



GOVERNMENT OF SAMOA

**Samoa**  
**Law Reform Commission**  
Komisi o le Toefuataiga o Tulafono a Samoa

**Ministerial and Departmental  
Arrangements Act 2003**

Discussion Paper

April 2017

## About the Samoa Law Reform Commission

The Samoa Law Reform Commission was established in 2008 by the Law Reform Commission Act 2008 as an independent body corporate to undertake the review, reform and development of the laws in Samoa. Its purpose is to facilitate law reform in Samoa by providing pragmatic recommendations based on high quality research, analysis and effective consultation.

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This Paper may be cited as **SLRC DP22**

This Discussion Paper is also available on the Law Reform Commission's website:  
[www.samoalawreform.gov.ws](http://www.samoalawreform.gov.ws)

## CALL FOR SUBMISSIONS

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Submissions or comments on this Discussion Paper should be received by the Commission no later than close of business on **21 July 2017**

Emailed submissions should be sent to:  
[commission@samoalawreform.gov.ws](mailto:commission@samoalawreform.gov.ws)

Written submissions should be addressed and sent to:  
**Executive Director**  
**Samoa Law Reform Commission**  
**Level 1, FMFM II Building**  
**Eleele Fou, Apia, Samoa**

Oral Submissions should be voiced at our Public Consultations:  
**Dates, Time and Venues for public consultations will be announced on television, radio stations and newspapers for the public's information.**

The Samoa Law Reform Commission seeks your views, comments and feedback on issues arising from the *Ministerial and Departmental Arrangement Act 2003* in particular the questions set out in the last section of this Discussion Paper.

The submitters are advised to focus on any or all of the questions provided therein.

A Final Report and Recommendations to Government is expected to be completed by 2017.

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## BACKGROUND

### *Terms of Reference*

1. The Samoa Law Reform Commission (**Commission**) received a reference from the Attorney General in 2008 to review all Ministry legislation.<sup>1</sup> This would have included the *Ministerial and Departmental Arrangements Act 2003 (MDAA)*, as well as numerous other ministry specific legislation, for example the *Ministry of Health Act 2006* which establishes the Ministry of Health. Given the broad scope of the reference, the Attorney General narrowed the focus of the review in 2012 to focus specifically on the MDAA. Accordingly, this review considers and invites submissions on:

- a) How the MDAA can be updated to reflect the current Ministerial and Departmental structures of all Government Ministries and Corporations; and
- b) How the MDAA can better become the uniform law establishing government ministries and related matters.

2. This Discussion Paper is divided into the following four (4) parts:

Part 1 provides an overview of the MDAA and its purpose.

Part 2 considers the existing and future interaction of the MDAA with other legislation like the *Public Service Act 2004* and ministry specific legislation that contain establishing provisions.

Part 3 considers the adequacy of the current MDAA framework and explores options for reform. This includes exploring why the list of all Government Ministries and Corporations in Samoa is not consistently updated and whether the MDAA should be expanded to include appointments of Ministers, CEOs and other public service employees. This part also contemplates an amended MDAA, and asks whether establishing provisions common to all Ministries and Corporations should be removed from the vast number of ministry specific legislation, and moved into the MDAA to provide a uniform scheme for establishing ministries in Samoa.

Part 4 provides a conclusion and way forward.

3. In developing this Discussion Paper, the Commission carried out preliminary consultations with the Office of the Attorney General (**OAG**) on 19 January 2016.

4. Furthermore, at the request of the Commission, Ministries nominated representatives to assist the Commission in this review. These representatives will be the key focal points for

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<sup>1</sup> This review was put on hold to redefine its scope as it was initially too broad at the time and also due to competing priorities. Work resumed on this project in 2015.

this review. Extensive consultations with the 15 government Ministries listed below, the OAG and the Office of the Electoral Commission, will be carried out on issues raised in this Discussion Paper (also see Appendix A for a full list of consultation questions):

- ✚ Ministry of the Prime Minister and Cabinet (MPMC)
- ✚ Ministry of Health (MOH)
- ✚ Ministry of Finance (MOF)
- ✚ Ministry of Justice and Courts Administration (MJCA)
- ✚ Ministry of Agriculture and Fisheries (MAF)
- ✚ Ministry of Natural Resources and Environment (MNRE)
- ✚ Ministry of Commerce, Industry and Labour (MCIL)
- ✚ Ministry of Police (MOP)
- ✚ Ministry of Communications and Information Technology (MCIT)
- ✚ Ministry for Revenue (MOR)
- ✚ Ministry of Education, Sports and Culture (MESC)
- ✚ Ministry of Works, Transport and Infrastructure (MWTI)
- ✚ Ministry of Foreign Affairs and Trade (MFAT)
- ✚ Ministry of Women, Community and Social Development (MWCSD)
- ✚ Ministry of Public Enterprises (MPE).

