

THURSDAY, 22 MARCH 2018

Mr Speaker took the Chair at 9.00am.

Prayer.

OPENING ADDRESS BY MR SPEAKER

MR SPEAKER: I announce that Proceedings of the Legislative Assembly resumed.

MESSAGE FROM LE O LE AO O LE MALO

Mr Speaker read out the Message from O Le Ao o le Malo.

“MEMORANDUM to:

Mr Speaker:

Pursuant to Article 59 of the Independent State of Samoa, consent is hereby given to the Legislative Assembly to proceed upon consideration of the following Bill:

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

GIVEN UNDER my Hand this day, 21st of March, 2018.

(Signed): **Tuimalealiifano Vaaletoa Sualauvi II**
O LE AO O LE MALO.”

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NOTICE FROM THE LEADER OF THE HOUSE

Mr Speaker read out the Notice from the Leader of the House.

Pursuant to Standing Order 100(2), notice is hereby given to the Legislative Assembly for consideration of the Bill given under a certificate of Urgency.

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

GIVEN this day 21st March 2018

(Signed): Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai
Lolofietele Neioti Aiono Galumalemana Dr. Sailele
Malielegaoi

LEADER OF THE HOUSE

MR SPEAKER: I greet the House this morning in all its honorific salutations. I also acknowledge the Heads of the various Government Ministries and Corporations and Samoa listening in.

TOBACCO CONTROL AMENDMENT BILL 2018
– second reading

Afioga Hon TUITAMA TALALELEI TUITAMA (Minister of Health): Mr Speaker, I believe that we have arrived this morning in health to continue with our deliberation on the Bill. Gratitude is offered to our Heavenly Father for His grace.

I stand Mr Speaker to move a motion, *that the Tobacco Control Amendment Bill 2018 be second read and I wish to comment on it.*

Seconded by the Minister of Works, Transport and Infrastructure and the Minister of Public Enterprise.

MR SPEAKER: I call on the Hon Minister of Health for his speech.

Afioga Hon TUITAMA TALALELEI TUITAMA: Mr Speaker, this is a brief Amendment Bill which is appropriate and relevant at this time to be consistent with the current way of living.

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Tobacco Control Amendment Bill 2018

– second reading

The Bill seeks to amend the Tobacco Control Act 2008 which is established on the international treaty known as the Framework Convention on Tobacco Control or FCTC which we signed in 2003 and came in to force in 2005.

Mr Speaker, this international treaty is under the auspices of the World Health Organization and it is mentioned in the Sustainable Development Goals specifically SDG3A under the health sector. This is the first time that there has been an amendment to the Act in the 10 years since it was enforced. There are two matters emphasized in the Bill; first are provisions to achieve the goals set out in the FCTC.

Second, is to establish a tobacco licensing regime and there are 7 Sections of the Act that will be amended. The majority of the Amendment Bill is for tobacco licensing fees. The first amendment is to Section 2 providing for the interpretation of terms. The first definition is to the word “employer” to insert and include owners of public transport. The second definition is “tobacco product” to insert a provision for electronic cigarettes because it is not provided for in the 2008 Principal Act. There are producers that produce tobacco products that have moved to producing electronic cigarettes which is currently being used around the world and there may be a time when they will be available in Samoa. There are new terms being inserted under this Section such as “carton”, “distributor”, “import”, “license”, “licensee”, “National Tobacco Control Committee”, “prescribed fee”, “occupier” and “tobacco industry”. These terms are not defined in the Principal Act and it needs to be provided for to avoid contradictions and queries on these terms thus the purpose of this Amendment Bill now before the House.

This Amendment Bill inserts a new Part 2A to Section 7 to establish the National Tobacco Control Committee and its functions. The Committee comprises members from related Ministries and the private sector. The quorum for a meeting is 8 members of the Committee and they should meet four times every calendar year and provide a quarterly report to the Minister of Health through the CEO of the Ministry of Health.

There is also an amendment to Section 18 to repeal Section 18(1)(a) in relation to Article 13 of the Framework Convention on Tobacco Control which states that there should be no advertising and sponsorship in relation to tobacco products and the tobacco industry. [Advertisements on store windows should be taken down.](#) The current legislations prohibit the advertising of tobacco products. Only the cigarette dispensers are allowed. We signed the FCTC therefore the purpose for this amendment to prohibit the advertising of tobacco and the boxes showing such promotions or sponsorship should not be visible for the consumers to see especially the children.

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– second reading

Section 21 is also amended to substitute Section 21(3) also to be consistent with Article 13 of the Framework Convention of Tobacco Control. This is to disallow normal trade discounts and rebates on tobacco products. Promotional discounts are not permitted under the treaty.

Section 23 is also amended to insert Section 23A prohibiting any person under 21 to sell tobacco products. The current legislation prohibits the sale of tobacco products to a person under the age of 21 but it does not provide for the age of the seller. This amendment adds to the prohibition not only disallowing a person under 21 to purchase tobacco products but a person under the age of 21 cannot sell any tobacco product.

Section 24 is also amended to insert a subsection (2A) providing that the Chief Executive Officer may prescribe the permitted weight and size of a cigarette in a packet that is permitted to be sold by retailers.

Currently, tobacco product producers are making the cigarettes bigger so that they can be demanded but this provision will ensure that the sizes are uniform as well as the weight.

Mr Speaker, there is also an amendment to Section 29 inserting a subsection 29A providing for shadow testing of tobacco products at the cost of the manufacturer or importer. This test is to ensure that the information presented to the Ministry is accurate.

There is an amendment inserting a new Part 5A providing for licenses...

Tofa Lealailepule Rimoni Aiafi (Faleata West): Mr Speaker...

MR SPEAKER: I beg tolerance of the Hon Minister. I will allow the interjection...before that the Chair wishes to make a recommendation. We will soon move on to the consideration in detail of the Bill and each clause can be detailed but the important aspects should be clarified as I am mindful of our work but I will allow the opportunity.

Tofa Lealailepule Rimoni Aiafi: This is also the reason for upstanding Mr Speaker. This was all done during our briefing on Monday and the Hon Minister is repeating it. Give us the opportunity now to query the Bill with respect.

MR SPEAKER: This is also the position of the Chair. The General Manager explained all these matters but the Chair does not have the authority to intrude on your explanation depending on your time. I call on the Hon Minister.

Afioga Hon TUITAMA TALALELEI TUITAMA: Mr Speaker, I believe I will conclude here then. Thank you. That is the Bill with respect.

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Tobacco Control Amendment Bill 2018
– second reading

MR SPEAKER: Our work relies on the assistance from the Government.

Tofa AUMUA ISAIA LAMEKO (Falealili West): Mr Speaker...

MR SPEAKER: I call on the Member for Falealili West.

Tofa AUMUA ISAIA LAMEKO: Thank you Mr Speaker for the opportunity this morning. I am grateful for the loving grace of our Lord which has enabled us to return here in health.

I have a brief remark on the Tobacco Control Amendment Bill 2018. First, the Hon Minister mentioned a National Tobacco Control Committee. There is no representative from the Chamber of Commerce. Remember that tobacco is also produced in Samoa. There are two producers and I recommend a representative from the Chamber of Commerce should be included.

Second Mr Speaker, this amendment provides for the substitution of Section 21(3). For the information of the Ministry, this amendment poses a great impact. The current legislation allows for discounts and rebates to distributors.

My research found that there will be great impact on the employees. There are currently two distributors for Upolu and two for Savaii. There are employees in these companies that deliver the cigarettes and the rebate and discount is used to pay these employees. I sincerely ask the Hon Minister to review this provision because these employees will not have any income. This part of the legislation which provides for the employment of said employees will be removed.

Third, Hon Minister, regarding the license to the tobacco product manufacturers, it was mentioned during the briefing of this Bill that the license is annual and it an estimation of half a million was given. Perhaps this can be reviewed and extend it to two years. Those are some views Mr Speaker, thank you.

MR SPEAKER: I commend...

Tofa Hon LAUOFO FONOTOE NUAFESILI PIERRE LAUOFO (Anoamaa West): Mr Speaker, a brief moment please.

MR SPEAKER: I call on the Member for Anoamaa West.

