



Government of Samoa



SAMOA LAW REFORM COMMISSION

Review of the Narcotics Act 1967 (Drugs Reform)

Final Report 21/17

December 2017



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 Review of the *Narcotics Act 1967* as referred to the Samoa Law Reform Commission for review.

This report sets out the Commission's recommendations on the Review of the *Narcotics Act 1967* after public consultations and research in accordance with section 4 of the *Law Reform Commission Act 2008*.

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



GOVERNMENT OF SAMOA

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

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 Review of the *Narcotics Act 1967* as referred to the Samoa Law Reform Commission for review.

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(Telei'ai Dr. Lalotoa Mulitalo)
EXECUTIVE DIRECTOR
SAMOA LAW REFORM COMMISSION

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1. INTRODUCTION

I. Terms of Reference

- 1.1. In March 2015, the Samoa Law Reform Commission (**Commission**) received a Terms of Reference (**TOR**) from the Office of the Attorney General (**OAG**) to review the *Narcotics Act 1967* (**Samoa's Narcotics Act**). The TOR resulted from various concerns on the outdated nature of Samoa's Narcotics Act, drug-related cases taking up a lot of the Court's time and resources, and reports of a certain sector of Samoan society which uses methamphetamine.
- 1.2. The TOR required the Commission to consider the following issues:
 - (a) Whether the Samoa's Narcotics Act is adequate in controlling and regulating drugs;
 - (b) The need to consider emerging issues such as:
 - i. preventative regulatory regime;
 - ii. minimisation of drug related harm;
 - iii. new drugs, such as synthetic marijuana and party pills;
 - iv. support and treatment services and rehabilitation facilities;
 - v. medicinal use of certain drugs in controlled situations; and
 - vi. the establishment of an Alcohol and Drugs Court (**ADC**).
 - (c) The adequacy of enforcement, particularly in relation to:
 - i. penalties, including the appropriate penalty for low-level offending, inclusion of education, assessment and treatment for drug users;
 - ii. monitoring of prisoners released after serving their term or early on parole, e.g. mandatory drug testing; and
 - iii. rehabilitation as a sentencing option.
 - (d) The roles and responsibilities of parents, Village Fono and churches with respect to drug use.

II. Law Reform Process

- 1.3. The Commission completed the *Drugs Reform (Review of the Narcotics Act 1967) Issues Paper* (**Issues Paper**) in May 2017, outlining key issues raised in preliminary consultations with key stakeholders. The Issues Paper provided a platform for discussion and debate about illegal drugs and the contextual setting for the development of tentative options for law reform. Cabinet approved the Issues Paper in June 2017 for stakeholders and public consultations.
- 1.4. Following Cabinet's approval of its Issues Paper, the Commission carried out extensive stakeholder and public consultations. Stakeholders' consultations were carried out in August and September 2017 with 20 stakeholders including the relevant Ministries,

members of the Judiciary and non-government organizations (NGOs).¹ The Commission conducted one-on-one consultations, recording/ transcriptions and also gave out questionnaires. 11 out of the 20 stakeholders consulted, provided written responses to these questionnaires.²

- 1.5. In addition, the Commission conducted public consultations in both Upolu and Savaii from 25-29 September 2017 to obtain the views of the public on ways to reduce drug-related harm and on the matters raised in the Issues Paper. Prior to this, awareness through social media, television and newspaper to inform the public on consultation logistics was conducted. Public consultations in Upolu and Savaii were divided into the following groups: Alii ma Faipule (4 in Upolu, 4 in Savaii), Tina ma Tamaitai (4 in Upolu, 4 in Savaii) and the youth (2 in Savaii). Overall, 409 members of the public turned up to these consultations. A total of 49 individual submissions were received from members of the public in both Upolu and Savaii.
- 1.6. It has been challenging for the Commission to obtain the necessary information and reliable data for the report. Furthermore, the lack of submissions due to the lack of interest, as well as the delay in providing submissions due to time constraints faced by some of the key stakeholders, were some of the challenges faced in developing this Report.
- 1.7. This Report was developed with the assistance of the members of the public consulted on this review, members of the Judiciary, representatives from various government agencies, NGOs, as well as various groups and associations. Such assistance was provided by way of advice, written/oral submissions and expertise for which the Commission is extremely grateful and which considerably informed the recommendations in this Report.

III. Outline of Report

- 1.8. The Report is divided into the following 8 chapters.
 - **Chapter 1** will provide an overview of Samoa's Narcotics Act, some of the drug related issues raised in consultations and statistics on drug offending in Samoa.
 - **Chapter 2** will discuss the preliminary provisions of Samoa's Narcotics Act, namely its current title, long title, the interpretation section, administration of the Act, powers and functions of the Minister of Health, and appointment of inspectors.

¹The 20 stakeholders include: Ministry of Education, Sports and Culture; Ministry of Women, Community and Social Development; Samoa Prison and Corrections Services; Mental Health Unit; National Council of Churches; National University of Samoa; University of the South Pacific; Samoa Returnees Charitable Trust; Scientific Research Organization of Samoa; Samoa Victim Support Group; Samoa Pharmacy Association; Ministry for Revenue; Ministry of Justice and Courts Administration; Ministry of Health; Ministry of Police; Ministry of Prime Minister and Cabinet; Samoa Nursing Association; Office of the Attorney General; Samoa Cancer Society; Samoa Law Society and Transnational Crimes Unit.

² These included the Ministry of Education, Sports and Culture; Ministry for Revenue; Ministry of Justice and Courts Administration; Ministry of Health; Ministry of Police; Ministry of Prime Minister and Cabinet; Samoa Nursing Association; Office of the Attorney General; Samoa Cancer Society; Samoa Law Society and Transnational Crimes Unit.

- **Chapter 3** will discuss the relevant provisions on the classification of narcotics under Samoa's Narcotics Act. It will also consider other alternative drug induced substances and plants, with similar effects as marijuana and other harder drugs. Furthermore, it will discuss psychoactive substances, synthetic drugs and relevant provisions from comparable jurisdictions and relevant international drug conventions relating to such substances.
- **Chapter 4** will discuss the 'Offence and Penalties' provisions under Samoa's Narcotics Act and comparable laws in other jurisdictions. It will assess the adequacy and effectiveness of current offences and penalties in addressing drug-related crime in Samoa.
- **Chapter 5** will examine 'exemptions to the offences' provisions under Samoa's Narcotics Act including the defence to a charge, restrictions, and licenses approved by the relevant Chief Executive Officer (CEO). It will also discuss exemptions in other countries.
- **Chapter 6** will assess the adequacy of Samoa's enforcement structure. It will discuss specific provisions relating to enforcement under Samoa's Narcotics Act e.g. search warrants and forfeiture. This chapter will also look at other matters including testing, monitoring, evidentiary provisions, other enforcement matters such as boarding boats, as well as other issues affecting enforcement in Samoa.
- **Chapter 7** will assess the current preventative regulatory regime in Samoa which includes intervention policies, programmes and practices that aim to prevent and/or reduce illegal drug use and the resultant harm. It will also discuss existing support and treatment services as well as rehabilitation programmes in Samoa. Comparable jurisdictions will also be considered.
- **Chapter 8** will discuss the role of the community including the government, NGOs, churches, parents, Village Fono and the village community. It will assess and make recommendations as to how the village and the community can better contribute in curbing drug related problems in Samoa.

IV. A Need for Change

- 1.9. Since its enactment in 1967, Samoa's Narcotics Act has only been amended twice in 2006 and 2009 respectively. Amendments to the law were inadequate to address the prevalence of drug-related issues in Samoa and the new developments in the evolving drug environment. For example, the rise of methamphetamine cases, the use of illegal drugs for medicinal purposes as well as the consideration of rehabilitation as a sentencing option. Therefore, this review is necessary and timely to ensure that it reflects current developments around issues relating to illegal drugs, and to consider and incorporate regulatory provisions from similar overseas jurisdictions where appropriate, in order to effectively curb drug-related issues for a safer Samoa.
- 1.10. This Report considers specific issues relating to Samoa's Narcotics Act that were raised in the Commissions Issues Paper and explores options for their reform. These include

specific areas of concern raised by key ministries including the Ministry of Health (**MOH**), Ministry for Revenue (**Customs**), Ministry of Police (**MOP**) and OAG as well as members of the Judiciary and the public in consultations.

- 1.11. While this Report comprehensively considers provisions of Samoa's Narcotics Act, it does not consider them all. The Commission considers that the provisions that are not addressed or discussed in this Report are not contentious at this time. Thus, the Commission recommends that such provisions should be retained, but redrafted in a logical order and in plain language. This will make the law clearer and consistent with relevant legislation.

V. Way Forward

- 1.12. Recommendations have been made throughout the Report to update current provisions that are outdated and do not adequately serve the purpose of Samoa's Narcotics Act. Furthermore, the Commission has made recommendations suggesting for certain matters to be further clarified and covered under Regulations instead of including them under a new drugs framework. Accordingly, any changes made to the law would also mean changes to the current *Narcotics Regulations 1967* (**Samoa's Narcotics Regulations**) to ensure consistency. The Commission will nevertheless be guided by the key stakeholders who are regularly involved in drug regulation (including MOP, MOH, Customs, Ministry of Justice & Courts Administration (**MJCA**), Scientific Research Organisation of Samoa (**SRoS**), and OAG as well as members of the Judiciary) on the efficacy of the proposed changes.
- 1.13. The Commission also notes that the Report, considering the various terminologies used in other jurisdictions to refer to 'illegal drugs', will use the terminology relevant to the jurisdictions being discussed. Furthermore, in the case of Samoa and for consistency, the Commission will use the term 'illegal drug' or 'drug' instead of the term 'narcotic', as the law currently provides.
- 1.14. For the most part, the Commission has also recommended for the provisions from other legislation such as the *Drugs Act 1967*, *Crimes Act 2013*, *Customs Act 2014*, *Police Powers Act 2007*, *Evidence Act 2015*, *Community Justice Act 2008*, and the *Internal Affairs Act 1995* to be adapted and adopted in any new drugs framework. This is to achieve consistency and uniformity across all laws and matters relating to regulating illegal drugs in Samoa. It is hoped that a more uniform framework will make the regulation of illegal drugs more effective, adequate, practical and efficient. Also, the key players responsible for enforcing the law are better informed of the requirements, which are consistent, easier to understand and aim to increase efficiency. Again, the Commission will be guided by key relevant agencies and the courts about the efficacy of doing so in some of the provisions.
- 1.15. Finally, the Commission has also identified a need for training on a new drugs framework for law enforcement agencies including MOP, MOH and Customs among others, to ensure that enforcement officers are up to date with the latest changes in legislation and familiar with rules governing their functions in regulating illegal drugs to avoid any issues. For example, the overlap of powers. The need for this training was illustrated in submissions received from both key stakeholders and the public indicating a lack of understanding of

many parts of Samoa's Narcotics Act by some members of the relevant agencies. As such, some officers who have responsibilities under the law do not effectively and efficiently utilise them or are uninformed with the provisions regulating illegal drugs in Samoa, resulting in inadequate enforcement.

RECOMMENDATION 1: Any provisions not covered or addressed in this Report should be retained, but redrafted in a logical order and in plain language. This will make the law clearer and consistent with relevant legislation.

2. CHAPTER 1: CURRENT SITUATION

2.1. This Chapter provides an overview of Samoa's Narcotics Act and some of the drug related issues raised in stakeholders' and public consultations. It provides and analyses a range of statistics obtained from the MOP and MJCA. Subsequently, the Commission relies on its extensive research and public submissions to inform recommendations on this chapter.

I. Current Framework

2.2. Narcotics or illegal drugs is regulated by Samoa's Narcotics Act. The Act is 50 years old and is largely based on the old New Zealand's *Misuse of Drugs Act 1965*. The key features of Samoa's Narcotics Act can be summed up into the following 6 parts:

Part 1 (preliminary matters) deals with the interpretation section which defines relevant terms. It also provides that MOH administers Samoa's Narcotics Act.

Part 2 classifies narcotics into 3 classes. Class A lists narcotics which pose a very high risk of harm, Class B lists narcotics with a high risk of harm and Class C lists narcotics with a moderate risk of harm. The 3 classes are in the form of Schedules to Samoa's Narcotics Act.

Part 3 provides for Offences and Penalties. For example, unlawful cultivation, use and possession of prohibited plants and seeds and the relevant penalties, unlawful possession, use and supply of narcotics and unlawful sale and penalties, manufacture or possession of controlled precursors and related penalties.

Part 4 provides for exemptions from prohibitions. For example, persons who possess and use narcotics are exempted from liability if they have a licence to deal in that narcotic. It also provides for licenses to deal with controlled drugs and precursors. For example, the CEO of the MOH can grant a license to deal in narcotics or any controlled quantity or precursor. License granted by the CEO can only be done with the approval of the Minister.

Part 5 provides for the enforcement powers. For example, the relevant roles of police, officers of Health, Customs, Agriculture, and inspectors in implementing Samoa's Narcotics Act.

Part 6 provides that the Head of State (**HOS**), acting on the advice of Cabinet may make regulations which are in his or her opinion, expedient to give full effect to Samoa's Narcotics Act and its administration. To date, the only regulations made relates to applications for licenses to import, export and deal in narcotics, transportation and carrying of narcotics by ships and aircrafts as well as the registration, duration, renewal and revocation of licenses.

II. Amendments

2.3. There have only been two (2) amendments to Samoa's Narcotics Act since its enactment:

2006 amendments

- Defining controlled precursor and new added provisions on unlawful manufacture of a narcotic and the unlawful sale of a controlled precursor (sections 18A and 18B)
- A minor amendment to section 14 on search warrants by inserting subsection (1) 'or evidence of any offence' after 'document' last occurring.

2009 amendments

- Increasing penalties on drug offences e.g. for possession of seed of prohibited plant, the original penalty of 7 years has been increased to 14 years.
- The introduction of penalties for illegal export/import of narcotics and the unlawful possession or supply of narcotics
- The introduction of the 3-tiered drug classification system (Class A, Class B and Class C)
- Imposition of a mandatory obligation on healthcare professionals to report to police a suspicion that a patient has illegally used a narcotic.

III. Narcotics Regulation 1967

2.4. Since its enactment, the following matters are regulated:

- Licenses to import narcotics (reg. 3)
- Licenses to export narcotics (reg. 4)
- Ships and aircrafts carrying narcotics as stores or through traffic (reg. 5)
- Applications for licenses to deal in narcotics (reg. 6)
- Director may require further information (reg. 7)
- Grant of licenses to deal in narcotics (reg. 8)
- Grant of such licenses to the Government employees (reg. 9)
- Register of such licenses (reg. 10)
- Duration and renewal of such licenses (reg. 11)
- Revocation of licenses (reg. 12)
- Licenses are personal (reg. 13)
- Licensee's register (reg. 14)
- Time of making entries in licensee's register (reg. 15)
- Form of licensee's register and entries to be made therein (reg. 16)
- Stocktakings (reg. 17)
- Location and duration of keeping records (reg. 18)
- Inspection of records (reg. 19)
- Prescription of narcotic (reg. 20)
- Order for narcotic (reg. 21)
- Prescriptions and orders to be in writing or confirmed in writing, endorsed as to supply and retained (reg. 22)
- False prescription or order (reg. 23)
- Restrictions on supply, etc. of narcotics (reg. 24)

2.5. A comparative analysis of drug laws in Tonga, New South Wales (**NSW**) and New Zealand (**NZ**) shows that Samoa's Narcotics Act is outdated and does not adequately address the issues pertinent to the effective regulation of narcotics, as required by the TOR.

2.6. Some general observations from this comparative analysis are that there is a lack of clarity on procedures around the classification and amending schedules relating to the 3 classes of narcotics and the processes regulating licences to deal with narcotics. Furthermore, some of the related provisions are scattered throughout Samoa's Narcotics Act which includes the powers of different officers and offence provisions. There are also issues that Samoa's Narcotics Act does not adequately address, such as new drug offences and enforcement powers for police and customs in order to effectively carry out their functions.³ These issues will be discussed in detail later in this Report.

IV. Current and Emerging Issues

2.7. Drug-related issues are becoming prevalent today causing social and economic harm to Samoan communities.⁴ Preliminary consultations and research identified some of the major issues which include the following:

Enforcement issues

- Poor monitoring of drug offences and drug offender reoffending.⁵
- Poor communication systems nationally to keep the relevant agencies connected and informed on drug related crimes.⁶
- Underreporting by the public of drug-related offences that take place in the workplace, villages and communities.
- Lack of trainings to effectively handle drug-related matters.
- Limited resources to detect, monitor and assist law enforcement agencies.⁷

Offences and penalties

- Increasing numbers of young people (under 16 years) possessing cannabis.
- Current penalties ineffective in deterring offenders and reducing reoffending rates.
- Lack of rehabilitative sentencing options and alternative dispositions especially for low-level offending.

³ For example, offences relating to theft of drugs and enforcement powers such as controlled delivery and covert monitoring.

⁴ These include among others health issues, the rise of criminal offending and the increasing cost of intervention methods e.g. law enforcement, courts and corrections.

⁵ United Nations Office on Drugs and Crime Southeast Asia and the Pacific, 'Transnational Organized Crime in the Pacific A threat Assessment', *United Nations Office on Drugs and Crime* (September 2016) <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2016/2016.09.16_TOCTA_Pacific_web.pdf>.

⁶ United Nations Office on Drugs and Crime Southeast Asia and the Pacific, 'Transnational Organized Crime in the Pacific A threat Assessment', *United Nations Office on Drugs and Crime* (September 2016) <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2016/2016.09.16_TOCTA_Pacific_web.pdf>.

⁷ Preliminary Consultation with Samoa's Prisons and Corrections Service (Prisons and Correction Service Office – Tafaigata, Samoa, 14 June 2016); Email from the Ministry of Police to the Samoa Law Reform Commission (preliminary consultations), 17 January 2017. See also United Nations Office on Drugs and Crime, *Transnational Organized Crime in the Pacific: A Threat Assessment* (September 2016) UNODC <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2016/2016.09.16_TOCTA_Pacific_web.pdf>.

Rehabilitation and prevention

- Inadequate personnel for treating addicts, including psychologists to work with relevant Ministries.⁸
- Poor facilities to treat addicts and detain offenders (i.e. prisons).⁹
- Inadequate rehabilitative measures to assist offenders and addicts.

Medicinal use of drugs

- Lack of clarity in procedures to request for medicinal drugs and a mechanism to effectively regulate the use of such substances.

New/ unlisted drugs and substances

- New drugs such as party pills and synthetic drugs not covered under the current framework.
- The common use of local plants and substances that have similar effects to drugs including logo, mushroom head (pulouaitu) and kava.

Role of relevant agencies and the community

- Lack of awareness and publicity campaigns by relevant agencies informing the public on the dangers and risks of drug use.
- Lack of collaboration between relevant agencies and village communities in addressing drug-related issues.
- Absence or lack of responsibility shown by families and churches in raising awareness and advising the youth about the impacts of drugs.

Regulations

- Current regulations contained in Samoa's Narcotics Regulations are outdated and require amendments to capture new developments such as regulations prohibiting, regulating, or restricting advertisements for controlled drugs.¹⁰

SUBMISSIONS

2.8. The Commission sought public submissions on the harms caused by narcotics or illegal drugs in Samoa. For the purpose of this report, the harms raised in submissions are divided into social and economic harms.

2.9. Social harms are those issues affecting families, villages and the wider community. Harms identified include domestic violence where fathers and husbands as leaders of families, use drugs and abuse wives and children while under the influence of illegal drugs.¹¹ This

⁸ Preliminary Consultations with Mental Health Unit (Ministry of Health Complex, Moto'otua, Samoa, 27 May 2016); Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Ministry of Justice and Courts Administration Building, Sogi, Samoa, 24 October 2016).

⁹ Preliminary Consultation with Samoa's Prisons and Corrections Service (Prisons and Correction Service Office – Tafaigata, Samoa, 14 June 2016).

¹⁰ *Misuse of Drugs Act 1975* (New Zealand) s 37(1) (o); See also *Misuse of Drugs Regulation 1977* (New Zealand) s 50.

¹¹ Public Consultations with Alii ma Faipule, Tina ma Tamaitai and Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

leads to family breakdown and disharmony in villages.¹² Reputations of families are ruined because of youths and parents taking illegal drugs.¹³ There have been cases where children were used by parents to sell illegal drugs.¹⁴ Criminal offending is common particularly in villages.¹⁵ There are also health issues resulting from illegal drug abuse such as mental illnesses.¹⁶

2.10. Economic harms identified include the sale of family property and belongings as a result of addiction to illegal drugs.¹⁷ Drug abuse resulting in injury and loss of lives putting pressure on hospitals to treat the injured.¹⁸ Illegal drug abuse significantly affects the low income earners as they depend on selling illegal drugs for a living.¹⁹ Families of drug offenders pay substantial fines to the village or funeral costs in cases where drug addicts die.²⁰ Government is also pressured to provide services such as rehabilitation to accommodate offenders.²¹ The Courts are inundated with drug cases, taking up much of its time and resources.²²

2.11. Some of the causes of these social and economic harms include the following:²³

- Corruption in government agencies
- Insufficient penalties to deter offending and re-offending
- Lack of resources (equipment to detect illegal drugs)
- Lack of income and limited opportunities (unemployment, high cost of living)²⁴
- Peer pressure (youth exposed to drug activities)
- Negative upbringing in families and lack of family time

¹² Public Consultations with Alii ma Faipule, Tina ma Tamaitai and Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹³ Public Consultations with Alii ma Faipule and Tina ma Tamaitai (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹⁴ Public Consultations with Youths (Savaii, 28-29 September 2017).

¹⁵ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹⁶ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹⁷ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹⁸ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

¹⁹ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

²⁰ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

²¹ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

²² Public Consultations with Tina ma Tamaitai (Upolu and Savaii, 25-26 and 28-29 September 2017).

²³ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Consultations with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (Upolu and Savaii, 25-26 and 28-29 September 2017).

²⁴ Most people who have been referred to the Alcohol and Drugs Court are addicted to drugs because of family breakdowns and others say it is easy for them to earn money if they sell it.

- Accessibility and boredom together with stress relief
 - Stigma (released offenders do not feel accepted by their families so they re-offend).
- 2.12. The above public submissions revealed that the harm of illegal drugs is tremendous, affecting Samoa socially and economically.
- 2.13. In addition, the Commission sought the views of Government Ministries on whether Samoa's Narcotics Act is adequate to address the social and economic harms. The majority view was that Samoa's Narcotics Act is outdated and requires an urgent review, updating and/or even a complete overhaul.²⁵ Consultations with the members of the Judiciary revealed that Samoa's Narcotics Act largely follows the old *Misuse of Drugs Act 1965* which has been repealed and replaced by the current *Misuse of Drugs Act 1975*. However, Samoa has not updated its legislation. Furthermore, a prosecutor during Continuing Legal Education Committee (CLEC) Hotspot submitted that the current legal regime is insufficient to address the existing marijuana problem in Samoa. In fact, it is inadequate to cover the increasing methamphetamine issue.²⁶
- 2.14. Accordingly it was noted that, the current drugs reform carried out by the Commission is timely to ensure that the illegal drug laws of Samoa are kept up to date with the current issues.²⁷ Such reforms will ensure that the law is practical and suitable to the current needs of Samoa.²⁸

COMMISSION'S VIEW

- 2.15. Samoa's illegal drugs environment is vastly different from that which existed in 1967. It was enacted to suit the circumstances at that time. Samoa's Narcotics Act is 50 years old. It has only been amended twice. Other countries like NZ and NSW have enacted more modern legislation regulating illegal drugs. Public submissions revealed serious social and economic harms affecting Samoan communities. The Commission notes that the causes of these social and economic issues stem from the lack of enforcement by the relevant authorities due to lack of resources and manpower, corruption practices by the

²⁵ Consultation with members of the Judiciary (Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Consultations with the Samoa Victim Support Group (Samoa Victim Support Group Headquarters, Apia, 14 September 2017); Consultations with the Ministry of Women, Community and Social Development (Ministry of Women, Community and Social Development Main Office, Savalalo, 9 August 2017); Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

²⁶ Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

²⁷ Consultation with members of the Judiciary (Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Consultations with the Samoa Victim Support Group (Samoa Victim Support Group Headquarters, Apia, 14 September 2017).

²⁸ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

relevant authorities, poverty, lack of employment and inadequate penalties to punish drug offenders, to name a few.

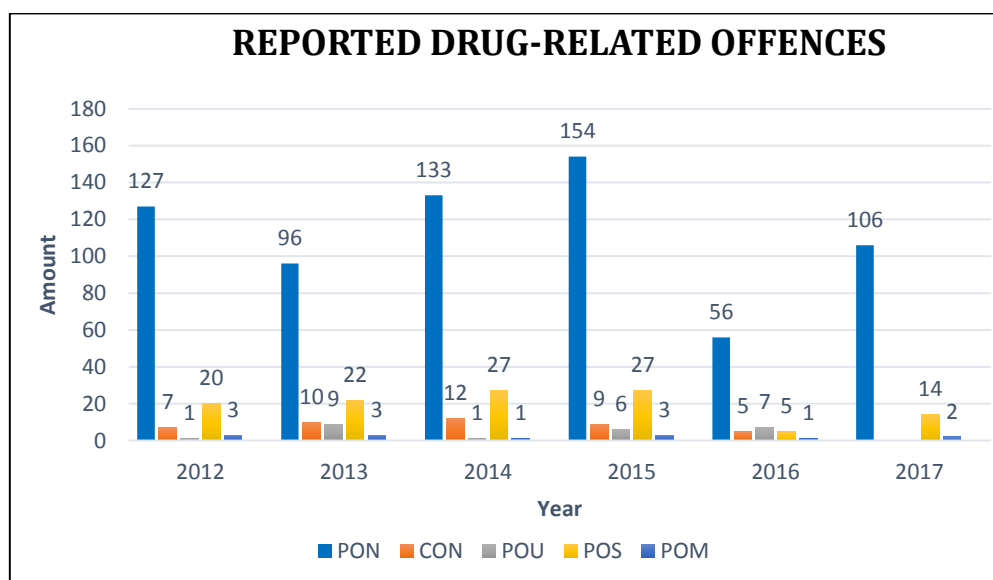
- 2.16. The Commission supports the majority view that Samoa’s Narcotics Act is outdated and does not adequately address the current and emerging issues in Samoa. Therefore, to meet the TOR, the Commission is of the view that Samoa’s Narcotics Act should be completely overhauled and replaced with a new and updated framework which is relevant and suitable to the current needs of Samoa (**new drugs framework**).

RECOMMENDATION 2: To meet the TOR, Samoa’s Narcotics Act 1967 should be completely overhauled and to be replaced with a new drugs framework that meets the current needs of Samoa.

V. Statistics

- 2.17. According to data obtained from MOP, marijuana (cannabis) is the most commonly abused illegal drug in Samoa.²⁹

Figure 1



Source: Ministry of Police (September, 2017)

- 2.18. Figure 1 above shows that the highest number of reported cases involving narcotics were recorded in 2012, 2014 and 2015. The most common drug-related offence is possession of narcotic (marijuana) (**PON**). It was noted in preliminary consultations with MOP that majority of these marijuana possession cases were possession of small quantities of marijuana (low level possession).³⁰
- 2.19. The second most common offence is the possession of seeds (**POS**) followed by cultivation of a narcotic (marijuana) (**CON**). Possession of utensils (**POU**) and possession of methamphetamine (**POM**) are less common.³¹ Notwithstanding the statistics, the

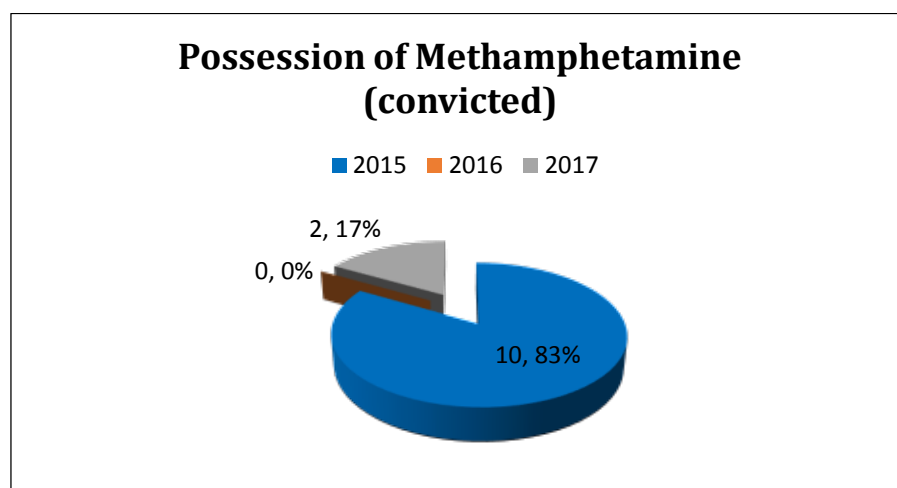
²⁹ Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* Issues Paper No 23, 46-49.

³⁰ Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* Issues Paper No 23, 46-49.

³¹ Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* Issues Paper No 23, 46-49.

Commission’s preliminary consultations with MOP in 2016 revealed that there is underreporting of methamphetamine cases in Samoa. This is due to the lack of resources, equipment and training for Samoa law enforcement agencies to adequately detect and prosecute methamphetamine cases.

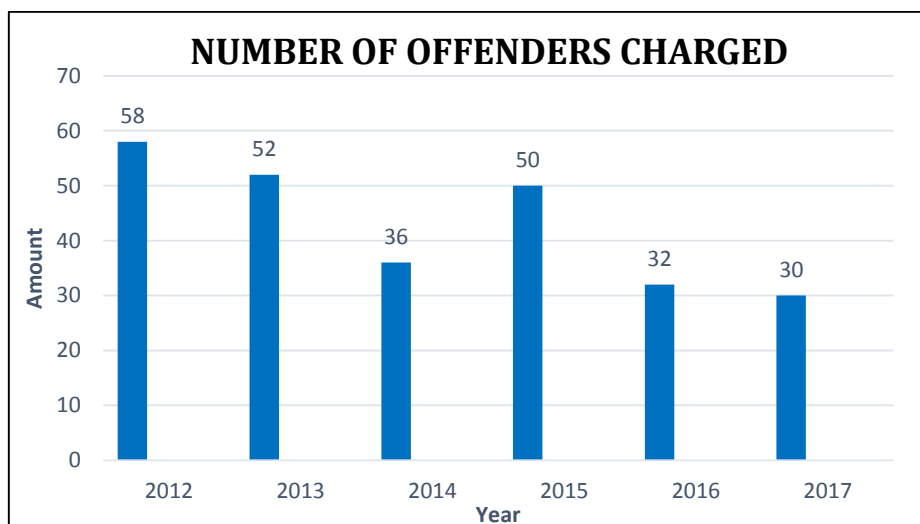
Figure 2



Source: Ministry of Justice & Courts Administration (September, 2017)

2.20. In relation to POM, MJCA revealed that convicted cases of such nature were at all-time high in 2015 with a considerably lower percentage in 2017 (see Figure 2 below). From these cases in 2015, 2016 and 2017, the majority of those convicted for POM were male (97) with a very low number of females (3).

Figure 3



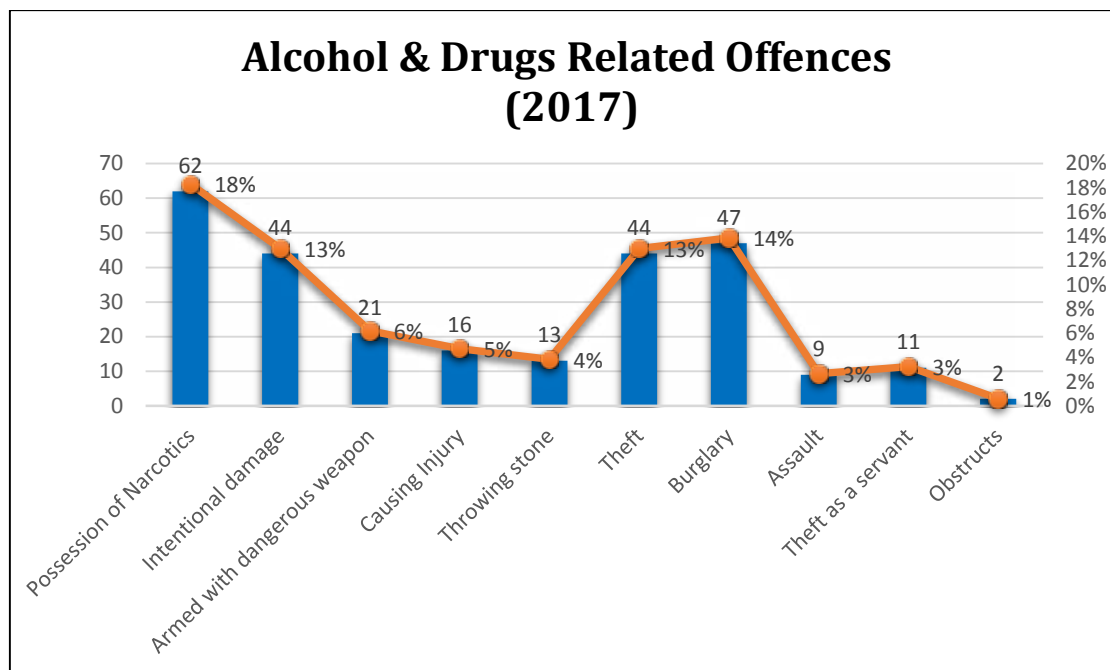
Source: Ministry of Police (September, 2017)

2.21. Figure 3 above shows the number of offenders charged for illegal drug-related offences. It shows that the highest number of those charged was in 2012 (58). This dropped in 2014 (36) and rose significantly again in 2015 (50). There was a further decrease in the following years, 2016 and 2017. It is important to note that the number of those charged

with illegal drug-related offence is lower compared to the number of reported cases because one offender can be charged with 2 or more offences.

2.22. Furthermore, it was noted in preliminary consultations with MOP that majority of these offenders are male with only a few females charged especially in 2012 and 2013.

Figure 4



Source: Ministry of Justice & Courts Administration (September, 2017)

2.23. There have been cases brought before the courts where people have been convicted with offences influenced by illegal drugs and/or alcohol. Figure 4 above shows the number of offences in 2017 where alcohol and/or illegal drugs were contributing factors. Most of the non-related illegal drug cases where alcohol and/or drug were contributing factors include intentional damage (13%), theft (13%) and burglary (14%). Other non-related illegal drug offences that were known to have been influenced by illegal drugs and/or alcohol include armed with a dangerous weapon, causing injury to the other person and assault. Accordingly, it is unclear from the graph as to what percentage of the overall offence was influenced by illegal drugs alone. According to MJCA, these were just raw data and it is an ongoing challenge to disaggregate the information, given the lack of capacity and resources within the Ministry.

2.24. Overall, it can be concluded that based on the above statistics that:

- The highest number of drug-related cases reported to MOP were in 2012, 2014 and 2015.
- The possession of marijuana is the highest reported drug-related offence followed by cultivation of prohibited plants.
- The possession of methamphetamine is less common but steadily increasing.
- 93% of those charged with possession of methamphetamine are male with 3 % being female.

- Males make the majority of illegal drug offenders with a few number of females in the recent years, 2015-2016.
- In 2017, some of the cases where either illegal drugs or alcohol was a contributing factor include theft and assault.

2.25. Further issues raised by MOP and MJCA in consultations regarding the above statistics include the following:

a) Data not disaggregated

2.26. Although statistics were divided by gender and year, they do not reflect matters such as:

- age groups (although it was highlighted by MOP and some stakeholders that majority offenders involved are youth i.e. between the ages of 16 and 35 years).
- whether the numbers include persons with disabilities or people with mental health (although it was noted by the Mental Health Unit (**MHU**) that people admitted to the Unit for mental health issues are also charged with a drug-related offence).
- geographical area where most offenders reside and places where drug offending is common (although it was alluded to in consultations that most drug offending especially possession and supply takes place in the urban areas, while cultivation of prohibited plants is common in rural areas³²).
- educational and socio-economic background of offenders (although it was noted that people with higher socio-economic status were mainly charged with offending relating to harder illegal drugs like methamphetamine with those of a low socio-economic background found to be offenders of low level offending and mainly marijuana³³).
- the number of other criminal cases where illegal drug was a contributing factor. It is unclear as to what percentage of criminal cases were influenced by illegal drugs alone.

b) Inconsistent and unreliable data

2.27. Statistics provided by MOP are not consistent with those provided by MJCA. It should be noted that some of the possible reasons for the inconsistency include:

- some illegal drug offenders are charged with several illegal drug-related offences i.e. for one offender, he or she may be charged/ convicted with 2 or more offences. Therefore, there is a high number of offences compared to the number of offenders recorded.
- some drug offenders may be charged but are not necessarily convicted due to lack of evidence or that they were not guilty in the first place. Therefore, there may be a higher number of those charged and less number of convictions.
- poor information sharing between MOP and MJCA when cases are being brought before the courts for prosecution purposes.

³² Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot Seminar on the Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

³³ Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot Seminar on the Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

c) Lack of resources/ personnel

- 2.28. MJCA and MOP identified that the lack of capacity and resources (such as having an adequate database to record and manage information) has led to inconsistent and unreliable data. However, MOP in preliminary consultations noted that it has recently put in place a new and functioning database for such purpose to ensure that information is accurately recorded, which will hopefully address issues relating to information gathering and management.

SUBMISSIONS

The Commission sought submissions on the prevalence of methamphetamine production in Samoa and how Samoa (MOP and MJCA) can improve its existing information-gathering system on illegal drugs.

Further evidence of methamphetamine in Samoa

- 2.29. Although marijuana is the most common abused illegal drug in Samoa, methamphetamine is becoming increasingly popular among a certain sector of society.³⁴ According to one submitter, this sector mainly possesses or uses meth for recreational use.³⁵ Recent raids carried out by MOP have discovered methamphetamine. From the MOP's experience, where there is cannabis there will also be the presence of meth and other illegal drugs as well as firearms.³⁶
- 2.30. Furthermore, some submitters informed the Commission that there are laboratories and equipment in Samoa which are used to manufacture methamphetamine.³⁷ Despite this, methamphetamine are being imported from countries including American Samoa, USA and NZ.³⁸
- 2.31. Concerns over Samoa being a transit point for meth were also raised in submissions. However, due to the weak Samoan tala, it is unlikely that a market for methamphetamine in Samoa would be a problem, at least at this stage because Samoa will not be exempted forever.³⁹

Improvements to gathering information

- 2.32. To further improve the existing systems on gathering information relating to illegal drugs harm and use in Samoa, some stakeholders suggested the following measures:

³⁴ Refer to the Terms of Reference.

³⁵ Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017).

³⁶ Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

³⁷ Consultation with Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017); Consultation with the Ministry of Police (Ministry of Police Main Office, Apia, 28 August 2017).

³⁸ Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017).

³⁹ Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017).

a) *Collaboration between relevant organisations*

- 2.33. A collective effort involving all key players and relevant Ministries is vital in strengthening existing systems on gathering information on drug-related issues. This includes MOH, MOP, Samoa Prisons and Corrections Services (**SPCS**), MJCA, NGOs that provide services for victims and illegal drug offenders.⁴⁰The involvement of the community i.e. churches, families, Village Fono through reporting was also noted to be important and will assist to improve information gathering in Samoa.⁴¹
- 2.34. Regionally, some stakeholders raised the desire to strengthen cooperation with American Samoa where a new Transnational Crime Unit (**TCU**) has been recently established. This will assist with collecting intel on illegal drug-related activities e.g. trafficking and smuggling, that take place between the two Samoa and also generally in the region.⁴² Continuing partnerships between MOP and the Australian and NZ Police Forces would also help to improve systems and make information readily available.⁴³

b) *Functional databases*

- 2.35. Relevant ministries should also be required to keep databases for collecting information on illegal drug related harm and issues.⁴⁴ This will assist to provide reliable statistics for policy makers.⁴⁵
- 2.36. However, it is important to note that MOP has a new Case management system which can track, for instance, whether alcohol and/or illegal drug contributed to the commission of an offence and also identify the name of such illegal drug.⁴⁶ MJCA is also developing and working on data collection of offences coming in and going out of the courts as part of its case management system. Ideally, MJCA wants to install a database which will easily track offences that are influenced by illegal drugs and/or alcohol.⁴⁷ From this information, both Ministries hope that it will be able to inform people of the harm caused by illegal drugs in Samoa.

⁴⁰ Consultation with the Transnational Crimes Unit (FMFM II Building, Matagalalua, 29 August 2017).

⁴¹ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴² Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017).

⁴³ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁴ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, 15 August 2017); Consultation with the Transnational Crimes Unit (FMFM II Building, Matagalalua, Samoa, 29 August 2017).

⁴⁵ Consultation with Samoa Victim Support Group (Samoa Victim Support Group Headquarters, 14 September 2017).

⁴⁶ Consultation with the Ministry of Police, (Ministry of Police Main Building, 28 August 2017).

⁴⁷ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, 15 August 2017).

c) Specific information provisions in the law

2.37. To further strengthen and oblige ministries to collect and compile data, some queried whether there are any data related provisions in the laws to this effect.⁴⁸ Accordingly, it was raised that the new drugs framework should contain a provision which covers the kind of data to be recorded and the person responsible for recording such information.⁴⁹

d) Information and statistics Committee

2.38. The possibility of establishing an information and statistics Committee would also contribute to strengthen the current information gathering system on drug cases.⁵⁰

e) Awareness on drug-related issues and reporting mechanisms in place

2.39. Some submitters noted that to ensure that sufficient information is gathered on illegal drug-related issues in Samoa, it is important to build awareness on these issues as well as informing the public about reporting mechanisms already in place e.g. through Ministry of Women, Community & Social Development (**MWCSD**) and MOP.⁵¹

2.40. Overall, improving collaboration among key players and having functional databases and/or data-specific provisions in the law will assist with reporting and identifying key issues not to mention helping those affected by illegal drugs.⁵² However, it was also acknowledged that collecting and documenting information is and will always be a challenge.⁵³

COMMISSION'S VIEW

2.41. Statistics reveal that marijuana remains the most common abused illegal drug in Samoa. Methamphetamine is becoming increasingly popular in some sectors of society, which is a major concern. Despite the available statistics discussed above, issues regarding compilation of statistics and data management continue to exist in Ministries such as MOP and MJCA. The Commission notes that these Ministries face similar challenges when it comes to information gathering. The lack of capacity and resources has led to inconsistent, unreliable and non-disaggregation of data. This is a major concern for Samoa particularly when reforming laws that require up to date and accurate statistics. The availability of these statistics will help inform any policies or proposed laws that the Government wishes to formulate and implement.

2.42. Therefore, in order to gain deeper understanding of illegal drug-related issues and identify ways to effectively address illegal drug problems, the Commission is of the view that a concerted effort should be made towards proper and adequate data collection by

⁴⁸ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, 15 August 2017).

⁴⁹ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarter, 5 September 2017).

⁵⁰ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarter, 5 September 2017).

⁵¹ Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017); Consultation with the Ministry of Education, Sports and Culture (Ministry of Education, Sports and Culture Headquarters, 8 August 2017);

⁵² Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, 15 August 2017); Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, 5 September 2017).

⁵³ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, 5 September 2017).

the relevant Ministries. This includes establishing proper databases and frequently updating information, noting the availability of relevant personnel and resources. The ongoing work by MOP and MJCA in establishing case management systems (such as Auafamau Central Database (**Auafamau**)), as revealed in consultations, is supported by the Commission so as to ensure that the relevant information is disaggregated to assist with law enforcement and law reviews. The Commission is of the view that necessary resources and funding are to be made available to these Ministries to ensure their case management systems (collecting information and tracking offences) are fully functional.

2.43. The Commission supports the view expressed by one of the submitters, that is, for the new drugs framework to have in place a provision which makes data collection mandatory for all the relevant ministries and agencies. There are no specific provisions in NZ, NSW and the United Kingdom (**UK**) to mandatorily collect, keep or update data or information pertaining to illegal drugs. There are, however, some provisions from the UK and NZ which may be of some guidance to Samoa. In the UK, the Secretary of State may make regulations with particular provisions requiring the keeping of records and the provision of information with respect to controlled drugs under such circumstances and in such manner as prescribed.⁵⁴ In NZ, its Act requires the Minister of Health to provide and publish reports, information and advice with respect to the misuse of drugs and the treatment of people suffering from such misuse of drugs.⁵⁵

2.44. All in all, having reliable and up to date data collection systems will better inform policies and laws relating to illegal drugs. This will lead to effective law enforcement.

RECOMMENDATION 3: A combined effort should be made to have proper and adequate data collection by the relevant Ministries. The ongoing work by Ministry of Police and Ministry of Justice & Courts Administration with the Auafamau database is commended and these Ministries should be allocated with adequate funding and resources to support and sustain it. Such systems like the Auafamau database will better inform policies and laws relating to illegal drugs.

