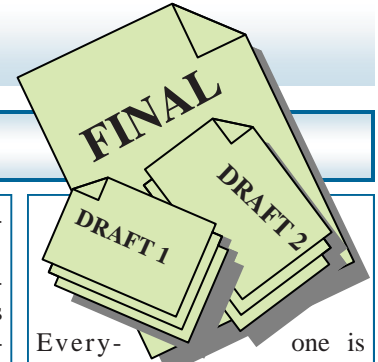




# Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

“The first draft reveals the art, revision reveals the artist”

Michael Lee



“I did really try to write it so that an educated public that cares about issues like this doesn't have to be a lawyer and can read it and understand it”.  
Floyd Abrams

## DRAFTER'S NOTE

“... and after every rough draft there's a final masterpiece”.

As drafters, we've played a role in drafting various legislation with guidance of experienced legal drafters and our very own Legislative Drafting Handbook - it means a lot to us that those processes are followed. Drafting a law is only the first step. The laws need to be enforceable, consistent with the Constitution and they need to

work. They need to be understood.

This issue tells of the involvement in drafting various pieces of legislation, the formal training and practical exercises in legislative drafting, and the skills learnt in the hope to better our drafting styles.

From a drafter, “drafting comes with style”- there's beauty in effective writing and drafting in proper form.

Every-one is deemed to know the law, so from the Attorney General and the Legislative Drafting Team - HAPPY READING & STAY INFORMED!

**Lead Drafter for this Issue:**  
Salote Wright

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## WORKSHOP ON DEVELOPING APPROACHES TO MARITIME SECURITY THROUGH CRIMINAL AND INTERNATIONAL LAW (TONGA)

(Story on pages 4-5)



Teleiai Lalotoa S. Mulitalo (Parliamentary Counsel) and Constance Tafua-Rivers (Senior Legislative Drafter) at the Workshop for Pacific Island Countries on Developing Integrated Approaches to Maritime Security through Criminal and International Law, held in Nuku'alofa, Tonga from 7th-8th May 2009.

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## PARLIAMENTARY SITTINGS FOR MAY TO JUNE 2009

MONTH	Monday (Week beginning)	Tuesday	Wednesday	Thursday	Friday
MAY	-	-	-	-	29
JUNE	15 22 29	16 23 30	17 24 -	18 25 -	19 26 -

## CURRENT LEGISLATION

BILLS PASSED IN JUNE 2009	COMMENCED LEGISLATION AND SUBSIDIARY LEGISLATION	
TITLE	COMMENCEMENT DATE	
<b>Acts passed in June Parliament Session:</b> 1. Supplementary Appropriation Act (No.2) 2008/2009 2. Appropriation Act 2009/2010 3. SEG International Enterprise Act 2009 4. VAGST Amendment Act 2009 5. Road Traffic (Payment of Fines) Act 2009 6. Education Act 2009 7. Road Traffic (Breathalyser) Amendment Act 2009	Immigration Act 2004, Section 14(1)(2)- Public Notice (SR2009/8)	9 April 2009 (assented date)
	Notice of Additional Charge for Supply of Electricity (No.3) 2009 (SR2009/9)	1st May 2009 (nominated date)
	Public Finance Management Amendment Act 2008, Notice of Commencement (SR2009/12)	5th May 2009 (nominated date)
	Land Transport Authority Act 2007, Ministerial Determination (SR2009/13)	25 May 2009 (assented date)
	Notice of Additional Charge for the Supply of Electricity (No.4) 2009 (SR2009/11)	1st June 2009 (nominated date)
	Declaration of Public Holiday for Independence Day 2009 (SR2009/10)	2nd June 2009 (nominated date)
	Samoa Water Authority (Sewerage & Wastewater) Regulations	5 June 2009 (assented date)
	Appropriation Act 2009/2010	23 June 2009 (assented date)
	Supplementary Appropriation Act 2008/2009	23 June 2009 (assented date)
	SEG International Enterprise Act 2009	23 June 2009 (by assent ) but has retrospective operation from 2 March 2009.

