

IMMIGRATION BILL 2020

SAMOA

Explanatory Memorandum

Summary:

This Bill repeals the current Immigration Act 2004 (“Act”) and replaces it with a modified and updated regulatory framework for Immigration matters. This Bill is the culmination of review work conducted with the assistance of the Pacific Immigration Development Community on the Act in 2018. The new Bill provides an updated framework that adheres to international standards for immigration process whilst at the same time provides for a system that provides protection of our borders.

Clauses:

PART 1

PRELIMINARY

- Clause 1: - provides for the short title and commencement date of the Bill (i.e. a date to be nominated by the Minister).
- Clause 2: - provides for the definition of terms.

PART 2
APPLICATION OF THIS ACT

- Clause 3:** - provides that this enacted Bill binds the Government.
- Clause 4:** - provides for the virtue of a citizen's right in Samoa.
- Clause 5:** - requires that a person may cooperate accordingly to the Minister's instructions.
- Clause 6:** - provides for circumstances whereby a notice is taken to have been served.

PART 3
**PERMISSIONS REQUIRED FOR ENTRY,
STAY AND DEPARTURE**

Division 1 - Visas

- Clause 7:** - provides that all entrance into Samoa of non-citizens cannot enter without a valid visa.
- Clause 8:** - provides that a person other than a citizen or exempt person may apply for a visa under this Clause and submit with a prescribed fee.
- Clause 9:** - provides that a person, or a spouse or partner (of a citizen or a holder of a permanent resident visa) is not automatically entitled to be granted a visa.
- Clause 10:** - enlists the form of visa specifies the validity, category, conditions and exemptions relating to the visa.

- Clause 11:** - provides that the Chief Executive Officer is responsible for granting a visa accordingly to the grounds set out in the Regulations.
- Clause 12:** - provides that in case of emergency situation, it is the responsibility of the Minister to impose a condition to be applied to a visa.
- Clause 13:** - expressly states that the visa expires on the commencement day after the date specified in the visa.
- Clause 14:** - provides the circumstances whereby a visa or exemption granted may be void and is of no legal effect.

Division 2 - Information Requirements

- Clause 15:** - provides that a person seeking entry, stay or departure from Samoa must complete a declaration form when required by the Minister.
- Clause 16:** - empowers the Chief Executive Officer to request further information from a person seeking to enter, remain in or departing Samoa.
- Clause 17:** - authorizes the Chief Executive Officer to require medical examination for a person, who is about to enter, has entered or is about to leave Samoa to be examined by a qualified medical practitioner.

Division 3 - Entry and exit ports

- Clause 18:** - provides that unless exempted, all persons must enter and depart Samoa through a regulated port.

- Clause 19:** - provides that unless the person has gone through the clearance zone a person has not entered or exit Samoa.

*Division 4 - Arrival and
Departure Prohibitions*

- Clause 20:** - provides that a person is prohibited from departing or attempting to depart Samoa if he or she is subject to an order by a Court, the Attorney General or an order under the Bankruptcy Act 1908.

- Clause 21:** - provides for the grounds for issuing a Court departure prohibition order, appeal process for an order issued to be provided by Regulations and the power of the Court to extend, revoke or amend the order issued.

- Clause 22:** - empowers the Attorney General to issue an Attorney General departure prohibition order and grounds for such order, power of the Attorney General to extend, revoke or amend the order issued, and the right of a person affected to appeal the order issued by the Attorney General.

- Clause 23:** - empowers the Head of State to make Regulations prescribing the grounds for which a person may be declared as a prohibited immigrant. It also empowers the Minister to declare a person to be a prohibited immigrant by Notice. It also prohibits a prohibited immigrant from being entitled to apply for or be granted an entry visa, or attempt to or enter Samoa.

- Clause 24:** - provides that the responsible Minister may keep and maintain a prohibited immigrant register, and provide information on register to anyone according to prescribed procedures.

PART 4
DECISIONS FOR REFUSAL
OR PERMISSIONS

- Clause 25:** - provides that the Chief Executive Officer may require certain category of visas to be obtained by a person prior travelling to Samoa.
- Clause 26:** - provides that unless exempted by the Chief Executive Officer, a visa may be refused to a person if the person does not meet the required criteria prescribed.
- Clause 27:** - provides for the required criteria under clause 26 and the process and considerations of the required criteria are to be prescribed by Regulations.
- Clause 28:** - provides that requirements for sponsorship may be prescribed under Regulations.
- Clause 29:** - provides that an employment visa may be granted to a person only when the requirements of law regulating employment in Samoa are met.

PART 5
ARRIVALS AND DEPARTURES

Division 1 - Passenger and Crew Responsibilities

- Clause 30:** - provides for the requirement to undergo immigration clearance in the clearance zone at places and in manner specified by Regulations.
- Clause 31:** - provides for a duty of a person to ensure to depart Samoa prior to the expiration of the visa, unless that person is exempted.
- Clause 32:** - provides that a person has not departed Samoa if the craft at which the person is on is forced to return to Samoa due to emergency purposes.

Division 2 - Operator and Carrier Responsibilities

- Clause 33:** - provides that an operator or carrier is responsible for any person travelling on their craft. It also provides that the Head of State on the advice of Cabinet may make regulation prescribing duties of operators and carriers, the process by which duties are to be met, and forms required for operators and carriers to fill.
- Clause 34:** - provides that Regulations may prescribe the location for obtaining immigration clearance for an operator or carrier.
- Clause 35:** - provides that Regulations may prescribe what an emergency situation is, and this Clause exempts an operator or carrier from complying with this Part in times of emergency situations.

