

# REVIEW OF THE ARMS ORDINANCE

1960



DISCUSSION PAPER

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## **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 **12 January 2024**.

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 Commission seeks your views, comments and feedback on the questions set out in this Discussion 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 due course [**date to be advised**]

# PART 1: INTRODUCTION

## A. BACKGROUND

1.1 In October 2019, the Samoa Law Reform Commission (Commission) received a request from the Ministry of Police, Prisons and Correction Services ('MPPCS' also referred to as 'Ministry of Police') for the Commission to review the Arms Ordinance 1960 (AO 1960).

1.2 At the time of the request, the Commission was already engaged in a special (joint) project with the Office of the Attorney General (OAG) and the Ministry of Justice and Courts Administration (MJCA) pursuant to a Directive from the then Cabinet. The request from the MPPCS was therefore deferred until the Commission had capacity to commence this Review.

## B. SAMOA'S ARMS LAW IN NEED OF REVIEW

1.3 Samoa's Arms Ordinance 1960 is one of the few remaining Ordinances or pre independent laws of Samoa made and enforced during the New Zealand administration, which are still being used today.<sup>1</sup>

1.4 To date, there have been minimal amendments to this AO 1960, with the most recent amendments being passed in 2019 to:

- (a) facilitate the import of unlawful firearms into Samoa for the purpose of the Pacific Games 2019; and
- (b) allow a person under the age of 21 years to be in the possession of a firearm, for this same purpose.

1.5 According to MPPCS, the Office has over the years developed practices necessary for the effective implementation of the AO 1960. Unfortunately, the

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<sup>1</sup> Cover letter, Ministry of Police, Prisons and Corrections, "*Review of Arms Ordinance*", dated 14 August 2020.

MPPCS continues to face the challenge of effectively carrying out and enforcing these practices, if they are not expressly provided for in the Ordinance.

1.6 A further comprehensive review by the Samoa Audit Office in 2017 – 2018 on the operation and implementation of the AO 1960 highlighted a number of issues and recommendations. These issues noted were that:

- (a) the Ordinance is outdated;
- (b) there are issues in the licensing system;
- (c) weaknesses in controlling of arms; and
- (d) inconsistencies in the Armoury Register.<sup>2</sup>

1.7 The Audit Office Report highlighted that the AO 1960 is outdated and in need of review to be updated to provide for the current practices that are in place but not yet legislated. This recommendation is supported by the Ministry of Police. A good legal framework aligned with best international and regional standards and practices will strengthen the capacity of the Ministry to execute its role and enhance the national security of Samoa.

1.8 Samoa is a small country and the current framework on restrictions of firearm allowed for possession is working for Samoa in terms of national security and general public safety. However, the Ministry of Police notes the *rising presence of illegal firearms* in Samoa and the effects of such on the public and on Samoa's national security.<sup>3</sup> Undoubtedly, the presence of these illegal firearms contributes to the high number of crimes committed and brought before the Court of Samoa, as will be reflected in the case laws **(Part 4)**.

1.9 These concerns raise the need to strengthen Samoa's existing firearms licensing system and administration procedures. A strengthened regulatory framework may help the Ministry of Police to improve and also strengthen its

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<sup>2</sup> Samoa Audit Office, "Ministry of Police – Comprehensive Full Audit – Management Letter 1<sup>st</sup> July 2017 – 30 June 2018", 2018.

<sup>3</sup> Cover letter, Ministry of Police, Prisons and Corrections, "Review of Arms Ordinance", dated 14 August 2020.

regulatory and enforcement roles in controlling all aspects related to firearms and ammunition in Samoa.

## C. TERMS OF REFERENCE

1.10 In discussing the scope and direction of this Review at the preliminary discussions stage, the MPPCS provided the following list of issues for the Commission to consider in the Review of the AO 1960 and proposal of any future and subsequent recommendations (a preliminary draft TOR).

- (1) the adequacy of the current firearm licensing system and its enforcement;
- (2) the categorisation of firearms and ammunition and their definition;
- (3) the procedures for possession, use or carriage of firearm or ammunitions;
- (4) the procedures in dealing with firearms and ammunitions (Licensed dealers);
- (5) the procedures for purchase, sale and acquisition, importation and exportation of firearms or ammunitions;
- (6) the marking and registration of firearms;
- (7) the prohibition of unauthorised manufacturing of firearms or ammunitions;
- (8) the procedures on enforcement measures in relation to firearms and ammunitions;
- (9) the imposition of relevant fees for all transactions in the licensing system;
- (10) the procedures on importation of explosives;
- (11) the procedures on how antique firearms are to be dealt with;
- (12) the procedures that will be prescribed by Regulations;
- (13) the approved forms; and
- (14) the responsibility of the Village Fono on the use of firearms.<sup>4</sup>

1.11 At the end of our preliminary discussions, it was agreed that the issues above can be collated in a more concise Terms of Reference (TOR). The agreed concise TOR required the Commission to:

- a) **carry out a full review of the Arms Ordinance;**
- b) **research and review related local and overseas laws and practices for analysis; and**
- c) **make recommendations on an appropriate framework for Samoa.**

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<sup>4</sup>Cover letter, Ministry of Police, Prisons and Corrections, “*Review of Arms Ordinance*”, dated 14 August 2020.



1.12 Following the endorsement of the agreed concise TOR above, this Review officially commenced in June 2022.

1.13 The objective of this review is to establish and develop a **new** or **reformed** arms legislative framework that is aligned with the appropriate best practices and standards observed internationally and in our region.

1.14 This Discussion Paper aims to provide the public and stakeholders with the Commission’s preliminary research and preliminary consultations findings to inform submissions and any input on this critical review. This Discussion Paper is divided into the following parts:

- a. **Part 2: The Current Law**
- b. **Part 3: Preliminary Consultations with Stakeholders**
- c. **Part 4: Samoan Court Decisions**
- d. **Part 5: Arms Ordinance 1960 and Related Legislation (Samoa)**
- e. **Part 6: Other Jurisdictions**
- f. **Part 7: Conclusion**

# PART 2: THE CURRENT LAW

## A. THE ARMS ORDINANCE 1960

2.1 The AO 1960 provides for the importation, sale and licensing of firearms and ammunition in Samoa. As of 2023, this Ordinance is 63 years old; it has 33 provisions that are not categorised under Parts. Since its enactment, there is no record of any subsidiary legislation made under the authority of the Ordinance.

### (ii) Amendments to the Ordinance

2.2 According to the *Legislative Assembly Updated List of the Acts and Ordinances in Samoa 2022 (Red Book)*, the Ordinance has been amended 12 times. A further search by the Commission revealed that the Ordinance was consequentially amended by an Act of Parliament (Police Powers Act 2007), bringing the total to 13, as laid out in the table below.

AMENDMENTS TO THE ARMS ORDINANCE 1960	
NO	CITATION
1)	Arms Amendment Act 1969, No.2
2)	Reprint of Statutes (Miscellaneous Provisions) Act 1975, No.28
3)	Arms Amendment Act 1978
4)	1980, No.18 (full citation not noted in the Red Book)
5)	Miscellaneous Fees Amendment Act 1998
6)	Arms Amendment Act 1999 (No.19)
7)	Arms Amendment Act 2006 (No.4)
8)	Arms Amendment (No. 2) 2006 (No.11)
9)	Police Powers Act 2007 (No.27)
10)	Proceeds of Crime Act 2007 (No.4)
11)	Fees and Charges (Miscellaneous Amendments) Act 2017
12)	Conventional Arms Act 2017 2017, No.26
13)	Arms Amendment Act 2019 (No. 21)

2.3 The 13 amendments are explained in the table below.

AMENDMENT ACT	DETAILS OF AMENDMENT MADE
<p><b>1. Arms Amendment Act 1969 No. 2</b></p>	<ul style="list-style-type: none"> <li>• Amended the definition for the term “court” in section 2 by deleting the word “High” and substituting with the word “Magistrates”.</li> <li>• Amended section 23 by deleting the word “Judge” and substituted with the word “Magistrate”.</li> </ul>
<p><b>2. Reprint of Statutes (Miscellaneous Provisions) Act 1975, No.28</b></p>	<p>Amended the Arms Ordinance 1960 as follows:</p> <ul style="list-style-type: none"> <li>• For Section 2:               <ol style="list-style-type: none"> <li>i. the definition of the term “Arms Officer” is amended by omitting the words “Superintendent of Police” and substituting with “Commissioner of Police”;</li> <li>ii. the definition for the term “public place” is deleted and substituted with a new definition.</li> </ol> </li> </ul>
<p><b>3. Arms Amendment Act 1978</b></p>	<ul style="list-style-type: none"> <li>• Amended section 2 by repealing the terms and their definitions and substituting with new interpretation section.</li> <li>• Insert new section 2A (appointment of Arms officers to be appointed by the Police Commissioner) after section 2.</li> <li>• Section 6 is amended by repealing and substituting with a new subsection (5), in relation to permits for import of firearms.</li> <li>• Inserted new section 6A (importation of fireworks to be approved by the Police Commissioner in his discretion) after section 6.</li> <li>• Inserted new section 8A (sale of fireworks to children) after section 8.</li> <li>• Section 12 is amended by inserting a new subsection (2A) after subsection (2).</li> <li>• The First Schedule is repealed and substituted with a new First Schedule in relation to the fees for permits, licenses etc..</li> <li>• The Second Schedule is amended by substituting the current fees, penalties in the Schedule with new.</li> </ul>
<p><b>4. Arms Amendment Act 1980</b></p>	<ul style="list-style-type: none"> <li>• Amended the First Schedule by repealing and substituting with new First Schedule, amending various fees for permits, licenses, certificates in the Ordinance.</li> </ul>
<p><b>5. Arms Miscellaneous Fees Amendment Act 1998</b></p>	<ul style="list-style-type: none"> <li>• amended various Acts, particularly the fees payable to Government including the fees which used to be provided in the Ordinance under First Schedule (now repealed).</li> <li>• These fees included but were not limited to fees for the issuance of a permit to a dealer, issuance of a dealer’s license, issuance of certificate registration, the renewal of a certificate of registration etc.</li> </ul>
<p><b>6. Arms Amendment Act 1999</b></p>	<ul style="list-style-type: none"> <li>• amended sections 3, 4, 6, 7, 8, 8A, 9, 11, 12, 13, 14, 15, 16, 18 of the Ordinance by substituting current fines and custodial penalties provided in the Schedule with new ones</li> </ul>
<p><b>7. Arms Amendment Act (No.1) 2006</b></p>	<ul style="list-style-type: none"> <li>• amended section 8 by substituting the age of “16” with “21” in which a person can possess firearm and ammunition</li> <li>• amended section 12 by inserting new subsections (9) and (10);</li> <li>• inserted new sections 21A and 21B, and new subsections in sections 9, 10, and</li> </ul>

	<ul style="list-style-type: none"> <li>section 12.</li> <li>sections 20(1) and 24 were amended.</li> </ul>
<b>8. Arms Amendment Act (No.2) 2006</b>	<ul style="list-style-type: none"> <li>Inserted a new section 9A which introduced the amnesty period in Samoa.</li> <li>In section 25, the phrase “for not less than 2 years” was substituted with “for not less than 6 months”, reducing the period in which any detained firearms, ammunition or explosives may be disposed of by the Commissioner.</li> </ul>
<b>9. Arms Amendment Act 2019</b>	<ul style="list-style-type: none"> <li>Amended: <ul style="list-style-type: none"> <li>(a) section 2 of the Ordinance by inserting the definition for “sporting competition”;</li> <li>(b) section 6 of the Ordinance by substituting words and subsections throughout;</li> <li>(c) section 8 by substituting new section 8;</li> </ul> </li> <li>section 9 by repealing subsections (4), (5) and (6).</li> </ul>
<b>CONSEQUENTIAL AMENDMENTS (under other enactments)</b>	
<b>10. Proceeds of Crime Act 2007</b>	<ul style="list-style-type: none"> <li>Repealed section 21A</li> </ul>
<b>11. Police Powers Act 2007</b>	<ul style="list-style-type: none"> <li>Sections 6 and 12 were consequentially amended</li> </ul>
<b>12. Conventional Arms Act 2017</b>	<ul style="list-style-type: none"> <li>Section 6(3) was substituted with a new subsection.</li> </ul>
<b>13. Fees and Charges (Miscellaneous Amendments)</b>	<p>Consequentially amended the Arms Ordinance as follows:</p> <ul style="list-style-type: none"> <li>In section 2, the term “Ministry” is inserted with its definition;</li> <li>Sections 3(2), 6(1), 7(3), 9(2) and 12(2) are amended by repealing “fee prescribed in Schedule 1” and substituting with “prescribed fee”;</li> <li>Section 21 is amended by inserting a new subsection “(2)(da)” after subsection (2) and a new subsection “(2A)” after subsection (2);</li> <li>Schedule 1 is repealed.</li> </ul>

### (iii) Provisions of the Arms Ordinance 1960

2.4 The table below summarizes the 33 provisions of the Arms Ordinance 1960.

<b>PROVISION OF ARMS ORDINANCE 1960</b>	
<b>Sections</b>	<b>Summary of Provisions</b>
<b>Section 1 – Short title and commencement</b>	Provides for the short title and commencement date of this Ordinance

<b>Section 2 - Interpretation</b>	Provides the definition of the terms used throughout the Ordinance
<b>Section 2A - Appointment of Arms Officer</b>	Empowers the Police Commissioner to appoint 1 or more members of the Police as Arms Officers. If no such appointment is made, the Commissioner exercises the powers and functions of an Arms Officer.
<b>Section 3 - Dealers in arms and ammunition to be licensed</b>	It requires that a person must first hold a “ <i>dealer’s license</i> ” before that person can sell, offer for sale, have in their possession for sale any firearms or ammunition or manufacture any firearms for sale. A dealer’s license is issued upon payment of prescribed fee and subject to terms and conditions provided.
<b>Section 4 - Record of dealings by licensed dealers</b>	Requires a licensed dealer to keep a book of records of dealings and particulars as may be prescribed either in regulations or by the Arms Officer, relating to receipt, manufacture, sale or delivery of ammunition or firearms. A breach of this provision is an offence liable to punishment upon conviction.
<b>Section 5 - Arms Officer may seize firearms or ammunition held by licensed dealers</b>	Authorizes an arms officer to take possession of firearms or ammunitions in the possession of a licensed dealer, if he or she thinks fit to do so. Further provides for the process of seizure of firearms or ammunition as well as compensation for licensed dealers, as necessary.
<b>Section 6 - Permits for import of firearms</b>	Provides that subject to section 14 of the Police Powers Act 2007, the importation or bringing in of any ammunition or firearms into Samoa by any person without a permit to import firearms is <b>prohibited</b> . A permit to import may be to import for personal use, by a licensed dealer or for an approved sport competition. The general process for application and granting of a permit is provided for under this section.
<b>Section 6A - Importation of fireworks</b>	The Commissioner is authorized to approve the importation of fireworks of types and quantities as the Commissioner thinks fit. Such approval may also be revoked.
<b>Section 7 - Permits for possession</b>	Sets out the requirements for a permit for possession of firearm or ammunition. A permit for possession is required in order for a person to have in their possession a firearm or ammunition. A person is prohibited from delivering firearm or ammunition to any other person, other than a licensed dealer or person entitled to obtain the firearm/ammunition under any permit under this section. Other terms provided include validity period of permit, revocation and penalty for breach of this provision.
<b>Section 8 - Sale to and possession by young persons of firearms and</b>	Prohibits the sale of firearms to persons under the age of 21 years; and also prohibits a 21-year-old from carrying or having in their possession any firearm, explosive or ammunition. <b>Exception:</b> a person under 21 years is exempted from the above for the

<b>ammunition</b>	purposes of an approved sporting competition and according to limitations of the exemption set out in this provision (supervision by person with firearm certificate of registration, use within set compound and if the person under 21 is a fit and proper person under this Ordinance). Breach of this provision is an offence punishable upon conviction to a fine.
<b>Section 8A – Sale of fireworks to children</b>	Prohibits the sale or supply of any fireworks (approved for importation) to a child under 12 years is prohibited. A breach of this provision is an offence punishable upon conviction to a fine.
<b>Section 9 – Registration of firearms</b>	Prohibits a person (who is not a licensed dealer) from being in possession of any firearms for a period longer than 7 days unless that person is the registered as owner of firearm. Provides for the general conditions and process of registration of firearms.
<b>Section 9A - Amnesty</b>	This section authorizes the Minister to declare a firearm Amnesty period whereby people can hand in firearms, ammunition, explosives or dangerous weapons without being charged under sections 9 and 13 of this Ordinance. The firearms, ammunitions, explosives or dangerous collected during amnesty period are disposed of in a manner the Commissioner may direct.
<b>Section 10 – Certificate of registration may be refused or existing certificate revoked</b>	Provides for the conditions to be met for a person to be registered as the owner of a firearm and the conditions which would authorize an arms officer to revoke an existing certificate of registration. The conditions to be met to be a fit and proper person include that a person: <ul style="list-style-type: none"> <li>- has <b>not</b> within the last 5 years been convicted of an offence for which a term of imprisonment of more than 2 years but less than 5 years may be imposed; or</li> <li>- has at any time been convicted of an offence for which a term of imprisonment of 5 years or more may be imposed; or</li> <li>- is someone who in the opinion of the Arms officer, is otherwise not a fit and proper person.</li> </ul>
<b>Section 11 – Unregistered firearm to be surrendered to Police</b>	Provides that upon revocation of any certificate of registration or refusal of an Arms Officer to issue or renew a certificate of registration, the owner or person in possession of the firearm (to which the certificate or application relates) shall, on demand, deliver the firearm to a member of the Police.
<b>Section 12 – possession of unlawful weapon</b>	Prohibits any person from being in possession of an unlawful weapon or part of an unlawful weapon. Anyone in possession of an unlawful weapon or ammunition for an unlawful weapon must destroy, export from Samoa or deliver to the Arms Officer such unlawful weapon / ammunition. and to be given to the arms officer.  <b>Exception:</b> The Minister may, by license in writing on payment of prescribed

	fee, authorize a person to be in possession of an unlawful weapon, subject to conditions (as to use or custody) as the Minister may impose.
<b>Section 13 – Carriage or possession of arms, ammunition, or explosives, except for proper purposes, prohibited</b>	Prohibits a person from being in possession of any firearm, ammunition, or unlawful weapon unless it is for some lawful, proper and sufficient purpose.
<b>Section 14 – Unlawful acquisition of firearms, ammunition or explosives</b>	Provides that a person who procures, attempts or conspires to procure a firearm, ammunition or explosive by way of trespass commits an offence.
<b>Section 15 – Presenting firearms at other persons</b>	Provides that a person who presents a firearm (loaded or unloaded) at any person without lawful and sufficient purpose commits an offence.
<b>Section 16 – Obstruction of police</b>	Provides that a person who obstructs a member of police (of any rank) in the exercise of any right of search, seizure, or detention under this Act commits an offence.
<b>Section 17 – Arrest of offenders</b>	Empowers a Police officer (of any rank) to arrest a person who is reasonably suspected of committing an offence punishable by imprisonment under this Ordinance, without a warrant.
<b>Section 18 – Offences by companies</b>	Provides that where an offence under this Ordinance punishable by imprisonment (whether or not it is also punishable by fine) is committed by an incorporated company, the company liable on conviction to fine not exceeding 1000 penalty units.
<b>Section 19 – Occupier of premises deemed to be in possession of arms, ammunition or explosives found thereon</b>	Provides that a person who occupies any land or building on which firearms, ammunition, or explosives are found is taken to be in possession of those arms, ammunition or explosives, unless the person can prove that they were in the possession of some other person or satisfies the Court that he or she had no reasonable grounds for believing that they were on such land or building.
<b>Section 20 – Search of suspected persons and seizure of arms, ammunition or explosives</b>	Empowers a police officer who suspects upon reasonable grounds that a person is carrying or is in possession of any firearm, ammunition or explosive contrary to this Ordinance, to search without warrant that person, a vehicle, package or a thing in the possession of a person, and may detain as a result of the search any firearm, ammunition or explosives.
<b>Section 21 – Search of land or buildings for arms,</b>	Authorizes a commissioned police officer to enter a house, building, land, vehicle, vessel or premises to seize and detain any firearms, ammunition or explosives found therein, if the commissioned officer has reason to suspect

<b>ammunition or explosives</b>	that firearms, ammunition or explosives are present in any house, building, land, vehicle, vessel etc. in which an offence is about to be committed.
<b>Section 21A</b>	<i>Repealed</i>
<b>Section 21B – Mandatory reporting of wound caused by firearm</b>	Requires a doctor or nurse treating a wound suspected to have resulted from a firearm to report to Police the name of the wounded person and grounds of their suspicion. Failure to report as soon as practical is an offence liable upon conviction to a fine or imprisonment as provided.
<b>Section 22 – Application of Ordinance to property of Government</b>	Protects the carriage and possession of firearms, ammunition or explosives belonging to Government by any members of Police, any authorized person employed in the public service or any member of the armed forces of the Government in, from being rendered unlawful.
<b>Section 23 – Restoration of articles seized under this Ordinance</b>	Provides that the Court, upon application to Court, may make an order to restore any firearms, ammunition or explosives seized and detained in pursuance of the right of search, seizure or detention under this Ordinance.
<b>Section 24 - Forfeiture</b>	Provides that where a person is convicted of using, carrying or having in possession any arms, ammunition or explosives, the convicting Court shall as part of the conviction, order that the same be forfeited to Government, and may be disposed as the Commissioner of Police directs.
<b>Section 25 – Authorising disposal of firearms ammunition or explosives detained by Police</b>	Authorizes the disposal of firearms, ammunition or explosives seized or detained for not less than 6 months, in a manner as the Commissioner of Police may direct.
<b>Section 26 - Protection of persons acting under the authority of this Ordinance</b>	Protects the Government, a Minister or any person lawfully acting in execution of this Ordinance from any action, claim or demand.
<b>Section 27 – Regulations</b>	Authorizes the Head of State to make regulations on the advice of Cabinet for the administration of the Ordinance including the prescribing of forms for permits, licenses and certificates, marking of firearms, certificate of registration etc.
<b>Section 28 – Repeal and savings</b>	Provides for (6) enactments that are repealed under by this Ordinance, and also saves some matters/actions made under any repealed provisions of this Ordinance.