5. The outcome of this review is to see how the MDAA can become the uniform law to establish all Government Ministries and Corporations, consistent with other laws and kept up to date. This review will invite submissions on the options available to do so, which include amending the MDAA so it comprehensively covers establishing ministries and related matters, and through consequential amendments to various Ministry specific legislation, so that provisions common to all Ministries are removed and placed in the MDAA and ministries can focus on their core functions.

## **PART 1: WHAT IS THE MDAA?**

### ***Background***

6. The MDAA came into force on 1 May 2003, and is administered by the Ministry of the Prime Minister and Cabinet (the **MPMC**).<sup>2</sup> According to the Hansard reports, the objective of the MDAA is to improve service delivery by government departments to the public, safeguard public funds and reduce the duplication of responsibilities carried out by different government departments.<sup>3</sup>
7. Consultations with the OAG on 19 January 2016 also revealed that the MDAA was intended to establish all Ministries under a single piece of legislation, without the need for Ministries to have individual legislation to establish them separately (“**Ministry specific legislation**”).<sup>4</sup>
8. The MDAA is broken down into the following parts:

- a) **Establishing Ministries and providing a list of all Government Ministries;**

MDAA establishes Ministries and provides a list of all Ministries in Schedule 1.<sup>5</sup>

- b) **Appointment of Chief Executive Officers/Head of Departments;**

The Act establishes that each Ministry shall have a Head of Department who is called the Chief Executive Officer.<sup>6</sup> Schedule 2 of the MDAA lists all Chief Executive Officers of all Ministries in Schedule 1.<sup>7</sup>

- c) **Amendments to the list of Ministries and Chief Executive Officers;**<sup>8</sup>

The MDAA Schedules listing Government Ministries and their CEOs can be amended by an Order from the Head of State acting on advice from the Prime

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<sup>2</sup>*Ministerial and Departmental Arrangements Act 2003* (Samoa).

<sup>3</sup> Bills Committee, Parliament of Samoa, *The Bills Committee Report on the Ministerial and Departmental Arrangement Bill 2002* (2002) 9.

<sup>4</sup>Preliminary Consultation with Noumea Loretta Teueli (and Leitu Moananu), Chief Legislative Drafter (Level 6 – Tui Atua Tupua Tamasese Efi Building, Apia, Samoa, 19 January 2016).

<sup>5</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 4(1); sch 1.

<sup>6</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 5(1).

<sup>7</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 12.

<sup>8</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 6; sch 2.

Minister.<sup>9</sup> The amendments must be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.<sup>10</sup>

**d) Assigning responsibilities to Ministers by the Prime Minister;**<sup>11</sup>

The MDAA empowers the Prime Minister to delegate to a Minister, the responsibility of a department or subject,<sup>12</sup> and revoke or vary a direction.<sup>13</sup> It also allows the Prime Minister to retain a department or subject in his charge.<sup>14</sup> This provision is replicated in Article 35 of the Constitution of Samoa.<sup>15</sup>

**e) Delegating Ministerial and Chief Executive Officer's responsibilities;**<sup>16</sup>

If certain Ministries are abolished, then the Head of State, acting on the advice of the Prime Minister, can make an Order to assign responsibility for the activities or functions of that Ministry.<sup>17</sup>

**f) Saving Provisions and Repeal**

The MDAA provides a savings provision which lists entitlements and obligations of Ministries that will not be affected as a result of their abolition through the enactment of MDAA.<sup>18</sup>

Lastly, the MDAA repeals Samoa's *Ministerial Portfolios Act 1976*.<sup>19</sup>

9. These Sections will be discussed in more detail in Part 3, focusing on whether the existing provisions are adequate or should be improved to better achieve the purposes of the Act.

10. Since its enactment, the MDAA has been amended once by the *Public Service Act 2004* by adding a new Schedule 2 which lists CEOs. In 2014, the Ministry for Public Enterprises (the **MPE**) was added into Schedule 1 and the CEO for MPE into Schedule 2, by an Order of the

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<sup>9</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 6(1).

<sup>10</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 6(2); sch 2.

<sup>11</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) ss 5, 7 sch 2.

<sup>12</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 7(1)(a).

<sup>13</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 7(1)(b).

<sup>14</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 7(2).

<sup>15</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 35.

<sup>16</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 10 (1).

<sup>17</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 10 (1).

<sup>18</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 11.

<sup>19</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 12.



Head of State acting on the advice of the Prime Minister.<sup>20</sup> Government Portfolios were assigned by the Prime Minister to the Minister for Public Enterprises under section 7 of the MDAA.<sup>21</sup>

