



SAMOA

PRISONS AND CORRECTIONS ACT 2013

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PRISONS AND CORRECTIONS ACT 2013
2013, **No. 11**

AN ACT to repeal the Prisons Act 1967 and to provide for the re-organisation and reform of prisons in Samoa by the establishment of a Samoa Prisons and Corrections Service with necessary transitional arrangements, and by reforms to the management of prisons and the treatment of prisoners in accordance with Samoan customs and traditions and accepted practices and standards, and with an objective of providing a corrections based system, and for related purposes.

[Assent date: 5 June 2013]

[Commencement date of whole Act: 1 January 2015]

[Commencement date of Long Title, Enactment Clause and sections 1,5 & 61(2): 30 April 2014]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Prisons and Corrections Act 2013.

(2) The Minister may nominate the commencement of this Act, and may nominate different commencement dates for certain sections or Parts.

(3) The Minister may take, or authorise the taking of, any necessary preparatory action for the establishment of the Service, including the appointment of a Commissioner and other members, prior to the formal transfer of responsibility

for the management of prisons from the Police Service to the Prisons and Corrections Service.

2. Interpretation - In this Act, unless the context otherwise requires:

“CEDAW” means the United Nations Convention on the Elimination of all Forms of Discrimination Against Women;

“civil prisoner” means a prisoner ordered to serve a term of imprisonment for failing to pay a debt;

“commencement date” means the day on which this Act commences to transfer responsibility for the management of prisons from the Police Service to the Prisons and Corrections Service;

“Commissioner” means the person appointed as Commissioner of Prisons and Corrections under section 5, and includes any sworn member appointed to act as Commissioner;

“Commissioner’s Orders” means Orders made by the Commissioner under this Act;

“convicted prisoner” means a prisoner who has been convicted by a court and sentenced to a term of imprisonment, whether or not there is an appeal pending in relation to the conviction;

“CRC” means the United Nations Convention on the Rights of the Child;

“effective sentence” means the term of imprisonment that a prisoner is to serve, after taking into account remission under this Act;

“firearm” includes ammunition, but does not include a gun which only discharges tear gas canisters or other similar item, or any other device which can be used to restrain a prisoner or to render a prisoner temporarily immobile without the firing of any bullet or other ammunition;

“independent prison inspector” means an inspector appointed under section 20(5);

“Judge” means a judge of the Supreme Court or the District Court;

“lawful order for detention” includes:

(a) a warrant of commitment made by, or with the authority of a court; or

(b) any other order of a court committing a person to prison; or

(c) an authority committing a person to the prison signed by a police officer in charge of any police station, if—

(i) the prisoner cannot be accommodated in a cell at the police station; and

(ii) it is not practicable to obtain the order of a court for the commitment of the prisoner to the prison; or

(d) an order for the detention of a person signed by an immigration officer having power to do so; or

(e) any other order made under an Act which provides for the arrest, detention or committal of a person to prison;

“member” means a sworn member or a non-sworn member of the Service;

“officer-in-charge” means a sworn member appointed under section 17 to be in charge of a prison (or any specific part of a prison where more than 1 category of prisoner is in custody), by whatever title the Commissioner determines the officer is to be called, and includes any member acting in that position;

“Parole Board” means the Prisons Parole Board established under the Prisons Parole Board Act 1977;

“prison” means a prison, temporary prison or corrections facility established under section 16, or any other building or place deemed to be a prison or corrections facility under this Act or other Act;

“prison inspector” means a person appointed under section 20;

“prisoner” means a prisoner incarcerated in a prison, including an unconvicted prisoner or a civil prisoner;

“Prisons and Corrections Service” means the Prisons and Corrections Service established by section 4;

“prohibited article” means an article, item, foodstuff or thing prescribed by the Regulations or Commissioner’s Orders as being an item that may not be brought into, or removed from, a prison by any person other than a member;

“senior officer” includes the Assistant Commissioner, an officer-in-charge and any other sworn member of a rank determined by the Commissioner to be a senior officer of the Service;

“Service” has the same meaning as “Prisons and Corrections Service”;

“Visiting Medical Officer” means a medical officer appointed under section 19(1) to be a Visiting Medical Officer;

“young prisoner” means any prisoner aged 18 or younger.

3. Guiding principles under this Act – When interpreting or applying a provision of this Act, and when carrying out duty, power or function, all persons must:

- (a) ensure that prisons are managed in accordance with Samoan tradition, culture and community values, and in such a manner as will facilitate the return to ordinary life in the Samoan community of a prisoner when released from prison; and
- (b) ensure that full regard is had to the recognised international standards and obligations relating to the treatment of prisoners (and in particular those stated in any international Convention to which Samoa is a Party, and in The Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955), and that these standards are applied to the fullest extent possible; and
- (c) apply to the fullest extent possible the rights and obligations of CEDAW and CRC in the administration of Samoa’s prisons and the treatment of prisoners; and
- (d) maintain discipline and order with fairness but firmness, and with no more restrictions than is required for the proper management of prisons and prisoners in accordance with Samoan cultural and community values; and
- (e) facilitate the shift of underlying philosophy from the containment of prisoners to the provision of effective and appropriate correctional services; and
- (f) at all times in treating convicted prisoners, encourage their self-respect and a sense of personal responsibility so as to re-build their morale and to instil in them habits of good citizenship and hard work with a view to them leading a good and useful life after their discharge; and
- (g) when controlling prisoners by members, seek to influence the prisoners through the members’

- examples and leadership so as to enlist the prisoners' willing co-operation; and
- (h) ensure that prisoners who are infected with an infectious disease or suffering any serious illness or any disability are treated in a manner which takes into account their basic rights and special needs.

PART 2 PRISONS AND CORRECTIONS SERVICE

4. Samoa Prisons and Corrections Service – (1) The Samoa Prisons and Corrections Service is established by this section and is to be managed in accordance with the provisions of this Act.

(2) The functions of the Samoa Prisons and Corrections Service are:

- (a) to perform duties and functions and exercise powers in accordance with this Act, and other laws; and
- (b) to manage prisons; and
- (c) to provide for the management, custody, care and rehabilitation of prisoners lawfully held in custody; and
- (d) to perform any other functions given to it under this Act or any other Act.

(3) All references in a law, instrument or official document relating to the previous role of the Police Service in relation to the management of prisons and prisoners is deemed to refer to the Samoa Prisons and Corrections Service, or a member of the Prisons and Corrections Service.

5. Commissioner of Prisons and Corrections and Assistant Commissioner – (1) The Head of State, acting on the advice of Cabinet, may appoint a qualified and fit and proper person to be:

- (a) the Commissioner of Prisons and Corrections; and
- (b) the Assistant Commissioner of Prisons and Corrections, if the Commissioner recommends to Cabinet that the appointment is necessary for the proper management of the Service.

(2) The Commissioner of Prisons and Corrections is the Head of the Samoa Prisons and Corrections Service, who:

- (a) subject to the orders and directions of the Minister, has the function for the administrative command and direction of all members; and
 - (b) has the duty to undertake the management of prisons and prisoners in accordance with the policies of the Government relevant to the management and treatment of prisoners; and
 - (c) for the purpose of exercising any powers under this Act, has the power to make Commissioner's Orders applying to members and prisoners; and
 - (d) is responsible for the control of all prisoners and may allocate them to such prisons as the Commissioner sees fit; and
 - (e) has the power to designate the classification, purpose and function of any prison; and
 - (f) is to ensure that an infrastructure development plan and related work programmes are developed and up-dated to ensure that proper facilities are provided to the Service to meet the requirements and objectives of this Act; and
 - (g) has the power to make delegations of the Commissioner's functions and authority by written instrument of delegation -
 - (i) to any sworn member, if the power can be properly exercised by the sworn member; and
 - (ii) to any non-sworn member, if the power can be exercised under this Act and any law relating to the financial management of the Service or any other aspect of its lawful administration.
- (3) The duties of the Assistant Commissioner are:
- (a) to act as Commissioner in the absence of the Commissioner from duty for any reason; and
 - (b) to assist the Commissioner in the exercise of the Commissioner's functions and powers; and
 - (c) to exercise all delegated and other necessary powers, subject to any limitation or requirement imposed by the Commissioner.
- (4) A person appointed under subsection (1):
- (a) may be appointed for a period not exceeding 3 years, fixed by the Head of State, acting on the advice of Cabinet; and

(b) is eligible for reappointment but on expiry of the term, continues in office until reappointed or another person is appointed.

(5) The salary and allowances of the persons appointed under this section are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal, and all other terms and conditions are to be stated in a contract of appointment, which are to have effect subject to this Act.

(6) Regulations may also prescribe other terms and conditions relating to the appointments made under this section and in relation to the employment of the Commissioner and the Assistant Commissioner.