Tofa Hon LAUOFO FONOTOE NUAFESILI PIERRE LAUOFO: Thank you for the opportunity. We concur with your prayer Mr Speaker thanking Heavenly Father this morning.

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– second reading

Just a brief comment Hon Minister of Health. The definition of tobacco product includes non-nicotine delivery systems; this would assume a cigarette without nicotine. I note that nicotine is the cause of cancer. I found that those who which to quit smoking turn to non nicotine delivery systems. I ask for an explanation in this regard in case the Bill prohibits these but they are useful in helping people stop smoking.

Another matter Hon Minister, regarding the licenses that were also mentioned by the Member for Falealili, there is a limitation on the license given to a manufacturer, importer and distributor. What is the stance of the Ministry, whether there should be a benchmark? If we are to maintain and achieve the vision of the Ministry to reduce the number of patients affected by these illnesses.

The Committee was mentioned and I read that there will be 15 members including a representative from the Ministry of Education, Sports and Culture and a representative from SASNOC. Perhaps this is too large a number. The Committee can always have a meeting and call a representative from these institutions to comment on a matter before the Committee.

The final query Hon Minister, the Ministry should have records to show whether there has been a reduction in the number of smokers since the enforcement of the legislation. I note that the Act commenced a long while ago. Also, has the number of patients affected by smoking related illnesses decreased? That is all Mr Speaker, thank you for the opportunity.

MR SPEAKER: Thank you. I call on the Member for the Urban West Constituency.

Afioga FAUMUINA ASI PAULI WAYNE FONG (Urban West): Thank you Mr Speaker. I acknowledge the Leader of the Government this morning, also the honorable Cabinet. My comments will be brief Mr Speaker. Generally, the Bill targets factory compliance; factories that handle manufacturing and packing. This should be reconsidered Hon Minister. There is only one company locally that operates well and the factory is in compliance. This is because there is a separate building for manufacturing cigarettes. Other factories Mr Speaker, I will not mention from which country, operates the factory in the front and they reside in the back part of the building. Others operate the factory downstairs and the family resides upstairs. It is necessary that there is a separate building for the factory and the residential home.

Mr Speaker, regarding branding, there is a legislation under the Ministry of Finance to brand imports ensuring quality. At the moment, there are more than 20 brands of cigarettes in Samoa but I only know of one that has had a factory here and that is Pall Mall with the red and green packets.

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The Hon Minister should consider a brand allowed in to Samoa. Smoking is not being condoned but the true brand should be allowed. These brands are being passed by the Ministry and being accepted to be sold.

Those are the two recommendations Hon Minister, and I leave it with you to assist with the Bill. God bless this meeting with respect, thank you.

MR SPEAKER: I call on the Member for Salega East followed by the Member for Anoamaa East.

Tofa OLO FITI AFOA VAAI (Salega East): Thank you Mr Speaker. I concur also with your prayer this morning. I have a minor query Hon Minister by way of the Chair. We have all been clarified on the size and the weight but it is only the length that the Hon Minister did not clarify. How long should a cigarette be? I ask this because I did not read in the Bill any provision which provides for cigarettes made using the Samoan tobacco. Is this regulated in the Bill? This also assists with the families and I know it does not contain nicotine. Perhaps this can be allowed because it helps the families that rely on the sale of the Samoan tobacco. That is the brief query Hon Minister.

MR SPEAKER: I call on the Member for Anoamaa East.

Afioga ALAIASA MUAGUTUTIA MOEFAAUO MALAGAITUTOGIAI SEPULONA MOANANU (Anoamaa East): I am grateful for the opportunity Mr Speaker. You have given praise for our renewed health this morning because of the grace of our Lord. I will not reiterate the matters already addressed.

This Constituency supports the Bill in its entirety. I assumed it would be a Bill that would prohibit cigarettes all together if it is the reason for the increase in illnesses in our country. It seems however that the cost is to our people. If the license is incurred, there will be costs incurred to the manufacturers and in turn our people.

There is a matter regarding children but there is no provision for children who are 13 or 14 years old and they smoke. The full force of the law should also be upon these children. If you penalize a person under the age of 21 that sells tobacco, the young smokers should also be penalized.

Many of the other matters were clarified on Monday. The recommendation regarding the Committee, the members should be *non-smokers so that their views are consistent with the objects and purpose of the Bill*. If smokers are members of this Committee, they will convince the other members and pull them to support their recommendations to the Hon Minister. We have had a long standing relationship with the tobacco manufacturer.

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One Member mentioned the Samoan tobacco which is in competition with the cigarettes in this market. The Bill does not provide for it. I do not know if the Ministry has investigated if the Samoan tobacco affects people's health. That is our view on the Bill.

I wish to use this opportunity this while the country is listening in to comment on the incident between Falefa and Lufilufi. It is with humility that I apologize if this constituency has stirred the waters and affected the country. For the information of the House, the situation has been addressed, God be praised. It was relayed during the meeting of the constituencies involved that whoever creates harmony is a child of God. This means that Gods children are all in Anoamaa because they have kept the peace. I do apologize to the Leader of the Government and the dignity of the House for the events that took place and in God we pray that this does not recur. We cannot avoid tension because the temptations of the devil are stronger these days.

All the best for the Bill and the Hon Minister. Thank you Mr Speaker for the floor.

MR SPEAKER: Thank you for your speech. I call on the Hon Prime Minister. I beg leniency of the Member for Faleata West, the floor will be given to the Hon Prime Minister.

Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai Lolofietele Neioti Aiono Galumalemana Dr. Sailele Malielegaoi (Prime Minister): Mr Speaker, the nation has heard the confession from the Member for the constituency involved in the incident. Take time to visit your constituencies. I however want to talk about the movie Ten Commandments as intermission to our Meeting. The movie Ten Commandments is about the ten commandments of Moses by Charles Heston and Yul Brynner who was the pharaoh. Yul Brynner was a famous movie mogul and he died a multibillionaire. One morning while I was in Japan for a meeting, I turned the television on to an American program, Good Morning America. A talk show with famous people that are interviewed and they give advice to the world. This episode had Yul Brynner and he was dressed in the costume he wore in the movie, The King and I about the historical kings of Thailand. He was standing and he raised his right hand and pointed at me, I stood surprised as he stood and pointed and he said 'You, I am talking to you' and he was pointing at me and continued 'you who is watching this morning, I am talking to you and your stupidity because you smoke. Can you see me, I am wise and I am rich and this is what I did, I smoked and smoked and now I have cancer. Soon I will die and my life wasted.' That was his only message and the program ended.

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I slept that night and woke up in the morning to the news that Yul Brynner had passed away because of smoking. That is all I wanted to share. The words of Yul Brynner ‘I am wise but my stupidity was in smoking’ and now he is dead. When I returned, I turned my television on and I saw a former 2AP announcer, Pat Mamaia, and I was shocked to see his deteriorating condition. He was declaring that he also would die soon because of cancer. Following that was an advertisement that I do not see anymore and I have asked the hospital to replay these advertisements. It was an advertisement reading, Smoking is bad and the video was an internal view of a person smoking. The smoke travelled down the esophagus and to the lungs and it covered the lungs that were blackened by the smoke and there was a mention of nicotine that was mentioned by the Member for Anoamaa East that causes cancer. I have searched exhaustively for this ad so that it can be played but they said it was lost. It is a great advertisement

Mr Speaker, this is how great this Bill is and I am grateful to the Hon Minister for bringing this Bill. There is a difficult aspect of this Bill and that is that it assumes that rights are being imposed upon, the freedom to choose. There are only two decisions that the Government can make; first, the obstruction of rights and stop the importation of cigarettes all together, or second, to make it difficult through the provisions in legislation for smokers to continue smoking. Other provisions that can be imposed is to increase the cost of cigarettes even if it has to be \$100 for one cigarette so small you only take one puff and it is finished. The only other solution is to increase taxes. Anything harmful to your health such as sugary and fatty products should be increased because it is difficult to dissuade people from enacting their freedom. Currently it is getting very expensive with every week there are requests to doctors to send patients ill from these causes to be sent overseas. The Government has no option other than legislation, legislation to increase taxes on fatty products, chicken, turkey tails but still allow it. The reason for this is because we are cautious with health but every time a legislation to increase taxes is tabled, only words of sympathy are being made in the House. If we are cautious of the people’s health we should make legislation to dissuade people from consuming these products. The Government is close to ceasing these products altogether. There is no difference between cigarettes and whisky, vodka or beer. If the Cabinet ceased these products altogether, the nation will cry out against the Government. So every effort is made to keep the freedom to choose whether to live long or die young but enforce provisions. A person that is ignorant like Yul Brynner, once they realize it, they will be closer to their grave. This is the foundation of this legislation, to give the freedom to the people. One Member mentioned work.

