



# **EXCHANGE OF INFORMATION**

**Discussion Paper**

**24 May 2018**

## SAMOA LAW REFORM COMMISSION

The Samoa Law Reform Commission (**the 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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Submissions or comments (formal or informal) on this Issues Paper should be received by the Commission no later than close of business on 29 June 2018.

Emailed submissions should be sent to:  
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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 Commission seeks your views, comments and feedback on the questions set out in this Issues Paper.

The submitters are advised to focus on any of the questions provided therein. It is definitely not expected that you will answer every question.

A Final Report and Recommendations to Government will be published in [date]

# 1. Introduction

## The Problem

- 1.1 Clear procedures of ‘information exchange’ between Government ministries and agencies are essential. Information held and kept by Government ministries and agencies is vital in assisting Government in making well-informed, sound policy and development decisions.<sup>1</sup>
- 1.2 Since the establishment of the Samoa Law Reform Commission (“Commission”) in 2008, it is noted that across the board, the public sector encounters many challenges and difficulties in obtaining relevant and reliable data and statistics from the relevant Government ministries and agencies, where needed for various projects. For example, crime statistics.<sup>2</sup> The Law and Justice Sector (“LJS”) has identified the lack of a centralized database to store data relevant to the work of the Sector. The lack of relevant information/data available has resulted to limited strategic Sector policy and issue analysis.<sup>3</sup> Furthermore, LJS could only obtain and access parts of information required, or the information available is out of date. The Commission notes that a centralized database, the ‘Auafa-Mau Database’ is currently being developed for the purpose of storing crime statistics relevant to the work of the LJS. It is hoped that the Auafa-Mau database will better assist LJS in law enforcement and inform decision making of the different sectors of Government on crime trends in Samoa.
- 1.3 In the review and research work of the Commission also, requested data and statistics received were either incomplete, inaccurate or out-of-date.<sup>4</sup> Sometimes, there is a long delay in releasing information requested and this impacts greatly on the progress of projects. In light of this, the Commission has constantly recommended in its Final Reports completed, the need for Government ministries and agencies to compile and keep complete, accurate and up-to-date data/statistics.<sup>5</sup> Also emphasized is the need for proper procedures in place to allow the free flow of information upon request.
- 1.4 There is legislation in Samoa that generally regulate the exchange of information between Government ministries and agencies. For example, the *Tax Information Exchange Act 2012* provides for agreements to be made between the Minister for Revenue and other Ministries as a method to enable and encourage secure exchange of tax information under proper regulation.<sup>6</sup> Another example is the *Public Finance Management Act 2001* which provides that the Financial Secretary (also known as the CEO for the Ministry of Finance) may require production of financial reports and accurate accounts records from Government ministries and agencies.<sup>7</sup> Despite the

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<sup>1</sup> Samoa Law Reform Commission, Projects Final Reports – “*Sex Offenders’ Register Final Report 2015, Alcohol Reform Report 15/16 and Review of the Narcotics Act 1967 (Drugs Reform) Final Report 21/17*”.

<sup>2</sup> Samoa Law Reform Commission, “*Review of the Narcotics Act 1976 (Drugs Reform)*”, Final Report, December 2017.

<sup>3</sup> Samoa Law and Justice Sector, “*Law and Justice Sector Plan 2012-2016*”, pp9.

<sup>4</sup> Samoa Law Reform Commission Annual Report No 7 (15/16).

<sup>5</sup> Samoa Law Reform Commission Projects, “*Sex Offenders’ Register Final Report 2015, Alcohol Reform Report 15/16 and Review of the Narcotics Act 1967 (Drugs Reform) Final Report 21/17*”.

<sup>6</sup> Tax Information Exchange Act 2012, section 3.

<sup>7</sup> Public Finance Management Act 2001.

presence of these provisions in these laws, there is no one overarching framework to regulate the exchange of information between Government ministries and agencies.

1.5 The exchange of information between the media and Government is generally governed under the *Media Council Act 2015*. The objective of this Act is to promote professional journalism and integrity in the news media, while observing the fundamental rights under Part II of the Constitution.<sup>8</sup> Briefly, it may be said that under this Act, the media is given to some extent, the freedom to report and access relevant information for purposes of their news, within the vicinity allowed under the Constitution. In light of this, the Commission considers it prudent that Samoa takes this review one step at a time, looking firstly at the sharing of official information between Government ministries and agencies.

### The Terms of Reference

1.6 Consequently, the Commission, pursuant to section 6(a) of the Law Reform Commission Act 2008, recommended a project to the Office of the Attorney General (“OAG”) in March 2017. The project recommended was to consider and assess whether there is a need to regulate information sharing in Samoa and the Commission raised whether a Freedom of Information legislation would be appropriate for Samoa. The intention behind this proposal is to have in place a system that would enable effective and efficient sharing and exchange of ‘*official information*’ that is held or kept by Government ministries and agencies amongst each other. It is envisaged that open sharing of official information between Government ministries and agencies will enable access by all Government ministries and agencies to all the relevant information that will assist Government as a whole in making well-informed and sound decisions for the betterment and development of Samoa. This proposed project was confirmed by the OAG in May 2017, and the Commission proceeded with its preliminary research from June to December 2017.

1.7 At the outset, there was suggestion to consider a Freedom of Information legislation for Samoa to perhaps address the problem. However, at the preliminary stages of this review, having reviewed and considered other jurisdiction Freedom of Information (“FOI”) legislation and policies, the Commission was quick to be of the view that a FOI legislation or policy is not the practical option to address issues relating to information sharing between Government ministries and agencies. This is mainly because the main purpose of an FOI legislation or policy is to regulate **the right of the public and the media to access information held by Government ministries and agencies**. The Commission believes that access of the public and media to official information are equally important issues for a democratic government. However, given that the new Media Council Act 2015 has only just recently been passed and is yet to be effectively implemented, the time will come for such a framework, taking into account the Samoan context, the current priority needs of Government and the available resources.

1.8 In January 2018, the scope of the terms of reference (TOR) was narrowed down as follows:

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<sup>8</sup> Media Council Act 2015, section 4.

1. To consider and assess issues on ‘exchange of information’ in Samoa between Government Ministries and agencies;
2. What laws and policies in place govern the ‘exchange of information’ between Government Ministries and agencies;
3. To consider similar laws and policies in other countries on ‘exchange of information’ between Government Ministries and agencies.
4. To provide suitable options for Samoa

## 2. PART I – THE EXISTING INFORMATION SHARING MECHANISMS

2.1 The Commission’s preliminary research reveals that there is a lack of clear procedures and regulations in Samoa regarding information sharing between Government ministries and agencies, therefore contributing to limited and poor information exchange.<sup>9</sup> Furthermore, a number of issues were identified:

### (i) Absence of a centralized data system:

- As identified by the Law and Justice Sector (“LJS”), there is a lack of a centralized hub for research and information within their own Sector.<sup>10</sup> As briefly mentioned above, this means a lack of accurate data and incomplete information which evidently restricts the amount of research and analysis that can be done to develop activities within the Sector to achieve their targeted goals as set out in its sector plans.<sup>11</sup>
- The development of the Auafa-Mau Database would be a first attempt at such centralized database for not only the LJS but for all other Government sectors as well. The Auafa-Mau Database aims to centralize crime statistics held by the relevant agencies to assist the management of work flow both within Ministries and between agencies in the LJS. The availability of such a centralized database for all sectors would enable open and easy information exchange amongst Ministries working towards common goals.
- This issue is also evident in other sectors such as the Education Sector. In its Plan 2013-2018, it discusses the lack of an integrated information management system in the Education Sector, or capacity in analysis, interpretation and use of data.<sup>12</sup> It also acknowledges the need to create information management system that will allow a nationwide sharing of education related information and data.<sup>13</sup> Again, the formulation and development of similar information sharing systems throughout all

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<sup>9</sup> Public Service Commission, “*The Public Administration Sector Plan for Samoa 2013/14 – 2017/18*”, 2013, p 34-35.

<sup>10</sup> Samoa Law and Justice Sector, “*Law and Justice Sector Plan 2012-2016*”.

<sup>11</sup> Samoa Law and Justice Sector, “*Law and Justice Sector Plan 2012-2016*”.

<sup>12</sup> Ministry of Education, Sports and Culture, “*Samoa Education Sector Plan, July 2013 – June 2018*” – *Improved Focus on Access to Education and Training and Quality Learning Outcomes*”, 2013, p27.

<sup>13</sup> Ministry of Education, Sports and Culture, “*Samoa Education Sector Plan, July 2013 – June 2018*” – *Improved Focus on Access to Education and Training and Quality Learning Outcomes*”, 2013, p27-28.



