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ALCOHOL REFORM
ISSUES PAPER



Samoa
Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa




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PART A: INTRODUCTION

1. Historical Context

Alcohol is a major contributing factor to crime and offending in Samoa. Statistics obtained from the Ministry of Police reveal that alcohol consumption contributes immensely to the most common offences such as drink driving, homicide, grievous bodily harm, domestic violence, throwing stones and illegal manufacture of homebrew to name a few.¹ However, Samoa in the region is not alone with this problem.

In 2008, the Law Commission in New Zealand commenced a two year investigation on the harm caused by alcohol resulting in 153 recommendations to the government in 2010, most crucially a 50% tax increase on alcohol and a higher purchase age.² An extensive review of New Zealand liquor laws was undertaken to try and reduce the harm caused by alcohol, for instance, controlling the supply of alcohol to minors, underage drinking, reducing demand for liquor, ways to limit alcohol related incidents, binge-drinking culture, licensing, and advertising. After 4 years of debate in New Zealand, a new Alcohol Reform Bill was finally passed in 2012, claiming to strike a sensible balance by way of reducing the serious harm caused by alcohol without penalizing people who drink responsibly. Some of the changes made following the debates include:

- requiring parents' or guardians' consent for minors to drink,
- restriction on the sale of Ready to Drinks (RTDs),
- age limit to remain at 18 years; and
- restrictions on the advertisement of alcohol.³

For Samoa, the New Zealand review is timely as it provides guidance on options for reform for this alcohol review project. Alcohol reforms in Australia and other European countries will also assist with this Issues Paper. To fully understand the impact of alcohol in Samoan society, it is necessary to consider the history of how alcohol was introduced in Samoa and its development over the years.

Alcohol was first introduced to Samoa in the 19th century by European whalers and beachcombers.⁴ For many decades consumption was kept rather modest due to missionary efforts and lack of supply. The beginning of the Second World War impacted on the availability of alcohol and Samoan people were exposed to alcohol on a large scale.⁵ A major increase in alcohol consumption came in the 1940s with the influx of over 10,000

¹ Ministry of Police Crime Statistics (From year 2012-2013) received July 2013

² Isaac Davison (2012) *Alcohol reforms 'watered down'*, New Zealand Herald, <www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10853482> (Accessed on: 08th July 2013)

³ Ibid at n1

⁴ Shawn S Barnes, Christian R Small, Tui Agapapalagi Lauilefue, Julian Benett, Seiji Yamada (2010) *Alcohol consumption and gender in rural Samoa: Substance abuse and Rehabilitation* (original research)

⁵ Ieti Lima (2004) *Tafesilafa'i: Exploring Samoa Alcohol use and Health within the framework of the fa'asamoa*, University of Auckland

American soldiers in Upolu and New Zealand forces under the New Zealand administration.⁶ The soldiers brought with them a keen appetite for alcohol liquor which resulted in the expansion of the illegal manufacture of alcoholic liquor in Samoa.⁷ Samoans then were prohibited (total prohibition) from obtaining liquor (under the New Zealand administration), which led to widespread home-brew of the *faamafu* (*English translation*).⁸ Cases involving home-brewing (found their way into the court system) usually arising from personal feuds in the villages. A Liquor Commission appointed in 1952 to inquire into and report upon certain questions regarding the supply, sale and consumption of intoxicating liquor in Samoa, noted at the time that:

*“intoxicating liquor was still unknown to the great majority of Samoans, and with some exceptions, those who were able to obtain liquor were in no way educated to its use”.*⁹ The Liquor Commission observed that ‘*many Samoans who have acquired a taste for liquor regard a state of complete intoxication as the goal to be attained by their drinking*’.¹⁰

Consequently, the Liquor Commission appointed considered options to better control liquor use and consumption by the Samoan people. One of the options was the primary reliance on the village *fono* to control the use and consumption of liquor. This option was found to be impractical as evidence at that time showed that control by family groups in Samoa was already breaking down. A number of families had broken away from their family groups and were now living independently beyond the control of their *matai*. The Liquor Commission consequently recommended a properly constituted and politically independent authority such as a board or committee to oversee and control the supply and use of liquor. This recommendation was eventually implemented after Samoa gained independence through the introduction of a Bill in parliament.

Samoa’s independence in 1962 marked an end to the alcohol prohibition law enacted under the New Zealand administration. In 1971, a Liquor Bill was finally tabled and debated in Parliament. The issues debated included the right of the individual to enjoy and consume alcohol as well as the adverse impacts that alcohol had on peace and harmony in the villages. Another important issue noted during the debate was the impact of alcohol on culture and traditions, for instance, the breaking down of relationships within families as a result of alcoholism. Nonetheless, the Liquor Bill was passed in 1971 and one of the major focuses of this Act was provision for control of the manufacture and sale of liquor in Samoa, which had also been recommended by the 1952 Liquor Commission. Provided below are

⁶ Ieti Lima (2004) *Tafesilafa’i: Exploring Samoa Alcohol use and Health within the framework of the fa’asamoa*, University of Auckland

⁷ Ibid at n6

⁸ Ibid at n6

⁹ Ibid at n6

¹⁰ Shawn S Barnes, Christian R Small, Tui Agapapalagi Lauilefue, Julian Benett, Seiji Yamada (2010) *Alcohol consumption and gender in rural Samoa: Substance abuse and Rehabilitation* (original research)

the subsequent amendments that were also made to the Liquor Act 1971 following its enactment:¹¹

- *Liquor Amendment Act 1978*- this amendment provided legislation to enable the Government's newly established Western Samoa Breweries to sell its manufactured beer products.
- *Liquor Amendment Act 1986*- enabled the Liquor Control Board to grant liquor importer licenses which authorised importers to import liquor into Western Samoa. This amendment ended the Government's monopoly on the importation of liquor into Samoa.
- *Liquor Amendment Act 1991*- recognized the authority of Alii and Faipule, the *village fono*, in the issuance and cancellation of licenses to resell liquor at the 'license premises' in the villages. This amendment also increased from one to three, the number of members of the general public to be appointed to the Liquor Control Board by the Minister
- *Liquor Amendment Bill 1992/1993*- was enacted to include the Financial Secretary or his or her nominee on the Liquor Control Board.

2. Terms of Reference

Forty two years after the original Liquor Act was introduced, a new Liquor Act 2011 came into force, which repealed the original Act. The object of this new Liquor Act 2011 is to promote and encourage responsibility in the manufacture, import, sale and consumption of liquor through the establishment of a scheme of liquor licenses. In March 2013, the Attorney General asked the Commission to consider and work towards possible law reform relating to the sale and consumption of alcohol with the objective of reducing the harm caused by alcohol in Samoa. Possible areas identified by the Attorney General include but are not limited to the following:

- a) Adequacy of current liquor licensing and enforcement thereof;
- b) Alcohol taxation and pricing;
- c) Availability of cheap liquor
- d) Controlling alcohol content in liquor;
- e) Advertising
- f) Responsibilities of parents, village councils and churches with respect to adolescent drinking;
- g) Age limit for drinking.

The proposed reference is in light of an increased number of alcohol related incidents, including serious offences such as homicides, rapes, fights and traffic accidents, where the

¹¹ Ieti Lima (2004) *Tafesilafa'i: Exploring Samoa Alcohol use and Health within the framework of the faasamoa*, University of Auckland

abuse of alcohol is a contributing factor. An additional issue identified by one of the members of the judiciary is the question of whether there should be a limit on alcohol content of liquor manufactured in Samoa and imported liquors. In 2012, one of the judges called for the review of the current Liquor Act 2011 to investigate the alcohol content of these liquors.¹²

The Commission commenced its alcohol reform review by preparing a preliminary survey paper (“survey”) seeking submissions from key government stakeholders regularly involved with alcohol regulation. The aim of the survey was to seek the views of these stakeholders on matters of concern arising from their own experience with alcohol regulation. The survey was disseminated on 30 April 2013 with submissions due back on 30 May 2013. The key government stakeholders include *Ministry for Revenue, Ministry of Health, Ministry of Justice and Courts Administration, Attorney General’s Office, Ministry for Women, Community and Social Development, National Health Services, Ministry of Commerce, Industry and Labour Ministry of Education, Sports and Culture and Ministry of Police*. The Commission acknowledges the assistance of key government stakeholders who provided their submissions in response to the survey. The submissions have assisted in developing this Issues Paper.

3. We welcome your Comments

This Issues Paper calls for public submissions. It will present issues related with the law regulating the sale and consumption of alcohol and will also identify issues raised by key government stakeholders in their submissions. Similar laws in other jurisdictions such as New Zealand and Australia will be discussed in this Issues Paper with the aim of assisting the public with their responses to questions posed at the end of each issue identified in our Terms of Reference.

