



Monday 16th March 2020
MEMBERS PRE-SITTING BRIEFING

A total of 32 Members convened at the Conference Room of Maota Tofilau Eti Alesana (MTEA), Mulino today for their second Members Briefing for 2020. The Hon Speaker took lead of the Briefing which had 4 Bills on the agenda; the Energy Management Bill 2019; Land and Titles Bill 2020; Judicature Bill 2020; and the Constitution Amendment Bill 2020. The Chief Executive Officers for the Ministry of Finance, Ministry of Justice and Courts Administration, and the Samoa Law Reform Commission, together with the Assistant Attorney General presented on the purpose of their respective Bills and attempted to answer the queries and concerns raised by Members during the briefing.

(1) ENERGY MANAGEMENT BILL 2019

Presenter: *Leasiosiofaasisina Oscar Malielegaoi*
CEO - Ministry of Finance

The CEO elaborated that the Bill essentially provides a coherent institutional and regulatory framework for the management, planning and coordination of the energy sector. He further clarified that the Bill will encompass all matters pertaining to energy and therefore leading to the repeal of the following legislations; *Energy Efficiency Act 2017*; *Oil Fuel Supply Act 1974*, and *Petroleum Act 1984*, so as to provide easier reference and administration of the provisions of the Act.

The CEO further noted that the Bill takes into consideration the acceptable standard of energy consumed appliances such as refrigerators, air con's, etc. allowed into the country (noting the harmful gases that certain products release into the atmosphere and posing health risk to the consumer). The Bill also provides the continuity of the National Energy Coordination Committee (NECC); this Committee is co-Chair by the Hon Minister of Finance and the Hon Deputy Prime Minister (Minister of Natural Resources and Environment).

Furthermore, Leasiosiofaasisina explained that there are also higher charges/fines provided in the Bill with the understanding that more high charges would discourage the public from breaking the laws

The following were the issues raised by Members:

- In reference to Clause 19 of the Bill, specifically the granting of licence for the retail of petroleum whereby only 'Citizens' of Samoa can apply for a licence. Few Members queried the rationale behind this provision.

To which the CEO responded that the retail of petroleum in the country was a business venture reserved only for Samoan citizens, whether by birth, marriage or descent. In the instance that the application was made by an individual who was granted citizenship by investment into Samoa, the NECC will assess the application based on the conditions and make the final decision.

- One Member asserted that all registrations and reports submitted to the NECC Committee for any business licence from any foreigner should be provided in either English or Samoan languages to avoid confusion, noting that there have been previous cases where police reports submitted by Chinese were in Chinese language and was difficult to understand the information provided in the report.
- Due to the health crisis currently experienced globally, Members queried the preparedness of Samoa to the impacts of the corona virus on Samoa. Members queried what Samoa will do to counter this crisis and how will Samoa continue to progress without supplies and trade with our trading partners.
- One of the Members queried whether the private distribution of fuel/kerosene at retail shops was legal; to which the CEO for Ministry of Finance responded that licences were approved and issued to certain retail shops for the sale of certain petroleum products to provide convenience and easier access for the public.

The CEO for MOF stated that although the tourism industry will take a down fall as fewer visitors will be travelling during the health crisis, the plus side is that due to fewer flights, the demand for petroleum has gone down and therefore generally lowering its cost. Furthermore, Leasiosiofaasisina informed Members that Samoa was in a safe position with approximately 3 months of fuel supply for both Upolu and Savaii. The CEO asserted that Government has already implemented tighter controls at all borders/every point of entry into Samoa to reduce the risk of an infection entering our nation as well as to continue safe trading with our foreign partners.

The CEO concluded his presentation and thanked Hon Speaker and Members for their comments and views expressed towards the Energy Management Bill 2020.

(2) CONSTITUTION AMENDMENT BILL 2020

Presenter: *Teleiai Dr. Lalotoa Mulitalo - Executive Director (SLRC)*

The Executive Director of the Samoa Law Reform Commission provided a brief synopsis of the Constitution Amendment Bill 2020, noting that it is every judicature's wish to have more of Samoa's culture and traditions reflecting in its Supreme law (the

Constitution) hence the production of the report. Teleiai clarified that there were 3 main objectives of the Bill;

- (i) to recognise the decisions made in Village Fono (as there were various issues which came about on the issue of individual rights vs. collective rights)
- (ii) to recognise the decisions made by the Land and Titles Court; and
- (iii) the independence of the Land and Titles Court.