#### iv) Analysis of the Ordinance:

2.5 A review of the Ordinance highlighted a number of issues (below), some of which were also pointed out in the Audit Office's Report. The re-iteration of these issues re-emphasizes their importance.

##### *Out datedness of the Ordinance:*

2.6 On the face of the law, the Ordinance regulates the importation, sale, licensing, possession, and other matters in relation to firearms and ammunitions in Samoa. The pre-independence law is about 63 years old now.

2.7 There is a notable increase in the presence of unlawful firearms in Samoa. It is also unquestionable that the nature and character of firearms and ammunitions have changed over time in nations beyond the borders of Samoa. Inevitably, this puts Samoa at risk of exposure to novel or unregulated firearms and ammunition. For national security and safety purposes, it is important that a modern legal framework is in place to respond to this and offer some resolution suitable to the context of Samoa.

2.8 The current law is general and although it has been amended a number of times to address matters arising, it remains un-encompassing of all modern-day changes and development of firearms, ammunitions and related matters.

2.9 The Ordinance empowers the making of Regulations to prescribe the making of permits and licenses forms and certificates etc. and other matters crucial in the effective implementation of the Ordinance (i.e. matters such as forms for the permits license and certificates, the conditions of each, marking of firearms etc., prescribing fees and charges and so forth. To date, **no Regulations** have been made.

##### *Definitions of the terms used in the Ordinance:*

2.10 Samoa's Ordinance defines a total of 13 terms. There are terms used throughout the Ordinance which are not defined, but may be beneficial for

Samoa to consider defining in an updated legal framework. For some terms, it is a matter of updating their definition to reflect the changes in the nature of firearms and ammunitions and the necessary regulatory framework.

#### *Arms officer vs. police officer:*

- 2.11 There is potential confusion in the use of references to an arms officer and a police officer in the process of ‘issuing’ and ‘renewing’ firearm license.
- 2.12 An ‘arms officer’ is appointed based on skills and training relevant to the operation of firearms and ammunition. An arms officer issues firearms licenses (section 9), while reference is made to a police officer as the authority to process an application for renewal.
- 2.13 This implies that **any** police officer who is not authorised as an arms officer, can process a license renewal application. In order to avoid possible confusion in implementation, there is a need to clarify and establish the roles and functions exclusively carried out by arms officers, as opposed to police officers.

#### *Licensing Scheme:*

- 2.14 The Arms Ordinance 1960 provides for one (1) type of license - a **Dealer’s license**.
- 2.15 The Ordinance sets out that a dealer’s license may be issued upon payment of the prescribed fee, but it does not set out the process, eligibility criteria and conditions to be satisfied when applying for a dealer’s license.
- 2.16 A dealer’s license **if granted**, allows a licensed dealer to sell, offer for sale, have in the person’s possession for sale, in the way of the person’s business, any firearms or ammunitions, or manufacture for sale any firearms. Each license is valid for a period not exceeding 1 year, and is issued only in respect of one place of business.

2.17 The Commission’s preliminary research and consultations found that the Ministry of Police has in place a process for applying for a dealer’s license. This process however is not expressly stipulated in the law for implementation and enforcement as they consider applications received. The licensing process therefore needs to be legislated, and in doing so must be updated to take into account the best international and regional standards and practices as well as Samoa’s current context.

#### **Permit Scheme:**

2.18 Similar to the licensing system, the permit scheme under the Ordinance is a general one. There are 3 types of permits issued under the Ordinance, namely:

- (i)** a permit for the import of firearm (section 6);
- (ii)** a permit to import of fireworks (section 6A); and
- (iii)** a permit to possess a firearm (section 7).

2.19 These sections do not provide process and procedures on the application of such permits. Again, like the licencing process, it is crucial that the law should also provide a robust system to guide and authorise the Police on the issuance of permits and ensure the system used suits the situation in Samoa. ‘

#### **Offences & Penalties**

2.20 Samoa provides for about 16 offences within the specific provision setting out the offence. Some analysis of the offences and penalties in Samoa’s law is below for consideration of possible updates to Samoa’s Ordinance:

- The highest fine imposed is SAT\$20,000 for a *breach of requirement for a licensed dealer to keep a record of dealings* and for the *import of firearms without permit*. For the latter, a convicted offender may also be imposed an *imprisonment term not exceeding 5 years, or both*.

- Interestingly, offences by companies under Samoa's law subjects the company to a fine of only SAT\$10,000, which is less than the fine referred above.
- The lowest fine imposed is for the offences of *selling fireworks to children* and *obstruction of police*, which is a *fine not exceeding SAT\$2,000*. For the *obstruction of police*, a person is also subject to *imprisonment for a term not exceeding 1 year, or both*.

## PART 3: PRELIMINARY CONSULTATIONS WITH KEY STAKEHOLDERS

3.1 The Commission as per its law reform process engaged in discussions with the MPPCS as the administrator and implementer of this Ordinance, in efforts to gauge their views and experiences in enforcement of the Ordinance.

3.2 As indicated above, the first round of preliminary discussions between the Commission and the MPPCS came to a halt when the Commission was required to shift priorities to a joint project with other Government Offices towards the end of 2019.<sup>5</sup> When it came time to revive this Review of the Arms Ordinance, a refresher (second) meeting was carried out to re-confirm the scope and details of the Review, hence the 2 different sessions<sup>6</sup> with the MPPCS. The Commission is thankful to the MPPCS as they provided materials and data that assisted the Commission in its preliminary research.

### A. ISSUES RAISED FROM PRELIMINARY CONSULTATION

3.3 From discussions with the MOP, the following were the main issues and concerns of the Ministry, which they hope could be addressed in this Review:

**a. The Arms Ordinance is out-of-date:**

- The Ordinance is out of date and therefore needs to be updated in totality to properly address and respond to developing contemporary practices and modern terms of firearms.
- To review and update all arms-related fees.

**b. License & Permit Scheme:**

- There is a need to clarify procedures as well as eligibility criteria and conditions for the granting, issuing or revocation of licenses and permits.  
i.e inclusion of Samoan Citizenship/Permanent Residency as an eligibility criteria to owning a license;
- The law must also identify the types of licences and permits available and the regulation of the same (i.e regulation of licensed dealers)

<sup>5</sup> Government (Fetu'una'i Muniao Report), the measles endemic in 2019, and the lockdowns in early 2020 and early 2022 due to the COVID-19 pandemic.

<sup>6</sup> Meeting 1 – 20 July 2019, Meeting 2 – 17 November 2022.

- Procedures should also be set out for the:
  - issuance and review of warrants to use and possess firearms to consider and address urgent circumstances;
  - transfer of firearm (ownership);
  - restrictions on the number of firearms a (one) person is allowed to register under their name;
  - temporary firearm licenses for non-Samoan citizens, and only for sporting purposes

**c. Dealing with or handling firearms etc.**

- The law must set out conditions for person with prior criminal convictions in terms of their future possessing or storing or any involvement with firearms, ammunitions or explosives.
- What are unlawful and what are lawful firearms, and do these categories of firearms need to be reviewed and revised.
- The need to deal with the importation of unlawful weapons and explosives
- Dealing with firearm used for government Ministries/Corporations;

**d. Police discretions, powers and limitations:**

- There needs to be some clarity as to the discretions, powers and protections of the police officers as well as limitations as to the exercise of these discretions and powers. This would offer guidance and protection to the police officers as well as protection for the public from any abuse of power.
- There is also the need to consider provisions which would allow the arming of police officers in exceptional and life threatening situations for police or the public (i.e. an active shooter scenario)
- Demand for a Police armoury for firearm and ammunition storage purposes.

3.4 The above matters of concern highlight the areas where the MPPCS is seeking the aid of law reform to strengthen and clarify in order to allow the police to effectively implement and enforce this law.

# PART 4: SAMOAN COURT DECISIONS

4.1 To further inform this review, the Commission carried out research on decisions of the Samoan Courts which referred to, interpreted and applied the provisions of the Ordinance. This research was done on the available legal database to the Commission, Pacific Islands Legal Information Institute (PacLii) search engine.

4.2 The Commission’s search revealed that as of June 2023, there have been **30** (recorded / reported) cases which applied the provisions of the Arms Ordinance 1960. As with other prior reviews, the Commission acknowledges that this number is inconclusive and is not reflective of the actual number of firearms and ammunition related cases which have gone through the proceedings in Samoa’s Courts.

4.3 In light of this, the Commission extended its search to include cases referring to other terms such as guns, rifles, shot-guns, revolver to determine if more different cases. From this search, a total of **161** additional cases were found. These cases were read and further filtered to focus on cases that dealt with offences committed using firearms, guns, rifles etc. This exercise narrowed the number of cases from the extended search down to **81 cases**.

4.4 In the absence of additional data, the Commission relied on its own research as the basis of its analysis, to illustrate an overall idea of the prevalence of firearms related matters in Samoa. To clarify, the Commission’s research found a total of **111 reported** cases available on PacLii:

- **30/111** specific to the Arms Ordinance 1960;
- **81/111** from the extended research.

4.5 The above 2 categories of case law are presented in the 2 tables below.  
**(A)** Judgments by the Courts of Samoa applying the Arms Ordinance 1960; and

**(B)** Extended search – Samoan Case Law (*the court decisions which make reference to guns, firearms, pistols etc. but the charges were not brought under the AO 1960*).

(A) JUDGMENTS BY THE COURT OF SAMOA APPLYING THE ARMS ORDINANCE 1960	
CASE LAW	SUMMARIES
<b>2022</b>	
<p><b>1. <i>Police v Mapu</i></b> [2022] WSSC 38 (02 September 2022)</p>	<p>The first accused is charged with being in possession of narcotics, utensils, unlawful weapon, unregistered firearm and unlawful ammunitions pursuant to the Arms Ordinance 1960, Narcotics Act 1967 and the Crimes Act 2013, after a search was conducted at the house of the defendant pursuant to a search warrant. The second accused is charged together as a party to the 6 charges.</p> <p><b>Held:</b> The court held that the 1<sup>st</sup> defendant was in possession of the narcotics, utensils, firearms and ammunitions, and guilty of all the charges against him. Charges against the second accused were dismissed as the court was not satisfied beyond reasonable doubt the second accused was involved.</p>
<p><b>2. <i>P v Pritchard</i></b> [2022] WSSC 37 (03 May 2022)</p>	<p>This was an application for bail. Discussed 2 types ofailable charges:</p> <ul style="list-style-type: none"> <li>i. <i>Bailable as of right</i> – offence for which max penalty is less than 3 years imprisonment</li> <li>ii. <i>Bailable at discretion of the Court</i> – unless the Court is satisfied that there is a just cause for the defendant to be remanded in custody</li> </ul> <p>For this matter, due to the nature of the charges, they areailable at discretion of the Court.</p> <p><b>Sentence:</b> There was just cause for the Applicants to be remanded in custody as the charges faced by the applicants are very serious and if found guilty, there is a high likelihood of custodial sentence given the combination of drug and firearm offences. The applications for bail were therefore denied.</p>
<p><b>3. <i>P v Pritchard</i></b> [2022] WSSC 51 (14 Oct 2022)</p>	<p>The accused is a repeat offender with variety of previous conviction. In this matter he faces 4 charges, 1 of which is for being in possession of unlawful weapons.</p> <p><b>Held:</b> The decision only records sentencing for the narcotics related charges, but no mention of a sentence for the arms &amp; ammunition charges.</p>
<b>2021</b>	
<p><b>4. <i>P v Palu</i></b> [2021] WSSC 82 (10 Nov 2021)</p>	<p>The defendant faces 5 charges, 2 of which are charges related to arms and ammunitions under the AO 1960:</p> <ul style="list-style-type: none"> <li>(i) Possession of unlawful ammunition; and</li> <li>(ii) Possession of ammunition without a permit</li> </ul>



	<p>The quantity of unlawful ammunition and ammunition without permit found is not stated.</p> <p><b>Sentence:</b></p> <p>In determining the appropriate sentence, deterrence is a significant consideration. A custodial sentence is therefore warranted. The first defendant was sentenced to serve time in prison after his convictions for being in possession of unlawful ammunition and also for possession of ammunition without a permit. The second defendant was sentenced to a term of supervision on the basis that the more culpable of the 2 was the first defendant.</p>
<p><b>5. <i>P v Aloese</i></b> [2021] WSSC 10 (26 Feb 2021)</p>	<p>The 6 defendants face 9 charges (4 related to arms and ammunition) – (i) possession of an unlawful weapon; (ii) possession of a ‘modified’ weapon (unlawful weapon); (iii) possession of unlawful ammunition; and (iv) possession of single shot ammunition.</p> <p><b>Held:</b></p> <p>In the absence of evidence linking the other defendants to the weapons and ammunitions, and with the 1<sup>st</sup> D’s evidence categorically accepting the weapons and ammunitions as belonging to him, the Court was satisfied beyond reasonable doubt that the weapons and ammunitions indeed belonged to the 1<sup>st</sup> D. The others were acquitted of the 4 arms and munition charges.</p>
<b>2020</b>	
<p><b>6. <i>Police v Langkilde</i></b> [2020] WSSC 57 (20 Feb 2020)</p>	<p>The defendant faces 4 charges, 1 of which is for being in possession of ammunition without permit. There was no evidence to show a permit was issued.</p> <p><b>Held:</b></p> <p>The accused did not discharge the burden to prove the existence of a permit. The Court therefore found the accused guilty of being in possession of ammunition without a permit. The sentence was handed down in a separate decision (below)</p>
<p><b>7. <i>Police v Langkilde</i></b> [2020] WSSC 58 (9 March 2020)</p> <p><i>(Sentencing of matter in (3) above)</i></p>	<p><b>Sentence:</b></p> <p>The Court took into account the aggravating and mitigating factors and the totality principle and accepts prosecution and defense submissions that a non-custodial sentence of supervision is appropriate. The accused was convicted and sentenced to 12 months supervision with conditions.</p>

<b>2019</b>	
<p><b>8. Police v Kalolo</b> 2019] WSFVC 2 (26 August 2019)</p>	<p>The defendant faces 3 charges, 2 of which involve firearms (being armed with a dangerous weapon (gun) and possession of unlawful weapon) as a result of an incident where the defendant overreacted and pulled a gun on an unexpected citizen doing his job. The Court discussed that in cases where firearms are used to threaten victims but there is no discharge of the firearm, the Court has imposed both custodial and non-custodial sentences.</p> <p><b>Sentence</b> The defendant was convicted and sentenced to 1 month imprisonment for possession of unlawful firearms, and being armed with a firearm. <b>Firearms ordered to be confiscated and destroyed.</b></p>
<b>2018</b>	
<p><b>9. Police v Fuiava</b> [2018] WSDC 5 (21 March 2018)</p>	<p>The defendant faces charges related to narcotics and firearms (possession of unlawful weapon and of ammunition for unlawful weapon). The operable word in the charge is possession, not ownership of the arms/ammunition. The possession of a firearm and ammunition is a <b>strict liability</b> offence and physical custody or knowledge of it isn't essential.</p> <p><b>Held:</b> The defendant is found guilty of possession of unlawful weapon and of possession of ammunition for the unlawful weapon. <b>Police Commissioner ordered to destroy the pistol and ammunition.</b> D remanded on same bail conditions until sentencing.</p>
<p><b>10. Police v Fuiava</b> [2018] WSDC 18 (19 June 2018)</p>	<p><b>Sentence:</b> The Court after considering all the surrounding factors concluded that a non-custodial sentence is appropriate. The Court also warned the defendant that deterrence is still crucial and to be mindful that the next time he would appear in Court, there won't be any more leniency.</p>
<p><b>11. Police v Stowers</b> [2018] WSSC 45 (10 April 2018)</p>	<p>There are 5 charges (3 related to narcotics and 2 related to arms &amp; ammunitions).</p> <p><b>Sentence:</b> Applying the totality principle, the accused is convicted and sentenced on the lead offence of cultivation of prohibited plants to 4 years and 8 months imprisonment. In regards to the arms/ammunition charges, the accused is sentenced to 9 months imprisonment for possession of an unregistered firearm and also sentenced to 6 months imprisonment for possession of unlawful ammunition.</p>

<b>2017</b>	
<p><b>12. Keil v NPO</b> [2017] WSSC 5 (20 Feb 2017)</p>	<p>The Police filed 6 types of charges against the applicant. Particular to arms and ammunitions, there were:</p> <ul style="list-style-type: none"> <li>(i) 100 counts of armed with a dangerous firearm pursuant to (s.25 of the Police Offences Ordinance 1961)</li> <li>(ii) 148 counts of being in possession of an unlawful weapon (s.12 of the AO).</li> </ul> <p><b>Held:</b></p> <p>It was clear from the grounds provided by Mr Hampton that both the evidential test and public interest are not met prior to the charges being laid.</p> <p>All the charges filed by the Prosecution against the defendant are dismissed.</p> <p>Whether the application to stay proceedings permanently is withdrawn or not will not affect the decision to have the charges dismissed.</p>
<p><b>13. Police v Neemia</b> [2017] WSSC 94 (15 June 2017)</p>	<p>The accused appear for sentence on 5 joint charges. There were 3 narcotics charges and 2 arms / ammunition related charges. These 2 charges were for the possession of:</p> <ul style="list-style-type: none"> <li>(i) unlicensed firearm and</li> <li>(ii) unlawful ammunition.</li> </ul> <p>The focus of charges was on marijuana found in accused home and engaging in commercial distribution for financial gain.</p> <p><b>Sentence:</b></p> <p>The defendants were sentenced imprisonment (1<sup>st</sup> defendant) and supervision (2<sup>nd</sup> defendant).</p> <p>--- There was no discussion on Arms Ordinance and the charges laid under this Ordinance.</p>
<b>2016</b>	
<p><b>14. Police v Vili</b> [2016] WSSC 132 (17 June 2016)</p>	<p>The 2 accused faced charges for narcotics and possession of a single shot rifle butt without a valid certificate of registration. It is aggravating that there is the presence of an unregistered firearm in the family home (a dangerous weapon which could possibly lead to serious injury and even death). Suffice to say that an unregistered firearm is against the law, and firearms in general should be approached with extreme caution considering the potential harm.</p> <p><b>Sentence:</b></p> <p>No detailed discussion of the charges under the AO 1960, rather the charges were referred in totality. The 1<sup>st</sup> accused is convicted of the offences of possession of narcotics and possession of unregistered firearm and ordered to appear for sentence in 12 months. Within that 12 month, he is not to reoffend, otherwise he will be sentenced on these offences and any other new ones. The 2<sup>nd</sup> accused is convicted and sentenced to 21 months imprisonment for the possession of narcotics.</p>
<p><b>15. Police v Fano</b> [2016]</p>	<p>The accused is charged with being in possession of ammunition for unlawful weapon.</p>