¹² Samoa Observer, (8th March, 2013) *Shiloh’s father writes*,
< www.samoaoobserver.ws/opinion/opinion/3812-shilohs-father-writes> (Accessed on: 15th July 2013)

PART B: ISSUES

1. Age Limits and Exhibition of IDs

Age limits

In Samoa, there is no specific legal age to drink alcohol. The *Liquor Act* only provides for a purchasing age of 21 years. A person under the age of 21 years who buys an alcoholic drink commits an offence and can be fined up to \$50.¹³

In New Zealand, the relevant legislation regulating the access to alcohol is the *Sale and Supply of Alcohol Act 2012*. This legislation sets out a purchasing age instead of a drinking age. For example, it is an offence for a person under 18 years to purchase liquor.¹⁴

A minimum drinking age is regarded as one of the most effective control mechanisms to limit the availability of alcohol to young people.¹⁵ However, the introduction of a minimum drinking age as an offence is difficult to enforce in private places, where the control of the Police is quite limited. Criminalizing young people with this control measure could involve the risk of discouraging them from seeking help in cases of alcohol addiction or alcohol dependence.

The *Liquor Act* of Samoa also prohibits selling or supplying any liquor to a person under the age of 21 years:

- any person that sells or supplies any liquor to a person under the age of 21 years commits an offence and is liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months, or both¹⁶;
- a licensee commits an offence and is liable to the same penalty if a person under 21 years is allowed to come into possession or drink liquor on the licensed premises.¹⁷

All the key government stakeholders (“stakeholders”) who were consulted during the preliminary consultations indicated the age of 21 years as the appropriate purchase age. This is to prevent young people from abusing alcohol. Also, this is the age of legal capacity and the age where a person is eligible to vote in Samoa.

In New Zealand and Australia, the purchase age is 18 years in order to maintain consistency with the age when young people in these countries reach maturity.

¹³ *Liquor Act* 2011, s 14(3), (Samoa).

¹⁴ *Sale and Supply of Alcohol Act* 2012, s 243, (New Zealand).

¹⁵ Thomas Babor et al (2003) *Alcohol: No Ordinary Commodity* OUP, New York, p. 127.

¹⁶ *Liquor Act* 2011, s 14(1), (Samoa).

¹⁷ *Ibid* at n16, s 57(1).

The “*Australian Guidelines to Reduce Health Risks from Drinking Alcohol*” produced by the Australian National Health and Medical Research Council promotes delaying the consumption of alcohol as long as possible due to the health effects on the body (e.g. brain development and mental health) and the increase in antisocial behaviour that results from drinking.¹⁸ A study mentioned in the *Guidelines* indicated that those who first became drunk by 19 years of age were more likely to be alcohol dependent and heavy drinkers in later life.¹⁹

Question 1: *What should be the appropriate age to purchase alcohol in Samoa?*

Question 2: *Should there be a drinking age apart from purchasing age?*

Question 3: *What other ways to control the purchase and consumption of alcohol by young people, apart from limiting purchase and drinking age?*

Question 4: *Should a young person under the age of 21 years whom the alcohol is sold to be criminalized as in the case of the supplier?*

Historical and Hospitality Training Course

The *Liquor Act* of Samoa provides an exception that a person aged from 18 to less than 21 years is allowed to enter licensed premises and to come into possession of liquor but NOT to consume alcohol beverages if that person is:

- an employee of the licensee; or
- a trainee undergoing hospitality training course in the licensed premises²⁰.

Therefore, an underage person in Samoa may sell or serve liquors to the patrons on the licensed premises but not drink any alcohol beverages.

During the preliminary consultation with stakeholders, the Ministry of Police suggested that this exception should be removed because alcohol beverages are accessible to young people who are exposed to an environment which encourages the consumption of alcohol. The Attorney General’s Office suggested that this exception “*should be better monitored by imposing further restrictions such as: prohibiting students from undertaking practical training in environments with heavy consumption of alcohol and restrict trainings to restaurants*”.

¹⁸ Commonwealth of Australia, Australian National Health and Medical Research Council,(2009) “Australian Guidelines to Reduce Health Risks from Drinking Alcohol”, Australia
<www.nhmrc.gov.au/files_nhmrc/publications/attachments/ds10-alcohol.pdf> (Accessed on: 5th June 2013)

¹⁹ Ibid at n18 p 62.

²⁰*Liquor Act* 2011, s 57(3), (Samoa).

In New Zealand, employing a minor in licensed premises constitutes an offence. The minors are allowed to work in licensed premises only for purposes other than selling alcoholic beverages: to prepare or serve meals, clean, repair, maintain, alter, or restock the area or any equipment in the area, remove or replace any equipment, stock-take or check or remove cash.²¹

In Australia, employing a minor to serve or supply liquor on licensed premises is allowed with certain restrictions in most States.²² For example, in Western Australia minors can be employed in restaurants to serve alcoholic beverages with a meal to patrons, but they have to be supervised by a person over 18 years of age at all times.²³

Question 5: *Should the employment or training of people under 21 years on licensed premises be:*

- i. *Permitted subject to the current conditions?*
- ii. *Restricted to restaurants and for purposes other than selling or serving alcohol? Should there be other restrictions?*
- iii. *Totally prohibited?*

Question 6: *What about the issue of a young person working in a family business where liquors are sold such as a bar, a retail shop, or night club?*

Drinking under the Parents' Supervision

In Samoa, a person under the age of 21 years can buy and or drink liquor in a restaurant as part of a meal if under the supervision of his or her parents.²⁴

Most of the stakeholders consulted by the Commission do not agree with this exception allowing underage persons to access alcohol. They feel that this exception contradicts one of the main purposes of *Liquor Act* that is to prevent young people under 21 from consuming alcohol.

- The Land Transport Authority highlighted that *“parental influence plays a strong role in shaping drinking behaviour and although it could be protective, it also carries a risk factor in the development of drinking patterns; therefore the law should not allow for this exception”*.

²¹ *Sale and Supply of Alcohol Act 2012*, s 242, (New Zealand).

²² *Liquor Act 2007*, s 119 (New South Wales); *Liquor Act 1992*, s 155, (Queensland); *Liquor Licensing Act 1997*, s 107 (South Australia); *Liquor Control Act 1988*, s 121, (Western Australia); *Liquor Licensing Act 1990*, s77, (Tasmania).

²³*Liquor Control Act 1988*, s 121(11), (Western Australia).

²⁴*Liquor Act 2011*, ss 14(4) and 57(4). (Samoa)

- The Attorney General's Office underlined that: *"Whether or not a person under the age of 21 years is supervised by a parent does not guarantee drinking responsibly; other parents are irresponsible and may be alcoholics themselves"*.
- The Ministry of Commerce, Industry and Labour explained that *"The rationale behind this [exception] was to promote tourism"*.

In New Zealand a person can only supply alcohol to a minor if the supplier:

- is a parent or guardian of the minor and supply the alcohol in a responsible manner; or
- has express consent from the parents or guardian of the minor and supply the alcohol in a responsible manner.²⁵

According to the relevant law in New Zealand, supplying alcohol in a "responsible manner" means for example, supplying food and non-alcoholic drinks with the alcohol or arranging safe transport²⁶.

In Victoria (Australia), it is an offence to supply alcohol to a minor on licensed premises except where the liquor is supplied for consumption as part of a meal and a spouse (above the age of 18 years), parent or guardian are present.²⁷

Question 7: *What is your opinion in relation to allowing young people less than 21 years to buy and consume alcohol under the supervision of parents?*

Question 8: *Should the Liquor Act adopt a provision relating to the supply of alcohol to minors in a responsible manner similar to the legislation in New Zealand?*

Exhibition of IDs

In Samoa, it is not mandatory for licensees to ask for valid identifications from patrons entering the premises. However, the licensee, being prosecuted for supplying alcohol to a person less than 21 years, in his defence can prove that when the liquor was sold, the customer had shown some lawful form of proof of age indicating that he or she was over the age of 21 years.²⁸

Several stakeholders consulted during the preliminary consultations suggested that a request for the exhibition of an identification document should be mandatory for

²⁵ *Sale and Supply of Alcohol Act 2012*, s 241(3) (New Zealand).

²⁶ *Ibid* at n25, s 241(4).

²⁷ *Liquor Control Reform Act 1998* s 119, (Victoria)

²⁸ *Liquor Act 2011*, ss 14(2) and 57(2) (Samoa).

customers suspected of being under the age of 21 years. The Land Transport Authority suggested also the inclusion of a new offence in order to punish those customers presenting fake IDs.

The *Sale and Supply of Alcohol Act 2012* of New Zealand sets out that in any proceedings for the offence of selling or supplying alcohol to underage persons, the licensees have to prove, as a defence, that the customer provided an age document indicating that he or she was not under the purchasing age²⁹.

In Victoria and New South Wales (Australia), a patron suspected of being under the purchasing age may be required by a licensee, employee, police officer or an inspector to present an age document³⁰.

A new offence was introduced in the *Sale and Supply of Alcohol Act 2012* of New Zealand in order to criminalize the practice of presenting fake IDs; using someone else's ID to buy alcohol; and giving or lending an ID to an underage person knowing that he or she intends to use it to buy alcohol³¹. The same offence is in force in several States of Australia.³²

A campaign initiated by the Australian Liquor Stores Association, which supports the Australian Government's National Drug Strategy, warns those purchasing alcohol that they may be asked for ID if they appear to be under 25 years of age.³³

Question 9: *Should the exhibition of IDs be mandatory prior to entering license premises?*

Question 10: *What should constitute a valid identification?*

Question 11: *Should presenting fake IDs be criminalized?*

Question 12: *Should the Liquor Act stipulate a provision allowing licensees, licensed premises' employees and authorities to seek an ID from a patron suspected of being under 25 years, given that it is difficult to identify the age of people in their early twenties?*

²⁹ *Sale and Supply of Alcohol Act 2012*, s 239(4) (New Zealand).