- Clause 36:** - provides that an operator is responsible to remove a passenger who has been denied entry in Samoa, and the implementation process of an operator's or carrier's obligation is to be set out in Regulations.
- Clause 37:** - provides that a craft is subject to seizure where the offence involves the unlawful disembarkment of a transit passenger or prohibited immigrant in Samoa from that operator's craft.
- Clause 38:** - provides requirement for departure from Samoa at which a carrier or operator of any craft must ensure the craft departs from Samoa at a regulated port only, unless exempted by the Minister and, it must provide the Chief Executive Officer with any information or document as prescribed by Regulations. The Minister upon the advice of the Chief Executive Officer may prohibit any craft from arriving in or departing Samoa until the Minister is satisfied that the carrier or operator is complied with this Act or any other law.
- Clause 39:** - requires an operator or owner of a regulated port to comply with the requirements prescribed by Regulations. The Regulations may also set out offences for breach of these Regulations and penalties.

PART 6
CANCELLATION, REMOVAL
AND DEPORTATION

- Clause 40:** - empowers the Chief Executive Officer to cancel a visa according to prescribed requirements. It further provides that if a visa is cancelled while a person is in the clearance zone, the person may be required to leave Samoa immediately. It also requires the Chief Executive Officer to serve a notice to a person whose visa is cancelled providing reasons for cancelling the visa.
- Clause 41:** - provides that the Minister may in writing issue a removal order for a person to leave Samoa if the person is found to be unlawfully in Samoa.
- Clause 42:** - provides that the Minister on the advice of the Chief Executive Officer may sign a deportation order to deport a person from Samoa if the person is a prohibited immigrant, or the person has entered Samoa in breach of this Act or other law, convicted of a nominated offence, or remains in Samoa after the expiry or cancellation of person's visa.
- Clause 43:** - provides for the execution of a deportation order and for regulations to be made to provide for procedure or manner in which the deportation may be carried out.
- Clause 44:** - provides that a deportation order is not validated because the person subject to the order is married to a citizen, has a child with a citizen and has made an application to become a citizen. It further provides for the validity period of the order which is until the person leaves Samoa or unless it is revoked.

- Clause 45:** - provides for treatment of persons under the age of 18 who are subject to a removal or deportation order.
- Clause 46:** - authorises a Minister to designate premises used to confine a person who is subject to a deportation or removal order.
- Clause 47:** - provides for the process to be followed for transporting a removed or deported person whereby the Minister is authorised to instruct an operator or carrier to transport a deported person or removed person. The costs associated to this arrangement are to be borne by the deported/removed person or unless the Minister directs to be paid out of funds by Legislative Assembly. Other requirements are to be prescribed by regulations.
- Clause 48:** - empowers the Minister to subject a person to an exclusion prescribed period by declaration.

PART 7

APPEAL AND REVIEW MEASURES

- Clause 49:** - provides for the limitation of rights for person applying for a visa or a holder of a visa to a grant of a visa or challenge, seek review or bring other legal proceeding in Court concerning granting, denial, cancellation or imposition of any term or condition for any visa granted.

- Clause 50:** - provides that the Court has no jurisdiction to make any decision or order concerning any matter under sections 23 and 49.
- Clause 51:** - provides that a person's whose visa has been cancelled by the Chief Executive Officer may appeal the decision to the Minister and the power of the Minister to cancel or confirm the said decision.
- Clause 52:** - allows a person subject to a removal or deportation order to appeal against the orders to the Minister in writing. However such appeal does not affect the application of the order on the person subject to such orders.
- Clause 53:** - provides that a person may at any time withdraw in writing an appeal made under Part 7.
- Clause 54:** - provides for Regulations to be made to prescribe a system of administrative review of any act made by any person who has acted under a delegated authority.

PART 8
RESPONSIBILITIES OF EMPLOYERS
AND EDUCATION PROVIDERS

- Clause 55:** - provides for the duties of the employers and education providers in providing and confirming the relevant requirements specified under this clause regarding the non-citizen employees (they engage for employment) and students (admitted for educational purposes).

PART 9
INFORMATION PROTECTION

- Clause 56:** - provides that any information collected or shared for the purpose of this Act must be kept confidential and may be released to required agencies on grounds of national security, national interest or public interest of Samoa. It further provides for regulations to be made to provide the manner in which information is to be released.
- Clause 57:** - duty of the Chief Executive Officer to establish a database of information collected and prohibiting any person from accessing or disclose or alter any information on the database unless authorised by the Minister.
- Clause 58:** - empowers the Minister to enter into agreements with other States for the purpose of mutual assistance in criminal matters and further provides that the Minister must consult the Attorney General before entering into agreements to ensure requirements of law regulating mutual assistance in criminal matters are complied with.

PART 10

FUNCTIONS AND POWERS

- Clause 59:** - empowers the Minister to delegate to the Chief Executive Officer or an enforcement Officer his or her duty or function except for the power to delegate. Such delegation of power remains in force until it is revoked by the Minister.
- Clause 60:** - provides that the Minister has the power to authorize in writing for enforcement officers to do certain acts such as entering using force necessary in the circumstances to arrest a non-citizen, requiring a person to produce identification evidence and requiring them to answer questions for unlawfully entering and remaining in Samoa.

This clause also empowers enforcement officers to have certain powers as listed.

- Clause 61:** - provides that the Minister may provide a signed certificate of evidence in an approved form concerning any matter in question under the Act for any Court proceeding.
- Clause 62:** - provides that the Chief Executive Officer may require biometric data to be collected from the person where there is a good cause to suspect the person has acted in contravention of the Act or is liable for turnaround, removal or deportation.
- Clause 63:** - provides that the Chief Executive Officer must under the supervision of the Minister be responsible for the implementation of the Act and any other matters prescribed by Regulations.
- Clause 64:** - provides the power of the Chief Executive Officer to delegate any duty or function except the power to delegate to an enforcement officer and may be revoked by the Chief Executive Officer.
- Clause 65:** - provides that the Chief Executive Officer may request for Police Commissioner's assistance if there is belief of a risk of harm on an enforcement officer in the carriage of their duties.

PART 11

OFFENCES AND PENALTIES

- Clause 66:** - lists out the offences and penalties with regards to the breach of the Act.

- Clause 67:** - authorises the Minister to summarily deal with minor breaches if requested by a person accused of the offence in writing. The person is not liable to be further prosecuted after being summarily dealt with.

