



DRUGS REFORM

(REVIEW OF THE NARCOTICS ACT 1967)

Issues Paper 23

June 2017

SAMOA LAW REFORM COMMISSION

The Samoa Law Reform Commission (**the Commission**) was established in 2008 by the *Law Reform Commission Act 2008* as an independent body corporate to undertake the review, reform and development of the laws in Samoa. Its purpose is to facilitate law reform in Samoa by providing pragmatic recommendations based on high quality research, analysis and effective consultation.

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This Issues Paper is also available on the Commission's website: www.samoalawreform.gov.ws

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CALL FOR SUBMISSIONS

Submissions or comments (formal or informal) on this Issues Paper should be received by the Commission no later than close of business on **27 October 2017**.

Emailed submissions should be sent to:
commission@samoalawreform.gov.ws

Written submissions should be addressed and sent to:
Executive Director
Samoa Law Reform Commission
Level 1, FMFM II Building
Eleele-Fou, Apia, Samoa

Oral Submissions should be voiced at our Public Consultations:
Dates, Time and Venues for public consultations will be announced on television, radio stations and newspapers for the public's information.

The Commission seeks your views, comments and feedback on the questions set out in this Issues Paper.

The submitters are advised to focus on any of the questions provided therein. It is definitely not expected that you will answer every question.

A Final Report and Recommendations to Government will be published in **December 2017**.

PREFACE

In March 2015, the Commission received a reference from the Office of the Attorney General (**OAG**) to review the *Narcotics Act 1967* (**the Narcotics Act**). The reference raises concerns that the current Act is outdated. Also, the only amendments made since its enactment relates to dealing in narcotics and search warrants in 2006 as well as precursors (materials needed to manufacture drugs) and increasing the penalties for majority of the drug offences in 2009.¹

The reference also highlights the issue that drug related cases take up a lot of the Court's time and resources. Furthermore, there have been reports of a certain sector of Samoan society who use methamphetamine, which is a major concern.

The scope of the Terms of Reference (**TOR**) include the following issues:

- a) Whether the current 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.
- 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 councils and churches with respect to drug use.

This Issues Paper presents key issues and questions associated with the above TOR, for the purpose of public consultations. Submissions that will be received from these public consultations will assist the Commission to formulate its recommendations to Cabinet on proposed options for reforming Samoa's current Narcotics Act. Given the broad scope of the TOR, this paper will not address a number of issues, such as the history and development of drug regulation, psychoactive substances in food, options for reform of the current classification system, and offences that are indirectly related to drug offences, to name a few. The Commission

¹ These offences include unlawful cultivation of a prohibited plant, illegal import or export of narcotics, illegal import or export of controlled precursors, miscellaneous offences, unlawful supply or possession of narcotics, unlawful manufacture of narcotics, unlawful sale, manufacture, supply or possession of controlled precursor, and breach of any provisions under the Act generally.

is of the view that these issues should be dealt with in a separate review, if required. However, the focus of this Issues Paper will consider issues raised in the above TOR.

In this context and in light of the TOR, this Issues Paper will be divided as follows:

1. **Part A:** Part A will assess the current drugs landscape in Samoa, with specific regard to Samoa's Narcotics Act and the application of this Act in practice using the available statistics. Part A consists of the following chapters:
 - a. **Chapter One** will describe the current drugs landscape in relation to Samoa's Narcotics Act, as well as examining model laws from overseas jurisdictions which can be used to develop Samoa's current legislative framework;
 - b. **Chapter Two** will cover relevant statistics from key stakeholders regarding the implementation of Samoa's current drugs legislation;
2. **Part B:** Part B will assess the other emerging issues as outlined in the TOR, which may or may not be already featured in the Narcotics Act. Part B consists of the following chapters:
 - a. **Chapter Three** will analyse Samoa's current preventative regulatory regime and discuss areas in which improvement is necessary;
 - b. **Chapter Four** will assess Samoa's current enforcement structure;
 - c. **Chapter Five** will discuss support and treatment services and available rehabilitation facilities in Samoa, as well as proposed facilities;
 - d. **Chapter Six** will examine drug-related harm and issues surrounding the minimisation of this harm;
 - e. **Chapter Seven** will explain the medicinal use of certain drugs in controlled situations in Samoa;
 - f. **Chapter Eight** will review the emergence of new drugs such as synthetic marijuana and party pills and model laws which can be adopted to combat such a threat; and
 - g. **Chapter Nine** will discuss the roles and responsibilities of parents, village councils and churches in addressing issues relating to drug use.

RELEVANT STAKEHOLDERS AND METHODOLOGY

In preparing this Issues Paper, the Commission has been assisted by the following key stakeholders who have provided advice and information relevant to the TOR:

- (i) the Ministry of Health (**MoH**);
- (ii) the National Prosecution Office of the OAG (**NPO**);
- (iii) the Ministry of Police (**MoP**);
- (iv) Samoa Prisons and Corrections Services (**SPCS**);
- (v) the Mental Health Unit (**MHU**);
- (vi) the Scientific Research Organisation of Samoa (**SROS**);
- (vii) the Transnational Crime Unit (**TCU**);
- (viii) the Goshen Medical Health Trust (**GMHT**);
- (ix) the Alcohol and Drugs Court Samoa (**ADC**); and
- (x) the Samoa Returnees Charitable Trust (**SRCT**).

The discussion and analysis in this Issues Paper are confined to the information provided to the Commission by the above relevant stakeholders to date, together with a comparative analysis of drug laws and landscape in comparable jurisdictions of Australia, New Zealand, the United States and the United Kingdom, as well as other Pacific Island Countries (**PICs**) including Tonga, Vanuatu and Papua New Guinea. Furthermore, this Issues Paper will also make reference to international drug conventions that Samoa is and is not a party to, its obligations under these conventions, and areas that would allow Samoa to further improve its current drug legislative framework.²

This Issues Paper calls for public submissions. It will present issues relating to the legislation regulating drugs and will also identify issues raised by key government stakeholders in their submissions. All members of the public are welcome to present their own submissions and viewpoints on this important topic, in accordance with the directions for submissions given on **page 4** of this Issues Paper.

² These include the Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol) (**the 1961 Convention**); Convention on Psychotropic Substances 1971 (**the 1971 Convention**); and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (**the 1988 Convention**).

ACRONYMS AND TERMINOLOGY

Terminology

The Commission notes that the term ‘drug’ varies across jurisdictions. For example, the terms ‘controlled’, ‘illicit’, and ‘prohibited’ are used in New Zealand, Tonga and New South Wales respectively. In this Issues Paper, the Commission will use terminology relevant to the jurisdictions being discussed. However, for the purpose of any proposed reforms that arise out of this review, the Commission recommends that plain language and consistent terms are used.

Acronyms

ACIC	Australian Criminal Intelligence Commission
ADANZ	Alcohol Drug Association New Zealand
ADC	Alcohol and Drugs Court
ADHD	attention deficit (hyperactivity) disorder
NDS	National Drug Strategy 2016-2025 Australia
AOD	alcohol and other drug
CEO	Chief Executive Officer
CID	Criminal Investigation Division
CJ	Chief Justice
CLA Act	Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015
DUMA	Drug Use Monitoring in Australia
EACD	Expert Advisory Committee on Drugs New Zealand
GMHT	Goshen Mental Health Trust
INCB	International National Control Board
IDMS	Illicit Drug Monitoring System New Zealand
LEAD	Law Enforcement Against Drugs Unit
LSD	lysergic acid diethylamide
MHU	Mental Health Unit
MJCA	Ministry of Justice Courts and Administration
MoH	Ministry of Health
MoP	Ministry of Police

NAODWFDS	National Alcohol and other Drug Workforce Development Strategy 2015-2018 Australia
NATSIPDS	National Aboriginal Torres Strait Islander Peoples' Drug Strategy 2014-2019
NDARC	National Drug and Alcohol Research Centre New Zealand
NGOs	Non-Governmental Organisations
NHS	National Health Service
NIAS	National Ice Action Strategy 2015 Australia
NPO	National Prosecution Office
NWDMP	National Wastewater Drug Monitoring Program Australia
NZMOH	New Zealand Ministry of Health
NZNDP	New Zealand National Drugs Policy 2015-2020
NZSSA	New Zealand's Search and Surveillance Act 2012
OAG	Office of the Attorney General
PICs	Pacific Island Countries
PIFS	Pacific Islands Forum Secretariat
PNG	Papua New Guinea
POCT	point-of-collection testing
PTCCC	Pacific Transnational Crime Coordination Centre
SPCS	Samoa Prisons and Correction Services
SIROS	Scientific Research Organisation of Samoa
SRCT	Samoa Returnees Charitable Trust
TCU	Transnational Crime Unit
TOR	Terms of Reference
UN	United Nations
1961 Convention	UN Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol)
1971 Convention	UN Convention on Psychotropic Substances 1971
1988 Convention	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

1. INTRODUCTION

- 1.1 The Narcotics Act currently uses the term ‘narcotic’ to describe illegal drugs. For the purposes of this Issues Paper, the Commission will use the term ‘drug’ for consistency.
- 1.2 Generally, **drugs** include any substance, preparation, mixture, article, or plant whether natural or synthetic whether legal or illegal.³ However for the purposes of this review, the primary focus is on ‘illegal drugs’.

Current Issues in Samoa

- 1.3 Drug-related issues are becoming prevalent today causing personal, social and economic harm to Samoan communities.⁴ Preliminary consultations reveal that some of the issues currently hindering Samoa’s efforts in combating drug-related problems include:

(a) Monitoring and Enforcement

- There is poor monitoring of drug offences and drug offender reoffending and rehabilitation rates due to insufficient resources and data in law enforcement agencies;⁵
- There is poor communication systems nationally and across regional organisations to keep the relevant agencies connected and informed on drug related crimes in the region;⁶ and
- There is underreporting by the public of drug-related offences that take place in the workplace, villages and communities, with reporting generally limited to periodic media stories.

(b) Resources and Facilities

- There are limited resources to detect, monitor and assist law enforcement agencies such as Police and Customs. For example, border control detection equipment, surveillance cameras, and testing procedures are in need of improvement;⁷

³ United Nations Office on Drugs and Crime, *Information about drugs* (2017) UNODC <<https://www.unodc.org/unodc/en/illicit-drugs/definitions/>>.

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, *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>.

⁶ Pacific Island Forum Secretariat, *Pacific Transnational Crime Assessment* (2016) PIFS.

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>.

- There are inadequate personnel for treating addicts, including psychologists to work with the MHU and ADC;⁸ and
- Samoa has poor facilities to treat addicts and detain offenders (i.e. prisons).⁹

(c) Penalties

- Current penalties are not effective in deterring offenders and reducing reoffending rates. Sentences are disproportionately high compared to the level of offending, particularly compared to other jurisdictions and sentencing trends for drug offending. For example, possession of a cannabis cigarettes carries a maximum penalty of 14 years imprisonment.¹⁰
- There are no provisions relating to rehabilitative measures or other alternative dispositions as a penalty, under the current legislation. In practice, there are few programmes implemented by various organisations.

(d) Offending by youth and children¹¹

- There are reports of increasing numbers of minors (under 16 years) possessing cannabis.¹² Members of the judiciary have expressed concern and urged that the community as a whole address the issue given it is a social problem where everyone is responsible.¹³

(e) Public awareness

- There is a lack of awareness campaigns and trainings for officers and law enforcement agencies, including Police officers, customs officers and health professionals dealing with drug-related cases;¹⁴ and
- There is a lack of publicity campaigns for the public on the dangers and risks of drug use (awareness programmes).¹⁵

(f) Outdated Regulations

- Current regulations are outdated and require amendments to capture new developments similar to other jurisdictions such as New Zealand and New South

⁸ Preliminary Consultation with Mental Health Unit (Level 2-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) (Level 1-Ministry of Justice, Courts and 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 See *Narcotics Act 1967* (Samoa) s 18(b).

¹¹ Children here refers to a child aged 16 and/or below which is in line with the international *Convention on the Rights of the Child* of which Samoa is a party.

¹² TV3 Tala I Vaifanua, 'Police Media Report: Drug Offences' (March 2017) *TV3 Samoa*.

¹³ *Police v Williams* [2014] 153 WSSC. See also Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016).

¹⁴ 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>.

¹⁵ Preliminary Consultation with Mental Health Unit (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 27 May 2016).

Wales, such as regulations prohibiting, regulating, or restricting advertisements for controlled drugs, and statements made in any such advertisement.¹⁶

- 1.4 In light of the above issues and many others, the Commission considers it necessary to do a thorough reform of the current drugs legislation. A new and updated law can address the above issues and better cater for the ever-changing drug environment.

Issues in the Pacific region

- 1.5 Vanuatu and Papua New Guinea (**PNG**) have recently reviewed their drug legislation, in 2013 and 2015 respectively. While the PNG review is not publicly accessible, the Vanuatu Law Commission made a number of recommendations to reform its *Dangerous Drugs Act 1938* similar to this current review.¹⁷ Recommendations included improving drug awareness through education programmes; providing for diversionary programmes and community work for small possession charges; training all officers in testing, storage and destruction procedures and establishing an expert committee to advise on new substances or drugs. Vanuatu currently has a *Dangerous Drugs Bill* reflecting the above recommendations, which is not yet passed.
- 1.6 A recent report on international criminal activity stated that the Pacific region was “highly vulnerable”.¹⁸ Generally speaking, PICs have reported very low levels of cocaine use. Methamphetamine seizures have strongly increased since 2012 for both trafficking and manufacture.¹⁹ Along with cannabis,²⁰ methamphetamine is the most frequently intercepted drug in the region, with seizures occurring in Fiji, French Polynesia, Samoa and Tonga in 2009 and 2010.²¹ Moreover, recent media reports have highlighted that PICs have been used as staging areas for illegal drug trafficking. Further, New Zealand Police and security analysts have noted that deportees mainly from the United States to four PICs namely Tonga, Fiji, Vanuatu and New Caledonia are fuelling an increase in drug and weapon smuggling.²²

¹⁶ *Misuse of Drugs Act 1975* (New Zealand) s 37(1)(o); See also *Misuse of Drugs Regulation 1977* (New Zealand) s 50.

¹⁷ Vanuatu Law Commission, *Dangerous Drugs Act: Legislative Review*, Final Report (2014) <http://www.lawcommission.gov.vu/images/pdf/Dangerous_Drugs_Final_Report.pdf> (Accessed 26 January 2017).

¹⁸ Blair Ensor and Tony Wall, ‘Corruption in Paradise: International Crime groups target vulnerable Pacific countries’ (7 November 2016) *Stuff* <<http://www.stuff.co.nz/world/south-pacific/85785437/corruption-in-paradise-international-crime-groups-target-vulnerable-pacific-countries>>.

¹⁹ Blair Ensor and Tony Wall, ‘Corruption in Paradise: International Crime groups target vulnerable Pacific countries’ (7 November 2016) *Stuff* <<http://www.stuff.co.nz/world/south-pacific/85785437/corruption-in-paradise-international-crime-groups-target-vulnerable-pacific-countries>>.

²⁰ See Prime Minister’s Office: Government of Tonga, UPDATE: *Destroying of Drugs seized in Eua* (22 November 2016) <<http://www.pmo.gov.to/update-destroying-of-drugs-seized-in-eua/>>.

²¹ United Nations Office on Drugs and Crime, *Patterns and Trends of Amphetamine-Type Stimulants and Other Drugs: Asia and the Pacific* (3 December 2012) <https://www.unodc.org/documents/southeastasiaandpacific/2012/12/ats-2012/2012_Regional_ATS_Report_FINAL_HQPDF_3_Dec_2012_low.pdf>.

²² TVNZ 1NEWS, ‘Pacific nations being used as staging areas for drugs coming to New Zealand’ (6 April 2017) *TVNZ* <<https://www.tvnz.co.nz/one-news/new-zealand/pacific-nations-being-used-staging-areas-drugs-coming-new-zealand>>.

- 1.7 During multiple search warrants executed by the MoP in recent years, small quantities of methamphetamine were located pre-packaged for sale which indicates the emergence of a domestic enterprise supporting local production.
- 1.8 According to Samoa's TCU, key vulnerabilities likely to be increasing the supply and transshipment of methamphetamine within PICs include the limited ability to properly screen international mail and parcel post items, which provides an avenue for illegal drug importers to receive packages containing illegal drugs; the frequency of commercial flights from Asia into PICs and the large number of cargoes containing illegal drugs being imported to PICs.
- 1.9 The Pacific Islands Forum Secretariat (**PIFS**) has recognised that transnational crime remains a threat to national and regional stability and requires effective national law enforcement agencies, continuing regional co-operation and high level political commitment to combat this threat.²³
- 1.10 The Commission's review is comprehensive and wide ranging. The objective is to propose a new legislative framework for regulating drugs that is workable for Samoa and reflects modern knowledge and understanding about drug use and its impact on communities. Given the above discussion on issues in Samoa and the region, the review of the current Narcotics Act is timely and necessary for Samoa.

²³Pacific Islands Forum Secretariat, *Forty-First Pacific Islands Forum Port Vila, Vanuatu 4 - 5 August 2010* (2010) <http://www.forumsec.org/resources/uploads/attachments/documents/2010_Forum_Communique.pdf>.

PART A

This Part examines the current legal landscape relating to drugs in Samoa, specifically:

Chapter One will examine the current provisions of the Narcotics Act, as well as examining model laws from Tonga, New Zealand and New South Wales. This Chapter will provide a comparative analysis in order to identify areas where Samoa's legislation is in need of improvement and reform.

Chapter Two analyses statistics obtained from the MoP and SPCS regarding drug offences in Samoa from 2009-2015.

2. CHAPTER ONE: CURRENT DRUG LANDSCAPE IN SAMOA

2.1 This chapter examines the current legal landscape in Samoa relating to drugs, in particular the current provisions of the Narcotics Act. It will also examine model laws from Tonga, New Zealand and New South Wales. The comparative analysis will identify areas where Samoa's legislation is currently lacking and raise issues and questions for public submissions.

The Narcotics Act 1967

2.2 The Narcotics Act regulates the import, export, growing, manufacture, sale, distribution, use and possession of narcotic drugs.²⁴ Since its enactment 50 years ago the Narcotics Act has only been amended twice in 2006 and 2009 respectively. Some of the amendments made included:

- introduction of penalties for illegal export/import of narcotics and the unlawful possession or supply of narcotics;
- introduction of penalties for illegally importing controlled precursors (the material(s) needed to manufacture drugs), as a penalty section on controlled precursors did not previously exist;²⁵
- imposition of a mandatory obligation on healthcare professionals such as nurses, pharmacists, doctors, dentists and veterinarians to report to police a suspicion that a patient has illegally used a narcotic;
- a substantial increase in penalties for drug offences;²⁶ and
- the three-tiered drug classification system (Class A, Class B and Class C) was also introduced.²⁷

²⁴*Narcotics Act 1967* (Samoa) Long title.

²⁵*Narcotics Act 1967* (Samoa) s 17A. The 1967 Act only provided penalties for illegal import or export of illegal narcotics.

²⁶For example, see *Narcotics Act 1967* (Samoa) s 6.

²⁷ Before the 2009 amendments, the first Schedule contained both cannabis (currently a Class B drug) and cocaine (currently a Class A drug); and the second Schedule contained methamphetamine (currently a Class A

- 2.3 Samoa's current Narcotics Act largely follows New Zealand's *Misuse of Drugs Act 1975*. Although existing provisions adequately address a number of drug-related issues, there is a lack of clarity regarding some provisions. These issues will be discussed below.
- 2.4 New Zealand's legislation contains 41 sections, however the sections are not categorised into parts with subheadings such as, (i) offences, (ii) penalties, or (iii) evidentiary matters among others. Legislation in other countries such as Australia (specifically New South Wales) and Tonga are more clearly structured in separate parts which deal with specific matters. This structure makes the legislation more user friendly and easier to navigate.

Adequacy of the Narcotics Act

- 2.5 This part will briefly discuss the key features of the Narcotics Act. Consequently, it will highlight some of the loopholes in the Act in light of similar provisions in the laws of New Zealand, New South Wales and Tonga. It will then raise issues and questions as to whether current provisions of the Narcotics Act are to be amended, updated or retained, to follow provisions in New Zealand, New South Wales and Tonga.

1) Name of the Act and reference to narcotics

- 2.6 New Zealand's illegal drug legislation is known as the *Misuse of Drugs Act 1975*. New South Wales refers to its legislation as the *Drug Misuse and Trafficking Act 1985* while Tonga's legislation is known as the *Illicit Drugs Control Act 2003*.
- 2.7 It appears that the terminology for illegal drugs vary across the different jurisdictions. Namely, New Zealand uses "controlled drug", New South Wales uses "prohibited drug", and Tonga uses "illicit drug." Samoa uses a more general term "narcotic".
- 2.8 The Commission considers it important that any proposed new title and reference to narcotics should take into account more modern terminology and plain language to ensure consistency and that the legislation is understood by as many people as possible.

Questions:

1. *Should the name of the Narcotics Act be changed?*
2. *If the name of the Narcotics Act is changed, what should it be called (for example Illicit Drugs Act)?*

2) Preliminary matters

(a) Interpretation

drug). The three-tiered classification has therefore clarified different classifications of narcotics and is in accordance with the UN internationally recognized illegal drug classification system.

2.9 Section 2 of the Narcotics Act contains definitions. Some of the important terms in the relevant laws of New Zealand, Tonga and New South Wales which are not defined in the Narcotics Act, but merit consideration, include ‘controlled drug’, ‘illicit drug’, ‘prohibited drug’, ‘sell’²⁸, ‘psychoactive substances’, and ‘supply’.

2.10 The Commission also notes that terms listed under a new legislation should be set out clearly and referred to with more modern terminology. For example, the term “constable” to be amended to “Police Officer” which refers to a sworn member of the Samoa Police Service. This should be reflected throughout the Narcotics Act accordingly so that it is consistent with terminology used in related legislation such as the *Customs Act 2014* and *Food Act 2015*.

Questions:

3. *Should the new legislation, where appropriate, include terms (not already covered under the current Narcotics Act) as listed in the legislation of New Zealand and New South Wales (for example, supply, sell)?*
4. *What other terms should be defined under the new legislation (for example, article)?*

(a) Administration of the Act

2.11 Section 3 provides that the MoH, under the control of the Minister, is charged with the administration of the Narcotics Act. The same applies in New Zealand and Tonga respectively where the Ministry of Health of both countries administer the Act.

(b) Inspectors

2.12 Section 4 provides for the appointment of inspectors by the Public Service Commission for the purposes of the Narcotics Act. Appointments are made on the recommendation of the CEO, however the Act does not specify what factors the CEO should consider when making this recommendation. Additionally, the functions of an inspector are scattered throughout the Narcotics Act but are not clearly stated in a comprehensive list, for ease of reference, in this section.

2.13 Tonga has a similar albeit broader provision which relates to the appointment of authorised officers who are suitably qualified and trained and are authorised to carry out specific duties under the Act.²⁹

²⁸ Note that the term ‘sell’ although not defined under the Narcotics Act is defined under the *Acts Interpretation Act 2015* which includes “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.”

²⁹ *Illicit Drugs Control Act 2003* (Tonga) s 31.

2.14 New Zealand appoints “authorised person” which includes a custom or a police officer, designated prescribers, nurse practitioners, optometrists and midwives. New South Wales’s reference to “authorised person” bears a similar meaning to that of New Zealand.

Questions:

5. *What factors should the CEO take into account when appointing ‘inspectors’ under the Act?*
6. *Should section 4 include a comprehensive list of the functions of ‘inspectors’?*
7. *Should the legislation include a definition of ‘authorised officers’ similar to New Zealand and New South Wales?*

(c) Classifications and Amending Schedules

2.15 Section 4A provides that narcotics are to be classified as Class A, Class B and Class C drugs. This is based on the risk of harm the drug poses to individuals or society when they are misused. This is similar to the classification system used in New Zealand. Accordingly:

- (i) narcotics that pose a very high risk of harm are classified as Class A narcotics;
- (ii) narcotics that pose a high risk of harm are classified as Class B narcotics; and
- (iii) narcotics that pose a moderate risk of harm are classified as Class C narcotics.³⁰

2.16 However, it is unclear from Samoa’s Narcotics Act how the level of risk should be determined.

2.17 Section 5 provides that the Head of State, acting on the advice of Cabinet, may by order amend lists of narcotics or prohibited plants specified or described in the First, Second and Third Schedule. However, it is unclear from the Narcotics Act how the Head of State determines the re-classification and what criteria he or she follows. An issue to note from section 5 is whether the Head of State is the appropriate person to amend lists of narcotics or prohibited plants, as it may be impractical to implement. Generally speaking, Samoa follows the United Nations’ (UN) classification of hard drugs.³¹ However, in the instances where this may not be appropriate, it is not clear how the different degrees of risk are and should be defined for Samoa’s purposes.

2.18 The Commission notes that the *Ministry of Health Act 2006* enables the Minister to establish advisory bodies to assist the Minister or MoH to carry out its functions under that Act or any applicable law. To do this, these bodies may make enquiries, conduct research or report to the Minister.³² Accordingly, as the MoH is the administering authority of the Narcotics

³⁰ *Narcotics Act 1967* (Samoa) s 4A.

³¹ 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.

³² *Ministry of Health Act 2006* (Samoa) s 13.