## **PART 2: INTERACTION BETWEEN MDAA AND OTHER LEGISLATION**

### *Interaction with Ministry specific legislation*

11. Before the MDAA was enacted in 2003, Ministries were established through their own legislation. For example, the *Ministry of Women Affairs Act 1990* established what was formerly known as the Ministry of Women Affairs and the *Ministry of Works Act 2002* established what was formerly known as the Ministry of Works. This legislation served to both establish these ministries and set out their core functions and powers.
12. Since the MDAA has been enacted however, these laws (e.g. Ministry of Women Affairs Act 1990 and Ministry of Works Act 2002) have continued to operate alongside the MDAA. Additionally, and notwithstanding advice from the OAG not to, Ministries have continued to enact their own ministry specific legislation, duplicating establishing provisions, after the MDAA was introduced.<sup>22</sup> This includes for example the Ministry of Health which is established by the *Ministry of Health Act 2006*<sup>23</sup>, the Ministry of Police as established by the *Police Service Act 1977* (which is now repealed by the *Police Services Act 2009*)<sup>24</sup> and the Ministry of Revenue which was established by the *Income Tax Administration Act 1974* (which is now repealed by the *Tax Administration Act 2012*).<sup>25</sup>
13. Two issues have therefore arisen in relation to how the MDAA interacts with this ministry specific legislation. First, it is unclear which legislation applies when the MDAA and another piece of legislation establish a Ministry. Second, consequential amendments have not been made to either legislation in some cases, to update the names of Ministries when they merge or are otherwise renamed. For example, the Ministry of Works is now known as the Ministry of Works, Transport and Infrastructure. This is accurately reflected in the MDAA but not in the *Ministry of Works Act 2002*.
14. Preliminary consultations also revealed the following reasons as to why some Ministry legislation continues to be enacted despite the MDAA:

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<sup>20</sup>*Ministerial and Departments Arrangement Act 2003* (Samoa).

<sup>21</sup>This is the first time that Ministerial Assignment has been issued under the MDAA.

<sup>22</sup>See Appendix B below.

<sup>23</sup>*Ministry of Health Act 2006* (Samoa) s 4.

<sup>24</sup>*Police Services Act 2009* (Samoa) s 3.

<sup>25</sup>*Tax Administration Act 2012* (Samoa) s 4.

- a) The MDAA does not expressly specify that it is the key legislation for establishing all Ministries or that it applies to all Ministries;<sup>26</sup>
- b) The MDAA does not clarify its purpose and application; and
- c) When the MDAA was enacted, no consequential amendments were made to remove the establishing provisions from ministry specific legislation.

15. Preliminary consultations with OAG reveal that the existence of these Ministry specific laws can cause confusion amongst Government stakeholders and members of the public as to the purpose of the MDAA, particularly around whether the MDAA overrides the ministry specific legislation, and what law sets up and governs the ministerial arrangements for each Ministry.

16. The OAG, during our preliminary consultations, submitted that one advantage of having a uniform scheme establishing all Government Ministries, such as the MDAA, is that Ministries can then utilize their own legislation to focus on their areas of responsibility, functions and powers. For example, MNRE under the *Forestry Management Act 2011* manages Samoa's natural environment resources and is responsible for ensuring the effective and sustainable management of Samoa's forestry resources. Similarly, under the *Fisheries Management Act 2011*, MAF regulates and controls the conservation, management and development of fisheries in Samoa. In other words, the MDAA establishes these Ministries (establishing legislation) but their portfolio functions and powers are set out in separate legislation (management legislation).

17. In order to achieve this consistency across all relevant legislation in Samoa, one option for reform is to carve out the relevant establishing provisions from ministry specific legislation, such as the *Ministry of Health Act 2006* so that the MDAA becomes the only legislation establishing Ministries in Samoa, and the ministry specific legislation focuses on portfolio functions and powers. Consideration can also be given to whether other administrative provisions (including appointments of Ministers, CEOs and their delegation powers, for example), which are common to all Government Ministries, can also be carved out and placed in the MDAA for further uniformity.

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<sup>26</sup> **Note:** MDAA does not apply to Constitutional Authorities such as the Office of the Attorney General, Samoa Audit office, Department of the Legislative Assembly, Ombudsman's Office and the Office of the Electoral Commission.

## QUESTIONS

1. Should the MDAA become the uniform law to establish all government ministries in Samoa? If yes, should Ministry specific legislation, like the *Ministry of Health Act 2006*, be updated to remove establishing provisions (ensuring the ministries are appropriately established under the MDAA)?
2. Should administrative provisions common to all Government Ministries be removed from ministry specific legislation and placed into the MDAA? If yes, which administrative provisions are common to all Ministries and appropriate to remove?
3. Do you foresee any problems by removing the establishing (and potentially administrative) provisions from ministry specific legislation moving forward?

### *Interaction with Public Service Act 2004*

18. In Part 3 of this Paper, the Commission considers each of the existing sections of the MDAA, as well as additional provisions from other Acts that may be relevant to include in a new MDAA. This includes some administrative provisions currently included in the *Public Service Act 2004*. The Commission notes that there is an ongoing review of the *Public Service Act 2004* underway and that the outcome of that review may impact on this review. The Commission therefore specifically invites submissions and will work with the Public Services Commission to establish how these two Acts can operate alongside each other effectively and efficiently, without duplicating provisions across legislation.

