



Government of Samoa



KOMISI O LE TOEFUATAIGA O TUALFONO A SAMOA

Ministerial and Departmental Arrangements Act 2003

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Introduction

The Samoa Law Reform Commission (“Commission”) received a reference from the Attorney General in 2008 to review all Ministry laws with a view to proposing a framework for uniformity in Government Ministry laws.¹ Given the broad scope of the reference, the Attorney General in 2012 narrowed the review to focus specifically on the *Ministerial and Departmental Arrangements Act 2003* (the ‘MDAA’ review), with the following Terms of Reference (“TOR”):²

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

Due to competing work priorities of the Commission at the time, the MDAA review was put on hold and work resumed in the beginning of 2015 with preliminary research. In January 2016, the Commission met again with the Office of the Attorney General (OAG) to once again, clarify the TOR and discuss a way forward. The outcome of this meeting with the OAG was that the TOR was summed up as follows:

“To develop the MDAA to be the uniform law to establish all Government Ministries and Corporations.”³

This outcome, together with the research carried out by the Commission largely informed the development of a Discussion Paper. To further understand the Ministerial Departmental Arrangements Act, Parliamentary Debates in the Hansard records of the Office of the Clerk of the Legislative Assembly were also reviewed. For a comparative analysis with overseas jurisdictions, the Commission also looked at the overseas public sector frameworks, in particular Samoa’s neighbours New Zealand and Australia, in search of any foreign aspects beneficial (in a study of the public sector frameworks) for Samoa.

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

² Samoa Law Reform Commission, *Ministerial Departmental Arrangement Act 2003 Review*, Discussion Paper No 22 (2017) 1.

³ Ibid.

A Discussion Paper was completed in April 2017 and approved by Cabinet in July of the same year for stakeholder consultations. The Discussion Paper sought submissions on several issues which include the option of amending the MDAA to meet the above TOR. Following the approval of the Discussion paper, from June 2017, further more targeted research was undertaken. The Commission embarked on an analysis of the current and existing public sector legislative framework. As the TOR also required the review of enabling legislation for Corporations also, the Commission also researched the laws setting up government Corporations.

In the course of further research undertaken, it was revealed that there were various upcoming and pending reviews on the public sector of Samoa. For example, extensive surveys and research were already undertaken by the Public Service Commission. It became clear that some of the central agencies of government were already discussing and leading reforms on the public sector structure, though under their own key objectives and mandates. These revelations informed the Commission's decision to carry out targeted consultations with the Central Agencies. The Central Agencies consist of the Office of the Public Service Commission (PSC), the Ministry of Prime Minister and Cabinet (MPMC), the Ministry of Finance (MOF), the Ministry of Public Enterprise (MPE) and the Office of the Attorney General (OAG). Carrying out consultations with the Central Agencies was a deliberate decision on the part of the Commission to ensure that consultations are effective and respond to the needs of the TOR.

At the consultations, the Commission sought the views of the Central Agencies on the following key questions:

1. For the reasons given in the Law Reform Commission consultation presentation, following a review of the Ministerial and Departmental Arrangements Act 2003 (MDA Act), the Law Reform Commission is of the view that there needs to be a complete overhaul of the MDA Act for it to be capable of reflecting 'an updated ministerial and departmental structures of all Government Ministries and Corporations' (TOR).

Do you have any concerns or reservations on this position, or do you agree with this position?
Please give reasons.

2. From your Office's/Ministry's perspective, if the MDA Act was to be reviewed to meet the TOR, what would you change?

3. Does your office have any future reforms planned that may affect the development of a uniform legislative framework for Ministries and Corporations? If yes, what? How would it affect this project?

4. What option do you prefer from the Options suggested (Consultation Presentation), to allow for a practical and consistent legislative framework establishing government ministries and corporations, and why?

Submissions to the above questions were due to the Law Reform Commission on 3 November 2017. The submissions both verbal and written to the above questions from the Central Agencies during and following the consultations have significantly informed the Commission's recommendations in this Final Report.

In addition, to assist further discussions of the Central Agencies and the Government, the Commission has prepared a draft proposed outline of what may be a Public Sector Legal Framework for Samoa (Draft Proposed Public Sector Legal Framework Outline), to further illustrate what the TOR received by the Law Reform Commission seeks to achieve. This Draft Proposed Public Sector Legal Framework Outline is attached as Schedule 1 to this Final Report. Given the intricacies of the realities in the current public sector framework (or the lack of framework) e.g. the many differences in the current systems governing public servants adopted by the Boards in the Public Bodies, Ministries and the Constitutional Offices across Samoa's Public Sector, this proposed draft is by no means a Final Product. It is hoped it will assist further discussions of the relevant authorities for a relevant, suitable and realistic public sector for Samoa.

1. Part A: What is the current law?

1.1 The Ministerial and Departmental Arrangements Act 2003 came into force on 1 May 2003 and is administered by the Ministry of the Prime Minister and Cabinet (MPMC).⁴ It repeals the Ministerial Portfolios Act 1976 which provided for the rearrangement of the Portfolios of certain Cabinet Ministers.⁵ It abolished the (then) named Government departments and gave them new Ministry names, realigning and shifting those departments under those newly named Government 'Ministries'. These were all provided for under a total of 14 sections and 2 Schedules to the Ministerial and Departmental Arrangements Act 2003.⁶

Section 1 to section 3 are preliminary provisions stating the short title and commencement, interpretation section and application of the MDAA Act,⁷ inclusive of transitional provisions to allow for the smooth transit of the operations of the abolished Ministries and Departments in to the Ministries now named in the Schedule.⁸

Section 4 provides that there shall be a list of Government Ministries, in Schedule 1;⁹

Section 5 states that there shall be a list of CEOs parallel to Government Ministries, in Schedule 2;¹⁰

Section 6 provides that any amendments to the lists under Schedule 1 and Schedule 2 are to be by Order of the Head of State on the advice of the Prime Minister;¹¹

Section 7 provides that the Prime Minister may charge a Minister with the responsibilities for a Department (also a function of the Hon Prime Minister under Article 35 of Constitution of Samoa 1960);¹²

⁴ *Ministerial and Departmental Arrangements Act 2003* (Samoa).

⁵ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 12.

⁶ *Ministerial and Departmental Arrangements Act 2003* (Samoa).

⁷ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 1 – s3.

⁸ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 1(4).

⁹ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 4(1); sch 1.

¹⁰ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 5; sch 2.

¹¹ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 6; sch 2.

¹² *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 7; *Constitution of the Independent State of Samoa 1960* Article 35.

Sections 8 and 9 provide that the references to abolished Departments and Ministries, or to Heads of the abolished Departments and Ministries, are to be references to the CEOs and Ministries in Schedule 1 and Schedule 2;¹³

Section 10 provides that the Head of State may make Orders to clarify Ministerial and CEO responsibilities;¹⁴

Section 11 sets out the Savings provisions requiring that the abolition of a Ministry or Department does not affect the previous operations of an abolished department. For example, the rights, privileges, obligations and liabilities under an abolished department are saved and continued under the new Ministry.¹⁵

Background - Public Sector Reforms before MDAA

1.2 Public sector reforms are not new to Samoa. In 1996, the Government's key focus on public sector reforms was to improve service delivery to the public, improving government efficiency and effectiveness as well as providing an enabling environment for the growth of the Private Sector.¹⁶ In the years leading up to 2003, the Public Service Commission carried out its Departmental Functional Review through the Institutional Strengthening Project to realign Ministries and their functions ("PSC realignment"). In 2003, the PSC realignment led to the reduction in the total number of Government Departments, from 27 to 14 new Ministries.¹⁷ The MDAA was enacted to reflect the outcome of the PSC realignment. According to official Hansard record of Parliamentary proceedings,¹⁸ the MDAA reflects the following overall objectives: PSC realignment:

- i. improve service delivery by government departments to the public;
- ii. safeguard public funds; and
- iii. reduce the duplication of responsibilities carried out by different government departments.

¹³ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 8 – s 9.

¹⁴ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 10.

¹⁵ *Ministerial and Departmental Arrangements Act 2003* (Samoa) s 11.

¹⁶ Public Service Commission, Government of Samoa, *Report on the Evaluation of the 2003 Public Service Realignment*, (2011) 11 ('*Evaluation of the 2003 Public Service Realignment Report*').

¹⁷ *Ibid.*

¹⁸ Bills Committee, Parliament of Samoa, *The Bills Committee Report on the Ministerial and Departmental Arrangement Bill 2002* (2002) 9.

1.3 Furthermore, the new reforms of government were reflected in the enactment of the *Public Finance Management Act 2001* for an effective management of public funds and improving transparency and accountability in the management of public funds.¹⁹ In addition, *the Public Bodies (Performance and Accountability) Act 2001* was enacted to improve performance and accountability of Public Bodies and improve transparency and accountability in carrying out their statutory functions.²⁰

Commission's view

1.4 Following an extensive review of the MDAA Act the subject of the TOR, and the background and environment from which it was produced, the Commission is of the view that the purpose for enacting the MDAA was not to formerly establish Government Ministries and Corporations but to officially list and name the realigned and rearranged departments and Ministries. Its brevity (as discussed above, only 14 sections) was deliberate, for just this purpose. As also discussed above, the MDAA was enacted to reflect one of the outcomes of the Government Realignment of the Public Service in 2003, which is the reduction of 27 Government departments to 14 new Ministries.²¹ To meet the TOR, the MDAA should be completely overhauled if it is to produce a suitable framework that will reflect the current structures of all Ministries and Corporations and to become the uniform law to establish Government Ministries and Corporations.