Act, the Commission notes that this provision may be an avenue the MoH could use to establish an advisory committee to advise on drug classification.³³

- 2.19 New Zealand's legislation establishes advisory and technical committees responsible for 'advising the Minister regarding any of the purposes of this Act',³⁴ and an Expert Advisory Committee on Drugs (**EACD**) who are mainly responsible for advising on matters relating to 'drug classification'.³⁵ The EACD is tasked with carrying out medical and scientific evaluations and making recommendations to the Minister regarding reclassification if necessary. In addition to the advice by these committees, the Minister must also consider certain factors³⁶ before recommending amendments to the schedules of the Act in Parliament.³⁷
- 2.20 Accordingly, the Commission notes that having similar committees and factors for the Minister to consider could assist Samoa to determine the risks associated with different types of drugs, advice on drug classification and any other matter relating to drug use and harm.

Questions:

8. *What is the practice of the Head of State under section 5 when adding or omitting any drug, preparation or substance to the prescribed schedules? Should this practice be legislated?*
9. *Is the Head of State the appropriate authority to determine drugs reclassification for Samoa?*
10. *Should an expert committee(s) be established to provide advice when adding or omitting any drug, preparation or substance to the prescribed schedules? If so, who should be part of these committee(s) and what will be their functions?*

(d) Functions and powers of Minister

- 2.21 Samoa does not set out the functions of the Minister in the Narcotics Act. 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.³⁸

³³ Email from the Office of the Attorney General to the Samoa Law Reform Commission (preliminary consultations), 1 May 2017.

³⁴ *Misuse of Drugs Act 1975* (New Zealand) s 5.

³⁵ *Misuse of Drugs Act 1975* (New Zealand) s 5AA.

³⁶ 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).

³⁷ *Misuse of Drugs Act 1975* (New Zealand) s 4B.

³⁸ See *Narcotics Act 1967* (Samoa) ss 10-12.

- 2.22 In contrast, the New Zealand *Misuse of Drugs Act 1975* specifically lists the functions of the responsible Minister. 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.³⁹
- 2.23 Furthermore, the New Zealand legislation also stipulates the Minister's powers to 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.⁴⁰ Further, the Minister also has the power to 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 a Medical Board.⁴¹ This notice can be revoked at any time.⁴²
- 2.24 Samoa does not have either provision. Therefore, such a provision could potentially assist in clearly articulating the Minister's functions, raising awareness and combating abuse.

Questions:

11. Should the new legislation include a comprehensive list of powers and functions of the Minister similar to New Zealand? If so, what Ministerial powers should be included in the new legislation?

3) Offences

(a) Possession and cultivation of prohibited plants

- 2.25 Section 6 makes it an offence to cultivate a prohibited plant or be in possession of its seed(s) unless the court is satisfied that the offence was not committed wilfully. It is a defence to this section if a person was granted a licence to cultivate or be in possession of the plant or seed(s), and if the plant seed is a variety of *PapaverSomniferum* L and was not intended to be a source of narcotic.⁴³ The Narcotics Act does not state the circumstances in which the licences 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.
- 2.26 In preliminary consultations with the OAG, it was flagged that regulations could therefore be made to exempt people from liability under this section if it is to conduct scientific study or research, for example. However, the OAG indicated that significant stakeholder consultation should occur before any exemptions are made, to prevent abuse in future and ensure there are appropriate monitoring/supervisory bodies in place.
- 2.27 New Zealand, Tonga and New South Wales have similar provisions to Samoa's current Act. However, New South Wales further states that a person is exempted from liability if the cultivation and/or possession of prohibited plants was for the purpose of scientific

³⁹ *Misuse of Drugs Act 1975* (New Zealand) s 5B.

⁴⁰ *Misuse of Drugs Act 1975* (New Zealand) s 22.

⁴¹ *Misuse of Drugs Act 1975* (New Zealand) s 23 (2).

⁴² *Misuse of Drugs Act 1975* (New Zealand) s 23(3).

⁴³ *Narcotics Act 1967* (Samoa) s 6(3).

research, instruction, analysis or study.⁴⁴ Also, the exemption applies if it was in accordance with a direction given by the Commissioner of Police to destroy a substance where the Commissioner is satisfied that no person has been charged or is likely to be charged with respect to the substance.⁴⁵

Questions:

12. *In what circumstances can a license be granted to cultivate or be in possession of prohibited plants in Samoa?*

13. *Should Samoa include exemptions for possessing and cultivating prohibited plants, similar to provisions in New South Wales (for example, for scientific research or study)?*

(b) Seizure and destruction of prohibited plants

2.28 Section 6(4) empowers designated officers to seize or destroy the following, unless permitted by a licence granted under the Narcotics Act:

- (i) A cultivated prohibited plant; or
- (ii) The seed of a prohibited plant in someone's possession.⁴⁶

2.29 Tonga and New Zealand have similar provisions. However, in contrast to Samoa and New Zealand, Tonga's provision also covers the destruction of a seized controlled drug, chemical or equipment and is not limited to prohibited plants. Furthermore, it also stipulates methods of destruction which include incineration or any such means ordered by the Court or by delivery to:⁴⁷

- (i) the Ministry of Health for use exclusively in meeting the lawful medical or scientific needs; and
- (ii) the Ministry of Police for training needs.⁴⁸

2.30 The Commission notes that the current Narcotics Act includes destruction of prohibited plants only and does not include destruction of dangerous substances or articles (other than a prohibited plant) as is the case in Tonga, New Zealand and New South Wales. The Narcotics Act also does not include methods of destruction of either prohibited plants or dangerous substances or articles.

2.31 The Commission also notes that the *Drugs Act 1967* outlines powers of entry, inspection, seizure and destruction of any drug samples (as defined under that Act).⁴⁹ This provision

⁴⁴ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 25(4).

⁴⁵ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 23(4), 39G.

⁴⁶ *Narcotics Act 1967* (Samoa) s 6(4).

⁴⁷ *Illicit Drugs Control Act 2003* (Tonga) s 32(2)(b).

⁴⁸ *Illicit Drugs Control Act 2003* (Tonga) s 32(2)(a).

⁴⁹ *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.

gives an officer broader powers than those given to officers under the Narcotics Act, and is more aligned with the legislation of Tonga and New Zealand.⁵⁰ Therefore, for consistency and comprehensiveness, the Commission queries whether the powers stipulated under the *Drugs Act 1967* be replicated under the new legislation, to give designated officers broader powers to search, seize and destroy prohibited plants and narcotics.

Questions:

14. *Should section 6(4) be expanded to include methods of destroying seized prohibited plants, in addition to the circumstances when they can be seized?*
15. *Should section 6(4) be applied to seizure and destruction of other dangerous substances, chemicals and articles, in addition to prohibited plants (similar to Tonga, New Zealand and New South Wales)?*
16. *Should the Act give broader powers to designated officers to inspect, seize and destroy prohibited plants and drugs, similar to the powers given in the *Drugs Act 1967* and Tonga and New Zealand?*

(c) *Possession and use of narcotics*

2.32 Section 7 prohibits knowingly possessing or using narcotics unless exempted under the Act i.e. if a person has a licence to possess or use narcotics. Both New Zealand and New South Wales have similar provisions in that a person who possesses or uses any controlled drugs is exempted from liability if he or she has a licence to possess and use such drugs.⁵¹ However, New South Wales also makes it an offence where a person procures someone 16 years or younger to supply drugs or take part in the supply of a prohibited drug.⁵² There is also an offence under the New South Wales *Drug Misuse and Trafficking Act 1985* for any person who supplies a controlled drug on an ongoing basis without a licence or being authorised by the Secretary of Health.⁵³

2.33 The Commission notes from preliminary consultations with the OAG that there is currently a draft *Children Care and Protection Bill 2017* being finalised. The Commission will continue to monitor the progress of this Bill to see if there are any provisions included that target using children to sell goods (including illegal drugs).

Questions:

17. *Should Samoa expand its possession and use of narcotics offences so that it is also an offence for a person to procure a child to supply drugs or take part in the supply of drugs (similar to New Zealand and New South Wales)?*

⁵⁰ Email from the Office of the Attorney General to the Samoa Law Reform Commission (preliminary consultations), 1 May 2017.

⁵¹ See *Misuse of Drugs Act 1975* (New Zealand) s 6; *Drug Misuse and Trafficking Act 1985* (New South Wales) s 25.

⁵² *Drug Misuse and Trafficking Act 1985* (New South Wales) s 25(2C)-(2D).

⁵³ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 25A.

18. Should Samoa also include an offence for a person to supply a controlled drug on an ongoing basis without a licence or authority from the Secretary of Health (as in New South Wales)?

(d) Dealing

- 2.34 Section 17 makes it illegal to import or export narcotics. Further, section 18A relates to the unlawful manufacture of a narcotic.
- 2.35 Section 17A provides that importing or exporting controlled precursors is an offence under the Act unless there is a licence or unless the person importing or exporting such substances has a reasonable excuse. This position is also taken in New Zealand. Tonga however does not provide for a similar exemption.

(e) Miscellaneous offences

- 2.36 Section 13 provides miscellaneous offences that include using premises to commit an offence, possessing equipment (such as a needle, syringe, pipe or utensil) and use of opium, without lawful excuse. A person convicted of any of these offences is liable to imprisonment for a term not exceeding 7 years or a fine not exceeding 200 penalty units.
- 2.37 New Zealand 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.⁵⁴ This is currently covered under section 6(1)(b) of Samoa's Narcotics Act.

(f) Possession of equipment etc.

- 2.38 Section 13(b) under miscellaneous offences provides that it is an offence for a person to have in his or her possession a needle, syringe, pipe or other utensil for the commission of an offence. However, there is no reference to the supply, manufacture, production, export or import of 'equipment or materials'.
- 2.39 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 such chemical or equipment is to be used for the commission of an offence under Tonga's *Illicit Drug Control Act 2003*.⁵⁵ A similar provision is found under New Zealand's legislation.⁵⁶
- 2.40 New South Wales 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.⁵⁷

⁵⁴ *Misuse of Drugs Act 1975* (New Zealand) s 13(1).

⁵⁵ *Illicit Drugs Control Act 2003* (Tonga) s 5.

⁵⁶ *Misuse of Drugs Act 1975* (New Zealand) s 12A.

⁵⁷ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 1C(1).

Questions:

19. *Should Samoa expand its provision on possession of equipment to include importing, exporting, manufacturing or producing equipment, similar to Tonga, New Zealand and New South Wales?*

(g) Use of premises for dealing

2.41 The final miscellaneous offence provides that a person who uses or permits to be used any premises or vehicle to commit an offence is liable under the Narcotics Act.⁵⁸ In preliminary consultations with the OAG, a concern was raised about how effectively Samoa is regulating premises used for dealing drugs. This was in response to cases and media reports of ‘meth labs’ arising in Samoa.⁵⁹ Whilst this provision would target these types of premises, the Commission queries whether it ought to be in a standalone section to emphasise and acknowledge this potentially growing problem.

2.42 There is a separate provision under the New Zealand law relating to the use of premises, vehicles, ships etc. for committing an offence.⁶⁰ However, New South Wales has a specific part dedicated to offences involving drug premises.⁶¹ Some of these offences include:⁶²

- an owner or occupier who knowingly allows for the use of their premises as a drug premises;
- a person who allows his/her premises for drug dealing and knows that a child has access to the premises and, as a consequence of that access, the child is exposed to a prohibited drug or prohibited plant, or a drug supply process, or any equipment capable of being used to administer a prohibited drug;
- a person who organises a drug premises c.f. organising a drug laboratory; and
- a person who assists in organising a drug premises and he/she knows that a child is involved.

Questions:

20. *Should the provision on use of premises for dealing be removed from the ‘Miscellaneous Offences’ part of the Act and placed in a standalone section?*

21. *Should the provision on use of premises for dealing be expanded to include other situations as prescribed under laws of New Zealand and New South Wales (for example, boats and aircrafts)?*

(h) Aiding and abetting an offence

⁵⁸ *Narcotics Act 1967* (Samoa) s 13(a).

⁵⁹ Email 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], *Police v Roy Williams* [2014]; and media reports, 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>>.

⁶⁰ *Misuse of Drugs Act 1975* (New Zealand) s 12.

⁶¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) pt 2B.

⁶² See *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 36V-36Z.

2.43 Section 19 provides that it is an offence for a person in Samoa to abet or aid an offence committed outside of Samoa which violates both the corresponding law of that country and the law in Samoa.

2.44 Both New South Wales and New Zealand have a similar provision to Samoa in relation to conspiring to commit and aiding and abetting the commission of an offence both in and outside New South Wales and New Zealand respectively.⁶³

(i) False statements and failure to answer questions

2.45 Section 21 states that it is an offence to make a declaration or statement the person knows to be false for the purpose of obtaining the grant or renewal of a licence under the Narcotics Act.

2.46 Section 22 makes it an offence if a person fails or refuses to answer (or fails to answer truthfully) a question posed by empowered officers under the Narcotics Act. Tonga has a similar provision to this applying to both customs officers and police.⁶⁴

(j) General offence

2.47 Section 23 contains a general offence which states a person commits an offence if he or she acts in contravention of the Narcotics Act, or fails to comply with any of its provisions. The other stated jurisdictions do not have such provision under their drug laws.

(k) Principals liable for acts of agents

2.48 Section 27 makes a director or an officer involved in management of a company liable upon conviction of their company of an offence against the Narcotics Act unless he or she can prove that the act constituting the offence took place without his or her knowledge or consent.

2.49 New Zealand has a similar provision which also covers principals being held accountable for actions of their agents generally.⁶⁵ Under New South Wales law, a principal is also liable if he or she is an accessory to the commission of an offence.⁶⁶

(l) Obstruction of officers

2.50 Section 28A states that a person who wilfully obstructs, hinders, resists or deceives a constable, officer of Customs or inspector in the execution of any duties or powers conferred under the Narcotics Act commits an offence and is liable on conviction to

⁶³ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 27-28; *Misuse of Drugs Act 1975* (New Zealand) s 10.

⁶⁴ *Illicit Drugs Control Act 2003* (Tonga) ss 16, 29.

⁶⁵ *Misuse of Drugs Act 1975* (New Zealand) s 17(2).

⁶⁶ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 43B.

imprisonment for a term not exceeding 5 years. This provision is identical to the corresponding provisions in New Zealand and Tonga.⁶⁷

4) Exemptions

(m) Exemptions from possession, use and dealing

2.51 Under section 7(2), a person is exempted from the possession, use and dealing of narcotics if:

- (a) the person is entitled to import or export that narcotic;
- (b) the person is licensed to deal in that narcotic;
- (c) the narcotic was supplied for the person's use, or for the treatment of some animal under his or her care, by a licensee, or pursuant to the prescription of a licensee, authorised to supply or prescribe narcotics for that purpose;
- (d) the person's possession is for or on behalf of a person lawfully entitled to the possession of that narcotic;
- (e) the person's possession is permitted by the regulations;
- (f) the person has the narcotic as a sample or for analysis under the Drugs Act 1967;
- (g) the person is in the service of the Government and the person's possession is for the purpose of investigating an offence or alleged offence or the prosecution of any person; or
- (h) the person is lawfully in possession of the narcotic pursuant to an authority or supply granted or issued under section 8 or 9.

2.52 Other exemptions for dealing (which cover importing and exporting) are scattered throughout the legislation. For example, exemptions relating to carriers who are permitted to carry controlled drugs for incidental purposes are located separately in section 10(4).

2.53 New South Wales and Tonga also provide similar exemptions.⁶⁸ On the other hand, New Zealand has a more extensive list.⁶⁹

(a) Persons pursuing duties under the Act

2.54 Section 28 exempts from civil or criminal liability a person who carries out any act in pursuance or intended pursuance of the Narcotics Act or its regulations unless he or she acted in bad faith or without reasonable care.

2.55 New Zealand's provision is identical to Samoa.⁷⁰ Additionally, New Zealand has a separate provision specific to constables acting undercover.⁷¹

⁶⁷ *Misuse of Drugs Act 1975* (New Zealand) s 16; *Illicit of Drugs Control Act 2008* (Tonga) s 28.

⁶⁸ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 10, 13, 24, 25 and 29; *Illicit of Drugs Control Act 2008* (Tonga) s 7.

⁶⁹ *Misuse of Drugs Act 1975* (New Zealand) s 8.

⁷⁰ *Misuse of Drugs Act 1975* (New Zealand) s 34.

⁷¹ *Misuse of Drugs Act 1975* (New Zealand) s 34A(3).

2.56 Tonga's provision is similar to New Zealand with the overall difference in that protection extends to cover not only undercover police but informers generally.⁷²

(b) Opium for registered addicts

2.57 Section 8 provides an obligation on the Chief Executive Officer (CEO) of MoH to keep a register of persons the CEO thinks are addicted to the quasi-medical use of opium and may supply reasonable quantities to any person named in the register that he or she thinks fit to receive. This section also excuses from criminal liability a person who uses medicinal opium supplied under this section.

Questions:

22. *What is the current process for prescribing opium to patients in Samoa?*

23. *In what circumstances, if any, is opium prescribed in practice?*

(c) Supplies of narcotics or controlled precursors for ships, aircraft and first aid kits

2.58 Section 9 empowers the CEO of MoH to authorize a person in charge of an aircraft or a ship, including the person that has control of a first aid kit who has been approved by the CEO to obtain or possess narcotics or controlled precursors under the conditions listed under this section.

2.59 New Zealand has a similar rule covered under its regulations.⁷³

5) Licences to deal with drugs

(a) Restrictions

2.60 Section 10 restricts the import and export of narcotics and controlled precursors to those with a licence granted by the CEO. It is prohibited to import or export a controlled precursor unless a person has a reasonable excuse provided under this section.⁷⁴ The prohibitions do

⁷² *Illicit of Drugs Control Act 2008* (Tonga) s 28.

⁷³ *Misuse of Drugs Regulations 1977* (New Zealand) ss 17-19.

⁷⁴ A person has a reasonable excuse if (a) the controlled precursor is imported by a person and that person has a licence to manufacture or produce a narcotic; the controlled precursor will be used for the treatment of an animal under the care of a licenced person; the controlled precursor will be used for a lawful purpose including but not limited to an agricultural, commercial or industrial purpose or activity; the controlled precursor will be used as a sample or for analysis, under the *Drugs Act 1967*; the controlled precursor is for the purpose of investigating an offence or alleged offence or the prosecution of a person; the controlled precursor is lawfully in his or her possession pursuant to a licence or authority granted under this Act or other law of Samoa in force at the time; (b) the controlled precursor is exported by a person and that person has the intention or belief that it will be used for a purpose that is lawful under the law of the country to which the controlled precursor is exported.

not apply to vessels/aircrafts carrying authorized quantities of narcotics for medical purposes accompanied by export authorization from the country they are exported to.⁷⁵

- 2.61 Section 11 allows only persons with a licence granted by the CEO to deal with narcotics or a controlled quantity of a controlled precursor. The same section restricts the grant of licences to only persons meeting criteria under this section. The CEO may grant conditions or further restrictions in the licence.
- 2.62 Section 12 states that a licence under the Narcotics Act cannot be granted to a person convicted of an offence against this Act, related Acts, its repealed provisions or regulations unless the Minister has approved granting the licence. Similarly, Ministerial approval is also required to grant a licence to a previous licensee whose licence was cancelled due to a breach of a licence condition, the Narcotics Act or regulations.
- 2.63 In New Zealand, licences are granted subject to conditions in New Zealand *Misuse of Drugs Act 1975*.⁷⁶ Therefore, unless Ministerial approval is given, licences cannot be granted for the following purposes:⁷⁷
- To import into, or export from New Zealand, prepared opium for smoking;
 - To authorise the consumption, injection, or smoking of any controlled drug; and
 - To any person whose licence was previously cancelled or has been convicted of an offence against the Act.

2.64 The New South Wales legislative framework adopts a similar approach.⁷⁸

(b) Failure to comply with conditions of licences

2.65 Section 20 prescribes that failing to comply with the terms or conditions of the licence is an offence. Furthermore, the holder of a licence to import a controlled quantity of a controlled precursor is also required to keep and produce certain records and failure to do so is an offence.⁷⁹

6) Enforcement

(a) Search warrants

2.66 Section 14 empowers the courts 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. The constable or inspector executing this warrant must have it with him or her at the time of execution and produce when required. In preliminary consultations, there were several issues raised by MoP about the

⁷⁵ *Narcotics Act 1967* (Samoa) s 9.

⁷⁶ *Misuse of Drugs Act 1975* (New Zealand) s 14(1).

⁷⁷ *Misuse of Drugs Act 1975* (New Zealand) s 14 (2)-(4).

⁷⁸ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 10, 13, 24, 25 and pt 2A. See also discussion on exemptions in New South Wales.

⁷⁹ *Narcotics Act 1967* (Samoa) s 20(3).

practice when executing search warrants. These are discussed separately in **Chapter Four** of this Issues Paper.

2.67 Tonga has a similar provision regarding police powers to apply for a search warrant.⁸⁰ However, Tonga's provision extends to customs officers. The section provides that if a customs officer has reasonable cause to suspect that an offence has been committed under Tonga's *Illicit Drug Control Act 2003* and there is evidence relating to this offence he or she may make an application for a warrant.⁸¹

(b) Search without a warrant

2.68 Section 14A states that a constable may carry out a search without a warrant in specific circumstances if he or she has reasonable grounds to believe there is a narcotic or controlled precursors on the premises which would constitute an offence. The same applies to allow a constable to search and detain person(s) reasonably believed to be in possession of narcotics or controlled precursor(s).

2.69 Tonga has a similar provision. However, Tonga's provision allows for customs officers to enter and search any place within a customs area *only*, such as ports and terminals, without a search warrant.⁸²

2.70 The Commission notes that the *Customs Act 2014* contain some provisions permitting searches of persons in certain circumstances.⁸³ Irrespective of this, the Commission notes that it may be helpful, for clarity and convenience, to replicate or expand on these provisions in the Narcotics Act, where appropriate.

Questions:

24. Should the Act include provision(s) specific to customs officers and their powers to conduct searches, with or without a search warrant, similar to Tonga?

(c) Arrest without a warrant

2.71 Section 16 empowers a constable, Customs officer or inspector to arrest a person without a warrant where he or she has reasonable cause to suspect or finds a person dealing, importing or exporting or otherwise in possession of any narcotic or controlled precursor in violation of this Act.⁸⁴

2.72 New Zealand and Tonga have similar provisions relating specifically to the power of customs officers to arrest a person who is suspect to have illegally exported or imported drugs into New Zealand and Tonga.⁸⁵

⁸⁰ *Illicit Drugs Control Act 2003* (Tonga) s 23.

⁸¹ *Illicit Drugs Control Act 2003* (Tonga) s 22.

⁸² *Illicit Drugs Control Act 2003* (Tonga) s 21.

⁸³ See *Customs Act 2014* (Samoa) ss 168-171.

⁸⁴ *Narcotics Act 1967* (Samoa) s 16.

⁸⁵ See *Misuse of Drugs Act 1975* (New Zealand) s 26; *Illicit Drugs Control Act 2003* (Tonga) s 20.

(d) Power to inspect books

- 2.73 Section 15 provides the power of a constable, customs, health officer or inspector to enter premises of a producer, manufacturer, seller or distributor of narcotics to inspect books of related dealings with narcotics or controlled precursor(s). They can also demand copies of entries and inspect stocks of narcotics or controlled precursor(s). Wilfully delaying or obstructing an officer in the exercise of these powers is an offence.
- 2.74 New Zealand has a similar provision to Samoa. However, it is more clearly set out and comprehensive. For example, the heading of the provision states the power to not only demand production of records but it also explicitly states the power to inspect books. Furthermore, the New Zealand provision also includes that a Medical Officer of Health may require the production for inspection any books or documents where there is reasonable ground for suspecting that the person is in possession of any controlled drug for the purpose of sale, manufacturing, preparation for sale, or use.⁸⁶

(e) Forfeiture

- 2.75 Section 25 contains forfeiture provisions for all articles related to an offence, after a person has been convicted for that offence. However, there is confusion about whether this section applies only to forfeiture of drugs, or whether it extends to forfeiture of goods and property as well, for the following reasons:
- (a) *Inconsistent terminology in section 25*: The section is headed 'forfeiture of goods', but the provision itself refers to forfeiture of 'articles' only. In preliminary consultations with the OAG, it was raised that 'article', as it is referred to in the definition of 'narcotic', relates to drugs and does not extend to goods, firearms or property (for example, motor vehicles and boats).
 - (b) *Forfeiture provisions in other Samoan legislation*: There is other legislation in Samoa that contains forfeiture provisions, which include goods and property. For example, the *Police Powers Act 2007* enable police officers to enter, search and seize *materials* found in relation to an offence. 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).
 - (c) *Drug cases where firearms have been seized*: In drug raids in May 2016 carried out by MoP, illegal ammunition and firearms were found, seized and forfeited.⁸⁷ It is unclear from preliminary consultations however, whether this was done pursuant to the *Narcotics Act 1967* or the *Police Powers Act 2007*.⁸⁸

⁸⁶ *Misuse of Drugs Act 1975* (New Zealand) s 19(2).

⁸⁷ Vatapuia Maiava, 'Faleatiu drug raid nets weed, weapons' (15 May 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/15_05_2016/local/6148/Faleatiu-drug-raid-nets-weed-weapons.htm>. See also Vatapuia Maiava, 'Police winning the war on drugs' (14 July 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/14_07_2016/local/8660/Police-winning-war-on-drugs.htm>

⁸⁸ *Police Powers Act 2007* (Samoa) s 23.