## **PART 3: THE ADEQUACY OF CURRENT FRAMEWORK/LEGISLATION AND OPTIONS FOR REFORM**

19. This part examines the adequacy of the current provisions of the MDAA and identifies relevant issues for reform. It will focus on provisions the Commission consider contentious at this stage of the review, particularly sections 1 to 6 which raises issues for reform. The provisions of the Act that the Commission consider non-contentious are to be retained, specifically sections 7 to 13 which include Schedules 1 and 2. Lastly, this part explores other relevant provisions which the Commission proposes to be included in the new MDAA to ensure it is robust, comprehensive and adequate for the purpose of a standalone principal legislation that establishes all Ministries and Corporations. In analyzing the above issues, the Commission discusses relevant provisions from other Ministry specific legislation in Samoa and the Public Sector Act 2009, South Australia.

### **CONTENTIOUS PROVISIONS**

#### ***Short Title of MDAA***

20. The current title of the Act is called the *Ministerial and Departmental Arrangements Act 2003*. In other countries, the legislation that governs the public service also contains some provisions establishing ministries, for example the *Public Sector Act (2009)* in South Australia. A relevant issue to consider is whether the current MDAA title clearly reflects the overall purpose of the MDAA to be the principal legislation which establishes all Government Ministries and Corporations. Alternatively, it is worth considering how the review of the Public Service Act in Samoa could impact on the MDAA, for example, whether the intention of this review is to retain two separate pieces of legislation or merge the two together. This paper proceeds on the basis that both legislation will continue to operate, but submissions are invited on this topic.

#### **QUESTIONS**

4. Should the title of the Act be renamed to reflect the overall objective of the MDAA?
5. Should the MDAA and Public Service Act remain separate pieces of legislation?

#### ***Purpose of MDAA***

21. The current purpose statement in the MDAA is “to provide for Ministerial portfolios and Departmental arrangements and for related purposes”. The Commission notes that there is a lack of understanding among Ministries as to the purpose of the MDAA presumably due to this broad purpose statement. Accordingly, the purpose of the MDAA may need to be clarified. The Commission considers it important that any

proposed purpose statement should be framed to suit Samoa's context and overall objective of a proposed new MDAA.

#### QUESTIONS

6. Should the purpose (Long Title) of the MDAA be revised and better defined?
7. If yes, what is a suitable purpose statement for the new MDAA? Should the purpose statement specify the MDAA as the principal establishing legislation?

#### **Interpretation**

22. There is only one term currently defined in the MDAA, which is 'Head of Department'.
23. If the new MDAA is to be the principal legislation establishing Government Ministries in Samoa, then more terms should be defined for clarity, particularly those regularly referred to. The Commission notes the following terms as examples that could be defined in the MDAA:
  - 23.1. '**Chief Executive Officer**' – the term 'Head of Department' is currently defined in the MDAA but CEO is not. Consideration should be given to including CEO within the definition of Head of Department or otherwise defining CEO instead. The Commission notes that under the *Public Service Act 2004*, CEO is defined as the Head of Department of a Ministry, and includes the Head of a Constitutional Authority.<sup>27</sup> Similarly the *Acts Interpretation Act 2015* defines CEO as the administrative Head of the Ministry, and includes the Head of a Constitutional Authority.<sup>28</sup>
  - 23.2. '**Ministry**' – Ministries are currently defined in the MDAA by reference to the list of Ministries contained in Schedule 1. This is different however, to the definition of 'Ministry' in the *Acts Interpretation Act 2015*, which includes constitutional authorities such as the Attorney General Office, Samoa Law Reform Commission, Office of the Electoral Commission, Audit Office and the Legislative Assembly. Consideration should be given to whether this same definition should be used in the MDAA and if so, then the list of Ministries in Schedule 1 should be updated accordingly.

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<sup>27</sup> *Public Service Act 2004* (Samoa) s 3; However this definition expressly excludes the Attorney General, the Controller of Customs and the Auditor General and this may be owed to the fact that these Offices are devolved (not under) from the Public Service Commission.

<sup>28</sup> *Acts Interpretation Act 2015* (Samoa) s 3.

#### QUESTIONS

8. Are the current definitions adequate for the purpose of an establishing legislation?
9. What other suitable terms should be included and defined under the MDAA?
10. Should the definition of 'Ministry' from the *Acts Interpretation Act 2015* be used in the new MDAA?

#### **Amendment of Schedules**

24. The MDAA provides that the Schedules may be amended by an Order of the Head of State acting on the advice of the Prime Minister.<sup>29</sup> The notice of an order is to be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.<sup>30</sup> However, the Commission notes that Schedules 1 and 2 currently do not reflect the current Ministerial names or structures. For example, the Ministry of Prime Minister listed in the MDAA is now referred to as the Ministry of Prime Minister and Cabinet and the Ministry of Agriculture is now referred to as the Ministry of Agriculture and Fisheries but these are not updated in the Schedule.
25. Another issue to consider is whether the current provision to amend the Schedules is too onerous and whether it can be simplified. The Commission notes that it may be too onerous for the Head of State to issue an Order every time a Schedule needs to be amended. Also, the requirement to publish an Order in the *Savali* and 1 other newspaper circulating in Samoa seems impractical and outdated. A more practical alternative could be that the responsible Ministry, specifically the MPMC, is delegated the power to amend the Schedules. This would streamline the process for both simple amendments like updating the names of Ministries and their CEOs, as well as more complex amendments like separating the Ministry of Police, Prison and Fire Service in 2013 into three different Government agencies.