(7) Despite any other law, the Commissioner may:

(a) make a decision, give a directive and do an act or thing to ensure the security and good governance of a prison; and

(b) require that a person purporting to exercise a lawful power of inspection or entry in a prison, first comply with a directive related to prison security and management; and

(c) require that any interviewing or questioning, under a lawful authority, of a sworn member whilst on duty within a prison, be done at the times and places, and in a manner as to permit the member to properly carry out the member's duty or power; and

(d) vest in a sworn member the right to carry out any duty or power under this section.

6. Members of the Service – (1) The Service consist of sworn members and non-sworn members of the Service.

(2) The sworn members are to consist of such ranks as the Minister may prescribe by Order in the Savali, and until such determinations are made, the ranks applying at the commencement date continue to apply, with necessary modifications determined by the Commissioner.

(3) All sworn members must take before the Commissioner or a Judge the oath set out in the Schedule.

(4) The ranks designated under subsection (2) may classify members as Prisons Officers or Corrections Officers, and may use any other appropriate classification.

(5) All persons who:

(a) at the commencement date are officers and employees of the Police Service engaged in any aspect of the management of prisons; and

(b) indicate their consent to their transfer to the Service,
may by Order of the Minister, be deemed to be sworn or non-sworn members of the Prisons and Corrections Service at an equivalent rank or position, and are to be subject to the provisions of this Act.

(6) Members deemed to be appointed under subsection (5) are transferred to the Service without loss of any entitlement or benefit, applying to their service in the Police Service, including any benefits under any fund administered for the welfare of police officers.

(7) Persons employed under contract with the Police Service may be transferred to the Prisons and Corrections Service in accordance with subsection (5), and all such contracts are deemed to have been made with the Prisons and Corrections Service, and continue for the remainder of their duration.

(8) The Commissioner is deemed for all lawful purposes to be the employer of the sworn and non-sworn members, and has all rights, duties and powers of an employer in respect of all members, but this does not create an employment relationship in circumstance where a non-sworn member is engaged under contract to the Service on a basis other than as an employee of the Service.

(9) Subject to the Constitution and any Act, the Commissioner must carry out his or her functions and responsibilities as an employer in accordance with the following principles:

- (a) appointments and promotions are to be made on the basis of merit; and
- (b) decisions on employment matters are to be made fairly, properly and promptly; and
- (c) members have the right to access to simple and fair grievance systems; and
- (d) members are entitled to receive reasonable remuneration and terms and conditions of service; and
- (e) eligible persons are entitled to reasonable opportunity to apply for employment in the Service; and
- (f) principles of equal opportunity apply to all aspects of the Service, subject to the requirements of this Act which call for the proper treatment of prisoners by members of the same sex; and

- (g) there are to be sufficient number of members employed in the Service to ensure the effective and efficient management of prisons and the fair and humane treatment of prisoners.

(10) All members are to act under the direction of the Commissioner and their superior officers or supervisors in the discharge of their lawful functions, powers and duties.

(11) Members hold office in accordance with procedures prescribed by Regulations or specified in Commissioners' Orders and conditions of employment approved by the Commissioner, which may make the following provisions:

- (a) the procedures applying to the appointment and promotion of members; and
- (b) the qualifications for appointment and promotion of members; and
- (c) the vesting of other appropriate powers in the Commissioner in relation to any aspect of the employment of members; and
- (d) the powers of the Commissioner to employ temporary members where -
 - (i) the number of subordinate members in a prison is insufficient to secure its good management and security; and
 - (ii) there are no female officers or sufficient numbers in a prison where female prisoners are confined; and
- (e) a probation period to be served; and
- (f) the period of service, and retirement ages of members; and
- (g) the provision of appropriate training, and requirements for members to undertake training courses and programmes; and
- (h) the circumstances in which a member may be discharged from duty, and the procedures for discharge of members, which must take into account the requirements of natural justice; and
- (i) the recognition of the constitutional rights of equality of all persons in relation to the appointment processes, opportunities for advancement and training, and the allocation of roles and responsibilities within the Service.

(12) The terms and conditions applying to the appointment of members are, as near as is practicable, to be

the same as those applying to equivalent ranks and positions in the Police Service.

(13) In the absence of any Regulations, Commissioner's Orders or approved conditions of employment applying under this section, any employment related arrangement applying under the Police Service Act 2009 applies to members of the Prisons and Corrections Service with necessary modifications, and the Commissioner may apply any such procedure and make any decision or take any action accordingly.

7. Termination of Commissioner or Assistant Commissioner – (1) The Head of State, acting on the advice of Cabinet, may terminate the appointment of the Commissioner or the Assistant Commissioner for breach of duty or on grounds of incapacity if the Commissioner or Assistant Commissioner:

- (a) has behaved in a manner likely to affect the confidence of the community in the ability of the Commissioner or Assistant Commissioner to perform his or her functions, duties and powers under this Act; or
- (b) has failed to keep discipline within the Service or at a prison; or
- (c) is unable to perform his or her functions, duties or powers by reason of physical or mental incapacity.

(2) The Head of State, acting on the advice of Cabinet, shall terminate the appointment of the Commissioner or the Assistant Commissioner if he or she is convicted of an offence for which a term of imprisonment may be imposed.

(3) The power to terminate under this section applies irrespective of any terms of the contract relating to the appointment of the Commissioner or the Assistant Commissioner.

(4) Before a decision for termination is taken under this section, an inquiry may be held if ordered by the Minister under section 26, or if required by the Prime Minister, after consultation by the Minister or the Prime Minister with the Attorney General.

(5) The Ombudsman is to be a member of the committee undertaking the inquiry under subsection (4) to terminate the Commissioner.

(6) Despite subsection (4), the appointment of the Commissioner or Assistant Commissioner may be terminated

under subsection (1) if Cabinet is of the opinion the Commissioner or an Assistant Commissioner:

- (a) has behaved in a manner likely to affect the confidence of the community in the ability to perform the duties of office; or
- (b) has failed to keep discipline within the Service or at prison; or
- (c) is unable to perform the duties of office by reason of physical or mental incapacity,

PROVIDED THAT before a decision of termination or suspension is officiated, Cabinet must give the Commissioner or Assistant Commissioner an opportunity to be heard or to respond.

8. Suspension of the Commissioner and Assistant Commissioner – (1) The Head of State, acting on the advice of Cabinet, may suspend the Commissioner or the Assistant Commissioner from office if there are grounds for suspecting that the Commissioner or the Assistant Commissioner may be terminated under section 7.

(2) A suspension made under this section applies until the date of the final decision to terminate is made under section 7, and the suspension may be with or without pay, as determined by Cabinet.

(3) The Commissioner or the Assistant Commissioner automatically becomes suspended under this subsection if he or she is charged with an offence punishable by imprisonment, and Cabinet may determine whether or not the suspension is to be with or without pay, taking account of the seriousness of the charge.

9. Termination of other members – (1) A member is terminated or deemed to be terminated in the following circumstances, if the member:

- (a) has given at least 1 months' notice in writing to the Commissioner of the member's intention to leave the Service; or
- (b) has been determined by the Commissioner, acting on proper medical advice, to be medically unfit to carry out the member's duties; or
- (c) is dismissed for poor work performance on grounds and in accordance with procedures determined by the Commissioner or prescribed in Regulations; or

(d) is convicted of an offence for which a term of imprisonment is imposed.

(2) The powers of a member under this Act automatically and immediately cease on the date of termination or deemed termination of the member under this section.

10. Other employment related provisions – (1) Regulations or Commissioner's Orders may make provision for any employment related matter applying to members, including the following:

- (a) procedures for resignation from the Service, and the implications arising from resignation;
- (b) procedures, entitlements and obligations relating to retirement;
- (c) retirement on medical grounds;
- (d) disciplining members on the ground of poor work performance, and any other ground relating to maintaining the efficient operation of the Service, proper management of prisons or the provision of corrections;
- (e) conduct which amounts to breach of a member's duty;
- (f) procedures for appeals against termination or other disciplinary action.

(2) If no Regulations or Commissioner's Orders provide for matters under subsection (1), any provision of the Police Service Act 2009 relating to the matters specified in subsection (1) applies to members of the Service, and the Commissioner may apply any procedure provided by or under that Act and make any decision or take any action accordingly.

11. Uniforms, insignias and identity cards – (1) The Commissioner must determine the uniforms to be worn by members, and all insignias to designate rank, length of service or any other matter.

- (2) The identity card to be issued to the members must:
- (a) be of a type and in a form approved by the Commissioner; and
 - (b) clearly indicate whether the member is a sworn member or a non-sworn member; and
 - (c) be signed by the Commissioner or a delegate of the Commissioner; and
 - (d) for a sworn member, be for all lawful purposes evidence of the sworn member's appointment

under this Act and of the sworn member's right to exercise the powers provided for under this Act.