RECOMMENDATION 4: Drug-related offences and serious offences should be disaggregated to identify whether an offender was under the influence of illegal drugs and/or alcohol at the time of the offence. This would assist Alcohol & Drugs Court's rehabilitation efforts for drug offenders.

RECOMMENDATION 5: The new drugs framework should have a provision which makes data collection mandatory for all the relevant ministries and agencies. The provisions should set out the roles of the personnel responsible for data collection and management. The provisions in the United Kingdom and New Zealand laws may provide some guidance to Samoa.

⁵⁴ *Misuse of Drugs Act 1971* (United Kingdom) s 10 (2) (c).

⁵⁵ *Misuse of Drugs Act 1975* (New Zealand) s 5B.

3. CHAPTER 2: PRELIMINARY MATTERS

3.1. This Chapter discusses the preliminary provisions of Samoa's Narcotics Act, namely its current title (short title in section 1), long title, the interpretation section (section 2), administration of the Act (section 3), and appointment of inspectors (section 4). Comparable laws will also be discussed. It will consider submissions to the issues raised in preliminary consultations. Consequently, these submissions will inform recommendations on preliminary provisions in the new drugs framework.

I. Name of the Act, Reference to 'Narcotics' & Purpose

a) Title

3.2. Section 1 states that Samoa's Narcotics Act may be cited as the *Narcotics Act 1967*. Similar legislation in NZ is called the *Misuse of Drugs Act 1975*. New South Wales calls it the *Drug Misuse and Trafficking Act 1985* while Tonga's legislation is called the *Illicit Drugs Control Act 2003*. It is apparent that the names of the Acts vary across jurisdictions.

3.3. Furthermore, references to illegal drugs in overseas legislation are also different i.e. NZ uses 'controlled drug', NSW uses 'prohibited drug', Tonga uses 'illicit drug', and 'narcotic' is used in Samoa. Despite the different terms used, all terms refer to illegal drugs.

b) Long title

3.4. The purpose of Samoa's Narcotics Act is to regulate the importation, exportation, growing, manufacture, sale, distribution, use and possession of illegal drugs.⁵⁶ The *NZ Misuse of Drugs Act 1975* consolidates and amends the *Misuse of Drugs Act 1965* and makes further provisions for the prevention of misuse of drugs.⁵⁷ The law in NSW prohibits the manufacture, supply, possession and use of certain drugs, and for related purposes,⁵⁸ while Tonga's *Illicit Drugs Control Act 2003* controls illicit drugs, controlled chemicals and equipment.⁵⁹

SUBMISSIONS

The Commission sought submissions on whether the name of the Act (Narcotics Act 1967) should be changed.

3.5. The majority view was that the name/title of Samoa's Narcotics Act needs to be changed.⁶⁰ This is to ensure that there is a clear distinction between the different types of drugs and

⁵⁶ *Narcotics Act 1967* (Samoa) Long title.

⁵⁷ *Misuse of Drugs Act 1975* (New Zealand) Long title.

⁵⁸ *Drug Misuse and Trafficking Act 1985* (New South Wales) Long title.

⁵⁹ *Illicit Control Drugs Act 2003* (Tonga) Long title.

⁶⁰ Samoa Law Society, Written Submission to Samoa Law Reform Commission, (*Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry Education, Sports and Culture, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, June 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa's Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.;

also to effectively regulate and be more inclusive of dangerous drugs currently used by drug users. The name 'Illegal Drugs Act' was proposed by a majority of stakeholders to be adopted because it is commonly used, modern and easy-to-understand.⁶¹ Other suggested titles were, 'Dangerous Drugs Act', 'Control of Dangerous Drugs Act' and 'Illicit Drugs Act'.⁶² A few stakeholders proposed to adopt names/titles of drug laws in NZ and NSW (Misuse of Drugs or Drug Misuse and Trafficking Act) because these two countries provide technical assistance to Samoa on illegal drugs.⁶³ Others expressed the view to retain the current name of the Act as it distinguishes Samoa from the other jurisdictions, being the only country using 'Narcotics Act'.⁶⁴

COMMISSION'S VIEW

- 3.6. The Commission notes from submissions that the majority of stakeholders suggested to change the name/title of Samoa's Narcotics Act to a simpler name such as 'Illegal Drugs Act', almost similar to Tonga's legislation (Illicit Drugs Control Act). Further research undertaken by the Commission revealed that the reference to 'narcotics' is outdated due to its imprecision. Narcotics refer to pain relief drugs which physician use to relieve severe pain.⁶⁵ It can also be used to relieve anxiety and induce anaesthesia. Other common uses are to suppress cough and to control severe diarrhoea.⁶⁶ Accordingly, the Commission is of the view that the current reference to 'narcotics' in the current Act does not adequately capture the scope of the TOR. Therefore, the name 'Illegal Drugs Act' or 'Illicit Drugs Act' should be adopted for the new drugs framework.
- 3.7. There were no specific submissions on a proposed long title in the new drugs framework. However, the Commission is of the view that any long title in a new drugs framework should extensively address issues raised in the TOR and better cater for the ever-changing illegal drug environment. The current long title is adequate and should be retained, however, issues such as support and treatment services and the role of the communities under the TOR should be incorporated.

Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁶¹ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Education, Sports and Culture, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 August 2017.

⁶² Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁶³ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁶⁴ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific, Alafua Campus, 15 September 2017).

⁶⁵ The Free Dictionary by Farlex, 'Narcotic' <<https://medical-dictionary.thefreedictionary.com/narcotic>>.

⁶⁶ The Free Dictionary by Farlex, 'Narcotic' <<https://medical-dictionary.thefreedictionary.com/narcotic>>.

RECOMMENDATION 6: The current reference to ‘narcotics’ is outdated and should be replaced with a more modern term. For the purpose of the new drugs framework, a simpler short title such as ‘Illegal Drugs Act’ or ‘Illicit Drugs Act’ should be considered.

RECOMMENDATION 7: The current long title of Samoa’s *Narcotics Act 1967* is adequate and should be retained. However, issues such as support and treatment services and the role of the communities should be considered in the formulation of a revised long title in the new drugs framework.

II. Interpretation

- 3.8. Samoa’s Narcotics Act contains 22 definitions. These definitions include terms such as the ‘CEO’, ‘Ministry’, ‘Minister’, ‘medicinal opium’, ‘prohibited plant’, narcotic’, and ‘dealing in’. There are also other terms that are not in the interpretation section but are defined in other provisions of the Act, such as ‘premise’ in section 14(1)(a) and ‘manufacture’ in section 18A(2).
- 3.9. Preliminary consultations raised an issue that the list of terms under Samoa’s Narcotics Act is not comprehensive and does not capture some of the important terms in the relevant laws of NZ, Tonga and NSW, such as ‘controlled drug’, ‘prohibited drug’, ‘sell’, ‘psychoactive substances’, ‘article’ and ‘supply’.
- 3.10. The table below illustrates the terms common in all four jurisdictions including Samoa, as well as terms defined in the laws of NSW, Tonga and NZ but are not defined in Samoa’s Narcotics Act. It is important to note that other terms such as ‘sell’ is already defined under other laws of Samoa, such as the *Acts Interpretation Act 2015* (s3), ‘police officer’⁶⁷ under the *Police Powers Act 2007* (s2), and ‘craft’ and ‘customs area’ under the *Customs Act 2014* (s2).

COMMON TERMS IN ALL FOUR JURISDICTIONS SAMOA, TONGA, NZ AND NSW	OTHER TERMS NOT DEFINED IN THE NARCOTICS ACT OF SAMOA (BUT DEFINED IN OTHER LAWS) NSW, TONGA AND NZ THAT MERIT CONSIDERATION
Class A drug Class B drug Class C drug Controlled precursor/ chemical	Supply ⁷⁰ Sell ⁷¹ Controlled equipment ⁷²

⁶⁷ Note that the term ‘constable’ is used under the *Narcotics Act 1967*. To be consistent with other laws relating to police, the term ‘constable’ should be replaced with the term ‘police officer’.

⁷⁰ *Drug Misuse and Trafficking Act 1985* (New South Wales) p 1 s 3; *Misuse of Drugs Act 1975* (New Zealand) s 2; *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁷¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) pt 1 s 3. Note that the term ‘sell’ is also referred to as ‘supply’ in New South Wales. Additionally, the term ‘sell’ is currently defined in Samoa under its *Acts Interpretation Act 2015* in section 3 as meaning: “to barter, exchange, offer or attempt to sell, or receive for sale, or have in possession for sale, or expose for sale, or send or deliver for sale, or cause or permit to be sold, offered, or exposed for sale.”

⁷² *Illicit Drugs Control Act 2003* (Tonga) s 2. Note that there is reference to equipment, utensils, and needles under Samoa’s Act but they are not covered under a particular holistic term like in Tonga. NZ and New South Wales are similar to Samoa.

Cultivate or cultivation	Goods ⁷³
Medical practitioner	Approved laboratory ⁷⁴
Minister	Authorised officer/ person ⁷⁵
Prohibited plant	Carrier (person) ⁷⁶
Pharmacists	Contiguous zone ⁷⁷
Narcotic (Samoa)/ controlled drug (NZ)/ prohibited drug (NSW)/ illicit drug (Tonga)	Controlled delivery ⁷⁸
Prepared opium	Monitor ⁷⁹
Trafficable quantity	Craft ⁸⁰
Manufacture ⁶⁸	Customs area ⁸¹
Premises ⁶⁹	Property ⁸²
	Utensils ⁸³

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should include terms found in other countries (e.g. article, authorised officers), and clarify current terms like 'forfeiture'.

New terms to legislate

3.11. Submissions revealed the need to include in the new drugs framework new terms not currently defined, for instance 'supply' and 'sell' found in the Acts of NZ and NSW.⁸⁴ Terms such as 'item' and 'article' were also proposed to be included.⁸⁵ One submitter proposed to define the term 'importation'.⁸⁶ MOH in particular emphasized the need to clearly

⁶⁸ Note that the term 'manufacture' is listed under section 18A (2) of the *Narcotics Act 1967* (Samoa).

⁶⁹ Note that the term 'premise' is defined under section 14(1) (a) of the *Narcotics Act 1967* (Samoa).

⁷³ *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁷⁴ *Misuse of Drugs Act 1975* (New Zealand) s 2.

⁷⁵ Note that Tonga uses the term 'authorised officer' who are suitably qualified and trained who are authorised to carry out specific duties under its *Illicit Drugs Control Act 2003* (Tonga) s 31.

⁷⁶ *Misuse of Drugs Act 1975* (New Zealand) s 2.

⁷⁷ *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁷⁸ *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁷⁹ *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁸⁰ *Misuse of Drugs Act 1975* (New Zealand) pt 2 s 10 provides that for the purposes its section 12 for the term 'craft' is to be interpreted from its meaning under *Customs and Excise Act 1996*. Note that the term 'craft' is defined under section 2 of Samoa's *Customs Act 2014* bearing a similar definition to NZ.

⁸¹ *Illicit Control Drugs Act 2003* (Tonga) s 2. Note that section 2 of Samoa's *Customs Act 2014* contains a definition of 'customs controlled area' which has a similar meaning to Tonga.

⁸² *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁸³ *Illicit Drugs Control Act 2003* (Tonga) s 2.

⁸⁴ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

⁸⁵ Ministry of Education, Sports and Culture, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 August 2017.

⁸⁶ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017.

define the term 'drugs' so to demarcate clearly, for the purpose of the new drugs framework, whether it is referring to 'illegal drugs' or 'medicine'. MWCSO proposed to define the term 'youth' to clarify the inconsistent definition of 'youth' found in other Acts of Parliament⁸⁷ so to clearly specify such persons for the purposes of illegal drugs law and in so far as criminal offences go.

- 3.12. On the other hand, Samoa's Law Society (**SLS**) expressed the view that due diligence is to be exercised when making decisions to include new terms. This is to ensure that only the terms that are appropriate and that will actually be used in the Act are added. MJCA also advised care when providing a definition for a new term (e.g. sell, supply, etc.) so that such definition are outlined clearly so cases that fall under the term defined is limited considering that a definition may legally bar a case that was intended to be captured by that new definition.

Update some existing terms

- 3.13. MOP also suggested to update the current definition of 'constable' under the Act to 'a sworn member of Samoa Police Service', consistent with *Police Service Act 2009*.
- 3.14. SLS listed a number of terms currently in the Act requiring updating. For instance, the terms 'prescribe' in section 7(2)(c) of the Act as well as the words 'preparation' and 'consume' in the definition of 'narcotic'. They proposed to revisit the definition of the terms 'cultivate' and 'cultivation' as the current definitions are not comprehensive enough to include the actions of 'sow and plant' which exclude scattering seeds, tending to the plants and harvesting the plants etc. Submissions also raised that the term 'assistants' which are officers mentioned in several provisions of the Act, need to be defined.

Clarify some existing terms

- 3.15. Members of the Judiciary also proposed that the new drugs framework should clarify 'forfeiture' taking into account the following:
- Defining what an 'article' is.
 - Prescribing what can be forfeited.
 - Circumstances in which articles can be justifiably forfeited.
 - Considering whether there is undue hardship as a result of the forfeiture.
- 3.16. Furthermore, MOP highlighted that there have been various cases where articles/ items were identified to be associated with drugs, justifying the need to define such terms in a new drugs framework for clarity. SLS submitted to define the term 'article' in the Act rather than the term 'item' as it is in their respective opinion that this is the most suitable term relating to forfeiture.

COMMISSION'S VIEW

- 3.17. The Commission notes that the new drugs framework must include and define terms which serves its purpose and will be widely used and applied, as raised by the majority of

⁸⁷ The two Acts of Parliament referred hereto include the *Young Offenders Act 2007* (Samoa) s 2 and the *Infants Ordinance 1961* (Samoa) s 2; Consultation with the Ministry of Women, Community and Social Development (Ministry of Women, Community and Social Development Main Office, Savalalo, 9 August).

submitters. Moreover, any proposed new terms, such as 'supply', 'sell', 'item', 'article', 'importation', 'drugs' and 'youth' must be carefully considered before adding and defining them in the new drugs framework, as it may restrict interpretation, as raised by MJCA. Due diligence must be exercised before including other terms which are defined in other countries but not defined in Samoa's Narcotics Act. For example, 'controlled equipment', 'goods', 'vehicle', 'approved laboratory', 'authorised officer', 'carrier', 'contiguous zone', 'controlled delivery', 'monitor', 'craft', 'customs area', 'property' and 'utensils'.

- 3.18. The Commission supports MOP's view to update the definition of constable to 'a sworn member of Samoa Police Service' consistent with the *Police Service Act 2009*. Other terms such as 'cultivate' and 'cultivation' may also need to be updated to include actions of sowing and planting which excludes scattering seeds, tending to the plants and harvesting the plants. The term 'assistants' mentioned in several provisions of the Act also need to be defined. Again, the Commission is of the view that due diligence must be exercised before updating and re-defining these terms.
- 3.19. For the purpose of forfeiture provisions, the Commission is of the view that the terms 'article' and 'item' need to be defined and clarified as it is unclear whether such terms refer to 'goods' or 'property' that can be forfeited. In addition, the Commission supports the view expressed by members of the Judiciary to include in the new drugs framework what can be forfeited, situations in which articles can be justifiably forfeited, and whether there was undue hardship as a result of forfeiture. Further comprehensive discussion on 'forfeiture' at **Chapter 6 (I. Specific Enforcement Provisions)**

RECOMMENDATION 8: Due diligence must be exercised when adding new terms (e.g. 'importation', 'supply' etc. including terms from comparable jurisdictions) and re-defining existing terms (e.g. 'cultivate') in the new drugs framework. This is to ensure that such terms serves the purpose of the new drugs framework and will be widely used and applied. Terms that are already defined in other Acts of Parliament (e.g. 'sell' under the *Acts Interpretation Act 2015*, 'customs area' under the *Customs Act 2014*) should be replicated for consistency and uniformity. The definition of 'constable' needs to be updated to mean 'a sworn member of Samoa Police Service' consistent with the *Police Service Act 2009*.

RECOMMENDATION 9: For the purpose of forfeiture provisions, the term 'article' should be defined in the new drugs framework to cover matters which include substances, articles, goods, property and proceeds of drug-related crime.

III. Administration of the Act

- 3.20. Section 3 of the Act provides that the MOH is charged with the administration of the Act.
- 3.21. The same applies in NZ where the NZ Ministry of Health administers the Act. Tonga's *Illicit Drug Control Act 2003* is administered by the Minister of Police while in NSW, the Attorney General is the responsible administrator except for 'Part 2A: Medically supervised injecting centres' where the Minister for Police is jointly responsible with the Minister for Health.

- 3.22. The issue on the administration of the Act was not discussed in the Issues Paper. However, it was raised during stakeholder consultations.

SUBMISSIONS

The Commission sought submissions on the appropriate administrator of the new drugs framework.

- 3.23. Stakeholders which include MOP, MJCA and Customs were aware that MOH was the responsible authority to administer Samoa's Narcotics Act. MJCA expressed the view that irrespective of the current situation, the administering role of MOH needs to be reinforced in the new drugs framework. This would make MOH the driving and focal Ministry for administering the Act.

COMMISSION'S VIEW

- 3.24. MOH is the responsible body for administering the Samoa's Narcotics Act similar to NZ. Tonga and NSW include other relevant bodies. For instance, Ministry of Police for Tonga and the Attorney General, Police and Health for NSW. Therefore, the Commission considers that to effectively carry out duties and responsibilities under the law, it is crucial that the responsible Ministry is specified in the new drugs framework.
- 3.25. MOH should administer the new drugs framework (as it deals with the relevant licenses) together with the MOP (who mainly deal with enforcement). These two Ministries should actively work together to administer the law to ensure effective implementation and enforcement of the new drugs framework.

<p>RECOMMENDATION 10: Ministry of Health and Ministry of Police should administer the new drugs framework. These Ministries should actively work together to ensure its effective implementation and enforcement.</p>
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IV. Appointment of Inspectors

- 3.26. Section 4 of the Act provides that the Public Service Commission may, on the recommendation of the CEO of the MOH, appoint an officer of the public service to be an inspector for the purposes of Samoa's Narcotics Act and having the powers conferred on inspectors by such Act.
- 3.27. Preliminary consultations reveal that there is lack of clarity around procedures on the appointment of inspectors. Samoa's Narcotics Act also does not specify factors the CEO must consider when making such appointments. Furthermore, the functions and powers of an inspector are scattered throughout Samoa's Narcotics Act but are not stated under one provision. For instance,
- i. the powers of inspectors to seize and destroy a prohibited plant or a seed of prohibited plant;⁸⁸
 - ii. the power to execute a search warrant to enter and search a named premises or person on such premises;⁸⁹

⁸⁸ *Narcotics Act 1967* (Samoa) s 6(4).

⁸⁹ *Narcotics Act 1967* (Samoa) s 14 (1).

- iii. the power to enter the premises of a person authorised to deal with drugs (i.e. pharmacists) and demand for inspection any books or records pertaining to such person's dealings with narcotics or controlled precursors;⁹⁰ and
- iv. the power to arrest a person without a warrant a person who unlawfully imports or exports any narcotic or controlled precursor.⁹¹

SUBMISSIONS

The Commission sought submissions on factors the CEO should consider when appointing inspectors, what functions an inspector should perform under the new drugs framework and whether 'authorised officers' should be defined in the new drugs framework.

Inspectors: Current practice

3.28. Further consultations with MOH reveal that there are inspectors but is uncertain whether 'inspections' required under the Samoa's Narcotics Act have been carried out. There are inspectors for other matters such as medicines and food under the *Drugs Act 1967* and the *Food Act 2015*. The current appointment of inspectors by PSC is outdated. MOH proposed that inspectors should be appointed by them. They proposed to retain inspectors for certain situations where inspection of books is necessary, given that inspectors have the expertise that Police and Customs do not have. If Police are to carry out inspection roles, then it should be authorised by the CEO of MOH. Furthermore, MOH expressed that retaining inspectors is necessary as it foresees that more illegal drugs will become available in future requiring the need for inspections.

Factors to consider when appointing inspectors

- 3.29. Most stakeholders proposed the following factors to consider when appointing inspectors:
- Relevant qualification with years of experience in the area (e.g. qualified drug specialist with 5 years' work experience);⁹²
 - Suitably and well-trained in conducting inspections and investigation;⁹³
 - Extensive knowledge/well-versed in pros and cons of drugs;⁹⁴
 - No criminal record (especially in relation to drug offences).⁹⁵

⁹⁰ *Narcotics Act 1967* (Samoa) s 15 (1).

⁹¹ *Narcotics Act 1967* (Samoa) s 16 (1).

⁹² Ministry of Police, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁹³ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁹⁴ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁹⁵ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

Functions of inspectors

- 3.30. The majority of stakeholders agreed to include a comprehensive list of functions of inspectors in the Act.⁹⁶ This will,
- assist inspectors to be clear on what they are empowered to do and differentiate such roles from those of ‘assistants’ and ‘police’,⁹⁷ and
 - assist the relevant appointing authority (preferably the CEO of MOH) on matters to consider when making such appointments.⁹⁸
- 3.31. Another stakeholder proposed a separate/stand-alone provision in the new drugs framework to provide specifically for such a comprehensive list of the inspector’s functions as opposed to the provision for appointment of inspectors.⁹⁹

COMMISSION’S VIEW

- 3.32. Despite the lack of clarity on the current practice on inspectors, the Commission is of the view that retaining inspectors is vital for MOH to carry out its functions effectively under the new drugs framework. For example, the demand for inspection of any books or records pertaining to such person’s dealings with illegal drugs or controlled precursors.¹⁰⁰ Such inspectors should be appointed by MOH. Also, appointing inspectors is important to deal with the emergence of new drugs in Samoa.
- 3.33. The Commission notes that similar ‘inspectors’ are appointed in other laws, which may provide some guidance on possible roles of inspectors in the new drugs framework. For example, the *Drugs Act 1967* defines inspector as an officer appointed as an inspector of Health under the *Health Ordinance 1959*. Their role under section 20 of the *Drugs Act 1967* is to enter and inspect any place where there is any drug (as defined in the *Drugs Act*

⁹⁶ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

⁹⁷ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁹⁸ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁹⁹ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

¹⁰⁰ *Narcotics Act 1967* (Samoa) s 15 (1).

1967¹⁰¹) which the officer has reasonable ground for believing to be intended for sale. It can also seize any drug, wherever found, which is decayed or putrefied. In the *Health Ordinance 1959*, an inspector can enter on any lands or premises and inspect the same and all things and may carry out any work that is necessary to carry out its functions. The *Food Act 2015* appoints inspectors to regulate dealing with food, food businesses and inspection and analysis of food. He or she can also inspect imported food or take samples of it.¹⁰²

- 3.34. The Commission also notes submissions received on possible factors to consider when appointing inspectors for the purpose of the new drugs framework. Such factors include relevant qualifications, expertise in inspections and investigations, extensive knowledge about illegal drugs.

RECOMMENDATION 11: Appointment of inspectors should be included in the new drugs framework. They should be appointed by the Chief Executive Officer of the Ministry of Health. To clarify the roles of inspectors in the new drugs framework, relevant provisions of the *Drugs Act 1967* and the *Food Act 2015* on inspectors, may provide some guidance.

RECOMMENDATION 12: When appointing inspectors, factors to be considered by the Chief Executive Officer of the Ministry of Health include having relevant qualifications, expertise in inspections and investigations, and extensive knowledge about illegal drugs.

V. Powers and Functions of Minister

- 3.35. Samoa's Narcotics Act does not set out the functions of the Minister of Health. It only makes reference to the power of the Minister to grant licences to allow for the possession, use and import of narcotics and controlled precursors.¹⁰³
- 3.36. In contrast, the NZ *Misuse of Drugs Act 1975* specifically lists the relevant Minister's functions in relation to effective prevention of the misuse of drugs. These functions include the provision and publication of reports, information, and advice concerning the misuse of drugs and the treatment of persons suffering from the misuse of drugs.¹⁰⁴ Furthermore, the relevant Minister also has the power to prohibit the importation of controlled drugs for any specific period not exceeding 1 year, provided that such power is not exercised more than once for the same drug.¹⁰⁵ The Minister can also issue a prohibition notice prohibiting any authorised person from prescribing drugs unless the Medical Board recommends otherwise.¹⁰⁶

SUBMISSIONS

The Commission sought submissions on whether the functions and powers of the Minister should be included in the new drugs framework, similar to NZ.

¹⁰¹ Reference to the term 'drug' under the *Drugs Act 1967* (Samoa) s 2 refers to drugs that are considered legal such as medicines, disinfectants, anaesthetic, and cosmetics among others and does not cover illegal drugs which is the focus of this Review.

¹⁰² *Food Act 2015* (Samoa) ss 12-14, 20, 24.

¹⁰³ *Narcotics Act 1967* (Samoa) s 12.

¹⁰⁴ *Misuse of Drugs Act 1975* (New Zealand) s 5B.

¹⁰⁵ *Misuse of Drugs Act 1975* (New Zealand) s 22.

¹⁰⁶ *Misuse of Drugs Act 1975* (New Zealand) s 23.

Legislating Powers and functions of the Minister

- 3.37. The majority view is that the Act should include a comprehensive list of powers and functions of the relevant Minister, similar to NZ.¹⁰⁷ For example:
- Provide and publish reports, information and advice concerning the misuse of drugs and the treatment of persons suffering from the misuse of drugs.
 - Prohibit importation of controlled drugs for any specific period not exceeding 1 year provided that such power is not exercised more than once for the same drug.
 - Issue a notice to prohibit any authorised person such as a Doctor or Physician from prescribing drugs with the exception that it is recommended by the Medical Board.
- 3.38. Providing the powers and the functions of the relevant Minister in the law is important as it will inform both the relevant Minister and members of the public about the Minister's powers and functions.
- 3.39. Furthermore, to effectively administer the Act alongside the CEO, the Act should prescribe *broader* Ministerial powers instead of just the perfunctory powers the Minister has at present.¹⁰⁸

COMMISSION'S VIEW

- 3.40. The Commission notes the majority view to include in the new drugs framework a list the relevant Minister's powers and functions. This would significantly assist in articulating the relevant Minister's functions in raising awareness and combating drug abuse. Such an approach will also enable the relevant Minister to effectively administer the Act alongside the CEO. For these reasons, the Commission supports outlining the powers of the relevant Minister in the new drugs framework, following the NZ Act. For example, powers of the Minister to provide and publish reports, information and advice concerning the misuse of drugs and the treatment of persons suffering from drug abuse.

RECOMMENDATION 13: The new drugs framework should provide for functions of the Minister of Health in raising awareness and combating drug abuse. The relevant provisions of the New Zealand legislation should be adapted and adopted.

4. CHAPTER 3: ILLEGAL DRUG CLASSIFICATION

- 4.1. This chapter discusses the relevant provisions on the classification of narcotics under Samoa's Narcotics Act and issues raised from consultations. Subsequently, it briefly

¹⁰⁷ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

¹⁰⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

considers other substances and plants with similar effects as marijuana and other drugs. For example, mushroom head (pulouaitu) and logo (daturametel). Furthermore, this chapter discusses psychoactive substances and synthetic drugs (i.e. party pills) that are not specifically covered under Samoa's Narcotics Act. Reference will be made to relevant provisions from comparable jurisdictions and relevant international drug conventions relating to psychoactive substances. Public submissions on these issues will help inform the recommendations on this chapter.

I. Schedules

- 4.2. Samoa's Narcotics Act contains four Schedules. Each schedule is dedicated to a specific class of illegal drug. For instance, Schedule 1 contains drugs that poses a very high risk of harm to individuals and/or society including cocaine, methamphetamine, lysergic acid, heroin and 35 other substances. Schedule 2 covers Class B drugs which include cannabis, morphine and opium and 125 other substances. Schedule 3 lists Class C drugs (83 substances). According to preliminary consultations with MOH and MOP, it was highlighted that Schedules to the Act were last reviewed and updated in 2009 to include controlled precursors (22 substances) as listed in Schedule 4.
- 4.3. There are also similar Schedules in Tonga, however they are differently organised. For instance, Schedule 1 lists Class A, Class B and Class C drugs and are directly adopted from the three United Nations Conventions on illegal drugs.¹⁰⁹ Schedule 2 lists controlled chemical/ precursor. Schedule 3 lists utensils and any drug paraphernalia associated with the commission of an offence under Tonga's Act. For example, utensils used for manufacturing drugs.
- 4.4. Schedules of controlled drugs in NZ are similar to Samoa in many aspects. However, research by the Commission indicated that schedules of NZ's *Misuse of Drugs Act 1975* are regularly updated.¹¹⁰ This is in response to emerging issues such as the rise of new synthetic drugs.

II. Classification of Narcotics

- 4.5. For the purpose of considering the appropriate sentence or any other relevant matters, section 4A classifies illegal drugs based on the risk of harm such illegal drug poses to individuals and/or to society by its misuse, into the following classes:¹¹¹
- Class A narcotics – illegal drugs that pose a very high risk of harm;
 - Class B narcotics – illegal drugs that pose a high risk of harm; and
 - Class C narcotics – illegal drugs that pose a moderate risk of harm.
- 4.6. When adding or omitting any illegal drug, preparation or substance from the list of illegal drugs specified or described in the First, Second or Third Schedule, or any plant from the

¹⁰⁹ *Illicit Drugs Control Act 2003* (Tonga) sch 1. The United Nations Conventions include Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol), Convention on Psychotropic Substances 1971, and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

¹¹⁰ See *Misuse of Drugs Amendment Regulations 2014* (New Zealand) and *Misuse of Drugs Amendment Regulations (No 2) 2016* (New Zealand).

¹¹¹ Generally speaking, Samoa follows the United Nations' (UN) classification of hard drugs. The UN internationally recognized illegal drug classification system classifies illegal drugs according to their accepted dangers and comparative harmfulness either to individuals or to society at large when they are misused.

list of prohibited plants set out in section 2, or transfer any drug preparation or substance from one Schedule to another, the Head of State may by order carry this out on the advice of Cabinet.¹¹² It is also further provided that the Head of State, acting on the advice of Cabinet, may by order do the following:

- Prescribe in relation to a drugs, a quantity that is to be regarded as trafficable quantity of that drugs (s 5(2)).
- Add a new substance to the Fourth Schedule or amend or omit a substance that is listed in the Fourth Schedule (s 5(3)).
- Prescribe in relation to a controlled precursor, a quantity that is to be regarded as a controlled quantity of that controlled precursor (s 5(4)).

4.7. Preliminary consultations raised an issue that the current Act is not clear on how the level of risk should be determined. There is lack of clarity on the relevant criteria to be followed (if any) by the HOS to determine the classification of narcotics.

4.8. The Commission also notes from preliminary consultations that the *Ministry of Health Act 2006* enables the Minister of Health to establish advisory bodies to assist the Minister or MOH to carry out its functions under such Act or any applicable law. To do this, these bodies may make enquiries, conduct research or report to the Minister.¹¹³ Accordingly, given MOH's administrating function of Samoa's Narcotics Act, the Commission notes that this provision may be an avenue the MOH could use to establish an advisory committee to advice on drug classification.¹¹⁴

Comparable jurisdictions

New Zealand

4.9. NZ's *Misuse of Drugs Act 1975* establishes advisory and technical committees responsible for advising the Minister of Health regarding any of the purposes of such Act,¹¹⁵ and an Expert Advisory Committee on Drugs (**EACD**) who are mainly responsible for advising on matters relating to drug classification.¹¹⁶ The EACD carries out medical and scientific evaluations and makes recommendations to the Minister regarding reclassification, if necessary. In addition to the advice by these committees, the Minister must also consider certain factors¹¹⁷ before recommending amendments to the schedules of the Act in Parliament.¹¹⁸

¹¹² *Narcotics Act 1967* (Samoa) s 5.

¹¹³ *Ministry of Health Act 2006* (Samoa) s 13.

¹¹⁴ Email from the Office of the Attorney General to the Samoa Law Reform Commission (preliminary consultations), 1 May 2017.

¹¹⁵ *Misuse of Drugs Act 1975* (New Zealand) s 5.

¹¹⁶ *Misuse of Drugs Act 1975* (New Zealand) s 5AA.

¹¹⁷ These factors include, the likelihood or evidence of drug abuse, including such matters as the prevalence of the drug, levels of consumption, drug seizure trends, and the potential appeal to vulnerable populations; and the specific effects of the drug, including pharmacological, psychoactive, and toxicological effects; and the risks, if any, to public health; and the therapeutic value of the drug, if any; and the potential for use of the drug to cause death; and the ability of the drug to create physical or psychological dependence; and the international classification and experience of the drug in other jurisdictions; and any other matters that the Minister considers relevant. See *Misuse of Drugs Act 1975* (New Zealand) s 4B (2).

¹¹⁸ *Misuse of Drugs Act 1975* (New Zealand) s 4B.

- 4.10. In regards to the EACD, the legislation provides that it must comprise of people who have appropriate expertise in matters relating to drug and alcohol treatment, public health, justice system as well as someone representing the views of consumers of drug treatment services.¹¹⁹

SUBMISSIONS

The Commission sought submissions on the current practice of amending (add or omit) schedules by the HOS and issues on whether an expert committee (similar to NZ) should be established to provide advice when changing schedules and the composition of such a committee.

Amending Schedules: Current Practice

- 4.11. There were no submissions explaining the current practice by the HOS under section 5 of Samoa's Narcotics Act. However, a few stakeholders expressed the view that if such practice exists, it should be legislated to guide the making of any further amendments to the classification of drugs in future.

Appropriate Authority to classify

- 4.12. The majority view was that the Minister, similar to NZ and for practical reasons, should carry out the functions under section 5.¹²⁰ On the other hand, some stakeholders submitted to retain the current law for the HOS to amend given that the HOS is the highest authority in the country.¹²¹ Also, empowering a person other than the HOS (e.g. the Minister) may give rise to potential abuse of power.¹²²

Expert committee (composition and functions)

- 4.13. Other stakeholders agreed to establish an advisory/expert committee e.g. 'Drugs Board' to advise the appropriate authority under the Act on appropriate amendments to the schedules of the Act.¹²³

¹¹⁹ *Misuse of Drugs Act 1975* (New Zealand) s 5AA (3).

¹²⁰ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017;

¹²¹ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017;

¹²² Ministry of Police, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

¹²³ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Consultation with members of the Judiciary (Judges Chambers, Ministry of Justice and Courts Administration Office, Sogi, 13 September 2017).

- 4.14. There were also a number of submissions that proposed to utilize existing committees with roles relating to national security and safety issues. One stakeholder in particular proposed to utilize the National Security Committee.¹²⁴ At present, this Committee advises Cabinet on security issues which include monitoring drug movement. It is comprised of the Attorney General, Commissioner of Police, the CEOs of MOH, Ministry of the Prime Minister & Cabinet (**MPMC**), Customs, Quarantine, Immigration, TCU and other Ministries and State-Owned Enterprises.¹²⁵ Another stakeholder proposed to utilize the Narcotic Taskforce whose advice resulted in the 2009 amendments made to Samoa's Narcotics Act.¹²⁶
- 4.15. Moreover, MOH expressed the view that drug reclassification should be the role and function of the National Drug and Therapeutic Committee, and should be based on the International Narcotics Control Board (**INCB**) reclassification system. The Committee's functions should be drawn from the National Medicines Policy.

a) Composition

- 4.16. Despite the different committees proposed, the majority view was that any technical or advisory committee proposed should be made up of the following people:
- the CEOs of relevant ministries/SOEs (e.g. MOH, SROS, MOP, Customs);
 - medical and pharmaceutical professionals;
 - relevant members of the education sector;
 - relevant NGO members;
 - specialists/ experts having technical knowledge of illegal drugs and articles.

b) Functions

- 4.17. The functions of such technical or advisory committees, as suggested by some stakeholders, should include the following:
- to advise the relevant Minister on the suitability of adding or omitting a drug or preparation to the Schedule;¹²⁷
 - to determine the level of risk and provide the extent of harm caused by illegal drugs (such as physical harm, various levels of dependence, and social harm);¹²⁸
 - to be well-informed with developments in the drug environment both locally and internationally;¹²⁹

¹²⁴ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

¹²⁵ Ministry of Prime Ministry and Cabinet submission, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

¹²⁶ Transnational Crimes Unit, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

¹²⁷ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

¹²⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

¹²⁹ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

- to advise Cabinet on national security/safety issues and monitor drug movement and distribution.¹³⁰

COMMISSION'S VIEW

- 4.18. The Commission notes that the majority of submissions is in support of retaining the current practice under section 5 given that the HOS is the highest authority. This is to alleviate any abuse of power or corruption if another authority takes over the role of the HOS. Other submitters preferred the relevant Minister similar to the practice in NZ given his or her expertise in health matters. There were also submissions to utilize existing committees and advisory bodies similar to those that can be established by the Minister of health under the *Ministry of Health Act 2006*.¹³¹
- 4.19. The Commission is of the view that a practical approach is for the Minister of Health to classify drugs (omit, add and amend). Also, the Commission considers that an expert and advisory committee should be established (possibly set up under the *Ministry of Health Act 2006*) or existing committees can be utilized to advise the relevant Minister on issues such as the suitability of adding or omitting a drug, determine the level of risk, and provide the extent of harm (social and physical harm) caused by drug. Provisions contained under the NZ law can be adopted and adapted.
- 4.20. Such expert or advisory committees should be made up of representatives from the relevant agencies with technical knowledge of illegal drugs, pharmaceutical and medical professionals, and any other relevant personnel. The law of NZ can be used as guidance in relation to the composition of such Committees but only to the extent consistent with the local context. Accordingly, such a Committee with the relevant functions to advise the Minister will ensure that illegal drugs are appropriately and adequately classified.

RECOMMENDATION 14: The classification and amending of Schedules to the Act (section 5) should be the primary role of the Minister of Health, acting on the advice of an expert or advisory committee, whether established under the *Ministry of Health Act 2006* or utilizing existing committees.

RECOMMENDATION 15: Such expert or advisory committee shall be made up of representatives from the relevant agencies with technical knowledge of illegal drugs, pharmaceutical and medical professionals, and any other relevant personnel. The law of New Zealand can be used as guidance where relevant.

RECOMMENDATION 16: Consistent with public submissions, the functions of such expert or advisory committees, should include the following:

- to advise the Minister on the suitability of adding or omitting a drug or preparation to the Schedule;
- to determine the level of risk and provide the extent of harm caused by illegal drugs (such as physical harm, various levels of dependence, and social harm);

¹³⁰ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Consultations with the Ministry of Education, Sports and Culture (Education, Sports and Culture Building, Malifa, 8 August 2017).

¹³¹ See *Ministry of Health Act 2006* (Samoa) s 13.

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|--|
| <ul style="list-style-type: none">- to advise Cabinet on national security/safety issues and monitor drug movement and distribution. |
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III. Local Alternative Substances

- 4.21. Further preliminary research by the Commission found that common illegal substances including methamphetamine, morphine, cannabis, opium, heroin, codeine and many amphetamine-type substances, are adequately covered under Classes A, B and C.
- 4.22. However, a significant issue raised during preliminary consultations was the common use of other substances and plants in Samoa which are known to have life threatening effects. For example, the use of the logo plant / tagamimi (*daturametel*)¹³², mushroom head (*pulouaitu*), and laced cigarettes. Such substances are known to have been widely used in the rural areas, which have resulted in a number of health-related (mental) problems and even deaths in some situations.

a) *Pulouaitu (mushroom head)*

- 4.23. The mushroom head or *pulouaitu* is known in Samoa as an umbrella-designed fruiting body of a particular fungi.¹³³ This fungi is believed to have been introduced in Samoa together with cattle during the last century and is now found widely distributed across the Samoan islands.¹³⁴ *Pulouaitu* is usually gathered from agricultural pastures having grown on cow dung (*taepovi*) where their caps are removed and steeped into boiled water to produce a black juice which is mixed frequently with coffee.¹³⁵ Alternatively, some Samoans either consume mushroom caps raw, with coca cola, or leave it to dry up for smoking.¹³⁶ Also, the consumption of mushroom heads leaves the consumer feeling an inception of euphoria culminating visual and auditory hallucinations that may last up to 7 hours.¹³⁷ Such consumption can also cause loss of voluntary muscle function.¹³⁸

¹³² Invasive Species Compendium, 'Brugmansia Candida (angel's trumpet)' *Cookies in Invasive Species Compendium* (2017) <<http://www.cabi.org/isc/datasheet/10133>>.

¹³³ Editors of Encyclopaedia Britannica, 'Mushroom' *Encyclopaedia Britannica* (28 August 2017) <<https://www.britannica.com/science/mushroom>>.

¹³⁴ Paul Alan Cox, 'Use of hallucinogenic mushroom, *Copelandiacyanescens*, in Samoa' *Department of Botany University of Hawaii at Manoa* (1981) <<http://www.botany.hawaii.edu/basch/uhnpscesu/pdfs/sam/Cox1981WS.pdf>>.

¹³⁵ Paul Alan Cox, 'Use of hallucinogenic mushroom, *Copelandiacyanescens*, in Samoa' *Department of Botany University of Hawaii at Manoa* (1981) <<http://www.botany.hawaii.edu/basch/uhnpscesu/pdfs/sam/Cox1981WS.pdf>>.

¹³⁶ Paul Alan Cox, 'Use of hallucinogenic mushroom, *Copelandiacyanescens*, in Samoa' *Department of Botany University of Hawaii at Manoa* (1981) <<http://www.botany.hawaii.edu/basch/uhnpscesu/pdfs/sam/Cox1981WS.pdf>>.

¹³⁷ Paul Alan Cox, 'Use of hallucinogenic mushroom, *Copelandiacyanescens*, in Samoa' *Department of Botany University of Hawaii at Manoa* (1981) <<http://www.botany.hawaii.edu/basch/uhnpscesu/pdfs/sam/Cox1981WS.pdf>>.

¹³⁸ Paul Alan Cox, 'Use of hallucinogenic mushroom, *Copelandia Cyanescens*, in Samoa' *Department of Botany University of Hawaii at Manoa* (1981) <<http://www.botany.hawaii.edu/basch/uhnpscesu/pdfs/sam/Cox1981WS.pdf>>.

4.24. It is important to note, that the current legislation classifies magic mushroom as PSILOCYBINE (3-(2-dimethylaminoethyl) indol-4-yl dihydrogen phosphate), which is a Class A drug (which bears a similar effect as mushroom head).

b) Logo or tagamimi (daturas)

4.25. The 'logo' or 'tagamimi' in Samoan refers to the plant genus commonly known as 'daturas'¹³⁹ with large trumpet -shaped flowers either white, yellow, pink and purple in colour.¹⁴⁰ All members of this genus have hallucinogenic properties¹⁴¹ with leaves and seeds bearing hallucinogen alkaloids with the angel's trumpet, the horn of plenty and the jimsonweed being the most prominent of its members.¹⁴² In Samoa, the logo plant is commonly found along stream banks, on the edge of the forests and even on roadsides.¹⁴³

4.26. The table below lists other substances and plants and their classification under Samoa's Narcotics Act. It is important to note from the table however, that it is unclear how the local alternative substance commonly known as the logo or tagamimi (*daturametel*) can be classified.

Local Alternative Substances	Class A	Class B	Class C	Controlled Precursor	Unclassified
Magic mushroom (psilocybine)	✓				
Logo (Daturametel)					✓
Laced tobacco					✓

4.27. Furthermore, the use of other substances such as kerosene and benzene to lace tobacco has raised concerns among some health professionals as it has led to issues of mental health.¹⁴⁴ Further, this has prompted the idea as to whether such substances should be covered under the law.

SUBMISSIONS

The Commission sought submissions on the adequacy of the current classification system, other drugs to be covered not contained in the Schedules and how often these schedules should be updated.

Adequacy of current Classification

4.28. The Commission did not receive any submissions on the adequacy of the current classification of drugs. However, there were submissions which proposed to use NZ's current *Misuse of Drugs Act 1975* to identify possible drugs that might need to be added to the current classification of drugs under Samoa's Narcotics Act.

¹³⁹ Augustin Kramer, *The Samoa Islands: Material Culture* (1994) 453.

¹⁴⁰ Christina Pratt, *An Encyclopedia of Shamanism* (2007) 134.

¹⁴¹ Christina Pratt, *An Encyclopedia of Shamanism* (2007) 134.

¹⁴² Thomas Nordegren, *The A-Z Encyclopedia of Alcohol and Drug Abuse* (2002) 210.

¹⁴³ B.E.V. Parham, *Plants of Samoa* (1972) 116.

¹⁴⁴ Consultation of the Mental Health Unit (Mental Health Unit Conference Room, Moto'otua Hospital, 22 August 2017).

