



Government of Samoa



KOMISI O LE TOEFUATAIGA O TULAFONO A SAMOA

# Review of the Exchange of Information in the Public Sector

*'Iloiloga pe Faamata e Talafeagai le  
Faatulafonoina o le Fefa'asoaiga o  
Faamatalaga I le Va o Matagaluega ma  
Faalapotopotoga a le Mālō'*

## Final Report 24/18

December 2018



**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 *Exchange of Information in the Public Sector* as referred to the Samoa Law Reform Commission for review.

This report sets out the Commission's recommendations on the Review of the *Exchange of Information in the Public Sector* after stakeholders' consultations and research in accordance with section 4 of the *Law Reform Commission Act 2008*.

A handwritten signature in black ink, appearing to read 'Tuilaepa', written over a light blue background.

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



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

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## 1. PART A: INTRODUCTION

- 1.1 Information is defined as facts provided or learned about something or someone<sup>1</sup>. It can also refer to knowledge acquired through experience or study about someone or something.<sup>2</sup> Information is everywhere and it primarily exists to inform, empower and explain things for various reasons. It can be shared and communicated using various means of communication, for example, via email, internet, social media, newspaper or TV.
- 1.2 Information for the purpose of this report, refers to information and data that is held and kept by Government ministries and offices that help guide and inform policy decision making in their daily operations either individually or across the public sector. Information exists to enable a Government or country to function and keep up to date with the latest developments. It informs decision making of Government for the development of a country. The absence of valid, accurate and up-to-date information can impact greatly on the Government's ability to make informed decisions that will benefit the country as a whole.  
For example:
- a) information about the prevalence of certain outbreaks of diseases will enable Government to better address and respond to such outbreaks or how they can be avoided, either through legislative and non-legislative measures;
  - b) information about the rate of unemployment in Samoa will inform the Government on how to address such problems;
  - c) information about children absent from school will assist Government make policies to push for compulsory education.
- 1.3 Thus information in any country must be well recorded and must be shared amongst Government Ministries and Offices to assist with policy making and legislative development. In order to enable the sharing of such information amongst Government Ministries and Offices, guidelines and policies must be developed accordingly.
- 1.4 In Samoa, information management and the sharing of information have been longstanding issues in Government. This may be a result of the lack of regulations or policies to govern how information is to be shared, what type of information can be shared and to whom this information will be shared. Submissions from stakeholders' consultations revealed inconsistent practice of information sharing in Government and the lack of awareness of the importance of releasing certain information upon request.<sup>3</sup>

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<sup>1</sup> Oxford Living Dictionaries, *Information* <<https://en.oxforddictionaries.com/definition/information>> accessed 14 December 2018.

<sup>2</sup> Collins English Dictionary, *Information* <<https://www.collinsdictionary.com/dictionary/english/information>> accessed 14 December 2018.

<sup>3</sup> Samoa Law Reform Commission proposal, 22 June 2017.

- 1.5 The **Samoa Law Reform Commission (“Commission”)**, has highlighted some of the issues in its Discussion Paper approved in May 2018, some of which are first hand experiences faced on its previous reviews. Some of the issues highlighted include:
- a. the lack of clear procedure to regulate and enable the flow of information; and
  - b. the lack of requirement and standards of recording and safeguarding information; and
  - c. the delays in responses to requests for information; and
  - d. the inadequate resources and training for relevant officers on effective information management and sharing.
- 1.6 From the Commission’s preliminary findings, there are existing legislation and policies that regulate information sharing. However, these existing frameworks cater for information sharing under specific ministries/agencies. They do not directly address the need to encourage open and secure information exchange in the public sector as a whole.

### **Terms of Reference**

- 1.7 Accordingly, the Commission, in accordance with its mandates under the Law Reform Commission Act 2008<sup>4</sup>, recommended a project to the Office of the Attorney General (“OAG”) in March 2017, to consider and assess whether there is a need to regulate information sharing in Samoa, and whether a **Freedom of Information (“FOI”)** would be appropriate to address the issues highlighted above.
- 1.8 Following the Commission’s preliminary research and consultations, findings reveal that a FOI framework will apply to information sharing of Government’s information to the public and the media. This was not the intention behind this proposed review.
- 1.9 Public and media accessibility to Government’s information are equally important to a democratic government. Given that the Media Council Act 2015 has only just recently been passed and is yet to be effectively implemented, the time will come for such a framework.
- 1.10 As such, the scope of the **Terms of Reference (“TOR”)** for this review was substantially narrowed down to consider the **Exchange of Information (“EOI”) or sharing of information** within and amongst the offices of the Public Sector.
- 1.11 In January 2018, the revised TOR approved by the Attorney General’s Office required the Commission to:

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<sup>4</sup> *Law Reform Commission Act 2008* (Samoa), s 6(a).

1. Consider and assess the issues on ‘exchange of information’ in Samoa between Government Ministries and agencies;
2. Look at what laws and policies are in place that govern the ‘exchange of information’ in Samoa between Government Ministries and agencies;
3. Consider similar laws and policies in other countries on ‘exchange of information’ between Government Ministries and agencies;
4. Provide suitable options for Samoa.

### Preliminary Research, Discussion Paper and Consultations

1.12 The Commission carried out its further research and review into the exchange of information in the public sector over a period of 4 months (January – April 2018). A Discussion Paper was completed and submitted to Cabinet for endorsement in May 2018.

1.13 On 6 July 2018, the Commission received a Cabinet Directive (FK(18)18) dated 30 May 2018 endorsing the Exchange of Information Discussion Paper.

1.14 Given the nature and scope of this review, consultations only sought submissions from the Ministries and Corporations in the public sector. In total, there are 58 Government Offices which make up the public sector in Samoa. They include 15 Government Ministries, 32 State Owned Enterprises, 6 Statutory Bodies and 5 Constitutional Offices. Submissions were due on the 31 August 2018. The Commission sent follow ups and reminders for submissions, on 24 August 2018.

1.15 Out of the 58 Government Ministries and Offices in the public sector, the Commission received **17 submissions** from the following (in no particular order):

	<b>August 2018</b>
1.	Ministry of Foreign Affairs and Trade
2.	Ministry of Agriculture and Fisheries
3.	Ministry for Public Enterprises
4.	Ministry of Women, Community and Social Development
5.	Ministry of Commerce, Industry and Labour
6.	Samoa International Finance Authority
7.	Electric Power Corporation
8.	Office of the Regulator
9.	Office of the Ombudsman
	<b>September 2018</b>
10.	Ministry of Justice and Courts Administration
11.	Ministry for Revenue
12.	Ministry of the Prime Minister and Cabinet

13.	Ministry of Finance
14.	Public Service Commission
15.	Attorney General's Office
16.	Samoa Fire and Emergency Services Authority
	<b>October 2018</b>
17.	Samoa Water Authority

1.16 In **September 2018**, the Commission held stakeholder consultations over a period of 2 days (*17 and 18 September 2018*) - with the Government Ministries and Constitutional Bodies on the first day, and the State Owned Enterprises and Statutory Bodies on the second day. Out of the 58 Government Ministries and Offices, participants from **25** Ministries and offices attended and took part in these public consultations.

1.17 In these consultations, the participants were divided into groups to discuss and provide their responses to the following questions:

<b>Question 1</b>	What are the main challenges and difficulties you face (i) when requesting information from other Ministries/Public Bodies or (ii) when receiving requests for information from other Ministries/Public Bodies.
<b>Question 2</b>	How has your Ministry/Public Body addressed/dealt with these challenges/difficulties?
<b>Question 3</b>	What would be the most practical method(s) or process of information sharing in the public sector? <b>Option 1</b> - An overarching legislative framework (Act/Law) <b>Option 2</b> - Centralised Portal <b>Option 3</b> - Communication Data Sharing Policies <b>Option 4</b> - Sector Communication Strategies <b>Option 5</b> - Memorandum of Understanding

1.18 The participants' discussions and responses to these questions have assisted inform the recommendations in this Report.