³⁰ *Liquor Act 2007* s 128 (New South Wales); *Liquor Control Reform Act 1998*, s 126 (Victoria)

³¹ *Sale and Supply of Alcohol Act 2012* s 257 (New Zealand).

³² *Liquor Act 1998* s 129 (New South Wales); *Liquor Act 1992*, s 158 (Queensland); *Liquor Control Reform Act 1998* ss 123(1) and s 123(4) (Victoria); *Liquor Act* s 106BA, (Northern Territory).

³³ Australian Liquor Stores Association, (May 27, 2008), *ALSA Supports MCDS National Approach with "ID-25" & "DON'T BUY IT FOR THEM"*, Australia

<www.alsa.com.au/fileadmin/alsa-2009/alsa-270508.pdf> (Accessed on: 11th June 2013)

2. Alcohol product: content labeling and serving sizes

Alcohol Content

The *Liquor Act* states that the definition of “liquor” includes:

- a beverage which, at 20°Celsius contains more than 1.15% ethanol by volume;
- other beverages not included in the previous definition that for the purposes of sale are held out to be beer or spirit;
- any spirits, wine, ale, beer, stout, cider, or any other fermented, distilled or spirituous liquor ordinarily used as a beverage which contains more than 2 parts percent of proof spirit;
- any other substance prescribed by regulations as liquor.³⁴

Most of the stakeholders in their submissions suggested that it is appropriate to establish a maximum percentage of alcohol per volume in order for imported and locally manufactured liquors to qualify as suitable for human consumption.

Question 13: *Should a maximum percentage of alcohol per volume be established for imported and locally manufactured liquors to qualify as suitable for human consumption in Samoa?*

Question 14: *Which other standards should be set for liquors to qualify as suitable for human consumption?*

Question 15: *Should alcohol content of imported and locally manufactured liquors be mandatorily tested by qualified scientific laboratories like Scientific Research Organisation of Samoa for suitability for human consumption?*

Undesirable Liquors

In respect to the quality of the liquor, the *Liquor Act* punishes a licensee who sells ‘undesirable liquor’ with a fine not exceeding \$250 or imprisonment for a term not exceeding 3 months, or both.

The definition of undesirable liquor includes the following beverages:

- Any adulterated liquor, that is liquor which contains or is mixed with substances of low commercial value or with substances which operate to the

³⁴*Liquor Act* 2011, s 2(1). (Samoa)

prejudice or disadvantage of the consumers; or whose nutritive properties are less than those of such liquor in its normal state;

- Any liquor containing substances whose sale is an offence under the *Food and Drugs Act 1967* and *Poison Act 1968*.³⁵

The *Police Offences Ordinance 1961* punishes a person who consumes or attempts to consume undesirable liquor such as methylated spirit; has methylated spirit in his or her possession for the purpose of consumption by himself or herself or by any other person; import into Samoa methylated spirit without authorization by the Minister for Revenues. The penalty for this offence is imprisonment for a term not exceeding 3 months or a fine up to \$20, or both³⁶.

According to the submissions received from the stakeholders, the penalty associated with the illegal sale of undesirable liquors may not necessarily be a deterrent for the licensee from committing this offence particularly as the amount of the fine is minimal compared to a profit that the licensee may collect from the sale of these products. For example the Attorney General's Office suggests "*for the purpose of deterrence that the penalty is increased to 50 penalty units or 5 months imprisonment*".

Another issue to be raised is the recent introduction in Samoa of certain types of pre-mixed alcoholic drinks, also known as "ready-to-drink spirit drinks" ("RTD"), which seem not to be covered by the definition of undesirable liquor. This class of liquors may generate particular concern because the sweetness of the soft drink disguises the taste of the alcohol. Therefore, RTDs are likely to be more attractive to young people and such drinks facilitate their entry into a lifestyle involving alcohol consumption. There is also evidence that RTDs containing caffeine or guarana (a natural source of caffeine) may cause a "wide-awake drunk" effect when consumed in large amounts: for example intoxicated people may perceive that they are safe to drive because the caffeine combats the drowsiness normally associated with alcohol³⁷.

In New Zealand, the relevant legislation allows regulations in order to ban or restrict the availability of certain alcohol products or classes of products which are dangerous or likely to cause alcohol-related harm³⁸. Hence, it is an offence to supply banned or restricted alcohol products³⁹.

³⁵ *Liquor Act 2011*, ss 2(1) and 60 (Samoa) .

³⁶ *Police Offences Ordinance 1961*, s 22 (Samoa).

Methylated spirit is ethanol with additives chosen to make it, extremely bad tasting, foul smelling or nauseating, to discourage recreational consumption. Methylated Spirit is often deliberately colored blue or mauve to alert individuals to its potential danger. Methylated spirit is used mainly as a cleaning product and as fuel for spirit burners and camping stoves.

³⁷ Alcohol Advisory Council of New Zealand, (2008), "*Policy on Ready-To-Drinks (RTDs)*" Wellington p 2-3.

³⁸ *Sale and Supply of Alcohol Act 2012*, s 5, (New Zealand),

³⁹ *Ibid* at n38, s 238.

In Australia, there has been a significant debate about RTDs, including RTDs containing energy drinks. Currently there are no specific laws that deal with limiting the mix of alcohol and energy drinks, however members of a liquor industry group have agreed to:

- voluntarily limit the caffeine or caffeine-equivalent content of energy beverages to no higher than that in conventional cola soft drinks available in the market;
- not use Taurine (an additive designed to improve athletic performance or mental awareness);
- have an upper limit of two standard drinks per single-serve container; and
- make no energy-related claims in the marketing or advertising of those products.⁴⁰

Question 16: *What appropriate penalties should be given to licensee who sells undesirable liquor?*

Question 17: *What appropriate penalties should be given to those selling undesirable liquor without a license?*

Question 18: *Should the legislation in Samoa allow regulations in order to ban or restrict the availability of certain alcohol products or classes of products (for example RTDs or local vodka) which are dangerous or likely to cause alcohol-related harm?*

Question 19: *Should the Liquor Act regulate the manufacture, import and supply of RTDs in Samoa? Should regulation be left to manufacturers themselves as in the case of Australia?*

Labelling

The alcohol related case-laws in Samoa show that the majority of criminal offences, where the consumption of alcohol has been a contributing factor, involve cheap locally manufactured liquors, especially vodkas, which are sold in large plastic bottles with labels that contain no information as to the contents. In *Police v Tauleo'o*⁴¹, Justice Nelson made a call “for some concerted effort to be made without delay to review policies governing the manufacture, sale and distribution of unlabelled alcoholic products in Samoa. Perhaps “unlabelled” is too strong a term because these bottles do carry labels but as noted they contain barely adequate information and certainly nothing about what is inside them”.

⁴⁰Distilled Spirits Industry Council of Australia Inc, “Energy RTD”, Australia
<www.dsica.com.au/content/detail/energy_rtds> (Accessed on: 21st June 2013).

⁴¹ *Police v Tauleo'o* [2011] WSSC 160.
<www.pacii.org/cgi-bin/disp.pl/ws/cases/WSSC/2011/160.html?stem=0&synonyms=0&query=policy%20and%20v%20and%20tauleo%20and%20o> (Accessed on: 21st June 2013)

In Samoa, the *Food and Drugs Act 1967* gives power to the Head of State to make regulation with the purpose of prescribing the mode of labelling of any food and beverage sold in a package and the matter to be contained or not to be contained on any label⁴². To date, no regulations have been enacted to regulate the content of the labels in the packages of food in Samoa.

The *Liquor Act* regulates exclusively the misleading labelling of liquors. Alcohol beverages sold in a container bearing labels, which mislead the consumers about the nature, quality, strength, purity, composition, weight, origin, age or effects of the liquor, are regarded as undesirable liquors, whose sale constitute an offence⁴³.

Requirements for the labelling of liquor (both local and imported) in Australia and New Zealand are set out in the *Australia New Zealand Food Standards Code*. The Code requires that the label on any beverage which contains more than 0.5 % alcohol by volume, measured at 20°C, must include a statement of the approximate number of standard drinks in the package⁴⁴.

The Ministry of Police, interviewed by the Commission during the stakeholders' consultation, raised also the issue of brands on the labels of locally produced liquors which may encourage excessive consumption. In particular, the representatives of the said Ministry mentioned the cases of "*Fagu Fai Maso*" for an alcoholic beverage which means in translation, "building up muscles"; and "*Povi*" whose translation is "Bull" for a stronger variety of beer. The criteria relating to misleading labelling in the *Liquor Act* do not seem sufficient to tackle cases such as those mentioned by the Ministry of Police. For instance, the use of liquor names/labels that appeal especially to young people or encourage excessive consumption of alcoholic beverages.

