support of the applicant's motion for review was without substance or without merit.

***(B) Commission of Inquiry***

*i. Commission of Inquiry - Electoral Matters 2012*

In April, following the March 2011 Elections, the Government of Samoa resolved to approve the terms of reference for the establishment of a Commission of Inquiry (Commission) for the Review of

the Electoral Act 1963 which includes *inter alia*, consideration whether legislative amendment is necessary to implement the recommendations of the previous Commissions of Inquiry into electoral matters. Further, approve the appointment of 10 members of the Commission of Inquiry. The Commission was also tasked to consider several issues ranging from amendment of legislation, development of Electoral Systems and Procedures.

Donald Kerslake, Assistant Attorney General for the Civil Division was appointed by Cabinet as Counsel Assisting for the Commission of Inquiry in its deliberations. Mr. Kerslake was assisted by Ms. Sine Lafaialii, a State Solicitor with the Civil Division.

The Commission has completed its report and has submitted it to Cabinet for consideration.

*ii. Commission of Inquiry – Okoro Williams Nnamdi*

The Commission of Inquiry was established to inquire into the process followed by the Ministry of Police and Prison Services in the management of the investigation relating to a complaint filed by Mr Okoro Williams Nnamdi and his treatment while he was detained by the Police.

Principal State Solicitor Kalameli Seuseu was appointed by Cabinet as Counsel Assisting in this matter. Ms. Seuseu was assisted by Loukinikini Vili, a Senior State Solicitor for the Civil Division.

The Commission of Inquiry has completed its investigation and the report will be submitted to the Prime Minister in July 2012.

**Significant initiatives/projects**

*(A) World Trade Organization (WTO) Accession*

The Civil Division has been actively involved in Samoa's National Working Committee on Trade Arrangement, a body comprising of Governmental and Non Governmental agencies tasked, *inter alia*, with progressing Samoa's accession to the WTO. The involvement of the Civil Division has been to provide the Committee with legal assistance in the form of legal advice, reviewing and drafting legal documents relating to the WTO accession-to name a few. Members of the Civil Division have also taken part in key negotiations and regional and international trainings for accession to the international body.

On 28 October 2011, the formal Working Party on Samoa's accession adopted Samoa's accession package now to be forwarded to the Biennial Trade Ministers Conference in December. Subject to the approval of the General Council of the WTO and ratification by Parliament, Samoa may join Vanuatu and Russia as potential new members of the 153 member body of the WTO.

Mr. Donald Kerslake, Assistant Attorney General for the Civil Division of the Attorney General's Office is one the members of the Samoan delegation to Geneva for the purpose of negotiating Samoa's accession to the WTO. Samoa has been working towards accession to the WTO for 12 years.

*(B) Human Rights Commission*

As part of its efforts to establish a Human Rights Commission (HRC) for Samoa, the Government of Samoa through the Office of the Attorney General (AG's Office) and with the

kind financial assistance of the Asia Pacific Forum of National Human Rights Institutions (APF), invited consultants to advice on the systems, processes and logistics required to establish a Paris-Principle compliant HRC within the existing Office of the Ombudsman. The invitation was sent out in late October 2011.

The consultants were recruited by AFP from Rights Consultancy. They are Susan Roberts (former Executive Director of the Australian HRC) and Paul Oliver (former Communications Director of the Australia HRC). The two consultants have over 20 years of combined experience in the area of Human Rights.

The Civil Division wing of the AG's Office served as the work stations for the consultants during their visit to Samoa. In addition, Mr. Donald Kerslake and Ms. Loukinikini Vili assisted the consultants in the logistical aspects of their visit to Samoa.

The decision to invite consultants for the aforementioned reasons was a recommendation by a scoping study report in 2009, titled *Tatou Aia Tatau*. The study was carried out at the request of the AG's Office and with the kind financial assistance of APF. The objectives of the study were to make recommendations on the type of HRC that would (a) be most suitable for Samoa and its state of affairs; (b) comply with the UN-Paris Principles; and (c) meet the Government's aims. The 2009 Report made key recommendations on the establishment of the HRC in Samoa; chief amongst them was the recommendation that the HRC be established in the Office of the Ombudsman.

