

DISCLAIMER

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Thursday 22nd March 2018

9:15am

Day 3

I. MESSAGE FROM O LE AO O LE MALO:

Pursuant to Article 59 of the Constitution, the Hon Speaker read out the Message from O Le Ao o le Malo to permit the introduction of the following Bills:

1. Excise Tax Rates Amendment Bill (No.2) 2018

II. NOTICE FROM THE LEADER OF THE HOUSE:

Pursuant to Standing Orders 76 and 100(2), Mr Speaker read the Notice by the Leader of the House to allow the passage of the following Bills under Certificate of Urgency:

1. Customs Tariff Amendment Bill 2018
2. Excise Tax Rates Amendment Bill (No.2) 2018

III. GOVERNMENT ORDERS OF THE DAY – Reading of Bills

1. TOBACCO CONTROL AMENDMENT BILL 2018 – SECOND READING

The Hon Minister for Health, TUITAMA Talalelei Tuitama moved for the second reading of the Bill, the motion was seconded. The Hon Minister elaborated on the merits of the Bill, noting that it is the first amendment to the Tobacco Control Act 2008 (Principal Act) since its enactment 10 years ago; therefore it was a fitting time to review the Act and make relevant amendments. The Hon Minister informed the House that the amendment is relevant to the current trends specifically in regards to meeting requirements of the international convention which Samoa signed in 2003; the Framework

Convention on Tobacco Control (FCTC). The Minister noted that the treaty was enforced in 2005. Hon TUITAMA noted that the Convention is a treaty under the umbrella of World Health Organisation (WHO) and contributes specifically to the achievement of Sustainable Development Goal (3a) (SDG) which aims to “*Strengthen implementation of the Framework Convention on Tobacco Control in all countries as appropriate*”. The Minister elaborated on the objectives of the bill, stating that its purpose was two-fold, i.e., to meet international requirements of the Convention and enforce the licensing of tobacco product.

The Hon Minister asserted that the Bill will also prohibit the display of tobacco products in shops to discourage the public from purchasing these products. Furthermore, the Bill will enforce strict restrictions in regards to the age limit permitted to purchase or sell tobacco products; noting that currently the law provides for the restricted age of consumers and avoids the shop-keeper who is selling tobacco product which should also be

i. AUMUA Isaia Lameko, Member for Falealili West

The Member expressed his opinion in regards to Clause 3 which provides for the establishment of a National Tobacco Control Committee. The Member noted that the composition of the Committee should include a member from the Chamber of Commerce and proposed the slashing of rebates as this will affect the individuals who sell the product (cigarette). The Member concluded by advising the Ministry to consider reviewing licensing cost of tobacco as it is too expensive in his opinion.

ii. Hon FONOTOE Lauofo Pierre Lauofo, Member for Anoamaa West

The Member queried the inclusion of nicotine-patches and e-cigarettes as tobacco products. The Hon Member asserted that nicotine acts as a stimulant which causes addiction and indirectly the cause of cancer. The Member commented in response to the Member for Falealili West who spoke on licences, and stated that there should be a standardized limit for issued licenses to Tobacco distributors. The Member then commented on the National Tobacco Control Committee (NTCC) and stated that the Committee be afforded the authority to summon individuals to present if called to do so. In conclusion, the member proposed to conduct a census identifying the number of smokers for Samoa and stated that this would be beneficial for the Committee and the Ministry of Health.

iii. FAUMUINA Asi Pauli Wayne Fong, Member for Urban West

The Member noted two issues in regards to the Bill; which included the required conditions of a factory and the importance of packaging and branding. The Member stated that tobacco factories in Samoa should be established in a more industrialised location, away from the comfort

and privacy of homes. Additionally, FAUMUINA noted the importance of branding and packaging, proposing for set standards to comply by tobacco companies and advised that Government should have a part to play by endorsing the production of certain products once it has met the required standards.

iv. OLO Fiti Afoa, Member for Salega East

The Member queried the inclusion of local tobacco products such as ‘tipi’ in the new law.

v. ALAIASA Moefaaouuo Sepulona Moananu, Member for Anoamaa East

The Member expressed his support for the Bill and explained that it was his understanding the proposed Bill would prohibit the sale of tobacco in Samoa as the tactic to increase the cost of the product has proven ineffective. The Member then continued by stating that there is currently no law which provides punishment for individuals aged 13-20 years old caught smoking. The Member concluded by extending apologies on behalf of his constituents for the debacle which took place on Monday 19 March 2018 between members of his constituents and neighbouring constituencies.

vi. Hon Prime Minister, TUILAIPA Auelua Fatialofa Lupesoliai Dr. Sailele Malielegaoi