Recommendation 1: The MDAA should be completely overhauled and replaced to allow for a new framework to reflect the current ministerial and departmental structures of all Government Ministries and Corporations, and to be the uniform law to establish all Ministries and Corporations.

2. Part B: The current Public Sector Framework

2.1 This part explores the legislative framework under which the public sector bodies in Samoa are established, namely the Government Ministries, State Owned Enterprises, Constitutional bodies and Statutory bodies. The aim is to **determine whether the overall legislative setup of these 'public sector' offices assists with the proposed new framework under Recommendation 1 of this Final Report.**

¹⁹ *Public Finance Management Act 2001* (Samoa).

²⁰ *Public Bodies (Performance and Accountability) Act 2001* (Samoa).

²¹ *Evaluation of the 2003 Public Service Realignment Report*, above n 16, 5.

Government Ministries' Acts

2.2 Preliminary research undertaken by the Commission reveals that there are only four (4) specifically named '**Ministry**' Acts in Samoa which establishes four (4) Government Ministries.

They are:

- i. *Ministry of Transport Act 1978- an Act to establish the Ministry of Transport to provide for the development and administration of an efficient and economical transport policy for Samoa, and to provide for matters incidental to.*²²
- ii. *Ministry of Women Affairs Act 1990- an Act that establishes the Ministry of the Government to be known as the Ministry of Women Affairs.*²³
- iii. *Ministry of Works Act 2002- An Act to reform the law relating to public works by re-defining the role of the Public Works Department through the transfer of certain of its functions to the private sector, and by the comprehensive statement of its functions and powers in relation to the regulation of building construction, planning, urban management and the provision and maintenance of roads, bridges, seawalls and related public assets.*²⁴
- iv. *Ministry of Health Act 2006- An Act to establish and define the functions and powers of the Ministry of Health, the Minister and the Chief Executive Officer of the Ministry and for related purposes.*

2.3 Some of the common features or provisions of the above four (4) Acts are as follows:

- i. They establish Ministries. For example, the *Ministry of Transport Act* establishes the *Ministry of Transport*²⁵ and the *Ministry of Health Act* establishes the *Ministry of Health*.²⁶

²² *Ministry of Transport Act 1978* (Samoa), Long Title.

²³ *Ministry of Women Affairs Act 1990* (Samoa), Long Title.

²⁴ *Ministry of Works Act 2006* (Samoa), Long Title.

²⁵ *Ministry of Transport Act 1978* (Samoa), s 3.

²⁶ *Ministry of Health Act 2006* (Samoa), s 4.

- ii. They provide for the functions, powers and responsibilities of these Ministries. For example, Part 2 of the *Ministry of Health Act*²⁷ and Part 2 of the *Ministry of Works Act 2002*.²⁸
- iii. They establish Advisory Bodies and Committees. For example, section 11 of the *Ministry of Women Affairs Act 1990*²⁹ and Part 6 of the *Ministry of Health Act 2006*.³⁰
- iv. They have provisions on the delegation of powers and authorities. For example, Part 7 of the *Ministry of Health Act 2006*³¹ and section 8 and section 9 of the *Ministry of Transport Act 1978*.³²
- v. They have provisions on Annual Reports. For example, section 10 of the *Ministry of Transport Act 1978*³³ and section 18 of the *Ministry of Women Affairs Act 1990*.³⁴
- vi. They have provisions on Regulations. For example, section 58 of the *Ministry of Works Act 2002*³⁵ and section 24 of the *Ministry of Health Act 2006*.³⁶
- vii. They have miscellaneous provisions, for example, Part 8 of the *Ministry of Health Act 2006*.³⁷

2.4 The Commission also reviewed the laws which establish other Ministries listed in the MDAA Act:

- i. The Ministry of the Prime Minister and Cabinet is not established under a specific legislation. However, Article 37 of the Constitution of Samoa 1960 provides that there must be a Secretary to Cabinet, who is the CEO of MPMC.³⁸

²⁷ *Ministry of Health Act 2006* (Samoa), s 5 – s 6.

²⁸ *Ministry of Works Act 2006* (Samoa), s 4.

²⁹ *Ministry of Women Affairs Act 1990* (Samoa), s11.

³⁰ *Ministry of Health Act 2006* (Samoa), s 13.

³¹ *Ministry of Health Act 2006* (Samoa), s 16 – s 17.

³² *Ministry of Transport Act 1978* (Samoa), s 8 – s 9.

³³ *Ministry of Transport Act 1978* (Samoa), s 10.

³⁴ *Ministry of Women Affairs Act 1990* (Samoa), s18.

³⁵ *Ministry of Works Act 2006* (Samoa), s 58.

³⁶ *Ministry of Health Act 2006* (Samoa), s 24.

³⁷ *Ministry of Health Act 2006* (Samoa), s 19 – s 27.

³⁸ *Constitution of the Independent State of Samoa 1960* (Samoa), art 37.

- ii. The Ministry of Finance (Treasury) is established under the Public Finance Management Act 2001.³⁹
- iii. The Ministry of Agriculture is established under the Agriculture and Fisheries Ordinance 1959.⁴⁰
- iv. The Ministry of Commerce, Industry and Labour is established under the Trade, Commerce and Industry Act 1990.⁴¹
- v. The Ministry of Education, Sports and Culture is established by the Youth, Sports and Cultural Affairs Act 1993.⁴²
- vi. The Ministry of Foreign Affairs and Trade is established under the Trade, Commerce and Industry Act 1990.⁴³
- vii. The Ministry of Justice and Courts Administration is only listed in the MDAA Act.⁴⁴ The Land and Titles Act 1981 establishes the Department of Land and Titles. Its Registrar is the Registrar of the Court, who is also the CEO of the MJCA.⁴⁵
- viii. The Ministry of Communication and Information Technology (MCIT) is established under the Postal and Telecommunications Services Act 1999.⁴⁶
- ix. The Ministry of Natural Resources and Environment is established under the Lands, Surveys and Environment Act 1989.⁴⁷
- x. The Ministry of Police (Samoa Police Services) is established under the Police Service Act 2009.⁴⁸

³⁹ *Public Finance Management Act 2001* (Samoa), s 3.

⁴⁰ *Agriculture and Fisheries Ordinance 1959* (Samoa), s 3.

⁴¹ *Trade, Commerce and Industry Act 1990* (Samoa), s 4.

⁴² *Youth Sports and Cultural Affairs Act 1993* (Samoa), s 4.

⁴³ *Trade, Commerce and Industry Act 1990* (Samoa), s 4.

⁴⁴ *Ministerial and Departmental Arrangements Act 2003* (Samoa), sch 1.

⁴⁵ *Land and Titles Act 1981* (Samoa), s 3.

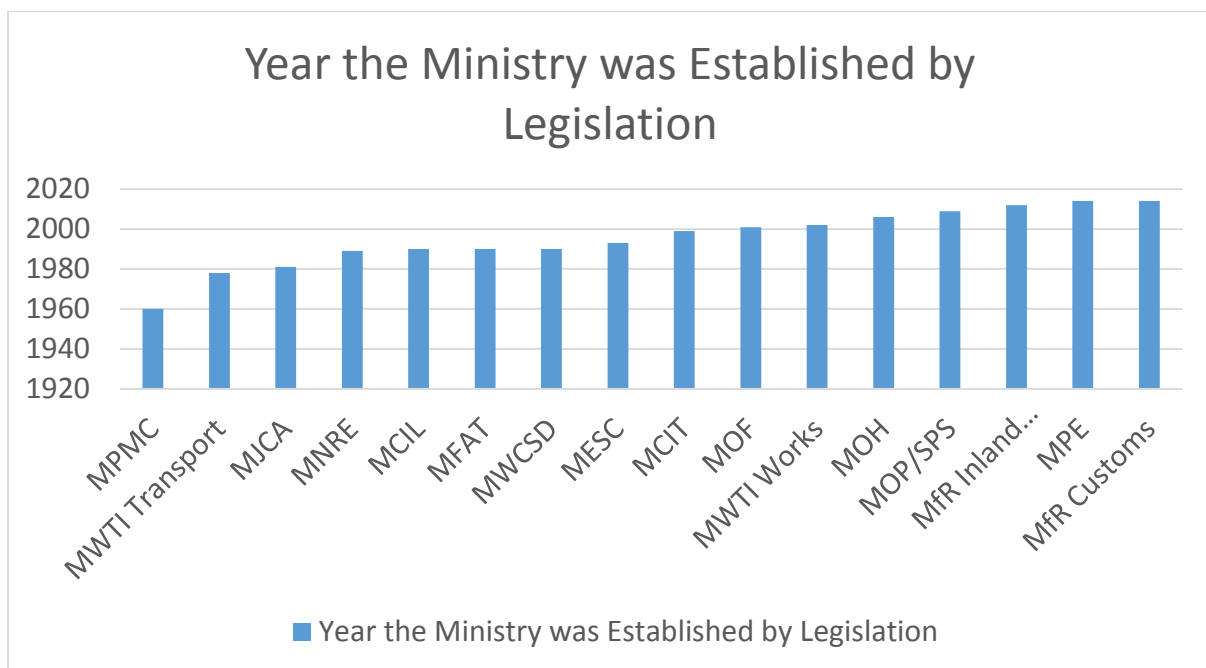
⁴⁶ *Postal and Telecommunications Services Act 1999* (Samoa), s 5.

⁴⁷ *Lands, Surveys and Environment Act 1989* (Samoa), s 4.

⁴⁸ *Police Service Act 2009* (Samoa), s 3.

