

PRISONS AND CORRECTIONS AMENDMENT BILL 2020

SAMOA

Explanatory Memorandum


Object and reasons

The Bill seeks to give effect to the decision of Government to merge the Samoa Police Services and the Prisons and Correction Services, under the management of the Police Commissioner.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends some of the definitions in section 2 of the Principal Act.
- Clause 3:** - amends section 4 of the Principal Act on the establishment of the Prisons and Corrections Services to be managed under the Police Service Act 2009 and the Prisons and Corrections Act 2013.
- Clause 4:** - substitutes section 5 to expressly state the Commissioner of Police is the Head of the Prisons and Corrections Services; provides for the appointments of the Deputy and Assistant Commissioners.
- Clause 5:** - amends section 6 to confirm officers' transition for the purposes of the merge.
- Clauses 6 to Clause 11:** - makes minor revisions to the relevant sections of the Principal Act for consistency.

- Clause 12:** - substitutes section 58 of the Principal Act for the transfer of assets following the merge.
- Clause 13:** - amends section 62 for transitional purposes.
- Clause 14:** - provides for consequential amendments.



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(Hon TIALAVEA Fea Leniu Tionisio Hunt)

**MINISTER FOR POLICE, PRISONS
AND CORRECTIONS SERVICES**

PRISONS AND CORRECTIONS AMENDMENT BILL 2020

SAMOA

Arrangement of Provisions

1. Short title and commencement
 2. Section 2 amended
 3. Section 4 amended
 4. Section 5 substituted
 5. Section 6 amended
 6. Sections 7 and 8 amended
 7. Section 13 amended
 8. Section 17 amended
 9. Section 18 amended
 10. Section 43 amended
 11. Section 45 repealed
 12. Section 58 substituted
 13. Section 62 amended
 14. Consequential amendments
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2020, No.

A BILL INTITULED

AN ACT to amend the Prisons and Corrections Act 2013 (Act):

- (a) to give effect to the decision of Government to merge the Samoa Police Services and the Prisons and Correction Services, under the management of the Police Commissioner; and
- (b) for related purposes.

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

1. Short title and commencement:

This Act may be cited as the Prisons and Corrections Amendment Act 2020 and commences on the date of assent by the Head of State.

2. Section 2 amended:

Section 2 of the Act is amended as follows:

- (a) for the definitions of “Commissioner”, “Commissioner’s Order”, “commencement date” and “member” substitute:

““Commissioner” means the Commissioner of Police Service appointed under the Police Service Act 2009 and includes any sworn member appointed to act as Commissioner;

“Commissioner’s Orders” means the Commissioner’s Orders made under this Act or the Police Service Act 2009;

“commencement date” means the 25th March 2020;

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

- (b) insert the following definition in the correct alphabetical order:

““Samoa Police Service” or “Police Service” has the same meaning under the Police Service Act 2009;” and

- (c) in the definition of “senior officer” insert “Deputy Commissioner” before “Assistant”.

3. Section 4 amended:

Section 4 of the Act is amended as follows:

- (a) for subsection (1) of the Act, substitute:

“(1) The Samoa Prisons and Corrections Service is established by this section and is to be managed in accordance with this Act and the Police Service Act 2009.”; and

- (b) omit subsection (3).

4. Section 5 substituted:

Section 5 of the Act is substituted with the following:

“5. Head of Prisons and Corrections, Deputy and Assistant Commissioner:

- (1) The Commissioner of Police Services is the Commissioner of the Prisons and Corrections Services.
- (2) The appointment, duties and powers, discipline, suspension, termination and any other terms relating to the Commissioner under the Police Service Act 2009 apply.
- (3) The Commissioner has the following duties:
- (a) subject to the orders and directions of the Minister, has the function for the administrative command and direction of all members; and