PART 12
MISCELLANEOUS

- Clause 68:** - provides immunity any person carrying out any duty or function under the Act in good faith.
- Clause 69:** - empowers the Head of State to make regulations acting on the advice of Cabinet to give effect to or for the purpose of the Act.
- Clause 70:** - repeals the Immigration Act 2004.
- Clause 71:** - provides for transitional provisions.
- Clause 72:** - provides for consequential amendments to the Marriage Ordinance 1961 and the Passports Act 2008.



.....
(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)
PRIME MINISTER AND MINISTER RESPONSIBLE FOR
THE MINISTRY OF THE PRIME MINISTER AND CABINET

IMMIGRATION BILL 2020

SAMOA

Arrangement of Provisions

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2

APPLICATION OF THIS ACT

3. Application of this Act
4. Rights of citizens protected
5. Duty to cooperate
6. Service of notice

PART 3

PERMISSIONS REQUIRED FOR ENTRY, STAY AND DEPARTURE

Division 1 - Visas

7. Entry into Samoa
8. Application for visa
9. Entitlement to visa is not automatic
10. Form of visa
11. Chief Executive Officer grants visa
12. Emergency Conditions
13. Expiry of visa
14. Void visa or exemption

Division 2 - Information Requirements

15. Person to submit declaration
16. Chief Executive Officer may request for further information
17. Requirement for medical examination

Division 3 - Entry and exit ports

18. Entry and exit through regulated port
19. Clearance zone

Division 4 - Arrival and Departure Prohibitions

20. Orders prohibiting departure from Samoa
21. Court departure prohibition order
22. Attorney General departure prohibition order
23. Prohibited immigrant
24. Prohibited immigrant register

PART 4

DECISIONS FOR REFUSAL OR PERMISSIONS

25. Obtaining visa prior to arrival in Samoa
26. Denial of visa and exemption
27. Required criteria
28. Sponsorship
29. Employment visa

PART 5
ARRIVALS AND DEPARTURES

Division 1 - Passenger and Crew Responsibilities

30. Requirement to undergo clearance zone process
31. Duty to depart Samoa
32. Non-departure

Division 2 - Operator and Carrier Responsibilities

33. Duties of operator or carrier
34. Immigration clearance
35. Emergency situation
36. Responsibilities to remove passenger who have been denied entry into Samoa
37. Seizure of Craft
38. Requirements for departure
39. Responsibilities of operators and owners of regulated ports

PART 6
CANCELLATION, REMOVAL AND DEPORTATION

40. Chief Executive Officer may cancel visa
41. Removal order
42. Deportation order
43. Execution of a deportation order
44. Deportation order not affected
45. Treatment of person under 18
46. Designation of confinement premises for removal or deportation
47. Transport of removed or deported person
48. Exclusion period

PART 7
APPEAL AND REVIEW MEASURES

49. Limitation of rights
50. Court does not have jurisdiction
51. Appeal regarding permanent residence visa
52. Appeal against removal or deportation
53. Withdrawal of an appeal
54. Administrative review

PART 8
**RESPONSIBILITIES OF EMPLOYERS
AND EDUCATION PROVIDERS**

55. Duties of employers and education providers

PART 9
INFORMATION PROTECTION

- 56. Confidentiality of information
- 57. Establishment, maintenance and protection of information
- 58. Sharing of information

PART 10
FUNCTIONS AND POWERS

- 59. Power of Minister to delegate
- 60. Powers of officers
- 61. Evidence by certificate
- 62. Power to collect biometric data
- 63. Duties and responsibilities of the Chief Executive Officer under this Act
- 64. Delegation of powers of the Chief Executive Officer
- 65. Assistance from Police

PART 11
OFFENCES AND PENALTIES

- 66. Offences and penalties
- 67. Power to summarily deal with an offence

PART 12
MISCELLANEOUS

- 68. Exempt from liability
- 69. Regulations
- 70. Repeal

- 71. Transitional provisions
- 72. Consequential amendments

2020, No.

A BILL INTITULED

AN ACT to provide for the repeal of the Immigration Act 2004 in substitution of a new Immigration Act and for other related purposes.

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

**PART 1
PRELIMINARY**

1. Short title and commencement:

This Act may be cited as the Immigration Act 2020 and commences on a date to be nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“acceptable travel document” means a travel document issued by the Chief

Executive Officer that:

- (a) is valid; and
- (b) correctly identifies the bearer; and
- (c) is not counterfeit, forged, altered or substantially damaged or obtained by fraud.

- “approved form”** means a form approved by the Minister for the purpose of this Act;
- “authorised officer”** means a sworn immigration officer or a police officer nominated by the Commissioner of Police;
- “carrier”** means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom craft is owned or chartered;
- “Chief Executive Officer”** or **“CEO”** means the Chief Executive Officer of the Ministry responsible for this Act;
- “child”** any person below the age of 18;
- “clearance zone”** the area in a regulated port that is closed off for checks approved by the Minister;
- “craft”** means any craft used in aerial or sea navigation;
- “education provider”** means an institution or organisation established under an enactment to provide an educational service in Samoa;
- “employee”** has the meaning given to it under the Labour and Employment Relations Act 2013;
- “employer”** has the meaning given to it under the Labour and Employment Relations Act 2013;
- “enforcement officer”** includes any Government official appointed to be posted within the clearance zone, or appointed to carry out a duty or function under this Act;
- “exclusion period”** means a period in which a person is declared under this Act, as being prohibited from entering Samoa;
- “Government agency”** means an Office that is answerable to Cabinet;
- “Minister”** means the Minister responsible for this Act;

- “nominated offence”** means an offence nominated by the Minister to be an offence that requires a person to be deported from Samoa;
- “National Revenue Board”** means the Board established under the Public Finance Management Act 2001;
- “operator”** means a person that operates a craft;
- “partner”** means a de-facto partner in a relationship between a man and a woman;
- “regulated port”** means an airport recognized under the Airport Authority Act 2012 or a port (which includes its approaches) declared as such under the Ports Authority Act 1998;
- “Samoa”** has the meaning given to it under the Acts Interpretation Act 2015;
- “spouse”** means the legally married spouse of a marriage between a man and a woman;
- “stand-down period”** means a period in which a person is prohibited from providing sponsorship under this Act;
- “visa”** means a document or mark approved by the Minister issued under this Act.

