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ALCOHOL REFORM
REPORT 15/16

Samoa

Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa



GOVERNMENT OF SAMOA

**OFFICE OF THE PRIME MINISTER AND MINISTER FOR THE SAMOA LAW
REFORM COMMISSION**

The Honourable Speaker
THE LEGISLATIVE ASSEMBLY OF SAMOA

In compliance with section 9 (2) of the *Law Reform Commission Act 2008*, I have the honour to submit to you copies of the Report on the Alcohol Reform as referred to the Samoa Law Reform Commission for review.

This report sets out the Commission's recommendations on Alcohol Reform after public consultations and research in accordance with section 4 of the *Law Reform Commission Act 2008*.

(Hounourable Tuilaepa Lupesoliai Fatialofa Dr. Sailele Malielegaoi)
**PRIME MINISTER AND MINISTER FOR THE SAMOA LAW REFORM
COMMISSION**



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(Leota Theresa Potoi)
EXECUTIVE DIRECTOR
SAMOA LAW REFORM COMMISSION

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List of Abbreviations

ABAC	Alcohol Beverages Advertising Code
ABAC Alcohol Code	ABAC Responsible Alcohol Marketing Code
ABV	alcohol by volume
ACC	Accident Compensation Corporation
ADC	Alcohol and Drugs Court
AGO	Attorney General's Office
Alcohol Council	Alcohol Advertising and Promotions Council
ANPHA	Australian National Preventive Health Agency
ASA Code	ASA Code for Advertising and Promotion of Alcohol
ASA NZ	New Zealand Advertising Standards Authority
ASA UK	United Kingdom Advertising Standards Authority
CBS	Central Bank of Samoa
CIS	Compact Impact Statement
Commission	Samoa Law Reform Commission
Complaints Board	Advertising Standards Complaints Board
DUI	driving under the influence
Food Standards Code	Australia New Zealand Food Standards Code
FSANZ	Food Standards Australia New Zealand
FTCD	Fair Trading & Codex Alimentarius Division
GPO	General Price Order
Issues Paper	Alcohol Reform Issues Paper
LCB	Liquor Control Board
MCIL	Ministry of Commerce Industry and Labour
MESC	Ministry of Education Sports and Culture
MfR	Ministry for Revenue
MJCA	Ministry of Justice Courts and Administration
MOF	Ministry of Finance
MOH	Ministry of Health
MWCSD	Ministry of Women Community and Social Development

NACP	National Alcohol Control Policy
NCDs	Non-Communicable Diseases
Police	Ministry of Police
RTDs	ready-to-drink
SBC	Samoa Beverage Company
SBL	Samoa Breweries Limited
SHA	Samoa Hotels Association
SQA	Samoa Qualifications Authority
SROS	Scientific Research Organisation of Samoa
STA	Samoa Tourism Authority
SVSG	Samoa Victim Support Group
SYNC	Samoa National Youth Council
VAGST	value added goods and services tax
WHO	World Health Organisation
Chamber of Commerce	Samoa Chamber of Commerce
Liquor Act	<i>Liquor Act 2011</i>

Terms of Reference

In March 2013, the Samoa Law Reform Commission (**Commission**) was requested by the Attorney General to review laws relating to the sale and consumption of alcohol¹ with the objective of reducing the harm caused by alcohol in Samoa and to make recommendations for reform.

The review was to deal with a number of issues including:

- Adequacy of current alcohol licensing system and its enforcement;
- Availability of cheap alcohol;
- Alcohol taxation and pricing;
- Controlling alcohol content in alcohol;
- Age at which alcohol can be purchased;
- Advertising and promotion of alcohol;
- Responsibilities of parents, *Village Fono* and churches with respect to adolescent drinking.

The consumption of kava² is not included in this review. In many countries, kava represents a type of beverage which falls outside the usual beer, spirits or wine categories as it is produced at local level in many homes and villages, with cultural affiliations.³ Although it can produce similar effects to alcohol, kava is not an alcoholic beverage produced through fermentation, and is not included in Samoa's crime statistics where alcohol is involved.

¹ Due to the use of the term 'liquor' under the *Liquor Act* 2011, the terms liquor and alcohol will be used interchangeably throughout this Report.

² Kava is prepared from the root of the kava plant (*Piper methysticum*) which is a shrub native to islands in the Pacific. Dr. Edward Group *What is Kava?* (4 December 2013) Global Healing Center <http://www.globalhealingcenter.com/natural-health/10-facts-to-know-about-kava/>.

³ World Health Organisation, *Global Status Report on Alcohol 2004* http://www.who.int/substance_abuse/publications/global_status_report_2004_overview.pdf, p. 18.

Executive Summary

1. Alcohol is regulated under the *Liquor Act 2011 (Liquor Act)*. Alcohol related harm has been increasing exponentially over the years and members of the judiciary have expressed grave concern over the prevalence of alcohol in the commission of offences, as well as recidivism among offenders brought before them. They also noted the increasing rates of serious violent offending fuelled by cheap alcohol such as *fagumaso*. This has led to the review of the *Liquor Act* to address these harms.
2. The Commission received a Terms of Reference in 2013 on alcohol reform, more specifically in relation to the following key issues:
 - a) Alcohol licensing system;
 - b) Regulating the sale and supply of alcohol by controlling availability;
 - c) Reducing demand of alcohol through taxation and minimum pricing scheme;
 - d) Advertising and sponsorship;
 - e) Enforcement;
 - f) Reducing alcohol-related problems; and
 - g) Responsibilities of parents, village council and churches.
3. This summary provides a brief overview of the Commission's conclusions and recommendations on the sale supply and consumption of alcohol in Samoa, focusing more particularly on the above key issues.
4. The report is structured into the following 8 parts.
 - a) Part 1: discusses some of the harm caused by excessive alcohol consumption particularly in relation to criminal offending and also some of the economic benefits provided by the alcohol industry.
 - b) Part 2: discusses the Alcohol Licensing System in Samoa and approaches in comparative jurisdictions that may be considered in the context of Samoa.
 - c) Part 3: relates to the availability of alcohol in Samoa and discusses further controls to assist in the regulation of the sale and supply of alcohol.
 - d) Part 4: discusses alcohol pricing and taxation in Samoa and its role in reducing the availability of cheap alcohol products and consequently reducing demand and associated harms. It discusses the current excise tax system as well as minimum price setting.

- e) Part 5: discusses how alcohol is advertised and promoted in Samoa, including sponsorship roles by alcohol beverage companies in Samoa. This part also discusses approaches in comparative jurisdictions that may be considered in the context of Samoa.
 - f) Part 6: discusses enforcement powers under the *Liquor Act* for both liquor inspectors and police and discusses enforcement by *Village Fono*.
 - g) Part 7: touches on some measures to reduce alcohol related problems, including education and public awareness as well as the recently established Alcohol and Drugs Court.
 - h) Part 8: provides a list of all the recommendations.
5. The Commission notes that legal measures alone will not modify entrenched social behaviour where alcohol is concerned. Therefore, the Commission has not only recommended greater regulation of the alcohol industry but has also recommended the implementation of alcohol education and awareness programs and policy measures as well as the strengthening of existing programs. The Commission's recommendations include:
- a) Improvements to the current licensing system through tighter controls over the issuance of new and renewed licences, clearer criteria for more improved decision making, and increased involvement of the village council and community in the licence approval processes. In addition streamlined processes for compliant licensees and more stringent processes for non-compliant licensees or where adverse reports have been received from Police of *Village Fono*.
 - b) Improvements to the classification of licences for the sale and supply of alcohol, distinguished on the basis of consumption 'On-site' (such as bars, nightclubs, restaurants, hotels, etc.) and consumption 'Off-site' (such as retail stores). In addition further differentiation based on the type and nature of the business of an On-site licensee (for example, bars and nightclubs on the one hand, and hotels and restaurants on the other) which is important to ensure appropriate conditions are imposed
 - c) Trading days for On-site licensees and Off-site licensees to be set out in legislation for clarity. The Sunday prohibition on the sale and supply of alcohol to continue in respect of Off-site licensees (i.e. retail stores) and some On-site licensees such as bars and nightclubs. However for onsite licensees such as hotels, motels and restaurants to be permitted to seek approval from the Liquor Control Board for the sale and supply of alcohol on Sundays.

Criteria and matters to be considered by the Board in these circumstances should also be clearly set out in legislation.

- d) Default trading hours for on-site licensees and off-site licensees to be set out in legislation for clarity, and deterrents to encourage compliance including involvement of *Village Fono* where applicable.
- e) Improved criteria for a licence to manufacture alcohol including the verification of the safety of the formulae or the brewing methods and minimum qualifications of a brew master.
- f) Retaining the current legal age to purchase alcohol at 21 years with clear requirements for responsible supervision by parents or legal guardians, as well as further obligations on the licensee or manager of the licensed premises.
- g) Excise tax on alcohol to be revised as well as excise tax brackets. For example the percentage of increase of excise tax of a tax bracket should correspond with the percentage of increase of the content of alcohol for that tax bracket. Additionally, the maximum price for alcohol should also be removed from the General Price Order.
- h) Regulating the advertisement and promotions of alcohol particularly in relation to the content of advertising, youth exposure to advertising and sponsorship messages, and inappropriate sales promotions. Furthermore, the Liquor Control Board to receive complaints from the public relating to alcohol advertising and promotions and for procedures for determining complaints to be set out in legislation.
- i) Regulating minimum labelling requirements for alcoholic beverages, including the number of standard drinks on alcohol beverages and a health message to the effect that 'alcohol abuse is dangerous for health'.
- j) Improved enforcement including the creation of infringement offences and new powers for Police and Liquor Inspectors in the legislation to issue infringement notices, and in certain very limited circumstances to temporarily close On-site licensed premises (such as bars and nightclubs), and temporarily suspend licences for non-compliant licensees.
- k) Improvements to be made regarding data collection by the Police on alcohol abuse as a contributory factor in a significant number of the criminal offending, to assist in the work of the recently established Alcohol and Drugs

Court. This will also assist future policy development for purposes of crime prevention and mitigation.

- l) Improved awareness and programs educating the community and schools on the negative impacts of excessive alcohol consumption in Samoa.

Preface

The need for reform of laws relating to alcohol is aimed at reducing harm (such as criminal offending) where alcohol is a significant contributory factor and is aligned with the Strategy for the Development of Samoa 2012-2016 for an *improved quality of life for all*. It also supports the strategic direction of the Law and Justice Sector Plan 2012-2016 with focus on enabling a *safe and stable Samoa*, and one of the key Sector goals, i.e. *community safety*.

Since the passing of the *Liquor Act 1971* there has been a significant amount of research supporting a strong link between alcohol consumption and harm. In addition, members of the judiciary have expressed that alcohol abuse has been a contributory factor in a significant number of the criminal offending brought before them as well as recidivism among offenders.

Following receipt of the reference on Alcohol Reform, the Commission released the *Alcohol Reform Issues Paper (Issues Paper)* in November 2013 outlining key issues raised in preliminary submissions from key government stakeholders regularly involved with alcohol regulation. The publication of the Issues Paper provided a platform for discussion and debate about alcohol and the contextual backdrop for the development of tentative options for law reform.

Public consultations in both Upolu and Savaii were carried out by the Commission in November 2014 to gauge the views of the public on ways to reduce alcohol related harm and on the matters raised in the Issues Paper. Over 100 written submissions were received from the public in both Upolu and Savaii, and numerous submissions were received from youth representatives and business focus groups. Further research was carried out in 2015 to obtain data relating to further issues raised in consultations.

It has been extremely challenging for the Commission to obtain the necessary information and reliable data for the report. Whilst some statistics and data have been made available by relevant Government agencies, these are at times incomplete due to resource constraints faced by some agencies and occasionally inconsistent with information received from other agencies.⁴

This Report was developed with the assistance of members of the public, representatives from various government agencies, non-government organisations, representatives from the alcohol industry, and experts in alcohol regulation. Such assistance was provided by way of advice, submissions and expertise for which the Commission is extremely grateful and which contributed significantly to the development of recommendations in this report.

⁴ For example, in relation to some of the crime statistics provided by Ministry of Police in 2014, it is unclear whether zero offences recorded for a certain period means no such offending occurred or incomplete recording by the Ministry of Police.

Part 1: Harm and Benefits

A. Introduction

1. Alcohol is a colourless volatile flammable liquid which is produced by the natural fermentation of sugars and is the intoxicating constituent of wine, beer, spirits, and other drinks and is also used as an industrial solvent and as fuel.⁵
2. Under the *Liquor Act* alcohol is defined as including:
 - a beverage which at 20°C contains more than 1.15% ethanol by volume;
 - other beverages not included in the previous definition that for the purposes of sale are held out to be beer or spirit;
 - any spirits, wine, ale, beer, stout, cider, or any other ferment, distilled or spirituous liquor ordinarily used as a beverage which contains more than 2 parts percent of proof spirit;
 - any other substance prescribed by regulations as liquor.⁶
3. The harmful use of alcohol imposes costs on people, families, communities and society as a whole. Although currently there is little reliable data available on the prevalence of alcohol in the commission of offences, the members of the judiciary have expressed that alcohol abuse has been a significant driver of crime in Samoa as well as recidivism among offenders brought before them.
4. This report examines alcohol related harm in Samoa, more specifically in relation to the link between excessive consumption of alcohol and crime. Other harms such as harm to health and the increasing costs borne by Government in the health sector, has not been the focus of this review and may be the subject of a further review.

B. Alcohol Consumption

5. Reliable statistics on alcohol consumption in Samoa has been scant and not readily available, often incomplete and sometimes inconsistent. The Samoa Bureau of Statistics included a series of specific questions on alcohol consumption in a sample Demographic and Housing Survey carried out in 2014. In this survey 4171 households were specifically selected to be nationally representative of the households in Samoa, with the goal of developing a single integrated set of demographic and health data of the Samoan population.⁷

⁵ Oxford Dictionaries, <http://www.oxforddictionaries.com/definition/english/alcohol> (Accessed on 25th February 2016).

⁶ *Liquor Act 2011* (Samoa), s 2(1).

⁷ Samoa Bureau of Statistics, *Samoa Demographic and Health Survey 2014*, p. 6.

6. To gain insight into the population's alcohol consumption, all the respondents were asked the following questions in the survey:
 - Whether they drank alcoholic beverages;
 - If so, had they consumed any alcoholic beverages within the last 24 hours preceding the interview?
 - Whether they consumed alcohol before, during or after their meal;
 - How many drinks (measured by one glass of beer) they consumed within the last 24 hours.⁸
7. The results of the survey showed that 9% of the women surveyed consume alcohol.⁹ Of this group, 12% of women responded that they had a drink within the 24 hours preceding the interview. Almost 54% of the women surveyed had responded that alcohol was consumed before their meal, 9% consumed alcohol with their meal and 30% after their meal.¹⁰
8. In contrast, a substantially higher proportion (approximately 40%) of men surveyed consumes alcohol. About 19% of the men surveyed stated that they had a drink within the 24 hours preceding the interview, with 75% of them stating they consumed alcohol before their meal. Most notably, the survey revealed that one third of men aged 15-49 responded to having 10 or more drinks within the previous 24 hours. If the responses are reflective of usual alcoholic consumption habits, the survey reveals substantial alcohol consumption of men between the ages of 15-49.¹¹
9. The general trend illustrated by the survey is that alcohol consumption is higher in both men and women residing in the Apia urban area and typically those who were more economically well off or financially secure. However, it does not necessarily follow that most harm caused by excessive drinking is caused by this same group.
10. Other surveys carried out on the prevalence of alcohol use in Samoa included a 2014 report prepared by the Ministry of Health (**MOH**) for the World Health Organization (**WHO**) on Non Communicable Diseases (**NCDs**) risk factors (**STEPS Report 2014**).¹² Data for this survey was obtained from 1766 adults aged 18-64, constituting 695 men (39.4%) and 1071 women (60.6%).¹³ In the survey used for the STEPS Report

⁸ Ibid, p. 67.

⁹ Ibid, p. 68.

¹⁰ Ibid.

¹¹ Ibid.

¹² Samoa Ministry of Health, *NCD Risk Factors STEPS Report 2014*

<<http://www.health.gov.ws/images/MOH/Publications/HealthReportSurvey/SamoaSTEPSReport2014.pdf>>.

¹³ Samoa Ministry of Health, *NCD Risk Factors STEPS Report 2014*

<<http://www.health.gov.ws/images/MOH/Publications/HealthReportSurvey/SamoaSTEPSReport2014.pdf>>, p. 18.

2014, alcohol consumption was gauged by asking questions which addressed the frequency and quantity of alcohol consumption.¹⁴

11. The results of the STEPS Report 2014 indicated the overall prevalence of persons who had consumed alcohol within the past 30 days (**current drinkers**) was 10.9 %, with consumption much higher in men at 18.8% compared to 2.2% of women.¹⁵

12. Binge drinkers was defined as those who consumed 5 or more drinks for men and 4 or more drinks for women on a drinking day within the past 30 days.

- Men were found more likely to indulge in binge drinking at 17.7% compared to women at 2%.¹⁶
- Men were also more likely to drink more frequently and more heavily on a typical drinking day, with an average of 6.1 standard drinks consumed by men and 3.8 drinks consumed by women.¹⁷
- The mean number of drinks in a drinking day was higher in the younger men.¹⁸
- Approximately 17.7% of men drink 5 or more drinks during a single drinking occasion, whereas only 2% of women drink four or more drinks during a single drinking occasion.¹⁹

13. Over one third of current drinkers, 33.7% usually drink with meals, however, 40% of current drinkers never drink with meals. Of the women that participated in the survey 58.6% responded to having a drink without meals. This was lower for the men with 38% responding to consuming alcohol without meals.²⁰

C. Alcohol and Crime

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14. The impact of alcohol in Samoa is significant, and it has been often cited as the main contributing factor to serious offending.²¹ Most families and communities have been affected directly or indirectly by harm caused by excessive alcohol consumption.

¹⁴ Ibid, p. 24.

¹⁵ Ibid, p. 25.

¹⁶ Ibid, p. 27.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid, p. 8.

²¹ *Police v Timoteo* [2011] WSSC 65; *Police v Aukuso* [2011] WSSC 149; [2012] WSSC 89 (21 September 2012).

15. Whilst there is no current comprehensive data available on serious offences where alcohol was a contributing factor, many members of the judiciary have expressed that excessive use of alcohol and the availability of cheap alcohol was a common contributory factor to many criminal matters before them. This view is reiterated by representatives from the Ministry of Police (**Police**), the Ministry of Justice and Court Administration (**MJCA**) and the Samoa Victim Support Group (**SVSG**). All suggesting that serious crime such as sexual offending and domestic violence is often strongly linked to excessive alcohol use or where alcohol was consumed beforehand.²²
16. It is noted that almost every week the media reports on crimes of a serious nature that have occurred where alcohol is a contributing factor, consumed by either an alleged offender or victim or both. It was also noted by many owners of businesses where alcohol was consumed, that fights often broke out when patrons were heavily intoxicated in the premises or upon leaving the premises. Criminal offending fuelled by excessive consumption of alcohol was also at the forefront of concerns raised by numerous members of the public during consultations about their experiences in the community.
17. The Commission was unable to obtain official statistics on crimes in Samoa where alcohol was a contributing factor. Thus, it is difficult to ascertain with any precision the prevalence of alcohol in the commission of serious offences, or even in relation to lower level offending and anti-social behaviour.
18. However, in an effort to provide a snapshot of the prevalence of alcohol and/or drug related offences before the courts, MJCA collected data specifically relating to the numbers of murder, manslaughter and grievous bodily harm offences committed under the influence of alcohol and/or drugs. This revealed an increasing trend of serious offences over the years which were alcohol and or drug related. In 2012, 43% of these serious offences were committed under the influence of alcohol and/or drugs. There was a slight increase in 2013 to 51% of offences. In 2014, there was an alarming hike in the statistics revealing almost three quarters (approximately 72%) of all murders, manslaughters and grievous bodily harm offences were committed under the influence of alcohol and/or drugs. The statistics are quite unsettling given that these offences are not low level or minor offending but are very serious, violent offending.
19. In regard to more low level offences, the review also revealed that there has been a three-fold increase in drink driving offences from 108 cases in 2009 to 340 cases in 2014.

²² Information provided by Samoa Victim Support Group (23 September 2014).

20. The Police were able to provide statistics on the number of reported lower level offending for the period between 2008 – September 2014 where alcohol was or appeared to be a contributing factor. Table 1 below illustrates this:

Table 1: Total Number of Reported Cases of Offences where Alcohol was or appeared to be a Contributing Factor 2008-September 2014 (Police)²³.

Offences	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-Sept 2014
Drunk in a Public Place	55	52	72	172	294	56
Illegal Manufacture of Home Brew	2	4	1	1	4	1
Driving under the Influence	2	32	19	91	245	31
Selling Alcohol Without License		1				
Influence of alcohol in breath			28			

21. Based on the information in Table 1, the most common alcohol-related offence reported between 2009-2013, was drinking in a public place. There was a general increase in the number of people apprehended for being intoxicated in public areas between 2009-2013. In 2011, 72 people were charged with this offence and in 2012 there was a 139% increase amounting to 172 offences. In 2013, there was a further 70% increase in this type of offending to 294 reported cases. These statistics illustrate the increasing prevalence of this type of alcohol-related offence. However, there is no indication whether such public places are in the urban area or in the rural villages.

22. Traffic offences are also common offences where the presence of alcohol is a contributing factor. Table 2 indicates that reported incidences of driving under the influence (**DUI**) have fluctuated over the period of 2009-2013. In 2009, there were 2 reported incidences of DUI, which increased to 32 in 2010. In 2012 there were 91 reported cases of DUI, whereas in 2014 there was a dramatic increase of 170% in this type of offending to 245 reported cases.

23. There are 28 reported incidences of alcohol in breath in 2010 alone, and none in any other years during this period. Also, during this period there is also only one case reported of selling alcohol without a license in 2011. It is not clear whether the low

²³ It is unclear from the data whether gaps indicate no offending or incomplete recording by Ministry of Police.

number is attributed to poor enforcement or in the case of alcohol licences, whether there is improved compliance by businesses selling alcohol.

24. The often less visible dimension of alcohol related harm includes child and family abuse and neglect.²⁴ This was illustrated in a submission from SVSG where it highlighted that from 2011-2013, over 320 domestic violence cases were lodged with their organization. Alcohol was a contributing factor in 70% of these domestic violence cases. SVSG also recorded that about 65% of the victims were exposed to verbal abuse and sustained physical injuries.²⁵

25. The submission from SVSG also identified sexual abuse cases reported to their organization where alcohol was a contributing factor. Table 2 below shows the total number of alcohol-related sexual crimes reported to Samoa Victim Support Group from 2011-2013. It reflects a steady increase in sexual crimes where alcohol was a contributory factor during that period. In 2011, there were 45 sexual abuse cases reported to SVSG, which increased significantly by 67% to 75 cases of sexual crimes reported the following year in 2012. In 2013, sexual crimes increased again by 19% to 89 reported cases.²⁶

Table 2: Total number of alcohol-related sexual crimes reported to Samoa Victim Support Group from 2011-2013²⁷.

	2011	2012	2013
Attempted Rape	8	12	16
Indecent Assault	12	22	24
Rape	7	18	20
Carnal Knowledge	15	17	19
Incest	3	6	8
Assaulting Videos	0	0	2
Total	45	75	89

²⁴ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 84; Interview with Lina Chang, President, Samoa Victim Support Group (Apia, 23 September 2014).

²⁵ Information provided by Samoa Victim Support Group (23 September 2014).

²⁶ Ibid.

²⁷ Ibid.

New Zealand

26. In New Zealand, alcohol has been identified as the drug that is causing the most problems for police. The impact of alcohol is significant because it affects so many different aspects of policing ranging from serious violent offending to lower level offending to minor cases of disorderly behaviour.²⁸
27. A National Alcohol Assessment carried out by the New Zealand Police reported trends in alcohol-related offending throughout New Zealand. This report showed that in at least one-third (20,447) of recorded violent offending, the offender had consumed alcohol beforehand.²⁹ The report also revealed that in half of the 489 homicides recorded between 1999 and 2008, either the suspect or a victim was under the influence of alcohol at the time of the incident.³⁰ In terms of sexual offences, one-fifth of all sexual offences recorded in 2007-2008 involved an offender who had consumed alcohol before committing the offence.³¹ A report carried out by the Ministry of Social Development in 2009 highlighted the role of alcohol in crimes against children and families. The report identified alcohol and/or drug abuse featured in approximately two-thirds of the cases.³²
28. The New Zealand District Court judges estimated that up to 80% of defendants in the criminal courts have alcohol or other drug dependency issues with alcohol being the drug of choice in three-quarters of its cases.³³
29. The harms of alcohol vary from the very visible alcohol-related offending. However, it also encompasses lower level offending and anti-social behaviour that is not always captured in official statistics, although it is a problem that frontline police officers see on a regular basis. In New Zealand, there were 21,263 occasions in 2007/08 in which police officers were required to pick up intoxicated people and take them to their homes as they were judged to be a risk to themselves or others. Alcohol has also been linked to a disturbing level of anti-social behaviours ranging from abusive and offensive language, intimidation, sexual harassment, graffiti and vandalism to urinating, excreting and vomiting in public places.³⁴
30. The New Zealand Law Commission also noted evidence suggesting that many patrons entering clubs and bars after consuming alcohol purchased from a retail

²⁸ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 79.

²⁹ *Ibid*, at 76.

³⁰ New Zealand Police, *National Alcohol Assessment* (Wellington, 2009) at 41, cited in New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 77.

³¹ *Ibid*, at 77.

³² Ministry of Social Development *Learning from Tragedy: Homicide within Families in New Zealand 2002-2006* (Wellington, 2009), cited in New Zealand Law Commission *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 78.

³³ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 78.

³⁴ *Ibid*.

store (called pre-loading) is believed to be linked to high levels of intoxication in public places and anti-social behaviour.³⁵

D. Harm to Health

Globally

31. Globally, approximately 3.3 million deaths per year are attributed to alcohol-related harm with associated costs which have overburdened both communities and societies.³⁶ Alcohol is a causal factor in 60 types of diseases and a component cause in 200 others.³⁷ It accounts for about 4% of deaths globally which accounts for more deaths than those caused by violence, HIV/AIDS or Tuberculosis.³⁸ Alcohol is also the leading risk factor in the world for deaths amongst males aged 15 – 59 years.³⁹ The WHO has classified alcohol as “carcinogenic to humans” and regards alcohol’s potential to cause cancer as being the same as asbestos, formaldehyde and tobacco.⁴⁰

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32. There is widespread acceptance by the public that long term alcohol use has significant and permanent effects on an individual’s health. Table 3 provides statistics from the **MOH** indicating the number of deaths resulting from alcohol related diseases over the period of 2010 – June 2014 at the Tupua Tamasese Meaole Hospital at Moto’otua. This excludes data from the Malietoa Tanumafili II Hospital in Savai’i and other district facilities.

Table 3: Alcohol Related Hospital Deaths; 2010-June 2014 Tupua Tamasese Meaole Hospital

Alcohol Related Diseases	2010	2011	2012	2013	2014 (Jan-June)	Total
Diabetes Mellitus	39	48	52	46	28	213
Cerebrovascular Diseases	49	35	28	20	9	141
Hypertension	38	43	65	34	28	208
Coronary Heart Disease	16	23	25	24	11	99
Heart failure	25	41	40	30	15	151

³⁵ Ibid, at 43.

³⁶ World Health Organisation, *Global status report on alcohol and health 2014* <http://apps.who.int/iris/bitstream/10665/112736/1/9789240692763_eng.pdf> at p.2.

³⁷ World Health Organisation, *Global status report on alcohol and health 2011* http://www.who.int/substance_abuse/publications/global_alcohol_report/msbgsruprofiles.pdf, p. x.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 80.

Cirrhosis of Liver	1	1	1	0	1	4
Alcohol Use Disorders	0	0	0	0	1	1

(Source: PATIS (Patient Information System) MOH/NHS)

33. The breakdown of information received about Table 3 (not shown here) revealed that the number of alcohol-related deaths during this period was much higher in men than in women.
34. Table 3 indicates that the highest incidence of alcohol-related diseases between 2009-2014 was diabetes mellitus or type 2 diabetes. After type 2 diabetes, hypertension is the following most common alcohol-related disease which resulted in death within that period. Heavy alcohol consumption also resulted in a high number of deaths from cerebrovascular diseases or strokes and heart failures. Diseases such as cirrhosis of the liver and alcohol use disorders were much less common and recorded only a few deaths as illustrated on Table 3.
35. It appears that the actual number of cases may be much higher than as identified in Table 3 which only discloses alcohol-related diseases and does not specify alcohol-related injuries.⁴¹ The MOH is currently developing its patient information system to improve accessibility to such data in Samoa.⁴²
36. The MOH has two main policy documents to guide its work in relation to addressing the harmful effects of alcohol consumption in Samoa. Firstly, the National Alcohol Control Policy (**NACP**) 2015-2020 which will complement legislation to address harmful effects of alcohol on the health of the Samoan population. Secondly, the WHO Global and Regional Strategies which guides MOH's work and aims to reduce alcohol-related harms.

E. Alcohol related Accidents

37. The Accident Compensation Corporation (**ACC**) provides a no fault personal injury scheme which provides insurance cover for employees in Samoa. The scheme provides compensation to provide for a wide range of medical treatments and rehabilitation for persons injured in accidents. Where work related accidents result in death, the scheme also provides compensation for the employee's dependants.⁴³

⁴¹ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 80.

⁴² Ministry of Health, *National Alcohol Control Policy 2016-2021*, at p.21, 23.

⁴³ Accident Compensation Corporation, *Our Services*, <http://www.acc.gov.ws/Services/OurServiceStandards/tabid/2992/language/en-US/Default.aspx>.

Table 4: Total applications for compensation claims considered by ACC Samoa between 2009-2013

Year	Total No. of accidents	Total claims including deaths ⁴⁴	Claims involving alcohol (3.1)	Deaths involving alcohol (3.2)	Permanent disability involving alcohol (3.3)
2009	151	176	13	4	2
2010	194	268	17	6	5
2011	199	222	0	0	0
2012	132	134	13	5	2
2013	218	227	20	11	4
Total	894	1027	63	26	13

(Accident Compensation Corporation 2014)

38. According to the figures in Table 4:

- 63 out of 894 (7.05%) applications for compensation have been heard or considered by ACC in which alcohol was found to be a contributing factor;
- 26 out of 1027 (2.53%) accidents were reported in which alcohol was found to be a contributing factor resulting in death, where dependents are entitled to compensation;
- 13 out of 894 (1.45%) accidents were reported in which alcohol was found to be a contributing factor resulting in permanent work disability.

39. Although the figures fluctuate between the years, there is a clear significant increase from 2009 to 2013, of claims concerning accidents, disability and death where alcohol is a contributing factor.

F. Benefits of Alcohol

40. As one of the most used recreational drugs, alcohol consumption has both social and economic benefits. The more obvious social benefits include consumer satisfaction, relaxation of personal, social and business relationships.⁴⁵

⁴⁴ The number of total claims including deaths is higher than the total number of accidents to reflect accidents where there were multiple victims involved and as such multiple claims would arise from one accident.

⁴⁵ Marsden Jacobs Associates, "The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework",

41. Globally, the alcohol industry is a multi-billion dollar enterprise with a diversity of economic activities ranging from revitalized exports, sustainable tourism, and enabling the environment for business development.⁴⁶
42. The alcohol industry in Samoa comprises alcohol manufacturers, distributors, retailers and cafes, restaurants, bars and clubs in the hospitality sector, all which provide a wide range of direct and indirect employment opportunities for local people. During consultations, many business owners raised the flow on economic benefits of the alcohol industry noting that alcohol provides employment opportunities often above minimum wage.
43. The alcohol industry is a lucrative sector in the Samoan economy. The two leading alcohol manufacturers in Samoa are Samoa Breweries Ltd (**SBL**) established in 1978 and Samoa Beverage Company (**SBC**) established in December 2012. SBC currently employ over 60 staff and has contributed approximately over 1.5 million in community sponsorship and excise tax.⁴⁷ SBL employs roughly around 165 – 200 staff and contributes around 16 million in community sponsorship and excise tax. On top of this it also contributes around 15 million on duty.⁴⁸
44. The alcohol industry in Samoa has over the years expanded to overseas markets and the beer has become a mainstay in the export income of Samoa. For example, the SBC identified their export markets as including New Zealand, American Samoa, Cook Island and Tokelau.⁴⁹
45. Table 5 below depicts the beer export earnings for Samoa from between 2004 – 2014 by SBL. It is not inclusive of the income earned from the exporting of SBC's products which include Taula, Sama and Manutagi.

(A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at pp. 8-9.

