



SAMOA

INTERNATIONAL TRANSFER OF PRISONERS ACT 2009

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**INTERNATIONAL TRANSFER OF PRISONERS ACT
2009**

2009 No.

16

AN ACT relating to the transfer of prisoners to and from Samoa, and for related purposes.

[Assent date: 27 October 2009]

[Commencement date: 1 December 2009]

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 International Transfer of Prisoners Act 2009.

(2) This Act commences on a date to be nominated by the Minister.

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

“appropriate Ministerial consent” means Ministerial consent given as required by section 5;

“continued enforcement method”, for the enforcement of a sentence of imprisonment, has the meaning given by section 30;

“converted enforcement method”, for the enforcement of a sentence of imprisonment, has the meaning given by section 30;

“escort officer”, for a prisoner, means the police officer, prison officer or other person specified in the warrant authorising the transfer of the prisoner under this Act as the escort officer for the prisoner;

“extradition country” has the same meaning as in the Extradition Act 1974;

“foreign law” means a law of a foreign country or of a part of, or in force in a part of, a foreign country;

“Immigration Minister” means the Minister responsible for administering the Immigration Act 2004;

“mentally impaired prisoner” means:

(a) a person serving a sentence of imprisonment on the acquittal of the person for an offence on the ground of mental impairment;

(b) a person serving a sentence of imprisonment because the person has been found mentally unfit to stand trial;

“Minister” means the Minister responsible for the Office of the Attorney General;

“national” of a particular country means a person who is a citizen of the country under the law of the country;

“non-parole period”, in relation to a sentence of imprisonment, means that part of the period of imprisonment for that sentence during which the person is not to be released on parole, whether that part of the period is fixed or recommended by a court or tribunal or fixed by operation of law;

“officer-in-charge” of a prison, means the person-in-charge of the prison;

“prison officer” means a person lawfully appointed as a prison officer, and acting in that position;

- “prisoner” means a person, however described, who is serving a sentence of imprisonment, and includes:
- (a) a mentally impaired prisoner; and
 - (b) a person who has been released on parole;
- “prisoner’s representative” means a parent, guardian or legal representative of the prisoner who may consent to the transfer of a prisoner under section 6;
- “release on parole” means any form of conditional release in the nature of parole, and includes:
- (a) release on probation; and
 - (b) release on licence to be at large;
- “Samoa court” means a court of competent jurisdiction in Samoa;
- “Samoa law” means a law of the Independent State of Samoa;
- “Samoa prisoner” means a prisoner who is serving a sentence of imprisonment imposed by a Samoa court in accordance with Samoa law;
- “sentence of imprisonment” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate or indeterminate period in the exercise of its criminal jurisdiction and includes any direction or order given or made by the court or tribunal with respect to the commencement of the punishment or measure;
- “transfer country” means a foreign country or a region that is declared by the regulations under section 7, or determined by Cabinet, to be a transfer country;
- “treaty” includes a convention, protocol, agreement or arrangement.

3. Act binds Government– This Act binds the Government.

4. Objects of the Act – The object of this Act is to facilitate the transfer of prisoners between Samoa and certain countries with which Samoa has entered agreements, whether generally or for a specific prisoner, for the transfer of prisoners so that the prisoners may serve their sentences of imprisonment in their countries of nationality.

5. Appropriate Cabinet consent to transfer– (1) The Cabinet must provide a Cabinet consent for the transfer of a prisoner from Samoa to a transfer country, before any such transfer may be made under this Act.

(2) The Cabinet must provide a Cabinet consent for the transfer of a prisoner from a transfer country to Samoa, before the transfer may be made under this Act.

6. Prisoner consent to transfer– (1) A prisoner may consent to his or her transfer under this Act only if:

- (a) the prisoner is an adult; and
- (b) the prisoner is capable of consenting to the transfer.

(2) A person may consent to the transfer under this Act of a prisoner who is a child or who is incapable of consenting to his or her transfer if the person is the prisoner's representative.

