



Office of the Attorney General of Samoa LEGISLATIVE DRAFTING UPDATE

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EDITOR'S NOTE

This issue provides an indication of the work and activities, that members of the Legislative Drafting Division have been involved in, from April to June 2010, as well as providing you an update of the development of our laws from that period. One of the most blessed opportunities of this quarter is that one of the Parliamentary Counsel delivered the Statement of Samoa at the Review Conference of the Rome Statute of the International Criminal Court, in Uganda.

Just as fortunate, our senior legislative drafter, together with other members from Samoa, attended a meeting in Vanuatu, with Commonwealth Investment Experts, on investment related issues, which would become part of a joint report, to develop new approaches, practices and policies for entering into and concluding International Investment Agreements. There has also been the opportunity for one of our junior drafters (along with other staff

of the Office) to undertake the Professional Diploma in Legislative Drafting. You will find that on top of the work, the Legislative Drafting Division has also provided training to create awareness on the development and legislative process. Other than that, we inform you of new laws and proposed legislation. From the Attorney General and the Legislative Drafting Division, HAPPY READING.
Lead Editor – Salote Wright

REVIEW CONFERENCE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (KAMPALA, REPUBLIC OF UGANDA—JUNE 2010)

The Review Conference of the Rome Statute of the International Criminal Court, was held in Kampala, Republic of Uganda in June 2010. Samoa was represented by Parliamentary Counsel, Papali'i Malietau Malietoa, of the Office of the Attorney General. The Conference dealt with amendments to certain provisions of the Rome Statute, and on those matters, Papali'i Malietau Malietoa delivered the statement of Samoa in support of the changes. The statement addressed the imperfections of the international rule of law, the need to carry out continuing discussions of further amendments to the Rome Statute, and the

significance of reconsidering the role of international rule of law in achieving peace and justice. In ending, Parliamentary Counsel in referring to Samoa, stated the importance of adequate national legislation and mechanisms to ensure cooperation of State Parties with the International Criminal Court.



Papali'i Malietau Malietoa delivering the statement of Samoa at Kampala, Uganda (*Statement delivered is on Page 3*)

PARLIAMENTARY SITTINGS FOR MAY TO JUNE 2009

| MONTH | Monday (Week beginning) | Tuesday | Wednesday | Thursday | Friday |
|-------|----------------------------|--------------|--------------|--------------|--------------|
| MAY | - | - | - | - | 28 |
| JUNE | 7 14 - | 8 15 - | 9 16 - | 10 - - | 11 - - |

CURRENT LEGISLATION

| BILLS PASSED IN JUNE 2009 | COMMENCED LEGISLATION AND SUBSIDIARY LEGISLATION | |
|---|---|--|
| Acts passed in June Parliament Session: | TITLE | COMMENCEMENT DATE |
| 1. Supplementary Appropriation Act (No.2) 2009/2010 | Notice of Charge on Base Tariff for the Supply of Electricity (No.5) 2010 (SR2010/16) | 23rd April 2010 (assent date) |
| 2. Appropriation Act 2010/2011 | Land Titles Registration Regulations 2010 (SR2010/17) | 12th April 2010 (assent date) |
| 3. Electoral Amendment Act 2010 | Road Traffic (Payment of Fines) Regulations 2010—Notice of Commencement (SR2010/18) | Notice dated 13 May 2010 nominating 7 June 2010 as commencement of the Regulations |
| OTHER BILLS WITH SELECT COMMITTEE | Road Traffic (Payment of Fines) Regulations 2010 (SR2010/19) | 7th June 2010 (nominated date) |
| 1. Waste Management Bill 2010 | Public Service Amendment Regulations 2010 (SR2010/20) | 17th May 2010 (assent date) |
| 2. Casino and Gambling Control Bill 2010 | Customs (Tourism and Manufacturing Development) Regulations 2010 (SR2010/21) | 17th May 2010 (assent date) |

BILLS BEFORE PARLIAMENT UP TO 30 JUNE 2010

| TITLE | STATUS |
|---|---|
| 1. Land and Titles Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 08/06/10 |
| 2. Housing Corporation Bill 2010 | 2nd Reading and Referred to Select Committee on 10/06/10 |
| 3. Film Control Amendment Bill 2010 | 2nd Reading on 09/06/10, Referred to Select Committee on 10/06/10 |
| 4. Stamp Duty Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 08/06/10 |
| 5. Bankruptcy Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 09/06/10 |
| 6. Maintenance and Affiliation Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 09/06/10 |
| 7. Divorce and Matrimonial Causes Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 09/06/10 |
| 8. Electricity Bill 2010 | 2nd Reading and Referred to Select Committee on 09/06/10 |
| 9. Parliamentary Pension Scheme Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 08/06/10 |
| 10. National University of Samoa Amendment Bill 2010 | 2nd Reading and Referred to Select Committee on 08/06/10 |

