

2013

SEX OFFENDERS' REGISTER
DISCUSSION PAPER



Samoa
Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa



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INTRODUCTION

The Sāmoa Law Reform Commission (“Commission”) received a reference on 5 February, 2013 from the Attorney General to assess:

- a) whether it is appropriate in the context of Sāmoa to have a sex offenders’ register; and
- b) whether such a register would help in the reduction of sexual re-offending.

The ultimate goal of having in place a sex offenders’ register is to create safer societies through registration and public notification of details of sex offenders. The United Kingdom, United States of America (USA), Canada, Australia and New Zealand have sex offenders’ registers in place. The assumption that sex offenders’ have a higher rate of recidivating¹ than other offenders is a central motivation for registration and notification laws.²

Background

The call for a sex offenders’ register originated from a Supreme Court case where a 45 year old male was convicted and sentenced to 3 years for indecent assault on a 7 year old female child in December 2012. The same offender had also been convicted and sentenced to prison for the same offence in 2009.³ Justice Nelson, the sitting judge in the proceeding stated the following:

“It may also be such time for sex offenders in this country to register so that people may know what kind of people are around their children...it is clear that this defendant learnt nothing from the first time and the chance for re-offending is high” Justice Vui Clarence Nelson.

The public statement made by his Honor Justice Nelson has raised discussion amongst members of the public, with some supporting the idea of a register while others expressing the view that such an issue be carefully considered in the context of Samoa.

The issue of whether a sex offenders’ register is appropriate must be carefully considered in the context of Samoa. Issues of implementation, enforcement and administration must be considered as they have cost and resource implications. Additionally, competing interests such as human rights and community-safety must also be taken into account. In response to the reference from the Attorney General, this discussion paper is aimed at bringing these issues forward for the purpose of public consultation and discussion.

¹ Recidivist is a person who continues to commit crimes and seems unable to stop even after being punished. (Oxford’s Advanced Learners Dictionary)

² See above, No.2

³ Kolotita Tālatalaga, ‘Supreme Court Judge calls for sex offenders register’ *Sāmoa Observer* (Apia, Sāmoa) 30 January 2013

It is important to consider the following issues:

- The definition of a sex offenders' register;
- purpose of a sex offenders' register;
- the administration of such a register; and
- Appropriateness of such a register for Samoa.

Other issues that arise from having in place a sex offenders' register include:

- What type of sex offender should be registered; and
- How long should a sex offender be registered?

An area that requires careful assessment is whether a register would prevent reoffending. To determine this, there are a number of issues that need to be taken into account: the nature of sexual offending and the common perception sexual crimes are committed by strangers rather than those familiar to the victim⁴. In the context of Sāmoa, information gleaned from media court reporting suggests that most sex offenders are family members of the victim or individuals living in the same village as the victim.

The ultimate question is whether such a register is appropriate for Samoa. The aim of this discussion paper is to provide the public and stakeholders with research information on a sex offenders' register to generate effective and fruitful discussions on this issue.

This Discussion Paper ("paper") calls for public submissions. Accordingly, it will be divided into two parts.

Part one will set out the sex offenders' register which includes but is not limited to the following:

1. The definition of a sex offenders' register
2. Features of a sex offenders' register
3. Issues associated with sex offenders' register.
4. Appropriateness of a sex offenders' register in Sāmoa.

Part two will lay out questions for discussion to assist in the determination of whether a sex offenders' register is appropriate for Sāmoa.

⁴ Lincoln David James Ellery, *Does New Zealand need a sex offender register: Practical implications for people who have sexually offended, the survivors, families and services that are involved* (LLM thesis, University of Otago, 2011)

PART ONE: SEX OFFENDERS' REGISTER

THE DEFINITION OF A SEX OFFENDERS' REGISTER

a) What is a sex offenders' register?

A sex offenders' register can be broadly defined as a register mandated by statute which requires people who have perpetrated sexual offences and who reside in the community to register personal information with law enforcement and be subject to legal restrictions on their freedom.⁵

The functions of a sex offenders' register typically involve the following:

- A requirement that the eligible offender must disclose personal details such as name, address, DNA and photos to law enforcement and that this disclosure occurs at least every year;
- an offender to be subject to lifetime registration;
- an offender to notify law enforcement officials if they intend to travel outside the statute's jurisdiction; and
- provisions for the offender to be imprisoned or incur large fines for non-compliance with the sex offenders' register or statute⁶.

b) What is the purpose of a sex offenders' register in the criminal justice system?