(C) *Mentoring Program*

In 2010, the Attorney General's Office identified one of the challenges faced by the Civil Division was the lack of experienced legal staff. In an effort to address this issue and as a result of a proposal by the Civil Division, the Samoa Law and Justice Sector Secretariat agreed to fund a mentoring program for the Civil Division. The program aimed at having high calibre senior lawyers from Australia and New Zealand, (whom our Office has worked with in the past) work with the Civil Division for no more than five (5) weeks. During that time, they would assist with Court matters and provide mentoring to young solicitors of the Civil Division.

This is a continuing initiative this year, again funded by the Samoa Law and Justice Sector Secretariat with the aim that high caliber lawyers engaged from overseas (particularly Australia and New Zealand) will impart their knowledge, wisdom and experience to develop our young new and less experienced lawyers' capacity. This mentoring program does not only consist of in- house trainings but the mentors may work and assist our Solicitors with complex legal advice as well as Court matters.

The Mentoring Program provided an opportunity for the lawyers in our Division to observe and absorb techniques, practices and knowledge from the Mentors.

The Civil Division was fortunate and privileged this year to have Prof. Paul Rishworth (New Zealand) and Peter Lithgow (Australia) as mentors and appreciates the mentoring program as a vital aspect of capacity building for the Civil Division; given that each year new lawyers are added to the Division.

# Corporate Services Division

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## *Duties and Responsibilities*

The Corporate Services Division (Corporate Division) is responsible for ensuring that the proper support is provided to the professional legal staff of the Attorney General's Office in a timely and efficient manner. The contribution of the Corporate Division to the execution of the professional staff's duties is invaluable. As highlighted in the organizational structure; once all positions are filled the Office stands to benefit more from the Corporate Division's service.

## *Achievements*

### *(A) Records Management Project*

The Records Management Project which has been approved for funding by the Law & Justice Sector for this financial year 2012/2013 is now deferred to the next calendar year as Aus Aid is in its last stages to finalize the new work plan for the next four years.

### *(B) Seminar on Human Resources Development and Cooperation for Officials from Asian & Pacific Countries.*

The Corporate Services Division of the Attorney General's Office received an opportunity this year to have the Manager for the Division attend a four weeks "Seminar on Human Resource and Cooperation for Officials from Asian & Pacific Countries in Beijing – China".

The Ministry of Commerce and Academy for International Business Officials (AIBO) of China working in collaboration with the Ministry of Foreign Affairs and Trade of Sāmoa sponsored this program.

The abovementioned program addressed best human resources practices around Asian Pacific nations, good governance practices, managing government crisis, Systems Reforms and Innovation in Building Service-oriented globally, challenges and hotspots in Human Resources Management of Modern Enterprise, Effective International assistance as well as Project Contracting and Labour Cooperation.

### *(C) In House Trainings (Induction & Refresher Trainings)*

The Corporate Services Division is responsible for conducting Induction Trainings for new recruits of the Office of the Attorney General.

This training is very important for new staff before they actually commence employment, as it aids and helps them to know and understand Office practices and principles and to ensure that they become aware of their obligations as public servants. This training also aims at refreshing the mindset and focus of staff so to concentrate on their Key Performance indicators as allocated in the performance Appraisal exercise as well as identifying gaps and weaknesses in order to work on areas to improve and ensure we deliver and accomplish excellent and favorable outcomes.

### *(D) Corporate Plan 2012 – 2015*

The compilation of our second edition Corporate Plan (Plan) was one of the challenging targets met by the Corporate Division this year. This exercise was a combined effort from management and their senior officers to make sure the Office identifies clearly its core objectives for the next three year period to be in line with the new national Strategy Development for Sāmoa Plan (SDS 2012 – 2016). The Plan ensures that the role of the AGO is clearly set out in terms of services carried out for the Government, and the Office’s relationship with the private sector and the public. This Plan also takes into account the next step for the Office to become statutorily established Office.

*(F) Capability Plan 2012/2013*

The Corporate Services Division also finalized the Capability Plan for 2012/2013. This importance of this exercise is to develop the capacity building of staff by identifying the current skills and knowledge, identify areas that need improvement and how to make such improvements. This ensures the Office daily support services are carried out with efficiency and effectiveness. This will be a very useful instrument as most of the new staff are graduates.