**LAWS: We know what they are, and what they are worth!**  
~Pierre Joseph Proudhon~

## BILLS BEFORE PARLMENT UP TO 30 JUNE 2009

TITLE	STATUS
1. Police Service Bill 2008	Referred to Select Committee
2. Narcotics Amendment Bill 2009	2nd Reading on 22/06/09, Referred to Select Committee on 23/06/09
3. Unit Titles Bill 2009	2nd Reading on 18/06/09, Referred to Select Committee on 19/06/09
4. Public Service Amendment Bill 2009	2nd Reading on 18/06/09, Referred to Select Committee on 19/06/09
5. Broadcasting Bill 2009	2nd Reading on 18/06/09, Referred to Select Committee on 19/06/09
6. Patents Amendment Bill 2009	2nd Reading on 19/06/09, Referred to Select Committee on 22/06/09

## SUMMARIES

### VAGST AMENDMENT ACT 2009

The Act amends section 12 of the *Value Added Goods and Services Tax Act 1992/1993*, the section that provides that certain goods and services subject to value added tax on the supply of goods and services need pay tax at a rate of zero per cent. The particular amendment to section 12(6) of the Act, which relates to zero-rated services, is to include as zero-rated those services currently supplied by the Totalisator Agency Board in carrying out its functions under the *Betting (Totaliser Agency) Act 1990*. These services include Totalisator betting facilities, book making and conducting lotto games.

### SUPPLEMENTARY APPROPRIATION ACT (No.2) 2008/2009


This Act contains the Second Supplementary Appropriation for the 2008/2009 financial year. It authorises the issuing of the grant and appropriation of **\$7,726,417** out of the Treasury Fund for the outputs and sub-outputs of Ministries/Departments, outputs provided by Third Parties and Transactions on behalf of the State. The Act further provides for the reduction of amounts earlier appropriated for particular departments in the Second Schedule and re-appropriate such funds in the manner set out in the First Schedule.

### APPROPRIATION ACT 2009/2010

This Act provides the Appropriation for the 2009/2010 financial year. It authorises the issuing of certain grants and appropriations out of the Treasury Fund and the Public Trustee's Account. The grant and appropriation of **\$383,125,598** is approved to be issued out of the Treasury Fund for outputs and sub-outputs delivered by Ministries/Departments or outputs to be delivered by third parties or for transactions on behalf of the State. Another grant and appropriation of **\$11,493,768** is also issued out of the Treasury Fund for Unforeseen Expenditures.

The grant and appropriation of **\$600,000** has been approved to be issued out of the Public Trustee's Account for the use of the Public Trust Office (outputs and sub-outputs, salaries and other outgoings, charges and expenses lawfully incurred or payable in administering the Public Trust Office).

**"A DOLLAR TODAY IS WORTH MORE THAN A DOLLAR TOMORROW"**  
*... the government issues grants and appropriations through the Ministries/Departments, for positive outcomes in our economy....*



### EDUCATION ACT 2009

This Act aims to provide a more broad or comprehensive approach to compulsory education for school-aged children. It provides for the responsibilities of carers of school-aged children to ensure such children attend school and the breach of these responsibilities will incur a penalty under the Act. This Act also aims to regulate teachers and disciplinary policies provided by schools. In achieving its aim, the Act provides responsibilities of Sui o le Nuu and police officers regarding the compulsory attendance of school-aged children. This Act provides for the establishment of approved organisations that will regulate certain classes of schools. There will be different approved organisations set up to regulate private and mission schools as well as ministry schools and early childhood education centres. The scope of the Act covers also the regulation of schools for school-aged children with special needs. The overall aim of the Act is compulsory attendance at school by children who are between 5 to 14 years old.

### SEG INTERNATIONAL ENTERPRISE ACT 2009

The Act provides for customs duty and tax and other exemptions to assist the filming of "Survivor Samoa". It particularly exempts overseas employees and contestants of the Television Show from payment of entry permit application or issue fees. The Act further exempts them from liability for income tax on income earned in Samoa and payment of departure tax. Goods and services supplied to the Local Company are rated zero per cent under the *Value Added Goods and Services Tax Act 1992/1993*.

The sale or gift of any goods exempted from value added goods and services tax acquired by the Local Company is subject to certain conditions.

The Act also exempts the Overseas Company and the Local Company from liability for customs duty and value added goods and service tax on imported goods listed in the Schedule to the Act.

The Act provides legal basis for these exemptions. Administrative processes already in place in Samoa will also be used to facilitate the television production.

