



# SAMOA LABOUR MIGRATION POLICY

## CONSULTATION ON POLICY PROPOSALS



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## EXECUTIVE SUMMARY

Samoa has long been a highly migratory population. International migration of workers from and to Samoa contributes significantly to Samoa's economy and Samoa is significantly reliant on remittances with the majority of households receiving remittances from abroad. Samoa has a young population profile and faces high unemployment. In an increasingly global market for jobs, labour migration features high on policy agendas of countries, regions and global organisations throughout the world. However, labour migration gives rise to a complex set of economic, social and cultural choices and consequences for Samoa's communities and industries and for migrant workers and their families. The movement of Samoan nationals abroad and the immigration of foreign workers impacts on Samoa's economy and socio-cultural context and poses questions about the role of Government and others.

The Government recognizes the reality and opportunity presented by increasingly global markets for labour and is developing labour migration policy to ensure that labour migration is managed in the best interests of Samoa's people and economy. The purpose of this paper is to outline key issues, establish objectives and guiding principles, and seek the views of Samoa's people on proposals for how labour migration issues and objectives should be addressed.

The proposed labour migration policy is designed along four policy platforms:

1. Governance inclusive or
2. Promotion
3. Protection
4. Development.

Policy issues and proposals within the Governance platform address the policy framework including purpose, objectives, scope/coverage, decision making structures and institutional arrangements.

The promotion platform addresses roles and responsibilities for developing new markets and for improving job opportunities in existing foreign markets.

Protection focusses on how to protect workers in Samoa and abroad and proposes key functions and initiatives for addressing worker welfare and protection along with roles and responsibilities of actors for delivering those.

The Development platform examines how best to maximize benefits of foreign employment for workers, their families and Samoa's economy.

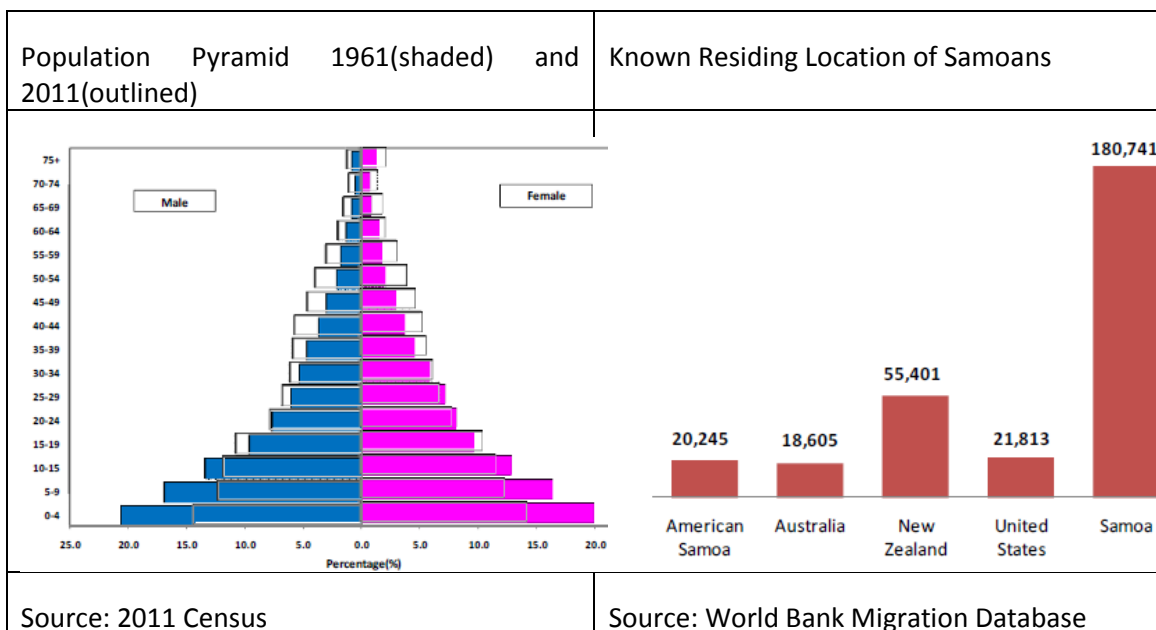
## OVERVIEW

### INTRODUCTION

1. International labour Migration (both immigration and emigration) makes an increasingly significant contribution to the development of Samoa's economy. Samoan nationals particularly those with skills, have for many years migrated globally to work and live abroad, while also allowing the entry of foreign nationals to Samoa where necessary skills and talents cannot be found from within the domestic labour market.
2. In an increasingly global market for jobs, labour migration features high on policy agendas of countries, regions and global organisations throughout the world. The Government recognizes the reality and opportunity presented by increasingly global markets for labour and has advanced Samoa's interests through signing bilateral agreements with Australia (Seasonal Worker Program) and New Zealand (Recognised Seasonal Employment) and pursuing alongside Pacific country neighbours, enhanced labour market access through PACER PLUS, PICTA and agreements with labour markets further abroad such as the EU.
3. Labour migration gives rise to a complex set of economic, social and cultural choices and consequences for Samoa's communities and sectors and for migrant workers and their families. The movement of Samoan nationals abroad and the immigration of foreign workers impacts on Samoa's economy and poses questions about the role of Government and others in: promoting opportunities for the employment of nationals abroad and for attracting skills needed by Samoa's industries; ensuring the successful integration of foreign workers to Samoa and Samoan migrant workers abroad; harmonization and recognition of qualifications of Samoan migrant workers in countries where employment opportunities are available; supporting workers to enhance the benefits from labour migration through e.g. skills development/transfer; incentivizing savings and remittances and protecting the welfare of foreign workers and their families to name a few.
4. Government is developing a policy on labour migration to ensure that it is managed in the best interests of Samoa's people and economy. The purpose of this paper is to outline key issues and seek your views on proposals for how these should be addressed.

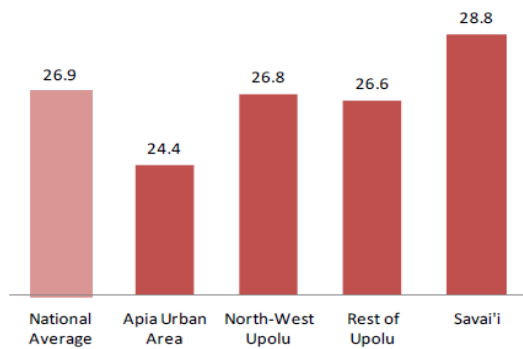
### BACKGROUND

5. Samoa has a migratory and young population and a long tradition of emigration; in fact, some estimates suggest that there are more Samoans residing abroad than in Samoa itself. Samoans living overseas maintain very strong ties with their families, villages and churches, even among second-generation migrants. According to the 2011 Census, of the Samoans still residing in country, it is estimated that the median age was 20.7, with around 38 percent of the population aged 14 and below. The age dependency ratio for Samoa was estimated at 76 percent, the highest among Pacific countries.



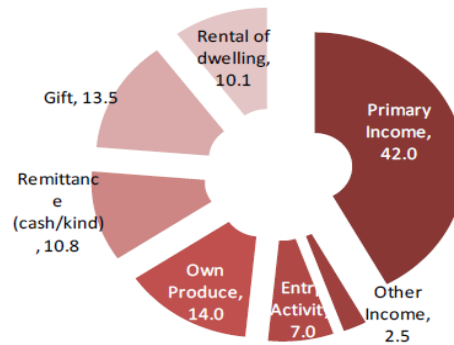
6. **Samoa faces high levels of unemployment, particularly in the unskilled sector.** While no reliable data exist on labour supply or unemployment, partial indicators suggest that there is high and rising unemployment compounded by large numbers of school leavers per annum with only a fraction of these being absorbed into paid employment. Furthermore, a high proportion of school leavers are unqualified or unskilled. Latest available data indicate that enrollment rate for tertiary education was only 7 percent, compared to secondary enrollment rate of 76 percent.
  
7. **Poverty remains a concern in the Samoan context, but can be partially mitigated by remittance inflows.** According to the 2008 Household Income and Expenditure Survey (HIES), it is estimated that 26.9% of the Samoan population was living below the basic needs poverty line (BNPL), from an estimated 22.9% in 2002. The rise in poverty was partly explained by global food and fuel crisis as well as the increased prominence of the cash economy. The HIES identified issues including poverty of opportunity - especially cash earning opportunities, as well as strain placed on households from financing needs for community events. Microeconomic analysis indicates that labour migration and remittances can affect receiving households through a number of different channels. Household-level evidence from countries where detailed surveys are available suggests that remittances often help households provide schooling for their children. Those studies tend to find that remittances also help finance agricultural investments, self-employment activities, and real-estate purchases. World Bank studies have also found a significant link between remittances and poverty reduction.