- 2.76 Therefore, the Commission queries whether the term ‘article’ should be better defined in the Act and/or whether the section on forfeiture needs to be clarified to expressly state whether it extends to goods and property.
- 2.77 New Zealand has a similar provision to Samoa but better defines what exactly can be forfeited. For example, the court in New Zealand may order that any money received as a result of drug dealing shall also be forfeited.⁸⁹ 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.⁹⁰
- 2.78 Tonga also provides for the forfeiture of all articles, goods or property.⁹¹
- 2.79 In New South Wales, a court may order that any article (other than a prohibited plant or prohibited drug) shall be forfeited and destroyed or otherwise disposed of.⁹² Furthermore, any money, documents or firearms seized in relation to the offence will also be forfeited.⁹³ A police officer may seize and carry away any thing that may reasonably be suspected to be liable to forfeiture under this section.⁹⁴

Questions:

25. Should the Act further define ‘article’ and/or specify items that should be forfeited, similar to New Zealand?

(f) Reporting

- 2.80 Section 25B mandates that a medical practitioner, nurse, pharmacist, dentist or veterinarian is to report to police any person they are treating or serving who they suspect has illegally used a narcotic or controlled precursor and provide their grounds of suspicion. It is an offence if the medical officer fails to report to a police officer as required.⁹⁵ The Commission notes that this provision is problematic especially in relation to maintaining patient confidentiality.
- 2.81 The Commission notes that there are procedures in place to protect the doctor’s liability in instances where patient confidentiality is breached for the purposes of section 25B of the Narcotics Act.⁹⁶

⁸⁹ *Misuse of Drugs Act 1975* (New Zealand) s 32(3).

⁹⁰ *Misuse of Drugs Act 1975* (New Zealand) s 32(4).

⁹¹ *Illicit Drugs Control Act 2003* (Tonga) s 33.

⁹² *Drug Misuse and Trafficking Act 1985* (New South Wales) s 35.

⁹³ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZC(1).

⁹⁴ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZC (3).

⁹⁵ Section 25B of the *Narcotics Act 1967* was introduced in 2006 by the *Narcotics Amendment Act 2006*.

⁹⁶ For example, see: s49(6) of the *Evidence Act 2015* which deals with privilege in criminal proceedings for information obtained by medical practitioners, and clearly states that section 25B of the Narcotics Act remains unaffected by this provision.

- 2.82 However, placing an onus on the physician to report suspected drug use may have an adverse impact on a patient's ability to seek appropriate care and treatment in the first place.
- 2.83 According to a survey published in the *British Medical Journal*, doctors view drug use (whether legal or illegal) as the second-most important area where patient confidentiality should be protected.⁹⁷ This could be in part due to the many studies that show patients will withhold information from their doctors, particularly in relation to drug use which is seen to be a sensitive topic.⁹⁸ Furthermore, there is data to suggest that some mental health patients forego medical care due to fears of a breach of confidentiality.⁹⁹ As the University of Washington's School of Medicine argues, if patients are less likely to share sensitive information it could therefore "negatively impact their care".¹⁰⁰
- 2.84 In that context, every patient referred to the MHU for a drug-induced condition would, by virtue of this provision, have to be reported to the authorities for their suspected drug-related behaviour which could severely impact on their treatment. Furthermore, anecdotal evidence suggests that patients are already failing to disclose to the MHU the true nature of their drug abuse, which severely hinders the MHU's ability to provide appropriate treatment.
- 2.85 Furthermore, comparative jurisdictions do not provide such an obligation on their medical professionals. In New Zealand, it is not mandatory for medical professionals to report cases, but they are obliged under the *Misuse of Drugs Act 1975* not to supply drugs to those whom the prescriber believes to be dependent on a controlled drug such as methadone.¹⁰¹
- 2.86 In relation to drug abuse, people are encouraged to contact the Medicines Control Unit of the New Zealand Ministry of Health (**NZMOH**) to report or discuss problems including suspected diversion of prescribed medication for illegal use, abuse of medication, forged prescriptions, and instances of unusual prescribing issues.¹⁰²

⁹⁷ M D Perez-Carceles, J E Pereniguez, E Osuna and A Luna, "Balancing confidentiality and the information provided to families of patients in primary care" (2005) 31 *British Medical Journal*, 531-535 <<http://jme.bmj.com/content/31/9/531>>.

⁹⁸ See: Pamela Sankar, Susan Mora, Jon F Mertz and Nora L Jones, "Patient Perspectives of Medical Confidentiality" (2003) 18(8) *Journal of General Internal Medicine*, 659-669 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1494903/>>; and Kell Julliard, Josefina Vivar, Carlos Delgado, Eugenio Cruz, Jennifer Kabak, and Heidi Sabers, "What Latina Patients Don't Tell Their Doctors: A Qualitative Study" (2008) 6(6) *Annals of Family Medicine*, 543-549 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2582474/>>.

⁹⁹ Pamela Sankar, Susan Mora, Jon F Mertz and Nora L Jones, "Patient Perspectives of Medical Confidentiality" (2003) 18(8) *Journal of General Internal Medicine*, 659-669 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1494903/>>.

¹⁰⁰ Jessica De Bord, Wylie Burke and Denise M. Dudzinski "Confidentiality" (2013) *Ethics in Medicine*, University of Washington <<https://depts.washington.edu/bioethx/topics/confiden.html>>.

¹⁰¹ *Misuse of Drugs Act 1975* (New Zealand) s 24.

¹⁰² Ministry of Health, *Drug Abuse containment* <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/drug-abuse-containment>>.

Questions:

26. *Should the medical practitioner, nurse, pharmacist, dentist or veterinary be obliged to report to police a patient suspected to have illegally used a narcotic or controlled precursor, given patient confidentiality?*

27. *If the obligation to report is removed should Samoa adopt a provision similar to New Zealand so that medical professionals are obliged not to supply drugs to those they believe are dependent on a controlled drug?*

(g) Designated Laboratories

2.87 There is no specific provision regarding designated laboratories for testing and analysis under the Narcotics Act. The Commission notes that based on preliminary consultations with SROS, it was raised that the OAG and the MoP worked with SROS in 2013 to establish the narcotics laboratory as part of the Government's Law and Justice Sector Plan. In practice, the laboratory tests drugs for evidence in prosecutions.¹⁰³ The Commission notes that the *Police Powers Act 2007* provides that the Minister may approve a laboratory in Samoa as an approved testing facility for forensic samples.¹⁰⁴ Furthermore, the *Police Powers Act 2007* also contains provisions relating to processes and procedures for testing and analysis of illegal drugs under the Narcotics Act.¹⁰⁵ The Commission queries whether there is a need to replicate the designated laboratory provisions from the *Police Powers Act 2007* in the *Narcotics Act 1967*, to reflect current practice and for clarity.

2.88 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.¹⁰⁶ 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 the Act.¹⁰⁷

Questions:

28. *Should the Act 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?*

b) *should such designation permit testing, analysis, storage and destruction of both controlled and illicit drugs?*

7) Penalties

¹⁰³Preliminary 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>.

¹⁰⁴ *Drugs Act 1967* (Samoa) s 27.

¹⁰⁵ *Drugs Act 1967* (Samoa) pt. 5.

¹⁰⁶ *Misuse of Drugs Act 1975* (New Zealand) s 5A; *Illicit Drugs Control 2003* (Tonga) s 8.

¹⁰⁷ *Misuse of Drugs Act 1975* (New Zealand) s 5A(1); *Illicit Drugs Control 2003* (Tonga) s 8.

- 2.89 Section 17 lists the penalties for importing or exporting (as well as attempting to import or export) any narcotic prohibited by the Narcotics Act. Penalties for a breach of this provision depend on the classification of the narcotic.
- 2.90 Section 17A sets out the penalties for importing or exporting (and attempting to import or export) any controlled precursor without a licence. It also lists, according to the classification of drugs, the different penalties for importing or exporting from Samoa (and attempting to import or export) any controlled precursor to unlawfully manufacture a narcotic.
- 2.91 Section 18 provides the different penalties for unlawful supply, possession and using narcotics depending on the classification of the narcotics.
- 2.92 Section 18A provides penalties depending on the classification of drugs for person(s) manufacturing narcotics in violation of the Narcotics Act.
- 2.93 Section 24 set out general penalties for offences under the Narcotics Act or the Narcotics Act Regulations 1967 (**the Regulations**) in which penalties are not already provided.
- 2.94 The table below outlines the penalties for different types of offences in all four jurisdictions.

OFFENCE	SAMOA	NEW ZEALAND	TONGA	NEW SOUTH WALES
Cultivation of prohibited plants	<ul style="list-style-type: none"> • Wilful – up to 14 years. • Not wilful – up to \$2,000 or 2 years. 	<ul style="list-style-type: none"> • Indictment – up to 7 years. • Summarily – up to 2 years and/or \$2,000 fine. 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	<ul style="list-style-type: none"> • General – up to 10 years. • Cultivation for commercial purpose – up to \$350,000 and/or 15 years.
Possession of seeds and prohibited plants	<ul style="list-style-type: none"> • Wilful – up to 14 years. • Not wilful – up to \$2,000 or 2 years. 	<ul style="list-style-type: none"> • Up to 1 year and/or \$500 fine. 		
Possession or supply of narcotic	<ul style="list-style-type: none"> • Class A – life. • Class B – up to 14 years. • Class C – up to 7 years. 	<ul style="list-style-type: none"> • Class A – up to 6 months and/or \$1,000 fine. • Class B – up to 3 months and/or \$500 fine. • Class C – up to 3 months and/or \$500 fine. 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	<ul style="list-style-type: none"> • Possession and use – up to \$2,000 and/or 2 years. • Supply – up to \$550,000 and/or life. • Supply to minors – up to 2 years and 6 months.
Letting your premises or motor vehicle be used to make, use or carry drugs	<ul style="list-style-type: none"> • Up to 7 years and/or \$2,000. 	<ul style="list-style-type: none"> • Class A – up to 10 years. • Class B – up to 7 years. • Class C – up to 3 years. 		<ul style="list-style-type: none"> • First offence¹⁰⁸ – up to \$6,000 and/or 14 months. • Second or subsequent offence – up to \$6,000 and/or 6 years.
Possession of instruments, equipment, manuals etc. for use and supply	<ul style="list-style-type: none"> • Up to 7 years and/or \$2,000. 	<ul style="list-style-type: none"> • Up to 1 year imprisonment and/or \$500 fine. 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	<ul style="list-style-type: none"> • Up to \$2,000 and/or 2 years.
Import or export of narcotic	<ul style="list-style-type: none"> • Class A – life. • Class B – up to 14 years. • Class C – up to 7 years. 	<ul style="list-style-type: none"> • Class A – life. • Class B – up to 14 years. • Class C – up to 7 years. 	<ul style="list-style-type: none"> • Up to \$1,000,000 fine and/or 30 years. 	
Import or export of controlled precursor	<ul style="list-style-type: none"> • Class A – life. • Class B – up to 14 years. • Class C – up to 7 years. 	<ul style="list-style-type: none"> • Knowingly import or export precursor substances for unlawful use – up to 7 years. 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	

¹⁰⁸ Generally the Court will sentence a first offender more leniently than a repeat offender. However, the starting point for an offence of possession of prohibited drugs, even for a first offender, is a criminal conviction. The factors that the Court takes into account when passing sentence for a first offender include: Good character; Need for rehabilitation; Greater remorse; extra curial punishment i.e. the effect that any penalty may have upon someone's employment, travel and membership with associations.

	<ul style="list-style-type: none"> • Not wilful – up to \$500 or 2 years. 	<ul style="list-style-type: none"> • Import or export precursor substance without reasonable excuse – up to 1 year or a 1,000 fine, or both. 		
Manufacture of narcotic	<ul style="list-style-type: none"> • Class A –life. • Class B – up to 14 years. • Class C – up to 7 years. 	<ul style="list-style-type: none"> • Class A – life • Class B – 14 years • Class C – Indictment – 8 years Summarily – 1 year and/or \$1,000 fine 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	<ul style="list-style-type: none"> • Narcotics – up to 15 years or \$200,000. • Cannabis – up to 10 years or \$200,000.
Sale, manufacture, supply or possession of controlled precursor	<ul style="list-style-type: none"> • Up to \$10,000 and/or 14 years. 	<ul style="list-style-type: none"> • Supplies or produces precursor substances – up to 7 years. • Possession of precursor substances – up to 5 years. • Manufactures precursor substances – up to 7 years. 	<ul style="list-style-type: none"> • Up to \$750,000 fine and/or 25 years. 	<ul style="list-style-type: none"> • Possession of drug precursor – up to 5-10 years and/or \$100,000 - \$200,000.
Abetting an offence	<ul style="list-style-type: none"> • Up to \$400 and/or 2 years. 			
Failure to comply with licence conditions	<ul style="list-style-type: none"> • Up to \$1,000 and/or 2 years. 			
General penalty	<ul style="list-style-type: none"> • Generally – up to \$1,000 and/or 2 years. • Supply or procuring or offer to supply or procure – up to \$2,000 and/or 7 years. 			
Mandatory reporting by medical professionals	<ul style="list-style-type: none"> • Up to \$1,000. 			

- 2.95 The above table compares and highlights the penalties for drug-related offences in Samoa, Tonga, New Zealand and New South Wales Australia. Accordingly, there is a huge contrast and discrepancy between penalties imposed in each country. The table shows that the penalties in Samoa are highly disproportionate to other jurisdictions. For example, Samoa imposes a substantial maximum penalty of up to 14 years' imprisonment with conviction for possession of a narcotic, like cannabis,¹⁰⁹ whereas the same offence in New Zealand carries a significantly reduced penalty of up to 3 months' imprisonment or a \$500 fine.
- 2.96 In addition, in relation to the possession of instruments, equipment, and manuals etc. for use and supply, the maximum penalty in Samoa is up to 7 years imprisonment and/or \$1,000 fine. The penalty in New Zealand is up to 1 year imprisonment and/or \$500 fine. In circumstances where terms like 'instruments', 'equipment' and 'manuals' are undefined in Samoa's Narcotics Act, this penalty is significant and similarly disproportionate to neighbouring jurisdictions.
- 2.97 The current penalties show an inclination towards punitive responses to drug offences. The *Community Justice Act 2008* does enable the Court to sentence an offender to community work if they are convicted of an offence punishable by imprisonment.¹¹⁰ Notwithstanding this, community based orders and other types of alternative dispositions for example suspended sentences, are not clearly specified under the Narcotics Act. These types of sentences were recommended by the Vanuatu Law Reform Commission as alternatives that may improve rehabilitation of drug offenders.¹¹¹
- 6.1 The Commission also notes that there are rehabilitation programmes, community work or supervision orders available to the court when sentencing young offenders.¹¹² However, further information is needed to ascertain who conducts the supervision and rehabilitation of young offenders, or how effective community work is on reducing reoffending, particularly given the prevalence of cannabis offences among youth in Samoa.¹¹³
- 2.98 Finally, the Commission notes that Samoa is the only jurisdiction from the four that imposes a penalty on medical professionals for failing to report patients who they suspect to be involved with drug use. If a medical professional does not report suspected illegal drug use, then they can be liable to a fine of up to \$1,000 fine. This is notwithstanding that this would breach doctor/patient confidentiality and potentially discourage people from seeking help from medical professionals in response to drug related injury.

Questions:

29. Should penalties in Samoa be reduced to become more proportionate to the offence or should there be an overhaul of all penalties to be in line with

¹⁰⁹ Cannabis is considered a Class B drug in Samoa's *Narcotics Act 1967*.

¹¹⁰ *Community Justice Act 2008* (Samoa) s 23(a).

¹¹¹ Vanuatu Law Commission, *Dangerous Drugs Act: Legislative Review, Final Report* (2014) <http://www.lawcommission.gov.vu/images/pdf/Dangerous_Drugs_Final_Report.pdf> (Accessed 26 January 2017).

¹¹² *Young Offenders Act 2007* (Samoa) s 16.

¹¹³ See TV3 Tala I Vaifanua, 'Police Media Report: Drug Offences' (March 2017) *TV3 Samoa*.

jurisdictions like New Zealand and New South Wales? If so, what should the new penalties be?

30. Should Samoa follow the approach in New Zealand and New South Wales regarding penalties for low level possession offences?

31. Should the Act remove the penalty for failure to report suspected illegal drug use by medical practitioners?

32. Should the Act include alternative dispositions rather than only custodial sentences and/or fines?

8) Evidentiary matters

(a) Burden of proof

2.99 Section 26 places the onus of proof on the accused charged with the possession of any prohibited substances to prove that he or she came into possession in a manner not prohibited by the Narcotics Act.

2.100 New Zealand and New South Wales have identical provisions where the onus is also on the accused.¹¹⁴

(b) Evidence

2.101 The Narcotics Act does not currently contain any evidentiary provisions in drug proceedings. However, in practice, SROS carries out analysis and testing to identify whether drugs seized by police or customs are prohibited drugs. The Commission was informed that analysis by SROS is also used as expert evidence in court proceedings.¹¹⁵ It was raised during preliminary consultations with MoP that the current practice is costly for police. This consequently hinders efforts in prosecuting drug-offenders as limited resources it may impact the available evidence.¹¹⁶

2.102 The Commission notes that the *Drugs Act 1967*, contains evidentiary provisions that permit certain persons to analyse samples and produce certificates as prima facie evidence in court proceedings.¹¹⁷ The Commission therefore queries whether similar provisions ought to be included in the Narcotics Act for clarity.

¹¹⁴ *Misuse of Drugs Act 1975* (New Zealand) s 30; *Drug Misuse and Trafficking Act 1985* (New South Wales) s 40A(2).

¹¹⁵ 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).

¹¹⁶ Email from the Ministry of Police to the Samoa Law Reform Commission (preliminary consultations), 17 January 2017.

¹¹⁷ *Drugs Act 1967* (Samoa) pt 6.

2.103 New Zealand has a specific provision dealing with evidence in drug related offences. In any proceeding, a certificate signed by an analyst,¹¹⁸ detailing the test results for a controlled drug, precursor or prohibited plant shall be sufficient evidence until the contrary is proved.¹¹⁹ Furthermore, the certificate shall be admissible evidence.¹²⁰ Both Tonga and New South Wales have similar provisions to New Zealand.¹²¹

2.104 The Commission also notes that there are no chain of custody provisions in the Narcotic Acts or Regulations. The *Drugs Act 1967* contains some information on chain of custody of drug testing samples, for example how they are to be sealed, transported and packaged.¹²² These processes are important in preserving and protecting evidence particularly ensuring that evidence is not tampered with. It may therefore be useful to consider including in the Narcotics Act or internal policies chain of custody provisions particularly where evidence is being passed between agencies i.e. MoP and SROS.

Questions:

33. Should Samoa include a part in the Act dealing with evidentiary provisions? If so, should the similar provisions from the *Drugs Act 1967* be replicated here?

34. What are challenges faced by Police and Defence when producing evidence for drug related prosecutions?

35. What additional resources are required to improve testing procedures (for example equipment, personnel, funding)?

36. Should the current practice be legislated to be consistent with New Zealand, Tonga and New South Wales regarding evidence?

37. Should Samoa include under the law or internal polices chain of custody provisions?

9) Miscellaneous

(a) Regulations

¹¹⁸ 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 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).

¹¹⁹ *Misuse of Drugs Act 1975* (New Zealand) s 31(2).

¹²⁰ *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.

¹²¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) ss 42, 43.

¹²² *Drugs Act 1967* (Samoa) pt. 6.

2.105 Section 29 empowers the Head of State to make regulations which are necessary to give full effect to the Narcotics Act. These regulations can be made to control or restrict the cultivation of prohibited plants, licences, importing and exporting, to name a few.¹²³

2.106 To date, only regulations relating to licences have been passed and include the following:¹²⁴

- applications for licences to import, export and deal in narcotics;
- ships and aircrafts carrying and transporting narcotics; and
- registration, duration, renewal and revocation of licences.

2.107 The current Regulations however, do not contain other regulations as listed under New Zealand's Act which could be useful for Samoa specifically:¹²⁵

- prohibiting, regulating, or restricting advertisements for controlled drugs, and statements made in any such advertisement;
- prescribing offences made under this Act, and the fines that may be imposed;
- exempting any persons, classes of persons, or controlled drugs, from any provision of any regulation made under this Act which imposes conditions or obligations.

Questions:

38. Should the Narcotics Regulations 1967 be expanded to include other areas like those under New Zealand's legislation (for example, restrictions on advertising)? If so, what areas should be included (for example, chain of custody processes, laboratory testing procedures, criteria to issue licences to cultivate plants)?

10) Schedules

2.108 The Narcotics Act contains four Schedules. The first schedule outlines the substances classified as Class A narcotics which are defined as posing a very high risk of harm to individuals and/or society. These substances include cocaine, methamphetamine, lysergic acid, heroin and 35 other substances.

2.109 The second schedule outlines the substances classified as Class B narcotics, which are defined as posing a high risk of harm to individuals and/or society. These substances include cannabis, morphine, opium and 125 other substances.

2.110 The third schedule lists 83 substances classified as Class C narcotics which are defined as posing a moderate risk of harm to individuals and/or society.

2.111 The fourth schedule sets out 22 substances which are controlled precursors. Many of these substances can be found in every day household items, such as hydrochloric acid.

¹²³Narcotics Act 1967 (Samoa) s 29.

¹²⁴Narcotics Regulation 1967 (Samoa)

¹²⁵Misuse of Drugs Act 1975 (New Zealand) s 37. See also *Misuse of Drugs Regulations 1977* (New Zealand).

2.112 New Zealand and Tonga have similar schedules. However, the schedules in New Zealand's Act are regularly updated in response to emerging issues such as the rise of new synthetic drugs.¹²⁶

Questions:

39. Are the current classifications adequate? What other drugs not currently captured in the legislation which should be included in the Samoa legislation Act (for example synthetic drugs)?

40. How often should the schedules be updated?

11) Other relevant matters not covered under Samoa's Act

(a) Theft of controlled drugs

2.113 There is currently no provision in the Narcotics Act relating to theft of controlled drugs, although the Commission notes that theft is a criminal offence under the *Crimes Act 2013*.¹²⁷ Under New Zealand's Act, it is an offence to steal a controlled drug or obtain a controlled drug fraudulently or dishonestly, for example.¹²⁸ 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. This provision is included in New Zealand's Act notwithstanding that there is also a criminal offence for theft under their Crimes Act.

Questions:

41. Should Samoa adopt a similar provision regarding theft of controlled drugs similar to New Zealand? Or is the offence of theft under Samoa's Crimes Act 2013 sufficient to cover this situation?

(b) Committing offences outside Samoa

2.114 The Narcotics Act does not contain a provision regarding prosecution of Samoan citizens living outside Samoa and those who are not citizens but currently present in Samoa who commit offences against the Act.

2.115 New Zealand has a provision of this nature that applies to (a) New Zealand citizens who are outside New Zealand; and (b) non-citizens who are in New Zealand, such that if they commit

¹²⁶ See *Misuse of Drugs Amendment Regulations 2014* (New Zealand) and *Misuse of Drugs Amendment Regulations (No 2) 2016* (New Zealand).

¹²⁷ *Crimes Act 2013* (Samoa) s 161.

¹²⁸ *Misuse of Drugs Act 1975* (New Zealand) s 11.

an offence under certain sections of the New Zealand Act,¹²⁹ then they are prosecuted according to the penalties specified in those sections.¹³⁰

2.116 The Commission notes that Samoa does have an *Extradition Act 1974*, which sets out the circumstances when people can be extradited. In preliminary consultations with the OAG, the Commission was also informed that there is 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.

Questions:

42. Should Samoa adopt a similar provision to New Zealand so that Samoans outside of Samoa and non-citizens in Samoa are prosecuted for offences committed under the Narcotics Act? Or will the Extradition Bill sufficiently cover this scenario?

(c) Treatment of people dependent on controlled drugs

2.117 Under New Zealand law, only authorised medical practitioners can issue prescriptions following specific guidelines developed by the NZMOH to assist with assessment of dependent persons i.e. addicts. There is also a guideline to assist treatment services to comply with the treatment of dependent persons.¹³¹

2.118 Although Samoa has an exemption for medicinal opium for registered addicts, and there have been reported requests for medicinal cannabis¹³², the legislation is silent about how these prescriptions are issued. The legislation is also silent about whether only specific practitioners should issue prescriptions.

Questions:

43. How can Samoa better guide medical practitioners when prescribing controlled drugs to dependent persons (for example should the legislation authorise specific medical practitioners to prescribe drugs or should the MoH develop internal guidelines)?

(d) Advertising

2.119 Samoa's Act does not contain any drug-related advertising provisions. New Zealand's *Misuse of Drugs Regulations 1977* provides restrictions on drug related advertising. It states

¹²⁹ These include sections 6, 9, 12A or 12AB. Offences covered under these sections include dealing with controlled drugs (section 6), cultivation of prohibited plants (section 9), manufacturing and producing drug equipment and utensils (section 12A), as well as unlawfully importing and exporting controlled precursors (section 12AB).

¹³⁰ *Misuse of Drugs Act 1975* (New Zealand) s 12C.

¹³¹ 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>>.