- (3) All members must:
 - (a) keep their identity cards in their safe-keeping; and
 - (b) ensure that their identity cards are not used by other members or persons for any unlawful or improper purpose; and
 - (c) produce their identity cards when requested to do so when carrying out any responsibility or power; and
 - (d) immediately report to a senior officer the loss or theft of the identity cards; and
 - (e) promptly return the identity cards to the Commissioner upon ceasing to be members.

(4) A member who breaches this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units, and the breach is a ground for disciplinary action.

(5) The lawful discharge by a member of any responsibility or power under this Act is not dependent upon the member being in uniform or being in possession of the member's identity card, or any other evidence of the member's right to exercise the relevant responsibility or power.

12. General obligations of members – (1) The following obligations apply to members:

- (a) no sworn member may resign without the approval of the Commissioner; and
- (b) a sworn member continues to be a sworn member (if required to do so by the Commissioner) if the period of the member's appointment expires during a state of war or a period of public emergency declared by law; and
- (c) a sworn member may be required for duty in any part of Samoa, and is subject to being recalled to duty during times when the member is not rostered on duty at any prison; and
- (d) no member may engage in any employment or business venture, or hold any office outside of the Service, unless approved by the Commissioner; and
- (e) no member may receive any fee or gratuity from any prisoner, or prison visitor, or any person

who is an ex-prisoner or a friend of a prisoner;
and

- (f) no member may have any business dealings with a prisoner, or have any other relationship with a prisoner which may compromise the security or good governance of the prison.

(2) No member may take part in an election or general election or in any way influence or seek to influence any voter at an election or general election for the Legislative Assembly other than by voting, unless the member applies for and obtain leave from the Commissioner for the duration of the relevant election period.

(3) A member who breaches this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units, and the breach is a ground for disciplinary action.

13. Powers, protections and privileges of sworn members-(1) In addition to the powers conferred by this Act, a sworn member:

- (a) may carry out any duty or powers prescribed in the Regulations and Commissioner's Orders; and
- (b) has the power given to police officers under section 63 of the Police Service Act 2009 to ascertain and record the particulars of identification of a prisoner, including the power to photograph a person and to take finger prints and if necessary forensic samples as defined in section 20 of the Police Powers Act 2007, and the power to use reasonable force in the exercise of these powers; and
- (c) must obey any lawful directions of a superior officer, and for this purpose may do any act or thing directed or authorised by the superior officer; and
- (d) may examine and search -
- (i) the clothing of any person coming into a prison; and
 - (ii) any prisoner and anything in a prison or which is being brought into a prison; and
 - (iii) any vehicle, container or object in the vicinity of a prison which a sworn member has reason to believe may contain any prohibited article or any other device,

implement or thing which may adversely affect the proper management of the prison; and

- (e) if reasonably suspecting that a prohibited article is being brought into a prison, may stop and search a person upon entering a prison; and
- (f) may use a dog for the purpose of conducting searches, and for any other purpose prescribed by Regulations or Commissioner's Orders; and
- (g) may seize a prohibited article that has been brought into a prison or found within the vicinity of a prison, and deal with any such article in accordance with section 64 of the Police Service Act 2009, or in any other prescribed manner; and
- (h) may arrest, without a warrant and to deliver to the custody of a police officer, any person -
 - (i) who commits, or attempts to commit an offence against this Act; or
 - (ii) fails to give to the sworn member his or her name and address when the sworn member reasonably suspects that the person has committed an offence against this Act; or
 - (iii) gives a false name and address in the circumstances stated in subparagraph (ii); and
- (i) may call for assistance in accordance with section 62 of the Police Service Act 2009, and any person who fails to render assistance commits the offence prescribed in that section; and
- (j) may arrest and deliver to a senior officer any other sworn member whom the member has reasonable grounds for believing is a deserter from the Service.

(2) When grounds exist that justify a search, the search may include a strip search and a search of internal body cavities.

(3) If the person to be searched is not a prisoner, the sworn member undertaking the search must, after first giving that person the opportunity to leave the prison, ensure that the search is conducted only by a sworn member of the same sex as the person being searched.

(4) A sworn member has the powers, protections and privileges of a police officer when:

- (a) transporting any prisoner to or from any prison; or
- (b) apprehending any person who may have escaped.

(5) A senior officer has the powers, protections and privileges prescribed by law and vested in a police officer relating to making and enforcing proclamations commanding rioters, or persons in riotous assembly, within or in the vicinity of a prison, to disperse.

(6) A member has the same protection given to a police officer under section 66 of the Police Service Act 2009, and is immune from criminal or civil proceedings when acting in good faith:

- (a) in carrying out any duty or power under this Act; and
- (b) in the execution of a warrant or lawful detention order issued by a court or under any law; and
- (c) in complying with any lawful order or directive made by the Commissioner, the Assistant Commissioner, a senior officer or an officer-in-charge, under this Act.

14. Disciplining members – (1) Disciplinary offences applying to all members may be prescribed or specified in:

- (a) Regulations made under this Act; and
- (b) Commissioner's Orders.

(2) The disciplinary procedures applying to members are to be in accordance with the principles of natural justice and prescribed by Regulations, including the following matters relating to:

- (a) the suspension of a member pending investigation or the hearing of any complaint, the duration of suspensions and the withdrawal of pay and privileges pending the determination of proceedings;
- (b) the powers of the Commissioner and senior officers to deal with disciplinary offences of a minor nature, and the procedures and punishments to be applied;
- (c) the powers of the Commissioner to review proceedings and punishments applied by senior officers;
- (d) the powers of the Commissioner to suspend punishments;

- (e) the formal hearing of disciplinary proceedings by Judges or tribunals, including their procedures, powers and rights to impose punishments;
- (f) any right of appeal and appropriate appeals processes and powers.

15. Prisons and Corrections Officers Associations – (1)

This section is made in the interests of national security and public safety, and for the purpose of imposing a reasonable restriction on members.

(2) No sworn member may be or become a member of a trade union or an industrial association, or any other association having an object of controlling or influencing the pay or employment conditions of the Service.

(3) Regulations may make provision for the establishment, membership, administration and functions of 1 or more associations for sworn members.

**PART 3
ESTABLISHMENT AND
ADMINISTRATION OF PRISONS**

16. Establishment of prisons, temporary prisons and corrections facilities – (1) The Minister may, by Order published in the Savali, declare:

- (a) any place, building or part of a building to be a prison; and
- (b) any place, building or part of a building to be a corrections facility (by whatever title the Minister determines) for the purpose of rehabilitating prisoners and preparing them for reintegration into the community when released from prison; and
- (c) any prison or corrections facility to cease to be a prison or corrections facility.

(2) Any land, building and other facility which, at the commencement of this Act, are in use as prisons are deemed to be declared under subsection (1) as prisons or corrections facilities for the purposes of this Act.

(3) For each prison declared under this section, the Minister may determine, by Order published in the Savali, the maximum number of persons which may be detained in the prisons, or any part of it.

(4) The Commissioner may make arrangements for keeping prisoners in a location designated by the Commissioner as a temporary prison for any of the following purposes of keeping of prisoners at a location other than a declared prison:

- (a) for the effective management of prisoners;
- (b) for giving effect to any provision of this Act;
- (c) for any other reason based on the security or well-being of members, prisoners or the general community.

(5) Without limiting subsection (4), the Commissioner must, after consulting the Minister, make arrangements for keeping prisoners in a location designated as a temporary prison if:

- (a) the number of prisoners in any prison is greater than the maximum number determined for that prison under subsection (3); or
- (b) there is an outbreak of any disease at any prison which constitutes a health risk to the members and prisoners at that prison; or
- (c) there is any lawful order made under any law which requires that a prison, or part of a prison, be closed or declares it to be unfit for human habitation.

(6) This section does not prevent the use of police stations, and holding cells at the courts and other appropriate locations, for the purposes of keeping prisoners in custody, and Commissioner's Orders may make provision for the temporary transfer of prisoners into custody at such locations to be held under the control of the Police.

17. Appointment of officers-in-charge and senior officers – (1) The Commissioner may appoint a sworn member:

- (a) to be the officer-in-charge of each prison and corrections facility (or in charge of any section of prison where more than 1 category of prisoner is kept in custody); and
- (b) to carry out the duties and powers of the officer-in-charge as prescribed by this Act, the Regulations and Commissioner's Orders.

(2) The Commissioner may appoint senior officers of the Service for a prison, under such designations and with such duties, powers and responsibilities as the Commissioner

determines, or as are prescribed by Regulations or Commissioner's Orders.