To ensure the effectiveness of this Discussion Paper for public submissions, it is important to define the purpose of a sex offenders' register. Such a definition will clarify from the outset what the register sets out to do as a whole and how it can complement existing legislative and cultural frameworks that deal with sexual offences and re-offending. In doing so, this paper considers the following jurisdictions which have sex offenders' registers in place:

United Kingdom

In the United Kingdom, a sex offenders' register helps the police identify suspects once a crime is committed because registered offenders are the first to be interviewed by Police. It also helps the police to prevent such crimes from re-occurring and acts as a deterrent for potential re-offenders⁷. The Home Office of the United Kingdom which is the lead

⁵ Lincoln David James Ellery, *Does New Zealand need a sex offender register: Practical implications for people who have sexually offended, the survivors, families and services that are involved* (LLM thesis, University of Otago, 2011)

⁶ Ibid.

⁷ Hallam Centre for Community Justice, *Briefing Paper: Sex Offender Registration – a review of practice in the United Kingdom, Europe and North American* http://www.shu.ac.uk/_assets/pdf/hccj-SexOffenderRegBriefPaper.pdf (Accessed 06 February 2013)

government department for immigration, passports, counter-terrorism, policing, drugs and crime describes the sex offenders' register as:

"...not a form of punishment or sentence of the court but an add on additional feature designed in the interests of public and child protection...a regulatory feature that followed automatically from a conviction and sentence and that is a...measure aimed at helping to protect the community from sex offenders ..." ⁸

The UK has also enacted the UK Sex Offenders Act 1997 which has a preamble that states that the purpose of a sex offenders' register is to:

- 1) require the notification of information to the police by persons who have committed certain sexual offences
- 2) to make provision with respect to the commission of certain sexual acts outside the UK and
- 3) for other connected purposes.

Australia – Victoria

The sex offenders' registration scheme that was established in Victoria, Australia in 2004 has the overall purpose of reducing the risk of harm to children of sexual abuse, increasing law enforcement and reducing the risk of re-offending⁹. Under the Sex Offenders Registration Act 2004, the purpose for such a scheme is:

- i. To primarily reduce the likelihood that sexual offenders will re-offend;
- ii. To facilitate the investigation and prosecution of any future offences that they may commit;
- iii. To prevent registered sex offenders working in child related employment; and
- iv. To empower the Police Ombudsman to monitor compliance in accordance to the Act.¹⁰

United States of America

USA is understood to have been one of the first countries in the world to establish a register of sex offenders in the early 1940s.¹¹ The original purpose of registration legislation under USA law was to provide law enforcement with a database of information to help monitor known sex offenders and to aid in the investigation of new allegations.¹²

⁸ ibid

⁹ Victorian Law Reform Commission, *The Purpose of the Sex Offender Registration Scheme*, http://www.lawreform.vic.gov.au/sites/default/files/SOR_Final%20Report_Ch%202_Purpose%20of%20the%20scheme.pdf (Accessed 11 February 2013)

¹⁰ *Sex Offenders Registration Act 2004* (Victoria), s1

¹¹ See above, No.9

With the passing of Megan's Law in 1996, the original purpose extended to authorizing the Department of Justice to make available information on certain sex offenders who have been released from prison. Thus the overall purpose of a sex offenders' register in USA was extended to include arming citizens with information to protect themselves and their children from sexual predators.

It was also anticipated that offenders subjected to community scrutiny would be less likely to re offend and that those who do would be apprehended more quickly due to community reports of suspicious activities.¹³

Canada

The Sex Offender Information Registration Act 2004 of Canada sets out the purpose of its register which is to help police services prevent and investigate crimes of a sexual nature. This is done through the registration of certain information relating to sex offenders¹⁴. This purpose is to be carried out in recognition of one of its principles - i.e. in the interest of protecting society through effective prevention and investigation of crimes of a sexual nature - and police services must have rapid access to certain information relating to sex offenders.¹⁵

FEATURES OF A SEX OFFENDERS' REGISTER

This paper will now consider the types of offending that are registered in the following jurisdictions.

a) What type of sex offender should be registered?

Sāmoa

Currently in Sāmoa, a sex offender is anyone who has been convicted of a sexual crime stipulated in the Crimes Ordinance 1961. However, to date there is a new Crimes Bill 2011 currently sitting with the Select Committee of Parliament. This new Bill, based on the Commission's review of the Crimes Ordinance 1961, has made considerable amendments in relation to the type of sexual crimes.

A sex offender in Sāmoa is therefore a person who has been convicted of any of the following sexual crimes as set out in the table below:

¹² Elizabeth J. Letourneau et al, *Evaluating the effectiveness of sex offender registration and notification policies for reducing sexual violence against women* (2010) National Criminal Justice Reference Service; <https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf> (Accessed 06 February 2013)

¹³ Ibid.

¹⁴ *Sex Offender Information Registration Act 2004* (Canada), s2

¹⁵ *Sex Offender Information Registration Act 2004* (Canada), s2(2a).