% Samoan population living below BNPL



Source: 2008 HIES

Samoa, sources of income, 2008

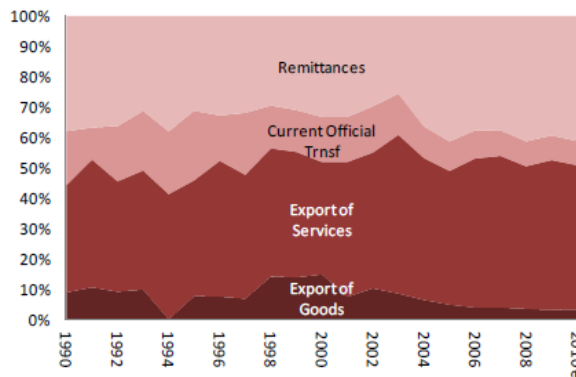


Source: 2008 HIES

## MACROECONOMIC CONTEXT

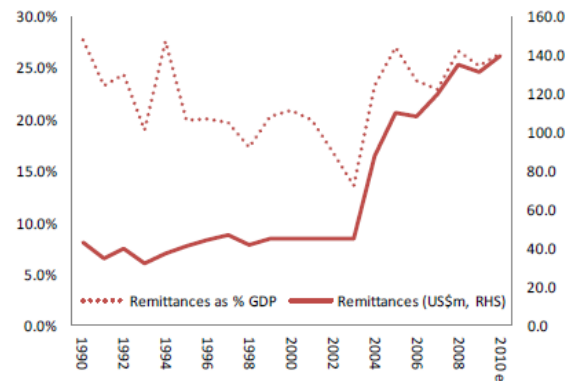
- Remittance plays an important role in the Samoan economy.** Remittances in the last two decades averaged 22 percent of GDP (vs. around 6 percent for LICs), which is among the highest ratios observed in the Pacific. According to the 2008 HIES, 10.8 percent of household weekly income are from remittances received (cash/in kind).

Key current account financing items



Source: World Bank Analysis, IMF

Samoa, remittances, and as percent of GDP



Source: World Bank Remittance Database, IMF

- Remittances are the main source of foreign exchange to the Samoan economy and crucial to its external balance.** In addition to remittances, official transfers are also significant, and will remain an important source of balance of payments support over the medium term. Tourism earnings (embedded in export of services) also play an important role in the economy, and is likely to continue in the medium term. Exports of goods are small compared to the other components, and have been falling in the past decade. Thus, in the absence of remittances, Samoa's current account deficit may become unsustainable.

10. **Stability and counter-cyclical nature of remittances have also helped Samoa respond to exogenous shocks.** The strong attachment of overseas Samoans to their extended families and continuing flow of new migrants have ensured the reliability of remittances during past crises. In fact, remittances are more stable than exports of goods and services. The counter-cyclical nature of remittances was seen vis-a-vis the Global Financial Crisis (GFC), and the 2009 tsunami. During the GFC we saw a sustained nominal level of remittances – US\$135 million and US\$132 million in 2008 and 2009 respectively. Furthermore, post the 2009 tsunami, data suggest a spike in remittance levels both in nominal terms as well as in percent of GDP. The counter-cyclical nature of remittance flows is particularly helpful to Samoa given its vulnerability to large external shocks (including natural disasters).

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#### WIDER GOVERNMENT POLICY.

11. The Strategy for the Development of Samoa 2012 – 2016, has as its major theme “Boosting Productivity for Sustainable Development with a view to attaining the Government’s longer term goal of *“Improved Quality of Life for All”*. The strategy focuses on ongoing development of the following key sectors :
- Economic: with the focus on Macroeconomic stability; Agriculture; Tourism; and strengthening of the environment for Business Development
  - Social: Health; Education; Social Cohesion – community development and strengthened justice and law sector for a safe and stable Samoa
  - Infrastructure: Transport System; Water; Energy; Communications
  - Environment: Environment sustainability and Climate Change resiliency.
12. The policy objectives of government under its broad strategy is well documented, and over the years since the first such strategy was introduced in 1995, there has been much refinement to substance, process and methodology, allowing for sectoral focus with amplified outcomes and performance indicators that could be monitored to track progress and evaluation of the achievement or non-achievement of the outcomes under the strategies developed for each key sector. To this extent, the labour migration policy must contribute and be coherent with SDS key focus areas particularly for Macroeconomic stability and Social development in Education.
13. In the continuing negotiations for increased access to labour markets in New Zealand and Australia under PICTA, PACER PLUS and the EU countries, it is imperative that the government should anticipate likely changes from these negotiations either in the numbers of participants permissible under the current schemes for temporary employment, and/or increased sector participation beyond the current subsectors which are primarily horticulture and viticulture. In this regard, the LMP must anticipate the likely economic and social consequences from any such changes to the current status that are likely to have major impact on the labour pool of the country.



## RATIONALE FOR A LABOUR MIGRATION POLICY

14. The development of a LMP could be considered as being timely and appropriate for the following reasons:
- The adoption of a LMP commensurate with the implementation of the Samoa Development Strategy (SDS) 2012-2016. The LMP will need to be located within the context of the SDS which will provide the framework against which the LMP can be monitored in terms of its contribution to the economic, social and financial outcomes;
  - The international focus on LMP as an economic tool to help achieve sustainable growth and development through financial flows from remittances, especially in countries like Samoa that are not so richly endowed with natural resources;
  - Acquisition of new skills and knowledge for empowerment to aid the development of domestic sectors and overall governance;
  - More targeted skills development for employment opportunities including other markets and/or regions outside of the Pacific, especially with the implementation of the new labor market arrangements under the various agreements Samoa is or will be a party to;
  - The graduation of Samoa from its least developed country status makes it all the more critical that Samoa looks at targeting skills development under such a LMP if it is to be competitive in the global market for skills and labor;
  - The importance of balancing imperatives for addressing the needs of the domestic sector for skills so that there is neither brain drain or waste but gainful employment in both domestic and overseas labor markets for Samoan workers;
  - The imperative for government to review and establish the necessary institutional arrangements that will be required to support the movement of its people engaged under such LM arrangements, to secure their safety and welfare as a sending nation; but also as a receiving nation, protection of those migrant workers under bilateral, regional and international agreements.

## POLICY DEVELOPMENT PROCESS

15. The process for developing Samoa's LMP comprises three phases:
- a. **Scoping, Design and Establishment Phase** including:
    - Establishing governance arrangements for the policy development project
    - Process design
    - Identifying key issues and developing the consultation paper.
  - b. **Consultation Phase** including national and sector specific consultations on policy proposals.
  - c. **Policy Drafting Phase.**
16. Phase one has been completed. Oversight of the development of the LMP sits with an Interagency Steering Committee chaired by the CEO of the Ministry of the Prime Minister and Cabinet. In November 2012 the Government conducted multi stakeholder meetings to identify key issues and

potential solutions to these. The results from those meetings are captured in an Issues Paper and have been used to inform policy proposals in this consultation paper.

17. This consultation paper forms the basis of Phase Two (consultation phase). Submissions will inform advice and recommendations to Cabinet on Samoa's labour migration policy. There are a number of ways for making submissions including:
  - a. Online via the websites of the Ministry of Prime Minister and Cabinet [www.mpmc.gov.ws](http://www.mpmc.gov.ws) and the Ministry of Commerce Labour and Industries [www.mcil.gov.ws](http://www.mcil.gov.ws). Hard copies can be requested from the Ministry of Prime Minister and Cabinet. Contact details are set out below.
  - b. The LMP Steering Committee representatives will be holding public meetings with stakeholders who have a particular interest in labour migration to discuss this document and collect feedback. Details of those meetings will be publicly advertised.
  - c. You are invited to comment on this consultation paper or on any other issues relating to international labour migration. Where possible, comments should make specific reference to the relevant section in this document and to the key questions raised. Comments can be emailed or posted. Emailed comments should be addressed to [hinauri@samoa.ws](mailto:hinauri@samoa.ws) (staff consultant for the labour migration policy project) and copied to the CEO of the Ministry of Prime Minister and Cabinet at [vaosa.epa@mpmc.gov.ws](mailto:vaosa.epa@mpmc.gov.ws). If you would prefer to submit your submission in hard copy, these can be addressed to: Hinauri Petana c/- ADB/World Bank Liaison office, Level 6, Central Bank Building, Apia and marked Labour Migration Policy - submission in confidence. The deadline for comments or submissions is 12 December 2014.

## LABOUR MIGRATION POLICY PLATFORMS

18. The achievement of LMP objectives rely on issues and actions that are grouped around four platforms:
  - i. **Governance:** Concerned with effective rules, roles and responsibilities.
  - ii. **Promotion:** Developing new markets for temporary employment of Samoan nationals abroad and maximizing opportunities in existing markets and sectors (labour sending). Attracting skills and talents needed by key industries and organisations in Samoa (labour receiving).
  - iii. **Protection:** Concerned with worker welfare and protection; safeguarding the rights and welfare of workers and their families.
  - iv. **Development:** Maximising the impact of labour migration on Samoa's economic and social development.

## GOVERNANCE

19. Governance relates to establishment of rules, roles and responsibilities and ensuring effective institutions for the management and implementation of labour migration under this policy.