(3) All current officers-in-charge of a prison who were appointed before the commencement of this Act are deemed, at the commencement of this Act, to have been appointed under this section, unless the Commissioner makes a decision to the contrary.

(4) A sworn member who holds office as Assistant Commissioner - Custody (or any equivalent title approved by the Commissioner) may exercise the powers of an officer-in-charge under this Act, the Regulations and the Commissioner's Orders.

18. Authorisation of members to act in other positions within prisons –

(1) Members may be appointed to carry out the duties and powers of other designated positions within the prisons in accordance with the Regulations and Commissioner's Orders, but no non-sworn member may be appointed to a position required to be held by a sworn member.

(2) In the absence of any specific power to give authorisations under this section, any necessary authorisation may be given by the Assistant Commissioner, a senior officer or an officer-in-charge, if the authorisation:

- (a) is necessary for the proper management of a particular prison; and
- (b) relates to the prison for which the officer-in-charge is responsible; and
- (c) is referred to the Commissioner for confirmation as soon as possible after it is made.

19. Appointment of Visiting Medical Officers – (1) The Chief Executive Officer for the Ministry responsible for Health:

- (a) may appoint medical officers as Visiting Medical Officers to discharge the duties prescribed by the Regulations and Commissioner's Orders at each prison; and
- (b) in making the appointments, must take into account–
 - (i) the need for those appointed to have knowledge of psychiatry; and
 - (ii) the particular needs of female prisoners held at any prison, and making medical services available to them and

whenever possible appoint female medical officers for such purpose.

(2) Despite subsection (1), the Commissioner may approve the appointment of registered medical practitioners to carry out the duties and powers of Visiting Medical Officers, if:

- (a) an officer-in-charge reports to the Commissioner that a Visiting Medical Officer has not visited a prison as required by this Act; or
- (b) there exists at any prison circumstances which require health inspection or the provision of medical services beyond the capacity of the Visiting Medical Officer to provide; or
- (c) there are any other reasons related to the health and well-being of the members or prisoners which require the provision of additional medical services at any prison.

PART 4 PRISON INSPECTIONS AND OFFICIAL VISITS

20. Prisons inspections – (1) The Commissioner must inspect or direct the inspection of each prison at least once a year and in such a manner so as to ensure that the provisions and objectives of this Act are given full effect.

(2) For the purposes of subsection (1), the Commissioner may designate senior officers to be prisons inspectors, and such officers are responsible for:

- (a) undertaking inspections required by this Act, or directed by the Commissioner; and
- (b) preparing and submitting to the Commissioner reports, that meet the requirements stipulated by the Regulations and Commissioner's Orders; and
- (c) making any appropriate recommendations to the Commissioner in relation to any aspect of the administration of prisons and the welfare of prisoners and members.

(3) Copies of any report prepared by a prisons inspector, and of any recommendations made by an inspector to the Commissioner, must be given to the Minister at the same time as they are provided to the Commissioner.

(4) Commissioner's Orders must make provision for regular prison visits and inspections by officers-in-charge,

a prison inspector or members, and for reporting requirements.

(5) In addition to subsections (1) and (2) there shall be an independent prison inspector to be appointed under the Regulations to carry out regular inspection of prisons and reports directly to the Minister.

(6) The independent prison inspector shall carry out the functions, duties and powers as are prescribed by Regulations or Commissioner's Orders.

21. Visits by Visiting Medical Officers – (1) In addition to any other visits which may be required by the Regulations or Commissioner's Orders, a Visiting Medical Officer must visit each prison at least once every 3 months.

(2) In addition to any other duties or responsibilities prescribed by Regulations or Commissioner's Orders, all Visiting Medical Officers, when visiting prisons pursuant to this Act, must inspect and advise on:

- (a) the quantity, quality, preparation and service of food within the prison; and
- (b) the hygiene and cleanliness of the prison and its prisoners; and
- (c) the availability of adequate clean water for the needs of each prisoner; and
- (d) the sanitation, lighting and ventilation of the prison; and
- (e) the suitability and cleanliness of the prisoners' clothing and bedding.

22. Visiting Justices – (1) A judge may act as a Visiting Justice for any prison.

(2) A Visiting Justice may conduct an inspection of each prison at any time determined by the Commissioner or the judge.

- (3) When visiting prisons, Visiting Justices may:
- (a) confirm that each prisoner held in custody at the prison is duly held on the proper authority of a lawful order for detention; and
 - (b) interview each prisoner under punishment or held in solitary confinement to ensure that due process has been observed; and
 - (c) review any decision made which affects the rights of a prisoner to remission of sentence under this Act, or which imposes any other punishment on a prisoner for a prisons offence

or arising from the alleged bad behaviour of a prisoner; and

- (d) perform such functions and make such reports as are determined by the Visiting Justice, prescribed by Regulations or requested by the Commissioner.

(4) When exercising any power under this section, a Visiting Justice has all the privileges and immunities that apply to the office of a judge, and may not be summoned to give evidence in any proceedings relating to any matter about which the Visiting Justice inquired or exercised a power.

23. Other arrangements for official visits – (1) The Minister may appoint for each prison, a visiting committee comprising the following:

- (a) a judge or Faamasino Fesoasoani;
- (b) the CEO of the Ministry of Health or a delegated senior health officer to inspect the health conditions of the prison and prisoners;
- (c) the Commissioner or a prisons inspector;
- (d) a respected member of the community;
- (e) a representative of the National Council of Churches;
- (f) a Member of Parliament.

(2) The roles, functions and powers of the Visiting Committee may be prescribed by Regulations or Commissioner's Orders and do not affect the rights of other persons and agencies entitled to undertake visits to or to inspect prisons under this Act.

24. Investigation by Ombudsman and other agencies –

(1) The Ombudsman or any duly appointed officer of the Office of the Ombudsman, has the right to visit prisons and prisoners in the lawful discharge of the Ombudsman's responsibilities, and the right to be given access to prisoners and facilities to properly investigate complaints or grievances.

(2) Officers of any agency having lawful duties in relation to the enforcement of human rights have the right to visit prisons and prisoners for the purpose of undertaking any investigation or inquiry in accordance with law.

25. Role of Chaplain, church ministers and community leaders – (1) The Commissioner may appoint:

- (a) a pastor or church minister to hold the office of Prisons Chaplain for the Service; and
- (b) other persons who are representative of the religions and denominations of the prisoners at each prison to support the work of the Chaplain and to be religious representatives for each prison.

(2) Appointments made under subsection (1) must take into account the spiritual needs of prisoners and any nomination made by a religious group having an affiliation with a prison.

(3) On the recommendation of an officer-in-charge, the Commissioner may approve the appointment of community leaders and other respected persons to be official visitors to any designated prison.

(4) Facilities approved by the officer-in-charge are to be made available to the Chaplain, religious representatives, community leaders and other respected persons appointed under this section:

- (a) to meet with individual prisoners or groups of prisoners; and
- (b) to provide religious books and texts to prisoners; and
- (c) to conduct religious ceremonies and observances; and
- (d) to provide appropriate support and advice to prisoners.

26. Power to order prison inquiries – (1) The Minister may appoint a committee of at least 2 suitably qualified persons, of whom at least 1 must be a public officer, to enquire into and report upon any aspect of:

- (a) an incident arising in any prison which has affected the security or good governance of the prison; or
- (b) the conduct, management or administration of the Service; or
- (c) the operation and effectiveness of this Act, or any aspect of it.

(2) In relation to an inquiry under subsection (1), the following sections of the Commissions of Inquiry Act 1964 apply:

- (a) the protections in accordance with sections 5 and 9;
- (b) the powers as provided by section 6;

- (c) a power to hear persons having an interest in a matter which is the subject of an inquiry as provided by section 7;
 - (d) the service of summons under section 8 and the offences under section 12;
 - (e) the secrecy obligations of committee members under section 15.
- (3) The Attorney-General:
- (a) is to be given prior notification in relation to the establishment of any inquiry under this section; and
 - (b) may provide a counsel assisting the inquiry, or approve the appointment of counsel for this purpose.

PART 5 ADMISSION AND CONFINEMENT OF PRISONERS

27. Admission of prisoners – (1) Prisoners are to be first admitted to a prison:

- (a) only on the authority of a signed warrant or other lawful order for detention; and
 - (b) only at the times prescribed by Regulations or provided for by Commissioner's Orders, as being the hours during which prisoners may be processed for admission.
- (2) When a person is presented to a prison to be held in custody, the officer-in-charge of the prison must be satisfied:
- (a) that the person is the person identified in the warrant or order; and
 - (b) of the age of the person; and
 - (c) that the warrant or order is signed, dated and made under a law.
- (3) The refusal by a person to confirm the person's identity, or an apparent technical error in a warrant or order issued on a person, is not a ground for refusing admission of the person.
- (4) If there is doubt under subsection (3) about the identity of a person or the validity of the warrant or order, the officer-in-charge of the prison is entitled:
- (a) to refuse the admission of the person; and
 - (b) to require that the person be taken back to the court or person who has signed the warrant or order,

for matters of identity or process to be confirmed and rectified.