New drugs to be added and their impacts

- 4.29. The Commission received submissions identifying (new) drugs that should be included in the classification of drugs in the new drugs framework. For example, to include the logo plant and the mushroom head as a prohibited plant. According to some submitters, these local plants are consumed solely for the high it imparts on the consumer.¹⁴⁵ For some, this is a concern because they are becoming more popular amongst the young people.¹⁴⁶
- 4.30. One stakeholder in particular suggested to include synthetic drugs and e-cigarettes (vapour cigarettes) in the classification of drugs.¹⁴⁷ MHU proposed to consider laced drugs such as tobacco laced with kerosene because of the high rate of patients being admitted to MHU experiencing a relapse which may have resulted from these tobaccos.¹⁴⁸ Alii and Faipule from Savaii and Upolu expressed the view to consider classifying substances such as matofu and vaoelefane which have been used to produce or mix with real drugs as they are poisonous and can affect the brain.¹⁴⁹
- 4.31. Some submitters queried whether kava is a drug and whether it should also be considered given its negative effects on a person's health.¹⁵⁰

Updating Schedules

- 4.32. The majority view was to provide a timeframe in which Schedules can be reviewed and updated. Some submitters expressed the view to review Schedules annually or every three (3) years.
- 4.33. Alternatively, some stakeholders preferred to have the Schedules reviewed either on a needs basis¹⁵¹ or to leave this up to the CEOs of the relevant stakeholders for their determination.¹⁵² One other stakeholder suggested using NZ to guide how often Samoa's schedules can be amended.

COMMISSION'S VIEW

- 4.34. The Commission notes that Samoa's current drug schedules adequately cover common illegal substances including morphine, methamphetamine, cannabis, opium, heroin, codeine and many amphetamine-type substances under Classes A, B and C. Accordingly,

¹⁴⁵ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific Alafua Campus, 15 September 2017).

¹⁴⁶ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific Alafua Campus, 15 September 2017).

¹⁴⁷ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

¹⁴⁸ Consultation of the Mental Health Unit (Mental Health Unit Conference Room, Moto'otua Hospital, 22 August 2017).

¹⁴⁹ Public Consultations with Alii ma Faipule (Upolu and Savaii 25-26, 28-29 September 2017).

¹⁵⁰ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific, Alafua Campus, 15 September 2017).

¹⁵¹ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

¹⁵² Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

Samoa's drug classifications are in many respects consistent with classifications of overseas jurisdictions like NZ and NSW.

- 4.35. It is also noted the prevalent use of other substances such as logo plant (daturametel), mushroom head (pulouaitu) and laced cigarettes. These substances pose a major concern in the community particularly among youths and has resulted in health-related problems and deaths in some situations. The Commission notes that the magic mushroom is classified as a Class A drug, however, it is uncertain whether other substances such as logo and laced cigarettes are covered under the law.
- 4.36. Therefore, the Commission is of the view that regular updating of schedules is important to ensure that they adequately cover common illegal drugs and other substances seen as causing harm to society e.g. logo, matofu, vaoelefane and laced cigarettes. Further research needs to be conducted on these substances to determine their extent of harm and to identify other harmful substances that should be regulated. The Committee established under **Recommendation 14** of this Report can conduct further research and investigation or the Ministry of Health under its relevant division. Moreover, the updating of Schedules should be done on a needs basis.

RECOMMENDATION 17: The Schedules of Samoa's Narcotics Act should be updated regularly to ensure that it adequately covers common illegal drugs and other substances such as logo and laced cigarettes. Further research needs to be conducted on these substances to determine the extent of harm caused and to identify other harmful substances (similar to logo and pulouaitu) that should be regulated. The Committee established under **Recommendation 14** of this Report should conduct such research or the Ministry of Health under its relevant division.

RECOMMENDATION 18: Schedules should be reviewed on a needs basis to ensure efficacy in the review of emerging drugs.

IV. Psychoactive Substances and Synthetic Drugs

- 4.37. Synthetic drugs and *new* psychoactive substances are becoming prevalent across the world affecting people's health. For instance, when such substances are taken or administered into one's system, it affects their mental processes, e.g. cognition.¹⁵³ Such substances are created using chemicals rather than natural, or botanical, ingredients. Synthetic drugs in particular aim to mimic the effects of existing illegal drugs such as cocaine and ecstasy. Commonly known synthetic drugs include party pills, synthetic cannabinoids and herbal highs.
- 4.38. Currently, Samoa does not have any law regulating psychoactive substances and synthetic drugs. Also, Samoa is yet to be a party to the *Convention on Psychotropic Substances 1971* (**1971 Convention**) which establishes an international control system for psychoactive substances. While psychoactive substances and synthetic drugs do not appear to be

¹⁵³ World Health Organization, 'Management of substance abuse: Psychoactive substances' <http://www.who.int/substance_abuse/terminology/psychoactive_substances/en/>.

particularly common in Samoa at this time, it is anticipated that this could be a major concern for Samoa in the near future. This raises a question on whether Samoa should become a party to the 1971 Convention.

Comparable jurisdictions

New Zealand

- 4.39. NZ passed the *Psychoactive Substances Act 2013 (PS Act NZ)* which allows for the legal, albeit strictly regulated, use and sale of synthetic drugs commonly known as legal highs or party pills. These artificial party pills are produced to mirror the effect of controlled drugs such as cannabis, ecstasy, LSD, and amphetamines. The main purpose of this PS Act NZ is to protect citizens from the misuse of untested drugs on an unregulated market.¹⁵⁴
- 4.40. As noted above, the PS Act NZ sets out strict requirements on the use and sale of these drugs. For example, obtaining a licence to sell is difficult and products that are intended for sale have to be approved after undergoing strict testing to ensure they are safe for consumption.¹⁵⁵ With the PS Act NZ in place, the NZ Government no longer needs to frequently amend their laws to counter the introduction of new synthetic drugs as the onus now falls on the manufacturer to obtain approval of their product before it is allowed on the market.
- 4.41. The PS Act NZ also restricts the sale of party pills to individuals who are under 18 years of age. It is an offence for a person under the age of 18 to buy or be in possession of any psychoactive substance.¹⁵⁶ Moreover, the entire supply chain (production, transport and sale) is strictly taxed and regulated.¹⁵⁷
- 4.42. Despite the presence of the PS Act NZ, synthetic drugs have caused major concerns for the Government, health professionals, police and also the community. This is because such drugs has led to life threatening effects and even deaths. For example, it was revealed in a recent media report that seven people died after using synthetic cannabis in the month of July alone in Auckland.¹⁵⁸

United Kingdom

- 4.43. The *Psychoactive Substances Act 2016 (PS Act UK)* regulates psychoactive substances in the UK. Psychoactive substances are defined under the UK law as drugs that are capable of producing a psychoactive effect on the person who consumes it, by stimulating or depressing the person's central nervous system.¹⁵⁹ These substances affect the person's mental and emotional state of mind.¹⁶⁰ Over a ten year period, legal highs in the UK were

¹⁵⁴ *Psychoactive Substances Act 2013* (New Zealand) s 3.

¹⁵⁵ *Psychoactive Substances Act 2013* (New Zealand) ss 17-18.

¹⁵⁶ *Psychoactive Substances Act 2013* (New Zealand) s 48.

¹⁵⁷ *Psychoactive Substances Act 2013* (New Zealand) ss 52-64.

¹⁵⁸ NZ Herald, "Seven deaths in Kiwi synthetic cannabis epidemic this month", 21 July 2017 (online ed.), <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11893530>. Accessed 18 December 2017. See also "Police: Twenty deaths linked to synthetic drugs", 14 September 2017 (online ed.) <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11922356>. Accessed 18 December 2017.

¹⁵⁹ *Psychoactive Substances Act 2016* (United Kingdom) s 2.

¹⁶⁰ *Psychoactive Substances Act 2016* (United Kingdom) s 2.

linked to some 76 deaths. Although the number of deaths was just a fraction of those from illegal narcotics such as heroin or cocaine, community concern has been raised by the highly publicised nature of the deaths and the ease of access to these substances in stores and purchase online.

- 4.44. Furthermore, the PS Act UK places a blanket ban on the production, supply, import and export of all psychoactive substances intended for human use.¹⁶¹ Notably, the PS Act UK does not prohibit possession per se of these drugs. This blanket ban is qualified only by the substances which are explicitly exempted by Schedule 1 of the legislation. The exempted products include medications, alcohol, nicotine, tobacco products, caffeine products and food products.

Australia

a) Federal

- 4.45. The Australian 'federal' approach to legal highs has been far more disconnected due to its federal system and as a result territories differ in their legislative responses to such substances. Consistent drugs legislation applies only insofar where the Commonwealth has constitutional jurisdiction. For example the Commonwealth government has jurisdiction in regulating the importation of these psychoactive substances into Australia.¹⁶²
- 4.46. The Commonwealth government enacted the *Crimes Legislation Amendment (Psychoactive Substances and other measures) Act 2015 (CLA Act)*. The main purpose of the CLA Act is to ban the importation of substances which have a psychoactive effect.¹⁶³ Psychoactive effect is defined as stimulation or depression of the person's central nervous system, resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or causing a state of dependence, including physical or psychological addiction.¹⁶⁴ The CLA Act contains similar exemptions to the UK provisions, though rather more extensive.
- 4.47. The CLA Act additionally bans the import of substances represented to be serious drug alternatives.¹⁶⁵ For example, where such substances have a psychoactive effect that is the same as, or substantially similar to that of an already prohibited drug, or is a lawful alternative to an already prohibited drug.

b) New South Wales

- 4.48. The NSW Government faced many issues over the years relating to the increased use of psychoactive substances and synthetic drugs. For example, in 2013, 1.2 percent of NSW's

¹⁶¹ *Psychoactive Substances Act 2016* (United Kingdom) s 8.

¹⁶² *Crimes Legislation Amendment (Psychoactive Substances and other measures) Act 2015* (Cth, Australia) s 320.2.

¹⁶³ *Crimes Legislation Amendment (Psychoactive Substances and other measures) Act 2015* (Cth, Australia) Long Title.

¹⁶⁴ *Crimes Legislation Amendment (Psychoactive Substances and other measures) Act 2015* (Cth, Australia) s 320.1.

¹⁶⁵ *Crimes Legislation Amendment (Psychoactive Substances and other measures) Act 2015* (Cth, Australia) s 320.3.

population (about 230,000 people) had used synthetic cannabinoids in the last 12 months, and 0.4% (about 80,000 people) had used another psychoactive substance such as mephedrone.¹⁶⁶

- 4.49. As a result, the NSW government introduced amendments to its *Drug Misuse and Trafficking Act 1985* to prohibit the manufacture, supply, and advertising of psychoactive substances.¹⁶⁷ These amendments came into effect in September 2013.
- 4.50. The *Drug Misuse and Trafficking Act 1985* provides that a person can be liable for manufacturing psychoactive substances for supply.¹⁶⁸ In addition, the law also imposes a ban on any advertisements of psychoactive substances that would promote or apparently promote directly or indirectly the consumption, supply or sale of a substance for its psychoactive effect.¹⁶⁹ This ban also applies to advertisements that provide information on how or where psychoactive substances may be obtained.

SUBMISSIONS

The Commission sought submissions on whether Samoa should regulate psychoactive substances and synthetic drugs either under a standalone law or form part of the new drugs framework.

- 4.51. The majority view was to include psychoactive substances and synthetic drugs in a stand-alone law similar to NZ's PS Act.¹⁷⁰ This will clearly regulate and emphasize the prohibition of synthetic drugs.¹⁷¹ Furthermore, a law to this effect would assist MOP develop identification and investigation techniques to accommodate these developments.¹⁷² Samoa's TCU further proposed for the possible stand-alone Act to impose a blanket ban specifically on the effect of Tetrahydrocannabinol (**THC**).
- 4.52. Members of the Judiciary expressed the view that a standalone legislation is a suitable option if there is strong research to support it.¹⁷³
- 4.53. The MOP submitted to incorporate provisions on psychoactive substances and synthetic drugs in the new drugs framework, instead of a standalone law. However, if such

¹⁶⁶ Drug Info, Synthetic Drugs, Drug info State Library New South Wales <<http://druginfo.sl.New South Wales.gov.au/drugs-z-drugs/synthetic-drugs>>.

¹⁶⁷ *Drug Misuse and Trafficking Act 1985* (New South Wales) pt. 2C.

¹⁶⁸ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZF.

¹⁶⁹ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZG.

¹⁷⁰ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Office, FMFM II Building, Matagalalua, 29 August 2017); Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Samoa Law Society, Written Submissions to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

¹⁷¹ Consultation with the Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

¹⁷² Individual Submission to Samoa Law Reform Commission, Continuing Legal Education Hotspot Seminar on the Drugs Reform (Review of the Narcotics Act 1967), 31 July 2017.

¹⁷³ Consultation with members of the Judiciary (Judges Chambers, Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

psychoactive substances and synthetic drugs become a problem over time, then it will be proper to have a standalone Act similar to NZ.¹⁷⁴

COMMISSION'S VIEW

- 4.54. The Commission notes the majority view to regulate psychoactive substances and synthetic drugs in a standalone legislation, similar to NZ. MOP disagrees with this view and proposed to incorporate provisions in a new drugs framework. Currently, Samoa does not have any law to this effect. The Commission notes despite the rarity of cases in Samoa, it anticipates that this would be a major concern in the future given new developments in the illegal drugs environment. It is also noted that countries like NZ and Australia have standalone laws regulating psychoactive substances and synthetic drugs.
- 4.55. Accordingly, the Commission is of the view that Samoa should have laws regulating psychoactive substances and synthetic drugs similar to comparable jurisdictions. This should be included in the new drugs framework, as opposed to a standalone law. Such laws will adequately respond to the rise and harm caused by psychoactive substances and synthetic drugs as they become available in Samoa. It will also assist law enforcement agencies to develop identification and investigation techniques to accommodate these developments.

RECOMMENDATION 19: Samoa should establish laws regulating psychoactive substances and synthetic drugs similar to what has been done in comparable jurisdictions. This should be included in a new drugs framework similar to New South Wales, as opposed to a standalone law. If this is the case, Samoa should consider signing up to the United Nations *Convention on Psychotropic Substances 1971* which governs the international control system for psychoactive substances.

5. CHAPTER 4: OFFENCES AND PENALTIES

- 5.1. This Chapter discusses the 'Offence and Penalties' provisions under Samoa's Narcotics Act and comparable laws in other jurisdictions. It will consider public submissions on issues raised in preliminary consultations to inform recommendations on suitable offences and penalties relevant to the current needs in Samoa.

I. Offences

a) *Prohibited plants*

Unlawful cultivation of prohibited plants and possession of seeds

- 5.2. Section 6 of the Act prohibits cultivating a prohibited plant or being in possession of any of its seed unless such acts fall under the exemptions provided for under the Act.¹⁷⁵
- 5.3. NZ, Tonga and NSW have similar provisions.¹⁷⁶

¹⁷⁴Consultation with the Ministry of Police (Ministry of Police Building, Apia, 28 August 2017).

¹⁷⁵See *Narcotics Act 1967* (Samoa) s 6(2).

¹⁷⁶*Misuse of Drugs Act 1975* (New Zealand) ss 9, 13(1) (b); *Drug Misuse and Trafficking Act 1985* (New South Wales) s 23(1) (a), (c); *Illicit Drugs Control Act 2003* (Tonga) s 4.

b) Illegal drugs and controlled precursors

Unlawful possession, use (procure, smoke, consume), supply or administering of illegal drugs

- 5.4. Under section 7 of the Act, a person commits an offence if he or she knowingly possesses (or attempt to possess) or uses illegal drugs (in the manners specified i.e. procure, consume, smoke or otherwise).¹⁷⁷ Additionally, supplying or administering (or attempt to supply or administer) illegal drugs to another person is also an offence under the Act.¹⁷⁸ There are exemptions provided by the Act which justify a person's lawful possession, use or even the supply or administration of illegal drugs to another person.¹⁷⁹
- 5.5. Tonga, NZ and NSW have similar provisions making the possession, use and administering of any controlled drug an offence unless exempted under their Acts.¹⁸⁰
- 5.6. In relation to *supply*, while all three comparable jurisdictions make it an offence to supply illegal drugs¹⁸¹, section 25A of the NSW Act creates an offence for the supply of drugs *on an ongoing basis*.¹⁸² Accordingly, a person who, on 3 or more separate occasions during any period of 30 consecutive days, supplies a prohibited drug (other than cannabis) for financial or material reward is guilty of an offence.¹⁸³ Furthermore, the jury must be satisfied of the same three occasions of supply relied upon as the basis for the offence and give directions to this effect.¹⁸⁴ A person is exempted from supplying illegal drugs on an ongoing basis, if he or she is licenced to do so, or acts in accordance with an authority granted by the Director General of the Health.¹⁸⁵

Illegal import and export and dealing in illegal drugs or controlled precursors

- 5.7. It is an offence under section 10 of Samoa's Narcotics Act to import into or export from Samoa either prepared opium, a prohibited plant or any narcotic listed in the Act.¹⁸⁶ However, the Act does exempt persons, who are licensed under section 11, to import or export and/or deal in:
- a) a narcotic listed under Schedules 1, 2 and 3;¹⁸⁷ and

¹⁷⁷*Narcotics Act 1967* (Samoa) ss 7 (a)-(b).

¹⁷⁸*Narcotics Act 1967* (Samoa) s 7 (c).

¹⁷⁹*Narcotics Act 1967* (Samoa) s 7 (2).

¹⁸⁰ See *Illicit Control Drugs Act 2003* (Tonga) s 4; *Misuse of Drugs Act 1975* (New Zealand) s 7; *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 10, 12-13.

¹⁸¹*Illicit Control Drugs Act 2003* (Tonga) s 4; *Misuse of Drugs Act 1975* (New Zealand) s 6(1) (c), 7(1) (b); *Drug Misuse and Trafficking Act 1985* (New South Wales) s 25.

¹⁸² Common examples of supplying prohibited drugs on an ongoing basis include: Dealing drugs such as ecstasy, cocaine, ice or heroin three or more times in a month; Agreeing to organise cocaine for you and your friends in exchange for not having to pay for all of your share three Saturday nights in the same month; Selling a friend a small amount of ice every week from your own stash; or Buying 60 pills for \$600 and selling 20 to three street dealers for \$250 each.

¹⁸³*Drug Misuse and Trafficking Act 1985* (New South Wales) s25A (1).

¹⁸⁴ See *Drug Misuse and Trafficking Act 1985* (New South Wales) s25A (3) and *R v Seymour* [2001] NSWCCA 272 at [11]–[12].

¹⁸⁵*Drug Misuse and Trafficking Act 1985* (New South Wales) s 25A (9).

¹⁸⁶*Narcotics Act 1967* (Samoa) s 10(1).

¹⁸⁷*Narcotics Act 1967* (Samoa) s 10(2).

b) a controlled quantity of a controlled precursor.¹⁸⁸

5.8. This position is also taken in NZ and Tonga.¹⁸⁹ Tonga however does not provide for a similar exemption. In Australia, the illegal import or export of a prohibited or 'border controlled drug' is a commonwealth/ federal offence.¹⁹⁰ Drugs that are known to be 'border controlled drugs' are specified under the law (which include substances listed indefinitely in the *Criminal Code Regulations 2002* (Federal) as border controlled drugs, analogues of listed controlled drugs and drugs listed temporarily by emergency determination), and their corresponding penalties.¹⁹¹

Unlawful manufacture of illegal drugs

5.9. Any person who unlawfully manufactures an illegal drug is also liable for an offence under Samoa's Narcotic Act.¹⁹² "Manufacture" is referred to under the Act as any process by which narcotic is produced (aside from cultivating the plant) and encompasses all manufacturing processes stipulated by section 18A of Samoa's Narcotic Act.¹⁹³

5.10. The offence of manufacture of illegal drugs is illegal and is an offence in Tonga, NZ and NSW.¹⁹⁴ Such offences carry hefty penalties.

Unlawful sale, manufacture, supply or possession of controlled precursors

5.11. Samoa's Narcotics Act makes it an offence to sell, manufacture, possess (or attempt to possess), supply (or attempt to supply) or deal with a controlled precursor believing that such substance will be used ultimately to manufacture a narcotic.¹⁹⁵ However, a person who is licenced to possess a controlled quantity of a controlled precursor is exempted from liability.¹⁹⁶ Such person is also not liable for unlawful sale of such substances if he or she knowingly sells to another licensed person.¹⁹⁷

5.12. Under the NZ's *Misuse of Drugs Act 1975*, it is also an offence to supply, produce or manufacture any precursor substance knowing that the substance is to be used in, or for, the production or manufacture of any controlled drug or cultivation of a prohibited plant (maximum penalty of seven years imprisonment).¹⁹⁸ As a control measure, pharmacists monitor the purchase of methamphetamine ingredients. They provide the Police with names, addresses, car registration numbers, drivers' licence details, the number and type of pseudoephedrine-containing products requested, and the dates and times of

¹⁸⁸*Narcotics Act 1967* (Samoa) s 10(3A).

¹⁸⁹*Illicit Control Drugs Act 2003* (Tonga) s 3; *Misuse of Drugs Act 1975* (New Zealand) s 6(1) (a).

¹⁹⁰*Criminal Code Act 1995* (Australia) ss 307.1-307.4.

¹⁹¹*Criminal Code Act 1995* (Australia) s 314. See also *Criminal Code Act 1995* (Australia) ss 301.4-301.6 for the definitions of 'border controlled drugs', 'border controlled plants', and 'border controlled precursors'.

¹⁹²*Narcotics Act 1967* (Samoa) s 18A (1).

¹⁹³*Narcotics Act 1967* (Samoa) s 18A (2).

¹⁹⁴*Illicit Control Drugs Act 2003*(Tonga) s 4; *Misuse of Drugs Act 1975* (New Zealand) s 6(1)(b); *Drug Misuse and Trafficking Act 1985* (New South Wales) s 24.

¹⁹⁵*Narcotics Act 1967* (Samoa) s 18B (1).

¹⁹⁶*Narcotics Act 1967*(Samoa) s 18B (1) (e).

¹⁹⁷*Narcotics Act 1967*(Samoa) s 18B (3).

¹⁹⁸*Misuse of Drugs Act 1975* (New Zealand) s12A (1) (b)-12A (2) (b).

purchase.¹⁹⁹ Pharmacists have also asked customers to show photo identification before selling products containing pseudoephedrine.²⁰⁰

- 5.13. NSW's law also makes it an offence to possess a substance that is a 'precursor' to an illegal drug. A precursor is an ingredient or substance that can be used along with other ingredients or substances to make an illegal drug. Precursors include things such as chemicals, plants, fungi or other natural organisms. Therefore, a person who has in his or her possession a precursor of a quantity not less than the quantity prescribed by the regulations in relation to that precursor is guilty of an offence.²⁰¹ For example:²⁰²
- Having ten boxes of pseudoephedrine in your car;
 - Being found to have a jug which contains benzaldehyde (a chemical used to make methamphetamine) in your garage;
 - Having several small canisters of methylamine (a gas used to make methamphetamine) in your backpack; or
 - Storing multiple chemicals and plants in your makeshift drug lab.

SUBMISSIONS

The Commission sought submissions on whether a new drugs framework should include an offence for a person to supply a controlled drug on an ongoing basis without a licence, similar to NSW.

- 5.14. The majority view supported the idea to have an offence criminalising a person who supplies a controlled drug on an ongoing basis without a licence or authority of the Director General of Health/CEO, similar to the law of NSW.²⁰³ There were no reasons stated, however, the Commission considers that one of the reasons would be to avoid drug trafficking and abuse.
- 5.15. In contrast, one submitter noted that it is unnecessary for Samoa to have this offence unless it carries a higher penalty. This is because if a person supplies illegal drugs on an

¹⁹⁹ New Zealand Parliamentary Library, "Methamphetamine ('Speed and 'P') in New Zealand", *Background Note: Information Briefing for Members of Parliament*, 1 July 2003, <<https://www.parliament.nz/resource/mi-nz/00PLSocRP03061/ce52c5808bee59927b0843154d1c75cffb397a47>>.

²⁰⁰ Deborah Benson, *Reporting system put to the test: New Zealand Pharmacy* (2003) 16. It should be noted that it is not an offence to purchase pseudoephedrine if there is no intention to later use it for producing methamphetamine.

²⁰¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 24B (1).

²⁰² John Sutton, 'Possession of Precursor for manufacture' *Armstrong Legal* <<https://www.armstronglegal.com.au/criminal-law/offences/drugs/possession-of-precursors>>.

²⁰³ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Office, Fiame Mataafa Faumuina Mulinuu II, Matagalalua, 29 August 2017); Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FMFM II Building, Matagalalua, 7 August 2017); Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017); Consultation of the Mental Health Unit (Mental Health Unit Office, Moto'otua, 22 August 2017); Consultation with the Ministry of Health (Ministry of Health Office, Moto'otua Hospital, 17 August 2017).

ongoing basis and has no license to do so, he/she can simply be charged with the offence of possession.²⁰⁴

COMMISSION'S VIEW

- 5.16. This part discussed some of the drug related offences under Samoa's Narcotics Act and similar provisions in comparable jurisdictions of Tonga, NZ and NSW. Whilst most of the offence provisions in Samoa are similar to other countries, there are additional offences relating to unlawful supply, which merit consideration. For example, NSW creates an offence of supplying drugs on an ongoing basis. This is when a person supplies a prohibited drug on 3 or more separate occasions during any period of 30 consecutive days. The Commission notes the majority view of submissions to include in a new drugs framework an offence of this nature. Given the statistics in Chapter 1 on drug offending and the social and economic harms on the community, the Commission is of the view that creating such an offence would assist track regular drug suppliers. The Commission considers that an appropriate penalty, based on the severity of the offence should be imposed for such an offence. For example, where supply on an ongoing basis of illegal drugs is for commercial purposes, then a higher penalty would be appropriate. The law in NSW can be used as guidance.
- 5.17. Moreover, although the current law provides for a definition of trafficable quantity and that trafficking of drugs may be covered under the offence of dealing (supply)²⁰⁵, the Commission considers that it is important to expressly include it under the law as a standalone offence. This is because trafficking is the same as the offence of supply, except that large quantities of drugs are involved. The benefit of having this as a standalone offence will better target large quantities of drugs discovered by authorities and prosecute offenders accordingly.

RECOMMENDATION 20: The new drugs framework should include an offence of supplying drugs on an ongoing basis, similar to New South Wales. Such an offence would assist track regular drug suppliers in Samoa. An appropriate penalty, based on the severity of the offence should be imposed for such an offence. For example, where supply on an ongoing basis of illegal drugs is for commercial purposes then a higher penalty would be appropriate. The law in New South Wales can be used as guidance.

RECOMMENDATION 21: A standalone offence relating to drug trafficking should also be included under the new drugs framework. This will better target large quantities of drugs discovered by authorities.

c) Offences involving young persons

Procuring a child to supply or take part in the supply of drugs, and a specific provision to deal with young offenders

- 5.18. There are no specific provisions under Samoa's Narcotics Act relating to children. Under section 25 of the NSW *Drug Misuse and Trafficking Act 1985*, it is an offence if a person procures someone 16 years or younger to supply drugs or take part in the supply of a

²⁰⁴ Consultation with the Transnational Crimes Unit (Transnational Crimes Office, FMFM II, Matagalalua, 29 August 2017);

²⁰⁵ See *Narcotics Act 1967* (Samoa) s 7.

prohibited drug.²⁰⁶ Preliminary consultations raised an issue on whether Samoa should consider having a provision to protect children who are caught up in drug activities.

- 5.19. Furthermore, concerns about the prevalence of drug offending among the youth has raised questions as to whether a specific drug-related offence relating to children/youth should be covered under the law. Criminal offending in Samoa is regulated by the *Crimes Act 2013*, which includes offending by youth. There is no specific law regulating youth offending. However, the *Young Offenders Act 2007* is the principal legislation in Samoa that provides a criminal justice system for young persons, their treatment by the courts, and related purposes.²⁰⁷ Under this Act, the Youth Court (i.e. a specialised division of the District Court) can hear any criminal charges brought against a young person except for murder which is referred to the Supreme Court.²⁰⁸

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should have an offence relating to procuring a child to supply drugs or take part in the supply of drugs. Also, whether the new drugs framework should have a provision dealing with minors who are involved in drug offending.

Procuring a child to take part in selling drugs

- 5.20. The majority view was that irrespective of procuring provisions in the law, possession and use of narcotics offences should be expanded to prohibit the procuring of a child to supply drugs or take part in the supply of drugs, similar to NSW.²⁰⁹ Such a provision will help address the issue of young children being used to take part in supplying of prohibited plants or at least being exposed to drugs at a young age.²¹⁰ It was acknowledged by members of the Judiciary that there is an existing issue where parents are the perpetrators and they are using their children to sell drugs. Therefore, such provision warrants consideration to ensure that the children are protected.²¹¹
- 5.21. It was also raised that even though such offences are uncommon in Samoa, it is in the interest of our society that such possible offending should be reflected in our law.²¹² TCU

²⁰⁶*Drug Misuse and Trafficking Act 1985* (New South Wales) s 25(2C)-(2D).

²⁰⁷*Young Offenders Act 2007* (Samoa) Long title.

²⁰⁸*Young Offenders Act 2007* (Samoa) s 5(1), (3).

²⁰⁹ Ministry for Revenue, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

²¹⁰ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²¹¹ Consultation with members of the Judiciary (Judges Chambers, Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017);

²¹² Consultation with Ministry for Revenue (Ministry for Revenue (Custom) Office, Matautu, 15 August 2017).

provided that there have been previous cases where the offender who was charged was using children to deal and supply illegal drugs. Customs authorities also indicated that people are becoming inventive in finding new ways to circumvent the law which includes using young people to conceal drugs as observed in overseas countries.²¹³

- 5.22. Queries were raised by some submitters as to whether the *Child Care & Protection Bill* addresses the issue of children being used to sell or take part in selling drugs.²¹⁴ If such a Bill does this, then this will be sufficient and will help protect the children of Samoa from using drugs or at least being used in supplying of drugs.²¹⁵

Specific provision to deal with young drug offenders

- 5.23. The majority view was to include a specific provision dealing with young persons who are involved in drug-offending.²¹⁶ Young persons who are caught under this provision should be referred to the Youth Court as it already has jurisdiction for such matters and it is the proper Court to handle such cases in accordance with the *Young Offenders Act 2007*.²¹⁷ Furthermore, in regard to rehabilitation of young offenders, it was highlighted that the services of the ADC be made available to young people, with the guidance of the Youth Court.²¹⁸
- 5.24. However, one of the stakeholders submitted that such a provision (dealing with young persons involved in drug offending) will be necessary only if it provides the Court discretion to deal with the young person in a manner which reflects other aggravating factors of the offending (quantity, involvement of violence, previous convictions/involvement).²¹⁹

COMMISSION'S VIEW

- 5.25. There is no specific offence provision under Samoa's Narcotics Act on procuring a child to supply or take part in the supply of drugs. There is only a general drug-procuring offence under section 24(2) where it is an offence to procure a narcotic or controlled precursor. In NSW, it is an offence if a person procures someone 16 years or younger to supply drugs or take part in the supply of a prohibited drug. The Commission notes from submissions that such offences are rare in Samoa, but explicitly providing it in the new drugs

²¹³ Consultation with Ministry for Revenue (Ministry for Revenue (Custom) Office, Matautu, 15 August 2017).

²¹⁴ Consultation with members of the Judiciary (Judges Chambers, Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

²¹⁵ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²¹⁶ Consultation with the Ministry of Education, Sports and Culture (Ministry of Education, Sports and Culture Building, Malifa, 8 August 2017); Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, Fiame Mataafa Faumuina Mulino II Building, Matagalalua, 29 August 2017); Consultations with the Ministry of Police, (Ministry of Police Main Office, Apia, 28 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²¹⁷ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²¹⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²¹⁹ Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

framework would address concerns about young children being exploited by their parents or adults, to supply drugs or being exposed to drugs at a young age. Therefore, pending the enactment of the *Child Care & Protection Bill 2017*, the Commission is of the view that an additional provision should be included in the new drugs framework to this effect. However, an appropriate penalty should be imposed to consider the severity of the offence (affecting children) and the rehabilitation needs of the offender.

- 5.26. Specific provisions to deal with young offenders are already addressed under the *Young Offenders Act 2007*. Such Act provides a criminal justice system for young persons, their treatment by the courts, and related purposes. Therefore, the Commission is of the view that provisions on young drug offenders should not be included in a new drugs framework.

RECOMMENDATION 22: Pending the passing of the *Child Care & Protection Bill 2017* by Parliament, an additional offence to procure a child to supply or take part in the supply of drugs, should be added in the new drugs framework. An appropriate penalty should be imposed to consider the severity of the offence (affecting children) and the rehabilitation needs of the offender.

RECOMMENDATION 23: Provisions on young drug offenders should not be included in the new drugs framework as they are adequately addressed under the *Young Offenders Act 2007*.

d) Miscellaneous Offences

- 5.27. These offences include the use (or permitting the use) of premises and being in possession of equipment or utensils for the purpose of committing an offence.²²⁰ Smoking prepared opium or using it otherwise is also a miscellaneous offence under this provision.²²¹ It should be noted that a person found on the premises used for smoking opium will have committed an offence against this Act.²²²
- 5.28. NZ has an identical provision which lists the offence relating to possession of the seed or fruit of any prohibited plant which he or she is not authorised under the Act to cultivate.²²³ This is currently covered under section 6(1)(b) of Samoa's Narcotics Act.

(i) Possession of drug paraphernalia

- 5.29. In relation to the offence where a person has in his or her possession a needle, syringe, pipe or other utensil for the commission of an offence, there is no reference to the *supply, manufacture, production, export or import* of 'equipment or materials' used for the commission of an offence under Samoa's Narcotics Act.
- 5.30. Tonga's law more broadly provides that a person commits an offence if he or she possesses, manufactures or supplies any controlled chemical or equipment knowing that

²²⁰*Narcotics Act 1967* (Samoa) s 13(a)-(b).

²²¹*Narcotics Act 1967* (Samoa) s13 (c).

²²²*Narcotics Act 1967* (Samoa) s3 (c).

²²³*Misuse of Drugs Act 1975* (New Zealand) s 13 (1)(b).

such chemical or equipment is to be used for the commission of an offence under Tonga's *Illicit Drug Control Act 2003*.²²⁴

- 5.31. A similar provision is found under NZ's legislation.²²⁵ NSW also has a provision relating to possession of equipment, however it goes further to provide an offence for the possession of a manual or instructions for manufacturing a prohibited drug.²²⁶

(ii) Use or permitting to use any premises to deal

- 5.32. Moreover, the offence of using or permitting to use any premises or vehicle to commit an offence under Samoa's Narcotics Act is also listed as a miscellaneous offence rather than a standalone provision.²²⁷ The relevant section defines 'premises' to include a building, aircraft, vehicle, ship, carriage, premise or place.²²⁸
- 5.33. Preliminary consultations with the OAG revealed a concern on how effective Samoa's Narcotics Act is in regulating premises used for dealing drugs. This was in response to cases and media reports of 'meth labs' arising in Samoa.²²⁹ Whilst this provision would target these types of premises, the Commission queried whether it ought to be in a standalone section to emphasise and acknowledge this potentially growing problem.
- 5.34. Under the law of NZ, there is a separate provision relating to the use of premises, vehicles, ships etc. for committing an offence.²³⁰
- 5.35. NSW has a specific part dedicated to offences involving drug premises.²³¹ Some of these offences include among others an owner or occupier who knowingly allows for the use of their premises as a drug premises or where a person organises a drug premises c.f. organising a drug laboratory.²³²

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should include a provision on the possession of equipment to include importing, exporting, manufacturing or producing equipment. Also, whether 'use of premises' provision should stand on its own and if so, whether it can be expanded to include other situations provided under the laws of NZ and NSW.

²²⁴*Illicit Drugs Control Act 2003* (Tonga) s 5.

²²⁵*Misuse of Drugs Act 1975* (New Zealand) s 12A (2).

²²⁶*Drug Misuse and Trafficking Act 1985* (New South Wales) s 11C (1).

²²⁷*Narcotics Act 1967* (Samoa) s 13(a).

²²⁸*Narcotics Act 1967*(Samoa) s 14(1) (a).

²²⁹Email from the Office of the Attorney General to the Samoa Law Reform Commission (Preliminary consultations), 1 May 2017. See also the cases of *Police v Stuart Webber & Anor* [2016] WSSC 37 and *Police v Williams* [2014] 153 WSSC; See also Autagavaia Tipi Autagavaia, 'Samoa police in Samoa have uncovered drugs, illegal weapons, drugs and cash' (31 July 2015) *Radio NZ*<<http://www.radionz.co.nz/international/pacific-news/280147/samoa-police-raid-uncovers-weapons,-drugs-and-cash>>.

²³⁰*Misuse of Drugs Act 1975* (New Zealand) s 12.

²³¹*Drug Misuse and Trafficking Act 1985* (New South Wales) pt 2B.

²³² See *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 36V-36Z.

Expand possession of equipment provision to cover import, export, and producing equipment

- 5.36. Majority of those consulted concurred to expand the provision on possession of equipment to include importing, exporting, manufacturing or producing equipment used to commit an offence under the law similar to Tonga, NZ and NSW.²³³ Having this all in one provision will provide clarity and certainty for law enforcement agencies when pressing charges in relation to offences of this nature.
- 5.37. Customs raised an issue that there have been cases in the past in relation to joint charges with the MOP. MOP would file charges for possession of utensils under Samoa's Narcotics Act and they would also file charges for importing prohibited goods under the *Customs Act 2014* on the same offending. The issue then arises when the files are transferred the OAG for review. Upon reviewing the file, the charges under the *Customs Act 2014* are sometimes withdrawn for unknown reasons. However, it has come to the attention of Customs that charges filed by the MOP are prioritised over charges filed under the *Customs Act 2014*. As such, Customs agrees to expand such provision for ease of reference and practicality. For example, all equipment known to be for the commission of an offence seized are dealt with under one Act which will subsequently save time and resources.²³⁴
- 5.38. It was also raised by some stakeholders that drug utensils should have a standalone offence provision.²³⁵
- 5.39. However, some submitters noted the importance of being mindful of everyday household utensils (e.g. spoon) which are known to have been used to administer drugs (so that it is only an offence if the person with the utensil must also be in possession of a drug capable of being administered with that utensil). Furthermore, persons such as doctors and nurses whom are likely to be in possession of such equipment due to their profession should also be exempted from liability.²³⁶

²³³ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Transnational Crime's Unit, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²³⁴ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

²³⁵ Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, Fiame Mataafa Faumuina Mulino II Building, Matagalalua, Samoa, 29 August 2017).

²³⁶ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

Standalone provision on use of premises for dealing and what constitutes ‘premises’

5.40. The majority of stakeholders supported having a standalone provision on the use of premises for dealing,²³⁷ as there have been cases of premises discovered in recent police raids used to manufacture methamphetamine,²³⁸ as well as incidents of illegal drugs found on boats.²³⁹ Furthermore, such provision should clearly define ‘premises’ to include for example, vehicles, ships, residential homes, places (i.e. market/ schools/ village) etc. as already contained under the law.²⁴⁰

COMMISSION’S VIEW

5.41. The Commission notes that section 13 (b) of Samoa’s Narcotics Act does not cover supply, manufacture, production, export or import of items listed in this section. It only covers possession. In Tonga and NZ, similar provisions cover manufacture and supply of equipment and materials. The majority view from submissions supported expanding section 13 (b) to include importing, exporting, manufacturing or producing equipment, similar to Tonga and NZ. This would provide clarity for law enforcement when pressing charges relating to offences of such nature. Therefore, the Commission agrees to expand offences under section 13(b) to include supply, manufacture, production, export or import of equipment consistent with Tonga and NZ.

5.42. Also, the Commission notes that the offence of using or permitting to use any premises or vehicle to commit an offence falls under section 13(c) (Miscellaneous offences) and does not have a standalone provision. Preliminary consultations revealed the increasing number of reports on ‘meth labs’ in Samoa and the need to separate this offence to

²³⁷Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017, Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration, Sogi, 15 August 2017).

²³⁸Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²³⁹ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

²⁴⁰Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Ministry of Education, Sports and Culture, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 September 2017; Ministry for Revenue, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; See *Narcotics Act 1967* (Samoa) s 14(1) (a).

emphasize and acknowledge this growing problem (including meth contamination). Submissions revealed that there have been cases of premises discovered in recent police raids which have been used to manufacture meth. Therefore, the Commission supports the view to have in place a separate standalone offence provision on the use of premises for the purpose of committing an offence. The term 'premises' should be well defined to include vehicles, ships, residential homes, places, market, schools and villages.

RECOMMENDATION 24: To expand offences under section 13(b) to include supply, manufacture, production, export or import of equipment consistent with Tonga and New Zealand.

RECOMMENDATION 25: To separate the offence of using premises to deal (section 13(a)) as a standalone provision to emphasize and acknowledge the growing problem of 'meth labs' being discovered in recent police raids. Premises should be clearly defined to include all places that are used for the commission of an offence under the new drugs framework e.g. ships, boats etc.

e) Mandatory reporting of illegal use of narcotic or controlled precursor

- 5.43. Medical practitioners, nurses and other listed medical health professionals are obligated under section 25B of Samoa's Narcotics Act to report a patient or client whom they reasonably suspect to have illegally used an illegal drug or controlled precursor.²⁴¹ Any failure to do so will result to an offence under the Act. It is important to note that Samoa is the only jurisdiction that has this offence.

SUBMISSIONS

The Commission sought submissions on whether section 25B should be retained, in light of patient confidentiality. If such a provision is removed, whether the medical professionals are obliged not to supply drugs to those they believe are dependent on a controlled drug, similar to NZ.

- 5.44. There were different views as to the mandatory reporting of patients using illegal drugs. Some stakeholders stated that it breaches patient-doctor confidentiality, others submitted to impose conditions to qualify mandatory reporting e.g. class of drugs involved and as well as the patient imposing danger to others. MHU submitted that it has protocols in place to report patients suspected of using illegal drugs but it is mainly on 'suspected use'. However, some stakeholders submitted that it should be the prerogative of the medical professional whether to report or not and to consider the consequences of their actions.²⁴² There may be extreme cases where patients abuse drugs, like morphine, so the doctor must have good judgment whether to report it based on the severity of the action.²⁴³
- 5.45. MOH clarified that section 25B was meant enacted to capture patients illegally using precursors. There were cases of people regularly requesting medication that contain precursors capable of manufacturing harder drugs. Therefore, why reporting by a medical professional became mandatory. The intention was also for customs to report cases of excessive import by an unauthorised person. There were a number of submissions for

²⁴¹Narcotics Act 1967(Samoa) s 25B (1).

²⁴²Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

²⁴³Consultation with the Ministry of Health (Ministry of Health Office, Moto'otua Hospital, 17 August 2017).

Samoa to adopt a provision where medical professionals are obliged not to supply drugs to those they believe are dependent on a controlled drug, similar to NZ.

COMMISSION'S VIEW

5.46. The Commission notes that section 25B is unique to Samoa and such provisions cannot be found in laws of other countries, like Tonga, NZ and NSW. A common view from submissions is that such a provision requiring medical health professionals to report a patient or client whom they reasonably suspect to have illegally used an illegal drug or controlled precursor, breaches doctor-patient confidentiality. Submissions from MOH reveal the intention behind such a provision was to report people who regularly request for medication that contain precursors capable of manufacturing harder drugs like methamphetamine. Despite the intentions, the Commission is of the view that retaining such provisions would not only breach confidentiality, it will discourage patients from seeking help concerning health related problems resulting from drugs. It will also invite opportunities for law suits against health professionals and this will be costly for Government. Accordingly, an obligation not to supply drugs to those whom medical professionals believe are dependent on a controlled drug should be considered consistent with NZ.

RECOMMENDATION 26: Consistent with overseas developments, section 25B should be removed as it breaches doctor-patient confidentiality and it would discourage patients from seeking help concerning health related problems from drugs. It will also open up opportunities for law suit against health professionals which will be costly for government. In light of this, an obligation not to supply drugs to those whom medical professionals believe are dependent on a controlled drug should be considered, as in the case of New Zealand.

f) Other offences

5.47. Research carried out by the Commission revealed that there are other 'offences' which are not expressly provided for under Samoa's Narcotics Act but merits consideration. These include among others the following:

(i) Theft of controlled drugs

5.48. The theft of controlled drugs is not covered under Samoa's Narcotics Act although theft is a criminal offence under the *Crimes Act 2013*. In NZ, it is an offence to steal a controlled drug fraudulently or dishonestly. This type of provision could target offenders who may steal controlled drugs from pharmacies, dishonestly obtain prescriptions from medical practitioners, or improperly use their authority to prescribe and/or dispense controlled drugs.