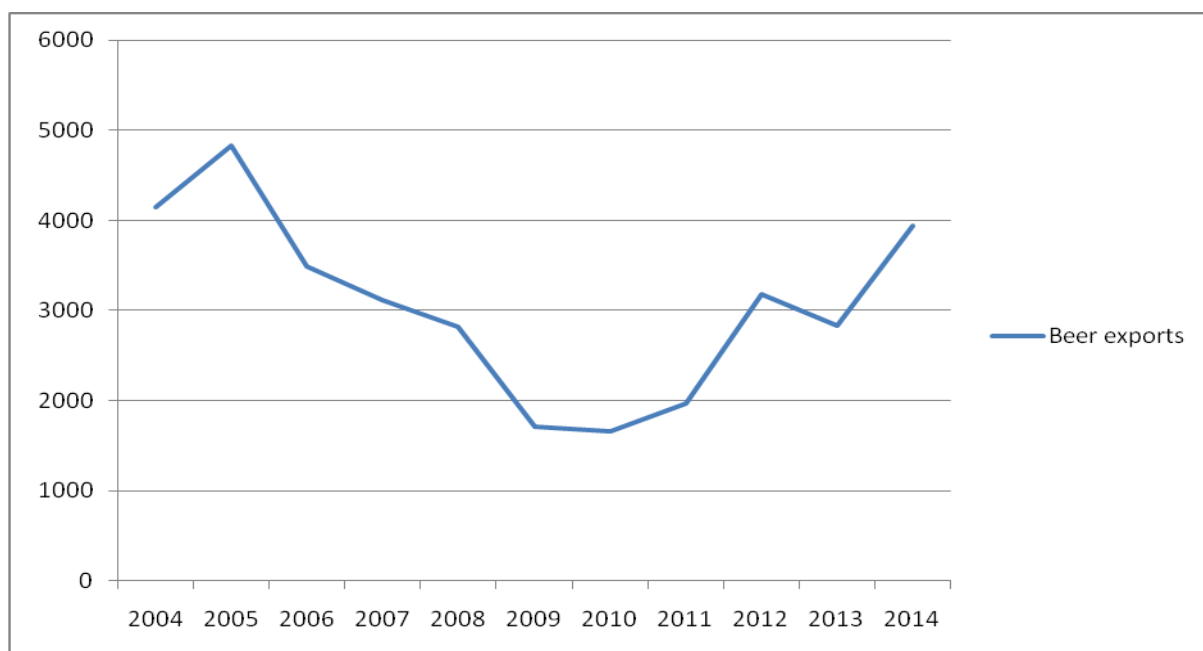
⁴⁶ World Health Organisation (2014), Global status report on alcohol and health. Geneva, 18, http://www.who.int/substance_abuse/publications/global_alcohol_report/msb_gsr_2014_1.pdf?ua=1.

⁴⁷ Information provided by Samoa Beverage Company.

⁴⁸ Interview with Trevor Nainoca, Financial Manager, Samoa Breweries Limited (Apia, 1 April 2016).

⁴⁹ Information provided by Samoa Beverage Company. However, no information was provided on its export earnings since it was established in 2012.

Table 5: Beer export earnings from 2004 - 2014



46. Table 5 shows that since 2009, there has been a steady increase in export earnings peaking in 2014 with beer export earnings of 3.94 million accounting for 17.5% of earnings from total domestic exports.

47. Figures from the Central Bank of Samoa (CBS) for the 6 month period from July 2014 – January 2015 reveal that beer contributed to 6.85% (approximately 2.75 million tala) of exports.⁵⁰ More recent figures from the CBS for the 4 month period from July – October 2015 showed that beer comprised of 5.5 % of all exports bringing in 2.24 million tala.⁵¹ These figures relate only to export earnings by Samoa Breweries Limited.

48. The CBS indicated that the export data is only a fraction of what is manufactured and sold locally, indicating the significant contribution by the alcohol industry to Samoa's economy.

49. Quite separate from its contribution to Samoa's economy, the large alcohol manufacturing companies are often heavily relied upon to sponsor major events. This is discussed in more detail under Part 5 of the report.

⁵⁰ Central Bank of Samoa, *Update on the World and the Samoan Economy for the First Seven Months of 2014/2015 to end January 2015*, (12 March 2015).

⁵¹ Central Bank of Samoa, *Update on the World and the Samoan Economy for the First Four Months of 2015/2016 to end October 2015*, (17 December 2015).

Part 2: Regulating the Sale and Supply of Alcohol through the Alcohol Licensing System

A. Legislative History

50. There are many different ways the supply or availability of alcohol can be controlled or regulated. Laws that have looked at controlling the availability of alcohol have a long history. Prior to Samoa's independence in 1962, the Samoan people were prohibited by law from purchasing and consuming alcohol. During that time, Europeans and other foreign nationals were the only people who were legally permitted to purchase and consume alcohol.⁵² Due to this prohibition, many of the local people resorted to making homebrew beer for enjoyment, which was widely available and distributed.

51. The *Liquor Act 1971* was Samoa's first legislation regulating alcohol in Samoa. The *Liquor Act 1971* provided a statutory framework for the control of the manufacture and sale of liquor in Samoa, and established the Liquor Control Board (**LCB**).

52. Subsequent amendments were made to the *Liquor Act 1971* following its enactment. Key amendments included the establishment of the Samoa Breweries Limited to manufacture and sell beer products.⁵³ In 1986, the Government's monopoly on the importation of liquor into Samoa ended when the LCB was authorised to grant liquor importer licences to enable the importation of liquor into Samoa, pursuant to amendments to the *Liquor Act*.⁵⁴ Further amendments recognized the authority of *Ali'i* and *Faipule (Village Fono)* in the issuance of licences to sell and supply liquor in the village. Also the number of members of the general public appointed to the LCB by the Minister increased from one member to three members.⁵⁵ The LCB was again expanded in 1992/1993 to include the Financial Secretary.⁵⁶

53. Consequently, the *Liquor Act* was passed replacing the *Liquor Act 1971*. The object of the *Liquor Act* is to promote and encourage responsibility in the manufacture, import, sale and consumption of liquor.⁵⁷ Most notably, the *Liquor Act* established a scheme to regulate the manufacture, import and sale of liquor through the issuance of liquor licences (**licensing system**) and subsequently continued the LCB as the licensing authority under that Act.⁵⁸

⁵² Ieti Lima, *Tafesilafa'i: Exploring Samoa Alcohol use and Health within the framework of the fa'asamoa*, (University of Auckland, 2004).

⁵³ *Liquor Amendment Act 1978* (Samoa).

⁵⁴ *Liquor Amendment Act 1986* (Samoa).

⁵⁵ *Liquor Amendment Act 1991* (Samoa).

⁵⁶ *Liquor Amendment Act 1992/1993* (Samoa).

⁵⁷ *Liquor Act 2011* (Samoa), s 3.

⁵⁸ *Ibid*, s 5.

54. This Part will focus on the licensing system under the *Liquor Act* which provides restrictions on the availability of alcohol in Samoa through the issue of licences for the sale, supply, manufacture and import of alcohol.

B. Liquor Control Board

55. The *Liquor Act* sets out the functions and powers of the LCB to issue alcohol licences, consider complaints made in relation to licensed premises, monitor and regulate activities of licensees and provide for offences and relevant penalties in relation to the use of alcohol.⁵⁹ Membership of the LCB includes the Minister responsible for Revenue (as chairperson), Chief Executive Officers (or representatives) of the Ministry for Revenue (**MfR**), Ministry of Finance (**MOF**), MOH, the Attorney General (or representative), the Commissioner of Police, and 5 members appointed by Cabinet from the private sector and the community for a period of 3 years.⁶⁰ Currently the 5 members representing the private sector and the community consist of 5 male *matai* from various villages. There is no legal requirement for appointed LCB members to have particular qualifications or expertise. There is also no guarantee that businesses, manufacturers, churches, and women will be adequately represented on the LCB.

56. The LCB's functions and powers under the Act are broad and wide ranging. It includes determining applications for the grant, decline, suspension or cancellation of licences to sell, import and manufacture alcohol,⁶¹ The LCB also determines the prices payable to a licensee for liquor sold, trading hours for the sale of liquor,⁶² monitors and regulates activities of licensees,⁶³ considers complaints and carries out inquiries and hearings,⁶⁴ and advises Government in respect of any of matters referred to it.⁶⁵

57. The Secretary of the LCB has significant functions and powers under the Act and is an employee of the Ministry for Revenue.⁶⁶ Aside from administrative functions such as receiving licence applications, the LCB Secretary can request information that is prescribed under Act or in regulations, and can also request specific information set out under the Act.⁶⁷ The LCB Secretary's functions include extensive discretionary powers and can request information he or she considers the LCB may require.⁶⁸

⁵⁹ *Liquor Act 2011* (Samoa), s 6.

⁶⁰ *Ibid*, s 7.

⁶¹ *Ibid*, s 6.

⁶² *Ibid*, ss 6(e)–(f)..

⁶³ *Ibid*, s 6(h).

⁶⁴ *Ibid*, ss 6(b)–(c). .

⁶⁵ *Ibid*, s 6(i).

⁶⁶ *Ibid*, s 8.

⁶⁷ *Ibid*, s 25.

⁶⁸ *Ibid*, s 24(1)(e).

58. Meetings of the LCB can be called as often as the Chairperson considers necessary for the efficient exercise of the functions of the LCB.⁶⁹ Normally twelve meetings per year are budgeted for each financial year carried out on a monthly basis, although special meetings are called throughout the year, where various issues including new licence applications are discussed.⁷⁰

Submissions

59. Public consultations carried out by the Commission provided the members of the community and business groups an opportunity to voice their concerns about the current laws regulating alcohol. The underlying theme raised by the general public and business groups is that the current law is inadequate in minimising or reducing alcohol related harm, and that the Government needs to address these concerns. Furthermore, it appears widely accepted by the public that increased availability of alcohol leads to increased levels of alcohol consumption.

60. Many submissions were received and views expressed on the licensing process (including renewals) and practices of the LCB. Unless otherwise stated the points noted are from consultations and submissions received.

61. Members of the general public and the majority of business focus group shared many concerns about the current licensing process, and similar views that the current licensing process is inadequate and decisions of the LCB often appeared to be inconsistent and lacking transparency, particularly in relation to reasons for decisions.

62. For example, a licensee of a nightclub informed of a complaint made to the LCB in relation to noise from their nightclub. According to the licensee, they were notified by the LCB in writing regarding the complaint and were directed to immediately close the bar. The closure was a week's period and they were never given an opportunity to respond.⁷¹

63. It was raised that adequate training should be provided for members of the LCB not only pertaining to the legislation and regulations but also on matters of administrative law, for example, relevant matters the LCB must consider versus irrelevant matters, grounds of fairness and reasonableness. This is to ensure that due process is upheld and procedural protections are in place when the LCB exercises its discretion. It was also suggested that the LCB should provide reasons for their decisions in writing so that their decisions were more transparent.

⁶⁹ *Liquor Act 2011* (Samoa), s 9.

⁷⁰ Interview with Togia'i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (Apia, 22 October 2014).

⁷¹ Interview with Owner, YNOT Bar (Apia, 24 October 2014).

64. Delays in licensing decisions was also raised as a problem – with a representative of MfR who often sat in LCB meetings stating that delays in licensing decisions are common, and that some decisions have been known to take up to 5 or 6 months after an application is submitted.⁷²
65. The composition of the LCB to increase its effectiveness and efficiency was raised as a concern. Members of the business community consulted suggested that permanent LCB membership should include representatives of the business community, and other relevant agencies, such as the Scientific Research Organisation of Samoa (**SROS**).

Analysis

66. In order to address delays in licensing decisions, the approval process for a license is expedited by the LCB Secretary circulating to LCB members copies of an application and accompanying documents (such as a *matai* approval form⁷³, report from the MOH and police form) in advance.⁷⁴ It is also very common practice for matters (such as new applications for a licence) to be brought before the LCB to formalise a decision that has already been made by the Chairman of the LCB.⁷⁵
67. Clearly the currently practice is at risk of legal challenge on various administrative law grounds – which indicates a need to be addressed so that it is not only legally robust, but more practical and workable. This indicates a need for adequate training on the legislation as well as general principles of administrative law, particularly for appointed members to the LCB.
68. Membership of the LCB should be revised. For example, the MOH provides a clearance report to the LCB following onsite inspections to ensure that health requirements are complied with and the site is suitable for the safe manufacturing of alcohol. However such reports may be requested from the Ministry without necessarily being a member of LCB. A further example is SROS which is not a member of LCB but it may be prudent for the LCB to obtain reports from SROS in relation to applications for a licence to manufacture alcohol. Furthermore, given the contribution by the alcohol industry to Samoa’s economy, it would be appropriate to have a representative from the business community, such as a representative from the Samoa Chamber of Commerce (**Chamber of Commerce**).

⁷² Interview with Togia’i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (Apia, 22 October 2014).

⁷³ As part of an application for a liquor licence, the consent of the Ali’i and Faipule of the premises to which the application relates must be provided with the application. The consent form requires the signatures of at least 10 Ali’i and Faipule.

⁷⁴ Interview with Togia’i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (22 October 2014).

⁷⁵ Ibid.

69. It is also very important for the LCB to collectively have the relevant expertise to determine matters under the Act. Currently under the Act, there are no criteria for the selection and appointment of LCB members representing the private sector and public representatives. However there is a need to ensure appointed members have the appropriate knowledge, skills, and experience to assist the LCB to achieve its objectives and perform its functions. Appointment of these members should be publicly advertised.
70. To reduce the workload of the LCB, some of the functions of the LCB under the current Act, such as the less contentious decisions may be carried out by the CEO of the Ministry. This could include obtaining reports and verifications for licence applications (for example, from the MOH, Police, SROS, etc.) and processing licence renewal applications for licensees that have not received any previous adverse reports. Such functions can remain that of the LCB however the legislation should enable the delegation of these functions to the CEO of the Ministry.

RECOMMENDATIONS

1. References in the legislation to 'liquor' should be replaced with 'alcohol' which is a more modern and commonly used term. The change should also be reflected in the name of the Liquor Control Board (**LCB**).
2. Permanent Members of the LCB should continue to consist of the chief executive officers of the Ministry for Revenue (**MfR**), Ministry of Police (**Police**), Ministry of Finance (**MOF**), and Attorney General's Office (**AGO**). A representative from the Chamber of Commerce should be added as a permanent member of the LCB.
3. The legislation should require that Appointed Members of the LCB representing the private sector and public representatives are publicly advertised, and:
 - a) collectively possess the appropriate knowledge, skills, and experience to assist the LCB to achieve its objectives and perform its functions;
 - b) consist of a minimum of 2 and maximum of 4 including a representative of *matai* and consideration of gender balance.
4. Appointed Members of the LCB should be provided adequate training on the legislation, regulations, as well as general principles of administrative law that would be necessary to undertake their role as sitting members of the LCB. This should be included in the MfR budget.
5. All functions and powers exercised by the LCB should expressly be set out in legislation. For LCB to be able to function more efficiently and focus on more substantive, contentious and complex matters, its general administrative functions and powers should be able to be delegated to the CEO of MfR. The following

functions and powers that should NOT be permitted to be delegated to the CEO include:

- a) Decisions on first time licence applications;
- b) Renewal applications from non-compliant licensees;
- c) Decisions to reduce or extend trading hours;
- d) Decisions on applications to sell or supply alcohol on Sundays;
- e) Decisions to impose licence conditions which the LCB has discretion under the legislation to do so;
- f) Matters relating to complaints, hearings, suspensions and licence cancellations;
- g) Decisions relating to any breaches of standards on the content of alcohol advertisements and promotions.

6. The legislation should also expressly specify functions and powers that should be exercised by the CEO of MfR in relation to the regulation of alcohol, and specify which of these functions may be delegated to the LCB Secretary. The functions of the LCB Secretary under the Act (including functions delegated to him or her by the CEO of MfR) should be limited to administrative functions. The following functions and powers of the CEO that MAY be delegated to the LCB Secretary or other ACEO of the Ministry should include:

- a) assessing whether the minimum criteria provided in the legislation (such minimum requirements can include providing evidence of approval by *Village Fono*, and checks on prior convictions for serious offences) are met before an application for a licence can be accepted,
- b) receiving applications that meet minimum criteria for consideration by LCB;
- c) returning incomplete applications if minimum criteria are not met,
- d) requesting certain further information required for an application.

7. The legislation should also specify additional licensing conditions that the LCB may impose on licences and criteria that must be met, to improve consistency and transparency in the decision making of the LCB. Additionally, the LCB must provide written reasons for their decisions which would also promote transparency, accountability and uphold the principles of administrative law.

C. Licence for Sale or Supply of Alcohol

Samoa

71. Under the *Liquor Act*, anyone who wishes to sell liquor must apply to the LCB for a liquor licence.⁷⁶ There are eight classes of licences in Samoa:

- a) Wholesale licence – This license authorises the sale of wholesale liquor in sealed containers away from licensed premises.⁷⁷
- b) Retail sale licence – This license authorises the sale and supply of liquor in sealed containers for consumption away from licensed premises,⁷⁸ for example in supermarkets and village stores.
- c) Food and beverage licence – This license authorises the sale and supply of liquor during prescribed times or as set out in the license as ancillary to a meal consumed at the licensed premises, provided it is not removed from the premises.⁷⁹This includes restaurants, hotels, motels and beach resorts.
- d) Bar licence – This license authorises the sale and supply of liquor for consumption on the licensed premises.⁸⁰
- e) Nightclub licence –This licence authorises the sale and supply of liquor for consumption on the licensed premises during prescribed times or set out in the license.⁸¹ The main distinguishing factor of a nightclub from a bar, is that a nightclub has the right to charge entry fees.⁸²
- f) Temporary licence – This license authorises the sale and supply of liquor for consumption in an area specified in the licence.⁸³ Regulations can be made to prohibit the sale of liquor of a certain kind.⁸⁴
- g) Licence to import liquor – This licence authorises the licensee to import liquor as specified in the licence.⁸⁵
- h) Licence to manufacture liquor – This licence authorises the licensee to manufacture liquor on the premises prescribed in the licence.⁸⁶

⁷⁶ *Liquor Act 2011* (Samoa), s 24.

⁷⁷ *Ibid*, s 18.

⁷⁸ *Ibid*, s 19.

⁷⁹ *Ibid*,s 20.

⁸⁰ *Ibid*, s 21(1).

⁸¹ *Ibid*, s 22(1).

⁸² *Ibid*, s 2(1).

⁸³ *Ibid*, s 23.

⁸⁴ *Ibid*.

⁸⁵ *Ibid*, s 38(1).

72. An application must include details of the applicant and the premises to be licensed, criminal convictions, a valid business licence and other information the LCB may require.⁸⁷ Furthermore, the LCB must consider the following when considering an application for a license to sell liquor. These include:

- a) Whether the applicant is a fit and proper person to hold a licence;
- b) Whether it is appropriate to issue the licence for the area to which the application relates and the suitability of the premises for the purpose of the licence;
- c) The applicant's understanding of the obligations of a licensee under the Act;
- d) Whether the applicant has contravened a provision of the Act;
- e) Where applicable, permission from the *Village Fono* of the village where the premises to which the application relates are to be situated;
- f) Prior convictions for a serious offence;
- g) Any objections to the application;
- h) Public interest.⁸⁸

73. As noted above, *Village Fono* have an important role to play in the issuance of liquor licences under the Act.⁸⁹ Before an application for liquor licence (for example for a retail business located in a village) is granted, prior written consent of the *Village Fono* of that village must first be obtained and attached to the application for the LCBs consideration.⁹⁰ In practice this is a standard form where a minimum of 10 signatures by *Village Fono* in support of the application is given.

74. Objections can be made to an application on grounds that the applicant is not a fit and proper person, or on the basis that it is not appropriate to grant the licence for the premises in that area. Objections can also be made for reasons of public interest.⁹¹ However, where there is an objection, the applicant must be given an opportunity to respond.⁹²

⁸⁶ *Liquor Act 2011* (Samoa), s 45(1).

⁸⁷ *Ibid*, s 24.

⁸⁸ *Ibid*, s 26.

⁸⁹ *Ibid*, s 26(1)(f).

⁹⁰ *Ibid*, s 26.

⁹¹ *Liquor Act 2011* (Samoa), s 27(2).

⁹² *Ibid*, s 27(3).

75. The *Liquor Act* expressly provides that the LCB must not issue a nightclub licence or a bar licence to an applicant where the premises is or is proposed to be located 50 metres of a hospital, church or school.⁹³

76. A liquor licence is issued for a calendar year⁹⁴ and must be renewed each year.⁹⁵ The usual documents required for first time licence applications are not required for licence renewals.⁹⁶ The current streamlined practice for renewals requires only the payment of the requisite fee with a receipt given in return as proof of payment.

Table 6 shows all liquor licences issued for a single financial year, from July 2014 to June 2015 for all classes of licences.⁹⁷

Class	Type of Liquor Licence currently held	July 2014 to June 2015		Fees per annum
A	Distribution & Wholesale	10		\$1,000
B	Retail sale (Trading Stores & Supermarkets)	482		\$250
C	Food & Beverage	44	76	
	• Hotels	0		\$1,500
	• Motel	10		\$250
	• Beach Resort	22		\$250
	• Restaurants	0		\$1,000
D	Bar	20		\$1,000
E	Night Club	8		\$1,500
F	Temporary	0		\$250
G	Import	12		\$1,500
H	Manufacture	6		\$1,000
	Total	614		

⁹³ Ibid, s 21 (3); s 22(3).

⁹⁴ Ibid, s 28.

⁹⁵ Ibid, s 29.

⁹⁶ Interview with Togia'i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (22 October 2014).

⁹⁷ Information provided by the Ministry for Revenue (22 September 2014).

77. As shown in Table 6, a total of 614 licences were issued, including licences that are renewed. The majority of the licences issued were for the sale and supply of alcohol, constituting 97% (596). About 1.9% (12) licences for the import of alcohol were issued, and about 0.9% (6) licences for the manufacture of alcohol.

78. Of the licences for the sale and supply of alcohol, about 82% (492) were issued to trading stores and supermarkets for consumption away from licensed premises. The location of the licensed premises is not provided and therefore the number of the retail liquor licences in the rural villages or the cluster of these premises cannot be determined. However licences for consumption on licensed premises constituted about 17% (104). These licences were issued to hotels, motels, beach resorts, bars, nightclubs, and restaurants.

Table 7: New Licences Issued for period 2008-2014 (excluding renewals)⁹⁸

Class	Application for Liquor Licence	2008	2009	2010	2011	2012	2013	2014	Total 2008-2014
A	Wholesalers and Distributors		1			3			4
B	Retail (Trading Stores)	21	26	40	32	40	49	46	254
C	Food & beverage	6	4	8	1	9	11	4	43
D	Bars		1	1					2
E	Night Clubs	1		1		1	1		4
F	Temporary								0
G	Importation				1	2		1	4
H	Manufacturing	1	1	1		1			4
	Total	29	33	51	34	56	61	51	315

79. As shown in Table 7 a total of 315 new liquor licences were issued by the LCB for the period 2008 to 2014, excluding applications for a licence renewal. Most new licences for the sale and supply of alcohol during this period are issued for consumption offsite away from licensed premises (for example to trading stores, supermarkets, wholesalers and distributors). Such licences constitute about 84% (258), compared to licences for consumption onsite which constitute only about 15% (49).

⁹⁸ Information provided by the Ministry for Revenue (22 September 2014).

Conditions for the sale and supply

80. The LCB has wide powers under the Act to impose conditions on a licence for the sale and supply of liquor. Such conditions may include the times liquor may be sold or consumed, opening and closing times, how liquor is to be sold from the premises, the maximum number of persons who may be at the licensed premises, as well as restrictions on noise at the premises.⁹⁹
81. The Act also prohibits the sale of liquor on Sunday except as approved by the LCB,¹⁰⁰ or on any other days specified by the LCB.¹⁰¹ These prohibitions are expressly provided under the Act as mandatory conditions of a licence for the sale of liquor. The LCB also has extremely wide powers to vary or revoke the conditions at any time,¹⁰² which may or may not be endorsed on the licence.¹⁰³

New Zealand

82. Similar to Samoa, New Zealand has established a licensing regime under the *Sale and Supply of Alcohol Act 2012*. In New Zealand, there are 4 types of licences:
- a) On licences – This licence authorises the sale and supply of alcohol for consumption on any premises, such as pubs and restaurants.¹⁰⁴
 - b) Off licences – This licence authorises the sale and supply of alcohol on the premises for consumption off the premises, such as bottle stores and supermarkets.¹⁰⁵
 - c) Club licence – This licence authorises the sale and supply of alcohol on the premises for consumption on the premises, to club members or guest(s) of the club member(s).¹⁰⁶ A club is defined as any chartered club, any club whose objective is to participate in or promote any sport or any other recreational activity, otherwise than for gain, and any other voluntary association of persons combined for any purpose other than gain.¹⁰⁷

⁹⁹ *Liquor Act 2011* (Samoa), s 30(3A).

¹⁰⁰ *Ibid*, s 30(3).

¹⁰¹ *Ibid*, s 32(1)(a)(ii).

¹⁰² *Ibid*, s 30(3A).

¹⁰³ *Ibid*, s 30(1),(2).

¹⁰⁴ *Sale and Supply of Alcohol Act 2012* (New Zealand), ss 14, 15, 16.

¹⁰⁵ *Ibid*, s 17.

¹⁰⁶ *Ibid*, s 53.

¹⁰⁷ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 2.

- d) Special licence –This licence authorises the sale and supply of alcohol for consumption on the premises to any person attending a particular occasion or event.¹⁰⁸

83. In New Zealand, all applications for a new or renewed alcohol licence are made to the local District Licensing Committee, which must consider the following before issuing a licence:¹⁰⁹

- a) the object of the Act;
- b) the suitability of the applicant;
- c) any relevant local alcohol policy;
- d) the days and hours of sale;
- e) the design and layout of premises;
- f) the sale of goods other than alcohol and refreshments;
- g) the provision of other services not related to the sale of alcohol and refreshments;
- h) how the ‘amenity and good order’ of the area would be affected if the licence were granted;
- i) the undesirability of further licences where amenity and good order have already been reduced;
- j) whether the applicant has systems, staff and training to comply with the law;
- k) any matters reported by the Police, an inspector or the Medical Officer of Health.

84. The District Licensing Committee then forwards the applications to a local licensing inspector, a medical officer of health and local police to review the application and report on any matters of opposition within 15 working days after receiving the application.¹¹⁰ The applicant is also required to give public notice of the application within 20 working days after filing the application,¹¹¹ in a local newspaper, internet site as well as being displayed on the proposed premises.¹¹² The public notice is to allow an opportunity for the public to raise any objections based on any of the licensing criteria mentioned above.

¹⁰⁸ Ibid, s 73.

¹⁰⁹ Health Promotion Agency, *Applying for a licence* <<http://www.alcohol.org.nz/alcohol-management-laws/licensing-local-policies/alcohol-licensing/applying-for-a-licence>>.

¹¹⁰ *Sale and Supply of Alcohol Act 2012* (New Zealand), ss 103, 129.

¹¹¹ Ibid, s 101(b).

¹¹² Health Promotion Agency, *Applying for a licence to sell or supply alcohol – A guide to applications and hearings* <<http://alcohol.org.nz/node/452>>.

85. Unlike Samoa, in New Zealand only certain people may raise objections regarding the proposed premises. Any person with greater interest than the general public¹¹³, for example someone who works or lives within the vicinity of the proposed premises may provide an objection. Objections must be lodged with the District Licensing Committee within 15 working days of the first publication of the public notice.¹¹⁴ The District Licensing Committee then decides whether a person has standing to lodge an objection to the application.¹¹⁵
86. Applications with an adverse report or that objected to, are referred to the Alcohol Regulatory and Licensing Authority for consideration. The Alcohol Regulatory and Licensing Authority is chaired by a district court judge.¹¹⁶

Submissions

87. Many submissions were received on the involvement of *Village Fono* in decisions on alcohol licence applications. Some businesses however noted that it is common for matai to expect monetary payment for supporting or consenting to an application for a license, which was corroborated by the former LCB Secretary. The public in Upolu suggested as an alternative to Matai consent, that consent be obtained by the *Sui o le Nuu*, Women representatives and Church representatives.
88. Another prevalent theme that emerged in consultations and submissions was the lack of community input about where alcohol is sold and how it is supplied and consumed in the villages, particularly the views of villagers where the licensed premises are located. Members of the public noted that there appeared to be little involvement by the community in licensing decisions. Many members of the public raised that input by representatives of Women's Village Committees and churches in the approval of alcohol licences should be formally sought, and not just that of the *Ali'i and Faipule*.
89. The majority of bar owners and manufacturers also suggested that the policing bodies should be able to penalise businesses that have failed to comply with the Act and conditions of a licence. Some bar owners and manufacturers expressed the view that penalties for breaches of conditions of the licence should be increased to act as a deterrent. Submissions in both Upolu and Savaii noted that there should be further deterrents for businesses selling alcohol, such as by increasing the application fee for alcohol licences.

¹¹³ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 102(2).

¹¹⁴ *Ibid*, ss 102(2)–(3).

¹¹⁵ Health Promotion Agency *Applying for a licence to sell or supply alcohol – A guide to applications and hearings* <<http://alcohol.org.nz/node/452>>.

¹¹⁶ Ministry of Justice, *Alcohol Regulatory and Licensing Authority* <<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority>>.

90. Many members of the public in both Upolu and Savaii suggested that the number of retail alcohol licences issued per year particularly should be monitored and reduced as many people would purchase alcohol and drink at home or elsewhere before heading to nightclubs or bars. Some businesses consulted also expressed the view that a restriction be set to the number of alcohol licences approved per year.
91. SBC recommended that before a license is granted, the LCB must undertake a background check on the licensee and also the village to which the license applies, to determine whether any alcohol related incidents were committed by the applicant or the frequent occurrence of those incidents within the applicant's village (associated with the alcohol supplied from the applicant's shop). It was suggested that the *Village Fono* should have an increased role in the renewal of licences, and in granting alcohol licences to village stores.
92. It was also suggested that a reward system should be established by regulation, for compliant licensees. For example, applications for renewals of licences for low risk premises which present little or no compliance issues should be fast tracked. However licensees with significant compliance issues or which adverse reports (for example, from Police or the MOH) had previously been received, should face closer scrutiny and therefore be required to reapply for renewal of licence each year and provide updated information.
93. One retail licensee interviewed advised that she first applied for a licence to sell alcohol when they opened their business in 1992.¹¹⁷ Since then, they have not been required to resubmit a further application for renewal but were granted licence renewal each year simply upon payment of the renewal fee. She could not recall being issued with a licence certificate with the conditions of licence endorsed on it, and is not familiar with the current generic conditions endorsed on licence certificates that are more recently granted which includes ceasing the sale of alcohol after 10.00pm. She advised that after 10.00pm was their most busy time to sell alcohol in the past. They also became aware of the Sunday prohibition when it was advertised on television and in the newspapers.
94. Another licensee of a very popular bar in Apia advised that they first applied for a licence to sell alcohol when they opened their bar in 2012, and was issued a licence certificate with conditions.¹¹⁸ Since then they have been granted licence renewals each year simply upon payment of a fee. The licensee advised that it was during a meeting with police where they explained some of the rules, that she became aware of some of the conditions, and that there is still some confusion about some of the conditions of the licence.

¹¹⁷ Interview with Owner, Simokata Enterprises (27 October 2015).

¹¹⁸ Interview with Owner, Sheesha's Cocktail Bar (27 October 2015).

Analysis

Classes of licences

95. It is not clear why different classes of licences are created under the *Liquor Act* for nightclubs, bars, and for food and beverage. Samples of liquor licences issued by LCB that were provided to the Commission revealed inconsistency in the categorisation of liquor licences issued for restaurants, resorts, motels, and hotels. It became apparent from discussion with the LCB Secretary that the various classes of liquor licences for consumption on-site at licensed premises are differentiated on the basis of fees, and that the terms and conditions imposed are essentially the same.
96. As previously discussed, New Zealand appears to have a more simplified system for classification of licences. There are four types of licences – on-licences, off-licences, club licences and special licences. On-licences authorise the sale and supply of alcohol for consumption on the premises such a bars and restaurants. This categorization groups licences broadly according to the nature of the business. In contrast, the current system in Samoa appears to differentiate classes of licences for premises that are very similar in nature. For example, nightclubs differ from bars only so far as they require cover charge. However in practice many bars, on occasion require cover charge.

Number of Licences Issued

97. The period 2008-2014 (see Table 7 above) indicates that licences issued for alcohol consumption away from the premises to trading stores and supermarkets more than doubled in number constituting about 80% of all new liquor licences issued. This is followed by Food and Beverage licences constituting about 14% of all new liquor licences issued for that period. In respect of licences (including renewed licences) for the financial year 2014/2015 (see Table 6 above) about 82% was for consumption offsite (i.e. away from the licensed premises) and were issued to trading stores and supermarkets. However licences for consumption onsite in hotels, motels, beach resorts, bars, nightclubs, and restaurants constituted about 17%.
98. The information in Tables 6 and 7 indicate that a substantial number of licences are issued for offsite licences. The trend indicates a continued increase, which would support proposing that the number of retail liquor licences issued each year is a relevant matter that should be considered by LCB. In addition, the number of licensed premises already operating in the village or locality of the proposed premises, as well as how it may impact on the amenity and good order of the village or area if granted, should also be relevant considerations.