Crimes Ordinance 1961	Crimes Bill 2012
1. Rape and/or attempted rape	1. Sexual violation and/or attempted sexual violation (rape and/or attempted rape)
2. Incest	2. Sexual connection (penetration without consent of any person's orifices by any part of the body of any other person or by an object)
3. Sexual intercourse by a man with a young girl living in his family	3. Assault with intent to commit sexual violation
4. Sexual intercourse with girl under 12	4. Sexual conduct with consent induced by threats
5. Indecency with girl under 12	5. Sexual conduct with a family member
6. Sex intercourse or indecency with girl between 12 and 16	6. Sexual conduct with a child under 12
7. Indecent assault on woman or girl	7. Sexual conduct with young person under 16
8. Conspiracy to induce sexual intercourse	8. Indecent assault
9. Inducing sexual intercourse under pretence of marriage	9. Using threats of intimidation for the purpose of sexual conduct
10. Sexual intercourse with idiot or imbecile woman or girl	10. Sexual conduct with severely intellectually disable person
11. Adultery by married persons	11. Voyeurism (secretly watching other people have sex or engaged in private acts)
12. Adultery with married woman	12. Adultery by married persons
13. Indecent act between woman and girl	13. Adultery with married person
14. Indecency between man and boy	14. Sodomy and attempts to commit sodomy.
15. Indecency between males	
16. Sodomy and attempted sodomy	
17. Bestiality and attempted bestiality	
18. Indecency with animal	

USA – California

Any person convicted in any court in the state of California or in any federal or military court with the following offences is required to register e.g.

- 1) Sexually violent predator¹⁶; or
- 2) murder resulting from a rape or attempted rape; or
- 3) kidnapping resulting in death by rape or sodomy; or
- 4) kidnapping of a child with intent for ransom, reward or extortion resulting in rape and other sexual contact. or
- 5) human trafficking including minors with the intent for sexual purposes; or
- 6) lewd and lascivious acts committed to a child under 14 years; or
- 7) assault with intent to rape, sodomize or oral copulation; or

¹⁶ Defined by the California Welfare and Institutes Code as a person who has been convicted of a sexually violent offence against one or more victims and who has a diagnosed mental disorder that makes a person a danger to the health and safety of others in that it is likely he/she will engage in sexually violent criminal behaviour.

8) sexual penetrations against the victim's will causing bodily injury.¹⁷

Sex offenders are required to register pursuant to the California Penal Code Section 290. Section 290 of the penal code provides the following criteria for offences or persons that must register within 5 working days of coming into or changing of address with the:

- Chief of Police of the city he/she resides in; or
- Sheriff of the county if he/she resides in an unincorporated area or has no police department; or
- Chief of Police of a campus of University of California, the California State University or Community College if he/she resides on campus or in any of the facilities.

Australia – New South Wales

Under the Child Protection (Offenders Registration) Act 2000, registrable people that must register with police and provide information are categorized into 2 classes.

- Class 1 – offences include the murder of a child and sexual intercourse with a child;
- Class 2 – offences include acts of indecency, possession of child pornography, kidnapping of a child, filming a child for indecent purposes and grooming offences.

Without proper classification of which sex offender should be registered, there is the potential risk that a sex offender's register would mean the automatic registration of young offenders under the age of 18. In other words, young teenagers under the age of 18 years convicted of sexual crimes such as sexual intercourse or indecency with a girl between 12 – 16 years old would be required to be registered as a sex offender.

This concern was also expressed by the Law Reform of Western Australia that stated children convicted of a sexual crime would be placed on the sex offenders' register. Therefore, they would be required to comply with reporting obligations without any consideration of their individual circumstances and the risk they posed to the community¹⁸.

This raises issues of registration of children under the age of majority who have become perpetrators of sexual abuse crimes.

Should a sex offenders' register include all types of sex offenders including children?

¹⁷ This list is non-exhaustive but is considered as the major sexual crimes that requires registration under section 290 of California's Penal Code.

¹⁸ Law Reform Commission of Western Australia, *Branding Children as Sex Offenders* (2012) http://www.lrc.justice.wa.gov.au/files/Brief_July2012_18-21.pdf (Accessed 13 February 2013).

This paper will now consider the duration of registration of sex offenders on the register, looking into the following jurisdictions.

b) How long should a sex offender be registered?

Australia – NSW

Under the Child Protection (Offenders Registration) Act 2004, sexual offenders are:

- Required to report annually and any change in personal circumstances within 14 days of that change; and
- Reporting must take place away from members of the public and reporting person is entitled to be accompanied by a support person.

Reporting obligations start when a person is sentenced or when they are released from prison. The length of time that a class 1 or 2 offender is required to be registered is dependent on the following:

Single Class 1 offence (includes murder of a child and sexual intercourse with a child)	15 years
Single Class 2 offence (includes acts of indecency, possession of child pornography, kidnapping of a child, filming a child for indecent purposes and grooming offences)	8 years
Two Class 2 offences	15 years
Class 1 & Class 2 offence or more	Life

USA – California

Section 290 (a) of the California Penal Code requires a registrable sex offender to be registered for the entirety of his or her life.