The Executive Director elaborated that the recommendations made by the Special Inquiry Committee on the Land and Titles Court gave rise to the provisions of the Bill. To factor in the customs and traditions of Samoa the bill provides the independence of the LTC. She also explained that a significant aspect of the Bill is the restructure of the Lands and Titles Court whereby there will be a Lands and Titles High Court that will have jurisdiction to hear any appeals from the Lands and Titles Court and a further higher Court of Appeal called the Land and Titles Court of Appeal and Review which will be made the superior court of record.

Overall the Constitution Amendment Bill seeks to emphasise the separation of the Lands and Titles Court from the Original civil and criminal Supreme Court (particularly Part 9 of the Constitution Amendment Bill). Though both will be regarded as the same level of importance, their jurisdictions are different and both courts will be independent from each other. Furthermore, the Bill seeks to bind the provisions of the Lands and Titles Bill 2020.

(3) LAND AND TITLES BILL 2020

Presenter: *Moliei Vaai- CEO - Ministry of Justice and Courts Administration*

The CEO of the Ministry of Justice and Courts Administration again reiterated that the changes proposed by the Bill was a result of recommendations that were put forth by the Parliamentary Special Commission of Inquiry in 2016. She further stated that the changes reflect government's ongoing goal of ensuring that Samoa's "Tu ma Aganuu" are reflected in its laws.

She further went on to detail some of the important aspects introduced by the Bill:

1. The Bill repeals the Lands and Titles Act 1981;
2. The Lands and Titles Court (LTC) will have jurisdiction to all matters relating to Samoan names and titles; Independent from the civil and criminal (*palagi*) Supreme Courts;

3. Lands and Titles Appeals will no longer be heard by the original (*Palagi*) Supreme Court but will now be considered within the Lands and Titles realm whereby a new Lands and Titles High Court will be established to consider appeals from the Lands and Titles court and will have all the powers and jurisdiction of the LTC.
4. The decision of the LTC High Court is subject to further appeal to the LTC of Appeal and Review whereby the grounds for review will be subject to common law grounds of a judicial review.
5. Establishes a Komisi (independent from the Judicial Services Commission) which consists of the President of the LTC, as Chairperson; a Supreme Court Judge as nominated by the Chief Justice; and the Chairperson of the Public Service Commission and a Registrar of the Supreme Court as secretary whose powers are to appoint, promote and transfer the removal of any Samoan LTC Judge.
6. LTC to have the jurisdiction to determine claims and disputes involving right of way or access on customary land.

The following were issues raised by Members on the Constitution Amendment Bill 2020 & Lands and Titles Bill 2020:

- In reference to the selection of LTC Judges, the member from Palauli le Falefa raised his concern that the Komisi should ensure that the Judges being appointed are those that serve in villages so they may have a full understanding of the Samoan culture and thus make the right decisions on matai and land title matters;
- In regards to Appeals, the member also expressed that he was sceptical of having appeals in the LTC;
- The Member for Anoamaa West questioned the feasibility of Clause 14 (3) (a) in regards to the removal of a matai Title and stated that it will be impossible to officially remove a matai title upon the consensus of that person who held the matai title and is a sulii;
- Another member questioned the possibilities of conflict of interest of the President of the LTC in regards to appeals put forth to the LTC High Court and the LTC Court of Appeal and Review;
- The Member of Salega East questioned whether there is a limit in the age of retired judges being appointed to the different level of courts as we should not appoint someone that too age as it may affect the workload and quality of decisions of the court;

- He further questioned whether the salaries of the LTC Judges be on the same scale as the Judges of the Supreme court and whether the Government is prepared to fund these expenses

(4) JUDICATURE BILL 2020

Presenter: *Galumalemana Noumea Loretta Teueli- Assistant Attorney General*

The Assistant Attorney General simply stated that the Bill seeks to update the Judicature Ordinance 1961, removing duplicated provisions already found in the Constitution.

By removing repetitive provisions, the new Bill now regulates administrative, procedural and civil appeal provisions practices in the Civil and Criminal Courts.

The Hon. Speaker concluded the briefing with a Prayer.