WSSC 107 (29 June 2016)	<p><b>Sentence:</b> The accused is convicted and sentenced to 6 months supervision with a special condition (<i>to spend 60 hours with the young mothers in the Samoa Victim Support Shelter, teaching them the skills of floral arrangement</i>)</p>
<p><b>16. Police v Menefat a</b> [2016] WSFVC 7 (5 October 2016)</p>	<p>A police officer appears for sentencing for 3 charges (1 is for possession of unlawful weapon). The charges in relation to the unlicensed firearm was reported by the wife after some conflict between them.</p> <p>The firearm in question was evidence for a matter awaiting hearing. Similar prior matter where gun was kept under such conditions and returned after the closing of the matter. The possession of the firearm is therefore considered at the lower end of gravity of offending and falls short of warranting custodial sentence.</p> <p><b>Sentence:</b> The Court considered all relevant factors and found that the consequences of a conviction are out of all proportion to the accused's offending. The accused is therefore ordered to pay \$400.00 Prosecution costs within 14 days and on payment of those costs, is to be discharged without conviction.</p>
<b>2015</b>	
<p><b>17. Police v Brown</b> [2015] WSFVC 1 (10 April 2015)</p>	<p>The accused faces charges of possession of firearm without permit and 2 of possession of firearm without valid certificate of registration. On the charge of possessing a firearm without a permit, the Court had no difficulty finding that the accused was in possession of the 12-gauge pump action rifle and without a permit to be in possession of the firearm (the firearm was registered under different person).</p> <p><b>Held:</b> On the evidence, the Court found the accused guilty of all charges of possession of a firearm without permit and without valid certificate of registration for periods in question. The accused is remanded at liberty to 30 April 2015 for a pre-sentence report and sentencing on the 4 charges of which he has been guilty.</p>
<p><b>18. Police v Mati</b> [2015] WSSC 41 (15 April 2015)</p>	<p>The accused was charged with 3 drug-related offences under the Narcotics Act 1967, and 1 charge of being in possession of an unlawful weapon under the AO 1960</p> <p>In discussing the narcotics related charges, the Honourable CJ made a note that some of the cases of largescale cultivation of marijuana that have come before the Court <u>have involved possession</u> of firearms. Often the reason given for this is that firearms are needed to protect the accused's marijuana plantation from other people, for example, thieves. <u>If this is so, possession of firearms can be dangerous and the danger arises from the fact of cultivation.</u></p> <p>In addition, in cases of cultivation which involve possession of firearms, such firearms are always unlicensed. In this case, there is good reason to believe that the unlicensed 22 revolver pistol found on the accused was intended for the</p>

	<p>protection of his marijuana plantation which <u>can be dangerous</u>.</p> <p><b>Held:</b> The charge of cultivation of narcotics was the lead charge (and not much discussions on the possession of arms). In the sentencing – for the charge of being in possession of an unlawful firearm, namely, a 22 revolver pistol, the accused is convicted and sentenced to 9 months imprisonment.</p>
<p><b>19. Police v Metotisi</b> [2015] WSSC 68 (28 July 2015)</p>	<p>There are 2 charges: one of theft of an animal and one charge of possession of an unlawful firearm (12 gauge gun). This was a different kind of case – the charges under the law included one of ‘theft of an animal (cow)’. The facts however show that the animal trespassed onto the accused’s land and caused damage to the plantation. As a result, the cow is shot on the accused’s land and distributed amongst the people of the village. This was done according to the usual village procedure.</p> <p><b>Sentence:</b> Given the facts of the matter, the Court had doubts as to the establishment of the ‘dishonest’ element in the charge of theft. For the charge of being in possession of an unlicensed firearm against the acc’d (Fui), there is no reasonable doubt about that charge.</p> <ul style="list-style-type: none"> <li>• Both acc’d discharged without conviction in respect of the charge of theft of an animal</li> <li>• the accused is convicted of the charge of being in possession of an unlicensed firearm and fined \$200</li> </ul>
<b>2013</b>	
<p><b>20. Police v Schuster</b> [2013] WSDC 1 (12 July 2013)</p>	<p>There were multiple charges under this case against multiple defendants (Satapuala village). The matter resulted from disruption at Satapuala when a stone wall was erected on the main road. The Police’s attempts to clear the road led to a confrontation with the villagers. Amongst multiple charges (such as unlawful assembly, resisting police, insulting words etc) is one of possession of an unlicensed firearm.</p> <p><b>Held:</b> Although the firearm was found in the accused’s truck, the prosecution failed to provide evidence to prove the elements of the offence. The arms charge was therefore dismissed.</p>
<b>2012</b>	
<p><b>21. Police v Tuputala</b> [2012] WSSC 36 (4 May 2012)</p>	<p>This was a matter where an informant reported the selling of marijuana from the accused’s land. During the search for marijuana, the police found a 4/10 rifle and 25mm pistol. The accused was charged for the possession of unlawful weapon (the 25mm pistol only) under the Arms Ordinance 1960 (s.12) while his wife appeared for possession of narcotics.</p> <p>The accused told the police that the firearms were to scare off pigs. Prosecution did not give evident to the contrary. <u>The Court gave the accused the benefit of</u></p>

	<p><u>the doubt.</u></p> <p><b>Sentence:</b> The 1<sup>st</sup> accused was convicted and sentenced to a fine of \$500 for possession of an unlawful weapon. The 2<sup>nd</sup> accused was sentenced to 3 years imprisonment.</p>
<b>2010</b>	
<p><b>22. Police v Atoa</b> [2010] WSSC 33 (22 March 2010)</p>	<p>The defendant appears for sentence on a charge that he attempted to murder the complainant by shooting at him. The use of firearms in this country to commit offences is a <u>very serious crime</u> and is <u>normally punished by imprisonment</u>. Penalties prescribed for such offending have been increased by our Parliament over the last ten years in recognition of its seriousness, in an effort to allow the courts to try and combat this increasingly prevalent crime. The defendant's offending is aggravated by his premeditation in going to the complainant's house armed beforehand with the gun and the sapelu. No question that a penalty of imprisonment must be imposed for this behaviour.</p> <p><b>Sentence:</b> For the charges of being in possession of an unlawful firearm, the defendant was sentenced to 12 months imprisonment. For the discharge of the firearm, the defendant is discharged without conviction. When added to sentences imposed for other charges, the imprisonment period to be served concurrently is 3 years (minus time in custody awaiting sentence).</p>
<p><b>23. Police v Faisauv ale</b> [2010] WSSC 55 (11 June 2010)</p>	<p>The charges were for (i) possession of narcotics; (ii) possession of a dangerous weapon, (iii) possession of ammunition (s.12 of the AO), and (iv) being armed with a dangerous weapon.</p> <p><b>Held:</b> The Court found the first defendant guilty of being in possession, with knowledge, of the ammunition alleged contrary to the Arms Ordinance 1960, section 12 (1)(2); and of being in possession, with knowledge, of the pistol and ammunition as alleged and therefore guilty of being in possession of unlawful weapon and ammunition contrary to the AO.</p>
<p><b>24. Police v Maposua</b> [2010] WSSC 85 (28 July 2010)</p>	<p>A search warrant issued to search D's land and premises. They recovered narcotics (weed) and also found a .32 revolver with 17 rounds of ammunition. The defendant was charged with 3 charges, 1 of which was for possession of an unlawful weapon contrary to s.13 of the AO 1960.</p> <p>Evidence provided satisfied the court that the operation (narcotics) was both commercial and ongoing.</p> <p><b>Sentencing patterns</b> – personal use of small quantities does not invariably result in imprisonment. There has also been a consistency in the imposition of harsher penalties on persons engaged in commercial distribution and financial gain.</p> <p><b>Sentence:</b> The defendant was convicted of all charges included the crime of possession of an unlawful weapon. Altogether, he was sentenced to an 18 months term of imprisonment.</p>

<b>2008</b>	
<p><b>25. Police v Esera</b> [2008] WSSC 43 (23 June 2008)</p>	<p>Search warrant issued to search the accused's home for house for narcotics. The defendant stood trial for 5 charges - 4 narcotics related and 1 in regards to possession of an unlawful weapon (initially recorded as a 25 semi-automatic pistol, and later amended that it was a 22 calibre) contrary to s.12 of the AO</p> <ul style="list-style-type: none"> <li>• Counsel for the accused submitted that the pistol found in the bedroom of the accused and his wife was not working, implying that a non-working pistol is not a pistol in terms of the AO 1960.</li> </ul> <p><b>Sentence:</b> The Court did not agree with this submission and stated that the Ordinance makes no distinction between a working and non-working pistol or between a functioning firearm and non-functioning firearm. As long as a pistol retains its identity as a pistol, it is a pistol. The definition of a pistol based on whether it is working or not is not accepted by Court. - Court concluded that the firearm is a pistol (22 calibre) All 5 charges proved beyond reasonable doubt.</p>
<p><b>26. Police v Lafi</b> [2008] WSSC 44 (14 July 2008)</p>	<p>The accused (in above matter) appears for sentencing.</p> <ul style="list-style-type: none"> <li>- The Court mentioned that its sentencing in narcotics cases is plan and need not repeated. The 3 separate narcotic charges all received imprisonment sentences, respectively.</li> <li>- For the charge of possession of the pistol which does not work, the accused is sentenced to one month imprisonment</li> </ul> <p><b>Held:</b> The total sentence to be served by the accused was effectively 10 months imprisonment.</p>
<p><b>27. Police v Chan Chui</b> [2008] WSCA 11 CA 15 of 2007 (19 September 2008)</p>	<p>An appeal seeking a review of the penalty (fine) imposed upon the respondent for narcotics and firearm offences. This was on the basis that the penalty was manifestly inadequate and inconsistent with appropriate range of penalties for like offences.</p> <p><b>Held:</b> The appeal was dismissed on the grounds that the Appeal Court respects the approach taken by the trial judges who dealt with the matter. It would be inappropriate for the Appeal Court to intervene in areas of judicial discretion except in areas of legal principle or significant departures from permitted range.</p>
<b>2007</b>	
<p><b>28. Police v Chan Chui -</b> [2007] WSSC 72 (18 September</p>	<p>The accused is charged with 3 narcotics related charges, 1 of making verbal threats and 1 for possession of unlawful weapon without lawful, proper and sufficient purpose.</p> <p><b>Held:</b> The Court held that there was a case to answer in respect of the alleged possession of unlawful ammunition without lawful, proper and sufficient</p>

2007) <b>Written Ruling</b>	purposes. This was in addition to the findings of cases to answer for the other charges (for narcotics
<b>2005</b>	
<b>29. Police v Faulkner</b> [2005] WSSC 4 (14 March 2005)	The accused was charged with possession of narcotics and further charged with possession of unlawful weapons contrary to s.12 of the AO 1960. There were new information sworn by the Police and the accused sought to dismiss the new information as the acceptance of such would violate the accused's right to fair trial and abuse the court process.  <b>Held:</b> The Court after consideration decided to dismiss 2 of the additional information laid as it would breach the accused's right to fair trial.
<b>1997</b>	
<b>30. Police v Gasolo</b> [1997] WSSC 7; Crim No S 294 295-96 (26 February 1997)	The accused was charged with two charges of causing grievous bodily harm under the Crimes Ordinance 1961, and for presenting a loaded firearm without lawful, proper and sufficient purpose under the AO 1960.  <b>Held:</b> The charge of the accused presenting a loaded firearm at victim without lawful, proper, sufficient purpose was not addressed by evidence. The charge is dismissed.

## A. Some analysis of the 30 Arms Ordinance Court Decisions

### (i) The 30 Reported Court Decisions applying the Arms Ordinance 1960

4.6 An overall observation of the Commission from the cases read and analysed is that there is a prevalence and alarming number of illegal guns present in Samoa.

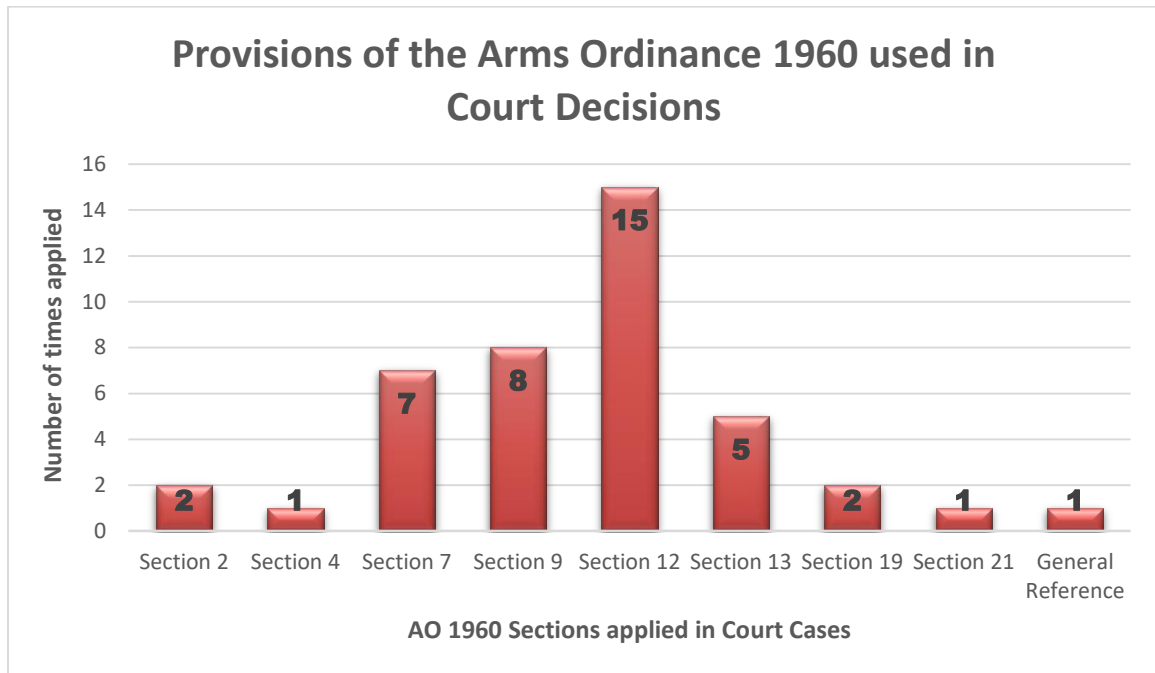
4.7 Since the enactment of the Arms Ordinance 1960 (some 63 years now), data shows that only seven (7) of the 27 current provisions of the Ordinance have been relied upon and applied, according to the 30 reported court decisions found. This is set out below and further illustrated in a graph below:

- **2 cases** applied section 2 (Interpretation);



- **1 case** referred to section 4 (Record of dealings by licensed dealers);
- **7 cases** relied on section 7 (Permits for possession);
- **8 cases** referred to section 9 (Registration of firearms);
- **15 cases** applied section 12 (Possession of unlawful weapon);
- **2 cases** were in relation to section 19 (Occupier of premises deemed to be in possession of arms, ammunition or explosives found thereon);  
and
- **1 case** refers to section 21 (Search of land or buildings for arms, ammunition or explosives).

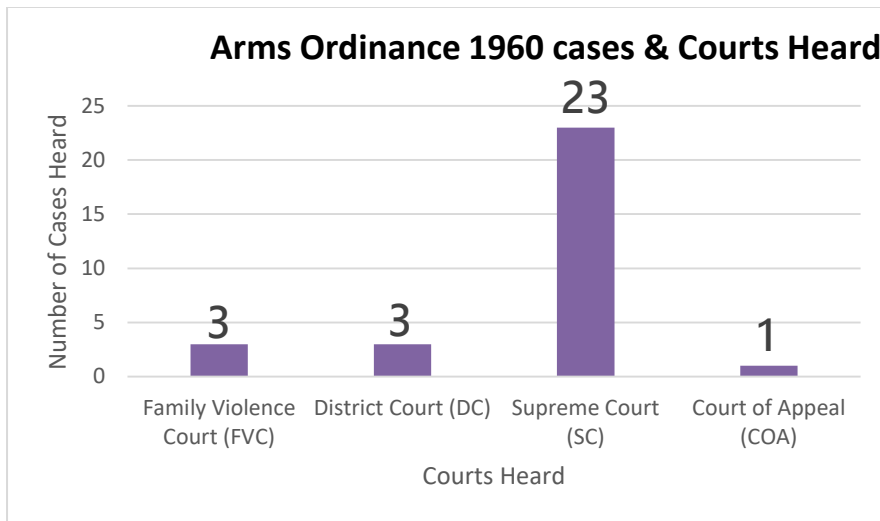
**Note:** *The number of cases listed above is more than the 30 court cases because some cases referred to 2 or more provisions.*



### (ii) Arms Ordinance cases & Courts Heard

4.8 A further breakdown of the 30 cases shows which court heard these matters respectively. Of the 30 court decisions:

- **1 case** was heard in the Court of Appeal (COA);
- **23 cases** were heard in the Supreme Court (SC);
- **3 cases** were heard in the District Court (DC); and
- **3 cases** were heard in the Family Violence Court (FVC).



4.9 The above shows that majority of the recorded court cases applying the provisions of the AO 1960 were heard in the Supreme Court. In the Arms Ordinance 1960, the ‘Court’ is defined to mean the District Court.

*Why are the majority of matters then heard by the Supreme Court?*

*The arms and ammunition related charges in cases founds are usually linked to narcotics charges or searches. According to the Criminal Procedure Act 2016 (section 6 - Trial with or without assessors), charges under the Narcotics Act 1967 are to be dealt by a Supreme Court Judge, sitting alone. Therefore, the arms and ammunition charges are dealt with together with narcotics cases, by a Supreme Court Judge.*

### **(iii) Most Charged Offences – Possession of unlawful firearms / weapons (and related ammunition)**

4.10 The majority of the firearms and ammunitions discovered according to reported case laws are ‘unlawful’. Generally, these cannot be imported except where it is so permitted by the Minister under special circumstances for special reasons.

4.11 For all the unlawful weapons discovered in the Court cases, none of these had any proper or legal authorisation for their importation into Samoa. This is **alarming** as it implies the existence of illegal importation of unlawful firearms, ammunitions into Samoa.

#### (iv) Sentencing Trends

4.12 Of the **30** cases, **15** cases were sentencing matters, **13** hearings and **1** appeal matter.

4.13 The **15** sentencing cases are further analysed:

- In **7** matters, the Court imposed a custodial sentence (imprisonment). These ranged from about 1 month up to about 18 months.
- In **6** cases, the Court imposed non- custodial sentences such as a fine, supervision, or community service;
- For **2** matters, the sentencing was in relation to the narcotics charges, and no further mention of the arms related charges.

4.14 As it is encouraging to see the majority of sentencing decisions imposing imprisonment terms for arms related offences, the imprisonment sentences imposed are at the lower end compared to other jurisdictions.

4.15 Another notable observation is that only **2** out of **30** cases applying the AO 1960 referred to the ordering of the disposal of the unlawful arms and ammunition.

#### (v) Extended Search – Samoan Case Law

4.16 As referred above, a total of 81 cases from the Commission’s extended search were read and analysed in addition to the 30 Arms Ordinance cases.