*(G) Work Force Plan (“WFP”)*

Work Force Plan is a new initiative approved by Cabinet which is driven by the Public Service Commission across the service.

The WFP main objective is having the right people, with the right skills, in the right place, at the right time. The Corporate Service Division in collaboration with the other Office Divisions combined efforts to developed the WFP.

The basis of this WFP is to:

- Scan & Understand;
- Analyze & Interpret;
- Develop & Implement;
- Monitor & Evaluate operations of the AGO to be specific.

The development of the WFP is in 4 stages and as an update the Office progress is currently in its third stage, with the aim to complete the WFP before the end of October 2012. The Office is looking forward to having its long term plans in place so that it can prioritize its target to ensure it is in line with the new Corporate Plan 2012 – 2015.



# Financial Expenditure

## AT – Budget Category for FY:11/12

Budget Categories	Actual YTD	Commitments	Total Spending	Revised Budget	Total Funds	Funds Left to Spend
Capital	93,079.57	0.00	93,079.57	93,166.52	93,166.52	86.95
Cost Recovery	- 49,826.35	0.00	- 49,826.35	- 25,000.08	- 25,000.00	24,826.35
Operating	874,102.35	0.00	874,102.35	929,366.44	929,366.60	55,264.25
Personnel	1,732,011.10	0.00	1,732,011.10	1,845,323.87	1,845,323.79	113,312.69
<b>Total</b>	<b>2,649,366.67</b>	<b>0.00</b>	<b>2,649,366.67</b>	<b>2,842,856.91</b>	<b>2,842,856.91</b>	<b>193,490.24</b>

## Expenditure Spending for FY11/12

OUTPUT	Period 1 (July 11)	Period 2 (August 11)	Period 3 (September 11)
Below the Line – AT	2,178.06	20,983.04	133,632.
Legal Advice	31,689.3	19,925.23	16,607.87
Legislative Drafting	20,998.93	27,115.25	23,957.97
Criminal Prosecution	38,855.66	38,235.91	33,142.2
Civil Litigation	17,662.19	11,893.24	24,697.38
Drafting Govt. Contracts	13,923.07	13,474.1	15,463.48
Central Services Unit	47,171.4	44,879.11	45,646.11
<b>Total</b>	<b>172,478.61</b>	<b>176,505.88</b>	<b>293,147.01</b>

OUTPUT	Period 4 (October 11)	Period 5 (November 11)	Period 6 (December 11)

Below the Line – AT	39,402.14	.	31,914.24
Legal Advice	29,899.87	38,537.41	29,173.58
Legislative Drafting	40,384.44	38,626.43	23,873.61
Criminal Prosecution	50,104.58	56,604.72	28,634.6
Civil Litigation	16,281.32	31,050.3	19,033.6
Drafting Govt. Contracts	21,482.74	30,535.7	15,762.75
Central Services Unit	53,711.83	38,513.55	40,630.74
<b>Total</b>	<b>251,266.92</b>	<b>233,868.11</b>	<b>189,023.12</b>

<b>OUTPUT</b>	<b>Period 7 (January 12)</b>	<b>Period 8 (February 12)</b>	<b>Period 9 (March)</b>
Below the Line – AT	.	12,700.7	20,352.16
Legal Advice	9,616.48	25,203.86	34,339.44
Legislative Drafting	27,123.47	46,765.36	47,901.85
Criminal Prosecution	30,494.23	45,311.59	34,407.32
Civil Litigation	12,427.1	26,057.66	6,308.63
Drafting Govt. Contracts	17,205.33	21,162.66	23,687.64
Central Services Unit	51,248.51	48,087.84	28,715.92
<b>Total</b>	<b>148,115.12</b>	<b>225,289.67</b>	<b>195,712.96</b>

<b>OUTPUT</b>	<b>Period 10 (April 12)</b>	<b>Period 11 (May 12)</b>	<b>Period 12 (June 12)</b>
Below the Line – AT	11,536.79	.	34,980.24
Legal Advice	29,828.25	16,972.26	9,564.48
Legislative Drafting	48,533.65	26,151.48	39,061.67
Criminal Prosecution	40,839.24	75,052.73	118,379.71