1.19 The Commission identified through its preliminary research the following common issues on the exchange of information in the public sector:

- a. absence of a centralised data system;
- b. absence of individual Ministry systems of information exchange;
- c. lack of up to date and information records;
- d. lack of collaboration;
- e. delay in the release of information;
- f. lack of resources, expertise and training.



1.20 Following further analysis, these issues are further narrowed down and categorised into the following 3 key issues:

- a. **INFORMATION** – there is a lack of up-to-date information, a lack of/poor record-keeping which results in a lack of available information to be shared/exchanged when requested.
- b. **INFORMATION SHARING SYSTEMS** – there is an absence of a centralised data system and there is a lack of internal information exchange system within each Government Ministry/Office.
- c. **OFFICERS/EMPLOYEES** – there is a lack of proper training, expertise and resources and collaboration in the Public Sector to properly share/exchange information.

## 2. **PART B: ISSUES (TOR 1)**

**Consider and assess the issues on ‘exchange of information’ in Samoa between Government Ministries and agencies.**

### **Issue 1 – INFORMATION**

2.1 As mentioned above, information informs and empowers, but information cannot inform or empower if it is non-existent. The lack of or absence of available and relevant information is one of the main causes of poor information sharing in Samoa’s public sector.

2.2 Government Ministries and Offices have raised in the Commission’s various review projects that they constantly face this issue of lack of or absence of relevant and accurate information that is crucial to their respective daily operations and decision making.

It was found that in most cases, the required or requested information is either unavailable or cannot be located in the relevant Government Ministry/Office’s records. In some cases, information is available, but it is incomplete, inaccurate, inconsistent or out-of-date, which has just as much negative impact as not having information at all.

2.3 This was also faced by the Commission where the Commission sought information to help inform its recommendations in its review projects. The Commission has in some cases received incomplete, inconsistent and unreliable data and information from other Government Ministries/Offices which impacted the formulation of practical and timely recommendations to improve law reform in Samoa.

- 2.4 Inconsistent and incomplete information is a result of poor record keeping as well as a lack of open communication amongst Government Ministries/Offices. Inaccurate information has a negative impact as it can lead to lack of enforcement activities as highlighted in the Commission's CEDAW report.<sup>5</sup>
- 2.5 Having a centralized hub for research and information is one way to eliminate this issue of scattered, inaccurate and incomplete information that currently exists between the Government Ministries and agencies.<sup>6</sup>

## **Issue 2 – INFORMATION SHARING SYSTEMS**

- 2.6 As identified above, information sharing systems are important as they provide a guideline to regulate the sharing of information. Unfortunately, it is evident that there is a lack of information exchange systems within individual Government Ministries/Offices. As a result, there is uncertainty as to the proper process for sharing information internally which contributes to a lack of or poor information sharing.
- 2.7 The same is seen at the national level amongst all Government ministries and offices, in the absence of an overarching information sharing system to direct information sharing amongst the public sector. The absence of such systems (for both internal and external information sharing) contributes significantly to the breakdown in the dissemination of information from one Government Ministry/Office to another where there are no clear procedures to follow.
- 2.8 In some cases, there are existing information sharing systems but the procedures are unclear or the relevant officers are unaware of such procedures.<sup>7</sup> For some, there is an inconsistency in the procedures followed by the different divisions within one Ministry/Office which can cause disagreements and confusion within that Ministry/Office.<sup>8</sup>

## **Issue 3 – OFFICERS / EMPLOYEES**

- 2.9 Further to the above issues, the Commission recognizes that one of the contributing factors to poor information exchange is the lack of relevant training for

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<sup>5</sup> Samoa Law Reform Commission, *Samoa's Legislative Compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*, Final Report No 17 (August 2016) 19.

<sup>6</sup> Samoa Law and Justice Sector, *Law and Justice Sector Plan 2012-2016*

<[http://www.samoaljs.ws/english/images/stories/uploads/SLJS\\_Plan\\_2012-2016\\_English.pdf](http://www.samoaljs.ws/english/images/stories/uploads/SLJS_Plan_2012-2016_English.pdf)>.

<sup>7</sup> Samoa Law Reform Commission, *Exchange of Information*, Discussion Paper No 24 (2018) 8.

<sup>8</sup> Ibid.

officers/employees on information management (which includes the development, collecting and dissemination of information).<sup>9</sup>

- 2.10 Some Government Ministries/Offices do not have designated officers/employees to respond to other Ministries'/Offices' requests for information. For others, the responsible officers/employees do not fully understand their role in relation to other Government Ministries/Offices and why open communication with each other is important, especially where Ministries/Offices have overlapping or interlinked functions and mandates. Some officers/employees may not be aware that the requested information is within their Ministry/Office, or they are uncertain of what information can be shared and what must be kept confidential. In some cases, the officers/employees are uncertain of their own internal information sharing processes. In such cases, the uncertainty causes delays in releasing information in response to requests. For some, it causes a reluctance in officers/employees to share the information and so respond that the requested information is unavailable or confidential when in fact the information is available and it is public information. In some cases, the uncertainty may lead to the disclosure of information which should be kept confidential.
- 2.11 In addition to the lack of proper training for officers and employees, there is also the common issue of having inadequate resources available to officers/employees to enable better and effective information management and sharing.

### **3. PART C: THE LAW**

**Look at what laws and policies are in place that govern the 'exchange of information' in Samoa between Government Ministries and agencies.**

- 3.1 This Chapter provides a brief overview of the existing laws and policies on the exchange of information in Samoa as well as some discussion on how other jurisdictions provide for and regulate information exchange in their countries.

#### **(a) SAMOA (TOR 2)**

- 3.2 The Commission's preliminary research revealed that there is no national legislation or policy in place to regulate the exchange of information in the public sector. There are however existing laws and policies that regulate the exchange of certain information but only to a limited extent.
- 3.3 In terms of legislation, the *Public Records Act 2011* regulates the custody, control, management, preservation and use of public records. These functions are carried out by the National Archives and Records Authority established under the Act. The Act

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<sup>9</sup> Ibid, at 10.

regulates, manages and preserves the use of public records. It does not regulate the sharing of information in the public sector.

- 3.4 Another limited legislative framework is the mandatory disclosure of information in the Statistics Act 2015. A Government Statistician, under a warrant issued by a Judge, is authorised to enter any place of business, inspect its premises and any books of account, documents or other business records.<sup>10</sup> This is inclusive of the public sector offices. When a census or survey is conducted by the Samoa Bureau of Statistics (“the Bureau”), it is mandatory for the public to provide all information required by the Government Statistician within the time specified.<sup>11</sup> The provision of information requested by the Bureau under the *Statistics Act 2015* is only confined to the purposes of the Statistics Act which are: to regulate the collection, recording and analysis of statistical information for the purpose of dissemination of official statistics.<sup>12</sup> It is not helpful to the discussions on a public sector exchange of information system for Samoa. Nevertheless, it is useful to understand that certain mandatory legal frameworks for the release of information for certain purposes exist.
- 3.5 The *Attorney General's Office (OAG) Directives to Lawyers in Ministries and Public Bodies 2015, No. 1* (Directive) regulates the exchange of correspondence between Ministries and the OAG on any legal matters requiring assistance from the OAG. The Directive is helpful in assisting the exchange of information in the public sector, however the Directive only goes so far to bind lawyers who are employed in Ministries and Public Bodies, but does not regulate the exchange of information within the public sector.
- 3.6 The Commission also looked at the existing policies that may have guidance on the exchange of information. These include the *Cabinet Handbook 2011*, the *Public Administration Sector Plan 2013/14-2017-2018*, *Communication Strategy 2015*, *Law and Justice Communication Strategy*.
- 3.7 The Commission during public consultations also sought the views of Government ministries and agencies on the current policies that regulate the exchange of information within their offices.
- 3.8 During consultations, several participants made references to other national policies such as the National Communication Policy, Social Media Policy and the Communication Sector Plan of the Ministry of Communications Information and Technology (MCIT) which regulates information sharing to some extent within a specific scope.