- xi. The Ministry for Revenue is established under two (2) different Acts; the Tax Administration Act 2012 establishes the Inland Revenue Services⁴⁹ and the Customs Act 2014 establishes the Samoa Customs Service.⁵⁰
- xii. The Ministry of Public Enterprise is only listed in the MDA Act in a 2014 amendment to the MDA Act.⁵¹ It is not established by a specific legislation.

2.5 The graph below illustrates the years in which Ministries were established and the trend of their establishment. On analysis of the years in which they were created by legislation, the 12 Ministries listed were established within a span of 36 years, from 1978 to 2014. Although such analysis is helpful to indicate the span of years when all these Ministries were established, such analysis must still be treated with caution taking into account the change of portfolios along the years and the annual Consolidation project carried out by the Office of the Attorney General.



⁴⁹ *Tax Administration Act 2012* (Samoa), s 4.

⁵⁰ *Customs Act 2014* (Samoa), s 4.

⁵¹ *Ministerial and Departmental Arrangements Act 2003* (Samoa), sch 1.

State Owned Enterprises

2.6 Preliminary research undertaken by the Commission shows that there are currently 32 State Owned Enterprises in Samoa. They consist of 23 Public Trading Bodies and 9 Public Beneficial Bodies.⁵²

Public Trading Bodies

2.7 The following is the list of 23 Public Trading Bodies with their establishing Acts:

- i. Accident Compensation Corporation is established by the Accident Corporation Act 1989;⁵³
- ii. Agriculture Store Corporation Limited is established under the Agriculture Store Corporation Repeal Act 2013 which dissolved the Agricultural Store Corporation Act 1975 and replaced it with the current Agriculture Store Corporation Limited;⁵⁴
- iii. Airport Authority is established under the Airport Authority Act 2002;⁵⁵
- iv. Development Bank of Samoa is established by the Development Bank of Samoa Act 2010;⁵⁶
- v. Electric Power Corporation is established under the Electric Power Corporation Act 1980;⁵⁷
- vi. Gambling Control Authority is established under the Betting (Totalisator Agency) Act 1990;⁵⁸
- vii. Housing Corporation is established under the Housing Corporation Act 2010;⁵⁹

⁵² *Public Bodies (Performance and Accountability) Act 2001* (Samoa), sch 1.

⁵³ *Accident Compensation Act 1989* (Samoa), s 4.

⁵⁴ *Agriculture Store Corporation Repeal Act 2013* (Samoa), s 2.

⁵⁵ *Airport Authority Act 2012* (Samoa), s 3.

⁵⁶ *Development Bank of Samoa Act 2010* (Samoa); s 3.

⁵⁷ *Electric Power Corporation Act 1980* (Samoa), s 4.

⁵⁸ *Betting (Totalisator Agency) Act 1990* (Samoa), s 4.

⁵⁹ *Housing Corporation Act 2010* (Samoa), s 3.

- viii. National Provident Fund is established under the National Provident Fund Act 1972;⁶⁰
- ix. Land Transport Authority is established under the Land Transport Authority Act 2007;⁶¹
- x. Polynesian Airlines (Holdings) Limited is established under Company laws;⁶²
- xi. Polynesian Airlines (Investments) Limited is established under Company laws;⁶³
- xii. Polynesian Limited is established under Company laws;⁶⁴
- xiii. Public Trust Office is established under the Public Trust Office Act 1975;⁶⁵
- xiv. Samoa International Finance Authority is established under the Samoa International Finance Authority Act 2005;⁶⁶
- xv. Samoa Land Corporation is established by Company laws;⁶⁷
- xvi. Samoa Life Assurance Corporation is established by the Life Assurance Corporation Act 1976;⁶⁸
- xvii. Samoa Ports Authority is established under the Ports Authority Act 1998;⁶⁹
- xviii. Samoa Post Limited is established by Company laws⁷⁰ and regulated by the Postal Services Act 2010;⁷¹

⁶⁰ *National Provident Fund Act 1972* (Samoa), s 3.

⁶¹ *Land Transport Authority Act 2007* (Samoa), s 4.

⁶² *Companies Act 2001* (Samoa).

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Public Trust Office Act 1975* (Samoa), s 3.

⁶⁶ *Samoa International Finance Authority Act 2005* (Samoa), s 3.

⁶⁷ *Companies Act 2001* (Samoa).

⁶⁸ *Life Assurance Act 1976* (Samoa), s 3.

⁶⁹ *Ports Authority Act 1998* (Samoa), s 4.

⁷⁰ *Companies Act 2001* (Samoa).

⁷¹ *Postal Services Act 2010* (Samoa), s 9.

- xix. Samoa Shipping Corporation is established under Company laws;⁷²
- xx. Samoa Shipping Services is regulated under the Shipping Act 1998;⁷³
- xxi. Samoa Trust Estates Corporation is established under the Samoa Trust Estate Corporation Act 1977;⁷⁴
- xxii. Samoa Water Authority is established under the Samoa Water Authority Act 2003;⁷⁵
- xxiii. Unit Trust of Samoa (Management) Limited is established pursuant to the provisions of the Unit Trusts Act 2008.⁷⁶

Public Beneficiary Bodies

2.8 The following is the list of 9 Public Beneficial Bodies with their establishing Acts:

- i. Samoa Sports Facilities Authority is established under the Samoa Sports Facilities Authority Act 2007;⁷⁷
- ii. Samoa Tourism Authority is established under the Tourism Development Act 2012;⁷⁸
- iii. National University of Samoa is established by the National University of Samoa Act 2006;⁷⁹
- iv. National Health Services is established under the National Health Services Act 2014;⁸⁰
- v. National Kidney Foundation is established by the National Kidney Foundation of Samoa Act 2005;⁸¹

⁷² *Companies Act 2001* (Samoa).

⁷³ *Shipping Act 1998* (Samoa).

⁷⁴ *Samoa Trust Estates Corporation Act 1977* (Samoa), s 3.

⁷⁵ *Samoa Water Authority Act 2003* (Samoa), s 3.

⁷⁶ *Unit Trusts Act 2008* (Samoa).

⁷⁷ *Samoa Sports Facilities Authority Act 2007* (Samoa), s 3.

⁷⁸ *Tourism Development Act 2012* (Samoa), s 5.

⁷⁹ *National University of Samoa Act 2006* (Samoa), s 3.

⁸⁰ *National Health Service Act 2014* (Samoa), s 4.

⁸¹ *National Kidney Foundation of Samoa Act 2005* (Samoa), s 3.

- vi. Samoa Fire Emergency Services Authority is established under the Fire and Emergency Service Act 2007;⁸²
- vii. Samoa Health Promotion Foundation is established by the Health Promotion Foundation Act 2015;⁸³
- viii. Samoa Qualifications Authority is established under the Samoa Qualifications Authority Act 2010;⁸⁴
- ix. Scientific Research Organization of Samoa is established by the Scientific Research Organization of Samoa Act 2008.⁸⁵

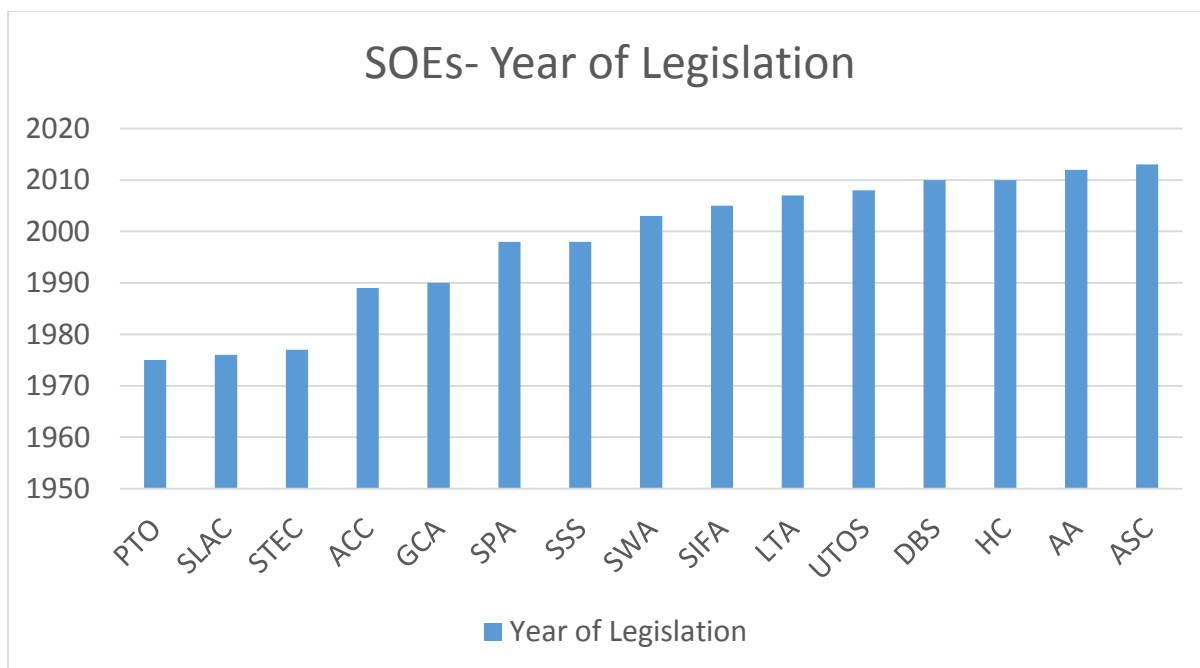
2.9 The graph below illustrates the years in which SOEs were established and the trend of their establishment. It appears to show that SOEs have been established within a span of 38 years, from 1975 to 2013. Again, similar to the analysis under 2.5 above, the indicated span of years of SOE establishment under legislation, must also be treated with caution taking into account the change of portfolios along the years and the annual Consolidation project carried out by the Office of the Attorney General.