Civil Litigation	31,432.14	19,508.8	3,771.7
Drafting Govt. Contracts	30,066.04	51,019.65	18,654.64
Central Services Unit	44,906.89	30,502.5	31,388.54
<b>Total</b>	<b>237,143.</b>	<b>219,207.42</b>	<b>255,800.98</b>

#### Capital Items Purchased for FY11/12

Capital categories	Actual YTD	Commitments	Total Spend	Revised Budget	Total Funds	Funds Left to Spend
787101 - Furniture & Fit	25,562.30	0.00	25,562.30	25,562.30	25,562.30	0.00
788101 - Computers	10,425.96	0.00	10,425.96	10,425.96	10,425.96	0.00
788102 - Photocopiers	39,700.00	0.00	39,700.00	39,700.00	39,700.00	0.00
788104 - Server	17,391.31	0.00	17,391.31	17,478.26	17,478.26	86.95
<b>Total</b>	<b>93,079.57</b>	<b>0.00</b>	<b>93,079.57</b>	<b>93,166.52</b>	<b>93,166.52</b>	<b>86.95</b>

#### Cost Recoveries Report for FY11/12

Revenue Outputs	Actual YTD	Commitments	Total Spend	Revised Budget	Total Funds	Funds Left to Spend
1320 - Legislative Dra	- 12,559.98	0.00	- 12,559.98	- 5,000.04	- 5,000.00	7,389.98
1340 - Civil Litigatio	- 37,266.37	0.00	- 37,266.37	- 20,000.04	- 20,000.00	17,266.37
<b>Total</b>	<b>- 49,826.35</b>	<b>0.00</b>	<b>- 49,826.35</b>	<b>- 25,000.08</b>	<b>- 25,000.00</b>	<b>24,826.35</b>

# Law and Justice Sector

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## Structure

The Samoa Law and Justice Sector (SLJS), comprises of the following Government Ministries and Offices and non-Government Representatives, namely, the Office of the Attorney General, the Ministry of Police and Prisons, Ministry of Justice and Courts Administration, the Office of the Ombudsman, the Ministry of Women, Community and Social Development, Samoa Law Reform Commission, the Public Service Commission, Ministry of Finance, Samoa Law Society, SUNGO, Samoa Council of Churches, and Matai Representative. The Sector is headed by a Steering Committee (chaired by the Attorney General) and is comprised of the Chief Executive Officers and representatives of all agencies mentioned above including representatives of central agencies, notably, the Ministry of Finance and the Publics Service Commission. The purpose of the Steering Committee is to direct and oversee the Sector's processes.

The work of the Sector is supported by its Secretariat which is its coordination unit. The Secretariat consists of a Sector Coordinator, a Principal Projects Officer, a Principal Finance Officer, and an Office Assistant.

The SLJS aims generally to improve service delivery, to communicate on, and increase coordination amongst Sector Agencies, regarding law and justice issues/activities. Specifically, to (i) raise recognition of the importance of law and justice, (ii) improve the direction, planning, management, communication, coordination and monitoring of government services (from national to agency levels and integrate and link services between sectors), (iii) harmonise service delivery, and improve effectiveness and value for money, (iv) provide a government-owned priority-setting mechanism for development, and (iv) facilitate international development assistance to support the Government's priorities. In addition, the SLJS also provides a powerful means to foster/facilitate: (v) mutual interdependency between agencies and sectors, (vi) support each other to make life easier, (vii) and the agencies collectively advise the Ministry of Finance on how to allocate funding and possibly increase funding.

## Achievements

### *Projects*

The Samoa Law and Justice Sector Plan 2008-2012 was only launched in May 2010, 2 years late. Despite the setback – implementation of project activities planned under this initial Sector Plan have exceeded expectations. Launching, transitioning and implementing in eighteen months is nothing short of impressive and is one of the Sector's greatest achievements and testament to the cooperative work and commitment of its Steering Committee.

Many of the project activities the Sector has implemented in these early days have concerned the creation of the necessary infrastructure that will enable the real work towards achieving its stated goals.