The relevant legislation of New South Wales⁴⁵ and Queensland⁴⁶ (Australia), for determining that an alcoholic beverage is undesirable liquor, sets out the following criteria regarding the labelling:

- the name, design or packaging of the liquor is targeted at or particularly attractive to minors;
- the name, design or packaging of the liquor encourages irresponsible, rapid or excessive consumption of the product.

⁴²*Food and Drugs Act 1967*, s 40, (Samoa).

⁴³*Liquor Act 2011*, s 60(1) (c), (Samoa).

⁴⁴ ComLaw, (2013), *Australia New Zealand Food Standards Code, Standard 2.7.1: Labelling of alcoholic beverages and food containing alcohol*. Australian Government, < www.comlaw.gov.au/Details/F2011C00588> (Accessed on: 24th June 2013)

⁴⁵ *Liquor Act 1993*, s 100(3), (New South Wales)

⁴⁶ *Liquor Act 1993*, s 156B(3), (Queensland)

Question 20: *Should the Food and Drugs Act 1967 be reviewed to ensure strong regulations are in place to regulate content of the labels in the packages of food and beverages in Samoa? Should it specify alcoholic drinks as well?*

Question 21: *If so, should there be a provision in the labeling regulations in Samoa which requires manufacturers to specify the approximate number of standard drinks in the package? What other requirements should be adopted for the alcohol labeling?*

Question 22: *Should the Liquor Act be amended to prohibit, as undesirable liquor, the sale of alcohol beverages whose labeling is targeted at or particularly attractive to young people or encourages irresponsible, rapid or excessive consumption of alcohol?*

Warning Labels

The Ministry of Education, Sports and Culture in its submission suggested that, like cigarette packets, the alcohol products should be labelled with warning messages on the effects of alcohol consumption and information on responsible consumption.

Packaging for tobacco products sold in Samoa must display a health message which has to be large, clear, visible and legible and take up a minimum of 30 percent of the principal display area of tobacco packages⁴⁷.

Australia and New Zealand currently do not require health warning on alcohol labels. A recent research publication of the Parliament of Australia⁴⁸ concluded that while warning labels may increase awareness of the risks associated with excess alcohol consumption, the increased awareness does not necessarily translate to behavioural changes in at-risk groups. The research suggested that warning labels have a chance of inciting positive changes in drinking behaviours, if the health messages they convey firstly, are arresting (similar to tobacco warning labels) and, secondly, vary reasonably frequently.

According to the figures provided by the International Center for Alcohol Policies⁴⁹, as at March 2011, 16 countries had national laws mandating health warning labels on alcohol

⁴⁷ *Tobacco Control Act 2008*, s 26, (Samoa)

⁴⁸ Matthew Thomas, (9 May 2012), "Alcohol warning labels—do they work?", Parliament of Australia, <www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2011-2012/alcohollabels#_Toc324314968> (Accessed on: 25th June 2013)

⁴⁹ See *The International Center for Alcohol Policies* - (ICAP) is a not-for-profit organization, supported by major producers of alcoholic beverages. ICAP promotes dialogue involving the drinks industry, the research and public health communities, government, and civil society <www.icap.org/table/HealthWarningLabels> (Accessed on: 25th June 2013)

beverage containers. These were Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, France, Germany, Guatemala, Mexico, the Russian Federation, South Africa, Taiwan, Thailand, United States and Uzbekistan. The nature of the warnings vary. Most provide reminders about the general health risks associated with alcohol consumption, of drinking during pregnancy and of the dangers of drinking while driving.

For example, in South Africa, labels for alcoholic beverages must contain at least one of the following health messages⁵⁰:

- *Alcohol reduces driving ability, don't drink and drive.*
- *Don't drink and walk on the road, you may be killed.*
- *Alcohol increases your risk to personal injuries.*
- *Alcohol is a major cause of violence and crime.*
- *Alcohol abuse is dangerous to your health.*
- *Alcohol is addictive.*
- *Drinking during pregnancy can be harmful to your unborn baby*

The health message on labels of liquors sold in South Africa must be visible, legible and indelible and cover a space of at least one eighth of the total size of the label.

Question 23: *Should alcohol products in Samoa have in place 'warning labels' similar to tobacco?*

Question 24: *If yes, how should the warning labels appear on these alcohol products?*

Question 25: *In Samoa, should the warning labels be put on all alcoholic beverages or only on strong spirits but not on beers and wines? Also, what about imported liquors?*

Question 26: *Should warning messages be similar to labels in South Africa? What other messages to include in the labels?*

Question 27: *Should the messages be arresting and changes reasonably frequently to be able to discourage people from drinking irresponsibly?*

⁵⁰ *Foodstuffs, Cosmetics, and Disinfectants Regulations 2007, Annexure (South Africa)*
<www.info.gov.za/view/DownloadFileAction?id=72307> (Accessed on: 28th June 2013)

Serving sizes

Samoa currently has no requirements for standard service sizes for alcoholic beverages.

The Commission has noticed that in most of the night clubs and bars in Samoa, “towers” with a capacity of 5 litres are available to serve beer to the patrons. This kind of practice may encourage the consumption of large quantities of alcohol and thus could increase the risk of alcohol-related crimes and public disorder.

New Zealand law prohibits the sale or supply of liquors, for consumption on the licensed premises, in a container exceeding 500 ml. A licensee infringing this prohibition commits an offence and is liable to a fine of up to \$2000⁵¹.

The United Kingdom has a significant regime relating to serving size. The goal of this regime is to control measures in which alcohol and other products are sold, in order to protect consumers from operators who may be tempted to short pour drinks to increase margins. The second important function it plays, in relation to the sale of alcohol, is to allow consumers to calculate for themselves the quantity of alcohol they are consuming. Alcoholic beverages must be available and offered for consumption on the premises in standard quantities specified in the relevant legislation⁵²:

- Beer and cider: half pint;
- Gin, rum, vodka or whiskey: 25-35 ml;
- Wine: 125 ml.

Question 28: *Should the size of containers of liquors served to patrons on the licensed premises be regulated by setting standard quantities?*

Question 29: *What standard quantities of liquor and beverages should be set for bars and nightclubs? Who sets and monitors these standards?*

Question 30: *Should the Liquor Act be amended to prohibit the sale or supply of alcohol in containers exceeding a certain capacity? Should the permitted capacity of the containers be up to 500 ml as in New Zealand?*

Question 31: *Should the sale and supply of liquors in excessive quantities be criminalized?*

Question 32: *What suitable penalties should be given to bar and club owners for infringement?*

⁵¹*Sale and Supply of Alcohol Act 2012*, s 254, (New Zealand)

⁵²*Weights and Measures Act 1985* (United Kingdom).

3. Liquor licences

The *Liquor Act* establishes a scheme of liquor licences in order to regulate the manufacture, import and sale of liquor.

Licensing is the primary mechanism to control the availability of alcohol in Samoa. This control is achieved through the requirement that only a holder of a licence is legally authorized to produce, import, and sell liquors in Samoa. The manufacture, import or sale of liquors in Samoa without the respective licences constitutes an offence that is punished with a fine not exceeding \$500 or imprisonment for a term not exceeding 6 months, or both.⁵³

The *Liquor Act* provides for different classes of licences:

- Wholesale licence⁵⁴: authorises the licensee to sell liquor wholesale in sealed containers for consumption away from licensed premises;
- Retail sale licence⁵⁵: authorises the licensee to sell liquor to the general public for consumption away from licensed premises;
- Food and beverage licence⁵⁶: this is the licence issued to restaurants. Such licence authorises the licensee to sell liquor as ancillary to a meal consumed at the licensed premises with the condition that the alcoholic beverage is not removed from or taken off the licensed premises.
- Bar licence⁵⁷: authorises the licensee to sell liquor for consumption on the licensed premises.
- Nightclub licence⁵⁸: this licence is issued to those premises that have the right to charge entry fees. Such licence authorises the licensee to sell liquor for consumption on the licensed premises.
- Temporary licence⁵⁹: authorises the licensee to import and sell liquor during limited times set out in the licence for consumption in an area specified in the licence.
- Licence to import liquor⁶⁰: authorises the licensee to import liquor within the territorial limits of Samoa from any country outside Samoa.

⁵³*Liquor Act* 2011, ss 12, 36 and 42 (Samoa)

⁵⁴ *Ibid* at n53, s 18.

⁵⁵ *Ibid* at n53, s 19.

⁵⁶ *Ibid* at n53, s 20.

⁵⁷ *Ibid* at n53, s 21.

⁵⁸ *Ibid* at n53, s 22.

⁵⁹ *Ibid* at n53, s 23.

- Licence to manufacture liquor⁶¹: authorises the licensee to legally produce liquor in Samoa.

Question 33: *In your opinion, is a fine not exceeding \$500 or imprisonment for a term not exceeding 6 months the appropriate penalty to tackle the issue of the production and sale of illegal home-brew liquors in the villages?*

Question 34: *How can the police enforce the prohibition of manufacturing and selling liquors without licence? Do you think an increase in cooperation between police and the village fono is needed in this field? If so, which aspects should this cooperation entail?*

Location of the licensed premises

In Samoa, night clubs and bars cannot be situated within 50 metres from a hospital, church or school⁶². However, under the current legislation, there is no condition regarding the distance of licensed premises from residential areas.