Registered sex offenders whose information cannot be disclosed to the public may obtain relief from the duty to register upon obtaining a certification of rehabilitation.¹⁹

A registered sex offender is eligible to apply for a certificate of rehabilitation seven to ten years (depending on the registrable sexual offence) after release from custody or on parole or probation whichever is sooner.²⁰

¹⁹ *Penal Code of California*, s290.5 and s290.4 subd.(a)(1).

²⁰ *Ibid.*

c) Who should manage and have access to the sex offenders' register?

The table below sets out countries with sex offenders' registers and government departments and/or agencies that manage and have full access to these registers.

COUNTRY with Sex Offender Register	GOVERNMENT DEPARTMENT/AGENCY that manage and have access to register
United States of America	All State Police Departments, Sheriffs and all University campus Chief of Police.
Australia – NSW	Police Department
Australia – Victoria	Police Department and Department of Human Services (DOH – limited access)
Canada	Royal Canadian Mounted Police

d) Should a sex offenders' register be made available to the public?

Studies in South Carolina, USA have shown that the intent of public notification is to arm citizens with information to protect themselves and their children from sexual predators. It was also anticipated that offenders subjected to community scrutiny would be less likely to offend and that those who do would be apprehended more quickly due to community reports of suspicious activities.²¹

On the other hand, there is the common perception by supporters of sex offenders' registers that most sex offenders who perpetrate sexual abuse are people not known or are strangers to their victims. However, studies by the US Department of Justice have shown evidence that strangers were not the primary perpetrators of sexual crimes, the majority of victims of sexual assaults and rape knew the offender.²²

In shaping sex offender registration policy, the federal government of USA in 1994 passed the Jacob Wetterling Act mandating all states to develop and maintain sex offenders' registries. In 1996, Megan's law was passed. The law is named after seven year old Megan Kanka, a New Jersey girl who was raped and killed by a known registered sex offender who had moved across the street from the family without their knowledge. In the wake of the tragedy, the Kankas sought to have local communities warned about sex offenders in the area.

Consequently this introduced the requirement for states to develop strategies for releasing information about convicted sex offenders to the public. Under Megan's law, states could

²¹ Elizabeth J. Letourneau et al, *Evaluating the effectiveness of sex offender registration and notification policies for reducing sexual violence against women* (2010) National Criminal Justice Reference Service; <https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf> (Accessed 06 February 2013)

²² L. Greenfeld 'Sex offences and offenders: An analysis of data on rape and sexual assault' in Lincoln David James Ellery, *Does New Zealand need a sex offender register: Practical implications for people who have sexually offended, the survivors, families and services that are involved* (LLM thesis, University of Otago, 2011)

determine how long a sex offender is to be registered and the kind of sex offender that should be subjected to publication and community notification.²³

Nearly all states in the USA release information about repeat offenders and offenders who commit predatory sexual violence against strangers. About half of the states implemented risk assessment procedures and opted to release information only about registered sex offenders deemed to pose a high risk to public safety.²⁴

Information that is however not authorized to be publicized is any information identifying the victim by name, birth date, address and relationship to the registrant as well as specific details about the sexual crimes of the registered offender.²⁵

In the State of California, there are four categories of registered sex offenders that the Department of Justice is required to publicize for purposes of disclosure on the Megan's Law Internet website:

1) Home Address Category
• Kidnapping resulting in death by rape or sodomy.
2) Conditional Home Address Category
• Kidnapping with intent for ransom, reward or extortion resulting in rape and other sexual contact.
3) Zip Code Category
• Rape through force, violence, menace or fear of immediate and unlawful bodily injury to self or other person; or
• Rape through fear of future violence, menace to self or other person.
4) Undisclosed Category
• May not be displayed on the website if their offence is not of the above listed. Offenders in this category must still register as sex offenders with local law enforcement agencies and are known to law enforcement.

Australia

NSW has established two Acts that encompass the Child Protection Register which controls the conduct of people on the register who allegedly continue to pose a danger to children. These two Acts are –

- 1) Child Protection (Offenders Registration) Act 2000; and
- 2) Child Protection (Offenders Prohibition Orders) Act 2004

Neither legislation allows for public access to the information about sex offenders.

²³ Lincoln David James Ellery, *Does New Zealand need a sex offender register: Practical implications for people who have sexually offended, the survivors, families and services that are involved* (LLM thesis, University of Otago, 2011)

²⁴ See above, No. 14

²⁵ Penal Code of California, s290.46

Canada

Access to the sex offender's register in Canada is restricted. The rationale, as set out in section 2(2c i-ii) of its Sex Offender Information Registration Act 2004, is based on two competing interests:

- the privacy interests of sex offenders and
- the public interest in their rehabilitation and reintegration into the community as law abiding citizens.