(5) Upon admission under this section, a prisoner:

- (a) is regarded to be in lawful custody; and
- (b) is to be subject to prison regulations, orders and discipline for the entire period of the term of imprisonment, even when the prisoner is not within the confines of a prison.

(6) If it appears that the person to whom the warrant or order relates is or may be a young prisoner, the officer-in-charge must:

- (a) ensure that the prisoner is treated as a young prisoner under this Act, Regulations and the Commissioner's Orders, and is housed separately from adult prisoners; and
- (b) ensure that the young prisoner is treated in accordance with the requirements of the CRC; and
- (c) if doubts exist as to the actual age of the prisoner, take appropriate action to bring the person before a court for confirmation of the legality of the confinement of the person in the prison.

(7) If a prisoner requests that arrangements be made so that the prisoner is kept in protective custody, the officer-in-charge must:

- (a) consider the grounds upon which the prisoner has made the request; and
- (b) determine whether the prisoner is, or may be, at any particular risk from any other prisoner; and
- (c) ensure that appropriate arrangements are made for the safety of the prisoner if a risk is identified provided that the prisoner is not to be kept in solitary confinement without consent.

28. Arrangements for certain prisoners upon admission – (1) From the time of admission, arrangements must be made for the following prisoners to be kept separate from the adult male prisoners being held in custody:

- (a) female prisoners, who are to be supervised by female officers, and managed in accordance with Commissioner's Orders; and
- (b) young prisoners; and
- (c) adult male prisoners considered by the officer-in-charge to be at some particular risk; and

- (d) unconvicted prisoners and civil prisoners who are to be held in accordance with Commissioner's Orders.
- (2) There shall be no separation of other prisoners except where it is necessary for:
- (a) the personal safety of any other person; or
 - (b) the security or good order and discipline within a prison; or
 - (c) containment of any infectious disease, as ordered by a Visiting Medical Officer or a registered medical practitioner appointed under section 19(2).

29. Information to be provided on admission – As soon as practicable after admission, the prisoner must be given appropriate information about:

- (a) any right of appeal, which information shall be given within 24 hours of admission; and
- (b) the rights of prisoners whilst in custody under this Act, or as prescribed by Regulations or Commissioner's Orders; and
- (c) the prisoner's duties, responsibilities and obligations whilst in custody; and
- (d) the consequences of bad behaviour in relation to the time that the prisoner will serve, and the procedures to earn low security classifications and entitlement to privileges and early release; and
- (e) the risks involved in sharing toothbrushes and razors, engaging in unsafe sexual practices, tattooing or other similar activity.

30. Medical examination – (1) A prisoner must be examined by a Visiting Medical Officer or a registered medical practitioner within 24 hours after admission unless the attendance of a Visiting Medical Officer or registered medical practitioner cannot be obtained after all reasonable steps have been taken to secure the attendance of the Visiting Medical Officer or practitioner.

(2) If no medical examination has been undertaken in relation to a prisoner within 7 days of admission, the prisoner may be classified under this Act, and arrangements are to be made for the examination as soon as is practicable.

(3) A prisoner must be advised of the risks associated with transmissible diseases in the prison environment and be

encouraged to undertake voluntary counselling and testing in accordance with any programme offered by the Ministry of Health or any other authorised agency.

31. Initial classification – (1) All convicted prisoners shall be classified in accordance with the procedures prescribed in Commissioner’s Orders.

(2) For the purposes of the initial classification, a date of release for each prisoner is to be determined and recorded in the prisoner’s records.

(3) Regulations may prescribe a period of remission to be applied to prisoners upon their admission, and for any matter relevant to the remission of sentences as a means of enforcing good behaviour.

32. Remission of sentence – (1) If Regulations are made under section 31(3), the remission of sentence that is applied at the initial classification:

- (a) is conditional upon the good behaviour of the prisoner; and
- (b) may be forfeited and then restored by the Commissioner or in accordance with Regulations or Commissioner’s Orders.

(2) A Visiting Justice may review any decision to forfeit the right of remission under subsection (1).

(3) The Minister may grant further remission upon the recommendation of the Commissioner given in accordance with any criteria prescribed by Regulations or the Commissioner’s Orders.

(4) Procedures to request a review of a decision to forfeit any entitlement to remission, or to appeal the decision are to be prescribed by Regulations or Commissioner’s Orders.

(5) Any entitlement on remission for sentence of life imprisonment is only to be granted in accordance with the Prisons Parole Board Act 1977.

33. Diet and food rations – (1) All prisoners are to be provided with basic food rations in accordance with Regulations or Commissioner’s Orders, and no withholding or reduction of any basic food rations may be used as a punishment.

- (2) Nothing prevents additional rations being provided:
 - (a) with the approval of the Commissioner if the additional rations constitute an increase in prisoners food rations; or

(b) with the approval of the officer-in-charge, if the additions are basic food items and additives aimed at enhancing the nutrition or flavour of the food provided.

(3) The rations provided must reflect the religious observances and dietary habits of certain prisoners, but in applying such distinctions there is to be no undue preference or favoured treatment given to the prisoners from any racial, ethnic or religious group.

(4) Food may be brought into a prison and provided to prisoners during times of prison visits:

(a) only in accordance with Commissioner's Orders; and

(b) if the food is of an appropriate type and poses no security risk.

34. Transfers from prison – (1) Transfers of prisoners are to be undertaken in accordance with the Regulations and Commissioner's Orders, and the use of instruments of restraint during transfers must be in compliance with section 46.

(2) Police officers and any person authorised by a Judge or registrar of a court may convey a prisoner to or from any prison at which the prisoner may be lawfully detained, and Commissioner's Orders are to make any necessary provision in relation to the handing over of prisoners.

(3) Prisoners may be removed from a prison:

(a) to a court, upon the order of a Judge, or when the attendance of the prisoner at court is otherwise required, which shall be determined by the officer-in-charge; or

(b) to a hospital or facility providing medical services, at the order of a Visiting Medical Officer or registered medical practitioner appointed under section 19(2); or

(c) to a psychiatric hospital or institution, in accordance with the procedures prescribed in any law relating to mental health; or

(d) to any other prison, on the order of the Commissioner; or

(e) to any other safe place determined by the Commissioner (which is to be treated as a prison for the purposes of this Act) if there is a risk of contagious or infectious disease within a prison, on the order of the

Commissioner, or if in an emergency on the order of an officer-in-charge; or

(f) to any other place in accordance with Commissioner's Orders.

(4) The period of any removal made under subsection (3) are to be determined by the person having authority in relation to the removal under that subsection, and at the end of that period the prisoner must be returned to prison unless the prisoner's sentence has expired.

PART 6
MEDICAL TREATMENT,
INFECTIOUS DISEASES ETC.

35. Provision of medical treatment – (1) Visiting Medical Officers are responsible for the general care of the health of prisoners, but the Commissioner, a senior officer or an office-in-charge may arrange other medical services to be provided by a registered medical practitioner.

(2) Officers-in-charge may order that a prisoner be medically examined, and the Visiting Medical Officer or a registered medical practitioner must examine and treat any prisoner who makes a request to be examined.

(3) Where a Visiting Medical Officer is of the opinion that a prisoner is in need of specialist treatment (including psychiatric care), the Visiting Medical Officer must:

(a) make a report to the officer-in-charge; and

(b) make arrangements for the prisoner to be referred to an appropriate registered medical practitioner, and if necessary, to be transferred under section 34(3).

(4) A prisoner who is suffering from any disease or illness must only be held separately from other prisoners upon the order of a Visiting Medical Officer, unless the officer-in-charge believes that a risk of infection or spread of the disease endangers the health or welfare of prisoners or members.

(5) If an officer-in-charge makes an order for the separation of a prisoner under subsection (4), arrangements are to be made for a Visiting Medical Officer to visit and confirm the need for separation as soon as is practicable.

(6) This section does not prevent the Service from using the services of any registered medical practitioner to provide necessary medical services within prisons.

36. Access to other medical and related services - The Commissioner must arrange for the provision of other medical and related services, and the implementation of any relevant policy or programme of the Ministry of Health, including:

- (a) appropriate dental treatment, which is not be confined to dental extractions; and
- (b) public awareness and education programmes;
- (c) vaccination programmes or programmes of specific treatment for certain diseases; and
- (d) support services for infants and mothers, if infants are permitted to remain in the confines of a prison.

37. Keeping of medical records – (1) Arrangements are to be made for keeping the medical records of prisoners confidential but prisoners must be notified of the results of any test or treatment, and provided with any necessary support where the circumstances require.