All stakeholders consulted by the Commission are in favour of introducing a mandatory distance of bars and nightclubs from residential areas to avoid undue disturbance of the quiet and good order of the neighbourhood.

The Ministry of Commerce, Industry and Labour highlights that a current problem in Samoa is that *“some night clubs are built in residential areas without control. The nature of night clubs and that type of business renders them isolated from residential areas. They are not the right type of business that goes along well with residential areas”*.

The Land Transport Authority suggests introducing *“the distance to 100 meters to help reduce noise pollution, disturbance of peace and protect residential areas”*.

The area where premises will be situated is a matter that must be considered in deciding on granting a licence to sell alcohol. The *Liquor Act* states that the Liquor Control Board⁶³ must consider whether it is appropriate to issue a licence for premises in the area specified in the application. However, the Act does not suggest any criteria to assess the appropriateness of granting new licences in a specific area.

During the preliminary consultation with the relevant stakeholders, the Ministry of Education, Sports and Culture expressed concern that many young people are accessing

⁶⁰ *Liquor Act* 2011, ss 2, 36-41, (Samoa).

⁶¹ *Ibid* at n60, ss 42-47.

⁶² *Ibid* at n60, ss 21 and 22.

⁶³ See *Liquor Act* 2011, ss 5-11 (Samoa)- The Liquor Control Board is a body of the Government in charge of granting, declining, suspending or cancelling licenses; dealing with the complaints; setting by public notice the opening and closing hours of licensed premises. See *Liquor Act* 2011, ss 5-11 (Samoa).

and consuming alcohol and that young people are often targeted by retail shops. Therefore, the Ministry suggest limiting the number of liquor stores to be opened in Samoa.

Control measures have been designed in other countries to limit the number of licensed premises. They are based on the so-called “*availability theory*”. According to this theory, an increased availability of alcohol results in increased levels of consumption, alcohol- related harm, anti-social behaviours and crimes. Studies have found that in high outlet density areas, alcohol retailers generally attempt to achieve profits using discounts and promotions⁶⁴. These practices facilitate heavy drinking sessions especially among young people.⁶⁵

In New Zealand, the licensing authority, in deciding whether to grant a licence, must take into account the impact of the proposed premises on the “amenity and good order of the locality”. The factors that must be considered when deciding whether the issue of a licence would be likely to reduce the amenity and good order of a neighbourhood are:

- Current and future noise levels and levels of nuisance and vandalism;
- Number of premises for which licences are already held in that locality.⁶⁶

An applicant for a licence in New South Wales (Australia) has to submit a “Community Impact Statement” (“CIS”). The objective of the CIS is to facilitate the assessment by the Licence Authority of the impact that the granting of certain licences may have on the local community. The CIS makes the Licensing Authority aware of the views of the local community and the results of the discussions between the applicant and the local community for any issue raised by the community.⁶⁷

⁶⁴ Paul Grunewald, (2008), “*Why Do Alcohol Outlets Matter Anyway? A Look into the Future*” *Addiction*, Vol 3, England <onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2008.02332.x/pdf> (Accessed on: 2nd July 2013)

⁶⁵Taisia Huckle, J Huakau, (2008), P Sweetsur, O Huisman and S Casswell “*Density of Alcohol Outlets and Teenage Drinking: Living in an Alcoholic Environment is Associated with Higher Consumption in a Metropolitan Setting*” Massey University, New Zealand <www.ncbi.nlm.nih.gov/pubmed/18821871> (Accessed on: 2nd July 2013)

⁶⁶*Sale and Supply of Alcohol Act 2012*, ss 105 and 106, (New Zealand).

⁶⁷ *Liquor Act 2007* s 48 (New South Wales).

Question 35: *Should ‘residential area’ be specified in the Liquor Act in addition to hospital, church or school? If so, should the distance of night clubs and bars be 100 metres from residential areas as suggested by the Land Transport Authority?*

Question 36: *Should the Liquor Act address criteria to assess appropriateness of granting new licences considering the impact on ‘residential areas’ in any application?*

Question 37: *If so, should the role of Liquor Control Board be strengthened to carefully consider applications by assessing the following proposed criteria before granting licenses?*

- i. *number of similar licensed retail shops in the village compared to size of village;*
- ii. *community impact assessment produced by the Village Fono; and*
- iii. *negative impact on the amenity and good order in the village as a result of too many licensed retail shops.*

Types of products available at retail premises

Another mechanism to control the availability of alcohol is to establish restrictions on the range of alcohol products available in retail shops for consumption away from the premises.

The *Liquor Act* states that regulations may be enacted to prohibit the sale of certain liquors in retail shops.⁶⁸

Alcohol-related case laws in Samoa mostly involve the abuse of cheapest liquors sold at retail shops and consumed away from the premises such as large plastic bottles of vodka⁶⁹.

The cheap price of alcohol purchased in retail shops leads to the dangerous practice of “preloading” that is drinking the alcohol bought in shops before entering bars and nightclubs. Research suggests that individuals who drink before going out may consume large quantities of alcohol and suffer higher levels of alcohol-related harm than those who do not.⁷⁰

The New Zealand sale and supply of alcohol law prohibits the sale of alcohol beverages in supermarkets and grocery shops, except beer, mead, and wine which contain no more than 15% ethanol by volume.⁷¹

⁶⁸*Liquor Act* 2011, s 19(2), (Samoa).

⁶⁹*Police v Tauleo'o* [2011] WSSC 160.

⁷⁰Karen Hughes, Zara Anderson, Michela Morleo and Mark A Bellis (2008), “Alcohol, Nightlife and Violence: The Relative Contributions of Drinking Before and During Nights Out to Negative Health and Criminal Justice Outcomes” Faculty of Health and Applied Social Sciences, Liverpool <www.ncbi.nlm.nih.gov/pubmed/17996008> (Accessed on: 3rd July 2013)

⁷¹ *Sale and Supply of Alcohol Act* 2012, s 58 (New Zealand).

In New South Wales (Australia), premises whose primary purpose of the business is not the sale of alcohol (e.g. supermarkets and grocery shops), may sell alcoholic beverages only in areas that are adequately separated from the rest of the premises where other goods are sold.⁷²

Question 38: *To reduce alcohol- related harm, should the sale of liquors in supermarkets and grocery shops be:*

- i. *totally prohibited?*
- ii. *restricted to alcohol beverages which contain no more than 15% ethanol by volume?*
- iii. *restricted to beer, mead and wine which contain no more than 15% ethanol by volume as in the legislation of New Zealand?*

Question 39: *What social impact may the control measures on alcohol beverages available on retail shops, have on the wellbeing of the villages? May such measures lead to an increased production of illegal homebrew liquors?*

Question 40: *Should the sale of alcoholic beverages in supermarket and grocery shops be restricted only to areas that are adequately separated from the rest of the premises where other goods are sold?*

Suitability of a licensee

In Samoa, a licensee must be a fit and proper person to hold a licence⁷³. The *Liquor Act* does not specify the criteria to assess the suitability of the applicant for a licence.

In New Zealand, a licensee must have an appropriate training system in place to comply with the law. A licensee also has to appoint a manager to be on duty at all times when alcohol is being sold. The manager is responsible for complying with the obligations of the alcohol legislation and the conditions of the licence. For this reason, the managers must have a manager's certificate obtained by successfully completing training designed to equip them with a working knowledge of the alcohol legislation with an emphasis on the requirements of host responsibility and responsible service⁷⁴.

In Australia, it is a mandatory requirement for licensees, approved managers, supervisory staff and employees to undertake a training course in the "Responsible Service of Alcohol" ("RSA"). The laws of each jurisdiction detail the requirements⁷⁵. The RSA training course must be delivered by an accredited training organization, but the delivery differs across Australia (online or face-to-face). The RSA covers the responsible practices in the sale,

⁷² *Liquor Act 2007*, s 30 (New South Wales).

⁷³ *Liquor Act 2011*, s 26(a), (Samoa)

⁷⁴ *Sale and Supply of Alcohol Act 2012*, ss 105.1(j), 212, 216-218 (New Zealand).

⁷⁵ See for example *Liquor Act 1992*, ss 141C, 274, 294 and 316 (Queensland).

supply and service of liquor including topics such as duty of care, harm minimisation, refusal of service, effects of alcohol, minors, identifying intoxication and conflict resolution.

Question 41: *Should the Liquor Act be amended to provide for criteria to assess the suitability of applicants to become licensees?*

Question 42: *Should the Liquor Act be amended to mandatorily require a licensee, managers, supervisors and bartenders to undertake regular training on responsible practices in the sale, supply and service of liquor? If so, who should provide and fund for these trainings?*

Temporary licence

A temporary licence authorises a licensee to import and sell alcohol during a limited period and in an area specified in the licence⁷⁶. The Liquor Act does not set out the conditions which justify the grant of this licence.