Some of the Sector's projects that have been launched include: the Digitisation of Land and Titles Court Records; the Mentoring of Government Lawyers Programme; Capacity building for the fledgling Samoa Law Reform Commission; ISP for the Office of the Ombudsman; the Separation of

the Prisons Function from Samoa Police; the launching of the internet research engine SamLII (Samoa Legal Information Institute); the building of the Tafaigata Chapel; the renovations of the Olomanu Youth Rehabilitation Centre; the extension of the Tafaigata Women's Prison; the Samoa Returnees Re-Integration Assistance Programme; the Neighbourhood Watch Pilot Project at Vaitele-Fou; the Judges Retreat and the Biennial Seminar for Judges and Lawyers, to name a few.

### **Significant Issues and Suggestions to address issues**

The main issues the Sector faces and is endeavoring to address in its new Sector Plan development for 2012-2016 – concerns monitoring and evaluation and fully working with confidence and running with the Sector Wide Approach; questions of sustainability and forward planning in place of ad hoc and piece meal reactionary decisions.

#### *Significant initiatives/Projects*

Many of the new projects considered by the Sector takes the second step to the foundation laying projects under the first Sector Plan. The initiatives looks to build on a good start and to focus more on having the evidence to drive the projects so that they are focused and targeted to ensure a better chance of achieving the proposed and desired outcomes. In this regard there is a strong focus on data collection and analysis and the management of such data in digital ways. Information is power and wielded well can make the difference between success and missing the mark altogether! The projects though evidence based will still be aimed at the four goals mentioned earlier plus one further new one for capacity building acknowledging that change requires everyone to be on the same page in terms of resources as well as skills.

**ATTACHMENT A: Summary of relevant training attended by officers**

Date of training	Name of training	Where the training was held and what organisation hosted the training	Who attended the training (name of officer/s and agency)
6 Jun – 1 Jul 2011	Legislative Drafting Course	Institute of Applied Legal Studies University of London  Funded by: Commonwealth Secretariat and the New Zealand Office of the Parliamentary Counsel.	Nola Petelo-Faasau
13 Jun - Jul 2011	Work Attachment program for Prosecutors	New Zealand, Wellington	Gafatasi Patu
14-17 June 2011	Judicial System Construction for Developing Countries	Beijing, China	Kamelie Seuseu,
25 – 28 Jul 2011	Final Sub-regional consultation on advancing legislative change on violence against women	Held in Nadi/Fiji  Hosted by the Regional Rights Resource Team and Funded by United Nations Trust Fund	Fetogi Vaai
18 – 22 Jul 2011	8 <sup>th</sup> Pacific Islands Advanced Maritime Boundaries Development Workshop	Held in Sydney/Australia  Hosted by the Secretariat of the Pacific Community	Constance Tafua-Rivers
10 Jul 2011	Young Pacific Lawyers Forum	Sydney/Australia	Salote Peteru and Fetuliai Lagaia
8 August 2011	ICB4PAC Workshop on Drafting Cyber Policy	Apia, Samoa	Kamelie Seuseu, and Sefo Ainu,
22-23 August 2011	Pacific Island Countries Trade Agreement (PICTA) Temporary Movements of Natural Persons (TMNP) Workshop	Nadi, Fiji	Muriel T. Lui,
1-4 November 2011	Training for Regional and	Fiji (Suva), Pacific Island Forum Secretariat	Mr. Elemesi Schmidt,

	Magistrates on Human Rights Advocacy		
19 – 23 March 2012	PILON Advanced Litigation Skills Program	Auckland, New Zealand	Precious Chang
10 April – 20 May 2012	American Bar of Association Rule of Law initiative	Suva – Fiji & Washington D.C. United States of America	Cecily Faasau & Edelma Niumata
11 – 13 April 2012	Pacific Appliance Labelling Workshop	Suva - Fiji	Loretta Teueli
17 – 21 April 2012	Capacity Building and ICT Policy, Regulatory and Legislative Framework support for Pacific island countries Project	Norfolk Islands	Fetogi Vaai
2 – 4 May 2012	Secondment for trade lawyers – preliminary meetings	Geneva	Loukinikini Vili
28 – 30 May 2012	Bali Process Technical Experts Workshop on Trafficking in Persons	Bali – Indonesia	Sosefina Faamausili