PART 2

APPLICATION OF THIS ACT

3. Application of this Act:

- (1) This Act binds the Government.
- (2) Despite any other law:
 - (a) this Act applies to any act or omission or event which occurs in Samoa or any other place; and
 - (b) the Court of Appeal, the Supreme Court and the District Court have jurisdiction to hear and determine any matter for which this Act provides that Court with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

- (3) The geographical boundaries within which this Act applies is the territory of Samoa comprising of the islands of Upolu, Savaii, Manono, Apolima and any other island adjacent to it and lying between 13° and 15° south latitude and 171° and 173° longitude west of Greenwich; and includes all waters within the outer limits of the territorial sea of Samoa and the exclusive economic zone.

4. Rights of citizens protected:

- (1) Every citizen has, by virtue of that citizenship, the right to be in Samoa at any time.
- (2) Despite subsection (1), all citizens must upon entry or departure from Samoa, be subject to this Act.
- (3) A citizen is not subject to deportation from Samoa at any time.

5. Duty to cooperate:

- (1) The Minister may in writing instruct the head of a Government agency to cooperate with the Chief Executive Officer for the implementation of this Act.
- (2) A person in receipt of a lawful instruction under this section must comply with the instruction.

6. Service of notice:

Where any notice or document is to be served under this Act within Samoa, the document is taken to have been served:

- (a) immediately if served personally; or
- (b) within five (5) days if the document was sent by post or electronically or left at the nominated address with a person over the age of 16 years.

PART 3
PERMISSIONS REQUIRED FOR ENTRY,
STAY AND DEPARTURE

Division 1 - Visas

7. Entry into Samoa:

- (1) With the exception of a citizen, a person cannot enter or remain in Samoa without a visa.
- (2) A person including a citizen entering Samoa is not entitled to enter unless all the prescribed entry requirements have been complied with.
- (3) An enforcement officer may deny a person's entry into Samoa for not complying with this section.

8. Application for visa:

A person ("applicant") other than a citizen or an exempt person must apply according to prescribed requirements for a visa before entering Samoa and such application must be accompanied with the prescribed fee.

9. Entitlement to visa is not automatic:

- (1) A person is not automatically entitled to be granted a visa.
- (2) A spouse or partner is not automatically entitled to be granted a resident visa by virtue of their status as a spouse or partner of a citizen or a holder of a permanent resident visa.

10. Form of visa:

- (1) A visa must specify:
 - (a) validity period; and
 - (b) the category of the visa; and
 - (c) conditions relating to the visa.

- (2) The Head of State may, on the advice of Cabinet make regulations:
 - (a) in relation to a visa issued -
 - (i) the category and conditions of the visa; and
 - (ii) the validity period of a visa; and
 - (iii) the conditions for extension of the visa;
 - (iv) the conditions for changing of the category of a visa;
 - (b) the number of certain categories of visas that may be issued within any particular period; and
 - (c) subject to subsection (5), fees and charges for visas;
 - (d) to prescribe circumstances in which exemption is granted to a visa holder or applicant.
- (3) A visa is valid until the expiry date specified.
- (4) A visa may be valid for single or multiple entries.
- (5) Fees prescribed under regulations are not refundable, and must first be approved by the National Revenue Board before such are prescribed.
- (6) A person is not entitled to remain in Samoa on the basis that the person has applied for an extension of a visa and is subject to removal by an authorised officer from Samoa if the extension is not granted before the expiry of the visa.

11. Chief Executive Officer grants visa:

- (1) The Chief Executive Officer may grant a visa in accordance with grounds set out in regulations.
- (2) The Chief Executive Officer must not grant a visa if the requirements of the Act are not met.
- (3) The Chief Executive Officer may request further information from the applicant.

12. Emergency Conditions:

The Minister may in an emergency situation impose a condition to be applied to a visa as specified in regulations.

13. Expiry of visa:

Unless a visa states otherwise, the visa expires on the commencement of the day after the specified date of expiry.

14. Void visa or exemption:

- (1) A visa or exemption granted in contravention of this Act is void and is of no legal effect.
- (2) A visa of a person that is the subject of a removal order or deportation order, is upon the issuance of the relevant order, automatically voided.

Division 2 - Information Requirements

15. Person to submit declaration:

- (1) A person seeking entry, stay or departure from Samoa, must complete a declaration in an approved form when required by the Minister.
- (2) A person subject to a request by the Minister under subsection (1) commits an offence if the person:
 - (a) makes a false declaration; or
 - (b) refuses to comply with the request; or
 - (c) fails without reasonable excuse to comply with the request.
- (3) The penalty for an offence under this section is not exceeding 5 penalty units upon conviction.

16. Chief Executive Officer may request for further information:

- (1) The Chief Executive Officer may request any further information concerning a matter relevant to the implementation of this Act, from a person seeking to enter, remain in or depart from Samoa.
- (2) A person commits an offence if the person:
 - (a) provides false information; or
 - (b) refuses to provide the required information; or
 - (c) fails without reasonable excuse to provide the required information.
- (3) The penalty for breach of this section is as follows:
 - (a) non-compliance with subsection (2)(a), upon conviction a penalty not exceeding 100 penalty units or imprisonment not exceeding four (4) years; or
 - (b) for -
 - (i) a Samoan citizen the same penalty for subsection (2)(a) or departure prohibition order or both; and
 - (ii) a non-Samoan citizen, the Minister may refuse or cancel a visa and order the immediate removal of such person from Samoa with an exclusion period of not less than five (5) years.

17. Requirement for medical examination:

- (1) Subject to subsection (5) the Chief Executive Officer may require a person who is about to enter, has entered Samoa or is about to depart from Samoa to be examined by a qualified medical practitioner registered under the Medical Practitioners Act 2007 and Healthcare Professions Registration and Standards Act 2007.
- (2) A medical examination may include a requirement for the person to provide samples of the person's bodily tissue or other biological material.