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Many Government projects are impacted because of these kinds of thoughts as mentioned by the Member. It is what the Government projects are leaning towards so as to implement initiatives that make it difficult for people to purchase these products so they can wise up. Lung cancer caused by smoking is a deadly illness that is also a Non-Communicable Disease as mentioned by the Hon Minister. This is the cause of 3 ¼ of deaths in the entire Pacific.

Mr Speaker, the Samoan tobacco, ‘tipi’ was mentioned and it is also included. Leauvaa was one village that grew this and commercialized this product but I am uncertain of how many people passed away because of it.

Mr Speaker, this is the intention. The Government is trying to save our people with these provisions but a smoker has a choice whether to choose death or to live long, it is their decision. I speak regularly with my Associate Minister who goes with his Bible at all hours of the day. God made humans and gave them free agency, the freedom to choose. There are people who criticize this freedom and are of the view that if there was no free agency, Adam and Eve would not have sinned. If there was no free agency we would all go to heaven and there would be no criticisms and hiding behind aliases such as OLP like Levaopolo, hiding behind these identities and disrupting the Government...

Tofa Olo Fiti Afoa Vaai: Mr Speaker...

Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai Lolofietele Neioti Aiono Galumalemana Dr. Sailele Malielegaoi: I will conclude here.

Tofa Olo Fiti Afoa Vaai: Mr Speaker...

Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai Lolofietele Neioti Aiono Galumalemana Dr. Sailele Malielegaoi: All of you including Levaopolo, stop this. I have told you all that I know your true identities. All of you who are stirring up trouble in the country. I am telling you that I have advised the Attorney General’s Office and the Commissioner of Police to charge you all under the law. The country is in uproar because of your actions.

Mr Speaker, I will conclude. Take the time out to go to the cinemas you might learn something.

Tofa Olo Fiti Afoa Vaai: Mr Speaker, an opportunity please regarding the remarks by the...

MR SPEAKER: Your name was not mentioned.

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Tofa Olo Fiti Afoa Vaai: It was mentioned thrice.

MR SPEAKER: It was Levaopolo but you are Olo.

Tofa Olo Fiti Afoa Vaai: I removed the Levao and P and returned with only Olo...

MR SPEAKER: Levaopolo was the previous member and Olo is the new member. I will allow the opportunity.

Tofa Olo Fiti Afoa Vaai: I have heard many times the rumors accusing me of being OLP as the Hon Prime Minister also mentioned. I will leave it to the Courts to decide the fact of the matter. These accusations are derogatory to me and my Constituency listening in. The Hon Prime Minister has made his statement in the House and I will await the progress of this investigation. It is not a matter to be taken lightly as these accusations are serious, with respect, thank you.

MR SPEAKER: I assume this is the only Member that wishes to comment. Member for Faleata West, the matter has been clarified by the Hon Minister of Health.

Tofa LEALAILEPULE RIMONI AIAFI: Thank you. I wish to assist the remarks by Dr Tuilaepa. After the rugby games and the incident last week, a matai from our village attended the Union meeting to decide on the punishment for the players involved in the incident. The Union met and the decision was that whoever caused trouble would be suspended. The matai returned and we had our meeting and I asked him to relay the happenings in the meeting. The matai said that the punishment would be...and he sat a while because he had forgotten the English word used. I told him to say something because it was getting late and he said, for those players that cause trouble again, they will be beaten by the village and that is what we should do.

Mr Speaker, I want to ask the Hon Minister as the exact number of cigarette factories we have here. I heard that there was a new factory but I only know of one. The location of the new factory was said to be at Tafaigata. If this is true, it does not look like a cigarette factory.

Before the license was approved, there should have been a site visit to make sure that the requirements of the law are met. I believe these are inappropriate facilities for the production of cigarettes. Last month, I, the Hon Minister and the Hon Minister of Women, Community and Social Development attended a promotional event by the Ministry at Tanoa.

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Samoa declared that they would be a smoke free nation in how many years, I am uncertain. This means that there will be no smokers in Samoa. I am not sure if this is possible. The Bill has provisions for licenses.

I note that there are 3 types of licenses; license to produce, license to import and a license to distribute. My question Hon Minister, what is the purpose of this license? This would include stores and wholesalers which is an added cost. Cigarette factories will need a license to import and also a license to produce. The number of licenses allowed should be reviewed. The cost should also be mentioned. I heard some Members mentioned that it would be half a million and it is appropriate for cigarette factories because they have a large capital investment and set up costs so there should be transparent legal requirements to be met especially in regards to the health provisions.

Hon Minister, there is a provision that the Chief Executive Officer can approve the license and if the license is refused, the applicant can write to the Minister so there is another opportunity to approve the license. Personally, I do not agree because the CEO is also the Minister and if the applicant is unsatisfied, the law should be explained to the person. I do not think it is appropriate to have the CEO decline an application and it is approved by the Minister. I believe there is a connection with the decrease in the number of smokers and the increase in costs of cigarettes. It is being said that Samoa has the cheapest cigarettes compared to Australia and New Zealand.

If there is evidence to support that the decrease in number of smokers leads to the increase in the costs of cigarettes then it is necessary that we follow in this direction if we are also the cheapest. There is also a rumor that there are people importing tobacco to grow in Samoa. This should be investigated if it is true because it is not appropriate because we have our usual producers. There should be a study whether we can use our own tobacco to make cigarettes.

Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai Lolofietele Neioti Aiono Galumalemana Dr. Sailele Malielegaoi: Mr Speaker...

MR SPEAKER: I call on the Hon Prime Minister.

Susuga Hon Tuilaepa Auelua Fatialofa Lupesoliai Lolofietele Neioti Aiono Galumalemana Dr. Sailele Malielegaoi: Regarding the matter raised about the role of the Minister. I recall when I used to be a Minister and the Prime Minister called me and asked me to meet with a man that had approached him about a license for his funeral parlor. The license was declined by the Inland Revenue because the hospital had advised that the one funeral parlor was enough.

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Not long after, the man who made the application for a funeral parlor at Malifa came to see me. He said to me that his application was declined because the Head of the Inland Revenue who also has a funeral parlor declined his application on the advice from the hospital that there was enough funeral parlors and that there were not many Samoans that were passing away.

I called the Head of the hospital while the man was sitting in front of me. I called him and he said he had made no such recommendation and that the more the funeral parlors there were the better the competition and affordability for us all. I then wrote a letter to the Head of the Inland Revenue that also owned a funeral parlor and told him to revise his decision whether it is appropriate because I had already checked and there was no such recommendation made from the hospital warranting a decline in the application. I told him to revise his decision or he would be charged with conflict of interest. This was how we then had this funeral parlor and it is one of the best, it is owned by Sefo Pau. This is why it is important to have the Ministerial role where people can turn to when the CEO does not make sound decisions.

Mr Speaker, I had to address the matter mentioned by the Member in case there is an assumption that the Ministers decision is purely political. The Minister is like the Court of Appeal where appeals from the people can be referred if the decision from the bottom is questionable. There are times when they approach the Minister and the Minister confirms that decision right decision made by the Heads of the Ministries.

MR SPEAKER: Thank you Hon Prime Minister for the explanation. This matter has been clarified. I assume the speech by the Member has concluded. Thank you. I commend the members that commented on the matter for the listening public. Is there any further comments Hon Minister?

Afioga Hon TUITAMA TALALELEI TUITAMA: Mr Speaker, the Leader of the Government has made his remarks and it has clarified all the issues raised by the Members of the House. As for some of the queries, I was interrupted before I could respond. But I will not respond to them because they were clarified during our briefing. Thank you Mr Speaker and the House for the opportunity given to this Bill.