5.49. This provision is included in NZ's *Misuse of Drugs Act 1975* notwithstanding that there is also a criminal offence for theft under NZ's *Crimes Act 1961*.²⁴⁴

5.50. However, it is important to note that in practice, medical professionals who are found to have abused their power to obtain drugs without authorisation are brought before the Samoa Medical Practitioners Council. In 2016, there was one disciplinary action brought against a nurse who was caught stealing drugs (namely morphine) and administering it

²⁴⁴ See *Crimes Act 1961* (New Zealand), s 223.

on herself. In this case, the nurse had access to the dangerous drugs cabinet where all controlled drugs are kept. The practice authorizes senior nurses to have access to the cabinet and the key is passed from one shift to the other as there is only one key to the cupboard. Each ward has a dangerous drugs cabinet including outpatient, emergency and all district facilities. The nurse was found to have developed an addiction to the drug because of her exposure to it.²⁴⁵

SUBMISSIONS

The Commission sought submissions on whether Samoa should adopt a provision regarding theft controlled drugs, similar to NZ.

- 5.51. The majority view was that Samoa should adopt a provision relating to the theft of controlled drugs similar to NZ.²⁴⁶ This is irrespective of the theft offence already covered under the *Crimes Act 2013*. Adopting the NZ approach is practical as the offence of theft in the *Crimes Act 2013* is very broad. Furthermore, depending on the severity of the offence, an appropriate penalty should also be imposed.²⁴⁷ This will help prevent abuse.²⁴⁸
- 5.52. Only one submitter provided that the offence of theft under the current *Crimes Act 2013* is sufficient to cover situations involving theft of controlled drugs.²⁴⁹

COMMISSION'S VIEW

- 5.53. Samoa's Narcotics Act does not provide for the offence of theft of controlled drugs and precursors. There is only the broader offence of theft under the *Crimes Act 2013*. However, in NZ, theft of controlled drugs is an offence that refers to the act of fraudulently or dishonestly stealing a controlled drug.²⁵⁰ The Commission notes from submissions that theft under Samoa's *Crimes Act 2013* is broad and does not specifically cover the essence of this more specific offence found in NZ. Therefore, the Commission considers that the new drugs framework should have a standalone provision on theft of controlled drugs and precursors. Furthermore, the Commission supports the imposition of an appropriate penalty for such an offence depending on its nature, as proposed by SLS, MOP and MJCA so to prevent abuse and deter knowingly prescribing illegal drugs.

²⁴⁵ Consultations with the Ministry of Health (Ministry of Health Office, Moto'otua Hospital, 17 August 2017).

²⁴⁶ Consultations with the Ministry of Health (Ministry of Health Office, Moto'otua Hospital, 17 August 2017); Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Consultation with the Ministry of Justice and Court Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁴⁷ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁴⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²⁴⁹ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

²⁵⁰ *Misuse of Drugs Act 1975* (New Zealand) s 11.

RECOMMENDATION 27: To provide a standalone offence for the theft of controlled drugs and precursors under the new drugs framework similar to New Zealand. An appropriate penalty for such an offence should be imposed depending on the nature of the offence.

(ii) Conspiring to commit an offence both in and outside of Samoa

5.54. In addition to aiding and abetting the commission of an offence under the law, the law in NSW also provides for an offence relating to situations where a person conspires with another person or persons to commit an offence in any place outside NSW.²⁵¹ Having this provision under the law of Samoa would target those who are suspected to have affiliations with overseas drug offenders. The Commission also notes that Samoa has an *Extradition Act 1974*, which sets out the circumstances when people can be extradited. In preliminary consultations, the Commission was informed that there is also an *Extradition Bill 2017*, which is expected to be finalised and tabled in Parliament this year. The Bill will clearly set out the standard process and procedures for warrants in extradition matters.²⁵²

SUBMISSIONS

The Commission sought submissions on whether Samoa should adopt a provision for conspiring to commit an offence both in and outside of Samoa.

5.55. The common view was that if the *Extradition Bill 2017* sufficiently covers this, then there is no need for Samoa to adopt such provision.²⁵³ The new drugs framework should make reference to the relevant provision of the Extradition Bill for guidance. This will avoid duplication and/or contradictions as to which law will be applicable when such situations arises.²⁵⁴

5.56. Members of the Judiciary further expressed the view that for offences that are committed by Samoans living overseas, it would be ideal and practical for such person to be dealt with under the relevant laws of that country. Having them sent back and be prosecuted in Samoa would mean more work for the Courts. Furthermore, those jurisdictions have better facilities and services to assist these offenders.²⁵⁵

²⁵¹*Drug Misuse and Trafficking Act 1985* (New South Wales) s 28.

²⁵² Consultation with the Office of the Attorney General (Office of the Attorney General Conference Room, Tuiatua Tupua Tamasese Efi Building, 16 September 2017).

²⁵³ Samoa Nursing Association; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁵⁴ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁵⁵ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Office, Sogi, 13 September 2017).

- 5.57. A few stakeholders expressed the view that Samoa should adopt a similar provision in NZ.²⁵⁶ Having such provision would cover Samoans living outside of Samoa and non-citizens in Samoa who are prosecuted for offences committed under Samoa's Narcotics Act.

COMMISSION'S VIEW

- 5.58. The Commission notes that there is no specific provision under Samoa's Narcotics Act on 'conspiring to commit an offence outside of Samoa'. Section 28 of the *Drug Misuse and Trafficking Act 1985* of NSW provides for such an offence. The Commission notes that to have this provision in the new drugs framework would target those who are suspected to have affiliations with overseas drug offenders.
- 5.59. The Commission also notes that there is an *Extradition Bill 2017*, which is expected to be finalised and tabled in Parliament before the end 2017. This Bill clearly sets out the standard process and procedures for warrants in extradition matters. The Commission suggests awaiting the enactment of the *Extradition Bill 2017* to address this issue.

RECOMMENDATION 28: Pending the passing of the *Extradition Bill 2017* by Parliament, a provision on conspiring to commit an offence both in and outside of Samoa should be considered to be included in the new drugs framework.

(iii) Publishing materials that promote drug use (advertising)

- 5.60. Samoa's Narcotics Act does not contain any provisions relating to drug advertisements.
- 5.61. NZ's *Misuse of Drugs Regulations 1977* provides restrictions on drug related advertising. It states that no person shall publish, or cause or permit to be published, any advertisement related to *controlled drugs*²⁵⁷ with the exception of an exempted drug or any partially exempted drug.²⁵⁸ Every person who publishes, or causes or permits to be published, any advertisement commits an offence against these regulations.²⁵⁹ Furthermore, restrictions on publishing or advertisements do not apply to those distributed to practitioners or pharmacists where it:²⁶⁰
- (a) states the true name and address of the place of business of the person by whom or at whose request the advertisement is published; and
 - (b) contains a conspicuous statement sufficient to indicate that the advertisement relates to a controlled drug, or, if the advertisement is comprised in a price list or similar publication, contains the abbreviation "CD".
- 5.62. Moreover, in relation to *psychoactive substances*, the law in NSW also prohibits a person from publishing or display in any manner, way, medium or form any advertisement knowing or being reckless as to whether the advertisement promotes, or apparently promotes, directly or indirectly, the consumption, supply or sale of a substance for its

²⁵⁶Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

²⁵⁷*Misuse of Drugs Regulations 1977* (New Zealand) r 50(1).

²⁵⁸*Misuse of Drugs Regulations 1977* (New Zealand) r 50(4).

²⁵⁹*Misuse of Drugs Regulations 1977* (New Zealand) r 50(3).

²⁶⁰*Misuse of Drugs Regulations 1977* (New Zealand) r 50(2).

psychoactive effects, and providing information on how or where the psychoactive substance may be acquired.²⁶¹

SUBMISSIONS

The Commission sought submissions on whether Samoa should regulate advertisement that promote drugs, similar to NZ, and in what situations should such advertisements be permitted (if any).

Regulations relating to advertisements

5.63. The majority view agreed that Samoa should have regulations to regulate advertisements that promote drug use such as in NZ.²⁶² Regulations will assist the MOP, MOH and Samoa's National Security Committee in regulating public information about the different drugs. This would also help curb drug use and most importantly protect our community from unwanted exposure to advertisements relating to drugs especially children.²⁶³ Furthermore, restricting advertising will also avoid promoting new products such as e-cigarettes (an addictive substance affecting people's health) which are not currently covered under the law.²⁶⁴

When advertisements are permitted

5.64. The majority view provided that advertisements relating to drugs should only be permitted to the extent that they are for the purposes of:

- Awareness on drug harm in order to discourage drug use and prevent drug harm;²⁶⁵
- Informing practitioners or pharmacists to assist with the treatment of medical conditions with authentic certification.²⁶⁶

5.65. It was also noted that any advertisements relating to illegal drugs must be approved by the National Security Committee before dissemination. In granting approval, the National

²⁶¹*Drug Misuse and Trafficking Act 1985* (New South Wales) s 362G.

²⁶² Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, Review of the Narcotics Act 1967, 30 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²⁶³ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

²⁶⁴ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

²⁶⁵ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

²⁶⁶ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

Security Committee must develop a guideline/framework to identify what sort of drug related advertisements must be permitted.²⁶⁷

COMMISSION'S VIEW

- 5.66. The majority view was that Samoa should have regulations governing advertisements that promote drug use, like in NZ. This will help control what people are exposed to. Advertisements that are approved by the appropriate authority/ committee can still be permitted but only in certain circumstances.
- 5.67. The Commission supports having in place regulations governing advertisements that promote the use of controlled drugs similar to NZ. Such regulation(s) should not be limited to psychoactive substances but should cover any controlled drug. The Commission notes that such regulation(s) may not be relevant to Samoa at this stage given that such drugs are not used for advertisement purposes as the case in NZ and NSW. Nevertheless, the Commission foresees the possibility of such advertisements that would promote controlled drugs (e.g. medicinal cannabis) in the near future.
- 5.68. Furthermore, exemptions should be provided in situations where such advertisements are used solely for the purpose of informing the public about drug harm, as well as assist medical professionals for treating medical conditions.

RECOMMENDATION 29: There should be regulation(s) governing advertisements that promote the use of controlled drugs similar to New Zealand. Such regulation(s) should not be limited to psychoactive substances but should cover any controlled drug. Although such regulation(s) may not be relevant to Samoa at this stage given that such drugs are not used for advertisement purposes as the case in New Zealand and New South Wales, the Commission foresees the possibility of such advertisements that would promote controlled drugs (e.g. medicinal cannabis) in the near future. Furthermore, exemptions should be provided in situations where such advertisements are used solely for the purpose of informing the public about drug harm, as well as assist medical professionals for treating medical conditions.

II. Penalties

- 5.69. This part compares some key penalties with other countries particularly NZ, to illustrate the issue of disproportionality of penalties as raised in preliminary consultations. Submissions on this issue will inform recommendations as to a suitable penalty structure for Samoa that meets the TOR.
- a) Penalty for possession of cannabis*
- 5.70. The penalties in Samoa are highly disproportionate, compared to the jurisdictions of NZ and NSW. For example, Samoa imposes a substantial maximum penalty of up to 14 years' imprisonment with conviction for possession of cannabis,²⁶⁸ whereas the same offence in NZ carries a significantly reduced penalty of up to 3 months' imprisonment or a \$500 fine. In NSW, the penalty imposed for possession of a prohibited plant is up to \$5,000 - \$10,000 fine and/or imprisonment for 2 years.

²⁶⁷Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

²⁶⁸ Cannabis is considered a Class B drug in Samoa's *Narcotics Act 1967*.

b) Penalty for possession of drug paraphernalia

5.71. The possession of instruments, equipment, and manuals etc. for use and supply, carries a maximum penalty in Samoa of up to 7 years imprisonment and/or \$1,000 fine. The penalty in NZ is up to 1 year imprisonment and/or \$500 fine.

c) Penalty for possession and supply of illegal drugs

5.72. The possession of an illegal drug (i.e. harder drugs like methamphetamine) in Samoa carries a maximum penalty of up to life imprisonment for Class A drugs. The same penalty applies to supply of illegal drugs.

5.73. NZ and NSW differentiate penalties for possession and supply of illegal drugs, where the former carries a less severe penalty than the latter. For example, the penalty in NZ for possession and use of a Class A drug is up to 6 months and/or up to \$1,000 fine. Class B drugs carry a penalty of up to 3 months and/or up to \$500 fine, and Class C up to 3 months and/or up to \$500 fine. In the case of NSW, the penalty for the possession and use of a prohibited drug is up to \$2,000 fine and/or 2 years. For cases of supply, NZ's penalties are similar to those of Samoa while NSW have different penalties imposed in different circumstances. For example, supply of a prohibited drug on an ongoing basis carries a penalty of up to \$35,000 fine and/or 20 years, while general supply attracts a penalty of up to \$200,000 and/or up to 15 years imprisonment.

5.74. The reason for the difference in possession and supply related offences is that possession is known as a low-level offence and it can be for personal use (unless there is possession of larger quantities with the intention of supply). On the other hand, supply offences are penalised severely because of its repercussions i.e. expose others to such substances and the amount of money involved.²⁶⁹

d) Penalty structure: current practice

5.75. The current penalties in Samoa show an inclination towards punitive responses to drug offences. For example, in the case of *Police v Savusa [2017] WSSC 124*, the Judge citing the case of *Police v Masame [2007] WSSC 92* (per CJ Sapolu) noted that the attitude of the Court has been to impose custodial sentences in narcotics cases because of the high prevalence of this type of offending unless there are exceptional circumstances which would justify a non-custodial sentence.

5.76. In practice, penalties under the law are not strictly applied and sentences imposed are left to the discretion of the Courts. In considering both aggravating and mitigating factors, sentences imposed are lower than the maximum penalty and/or even involve a rehabilitative component. For example, in the case of *Police v Vili & Anor [2016] WSSC 132* the offender who was found to be in possession of 250 marijuana cigarettes was sentenced to 21 months imprisonment. A penalty of 2 years and 10 months imprisonment was also awarded to an offender who was charged and convicted for the possession of 61

²⁶⁹*Misuse of Drugs Act 1975 (New Zealand).*

prohibited plants and 2,876 seeds.²⁷⁰ According to the law, these offences would normally attract a penalty of up to 14 years imprisonment.²⁷¹

5.77. For possession of methamphetamine (Class A narcotic) cases (where the law imposes a maximum penalty of life imprisonment), the Court, in the case of *Police v Stuart Webber & Anor [2016] WSSC 37*, sentenced the defendant to 5 years imprisonment. However, in another case involving the possession of methamphetamine, the defendant was given a non-custodial sentence of 8 months supervision with special conditions.²⁷² Such special conditions required the defendant to attend the psycho-education drug and alcohol programme (Toe Afua se Taeaofou) with probation for 6 weeks.

5.78. In addition, the defendant who was found guilty of possessing a utensil in contravention of section 13(b) of Samoa's Narcotics Act was given a non-custodial sentence of 8 months supervision.²⁷³ In another case, the offender was sentenced to 3 months in jail for the possession of 2 glass pipes and a stainless steel socket.²⁷⁴ Such offence under the law carries a maximum penalty of up to 7 years imprisonment and/or \$2,000 fine.

e) Consideration of other Acts when sentencing offenders

5.79. In addition to the nature of the offence as well as the aggravating and mitigating factors considered by the Courts, consideration is also given to other relevant laws in Samoa when sentencing offenders.

5.80. The *Community Justice Act 2008* referred to in some cases²⁷⁵ enables the Court to sentence an offender to community work if they are convicted of an offence punishable by imprisonment.²⁷⁶ Furthermore, section 13 of the *Community Justice Act 2008* provides that a Court may impose a sentence of supervision only if the Court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender. Section 16 of the *Community Justice Act 2008* states that the Court may impose such special condition(s) related to the rehabilitation or reintegration of an offender as the Court thinks necessary.²⁷⁷

5.81. Moreover, the *Young Offenders Act 2007* also provides several sentencing options for the Court to consider when sentencing young offenders. Therefore, where the Court finds a charge to be proven against a young person, it may where appropriate, without entering a conviction, order the young person within 6 months to:²⁷⁸

- (a) carry out his or her obligations under any agreement reached at a pre-sentence meeting; or

²⁷⁰*Police v Savusa [2016] WSSC 124*. See also the case of *Police v Neemia [2017] WSSC 94* where the defendant who was in possession of 141 prohibited plants and seeds and was sentenced to only 2 years and 6 months.

²⁷¹*Narcotics Act 1967* (Samoa) s 6(1).

²⁷²*Police v Tuala [2016] WSSC 123*.

²⁷³*Police v Tulua [2016] WSSC 123*.

²⁷⁴*Police v Stuart Webber & Anor [2016] WSSC 37*.

²⁷⁵ See for example, *Police v Tulua [2016] WSSC 123*.

²⁷⁶*Community Justice Act 2008* (Samoa) s 23 (1)(a).

²⁷⁷ See also *Police v Tulua [2016] WSSC 123*.

²⁷⁸ *Young Offenders Act 2007* (Samoa) s 15(1).

- (b) undertake a term of community work of not more than 100 hours, to be completed within 6 months; or
- (c) undertake a needs assessment or rehabilitative programme of not more than 6 months duration.

5.82. The Commission also notes that there is scope under the *Young Offenders Act 2007* for a police officer, when charging a young person for an offence, to consider whether it would be sufficient to warn the young person, unless a warning is inappropriate having regard to the seriousness and nature of the offence, as well as the number of previous offences committed by the young person.²⁷⁹

5.83. Notwithstanding these two Acts, community based orders and other types of alternative dispositions (e.g. suspended sentences) are not clearly specified under Samoa's Narcotics Act. These types of sentences were recommended by the Vanuatu Law Reform Commission as alternatives that may improve rehabilitation of drug offenders.²⁸⁰ For the case of Samoa, the Commission noted in its Issues Paper that further information is needed to ascertain how effective community work is on reducing reoffending, particularly given the prevalence of cannabis offences among youth in Samoa.²⁸¹

SUBMISSIONS

The Commission sought submissions on whether Samoa's penalty structure for drug offending should be revised to consider alternative dispositions (non-custodial sentences) as opposed to custodial sentences and/or fines.

Penalties disproportionate

5.84. Submissions received revealed that the current penalties in Samoa are too high and disproportionate compared to other countries like NZ.²⁸² For example, possession of one joint is an automatic 14 years. Also, the current penalty structure does not reflect the current practice of the court in Samoa e.g. possession of small quantities of marijuana (4 or 5 baggies) attract 6 or 7 months or community supervision.²⁸³ Banishment was also raised as another form of penalty imposed by the Village Fono which is considered harsh and ineffective to deter re-offending and should not be imposed at all.²⁸⁴ Therefore, the

²⁷⁹ *Young Offenders Act 2007* (Samoa) s 17(1).

²⁸⁰ Vanuatu Law Commission, *Dangerous Drugs Act: Legislative Review*, Final Report (2014)

<http://www.lawcommission.gov.vu/images/pdf/Dangerous_Drugs_Final_Report.pdf>.

²⁸¹ See TV3 Tala I Vaifanua, 'Police Media Report: Drug Offences' (March 2017) *TV3 Samoa*.

²⁸² Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

²⁸³ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

²⁸⁴ Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima) 31 August 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017;

penalty structure should be reviewed to consider current practice and approaches in overseas countries.

- 5.85. In addition, other stakeholders cautioned to consider the local context for any proposed new penalty structure.²⁸⁵ There are existing rehabilitation programmes carried out by ADC and the *Young Offenders Act 2007*, which are available to the Court when sentencing young offenders.
- 5.86. On the other hand, some submitters disagreed and suggested to retain the current regime.²⁸⁶ This is because it was noted that the main reason for the high penalties is to proactively deter reoffending.²⁸⁷ Furthermore, the judges have always had the discretion to impose appropriate sentences (taking into account various factors such as quantity) and therefore the law is not strictly applied.²⁸⁸ Retaining the current regime would also be practical and beneficial for the future as situations could get worse with new flights coming in, more boats and a bigger harbour. Therefore, there will be no or very little need to make changes to the law in relation to penalties.²⁸⁹
- 5.87. It was further supported by a number of submitters that the current practice of the courts is consistent with the approaches taken in the laws of NZ and NSW.²⁹⁰ Accordingly, the Court has already established a tariff for sentencing involving different quantities of marijuana. Lower quantities do not usually result in incarceration unless the offending is aggravated by previous convictions, presence of violence, etc. For example, if one person is charged for one cigarette of marijuana and another with a 10 marijuana plants, the latter will have a more severe penalty.²⁹¹
- 5.88. Furthermore, the *Sentencing Act 2016* deals sufficiently with the requirement for parity, gravity and culpability. These principles ensure that petty amounts of marijuana are

²⁸⁵ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²⁸⁶ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

²⁸⁷ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

²⁸⁸ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with the Office of the Attorney General (Office of the Attorney General Conference Room, Tuiatua Tupua Tamasese Efi Building, 16 September 2017).

²⁸⁹ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁹⁰ Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

²⁹¹ Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

treated accordingly. Therefore, even though the Act says 14 years maximum penalty for possession of marijuana, it does not mean a single joint of marijuana will result in 14 years imprisonment.²⁹²

Include alternative dispositions rather than only custodial sentences

- 5.89. Numerous submissions received by the Commission highlighted that the current law should include alternative dispositions rather than only custodial sentences and/or a fine.²⁹³ Imposing custodial sentences should not be mandatory for every offence (at least for low level offending) and it should be up to the court to make an assessment and allow for community service orders for certain offending.²⁹⁴
- 5.90. Furthermore, where drugs are involved especially concerning addicts who are being charged, it would be more appropriate to have a rehabilitation sentence where it would be in the judges' discretion to determine the period the offender has to undergo rehabilitation as well as other conditions.²⁹⁵ Offering these alternatives recognises the rehabilitative approach by the courts towards dealing with drug offenders.²⁹⁶
- 5.91. Other stakeholders submitted alternative dispositions could be offered instead of a fine or an imprisonment term, especially for those who have breached conditions of a licence, which include disregarding practising licences for a period of time until further notice, and/or deny them the authority to obtain drugs from a drug lab.²⁹⁷
- 5.92. Only one submitter disagreed providing that the practice of imposing custodial sentencing should remain.²⁹⁸

COMMISSION'S VIEW

- 5.93. The Commission notes the disproportionality in some offences under Samoa's Narcotics Act when compared to overseas jurisdictions like NZ. For example, offences like possession and supply of illegal drugs in Samoa carry a considerably higher penalty of a

²⁹² Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

²⁹³ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁹⁴ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

²⁹⁵ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017.

²⁹⁶ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

²⁹⁷ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

²⁹⁸ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

maximum 14 years and life imprisonment, where similar offences carry penalties of less than 12 months and fines not exceeding \$1,000 in NZ.

- 5.94. Further, although the law provides for such high penalties, these are not strictly applied in practice as revealed in case laws discussed above. The Court in Samoa has the discretion to impose an appropriate sentence having considered all mitigating and aggravating factors. Therefore, the sentences imposed by the courts are significantly lower than those imposed by the law. Also, the Court must have regard to other important legislation such as the *Community Justice Act 2008*, *Young Offenders Act 2007* and the *Sentencing Act 2016* when sentencing offenders. These legislations provide options to the Court on the appropriate sentence based on the circumstances of the case (e.g. non-custodial sentences for addicts).
- 5.95. The Commission notes the majority view to amend the current penalty structure to reflect current practice and the approaches in NZ and NSW. On the other hand, a few submitters expressed the view that the current regime should be retained. The Court has the discretion on the appropriate penalty or sentence to be imposed (whether low or high level offending), based on the circumstances of the case and the relevant laws to be considered. Also, for the law to adequately address emerging issues involving harder drugs and new ideas of committing drug related offences, it was suggested the current law should be retained.
- 5.96. The Commission is of the view that caution must be exercised when amending the current penalty structure of Samoa. The current practice does not justify a restructure of the current penalties of popular offences such as possession of illegal drugs. Although the maximum penalties and/or imprisonment terms for such offences in Samoa's Narcotics Act are higher than NZ, the Court in practice does not strictly apply these penalties. The Court has the discretion to impose a suitable sentence based on the unique circumstance of a particular case, having considered the aggravating and mitigating factors. The Court is also guided by other legislation such as the *Community Justice Act 2008*, *Young Offenders Act 2007*, and the *Sentencing Act 2016* when making its decision. Also, as more problems emerged involving harder drugs and new ideas of committing drug related offences, the current penalty structure should be retained to address these cases. This would save Government's resources and costs that will go towards amending the law again in the future, if the current law is amended to address the disproportionality.

RECOMMENDATION 30: The current penalty structure should be retained. The Court, guided by other relevant legislation (e.g. *Community Justice Act 2008*) has the discretion to impose suitable sentences on a case by case basis. Although Samoa's Narcotics Act imposes very high penalties/ imprisonment terms, the Court in practice does not strictly apply them. Retaining the current penalty structure would address emerging and future problems regarding illegal drugs and new offences. This would save Government resources and costs from amending the law again in the future, if the current law is to be amended to address the disproportionality.

6. CHAPTER 5: EXEMPTIONS FROM PROHIBITION

- 6.1. Following the analysis and the recommendations under Chapter 4 (Offences and Penalties), this Chapter examines 'exemptions to the offences' provisions, under Samoa's

Narcotics Act. The exemptions include the defence to a charge, restrictions and licenses approved by the relevant CEO. The Commission will consider public submissions on this chapter, which will inform its recommendations.

I. Specific Exemptions under Samoa's Narcotics Act

a) *Exemption from unlawful cultivation of prohibited plants and possession of seeds*

6.2. Section 6 provides that it is a defence to a charge for unlawful cultivation of prohibited plants if the defendant proves:²⁹⁹

(a) that the Defendant cultivated the prohibited plant or had in D's possession the seed of prohibited plant, as the case may be, to which the charge relates, under conditions of a license granted under this Act by the CEO; or

(b) that the prohibited plant or the seed as the case may be to which the charge relates, is a variety of *Papaver Somniferum* L, and that it was not intended to be a source of any narcotic or that it was not being developed as a strain from which a narcotic could be produced.

6.3. Preliminary research by the Commission showed that Samoa's Narcotics Act does not specify circumstances in which the licenses to cultivate or possess plants or seeds are granted, although regulations can be made to this effect pursuant to section 29 (c) of the Act. It was flagged during preliminary consultations that there is scope under the Samoa's Narcotics Regulations to exempt people from liability under section 6 if cultivation and possession of marijuana is for the purpose of conducting scientific study or research.³⁰⁰ However, it was indicated that significant consultations should occur before any exemptions are made, to prevent abuse in future and ensure there are appropriate monitoring/supervisory bodies are in place.³⁰¹

6.4. NZ's *Misuse of Drugs Act 1975* exempts the consumption, injection or smoking of a controlled drug under the license issued for the purpose of research or study.³⁰² NSW's law provides that a person is exempted from liability if the cultivation and /or possession of prohibited plants was authorized by the Secretary of the Department of Health for the purpose of scientific, research, instruction, analysis or study.³⁰³ The same applies in Tonga where prohibited plants that are forfeited by Police can be disposed of by delivering them to the Ministry of Health and/or Ministry of Police for the purposes of trainings and research.³⁰⁴

SUBMISSIONS

The Commission sought submissions on circumstances in which a license can be granted to cultivate or be in possession of prohibited plants and whether Samoa should include exemptions for scientific research or study.

²⁹⁹ *Narcotics Act 1967* (Samoa) s 6(3).

³⁰⁰ *Narcotics Regulations 1967* (Samoa) reg 3(f).

³⁰¹ Consultation with the Office of the Attorney General (Office of the Attorney General Conference Room, Tuiatua Tupua Tamasese Efi Building, 16 September 2017).

³⁰² *Misuse of Drugs Act 1975* (New Zealand) s 14 (3).

³⁰³ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 23 (4)(b), 10 (2)(b).

³⁰⁴ *Illicit Drugs Act 2003* (Tonga) s 32 (2) (a).

Circumstances for granting “licence to cultivate” prohibited plants

- 6.5. Some stakeholders submitted that licences to cultivate marijuana should be granted on the condition that it is for scientific research, study and analysis *only*, subject to policies and guidelines.³⁰⁵ They further submitted that a licence subject to Cabinet approval should be granted for such purposes and should only be valid for 3 months or less than 12 months.³⁰⁶
- 6.6. Some stakeholders noted that it should also cover situations where marijuana are cultivated to be used for medical treatment.³⁰⁷
- 6.7. Other submitters expressed the view that conditions for licences under the law and/or regulations need to be defined and strictly monitored.³⁰⁸ For example, Customs noted that when importing narcotics into Samoa, MOH should inform Customs of the time, date and amounts of drugs being imported for monitoring purposes. For pharmacists, they should be required to show Customs the license as well as the list of drugs they are importing.
- 6.8. Two submissions were strongly against the granting of a licence to cultivate marijuana for research, study and analysis. It should remain illegal to cultivate even if there is a justifiable purpose.³⁰⁹ It was also added that licence to possess should also not be granted.³¹⁰

Exemptions to possessing and cultivating prohibited plants under the law

- 6.9. The majority view was that the exemption of cultivating and/or possessing ‘prohibited plants’ for the purpose of scientific research or study should be covered under the law.³¹¹ Additionally, one submitter noted that if this exemption is included, then other exemptions in particular, possession and/or cultivation of prohibited plants for

³⁰⁵ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017;

³⁰⁶ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with the Ministry of Education, Sports and Culture (Ministry of Education, Sports and Culture Headquarters, Malifa, 8 August 2017).

³⁰⁷ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁰⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017.

³⁰⁹ Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 14 November 2017.

³¹⁰ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

³¹¹ Consultation with the Ministry of Health (Ministry of Health Office, Moto’otua Hospital, 17 August 2017); Consultation with Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, 29 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

‘medicinal purposes’ should also be covered on the basis that it has been approved by either a select committee or MOH.³¹²

- 6.10. There were also those who had reservations in allowing for such exemptions because of the difficulty in monitoring and regulating such activities i.e. cultivation.³¹³ There was also the concern that Samoa does not have the technical capacity to conduct such research and study, compared to NZ.³¹⁴ Therefore, it was provided that any exemption for cultivation or for any other offence, should be considered by the relevant Committee (i.e. National Security Committee) who should advise the Minister and Cabinet accordingly.³¹⁵

COMMISSION’S VIEW

- 6.11. The current exemption in section 6 of the current Narcotics Act lacks clarity on circumstances in which such licenses are granted for the unlawful cultivation of prohibited plants and possession of seeds. Some stakeholders submitted to consider the exemption to grant licences for ‘scientific research study and analysis’, following provisions in NZ, Tonga and NSW. Such an exemption should be legislated. Other stakeholders submitted to extend this exemption to ‘medical use’ but it should be closely monitored. A few submitters were against this idea.
- 6.12. Notwithstanding Samoa’s Narcotics Regulations (reg 3(f)) on the license to import narcotics for scientific purposes, the Commission is of the view that the exemption ‘scientific research study and analysis’ should be specified in a new drugs framework, to further clarify conditions in which such a license can be granted. The Commission notes that there is likelihood of abuse if such an exemption is legislated, given the statistics on drug offending in Samoa. However, such an exemption should be strictly regulated and monitored by the relevant authorities, before a license is granted. On the other hand, some stakeholders stated that the Samoan context should be considered; whether it has the technical capacity and funding to justify such an exemption, the likelihood of abuse, and how regular such studies are undertaken.

RECOMMENDATION 31: Consistent with developments in Tonga and NZ, the exemption ‘scientific research study and analysis’ should be specified in the new drugs framework. The Commission notes that there is likelihood of abuse if such an exemption is legislated given the statistics on drug offending in Samoa. However, such an exemption, if the necessary license is granted, should be strictly regulated and monitored by the relevant authorities.

b) Opium supply

- 6.13. Section 8 provides that opium, a Class B narcotic, can be supplied for registered addicts. The provision requires that the CEO of MOH may keep the register of persons who in his or her opinion have become addicted to the quasi-medical use of opium prior to the

³¹² Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

³¹³ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

³¹⁴ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto’otua, 5 September 2017).

³¹⁵ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

passing of Samoa's Narcotics Act, and are unlikely to be safely cured of that addiction. It also provides that the CEO may supply such reasonable quantities of opium as he or she shall think fit to persons whose names are on that register. Section 8(3) clearly states the exemption that each person (on the register) may personally make a quasi-medical use of opium so supplied to him or her without committing an offence.

- 6.14. Furthermore, other products such as morphine and codeine produced from opium are commonly used in Samoa for pain relief.³¹⁶ For example, morphine is the main prescribed drug in Samoa for treatment of illnesses such as cancer. Although it offers some type of relief but for the majority of cancer patients who are 'palliative', it is not effective in managing pain.³¹⁷

SUBMISSIONS

The Commission sought submissions on the current process relating to prescribing opium to patients in Samoa and whether such a provision should to be retained and clarified in the new drugs framework.

Process for prescribing opium and circumstances in which they are prescribed

- 6.15. According to MOH, the current process for prescribing opium in Samoa is by prescription, in consultation and approval by a senior medical officer or medical consultant. Such prescriptions are for medicinal purposes only e.g. alleviate pain of those who are terminally ill. It was noted that opium can also be imported and prescribed to addicts who are registered on the register.³¹⁸ In relation to the latter, MOP noted that the list of patients/addicts whom are prescribed opium in Samoa should be made available to the Commissioner and MOP so that they are aware of these people when they conduct raids, to avoid false detainment.

Retain provisions relating to opium

- 6.16. Based on the above reasons (e.g. opium having a medicinal value to people), majority of submitters agreed that provisions relating to opium supply should be retained.³¹⁹

COMMISSION'S VIEW

- 6.17. The Commission notes from submissions that 'opium' is still being prescribed to registered addicts subject to the approval of a senior medical officer or medical consultant. The number of addicts on the register today is unknown but submissions revealed that opium is prescribed only for medicinal purposes i.e. to alleviate pain of

³¹⁶ Drugs.com, *What is Morphine?* <<https://www.drugs.com/morphine.html>>

³¹⁷ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

³¹⁸ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

³¹⁹ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Consultations with Samoa's Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, 29 August 2017); Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Consultation with the Ministry of Education, Sports and Culture (Ministry of Education, Sports and Culture Headquarters, Malifa, 8 August 2017).

those who are terminally ill. The majority view was to retain the ‘opium’ provision to assist those with terminal illness and registered addicts. The Commission considers that if MOH still plays a huge part in prescribing opium for registered addicts and serve other medicinal purposes, then the provision should be retained with appropriate control measures to prevent abuse.

RECOMMENDATION 32: The provision relating to the supply of opium should be retained and be included in the new drugs framework. This is because Ministry of Health still plays a huge part in prescribing opium for registered addicts and serve other medicinal purposes (as revealed in consultations). However, appropriate control measures should be in place to prevent abuse.

II. Other Exemptions not in Samoa’s Narcotics Act

a) *Mistake as to nature of controlled drug or precursor substance*

- 6.18. Samoa’s Narcotics Act does not have a provision concerning a defence of mistake as to the nature of a controlled drug of precursor substance. Although this may be available in practiced, it was raised during preliminary consultations that a similar provision could be considered for inclusion under the new drugs framework to ensure that offenders do not use this as an excuse to avoid liability.
- 6.19. NZ’s *Misuse of Drugs Act 1975* provides that a defendant shall not be acquitted of an offence for which they are charged because they did not or may not have known that the substance, preparation, mixture, or article in question was the particular controlled drug or precursor substance alleged, i.e. mistake as to the nature of a drug/plant.³²⁰

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should have a defence of mistake as to the nature of the controlled drug or precursor substance, similar to NZ.

- 6.20. Majority of the submissions provided that the new drugs framework should have a similar provision as in NZ.³²¹ Such provision will help ensure that the offender does not use this as an excuse to avoid liability.³²²
- 6.21. On the other hand, some stakeholders submitted that such a defence may still be appropriate for Samoa because there have been cases in the past where the substance was not a drug but in fact baking soda. It is possible that this may occur again in future.³²³

³²⁰ *Misuse of Drugs Act 1975* (New Zealand) s 29.

³²¹Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Education, Sports and Culture, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

³²²Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

³²³ Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FiameMataafaFaumuinaMulinuu II, Matagalalua, 7 August 2017.

COMMISSION'S VIEW

6.22. Samoa's Narcotics Act does not have a specific 'defence of mistake'. The majority view from submissions was to have a provision in a new drugs framework, similar to NZ. The Commission is of the view that caution must be exercised before when such a provision is to be included in a new drugs framework. The 'defence of mistake' provisions are common in many criminal offences. However, the mistake of fact must be honest and reasonable. The mistake must be one that would appear reasonable to a judge or assessors. The Commission is of the view that if a 'defence of mistake' provision is included in the new drugs framework, it should be left to the Court's interpretation.

RECOMMENDATION 33: The 'defence of mistake as to the nature of controlled drug or precursor substance' should be included in the new drugs framework. If such a provision is contested, it should be left to the Court's interpretation.

b) International traveller's exemption

6.23. Samoa does not have a provision under Samoa's Narcotics Act exempting travellers who are authorised by their home countries to carry drugs for treatment services to another country. Currently, any illegal drug discovered at the border by Customs are seized and detained. However, there are situations where an international traveller who is found to be in possession of such drugs can be exempted from liability on the condition that there is a certificate authorising such person carry such drugs i.e. a prescription. In the 1990s, there was a case where an Australian passenger was travelling to Samoa carrying illegal drugs. This person was allowed to carry such drugs into Samoa on the basis that it was authorised by his doctor back in Australia.³²⁴

6.24. In its Issues Paper, it was discussed that Tonga and NZ both have exemptions for international travellers who carry with them illegal drugs required for treating a medical condition (or for a person under their care as in NZ), and the drug has been lawfully supplied in the country of origin by a treating medical practitioner and it is no more than one month supply.³²⁵ However, NZ classifies certain types of drugs that travellers can travel with. For example, cannabis-based products for medical use supplied in the US can only be permitted into NZ if such product has the US Food and Drug Administration approval.³²⁶

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should contain such a provision regarding international traveller exemption from carrying illegal drugs.

6.25. The common view was that Samoa should allow international travellers to carry controlled drugs if legally prescribed by an authorised person in their home countries.³²⁷

³²⁴Consultations with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

³²⁵ For Tonga, see *Illicit Drugs Control Act 2003* (Tonga) s 6; For New Zealand, see Ministry of Health (NZ), *Bringing Medicines into New Zealand* (7 December 2016) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/bringing-medicines-new-zealand>>.

³²⁶Ministry of Health (NZ), *Bringing Medicines into New Zealand* (7 December 2016) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/bringing-medicines-new-zealand>>.

³²⁷Ministry of Education, Sports and Culture, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 August 2017; Samoa Nursing Association, Written Submission to

One submitter expressed that view that cannabis for instance is now known to have good uses for cancer, and that the world may be heading this way particularly with the rise of cancer cases globally. Therefore, more and more people are relying on these illegal drugs for treatment and take it with them while travelling.³²⁸ It was suggested that the NZ approach could be used as guidance as it is reasonable.

- 6.26. However it was strongly emphasised that there should also be strict guidelines and conditions in place to effectively regulate such cases.³²⁹ For example conditions/ requirements could cover matters including,³³⁰
- the amount to be allowed into Samoa which should be less than a month supply i.e. 30 day permit.
 - the drug was lawfully supplied in in country of origin for a certain medical condition and that it was approved by an authorised medical practioner.
 - as proof, proper medical documentation/ evidence such as a medical report must be provided certifying that the controlled drug are prescribed for treatment.
- 6.27. However, one submitter noted that further review/ discussions of the issue is needed before a decision to exempt international travellers is made.³³¹ Another submitter however, strongly stated that such exemption should not be included in the law at all.³³² A reason for the assertion was not provided.

COMMISSION'S VIEW

- 6.28. The Commission notes that the international travellers' exemptions allow travellers to carry with them drugs that are otherwise prohibited in the country of destination, provided that such drugs are accompanied by a certificate issued by a medical practitioner or a relevant authorised body in their country of origin. Such exemptions can be found in the laws of Tonga and NZ where travellers are allowed to do so for medical reasons, with certain conditions. A common view expressed and supported by the

Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

³²⁸ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³²⁹ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017.

³³⁰ Ministry of Education, Sports and Culture, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 August 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³³¹ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

³³² Consultation with Transnational Crimes Unit (Transnational Crimes Unit Office, Fiame Mataafa Faumuina Mulino II Building, Matagalalua, 29 August 2017).

Commission, was to include such an exemption in the new drugs framework with strict guidelines to be imposed. For example:

- the amount to be allowed into Samoa which should be less than a month supply i.e. 30 day permit;
- the drug was lawfully supplied in in country of origin for a certain medical condition and that it was approved by an authorised medical practitioner;
- as proof, proper medical documentation/ evidence such as a medical report must be provided certifying that the controlled drug are prescribed for treatment.

RECOMMENDATION 34: The new drugs framework should include a provision exempting international travellers who have been authorised to carry illegal drugs for treatment when entering Samoa similar to Tonga and New Zealand. However, strict guidelines and conditions need to be in place to regulate such practice which may include the following:

- the amount to be allowed into Samoa which should be less than a month supply i.e. 30 day permit.
- the drug was lawfully supplied in country of origin for a certain medical condition and that it was approved by an authorised medical practitioner.
- as proof, proper medical documentation/ evidence such as a medical report must be provided certifying that the controlled drug are prescribed for treatment.

c) Medicinal use of certain drugs in controlled situations

6.29. Aside from opium, there are many other illegal drugs that have important medicinal use for example, cannabis oil. Preliminary consultations revealed that there have been requests for medicinal cannabis.³³³ However, Samoa's Narcotics Act is silent on situations where such illegal drugs, such as cannabis, can be requested for medicinal purposes. Samoa's Narcotics Act also lacks clarity on who issues prescriptions and the process for issuing such prescriptions.

6.30. The *Narcotics Regulation 1967* however provides scope for an approved licensee to import medicinal marijuana.³³⁴

6.31. It was revealed during preliminary consultations that medicinal drugs in practice, can be requested by doctors for treating their patients in Samoa. The request has to be done by the most senior physician. Evidence to allow for the use of medicinal drugs should highlight that the patient has gone through all the conventional treatments without any improvements and therefore the next resort would be medicinal drugs. It has been done with "oxycodone" a Class B drug.³³⁵ Upon receiving a request, the MOH submits the application to the INCB for approval.³³⁶ Once approved, the MOH will find an importer and apply for a licence from the INCB to allow for the import of illegal drugs. Once the licence

³³³ Preliminary Consultation with the Ministry of Health (Samoa) (Ministry of Health Complex, Moto'otua, Apia, Samoa, 12 May 2016).

³³⁴ *Narcotics Regulation 1967* (Samoa) reg 3.

³³⁵ Preliminary Consultation with the Ministry of Health (Samoa) (Ministry of Health Complex, Moto'otua, Apia, Samoa, 12 May 2016).

³³⁶ The INCB is the independent and quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions set up on 1968 in accordance with the Single Convention on Narcotic Drugs 1961.

is approved, the drug is then imported for medicinal use in quantities specified by the treating physician. These licences can only be used in controlled situations and are valid for 3 months only.³³⁷

- 6.32. Despite having this mechanism in place, preliminary consultations provided that the supply of illegal drugs for medicinal purposes is rare in Samoa. There has only been one request for medicinal marijuana in 2015. This request involved a woman who was diagnosed with breast cancer. She requested the supply of medicinal marijuana (cannabis oil) for pain relief. It was further alluded to in consultations that once people are aware of this option for pain relief, MOH anticipates more requests of this nature in future.³³⁸

Comparable jurisdictions

New Zealand

- 6.33. In NZ, in order for controlled drugs like cannabis to be used for medicinal purposes, it must meet the same criteria and testing processes as any other medicine.³³⁹
- 6.34. In relation to addicts and dependent persons, medical practitioners can issue prescriptions following specific guidelines developed by the NZ Ministry of Health to assist with assessment of dependent such persons. There is also a guideline to assist treatment services to comply with the treatment of dependent persons.³⁴⁰
- 6.35. For patients generally, medical practitioners can prescribe controlled drugs such as opium or cannabis for treatment. Prescriptions are dependent on the treating physicians and specialists who, upon satisfaction that prescription is appropriate, may prescribe any form of cannabis-based products³⁴¹ provided they follow the process set out by the NZ Ministry of Health.³⁴²
- 6.36. Prescriptions for *pharmaceutical* grade medical cannabis products may be made in NZ subject to ministerial approval under regulation 22 of NZ's *Misuse of Drugs Regulations 1977*.³⁴³ For *non-pharmaceutical* grade cannabis-based products, the following matters are to be considered when making assessments of an application for Ministerial approval

³³⁷ Preliminary Consultation with the Ministry of Health (Samoa) (Ministry of Health Complex, Moto'otua, Apia, Samoa, 12 May 2016).

³³⁸ Preliminary Consultation with the Ministry of Health (Samoa) (Ministry of Health Complex, Moto'otua, Apia, Samoa, 12 May 2016).

³³⁹ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

³⁴⁰ Guidelines found here: Ministry of Health (NZ), *Prescribing Controlled Drugs in Addiction Treatment* (2013) <<http://www.health.govt.nz/system/files/documents/publications/prescribing-controlled-drugs-in-addiction-treatment-may14-v5.pdf>>.