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<sup>10</sup> *Statistics Act 2015* (Samoa) s 33.

<sup>11</sup> *Statistics Act 2015* (Samoa) s 29.

<sup>12</sup> *Statistics Act 2015* (Samoa) Long title.

3.9 The Commission provides below its findings on its further research on these policies raised in consultations to see whether they are relevant in determining a way forward for this Project.

**i. National Information and Communication Technology Policy 2012-2017**

3.10 The National ICT Policy (“ICT Policy”) sets out the Government’s overarching goals for ICT based development over a 5 year period and provides an overarching framework that harmonises and aligns national ICT priorities of various industry sectors and government ministries.<sup>13</sup> The Government has a vision of ICT for all which describes the Government’s ambition to “*foster greater utilization of ICT by all Samoans, in all communities, and in all aspects of life.*”<sup>14</sup> The Policy places emphasis on the need for ICT as it is a tool that can empower people and communities by making information accessible including education opportunities, remove geographic distance as a barrier to social, economic or cultural participation, and creating trade commercial opportunities.<sup>15</sup>

3.11 The Policy also elaborates on the 5 goals and measures done on how to achieve them. Although the Policy discusses the importance of information to be disseminated throughout Samoa, it may not be relevant to use as an existing framework to the current project as it focuses more on Information and Communications Technology as a whole not just in the Public Sector but as well as other sectors in the community.

**ii. Communications Sector Plan, 2017/18-2021/22**

3.11 The Communications Sector Plan provides for a set of prioritized activities and a path designed to assist the government, businesses and citizens of Samoa to gain access to relevant information and benefit from the use of such information received through the use of the communications sector.<sup>16</sup>

3.12 The Sector Plan proposes to:

- (a) increase the degree of digitization of public administration;
- (b) develop ICT capabilities among our citizens, student and teachers; and
- (c) consolidate the ICT capabilities of government into a single ‘center of excellence’ that builds upon the SNBH (Samoa National Broadband Highway) investment.

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<sup>13</sup>Ministry of Communications and Information Technology, *National Information and Communication Technology Policy 2012-2017* <<https://www.mcit.gov.ws/images/mcit/NICTPOLICY2012-2017.pdf>>.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ministry of Communications and Information Technology, *Communications Sector Plan 2017/180 – 2021/22* <<https://mcit.gov.ws/images/Communications-Sector-Plan-2017-18-to-2021-22.pdf>>.

- 3.13 Much of what the Sector Plan proposes take advantages of the submarine cable that is currently being put into place, together with the lower costings associated with the same. It gives clear direction to government and the communications sector and informs citizens and the market about how the sector will be developed over a period of 5 years and where the priorities are placed.
- 3.14 Having considered the information above, the Sector Plan may not be appropriate in the context of this Project. The Sector appears to focus more on the improvement of the communications sector as a whole and on the national level, in relation to the Internet, telephone, television, radio, and postal services. This includes the focus on the products used to access such services such as smartphones, tablets, computers, digital equipment's etc. It would appear the Sector Plan would not directly address the issue of the exchange of information between Ministries which is the aim of this Project.
- 3.15 During consultations, some other policies and strategies under MCIT were brought to the attention of the Commission. These are briefly discussed below.

### **iii. National Communication Sector Policy 2003 (Revised in 2005)**

- 3.16 This Policy provides a "broad set of strategies, designed to guide the development of Samoa's communications sector, focusing more on ensuring that the needs and aspirations of the people of Samoa are met."<sup>17</sup> The objectives of the Policy is to create an environment that comprises competition, private sector involvement, universal service/access and market liberalisation.<sup>18</sup>
- 3.17 The development of this policy is one of the Government's substantial steps towards reforming its communications sector, driven by its belief that a strong communications industry provides vital support for economic and social development.<sup>19</sup> The Communication Sector includes all Telecommunications, Postal and Courier and Broadcasting services operating in the country.<sup>20</sup>
- 3.18 Similar to other policies identified in the Commission's research, this Policy was developed specifically for the Communication Sector only. It does not in any way address or assist in the exchange of information in the public sector and is therefore outside of the scope of this review.

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<sup>17</sup> Ministry of Communication and Information Technology, *Samoa National Communications Sector Policy (2003)* <[https://www.mcit.gov.ws/images/mcit/2.1%20NCSP\\_updated%20Aug05.pdf](https://www.mcit.gov.ws/images/mcit/2.1%20NCSP_updated%20Aug05.pdf)>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

#### iv. Social media Policy for Government 2017

- 3.19 Broadband technologies have been progressing rapidly and are bringing significant changes to the way we live and how we do business.<sup>21</sup> According to this policy, public servants are given an opportunity to take part in this technological transition and utilise the available technologies to facilitate open conversations with the public, as opposed to simply communicating to them.<sup>22</sup>
- 3.20 The purpose of this policy is to:
- Provide a framework for the use of social media services in government;
  - Support social media use in communicating overall government matters, which provide citizens better access to Government programs and services and more choice on how, when and where to access these services;
  - Enable Government to be more active in its relationship with citizens, partners and stakeholders;
  - Encourage appropriate, creative and effective official and professional use of social media by government employees for Government purposes;
  - Encourage appropriate personal use of social media by Government employees; and
  - Ensure the use of social media by Government employees complies with all applicable laws, policies and procedures.<sup>23</sup>
- 3.21 This policy was developed to provide guidelines to help clarify how Government ministries/agencies can best use social media platforms to communicate with and engage the general public in its operation. Planning to use social media platforms should be done as part of a wider effort to develop organisation's communication strategy.
- 3.22 Like other policies already discussed, this Social Media Policy for Government is also limited in scope as it focuses on how Government can better utilise social media to reach the public, the media and even the private organisations. Although it may cover communication amongst Government ministries/agencies through social media, it will not necessarily resolve the issue of information sharing (in formal terms) in the public sector. Perhaps this policy could be discussed further in a future broader review of a Freedom of Information Policy/Legislation.

Overall, the discussions above under TOR 2 show that although the above legislation and policies may provide guidelines on information sharing; these frameworks are limited to the work of the specified ministries/agencies for which they were

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<sup>21</sup> Ministry of Communication and Information Technology, *Social Media Policy for Government* (2017) <<https://mcit.gov.ws/images/2018/Publications/Social-Media-Policy-2017.pdf>>.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

developed. They do not directly address information sharing amongst the Government Ministries and Agencies in Samoa.

## **(b) OTHER JURISDICTIONS (TOR 3)**

**Consider similar laws and policies in other countries on ‘exchange of information’ between Government Ministries and agencies.**

3.24 This is the first review into the exchange of information in the public sector in Samoa. As such, the Commission looked at the approaches and experiences of other jurisdictions to guide its review towards a regulatory framework that would be appropriate and suitable to the context and needs of Samoa’s public sector.