MR SPEAKER: Thank you.

Motion approved and the Tobacco Control Amendment Bill 2018 was read a second time. .

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Constitutional Amendment Bill (No.2) 2018
 – second reading

MR SPEAKER: Pursuant to Standing Orders the Bill will be referred to the Social Committee for consideration to report back at the following Sitting.

CONSTITUTIONAL AMENDMENT BILL (NO.2) 2018
 – second reading

MR SPEAKER: I call on the Leader of the Government.

Susuga Hon TUILAEP AUELUA FATIALOFA LUPESOLIAI LOLOFIETEELE NEIOTI AIONO GALUMALEMANA Dr. SAILELE MALIELEGAOI: Mr Speaker and the esteemed House, I stand with all due respect to move a motion, *That the Constitutional Amendment Bill (No.2) be read a second time and I wish to clarify it.*

Seconded by the Deputy Prime Minister, Minister of Public Enterprise and the Minister of Health.

MR SPEAKER: With respect, I call upon the Hon Prime Minister for your explanatory speech.

Susuga Hon TUILAEP AUELUA FATIALOFA LUPESOLIAI LOLOFIETEELE NEIOTI AIONO GALUMALEMANA Dr. SAILELE MALIELEGAOI: Mr Speaker, the Constitutional Amendment Bill (No.2) 2018 is similar to the tobacco legislation in that it has already been explained and understood by the House on the day of the briefing. I commend the Chair and the Head of the Office for this new initiative that began in the previous Term. This new process is essential. When I first entered Parliament, the Bill is tabled and that is the first time we get to read the Bill and we begin with our speeches. There is no time to read and understand.

When Tofilau stands to comment on the Bill, that is when we rush through the reading of the Bill. Maybe after two speeches on the Bill, others have finished reading through. I believe that this new process enables further understanding for the Members on the Bill because the entire day before the Sitting is allocated for the consultations with the Attorney General's Office and the Heads of the Ministries responsible for the Bills. This is why the Hon Minister of Health was interrupted because the Bill had already been clarified. The reason that it is essential that we still stand Mr Speaker is because the country is listening in support, especially His Highness O Le Ao o le Malo and the Members of the Council of Deputies.

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Constitutional Amendment Bill (No.2) 2018
 – second reading

This Constitutional Amendment Mr Speaker provides for a reform of the Lands and Titles Court and reforms being prepared by the Ministry of Justice and Courts Administration. The purpose of the Bill is to include three additional members to the Judicial Service Commission by amending Article 72 of the Constitution and to allow further prescription by Act, the processes of the Judicial Service Commission. This Commission makes decisions on matters such as the appointment of Judges.

Mr Speaker, we are all aware that the Three Arms of the State are separate of each other. The Parliament which is headed by the Chair, the Judiciary which is headed by the Chief Justice and then there is the Cabinet and Executive that implement the developments of our country. These bodies are independent of each other and they scrutinize each other. The Judiciary scrutinizes the Executive and Parliament and so forth. If there are issues, one body will advise the other. This is why Parliament passed the establishment of a Commission to review the procedures and processes of the Judiciary because there were many complaints. You are all aware that the Committee Report was tabled and some important aspects of the Report suggested improvement to the judicial procedures. In response to the recommendation, the Cabinet is addressing the Report as passed by the House. This Cabinet does not sit idly and sway in their chairs. It is a Cabinet that sees what needs to be done and takes action. This is the response to that Report and the recommendations that were passed by the House. As such, it is necessary to amend the Constitution. If the House recalls, there was a recommendation made by a Member during one of our Seminars that the Constitution should acknowledge communal rights because the majority of legislation follow British law which focuses on individual rights and not the rights of a group such as ecclesia or the village council. The Constitution was amended then to provide for this right.

Mr Speaker, the gist of my remarks is that this Cabinet is not an idle body. If the Cabinet notes necessary issues mentioned in this House, it is addressed. The time God has given us is the only time we have, there is no other time.

Mr Speaker, that is the entirety of the Amendment which was supported by the House with the endorsement of the Committee Report mentioned.

MR SPEAKER: Thank you. I call on the Member for Aleipata Itupa i Lalo.

Afioga TAFUA MALUELUE TAFUA (Aleipata Itupa i Lalo): Mr Speaker, I express gratitude for your conducting of our Proceedings this morning. I also thank the Hon Prime Minister for the motion to amend the Constitution. The Constitution is amended from time to time so that it is consistent with the changes in living standards.

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Constitutional Amendment Bill (No.2) 2018
 – second reading

I stand with respect to support the Bill or the amendments. I wish to thank the Hon Prime Minister and the Cabinet. I remember in April 2016 after the Elections we had a workshop where I raised the matter of individual rights versus community responsibility or the rights of the village or a group. This view was founded on the court decisions. For instance, if an individual takes the village to court because they disagree with the establishment of a church in the village, the court considers the individuals right and disregards the village decisions or rules as to the number of churches allowed in their village. I am happy to relay that there have been cases approved because of this amendment. As for the amendment to the Constitution to increase the number of the members of the Judicial Commission, it is appropriate. We have been independent for 55 years now and the Commission has always comprised of 3 members; the Chief Justice, the Attorney General and the Minister of Justice to Courts Administration. This has been the case since 1962. The proposed additional members include a Registrar of the Supreme Court who is not a voting member, a retired Supreme Court Judge and the President of the Lands and Titles Court. I support this amendment.

I commend the Minister responsible for the Bill and the Attorney General. The only recommendation is in regards to Clause 2(c)(e) and I mentioned this during our workshop. If there is no retired Supreme Court Judge perhaps there should be an additional provision for any other qualified Judge or a senior member of the Law Society to be a member.

I wish to applaud the Chairperson and the Committee that reviewed this because it is clear and transparent and it is an appropriate proposal. However that is the only recommendation in regards to the matter to consider a minor addition. With respect.

MR SPEAKER: I call on the Member for Gagaifomauga No. 3.

Afioga Hon LAAULI LEUATEA POLATAIVAO FOSSIE SCHMIDT (Gagaifomauga No. 3): Thank you Mr Speaker. I believe this Constituency is sleepless and thoughtful because we have come to an important Bill that regards the Constitution and the Lands and Titles Court.

First, I wish to thank the Chief Justice and the Judiciary; the CEPP, Registrars and the President for the work carried out in the past and I also acknowledge those who have passed that served in the Judiciary.

I need not reiterate that the Three Arms of the State collaborate and do not conflict. Its responsibilities do not overlap and they do not conflict each other. If this initiative is by the Judiciary, then I applaud the effort by the Chief Justice and the members of the Judiciary especially in being vigilant and making recommendations to the Cabinet to review the composition of the Judicial Commission.

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Mr Speaker, as we are all aware, every single day there are complaints from the country regarding the courts, not only for criminal cases by also the Lands and Titles Court. This is the purpose of my support for this Bill. Perhaps this is where the country will finally have a refuge from the struggles in seeking heirs to family land and titles where families and villages go against each other in the courts. If this is the solution Mr Speaker, we should stand together and assist in strengthening this Arm of the State in the continuation of its service.

I commend the wisdom behind the initiative to strengthen this Arm of the State. There are those that say that the most stable stool is the stool with three legs, such as the Three Arms of the State. The responsibility of the House is therefore very essential in offering the necessary assistance for the strengthening of the Three Arms. The Three Arms are the driving force behind the vision of the State for its future. If there are weaknesses in one Arm, the other will query. If there are problems in one Arm, the others will correct and that is the intention Mr Speaker. Giving precedence to the service of the Judiciary is essential because if the decisions made in the Courts are erroneous then it will affect the upcoming generations. After the final appeal, there is no other solution. This is the impact that should be carefully considered to ensure that the decisions made by the Courts are correct and accurate. With every task, there are always faults. There are times when there is disagreement, an error in judgment but the Lord is all seeing and He sees every person and their works. It is not an easy task because the nation is inter-related. This is why there are adjournments in the cases because of the connections and relationships. Despite this, I commend those who were tasked with the work throughout the many years after they had sworn an oath before God to practice integrity. There are times when we question the integrity of a Judge because only one person knows our honesty and that is God.