Hence, the position in Canada requires that the information be collected only to enable police services to prevent or investigate crimes of a sexual nature, and that access to this information and use and disclosure of it is restricted.

ISSUES ASSOCIATED WITH A SEX OFFENDERS' REGISTER

There are three key principle themes that are superimposed on a sex offenders' register as discussed in the above jurisdictions:

- 1) It acts as a warning system to victims and communities on the premise that it will inform families to take preventative measures in order to feel and keep themselves and their children safe.
 - 2) The register is to act as an investigative tool for the police force in cases where the offence is sexual in nature.
 - 3) The deterrent aspect where it provides a platform to reduce re-offending.
-

This paper will discuss the last two points above, namely whether such a register prevents re-offending and the effectiveness of such a register to act as an investigative tool for police force.

a. Can a sex offenders' register prevent re-offending?

One of the principle theories behind a sex offenders' register is the belief that branding and shaming a sex offender, would serve as an effective method of preventing sexual offending. The idea is that a registered sex offender will not attempt to re-offend due to the risk of being identified and coming under scrutiny of the public or further punishment.²⁶

While studies undertaken in USA have shown that a sex offenders' registers can deter criminal behavior, it is only first time offenders -who were deterred from re-offending.

²⁶ Lincoln David James Ellery, *Does New Zealand need a sex offender register: Practical implications for people who have sexually offended, the survivors, families and services that are involved* (LLM thesis, University of Otago, 2011)

Such registries did not deter recidivist sexual offenders (someone who reoffends repeatedly).²⁷

Shaming and labeling a sex offender has also shown adverse consequences especially when the shame and stigma is extended to the offenders' family and support networks which are relied upon to provide crucial support to an offender during their release from prison. This poses a greater risk for offenders to feel alienated, powerless and unable to contribute to society in a meaningful way. Thus, they become resentful and the risk of re-engaging in sexually abusive behavior increases.²⁸

Based on the studies undertaken in the USA, a sex offenders' register does not address the root of the problem. The assumption that a sex offenders' register on its own can automatically stop an offender from their sexually violent behavior has proven to be false²⁹. Some offenders, as studies have shown, need a variety of treatment and corrective interventions to change their behavioral cycle of abuse.³⁰

b) Are there other more appropriate mechanisms that can prevent sexual re-offending?

The question of whether a sex offender's register can prevent sexual re-offending has been considered by studies in the USA and other countries, as mentioned above, with mixed results. This brings the discussion of what if any are the alternative methods available in those countries to prevent sexual re-offending:

United Kingdom

Some alternative mechanisms that the UK have implemented or is considering are as follows:

- Surgical and pharmacological treatments which include chemical castration³¹ and anti-libidinal medication³².
- Psychological treatments that involve helping the offender gain insight into why they offended thus leading to treatments where they are able to control or remove what is maintaining the offending behavior and helping them to prevent a relapse when under stress or in high risk situations in the community. Treatment includes

²⁷ Ibid.

²⁸ See above, No. 31.

²⁹ Office of the Attorney General, 'Megan's Law – Facts about sex offenders' (2001) <http://meganslaw.ca.gov/facts.htm> (Accessed 14 February, 2013)

³⁰ Ibid.

³¹ Chemical castration is the administration of medication designed to reduce libido and sexual activity (Wikipedia) http://en.wikipedia.org/wiki/Chemical_castration (Accessed 14 February 2013)

³² Anti-libidinal medication acts by reducing the levels and activity of male hormones thus reducing the frequency and intensity of sexual fantasy, urges and arousal (Forensic Mental Health) <http://www.liv.ac.uk/fmhweb/EP%20Sex%20Offender%20Research.pdf> (Accessed 14 February, 2013)

skills based interventions, behavior modification and insight interventions including cognitive behavioral approaches.³³

USA

USA has also considered other options to reduce sexual re-offending in conjunction with its sex offenders' register. Some of the options are set out as follows:

- Mandatory sex offender therapy;
- residency restriction laws with the aim to increase public protection by limiting where sex offenders live;
- mandatory life sentences for some sex offenders;
- global Positioning System (GPS) which works in real time including the possibility of incorporating exclusion zones so that the system sets off an alarm to law enforcement authorities if an offender enters into restricted areas;
- monitoring released offenders;
- predator free child molester zones.³⁴

c) Is a sex offender register a useful investigative tool for the police force?

Most sex offenders' registers that are established are set up with the purpose of helping the police force investigate sexual offences more efficiently and effectively. Studies by comparable jurisdiction such as USA have found evidence that sex offender registration reduced the frequency of sexual crimes because local police had knowledge of local sex offenders. Therefore the swiftness of arrest rates was improved.³⁵

A sex offenders' register works under these conditions when there are adequate resources to implement and enforce the letter of the law. However a recent investigation by the Victorian Ombudsman of Australia into the implementation of the Sex Offenders Registration Act 2004 (Vic) proved contrary to the purpose of facilitating effective and efficient police work. In this case, Victoria Police members are instructed to notify the Department of Human Services whenever a registered sex offender reports unsupervised contact with a child. The failure of Victoria's police department to report these matters to the Department of Human services left children exposed to unacceptable risk.³⁶

³³ Ibid.