<b>(B) EXTENDED SEARCH – SAMOAN CASE LAW</b> <i>These are the court decisions which make reference to guns, firearms, pistols etc. but the charges were not brought under the AO 1960</i>	
<b>CASE LAW</b>	<b>SUMMARIES</b>
<b>2020</b>	
<b>I. Police v Leiloa</b> [2020] WSSC 96	The defendant appears for sentencing on the charges of conspiracy to commit an offence, namely murder, pursuant to sections 38(2) and 99(a) of the Crimes Act 2013 for which the maximum imprisonment is life imprisonment. (Section 106 Crimes Act 2013).  There were no discussions on the Arms Ordinance but the facts of the case reveal the

	defendant was in possession and obtainment of unlawful weapons (rifle, .22 rifle, 12 gauge, small pistol .38 revolver).
2. <i>Police v Gabriel</i> [2019] WSSC 40	<p>The defendant appears for sentencing on one charge of causing grievous bodily harm with intent and being armed with a dangerous weapon (12 gauge shot gun) and discharging a firearm.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>for the charge of grievous bodily harm, the defendant is sentenced to 3 years and 2 months imprisonment.</li> <li>For the charge of being armed with a dangerous weapon, 4 months' imprisonment to be served concurrently and discharge of firearm, convict and discharge.</li> </ul>
3. <i>Police v Fuiava</i> [2018] WSDC 5	<p>The defendant was charged with being in possession of unlawful weapon not being authorised by the Minister, being in possession of ammunitions and being in possession of utensils in breach of the Narcotics Act 1967.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The defendant is guilty of all 3 charges and is remanded on bail conditions awaiting sentencing.</li> <li>The Police Commissioner is ordered to destroy the pistol and its ammunitions.</li> </ul>
4. <i>Police v Faleupolu</i> [2017] WSDC 22	<p>This is a ruling on a bail application by the Defendant. The Defendant was charged with one count alleging that on 26/09/17, he was in possession of an unlawful weapon namely a .32 calibre semi- automatic pistol (“the gun”) and 24 ammunitions for an unlawful weapon not being so authorised by the Minister of Police.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The Court held there was no real significant risk that the Defendant may re-offend if bail is granted.</li> <li>Bail is granted on certain conditions including surrendering his passport to the Court Registrar among other.</li> </ul>
5. <i>Police v Fiapopo</i> [2016] WSFVC 4	<p>This a sentencing decision relating to the defendant for the charges of (i) threat to kill; (ii) assault; (iii) being armed with a dangerous weapon; (iv) in possession of an unlicensed firearm; and (v) discharging the firearm.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The defendant is sentenced to 250 hours of community work in total.</li> <li>Police is ordered to (a) investigate the allegation that the unlicensed firearm belongs to a Catholic Priest and (b) destroy the 12-gauge firearm following investigation and prosecution, if any prosecution follows.</li> </ul>
6. <i>Police v Tautalaas o</i> [2016] WSSC 96	<p>The accused appears for sentencing in relation to the charge of attempted murder (by attempting to shoot another villager with a 12 gauge shot gun) in which he pleaded guilty.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>Sentenced to five years imprisonment less any time spent in custody.</li> </ul>

<p><b>7. Police v Vaili</b> [2016] WSSC 102</p>	<p>The accused faced 4 charges arising out of 2 incidents. The 4 charges include driving in a dangerous manner, being armed with a dangerous weapon (semi-automatic rifle), discharging the semi-automatic rifle against police officers and again discharging the same semi-automatic rifle with intent to resist his lawful arrest on the second incident.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• The prosecution has proven the charges to the required standard.</li> <li>• The charges against the defendant in respect of the second incident are also proved to the required standard.</li> <li>• The defendant to appear before the court for sentencing on 6 May 2016.</li> </ul>
<p><b>8. Police v Vaili</b> [2016] WSSC 103</p>	<p>The Defendant above appears for sentencing on the charges above.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• On the charge of using and discharging a firearm against the police convicted and sentenced to 3 years in prison.</li> <li>• In relation to the charge of armed with a dangerous weapon, in this case a semi-automatic rifle, after similar deductions convicted and sentenced to 9 months in prison, concurrent term.</li> <li>• In relation to the offence of dangerous driving, again following the same process convicted and sentenced to 3 months in prison, concurrent term.</li> <li>• In relation to the rifle involved in this incident if recovered it is ordered forfeited and is to be destroyed.</li> <li>• In respect of this incident and information S4535/14 the defendant will be convicted and likewise sentenced to 3 years in prison.</li> </ul>
<p><b>9. Police v Ianuari</b> [2016] WSSC 53</p>	<p>The defendant appears for sentencing for such charges including (a) two counts of intending to cause grievous bodily to two victims and did wound or caused grievous bodily harm to those two victims; (b) one count of attempted grievous bodily harm; (c) one count of intentional damage; (d) one count of using firearm in the commission of a crime; (e) one count of being armed with a dangerous weapon, and (f) one count of insulting words.</p> <p><b>Held:</b> The defendant is convicted and placed on probation for two years on the following conditions:</p> <ul style="list-style-type: none"> <li>• to live and work as directed by the Probation Service.</li> <li>• to continue to attend current remedial and educational programmes under the supervision of the Probation Service; and</li> <li>• to attend any other programme or community project as directed by the Probation Services.</li> </ul>
<p><b>10. Police v Taua and Maliefou</b> [2016] WSSC 66</p>	<p>The defendants appear for sentencing on joint charge of theft of an animal, and one charge against the other defendant for being armed with an unlicensed firearm.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For the joint charge and the other charge against the other defendant, both are convicted and asked to come up for sentence within 12 months. Both defendants will not be called upon if they do not re-offend.</li> </ul>

<p><b>11. Police v Enelagi</b> [2015] WSSC 208</p>	<p>The D appears for sentencing on the charges in which D has pleaded guilty to including cultivation of 10 marijuana plants; possession of unlawful 9mm ammunitions; and possession of unregistered firearm.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The Defendant is convicted and sentenced to 22 months' imprisonment.</li> </ul>
<p><b>12. Police v Metotisi and Misiuepa</b> [2015] WSSC 68</p>	<p>Both defendants appear for sentencing on the charges of theft of an animal, whilst 1 of the other defendant appears for sentencing on an additional charge of possession of an unlawful firearm against him. Both accused pleaded guilty at the earliest opportunity.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• both accused are discharged without conviction in respect of the charge of theft of an animal.</li> <li>• the accused Fui is convicted of the charge of being in possession of an unlicensed firearm and fined \$200.</li> </ul>
<p><b>13. Police v Pese</b> [2015] WSSC 153</p>	<p>The defendant appears for sentencing on 3 charges namely being in possession of marijuana and rolled cigarettes, being in possession of 4,600 marijuana seeds and being in possession of 2 unlicensed 12 gauge shotguns. The defendant has pleaded guilty to all 3 charges.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• On the charge of possession of 4,600 seeds of marijuana convicted and sentenced to 2½ years in prison. Remand in custody time to be deducted.</li> <li>• On the other charge of possession of the cigarettes convicted and sentenced to 21 months in prison concurrent term.</li> <li>• On the charges of possession of two unlicensed firearms convicted and sentenced to 12 months in prison, firearms are ordered to be destroyed. That 12 months is also a concurrent term.</li> <li>• The defendant will serve in total for these offences 2½ years in prison less remand in custody time.</li> </ul>
<p><b>14. Police v Mauga</b> [2015] WSSC 145</p>	<p>The defendants appear for sentencing for 4 joint charges against them being in possession of 4 branches of marijuana and 8 marijuana seeds, in possession of live round of .308 ammunition usable for a rifle or a semi-automatic weapon. Both defendants pleaded not guilty to possession of the ammunition, whereas the other defendant pleaded not guilty to the narcotics charges. The other defendant pleaded guilty. During trial, all charges were proven against the defendants.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• In respect of the possession of the leaves convicted and sentenced to 4 months in prison, remand in custody time to be deducted.</li> <li>• Possession of the eight (8) seeds convicted and sentenced to one (1) month in prison, concurrent term.</li> </ul>
<p><b>15. Police v Peters</b> [2015] WSSC 20</p>	<p>There was no discussion or mention of the provisions of the Arms Ordinance. However, the defendant appears was charged and appeared for sentencing in this case for causing actual bodily harm. The defendant assaulted the victims with the barrel, handle and the butt of his rifle.</p>

	<p><b>Sentencing:</b></p> <ul style="list-style-type: none"> <li>• Sentenced to 7 months supervision and as a special condition of his term of supervision he is to attend the anger management programme conducted by the probation service.</li> </ul>
<p><b>16. Police v Tapuala</b></p> <p>[2014] WSSC 177</p>	<p>There was no discussion or mention of the provisions of the Arms Ordinance. The defendant in this case appears for sentencing of four charges including causing grievous bodily harm causing injury using a firearm to commit a crime and possession of an unlawful weapon. He pleaded guilty to all charges.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• For that charge convicted and sentenced to 3 years in prison concurrent term.</li> <li>• The final charge of possession of an unlawful weapon namely a pistol carries a 1 year maximum. Convicted and sentenced to 6 months in prison again concurrent term.</li> </ul>
<p><b>17. Police v Williams</b></p> <p>[2014] WSSC 153</p>	<p>The defendant appears for sentencing on a variety of narcotics charges including possession of unlawful pistols and ammunition. There was no mention or discussion of the provisions of the Arms Ordinance, however it was found in the possession of the defendant unlawful pistols and ammunition.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• The pistols that were seized and are presently under the custody of the police are ordered to be destroyed forthwith.</li> </ul>
<p><b>18. Police v Siaosi</b></p> <p>[2014] WSSC 19</p>	<p>The accused appears for sentence on one count of using a firearm against a law enforcement officer, and one count of being armed with a dangerous weapon. The accused pleaded not guilty to both charges but during trial was found guilty of both charges.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For the offence of using a firearm against a law enforcement officer the accused is sentenced to 2 years and 9 months imprisonment.</li> <li>• For the offence of being armed with a dangerous weapon which in this case was an unlawful firearm, the accused is sentenced to 4 months imprisonment.</li> </ul>
<p><b>19. Attorney General v Tofele Lata Tavui</b></p> <p>[2014] WSCA 3</p>	<p>The Attorney General appeals the dismissal of a charge against the respondent. The respondent in this case was charged with attempted murder, being armed with a dangerous weapon (single shot firearm) and causing grievous bodily harm. The court dismissed the charge of attempted murder on the ground there was no case to answer.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• The appeal is allowed. The discharge on the charge of attempted murder is quashed and a retrial is ordered on that charge.</li> <li>• The respondent should be remanded in custody pending trial.</li> </ul>
<p><b>20. Police v Mateai</b></p> <p>[2013] WSSC 140</p>	<p>Two defendants appear for sentencing on the charges where one defendant is charged with (i) possession of seeds, (ii) possession of marijuana, (iii) cultivation of two small marijuana plants and (iv) two counts of unlicensed firearm (shot guns). The other defendant is charged with possession of two smaller plants. Both defendants plead guilty to all charges.</p>

	<p><b>Sentence:</b> For Roger:</p> <ul style="list-style-type: none"> <li>• For the drug charges, convicted and sentenced to 28 months in prison.</li> <li>• For the firearm charges, the charges are dismissed but the firearms are ordered to be destroyed.</li> </ul> <p>For Asofa:</p> <ul style="list-style-type: none"> <li>• For the charge of cultivating small plants, convicted and sentenced to 6 months in prison.</li> <li>• For the charge of actual bodily harm and possession of 2 cigarettes, convicted and sentenced to 2 months in prison.</li> <li>• In respect of possession of the two cigarettes you will be convicted and sentenced to 1 month in prison.</li> <li>• Terms to be cumulative to each other and cumulative to your other term of 6 months for the other drug offence.</li> </ul>
<p><b>21. Police v Leaoaniu</b> [2013] WSSC 108</p>	<p>The defendant appears for sentencing on 2 counts of causing grievous bodily harm (used a small hand gun and shot 2 victims during a scuffle that broke out between them).</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted and sentenced to 6 years in prison (3 years for each victim which brings a total of 6 years).</li> </ul> <p><b>Comment by the Judge in this case:</b> <i>The use of firearms in this country to commit offences is becoming far too common. The court in previous cases has imposed deterrent sentences in an effort to deter people from resorting to the use of such lethal weapons. Such sentences have issued in the past and will continue to issue. The message to the public must be unambiguous and not be misunderstood. If you use a gun on another person you can expect little leniency from the court.</i></p>
<p><b>22. Police v Tavui</b> [2013] WSSC 125</p>	<p>The defendant appears for sentencing on the charges against him. He pleads guilty to the charges of wilfully causing grievous bodily harm and being armed with a dangerous weapon (shot the victim on the chest using a firearm).</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Defendant is convicted of the charges of grievous bodily harm and being armed with a dangerous weapon and sentenced to a term of imprisonment for a period of 5 years.</li> <li>• Defendant is also sentenced to a term of imprisonment for a period of six months for the firearms offence and such sentence to be concurrent with the above order.</li> </ul>
<p><b>23. Police v Schuster</b> [2013] WSDC 1</p>	<p>In this case, there are 18 defendants charged with unlawful assembling in Satapuāla, together with additional separate charges on 12 of them. Some of these additional charges include possession of unlicensed firearms, hence why this case was considered. The courts did not discuss the provisions of the Arms Ordinance 1960.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• All other charges against some of the defendants of either resisting/obstructing a police officer, using threatening/insulting words, or armed with a dangerous weapon, or in possession of an unregistered firearm are either dismissed as duplicate charges, or as alternative charges to charges proven, or for insufficient evidence.</li> </ul>



<p><b>24. Police v Pepe</b></p> <p>[2013] WSSC 47</p>	<p>The defendant appears for sentencing after he pleaded guilty to the manslaughter of his sister from a gunshot wound to her chest and upper body inflicted accidentally.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted of manslaughter and placed on supervision under the probation office for a period of 2 years.</li> <li>• There are special conditions for that supervision and these are as follows: <ul style="list-style-type: none"> <li>▪ To undertake 150 hours of community service under the office community service program;</li> <li>▪ For the period of 2 years supervision, to refrain from consumption of alcohol of any kind that includes homebrew;</li> <li>▪ Not to be found inside any bar or place serving alcohol and that includes a shop premises.</li> </ul> </li> </ul>
<p><b>25. Nauer v Attorney General</b></p> <p>[2012] WSCA 8</p>	<p>The appellant appeals the conviction of murder against him (fired a 6 shot revolver against the deceased) on the basis that the verdict was unreasonable due to the assessors not have reasonably excluded self-defence or defence of another.</p> <p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>• The evidence in support of self-defence or defence of another was not so unequivocal that an acquittal in this Court is justified.</li> <li>• The summing up did not adequately explain the elements of defence of another or the onus of proof in relation to self-defence and defence of another.</li> <li>• For those reasons the appeal against conviction is allowed, the conviction quashed and a new trial ordered under s 164N(4) of the Criminal Procedure Act.</li> </ul>
<p><b>26. Attorney General v Filipaina</b></p> <p>[2012] WSCA 1</p>	<p>This case did not discuss the Arms Ordinance 1960. The Court sustained convictions of the responded on charges of possession of cannabis, possession of an unlawful pistol and 2 counts of unlawful possession of ammunition. The Attorney General sought orders under the Proceeds of Crime Act 2007 to forfeit tainted property cash and a Jeep. The Supreme Court made an order in relation to the cash but did not order on the vehicle.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• The Attorney General’s appeal is allowed and order the forfeiture of the Jeep.</li> </ul>
<p><b>27. Police v Tuputala</b></p> <p>[2012] WSSC 36</p>	<p>The defendant appears for sentencing on the charge of possession of an unlawful weapon (pistol 25mm). The defendant’s wife appear also for sentencing on a different charge. Both originally pleaded not guilty to the charges against them but vacated their not guilty pleas on the morning of the trial to guilty pleas.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• <b>Defendant 1:</b> taking in account the offending and the mitigating factors in his favour, he is fined \$500 for possession of an unlawful weapon.</li> <li>• <b>Defendant 2:</b> sentenced to 3 years imprisonment. Any time for which she has been remanded in custody pending the outcome of this matter is to be further deducted from that sentence.</li> </ul>

<p><b>28. Police v Iva</b> [2011] WSSC 142</p>	<p>The defendant appears for sentencing for manslaughter charge against him (used a shotgun to shoot the deceased in the arm causing fatal injuries resulting in the death of the deceased) after a defended trial.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted and sentenced for a period of 10 years in prison.</li> </ul>
<p><b>29. Police v Luamanu</b> [2011] WSSC 103</p>	<p>The defendant appears for sentencing for the charge of robbery. The defendant used a gun to threaten an employee of Ink Patch so they could carry out the defendant's instructions. There was no discussion on the Arms Ordinance 1960.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The accused is convicted and sentenced to 7½ years imprisonment. The period of time during which he has been remanded in custody is to be deducted from that sentence.</li> </ul>
<p><b>30. Attorney v Faisauvale</b> [2011] WSSC 56</p>	<p>The defendants appear for sentencing on charges including possession of narcotics, possession of a dangerous weapon and ammunitions, and being armed with a dangerous weapon.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The Court is satisfied beyond reasonable doubt that the second defendant is guilty of the crime of Possession of Narcotics contrary to the Narcotics Act sections 7 and 18 as alleged in Information S1939/09.</li> <li>• The first defendant is convicted of the crimes of Possession of Ammunition and Unlawful Weapon as stated in Information S1941/09, S1954/09 and S3265/09.</li> <li>• The first defendant is convicted of the crime of Possession of Narcotics as stated in Information S1939/09.</li> <li>• The first defendant is acquitted on Information S1940/09.</li> <li>• The second defendant is convicted of the crime of Possession of Narcotics on Information S1939/09.</li> </ul>
<p><b>31. Police v Vavao</b> [2011] WSSC 81</p>	<p>The defendant appears for sentencing after a defended hearing on the charge of murder against him. A panel of assessors held the defendant not guilty of murder but guilty of manslaughter. The defendant shot the deceased in the right upper shoulder which severed the main artery and bouncing off the right collar which caused many injuries and led to the death of the victim.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted and sentenced to 10 years in prison.</li> <li>• The gun involved in this matter is ordered to be destroyed.</li> </ul>
<p><b>32. Police v Tanielu</b> [2010] WSSC 134</p>	<p>The defendant is charged with thee co-accused for robbery. There are no discussions on the Arms Ordinance 1960. However, the facts of this case revealed that a fake gun was used to threaten bank employees in the commission of the offence.</p> <p><b>Judgment of the Court:</b></p> <ul style="list-style-type: none"> <li>• The charge of robbery is proven beyond reasonable doubt.</li> <li>• The charge against the accused of being armed with a dangerous weapon without a lawful purpose have also been proven beyond reasonable doubt.</li> </ul>

<p><b>31. Police v Iele</b></p> <p>[2010] WSSC 172</p>	<p>This case did not discuss the provisions of the Arms Ordinance 1960. The Court found the defendant guilty of indecent assault on the victim (14 year old boy). The mention of arms in this case is where the complainant testified that the defendant had a pistol tucked into his jacket which the defendant threatened to shoot the victim if he did not comply.</p> <p><b>Decision and sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted and sentenced to 18 months imprisonment for indecent assault and an additional 6 months for robbery, totalling 24 months.</li> </ul>
<p><b>33. Farao v Police</b></p> <p>[2010] WSCA 9</p>	<p>The defendant appeals the decision by the court in the first instance against him on the grounds of unreasonable verdict, miscarriage of justice and nullity arose in the course of the trial. There is no discussion on the Arms Ordinance 1960 The defendant is alleged to have shot the victim using a 12-gauge shotgun causing the victim to sustain injuries.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• The appeal is dismissed.</li> </ul>
<p><b>34. Failsauvale v Police</b></p> <p>[2010] WSCA 8</p>	<p>The appellant was convicted by the Supreme Court on charges of possession of cannabis, possession of an unlawful pistol and 2 counts of possession of unlawful ammunition. The appellant appeals the conviction and sentence against him. There was no discussion on the provisions of the Arms Ordinance 1960.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• The appeal is dismissed.</li> </ul>
<p><b>35. Police v Fa'i</b></p> <p>[2010] WSSC 148</p>	<p>The defendant appears for sentencing on 2 charges (i) possession of marijuana and (ii) possession of a semi-automatic pistol.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted and sentenced for both charges to 2 years imprisonment.</li> </ul>
<p><b>36. Police v Maposua</b></p>	<p>The defendant appears for sentencing on the charges of Possession of Narcotics (3x), Possession of Utensil, Possession of Unlawful Weapon. The defendant pleaded guilty at the last moment and after the presentation of the prosecution case. There is no discussion on the provisions of the Arms Ordinance 1960.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For the charge of possession of narcotics, convicted and sentenced to a term of imprisonment for a period of 4 years.</li> <li>• For the charge of possession of an unlawful utensil and possession of unlawful weapon, convicted and sentenced to a term of imprisonment for a period of 18 months and such sentence is to cumulative to the above.</li> </ul>
<p><b>37. Police v Faisauvale</b></p> <p>[2010] WSSC 83</p>	<p>This is a decision on an application for bail by the accused. The prosecution opposes the application by the accused.</p> <p>The case does not discuss any provisions of the Arms Ordinance 1960; however, the defendant is jointly charged with possession of narcotics, possession of pipe and individually charged with being armed with a dangerous weapon (a .22 pistol semi-automatic pistol and possession of unlawful ammunitions.</p> <p><b>Held:</b> Bail is denied for the accused.</p>

<p><b>38. Police v Pio</b></p> <p>[2010] WSSC 136</p>	<p>The defendant appears for sentencing on the charge of causing grievous bodily harm (shot his brother in law in the leg, not intending to kill him but intending to mean the shot as a warning.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For grievous bodily harm, the defendant is convicted and sentenced to 2 years and 4 months in prison.</li> <li>• In respect of discharging a firearm, the defendant is convicted and discharged without penalty.</li> </ul>
<p><b>39. Police v Maposua</b></p> <p>[2010]</p>	<p>The defendants appears for sentencing on the on the charge of attempted murder. The defendants shot at the complainant's vehicle using a shot gun.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For Mr Schwalger, convicted and sentenced to 4 years in prison;</li> <li>• For Mr Maposua convicted and sentenced to 4 years 9 months in prison.</li> </ul>
<p><b>40. Police v Faisauvale</b></p> <p>[2010] WSSC 58</p>	<p>The principal defendant (Tagaloasa Filipaina) in this case was found guilty of the crimes of possession of narcotics and firearm. This case however focuses on the other defendant Sinapati who was found guilty and thus appears for sentencing as he was employed by the principal defendant to maintain and care for the property on which the marijuana was found.</p> <p>There was no discussion on the Arms Ordinance 1960.</p> <p><b>Order:</b></p> <ul style="list-style-type: none"> <li>• Taii Fotu Sinapati is convicted of the crime of possession of narcotics.</li> <li>• Taii Fotu Sinapati is to appear for sentence if called upon within a period of two years. It is a condition of the order that he commit no crime or offence involving narcotics within that period.</li> </ul>
<p><b>41. Police v Faisauvale</b></p> <p>[2010] WSSC 55</p>	<p>This is the court's decision on the case above (sentencing of the second defendant). The first defendant is charged with the crimes of possession of narcotics, possession of a dangerous weapon and ammunition and being armed with a dangerous weapon. The second defendant is charged with possession of narcotics.</p> <p><b>Decision of the court:</b></p> <ul style="list-style-type: none"> <li>• The second defendant is guilty of being in possession of narcotics;</li> <li>• The first defendant is convicted of being in possession of ammunition and unlawful weapon;</li> <li>• The second defendant is convicted of being in possession of narcotics.</li> </ul>
<p><b>42. Police v Maposua</b></p> <p>[2010] WSSC 69</p>	<p>This is a ruling by the Courts on the objection by the defendants in this case (halfway into the trial) as to the legality of the search warrants executed by the police which resulted in the recovery of the two firearms alleged to have been involved in this offending.</p> <p>The objection on the sesarch warrant is that it is defective on the basis that:</p> <ol style="list-style-type: none"> <li>section 21 warrants can only be used where there is in any premises any firearm "in respect of which any offence against the Arms Ordinance has been or is about to be committed" or any firearm "which may be evidence of any such offence;</li> </ol>