¹³² Preliminary Consultation with the Ministry of Health (Samoa) (Level 2- Ministry of Health Complex, Moto'otua, Apia, Samoa, 22 May 2016).

that no person shall publish, or cause or permit to be published, any advertisement related to controlled drugs¹³³ with the exception of exempted drug or any partially exempted drug.¹³⁴

2.120 Furthermore, restrictions on publishing or advertisements do not apply to those distributed to practitioners or pharmacists and that:¹³⁵

- (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".

2.121 Every person who publishes, or causes or permits to be published, any advertisement commits an offence against these regulations.¹³⁶

2.122 Similar regulations regarding drug advertising may also be considered for Samoa. However, the Commission is aware that advertisements informing people about drug harm may be permitted.

Questions:

44. *Should Samoa have similar regulations, like in New Zealand, restricting advertisements that promote drug use?*

45. *In what situations should drug related advertisements be permitted?*

(e) International traveller's exemption

2.123 Samoa does not have a provision regarding exemptions to travellers who are authorised by their home countries to carry drugs for treatment services.

2.124 Tonga and New Zealand both have an exemption where the drug is required for treating a medical condition for that person (or for a person under their care as in New Zealand¹³⁷), 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.¹³⁸

¹³³ *Misuse of Drugs Regulations 1977* (New Zealand) r 50(1).

¹³⁴ *Misuse of Drugs Regulations 1977* (New Zealand) r 50(4).

¹³⁵ *Misuse of Drugs Regulations 1977* (New Zealand) r 50(2).

¹³⁶ *Misuse of Drugs Regulations 1977* (New Zealand) r 50(3).

¹³⁷ Note that to demonstrate that the controlled drug has been lawfully supplied for the treatment of a person or someone under that persons' care, that person should carry a copy of their prescription or a letter from their doctor stating that they are being treated with the controlled drug(s) and the name and strength of these drugs. In addition, that person should also carry their medicines including controlled drugs in the original labelled containers.

¹³⁸ 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>>.

2.125 However, New Zealand explicitly bans cannabis-based products for medical use supplied in the United States unless the product has United States Food and Drug Administration approval.¹³⁹

Questions:

46. *Should the Act include provisions permitting international travellers to carry controlled drugs if prescribed by their home countries?*

(f) *Police powers*

2.126 Tonga has a provision specifically relating to the power of police to covertly monitor the possible commission of an offence for investigation purposes subject to Court authorisation.¹⁴⁰ It also allows police officers to use tracking devices for investigations subject to Court approval.¹⁴¹

2.127 Furthermore, controlled delivery is also covered under Tonga's legislation which 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.¹⁴² The provision also lists the types of activities which may be undertaken in the course of and for the purposes of a controlled delivery.¹⁴³

2.128 Samoa does not have any such provisions in its Narcotics Act. The Commission notes however that the *Police Powers Act 2007* contains certain provisions regarding authorisation given to police to carry out surveillance operations for investigations subject to Court approval. Nevertheless, having this as well as other powers similar to that in Tonga under any new proposed legislation, would assist with clarifying police's enforcement powers in dealing specifically with drug-related offences.

¹³⁹Ministry 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>>.

¹⁴⁰ *Illicit Drug Control Act 2003* (Tonga) s 9.

¹⁴¹ *Illicit Drug Control Act 2003* (Tonga) s 10.

¹⁴² 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 it 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>>.

¹⁴³ *Illicit Drug Control Act 2003* (Tonga) s 11.

Questions:

47. Should the Act specify the powers available to Police in drug specific situations (for example covert monitoring or controlled delivery, as is in the case in Tonga's *Illicit Drug Control Act 2003*)? If so, should the powers already contained under the *Police Powers Act 2007* be replicated as well?
48. Does the MoP have the resources to conduct surveillance operations at present? If not, what resources does it need?

(g) Time for filing charging document

2.129 The New Zealand *Misuse of Drugs Act 1975* provides conditions for the filing of charging documents in respect of an offence against sections 6 (Dealing with controlled drugs), 9 (Cultivation of prohibited plants) or 10 (Aiding offences against corresponding law of another country) of the Act. 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.¹⁴⁴

2.130 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.¹⁴⁵ Before deciding whether or not to give his or her consent the Attorney General may make such inquiries as he or she thinks fit.

2.131 In Samoa, the *Criminal Procedure Act 2016* stipulates that a charging document may be filed within 21 working days.¹⁴⁶ However, it does not mention a limitation period in relation to the time between the offence being committed and the charge being brought, contrary to New Zealand.

Questions:

49. Should the Act include a limitation period for filing a charge sheet between the offence being committed and the charge being brought, similar to New Zealand?

(h) Mistake as to nature of controlled drug or precursor substance

2.132 New Zealand's *Misuse of Drugs Act 1975* also 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.

¹⁴⁴ *Misuse of Drugs Act 1975* (New Zealand) s 28.

¹⁴⁵ *Misuse of Drugs Act 1975* (New Zealand) s 28A.

¹⁴⁶ *Criminal Procedure Act 2016* (Samoa), s 17(3).

2.133 Although Samoa does not have similar provision, it may be the case in practice. Irrespective of this, a similar provision could be considered for inclusion under the new Act to ensure that offenders do not use this as an excuse to avoid liability.

Questions:

50. Should the Act include a provision that removes the defence of mistake as to nature of controlled drug or precursor substances similar to New Zealand?

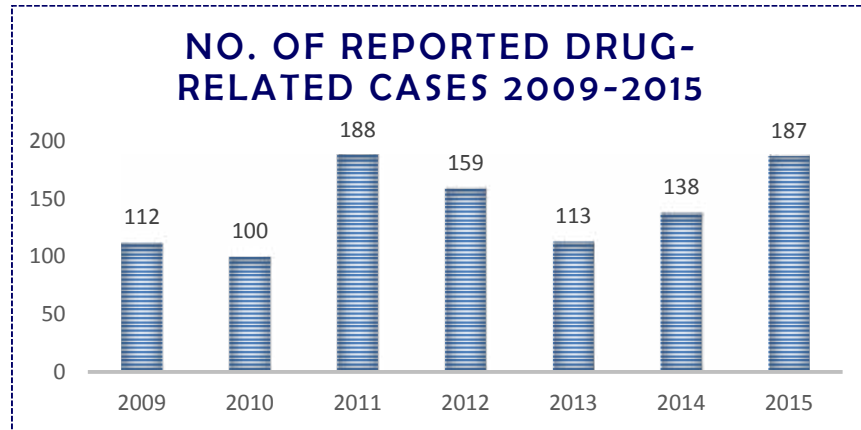
Chapter Summary

Compared to the overseas jurisdictions of Australia, New Zealand and Tonga, Samoa's current Narcotics Act is seemingly outdated and does not address all of the issues that are addressed under these model laws. In reviewing Samoa's Narcotics Act, there are also other factors to consider such as the terminology to be used when referring to illegal drugs, and whether or not to further define a number of other relevant terms. In formulating a new drug-related legislation, it is important to consider other model laws for guidance. For the purposes of developing a new legislative framework, the Commission has identified questions (as stated throughout this Chapter) for public submissions.

3. CHAPTER TWO: STATISTICS ON DRUG-RELATED ISSUES

3.1 This chapter analyses statistics from the MoP and SPCS regarding drug offences in Samoa from 2009-2015. In short, this Chapter shows that possession of marijuana cases are the most common in terms of commission and reporting.

Figure 1: Reported Drug-Related Cases 2009-2015



Source: Ministry of Police, 2016.

3.2 Figure 1 shows that the highest number of reported cases was in 2011 and 2015 and the lowest number was recorded in 2010. There was a decline in reported drug cases in 2013. However, it steadily rose again in 2014 and 2015.

3.3 It has been speculated in the media that the high number of recorded drug offences in 2015 was due to the rigorous drug raids (mainly targeting the cultivation and supply) carried out by police. As a result, more offenders were being caught.¹⁴⁷ Conversely, preliminary consultations with NPO suggest that as drug raids became common especially during 2015, it may also have deterred some people from using drugs due to fear of prosecution.

3.4 It was also evident from data received from Police that the majority of reported cases involved marijuana and most suspects were male. Further, some males who were involved in drug offences were as young as 16 years old i.e. a child.¹⁴⁸

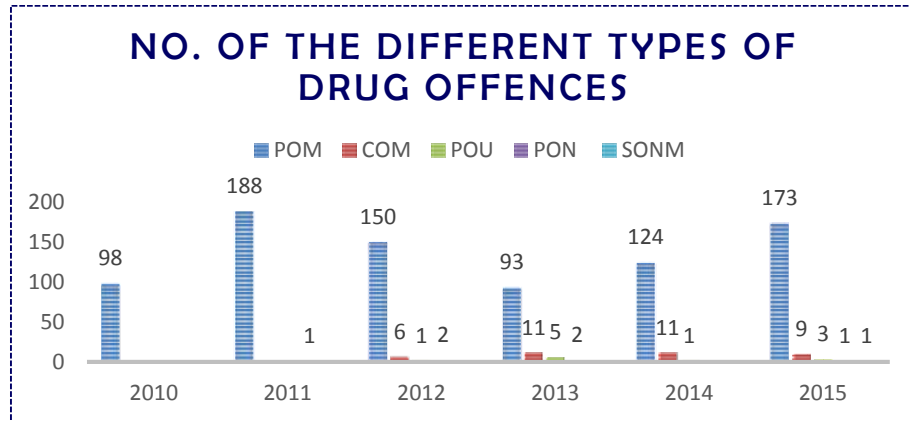
3.5 Notwithstanding the above statistics, the Commission has reviewed anecdotal evidence suggesting there is underreporting in methamphetamine cases. In 2016 alone, there have been reported instances involving methamphetamine.¹⁴⁹ Underreporting could be due to a lack of resources, equipment and training for Samoa law enforcement agencies to adequately detect and prosecute methamphetamine cases. Accordingly, it is unclear to what extent methamphetamine production and use is a problem in Samoa, however there is evidence of its existence and a need to better detect and respond to it.

¹⁴⁷Vatapuia Maiava, 'Police winning war on Drugs' (14 July 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/14_07_2016/local/8660/Police-winning-war-on-drugs.htm>.

¹⁴⁸ TV3 Tala I Vaifanua, 'Drug-related issues in Samoa', (March 2017) *TV3 Samoa*.

¹⁴⁹For example, see, Pail Mulitalo Ale, 'More Drugs Pipe found in Samoa' (16 August 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/16_08_2016/local/10041/More-drug-pipes-found-in-Samoa.htm>.

Figure 2: Different Types of Drug Offences

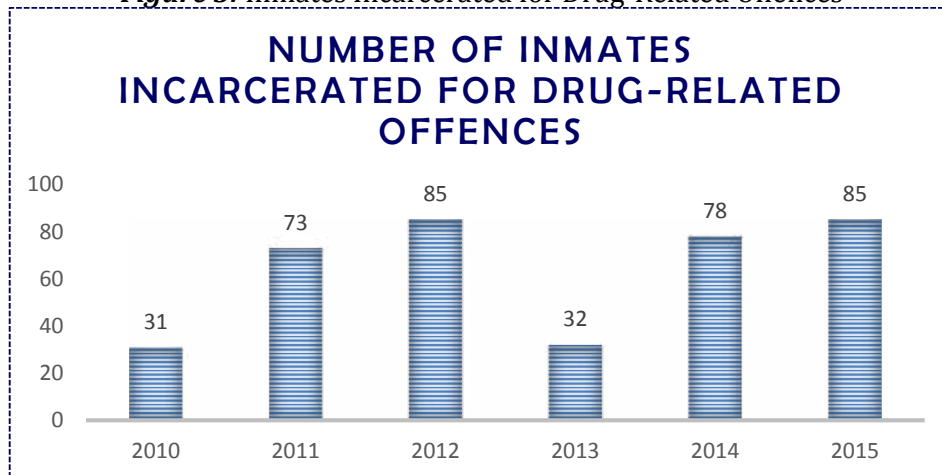


POM – Possession of Marijuana; COM – Cultivation of Marijuana; POU – Possession of utensil; PON – Possession of narcotics; SONM – Supply of Narcotic and Marijuana.

Source: Ministry of Police, 2016.

3.6 The graph above shows that the most common drug-related offence from 2009-2015 was possession of marijuana (cannabis), which was reported in significantly higher instances compared to other offences. The highest number of marijuana possession offences were recorded in 2011 (188 cases). The second most common offence is cultivation of marijuana with the highest number of cases recorded in 2013 and 2014 (11 cases). There have also been several cases in relation to supply of marijuana as well as possession of a utensil for the commission of an offence. The significantly less common offences include possession of narcotics such as methamphetamine (four cases in the past eight years) and cocaine (one case recorded in 2011). Preliminary consultations with the NPO revealed that the majority of the above cases led to a conviction.¹⁵⁰

Figure 3: Inmates Incarcerated for Drug-Related Offences



Source: Samoa Prisons and Corrections Services, 2016

3.7 The above graph details the number of inmates that have been incarcerated for drug-related offences between 2010 and 2015. The periods from 2011-2012 and 2014-2015 had the highest number of drug-offenders being incarcerated, mainly for possession of

¹⁵⁰ Preliminary Consultation with the National Prosecution Office (Samoa) (Level 2 – Tofilau Eti Alesana Building, Mulinuu, Apia, Samoa, 13 January 2017).

marijuana charges.¹⁵¹ A reason for this is due to the high number of drug-related offences shown in **Graph 1** as well as the high number of convictions as noted by the NPO above.

Questions:

- 51. What measures should be taken to improve underreporting in drug-related cases?*
- 52. What resources does the Ministry of Police need to better detect and record drug related crime?*
- 53. What are the potential causes for increased drug offending among the male population?*
- 54. Is there any further evidence of methamphetamine production and/or use in Samoa?*
- 55. Do all possession of marijuana cases warrant a conviction? Or should there be a penalty available without conviction for low level and/or juvenile offenders?*
- 56. What role should the Village Fono play to improve reporting of drug related crime?*
- 57. Should the Act include a specific provision dealing with minors who are involved in drug-offending?*

Chapter Summary

The available statistics demonstrate that marijuana is the most commonly abused illegal drug in Samoa, being a Class B drug. Generally speaking, most offences relate to low-level offences such as possession of marijuana. The statistics also show that most offenders are male, with some being as young as 16 years old at the time of offending. There is a notable lack of statistics in relation to the use of methamphetamine, which is starting to become more prevalent in Samoa. Unfortunately, the available statistics do not demonstrate the growing trend of methamphetamine use. In order to adequately address issues identified in this Chapter, the Commission has identified relevant questions for public submissions.

¹⁵¹ Preliminary Consultation with Ulugia Sauafea Aumua (and other officers), Assistant Commissioner of Samoa's Prisons and Corrections Service (Prisons and Correction Service Office – Tafaigata, Samoa, 14 June 2016).

PART B

Having extensively addressed the issues surrounding Samoa's current Narcotics Act in Part A, this Part will now turn to the emerging issues as identified in the TOR. Specifically, the following issues will be addressed in the subsequent chapters:

- (a) **Chapter Three** will analyse Samoa's preventative regulatory regime and discuss areas in which improvement is necessary;
- (b) **Chapter Four** will assess Samoa's current enforcement structure;
- (c) **Chapter Five** will discuss support and treatment services and available rehabilitation facilities in Samoa, as well as proposed facilities;
- (d) **Chapter Six** will examine drug-related harm and issues surrounding the minimisation of this harm;
- (e) **Chapter Seven** will explain the medicinal use of certain drugs in controlled situations in Samoa;
- (f) **Chapter Eight** will review the emergence of new drugs such as synthetic marijuana and party pills and model laws which can be adopted to combat such a threat; and
- (g) **Chapter Nine** will discuss the roles and responsibilities of parents, village councils and churches in addressing drug use.

4. CHAPTER THREE: PREVENTATIVE REGULATORY REGIME

4.1 This Chapter explores possible preventative regulatory regimes that would assist in preventing the harms of drug abuse from occurring before they manifest into a significant problem. Preventative regulatory regime refers to a system of preventing drug-related crime through effective enforcement, policies and programmes. In this chapter, preventative regulatory regime includes intervention policies, programmes, and practices that aim to prevent and/or reduce illegal drug use and the resultant harm.¹⁵² These programmes and intervention policies may target young people to avoid or delay the use of drugs or if they have started already, to avoid developing disorders."¹⁵³

Samoa

¹⁵²United Nations Office on Drugs and Crime, *World Drug Report 2015*

¹⁵³ The U.N. agency mandated to assist Member states in their struggle against illegal drugs, crime and terrorism; United Nations Office on Drugs and Crimes (UNODC), *International Standards on Drugs Prevention* (2015)

<https://www.unodc.org/documents/prevention/UNODC_2013_2015_international_standards_on_drug_use_prevention_E.pdf>.

National Drug Policy

- 4.2 Currently, Samoa does not have a stand-alone drug policy in the health sector. Preliminary consultations in 2016 reveal that there were discussions within the health sector to create an overall drugs policy. Moreover, if such a policy is established, then the priority for the health sector and the law and justice sector would be to gather relevant statistics about drugs in Samoa in order to inform the overall drugs policy. Subsequently, a Committee or Taskforce should be established to discuss issues to be included in the policy.
- 4.3 The policy could include strategies to combat the demand and supply of drugs, as well as boost available treatment services, awareness campaigns, and the necessary support for families, villages and communities.

Crime Prevention Strategy

- 4.4 Samoa is currently developing an overall Crime Prevention Strategy (2016-2020) which aims to make Samoa a safe and better place to live, visit and do business through collective action by the community to combat criminal activity in Samoa. In relation to drugs, this strategy could assist identify vulnerable areas where drug related offences are high, and/or help determine the root causes of drug-related crime in the first place. It could also find ways to address these problems by working in partnership with community based groups, non-government organisations and private sector organisations.
- 4.5 Currently, the Commission is assisting in finalising this Crime Prevention Strategy as part of a Working Group that consists of Government Offices such as the OAG and MoP. The Working Group is looking to have consultations around May 2017 and the Strategy is expected to be finalised shortly afterwards.

Other Related-Policies

- 4.6 Samoa has existing policies relating to Mental Health (2006), Tobacco Control (2010) and a Medicine (2008).
- 4.7 The *Medicine Policy 2008* 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.¹⁵⁴
- 4.8 Samoa's *Mental Health Policy 2006* deals with the treatment of mental health patients and recommends developing a standalone substance abuse treatment service for Samoa given the prevalence of drug induced mental health patients.¹⁵⁵

¹⁵⁴ Ministry of Health (Samoa), *Samoa National Medicines Policy 2008* (2008).

¹⁵⁵ A substance abuse treatment service provides and assists people who are addicted to drugs and alcohol. The service carries out rehabilitation programmes and develops policies etc. to assist with drug abuse. The Mental Health Unit (Samoa) recommended that Samoa should have a specific *Alcohol and Drugs Service* to assist those addicted to alcohol and drugs.

4.9 The *Tobacco Policy 2010* 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.¹⁵⁶

Comparable Jurisdictions: Preventative regulatory regimes

1) New Zealand

4.10 Although New Zealand has legislation on drug abuse and mental health, its *National Drug Policy 2015-2020 (NZNDP)* is the guiding document which encompasses all policies and practices dealing with both legal and controlled substances (including tobacco and alcohol).¹⁵⁷ Guided by three objectives pertaining only to drug prevention, the NZNDP aims to delay drug uptake by young people, minimize drug related illnesses and injuries, and shift current attitudes to understand alcohol and other drugs. The NZNDP particularly recognizes that an effective government intervention depends upon an active cross-agency response. Thus, New Zealand's health services, education and social services, justice system, communities, families and children are identified as vital key players who must work collaboratively to minimize harm.¹⁵⁸

4.11 New Zealand also has a number of facilities which deal specifically with drug and alcohol treatment services. For example, Alcohol Drug Association New Zealand (**ADANZ**) provides expert information and policy advice, early intervention and support services. ADANZ's services now include a national methamphetamine intervention service for addicts.

2) Australia

4.12 There is currently a National Campaign against Drug Abuse (2016-2025). The Strategy identified three central pillars to harm minimisation:

- 1) harm reduction with the aim to reduce harm already occurring from the effects of alcohol and prohibited drugs;
- 2) demand reduction which intends to reduce the desire to use prohibited drugs; and
- 3) supply reduction which aims to prevent or reduce the availability of drugs.

4.13 Supply reduction also aims to control and manage the supply of legal drugs through prescribing guidelines as to the age limit and restriction for usage, licensing conditions and permitted trading hours to trade drugs. These pillars each contribute to the overarching

¹⁵⁶ Ministry of Health (Samoa), *National Tobacco Control Policy and Strategy 2010-2015* (2010).

¹⁵⁷ 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>>.

¹⁵⁸ 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>>.

goal of minimising alcohol, tobacco and other drug-related health, social, and economic harms among individuals, families and communities.

- 4.14 Both Australia and New Zealand have existing school-based prevention and education activities with established local networks and supports, such as sporting clubs, kin groups and churches to deliver prevention and education messages. These activities could be effectively implemented in the Samoan context, where community engagement in both sporting and church activities is already high.

Questions:

58. Should Samoa develop a Drug Policy similar to New Zealand and Australia? Who should be responsible for developing it?

59. If yes, what will be the aim of this policy? What should be covered under this policy? How regular should it be updated?

Chapter Summary

Samoa does not have a stand-alone drug policy in its health sector. Samoa has policies in relation to tobacco use, mental health, medicine, as well as a Crime Prevention Strategy which is currently still being formulated. Comparatively, other overseas jurisdictions have specific drug policies. Having an overall drug policy is important for Samoa to guide the Health sector and Government at large in addressing issues relating to the abuse of illegal drugs. In order to adequately address these issues, the Commission has identified relevant questions in this Chapter for public submissions.

5. CHAPTER FOUR: THE ADEQUACY OF SAMOA'S CURRENT ENFORCEMENT STRUCTURE

- 5.1 This chapter will discuss the current enforcement strategy in Samoa as well as examining the overseas and regional enforcement structures currently in place.
- 5.2 The current Narcotics Act contains several provisions relating to enforcement as identified in Chapter 1. These provisions include the power to seize and destroy prohibited plants;¹⁵⁹ the power to inspect books and stocks of narcotics or controlled precursors;¹⁶⁰ the power to arrest a suspected person of committing an offence;¹⁶¹ searches with or without warrants;¹⁶² and mandatory reporting of suspected illegal use of a narcotic or controlled precursor,¹⁶³ among others. Those who have the power under these provisions include the Head of State, the CEO of MoH, police officers, Customs officers and any other person authorised to assist.
- 5.3 There are a number of additional matters impacting on the adequacy of Samoa's enforcement structure which include:
- 1) Executing search warrant procedure in practice;
 - 2) Monitoring intelligence and offender populations; and
 - 3) Drug testing procedures.

Search warrants

Samoa

a) Issuing search warrants

- 5.4 Preliminary consultations revealed that there appears to be confusion between what the legislation provides and what is occurring in practice in Samoa. Specifically, when carrying out drug searches, the MoP stated that the Chief Justice (**CJ**) is the only person who can grant a warrant. In cases where the CJ leaves to go overseas, the search will have to wait until the CJ returns. Understandably, this is impractical and police have requested if other Supreme Court judges can have the power to grant warrants.
- 5.5 However, the Narcotics Act clearly states that a Judge of the District Court or Supreme Court may "grant a search warrant" if he or she "is satisfied by information on oath that there is reasonable ground for suspecting" an offence against the Narcotics Act has been committed.¹⁶⁴ Furthermore, Samoa's *Criminal Procedure Act 2016* states that a judge or registrar (not including a deputy registrar) may issue a search and seize warrant.¹⁶⁵

¹⁵⁹*Narcotics Act 1967* (Samoa) s 6(4).

¹⁶⁰ *Narcotics Act 1967* (Samoa) s 15.

¹⁶¹ *Narcotics Act 1967* (Samoa) s 16.

¹⁶² *Narcotics Act 1967* (Samoa) ss 14, 14A,

¹⁶³ *Narcotics Act 1967* (Samoa) s 25B.

¹⁶⁴ *Narcotics Act 1967* (Samoa) s 14

¹⁶⁵ *Criminal Procedure Act 2016* (Samoa) s 33.

5.6 According to the Ministry of Justice Courts and Administration (**MJCA**) a search warrant for drug-related searches is in practice signed by a Supreme Court judge or the Chief Justice himself or herself, suggesting the MoP and MJCA have conflicting information and that there may be some confusion between the legislation and current practice.

b) Duration of search warrant

5.7 Secondly, MoP stated that a warrant is only valid for one month.¹⁶⁶ MoP have requested that the duration of a warrant be extended as this will assist their case if there's more evidence needed for the police investigation. An extended duration would avoid delays.

c) Warrantless searches on government land

5.8 MoP also raised the issue of carrying out searches on government owned land and property. According to MoP, many drug cases occur in some villages that use Samoa Trust Estates Corporation (STEC) owned land and properties to cultivate marijuana. MoP stakeholders expressed the view that searches without warrants should be issued at these locations as they suspect a lot of narcotic-related activity is taking place on these lands.

d) Other issues

5.9 In October 2015 the Law Enforcement Against Drugs Unit (**LEAD**) was established in Samoa. It was created to counter growing concern over illegal drug activities in communities. However, it was dissolved around October 2016 due to unforeseen circumstances within MoP's internal affairs. LEAD's work is carried out by the Criminal Investigation Division (**CID**) and the Intel division.