However, this morning, I give 200% support on behalf of my Constituency for this Commission to assist the Courts with their works. Mr Speaker, I applaud with gratitude this initiative enabling the continuation of the good work by this Arm of the State.

With respect, God bless our Meeting.

MR SPEAKER: Thank you. The floor is free. I call on the Member for Salega East.

Tofa OLO FITI AFOA VAAI: Thank you Mr Speaker. Thank you that the salutation as Member for Salega was made and not OLP. Mr Speaker, the previous Member gave his 200% support and I give my 250%. I support this Amendment Mr Speaker because it has been more than 50 years and these 3 members have been doing the work.

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The process was that the Commission would elect the Judges and refer their report to the President of the Lands and Titles Court. This was inappropriate and thankfully, this Amendment will now allow for the President to be the Chairperson of the Commission. I researched in the past whether there was any record of their decisions made in their meetings. Only now will there be a secretary to the Commission which means it will only be recorded now.

I pray to this new Commission to review the rules and policies of the Courts in regards to the appointing of matai for the families. They decide whether there are three or five matai and I personally believe that it is inappropriate for the Courts to appoint what is sacred to families.

That is the request Hon Prime Minister. Thank you.

MR SPEAKER: Thank you. I assume the Government will respond when we return from our recess. Is there any other Member that wishes to comment?

Afioga Sulamanaia Fetaiai Tauiiili Tuivasa (Vaimauga East): Mr Speaker. I stand with respect...

MR SPEAKER: I apologize to the Member. There are three of you upstanding to comment on the matter. You will be given the opportunity when we return from our recess. With respect.

Proceedings of the Legislative Assembly were set aside for its usual recess at 10.43am and resumed at 11.33am.

MR SPEAKER: I announce that the Proceedings of the Legislative Assembly have resumed.

Before we recessed, the Member for Salega East concluded his remarks. I will use this opportunity to call upon the Member for Vaimauga East to take the floor.

I call on the honorable Member.

Afioga SULAMANAIA FETAIAI TAUIILILI TUIVASA: We have returned from our refreshments this morning to that side of the House; Hon Prime Minister also the Leader of the Government, Deputy Prime Minister, the Cabinet and Associate Ministers. I greet also this side of the House to all the Members of Parliament. I also acknowledge the present of Mr Speaker, Deputy Speaker and the Heads of the various Government Ministries and Departments and the nation supporting our Sittings.

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Before I contribute on behalf of Vaimauga East, I wish to greet the dignity of the Constituency supporting me and I ask for your continuous support and favor.

Mr Speaker, all the Bills that were tabled in the House, this seat did not want to comment on those matters such as tobacco. However when it comes to legislation that involves the foundation of our nation, this is the only matter that the Member for Vaimauga East will comment on. I note that some Members have given 200% and 250% support to the Bill. As for the Member for Vaimauga East, my support does not even touch the 40% mark. Why? Because there are many aspects that need to be spoken on in the Bill.

First, I wish to thank the Leader of the country and the Associate Minister for the Bill. I also extend gratitude to the Deputy Prime Minister and the Cabinet for your vigilance and persistence for the betterment of Samoa's future and its people. You are not afraid to induce change. Why? For the benefit of Samoa and its people. Before I entered Parliament, I would constantly hear of the Constitution being amended. It was like a sword fight whenever this would happen. What is the case now? The House is calm under the guidance of the Chair. God bless you. Regarding the Bill, I wish to offer my assistance and recommendation to the Hon Prime Minister responsible for the Bill. I support the initiative for additional members because there are many public complaints targeting the Courts. I am not ashamed to say that there are some who have gone disgruntled to their graves because of court decisions. I am grateful that it is during this Term where we are addressing this issue for the benefit of Samoa and its people.

There are public complaints in relation to the appointing of the Judges some say that they are not well versed with the honorific salutations of the villages and constituencies. I support the provision in this Bill for additional members however I do not support the provision for one member to be a retired Supreme Court Judge because they are retired. The set period of retirement is 68 and when you are retired, there is nothing else they can do but drive around in their car and visit their plantation. That is this members concern. Perhaps if it were a member of the cloth instead and not a retired judge. The Chief Justice is also a Judge and so I request the Hon Prime Minister responsible for the Bill to consider replacing the member with member of the cloth or a member of the Council of Churches. That is the proposed amendment.

In respect of the Registrar of the Supreme Court as a member, I am concerned at this. The provision is that the Registrar will have no voting rights but will be the secretary. How can we take lightly to such a position? I present another recommendation to the Hon Prime Minister to replace this member with a woman representative.

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Those are the only requested amendments to the Hon Minister responsible for the Bill. Remove the proposed retired Supreme Court Judge and replace the position with a member of the cloth and replace the Registrar of the Supreme Court with a woman representative especially since the position has no voting rights. God bless the country listening in as well as the Chair and the House.

MR SPEAKER: I call on the Member for Alataua West. Perhaps this is the final Member to speak.

Afioga ALIIMALEMANU ALOFA TUUAU (Alataua West): Thank you for this opportunity. I greet you Mr Speaker and all the Members of Parliament including those in service to the various sectors at this hour.

I was one of the members of the Committee responsible for the Report being mentioned. I did not think to speak because it was our recommendations but I am disgruntled at the mention of a woman representative. In my view, the language used in drafting of any Bill is neutral; it implies either male or female. The President of the Lands and Titles Court can be a female. The retired Supreme Court Judge and the Registrar of the Supreme Court can also be female. Therefore I oppose such a recommendation and fully support...

Afioga Sulamanaia Fetaiai Tauiiili Tuivasa: A point of order Mr Speaker.

MR SPEAKER: I beg tolerance of the Member. Please make it brief.

Afioga Sulamanaia Fetaiai Tauiiili Tuivasa: I am dismayed that the Member has spoken despite being in the Committee. As I said, this is only the view of Vaimauga East. Let that side respond but instead my sister has and I apologize. She is also a mother but she is in opposition to my view when I am promoting mothers.

Afioga ALIIMALEMANU ALOFA TUUAU: Mr Speaker, there is no disagreement. The only clarification to the Member is that when drafted, legislation is neutral and men and women are equal. Take for instance what I said where a Registrar, the Chief Justice or even the President can be female. That is the only point that I wanted clarified. As for the Bill, I support it. Regarding the matter for one member to be a retired Supreme Court Judge, there were many views in this regard however priority was to the experienced and seasoned in the field.

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That was the purpose for the recommendation by the Committee so that there are two experienced in the field. It was necessary to include the Registrar of the Supreme Court to take notes and be a secretary so that the number of voting members is not equal when it comes to making decisions by vote.

That is the assistance together with the support of this Constituency. Thank you for the opportunity.

Afioga Fuimaono Teo Samuelu Teo (Falealili East): Mr Speaker...

MR SPEAKER: Thank you. I deem that this is the final member to speak. I advise the members that this matter will be referred to a Parliamentary Committee to report on and that is another forum where you may voice your views. We have all heard from the Member for Alataua West who is also a Member of the Committee. There are various conflicting views which is not a concern however I only remind the members not to...it is not easy for the country to listen to the conflicting remarks from the Members of Parliament however if there are other matters I will give the opportunity and if not, I will give the floor to the Governments response.

Is there a matter Falealili?

Afioga Fuimaono Teo Samuelu Teo: Mr Speaker, I apologize for my absence during the beginning of the consideration of this Bill. As you are aware there was the disturbance with Luatuanuu resulting in the road block and so I had to turn around and take a longer route. I arrived just as the consideration was concluding. Therefore I seek an opportunity to make one recommendation Mr Speaker but I give my full support for the Bill.

MR SPEAKER: I again reiterate that the Report by the Parliamentary Commission of Enquiry was passed by the House so comment accordingly. I hate to instruct the House as Samoa is listening in but it is for clarity in the progress of our orders. I call on the Member.

Afioga FUIMAONO TEO SAMUELU: With all due respect Mr Speaker I seek to use my opportunity under the Standing Orders to put forward my views. Others have made their speeches now before the House. The Member for Falealili East supports the appointment of the Commission. However, we are all aware of the complaints against the establishment of this Commission. The humble request is that additional duties be given to this Commission. At the discretion of the Hon Minister, perhaps the retirement age should be removed but instead set a period for performance evaluations for the Judges.