#### QUESTIONS

11. Is the current process of amending the MDAA Schedules, namely by Order of the Head of State acting on the advice of the Prime Minister and published in the *Savali* and another newspaper, too onerous? Can it be simplified? If so, how?
12. Should the responsible Ministry (MPMC) receive delegated powers to amend the Schedules under section 6 to streamline processes for updating and amending Schedules?
13. Should the requirement for publication in Samoan and English in the *Savali* and one other newspaper be retained? If not, should there be any publication requirement before amendments can be made?

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<sup>29</sup>*Ministerial and Departmental Arrangement Act 2003* (Samoa) s 6(1).

<sup>30</sup> *Ministerial and Departmental Arrangement Act 2003* (Samoa) s 6(2).

## **OTHER RELEVANT PROVISIONS TO BE INCLUDED IN NEW MDAA**

26. This section contemplates whether a number of provisions currently in the Public Service Act should be included in the new MDAA. However, if the MDAA is to be the principal legislation to establish Government Ministries and Corporations, these provisions should be included. As mentioned above, the Commission notes the ongoing review of the Public Service Act by the Public Service Commission and is mindful that the outcome of that review will likely impact the new MDAA framework in Samoa.

### **General functions of a Ministry**

27. These are not set out under the MDAA. Setting out general functions of a Ministry is essential as it establishes the purpose of the Ministry. Each Ministry serves different purposes and tasks, however, there are underlying common purposes that could be included in the MDAA to provide clarity. For example:

The Ministry's functions are:

- a) to assist the Minister to administer legislation executed by that Ministry;<sup>31</sup>  
and/or
- b) To perform duties and functions and exercise powers in accordance with any laws, and to perform any other functions given to it under this Act or any other Act,<sup>32</sup>

28. Subsequently, the above provisions could be incorporated in the MDAA to ensure it provides the general powers and responsibilities of Ministries for the purpose of the standalone principal MDAA.

### **QUESTIONS**

14. What general powers and responsibilities are common to all Ministries? Should they be clearly set out in the MDAA?

### **Provisions for the appointment of a Minister**

This is not provided for in the MDAA. However, the MDAA was established to provide for Ministerial portfolios and Departmental arrangements and for related purposes.<sup>33</sup> Given that the appointment of Ministers is provided under the Constitution, the Commission considers

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<sup>31</sup>*Ministry of Health Act 2006* (Samoa) s 5.

<sup>32</sup>*Prisons and Corrections Act 2013* (Samoa) s 4.

<sup>33</sup>*Ministerial and Departmental Arrangements Act 2003* (Samoa).

it practical to make reference to the relevant provision of the Constitution under the MDAA, for ease of reference.

## QUESTIONS

15. Should the MDAA also include provision for how Ministers are appointed (so that the MDAA becomes a central point for establishing Ministries and appointing Ministers)?

## Responsibilities of a Minister

29. The MDAA provides that the Prime Minister can charge a Minister with the responsibility for a department or subject.<sup>34</sup> This is the only reference in the Act regarding functions or responsibilities of a Minister.

30. There are specific responsibilities contained in certain ministry specific legislation that are relevant to all Ministers and could be included in the Act. For example:

The Minister shall have the following functions:

- a) to administer legislations related to the Ministry (as may be provided for in ministry specific legislation);<sup>35</sup> ;
- b) to fulfil the responsibilities set out in the ministry specific legislation<sup>36</sup> which include formulating, directing<sup>37</sup> and controlling<sup>38</sup> policies of the Ministry,
- c) to provide governance and strategic leadership to the Ministry;<sup>39</sup>
- d) to monitor the Ministry's performance, including its compliance with all applicable laws;<sup>40</sup>
- e) to evaluate the Chief Executive Officer's performance, including the Chief Executive Officer's compliance with the requirements of all applicable laws; and;<sup>41</sup>
- f) to approve and present the annual report on the Ministry's performance and to lay the annual report before the Legislative Assembly; and

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<sup>34</sup>Ministerial and Departmental Arrangements Act 2003 (Samoa) s 7.

<sup>35</sup> Ministry of Health 2006 (Samoa) s 7(a).

<sup>36</sup> Ministry of Health 2006 (Samoa) s 7(b).

<sup>37</sup> Ministry of Women Affairs Act 1990 (Samoa) s 3.

<sup>38</sup> Trade, Industry and Commerce Act 1990 (Samoa) s 3.

<sup>39</sup> Ministry of Health 2006 (Samoa) s 7

<sup>40</sup> Ministry of Health 2006 (Samoa) s 7

<sup>41</sup> Ministry of Health 2006 (Samoa) s 7.