³⁴ See above, No. 34

³⁵ J.J Prescott and Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws affect criminal behaviour?* (2011) Journal of Law and Economics
<http://www0.gsb.columbia.edu/faculty/jrockoff/papers/Prescott%20and%20Rockoff%20jle.pdf> (Accessed 14 February, 2013)

³⁶ Ombudsman Victoria, *Whistleblowers Protection Act 2001 – Investigation into the failure of agencies to manage registered sex offenders*, (February, 2011)
http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_the_failure_of_agencies_to_manage_registered_sex_offenders.PDF (Accessed 11 February, 2013)

It was the Ombudsman view that the failure of the police department to act in accordance with the Sex Offenders Registration Act 2004 (Vic) were from a combination of the following factors:

- Inadequate commitment to the Sex Offenders Register by Victoria Police partly due to lack of resources.
- Lack of a shared understanding between the Department of Human Services and Victoria Police of the concept of 'risk' and how it should be applied to the Sex Offenders Register.
- Lack of understanding by Victoria Police members of the instances in which information may be disclosed under the Sex Offenders Registration Act; and
- Failure of key agencies to share responsibilities for ensuring the Sex Offenders Register contributed to the protection of children.³⁷

The United Kingdom after extensive research uncovered several shortcomings and concerns about its sex offenders' register and existing arrangements to deal with sex offenders. These concerns related to:

- Deficiencies in current legislation.
- Inadequate resources for monitoring offenders.
- Increased workloads.
- Fears that resources had been diverted away from other categories of higher risk offenders.
- Timeliness and quality of the flow of information from the courts, prisons and hospitals regarding offenders required to register.
- The creation of unrealistic expectations on the part of the public and other agencies.³⁸

As shown above, the establishment of a sex offenders' register is an expensive undertaking that would require massive cross-sector collaboration among relevant government bodies to enforce and manage. Key issues to consider prior to establishing a register are its implementation, accessibility and management.³⁹

APPROPRIATENESS OF A SEX OFFENDERS' REGISTER FOR SAMOA

As previously stated in the introduction of this paper, the issue of whether a sex offenders' register is appropriate for Sāmoa must carefully consider Samoa's unique culture, its population and resources. In any law reform project in Samoa, culture is of paramount importance and any such review must meet current developments and infrastructural needs. Issues of implementation, enforcement and administration need to be considered as these issues have cost and resource implications.

³⁷ Ibid.

³⁸ Hallam Centre for Community Justice, *Briefing Paper: Sex Offender Registration – a review of practice in the United Kingdom, Europe and North American* <http://www.shu.ac.uk/assets/pdf/hccj-SexOffenderRegBriefPaper.pdf> (Accessed 06 February 2013)

³⁹ New Zealand Parliamentary Debates, Legislative Council (Wednesday, 30 July 2003) p7494

Based on discussions in comparable jurisdictions, there are a number of issues that arise which require careful consideration and discussion:

1. *Should Samoa follow the footsteps of developed countries such as UK, Australia and Canada in establishing a sex offenders' register?*
2. *What would be the purpose of a sex offenders' registry for Sāmoa?*
3. *Should the purpose of such a register aim at preventing re-offending by shaming and naming the sex offender?*
4. *Should the purpose be aimed more at assisting police with investigations of sex offenders in Samoa?*
5. *Who would be classified as sex offenders for the register?*
6. *Should the proposed register include serious non-sexual offences such as murder and kidnapping, as noted in jurisdictions discussed?*
7. *Should young sex offenders under the age of 18 years be treated the same as adult sex offenders?*
8. *Who should be responsible for managing such a register?*

There are several cultural mechanisms and legal frameworks which exist which may serve the same purpose as a sex offenders' register.

a) Village Fono

Culture plays a significant role in ensuring that the community is safe from morally unacceptable behaviors such as sexual crimes. In doing so, the village *fono* plays a vital role in making village rules and imposing punishments to deter village misconduct.

Many of the reported sexual offence cases involving children occur in family settings in villages. In these situations the offender is tried first before the village *fono* following complaints by the victim's family. Subsequently, substantial penalties and fines are imposed and in extreme cases, banishment is ordered against the offender and his or her family. In a small village setting, the punishments imposed by the village *fono* would put shame on the offender and family as the whole village is aware of the offender and his or her family.