Renewal of Licence

99. In regards to the application process for the renewal of a licence, there is no further scrutiny by the LCB of applicants. The current process is rather streamlined in that a liquor licence is renewed automatically upon application made in the standard form and upon payment of the required fee. This means that licence holders with significant compliance issues or which have had previous adverse reports regarding breaches of licence conditions (for example, from Police, MOH or *Village Fono*) are still able to obtain licence renewals with ease. However these licensees should face closer scrutiny by the LCB when they reapply for renewal of licence each year and should be required to satisfy the LCB that there will not be any further compliance issues.
100. The current practice also means that any significant changes in the circumstances of a licensee may not be known or considered in a licence renewal. There is no obligation on the licensee to ensure that the LCB is informed of any significant changes, which may have an impact on any decision to renew a licence. The Licensee should be required to provide the decision maker any significant changes in information formerly provided.
101. From discussions with MfR, it appears that the majority of licence holders comply with the terms and conditions of their licence. Therefore, the current streamlined process for renewing licences appears suitable for licence holders that comply with their licence and are not subject to complaints in relation to their licence. However, licence holders that have significant compliance issues and breach the terms of their licence or that are the subject of complaints or adverse reports by the public, police or *Village Fono* should be subject to closer scrutiny and be required to provide a more comprehensive application for licence renewal.

Objection to application

102. The grounds for objection to a licence application under the Act are very narrow and specific. Such grounds include that the proposed premises is not appropriate for the area or that it will not be in the public interest to grant the licence.¹¹⁹ There is however no criteria or guidance in how these grounds are determined.
103. Furthermore, the efficacy of this provision is undermined as there is no obligation on the applicant to publish a public notice regarding the proposed premises. The public including people living and working in the surrounding area of the proposed premises cannot utilize this provision to make an objection on the applicant's application if they are unaware of the proposed premises. The implication is that people are only able to lodge complaints after the licence has been granted and the

¹¹⁹ *Liquor Act 2011* (Samoa), s 27(2).

premises have been built. An example, is the Ace of Clubs Bar located adjacent to a church building and opposite a primary school despite an express provision under the *Liquor Act* prohibiting the issue of a nightclub licence for a premises situated within 50 metres of a hospital, church or school. The objection mechanism could have been utilized by members of the public to provide their input before the construction of the premises. After the premises are built, there is very little recourse for the public and in particular those living within the vicinity of the premises, to object.

Conditions

104. The LCB has wide powers to impose conditions on a licence for the sale and supply of alcohol, which may or may not be endorsed on the licence. The LCB also has extremely wide powers to vary or revoke the conditions at any time. Concerns in relation to the wide discretion exercised by the LCB on conditions imposed with little or no guidance was also raised during consultations. There are currently no policies in place to guide the LCB in the exercise of their wide discretion. This creates not only inconsistency in decision making but also leads to enforcement issues where conditions are not uniform or clear.
105. In addition to the mandatory licence conditions required by the Act for the sale and supply of alcohol, the LCB imposes additional conditions that are normally set out on the license certificate. Nonetheless, during consultations many licensees noted that they were not aware of all the terms and conditions of their licence.
106. Standard conditions imposed on a license for consumption on a licensed premises such as a Food and Beverage licence, Bar Licence and Nightclub Licence include the following:
 - a) Sale of liquor restricted on Mondays to Thursdays from to 6am to 10pm and Fridays and Saturdays from 6.00am to 12 midnight;
 - b) Sale of Liquor prohibited on Sundays;
 - c) Sale of Liquor to drunk or disorderly persons prohibited;
 - d) Sale of Liquor for consumption on the licensed premises only;
 - e) Licensee shall prohibit sale of or use of prohibited drugs inside the premises;
 - f) Any music at the licensed premises should be maintained at a level that is neither disruptive nor inconvenient to surrounding residents or businesses and should stop at 10pm Monday to Saturday;

- g) The Licence is valid until [date X] and all licences not renewed by that date shall be cancelled;
- h) The LCB may cancel or vary without notice the license if the conditions are not adhered to.¹²⁰

107. Standard conditions endorsed on a Retail Licence are substantially the same except the condition relating to consumption of alcohol on the licensed premises is omitted. Some retail licences expressly prohibit the consumption of alcohol in front or around the retail store.¹²¹ No licence conditions are endorsed on a Wholesale Licence, Import Licence or manufacturing Licence.¹²²

RECOMMENDATIONS

- 8. The class of alcohol licences for the sale and supply of alcohol should be divided into 2 categories – On-site licence and Off-site licence:
 - a) **On-site licence:** should authorise the sale and supply of alcohol for consumption at a licensed premises. This should include nightclubs, bars, restaurants, motels, hotels, resorts. Different conditions may be imposed on the licence and different fees applied depending on the type of business the On-site licence is for.
 - b) **Off-site licence:** should authorise the sale and supply of alcohol for consumption off the premises. This should include retail stores, supermarkets.
- 9. The legislation should specify criteria that the Liquor Control Board (**LCB**) must consider when approving a licence for the sale and supply of alcohol. These should include:
 - a) the suitability of the applicant;
 - b) the number of licensed premises already operating within the locality of the proposed premises and the outlet density (see **recommendation 34**);
 - c) the days and hours during which the applicant proposes to sell and supply alcohol;
 - d) whether it is appropriate to issue the licence for the premises in the proposed

¹²⁰ Copies of licences provided by the Secretary of the Liquor Control Board (28 October 2015).

¹²¹ Ibid.

¹²² Ibid.

area;

- e) whether the applicant has any previous convictions that would render the issuance of the licence inappropriate;
- f) whether the consent of the *Village Fono* where the proposed premises will be located has been sought and whether the construction of such a premises will contravene any village bylaws;
- g) whether in the opinion of the LCB the amenity and good order of the area would be significantly reduced by issuing the licence, and in determining this may consider input by representatives of Women's Village Committees and churches where the proposed premises will be located, in addition to the *Village Fono*;
- h) whether the applicant proposes to provide non-alcoholic beverages and food on the proposed premises (in relation to On-site licences);
- i) the design and layout of the premises (in relation to On-site licences);
- j) whether the applicant has systems, staff and training to comply with the law (in relation to On-site licences);
- k) any matter reported by the Ministry of Police (**Police**), Ministry of Health (**MOH**) or *Village Fono*.

10. For an On-site licence, the applicant should be required to provide detailed information about the type of business to which the licence application relates and also whether they propose to provide non-alcoholic beverages and food on the proposed premises. This will assist the LCB to determine the nature of the business of the proposed premises, for example, whether it will be a nightclub, bar, restaurant, motel, hotel, or resort. This will also determine the licence conditions to be imposed (for example because licence conditions for a hotel will be different from that of a nightclub). The applicant should be required to provide detailed information to the design and layout of the premises, and evidence of systems, staff and training to comply with the law.

11. Similar to the requirements for a manufacturing licence, an applicant for an On-site licence must provide reports approving the premises as complying with required safety standards, from the MOH, and the Ministry responsible for building requirements and any other reports as may be required by the LCB.

12. To ensure greater community involvement in decisions relating to alcohol applications, any person may be able to lodge an objection against a new licence

application for the sale and supply of alcohol on any of the grounds in the licensing criteria. Furthermore, the *Village Fono* should continue to play an active role in restricting sale and consumption of alcohol through their active involvement in the licensing process.

13. The legislative provision prohibiting construction of a bar or nightclub within 50 metres of school buildings should remain. However in relation to churches, On-site licences may be approved (including for a bar or nightclub) provided that the LCB is satisfied that further requirements have been met by the applicant relevant to its location within the vicinity of a church. Such further requirements may include sound proofing for the premises and extra security for the premises. Reports from churches within the vicinity may also be requested by the LCB to assist with its decision.
14. Mandatory licence conditions should continue to be set out in legislation, such as:
 - a) Permitted trading hours for the sale and supply of alcohol;
 - b) Closing time for licensed premises which should be no later than an hour after sale is prohibited (in relation to on-site licences);
 - c) Days the sale of alcohol is prohibited (where applicable);
 - d) prohibition on the sale and/or supply of alcohol to minors;
 - e) prohibition of entry by minors on the licensed premises (in relation to on-site licences);
 - f) water must be freely available to customers on all licensed premises and non-alcoholic drinks must be available for sale (in relation to on-site licences);
 - g) prohibition on selling to drunken or disorderly persons;
 - h) a copy of the licence, together with the conditions must be prominently displayed on the premises
 - i) Sale of alcohol for consumption on the licensed premises only (in relation to on-site licences), or sale of alcohol for consumption away from the vicinity of the licensed premises (in relation to off-site licences);
 - j) Music at the licensed premises must be maintained at a level that is neither disruptive nor inconvenient to surrounding residents or businesses;
 - k) Period the Licence is valid for;
 - l) The LCB may suspend the licence if there are significant compliance issues or where adverse reports are received in relation to licence conditions (for example, from Police, MOH or *Village Fono*).

15. Legislation should also prescribe what types of conditions the LCB may exercise their discretion to impose, so that discretion is exercised within the parameters expressly set out in legislation. This should include conditions:
- a) Reducing or minimising disruption or convenience to surrounding residents or businesses (for example, requiring extra security, or sound proofing of the premises).
 - b) Reducing the times the sale of alcohol is permitted or closing time for the licensed premises (in relation to On-site licences) in particular
 - c) Prohibiting the sale of alcohol on certain days in particular circumstance (where for example, as was done during National elections).
16. All conditions imposed must be clearly set out on all licence certificates, including temporary licences and renewed licences.
17. To minimise the workload of the LCB to better focus on applications that are more contentious:
- a) Off-site licences should be granted initially for a year, and compliant Off-site licences renewed every 2 years through a streamlined process where the licence is automatically renewed upon payment of a fee and subject to the same terms and conditions. However, Off-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public should be required to apply for renewal each year and provide the LCB a report from the police and where relevant *Village Fono* in support of their application.
 - b) On-site licences for restaurants, hotel and motels should be granted initially for a year, and compliant On-site licences renewed every 2 years through the same streamlined process. However, such Off-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public should be required to apply for renewal each year and provide the LCB a report from the police and where relevant *Village Fono* in support of their application.
 - c) On-site licences for nightclubs and bars should continue to be renewed yearly due to the nature of the business. Additionally, such On-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public, should when applying for a renewal provide the LCB a report from the police, and where relevant the *Village Fono* in support of their renewal application.

18. A temporary licence should be obtained for any commercial events where alcohol is sold or supplied, such as fund raisings or corporate table events. The legislation should provide criteria that the LCB must consider before approving a temporary licence. This should include:

- a) The nature of the event;
- b) The days and hours during which alcohol will be sold and supplied;
- c) Whether the food and non-alcoholic drinks will be provided at the event;
- d) The design, layout and location of the premises concerned;
- e) Where appropriate, whether the consent of the *Village Fono* of the village where the event will be located has been sought and whether such an event contravenes any village bylaws.

19. The legislation should provide that before approving a temporary licence, the LCB must be satisfied of the following:

- a) That the applicant has taken steps concerning matters of security for the premises, monitoring, controlling noise levels and public health concerns;
- b) That the applicant has taken steps to ensure that the sale and supply of alcohol to minors will be prohibited.

20. A licensee (for the sale, manufacture, importation of alcohol) should have an ongoing obligation to inform the LCB of any changes of information provided or in connection with a licence application or licence renewal.

D. Licence to Manufacture Alcohol

Samoa

108. A person can only manufacture alcohol with a licence to do so.¹²³ Such licence is granted by the LCB to manufacture alcohol on a premises prescribed in the licence.¹²⁴As part of the application to manufacture alcohol, the applicant must provide the LCB:

- a) prescribed information (and any other information the LCB Secretary considers the board may require);
- b) a prescribed report from the MOH;

¹²³ *Liquor Act 2011* (Samoa), s 17(h), s 42.

¹²⁴ *Ibid*, s 45.

- c) the brewing methods and formula or formulae to be used by the manufacturer;
- d) the qualifications of the brew master to be employed by the manufacturer; and
- e) the approved fee.¹²⁵

109. When determining an application for a licence to manufacture alcohol, the LCB is required to consider whether the applicant is a fit and proper person to hold a licence, any prior convictions of the applicant for a serious offence, and the public interest.¹²⁶

110. Similarly to its powers in relation to the issue of licences to sell or import alcohol, the LCB has wide powers to impose conditions on a licence for the manufacture of alcohol, which may or may not be endorsed on the licence.¹²⁷ These include setting the prescribed limits of alcohol that may be manufactured, or setting restrictions on how alcohol may be manufactured.¹²⁸

111. The applicant is required to inform the LCB Secretary of any changes of information provided or in connection with the application, before the application is disposed of.¹²⁹

Submissions

112. One submission raised in public consultations was the need for developing a standard to govern the safety of alcoholic beverages.¹³⁰ Proof that the applicant meets such standard should also be provided when lodging an application to manufacture. As the agency in Samoa responsible for conducting food tests, SROS was suggested as a possible agency to analyse and test alcohol products to ensure its manufacture meets certain requirements. It was suggested that such minimum standards if developed should be required to be reviewed periodically for example, every 3-5 years.¹³¹

113. Bar owners and manufacturers strongly support that quality controls be introduced to ensure alcohol products are manufactured according to standards of best practice¹³². For example, introducing a food safety plan and employing qualified staff, and enforcing strict labelling and packaging requirements. Youth

¹²⁵ Ibid, s 43(2).

¹²⁶ Ibid, s 44.

¹²⁷ Ibid, s 39(1).

¹²⁸ Ibid, s 46(2).

¹²⁹ Ibid, s 43(4).

¹³⁰ Information received from the Public Consultations (29 October 2014).

¹³¹ Ibid.

¹³² Information received from the Business Consultations (24 September 2014).

representatives consulted also supported the development of minimum standards for the manufacture of alcohol to ensure it is fit for human consumption.¹³³

Analysis

114. As part of an application for a manufacturing licence an applicant must provide the LCB various information, including a report from the MOH. The MOH carries out onsite inspections to ensure that all health requirements are complied with by the applicant and the site is suitable for the safe manufacturing of alcohol. The health report includes matters such as cleanliness and hygiene, adequate water supply, and safety of the building.¹³⁴ If the health requirements are not met, recommendations are made to the applicant to remedy the problems and to contact the Ministry once the necessary requirements have been met. Upon completion of the health requirements set by the MOH, a clearance report is issued to the LCB.¹³⁵ Previous health reports have delayed the issuance of a liquor licence for reasons such as cracks in concrete floors that accumulate dust and harbour insects and vermin, or wastewater discharge that creates an unpleasant smell and infestation of flies.
115. The brewing methods and formulae to be used by the manufacturer are currently required as part of an application to manufacture alcohol. However, it is not clear how the safety of the formulae is verified or determined by the LCB particularly, as there are no national minimum standards relating to safety of alcoholic beverages for consumption. The health report discussed above is limited to the site and building where the proposed premises will be located, and there is no assessment into the safety of the formula or the brewing methods that will be used by the proposed licensee.
116. Furthermore, although the qualifications of the brew master are required as part of an application to manufacture alcohol, it is not clear what the minimum qualifications are and how it is verified by the LCB. The Samoa Qualifications Authority (**SQA**) offers foreign qualifications services that assess the authenticity and legitimacy of foreign qualifications. This service is offered at a standard fee as well as a fast tracked fee. At the moment there is no obligation for the applicant to have the brew master's qualification verified. Given the significance of the role of the brew master as well as the importance of ensuring public safety, verification of the brew master's qualification should be required as part of the licence application.
117. The criteria considered by the LCB for a license to manufacture alcohol, does not include other criteria currently required to sell or supply alcohol, such as the suitability of the premises, and the applicant's understanding of the obligations of a

¹³³ Information received from the Youth Consultations (3 November 2014).

¹³⁴ Telephone interview with Sinei Fili, Principal Food Safety & Tobacco Officer, Ministry of Health (10 December 2015).

¹³⁵ Ibid.

licensee, and objections to an application. There is no clear reason why this is differentiated. Furthermore, the Act does not provide scope for the objection to an application to manufacture alcohol, therefore omitting entirely any opportunity for community or public involvement in such decisions. The lack of community input in relation to the manufacture of alcohol which is commonly consumed in the villages was raised in consultations.

118. The LCB is already empowered under the Act to set limits of alcohol that may be manufactured or set restrictions on how alcohol may be manufactured, which could be an effective way to control the strength of alcohol that is sold cheaply and easily accessed in villages. From discussions with the representative from the Ministry, it appears that this has never been done.

RECOMMENDATIONS

21. The criteria considered by the Liquor Control Board (**LCB**) for a license to manufacture alcohol should include the same criteria for selling alcohol, such as the suitability of the premises, the applicants understanding of the obligations of a licensee, and objections to an application. The LCB should also be satisfied of the following, the costs of which should be borne by the applicant:

- a) the safety of the formulae or the brewing methods as meeting minimum standards that will be used by the proposed licensee as verified by the Scientific Research Organisation of Samoa (**SROS**) or other relevant agency, and
- b) the brew master's qualification as verified by the Samoa Qualification's Authority (**SQA**) should also be required as part of the licence application. The minimum qualifications of the brew master should be set out under the Act or in regulations.

22. Regulations should be able to be made to set out minimum standards that the manufacturer must meet with regards to the safety of the formulae or brewing methods to be used in the proposed premises.

E. Licence to Import Alcohol

Samoa

119. A licence is required for the importation of liquor to be sold and supplied for consumption.¹³⁶ This excludes persons bringing in duty free as part of their personal luggage, provided it is not more than 2250ml in total.¹³⁷

¹³⁶ *Liquor Act 2011* (Samoa), s 36(2).

120. When determining an application for a licence to import liquor, the LCB is required to consider whether the applicant is a fit and proper person to hold a licence, and whether it is in the public interest to grant it.¹³⁸

121. A licence to import liquor cannot be issued to an applicant that has been convicted of a serious offence.¹³⁹ Hence, the applicant must provide reports from the MOP and from the Excise Division of the Ministry responsible for Customs.¹⁴⁰

122. The LCB has wide powers to impose conditions on a licence for the import of liquor, which may or may not be endorsed on the licence.¹⁴¹ Such conditions may include setting the prescribed limits of alcohol for liquor that may be imported, or setting restrictions on how liquor may be imported.¹⁴²

Submissions and Analysis

123. There were no submissions received in relation to the importation of alcohol. It is noted however that the criteria considered by the LCB for a license to import alcohol, does not include objections to an application, and there is little if any opportunity for the community to object to the importation of alcohol.

124. There is no requirement that an applicant (or licensee) is required to inform the LCB Secretary of any changes of information provided or in connection with the application. This should be an ongoing obligation.

Part 3: Regulating the Sale and Supply of Alcohol by Controlling Availability

A. Introduction

125. Further policy measures designed to restrict alcohol availability to the wide community will be discussed under this Part, such as:

- a) restrictions on the purchasing age of alcohol and on the supply to and by minors,
- b) restrictions on trading hours and days of sale of alcohol,
- c) restricting the types of premises that can be granted alcohol license,
- d) restricting the types of products for sale,

¹³⁷ *Ibid*, s 36(3).

¹³⁸ *Ibid*, s 37.

¹³⁹ *Ibid*, s 38(2).

¹⁴⁰ *Ibid*.

¹⁴¹ *Liquor Act 2011 (Samoa)*, s 39(1).

¹⁴² *Ibid*, s 39(2).

- e) regulating alcohol serving size,
- f) controlling the number of outlets that are granted alcohol licences and density of outlets operating within a particular geographic area¹⁴³.

126. Other ways to restrict the availability of alcohol, such as through total alcohol prohibition, and increasing the involvement of *Village Fono*, will also be discussed in this part.

B. Restrictions on purchasing, consumption and service to minors

127. Restrictions on the age for purchasing alcohol and the supply of alcohol to minors are a common measure designed to restrict alcohol availability. It is a commonly used method in many countries.

Samoa

128. The *Liquor Act* prohibits a person under the age of 21 years from purchasing alcohol. A minor who commits this offence is liable to a fine not exceeding 5 penalty units or \$500.¹⁴⁴ Moreover, it is also an offence for any person to send or allow a minor to purchase or collect alcohol. A person who commits this offence is liable to a fine not exceeding 25 penalty units or \$2,500 or to imprisonment for a term up to 3 months, or both.¹⁴⁵

129. In Samoa, the selling or supplying alcohol to a person under the age of 21 years is prohibited and anyone who commits this offence is liable to a fine of up to 50 penalty units or \$5,000 or to imprisonment for a term not exceeding 6 months, or both.¹⁴⁶ However, there is a legislative exemption that allows a licensee of a food and beverage licence to sell or supply liquor to a person under the age 21 provided that person is under the supervision of an attending parent.¹⁴⁷

130. Furthermore, the legislation makes it an offence for the licensee if a person under 21 comes or is allowed to come into possession of liquor, or consumes alcohol on the premises or if the minor is permitted entry on to the licensed premises.¹⁴⁸ A licensee who commits this offence is liable to a fine not exceeding \$5,000 or imprisonment of up to 6 months or both.¹⁴⁹

¹⁴³ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010) at 115-125.

¹⁴⁴ *Liquor Act 2011* (Samoa), s 14(3).

¹⁴⁵ *Ibid*, s 14(5).

¹⁴⁶ *Ibid*, s 14(1).

¹⁴⁷ *Ibid*, s 14(4).

¹⁴⁸ *Liquor Act 2011* (Samoa), s 57(1).

¹⁴⁹ *Ibid*, s 57(3).

New Zealand

131. In New Zealand the *Sale and Supply of Alcohol Act 2012* sets the legal purchasing age at 18 years,¹⁵⁰ and prohibits the selling or supplying of alcohol to anyone under the age of 18.¹⁵¹ A minor who buys alcohol from any licensed premises is liable on conviction to a fine up to \$2,000.¹⁵²
132. Similar to Samoa, a minor may be sold or supplied alcohol on a licensed premises where the minor is accompanied by his or her parent or guardian, there is express consent from the parent or legal guardian of the minor,¹⁵³ or where the young person is married, in a civil union or living with a de facto partner.¹⁵⁴
133. Furthermore, New Zealand imposes an obligation on the supplier (including parents) when supplying alcohol to a minor do so responsibly. The legislation provides matters to consider to determine whether the alcohol was supplied in a responsible manner including but not limited to whether the supplier supervised the consumption of alcohol, whether food was provided with the alcohol, the nature of the occasion, the strength and volume of alcohol supplied as well as the age of the minor.¹⁵⁵
134. The penalty for the illegal selling or supplying of alcohol to a minor is a fine of up to \$2,000.¹⁵⁶ A licensee or manager of licensed premises who sells or supplies alcohol or allows the selling or supply of alcohol to a minor on licensed premises commits an offence liable on conviction to either a fine of up to \$10,000 or the suspension of a licence for a period of not more than 7 days.¹⁵⁷ Any person other than a licensee or manager of licensed premises who sells or supplies alcohol on licensed premises is liable on conviction to a fine of up to \$2,000.¹⁵⁸
135. New Zealand has also developed a response to the more minor offences in the legislation through the use of infringement notices. Infringement notices are on the spot fines that police can issue in response to specific offences.¹⁵⁹ Police may issue infringement notices for a range of offences including where a minor has purchased alcohol or is found unlawfully in a restricted or supervised area, where a licensee or manager has permitted a minor to unlawfully enter or remain in a restricted or supervised area or where a person has given an ID to a minor knowing that they

¹⁵⁰ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 243(1).

¹⁵¹ *Ibid*, ss 239(1), 240.

¹⁵² *Ibid*, s 243(1).

¹⁵³ *Ibid*, s 241(3)(d).

¹⁵⁴ *Ibid*, s 241(3)(c): a minor who is married, in a civil union or living with a de facto partner is no longer subject to guardianship by operation of s 28 of the Care of Children Act 2004.

¹⁵⁵ *Ibid*, s 241(4).

¹⁵⁶ *Ibid*, s 241(2).

¹⁵⁷ *Ibid*, s 239(3).

¹⁵⁸ *Ibid*, s239(2),(4).

¹⁵⁹ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 260(1).

intend to use it to buy alcohol. These infringement offences are subject to an instant fine of \$250. Infringement notices are discussed in more detail in **Part 6** of this Report.

136. Unlike Samoa, New Zealand has also legislated offences to restrict the access of minors to certain licensed areas. It is an offence for a minor to be found in any restricted area on any licensed premises. It is also an offence for a minor to be in a supervised area without being accompanied by a parent or guardian. A minor who commits this offence is liable on conviction to a fine of up to \$1,000.¹⁶⁰ A licensee or manager of a licensed premise who allows a minor to enter or remain in a restricted area or a supervised area without supervision commits an offence liable to a fine up to \$2,000.¹⁶¹

137. In New Zealand, a person under the purchasing age can only buy alcohol on or from any licensed premises only upon the request of a constable acting in the course of his or her duties.¹⁶²

New South Wales, Australia

138. Similar to New Zealand, New South Wales imposes a minimum legal purchasing age of 18 years, and makes it an offence for a person under 18 to purchase alcohol.¹⁶³ Any person who sells or supplies alcohol to a minor commits an offence.¹⁶⁴

139. Persons under 18 are prohibited from consuming or obtaining possession of alcohol on licensed premises. However, a minor may be supplied alcohol with the permission and under responsible supervision of a parent or guardian.¹⁶⁵ Similar to New Zealand, NSW imposes an obligation to those who supply alcohol to minors to do so in a responsible manner. Matters taken into consideration when determining whether the supply of alcohol is consistent with the responsible supervision of a minor include the minor's age, whether the parent, guardian, or the responsible adult supplying the alcohol is intoxicated, whether alcohol is consumed with food, the quantity and type of alcohol and the time period over which it is supplied.¹⁶⁶

140. It is also an offence for a minor to use any document to falsify an age in order to gain entry to, remain in or obtain liquor from the licensed premises.¹⁶⁷

¹⁶⁰ *Ibid*, s 244(1)–(3).

¹⁶¹ *Ibid*, s 245(1)–(2).

¹⁶² *Ibid*, s 243.

¹⁶³ *Liquor Act 2007* (New South Wales), s 117(1).

¹⁶⁴ *Ibid*.

¹⁶⁵ *Ibid*, s 117(4).

¹⁶⁶ *Liquor Act 2007* (New South Wales), s 117(5).

¹⁶⁷ *Ibid*, s 129.

United Kingdom

141. The legal purchasing age in the UK is 18 years of age. It is an offence for any person under 18 to purchase or attempt to purchase alcohol¹⁶⁸ and it is an offence to sell alcohol to a person under the age of 18.¹⁶⁹
142. It is an offence for a person under 18 years to knowingly consume alcohol on licensed premises,¹⁷⁰ or if a person knowingly allows an individual aged under 18 to consume alcohol on the relevant premises.¹⁷¹ Similar to the approaches in NZ, NSW and Samoa, a minor may consume alcohol on licensed premises only when accompanied by a parent. However, the approach in the UK differs slightly limiting only minors aged 16 and above to consume alcohol in this case. The alcohol is limited to beer, wine or cider and must be consumed together with a meal. The UK also differs in that it extends this provision to any attending adult rather than a parent or guardian as is the situation in the previous jurisdictions discussed.
143. It is also an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol.¹⁷² For example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child.
144. It is an offence to send a child to obtain alcohol.¹⁷³ Such offence would cover, for example, circumstances where a parent sends their child to collect some alcohol which had been bought over the telephone. Moreover, it provides that the offence will be committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent.¹⁷⁴
145. As is the case in New Zealand, it is not an offence for a minor to buy or attempt to buy alcohol at the request of a police constable or trading standards officer, acting in the course of their duty.¹⁷⁵ This would include situations where a child is asked to buy or attempt to buy alcohol in order to conduct test purchasing operations to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales.¹⁷⁶

¹⁶⁸ *Licensing Act 2003* (United Kingdom), s 149(1).

¹⁶⁹ *Ibid*, s 146(1).

¹⁷⁰ *Ibid*, s 150(1).

¹⁷¹ *Ibid*, s 150(2).

¹⁷² *Ibid*, s 149(3).

¹⁷³ *Ibid*, s 152.

¹⁷⁴ *Ibid*, s 152(2).

¹⁷⁵ *Licensing Act 2003* (England and Wales), s 152(4).

¹⁷⁶ *Ibid*.

Submissions

146. Submissions from the public, businesses and stakeholder consultations were diverse, in relation to the current age restrictions in the *Liquor Act*. The Chamber of Commerce supports the retaining the minimum legal purchasing age at 21. NiuVoka agreed stating that the current drinking age is adequate to be consistent with other. Other submitters supported the review of the current age restrictions with some suggestions to increase the age to 25 to counter the increasing prevalent harms that arise from drinking amongst youths who are exposed very early to alcohol. Certain members of the business community supported the reduction of the drinking age to 18 years to realistically reflect the emotional maturity of young people. It was also raised by members of the business community that a consumption age should be included in the legislation as another method to curb the availability of alcohol to minors.
147. Many submitters raised that irrespective of the age limit, the focus should be on verification of the customer's age before allowing access to enter licensed premises. Members of the business community stressed the need for licensees to thoroughly request and check for valid identification from patrons entering licensed premises and to refuse entry to those who do not exhibit valid identification. However, the LCB Secretary indicated that no incidents regarding the sale of alcohol to persons under 21 has ever been reported to the LCB, or prosecuted.
148. An interview was carried out on a small group of 5 youths whose ages ranged from 13 – 19, who had been permitted access to a popular nightclub in town. They described their experience as having paid \$15 entry fee each on a Friday night around 9:30pm, and were not stopped or questioned when their entry fee was paid. However they said that when they proceeded to the entrance of the nightclub, they were approached by security who allowed them in although he was informed of their ages, on the condition they would not consume alcohol and would hide from any police that may patrol the nightclub.
149. A similar case was encountered by the recently established Alcohol and Drugs Court (“**ADC**”) in Samoa. Four young males aged between 16 and 18 years old were charged with grievous bodily harm which carried a maximum penalty of ten years imprisonment. These young men were considered for eligibility for the ADC by the current clinician. During their assessment, two of the young men disclosed that they regularly consume alcohol at a particular popular bar in Apia where the incident took place and have never been approached to show identification. Their assessment showed that these two young men are severe binge drinkers. Action is being

considered to lodge a formal complaint against the RSA Bar regarding these incidents.¹⁷⁷

150. The Chamber of Commerce support the continuation of the current provision permitting the supply of alcohol to minors under the supervision of parents. It suggested that the exemption be extended to circumstances where a minor is in the care of a legal guardian rather than a parent.

Analysis

151. Many jurisdictions restrict the access of minors to alcohol, by imposing a purchase age which is an age deemed appropriate for a person to purchase alcohol. The purchase age in all the overseas jurisdictions discussed above is 18 years.

152. Samoa and other jurisdictions also impose a consumption age for minors. In New Zealand, there is no minimum age at which a person can consume alcoholic beverages. However there are restrictions on the sale, purchase and consumption of alcohol on licensed premises. Parents may supply alcoholic beverages to young people in a 'supervised area' if they do so in a responsible manner. Samoa's legislation takes a similar approach, and prohibits a licensee to sell or supply alcohol to a person who is under 21 years without parental permission and supervision.

153. The approach in the UK differs slightly. The UK has legislated a specific age at which a minor may be supplied alcohol on licensed premises. Only minors aged 16 and above may be permitted to consume alcohol on licensed premises when accompanied by an individual aged 18 or over, where the alcohol is either beer, wine or cider and it is consumed together with a meal. This differs from NZ where a parent may supply to a minor of any age on a licensed premise provided there is responsible supervision. Another key difference to the approach used in the UK is that the legislation allows for any individual to accompany the minor when alcohol is supplied whereas NZ, Samoa and NSW require the express permission of the minor's parents or legal guardians.

154. The legislation in jurisdictions such as New Zealand and NSW seek to retain the parent's ability to control how and when their children are introduced to alcohol, however added legislative protections have been drafted into their legislation. In New Zealand and New South Wales, parents are to supply alcohol to minors on licensed premises in a responsible manner with regard to different matters such as the age of the minor, whether the minor is consuming alcohol with food, the strength

¹⁷⁷ Information provided by Moana Solomona, Alcohol and Drugs Court Clinician (12 April 2016).

of the alcohol.¹⁷⁸ The UK and Samoa do not have a similar provision in their legislation.

155. All of the comparable jurisdictions including Samoa have made it an offence for a minor to purchase alcohol, although the UK expands this offence to capture a minor who attempts to purchase alcohol.