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If a Judge or the Deputy President conducts a court proceeding touching on family treasures, there is dishonesty. We should not wait until they retire but when an issue is noted by the Commission then a decision should be swift. That is all with respect.

MR SPEAKER: Thank you. I assume that all the Members that wanted to comment have had their opportunities. I will give the floor to the Government for any clarifying remarks.

I call on the Hon Prime Minister.

Susuga Hon TUILAEPA AUELUA FATIALOFA LUPESOLIAI LOLOFIETELE NEIOTI AIONO GALUMALEMANA Dr. SAILELE MALIELEGAOI: Mr Speaker, I commend the Members that commented on the Bill for their remarks. Many Members spoke on length and it is necessary because it is the Constitution we are handling. I have already mentioned that this Amendment was initiated from the House and so it is essential. If there is such a case as was mentioned by the previous Member that just spoke, that is when the House steps in. The House can retire a Judge by a motion moved in the House and supported by 2/3. The Courts should listen attentively to the Leaders of the nation because there is no higher authority as all the Leaders of Samoa are in the House. The perspective of Parliament should be noted. Therefore if there are changes to the Judiciary, it is because the independence of the Judiciary, the Parliament and the Executive is being recognized. This is why the remarks made are very important regarding the Judiciary and their service. The Committee called on the Judiciary at the time of the consideration and they refused to appear. If the Committee had chosen to act on the refusal of the summons, the House would have ruled to make a decision. The Parliament has the great authority and power however it is also cautious in exercising this power which is only considered when there are lapses in the Judiciary. The caution is that there is no indication of abuse of authority. There was a mention of stools and I want to talk about this. I recall that it was probably last year that I sat on a four legged chair. The two legs in the front lifted off the floor and I was lucky that although I hit the floor, my head did not hit the desk directly behind me. I was not the only one that this happened to. It was proven then that even a four legged chair can become unbalanced. I recommend that perhaps the structure of the chairs should be revised and maybe have six legs or eight legs for the chairs in Parliament in case a life is lost. But the most dangerous chair is the three legged chair and should not be used in the House. That is all I have to say on chairs and its legs.

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On the matter of the appointment of Judges, whether they are young or old, it should not be a retired member as was mentioned. It is often said about our elderly that the older they are, the wiser. Despite legal provisions for the end of service at a certain age, the knowledge and experience is still there although they are retired. There was a Judge that was retired because of the legal provisions who is now a Judge in Niue and that is an indication that this Government recognizes the Judges. This means that they still have value. The important matter here is the decisions of the Lands and Titles Court. There are times when matters are referred to the Supreme Court when the Lands and Titles Court become caught in indecision. The matter is then referred to the Supreme Court and this is where these Judges sit. There is always the assumption of conflict of interest. This recommendation was not done on a whim. This is why some Judges of the Lands and Titles Court excuse themselves if they are related to the case.

There are two local Judges that have retired and in addition to the Judges that have retired to New Zealand, there are many. Perhaps next year there will be three and next year there may be four to eight. What is surprising is that one of the Judges sat in the International Criminal Court. Not long after it was established and a Samoan was appointed. Not a New Zealander or an Australian or anyone else in the Pacific region but a Samoan. Now he has retired and he is one capable candidate. Mr Speaker, the Cabinet's decision was well researched.

I applaud the Hon Minister of Justice and Court Administration that initiated this Bill which was referred to the Cabinet for approval and tabled under my name because it amends the Constitution it is tabled under the Leader of the Government because it is not a matter to be taken lightly. Again, I thank the Hon Minister for his courage and the same goes for the Ministry. If there is any gratitude due, it is to the Hon Minister and the Cabinet for their vision and foresight and the same to the Parliament and the Committee that considered the matter and made recommendations.

Mr Speaker, regarding the comment to replace a member with a member of the cloth, we are well aware that their primary responsibility is from the Lord and His Word. A member of the cloth should not be tainted by any worldly responsibility; it is only from the Bible that they are divinely instructed. If the Member from Letogo was thoroughly educated in theology, he would not have made such a recommendation. This is why he should converse with my Associate Minister who travels everywhere with a Bible. Maybe then he would know not to look back...

Afioga Sulamanaia Fetaiai Tauiili Tuivasa: Mr Speaker...

MR SPEAKER: I beg patience of the Member, continue Hon Prime Minister.

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Susuga Hon TUILAEP AUELUA FATIALOFA LUPESOLIAI LOLOFIETEELE NEIOTI AIONO GALUMALEMANA Dr. SAILELE MALIELEGAOI: That is the advice. Whenever it comes to such matters, talk to my Associate Minister. As for the request for a woman representative, the Member from that Side has responded.

There are times when legislation is drafted and the term ‘he’ is used but that implies any gender whether it is female or male. In our country, there is gender equality. There is no reason to mention it. I was sympathetic of the Member and the woman Member that responded and she was correct. I am not opposing the Members comment but that is the clarification. In legislation, no matter whether the gender is masculine, it also implies femininity. There is no discrimination to one gender.

The intention of having a secretary is for record keeping purposes. The reason for removing the voting rights is because there are matters that may impact on the position as CEO. For the appointment of Judges as provided in the Constitution, His Highness, O Le Ao o le Malo appoints the Judge upon the advice from Cabinet to avoid any assumed politics in the appointment. Such is the reason for removing the voting right from the CEO because of the fragility of the matter. There is a strict relationship between the CEO and the Judges whereby the CEO cannot be involved in the appointment of the Judges.

Mr Speaker, this concludes the matters that were raised. There was a mention of the decisions by the Courts on matai and this is a very valid issue. Perhaps an amendment should be considered for this but the only caution is in case we impede upon the independent of the Judiciary and their work but leave that with us and it will be considered.

Mr Speaker, that is the final clarification on the matters raised on the Bill.

MR SPEAKER: Thank you.

Motion approved and the Constitution Amendment Bill (No.2) 2018 was read a second time.

MR SPEAKER: Pursuant to Section 109 of the Constitution, the Bill will be referred to the Standing Order, Electoral Matters, Petitions and Constitutional Offices Committee for consideration to report back to the Legislative Assembly no later than 90 days from today.

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ELECTORAL COMMISSION BILL 2018

– second reading

MR SPEAKER: I call on the Hon Minister responsible for the Electoral Office.

Afioga Hon FAAOLESA KATOPAU T. AINUU (Minister of Justice and Court Administration): Mr Speaker, I move a motion, *That the Electoral Commission Bill 2018 be read a second time and I wish to clarify it.*

Seconded by the Minister of Education, Sports and Culture and the Minister of Communication and Information Technology.

MR SPEAKER: I call on the Hon Minister to make your clarifying speech.

Afioga Hon FAAOLESA KATOPAU T. AINUU: Mr Speaker and Members of Parliament, this Bill establishes the Electoral Commission and consolidate matters on the position of the Electoral Commissioner dealt with under sections 3, 3A, 3B and 4 of the Electoral Act 1963 that are to be repealed by this Bill.

The objects of the Bill are to establish the Electoral Commission, to provide for the establishment of the position of Electoral Commissioner, the terms of appointment, resignation, termination and vacancy of the position of the Electoral Commissioner; and to set out the appointment of staff of the Electoral Commission.

Also provided for is the administration and finance of the Office and the appointment of an Electoral Boundaries Committee to review the constituencies' boundaries.

That is the clarification Mr Speaker of the Bill. It is to provide a legal framework for the Electoral Commission and to clarify its duties and responsibilities with respect.

MR SPEAKER: Thank you. Is there a Member that wishes to speak?

Tofa Hon Laufo Fonotoe Nuafesili Pierre Laufo: Mr Speaker...

MR SPEAKER: I call on the Member for Anoamaa West.

Tofa Hon LAUOFO FONOTOE NUAFESILI PIERRE LAUOFO: Thank you. My thoughts on the Bill will be brief. I commend and thank the Hon Minister for the preparation and clarification speech. The only view I put forward to the Hon Minister is the contracted term for the Commissioner. Personally I think it should be more than 3 years. This is the benchmarked term for all the other Heads of Ministries.