	<p>ii. that the warrant authorized a search of Viliamu Maposua's house not his father's house and therefore the search was illegal and again any evidence so obtained would equally be tainted by that illegality and should be excluded.</p> <p><b>Decision of the Court:</b></p> <ul style="list-style-type: none"> <li>The police have properly complied with the requirements of section 21 of the Arms Ordinance, the warrants there under issued were valid and enforceable and the materials recovered pursuant to those warrants are admissible in these proceedings.</li> </ul>
<p><b>43. Police v Eletise</b></p> <p>[2010]</p> <p>WSSC 62</p>	<p>The defendant appears for sentencing for the following charges:</p> <ol style="list-style-type: none"> <li>possession of 131 stalks of marijuana;</li> <li>possession of 1½ cigarettes of marijuana;</li> <li>possession of an unlawful weapon namely a .22 calibre pistol; and</li> <li>possession of unlawful ammunition namely 30 rounds of .22 calibre ammunitions.</li> </ol> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>To serve a total of 4 years in prison, remand in custody time to be deducted.</li> </ul>
<p><b>44. Police v Toma</b></p> <p>[2010]</p> <p>WSSC 65</p>	<p>The defendant appears for sentencing on the charge of manslaughter. The facts of the case revealed that the deceased went to the house of the defendant's brother in law next to the defendant's house carrying a .22 calibre rifle. It is not clear why the deceased was angry however efforts were made to calm down the deceased by the defendant and his son in law. There was a struggle to get control of the .22 calibre rifle and the gun broke in two which the defendant grabbed the metal of the weapon and hit the deceased on the head. The deceased died from head injuries sustained in the assault.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The defendant is convicted and sentenced to prison for 3 years.</li> </ul>
<p><b>45. Police v Siano</b></p> <p>[2010]</p> <p>WSSC 25</p>	<p>The defendant in this case is charged with grievous bodily harm and is disputing some paragraphs of the summary of facts on the basis that the evidence of the victim is different to that of his (the victim provoked the defendant to use the gun to shoot the victim).</p> <p><b>Discussion by the court on the use of a gun in the offending:</b></p> <p><i>"Firstly you used in this offending a <u>gun</u> which is a lethal weapon. A weapon in respect of which the Parliament of this country over the last decade has consistently increased penalties for because of the increasing number of firearms offences both fatal and non fatal that are coming before the courts. That is a clear message to the court to treat such offending with the utmost seriousness."</i></p> <p><b>Decision and Sentence:</b></p> <ul style="list-style-type: none"> <li>The defendant is convicted and sentenced to 3 years imprisonment.</li> </ul>
<p><b>46. Police v Atoa</b></p> <p>[2010]</p> <p>WSSC 22</p>	<p>The defendant appears for sentencing on the charge of attempted murder (shooting at the victim) and other charges including possession of unlicensed firearm, armed with a dangerous weapon (namely a gun), a second count of armed with a dangerous weapon (a bush knife) and discharging a firearm. The defendant has pleaded guilty to all charges against him.</p> <p><b>Discussion by the court on the use of guns:</b></p> <p><i>"The use of firearms in this country to commit offences is a very serious crime and is normally punished by imprisonment. Penalties prescribed for such offending have been increased by our</i></p>

	<p><i>Parliament over the last ten years in recognition of its seriousness, in an effort to allow the courts to try and combat this increasingly prevalent crime.”</i></p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• For the charge of attempted murder, convicted and sentenced to 3 years imprisonment.</li> <li>• For the charge of possession of an unlawful firearm, 12 months’ imprisonment.</li> <li>• For the charge of armed with a dangerous weapon namely a gun, 6 months.</li> <li>• For the charge of armed with a dangerous weapon namely a knife, 3 months.</li> <li>• For discharging a firearm, discharged without conviction.</li> <li>• All terms are to be served concurrently which means the defendant serves 3 years imprisonment.</li> </ul>
<p><b>47. Police v Toli</b></p> <p>[2010] WSSC</p>	<p>The accused was charged with attempted murder (discharged and shot at the victim using a 12-gauge shot gun 5 times) and causing wilful damage to property. The accused pleaded not guilty and stood trial before a panel of assessors. The accused was found guilty of the charges and now appear for sentencing.</p> <p><b>Discussion by the Courts on the use of guns:</b></p> <p>“In passing sentence, I have to say that this is the most serious case of attempted murder that has come before the Courts in the recent past. So serious is this case, I have been considering whether in view of the aggravating circumstances relating to the offending the starting point for sentence should be 10 or 12 years.</p> <p>Because of the level of sentences that this Court has imposed in previous cases of attempted murder which involved the use of a gun, I have thought that a starting point of 12 years may be too sudden a change in the level of sentencing for this type of case. This does not mean that in the future the starting point for attempted murder in a similar factual situation may not go up to 12 years.”</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The accused is convicted and sentenced to 10 years imprisonment on the charge of attempted murder.</li> <li>• On the charge of causing wilful damage, the accused is convicted and sentenced to 4 years imprisonment.</li> </ul> <p>Both sentences to be concurrent. That means the accused will serve 10 years imprisonment.</p>
<p><b>48. Police v Faisauval e</b></p> <p>[2009] 83 WSSC</p>	<p>The defendant in this case appears for sentencing for the charges of being in possession of narcotics and being in possession of a firearm and ammunition.</p> <p><b>Discussion by the Court on the involvement of firearms/guns in drug cases:</b></p> <p>“But no country has allowed commercial sale or distribution especially when it involves the possession and use of firearms. There is a big difference between small personal use and large scale criminal activity. Criminal organizations are interested in money and protection of their market. They use bribery, violence and the weakness of addicts to get financial gain. All countries recognize this evil. Here the offender was engaged in commercial gain and had an illegal weapon to protect his activity or enforce payments. The general submissions of counsel do not apply in this case.”</p>

	<p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Convicted of the crime of possession of narcotics and is sentenced to an imprisonment term for a period of 4 years.</li> <li>• Convicted of the crime of being in possession of an unlawful weapon and sentenced to <u>2 years and 6 months imprisonment</u>, cumulative to that above.</li> <li>• Also convicted of being in possession of unlawful ammunition.</li> </ul>
<p><b>49. Police v Ah Kee</b></p> <p>[2009] WSSC 78</p>	<p>The defendant appears for sentencing on the charge of attempted murder. The defendant shot the victim. There is no mention of the Arms Ordinance 1960 in this case however, the defendant used a gun for the offending.</p> <p><b>Sentence:</b> Convicted and sentenced to <u>4 years and 8 months</u>.</p>
<p><b>50. Police v Chan Chui</b></p> <p>[2008] WSCA 11</p>	<p>The appellant seeks review of a penalty in the form of a fine of \$650.00 imposed upon the respondent's conviction for narcotics and firearm offences. The basis for this is that the penalty is inadequate and inconsistent with the appropriate range of penalty for like offences.</p> <p>For information, the respondent was convicted of the following:</p> <ol style="list-style-type: none"> <li>(1) 3 marijuana 'joints'</li> <li>(2) a glass pipe for the purpose of the commission of an offence against the Narcotics Act 1967</li> <li>(3) a copper pipe for like purpose</li> <li>(4) possession of 54 rounds of .22 ammunition contrary to the Arms Ordinance 1960 s.13.</li> </ol> <p>The court imposed a pecuniary penalty of \$650 specified as follows (a) possession for narcotics - \$200, (b) possession of a prohibited implement - \$150 (c) possession of a prohibited implement - \$150 and possession of ammunition - \$150.</p> <p><b>Judgment of the Court:</b> The appeal is dismissed.</p>
<p><b>51. Police v Faatau</b></p> <p>[2008] WSSC 71</p>	<p>The defendant is 15 years old and appears for sentencing. The facts show the defendant who was 14 years at the time unintentionally killed the victim (his 14 year old cousin) with a .22 rifle.</p> <p><b>Sentence:</b> The court was not prepared to enter any conviction as it will have undesirable consequences with a conviction of manslaughter to the defendant's name. The defendant is <u>discharged without conviction</u>.</p>
<p><b>52. Police v Lafi</b></p> <p>[2008] WSSC 44</p>	<p>The accused appears for sentencing on five charges (a) possession of an unlawful weapon, namely, a 25 semi-automatic pistol (b) possession of narcotics, namely, five marijuana seeds and an envelope containing dried marijuana leaves (c) possession of utensils, namely, ten plastic bags (of specified sizes) and two straws (d) possession of narcotics, namely, nineteen marijuana seeds and (e) possession of narcotics, namely, sixty six marijuana seeds.</p> <p>The accused house was searched in accordance with a search warrant and as a result the above charges. The accused did not plead guilty but was found guilty of all the charges after the proceedings.</p>

	<p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The total sentence to be served by the accused is, therefore, effectively to be <u>10 months imprisonment.</u></li> </ul>
<p>53. <i>Police Esera</i> v</p> <p>[2008] WSSC 43</p>	<p>This is the judgment of the case above. The facts of the case showed that a search was done at the accused's house pursuant to a search warrant.</p> <p><b>Discussion on the Arms Ordinance 1960:</b>  <i>An unlawful firearm was also found during the search which when taken by police and confirmed a .22 pistol. Counsel for the accused made oral legal submission that the pistol found by the police in the accused's home does not work thus could not be a pistol under the Arms Ordinance 1960. The Court held that in this case as long as the pistol retains its identity, then it remains a pistol whether it working or not. Section 2 of the AO defined an unlawful weapon to include a pistol and the AO does not make a distinction between a working and non-working pistol, nor a function or a non-functioning one.</i></p> <p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>The charges against the accused based on the evidence adduced are proven beyond reasonable doubt.</li> </ul>
<p>54. <i>Police Enelagi</i> v</p> <p>[2007] WSSC 95</p>	<p>The accused appears for sentencing on four charges, one of cultivation of prohibited plants, one of possession of narcotics, one of being armed with a dangerous weapon, and two charges of being in possession of an unlawful.</p> <p>To all charges, the accused pleaded guilty at the earliest opportunity after receiving legal advice.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The accused will serve a total sentence of 3 years and 3 months imprisonment.</li> </ul>
<p>55. <i>Police Titi</i> v</p> <p>[2007] WSSC 91</p>	<p>The accused appears for sentence on the charge of attempted murder (shot the victim in the back of his head with a firearm). The accused initially pleaded not guilty to the charge but subsequently changed his plea 7 months before his trial.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The accused is sentenced to 5 years and 4 months imprisonment.</li> </ul>
<p>56. <i>Police Papalii</i> v</p> <p>[2007] WSSC 90</p>	<p>The accused appears for sentence on three charges – one of wilfully causing grievous bodily harm, one of causing actual bodily harm, and one of being in possession of an unlawful weapon, namely, a .38 revolver pistol. The accused shot the victims using a firearm.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>For charge of wilfully causing grievous bodily harm to Uili sentenced to 3 years imprisonment.</li> <li>On the charge of causing actual bodily harm to the victim Faavae, the accused is sentenced to 3 months imprisonment.</li> <li>On the charge of being in possession of an unlawful weapon, the accused is sentenced to 2 months imprisonment. All sentences are to be concurrent.</li> </ul>



<p><b>57. Police v Aukuso</b></p> <p>[2007] WSSC 80</p>	<p>The accused appears for sentence on the charge of attempted robbery. The accused used a gun to carry out the offence (threaten the victim to give money but when the victim drove away the accused shot at the car).</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The accused is convicted and sentenced to 2 years and 3 months imprisonment.</li> </ul>
<p><b>58. Police v Faulkner</b></p>	<p>The accused Joseph Lafaele Faulkner, a 42 year old male of Vaitele, appears for sentence on the charge of possession of narcotics. A search was carried out at the accused's house which the police located cocaine, marijuana and a .45 automatic pistol loaded with ammunitions and a .38 revolver. Other lesser charges were withdrawn by the prosecution. The accused pleaded guilty to the charge for which he is now appearing for sentence.</p> <p>There was no discussions on the Arms Ordinance 1960 however</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The accused is convicted and sentenced to 6 years and 4 months imprisonment</li> </ul>
<p><b>59. Police v Chan Chui</b></p> <p>Written Ruling [2007] WSSC 72</p>	<p>The accused was charged with knowingly being in possession of narcotics, (b) being in possession of a glass pipe, (c) being in possession of a copper pipe for the consumption of narcotics, (d) being in possession of fifty four (54) .22 live ammunitions without lawful, proper and sufficient purpose (e) verbally making a threat to do bodily harm and (f) verbally making a threat to do bodily harm.</p> <p>Charges (e) and (f) were dismissed.</p> <p><b>Held:</b> The Court held as follows:</p> <ul style="list-style-type: none"> <li>In relation to information S67/06, I find that there is no case to answer in respect of the alleged five small plastic packets of dried marijuana leaves but there is a case to answer in respect of the alleged possession of the three joints of marijuana.</li> <li>In relation to information S68/06, I find that there is a case to answer in respect of the alleged possession of a glass pipe for the purpose of consumption of narcotics.</li> <li>In relation to information S105/06, I find that there is a case to answer in respect of the alleged possession of a copper pipe for the purpose of consumption of narcotics.</li> <li>In relation to information S159/06, I find that there is a case to answer in respect of the alleged possession of 45, .22 live ammunitions without lawful, proper and sufficient purpose.</li> <li>Information S184/06 and S185/06 have already been dismissed as the prosecution offered no evidence in respect of those information.</li> </ul>
<p><b>60. Papu Police</b></p> <p>[2007] WSCA 2</p>	<p>This was an appeal against the appellants' conviction for murder after trial before the Chief Justice and a panel of assessors. The appellants were jointly charged that they were parties to the murder of Sauao Tanielu by being part of a group of people who formed the common intention to prosecute an unlawful purpose namely the carrying of armed weapons to the village of Satapuala to burn houses and frighten people and that in the prosecution of the common purpose the commission of the murder of Sauao Tanielu was or ought to have been known to be a probable consequence of the common purpose.</p>

	<p>There were no discussions on the Arms Ordinance 1960; however a gun was used in this case to carry out the commission of the offence.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The appeal is dismissed.</li> </ul>
<p><b>61. Police v Liligia</b></p> <p>[2007] WSSC 101</p>	<p>The accused appears for sentencing after he was found guilty by a panel of assessors for the crime of manslaughter. The court also sat a coroners Court to inquire the cause of death of the deceased. The Coroner's court held the death of the deceased was a result of a gunshot wound to the chest inflicted by the accused in this matter.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>Convicted and sentenced to a period of 10 years imprisonment.</li> </ul>
<p><b>62. Police v Faauila</b></p> <p>[2007] WSSC 100</p>	<p>The accused appears for sentencing on the charge of manslaughter. According to the Coroner's finding, the deceased died as a result of a fatal gunshot wound inflicted by the accused.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>The accused is convicted and sentenced to 6 years imprisonment.</li> </ul>
<p><b>63. Papu v Police</b></p> <p>[2006] WSSC 29</p>	<p>The 2 accused in this case made bail application for the court to determine. Both accused were charged with (a) one charge of being party to murder, (b) one charge of being party to attempted murder, (c) one charge of being party to arson, (d) another charge of being party to a different arson, (e) one charge of being armed with a dangerous weapon, and (f) one charge of discharging a firearm.</p> <p>The grounds for the application were (a) the case by the prosecution against the accused is weak, (b) the risk of flight is minimal if the accused are granted bail, (c) there is no possibility of offending if bail is granted, and (d) there will be a lengthy delay in awaiting the trial of the accused.</p> <p>The Attorney General on behalf of the informant opposes the bail on the following grounds (a) the seriousness of the charge of being party to murder which carries a mandatory statutory penalty of life imprisonment as well as the gravity of the total offending with which the accused have been charged, (b) the prosecution has a very strong case against the accused, (c) risk of tampering with key prosecution witnesses and protection of those witnesses, (d) integrity of the trial process, (e) risk of the accused absconding if granted bail, and (f) public safety.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>Bail is accordingly denied.</li> </ul>
<p><b>64. Faulkner v Police</b></p> <p>[2006] WSCA</p>	<p>This is the courts judgment on a motion for leave to appeal and extension of time to appeal by the applicant. The appellant was charged in 2003 with possession of methamphetamine and with possession of 2 unlawful firearms (2 charges). The appellant was further charged in 2005 with seven new charges. One was later withdrawn and the other 6 became the subject of 2 judgments by the Chief Justice. The first judgment dealt with further charges under the Narcotics Act 1967. The second judgment dealt with:</p> <p>(i) 4 charges under the Arms Ordinance that the Chief Justice refused to dismissed; and</p>

	<p>(ii) an objection by the appellant as to the admission of further witness statements.</p> <p>The Court refused to uphold that objection, thus the appellant appeals mainly on the ground that the additional information or charges infringes his rights under Article 9 of the Constitution.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• Appeal is dismissed. The CJ’s decision is upheld by the Court of Appeal.</li> </ul>
<p><b>65. Police v Lealaitag omoa</b></p> <p>[2006] WSSC 6</p>	<p>This case dealt with an application for bail by all 5 accused. Each accused were charged with respective charges against them, which included discharging firearm. The first four accused used firearms on the deceased and the victims in this case.</p> <p>Counsel for the accused submitted the accused while remanded in custody have been subject to inhumane treatment (being locked up without clothes in solitary confinement without proper beddings, being forced to live in cramp, cold and unhealthy conditions and being denied basic necessities including proper food etc.) and other grounds such as no intention on the accused to flee the country, and an ifoga has been performed by the village of Faleatiu to Satapuala which was accepted etc.</p> <p>In opposing the bail application, prosecution filed affidavits and stated no inhumane treatment have been inflicted on the accused since being remanded in custody and that they are given water at night, allowed to smoke in their cells and have been provided with bed sheets to sleep on. Other grounds also include the witnesses being young and afraid of the accused if bail is granted and that the witnesses will be scared to cooperate with the police and give evidence if the accused are granted bail, including the accused interfering with witness evidence etc.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• The court agrees with the submission of the prosecution and that the charges of murder and being a party to murder are extremely serious. Bail is denied.</li> </ul>
<p><b>66. Police v Faulkner</b></p> <p>[2005] WSSC 4</p>	<p>The accused sought the following orders from the Court:</p> <ol style="list-style-type: none"> <li>(a) an order that the new charges filed by the prosecution in this case should be dismissed; and</li> <li>(b) an order that the prosecution witnesses should be confined to those as listed in the witness list served on defence counsel together with the trial documents.</li> </ol> <p>The grounds in support of the accused’s motion are:</p> <ol style="list-style-type: none"> <li>(a) that the acceptance of the new charges and the additional witnesses would violate the accused’s constitutional rights pursuant to Articles 6(3),9(1) and 9(4)(a) of the Constitution; and</li> <li>(b) further violate s.89 of the <a href="#">Criminal Procedure Act 1972</a>, and (c) and further constitute an abuse of the Court’s process.</li> </ol> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• The matter is further adjourned to a later date for hearing of further submissions from counsel. Accused bail conditions continue; and</li> </ul> <p>For the 2 additional information (s.13(b) of the <a href="#">Narcotics Act 1967</a> with possession of pipes for the purpose of administering methamphetamine) charging the accused are dismissed as they breach the accused rights under Article 9(4)(a) of the Constitution, whereas the other information (charging the accused with possession of methamphetamine) still remains.</p>