## SUMMARIES (continued)

### ROAD TRAFFIC (PAYMENT OF FINES) ACT 2009

This Act permits the payment and collection of fines for specified traffic offences without the need for Court proceedings. The Bill provides persons who have committed certain road traffic offences with the right to elect to pay a pecuniary penalty as a substitute to court conviction.

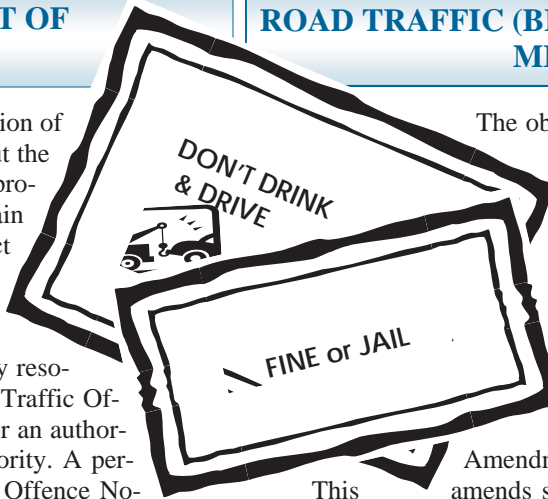
The Act allows for a speedy acknowledgment of a traffic offence and a speedy resolution to the matter. This is by way of a Traffic Offence Notice issued by a Police Officer or an authorized officer of the Land Transport Authority. A person who has been served with a Traffic Offence Notice may elect to pay the fine stated in the Notice, within the time specified in the notice. If the person does pay, that person does not receive a court conviction. Such a system also frees up the Court's schedule and should reduce the workload of Police Officers who not only prosecute but also spend a lot of time serving summons for minor traffic offences which would normally attract low monetary fines of around \$50.

### ROAD TRAFFIC (BREATHALYSER) AMENDMENT ACT 2009

The objective of this Amendment Act ('the Amendment') is to improve road safety and to better protect the people of Samoa from deaths or injury caused by those who drive while alcohol impaired. The Amendment also provides an effective and efficient means of enforcement that is compatible with the basic procedural rights of those suspected of breaching the provisions of the

Amendment.

This amends section 40 of the *Road Traffic Ordinance 1960* and inserts new provisions relating to driving while under the influence of alcohol and drugs. It provides for the use of breathalyser equipment to assist police officers in identifying alcohol levels in a person exceeding the specified limits. It also makes it an offence for a person with excessive alcohol content in his or her breath and blood to drive a vehicle. It further imposes an obligation on an affected person to comply with reasonable procedures in relation to breath and blood testing or screening.



### DEVELOPING APPROACHES TO MARITIME SECURITY THROUGH CRIMINAL AND INTERNATIONAL LAW

- Teleiai Lalotoa S. Mulitalo and Constance Tafua-Rivers Report (edited) -

A regional workshop on "Developing an integrated approach to maritime security through criminal and international law" was coordinated by the Secretariat of the Pacific Islands Maritime Law Association based in Fiji (PIMLA) and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) housed in the Pacific Islands Forum Secretariat in Fiji.

Two members from our Office, namely, Teleiai Lalotoa S. Mulitalo (Parliamentary Counsel) and Constance Tafua-Rivers (Senior Legislative Drafter) had participated in the 2-day workshop, given their ongoing involvement in counter-terrorism legislative drafting matters. Other regional participants included maritime professionals, maritime lawyers, legal consultants, etc. from Tonga, Fiji, Nauru, Cook Islands, Kiribati, Palau, Solomon Islands, Papua New Guinea and Vanuatu.

The main presenters during the work-

shop included Fagaloa Tufuga Fagaloa (PIMLA), Phill Divett (UNODC), Dolgor Solongo (UNODC) and Teleiai Lalotoa S. Mulitalo (AGO). Ms. Mulitalo presented a paper on a legislative opinion of counter-terrorism in the world, looking at the significance of maritime issues and applying Samoa as a case study.

Presentation topics included: the global framework against maritime terrorism; legal issues relating to maritime security; the 2005 Suppression of Unlawful Acts (SUA) Protocol; how the Law of the Sea can prevent crimes being committed at sea; ratification of the SUA and its implications for Pacific Island Countries; Samoa's Legal Framework on Terrorism emphasizing maritime law; the role of the Non Proliferation Treaty and Comprehensive Safeguard Agreements within the SUA Protocol; piracy in the Pacific; countering offences committed at sea through criminal justice mechanism;

and a case study on maritime legal issues.