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Electoral Commission Bill 2018
– second reading

However, the basis of my view is on the fact that a Term is 5 years and it would be necessary that the contract term covers the Parliamentary Term.

I applaud the establishment of a Committee to review the electoral boundaries and I believe that this is an appropriate step progressing forward. Just a recommendation, it would be necessary that this Committee meet the same time that the Commission of Inquiry into electoral matters meets right after the Elections. Even if there is no change to the boundaries, a review is relevant especially after the Elections as I see that there is no set time in the Bill for their meetings.

That is all Mr Speaker. It would be good if straight after the Elections there should be a review and necessary amendments made. Thank you for the opportunity Mr Speaker.

MR SPEAKER: Thank you. Very good. The Government will respond. Is there a Member that wants to speak.

I call on the Member for Aleipata Itupa i Lalo.

Afioga TAFUA MALUELUE TAFUA: Mr Speaker, thank you for the opportunity. I will be brief on the matter. I wish to commend and applaud the Hon Minister for the Bill. There were many queries during the briefing on Monday and I did not make a submission at that time. However I do have 3 points that I wanted to speak on regarding the Bill.

First, although the Bill has not been considered in detail but regarding the qualification of a voter, it is hard to accept that my siblings cannot vote for me if I am not their member. The opportunity is only given to a candidates spouse and children to vote for them if the spouse hold a title in the same constituency as the candidate.

Second, I will leave it for when the Bill is referred to the Committee and then I will make a submission, thank you.

MR SPEAKER: I call on the Member for Palauli le Falefa.

Afioga Hon FAUMUINA TIATIA FAAOLATANE LIUGA (Palauli le Falefa): Thank you Mr Speaker for the opportunity. I applaud the House for the number of Bills we were able to refer today. The importance of this Bill is that it concerns our General Elections and I asked myself whether it was necessary for the Electoral Commission to be independent and whether there are enough duties and responsibilities for the Office to undertake.

As I noted from the other speeches and also the clarification of the Bill, the purpose of the Bill is to establish the Electoral Commission as an independent body. However, the employing of the staff is not independent as it is still under the Public Service Commission.

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 – second reading

As this Parliament is aware, there are some Government bodies where the Management hires their own employees as the Commission has many other responsibilities and the CEO position was removed. The CEO supports the Chairperson of the Commission. My question is what exactly the definition of the word independence here. In my interpretation of the Bill, the independence being explained here in the Bill is the duties of the Office.

One aspect that is not mentioned is the powers given to the Commissioner and the criteria for the qualification of candidates. The reason I raise this matter Hon Minister is because after the four past Elections, there have been electoral petitions against me. Even in this Bill and the other Bills coming up there are no provisions to address the increasing electoral petitions. In these cases, the losing party will continue in scorn and seek to disrepute the winning candidate. It is a minor request that the Commissioner have the power to decide instead of using the Courts, whether a person qualifies to be a candidate or not. Currently, the process is that the oath is made but there is no investigation done. Personally, an investigation is simple but instead, they go to the Courts because there are no powers given to the Commissioner. There were powers before and I recall it was two or three Terms ago that it was removed.

Hon Minister, now that the Electoral Office will be independent, the powers should be given so that the candidates do not opt for the Courts. Perhaps costs can be saved and used to increase the pension for the elderly. We have many traditional obligations Hon Minister, how can they be serviced if money is being given to the Courts? There were consultations on the salary of new lawyers. I know that your office Hon Minister usually gets paid \$200-\$300 an overtime hour when dealing with petitions because they are urgent. I remember there was a Cabinet Directive that was aimed at lawyer fees and making them affordable but the fees are still not affordable. It would be simpler if the Commissioner and the Attorney General handle it using the employees of both Offices to assist the future leaders because we are the leaders now and there will be others in the future. Our duty Hon Minister is to prepare now for the future of our Elections and we should stop going to the Courts. I know that most of us on this side and that side have been to the Courts. Others were smart enough to apologize but others went to by-elections. Hon Minister, I mention this because I have never missed once. I know that the legislation being amended and other legislations are created for petitions but in the end, it ends up in the Courts. I fully support the establishment of the Electoral Commissioners Office as an independent body. It would be good to review the duration of the contract. If this Bill is passed and the Commissioner appointed, by the time the General Elections comes up in 2021, it would be three weeks and the Commissioners term would be complete. So right after the term, reappointment is uncertain and the replacement is also uncertain. Please consider this matter.

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Electoral Commission Bill 2018
– second reading

I am looking at the Assistant Commissioner position and the level the position is at and I think it should be at the Deputy position such as the Office of the Legislative Assembly which has a Deputy. Even the Comptroller Auditor needs a Deputy. There should be a Deputy in case the Commissioner passes away from a car accident, a heart problem or a kidney failure because we do not know these things. No one knows the will of the Lord and we should be prepared. Even though the incumbent Commissioner is young the angels will call. I commend the Office for the Bill and I support it with the proposed amendments I have mentioned to be considered when it is referred to the Committee. With respect. Bless our Meeting.

Afioga SULAMANAIA FETAIAI TAUILILI TUIVASA: Thank you for the opportunity Mr Speaker. I rise on behalf of my Constituency on the Bill now before the House. I support the Bill and I commend the Hon Minister and Associate Minister as well as the Head of the Office and the Office for this Bill to establish the independence of the Electoral Commissioners Office. Thank you Hon Minister. The Hon Prime Minister stated that the Constitutional Amendment was initiated by the Minister responsible for the Electoral Office. I assume the Member for Salega East supported the Bill 250% was because he thought it was the Hon Prime Ministers legislation but it is not. The Member for Vaimauga East supports this Bill not only because the Hon Minister is also from Vaimauga, but also...

MR SPEAKER: I call on the Member for Salega.

Tofa Olo Fiti Afoa Vaai: Mr Speaker, I believe that the matter mentioned has long passed and I do not oppose all Government legislation. There are legislation that I support. The Member for Vaimauga East is correct so I ask that 100% of my 200% support be deducted. With respect.

MR SPEAKER: I call on the Member to continue your speech.

Afioga SULAMANAIA FETAIAI TAUILILI TUIVASA: Mr Speaker, I applaud the Hon Minister and the Associate Minister for the Bill. As soon as the Associate Minister joined the Ministry the Bill was soon drafted. This is the intention of the Government. It is that legislation is quickly prepared and tabled. Regarding the proposal to establish the Electoral Commissioners Office as independent is supported by the Member for Vaimauga. All these amendments are to progress forward. Although we make the laws, we will also be affected in the long run and so I support this Bill.

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The only request to the Hon Minister and the Associate Minister concerns the PSC. There is a legislation that I was affected by as were other candidates working as a public servant that provided that they resign. The concern is that if you resign to run in the Elections and you are unsuccessful, where then do you turn? If you return to the Ministry you worked for there will be hard feelings. That is my concern. This provision should be removed and the opportunity allowed to the public servants to continue to work when running as a candidate because there are Heads of Ministries that want to run but they are restricted by this provision. It would not matter if you return to work and the boss is happy with you but if there are hard feelings between the boss and you, what then is your option? That is the only request to the Commissioner.

That is the support of Vaimauga East to the Hon Minister and the Associate Minister and the Electoral Commissioner.

MR SPEAKER: Thank you. I call on the Member for Falealili West. Be brief so that a response can be made.

Tofa AUMUA ISAIA LAMEKO: Thank you Mr Speaker for the opportunity. I wish to thank and applaud the Hon Minister for the Bill proposing the independence of the Electoral Commissioner.

First, in the Bill there is a provision for the establishment of an Electoral Boundaries Committee and I propose that the Attorney General be added as a compulsory member of the Committee.

Second, it is clear in the Bill that the term for the Commissioner is 3 years, similar to the Attorney General. The Bill establishes the Office and provides for powers to recruit and terminate employees also depending on Regulations.

That is the brief view of the Constituency to support the Bill. Thank you.

MR SPEAKER: Thank you. I call on the Member for Faleata West and then the Government will respond.