The rationale behind the punishments imposed, whether it be a fine, presentation of gifts, or banishment, is to make known to the offender that what he or she has done is against village rules and/or is a crime. Also, it is to ensure that the offender and his or her family

are shamed; the offender learns a great lesson and the offender is deterred from re-offending.⁴⁰

Are the punishments imposed by the village fōnō sufficient to deter re-offending in a village setting?

What role should the village fōnō play in preventing sexual re-offending in the villages?

b) Rehabilitation

The Commission undertook extensive review of the Prisons legislation in Samoa in 2009. The focus of the review was the rehabilitation of prisoners with the aim of reducing re-offending. The outcome of this review was a Prisons and Corrections Services Bill 2011 which provides for the establishment of a corrections-based system focusing on the rehabilitation of prisoners for reintegration into society.

The Bill (currently before Parliament) aims at providing prisoners with trainings, counseling based on the culture and work program which would assist them to become responsible citizens. The classification of prisoners is also recommended in the Bill so as to ensure that each prisoner is accorded the appropriate training and counseling. For instance, sex offenders will be put into suitable rehabilitation programs in an attempt to prepare them for reintegration into society. Whether it will be successful remains to be seen.

This Bill is expected to be passed in March 2013. At Tafaigata prison, there are already ongoing programs aimed at training and up skilling prisoners to become responsible citizens for reintegration into society. Courses such as carpentry, cooking, baking, handicrafts to name a few have been in place long before the review was undertaken. The passing of the Bill will further strengthen these ongoing educational programs and mandatorily require resources to be pulled in for implementation purposes.

Can the new Prisons and Corrections Bill with a focus on rehabilitation, if passed and implemented, be adequate so as to make a sex offenders' register unnecessary?

Should the new Prisons Bill implement more rehabilitation programs that specifically target sex offenders?

Should other government and non-government agencies implement rehabilitation programs that specifically target sex offenders?

Who should these government and non-government agencies be?

⁴⁰ George Turner, *Sāmoa: A Hundred years ago and long before* (1989)

What types of rehabilitation should be considered for sex offenders?

c) Court sentencing

Crimes Ordinance 1961	Maximum penalty	Crimes Bill 2011	Maximum Penalty
Rape	Life	Sexual violation	Life
Attempted rape	10 years	Unlawful sexual connection	14 years
Incest	7 years	Attempted sexual violation	14 years
Sexual intercourse by man with a young girl living in his family	7 years	Incest	14 years
Sexual intercourse with girl under 12	10 years	Sexual conduct with family member	14 years
Indecency with girl under 12	7 years	Sexual conduct with child under 12	Life
Sexual intercourse or indecency with girl between 12 and 16	7 years	Sexual conduct with young person under 16	10 years
Indecent assault on woman or girl	5 years	Indecent assault	5 years

The above table sets out some examples of sexual crimes with their maximum sentencing penalties. Sentencing by courts is the first step in deterring offenders from re-offending. However various reports from the Courts have shown that the maximum penalties for most sexual crimes have not been utilized to their full extent. This bears two questions:

Should the Courts impose the maximum penalties on sexual crimes?

Are the maximum penalties for sexual crimes sufficient to deter re-offending?

d) Publicity

Sexual offence cases are widely covered by the media in Samoa. Almost every family has access to television, radio, newspapers and online resources to obtain the latest news and case reporting. As public awareness on incest and carnal knowledge increases, victims are no longer staying silent. The frequency of reports of incest, carnal knowledge and indecent assault in Samoa is on the rise.

Samoa is a small community and any sexual offence case involving an adult and a minor appearing on television or newspaper will be a main topic of discussion amongst members of the public. There is an assumption that everyone in the community would recognize the offender or a family member. In some cases shown on television, the offender or his or her family member would react violently against the media for showing their faces. This is because media coverage of the sexual offenders' case brings about shame to the offender

and family. With such a small population, offenders' identities are often known, even with name suppression orders.

Is the media coverage of a sex offender that takes place already sufficient to shame offenders?

Is media coverage sufficient to assist in public awareness?

Should families and children of sex offenders be afforded protection from public scrutiny?

e) Other Issues

Criminal Deportees

In 2010, Sāmoa established the Returnee's Charitable Trust ("the Trust") with the aim of promoting, advancing and carrying out rehabilitation and reintegration programs. The target groups for these programs are criminal deportees repatriated from the three main deporting nations such as USA, New Zealand and Australia.

One of the key features of the Trust is that all criminal deportees are registered in their database for the purpose of accessing the Trust's rehabilitation and reintegration programs. Criminal deportees also undergo risk assessments conducted by the Trust for several reasons:

- To ascertain the level and type of rehabilitation needed by the deportee; and
- To ascertain suitability of living arrangements for the deportee.

The database is however confidential and can only be accessed by officers of the Trust. To date, the Trust is a small operation and therefore its monitoring framework is entirely voluntary where criminal deportees are encouraged to maintain verbal contact with the office as well as their counseling sessions set up by the Trust.