## SCOPE

20. It is necessary to determine what the policy covers and who it applies to. Four key questions are pertinent to establishing the broad scope of what the LMP should cover:

(i) **Only existing schemes for NZ RSE and Australia's SWP** or inclusive of labour mobility agreements under MSG SMS, EU EPA and all other such schemes that may be entered into from time to time? Samoa Government plans to use and grow labour migration to benefit Samoa's economy and people so a narrow focus on existing opportunities on Australia and NZ farms would be too restrictive. The common factor across all schemes considered is that they are Government negotiated agreements with a labour migration component.

(ii) **Emigration only or including immigration of foreign workers?** A key challenge will be to understand the type of institutions and policies needed to guide sensible immigrant admissions policy in Samoa, and that these respond to current and shifting economic needs. In this regard, there is a need to better understand how immigration contributes to the nation's economic competitiveness and how potential negative impacts on society's vulnerable groups can be addressed.

Immigration is an important issue because Samoa cannot produce all the skills it needs and more integrated regional approaches will in the longer run, be more cost effective than trying to build country capacity on an endless number of levels. Furthermore, labour market economics dictates that certain skills are harder to retain and/or produce (such as pathologists, dentists, high-level technicians, etc.).

Outside of Governments mainstream immigration policies, the institutional arrangements to support best practice in support of the agreements Samoa signs up to are unclear. As a destination country for labour migrants, considerations for Samoa government include the need to ensure: well informed decisions for opening Samoa's labour market (or specific sectors/occupations) to foreign workers, non-displacement of Samoan nationals, safeguarding established quality and safety standards for the delivery of key services, guarding against the erosion of domestic employment conditions and ensuring foreign workers integrate well and depart at the end of their contracts.

If there is a downside to including labour receiving (immigration) in the LMP, it would be the potential to make the LMP more complex than if it dealt exclusively with labour sending. This would need to be monitored.

(iii) **Temporary labour migration only or temporary and permanent labour migration?** Samoans can (and do) already migrate and work permanently<sup>1</sup> or temporarily abroad utilising unilateral immigration policies of foreign countries. The movement of private individuals via unilateral immigration policies of foreign countries does not require any

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<sup>1</sup> In particular under Samoa Quota residence policy with New Zealand (1100 permanent residence places per annum) and other avenues including family reunification.

more or different interventions than existing policy prescriptions provide and should therefore fall outside the scope of the LMP.

- (iv) **Unskilled and semi-skilled only, or also skilled?** LMP should be concerned with enhancing employment opportunities abroad for nationals and improving access of Samoa's industries to skills and qualifications not able to be sourced domestically. On this basis there appear to be no good reasons for discriminating on the basis of skill levels.

21. The practical requirements for facilitating the movement of workers will vary according to destination/source country, industry/sector and targeted skill levels. For example, skilled people are generally better able to access information, are less vulnerable to exploitation, and more capable of expediting requirements for their employment abroad (or in Samoa in the case of the entry of foreign workers to Samoa) including through the use of private agents. Government will therefore consider on a case by case basis the modalities necessary for the successful entry of workers to Samoa and of Samoan workers abroad.

22. **Government proposes** that the LMP should apply to:

- a. Government agreements for temporary labour migration, both emigration and immigration and including all skill levels.
- b. All those with a formally mandated function for labour migration must comply with the policy.

**Question:**

Do you agree with the scope of what the labour migration policy should cover?  
Do you agree with the description of those that must comply with the policy?

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**PURPOSE AND OBJECTIVES**

23. An overarching purpose for international labour migration is important for setting the direction and focus of contributory policies and strategies. This purpose statement must speak to the connection of labour migration with the SDS.

24. **Government proposes** that the purpose of the Labour Migration Policy should be:

*“To promote temporary labour migration in Samoa’s interests for sustainable economic growth and development.”*

25. **Government proposes** the objectives of the Labour Migration Policy should be to:

- i. Locate labour migration in the context of Samoa’s Development Plan Priorities
- ii. Ensure good governance and coordination of labour migration through effective regulations and institutions

- iii. Promote opportunities for safe and productive employment abroad
- iv. Align Samoa's education and training capacity and infrastructure with domestic and foreign employment opportunities for Samoans
- v. Ensure Samoa is competitive in the global market for skills and labour
- vi. Safeguard worker's rights and protect workers from exploitation
- vii. Maximize development outcomes from labour migration.
- viii. Safeguard the 'Samoans first' preference in relation to employment opportunities in the domestic labour market.
- ix. Ensure Samoa's industries have access to essential skills and labour.

**Questions:**

Do you agree with the purpose statement for the labour migration policy?

Do you agree with the objectives for the policy?

Is there anything missing or should the LMP have a different statement of purpose and objectives?

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**PRINCIPLES**

- 26. Labour migration gives rise to a complex range of sometimes competing issues and it will be necessary to have a clear set of principles to guide LMP decisions and implementation.
- 27. **Government proposes** the following principles for the LMP. Deviations from established principles would need to be justified:
  - i. *Development focused:* the policy and its implementation should be focused on improving the lives of workers and their families and the broader Samoan economy.
  - ii. *Market responsive:* Government approaches for securing access to new markets and sectors for employment abroad shall be premised on market intelligence of demand in new markets/sectors *and* Samoa's capacity to meet that demand.
  - iii. *Practical:* The policy and its implementation should be strategic, future focused and implementable.
  - iv. *Facilitative:* The policy should be facilitative as opposed to restrictive of opportunities for Samoan nationals to work abroad.
  - v. *Freedom of choice:* The policy should safeguard the right of individuals to choose to take up employment abroad.

- vi. *Equality*: The dictates of demand driven labour migration mean that specific skills, abilities or attributes are sought over others. Implementation should ensure equality of access on the basis of the requirements demanded.
- vii. *Transparent*: The policies, processes and implementation of the LMP should be clear and accessible to all interested parties.
- viii. *Management of risk*: The risks to workers or domestic industries from entering into agreements with new markets and sectors shall be assessed and risk management principles integrated into all phases of program development and implementation.
- ix. *Accountable*: Capacity for monitoring and enforcement shall be an integral consideration of policies and program design and implementation.

#### Question

Do you agree with the principles outlined above or should there be different or additional principles?

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#### INSTITUTIONAL ARRANGEMENTS – LEADERSHIP

- 27. Labour migration is a dynamic space. Where the mandate and domain of organisations is unclear or where priorities are not established, leadership and coordination of LMP will be difficult to achieve particularly as key functions for the governance and implementation of labour mobility are many and varied and touch on the organizational mandates of multiple organisations. It will be important therefore to clearly locate leadership of LMP - ideally in one single organization.
- 28. Government intends to identify and appropriately mandate a lead organization for labour migration  
Options of organisations for leading policy and coordination of labour migration include:

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#### MINISTRY OF PRIME MINISTER AND CABINET

- 29. As already mentioned, the Seasonal Employment Unit responsible for managing Samoa's participation and the sending of workers to work on farms for NZ and Australia's temporary seasonal worker schemes, is located within the Ministry of the Prime Minister and Cabinet as is responsibility and mandate for Immigration. The SEU's focus has been on recruitment and pre departure briefings and recently with the appointment of a foreign liaison officer based in NZ, on worker welfare. MPMC therefore has the most substantive practical experience of government managed international and recruitment issues for managing the sending of workers to farms in New Zealand and to a much lesser extent, Australia.

30. Pros: Most significantly, MPMC leadership and coordination of labour migration means that the LMP will benefit from the influence and weight of authority brought to bear from MPMC as a central agency with direct access to Cabinet and more particularly, the Prime Minister. Secondly, it would provide continuity in relation to the delivery of recruitment related services for RSE and SWP and represent the least change where the interface with Australia and New Zealand Government and employers for RSE and SWP is concerned. Finally, Immigration is located within MPMC and therefore, greater ability to directly affect decisions to smooth bureaucratic processes to facilitate easier entry of essential skills and qualifications needed by Samoa's key industries.
31. Cons: MPMC does not have subject matter expertise on labour markets and employment or responsibilities and mandates in the areas of occupational health and safety, industry standards and other such core knowledge and capabilities that are essential for successfully achieving objectives of the LMP.

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#### MINISTRY OF COMMERCE INDUSTRIES AND LABOUR

32. MCIL's role to date in labour migration has focused on negotiations for the development of new markets working alongside MFAT. MCIL is also responsible for issuance of Work Permits to foreign workers coming into Samoa and has responsibility for domestic labour market analysis and concerns. MCIL is responsible for monitoring and enforcing employment standards, terms and conditions and recently passed legislation which amongst other things, addresses activities of private recruiting agents. MCIL is Samoa's focal point for the International Labour Organisation and has recently appointed a Trade Coordinator.
33. Pros: Subject matter expertise relevant to most functions detailed under the four pillars of Development, Promotion, Protection and Governance of labour migration sit within MCIL. MCIL has experience in working alongside the MFAT in developing access to new markets for labour migration and houses relatively greater expertise in labour market analysis; Administers legislation including Labour and Employment Act, Industrial Relations, Occupational Safety and Health Act 2002, and Work permits; Houses capability to administer, scrutinize and determine implications of regulatory provisions domestically and internationally on labour and employment including provisions for the protection of migrant workers, conversant with Samoa's obligations for ratified ILO conventions.
34. Cons: No previous practical experience in facilitating foreign recruitment.