An overview of the workshop indicated Samoa as the leading Pacific Island Country in legislative drafting, with increase in legislation enacted, as well as other domestic legislation currently being developed to implement principles of International Instruments.

(More details of PIMLA AGM and Ministers Meeting continued on next page).

***You do not examine legislation in light of the benefits it will convey if properly administered, but in light of the wrongs it would do and the harms it would cause if improperly administered.***

## 4TH PIMLA ANNUAL GENERAL MEETING (TONGA)

The 4th PIMLA Annual General Meeting was held in Tonga from 11—12 May 2009. All 12 member participants of PIMLA and the President were present. The Regional Maritime Program of SPC (through their Legal Advisor, Tufuga Fagaloa Tufuga) acted as Secretariat to the meeting. During the meeting Teleiai Lalotoa S. Mulitalo presented another paper on “Incorporated Conventions of IMO/ILO—a legislative perspective”. Topics discussed included: drafting legislation for compliance of Pacific Island Countries to maritime laws; reluctance of countries to accept the International treaties of IMO/ILO; Conventions on the Law of the Sea and transport over seas; seafarers’ rights with Kiribati as a case study; open registry for shipping ; and looking at piracy on seas and its impacts on the Pacific.

The meeting concluded with the appointment of members of the Executive Committee for the year 2009.

***The trouble with the laws these days is that criminals know their rights better than their wrongs.***  
~Author Unknown~

**Can you blame them? Laws are that informative!**

## To avoid AWKWARD drafting...

**DON'T SAY** chairman, chairwoman **SAY** chairperson  
**DON'T SAY** female, male, man, woman **SAY** person  
**DON'T SAY** husband, wife **SAY** spouse  
**DON'T SAY** widow, widower **SAY** surviving spouse  
**DON'T SAY** daughter, son **SAY** child, children  
**DON'T SAY** draftsman **SAY** drafter  
**DON'T SAY** father, mother **SAY** parent  
**DON'T SAY** policeman **SAY** police officer

## 2ND REGIONAL MEETING OF MINISTERS FOR MARITIME TRANSPORT/COUNTER-TERRORISM

Teleiai Lalotoa S. Mulitalo (Parliamentary Counsel) and Constance Tafua-Rivers were also fortunate to be members of Samoa’s delegation to the 2nd Pacific Maritime Ministers Meeting on 14 May 2009 along with the Honorable Minister of Works, Transport and Infrastructure. Following this meeting our officers reported their recommendations through a report to Cabinet: for Samoa to ratify the following International Instruments: the 1988 Protocol on Fixed Platforms; the 2005 Protocol to the Suppression of Unlawful Acts at Sea Conventions; and the 2005 Protocol to the Protocol to the Suppression of Unlawful Acts at Sea Convention. For Samoa to be a party to these would promote and encourage further counter-terrorism measures for and by Samoa.

## VICHEALTH STUDY TOUR (MELBOURNE, AUSTRALIA) - Loretta's Report (edited)



Loretta Teueli (Senior Legislative Drafter) travelled to Victoria, Australia on a study tour to VicHealth. The trip was funded by the Sector Widening Approach of the Ministry of Health. VicHealth is a health promotion foundation that was established under the *Tobacco Act 1987* of Victoria.

The trip essentially looked at VicHealth and studied how it functions as a health promotion foundation. It was a detailed look into how it is funded, and it also discussed some of its strengths and weaknesses. The study tour was an initiative by the Ministry of Health to understand how such a foundation works and how the same (if needed)

could be established in Samoa. An interesting aspect of VicHealth is that it focuses on the non-clinical aspect of health i.e. a preventative approach. It operates as a partner that provides funding to organizations (including Government and NGOs), to carry out projects that impact on the overall health of Victoria. These projects vary from (non – academic) research to community awareness campaigns on emerging issues that impact on health such as violence against women, alcohol abuse, tobacco abuse and literacy in the harmful effects of unprotected exposure to the sun which results in skin cancer.

The Study tour included not only visits to the Vichealth Health Promotion Foundation Headquarters but also to projects funded by the Foundation.



**LEGISLATIVE PROCESS:** Ministries are involved with policy making, the Office of the Attorney General plays an advisory, supporting/supervisory role at every stage of the process, the Law Reform Commission ensures law reform is undertaken with broad stakeholder consultation, the Minister of a sponsoring Ministry endorses and approves draft for submission to Cabinet, the Cabinet endorses the draft for Parliament, the Clerk of the Legislative Assembly determines formatting requirements as well as translating legislation, and Parliament debates and enacts legislation.