This part is still to be explored to ensure proper and effective mechanisms for implementation in Samoa. In the context of a sex offenders' register, issues that may arise include:

Should Sāmoa implement reporting and monitoring mechanisms of registered sex offenders deported from USA, Australia and New Zealand?

Does Samoa have the necessary resource and mechanism to deal with registered sex offenders from overseas?

Would a sex offenders' register create a platform for vigilantism in a small village setting?

Historically, law and order that passed in Sāmoa consisted of swift justice with no recourse for the offender coupled with various superstitious practices that all served to both prevent individuals from offending and to punish the offender. It was understood that death was the usual punishment for murder and adultery,⁴¹ where the injured party was at liberty to seek revenge on the brother, son or any member of the family for which the offender belonged.⁴²

Offenders who sought refuge in other villages would seldom be pursued by the wronged family on the premise that it might cause civil strife with the said village of refuge. However offenders who sought refuge elsewhere would learn that their houses had been burned, their plantation taken away and their families banished from the village.⁴³

The nature of the culture raises the concern of people taking matters into their own hands. Not only is the offender targeted, but his or her extended family may become victims of violence. It is understood that in the past, a victim's family sought retribution with vengeance. Nowadays, *ifoga* is performed by the offender and his or her family before the victim's family with the aim of reconciliation.

Given the nature of village or communal living, issues that may arise concerning a publicized sex offenders' register include but are not limited to the following questions:

Would a publicized sex offenders' register provoke conflict between the offenders' family and the victims' family in a small village setting?

Would a publicized sex offenders' register create instances where people will take matters into their own hands and punish registered sex offenders?

⁴¹ George Turner, *Sāmoa: A Hundred years ago and long before* (1989)

⁴² Ibid.

⁴³ See above, No. 15

PART TWO: CALL FOR RESPONSES

It is unclear how a sex offenders' register would operate in the criminal justice system of Sāmoa. The call for a register by his Honor Justice Nelson has generated comments from members of the public, relevant stakeholders and non-government organizations on the appropriateness of such a register in Samoa.

To determine the appropriateness of a sex offenders' register in Sāmoa this paper presents the following questions for public submissions. The Commission accepts both oral and written submissions.

A. SHOULD SAMOA HAVE IN PLACE A SEX OFFENDERS' REGISTRY?

If yes, provide submissions on the following questions:

1. What should be the purpose of a sex offenders' register?
2. Do you think the register would assist in preventing re-offending by shaming the sex offender? and
3. Do you think the register would assist police with their investigations of sexual crimes?
4. Should a sex offenders' register include all types of sex offenders including children?
5. Should the register include other serious offences such as murder of a child by rape, as noted in jurisdictions discussed in this paper?
6. Should a sex offenders' register identify and classify sex offenders that should be registered?
7. Should young and adult sex offenders be treated the same for the purposes of registration in the sex offenders in the register?
8. How long a sex offender should be registered for?
9. Who should manage and have access to the sex offenders' register?
10. Should a sex offender register be made available to the public?
11. Who should be responsible for managing such a register?
12. Would a sex offender register identify potential re-offenders?
13. Do you think a sex offender register reduce sexual re-offending?
14. Do you think that a sex offender register be a useful tool for the Police?
15. Do you think a sex offender register would create more disturbances and in effect lead to more criminal offences being committed?
16. What about the families and children of sex offenders? Should they be afforded protection under law from public scrutiny? If so, how?

B. THE COMMISSION PRESENTS THE FOLLOWING ISSUES BASED ON EXISTING CULTURAL AND LEGAL FRAMEWORKS FOR PUBLIC SUBMISSIONS:

1. Do you think the punishments imposed by the village fōnō orders sufficient to deter re-offending in a community setting?
2. What role should the village *fono* play in reducing sexual re-offending in the villages?

3. Are there other more appropriate mechanisms that can reduce sexual re-offending in Sāmoa?
4. Do you think rehabilitation is an effective deterrent?
5. Should the new Prisons and Corrections Bill implement more rehabilitation programs that specifically target sex offenders?
6. Should other government and non-government agencies implement rehabilitation programs that specifically target sex offenders?
7. Who should these government and non-government agencies be?
8. What types of rehabilitation should be considered for sex offenders?
9. Should the Courts impose the maximum penalties on sexual crimes?
10. Is media coverage of a sex offender an alternative to register so as to reduce re-offending?
11. Is media coverage sufficient to assist in public awareness?
12. Should Sāmoa implement reporting and monitoring mechanisms of registered sex offenders deported from USA, Australia and New Zealand?
13. Does Sāmoa have the necessary resources and mechanisms to monitor and oversee registered sex offenders from overseas?
14. Would a publicized sex offenders' register provoke conflict between the offender's family and the victim's family?
15. Would a publicized sex offenders' register create instances where people will take matters into their own hands and punish registered sex offenders?

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