

DISCLAIMER

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Monday 28 January 2019

DAY 5

[Part A]

9:10am

I. GOVERNMENT ORDERS OF THE DAY

1. MINISTRY OF HEALTH AMENDMENT BILL 2019 – Consideration in Detail

Clause 3 – Approved

Clause 4 – Approved

Clause 5 – Approved

Clause 6:

(i) FAUMUINA Faaolatane Tiatia Liuga, Member for Palauli le Falefa

The Member noted the amendment was contradicting a previous amendment passed by Parliament, *Fees and Charges (Miscellaneous Act) 2018* – which provided that all fees and charges provided in 61 Acts (including Ministry of Health and the National Health Services) will be determined by the National Revenue Board so as to ensure consistency across Ministries/Corporations/SOE's in the setting of charges and fees.

The Member for Palauli le Falefa moved for the removal of the entire s.19 of the Ministry of Health Act 2006 to remove the function as it has been referred to the National Revenue Board.

Hon Prime Minister, TUILAIPA Lupesoliai Neioti Lolofietele Dr. Sailele Malielegaoi

The Hon Prime Minister clarified that the authority and jurisdiction afforded to the National Revenue Board will not be changed – however there is also flexibility so as to provide leeway to ensure alterations in the performing of functions.

Clause 6 – Approved

Clause 7 – Approved

Clause 8 – Approved

Clause 9 –

**(ii) Associate Minister of Communications and Information Technology,
LEALAILEPULE Rimoni Aiafi**

The Member conveyed support for changing the designation of Chief Executive Officer to the Director General of Health. In regards to the new insertion provided in Clause 9, the Member queried s.9(3)(c) ‘any other qualification and eligibility as approved by the Minister’ – whether other qualifications referred to other capabilities not related to health.

Clause 9 – Approved

Clause 10 –

**Associate Minister of Communications and Information Technology,
LEALAILEPULE Rimoni Aiafi**

The Member queried s.10 ‘Appointment of Deputy Director General’ – the query was in regards to whether the position was a new designation or will all ACEO’s of the Ministry be referred to as Deputy Director General.

Hon Minister of Health, TUITAMA Talalelei Tuitama

The Hon Minister clarified that all contract employees will remain as is, all benefits will continue until contract ceases. In accordance with the Public Service Commission Act, the Director General has the authority to ‘hire/fire’ (perform the function of who is made redundant). The Hon Minister elaborated that redundancy of employees for the National Health Services will be based on the PSC Act 2004.

(iii) LAUOFO FONOTOE NUA FESILI Pierre Laufo, Member for Anoamaa West

The Member queried whether there was a fund allocated for employees who will be made redundant. LAUOFO stated that his query is due to the funds having to garner approval from the House, and queried whether this too will be the process.

Hon Minister of Health, TUITAMA Talalelei Tuitama

The Hon Minister plainly stated that the monies to cater for redundant packages will be from government.

Hon Prime Minister, TUILAEPA Lupesoliai Neioti Lolofietele Dr. Sailele Malielegaoi

The Hon PM assured the Member that the set protocol will be followed – (Cabinet reports to the House for approval). He then elaborated that it was important to amend the current 1% unauthorised fund to 3% so as to allow Government to cater for unforeseen circumstances.

FONOTOE Nuafesili Pierre Laufofo, Member for Anoamaa West

The Member acknowledged the Prime Minister for his clear response.

Clause 10 – Approved

Clause 11 – Approved

Clause 12 – Approved

Clause 1: Name and Short Title – Approved

2. MINISTRY OF HEALTH AMENDMENT BILL 2019 – third reading

The Hon Minister of Health, TUITAMA Talalelei Tuitama moved for the Bill to be third read; motion seconded and approved

The Ministry of Health Amendment Bill 2019 was third read and passed the Legislative Assembly.

3. COMMUNITY LAW CENTRE AMENDMENT BILL 2019 – second reading

The Hon Minister of Justice and Courts Administration, FAAOLESA Katopau Ainuu, moved for the Bill to be read a second time and spoke to clarify the objects of the Bill; motion seconded.