³⁴¹ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

³⁴² Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

³⁴³ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

to prescribe among others such products as regulated similarly by regulation 22 of NZ's *Misuse of Drugs Regulations 1977*.³⁴⁴

- (a) the presence of a severe or life-threatening condition;
- (b) evidence that reasonably applicable conventional treatments have been trialled and the symptoms are still poorly controlled;
- (c) evidence that the risk and benefit of the product has been adequately considered by qualified clinical specialists;
- (d) application from a specialist appropriate to the medical condition being treated or the Chief Medical Officer of a District Health Board;
- (e) applicant or specialist prescriber has sought adequate peer review;
- (f) provision of a Certificate of Analysis, preferably from an accredited laboratory, so that the concentration of the active ingredient(s) is known; and
- (g) the patient or guardian has provided informed consent.

6.37. Furthermore, the types of medical drugs products are restricted to products that have been approved by the Minister.³⁴⁵

Australia

a) Federal

6.38. In 2016, Australia's federal parliament passed amendments to the *Narcotic Drugs Act 1967* (Cth) to allow controlled cultivation of cannabis for medicinal or scientific purposes through a single national licensing scheme.³⁴⁶ It was provided that allowing such practice will lead to the need to reclassify medicinal cannabis from a prohibited drug to a controlled drug.³⁴⁷ Re-scheduling a drug into the controlled drug classification requires that the drug must undergo extensive safety and efficacy testing.

b) Queensland

6.39. In anticipation of reforms at the federal level, Queensland for instance recently passed the *Public Health (Medicinal Cannabis) Act 2016* requiring the Director General of Queensland Health's approval for a patient's access to medicinal cannabis.³⁴⁸ Medicinal cannabis will only be approved if all conventional available treatments have failed or if the conventional treatment causes intolerable side effects. The prescribing doctor must also provide

³⁴⁴ Ministry of Health, *Prescribing cannabis-based products* (8 February 2017) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/prescribing-cannabis-based-products#3>>. See also Guidelines found here: Ministry of Health (NZ), *Prescribing Controlled Drugs in Addiction Treatment* (2013) <<http://www.health.govt.nz/system/files/documents/publications/prescribing-controlled-drugs-in-addiction-treatment-may14-v5.pdf>>.

³⁴⁵ *Misuse of Drugs Regulations 1977* (New Zealand) r 22.

³⁴⁶ Hon. Sussan Ley MP, 'Medicinal Cannabis to be cultivated through single national scheme' (Media Release, 2 December 2015) <<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2015-ley144.htm>>.

³⁴⁷ Jennifer H. Martin and Yvonne A. Bonomo, 'Medicinal Cannabis in Australia: The missing links' (6 June 2016) 204(10) *Medical Journal of Australia*, 371-373 <https://www.mja.com.au/system/files/issues/204_10/10.5694mja16.00234.pdf>.

³⁴⁸ *Public Health (Medicinal Cannabis) Act 2016* (Queensland) chap 3, pt. 2, ss 34-36. See also, Jennifer H Martin and Yvonne A Bonomo, *Medicinal Cannabis in Australia-the missing links* (August 2016) *The Medical Journal of Australia* <<https://www.mja.com.au/journal/2016/204/10/medicinal-cannabis-australia-missing-links>>.

clinical evidence that a specific type of medicinal cannabis product is effective for the particular condition or symptoms.³⁴⁹ The Act balances the need to allow greater use of medicinal cannabis products while ensuring medicinal cannabis products are used safely and not diverted for unlawful purposes.³⁵⁰

United Kingdom

6.40. In the UK, Sativex which is a pharmaceutical cannabis based medicine is accessible to sufferers of a chronic condition known as multiple sclerosis. However, prescribing such drug is at the discretion of the prescribing doctor.³⁵¹ Sativex is classified separately from cannabis in the UK as a Class B drug, meaning criminal sanctions will still apply for possession, supply, importation and exportation if the accused does not have a legitimate prescription.³⁵²

United States

6.41. In the US, more than 15 States have legalised medicinal cannabis.³⁵³ Four States have even legalised cannabis both recreationally and medicinally.³⁵⁴

6.42. In California, cannabis can be prescribed to treat anorexia, spasticity, glaucoma, arthritis, migraines and any other illness which marijuana can provide relief, as well as the aforementioned illnesses such as cancer.³⁵⁵

SUBMISSIONS

The Commission sought submissions on whether Samoa should expressly legislate medicinal use of illegal drugs in controlled situations, in a new drugs framework and the relevant procedures involved (e.g. guidance for medical practitioners when prescribing controlled drugs to dependent persons).

Preference 1: Allow medicinal drugs with strict guidelines in the law

6.43. The majority view supported the use of medicinal marijuana for treatment in controlled situations e.g. cancer treatments. This is given developments in other countries on this issue. The Pharmacists Association supports this given that global statistics revealed that 200+ cases of cancers were reversed or delayed because of medicinal marijuana. They added that the focus should be on the health and economic benefits. SROS agreed to carry

³⁴⁹ *Public Health (Medicinal Cannabis) Act 2016* (Queensland) chap 4, pt. 2-3.

³⁵⁰ Queensland Health, *Public Health (Medicinal Cannabis) Bill 2016* (28 September 2016) Queensland Government <<https://www.health.qld.gov.au/system-governance/legislation/reviews/medicinal-cannabis>>.

³⁵¹ Medical Marijuana UK, *Legal Access: Where and how to get safe and legal access to medical marijuana around the World* (2017) MMJUK <<http://medicalmarijuana.co.uk/legal/legal-access>>.

³⁵² Medical Marijuana UK, *UK Cannabis Legal Guidelines* <<https://medicalmarijuana.co.uk/legal/uk-medical-cannabis-guidelines/>>.

³⁵³ Steve Bloom, *CBD Oil Now Legal in 16 States* (10 November 2016) Celebstoner <<http://www.celebstoner.com/news/marijuana-news/2014/03/13/four-states-on-verge-of-passing-cbd-only-laws/>>.

³⁵⁴ Medical Marijuana UK, *Legal Access: Where and how to get safe and legal access to medical marijuana around the World* (2017) <<http://medicalmarijuana.co.uk/legal/legal-access/>>.

³⁵⁵ The Medical Board of California, *Marijuana for Medical Purposes* (October 2014) CA.Gov <http://www.mbc.ca.gov/Licensees/Prescribing/Medical_Marijuana.aspx>.

out research to identify suitable drugs to be used, noting funding and resource constraints.

- 6.44. However, it was also raised that allowing for medicinal drugs would require clear guidelines in place to:
- clarify situations where prescription of illegal drugs as medicine are permitted e.g. if the patient's prognosis or illness has no other cure.³⁵⁶
 - types of drugs available to be restricted to certain types that are scientifically tested to be medically safe.³⁵⁷
 - identify authorities (ideally MOP) to handle standard licenses to deal with medicinal drugs.
- 6.45. Furthermore, it was also suggested that a regulating body i.e. MOH should oversee applications for medicinal drugs.

Prescriptions

- 6.46. The majority view was to have in place guidelines and policies (empowered under a new drugs framework) to guide medical practitioners and pharmacies when prescribing (i.e. prescription privileges guidelines) and dispensing illegal drugs, similar to NZ.³⁵⁸ Such policies should cover matters including for instance:
- Person who can prescribe drugs i.e. authorised medical practitioners. Likewise with prescribing medicine have 'prescription privileges' where medicines are only prescribed by certain medical consultants.³⁵⁹
 - Circumstances in which illegal drugs can be prescribed i.e. terminal cancer.
 - Control measures e.g. specify the amount of drugs prescribed.
 - Enforcement e.g. monitoring of medical officers who prescribe as well as pharmacies who dispense such drugs.³⁶⁰

³⁵⁶Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁵⁷Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

³⁵⁸Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017). Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

³⁵⁹Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Consultation with the Ministry of Health (Ministry of Health Office, Moto'otua Hospital, 17 August 2017).

³⁶⁰Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

6.47. Moreover, some stakeholders added that the issuing of prescriptions by doctors should be strictly monitored by a separate body.³⁶¹

Preference 2: Allow medicinal drugs in a policy

6.48. On the other hand, a few stakeholders stated to regulate it in the form of a policy. MOP and MOH should develop such a policy.³⁶²

Preference 3: Do not allow for medicinal drugs

6.49. A few submitters had reservations and stated that Samoa should not allow for the medicinal use of illegal drugs because it does not have the infrastructure to support it.³⁶³

6.50. The OAG noted that sections 7, 9 and 10 of Samoa's Narcotics Act generally cover medicinal use of drugs. The current legislation already authorises specific medical practitioners to prescribe medicinal drugs.³⁶⁴ In fact, morphine is prescribed to some patients who are addicted to it based on the World Health Organisation guidelines.³⁶⁵

COMMISSION'S VIEW

6.51. Although Samoa's Narcotics Act provides the opium exemption discussed in paragraph 6.13 of this Report, it does not specifically provide for the medicinal use of other drugs, like cannabis, and the necessary process involved for prescribing such drugs. The Commission notes that despite the absence of such provisions in the law, requests for illegal drugs (e.g. cannabis oil) have been done in practice but in very rare situations. Also, as revealed in preliminary consultations, the process to import such drugs is lengthy and requires the approval of the INCB. It is unclear from preliminary consultations as to what legal basis MOH relies on in relation to the INCB process. However, the Commission notes that Regulation 3 allows a licensee to import illegal drugs used for medicinal purposes (reg 3(f)).

6.52. The Commission notes the majority view to legislate the use of illegal drugs such as marijuana/cannabis for medical treatment in controlled situations, given its usefulness in treating terminal illness like cancer. Significantly, a representative from the Pharmacists association supports this given global statistics showing that a significant number of cancer cases have been reversed or delayed because of marijuana. However, it was also raised that precautionary measures need to be considered and clear guidelines were proposed by some stakeholders to be adhered to before prescribing such drugs. They also

³⁶¹ Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Consultation of the Mental Health Unit (Mental Health Unit Main Office, Moto'otua Hospital, 22 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁶² Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

³⁶³ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Consultation with the Ministry of Police (Ministry of Police Main Office, Apia, 28 August 2017).

³⁶⁴ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

³⁶⁵ Consultation of the Mental Health Unit (Mental Health Unit Main Office, Moto'otua Hospital, 22 August 2017).

added that this is something worth exploring and SROS expressed the view that they would be happy to carry further research to identify suitable drugs for use in Samoa. Other submitters disagreed with allowing the medicinal use of illegal drugs given that Samoa lacks infrastructure to effectively regulate such matters and also because the law already generally addresses them under sections, 7, 9 and 10 of the current Act.

- 6.53. The Commission also notes the NZ approach would provide some guidance to Samoa on situations where controlled drugs (opium or cannabis) can be prescribed. NZ distinguishes the issuing of prescriptions for controlled drugs between addicts and dependant persons (as in the registered addicts' opium exemption in Samoa) and patients generally. When prescribing controlled drugs to patient, clear guidelines are provided under the NZ Regulations, as discussed above. Prescriptions are dependent on the treating physicians and specialists who must be satisfied that the prescription of medicinal cannabis is appropriate.
- 6.54. If medicinal use of illegal drugs such as marijuana is allowed in Samoa, the Commission considers that specific guidelines and internal policies are put in place to regulate such matters. Submitters provided that such guidelines and policies should be developed by MOH following the NZ approach. This will assist medical practitioners and pharmacies with prescribing and dispensing of illegal drugs that are permitted for treatment in controlled situations.³⁶⁶ Moreover, such guidelines and policies should be in the form of legislation.
- 6.55. Having analysed Samoa's Narcotics Act, the Commission is of the view that the current exemption/license provisions relating to medicinal drugs are insufficient. This is because the provisions are very general and lack clarity. Section 29 of the current Narcotics Act empowers the HOS to make regulations that may be necessary or expedient for giving full effect to the Samoa's Narcotic Act. For example, regulations may be made for the purpose of prescribing any narcotic or controlled precursor by medical practitioner. There are no specific regulations to that effect in Samoa except for reg 3 which allows a licensee to import an illegal drug for medicinal and scientific purpose and reg 20 where an illegal drug can be prescribed to any human being or animal if he or she has a license approved by the Director or CEO of MOH. However, these regulations are broad and do not help address the medicinal use of drugs for treatment in controlled situations.
- 6.56. Consistent with developments in NZ and to assist terminally ill patients, the Commission is of the view that medicinal use of drugs (medicinal cannabis and others) should be regulated pursuant to section 29 of Samoa's Narcotics Act. The Commission notes from consultations that this is currently being done in practice in Samoa and MOH anticipates more requests of this nature in future. Therefore, this justifies that it be regulated with strict rules and guidelines. Consistent with suggestions provided by some stakeholders, regulations should set out the following:

³⁶⁶ Further discussion on 'dispensing and administering drugs' at Chapter 6 (V. Other Enforcement Matters).

- Person who can prescribe drugs i.e. authorised medical practitioners. Likewise with prescribing medicine having ‘prescription privileges’ where medicines are only prescribed by certain medical consultants.³⁶⁷
- Circumstances in which illegal drugs can be prescribed i.e. terminal cancer.
- Types of drugs available to be restricted to certain types that are scientifically tested to be medically safe;
- Control measures e.g. specify the amount of drugs prescribed and time frame for usage;
- Identify authorities (ideally MOP) to handle standard licenses to deal/ dispense (e.g. Pharmacy Standard Licenses).
- Enforcement e.g. monitoring of medical officers who prescribe as well as pharmacies who dispense such drugs.³⁶⁸

6.57. In determining whether the prescription of a drug (medicinal cannabis and others) by a physician is appropriate for the patient, the Commission suggests to adapt and adopt the following criteria in the law of NZ:³⁶⁹

- the presence of a severe or life-threatening condition;
- evidence that reasonably applicable conventional treatments have been trialed and the symptoms are still poorly controlled;
- evidence that the risk and benefit of the product has been adequately considered by qualified clinical specialists;
- application from a specialist appropriate to the medical condition being treated or the Chief Medical Officer of a District Health Board;
- applicant or specialist prescriber has sought adequate peer review;
- provision of a Certificate of Analysis, preferably from an accredited laboratory, so that the concentration of the active ingredient(s) is known; and
- the patient or guardian has provided informed consent.

6.58. The Commission also considers that a relevant Board should be established under MOH to administer the regulation. The composition of the Board and functions are to be determined by the MOH. Their functions should include the following:

- to assess requests from the relevant physicians on behalf of the patient
- carry out further research and inquiries as to the nature of the request and consultations with the relevant experts
- provide recommendations to the CEO whether the request is approved or not
- carry out any other functions that may be necessary for the purpose of the request.

³⁶⁷Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

³⁶⁸Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

³⁶⁹ Peter Dunne, Backgrounder: Medical Cannabis in New Zealand (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>. Ministry of Health, Prescribing cannabis-based products (8 February 2017) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/prescribing-cannabis-based-products#3>>.

RECOMMENDATION 35: Consistent with current practice and developments in countries like New Zealand, the medicinal use of drugs (medicinal cannabis and others) should be regulated pursuant to section 29 of Samoa's Narcotics Act. Regulations should set out the following:

- Person who can prescribe drugs i.e. authorised medical practitioners. Likewise with prescribing medicine having 'prescription privileges' where medicines are only prescribed by certain medical consultants;
- Circumstances in which illegal drugs can be prescribed i.e. terminal cancer.
- Types of drugs available to be restricted to certain types that are scientifically tested to be medically safe;
- Control measures e.g. specify the amount of drugs prescribed and time frame for usage;
- Identify authorities (ideally Ministry of Police) to handle standard licenses to deal/dispense (e.g. Pharmacy Standard Licenses).
- Enforcement e.g. monitoring of medical officers who prescribe as well as pharmacies who dispense such drugs.

RECOMMENDATION 36: In determining whether the prescription of a drug (medicinal cannabis and others) by a physician is appropriate for the patient, the Commission suggests to adapt and adopt the following criteria in the law of New Zealand:

- the presence of a severe or life-threatening condition;
- evidence that reasonably applicable conventional treatments have been trialled and the symptoms are still poorly controlled;
- evidence that the risk and benefit of the product has been adequately considered by qualified clinical specialists;
- application from a specialist appropriate to the medical condition being treated or the Chief Medical Officer of a District Health Board;
- applicant or specialist prescriber has sought adequate peer review;
- provision of a Certificate of Analysis, preferably from an accredited laboratory, so that the concentration of the active ingredient(s) is known; and
- the patient or guardian has provided informed consent.

RECOMMENDATION 37: The Commission is of the view that a relevant Board should be established under Ministry of Health to administer the regulation. The composition of the Board and functions are to be determined by the Ministry of Health. Their functions should include the following:

- to assess requests from the relevant physicians on behalf of the patient,
- carry out further research and inquiries as to the nature of the request and consultations with the relevant experts,
- provide recommendations to the Chief Executive Officer whether the request is approved or not,
- carry out any other functions that may be necessary for the purpose of the request.

7. CHAPTER 6: ENFORCEMENT

This Chapter assesses the adequacy of Samoa's enforcement structure. It discusses specific provisions relating to enforcement under Samoa's Narcotics Act. The chapter also looks at other matters including testing, monitoring, evidentiary provisions, other enforcement matters such as boarding boats, as well as other issues affecting enforcement in Samoa.

I. Specific Enforcement Provisions

a) Search warrants & search without a warrant

- 7.1. Section 14 of Samoa's Narcotics Act empowers the Court to issue search warrants to permit officers to enter and search any building, aircraft, ship, carriage, vehicle, premises or place, or person to seize and detain any narcotic or any evidence of an offence.³⁷⁰ The constable or inspector executing such warrants must have it with him or her at the time of execution and produce when required.³⁷¹
- 7.2. Following preliminary consultations, it was established that search warrants, can be granted by the District Court and Supreme Court pursuant to section 14 of Samoa's Narcotics Act and relevant provisions of the *Criminal Procedures Act 2016*.³⁷² Search warrants can be issued at any time or times, within 1 month from the date of the warrant to enter and search a premise or persons suspected to have committed an offence under Samoa's Narcotics Act.³⁷³
- 7.3. There are also situations where police officers can carry out searches *without* a warrant (section 14A). It was revealed that a search *without* a warrant are not executed solely by MOP but by customs officer under the *Customs Act 2014*. Section 14A (5) of Samoa's Narcotics Act establishes that a police officer can carry out a search *without* a warrant where he or she has reasonable grounds for believing that a person has committed an offence under the Act.³⁷⁴ However, the interpretation of 'reasonable grounds' is unclear. This has resulted in queries as to what 'reasonable grounds' encompasses and also challenges regarding the validity and the reasonableness of a searches *without* a warrant carried out by law enforcement officers.

Comparable jurisdictions

Tonga

- 7.4. In Tonga, a magistrate can issue a search warrant permitting a police and customs officer to carry out searches in accordance with the Act.³⁷⁵ This also applies to search *without* warrants but customs officers are confined to customs area only, such as ports and terminals.³⁷⁶

New Zealand

³⁷⁰Narcotics Act 1967 (Samoa) ss 14(1), 14A(3).

³⁷¹Narcotics Act 1967 (Samoa) ss 14(2), 14A(4).

³⁷² See *Criminal Procedure Act 2016* (Samoa) s 190.

³⁷³Narcotics Act 1967 (Samoa) s 14(1).

³⁷⁴Narcotics Act 1967 (Samoa) s 14A (2).

³⁷⁵*Illicit Drugs Control Act 2003* (Tonga) s 21.

³⁷⁶*Illicit Drugs Control Act 2003* (Tonga) s 23(1).

- 7.5. When issuing search warrants in NZ, a justice of the peace, community magistrate, registrar or deputy registrar can issue a search warrant allowing law enforcement officers to conduct searches.³⁷⁷ Search warrants can be executed on more than one occasion during the period of its validity and it is up to the applicant to request the duration of the warrant (subject to the satisfaction of the issuing officer).³⁷⁸ Further, a search warrant would generally be valid for approximately 2 weeks and no longer than a month.³⁷⁹
- 7.6. In relation to search *without* a warrant, the NZ *Search and Surveillance Act 2012* allows police officers to enter a place or vehicle without a warrant; and search for and arrest a person that the constable suspects has committed the offence.³⁸⁰ Entry without a warrant is carried out in order to avoid loss of offender or evidential material. Circumstances where a search *without* a warrant is justified is where the constable has reasonable grounds,³⁸¹
- a) to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and
 - b) to believe that the person is there; and
 - c) to believe that, if entry is not effected immediately, either or both of the following may occur:
 - i) the person will leave there to avoid arrest.
 - ii) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.

Australia

a) New South Wales

- 7.7. In NSW, an application for a search warrant must set out the reasons that the police have for believing that they will find evidence on those premises. The police must satisfy the issuing Justice (who can be an authorised justice, a magistrate or a judge) that they have reasonable grounds to believe that there is, or will be at the time the warrant is executed, things that is connected with the offence and that the search is likely to lead to an arrest. The offence must be an indictable offence, or a firearms, drug, stealing or child pornography offence. The justice who issues the warrant must record the reasons why they granted the issue of the warrant or the warrant is invalid. The warrant lasts for 3 days unless it is extended by the justice. The police must provide a report back to the justice within 10 days of the warrant being executed.³⁸²
- 7.8. NSW police also have a right to search a person *without* a search warrant. In order to do this, the police must have reasonable grounds to believe that the individual in question is in possession of one of the following:³⁸³

³⁷⁷*Search and Surveillance Act 2012* (New Zealand) s 6.

³⁷⁸*Search and Surveillance Act 2012* (New Zealand) s 98(5).

³⁷⁹*Search and Surveillance Act 2012* (New Zealand) s 103.

³⁸⁰*Search and Surveillance Act 2012* (New Zealand) s 8.

³⁸¹*Search and Surveillance Act 2012* (New Zealand) s 8(2).

³⁸² See *Law Enforcement (Powers & Responsibilities) Act 2002*, pt. 5, *Crime Commission Act 2012* (NSW) Div. 3, and *Crimes Act 1914* (Cth) s 3E.

³⁸³ See George Sten & Co, "What rights do you have in NSW when police have a search warrant?" <<https://criminal-lawyer.com.au/police-search-warrants-nsw/>>. Accessed 19 December 2017.

- A dangerous weapon; or
- Illicit drugs; or
- Stolen, or unlawfully obtained property; or
- An object to commit a crime, or cause harm to themselves, or to another.

b) Victoria

7.9. The situation in Victoria is similar to NZ where under the *Drugs Poisons and Controlled Substances Act 1981*, any magistrate may issue a search warrant permitting a police officer to at any time or times by day or night enter land or premises and search such land or premises, as well as seize and destroy any drug of dependence found in such place or premises. Such warrants like NZ are also valid for a month.³⁸⁴

SUBMISSIONS

The Commission sought submissions on whether to specify search warrants provisions to customs officers in the new drugs framework. Also, whether there is a need for appropriate trainings to improve awareness on search warrants and the duration of search warrants, as well as clarification on 'reasonable grounds' regarding search without a warrant.

Specific provisions for customs officers to conduct searches with or without a search warrant

7.10. The majority view submitted that there should be provisions specific to customs officers and their powers to conduct searches with or without a search warrant, similar to Tonga.³⁸⁵ Such power however, should be restricted to 'customs areas' only.³⁸⁶

7.11. Customs provided that having such provision would allow customs officers to effectively enforce the law and combat this raising problem involving illegal drugs. It also stated that such power should be under the *Customs Act 2014*. The MOP also further elaborated on this providing that customs officers should have the power to conduct 'search of persons' in addition to search of cargo. Once they find anything, they should call the police and police can attend to arrest.

7.12. In contrast, one submitter raised concern about including such provision in the law.³⁸⁷ It noted that since Samoa is a small place, there is no need for this but the customs officer

³⁸⁴*Drugs Poisons and Controlled Substances Act 1981* (Victoria) s 81(3).

³⁸⁵Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

³⁸⁶ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

³⁸⁷Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

should contact the MOP if he/she believes there is reasonable cause to carry out a search with or without a warrant.³⁸⁸

Training programmes be conducted to improve police awareness on search warrants procedure

- 7.13. Some submissions provided that any form of training to raise awareness on search warrant procedures is necessary and should be encouraged.³⁸⁹ Police officers should have regular trainings, not just for drug related offences, but all other offences.³⁹⁰ The procedures for obtaining a search warrant to seize drugs would be similar to other warrants for the seizure of other matters related to an offence.³⁹¹ Such trainings will better inform persons executing search warrants and will possibly avoid searches being carried out without reasonable cause.³⁹² It was also highlighted however, that because of the insufficient number of police officers in Samoa, the involvement of the Village Fono is also very important when carrying out searches and conducting raids. Therefore, the Village Fono should also be made aware of the process.³⁹³
- 7.14. However, it was raised by MOP and TCU that executing search warrants is no longer an issue as police officers are aware of the law. Furthermore, search warrants are included in the Police Recruitment Trainings as well as on-the-job trainings.³⁹⁴

Appropriate duration for search warrants

- 7.15. In relation to duration of search warrants, one submitter noted that the current duration of one month under the law is sufficient as stipulated in section 14 of the Act.³⁹⁵ However, the police should be able to apply for the extension of a search warrant. For instance, in circumstances where evidence and information are required, the Police may require more

³⁸⁸Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

³⁸⁹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

³⁹⁰Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁹¹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁹²Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

³⁹³Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

³⁹⁴Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

³⁹⁵ Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

time. Therefore, the search warrant must be extended to accommodate for such, provided that they stipulate valid grounds as to why such an extension is needed.³⁹⁶

- 7.16. One submitter provided that the law should provide for 3 months instead of 1 month.³⁹⁷ This will avoid applying for extension for efficiency.

Reasonable cause to search 'without' a warrant be clarified

- 7.17. Moreover, there were also concerns regarding the interpretation of what 'reasonable cause' amounts to and should therefore be clarified in the law especially for searches without a warrant.³⁹⁸ One submitter specifically noted that they are not surprised if people question whether searches without warrants carried out by Police were reasonable.³⁹⁹ Police are not really certain on situations when there is a 'reasonable cause' to believe that a person is or was committing an offence.⁴⁰⁰

- 7.18. Members of the Judiciary also questioned the application of section 14A (search without a warrant) because it only applies to cases where there is 'reasonable cause' to suspect or believe. However, the law does not adequately clarify circumstances in which such searches can be conducted apart from there being no time to apply for a search warrant or where an immediate search is needed. Therefore, it would be necessary to retain and expand on this provision to specify the exact circumstances where section 14A can be exercised.⁴⁰¹ This would avoid unjust searches without a warrant from being carried out by law enforcement officers without having reasonable cause to believe or suspect. According to CJ Sapolu, some of the circumstances where searches without a warrant are required include among others:⁴⁰²

- At night or when courts are not operating e.g. Sunday
- To ensure that evidence is not lost or destroyed
- To deal with the suspect then and there because he/she might flee.

- 7.19. CJ Sapolu also noted the importance of considering the safety and security of Police when such searches are carried out.⁴⁰³

³⁹⁶ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

³⁹⁷ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

³⁹⁸ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

³⁹⁹ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁴⁰⁰ Consultation with the Samoa Victim Support Group (Samoa Victim Support Group Headquarters, Beach Road, Apia, 14 September 2017).

⁴⁰¹ Consultation with members of the Samoa's Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot on Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

⁴⁰² Consultation with members of the Samoa's Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁴⁰³ Consultation with members of the Samoa's Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

COMMISSION'S VIEW

a) *Search warrants*

- 7.20. The Commission considers that the current provision relating to *search warrants* should be retained.⁴⁰⁴ Customs officers already have a specific role to play under the *Customs Act 2014* in relation to search of ports and terminals. Therefore, it is not recommended for the new drugs framework to specify a provision regarding powers of custom officers for search warrants and searches without a warrant.
- 7.21. The Commission notes submissions to obtain the support of the Village Fono where necessary to ensure search warrants are executed effectively in villages. Accordingly, awareness programmes should be conducted with Village Fono to inform them of the importance of search warrants.
- 7.22. The Commission further notes the ongoing training programmes currently carried out by MOP for Police officers on the execution of search warrants. In light of this, the Commission considers that such initiatives should regularly continue with adequate budget to sustain it. This is to ensure police officers continuously learn of the law and new developments to prevent searches without reasonable cause.
- 7.23. Consistent with laws in Tonga, NZ and Victoria, the 1 month duration for search warrants is suggested to be retained. However, caution must be exercised by the Court if further extension is requested for investigation purposes to ensure a fair and just hearing. The Court must determine any request for extension on a case by case basis. Any extension granted should not be more than 30 days to avoid delays as well as any abuse of power by police from unnecessary searches.

b) *Search without a warrant*

- 7.24. In relation to *search without a warrant* (s 14A), the Commission considers that circumstances in which such searches can be conducted should be clarified in the new drugs framework. This will avoid unreasonable searches *without* a warrant. Consistent with submissions, some of the circumstances which may justify searches *without* a warrant include:
- days on which the Courts are not operating e.g. Sunday or public holidays;
 - where it is to ensure that evidence is not lost or destroyed; or
 - where it is to ensure that the suspect is dealt with on the spot before he or she escapes.
- 7.25. Further, the law of NZ regarding circumstances where a search *without a warrant* is reasonably carried out can be used as guidance. For example, where a police officer has reasonable grounds,⁴⁰⁵
- a) to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and
 - b) to believe that the person is there; and

⁴⁰⁴See *Customs Act 2014* (Samoa) s 196.

⁴⁰⁵ Search and Surveillance Act 2012 (New Zealand) s 8(2).

c) to believe that, if entry is not effected immediately, either or both of the following may occur:

iii) the person will leave there to avoid arrest.

iv) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.

RECOMMENDATION 38: Current search warrant provisions should be retained (s 14). Customs officers already have a specific role to play under the *Customs Act 2014* in relation to search of ports and terminals. Therefore, it is not recommended for the new drugs framework to have a specific provision specifying powers of custom officers for search with/without warrants.

RECOMMENDATION 39: Ministry of Police and Customs should carry out awareness programmes to inform and obtain the support of the Village Fono where necessary to ensure search warrants are executed effectively in villages.

RECOMMENDATION 40: Ongoing training programmes carried out by Ministry of Police for Police officers on the execution of search warrants should continue. This is to ensure that the process of carrying out a search is clear and also to prevent unreasonable searches.

RECOMMENDATION 41: Consistent with laws in Tonga, New Zealand and Victoria, the 1 month validity period for search warrants should be retained. However, caution must be exercised by the Court if further extension is requested for investigation purposes to ensure a fair and just hearing. Any extension granted should be within validity period (1 month) to avoid delays as well as any abuse of power by police from unnecessary searches.

RECOMMENDATION 42: Circumstances in which searches *without* a warrant (s 14A) can be conducted should be clarified in a new drugs framework with appropriate measures in place to avoid unreasonable searches. Some of the circumstances which may justify searches *without* a warrant include:

- days on which the Courts are not operating e.g. Sunday or public holidays;
- where it is to ensure that evidence is not lost or destroyed; or
- where it is to ensure that the suspect is death with on the spot before he or she escapes.

The law of New Zealand can be used as guidance.

c) Seizure and destruction of prohibited plants

7.26. Section 6(4) empowers designated officers to seize or destroy a cultivated prohibited plant or the seed of a prohibited plant in someone's possession, unless permitted by a licence granted under section 11 of Samoa's Narcotics Act.⁴⁰⁶ Accordingly, the provision only covers the destruction of prohibited plants and does not cover other illegal substances and equipment. Furthermore, it does not provide for methods of destruction.

7.27. The Commission notes that the *Drugs Act 1967* gives an officer broader powers than those given to officers under Samoa's Narcotics Act to entry, inspection, seizure and destruction

⁴⁰⁶*Narcotics Act 1967* (Samoa) s 6(4).

of any drug samples (as defined under that Act)⁴⁰⁷ , and is more aligned with the legislation of Tonga and NZ.⁴⁰⁸

- 7.28. Tonga and NZ have similar seizure and destruction provisions. However, Tonga's provision also covers the destruction of a seized controlled drug, chemical or equipment and is not limited to prohibited plants. Furthermore, Tonga's law also stipulates methods of destruction which include incineration or any such means ordered by the Court or by delivery to the Ministry of Health for use exclusively in meeting the lawful medical or scientific needs, and the Ministry of Police for training needs.⁴⁰⁹

SUBMISSIONS

The Commission sought submissions on whether section 6(4) should include methods of destroying seized prohibited plants and seizure and destruction of other dangerous substances, chemical and plants (as in Tonga and NZ). It also sought submissions on whether the new drugs framework should give broader powers to designated officers to inspect, seize and destroy prohibited plants, similar to Tonga and NZ.

- 7.29. The majority of the submitters agreed that *methods* of destroying seized prohibited plants should be included in the law similar to Tonga.⁴¹⁰ Providing methods for destruction in the law would avoid abuse by authorised officers who are not required under the Act to dispose of or destroy plants.⁴¹¹ Furthermore, appropriate and authorised persons should be designated to carry out such acts.⁴¹² These are vital for transparency and accountability reasons.⁴¹³
- 7.30. It was also emphasised by the majority of stakeholders that the seizure and destruction provisions *apply to dangerous substances, chemicals and articles*, in addition to prohibited

⁴⁰⁷*Drugs Act 1967* (Samoa) s 20. Note that the *Drugs Act 1967* regulates the sale of drugs that are considered legal such as medicines, disinfectants, anaesthetic, and cosmetics among others and does not cover illegal drugs which is the focus of this Review. There are also powers contained in the *Customs Act 2014* for customs officers to seize goods which include illegal drugs— see section 172.

⁴⁰⁸ Email from the Office of the Attorney General to the Samoa Law Reform Commission (preliminary consultations), 1 May 2017.

⁴⁰⁹*Illicit Drugs Control Act 2003* (Tonga) s 32(2) (a) and 32(2) (b).

⁴¹⁰Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴¹¹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴¹²Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FMFM II, Matagalalua, 7 August 2017);

⁴¹³Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017.

plants.⁴¹⁴ Destruction of these substances and equipment must be done in a secured manner.⁴¹⁵ The provisions in the *Drugs Act 1967* and the laws of Tonga and NZ were suggested to be used as guidance.⁴¹⁶

- 7.31. Broader powers given to designated officers to inspect, seize and destroy prohibited plants and drugs was widely supported by submitters consistent with the laws of Tonga and NZ.⁴¹⁷ This will allow for effective enforcement of the law.

COMMISSION'S VIEW

- 7.32. The Commission notes submissions that provisions relating to seizure and destruction of illegal drugs should be expanded and further clarified. The laws of Tonga and NZ provides for methods of destroying illegal substances seized by police or other relevant authority. Such laws also stipulate matters and substances that could be seized and destroyed which is not limited to prohibited plants as the case in Samoa. Therefore, the Commission considers provisions in the new drugs framework should stipulate *methods* as well as *matters and substances* that could be seized and destroyed.

- 7.33. In relation to powers given to designated officers to seize and destroy, the *Drugs Act 1967* contains provisions that gives an officer broader powers than those given to officers under Samoa's Narcotics Act to enter, inspect, seize and destroy any drug samples. This position is consistent with the laws of Tonga and NZ. Therefore, for consistency and comprehensiveness, the Commission considers that the powers stipulated under the *Drugs Act 1967* be replicated under the new drugs framework.

RECOMMENDATION 43: Section 6(4) of the Samoa Narcotics Act should be expanded under the new drugs framework to expressly provide other dangerous substances, chemicals and

⁴¹⁴Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁴¹⁵Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁴¹⁶Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴¹⁷ Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

articles, in addition to prohibited plants that could be seized and destroyed. The provision should also include methods of destroying seized prohibited plant and illegal substance, in addition to the circumstances when they can be seized. This will ensure that any illegal substances are seized and disposed of accordingly.

RECOMMENDATION 44: Provisions contained in Samoa's *Drugs Act 1967* relating to broader powers of designated officers to enter, inspect, seize and destroy should be adapted and adopted in the new drugs framework for consistency and comprehensiveness.

d) Persons pursuing duties under the Act

- 7.34. Section 28 exempts from civil or criminal liability a person who carries out any act in pursuance or intended pursuance of Samoa's Narcotics Act or its regulations unless he or she acted in bad faith or without reasonable care.
- 7.35. NZ's provision is identical to Samoa.⁴¹⁸ Additionally, NZ has a separate provision specific to constables acting undercover.⁴¹⁹ Tonga's provision is similar to NZ with the overall difference in that protection extends to cover not only undercover police but informers generally.⁴²⁰

SUBMISSIONS

- 7.36. Although this issue was not raised in the Commission's Issues Paper, it merits consideration. Tonga's provision relating to persons pursuing duties under its *Illicit Drugs Control Act 2003* does not only offer immunity to police officers acting undercover but also to informers generally.
- 7.37. During consultations, some submitters expressed the view that such a provision will not only protect police officers but also people who report illegal drug activity to police (i.e. informers).⁴²¹ A submitter provided that informers should be protected under the law.⁴²² This is because there have been cases of people who know about drug use but are afraid to report to the authorities due to safety reasons.

COMMISSION'S VIEW

- 7.38. The Commission is of the view that the current provision of Samoa's Narcotics Act is sufficient to protect persons pursuing duties under the Act including police officers. However, it considers that this provision should be extended to also offer protection for informers' generally, similar to Tonga. Having this in the law will assist law enforcement agencies with prosecuting drug-related crime in Samoa and also improve reporting of drug cases that takes place in the village.

RECOMMENDATION 45: The provisions offering protection for persons pursuing duties under the Act including police should be extended to cover informers generally. This will assist law enforcement agencies and also encourage reporting of drug-related cases in the village communities.

⁴¹⁸ *Misuse of Drugs Act 1975* (New Zealand) s 34.

⁴¹⁹ *Misuse of Drugs Act 1975* (New Zealand) s 34A (3).

⁴²⁰ *Illicit of Drugs Control Act 2003* (Tonga) s 28.

⁴²¹ Consultation with the Ministry of Police (Ministry of Police Building, Apia, 28 August 2017).

⁴²² Consultation with the Ministry of Police (Ministry of Police Building, Apia, 28 August 2017).

e) *Forfeiture*

- 7.39. Section 25 of Samoa's Narcotics Act contains forfeiture provisions for all articles related to an offence, after a person has been convicted for that offence. However, there are issues whether section 25 of the Samoa Narcotics Act applies only to forfeiture of drugs, or whether it extends to forfeiture of goods and property. Some of the reasons for such confusion include inconsistent terminology in section 25. For example, the section is headed 'forfeiture of goods', but the provision itself refers to forfeiture of 'articles' only. Preliminary consultations with the OAG, revealed that 'article', relates to drugs *only* and does not extend to goods, firearms or property (for example, motor vehicles and boats).
- 7.40. Another reason for the confusion is that forfeiture provisions are defined in other Samoan Acts to include goods and property. For example, the *Police Powers Act 2007* enables police officers to enter, search and seize *materials* found in relation to an offence.⁴²³ The *Proceeds of Crime Act 2007* also contains provisions relating to forfeiture of any proceeds obtained from the commission of a crime (including income, money and property).⁴²⁴ Moreover, there have also been drug cases where firearms have been seized and it was unclear from preliminary consultations whether this was done pursuant to Samoa's Narcotics Act or the *Police Powers Act 2007*.⁴²⁵

Comparable jurisdictions

Tonga

- 7.41. Tonga provides for the forfeiture of all articles, goods or property.⁴²⁶

New Zealand

- 7.42. NZ's forfeiture provision better defines what exactly can be forfeited. For example, the court in NZ may order that any money received as a result of drug dealing shall also be forfeited.⁴²⁷ Furthermore, the court may order that any motor vehicle, aircraft, or ship or boat or other vessel owned by the convicted drug offender also be forfeited.⁴²⁸

New South Wales

- 7.43. In NSW, a court may order that any article (other than a prohibited plant or prohibited drug) shall be forfeited and destroyed or otherwise disposed of.⁴²⁹ Furthermore, any money, documents or firearms seized in relation to the offence will also be forfeited.⁴³⁰ A police officer may seize and carry away any thing that may reasonably be suspected to be liable to forfeiture.⁴³¹

⁴²³ *Police Powers Act 2007* (Samoa), s 30.

⁴²⁴ *Proceeds of Crime Act 2007* (Samoa), s

⁴²⁵ *Police Powers Act 2007* (Samoa) s 23.

⁴²⁶ *Illicit Drugs Control Act 2003* (Tonga) s 33.

⁴²⁷ *Misuse of Drugs Act 1975* (New Zealand) s 32(3).

⁴²⁸ *Misuse of Drugs Act 1975* (New Zealand) s 32(4).

⁴²⁹ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 35.

⁴³⁰ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZC(1).

⁴³¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZC (3).

SUBMISSIONS

Accordingly, the Commission sought submissions on whether forfeiture provisions should be clarified.

- 7.44. Majority of the submitters agreed that ‘article’ should be defined under the law to specify items that should be forfeited.⁴³²Members of the Judiciary noted that the whole provision relating to forfeiture needs to be clarified. Any forfeiture provision should be able to clarify what article means, what can be forfeited, and circumstances articles can be forfeited among others. According to MOP, this will help clarify matters that should and could be forfeited by police when conducting raids for example, including goods and property that are used to manufacture meth or in dealing with drugs.
- 7.45. Alii ma Faipule from Savaii and Upolu also noted that money earned from drugs should also be forfeited and should not be claimed as clean money.

COMMISSION’S VIEW

- 7.46. The Commission considers that forfeiture provisions should be clarified under the new drugs framework. Consistent with **Recommendation 9**, amended forfeiture provisions should provide matters that could be forfeited including substances, articles, goods, proceeds and property. This is consistent with the majority view and will also provide further clarity as to what exactly can be forfeiture. Provisions from other relevant laws including the *Police Powers Act 2007* and the *Proceeds of Crimes Act 2007* should be replicated where necessary for consistency. The laws of Tonga, NZ and NSW can be used as guidance.

RECOMMENDATION 46: The forfeiture provisions under the new drugs framework should cover matters which include substances, articles, goods, property and proceeds of drug-related crime. Provisions from other relevant laws including the *Police Powers Act 2007* and the *Proceeds of Crimes Act 2007* should be replicated where necessary for consistency. The laws of Tonga, New Zealand’s and New South Wales can be used as guidance.

⁴³²Consultation with members of the Samoa’s Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

II. Drug Testing

a) Drug testing for prosecution and court purposes

7.47. In Samoa, drug testing is only done if the accused pleads not guilty to the alleged drug offence.⁴³³ The onus therefore is on the prosecution to prove that the particular substance found was in fact an illegal drug, and MOP bears the cost of the test. Preliminary consultations by the Commission in 2016 and 2017 revealed that SROS began testing for illegal substances (methamphetamine and cannabis) in 2013. Other types of drugs and precursor substances are currently not being tested. SROS does not carry out biological testing (e.g. urine samples) for those suspected of taking drugs. For cannabis testing, tests are mainly carried out on finished products which includes oils and leaves. For methamphetamine, utensils such as straws and pipes are mainly tested for traces of such drugs, and 90% have found to be positive.⁴³⁴

7.48. Some of the issues that were revealed during preliminary consultations included:

- SROS revealed the ongoing struggle with lack of resources and funding to train staff to carry out testing.
- MOP stated that the process on drug testing is very costly especially in cases when the testing is deemed unnecessary in the face of a clear and obvious sample.

b) Workplace drug testing and screening

7.49. Currently, drug testing does not exist in the workplace. It is important to consider this issue where drug use could negatively impact on an employee's ability to perform the requirements of their role and endanger the safety of others.⁴³⁵ Accordingly, some of the issues that were raised from preliminary consultations in relation to workplace testing include:

- the possibility to carry out drug testing in the pre-employment stage to avoid hiring individuals who are drug addicts.
- carrying out post-incident drug testing and testing for a reasonable suspicion. A company policy should define the factors that may give rise to a reasonable suspicion such as an employee's appearance, speech and behavior; and
- conducting random testing for people who work in safety-sensitive positions.

Comparable jurisdictions

New Zealand

7.50. Drug testing in NZ is more advanced which covers biological testing, using urine, breath, hair, saliva or sweat. Such testing can be done by various organizations which include

⁴³³ Consultation of Samoa Research Organization (Samoa Research Organization Main Office, Vailima, 30 August 2017).

⁴³⁴ Consultation of Samoa Research Organization (Samoa Research Organization Main Office, Vailima, 30 August 2017).

⁴³⁵ National Safety Council, "The importance of workplace drug testing" (2014)

<<http://www.nsc.org/RxDrugOverdoseDocuments/RxKit/EMP-Importance-of-Workplace-Drug-Testing.pdf>>.

workplaces, sporting bodies, and drug treatment services as well as in judicial settings to inform legal decisions such as in custody cases.⁴³⁶

New South Wales

- 7.51. In NSW, only suspected substances are referred for testing or analysis if the quantity is not less than the trafficable quantity for the drug or if the identity of the substance is in dispute. For example, trafficable quantities of cannabis must exceed 33 grams while methamphetamine must exceed 3 grams.⁴³⁷ However, for quantities less than the threshold or identification not disputed, then it can only be tested by presumptive methods. The unique approach taken to test suspected prohibited plants (e.g. cannabis) involves such matters to be physically analyzed by a botanist or other qualified or trained person⁴³⁸ appointed ('authorized persons') by the Director General.⁴³⁹ This may include, for example, specifically trained police officers. Subsequently, the issuing of identification certificates signed by 'appointed persons' which identify and quantify a plant as prima facie evidence is used for court purposes.⁴⁴⁰

SUBMISSIONS

The Commission sought submissions on resources required to improve drug testing in Samoa and whether Samoa should follow the approaches in NSW and NZ. Also whether testing in Samoa be extended to include biological testing and mandatory drug testing in the workplace for certain professions.