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#### INSTITUTIONAL FRAMEWORK

35. A sound institutional framework will be necessary for ensuring the LMP objectives are achieved for Samoa. The component parts of the framework comprise policy and regulation (and where

necessary legislation), leadership and coordination structures and organisation's appropriately mandated, resourced and accountable for the delivery of key functions.

36. This LMP presents an opportunity to review the institutional framework for the effective governance of temporary labour migration in line with the proposed purpose and objectives of this policy.

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## COORDINATION AND DECISION MAKING STRUCTURES

37. Mechanisms will need to be established for coordination across Government and more broadly on policy and implementation matters for the achievement of LMP objectives. It will also be important to establish structures with the capacity to take quick and well informed decisions within the context of Government's LMP framework.
38. For good governance and coordination purposes, **Government proposes** the establishment of a lean senior officials Labour Migration Steering Committee (LMSC). The purpose of the Senior Officials Steering Committee will be to coordinate and monitor progress against the achievement of LMP objectives, to support the lead organization for Labour Migration and ensure coherence and efficient coordination and consultation on policy and implementation issues. All policy and new initiative proposals and advice to Government will be transmitted via the Labour Migration Senior Officials Committee.
39. Government considers that based on existing organizational mandates and responsibilities, the LMSC should comprise:
  - i. MPMC:
    - a. *Immigration*: in-bound visa processing and decisions including employer compliance with requirements for recruiting foreign nationals, protect integrity of the border, enforce breaches of visa conditions.
    - b. *Seasonal Employment Unit*: Assembles a work ready pool; selects workers for RSE and SWP; attends to administrative requirements for worker visa applications; delivers pre departure briefings and recently installed an overseas labour attaché/liaison officer in NZ for RSE. MPMC also has the role of all-of-government *policy leadership*.
  - ii. Ministry of Commerce Industries and Labour: labour and employment laws, labor and skills shortages; job seekers register; labour market information systems; overseas labour market intelligence; labour and employment laws and standards; focal point for ILO; labour inspectorate monitors compliance and enforcement.
  - iii. Ministry of Foreign Affairs and Trade: Diplomacy, trade negotiations including labour migration agreements, foreign embassies and Trade consuls.
  - iv. MESC: Determines opportunities and implications for aligning domestic qualifications and skills training to meet demand from domestic and foreign markets and sectors.
  - v. MWCD: Social and community impacts of labour migration; issues for women and youth.



40. The Ministry of Finance (Fiscal implications and impacts) and Office of the Attorney General (Legislative implications and legal representation for workers abroad) may participate as ex officio members as deemed necessary. The Steering Committee should also be able to establish standing or ad-hoc reference or working groups as required and to engage experts for specific issues as need arises. The final composition of the LMSC should reflect any changes in organizational mandates for labour migration arising from Cabinet decisions on the LMP framework.
41. Government will need to make ongoing decisions to progress LMP objectives and some such decisions may need to be taken quickly. The timing and pressures on Cabinet meetings and agenda may not be conducive to quick decision making and therefore there may need to be alternative but transparent and accountable decision making structure established to achieve such decisions. Examples of ongoing decisions include:
  - a. Approval for strategies etc. that Government proposes to develop within the four pillars of this LMP as outlined in the body of this consultation document
  - b. Decisions to pursue access to new markets for labour
  - c. Need for the installation of liaison officers/labour attachés in foreign jurisdictions
  - d. Decisions on ad-hoc issues arising from foreign workers abroad e.g. support of workers who run afoul of the law in foreign jurisdictions or who require support for claims against employers for issues such as non-payment of wages, breaches of employment conditions or harassment, the need for emergency repatriation of an individual or a group of workers where insurance cover is not provided.
42. Government wishes to examine the following options for ongoing decision making in the context of the LMP framework:
  - a. Option 1: Status quo. Cabinet decides based on advice from the LMSC.
  - b. Option 2: Decisions by a Ministerial sub group comprising Ministers of those organisations represented on the LMSC and with recourse to Cabinet for decisions not covered or mandated by the LMP framework or as deemed necessary by the Ministerial Sub Group.

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## POLICY ADVICE TO GOVERNMENT

43. Well governed labour migration requires clear enforceable policy rules that all must adhere to. Where necessary, policies will be supported by legislation and be assured the financial and technical means for implementation and effective and efficient administration, monitoring and enforcement. Beyond the establishment of the LMP framework, Government will require ongoing, sound policy advice on issues relating to the four platforms of the framework. Leadership and coordination of policy advice will be the responsibility of the lead organization for labour migration.
44. Policy settings for LMP give rise to some fundamental public policy questions e.g. Should government intervene in the decisions of individuals to enter into employment contracts abroad more than it does with employment domestically; when (if ever) would the Government intervene to prevent nationals from accepting overseas employment? Should Government set minimum

standards of employment under Government MOU for labour migration and if so, what should those minimum standards be? How should recruitment be conducted e.g. exclusively through government (as in Jamaica); through regulated private recruitment agencies (as in Sri Lanka), or some combination of the two? Should government be responsible for the welfare of Samoan migrant workers abroad and if so, how would workers be protected and supported? Should government also have concern for families of workers left behind? Many of these issues are addressed in this LMP consultation paper.

45. Policies of labour sending countries in other parts of the world typically establish roles and responsibilities of various bodies and include:
- Establishing minimum standards for employment contracts for migrant workers (so that Government stipulates the minimum terms and conditions necessary before it will entertain sending workers abroad) and requiring that migrant workers have their contracts approved by a designated government authority before departure.
  - Licensing and regulation of private recruitment agents, including maximum fees that can be charged to workers; and
  - Restrictions on direct recruitment by foreign employers or their agents.

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## KEY FUNCTIONS

46. It is necessary to clarify key functions for the delivery of LMP objectives along with bodies with responsibility for delivering such functions. Form follows function and decisions on key roles and responsibilities will be informed by the institutional arrangements for the performance of functions within the key labour migration policy platforms.

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## CURRENT ARRANGEMENTS FOR THE DELIVERY OF KEY FUNCTIONS

47. To date, temporary employment abroad has focused on work on farms in Australia's SWP and New Zealand's RSE and managed by the Ministry of Prime Minister and Cabinet through the Seasonal Employment Unit (SEU). The location of responsibility in MPMC is consistent with Government's practice of incubating new initiatives within the MPMC with a view to later transitioning responsibility for such initiatives to an appropriate line Ministry.
48. The functions of the SEU are narrow in scope and include recruiting workers in response to requests from overseas employers using a pool of candidates that have previously registered an interest in work abroad, delivering pre-departure briefings for recruits and attending to the paper work associated with visa applications. Seventy percent of recruitment for RSE and SWP occurs via the SEU and thirty percent via unregulated activities of informal agents e.g. church or village leaders.
49. The SEU operates in relative isolation from other Government Ministries with the exception of recent engagement with Ministry of Health for delivery of health information and education during pre-departure briefings. The MOU for SWP and RSE is negotiated and signed off by the CEO of the Ministry for the Prime Minister and Cabinet.

50. Meanwhile, negotiating access to/for new markets and sectors via trade related agreements occurs via the Ministry of Foreign Affairs and Trade (MFAT) liaising with the Ministry of Commerce Industries and Labour (MCIIL). Negotiations occur in a disconnected fashion with the MPMC and without coherent consideration of the practical requirements for making temporary labour migration schemes work effectively, the effective management of risks and how market access opportunities gained could best be managed in order to maximize employment opportunities for Samoan nationals.
51. Government considers that core functions that will continue to be required for the management of labour migration from Samoa shall include:
- Delivery of government managed recruitment services including selection, documentation (visa, passports, medical and police checks etc), employment contract review and signing, coordination with employers on flights.
  - Preparation of workers prior to departure including pre departure briefings
  - Negotiation of MoU's and other such bilateral labour agreements
  - Negotiating access to new markets and/or sectors via trade related agreements

## PROMOTION

52. LMP objective: "The promotion of safe and productive employment opportunities abroad for Samoan nationals." Government has also proposed LMP principles that are relevant to this promotion objective including (i) market responsiveness, (ii) practical (iii) facilitative, and (iv) management of risk.
53. Promotion related functions relevant for achieving LMP purpose and objectives fall into two broad areas:
- Developing new markets for labour migration
  - Promotion in existing markets to maximize opportunities for Samoan nationals

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## DEVELOPING NEW MARKETS FOR LABOUR MIGRATION

54. Samoa has a natural competitive advantage in the Anglo-speaking market. Asia is very competitive while EU is some distance away. The United States could be a potential market and opportunities in Guam sparked some interest early last year but no progress was made towards this. The Middle East is a risky destination with some alluding to the "horror stories" in the Gulf and protection is an important consideration. While Australia and New Zealand are naturally important destination markets for Samoa, confining Samoa's labour migration focus on Australia and New Zealand constrains the potential contribution of labour migration to Samoa's economy. Continuing negotiations for new access arrangements e.g. under PACER PLUS, WTO, PICTA and EU EPA should therefore be a priority.
55. To develop new markets for labour, Government requires:

- intelligence on foreign market opportunities
  - good data on what Samoa has to offer by way of labour and skills
  - the capacity to bridge the gap between labour and skills demanded by foreign markets and existing capacity to supply.
56. There is a need for capacity to evaluate foreign market opportunities, size up potential benefits, determine the degree to which Samoa is positioned to meet demand in foreign markets (availability of labour, qualifications or skills that are recognized in foreign markets), identify risks and risk treatments, identify implications for domestic industries and sectors, conduct trade diplomacy, successfully negotiate access agreements and establish effective machinery for connecting Samoan migrant workers with foreign employers.
57. Existing Government agreements for labour mobility include only RSE and SWP with NZ and Australia respectively and are bilateral non-binding agreements that sit outside the Trade framework. Outside of these, future developments in labour migration are being pursued in Trade related negotiations led by the Ministry of Foreign Affairs and Trade. Presently too, negotiations for access to employment abroad are not routinely informed by sound market intelligence of demand and regulatory settings in foreign markets (including foreign labour and employment laws and policies for protecting Samoan migrant workers), analysis of the impacts and implications (including risks) for Samoa's domestic industries and communities, or an assessment of Samoa's capacity to deliver the labour and skills demanded much less the modalities for managing and facilitating access to new markets once secured.
58. Once Government has identified viable foreign markets, the strategy for commencing and successfully concluding negotiations involves **diplomacy** as much as it does technical savvy. Some labour sending countries elsewhere in the world task their foreign embassies with identifying opportunities for access and also with finding new employers once access is gained. Trade diplomacy and leadership of marketing missions may be an appropriate role for Samoa's foreign embassies via The Ministry of Foreign Affairs and Trade. Government considers that Samoa's diplomatic representatives and staff in foreign embassies will need to be engaged in the strategy for access to foreign markets for employment and should be supported with information and advice to effectively perform diplomacy for this role.
59. There is little point in securing access without ensuring the means to then translate access into market entry. It will be important too to determine Samoa's supply side readiness/capacity and this will ultimately require an effective labour market information system (MCIL). It will also be important to assess requirements and implications for achieving relevant qualifications and skills (MESC/SQA) to meet those demanded by foreign markets, establish a work ready pool register of skills available for employment abroad;(MPMC-SEU/MCIL), arrange public employment services and/or confirm private recruiting agent services (MPMC-SEU/MCIL) and determine the need for restrictions or policies to address the problem of "brain drain" (for the protection of labour and skill needs of domestic industries) and/or in Samoa's case "brain waste" (MPMC-SEU/MCIL).

60. **Government proposes** that the initiation of work to develop or pursue a new market or sector for labour migration will require Government approval of a *Foreign Market Evaluation Study*. Such studies must include:
- Analysis of supply side readiness – What type of labour, qualifications or skills are demanded in and the degree to which these are available and/or able to be produced by Samoa (MCIL with SQA)
  - Assessment of impacts, implications or risks for Samoa’s domestic industries (MCIL)
  - Worker’s rights and protection – Are adequate labour market policies and regulations available to protect worker’s rights and will workers be afforded appropriate minimum standards and conditions of employment (MCIL)
  - Will workers (and their families) benefit (financially and/or through skill acquisition) or will the cost outweigh any benefits (MCIL with Ministry of Women)
  - Will workers be safe from harm and to what extent can their safety be assured? (MFAT and AG/TCU).
61. Should the Foreign Market Evaluation Study be approved, **Government proposes** typical functions for developing new markets shall include:
- Undertaking promotions and marketing missions (MFAT with MCIL);
  - Trade diplomacy and broad diplomatic relations (MFAT);
  - Design of arrangements for connecting Samoa’s workers with opportunities in the new market (MPMC with MCIL);
  - Negotiating labour migration agreements (whether bilateral or multilateral) (MFAT with MCIL).
62. **Government proposes** that work to develop new markets for labour migration be initiated by Cabinet approval based on submission via the LMSC of a Foreign Market Evaluation Study.
63. **Government further proposes** that the role of developing new markets for the safe and productive employment of Samoan nationals abroad be led by the Ministry of Commerce Industries and Labour in conjunction with the Ministry of Foreign Affairs and Trade. MCIL will be responsible for leading and consulting as appropriate on the development of Foreign Market Evaluation Studies and submitting these through the LMSC to Cabinet. MCIL will also be responsible for leading alongside MFAT any ensuing negotiations for achieving access to foreign markets for employment.
64. The MCIL will be required to ensure its advice is informed by previous experience and effective modalities for implementing labour migration schemes. MCIL will also be required to engage the Ministry of Education, SQA, MCWD, MPMC and relevant private sector bodies for input on implications for domestic settings and capacity, and incorporate feedback from these organisations in Foreign Market Evaluation advice to Government.

## Questions

- Do you agree that Government should deliberately promote safe and productive employment abroad for Samoan nationals?
- Do you agree with the list of relevant considerations for Foreign Market evaluation studies and is anything missing in this advice to Government?
- Should there be additional or different considerations underpinning Government's decisions for developing access to new markets?

## PROMOTION IN EXISTING MARKETS

65. Once access to foreign markets is achieved, labour migration is typically a demand driven and competitive environment and Samoan workers will compete with others for employment opportunities in destination countries. It is often necessary therefore to establish measures for promoting Samoa's workforce in order to convince foreign employers to employ Samoan nationals. The role of promoting to maximize opportunities in existing markets can fall either to private recruiting agents (where private recruiting agents are used), or to Government or both.
66. Presently Samoa's lead implementing organization for labour migration is the Ministry of Prime Minister and Cabinet's (MPMC) Seasonal Employment Unit (SEU). Private recruiting agents have so far shown no interest in participating in recruitment for Australia's SWP or New Zealand's RSE and promotion (along with other recruitment related functions) is delivered in the main by Samoa Government and a small group of unregulated informal 'agents' comprising church leaders and village matai who actively prospect for employment opportunities in New Zealand. Little to no private or Government prospecting or promotion currently occurs in Australia.
67. The promotion of opportunities for Samoa's workforce in existing Australian and NZ seasonal schemes occurs mainly via visits by SEU. SEU visits are typically sponsored and orchestrated by Australia and NZ Governments and often timed to coincide with conferences or meetings associated with the respective temporary migration schemes. Recently however, the MPMC employed a NZ based liaison officer who is tasked with liaising with Samoan workers along with existing and potential employers. Samoa's trade consuls and embassies in Australia and New Zealand have limited and unspecified role in Samoa's labour migration efforts and no concerted MFAT resource is dedicated to the role of labour migration promotion in foreign markets.
68. The private recruiting sector in Samoa is undeveloped and there is a perception that recruiting for SWP and RSE is not commercially viable. It is therefore likely that Government may need to continue to play a substantial role in recruitment and promotion for the existing Australia and NZ seasonal schemes.
69. **Government proposes** that the role of promoting Samoa's workforce in markets with *existing* labour mobility agreements in order to maximize employment opportunities for Samoan nationals

should be performed by the Government organization leading implementation of labour migration agreements i.e. connecting workers with employment opportunities (MPMC/SEU with MFAT).

70. Government further considers that should regulated private sector recruiting agents be permitted to participate in specific markets or sectors in future, they too will be required to engage in promotion related activities.

#### Questions

- Do you agree that Government should have the role of promoting in existing markets to maximize employment opportunities for Samoan nationals?
- Do you agree that should regulated private recruiting agents be permitted to recruit for foreign markets, that they too should be required to promote in order to maximize employment opportunities for Samoan nationals?

#### PROTECTION

71. The protection and support of workers and their families is a primary concern of Government and it will be necessary to establish requirements for affording protection including in relation to recruitment and to set and enforce standards for the management of labour migration.

#### RECRUITMENT: WHO SHOULD BE ALLOWED TO RECRUIT?

72. Even if Government successfully negotiates access to foreign markets for employment, most Samoan nationals will lack the information, networks and skills to identify potential foreign employers and secure employment. Providing ways to facilitate recruitment and link employers with Samoan workers is therefore critical. Determining how recruitment should happen for specific markets is also important in order to protect workers and their families from exploitation and support their wellbeing. It is therefore important to be clear about who can recruit and send workers into specific foreign markets and the requirements associated with bodies delivering recruitment services.
73. Recruitment and the quality of its delivery is also crucial for the achievement of Samoa's labour migration policy objectives because Samoa's competitiveness on a global stage is affected by:
- Costs of recruitment from Samoa
  - Quality of workers selected
  - Efficiency and effectiveness of recruitment services
  - Confidence in Government machinery so that employers can be certain of an expected outcome.
74. Currently, private recruitment agents have not expressed an interest in engaging in recruitment for Australia's SWP or New Zealand's RSE. This may be due to a combination of factors key amongst

which is likely to be firstly, that the private recruiting agent market in Samoa is undeveloped, and secondly that policy settings of the SWP and RSE prohibit the charging of workers for recruitment related services and this serves to inhibit the commercial attractiveness of this activity for Samoa based private recruiting agents.