**ATTACHMENT B: Summary of major regional meetings attended**

<b>Date of meeting</b>	<b>Name of meeting</b>	<b>Where meeting was held</b>	<b>Who attended the meeting (name of officer/s and agency)</b>
30 May – 1 June 2011	Pacific Prosecution Conference	Port Vila Vanuatu	Precious Chang and Tanya Toailoa
1 – 2 Jun 2011	Forum Regional Security Meeting	Held in Suva/Fiji Hosted and funded by Pacific Islands Forum Secretariat	Nola Petelo-Faasau
6-8 June 2011	3rd Commonwealth Red Cross and Red Crescent international humanitarian law conference	Kuala Lumpur, Malaysia	Loukinikini Vili, State Solicitor
15 June – 5 July 2011	Seminar for implementation of maritime legislation for Developing Countries	Ningbo, China	Phaedra Valoia
29 June-01 July 2011	Economic Partnership Agreement (“EPA”)	Nadi, Fiji	Sine Lafaialii, State Solicitor

	Technical Working Group Meeting on Legal and Institutional and Capacity building		
30 June – 1 Jul 2011	16 <sup>th</sup> IAP Annual Conference & 4 <sup>th</sup> World Summit of Prosecutors	Seoul, Korea	Aumua Ming C. Leung Wai and Precious Chang
22 – 25 Aug 2011	ITU-EC ICB4 Pacific Regional Workshop – Concepts and Techniques of Developing Cyber Crime Policy and Legislation	Hosted by the Office of the Attorney General of Samoa and Funded by	Papalii Malietau Malietoa
26 August 2011	PICTA Trade In Service Meeting	Nadi, Fiji	Muriel T. Lui
12 – 13 October 2011	UNEP: Preparatory Meeting for the World congress on Justice, Governance for Law on Environmental Sustainability,	Kuala Lumpur, Malaysia	Rexona Titi
26 – 28 Oct 2011	4 <sup>th</sup> Hague Conference on Private International Law (HCCH)	Held in Manila/Philippines	Papalii Malietau Malietoa
7 – 9 November 2011	Preventing Abuse of the Non – Profit Sector to Finance Terrorism	Auckland, New Zealand	Precious Chang
17 – 18 November 2011	Seminar of Integrity in Public Life	Auckland, New Zealand (funded by Commonwealth Secretariat)	Sefo Ainuu
8 – 10 February 2012	7 <sup>th</sup> Round of PICTA trade services meeting	Nadi – Fiji	Muriel Lui
13 – 16 February 2012	Rome Statute Meeting on the International Criminal Court	New South Wales - Australia	Papalii Malietau Malietoa



19 – 24 February 2012	Justice Rapid Response	Semarang - Indonesia	Leinafo Taimalelagi
20 February – 2 March 2012	9 <sup>th</sup> Island Countries Advanced Article 76 (UNCLOS) and Maritime Boundaries Workshop	Sydney - Australia	Constance Rivers
17 – 19 April 2012	Commonwealth Maritime Boundaries and Ocean Governance Forum	London - England	Constance Rivers
4 – 24 May 2012	Seminar on Human Resources Development and Cooperation for Officials from Asian and Pacific Countries	China	Tusitala Su'a
8 – 9 May 2012	Pacific Region Roundtable on the Montreaux Document on Private Military and Security Companies	Canberra - Australia	Salote Peteru
30 April – 4 May 2012	World Trade Organisation Negotiations Seminar	London – England	Donald Kerslake
14 – 18 May 2012	Control of cross border movement of cash and bearer negotiable instrument & Suspicious transactions Reporting	Tonga	Tanya Toailoa
5 – 7 July 2012	20 <sup>th</sup> Annual ANZSIL conference International Law in the Next Two Decades: Form or Substance		Muriel Lui

2 – 6 July 2012	Small Island Developing States Technical Cooperation Program Introduction to Air Law	Singapore	Kamelmi Seuseu
9 – 13 July 2012	Pacific Prosecutors Conference	Solomon Islands	Attorney General, Precious Chang, Rexona Titi, Leinafo Taimalelagi
13 – 15 July 2012	Pacific Legislative Drafters Forum	Suva – Fiji	Loretta Teueli & Rupeni Nawaqakuta