156. A common feature in comparable jurisdictions is the exemption of a minor who purchases alcohol from a licensed premise at the request of a constable acting in the course of his or her duties. This particular provision is legislated for in New Zealand, UK and Scotland for monitoring and enforcement purposes. Samoa does not have a similar provision in the *Liquor Act*.

157. Many of these jurisdictions have also made it an offence to use a falsified age document to gain entry or obtain alcohol from licensed premises. In Samoa, the *Liquor Act* does not include a similar provision.

RECOMMENDATIONS

23. A person under 21 may be supplied alcohol at a licensed premises (such as a restaurant or where the nature of the business is to sell food and beverages), provided the person is under the responsible supervision of a parent or legal guardian. Breach of this by the licensee should be an offence.

24. Matters taken into consideration when determining whether the supply of alcohol is consistent with the responsible supervision, should include:

- a) the minor's age which should not be under 18;
- b) whether the parent or legal guardian is intoxicated;
- c) whether the minor is intoxicated (as supply to a minor who is intoxicated would not be consistent with responsible supervision);
- d) whether the minor is consuming alcohol with a meal;
- e) whether the parent, guardian or responsible adult is responsibly supervising the minor's consumption of the alcohol;
- f) the quantity and type of alcohol, and the time period over which it is supplied.

¹⁷⁸ Other matters considered whether alcohol was supplied in a responsible manner include but are not limited to whether a choice of low-alcohol beverages was offered, the nature of the occasion, the period over which alcohol was supplied, and steps taken by the supplier to supervise the consumption of alcohol.

25. A valid form of identification should be required to gain entry to On-site licensed premises such as a night club or a bar when a person is suspected of being underage in order to purchase alcohol. A valid form of identity should include a passport, driver's licence, and student identification cards from a tertiary Institution which includes the date of birth or some other form of identification approved by the Liquor Control Board (LCB).

26. The licensee or manager of an On-site licensed premise should be authorised to confiscate false identification documents, or identification documents that appear to have been tampered with and provide them to the Police as soon as practicable. This should not include passports. It should be an offence for a minor to use any document to falsify an age.

C. Restrictions on Service by Minors

Samoa

158. Under the *Liquor Act* persons under the age 21 are prohibited from entering a licensed premises as well as coming into possession of liquor on the licensed premises.¹⁷⁹ However, an exception exists where the minor is aged 18 and above and is an employee of the licensee, or is a trainee undergoing hospitality training by an education institution recognised by the LCB, or is granted permission by the LCB.¹⁸⁰

New Zealand

159. New Zealand has also legislated offences restricting the general access of minors to certain licensed areas. It is an offence for a minor to be found in a restricted area on any licensed premises or in a supervised area without being accompanied by a parent or guardian.¹⁸¹ A minor who commits this offence is liable on conviction to a fine of up to \$1,000.¹⁸² A licensee or manager of a licensed premise who allows a minor to enter or remain in a restricted area or a supervised area without supervision commits an offence liable to a fine up to \$2,000.¹⁸³

160. However, an exception exists where a minor is employed in a restricted or supervised area strictly for the purposes of:

- a) preparing or serving a meal; or

¹⁷⁹ *Liquor Act 2011* (Samoa), s 57(1).

¹⁸⁰ *Ibid*, s 57(3).

¹⁸¹ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 244(1)—(2). A restricted area is an area where a minor's access is absolutely prohibited. A supervised area is an area which generally prohibits a minor's access unless the minor is accompanied by a parent or guardian.

¹⁸² *Ibid*, s 244(1)—(3).

¹⁸³ *Ibid*, s 245(1)—(2).

- b) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area; or
- c) removing or replacing any equipment; or
- d) stocktaking; or
- e) checking or removing cash.¹⁸⁴

161. In restricted areas, a minor's employment is limited only to the above roles. However, in supervised areas, a minor may engage in selling or supplying alcohol.¹⁸⁵

New South Wales

162. Under the *Liquor Act 2007* (NSW), it is an offence for any licensee to allow minors to sell or supply alcohol on licensed premises.¹⁸⁶ For example, a minor employed by a licensed restaurant cannot take an order for, or deliver, alcohol to patrons and can only take food orders.

163. The Independent Liquor and Gaming Authority can permit a minor to serve liquor in a venue, although such approval would normally be subject to stringent supervisory conditions and in very limited circumstances. In these circumstances the sale, supply or service of liquor by the minor in a non-restricted area of the club, such as the dining room would not be an offence.¹⁸⁷

United Kingdom

164. The *Licensing Act 2003* (UK) generally prohibits a minor from selling or supplying alcohol.¹⁸⁸ However, the legislation prescribes the very limited instance in which minors can engage in selling and supplying alcohol. Minors may sell and supply alcohol at a premise where alcohol is sold for consumption with a table meal.¹⁸⁹ The implication of this exception is that a minor may only serve alcohol where he or she is employed in a restaurant or in the restaurant area of licensed premises.

165. Furthermore the *Licensing Act 2003* prohibits a person from knowingly sending a minor to obtain alcohol sold on any licensed premises.¹⁹⁰ However, this offence excludes individuals under 18 whose work at the premises, whether paid or unpaid, involves the delivery of alcohol.¹⁹¹

¹⁸⁴ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 244(4).

¹⁸⁵ *Ibid*, s 244(4)(d).

¹⁸⁶ *Liquor Act 2007* (New South Wales), s 119.

¹⁸⁷ *Ibid*, ss 119, 121.

¹⁸⁸ *Ibid*, s 153(2).

¹⁸⁹ *Ibid*.

¹⁹⁰ *Ibid*, s 152(1).

¹⁹¹ *Ibid*, 152(3).

Analysis

166. As discussed above, in some jurisdictions minors may lawfully do a variety of jobs on licensed premises. In New Zealand, minors may engage in work in restricted and supervised areas but the law limits their employment to very specific roles that include preparing and serving meals, stocktaking and other roles that do not involve contact with alcohol. Minors may not engage in handling, selling or supplying alcohol in restricted areas. However, in supervised areas such as pub restaurants or family lounge bars, a minor is permitted to sell and supply alcohol. The UK has taken a similar approach allowing minors to sell and supply alcohol in licensed areas where alcohol is sold to be consumed with a table meal or restaurants. The UK has also expanded the employment of minors to include the delivery of alcohol. In contrast to these jurisdictions, NSW has taken a very conservative approach with a blanket ban on minors engaging in the selling and supplying of alcohol. A minor may be permitted to serve alcohol in a venue only upon the permission of the Independent Liquor and Gaming Authority which is subject to stringent conditions and very limited circumstances.
167. In Samoa there are a few circumstances in which a minor may lawfully be employed on licensed premises. Unlike the previous jurisdictions, Samoa has set an age restriction at which a minor may be employed in a licensed premise which is currently 18 years of age. In contrast to previous jurisdictions which have expressly specified the provisions surrounding the employment of minors in licensed areas, Samoa has not defined the circumstances in which a minor may be employed within licensed premises. The inference is that a minor may work in any capacity in licensed premises including roles that have direct contact with alcohol such as bartending.

RECOMMENDATIONS

27. A person aged under 21 and over 18 may be employed in a On-site licensed premises for any of the following purposes:
- a) preparing or serving a meal; or
 - b) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area or stocktaking; or
 - c) checking or removing cash; or
 - d) selling or supplying alcohol provided he or she is supervised by an adult where he or she is employed at.

D. Regulating Trading Hours and Days for Sale of Alcohol

168. One measure designed to reduce alcohol availability is restricting the time (opening and closing hours) and days in which alcohol can be sold by setting these restrictions in legislation or as a condition of a licence.

Samoa

Trading hours

169. In Samoa, specific trading hours for licensed premises to sell and supply alcohol are not expressly set out in legislation. However, the LCB is empowered under the legislation to set by public notice the standard trading hours for the sale of liquor for licensed premises.¹⁹²

170. The LCB is also able to impose conditions on the times during which liquor may be sold or consumed at any particular licensed premises.¹⁹³ Currently the LCB restricts the sale and supply of liquor by licensed premises between the hours of 6.00am to 10.00pm from Monday to Thursday and from 6.00am to 12.00am Friday and Saturday, by way of licence conditions.¹⁹⁴ Furthermore, the LCB also has discretion to vary licence conditions.¹⁹⁵ It is on this basis that standard trading hours are sometimes extended by the LCB, which is normally done following an application by a licensee to the LCB.

171. The normal practice as up to end of 2015 as informed by a representative of the MfR is that a licensee must submit a written application for an extension of trading hours to the LCB outlining the special circumstances for which the application for extended trading hours has been made.¹⁹⁶ This application is then referred by the LCB Secretary to the Minister for approval. The process for extension of trading hours is undertaken each week and written applications for extensions must be submitted to the Minister's office at latest by Tuesday of the same week. Requests are usually for the extension of trading hours on a Wednesday or Thursday from 10.00pm to 12 midnight, for the purpose of a fund raiser. The application is normally approved by the Minister and the applicant is then informed in writing. The Commission is advised that these Ministerial approved extensions are then put before the LCB at their next meeting for formal endorsement.

¹⁹² *Liquor Act 2011* (Samoa), s 6(f).

¹⁹³ *Ibid*, s 30(3A).

¹⁹⁴ Licence Condition 1 on retail licences, bar licences, nightclub licences, bar and restaurant licences.

¹⁹⁵ *Liquor Act 2011* (Samoa), s 30(4).

¹⁹⁶ Telephone interview with Solia Tanuvasa Kalolo, ACEO Client Services Division, Ministry for Revenue (Apia, 27 October 2015).

172. Additionally, under the licence conditions, all music from the licensed premises is to stop at the time that sale of alcohol is required to cease. Thus, an application to extend the time in which music can be played is made in the same way and usually together with an application to extend trading hours.¹⁹⁷
173. The standard trading hours may also vary in villages depending on the curfews imposed by the *Village Fono*. *Ali'i and Faipule* in some villages impose more restrictive trading hours on the sale of alcohol often by a certain time in the evening. These restrictions are not part of the licence conditions but are part of the rules of the village in which the licensed premises is situated. Such restrictions are generally adhered to and breach of these restrictions by a store owner could result in a fine or other penalty imposed by the *Village Fono*.

Trading Days

174. Similar to trading hours, the *Liquor Act* does not provide for specific trading days in legislation. The LCB may provide the trading days when the sale and supply of alcohol may be prohibited such as on specific public holidays for example Good Friday and Christmas Day.¹⁹⁸ This power is not explicitly provided in the legislation, but implied through a section relating to signs that must be on the licensed premises.
175. Some recent examples include the period of the National elections, where the sale of alcohol was prohibited by all licensees on 3 and 4 March 2016. A further example is during Easter period in 2016, where the sale of alcohol by bars, night clubs and retail stores was prohibited on Easter Friday.
176. The *Liquor Act* does however expressly prohibit the sale or supply of alcohol on Sundays, except as approved by the LCB.¹⁹⁹ Such prohibition is expressly provided under the Act as mandatory conditions of a licence for the sale of alcohol. In discussions with the LCB Secretary, it was revealed that certain motels and hotels are granted exceptions to this prohibition.²⁰⁰ The Commission was also informed that the LCB considered a subcommittee report in December 2015 which included the recommendation to remove the Sunday prohibition on the sale of alcohol. The LCB's decision declined the removal of the Sunday prohibition and reaffirmed the ban on the sale of alcohol on Sundays which extended to also include the hotels and motels that were previously granted exemptions.²⁰¹

¹⁹⁷ Telephone interview with Owner, Sheesha's Cocktail Bar (Apia, 27 October 2015).

¹⁹⁸ *Liquor Act 2011* (Samoa), s 32(1)(a)(ii) – the power of the LCB to restrict the sale of alcohol on certain days is implied in this section.

¹⁹⁹ *Ibid*, s 30(3).

²⁰⁰ Interview with Togia'i Failagi, Former Secretary of the LCB, Ministry for Revenue (Apia, 22 October 2014).

²⁰¹ Information received from Komisi Koria, ACEO Legal Division, Ministry for Revenue (Apia, 21 January 2016).

New Zealand

Trading Hours

177. Under the *Sale and Supply of Alcohol Act 2012* in New Zealand, the default national maximum trading hours for the consumption of alcohol on licensed premises are:²⁰²

- a) 8.00am – 4.00am for on-licences where alcohol is sold and supplied for consumption on the premises, such as bars and nightclubs; and
- b) 7.00am -11.00pm for off-licences where alcohol is sold and supplied for consumption off the premises, such as liquor stores, supermarkets and retail stores.

178. The sale and supply of alcohol outside the permitted trading hours is prohibited.²⁰³ However, District Licensing Committees can develop local alcohol policies which can restrict or extend the maximum national opening hours set out in the *Sale and Supply of Alcohol Act*.²⁰⁴ On the other hand, the default maximum national trading hours apply to all districts without a local alcohol policy in force.²⁰⁵

Trading Days

179. The prohibited trading days in New Zealand are Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.²⁰⁶ On these days, the sale or supply of alcohol to any person is prohibited for on-licences unless the person is residing or lodging on the premises, on the premises for the purposes of dining or a special licence has been approved to sell or supply alcohol.²⁰⁷ The legislation further defines that alcohol may only be served to a person dining on the premises an hour before and after dining.²⁰⁸ A prohibition is also in place for all off licences during these special days. However, an exception is made for the sale or supply of grape or fruit wine that is made or grown on the premises.²⁰⁹

²⁰² *Sale and Supply of Alcohol Act 2012* (New Zealand), s 43(1).

²⁰³ *Ibid*, s 46. However, s 49(1) provides that a remote sale of alcohol is permissible at any time of day.

²⁰⁴ Ministry of Justice, *Local Alcohol Policies* <<http://www.justice.govt.nz/policy/sale-and-supply-of-alcohol/alcohol-in-the-community/local-alcohol-policies-laps>>.

²⁰⁵ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 44(1).

²⁰⁶ *Ibid*, ss 47, 48.

²⁰⁷ *Ibid*, s 47.

²⁰⁸ *Ibid*, s 47(3)(b).

²⁰⁹ *Ibid*, s 215(2)(a)(ii).

New South Wales

Trading Hours and Days

180. In New South Wales, the standard trading hours for on-premises licences (such as restaurants and nightclubs) are from 5.00am to 12.00am from Monday to Saturday and from 10.00am to 10.00pm on Sundays.²¹⁰ For all stores that sell alcohol for consumption off the premises (such as supermarkets) the trading hours are until 10.00pm for every day of the week.²¹¹ Despite this, licensees can apply to the Liquor and Gaming Authority to authorise extended trading hours for the sale and supply of alcohol outside the standard trading period.²¹²

181. The extended trading period may be authorised on a one-off basis for a specific date or on a permanent basis until the extended trading hours are varied or revoked by the Authority.²¹³ Extended trading hours may also be granted for licensed hotels and clubs during significant special events that the Minister considers to be of regional, state or national significance.²¹⁴ The temporary extension of trading hours for these special events is prescribed by regulations, as was done for the extension of trading hours for licensed hotels and clubs to sell and supply alcohol during the Rugby World Cup 2015 where the regulations were made setting out the dates and hours of the extended trading period.²¹⁵

182. In NSW the legislation regulates the trading hours for restricted days which are defined as Good Friday or Christmas Day.²¹⁶ The legislation specifies the restricted trading hours that apply on Good Friday and Christmas Day according to the type of licence. On-premises licences and hotel licences are authorised to sell alcohol between noon and 10.00pm on the restricted days but only if the alcohol is sold with or ancillary to a meal served in the dining area.²¹⁷ Other licences are prohibited from selling alcohol on these restricted days. Certain premises are exempt from the operation of the restricted trading days such as airports, caterers and accommodation premises where the sale of alcohol is to a resident and/or a resident's guest.²¹⁸

²¹⁰ *Liquor Act 2007* (New South Wales), s 12(1).

²¹¹ *Ibid*, s 12(1C).

²¹² *Ibid*, s 49.

²¹³ *Ibid*, s 49(5).

²¹⁴ *Ibid*, s 13.

²¹⁵ *Liquor Amendment (Special Events Extended Trading) Regulation 2015* (New South Wales), reg. 3.

²¹⁶ *Liquor Act 2007* (New South Wales), s 4(1).

²¹⁷ *Ibid*, s 14(3); s 25(3).

²¹⁸ *Ibid*, ss 25(4), 14(2)(c).

United Kingdom

Trading Hours and Days

183. The *Licensing Act 2003 (England and Wales)* abolished set licensing hours and trading days in England and Wales essentially allowing up to 24 hour trading for the sale and supply of alcohol.²¹⁹ Trading hours and days for premises are now set through the conditions of individual licences. In an application for a licence, the applicant states its proposed hours and days during which the authorised licensable activities will be carried out on the premises.²²⁰ The local licensing authority assesses the application and may decide to grant reject or vary the proposed hours and days for the proposed licence.²²¹

Submissions

Trading Hours

184. The general consensus from the consultations was that there should continue to be restrictions on trading hours for all licensed premises. However, many members of the business community raised their concerns that the current 10.00pm closing time for bars and nightclubs was too early and not good for business.

185. Furthermore, it was suggested by members of the public and some business owners that the current trading hours are conducive to dangerous drinking. Shorter trading hours encourages binge drinking among patrons who consume alcohol at a faster pace before closing time. Another direct consequence of the shorter trading hours is that it leads to people drinking in non-regulated areas such as on the streets after nightclubs and bars have closed. It was raised that it is in these non-regulated areas that many of the alcohol-fuelled arguments and fights take place. It was suggested that a later closing time may reduce binge drinking and encourage more moderate drinking.

186. Similarly, it was also raised that as a result of the current closing hours being the same as trading hours, intoxicated patrons would stream out onto the streets at the same time which would often lead to disorderly behaviour and fights breaking out outside the premises and on the streets. It was submitted that a short gap between the time when the sale of alcohol stops and before closing time (for example an hour gap), could allow people time to sober up before heading home, and reduce

²¹⁹ United Kingdom Government, *Flexible Opening Hours* <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118383/flexible-closing-times.pdf>; BBC News, *Did 24-hour drinking actually change anything?* (24 November 2015), <<http://www.bbc.com/news/magazine-34881193>>.

²²⁰ *Licensing Act 2003* (England and Wales), s 17(4).

²²¹ *Ibid*, s 18(2).

intoxicated patrons spilling out into the streets all at once. It was also suggested that during this time, the licensed premises should be prohibited from selling and supplying alcohol and should provide free tap water on request and should only sell bottled water and non-alcoholic drinks.

187. A large proportion of participants of the consultations also expressed the view that it was not the trading hours in Samoa that was the problem but rather that they were poorly enforced. Concerns were raised that the inadequate enforcement of closing times for nightclubs meant that people were consuming alcohol later into the night and then driving home increasing the chances of a car accident.²²² There was also great concern that many village stores continued to sell alcohol beyond approved trading hours, without enforcement by authorities or by *Ali'i and Faipule*. The lack of enforcement of the trading hours was raised to be a contributor to the alcohol-related problems in Samoa.

188. A common submission raised in consultations was the need for harsher penalties to be imposed on bars and nightclubs that continued to disregard the closing time. It was suggested that licensees should be penalised when trading hours are breached and similarly rewarded for compliance. For example, licensees who do not comply with the trading hours should be issued an immediate fine issued by the MOP, and any further breaches should result in suspension of licence. In contrast, those with a good compliance record could have their applications for licence renewals fast tracked.

189. Many submissions from bar and nightclub owners called for changes to be made to the current process for extending trading hours by written application on a weekly basis. These submissions described the current process as onerous and impractical for businesses. Submissions raised that the weekly applications are almost always granted with it being a normal practice for nightclubs and bars to be opened until 12.00am from Monday to Saturday. A common view shared is that there is no real reason to cut off the trading hours at 10.00pm and that trading hours should be changed to 12.00am from Monday to Saturday to reflect the common practice and avoid the weekly applications for extensions.

Analysis

Trading Hours

190. Both New Zealand and Australia differentiate the trading hours for on-license premises where alcohol is sold on the premises and the nature of that business (for example nightclub or hotel), and off-licence premises where alcohol is sold for consumption off the premises (for example a retail store). Both of these jurisdictions

²²² See further discussion on enforcement in Part 6.

also provide these trading hours in their alcohol legislation. In contrast, Samoa does not differentiate standardised trading hours for different types of licences and businesses, nor does it expressly provide this in legislation opting instead for the LCB to set the trading hours and notifying the public through notices.

191. The Commission was informed that the current trading hours set by the LCB was due in part to the increased incidence of alcohol related incidents in the past as well as the implementation of the 'road switch' in 2007.²²³ These set hours have since remained in place despite the original purpose being no longer relevant. The regular requests for extension of trading hours to midnight indicate that the current trading hours needs to be revisited.
192. It was revealed that on average about 11 or 12 applications are lodged to the Minister's office every week for his approval from bars and nightclubs requesting extensions of trading hours until midnight.²²⁴ This not only a cumbersome process, but also time-consuming for the Minister with a busy schedule, who has to make time every week to review and decide on each application.²²⁵ Furthermore under the Act, approval must be given by the LCB and not the Minister – and the current practice of providing the Minister's decision to the LCB at a later time to formalise and endorse the decision, may be grounds for legal challenge.
193. There were no submissions received in relation to the trading hours of retailers being changed past 10.00pm, which may indicate general acceptance of the need to maintain this time restriction. The main concern expressed by the public in this regard was that there seemed to be poor enforcement by authorities, or by *Ali'i and Faipule* of the 10.00pm restriction by retailers. The practice by some villages to restrict the sale of alcohol to an earlier time than imposed by the LCB as well as outright bans on the sale of alcohol in the village were welcomed by the public and it was suggested that these powers should be recognised in legislation. The *Ali'i and Faipule* however should not be able to extend trading hours stipulated in the legislation.
194. In light of the current practice of weekly applications for extensions, one possible solution could be to adopt the approach taken in the comparable jurisdictions and differentiate trading hours for different licences. For example, for on-site licensees (such as bars and nightclubs) trading hours could be set between 8.00am and 12 midnight and other on-site licensees (such as restaurants, restaurant bars in resorts and hotels) and all off-site licensees to remain from 8.00am to 10.00pm. These standard trading hours should be provided in legislation for clarity and public awareness. The LCB could be allowed under the legislation to reduce trading hours in certain circumstances, for example if an on-site licensee is in close proximity to

²²³ Interview with Togia'i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (22 Oct 2014).

²²⁴ Interview with Tasha Sagapolutele, Former Minister's Secretary (29 October 2015).

²²⁵ Ibid.

residential areas, or church, or if there are complaints about noise or disorderly behaviour, or village bylaws state so. However, such decisions should be consulted on and any resulting decision should be published. Interestingly, the Commission was informed that very few complaints against to bars and nightclubs were received by the LCB, with about 3 in 2014, and all related to noise.²²⁶

195. As discussed above, it was submitted that shorter trading hours were conducive to binge drinking and consequently disorderly behaviour during closing time. A possible measure to address this problem would be to permit a gap between the cut off time for selling alcohol and the closing of the on-site premises where water and non-alcoholic drinks can continue to be sold. This interval allows for patrons to sober up and disperse in small groups rather than all at once where fights are likely to break out. The free supply of water will assist in sobering up those who have consumed alcohol. The LCB could require as a condition of an on-site licensed premises to provide tap water provided for free and upon request.

RECOMMENDATIONS

28. The maximum trading hours (closing and opening) for licensed premises for the sale and supply alcohol should be expressly set out in legislation:

- a) For On-site licensed premises such as nightclubs and bars located in the urban area, the trading hours should be between 8.00am and 12.00am. However, a period up to one hour after closing time should be allowed for people to remain on the premises with only the sale of water, non-alcoholic drinks and food permitted.
- b) For nightclubs and bars outside the urban area, as well as other On-site licensed premises such as restaurants, resorts and hotels, the trading hours should be between 8.00am and 10.00pm.
- c) For all Off-site licensees (such as retail shops) the trading hours should be between 8.00am and 10.00pm.

29. On-site licensees should be required as a condition of their licence that tap water should be made available for free to patrons on request throughout the night.

30. The Liquor Control Board (**LCB**) should retain the power to temporarily reduce or extend the trading hours for the sale and supply alcohol for particular occasions or on other public holidays by public notice. The process and criteria for the LCB's decisions when restricting or extending trading hours should be set out in legislation.

²²⁶ Interview with Tasha Sagapolutele, Former Minister's Secretary, (29 October 2015).

Additionally, the reasons for LCB's decisions should be in writing and be made publicly available. The legislation should also recognise that *Village Fono* can impose more restrictive trading hours for licensed premises in their village than the default maximum trading hours.

31. The maximum trading hours should be strictly monitored and enforced. Licensees that do not comply with the trading hours should be penalized and incur an immediate fine, that should be set out in legislation. (See recommendations on enforcement).

Submissions

Trading Days

196. Many submissions supported the continuation of the prohibition on Sunday trading as an effective mechanism to reduce alcohol availability and alcohol-related harm and also respectful of the observance of Sundays. However, many in the business community disagreed and strongly called for the removal of the Sunday prohibition as it adversely affects business profitability and development as well as impacts unfairly on the responsible public.

197. Many business owners were of the mistaken view that many hotels and motels were automatically exempted from the Sunday trading prohibitions, and suggested that it be extended to bars and restaurants. Many concerns were raised in regards the exemption not being applied consistently as it was common knowledge that certain bars and restaurants have been permitted to sell alcohol on Sunday. Some bar and restaurant owners informed the Commission that that they had sought exceptions to the Sunday prohibition of alcohol sales, but were declined by the LCB, and were unclear how or why the LCB differentiated between the different types of licences as many patrons at a restaurant (similarly to patrons at a hotel) enjoyed alcohol with their meals. A significant number of submitters indicated that the prohibition was considered outdated and ineffective, particularly as it was not enforced in respect of many hotels and motels.

198. It was raised by the Samoa Tourism Authority (**STA**) that the ban on Sunday trading has a direct negative impact on tourist experiences and in effect the tourism sector which the government has prioritised for national economic and social growth.²²⁷ A submission from Samoa Hotels Association (**SHA**) stated that many tourists from the short-haul markets, such as New Zealand and Australia, as well as the long-haul markets, such as Asia and Europe have an appreciation of wines with their meals. Furthermore, many of these tourists view cocktails as part of the island

²²⁷ Information provided by Papalii Matatamalii Sonja Hunter, Chief Executive Officer, Samoa Tourism Authority (2 February 2016).

resort experience. It was raised that to deny tourists of these simple pleasures on a hard earned holiday would negatively impact on Samoa's destination appeal and marketability.²²⁸

199. It was also raised that the retaining of the Sunday prohibition for hotels and motels was unfairly penalising tourists.²²⁹ The submission from SHA highlighted that no problems or complaints have been received from the hotels and motels that are permitted to sell alcohol to their guests on Sundays.²³⁰

200. It was suggested that there are a multitudes of other ways the government can employ to reduce accidents and alcohol-related harm without resorting to penalising tourists and the responsible public.²³¹ For example, an alternative to the current system is allowing Sunday trading for certain licensees that would be subject to certain conditions including for example, that alcohol only be purchased and consumed on the licensed premises.

201. The ad hoc process undertaken by the LCB in the alcohol ban during General Elections in March 2016 highlights the need for clarity in the legislation of the LCB's process to reduce trading hours or prohibit trading on certain days. The LCB imposed a ban on the sale of alcohol on 3 and 4 of March during General Elections which also applied to all restaurants and hotels. An emergency meeting was held on the 1 March 2016 between the LCB and members of SHA to discuss the alcohol ban, with the President of SHA requesting reconsideration of the ban for hotels which may provide Samoa a bad reputation in the tourism industry. The President of SHA raised that such ban would have a significant negative impact on the tourism industry, as tourists who had not contributed to the adverse impacts of alcohol in Samoa would be negatively impacted and penalised. The outcome of the meeting was that all accommodation providers were exempted from the alcohol ban. This case is illustrative of the point that there needs to be an improved and consultative process for the LCB when considering reducing trading hours or trading days.

Analysis

Trading Days

202. Under the current law, the sale and supply of alcohol on Sundays is prohibited. The rationale for the imposition of the Sunday ban was as a response to the increased

²²⁸ Information provided by Alexandra Maui Rankin, CEO, Samoa Hotels Association (19 February 2016).

²²⁹ Information provided by Papalii Matatamalii Sonja Hunter, CEO, Samoa Tourism Authority (2 February 2016).

²³⁰ Information provided by Alexandra Maui Rankin, CEO, Samoa Hotels Association (19 February 2016).

²³¹ Information provided by Papalii Matatamalii Sonja Hunter, CEO, Samoa Tourism Authority (2 February 2016).

alcohol-related harm and disorderly behaviour resulting from the excessive consumption of alcohol, particularly within the villages.²³²

203. Previously, the LCB has granted exemptions to certain motels and hotels provided that alcohol is consumed by guests on the premises together with meals.²³³ Many submissions from the business community have expressed dissatisfaction over the ad hoc basis by which the LCB grants exemptions, with no clear criteria for their decision making and no written reasons provided for such decisions.
204. In December 2015 the LCB requested a sub-committee to look into whether the law prohibition the sale of alcohol on Sunday should be changed.²³⁴ Contrary to recommendations of the sub-committee, LCB reaffirmed the current Sunday prohibition resulting in a blanket ban on all selling of alcohol on Sundays, including by hotels and motels that were previously exempted by the LCB.²³⁵ Again the rationale for the blanket prohibition is not clear as reasons for LCB's decision are not provided in writing nor published.
205. The submissions received from the STA and SHA illustrates that the continuance of the Sunday prohibition would have a negative impact Samoa's tourism industry. This negative impact is likely to be exacerbated given that hotels and motels that may have once been exempted are now subject to the Sunday prohibition in light of the LCB's recent decision.
206. It is not clear why the prohibition should be retained especially with regards to its impact on tourism, as tourists commonly have wine or beer with their meals in their hotels. As reported from the SHA, no incidents or problems have been reported back by the previously exempted hotels or motels regarding alcohol consumption by tourists on Sundays. SHA emphasised that it appears that tourists are being unfairly penalised for a problem that they do not contribute to. Furthermore, it seems that to lift the ban in relation to accommodation providers such as hotels and motels would not adversely affect the community, however to retain the prohibition would cause the tourism industry significant problems in terms marketability and the destination appeal of Samoa.
207. Aside from concerns of the Sunday ban in respect of hotels, motels and restaurants, there appears to be general acceptance by the public and business community of the Sunday prohibition in respect of retail stores in the villages where much of the alcohol-related harm appears to stem from.

²³² Interview with Togia'i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (22 October 2014).

²³³ Interview with Togia'i Faiilagi, Former Secretary of the LCB, Ministry for Revenue (22 October 2014).

²³⁴ Note this would have required a law change.

²³⁵ Information provided by Komisi Koria, ACEO Legal Division, Ministry for Revenue (Apia, 21 January 2016).

208. In relation to licences where the predominant business is the selling of food such as restaurants and restaurant areas in hotels and motels, exceptions should be made, as alcohol is normally consumed to complement meals rather than an environment that encourages excessive drinking. Furthermore these are places that would be subject to close monitoring and control by its staff. Such application should be decided on its merits with the onus on the applicant to furnish to the LCB's satisfaction that measures such as security precautions, noise control, and appropriate staff training that will be undertaken. On the other hand, licences for nightclubs and bars should remain subject to the Sunday prohibition.
209. A blanket ban on the sale of alcohol was imposed during General Elections on 3 and 4 of March 2016. This resulted in complaints by the hotel industry and restaurateurs.²³⁶ The Commission was advised that an emergency meeting was held on the 1 March 2016 between representatives of the Ministry and members of SHA to discuss the alcohol ban, with the President of SHA requesting reconsideration of the ban for hotels which may provide Samoa a bad reputation in the tourism industry.²³⁷ The President of SHA in a statement to the press raised that such ban would have a significant negative impact on the tourism industry, as tourists who had not contributed to the adverse impacts of alcohol in Samoa would be negatively impacted and penalised.²³⁸ The Commission was also advised that following the meeting, the ban was revised to exclude hotels, motels and restaurants.²³⁹ Furthermore, it appears that the LCB had not formally met in respect of any of the decisions on the ban and exemptions, and it is unclear who was actually responsible for the decisions made.
210. All the decisions on the alcohol ban during the General Elections pose a high risk of legal challenge. This illustrates the need for amendments to the Act to ensure that it provides for an effective consultative process for the LCB when making such important decisions. It also illustrates the need for the LCB to be able to delegate certain powers and functions to be lawfully carried out by the CEO of the Ministry when the need arises, for example the LCB is unable to meet and a decision is urgent.
211. In relation to public holidays, there is no direct empowering provision for the LCB to restrict the sale of alcohol on these days. The power of the LCB to set such restrictions in the current legislation is implied in a section that discusses the signs that are required to be on licensed premises. The discretionary power for the LCB to

²³⁶ Vatapuia Maiava, 'Alcohol ban questioned', *Samoa Observer* (online), 26 February 2016 <http://www.samoaoobserver.ws/en/26_02_2016/local/2947/Alcohol-ban-questioned.htm>; Vatapuia Maiava, 'Alcohol ban concerns', *Samoa Observer* (online), 29 February 2016 <http://www.sobserver.ws/en/29_02_2016/local/3084/Alcohol-ban-concerns.htm>.