Comparable jurisdictions

1) New Zealand

5.10 Under New Zealand's *Search and Surveillance Act 2012 (NZSSA)*, a District Court or High Court judge may issue a search warrant to authorise a law enforcement officer to search a particular location and seize specific items or goods if there is probable cause to do so.¹⁶⁷ A justice of the peace, community magistrate, registrar or deputy registrar who has been authorised to act as an issuing officer under the NZSSA may also issue warrants.

5.11 The application for a search warrant must contain particulars relevant for the issuing officer to determine and issue the warrant.¹⁶⁸ A warrant can be executed on more than one occasion during the period in which the warrant is in force, if allowed by the issuing officer.¹⁶⁹ It is up to the applicant to request the duration of the warrant and the issuing officer will determine if he or she is satisfied that the warrant should be in force for the

¹⁶⁶*Narcotics Act 1967 (Samoa) s 14(1).*

¹⁶⁷*Search and Surveillance Act 2012 (New Zealand) s 6.*

¹⁶⁸*Search and Surveillance Act 2012 (New Zealand) s 98(2).*

¹⁶⁹*Search and Surveillance Act 2012 (New Zealand) s 98(5).*

requested period. The officer will also determine if it should be executed on more than one occasion.

- 5.12 Generally speaking, a warrant's duration does not exceed 14 days from the date of issue.¹⁷⁰ If the issuing officer is satisfied that the period of 14 days is insufficient, then a period or not more than 30 days from the date of execution of the warrant may be granted. As such, a search warrant would generally be valid for approximately 2 weeks and no longer than a month.

2) Tonga

- 5.13 Search warrants permitting police and customs officers to enter a place, search for any illicit drug or thing and seize any illicit drug, equipment, evidence or any property associated with illicit drug activities is governed by section 23 of Tonga's *Illicit Drugs Control Act 2003*. However, the duration of such search warrants is not specified in the legislation.
- 5.14 Search warrants are only granted if a magistrate is satisfied, by information on oath, that there are reasonable grounds to suspect that there is, in or on any place:¹⁷¹
- (a) an illicit drug, controlled chemical or controlled equipment;
 - (b) any evidence relating to the commission of an offence against this Act; or
 - (c) any property derived from an offence under this Act.

3) Australia

a) Victoria

- 5.15 Victoria's *Drugs Poisons and Controlled Substances Act 1981* governs the issuing of search warrants for 'drug premises' - premises which are believed to be used for making or selling prohibited drugs. Only police officers of the rank of sergeant or higher can apply for these warrants. These warrants are valid for one month from the date that they are issued. They authorise the Police to enter the premises or vehicle using necessary force and to search them and any persons found on the premises. In addition, the warrant also allows police to seize, arrest, destroy or destroy among others any articles or substances they find.¹⁷²

b) Western Australia

- 5.16 Section 24 of Western Australia's *Misuse of Drugs Act 1981* permits a justice of the peace to grant a search warrant in connection with prevention or detection of offences. The search warrant authorises a police officer at any time or times within 30 days from the date of that search warrant to enter any vehicle, premises or other place named in that search warrant, to search that vehicle, premises or place and any person, baggage, package or other thing,

¹⁷⁰*Search and Surveillance Act 2012* (New Zealand) s 103.

¹⁷¹*Illicit Drugs Control Act 2003* (Tonga) s 23(1).

¹⁷²*Drugs Poisons and Controlled Substances Act 1981* (Victoria) s 81(4).

using such force as is reasonably necessary and with such assistance as the police officer considers necessary.¹⁷³

Questions:

60. *Should training programmes be conducted to improve police awareness on search warrant procedure?*
61. *What is the appropriate duration for search warrants? Should they be extended or should police officers instead be able to apply to the court for extensions?*
62. *What are the concerns, if any, about permitting searches without warrants on government land?*
63. *Is there a need for a specific drugs unit in the MoP? If yes, what are the barriers/constraints to achieving this?*

Monitoring

Samoa

a) Monitoring Intelligence

- 5.17 The Samoa Customs Agency works closely with other government and international enforcement agencies (such as the Oceania Customs Organisation and the World Customs Organisation) to detect and deter unlawful movement of goods across the border, including drugs. The task of intercepting illegal drugs and firearms at all ports of entry has been greatly improved due to the enforcement and implementation of standard operating procedures and tools such as the mobile x-ray machine, detector dogs, and other technology.¹⁷⁴
- 5.18 Furthermore, the Samoa TCU established in 2003 is another key player who monitors illegal drug activities not only in Samoa but regionally. The Samoa TCU works with Customs as well as the MoP and Immigration Officers to ensure the safety of Samoa. TCU uses high level local and global intelligence networks to detect and prevent transnational criminal activities, including drug-trafficking.
- 5.19 The Pacific Transnational Crime Coordination Centre (**PTCCC**) is the central body for all TCUs around the region which is based in Samoa and assists Samoa to monitor transnational crimes in the Pacific Region. The PTCCC coordinates the collection, collation and dissemination of intelligence throughout the Pacific Region. Information gathered helps inform local law enforcement agencies about the trends of illegal-drug activities in

¹⁷³ *Misuse of Drugs Act 1981* (Western Australia) s 24(1).

¹⁷⁴ Changes have been put in place through the ongoing Customs Modernization Project which aims to strengthen its services, including among others implementing effective and efficient border management procedures and improving the capacity to monitor and provide timely statistics.

the region.¹⁷⁵ Accordingly, having such information allows local police and customs authorities to monitor and respond to such activities.

b) Monitoring Offenders

- 5.20 The MJCA, through its community justice supervisors, monitor drug-offenders who carry out community work as part of their sentence. Such monitoring only applies during the period of the community work. Furthermore, general monitoring in village communities is uncertain although the Village Fono has a responsibility under the *Village Fono Act 1990* to ensure that there is peace and harmony in the village.¹⁷⁶
- 5.21 There is no monitoring of an inmate's progress once he or she is released from prison. Preliminary consultations with the SPCS reveal that this is something they would like to implement. However, it noted that collaboration between various agencies who have a vested interest in this proposal - as well as additional funding - will be necessary for this idea to become a reality.
- 5.22 Furthermore, in relation to deportees who are sent back to Samoa and have been involved in drug-related offences overseas, the SRCT stated in a preliminary consultation with the Commission that as a voluntary service, there are many deportees who were involved in drug-related activities overseas that are not monitored at all. Because these deportees are not registered with the SRCT the SRCT has no enforcement powers over them and can only assist those deportees who are registered members. Accordingly, this causes a great concern for Samoa as unregistered deportees are able to return to Samoa unmonitored and without measures in place to prevent further criminal activities from taking place. The Commission therefore queries how deportees can be better monitored when they return to Samoa, and if negative peer associations with overseas drug offenders are an issue here in Samoa.

Comparable jurisdictions

1) New Zealand

- 5.23 Some of the agencies in New Zealand that are involved in monitoring drug related crime include police officers, health professionals and border security personnel.
- 5.24 New Zealand's *Police Illicit Drug Strategy 2010* focused on three key areas including reducing supply, reducing harm and reducing demand.¹⁷⁷ All three key areas involve intense monitoring by police with assistance from local communities to monitor controlled drug activities occurring in communities across New Zealand, particularly those vulnerable to drug crimes.

¹⁷⁵Nautilus Institute, *Pacific Transnational Crime Coordination Centre* (2008)

<<http://nautilus.org/publications/books/australian-forces-abroad/pacific-islands/pacific-transnational-crime-coordination-centre-ptccc/>>.

¹⁷⁶ *Village Fono Act 1990* (Samoa). Further discussion on the Role of the Village Fono in **Chapter Nine**.

¹⁷⁷New Zealand Police, *Illicit Drug Strategy to 2010*

<https://www.police.govt.nz/resources/2009/NZ_Police_Illicit_Drug_Strategy_2009.pdf>.

- 5.25 Furthermore, one of the priorities of the *New Zealand Police Prevention First Strategy 2010-2015*¹⁷⁸ focuses on reducing the impact of drugs. To achieve this the New Zealand Police looked at:
- using a suite of interventions and tools targeting priority offenders;
 - improving the Tasking and Coordination of National and District operational resources to maximise their impact against the highest priority organised crime problems; and
 - intensifying its targeting of assets derived from criminal activity through the proactive use of financial information, intelligence and enforcement.
- 5.26 The New Zealand Police also carry out online monitoring on an ongoing basis, maintaining a close watch on social media for accounts and pages selling drugs.¹⁷⁹
- 5.27 Furthermore, the Illicit Drug Monitoring System (**IDMS**) also assists:¹⁸⁰
- to track trends in drugs of high concern;
 - to document the availability, price, and potency of drugs;
 - to detect emerging drugs and related problems;
 - document health and social harms of drug use; and
 - to measure the demand for health and treatment services.
- 5.28 The Medicines Control of NZMOH's also conducts monitoring by carrying out drug abuse containment activities. Some of these activities include:¹⁸¹
- liaising with doctors, pharmacists and addiction services in relation to drug abuse and misuse issues;
 - monitoring controlled drug prescribing;
 - working with the Medical Officers of NZMOH in the preparation of Restriction Notices for drug seekers and writing to practitioners if there are any concerns regarding possible aberrant prescribing of controlled drugs or medicines;
 - advising health professionals of current drug misuse issues;
 - liaising with Police and other agencies locally and nationally on drug misuse;
 - preparing reports for the disciplinary processes of the Medical Council, Dental Council and Pharmacy Council; and
 - providing advice on the requirements of the *New Zealand Misuse of Drugs Act 1975* and *Medicines Act 1981*.

2) Australia

¹⁷⁸New 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>>.

¹⁷⁹Kristy 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>>.

¹⁸⁰Chris Wilkins, 'Recent Drugs Trends in New Zealand: the Illicit Drugs Monitory System (IDMS)' (Paper presented at National Drugs Trends Conference, Sydney, 9 October 2012) <<https://ndarc.med.uNewSouthWales.edu.au/sites/default/files/ndarc/resources/Drug%20Trends%20in%20NZ%20-%20Chris%20Wilkins%20presentation.pdf>>.

¹⁸¹Ministry of Health (NZ), *Drug Abuse Containment* (3 August 2016) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/drug-abuse-containment>>.

a) National Wastewater Drug Monitoring Program (NWDMP)

- 5.29 In June 2016, AUS\$3.6 million was approved from the Confiscated Assets Fund for the Australian Criminal Intelligence Commission (ACIC) to develop a NWDMP.¹⁸²The main objective of NWDMP is to provide leading-edge, coordinated national research and intelligence on illicit drugs and licit drugs that can be abused, with a specific focus on methylamphetamine and 12 other substances. It is a key initiative in establishing an objective evidence base on illicit drug use and the level of use of a number of legitimate substances.¹⁸³
- 5.30 NWDMP will be carried over a three-year period and will produce nine public reports which will share results and data that will provide statistically valid datasets of methylamphetamine usage and distribution patterns across 51 sites in capital city and regional areas across all states and territories. The programme covers approximately 58 per cent of the population, or over 14 million people.¹⁸⁴
- 5.31 Furthermore, the report is intended to provide concrete data to inform a range of disciplines—including health, education, law enforcement and the not-for-profit sector—in formulating their responses to the complex issues posed by drug markets.¹⁸⁵
- 5.32 In March 2017, the first NWDMP Report was published by the ACIC which found that methylamphetamine was the highest consumed illicit drug of those tested across all regions of Australia, with consumption in some areas at historic highs.¹⁸⁶

b) Drug Use Monitoring in Australia (DUMA)

¹⁸² Australian Criminal Intelligence Commission, 'National Wastewater Drug Monitoring Program' (2017) 1 <https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_1_0.pdf?v=1490333695>See also Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (26 March 2017) <<https://www.acic.gov.au/publications/intelligence-products/national-wastewater-drug-monitoring-program-report>>.

¹⁸³ Australian Criminal Intelligence Commission, 'National Wastewater Drug Monitoring Program' (2017) 2 <https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_1_0.pdf?v=1490333695>See also Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (26 March 2017) <<https://www.acic.gov.au/publications/intelligence-products/national-wastewater-drug-monitoring-program-report>>.

¹⁸⁴ Australian Criminal Intelligence Commission, 'National Wastewater Drug Monitoring Program' (2017) 2 <https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_1_0.pdf?v=1490333695>See also Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (26 March 2017) <<https://www.acic.gov.au/publications/intelligence-products/national-wastewater-drug-monitoring-program-report>>.

¹⁸⁵ Australian Criminal Intelligence Commission, 'National Wastewater Drug Monitoring Program' (2017) 2 <https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_1_0.pdf?v=1490333695>. See also Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (26 March 2017) <<https://www.acic.gov.au/publications/intelligence-products/national-wastewater-drug-monitoring-program-report>>.

¹⁸⁶ Australian Criminal Intelligence Commission, 'National Wastewater Drug Monitoring Program' (2017) 26 <https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_1_0.pdf?v=1490333695>.

5.33 DUMA is a project which seeks to measure drug use among those people who have been recently apprehended by police. Data from DUMA is used to examine issues such as the relationship between drugs and property and violent crime, monitor patterns of drug use across time, and help assess the need for drug treatment amongst the offender population.¹⁸⁷

5.34 DUMA currently collects quarterly drug use information from police detainees.¹⁸⁸ The collection is the only ongoing survey of offenders. The primary purpose of DUMA's core data collection is to improve the comparability of the data.¹⁸⁹ The programme examines the relationship between drugs and crime, and monitors local drug markets and drug use patterns by detainees across time.¹⁹⁰ Aims of DUMA include:¹⁹¹

- collect illicit drug prevalence data on offenders at selected sites in Australia;
- improve the quality of data available on illicit drug use in the offender population;
- provide aggregated data in a timely fashion to State and Territory law enforcement agencies as well as federal national agencies such as the AFP, Customs, ABCI and NCA on the level of illicit drug use within the offender population;
- establish a mechanism whereby local and national law enforcement can evaluate policy initiatives;
- provide an early warning system for changes in patterns of illicit drug use.

5.35 Further, DUMA seeks to aid in community planning, monitoring and resource allocation, and represents an important source of data for state and federal policy-makers. Data collected through DUMA sites provides a research and evaluation tool for local analysts, policy-makers and practitioners.¹⁹²

c) *Online monitoring*

5.36 In late 2012, the National Drug and Alcohol Research Centre (**NDARC**)¹⁹³ commenced monitoring the online drug marketplace on the back of international research showing the internet's growing influence on drug availability and drug use. The research complements the Centre's existing monitoring programmes which include interviews with people who use drugs and tracking drug-related hospital admissions. In relation to online monitoring

¹⁸⁷ Australian Institute of Criminology: Australian Government. *About DUMA*

<http://www.aic.gov.au/about_aic/research_programs/nmp/duma/about.html>.

¹⁸⁸ Trained local staff conduct interviews with detainees who have been arrested in the previous 48 hours and are being held in custody.

¹⁸⁹ Australian Institute of Criminology: Australian Government. *About DUMA*

<http://www.aic.gov.au/about_aic/research_programs/nmp/duma/about.html>.

¹⁹⁰ Australian Institute of Criminology: Australian Government. *About DUMA*

<http://www.aic.gov.au/about_aic/research_programs/nmp/duma/about.html>.

¹⁹¹ Australian Institute of Criminology: Australian Government. *About DUMA*

<http://www.aic.gov.au/about_aic/research_programs/nmp/duma/about.html>.

¹⁹² Australian Institute of Criminology: Australian Government. *About DUMA*

<http://www.aic.gov.au/about_aic/research_programs/nmp/duma/about.html>.

¹⁹³ NDARC is based at the University of New South Wales and carries out various researches monitoring different drug-related issues ranging from patterns of alcohol and drug use and trends of illicit drugs being sold via the internet on the black-market. See their website at <https://ndarc.med.unsw.edu.au/>.

of drug black-market, the NDARC programme found that the most commonly sold substances vary across online mediums.¹⁹⁴

d) Data collection database

- 5.37 To further boost its efforts in monitoring prohibited drugs, a discussion paper published by the Victorian Alcohol and Drug Association recommended the creation of a comprehensive database which would capture information from police, health services and users about emerging concerns with particular types of synthetic drugs.¹⁹⁵

Questions:

64. *In what ways could Samoa's monitoring of drug crime be improved? What are the impediments to achieving this?*
65. *What kind of IT infrastructure is required, if any, to improve Samoa's monitoring of drug related crime?*
66. *How can we better monitor drug offenders once they return to the community after serving sentence? Who is best placed to do this (for example Village Fono or through post sentence drug rehabilitation schemes)?*
67. *Should the MoP develop a strategy similar to New Zealand's Police Illicit Drug Strategy 2010 to combat drug related issues in Samoa, focusing on the key areas including reducing supply, reducing harm and reducing demand?*

Drug Testing

Samoa

- 5.38 The current practice in Samoa is that testing is only done if the accused pleads not guilty to the alleged offence. The onus therefore is on the prosecution to prove that the particular substance found was in fact an illegal drug, and the Police bear the cost of the test.
- 5.39 In 2013, SROS began testing for illegal substances, namely methamphetamine and cannabis. Other types of drugs and precursor substances are currently not being tested.¹⁹⁶ Furthermore, SROS does not carry out biological testing such as testing urine samples of

¹⁹⁴National Drug and Alcohol Research Centre (New South Wales), *First findings from internet drug monitoring program* (1 August 2013) <<https://ndarc.med.uNew South Wales.edu.au/news/first-findings-internet-drug-monitoring-program>>.

¹⁹⁵Cameron Houston and Nino Bucci, 'Why did you have to leave us like this?-three dead after toxic drug batch' (17 January 2017) *Victoria News* <<http://www.theage.com.au/victoria/why-did-you-have-to-leave-us-like-this--three-dead-after-toxic-drug-batch-20170116-gtsff6.html>>. See also Melissa Davey, 'Victoria to spend \$29.5m on real-time monitoring of prescription drugs' (25 April 2016) *The Guardian* <<https://www.theguardian.com/australia-news/2016/apr/25/victoria-to-spend-295m-on-real-time-monitoring-of-prescription-drugs>>.

¹⁹⁶ The Office of the Attorney General recently requested for SROS to look into testing precursors but this is at its early stages as a methodology is yet to be formulated. Currently, SROS does not test for purity or quantity.

those suspected of taking drugs.¹⁹⁷ In relation to cannabis testing, tests are mainly carried out on finished products. This does not include oils and leaves. For methamphetamine, utensils such as straws and pipes are mainly tested for traces of methamphetamine. All of the cannabis samples SROS has tested have been positive. For methamphetamine, over 90 percent have been positive.

5.40 To date, no new drugs have been discovered from drug testing that have been carried out. There has also been no known issues with tampering of evidence. However, one of SROS' major issues in carrying out their work effectively is in relation to lack of resources and funding to train staff.

5.41 In carrying out investigations, all drug samples obtained by police are forwarded to SROS for testing for identification and confirmation. Preliminary consultations reveal that this process is very costly for the MoP particularly in cases when the testing is deemed unnecessary in the face of a clear and obvious sample.

5.42 Furthermore, the Commission notes that although drug testing is carried out for prosecution and court purposes, such practices do not seem to exist in the workplace. Accordingly, it was raised during preliminary consultations with SRCT that drug testing and screening should be considered for specific agencies including the SRCT for its members and staff, Prisons and Corrections and other workplaces, where appropriate.¹⁹⁸ Carrying out such tests and screens may be essential in certain roles where drug use could negatively impact on an employee's ability to perform the requirements of their role and endanger the safety of others.¹⁹⁹ Furthermore, if such procedures in relation to testing and screening are put in place, it was raised that it is also important to consider when they should occur. Some of the suggested options include:

- Drug testing could be done pre-employment where legal and appropriate. This will avoid the hiring of individuals who are actively abusing drugs.
- Drug testing could also be done post-incident. People using drugs are at increased risk of errors and injury. This also may help protect the employer if there is any litigation following the incident.
- Testing could also be done for reasonable suspicion. Company policy should define the factors that may give rise to a reasonable suspicion, including objective factors such as an employee's appearance, speech and behaviour, as well as any other information specific to the workplace in question.

¹⁹⁷ SROS noted that there has been a proposal to work on a new project together with the ADC to develop testing for offenders and to include the use of biological samples, such as urine. It was hoped that this will be up and running at the end of 2016. Such a system could then be used by SPCS to test inmates.

¹⁹⁸ It was raised during preliminary consultations with SRCT that the only organisation that carries out drug screening is the Coral Reef Academy which offers a residential school helping troubled youth (mainly from the United States) overcome emotional difficulties and substance abuse.

¹⁹⁹ National Safety Council, "The importance of workplace drug testing", (2014)
<<http://www.nsc.org/RxDrugOverdoseDocuments/RxKit/EMP-Importance-of-Workplace-Drug-Testing.pdf>>
(Accessed 10 May 2017).

- Drug testing could also be done randomly for people who work in safety-sensitive positions. Workplaces could contract with a reputable laboratory that is certified to provide these services.²⁰⁰

Comparable Jurisdictions

1) New Zealand

5.43 In New Zealand, drug testing can be done by looking for traces of drugs in the body using samples of urine, breath, hair, saliva, or sweat. Such testing may be used by a range of organisations including:²⁰¹

- workplaces to check for past use of illicit drugs and blood alcohol concentration while working;
- sporting bodies to detect drugs that are not permitted while competing in certain competitions;
- drug treatment services to inform medical decisions; or
- in judicial settings to inform legal decisions such as in custody cases.

5.44 New Zealand authorities look at two different types of testing, being point-of-collection testing (**POCT**) and laboratory testing. POCT does not make clear how much of a drug was used, when it was used or the level of impairment and therefore the laboratory testing is necessary to confirm any positive test. Generally, laboratory testing is more accurate than POCT but it's not always exact. POCT devices provide more timely results, but laboratory analysis can better differentiate illicit from prescription drug use.²⁰²

2) Australia

5.45 In Australia, identification of suspected narcotic substances is an element of most drug-related offences. Consequently, the prosecution bears the onus of proving the identity of illicit drugs.

5.46 Recent amendments to New South Wales *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* have nevertheless removed the mandatory requirement to perform confirmatory testing on seizures less than a traffickable quantity.²⁰³ This means that police officers now need only refer suspected substances for analysis where the quantity "is not less than the trafficable quantity for the drug",²⁰⁴ or if the identity of the substance is in dispute.²⁰⁵ Trafficable quantities of cannabis must exceed 300 grams while

²⁰⁰ Preliminary consultations SRCT with Magele Vernon Mckenzie, Director (SRCT Office – Vailima, Samoa, 9 May 2017). See also Tomo Drug Testing, "Why Drug Testing is Important", (2015) <<https://www.yourdrugtesting.com/why-drug-testing-is-important/>> (Accessed 10 May 2017).

²⁰¹New Zealand Drug Foundation, *Effective Drug Testing* (March 2017) New Zealand Drug Foundation <<https://www.drugfoundation.org.nz/drug-information/drug-testing>>.

²⁰²New Zealand Drug Foundation, *Effective Drug Testing* (March 2017) New Zealand Drug Foundation <<https://www.drugfoundation.org.nz/drug-information/drug-testing>>.

²⁰³ *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales) s 15.

²⁰⁴*Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales) s 14(1)(c).

²⁰⁵*Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales), section 15(2).

methamphetamines must exceed 3 grams.²⁰⁶ Thus, where identification is not disputed, quantities below these thresholds need only be analysed by presumptive methods;²⁰⁷ or in the case of plants (e.g. cannabis), physically analysed by a botanist or other qualified person.²⁰⁸

- 5.47 Moreover, various Australian jurisdictions contain varying evidentiary provisions in relation to drug possession. In Queensland and the Northern Territory, the prosecution need not particularise the type of drug where the court is satisfied that the substance was nevertheless a ‘dangerous drug’.²⁰⁹ In New South Wales, Tasmania and Victoria, a substance or plant which is represented as being a prohibited drug or plant is deemed to be as such.²¹⁰
- 5.48 Furthermore, in relation to the identity of a substance, all Australian jurisdictions dictate that the identity of a substance is proven where it is certified by a prescribed certificate of an approved analyst or botanist.²¹¹ The Australian Capital Territory, Victoria and Western Australia allow the accused to object to the certificate and require the analyst or botanist to attend as a witness in the proceedings.²¹² Furthermore, in Victoria and Western Australia, the court has the power to make an order for costs of approved analysts or botanists that are required to attend as a witness or conduct a forensic examination.²¹³
- 5.49 New South Wales takes a unique approach to cannabis identification, allowing certificates signed by “appointed persons” which identify and quantify a plant as prima facie evidence.²¹⁴ An “appointed person” is any person who the Director-General of the Department of Industry and Investment appoints and considers as being suitably qualified.²¹⁵ This may include, for example, specifically trained police officers.
- 5.50 The Commission notes that the New South Wales model may be advantageous for Samoa notwithstanding costs and resources. Accordingly, limiting full forensic testing procedures to quantities above a predetermined quantity (e.g. 300g for marijuana and 3g for methamphetamines) and using presumptive testing identity that a substance is not in dispute would significantly reduce costs associated with forensic testing in a large number of cases.

²⁰⁶*Drug Misuse and Trafficking Act 1985* (New South Wales) sch 1.