### **i. Tonga**

3.25 Tonga has a Freedom of Information (FOI) Policy 2012 which provides and makes available official information for the public to access. Although the nature, extent and scope of Tonga’s policy is outside of the TOR for this Review, Tonga’s policy may assist the Commission in formulating relevant recommendations. This policy clarifies what official information is, establishes a specialized FOI unit to manage information as well as implement FOI policy matters and other administrative matters for proper implementation of the policy such as the process of applying for information and specific timeframes for such applications and responses to the same.

### **ii. New Zealand**

3.26 In New Zealand information can be shared between government agencies through establishing approved information sharing agreements (AISAs). AISA serves to allow government agencies to collate and share information without interfering with individual rights and exposing agencies to legal risk. These agreements are governed by the *Privacy Act 1993*. For example when requesting for information about a government agency, this request would be considered as an official request under the *Official Information Act 1982* and would therefore be dealt with under that Act. However for personal information specific to an individual, these are usually shared more generously between agencies. Sharing information on specified terms and conditions in an agreement would ensure the security and confidentiality of the information shared. This allows for flexibility as these agreements may be altered to suit the needs of each exchange taking into account the type of information that is requested and exchanged. The same approach is taken by the United Kingdom.



### iii. Australia (Federal, South Australia and New South Wales)

- 3.27 In the Commission’s Discussion Paper, it examined the different approaches taken by the Australian Federal Government and two of its State governments (namely that of New South Wales and South Australia) to “allow, enable and limit” the exchange of information between the public sector agencies.
- 3.28 For such an exchange, Australia’s Federal Government operates on a Public Data Sharing Statement.

#### a. Federal

- 3.29 In the recognition of invaluable data that Australia’s government and its entities hold to Australia’s growing economy, improving its service delivery and transforming policy outcomes of the nation, the national government issued the Public Data Sharing Statement (Statement) in 2015. For its purposes, ‘data’ in this Statement encompasses all information government entities have accumulated for any purpose(s) specified by the Statement (e.g. research or service delivery).
- 3.30 Also notable from the Statement, is its imposition of responsibility on government entities to ensure guidelines and policies are in place to maintain the security of information to the highest standards whilst upholding the privacy of individuals, nation’s security and commercial confidentiality.<sup>24</sup> Fostering a culture of trust and collaboration between entities is particularly encouraged in the Statement with the conviction that to ensure greater efficiency, data-sharing arrangements need to be carried out through a letter of exchange between entities (rather than memorandums of understanding or deeds of arrangement).<sup>25</sup>

#### b. South Australia

- 3.31 To facilitate data sharing between the public sector agencies and other entities in South Australia, this Australian state enacted a *Public Sector (Data Sharing) Act 2016* (PS (Data Sharing) Act). This Act regulates the establishment of systems and an Office of Data Analytics; and other matters.<sup>26</sup>
- 3.32 In 7 substantive Parts, Part 1 of the Act provides for preliminary matters of the Act (e.g. the short title to the Act, the commencement date and the interpretation provision of the Act) whilst Part 2 states the objects of the Act and its interaction with

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<sup>24</sup> Australian Government, *Australian Government Public Data Policy Statement* (2015) <[https://www.pmc.gov.au/sites/default/files/publications/aust\\_govt\\_public\\_data\\_policy\\_statement\\_1.pdf](https://www.pmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf)>.

<sup>25</sup> Ibid.

<sup>26</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) Long title.

other Acts. Part 3 is then dedicated to providing for the establishment of the Office of the Data Analytics leaving Part 4 to provide for *trusted access principles* that is to be applied when facilitating data sharing in the public sector.<sup>27</sup> Part 5 and 6 provides for safeguards to data sharing regulated by this Act and when the Minister may enter into data sharing agreements.<sup>28</sup> Part 7 then regulates the miscellaneous matters of the Act (such as restriction on further use or disclosure of public sector data, etc.)

### c. New South Wales

- 3.33 Similar to South Australia, the New South Wales government enacted a recent *Data Sharing (Government Sector) Act 2015* (“Data Sharing Act 2015”). This Act provides for data sharing between government sectors and the government data analytics Centre; between other government sector agencies and to address the privacy and other safeguards that apply to the sharing of such data.<sup>29</sup>
- 3.34 A brief outline of the *Data Sharing Act 2015* is as follows. It has 4 Parts. Part 1 deals with the preliminary matters to the Act, Part 2 provides for the facilitation of data sharing within the government sector<sup>30</sup> and Part 3 makes provisions for establishing safeguards to ensure privacy and confidentiality of sensitive information. This is in addition to the custody and control of information shared between government agencies.<sup>31</sup> Part 4 contains the miscellaneous matters for this Act, e.g. reporting provisions by the Secretary of the Department on compliance, delegation of the Minister’s functions and the Governor’s regulation making power.<sup>32</sup>

### d. Western Australia

- 3.35 For Western Australia, in 2003, a policy framework (Policy) was developed by a Seniors Officers’ Group. This currently regulates information sharing between agencies. The Policy aims to assist improve community outcomes, client outcomes and better coordinated services, and recognizes that effective information sharing between government agencies is key to development.<sup>33</sup>
- 3.36 The Policy further provides for principles of sharing information to ensure that information shared is carried out within the limits of the law and that processes and procedures are put in place and implemented.<sup>34</sup> Furthermore, such procedures must

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<sup>27</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) s 7(6).

<sup>28</sup> *Public Sector (Data Sharing) Act 2016* (South Australia) s 9.

<sup>29</sup> *Data Sharing (Government Sector) Act 2015* (New South Wales) Long title.

<sup>30</sup> *Data Sharing (Government Sector) Act 2015* (New South Wales) s 7.

<sup>31</sup> *Data Sharing (Government Sector) Act 2015* (New South Wales) ss 11-14.

<sup>32</sup> *Data Sharing (Government Sector) Act 2015* (New South Wales) pt 4.

<sup>33</sup> Senior Officers Working Group, “*Policy Framework and Standards – Information Sharing between Government Agencies* (2017) <[http://www.department.dotag.wa.gov.au/files/info\\_sharing\\_policy.pdf](http://www.department.dotag.wa.gov.au/files/info_sharing_policy.pdf)>.

<sup>34</sup> *Ibid.*

recognize the importance of privacy as well as information that would be considered confidential.<sup>35</sup>

- 3.37 In order to achieve the overall aim of effective information sharing among government bodies, the Policy considers several enablers and strategies for implementation which includes implementing a Policy Framework and Standards, having MOUs in place to set out a structured process for information sharing, having specific provisions in some legislation to support specific MOUs, and for CEOs to endorse MOUs to assist implement conducive information sharing amongst government bodies.<sup>36</sup>
- 3.38 When sharing information, the Policy also provides standards for managing the sharing of information that may be sensitive and should be subject to confidentiality e.g. personal information and commercially sensitive information. In all cases, government agencies have a duty of care in managing that information regardless of which agency generated the information in the first instance.<sup>37</sup>

#### **iv. United Kingdom**

- 3.39 The UK has the following mechanisms regulating information sharing across the public sector:
- i) **Legislation – enabling provisions/ gateways***
  - ii) **Policy***
  - iii) **Information sharing agreements (ISA)***

#### **General on public bodies in the UK**

- 3.40 Public bodies in the UK collect large amounts of data from individuals and other organisations in the exercise of their various functions and share these data with other public bodies.<sup>38</sup>
- 3.41 Some of the advantages of data sharing as documented include:<sup>39</sup>
- i. informed policy-making and improved provision of public services;
  - ii. emergency planning and response;
  - iii. research and the knowledge-based economy;
  - iv. efficiency and cost effectiveness; and
  - v. transparency.