(2) Upon discharge, a prisoner who has an on-going medical condition that has been treated when in prison must be given a discharge note confirming the nature of the illness and details of the treatment provided.

(3) Information about the medical condition of a prisoner are to be notified as soon as possible to an officer-in-charge if action is or may be required to ensure the safety and well-being of members and prisoners.

38. Dealing with infectious diseases – (1) The Service is responsible for ensuring that conditions within prisons and prison cells are not conducive to the spread of disease, and must implement any recommendations made by Visiting Medical Officers or the Ministry of Health aimed at reducing the risk of the outbreak of disease.

(2) The Commissioner may implement any recommendation made under subsection (1) and to do anything that is necessary or incidental to the implementation of any such recommendation.

(3) Commissioner's Orders may make provision for matters that can minimise the risk of spreading diseases, including:

- (a) the provision of training to members in relation to the application of the universal precautions to protect themselves from the possible transmission of infectious diseases; and

- (b) requirements that members observe the universal precautions when carrying out their duties.

PART 7
CLASSIFICATION OF PRISONERS

39. Objectives in classifying prisoners – (1) The following objectives apply to the classification of a prisoner:

- (a) a principal objective in applying classification criteria to all prisoners is to achieve effective rehabilitation of the prisoner;
- (b) classification procedures are to be applied so as to ensure that appropriate arrangements are made for the separate accommodation and other appropriate separation within prisons of the following –
 - (i) female prisoners;
 - (ii) young prisoners;
 - (iii) prisoners considered to be at risk within the prison environment;
 - (iv) unconvicted prisoners;
 - (v) civil prisoners;
- (c) prisoners undergoing initial classification are to be provided with information about all aspects of their incarceration;
- (d) during classification, consideration are to be given to each prisoner’s history, age, level of education, character and background, and appropriate report prepared;
- (e) appropriate training and employment opportunities for each prisoner are to be identified;
- (f) the classes to be applied are to avoid complexity;
- (g) prisoners who have been determined to require protective custody are to be classified in such a manner as to ensure their safety whilst in custody.

(2) Procedures for determining and applying security classifications, and the implications of such classification, are to be prescribed by Regulations or Commissioner’s Orders.

40. Prisoner classification procedures – Procedures for classifying prisoners are to be prescribed by Regulations or in Commissioner’s Orders, and are to be consistent with the objectives stated in section 39.

PART 8
DISCIPLINING PRISONERS

- 41. Prison offences** – (1) Prison offences are to be:
- (a) prescribed by Regulations and in Commissioner’s Orders; and
 - (b) prominently displayed at all prisons at a place or places where prisoners have access; and
 - (c) in the Samoan and English languages.

(2) If a prisoner is charged with and punished for a prison offence, the charge or punishment does not prevent criminal proceedings being taken against the prisoner arising from the same circumstances, but a court must take into account any penalty imposed for the prison offence, when sentencing a prisoner for the criminal offence.

42. Impermissible penalties – (1) No prisoner is to be subjected, by way of punishment, to the following:

- (a) corporal punishment in any form;
- (b) the use of instruments of restraint;
- (c) withdrawal of basic food rations;
- (d) denial of sleeping mats and standard bedding which are ordinarily supplied to prisoners;
- (e) a total denial of visitation rights or the right to communicate with a friend, family, Visiting Justice, Visiting Medical Officer, registered medical practitioner, prisons Chaplain, religious representative or community representative.

(2) Subsection (1)(e) does not prevent the withdrawal of visitation rights or the right to communicate with a friend or family for a period consistent with Regulations or Commissioner’s Orders.

(3) The officer-in-charge must ensure that a prisoner who is kept separately as a punishment is visited at least twice a day.

43. Proceedings for prison offences – (1) Powers to hear and determine proceedings against prisoners in relation to prison offences are under the general authority of the Commissioner and a Visiting Justice, and additional powers may be vested by Regulations in the following:

- (a) senior officers or officers-in-charge;

(b) a tribunal established and empowered by Regulations.

(2) The punishments which may be imposed for breaches of prison offences are to be prescribed by Regulations, and if there are no Regulations the following punishments may be imposed by a visiting justice, the Commissioner, the Assistant Commissioner or a senior officer:

(a) forfeiture of remission of sentence for a period not exceeding 90 days;

(b) deprivation of earnings, or part of it, for a period not exceeding 60 days;

(c) forfeiture of privileges under this Act for a period not exceeding 60 days.

(3) The principles of natural justice apply to any proceedings against prisoners under this section, as far as is practicable.

(4) If a proceeding is heard and punishment is imposed by a senior officer or an officer-in-charge, the Commissioner may review the matter and overturn the decision or impose an alternative punishment in accordance with subsection (2).

(5) No procedure is to permit or require a prisoner to impose punishment on any other prisoner except any procedure for any appropriate arrangement for prisoners to be designated to play leadership or mentoring roles in relation to other prisoners.

PART 9 USE OF FORCE, RESTRAINTS AND FIREARMS

44. Use of force – (1) Members are not to use force against any prisoner, except the use of force under the following:

(a) for self-defence or the defence of any person;

(b) if there is an escape, or attempted escape;

(c) when a prisoner uses actual or passive resistance to a member when carrying any duty or power.

(2) A member is not to use force permitted under subsection (1) more than is necessary in the circumstances, and must immediately make a report on the permitted use of force and all relevant matters to the officer-in-charge who must:

(a) enter a record of the report in the prison log; and

(b) ensure that the prisoner is given any appropriate medical treatment for any injury received.

(3) A sworn member shall be trained in relation to the following:

- (a) the use of riot gear and other means of asserting control over riots and disturbances within prisons;
- (b) the use of force for the purpose of restraining aggressive prisoners;
- (c) dealing with prisoners practising passive resistance.

(4) The training under subsection (3) is to be part of the basic training of members and part of the on-going training and instruction within the Service.

45. Firearms not to be kept or used by the Service-(1)

Firearms are not to be kept by the Service, or be used by members when carrying out their duties and powers under this Act.

(2) If there is any incident in a prison or incident involving a prisoner in custody, which requires an armed intervention, the Commissioner, the Assistant Commissioner, a senior officer or an officer-in-charge must request assistance from the Police Service for its members to intervene in the incident in an appropriate manner under Part 3 of the Police Powers Act 2007.

46. Use of instruments of restraint – (1) The Service is not to use any instrument of restraint that contravenes The Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955.

(2) No instrument of restraint may be used as a punishment.

(3) Handcuffs may only be used as a precaution against escape during the transfer of a prisoner, or on the order of the officer-in-charge if other means of controlling a prisoner have failed.

(4) A strait jacket is only to be used on medical grounds with the prior approval of a Visiting Medical Officer or with approval obtained as soon as is practicable after the strait jacket has been applied.

(5) The use of any other instrument of restraint is not permitted unless authorised by Regulations or Commissioner's Orders (which must be consistent with Regulations).

(6) If instruments of restraint are used under the authority of this Act, the following requirements apply:

- (a) the instruments are not to be applied in such a way as to cause unnecessary pain to the prisoner;
- (b) the instruments are to be applied in a manner which preserves the dignity of the prisoner as far as is practicable;
- (c) the instruments are not to be applied for any longer than is necessary, and not for a period that exceeds 24 hours unless with the prior approval of a Visiting Medical Officer.

PART 10
PRISON LABOUR, PROGRAMMES
AND ENTERPRISES

47. Approved prison labour – (1) A convicted prisoner may be required to undertake labour, within or outside a prison, and to perform any labour prescribed by Regulations or in Commissioner’s Orders, which is:

- (a) to have due regard to the need to provide meaningful rehabilitation of prisoners, with an emphasis on vocational training being provided; and
- (b) for female prisoners, to be of a type that is appropriate for women to undertake; and
- (c) for young prisoners, to be of a type that is appropriate for a person of the age of the prisoner; and
- (d) to be aimed at providing relevant skills to prisoners so as to enhance their opportunities after discharge; and
- (e) to take account of the prevailing employment opportunities and lifestyles in the areas where the prisoners are likely to be released to; and
- (f) to respect the human dignity of all prisoners and take account of their religious observances and practices; and
- (g) not to require a prisoner to work for more than 8 hours each day, with at least 1 day each week set aside for rest or recreation, and due regard given to the observance of public holidays; and
- (h) to provide for exemption from labour on medical grounds.

(2) Prisoners must keep their cells and rooms, common areas, kitchens, toilet and bathing facilities, furniture, clothing and utensils clean and in good repair.