²³⁷ 'Emergency meeting called today', *Samoa Observer* (online), 01 March 2016 <http://www.samoaoobserver.ws/en/01_03_2016/local/3126/Emergency-meeting-called-today.htm>.

²³⁸ Vatapuia Maiava, 'Alcohol ban concerns', *Samoa Observer* (online), 29 February 2016 <http://www.sobserver.ws/en/29_02_2016/local/3084/Alcohol-ban-concerns.htm>.

²³⁹ Vatapuia Maiava, 'Election liquor ban clarified', *Samoa Observer* (online), 02 March 2016 <http://www.samoaoobserver.ws/en/02_03_2016/local/3167/Election-liquor-ban-clarified.htm?tpl=107>.

set restrictions on specific days of the year needs to be explicitly laid out in legislation. There are annual public holidays where restrictions can be expressed in legislation such as Good Friday and Christmas holidays. However, LCB should retain discretion for special holidays during the year for example, restrictions on alcohol sale during elections.

RECOMMENDATIONS

32. The prohibition on the sale or supply of alcohol on Sunday should remain in place for Off-site licences such as retail stores and supermarkets. The Sunday prohibition should also remain in place for On-site licensees such as bars and nightclubs. The legislation should expressly provide the types of On-site licences that 'may' be permitted to sell or supply alcohol on Sunday, which should include restaurants where selling food is the predominant nature of the business, and also hotels, motels and resorts where alcohol is sometimes consumed with a meal. For On-site license premises that 'may' be permitted to sell or supply alcohol on Sunday, the licence application should include a request to do so. Such applicants should be required to satisfy the Liquor Control Board (**LCB**) that all measures will be taken that will minimize as much as possible any negative impacts of Sunday trading. This should include measures such as security precautions, noise control, and appropriate staff training.
33. The terms and conditions of Sunday trading for a permitted licensee should be clearly set out in the licence and should include the following:
- a) The sale of alcohol is restricted to the hours between 9:00am and 10:00pm.
 - b) Where the licensed premises is a restaurant, the sale of alcohol should only be authorised if the alcohol is sold or supplied together with a meal.
 - c) Where the licensed premises is a hotel, motel or resort, the sale or supply of alcohol may only be made to its guests and or to guests of the guest.
 - d) All noise needs to be maintained at a reasonable level.
 - e) Licensees must ensure that alcohol is consumed on the premises and no alcohol is to be removed from the premises.
 - f) If any licensee breaches the terms and conditions of Sunday trading, the LCB may suspend or revoke approval to sell alcohol on Sunday, or suspend or revoke the licence as a whole.

E. Controlling Outlet Numbers

212. This method of controlling the availability of alcohol involves influencing the availability of alcohol by controlling both the number of stores that are granted alcohol licences and the number of alcohol selling stores operating within a particular geographic area or location.²⁴⁰For the purposes of this part, outlet density is determined on the basis of a geographical area, i.e. a large number of outlets in the same physical location.
213. A concentration of outlets in a particular area has been associated with increased alcohol consumption particularly amongst younger people, higher levels of harmful drinking as evidenced by more alcohol-related crime and anti-social behaviour posing risks to community wellbeing.²⁴¹

Samoa

214. In Samoa, the current legislation does not control the number of outlets that are granted liquor licences, nor the density of outlets operating within a particular geographic area. Furthermore, the numbers of liquor stores operating in a particular area are not normally considered by the LCB when granting an application for a licence, although the LCB must consider the area to which the application relates,²⁴² and any person may object on the grounds that the area in which the proposed premises is inappropriate.²⁴³

New Zealand

215. Unlike Samoa, New Zealand's legislation expressly requires the issue of outlet density to be considered by the district licensing committee when reviewing an application. The issue of outlet density is included in a broader consideration of the effects of a licence application on the 'amenity and good order of locality.' When reviewing a licence application licensing committee must consider whether the amenity and good order of the locality would likely be reduced, to more than a minor extent, by the issuance of the licence.²⁴⁴The impact on amenity requires the licensing committee to specifically consider the number of other licensed premises in the area, the current and possible future levels of noise, nuisance and vandalism and the compatibility with the current and future use of surrounding properties.²⁴⁵

²⁴⁰ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010) at 116-117.

²⁴¹ *Ibid*, at 135;

²⁴² *Liquor Act 2011* (Samoa), s 26(b).

²⁴³ *Ibid*, s 27(2)(b).

²⁴⁴ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 105(1)(h).

²⁴⁵ *Ibid*, s 106(1)(a).

216. Any person with a greater interest than the general public may lodge an objection to an application or renewal of a alcohol application on any of the licence criteria within 15 days after the public notice of the licensee's application.

New South Wales

217. In NSW, an applicant for a licence is required to submit a 'Community Impact Statement' (CIS) with the licence application. The objective of the CIS is to facilitate the assessment by the Licence Authority of the impact that the granting of certain licences may have on the local community. The CIS makes the Licensing Authority aware of the views of the local community and the results of the discussions between the applicant and the local community for any issue raised by the community.²⁴⁶

218. The CIS is a product of a consultation between the applicant and the local community. It provides an opportunity for members of the local community including the local council, police and any special interest groups to raise any issues and concerns over the potential impact of the proposed premises. The CIS must show that the local community's concerns have been heard and that changes have been made to the proposed premises to take account of these concerns. There are very stringent procedural rules in place to ensure that a thorough consultation has taken place. The CIS is also made publicly available by the licensing authority.²⁴⁷

219. The licensing authority needs to be satisfied that the overall social impact of the licence, authorisation or approval granted will not be detrimental to the well-being of the local or broader community.²⁴⁸

Submissions

220. Members of the Youth Focus Group suggested to limit the number of stores in a village that may be permitted to sell alcohol. In addition, some member of the public suggested that the licensing system would be more effective by limiting the number of liquor outlets in the villages.

Analysis

221. As noted from the discussions above, New Zealand requires outlet density to be considered under its legislation. In contrast, Samoa and NSW have used broad criteria such as the appropriateness of the premises in the proposed area, which arguably may capture outlet density issues.

²⁴⁶ *Liquor Act 2007* (New South Wales), s 48.

²⁴⁷ Office of Liquor, Gaming and Racing, *Community Impact Statement* <http://www.olgr.nsw.gov.au/liquor_cis_home.asp>.

²⁴⁸ *Liquor Act 2007* (New South Wales), s 48(5).

222. New Zealand's approach has been to refrain from taking a strictly numerical approach on the number of licensed premises that should exist in a particular area. Instead, it has adopted a broader scope looking at the amenity impact that results from the concentration of outlets in a particular area. The rationale of this approach was to take account of the secondary harms that are a direct consequence of outlet density. For example, the more alcohol outlets in an area the greater the competition which can lead to price discounting and longer opening hours to gain competitive advantage.²⁴⁹ Moreover, the increased consumption of alcohol is associated with higher levels of alcohol-related crime and anti-social behaviours and a reduction in the quality of public amenities.²⁵⁰

223. An associated issue with outlet density is that the easy accessibility of cheap alcohol has given rise to the new phenomenon of 'pre-loading' which is drinking before going out.²⁵¹ This new trend sees more people buying alcohol from stores and supermarkets where they are cheaper than at nightclubs and bars and drinking them before going out.²⁵² This is also becoming an issue in Samoa where the cheap price of alcohol coupled with the easy availability in retail shops is popularising this practice. MoH's recently launched National Alcohol Control Policy refers to research that individuals who engage in this practice are much more likely to consume higher levels of alcohol than those who do not.²⁵³

224. New Zealand and NSW have empowered communities to provide an input addressing matters of concern during the application process. As previously discussed, in New Zealand this is through the objection process where anyone with a greater interest than the general public may object to a licence application on any of the licensing criteria. In NSW, a licence applicant is required to consult with the local community regarding the proposed premises and submit the result of this consultation in a CIS to the licensing authority. The applicant is required to factor the outcomes of these discussions into the proposal for the premises. If resolution of certain issues cannot be attained, these are also to be noted in the CIS.

225. In Samoa, the opportunity for community input is rather limited in comparison to other jurisdictions discussed. Consent by the *Village Fono* involves signing a form to support the application. In practice, this could mean that if a *matai* were to object on the basis of the high concentration of alcohol outlets, or on any other licensing criteria, the applicant could simply seek another *matai* to endorse the application.

226. The *Liquor Act* also allows for members of the public to lodge objections in relation to the appropriateness of the area of the proposed premises. However, the

²⁴⁹ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010) at 134.

²⁵⁰ *Ibid*, 134-135.

²⁵¹ *Ibid*, at 43.

²⁵² *Ibid*.

²⁵³ Ministry of Health, *National Alcohol Control Policy 2016-2021*, at p.17.

efficacy of this provision is undermined because unlike New Zealand and NSW, there is no requirement for the public to be notified (whether by the applicant or the LCB) of the proposed licence. Although there is a provision for objection, it is ineffective if people are unaware of the proposed premises until after it has been established.

227. The issue of outlet density is even more significant given the increasing numbers of new licences issued over the last few years. In 2014, 50 new licences were issued with 46 licences for retail stores and 4 food and beverage licences. The statistics show that the majority of new licences are for retail stores in villages which have been identified as where most of the alcohol harm occurs. The continuing increase in new licences each year warrants following New Zealand's example by making outlet density an explicit consideration in approving new licences so that the LCB should be satisfied that the overall social impact of the licence will not be detrimental to the well-being of the local or broader community.

RECOMMENDATIONS

34. The legislation should require the Liquor Control Board (LCB) to consider the issue of outlet density as part of the criteria when reviewing an application for a licence, and that the LCB should be satisfied that the overall social impact of the licence will not be detrimental to the well-being of the local or broader community. A report (community impact statement) may be requested from the *Village Fono* on any incidents in the village relating to any licences issued, to assist the LCB determining the overall social impact of the licence on the community.

F. Restrictions on the types of Alcohol Products that can be sold

Samoa

228. Under the *Liquor Act* regulations can be made to prohibit a licensee of a retail licence, bar licence, nightclub licence, or temporary licence, from selling liquor of a prescribed kind.²⁵⁴ However, no regulations have ever been promulgated under these provisions. The Act also prohibits the selling of undesirable liquor products. These include any unadulterated liquor, any liquor product prohibited under other legislation or any liquor sold in a container bearing false or misleading statements about the nature, quality, strength, composition, weight or any other effects of the liquor.²⁵⁵ Any licensee who breaches this provision is liable to a fine of up to 25

²⁵⁴ *Liquor Act 2011* (Samoa), ss 19(2), 21(2), 22(2), 23(2).

²⁵⁵ *Ibid*, s 60.

penalty units or \$2,500 or imprisonment for a term not exceeding 3 months or both.²⁵⁶

New Zealand

229. Under the *Sale and Supply of Alcohol Act 2012* regulations can be made to ban or restrict certain alcohol products.²⁵⁷ However the Minister must not recommend such regulations be made unless satisfied after consultation with the Minister of Health that the alcohol product is particularly dangerous to health, or has special appeal to young people because of its nature or any advertising, display for sale, labelling, packaging or promotion.²⁵⁸ Anyone who imports, manufactures, distributes, displays for sale or sells to any person banned or restricted alcohol products is liable to a fine of not more than \$20,000.²⁵⁹

Submissions

230. The issue of restrictions on the type of alcohol sold was a topic which raised many concerns during consultations especially with regards to the sale and supply of cheap alcohol such as *fagumaso* in Samoa. These views echoed the long-held concerns by the judiciary over the alarming rate of offending that stems from the unregulated sale of cheap high volume alcohol in village stores.²⁶⁰

231. Some submissions called for a total prohibition on the sale and supply of *fagumaso* in Samoa submitting that cheap alcohol has been identified as the contributing factor to many alcohol-related incidents especially in the villages.²⁶¹ Others suggested that the sale of this type of alcohol should be limited to liquor stores, so that access to this type of alcohol was more restricted in the villages where it is very popular. However, many members of the private sector opposed total prohibition to the sale of *fagumaso* on the basis that this could result in the increased production of illegal homebrew. Furthermore, the Chamber of Commerce representative supported the wide availability of alcohol products to ensure adequate competition within the market.

Analysis

232. Both New Zealand and Samoa provide provisions banning the sale and supply of certain alcohol products. However, New Zealand's provision operates on a wider scope providing that an alcohol product may be banned if it is deemed to be

²⁵⁶ Ibid, s 61.

²⁵⁷ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 400.

²⁵⁸ Ibid, s 400(7).

²⁵⁹ Ibid, s 238(2).

²⁶⁰ *Police v Natano* [2012] WSSC 89; *Police v Mase* [2010] WSSC 138; *Police v Timoteo* [2011] WSSC 65.

²⁶¹ Information received from the Youth Consultations (3 November, 2014).

particularly dangerous to health or having special appeal to young people. In New Zealand these banned alcohol products are detailed in regulations.

233. In Samoa, this is a very relevant topic given the calls made by members of the judiciary as well as the widespread concern over the sale and supplies of cheap alcohol such as *fagumaso*.

234. The *Liquor Act* already provides regulation making powers to prohibit a licensee of a retail licence, bar licence, nightclub licence, or temporary licence, from selling specific types of alcohol – which could be a very effective measure to reduce alcohol related harm. However, to date, no regulations have been promulgated.

RECOMMENDATIONS

35. The law currently enables regulations to be made to prohibit a licensee from selling alcohol of a prescribed kind. This regulation making power should remain and should be broad enough to prohibit or limit the sale by Off-site licensees of specific types of alcohol, or beverages of very high alcohol content from being sold. For instance this should enable a group of Off-site licensees (such as retail stores in villages or in certain areas) to be restricted from selling ‘ready to drink beverages’ (**RTDs**) or alcohol above a certain strength, whilst specialist alcohol stores may be permitted to sell the full range of alcohol products.

36. In relation to products or classes of products that are considered undesirable, the following criteria should be included under the Act about what makes a product undesirable:

- a) If it is particularly dangerous to health;
- b) If it is targeted at or has special appeal to minors; and
- c) If it encourages irresponsible or excessive consumption of the product.

37. The *Village Fono* of the area in which the licensed premises is located should be encouraged to put in place bylaws prohibiting or restricting the sale in village stores or consumption in villages, of specific types of alcoholic beverages or alcohol above certain strength.

G. Serving Size

235. This method of controlling the availability of alcohol concerns the serving size of containers. This also includes specifying what a standard drink is in order for consumers to know how much alcohol they have consumed.

Samoa

236. Currently, the serving size of alcoholic beverages is not regulated in Samoa. Furthermore, there is little or no information available to the public in relation to standard serving sizes of drinks in order to work out how much alcohol is being consumed.
237. More recently, portable beer taps known as ‘beer towers’ have become very popular in Samoa and commonly seen in bars and pubs. These beer towers come in various capacities ranging from 3 litres to 5 litres.

New Zealand

238. In New Zealand, the sale or supply of any spirit in a container exceeding 500 ml is prohibited. A licensee infringing this prohibition commits an offence and is liable to a fine of up to \$2,000.²⁶² Aside from this provision, serving sizes are not regulated in New Zealand, although a significant amount of information is available to the public in relation to standard serving sizes of drinks, in order to work out how much alcohol is being consumed.²⁶³
239. The law in New Zealand requires all bottles, cans and casks of alcoholic drinks to be labelled with how many standard drinks they contain. One standard drink is measured as being equal to 10 grams of pure alcohol despite the container size or alcohol type.²⁶⁴ The rationale for this particular measurement is that an average person’s liver can only break down one standard drink of alcohol per hour.²⁶⁵ The formula used to calculate the number of standard drinks is the volume of the container multiplied by the percentage of alcohol multiplied by 0.789 which is the density of ethanol at room temperature.²⁶⁶ Using this formula, a small bottle of beer (330ml) at 5% alcohol is calculated as providing 1.3 standard drinks, whereas a large bottle of beer (750ml) at 7% alcohol is calculated as providing 4.1 standard drinks.

United Kingdom

240. In the United Kingdom, the serving quantities of alcohol in licensed premises are heavily regulated.²⁶⁷ For example, the glass size from which the beer, cider and wine

²⁶² *Sale and Supply of Alcohol Act 2012* (New Zealand), s 254.

²⁶³ Health Promotion Agency, *Standard Drinks* <<http://alcohol.org.nz/help-advice/standard-drinks>>.

²⁶⁴ Health Promotion Agency, *What’s a standard drink?* <<http://alcohol.org.nz/help-advice/standard-drinks/whats-a-standard-drink>>.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Weights and Measures Act 1985* (United Kingdom).

is sold and consumed is regulated.²⁶⁸ The rationale behind this is to control the measurements in which alcohols (and other products) are sold, so as to protect alcohol consumers from dishonest licensed operators who short pour drinks in order to increase margins. It also allows consumers to self-monitor the quantity of alcohol being consumed.

241. Alcoholic beverages must be available and offered for consumption on the licensed premises in standard quantities specified in the relevant legislation²⁶⁹ For example: beer and cider: 1/3 pint, 1/2 pint, 2/3 pint and multiples of 1/2 pint; spirits 25 ml, 35 ml and multiples of 25 ml or 35 ml; wine (including sparkling wine above 75 ml): 125 ml and 175 ml or multiples of 125 ml or 175 ml; fortified wine: 50 ml, 70 ml or multiples. A licensee infringing these requirements commits an offence.

Submissions

242. Much of the discussions during the public consultation focused on the increased use of beer towers for serving beer in licensed premises. Similar concerns were raised by the public over the availability of cocktail jugs in certain licensed premises, which are provided for group consumption. Concerns raised over beer towers and cocktail jugs included that it may encourage people to drink irresponsibly and excessively, with minimal monitoring by the licensee. Members of the public raised that serving staff and consumers alike are less likely to be able to monitor the consumption of alcohol and level of intoxication when alcohol is served in such large quantities.

243. On the other hand, members of the business community submitted that beer towers should only be made available to outlets that served draught beer within a controlled environment such as bars, hotels and nightclubs. However beer towers should not be permitted to be removed from the licensed premises or used for after hour consumption and must be consumed only on the licensed premises.

244. According to a manufacturer of beer towers, advantages of beer towers included convenience to the licensed operator, increased profits and promotion. Beer towers also improved restaurant efficiency as there is less crowding around the bar area and reduced the workload on serving staff when dealing with large groups.

Analysis

245. In Samoa, beer towers come in various sizes of 3 to 5 litre containers, and cost from \$30 - \$50, which is significantly cheaper than buying small bottles of beer

²⁶⁸ Weights and Measures (Specified Quantities) (Unwrapped Bread and Intoxicating Liquor) Order 2011-The Secretary of State made the following Order in exercise of the powers conferred on him by sections 22(1) and (2), 24(1) and 86(1) of the *Weights and Measures Act 1985* (United Kingdom).

²⁶⁹ Weights and Measures (Intoxicating Liquor) Order 1988(England); Article 4.

(335mls) normally, sold around \$5, and draft beer normally sold by the glass for \$3 or \$4. Often there are further reductions in the price of beer towers and cocktail jugs during happy hour and special promotions by bars and nightclubs, which may encourage consumers to drink more excessively. On the other hand, restricting the use of beer towers and cocktail jugs by a certain time (for example by 8pm), could reduce this. Furthermore, such time restrictions may to some extent even out the limited ability for the licensee (and employees) to monitor the level of intoxication of patrons.

246. The standard serving size of alcohol is not regulated in Samoa and there is scant information for the public on measuring a standard drink of alcohol in order to work out how much alcohol is being consumed. There is also no legal requirement for labels to indicate the number of standard drinks that can be served (although this is practiced by some local manufactures). These issues are increasingly important with the prevalence of beer towers in Samoa, and a concern raised frequently by the members of the public during consultations.

247. In the UK, the standard quantities or measurements of alcoholic beverages are specified in legislation to assist consumers keep track of the quantity of alcohol consumed as well as a form of consumer protection from dishonest licence operators. However, the regulation of the standard serving size in New Zealand is limited to prohibiting the sale of alcohol in a container exceeding 500ml. On the other hand, there is significant information publically available in New Zealand about the standard serving size of alcohol drinks (i.e. 10 grams of pure alcohol), in order to work out how much alcohol is being consumed.

248. Should New Zealand's measurement of a standard serving size of alcohol be followed, then a 5 litre beer tower at 4.9% alcohol would be equivalent to 15 small bottles of Vailima beer, or 19.5 standard drinks. Not surprisingly, concerns that beer towers could increase alcohol consumption and irresponsible drinking may be justified, as would be concerns that staff and consumers alike are less likely to be able to monitor the consumption of alcohol and level of intoxication from alcohol being served from them.

RECOMMENDATIONS

38. The legislation should provide that the standard of serving size of alcohol should be measured as being equal to 10 grams of pure alcohol despite the container size or alcohol type. Labels on alcoholic beverages should be required to indicate how many standard drinks it contains based on this measurement.

39. The relevant government agencies (such as Ministry of Health (**MOH**) and the Ministry of Police (**Police**)) should work collaboratively to provide public awareness programs about standard serving sizes so that consumers can work out

how much alcohol is being consumed and drink more responsibly.

40. The sale or supply of beer towers and cocktail jugs should be restricted so that it is not sold or supplied after a certain time (for example past 8.00pm) and that the licensee (and employees) should be required to monitor the consumption of alcohol and level of intoxication from patrons being served towers and cocktail jugs.

Part 4: Reducing Demand of Alcohol through Pricing: Taxation and Minimum Price

A. Introduction

249. The sale of cheap alcohol and its impact on the community was raised by Justice Nelson as requiring review. Justice Nelson remarked in *Police v Mase*²⁷⁰ on the number of offences before the courts involving consumption of cheap alcohol, with the majority of cases involving spirits such as the large plastic bottle of vodka sold cheap at retail stores. Such offending ranged from one end of the spectrum such as traffic accidents to the other end such as murder.

250. Pricing is a significant factor that affects alcohol consumption, although other relevant factors include age, income and drinking habits of consumers. Based on the law of demand, the increase in the price of alcohol is expected to lower alcohol consumption and thereby lower alcohol related harms. Similarly, a decrease in the price of alcohol is expected to result in higher consumption and higher alcohol related harms.

251. It has been suggested by research carried out in other jurisdictions, although limited, that raising the minimum price of the cheapest beverages may be effective in influencing heavy drinkers and reducing harm resulting from alcohol.²⁷¹

252. The most common form of pricing measure that governments have long used to reduce alcohol related harm has been the setting of custom tariffs on alcohol imports and excise duties on domestic production.²⁷² The imposition of excise tax is a measure that has been used by Samoa over the last 30 years to reduce the affordability of alcohol. This part provides a brief explanation on alcohol taxation in Samoa, the excise tax scheme and the cost and benefits of it.

²⁷⁰ *Police v Mase* [2010] WSSC138

<<http://www.pacii.org/cgibin/sinodisp/ws/cases/WSSC/2010/138.html?stem=&synonyms=&query=POLICE%20V%20MASE>>.

²⁷¹ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010) at 295.

²⁷² *Ibid*, at 289.

253. In some countries, minimum pricing schemes have been established for alcohol beverages. Samoa has never imposed a minimum pricing scheme, although this also will be discussed in this part.

B. Excise Tax

Samoa

254. The alcohol taxation system in Samoa is based on 3 main types of taxes imposed and collected by the MfR for imported and locally manufactured goods. These include:

- a) Value added goods and services tax (**VAGST**) of 15% which is applied on most goods supplied in Samoa by a registered business.²⁷³
- b) Import duty which is imposed on all products imported in Samoa including imported alcohol products.²⁷⁴
- c) Excise Tax which is imposed on excisable goods including all alcohol products, as well as imported and locally manufactured alcohol.

255. Excise tax was initially introduced in 1984 under the *Excise Tax (Import Administration) Act 1984* and *Excise Tax (Domestic Administration) Act 1984* and the *Excise Tax Rates Act 1984*. Its introduction was primarily as an additional source of government revenue to address the social, health and environmental impacts of certain consumer goods, most commonly alcohol and tobacco products. Furthermore, revenue collected was used to finance the continued government deficit in the face of shrinking import duties and VAGST collections due to weak consumer demand²⁷⁵ and to support government efforts to boost and sustain growth through various development projects, particularly road infrastructure and building²⁷⁶.

256. Excisable goods are listed in the Schedule to the *Excise Tax Rates Act 1984*. Aside from alcohol, these include tobacco, soft drinks, motor vehicles, and fuel and petroleum products. Excise tax is not imposed on home-brew and sacramental wines. Excise tax is also imposed on locally manufactured liquor products after their

²⁷³ *Value Added Goods and Services Tax Amendment Act 2006* (Samoa), s 4; Ministry for Revenue, [VAGST do you need to Register, <http://www.revenue.gov.ws/images/images-backup/images/ir-30%20eng.pdf>](http://www.revenue.gov.ws/images/images-backup/images/ir-30%20eng.pdf)

²⁷⁴ Information provided by the Ministry of Finance and Revenue Board (23 June 2015); See Schedule to *Excise Tax Rate Act 1984* applies to both the importation and domestic production of excisable goods. Therefore, indicating a single excise rate that applies to both import and domestic production; See Ministry for Revenue, *Concessionary Treatment of Excise Tax on Domestic Manufacture of Spirit-based Ready-To-Drink Alcohol Beverages (RTDs) Issues Paper* (2014), pp. 1- 8.

²⁷⁵ Central Bank of Samoa, *Monetary Policy Statement for the Financial Year 2009/2010* p. 8.

²⁷⁶ Central Bank of Samoa, *Annual Report for the Financial Year July 2011 – June 2012* p. 8.

production and before their removal from the place of manufacture.²⁷⁷ Excise tax is also imposed on liquor products that are imported into Samoa before the goods are cleared from customs control.²⁷⁸

257. Excise tax rates on alcohol are determined in accordance with the type of alcohol and the percentage or content of alcohol in the product.²⁷⁹ Recent increases to excise tax rates for alcohol products in 2015, increased the excise tax rate for all alcohol products by 6.5% from 2012. The table below sets out the excise tax rates in 2012 and the existing excise rates.

Table 8: Excise Tax Rates 2012 and 2015

Beverage	Strength (%) Alcohol by volume (ABV)	Excise Rate 2012 ²⁸⁰	Excise Rate 2015 ²⁸¹
Beer	3% or less ABV	\$2.64 per litre	\$2.81 per litre
Other Beer	3% or more ABV	\$2.64 per litre	\$2.81 per litre
Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and non-alcoholic beverages)	15% or less ABV	\$44.00 per litre	\$46.86 per litre
Spirits (including spirit-based RTDs) (Obtained by Distilling Grape, Whiskies, Rum and Tafia, Liqueurs and cordials)	30% or less ABV	\$11.00 per litre	\$11.72 per litre
	> 30% but <57.12% ABV	\$17.60 per litre	\$18.74 per litre
	≥57.12% ABV	\$35.20 per litre	\$37.49 per litre
Spirits (including spirit-based RTDs) -Gin and Geneva -Vodka	30% or less ABV	\$10.00 per litre	\$10.65 per litre
	> 30% but <57.12% ABV	\$17.60 per litre	\$18.74 per litre
	≥57.12% ABV	\$35.20 per litre	\$37.49 per litre

²⁷⁷ Information provided by Solia Tanuvasa Kalolo, ACEO Client Services, Ministry for Revenue (5th May 2015).

²⁷⁸ Ibid.

²⁷⁹ Excise Tax Rates Act 1984 (Samoa), Schedule.

²⁸⁰ Excise Tax Rate Amendment Act 2012.

²⁸¹ Excise rate tax 2015 information obtained from data received from Ministry for Revenue in June-July 2015.

Table 9 Spirits Excise Tax Rates for 1998-2015

Year	Alcohol Volume ≤30% Excise	Alcohol Volume >30% but <57.12%	Alcohol Volume ≥ ≥57.12%
1998	\$7.50	\$12.00	\$24.00
2006	\$9.08	\$14.52	\$29.04
2008	\$10.00	\$16.00	\$32.00
2012	\$11.00	\$17.60	\$35.20
2015	\$11.72	\$18.74	\$37.49

New Zealand

258. According to the New Zealand Law Commission Report the primary purpose for the imposition of excise tax in New Zealand was to minimise alcohol related harm by raising alcohol prices and reducing consumption and therefore harms.²⁸² Advice received by the Commission concluded that ‘in excess of 67%’ of all alcohol in New Zealand is consumed at harmful or hazardous levels.²⁸³ According to the report, excise tax was also introduced to pay for the net fiscal costs on the government for the external alcohol-related harms.²⁸⁴

259. In New Zealand, excise tax is imposed under the *Customs and Excise Act 1996*. Specific goods manufactured in New Zealand including alcohol, tobacco and fuel are all as excisable goods.²⁸⁵ Manufactures of excisable goods (such as alcohol products excluding home brew) must do so in a licensed manufacturing area called Customs Controlled Area which is collected by the New Zealand Customs Service.²⁸⁶

260. The calculation of excise tax in New Zealand is based on a litre of alcohol basis and on an actual content basis depending on the beverage types and alcohol content.²⁸⁷

²⁸² New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 166.

²⁸³ Marsden Jacob Associates, “The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework”, (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 21. The estimate of 67 % was viewed as conservative.

²⁸⁴ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 166.

²⁸⁵ New Zealand Customs, *Excise and Excise-equivalent Duties Table – effective from 1 July 2015* <<http://www.customs.govt.nz/news/resources/tariff/theworkingtariiffdocument/Documents/Excise%20and%20Excise-equivalent%20duties%20table.pdf>>.

²⁸⁶ *Customs and Excise Act 1996* (New Zealand), ss 10, 68, 68B.

²⁸⁷ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 166.

Submissions

261. A total of 18 submissions were received from the Upolu public in relation to alcohol taxation and pricing. The general consensus from the Upolu public including the Youth Focus Group is that the price of alcohol should be increased to discourage consumers from purchasing alcohol in excess, and that if the price of alcohol is set high enough it would effectively reduce consumer demand. Many members of the public supported the imposition of higher taxes on all alcoholic beverages to reduce demand, and a similar view was expressed by representatives from the Samoa National Youth Council (**SNYC**).
262. An alternative view expressed by Samoa Breweries Ltd was that improved enforcement of current laws and policies would probably act as a stronger deterrent for controlling alcohol related problems as opposed to price increases. This was also echoed by many members of the public and business owners.
263. Retail business owners indicated that alcohol (like cigarettes) was a very popular and quick selling item and that any significant increases in prices due to hikes in excise tax would affect the sale of one of their most popular commodities and subsequently affect their small businesses. Some of the alcohol manufacturers indicated that a sudden increase in excise tax had a significant impact on carrying on operations efficiently, and more structured and consistent excise tax increases was preferred.
264. It was also suggested by a member of the private sector that excise tax imposed on spirits with a high alcohol content required review, in order to deal with anomalies where a higher alcohol volume resulted in cheaper prices per volume of alcohol. He added that it would likely encourage manufacturers to produce beverages with alcohol strength above 30%, because it is cheaper to do so.

Analysis

265. Excise tax targets the cheapest forms of alcohol resulting in an increase in prices, and there is widespread evidence that an increase in excise tax and therefore prices is a highly effective policy measure.²⁸⁸ Many countries support the use of excise tax to address alcohol-related problems and to compensate for the social costs of alcohol-related harm.²⁸⁹
266. Research indicates that heavy drinkers and teenagers preferentially choose to buy cheap forms of alcohol and therefore, reduction in consumption is likely to be

²⁸⁸ Marsden Jacob Associates, "The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework", (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at p. 2.

²⁸⁹ World Health Organization, *WHO Expert Committee on Problems Related to Alcohol Consumption* http://www.who.int/substance_abuse/expert_committee_alcohol_trs944.pdf, at 28.

greatest for these problem groups.²⁹⁰ Young drinkers have a tendency to have small incomes and studies show that while there is variability in the responsiveness of young people to price changes, the overall weight of evidence would indicate young people will reduce their consumption as a result of a price increase.²⁹¹

“ . . . there is concern the easy accessibility of cheap alcohol is resulting in more alcohol being consumed, with people drinking more often or drinking larger amounts. . . There is lasting evidence to suggest that young drinkers, binge drinkers and harmful drinkers tend to choose cheaper products”.²⁹²

267. In broad terms, research suggests all drinkers reduce their consumption to some degree in response to price increases. For example, moderate drinkers are most responsive to price changes in alcohol, while heavier drinkers are somewhat less responsive to price changes²⁹³ and seem more willing to substitute between beverages when one price of one type of alcohol product changes compared with another.²⁹⁴

268. In relation the rate of excise tax imposed, some anomalies can be identified in Table 8. Firstly, ‘beer’ has an alcohol content of 3% or less, whilst ‘other beer’ has an alcohol content of 3% or more. However both are taxed at the same rate of \$2.81 each despite the different strengths. Secondly, it is cheaper to purchase beverages with higher alcohol content, as the increase of the corresponding excise tax per litre does not increase as much. For example, spirits such as vodka, rum or whisky with alcohol content of 30% or less are taxed at the rate of \$11.72 per litre (bracket 1), whilst spirits with alcohol content of over 30% to under 57.12% are taxed at the rate of \$18.74 per litre (bracket 2), and spirits of 57.12% or more alcohol content are taxed on a per litre basis at \$37.49 (bracket 3).