⁸² *Fire and Emergency Service Act 2007* (Samoa), s 3.

⁸³ *Health Promotion Foundation Act 2015* (Samoa), s 3.

⁸⁴ *Samoa Qualifications Authority Act 2010* (Samoa), s 3.

⁸⁵ *Scientific Research Organization of Samoa Act 2008* (Samoa), s 3.



2.10 Although the TOR only makes reference to Ministries and Corporations/SOEs, it is helpful for the purposes of this review to have some idea of the enabling legislation of the existing Constitutional Offices and other Statutory Bodies.

Constitutional Offices

2.11 There are 5 Constitutional Offices in Samoa.

- i. The Office of the Attorney General is established pursuant to Article 41 of the Constitution of Samoa 1960 and the Attorney General’s Office Act 2013.⁸⁶
- ii. The Audit Office is established pursuant to Article 97 of the Constitution of Samoa 1960 and the Audit Act 2013.⁸⁷
- iii. The Office of the Ombudsman is established pursuant to Article 82A of the Constitution of Samoa 1960 and the Ombudsman (Komesina o Sulufaiga) Act 2013.⁸⁸

⁸⁶ *Attorney General’s Office Act 2013* (Samoa), s 3.

⁸⁷ *Audit Act 2013* (Samoa), s 11.

⁸⁸ *Ombudsman (Komesina o Sulufaiga) Act 2013* (Samoa), s 5.

- iv. The Public Service Commission is established by Article 84 of the Constitution of Samoa 1960 and the Public Service Act 2004.⁸⁹
- v. The post of the Clerk of the Legislative Assembly is established pursuant to Article 51 of the Constitution of Samoa 1960 and the Standing Orders of Parliament.⁹⁰

Statutory Bodies

2.12 Preliminary research by the Commission shows the following 4 Statutory Bodies and their enabling Acts.

- i. The Samoa Law Reform Commission is established by the Law Reform Commission Act 2008.⁹¹
- ii. The Office of the Electoral Commission is established by the Electoral Act 1963.⁹²
- iii. The Bureau of Statistics is established by the Statistics Act 2015.⁹³
- iv. The Office of the Regulator is established by the Telecommunications Act 2005.⁹⁴

Commission's view

At the beginning of this Part B, it was stated that the aim of highlighting the enabling legislative framework of Samoa's 'public sector' offices was to **determine whether their overall setup assists with the proposed new framework under Recommendation 1 of this Final Report.** Given the discussions in this Part, the Commission provides the following overall analysis.

2.13 The 4 Ministry Acts have common provisions in the laws that establish them. However, each Ministry Act has its own distinct mandates and functions. They were not consciously designed to form part of a uniform framework as each Act was established in different years and they were enacted far apart from each other. For example, the Ministry of Works Act 2002 was enacted 12 years after the Ministry of Women Affairs Act 1990.

2.14 Similarly, the Acts that establish other Ministries listed in the MDAA were not developed from a systematic coordinated framework specific for the establishment of Ministries. The oldest Act was enacted in 1978 and the most recent in 2014. According to the years of the enabling pieces

⁸⁹ *Public Service Act 2004* (Samoa), s 2.

⁹⁰ Standing Orders of Parliament (2016 Updated).

⁹¹ *Law Reform Commission Act 2008* (Samoa), s 5.

⁹² *Electoral Act 1963* (Samoa), s 3.

⁹³ *Statistics Act 2015* (Samoa), s 5.

⁹⁴ *Telecommunications Act 2005* (Samoa), s 9.

of legislation, these Ministries were established within a span of 36 years with different mandates and functions. However, this span of 36 years may not be completely conclusive for various reasons, including that the annual Consolidation of Laws conducted by the Office of the Attorney General updates Ministry names, following the Ministry portfolio reshuffle by the Honourable Prime Minister in any given year. For example, the MWCSO is said to be established under the Ministry of Women Act 1990, but its current responsibilities were revised more recently without amendments to the 1990 Act to reflect those revisions. In summary, the trend on the establishment of all Ministries reveal an absence of a uniform framework in Ministry establishment.

2.15 For reasons given under paragraph 2.14 above on Ministries' establishment with reference to the Consolidation of Laws, an analysis that it took Samoa 38 years (1975 and 2013) to establish State Owned Enterprises may also be inconclusive. However, it is sufficient to indicate the absence of a uniform establishment framework for State Owned Enterprises, similar to that of the Government Ministries. Constitutional Bodies and Statutory Bodies also follow the same trend. They were not created under a uniform framework but rather, were created independently of each other in the unique environments and realities (in Samoa in the years) in which they were developed and enabled.

2.16 In light of the TOR, it can safely be concluded that Government Ministries, State Owned Enterprises, Constitutional Bodies and Statutory Bodies have no coherent framework on their overall setup.

Recommendation 2: Government Ministries, State Owned Enterprises, Constitutional Bodies and Statutory Bodies have no coordinated framework on their overall setup i.e. in their respective enabling Acts. These Acts were not developed under a coordinated uniform framework to establish the public sector in Samoa. Therefore, each category's overall setup will not assist meet the TOR.

3. Part C: Other jurisdictions

This part examines the frameworks in which New Zealand, Australia and Singapore establish their public sectors. Subsequently, the Commission will **assess the suitability of these frameworks to Samoa to determine whether it may meet the TOR.**

NZ State Sector Act 1988

3.1 This Act appoints a States Service Commissioner which oversees all State services⁹⁵ in respect of the Government of New Zealand, whether Government departments, corporations, agencies or other instruments; and includes a Crown entity and organizations named in Schedule 4 and Schedule 4A of the *Public Finance Act 1989*, which includes the Education service.⁹⁶ The key features of the Act are as follows:

- Part 1 appoints a State Service Commissioner⁹⁷ and provides for its functions⁹⁸ and duties;⁹⁹
- Part 2 defines the Public Service and Departments of New Zealand;¹⁰⁰
- Part 3 appoints the CEO¹⁰¹ and provide for its functions and duties,¹⁰²
- Part 4 provides for the senior leadership and management capability in Public Service;¹⁰³
- Part 5 provides for Government workforce policy and personnel provisions;¹⁰⁴
- Part 6 provides for the Application of the Employment Relations Act 2000;¹⁰⁵
- Part 7 provides for the Education Service;¹⁰⁶
- Part 7A provides for Personnel provisions in relation to Education Service;¹⁰⁷
- Part 7B provides for the senior appointments in the Education Service;¹⁰⁸

⁹⁵ *State Sector Act 1988* (NZ), s 4.

⁹⁶ *State Sector Act 1988* (NZ), s 2: Definition of State services.

⁹⁷ *State Sector Act 1988* (NZ), s 4.

⁹⁸ *State Sector Act 1988* (NZ), s 6.

⁹⁹ *State Sector Act 1988*(NZ), s 5.

¹⁰⁰ *State Sector Act 1988* (NZ), s 27.

¹⁰¹ *State Sector Act 1988* (NZ), s 35.

¹⁰² *State Sector Act 1988* (NZ), s 34.

¹⁰³ *State Sector Act 1988* (NZ), s 46 – s 50.

¹⁰⁴ *State Sector Act 1988* (NZ), s 55A - s 66.

¹⁰⁵ *State Sector Act 1988* (NZ), s 67 - s 71.

¹⁰⁶ *State Sector Act 1988* (NZ), s 73 – s 77.

¹⁰⁷ *State Sector Act 1988* (NZ), s 77A – s 77I.

¹⁰⁸ *State Sector Act 1988* (NZ), s 77IA – s 77IF.

- Part 8 provides the miscellaneous provisions.¹⁰⁹

Public Sector Act 2009 (South Australia)

3.2 This Act sets out the provisions authorising the Governor to carry out the following:

- Establish or abolish a department;¹¹⁰
- Establish attached offices;¹¹¹ and
- Designate or revoke designation of responsible Ministers.¹¹²

3.3 The key features of the Public Sector Act 2009 (South Australia) are as follows:

- Part 1 states the preliminary provisions (Short Title and Interpretation);¹¹³
- Part 2 states the Objects of the Act;¹¹⁴
- Part 3 provides for the Public Sector Principles and practices;¹¹⁵
- Part 4 appoints the Commissioner for the Public Sector Employment;¹¹⁶
- Part 5 provides for the South Australia Executive Service and its purpose;¹¹⁷
- Part 6 establishes the Public Service (Government Departments, responsible Minister and CEOs);¹¹⁸

¹⁰⁹ *State Sector Act 1988 (NZ)*, s 82 – s 84C, s 85 – s 90, s 93 – s 95, s 106, s 110 – s 111.

¹¹⁰ *Public Sector Act 2009 (South Australia)*, s 26.

¹¹¹ *Public Sector Act 2009 (South Australia)*, s 27.

¹¹² *Public Sector Act 2009 (South Australia)*, s 28.

¹¹³ *Public Sector Act 2009 (South Australia)*, s 1, s 3.

¹¹⁴ *Public Sector Act 2009 (South Australia)*, s 4.

¹¹⁵ *Public Sector Act 2009 (South Australia)*, s 5 – s 12.

¹¹⁶ *Public Sector Act 2009 (South Australia)*, s 13.

¹¹⁷ *Public Sector Act 2009 (South Australia)*, s 22 – s 23.