Additional resources are required to improve testing

- 7.52. Some submissions revealed that it would be vital that a proper testing facility or system is in place to effectively test for drugs.⁴⁴¹ Samoa Nursing Association provided that such lab can be set up within the MOP.
- 7.53. In addition, the need for qualified and trained personnel to carry out testing was also highlighted by some submitters.⁴⁴² At the time of consultations, SROS had four qualified analysts who can analyze cannabis and two can test methamphetamine and other hard drugs.
- 7.54. Equipment for initial testing of drug or narcotics in the body of the accused e.g. saliva swipes as well as a vehicle to assist in surveillance and conducting drug investigations were also raised to be crucial and will greatly assist law enforcement agencies.⁴⁴³

⁴³⁶New Zealand Drug Foundation, *Effective Drug Testing* (March 2017) New Zealand Drug Foundation <<https://www.drugfoundation.org.nz/drug-information/drug-testing>>.

⁴³⁷*Drug Misuse and Trafficking Act 1985* (New South Wales) sch 1.

⁴³⁸*Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales) s 12.

⁴³⁹*Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales) s 12.

⁴⁴⁰*Drugs Misuse and Trafficking Act 1985* (New South Wales) s 43(3)-(6).

⁴⁴¹Consultation of the Mental Health Unit (Mental Health Unit Main Office, Moto'otua Hospital, 22 August 2017).

⁴⁴²Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁴⁴³Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, 29 August 2017).

- 7.55. More funding to purchase equipment and resources such as the drugs kits that customs border officers use to determine type of drugs confiscated at designated ports is also needed.⁴⁴⁴ Members of the Judiciary highlighted that both SROS and MOH should fund such equipment to carry out these tests because their work correlate.⁴⁴⁵ To reduce costs, some submitters also suggested that the perpetrator contribute to the cost of testing especially in cases where the defendants disputes the sample.⁴⁴⁶ However, some disagreed providing that this would be unjustifiably excessive hardship on defendants.⁴⁴⁷

Drug Testing Procedure

- 7.56. SROS noted in consultations that there is no standard procedure. Testing largely depends on the questions or the information requested by the court. For example, the court may sometimes request for the custody of the sample. SROS however, has a procedures manual which contains forms and procedures relating to testing including labels and chain of custody procedures e.g. police have to sign statement when they receive it etc. in relation to testing methods. SROS follows methods and procedures adopted from United Nations Office on Drugs and Crime.
- 7.57. Irrespective of this, one submitter provided that methods of testing need to be improved.⁴⁴⁸ This can include saliva swap testing, urine and blood testing. Having different methods of testing will help SROS and in the case of MHU, identify whether patients have been under the influence of drugs. This is because some of those who were admitted to the MHU do not admit that they have used any drugs, or some are not able to speak with the right frame of mind with some of them being unwell or delusional at the time of admission.⁴⁴⁹

Adopt a similar approach to Australia and NZ to reduce costs in testing

- 7.58. According to SROS, MOP used to send drugs overseas for testing. The process was long and it was very costly to send drugs to NZ. As a result, the Narcotics Laboratory was set up for drug testing. During the initial stages of its development, SROS only conducted tests for marijuana and upon the discovery of methamphetamine SROS, OAG and MOP worked to organize for local scientists to be sent overseas to study and come back to be qualified in testing for these specific drugs. SROS does qualitative analysis and is working towards establishing a programme where they will be able to analyze data to put weight on penalties depending on the amount of drug in the drug testing process. SROS is also doing quantitative research to quantify the problem.

⁴⁴⁴Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, 29 August 2017).

⁴⁴⁵Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁴⁴⁶ Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁴⁴⁷Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁴⁸ Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁴⁴⁹Consultation of the Mental Health Unit (Mental Health Unit Main Office, Moto'otua Hospital, 22 August 2017).

- 7.59. SROS is also able to test the purity of products. For cannabis, the only thing SROS cannot identify is branches without leaves. A botanist/specialist would have to do that, same as ESR in NZ. SROS is able to test seeds and oils. Botanical and chemical compounds are the two components SROS is able to test. However SROS has not received any of these samples to test anyway.
- 7.60. Further, the only time SROS has sent drugs overseas to test is when MOP disagreed with the finding. In such cases MOP suffers the consequence of expensive testing. Therefore, at this stage with the establishment of SROS, costs have been reduced by 50% apart from cases where MOP sends to NZ. The process is also timely in that results can be ascertained within 3-7 days. However, there have been situations where delay may be incurred and this is especially in cases where MOP for instance bring the sample on Friday and court case is on Monday. It is impossible to test the sample in this time frame without paying an urgent fee.
- 7.61. Irrespective of the above, majority of the submitters provided that Samoa should adopt a similar approach to Australia and NZ to reduce cost for testing.⁴⁵⁰ However, it was acknowledged that the issues relating to funding, personnel, expertise and resources would still be major challenges. If Samoa does adopt a similar approach to Australia and NZ, it would need more trained individuals that can carry out this job. Not only that, established funding is needed to ensure Samoa has the facilities and resources to do this.⁴⁵¹
- 7.62. Others suggested that because of the expense, it may be appropriate for the time being to carry out a trial on a smaller scale to assess its effectiveness.⁴⁵²

'Appointed person' for the purposes of testing and approving prohibited plants and drugs

- 7.63. In order to test and approve prohibited plants and drugs, submitters suggested that authorized persons including those from the Ministry of Agriculture and Fisheries and SROS should be appointed for such purposes.⁴⁵³
- 7.64. Other submitters stated that authorized officers for purposes of testing and approving prohibited plants and drugs should be similar to appointed persons defined by the *Drugs Misuse and Trafficking Act 1985* of NSW.⁴⁵⁴ It can be a specifically trained police officer(s)

⁴⁵⁰Consultation with the Ministry of Police (Ministry of Police Building, Apia, 28 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, Samoa, 29 August 2017).

⁴⁵¹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁵² Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

⁴⁵³Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁴⁵⁴ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017;

that is appointed by the Police Commissioner to deal with the purpose of testing and approving prohibited plants and drugs.⁴⁵⁵ Two submitters suggested that whoever is appointed as an authorized officers under the Act should be trained and should be someone with qualification and experience.⁴⁵⁶

Testing be extended to include testing of biological samples

- 7.65. Majority of the submissions received by the Commission as to whether Samoa should carry out biological testing were in the affirmative.⁴⁵⁷ The Judiciary noted that biological testing would be ideal for Samoa to ensure that participants undergoing drugs rehabilitative programmes do not continue or resort back to taking drugs. In NZ, this is carried out on a random basis.⁴⁵⁸ Including biological samples will assist in identifying traces of drugs in the body as it is done in NZ, whether it be point of collection testing or laboratory.⁴⁵⁹ Furthermore, if Samoa has saliva swipe and urine testing it will make the investigation process more efficient with evidence being gathered on the spot saving lab costs. Cases will also progress smoothly before the court eliminating any backlog that the Court currently faces.⁴⁶⁰
- 7.66. However, the Judiciary also acknowledged the challenge of the lack of capacity and resources. Therefore, to make this a reality there needs to be some training for scientists to carry out these tests, and/or recruit experts from overseas to come and train local people. Moreover, to assist with funding, one submitter recommended for SROS and MOH to work and pull together their resources to fund such initiatives.⁴⁶¹
- 7.67. SROS revealed that testing is carried out for finished products. The next step is to test biological samples. The ADC has also requested this too. Biological testing is still being discussed with the Institute of Environmental Science and Research (**ESR**) in NZ. The problem is the funding. ESR has already agreed to help. SROS aims to have this done by

⁴⁵⁵Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁵⁶Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁴⁵⁷Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Consultation with the Ministry of Police, (Ministry of Police Main Office, Beach Road, Apia, 28 August 2017); Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

⁴⁵⁸Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁴⁵⁹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁶⁰Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

⁴⁶¹Consultation with the Samoa Victim Support Group (Samoa Victim Support Group Headquarters, Apia, 14 September 2017).

the end of 2017. It is also being discussed as to whether local scientists be sent overseas, or ask ESR trainers to come to Samoa to do the training here.

Mandatory drug testing and/or screening in the workplace for certain professions

- 7.68. Most of those who were consulted supported having mandatory drug testing and/or screening in the workplace for certain professions subject to funding and available resources.⁴⁶² This is very critical especially in emergency services and would also benefit employers.⁴⁶³ Moreover, MJCA stated that this is one of the important areas of focus of the Prime Minister and now is the time to signify this so that every ministry is responsible.⁴⁶⁴ Having regular monitoring and checks would ensure the effectiveness of the legislation and maintain the safety of everyone.⁴⁶⁵
- 7.69. Possible workplaces include MOP, Fire & Emergency Services Authority (**FESA**), TCU, Customs, Immigration and Quarantine, SROS, MOH, Samoa Returnees Charitable Trust (**SRCT**), pharmacies and all other institutions who deal with drugs. One submitter further noted that if Samoa is going to allow people to use drugs especially in controlled situations e.g. medicinal cannabis, it is necessary that these professions (who regularly deal with safety and heavy machinery) are screened and randomly tested for drugs.⁴⁶⁶ At the moment, MOP is working with SROS on this.
- 7.70. Alii and Faipule from both Upolu and Savaii were in favor of workplace testing and/or screening. They further noted that those who should be tested should not be limited to specific professions. Random drugs testing should be carried out for all public servants in order to detect any drug users as it is possible that there are. Also, prisoners who have been released back into the community should also be regularly tested for drugs to see if they are back on drugs or not.
- 7.71. One submitter provided that if biological sample testing is introduced there needs to be strict procedural safeguards to ensure samples collected are not compromised and rules around collection of bio samples need to be clear (who collects, when, in what circumstances etc.).⁴⁶⁷

⁴⁶²Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FMFM II, Matagalalua, 7 August 2017);

Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017

⁴⁶³Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁴⁶⁴Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

⁴⁶⁵Consultation with the Ministry of Education, Sports and Culture (Education, Sports and Culture Headquarters, Malifa, 8 August 2017).

⁴⁶⁶Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁴⁶⁷ Individual Submission to Samoa Law Reform Commission, *Continuing Legal Education Hotspot Seminar on the Drugs Reform (Review of the Narcotics Act 1967)*, 31 July 2017.

COMMISSION'S VIEW

- 7.72. To improve testing requirements in Samoa, the Commission notes from submissions that the following should be in place:
- a proper facility for testing,
 - the need for qualified and trained personnel to carry out testing,
 - ongoing training of current staff at SROS and relevant agencies (MOP, MOH and Customs)
 - need to pull funds and resources together to purchase the relevant equipment.
- 7.73. The Commission also notes that the methods of testing need to be improved, particularly biological testing noting cost constraints associated with this method of testing. However, SROS, MOP and MOH should pull their resources and funds together if biological testing is to occur in Samoa. Also, the ongoing discussion between SROS and ESR must be reinforced and supported by funding to ensure local scientists are trained locally to carry out biological testing to reduce cost of sending them overseas.
- 7.74. Furthermore, the Commission notes that SROS testing is limited and it does not cover other testing conducted in NZ (point of contact testing) and NSW (presumptive method). The NSW's presumptive method approach is useful for Samoa as it would significantly reduce cost associated with forensic testing in a large number of cases. However, there are cost and resource implications with this method. Therefore, the Commission strongly considers that funding, expertise and resources should be properly invested (established funding) to train individuals to use the presumptive methods adopted by NSW. Alternatively, relevant officers from Ministry of Agriculture & Fisheries can be utilized as botanists or police officers can be trained for the purpose of testing and approving prohibited plants and drugs. In the meantime, the Commission suggests that trials on a smaller scale can be carried out by SROS for other methods of testing.
- 7.75. Consistent with submissions, the Commission is of the view that mandatory testing and/or screening would be useful to deter drug abuse and track drug offenders in some government agencies, such as MOP, FESA, TCU, Customs, Immigration and Quarantine, SROS and MOH. However, resource constraints must be noted. Relevant industries and professions should have in place guidelines to ensure that mandatory testing and/or screening of employees are properly and reasonably carried out.

RECOMMENDATION 47: To improve drug testing in Samoa, the following should be considered noting resource constraints and limited funding:

- a proper facility for testing.
- the need for qualified and trained personnel to carry out testing.
- ongoing training of current staff at Scientific Research Organization of Samoa and relevant agencies (Ministry of Police, Ministry of Health and Customs).
- need to pull funds and resources together to purchase the relevant equipment.

RECOMMENDATION 48: Biological testing should be considered for Samoa. Ministry of Police, Ministry of Health and Scientific Research Organization of Samoa should pull their resources and funds together to accommodate biological testing.

RECOMMENDATION 49: Presumptive methods of testing similar to New South Wales should be considered. In the meantime, Scientific Research Organization of Samoa can carry out trials to assess the feasibility of this method. Furthermore, relevant officers from Ministry of Agriculture can be trained and utilized as botanists for the purpose of testing and approving prohibited plants and drugs similar to New South Wales. Alternatively, police officers can be trained for the same purpose. Adequate funding should be allocated for such methods to be trialed and implemented.

RECOMMENDATION 50: Mandatory testing and screening should be carried out for certain industries and professions, namely, Fire & Emergency Services Authority, Ministry of Police, Ministry of Health, Samoa Returnees Charitable Trust, Customs, Scientific Research Organization of Samoa, Electric Power Corporation, Immigration and Quarantine, noting resources constraints. Relevant industries and professions should have in place guidelines to ensure that mandatory testing of employees are properly and reasonably carried out.

c) Designated Laboratories

- 7.76. There is no specific provision regarding designated laboratories for testing and analysis under Samoa's Narcotics Act. A narcotics laboratory was established in 2013 as part of the Government's Law and Justice Sector Plan to test drugs for evidence in prosecutions.⁴⁶⁸ The Commission notes that the *Police Powers Act 2007* provides that the relevant Minister may approve a laboratory in Samoa as an approved testing facility for forensic samples.⁴⁶⁹ Furthermore, the *Police Powers Act 2007* also contains provisions relating to processes and procedures for testing and analysis of illegal drugs under Samoa's Narcotics Act.⁴⁷⁰ The Commission queries whether there is a need to replicate the designated laboratory provisions from the *Police Powers Act 2007* in Samoa's Narcotics Act, to reflect current practice and for clarity.
- 7.77. Both New Zealand and Tonga have provisions relating to approved and designated laboratories for the testing, analysis, storage and destruction of both controlled and illicit drugs.⁴⁷¹ The Minister of Health in both New Zealand and Tonga is responsible by notice in the *Gazette*, to approve any such laboratory for the purposes of their respective legislation.⁴⁷²

SUBMISSIONS

The Commission sought submissions on whether a new drugs framework should specify designated laboratories for testing (for example SROS)? If so;

(a) should the Act specify how a laboratory is approved replicating what is already contained under the Police Powers Act 2007?

⁴⁶⁸Preliminary Consultations with the Scientific Research Organization of Samoa (Vailima, Samoa, 22 June 2016). See also Samoa Law and Justice Sector, *Narcotics Testing Laboratory* (13 August 2013) <http://www.samoaljs.ws/english/index.php?option=com_content&view=article&id=174:narcotics-testing-laboratory&catid=59:current-projects&Itemid=95>.

⁴⁶⁹*Drugs Act 1967* (Samoa) s 27.

⁴⁷⁰*Drugs Act 1967* (Samoa) pt 5.

⁴⁷¹*Misuse of Drugs Act 1975* (New Zealand) s 5A; *Illicit Drugs Control 2003* (Tonga) s 8.

⁴⁷²*Misuse of Drugs Act 1975* (New Zealand) s 5A(1); *Illicit Drugs Control 2003* (Tonga) s 8.

(b) should such designation permit testing, analysis, storage and destruction of both controlled and illicit drugs? (28)

Designated labs

7.78. The common view from submissions was that Samoa's Narcotics Act should designate and specify how a laboratory is approved and that such designation should permit testing, analysis, storage and destruction of both controlled and illicit drugs.⁴⁷³ This would be appropriate as it will monitor what is being destroyed.⁴⁷⁴ Furthermore, having this in the law will resolve issues of delay and expense. For example, Customs raised that sometimes it usually takes a while to get test results from SROS. This is a major impediment for filing drug related charges because results can take a while to be obtained. Also sometimes SROS themselves are unsure of when the results will be ready. MOP noted that provisions to this effect contained in the *Police Powers Act 2007* should be replicated.

COMMISSION'S VIEW

7.79. Samoa's Narcotics Act is outdated and did not envisage to establish or designate laboratories in Samoa. However, in practice the current Narcotics Laboratory located in Vailima carries out drug testing. NZ and Tonga have provisions relating to approved and designated laboratories for the testing, analysis, storage and destruction of both controlled and illicit drugs. This is also the case under the *Police Powers Act 2007* of Samoa for forensic testing. Consistent with submissions, the Commission considers that a new drugs framework should replicate provisions under the *Police Powers Act 2007* which will not only establish or designate laboratories but set out other relevant provisions. The law should designate the current Narcotics Lab at Vailima as the designated laboratory for such purposes relating to drug testing.

RECOMMENDATION 51: The new drugs framework should replicate provisions under the *Police Powers Act 2007* relating to designating drug laboratory for testing (i.e. the Narcotics Lab at Vailima) which will not only establish or designate laboratories for testing but set out other relevant provisions.

III. Monitoring

a) Specific monitoring powers of police

7.80. The *Police Powers Act 2007* provides monitoring powers of the Samoan Police were they can be authorised to carry out surveillance operations for investigations subject to Court approval.⁴⁷⁵ Surveillance warrants to allow police to gather information and evidence that

⁴⁷³Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁷⁴Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁴⁷⁵ *Police Powers Act 2007* (Samoa), Long title and s 4.

will assist them in their fight against organised crimes can therefore be issued under such Act.⁴⁷⁶

- 7.81. In Tonga, police officers have similar powers as the Samoan Police's surveillance operations powers to carry out covert monitoring.⁴⁷⁷ Controlled delivery which is not covered under Samoa's laws is also used in Tonga by police officers. This is used when a consignment of illicit drugs is detected and allowed to go forward under the control and surveillance of law enforcement officers to secure evidence against organizers of illicit drug trafficking.⁴⁷⁸ The types of activities which may be undertaken in the course of and for the purposes of a controlled delivery include among others:⁴⁷⁹
- (a) allowing any craft or vehicle to enter, leave or transit through Tonga;
 - (b) allowing delivery of any illicit drug, controlled chemical or controlled equipment, in or on the craft or vehicle; or property suspected to be involved directly or indirectly with any offence under this Act;
 - (c) using such force as may be reasonable in the circumstances to enter and search the craft or vehicle;
 - (d) placing a tracking device on board the craft or vehicle; or
 - (e) allowing any person who has possession, custody or control of the illicit drug, controlled chemical or controlled equipment to enter, leave or transit through Tonga.

b) Monitoring offenders (pre and post release) and deportees

- 7.82. In relation to monitoring *offenders*, community justice supervisors work closely with the courts to help monitor and reintegrate offenders back into society. For example, the ADC through its rehabilitation programmes sentence drug offenders to community work where the pastor or a matai from the offender's village monitors his/her progress as well as ensure that he/she complies with the conditions of his/her sentence.
- 7.83. However, *prisoners* of drug offences who have served their time and are released back into the community are not monitored. The absence of a monitoring system for offenders post-release, irrespective of serving time was one of the issues expressed during

⁴⁷⁶Police Powers Act 2007 (Samoa) s 3A.

⁴⁷⁷Illicit Drug Control Act 2003 (Tonga) ss 9-10.

⁴⁷⁸ The controlled delivery technique has been proved effective in some countries in identifying and bringing to justice principals, organizers and financiers of the illegal drug traffic. The controlled delivery technique is compatible with the requirements of the *Single Convention on Narcotic Drugs 1961*, but its application depends on the particular legal and administrative provisions in the countries concerned. The technique merits wider use, and does not involve any element of entrapment. It has been used most effectively when illegal drugs are discovered in unaccompanied freight consignments or in the post. Controlled deliveries involving a courier present special difficulties and should be treated with caution. In a controlled delivery, security of information is of paramount importance as is the appropriate knowledge and co-operation of the law enforcement authorities. Such co-operation is essential between the country in which the initial detection of drugs has occurred, transit countries and the country of final destination. A number of important detections have been made as a result of speedy international co-operation of this type between law enforcement authorities. See, Cutting PD, *The technique of controlled delivery as a weapon in dealing with illicit traffic in narcotic drugs and psychotropic* (1983) National Centre for Biotechnical Information <<https://www.ncbi.nlm.nih.gov/pubmed/6563921>>.

⁴⁷⁹Illicit Drug Control Act 2003 (Tonga) s 11.

preliminary consultations. This is also the case with deportees involved in drug-related offences overseas. Currently, registration of deportees with the SRCT is voluntary. Those deportees who have not registered cannot be monitored.

c) Enforcement role of relevant local and regional agencies

7.84. Irrespective of there being no specific unit to monitor drug-offending locally, Police (and Customs) still work closely with regional and international agencies to monitor criminal activities. For example, the Pacific Transnational Crime Coordination Centre (PTCCC) assists local Police and other enforcement agencies by providing information about trends of illegal-drug activities in the region. Samoa also has its own TCU which uses high level local and global intelligence networks to detect and prevent transnational criminal activities, including drug-trafficking. Furthermore, Samoa's Customs also work with overseas agencies to assist with controlling the intercepting of illegal products into Samoa including drugs.

d) Monitoring initiatives and programmes carried out by MOP

7.85. As mentioned above, the Samoan Police work closely with the likes of TCU and the PTCCC to monitor drug-related activities in Samoa. Apart from the raids that police carry out as well as information received from people reporting drug related activities, MOP do not necessarily have specific programmes dedicated specifically to monitoring drug offending locally. MOP rely heavily on the public to report suspected cases of illegal drug-dealing and cultivation of prohibited plants for instance.⁴⁸⁰

7.86. In NZ, police officers, health professionals and border security personnel are all involved in monitoring drug-related activities. For example, health professionals work closely with NZ police and other agencies locally and nationally to report any instances of drug misuse.⁴⁸¹ There is also intensive monitoring by the NZ Police of illegal drug activities both online and in the communities.⁴⁸²

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should include covert monitoring or controlled delivery; what resources MOP needs to conduct surveillance operations and how monitoring of offences and offenders can be improved.

Specific monitoring powers

7.87. The majority of the submissions were in favour of specifying in Samoa's Narcotics Act powers that are not currently available to police in drug specific situations (e.g. covert

⁴⁸⁰ Consultation with the Ministry of Police (Ministry of Police Main Office, Apia, 28 August 2017).

⁴⁸¹ Ministry of Health, 'Drug Abuse containment' *Ministry of Health ManatuHauora* <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/drug-abuse-containment>>.

⁴⁸² Kristy Lawrence, 'Police are monitoring online sites for illegal activity' (25 October 2015) *Stuff* <<http://www.stuff.co.nz/manawatu-standard/news/73192815/police-are-monitoring-online-sites-for-illegal-activity>>; New Zealand Police, *Illicit Drug Strategy to 2010* <https://www.police.govt.nz/resources/2009/NZ_Police_Illicit_Drug_Strategy_2009.pdf>; New Zealand Police, *Prevention First-National Operating Strategy 2011-2015* (2011). <<http://www.police.govt.nz/sites/default/files/publications/prevention-first-strategy-2011-2015.pdf>>.

monitoring or controlled delivery) similar to Tonga.⁴⁸³ This will help police to effectively deal with specific drug related offences.⁴⁸⁴ In contrast, one submitter provided that if the powers are already contained in the *Police Powers Act 2007*, then such powers are not required.⁴⁸⁵

Monitoring offenders (pre and post release) and deportees

- 7.88. Alii ma Faipule from Savaii and Upolu noted that the village plays a role in monitoring offenders. The MJCA and the courts already work with the villages to monitor offenders released for community work.
- 7.89. In relation to *deportees*, SRCT submitted that it already carries out ‘follows up’ with deportees to get them to register. However, because of the lack of enforcement powers as well as human rights of deportees, efforts to have deportees mandatorily register have not been so fruitful. SRCT expressed that the issue of mandatory registration has been a recurring one amongst members of the board. Members of the Judiciary raised whether a register recording a deportee’s information would be conducive to enforcement agencies enforcement efforts. The SRCT provided that it is exploring the idea of setting up coordinators within villages to assist with monitoring. Having this reporting mechanism in place will mean better dialogue. Furthermore, MPMC provided that Samoa currently has a policy on returnees and/or deportees with Cabinet that addresses this issue including the monitoring of deportees.

Strengthening monitoring enforcement efforts

- 7.90. To further assist with law enforcement monitoring efforts of Police and Customs, some of the measures that were suggested by submitters included:
- i) Establish a specific and independent Unit dedicated solely to fight drug-related crimes noting the availability of resources.⁴⁸⁶
 - ii) Capacity building of law enforcement officers. Upskill staff with the correct procedure in dealing with drug-related matters.⁴⁸⁷

⁴⁸³Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁴⁸⁴Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁴⁸⁵Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁸⁶Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

⁴⁸⁷Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

- iii) Funding and resources. More resources are required such as cameras to assist in taking evidences at locations of cases, communication Interception Devices and surveillance gadgets.⁴⁸⁸
- iv) Collaborate with the villages with regard to monitoring of the offenders once they are released from prison.⁴⁸⁹ It was suggested that a partnership between the Government and the village community will be needed to assist ex-offenders.⁴⁹⁰ MOP provided that the draft Crime Prevention Strategy does identify the collaborative work of all members of the public, ministries, non-governmental organisations, educational institutions, private sectors, churches, Village Fono, youth groups, aoga Aso Sa in the effort to combat crimes in Samoa.
- v) It was also suggested that having post sentence drug rehabilitation schemes would be essential to further assist with curbing reoffending.⁴⁹¹
- vi) Improve reporting and information gathering.⁴⁹² Having a database to record drug users and abusers would be beneficial for Samoa and would greatly assist the work of the MOP. MOP provided that there is currently the Auafamau where the whole of the Law and Justice Sector can connect to and such information can be monitored thoroughly.

COMMISSION'S VIEW

a) *Specific monitoring powers for police*

7.91. Carrying out surveillance operations and covert monitoring will assist law enforcement officers especially police, to obtain and gather information and evidence on drug-related crime. The Police Powers Act 2007 already contains provisions of this nature which the Commission considers should be replicated under the new drugs framework for consistency. However, the law(s) in Samoa does not consider other specific monitoring powers such as controlled delivery as the case in Tonga. Consistent with the majority view, the Commission considers that a specific provision relating to controlled delivery should be covered under the new drugs framework. Such provision should contain situations when such method is used as well as activities that can be undertaken for the purposes of controlled delivery. The law of Tonga can be used as guidance. Furthermore, guidelines as to how to execute such power should also be developed and implemented to assist police officers carry out their work.

⁴⁸⁸Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁴⁸⁹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁴⁹⁰Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

⁴⁹¹Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, Samoa, 29 August 2017).

⁴⁹²Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

b) Monitoring offenders

7.92. In relation to monitoring of offenders, the courts and relevant ministries have an existing relationship with the village communities where villages help with supervising offenders when they are sentenced to community work. Relevant laws including the *Community Justice Act 2008* as well as the *Young Offenders Act 2007* already place importance on the role of the community regarding the monitoring of offenders who are undergoing rehabilitation programmes of the ADC. However, offenders who have served their time and have been released back into society are not monitored.

c) Monitoring deportees

7.93. Deportees are also not monitored given that registration is voluntary. The majority view expressed concern about the impact this would pose on communities. Likewise Judiciary members also emphasized the importance of monitoring deportees especially to ensure the safety of society. Currently, the government has already developed a Policy on deportees but have yet to implement it which the Commission has been informed would cover monitoring of deportees in Samoa. The Commission considers it important that the implementation of such Policy is prioritized and be in effect as soon as possible. Once the Policy is rolled out, it should be accompanied by training for staff, with awareness raising programmes developed for the local community. This should include particular focus on their roles regarding effective monitoring of deportees in communities.

d) Monitoring assistance

7.94. Moreover, in relation to monitoring generally, law enforcement agencies continue to face ongoing challenges relating to resources and funding among others. Currently, MOP's Criminal Investigation Department carries out work to combat drug-related issues and offences in Samoa. Furthermore, MOP receives assistance from bodies including the TCU and PTCCC regarding information on criminal activities both locally and in the region. Such assistance has greatly guided the monitoring work of the Samoan Police. This is also the case with Customs with overseas agencies assisting with combating issues of illegal substance being intercepted and smuggled into Samoa. Irrespective of such assistance and consistent with public submissions, the Commission considers that it is crucial for Samoa to have a standalone Unit with the resources and trained personnel to deal with illegal drug cases. This will ensure that drug related activities are adequately dealt with and that drug-related harm as reflected in Chapter 1 are addressed. In addition, resources and training of personnel is necessary and required.

e) Monitoring programmes

7.95. Monitoring programmes should also be developed and further improved to ensure that monitoring efforts are sufficient to tackle drug cases in Samoa. It is vital that such programmes should include collaboration with the village community as well as among government ministries themselves especially in relation to information sharing. Programmes carried out in NZ and Australia could be adopted and adapted noting the availability of resources and funding.

RECOMMENDATION 52: A specific provision relating to controlled delivery should be covered under the new drugs framework in addition to the power of covert monitoring and carrying out surveillance operations. Such provision should contain situations when such method is

used as well as activities that can be undertaken in the course of it. The law of Tonga can be used as guidance.

RECOMMENDATION 53: Monitoring of offenders who undergo community work as ordered by the courts should be further strengthened and reinforced. Furthermore, this should also extend to cover prisoners who have been released after serving their time in prison. The Samoa Prisons and Corrections Services should work collaboratively with village communities to achieve this goal.

RECOMMENDATION 54: The implementation of the newly developed Deportees' Policy by Ministry of the Prime Minister and Cabinet should be prioritized and be in effect as soon as possible. Once the Policy is rolled out, it should be accompanied by training of staff, with awareness raising programmes developed for the local community. This should include particular focus on their roles regarding effective monitoring of deportees in communities.

RECOMMENDATION 55: A standalone Drugs Unit with the necessary resources and trained personnel should be established within the Ministry of Police to deal with illegal drugs cases.

RECOMMENDATION 56: Effective monitoring programmes should be developed to ensure that monitoring efforts are sufficient to tackle drug cases in Samoa. Programmes carried out in New Zealand and Australia could be adopted and adapted noting the availability of resources and funding.

IV. Evidentiary Matters

a) *Evidentiary provisions and chain of custody*

- 7.96. The Samoa Narcotics Act does not contain any specific provision pertaining to evidence. However, in practice, SROS carries out analysis and testing to identify whether drugs seized by police or customs are prohibited drugs which is then used as expert evidence in court proceedings.⁴⁹³ Furthermore, the Samoa Narcotics Act also does not have any provisions relating to chain of custody.
- 7.97. Accordingly, the *Drugs Act 1967* contains evidentiary provisions that permit certain persons to analyse samples and produce certificates as prima facie evidence in court proceedings.⁴⁹⁴ Such Act also contains some information on chain of custody of drug testing samples, for example how they are to be sealed, transported and packaged.⁴⁹⁵ These processes are important in preserving and protecting evidence particularly ensuring that evidence is not tampered with.
- 7.98. NZ has a specific provision dealing with evidence in drug related offences. In any proceeding, a certificate signed by an analyst⁴⁹⁶ detailing the test results for a controlled

⁴⁹³ Preliminary Consultations with the Scientific Research Organization of Samoa (Vailima, Samoa, 22 June 2016). See also Samoa Law and Justice Sector, *Narcotics Testing Laboratory* (13 August 2013).

⁴⁹⁴ *Drugs Act 1967* (Samoa) pt 6.

⁴⁹⁵ *Drugs Act 1967* (Samoa) pt 6.

⁴⁹⁶ This is defined to mean any person who is designated by the Minister by notice in the *Gazette* as the analyst in charge of an approved laboratory; or any person who works in an approved laboratory and who is

drug, precursor or prohibited plant shall be sufficient evidence until the contrary is proved.⁴⁹⁷ Furthermore, the certificate shall be admissible evidence.⁴⁹⁸ Both Tonga and NSW have similar provisions to NZ.⁴⁹⁹

b) *Tampering with evidence*

7.99. Samoa's Narcotics Act does not contain an offence to this effect. However, the *Police Service Regulation 2010* provides that any persons who "suppresses damages or tampers with or unlawfully destroys any official correspondence report, record or other document or thing or conceals or unlawfully holds any such thing" is guilty of an offence.⁵⁰⁰ This is read in conjunction with section 50 of the *Police Service Act 2009*. The *Crimes Act 2013* also has provisions relating to the accessory after the fact offence and evidence tampering. Such offence however, only implicates a person who tampers with evidence for the purpose of enabling another person, he or she believes to have been party to an offence.⁵⁰¹ Further, under the *Tax Information Exchange Act 2012*, a person who intentionally removes, tampers, or destroys information requested under this Act is guilty of an offence.

7.100. There were several cases before the court in the last year concerning the issue of evidence tampering. For example, in September 2016, a hearing for the firearm charges against a suspended police officer was re-scheduled due to disappearance of the gun forming part of the evidence of this hearing.⁵⁰² Another case concerned the Director of the National Prosecution Office where there were allegations of tampering with evidence in support of traffic charges brought against the Director.⁵⁰³

7.101. In Tonga, interfering with evidence is an offence. Therefore, any person who unlawfully interferes with, uses, takes or disposes of a seized substance or article or any sample thereof, or unlawfully interferes with or falsifies any evidence with the intention of

authorized, by the analyst in charge of that laboratory, to act as an analyst for the purposes of this Act, either generally or in any particular case: *Misuse of Drugs Act 1975* (New Zealand) s 31(1).

⁴⁹⁷*Misuse of Drugs Act 1975* (New Zealand) s 31(2).

⁴⁹⁸*Misuse of Drugs Act 1975* (New Zealand) s 31(3). The legislation stipulates that at least 7 days before the hearing at which the certificate is tendered, a copy of that certificate is served on the defendant and the defendant is at the same time informed in writing of whether the prosecution intends to call upon the analyst as a witness.

⁴⁹⁹*Drug Misuse and Trafficking Act 1985* (New South Wales) ss 42, 43.

⁵⁰⁰*Police Service Regulations 2010* (Samoa), regs. 31(1)(i) and 31(1)(n).

⁵⁰¹*Narcotics Act 1967* (Samoa) s. 37: Accessory after the fact- An accessory after the fact to an offence is a person who, knowing or believing any person to have been a party to an offence: (a) harbours or otherwise assists that person; or (b) tampers or otherwise interferes directly or indirectly with any evidence against him or her, – for the purpose of enabling that person to avoid arrest or conviction or escape from arrest.

⁵⁰² See Joyetter Feagaimaali'i-Luamanu, "Missing gun evidence in hearing of suspended Police officer", *Samoa Observer* (online ed.) 19 September 2017, <http://www.samoaoobserver.ws/en/19_09_2017/local/24509/Missing-gun-evidence-in-hearing-of-suspended-Police-officer.htm>. Accessed 19 December 2017.

⁵⁰³ See Radio NZ, "Inquiry to look into evidence tampering in Samoa", (online ed.) 27 February 2017, <<http://www.radionz.co.nz/international/pacific-news/325398/inquiry-to-look-into-evidence-tampering-in-samoa>>. Accessed 19 December 2017.

interfering with the course of justice, commits an offence and is liable to a term of imprisonment not exceeding 10 years.⁵⁰⁴

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should have evidentiary provisions and what are the associated challenges. It also asked whether the new drugs framework should have chain of custody provisions and offence relating to evidence tampering.

7.102. It was widely supported by submitters that a part dedicated to evidentiary matters pertaining specifically to drug related cases should be included in a new drugs framework using the *Drugs Act 1967* as guidance.⁵⁰⁵ This part would contain the current practice relating to evidence and should also cover matters concerning chain of custody. Having this in the law will assist enforcement agencies especially police and customs when providing evidence for prosecution purposes. Furthermore, having these provisions will resolve challenges currently faced by agencies who deal or handle drug-related evidence. For example,

- delays with the testing and processing of results hindering the preparation of charges;
- the lack of chain of custody procedures to regulate who should be responsible for handling evidence is also another problem;⁵⁰⁶
- competing claims when MOP and Customs pursue joint charges under the Samoa's Narcotics Act and the *Customs Act 2014* respectively;⁵⁰⁷ and
- the reliability and credibility of evidence to be submitted to the court.⁵⁰⁸

⁵⁰⁴*Illicit Control of Drugs Act 2003* (Tonga) s. 37.

⁵⁰⁵Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FiameMataafaFaumuinaMulinuu II, Matagalalua, 7 August 2017); Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

⁵⁰⁶Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; providing a chain of custody provision is necessary to 'lay a foundation' for the evidence in question, by showing the absence of alteration, substitution, or change of condition of the drugs detected and confiscated. Such provision(s) would also create some certainty of the procedure involved. This is because there have been instances where there are different opinions especially with police as from which set point should which ministry have custody. MOP provided that there is currently an evidence exhibit room that will hopefully solve the problem regarding evidence.

⁵⁰⁷Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

⁵⁰⁸Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017; It is important to obtain proper certification to confirm that the drugs seized are in fact illicit drugs prohibited under the Act, in order to prove their case beyond reasonable doubt. SROS is yet to be a level 3 laboratory and the Courts can only accept level 3 laboratory testing regarding evidence.

7.103. In relation to evidence tampering, the majority of stakeholders suggested that a new law should ensure that evidence tampering is dealt with.⁵⁰⁹ This will avoid any injustice and also for effective prosecution purposes.

COMMISSION'S VIEW

7.104. The importance of having *evidentiary provisions* including chain of custody, time for filing a charge sheet etc. is vital for the effective prosecution of drug-related cases that are brought before the court.

7.105. Chain of custody provisions for instance are important as they preserve and protect evidence being passed among agencies. Most importantly it ensures that evidence is not tampered with. The Commission therefore considers that chain of custody provisions ought to be included in the new drugs framework similar to those contained in the *Drugs Act 1967*. This will ensure clarity and consistency in the procedures and process used by relevant authorities when handling or dealing with evidence.

7.106. Furthermore, given the significance of evidence in prosecution and any other court matters, the Commission considers that provisions that regulate evidence tampering should be included in the new drugs framework consistent with majority of the submissions. The Commission notes that provisions contained in the *Police Service Regulations 2010* concerning interfering with evidence of any sort as well as the *Police Service Act 2009* should be considered and replicated for consistency and clarity. Provisions contained in other laws that touch on this issue such as the *Tax Information Exchange Act 2012*, as well as the *Crimes Act 2013* should also be considered to an extent that is appropriate and relevant for uniformity. The laws of Tonga can also be used as guidance.

RECOMMENDATION 57: The new drugs framework should contain provisions relating to evidentiary matters. There should also be chain of custody provisions in order to protect and govern the passing of evidence from one agency to another. The provisions under the *Drugs Act 1967* can be replicated or used as guidance for consistency and clarity.

RECOMMENDATION 58: The offence of tampering with evidence should also be included under the new drugs framework. Existing laws such as the *Police Service Regulations 2010* and the *Police Service Act 2008* should be replicated for consistency.

c) *Limitation period for filing charging document*

7.107. The Samoa Narcotics Act does not have a provision providing for the time for filing a charging document relating to a drug offence. The *Criminal Procedure Act 2016* however stipulates that a charging document may be filed within 21 working days.⁵¹⁰ However, it does not mention a limitation period in relation to the time between the offence being committed and the charge being brought. The *Customs Act 2014* also provides that any

⁵⁰⁹Consultation with the Ministry of Police (Ministry of Police Building, Apia, 28 August 2017); Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017); Consultation with the Ministry of Health (Ministry of Health Headquarters, Moto'otua Hospital, 17 August 2017).

⁵¹⁰*Criminal Procedure Act 2016* (Samoa), s 17(3).

information for an offence against the *Customs Act 2014* may be laid at any time within 7 years after the date of the offence.⁵¹¹

7.108. The NZ *Misuse of Drugs Act 1975* provides conditions for the filing of charging documents in respect of certain drug offences including dealing, cultivation or aiding offences against corresponding law of another country.⁵¹² The conditions provide that a charging document may be filed at any time and the limitation period in respect of any other offence against this Act, or any regulations made under it, ends 4 years after the date on which the offence was committed.⁵¹³ Furthermore, where a person is liable for an offence committed against the law of another country, a charging document may not be filed except with the Attorney General's consent.⁵¹⁴ Before deciding whether or not to give his or her consent the Attorney General may make such inquiries as he or she thinks fit.

SUBMISSIONS

The Commission sought submissions on whether the new drugs framework should include a provision stipulating a limitation period for filing a charge sheet between the offence being committed and the charge being brought, similar to NZ.

7.109. The common view was that a new proposed framework should include a limitation period (e.g. 5 years) for filing a charge sheet between the offence being committed and the charge being brought.⁵¹⁵ A fixed timeframe would achieve clarity and consistency in relation to the time period for filling a charging document for any offence. However, it was also cautioned that it is imperative that when determining an appropriate limitation period, focus should be placed on the time that it takes SROS to determine the identity of a suspected product.

7.110. Some noted that having a fixed limitation period is unreasonable given that there is normally a shortage of police to undertaking the filing of charges therefore flexibility is appropriate in Samoa's context.⁵¹⁶

COMMISSION'S VIEW

7.111. The majority of submitters emphasised the need to provide in the new drugs framework a limitation period for filing a charge sheet between the offence being committed and the charge being brought, similar to NZ. Having a reasonable timeframe will ensure greater clarity and consistency regarding the process and procedure. The Samoa Narcotics Act does not contain a provision stipulating a time for filling a charge. However, other laws

⁵¹¹*Customs Act 2014* (Samoa) s 263(3).

⁵¹²*Misuse of Drugs Act 1975* (New Zealand) ss 6, 9-10.

⁵¹³*Misuse of Drugs Act 1975* (New Zealand) s 28.

⁵¹⁴*Misuse of Drugs Act 1975* (New Zealand) s 28A.

⁵¹⁵Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

⁵¹⁶Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

including the *Criminal Procedure Act 2016* (21 days) and the *Customs Act 2014* (7 years) provide a limitation period for filing charges.

- 7.112. The law of NZ provides conditions for the filing of charging documents in respect of certain drug offences and stipulates the limitation period to be 4 years. Therefore, the Commission considers that to effectively deal with drug offences and for expediency, a provision regarding a limitation period for filing a charge sheet should be provided for under the new drugs framework. As a matter of consistency, any stipulated timeframe should take into account related legislation namely the *Customs Act 2015*. The law of NZ can also be used as guidance especially in relation to conditions to be considered when executing or filing a charge sheet.

RECOMMENDATION 59: A provision regarding a limitation period for filing a charge sheet should be included under the new drugs framework. For expediency and efficiency, such provision should stipulate a limitation period for filing a charge sheet. An appropriate timeframe should consider related legislation namely the *Customs Act 2015*. The law of New Zealand can also be used as guidance regarding the conditions of such provision.