Government sectors would be beneficial as it will inform decision-making at all levels of Government.<sup>14</sup>

(ii) **Absence of individual Ministry Systems of information exchange**

- One of the issues identified in the experience of the Commission is that there is a lack of information exchange systems within the individual Government Ministries and agencies. In the absence of such information exchange system, when officers receive requests for information, they are hesitant to release and disclose the requested information because they are unsure whether such information can be disclosed. In some cases, the issue is the uncertainty or the lack of a clear process in releasing such information.
- In some ministries, there may be a system of information exchange, but such system only exists in practice without clearly set out procedures or guidelines that may be easier to follow. In such cases, different employees under different divisions (or division leaders) may have different steps of procedure of disclosing information/data requested. Some may be continuing an old practice/system of information while some may argue that such system has been updated/changed. If there are inconsistencies in practice in releasing of information from within the same ministry/agency, this may lead to disagreements with the requesting ministry due to the different processes used and followed by the officers of the same Ministry.

(iii) **Lack of up to date and accurate information records**

- The Commission's experience shows that the statistics and data received from some Government agencies are either incomplete or inconsistent<sup>15</sup> and therefore can be unreliable.<sup>16</sup>
- For example, the statistics provided by some Government ministries for the Alcohol and Drugs Reform projects<sup>17</sup> were inconsistent. Such inconsistencies may be due to poor information sharing between the relevant Government ministries when complaints are filed leading up to cases in the courts.<sup>18</sup> There is also a lack of proper and open communication amongst Government ministries who clearly share common functions and mandates, and it creates a weak link in the system of information sharing. Inaccurate and outdated information can also lead to lack of enforcement activities, as highlighted in the Commission's CEDAW project.<sup>19</sup> Accurate statistics/information will provide Government ministries and agencies, such as Ministry of Police, with

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<sup>14</sup> Ministry of Education, Sports and Culture, "Samoa Education Sector Plan, July 2013 – June 2018" – *Improved Focus on Access to Education and Training and Quality Learning Outcomes*, 2013, p 27-28.

<sup>15</sup> Samoa Law Reform Commission, "Alcohol Reform Report 15/16", 2016, pp3.

<sup>16</sup> Samoa Law Reform Commission, "Review of the Narcotics Act 1967 (Drugs Reform) Final Report 21/17)", December 2017.

<sup>17</sup> Samoa Law Reform Commission, "Review of the Narcotics Act 1967 (Drugs Reform) Final Report 21/17)", December 2017.

<sup>18</sup> Samoa Law Reform Commission, "Review of the Narcotics Act 1967 (Drugs Reform) Final Report 21/17)", December 2017.

<sup>19</sup> Samoa Law Reform Commission, "Samoa's Legislative Compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Final Report", August 2016, pp19.

the relevant information that will assist them with their activities. This will help them achieve their targeted goals set out in their sector plans and being well informed and aware of current circumstances and development, which would enable all relevant ministries and agencies to effectively take steps of improvement.

(iv) **Lack of collaboration**

- Having proper communication protocols and guidelines for information sharing within government is essential as it enhances interagency cooperation where appropriate.<sup>20</sup> It is highlighted in the Public Administration Sector Plan 2014 – 2019 that in Samoa, there is a need for Government ministries, agencies, and relevant stakeholders to develop and formulate such protocols and guidelines to enable information sharing that is efficient and effective.<sup>21</sup> The same Plan also reported that stakeholders in the tourism sector identified the need to improve coordination, information dissemination and engagement between Samoa Tourism Authority (STA), industry members and other stakeholders to further improve destination marketing.<sup>22</sup>

(v) **Delay in release of information**

- As a result of the lack of centralized systems, lack of collaboration, and lack of up to date and accurate information, there can be significant delays (of up to a year in some cases) in releasing the information requested. These delays have great impact on the performance and delivery of services of a requesting ministry or agency. Fortunately, these delays can be minimized if officers are better trained and made aware of their responsibilities and obligations in relation to the communication of information required by another ministry or agency to effectively carry out their functions. It is important to note however that some government ministries may have their own practices and procedures in place regarding the release and sharing of information. However, these practices and procedures may not necessarily align with each other, causing gaps in the exchange of information between ministries and agencies as each Ministry complies with its own procedures that may not be favorable to another Ministry.
- One of the reasons for the uncertainty is because Government ministries and agencies view the information they possess as their ‘private property’. This results in little to no information sharing amongst government ministries when the need arises. This mentality may be a result of the lack of understanding and awareness between officers/employees of the overlap and interdependency of their roles which all contribute to inform decision making throughout the Public Sector.

(vi) **Lack of Resources/Expertise/Training**

- It is acknowledged that Ministries may in certain cases be subject to confidentiality and are unable to release certain information. However, there

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<sup>20</sup> Public Service Commission, “*The Public Administration Sector Plan for Samoa 2013/14 – 2017/18*”, 2013.

<sup>21</sup> Ministry of Communications and Information Technology, “*Corporate Plan (2011-2014)*”.

<sup>22</sup> Ministry of Communications and Information Technology, “*Corporate Plan (2011-2014)*”.

is a need to identify which is confidential and particular to Ministries/agencies and what can be released as public information. As briefly mentioned above, another contributing factor to the breakdown in information sharing is the inadequacy of resources available and lack of relevant training for employees on managing (gathering, compiling, dissemination) information.

- It is a common challenge in most of the Commission's projects that there is a lack of capacity and resources (such as having an adequate database) to record and manage information. This leads to issues of inconsistent and incomplete information.<sup>23</sup> For instance, data received for the Commission's Sex Offenders Register Project were mostly raw data which the Commission was unable to systematically analyse. This is due to the lack of personnel to analyse such information before it is released.<sup>24</sup>
- In response to the above issue, it was noted in the *Strategy for the Development of Samoa* that capacity building for the officers together with effective mechanism in place to facilitate dialogue in information sharing and exchange between the Government, private sector and civil society, would help with Samoa's economic development.<sup>25</sup> The Samoa Tourism Sector Plan 2015 – 2019 acknowledges that in order to improve online content, training and attachments in information services to build capacity of STA staff, a thorough review of all information is required and identifying what can be released without impacting on the Ministry.<sup>26</sup> This may apply to all Ministries and agencies in all sectors as a first step towards achieving effective information sharing, that is for the relevant officers to have proper knowledge and complete records of all the information in their control or related to their respective functions and mandate, in order to be able to incorporate and deliver them when requested.

(vii) **Lack of knowledge on what information can be released and what must be kept**

- Central to the above issues is the question – do the offices and officers across the public sector know which information they have in their line of work they can release as requested by other offices, and which they cannot, due to for example, confidentiality rules? A sound understanding of the differences between the two must be clarified first within each office, and office training conducted accordingly.

### **3. PART II: CURRENT LAW/POLICIES ON INFORMATION SHARING**

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<sup>23</sup> Samoa Law Reform Commission, "Review of the Narcotics Act 1976 (Drugs Reform)", Final Report, December 2017.

<sup>24</sup> Samoa Law Reform Commission, "Sex Offenders' Register Final Report 16/16", May 2015.

<sup>25</sup> Ministry of Finance, "Strategy for Development of Samoa 2016/17 – 2019/20", December 2016, pp6.

<sup>26</sup> Samoa Tourism Authority, "Samoa Tourism Sector Plan 2014-2019", pp22.

3.1 At present, there is no national policy or legislation in place to regulate the exchange of information between Government Ministries and Agencies. The public sector seeks information and collect data through direct requests by one Ministry to the other on a needs basis, and Ministries set up their own standard communication systems to facilitate the sharing of information amongst themselves, again, on a needs basis. There are however, some laws and policies that regulate the way in which certain information is shared and disseminated amongst specific Government Ministries and agencies.

#### (i) Public Records Act 2011

3.2 Samoa has a Public Records Act 2011 (“Act”) which is aimed to regulate the custody, control, management, preservation and use of public records. In 2013, a National Archives and Records Authority (“Authority”) was established in 2013 under the Ministry of Education, Sports and Culture.<sup>27</sup> The functions of the Authority include:<sup>28</sup>

- Collection, preservation and conservation of archival collection;
- Strengthening public records management across all government Ministries, Authorities and Agencies;
- Providing of materials and maintaining equipment and facilities for the safeguarding of archival collection;
- Undertaking the development of Frameworks, policies and procedures;
- Strengthening the capacity of Archives staff to undertake work of the Archives Division.