- g) to exercise powers and functions vested in the Minister under the Act<sup>42</sup> or as reasonably necessary for the effective performance of functions of the Ministry.<sup>43</sup>

31. For consistency with the MDAA's purpose, it is proposed that general provisions on the appointment of a Minister should be provided in the MDAA for clarity.

**QUESTIONS:**

16. Should the MDAA include provisions relating to responsibilities of a Minister? If so, should relevant responsibilities common to all government ministries but taken from various ministry specific legislation be used?

**Provisions for the appointment of a Chief Executive Officer (CEO)**

32. The MDAA provides that a Ministry shall have a Chief Executive Officer.<sup>44</sup> The appointment of Chief Executive Officers is also provided under the *Public Service Act 2004*.<sup>45</sup>

33. Various ministry specific legislation enacted before and after 2003, provide for the appointment of Chief Executive Officers and establish them as Head of the Department/Ministry.

34. The *Prisons & Corrections Act 2013* and *Police Service Act 2009* clearly states the process when appointing a Chief Executive Officer of their respective Ministries. The Head of State, acting on advice of the Cabinet may appoint a Chief Executive Officer.<sup>46</sup> The *Police Service Act 2009* also states the duration of the appointment.<sup>47</sup>

35. The Commission is of the view that as the purpose of the Act is to provide for Ministerial portfolios and departmental arrangements and for related purposes, provisions pertaining to appointment of Chief Executive Officers should be included in the MDAA. It is proposed the wording used in the *Public Service Act 2004*, the *Prisons & Corrections Act 2013* and *Police Service Act 2009* pertaining to the appointment of Chief Executive Officers should be adopted in the Act.<sup>48</sup>

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<sup>42</sup> *Ministry of Women Affairs Act 1990* (Samoa) s 3.

<sup>43</sup> *Trade, Industry and Commerce Act 1990* (Samoa) s 3.

<sup>44</sup> *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 5(2).

<sup>45</sup> *Public Service Act 2004* (Samoa) s 12.

<sup>46</sup> *Prisons and Corrections Act 2013* (Samoa) s 5; *Police Service Act 2009* (Samoa) s 12.

<sup>47</sup> *Police Service Act 2009* (Samoa) s 12(2).

<sup>48</sup> *Public Service Act 2004* (Samoa) s 12.

## QUESTIONS

17. Should the MDAA include a provision detailing the process of appointing a CEO? If so, should the process articulated in the *Public Service Act 2004* be used?
18. How many provisions from *Public Service Act 2004* should be replicated in MDAA?

## Powers and Responsibilities of CEO

36. To ensure Government Ministries and Departments fulfill their responsibilities, it is essential to set out the powers and responsibilities of a CEO, as they are the head of the departments and overlook the daily routine/tasks of Ministries. The *Public Service Act 2004* provides for general responsibilities of Chief Executive Officers.<sup>49</sup> One responsibility is to provide effective and efficient management of their respective Ministry.<sup>50</sup> This is also a similar theme amongst ministry specific legislation enacted after the Act, which expressly state the Chief Executive Officer's responsibility is to effectively and efficiently manage their department.<sup>51</sup>
37. However, there are also some Ministries which do not have such provisions in their establishing ministry laws because the general responsibilities of the Chief Executive Officer are comprehensively listed in the *Public Service Act 2004*. For example, *Ministry of Women Affairs Act 1990*, *Ministry of Works Act 2002* and the *Youth Sports and Cultural Affairs Act 1993*.
38. The Commission notes that the benefit of having such provisions is that they apply equally to all CEOs. Consideration should therefore be given to whether it is appropriate to include a list of general responsibilities common to all CEOs in the MDAA.
39. In circumstances where the CEO is absent or unable to perform their duties, to ensure that Ministries or Departments continue its daily tasks, the *Public Service Act 2014* provides for a CEO to delegate to an employee, any of the CEO's powers. Similarly, most Ministries allow their Ministers to delegate their powers (and other powers delegated to them) by any law as provided for in their ministry specific legislation.
40. In circumstances where the CEO is absent or unable to perform their duties, to ensure that Ministries or Departments continue its daily tasks, the *Public Service Act 2014*

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<sup>49</sup> *Public Service Act 2004* (Samoa) s 15.

<sup>50</sup> *Public Service Act 2004* (Samoa) s 15(1).

<sup>51</sup> *Police Service Act 2009* (Samoa) s 16(1); *Prisons and Corrections Act 2013* (Samoa) s 11(2)(a).

provides for a CEO to delegate to an employee, any of the CEO's powers. Similarly, most Ministries allow their Ministers to delegate their powers (and other powers delegated to them) by any law as provided for in their ministry specific legislation.

#### QUESTIONS

19. Should general powers and responsibilities of CEOs be set out in the MDAA? If so, what powers are common to CEOs across all Ministries?
20. Should these general powers be removed from Ministry specific legislation?
21. Should the general responsibilities listed in the MDAA replicate those listed in the *Public Service Act 2004*?