SUMMARIES

SUPPLEMENTARY APPROPRIATION ACT (NO.2) 2009/2010

This Act contains the Second Supplementary Appropriation for the 2009/2010 financial year. It authorises the issuing of the grant and appropriation of **\$882,665** 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 2010/2011

This Act provides the Appropriation for the 2010/2011 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 **\$437,884,666** is approved to be issued out of the Treasury Fund for outputs and sub-outputs delivered by Ministries/Departments, outputs delivered by Third Parties and Transactions undertaken on behalf of the State for the Financial year ending on 30th June 2011. The grant and appropriation of **\$600,00** is 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).

Another grant and appropriation of **\$13,136,540** is also issued out of the Treasury Fund for Unforeseen Expenditures.

ELECTORAL AMENDMENT ACT 2010

This Act amends the Electoral Act 1963 ('the Principal Act') to provide both clearer procedures and improvements to the electoral process, including removal of the procedure to revise electoral rolls set out in the current section 18A of the Act. Section 18A of the Principal Act is repealed and substituted with a new section 18A which requires the Registrar of the Land and Titles Court to notify the Electoral Commissioner regularly of changes to the Register of Matais.

This Act also allows an elector to transfer his or her registration to another constituency if the transfer is registered not less than five (5) years from the elector's original registration as an elector or an earlier transfer. It further provides for an elector married to a person registered on the individual voters' roll to choose to register as an individual voter rather than an elector.

STATEMENT OF THE DELEGATION OF THE INDEPENDENT STATE OF SAMOA

(Delivered by: Papali'i Malietau Malietoa)

Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen:

At the outset, the Delegation of Samoa would like to express its gratitude to the President, the Government and indeed the people of Uganda, for the warm and legendary hospitality that we have been enjoying since our arrival in Kampala.

My delegation would also like to congratulate Bangladesh for joining the International Criminal Court global family.

Mr. President,

Samoa participated actively in Rome and plans to be active here in Kampala. In Rome, the head of the Samoan delegation to the diplomatic Conference-Ambassador and later Judge Tuiloma Neroni, was Coordinator for the negotiations on the Final Clauses and the Preamble of the Statute. The importance of the beginning and end provisions of treaties is easy to overlook. This meeting is a timely reminder of their significance.

Among the Final Clauses was Article 123 of the Rome Statute, which provides the occasion for this gathering. It constituted an understanding that what we were doing in Rome, while stunning in its potential effects on the international rule of law, would inevitably fall short of perfection. It would be necessary to meet again to "consider any amendments to" the Statute, and to share some views about the overall functioning of our creation. Article 123 provides for convening of the first Review seven years after the treaty's entry into force; we would suggest that a seven year cycle is a sensible one for the future gatherings of this nature.

Samoa is on record in support of each of the three amendments before the Conference. Whether we achieve a consensus on these issues here or on another occasion, we see their ultimate resolution as inevitable.

We also look forward to participating in the stock-taking of the Conference. We strongly support the position that there can be both peace and justice, and there is an important role for victims in the justice process. Looking back at Rome, we are struck by how much preambular material is reflected in the topics for consideration here. A preamble is a set of provisions that try to capture the essence of, and reason for, what follows. Consider, for example, the metaphor of the shattered mosaic in the first paragraph, an image designed to evoke notions of restorative justice and the role of international criminal law in achieving peace and justice for victims. Consider the fundamental preambular reference to complementarity. Consider the basic underpinnings of the duty to cooperate in the task of international justice. All these are germane to our agenda here. How can we contribute to those ideals?

There is one over-arching, and depressing, fact about stock-taking. Fewer than half of the State Parties have enacted adequate legislation to enable them to cooperate properly with the Court and to ensure that the treaty crimes are penalized under domestic law. We do not mean to minimise the resource and other problems in doing so. But at the same time we can not underestimate the importance of demonstrating a serious commitment to the goals of the Court through adequate legislation.