75. Recruitment for the NZ and Australia therefore presently occurs via either:
- Government managed recruitment (where employers rely exclusively on SEU to select workers) comprises 70% of total NZ RSE recruitment. Informal recruitment (i.e. unregulated) comprises 30% of total recruitment and occurs via:
  - Direct recruitment by Foreign Employers travelling to Samoa to recruit directly - usually via an intermediary e.g. a worker representative
  - Experienced Samoan workers who are wholly tasked by their overseas based foreign employers to select new or additional workers for an upcoming season
  - Church leaders and/or village matai who actively prospect employment opportunities abroad and select workers for those.
76. To the extent that risks can be managed, workers can be protected and LMP objectives successfully achieved, **Government proposes** to take decisions on recruitment modalities on the basis of each new market or sector operating from the premise that Government intervention for the management and delivery of recruitment services will only occur where the market fails to deliver required services.

#### Questions

- Do you agree that the LMP should be flexible so that in future decisions can be taken on the type of recruitment that best suits the circumstances in each market or sector?

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#### GOVERNMENT RECRUITMENT

77. Where justifiable circumstances exist for Government managed recruitment, high levels of transparency at policy and implementation levels will be necessary in order to manage risks and perception of corruption.
78. **Government proposes** that Government managed recruitment may be appropriate where:
- i. The market fails to deliver required services
  - ii. Workers are especially vulnerable to exploitation and abuse due to:
    - Low qualifications and skills
    - Age and inexperience
    - Risks emanating from circumstances of employment (e.g. young/women live-in caregivers in the homes of private citizens abroad).
  - iii. The foreign market or sector is new and unfamiliar and Government may wish to manage recruitment directly in order to work out how best to operate in the new market, with the



- option of transitioning responsibilities to private recruitment agents where suitable private recruitment capacity exists.
- iv. Recruitment is for a relatively discrete/small number of workers and/or for a specialized area of work and/or over a short space of time.
  - v. Specified as a requirement of negotiated labour migration agreements and as a condition of achieving access to specific labour markets or sectors within markets.
  - vi. There is inadequate private recruiting agent capacity or interest.

#### Question

- Do you agree to the circumstances under which Government managed recruitment may be justified?
- What other circumstances might require Government to directly manage recruitment?

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#### PRIVATE RECRUITING AGENTS

79. Government considers that where opportunities for professional private recruitment exists and there is adequate capacity in Samoa's private recruitment sector to effectively deliver recruitment in line with the achievement of the objectives of the LMP, then regulated private agent recruitment should be favourably considered.
80. Decisions about the participation of private recruiting agents in the placement of foreign workers abroad and in Samoa (in the case of foreign workers to Samoa) will be taken on a case by case basis in relation to the circumstances and requirements of specific foreign markets, sectors, schemes or labour migration agreements.
81. **Government proposes** to establish a regime for regulating private recruiting agents. Specific and tailored requirements may be established from time to time as necessary to respond to circumstances of specific markets/sectors or schemes. Minimum requirements for all Private recruitment agents engaged in the placement of foreign workers will include:
  - i. Must be a business that is formally registered in Samoa and wholly owned by a Samoan citizen
  - ii. Demonstrate good character and not formally convicted of an offence incurring a term of imprisonment greater than xxx years in the last 10 years
  - iii. Hold a valid registration or license to operate as a private recruiting agent for the placement of workers abroad
  - iv. Hold valid endorsement(s) to recruit for a specific market(s) (e.g. Australia SWP or New Zealand RSE), sector(s) for specific labour agreements.
  - v. Of sound financial standing and background and not having been adjudged bankrupt within the last 5 years
  - vi. Have appropriate knowledge and experience of employment law and contracts in Samoa and in at least one foreign market

- vii. Conduct a minimum level of foreign recruitment in overseas markets/sectors for which valid private recruiting agent endorsements are held in order to be eligible for subsequent renewal of license and/or endorsements.

#### Question

- Do you agree that the LMP should allow for and regulate the participation of private recruiting agents for foreign employment?
- Do you agree with the minimum requirements identified for all private recruiting agents regardless of which market or sector they are eligible to recruit for?
- Are there other or different minimum requirements that should be included?

#### Direct recruitment by foreign employers or foreign recruitment agents

82. Once agreements have been signed with foreign markets, foreign employers may from time to time look to enter Samoa's borders to recruit workers from amongst Samoan nationals. Such activity by foreign employers is on the one hand, beneficial as it requires no upfront investment from Samoa Government in order to connect Samoan nationals with jobs – as long as those jobs are in fact bona fide and this is where it becomes problematic. Unmonitored recruitment by foreign agents and employers exposes Samoan nationals to possible exploitation and abuse. Once foreign employers/recruiters depart Samoa they fall outside Samoa Government's jurisdiction and cannot be held accountable for exploitative practices or non-payment of wages. Samoan migrant workers who fall victim to exploitation by such employers could find themselves without support and a long way from home. It is for these types of reasons that some labour sending countries have prohibited foreign direct recruitment.
83. On the other hand, the risk of exploitation and abuse of Samoan nationals by foreign direct recruitment from NZ RSE employers and Australian approved employers is minimal. This is because employers that wish to recruit under both the NZ RSE and Australia SWP are pre-qualified by their respective Governments, details of eligible employers and recruiting agents are made available to Pacific governments and there is a high level of information sharing and communication between the government parties. While this affords a degree of confidence about the bona-fides of foreign direct employer recruitment, such activity is not visible and often foreign employers can enter Samoa's border, recruit workers and leave without once coming to the attention of the SEU currently responsible for overseeing implementation of the RSE and SWP for Samoa. Government therefore needs to establish means for improving the transparency of direct recruitment activity by foreign employers under RSE and SWP with the least possible compliance cost in order to monitor and be assured that migrant workers are not being exploited.

84. Government recognizes these risks and the imperative to protect Samoan nationals from exploitation by unethical foreign employers and recruiters and that this imperative has resulted in policies of labour sending countries in other parts of the world restricting direct recruitment by foreign employers. Equally, Government does not wish to over-regulate and create unnecessary disincentives to legitimate foreign employers looking to travel to Samoa to recruit.
85. **Government proposes** to allow regulated foreign direct recruitment by legitimate/verified foreign employers. Such employers must apply to Samoa government for a permit to recruit and comply with recruiting requirements for the submission of information related to the recruitment exercise - prior to departing from Samoa. Where insufficient Government to government verification of employer bona-fides exists, Samoa's foreign missions located in destination countries may be best placed to verify the legitimacy of foreign employers as part of the permit application process or via the services of and labour attaches where such are established in specific missions.

#### Question

- Do you agree that foreign employers/recruiters should be allowed to recruit directly from and in Samoa?
- Are there other risks from allowing foreign employers to recruit directly in Samoa?
- How else might Samoa Government ensure the bona-fides of foreign employers that wish to recruit directly from/in Samoa?

#### INFORMAL RECRUITMENT

86. Informal recruitment could be considered the most natural, long standing and cost effective form of recruitment. It is very common for people to secure jobs in foreign countries through their relatives, friends or personal networks. Even within Government managed schemes for RSE and SWP, informal recruitment plays a significant role for example return workers are sometimes tasked by their employers with finding new workers for the upcoming season. They naturally look to their family, village and social networks for new recruits. Similarly, it is not uncommon for individuals with networks and 'know-how' to perform the role of an employment broker on behalf of their village or church constituents. When all such activity takes place in a manner that is not exploitative and where employment experience and outcomes are positive or at the very least, unremarkable, then what good purpose could possibly be served by Government intervention?
87. Government is not averse to informal recruitment per-se however, informal recruitment in the context of Government negotiated labour migration agreements is typically unregulated and therefore lacks transparency and presents risks of exploitation and abuse which cannot be easily detected. **Government proposes** therefore to establish a regime for regulating all non-Government conducted recruitment and to thereby prohibit informal recruitment while instead seeking to formalise informal recruitment agents and to enable eligible agents to operate in a regulated

environment. The regime for formalizing currently informal recruitment agents will be designed and applied on a measured basis commencing with a simple requirement for registering agents under Labour law with the objective of allowing government to collect important information.

88. Decisions relating to the design and implementation of the regulatory regime for private recruiting agents will be taken by Government in the context of this labour migration policy. It will be important to examine the adequacy of and ensure coherence with existing regulations relevant to the objectives for regulating recruitment agents including those provided under the recently enacted Labour legislation.
89. For the purposes of the RSE and SWP scheme, Government considers that it may be sufficient to simply require existing informal agents with a track record of previous recruiting to register and provide relevant information on recruitment objectives, plans and outcomes.

**Questions:**

- Do you agree that informal recruitment (e.g. by church and village leaders/representatives) should be required to continue to operate and/or to operate in amore regulated and transparent manner.
- Do you agree that existing informal recruiters for NZ's RSE and SWP should be required to be registered and to share information with Government on their recruitment activities.