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> UK Law Commission, *Data Sharing between Public Bodies*, Consultation Paper No 214 (2015) 1.

<sup>39</sup> Ibid, at 13-16.

3.42 When sharing information in the UK, it is important for agencies to know and be aware whether they have the power to do so. Broadly speaking, when sharing information between public bodies there are three ways in which they may do so:<sup>40</sup>

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

3.43 There are several policies, protocols and legislation that regulate and control the sharing of information between government bodies. In the context of personal information, there is no single source of law that regulates the powers that a public body may use to share such information.<sup>41</sup>

***i) Legislation – Enabling Provisions / Gateways***

3.44 Some of the primary legislation of the UK contain express provisions or gateways enabling government bodies to share information with one another. Such provisions may also provide for the creation of further powers to share information under subordinate legislation.<sup>42</sup> For example, section 47 of the Statistics and Registration Service Act 2007 (UK), gives the power to the Minister of the Cabinet Office to make regulations for the purpose of authorizing a public authority to disclose information to the Statistics Board where the disclosure would otherwise be prohibited by law or

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<sup>40</sup>Jenny Spiers, “UK NHS Information Sharing Policy – personal information (June 2016) <<https://www.england.nhs.uk/wp-content/uploads/2016/12/information-sharing-policy-v2-1.pdf>>.

<sup>41</sup> Ibid.

<sup>42</sup> UK Law Commission, above note 38.

the authority would not otherwise have power to make the disclosure.<sup>43</sup> Sometimes these enabling provisions or gateways tend to be permissive, creating a discretion to share information, but not an obligation. For example, under the UK Serious Crime Act 2007, s 68 permits the disclosure of information to prevent fraud: “A public authority may, for the purposes of preventing fraud or a particular kind of fraud, disclose information as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation.”<sup>44</sup>

## **ii) Policy**

- 3.45 The UK National Health Service (NHS) developed an Information Sharing Policy to:<sup>45</sup>
- (a) provide a framework for NHS England and those working on its behalf to provide information to deliver better care and consider the controls needed for information sharing; and
  - (b) establish a mechanism for the exchange of information between NHS England and other organisations.

## **iii) Information Sharing Agreements (ISA)**

- 3.46 ISA’s sometimes known as ‘Information or data sharing protocols’ can be set up by agencies to facilitate the sharing of information amongst themselves. These protocols set out a common set of rules to be adopted by the various organisations involved in an information sharing operation. These could well form part of a contract between organisations. It is good practice to have a data sharing agreement in place, and to review it regularly, particularly where information is to be shared on a large scale, or on a regular basis. Features of these agreements include:<sup>46</sup>
- i. the purpose, or purposes, of the sharing;
  - ii. data quality – accuracy, relevance, usability;
  - iii. retention of shared data;
  - iv. any particular obligations on all parties to the agreement, giving an assurance around the standards expected; and
  - v. sanctions for failure to comply with the agreement or breaches by individual staff.

- 3.47 Where information sharing is between “trusted organisations” for specific purpose such as caring for patients etc. agreements are not necessary. The policy further provides for monitoring procedures in relation to compliance with agreements and

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<sup>43</sup> For example, Statistics and Registration Service Act 2007 (Disclosure of Pupil Information) (England) Regulations 2009, SI 2009 No 277; See the UK Law Commission, *Data Sharing between Public Bodies A Scoping Report*, Scoping Report (2014) 8.

<sup>44</sup> *Ibid.*

<sup>45</sup> Jenny Spiers, above note 40, [3.1].

<sup>46</sup> *Ibid.*, at [5.1]-[5.2].

practices set out and agreed to between government agencies sharing information with one another.<sup>47</sup>

## 4. PART D: CONSULTATION OUTCOMES

- 4.1 As previously stated, there is no clear-cut framework to regulate information sharing between Government Ministries and Offices.<sup>48</sup> Although there are existing legislation, strategies and policies under certain Ministries and Offices that regulate information sharing, these relate to information sharing between these specific ministries and offices and therefore have a limited scope compared to what is required to effectively regulate information sharing in the public sector.<sup>49</sup>
- 4.2 According to submissions received by the Commission and from consultations carried out, it seems that effective regulation of information exchange in the public sector requires careful consideration of a multifaceted approach. The public sector needs a system that adequately serves the needs of each Ministries and Agencies to access relevant information to guide its policy and development decisions while at the same time offering protection for sensitive and confidential information being shared.
- 4.3 A single-focused information sharing system may not necessarily capture the complexities of information sharing within the public sector, taking into account the different types and levels of information involved. The Commission acknowledges that there are different types of information; there are public information that must be made available by default and there are sensitive and confidential information which require more stringent terms of disclosure.
- 4.4 From the Commission's findings, there are various methods that are currently used by government ministries and agencies to share information with each other. These different methods and options are further discussed as we consider what would be a suitable option for Samoa. Responses and comments from submissions as well as consultations highlight a mutual interest of ministries and entities in developing a framework that is practical.
- 4.5 Apart from a national information sharing system, the Commission notes from submissions received that that government ministries and offices exchange requests for information and responses to requests for information on a daily basis. These correspondences are commonly by way of formal letter or email. These requests are usually followed up by a telephone call or another letter or email. For some, these

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<sup>47</sup> Jenny Spiers, above note 40, [9.1]-[9.2].

<sup>48</sup> Samoa Law Reform Commission, above note 7.

<sup>49</sup> Ibid.

methods are preferred as they are quicker and there is also an immediate record of requests for information.<sup>50</sup>

- 4.6 Some stakeholders even stated in their submissions that the preferred and most practical options of sharing information with other government ministries/agencies would be through letters and emails.<sup>51</sup> These views are duly noted by the Commission. The Commission also notes from other submissions that despite the use of these methods, Ministries and Agencies continue to face various issues of getting access to relevant information requested. As such, the Commission believes that it is timely for Samoa to look at developing an appropriate national regulatory framework to aid the flow of information within the public sector.
- 4.7 The following are options from the Commission’s findings, with detailed discussions of submissions received as well as responses provided by participants to consultations on what would be the most practical method or process of sharing information in the public sector. A number of ministries and agencies provided multiple options of what would be the practical options of information sharing in their responses, and these are further discussed under each option.
- 4.8 A minor few of the stakeholders did not expressly provide their views on what would be the most practical method of information sharing in the public sector. Nevertheless, but their views assisted the Commission in understanding the existing methods that are currently being used to obtain information for the carrying out of their functions and mandates (i.e. authority under law).<sup>52</sup>
- 4.9 The following are the views and submissions received by the Commission from the stakeholders, in response to the question on what would be the most practical method of sharing information in the public sector.

## I. Legislative Framework

### SUBMISSIONS

- 4.10 Out of the 17 submissions received, 4 opted for a legislative framework to regulate the sharing of information in the public sector. The Samoa Water Authority (“SWA”),

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<sup>50</sup> Ministry for Revenue, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 17 September 2018).

<sup>51</sup> Ministry of the Prime Minister and Cabinet, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 4 September 2018; Public Service Commission, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 3 September 2018; Ministry of Agriculture and Fisheries, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018; Ministry of Women, Community and Social Development, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 30 August 2018.

<sup>52</sup> Office of the Ombudsman, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.

Ministry of Justice and Courts Administration (“MJCA”), the Public Service Commission (“PSC”) and the Ministry of Commerce, Industry and Labour.