- (3) A person commits an offence under this section who:
 - (a) refuses to be medically examined when required to do so;
 - (b) fails without reasonable excuse to be medically examined when required to do so.
- (4) The penalty for an offence under this section upon conviction, is an amount not exceeding 100 penalty units.
- (5) The Chief Executive Officer must consult the Director General of Health before requiring a person to undergo a medical examination under subsection (1).

Division 3 - Entry and exit ports

18. Entry and exit through regulated port:

Except where the Minister exempts a person from complying with this Act, a person must enter and depart from Samoa through a regulated port.

19. Clearance zone:

For the purpose of this Part, a person has not entered or exited Samoa, unless the person has gone through the clearance zone.

Division 4 - Arrival and Departure Prohibitions

20. Orders prohibiting departure from Samoa:

- (1) A person is prohibited from departing or attempting to depart Samoa if he or she is subject to the following:
 - (a) a Court order;
 - (b) the Attorney General's order;
 - (c) unless consented to by the official assignee, a declared bankrupt under the Bankruptcy Act 1908.

- (2) The Court shall not make orders as to costs concerning any order or application made under this Division.
- (3) Regulations may prescribe the process by which an Order issued under this Part is to be revoked.

21. Court departure prohibition order:

- (1) The Court order may be issued for the following grounds:
 - (a) the person has a debt in excess of the amount prescribed in a Notice by the Minister that the person is unlikely to pay if allowed to leave Samoa; or
 - (b) the person is a party or a witness in Court proceedings which renders the person leaving Samoa, as contrary to the interests of justice; or
 - (c) the person is on bail.
- (2) Where the Court considers it in the interests of justice, the Court may make an order under this section without notice to the person that is subject to the order.
- (3) The appeal process for an order issued under this section is set out in regulations.
- (4) The Court's power to issue an order under this section includes the power to extend, revoke or amend the order.
- (5) An appeal of an order does not suspend the effect of the Order.
- (6) The Registrar must notify the Chief Executive Officer as soon as practicable that an Order issued under this section has been revoked, extended or amended.

22. Attorney General departure prohibition order:

- (1) The Attorney General, may without notice to the person, issue an order on a motion by an interested party or on the Attorney General's discretion, prohibiting that person from leaving Samoa on the following grounds:
 - (a) a determination is made that it is not in Samoa's national interest or national security for the person to leave Samoa; or
 - (b) the person is a party or a witness in Court proceedings which renders the person leaving Samoa, as contrary to the interests of justice; or
 - (c) the person is on bail; or
 - (d) the person is required to be physically present in Samoa for criminal offence investigations for offences punishable by imprisonment for two (2) years or more.
- (2) The Attorney General may at any time extend, revoke or amend the order.
- (3) A person subject to an order under this section may appeal the issuance of the Order to a Judge of the Supreme Court within seven (7) days of receiving notification of the Order.
- (4) The appeal does not suspend the effect of an order issued.
- (5) The Court may only cancel the Attorney General's order if the applicant appealing the order is able on a balance of probabilities to establish that the order is not required in Samoa's national interest or national security.
- (6) The Court may not require the Attorney General to disclose to the appellant information, document or other material which the Attorney General has certified:

- (a) is vital to Samoa's national interest or national security; and
- (b) the disclosure of such comprises Samoa's national interest or national security.

23. Prohibited immigrant:

- (1) The Head of State may make regulations prescribing the grounds for which a person may be declared as a prohibited immigrant.
- (2) The Minister may by Notice declare a person to be a prohibited immigrant according to regulations made under subsection (1).
- (3) A prohibited immigrant:
 - (a) is not entitled to apply for or be granted an entry visa; or
 - (b) must not enter or attempt to enter Samoa; or
 - (c) must immediately leave Samoa if in Samoa at the time of the declaration under subsection (1).
- (4) The Minister may in the same manner as in subsection (2) declare that a person is no longer a prohibited immigrant.
- (5) Subject to Article 4 of the Constitution, the Minister's declaration cannot be reviewed in any legal proceeding or challenge including by way of prerogative writ or judicial review.

24. Prohibited immigrant register:

The Minister may keep and maintain a register for the purpose of section 23 and may provide information on the register to anyone according to requirements set out in regulations and in accordance with prescribed procedures.

PART 4
DECISIONS FOR REFUSAL OR PERMISSIONS

25. Obtaining visa prior to arrival in Samoa:

Despite section 7, the Chief Executive Officer, may require that a certain category of visas must be obtained by a person travelling to Samoa, prior to arrival in accordance with prescribed requirements.

26. Denial of visa and exemption:

- (1) Unless exempted by the Chief Executive Officer in writing, a person may be refused a visa.
- (2) The Chief Executive Officer must refuse a visa to a person if the person does not meet the required criteria prescribed under this Act.
- (3) The Chief Executive Officer may refuse an exempt person from entry into Samoa if the person does not meet the required criteria.

27. Required criteria:

- (1) For the purpose of section 26, the required criteria are as follows:
 - (a) national interest criteria or national security criteria is determined based on information provided that a person does not compromise the national interest or national security of Samoa;
 - (b) public interest criteria is determined based on information provided that is a person's entry or presence in Samoa is not in the public interest;
 - (c) character criteria is determined based on the information provided that a person does not pose a threat to Samoa;

- (d) health criteria is determined based on the information provided that a person does not suffer from a physical or psychological condition that poses a threat to the health or safety of the community;
 - (e) fraud criteria is determined based on information provided that is not fraudulent in any way;
 - (f) child safety criteria is determined based on information provided that a person's entry and stay in Samoa does not affect the safety of a child.
- (2) The process and considerations relating to the assessment of the required criteria are to be prescribed by regulations.

28. Sponsorship:

Regulations may be made to prescribe:

- (a) requirement of sponsorship to be lodged for certain categories of visas;
- (b) the means of lodgement of application for sponsorship;
- (c) responsibilities and obligations pertaining to sponsorship; and
- (d) penalties for breaches of sponsorship obligations not exceeding 1,000 penalty units.