3.3 The Authority is said to have completed digitization of the collections from the Ministry of the Prime Minister and Cabinet, however there is no record online of these resources. Also, the Authority does not have its own webpage, rather it operates under the MESC website which only provides basic information on the functions of the Authority.<sup>29</sup> The mandate of the Authority is to assist ministries, authorities and agencies to create and manage public information.

3.4 Overall, the legislation provides that the Authority is established for the purpose of keeping, managing and preserving the use of public records. **However, it does not regulate information sharing between Government Ministries and Agencies.**

#### (ii) Directives to Lawyers in Ministries and Public Bodies (Attorney General’s Directive 2015, No. 1) (“Directives”)

3.5 The Attorney General’s Office issued a Directive in 2015 (“the Directive”). This Directive applies to all lawyers (in house counsels) employed in Government Ministries. The Directive provides guidelines to assist correspondences between Ministries and the OAG in matters that require the legal advice from the OAG. The Directive is considered to be one of the existing mechanisms to assist the exchange of information among Government Ministries. However, like other available

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<sup>27</sup> Public Records Act 2011.

<sup>28</sup> <http://www.mesc.gov.ws/index.php/en/minister/about-us/divisions/national-archives-and-records-authority>, Ministry of Education, Sports and Culture website.

<sup>29</sup> <http://www.mesc.gov.ws/index.php/en/minister/about-us/divisions/national-archives-and-records-authority>, Ministry of Education, Sports and Culture website.

methods, it only binds in house counsels when exchanging information with AGO. It does not regulate the exchange of information between Ministries.

3.6 The Directive identifies the type of matters for referral to the AGO and the applicable process and timeframes for correspondences. Furthermore, the Directive requires in-house counsels to provide OAG with an overview and findings of a matter referred disclosing all relevant information and documents pertaining to the overview and the findings.<sup>30</sup> This information will then assist the OAG in formulating their advice.<sup>31</sup> It is important to note that all correspondences and advice between the Ministries and the OAG are exchanged in strict confidence.<sup>32</sup> Again, it must be noted that the Attorney General's Directive applies only to lawyers (in house counsels) employed in Government Ministries, and not to Ministries and **therefore does not extend to the rest of a Ministry's Divisions.**

### (iii) Cabinet Handbook:

3.7 In 2011, the Cabinet approved its "Cabinet Handbook 2011" ("Handbook"). The purpose of the Handbook is to provide general information on the role of Cabinet, how it operates and make policy decisions for the executive Government as a whole.<sup>33</sup>

3.8 The Handbook also serves as a guideline to the Public Service and other State service organizations on procedures to follow and apply in the preparation of their submissions to Cabinet. This is done for the purpose of improving the quality of policy support services to Cabinet.<sup>34</sup> In order for Cabinet to facilitate effective decision-making and carry out its constitutional mandate, the submissions provided (policy decisions, advices and implementation plans) must be accurate, up to date and well informed.

3.9 One of the main aims of the Handbook in the context of information sharing is to enable Cabinet to make policy decisions based on well-informed information and in line with Government strategic objectives and priorities, and they are able to provide full accurate information in support of their recommendations on policy options. Also, to ensure that any information papers given to Cabinet are complete and concise to allow them to make decisions efficiently.

3.10 Although the Handbook is considered helpful to all Government Ministries/Agencies and SOEs in identifying what information should be provided to assist Cabinet in carrying out its duties, it only goes so far as to require Ministries/Agencies/SOEs to follow such procedure for relevant submissions to Cabinet. It does not create an obligation on Ministries/Agencies or SOEs to apply the same procedures in the exchange of information between Ministries/Agencies and SOEs. In such cases, each Ministry/Agency would most likely follow their own

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<sup>30</sup> Attorney General's Office, "Directives to Lawyers in Ministries and Public Bodies 2015, no.1", 2015.

<sup>31</sup> Attorney General's Office, "Directives to Lawyers in Ministries and Public Bodies 2015, no.1", 2015, Directive 4.

<sup>32</sup> Above n, 30.

<sup>33</sup> Ministry of the Prime Minister and Cabinet, "Government of Samoa - Cabinet Handbook", 2011, p13.

<sup>34</sup> Ministry of the Prime Minister and Cabinet, "Government of Samoa - Cabinet Handbook", 2011, p13.

practices and timeframes, **which may not always suit the needs of the requesting Ministry/Agency.**

(iv) **Public Administration Sector Plan 2013/14 – 2017-2018**

3.11 Another instrument in place is the ***Public Administration Sector Plan (PASP)*** (“Plan”) which was developed with the aim to guide the Public Administration Sector towards quality and coordinated service delivery that is cost effective, efficient and transparent. This Plan aims to improve public confidence in Government through strengthening the integrity of public servants, systems and processes to support economic and social development in Samoa. It may also improve the reliance of one Ministry upon another to assist each other in the exchange of not only their services but the exchange of relevant information.

3.12 Although the PAS Plan is useful for the purposes of improving and opening dialogue between Ministries and the public, it does not directly address the exchange of information between Ministries, which is the focus of this paper. Also, some methods of communication and information exchange under the PASP, may assist in guiding the development of better open communication between Ministries. This can be done by adopting methods discussed under the PAS Plan, and altering them to suit the needs of inter-Ministry communication.

3.13 For example, under the PASP, there are activities that the PAS members/stakeholders are to carry out and implement in order to reach its goal of building the public’s confidence in the public servants and its systems in place. These activities include the reviewing of the public sector governance arrangement, awareness program for unified public sector integrity standards and the development of a complaints register for public sector<sup>35</sup> to name a few. In relation to improving inter-Ministry communication, we may look at similar activities like awareness on the need for better and unified communication standards that will apply to all Ministries/Government Offices/Agencies and may even consider a central Ministry or a body of Ministries to oversee complaints or any issues that arise in the exchange of information between Government Ministries and Agencies.

3.14 In addition, some lessons can be learnt from the development of the PASP to guide the development of any information exchange strategy for all Government Ministries. For example, it was discussed at one of the forums that one challenge faced is the lack of recognition of the PASP due to lack of awareness of the same – the relevant Ministries/Stakeholders had minimal understanding of PASP and their day to day work. Similarly, for information exchange between Ministries, a factor behind the lack of communication and information sharing amongst Ministries, may be that the Ministries do not recognize their inter-dependence and reliance on each other, or lack of proper methods of communication or a lack of understanding that information can be shared to help each other to effectively and efficiently carry out their statutory functions.

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<sup>35</sup> Above n, 9, p7.

## (v) Communication Strategy 2015

- 3.15 As mentioned above, one of the key challenges identified in relation to the PASP is its low recognition and ineffective communication among the implementing agencies, lead agencies and steering committees. Subsequently, the key stakeholders had minimal understanding on the link of the PASP and the work of their respective agencies. As a result, a communication strategy was developed to assist in the implementation of the PASP strategies through promotion and coordination.<sup>36</sup>
- 3.16 In 2015, a *Communication Strategy* was developed by the Public Administration Sector Coordination Division (PASCD) under the Public Service Commission (PSC) as further guidance on the dissemination of relevant information to inform the public on what the Government is doing, its processes and policies approved by Cabinet (as under the Cabinet Handbook).
- 3.17 The Communication Strategy is purposed to:
- i. generate awareness of key stakeholders of the PASP;
  - ii. promote, encourage and significantly improve dissemination of information across the different sectors;
  - iii. engage stakeholders and improve partnership that will promote participatory approach in building effective partnerships;
  - iv. enable leadership support (to attain accurate information); and
  - v. influence national, regional and international stakeholders (to inform development partners of challenges and opportunities of the sector).
- 3.18 This Communication Strategy will be guided by these underlying principles:
- i. delivering relevant communications that is tailored towards the stakeholders' needs;
  - ii. producing communications that are designed on fact-based information and delivered openly;
  - iii. communications to contain and deliver consistent key messages;
  - iv. communications that promote a culture of knowledge sharing and learning; and
  - v. communication related decisions to be in line with government approved policies and fit within existing standards and legislation.<sup>37</sup>
- 3.19 As stated above, this strategy aims to encourage ministries and all government agencies to utilize communication methods to disseminate information to each other on a regular basis, to enable the analysis and organization of information that needs to be communicated to continue building partnership. This Strategy aims to contribute to the successful implementation of the PASP strategies and activities through effective promotion and coordination. The Communication Strategy although directed at a limited scope of matters, may still aid the development of an overall national policy that will govern information sharing amongst all Government Ministries/Agencies. It may provide guidance as to which methods of communication have been proven effective for the exchange of particular

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<sup>36</sup> Public Service Commission, *"Public Administration Sector Plan (PASP) 2013/14 – 2017/18 – Communication Strategy"*, 2017, p4.