The Ministry for Revenue, which is the Ministry in charge of administering the *Liquor Act*, consulted by the Commission about the current practice relating to the grant of this type of licence, advised the Commission that “*circumstances would include family or church events, which require importation of large amounts of alcohol by someone who is not usually an importer, or the sale of alcohol by someone or a group of people who do not normally retail alcohol.*”

In New Zealand, the relevant law establishes special licences that are available for events or social gatherings, whose circumstances are described in the licence⁷⁷.

Similarly in Australia, many of the jurisdictions have special or limited licences available, which include licences for special and major events (e.g. weddings or sporting club functions). There are various restrictions on the special or limited licences which include the number of functions per year (in New South Wales it is limited to 52 per year) or that the sale or supply of alcohol must be ancillary to the purpose of the function.⁷⁸

Question 43: *Should the conditions for granting a temporary licence be specified in the Liquor Act? If so, what conditions should be specified for granting of temporary licence?*

Question 44: *Should there be restrictions in the granting of temporary licence? For instance, number of functions per year or that the sale or supply of alcohol must be ancillary to the purpose of the function?*

⁷⁶ *Liquor Act 2011*, s 23, (Samoa).

⁷⁷ *Sale and Supply of Alcohol Act 2012*, s 22, (New Zealand).

⁷⁸ *Liquor Act 2007* ss 36-39, (New South Wales).

4. Public places

In Samoa, it is prohibited to drink alcoholic beverages or to carry an opened bottle of liquor in a public place. A person who commits this illegal behaviour is liable to a fine not exceeding \$250 or to imprisonment for a term not exceeding 3 months, or both. Moreover, a person found drunk in a public place can be sentenced to jail for 3 months or a fine of \$20⁷⁹

According to the statistics provided by the Ministry of Police regarding the crimes committed in Samoa in 2012, there were 294 cases of drunkenness in public place.

The Samoan Courts have expressed concern in their rulings about the dangers of drinking in public places, such as the side of main roads or seawalls, which often results in fights and other serious criminal offences (e.g. *Police v Tause*⁸⁰).

The stakeholders' submissions highlight that the current penalties for drinking in public places should be increased in order to prevent public disturbances and the dangers associated with drinking in public places.

In Victoria (Australia), being found drunk in a public place is an offence punishable by a fine up to \$1155. ⁸¹ Some local governments in Victoria pass bylaws that prohibit the consumption of alcohol in certain public areas (e.g. beaches and foreshore areas) with fines up to approximately \$300.⁸²

In New Zealand, at present there is no general prohibition on drinking alcohol in public places. Public drunkenness, as an offence, was repealed in 1981. However, it is contrary to law to drink in a public place in the following circumstances: for anyone to drink in a designated location subject to a liquor ban⁸³; for people under the age of 18 to drink in any public places at any time (the penalty is a fine up to \$300).⁸⁴

⁷⁹ *Liquor Act* 2011, s 16 and *Police Offences Ordinance* 1961, s 16. (Samoa)

⁸⁰ *Police v Tause* [2011] WSSC 126.

<www.paclii.org/ws/cases/WSSC/2011/126.html> (Accessed on: 5th July 2013)

(The summary of the case states that an exchange of provocative words between two groups of young men drinking alcohol on the seawall at Satitua resulted initially in a fight. After the fight was broke up, Fiti, one of young men involved in the fight, fueled by alcohol, took matters to another level. He went to his uncle's house, fetched a sapelu, and walked towards the house of a member of the opponent group. Fiti struck the victim with the sapelu. The victim put up his left arm to defend himself from the strike and the sapelu hit his left hand causing the victim to fall down unconscious onto the road. Fiti was convicted of grievous bodily harm).

⁸¹ *Summary Offences Act* 1966 s 13, (Victoria).

⁸² Warrnambool City Council, (2009) *Alcohol Consumption Restrictions*, Australia, <http://www.warrnambool.vic.gov.au/index.php?q=node/220> (Accessed on: 5th July 2013)

⁸³ *Local Government Act* 2002, s 147 (New Zealand).

⁸⁴ *Summary Offences Act* 1981, s 38 (New Zealand).

The stakeholders also emphasised the need for enforcement of the law concerning drinking in a public place in rural areas. The Ministry of Commerce, Industry and Labour suggests *“making the pulega a alii ma faipule (village fono) assist police with enforcement practically works for the concept”*. The Attorney General’s Office states that *“to aid in the enforcement of the laws already in place, the involvement of villages is much needed in this area. The villages need to be strict on their rules in monitoring young people (adolescents) for drinking in public places such as the side of the road, seawalls, making unnecessary noises while under the influence of alcohol etc.”*

Question 45: *What is the appropriate penalty for drinking in public place in Samoa?*

Question 46: *What is regarded as a public place?*

Question 47: *What role should the village fono play in addressing the problem of alcohol abuse?*

5. Advertising

The alcohol industry is one of the industries which spend more money on advertising in Samoa. Beverage companies advertise their alcoholic products in a variety of media, but especially by means of newspapers, television, radio and sponsorship.

The advertising of alcohol beverages is not covered in the current legislation in Samoa. In this respect, in *Police v Aukuso*⁸⁵ Justice Nelson states *“There are also no regulations governing advertisements promoting the sale of alcoholic beverages. There seems little emphasis in Samoa of non alcoholic alternatives or on the harmful effects alcohol has not only on people’s well-being but as can be seen from this case on their behavior. The end result would seem to be a whole emergent generation growing up within the setting of an alcoholic lifestyle that is being glamorized; something that this country may well suffer the consequences of in the future if not before”*.

The stakeholders’ submissions show different positions regarding the need of regulating alcohol advertising.

Most of stakeholders believe appropriate measures have to be adopted to regulate the use of advertisements promoting alcoholic drinks. The Attorney General’s Office considers that *“there seem to be more advertisements on television promoting alcohol than there are on awareness of the harmful impact of alcohol”*. The Ministry of Women, Community and Social Development states that *“just not awareness but also marketing strategies must be*

⁸⁵*Police v Aukuso* [2011] WSSC 149.

< www.paclii.org/ws/cases/WSSC/2011/149.html > (Accessed on: 5th July 2013)

regulated, where there should be no public advertisement of alcohol". The Ministry of Education, Sports and Culture suggests that "sponsorship should be carefully targeted. Where the health of the population is involved, the image should not be liquor. This for example sporting events where healthy lifestyle is promoted, liquor should not be the image used as the sponsor".

In contrast, the Ministry of Commerce, Industry and Labour is in favour of giving the alcohol industry equal opportunities to promote their products as other business sectors: *"Liquor manufacturers, distributors and retailers of liquor are business ventures. Like any other business they must be given opportunities to allow their marketing personnel to advertise and promote their products through the media for response of the market. Likewise give them the maximum opportunity to sponsor games and sports activities and promote the concept of sportsmanship. Sponsoring sports activities does not necessarily mean that they are selling liquor. These can also sell the message to the effect of enjoying liquor responsibly".*

The Attorney General's Office suggests having regard to the provisions of *Tobacco Control Act 2008* concerning the advertising of cigarettes and other tobacco-based products: *"The approach taken by those implementing the Tobacco Control Act on how graphic the awareness advertisements are, could be considered for this issue".*

The sale of cigarettes and other tobacco-based products raises issues similar to alcoholic beverages, relating especially to the risks for the public health. The regulation of advertising in the *Tobacco Control Act 2008* is aimed at reducing the social approval of the use of tobacco, particularly among young people by imposing controls on the marketing, advertising, sale, promotion, packaging and distribution of tobacco products and their association through sponsorship with other products and events⁸⁶. The advertising of tobacco is banned in books and newspapers printed in Samoa, and television and radio transmissions broadcasting from Samoa⁸⁷. The ban includes also the use of tobacco brands to promote and identify any article other than tobacco products; services, activities or events; scholarship, fellowships or other educational benefit⁸⁸.

Similarly, in New Zealand there are no regulations governing the advertising of alcohol. The current approach to the regulation of alcohol advertising in New Zealand is based on voluntary self-regulation by the industry. The self-regulation system sets out the requirements for alcohol advertisements. The philosophy of self-regulation systems is that rules are best enforced through persuasion and incentives rather than through punishment. The advertising industry in New Zealand must adhere to certain principles provided for under a code of practise called *"Code for Advertising Liquors"*⁸⁹.

For example the advertisements on alcoholic beverages should not:

⁸⁶ *Tobacco Control Act 2008*, s 16, (Samoa).

⁸⁷ *Ibid* at n86, s 17.

⁸⁸ *Ibid* at n86, s 19.

⁸⁹ New Zealand Advertising Authority, (2003), *Code for Advertising Liquor*, New Zealand < www.asa.co.nz/code_liquor.php > (Accessed on: 8th July 2013)

- Glamorise liquor or show or encourage the immoderate consumption of liquor;
- Emphasise a product's alcoholic strength;
- Be directed at minors nor have strong or evident appeal to minors in particular;
- Be shown on television between 6.00 am and 8.30 pm.

Radio and television broadcasters in New Zealand annually provide free airtime to government organizations for the broadcast of liquor moderation messages.