The Hon Minister stated that the Community Law Centre Act 2015 was established to create the Community Law Centre and to provide for its functions, duties and powers; the Bill sought to install a centre for legal officers for the public (especially those who could not afford a lawyer and to pay for legal fees). Furthermore the Minister stated that the Bill repeals s.6 (2) of the Principal Act to remove all civil matters from the functions of the Centre and focus solely on criminal matters. The Hon Minister also stated that the Bill substituted the term for legal officers to amend the title from public ‘advocate’ to public ‘defender’.

(i) FAUMUINA Faaolatane Tiatia Liuga, Member for Palauli le Falefa

The Member noted the importance of including civil matters into the functions of the Community Law Centre (CLC) and suggested that civil cases still remain under the jurisdiction of the CLC citing the fees to be too costly and people needed assistance.

Hon Minister of Justice and Courts Administration, FAAOLESA Katopau Ainuu

The Hon Minister asserted that due to the overall budget not being feasible to cater for both civil and criminal matters, the Ministry has therefore resulted to focusing on criminal matters solely – the Hon Minister assured the House that it is the Ministry’s intentions to incorporate civil matters once the Ministry can afford to do so.

FAUMUINA Faaolatane Tiatia Liuga, Member for Palauli le Falefa

The Member stated that the PM already stated the importance of utilising all funds and this was contradicting the statements made earlier by the Minister. The Member stated that a surplus is projected for the Ministry and therefore noted his disappointment on the inability of the CLC to cater for civil matters.

Hon Prime Minister, TUILAIPA Lupesoliai Neioti Lolofietele Dr Sailele Malielegaoi

The Hon PM stated that the Centre is to cater for those whom cannot afford legal costs, furthermore the Hon Prime Minister stated that members (whom have to deal with election petitions) are usually financially stable.

The Prime Minister noted that to date – CEO’s require money for annual projects and therefore funds are allocated to urgent and prioritised projects. He also mentioned the Tenders Board role (relates to the allocation and appropriation of funds as the Member queried the appropriation of funds). On the issue of infrastructure the Hon PM clarified that infrastructure is given priority for appropriated funds.

(ii) TAFUA Maluelue Tafua, Member for Aleipata Itupa i Lalo

In regards to the Bill, the Member stated that it is quite straight forward as it amends the title of ‘Advocate’ to ‘Defender’.

(iii) SULAMANAIA Fetaia Tauiliili Tuivasa, Member for Vaimauga East

The Member noted instances whereby an individual cannot meet debt repayments is therefore sent to serve imprisonment; however upon release from prison, the individual is asked to pay the debt. The Member disagrees with the practice of being penalised twice for the same crime.

POINT OF CLARIFICATION - Hon Prime Minister

The Hon PM commented that Banks and financial institutions should place emphasis on assessing loan applications to ensure the applicant is capable of meeting repayments, or has sufficient collateral presented so as to avert the issue raised by the Member for Vaimauga East.

4. COMMUNITY LAW CENTRE AMENDMENT BILL 2019 – consideration in detail

Clause 2 – *Approved*

Clause 3 – *Approved*

Clause 4 – *Approved*

Clause 1: Name and Short title – *Approved*

5. COMMUNITY LAW CENTRE AMENDMENT BILL 2019 – third reading

The Hon Minister of Justice and Courts Administration moved for the third reading of the Bill; motion seconded and approved.

The Community Law Centre Amendment Bill 2019 was third read and passed the Legislative Assembly.

6. ALCOHOL CONTROL BILL 2018 – second reading

The Hon Minister for Revenue TIALAVEA Fea Leniu Tionisio Hunt moved for the second reading of the Bill and spoke to clarify the objects of the Bill; motion seconded.

The Hon Minister explained that the Act seeks to alleviate the social implications of alcohol and to prohibit unnecessary advertisement of alcohol. Furthermore the Minister noted that the Bill was in progress since 2015 on the recommendation from the Samoa Law Reform Commission. Additionally, the Bill was a result of the social implications on alcohol consumption – Hon Minister elaborated by stating that from January 1 – December 1 2018, there were 2,036 alcohol related incidents reported to Police (which is an alarming number).