- 4.11 The MJCA expressed in its submission that a legislative framework would be the most practical option to strengthen the process of information sharing in the public sector as a legislative approach will give weight to the implementation, enforcement as well as the management of information sharing at a national level amongst Ministries/Agencies.<sup>53</sup> The PSC shares similar views that a Right to Information legislation would be ideal to encourage and support the exchange of information.<sup>54</sup> MCIL states that enacting a legislation is an option that needs to be explored.<sup>55</sup>
- 4.12 The SWA stated that as it supports the idea of a legislation, it also has some concerns on the effective implementation of such a law, based on their experience of the application and implementation of existing laws where there is a clear contradiction with current practice, and relevant stakeholders continue to follow a practice rather than upholding and complying with clear legislative requirements.<sup>56</sup>
- 4.13 The Ministry of Foreign Affairs and Trade (MFAT) participants expressed views against the development of a legislation as this may indicate a lack of cooperation and collaboration within Government itself and may give rise to personal liability issues and implementation issues.<sup>57</sup>

## STAKEHOLDER PUBLIC CONSULTATIONS

- 4.14 From consultation discussions and presentations, a number of participants expressed views in favour of a legislative framework to regulate the exchange of information in the public sector.
- 4.15 One of the groups presented that a legislation would be the most practical as it would be binding on all government agencies and it adds weight to the need to share information amongst each other.<sup>58</sup> The same views were also shared by other groups in their presentations.<sup>59</sup> There were further discussions on other options stating that policies may lack clarity of processes and MOUs would not offer security for

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<sup>53</sup> Ministry of Justice and Courts Administration, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 4 September 2018.

<sup>54</sup> Public Service Commission, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 3 September 2018

<sup>55</sup> Ministry of Commerce, Industry and Labour, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 28 August 2018.

<sup>56</sup> Samoa Water Authority, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 24 October 2018.

<sup>57</sup> Ministry of Foreign Affairs and Trad, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.

<sup>58</sup> Ministry of Public Enterprises, Ministry of Justice and Courts Administration and Attorney General’s Office, Consultation group discussions, 18 September 2018.

<sup>59</sup> Ministry for Revenue, Ministry of Agriculture and Fisheries, Ministry of Finance, Consultation group discussion and presentation, 18 September 2018.



information that is shared as there is always the possibility of ministries/agencies sharing more than what was agreed.<sup>60</sup>

- 4.16 In contrast, another group presented that a legislation may be impractical to regulate information sharing in the public sector.<sup>61</sup>

## II. Communication Data Sharing Polices

### SUBMISSIONS

- 4.17 SWA is supportive of the development of a national policy. SWA is of the view that the absence of a national policy leads to some ministries/agencies treating information requests on an ad hoc basis, which may lead to inconsistent treatment of requests depending on gravity the respective ministries/agencies will place on requests. SWA believes that the enforcement of a national policy would remove ad hoc treatment of requests and encourage ministries to realise the importance of responding to requests for information.<sup>62</sup>
- 4.18 MFAT is also supportive of the option of developing a Communication Data Sharing Policy as proposed by the Commission in its Discussion Paper.
- 4.19 MPE also expressed that Samoa should perhaps look at revisiting current mechanisms and to look at ways to improve these existing instruments.<sup>63</sup> This is in line with the proposal by the Commission to adopt and extend the current Communication Strategy 2015 (PASP).
- 4.20 There were no submissions on the use of Data Sharing Statements.

### CONSULTATIONS

- 4.21 During consultations discussions, some participants also briefly shared their views that Samoa should look at using existing policies and consider relevant amendments and improvement to cater for information sharing needs in the public sector.<sup>64</sup>

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<sup>60</sup> Ministry of Public Enterprises, Ministry of Justice and Courts Administration and Attorney General's Office, Consultation group discussion and presentation, 18 September 2018.

<sup>61</sup> Samoa Shipping Corporation, Samoa Ports Authority, Samoa Bureau of Statistics, Airport Authority, Consultation group discussion and presentation, 19 September 2018.

<sup>62</sup> Samoa Water Authority, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 24 October 2018.

<sup>63</sup> Ministry of Public Enterprises, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.

<sup>64</sup> Samoa Shipping Corporation, Samoa Ports Authority, Samoa Bureau of Statistics and Airport Authority, Consultation group discussion and presentation, 19 September 2018.

### III. Sector Communication Strategy (Sector Approach)

4.22 There were no submissions received on Sector Communication Strategy approach.

There were also no views expressed on this Option in consultations carried out.

### IV. Memorandum of Understanding

4.23 Out of the 17 submissions, 4 opted for MOUs as the most practical method of sharing information. These are the Ministry for Revenue, Office of the Regulator and the Ministry of Commerce, Industry and Labour and the Ministry of Foreign Affairs and Trade. Out of this 4, 3 have already used MOUs in their information sharing arrangement with other entities.

4.24 The Ministry for Revenue has used MOUs and they see that this would be the best avenue to share information in the public sector as it allows both parties (ministries or agencies) to the MOU to decide and agree on the parameters of information sharing. The MOUs must set out clearly the confidentiality of information and restriction of the exchange according to their respective governing law, and provide a clear procedure for the exchange of information to ensure there is no delay.<sup>65</sup> In addition, it becomes an avenue of establishing working partnership with other ministries/agencies they have signed such MOUs with. The Office of the Regulator (OOTR) is also in support of the use of MOUs or policy.<sup>66</sup>

4.25 The Ministry of Commerce, Industry and Labour also indicated that they have used MOUs as well as Joint taskforce groups, but they still experience challenges or difficulties in obtaining requested information. As such, MCIL is open to explore other options available such as the development of legislation to allow for access of information.<sup>67</sup>

4.26 There were some differentiating views on the use of MOUs to share information. Such were the views of the Attorney General's Office where they stated that an MOU may not be efficient enough to prevent confidential information from being leaked to outside non-intended third parties.<sup>68</sup>

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<sup>65</sup> Ministry for Revenue, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 17 September 2018.

<sup>66</sup> Office of the Regulator, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 22 August 2018.

<sup>67</sup> Ministry of Commerce, Industry and Labour, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 28 August 2018.

<sup>68</sup> Office of the Attorney General, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 13 September 2018.

## CONSULTATIONS

4.27 Participants from a number of Ministries/Agencies also stated that amongst other preferred options, MOUs between Ministries and Agencies is an avenue to consider and explore.<sup>69</sup>

### *Additional options raised in submissions/consultations*

#### **a. Website analysis:**

4.28 From submissions received, the Commission noticed that a number of stakeholders suggested and raised the need for updated websites. As such, in preparation for its public consultations, the Commission carried out a check on the existing websites of Government Ministries, SOEs/Cos and how and whether these websites are utilised as a means of disclosing general/public information on the respective ministries/agencies.

4.29 In carrying out this further research, the Commission looked at whether there are existing and working websites, what type of information is made available on these websites and whether the available information are adequate, up to date and helpful etc. The purpose of this exercise was so the Commission can be informed on the level of information available to the public, and available to the public or any office, upon request.

4.30 The Commission's findings revealed that 48 Government Offices have working/active websites (3 of these Offices share 1 website – Polynesian Airlines (Holdings) Ltd, Polynesian Airlines (Investments) Ltd and Polynesian Ltd). Seven (7) Offices<sup>70</sup> do not have working/active websites and 2 Offices websites are currently undergoing maintenance work.<sup>71</sup> This status may have changed after this research was done, but this was the status as of September 2018.

4.31 The common information published in these available websites as identified include the ministries'/agencies':

- Mission and Vision;
- List of existing Divisions, roles and functions;
- Advertisement of vacant positions within Ministry/Agency;
- List of laws administered by Ministry/Agency;

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<sup>69</sup> Ministry of Health, Samoa Bureau of Statistics, Samoa Life Assurance Corporation, Samoa Prisons and Corrections Services, Accident Compensation Corporation; Consultation discussion and presentation, 19 September 2018.