(3) A prisoner or prisoner's representative must be informed, through an interpreter if necessary, in language in which the prisoner or prisoner's representative is able to communicate with reasonable fluency, of the legal consequences of the transfer of the prisoner under this Act before consenting to the transfer.

(4) The consent to transfer by the prisoner or prisoner's representative must be accompanied by certification by the prisoner or prisoner's representative that he or she has been informed under subsection (3).

(5) For this section, a prisoner is incapable of consenting to his or her transfer if the prisoner is an adult who:

- (a) is incapable of understanding the general nature and effect of the transfer; or
- (b) is incapable of indicating whether he or she consents or does not consent to a transfer.

(6) A prisoner's or prisoner's representative's consent to transfer cannot be withdrawn after the prisoner leaves the country from which the prisoner is being transferred.

(7) In this section:

“adult” means:

- (a) for a prisoner in Samoa, a person above 18 years of age; and
- (b) for a prisoner in a transfer country, a person of or above the age that under the law of that country is the age at which a person is considered for legal purposes to be an adult;

“child” means:

- (a) for a prisoner in Samoa, a person of or below 18 years of age; and
- (b) for a prisoner in a transfer country, a person below the age that under the law of that country is the age at which a person is considered for legal purposes to be an adult.

7. Application of Act to transfer countries—(1) A transfer country for the purposes of this Act may be:

- (a) prescribed by regulations; or
- (b) determined by Cabinet, if no such regulations have been made.

(2) The application of this Act to a transfer country may be subject to limitations, conditions, exceptions or qualifications prescribed in the regulations or Cabinet determination relating to the transfer country.

(3) The limitations, conditions, exceptions or qualifications in relation to a transfer country that may be applied under subsection (2) are any 1 or more of the following:

- (a) limitations, conditions, exceptions or qualifications that are necessary to give effect to a bilateral treaty in relation to transfer of prisoners to or from that country, a copy of which is set out in the regulations;
- (b) limitations, conditions, exceptions or qualifications that are necessary to give effect to a multilateral treaty in relation to transfer of prisoners to or from that country, a copy of which is set out in the regulations;
- (c) limitations, conditions, exceptions or qualifications, other than limitations, conditions, exceptions or qualifications that are necessary to give effect to a treaty, for the transfer of prisoners to or from that country that are set out, or identified in any other way, in the regulations.

(4) The limitations, conditions, exceptions or qualifications that are necessary to give effect to a treaty in relation to a transfer country may be expressed so as to state that this Act applies to that country subject to the treaty.

(5) For the purposes of this Act, the following colonies, territories or protectorates are taken to be part of a transfer country:

- (a) a colony, territory or protectorate of that country;
- (b) a region that is part of that country;
- (c) a region that is under the protection of that country;
- (d) a region over which that country exercises jurisdiction or control;
- (e) a region for whose international relations that country is responsible.

(6) For this section, a region is taken to be a “foreign country” if:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region’s international relations.

PART 2 TRANSFERS GENERALLY

8. When a prisoner may be transferred– A prisoner may be transferred between Samoa and a transfer country if:

- (a) the prisoner is eligible for transfer from or to Samoa; and
- (b) Samoa and the transfer country have agreed to the transfer of the prisoner on terms agreed under this Act; and
- (c) the prisoner or the prisoner’s representative has consented in writing to transfer on those terms; and
- (d) appropriate Cabinet consent in writing has been given to transfer on those terms; and
- (e) the relevant conditions for transfer of the prisoner are satisfied; and
- (f) the transfer of the prisoner is not likely to prevent the surrender of the prisoner to any extradition

country known by the Minister to have requested the extradition of the prisoner or to have expressed interest in extraditing the prisoner or that, in the opinion of the Minister, is reasonably likely to request extradition.

9. Eligibility for transfer from Samoa of prisoners– A prisoner is eligible for transfer from Samoa to a transfer country if the prisoner is a national of the transfer country.