(i) OLO Fiti Afoa Vaai, Member for Salega East

The Member suggested that the Minister look into the Liquor Board and their decisions to ensure consistency.

(ii) LEALAILEPULE Rimoni Aiafi, Associate Minister of Communications and Information Technology

The Member raised the following points in relation to the Bill. He stated that a proper course should be conducted by the Ministry of Police for those working as securities/bouncers as the task is difficult because they deal with intoxicated people. Nightclub/pub owners should refrain from employing their relatives to be securities/bouncers as this is unprofessional.

The member also suggested that government look into the importation of beer as it provides a variety of choices for tourists, and it is important that bars/pubs/hotels don't set prices too high for these goods. He further proposed that heavier fines should be imposed on those whom do not abide by the alcohol content.

In regards to legislation that allows the Police to exercise 'reasonable force' to culprits, he stated that the use of such word is ambiguous and needed to be clarified. He concluded that the Police should be authorised with the jurisdiction to shut down a nightclub on the spot when a serious incident takes place.

(ii) LAAULI Leuatea Polataivao Fosi, Member for Gagaifomauga No.3

The Member stated that alcohol is the number one exterminator in the nation to date; in retrospect, alcohol consumption is not new, it was introduced by German and New Zealand administration. However, the Member queried the cause of such desolate behavior when intoxicated; he believes that emphasis should be placed on the percentage of alcohol produced locally – as he stands behind his words that locally produced alcohol is not good.

The Member noted his support for the Bill and stated that any legislation which provides for the control of alcohol is a step in the right direction and urged the responsible Ministry and Authority to stringently enforce the provisions of the Bill and stated that local producers of alcohol whom do not abide by the set strength for alcohol to be immediately put out of business.

Hon Prime Minister, TUILAEPA Lupesoliai Neioti Lolofietele Dr Sailele Malielegaoi

The Hon PM commended the Members on raising the issue and acknowledged the Police Commissioner on the duties during the festive season; the Prime Minister elaborated that alcohol and drugs is a deadly mix that leads to numerous offences (inability to have proper judgment).

He further stated that security officers/bouncers do not have the authority to take the law into their own hands and strongly advised the public and club owners to call the police in serious drunken disorder cases. On another issue, the Hon PM advised the Deputy Prime Minister for the Ministry of Environment to form control measures in regards to heavy waste and littering outside clubbing areas.

Hon Minister for Revenue, TIALAVEA Fea Leniu Tionisio Hunt

The Hon Minister concluded by stating that bars and nightclubs have employed qualified security guards, with no prior convictions and stated that there will be emphasis on drug-testing to be another requirement in the recruitment and selection process.

On a Point of Clarification - Hon Prime Minister

The Hon PM stated that there is no greater law than the use of ‘common sense’ – however when an individual is intoxicated, this can hinder/prohibit an individual from making better choices.

The Alcohol Control Bill 2018 was second read and referred to the Economic Sector Committee.

Proceedings were set aside at 10:45am and resumed at 11:31am

MOTION – Hon Prime Minister

The Hon PM moved a motion to have proceedings of the Assembly proceed until 1 pm and reconvene at 7pm – 11 pm; Motion seconded and approved.

7. LAND AND TITLES BILL 2019 – second reading

The Hon Minister, FAAOLESA Katopau Ainuu moved for the second reading of the Land and Titles Bill 2019 and spoke to clarify the Bill; motion seconded.

The Minister stated that the Bill seeks to repeal the Land and Titles Act 1981, and noted that the Bill was borne from the recommendations made by the Commission of Inquiry. He stated that the Commission was established to deliberate ways to better enhance the works of the Land and Titles Court.