¹¹⁸ *Public Sector Act 2009 (South Australia)*, s 24 – s 40.

- Part 7 provides for Public Sector Employment;¹¹⁹
- Part 8 sets out the miscellaneous provisions.¹²⁰

Government Sector Employment Act 2013 (New South Wales)

3.4 This Act establishes the Government Sector and Public Services.¹²¹ It provides a list of Departments of the Public Service listed in Part 1 of Schedule 1.¹²² The provisions of the Act apply to workforce management in the Public Service and also applies broadly across the Government sector.¹²³ The Act makes reference to the Constitution Act 1902, specifically Administrative arrangements (Part 7) where Departments are reshuffled by way of Administrative Arrangement Orders, issued by the Government to establish and disestablish the Public Service agencies and allocate Ministerial responsibilities.¹²⁴

3.5 The key features of the Act are as follows:

- Part 1 are the preliminary provisions (Commencement,¹²⁵ Definitions¹²⁶ and Objects),¹²⁷
- Part 2 provides for the Ethical framework for the government sector (Objectives,¹²⁸ Government Sector core values),¹²⁹
- Part 3 appoints the Public Service Commissioner¹³⁰ and establishes Advisory Board¹³¹ (Functions),¹³²
- Part 4 establishes and defines the Public Service listed in Part 1, Schedule 1,¹³³

¹¹⁹ *Public Sector Act 2009* (South Australia), s 41 – s 64.

¹²⁰ *Public Sector Act 2009* (South Australia), s 65 – s 81.

¹²¹ *Government Sector Employment Act 2013* (NSW), s 4b.

¹²² *Government Sector Employment Act 2013* (NSW), sch 1.

¹²³ *Government Sector Employment Act 2013* (NSW), s 20.

¹²⁴ *Government Sector Employment Act 2013* (NSW), s 22(3), *Constitution Act 1902* (NSW), Part 7.

¹²⁵ *Government Sector Employment Act 2013* (NSW), s 2.

¹²⁶ *Government Sector Employment Act 2013* (NSW), s 3.

¹²⁷ *Government Sector Employment Act 2013* (NSW), s 4.

¹²⁸ *Government Sector Employment Act 2013* (NSW), s 6.

¹²⁹ *Government Sector Employment Act 2013* (NSW), s 7.

¹³⁰ *Government Sector Employment Act 2013* (NSW), s 9.

¹³¹ *Government Sector Employment Act 2013* (NSW), s 18.

¹³² *Government Sector Employment Act 2013* (NSW), s 11, s19.

¹³³ *Government Sector Employment Act 2013* (NSW), s 20 – s 22.

- Part 5 provides for the Government Sector employees;¹³⁴
- Part 6 provides for the removal of statutory officers;¹³⁵
- Part 7 sets out the miscellaneous provisions.¹³⁶

The Constitution of the Republic of Singapore 1965

3.6 Article 30 of the Constitution vests the power in the Prime Minister to charge any Minister with the responsibility for any department or subject.¹³⁷ It establishes the Public Service under Part IX.¹³⁸

3.7 The key features of the Constitution provisions are as follows:

- it lists the Public Service;¹³⁹
- it establishes the Public Service Commission;¹⁴⁰
- it makes provisions for the disqualification of an appointment to the Commission;¹⁴¹
- it provides for the terms of Services of the Chairman and members of the Commission;¹⁴²
- it makes provisions for the Secretary to the Commission;¹⁴³
- it provides for the appointment of Public Officers;¹⁴⁴

¹³⁴ *Government Sector Employment Act 2013* (NSW), s 63 – s 74.

¹³⁵ *Government Sector Employment Act 2013* (NSW), s 75 – s 79.

¹³⁶ *Government Sector Employment Act 2013* (NSW), s 80 – s89.

¹³⁷ *The Constitution of the Republic of Singapore 1965*, art 30.

¹³⁸ *The Constitution of the Republic of Singapore 1965*, art 102.

¹³⁹ *The Constitution of the Republic of Singapore 1965* (Singapore), art 102.

¹⁴⁰ *The Constitution of the Republic of Singapore 1965* (Singapore), art 105(1).

¹⁴¹ *The Constitution of the Republic of Singapore 1965* (Singapore), art 106.

¹⁴² *The Constitution of the Republic of Singapore 1965* (Singapore), art 107.

¹⁴³ *The Constitution of the Republic of Singapore 1965* (Singapore), art 109(1).

¹⁴⁴ *The Constitution of the Republic of Singapore 1965* (Singapore), art 110.

- it makes provisions for the Education Service Commission, and the Police and Civil Defence Services Commission;
- it makes provisions for Board membership and the Legal Service Commission.¹⁴⁵

Commission's view

This Part C reviewed the enabling legislation of particular overseas jurisdictions' to **assess the suitability of those frameworks to Samoa**, to determine whether they may meet the TOR. Having reviewed the above, the Commission makes the following analysis.

3.8 One of the obvious common features of the above Acts is that they all establish the Public Sector or the Public Service under a single enabling legislation. Generally, public servants are regulated under one public sector framework. There is no distinction between Government sectors. The Acts appoint Commissioners who oversee the Public Sector or the Public Service. The Commission is of the view that the common features drawn from the above comparable jurisdictions could assist meet the framework to which the TOR aspires to: - a framework to reflect the current ministerial and departmental structures of all Government Ministries and Corporations and to be the uniform law establishing all Government Sector Offices.

Recommendation 3: The laws of New Zealand, Australia and Singapore could assist inform a framework which the TOR seeks to achieve for Samoa. Under these different Acts (each having a single framework), their Government Ministries and SOEs are established.

4. Part D: Possible Options

4.1 Following the analysis of the issues under Part A, Part B and Part C of this Report, there are three (3) key options proposed to meet the TOR.

Option 1 (currently possible for Samoa's 15 Ministries)

4.2 To establish 15 Ministry Acts for the 15 Ministries in Samoa, providing for standard administrative provisions across these Ministries. Each Act to state the functions and

¹⁴⁵ *The Constitution of the Republic of Singapore 1965* (Singapore), art 110D.

responsibilities and the management of those functions by the Ministry. This framework generally reflects the 4 Ministries Acts framework discussed in Part B of this report.

Option 2 (currently possible for Samoa's 15 Ministries)

- 4.3 To establish 1 Ministry Act for the 15 Ministries in Samoa, providing for standard administrative provisions to be applied across the Ministries. However, the core functions and the management of those functions will be set out in separate pieces of legislation (management legislation such as the *Forestry Management Act 2011*).

Option 3 (possible for Samoa's 15 Ministries and 32 State Owned Enterprises and statutory offices)

- 4.4 To adapt and adopt one single public sector framework similar to those of other jurisdictions discussed above, for a practical and realistic framework for Samoa to meet the TOR. For example, to consider the State Sector Act 1988 of New Zealand, Sector Act 2009 of South Australia, Government Sector Employment Act 2013 of New South Wales and the Constitution of the Republic of Singapore 1965.

Option 4

- 4.5 Given that the Ministry of Public Enterprise is a new setup (2014), Option 4, which is a further extension of Option 3 is that: The Ministries adopt Option 2 above, until such time that the State Owned Enterprises could stand on its feet and merge into that 1 Ministry Act for Ministries and SOEs, again evolving into a one single public sector framework featured in Option 3.

5. Part E: Current Public Sector Reforms

- 5.1 During consultations with the Central Agencies, the following public sector reforms were revealed to the Law Reform Commission. The Commission notes that these are crucial reforms which must be considered as they significantly impact on this MDAA review:

a) From the Public Service Commission¹⁴⁶

The Public Administration Sector Plan (PASP) 2013/14-2017/18 Third Annual Review Report (October 2017)

- 5.2 Launched in February 2014, the PASP 2013/14-2017/18 is a ‘whole of government’ public sector plan which aims at achieving a professional and competent public administration that provides quality and coordinated public service delivery in a cost effective, efficient and transparent manner.
- 5.3 The Public Administration sector to which the PASP applies consists of 31 agencies which include 14 Ministries, 5 Constitutional bodies, 4 Statutory bodies and 8 out of 9 SOEs that are public beneficial bodies. It is said that the PASP is reflective of the Strategy for the Development of Samoa (SDS) 2016/2017-2019/2020 and falls under Priority Area 1 (Economic Sector), Key Outcome 5 (Participation of the Private Sector enhanced), and Strategic Outcome 3 (Public sector performance management and capacity strengthened). Initially, PASP had 29 activities when it was launched in 2014 but it was later reduced to 19 activities to be implemented by the public sector. The main drivers behind these activities are the PSC, MOF, MWCSO, SUNGO and Samoa Chamber of Commerce Industry (SCCI), each having their own key roles in relation to the PASP.
- 5.4 To date, more than half of the current 19 activities have been, or are currently being implemented (6 completed, 12 are in progress and 1 ongoing activity). The completion dates for the 4 activities that were planned to be completed by June 2017 have been deferred to June 2018. Some of the activities completed include the revitalisation of the Central Agencies Committee which, since the last Annual Review in October 2016, has submitted 5 policy papers which have been approved by Cabinet. These policy papers include the *Policy of Returnees*, *Review of Daily Subsistence Allowance for official travels* and *Term Policy Paper revising the term for contract employees*.
- 5.5 Other progress noted is the establishment of a *Public Sector Research Institute* which would serve as a public sector research hub. This proposed development is well documented in a policy paper which was developed by PSC entitled “**The Clever Country Policy 2018-2058**”.¹⁴⁷ In brief, this policy advocates a transition in Samoa’s development priorities from primary production to economic growth based on knowledge and innovation (knowledge based economy) – sharing and

¹⁴⁶ Public Service Commission, Government of Samoa, *Public Administration Sector Plan 2013/14 – 2017/18 Third Annual Review Report*, (October 2017).