#### Delegation of Power

41. The following ministry specific legislation allow both Chief Executive Officers and Ministers to delegate their powers in writing:

- a) Land & Surveys Environment Act 1989;<sup>52</sup>
- b) Agriculture and Fisheries Ordinance (1959);<sup>53</sup>
- c) Public Finance Management Act 2001;<sup>54</sup>
- d) Ministry of Health Act 2006;<sup>55</sup>
- e) Ministry of Transport Act 1978;<sup>56</sup>
- f) Ministry of Works Act 2002;<sup>57</sup>
- g) Ministry of Women Affairs Act 1990;<sup>58</sup>
- h) Youth, Sports and Cultural Affairs Act 1993;<sup>59</sup>

42. South Australia's *Public Sector Act 2009* also provides a similar provision where the Premier may assign a public sector employee to act as the CEO of a department in circumstances where the CEO is absent, or unable to discharge duties, as well situations where no one is employed as the CEO of that department.<sup>60</sup> The CEO may also delegate their power to a particular person or committee. The delegation may be absolute or conditional.<sup>61</sup>

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<sup>52</sup>*Land and Surveys Environment Act 1989* (Samoa) s 3.

<sup>53</sup>*Agriculture and Fisheries Ordinance 1959* (Samoa) ss 6, 10.

<sup>54</sup>*Public Finance Management Act 2001* (Samoa) ss 6, 10.

<sup>55</sup>*Ministry of Health Act 2006* (Samoa) ss 16-18.

<sup>56</sup>*Ministry of Transport 1978* (Samoa) ss 8-9.

<sup>57</sup>*Ministry of Works 2002* (Samoa) ss 10-11.

<sup>58</sup>*Ministry of Women Affairs 1990* (Samoa) ss 8-9.

<sup>59</sup>*Youth, Sports and Cultural Affairs Act 1993* (Samoa) ss 8-9.

<sup>60</sup>*Public Sector Act 2009* (South Australia) s 34(2)(a)-(b).

<sup>61</sup>*Public Sector Act 2009* (South Australia) s 39(3)(a).

43. The *Public Sector Act 2009* also provides for a Minister to delegate their powers in writing to a particular person or a person for the time being performing particular duties or holding or acting in a specified position.<sup>62</sup> The delegation may also be absolute or conditional.<sup>63</sup>

44. The Commission notes that this is a relevant provision to include in MDAA to ensure the management of the Ministry/Department is efficient and effective in circumstances where the CEO or Minister is absent or unable to carry out their responsibilities.

#### QUESTIONS

22. Should the MDAA contain a provision enabling Ministers and CEOs to delegate their powers?

#### Termination/Suspension of CEO

The MDAA does not provide any standard administrative provisions regarding termination or suspension of CEOs.

45. The *Public Service Act 2004* does provide however, that the Head of State acting on advice of the Cabinet (after Cabinet has consulted the Commission) may in writing terminate a CEO.<sup>64</sup> The Act also lists the following grounds for termination:

- a) Misbehaviour;
- b) Poor performance;
- c) Redundancy; or
- d) Physical or mental incapacity.<sup>65</sup>

46. The Commission notes that this is another relevant provision to be included in the Act as it is an administrative provision that is applicable to CEOs across Ministries and relevant if the MDAA is to be the uniform law.

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<sup>62</sup> *Public Sector Act 2009* (South Australia) s 75.

<sup>63</sup> *Public Sector Act 2009* s75(3)(a)

<sup>64</sup> *Public Service Act 2004* (Samoa) s 13.

<sup>65</sup> *Public Service Act 2004* (Samoa) s 13.

## QUESTIONS

23. Should the MDAA contain provisions on the termination and suspension of CEOs? If so, should the wording in the *Public Service Act 2004* be used?
24. Do you have any further comments/views on any part of this Discussion Paper?

## Part 4: CONCLUSION

47. In conclusion, this Discussion Paper set out to review the MDAA in line with the reference issued to the Commission by the Attorney General in 2012.
48. MDAA was enacted to be the principal legislation to establish Government Ministries and Corporations. However, this is not the status quo as there is a misperception amongst Government stakeholders as to the purpose of the MDAA. As mentioned above, notwithstanding the MDAA there are still numerous ministry specific legislation that existed and enacted after 2003 establishing Government Ministries. Furthermore, the current Schedule does not reflect the current Ministerial and Departmental structures of the existing Government Ministries and Corporations.
49. The Commission is of the view that if the MDAA is the principal legislation to establish Government Ministries and Corporation, by the end of this review consequential amendments to the MDAA will be recommended to the OAG to ensure that the MDAA comprehensively covers establishing Government Ministries, Corporations and related matters. This Discussion paper has proposed administrative provisions to be carved out from ministry specific legislations and included in the MDAA.
50. All in all, this Discussion Paper creates a platform for consultations on this crucial review. The Commission appreciates your feedback on issues and questions raised in this paper.