<sup>37</sup> Public Service Commission, *"Public Administration Sector Plan (PASP) 2013/14 – 2017/18 – Communication Strategy"*, 2017, p6.

information on various matters and whether these methods of communication will be incorporated into a proposed national policy. For example, information that should be openly available to each other are to be accessible either via social media or websites, and which information are to be left in the custody of the holding Ministry/Agency until a formal request is provided by another Ministry/Agency.

3.20 Again, as with other policies and strategies discussed above, the PASP and the Communication Strategy 2015 are developed for specific and more limited matters, between the Public Service Commission and specific authorities/ministries. Its scope will not have much effect when trying to implement and encourage information exchange of more general matters for all relevant Ministries and agencies. It is therefore timely that Samoa considers the development of an overarching national policy or legislation that will provide for and address in totality, the issues of information sharing between Government Ministries and agencies in Samoa.

#### (vi) Law and Justice Communication Strategy

3.21 This strategy set out to improve communication between the Sector agencies and the community. Initially created in 2012, this Strategy is currently reviewed by the Sector Secretariat. This review will focus on the following matters:

- i. Identifying the Sector's target audiences;
- ii. The Sector's key communications objective;
- iii. Identify priorities for the improvement of Sector communications;
- iv. Identify further communications planning required; and
- v. Provide for evaluation of this communication strategy.

3.22 The review will ensure that the strategy addresses the following 3 shared outcomes of the LJS plan of 2016/17 – 2019/20:

- i. Safer Communities – The strategy aims to contribute to safer communities by informing the community of the role of the justice system in our society. The Sector also aims to engage with the community by promoting involvement in the Sector's community outreach programmes;
- ii. Access to Justice – The strategy aims to increase the visibility of the Sector in the community by publicizing the Sector activities, successes, programmes and performances; and
- iii. Maintaining integrity and good governance – This strategy endeavours to promote the integration between customary and formal justice systems.

3.23 This strategy is guided by the following communications principles:

- i. Communication is a shared responsibility and requires cooperation and contribution from all Sector agencies. This will require a designated person from each agency to manage communication. Such a person is to ensure that correspondence between the Sector agencies should be addressed in a timely manner. The agencies are to ensure that their information is accurate and are to assist the public in accessing law and justice services.
- ii. The Steering Committee for Communications Sub-Committee, if applicable shall lead the development and be responsible for Sector-wide communication products, such as a quarterly newsletter that will inform activities and



projects of all Sector agencies. This committee is to ensure that communications across the Sector are consistent with the Sector goals, objectives and priorities.

- iii. To ensure consistency of information all Sector-wide external communication shall be approved by the Steering Committee, as they are the face of the Sector.

#### (vii) Memorandum of Understanding (MOU)

3.24 The Attorney General's Office confirms their use of a MOU to exchange information between itself and the other party or parties to the MOU. It was further clarified that under a MOU, exchange of information is subject to the strict terms and conditions under which such exchange is to take place. For instance, only the information identified in the MOU is to be exchanged. Such information is also to be exchanged in the manner or in such a way or for the purpose provided for in the MOU. Any information subject to confidentiality that was disclosed by each signatory to the MOU is protected against further disclosure to a third party without the approval/consent of both parties by a confidentiality clause under the MOU.

**This is between two or more parties and may not be conducive to be applied across the Ministries.**

## 4. PART III: INFORMATION SHARING IN OTHER JURISDICTIONS

### Tonga

4.1 In Tonga, there is no specific policy or legislation on the exchange of information between its government bodies, but it has a Freedom of Information (FOI) Policy 2012 which provides for the sharing and making available of official information to and for the public.

4.2 Official information dealt with is any information that is held by:

- a Ministry or Department or Public Body;
- a Minister in his/her official capacity.

4.3 These do not include information:

- held by other non-public bodies other than on behalf of the public body or Minister; and
- contained in communications and correspondence between public bodies on behalf of Minister and Department.

4.4 "*Information*" in Tonga includes anything by which words, figures, letters or symbols are recorded and may include a map, plan, graph, drawing, painting, recording, photograph; email or other types of digital information; and anything in which information is embodied and is capable of being reproduced.

4.5 Although Tonga's FOI promotes public accessibility to information held by the Government contrary to the aim of this paper, it may still be relevant to assist Samoa in considering the type of information to be subject to a policy framework for the regulation of inter-Ministry/Agency information exchange and communication.

#### *FOI bodies/authorities set up and regulation*

4.6 Tonga's FOI policy **established a specialized FOI unit** for Government dissemination of information and implementation of the FOI policy matters. There is also an Information Commissioner who provides guidelines for the FOI Unit and makes recommendations on the proposed changes to the policy and future legislation.<sup>38</sup> In addition to that, to further assist the FOI unit, **there are information officers within public bodies**, who are responsible for processing information requests and liaising with the FOI Unit.

#### *Disclosure and access to information*

4.7 There are **4 types of "information disclosure"** mentioned in Tonga's FOI Policy:<sup>39</sup>

1. *Required disclosure*: mandatory release of information required by law or enforceable under an agreement;
2. *Routine disclosure*: voluntary publication of Government information of interest to the public;
3. *Active disclosure*: voluntary release of information on request including release of information not normally sought by the public but where there is no public detriment in providing the information on request;
4. *Assessed disclosure*: the release of information after it has been assessed against defined limitations. In these cases, the presumption is in favour of release unless an agency can prove that it would be detrimental to the public interest.

4.8 In any request, it is not a requirement for a requestor to give reasons for a request or provide further details beyond those needed to identify and deliver the information.

4.9 The policy also provides for 3 different categories of **"access"**:<sup>40</sup>

1. *Automatic disclosure*: information that are published and available to the public;
2. *Proactive disclosure*: public authorities taking affirmative steps to make information public through publication schemes and media statements without waiting for requests;
3. *Access requests*: where information is made available upon request, unless exempt or excluded.

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<sup>38</sup> Rick Snell and Ministry of Information and Communication, "Kingdom of Tonga - Freedom of Information Policy", June 2012, p10.

<sup>39</sup> Rick Snell and Ministry of Information and Communication, "Kingdom of Tonga - Freedom of Information Policy", June 2012, p15.

<sup>40</sup> Rick Snell and Ministry of Information and Communication, "Kingdom of Tonga - Freedom of Information Policy", June 2012, p16.

### *Process of Applying<sup>41</sup> and Timeframes:*

4.10 There is no specific process of applying for information, but the requirements of making a request for information are provided.

4.11 Every request is required to be made in writing and directed to either the FOI unit through their website or office, or a request may be directed to the relevant public body and assistance of the FOI unit may be sought. Where a request is made directly to the public body, the information officers in that public body will notify the FOI unit as soon as possible.

4.12 In terms of responding to an application for information, the set timeframe is *10 working days* from the date of receipt of request. This timeframe may be extended in circumstances where significant search is required or where interests of third parties are affected. If information is not provided to the requestor as per the policy, an explanation is to be given to the requestor as soon as possible, within 10 working days.<sup>42</sup>

### *New Zealand*

4.13 Information sharing in New Zealand (NZ) includes the disclosure of information on an identifiable individual by one agency (or division) to another, particularly for reason not related to the purpose the information was originally provided/gathered for.<sup>43</sup> Accordingly, information can be shared between government agencies through establishing approved information sharing agreements (AISAs).<sup>44</sup> AISAs are the enabling instruments allowing government agencies to “collate and share information” without intruding/interfering with individual rights and exposing agencies to legal risk.<sup>45</sup> These agreements are those that are on-going which means that information can be shared between agencies on a weekly or daily basis and are governed by the *Privacy Act 1993*.

4.14 Some of the advantages of having AISAs in place include:<sup>46</sup>

- facilitating of agency co-operation and efficiency in shared public service delivery while meeting privacy expectations;
- it provides legal authority to share where there is a lack of authority or incomplete authority; and

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<sup>41</sup> Rick Snell and Ministry of Information and Communication, “*Kingdom of Tonga - Freedom of Information Policy*”, June 2012, p21-22.

<sup>42</sup> Rick Snell and Ministry of Information and Communication, “*Kingdom of Tonga - Freedom of Information Policy*”, June 2012, p22.

<sup>43</sup> Privacy Commissioner, “*An A to Z of Approved Information Sharing Agreements (AISAs)*”, 2015 <https://privacy.org.nz/assets/Files/AISAs/Approved-Information-Sharing-Agreement-guidance-March-2015.pdf>.