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## DISTRIBUTION OF OPPORTUNITIES

90. A range of views exist in Samoa about how opportunities for employment should be distributed. Much of this is based on past experience of distribution of opportunities for RSE and SWP and includes:
- equitable distribution of employment opportunities abroad should be a goal
  - selection and recruitment should not only meet employer goals but also meet Samoa community goals and therefore for example, workers who fail to contribute back to their communities should not be permitted to return for a further period of employment
  - foreign employers dictate who they want and thereby override Samoa and village authorities. "Why are we not taking a stronger stance on who to send across and some aspects of employment contracts?"
  - employer demand and worker productivity should dictate who gets to work abroad and that doing otherwise may mean that employers will seek to have their labour needs met from another country
  - workers selected through processes focusing on the individual are not accountable to families and communities. And conversely,

- church and village groups are unfairly dominating recruitment and individuals should have equal access to employment opportunities abroad and that churches are using the schemes to fund their projects.
- church groups play an important role and church group selected workers, like everyone else, should be allowed to spend their money as they wish without Government intervention
- oversupply of workers allows employers to dictate their terms and that Samoa needs to work with other countries to ensure the best terms for all workers

#### Question

Do you believe that equity, community contribution and social factors should be factors in determining an individual's eligibility for foreign employment?

Do you agree that village and/or church based recruitment should be allowed?

Do you believe that Government should be cooperating with other Governments to achieve better terms and conditions for Samoan workers?

#### MINIMUM STANDARDS EMPLOYMENT TERMS AND CONDITIONS

91. Assessments of contracts and whether they meet international standards are important. Chiefs/leaders highlight that employment contracts and understanding employment contracts is problematic. MCIL staff could assist in this regard. Samoan nationals can be at a disadvantage when negotiating employment contracts with foreign employers due to incomplete information or intelligence on foreign labour market pay rates and conditions. The purpose and objectives of the LMP policy would not be served if migrant workers endured lesser employment conditions than that enjoyed by workers doing a similar job and of a similar employment status at home, or compared to the market rate for such jobs in the destination country. Allowing Samoan migrant workers to accept lesser employment standards and conditions in foreign markets may risk driving down employment standards for Samoans domestically when foreign workers compete for the same jobs on their return home and put workers at risk of not achieving adequate income to sustain themselves abroad or provide for their return home at the end of their contract.
92. **Government proposes** that agreements for labour migration must establish for Samoan migrant workers, minimum employment standards no less than that afforded to workers within Samoa, and no less than the market rate received by workers in destination countries. Such minimum standards will be set, gazette and/or publicized by the MCIL, and all employment contracts for Samoan migrant workers must be vetted and approved by the MCIL for compliance with such minimum standards.

### Questions

Do you agree that Samoa Government must establish and ensure minimum employment terms and conditions for migrant workers?

Do you agree that MCIL should have the role of vetting employment contracts for all migrant workers for compliance with minimum standards?

Do you believe Samoan Government and/or private recruitment agencies should be required to negotiate the most favourable terms and conditions for foreign workers?

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### INFORMATION FOR WORKERS AND THEIR FAMILIES

93. Information and accessibility of information about foreign employment opportunities, the process and steps for accessing these, the environment and relevant factors about destination countries including the rights and obligations of migrant workers, the types of work available and relevant information about the performance of such work and associated remuneration and entitlements, are all information that will support Samoan nationals and their families to make informed decisions regarding accessing opportunities for employment abroad and help to guard against exploitation.
94. **Government proposes** that the lead Government Implementing organization (SEU) be responsible for ensuring Samoa public and other interested parties have access to good information about employment abroad under specific labour migration agreements.

### Question

Do you agree that Government via SEU should have the role of ensuring good information is accessible to the public about employment abroad and how to access opportunities?

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### PRE DEPARTURE BRIEFINGS

95. Having made the decision to access foreign employment, workers must be conversant with important information pertaining to their destination country, specific information about the place where they will be located and the specific job that they will be performing, and more detailed information about their rights, entitlements and obligations. Such information supports workers to integrate quickly and easily upon arrival in destination countries and imparts essential skills and knowledge that can safeguard them.

96. Specific requirements for pre departure information and training may be required from time to time and mandatory for specific markets, for example language training.
97. **Government proposes** that it will be mandatory for all migrant workers to attend briefings and/or training delivered by SEU connected with their employment abroad prior to departing for their destination country.

#### Question

Do you agree that pre departure briefings should be mandatory for all foreign workers prior to departing Samoa?

#### SUPPORTING WORKER WELFARE

98. Government considers that where possible, favourable arrangements for social security (e.g. tax treatment, health and income insurance etc.) should be pursued in the context of negotiated labour migration agreements or employment contracts.
99. Government considers it important to establish appropriate supports for Samoa's foreign workers during their employment abroad. Samoan migrant workers abroad often have the need for support for a variety of issues ranging from dealing with problems/complaints about employers, wages and conditions, understanding their rights and entitlements as temporary workers in a foreign country, problems with accommodation, support for budgeting or to deal with problem worker behaviour etc. Inability to access support can result in adverse outcomes for workers and for Samoa's reputation as a labour sending country and missed opportunities to maximize benefits from employment.
100. **Government proposes** to establish arrangements for the support of foreign workers abroad including where practicable, through the appointment of overseas liaison officers or labour attaches. Decisions on such arrangements will be taken on a case by case basis for each market/sector.

#### Question

Do you agree that Government should play a key role in supporting foreign workers abroad?

#### COMPLAINTS INVESTIGATION AND RESOLUTION

101. Government is concerned to ensure its nationals are supported and protected. Workers must have an avenue for lodging complaints with regard to any aspect of their recruitment and may not have the wherewithal to have their complaints addressed while abroad, particularly complaints directed

at their employers. In the interests of fairness, transparency and accountability, appropriate mechanisms must be available to workers and their families for having their complaints investigated and resolved.

102. **Government propose** to charge the MCIL via its labour inspectors and where appropriate SEU overseas liaison officers/labour attaches with responsibility for managing, investigating and resolving complaints from workers, employers or the public regarding the conduct of any parties associated with the management and delivery of labour migration and recruitment related services. As jurisdictional dictates allow, Government considers that labour inspectors/labour attaches responsible for investigating complaints should have powers to:

- i. Consult with persons considered relevant to the complaint
- ii. Enter premises of private recruiting agents or other relevant body within Samoa
- iii. Require private recruitment agents or other body to whom complaint is directed to furnish to the labour inspector, any documents, information or other items requested in connection with the investigation of the complaint
- iv. Interview complainant and party against whom complaints are laid.
- v. Submit recommendations on complaints to the CEO MCIL for decision.
- vi. Refer cases to police for prosecution as appropriate.
- vii. Provide summary reports of complaints received to the CEO MCIL.

#### Question

Do you agree that Government should establish a formal regime for managing, investigating and resolving complaints from workers?

Do you agree that Samoa Government should support foreign workers with complaints about their employment abroad?

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#### HEALTH

103. The health of Samoan migrant workers is important, as is ensuring that workers do not return with communicable disease. All Samoan workers must be appropriately screened for relevant factors, some of which may be specified in labour migration agreements or by the Governments of specific destination countries as minimum health and health screening requirements. Beyond any minimum requirements Government considers it important to ensure workers receive good information and education on health, personal hygiene, nutrition, sexual health and drug and alcohol awareness including specific risks that may be present in the destination country. Furthermore, depending on the risks present in destination markets it may be necessary to deliver health services and inoculations to workers prior to their departure.



104. **Government proposes** that beyond any minimum requirements formally stipulated by destination country Governments, the Ministry of Health will be responsible for ensuring that migrant workers are in good health and have good information on maintaining good health while abroad. Accordingly, the Ministry of Health will be responsible for confirming any additional health screening, promotion and where necessary services including inoculations for workers destined for specific markets prior to their departure. Government on advice from the Labour Migration Steering committee will then confirm health interventions to be included as mandatory requirements for workers in connection with the country for which they are destined.
105. Realistically, it is likely that migrant workers will at some point during their employment abroad, need access to primary and where necessary tertiary health services. Additionally, appropriate provisions are necessary to ensure the return home of Samoan nationals who pass away while abroad. Arrangements for ensuring cost effective health services are accessible will be important.
106. **Government proposes** that it will be compulsory for all foreign workers to have health insurance cover providing for at a minimum, general illness and prescription charges, hospitalization and where necessary in the event of death, returning workers home to their families. The Ministry of Health will issue minimum requirements for health and/or travel insurance cover to suit individual foreign markets and risks present in specific occupations. The SEU will be responsible for ensuring the most cost effective means for affording health insurance for Samoa's migrant workers in consultation with the Ministry of Health and MFAT.

#### Question

Do you agree that health insurance should be compulsory for all workers under this policy?

Do you agree that the MoH should be responsible for ensuring foreign workers are appropriately screened for health related conditions, have good information about maintaining good health while abroad, and provide advice to Government on the need for additional health interventions (e.g. inoculations) due to known health risks in destination countries?

Who should pay for the cost of health/travel insurance for migrant workers?