29. Employment visa:

A person must not be granted an employment visa unless the requirements of law regulating employment in Samoa are met.

PART 5
ARRIVALS AND DEPARTURES

Division 1 - Passenger and Crew Responsibilities

30. Requirement to undergo clearance zone process:

- (1) Any person seeking to enter, transit or depart Samoa must undergo immigration clearance in the clearance zone at the places and in the manner specified by regulations.
- (2) A person must during immigration clearance show his or her passport or other form of valid identification proving his or her identity to any enforcement officer who requests identification.
- (3) A person in breach of subsection (2) commits an offence and is liable to immediate removal from Samoa for a non-citizen, or upon conviction to an imprisonment term not exceeding 12 months for a citizen.

31. Duty to depart Samoa:

- (1) Subject to subsection (2), a person must ensure to depart Samoa prior to the expiry of his or her visa.
- (2) A person may remain in Samoa at the expiry of that person's visa if the person is exempt according to this Act.
- (3) Subject to subsection (2) any person in Samoa after the expiry of that person's visa is in Samoa unlawfully.
- (4) A person in breach of this section commits an offence and is liable:
 - (a) upon conviction to a penalty fine not exceeding 100 penalty units; or
 - (b) deportation from Samoa; or
 - (c) exclusion from Samoa for a period of 10 years; or
 - (d) both penalties listed under paragraph (b) and (c).

32. Non-departure:

A person is not taken to have departed Samoa if the craft on which the person is on is forced to return to Samoa due to emergency purposes.

*Division 2 - Operator and Carrier Responsibilities***33. Duties of operator or carrier:**

- (1) An operator or carrier is responsible for any person travelling on an operator's or carrier's craft.
- (2) The Head of State on the advice of Cabinet may make regulation prescribing:
 - (a) duties of operators and carriers; and
 - (b) the process by which such duties are to be met; and
 - (c) forms required for operators and carriers to fill.
- (3) For the purpose of this Part a captain of a private owned craft is treated as an operator or carrier under this section.
- (4) An operator or carrier in breach of this section is liable upon conviction to a penalty not exceeding 10,000 penalty units.

34. Immigration clearance:

The location for obtaining immigration clearance for an operator or carrier is specified by regulations.

35. Emergency situation:

- (1) An operator or carrier is exempt from complying with this Part in an emergency situation.
- (2) An emergency situation is prescribed by regulations.

36. Responsibilities to remove passenger who have been denied entry into Samoa:

- (1) An operator or carrier is responsible for the removal of a passenger that is denied entry into Samoa.
- (2) The implementation process of an operator's or carrier's obligation under this section is set out in regulations.
- (3) The carrier or operator of a craft from which a prohibited immigrant disembarks in Samoa is jointly and severally liable for the following:
 - (a) removal of the prohibited immigrant from Samoa; and
 - (b) to pay to the Government all costs and expenses incurred by the Government in connection with the care, maintenance and treatment of the prohibited immigrant and the prohibited immigrant's removal from Samoa.

37. Seizure of Craft:

Where the offence involves a prohibited immigrant or transit passenger:

- (1) If an operator is convicted of an offence involving the unlawful disembarkment of a transit passenger, or prohibited immigrant in Samoa from that operator's craft, this section applies.
- (2) In addition to any other penalty that an operator is convicted of, the Court may order that a ship or craft be detained until provision has been made by the operator, to the satisfaction of the Minister for the removal of the prohibited immigrant or transit passenger out of the proclaimed area or anywhere else in Samoa.

- (3) If a fine is imposed under this Act on a carrier or operator of a craft the Court may order that such craft be detained until the fine is paid.

38. Requirements for departure:

- (1) Unless exempted by the Minister, the carrier or operator of any craft must ensure that the craft departs from Samoa at a regulated port only.
- (2) The carrier or operator of a craft that is to depart from Samoa for any place outside Samoa must provide the Chief Executive Officer any information or documents as prescribed by regulations.
- (3) The Minister upon the advice of the Chief Executive Officer may prohibit any craft from arriving in or departing from Samoa until the Minister is satisfied that the carrier or operator of the craft has complied with this Act or any other law.

39. Responsibilities of operators and owners of regulated ports:

- (1) An operator or owner of a regulated port is required to comply with requirements prescribed by regulations for the purpose of this Act.
- (2) Regulations prescribed under this section may set out offences for breach of the regulations and penalties, not exceeding 1,000 penalty units or imprisonment for a term not exceeding 14 years.

- (3) For the purpose of this section, an “operator” or “owner” of a regulated port is a person regulated as such under laws regulating all ports of entry into Samoa.

PART 6

CANCELLATION, REMOVAL AND DEPORTATION

40. Chief Executive Officer may cancel a visa:

- (1) The Chief Executive Officer may cancel a visa according to prescribed requirements.
- (2) Regulations may be made under this section to prescribe circumstances under which a visa may be cancelled.
- (3) If a visa is cancelled and the holder of the visa is in the clearance zone, the person may be required to leave Samoa immediately.
- (4) The Chief Executive Officer must serve a notice to a person whose visa is cancelled providing reasons for the cancellation.

41. Removal order:

- (1) The Minister may in writing issue a removal order for a person to leave Samoa if the person is found to be in Samoa unlawfully.
- (2) Regulations may be made to prescribe circumstances in which a person may be removed.
- (3) The order issued must be signed by the Minister in an approved form.
- (4) A person found in Samoa in breach of a removal order and has not departed Samoa voluntarily or filed an appeal under section 41, is subject to be taken into confinement in accordance with procedures and requirements prescribed by regulations.

42. Deportation order:

- (1) On the advice of the Chief Executive Officer, the Minister may sign a deportation order to deport a person from Samoa on the following grounds:
 - (a) the person is a prohibited immigrant; or
 - (b) the person has entered Samoa in breach of this Act or other law;
 - (c) the person is convicted of a nominated offence; or
 - (d) the person remains in Samoa after the expiry or cancellation of his or her visa.
- (2) A deportation order authorises an enforcement officer to take into confinement the person named in the order and execute the order in accordance with section 43.