V. Other Enforcement Matters

- 7.113. Other matters pertaining to enforcement that were raised in the Issues Paper and preliminary consultations include the following:

a) *Search of persons*

- 7.114. Search of persons who have been suspected to carry drugs both externally and internally was also raised by Customs as an important matter that they would like to consider and expand on. Under the *Customs Act 2014*, a police or customs officer can either carry out a preliminary search of a person which involves little or no physical contact, or an actual search of a person of whom an officer after preliminary search of the person has reasonable cause to suspect has hidden on or about his or her person prohibited or dangerous items listed under the *Customs Act 2014*. The current law does not include internal body searches.⁵¹⁷

- 7.115. SPCS provided that it carries out different types of searches of prisoners to ensure that prisoners admitted or those who are already in prison are not concealing anything. These types of searches include cell searches (i.e. inspect and search all cells for any concealments etc.) and a person search (including a rub search and a strip search). Search of persons procedures are contained in the SPCS Induction Manual for new recruits.

b) *Dispensing and administering of drugs*

- 7.116. Some stakeholders noted that monitoring by a standalone committee or body of drug being dispensed and administered by health professionals or those authorised to

⁵¹⁷Ministry for Revenue also provided that it is currently working on establishing a procedure for search of persons and internal body searches is something that they would like to consider to be covered. Ministry for Revenue noted that if internal body searches is covered it would like to collaborate with Ministry of Health to ensure that the process is properly carried out and also to ensure that it recognises the constitutional right of the person. In addition, it also provided that search of persons including internal body searches should also be clarified in the law.

dispense and administer drugs, should also be considered and prioritised. MOP suggested that there is a need to have a policy to this effect. The policy will document:⁵¹⁸

- what is being prescribed (to include products approved by a medical consultant or by the chief pharmacist),
- the amount (there should be a certain quota),
- Licences to dispense and or administer. MOP can issue a one year licence for doctors and individual pharmacists for example.

c) Monitoring borders

7.117. Another issue that was highlighted during consultations was in regards to the monitoring of borders. It was noted that monitoring of all entry points in Samoa is important to prevent illegal substances such as methamphetamine from entering the country. A concern was raised regarding boats and containers at Samoa's coastal areas which may contain illicit drugs meant for other destinations.⁵¹⁹ It was also raised that the expansion of Samoa's main airport will mean more people coming in and the higher the probability of illegal substances being smuggled into Samoa. However, whilst it is a concern, a submitter provided that this is the reality of expansion and Samoa is progressing forward not backwards.⁵²⁰ Therefore, in preparation for this, it was suggested that Samoa should be proactive and that the capacity of enforcement officers must be built.⁵²¹ Officers should undertake drugs surveillance courses, drugs identification courses etc.⁵²²

d) Instrument of crime proceeds

7.118. Instrument of crime proceeds was also raised by MOP as an issue which in some ways if managed properly would improve enforcement by police. Such proceeds relates to proceeds obtained from reselling instruments forfeiture and seized should go directly to MOP to fund its operations e.g. testing.⁵²³ Currently, proceeds from selling off instruments of crime are managed by Ministry of Finance. The same case applies in other countries such as NZ and Australia. However, in these jurisdictions, the person who is in charge of managing the funds can allocate money to police for instance to assist with their enforcement work.

COMMISSION'S VIEW

7.119. The Commission acknowledges the importance of the above matters to ensure adequate enforcement of Samoa's Narcotics Act. However, given that such matters fall outside the scope of the TOR, the Commission considers that they should be left to the relevant ministries to address themselves. This is especially for matters that directly impact on

⁵¹⁸Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with Samoa Pharmacy Association (Samoa Law Reform Commission Conference Room, FiameMataafaFaumuinaMulinuu Building II, Matagalalua, 4 September 2017).

⁵¹⁹Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁵²⁰Consultation with the Ministry of Prime Minister and Cabinet (Ministry of Prime Minister and Cabinet Conference Room, FiameMataafaFaumuinaMulinuu II, Matagalalua, 7 August 2017);

⁵²¹Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵²²Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵²³ Consultation with the Ministry of Police, (Ministry of Police Building, Apia, 28 August 2017).

their own responsibilities and functions. Comprehensive discussion and further dialogue among relevant ministries is important to ensure that such matters are considered and implemented in due course to assist with their responsibilities and functions.

RECOMMENDATION 60: Enforcement matters that directly relates to the internal matters/operations of particular ministries e.g. search of persons, monitoring of dispensing and administering of drugs, monitoring borders and instrument of crime proceeds should be left to the relevant ministries to address themselves (e.g. having guidelines for dispensing and monitoring of prescriptions etc.). Comprehensive discussion and further dialogue among relevant ministries is important to ensure that such matters are considered and implemented.

VI. Issues Affecting Enforcement

7.120. Consultations revealed that there were various issues affecting the adequacy of Samoa's enforcement structure. These issues were mainly in relation to the overlap of powers of relevant agencies namely MOP and Customs when performing their roles. Such issues include the following:

- i) The lack of collaboration in relation to cases where both Police and Customs work together For example, cases where there is seizure at the border.
- ii) The need to further improve communication between MOP and Customs. Currently, Customs regularly works with MOP and MOH on matters involving drugs being seized at the border. However, sometimes there is miscommunication in some cases.
- iii) Processing of suspects. There have been cases where this has gone wrong especially in relation to chain of custody and also who is responsible for carrying out searches of persons.
- iv) Another issue was in relation to the search of cargo. MOP raised that in cases where the police reasonably believes that narcotics are entering the country without detection at the border, police should have access to search these cargoes. Under the *Customs Act 2014*, only customs officers can conduct search of cargo.
- v) Boarding boats. It was also raised by MOP that searches of boats and crafts are only carried out by customs. However, in cases where police are required, they cannot do so because it is not in the law. Under the *Customs Act 2014*, a Customs officer may at any time board a craft that is within Samoa if for instance, the Customs officer has reasonable cause to suspect that the craft is carrying any dutiable, uncustomed, prohibited, or forfeited goods.⁵²⁴
- vi) There is also the issue with police insisting to enter into customs controlled areas, leaving custom officers frustrated as the law is clear that monitoring of cases within the border is the prerogative of customs officers, not police officers.⁵²⁵ Irrespective of this, one submitter provided that the work cannot be done by one agency. There may be cases for example that, if customs waited for police and vice versa, by the time officers arrive, the cargo has disappeared or lost.⁵²⁶

⁵²⁴*Customs Act 2014* (Samoa) s 153(1).

⁵²⁵Consultation with Ministry for Revenue (Ministry for Revenue (Customs) Office, Matautu, 15 August 2017).

⁵²⁶Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, Samoa, 29 August 2017).

vii) The same concern was expressed by police in relation to border patrol. The *Customs Act 2014* provides that only customs officers may at any time and in a manner as the officer considers appropriate patrol on or over any part of the foreshore or the banks of a river and a structure extending from it, or a part of the adjacent land, or a Customs place or Customs controlled area.⁵²⁷ Although this is the law, in practice customs officers are not on patrol boats according to one submitter. This is something that they are pushing for because most countries, customs patrol the oceans.⁵²⁸

SUBMISSIONS

The Commission sought submissions on ways to address issues affecting enforcement and how the roles of the key players can be improved.

7.121. Public submissions revealed the need to improve the work of law enforcement agencies involved in drug-related cases. Accordingly, submissions suggested the following:⁵²⁹

- Invest in and increase resources for carrying out detection work for instance. For example, resources including sniffer dogs and equipment for detecting drugs.
- Improve and strengthen current procedures in relation best work practices. For example, customs need to notify police immediately about further actions to take and not sweep under the carpet. Any officers found bending set rules/procedures should be dealt with accordingly – suspension or disciplinary action depending on the extent of conduct of responsible officer).
- Carry out training for law enforcement officers so that they are adequately equipped with knowledge about the law to better carry out their duties.
- Raise and carry out extensive awareness programmes through conducting seminars for instance to inform the public about the impact of drugs on society as well as the role of the different key agencies that assist in the regulation of illegal drugs in Samoa namely, MOH, MOP and Customs.
- Relevant agencies to consider hiring experts or train local personnel with the relevant expertise in order to effectively carry out duties under the law.
- Relevant ministries to collaborate and work together with other ministries as well as with village communities when enforcing the law including monitoring.
- Relevant agencies to improve and strengthen current rehabilitation programmes. There should also be more community-based rehabilitation and community services programmes especially for those who are released back into the community.
- Government to prioritize combating drug-related issues on their agenda. The more political will and backing for drug issues the better and adequate the response will be.
- Strengthen Village Fono rule in urban areas e.g. Apia, where most of the offences take place.

⁵²⁷*Customs Act 2014* (Samoa) s 151.

⁵²⁸Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FMFM II Building, Matagalalua, Samoa, 29 August 2017).

⁵²⁹Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017).

- Improve the law by clarifying the roles and functions of responsible authorities as well as review the penalties to ensure they are adequate in dealing with drug offending.

COMMISSION'S VIEW

7.122. The Commission acknowledges that enforcement of any law is always very challenging and the Samoa Narcotics Act is no exception. Some of the common challenges include the lack of collaboration, limited resources and personnel, overlap of jurisdiction leading to territorial issues, the lack of clear guidelines and procedures in place for law enforcement officers to follow, as well as the unfamiliarity of law enforcement officers with their roles and functions under the law. Public submissions also acknowledged that this as a major issue.

7.123. Consistent with public submissions, the Commission considers that the following proposals can assist address these challenges:

- Strengthening collaboration among government ministries as well as between government ministries and the village communities.
- Review and strengthen current procedure and encourage best work practices.
- Conduct training for law enforcement officers so that they are adequately equipped with knowledge about the law.
- Raise awareness in village communities about the different roles of law enforcement agencies.
- Implement new and strengthen existing programmes that focus on rehabilitation so that they are more community-based.
- Government to prioritize combating drug-related issues on their agenda.
- Improve the law by clarifying the roles and functions of responsible authorities.

RECOMMENDATION 61: To further strengthen and address issues relating to enforcement, the following measures should be considered:

- Strengthening collaboration among government ministries as well as between government ministries and the village communities.
- Review and strengthen current procedure and encourage best work practices.
- Conduct training for law enforcement officers so that they are adequately equipped with knowledge about the law.
- Raise awareness in village communities about the different roles of law enforcement agencies.
- Implement new and strengthen existing programmes that focus on rehabilitation so that they are more community-based.
- Government to prioritize combating drug-related issues on their agenda.
- Improve the law by clarifying the roles and functions of responsible authorities.

8. CHAPTER 7: PREVENTION AND REHABILITATION

8.1. This chapter discusses two significant matters. Firstly, the current preventative regulatory regimes in Samoa which includes intervention policies, programmes and practices that aim to prevent and/or reduce illegal drug use and the resultant harm. It will also discuss comparable laws in other countries. Secondly, the existing support and

treatment services and rehabilitation programmes in Samoa with discussions of laws in other jurisdictions.

- 8.2. In the end, this chapter will consider public submissions to the issues raised in the Issues Paper pertaining to prevention/regulatory and rehabilitation, which will inform the Commission's recommendations.

I. Current Preventative Regulatory Regime

- 8.3. Preliminary consultations revealed that Samoa currently does not have a stand-alone drug policy that specifically deals with illegal drugs in the health sector, despite discussions in the past to establish one. Preliminary consultations in 2016 suggested that if an overall standalone policy is established, the health sector and the law and justice sector should be responsible for researching drug related issues and obtaining relevant statistics on drugs in Samoa to inform such drug policy. Furthermore, such a policy should address issues such as the demand and supply of illegal drugs as well as boost available treatment services, awareness campaigns, and the necessary support for families, villages and communities.

- 8.4. In the absence of a standalone drug policy, there are other existing policies in Samoa that relate to drugs:

a) Draft Crime Prevention Strategy (2016-2020)

- 8.5. This draft Crime Prevention Strategy aims to make Samoa a safe and better place to live, visit and do business in through a collective action by the community to combat criminal activity in Samoa. The draft strategy identifies key areas for action that the law and justice sector considers a priority to combat crimes in Samoa. Also, to identify how each key area for action can be addressed, time frames and the responsible agency. An example of a key action area under the draft policy is to work together with churches and communities in promoting law and order. For this key area to be effective, public awareness programmes are needed to educate families and communities on the relevant laws.

b) National Medicine Policy 2008

- 8.6. This policy discusses controlled drugs which are to be used for medical purposes. It establishes strategies and guidelines for administering aspects and protocols for safety so that all relevant stakeholders in the pharmaceutical sector can steadily address arising challenges from medicine therapy and manage medicines carefully at all levels.

c) Mental Health Policy 2006

- 8.7. This policy deals with the treatment of mental health patients and recommends developing a standalone substance abuse treatment for Samoa given the prevalence of drug induced mental health patients.

d) Tobacco Policy 2010

- 8.8. This policy controls and regulates the use of tobacco in Samoa through the implementation of key strategic areas. For example, the policy includes the reduction of tobacco consumption through price and tax measures, public awareness programmes,

education and communication, treatment and cessation programmes targeting tobacco dependence.

Comparable jurisdictions

New Zealand

8.9. NZ has a National Drug Policy 2015-2020 which is the guiding document encompassing all policies that deal with both legal and controlled substances (including tobacco and alcohol).⁵³⁰ Its objectives are to delay drug intake by young people, minimize drug related illnesses and injuries and shift current attitudes to understand alcohol and other drugs. Also, NZ recognizes that an effective government intervention depends upon an active cross agency response. For example, health services, education, social services, communities and families working together to minimize drug related harm.⁵³¹ In addition to these policies focusing on prevention, there are also a number of facilities which deal specifically with drug and alcohol treatment services. For example, Alcohol Drug Association New Zealand which provides early intervention and support services for addicts.

Australia

8.10. Australia has a National Campaign against Drug Abuse Strategy (2016-2025) which identifies 3 central pillars to harm minimization:

- (i) Harm reduction with the aim to reduce harm already occurring from the effects of alcohol and prohibited drugs;
- (ii) Demand reduction which intends to reduce the desire to use prohibited drugs; and
- (iii) Supply reductions which aims to prevent or reduce the availability of drugs.

SUBMISSIONS

The Commission sought submissions on whether Samoa should have a standalone Drug Policy and how such a policy should look like e.g. objective, time frame for review.

Preference 1: specific standalone Drug Policy

8.11. The majority view supported the idea of Samoa having a specific illegal drugs policy that will be able to tackle issues surrounding illegal drug use. Members of the Judiciary stated that having such policy would also be excellent to provide a guideline document for the government, courts and the public.⁵³²

⁵³⁰ Inter-Agency Committee on Drugs, *National Drug Policy 2015-2020* (2015) <<https://www.health.govt.nz/system/files/documents/publications/national-drug-policy-2015-2020-aug15.pdf>>.

⁵³¹ Inter-Agency Committee on Drugs (NZ), *National Drug Policy 2015-2020* (2015) <<https://www.health.govt.nz/system/files/documents/publications/national-drug-policy-2015-2020-aug15.pdf>>.

⁵³² Consultation with members of the Judiciary (Judges Chambers, Ministry of Justice and Courts Administration Office, Sogi, 13 September 2017).

- 8.12. In developing such policy, a special body or a taskforce comprising of health and law and justice sector agencies must be responsible.⁵³³ This body/ taskforce should be led MOH with the help MJCA, Police and OAG.⁵³⁴ Some also noted the cooperation of the ADC.⁵³⁵ However, CJ Sapolu cautioned that the independence of the ADC should not be compromised if it is involved.
- 8.13. Other stakeholders proposed to have a collective approach and include NGOs as well as the Village Fono who will assist with enforcement.⁵³⁶ Therefore, all major sectors such as health, justice, social services, communities, and NGOs should be part of it i.e. collective approach.⁵³⁷ Such body/ taskforce should start with carrying out research and collect data regarding drugs available in Samoa, and issues relating to their misuse and abuse (i.e. feasibility study).⁵³⁸

i) Proposed Objective

- 8.14. Some stakeholders suggested the following objectives for the proposed standalone drug policy:
- For a Safer Samoa from the use, distribution, manufacturing and selling of drugs,⁵³⁹
 - Control and regulation of drugs to address the issues relating to abuse of illegal drugs, prevention and protection from the use of illegal drugs (minimizing the risks), effects and consequences.⁵⁴⁰
 - To establish a regulative system that enhances drug prevention and minimises drug related abuse, illness and injuries targeting the most vulnerable age groups.⁵⁴¹

⁵³³Samoa Law Society, Written Submission to Samoa Law Reform Commission, (*Drugs Reform (Review of the Narcotics Act 1967)*), 31 October 2017; Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁵³⁴ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017); Consultation with the Transnational Crimes Unit (Transnational Crimes Unit Office, FiameMataafaFaumuinaMulinuu II Building, Matagalalua, Samoa, 29 August 2017).

⁵³⁵Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁵³⁶ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

⁵³⁷ Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

⁵³⁸ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017;

⁵³⁹Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁵⁴⁰Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵⁴¹ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

8.15. Others noted that the approach in NZ could be taken but revise it to suit the local context.⁵⁴² There were also those who suggested that the Policy should mirror what is contained in the draft Crime Prevention Strategy that is about to be endorsed soon which covers most of these issues.⁵⁴³

ii) Proposed Content

8.16. Submitters revealed that any such policy should address as much as possible all issues affecting various groups including men, youth, persons with disabilities (**PWD**), women and children.⁵⁴⁴ The Policy should include strategies that address demand, and supply of drugs including among others:⁵⁴⁵

- Preventative measures, to eliminate if possible the use, production and selling of drugs.
- It should also emphasise collaboration among relevant government agencies, non-government organisations, Village Fono and church communities.
- The role of the different government agencies as well as the role of the village i.e. Sui o Nuu and Sui Tamaitai.
- Establishment of sufficient and effective treatment and rehabilitative services.
- Community awareness programmes and provision of necessary support for drugs users and their families.
- It is also important to consider the harm that health workers such as nurses, doctors and law enforcers are exposed to at the hands of users when they become aggressive.

8.17. Also, some stakeholders noted to use the approach taken in Australia and NZ as guidance taking into account the Samoan context.⁵⁴⁶

iii) Update and review of policy

8.18. In relation to updating the Policy, submitters suggested that it should be updated:

- On a yearly basis;⁵⁴⁷ or
- Every two years and as necessary;⁵⁴⁸ or
- Every 3 years, provided that there is sufficient personnel to do the update,⁵⁴⁹ or

⁵⁴²Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

⁵⁴³ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

⁵⁴⁴Consultations with the Ministry of Women, Community and Social Development (Ministry of Women, Community and Social Development Main Office, Savalalo, 9 August 2017).

⁵⁴⁵Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017;

⁵⁴⁶ Consultation with Samoa Nursing Association (Samoa Nursing Association Complex, Moto'otua, 5 September 2017).

⁵⁴⁷Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵⁴⁸ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁵⁴⁹Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

- Every 5 years;⁵⁵⁰ or
- When there are issues arising from the implementation of the policy. The need to review depends on the loopholes identified after implementation of the policy as well as other issues identified by the Law and Justice Sector Committee.⁵⁵¹

Preference 2: Incorporate into existing policies

8.19. Some stakeholders noted that the existing draft Crime Prevention Strategy which is currently being finalised should contain a specific component dedicated in combating drug-related issues in Samoa.⁵⁵²The MOH suggested that it should be covered under the Medicines Policy (which is currently being reviewed and is anticipated to cover illegal drugs). Therefore, there will be no need for a specific drugs policy.

MOP develop a strategy similar to New Zealand’s Police Illicit Drug Strategy 2010 to combat drug related issues

8.20. The majority view was that MOP should develop a similar strategy to NZ, noting the differences in culture and resources.⁵⁵³Currently according to MOP, research is being carried out for their Drug & Alcohol Policy (in draft form). Such policy will take into account issues such as monitoring and prevention. Most importantly, it will look at how police officers should carry out their roles in combating drug related issues in Samoa as they are entrusted with ensuring a safer Samoa.⁵⁵⁴

COMMISSION’S VIEW

8.21. Although it was expressed that existing policies such as the Medicines Policy and the draft Crime Prevention Strategy are anticipated to cover issues relating to illegal drugs in Samoa, the Commission considers that having a specific drug policy developed by the MOH with the assistance of relevant agencies (Law and Justice Sector and NGOs) would be beneficial for Samoa. Incorporating illegal drug prevention under an existing policy/strategy would not be adequate to address current and existing drug-related issues that Samoa currently faces as reflected in the TOR and listed in **Chapter 1**. Therefore, a standalone and specific policy will not only prioritise and effectively deal with drug-related issues, but also offer strategies for reducing drug harm, supply and demand.

⁵⁵⁰Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

⁵⁵¹Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁵⁵²Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Review of the Narcotics Act 1967*, 30 October 2017.

⁵⁵³Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017; Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁵⁵⁴ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017.

- 8.22. Such policy should be inclusive and cover issues faced by different groups e.g. youth, men, women, and PWD; preventative measures to prevent drug abuse and harm; rehabilitation and effective treatment services for offenders and addicts; and the role of key players including the contribution of the village community. The policy should be informed by existing policies e.g. crime prevention and medicine to ensure that there is no duplication, and should be updated regularly on a needs basis.
- 8.23. The Commission notes submissions that MOP should develop a specific prevention strategy to assist with crime prevention similar to NZ. Such policy will mainly focus on crime prevention and enforcement against illegal drugs. The Commission noting the availability of resources and funding, considers that the draft Crime Prevention Strategy suffices to deal with this situation rather than a new Police Illicit Drug Strategy. This will not only save resources but also avoid any duplication.

RECOMMENDATION 62: Ministry of Health, with the assistance of relevant agencies, should develop a standalone/ specific illegal drug policy to effectively deal and address illegal drug problems and issues that Samoa currently faces as reflected in the Terms of Reference. Such policy should be inclusive of all issues relating to preventing drug harm, rehabilitation, awareness raising, as well as role of key players. The policy should be informed by existing policies and must be regularly updated to ensure that it is up to date with new developments in Samoa concerning illegal drugs.

RECOMMENDATION 63: There is no need for Ministry of Police to develop a strategy similar to New Zealand as the draft Crime Prevention Strategy is sufficient. The draft policy should include particular focus on effective measures to prevent drug-related crimes and procedures for reporting drug-related crimes.

II. Rehabilitation

- 8.24. Samoa's Narcotics Act does not necessarily contain provisions with a rehabilitation focus as majority of the penalties imposed are punitive and custodial. However, various legislation exist which focuses on rehabilitation of offenders. Furthermore, various organisations carry out rehabilitation programmes to assist with the reintegration of offenders and deportees back into society. Despite such instruments and initiatives in place, preliminary consultations with SPCS in 2016 revealed that about 60% to 70% of the inmates presently serving time at Tafaigata Prisons were re-offenders, with some serving their fifth or sixth prison terms. The statistics cover all offences and it is not limited to drug offences. This raises a crucial question on whether prison sentences alone as well as programmes carried out by the various organisations are sufficient and effective in reducing re-offending and curbing the drug-related issues in Samoa.
- a) Legislations relating to rehabilitation*
- 8.25. Samoa has enacted several laws relating to the rehabilitation of offenders of crimes as well as those who are affected by drugs for instance. These laws include the following:

i) Community Justice Act 2008

8.26. The *Community Justice Act 2008* places huge importance on community-based rehabilitation. Such Act aims to promote criminal justice by the provision of a community based justice system that fosters community based sentencing options and the rehabilitation and reintegration of offenders.⁵⁵⁵ Further, the Act was enacted to administer and operate a community based justice system that promotes public safety and contribute towards the maintenance of a just society.⁵⁵⁶

ii) Young offenders Act 2007

8.27. As alluded to by members of the Judiciary during preliminary consultations, the *Young Offenders Act 2007* places a great significance on the rehabilitation of young offenders. At the pre-sentencing stage, the Court when determining an outcome shall have regard to the following principles:⁵⁵⁷

- (a) the accountability by the young person for the wrong that has been done; and
- (b) the rehabilitation of the young person including an assessment of the suitability of his or her current living arrangements; and
- (c) the involvement of the young person's family, church, chief, and village; and
- (d) the protection of the community; and
- (e) an acknowledgement of the views of the victim and to restoring the position of the victim in accordance with Samoan custom and tradition;
- (f) the putting in place of a plan for rehabilitation of the young person that fosters responsibility by the young person and which promotes the young person's self-esteem, cultural awareness and understanding.

iii) Prisons and Corrections Act 2013

8.28. Rehabilitation is also addressed under the *Prisons and Corrections Act 2013*. Accordingly, one of the purposes for the establishment of the Samoa Prisons and Corrections Service is to provide for the management, custody, care and rehabilitation of prisoners lawfully held in custody.⁵⁵⁸

8.29. Under section 50 of the Act, rehabilitation is addressed by focusing on early release and pre-release programmes for prisoners. The aim of these early release or pre-release programme is to assist in the rehabilitation of prisoners and provide opportunities for prisoners to re-enter society by the performance of community work or paid employment, or enrolment in a course of education or instruction.⁵⁵⁹ Further, when determining appropriate programmes to ensure effective rehabilitation, prisoners are classified accordingly based on their needs and circumstances.⁵⁶⁰

⁵⁵⁵*Community Justice Act 2008* (Samoa) Long title.

⁵⁵⁶*Community Justice Act 2008* (Samoa) s 2.

⁵⁵⁷*Young Offenders Act 2007* (Samoa) s 13.

⁵⁵⁸*Prisons and Corrections Act 2013* (Samoa) s 4(1) (c).

⁵⁵⁹*Prisons and Corrections Act 2013* (Samoa) s 50. See also *Prisons and Corrections Act 2013* (Samoa) s 47.

⁵⁶⁰*Prisons and Corrections Act 2013* (Samoa) s 39.

iv) Prisons Parole Board Act 1977

- 8.30. In assisting with rehabilitation of offenders, a parole officer shall supervise all persons placed under his or her supervision, with a view to assisting their social rehabilitation and preventing the commission of further offences.⁵⁶¹

v) Sentencing Act 2016

- 8.31. One of the purposes of sentencing or otherwise dealing with a defendant according to the *Sentencing Act 2016*, is to assist in the defendant's rehabilitation and reintegration.⁵⁶² In this regard, the court in sentencing or otherwise dealing with a defendant must take into account the defendant's personal, family, community, and cultural background in imposing a sentence or other means of dealing with the defendant with a partly or wholly rehabilitative purpose.⁵⁶³

vi) Mental Health Act 2007

- 8.32. In relation to rehabilitation of patients with mental disorders (as a result of drugs etc.), the *Mental Health Act 2007* provides for the care, support, treatment and protection of persons with a mental disorder and for related purposes.⁵⁶⁴ Accordingly, subject to available resources, persons responsible for dealing and treating mental health patients shall among others, have regard to the following objectives and principles among others:⁵⁶⁵

- (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection;
- (b) to support families and communities where they are providing care and support for a person with a mental disorder;
- (c) to promote a high standard of training of those responsible for the care, support, treatment and protection of persons with a mental disorder;

vii) UN Conventions on Illegal Drugs

- 8.33. According to the *Single Convention on Narcotic Drugs 1961 (1961 Convention)* and the 1971 Convention, there must be a balance between punishment and rehabilitation. Serious offences are to be adequately punished, particularly by imprisonment.⁵⁶⁶ However, offences such as drug-related offences should consider rehabilitative measures (treatment, education, after care or social reintegration), as an alternative or in addition to conviction or punishment.⁵⁶⁷ In the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the 1988 Convention)*, rehabilitative measures as an

⁵⁶¹*Prisons Parole Board Act 1977* (Samoa) s 18(2).

⁵⁶²*Sentencing Act 2016* (Samoa) s 5(1) (g).

⁵⁶³*Sentencing Act 2016* (Samoa) s 6 (1) (h).

⁵⁶⁴*Mental Health Act 2007* (Samoa) Long title.

⁵⁶⁵*Mental Health Act 2007* (Samoa) s 3.

⁵⁶⁶*United Nations Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol*, opened for signature until 1 August 1961 (entered into force 8 August 1975) art 36 (1) (a); *United Nations Convention on Psychotropic Substances 1971*, opened for signature until 1 January 1972 (entered into force 16 August 1976) art 22(1) (a). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

⁵⁶⁷*United Nations Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol*, opened for signature until 1 August 1961 (entered into force 8 August 1975) art 36 (1) (b); *United Nations Convention on Psychotropic Substances 1971*, opened for signature until 1 January 1972 (entered into force 16 August 1976) art 22(1) (b). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

alternative to conviction or punishment are confined to personal use offences and “appropriate cases of a minor nature.”⁵⁶⁸ Samoa is party to the 1961 Convention⁵⁶⁹ and the 1988 Convention.⁵⁷⁰ There is scope for Samoa to become a party to the 1971 Convention and incorporate greater focus on rehabilitative measures as a response to low level drug offending.

b) Current Rehabilitation Programmes & Treatment Facilities in Samoa

8.34. Preliminary consultations in 2016 revealed that there are programmes and treatments in Samoa which provides rehabilitation services:

i) Samoa Prisons and Corrections Service

8.35. The SPCS carry out rehabilitation and treatment programmes based on the needs of inmates. For example:

Vocational programmes

8.36. These programmes target inmates who have committed crimes due to financial reasons. Some of the drug offenders incarcerated due to drug offences previously made a living selling drugs to earn money. They are taught basic skills that will enable them to set up small businesses and enter into the workforce once they are released. For example, the elei designing programme for women and young inmates, the farming programme for all inmates, carving and handicrafts, carpentry and cooking classes.

Educational programmes

8.37. This programmes focus on educating prisoners about basic life skills which include literacy and numeracy skills for inmates who are performing below or at 8th grade level. There is also spiritual counselling for all inmates and computer literacy and financial management for those with an interest in these areas.

Behaviour programmes

8.38. These programmes are targeted at reforming the behaviour of inmates. For example, an alcohol and drugs programme facilitated by the National Health Services (NHS), MOH and Goshen Mental Health Trust (GMHT), an anger management programme facilitated by the MOP and a mental health and therapeutic programme facilitated by the NHS. MOH, MHU, Faataua le Ola and the GMHT.

Challenges

8.39. The Commission notes that while the above programmes are a positive step towards reintegration, other offenders may require targeted and specific treatment in order to rehabilitate for issues such as drug addiction and mental health issues. However, SPSC in preliminary consultations revealed the ongoing challenge of the lack of resources and

⁵⁶⁸United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, opened for signature on 19 December 1988 until February 1989 (entered into force 11 November 1990) art 3(4) (c)-(d). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

⁵⁶⁹Samoa became a party to the 1961 Convention by default. This is because the control system established under such Convention applies to all States whether a party or not to adhere to the rules stated therein.

⁵⁷⁰ Accession to the 1988 Convention took place in 2005.

personnel to cater for these specific programmes targeting specific groups such as addicts or drug re-offenders.

ii) Alcohol and Drugs Court

- 8.40. Prior to the establishment of the ADC in February 2016, drug and alcohol related offences were solely handled by the general court system. However, it was becoming apparent that sentences and imprisonment were not reducing the risk of re-offending. A more targeted approach was needed for offences involving alcohol and drugs. The ADC was therefore set up to enable certain drug and alcohol offenders to undergo a drug and alcohol related programme before returning to the mainstream court system for sentencing. Based on the NZ model, the ADC is currently made up of one Supreme Court Judge, an alcohol and drug clinician, once case manager, police officers, lawyers, court co-ordinator, community justice supervisors and a probation team.⁵⁷¹
- 8.41. However, not all offenders are qualified for treatment under the ADC. Preliminary consultations with the ADC in 2016 revealed the criteria that each offender must meet to be eligible for treatment under the ADC. For example:
- The offender must plead guilty to the offence;
 - The offender must likely have an alcohol or drug abuse problem that induced offending;
 - The offender must have a high chance of release on bail to undergo court programmes;
 - The offender must live in areas between Laulii and Afega (note that the areas have been extended to include all offenders in Samoa in 2017);
 - The offender must be charged with an offence of up to 3 years imprisonment;
 - The offender must not be charged with a sexual related offence, or arson; and
 - The offender must have no serious mental health condition that prevents court participation.
- 8.42. Following the completion of the program, the ADC clinician will recommend an appropriate sentence based on the offender's progress. The following are some of the rehabilitation programmes carried out by the ADC as revealed in 2016 preliminary consultations:

Alcohol and drugs program

- 8.43. Drug and alcohol offenders who meet the criteria for this course are strictly prohibited from consuming drugs and alcohol. This prohibition is monitored by the Court, Community Justice Supervisor, family members and the wider village. The programme may require the participant to relocate to another area during the programme to avoid any temptation.

⁵⁷¹ Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Ministry of Justice and Courts Administration Building, Sogi, Samoa, 24 October 2016).

Counselling program

- 8.44. This programme includes anger management and relationship counselling to assist offenders with anger issues, especially when those affect relationships with their families and peers as a result of alcohol and drug abuse.

Community work program

- 8.45. Some offenders are required to carry out community work in their communities to enable them to learn new life and work skills and give back to the community.

Challenges

- 8.46. Despite the ADC's work on addressing alcohol and drug related programmes, there are still many challenges faced by this new establishment as revealed in preliminary consultations with them in 2016. These challenges include:
- Lack of qualified professionals that can provide clinical services and qualified counselling in Samoa who specialises in mental health and drug addiction. The Commission notes that the majority of counsellors specialise in spiritual counselling but not in drug addiction or mental health issues
 - Cultural related issues due to the fact that some offenders under the ADC programme struggle to do basic activities and are not self-sufficient, often relying on their parents. This proves more difficult for ADC to do their work as not only do they rehabilitate these offenders, they also have to teach basic life skills which would normally have been attained at an adult age.
 - Lack of awareness in terms of alcohol and drug related issues.
 - Lack of collaboration among the relevant government ministries responsible for providing assistance to the ADC.

iii) Samoa Returnees Charitable Trust

- 8.47. The SRCT also carries out reintegration programmes for deportees that are sent back to Samoa because of different types of offending. Tailored counselling is offered for drug-offenders and the SRCT works closely with groups such as the Faataua le Ola (a suicide support group), Soifua Manuia as well as the ADC and MHU. As registration is voluntary, only those who have agreed to be registered under the SRCT are provided assistance through rehabilitation and reintegration program. To ensure that every deportees receives rehabilitative assistance, the SRCT has raised that compulsory registration of all deportees is something that it would like to look at. This is to ensure that not only offenders get the help they need but also to ensure Samoan communities are safe from illegal drug activity.⁵⁷²

iv) Goshen Mental Health Trust (GMHT)

- 8.48. The GMHT is another group that assists with helping those with a drug and/or alcohol related problem. The GMHT often deals with children, particularly young boys and sufferers who have been ostracized from their families and have no one else to look after them. Regarding drug-related issues, it is the Commission's understanding that except for

⁵⁷² Preliminary consultations with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Office – Vailima, Samoa, 9 May 2017).

very severe cases, most patients with a drug-induced problem will end up being referred to the GMHT. From preliminary discussions with the GMHT, it was understood that the treatment services mainly revolve around counselling and implementing the *fa'a Samoa* way. The ultimate aim of the GHMT is to integrate the member back into Samoan society.

SUBMISSIONS

The Commission sought public submissions on how ADC can improve its services and what appropriate rehabilitation services should be in place to assist offenders re-integrate into Samoan society.

Improving the efficacy of the Alcohol and Drugs Court

8.49. It was noted in submissions received by the Commission that since its inception in 2016, the ADC and the MJCA have done a number of awareness programmes to assist offenders of drug and alcohol related crimes. However, there is room to improve the current situation to further assist ADC with its effectiveness. Some of the ways that were suggested to help achieve this goal include:⁵⁷³

- *Awareness Programmes:* Develop more workshops within villages to continue to educate our people of the function of this Court. This help gain support from the community regarding reporting and monitoring purposes. It will also inform and help the village understand how important each and everyone's role is in rehabilitating drugs users.
- *Capacity building:* To hold legal education for lawyers who are interested or are currently working in the ADC. There should also be continued support for clinicians currently handling cases brought before the ADC. Emphasis should be placed on people who are involved to secure degrees or necessary qualifications. Currently, only foreigners are being hired to this work.⁵⁷⁴
- *Effective collaboration:* there should be effective collaboration regarding information sharing among stakeholders.
- *Personnel:* more people with the relevant expertise should be hired to assist with the work. Locals should be encouraged after equipping them with the relevant training.
- *Resources:* establishing a database is essential so that information is accessible given that resources are lacking.

8.50. In addition to having the ADC, some submitters stated that it would be ideal and appropriate for Samoa to have a specific and/or standalone rehab drug treatment facility/service to deal with drug offenders and drug-related issues.⁵⁷⁵

⁵⁷³Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵⁷⁴ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

⁵⁷⁵ Consultation with National Council of Churches (John Williams Building, Tamaligi, 11 August 2017); Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

More support for drug users, addicts and deportees

- 8.51. Members of the Judiciary suggested that a targeted approach in relation to rehabilitation of those involved in drug offending is necessary. Further, it was also raised that the need for the government and village to prioritise such area of rehabilitating people involved in drug-related crimes one way or another is vital to guarantee effectiveness.⁵⁷⁶

Addicts

- 8.52. MOH acknowledged that support services for drug addicts is one area in Samoa where there is very limited professional and technical expertise available.⁵⁷⁷ What is offered at prisons e.g. counselling does not fully address the needs of addicts. Therefore, in light of this predicament, if Samoa is serious about these issues, it needs to get the money from somewhere to pay for all these needed personnel.⁵⁷⁸
- 8.53. Alternatively, it was suggested by some for Samoa to work within its means. For instance, members of the Judiciary stated that we should get the community involved or have community based treatments for addicts. This is practical and cost effective for Samoa. The ADC has been using the community to assist them with their rehabilitation programmes which has been a success.⁵⁷⁹ MHU also submitted that the majority of the rehabilitation programmes it carries out for its patients are done in collaboration with families and communities. This is a big part of the *Mental Health Act 2007*. Support is given to the family to treat their family members who are patients with the Unit. In cases where families cannot look after the patients, MHU can take them in.⁵⁸⁰
- 8.54. MHU also noted that all registered prisons in Samoa are also a registered mental health treatment centres. Samoa does not have the facilities to house prisoners who are mentally sick, so they are sent to prisons and doctors go to the prisons to treat them. MHU now employs GMHT as an extended part of MHU to treat its patients (i.e. step-down service). Patients who are referred to GMHT are those who are not sick enough to be contained at MHU or those who are not well enough to be home. MHU visits GMHT two times a week and they are responsible for all the patients at GMHT as well.

Offenders

- 8.55. MHU provided that ADC does not have any clinical intervention programmes for its offenders. This issue was raised before its establishment however MJCA decided to make it more a behavioural matter.

⁵⁷⁶Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵⁷⁷ Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

⁵⁷⁸ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁵⁷⁹ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁵⁸⁰ Consultation of the Mental Health Unit (Mental Health Unit Office, Moto'otua Hospital, 22 August 2017).

- 8.56. Furthermore, ADC also does not have the necessary expertise especially for those who are addicts.⁵⁸¹ This issue is further exacerbated by the lack of health professionals that specialise in this area such as social workers, psychologist, and mental health experts.⁵⁸²
- 8.57. ADC also need to improve their current programmes to cater for the needs of offenders. Having good programmes are key to rehabilitation.⁵⁸³

Prisoners

a) Drug offenders currently serving their time

- 8.58. To assist drug offenders currently serving time in prisons, SPCS currently carries out programmes to assist with the rehabilitation of prisoners. These programmes are very general to influence and try and change behaviour, address awareness of drugs, awareness of consequences and impacts. SPCS's aim is to provide and run as many programmes as they can for inmates so that they have programmes to occupy their time and hoping that once they complete these programmes they will be productive and they will not reoffend and go back to prisons. The three programmes running at the moment include, behavioural programmes, educational programmes, and vocational skills programmes. SPCS has also been looking at incorporating principles of the *Community Justice Act 2008* to assist with rehabilitation. Although there are no clinical interventions to assist prisons who are addicts, SPCS noted that it hopes to carry out clinical intervention and/or therapeutic programmes in future to address the drug problem.
- 8.59. However, irrespective of the above, majority of the submissions agreed that prisoners would benefit from more targeted drug and alcohol programmes in prison.⁵⁸⁴ Further, it was also provided that it is an international practice that in order to achieve the purpose of therapeutic courts (i.e. ADC), prisoners should be given alcohol and drugs programmes.⁵⁸⁵ Tailored programmes that aim at influencing behaviour for the better are necessary and needed. These programmes should not only be targeted to change their mind-set but also reduce/eliminate their tendency of resorting back to alcohol and drugs before they are reintegrated back into the community.⁵⁸⁶
- 8.60. According to MJCA, the current programmes currently run by SPCS need to be improved and certified. SPCS should involve Samoa Qualifications Authority to target and address the programmes and not accept anyone or any content for the time being just to cater for the need for rehabilitation. Programmes should be developed with the hope that they are

⁵⁸¹ Consultation of the Mental Health Unit (Mental Health Unit Office, Moto'otua Hospital, 22 August 2017).

⁵⁸² Ministry of Health, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 4 September 2017.

⁵⁸³ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

⁵⁸⁴ Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁵⁸⁵ Consultation with the Ministry of Justice and Courts Administration (Ministry of Justice and Courts Administration Building, Sogi, 15 August 2017).

⁵⁸⁶ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

going to be effective. MJCA are requesting SPCS for inmates to join ADC programmes but SPCS is having difficulty implementing this due to their own barriers/duties as well, so MJCA cannot really force them to bring along inmates. Therefore, MJCA only targets persons charged that go through ADC. However, MJCA believes that SPCS do not have any specific programmes for drugs or technical programmes which ADC is doing. Therefore, there is a need for SPCS and MJCA to work closely together and improve on communication and collaboration.⁵⁸⁷ It was also recommended by MJCA that SPCS should explore options to employ a clinician for prisoners. It noted that prisoners who are imprisoned as a result of drug-offending are not given programmes specific on drugs and alcohol and most of these prisoners are not addicts.

b) Drug offenders who have served their time

- 8.61. In relation to prisoners who are released *after* serving sentences for drug-related crimes, the common view of submitters was that these people need more support reintegrating into society.⁵⁸⁸
- 8.62. One submitter emphasised that society needs to be more accepting of the prisoner. More specifically, the prisoner's family should also be supported on how to cope if/when there is a re-lapse in the prisoner's drug use. Often it is the drug user's immediate family who is most at risk and under immense stress in the circumstances. They are sometimes faced with the difficult decision of whether or not to turn in the drug user to the police. Therefore, the more holistic the support, the better.⁵⁸⁹
- 8.63. Another submitter noted, that prisoners who have served their time should be taken back to their village of origin and have the Village Fono monitor them.⁵⁹⁰

Deportees

- 8.64. SRCT works closely with ADC and MJCA to assist with rehabilitation of deportees by putting them on rehabilitative-focused programmes e.g. counselling services. There are no specific programmes that would guarantee effective prevention. SRCT carries out a lot of counselling sessions for offenders of drugs and alcohol. One of these sessions is the "e fuata'i ai le olaga". The programme aims to educate offenders to contribute to the community to better societies. In this programme, they talk about choice, impact of

⁵⁸⁷ Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

⁵⁸⁸ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017); Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁵⁸⁹ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁵⁹⁰ Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

consumption, and culture of accountability.⁵⁹¹ Majority of deportees are male from the age range of 17 to 50 years old.

- 8.65. The lack of facilitates and services to counsel these peoples is the biggest challenge for the SRCT. Furthermore, in relation to personnel, without help from NZ, Australia, US (who offer help through facilitators to help offenders), SRCT would not be able to cope. Some deportees have been hired to assist with counselling because of their experience. At the moment, there are only 4 personnel running SRCT. Getting more personnel as well as up skilling the current workforce is one of the things SRCT aims to improve. SRCT is also looking at setting up a network for returnees who have successfully completed its programmes. This will be a general assembly push where they can feel more involved with the work of SRCT.⁵⁹²
- 8.66. MOH also echoed these challenges noting that it is unsure if Samoa would have the resources to cater for the needs of deportees. For example, deportees may be on treatment and/or technical and professional expertise that is not available in Samoa.⁵⁹³
- 8.67. MPMC provided that there is already a Policy in place for dealing within deportees within Samoa. However, the new policy on deportees/returnees cannot do much to stop such deportees as they have a right to come here and keeping in mind, they are free persons as well who have served their time. Therefore, immigration can only monitor but cannot really interfere with the rights of deportees. TCU is the primary source for deportee registration.⁵⁹⁴

Youth

- 8.68. Rehabilitation programmes for youth also need to be tailored to their needs.⁵⁹⁵

COMMISSION'S VIEW

- 8.69. The Commission notes from submissions that while the above programmes are a positive step towards changing the behaviour and helping with the reintegration of drug offenders, they do not adequately deal with the problem given the lack of clinical interventions available especially for drug offenders who are addicts and suffer from mental health issues. Therefore, a more targeted approach that adequately address the needs of the different groups i.e. addicts, offenders, prisoners, deportees etc. is necessary and would be crucial in guaranteeing effectiveness. If the Government and Village Fono are serious about addressing drug-related issues in Samoa, priority should be given to the rehabilitation and treatment of those affected or involved in drug offending.

⁵⁹¹The use or abuse of alcohol and drugs makes them vulnerable to carrying out violent behaviours e.g. fighting, physical, sexual, psychological abuse as well as impacts on their health.

⁵⁹² Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima) 31 August 2017.

⁵⁹³ Consultation with the Ministry of Health (Ministry of Health Main Office, Moto'otua Hospital, 17 August 2017).

⁵⁹⁴ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁵⁹⁵ Consultation with members of the Judiciary (Judges Chambers-Ministry of Justice and Courts Administration Building, Sogi, 13 September 2017).