## APPENDIX A: LIST OF QUESTIONS

1. Should the MDAA become the uniform law to establish all government ministries in Samoa? If yes, should Ministry specific legislation be updated to remove establishing provisions (ensuring the ministries are appropriately established under the MDAA)?
2. Should administrative provisions common to all Government Ministries be removed from ministry specific legislation and placed into the MDAA? If yes, which administrative provisions are common to all Ministries and appropriate to remove?
3. Do you foresee any problems by removing the establishing (and potentially administrative) provisions from ministry specific legislation moving forward?
4. Should the title of the Act be renamed to reflect the overall objective of the MDAA?
5. Should the new MDAA be renamed the Public Sector Act following the NSW example? Should the MDAA and Public Service Act remain separate pieces of legislation?
6. Should the purpose of the MDAA be revised and better defined? If so, are provisions in South Australia's appropriate for Samoa?
7. If provisions in the NSW Act is not appropriate, what is a suitable purpose statement for the new MDAA? Should the purpose statement specify the MDAA as the principal establishing legislation?
8. Are the current definitions adequate for the purpose of a principal establishing legislation?
9. What other suitable terms should be included and defined under the MDAA?
10. Should the definition of 'Ministry' from the Acts Interpretation Act 2015 be used in the new MDAA?
11. Is the current process of amending the MDAA Schedules, namely by Order of the Head of State acting on the advice of the Prime Minister and published in the Savali and another newspaper, too onerous? Can it be simplified? If so, how?
12. Should the responsible Ministry (MPMC) receive delegated powers to amend the Schedules under section 6 to streamline processes for updating and amending Schedules?
13. Should the requirement for publication in Samoan and English in the Savali and one other newspaper be retained? If not, should there be any publication requirement before amendments can be made?
14. What general powers and responsibilities are common to all Ministries? Should they be clearly set out in the MDAA?

15. Should the MDAA also include provision for how Ministers are appointed (so that the MDAA becomes a central point for establishing Ministers and appointing Ministers?)
16. Should the MDAA include provisions relating to responsibilities of Minister? If so, should relevant responsibilities common to all government ministries but taken from the Foreign Affairs Act 1976 and the Ministry of Health Act 2006 various ministry specific legislation be used?
17. Should the MDAA include a provision detailing the process of appointing a CEO? If so, should the process articulated in the Public Service Act 2004 be used?
18. How many provisions from Public Service Act 2004 should be replicated in MDAA?
19. Should general powers and responsibilities of CEOs be set out in the MDAA? If so, what powers are common to CEOs across all Ministries?
20. Should these general powers be removed from individual establishing ministerial legislation?
21. Should the general responsibilities listed in the MDAA replicate those listed in the Public Service Act 2004?
22. Should the MDAA contain a provision enabling Ministers and CEOs to delegate their powers?
23. Should the MDAA contain provisions on the termination and suspension of CEOs? If so, should the wording in the Police and Corrections Act 2013 or the Public Service Act 2004 be used?
24. Do you have any further comments/views on any part of this Discussion Paper?

**APPENDIX B: MINISTRIES WITH CORRESPONDING ESTABLISHING MINISTRY-LAWS**

No.	Ministry	Establishing Ministry-Laws
1	Ministry of the Prime Minister and Cabinet	<i>Ministerial and Departmental Arrangements Act 2003</i>
2	Ministry of Finance	<i>Public Finance Management Act 2001</i>
3	Ministry of Agriculture	<i>Agriculture and Fisheries Ordinance 1959</i>
4	Ministry of Commerce, Industry and Labour	<i>Trade, Commerce and Industry Act 1990</i>
5	Ministry of Education, Sports and Culture	<i>Youth, Sports and Cultural Affairs Act 1993</i>
6	Ministry of Foreign Affairs and Trade	<i>Trade, Commerce and Industry Act 1990</i>
7	Ministry of Health	<i>Ministry of Health Act 2006</i>
8	Ministry of Justice & Courts Administration	- <i>Ministerial and Departmental Arrangements Act 2003</i>
9	Ministry of Communication and Information Technology	<i>Postal and Telecommunications Services Act 1999 - Ministerial and Departmental Arrangements Act 2003</i>
10	Ministry of Natural Resources and Environment	<i>Lands, Survey and Environment Act 1989</i>
11	- Ministry of Police and Prison Service  Samoa Police Service  Prison and Corrections	<i>Ministerial and Departmental Arrangements Act 2003</i>  <i>Police Service Act 1977 (which is repealed by the Police Service Act 2009);</i>  <i>Prisons and Corrections Act 2013</i>
12	Ministry of Revenue	<i>Income Tax Administration Act 1974 (which is repealed by the Tax Administration Act 2012); Customs Act 1977 (which is repealed by the Customs Act 2014)</i>
13	Ministry of Works, Transport and Infrastructure	<i>Ministry of Transport Act 1978;</i> <i>Ministry of Works Act 2002</i>



14	Ministry of Women, Community and Social Development	<i>Ministry of Women Affairs Act 1990; Internal Affairs Act 1995</i>
15	Ministry for Public Enterprises	<i>Ministerial and Departmental Arrangements Act 2003</i>