Similarly, Australia has a voluntary self-regulation system with regards to regulating alcohol advertising.⁹⁰ The *Alcohol Beverages Advertising (and Packaging) Code* sets the standards for alcohol packaging and advertising in Australia; this is administered by a Management Committee which includes industry, advertising and government representatives. Consumer complaints are initiated through an independent authority called the Advertising Standards Bureau. There is a strong focus in the *Code* so that advertising campaigns do not target young people. There are also restrictions on creating any direct association with the consumption of alcohol and driving a motor vehicle or playing sport.

Question 48: *To strike a balance between the interests of businesses and the public health, how should alcohol advertisement be regulated?*

- Should it be banned following the example of the Tobacco Control Act 2008?*
- Should it be subject to certain restrictions? If so, which restrictions are appropriate for Samoa?*
- Should it be left to the alcohol industry in Samoa to self regulate and establish a Code for advertising liquors, similar to the case of New Zealand and Australia? If so, what standards should be set through the self-regulation system?*

Irresponsible promotions

The Commission has noticed that night clubs in Samoa, with the intention of making profit, organise speed competitions and promotions such as “*All you can drink for \$30 from 5.30 pm to 7 pm*”. These practices raise special concerns because they encourage the rapid

⁹⁰ Advertising Standards Bureau, *Alcohol Advertising*, Canberra, Australia, www.adstandards.com.au/process/theprocesssteps/specificproductsandissues/alcoholadvertising (Accessed on: 8th July 2013)

consumption of large quantities of alcohol, thus increasing the risk of alcohol-related crime and disorder.

In New Zealand, such irresponsible promotions are totally banned. The scope of the prohibition covers a wide variety of practices including:

- promotions that encourage drinking alcohol in large quantities;
- promoting or advertising discounts on alcohol in a manner that leads the customers to believe the price is 25% or more below the price at which the alcohol is ordinarily sold;
- promoting or advertising alcohol that is free of charge;
- offering the opportunity to win a prize on the condition that alcohol is bought;
- promoting or advertising alcohol in a manner that is likely to have special appeal to minors⁹¹.

Question 49: *Should the Liquor Act be amended to prohibit irresponsible promotions undertaken by bars and night clubs in Samoa?*

Question 50: *What irresponsible promotions should be prohibited under the Liquor Act?*

Question 51: *What appropriate penalties for the breach of this prohibition?*

6. Taxation and pricing

Some of the most serious case-laws in Samoa, where the abuse of alcohol has been a contributing factor, involve the cheapest alcoholic beverage sold at retail shops, especially large plastic bottles of vodka.

In *Police v Aukuso*⁹², Justice Nelson made a remark against the availability of such cheap alcohol which has very high alcohol content. In *Police v Tauese*⁹³ the selling of alcohol at a very cheap price was strongly criticized as a clear incentive and an invitation to the public to get drunk cheaply.

During the preliminary consultation, the Attorney General's Office highlighted "*the economic theory is that a cheaper a price of a good, leads to the increase/higher in demand. This theory has proven right and case laws support this theory. Selling liquor cheaply and having it widely available, leads to social problems*". The Ministry for Revenue recognized

⁹¹ *Sale and Supply of Alcohol Act 2012*, s 237 (New Zealand).

⁹² *Police v Aukuso* [2011] WSSC 149.

⁹³ *Police v Tauese* [2011] WSSC 126.

that “there is a link between cheaper, readily available alcohol and the negative social consequences of alcohol consumption. The cheaper the alcohol, the more accessible it is. The higher the price, the greater the disincentive to purchase something”. The Ministry of Commerce, Industry and Labour highlighted in its submission that the problem in Samoa is not the imported alcohol: “Imported liquor does not come cheaply. It is the locally manufactured licensed and non licensed liquor that is attractive”. The Ministry of Education, Culture and Sports suggested that “The prices of liquor should be increased to deter people from drinking”.

Pricing policies are one of the most effective tools to influence alcohol consumption and reduce levels of alcohol-related harm. Therefore, raising the price of the cheapest liquors can play a critical role in a package of measures aimed to prevent the abuse of alcohol. Indeed, the link between cheap alcohol products and heavy drinking sessions has been established in several studies⁹⁴.

There are different mechanisms available to influence the price of the alcohol, in particular the use of excise taxes and minimum pricing.

Question 52: *To reduce levels of alcohol-related harm, should the price of cheap locally manufactured alcohol be increased?*

Alcohol excise taxes

The World Health Organization Expert Committee on Problems Related to Alcohol Consumption states that “particularly in countries with high levels of hazardous drinking, taxation is likely to be a more cost-effective means of reducing alcohol-related problems than other alcohol policies⁹⁵”.

Excise taxes represent a substantially large proportion of the price of cheap alcohol products. Consequently, any increase in excise tax will significantly affect the price of the cheap spirits which are most commonly associated with crimes where the abuse of alcohol has been a contributing factor. Therefore, it is possible that an increase in the excise tax is likely to have an impact on drinking patterns in Samoa such as the consumption of local vodka sold very cheaply in large plastic bottles.

The current excise duties imposed on alcohol beverages are governed in Samoa by *Excise Tax Rates 1984*. The excise rates are determined according to the type of liquor and the percentage of alcohol per volume. For instance, the rate for beers is \$2.64 per litre. The rate

⁹⁴ See, for example, E Weitzman, T Nelson, and H Wechsler (2003) “Taking Up Binge Drinking in College: The Influences of Person, Social Group, and Environment”, Volume 32, Journal of Adolescent Health.

⁹⁵World Health Organization WHO Expert Committee, (2007), *Problems Related to Alcohol Consumption* WHO Technical Report Series , p944

for spirits such as vodka and gin is calculated according to the percentage of alcohol per volume: \$10.00 per litre for liquors of an alcohol strength by volume of 30% or less; \$17.60 per litre for liquors of an alcohol strength by volume exceeding 30% but less than 57.12%; \$35.20 per litre for liquors of an alcohol strength by volume of 57.12% or higher.

In Australia, there has been significant debate about RTDs that contain energy drinks. The concern is that RTDs are marketed to young people. A study showed that a large proportion of adolescents in Australia felt that RTDs are packaged to appeal to them⁹⁶. Hence, an attempt to reduce consumption of RTDs in Australia was conducted in April 2008 by significantly increasing the excise tax on them (from approximately 40% - 70%).

Question 53: *Should the Excise Tax Rates 1984 be amended to raise the excise tax on cheap liquor such as the plastic bottles of cheap vodka sold in Samoa?*

Question 54: *Should this excise tax raise apply to RTDs in Samoa given its impact on young people?*

Minimum Price

Minimum pricing is another tool to reduce the consumption of cheap alcohol. It is a relatively simple mechanism that consists of setting a minimum price per unit of alcohol below which liquors cannot be sold. The benefit of minimum pricing is that it lifts the retail price of alcohol beverages. Hence, a minimum pricing system can be used to target those most harmful drinks that are sold very cheaply in retail shops.

The current alcohol legislation in Samoa does not consider the option to set a minimum price for liquors as a mechanism to prevent high levels of consumption of alcohol.

In Canada, a minimum pricing regime has been instituted across 10 provinces to reduce the consumption of alcohol and is commonly referred to as 'social reference pricing'. A recent study evaluating the increase in the minimum pricing in Canada from 2002 to 2009 has suggested that a 10% increase in the average minimum price for all alcoholic beverages was associated with a 32% reduction in alcohol attributed deaths and a 16% reduction in consumption compared to other beverages.⁹⁷

⁹⁶ J Copeland, P Gates, D Stevenson and P Dillon (2005) *Young People and Alcohol: Taste Perceptions, Attitudes and Experiences*, NDARC Technical Report No. 241, National Drug and Alcohol Research Centre, Sydney.

⁹⁷Tim Stockwell, M. Christopher Auld, Jinhui Zhao and Gina Martin, (2011), *Does minimum pricing reduce alcohol consumption? The experience of a Canadian province,* Society for the Study of Addiction.

Question 55: *Should the Liquor Act be amended to provide for minimum pricing option to reduce the consumption of cheap liquor in Samoa?*

Question 56: *What alcoholic liquor and beverages should be targeted for minimum pricing?*

7. Driving under alcohol influence

Driving under the influence of alcohol considerably increases the risk of being involved in fatal and injury crashes.

In Samoa, the alcohol limits for driving are provided for under the *Road Traffic Ordinance 1960*. A person commits an offence if he or she drives or attempts to drive a motor vehicle with a proportion of alcohol in the breath exceeding 40 micrograms of alcohol per 100 millilitres of breath; or a proportion of alcohol in the blood exceeding 80 milligrams of alcohol per 100 millilitres of blood. The penalty in case of exceeding these limits is a fine of up to \$500 or imprisonment for maximum 5 years⁹⁸.

According to the statistics provided by the Ministry of Police regarding the crimes committed in Samoa in 2012, there were 294 cases of driving under alcohol influence.