The Hon Minister informed the House that the Bill sought to make all matai titles of equal importance; Furthermore, to allow the public to appeal decisions by the Land and Titles Court. In regards to the Final Court of Appeal, the Hon Minister stated that the new Bill will enable the Lands and Titles Court to have jurisdiction to make final decisions, rather than referring to the Supreme Court.

The Bill also consolidates the jurisdiction of the Lands and Titles Court of Appeal to have its final decision not overturned by the Supreme Court as stipulated in the Principal Act. Moreover, it provides the Lands and Titles court to consolidate boundaries for customary land (MNRE have different boundaries as opposed to the MJCA's the Ministry will have the final say on where the boundary is based on the records present in the MJCA's database). In regards to instances of conflict of interest amongst judges, the Hon Minister clarified the duties of the Ministry's registrars which is to determine the validity of Matai titles.

Hon Prime Minister – Point of Clarification

The Bill was borne from the House – the grievances voiced by members of the public in relation to land and titles long outstanding pending decisions was tried countless times by the people, and they sought refuge in Parliament.

The Hon PM commented on the separation of powers; noting the three pillars which co-exist to ensure democracy in the nation, Executive, Parliament and the Judiciary – the Hon Minister clarified that the Bill was formulated in relation to the report and recommendations provided by the Special Inquiry Committee.

OLO Fiti Afioa Vaai, Member for Salega East

The Member echoed sentiments made by the Hon Prime Minister; stated that the best factor about the amendment is the separation of powers and jurisdiction (no more referrals to the high court) The Member then called for Land & Titles to be separated permanently and placed under the jurisdiction of the President of the Land & Titles Court whilst the judiciary is led by the Chief Justice. In regards to legal officers, the member expressed concerns that they only fight to win cases rather

than fight for the truth; the Member elaborated that this is a concern especially for those who cannot afford lawyers. The Member for Salega East stated the importance of families to discuss and settle family matters rather than resorting to courts, as these take up time and money.

Hon Prime Minister – point of Clarification

The Hon PM informed the House that recommendations from the public and Committee have all been taken into consideration. The Prime Minister noted that in the hopes of enhancing the procedures and processes of the Land and Titles Court, it was also aimed to truncate the time for court decisions.

SULAMANAIA Fetaiai Tauiliili Tuivasa, Member for Vaimauga East

The Member commented on the importance of land survey in terms of properly locating and mapping the boundaries of customary land, noting that currently there are no proper boundaries established. He elaborated that in the past, family high chiefs and orators would use a tree or a post located in the land to measure boundaries (which is worrisome) as these posts and trees are not guaranteed to exist a lifetime or generation.

The Member therefore called for land surveyors to be involved so as to ensure accuracy of records to avoid friction and conflict between neighbours. On the other side, the Member noted the importance of confidentiality, given that the Ministry of Natural Resources and Environment having access to confidential documents can cause issues of tampering with documents.

In regards to the issue of temporary orders, the Member queried who had the highest authority, the President of the Land and Titles Court or the CEO. He then suggested to afford villages the right to decide the timeframe to submit the registration of their matai titles.

The Member then jested that the Chairperson of the Commission of Inquiry should have taken the judges for the Land and Titles Court to the judiciary to protect the integrity of Parliament.

POINT OF CLARIFICATION – Hon Speaker

The Hon Speaker on a point of clarification stated that the Bill was formulated as a solution to address issues raised in the House together with recommendations made by the Commission of Inquiry on the Land & Titles Court regarding customary lands and matai title bestowment.

Minister of Agriculture and Fisheries, Hon LOPAOO Natanielu Mu'a (Chairperson of the Commission of Inquiry)

The Hon Minister, spoke to clarify in his position as the chairperson for the Commission of Inquiry (at the time) that due to customary practices of mutual respect, the Commission decided to let it pass, when the judges refused to appear before the Commission when summoned by Parliament.

SEIULI Ueligitone Seiuli, Associate Minister of Works, Transport and Infrastructure

The Member commented on the relationship between the Ministry of Natural Resources and Environment and the Ministry of Justice and Courts Administration and stated that the land surveyor only comes into play when summoned – the land and titles cannot change unless the call comes from the Court of Appeal.