10. Eligibility for transfer to Samoa of prisoners– (1) A prisoner is eligible for transfer to Samoa from a transfer country if the prisoner:

- (a) is a Samoan citizen or national; and
- (b) is permitted to travel to, enter and remain in Samoa indefinitely under the Immigration Act 2004.

(2) If a request is made for the transfer of a prisoner to Samoa, the Cabinet must obtain confirmation from the Immigration Minister that the prisoner:

- (a) is eligible under subsection (1) for a transfer to Samoa; or
- (b) is likely to be eligible under subsection (1) for a transfer to Samoa at a future time specified by the Cabinet for the purposes of the consultation.

11. Transfer conditions for a transfer from Samoa– (1) The conditions for transfer from Samoa of a prisoner, other than a mentally impaired prisoner, are satisfied if:

- (a) neither the sentence of imprisonment imposed by the Samoan court nor the conviction on which it is based is subject to appeal; and
- (b) subject to subsection (3), the acts or omissions constituting the offence for which the prisoner is serving the sentence in Samoa would, if the acts or omissions had occurred in the transfer country, have constituted an offence in the transfer country; and
- (c) if the sentence of imprisonment is determinate, on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served, whether or not the prisoner has been

released on parole, or a shorter period remains to be served and the Cabinet has determined that, in the circumstances, transfer for a shorter period is acceptable.

(2) The conditions for transfer from Samoa of a mentally impaired prisoner are satisfied if:

(a) neither the sentence of imprisonment imposed by the Samoan court nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal; and

(b) subject to subsection (3), the acts or omissions constituting the offence—

(i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and

(ii) on account of which the prisoner is confined in Samoa, would, if the acts or omissions had occurred in the transfer country, have constituted an offence in the transfer country; and

(c) if the sentence of imprisonment is determinate - on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served (whether or not any review affecting the duration of the sentence is pending), or a shorter period remains to be served and the Cabinet has determined that, in the circumstances of the case, transfer for a shorter period is acceptable.

(3) The Cabinet may determine that the requirements of subsection (1)(b) or (2)(b) need not be satisfied in a particular prisoner's case.

12. Transfer conditions for transfer to Samoa— (1) The conditions for transfer to Samoa of a prisoner, other than a mentally impaired prisoner are satisfied if:

(a) neither the sentence of imprisonment imposed by the transfer country's court or tribunal nor the conviction on which it is based is subject to appeal under the law of the transfer country; and

- (b) subject to subsection (3), the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in the transfer country would, if the acts or omissions had occurred in Samoa, have constituted an offence in Samoa; and
 - (c) if the sentence of imprisonment is determinate - on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served, whether or not the prisoner has been released on parole, or a shorter period remains to be served and the Cabinet has determined that, in the circumstances, transfer for a shorter period is acceptable.
- (2) The conditions for transfer to Samoa of a mentally impaired prisoner are satisfied if:
- (a) neither the sentence of imprisonment imposed by the transfer country's court or tribunal nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal under the law of the transfer country; and
 - (b) subject to subsection (3), the acts or omissions constituting the offence—
 - (i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and
 - (ii) on account of which the prisoner is serving the sentence in the transfer country, - would, if the acts or omissions had occurred in Samoa, have constituted an offence in Samoa; and
 - (c) if the sentence of imprisonment is determinate - on the day of receipt of the request for transfer at least 6 months of the prisoner's sentence remains to be served, whether or not any review affecting the duration of the sentence is pending, or a shorter period remains to be served and the Cabinet has determined that, in the circumstances, transfer for a shorter period is acceptable.
- (3) The Minister may determine that the requirements of subsection (1)(b) or (2)(b) need not be satisfied in a particular prisoner's case.

**PART 3
TRANSFERS FROM SAMOA**

13. Applications for transfer from Samoa– (1) An application for transfer from Samoa may be made to the Minister by a prisoner serving a sentence of imprisonment in Samoa, or by the prisoner’s representative.

(2) An application under this section must be made in the manner prescribed by the regulations, or in the absence of regulations, in the manner approved by the Minister.