(3) Entitlements to remuneration for labour are to be as prescribed by Regulations providing the following:

- (a) exemption of certain categories of work from payment;
- (b) provision for fair wages, taking account of the commercial return arising from the work undertaken;
- (c) arrangements for dealing with prisoners entitlements so that some monies are available for the purchase of personal requirements and other arrangements for retaining monies when the prisoner is released.

(4) Regulations prescribing remuneration for labour are to be reviewed at periods of not less than 5 years after commencement and after each succeeding review, to take account of increases in the cost of living and the development of prison enterprises under section 49.

48. Work for unconvicted prisoners - Unconvicted prisoners may decline to work, but if they elect to participate in prison labour section 47(1) apply.

49. Prison enterprises – Provisions are to be made by Regulations, and supported by Commissioner’s Orders, encouraging the establishment and development of prison enterprises, and the appropriate involvement of prisoners so as to enhance their rehabilitation and opportunities, and the provisions are to include the following:

- (a) the setting of prices and charges on a commercial basis;
- (b) the imposition of the “user pays” principle;
- (c) the establishment and proper operation and accounting of special funds established in accordance with law to facilitate commercial enterprises;
- (d) any other matter that fosters prison enterprises and the meaningful participation of appropriate prisoners in the enterprises.

PART 11 SCHEMES FOR EARLY

50. Early release and pre-release programmes – (1)

The aims of early release or pre-release programme are:

- (a) to assist in the rehabilitation of prisoners; and
- (b) to provide opportunities for prisoners to re-enter society by the performance of community work or paid employment, or enrolment in a course of education or instruction.

(2) The Commissioner or a body or committee established for this purpose must by Regulations administer the early release and pre-release programmes.

(3) In addition to any other requirements or pre-conditions imposed by Regulations made under subsection (4), prisoners must meet the following minimum requirements to be eligible for early release under any of the following programmes:

- (a) in relation to release under programs involving the performance of community work or paid employment, the prisoner -
 - (i) has a low security classification; and
 - (ii) has 12 months or less of effective sentence to serve; and
- (b) in relation to undertaking a course of education or instruction, the prisoner -
 - (i) has a low security classification; and
 - (ii) has 12 months or less effective sentence to serve; and
 - (iii) has been accepted to undertake an appropriate course of education or instruction.

(4) Schemes for pre-release programmes and for the early release of prisoners are to be prescribed by Regulations providing for the following:

- (a) any other entitlements and pre-conditions for prisoners who have achieved a low security rating to be eligible to serve part of their sentences on the programmes;
- (b) the identification and approval of government, private, church, non-government agencies, companies, organisations or other bodies to participate in the programmes;
- (c) any reporting or other requirements applying to an entity specified under paragraph (b) participating in the programmes, and requirements for effective supervision of the

- schemes by the entity or members of the Service;
- (d) the conditions and requirements to be imposed upon or observed by prisoners participating in the programmes;
 - (e) the entitlements of prisoners participating in early release or pre-release programmes, including the right to receive payment for their work, and the provision of rations or allowances instead of rations;
 - (f) any other matter that may promote the rehabilitation of prisoners and facilitate the re-introduction of prisoners into society; and
 - (g) schemes of release for prisoners with terminal illnesses, and release for female prisoners and young prisoners are to comply with the requirements under CEDAW and CRC;
 - (h) identifying classes of offenders, such as those convicted of serious sexual offences, who are not to be eligible for early release;
 - (i) the early release of prisoners on medical grounds.

51. Weekend and short term release – (1) Regulations are to provide schemes of short term release, including the following:

- (a) weekend release;
- (b) release from prison to attend a course of instruction;
- (c) release into the care and supervision of community leaders for the purpose of facilitating the re-entry of the prisoner into his or her village or community;
- (d) any other arrangement permitting short term release to assist in the rehabilitation of a prisoner or facilitate the prisoner's return to the family, village or community.

(2) Commissioner's Orders may provide any other scheme approved under subsection (1) that is not inconsistent with the relevant Regulations.

PART 12 DISCHARGE OF PRISONERS

52. Discharge of prisoners – (1) An officer-in-charge must ensure that a prisoner is discharged:

- (a) at the end of the effective sentence; or
- (b) under an order of any court; or
- (c) into the custody of a person having lawful authority over the prisoner under a law; or
- (d) under the decision of the Parole Board, or the decision of any other body authorised under an Act to release a prisoner on parole or licence.

(2) If there is any doubt arising as to actual date upon which discharge is due, or doubt about the lawful authority of a person into whose custody a prisoner is to be released, the officer-in-charge must refer it to the Commissioner for a decision.

(3) If the Commissioner is unable to clarify a doubt under subsection (3), the Commissioner may refer it to the Attorney General for an opinion.

53. Parole of prisoners – (1) This Act does not affect the Prisons Parole Board Act 1977, or any other Act dealing with the parole of prisoners or providing for release or management of prisoners under any legal process.

(2) The Commissioner must ensure that all necessary action is taken to implement a decision of the Parole Board or of any other body having lawful powers over the management and rehabilitation of prisoners.

(3) Powers of the Parole Board in relation to the remission and release of prisoners are in addition to, and not in derogation of, the provisions of this Act.

54. Support for prisoners after release – Commissioner's Orders may provide for the Service to undertake appropriate activities and support services in relation to prisoners who have been discharged to facilitate their reintegration into society.

PART 13 OFFENCES

55. Offences by members – (1) A member who:

- (a) begins, excites, causes or joins any mutiny or sedition within the Service or in any prison; or
- (b) fails to use his or her utmost endeavours to suppress a mutiny or sedition within the Service or in a prison; or

(c) fails to report to a senior officer, the existence of a mutiny or sedition within the Service or in a prison, or an information that the member has that indicates that mutiny or sedition may arise; or

(d) deserts the assigned place of duty with the intention of not returning to the Service; or

(e) participates in a strike or industrial action that affects the proper management of a prison; or

(f) allows a prisoner who is committed to the member's charge, or whom it is the member's duty to keep or guard, to escape; or

(g) persuades, procures or assists a sworn member to desert; or

(h) fails to give information to a senior officer about the desertion or intended desertion of a sworn member; or

(i) strikes or offers violence to a superior officer, commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years or both.

(2) A member who, having ceased to be a member, fails or refuses to deliver up to a senior officer, any equipment, clothing and any other item supplied during his or her term as a member, and which are the property of the Service or the Government, commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a period not exceeding 6 months, or both.

(3) Despite subsection (2), the Commissioner may allow a member to make payment (an amount to be determined by the Commissioner) for an item in subsection (2) except any instrument of restraint.

(4) A person who:

- (a) gains admission to or employment in the Service by any false certificate or representation; or
- (b) engages in a political activity, or does any other thing which is contrary to any duty or function under this Act,

commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

56. Inciting and harbouring – (1) A person who by any direct or indirect means:

- (a) procures, persuades or attempts to persuade a sworn member to desert; or

(b) knowingly harbours or assists a deserting sworn member; or
 (c) knowingly employs a deserting sworn member, commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(2) A person who:

(a) directly or indirectly instigates, commands, counsels or solicits a mutiny or sedition amongst sworn members or prisoners; or
 (b) directly or indirectly instigates, commands, counsels or solicits a disobedience to a lawful command; or
 (c) wilfully attempts to induce a sworn member to breach the oath of allegiance,
 commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

(3) A person who:

(a) counsels, incites, assists or arranges for a prisoner to escape; or
 (b) harbours a prisoner illegally at large; or
 (c) knowingly employs a prisoner illegally at large; or
 (d) knowingly and without lawful excuse assists a prisoner illegally at large,
 commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

57. General offences concerning prison management –

(1) A person who:

(a) hinders or obstructs a sworn member when carrying out any duty or power under this Act; or
 (b) fails to comply with any direction or command given by a sworn member within a prison, or when transferring a prisoner under this Act; or
 (c) injures or kills a dog used by the Service under this Act,
 commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(2) A person may only enter a prison with the authority of the Commissioner or the relevant officer-in-charge.

(3) A person who breaches subsection (2) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(4) A person, other than a sworn member, who:

- (a) is found in possession of any uniform, equipment or article which has been supplied to a member for the purpose of the member's duty; or
- (b) is found in possession of any other property of the Service and cannot satisfactorily account for how the person came to be in possession of the property; or
- (c) without lawful authority, purchases or receives a property or item issued to a sworn member or of the Service; or
- (d) aids or abets a member in selling or disposing of a property or item of the Service without lawful authority,

commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(5) A person who:

- (a) brings, sells or attempts by any means whatsoever to introduce into a prison, or to give to a prisoner, a prohibited article; or
- (b) communicates with a prisoner for the purpose of breaching this section; or
- (c) offers a bribe or inducement to a member in order to avoid a provision of this Act, or to induce a breach of this Act,

commits an offence and is liable to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(6) A person, other than a member, who by words, conduct or demeanour:

- (a) pretends to be a member; or
- (b) wears a uniform, identity card or other thing as if the person is a member,

commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 6 months, or both.