The Hon PM stood to emphasise the importance of the Bill, reciting an anecdote on Yul Brynner who died from lung cancer due to heavy smoking habits. The Hon PM further stated that although Government would like to ban tobacco products in Samoa, this is complicated as it would infringe on human rights (freedom of choice), however the only other option is to increase to a high percentage the duty on tobacco products so as to discourage the public from consuming such products. The Hon PM urged the Ministry of Health to formulate effective strategies to discourage people from smoking. Furthermore, he noted that the consumption of local tobacco (tipi) is not a healthy alternative and should be avoided.

vii. LEALAILEPULE Rimoni Aiafi, Associate Minister for Communication and Information Technology

The Member stated that he was unaware there was more than one tobacco factory in Samoa, then noted his uncertainty in regards to the Classes of License stipulated in Clause 9, i.e., manufacture license; importer license; and distributor license; the Member advised to reconsider the classification of licenses and specify the appropriate conditions for who the license is intended for to ensure clarity and less uncertainties. Furthermore, the Member stated that the CEO should

also be afforded the power to approve or disprove an application for a distributor's license; however the Minister can override such decision made by the CEO. The Member asserted to construct factories to manufacture local tobacco and market this product to overseas markets as a means of income rather than importing tobacco products from foreign countries.

- The Hon. Prime Minister interjected to elaborate on the Associate Minister's statement, in regards to Minister's having the power to override the decision made by the CEO, and stated that in instances as these, the Minister acts as the Court of Appeal whereby rulings/decisions are reviewed before a final decision is made.

The Tobacco Control Amendment Bill 2018 was read a second time and stands referred to the **Social Sector Committee**.

2. CONSTITUTION AMENDMENT BILL (No.2) 2018 – SECOND READING

The Hon. Prime Minister, TUILAEP Auelua Fatialofa Lupesoliai Dr. Sailele Malielegaoi moved for the second reading of the Constitution Amendment Bill 2018 and spoke to clarify the objects of the amendment. He asserted that the Constitution amendment is similar to the Tobacco amendment in the sense that it needs no clarification, as Members are already aware of its purpose and the reason behind its proposal. The Hon PM stated that the current parliament is fortunate to have other avenues available to seek further clarification on the merits of the Bill, or express their concerns and opinions, whereas, in the past, there was only the chance accorded during second reading debates. However, the Hon Prime Minister stated that regardless of having the opportunity to be informed elsewhere (such as the Member's Pre-Sitting Briefing), clarification within Chambers during second reading debate is of the utmost importance because Samoa is listening in through live radio coverage of the *Fono*, hence raising the importance of providing a clear and concise explanation.

The Hon. PM clarified that the Bill proposes to add three new members to the Judicial Service Commission established under Article 72(1) of the Constitution of the Independent State of Samoa. The three new members include, the President of the Land and Titles Court; retired Supreme Court Judge appointed by O le Ao o le Malo; and the Registrar of the Supreme Court as the secretary of the Commission. The PM emphasised that the new members of the Committee will strengthen and enhance the Judicial arm of Government. The PM reminded the Members of the suggestion made during Member's Briefing to the Attorney General (AG) to include a member of the Village Fono in the Commission.

i. TAFUA Maluelue Tafua, Member for Aleipata Itupa i Lalo

The Member noted his support for the Bill and recommended to have a member of the Samoa Law Society as part of the Commission.

ii. Hon LAAULI Leuatea Polataivao, Member for Gagaifomauga No.3

The Member spoke on the importance of the three branches of Government, especially the independence of these branches to ensure decision making and practices are not conflicted. The Member then noted his constituency's support for the Bill.

iii. OLO Fiti Afoa Vaai, Member for Salega East

The Member acknowledged the involvement of the President of the Land and Titles Court as a Member of the Commission; he also praised the inclusion of the Supreme Court Registrar as the secretary of the Commission (recalled on a past event whereby records of decisions made by the Judicial Service Commission was unattainable); he was certain the secretary would improve proper record keeping for the Commission.

Proceedings were set aside at 10:46am and resume at 11:36am

iv. SULAMANAIA Fetaiai Tuiliili Tuivasa, Member for Vaimauga East

The Member acknowledged his constituency then expressed his opinion on the Bill. The Member asserted that he does not support the Bill because of the following reasons; there should be a female member representing the interests of women which will in turn contribute to having equal opportunities for both genders; secondly, the Chief Executive Officer of the Ministry of Justice should not be tasked with secretarial duties of the Commission, this task can be assigned to a female.

v. ALIIMALEMANU Alofa Tuuau, Member for Alataua West

The Member voiced her disappointment in regards to the statement made by the Member for Vaimauga East, stating that a female representative can take the place of the Supreme Court Registrar to take notes of the Commission's meetings. She asserted that women can attain higher positions in the Commission at any time, not just secretarial duties as noted by the Member for Vaimauga East. In response to the Registrar having no voting rights, this is to ensure the numbers are uneven so as to ensure efficient voting.