(3) An application under this section must be for the transfer of the prisoner to a transfer country to complete the sentence on terms agreed in accordance with this Act.

14. Preliminary consideration of application for transfer–

(1) The Minister may take into account any matter the Minister considers relevant to the processing of an application under section 13 before the application is referred to Cabinet.

(2) The Minister may obtain from the transfer country information that is relevant to the Minister’s assessment of the application.

(3) The Minister:

- (a) must notify a transfer country of any application for transfer to that country; and
- (b) may request the transfer country to indicate its provisional views on the application, including details of the method by which it is likely that the sentence of imprisonment would be enforced by the transfer country if, following a formal request for transfer, it consents to the transfer.

(4) The Minister may provide the transfer country with:

- (a) details of any request for extradition of the prisoner that has been made under the Extradition Act 1974 or of any expression of interest in extradition made by another country or of any country that, in the opinion of the Minister, may wish to extradite the prisoner; and
- (b) any other information the Minister considers may assist the transfer country in giving its provisional views on the proposed transfer; and

- (c) any other information required by Cabinet.

15. Formal request for transfer– (1) The Minister may, after obtaining Cabinet approval, make a formal request in writing for the transfer of a prisoner from Samoa to a transfer country.

(2) In deciding whether to approve a formal request, the Cabinet may take into account any matter the Cabinet considers relevant.

(3) A formal request for the transfer of a prisoner to a transfer country may be made if:

- (a) the required consents under section 17(2) are given; and
- (b) the Cabinet is satisfied that the transfer is made in compliance with section 8.

16. Information to accompany a formal request – A formal request for transfer from Samoa to a transfer country is to be accompanied by:

- (a) any information required to be provided in accordance with arrangements made with the transfer country; and
- (b) any other available information the Minister considers relevant to the request and that may appropriately be provided.

17. Governmental consent to transfer from Samoa– (1) The Minister is to notify the prisoner or the prisoner's representative and any Minister whose consent to the transfer is required under this Act:

- (a) of the transfer country's decision; and
- (b) if consent is given, of the proposed method by which the sentence of imprisonment will be enforced by the transfer country and any other proposed terms of transfer.

(2) The prisoner or prisoner's representative and Minister concerned are to advise the Minister as to whether they consent to the transfer on the terms proposed by the transfer country.

(3) The Cabinet, after consultation with the Minister, shall:

- (a) determine whether or not consent should be given to the transfer of a prisoner on the terms proposed by the transfer country; and
- (b) notify the transfer country as to whether consent has been given to transfer the prisoner on those terms or, if consent will be given if the transfer country agrees to variation of the terms, of the variation proposed.

18. Issue of warrant for transfer from Samoa– The Minister upon obtaining Cabinet consent may, subject to Part 2, issue a warrant, in the form prescribed by the regulations or in the absence of regulations in the form issued by the Attorney General, for the transfer of the prisoner from Samoa to a transfer country if the prisoner’s or the prisoner’s representative’s consent and Cabinet consent in writing to the transfer on the terms proposed by the transfer country, or, if the transfer country has agreed to variation of the terms, the terms as varied, have been given.

19. Warrants for transfer from Samoa– (1) A warrant for the transfer of a prisoner from Samoa authorises the transfer of the prisoner from Samoa to the transfer country to complete serving the sentence of imprisonment in accordance with the terms agreed under this Act.

(2) A warrant for transfer from Samoa must:

- (a) specify the name and date of birth of the prisoner to be transferred; and
- (b) specify the transfer country to which the prisoner is to be transferred; and
- (c) state that following written consents to the transfer have been given—
 - (i) the prisoner’s or prisoner’s representative’s consent;
 - (ii) the transfer country’s consent;
 - (iii) appropriate Cabinet consent.