<sup>44</sup> Agreement between or within agencies that enables the sharing of personal information (whether or not the sharing also includes information that is not personal information) to facilitate the provision of a public service. See section 96C Privacy Act 1993.

<sup>45</sup> Above n, 43.

<sup>46</sup> Above n, 43.

- provides certainty and assurance for agencies about how information will be protected, reported and deleted.

4.15 For information that is not personal information specific to any individual, these are usually shared more generously between agencies. For requests for information about a government agency, it would be considered a request under the *Official Information Act 1982* and would be dealt with under that Act.

4.16 In addition to these already existing mechanisms regarding information sharing, Government ministries in NZ are striving to find other ways in which information sharing can be further improved in order for them to provide a better service to the public. For instance, in relation to the ongoing reforms regarding child protection, the relevant Ministry is aiming to create an information sharing framework to guide organizations and professionals involved and linked to child protection matters when sharing information if they have concerns about immediate or long term safety of a child. Some of the vital points of this approach are as follows:<sup>47</sup>

- encourage proactively sharing information;
- protect professionals when sharing information in good faith; and
- giving the Ministry for Vulnerable Children, Organa Tamariki, the power to require information sharing.

## Australia

### Federal

4.17 In 2015, the Australian Federal Government issued a policy statement in regards to Public Data Sharing (Statement). The Statement provides that invaluable data held by the Australian government holds considerable value for growing the economy, improving service delivery and transforming policy outcomes of the nation.

4.18 Such *data* referred to covers all data collected by government entities for any purposes including, government administration, and research or service delivery. The Statement provides that data held by government bodies especially non-sensitive data<sup>48</sup> should be made available by default. Furthermore, it is provided that the government bodies should ensure that guidelines and polices are put in place to ensure the security of information shared. It was also emphasized that a culture of trust and collaboration between entities should be fostered and that in order to ensure greater efficiency, data-sharing arrangements need to be carried out through a letter of exchange between entities (rather than memorandums of understanding or deeds of arrangement).<sup>49</sup>

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<sup>47</sup> N.B this proposed framework was announced by NZ's Minister of Justice and the Minister of Social Development; <https://nzfvc.org.nz/news/government-announces-information-sharing-framework>.

<sup>48</sup> Non-sensitive data is anonymised data that does not identify an individual or breach privacy or security requirements.

<sup>49</sup> Australian Government, "Australian Government Public Data Policy Statement", 2015 [https://www.pmc.gov.au/sites/default/files/publications/aust\\_govt\\_public\\_data\\_policy\\_statement\\_1.pdf](https://www.pmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf).

4.19 The streamlining of data sharing processes for government entities will enable greater efficiencies and improve decision making for policy and implementation processes. In freely sharing data, again, it is important to have in place safeguards to ensure that the highest standards of security and privacy for the individuals, national security and commercial confidentiality is upheld.<sup>50</sup>

## South Australia

4.20 In South Australia, the *Public Sector (Data Sharing) Act 2016* (PS (Data Sharing) Act) regulates the sharing of information between public sector agencies. The PSDSA was enacted to facilitate the sharing of data between public sector agencies; to provide for the sharing of data between public sector agencies and other entities; and to provide for an Office of Data Analytics; and for other purposes.<sup>51</sup>

4.21 Briefly, the PSDSA is divided into the following 7 parts.

*PART 1 – Preliminary:* generally provides for standard short title, commencement and interpretation of terms in the Act.

The PSDSA defines *data* as any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analyzed or processed (whether by an individual or by a computer or other automated means). Other important definitions include *data provider*, *data recipient*, *exempt public data* and *data sharing safeguards*.

*PART 2 – Objects and interaction with other Acts:* sets out the objectives of the Act in relation to promoting information sharing in the public sector and the relationship of the Act to other legislation. Some of the objectives of the PSDSA are:<sup>52</sup>

- (a) to promote, the management and use of public sector data as a public resource that supports good Government policy making, program management and service planning and delivery (in accordance with the trusted access principles and the data sharing safeguards); and
- (b) to remove barriers that impede the sharing of public sector data between public sector agencies; and
- (c) to facilitate the expeditious sharing of public sector data between public sector agencies; and
- (d) to provide protections in connection with public sector data sharing under the Act by:
  - i. specifying the purposes for, and the circumstances in which, public sector data sharing is permitted or required; and

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<sup>50</sup> Australian Government, “*Australian Government Public Data Policy Statement*”, 2015, [https://www.pmc.gov.au/sites/default/files/publications/aust\\_govt\\_public\\_data\\_policy\\_statement\\_1.pdf](https://www.pmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf).

<sup>51</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Long title.

<sup>52</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), Section 4.

- ii. ensuring that public sector data held by public sector agencies shared under this Act continues to be protected from unauthorized use or disclosure; and
  - iii. ensuring that data providers retain responsibility for the release of public sector data outside the public sector under the *Freedom of Information Act 1991*; and
  - iv. requiring compliance with data sharing safeguards in connection with public sector data sharing; and
- (e) to provide for the Minister to enter into data sharing agreements with certain entities.

**PART 3 – Office for Data Analytics:** provides for the establishment and designation of an Office for Data Analytics (ODA) to undertake analytical work on public sector data received from across the whole of Government and makes results of data analytics work available to the public sector, private as well as the general public as ODA sees fit. The ODA according to the law may be a designated public sector agency, or part of a public sector agency.<sup>53</sup> The carriage of the functions of ODA will be in line with requirements and limitations of power of ODA set out by the Minister.<sup>54</sup>

**PART 4 – Facilitating public sector data sharing:** provides for *trusted access principles* to be applied in facilitating public sector data sharing, which set out circumstances when information may or may not be shared depending on:

- the purpose for which data is proposed to be shared and used – must be necessary and appropriate and is of value to the public (*safe project*)<sup>55</sup>;
- proposed data recipient – that they are aware of the risks of unnecessary use of data (*safe people*)<sup>56</sup>;
- whether the content of data to be shared and used contains any personal information or any other sensitive information relating to privacy and commercial matters that must be protected (*safe data*)<sup>57</sup>;
- whether the environment in which the data is to be stored, accessed and used is appropriate (*safe settings*)<sup>58</sup>;
- the publication or disclosure of the results of the data analytics work on the data shared does not put anyone or anything at risk (i.e. breach of confidentiality) (*safe outputs*).<sup>59</sup>

**PART 5 – Data sharing safeguards:** As concerns over risks associated with data sharing are inevitable, the law also contains provisions that safeguard data sharing

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<sup>53</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), Section 6.

<sup>54</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 6.

<sup>55</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 7(2).

<sup>56</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 7(3).

<sup>57</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 7(4).

<sup>58</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 7(5).

<sup>59</sup> *Public Sector (Data Sharing) Act 2016* (South Australia), section 7(6).

among public sector agencies. These include provisions on confidentiality and commercial-in-confidence, data custody and control safeguards and other data sharing safeguards.

*PART 6 – Minister may enter data sharing agreement:* covers matters in relation to the authority of the relevant Minister to enter into data sharing agreements with other relevant entities, and such agreements may be subject to conditions as agreed between the Minister and such entity. There are also cases where the Minister may direct a public sector agency to provide public sector data that it controls, including those that are exempted from disclosure to be provided to another public sector agency.<sup>60</sup> The direction by the Minister must publish notice of this in the Gazette, and also before Parliament within 6 sitting days after making such direction.<sup>61</sup> The power of the Minister can be delegated.<sup>62</sup> Another matter to be noted is that in situations where data or information is shared by a person dishonestly, that person is not liable to any civil or criminal suit but the Government. Where such person is a member of a body corporate then the body corporate is liable.<sup>63</sup>

*PART 7 – Miscellaneous:* deals with other matters including restriction of further use and disclosure of public sector data, delegation of powers of Minister, personal liability and regulation making power. To ensure practicality of the law, there is a requirement for its review after 3 years of its inception.<sup>64</sup> This review assesses the inefficiencies of the law and provides findings as to how it can be better improved.

## New South Wales

4.22 In 2015 the NSW government passed the *Data Sharing (Government Sector) Act 2015* (“Data Sharing Act 2015”) which deals with the sharing of government sector data with a government data analytics Centre and between other government sector agencies and also addresses the privacy and other safeguards that apply to the sharing of such data.<sup>65</sup>

4.23 A brief outline of the Data Sharing Act 2015, it is divided into 4 concise parts.

*PART 1 – Preliminary:* provides for the standard preliminary matters such as commencement, the objects of the Act and an interpretation clause providing definitions of relevant terms used throughout the Act.