<sup>70</sup> Samoa Prisons Services, Ministry of Police, Samoa Trust Estates Corporation, Samoa National Provident Fund, Ministry of Works, Transport and Infrastructure, Samoa Health Promotion Foundation and Agriculture Store Corporation.

<sup>71</sup> Samoa Law Reform Commission and the Development Bank of Samoa.

- Publications of Corporate Plans/Annual reports/projects.

- 4.32 The website is considered the first mechanism or avenue the public may obtain information on a Government Ministry/Agency. It is also perceived as an effective avenue of information sharing in the public sector. The Commission observes however that for some websites, information available are either out of date or incomplete.
- 4.33 On August 21 2018, the Prime Minister issued a directive through a letter to a number of Government Ministries and Agencies directing them to ensure that there is an operating website under each ministry/agency and where there is an existing website, to ensure that information on these websites are up-to-date.<sup>72</sup> The accessibility to information and information sharing amongst the public sector is indeed a matter of concern to Government.
- 4.34 A number of submitters provided that amongst other options, Ministries and Agencies must also ensure that public/non-confidential information under their control/care should be updated and made available through these websites.<sup>73</sup> These were submissions from the AGO, SWA and FESA, MFAT.

#### **b. Centralised Information Database/Portal**

- 4.35 A number of participants in consultations advocated for a Centralised Portal to address information sharing in the public sector.<sup>74</sup> If such a portal is developed, there must be an administrator/implementer. This group went further to suggest a collaboration between MCIT and SBS as joint-administrators taking into account MCIT's resources and technological expertise and SBS' current mandate of collecting data/information.<sup>75</sup>

#### **c. Formal Letter Request**

- 4.36 As mentioned above, formal letters is one of the most common methods of correspondences amongst Ministries/Agencies. The issue with this method is the lack of regulation and set standards to be complied with by ministries and agencies when requesting and sharing information with each other.

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<sup>72</sup> Letter from the Honourable Prime Minister to Government offices ("Circular Letter of websites"), 21 August 2018, 1.

<sup>73</sup> Office of the Attorney General, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 13 September 2018; Samoa Water Authority, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 24 October 2018; Fire and Emergency Services Authority, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 4 September 2018; Ministry of Foreign Affairs and Trade, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.

<sup>74</sup> Ministry of Public Enterprises, Ministry of Justice and Courts Administration, Office of the Attorney General, Office of the Regulator, Samoa International Finance Authority, Samoa Water Authority, Samoa Research Organization of Samoa, GCA, Ministry of Health, Central Bank of Samoa, Samoa Life Assurance Corporation, Samoa Prisons and Corrections Services, Accident Compensation Corporation; Consultation group discussions and presentations, 18 & 19 September 2018.

<sup>75</sup> Ministry of Public Enterprise, Ministry of Justice and Courts Administration and Attorney General's Office, Consultation group discussion and presentation, 18 September 2018.

- 4.37 As mentioned above, a few of the Ministries/Agencies expressed that formal letter of request was one of the most commonly used method of requesting for information. In setting standards of information sharing by way of formal letters (may be applicable to email correspondences also), the Ministry of Finance provided specific suggestions as to how formal letter of request can be used more effectively to seek/obtain information.
- 4.38 The Ministry of Finance suggested that formal letters of request would be the most practical method of sharing information, if minimum standards of compliance are put in place, such as that the requesting Ministry/Agency being required to provide the following:
- the exact information requested;
  - purpose of acquiring the information - what the information is needed or intended for;
  - a guarantee that the information will not be disclosed to a third party unless permitted by Office releasing the information;
  - clarify that if the information is shared – who will the information be shared to - whether it is shared internally to complete report to Cabinet/Parliament or to an outside agency or donor etc;
  - to provide supporting documents that the requesting Ministry/Agency may have to assist the receiving Office to understand the request.<sup>76</sup>

#### **d. Cabinet Directive**

- 4.39 One of the longest standing and widely accepted practice in the public sector, is the issuance of Cabinet Directives which set out specific instructions for Ministries and Agencies.
- 4.40 Submissions suggested that Cabinet Directives can be used as to draw and issue the principles and requirements of information sharing to each Ministry/Agency. Such a directive may be used to develop a Sector Strategy (or enhance existing strategies), or it may even be used as developing block for a comprehensive across government Communication Strategy.<sup>77</sup>

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<sup>76</sup> Ministry of Finance, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 11 September 2018.

<sup>77</sup> Ministry of Foreign Affairs and Trade, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.

## 5. PART E: RECOMMENDED OPTIONS FOR SAMOA (TOR 4)

### Provide suitable options for Samoa.

#### OPTION 1 – OVERARCHING LEGISLATIVE FRAMEWORK

- 5.1 The first option of developing an overarching legislative framework is one that offers to ensure there is weight given to the regulation of information sharing in the public sector. This approach has proven to provide solution in removing barriers in the exchange of information in other overseas jurisdictions, such as South Australia and New South Wales.<sup>78</sup>
- 5.2 Samoa can adopt an overarching legislative framework similar to that of South Australia and New South Wales. The Commission in its Discussion Paper offered a tentative draft outline for a possible Exchange of Information legislative framework:

##### ***Proposed Outline of a Bill:***

- *Short Title and commencement* – Public Sector (Data Sharing) Bill 2018
- *Interpretation* – will consider defining terms such as “data”, “information”, “data provider”, “data recipient”, “public sector”, “data sharing safeguards”, “personal data” etc.
- *Office for Data analytics* – to establish or designate an Officer or Division or Ministry/Agency to be a channel to manage the sharing of data amongst the public sector ministries/agencies.
- *Guidelines for data sharing* – with an overarching legislation, every ministry and agency that will be governed by and subjected to the proposed data sharing bill will contribute to the development of relevant guidelines and principles to guide the sharing of information/data.
- *Safeguards* – to provide security and safeguards for the custody and sharing of confidential and sensitive information.
- *Data sharing Agreements* – this provides the authority and option for a Minister to enter into data sharing agreements with other ministries/agencies. This takes into account the use of MOUs already practiced in Samoa to share data between ministries/agencies.
- *Miscellaneous* – to provide for other matters and issues such as the restriction on further use and disclosure of data, delegation of powers, personal liability, regulation making power and periodical review of the Act to ensure it remains relevant and practical for Samoa.

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<sup>78</sup> Samoa Law Reform Commission, above note 7.

## OPTION 2 – COMMUNICATION DATA SHARING POLICIES

5.3 Another option that Samoa may consider is that of using communication data sharing policies (further discussed below)

*(a) Communication Strategy 2015 (PASP) (Across the Public Service – Administered by PSC)*

- a.** From the Commission’s findings, a second option for consideration would be to adopt and extend an existing mechanism to provide for public sector information sharing. The existing mechanism considered was the PSC Public Administration Sector Plan. This Policy was developed to pave the way for the Public Administration Sector towards quality and coordinated service delivery that is cost effective, efficient and transparent.<sup>79</sup> Among other matters, this policy was designed to promote, encourage and improve the dissemination of information across the different sectors. The Commission is unaware of the level of effectiveness of this Plan, but is of the respectful view that raising awareness of the Plan’s benefits would attract full and effective implementation.