¹⁴⁷ Public Service Commission, Government of Samoa, *The Clever Country Policy 2018-2058*.

creating new information, and translating them into niche products and services. The concept of Knowledge-Based-Economy (KbE) promotes the acquisition, creation, dissemination, and use of knowledge and information through increased investment in human resources with emphasis in priority in education and ICT sector, together with stable financial resources as well as strong political will and leadership. This is an incentive to invest in the people/ human resources to ensure sustainable development in the years to come, and ensure that Samoa has the necessary national human resource base to support a KbE. The transition to a KbE is expected to go through a 3 phase approach (*phase 1*: consolidation; *phase 2* institutional reforms and structural change; *phase 3*: knowledge creation and innovation) over a 30 year period.

5.6 Another important activity to note under the PASP is the **Samoa Public Service Functional Analysis/Review Project**¹⁴⁸ currently undertaken by the PSC. This review was conducted in 3 phases. Phase 1 (Situational Analysis) and Phase 2 (Functional Analysis) have been completed with the Functional Analysis Report approved by Cabinet in October 2016. Phase 3 which is the implementation stage is pending until further direction from Cabinet.

5.7 The whole purpose of this Functional Review/Analysis in 5.6 was to:

- a) identify and recommend, for Cabinet's consideration, an appropriate public service structure that is aligned to Government of Samoa national priorities, contributes to improved public service performances and a more cost-effective government;
- b) assess and recommend changes to the organization of functions within Government Ministries where this is required to facilitate effective and efficient performance of functions; and
- c) recommend options for organization of staffing structures to facilitate ministries performance of allocated functions in an efficient and effective manner.

5.8 The review includes the:

- i. identification of functions (both core and non-core);
- ii. the redefinition and reallocation of functions;

¹⁴⁸ Public Service Commission, Government of Samoa, *Samoa Public Service Functional Analysis/Review Report*, 2016.

- iii. the transfer of functions from one agency to another to avoid duplications and overlaps;
- iv. the merge of functions from different agencies;
- v. the outsourcing or contracting out of functions to the private sector if a function is not a core business of government and it is better performed by the private sector; or/and
- vi. establishing of new entities to better facilitate and perform certain functions.

5.9 The whole intention is to improve efficiencies and to determine the most appropriate organizational structure in which functions can or should be performed effectively.

5.10 There is also the implementation of the "**One Public Sector One Vision for Good Governance One Policy strategy**",¹⁴⁹ approved by Cabinet. In 2015, Cabinet commissioned PSC¹⁵⁰ to compile a paper to address the recruitment and selection (R&S) for all CEO positions. A technical advisor was brought in to review the streamlining of the R&S process for the public service. As a result of the review, gaps were identified within the HR procedural system which prompted PSC to compile a "One Policy" paper. Cabinet approved the "One Public Sector – One Goal – One Policy, FK(16)31 *Galuega a le Malo – Tasi le Sini o Pulega Lelei – Tasi le Faigafaavae*". The whole idea of a one policy approach is that it not only provides consistency for whole of Government, but it also provides for better management of government funds and eliminates conflict and promotes efficiency in the operational process.

5.11 The **Functional Analysis Review and the One Public Sector, One Vision for Good Governance Strategy** are expected to be rolled out by June 2018. Other activities which are in the pipeline to be completed and implemented in 2018 include the following:

- a) National Planning and Management Framework developed and implemented;
- b) Organizational Performance Assessment and Improvement Tool (OPAIT);
- c) Developing a complaints register for the public sector;
- d) Workforce Plan across the whole Public Sector;
- e) Developing a National Human Resource Development Plan.

¹⁴⁹ Public Service Commission, Government of Samoa, *One Public Sector, One Vision for Good Governance One Policy Strategy*, FK (16) 31, 2016.

¹⁵⁰ Cabinet, Government of Samoa, FK (16) 07, 2015.

b) Parliamentary Speeches of the Minister of Finance¹⁵¹

Public Sector Reforms in the pipeline as alluded by the Minister of Finance during 2nd reading of the Appropriation Bill 2017/2018

5.12 The Honourable Minister of Finance during the second reading of the Appropriation Bill 2017/18 (budget speech in Parliament, June 2017) noted the intention of the government to review the public service to lift its performance and responsiveness to the delivery of efficient quality services required by the people of Samoa. He stated that preparatory work on the review of the public service is on-going and the government expects this exercise to continue into the next financial year (2018/19).

c) Ministry of Public Enterprise and Legislative Reforms to Public Bodies¹⁵²

Public Bodies (Performance and Accountability) Amendment Bill 2017; Management Bills e.g MNRE and MAF

5.13 Consultations revealed that the Ministry of Public Enterprise is currently carrying out consultations on a Draft Public Bodies (Performance and Accountability) Bill 2017 (PB(P&A) Bill). By Final Report writing, the Law Reform Commission has not been able to access a copy of the Draft Bill but was informed at consultations that the Draft PB(P&A) Bill makes provisions similar to those of the Public Service Commission, governing the public servants of the Public Bodies.

In addition, consultations also revealed that a number of Government Offices have legislative reviews either on-going or in the pipeline which also could impact on the review of the MDAA. Some of these reviews include the Government Ministry Management Bills. Again, these Draft Bills would significantly impact on this MDAA review.

Commission's view

Having considered the matters in Part D on significant current and pending reviews and proposals on Samoa's public sector undertaken by the Ministries whose work is integral to this review (PSC, MOF, MPE), the Commission offers the following analysis.

¹⁵¹ Bills Committee, Parliament of Samoa, *The Appropriation Bill 2017/2018*, 2017.

¹⁵² Stakeholder Consultation with ACEO Legal Officer Salote Peteru, Ministry of Finance (Level 4 – Central Bank of Samoa Building, Samoa, 19 October 2017), and Stakeholder Consultation with CEO Elita Tooala and Ministry of Public Enterprise (Level 5 – Central Bank of Samoa Building, Samoa, 20 October 2017).

5.14 The Commission is of the view that the review of the MDAA cannot be treated in isolation given that there are major public sector reforms either taking place or are in the pipeline. Certainly these public sector reforms discovered by the Commission during consultations will have a significant impact on meeting the TOR. For instance, some of the recommendations in PSC's Functional Analysis Review suggests the transfer of functions from one agency to another; the outsourcing or contracting out of functions to the private sector; the establishing of new entities to better facilitate and perform certain functions. If implemented, this will have a significant impact on the current ministerial structure especially with the proposed reshuffling of functions and the establishment of new entities. There is also the "One Public Sector, One Vision for Good Governance One Policy strategy" which strives to achieve consistency for the whole of Government in terms of the Human Resource procedural system. If implemented, this will significantly impact on the HR systems of Constitutional Offices, SOEs and some Ministries HR procedures and processes.

5.15 The Commission has some proposals to meet the TOR. However, given the above discussions under this Part D, It is the Commission's respectful view that any proposed public sector framework by the Commission must take account, or await the outcomes of the above proposed

Recommendation 4. The Commission has highlighted some possible Options to meet the TOR as best as possible. However, given the above discussions under this Part D, it is the Commission's respectful view that any proposed public sector framework by the Commission must take account, or await the outcomes of the current above extensive proposed public sector reforms.

6. Part F: Submissions (Stakeholders Consultations)

6.1 The Commission sought submissions on the questions (above under Introduction):

- i. Following a review of the MDAA, the Commission is of the view that there needs to be a complete overhaul of this Act for it to be capable of reflecting an updated ministerial and department structures of all Government Ministries and Corporations' (TOR). Do you have any concerns or reservations on this position, or do you agree with this position?

- ii. What option do you prefer from the Options suggested, to allow for a practical and consistent legislative framework establishing government Ministries and Corporations and why?
- iii. From your Office's/Ministry's perspective, if the MDAA was to be reviewed what would you change?
- iv. Does your office have any future reforms planned that may affect the development of a uniform legislative framework for Ministries and Corporations? If yes what? How would it affect this project?

KEY ISSUES

6.2 Some of the issues raised by the Central Agencies is the inconsistency with the governance structure across the public sector. The Public Service Commission (PSC) explained that their review of the recruitment/selection procedures revealed that there is inconsistency in the appointment and recruitment of officers in some of the Ministries.¹⁵³

6.3 The PSC,¹⁵⁴ the Ministry of Prime Minister and Cabinet (MPMC),¹⁵⁵ Ministry of Finance (MOF),¹⁵⁶ and Ministry of Public Enterprise (MPE)¹⁵⁷ expressed the view that the State Owned Enterprises (SOEs) have their own legislation governing their own appointments which is different from Ministries. They commented that SOEs do not cooperate with MPE who oversees them. According to these Central agencies, SOEs are of the view that their governing laws overrule any directions from Cabinet. This view defeats the establishment of the MPE which was to help strengthen the profitability and efficiency of the Public Bodies. MPMC commented that the MPE is seen as an advisory Ministry rather than a monitoring Ministry to monitor, enforce policies or

¹⁵³ Stakeholder Consultation with Chairman Tu'u'u and Public Service Commission (Level 2 – FMFMII, Government Building, Samoa, 16 October 2017).

¹⁵⁴ Stakeholder Consultation with Chairman Tu'u'u Dr Ieti Taulealo and Public Service Commission (Level 2 – FMFMII, Government Building, Samoa, 16 October 2017).