- (b) has the duty to undertake the management of prisons and prisoners in accordance with the policies of the Government relevant to the management and treatment of prisoners; and
 - (c) for the purpose of exercising any powers under this Act, has the power to make Commissioner's Orders applying to members and prisoners; and
 - (d) is responsible for the control of all prisoners and may allocate them to such prisons as the Commissioner sees fit; and
 - (e) has the power to designate the classification, purpose and function of any prison; and
 - (f) is to ensure that an infrastructure development plan and related work programmes are developed and updated to ensure that proper facilities are provided to the Service to meet the requirements and objectives of this Act; and
 - (g) has the power to make delegations of the Commissioner's functions and authority by written instrument of delegation -
 - (i) to any sworn member, if the power can be properly exercised by the sworn member; and
 - (ii) to any non-sworn member, if the power can be exercised under this Act and any law relating to the financial management of the Service or any other aspect of its lawful administration.
- (4) The Head of State, acting on the advice of Cabinet, may appoint a qualified and fit and proper person to be:
- (a) the Deputy Commissioner of Prisons and Corrections; and

- (b) the Assistant Commissioner of Prisons and Corrections,
if the Commissioner recommends to Cabinet that the appointment is necessary for the proper management of the Service.
- (5) The duties of the Deputy Commissioner are:
 - (a) to act as Commissioner in his or her absence from duty for any reason; and
 - (b) to assist the Commissioner in the exercise of the Commissioner's functions and powers; and
 - (c) to exercise all delegated and other necessary powers, subject to any limitation or requirement imposed by the Commissioner.
- (6) A person appointed under subsection (4):
 - (a) may be appointed for a period not exceeding three (3) years, fixed by the Head of State, acting on the advice of Cabinet;
 - (b) under terms and conditions stipulated under contract and under this Act; and
 - (c) is eligible for reappointment.
- (7) The salary and allowances of the persons appointed under subsection (4) are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal.
- (8) Despite any other law, the Commissioner may:
 - (a) make a decision, give a directive and do an act or thing to ensure the security and good governance of a prison; and
 - (b) require that a person purporting to exercise a lawful power of inspection or entry in a prison, first comply with a directive related to prison security and management; and
 - (c) require that any interviewing or questioning, under a lawful authority, of a sworn member whilst on duty within a prison, be done at the times and places, and

- in a manner as to permit the member to properly carry out the member's duty or power; and
- (d) vest in a sworn member the right to carry out any duty or power under this section."

5. Section 6 amended:

Section 6 is amended as follows:

- (a) for subsection (5) to (7), substitute as follows:

- "(5) All persons who at the commencement of the Prisons and Corrections Amendment Act 2020 are officers and employees of the Service engaged in any aspect of the management of prisons, may be deemed to be sworn or non-sworn members of the Police Service at an equivalent rank or position, and are to be subject to the provisions of this Act and the Police Service Act 2009.
- (6) Members deemed to be appointed under subsection (5) are transferred to the Police Service without loss of any entitlement or benefit, applying to their service in the Prisons and Corrections Service, including any benefits under any fund administered for the welfare of Prison officers and Correction officers.
- (7) Persons employed under contract with the Prisons and Corrections Service may be transferred to the Police Service in accordance with subsection (5), and all such contracts are deemed to have been made with the Police Service, and continue for the remainder of their duration."; and

(b) omit subsection (13).

6. Sections 7 and 8 amended:

Sections 7 and 8 of the Act are amended as follows:

- (a) in section 7, omit subsection (5); and
- (b) substitute “Commissioner” with “Deputy Commissioner”.

7. Section 13 amended:

- (a) in subsection (1) paragraph (h), omit “and to deliver to the custody of a police officer”; and
- (b) in subsection (6) omit “given to a police officer” with “provided for”; and
- (c) in subsection (6) paragraph (c), insert “Deputy Commissioner” after “Commissioner”.

8. Section 17 amended:

Section 17(4) is amended by substituting “Assistant” with “Deputy”.

9. Section 18 amended:

In section 18(2), insert “Deputy Commissioner” before “Assistant”.

10. Section 43 amended:

In section 43(2), insert “Deputy Commissioner” before “the Assistant”.

11. Section 45 repealed:

Section 45 is repealed.