<p><b>67. Police v Sione</b></p> <p>[2002] WSSC 11</p>	<p>The accused is charged in six separate informations with the offences of robbery, attempted robbery, assault with intent to commit robbery, causing actual bodily harm without lawful justification, being armed with a dangerous weapon without any lawful purpose, and unlawful entry of a building with intent to commit an offence therein. The accused used a 12 gauge shotgun to threaten the victim and assaulted her by punching her using the gun.</p> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>• The charge of robbery is dismissed.</li> <li>• For the remaining charges, they have been proven beyond reasonable doubt.</li> <li>• The matter is adjourned for probation report and sentencing.</li> </ul>
<p><b>68. Police v Crichton</b></p> <p>[199] WSSC 10</p>	<p>The defendant appears for sentencing after pleading guilty to a charge of assault. The defendant shot the victim in the chest and the bullet lodged in his back.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The defendant is subject to 3 months imprisonment.</li> </ul>
<p><b>69. Police v Tiapu'u</b></p> <p>[1999] WSSC 6</p>	<p>The defendant appears for sentencing on the charge of manslaughter. The defendant discharged a firearm at the deceased causing his death.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• Sentenced to imprisonment for a term of 2 years.</li> </ul>
<p><b>70. Police v Phillip</b></p> <p>[1999] WSSC 1</p>	<p>The defendant appears for sentencing on the charge of manslaughter. The defendant was found guilty by verdict of assessors on the basis that the defendant shot and caused the death of the victim. The defendant in this case was provoked as he was attacked by 4 men including the victim using their fists, axe, and bush knife etc. which caused the defendant to get angry and shoot the victim.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The defendant is ordered to appear for sentence in 3 years from this day, on the condition that the defendant is of good behaviour for 3 year and on further condition that the defendant is under supervision of a probation officer.</li> </ul>
<p><b>71. Police v Kuoi</b></p> <p>[1998] WSSC 41</p>	<p>This is the oral sentencing decision of the Court against the defendant. The Court in giving out the sentence held that the actions of the defendant were careless and negligent in placing the mouth of the gun on the face of the deceased while the deceased was sleeping and tapping the deceased's nose with the mouth of the gun is a dangerous act.</p> <p><b>Sentence:</b></p> <ul style="list-style-type: none"> <li>• The defendant is convicted and sentenced to 4 years imprisonment.</li> </ul>
<p><b>72. Faisaovale v Commissioner of Prisons</b></p> <p>[1998] WSSC 25</p>	<p>This was an application by the applicants on the basis that:</p> <ol style="list-style-type: none"> <li>the applicants are being unlawfully detained at Tafaigata Prison and should, therefore, be released in terms of Article 6(2) of the Constitution;</li> <li>the applicants are being subjected to inhuman treatment in terms of Article 7 of the Constitution and, therefore, should be given such treatment as would satisfy that provision of the Constitution.</li> </ol> <p>The Arms Ordinance 1960 was not discussed in this case however the charges against the applicants include being armed with a dangerous weapon.</p>

	<p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>The applicants are ordered to be released from their present detention at Tafaigata Prison.</li> </ul>
<p><b>73. Police v Gasolo</b></p> <p>[1997] WSSC 7</p>	<p>The accused was charged with 2 counts of causing grievous bodily harm. The Court heard the evidence of both sides to determine the hearing of the accused. It is alleged that the defendant shot the victims using a pistol.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The 2 charges of causing grievous bodily harm have been proven beyond reasonable doubt.</li> </ul>
<p><b>74. Police v Tulaga</b></p> <p>[1997] WSSC 5</p>	<p>The accused was charged with wilfully and without lawful justification caused grievous bodily harm and also charged with wilfully and without lawful justification caused actual bodily harm to the victim.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>Prosecution has proven the grievous bodily harm charge beyond reasonable doubt.</li> </ul>
<p><b>75. Faamatu ainu v Attorney General</b></p> <p>[1994] WSCA</p>	<p>The appellant appealed his murder conviction on the ground that the conviction was the weight of evidence and the CJ erred in rejecting self-defence as a defence. The defendant in his anger shot the victim.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The COA is satisfied the appellant's ground of appeal has not been made out. The appeal is dismissed.</li> </ul>
<p><b>76. Attorney General v Mani</b></p> <p>[1994] WSCA 16_15</p>	<p>The appellant (AG) appeals the sentence imposed on the respondent of \$1,000 after he pleaded guilty to the charge of manslaughter. The ground of the appeal is that the sentence is inadequate and it should be set aside and that an appropriate sentence be imposed to meet the criminality.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The appeal is therefore allowed and a term of 3 years imprisonment is imposed as well as the fine of \$1,000.</li> </ul>
<p><b>77. Police v Afoa</b></p> <p>[1994] WSSC 47</p>	<p>The accused was charged with murder after shooting the deceased caused his death. The accused pleaded not guilty and made no statement to the Police. The prosecution during the trial called a witness who was a prisoner at the prison and detained in the same cell as the accused stated that while detained together, the accused admitted that he shot the deceased with a gun. The defence objected to the admissibility of the evidence and the Court was to determine the admissibility of the evidence.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>The evidence in dispute in this case is admissible.</li> </ul>
<p><b>78. Police v Faamatu aina</b></p> <p>[1993] WSSC 1</p>	<p>This is a summary of the case by the Chief Justice for the assessors before the assessors retire to come up with a decision. The accused is charged with murder of the deceased (shot the victim with a gun causing the death of the victim).</p> <p>The Chief Justice summed up the issues of the case including the elements the prosecution had to prove beyond reasonable doubt and also the issues raised by the defence in relation to provocation and the outcome of the case if it was indeed provocation.</p>

<p><b>79. Police v Visasio</b> [1992] WSSC 13</p>	<p>The appellant appeals his conviction on the charge of murder on the ground that there was a miscarriage of justice in that the defence provocation was not put to the assessors during trial. The accused shot the victim on the shoulder using a .22 rifle which passed through the left lung and into the heart of the deceased. He died later from a massive haemorrhage.</p>
<p><b>80. Si'omia v Police</b> [1971] WSLaw Report</p>	<p>The appellant appeals his conviction of being armed with a dangerous weapon namely a .22 calibre repeating rifle not for a lawful purpose.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• Appeal dismissed. Conviction affirmed.</li> </ul>
<p><b>81. Ta'ala, Re</b> [1956] WSLaw Rp 6</p>	<p>This was an appeal for a conviction against murder. The appellant was charged before the High Court of Samoa in that he murdered the victim, a Police Constable (shot the deceased using a .45 automatic pistol). The accused was found guilty by the Court but appealed on the basis that the court erred in fact and law and should have considered some case law decisions and that the evidence show there is reasonable doubt as to the guilt of the accused.</p> <p><b>Held:</b></p> <ul style="list-style-type: none"> <li>• Appeal is dismissed.</li> </ul>

## B. ANALYSIS OF THE ADDITIONAL 81 COURT DECISIONS:

4.17 As mentioned above, extended research on cases with references to firearms, guns, pistol, etc. found a total of **161** additional court decisions. This number was further filtered down to cases which made reference to offences committed using guns, rifles, shotguns, etc. This brought the total additional cases to 81, and we provide an overall analysis of these 81 court decisions:

- *In addition to the already concerning number of arms related cases, the majority of arms offences are linked to narcotics offences (another fast-spreading issue in Samoa) under the Narcotics Act 196, usually associated with marijuana charges.<sup>7</sup>*
- *Further, there is a high number of cases where murder, manslaughter, being armed with a dangerous weapon and assault are committed by the accused using unlawful arms / firearms / rifles / shotguns etc.*
- *As there is a prevalence of these serious offences in the Samoan community, the Courts of Samoa have not taken them lightly. This is reflected in the*

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<sup>7</sup> Police v Eletise [2010].

*imposition of imprisonment terms in most matters (if not all). In some cases, the Honourable Judges make reference to the severity of offences using firearms which warrant a custodial penalty. The imprisonment penalty is a means of deterrence for anyone.<sup>8</sup>*

- *Given the rise in offences committed using firearms, Police have tried to combat the problem through the introduction of the Amnesty in the Arms Ordinance.*
- *A high number of firearms and ammunitions discovered in searches for narcotics fall under the 'unlawful' category of firearms and ammunition under the Ordinance.<sup>9</sup>*

### **C. OVERALL ANALYSIS OF THE 111 COURT DECISIONS**

4.18 The above court decisions allow for some **overall** analysis:

- There is an alarming rate of offences related to and involving firearms and ammunitions in Samoa which needs to be addressed.
- There is a concerning number of unlawful, unregistered and unlicensed firearms and ammunition scattered and in the possession of individuals around Samoa.
- It is even more disturbing to see that the majority of these reported cases of unlawful and unregistered firearms are linked to the commission of narcotics offences (another fast-spreading issue in Samoa).

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<sup>8</sup> P v Ianuari (2016), P v Pio (2010), P v Fiapopo (2016), P v Liliga (2007).

<sup>9</sup> P v Palu [2021], Police v Vili [2016], P v Mati [2015], P v Maposua [2010] & P v Esera [2008].

# PART 5: ARMS ORDINANCE 1960 AND RELATED LEGISLATION (SAMOA)

5.1 In the course of preliminary review and discussions, the Commission considered and noted that some provisions relating to the Ordinance are provided for in other laws. Such provisions include for example the importation of arms and ammunition into Samoa and the arming of police officers. A brief summary of the provisions found in other laws related to the Ordinance is provided below.

## A. POLICE POWERS ACT 2007:

5.2 The Police Powers Act 2007 (PPA) authorises the arming of police officers in the course of their duties.<sup>10</sup> The arming of police officers as regulated under the PPA is not absolute as police officers are not authorised to carry around guns (or firearms) in the course of their ordinary duties.

5.3 The PPA does provide an exception where the Minister may approve the arming of a police officer or person, and where that police officer or person is trained in the safe use of firearms and dangerous weapons.<sup>11</sup>

5.4 In granting or issuing this approval, the Minister must first be satisfied of the following **conditions**:

- (a) *There are exceptional circumstances* such as –
- (i) the nature and seriousness of the offence;
  - (ii) the behavior or conduct of the suspect;
  - (iii) the Minister has reason to believe (through advice of Commissioner) that the suspect is armed or in possession of arms;

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<sup>10</sup> *Object clause*, Police Powers Act 2007.

<sup>11</sup> *Section 13 (2)(a) & (b)*, Police Powers Act 2007.



- (iv) the Minister has reason to believe the life of any police officer or person executing the warrant or undertaking the investigation may be threatened with any dangerous weapons, including arms; and
- (v) the Minister has reason to believe the safety of the public is under threat; **and**
- (b)** the arming is otherwise in accordance with the relevant police internal orders or rules; and
- (c)** the Minister has first consulted the AG.<sup>12</sup>

5.5 The PPA also permits the importation of explosives, ammunition or firearms for use of police officers in the course of their duties, subject to requirements.<sup>13</sup>

## **B. CUSTOMS ACT 2014**

5.6 The Customs Act 2014 (CA) regulates the *importation and exportation* of goods for Samoa. This includes the export and import of arms regulated under the AO 1960. The CA prohibits the importation of any goods specified in **Schedule 1** of the CA.

5.7 Schedule 1 prohibits the importation of “*dangerous item*” defined under the Ordinance to include any unlawful weapon.<sup>14</sup> This means, unlawful weapon as per the Ordinance are prohibited from being imported into Samoa. The process of detaining such unlawful weapons if imported in Samoa is under the jurisdiction of Customs and Inland Revenue, empowered under the CA.

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<sup>12</sup> Section 13 (3)(c), Police Powers Act 2007.

<sup>13</sup> Section 14 (1) & (2), Police Powers Act 2007.

<sup>14</sup> Schedule 1 (4), Section 91, Customs Act 2014.

5.8 Other matters that are regulated and provided for under the CA which relate to the Ordinance include the following:

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|--|
| <p>(1) <b>Section 171</b> empowers a custom officer or police officer may detain and search a person if there is reasonable grounds to believe that ...a person has a dangerous item hidden or in clear view of the person...<sup>15</sup> A dangerous item as defined in the CA to include unlawful weapon (defined under the Ordinance), and dangerous or offensive weapon or instrument of any kind; whatever; or any ammunition; or any explosive substance or device or any other injurious substance or device of any kind whatever that could be used to endanger a person's safety.<sup>16</sup></p> |
| <p>(2) <b>Section 172</b> empowers a custom officer or police officer to seize a thing found on a person pursuant to its search in section 170 or section 171, and the police or custom officer has reasonable cause to suspect that such a thing found is considered a "dangerous item".</p>  |
| <p>(3) <b>Section 198 empowers</b> a customs officer by virtue of a search warrant issued, to immediately detain and search a person for a dangerous item and may seize an item if the customs officer has reasonable grounds to believe that the person has in his or her possession a dangerous item.<sup>17</sup></p>   |
| <p>(4) <b>Section 199 empowers</b> a customs officer to detain any goods seized in the course of exercising a power of a search under section 197 or 198 if the officer has reasonable grounds to suspect that the goods are dangerous items.<sup>18</sup></p>   |

5.9 It is evident from the above provisions that a close partnership and collaboration between the MPPCS and the Ministry for Customs and Revenue is crucial in the effective implementation of their respective duties under the said laws. In order to better regulate and control firearms and ammunition in Samoa, it is important that the respective authorities are aware of their separate roles so as to avoid duplication of functions, as well functions they are to cooperate in.

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<sup>15</sup> *Section 171*, Customs Act 2014 – "(1) A Customs officer or police officer may immediately detain and search a person to whom this section applies if, and only if, the Customs officer or police officer has reasonable grounds to believe that: (a) the person has a dangerous item hidden or in clear view on or about his or her person; and"

<sup>16</sup> Section 2 – definition of dangerous item, Customs Act 2014.

<sup>17</sup> Section 198, Customs Act – "(1) This section applies to a person who is at the place referred to in the search warrant when the Customs officer arrives at that place, or who arrives at that place when the officer is executing the warrant.

(2) A Customs officer may immediately detain and search a person to whom this section applies for a dangerous item, and may seize the item under section 197(2) if, and only if, the officer has reasonable grounds to believe that:

(a) the person has a dangerous item hidden or in clear view on or about his or her person; and".

<sup>18</sup> *Section 199*, Customs Act 2014.

# PART 6: OTHER JURISDICTIONS:

6.1 As this is the first time for a full review into the Arms Ordinance 1960; a 63-year-old pre-independence law in the fabric of laws of Samoa, the Commission explored the existing arms legal frameworks of neighbouring jurisdictions such as New Zealand, Fiji and Vanuatu for comparative analysis purposes.

6.2 Samoa in its own sovereignty can legislate for its own affairs as it thinks necessary based on its own experiences. Nevertheless, an understanding of how other countries have updated their own arms laws to regulate and control arms related matters, offer some guidance for Samoa in its own reforms. A recognition of its own national circumstances as well as the regional and international expectations of arms laws will help Samoa to develop arms laws that are not only tailored and responsive to Samoa’s context but also aligned with appropriate best practices and standards observed internationally and in our region.

6.3 The table below highlights the laws regulating arms related matters in the respective countries considered for comparative analysis.

<b>ARMS LAWS IN COUNTRIES CONSIDERED FOR COMPARATIVE ANALYSIS</b>			
<b>SAMOA</b>	<b>NEW ZEALAND</b>	<b>FIJI</b>	<b>VANUATU</b>
1. <b>Arms Ordinance 1960</b>	3 <b>Arms Act 1983</b> 4 Arms Regulations 1992 5 Arms (Restricted Weapons and Specially Dangerous Air guns) Order 1984 6 Arms (Military Style Semi-Automatic Firearms-Pistol Grips) Order 2013 7 Arms (Prohibited Ammunition) Order 2019 8 Arms (Prohibited Magazine) Order 2019	1. <b>Arms and Ammunition Act 2003</b>	1. <b>Firearms Act 1987</b> 2. Firearms Regulations 1988

## A. NEW ZEALAND:

6.4 The premise of New Zealand’s arms regime in the licensing of individuals regards whether such individual is a fit and proper person to possess firearms. The key legislation governing arms matters in New Zealand is the **Arms Act 1983** (“AA 1983” or “the Act”).

6.5 The subsidiary laws which assist the AA 1983 in governing New Zealand’s arms framework are:

- (i) The Arms Regulations 1992 (“AA 1992” or “the Regulations”);
- (ii) The Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984;
- (iii) The Arms (Military Style Semi-Automatic Firearms-Pistol Grips) Order 2013;
- (iv) The Arms (Prohibited Ammunition) Order 2019; and
- (v) The Arms (Prohibited Magazine) Order 2019.

### (i) Scope of the Law

6.6 New Zealand’s legislative framework is undoubtedly wider and covers a larger scale of matters given the multiple legislative instruments in place, compared to Samoa’s one arms law.<sup>19</sup>

### (ii) Structure and Outline

6.7 New Zealand’s legal framework is more developed and advanced than Samoa in terms of the regulation and use of firearms. The AA 1983 offers a more structured and comprehensive outline with the different arms matters regulated being separated under specific Parts. This allows for easier navigation of the AA 1983. For instance, all dealer-related provisions are covered under *Part 2 – Licensed dealers*. All provisions related to shooting clubs are provided under *Part 6 – Shooting clubs and shooting ranges*.

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<sup>19</sup> See Arms Act 1983, section 1A.

6.8 On the contrary, Samoa's Arms Ordinance 1960 is difficult to navigate for the following reasons:

- (i) The provisions or matters are NOT separated under specific Parts. The provisions are scattered without any subheadings to guide readers.
- (ii) There is no order or coherency to the provisions. The arrangement of provisions is neither sorted by arms matters nor is it sorted by arms actors (e.g. Police, dealers, firearms licensees).

### (iii) Terminology

6.9 New Zealand's AA 1983 defines about 50 terms. The Commission notes in the table below some terms available in New Zealand's AA 1983, (mainly in respect of shooting clubs) which Samoa may consider in a revised arms law.

<b>Terms in Arms Act 1983 (NZ)</b> <i>(to consider in a revised arms law for Samoa)</i>
1. Pistol
2. Shooting activities
3. Shooting club
4. Shooting range

### (iv) Licensing and Permit Scheme

6.10 Licensing is similar across the two jurisdictions providing for two 2 licenses:

- (i) dealer's license; and
- (ii) firearms license.

6.11 In NZ's Act, the application for a license requires the provision of information including:

- the individual's particulars (full name, date of birth, place of birth, address, occupation and contact details);
- Police report;
- character references' reports;
- doctor's report;
- information regarding previous convictions;
- information concerning the firearm (type of firearm, serial number of firearm); and
- proof of passing a firearms safety course.

6.12 NZ's licensing scheme is expressly legislated with the eligibility criteria mandated in the provisions of its arms law.<sup>20</sup>

6.13 The process for applying for a license is more stringent in NZ compared to Samoa. This is evident in the fact that NZ's law requires that a person who has had their firearms license revoked in the past 5 years, is ineligible to apply for a firearms license. Moreover, it is an automatic disqualification in NZ if an applicant:

- has within the previous 10 years, been convicted of offences pertaining to specified violence, specific criminal acts or misuse of drugs;
- has within the previous 10 years, had a protection order made against them; or
- is subject to a firearms prohibition order.

6.14 There are two types of arms-related **permits** in New Zealand:

- (i) the permit to import; and
- (ii) permit to possess.

6.15 These two types of permits are also mandated in Samoa's permit scheme (in addition to a permit to import fireworks).

6.16 In applying for a permit to possess a firearm in NZ, only a current firearms license holder with an appropriate endorsement on their license can apply to Police to possess any, and only, the following items:

- a restricted weapon; or
- a prohibited firearm; or
- a prohibited magazine; or
- a pistol; or
- a pistol carbine conversion kit.

6.17 Perhaps the most important component to an application for a license and/or permit in New Zealand is satisfying the "*fit and proper*" person criteria.

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<sup>20</sup> See Arms Act 1983, sections 23 – 24A.

This ensures a system that is focused on safety, with equal importance placed on **who** is using the weapon and **what** weapon is being used.

6.18 The following shows what constitutes being a “**fit and proper**” person to possess and use firearms in New Zealand:

***In New Zealand, a fit and proper person to possess and use firearms:***

- ✓ Is 16+ years old
- ✓ Has not had a firearms license revoked in the last 5 years (or if revocation was reversed in the DC)
- ✓ Is not disqualified under section 22H of the Act from holding a firearms license
- ✓ Has had their storage facilities for firearms & ammo inspected and approved by a member of the Police
- ✓ Has not been charged with/convicted of an offence in NZ or overseas that is punishable by imprisonment (including an offence of violence, drugs or alcohol)
- ✓ Has not been charged with/convicted of an offence under the Arms Act 1983; has not failed to comply with any requirement under the Act
- ✓ Has/does not have a protection order made against them;
- ✓ Has/does not have a restraining order made against them (re Harassment Act 1977);
- ✓ Has not inflicted family violence against another person
- ✓ Has not/does not show symptoms of mental/physical illness or injury that may adversely affect their ability to safely possess firearms
- ✓ Does not abuse or heavily depend on alcohol or drugs (to a degree that detrimentally affects their behaviour or judgment)
- ✓ Is not a member or close affiliate of a gang or organised criminal group
- ✓ Has not been assessed as a risk to a State’s national security
- ✓ Does not/has not shown behavioural patterns tending to exhibit or encourage violence, hatred,

### **(v) Shooting Clubs & Shooting Ranges**

6.19 NZ’s AA 1983 (Part 6) is the legal authority for shooting clubs and ranges in New Zealand which provides for the establishment of shooting clubs, the certification of shooting ranges, approved shooting activities and compliance procedures.

