



**Office of the Attorney General of Samoa
LEGISLATIVE DRAFTING UPDATE**

“Thoughts are but dreams till their effects be tried”.
William Shakespeare

“But words are things,
and a small drop of ink
falling like dew upon a
thought, produces that
which makes thousands,
perhaps millions, think.”

Sir Aubrey De Vere.

EDITOR’S NOTE

My, how time flies. We are now halfway into the year 2008 and after the popularity of Volume 1, Issue 1—Legislative Drafting Update, the Legislative Drafting Team is pleased to provide Issue No.2.

Although highlighted in our first issue, there is no end to emphasising how important it is in this political climate to provide information on current Government policies being given legislative status and what Parliament has recently approved to become legislation.

Along those lines, someone recently commented that laws and amendments were being passed all the time—commencement dates were publicised but the public were not being informed about what the substantive content of these laws were. Aside from the more technical aspects of this question discussed at length (such as why the

laws are not published in the newspapers as well, where can we find out what these new laws are and why do we have to pay for copies of legislation), this Newsletter is a key to raising awareness and providing transparency for the legislative developments taking place.

That said, you will find in this issue summaries of recently passed legislation that has been largely publicised, debated and criticised including the Road Transport Reform Act 2008 and the Land Titles Registration Act 2008.

Also, true to a recent quote adopted by the Legislative Drafting Team [“Whatever your hand finds to do, do it with all your might...” Ecclesiastes 9:10], hands in the “West Wing” as we like to call our Department have not been idle. Some significant projects underway are a Legislative Drafting *Handbook*, in-


country
Legislative
Drafting
Training,
and a Re-



gional Seminar on the International Criminal Court and our own International Criminal Court Act 2008.

That is a brief highlight of what you can expect to find in the next few pages. We leave you to draw your own conclusions from the summaries and information provided and hope this issue provides for an enlightening if not enjoyable read!

From the Attorney General and Legislative Drafting Team—Happy reading.


Constance Tafua-Rivers
(State Solicitor)
Lead Drafting Editor for this Issue.

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LAND TITLES REGISTRATION ACT 2008

The main purpose of the Land Titles Registration Act 2008 is to change the current Deeds system of registration of land that we have to the Torrens system of land registration, particularly in relation to *freehold land*. It is not, as has been reported a guise to later permit the selling of customary land. For those questioning

what the Torrens system of registration is, below is a brief outline of what it is in comparison to the current Deeds system.

** Deeds system of Registration—*

This is the method of registering instruments which affect title to land. It results in the legal estate in land being dependent upon the deed and not

upon the entry in the Land Register. So, “registration by title” and not title by registration. It has been shown in the past that this does not provide certainty or security of title and is not conducive to the use of freehold land. For example, if there was a defect with an earlier deed of conveyance, that would affect ALL subsequent titles—

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PARLIAMENTARY SITTINGS CALENDAR FOR 2008

MONTH	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F										
MARCH					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
APRIL	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30					
MAY					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28			
JUNE						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27			
JULY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30					
AUG				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29			
SEPT	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						
OCT		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31			
NOV					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28			
DEC	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					

BILLS PASSED FROM 31st MARCH TO 30 JUNE 2008

A. Acts passed in APRIL Parliamentary session (14th –18th)

1. Japan Bank of International Cooperation Loans Act 2008
2. International Companies Amendment Act 2008
3. Road Transport Reform Act 2008
4. Sports Disputes Resolution Act 2008

B. Acts passed in MAY Parliamentary session (5th-9th)

1. Robert Louis Stevenson Foundation Amendment Act 2008
2. Electronic Transactions Act 2008

C. Acts passed in JUNE Parliamentary session (10th-13th)

1. Excise Tax Rates Amendment Act 2008

ACTS PASSED FROM 31st MARCH TO 30 JUNE 2008 cont.

2. Customs Tariff Amendment Act 2008
3. Telecommunications Amendment Act 2008
4. Land and Titles Amendment Act 2008
5. Police Offences Amendment Act 2008
6. Land Titles Registration Act 2008
7. Appropriation Act 2008/2009
8. Supplementary Appropriation Act 2007/2008

SUMMARIES

ROAD TRANSPORT REFORM ACT 2008



The Road Transport Reform Act was drafted with a view to implementing policy directives from Government. Passed on the 27th April 2008 this legislation will change the driving side

of the road from the right hand side to the left hand side and accordingly, the use of left-hand drive to right-hand drive vehicles.