12. Section 58 substituted:

For section 58 of the Act, substitute as follows:

“58. Transfer of assets, records, etc.:

- (1) The Minister may approve the transfer to the Police Service of any asset or property of the Service which has been used for or in connection with a prison, or the management of prisoners, prior to the commencement date.
- (2) Any legal process associated with the transfer of asset or property under subsection (1) is effective upon the date of approval of the Minister without the need for any other legal formality, subject to any legal requirement of recording the change of ownership pursuant to this section.
- (3) The Police Service must receive and assume ownership of documents, records and files held by the Prisons and Corrections Service relating to the management of prisons and prisoners prior to the commencement date.”.

13. Section 62 amended:

For section 62(2) of the Act, substitute as follows:

- “(2) At the commencement of the Prisons and Corrections Amendment Act 2020 (Amendment Act):
- (a) any terms and conditions of employment applying to members appointed before the commencement of the Amendment Act; and
 - (b) any duties assigned to any officer; and
 - (c) any disciplinary proceedings taken against officers or prisoners, and punishments imposed under such proceedings, under the oversight of the outgoing Commissioner of Prisons and Corrections Service (“repealed office”); and

- (d) any power exercised; and
 - (e) the admission, classification, early release and discharge of any prisoner; and
 - (f) the calculation and application of any remission of sentence, and other entitlement of a prisoner; and
 - (g) the implementation of any scheme for prison labour or rehabilitation and training undertaken; and
 - (h) the commencement of any criminal prosecution for an offence;
 - (i) any action or decision made by the Commissioner of Police regarding the management of the members and the prisoners, continue to be valid and have full force and application until affected by the exercise of any authority under this Act, and where appropriate are deemed to have been made under the duties and powers of the Commissioner.
- (3) At the commencement of the Amendment Act:
- (a) all employees (except for the repealed office) under this Act are taken to be employed by the Commissioner of Police;
 - (b) all contracted employees to the Prisons and Corrections Service are saved and are now subject to the direction of the Commissioner of Police;
 - (c) the contract benefits and employment benefits of all employees are saved as follows -
 - (i) for contract benefits, until the contract term expires;
 - (ii) for benefits of all other employees to continue in accordance with this Act and the Police Service Act;
 - (d) any contract signed before the commencement of this Amendment Act is saved and validated where necessary;

- (e) all information, assets and liabilities of the Prisons and Corrections Service are transferred and vested in the Police Service;
- (f) for the Professional Standards Unit, Legal Unit, Policy Unit, Training Unit and any other Unit of the Service that the Commissioner of Police thinks that is necessary to be merged with the relevant Divisions or Unit in the Police Service is taken to be merged with the relevant divisions of the Police Service.”.

14. Consequential amendments:

- (1) For any references in the whole Act and any Act to be amended as follows:
 - (a) “Samoa Prisons and Corrections Service” or the “Prisons and Corrections Service” is also taken to refer to the “Police Service” where necessary;
 - (b) “Commissioner of Prisons and Corrections Service” substitute with “Commissioner of Police”.
- (2) Any reference to any other law to the Samoa Prisons and Corrections Service is taken to be a reference to both the Samoa Prisons and Corrections Service and the Police Service.
- (3) Any reference to any law or document to the “Commissioner of Samoa Prisons and Corrections Service” is taken to be a reference to the “Commissioner of Police”.
- (4) The Police Service Act 2009 is amended as follows:
 - (a) by amending section 35(2) by inserting “and under the relevant provisions of the Prisons and Corrections Act 2013” after “public service”; and

- (b) in section 42 -
 - (i) for subsection (1), after “Subject to” insert “subsection (3) and the provisions of the Prisons and Corrections Act 2013” and omit “any law which makes provision in relation to the management of the prisons in Samoa”; and
 - (ii) after subsection (2) insert:

“(3) A member subject under this section and to be transferred to a sworn position of the Service or Prisons Service shall, before the transfer is completed, undergo a training required to become a sworn member of the Service or Prisons Service.”.
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