Similar to South Australia, the NSW Act serves similar *objectives* such as promoting the protection of privacy as an integral component, the management

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<sup>60</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Section 9.

<sup>61</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Section 9.

<sup>62</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Section 15.

<sup>63</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) section 16.

<sup>64</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Section 19.

<sup>65</sup> *Data Sharing (Government Sector) Act 2015* (NSW) Long title.

and use of government sector data as a public resource that supports good Government policy making, program management and service planning and delivery, and to remove barriers that impede the sharing of government sector data, and to provide protections in connection with data sharing.<sup>66</sup>

*Data* is defined under the NSW law to mean any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).<sup>67</sup> *Government sector data* is also defined to mean any data that a government sector agency controls, but does not include data of a kind excluded by the regulations.<sup>68</sup>

Similar to South Australia, there is also established under this Act a central body called the Data Analytics Centre (DAC) (or any other prescribed body).

*PART 2 – Facilitating government sector data sharing:* facilitates government sector data sharing through either voluntary data sharing with DAC or between other government sector agencies. In addition to voluntary information sharing, the Act provides for situations where the Minister can provide direction for government sector agencies to provide information to DAC or to another government agency.<sup>69</sup> These enable effective policy making, program management and service planning. Recipients of any data shared are subject to safeguards that are also provided under the law.<sup>70</sup>

*PART 3 – Data sharing safeguards:* Furthermore, the Act provides for Data sharing safeguards (similar to South Australia) that protects privacy and confidentiality of health, personal and commercially sensitive information. There are also safeguards in the custody and control of information shared and received between government agencies.<sup>71</sup>

*PART 4 – Miscellaneous:* Other matters provided for include provisions on reporting by the Secretary of Department about compliance, delegation of any function of the Minister in the Act and regulation making power of the Governor. The Act also contains a requirement for it to be reviewed after a period of 5 years from date of assent to ensure the Act objectives remain valid.<sup>72</sup>

## Western Australia

4.24 In 2003, a Seniors Officers' Group in Western Australia developed a policy framework (Policy) for information sharing between agencies. The Policy aims that

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<sup>66</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* section 3.

<sup>67</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* Section 4(1).

<sup>68</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* section 4.

<sup>69</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* Section 7.

<sup>70</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* Section 6.

<sup>71</sup> *Data Sharing (Government Sector) Act 2015 (NSW)* Section 11-14.

<sup>72</sup> *Data Sharing (Government Sector) Act 2015 (NSW)*, Part 4 (sections 16 – 20).



through the effective sharing of information between government agencies it will assist to:<sup>73</sup>

- *Improve community outcomes* - By working collaboratively to tackle complex issues, agencies can achieve better outcomes for the community e.g. prevention and early intervention in crime; assistance in areas of health or family development;
- *Improve client outcomes* - Some examples include assisting families who may be experiencing multiple problems such as housing issues; children who are not coping at school; and adolescent/parent conflict.
- *Better coordinated services* - Information sharing will improve communication and the flow of information between the Government and service providers in working together to establish organizational arrangements that promote the most effective and efficient use of services, minimize duplication and streamline access.

4.25 The Policy further provides for principles of sharing information to ensure that information shared is carried out within the limits of the law and that processes and procedures are implemented.<sup>74</sup> Furthermore, such procedures should recognize the importance of privacy as well as information that would be considered confidential.<sup>75</sup>

4.26 In order to achieve the overall aim of effective information sharing among government bodies, the Policy considers several enablers and strategies for implementation. These include the following:<sup>76</sup>

- *Implement a Policy Framework and Standards* – This will provide for a framework in which information can be shared between government bodies and also standards that need to be followed to protect sensitive information.
- *Memorandum of Understanding (MOU)* – Having MOU’s will set out a structured process for information sharing, enabling officers to exchange defined information to the full extent permitted by current legislation. These will assist in improving services while protecting the rights of clients and government officers. MOUs are to be signed by CEOs and any arrangements made under these MOUs should be consistent with legislative provisions. A structured MOU may have application in a wide variety of circumstances, but does not preclude appropriate informal information sharing arrangements. However, where possible, agencies should work towards formalizing any unstructured arrangements.

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<sup>73</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

<sup>74</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

<sup>75</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

<sup>76</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

- *Having specific provisions in some legislation to support specific MOUs* – There are some legislation in Western Australia that regulate and control the sharing of information.
- *CEO endorsement of MOUs* – The endorsement of the CEO of MOUs to share information will also help assist with the implementation of a conducive information sharing environment among government bodies.

4.27 When sharing information, the Policy also provides standards for managing the sharing of information that may be sensitive and should be subject to confidentiality e.g. personal information and commercially sensitive information. Therefore, in all cases, government agencies have a duty of care in managing that information regardless of which agency generated the information in the first instance.<sup>77</sup>

4.28 Some of the issues that need to be considered in relation to standards for sharing and collecting information include:<sup>78</sup>

- Consideration given to legal provisions that apply to information sharing – it is vital that government bodies when sharing information are aware of the legal provisions and those contained in common law that allow and/or restrict information sharing.
- Needs analysis - Agencies should undertake an analysis of the need for the information sharing, and its benefits and costs. Information should only be exchanged where there is demonstrated need, and the perceived benefits clearly outweigh any privacy issues.
- Minimum information exchanged - The minimum amount of information should be shared to achieve the required results, and agencies should ensure that the information shared is necessary for the primary purpose for which it was collected.
- Equitable and fair treatment of clients – person whose information is to be shared need to be treated in an equitable and fair manner. This will avoid the risk of disclosing confidential and private information that would not be necessary and is contrary to the purpose in which the information was requested.
- Rights and obligation observed – in addition to treating shared information fairly, it is important that the rights of those that the information pertains to is observed. Obligations of bodies who share information should also be observed to ensure that information are not passed on to a third party agency by the recipient of such information for instance.

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<sup>77</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

<sup>78</sup> Senior Officers Working Group, “Policy Framework and Standards – Information Sharing between Government Agencies,” 2017, [http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf).

## United Kingdom

4.29 As will be seen in the discussions below, the UK has the following mechanisms regulating information sharing across the public sector:

- i) *Legislation – enabling provisions/ gateways*
- ii) *Policy*
- iii) *Information sharing agreements (ISA)*

4.30 In a UK Law Commission Consultation Paper No 214 - DATA SHARING BETWEEN PUBLIC BODIES it was highlighted that public bodies collect large amounts of data from individuals and other organisations in the exercise of their various functions and share these data with other public bodies.<sup>79</sup>

4.31 Some of the advantages of data sharing as documented includes:<sup>80</sup>

- i. Informed policy-making and improved provision of public services
- ii. Emergency planning and response
- iii. Research and the knowledge-based economy
- iv. Efficiency and cost effectiveness
- v. Transparency

4.32 When sharing information in the UK, it is important for agencies to know and be aware whether they have the power to do so. Broadly speaking, when sharing information between public bodies there are three ways in which they may do so:<sup>81</sup>

- i.** *Express obligations* – Occasionally, a public body will be legally obliged to share particular information with a named organisation. This will only be the case in highly specific circumstances but, where such an obligation applies, it is clearly permissible to share the information.
- ii.** *Express powers* – Sometimes, a public body will have an express power to share information. Again, an express power will often be designed to permit disclosure of information for certain purposes. Express statutory obligations and powers to share information are often referred to as “gateways”.
- iii.** *Implied powers* – Often, the legislation regulating a public body’s activities is silent on the issue of data sharing. In these circumstances, it may be possible to rely on an implied power to share information derived from the express provisions of the legislation. This is because express statutory powers may be taken to authorize the organisation to do other things that are reasonably incidental to those which are expressly permitted. To decide if you can rely

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<sup>79</sup> UK Law Commission Consultation Paper No 214 DATA SHARING BETWEEN PUBLIC BODIES, See chap 1 –p. 1.

<sup>80</sup> UK Law Commission Consultation Paper No 214 DATA SHARING BETWEEN PUBLIC BODIES, See chapter 2, p.13-16.

<sup>81</sup> Jenny Spiers, “UK NHS Information Sharing Policy – personal information”, June 2016, <https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf>.

on an implied power, you will need to identify the activity to which the proposed data sharing would be “reasonably incidental”, and then check that the organisation has the power to engage in that activity.