Consequential amendments are also made for *Road Traffic Regulations* and *Road Traffic Orders*. The importation of left-hand drive vehicles are also prohibited. (See Order of Prohibited Imports cited above).

After entry into force of the provision changing the side of the road to be driven on, a 3 month “grace period” is granted where only warnings are issued instead of prosecution for minor traffic offences.

REGULATIONS, ORDERS AND NOTICES

TITLE OF SUBSIDIARY LEGISLATION	DATE OF ASSENT
1 Order of Prohibited Imports—section 49 Customs Act 1977	2 May 2008
2 International Mutual Funds (Fees) Regulations 2008	12 May 2008
3 International Mutual Funds (Forms) Regulations 2008	12 May 2008
4 Electric Power Corporation (Further Amended Imposition of Temporary Additional Charge) Regulations 2008	29 May 2008
5 Customs Tariff (Alteration to Nomenclature) Order 2008	29 May 2008
6 Companies Act 2001—Notice of Commencement	19 June 2008
7 Marine Wildlife Protection Regulations	(assented copy to be received)

INTERNATIONAL CRIMINAL COURT ACT 2008



The International Criminal Courts Act was passed by Parliament and assented to by the Head of State in late 2007. Entry into force will take place once the Minister has nominated a commencement date and provided notice of commencement.

The purpose of the Act is to enable Samoa to implement and give effect to its obligations under the Rome Statute of the Interna-

tional Criminal Court and related matters.

The main international crimes and offences against the administration of justice that are provided for in the Act are:

- 1) the offence of genocide;
- 2) the offence of crimes against humanity; and
- 3) the offence of war crimes.

The jurisdiction to try any of the above offences is provided for in the Act as well as

the trial of offences committed outside of Samoa.

General provisions are outlined for requests for assistance and the application procedure for arrest and surrender of persons to the ICC.

The Act will also enable Samoa to act as a State of enforcement and various provision is made for enforcement of sentences and orders of the ICC in Samoa. No section of the Act however can be used to authorise

a removal order for citizens of Samoa.

Where sittings of the ICC are conducted in Samoa provision is made for the conduct of Prosecutors of investigations, powers of the ICC while sitting, power to detain and remove prisoners etc.

Recognition is given to the separate legal status of officials of the ICC and enjoy certain privileges and immunities pursuant to the Act.

A regional seminar on the ICC is being co-hosted by this Office in August to generate awareness within the region

SUMMARIES cont.



LAND TITLES REGISTRATION ACT 2008

Cont. from page 1...

such deeds have been entered in the Land Register.

* *Torrens system of Registration*—

Unlike the registration process above, the torrens system is title by registration. That is to say, once a person is entered on the Land Register to be the owner then that person is the registered owner of the land. There is no uncertainty as to who a land owner may be and indefeasibility of title is guaranteed.

This does not affect the current system of alienation of customary land or determination of ownership of customary land. In fact—

1) The Act does not allow sale of customary land:

⇒ the Constitution prohibits the sale or mortgage of customary

land. (Article 102);
⇒ section 9 further clarifies that no provision of the Act may be construed or applied to the alienation of customary land;

2) The Act continues present law allowing the registration of customary land where:

⇒ customary land is the subject of a duly signed lease that has already been surveyed for such purpose (Alienation of Customary Land Act 1965);

⇒ the Land and Titles Court makes a judgment in respect of the ownership or status over a customary land; and

3) The Act does not apply indefeasibility of title to customary land:

⇒ The ownership of customary land remains (separate) and to be determined under the Land and Titles Act 1981.

Finally, a customary lease (Deed of Lease) is signed by the Minister responsible for Lands as trustee on behalf of the beneficial owners pursuant to the Alienation of Customary Land Act 1965, not the matai. It is this Deed of Lease that is registered.

A copy of the Act can be obtained from the Legislative Assembly Office for further details.

ELECTRONIC TRANSACTIONS ACT 2008



Electronic transactions are becoming increasingly common in commercial business and this Act was passed with a view to facilitating and regulating such transactions.

Once this Act comes into force, a legal requirement for information to be in writing will be satisfied by an electronic record so long as the information is accessible and can be used for subsequent reference. The term electronic record is interpreted to mean: "information generated, sent, received or stored by electronic means including electronic data interchange, electronic mail, telegram, telex or telecopy".