(3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant:

- (a) requires the superintendent of the prison, or the person in charge of the hospital or other place, in which the prisoner is serving the sentence of

- imprisonment to release the prisoner into the custody of a person specified in the warrant; and
- (b) authorises the person to take the prisoner to a place in Samoa and, if necessary, to detain the prisoner in custody for the purpose of placing the prisoner in the custody of an escort officer for transport out of Samoa; and
 - (c) to authorise the escort officer to transport the prisoner in custody out of Samoa to the transfer country for surrender to a person appointed by the transfer country to receive the prisoner.
- (4) If the prisoner has been released on parole, the warrant is:
- (a) to specify any approvals, authorities, permissions or variations to the parole or other order or licence to be at large that have been made under a Samoan law; and
 - (b) to specify any procedures for the transfer of the prisoner to the transfer country that have been agreed upon with the transfer country and to give any necessary authorisations and directions.
- (5) The Minister may give any direction or approval that is necessary to ensure that the warrant is executed in accordance with its tenor.

20. Cancellation of warrant for transfer from Samoa– (1)

The Cabinet or Minister may cancel a warrant for transfer from Samoa at any time before the prisoner it concerns leaves Samoa.

(2) Without limiting the grounds on which the Cabinet or Minister may cancel a warrant for transfer, it must be cancelled if the Cabinet, the prisoner or prisoner’s representative or the transfer country concerned, withdraws consent to the transfer.

PART 4

**TRANSFERS TO SAMOA OF PRISONERS FROM
TRANSFER COUNTRIES**

21. Transfer request from outside Samoa– The Cabinet may consent to a request from a transfer country for the transfer of a prisoner serving a sentence of imprisonment in that country

to Samoa to complete serving the sentence on terms agreed under this Act if the Cabinet is satisfied that, were the Cabinet to give that consent, the transfer could be made in compliance with section 8.

22. Information to accompany request– Before Cabinet consents to the transfer of a prisoner to Samoa under this Part, the Minister may request the transfer country to provide:

- (a) details of any request for extradition of the prisoner that has been made to the transfer country or of any country that has expressed interest in extraditing the prisoner or that is likely, in the opinion of the transfer country, to request extradition; and
- (b) any other information the Minister considers relevant to the assessment of whether consent should be given for the transfer of the prisoner to Samoa.

23. Enforcement of foreign sentence – Before Cabinet consenting to the transfer of a prisoner to Samoa under this Part, the Cabinet is to determine, under Part V, the method by which the sentence of imprisonment imposed by the transfer country will be enforced in Samoa if the prisoner is transferred and is to advise the transfer country of this and of any other proposed terms on which consent will be given to the transfer.

24. Governmental consent to transfer to Samoa– (1) Before Cabinet consents to the transfer of a prisoner to Samoa under this Part, the Minister is to notify the Minister responsible for prisons, in writing, in the form prescribed by the regulations or in the absence of regulations in the form issued by the Attorney General, of receipt of the request.

(2) The Minister is to provide the Immigration Minister and the Minister responsible for prisons with any information that the transfer country has given the Minister and particulars of the method by which the Minister considers the sentence of imprisonment imposed by the transfer country could be enforced by Samoa and any other proposed terms of the transfer.

(3) The Immigration Minister and the Minister responsible for prisons must advise the Minister and Cabinet as to whether

they consent to the transfer on the terms proposed as soon as practicable after receiving the notification.

(4) If the Immigration Minister and the Minister responsible for prisons consent to the transfer, those Ministers are to advise the Minister and Cabinet of:

- (a) the prison, or hospital or other place, in which the prisoner will begin to complete serving the sentence; and
- (b) in the case of a prisoner who has been released on parole, any recommended terms or conditions on which the prisoner is to complete serving the sentence; and
- (c) any other matters those Ministers consider relevant to sentence enforcement.

25. Formal consent to transfer – After the Cabinet consent has been given, the Minister is to, as soon as practicable:

- (a) notify the transfer country of Samoa's consent to the transfer; and
- (b) ask the transfer country to—
 - (i) formally consent to the transfer on the terms proposed by Samoa; and
 - (ii) advise of the prisoner's formal consent to transfer on those terms.