### **(vi) Arms Offences & Penalties**

6.20 There are about 90 punishable offences set out in NZ’s AA 1983 and AR 1992. There are a few notable differences in the offenses and penalties

mandated across the two jurisdictions. Firstly, Samoa's offences mostly cover activities done without lawful documentation such as dealing without a license, importing without a permit, or possessing a firearm without a permit for possession. Meanwhile, New Zealand's offenses span much further, covering offences such as those mentioned below:

NZ ARMS ACT 1983		
Provision	Offence	Penalty
Section 8C	Failure to observe the effect of expiry or surrender of dealer's license	6mths imprisonment (maximum term), or \$10,000 (maximum fine).
Section 9B	Failure to observe the effect of revocation of dealer's license	
Section 34	Failing to notify Police of a change in address and/or failing to make arrangements for the safe custody or arms items during its shift to the new address	\$2,000 (maximum fine)
Section 42	[With intent to deceive]: - Adding/altering/erasing to a license any words/figures extraneous to the license as issued - Wilfully parting with possession of one's license so it could be used by someone else - Using/attempting to use a license issued to another individual with the intention of procuring arms	2yrs imprisonment (maximum term), or \$20,000 (maximum fine).
Section 46	Carrying an imitation firearms without lawful, proper and sufficient purpose	1yr imprisonment (maximum term), or \$4,000 (maximum fine).
Section 55A	Unlawfully assembling a prohibited firearm or converting a firearm into a prohibited firearm	5yr imprisonment (maximum term)
Section 55E	Illegal trafficking of firearms, parts or ammunition	10yrs imprisonment (maximum term)

6.21 Also evident is the great disparity in the penalties imposed for the different arms offences between the two jurisdictions. For example:

Offence	Penalty in Samoa	Penalty in NZ
Dealing without a license	Fine not exceeding SAT\$5,000	Fine of up to NZD\$10,000
Presenting firearms to another person without lawful purpose	Fine of up to \$5,000 or a 2 years imprisonment term	<b><i>Liable to 7 years imprisonment</i></b> <i>(The offence is also extended to include presenting anything that, in the circumstances, is likely to lead that person to believe it to be a prohibited firearm)</i>



## B. FIJI

### (i) Scope of the Law:

6.22 The **Arms and Ammunition Act 2003** (Act) Fiji repealed the Arms and Ammunition Act 1962 (Cap 188) and its Arms and Ammunition Regulations. The Act regulates and controls the manufacture, importation, exportation, sale and possession, use and storage of arms and ammunition and for related matters.<sup>21</sup>

### (ii) Structure and Outline:

6.23 The Act is divided into 7 Parts, has 54 sections and a Schedule laying out the penalties under the Act. Fiji's Act is up to date in terms of its format, structure and language.

### (iii) Terminology:

6.24 The Interpretation clause in Fiji's law contains more terms used throughout the Act as compared to Samoa. The terms defined are more updated and in line to suit what is suitable with Fiji's context. For instance, the term "arms" is defined in Fiji's Act whereas it is not defined in the Ordinance. The definitions of the terms in Fiji's Act also offer the users guidance on arms. This is perhaps Fiji's Act is a recently enacted law as compared to the very outdated Ordinance. Fiji's Act offer guidance on terms that can be considered for this Review.

### (iv) Licensing and Permit Scheme:

6.25 The Act provide the following types of licenses:

- a) a license to manufacture (to manufacture arms or ammunition);<sup>22</sup>
- b) an arms license (to possess or use any arms or ammunition);<sup>23</sup> or
- c) a dealer's license.<sup>24</sup>

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<sup>21</sup> Object clause, Arms and Ammunition Act 2003, Fiji.

<sup>22</sup> Ibid, Section 3.

<sup>23</sup> Ibid, Section 4.

<sup>24</sup> Dealers license allows a person to: (i) store, assemble, clean, repair, test or prove any arms/ammunition; (ii) manufacture any component part of any arms or ammunition; sell, dispose of or expose for sale any arms or ammunition; or (iv) keep or has in possession any arm or ammunition for any purpose as mentioned, (Section 10).

6.26 Fiji's Act goes further to regulate and issue *interim import license* which allows a person arriving in Fiji for a temporary stay and carries arms or ammunition can use in carrying out such act. This process is regulated under section 17 of the Act.

6.27 The licensing system in the Act appears to be robust laying out stringent requirements a person must meet before a person is granted with a license (depending on the type of license applied). Each license has different criteria and requirements depending on the nature of what the license permits a person to carry out, are expressed in the Act.

6.28 Some requirements include (but not limited to):

(a) the competency of an applicant to handle, use, store, possess and control an arm or ammunition;

(b) the applicant passes a practical and written examination approved by the Commissioner in relation to the handling, storage, possession and control of arms or ammunition including knowledge of the relevant provisions of the Act and Regulations.<sup>25</sup>

6.29 The Act also provide for renewal requirements and where licenses may be rejected. Fiji's Act also legislate the marking and identification of arms which requires a firearm to be marked with a unique and permanent marking once registered.<sup>26</sup> This is for the purpose of tracing the firearms.

#### **iv) Marking of arms and identification**

6.30 Fiji's Act also legislate the marking and identification of arms which requires a firearm to be marked with a unique and permanent marking once registered.<sup>27</sup> This enables the registered arms to be easily identified and trace the firearms.<sup>28</sup>

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<sup>25</sup> Ibid, section 6.

<sup>26</sup> Ibid, Section 7.

<sup>27</sup> Ibid, Section 7.

<sup>28</sup> See section 7, Arms and Ammunition Act 2003 (Fiji).

#### v) Shortening arms and converting imitation arms into arms

6.31 The Act further prohibits the shortening of firearms or conversion of any imitation firearms into any arms anything that although having the appearance of being an arm, is constructed to be incapable of discharging any missile through its barrel.

#### vi) Penalties and Offences:

6.32 Penalties and offences in Fiji's legislation are much higher and more updated as opposed to those in the Ordinance. Also, Fiji's legislation appears to capture more and modern offences catering to the current circumstances.

### C. VANUATU

#### (i) The Legislative Framework

6.33 Vanuatu has in place a ***Firearms Act 1987*** (FA 1987) which provides for the regulation and control of the possession, purchase, manufacture, sale and import of firearms, and ammunition and any other related matter.<sup>29</sup> It is now about 36 years old, and contains a total of 44 sections.

6.34 To complement the FA 1987, a ***Firearms Regulations 1988*** was enacted to provide for the forms, fees and other related matters.

6.35 In addition to the above are the following:

- (a) *Firearms and Ammunition Special Purchase Act 2002* which validates or authorises the purchase of certain firearms, ammunition and other related items by the Government; and
- (b) *Hew Hebrides Condominium Joint Regulation 1966* which specifically prohibited the discharge of firearms within the town limits of Vila and Santo.

#### (i) Structure & Outline

6.36 Similar to Samoa, the provisions in Vanuatu's law are not separated under Parts (as in NZ's law).

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<sup>29</sup> Firearms Act 1987, Short Title.

6.37 An interesting feature of Vanuatu’s FA 1987 is that the different offences and their respective penalty, are set out in a Schedule. This is different from the structure of Samoa’s law where the offences and penalties are provided within the relevant sections of the law.

**(ii) Terminology**

6.38 Vanuatu’s law defines 18 terms (2 additional terms added under a 2017 Firearms Amendment Act 2017).

6.39 A licensing officer in Vanuatu is an officer appointed by the Commissioner of Police.

6.40 A few of the terms defined in Vanuatu’s law are highlighted for purposes of Samoa’s review for an updated arms law for Samoa

	<b><u>Terms in Vanuatu’s law</u></b>	<b><u>Definition in Vanuatu’s law</u></b>
1.	Air weapon	Any person is prohibited from possessing, acquiring or purchasing an air weapon. These were required to be surrendered to any police station within 12 months from commencement date of the FA 1987, and upon surrender, a person would have been entitled to compensation.
2.	Antique firearm	Refers to firearm manufactured during or before 1899, and is exempted under the definition of a firearm.
3.	Automatic firearm	A firearm which when fired ejects the spent round and refills the breech.
4.	Imitation firearm	Refers to anything that has the appearance of being a firearm, whether or not it is capable of discharging any shot, bullet, cartridge, shell or other missile.
5.	Prohibited weapon	Weapon which requires special authority of the Commissioner before one could manufacture, sell, transfer, purchase, acquire or have in their possession. It is, to some extent the same as those defined as ‘unlawful weapons’ in Samoa’s law.

### (iii) Licensing Scheme

6.41 Vanuatu's FA 1987 provides for 3 types of licenses.

No.	Types of Licenses in Vanuatu's law		Application Process
1.	Firearm Licence <sup>30</sup>	allows a person to possess, purchase or acquire a firearm	The application process for grant or renewal of a firearm licence is set out in <b>section 9</b> , together with grounds not to grant a firearm licence, as well as grounds to revoke a firearm licence.
2.	Firearms Dealer's Licence <sup>31</sup>	allows a person by way of trade of business to (a) manufacture, sell, transfer, repair, test or prove; or (b) expose for sale or transfer; or (c) have in his possession for sale, transfer, repair, test or proof, any firearm or ammunition.	The application process for the grant or renewal of a dealer's licence is provided in <b>section 11</b> , together with grounds not to grant a firearm licence, as well as grounds to revoke a firearm licence. <b>Sections 12</b> requires a firearms dealer to submit registers of sales and purchases and stock in hand for inspection. <b>Section 13</b> provides that a licensed dealer convicted of an offence may be ordered to be removed from the registry and the dealer's licence granted be cancelled.
3.	Firearms Import Licence <sup>32</sup>	authorizes a person to import into Vanuatu <b>any</b> firearms or ammunition	Application for the grant, renewal or revocation of a firearms import licence is set out in <b>section 14</b> of the FA 1987

6.42 The further details as to the purpose of the above licenses and permits as well as legislated conditions and criteria are further discussed in **Annexure 1**.

### (iv) Import of firearms or ammunition

6.43 The Minister is authorised, from time to time, to prohibit for a specified period the importation of any firearms or ammunition or parts of firearms or ammunition without a special licence issued by the Commissioner of Police.<sup>33</sup>

6.44 It is expressly required in the FA 1987 that any person who has in his or her possession any firearm or ammunition, must make declaration of such to a customs officer upon arrival.

<sup>30</sup> Firearms Act 1987, section 3 (Requirement for a firearm licence).

<sup>31</sup> Firearms Act 1987, section 6 (Requirement for a firearms dealer's licence).

<sup>32</sup> Firearms Act 1987, section 7 (Requirement for a firearm import licence).

<sup>33</sup> Firearms Act 1987, section 18 (Minister may prohibit import).

#### (v) Police powers

6.45 The law provides that police officers may:

- (a) pursuant to authorisation granted under a warrant, enter and carry out searches in any premises named in the warrant, and to seize and detain any firearm or ammunition found at such premise;
- (b) without a warrant enter on any land or premises *other than* a dwelling house to ascertain whether a person carrying or possessing a firearm on that premises has a license for that purpose;
- (c) with reasonable grounds to suspect, stop and search a person.

6.46 The law exempts persons in the service of the Government of Vanuatu in his capacity as such and acting in the course of that service, carrying a firearm for official purposes.

#### (vi) Offences & Penalties

6.47 Vanuatu's law sets out all offences and their penalties in the Schedule of its FA 1987. In total there are 30 different offences for which a person can be charged under Vanuatu's laws.

- The highest penalty under Vanuatu's law is for the offence of *possessing any firearm or ammunition with the intent to endanger human life* which is punishable upon conviction to a fine *not exceeding VT 750,000 or imprisonment term not exceeding 15 years or both*.
- The lowest penalties under the same law are for the offences of
  - *possessing etc. an air weapon* which is punishable to a *fine (only), not exceeding VT 10,000*; and the offence of *possessing etc. firearm or ammunition by a person under 18 years* which is punishable to a *fine not exceeding VT 10,000 or imprisonment for period not exceeding 3 months or both*.

## **D. OVERALL ANALYSIS:**

6.48 A good and effective arms legal framework is important to ensure the safety of the people of any country. A comparative analysis between Samoa's Arms Ordinance 1960 and overseas considered jurisdictions reveals the outdatedness and weaknesses in Samoa's current legal framework. This is no doubt given the Ordinance is 63 years old. The nature and operation of the arms regime has significantly changed and developed compared to 63 years ago.

6.49 It is therefore necessary to update our current arms legal framework. A new and updated legislative framework will help respond to these inevitable changes to enhance our national security through new and improved licensing scheme and standardised processes and procedures. This improved framework will allow the Ministry to not only improve its service but to also effectively regulate and control all aspects in relation to firearms and ammunition and related matters within Samoa.

## PART 7 - CONCLUSION

- 7.1 The national security of the people of Samoa depends on not only its border control laws but also on its arms regulatory framework. The constant involvement of border related offences (particular to this review – presence of unlawful firearms) and the increase of firearms related offences, calls for the need to have in place an informed legal framework that is practical and relevant to today's context.
- 7.2 The 111 case law that made reference to the provisions of the AO 1960 reveal an alarming rate of offences related to and involving firearms and ammunitions in Samoa which needs to be addressed. There is also a concerning number of unlawful, unregistered and unlicensed firearms and ammunition scattered and in the possession of individuals around Samoa. It is even more disturbing to see that the majority of these reported cases of unlawful and unregistered firearms are linked to the commission of narcotics offences (another fast-spreading issue in Samoa).
- 7.3 New Zealand, Fiji and Vanuatu's laws are more updated compared to Samoa. These 3 countries legislate for a more wider scope of arms related matters and also simplified process and procedures i.e. licensing system, permits, imports and exportation, administration procedures, handling and marking of firearms, exemptions etc.. An overall comparison of the arms laws of these countries and Samoa's, reveal that Samoa's law is very outdated in form and content. For this Review, a detailed assessment of the overseas laws as well as the best standards and practices observed internationally and in our region is crucial to ensure Samoa develops a new law that is suitable to the context of Samoa and responds to the inevitable changes in firearms and ammunitions.
- 7.4 This Discussion Paper is a record of the Samoa Law Reform Commission's findings from its preliminary research and analysis and consultations undertaken. The Commission hopes that the discussions above provide sufficient background and support for the Commission's response to the TOR and the urgent need for the Review of Samoa's outdated arms law.



# DISCUSSION QUESTIONS

- 1) The nature and types of firearms and ammunitions accessible to the public have changed compared to 63 years ago. Should Samoa replace its current law with a new proposed legislative framework to respond to these inevitable changes?
- 2) How can Samoa strengthen its firearms and ammunition licensing system for the safety of its people?
- 3) Please provide some thoughts on the reform of any of the following:
  - a)** *Updating the categorisation and definitions of firearms and ammunitions;*
  - b)** *Licensing system & enforcement;*
    - (i) *Procedure of possession, use or carriage of firearms, ammunition & explosives.*
    - (ii) *Procedure for dealing in firearm, ammunition & explosives.*
    - (iii) *Procedure for purchase, sale and acquisition, importation and exportation of firearms, ammunition & explosives.*
    - (iv) *Eligibility criteria.*
    - (v) *Transfer of license.*
  - c)** *Limit (maximum) number of registered guns per person*
  - d)** *Marking and registration of firearms;*
  - e)** *Prohibition of unauthorised manufacturing of firearm;*
  - f)** *Updating the fees;*
  - g)** *Importation and Exportation of firearm and ammunition;*
  - h)** *Procedure on the Importation of explosives;*
  - i)** *Procedure regarding antique firearms;*
  - j)** *Procedure to authorise the arming of local police officers in exceptional (emergency) circumstances (i.e - active shooting in public places, terrorist attacks, safety of Parliament and the country);*
  - k)** *Membership & Registration of Shooting Federation(s);*
  - l)** *Updating offences and penalties;*
  - m)** *Responsibility of the village fono in regulating and monitoring the use of firearms and ammunition.*
- 4) Please comment on any other issue relating to this Review (not mentioned above).

# ANNEXURE 1 - COMPARATIVE ANALYSIS (IN-BRIEF)

The table below provides an overview of the legal framework of Samoa’s Ordinance compared to the laws in New Zealand, Fiji and Vanuatu.

	<b>THEMATIC ISSUES</b>	<b>SAMOA Arms Ordinance 1960</b>	<b>NEW ZEALAND Arms Act 1983 Arms Regulations 1992</b>	<b>FIJI Arms and Ammunition Act 2003</b>	<b>VANUATU Firearms Act 1987 Firearms Regulations 1988</b>
1.	<b>Types of licenses / Permit</b>	<p><b>1 type of license:</b> <b>Dealers license (s 3)</b> – to sell or manufacture firearms/ammunition.</p> <p><b>2 types of permit:</b> 1. <b>Permit for import</b> 2. <b>Permit for possession</b> <i>(refer to no. ____ below)</i></p>	<p><b>2 types of licenses</b></p> <p><b>1. Firearm’s license:</b> (s 20) This allows a holder unsupervised possession [and use] of a [non-prohibited] firearm</p> <p><b>2. Dealer’s license:</b> (s5) This allows a holder, in relation to arms items, to carry on the following dealer activities: selling, hiring, lending, supplying, possessing (for the purposes of an auction), repairing/modifying, displaying (as a director/curator of a bona fide museum), manufacturing for sale, hire, lending or other supply, and manufacturing prohibited parts and</p>	<p><b>6 types of licenses:</b></p> <p><b>1. Arms license (s4)</b> – to possess, use or carry any arms or ammunition.</p> <p><b>2. License to manufacture (s3)</b> – (i) to manufacture arms or ammunition and (ii) for an approved arsenal (to approve a premise for the manufacture of arms and ammunition).</p> <p><b>3. Dealer’s license (s10)</b> – to carry on business as an arms dealer and the</p>	<p><b>6 types of licenses:</b></p> <p><b>1. Firearm Licence (s.3</b> – Requirement for a Firearm Licence) Firearm licence granted shall be in Form 2, Schedule 1 of the Firearms Regulations 1988</p> <p><b>2. Firearms Dealer’s Licence (s.6</b> – Requirement for a Firearms Dealer’s Licence) Firearms dealer’s licence granted shall be in Form 5 Sch 1 of the Firearms Regulations 1988</p>

			using prohibited items to test and demonstrate those prohibited parts	license must specify the place of business. <sup>34</sup>  <b>4. Import license (s16)</b> – to import arms or ammunition  <b>5. Interim import license (s17)</b> – applies to those arriving in Fiji for a temporary stay that carries arms and ammunition for personal use.  <b>6. Export license (s19)</b> – to export arms or ammunition.	<b>3. Firearms Import Licence</b> (s.7 – Requirement for a Firearms Import Licence) Firearms import licence granted shall be in Form 9, Schedule 1 of the Firearms Regulations 1988
<b>2.</b>	Conditions / eligibility requirements for license	<b>No conditions specified in the Ordinance</b>  <b>i.</b> License to be issued in relation to only 1 place of business.  <b>ii. Record Keeping:</b>	<b>Eligibility</b> ( <i>before issuance of license</i> )  <b>1. Firearms License (ss.23–24A):</b> <b>The applicant:</b> <ul style="list-style-type: none"> <li>○ Should be 16+ years old</li> <li>○ Has not a firearms license</li> </ul>	<b>1. License to manufacture (s3)</b>  <b>i.</b> Minister may grant or refuse with or without conditions  <b>ii.</b> Cabinet to take in account:	<b>1. Firearms Licence</b> - shall be made in the prescribed form (Form ...) to the licensing officer of the area in which the applicant resides - payment of prescribed fee

<sup>34</sup> A dealers license allows a person to do business and deal with arms in the following manner:  
(a) stores, assemble, cleans, repairs, tests or proves any arms or ammunition;  
(b) Manufactures any component part of any arms of ammunition  
(c) Sells, disposes of or exposes for sale any arms or ammunition; or  
(d) Keeps or has in his or her possession any arms or ammunition for the purpose of the above (a) – (c) (Section 10(1)(a)-(d), *Arms and Ammunition Act 2003, Fiji*).