4.33 In 2013, the UK Law Commission published a Consultation Paper on *Data Sharing between Public Bodies* to investigate the root causes of the reported obstacles to data sharing between public bodies.<sup>82</sup> Overall, it was highlighted that there are problems with the form of the law relating to data sharing that could usefully be addressed. The UK Law Commission also found evidence of problems which are not directly due to the form of the law, but could be alleviated by law reform. The Report also made note of the importance of the protection of privacy to any data sharing regime.<sup>83</sup>

4.34 There are several policies, protocols and legislation that regulate and control the sharing of information between government bodies. In the context of personal information, there is no single source of law that regulates the powers that a public body may use to share such information.<sup>84</sup>

#### (i) Legislation – enabling provisions/ gateways

4.35 Some of the primary legislation of the UK contain express provisions or gateways enabling government bodies to share information with one another. Such provisions may also provide for the creation of further powers to share information under subordinate legislation.<sup>85</sup> For example, section 47 of the Statistics and Registration Service Act 2007, gives the power to the Minister of the Cabinet Office to make regulations for the purpose of authorizing a public authority to disclose information to the Statistics Board where the disclosure would otherwise be prohibited by law or the authority would not otherwise have power to make the disclosure.<sup>86</sup> Sometimes these enabling provisions or gateways tend to be permissive, creating a discretion to share information, but not an obligation. For example, under the UK Serious Crime Act 2007, s 68 permits the disclosure of information to prevent fraud: “A public authority may, for the purposes of preventing fraud or a particular kind of fraud, disclose information as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation.”<sup>87</sup>

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<sup>82</sup> UK Law Commission Consultation Paper No 214 DATA SHARING BETWEEN PUBLIC BODIES, See chap 1 – p.1.

<sup>83</sup> The Law Commission (LAW COM No 351) DATA SHARING BETWEEN PUBLIC BODIES: A SCOPING REPORT– p.1.

<sup>84</sup> Jenny Spiers, “UK NHS Information Sharing Policy – personal information”, June 2016, <https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf>.

<sup>85</sup> UK Law Commission Consultation Paper No 214, “DATA SHARING BETWEEN PUBLIC BODIES”.

<sup>86</sup> See, for example, Statistics and Registration Service Act 2007 (Disclosure of Pupil Information) (England) Regulations 2009, SI 2009 No 277. The Law Commission (LAW COM No 351) DATA SHARING BETWEEN PUBLIC BODIES: A SCOPING REPORT– p.8.

<sup>87</sup> The Law Commission (LAW COM No 351) DATA SHARING BETWEEN PUBLIC BODIES: A SCOPING REPORT– p.8.

## (ii) Policy

4.36 The UK National Health Service (NHS) developed an Information Sharing Policy to:<sup>88</sup>

- (a) provide a framework for NHS England and those working on its behalf to provide information to deliver better care and consider the controls needed for information sharing; and
- (b) establish a mechanism for the exchange of information between NHS England and other organisations.

## (iii) Information sharing agreements (ISA)

4.37 ISA's sometimes known as 'Information or data sharing protocols' can be set up by agencies to facilitate the sharing of information among themselves. These protocols set out a common set of rules to be adopted by the various organisations involved in an information sharing operation. These could well form part of a contract between organisations. It is good practice to have a data sharing agreement in place, and to review it regularly, particularly where information is to be shared on a large scale, or on a regular basis. Features of these agreements include:<sup>89</sup>

- i. the purpose, or purposes, of the sharing;
- ii. data quality – accuracy, relevance, usability;
- iii. retention of shared data;
- iv. any particular obligations on all parties to the agreement, giving an assurance around the standards expected; and
- v. sanctions for failure to comply with the agreement or breaches by individual staff.

4.38 Where information sharing is between “trusted organisations” for specific purpose such as caring for patients etc. agreements are not necessary. The policy further provides for monitoring procedures in relation to compliance with agreements and practices set out and agreed to between government agencies sharing information with one another.<sup>90</sup>

## ANALYSIS

4.39 From the above discussions, the countries considered have adopted various approaches and methods to allow, enable or limit information exchange amongst public bodies / ministries / government agencies. The common options of methods of information exchange utilized include:

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<sup>88</sup> Jenny Spiers, “UK NHS Information Sharing Policy – personal information”, June 2016, <https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf> para 3.1.

<sup>89</sup> Jenny Spiers, “UK NHS Information Sharing Policy – personal information”, June 2016, <https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf> para 5.1-5.2.

<sup>90</sup> Jenny Spiers, “UK NHS Information Sharing Policy – personal information”, June 2016, <https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf> para 9.1-9.2.

(i) *Development of an Act/Law that defines and sets out the following:*

- types of official information that is required to be communicated to government bodies;
- terms and conditions of such exchange to ensure the confidentiality and security of information is observed by all users;
- establishment of relevant bodies to further aid and enable information exchange.

4.40 This is the approach taken by South Australia with the enactment of its *PS (Data Sharing) Act 2016* and New South Wales with its *Data Sharing Act 2015*. These laws (amongst other information sharing laws in Australia) have enabled the sharing of data between public sector agencies and to further assist such communication. In addition, they have helped to remove barriers that hinder and delay the exchange of information between government agencies. The Acts have assisted with expeditious sharing of public sector data as they clearly set out safeguards and guidelines for information sharing. These safeguards include setting out the purpose and circumstances in which data sharing is permitted, as well as ensuring that data shared is protected at all stages of the communication, to ensure security of individuals, the public sector agencies as well as for national security purposes.

4.41 The Australian laws referred to are very recent (as evident from their years of enactment). In comparison to older legislation in place in New Zealand such as the *Privacy Act 1993* and *Official Information Act 1982*, it can be said that there is a shift in the trend and approach to data sharing. The older approach seems to have been focused on limiting, withholding and keeping official information safe, whereas the new approach now focuses on enabling easier, open and expeditious information sharing with safeguards in place to control and regulate the sharing of data/information. The recent trend taken by Australia may enable Samoa to experience similar benefits seen by Australia, such as expeditious sharing of public data when needed by each ministry or agency to guide decision making.

4.42 Samoa may consider looking at the disclosure of data that an agency controls including those that are exempted from disclosure. The laws of Australia allows for the delegation of such power. It would be wise to consider if Samoa wants to adopt a similar approach and whether this would be the best approach for Samoa, taking into account contextual differences of Samoa and the relevant States of Australia.

4.43 Overall, it may be useful for Samoa to explore whether a standalone legislation would address issues relating to exchange of information. Although an Act would be legally enforceable and would assist greatly in requiring information exchange, successful implementation and enforcement could be a challenge, and there must be willingness to coordinate resources for effective implementation.

(ii) *Development of Policy that provides for similar matters as in the Acts discussed above.*

4.44 This is the method adopted by Australia with its Public Data Sharing Statement (Policy Statement) as well as Tonga with its FOI Policy in place. These policies

provide for similar requirements of information sharing as in South Australia and NSW such as defining data to be shared, the need for guidelines and the emphasis on the need to ensure security and protection of data and information that is shared.

4.45 This policy would eventually inform a law, if a law is to be adopted. A Policy may be a better option to start with, as it would be more flexible to be amended and altered to provide and cater for different circumstances that may arise following its implementation. On the other hand, this flexibility may also be a disadvantage as it may open door for too many amendments and alterations that may lead to uncertain and unclear standards and requirements for information sharing. Moreover, it is important to consider which agency would be at the forefront of the formulation of a policy, so they can oversee the application of the policy as well as compliance by the relevant public sector agencies.

*(iii) The use of Agreements, MoUs and Letters of Exchange to set out particular conditions of information sharing among specific bodies/agencies.*

4.46 This is the approach taken by New Zealand, some States in Australia and the United Kingdom.

4.47 In New Zealand, information sharing is done by way of Agreements between the relevant agencies. This has proven effective as these Agreements provide authority to share and exchange information where there would be no express law to provide for such. Also, having specific Information Sharing Agreements, it allows the ministries / agencies involved to collate and share information with specified terms and conditions that ensure the security and confidentiality of information shared. This allows for flexibility as these Agreements may be altered to suit the needs of each exchange taking into account the type of information that is exchanged.

4.48 A similar approach is provided for under some legislation of Samoa, for example, the *Tax Information Exchange Act 2012*. However, the issue in Samoa is that such approaches are under-utilized due to lack of awareness of these options and lack of training to effectively utilize these methods under the relevant laws.

4.49 In addition to Agreements, there is the option of proceeding with MOUs (as provided for under Western Australia's policy). This method could be utilized similar to Agreements utilized by the Attorney General's Office in Samoa and in New Zealand. It is important to note though in relation to Agreements and MOUs, the need to ensure the relevant authorities (in most cases if not all – CEOs) are aware of terms and conditions of any information exchange that they sign, to ensure the goal of securing and protecting information shared is upheld at all stages and at all times.