26. Issue of warrant for transfer to Samoa – The Minister may issue a warrant, in the form prescribed by the regulations or in the absence of regulations in the form approved by the Attorney General, for the transfer of the prisoner from a transfer country to Samoa if the written consent of the prisoner or prisoner's representative and the transfer country and appropriate Cabinet consent in writing to transfer on the terms proposed by Samoa have been given.

27. Warrants for transfer to Samoa– (1) A warrant for the transfer of a prisoner to Samoa authorises the transfer of the prisoner from the transfer country to Samoa to complete serving the sentence of imprisonment imposed by the transfer country under the terms agreed under this Act.

(2) A warrant for transfer to Samoa must:

- (a) specify the name and date of birth of the prisoner to be transferred; and
 - (b) specify the transfer country from which the prisoner is to be transferred; and
 - (c) state that the following written consents to the transfer have been given—
 - (i) the prisoner's or prisoner's representative's consent;
 - (ii) the transfer country's consent;
 - (iii) appropriate Cabinet consent.
- (3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant is:
- (a) to authorise an escort officer to collect the prisoner from a place, whether in Samoa or the transfer country, specified in the warrant; and
 - (b) if the place is in the transfer country, to authorise the escort officer to transport the prisoner in custody to Samoa for surrender to a person appointed by the Minister to receive the prisoner and, if appropriate, to authorise the appointed person to escort the prisoner to the prison, or hospital or other place, in Samoa where the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
 - (c) if the place is in Samoa, to authorise the escort officer to escort the prisoner to the prison, or hospital or other place, in Samoa where the prisoner is to begin to complete serving the sentence of imprisonment in accordance with this Act; and
 - (d) if the prisoner is to be escorted to a prison, to require the superintendent of the prison to take the prisoner into custody to be dealt with in accordance with the terms agreed under this Act; and
 - (e) if the prisoner is to be escorted to a hospital or other place, to authorise the detention of the prisoner in that hospital or place to be dealt with in accordance with the terms agreed under this Act.
- (4) If the prisoner has been released on parole, the warrant is to specify any procedures for the transfer of the prisoner to

Samoa that has been agreed upon with the transfer country and to give any necessary authorisations and directions.

(5) The Minister or Cabinet may give any direction or approval that is necessary to ensure the warrant is executed in accordance with its tenor.

28. Cancellation of warrant– (1) The Minister or Cabinet may cancel a warrant for transfer to Samoa at any time before the prisoner it concerns leaves the transfer country.

(2) Without limiting the grounds on which the Minister or Cabinet may cancel a transfer warrant, it must be cancelled if the Cabinet, a prisoner or prisoner’s representative, or the transfer country concerned, withdraws consent to the transfer.

29. Effect of warrant on prisoner’s sentence– The prisoner to whom a warrant relates is to be released when the prisoner has completed serving the sentence of imprisonment in accordance with this Act unless any other law authorises the prisoner’s detention in respect of an offence other than that on account of which the sentence of imprisonment was imposed.

PART 5 ENFORCEMENT OF SENTENCES

30. Sentence enforcement in Samoa– The Cabinet may direct that a sentence of imprisonment imposed on a prisoner by a court or tribunal of a transfer country, be enforced on transfer of the prisoner to Samoa under this Act:

- (a) without any adaptation of the duration of the sentence of imprisonment or its legal nature, or with only such adaptations to the duration of the sentence or its legal nature as the Cabinet considers are necessary to ensure that enforcement of the sentence is consistent with Samoan law (in this Act called the “continued enforcement method”); or
- (b) by substituting a different sentence of imprisonment for that imposed by the transfer country (in this Act called the “converted enforcement method”).

31. Duration and nature of enforced sentence– (1) The sentence of imprisonment to be enforced under the continued enforcement method or converted enforcement method must not be harsher, in legal nature or duration, than the sentence of imprisonment imposed by the transfer country.