43. Execution of a deportation order:

- (1) The person subject to a deportation order must be made subject to confinement, for the purpose of removal from Samoa to the country of the person's origin or as determined by the Minister.
- (2) Regulations may be made to prescribe the required procedure or manner in which a person is to be deported.
- (3) The search and arrest of a person subject to a deportation order may be made and must be effected by a police officer.
- (4) An enforcement officer may use reasonable force if required during a person's confinement under this section for situations prescribed by regulations.

44. Deportation order not affected:

- (1) A deportation order is not invalidated on the grounds that the person to be deported:
 - (a) is married to a citizen;
 - (b) has a child with a citizen;
 - (c) has made an application to become a citizen.
- (2) A deportation remains in force from the time it is served and unless it is revoked, remains valid until the person named in the order leaves Samoa.

45. Treatment of person under 18:

If a person who is subject to a removal or deportation order is under the age of 18 is not accompanied by his or her parent or guardian, the Chief Executive Officer must ensure all reasonable efforts are made to establish contact with the parent or guardian to agree on suitable travelling arrangements for the person.

46. Designation of confinement premises for removal or deportation:

The Minister may in writing designate premises to be used to confine a person that is subject to a removal or deportation order.

47. Transport of removed or deported person:

- (1) The Minister may instruct an operator or carrier to transport a person that is the subject of a removal or deportation order.
- (2) Regulations are to prescribe the manner in which the process required for this section to be implemented.

- (3) Costs associated with passage, accommodation and maintenance is to be borne by the person subject to removal or deportation unless the Minister directs that they be paid out of funds appropriated for that purpose by the Legislative Assembly.
- (4) The Minister may issue travel documents for the purpose of a person subject to this section travelling out of Samoa.
- (5) An operator or carrier that does not comply with a direction made under this section commits an offence and is liable upon conviction to a fine not exceeding 10,000 penalty units.

48. Exclusion period:

- (1) The Minister may by declaration subject a person to an exclusion period for a period prescribed by regulations.
- (2) A person excluded from Samoa is prohibited from re-entering Samoa.

PART 7

APPEAL AND REVIEW MEASURES

49. Limitation of rights:

- (1) This section does not apply to a holder of a permanent resident visa.
- (2) A person applying for a visa or a holder of a visa does not have any right to:
 - (a) the grant of a visa;
 - (b) challenge, seek review or bring any other legal proceeding in any Court concerning -
 - (i) the grant or denial of a visa; or
 - (ii) the cancellation of a visa; or

- (iii) imposition of any term or condition for any visa granted under this Act.

50. Court does not have jurisdiction:

- (1) The Court does not have jurisdiction to make any decision or order concerning or touching upon any matter under sections 23 and 49.
- (2) This section is subject to the Constitution.

51. Appeal regarding permanent residence visa:

- (1) A person whose permanent residence visa has been cancelled by the Chief Executive Officer may appeal the decision to the Minister.
- (2) The Minister may confirm or cancel the Chief Executive Officer's decision.

52. Appeal against removal or deportation:

- (1) A person subject to a removal or deportation order may appeal in writing to the Minister as prescribed by regulations.
- (2) The filing of an appeal does not:
 - (a) automatically render the presence of a person in Samoa lawful; or
 - (b) entitle the person to remain in Samoa while the appeal is being considered; or
 - (c) stop removal or deportation procedures under this Act.

53. Withdrawal of an appeal:

A person may at any time withdraw an appeal lodged under this Part in writing to the Minister or Court where relevant.

54. Administrative review:

Regulations may be made to prescribe a system of administrative review of any determination, act or omission by any officer or other person acting under a delegated authority under this Act.

PART 8
REPONSIBILITIES OF EMPLOYERS
AND EDUCATION PROVIDERS

55. Duties of employers and education providers:

- (1) The following are requirements an employer must comply with:
 - (a) confirm that a non-citizen employee has been issued with an employment visa before engaging him or her in employment; and
 - (b) ensure all requirements of this Act are complied with by the non-citizen employee; and
 - (c) ensure the non-citizen leaves Samoa before his or her visa expires.
- (2) The following are requirements an education provider must comply with:
 - (a) confirm that a non-citizen student has been issued a study visa before admitting him or her for educational purposes; and
 - (b) ensure all requirements of this Act are complied with by the non-citizen student; and
 - (c) ensure the non-citizen student leaves Samoa before his or her visa expires.
- (3) An employer or education provider that is without lawful excuse and in breach under this section is subject to any or all of the following:
 - (a) pay an administrative penalty imposed by the Minister not exceeding 50 penalty units;

- (b) be subject to a stand-down period in which it may sponsor non-citizen employees or students.

PART 9

INFORMATION PROTECTION

56. Confidentiality of information:

- (1) Any information collected or shared for the purpose of this Act must be kept confidential by a person who has come into contact of such information.
- (2) Information required to be kept confidential under this section may be released to required agencies on grounds of the national security, national interest, or public interest of Samoa.
- (3) The manner in which information is to be released is set out in regulations.

57. Establishment, maintenance and protection of information:

- (1) The Chief Executive Officer must establish a database of information collected for the purpose of this Act, in any form determined by the Minister.
- (2) A person except with authorisation of the Minister is prohibited:
 - (a) from attempting to access, or accessing a register, information system or database;
 - (b) from attempting to disclose or alter, or disclosing or altering any information held in a register, information system or database.
- (3) A person who breaches this section commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or an imprisonment term not exceeding three (3) years, or both.

58. Sharing of information:

- (1) The Minister may enter into agreements with other States for the purpose of mutual assistance in criminal matters.
- (2) The Minister must consult the Attorney General before an agreement is entered into, and for the purpose of ensuring requirements of law regulating mutual assistance in criminal matters, are complied with.