*(b) Communication Public Sector Data Sharing – Statements*

- b.** The option of using Data Sharing Statement is an option drawn from Australian Federal Government. In such Statements, the following principles are highlighted:

- The Samoan government holds invaluable data for developing the economy, improving service delivery and transforming national policy outcomes;
- *Data* refers to all data collected by government bodies/agencies for whatever purposes such as government administration, research or service delivery;
- Data within government ministries/agencies, specifically non-sensitive<sup>80</sup> data should be made available by default;
- Government bodies should ensure to put in place guidelines and policies for the security of information/data shared;
- It is important to develop a culture of trust amongst entities to encourage collaboration. For more efficient data-sharing experience, the relevant entities can use letter of exchange for data-sharing arrangements;
- To ensure the highest standards of security and privacy of individuals, national security and to uphold commercial confidentiality, safeguards must be available.

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<sup>79</sup> Samoa Law Reform Commission, above note 7.

<sup>80</sup> Data that is anonymised so that it does not identify an individual or breach privacy or security requirements.

### **OPTION 3 – SECTOR COMMUNICATION STRATEGY (SECTOR APPROACH)**

- 5.4 This approach is similar to that of the PASP Communication Strategy discussed above, but this option focuses on the development of communication strategies that will be specific to the respective sectors. Such a Strategy will aid communication and information amongst sector agencies. This is the approach taken by the Law and Justice Sector and perhaps a practice that may be followed by the 13 other Sectors of Samoa to enable better and more effective information sharing within each sector.
- 5.5 There were no submissions received on Sector Communication Strategy approach. There were also no views expressed on this Option in consultations carried out.

### **OPTION 4 – MEMORANDUM OF UNDERSTANDING (Ministry to Ministry)**

- 5.6 MOUs is one of the methods currently used by Ministries/Agencies to share information with each other under agreed terms and conditions that can be revised or strengthened as appropriate and as required by the relevant parties involved. In these signed MOUs, Ministries/Agencies set out the confidentiality conditions that restrict the disclosure of shared information to third parties.<sup>81</sup>

## **6. PART F: THE COMMISSION’S RECOMMENDATIONS – A 3 STAGE PROCESS**

- 6.1 In light of all the discussions above, emphasis is placed on Samoa’s need for an information sharing system/method in the public sector that is “practical”. From submissions received, in order for Samoa to determine an appropriate approach, the Ministries and Agencies should assess the information that is available as well as the current systems that are working or are workable so that a tailor made approach for information sharing is developed.<sup>82</sup>
- 6.2 The Commission acknowledges that information sharing issues will not be resolved overnight, rather it will take some time for Samoa to progress to fully and effectively address these information sharing issues evident in the public sector.
- 6.3 After considering all the information gathered from research, submissions received and consultations with government ministries and agencies themselves, the Commission proposes that Samoa looks at adopting an approach where it will utilise a

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<sup>81</sup> Samoa Law Reform Commission, above note 7.

<sup>82</sup> Ministry of Foreign Affairs and Trade, Submission to the Samoa Law Reform Commission, *Exchange of Information Project*, 31 August 2018.



number of methods over a period of time, to allow its public sector to adopt and incorporate such proposed regulatory frameworks into their daily operations.

- 6.4 The Commission proposes a 3-stage approach through the following 3 regulatory methods:

**(I) Cabinet Directive**

- 6.5 The first stage utilises a longstanding and widely accepted practice of using Cabinet Directives. Through this method, Cabinet will issue in a Directive to all ministries and agencies requirements, standards, guidelines and even rules of information sharing that each ministry/agency must comply with.

- 6.6 Cabinet Directives may not be law, but these are accepted and seen by most if not all of the public sector as binding directions from Cabinet which ministries and agencies immediately take action to comply with. This can be adopted at the initial stages of this step towards a regulated information sharing system in Samoa's public sector. Depending on the time needed by ministries and agencies to follow and adhere to directives given, this becomes a bridge into the second stage of this proposal to develop a national Exchange of Information amongst Public Sector Offices Policy.

**(II) Policy**

- 6.7 At the second stage of this process, the principles and guidelines of information sharing provided in a Cabinet Directive will be translated into a National Exchange of Information Policy, which will be designed to apply to all of the public sector. Such a policy may, depending on what would be considered practical for the public sector, either be a revision and extension of the existing Communication Strategy 2015 or Samoa can opt to develop a tailor-made policy from the start that will take into account the circumstances and context of Samoa's public sector.

- 6.8 Such a Policy is proposed to apply and be implemented by all offices of the public sector, and will remain in force over a stated period of time as may be necessary, until Samoa considers itself ready to progress into legislating the exchange of information in its public sector, considering the required resources and expertise to implement and enforce such a law.

**(III) Legislative Framework**

- 6.9 At the final stage, Samoa will look at developing and drafting an Exchange of Information law which will take into account its "experiences" identified through the first two stages of this process.

- 6.10 Samoa may consider the development of a tailor-made law that legislates matters set out in the Cabinet Directive and Policy, guided by the legislative frameworks of South Australia and New South Wales as explained under Option 1 above (Part 5) and also in the Commissions Exchange of Information Discussion Paper. Subject to the first two stages 'experiences' alluded to earlier, a proposed Bill outlines is as follows:

***Proposed Bill Outline:***

- *Short Title and commencement* – Public Sector (Data Sharing) Bill 2018
- *Interpretation* – will consider defining terms such as “data”, “information”, “data provider”, “data recipient”, “public sector”, “data sharing safeguards”, “personal data” etc.
- *Office for Data analytics* – to establish or designate an Officer or Division or Ministry/Agency to be a channel to manage the sharing of data amongst the public sector ministries/agencies.
- *Guidelines for data sharing* – with an overarching legislation, every ministry and agency that will be governed by and subjected to the proposed data sharing bill will contribute to the development of relevant guidelines and principles to guide the sharing of information/data.
- *Safeguards* – to provide security and safeguards for the custody and sharing of confidential and sensitive information.
- *Data sharing Agreements* – this provides the authority and option for a Minister to enter into data sharing agreements with other ministries/agencies. This takes into account the use of MOUs already practiced in Samoa to share data between ministries/agencies.
- *Miscellaneous* – to provide for other matters and issues such as the restriction on further use and disclosure of data shred, delegation of powers, personal liability, regulation making power and periodical review of the Act to ensure it remains relevant and practical for Samoa.

6.12 At this stage, the Commission wishes to highlight that as Samoa progresses towards the development and implementation of a formal and national information sharing system, government ministries and agencies are encouraged to continue to utilise and improve information sharing through other existing methods.

6.13 Ministries and agencies should still continue to utilise websites by ensuring updated, accurate and complete information is uploaded for other ministries’/agencies’ access. They may also look at existing internal policies and information sharing systems as well as existing inter-ministry sharing systems, authorising legislation and how they may continue to improve and use these methods for better open and regulated information sharing.

6.14 There is also the use of the good old traditional style system - formal letters remain the most common methods of communication with other ministries and agencies. Specific requirements (as proposed by MoF in their submission discussed above) on what is requested and supplied may be agreed to in writing.

## 7. CONCLUSION

- 7.1 The Commission acknowledges that Samoa's efforts to regulate and manage the exchange and sharing of information in the public sector cannot be achieved easily. Based on the interest and responses from government ministries/agencies, the development of an information sharing system for the public sector is a necessary and long over-due project that will cater for and address the multiple issues faced by ministries and agencies in their daily operations. Government ministries and agencies expressed their support and are keen to take this forward to completion. There is a need for a suitable and practical information sharing system which will assist significantly in better communication and flow of information for better and well-informed policy and development decision making.
- 7.2 The Commission wishes to thank all Government Ministries and Agencies for their continuous support in the work of the Commission with the provision of thorough and informative submissions as well as taking part in scheduled consultations. Your comments and responses have assisted greatly in the completion of this Report and the Commission is appreciative of your contributions.

Faafetai lava.