(2) Without limiting subsection (1):

- (a) if the sentence of imprisonment imposed by the transfer country is for a determinate period, the sentence of imprisonment to be enforced under this Act must not be for a longer duration than that sentence; and
- (b) if the sentence of imprisonment imposed by the transfer country is for an indeterminate period, the sentence of imprisonment to be enforced under this Act is, as far as practicable, to be subject to similar terms affecting the duration of the sentence as those imposed in the transfer country; and
- (c) the sentence of imprisonment to be enforced under this Act must not be of a kind that involves a more severe form of deprivation of liberty than the sentence of imprisonment imposed by the transfer country.

32. Directions concerning enforcement of sentence– (1) In ordering that a sentence of imprisonment be enforced by the continued enforcement method or the converted enforcement method, the Cabinet may, subject to section 31, give such directions as the Cabinet considers appropriate as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under this Act.

(2) Without limiting subsection (1), directions may be made:

- (a) as to entitlements to release on parole, including any non-parole period, of the prisoner following transfer; and
- (b) if the prisoner is a mentally impaired prisoner - as to any review to be undertaken of the mental condition of the prisoner and treatment to be provided to the prisoner following transfer.

(3) For the purpose of forming an opinion or exercising any discretion under this section, the Cabinet may have regard to the following:

- (a) any submissions made by the transfer country;
- (b) any views expressed by any Minister concerned with the proposed transfer;
- (c) any views expressed by parole or prison authorities;
- (d) the sentence of imprisonment that might have been imposed if the acts and omissions constituting the offence had been committed in Samoa;
- (e) any limitations or requirements in relation to the way in which a sentence of imprisonment imposed by a transfer country may be enforced in Samoa arising from any agreement to which Samoa and the transfer country are parties.

33. Appeal and review of sentences of imprisonment imposed by transfer country and sentence enforcement decisions of the Minister– (1) On transfer of a prisoner to Samoa under this Act, no appeal or review lies in Samoa against the sentence of imprisonment imposed by the court or tribunal of the transfer country.

(2) No appeal lies against a decision of the Cabinet concerning the enforcement in Samoa under this Act of a sentence of imprisonment imposed by a court or tribunal of a transfer country.

34. Prisoner transferred to Samoa taken to be a Samoan prisoner– (1) A sentence of imprisonment imposed by the transfer country that is to be enforced in Samoa under the continued enforcement method or the converted enforcement method is taken, for the purpose of enforcement of the sentence of imprisonment in Samoa on transfer of the prisoner to Samoa under this Act, to be a sentence of imprisonment imposed by a Samoan court and the prisoner to be a Samoan prisoner.

(2) Any period of the sentence of imprisonment as originally imposed by the transfer country served by the prisoner before the transfer is taken to have been served under the sentence of imprisonment as it is enforced under this Act.

(3) A prisoner who is transferred to Samoa under this Act may, while serving a sentence of imprisonment imposed by a

transfer country that is enforced under this Act, be detained in a prison or hospital or other place in Samoa.

(4) Any relevant Samoan law, or practice or procedure lawfully observed, concerning the detention of prisoners applies in relation to the prisoner on and after that transfer to the extent that it is capable of applying concurrently with this Act.

(5) Without limiting subsection (4), Samoan law and practice and procedure relating to the following matters are applicable to a prisoner who is transferred to Samoa under this Act:

- (a) conditions of imprisonment and treatment of prisoners;
- (b) release on parole of prisoners;
- (c) classification and separation of prisoners;
- (d) removal of prisoners from 1 prison to another;
- (e) removal of prisoners between prisons and hospitals or other places or between 1 hospital or other place and another;
- (f) treatment of mentally impaired prisoners;
- (g) eligibility for participation in prison programs, including release under a pre-release permit scheme, however called;
- (h) temporary absence from prison, for example,—
 - (i) to attend a funeral; or
 - (ii) to visit a relative suffering a serious illness; or
 - (iii) to attend a place of education or training.

(6) The prisoner is entitled to any remission or reduction of the sentence of imprisonment imposed by the transfer country that is to be enforced under this Act for which the prisoner would be eligible in accordance with any applicable Samoan law if the sentence were a sentence of imprisonment for an offence against a law of Samoa.