		<p>Licensed dealer to keep at place of business record of particulars of dealings.</p> <p><b>iii. Licensed dealer:</b></p> <p>a. permit a member of Police to inspect and make copies of any entries in the book so kept by the dealer under subsection (1); and</p> <p>b. on demand provide any member of Police all further information in his or her possession with</p>	<p>revoked in past 5 years</p> <ul style="list-style-type: none"> <li>○ Is not disqualified under section 22H<sup>35</sup> of the Act from holding a firearms license</li> <li>○ Has adequate/appropriate storage facilities, inspected and approved by Police</li> <li>○ Has a referee who knows them well, resides in NZ, and will verify that this person is fit and proper to hold a firearms license</li> <li>○ Is a <b>fit and proper person</b><sup>36</sup></li> </ul> <p>Particulars (i.e. what to state in application) are found in Regulations 15(1) and (2).</p> <p><b>2. Dealer's License (s.6):</b></p>	<ul style="list-style-type: none"> <li>(a) Suitability of applicant to hold license;</li> <li>(b) Suitability of premises as arsenal site;</li> <li>(c) Any other prescribed requirements or conditions</li> <li>(d) Views of the Police Commissioner and the Commander of the Military</li> </ul> <p><b>iii. License holder must comply</b> with written guidelines for the manufacture of arms and ammunition.</p>	<p>(s.9)</p> <p>Application Form 1, Schedule 1 of the Firearms Regulations 1988</p> <p><b>2. Firearms Dealer's Licence</b></p> <ul style="list-style-type: none"> <li>- shall be made in the prescribed form and made to the licensing officer setting out particulars of every place of business</li> <li>- Payment of prescribed fee</li> </ul> <p>Application Form 4, Schedule 1 of the Firearms Regulations 1988</p> <p><b>3. Firearms Import Licence</b></p> <ul style="list-style-type: none"> <li>- Shall be made in the</li> </ul>
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<sup>35</sup> **AA 1983, 22H Persons disqualified from holding firearms licence** A person is disqualified from holding a firearms licence if— (a) the person has, within the previous 10 years, been convicted, or been released from custody after being convicted, of any of the following offences: (i) an offence under section 16(4), 16A, 44A, 50A, 50D, 51A, 53A, 54, 54A, 55, 55A, 55D, 55E, or 55F: (ii) a specified violent offence as defined in section 4 of the Victims' Orders Against Violent Offenders Act 2014: (iii) an offence under section 92, 98, 98A, 189A, 199, 202C, 238, 267(1), 269(1) and (3), or 306 of the Crimes Act 1961: (iv) an offence under section 6, 9, 10, 11, 12, 12A, 12AB, or 12F of the Misuse of Drugs Act 1975; or (b) the person has, or has had within the previous 10 years, a protection order, other than a temporary order, made against them under— (i) section 79 of the Family Violence Act 2018; or (ii) section 14 of the Domestic Violence Act 1995.

<sup>36</sup> A fit and proper person:

- Has not been charged with/convicted of an offence in NZ or overseas that is punishable by imprisonment (including an offence of violence, drugs or alcohol) Has not been charged with/convicted of an offence under the Arms Act 1983; has not failed to comply with any requirement under the Act
- Has/does not have a protection order made against them;
- Has/does not have a restraining order made against them (re Harassment Act 1977);
- Has not inflicted family violence against another person
- Has not/does not show symptoms of mental/physical illness or injury that may adversely affect their ability to safely possess firearms
- Does not abuse or heavily depend on alcohol or drugs (to a degree that detrimentally affects their behaviour or judgment)
- Is not a member or close affiliate of a gang or organised criminal group
- Has not been assessed as a risk to a State's national security
- Does not/has not shown behavioural patterns tending to exhibit or encourage violence, hatred, extremism

		<p>respect to any dealings by him or her relating to firearms or ammunition.</p>	<p><b>The applicant must:</b></p> <ul style="list-style-type: none"> <li>○ Be applying for/be the holder of a firearms license</li> <li>○ Be a “fit and proper” person with good character and reputation</li> <li>○ Have no previous convictions</li> <li>○ Have the competencies and resources to carry on dealer activities</li> <li>○ Have a sound knowledge of firearms</li> <li>○ Understand the legal obligations of a holder of a dealer’s license</li> <li>○ Understand the legal obligations of a firearms licensee (including an understanding of endorsements on firearms license), and is able to provide advice on those obligations.</li> </ul> <p>Particulars (i.e. what to state in application) are found in Regulations 3(2) to 5A.</p> <p><b>Conditions</b> (<i>after issuance of license</i>)</p> <p><b>1. Firearms License (Regs.19-19C):</b></p> <ul style="list-style-type: none"> <li>○ Holder must not put a firearm in a place where a young child has ready access to it</li> <li>○ Holder must take</li> </ul>	<p><b>2. Arms license: (ss 6)</b></p> <p><b>i. License granted only if a person is issued with a certificate from the authorized officer stating that the person is:</b></p> <ul style="list-style-type: none"> <li>(a) competent to handle, use, store, possess and control arms and ammunition; and</li> <li>(b) Passed a practical and written examination approved by the Commissioner relating to the handling, use, storage, possession and control etc. of arms and ammunition.</li> </ul> <p><b>ii. Condition of every arms license:</b></p> <ul style="list-style-type: none"> <li>(a) Photo of a person named in the license is attached to license;</li> <li>(b) Person named in license carries the license whenever carrying the arms to which it relates.</li> </ul> <p><b>3. Dealers license: (s10)</b></p>	<p>prescribed form to the licensing officer</p> <ul style="list-style-type: none"> <li>- Payment of prescribed fee</li> </ul> <p>Application shall be in Form 8, Schedule1 of the Firearms Regulations 1988</p>
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			<p>reasonable steps to ensure that any firearm in their possession is stored separately from ammunition, so that a person who obtains access to the firearm cannot obtain access to the ammunition (e.g. separate storage containers with different keypad locks, or if ammunition is too big, to store in a room of sufficient robust construction, inspected and approved by a member of the Police</p> <ul style="list-style-type: none"> <li>○ Holder must ensure any firearm is secure against theft (keep in lockable cabinet, immobilize the firearms)</li> <li>○ Etc...</li> </ul> <p><b>2. Dealer's License (Regs.8-9E):</b></p> <ul style="list-style-type: none"> <li>○ Place of business must be safe and secure</li> <li>○ All firearms for the purpose of sale, are to be dismantled, rendered inoperable or immobilized, or locked up</li> <li>○ Dealer must notify Police if they decide to discontinue business, if their address changes, if an employee resigns, if a</li> </ul>	<p>i. Commissioner must be satisfied with before issuing a dealer's license:</p> <ul style="list-style-type: none"> <li>(a) the applicant has adequate facilities and sufficient qualified employees to clean, repair, test, store and prove arms and ammunition;</li> <li>(b) the place is a place at which a person can be permitted to carry on business as an arms dealer without danger to the public safety or the peace;</li> <li>(c) adequate provisions exist at such place of business for the security of arms or ammunition; and</li> <li>(d) any other prescribed requirements or conditions are complied with.</li> </ul> <p><b>ii. Record Keeping:</b> Licensed arms dealers to keep and maintain books containing accurate records of:</p> <ul style="list-style-type: none"> <li>(b) all arms or</li> </ul>	
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			<p>manager for the place of business changes, if they are not able to comply with a condition or endorsement etc</p> <ul style="list-style-type: none"> <li>○ Dealer must permit Police to inspect arm and allow them enter the premises (provided its reasonable)</li> <li>○ Transport of certain arms items and ammunition to be done safely and securely</li> </ul> <p>Testing conditions (should be done at a shooting range certified by the Commissioner)</p>	<p>ammunition imported or received by the dealer in the course of business;</p> <ul style="list-style-type: none"> <li>(c) all arms or ammunition sold by the dealer;</li> <li>(d) the marks by which all arms so sold can be identified with the date of sale and the name and address of the purchaser;</li> <li>(b) and must on demand produce the records for inspection by any authorised officer at any place and reasonable time the officer requires.</li> </ul> <p><b>iii. Licensed arms dealer to:</b></p> <ul style="list-style-type: none"> <li>(a) sell or dispose of any arms or ammunition to a person; or</li> <li>(b) repair any arms or ammunition for any person, unless the person is the holder of a valid arms license and arms identification card.</li> </ul>	
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				<p><b>iv. Particulars of ammunition sold:</b></p> <p>(a) particulars of any ammunition sold or disposed of to a person by a dealer or a dealers employee must be endorsed upon the arms licence of the person by the dealer or the dealers employee.</p> <p>(b) every licensed arms dealer must, not later than 7 days after the start of each month, provide the Commissioner particulars in the prescribed form of-</p> <p>(i) the dealers stock-in-trade;</p> <p>(ii) all arms and ammunition imported or received by the dealer in the course of business during the month.</p> <p>(iii) all arms and ammunition exported or sold</p>	
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				<p>by the dealer during the preceding month, with the name of purchasers.</p> <p><b>4. Import License s16:</b></p> <p>i. Holder of import license must:</p> <p>(a) endorse on the license particulars of every arms or ammunition or parts of ammunition imported under the authority of the license; and</p> <p>(b) return the license to the police officer-in-charge of the police station nearest to where the holder of the license resides within 3 days from the expiration of the term specified in the import license.</p> <p><b>5. Interim Import License:</b></p> <p>i. Person entering Fiji temporarily must deposit the arms and ammunition with a senior officer of</p>	
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				<p>Fiji Islands Customs Service, or the officer-in-charge of the police station, at or nearest to the port of entry.</p> <p><b>6. Export License:</b> No express conditions for export license however s19(3) provides that Cabinet may grant or refuse application for an export license but no approval should be given unless the arms and ammunition have been in Fiji for a period more than 12 months.</p>	
3.	Application and Issuance of license	<p>Apply to the Arms Officer</p> <p>Issued by the Arms Officer on payment of prescribed fee.</p>	<p>1. <b>Firearms License:</b> - <b>Application for license</b> Shall be made in hard copy or e-copy form, signed by applicant, and delivered to the Police Station either closest to the applicant's place of employment or their place of residence (<b>Regulation 16</b>).</p> <p><b>Issuance</b> Application, if granted, will be issued by a member of the Police (<b>s. 24</b>).</p> <p>2. <b>Dealer's License application:</b> - <b>Application</b></p>	<p>1. <b>License to manufacture:</b></p> <ul style="list-style-type: none"> <li>Apply to the Minister in the prescribed form and accompanied by the prescribed fee.</li> <li>Minister with approval of Cabinet to issue or grant with or without conditions</li> </ul> <p>2. <b>Arms License:</b></p> <ul style="list-style-type: none"> <li>Apply to the Commissioner through an</li> </ul>	<p>1. <b>Firearms Licence</b></p> <ul style="list-style-type: none"> <li>shall be made in the prescribed form (Form ...) to the licensing officer of the area in which the applicant resides</li> <li>payment of prescribed fee (s.9)</li> </ul> <p>Application Form 1, Schedule 1 of the Firearms Regulations 1988</p> <p>2. <b>Firearms Dealer's Licence</b></p> <ul style="list-style-type: none"> <li>shall be made in the</li> </ul>

			<p>Shall be made in hard copy or e-copy form (one that is provided by or in any way approved by a member of the Police – <b>s.5A(1)(a)</b>), signed by the applicant and delivered to an address specified in the application form (<b>Reg. 3(1)</b>).</p> <p><b>Issuance</b> Application, if granted, will be issued by a Commissioned officer of Police (<b>s. 5B</b>).</p>	<p>authorized officer in the prescribed form accompanied by the prescribed fee</p> <ul style="list-style-type: none"> <li>• Commissioner to grant or refuse</li> </ul> <p>3. <b>Dealer’s license:</b></p> <ul style="list-style-type: none"> <li>• Apply to the Commissioner in the prescribed form accompanied by the prescribed fee</li> <li>• Commissioner may grant or refuse</li> </ul> <p>4. <b>Import License:</b></p> <ul style="list-style-type: none"> <li>• Apply to the Commissioner in the prescribed form accompanied with the prescribed fee</li> <li>• Minister to issue or refuse</li> </ul> <p>5. <b>Interim Import License:</b></p> <ul style="list-style-type: none"> <li>• Apply to the authorized officer in the prescribed form and accompanied by the prescribed fee</li> </ul>	<p>prescribed form and made to the licensing officer setting out particulars of every place of business</p> <ul style="list-style-type: none"> <li>- Payment of prescribed fee Application Form 4, Schedule 1 of the Firearms Regulations 1988</li> </ul> <p>3. <b>Firearms Import Licence</b></p> <ul style="list-style-type: none"> <li>- Shall be made in the prescribed form to the licensing officer</li> <li>- Payment of prescribed fee Application shall be in Form 8, Schedule1 of the Firearms Regulations 1988</li> </ul>
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				<p>6. <b>Export License:</b></p> <ul style="list-style-type: none"> <li>Apply to the Minister in the prescribed form accompanied by the prescribed fee</li> </ul> <p>Minister to grant or refuse</p>	
4.	<b>Renewal/Revocation/cancellation of license</b>	No renewal or cancellation provisions stipulated	<p><b><u>Renewal of license</u></b></p> <p>1. <b><u>Firearms License</u></b> – There are NO renewals. You have to apply again for a firearms license – the process will be much the same, except you may not need do the firearms safety course if Police says you do not have to.</p> <p>2. <b><u>For dealer’s license</u></b> – Renewal application must be made before the license expires, and takes effect from the date of expiry of the previous license (<b>s. 8A</b>). Renewal fee is \$200 (<b>AA, Schedule 1</b>).</p> <p><b><u>Revocation of license</u></b></p> <p>1. <b><u>Firearms License</u></b></p> <ul style="list-style-type: none"> <li>Holder’s license is immediately revoked if they become disqualified to hold license under section 22H (<b>s. 27B</b>)</li> <li>A commissioned officer of Police may also revoke the firearms license when: a)</li> </ul>	<p>Renewal of licenses applied to the Commissioner and subject to other provisions as if it were a new license.</p> <p>Minister or Commissioner may refuse an application for issue or renewal of a license with or without giving reasons and may cancel or suspend a license on the following grounds:</p> <p>(a) for reasons of public order or safety, which the Minister or Commissioner must record;</p> <p>(b) if the applicant or licensee has been convicted of an offence under this Act or a serious offence under the <a href="#">Penal Code</a>;</p> <p>(c) the applicant or licensee is certified by a medical practitioner</p>	<p>1) <b>Firearms Licence</b></p> <ul style="list-style-type: none"> <li>Unless previously revoked or cancelled, continue in force for <b>1 year</b> from the date when it was granted or last renewed, but shall be renewable for a further period of 1 year by the licensing officer and so on from time to time</li> <li>Renewal follows the same process as when a firearm license was first granted</li> <li>A firearms licence may be <b>revoked</b> if: <ul style="list-style-type: none"> <li>the licensing officer is satisfied that the licence holder is prohibited by or under the Act from possessing a firearm or is of intemperate habits or unsound mind, or is otherwise unfit to be trusted with such a firearm;</li> </ul> </li> </ul>

			<p>the holder is not a fit and proper person to possess firearm/airgun; b) holder has failed/refused to securely store arms items/ammunition; c) access to any firearm/airgun in the possession of the holder is reasonably likely to be obtained by any person: i) whose firearms license has been revoked because they are not a fit and proper person to possess one; or ii) who is not a fit and proper person to possess a firearm/airgun anyways (in the officer's opinion) (s. 27(2))</p> <ul style="list-style-type: none"> <li>○ Revocation can also happen when a firearms licensee has temporarily been suspended under section 60A (s. 27C)</li> </ul> <p>2. <b><u>Dealer's License</u></b></p> <ul style="list-style-type: none"> <li>○ A dealer's license is immediately revoked if the holder's firearms license is revoked (s. 9)</li> <li>○ A commissioned officer of Police may also revoke the license of a holder of license who has temporarily been</li> </ul>	<p>to be of unsound mind;</p> <ul style="list-style-type: none"> <li>(d) on breach of a condition of a licence; or</li> <li>(e) on other prescribed grounds.</li> </ul>	<ul style="list-style-type: none"> <li>• licence holder fails to comply with a notice (varying conditions of licence) requiring delivering up the firearm</li> </ul> <p>2) <b>Firearms Dealer's Licence</b></p> <ul style="list-style-type: none"> <li>- Valid for <b>1 year</b> and shall be renewable on application to the licensing officer on payment of prescribed fee</li> </ul> <p>3) <b>Firearms Import Licence</b></p> <ul style="list-style-type: none"> <li>- Valid for <b>1 year</b> and shall be renewable on application to the licensing officer on payment of the prescribed fee</li> </ul>
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			suspended under section 60A <sup>37</sup> if satisfied after considering submissions from said holder, that the license should be revoked (s. 9A)		
			<b>Cancellation of license</b> o No cancellation provisions		
5.	<b>Age to possess firearm</b>	<b>Section 8</b> – 21 years above.  <b>Exception:</b> Can possess firearms for the purpose of sporting competition (PG) with some conditions (to be supervised, only use firearms in compound approved by the Minister, and is fit and a proper person to possess a firearm/ammunition etc.	16 years old + <b>Section 20</b> – no person shall have a non-prohibited firearm in their possession unless he is of or over the age of 16 years.	<b>S28</b> – 21 years above.	A person must be 18 years or older (s.4 – <i>Prohibition on persons under the age of 18</i> )
6.	<b>Export of firearms</b>	No provision on exports of firearms.	<b>No express provisions on export of firearms</b> , as this is covered under the <i>Customs and Excise Act 2018</i> .	Refer to license on export Fiji	<b>Nil</b>
7.	<b>Import of firearms</b>	<b>Permit</b> – import by way of a permit.	Import by way of permit	Import by way of license (refer to license provisions)	Import by notice of the Minister published in the

<sup>37</sup> AA 1983, s. 60A **Temporary suspension of license pending possible revocation** (1) A member of the Police may, by notice in writing to the holder of a firearms or dealer's license, temporarily suspend the license if satisfied that 1 or more of the following apply: (a) the holder is not a fit and proper person to be in possession of any fire- arm or airgun, which includes a case where— (i) the holder has failed or refused to secure any arms items or ammunition in the person's possession in accordance with regular- tons made under this Act; or (ii) the holder has failed to comply with any conditions imposed on their license; or (iii) the holder has failed to comply with an improvement notice issued under section 60; or (iv) the member of the Police is so satisfied on the basis of a notice given under section 92 by a health practitioner; or (v) the license has been seized under section 18 of the Search and Surveillance Act 2012: (b) the holder, being the holder of a dealer's license, is not a fit and proper person to hold a dealer's license: (c) access to any firearm or airgun in the possession of the holder is reason- ably likely to be obtained by— (i) a person whose application for a firearms license has been refused; or (ii) a person whose firearms license has been revoked; or (iii) a person who, in the opinion of a member of the Police, is not a fit and proper person to be in possession of a firearm or an airgun or ammunition; or (iv) a person, other than the holder, whose firearms license has been temporarily suspended.

					<p>Gazette:</p> <ul style="list-style-type: none"> <li>- The Minister may by notice published in the Gazette - declare that firearms or ammunition or particular classes of firearms or ammunition shall not be imported into Vanuatu except at ports or places specified in such notice (s.17)</li> <li>- The Minister may from time to time by notice, prohibit for a specific <b>period</b> the import of any firearms, ammunitions or parts of firearms or ammunition, without special licence issued by the Commissioner.</li> <li>- No person shall import any firearms, ammunition or parts in contravention of any notice under this section or in breach of conditions subject to which which any special licence is issued (s.18)</li> <li>- Any vessel used for the import of any firearms or ammunition in contravention of a notice or for the receipt or storage of any firearms or ammunition imported in contravention of any notice, the owner or master thereof</li> </ul>
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					<p>shall be guilty of an offence unless it is proved to the satisfaction of the court that the owner or master was not implicated in the placing of such firearm or ammunition on board the vessel and that the offence was committed without his knowledge, consent, connivance, and the vessel may be detained by order of the court until security has been given for such sum, not exceeding VT7200,00 as the court may order.</p> <p>-The finding of any firearm or ammunition subject to a prohibition under s.18 shall be prima facie evidence that the vessels has been used for importation of firearms and ammunition contrary to this Act.</p>
8.	<b>Shooting Federation</b>	No provisions	<p><b>Shooting Clubs:</b>  <b>Section 38B</b> – Shooting club must hold a certificate of approval</p> <p><b>Section 38C</b> – A shooting club must be registered under the Incorporated Societies Act 1908, if it sells firearms or ammunitions. A shooting club under this section may not hold a certificate of approval if they are not registered</p>	No provisions	An approved rifle club is defined to mean any rifle club approved by the Minister (s.2 & 10)



			<p>under the Incorporated Societies Act 1908.</p> <p>Must apply to the Commissioner for certificate of approval.</p> <p>NB: Other conditions and requirements provided for in <b>Sections 38E–38K</b> and the Arms Regulations 1992.</p>		
<b>9.</b>	<b>Amnesty</b>	<p><b>Section 9A:</b> Minister may in writing declare a firearm amnesty period</p>	<p>No express amnesty provisions.</p> <p>The only amnesty provisions (i.e. amnesty period) provided in the Act was to cater to the possession of prohibited items following a reclassification of those items post-Christchurch mosque shootings. The amnesty period in the Act lasted from 21 March 2019 until: (i) the date that is 6 months after the first date on which regulations made under clause 7 come into force; or (ii) any later date prescribed by Order in Council.</p>	<p><b>Section 46:</b> Minister by regulations to declare an amnesty period not exceeding 30 days.</p>	<p><u>s.5 – Prohibition on possessing, acquiring, purchasing etc. of air weapons</u> - every person in possession of an air weapon on the date of commencement of the Act (28 March 1988), shall within <u>12 months from that date</u> surrender that weapon to any police station.</p> <p><b><u>Compensation:</u></b> Every person who surrenders an air weapon under subsection (2) shall be entitled to compensation as prescribed by the Minister</p>