PART 10

FUNCTIONS AND POWERS

59. Power of Minister to delegate:

- (1) The Minister may delegate any duty or function under this Act to the Chief Executive Officer or an enforcement officer except for the power to delegate under this section.
- (2) The Minister's delegation remains in force until revoked by the Minister.

60. Powers of officers:

- (1) The Minister may authorise in writing for enforcement officers to do the following:
 - (a) enter using force necessary in the circumstances, any place to arrest a non-citizen who has entered or remains in Samoa in breach of this Act or any other law;
 - (b) require a person to produce identification evidence and that person's authority for being in Samoa;
 - (c) require a person to answer any question concerning any matter under this Act.

- (2) Enforcement officers have the power for the purpose of this Act to:
 - (a) detain and question any person;
 - (b) inspect, search and arrest any person;
 - (c) enter and board any craft; and
 - (d) access any regulated port, docks and other facilities.
- (3) A person required to perform an act, function or duty under this section commits an offence if he or she:
 - (a) refuses or fails to do so without lawful excuse; or
 - (b) provides false or misleading or incomplete information or documents to any enforcement officer without lawful excuse.
- (4) The penalty for breach of this section is an administrative penalty issued by the Minister not exceeding 50 penalty units, or upon conviction, a fine not exceeding 500 penalty units, or imprisonment not exceeding three (3) years.

61. Evidence by certificate:

- (1) For any court proceeding concerning this Act, the Minister may provide a certificate of evidence in an approved form concerning any matter in question that may be done under the Act.
- (2) A certificate signed by the Minister is sufficient evidence of matters stated in the certificate unless otherwise proven.

62. Power to collect biometric data:

- (1) The Chief Executive Officer may require a person to allow biometric information to be collected from the person where there is good cause to suspect the person:

- (a) has acted in contravention of this Act; or
 - (b) is liable for turnaround, removal or deportation.
- (2) In this section “turnaround” means being requested to leave Samoa if the person is in the clearance zone.

63. Duties and responsibilities of the Chief Executive Officer under this Act:

The Chief Executive Officer must under the supervision of the Minister, be responsible for the implementation of this Act and any other matters prescribed by regulations.

64. Delegation of powers of the Chief Executive Officer:

- (1) The Chief Executive Officer may delegate any duty or function under this Act to an enforcement officer except for the power of delegation under this section.
- (2) The Chief Executive Officer’s delegation remains in force until revoked by the Chief Executive Officer.

65. Assistance from Police:

- (1) The Chief Executive Officer may request the assistance of the Police Commissioner if there is a belief that there is a risk of harm on an enforcement officer in the carriage of the enforcement officer’s duties.
- (2) The Police Commissioner is the person appointed as such under the Police Service Act 2009.

PART 11

OFFENCES AND PENALTIES

66. Offences and penalties:

- (1) A person commits an offence who in relation to this Act:
 - (a) attempts to breach; or

- (b) breach; or
 - (c) fails to comply.
- (2) A person commits an offence who aids or abets in any breach of subsection (1).
 - (3) A person commits an offence who knowingly harbours a person in breach of this Act.
 - (4) A person commits an offence who presents false or fraudulently produced documents as required under regulations.
 - (5) A person commits an offence who:
 - (a) refuses to truthfully answer any question put to the person by the Minister or person acting under authority of the Minister or withholds or refuses to give any information in the person's knowledge or possession or to produce any document which the person is lawfully required to give or produce; or
 - (b) knowingly makes any false or misleading or incomplete declaration, return or statement for the purpose of obtaining or assisting another person to obtain any visa or departure prohibition order; or
 - (c) alters any visa or departure prohibition order or copy of visa or departure prohibition order issued under this Act; or
 - (d) wilfully obstructs the Minister or a person, including but not limited to any officer or member of the Police Service, acting under the authority of the Minister under this Act; or
 - (e) knowingly uses or has in the person's possession any passport, other travel document, or document on which any visa or endorsement has been forged, or altered without lawful authority.

67. Power to summarily deal with an offence:

- (1) The Minister may summarily deal with minor breaches under this Act if so requested by a person accused of the offence in writing.
- (2) A person whose case is summarily dealt with and has paid the penalty imposed is not liable to be further prosecuted for the offence in question.
- (3) Regulations may be made to prescribe penalties not exceeding 50 penalty units for breaches that the Minister may impose under this section.
- (4) Penalties collected pursuant to this section must be deposited into the Treasury Fund.

PART 12 MISCELLANEOUS

68. Exempt from liability:

Any person who carries out any duty, function or power under this Act is exempt from liability in any criminal or civil procedure in respect of any act or matter done or omitted to be done in good faith.

69. Regulations:

The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purpose of this Act.

70. Repeal:

The Immigration Act 2004 (“repealed Act”) is repealed.

71. Transitional provisions:

- (1) At the commencement of this Act, any data collection or stored under the repealed Act is taken to have been collected and stored under this Act.
- (2) At the commencement of this Act, any permit issued, varied or revoked under the repealed Act is taken to have been a visa issued, varied or revoked under this Act.
- (3) At the commencement of this Act, an application for a permit under the repealed Act is treated as an application for a visa under this Act.
- (4) At the commencement of this Act, any notice, order, declaration, determination or decision issued or made under the repealed Act is taken to have been made under this Act.
- (5) At the commencement of this Act, the appointment of officers under the repealed Act is taken to be an appointment made under this Act.

72. Consequential amendments:

- (1) The Marriage Ordinance 1961 is amended as follows:
 - (a) in section 9 by substituting "16" with "18"; and
 - (b) in section 10, by substituting "19" with "21".
- (2) The Passports Act 2008 is amended by:
 - (a) substituting subsections (1) and (2) of section 6 as follows:
 - "(1) The validity period for a passport is as follows:
 - (a) 10 years for a person above the age of 16; or
 - (b) five (5) years for a person up to 16 years of age."; and

(b) substituting section 26(4) with the following:

“(4) A person who lands in Samoa without complying with this section, is to be treated according to the requirements of the Immigration Act 2020.”.