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#### SUPPORT FOR FAMILIES LEFT BEHIND

107. Policy settings for agreements for labour migration agreements can prevent families from accompanying workers abroad (as is the case with the SWP and RSE) and the continued and prolonged absence of a parent or key provider in a family can cause stress for families left behind including adverse effects on family cohesion and educational participation and achievement of children. Stress at home can also impact on migrant workers abroad and lead to them terminating

employment prematurely or adversely affecting their performance at work. Ultimately, social and family circumstances and decisions about taking up employment abroad are private individual decisions however, timely support can often help families to weather the difficulties of absence and enjoy longer term benefits from continued employment abroad. Currently the majority of workers to Australia and NZ are relatively young males however this may not always be the case as new agreements are struck with sectors that are predominantly female e.g. caregivers.

108. **Government propose** to charge the MPMC via the SEU in conjunction with the MWCD with responsibility for establishing arrangements for monitoring incidences of hardship and/or stress arising from the absence of foreign workers from home and providing advice to Government on cost effective responses for ensuring family and community resilience.

#### Question

Do you agree that Government should have a role to support and/or respond to distress in the families of workers who are left behind while migrant workers are abroad?

#### DEVELOPMENT

##### DEMAND FOR SKILLS & QUALIFICATIONS: BRAIN DRAIN, BRAIN GAIN, AND BRAIN WASTE

109. The movement of qualifications and skills across Samoa's border is as pertinent to labour sending as it is to labour receiving.
110. The movement abroad of Samoans with skills and qualifications often raises concerns about shortages of skilled and qualified people in key industries and sectors in Samoa. Government does not intend to restrict the free movement of people for the purposes of work whether skilled or low skilled because:
- People tend to come back to Samoa and they bring skills and money with them (a brain gain)
  - There is virtually nothing that the government can do to stop them from leaving in the first place. Sealing the border is not an issue and neither is the reintroduction of exit permits.
  - There are benefits from having skilled Samoans live and work abroad, foremost of which are the remittances they send home but also because it's potentially a promotional tool highlighting the high caliber of the Samoan work force and potentially helping to entice FDI in Samoa.
  - Economic integration is the way forward for small economies such as Samoa. Trade agreements are currently being negotiated which would potentially open up even more markets to the highly-skilled and that should be welcomed.
111. Government appreciates however concerns over the brain drain of professionals, particularly from key sectors of the economy such as Health; Teachers (High attrition rate of the highly qualified

secondary school teachers especially in science and math); Trades; and IT sector and considers that the appropriate response to this is to better align education and training with domestic skills shortages in key domestic sectors and where there are significant and feasible benefits to be gained, with opportunities for employment in foreign markets.

112. Government also shares concerns of many stakeholders about brain waste (as opposed to brain drain) when workers migrate abroad for jobs they are overqualified for. Brain waste happens when highly skilled Samoans abroad work on occupations they are not trained to do (ex-former senior public servants working as bus drivers; teachers working as receptionists, nurses working as caregivers). When such workers return to Samoa, they often need to re-fresh their qualifications before they can resume practice in their profession.

113. **Government proposes** to develop strategies for aligning education and training with employment opportunities domestically and for determining on a case by case basis, capacity and feasibility for producing workers with appropriate skills and/or qualifications for employment opportunities abroad. Possible avenues for progressing objectives for Samoa's industries access to essential skills and labour within the context of this LMP include:

- Achieve recognition or harmonization of qualifications with foreign markets and deliver migrant worker preparation to ensure they can take up employment in designated markets within their professional area of expertise and commensurate with their qualifications and experience.
- Align education and training with both domestic and foreign employment opportunities since a good proportion of graduates would choose to remain in Samoa anyway and therefore, brain gain.<sup>2</sup>
- Facilitate exchanges of staff between Samoan and foreign institutions. For instance, NUS and the Ministry of Education have been working with foreign universities to facilitate teacher exchange.
- Develop a database of skills. For instance, SQA is developing a skilled database to better understand supply from various educational institutions (APTC, NUS including TVET etc.). Here there is a need for a consolidated and integrated approach.
- Develop mechanisms Labour Market Information System and/or consistent and accurate approach for determining domestic shortages in qualifications and skills.

#### Question

Do you agree that education and training should be aligned not only with demand from Samoa's domestic sectors for specific qualifications and skills but also demand opportunities in foreign markets?

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<sup>2</sup> APTC estimates that under 5% of graduates end up migrating for employment abroad.

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## IMMIGRATION POLICY AND THE LABOR MARKET: MEETING CURRENT AND SHIFTING NEEDS AT HOME WHILE PROTECTING THE INTEGRITY OF THE BORDER

114. Immigration is an important issue under the LMP because Samoa cannot produce all the skills it needs. Labour Migration Agreements allowing foreign workers of specified countries to live and work in Samoa are designed to ensure Samoa's industries have access to essential skills and qualifications. Clearly however, protecting the integrity of Samoa's border is a key concern of government and necessary checks are important to ensure that illegal migration is kept at bay and only "bona-fide" workers and investors enter the country.
115. Government considers that commitments which Samoa has made under PICTA Temporary Movement of Natural Persons, is consistent with economic growth and objective of this LMP. For instance, in the WTO Mode 4 and PICTA, all commitments are unbound; although there are length of stay limitations in some sectors (i.e. services salespersons can stay for less than 60 days per year and three years for Intra-Corporate Transfers (ICTs).
116. Globally there is competition to attract and retain people with skills that countries are short of and government recognizes the need to introduce facilitative mechanisms that attract, incentivize and smooth the bureaucratic processes for entry at the border and to support successful integration of migrant workers from foreign countries with skills and qualifications that Samoa's industries need.
117. A flexible immigration policy must however be twinned with incentives or schemes that train locals to eventually take up jobs that overseas people are brought in to do. Focus must be on capacity-building, which will benefit Samoa in the longer term where it is practical and economically cost effective to build such capacity for the future. For instance, there are programs funded by donor countries that bring their own nationals to fill key posts temporarily. There is an ongoing challenge to make sure these positions build capacity of locals and not just fill immediate needs:
- China bring 5 doctors every 3 years to work at the National Health Service (China pays for the salary, MOH pays for accommodation)
  - AUSAID's PACTEM Program funds a position for 2-3 years (such as a legislative drafter, international investment consultant that worked on the NPF to help them diversify their mix of investment, specialist health positions such as biomedical engineer, dietician, pharmaceutical specialists).
118. **Government proposes** to establish a Samoan's first preference for employment opportunities domestically, to ensure that immigration of foreign workers does not drive down terms and conditions of employment domestically, to guard against potential health risks to domestic populations and to encourage industries and employers to invest in training of Samoan nationals for skills that are in short supply.
119. On the flip side, Government appreciates sentiment in some quarters that there are already enough migrant workers in Samoa including concerns about displacement of Samoans by migrant workers

and the need to ensure migrant populations integrate well into Samoan society. Some disquiet also exists about perception that the income of migrant workers flows to and benefits countries outside Samoa. **Government proposes** to design strategies for the successful integration of foreign workers to Samoa in line with Samoa Government's obligations under ratified international conventions but also, because doing so supports worker productivity and social and community cohesion.

120. Government also recognizes the positive role of Samoan Diaspora in meeting labour needs and considers that strategies for leveraging development from labour migration include consideration of leveraging development gains from qualifications, skills and experience of Samoan diaspora.
121. An often neglected opportunity for leveraging development potential from labour migration is the return of the second generation Samoans to reconnect with their heritage and return home. Retirees, in particular, have a role in bringing financial and human capital back to Samoa. Compared to Tonga, Samoans do return whereas high achieving Tongans tend not to. **Government proposes** to establish practicable strategies for leveraging diaspora for development.

#### Question

Do you agree that Government should adopt a 'Samoans first' policy in relation to agreements to open Samoa's labour market to foreign markets and further, that any such agreements do not result in driving down employment terms and conditions for Samoan nationals?

Do you agree that the Government in conjunction with the private sector should develop a strategy for attracting people with skills and qualifications that Samoa needs?

Do you agree that employers that utilize foreign workers should also be encouraged to support access to training and/or education that would enable Samoan nationals to do the jobs that foreigners are currently brought in to do?

Do you agree that Government should put in place requirements on employers of foreign workers to ensure the successful integration of migrant workers from foreign countries?

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#### LEVERAGING REMITTANCES FOR DEVELOPMENT

122. Government recognizes the significance of remittance income to Samoa's economy with remittance income representing nearly 25% of GDP. Furthermore, **Government proposes** to develop strategies for leveraging remittances for development e.g. through establishing products and/or services for migrant workers to encourage savings, investments and business creation to get the best return for individuals and Samoa's economy from labour migration. Such products and services could also include:

- financial literacy targeted to remittance senders and receivers building on the Central Bank's program of financial education to tailor a program for migrant workers,
- securitizing remittance flows,
- creating special category savings/deposit accounts and other financial instruments to incentivize savings and remittances by migrant workers,
- exploring the potential market for remittance backed education loans and mortgages and
- providing information support services to small investors.

**Question**

Do you agree that Government should develop strategies for maximizing gains for individuals from labour migration in particular remittances and skills development?