Mr. President,

Samoa is not a member of any Military grouping and has no aspirations to do so. It has no military forces and our civilian Police Force is unarmed. In a dangerous world, we rely on the rule of law to protect us. The rule of law advances slowly and sometimes it recedes. May our time here in Kampala be a time when the rule of law is respected and advances.

*May God bless Uganda, and May God also bless this whole gathering,
Soifua.*

**COMMONWEALTH INVESTMENT EXPERTS GROUP MEETING FOR THE PACIFIC REGION
(PORT VILA, VANUATU—3RD & 4TH MAY 2010)
— Constance Tafua-Rivers' Report (edited) —**

Constance Tafua Rivers (Senior Legislative Drafter) along with Nella Tevita-Levy, Arthur Penn, Pulotu Lyndon Chu Ling, attended the Commonwealth Investment Experts Group Meeting for the Pacific Region, which was held in Port Vila, Vanuatu, on 3rd and 4th May 2010. The meeting aimed at sharing and analyzing experiences and perspectives on the Commonwealth Guide to International Investment Agreement Provisions so as to inform future policy making. An overview of the *Draft Commonwealth Guide to International Investment Agreement Provisions* ('the Guide') was provided by Professor J. Anthony VanDuzer, Penelope Simons and Graham Mayeda of the University of Ottawa.

The role of foreign direct investment in building and expanding the capacity of States to produce and supply internationally competitive goods and services has been recognised, and as a result, the Guide was developed in response to a request for the Commonwealth Secretariat to explore ways and means of promoting a consensus on international trade which includes investment. Since International Investment Agreements continue to expand and become complicated it presented both opportunities and challenges for developing countries. The availability of various model internal investment agreements presented a dilemma where agreements were overlapping and inconsistent with one another.

It is important to note that the Guide proposes to provide model provisions that offer developing countries options to suit development needs and ensure that foreign investment is promoted coherently and not at the expense of national interests.

Some of the issues arising from discussion of the Guide were related to sustainable development, standards of investor protection by host states as well as reservations, exceptions and the right to regulate, environmental and social assessment provisions, standards for investors (e.g. human rights, labour standards, bribery and corruption, etc.), civil and criminal enforcement of standards for investors in host and host states, dispute settlement, and investment promotion and technical assistance.

Along with presentations by members from Kiribati, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Vanuatu, representatives from Samoa also presented (using Samoa as a case study) on issues in relation to: inter-departmental processes for policy formulation, negotiation and implementation of International Investment Agreements (IIAs) (e.g. by Government Ministries and representatives of the private sector), the process for private sector engagement in developing negotiating positions, establishing national objectives on investment issues, preparing Ministers and Head of Government on the progress of all national developments including investment issues, developing negotiating tools particularly in dealing with investment issues, managing the negotiation process in terms of the agreements that Samoa agrees to, and focusing on bilateral investment treaties (BITS) as opposed to Preferential Trade (and Investment) Agreement negotiations and understanding investment provisions and obligations under the relevant treaties.

**LEGISLATIVE DRAFTING TRAINING ON DEVELOPMENT AND LEGISLATION PROCESS
(APIA, SAMOA—22ND AND 23RD APRIL)**

The Legislative Drafting Division conducted a legislative drafting training on 22nd and 23rd April 2010, on a half day basis at the Conference Room of the Public Service Commission.

The aim of the training, was to improve public service awareness and knowledge on the drafting of legislative instruments and the legislative drafting process. The first day of training was aimed particularly at Chief Executive Officers, and the second day of training was for senior government officials who are involved in the development of legislation.

The training covered areas including: the role of the Office of the Attorney General in the legislative drafting process, kinds of legislative instruments, the basic features of an Act and other instruments, role of instructor/policy maker, role of the drafter, finalizing a legislative instrument, parliamentary process, commencement dates, enforcement and implementation, and regulations.

At the end of the training participants were given evaluation forms to indicate their views of the training. Following the evaluation we were able to identify some of the issues faced by

Chief Executive Officers and senior government officials in their work, specifically in regards to policy and legislation.

Overall, some of the issues raised by participants include: the time period for the process towards finalising the Act, conflict between Cabinet Directives and legislation, amendment of legislation, reconciling international standards with existing legislation, providing of consolidated laws, developing of policies in accordance with international standards, drafting process, review and enhancement of legislation, consulting the Attorney General's Office and the external consultant, developing Bills or Acts by Cabinet or Minister directive without policies, unavailability of electronic or hard copies of Acts in Ministries, enforcement of policies and legislation, the need for awareness campaigns on policies and regulations, submission to Cabinet through Ministry's Minister, whether culture is taken into account when Bills are reviewed or drafted, implementation of penalties, legislation which appears not to accord with public policy, guidelines for Attorney General's discretion, impracticality of laws, and other related issues.