Tofa LEALAILEPULE RIMONI AIAFI: Thank you Mr Speaker for the opportunity. I thank the Hon Minister and the Office for the Bill.

The electoral bills have always been tabled three or four months prior to the General Elections and it is certain that the Members would be confused. Thankfully, this Bill has been tabled well before hand so we can be prepared and make necessary changes.

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Electoral Commission Bill 2018
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I want to comment on the Bill because it is important. One Member mentioned it is difficult for those who have not made it to Court to understand only those who have been to Court, like myself, I have been to court many times and each time I have succeeded. It is unnecessary and not right. If you refer to the functions of the Commission, the first function is to conduct the elections of Members of Parliament. This means that it is necessary to give them the full authority to withhold or allow a candidate to run. We made a submission to the Commission on this exact matter. It is unnecessary for another candidate to investigate the qualification of another candidate but it should be the authority of the Electoral Commissioner. If there is a disgruntled candidate, the petition should be given to the Electoral Commissioner. There are grave impacts and some villages have even been in conflict with other candidates because of it but it should not be the case. I do not know why it changed but in the past Elections, the Commissioner had this responsibility and if the decision was that you could not run, that would be the end. I ask the Hon Minister to reconsider this issue and let the Office carry out this function.

In addition, the term of the Auditor General was changed to six years for the very purpose that it overlaps with the Parliamentary Term removing any political assumptions. I believe that this should also be the case for the Electoral Commissioner. The term should be six years which would also allow preparation time for the next General Elections. Also, it should be clear that there is a Deputy Commissioner being different from other Government Ministries. I have observed that this is what the PSC is reviewing because the current system is not working with at least 20 ACEOs in some Ministries without any responsibilities.

It would be just that the Bill be transparent for the future.

Those are some views with respect, thank you.

MR SPEAKER: Thank you. I call on the Member for Faasaleleaga No. 2.

Afioga PAU SEFO TAUMATA PAU (Faasaleleaga No. 2): I extend my support for the Bill. Thank you Hon Minister for the Bill. Just a few recommendations as I have heard some speeches pursuing the electoral petitions. It is known to many that I have been taken to courts four times in relation to these petitions. I believe that the Minister or the independence of the Electoral Commissioner has no power to resolve this issue of heading to the Courts after the Elections. While my Constituency is listening in, since I started running for this seat, there have always been petitions because of not receiving the outcome they wanted.

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The only advice is that after being victorious for four electoral petitions, and then the successful candidate should be immune from any other petitions following upcoming Elections. If not four, then maybe two. If this was the case, perhaps after the second petition, I would not have the other petitions against me until this Term.

That is the only assistance on the Bill and I support it.

MR SPEAKER: Thank you. I think two is enough because four would be too much. I call on the Hon Prime Minister.

Susuga Hon TUILAEP AUELUA FATIALOFA LUPESOLIAI LOLOFIETEELE NEIOTI AIONO GALUMALEMANA Dr. SAILELE MALIELEGAOI: Mr Speaker, some of the matters that were raised are in relation to the Government policies and so I must respond. The views expressed are essential and I emphasize that the Bill will be referred to a Committee and that is when all the opinions and recommendations will be considered.

I stand as the meaning of the independence of the Office was queried. Initially, none of the Ministries were independent as they were all under the umbrella of the Public Service Commission under the belief that the policies would be consistent for all the Ministries. As time progressed, some Ministries, beginning with the Office of the Legislative Assembly, requests were made because first, the PSC would not approve the applications made for additional employees. Second, PSC would not approve salary increases at the time. The perspective of PSC was that there should be no bias and all the Ministries should follow the salary scale set out.

Also, there should only be one Manager to review the applications and the importance of each. The Heads of most Ministries want to hire their own employees and that it would be simpler. The problem is that they become tiresome and they designate tasks to others in the Ministry. For instance, when we established the Ministry responsible for the Public Bodies, there was only a few in the Finance Administration and now it has expanded and there are many employees with a budget of millions. The same with SQA, it was assumed that only a few employees would suffice. What now? The Authority has expanded and you would wonder what work they are doing. But this is the nature of CEOs, they are empire builders. Once the CEO is appointed, they want to expand the organization. The question is, are the employees being utilized efficiently? If you really investigate, they are not. That is exactly what PSC was concerned about. However, after the request from the Legislative Office, this was when others followed suit.

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This was also the reason there was much controversy when the NPF legislation was tabled. I was involved in the preparation of this Bill while I was working for the Ministry of Finance in 1972. There was only one reason the Bill would not pass and that was through the authority of Parliament. As for the Parliamentarians, they were unhappy with having their salaries deducted for NPF. What then happened? A special provision was inserted that after a Member completed a Term, they can withdraw their NPF and then it was easier to pass. Others would have to wait until they are 55 years old but for Members, it is withdrawn after 3 years. That was the case in those days which made it easier to pass. Now the Members were satisfied that after three years, they withdraw their NPF for their campaign followed by the petitions. The previous Member was right; others were smart enough to apologize before the matter reached court. Who makes the decisions? We do. It became an issue that after three years the fund was withdrawn. I asked one former Member of Lufilufi what he was doing now after being a Parliamentarian. He responded that he was living off the staff. I asked him to explain what he meant because I wanted to understand. He said, in the mornings after breakfast, he would take his staff and whip and take a taxi to Mulinuu where he would wait for the court cases to finish and he would stand there with his staff and whip and orate, living off begging. It is disgraceful for a former Member in those days. Tofilau spoke to our Party and said that we should think of something for a Member to retire to. This was when we initiated the pension. After this was done, right after, a former Member would withdraw their pension with only two that did not which was myself and another Member of my Cabinet. After the end of the second Term, the same thing happened; the entire pension was withdrawn. Now I am thinking that it should be fixed so that it is no longer withdrawn and a begging former Parliamentarian will no longer interrupt the courts at Mulinuu.

Mr Speaker, I am explaining this so that it is clear that decisions are made to set out policies for the future thus the policy to establish independence. Now this Office is independent, as is the Police and the question is, is being independent relevant? The response, there is absolutely no relevance. Why? The salary scale is set out. No Ministry has the authority to increase salaries thus the irrelevance of being independent. What about positions? The Ministry of Finance and the Cabinet must be satisfied that the positions are necessary. This is why independence is absolutely irrelevant. The Cabinet is heading towards reforming the PSC so they will focus on training of the Management and public servants so they fully understand their duties. As for positions and the salary scale, there is a Tribunal and there is no reason that it should be referred to the PSC.

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The Cabinet is discussing the possibility of recruitment to be done by the Ministry itself. This is another reform being proposed. There is no other time. This is the Term for us to decide on these difficult issues that may amend the Constitution. Mr Speaker, the independence will still be established for now. Moving forward, there will be other amendments.

Continuing on, in regards to resignations, this is one important procedure the Cabinet implemented before the current Minister. This is why I am upstanding, to explain the Government policies where a public servant has to resign to be a candidate. If the candidate returns to work in the PSC and a relative or villager of the opposing candidate applies, there may be bias because this has happened. This Administration tries to regulate any opportunity to allow for biasness. Mr Speaker, as I have said, the Bill will be referred to the Committees for consideration and there may be many amendments initiated from those that spoke because all the views matter. After the Committee consideration, it will be referred back to the House for our consideration and approval of necessary amendments.

Mr Speaker, that is the explanation on the Government policies that were queried.

MR SPEAKER: Thank you. Is there an addition Hon Minister?

Afioga Hon FAAOLESA KATOPAU T. AINUU: Mr Speaker, the Hon Prime Minister has responded to all the queries raised by the Members.

With respect.

Motion was approved and the Electoral Commission Bill 2018 was read a second time.

MR SPEAKER: As the Leader of the Government mentioned, it is the Governments intention that Members will have their opportunity. Pursuant to our Standing Orders, the Bill will be referred to the Standing Order, House and Electoral Matters Committee for consideration to report back on the following Sitting day. There are many opportunities for the Members to express their views.

Now we have come to the end of our work for today. I call on the Member for Falealili East to conclude our Sitting with a prayer.

Proceedings of the Legislative Assembly adjourned at 12.54pm until Friday, 23 March, 2018 at 9.00am.