²⁰⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 March 2016, 65 (Gabrielle Upton).

²⁰⁸*Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* (New South Wales) s 12.

²⁰⁹*Misuse of Drugs Act 1990* (Northern Territory) s 40(1)(a)-(b); *Drugs Misuse Act 1986* (Queensland) s 129(1)(a)-(b);

²¹⁰*Drug Misuse and Trafficking Act 1985* (New South Wales) s 40; *Poisons Act 1971* (Tasmania) s 78(2); *Drugs, Poisons and Controlled Substances Act 1981* (Victoria) s 122.

²¹¹*Public Health Act 1997* (ACT) s 135A(2)(g)(ii), (3); *Drugs Misuse and Trafficking Act 1985* (New South Wales) s 43; *Misuse of Drugs Act 1990* (Northern Territory) s 29; *Drugs Misuse Act 1986* (Queensland) s 128; *Controlled Substances Act 1984* (South Australia) s 61(2); *Poisons Act 1971* (Tasmania) s 78(1); *Drugs, Poisons and Controlled Substances Act 1981* (Victoria) s 120(1); *Misuse of Drugs Act 1981* (Western Australia) s 38.

²¹²*Drugs of Dependence Act 1989* (ACT) s 193, *Public Health Act 1997* (ACT) s 135A(5)-(6); *Drugs, Poisons and Controlled Substances Act 1981* (Victoria) s 120(2)(b); *Misuse of Drugs Act 1981* (Western Australia) s 38B.

²¹³*Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 120(5); *Misuse of Drugs Act 1981* (WA) s 38C.

²¹⁴*Drugs Misuse and Trafficking Act 1985* (New South Wales) s 43(3)-(6).

²¹⁵*Drugs Misuse and Trafficking Act 1985* (New South Wales) s 43(5)-(6).

- 5.51 The Commission further notes implementing new testing procedures and guidelines would also require training for police and customs officers to ensure that the correct identification of substances used as evidence would be accurate.

Questions:

68. *Should Samoa adopt a similar approach to Australia and New Zealand to reduce costs in testing? If yes, why? What are the risks of having such a system? Would Samoa have the funding, personnel and resources to implement such a system?*
69. *Who would be best placed to be an “appointed person” for the purposes of testing and approving prohibited plants and drugs?*
70. *Should drug testing be extended to include testing of biological samples (for example, urine samples) to assist in identifying whether suspects have used drugs?*
71. *Should there be mandatory drug testing and/or screening in the workplace for certain professions? If so, which ones?*

Chapter Summary

Samoa’s current Narcotics Act contains a number of provisions relating to enforcement. However, preliminary consultations with the relevant stakeholders demonstrated that there are issues with these enforcement provisions that require addressing. Furthermore, having done a review of the comparable jurisdictions, in particular New Zealand and Australia, there are some areas that the Current Narcotics Act does not address regarding enforcement powers. For example, Samoa does not currently have a data collection database; nor does it have the extensive testing procedures that overseas jurisdictions have. These areas for reform have been identified above and for the purposes of this review, the Commission has formulated relevant questions under this Chapter in relation to Samoa’s current enforcement structure.

6. CHAPTER FIVE: SUPPORT AND TREATMENT SERVICES AND REHABILITATION FACILITIES

- 6.1 This Chapter examines the current support and treatment services and rehabilitation programmes available in Samoa. This chapter also explores similar services and programmes in other countries.
- 6.2 About 60 to 70 percent of the inmates presently serving time at Tafa'igata are re-offenders, with some serving their fifth or sixth prison terms.²¹⁶ Therefore, the Commission notes that an effective rehabilitation system should play a crucial role in dealing with societal drug issues. This can be observed in countries like New Zealand and Australia who have incorporated more rehabilitative options under their drug laws.²¹⁷
- 6.3 The focus on rehabilitation is also reflected in international drug conventions. For example, the *Single Convention on Narcotic Drugs 1961* (amended by the 1972 Protocol) (**the 1961 Convention**) and the *Convention on Psychotropic Substances 1971* (**the 1971 Convention**) strike a balance between punishment and rehabilitation. "Serious" offences are to be "adequately" punished, particularly by imprisonment or other loss of liberty.²¹⁸ However, for offences by drug users, rehabilitative measures (for example, treatment, education, after-care or social reintegration) may be considered as an alternative or in addition to conviction or punishment.²¹⁹ In the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (**the 1988 Convention**), rehabilitative measures as an alternative to conviction or punishment are confined to personal use offences and "appropriate cases of a minor nature."²²⁰ Samoa is party to the 1961 Convention²²¹ and the 1988 Convention.²²² There is therefore 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.
- 6.4 Preliminary consultations carried out by the Commission reveal that the ADC and SPCS carry out rehabilitation and treatment programmes for alcohol and drug offenders. These

²¹⁶ Preliminary Consultation with Ulugia Sauafea Aumua (and other officers), Assistant Commissioner of Samoa's Prisons and Corrections Service (Prisons and Correction Service Office – Tafaigata, Samoa, 14 June 2016). See also Staff of Samoa Observer, 'Ex-prisoners step up' (29 January 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/29_01_2016/local/1768/Ex-prisoners-step-up.htm>.

²¹⁷ Tony Gee, 'New prison's focus on Rehabilitation' (3 March 2005) *NZ Herald* <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10114300>.

²¹⁸ UN Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol), art 36(1)(a); UN Convention on Psychotropic Substances 1971, art 22(1)(a). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

²¹⁹ UN Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol), art 36(1)(b); UN Convention on Psychotropic Substances 1971, art 22(1)(b). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

²²⁰ UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, arts 3(4)(c) and (d). See also Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 96.

²²¹ Samoa 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.

²²² Accession to the 1988 Convention took place in 2005.

programmes mainly involve behavioural change counselling, and help to teach inmates literacy and numeracy skills as well as other valuable skills that will enable them to enter the work force. While these 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.

- 6.5 Furthermore, 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 programs, which is a major challenge for the SRCT. Accordingly, the SRCT has raised that this is something it would like to look at to ensure that not only offenders get the help they need but also to ensure Samoan communities are safe from illegal drug activity.²²³
- 6.6 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 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.

Alcohol and Drugs Court

- 6.7 In February 2016, the ADC was launched in Samoa to fulfil the following purposes:
- deal with offenders inducted by alcohol and drug abuse;²²⁴
 - equip offenders with the tools needed to start a new life away from reliance on drugs and alcohol and to contribute to society;²²⁵
 - reduce criminal offending induced by alcohol and drug abuse and recidivism by dealing with the root of the problem through education and treatment.²²⁶
- 6.8 Prior to the establishment of this Court, 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 reoffending and a more targeted approach

²²³ Preliminary consultations SRCT with Magele Vernon Mckenzie, Director (SRCT Office – Vailima, Samoa, 9 May 2017).

²²⁴ Ministry of Justice and Courts Administration, *Participant's Handbook: Samoa Alcohol and Drugs Court* (2016) 2.

²²⁵ Ministry of Justice and Courts Administration, *Participant's Handbook: Samoa Alcohol and Drugs Court* (2016) 2.

²²⁶ Moana Solomon, 'Ministry of Justice and Courts Administration; Samoa alcohol and Drugs Court' (Powerpoint presentation presented at the Expert Consultation on Addressing Substance Abuse in Asia Pacific Region, Suva, 26-27th September 2016).

to this offence type was required.²²⁷ The ADC was therefore set up to enable certain drug offenders to undergo a drug and alcohol related programme before returning to the mainstream court system for sentencing. Based on the New Zealand Model, the ADC is currently made up of one Supreme Court judge, an alcohol and drug clinician, one case manager, police officers, lawyers, court co-ordinator, community justice supervisors, and a probation team.

- 6.9 To qualify for the ADC programme, the offender must satisfy the following criteria:²²⁸
- 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 Lauli'i and Afega;
 - the offender *must* be charged with an offence of up to 3 years imprisonment;
 - the offender *must not* be charged with sexual related offence, or arson; and
 - the offender *must* have no serious mental health condition that prevents court participation.

6.10 Based on the above criteria, not all drug users will automatically receive treatment from the ADC. Furthermore, due to a lack of resources and personnel, the ADC do not handle cases concerning drug dealers. For example, a suspected drug dealer, user and addict was denied a chance to be treated under the ADC. The suspect according to the Court was not only an addict (which is covered under the criteria) but he was also a drug dealer selling drugs commercially. Furthermore, the type of drug involved was a Class A drug which is punishable by life imprisonment.²²⁹

6.11 Following the completion of the programme, the ADC clinician will recommend an appropriate sentence based on the offender's progress.

6.12 The Commission notes that when the ADC was launched, it was done on a 'pilot' basis and accordingly was limited to offenders who resided in villages between Afega and Lauli'i. This is evident from the criteria above. In preliminary consultations with the ADC however, the Commission was informed that this geographic limitation has since been extended. The Commission understands that from the start of 2017, all offenders in Samoa are eligible for the programme, including Savaii.

Programmes carried out by the ADC

6.13 Some of the programmes carried out by the ADC to assist drug and alcohol offenders include alcohol and drug abuse management, anger management and relationship

²²⁷ Tua Agaiava, 'Drugs and Alcohol Court: Positive move for Samoa' (21 February 2016) *Samoa Observer* (online) <http://www.samoobserver.ws/en/21_02_2016/columns/2703/Drugs-and-Alcohol-Court--Positive-move-for-Samoa.htm>

²²⁸ Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016).

²²⁹ Lagi Keresoma, 'Steward Webber not qualified for the Drug & Alcohol Programme' (9 March 2016) *Talama On-Line News* <<http://www.talamua.com/steward-webber-not-qualified-for-the-drug-alcohol-programme/>>.

counselling, basic life skills and health programmes. Offenders are initially enrolled in these programmes for six weeks. If after this period the probation officer finds that the offender needs more time within the programme then the ADC can extend its duration to at least 12-15 weeks for the offender to undertake intensive treatment.

(a) Alcohol and drugs programme

6.14 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 ADC is also mindful of the living arrangements of the participant and may require that the participant relocate to another area during the programme to avoid any temptation.

(b) Counselling programme

6.15 The ADC also carries out anger management and relationship counselling to assist offenders who experience anger issues, especially when those issues affect relationships with their families and peers as a result of alcohol or drug abuse.

(c) Community work programme

6.16 Some of the offenders are also sentenced to carry out community work in their communities. This enables the offender to learn new life and work skills and give back to the community.

(d) Challenges faced by the ADC

6.17 Despite the ADC's work in helping drug and alcohol offenders, it still faces many challenges in effectively carrying out its programmes. During preliminary consultations with the ADC, their noticeable challenges include:

- *Lack of qualified professionals:* one of the main issues affecting the ADC's work is the lack of available clinical services and qualified counsellors in Samoa that specialize in mental health and drug addiction. The majority of counsellors in Samoa specialise in spiritual counselling but not in drug addiction or mental health issues.
- *Cultural-related issues:* due to cultural and family constraints, the ADC relayed that some Samoans struggle to do basic activities and are not self-sufficient, often relying on their parents. In some cases, this is because the parents retain a great deal of influence and control over their children, even when their children are at least 30 years old. In that context, the ADC's work in helping drug abusers to get back on their feet is substantially difficult because the ADC is required to teach these offenders basic life skills which would normally have been attained at an adult age. Furthermore, the family environment does not encourage the offender's development, as they are not given the opportunity to mature.
- *Lack of awareness:* Samoa has a general lack of awareness in relation to drug related issues.

- *Lack of collaboration*: a lack of cooperation between relevant Government ministries responsible for providing assistance to the ADC and treatment hinders and affects the work of the ADC.

Programmes carried out by SPCS

6.18 Rehabilitation programmes carried out by the Rehabilitations Services Division of the SPCS are developed based on the needs of inmates. These programmes are carried out every year by different providers and mainly include those that apply to everyone generally irrespective of the type of offending.²³⁰

6.19 According to SPCS, they have a number of drug related programmes which can be utilised by all inmates in all of the prison centres.²³¹ Some are specifically targeted at young inmates, escapees, and violent inmates, inmates convicted of sexual offences, inmates with particular interests in certain skill-sets, women inmates, inmates with mental health issues, and inmates serving a sentence of 3-6 months. However, one of the biggest issues facing SPCS is the lack of funding and resources to carry out these initiatives.

(a) Vocational programmes

6.20 As some drug offenders commit crimes due to financial reasons (i.e. possess to sell to earn money to look after their families), vocational and livelihood programmes are carried out to assist inmates to learn about 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,²³² carving and handicrafts, carpentry and cooking exist to help those with an interest in these aforementioned areas. These initiatives help offenders who previously made a living from selling drugs to develop alternative ways of earning income.²³³

(b) Educational programmes

6.21 Educational programmes focus on educating prisoners about basic life skills. These include literacy and numeracy skills for inmates who are performing below or at 8th grade level,²³⁴

²³⁰Majority of the providers include religious groups. Other providers include government ministries such as the MOH/NHS as well as NGOs. Services provided are all carried out on a voluntary basis.

²³¹ These Centers include the Tafa'igata Prison and Olomanu Juvenile Centre in Upolu and the Vaia'ata Prison in Savai'i.

²³² Prisoners at Tafa'igata Prisons and Olomanu Juvenile Centre are taught routine labor skills by planting taro.²³² The plantations are well kept and maintained by inmates working from 6-8 hours a day.

²³³The Samoa Social Welfare Fesoasoani Trust established in 2016 also assists SPCS with rehabilitating and reintegrating of ex-prisoners particularly juvenile offenders in Samoa. Through an accredited trainer from Massey University, the Trust provides basic skills in carpentry, business management and English language training among others. The Trust is also planning to work with Samoa Qualification Authority to accredit certificates which will assist ex-prisoners to secure future employment opportunities and overall behavioral progress.

²³⁴Literacy and Numeracy Program is a four-month long program conducted by the Sei Oriana Charitable Trust which was completed by at least 50 prisoners in 2016.

spiritual counselling for all inmates and computer literacy and financial management for those with an interest in these areas.²³⁵

(c) Behaviour programmes

6.22 In addition, the SPCS also carry out programmes targeted at reforming the behaviour of inmates. Some of these include among others:

- an alcohol and drugs programme facilitated by the NHS, MoH and the GMHT;
- an anger management programme facilitated by the MoP; and
- a mental health and therapeutic programme facilitated by the NHS, MoH, MHU, Fa'ataua le Ola, and the GMHT.

(d) Challenges faced by the SPCS

6.23 Similar to the ADC, SPCS also faces a similar predicament in relation to the lack of resources and personnel to cater for targeted groups such as addicts or drug re-offenders.

Questions:

72. What does ADC need to improve its effectiveness?

73. What additional treatment or rehabilitative services (for example, an Alcohol and Drug Service) are required to support

- a) drug users at the various stages of the offending cycle, for example, before committing an offence, after serving time, when on parole, etc.;*
- b) drug addicts; and*
- c) deportees who are sent back to Samoa and were involved in drug-related activities overseas?*

74. Would prisoners benefit from more targeted drug and alcohol programmes in prison?

75. Do prisoners need more support reintegrating into society after serving sentences for drug related crime?

Chapter Summary

There is a need for Samoa to develop its rehabilitation facilities with regard to drug-induced health issues. Moreover, there are a number of recognised facilities that can help with drug-induced problems, including the Mental Health Unit (MHU). Since February 2016, an Alcohol and Drugs Court (ADC) was established in Samoa, which attempts to help offenders modify their behaviour with respect to drug use so that they can reintegrate into society without serving onerous prison sentences. Preliminary

²³⁵In October 2016, a 199 participant prisoners in some of these educational programs successfully completed and graduated from these programs.

consultations reveal that Samoa should have its own stand-alone drug treatment facility. In order to address all of these issues, the Commission has identified relevant questions under this Chapter for public submissions.

7. CHAPTER SIX: DRUG-RELATED HARM

7.1 This chapter discusses drug-related harm with reference to evidence from Samoa and New Zealand of particular harms caused by methamphetamine and cannabis. It will also briefly examine the social, economic and health-related harm of drug abuse.

Samoa

7.2 Preliminary consultations reveal that there is very little research in Samoa regarding the impact and harm (including social, economic and health-related harm) caused by illegal drugs. In 2006, the MHU published the *Mental Health Policy* which focused mainly on health-related harm.²³⁶ Irrespective of the type of harm being documented, there is still a lack of awareness largely among the local population about the existence and emergence of drug-induced illnesses such as depression and schizophrenia.²³⁷

7.3 In the absence of readily available data, discussion in this chapter will be confined to information received from preliminary consultations with the MoP, SPCS, MoH, MHU and GMHT.

Nature of drug-related harm

7.4 Drug-related harm varies significantly depending on the drug type and the individual. All drugs, including psychoactive substances, can alter mood, perception, cognitive function and an individual's behaviour.²³⁸ In doing so, these drugs can produce two different types of effects and possible harms:

- toxicity (intoxication): the immediate effect of a drug when the blood-level concentration rises rapidly; and
- dependence: the delayed effect of a drug that produces a range of longer-term harms.²³⁹

7.5 Furthermore, the impact of a drug on a particular individual will depend on a wide range of factors including the user's age, gender and underlying state of health (including their mental state); the method of use (e.g. injections, needles, inhaling); the quantity, frequency and duration of use; and the overall environment in which the drug is used.²⁴⁰

²³⁶ Preliminary Consultation with Mental Health Unit (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 27 May 2016);

²³⁷ Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016).

²³⁸ Greg Whelan 'The Pharmacological Dimension of Psychoactive Drugs' in Margaret Hamilton, Trevor King and Alison Ritter (eds), *Drugs in Australia – Preventing Harm* (2nd ed, Oxford University Melbourne Press, 2004) 19.

²³⁹ Greg Whelan 'The Pharmacological Dimension of Psychoactive Drugs' in Margaret Hamilton, Trevor King and Alison Ritter (eds), *Drugs in Australia – Preventing Harm* (2nd ed, Oxford University Melbourne Press, 2004) 19.

²⁴⁰ Greg Whelan 'The Pharmacological Dimension of Psychoactive Drugs' in Margaret Hamilton, Trevor King and Alison Ritter (eds), *Drugs in Australia – Preventing Harm* (2nd ed, Oxford University Melbourne Press, 2004) 19.

- 7.6 The impacts of drug abuse are not limited to the individual concerned, but will often impact others. The extent to which drug abuse can affect people other than the user should not be understated.²⁴¹ Examples of harm on persons other than the drug-user include:
- family and friends who are at risk of violent or other unwelcome behaviour attributable to drug use;
 - emotional distress and financial hardship endured by friends and family;
 - employers affected by absenteeism and lost productivity; and
 - the impacts of drug-related crime on the general community.

Cannabis and Methamphetamine

1) Health-related harm

- 7.7 Cannabis use and dependence is regarded as more common than other illegal drugs in many parts of the world, including the Pacific region.²⁴² Preliminary consultations with the MHU provided anecdotal evidence to suggest there is an increasing problem with marijuana use in Samoa affecting the younger generation, particularly males.²⁴³
- 7.8 Research shows that the higher the potency of cannabis, the higher chance that there will be adverse effects on an individual's mental health.²⁴⁴ For example, cannabis use can cause depression and anxiety.²⁴⁵
- 7.9 The 2006 *Samoa Mental Health Policy* provides that there is generally a high prevalence of mental disorders among people who abuse substances.²⁴⁶ For frequent and heavy marijuana users, the chance of getting a psychiatric illness is very high.²⁴⁷ About 16 percent of all mental health patients in Samoa have a drug induced related psychosis as a result of marijuana (and alcohol) abuse.²⁴⁸ During preliminary consultations, the MHU also raised that based on overseas research, those who take cannabis before the age of 15 years have a chance of developing schizophrenia three times higher than those users who experience

²⁴¹Robert J MacCoun and Peter Reuter, *Drug War Heresies: Learning from Other Vices, Times and Places* (Cambridge University Press, 2001) 106.

²⁴²United Nations Office on Drugs and Crime (UNODC), 'Cannabis: A short review' (Discussion Paper, United Nations Organization, 2010) 5 <https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis_review.pdf>.

²⁴³ Government of Samoa, *Samoa Mental Health Policy* (2006) 9. See also Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016); Deidre Tautua, 'Marijuana charges continue to increase' (3 April 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/03_04_2017/local/18604/Marijuana-charges-continue-to-increase.htm>; Pai Mulitalo Ale, 'Cases reported to Police continue to increase' 20 April 2016) *Samoa Observer* (<http://www.samoaoobserver.ws/en/20_04_2016/local/5152/Cases--reported--to-Police--continue--to-increase.htm>).

²⁴⁴United Nations Office on Drugs and Crime (UNODC) *Cannabis: A Short Review* (March 2012) <https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis_review.pdf>.

²⁴⁵United Nations Office on Drugs and Crime (UNODC) *Cannabis: A Short Review* (March 2012) <https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis_review.pdf>.

²⁴⁶ Government of Samoa, *Samoa Mental Health Policy* (2006) 9.

²⁴⁷Wayne Hall, 'Cannabis use and psychosis' (1998) 17 *Drug and Alcohol Review* 433-444.

²⁴⁸ Ministry of Health Strategic Development and Planning Division, *Samoa Mental Health Policy* (August 2006), 9.

cannabis at an older age.²⁴⁹ Furthermore, the frequent use of marijuana (or any drug) leads to addiction. In February 2016, the Samoa Observer released an article,²⁵⁰ highlighting the difficulties in preventing offenders from taking drugs again, even after they had been incarcerated.²⁵¹

7.10 Furthermore, methamphetamine use has also been proven to result in fluctuating behaviours such as increased wakefulness, increased physical activity, decreased appetite, increased respiration, rapid heart rate, an irregular heartbeat, increased blood pressure, and increased body temperature.²⁵²

7.11 Although anecdotally the Commission is aware of methamphetamine users in Samoa, there is no empirical data available regarding the impact of methamphetamine on their health.²⁵³ However the Commission can deduce that based on harm experienced by methamphetamine users in overseas countries like New Zealand²⁵⁴, similar harms could be faced by methamphetamine users in Samoa.

2) Social-related harm

7.12 62 percent of methamphetamine users in New Zealand reported that their use of methamphetamine had contributed to some extent to their current criminal activity.²⁵⁵ Of particular public concern is the perceived link between methamphetamine intoxication and violent crime. There is some evidence to support the assertion that violent behaviour is common among methamphetamine users.²⁵⁶

7.13 The rise of cannabis-related offences in New Zealand has contributed to the increase of other criminal activities such as theft, robbery, and abuse especially among regular users.²⁵⁷ Accordingly, the Commission notes the possibility of this occurring in Samoa especially

²⁴⁹The risk of developing a psychotic order is said to be twice as likely if an individual uses cannabis at age 15: United Nations Office on Drugs and Crime (UNODC), *Cannabis: A Short Review* (March 2012) <https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis_review.pdf>.

²⁵⁰Primary Health Manager of Community Social Work/Mental Health Services, Tasmania Health Services.

²⁵¹ Agaiava, T, 'Drugs and Alcohol Court: Positive move for Samoa' (21 February 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/21_02_2016/columns/2703/Drugs-and-Alcohol-Court--Positive-move-for-Samoa.htm>.

²⁵² National Institute on Drug Abuse, *Methamphetamine Drug Facts* (January 2014) National Institute on Drug Abuse <<https://www.drugabuse.gov/publications/drugfacts/methamphetamine>>.

²⁵³In March 2015, the Office of the Attorney General received a letter from a concerned individual regarding a former partner who was heavily addicted to methamphetamine, and the harms and issues she experienced whilst trying to find him the appropriate treatment for his addiction.

²⁵⁴In 2008, New Zealand's Illicit Drug Monitoring System (IDMS) found that the most frequent methamphetamine users were reported to have experienced insomnia (85%), blurred vision (56%), and chest pains (33%).²⁵⁴ The IDMS also found that the most common psychological problems reported by frequent methamphetamine users in New Zealand from their use of methamphetamine include short temper (72%), strange thoughts (70%), anxiety (62%), and paranoia (45%).

²⁵⁵Jim Hales, Jennie Bowen and Jane Manser, *NZ-ADAM: Annual Report 2006* (prepared for New Zealand Police, Health Outcomes International, Adelaide, 2006) 28 [NZ-ADAM], 146-147.

²⁵⁶Irina N Krasnova and Jean Lud Cadet, 'Methamphetamine Toxicity and Messengers of Death' (2009) 60 *Brain Research Reviews* 379-380. See also Shane Darke and others "Major Physical and Psychological Harms of Methamphetamine Use" (2008) 27 *Drug and Alcohol Review*, 253-255.

²⁵⁷ Law Commission (NZ), *Controlling and Regulating Drugs*, Issues Paper No 16 (2010) 27.

with the continuing rise of cannabis-related cases being reported to MoP.²⁵⁸ Likewise, methamphetamine use has been linked to an increase in violent crimes in places where its use is more prevalent, such as American Samoa. According to a Crime and Safety Report compiled in 2012 by the US Department of State Bureau of Diplomatic Security, there is a lucrative business of exporting marijuana via ferry from Samoa to American Samoa in exchange for crystal methamphetamine.²⁵⁹

- 7.14 Samoa's apparent illegal drugs trade has also led to the formation of youth gangs which affect village communities directly and indirectly.²⁶⁰ Direct effects of youth gangs include increased levels of crime, violence, abuse and public disturbance. Potential indirect effects of this can include that taxpayers are forced to contribute to welfare and community-assistance programmes to assist rehabilitation of gang members.²⁶¹ The Commission notes that, if this trend continues, it could contribute to more crime and other social issues in Samoa.
- 7.15 Furthermore, in preliminary consultations with the SRCT, it was raised that Samoa faces an imminent danger with the rise of drug-related criminal activity due to the increasing number of deportees (who were once drug offenders overseas) being sent back to Samoa. As more deportees get sent back who were once drug offenders and are now functional addicts, there is the potential for an increase in criminal activities such as drug trafficking and smuggling as a result of criminal groups which these deportees are connected with overseas.