## ADMISSION TO THE BAR

***"Your law degree no longer matters, it is your character as a lawyer", says His Honour Chief Justice Sapolu***

The newly admitted lawyers were sworn in on April 21 by His Honour Chief Justice Sapolu. The Attorney General moved the admission of Tanya Toailoa and Salote Wright, and Leinafo Taimalelagi's admission was moved by Tuimalealiifano Vaaletō'a Sualauvi II. All motions were supported by the Secretary of the Law Society.



Aumua Ming C. Leung Wai (Attorney General) and the three newly admitted solicitors: Leinafo P. Taimalelagi, Salote Wright and Tanya O. Toailoa. Tuimalealiifano (Council of Deputy) and Rosella Papali'i Viane (Secretary for the Law Society) are also shown.

***"The ingredients of being a good lawyer are intelligence, perseverance and commitment"***  
***(His Honour Chief Justice Sapolu)***

## MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION

*Aumua Ming C. Leung Wai*, Attorney General  
*Teleiai Lalotoa S. Mulitalo*, Parliamentary Counsel  
*Papalii Malietau Malietoa*, Parliamentary Counsel  
*Heather Holt*, Legislative Drafting Advisor  
*Sarona Rimoni*, Principal Legislative Drafter  
*Loretta Teueli*, Senior Legislative Drafter  
*Constance Tafua-Rivers*, Senior Legislative Drafter  
*Lanola Petelō-Faasau*, State Solicitor  
*Salote Wright*, State Solicitor  
*Phaedra Valoia*, Law Clerk  
*Lynn Namulau'ulu*, Senior Legal Secretary

## PROFESSIONAL DIPLOMA IN LEGISLATIVE DRAFTING

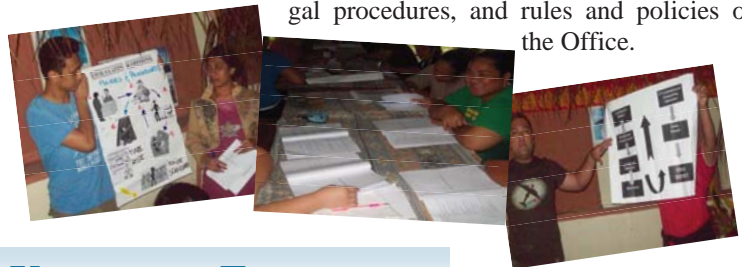
The Professional Diploma in Legislative Drafting for this year commenced in April, with 4 members from our Office undertaking the Course, namely, Fetogi R. Vaai, Fetulia'i Lagaiaia, Loukinikini Vili and Salote Wright.

The Commonwealth Secretariat and the Commonwealth of Learning initiated this 32 week Distance Training Course to enable trainees to learn and to practice the basics of legislative drafting. It teaches skills and techniques of legislative drafting which as emphasized, does not make a person a "seasoned drafter". Such skills and techniques are developed by practising them in an actual working environment. The course provides the basics of good drafting and some confidence in drafting; thus it allows the undertaking of drafting responsibilities. In short, the course provides the beginnings of a good drafter.

**To be a good drafter, you need organisation, purpose, principles of style, positive/active writing, be neutral gender and open to criticisms  
(this you learn from experience)**

## OFFICE MANUAL

The Office of the Attorney General went on a 3 day retreat to Nana'u Island from 19-21 June as an informal way to present and discuss the Office Manual and work on Capability Plans as seen in the photos below. The Office Manual aims at acquainting new employees especially law clerks with the type of work required in the Office, office management and operation of each division, legal procedures, and rules and policies of the Office.



## UPCOMING EVENTS

1. Australia and New Zealand International Law 17th Annual Conference, 2-4 July 2009.
2. United Nations International Law Fellowship Program, 6 July-14 August 2009.
3. Advanced Legislative Drafting Training from 20 July-14 August 2009.

**Drafting is a whole lot of fun. We know this 'cause we've worked alongside great drafters, one of them being Teleiai Lalotoa S. Mulitalo who will be leaving the Office of the Attorney General. BEST WISHES FROM LDD.**

## DISCLAIMER

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