269. Based on these figures, the increase in the alcohol content in each tax bracket is significantly higher than the corresponding increase in excise tax rates in each tax bracket. Therefore, if spirits with the maximum alcohol content of 30% in bracket 1 with an excise tax rate of \$11.72 per litre is compared with spirits with the maximum alcohol content of 57.12% in bracket 2 taxed at \$18.74 per litre, there is only about a 60% increase in excise tax for up to 90% increase in alcohol content. It is therefore cheaper to purchase beverages with higher alcohol content, which may increase the demand for alcoholic beverages with higher alcohol content.

270. It is proposed that an increase in alcohol content for example in relation to spirits should result in an equivalent or similar percentage increase in the excise tax rate.

²⁹⁰ Marsden Jacob Associates, “The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework”, (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009), p. 2.

²⁹¹ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010), at 280-281.

²⁹² *Ibid*, at 273.

²⁹³ *Ibid*, at 285.

²⁹⁴ *Ibid*, at 280.

This may be achieved if the excise tax brackets are revised and the number of excise tax brackets increased (for example so that there are 4 or 5 instead of 3). The percentage of increase of the excise tax should correspond with the percentage of increase of the content of alcohol in an alcoholic beverage.

271. The decision on whether to increase excise taxes and by how much is carried out by MfR in consultation with the MOF. According to the representative of MOF, excise tax per litre was normally expected to be increased every two years. However Tables 8 and 9 shows an irregular increase in excise tax for beer and spirits from 1998, which may be attributed to the deficit gap being filled.
272. In addition, irregular increases in excise tax would likely impact on manufacturers of alcohol which in the normal scheme of business would need to plan and forecast sales and growth of the business. Such forecasts would require looking at growth rates of previous years to predict revenue in the coming months. For this reason, imposing excise tax in a more structured and consistent way so that the level of increase is more consistent would be preferred by such businesses.
273. Relevant considerations in the imposition of excise tax in order to raise alcohol prices and reduce consumption and therefore harm, is the potential impact on businesses. For example, alcohol manufacturers (in regard to feasibility to operate efficiently) and retail store owners (where alcohol is a popular commodity and sales will drop with an increase in price), as well as the potential for increased production and consumption of illegal home brew. Further consideration should also be given to the effective implementation of other recommendations in the report, so that there is less reliance on continuously increasing excise taxes to reduce alcohol-related harms.

C. Minimum Pricing Scheme

274. A minimum price (or floor) price sets a minimum price per standard drink or unit of alcohol at which alcohol beverages must be sold.²⁹⁵ Minimum pricing is not a taxation measure, but rather a regulatory measure used to increase the price of the cheapest alcohol products and prevent discounting of cheaper products.²⁹⁶

Samoa

275. The *Fair Trading Act 1998* provides for the protection of consumers and other related purposes. The FTA establishes a Prices Board which is empowered under the Act to make General and Specific Price Orders for any goods, including

²⁹⁵ Australian National Preventative Health Agency, *Exploring the Public Interest Case for a Minimum (Floor) Price for Alcohol* (2014)

<<http://health.gov.au/internet/anpha/publishing.nsf/Content/minimum-price-final-report>>.

²⁹⁶ Ibid.

alcohol.²⁹⁷General Price Orders (**GPO**) are where the maximum or minimum or actual price of goods or services is fixed (except crops grown in Samoa), if the Prices Board considers it expedient in the eyes of the public.²⁹⁸This may relate to the sale of goods at ex-factory, wholesale or retail prices. Similarly Special Price Orders relating to the sale of goods can be made.²⁹⁹Selling or offering for sale goods or services in breach of a relevant price order is an offence.³⁰⁰

276. According to the Fair Trading & Codex Alimentarius Division (**FTCD**) of the Ministry of Commerce Industry and Labour (**MCIL**), price controls have only been used to set maximum prices for goods and services in the GPO list, but never minimum prices. These GPOs are scrutinized every three months by the Price Board issuing new GPOs every quarter.

277. It was noted from discussions with the FTCD, that the items listed on the GPO were all items that received a high number of complaints as a result of high retail prices. Beer is one such commodity where a high number of complaints received relating to profiteering resulted in its inclusion in the GPO list to make it more affordable.

New Zealand

278. Advice was provided to Government on the effectiveness of increasing the price of alcohol through imposing a minimum price regime as compared to an increase in excise tax, including recommendations against setting a minimum price.³⁰¹ Subsequently the New Zealand government announced for a minimum pricing regime not to be introduced (at least for the following 5 years) to allow the alcohol reforms to bed in and their impact assessed, including the development and implementation of Local Alcohol Policies.³⁰²

Australia

279. The Australian National Preventive Health Agency (**ANPHA**) was tasked by the Commonwealth Government of Australia to develop the concept of a public interest case for a minimum price of alcohol, to discourage harmful consumption and

²⁹⁷ *Fair Trading Act 1998* (Samoa), s 49. The Price Board consists of the Minister (Chair) and Chief Executive Officers of Ministry of Commerce Industry and Labour, Comptroller of Customs, Commissioner of Revenue, President of PSA and 3 appointed members.

²⁹⁸ *Fair Trading Act 1998* (Samoa), s 55.

²⁹⁹ *Ibid*, s 56.

³⁰⁰ *Ibid*, ss 35,62.

³⁰¹ Ministry of Justice, *Briefing to Minister Hon Judith Collins Investigating the Effectiveness of a Minimum Price Regime for Alcohol* (16 April 2014).

³⁰² The New Zealand government made changes to its alcohol legislation, through the *Sale and Supply of Alcohol Act* which was passed in 2012.

promote safer consumption.³⁰³ The ANPHA recommended that a minimum price for alcohol should not be introduced nationally at that time (i.e. 2012). The report also raised concerns that a minimum price would result in monopoly profits for the alcohol industry. This was because Australia's alcohol distribution and retail systems is fully private, and therefore a regulated minimum price increase (as distinct from a tax) would lead to profit increases flowing to the private sector from the monopoly rents created.³⁰⁴ The agency was concerned that there was a lack of adequate data to analyse the impact of a minimum price at a national level.³⁰⁵

280. ANPHA also noted the Australian Government has the full power to impose or easily change excises tax, unlike some overseas jurisdictions in which minimum floor prices for alcohol have been implemented.³⁰⁶

Scotland

281. In Scotland the *Alcohol (Minimum Pricing) (Scotland) Act 2012* introduces a mandatory condition on licences that alcohol must not be sold on a licensed premises at a price below its minimum price.³⁰⁷ The duration for minimum pricing provisions is provided at 6 years but maybe continued.³⁰⁸ Through this legislation, a competitive alcohol market controls the minimum price regime.

Analysis

282. Economic analyses and natural experiments from a range of countries have consistently demonstrated that increasing the price of alcohol will lead to a reduction in overall consumption.³⁰⁹ Benefits of this reduced consumption include reductions in crime and violence, alcohol-related disease and productivity losses.³¹⁰

283. Minimum pricing is potentially an effective instrument for reducing harmful alcohol consumption and its associated harms.³¹¹ This is based on the view that an increase in the price of alcohol could result in a decrease in overall consumption.

³⁰³ Australian National Preventative Health Agency, *Exploring the Public Interest Case for a Minimum (Floor) Price for Alcohol* (May 2013) <<http://health.gov.au/internet/anpha/publishing.nsf/Content/minimum-price-final-report>>.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ *Alcohol (Minimum Pricing) Act 2012* (Scotland), s 1.

³⁰⁸ Ibid.

³⁰⁹ Australian National Preventative Health Agency *Exploring the Public Interest Case for a Minimum (Floor) Price for Alcohol* (May 2013) <<http://health.gov.au/internet/anpha/publishing.nsf/Content/minimum-price-final-report>>.

³¹⁰ Ibid.

³¹¹ Ibid.

284. The advantages and disadvantages of a minimum price compared to excise tax increases were analyzed by the New Zealand Ministry of Justice on the effectiveness of increasing the price of alcohol by imposing a minimum price as compared to an increase in excise taxes.³¹²The impacts of imposing excise tax or setting a minimum price appear similar in that there would likely be overall reduction in consumption by young people due to price increases. However a distinguishing factor is that Government revenue increases as a result of excise, where private sector profit increases as a result of minimum price fixing. The impacts shown in Table 10 below appear equally relevant in the context of Samoa.³¹³

Table 10: Impacts on Setting Minimum Price or Excise Tax

Impacts of setting a minimum pricing on alcohol	Impacts of excise tax on alcohol
<ul style="list-style-type: none"> - Reductions in consumption by young drinkers resulting in reductions in alcohol related harms by this group - Low income families are less likely to consume alcohol, but if they do, are more likely to consume low price products as their budget will be negatively impacted if they continue consuming after the imposition of a minimum price - Retailers primarily selling low cost alcohol would be negatively affected - Demand for cheap alcohol will fall impacting on those who produce and supply in this market, and average costs of production could increase which may squeeze some producers out of the market - Government revenue will reduce as demand for alcohol lessens 	<ul style="list-style-type: none"> - The effects of an increase in excise tax on young drinkers would be similar to minimum pricing, however there would be slighter greater reductions in consumption by this group due to larger increases in price and therefore greater reductions in alcohol related harms by this group - Low income families are less likely to consume alcohol due to higher prices, which is a similar impact to minimum pricing. - The increase in revenue would be primarily gained by alcohol retailers, although retailers selling low cost alcohol would be negatively affected. - If excise duties are not passed onto consumers, retailers may force producers to absorb the excise costs reducing producer margins and profitability and pushing some producers out of the market – although in the long run, excise increases should be passed onto consumers.

³¹² Ministry of Justice, *Briefing to Minister Hon Judith Collins Investigating the Effectiveness of a Minimum Price Regime for Alcohol* (16 April 2014), pp. 9-10.

³¹³ Ibid.

	<ul style="list-style-type: none"> - Government revenue is expected to increase because of the increase in excise tax, which could help recover a significant portion of the costs harmful alcohol consumption poses on society.
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RECOMMENDATIONS

41. The price of cheap alcohol should be increased through increased excise tax to discourage consumers from purchasing cheap alcohol in excess. However, care should be taken so that it does not become unsustainable for businesses to operate. For example, adequate and thorough research and analysis should be carried out by the relevant government agencies to ensure the imposition of excise tax on alcohol is not unfeasible for alcohol manufacturers to continue their operation.
42. The percentage of increase of excise tax of a particular tax bracket should correspond with the percentage of increase of the content of alcohol in an alcoholic beverage for that tax bracket. In other words, an increase in alcohol content for example in relation to spirits or 'other beer' should result in an equivalent or similar percentage increase in the excise tax rate.
43. The excise tax brackets should be revised and an increase in the number of excise tax brackets should be considered. For example, the first tax bracket could include spirits with alcohol strength of under 10%, the second alcohol bracket could include spirits of alcohol strength between 10% and under 20%. Similar intervals could be inserted to the current tax bracket between 30% and 57.12%.
44. The excise tax on low volume alcohol (for example, light beer) should be reduced to encourage production of low strength/ volume alcohol.
45. Excise tax on ready to drink beverages (**RTDs**) should remain high due to its appeal to younger people, as the overall weight of evidence indicates young people will reduce their consumption as a result of a price increase.
46. Adequate time (for example, 3 years from any legislative reforms) should be allowed for alcohol reforms to be implemented and enforced, and current laws and policies improve. Such reforms if implemented effectively may lessen Government's reliance on very high excise tax to reduce alcohol-related harms.
47. The Ministry of Commerce Industry and Labour (**MCIL**) should monitor overseas

developments on minimum pricing schemes to inform consideration of a minimum price regime as current legislation enables minimum prices to be set but it has never been done.

48. Alcohol should be removed from the General Price Order (**GPO**) which sets a maximum price in order to make alcohol more affordable.

Part 5: Advertising and Sponsorship

A. Advertising, Promotions and Sponsorship

285. Advertising informs consumers about the range of goods and services which are available in the market place, and assists many consumers with their decisions on what to buy and what is available. Consequently, there is a need to ensure that rights of consumers are protected.

Samoa

Advertising and promotion

286. Advertising and promotion of alcohol in Samoa is not regulated by statute. A range of media such as television, radio broadcasting, cinemas, print, billboards and internet are used by the alcohol industry in advertisements, promotions and advertising sponsorship. There are no restrictions, for example on times when advertisements of alcohol can be televised or broadcast, which often occurs at a time when minors would normally be part of the audience. Billboards and posters advertising alcohol are sometimes located very near schools and at bus stops adjacent to schools used by primary, intermediate and college students.

287. There are a range of examples of recent promotions in 2015 and 2016 from alcohol beverage companies which include:

- Barrel Night in October 2015, advertised about 8 participating bars where patrons could drink as much free draught from a particular alcohol beverage company as they wanted from 5.00 to 6.00pm from Wednesdays to Fridays each week. Any purchase of particular alcohol beverage or product after that time would entitle the purchaser to raffle tickets drawn throughout the night to win prizes which include crates of beer.
- Halloween party in October 2015 in one of the nightclubs offering free draught beer from a particular alcohol beverage company from 6.00-7.00pm, and very cheap beer towers and prizes for costumes.

- Home Fest in June 2015 was sponsored by an alcohol beverage company and appeared to be promoted as an activity for families.
- Fundraising events where a beverage company offered free beer for the entire evening.

288. The sale of alcohol raises issues similar to cigarettes and other tobacco-based products, especially in relation to the risks for the public health. However, in contrast the marketing, advertising, sale, promotion and distribution of tobacco products whether directly or through the sponsorship of other products, services or events is heavily regulated under the *Tobacco Control Act 2008*.³¹⁴ Under this Act, various controls are imposed aimed at reducing the social approval of the use of tobacco, particularly among young people.³¹⁵ The advertising of tobacco is banned in books and newspapers printed in Samoa,³¹⁶ and if printed outside Samoa it is prohibited if intended for sale or distribution primarily in Samoa.³¹⁷ Furthermore, for any radio or television transmission originating outside Samoa, it is prohibited if targeted primarily at an audience within Samoa.³¹⁸

289. The *Tobacco Control Act 2008* requires the display of any tobacco product for sale to comply with prescribed requirements.³¹⁹ Price notices must also comply with any prescribed requirements in relation to their size, colour, content, number and health message.³²⁰ Furthermore, unlike alcohol products a retailer of tobacco products cannot display on the exterior of the retailers place of business the trade mark of a tobacco product or the company name of a tobacco product manufacturer.³²¹

Sponsorship

290. Sponsorship by the alcohol industry is also not regulated in Samoa. There are only few companies in Samoa that are often heavily relied upon to sponsor major events such as sporting and music events, which includes the large alcohol beverage companies. In contrast the use of tobacco brands in relation to sponsored events to promote and identify any other article, service, activity or events is prohibited under the *Tobacco Control Act 2008*.³²²

291. Examples of recent type of events with alcohol related sponsorship include the following illustrating the diversity of sponsorship activities:

³¹⁴ *Tobacco Control Act 2008* (Samoa), Long Title.

³¹⁵ *Ibid*, s 16.

³¹⁶ *Ibid*, s 17(1).

³¹⁷ *Ibid*, s 17(3).

³¹⁸ *Ibid*.

³¹⁹ *Ibid*, s 18(a).

³²⁰ *Ibid*, s 18(b).

³²¹ *Ibid*, s 18(c).

³²² *Ibid*, s 16.

- Manu Samoa versus All Blacks game in June 2015;
- Marist Samoa 7s tournament (yearly);
- Miss Samoa Pageant;
- College fundraising events.

New Zealand

Advertising and Promotion

292. In New Zealand, the advertising of alcohol on television and radio was regulated by statute until 1980.³²³ Currently New Zealand has a voluntary self-regulatory system with an industry-based body called the Advertising Standards Authority (**ASA NZ**) representing advertisers to maintain advertising standards so it is not misleading or deceptive.³²⁴

293. All alcohol advertising and promotions by companies and enterprises connected with the alcoholic drinks industry in New Zealand (whether as producers, importers, wholesalers, distributors or retailers) are required to adhere to the principles and guidelines set out in 'ASA Code for Advertising and Promotion of Alcohol' (**ASA Code**).³²⁵ The ASA Code covers all pre-packaged and bulk alcoholic drinks with an alcoholic strength above 1.15% alcohol by volume (**ABV**) which are advertised and promoted for sale and consumption in New Zealand.³²⁶

294. The ASA Code is designed to ensure that alcohol advertising and promotion is consistent with the need for responsibility and moderation in merchandising and consumption,³²⁷ and does not encourage consumption by minors. Particular care is also required in the advertising and promotion of products likely to have strong appeal to young adults over the legal purchase age.³²⁸

295. Guidelines on how the principles are to be interpreted and applied are also included in the ASA Code. For example, alcohol advertising and promotions shall not encourage irresponsible drinking or be directed at minors, or be shown on television between 6.00 am and 8.30 pm. It also should not emphasise a product's alcoholic strength except where the product is a light (or lite) alcohol product.

³²³ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010), at 322.

³²⁴ The Advertising Standards Complaints Board and the Advertising Standards Complaints Appeal Board both have a public member majority and a public member Chair. The ASA membership has no involvement in the work of the Boards. The Complaints Board has nine members, five public and four industry and meets fortnightly. The Appeal Board has three members, two public and one industry and meets on demand. See <<http://www.asa.co.nz/>>.

³²⁵ Advertising Standards Authority, *Code for Advertising Liquors* <http://www.asa.co.nz/code_liquor.php>.

³²⁶ Advertising Standards Authority, *Code for Advertising and Promotion of Alcohol* <<http://www.asa.co.nz/codes/codes/code-for-advertising-and-promotion-of-alcohol/>> Principle 4.

³²⁷ *Ibid*, Principle 1 and 2.

³²⁸ *Ibid*, Principle 3.

296. Irresponsible promotion or advertisement of alcohol is an offence under *the Sale and Supply of Alcohol 2012*.³²⁹ This includes where advertisers and promoters do anything thing that is likely to encourage people to consume alcohol excessively, or promotes or advertise discounts on alcohol where the price is 25% or more below the price at which the alcohol is ordinarily sold (in certain circumstances), and certain promotions where alcohol that is free of charge. A person convicted of such offence is liable to a fine of up to \$10,000.00, whilst a licensee convicted is liable to the same fine but can also have the licence suspended for up to 7 days.³³⁰

297. The New Zealand Law Commission supported the ban or restriction on all advertising of alcohol in all media. Some of the reasons provided were that advertisements normalised and glamorised drinking and sustained New Zealand's current drinking culture, and that clever advertising created a false impression and promoted the sale of alcohol whilst ignoring the dangers of the drug.³³¹ The contrary view by producers and retailers and people involved in regulation, suggesting that the purpose of alcohol advertising is to influence consumers to choose particular brands when they are buying alcohol, but not to increase total consumption, was also noted.³³²

298. The New Zealand Law Commission noted in its report:

*“. . . we have come to the view that greater controls are needed on advertising, sponsorship and other promotion of alcohol. These controls are in terms of the content of advertising, the levels of exposure to advertising and sponsorship messages, and inappropriate sales promotions. We now believe there is a strong argument that a self-regulatory body for alcohol advertising is inappropriate.”*³³³

Sponsorship

299. In New Zealand, alcohol sponsorship is common in sports and the arts. Guidelines on sponsorship and sponsorship advertisements include that such advertisements should not portray the consumption of alcohol or be broadcast during programs intended for minors, and should only in a subordinate way portray the sponsor's name, brand or logo.³³⁴ In addition alcohol sponsorship is not permitted where people aged under 18 are likely to comprise more than 25% of the participants, audiences or spectators, and should not feature alcohol branding on any promotional material distributed to minors.³³⁵

³²⁹ *Sale and Supply of Alcohol 2012* (New Zealand), s 237.

³³⁰ *Ibid.*

³³¹ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 323.

³³² *Ibid.*, at 324.

³³³ *Ibid.*, at 348.

³³⁴ *Ibid.*, at 342.

³³⁵ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 342.

300. Complaints by the public of the breach of any of the ASA Codes are received by the Advertising Standards Complaints Board (**Complaints Board**) which consists of 5 public members and 4 industry members who adjudicate on complaints and reports to the ASA on any aspect of advertising which is of cause for concern. If the complaint is upheld then the advertiser, advertising agency and media are requested to withdraw the offending advertisement immediately.³³⁶ Appeals from decisions of the Complaints Board are made to the Advertising Standards Complaints Appeal Board.³³⁷

Australia

301. Australia's Alcohol Beverages Advertising Code (**ABAC**) Scheme regulating alcohol advertising came into operation on 1 July 1998. The ABAC Scheme has a co-regulated system of alcohol advertising funded by industry where advertising guidelines were negotiated with government, although complaints are handled independently.³³⁸

302. The 'ABAC Responsible Alcohol Marketing Code' (**ABAC Alcohol Code**) outlines the standards for alcohol advertising in Australia (as well as guidelines to assist in its interpretation) and is designed to ensure that alcohol is marketed in a responsible manner. The standards provide for the need for responsible portrayal of alcohol beverages and its effects, and responsibility towards minors.³³⁹ It applies to print, billboard, internet, cinema, television, producer point of sale, radio and other marketing, and covers the content of the marketing, not its placement. It also applies to alcohol product naming and packaging, but does not apply to sponsorship.³⁴⁰

303. Consumer complaints are lodged through the Advertising Standards Bureau which is an independent authority and can be lodged on a confidential basis.³⁴¹ Complaints of breaches against ABAC are adjudicated by the ABAC Adjudication Panel which consists of 5 members independent of the alcohol industry. If the complaint is upheld, the marketer or its agency must, in most cases, modify, remove or discontinue the marketing within 5 business days.³⁴²

³³⁶ Advertising Standards Authority, *Complaints procedure* <<http://www.asa.co.nz/complaints/complaints-process/>>.

³³⁷ Ibid.

³³⁸ Alcohol Beverages Advertising Code Scheme, *About the ABAC Scheme* <http://www.abac.org.au/about/>.

³³⁹ ABAC Responsible Alcohol Marketing Code, standard 3(a)(b)(c).

³⁴⁰ ABAC Responsible Alcohol Marketing Code, <<http://www.abac.org.au/wp-content/uploads/2014/06/ABAC-Responsible-Alcohol-Marketing-Code-30-4-14.pdf>>, standard 2(a).

³⁴¹ Alcohol Beverages Advertising Code Scheme, *Lodging Complaints* <<http://www.abac.org.au/lodging-complaints/>>.

³⁴² Alcohol Beverages Advertising Code Scheme, *Complaints procedure* <http://www.asa.co.nz/complaints/complaints-process/>.

United Kingdom

304. Non-broadcast advertising in the UK is self-regulated.³⁴³ Broadcast advertising however is described as self-regulation within a co-regulatory framework, in that there is some oversight by Government of self-regulation by industry.³⁴⁴
305. The Advertising Standards Authority in the UK (**ASA UK**) is an independent regulator of advertising across all media that apply Advertising Codes. They act on complaints and proactively check the media to take action against misleading, harmful or offensive advertisements. If an advertisement is judged to be in breach of an Advertising Codes, it must be withdrawn or amended and the advertiser must not use the approach again.³⁴⁵
306. The UK advertising rules for alcohol are amongst the strictest in the world and apply across all media, placing an emphasis on protecting young people. Alcohol advertisements must not be directed at people under 18 or contain anything that is likely to appeal to them by reflecting youth culture or by linking alcohol with irresponsible behaviour, social success or sexual attractiveness.³⁴⁶

France

307. A brief discussion on France's laws is included in this report as wine is commonly viewed as the heart of French culture. France has very restrictive laws controlling the advertising of alcohol. Unlike many developed countries that rely on self-regulation or voluntary codes of practice, the Loi Evin was passed in France in 1991 applying to all drinks over 1.2 per cent alcohol by volume considered as alcoholic beverages.³⁴⁷
308. Articles in the Loi Evin relating to advertising alcohol include:³⁴⁸
- a) places and media where advertising is authorised are defined;
 - b) no advertising should be targeted at young people;
 - c) no advertising is allowed on television or in cinemas;
 - d) no sponsorship of cultural or sport events is permitted;
 - e) advertising is permitted only in the press for adults, on billboards, on radio channels (under precise conditions), at special events or places such

³⁴³ Self-regulation means that the industry has voluntarily established and paid for its own regulation.

³⁴⁴ United Kingdom Advertising Standards Authority, *About regulation* <<https://www.asa.org.uk/About-ASA/About-regulation.aspx>>.

³⁴⁵ Ibid.

³⁴⁶ Committees of Advertising Practice *Alcohol Advertising Code* <<https://www.cap.org.uk/Advertising-Codes/Broadcast/Codeltem.aspx?cscid={dafa8794-505f-4d15-ba5d-d0b8cf1507e7}#.Vwx0cZx95hF>>.

³⁴⁷ Institute of Alcohol Studies *The 'Loi Evin': a French exception* <<http://www.ias.org.uk/What-we-do/Publication-archive/The-Globe/Issue-2-2004-amp-1-2004/The-Loi-Evin-a-French-exception.aspx>>.

³⁴⁸ Ibid.

as wine fairs, wine museums. When advertising is permitted, its content is controlled;

- f) messages and images should refer only to the qualities of the products such as degree, origin, composition, means of production, patterns of consumption;
- g) a health message must be included on each advertisement to the effect that 'alcohol abuse is dangerous for health.

309. Significant penalties for infringement of laws around the advertising of alcohol have helped ensure the law is adhered to.³⁴⁹

Submissions

310. The resounding majority of submissions were that there was a need for the regulation of alcohol advertising and promotion and there was strong support for national advertising standards that all businesses within the alcohol industry would be required to adhere to. Furthermore, it was suggested that an advertising complaints board should be established to monitor and enforce the standards, receive complaints from the public, determine the breach of standards and issue penalties.

311. Submissions in support of regulating alcohol advertising raised that many advertisements seemed to promote the consumption of alcohol and associated it with fun, parties and a sense of happiness, but failed to highlight the dangers of alcohol use. Furthermore, although the alcohol industry should retain its right to advertise its products, they should also include the negative impacts of excessive alcohol consumption. Some examples that were raised frequently during consultations was the practice of involving youth in alcohol advertisements and that it appeared to normalise alcohol consumption by youth and encourage youth drinking. Submissions raised concerns that as young people are vulnerable and highly impressionable and will be easily influenced by the advertising they are exposed to, appropriate regulations should be in place to prohibit youths featuring in alcohol advertisements and promotions.

312. Some members of the business community raised the negative impacts of advertising as being exaggerated, and that many advertisements do not condone nor encourage the excessive consumption of alcohol. Rather, the excessive consumption of alcohol is a personal choice by consumers than a decision influenced by advertising, and to prohibit or restrict alcohol advertisements would do little to influence the drinking culture in Samoa. Submitters added that the focus should be

³⁴⁹ Institute of Alcohol Studies *The 'Loi Evin': a French exception* <<http://www.ias.org.uk/What-we-do/Publication-archive/The-Globe/Issue-2-2004-amp-1-2004/The-Loi-Evin-a-French-exception.aspx>>.

shifted to promulgating more campaigns about the harmful effects of alcohol on all media platforms, led by the MOH, Police, Ministry of Women Community and Social Development (**MWCSD**) and other relevant agencies.

313. Many submissions raised the need for a time restriction on the airing of alcohol advertisements and promotions on television and radio programs, so that such advertisements did not feature during times where children and young people would normally be watching television. SBC suggested the imposition of a permitted time slot where alcohol advertising was allowed air time, for example from 8.00pm – 12.00am.
314. The SBC also suggested that self-regulation of advertisements by businesses, so that businesses voluntarily tailored their messages to encourage responsible drinking behaviour.
315. Submissions also touched on the need for more controls to be established around the use of alcohol sponsorships in Samoa, as alcohol related sponsorships appear to have become an omnipresent fixture in sporting events, charity events and social events in Samoa. It was suggested that alcohol related sponsorships should be prohibited in relation to sporting events, particularly school or interschool sporting tournaments with young participants. Furthermore, billboards, posters and other related images at sporting tournaments with young participants normalise and embed the idea of alcohol consumption by young people.
316. Other submissions raised the dangers of alcohol promotions that include serving free, unlimited alcohol during a certain time period. Many concerns were raised in relation to this type of promotion as it is noticeably becoming very popular in Samoa. Submissions raised that this type of promotion directly encourages binge drinking and is a dangerous promotional method. It has been raised that these types of promotions are currently going on unregulated and no effort has been made to place any controls on such promotions.

Analysis

317. The jurisdictions discussed above have regulated alcohol advertising and promotions in different ways and to varying degrees. The various systems adopted in the different jurisdictions include self-regulation, co-regulation, and comprehensive legislative restrictions. As Samoa has not yet established any guidelines or a formal body to regulate alcohol-related advertising, the comparable jurisdictions offer options that Samoa can explore and possibly implement in future.
318. One option for Samoa to consider is the self-regulatory approach currently used in New Zealand. The self-regulatory system replaced the previous system of legislative regulation. An industry based body (i.e. ASA NZ), representing advertisers,

agencies and the media handles all advertising complaints. The ASA NZ has devised advertising codes of practice for many types of advertisements that includes alcohol-related advertising. The ASA Code for Advertising and Promotion of Alcohol sets out guidelines and standards specifically for alcohol-related advertising in New Zealand.

319. It should be noted however that the New Zealand Law Commission in its report stated the view that there is strong argument that a self-regulatory body for alcohol advertising is inappropriate for New Zealand. It stated further that greater controls on advertising (in terms of content and exposure), sponsorship and other promotion of alcohol (in terms of sponsorship messages, and inappropriate sales promotion) is needed.
320. If adopted by Samoa, self-regulation would require all companies and enterprises within the alcohol industry, whether as manufacturers, importers, wholesalers, distributors or retailers, to establish an alliance, for example an Alcohol Advertising and Promotions Council (**Alcohol Council**), to handle all complaints. A code of uniform advertising standards would need to be devised. All complaints in relation to alcohol advertisement, promotion and sponsorship will be referred to the Alcohol Council to assess compliance with the code.
321. The benefits of a self-regulatory system include avoiding control and regulation by Government, therefore being more flexible. Moreover, complaints would be adjudicated by the Alcohol Council and thus more likely to be cost efficient avoiding both the legal costs and the lengthy process of a court case.
322. It may also encourage responsibility by the industry and help to maintain consumer confidence in advertising, by providing a level playing field amongst businesses so that all advertisers play by the same rules. However, there is the risk of bias in that standards imposed could lean in favour of the industry. Furthermore, it would need to be funded by the industry as a self-regulatory system would not obtain Government funding. The financial undertaking of establishing and running an industry based body would possibly deter some businesses in the alcohol industry from being involved.
323. It is noted however that a representative of a major alcohol manufacturer in Samoa indicated that they had previously attempted to discuss a self-regulatory system for advertising alcohol in Samoa with another major alcohol manufacturer, unfortunately with no success.
324. Co-regulation is another possible option for Samoa, where industry has in place a self-regulatory system, however Government would still have some control, and it can be legally enforced. Government involvement would perhaps compel a greater interest in participation from the businesses than the self-regulatory system. Co-regulation could be tailored as such to suit the needs of Samoa where the LCB takes

on additional functions, such as handling complaints in relation to alcohol advertisement, promotion and sponsorship to assess compliance with a code of practice for alcohol-related advertising. Such code of practice could similarly be developed by the LCB in consultation with all companies and enterprises connected within the alcohol industry, or developed by the alcohol industry negotiated with Government. The weaknesses of this system would be similar to those discussed in relation to the self-regulatory scheme discussed above.

325. Australia has developed a co-regulatory system where the codes are negotiated with government but all cases are assessed independently. Similar to New Zealand, Australia has also devised a Code that has established guidelines and standards that all alcohol-related advertising are required to adhere to.

326. A further option which appears feasible for Samoa is a legislative framework which places comprehensive restrictions on the promotion of alcohol and alcohol advertising. This could be similar to France's Loi Evin or Samoa's stance on tobacco, where marketing, advertising, sale, promotion and distribution of tobacco products whether directly or through the sponsorship of other products, services or events, is regulated.

327. In contrast to New Zealand and Australia, France has opted to heavily restrict all alcohol-related advertising in its legislation. The French system regulates all aspects of advertising from the content of advertising to the limited areas where advertisements may be permitted.

328. Samoa could follow the French system implementing a heavily regulated alcohol advertising system. This would be advantageous to Samoa given the persuasive influence alcohol advertising has on the public and most importantly on the young people of Samoa.