Overall the participants indicated the usefulness of the training and recommended additional or regular training.

PROFESSIONAL DIPLOMA IN LEGISLATIVE DRAFTING

The Professional Diploma in Legislative Drafting (PDL) for this year commenced in April, with 6 members from the Office undertaking the course, namely, Phaedra Valoia, Kalameli Seuseu, Elemesi Schmidt, Arthur Lesā, Cecily Fa'asau, and Sine Lafaiali'i.

The course is to be completed in a 30 week period, and is designed for beginners as well as experienced drafters. It is delivered through, CD-ROM materials developed by the Commonwealth of Learning, face-to-face tutorials and video conferencing (usually through USP), and a workshop assessment (to be held in Suva, Fiji on a date determined by the Course Coordinator).

The course is offered mainly to enable participants to acquire knowledge of legislative drafting. It continues to teach practical skills in translating government policies into clear and effective laws that can be understood and applied by different people, particularly relevant stakeholders. It also provides emphasis on grammar and sentence structure, as well as the language to be used. The course consists of seven modules including drafting Bills and subsidiary legislation, which is hoped to assist our participants in becoming well-equipped drafters for Samoa.

ADMISSION TO THE BAR

On Friday 18th June 2010, Ms. Tiffany Nelson of the Office of the Attorney General was sworn in by His Honour Chief Justice Patu T. F. M. Sapolu. The Attorney General moved the admission and all motions were supported by the Secretary of the Law Society.

MEMBERS OF THE LEGISLATIVE DRAFTING DIVISION

Aumua Ming C. Leung Wai, Attorney General
Papali'i Malietau Malietoa, Parliamentary Counsel
Sarona Rimoni, Parliamentary Counsel
Heather Holt, Legislative Drafting Advisor
Loretta Teueli, Principal Legislative Drafter
Constance Tafua-Rivers, Senior Legislative Drafter
Lanola Petelō-Faasau, State Solicitor
Salote Wright, State Solicitor
Phaedra Valoia, State Solicitor
Tasha Sagapolutele, Senior Bills Officer

COMMISSION OF INQUIRY - MATAI TITLES (Consultations in April, May and June)

Sarona Rimoni (Parliamentary Counsel), Salote Wright (State Solicitor) and Tasha Sagapolutele (Senior Bills Officer) continue to be involved in assisting the Commission of Inquiry (Matai Titles) through consultations in April, May and June.

In April, consultations were held:

- 20th April—Maota o Pulenu'u at Matagalalua, for Vaimauga and Faleata Districts.
- 21st April—Afega, for villages between Faleula and Tufulele
- 26th April— Leulumoega, for villages between Faleāsi'u and Falelatai (except Aiga i le Tai).
- 27th April— Lefaga (Savaia), for the whole of Lefaga.
- 28th April— Lufilufi, for Anoama'a and Va'a o Fonoti.

In May, consultations were held:

- 4th May— Lalomanu, for Lotofaga, Lepā and Aleipata.
- 5th May— Si'umu, for Safata, Si'umu and Falealili

In June, the first consultations in Savai'i were held:

- 8th June— Pu'apu'a and Safotulafai
- 9th June— Satuipa'itea

The intention is to gather from these consultations views and ideas of the public regarding the increasing number of people holding a paramount matai title.

UPCOMING EVENTS

1. Further Consultations of the Commission of Inquiry-Matai Titles and Finalising of Report (July-August 2010)
2. Parliament Session starting 10th August 2010
3. Sub regional Workshop on National Implementation of the Chemical Weapons Convention for Pacific Islands States, Nadi, Fiji, 05-07 July 2010.
4. Additional Protocols to the Geneva Conventions Regional Seminar, Nadi, September 2010



LEGISLATIVE DRAFTING
DIVISION
AT ROUNDTABLE

In ending this issue, we acknowledge the work and assistance provided by Lynn Namulau'ulu (Legal Secretary) who has left the Office, and Heather Holt (Legislative Advisor) who will be returning in August to Australia: **BEST WISHES FROM LDD.**

CONGRATULATIONS also to Loretta Teueli for new appointment as Principal Legislative Drafter.

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.