¹⁵⁵ Stakeholder Consultation with Acting CEO Siaopo Pese and Ministry of Prime Minister and Cabinet (Level 4 – FMFMII, Government Building, Samoa, 17 October 2017).

¹⁵⁶ Stakeholder Consultation with ACEO Legal Officer Salote Peteru, Ministry of Finance (Level 4 – Central Bank of Samoa Building, Samoa, 19 October 2017).

¹⁵⁷ Stakeholder Consultation with CEO Elita Tooala and Ministry of Public Enterprise (Level 5 – Central Bank of Samoa Building, Samoa, 20 October 2017).

laws on SOEs.¹⁵⁸ Another issue raised by the Central Agencies is that when it comes to the role of the Board of Directors in SOEs, there is no transparency in the appointment of their officers.¹⁵⁹

6.4 Another issue raised during consultations is the miscommunication among members of the Central Agencies (MPMC, PSC, MOF, MPE, OAG) on the agenda for public sector reforms. MPE raised the issue that there is an absence of a clear framework for reforms within the Public Sector. The CEO explained that there is no defined platform or forum to discuss current reforms which are currently in the pipeline such as the consideration of whether SOEs are to be put under one framework.¹⁶⁰ When the PSC One Governance, One Policy, One Public Sector was approved by Cabinet in August 2016, it was difficult for other central agencies to implement.¹⁶¹

SUGGESTIONS

6.5 PSC suggested one framework for Ministries and SOEs which will create consistency and uniformity across the Public Service and will improve the delivery of all Government services to the public. However, the operations and management of functions to be set out in 15 separate pieces of legislation. This suggestion by PSC will also allow MPE to carry out its functions in managing and monitoring the profitability and efficiency of all Public Bodies. It will also avoid the issue of SOEs using their legislation as an excuse to not abide by MPE's instructions especially the directives from Cabinet sent to MPE. PSC also commented that Cabinet's view is for a whole of Government approach. This is to have one framework which standardizes administrative functions across the board. Cabinet recommended to include SOEs to PSC's proposal on the ACEO selection process not to advertise every 3 years but review to be based on performance. Furthermore, PSC commented that if the proposed framework comes into existence, for example a new MDAA, they would like to see consistency in the definitions of terms and in the appointment of CEOs. The delegation powers of the Minister to the CEO will also need to be reviewed together with the suspension and termination provisions. They also suggested to clarify

¹⁵⁸ Stakeholder Consultation with Acting CEO Siaopo Pese and Ministry of Prime Minister and Cabinet (Level 4 – FMFMII, Government Building, Samoa, 17 October 2017).

¹⁵⁹ Stakeholder Consultation with Chairman Tu'u'u Dr Ieti Taulealo and Public Service Commission (Level 2 – FMFMII, Government Building, Samoa, 16 October 2017).

¹⁶⁰ Stakeholder Consultation with CEO Elita Tooala and Ministry of Public Enterprise (Level 5 – Central Bank of Samoa Building, Samoa, 20 October 2017).

¹⁶¹ Stakeholder Consultation with Acting CEO Siaopo Pese and Ministry of Prime Minister and Cabinet (Level 4 – FMFMII, Government Building, Samoa, 17 October 2017).

the scope and purpose of the MDAA, the definition of 'Ministry' and the administrator of the new framework.¹⁶²

6.6 MPMC also supports the view expressed by PSC on a one framework which will create consistency and uniformity across the Public service. However, the operations and management of functions to be set out in 15 separate pieces of legislation. They expressed the view that the proposed one framework can assist drive PSC One policy. They commented that if there is one framework, then PSC should administer it. MPMC suggested to build on the current MDAA to include SOEs and amend the purpose and the scope of it to reflect that it is to be the supreme framework across all state sectors.¹⁶³

6.7 MOF did not provide an official position on the matter but the representative at the consultation agreed to have one framework, similar to the MDAA, and to have all administrative provisions under it and leave provisions on operational matters in separate legislation. Moreover, the representative at our consultations proposed to clarify in the one framework the definitions of 'Department' and 'Government agency'.¹⁶⁴

6.8 MPE supports the views expressed by PSC and MPMC on having one framework and one legislation for Ministries and SOEs. Furthermore, they commented that a one framework should be formulated in a way that is easy to implement. It is also suitable to have one framework to refer to as SOEs currently has 28 legislation. They suggested to leave it to the Samoa Law Commission to formulate this one framework.¹⁶⁵

6.9 OAG suggested to wait for the outcomes of ongoing and near future reforms undertaken by other Ministries before a one framework is created. They suggested that the Samoa Law Commission should be one of the Central agencies that will assist draw up a one public Sector One Policy framework.¹⁶⁶

¹⁶² Stakeholder Consultation with Chairman Tu'u'u Dr Ieti Taulealo and Public Service Commission (Level 2 – FMFMII, Government Building, Samoa, 16 October 2017).

¹⁶³ Stakeholder Consultation with Acting CEO Siaopo Pese and Ministry of Prime Minister and Cabinet (Level 4 – FMFMII, Government Building, Samoa, 17 October 2017).

¹⁶⁴ Stakeholder Consultation with ACEO Legal Officer Salote Peteru, Ministry of Finance (Level 4 – Central Bank of Samoa Building, Samoa, 19 October 2017).

¹⁶⁵ Stakeholder Consultation with CEO Elita Tooala and Ministry of Public Enterprise (Level 5 – Central Bank of Samoa Building, Samoa, 20 October 2017).

¹⁶⁶ Stakeholder Consultation with Galumalemana Noumea Loretta Teueli, Chief Legislative Drafter and Drafting Division team (Level 6 – Tui Atua Tupua Tamasese Efi Building, Apia, Samoa 23 October 2017).

MAJORITY VIEW

6.10 The majority of the Central agencies consulted agreed to a one framework for Ministries and SOEs which will create consistency and uniformity across the public sector. Such a framework should have consistent administrative provisions to be applied across Ministries and SOEs. However, operations and functions are to be set out in separate Acts. This majority view is a **combination of Option 2 and Option 3**:- 1 Act to establish all Ministries and SOEs with their operations set out in separate legislation.¹⁶⁷ Such a framework can be found in legislation of other countries like New Zealand and Australia, which Samoa can adapt and adopt.

Commission's view

An analysis of the information and data collected from the consultations is as follows.

6.11 The Commission notes the views expressed by the Central agencies on the need to develop a single/one framework that will create consistency and uniformity across the Government Ministries and SOEs. To achieve this single framework, there is a great need for a proper forum or platform for all Ministries and SOEs to meet and discuss the current and future reforms identified in Part E, its challenges and a way forward. In this forum, the Ministries and SOEs must formulate an agenda and roadmap to achieve a practical and realistic framework, to reflect a combination of Options 2 and 3 E.g. **'One Act with administrative provisions applying across the State Sector (i.e. all Ministries and SOEs). Operations and functions are to be set out in separate legislation.'** Once there is a clear roadmap for reforms, it could be reflected in an overhaul revision to the MDAA, as recommended by the Central Agencies.

6.12 In the meantime, it is the Commission's view that small steps need to be taken towards achieving Option 2 and Option 3. Given the ongoing reforms in Ministries and SOEs, it is crucial to await the outcome of these reforms before the next step can be taken. As discussed above, there are many issues to consider for a single framework as Ministries and SOEs have different roles to play in the public sector. Any substantial recommendation to establish a single framework that is consistent across the public sector will require numerous amendments to the laws affected and it will require political will, significant resources and substantial manpower to implement these changes.

¹⁶⁷ This is with the references in legislation "Ministry" means the Ministry responsible for target areas e.g. 'revenue', or for the 'environment', or for 'civil aviation'; 'education', etc etc.

6.13 To further achieve a practical and realistic framework under Option 2 and Option 3, all pending draft Amendment Bills such as the Public Service Draft Bill 2016 and Public Bodies (Performance and Accountability) Bill 2017 and draft Management Bills must be put on hold.

Recommendation 5: There should be a proper forum for Ministries and SOEs to discuss their current and future reforms, challenges and a way forward. Given the significance of these reforms, it is practical to await the outcome of these reforms which will inform an agenda and a roadmap towards accomplishing a practical and realistic framework, to reflect a combination of Options 2 and 3- *‘One Act with administrative provisions applying across the State Sector (i.e. all Ministries and SOEs). The mandate, operations and functions of these state agencies are to be in separate pieces of legislation, depending on the portfolios allocated to each respective government agency.’*

Recommendation 6: To further achieve a practical and realistic framework under Option 2 and Option 3, all pending draft Amendment Bills such as the Public Service Draft Bill 2016 and Public Bodies (Performance and Accountability) Bill 2017 and draft Management Bills, must be put on hold.

7. Part G: Conclusion

7.1 Part A discussed the current MDAA law and the public sector reforms before the enactment of the MDAA. The Commission’s view is that the MDAA was not enacted to establish Government Ministries and Corporations but to officially list and name the rearranged and realigned Ministries and departments pursuant to the Government Realignment Project by the Public Service in the years leading up to and including 2003. Therefore, to meet the TOR, the MDAA should be completely overhauled and replaced.

7.2 Part B examined the framework in which the public sector bodies in Samoa are established. The public sector bodies include the Government Ministries, SOEs, Constitutional bodies and Statutory bodies. The Commission’s view is that all these public bodies have no coherent framework in their overall legislative setup and they were not created under a deliberate uniform framework. Thus, their overall set up will not assist meet the TOR.