He then queried which order held the most authority, the Temporary Order from the Land and Titles Court or the Court of Appeal.

Hon Prime Minister – Interjection

The Hon PM stated that the new markers were introduced to consolidate boundaries and to avert conflict as the old markers were malleable and were worrisome as it could be changed or lost, whereas the boundaries and markers introduced in the Land and Titles Register were brought about to gather an exact and accurate area – and noted the importance of lands and titles register.

LEALAILEPULE Rimoni Aiafi, Associate Minister of Communication and Information Technology

The Member noted the issue of the authority of the chief orator (*Matai Sa’o*) of the family. The Member then commended the provision on the removal of matai titles. In regards to the issue of mediation, the Member called for the matai titles which are no longer used to be removed from the register. He then urged judges to abide by the 30 day period to reach a decision.

In regards to the Court of Appeal, the member agreed that there should be two court of appeal – one to deal with civil matters and the other to hear criminal matters.

LEAANA Ronnie Posini, Member for Safata West

The Member for Safata West noted that there were only two sides in the Land and Titles Court; he then raised three issues pertaining to the amendment Bill; in regards to temporary orders, the Member queried who had the higher authority (Land and Titles Court or the Court of Appeal). The Member then called to explore the possibility to abolish temporary orders.

ALAIASA Moefaaouou Sepulona Moananu, Associate Minister of Education, Sports and Culture

The Member stated that the proposed Bill becomes complex and lengthy when there are too many people involved (lawyers, mediators, arbitrators). He therefore encouraged a set timeframe to ensure judges were held accountable to meet the stipulated timeframe to reach a decision. In regards to the removal of matai titles, the Member encouraged the removal of titles when set requirements are not met.

ALIIMALEMANU Alofa Tuuau, Member for Alataua West

The Member noted support for the Bill and stated that the sketch plan required by the Courts is only a sketch plan – so as to show things are set

The Land and Titles Court was second read and referred to the Standing Orders, Electoral, Petitions and Constitutional Offices Committee.

8. TAX INFORMATION EXCHANGE AMENDMENT BILL 2019 – second reading

The Hon Minister for Revenue, TIALAVEA Fea Leniu Tionisio Hunt, moved for the second reading of the Bill and spoke to clarify the objects of the Bill; motion seconded

The Hon Minister stated that the Bill was straightforward as it aims to ensure citizens employed in seasonal employment schemes overseas are exempted from paying income tax until they return to Samoa, however if taxes are paid overseas then they are exempt from tax in Samoa this is to avoid double taxation of employees.

OLO Fiti Afoa Vaai, Member for Salega East

The Member noted that the Bill only introduces 2 new countries (New Zealand and Republic of Korea), however it is highly likely that there will be more countries to be incorporated. It is therefore advised that the legislation amend the provision so as to generalise countries – while regulation can be changed to incorporate new countries, this is to avoid countless amendments introduced to Parliament.

Hon Prime Minister – Clarification

The Hon PM clarified that the act seeks to provide NZ companies the right to be exempt from paying double tax if working in Samoa and vice versa.

FAUMUINA Faaolatane Tiatia Liuga, Member for Palauli le Falefa

The Member acknowledged the Bill as it is an important opportunity for the Samoa International Finance Authority and commended the Minister that the Bill does not include countries who have no investors in Samoa.

The Information Exchange Amendment Bill 2019 was second read and referred to the Economic Sector Committee

9. SAMOAN LANGUAGE COMMISSION AMENDMENT BILL 2019 – second reading

The Hon Minister for Education, Sports and Culture, LOAU Sola Keneti Sio moved for the second reading of the Bill and presented his clarification; motion seconded

The Hon Minister clarified that the Samoan language is an important part of Samoa's identity, noting that the Samoan community in American Samoa and New Zealand requested to be members of the Commission.

The Samoan Language Commission Amendment Bill 2019 was second read and referred to the Social Sector Committee.

Proceedings adjourned at 1pm and will reconvene at 7pm