3) Economic-related harm

- 7.16 The increase in drug offending in Samoa has the potential to impose enormous pressure on Samoa's economy, through high costs associated with intervention methods, treatment, law enforcement, courts and corrections services.

a) Cost of treatment

²⁵⁸Refer to **Figure 1 at Chapter Two**. See also Pai Mulitalo Ale, 'Cases reported to Police continue to increase' (20 April 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/20_04_2016/local/5152/Cases--reported--to-Police--continue--to-increase.htm>; Deidre Tautua, 'Marijuana Charges continue to Increase' (3 April 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/03_04_2017/local/18604/Marijuana-charges-continue-to-increase.htm>; Dedre Fanene, 'Three males charged with drug possession' (13 February 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/13_02_2017/local/16803/Three-males-charged-with-drug-possession.htm>; Deidre Fanene, 'Three Savaii males charged with possession of marijuana (20 March 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/20_03_2017/local/18121/Three-Savaii-males-charged-with-possession-of-marijuana.htm>.

²⁵⁹ Bureau of Diplomatic Security, *Samoa 2012 Crime and Safety Report* (31 March 2012) United States Department of State OSAC <<https://www.osac.gov/pages/contentreportdetails.aspx?cid=12284>>.

²⁶⁰ ABC Radio Australia, *Drug and gun running criminal gangs exposed in Samoa* (15 February 2012) <<http://www.radioaustralia.net.au/international/radio/onairhighlights/drug-and-gun-running-criminal-gangs-exposed-in-samoa>>. See also Pai Mulitalo, 'Dead or Alive gang wanted' (1 August 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/01_08_2016/local/9433/%E2%80%98Dead-or-Alive%E2%80%99-gang-wanted.htm>.

²⁶¹See, James C. Howell, 'The Impact of Gangs on Communities' [2006] (2) *NYGC Bulletin* <<https://www.nationalgangcenter.gov/Content/Documents/Impact-of-Gangs-on-Communities.pdf>>.

- 7.17 Preliminary consultations with the ADC revealed that the lack of resources availed to the ADC restricts them from dealing with cases concerning drug dealers.²⁶² Therefore, they only deal with cases concerning drug users. Furthermore, a lack of qualified counsellors specialising in drug addiction has put more strain on the current system. Currently, there is only one counsellor handling all drug and alcohol counselling cases.²⁶³
- 7.18 In addition, the MHU also raised a similar issue about the lack of psychiatrists to assist patients with drug-induced mental disorders. Therefore, the MHU is required to recruit overseas specialists to assist.
- 7.19 Accordingly, the increase in people being admitted to the ADC and MHU as a result of drug abuse means ultimately that there will be more costs incurred by the government and taxpayers to provide resources and personnel to try and combat the problem.²⁶⁴

b) Cost on law enforcement

- 7.20 Lack of funding and inadequate resources have greatly hindered law enforcement efforts in Samoa.²⁶⁵ The rise of reported drug cases as highlighted in **Figure 2 of Chapter Two** requires costly drug sample testing (this includes testing of obvious drug samples), a time consuming testing process, and the need for more personnel and vehicles to monitor communities adding further costs to MoP.
- 7.21 Samoa's Customs Agency also faces a similar predicament. Accordingly, with the potential increase in drug trafficking in the region as mentioned in the **Introduction**, adequate detection and monitoring systems will need to be implemented.

c) Cost on prison and correction services

- 7.22 Currently, the lack of funding, resources and poor security systems to assist SPCS, coupled with an increasing prison population, particularly for drug related offences, (refer to **Figure 3 in Chapter Two**) imposes an enormous strain on existing resources. Consequently, greater government investment such as the building of a new prison facility with an effective security system; or exploring alternative dispositions for low level drug offending

²⁶² See, Stuart Webber case, where Mr. Webber was charged with severe drug related offences i.e. dealing, which the court has no resources/ authority to deal with.

²⁶³ Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016).

²⁶⁴ Preliminary Consultation with Mental Health Unit (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 27 May 2016).

²⁶⁵ Email from the Ministry of Police to the Samoa Law Reform Commission (preliminary consultations), 17 January 2017; Preliminary Consultation with Ulugia Sauafea Aumua (and other officers), Assistant Commissioner of Samoa's Prisons and Corrections Service (Prisons and Correction Service Office – Tafaigata, Samoa, 14 June 2016); Preliminary Consultation with Moana Mata'utia Solomona, Clinician of the Alcohol and Drugs Court (Samoa) (Level 1-Ministry of Justice, Courts and Administration Building, Sogi, Samoa, 24 October 2016).

will also be required to ensure that there is adequate room to accommodate and rehabilitate convicted drug-offenders.

Questions:

- 76. What information or statistics are available in Samoa on drug related harm?*
- 77. How can Samoa improve the existing systems on gathering information on drug related harm?*
- 78. How can we better raise awareness of drug related harm in Samoa? Should this differ depending on the audience being targeted (for example youth, village chiefs)?*
- 79. What are some measures that could be carried out to resolve the harm caused by drug use and abuse?*

Chapter Summary

Generally speaking, there are a number of direct and indirect harms associated with drug abuse, including economic, social and behavioural harms. In Samoa, it is almost impossible to ascertain information regarding these harms with the exception of the health-related harm as the Commission was able to ascertain this data through the various health-related institutions operating in Samoa. Evidently, an increase in data collection regarding the other harms associated with drug abuse in Samoa is necessary for this review. In order to address all of these issues, the Commission has identified relevant questions under this Chapter for public submissions.

8. CHAPTER SEVEN: MEDICINAL USE OF CERTAIN DRUGS IN CONTROLLED SITUATIONS

- 8.1 This Chapter examines the extent to which certain drugs are used for medicinal purposes in Samoa, and discusses section 8 of the Narcotics Act which relates to opium use for registered drug addicts. This Chapter also explores situations in which certain drugs are used for medicinal purposes with reference to examples from comparative jurisdictions.
- 8.2 Many illegal drugs have important medicinal uses. Opium, which is used to produce morphine and codeine, is commonly used for pain relief.²⁶⁶ In New Zealand, methadone is also used in drug treatment. Many other drugs are used in tranquillisers, sedatives, stimulants and antipsychotics.²⁶⁷

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- 8.3 Aside from medicinal opium, the Narcotics Act is silent on situations where an illegal drug can be requested for medicinal purposes. Section 8(1) of the Narcotics Act only provides for the supply of opium by the CEO of MoH to registered persons already addicted to the quasi medicinal use of opium before the Act was passed. Section 8(2) of the Narcotics Act further provides that the CEO may supply a certain quantity of medicinal opium to a person on the register whom he/she thinks fit to be supplied thereof.²⁶⁸ Accordingly, the conditions in which a person in Samoa can be prescribed opium are incredibly limited, as they are only provided to persons on the register. Opium is classified as a Class B narcotic together with marijuana thus it is considered an illegal drug, and section 10 prohibits importing prepared opium into Samoa unless a licence has been granted by the CEO.²⁶⁹
- 8.4 On the other hand, opium can be used for medicinal purposes if it has undergone the processes necessary to adapt it for medicinal use.²⁷⁰ This is the situation provided under section 8(1) of the Act.
- 8.5 In relation to other medicinal drugs, there is scope under the *Narcotics Regulation 1967* for an approved licensee to prescribe drugs, for example medicinal marijuana.²⁷¹ Preliminary consultations with MoH revealed that patients have requested medicinal drugs from their doctors. There has only been one request for medicinal marijuana in 2015 however. This request involved a woman who was diagnosed with breast cancer. She requested the supply of medicinal marijuana (cannabis oil) for pain relief.

²⁶⁶Drugs.com, *What is Morphine?* <<https://www.drugs.com/morphine.html>>.

²⁶⁷ New Zealand Law Commission, *Controlling and Regulating Drugs*, Issues Paper No 16 (2010).

²⁶⁸*Narcotics Act 1967* (Samoa) s 8(1): Chief Executive Officer 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 passing of this Act, and are unlikely to be able to be safely cured of that addiction.

²⁶⁹*Narcotics Act 1967* (Samoa) s 10(2): No person shall import into or export from Samoa a narcotic specified or described in the First, Second or Third Schedules to this Act except pursuant to a licence granted by the Chief Executive Officer. Note: Opium is a Class B Narcotic under the Second Schedule of this Act.

²⁷⁰*Narcotics Act 1967* (Samoa) s 2.

²⁷¹ *Narcotics Regulation 1967* (Samoa) r 20.

- 8.6 Upon receiving a request, the MoH must submit the application to the International Narcotics Control Board (**INCB**) for approval.²⁷² Once approved, the MoH will find an importer and apply for a licence from the INCB to allow for the import of narcotics. Once the licence 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.²⁷³
- 8.7 According to MoH, the supply of opium and other medicinal drugs is rare in Samoa. However, once people are aware of this option for pain relief, MoH anticipates more requests of this nature in future.
- 8.8 In addition, other illegal drugs such as lysergic acid diethylamide (**LSD**) have been suggested overseas as having some value for use in psychiatry. Amphetamines are also seen to be useful in the treatment of attention deficit (hyperactivity) disorder (**ADHD**) and are regularly used for that purpose overseas.²⁷⁴

Comparable jurisdictions

1) New Zealand

- 8.9 In New Zealand, 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.²⁷⁵
- 8.10 A medical practitioner can prescribe controlled drugs such as opium or cannabis to patients for treatment in controlled situations. Prescriptions are dependent on the treating physicians and specialists who, upon satisfaction that prescription of medicinal cannabis is appropriate, may prescribe cannabis-based products.²⁷⁶ The following types of cannabis products are allowed for medicinal use:
- (a) pharmaceutical grade products: these include products that have consent and those products that do not have consent for distribution in New Zealand. For those products that have consent, strict standards as to the safety, stability and efficacy of the product must be adhered to. Products that do not have consent for distribution refer to those manufactured by a pharmaceutical company overseas;²⁷⁷ and

²⁷² 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.

²⁷³ Preliminary Consultation with the Ministry of Health (Samoa) (Level 2- Ministry of Health Complex, Moto'otua, Apia, Samoa, 12 May 2016).

²⁷⁴ See, WebMD, *Drug Treatments for ADHD* (2017) <<http://www.webmd.com/add-adhd/adhd-medical-treatment#1>>.

²⁷⁵ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

²⁷⁶ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

²⁷⁷ Intramural Research Program, *Guidelines for the Use of Non-Pharmaceutical Grade Compounds in Laboratory Animals* <https://oacu.oir.nih.gov/sites/default/files/uploads/armac-guidelines/pharmaceutical_compounds.pdf>.

(b) non-pharmaceutical grade products, which are products that are not manufactured in accordance with internationally recognised pharmaceutical manufacturing standards. They may, or may not, have intended to be used as medicines.²⁷⁸

8.11 Medicinal cannabis classified as a Pharmaceutical grade product is prescribed for “off-label” usage such as chronic pain, neuropathic pain, cancer pain and intractable childhood epilepsy.²⁷⁹ It can be prescribed in New Zealand provided that ministerial approval is obtained (in practice this power has been delegated to officials from the NZMOH).²⁸⁰ Applications must be from a specialist clinician in an appropriate specialty, or from a general practitioner on the recommendation of an appropriate specialist, assessed against defined criteria.²⁸¹ However, whilst medical practitioners can prescribe controlled drugs, the NZMOH can also issue ‘restriction notices’. These restriction notices can identify certain individuals such as drug dependent persons who medical practitioners cannot prescribe controlled drugs to.²⁸² This assists the government and medical practitioners in preventing abuse.

8.12 Previously, for non-pharmaceutical grade products, ministerial approval could not be delegated.²⁸³ As of 20 January 2016 only one application was received for a non-pharmaceutical grade product.

8.13 Ministerial approval for prescription of non-pharmaceutical grade cannabis-based products depends on a consideration of the following matters contained in the *Misuse of Drugs Regulations 1977*:²⁸⁴

- (a) the presence of a severe or life-threatening condition;
- (b) evidence that reasonably applicable conventional treatments have been trialed 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;

²⁷⁸ Ministry of Health (New Zealand), *Prescribed Cannabis-based products* (19 May 2016) <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/prescribing-cannabis-based-products>>.

²⁷⁹ Peter Dune, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government of New Zealand <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

²⁸⁰ *Misuse of Drugs Regulations 1977* (New Zealand) r 22.

²⁸¹ Peter Dunne, *Backgrounder: Medical Cannabis in New Zealand* (21 January 2016) Beehive Government <<https://www.beehive.govt.nz/release/backgrounder-medical-cannabis-new-zealand>>.

²⁸² Guidelines to be found here: Ministry of Health, *Prescribing Cannabis-based products* <<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control/prescribing-cannabis-based-products#guidelinesassess>>.

²⁸³ For example, see Peter Dunne, *Minister approves one-off use of Cannabidiol product ‘Elixinol’* (9 June 2015) <<https://www.beehive.govt.nz/release/minister-approves-one-use-cannabidiol-product-%E2%80%98elixinol%E2%80%99>>.

²⁸⁴ 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>>.

- (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.

8.14 However, recent changes to the New Zealand regulations in 2017 made the above process for prescribing non-pharmaceutical, cannabis-based products more accessible where approval was delegated to the NZMOH and no longer with the Minister. In light of this change, guidelines have also been developed, consulted on and simplified to allow specialists who are interested in accessing such products for their patients a clear, straightforward and unobstructed pathway to acquiring the appropriate products.²⁸⁵ Such guidelines will also ensure that there is minimal risk associated with the prescribing of such types of products.

2) Australia

8.15 The situation in Australia is slightly different to New Zealand's. In 2016, Australia's federal parliament passed amendments to the *Narcotics Drugs Act 1967* (Commonwealth) to allow controlled cultivation of cannabis for medicinal or scientific purposes through a single national licensing scheme. The Commonwealth now oversees all regulatory aspects of the cultivation of medicinal cannabis through one national scheme as opposed to eight separate jurisdictions, which arguably helps speed up the legislative process and access to medicinal cannabis products as well.²⁸⁶

8.16 As a result, reclassifying medicinal cannabis from a prohibited drug to a controlled drug is currently being considered by the Therapeutic Goods Administration's Advisory Committee on Medicines Scheduling.²⁸⁷ Re-scheduling a drug into the controlled drug classification requires that the drug must undergo extensive safety and efficacy testing.

8.17 It should be noted that none of these proposed amendments make cannabis legal in Australian law. Any cannabis grown, supplied or used outside of the proposed regulatory framework, at the Commonwealth and State levels, will remain prohibited, regardless of the motive.

8.18 If these measures are implemented successfully, a patient with a prescription will be able to use a medicinal cannabinoid manufactured from legally cultivated cannabis plants in Australia. These legislative amendments were made to provide both a legal and domestic source of medicinal cannabis so that patients could be treated as per a health professional's

²⁸⁵ See Isaac Davidson, "NZ doctors too prejudiced about medical cannabis, Government says", *NZ Herald* (online ed.) <

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11796626> (Accessed 8 May 2017).

²⁸⁶Hon. 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-mediarele-yr2015-ley144.htm>>.

²⁸⁷Jennifer 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>.

recommendations.²⁸⁸ It is also intended that products will only be dispensed via pharmacists.²⁸⁹

8.19 Some Australian states have implemented their own alterations in anticipation of proposed reforms at the federal level. For example, Queensland recently passed the *Public Health (Medicinal Cannabis) Bill 2016* requiring the Director General of Queensland Health's approval for a patient's access to medicinal cannabis.²⁹⁰ The Bill 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.²⁹¹

8.20 In Queensland, 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 clinical evidence that a specific type of medicinal cannabis product is effective for the particular condition or symptoms.

3) United Kingdom

8.21 The United Kingdom takes a slightly different approach to the aforementioned countries. Drugs classified under Schedule 1 of United Kingdom's *Misuse of Drugs Regulations 2001* are deemed to have no therapeutic value and therefore cannot be lawfully possessed or prescribed.²⁹² These Schedule 1 drugs include ecstasy, LSD and cannabis.

8.22 However, the pharmaceutical cannabis based medicine Sativex is accessible to sufferers of a chronic condition known as multiple sclerosis and is at the discretion of the prescribing doctor.²⁹³ Sativex is classified separately from cannabis in the United Kingdom 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.

4) United States

8.23 It is worth briefly mentioning the change in direction towards cannabis laws currently taking place in the United States, given the number of States that have now legalised

²⁸⁸ Australian Government Department of Health, *Office of Drug Control: FAQ* (18 October 2016) Office of Drug Control Australia <<https://www.odc.gov.au/qa>>.

²⁸⁹ Penny Timms, *Medicinal Marijuana to become legal to grow in Australia – but how will it work* (29 October 2016) ABC NEWS <<http://www.abc.net.au/news/2016-10-29/medicinal-marijuana-to-become-legal-explainer/7975194>>.

²⁹⁰ 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>>.

²⁹¹ 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>>.

²⁹² Release Legal Emergency & Drugs Service Ltd, *Schedules* (2017) Release <<http://www.release.org.uk/law/schedules>>.

²⁹³ 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/>>.

cannabis. In the United States, more than 15 States have legalised medicinal cannabis.²⁹⁴ Four States have even legalised cannabis both recreationally and medicinally.²⁹⁵

8.24 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.²⁹⁶

Questions:

80. Should the Act retain provisions related to the medicinal use of opium?

81. Should Samoa permit medicinal use of illegal drugs? If so, should this be restricted to certain types of drugs? And if so, who should be the regulating body?

82. In what circumstances can people legally apply for medicinal use of illegal drugs? Should this become part of the Act?

Chapter Summary

In Samoa, the Narcotics Act does not expressly provide for the situations in which members of the public can apply for illegal drugs to be used for medicinal purposes. However, this mechanism does exist in practice and can be utilized if the prescribing physician deems it necessary to request the particular drug, particularly opium. This system has been rarely utilised in Samoa. Conversely, overseas jurisdictions such as New Zealand and Australia utilize this option more routinely and have concrete mechanisms in place to facilitate these applications. The Narcotics Act also provides for situations – albeit limited in scope – in which medicinal opium can be prescribed. In order to assess the ways in which Samoa can move forward with respect to this issue, the Commission has identified relevant questions under this Chapter for public submissions.

²⁹⁴Steve 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/>>.

²⁹⁵ 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/>>.

²⁹⁶The Medical Board of California, *Marijuana for Medical Purposes* (October 2014) CA.Gov <http://www.mbc.ca.gov/Licensees/Prescribing/Medical_Marijuana.aspx>.

9. CHAPTER EIGHT: PSYCHOACTIVE SUBSTANCES AND SYNTHETIC DRUGS

- 9.1 This Chapter considers other drugs such as synthetic marijuana and party pills that are not specifically covered under Samoa's current Narcotics Act. It will also explore relevant provisions and approaches from comparable jurisdictions in addressing the emergence of these new drugs. Further, it will discuss international drug conventions relating specifically to psychoactive substances and Samoa's obligations under such convention.
- 9.2 Psychoactive substances (also known as psychotropic substances) are chemical substances which have the capacity to induce a psychoactive effect and impact on an individual's mental processes.²⁹⁷ Examples include, cocaine, ephedrine, and ecstasy among others. Synthetic drugs or new psychoactive substances also impact a person's mental state and are created using chemicals rather than natural, or botanical, ingredients. Synthetic drugs aim to mimic the effects of existing illegal drugs such as cocaine and ecstasy.²⁹⁸ Commonly known synthetic drugs include party pills, synthetic cannabinoids and herbal highs to name a few.

Samoa

- 9.3 Samoa currently does not have any law regulating psychoactive substances and synthetic drugs. Furthermore, Samoa is yet to become a party to the *Convention on Psychotropic Substances 1971 (the 1971 Convention)* which establishes an international control system for psychoactive substances. The Convention responded to the expansion of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential and therapeutic value.²⁹⁹ While psychoactive substances and synthetic drugs do not appear to be particularly prominent in Samoa at this time, the Commission anticipates that this could be a major concern for Samoa in the near future. Samoa could therefore consider signing up to the 1971 Convention.
- 9.4 Some jurisdictions have taken different approaches to regulating psychoactive substances. Some place outright bans on all substances (subject to certain exceptions) whereas other jurisdictions permit the supply of certain drugs that are appropriately tested.

Comparable Jurisdictions

1) New Zealand

- 9.5 In 2013, New Zealand passed the *Psychoactive Substances Act 2013* which allows for the legal, albeit strictly regulated, sale of synthetic drugs commonly known as legal highs or party pills. As discussed, these party pills are drugs which are produced synthetically to

²⁹⁷ See, World Health Organization, *Management of Substance Abuse; Psychoactive Substances* <http://www.who.int/substance_abuse/terminology/psychoactive_substances/en/>.

²⁹⁸ Victoria State Government Better Health Channel, "Synthetic Drugs" <<https://www.betterhealth.vic.gov.au/health/healthyliving/synthetic-drugs>> (Accessed 1 May 2017).

²⁹⁹ United Nations Office on Drugs and Crime, *Convention on Psychotropic Substances, 1971*, UNODC <<https://www.unodc.org/unodc/en/treaties/psychotropics.html>>.

mimic the effect of controlled drugs such as cannabis, ecstasy, LSD, and amphetamines.³⁰⁰ The purpose of this law is to protect citizens from the harms of untested drugs on an unregulated market.³⁰¹

- 9.6 Under the new legislation, sellers of party pills are now required to first obtain a licence which is not easily acquirable. The products themselves are also subject to strict testing.³⁰² Under this law, the New Zealand government no longer has to constantly amend their laws to counter the introduction of new synthetic drugs as the onus falls on the manufacturer to try to obtain approval for their product, something which is not easily done.
- 9.7 Furthermore, the legislation restricts the sale of party pills so that only individuals 18 years and over are permitted to purchase an approved product, making it an offence for a person under the age of 18 to buy or possess any psychoactive substance.³⁰³ The entire supply chain (production, transport and sale) is also taxed and regulated.³⁰⁴

2) United Kingdom

- 9.8 The United Kingdom's *Psychoactive Substances Act 2016* regulates psychoactive substances in its jurisdiction. The United Kingdom's legislation defines psychoactive substances 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. Also, these substances are defined as affecting the person's "mental functioning or emotional state".³⁰⁵
- 9.9 The *Psychoactive Substances Act 2016* places a blanket ban on the production, supply, import, export of all psychoactive substances intended for human consumption. Notably, the Act does not prohibit possession per se. This blanket ban is qualified only by the substances which are explicitly exempted by Schedule 1 of the legislation.³⁰⁶ The exempted products include medications, alcohol, nicotine, tobacco products, caffeine products and food products.³⁰⁷

³⁰⁰ See, ACHD Web, "Synthetic Drugs", (n.d.)

<<http://www.alleganyhealthdept.com/addictions/Synthetic%20Drugs%20-%20ACHD%20web.pdf>>.

³⁰¹ Avinash Tharoor, *5 Things We can learn from New Zealand's innovative Law to Regulate New Drugs* (30 September 2013) The Huffington Post <http://www.huffingtonpost.com/avinash-tharoor/new-zealand-drug-laws_b_4019402.html>.

³⁰² Cabinet Social Policy Committee (New Zealand), *Regulation of Psychoactive Substances*, (2013) Cabinet Paper <https://www.health.govt.nz/system/files/documents/pages/psychoactive_substances-cab-paper_.pdf>. See also, Caroll du Chateau, "The ill-effects of party pills", (12 May 2007) *NZ Herald* <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10439201>.

³⁰³ *Psychoactive Substances Act 2013* (New Zealand) ss 48-49.

³⁰⁴ Avinash Tharoor, *5 Things We can learn from New Zealand's innovative Law to Regulate New Drugs* (30 September 2013) The Huffington Post <http://www.huffingtonpost.com/avinash-tharoor/new-zealand-drug-laws_b_4019402.html>.

³⁰⁵ *Psychoactive Substances Act 2016* (United Kingdom) s 2(1)(a),(2).

³⁰⁶ *Psychoactive Substances Act 2016* (United Kingdom) s 3.

³⁰⁷ *Psychoactive Substances Act 2016* (United Kingdom) sch 1.

9.10 Over a ten year period, legal highs in the United Kingdom were linked to some 76 deaths.³⁰⁸ Although the number of deaths was just a fraction of those from illegal narcotics such as heroin or cocaine,³⁰⁹ community concern has been raised by the highly publicised nature of the deaths and the ease of access to these substances in stores and online.³¹⁰

3) Australia

a) Federal

9.11 Unlike the United Kingdom or New Zealand, the Australian approach to legal highs has been far more disconnected. This is in large part due to Australia's federal system. As criminal law is within state jurisdiction, territories differ in their legislative responses. Nationally, consistent drugs legislation applies only insofar as the Commonwealth has constitutional jurisdiction, such as in the regulation of the import of these psychoactive substances.