In New Zealand, the alcohol limits for driving are the same as in Samoa for adult drivers. However, for young drivers (under 20 years of age) in New Zealand, the limit is reduced to 15 micrograms of alcohol per 100 millilitres of breath and 30 milligrams of alcohol per 100 millilitres of blood.⁹⁹

In New South Wales (Australia), drivers who are required to drive passengers around (e.g. bus drivers), or drive vehicles that weigh significant amounts (e.g. trucks over 13.9 tonnes) or carry dangerous goods must have less than 20 micrograms of alcohol in 210 litres of breath or 100 millilitres of blood.¹⁰⁰

Experience in other jurisdictions has demonstrated benefits in terms of reduction of vehicle crashes with blood alcohol limits of 50 milligrams or lower. For example, in Australia the number of fatal and non-fatal crashes decreased in Queensland (by 18%) and New South Wales (by 8%) following a reduction of the limit of alcohol in the blood from 80 milligrams to 50 milligrams.¹⁰¹

A study conducted in United Kingdom shows that drivers with a blood alcohol content between 20 and 50 milligrams have at least a three times greater risk of dying in a vehicle

⁹⁸ *Road Traffic Ordinance 1960*, s 40, (Samoa).

⁹⁹ *Land Transport Act 1989*, s 57 (New Zealand).

¹⁰⁰ *Road Transport Act 2013*, ss 107 and 108, (New South Wales).

¹⁰¹ J Fell and R Voas, (2006), *"The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to 05 BAC"*, Volume 37, Journal of Safety Research.

crash than a driver who has 0 milligrams of alcohol in their blood; drivers with alcohol content between 50 and 80 milligrams of alcohol in their blood are six times more likely to die in a vehicle crash. The risk increases to 11 times for blood alcohol content between 80 and 100 milligrams.¹⁰² A study of 15 countries in Europe showed the adoption of a driving limit of a 0.05 ml blood alcohol concentration reduced alcohol-related driving death rates by 11.5% among young people aged 18–25. It also showed that fatalities among men of all ages were reduced by 5.7% (9.2% in urban areas).¹⁰³

In order to prevent driving accidents, several stakeholders agree on the need to increase random police blocks on the roads especially at the weekends and peak hours and not just during festive seasons when the public normally expect it.

Awareness programmes are also another tool to be considered, as suggested by the Land Transport Authority, “*although enforcement is a key to preventing driving accidents related to alcohol consumption, promotion and awareness is also a key to prevention*”. In that regard, the Attorney General’s Office “*recommends the increase in awareness programmes (such as advertisements on televisions) regarding the danger of drinking and driving and also public consultations/awareness of the laws that are in place and the penalties for the people that do not comply*”.

Question 57: *What practical measures in your opinion will address the problem of fatal crashes as a result of driving under the influence of alcohol in Samoa?*

Question 58: *Should Samoa differentiate alcohol limits for adult drivers and young drivers?*

Question 59: *What is your opinion in relation to the experience in Australia and the United Kingdom? Should Samoa lower the limit of alcohol in the blood in order to reduce the likelihood of fatal crashes?*

8. Responsibilities of Society and awareness programs

The *Liquor Act* does not specifically provide for responsibilities of society on issues regarding the consumption of alcohol. However, the *Sui-o-le-Nuu*’s responsibilities under the Internal Affairs Act 1995 of Samoa are to promote harmony within the village¹⁰⁴, and to ‘encourage the maintenance of law and order in his or her village’¹⁰⁵. An illustration of this responsibility is where the village representatives of Apia and Matautu had successfully responded to their villagers’ needs by petitioning for the relocation of night clubs situated within their villages, to other areas. However, where alcohol related cases emerge, the main

¹⁰² Amanda Killoran, Una Canning, Nick Doyle, Linda Sheppard, (2010) “*Review of effectiveness of laws limiting blood alcohol concentration levels to reduce alcohol-related road injuries and deaths*”, Centre for Public Health Excellence NICE.

¹⁰³ Daniel Albalade, (2006). “*Lowering blood alcohol content levels to save lives, the European experience*”, IREA Working Papers 200603, University of Barcelona, Research Institute of Applied Economics.

¹⁰⁴ *Internal Affairs Act 1995*, s.15 (1) (a) (Samoa).

¹⁰⁵ *Ibid* at n104, s.15 (1) (b).

role of the village representative has been to support village fines that are imposed upon offenders and to provide testimonials to court.¹⁰⁶

Under the *Village Fono Act Amendment Bill 2013*, there are a few proposed amendments to be made under section 5(2) to add on powers of the Village Fono relating to hygiene and economic development. Under this section the Village Fono has been given the power to “make rules for the maintenance of peace and harmony in the village”¹⁰⁷ and the power to make rules for improving the standard of living in the village”.¹⁰⁸ Should the Parliament of Samoa pass the proposed Bill, the Village *Fono* would be granted the power to make bylaws that would assist them to govern their village and uphold peace and harmony in their villages. These bylaws may include, at the Village *Fono’s* discretion, ways of addressing the problems associated with the consumption of alcohol.

Generally parents, churches, schools and village councils already play a role within the community and their families to address the alcohol issue. The recommendations made by several stakeholders during consultations highlight that parents should educate their children about the negative effects of alcohol, as well as setting curfews and necessary boundaries for their children, and to monitor the whereabouts of their children. Village councils should also set firm guidelines for youth through the *aumaga* or untitled men, to set codes related to alcohol consumption and to impose penalties for breach of those codes. Matai’s themselves must also be included in these guidelines. Church ministers and leaders should educate the church members about the negative effects of alcohol through existing church bodies such as choir, youth groups, Sunday school and women’s committee. Lastly, schools should be proactive in monitoring students’ attendance and raising awareness about the harm caused by alcohol.

Some Government Ministries have ongoing programs raising awareness around Samoa regarding the effects of alcohol with the aim of getting the community involved in addressing the alcohol problem. For instance, village fonos are working together with the Ministry of Police and Prison’s Neighbourhood Watch program. This program raises awareness of crime prevention strategies¹⁰⁹ and the cooperation of families to secure family peace and property from intruders.¹¹⁰

In 2011, the Ministry of Health conducted awareness programs in the tsunami affected villages to target the issue of alcohol consumption with the aim of reducing alcohol consumption and promote healthy living.¹¹¹ This program comes under the core functions of the Health Promotion and Prevention Division under the *Ministry of Health Act 2006*.¹¹²

¹⁰⁶ Stakeholder Commentaries to the Commission’s Survey.

¹⁰⁷ *Village Fono Act Amendment Bill 2013*, s.5 (2) (c) (Samoa).

¹⁰⁸ *Ibid* at n107, s.5 (2) (d).

¹⁰⁹ Ministry of Finance, (2012). *Strategy for the Development of Samoa*, Apia, Samoa.

¹¹⁰ Stakeholder Commentaries to the Commission’s Survey Questionnaire.

¹¹¹ Ministry of Health (Samoa), (2011), *Health Sector Wide Approach Program, Progress Bi-Annual Report 1*,

¹¹² *Ministry of Health Act*, 2006, Schedule 2(1.5) (Samoa).

This division deals with the awareness measures on the harm and effects of tobacco and alcohol and other drugs to a person's physical and mental and social abilities.¹¹³

In Australia, there are many interrelated preventative strategies that target either reducing alcohol consumption and/or increasing awareness of the effects that alcohol consumption has. These are mainly developed at the National and State level by not-for-profit groups (some supported by the Liquor Industry) and the appropriate government, but aim to work with the local community in implementing the strategies. Examples include a number of different programs under the Australian National Preventative Health Strategy: -

- a) National Drug Strategy including 'The Right Mix' (promoting responsible alcohol consumption as part of a healthy life through 'recognising the risks; acting to help yourself and others reduce drinking; and maintaining a healthy lifestyle'),
- b) The Resilience Education and Drug Information initiative that aims to provide information and education to school communities on the harms that drugs (including alcohol) can cause; and
- c) The National Binge Drinking Strategy that makes grants available for local communities to implement initiatives to reduce binge drinking.¹¹⁴

One such program funded through the National Binge Drinking Strategy is the 'Eyes Wide Clarence Valley' program aimed at 12-18 year olds in the local area which aims to provide positive recreational activities that youth can be involved in (e.g. free pool entry and free art workshops), and which include information about binge drinking and alcohol consumption.¹¹⁵

Question 60: *What roles should the village fono, churches, schools and families play in addressing the alcohol problem in Samoa?*

Question 61: *Are these awareness programs effective? Should Ministries do more?*

Question 62: *Following the example of Australia, should Samoa consider awareness programs aimed at young people, noting resource and cost implications?*

¹¹³ Ministry of Health, *Health and Education Promotion Section*, (2010-2013)
www.health.gov.ws/AboutUs/Divisions/HPPSD/HealthEducationandPromotionSection/tabid/5400/language/en-US/Default.aspx (Accessed on: 10th July 2013)

¹¹⁴ Australian Government, *Drug and Alcohol Use*
australia.gov.au/topics/health-and-safety/drug-and-alcohol-use > (Accessed on: 10th July 2013)

¹¹⁵ Clarence Valley City Council, *Eyes Wide Clarence Valley* (2012)
clarence.nsw.gov.au/cp_themes/metro/page.asp?p=DOC-IKB-32-25-87 > (Accessed on: 10th July 2013)