4.50 In Australia, its Policy Statement refers to the use of letters of exchange between entities to enable information sharing rather than MOUs or Agreements.

4.51 In all of the above methods used by these countries, the common aim and goal of all these methods is to find ways to enable and allow open exchange of information that provides safeguards to ensure that security and confidentiality of such information is upheld at all stages of communication. One way to achieving this, is by equipping relevant officers with skills, knowledge and resources to properly communicate and disseminate information when required.

## 5. PART IV: DISCUSSION QUESTIONS

5.1 In order for the review to be informed entirely by the input of the stakeholders, the following discussion questions are in place and the Commission looks forward to your responses and input.

### DISCUSSION QUESTIONS:

#### Ministry/SOE as request/or

1. In your line of work, do you at times require information/data from another Ministry?
2. Have these been readily provided to you upon request and have they been complete, relevant and timely?
3. In practice, what is the best way to obtain information from another Ministry? (e.g. formal letter, formal email)
4. Do you believe the information you require should be freely given for a productive work output on your side?

#### Ministry/SOE as request/ee

5. Does your Ministry/Office have information that is frequently requested by other Ministries for their work?
6. Is there information/ data that can be shared with another government agency? Is there certainty in your Office on this?
7. If yes to 6, is there a process you need to follow or do you need to seek authority?

#### General

8. What are the challenges/limitations (if any) which are associated with information sharing in your Ministry or organization?
9. How has your Ministry or organization addressed these issues?
10. In your view, what is the best way to share information in the public sector? (*PART IV provides options that may be helpful for your considerations*)

5.2 For the purposes of discussions, informed entirely by research on local and overseas material, the Commission has put in place some possible options in addressing the TOR.



## 6. PART V: FROM THE COMMISSION'S RESEARCH – OPTIONS FOR CONSIDERATION

5.1 The Commission's research reveals that there is no clear-cut framework to regulate information sharing in Samoa between Government Ministries and agencies. There are strategies and policies in place under certain Government sectors and Ministries but they relate to the sharing of information only between specific Ministries and the dissemination of information to Cabinet and the public. There is no specific framework to guide how information is to be shared between Ministries and agencies.

### OPTION 1- To have in place an overarching legislative framework

6.2 To ensure there is weight given in the regulation of across the public sector information sharing, Samoa may consider enacting a standalone overarching legislation, following South Australia *Public Sector (Data Sharing) Act 2016* and the *New South Wales Data Sharing Act 2015*. These laws regulate the sharing of data between public sector agencies and define 'data' in their laws. These laws have proven to remove barriers that hinder and delay the exchange of information between government ministries and agencies. They also provide for the establishment of a central body which is responsible to undertake analysis on public sector data received from across the whole of Government and to make result of such analysis to public sector agencies and the public as it sees fit.

6.3 The following is an outline for consideration. It is drawn from the laws of South Australia and New South Wales, with suggestions for a more relevant and contextual framework. This is subject to rigorous discussions and the Commission appreciates any views. :

Proposed Bill outline:

6.4 *Short Title and commencement*- Public Sector (Data Sharing) Bill 2018, and date of commencement

6.5 *Interpretation*- this part should consider defining terms such as 'data', 'data provider', 'data recipient', 'public sector agency', 'data sharing safeguards', 'personal data'.

6.6 *Office for Data analytics*- This part can establish or designate an existing Officer or Division in a Ministry or Corporation in Samoa who currently manages its own data and data to be shared with other public sector agencies. The roles of the relevant Officer or Division must be guided by the guidelines below.

6.7 *Guidelines for data sharing*- These guidelines or principles must be developed by each Ministry or Corporation to assist them with data sharing.

- the purpose for which data is proposed to be shared and used – must be necessary and appropriate and is of value to the public (*safe project*);<sup>91</sup>
- proposed data recipient – that they are aware of the risks of unnecessary use of data (*safe people*);<sup>92</sup>
- whether the content of data to be shared and used contains any personal information or any other sensitive information relating to privacy and commercial matters that must be protected (*safe data*);<sup>93</sup>
- whether the environment in which the data is to be stored, accessed and used is appropriate (*safe settings*);<sup>94</sup>
- the publication or disclosure of the results of the data analytics work on the data shared does not put anyone or anything at risk (i.e. breach of confidentiality) (*safe outputs*).<sup>95</sup>

6.8 *Safeguards*- These include provisions on confidentiality and commercial-in-confidence, data custody and control safeguards and other data sharing safeguards.

6.9 *Data sharing agreements*- this part provides that the relevant Minister may enter into data sharing agreements with a relevant entity. This is suggested here as an option to and adopts the practice in Samoa in relation to the use of MOUs to share data.

6.10 *Miscellaneous*- this part provides for issues such as restriction on further use and disclosure of data, delegation powers, personal liability, regulation making power and the periodical review of the Act to ensure it remains practical for Samoa.

## OPTION 2 – Communication Data Sharing Policies

### (a) Communication Strategy 2015 (PASP) (Across the Public Service - Administered by PSC)

6.11 If we are to adopt and extend an existing mechanism, we could look at the current PSC Public Administration Sector Plan. As earlier stated, this was developed to guide the Public Administration Sector towards quality and coordinated service delivery that is cost effective, efficient and transparent. The strategy itself aims to promote, encourage and significantly improve dissemination of information across the different sectors, among other factors. It is unclear as how this strategy has been effective in promoting and improving dissemination of information in the public sector, however, it should be reinforced through raising awareness to the public sector to understand its objectives. The Commission looks forward to being informed and enlightened by the Public Service Commission on this.

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<sup>91</sup> *Public Sector (Data Sharing) Act 2016 (South Australia)*, section 7(2).

<sup>92</sup> *Public Sector (Data Sharing) Act 2016 (South Australia)*, section 7(3).

<sup>93</sup> *Public Sector (Data Sharing) Act 2016 (South Australia)*, section 7(4).

<sup>94</sup> *Public Sector (Data Sharing) Act 2016 (South Australia)*, section 7(5).

<sup>95</sup> *Public Sector (Data Sharing) Act 2016 (South Australia)*, section 7(6).

### (b) Communication Public Sector Data Sharing - Statements

6.12 A Statement similar to the Australian Federal Government's Public Data Sharing (Statement) could be considered by the Government of Samoa. Such statement highlights the principles below.

6.13 These are:

- i) Invaluable data held by the Samoan government holds considerable value for growing the economy, improving service delivery and transforming policy outcomes of the nation.
- ii) Such *data* refers to all data collected by government entities for any purposes including, government administration, and research or service delivery.
- iii) Data held by government bodies especially non-sensitive data<sup>96</sup> should be made available by default.
- iv) The government bodies should ensure that guidelines and policies are put in place to ensure the security of information shared.
- v) A culture of trust and collaboration between entities should be fostered and that in order to ensure greater efficiency, data-sharing arrangements need to be carried out through a letter of exchange between entities.<sup>97</sup>
- vi) Safeguards must be available to ensure that the highest standards of security and privacy for the individuals, national security and commercial confidentiality is upheld.<sup>98</sup>

### OPTION 3 - Sector Communication Strategy – Similar to the Law and Justice Sector Communication Strategy (Ministry to Ministry in a Sector)

6.14 Similar to the PASP Communication strategy above, this option looks at utilising what the Law and Justice Communication Strategy has been recommended to include in their revised Strategy to include information sharing and data collection between the sector agencies. This would allow for more accurate and reliable information communicated to sector partners. This could be something all other 13 Sectors<sup>99</sup> of Samoa have in place for the same purpose, for clear identification and sharing of information each member of those sectors request from one another.

### OPTION 4 - Memorandum of Understanding (Ministry to Ministry)

6.15 MOUs are commonly used to govern information sharing between Ministries which include the types of information. Such exchange of information is subject to strict terms and conditions. For example, confidentiality that the information shared must not be disclosed to third parties without the approval/consent of both parties.

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<sup>96</sup> Non-sensitive data is anonymised data that does not identify an individual or breach privacy or security requirements.

<sup>97</sup> Above n, 49.

<sup>98</sup> Above n, 49.

<sup>99</sup> <https://www.mof.gov.ws/Services/Economy/SectorPlans/tabid/5811/Default.aspx> Ministry of Finance website.

MOUs can be revised and strengthened as a form of measure to promote information sharing between Ministries. It is considered less costly, as opposed to a legislative framework, and allows room for revision based on both parties' interest.

## LIST OF QUESTIONS

### QUESTIONS:

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