329. However, there are significant ramifications of adopting such a system. The French system may be seen to be a heavy handed response and one that completely ignores the commercial right by businesses to advertise their products. In Samoa, this may be an unfair penalising of businesses that are trying to promote their products. Furthermore, businesses may argue that advertising is not an avenue to promote the consumption of alcohol but rather to influence consumers' choice in particular brands when purchasing alcohol.³⁵⁰

330. The alcohol industry in Samoa is also one of the very visible and consistent sponsors of sporting and community groups and events which rely on the industry for their financial goodwill. The imposition of a heavily regulated system in Samoa

³⁵⁰ New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC 114, 2010), at 324.

could have the indirect consequence of negatively impacting these groups that rely on the financial and material support offered by alcohol sponsorships.

331. Samoa has not yet established a body that regulates alcohol advertising. New Zealand has established an advertising body with a general mandate that assesses complaints against all types of advertising. In contrast, Australia has established a specialist board, called the Adjudication Panel, to deal with complaints about alcohol-related advertisements. In Samoa, the LCB is the central body that deals with regulating the sale and supply of alcohol. As part of their mandate, the LCB deals with complaints made by the public against licensed premises. Their mandate does not yet specifically include monitoring alcohol-advertisements. However, given the nature of their work, it would perhaps make more sense to expand their mandate to include a function of assessing complaints rather than to form a specialist board.

RECOMMENDATIONS

49. Advertising and promotion of alcohol should be regulated particularly in relation to the content of advertising, youth exposure to advertising and sponsorship messages, and inappropriate sales promotions to ensure it is done responsibly and exposure to minors is minimised. Development of appropriate legislation should be lead by the Ministry responsible for regulation of alcohol in collaboration with other relevant Government agencies such as Ministry of Health (**MOH**), Ministry of Education Sports and Culture (**MESC**), Ministry of Police (**Police**) and Ministry of Women Community and Social Development (**MWCSD**). This should apply to all companies and enterprises connected with the alcohol industry in Samoa (whether as producers, importers, wholesalers, distributors or retailers). The legislation should include:

- a) defining places and media where advertising is authorised (for example, prohibition of advertising in the vicinity of schools);
- b) prohibiting targeting minors or trying appeal to them by linking alcohol with irresponsible behaviour and social success;
- c) prohibiting featuring youths on alcohol-related advertisements;
- d) setting out when advertising is prohibited (for example, prohibiting advertising on all forms of media during certain times when it is most likely to be exposed to young people, or in cinemas except for movies restricted to adults);
- e) controlling content of advertisements;

- f) requiring a health message must be included on each advertisement warning of the negative effects of alcohol abuse on a person's health.

50. Legislation should require that a person in breach should withdraw or amend the advertisement and must not use that approach again. Legislation should also provide for penalties for the infringement of laws around the advertising of alcohol such as fines.

51. The Ministry responsible for regulation of alcohol should develop national alcohol advertising and promotion standards (**Alcohol Advertising and Promotions Standards**) in consultation with MOH and MESC and other relevant agencies, to set standards for the content of advertisements.

52. The legislation should also include a new function for the LCB to receive complaints in relation to breaches of the Alcohol Advertising and Promotions Standards, and should set out procedures to be followed by the LCB when determining complaints from the public. This should include:

- a) A complainant may lodge a complaint to the LCB in writing outlining the alleged breaches of Alcohol and Promotions Advertising Standards made by the advertiser.
- b) If the LCB decides that there are no grounds for the complaint to proceed, the complainant should be advised. However if the LCB decides that there are grounds, then the complaint should be sent to the advertiser seeking comment within a set timeframe (for example 10 working days).
- c) The LCB will determine whether there has been a breach and all parties will be informed of the outcome. If there is a breach, the advertiser must immediately withdraw or amend the advertisement. Should the advertiser fail to do so, a penalty will be incurred.
- d) There will be no appeal from a decision of the LCB other than by instituting legal proceedings for judicial review in the Supreme Court.
- e) All rulings and decisions of the LCB should be published or made publically available.

53. Licensees should be encouraged to seek advice from the LCB before running an advertisement or promotion that might be at risk of breaching the Alcohol and Promotions Advertising Standards.

54. An independent review on the effectiveness of the LCB's complaints process, the rules around alcohol advertising, promotion and sponsorship should be conducted 3

years after this final report is passed in Parliament. Government may also wish to explore establishing an advertising standards board with a general mandate to investigate breaches of advertising standards for all advertisements, and not limited to alcohol advertisements.

B. Labeling

Samoa

332. The labelling of alcohol in Samoa is regulated under the *Liquor Act*, although this is to a very limited extent. Under the *Liquor Act* it is an offence to sell alcohol beverages in a container bearing labels which mislead the consumers about the nature, quality, strength, purity, composition, weight, origin, age or effects of the liquor.³⁵¹ There are no other specific provisions relating to the kinds of information that must be included on labels.

333. Under the *Food and Drugs Act 1967*, regulations prescribing the mode of labelling of any food and beverage sold in a package on any label may be made.³⁵² However, to date, no regulations to this effect have been promulgated.

334. In contrast with tobacco products, the *Tobacco Control Act 2008* requires health messages and other information to be displayed on, or included with, packages containing tobacco products.³⁵³

New Zealand/ Australia

335. The labelling of alcoholic beverages in Australia and New Zealand is determined by Food Standards Australia New Zealand (**FSANZ**). FSANZ is an organisation that was established under the *Food Standards Australia New Zealand Act 1991*. FSANZ is responsible for developing and reviewing food standards in Australia and New Zealand which are set out in the Australia New Zealand Food Standards Code (**Food Standards Code**).³⁵⁴

336. The Food Standards Code outlines the standards governing the labelling of alcoholic beverages for both countries but does not require alcoholic beverages to

³⁵¹ *Liquor Act 2011* (Samoa), s 60(1)(c).

³⁵² *Food and Drugs Act 1967* (Samoa), s 40.

³⁵³ *Tobacco Control Act 2008* (Samoa), s 16.

³⁵⁴ Food Standards Australia New Zealand, *Labelling of Alcoholic Beverages User Guide*, (2014)

<<http://www.foodstandards.gov.au/code/userguide/Documents/Guide%20to%20Labelling%20of%20Alcoholic%20Beverages.pdf>>, p. 11.

comply with general labelling requirements such as disclosing ingredients and nutritional information.³⁵⁵

337. The following are some of the standards included in the Food Standards Code:

- a) Any alcoholic beverage containing more than 1.15% alcohol by volume must include on the label a statement of the alcohol content. The statement must indicate the volume of alcohol in the alcoholic beverage as a proportion of the alcoholic beverage;³⁵⁶
- b) Any alcoholic beverages containing 1.15% alcohol by volume or less must also include a statement of the alcohol content;³⁵⁷
- c) A label stating the alcohol content is not required in beverages containing less than 0.5% of alcohol by volume;³⁵⁸
- d) Alcoholic beverages must include on the label a statement of the number of standard drinks in the package. A standard drink is the amount of a beverage that contains ten grams of alcohol at 20 degrees Celsius.³⁵⁹

338. The Food Standards Code also outlines prohibitions relating to representations about the content of alcohol beverages,³⁶⁰ although more detailed legislative provisions are provided under the *Food Act 2014* in New Zealand and Food Acts of Australian States and Territories.³⁶¹

339. The responsibility for enforcing the Food Standards Code in Australia rests with authorities in the states and territories and the Commonwealth Department of Agriculture in terms of imported food. In New Zealand, this responsibility lies with the Ministry of Primary Industries.³⁶²

³⁵⁵ Food Standards Australia New Zealand, *Labelling of Alcoholic Beverages User Guide*, (2014), <<http://www.foodstandards.gov.au/code/userguide/Documents/Guide%20to%20Labelling%20of%20Alcoholic%20Beverages.pdf>>, p. 8.

³⁵⁶ Food Standards Australia New Zealand Code <<https://www.legislation.gov.au/Details/F2016C00176>> standard 2.7.1, cl 2.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid, standard 2.7.1, cl 3.

³⁶⁰ Ibid, standard 2.7.1, cl 4-6.

³⁶¹ Food Standards Australia New Zealand, *Labelling of Alcoholic Beverages User Guide*, (2014), <<http://www.foodstandards.gov.au/code/userguide/Documents/Guide%20to%20Labelling%20of%20Alcoholic%20Beverages.pdf>>, p. 11.

³⁶² Food Standards Australia New Zealand, *Labeling of Alcoholic Beverages User Guide*, (2014), <http://www.foodstandards.gov.au/code/userguide/Documents/Guide%20to%20Labelling%20of%20Alcoholic>.

Analysis

340. There are no minimum standards or prescribed requirements for labelling. Aside from provisions under the *Liquor Act* making it an offence to provide misleading labels,³⁶³ there is no requirement that manufacturers provide information about the product, or warning labels concerning its harmful effects.
341. The information on the labels of most locally manufactured cheap high strength alcohol beverages which are a popular commodity in village stores vary significantly. Some of the beverages include information about the alcohol content and volume on the label, whilst other beverages only boldly display the alcohol content. For example, Rice Vodka containing a high volume of alcohol ranging from 250 ml to 2L (priced from approximately \$10 to less than \$45) boldly displays the alcohol content, another manufacturer (NiuVoka) provides both the alcohol content and volume on its labels.
342. The majority of bar owners and manufacturers consulted support having in place labelling and packaging requirements, for example warning labels on alcohol products to inform consumers about the harmful effects of alcohol such as the impact on pregnancy.

RECOMMENDATIONS

55. Alcoholic beverages should meet minimum labeling requirements relating to the alcohol content (this should not include ingredients and nutritional information) that should be set out in legislation. These minimum labeling requirements should be reviewed periodically, for example every 3 – 5 years. The Ministry responsible for Food safety should monitor and enforce labelling requirements. Minimum labelling requirements should include:
- a) Any alcoholic beverage containing more than 1.15% alcohol by volume must include on the label a statement of the alcohol content. The statement must indicate the volume of alcohol in the alcoholic beverage as a proportion of the alcoholic beverage. It should not be mandatory for alcoholic beverages containing less than 1.15% alcohol by volume to be labelled, although manufacturers should be encouraged to.
 - b) Alcoholic beverages must include on the label a statement of the number of standard drinks in the package. Following New Zealand's example, a standard drink is the amount of a beverage that contains 10 grams of alcohol at 20 degrees Celsius.

³⁶³ *Liquor Act 2011* (Samoa), s 60(1)(c).

c) A health message to the effect that 'alcohol abuse is dangerous for health.'

Part 6: Enforcement

A. Powers of Enforcement

Samoa

343. The *Liquor Act* provides very limited enforcement powers for both liquor inspectors and police, restricted to entering and inspecting any licensed premises.³⁶⁴ Both may direct a licensee to require people to leave the premises if the number of people exceeds the number specified in the licensee's licence.³⁶⁵ Both are also vested with the power to seize any liquor on licensed premises which is not satisfactorily accounted for by the owner or occupant as well as any stock or records that may be used as evidence for an offence committed by the licensee.³⁶⁶ During this inspection, they may require identification or evidence of age from any person on the premises.³⁶⁷ A police officer or inspector exercising the power of entry and inspection must within 72 hours after the inspection submit to the CEO of the Ministry and the LCB Secretary a report in writing stating the reason for and result of the inspection.³⁶⁸

New Zealand

344. Similar provisions to that in Samoa are provided under the *Sale and Supply of Alcohol Act 2012 (NZ)*. A police officer or an inspector may at any reasonable time enter and inspect any licensed premises, or any part of any licensed premises to monitor compliance with the licence conditions as well as the provisions of the legislation.³⁶⁹ Police officers or liquor inspectors are empowered to seize samples of alcohol as well as require information from people on the premises such as name, address and date of birth if the officer has reasonable cause to suspect that an offence against the legislation is being committed.³⁷⁰ If any person, without reasonable excuse, refuses or fails to provide any particulars or evidence when required to do so

³⁶⁴ *Liquor Act 2011* (Samoa), s 49(1).

³⁶⁵ *Ibid*, s 50(1)(a).

³⁶⁶ *Ibid*, s 49(5).

³⁶⁷ *Ibid*, s 49(6).

³⁶⁸ *Ibid*, s 49(8).

³⁶⁹ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 267.

³⁷⁰ *Ibid*, ss 268, 269.

by a constable and persists in refusing or failing after being cautioned by the constable, he or she may be arrested.³⁷¹

345. Furthermore, if a police officer or inspector believes that a licensee has breached any conditions under the Act, both have the ability to lodge an application to the licensing authority to suspend or cancel the relevant licence.³⁷² Once the application is received, the licensing authority will set down a date for a public hearing to determine the application. If the authority is satisfied that there have been relevant breaches to the Act, it may order the variation or revocation of any condition of the licence or suspension or cancellation of the licence.³⁷³

346. The New Zealand legislation grants police broader powers of enforcement than those offered under Samoa's *Liquor Act*, which most significantly include the ability to issue on the spot fines (or infringement notices) where an infringement offence has been committed.³⁷⁴ The issuance of infringement notices means that managers, licensees and individuals are made immediately accountable and avoids the pressure put on court resources through quick resolution of these cases. However, there is still ability for a person to challenge an infringement notice through requesting a court hearing.³⁷⁵

347. The *Sale and Supply of Alcohol Regulations 2013* set out the infringement offences and infringement fines for all which are provided below:

Infringement Offences	Infringement Fines
Manager intoxicated on duty ³⁷⁶	\$500
Employee intoxicated on duty ³⁷⁷	\$500
Buying of alcohol by people under purchase age ³⁷⁸	\$250
Minors in restricted areas or supervised areas ³⁷⁹	\$250
Permitting minors to be in restricted areas or supervised areas ³⁸⁰	\$250
Sales of spirit in vessel exceeding 500 ml ³⁸¹	\$250

³⁷¹ Ibid, s 269(3).

³⁷² Ibid, s 280.

³⁷³ Ibid, s 280(5).

³⁷⁴ Ibid, s 262.

³⁷⁵ Ibid, s 262(4)(f); New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010), at 373.

³⁷⁶ *Sale and Supply of Alcohol Act 2012* (New Zealand), ss 250.

³⁷⁷ Ibid, s 251.

³⁷⁸ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 243.

³⁷⁹ Ibid, s 244.

³⁸⁰ Ibid, s 245.

Offences relating to evidence of age documents ³⁸²	\$250
Failure to comply with certain requirements and restrictions imposed by or under the Act ³⁸³	\$250

348. Apart from on the spot infringement notices, police in New Zealand also have the power to close down licensed premises in the following circumstances:

- a) If a riot is taking place or there are reasonable grounds for believing that a riot may occur on any licensed premises;
- b) if there is fighting or serious disorder or there are reasonable grounds for believing that fighting or serious disorder is about to break out on any licensed premises;
- c) if there is a significant threat to public health or safety;
- d) if the conduct on any licensed premises amounts to a substantial public nuisance;
- e) If there are reasonable grounds for believing offences have been committed on the premises that carry a maximum penalty of 5 years or more and there is a significant risk of further such offences being committed on the premises if the premises remain open.³⁸⁴

349. In the event of any of the circumstances above, a police officer may order the closure of any licensed premises or any specified part of any licensed premises selling and supplying alcohol until a time stated in the order, which must not be later than 24 hours from the end of the day on which the order was made.³⁸⁵ The police officer may also order any person to leave the premises or that specified part of them.³⁸⁶

Submissions

350. Widespread concerns raised in consultations relate to the inadequate enforcement of existing alcohol laws and that the issue of enforcement should be a priority concern for the alcohol reform. Some members of the business community identified the poor enforcement of licence conditions and alcohol laws as being one of the main drivers behind the alcohol-related harm. Other submitters raised that an increase in penalties (such as increasing fines and terms of imprisonment) for

³⁸¹ Ibid, s 254.

³⁸² Ibid, s 257.

³⁸³ Ibid, s 259.

³⁸⁴ Ibid, s 266(1).

³⁸⁵ Ibid, s 266(2).

³⁸⁶ *Sale and Supply of Alcohol Act 2012* (New Zealand), s 266(2).

businesses that breach licence conditions would act as a deterrent and would reduce alcohol-related problems.

351. Other issues raised by the business community and the public were the inadequate enforcement of conditions of retail liquor licences due to the lack of resources and capacity faced by Police. This was the subject of growing concern for the business community who raised concerns over the prevalent practice of alcohol selling to minors in the villages. It was submitted that this practice meant alcohol was readily accessible to young people and thus encouraging underage drinking in the villages.
352. Most submitters viewed the *Village Fono* as best placed to monitor and enforce alcohol laws in the villages especially regarding the purchasing of alcohol by minors, similar to their enforcement of the illegal manufacture of homebrew. In some villages *Village Fono* completely prohibiting the sale of alcohol in the village, or prohibit its consumption on certain days or during certain times. The SBC suggested that the *Village Fono* should not only monitor the sale of alcohol by retail stores in villages, but should also regularly report any breaches to the LCB. Many submissions raised that a more formal role should be given to *Village Fono* including developing bylaws, and that village committees (consisting of members of the *Village Fono*, the women's committee and other prominent members of the village) should specifically be responsible for enforcing alcohol related village bylaws. The idea is that as the committee members are residents of the village, they would be best placed to carry out a monitoring role that is currently a challenge for police given their capacity issues.³⁸⁷
353. Furthermore, some business representatives suggested that awareness and training programs should be undertaken to educate the *Village Fono* about the licensing system and their enforcement responsibilities, whether or not it is formally recognised under legislation.
354. Many submitters highlighted the need for more rigorous enforcement of the licensing conditions of bar and nightclub licensees, including strict enforcement of the age restriction as many young people below the legal age were being allowed into bars and nightclubs.³⁸⁸ Despite this being raised as a frequent practice, the LCB Secretary revealed that no incidents regarding the sale of alcohol to persons under 21 has ever been reported to the LCB. This is quite significant given that there are still incidences of licensed premises not only allowing minors on the premises but permitting them to consume alcohol. A recent case was brought before the courts where four young men aged 16 – 18 years were charged with grievous bodily harm. During their assessments with the ADC Clinician, two of these young men revealed

³⁸⁷ Information received from the Youth Consultations (3 November 2014).

³⁸⁸ Information received from the Public Consultations (29 October 2014).

that they regularly drink alcohol at the RSA bar and have never been asked to show any ID.³⁸⁹

355. Certain businesses stated that continuous and regular monitoring by police would deter businesses from breaching their licensing conditions by allowing young people on the premises.³⁹⁰ The visibility of police would also discourage young people under the legal age from entering licensed premises as there is a higher risk of being caught.³⁹¹

356. Then again discussions with Police revealed the frustrations faced by police of the very limited police powers of enforcement under the *Liquor Act*.³⁹² Outside general policing powers, the role of police in enforcement are limited to closing down a bar operating outside the licensed hours, and reporting incidents to the LCB. Police have raised that there are certain nightclubs and bars which consistently fail to comply with the trading hours, however they have no authority to issue infringement notices to any of these licensees and there is very little recourse for Police to effectively deal with such licensees. The Police Commissioner made known that it was time consuming and resource intensive for police to focus on the same culprits that blatantly disregard licence conditions each week by opening long after the permitted trading hours.

Analysis

357. New Zealand has established very extensive powers for its enforcement agencies. In contrast, the enforcement agencies in Samoa have very little recourse when dealing with breaches by licensees. Unlike New Zealand, Samoa has no powers in the *Liquor Act* for police to issue on the spot fines or powers of arrest.

358. The recourse for police in Samoa is the submission of written reports to the LCB which decides on the course of action. The Police have identified businesses that habitually breach their licensing conditions and whom they have reported in writing to the LCB on numerous occasions. It appears however that such Police reports are not treated as formal complaints and thus no disciplinary action results. During this time the licensee continues to operate and often continues to breach the set closing time. A Ministry representative that frequently attended LCB meetings stated that in practice a police report was not considered by LCB as a formal complaint. This is consistent with reports received by the Commission that only very few complaints were received by the LCB in the last few years, which related solely to noise levels.

³⁸⁹ Information provided by Moana Solomona, Alcohol and Drugs Court Clinician (12 April 2016). See Part 3B for more information.

³⁹⁰ Information received from the Business Consultations (24 September 2014).

³⁹¹ Ibid.

³⁹² Telephone interview with Egon Keil, Police Commissioner, Ministry of Police (27 October 2015).

359. As illustrated above, the current system is ineffective and inefficient. Police are forced to use limited resources, manpower as well as time to close down certain licensed premises which blatantly disregard the law and licence conditions by failing to close at the required time. As no action results from Police complaints to the LCB, these licensees are encouraged to continue to disregard the law and breach their licensing conditions. Furthermore, Police lose credibility among the public who do not understand the limitations under the law of police authority to effectively address this problem. The Police are then often seen as not doing their job, as was evident in numerous views expressed during public consultations.

360. If the police had broader powers of enforcement than those currently offered under Samoa's *Liquor Act* including the ability to issue on the spot fines where an infringement offence has been committed, it would provide a deterrent for licensees that continue to disregard the law and conditions of their licence. This would likely reduce bar and nightclub licensees from opening past permitted trading hours if it was made an infringement offence, which if breached resulted in an instant fine and or suspension.

361. Additionally, it would also be a deterrent if Police could be given the power to close down licensed premises in particular circumstances such as if there is fighting or serious disorder or a riot or there are reasonable grounds for believing that it is about to break out on any licensed premises, or if there is a significant threat to public safety, or if the conduct on any licensed premises amounted to a substantial public nuisance, or if the licensed premises was opened past the permitted time. In these circumstances the police officer may order the closure of any licensed premises or selling and supplying alcohol until a time stated in the order, which must not last longer than a set period (for example 48 hours from the end of the day of order).

362. Another challenge for enforcement agencies in Samoa is the wide discretion the LCB has to impose conditions on a licence for the sale and supply of alcohol. As previously discussed in the Report, the legislation empowers the LCB to set standard conditions for all licensed premises.³⁹³ The legislation also grants wide discretion to the LCB to vary or revoke the conditions on any licensed premises at any time.³⁹⁴ However, there are no policy guidelines in place to guide the LCB which can possibly lead to inconsistency and non-uniformity in decision making. This is further compounded by the practice by LCB at times not to provide written reasons for their decisions, making it unclear as to the rationale for decisions and raising issues of transparency and fairness.

363. The inconsistencies in licence conditions also pose more enforcement issues under the current system where the licence conditions are only provided at the

³⁹³ *Liquor Act 2011* (Samoa), ss 30(3A), 39(2), 46(2).

³⁹⁴ *Ibid*, ss 30(4), 39(3), 46(3).

beginning of the application and all renewals are only given receipts. Some licensees who have had established businesses for many years informed the Commission that they had lost the document outlining the licence conditions. This makes it difficult for enforcement officers to make their necessary checks regarding compliance, especially where the LCB has varied or revoked certain conditions for certain businesses. Again this is further compounded by provisions under the *Liquor Act* that indicate that conditions do not need to be endorsed on the licence, which may raise issues as to what the licence conditions actually are. Moreover, should the licence conditions be made clearer and uniform without improvement in the enforcement of these conditions, the current problems will persist.

364. The *Liquor Act* also provides that where the structure of the licensed premises is altered and the alteration does not comply with current license conditions, the licence is regarded as void.³⁹⁵In such circumstances a new license must be obtained. This creates further problems for enforcement, as there are no systems in place to notify the LCB when these alterations take place.

365. Many submissions raised the need for *Ali'i and Faipule* to take a more active role in enforcement. At the moment, *Ali'i and Faipule* are able to do this through their general monitoring role. However, the *Village Fono Amendment Bill 2015* which is currently before Parliament proposes significant amendments to the *Village Fono Act 1990*, including empowering the *Village Fono* to make *faigafa'avae* (rules/ bylaws) in relation to certain village matters including to promote social cohesion and harmony within the village.³⁹⁶ If the Bill is passed, *Ali'i and Faipule* will be able to make *faigafa'avae* concerning the consumption and sale of alcohol in the village and impose punishment for its breach. In doing so, they may impose more restrictive requirements than those set by the legislation or the LCB concerning trading hours and days, noise levels, setting village fines for intoxicated members of the village who have caused disruption and retail stores that breach conditions of their alcohol licence. Under the Bill, the *Village Fono faiga fa'avae* will be registered on a Register kept by MWCSO for public inspection and awareness.³⁹⁷

RECOMMENDATIONS

56. The process for enforcing breaches of the law should be simplified. There should be infringement offences and powers for Police and Liquor Inspectors to issue infringement notices under the Act (similar to Land Transport Authority officers with regards to traffic infringements) and on the spot fines set out in regulations. A licensee may challenge the infringement notice through requesting a Court hearing. Infringement notices and on spot fines should be able to be issued in the following

³⁹⁵ Ibid, s 35.

³⁹⁶ *Village Fono Amendment Bill 2016* (Samoa), cl 5.

³⁹⁷ *Village Fono Amendment Bill 2016*(Samoa), cl 6.

circumstances:

- a) Where minors are permitted to enter bars and nightclubs;
- b) Purchasing of alcohol by persons under the age permitted;
- c) Where a licensed premises fails to comply with maximum trading hours and opens past the permitted closing time;
- d) Where beer towers and cocktail jugs are sold or supplied beyond the permitted hours;
- e) Failing to comply with certain requirements and restrictions imposed by or under the Act.

57. More specifically in relation to maximum trading hours and breaches relating to minors, licensees that do not comply should be penalized as follows which should be set out in the legislation:

- a) Licensees that breach the maximum trading hours for the first time should be issued an infringement notice and incur a fine (for example of \$250);
- b) Licensees that breach a second time should be issued an infringement notice and incur an increased fine (for example of \$500), as well as suspension for a period not exceeding the maximum period in legislation (for example 2 weeks);
- c) Licensees that breach a third time should be issued an infringement notice and incur a fine (for example of \$750), and have the licence suspended for period not to exceed the maximum period in legislation (for example 4 weeks). This should also impact on a further license issued to the licensee in breach.
- d) Public notices should be issued informing the public of the suspended licensees and the suspension period for non-compliance.

58. Furthermore, suspension of any licensee who continues to fail to comply with maximum trading hours in the preceding recommendation should only be issued by the Police Commissioner. The Police Commissioner should immediately notify the Liquor Control Board (**LCB**) in writing of the issuance of such suspension.

59. Police should also have the power to order the closure of a licensed premises in the following circumstances, until a time stated in the order which must not last longer than a set period (for example, 48 hours from the end of the day of order). The Police Commissioner should notify the LCB in writing of such order as soon as

practicable.

- a) If there is fighting or serious disorder or a riot or there are reasonable grounds for believing that it is about to break out on any licensed premises;
- b) If there is a significant threat to public safety;
- c) If the conduct on any licensed premises amounted to a substantial public nuisance;
- d) If the licensed premises was opened past the permitted time.

60. Where Police believes that a licensee has breached any other conditions under the Act and reports this to LCB, such report should be treated as a complaint to be acted on by the LCB and the licensee contacted for a hearing.

61. The *Village Fono* should be encouraged to make *faigafa'avae* or bylaws which may include (at the discretion of the *Village Fono*) rules relating to consumption and sale of alcohol in the village, as well as noise levels, and nuisance, in order to ensure that the granting of the licence will not negatively impact the community and village. These are enforced by the Village Fono themselves. Awareness and training programs should also be undertaken by the Ministry responsible for the regulation of alcohol together with the Ministry of Women Community and Social Development (**MWCSD**) and Ministry of Police (**Police**), to educate the *Village Fono* about the licensing system and enforcement responsibilities.

Part 7: Reducing alcohol-related problems

366. The Commission acknowledges that legal measures alone will not modify entrenched alcohol consumption behaviours in Samoa and that education, awareness and policy measures may have a more sustained impact on changing these social behaviours. This part discusses the current and proposed policies designed to minimize the incidence of alcohol abuse including the role of parents, village councils and churches with respect to adolescent drinking, preventative measures to combat alcohol-related harm such as alcohol education and treatment, and the establishment of the Alcohol and Drugs Court (**ADC**).

A. Introduction

367. As previously discussed in this Report, it is generally accepted by the public that much of the criminal offending in Samoa has been fuelled by the excessive consumption of alcohol. Consequently, the judiciary in Samoa have also recognized that alcohol and drug abuse is and has been a contributory factor in a significant number of criminal offending in Samoa as well as recidivism among offenders.

368. In response to this prevalent problem, the judiciary have taken the initiative to establish an Alcohol and Drugs Court in Samoa, which is based on a model successfully implemented in the USA. Justice Ema Aitken, who (together with a judicial colleague) established the pilot Alcohol and Other Drug Treatment Courts in Auckland, is also responsible for establishing this specialist court in Samoa which commenced sitting in the Supreme Court in mid February 2016.
369. There are certain eligibility criteria that must be met before an offender can be considered for referral to the specialist court. Firstly, the offender must have entered a guilty plea and be likely to have an alcohol and or drug abuse problem that is driving the offending behaviours. The offender should be able to be released on bail to undertake the programs and not have a serious mental health condition that would prevent participation in the programs. Furthermore, the offender must not be facing charges of murder, manslaughter, sexual offending or serious drug dealing offences. Given as this is a pilot program in Samoa, it is currently only available to offenders living in the region from Lauli'i to Afega.
370. If an offender meets those criteria, the Court then requires an assessment of the offender by the Court's clinician to identify the extent of the alcohol or drug abuse problem, and to determine any other underlying causes of the offending. Prior to the establishment of the ADC, there was no process for assessing offenders to identify the causes of their offending as there was a lack of capacity and technical expertise in Samoa. The clinician's report is submitted to the court to determine whether the ADC is suitable for the offender.
371. The ADC is an intensive monitoring court which aims to ensure that the offender complete appropriate rehabilitation programs to address the causes of the offending.³⁹⁸The offender will also be required to complete hours of community work, and such other pro-social activities as the Court considers appropriate. During the duration of program there is a strict requirement on all participants to abstain from alcohol and drug use and this is monitored by both the Court and the Community Justice Supervisor appointed for each village within the pilot. If the offender successfully participates and completes the treatment program, the Court will take this into account at sentencing.³⁹⁹
372. Alcohol and drug addiction can be a long standing debilitating condition. Therefore, treatment for offenders with this addiction is considered more effective when provided over a medium to long term basis with appropriate treatment programs.⁴⁰⁰ The idea behind the specialist court is that accurately identifying the

³⁹⁸ There are still very few rehabilitative programs designed to address alcohol and drug abuse or dependency in operation in Samoa.

³⁹⁹ Justice Ema Aitken, Presentation at 4th Biennial Law Symposium 2015, 3rd December 2015.

⁴⁰⁰ Ministry of Justice New Zealand, Alcohol and Other Drug Treatment Court Handbook, 20 December 2012.

causative behaviours of alcohol abuse and providing the necessary rehabilitative programs over a period of time will most likely reduce the risk of reoffending. The overall aim of this specialist court is that the curbing of recidivism among these offenders will ultimately provide for a safer community in Samoa.⁴⁰¹

RECOMMENDATIONS

62. Relevant Government agencies (such as Ministry of Health (**MOH**), Ministry of Women Community and Social Development (**MWCSD**), and Ministry of Police (**Police**)) and members of civil society should work in collaboration with the Alcohol and Drug Court to improve its efficacy. The benefits of the Alcohol and Drug Court (**ADC**) in curbing of recidivism amongst offenders will be more evident over time, and collaboration between Government agencies will ensure the success of this pilot program and may enable it to be extended to offenders living beyond the region of this program currently limited to villages from Lau'i to Afega. Collaborative work may include assisting in developing appropriate rehabilitation programs, and developing the capacity and technical expertise of clinicians in Samoa for clinicians that assess offenders.
63. Data collection regarding alcohol related offending or serious offending where alcohol is a contributing factor is essential. Police should make it mandatory process to record whether the offender was under the influence of alcohol and or drugs at the time of the offence. This would also assist in identifying offenders suitable for the ADC.

B. Awareness and Education

373. There are many programs that have already been implemented by the MOH in collaboration with the Health Sector aimed at educating the community on the health risks and harms associated with the excessive consumption of alcohol in Samoa.⁴⁰² This includes programs implemented by the MOH, MESC and MWCSD within the village community focussing on smoking, nutrition, physical activity, and alcohol as some of the key contributors of non-communicable diseases in Samoa.⁴⁰³ Additionally, MWCSD in collaboration with MOH initiated the 'Aiga ma Nuu Manuia' (Family and Village Wellbeing) program which involves village leaders taking ownership of local issues such as alcohol abuse and builds capacity to deal with such issues.⁴⁰⁴

⁴⁰¹ Justice Ema Aitken, Presentation at 4th Biennial Law Symposium 2015, 3rd December 2015.

⁴⁰² Ministry of Health, *National Alcohol Control Policy 2016-2021*, at p. 20. (

⁴⁰³ *Ibid*, at p. 19.