Pursuant to the Act, information will not be denied legal effect, validity or enforceability on the ground that information is in the form of an electronic record, or is not contained in the electronic record giving rise to legal effect, but is only referred to in that electronic record.

It should be noted however that consent is required before the use and accepta-

tion of electronic records.

As part of an ongoing strategy for the development of the country, certain areas of the Telecommunications Act 2005 have been identified as requiring a change for the continuous improvement of the Telecommunications Industry.

These changes are meant to encourage greater cooperation between the major Telecommunications providers in Samoa.

Alternative arrangements are made for the appointment of a Regulator and provision is made for a procedure to appeal orders made by the Regulator.

Pursuant to the Amendments there will be, inter alia:

– Establishment of a Telecommunications Tribunal so appeals against the decisions of the Regulator will no longer be made to the Supreme Court but this specialised tribunal;

– a process available to the Regulator to properly and quickly set interim interconnection rates;

– minimisation of civil liability against the Government and Regulator; and

– Additional grounds to revoke a service provider's licence if convicted of an offence involving dishonesty.

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This Act at the moment only applies to electronic transactions undertaken by the administering authority—Samoa International Finance Authority, unless otherwise approved by the Minister of Finance. It is hoped that this Act will facilitate speedy but lawful long distant transactions particularly in the area of the registration of international companies in Samoa.

BILLS BEFORE PARLIAMENT UP TO 30th JUNE 2008

TITLE	STATUS
1 Tobacco Control Bill 2008	2nd Reading completed (17/04/08)
2 Customs Amendment Bill (No. 2) 2008	To be tabled
3 Samoa Broadcasting Corporation Repeal Bill 2008	2nd Reading completed (14/04/08)
4 Constitutional Amendment (Unauthorised Expenditure) Bill 2008	2nd Reading completed (17/04/08)
5 Water Resource Management Bill 2008	2nd Reading completed (06/5/08)
6 Public Finance Management Amendment Bill 2008	1st Reading completed (05/05/08)
7 Passports Bill 2008	2nd Reading completed (13/06/08)
8 Miscellaneous Fees Amendment Bill 2008	2nd Reading completed (13/06/08)

UPCOMING EVENTS

INTERNATIONAL CRIMINAL COURT SEMINAR

Samoa has had a long and active association with the International Criminal Court (ICC). In 1998, the Samoan Ambassador and former Attorney General, Tuiloma Neroni Slade served as Vice President at the Rome Conference coordinating work on the Rome Statute. The Rome Statute establishes the ICC as a permanent institution that has the power to exercise jurisdiction over persons for the most serious crimes of international concern [see page 1]. Also, apart from Samoa being amongst one of the 26 initial States to sign the Rome Statute, Samoa has adopted implementing legislation entitled "International Criminal Court Act 2008" [see page3].

In August this active association will continue with the co-hosting of an ICC seminar by this Office and the International Committee of the Red Cross Regional Delegation for the Pacific. The proposed dates for the seminar are 14-15 August, 2008. It is a welcome opportunity to confirm that Samoa is committed to the ICC and in mutually assisting to provide a safe and secure international environment.

The main areas of dialogue and discussion are:

- 1) development of the ICC (its complementarity nature between national and judicial systems of the ICC and current cases of co-operation);
- 2) experience with ratification and implementation;
- 3) repression of international crimes, including implementation of the Geneva Conventions and their protocols;
- 4) support to regional States considering accession and implementation of the Rome Statute; and
- 5) developing a "Pacific model" implementing law.

These discussions will promote awareness of the role of the ICC, its complementary nature to State judicial systems and its implementation process.

With approximately 39 representatives from around the region expected to attend the seminar, it is sure to be a productive and informative one. For further information please contact Parliamentary Counsel Papalii Malietau Malietoa or State Solicitor Drafting, Constance Tafua-Rivers.

LEGISLATIVE DRAFTING IN-COUNTRY TRAINING

The Legislative Drafting Team will benefit from an In-Country Training on Basic Principles of Legislative Drafting. The programme will mainly focus on providing basic principles of legislative drafting to young drafters and interested solicitors to upgrade their skills in legislative drafting.