PART 14 MISCELLANEOUS

58. Transfer of assets, records, etc. – (1) The Minister may approve the transfer to the Service of any asset or property of the Police Service which has been used for or in connection with a prison, or the management of prisoners, prior to the commencement of this Act.

(2) Any legal process associated with the transfer of asset or property under subsection (1) is effective upon the date of approval of the Minister without the need for any other legal formality, subject to any legal requirement of recording the change of ownership pursuant to this section.

(3) The Service must receive and assume ownership of documents, records and files held by the Police Service relating to the management of prisons and prisoners prior to the commencement of this Act.

59. Prisons and Corrections Service Fund – (1) Arrangements are to be made in relation to the management of the Police Service Fund established under section 76 of the Police Service Act 2009 for fines and other monies contributed to the Fund relating to members of the Prisons and Corrections Service to be applied for their benefit in a manner that is consistent with section 76 of that Act.

(2) Monies paid into the Fund on the order of a court may be spent in support of any programme or enterprise under this Act relating to the rehabilitation of prisoners.

60. Regulations, Commissioner's Orders etc. – (1) The Head of State, acting on the advice of Cabinet, may make Regulations for the purpose of giving effect to the provisions of this Act, including Regulations making provision in relation to the following:

- (a) the regulation and government of prisons, and the maintenance of security and good governance in prisons;
- (b) the recognition and implementation of human rights and applicable international standards;
- (c) the appointment, discharge and duties of members;
- (d) offences of a disciplinary nature applying to officers and prisoners, and procedures for dealing with such offences, including procedures for appealing against any punishment;
- (e) the establishment, empowerment, procedures, privileges and protections of a Professional Standards Unit to deal with complaints

- concerning neglect of duty or alleged misconduct by a sworn member, or any allegation of corrupt or improper practice within the Service;
- (f) the rights of prisoners whilst in custody, including matters related to the following -
 - (i) visits from friends, relatives and other persons;
 - (ii) communications by post, or other means;
 - (iii) procedures for complaint and representation to prison authorities, the Ombudsman or any other agency with responsibilities for the investigation and enforcement of human rights;
 - (iv) exercise and recreation;
 - (v) other rights applying to prisoners awaiting trial;
 - (g) further duties and functions of Visiting Medical Officers, Visiting Justices, committees, or other persons authorised to undertake official prison visits, including the payment of allowances and the reimbursement of expenses consistent with any relevant law;
 - (h) the admission and classification of prisoners, including procedures applying to the detention or transfer of persons in accordance with Samoa's obligations under international conventions;
 - (i) interviews of prisoners by police officers in the course of their investigations, which may include arrangements for taking prisoners to crime scenes and their participation in identification processes, taking into account the constitutional rights of the prisoners and the role of their lawyers;
 - (j) the transfer of prisoners and the responsibilities of members, police officers and other persons in relation to the security of prisoners when being transferred;
 - (k) separation of prisoners, and the review of prisoners under separation;
 - (l) the use of dogs in maintaining good order and security, and other arrangements for

- responding to unrest and violence within prisons;
- (m) schemes for early release and pre-release, and other appropriate arrangements for the rehabilitation of prisoners;
 - (n) schemes providing support for prisoners after their release, including cooperative arrangements with relevant Ministries, government agencies, religious bodies, community based groups and other bodies;
 - (o) the provision of medical and related services within prisons, and arrangements for dealing with infectious diseases;
 - (p) arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW and CRC, and in particular the rights of mothers to feed and care for their infant children whilst in prison;
 - (q) the establishment and administration of prison enterprises and training and educational programmes;
 - (r) arrangements for unconvicted and civil prisoners, including procedures applying to the periodic review of orders for the detention of any unconvicted person made under any law;
 - (s) reporting, investigating and otherwise dealing with the death of prisoners in custody;
 - (t) procedures for prison visits, and matters relating to the taking of items, articles and other things into prisons during visits;
 - (u) offences for breach of any regulation, which may provide for penalties of fines not exceeding 500 penalty units or imprisonment for a term not exceeding 6 months, or both;
 - (v) the amendment to the Schedule;
 - (w) to impose solitary confinement.
- (2) Commissioner's Orders made under this Act:
- (a) come into effect upon being approved by the Attorney General and signed by the Commissioner; and
 - (b) may relate to any aspect of prisons administration and management, including the matters listed in subsection (1), and must be consistent with the provisions of this Act and the Regulations; and

- (c) may be of general application to the Service and to all prisons and prisoners, or may apply local operating procedures to any prison; and
 - (d) are to be reviewed at times prescribed by Regulations, or as determined by the Commissioner; and
 - (e) must give full recognition and effect to accepted standards and have regard to -
 - (i) the right of prisoners to adequate facilities permitting the proper preparation of defences and appeals, including access to legal advisers by prison visit or other communication (with appropriate regard to the confidentiality of the solicitor and client relationship) and to legal resources; and
 - (ii) the rights and special needs of persons with disabilities; and
 - (iii) the avoidance of discrimination on any grounds; and
 - (iv) the right to practise a religion of choice, including the observance of daily or periodic rituals and practices; and
 - (v) the right to basic education, and in particular the right of access to education by young prisoners and by juveniles held on remand; and
 - (vi) the right of prisoners to access the officers and resources of any agency which exercises powers to investigate complaints in accordance with law; and
 - (f) may provide for the recognition of good service by members, including for long service, good conduct and bravery; and
 - (g) must be circulated to all senior officers and officers-in-charge, and be brought to the attention of all members; and
 - (h) may be amended or repealed by the Commissioner; and
 - (i) may provide for the delegation of any power of the Commissioner to any member.
- (3) Copies of all Commissioner's Orders must be provided to the Attorney-General for confirmation that they are consistent with this Act, the Regulations and any other legal requirement.

(4) After approval of Commissioner's Orders has been given by the Attorney General, a notice of their making shall be published in the Savali.

61. Repeal – (1) The Prisons Act 1967 is repealed (“repealed Act”).

(2) Section 26 of the Police Service Act 2009 is repealed.

62. Transitional arrangements and savings – (1) The Regulations, Orders and Instructions applying to the management of the Police Service under Police Service Act 2009 have full effect in relation to the management of the Service (with necessary modifications determined by the Commissioner) until they are replaced or modified by Regulations or Commissioner's Orders made under this Act.

(2) After the commencement date:

(a) the terms and conditions of employment applying to members under the repealed Act or the Police Service Act 2009; and

(b) the duties assigned to any officer under the repealed Act or the Police Service Act 2009; and

(c) disciplinary proceedings taken against officers or prisoners, and punishments imposed under such proceedings, under the repealed Act or the Police Service Act 2009; and

(d) any power exercised under the repealed Act; and

(e) the admission, classification, early release and discharge of any prisoner under the repealed Act; and

(f) the calculation and application of any remission of sentence, and other entitlement of a prisoner under the repealed Act; and

(g) the implementation of any scheme for prison labour or rehabilitation and training undertaken under the repealed Act; and

(h) the commencement of any criminal prosecution for an offence against the repealed Act,

continue to be valid and have full force and application until affected by the exercise of any authority under this Act, and where appropriate are deemed to have been made or taken under this Act.

63. Amendments to other laws – (1) Section 35(2) of the Police Service Act 2009 is amended by deleting the words “and under the relevant provisions of the Prisons Act 1967”.

(2) Any reference to the Prisons Service in any other law is deemed to be a reference to the Samoa Prisons and Corrections Service.

(3) A reference in any law or document to the “Commissioner of Prisons” is deemed to be a reference to the Commissioner under this Act.

Schedule

MEMBERS’ OATH

“I.....do swear that I will well and truly serve the Independent State of Samoa in the Samoa Prisons and Corrections Service, without favour or affection, malice or ill-will, until I am legally discharged; and that I will exercise my duties and responsibilities to promote the good order of the prisons of Samoa in accordance with Samoan customs and traditions and in compliance with the accepted and required standards applying to the proper and humane treatment of prisoners; and that while I continue to hold office I will to the best of my skills and knowledge discharge all my duties faithfully and in accordance with law. So help me God.”

REVISION NOTES 2019

This is the official version of this Act as at 31 January 2019.

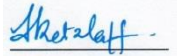
This Act has been revised and consolidated by the Legislative Drafting Division in 2017 – 2019 under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The commencement dates are inserted.

The following amendments have been made to this Act since its enactment:

By the Police Service Amendment Act 2017, No. 4 (commenced on 26 January 2017):

Section 7 insertion of new subsection (6)



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered
by the Samoa Prison and Correctional Services.*