vi. FUIMAONO Samuelu Teo, Member for Falealili East

The Member noted his approval of the merits of the Bill, and suggested that judges be subject to performance appraisals, for transparency and accountability reasons; if a judge does not perform his/her functions effectively and honestly they should be dealt with immediately rather than waiting until retirement.

vii. Hon Prime Minister, TUILAEP Auelua Fatialofa Lupesoliai Dr. Sailele Malielegaoi

The Hon Prime Minister in his concluding remarks, acknowledged all Members who spoke on the amendment, and addressed the concerns and queries raised by Members. The Hon. PM stated that in instances where the performance of a judge is in question, Parliament has the jurisdiction to carry out any means necessary to ensure justice is upheld (no one is above the law). In relation to the composition of the Commission, the retired judges was preferred as they have absorbed the most experience, information, intelligence and knowledge on all rulings during their time (the older the more wise), Hon. PM stated that a Samoan retired judge was currently sitting as the Petitions Judge in the Niue Court, noting that although they have retired, the wealth of knowledge and experience is still present. The Hon PM stated that there are currently 2 retired judges in Samoa, one was seated as an International Court of Justice (The Hague), therefore their credentials and reputation precede them. He affirmed that women are entitled to be members of the Commission, there are no barriers, and then clarified on the proposed role of the CEO in the Commission as limited to secretarial duties stating that this is to alleviate a potential conflict of Interest.

The Constitution Amendment Bill 2018 was read a second time and referred to the Standing Orders, Electoral, Petitions and Constitutional Offices Committee.

3. ELECTORAL COMMISSION BILL 2018 – SECOND READING

The Hon Minister for Justice and Courts Administration, FAAOLESA Katopau Ainuu moved a motion to have the Bill read a second time and spoke to clarify the Bill. The Hon Minister clarified the merits of the Bill include the establishment of the Electoral Commission, and to provide for the position of Electoral Commissioner, the terms of appointment, resignation, termination and vacancy of the position of the Electoral Commissioner. The Hon Minister stated, primarily the Bill proposes to enforce the independence of the Office of the Electoral Commissioner.

i. Hon FONOTOE Nuafesili Pierre Laufofo, Member for Anoamaa West

The Member commented that the term of appointment for the Electoral Commissioner should be the same as the duration of the parliamentary term. The Member suggested that the Commission assigned to investigate and determine constitutional boundaries should meet prior or after general elections.

ii. Hon FAUMUINA Tiatia Liuga, Member for Palauli le Falefa

The Hon Member expressed his support for the Bill, noting that the Commissioner and the Attorney General should have the power to preside over electoral petitions for convenience. The Hon Member believes that it should be the duty of the Commissioner to determine the eligibility of a candidate, as it is shouldered by the candidates.

iii. SULAMANAIA Fetaiai Taviliili Tuivasa, Member for Vaimauga East

The Member noted his support for the Bill and stated whether it was time to consider the provision which states that individuals/government officials who wish to contest in the general election are to resign from their post; noting that if the individual does not succeed, he/she has lost twice, the election race and employment which provided income to support and develop families.

iv. AUMUA Isaia Lameko, Member for Falealili West

The Member asked to reconsider the terms of office for the Electoral Commissioner.

v. LEALAILEPULE Rimoni Aiafi, Associate Minister for Communication and Information Technology

The Member proposed two suggestions; that there be a Deputy Commissioner position established to assist the Commissioner and to reconsider the term of office for the Commissioner, noting that the term of office for the Auditor General was amended accordingly to avoid conflicts of interest, similarly this condition should apply to the Electoral Commissioner.

Hon Prime Minister, TUILAEPA Lupesoliai Auelua Fatialofa Lupesoliai Dr. Sailele Malielegaoi

The Hon PM acknowledged the Members who spoke on the Bill, and asserted that the Independence of the Office is vital; he then emphasised the importance of the independence of parliamentary/constitutional officers to ensure decisions and processes are just and not conflicted. The Hon PM affirmed that the Public Service Commission is currently looking to engage in capacity building programs to enhance knowledge and skills of the working populace. The Hon PM clarified to the Member for Vaimauga East that the provision in relation to government officials resigning from their post before being eligible to contest in the elections was enforced to stamp out prejudice in the selection of public servants.

The Electoral Commission Bill was second read, and referred to the Standing Orders, Electoral, Petitions and Constitutional Offices Committee

**Proceedings were adjourned at 1:00pm.
The Assembly will reconvene at 9:00am, Friday 23rd March 2018.**