The Training will be conducted by a Senior Legislative Drafting Consultant of the

Australian Office of the Attorney General together with Parliamentary Counsel Teleiai Lalotoa S. Mulitalo as the local trainer. It will be held from 4-8 August. The training can only cater for a limited number of participants (15). The participants therefore are all members of the Legislative Drafting Team, 2 solicitors each from the Civil and Criminal Teams within the Office and 2 slots reserved for Government In-

house Ministries and Corporations.

Appreciation is extended towards the Samoa/AusAid/NZAid In-Country Training Programme for their collaborative funding assistance.

LEGISLATIVE DRAFTING HANDBOOK

The proposal to prepare a Legislative Drafting Handbook has been under contemplation for many years. Now, the Office of the Attorney General in conjunction with the Clerk of the Legislative Assembly of Samoa has initiated a project under the name “**Legislative Drafting Handbook Project**”. This project is being implemented with assistance from the Public Sector Improvement Facility within the Public Service Commission of Samoa and utilises funds provided to the PSIF by the Governments of Australia and New Zealand. The selected Consultant engaged in this project is Graham B. Powell.

The key tasks to be undertaken under this project are to -

- a) analyse the legislative processes in place in Samoa;
- b) analyse the full range of legislative matters, issues of governance and government administration, legal practice and social organisation in Samoa which may impact upon the form, nature and content of legislation;

- c) analyse problems faced in implementing previously drafted law and how it could have been avoided;
- d) consider a process to be adopted in the preparation for drafting legislation;
- e) prepare a Handbook for Legislative Drafting in Samoa setting out:
 - (i) approach to be taken in preparation for drafting legislation;
 - (ii) issues to be considered when drafting legislation and the weight to be given to each issue; and
 - (iii) procedures to be followed when drafting legislation; and
- f) conduct training on using the Legislative Drafting Handbook.

At this stage, the contents of the Handbook have been finalised and it is ready for publishing. The provisions of Part I note the roles played by Ministries and agencies and detail some practical steps to ensure that adequate preparation for pursuing law reform are applied by the relevant officers of sponsoring Ministries and agencies. Part II outlines general drafting requirements and specific requirements ap-

plying to Consultant Drafters. Requirements listed include:

- 1) compliance with Attorney General’s Directives;
- 2) the legislative process to be followed;
- 3) appropriate/correct terminology to be used;
- 4) technical requirements for drafting subordinate legislation; and
- 5) reporting requirements and confidentiality arrangements to be adopted.

Once the Handbook is published arrangements will be made to conduct trainings on its use and application. At the moment, tentative dates have been set for mid-September.

Since Samoa enjoys a pre-eminent position and reputation in the South Pacific in the context of legislative reform this Handbook will undoubtedly further assist in maintaining this position.

LEGISLATIVE DRAFTING ADVISOR



Following on from above, it is a pleasure to report that the Legislative Drafting Team will soon benefit from the addition of a *Legislative Drafting Advisor*.

Ms. Heather Holt from Australia will be joining the Attorney General’s Office in August for a period of 2 years. Her extensive experience and knowledge in legislative drafting will provide higher standards for this Team to work towards.

NEXT ISSUE

In our next issue, we will look at some of the Bills currently before Parliament.

The Consolidation of Laws Project is yet to be completed and we will accordingly provide an update on that.

MARITIME POLICY & LEGISLATION DRAFTING

In the 2nd and 3rd week of July Parliamentary Counsel Teleiai Lalotoa S. Mulitalo will attend to an invitation to be a resource person at the above named regional workshop. The workshop is organised by the Secretariat of the Pacific Community (SPC), Regional Maritime Programme.

The workshop is in two parts. Part 1 establishes the international maritime regulatory regime under International Maritime Organisation Conventions. It then details the most important aspects for formulating regional and national maritime policies.

Part II addresses the various methodologies in different Pacific Island Countries in translating International Maritime Organisation Conventions into domestic law. Teleiai Lalotoa S. Mulitalo will be presenting on and covering the areas in Part II.

A number of 22 participants including 2 representatives from Samoa (Attorney General’s Office and the Ministry of Agriculture) are registered for the workshop. One of our very own Mr. Tufuga Fagaloa Tufuga, Regional Maritime Legal Adviser—is the facilitator of the workshop.

DISCLAIMER

Please note that the information contained herein is not intended to be taken as legal advice and should therefore not to be relied upon as such.

Any fault in the accuracy of the information in this Newsletter is ours alone.