(7) Nothing in this section prevents the transfer country from pardoning or granting amnesty to or quashing or otherwise nullifying the conviction of a prisoner serving a sentence of imprisonment imposed by the transfer country in Samoa in accordance with this Act, or from commuting the sentence.

35. Prisoner transferred from Samoa taken to be prisoner of transfer country— On transfer of a prisoner from Samoa under

this Act, the sentence of imprisonment imposed by the Samoan court ceases to have effect in Samoa and, except as provided by section 36, the sentence of imprisonment is taken for all purposes in Samoa to be a sentence of imprisonment imposed by a court or tribunal of the transfer country and the prisoner is to be a prisoner of the transfer country.

36. Pardon, amnesty or commutation of sentences of imprisonment for prisoners transferred from Samoa– (1)

During the period in which a sentence of imprisonment is served in a transfer country by a prisoner transferred from Samoa under this Act, the prisoner's conviction may be quashed or otherwise nullified and the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Samoan law if the prisoner were serving the sentence of imprisonment in Samoa.

(2) If, during the period in which the sentence of imprisonment is served by a prisoner transferred from Samoa under this Act in a transfer country, the prisoner's conviction is quashed or otherwise nullified or the prisoner is pardoned or granted amnesty or commutation of sentence of imprisonment under Samoan law, the Minister is to immediately notify the transfer country that the prisoner should no longer be detained in custody or otherwise subjected to detention or supervision only because of the sentence of imprisonment.

37. Pardon, amnesty or commutation of sentences of imprisonment for prisoners transferred to Samoa– (1)

During the period in which a sentence of imprisonment is served in Samoa by a prisoner transferred to Samoa under this Act, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Samoan law if the sentence of imprisonment had been imposed for an offence against a Samoan law.

(2) The Minister is to direct, in a form prescribed by the regulations or in the absence of regulations in a form issued by the Attorney General, that a prisoner must not be detained in custody or otherwise be subjected to detention or supervision in Samoa under a sentence of imprisonment imposed by a transfer country enforced under this Act only because of that sentence of

imprisonment if, during the period in which the sentence of imprisonment is served in Samoa:

- (a) the prisoner is pardoned or granted amnesty or commutation of sentence of imprisonment under a Samoan law; or
- (b) the transfer country notifies the Minister that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence of imprisonment under the law of the transfer country.

**PART 6
MISCELLANEOUS**

38. Recovery of costs and expenses of transfer– The terms agreed under this Act for transfer of a prisoner may, if the Minister considers it appropriate, include terms relating to the recovery of the costs and expenses reasonably incurred in transferring the prisoner.

39. Prisoner and prisoner's representative to be kept informed– The Minister is to arrange for any prisoner or prisoner's representative who makes a request for transfer under this Act to be kept informed as to progress of the request.

40. Arrest of persons escaping from custody– (1) A police officer may, without warrant, arrest a person if the officer has reasonable grounds to believe that the person has escaped from custody authorised by this Act.

(2) The police officer must, as soon as practicable, take the person before a judge.

(3) If the judge is satisfied that the person has escaped from custody authorised by this Act, the Registrar may issue a warrant authorising any police officer to return the person to the custody from which the person escaped.

41. Application of Prisons Parole Board Act 1977– Except to the extent allowed under this Act, the Prisons Parole Board Act 1977 does not apply to prisoners transferred from and to Samoa in accordance with this Act.

42. Regulations– (1) The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may make provision for or with respect to information to be provided to prisoners and other persons for the purposes of this Act relating to the international transfer of prisoners.

(3) The regulations may prescribe penalties not exceeding a fine of 10 penalty units or a term of imprisonment not exceeding 3 months, or both, for offences against the regulations.

43. Repeal – The Transfer of Offenders Act 1995 is repealed.

REVISION NOTES 2009 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2009 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Part numbers changed to decimal

This Act has not been amended since its enactment.

*This Act is administered by
the Office of the Attorney General.*