7.3 Part C looked at the framework in which other countries such as New Zealand, Australia and Singapore, establish their public sectors. The Commission’s view is that the common features of

the different laws could assist Samoa achieve the framework in the TOR. In these countries, the public sector is established under a single framework.

- 7.4 Part D provided the 4 Options proposed by the Commission during its consultations.
- 7.5 Part E discussed the current reforms undertaken by Ministries and SOEs as revealed during consultations. These reforms include the PSC Functional Analysis and the PSC One Public Sector- One Vision for Good Governance, One Policy.
- 7.6 Part F discussed and analysed submissions from the Central agencies consulted. The majority view from these consultations was to develop a single framework that will create consistency and uniformity across the Government Ministries and SOEs. It is proposed that proper discussions should be held between Ministries and SOEs to discuss their current reforms, challenges and a way forward. A practical approach is to await the outcome of these reforms before a new framework is developed.
- 7.7 All in all, to meet the TOR, MDAA needs to be overhauled and totally replaced by a new practical and realistic framework. The new practical and realistic framework must await the outcomes of all the current reforms. The outcomes of these reforms will inform a framework that the TOR seeks to achieve and provide a Road Map/Agenda for the whole of government.
- 7.8 It is also important to consider in this review whether the Public Trading Bodies, which are not fully funded by Government, can be accommodated under the new practical and realistic framework proposed. The Commission proposes that such issues can be discussed among the Central agencies in the course of carrying out and implementing their reforms. It is also recommended that extensive consultations should be held in future with all the public sector bodies on their reforms, if a single framework for the public sector in Samoa is to be accomplished.

List of Recommendations

Recommendation 1: The MDAA should be completely overhauled and replaced to allow for a new framework to reflect the current ministerial and departmental structures of all Government Ministries and Corporations, and to be the uniform law to establish all government agencies.

Recommendation 2: Government Ministries, State Owned Enterprises, Constitutional Bodies and Statutory Bodies have no coordinated framework on their overall legislative setup i.e. enabling Acts. Their Acts were not intended to be a coordinated uniform framework to establish the public sector in Samoa. Therefore, their overall setup will not assist meet the TOR.

Recommendation 3: The laws of New Zealand, Australia and Singapore could assist inform a framework which the TOR seeks to achieve for Samoa. Under these different Acts (each having a single framework), a framework for Government Ministries and SOEs may be established.

Recommendation 4: To inform a practical and uniform framework to meet the TOR, it is the Commission's view to await the outcomes of the above public sector reforms for a possible merging of reviews as they significantly impact on the MDAA review.

Recommendation 5: There should be a proper forum for Ministries and SOEs to discuss their current and future reforms, challenges and a way forward. Given the significance of these reforms, it is practical to await the outcome of these reforms which will inform an agenda and a roadmap towards accomplishing a practical and realistic framework, to reflect a combination of Options 2 and 3- *'One Act with administrative provisions applying across the State Sector (i.e. all Ministries and SOEs). The mandate, operations and functions of these state agencies are to be in separate pieces of legislation, depending on the portfolios allocated to each respective government agency.*

Recommendation 6: To further achieve a practical and realistic framework under Option 2 and Option 3, all pending draft Amendment Bills such as the Public Service Draft Bill 2016 and Public Bodies (Performance and Accountability) Bill 2017 and draft Management Bills must be put on hold.

SCHEDULE 1

POSSIBLE PUBLIC SECTOR LEGAL FRAMEWORK - OUTLINE

Short title- Draft Public Sector Bill 2017

- Adopting South Australia's title (South Australia Public Sector Act 2009).
- Consistent with PSC's 'One Public Sector One Vision for Good Governance One Policy Approach' strategy, providing for consistency for whole of Government and better management of government funds and eliminates conflict and promote efficiency in the operational process.

Long Title (purpose) - adopting the following provision from the NZ State Sector Act 1998:

The purpose of this Act is to promote and uphold a public sector system that-

- a) is imbued with the spirit of service to the community; and
- b) operates in the collective interests of government; and
- c) maintains appropriate standards of integrity and conduct; and
- d) maintains political neutrality; and
- e) is supported by effective workforce and personnel arrangements; and
- f) meets good-employer obligations; and
- g) is driven by a culture of excellence and efficiency; and
- h) fosters a culture of stewardship

Preliminary matters

- Definitions of terms such as the 'Public sector', 'Ministry', 'Public Service' 'State-Owned Enterprise', 'employee', 'employer', 'industrial actions', 'grievances', 'education service', 'Chief executive officer', 'Commissioner'...etc.
- The link between the proposed framework 'Public Sector Act 2017' and laws setting out operational matters or core functions of the relevant Ministries and SOEs. For example:

SOEs/Ministries under the proposed Public Sector Act	Link of laws setting out functions/operational matters
Airport Authority	'Minister' is defined under the AA Act 2012 as Minister responsible for Civil Aviation

Land Transport Authority	'Minister' is defined under the LTA Act 2007 as Minister for Works, Transport and Infrastructure
Ministry of Health	'Minister' is defined under the MOH Act 2002 as Minister responsible for the Ministry
Ministry of Education, Sports and Culture	'Minister' is defined under the YSCA Act 1993 as the Minister for Education, Sports and Culture

Part 1 Public Sector

- There shall be Ministries designated in Schedule 1 and Head of Department who is to be called the Chief Executive Officer. The list of CEOs in Schedule 2 must be parallel to Ministries in Schedule 1 (similar provisions in MDAA Act 2003)
- There shall be SOEs listed in Schedule 1 (section 2(2))- 23 Public Trading Bodies + 9 Public Beneficiary Bodies (Public Bodies (Performance and Accountability) Act)
- List Constitutional Offices and Statutory Bodies (if necessary)
- Head of State, acting on the advice of the Prime Minister, may amend the Schedules by Order (similar provisions in section 6 of MDAA Act 2003)

Part 1A Public Service

- Definition of public service in Article 83 of the Constitution of Samoa 1960 and its functions under Article 87
- To replicate (where applicable) the following provisions of the PSC Act 2004:
 - o Part 2 The Public Service Commission
 - o Part 3 Chief Executive Officers
 - o Part 5 The Public Service (Division 1- Employment in the Public Service)(Division 2- Establishment, classifications and salaries)(Division 4- Appointment, transfer and promotion of officers)(Division 5- temporary employees)(Division 6- Upholding the values and the Code of Conduct)(Division 7- Appeals)(Division 9- Termination of employment) (Part 6- Public Service Board of Appeal)(Part 7- Miscellaneous)(Part 8- Savings and Transitional)

Part 1B Other Public Bodies

- The SOEs under the PTB Act 2001 and the definition of a 'public body'

- Consideration of Offices excluded under the definition of ‘public service’ in Article 83 of the Constitution of Samoa 1960
- Consideration of the ongoing PTB Amendment Bill 2017
- To replicate (where applicable) the following provisions from the Public Bodies (Performance and Accountability) Act 2001:
 - Part 1A Formation and Ownership of Public Trading Bodies
 - Part 2 Objectives of Public Trading Bodies
 - Part 3 Community Service Obligations
 - Part 4 Objectives of Public Beneficial Bodies
 - Part 5 Appointment and Role of Directors
 - Part 6 Accountability
 - Part 7 Support for Public Bodies and Directors
 - Part 7A Loans, etc. Procurement and Contracts
 - Part 8 Other Matters

Part 2 Commissioner for Public Sector Employment (similar to Public Sector Act 2009 of South Australia)

- Article 84 of the Constitution of Samoa 1960 to apply to the proposed ‘Commissioner for Public Sector Employment’.
- Establishment of an Advisory Board/Committee to assist the Commissioner (similar to section 18 the NSW Government Sector Employment Act 2013 and section 21 of the NZ State Sector Act 1998).
- For Samoa, it may be practical to retain the current provision of Article 84(1) of the Constitution on the appointment of 3 persons (one of them being the Commissioner). The other 2 members, as currently exist in PSC, should continue to play an advisory role to the proposed Commissioner of Public Sector Employment.

Part 3 Chief Executives

- To replicate (where applicable) Part 3 (Chief Executive Officers) and Part 5 (Public Service), Division 3 (Contract Officers) of the PSC Act 2004 of Samoa.

Part 4 Code of Conduct

- To replicate (where applicable) Part 4 (Values, Principles and Code of Conduct) of the PSC Act 2004 of Samoa.

Part 5 Leave and Working Arrangements (based on the Public Sector Act 2009 of South Australia)

- To replicate (where applicable) the PSC Working Conditions and Entitlements Manual 2015. It is suggested that only the significant issues can be highlighted under this Part but to leave the rest to be in the form of regulations. E.g South Australia provides some guidance as to what significant issues to be included:
 - Flexible Leave and working conditions
 - Hours of attendance
 - Recreation leave
 - Sick leave
 - Long service leave
- To consider Part 7 (Terms and Conditions of Employment) of the Labour and Employment Relations Act 2013.

Part 6 Application of Industrial actions (similar to Part 6 NZ State Sector Act 1988)

- To replicate (where applicable) Part 10 of the Labour and Employment Relations Act 2013- Conciliation of Industrial Disputes.

Part 7 Grievances

- To replicate (where applicable) Part 5 Division 8 (Grievances) of PSC Act 2004 of Samoa and Part 10 of the Labour and Employment Relations Act 2013 on Industrial Disputes.

Part 8 Teachers or Education Service

- To consider Part 7 (Education Service) of the NZ State Sector Act 1988 and adapt and adopt, where relevant to Samoa.
- Part 10 of LERA may be applicable in the event of industrial disputes (strikes).