⁴⁰⁴ *Ibid*, at p. 18.

374. Common views raised in public consultations is the need for greater investment in providing awareness programs in schools to educate young people on the harms associated with alcohol. This was also supported by many youth suggesting that such awareness programs be incorporated into school curriculums. Other submissions from youth suggested that such awareness programs should also include information on alcohol laws and should be disseminated at the grassroots level within the villages.
375. Submissions from youth also highlighted that at present the advertising of alcohol heavily outweighs any awareness campaigns on television and radio, and that there is a pressing need to balance alcohol advertising with awareness programs educating on harms caused by alcohol. Furthermore, the harms of alcohol abuse should be more publicly visible using various mediums such as billboards and information booths at public concerts, fundraisers and at sports tournaments, particularly where such messages can be better exposed to youth. SBL supported this approach and further suggested that regular awareness campaigns and education seminars be provided for the public.
376. Some submitters suggested that an increase in alcohol excise tax to fund harm-reduction initiatives such as awareness campaigns should be explored.
377. There is a need for an interagency cross-sectoral perspective on this issue. Relevant Government agencies (for example, MESC, MWSCD, MOH and Police) and Non-Government Organisations should work collaboratively to implement formal and informal education in schools and in villages focusing on the harms caused by alcohol consumption, particularly as serious offending, such as sexual offending and domestic violence is often strongly linked to excessive alcohol use, or where alcohol was consumed beforehand.
378. The increasing trend of very serious, violent offending over the years committed under the influence of alcohol and or drugs, is a concern for all. This is vital information that the public should be made aware of, through awareness campaigns and various mediums to suit the audience it is intended for.

RECOMMENDATIONS

64. Relevant Government agencies (for example, Ministry of Education (**MESC**), Ministry of Women Community and Social Development (**MWCS**D), Ministry of Health (**MOH**) and Ministry of Police (**Police**)) and Non-Government Organisations should work collaboratively to implement formal and informal education that focuses on the harmful effects of alcohol in schools and in villages.
65. There needs to be an improvement in the balance between alcohol advertising and

awareness initiative on harms caused by alcohol. Harms of alcohol abuse should be more publicly visible using various mediums where such messages will be exposed to youth and to suit the audience it is intended for.

66. To explore the use of a portion of excise tax on alcohol to create and implement awareness campaigns on the harms of alcohol.

C. Responsibilities of Parents, Village Councils and Churches with respect to adolescent drinking

379. The responsibilities of parents, village councils and churches in tackling alcohol abuse among young people, are extremely important. The need for these groups to work collaboratively (including with relevant Government agencies) to address alcohol abuse particularly amongst young people cannot be more emphasized.

380. Church leaders and church bodies such as choirs, youth groups, and Sunday schools have an equally important role and should have in place awareness programs and educating young people and raising awareness on the harms of alcohol abuse.

381. Views expressed in the consultations raised that parents themselves should take the lead in educating their children about the impact of alcohol, set curfews and necessary boundaries for children, and closely monitor the whereabouts of their children.⁴⁰⁵

382. This report has emphasised the need for parents or legal guardians of a person under 21 supplied alcohol on a licensed premises to provide 'responsible supervision', and has provided guidance on what constitutes responsible supervision. Parents should be encouraged to provide responsible supervision at all times, whether or not at a licensed premises.

383. The importance of the role of the Village Council in setting out firm village rules targeting alcohol consumption particularly amongst young people, and appropriate penalties, was also heavily emphasised during public consultations. Consequently, this report has suggested ways in which the *Village Fono* can be more involved in the determination by the LCB of alcohol licence applications for businesses in their respective villages and also in enforcement matters as often they are best placed to do so. Ongoing reforms of the *Village Fono Act 1990* aimed at encouraging good governance in villages proposes that village councils develop bylaws to uphold peace and harmony in the village. This could include developing bylaws that address consumption of alcohol by young people, as well as require responsible supervision by parents.

⁴⁰⁵ Samoa Law Reform Commission, *Alcohol Reform Issues Paper*, (2013) p. 34.

384. The Alcohol and Drugs Court discussed earlier aims to ensure that an offender completes appropriate rehabilitation programs to address the causes of the offending, community work and such other pro-social activities as the Court considers appropriate. Village councils and churches should with the assistance and training of the relevant Government agencies develop the necessary rehabilitation programs for young offenders and help support the treatment to reduce the risk of reoffending.

RECOMMENDATIONS

67. Parents, churches and village councils should recognize the importance of their role in addressing alcohol abuse among young people and should work collaboratively in doing so, along with the relevant Government agencies.
68. Awareness programs and workshops should be conducted by churches, with the assistance of relevant Government agencies and non-government organisations on issues involving alcohol. In addition, village councils and churches should with the assistance and training of the relevant Government agencies develop rehabilitation programs for young offenders in support of the Alcohol and Drugs Court (**ADC**), to reduce the risk of reoffending.
69. Village councils should be encouraged to have in place alcohol-related bylaws targeting alcohol consumption amongst young people, with appropriate penalties. Village councils should also be mindful of the harmful effects of alcohol advertising before they permit the installation of signs and billboards advertising and promoting alcohol in their respective villages.

PART 8: Summary of Recommendations

Liquor Control Board

1. References in the legislation to 'liquor' should be replaced with 'alcohol' which is a more modern and commonly used term. The change should also be reflected in the name of the Liquor Control Board (**LCB**).
2. Permanent Members of the LCB should continue to consist of the chief executive officers of the Ministry for Revenue (**MfR**), Ministry of Police (**Police**), Ministry of Finance (**MOF**), and Attorney General's Office (**AGO**). A representative from the Samoa Chamber of Commerce (**Chamber of Commerce**) should be added as a permanent member of the LCB.
3. The legislation should require that Appointed Members of the LCB representing the private sector and public representatives are publicly advertised, and:
 - a) collectively possess the appropriate knowledge, skills, and experience to assist the LCB to achieve its objectives and perform its functions;
 - b) consist of a minimum of 2 and maximum of 4 including a representative of *matai* and consideration of gender balance.
4. Appointed Members of the LCB should be provided with adequate training on the legislation, regulations, as well as general principles of administrative law that would be necessary to undertake their role as sitting members of the LCB. This should be included in the MfR budget.
5. All functions and powers exercised by the LCB should expressly be set out in legislation. For LCB to be able to function more efficiently and focus on more substantive, contentious and complex matters, its general administrative functions and powers should be able to be delegated to the CEO of MfR. The following functions and powers that should NOT be permitted to be delegated to the CEO includes:
 - a) Decisions on first time licence applications;
 - b) Renewal applications from non-compliant licensees;
 - c) Decisions to reduce or extend trading hours;
 - d) Decisions on applications to sell or supply alcohol on Sundays;
 - e) Decisions to impose licence conditions which the LCB has discretion under the legislation to do so;

- f) Matters relating to complaints, hearings, suspensions and licence cancellations;
 - g) Decisions relating to any breaches of standards on the content of alcohol advertisements and promotions.
6. The legislation should also expressly specify functions and powers that should be exercised by the CEO of MfR in relation to the regulation of alcohol, and specify which of these functions may be delegated to the LCB Secretary. The functions of the LCB Secretary under the Act (including functions delegated to him or her by the CEO of MfR should be limited to administrative functions. The following functions and powers of the CEO that MAY be delegated to the LCB Secretary or other ACEO of the Ministry should include:
- a) assessing whether the minimum criteria provided in the legislation (such minimum requirements can include providing evidence of approval by *Village Fono*, and checks on prior convictions for serious offences) are met before an application for a licence can be accepted,
 - b) receiving applications that meet minimum criteria for consideration by LCB;
 - c) returning incomplete applications if minimum criteria are not met,
 - d) requesting certain further information required for an application.
7. The legislation should also specify additional licence conditions that the LCB may impose on licences and criteria that must be met, to improve consistency and transparency in the decision making of the LCB. Additionally, the LCB must provide written reasons for their decisions which would also promote transparency, accountability and uphold the principles of administrative law.

Licence for Sale or Supply of Alcohol

8. The class of alcohol licences for the sale and supply of alcohol should be divided into 2 categories – On-site licence and Off-site licence:
- a) **On-site licence:** should authorise the sale and supply of alcohol for consumption at a licensed premises. This should include nightclubs, bars, restaurants, motels, hotels, resorts. Different conditions may be imposed on the licence and different fees applied depending on the type of business the On-site licence is for.

- b) **Off-site licence:** should authorise the sale and supply of alcohol for consumption off the premises. This should include retail stores, supermarkets.
9. The legislation should specify criteria that the LCB must consider when approving a licence for the sale and supply of alcohol. These should include:
- a) the suitability of the applicant;
 - b) the number of licensed premises already operating within the locality of the proposed premises and the outlet density (see **recommendation 34**);
 - c) the days and hours during which the applicant proposes to sell and supply alcohol;
 - d) whether it is appropriate to issue the licence for the premises in the proposed area;
 - e) whether the applicant has any previous convictions that would render the issuance of the licence inappropriate;
 - f) whether the consent of the *Village Fono* where the proposed premises will be located has been sought and whether the construction of the premises would contravene any village bylaws;
 - g) whether in the opinion of the LCB the amenity and good order of the area would be significantly reduced by issuing the licence, and in determining this may consider input by representatives of Women's Village Committees and churches where the proposed premises will be located, in addition to the *Village Fono*;
 - h) whether the applicant proposes to provide non-alcoholic beverages and food on the proposed premises (in relation to On-site licences);
 - i) the design and layout of the premises (in relation to On-site licences);
 - j) whether the applicant has systems, staff and training to comply with the law (in relation to On-site licences);
 - k) any matter reported by the Police, MOH or *Village Fono*.
10. For an On-site licence, the applicant should be required to provide detailed information about the type of business to which the licence application relates and also whether they propose to provide non-alcoholic beverages and food on the

proposed premises. This will assist the LCB to determine the nature of the business of the proposed premises, for example, whether it will be a nightclub, bar, restaurant, motel, hotel, or resort. This will also determine the licence conditions to be imposed (for example because licence conditions for a hotel will be different from that of a nightclub). The applicant should be required to provide detailed information regarding the design and layout of the premises, and evidence of systems, staff and training to comply with the law.

11. Similar to the requirements for a manufacturing licence, an applicant for an On-site licence must provide reports approving the premises as complying with required safety standards, from the MOH, and the Ministry responsible for building requirements and any other reports as may be required by the LCB.
12. To ensure greater community involvement in decisions relating to alcohol applications, any person may be able to lodge an objection against a new licence application for the sale and supply of alcohol on any of the grounds in the licence criteria. Furthermore, the *Village Fono* should continue to play an active role in restricting sale and consumption of alcohol through their active involvement in the licensing process.
13. The legislative provision prohibiting construction of a bar or nightclub within 50 metres of school buildings should remain. However in relation to churches, On-site licences may be approved (including for a bar or nightclub) provided that the LCB is satisfied that further requirements have been met by the applicant relevant to its location within the vicinity of a church. Such further requirements may include sound proofing for the premises and extra security for the premises. Reports from churches within the vicinity may also be requested by the LCB to assist with its decision.
14. Mandatory licence conditions should continue to be set out in legislation, such as:
 - a) Permitted trading hours for the sale and supply of alcohol;
 - b) Closing time for the licenced premises which should be no later than an hour after sale is prohibited (in relation to on-site licences);
 - c) Days the sale of alcohol is prohibited (where applicable);
 - d) prohibition on the sale and/or supply of alcohol to minors;
 - e) prohibition of entry by minors on the licensed premises (in relation to on-site licences);
 - f) water must be freely available to customers on all licensed premises and non-alcoholic drinks must be available for sale (in relation to on-site licences);
 - g) prohibition on selling to drunken or disorderly persons;

- h) a copy of the licence, together with the conditions must be prominently displayed on the premises
- i) Sale of alcohol for consumption on the licensed premises only (in relation to on-site licences), or sale of alcohol for consumption away from the vicinity of the licensed premises (in relation to off-site licences);
- j) Relating to music at the licensed premises to be maintained at a level that is neither disruptive nor inconvenient to surrounding residents or businesses;
- k) Period the Licence is valid for;
- l) The LCB may suspend the licence if there are significant compliance issues or where adverse reports are received in relation to licence conditions (for example from Police, MOH or *Village Fono*).

15. Legislation should also prescribe what types of conditions the LCB may exercise their discretion to impose, so that discretion is exercised within the parameters expressly set out in legislation. This should include conditions:

- a) Reducing or minimising disruption or convenience to surrounding residents or businesses (for example requiring extra security, or sound proofing of the premises).
- b) Reducing the hours the sale of alcohol is permitted or closing time for the licences premises (in relation to On-site licences) in particular;
- c) Prohibiting the sale of alcohol on certain days in particular circumstances (where for example, as was done during National elections).

16. All conditions imposed must be clearly set out on all licence certificates, including temporary licences and renewed licences.

17. To minimise the workload of the LCB to better focus on applications that are more contentious:

- a) Off-site licences should be granted initially for a year, and compliant Off-site licences renewed every 2 years through a streamlined process where the licence is automatically renewed upon payment of a fee and subject to the same terms and conditions. However, Off-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public should be required to apply for renewal each year and provide the LCB a report from the police and where relevant *Village Fono* in support of their application.

- b) On-site licences for restaurants, hotel and motels should be granted initially for a year, and compliant On-site licences renewed every 2 years through the same streamlined process. However, such Off-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public should be required to apply for renewal each year and provide the LCB a report from the police and where relevant *Village Fono* in support of their application.
- c) On-site licences for nightclubs and bars should continue to be renewed yearly due to the nature of the business. Additionally, such On-site licence holders that have breached conditions of the licence or that are the subject of complaints by the public, should when applying for a renewal provide the LCB a report from the police, and where relevant the *Village Fonoin* support of their renewal application.

18. A temporary licence should be obtained for any commercial events where alcohol is sold or supplied, such as fund raisings or corporate table events. The legislation should provide criteria that the LCB must consider before approving a temporary licence. This should include:

- a) The nature of the event;
- b) The days and hours during which alcohol will be sold and supplied;
- c) Whether food and non-alcoholic drinks will be provided at the event;
- d) The design, layout and location of the premises concerned;
- e) Where appropriate, whether the consent of the *Village Fono* where the event will be located has been sought and whether such an event contravenes any village bylaws.

19. The legislation should provide that before approving a temporary licence, the LCB must be satisfied of the following:

- a) That the applicant has taken steps concerning matters of security for the premises, monitoring, controlling noise levels and public health concerns;
- b) That the applicant has taken steps to ensure that the sale and supply of alcohol to minors will be prohibited.

20. A licensee (for the sale, manufacture, importation of alcohol) should have an ongoing obligation to inform the LCB of any changes of information provided or in connection with a licence application or licence renewal.

Licence to Manufacture Alcohol

21. The criteria considered by the LCB for a license to manufacture alcohol should include the same criteria for selling alcohol, such as the suitability of the premises, the applicant's understanding of the obligations of a licensee, and objections to an application. The LCB should also be satisfied of the following, the costs of which should be borne by the applicant:
- a) the safety of the formulae or the brewing methods as meeting minimum standards that will be used by the proposed licensee as verified by SROS or other relevant agency, and
 - b) the brew master's qualification as verified by the Samoa Qualification's Authority (**SQA**) should be required as part of the licence application. The minimum qualifications of the brew master should be set out under the Act or in regulations.
22. Regulations should be able to be made to set out minimum standards that the manufacturer must meet with regards to the safety of the formulae or brewing methods to be used in the proposed premises.

Restrictions on Purchasing, Consumption and Service to Minors

23. A person under 21 may be supplied alcohol at a licensed premises (such as a restaurant or where the nature of the business is to sell food and beverages), provided the person is under the responsible supervision of a parent or legal guardian. Breach of this by the licensee should be an offence.
24. Matters taken into consideration when determining whether the supply of alcohol is consistent with the responsible supervision, should include:
- a) the minor's age which should not be under 18;
 - b) whether the parent or legal guardian is intoxicated;
 - c) whether the minor is intoxicated (as supply to a minor who is intoxicated would not be consistent with responsible supervision);
 - d) whether the minor is consuming alcohol with a meal;
 - e) whether the parent, guardian or responsible adult is responsibly supervising the minor's consumption of the alcohol;
 - f) the quantity and type of alcohol, and the time period over which it is supplied.
25. A valid form of identification should be required to gain entry to an On-site licensed premise such as a night club or a bar when a person is suspected of being underage

and in order to purchase alcohol. A valid form of identity should include a passport, driver's licence, and student identification cards from a tertiary Institution which includes the date of birth or some other form of identification approved by the LCB.

26. The licensee or manager of an On-site licensed premises should be authorised to confiscate false identification documents, or identification documents that appear to have been tampered with and provide them to the Police as soon as practicable. This should not include passports. It should be an offence for a minor to use any document to falsify an age.

Restrictions on Service by Minors

27. A person aged under 21 and over 18 may be employed in a On-site licensed premises for any of the following purposes:

- a) preparing or serving a meal; or
- b) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area or stocktaking; or
- c) checking or removing cash; or
- d) selling or supplying alcohol provided he or she is supervised by an adult where he or she is employed at.

Regulating Trading Hours and Days for Sale of Alcohol

28. The maximum trading hours (closing and opening) for licensed premises for the sale and supply alcohol should be expressly set out in legislation:

- a) For On-site licensed premises such as nightclubs and bars located in the urban area, the trading hours should be between 8.00am and 12.00am. However, a period up to one hour after closing time should be allowed for people to remain on the premises with only the sale of water, non-alcoholic drinks and food permitted.
- b) For nightclubs and bars outside the urban area, as well as other On-site licensed premises such as restaurants, resorts and hotels, the trading hours should be between 8.00am and 10.00pm.
- c) For all Off-site licensees (such as retail shops) the trading hours should be between 8.00am and 10.00pm.

29. On-site licensees should be required as a condition of their licence that tap water should be made available for free to patrons on request throughout the night.

30. The LCB should retain the power to temporarily reduce or extend the trading hours for the sale and supply alcohol for particular occasions or on other public holidays by public notice. The process and criteria for the LCB's decisions when restricting or extending trading hours should be set out in legislation. Additionally, the reasons for LCBs decisions should be in writing and be made publicly available. The legislation should also recognise that *Village Fono* can impose more restrictive trading hours for licensed premises in their village than the default maximum trading hours.
31. The maximum trading hours should be strictly monitored and enforced. Licensees that do not comply with the trading hours should be penalized and incur an immediate fine, that should be set out in legislation. (See recommendations on enforcement).

Regulating Trading Days for Sale of Alcohol

32. The prohibition on the sale or supply of alcohol on Sunday should remain in place for Off-site licences such as retail stores and supermarkets. The Sunday prohibition should also remain in place for On-site licensees such as bars and nightclubs. The legislation should expressly provide the types of On-site licences that 'may' be permitted to sell or supply alcohol on Sunday, which should include restaurants where selling food is the predominant nature of the business, and also hotels, motels and resorts where alcohol is sometimes consumed with a meal. For On-site license premises that 'may' be permitted to sell or supply alcohol on Sunday, the licence application should include a request to do so. Such applicants should be required to satisfy the LCB that all measures will be taken that will minimize as much as possible any negative impacts of Sunday trading. This should include such as security precautions, noise control, and appropriate staff training.
33. The terms and conditions of Sunday trading for a permitted licensee should be clearly set out in the licence and should include the following:
- a) The sale of alcohol is restricted to the hours between 9.00am and 10.00pm.
 - b) Where the licensed premises is a restaurant, the sale of alcohol should only be authorised if the alcohol is sold or supplied together with a meal.
 - c) Where the licensed premises is a hotel, motel or resort, the sale or supply of alcohol may only be made to its guests and or to guests of the guest.
 - d) All noise needs to be maintained at a reasonable level.
 - e) Licensees must ensure that alcohol is consumed on the premises and no alcohol is to be removed from the premises.

- f) If any licensee breaches the terms and conditions of Sunday trading, the LCB may suspend or revoke approval to sell alcohol on Sunday, or suspend or revoke the licence as a whole.

Controlling Outlet numbers

34. The legislation should require the LCB to consider the issue of outlet density as part of the criteria when reviewing an application for a licence, and that the LCB should be satisfied that the overall social impact of the licence will not be detrimental to the well-being of the local or broader community. A report (community impact statement) may be requested from the *Village Fono* on any incidents in the village relating to any licences issued, to assist the LCB determining the overall social impact of the licence on the community.

Restrictions on the types of Alcohol products that can be sold

35. The law currently enables regulations to be made to prohibit a licensee from selling alcohol of a prescribed kind. This regulation making power should remain and should be broad enough to prohibit or limit the sale by Off-site licensees of specific types of alcohol, or beverages of very high alcohol content from being sold. For instance this should enable a group of Off-site licensees (such as retail stores in villages or in certain areas) to be restricted from selling 'ready to drink beverages' (RTDs) or alcohol above a certain strength, whilst specialist alcohol stores may be permitted to sell the full range of alcohol products.
36. In relation to products or classes of products that are considered undesirable, the following criteria should be included under the Act about what makes a product undesirable:
- a) If it is particularly dangerous to health;
 - b) If it is targeted at or has special appeal to minors; and
 - c) If it encourages irresponsible or excessive consumption of the product.

37. The *Village Fono* of the area in which the licensed premises is located should be encouraged to put in place by-laws prohibiting or restricting the sale in village stores or consumption in villages, of specific types of alcoholic beverages or alcohol above certain strength.

Serving Size

38. The legislation should provide that the standard serving size of alcohol should be measured as being equal to 10 grams of pure alcohol despite the container size or

alcohol type. Labels on alcoholic beverages should be required to indicate how many standard drinks it contains based on this measurement.

39. The relevant government agencies (such as MOH and Police) should work collaboratively to provide public awareness programs about standard serving sizes so that consumers can work out how much alcohol is being consumed and drink more responsibly.
40. The sale or supply of beer towers and cocktail jugs should be restricted so that it is not sold or supplied after a certain time (for example past 8pm) and that the licensee (and employees) should be required to monitor the consumption of alcohol and level of intoxication from patrons being served towers and cocktail jugs.

Excise Taxation

41. The price of cheap alcohol should be increased through increased excise tax to discourage consumers from purchasing cheap alcohol in excess. However, care should be taken so that it does not become unsustainable for businesses to operate. For example, adequate and thorough research and analysis should be carried out by the relevant government agencies to ensure the imposition of excise tax on alcohol is not unfeasible for alcohol manufacturers to continue their operation.
42. The percentage of increase of excise tax of a particular tax bracket should correspond with the percentage of increase of the content of alcohol in an alcoholic beverage for that tax bracket. In other words, an increase in alcohol content for example in relation to spirits or 'other beer' should result in an equivalent or similar percentage increase in the excise tax rate.
43. The excise tax brackets should be revised and an increase in the number of excise tax brackets should be considered. For example, the first tax bracket could include spirits with alcohol strength of under 10%, the second alcohol bracket could include spirits of alcohol strength between 10% and under 20%. Similar intervals could be inserted to the current tax bracket between 30% and 57.12%.
44. The excise tax on low volume alcohol (for example light beer) should be reduced to encourage production of low strength/ volume alcohol.
45. Excise tax on RTD beverages should remain high due to its appeal to younger people, as the overall weight of evidence indicates young people will reduce their consumption as a result of a price increase.
46. Adequate time (for example, 3 years from any legislative reforms) should be allowed for alcohol reforms to be implemented and enforced, and current laws and policies

improve. Such reforms if implemented effectively may lessen Government's reliance on very high excise tax to reduce alcohol-related harms.

Minimum Price Scheme

47. The Ministry of Commerce Industry and Labour (**MCIL**) should monitor overseas developments on minimum pricing schemes to inform consideration of a minimum price regime as current legislation enables minimum prices to be set but it has never been done.
48. Alcohol should be removed from the General Price Order (**GPO**) which sets a maximum price in order to make alcohol more affordable.

Advertising and Sponsorship

49. Advertising and promotion of alcohol should be regulated particularly in relation to the content of advertising, youth exposure to advertising and sponsorship messages, and inappropriate sales promotions to ensure it is done responsibly and exposure to minors is minimised. Development of appropriate legislation should be lead by the Ministry responsible for regulation of alcohol in collaboration with other relevant Government agencies such as MOH, Ministry of Education Sports and Culture (**MESC**), Police and Ministry of Women Community and Social Development (**MWCS**D). This should apply to all companies and enterprises connected with the alcohol industry in Samoa (whether as producers, importers, wholesalers, distributors or retailers). The legislation should include:
 - a) defining places and media where advertising is authorised (for example, prohibition of advertising in the vicinity of schools);
 - b) prohibiting targeting minors or trying appeal to them by linking alcohol with irresponsible behaviour and social success;
 - c) prohibiting featuring youths on alcohol-related advertisements;
 - d) setting out when advertising is prohibited (for example prohibiting advertising on all forms of media during certain times when it is most likely to be exposed to young people, or in cinemas except for movies restricted to adults);
 - e) controlling content of advertisements;
 - f) requiring a health message must be included on each advertisement warning of the negative effects of alcohol abuse on a person's health.

50. Legislation should require that a person in breach should withdraw or amend the advertisement and must not use that approach again. Legislation should also provide for penalties for the infringement of laws around the advertising of alcohol such as fines.
51. The Ministry responsible for regulation of alcohol should develop national alcohol advertising and promotion standards (**Alcohol Advertising and Promotions Standards**) in consultation with MOH and MESC and other relevant agencies, to set standards for the content of advertisements.
52. The legislation should also include a new function for the LCB to receive complaints in relation to breaches of the Alcohol Advertising and Promotions Standards, and should set out procedures to be followed by the LCB when determining complaints from the public. This should include:
- a) A complainant may lodge a complaint to the LCB in writing outlining the alleged breaches of Alcohol and Promotions Advertising Standards made by the advertiser.
 - b) If the LCB decides that there are no grounds for the complaint to proceed, the complainant should be advised. However if the LCB decides that there are grounds, then the complaint should be sent to the advertiser seeking comment within a set timeframe (for example, 10 working days).
 - c) The LCB will determine whether there has been a breach and all parties will be informed of the outcome. If there is a breach, the advertiser must immediately withdraw or amend the advertisement. Should the advertiser fail to do so, a penalty will be incurred.
 - d) There will be no appeal from a decision of the LCB other than by instituting legal proceedings for judicial review in the Supreme Court.
 - e) All rulings and decisions of the LCB should be published or made publically available.
53. Licensees should be encouraged to seek advice from the LCB before running an advertisement or promotion that might be at risk of breaching the Alcohol and Promotions Advertising Standards.
54. An independent review on the effectiveness of the LCB's complaints process, the rules around alcohol advertising, promotion and sponsorship should be conducted 3 years after the report is passed in Parliament. Government may also wish to explore establishing an advertising standards board with a general mandate to investigate

breaches of advertising standards for all advertisements, and not limited to alcohol advertisements.

Labeling

55. Alcoholic beverages should meet minimum labeling requirements relating to the alcohol content (this should not include ingredients and nutritional information) that should be set out in legislation. These minimum labeling requirements should be reviewed periodically, for example, every 3 – 5 years. The Ministry responsible for Food safety should monitor and enforce labelling requirements. Minimum labelling requirements should include:

- a) Any alcoholic beverage containing more than 1.15% alcohol by volume (**ABV**) must include on the label a statement of the alcohol content. The statement must indicate the volume of alcohol in the alcoholic beverage as a proportion of the alcoholic beverage. It should not be mandatory for alcoholic beverages containing less than 1.15% ABV to be labelled, although manufacturers should be encouraged to.
- b) Alcoholic beverages must include on the label a statement of the number of standard drinks in the package. Following New Zealand's example, a standard drink is the amount of a beverage that contains 10 grams of alcohol at 20 degrees Celsius.
- c) A health message to the effect that 'alcohol abuse is dangerous for health.'

Enforcement

56. The process for enforcing breaches of the law should be simplified. There should be infringement offences and powers for Police and Liquor Inspectors to issue infringement notices under the Act (similar to Land Transport Authority officers with regards to traffic infringements) and on the spot fines set out in regulations. A licensee may challenge the infringement notice through requesting a Court hearing. Infringement notices and on spot fines should be able to be issued in the following circumstances:

- a) Where minors are permitted to enter bars and nightclubs;
- b) Purchasing of alcohol by persons under the age permitted;
- c) Where a licensed premises fails to comply with maximum trading hours and opens past the permitted closing time;
- d) Where beer towers and cocktail jugs are sold or supplied beyond the permitted hours;

- e) Failing to comply with certain requirements and restrictions imposed by or under the Act.

57. More specifically in relation to maximum trading hours and breaches relating to minors, licensees that do not comply should be penalized as follows which should be set out in the legislation:

- a) Licensees that breach the maximum trading hours for the first time should be issued an infringement notice and incur a fine (for example of \$250);
- b) Licensees that breach a second time should be issued an infringement notice and incur an increased fine (for example, of \$500), as well as suspension for a period not exceeding the maximum period in legislation (for example, 2 weeks);
- c) Licensees that breach a third time should be issued an infringement notice and incur a fine (for example, of \$750), and have the licence suspended for period not to exceed the maximum period in legislation (for example, 4 weeks). This should also impact on a further license issued to the licensee in breach.
- d) Public notices should be issued informing the public of the suspended licensees and the suspension period for non-compliance.

58. Furthermore, suspension of any licensee who continues to fail to comply with maximum trading hours in the preceding recommendation should only be issued by the Police Commissioner. The Police Commissioner should immediately notify the LCB in writing of the issuance of such suspension.

59. Police should also have the power to order the closure of a licensed premises in the following circumstances, until a time stated in the order which must not last longer than a set period (for example, 48 hours from the end of the day of order). The Police Commissioner should notify the LCB in writing of such order as soon as practicable.

- a) If there is fighting or serious disorder or a riot or there are reasonable grounds for believing that it is about to break out on any licensed premises;
- b) If there is a significant threat to public safety;
- c) If the conduct on any licensed premises amounted to a substantial public nuisance;

d) If the licensed premises was opened past the permitted time.

60. Where Police believes that a licensee has breached any other conditions under the Act and reports this to LCB, such report should be treated as a complaint to be acted on by the LCB and the licensee contacted for a hearing.
61. The *Village Fono* should be encouraged to make *faigafa'avae* or bylaws which may include (at the discretion of the *Village Fono*) rules relating to consumption and sale of alcohol in the village, as well as noise levels, and nuisance, in order to ensure that the granting of the licence will not negatively impact the community and village. These are enforced by the *Village Fono* themselves. Awareness and training programs should also be undertaken by the Ministry responsible for the regulation of alcohol together with MWCSO and Police, to educate the *Village Fono* about the licensing system and enforcement responsibilities.

Alcohol and Drugs Court (ADC)

62. Relevant Government agencies (such as MOH, MWCSO, and Police) and members of civil society should work in collaboration with the ADC to improve its efficacy. The benefits of the ADC in curbing of recidivism amongst offenders will be more evident over time, and collaboration between Government agencies will ensure the success of this pilot program and may enable it to be extended to offenders living beyond the region of this program currently limited to villages from Lauli'i to Afega. Collaborative work may include assisting in developing appropriate rehabilitation programs, and developing the capacity and technical expertise of clinicians in Samoa for clinicians that assess offenders.
63. Data collection regarding alcohol related offending or serious offending where alcohol is a contributing factor is essential. Police should make it mandatory process to record whether the offender was under the influence of alcohol and or drugs at the time of the offence. This would also assist in identifying offenders suitable for the ADC.

Awareness and Education

64. Relevant Government agencies (for example, MESC, MWCSO, MOH and Police) and Non-Government Organisations should work collaboratively to implement formal and informal education that focuses on the harmful effects of alcohol in schools and in villages.
65. There needs to be an improvement in the balance between alcohol advertising and awareness initiative on harms caused by alcohol. Harms of alcohol abuse should be more publicly visible using various mediums where such messages will be exposed to youth and to suit the audience it is intended for.

66. To explore the use of a portion of excise tax on alcohol to create and implement awareness campaigns on the harms of alcohol.

Responsibilities of Parents, village councils and churches with respect to adolescent drinking

67. Parents, churches and village councils should recognize the importance of their role in addressing alcohol abuse among young people and should work collaboratively in doing so, along with the relevant Government agencies.

68. Awareness programs and workshops should be conducted by churches, with the assistance of relevant Government agencies and non-government organisations on issues involving alcohol. In addition, village councils and churches should with the assistance and training of the relevant Government agencies develop rehabilitation programs for young offenders in support of the ADC, to reduce the risk of reoffending.

69. Village councils should be encouraged to have in place alcohol-related bylaws targeting alcohol consumption amongst young people, with appropriate penalties. Village councils should also be mindful of the harmful effects of alcohol advertising before they permit the installation of signs and billboards advertising and promoting alcohol in their respective villages.

APPENDIX “A”

“ALCOHOL CONTROL BILL” (REFLECTING ALCOHOL REFORM FINAL REPORT RECOMMENDATIONS)

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