- 8.70. It was acknowledged that the lack of expertise and resources has prevented Samoa from implementing programmes of such nature. The lack of treatment facilities, personnel as well as funding has also been noted as some of the major obstacles hindering rehabilitation and treatment efforts in Samoa. However, members of the Judiciary noted that despite the lack of clinical interventions, the involvement of the community and having community based treatments for addicts and offenders has proven to be very effective. It is also practical and cost effective for Samoa.
- 8.71. The Commission notes that the MOH recently carried out a training which focused on upgrading the knowledge of participants from various government ministries to better understand the side effects of drugs and the behavioural signs associated with drug addicts.⁵⁹⁶ Accordingly, such trainings are a positive step towards assisting drug addicts in particular.⁵⁹⁷
- 8.72. Other legislation in Samoa already consider community-based treatment including the *Mental Health Act 2007*, the *Community Justice Act 2008* and the *Young Offenders Act 2007*. Therefore, the Commission is of the view that such laws should be utilised to their fullest potential when considering sentencing drug-offenders. This would be practical for Samoa saving costs and resources. However, a collaborative approach must be taken by the key Ministries and village communities to ensure offenders receive targeted rehabilitation programmes. In addition, resources and funds must be pulled together to ensure rehabilitation programmes are effective and assist offenders re-integrate back society. Awareness programmes should be undertaken to inform the Village Fono about the role of ADC as well as how they can contribute with the rehabilitation of drug offenders e.g. monitoring. The key Ministries must actively work together with Village Fono and communities to establish appropriate programmes to assist with rehabilitation.

RECOMMENDATION 64: Laws that already consider community based treatment including the *Mental Health Act 2007*, the *Community Justice Act 2008* and the *Young Offenders Act 2007* should be utilised to their fullest potential when considering sentencing drug-offenders. This would be practical for Samoa’s rehabilitation efforts, saving costs and resources.

RECOMMENDATION 65: A collaborative approach must be taken by the key Ministries and village communities to ensure offenders receive targeted and appropriate rehabilitation programmes. Resources and funds of relevant Ministries must be pulled together to ensure rehabilitation programmes are effective and assist drug offenders re-integrate back society.

RECOMMENDATION 66: Awareness programmes should be undertaken to inform the *Village Fono* about the role of Alcohol and Drugs Court as well as how they can contribute with the rehabilitation of drug offenders e.g. monitoring.

⁵⁹⁶Ioana Tupa’i, “Drugs training forges united effort”, Samoa Observer (online ed.), <http://www.samoaoobserver.ws/en/17_11_2017/local/26775/Drugs-training-forges-united-effort.htm>. Accessed 12 December 2017.

⁵⁹⁷The number of cases handled by the ADC has increased to 400, and about 100 drug addict cases that have been dealt with in Court have been transferred to rehabilitation programmes.

9. CHAPTER 8: ROLE OF COMMUNITY

- 9.1. Addressing drug abuse requires collaborative work from all sectors of government, NGOs and communities. This was echoed by the courts in the case of *Police v Williams [2014] 153 WSSC* where the court provided that the community has a vital role to play in curbing the problem. This sentiment was also shared by stakeholders who were consulted during preliminary consultations.
- 9.2. Furthermore, preliminary consultations revealed that the rate at which drug-related issues are happening in Samoa is not as problematic compared to countries like Fiji and Tonga. One of the reasons for this could be that Samoa still maintains its cultural values and societal hierarchy, which helps to suppress these problems from emerging.⁵⁹⁸ On the other hand, opinions expressed by other stakeholders during preliminary consultations differ. These stakeholders believe that drug-related issues are becoming more prevalent irrespective of the cultural values and hierarchies. They note that the vast majority of young men in Samoa use cannabis, and that there exists a certain part of Samoan society which uses methamphetamine.⁵⁹⁹
- a) *Village Fono*
- 9.3. Whilst Samoa's Narcotics Act does not specifically provide for societal responsibilities on issues regarding using and dealing with illegal drugs, other laws of Parliament do. For example, the *Internal Affairs Act 1995* provides that Executive Committees⁶⁰⁰ appointed for the purpose of the Act are responsible for soliciting the assistance and co-operation of the Alii ma Faipule effectively to prevent the use of drugs and narcotics in the villages.⁶⁰¹ Accordingly, this provision will greatly assist efforts by Government and relevant agencies to curb and address the issue of drug abuse and harm.
- 9.4. The *Internal Affairs Act 1995* also provides a more general responsibility of Sui-o-le-Nuu to promote harmony within the village,⁶⁰² and 'encourage the maintenance of law and order in his or her village'⁶⁰³. The *Village Fono Amendment Act 2017*,⁶⁰⁴ also empowers a Village Fono to make bylaws to promote the wellbeing, development and maintenance of harmony and good order of the village and its inhabitants.

⁵⁹⁸Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017.

⁵⁹⁹ Preliminary Consultation with Mental Health Unit (Samoa) (Moto'otua, Samoa, 27 May 2016); Preliminary Consultation with the Ministry of Health (Samoa) (Ministry of Health Complex, Moto'otua, Samoa, 12 May 2016). See also media reports: Deidre Atutua, 'Marijuana charges continue to increase' (3 April 2017) *Samoa Observer* <http://www.samoobserver.ws/en/03_04_2017/local/18604/Marijuana-charges-continue-to-increase.htm>; Deidre Fanene, 'Three Savaii Males charged with Possession of Marijuana' (20 March 2017) *Samoa Observer* <http://www.samoobserver.ws/en/20_03_2017/local/18121/Three-Savaii-males-charged-with-possession-of-marijuana.htm>

⁶⁰⁰ See section 10 of the *Internal Affairs Act 1995* (Samoa) regarding the composition of Executive Committees.

⁶⁰¹ *Internal Affairs Act 1995* (Samoa) s 11(c).

⁶⁰² *Internal Affairs Act 1995* (Samoa) s 15(1) (a).

⁶⁰³ *Internal Affairs Act 1995* (Samoa) s 15(1) (b).

⁶⁰⁴ *Village Fono Amendment Act 2017* (Samoa) s 5(c).

b) Parents

- 9.5. The role and responsibilities of parents, the churches and schools in addressing drug abuse and other related issues is equally important. Generally, these groups already play a role within the community and their families to address drug abuse.
- 9.6. Views expressed during preliminary consultations note that parents are the primary medium of education and awareness to their children concerning the harm caused by illegal drug use. Some experts in drug prevention acknowledge the effectiveness of drug use prevention measures through the cooperation of parents (or legal guardians) of young people who simply take the time to talk to children about health and safety related issues affiliated with drug use.⁶⁰⁵ Research carried out by the Commission has revealed that one of the reasons for children to stop using drugs is due to their parents' positive influence.⁶⁰⁶ Therefore, the importance of building solid relationships with one's children is of fundamental value to prevent drug use and abuse at an earlier stage.

c) Churches

- 9.7. Churches are also very influential in educating and raising awareness among the young and old about the harm affiliated with drug abuse. This stems from the belief regarding the active involvement of Samoan people in church activities such as Sunday Schools, youth groups, parent groups and church choir group.

d) Government and NGOs

- 9.8. The MOP has ongoing programmes raising awareness around Samoa regarding the effects of alcohol and more recently illegal drugs with the aim of getting the community involved in addressing alcohol and drug related problems.⁶⁰⁷ Furthermore, SRCT also conducts programmes in schools and communities across Samoa where deportees who were drug addicts share their experiences to help prevent young people from using drugs.⁶⁰⁸
- 9.9. MOH also carry out awareness programmes, however they only focus on the effects of tobacco and alcohol and do not cover the effects of illegal drugs.⁶⁰⁹ Similarly, the MHU currently carries out workshops, trainings and other awareness programmes with NGOs relating to mental health but these are not drug-specific programmes.⁶¹⁰
- 9.10. NGOs including Faataua le Ola and GMHT also conduct awareness and carry out counselling services for offenders and addicts.

⁶⁰⁵University of Utah, *Parents' Role Important in Preventing Drug Abuse*<<http://healthcare.utah.edu/healthlibrary/related/doc.php?type=20&id=405>>.

⁶⁰⁶ National Crime Prevention Council, *How Parents Can Prevent Drug Abuse* <<http://www.ncpc.org/topics/drug-abuse/alcohol-tobacco-and-other-drugs>>.

⁶⁰⁷ Consultation with the Ministry of Police (Ministry of Police Main Office, Apia, 28 August 2017).

⁶⁰⁸ Lagi Keresoma, 'Samoa returnees Trust help rehabilitate young offenders' (14 January 2015) *Talamua*<<http://www.talamua.com/samoa-returnees-trust-help-rehabilitate-young-offenders/>>.

⁶⁰⁹ Preliminary Consultation with the Ministry of Health (Ministry of Health Complex, Moto'otua, Samoa, 12 May 2016).

⁶¹⁰ Preliminary Consultation with Mental Health Unit (Moto'otua, Samoa, 27 May 2016).

- 9.11. Overall, despite current efforts by relevant agencies to try and address the problem, greater push is still required for more awareness programmes on the effects of illegal drugs. Both Government and the community therefore, need to go the extra mile to ensure that village communities are well informed of the harms and effects associated with illegal drug use and dealing.

Comparable jurisdictions

Australia

- 9.12. In Australia, the Government has invested a lot in awareness raising strategies and initiatives directed at the reduction of drug-related harm in communities. For example,
- National Drug Strategy 2016-2025⁶¹¹;
 - National Ice Action Strategy 2015⁶¹²;
 - National Aboriginal Torres Strait Islander Peoples' Drug Strategy 2014-2019⁶¹³;
 - and
 - National Alcohol and other Drug Workforce Development Strategy 2015-2018.⁶¹⁴
- 9.13. Many of these programmes arise from the National Drug Strategy, which was launched in 1985 as the National Campaign against Drug Abuse. Furthermore, majority of these strategies and initiatives all have similar aims with the overarching goal of having a national focus in order to raise awareness and most importantly minimise harm arising from alcohol, tobacco and other drug use.

SUBMISSIONS

The Commission sought submissions on how to better raise awareness of drug related issues in Samoa and the roles of Ministries and communities in addressing drug-related problems.

Proposing village self-initiated awareness strategies

- 9.14. The majority of submitters provided that village self-initiated awareness programmes is very important and would be effective in informing the people in village communities.⁶¹⁵ However, assistance and collaboration from relevant Ministries would be required.⁶¹⁶

⁶¹¹ Intergovernmental Committee on Drugs, Council of Australian Governments, *National Drugs Strategy 2016-2025* (draft, October 2015).

⁶¹² Commonwealth of Australia, Department of the Prime Minister and Cabinet, *National Ice Action Strategy 2015* (2015).

⁶¹³ Intergovernmental Committee on Drugs, Council of Australian Governments, *National Aboriginal Torres Strait Islander Peoples' Drug Strategy 2014-2019* (2014).

⁶¹⁴ Intergovernmental Committee on Drugs, Council of Australian Governments, *National Alcohol and Other Drug Workforce Development Strategy 2015-2018* (2014).

⁶¹⁵ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with National Council of Churches (John Williams Building, Tamaligi, 11 August 2017); Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima) 31 August 2017.

⁶¹⁶ Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Transnational Crimes Unit, Written Submission to Samoa Law Reform

Many submitters provided that the Government should still take the lead and prepare awareness strategies and programmes to roll out to the villages.⁶¹⁷ It was also suggested that villages should be consulted during the initial stages of the process to seek their views on matters including how to conduct awareness programmes within villages, as well as to get an idea of the needs and priorities of the village people and council.⁶¹⁸ According to some submitters, this will give more ownership to the villages because of their influence and involvement.⁶¹⁹ Further, the village will become more proactive in raising worthy programmes that would warrant the safety and security of village communities from illegal drugs.⁶²⁰

- 9.15. One stakeholder in particular highlighted the need for villages to prioritise issues concerning illegal drugs in addition to other issues they currently prioritise such as water and road infrastructure.⁶²¹ Having this in place will make it easier for the Government to allocate the appropriate funding to implement such proposals.⁶²²

Addressing the drug problem in Samoa: Role of Key players

- 9.16. The majority view was that the whole community comprised of government, Village Fono, churches, schools and families have roles to play in addressing problems associated with illegal drugs in Samoa. Some of the specific and common roles that were proposed:

Role of Village Fono

- 9.17. The common view was that the Village Fono should be at the forefront of tackling drug-related issues in villages.⁶²³ This includes the Village Fono initiating and enforcing

Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Consultation with National Council of Churches (John Williams Building, Tamaligi, 11 August 2017); Ministry for Revenue, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 18 August 2017; Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima) 31 August 2017.

⁶¹⁷ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017; Ministry of Justice and Courts Administration, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 24 September 2017.

⁶¹⁸ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

⁶¹⁹ Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

⁶²⁰ Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017; Samoa Cancer Society, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 22 September 2017.

⁶²¹ Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima, 31 August 2017).

⁶²² Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima, 31 August 2017).

⁶²³ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Ministry of Police, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 30 October 2017; Public Consultations with Alii ma Faipule Tina ma

effective laws and rules to address problems within their villages.⁶²⁴ An important part of this role requires the Village Fono to work closely with key ministries like MOP to complement their enforcement efforts e.g. drug raids, making arrests of drug perpetrators.⁶²⁵ It was also suggested that greater influence and powers be given to the Village Fono to impose and enforce penalties relating to drug offending.⁶²⁶

- 9.18. Moreover, some stakeholders noted the importance of having the Village Fono monitor not only drug offences but also drug offenders especially ex-drug offenders released back into the community, to avoid any future offending or reoffending.⁶²⁷ The Village Fono should also report to the relevant authorities any person either suspected to have committed a drug offence or believed to have a drug-induced condition.⁶²⁸ This will ensure the safety of the village.⁶²⁹
- 9.19. Assisting relevant agencies to raise awareness on the harm caused by drug use, as well as the related law and the consequent implications for violating such law, were also highlighted to be a role that the Village Fono should play.⁶³⁰
- 9.20. Youth representatives expressed that the role of the Village Fono is vital in reducing drug offending in the villages. The Village Fono should be more proactive in assisting the families particularly the youth in their villages to find employment because unemployment is one of the reasons people resort to drug offending. For example, some families/youth have relied on cultivating drugs and selling them due to their inability to find employment.⁶³¹ It was proposed that one way the Village Fono can assist is to urge the government and/or donor agencies to invest in village money-making initiatives e.g. plantations and vegetable gardens to assist the youth.⁶³²

Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶²⁴ Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017).

⁶²⁵ Public Consultations with Alii ma Faipule (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017); Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Consultation with Samoa Prisons and Corrections Services (Samoa Prisons and Correction Service Main Office, Tafaigata, 11 August 2017).

⁶²⁶ Public Consultations with Alii ma Faipule Tina ma Tamaitai (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶²⁷ Public Consultations with Alii ma Faipule (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶²⁸ Public Consultations with Alii ma Faipule Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶²⁹ Public Consultations with Alii ma Faipule Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶³⁰ Public Consultations with Alii ma Faipule Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017).

⁶³¹ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017).

⁶³² Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017).

Role of churches

- 9.21. A number of submissions revealed that churches should also contribute in addressing drug-related issues in Samoa by disseminating information or inviting people to carry out awareness programmes on the harms of illegal drugs through its activities such as Sunday schools, information sessions, aulavou or youth gatherings/forums.⁶³³ Some submitters even proposed for pastors to utilise their Sunday sermons to educate the youths on the harms of illegal drugs and to get the message across.⁶³⁴
- 9.22. Samoa's National Council of Churches (**NCC**) shared a recent consultation project initiated by MWCSO where NCC was responsible for advocating the spiritual side of the things regarding the social issues that MWCSO wanted to convey to the public i.e. domestic violence. Therefore, the same could be done for illegal drugs.

Role of families

- 9.23. Submissions received by the Commission re-emphasized that the family, particularly parents, have a duty to educate their children on the harmful effects of illegal drugs.⁶³⁵ They should lead by example and not expose children to drugs or alcohol as they grow up. Children would usually mirror the behaviours of their parents and there have been youth offenders caught up in drug offending as a result of their upbringing.⁶³⁶

Role of schools

- 9.24. The majority view was that schools and universities in Samoa should do more to raise awareness on the effects of drug consumption through education.⁶³⁷ Currently, the Ministry of Education Sports and Culture has a health and safety syllabus under its primary and secondary school curriculum. However, this does not necessarily cover illegal drugs. One submitter conveyed that having it in the syllabus/ curriculum would keep students informed about such issues.⁶³⁸

⁶³³Public Consultations with Alii ma Faipule Tina ma Tamaitai (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii 25-26, 28-29 September 2017); Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁶³⁴Consultation with National Council of Churches (John Williams Building, Tamaligi, 11 August 2017); Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁶³⁵ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017); Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Consultation with National Council of Churches (John Williams Building, Tamaligi, 11 August 2017); Consultation with Samoa Nursing Association (Samoa Nursing Association Headquarters, Moto'otua, 5 September 2017); Consultation with National University of Samoa (NUS Campus, Le Papaigalagala, 4 September 2017).

⁶³⁶ Consultation with Samoa Returnees Charitable Trust (Samoa Returnees Charitable Trust Headquarters, Vailima, 31 August 2017).

⁶³⁷ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017); Transnational Crimes Unit, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 5 September 2017; Consultation with the University of the South Pacific (Samoa) (University of the South Pacific Alafua Campus, 15 September 2017); Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁶³⁸ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific Alafua Campus, 15 September 2017).

9.25. It was also raised that tertiary institutions should play a more profound role assisting with drug testing for instance as they have the capacity to carry it out.⁶³⁹

Role of Ministries

9.26. Majority of the stakeholders consulted including Ministries acknowledged that more work is needed to improve awareness by relevant ministries.⁶⁴⁰ It was raised that a more coordinated effort between relevant agencies namely MOP and MOH to address drugs problems would be the practical way forward for Samoa.⁶⁴¹ This will also help save and make efficient use of government resources.⁶⁴²

9.27. There were also some submitters who suggested that a networking event or perhaps a forum held every 6 months where all relevant agencies come together to review and update each other on their work.⁶⁴³ This will not only avoid duplication of work but most importantly improve communication.⁶⁴⁴

9.28. Changing the approach of how Ministries carry out awareness programmes was also raised. Awareness programmes need to be more targeted noting the difference in age groups, social organizations and settings in the villages and should be backed up with solid evidence, statistics and data.⁶⁴⁵ This will be more effective in getting the message across and will have a more lasting impact on the people.⁶⁴⁶

9.29. The scope should also be extensive to adequately cover both rural and urban areas rather than programmes being concentrated in a particular region.⁶⁴⁷

9.30. To further improve awareness raising in Samoa, one submitter highlighted utilising media outlets and social media as they are popular especially among the youth and also because

⁶³⁹ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific Alafua Campus, 15 September 2017).

⁶⁴⁰ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017).

⁶⁴¹ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁶⁴² Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁶⁴³ Consultation with the Mental Health Unit (Mental Health Unit Conference Room, Moto'otua Hospital, 22 August 2017).

⁶⁴⁴ According to MHU ever since the Continuing Medical Education (CME) and the regulation of antibiotics, there has been a big improvement with doctors not prescribing antibiotics like lollies. CME is weekly and the antibiotics team present on how many antibiotics has gone out, over which period of time etc. Accordingly, this system could be used for monitoring the dispensing of illegal drugs to update everyone. Consultation with the Mental Health Unit (Mental Health Unit Conference Room, Moto'otua Hospital, 22 August 2017).

⁶⁴⁵ Consultation with the University of the South Pacific (Samoa) (University of the South Pacific, Alafua Campus, 15 September 2017).

⁶⁴⁶ Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁶⁴⁷ Public Consultations with Alii ma Faipule, Tina ma Tamaitai, Youths (TATTE Conference Centre in Upolu and Apita Pisaga Hall in Savaii, 25-26 and 28-29 September 2017).

it is the way to go nowadays. Such methods/tools should therefore be explored and taken advantage of which will guarantee extensive awareness.⁶⁴⁸

Village bylaws

- 9.31. The majority view was that the Village Fono should be empowered to implement bylaws to assist with the prevention and also in addressing drug issues in the village e.g. to penalise and/or to impose an obligation on villagers to report.⁶⁴⁹ One submitter noted, that such bylaws should be created in consultation with relevant government stakeholders.⁶⁵⁰ Further, it was also raised that caution must also be exercised when making such bylaws to ensure that they do not violate a person's right under the law or contradict the provisions of any other law.⁶⁵¹

COMMISSION'S VIEW

- 9.32. The responsibilities of the whole community including the government, Village Fono, schools, and churches in tackling drug-related issues among young people in particular, are extremely important. There is great need for these groups to work collaboratively to address drug-related issues among the youth and the wider community.
- 9.33. The important role of the Village Fono in taking a more proactive role in setting out firm village rules and bylaws targeting illegal drug offending and abuse particularly among young people, appropriate penalties and reporting obligations, was heavily discussed. The *Village Fono Amendment Act 2017*,⁶⁵² already empowers a Village Fono to make bylaws to promote the wellbeing, development and maintenance of harmony and good order of the village and its inhabitants. The Village Fono should also continue to assist law enforcement agencies with the monitoring, reporting, and raising awareness on the harm of illegal drugs. The *Internal Affairs Act 1995* already imposes an obligation on Sui-o-Nuu and Sui-Tamaitai-o-le-Nuu to solicit the assistance and cooperation of the Alii ma Faipule to help prevent the use of drugs and narcotics in the villages.⁶⁵³
- 9.34. Church leaders and church bodies such as youth groups and Sunday schools have an equally important role and should have awareness programmes in place so to educate young people on the harms of illegal drugs.
- 9.35. Views expressed in the consultations raised that parents themselves have a duty to educate, advice, counsel and inform their children of the dangers of illegal drugs and also ensure that their children are not exposed to such substances.

⁶⁴⁸Samoa Nursing Association, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)* 4 September 2017.

⁶⁴⁹Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017; Samoa Law Society, Written Submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 31 October 2017.

⁶⁵⁰ Ministry of Education, Sports and Culture, Written submissions to Samoa Law Reform Commission, *Drugs Reform (Review of Narcotics Act 1967)*, 4 August 2017.

⁶⁵¹Ministry of Prime Minister and Cabinet, Written submission to Samoa Law Reform Commission, *Drugs Reform (Review of the Narcotics Act 1967)*, 7 August 2017.

⁶⁵²*Village Fono Amendment Act 2017* (Samoa) s 5(c).

⁶⁵³*Internal Affairs Act 1995* (Samoa) s 11(c).

9.36. The Commission notes that more work is needed to improve awareness carried out by government ministries. The Commission considers that a more coordinated effort among relevant agencies would be more practical and efficient for Samoa. Further, a more targeted approach for awareness programmes should be made to ensure that it adequately covers all groups. Methods including social media and other media outlets should be utilised and taken advantage of to get the message across especially with current developments in Samoa's ICT infrastructure. Consequently, such efforts will make awareness raising programmes by ministries more effective in combating drug-related issues.

RECOMMENDATION 67: Parents, schools, churches and Village Fono should recognize the importance of their role in addressing drug-related issues and should work collaboratively in doing so, along with the relevant Government agencies.

RECOMMENDATION 68: Village Fono should be encouraged to have in place drug-related bylaws targeting drug offending especially among young people, with appropriate penalties. Village Fono should also continue to assist law enforcement agencies with the monitoring, reporting, and raising awareness on the harm of illegal drugs.

RECOMMENDATION 69: The role of the Executive Committees under the *Internal Affairs Act 1995* to solicit the assistance and cooperation of the Alii ma Faipule to help prevent the use of drugs and narcotics, should be utilised to its full potential and enforced.

RECOMMENDATION 70: Relevant government agencies need to develop and implement extensive and more targeted awareness raising programmes and should utilise various methods of communication for example, social media to get the message across to the community.

10. LIST OF RECOMMENDATIONS

CHAPTER 1: CURRENT SITUATION

RECOMMENDATION 1: Any provisions not covered or addressed in this Report should be retained, but redrafted in a logical order and in plain language. This will make the law clearer and consistent with relevant legislation.

RECOMMENDATION 2: To meet the TOR, Samoa's Narcotics Act 1967 should be completely overhauled and to be replaced with a new drugs framework that meets the current needs of Samoa.

RECOMMENDATION 3: A combined effort should be made to have proper and adequate data collection by the relevant Ministries. The ongoing work by Ministry of Police and Ministry of Justice & Courts Administration with the Auafamau database is commended and these Ministries should be allocated with adequate funding and resources to support and sustain it. Such systems like the Auafamau database will better inform policies and laws relating to illegal drugs.

RECOMMENDATION 4: Drug-related offences and serious offences should be disaggregated to identify whether an offender was under the influence of illegal drugs and/or alcohol at the time of the offence. This would assist Alcohol & Drugs Court's rehabilitation efforts for drug offenders.

RECOMMENDATION 5: The new drugs framework should have a provision which makes data collection mandatory for all the relevant ministries and agencies. The provisions should set out the roles of the personnel responsible for data collection and management. The provisions in the United Kingdom and New Zealand laws may provide some guidance to Samoa.

CHAPTER 2: PRELIMINARY MATTERS

RECOMMENDATION 6: The current reference to 'narcotics' is outdated and should be replaced with a more modern term. For the purpose of the new drugs framework, a simpler short title such as 'Illegal Drugs Act' or 'Illicit Drugs Act' should be considered.

RECOMMENDATION 7: The current long title of Samoa's *Narcotics Act 1967* is adequate and should be retained. However, issues such as support and treatment services and the role of the communities should be considered in the formulation of a revised long title in the new drugs framework.

RECOMMENDATION 8: Due diligence must be exercised when adding new terms (e.g. 'importation', 'supply' etc. including terms from comparable jurisdictions) and re-defining existing terms (e.g. 'cultivate') in the new drugs framework. This is to ensure that such terms serves the purpose of the new drugs framework and will be widely used and applied. Terms that are already defined in other Acts of Parliament (e.g. 'sell' under the *Acts Interpretation Act 2015*, 'customs area' under the *Customs Act 2014*) should be replicated for consistency and uniformity. The definition of 'constable' needs to be updated to mean 'a sworn member of Samoa Police Service' consistent with the *Police Service Act 2009*.

RECOMMENDATION 9: For the purpose of forfeiture provisions, the term 'article' should be defined in the new drugs framework to cover matters which include substances, articles, goods, property and proceeds of drug-related crime.

RECOMMENDATION 10: Ministry of Health and Ministry of Police should administer the new drugs framework. These Ministries should actively work together to ensure its effective implementation and enforcement.

RECOMMENDATION 11: Appointment of inspectors should be included in the new drugs framework. They should be appointed by the Chief Executive Officer of the Ministry of Health. To clarify the roles of inspectors in the new drugs framework, relevant provisions of the *Drugs Act 1967* and the *Food Act 2015* on inspectors, may provide some guidance.

RECOMMENDATION 12: When appointing inspectors, factors to be considered by the Chief Executive Officer of the Ministry of Health include having relevant qualifications, expertise in inspections and investigations, and extensive knowledge about illegal drugs.

RECOMMENDATION 13: The new drugs framework should provide for functions of the Minister of Health in raising awareness and combating drug abuse. The relevant provisions of the New Zealand legislation should be adapted and adopted.

CHAPTER 3: ILLEGAL DRUG CLASSIFICATION

RECOMMENDATION 14: The classification and amending of Schedules to the Act (section 5) should be the primary role of the Minister of Health, acting on the advice of an expert or advisory committee, whether established under the *Ministry of Health Act 2006* or utilizing existing committees.

RECOMMENDATION 15: Such expert or advisory committee shall be made up of representatives from the relevant agencies with technical knowledge of illegal drugs, pharmaceutical and medical professionals, and any other relevant personnel. The law of New Zealand can be used as guidance where relevant.

RECOMMENDATION 16: Consistent with public submissions, the functions of such expert or advisory committees, should include the following:

- to advise the Minister on the suitability of adding or omitting a drug or preparation to the Schedule;
- to determine the level of risk and provide the extent of harm caused by illegal drugs (such as physical harm, various levels of dependence, and social harm);
- to advise Cabinet on national security/safety issues and monitor drug movement and distribution.

RECOMMENDATION 17: The Schedules of Samoa's Narcotics Act should be updated regularly to ensure that it adequately covers common illegal drugs and other substances such as logo and laced cigarettes. Further research needs to be conducted on these substances to determine the extent of harm caused and to identify other harmful substances (similar to logo and pulouaitu) that should be regulated. The Committee established under **Recommendation 14** of this Report should conduct such research or the Ministry of Health under its relevant division.

RECOMMENDATION 18: Schedules should be reviewed on a needs basis to ensure efficacy in the review of emerging drugs.

RECOMMENDATION 19: Samoa should establish laws regulating psychoactive substances and synthetic drugs similar to what has been done in comparable jurisdictions. This should be included in a new drugs framework similar to New South Wales, as opposed to a standalone law. If this is the case, Samoa should consider signing up to the United Nations *Convention on Psychotropic Substances 1971* which governs the international control system for psychoactive substances.

CHAPTER 4: OFFENCES AND PENALTIES

RECOMMENDATION 20: The new drugs framework should include an offence of supplying drugs on an ongoing basis, similar to New South Wales. Such an offence would assist track regular drug suppliers in Samoa. An appropriate penalty, based on the severity of the offence should be imposed for such an offence. For example, where supply on an ongoing basis of illegal drugs is for commercial purposes then a higher penalty would be appropriate. The law in New South Wales can be used as guidance.

RECOMMENDATION 21: A standalone offence relating to drug trafficking should also be included under the new drugs framework. This will better target large quantities of drugs discovered by authorities.

RECOMMENDATION 22: Pending the passing of the *Child Care & Protection Bill 2017* by Parliament, an additional offence to procure a child to supply or take part in the supply of drugs, should be added in the new drugs framework. An appropriate penalty should be imposed to consider the severity of the offence (affecting children) and the rehabilitation needs of the offender.

RECOMMENDATION 23: Provisions on young drug offenders should not be included in the new drugs framework as they are adequately addressed under the *Young Offenders Act 2007*.

RECOMMENDATION 24: To expand offences under section 13(b) to include supply, manufacture, production, export or import of equipment consistent with Tonga and New Zealand.

RECOMMENDATION 25: To separate the offence of using premises to deal (section 13(a)) as a standalone provision to emphasize and acknowledge the growing problem of ‘meth labs’ being discovered in recent police raids. Premises should be clearly defined to include all places that are used for the commission of an offence under the new drugs framework e.g. ships, boats etc.

RECOMMENDATION 26: Consistent with overseas developments, section 25B should be removed as it breaches doctor-patient confidentiality and it would discourage patients from seeking help concerning health related problems from drugs. It will also open up opportunities for law suit against health professionals which will be costly for government. In light of this, an obligation not to supply drugs to those whom medical professionals believe are dependent on a controlled drug should be considered, as in the case of New Zealand.

RECOMMENDATION 27: To provide a standalone offence for the theft of controlled drugs and precursors under the new drugs framework similar to New Zealand. An appropriate penalty for such an offence should be imposed depending on the nature of the offence.

RECOMMENDATION 28: Pending the passing of the *Extradition Bill 2017* by Parliament, a provision on conspiring to commit an offence both in and outside of Samoa should be considered to be included in the new drugs framework.

RECOMMENDATION 29: There should be regulation(s) governing advertisements that promote the use of controlled drugs similar to New Zealand. Such regulation(s) should not be limited to psychoactive substances but should cover any controlled drug. Although such regulation(s) may not be relevant to Samoa at this stage given that such drugs are not used for advertisement purposes as the case in New Zealand and New South Wales, the Commission foresees the possibility of such advertisements that would promote controlled drugs (e.g. medicinal cannabis) in the near future. Furthermore, exemptions should be provided in situations where such advertisements are used solely for the purpose of informing the public about drug harm, as well as assist medical professionals for treating medical conditions.

RECOMMENDATION 30: The current penalty structure should be retained. The Court, guided by other relevant legislation (e.g. *Community Justice Act 2008*) has the discretion to impose suitable sentences on a case by case basis. Although Samoa's Narcotics Act imposes very high penalties/ imprisonment terms, the Court in practice does not strictly apply them. Retaining the current penalty structure would address emerging and future problems regarding illegal drugs and new offences. This would save Government resources and costs from amending the law again in the future, if the current law is to be amended to address the disproportionality.

CHAPTER 5: EXEMPTIONS FROM PROHIBITION

RECOMMENDATION 31: Consistent with developments in Tonga and NZ, the exemption 'scientific research study and analysis' should be specified in the new drugs framework. The Commission notes that there is likelihood of abuse if such an exemption is legislated given the statistics on drug offending in Samoa. However, such an exemption, if the necessary license is granted, should be strictly regulated and monitored by the relevant authorities.

RECOMMENDATION 32: The provision relating to the supply of opium should be retained and be included in the new drugs framework. This is because Ministry of Health still plays a huge part in prescribing opium for registered addicts and serve other medicinal purposes (as revealed in consultations). However, appropriate control measures should be in place to prevent abuse.

RECOMMENDATION 33: The 'defence of mistake as to the nature of controlled drug or precursor substance' should be included in the new drugs framework. If such a provision is contested, it should be left to the Court's interpretation.

RECOMMENDATION 34: The new drugs framework should include a provision exempting international travellers who have been authorised to carry illegal drugs for treatment when entering Samoa similar to Tonga and New Zealand. However, strict guidelines and conditions need to be in place to regulate such practice which may include the following:

- the amount to be allowed into Samoa which should be less than a month supply i.e. 30 day permit.
- the drug was lawfully supplied in country of origin for a certain medical condition and that it was approved by an authorised medical practitioner.
- as proof, proper medical documentation/ evidence such as a medical report must be provided certifying that the controlled drug are prescribed for treatment.

RECOMMENDATION 35: Consistent with current practice and developments in countries like New Zealand, the medicinal use of drugs (medicinal cannabis and others) should be regulated pursuant to section 29 of Samoa's Narcotics Act. Regulations should set out the following:

- Person who can prescribe drugs i.e. authorised medical practitioners. Likewise with prescribing medicine having 'prescription privileges' where medicines are only prescribed by certain medical consultants;
- Circumstances in which illegal drugs can be prescribed i.e. terminal cancer.
- Types of drugs available to be restricted to certain types that are scientifically tested to be medically safe;
- Control measures e.g. specify the amount of drugs prescribed and time frame for usage;
- Identify authorities (ideally Ministry of Police) to handle standard licenses to deal/ dispense (e.g. Pharmacy Standard Licenses).
- Enforcement e.g. monitoring of medical officers who prescribe as well as pharmacies who dispense such drugs.

RECOMMENDATION 36: In determining whether the prescription of a drug (medicinal cannabis and others) by a physician is appropriate for the patient, the Commission suggests to adapt and adopt the following criteria in the law of New Zealand:

- the presence of a severe or life-threatening condition;
- evidence that reasonably applicable conventional treatments have been trialled and the symptoms are still poorly controlled;
- evidence that the risk and benefit of the product has been adequately considered by qualified clinical specialists;
- application from a specialist appropriate to the medical condition being treated or the Chief Medical Officer of a District Health Board;
- applicant or specialist prescriber has sought adequate peer review;
- provision of a Certificate of Analysis, preferably from an accredited laboratory, so that the concentration of the active ingredient(s) is known; and
- the patient or guardian has provided informed consent.

RECOMMENDATION 37: The Commission is of the view that a relevant Board should be established under Ministry of Health to administer the regulation. The composition of the Board and functions are to be determined by the Ministry of Health. Their functions should include the following:

- to assess requests from the relevant physicians on behalf of the patient,
- carry out further research and inquiries as to the nature of the request and consultations with the relevant experts,
- provide recommendations to the Chief Executive Officer whether the request is approved or not,
- carry out any other functions that may be necessary for the purpose of the request.

CHAPTER 6: ENFORCEMENT

RECOMMENDATION 38: Current search warrant provisions should be retained (s 14). Customs officers already have a specific role to play under the *Customs Act 2014* in relation to search of ports and terminals. Therefore, it is not recommended for the new drugs framework to have a specific provision specifying powers of custom officers for search with/without warrants.

RECOMMENDATION 39: Ministry of Police and Customs should carry out awareness programmes to inform and obtain the support of the Village Fono where necessary to ensure search warrants are executed effectively in villages.

RECOMMENDATION 40: Ongoing training programmes carried out by Ministry of Police for Police officers on the execution of search warrants should continue. This is to ensure that the process of carrying out a search is clear and also to prevent unreasonable searches.

RECOMMENDATION 41: Consistent with laws in Tonga, New Zealand and Victoria, the 1 month validity period for search warrants should be retained. However, caution must be exercised by the Court if further extension is requested for investigation purposes to ensure a fair and just hearing. Any extension granted should be within validity period (1 month) to avoid delays as well as any abuse of power by police from unnecessary searches.

RECOMMENDATION 42: Circumstances in which searches *without* a warrant (s 14A) can be conducted should be clarified in a new drugs framework with appropriate measures in place to avoid unreasonable searches. Some of the circumstances which may justify searches *without* a warrant include:

- days on which the Courts are not operating e.g. Sunday or public holidays;
- where it is to ensure that evidence is not lost or destroyed; or
- where is it to ensure that the suspect is death with on the spot before he or she escapes.

The law of New Zealand can be used as guidance.

RECOMMENDATION 43: Section 6(4) of the Samoa Narcotics Act should be expanded under the new drugs framework to expressly provide other dangerous substances, chemicals and articles, in addition to prohibited plants that could be seized and destroyed. The provision should also include methods of destroying seized prohibited plant and illegal substance, in addition to the circumstances when they can be seized. This will ensure that any illegal substances are seized and disposed of accordingly.

RECOMMENDATION 44: Provisions contained in Samoa's *Drugs Act 1967* relating to broader powers of designated officers to enter, inspect, seize and destroy should be adapted and adopted in the new drugs framework for consistency and comprehensiveness.

RECOMMENDATION 45: The provisions offering protection for persons pursuing duties under the Act including police should be extended to cover informers generally. This will assist law enforcement agencies and also encourage reporting of drug-related cases in the village communities.

RECOMMENDATION 46: The forfeiture provisions under the new drugs framework should cover matters which include substances, articles, goods, property and proceeds of drug-related crime. Provisions from other relevant laws including the *Police Powers Act 2007* and the *Proceeds of Crimes Act 2007* should be replicated where necessary for consistency. The laws of Tonga, New Zealand's and New South Wales can be used as guidance.

RECOMMENDATION 47: To improve drug testing in Samoa, the following should be considered noting resource constraints and limited funding:

- a proper facility for testing.
- the need for qualified and trained personnel to carry out testing.
- ongoing training of current staff at Scientific Research Organization of Samoa and relevant agencies (Ministry of Police, Ministry of Health and Customs).
- need to pull funds and resources together to purchase the relevant equipment.

RECOMMENDATION 48: Biological testing should be considered for Samoa. Ministry of Police, Ministry of Health and Scientific Research Organization of Samoa should pull their resources and funds together to accommodate biological testing.

RECOMMENDATION 49: Presumptive methods of testing similar to New South Wales should be considered. In the meantime, Scientific Research Organization of Samoa can carry out trials to assess the feasibility of this method. Furthermore, relevant officers from Ministry of Agriculture can be trained and utilized as botanists for the purpose of testing and approving prohibited plants and drugs similar to New South Wales. Alternatively, police officers can be trained for the same purpose. Adequate funding should be allocated for such methods to be trialed and implemented.

RECOMMENDATION 50: Mandatory testing and screening should be carried out for certain industries and professions, namely, Fire & Emergency Services Authority, Ministry of Police, Ministry of Health, Samoa Returnees Charitable Trust, Customs, Scientific Research Organization of Samoa, Electric Power Corporation, Immigration and Quarantine, noting resources constraints. Relevant industries and professions should have in place guidelines to ensure that mandatory testing of employees are properly and reasonably carried out.

RECOMMENDATION 51: The new drugs framework should replicate provisions under the *Police Powers Act 2007* relating to designating drug laboratory for testing (i.e. the Narcotics Lab at Vailima) which will not only establish or designate laboratories for testing but set out other relevant provisions.

RECOMMENDATION 52: A specific provision relating to controlled delivery should be covered under the new drugs framework in addition to the power of covert monitoring and carrying out surveillance operations. Such provision should contain situations when such method is used as well as activities that can be undertaken in the course of it. The law of Tonga can be used as guidance.

RECOMMENDATION 53: Monitoring of offenders who undergo community work as ordered by the courts should be further strengthened and reinforced. Furthermore, this should also extend to cover prisoners who have been released after serving their time in prison. The Samoa Prisons and Corrections Services should work collaboratively with village communities to achieve this goal.

RECOMMENDATION 54: The implementation of the newly developed Deportees' Policy by Ministry of the Prime Minister and Cabinet should be prioritized and be in effect as soon as possible. Once the Policy is rolled out, it should be accompanied by training of staff, with awareness raising programmes developed for the local community. This should include particular focus on their roles regarding effective monitoring of deportees in communities.

RECOMMENDATION 55: A standalone Drugs Unit with the necessary resources and trained personnel should be established within the Ministry of Police to deal with illegal drugs cases.

RECOMMENDATION 56: Effective monitoring programmes should be developed to ensure that monitoring efforts are sufficient to tackle drug cases in Samoa. Programmes carried out in New Zealand and Australia could be adopted and adapted noting the availability of resources and funding.

RECOMMENDATION 57: The new drugs framework should contain provisions relating to evidentiary matters. There should also be chain of custody provisions in order to protect and govern the passing of evidence from one agency to another. The provisions under the *Drugs Act 1967* can be replicated or used as guidance for consistency and clarity.

RECOMMENDATION 58: The offence of tampering with evidence should also be included under the new drugs framework. Existing laws such as the *Police Service Regulations 2010* and the *Police Service Act 2008* should be replicated for consistency.

RECOMMENDATION 59: A provision regarding a limitation period for filing a charge sheet should be included under the new drugs framework. For expediency and efficiency, such provision should stipulate a limitation period for filing a charge sheet. An appropriate timeframe should consider related legislation namely the *Customs Act 2015*. The law of New Zealand can also be used as guidance regarding the conditions of such provision.

RECOMMENDATION 60: Enforcement matters that directly relates to the internal matters/operations of particular ministries e.g. search of persons, monitoring of dispensing and administering of drugs, monitoring borders and instrument of crime proceeds should be left to the relevant ministries to address themselves (e.g. having guidelines for dispensing and monitoring of prescriptions etc.). Comprehensive discussion and further dialogue among relevant ministries is important to ensure that such matters are considered and implemented.

RECOMMENDATION 61: To further strengthen and address issues relating to enforcement, the following measures should be considered:

- Strengthening collaboration among government ministries as well as between government ministries and the village communities.
- Review and strengthen current procedure and encourage best work practices.
- Conduct training for law enforcement officers so that they are adequately equipped with knowledge about the law.
- Raise awareness in village communities about the different roles of law enforcement agencies.
- Implement new and strengthen existing programmes that focus on rehabilitation so that they are more community-based.
- Government to prioritize combating drug-related issues on their agenda.
- Improve the law by clarifying the roles and functions of responsible authorities.

CHAPTER 7: PREVENTION AND REHABILITATION

RECOMMENDATION 62: Ministry of Health, with the assistance of relevant agencies, should develop a standalone/ specific illegal drug policy to effectively deal and address illegal drug problems and issues that Samoa currently faces as reflected in the Terms of Reference. Such policy should be inclusive of all issues relating to preventing drug harm, rehabilitation, awareness raising, as well as role of key players. The policy should be informed by existing policies and must be regularly updated to ensure that it is up to date with new developments in Samoa concerning illegal drugs.

RECOMMENDATION 63: There is no need for Ministry of Police to develop a strategy similar to New Zealand as the draft Crime Prevention Strategy is sufficient. The draft policy should include particular focus on effective measures to prevent drug-related crimes and procedures for reporting drug-related crimes.

RECOMMENDATION 64: Laws that already consider community based treatment including the *Mental Health Act 2007*, the *Community Justice Act 2008* and the *Young Offenders Act 2007* should be utilised to their fullest potential when considering sentencing drug-offenders. This would be practical for Samoa's rehabilitation efforts, saving costs and resources.

RECOMMENDATION 65: A collaborative approach must be taken by the key Ministries and village communities to ensure offenders receive targeted and appropriate rehabilitation programmes. Resources and funds of relevant Ministries must be pulled together to ensure rehabilitation programmes are effective and assist drug offenders re-integrate back society.

RECOMMENDATION 66: Awareness programmes should be undertaken to inform the *Village Fono* about the role of Alcohol and Drugs Court as well as how they can contribute with the rehabilitation of drug offenders e.g. monitoring.

CHAPTER 8: ROLE OF COMMUNITY

RECOMMENDATION 67: Parents, schools, churches and Village Fono should recognize the importance of their role in addressing drug-related issues and should work collaboratively in doing so, along with the relevant Government agencies.

RECOMMENDATION 68: Village Fono should be encouraged to have in place drug-related bylaws targeting drug offending especially among young people, with appropriate penalties. Village Fono should also continue to assist law enforcement agencies with the monitoring, reporting, and raising awareness on the harm of illegal drugs.

RECOMMENDATION 69: The role of the Executive Committees under the *Internal Affairs Act 1995* to solicit the assistance and cooperation of the Alii ma Faipule to help prevent the use of drugs and narcotics, should be utilised to its full potential and enforced.

RECOMMENDATION 70: Relevant government agencies need to develop and implement extensive and more targeted awareness raising programmes and should utilise various methods of communication for example, social media to get the message across to the community.