9.12 The Commonwealth government has jurisdiction regarding importation into Australia. As such, the Commonwealth enacted the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015 (CLA Act)*.

9.13 The CLA Act bans the importation of substances which "have a psychoactive effect".³¹¹ Psychoactive effect is defined as:

- a) 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, behavior, perception, awareness or mood; *or*
- b) causing a state of dependence, including physical or psychological addiction.

9.14 The CLA Act contains similar exemptions to the United Kingdom provisions, albeit somewhat more extensively.³¹²

9.15 The CLA Act additionally bans the import of "substances *represented* to be serious drug alternatives".³¹³ A substance will be "represented" if the presentation of the substance

³⁰⁸BBC, *Legal highs ban comes into force across the UK* (26 May 2016) <<http://www.bbc.com/news/uk-36384729>>; See also Office for National Statistics (UK), *Deaths involving legal highs in England and Wales 2004-2013* (28 April 2016) 4

<<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deaths-involving-legal-highs-in-england-and-wales-between-2004-and-2013/pdf>>.

³⁰⁹ Office for National Statistics (UK), *Deaths involving legal highs in England and Wales 2004-2013* (28 April 2016) 4

<<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deaths-involving-legal-highs-in-england-and-wales-between-2004-and-2013/pdf>>.

³¹⁰Daily Mirror, *Deaths from legal highs have tripled in two years as Government prepares crackdown* (28 April 2016) <<http://www.mirror.co.uk/news/uk-news/deaths-legal-highs-tripled-two-7855231>>.

³¹¹*Criminal Code Act 1995* (Cth) (Aus) pt 9.2

<http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html>.

³¹² *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015* (Cth) (Aus) s 320.2(2).

³¹³ *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015* (Cth) (Aus) s 320.3 (emphasis added).

includes an express or implied representation that the substance has 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.³¹⁴ This is the case whether this similarity is represented by way of its name, labelling, packaging or advertisement.³¹⁵

b) New South Wales

- 9.16 For several years leading up to 2013, the New South Wales government faced many issues relating to increased use of psychoactive substances and synthetic drugs. For example, in 2013, 1.2 percent of New South Wales's 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.³¹⁶
- 9.17 In response, the New South Wales government introduced changes to its *Drug Misuse and Trafficking Act 1985* to prohibit the manufacture, supply,³¹⁷ and advertising of psychoactive substances.³¹⁸ These changes came into effect in September 2013.³¹⁹
- 9.18 Under the new changes, a person can be liable for manufacturing psychoactive substances for supply to another person when there is knowledge that it the substance is being supplied to the person for human consumption or being reckless as to whether it is being supplied.³²⁰ Furthermore, 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. This ban also applies to advertisements that provide information on how or where psychoactive substances may be required.³²¹

Questions:

83. Should Samoa regulate psychoactive substances and synthetic drugs? If so, should this be incorporated in the Act similar to New South Wales, or through a standalone law similar to New Zealand?

³¹⁴ See *Criminal Code Act 1995* (Cth) (Aus) pt 9.1.

<http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html>.

³¹⁵ See *Criminal Code Act 1995* (Cth) (Aus) ss 320.3(b), 320.3(2)(a)-(c).

<http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html>.

³¹⁶ Drug Info, *Synthetic Drugs*, Drug info State Library New South Wales <<http://druginfo.sl.New South Wales.gov.au/drugs-z-drugs/synthetic-drugs>>.

³¹⁷ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZF.

³¹⁸ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZG.

³¹⁹ Drug Info, *Synthetic Drugs*, Drug info State Library New South Wales <<http://druginfo.sl.New South Wales.gov.au/drugs-z-drugs/synthetic-drugs>>. See also Anna Patty, 'Synthetic drugs to be outlawed in New South Wales' (10 September 2013) *The Sydney Morning Herald* <<http://www.smh.com.au/New South Wales/synthetic-drugs-to-be-outlawed-in-New South Wales-20130910-2thju.html>>; and Oliver Milman, 'Synthetic Drugs banned under broad new New South Wales legislation' (7 October 2013) *The Guardian* <<https://www.theguardian.com/world/2013/oct/07/synthetic-drugs-banned-legislation-wattle>>.

³²⁰ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZF.

³²¹ *Drug Misuse and Trafficking Act 1985* (New South Wales) s 36ZG.

Chapter Summary

To date, Samoa is in an advantageous position because psychoactive substances such as synthetic marijuana and party pills have not emerged as a significant problem like they have previously in New Zealand, Australia and the United Kingdom. In order to assess this issue, the Commission analysed the various legislative schemes in these overseas jurisdictions so that it can be determined if these models can be used in Samoa to prevent these substances manifesting themselves here as a significant problem. In that context, the Commission has formulated relevant questions under this Chapter for public submissions.

10. CHAPTER NINE: THE ROLES AND RESPONSIBILITIES OF PARENTS, VILLAGE COUNCILS AND CHURCHES WITH RESPECT TO DRUG USE

10.1 This chapter will examine the roles and responsibilities of the Village Fono, parents and churches with respect to drug-related activity taking place within the communities of Samoa.

Samoa

10.2 The Narcotics Act does not specifically provide for societal responsibilities on issues regarding using and dealing with illegal drugs.

10.3 Addressing drug abuse requires collaborative work from all sectors of Government, Non-Government organisations (NGOs) and communities. This was echoed by the courts in the case of *Police v Williams*:

*The consumption of illegal narcotics is of course also a social problem. The courts play a role in trying to reduce the problem by imposing deterrent sentences of imprisonment of offenders... **But the courts cannot alone solve the problem. The community must also play its part.** And the message that the court tries to send to the community all the time is involvement in drugs can lead to ruination of good lives and to terms in prison.*³²² (Emphasis added)

10.4 Preliminary consultations with the Samoa TCU noted that drug-related issues are prevalent in countries such as Fiji, Vanuatu and Tonga. However, the rate at which these issues are happening in Samoa is not as problematic. 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. Accordingly, if these societal structures are kept in place, it could be the case that unwanted gang activity, including illegal drug activity, can be stamped out by individual Village Fonos before they manifest as a prominent problem. As identified by the United States Department of State Bureau of Diplomatic Security in 2012:

*The Samoa police have conducted drug awareness programmes that have prompted most villages to be more alert and familiar with the symptoms and the effects of marijuana. This has brought some positive changes within Samoan communities as the village leaders and parents are uniting to fight against the use of marijuana and its dealers.*³²³

10.5 In contrast, opinions expressed by some stakeholders including the MHU and SPCS differ. They still believe that drug-related issues are still prevalent irrespective of these cultural

³²²*Police v Williams* [2014] 153 WSSC <[&synonyms=&query=title\(Police%20and%20Williams%20\)](http://www.paclii.org/cgi-bin/sinodisp/ws/cases/WSSC/2014/153.html?stem=&synonyms=&query=title(Police%20and%20Williams%20))>.

³²³ Bureau of Diplomatic Security, *Samoa 2012 Crime and Safety Report* (31 March 2012) United States Department of State OSAC Bureau of Diplomatic Security <<https://www.osac.gov/pages/contentreportdetails.aspx?cid=12284>>.

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.³²⁴ The prevalence of drug-related issues especially regarding cannabis-possession were also highlighted in recent media reports.³²⁵

1) Village councils

10.6 Whilst not contained in the Narcotics Act, the Village Fono can get involved in issues that disrupt peace and harmony in the village. Under the *Internal Affairs Act 1995*, *Sui-o-le-Nuu's* can promote harmony within the village,³²⁶ and 'encourage the maintenance of law and order in his or her village'³²⁷. In addition, the *Village Fono Amendment Act 2017*,³²⁸ 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.

10.7 An example of the Village Fono intervening was in Vaimoso, where they successfully eliminated a youth gang in 2016 known as "Original Blood Outlaws" who had caused problems in the village threatening peace and harmony.³²⁹

2) Government ministries and NGOs

10.8 Preliminary consultations reveal that there is a lack of awareness programmes on the effects of illegal drugs in Samoa. Although awareness programmes and education in relation to alcohol and tobacco related harm are carried out in communities, there are none on illegal drugs.³³⁰

10.9 The MoP also have ongoing programmes raising awareness around Samoa regarding the effects of alcohol with the aim of getting the community involved in addressing the alcohol problem. For instance, the Neighbourhood Watch programme raises awareness of crime prevention strategies;³³¹ and the cooperation of families to secure family peace and property from intruders.³³² However, this programme does not cover drug harm.

³²⁴ Preliminary Consultation with Mental Health Unit (Samoa) (Moto'otua, Samoa, 27 May 2016); Preliminary Consultation with the Ministry of Health (Samoa) (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 12 May 2016).

³²⁵ Deidre Atutua, 'Marijuana charges continue to increase' (3 April 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/03_04_2017/local/18604/Marijuana-charges-continue-to-increase.htm>. See also Deidre Fanene, 'Three Savaii Males charged with Possession of Marijuana' (20 March 2017) *Samoa Observer* <http://www.samoaoobserver.ws/en/20_03_2017/local/18121/Three-Savaii-males-charged-with-possession-of-marijuana.htm>.

³²⁶ *Internal Affairs Act 1995* (Samoa) s 15(1)(a).

³²⁷ *Internal Affairs Act 1995* (Samoa) s 15 (1)(b).

³²⁸ *Village Fono Amendment Act 2017* (Samoa) s 5(c).

³²⁹ Lanuola Tusani Tupufia, 'Youth Gang sorry' (3 August 2016) *Samoa Observer* <http://www.samoaoobserver.ws/en/03_08_2016/local/9528/Youth-gang-sorry.htm>.

³³⁰ Preliminary Consultation with the Ministry of Health (Samoa) (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 12 May 2016).

³³¹ Ministry of Finance, *Strategy for the Development of Samoa* (2012).

³³² See, Samoa Law Reform Commission, *Alcohol Reform Review*, Final Report No 15 (2016).

10.10 Furthermore, the majority of awareness programmes conducted by the MoH only focus on the effects of tobacco and alcohol and do not cover the effects of illegal drugs.³³³ 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.³³⁴

10.11 However, one group that has carried out work with regard to harm associated with drug use is the Samoa Returnees Charitable Trust. This involves programmes carried out by the Trust in schools and communities across Samoa where deportees who were drug addicts share their experiences to help prevent young people from using drugs.³³⁵

10.12 Therefore, more work is required in terms of education and raising awareness in the villages and communities to ensure that they are informed of the harms and effects associated with illegal drug use and dealing.

3) Parents, churches and schools

10.13 The role and responsibilities of parents, the church and schools in addressing drug abuse and other related issues among Samoan youth is equally important.

10.14 Generally parents, churches, schools and village councils already play a role within the community and their families to address alcohol abuse. However, there is modest evidence to suggest that the same applies to illegal drugs.

10.15 In particular, parents may be 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.³³⁶ Research carried out by the Commission has shown that children who live without the use of drugs and alcohol cited their parents, their positive influence and the need to please them as the reason for their refusal to use drugs.³³⁷ Thus, the importance of building solid relationships with one's children is of fundamental value to prevent drug use and abuse at an earlier stage.

10.16 Churches and spiritual entities 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. In July 2016, the Catholic Church from the Matagaluega Apia ran a campaign which focused on the theme

³³³ Preliminary Consultation with the Ministry of Health (Samoa) (Level 2-Ministry of Health Complex, Moto'otua, Samoa, 12 May 2016).

³³⁴ Preliminary Consultation with Mental Health Unit (Samoa) (Moto'otua, Samoa, 27 May 2016).

³³⁵ Lagi Keresoma, 'Samoa returnees Trust help rehabilitate young offenders' (14 January 2015) *Talamua* <<http://www.talamua.com/samoa-returnees-trust-help-rehabilitate-young-offenders/>>.

³³⁶ University of Utah, *Parents' Role Important in Preventing Drug Abuse* <<http://healthcare.utah.edu/healthlibrary/related/doc.php?type=20&id=405>>.

³³⁷ National Crime Prevention Council, *How Parents Can Prevent Drug Abuse* <<http://www.npc.org/topics/drug-abuse/alcohol-tobacco-and-other-drugs>>.

'Say no to suicide and drugs'. The group noted that drugs drive many of Samoa's youths today to commit suicide. Therefore, it urged that Samoa needs to work together as a family, church and a country to deliver the message of hope for the youth of Samoa. The Commission therefore notes that campaigns like these would assist with the issue.

Comparable jurisdictions

1) Australia

10.17 Australia currently has a number of comprehensive government strategies, working groups and funding initiatives directed at the reduction of drug-related harm in communities. Many of these programmes arise from the National Drug Strategy, which was launched in 1985 as the National Campaign Against Drug Abuse. Some of the relevant Australian policies at a Federal Government level include:

- *National Drug Strategy 2016-2025 (ANDS)*³³⁸: the Strategy's approach is to minimise harm arising from alcohol, tobacco and other drug use.
- *National Ice Action Strategy 2015 (NIAS)*³³⁹: The NIAS seeks to reduce the prevalence of methamphetamine use and resulting harms across Australia.
- *National Aboriginal Torres Strait Islander Peoples' Drug Strategy 2014-2019 (NATSIPDS)*³⁴⁰: this is a sub-strategy of the ANDS. The NATSIPDS aims to build safe and healthy communities by minimising alcohol, tobacco and other drug related health, social and economic harm among Aboriginal and Torres Strait Islander individuals, families and communities.
- *National Alcohol and other Drug Workforce Development Strategy 2015-2018 (NAODWFDS)*³⁴¹: This strategy, also developed in support of the ANDS, recognises the need for a national focus on the development of the alcohol and other drug (AOD) workforce. The strategy seeks to enhance capacity of the AOD workforce to prevent and minimise AOD harm and to ensure the sustainability of that workforce.

Questions:

84. *What roles should the Village Fono, churches, schools and families play in addressing the drug problem in Samoa?*

85. *Should Ministries do more in relation to drug awareness?*

86. *Should Samoa consider the approach in Australia regarding awareness programmes aimed at tackling drug use especially among young people, noting resource and cost implications?*

³³⁸Intergovernmental Committee on Drugs, Council of Australian Governments, *National Drugs Strategy 2016-2025* (draft, October 2015).

³³⁹Commonwealth of Australia, Department of the Prime Minister and Cabinet, *National Ice Action Strategy 2015* (2015).

³⁴⁰Intergovernmental Committee on Drugs, Council of Australian Governments, *National Aboriginal Torres Strait Islander Peoples' Drug Strategy 2014-2019* (2014).

³⁴¹Intergovernmental Committee on Drugs, Council of Australian Governments, *National Alcohol and Other Drug Workforce Development Strategy 2015-2018* (2014).

87. Should villages conduct their own awareness raising strategies internally, or should the government prepare strategies to roll out across villages?

88. Should the Village Fono make bylaws to address drug related problems at a village level? If so, what type of bylaws should be enacted?

Chapter Summary

The role of parents, villages, churches and the wider community are integral in preventing drug abuse and drug-related harm in Samoa's communities. The Commission has noted instances in which the Village Fono has been crucial in stamping out criminal behaviour and has listed the ways in which parents, villages, governmental organisations and non-governmental organisations and churches can become more involved in tackling this issue. In order to ascertain further feedback regarding this important issue, the Commission has formulated relevant questions under this Chapter for public submissions.

LIST OF QUESTIONS

Chapter One: Current Drug Landscape in Samoa

1. Should the name of the Narcotics Act be changed?
2. If the name of the Narcotics Act is changed, what should it be called (for example Illegal Drugs Act)?
3. Should the new legislation, where appropriate, include terms (not already covered under the current Narcotics Act) as listed in the legislation of New Zealand and New South Wales (for example, supply, sell)?
4. What other terms should be defined under the new legislation (for example, article)?
5. What factors should the CEO take into account when appointing 'inspectors' under the Act?
6. Should section 4 include a comprehensive list of the functions of 'inspectors'?
7. Should the legislation include a definition of 'authorised officers' similar to New Zealand and New South Wales?
8. What is the practice of the Head of State under section 5 when adding or omitting any drug, preparation or substance to the prescribed schedules? Should this practice be legislated?
9. Is the Head of State the appropriate authority to determine drugs reclassification for Samoa?
10. Should an expert committee(s) be established to provide advice when adding or omitting any drug, preparation or substance to the prescribed schedules? If so, who should be part of these committee(s) and what will be their functions?
11. Should the new legislation include a comprehensive list of powers and functions of the Minister similar to New Zealand? If so, what Ministerial powers should be included in the new legislation?
12. In what circumstances can a license be granted to cultivate or be in possession of prohibited plants in Samoa?

13. Should Samoa include exemptions for possessing and cultivating prohibited plants, similar to provisions in New South Wales (for example, for scientific research or study)?
14. Should section 6(4) be expanded to include methods of destroying seized prohibited plants, in addition to the circumstances when they can be seized?
15. Should section 6(4) be applied to seizure and destruction of other dangerous substances, chemicals and articles, in addition to prohibited plants (similar to Tonga, New Zealand and New South Wales)?
16. Should the Act give broader powers to designated officers to inspect, seize and destroy prohibited plants and drugs, similar to the powers given in the Drugs Act 1967 and Tonga and New Zealand?
17. Should Samoa expand its possession and use of narcotics offences so that it is also an offence for a person to procure a child to supply drugs or take part in the supply of drugs (similar to New Zealand and New South Wales)?
18. Should Samoa also include an offence for a person to supply a controlled drug on an ongoing basis without a licence or authority from the Secretary of Health (as in New South Wales)?
19. Should Samoa expand its provision on possession of equipment to include importing, exporting, manufacturing or producing equipment, similar to Tonga, New Zealand and New South Wales?
20. Should the provision on use of premises for dealing be removed from the 'Miscellaneous Offences' part of the Act and placed in a standalone section?
21. Should the provision on use of premises for dealing be expanded to include other situations as prescribed under laws of New Zealand and New South Wales (for example, boats and aircrafts)?
22. What is the current process for prescribing opium to patients in Samoa?
23. In what circumstances, if any, is opium prescribed in practice?
24. Should the Act include provision(s) specific to customs officers and their powers to conduct searches, with or without a search warrant, similar to Tonga?
25. Should the Act further define 'article' and/or specify items that should be forfeited, similar to New Zealand?

26. Should the medical practitioner, nurse, pharmacist, dentist or veterinary be obliged to report to police a patient suspected to have illegally used a narcotic or controlled precursor, given patient confidentiality?
27. If the obligation to report is removed should Samoa adopt a provision similar to New Zealand so that medical professionals are obliged not to supply drugs to those they believe are dependent on a controlled drug?
28. Should the Act 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?
 - b) should such designation permit testing, analysis, storage and destruction of both controlled and illicit drugs?
29. Should penalties in Samoa be reduced to become more proportionate to the offence or should there be an overhaul of all penalties to be in line with jurisdictions like New Zealand and New South Wales? If so, what should the new penalties be?
30. Should Samoa follow the approach in New Zealand and New South Wales regarding penalties for low level possession offences?
31. Should the Act remove the penalty for failure to report suspected illegal drug use by medical practitioners?
32. Should the Act include alternative dispositions rather than only custodial sentences and/or fines?
33. Should Samoa include a part in the Act dealing with evidentiary provisions? If so, should the similar provisions from the Drugs Act 1967 be replicated here?
34. What are challenges faced by Police and Defence when producing evidence for drug related prosecutions?
35. What additional resources are required to improve testing procedures (for example equipment, personnel, funding)?
36. Should the current practice be legislated to be consistent with New Zealand, Tonga and New South Wales regarding evidence?
37. Should Samoa include under the law or internal polices chain of custody provisions?

38. Should the Narcotics Regulations 1967 be expanded to include other areas like those under New Zealand's legislation (for example, restrictions on advertising)? If so, what areas should be included (for example, chain of custody processes, laboratory testing procedures, criteria to issue licences to cultivate plants)?
39. Are the current classifications adequate? What other drugs not currently captured in the legislation which should be included in the Samoa legislation Act (for example synthetic drugs)?
40. How often should the schedules be updated?
41. Should Samoa adopt a similar provision regarding theft of controlled drugs similar to New Zealand? Or is the offence of theft under Samoa's Crimes Act 2013 sufficient to cover this situation?
42. Should Samoa adopt a similar provision to New Zealand so that Samoans outside of Samoa and non-citizens in Samoa are prosecuted for offences committed under the Narcotics Act? Or will the Extradition Bill sufficiently cover this scenario?
43. How can Samoa better guide medical practitioners when prescribing controlled drugs to dependent persons (for example should the legislation authorise specific medical practitioners to prescribe drugs or should the MoH develop internal guidelines)?
44. Should Samoa have similar regulations, like in New Zealand, restricting advertisements that promote drug use?
45. In what situations should drug related advertisements be permitted?
46. Should the Act include provisions permitting international travellers to carry controlled drugs if prescribed by their home countries?
47. Should the Act specify the powers available to Police in drug specific situations (for example covert monitoring or controlled delivery, as is in the case in Tonga's Illicit Drug Control Act 2003)? If so, should the powers already contained under the Police Powers Act 2007 be replicated as well?
48. Does the MoP have the resources to conduct surveillance operations at present? If not, what resources does it need?
49. Should the Act include a limitation period for filing a charge sheet between the offence being committed and the charge being brought, similar to New Zealand?

50. Should the Act include a provision that removes the defence of mistake as to nature of controlled drug or precursor substances similar to New Zealand?

Chapter Two: Statistics on Drug-Related Issues

51. What measures should be taken to improve underreporting in drug-related cases?

52. What resources does the Ministry of Police need to better detect and record drug related crime?

53. What are the potential causes for increased drug offending among the male population?

54. Is there any further evidence of methamphetamine production and/or use in Samoa?

55. Do all possession of marijuana cases warrant a conviction? Or should there be a penalty available without conviction for low level and/or juvenile offenders?

56. What role should the Village Fono play to improve reporting of drug related crime?

57. Should the Act include a specific provision dealing with minors who are involved in drug-offending?

Chapter Three: Preventative Regulatory Regime

58. Should Samoa develop a Drug Policy similar to New Zealand and Australia? Who should be responsible for developing it?

59. If yes, what will be the aim of this policy? What should be covered under this policy? How regular should it be updated?

Chapter Four: The Adequacy of Samoa's Enforcement Structure

60. Should training programmes be conducted to improve police awareness on search warrant procedure?

61. What is the appropriate duration for search warrants? Should they be extended or should police officers instead be able to apply to the court for extensions?

62. What are the concerns, if any, about permitting searches without warrants on government land?

63. Is there a need for a specific drugs unit in the MoP? If yes, what are the barriers/constraints to achieving this?
64. In what ways could Samoa's monitoring of drug crime be improved? What are the impediments to achieving this?
65. What kind of IT infrastructure is required, if any, to improve Samoa's monitoring of drug related crime?
66. How can we better monitor drug offenders once they return to the community after serving sentence? Who is best placed to do this (for example Village Fono or through post sentence drug rehabilitation schemes)?
67. Should the MoP develop a strategy similar to New Zealand's Police Illicit Drug Strategy 2010 to combat drug related issues in Samoa, focusing on the key areas including reducing supply, reducing harm and reducing demand?
68. Should Samoa adopt a similar approach to Australia and New Zealand to reduce costs in testing? If yes, why? What are the risks of having such a system? Would Samoa have the funding, personnel and resources to implement such a system?
69. Who would be best placed to be an "appointed person" for the purposes of testing and approving prohibited plants and drugs?
70. Should drug testing be extended to include testing of biological samples (for example, urine samples) to assist in identifying whether suspects have used drugs?
71. Should there be mandatory drug testing and/or screening in the workplace for certain professions? If so, which ones?

Chapter Five: Support and Treatment Services and Rehabilitation Facilities

72. What does ADC need to improve its effectiveness?
73. What additional treatment or rehabilitative services (for example, an Alcohol and Drug Service) are required to support
- a) drug users at the various stages of the offending cycle, for example, before committing an offence, after serving time, when on parole, etc.;
 - b) drug addicts; and
 - c) deportees who are sent back to Samoa and were involved in drug-related activities overseas?

74. Would prisoners benefit from more targeted drug and alcohol programmes in prison?

75. Do prisoners need more support reintegrating into society after serving sentences for drug related crime?

Chapter Six: Drug-Related Harm

76. What information or statistics are available in Samoa on drug related harm?

77. How can Samoa improve the existing systems on gathering information on drug related harm?

78. How can we better raise awareness of drug related harm in Samoa? Should this differ depending on the audience being targeted (for example youth, village chiefs)?

79. What are some measures that could be carried out to resolve the harm caused by drug use and abuse?

Chapter Seven: Medicinal Use of Certain Drugs in Controlled Situations

80. Should the Act retain provisions related to the medicinal use of opium?

81. Should Samoa permit medicinal use of illegal drugs? If so, should this be restricted to certain types of drugs? And if so, who should be the regulating body?

82. In what circumstances can people legally apply for medicinal use of illegal drugs? Should this become part of the Act?

Chapter Eight: Psychoactive Substances and Synthetic Drugs

83. Should Samoa regulate psychoactive substances and synthetic drugs? If so, should this be incorporated in the Act similar to New South Wales, or through a standalone law similar to New Zealand?

Chapter Nine: The Roles and Responsibilities of Parents, Village Councils and Churches With Respect To Drugs Us

84. What roles should the Village Fono, churches, schools and families play in addressing the drug problem in Samoa?

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