

SAMOA

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2004, No. 4

AN ACT relating to the entry into, and presence in, and the departure and removal from Samoa of aliens and certain other persons.
[21st January 2004]

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 Immigration Act 2004.

(2) This Act shall commence on the date nominated by the Minister.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

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

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

“citizen” means a person who is a citizen of Samoa under the provisions of the Citizenship Act 2004; the Independent State of Samoa:

“Departure Prohibition Order” means an order made under sections 25 or 26 prohibiting a person from departing or attempting to depart from Samoa for any place outside Samoa:

“Deportation Order” means an order made under section 32:

“employment” includes any contract of service to which the Labour and Employment Act 1972 applies, and work done, whether on a permanent, temporary or casual basis either for another person or on a self-employed basis but does not include employment exempted by the Minister by Notice concerning Samoa’s:

(a) diplomatic and international and regional obligations and relationships; or

(b) national interest.

“Entry Permit” means a permit granted under Part 3:

“Government” means the Government of Samoa:

“Minister” means the Minister responsible for Immigration from time to time:

“Ministerial Entry Permit” means a permit granted under section 15:

“Officer” means an officer or other employee of the Ministry or agency responsible for Immigration from time to time and such other person as the Minister may nominate from time to time:

“Operator” includes any captain or owner or operator or charterer or agent:

“Permanent Resident Permit” means a permit granted under section 14:

“Proclaimed Area” means:

- (a) an area of a Regulated Port or Airport; and
- (b) any other area or place; and
- (c) any transport between one Proclaimed Area and another Proclaimed Area,

designated as such by the Minister by Notice, and for the purposes of this Act entry into a Proclaimed Area shall not be taken as entry to Samoa;

“Prohibited Immigrant” means a person declared by the Minister to be such under section 29:

“Regulated Port or Airport” means a port or airport in Samoa declared as such by the Minister by Notice:

“Samoa” means the Independent State of Samoa:

“ship” means every description of craft used, or capable of being used, in marine transportation and includes canoes, fishing vessels, hovercraft, non-displacement vessels and mobile offshore units:

“Temporary Resident Permit” means a permit granted under section 13:

“Transit Passenger” means a person, other than a citizen or person holding an Entry Permit, who is travelling by ship or aircraft from a country or place outside Samoa to another country or place outside Samoa and whose journey requires the person to travel via Samoa or passage through Samoa as part of such journey and “in transit” and “transitting” shall have corresponding meanings:

“Visitor Permit” means a permit granted under section 12.

3. Application of this Act—(1) This Act shall bind the Government.

(2) Despite any other law and subject to section 39:

(a) this Act shall apply to any act or omission or event which occurs in Samoa or any other place; and

(b) the Court of Appeal and the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Act provides such Court with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

PART 2 ENTRY AND DEPARTURE

4. Compliance with this Act—(1) Subject to subsection (4), every person shall enter and depart from Samoa in accordance with the provisions of this Act.

(2) Except where the Minister may exempt a person from such requirement, every person shall enter and depart from Samoa through a Regulated Port or Airport.

(3) Any person who contravenes subsections (1) or (2) commits an offence.

(4) Notwithstanding the other provisions of this Act, it shall not be an offence for any person on a ship or aircraft which is wrecked or in distress to land or be landed in Samoa provided that such person presents before the Minister or an Officer nominated by the Minister at the first available opportunity after landing.

5. Declaration on entry and departure—(1) Every person who is about to enter or who has entered Samoa or who is about to depart from Samoa shall, if required by the Minister by Notice, complete and deliver to the Minister or to a person nominated by the Minister a declaration in a form approved by the Minister.

(2) Any person who being required to complete and deliver a declaration in accordance with subsection (1):

- (a) refuses or fails to do so; or
- (b) completes and delivers a declaration which is in any respect false or misleading or incomplete, commits an offence.

6. Requirement to provide information and documents—

(1) The Minister may require any person who is about to enter or who has entered Samoa or who is about to depart from Samoa to answer any question which the Minister or a person nominated by the Minister may ask concerning any matter determined by the Minister by Notice.

(2) The Minister may require any person who is about to enter or who has entered Samoa or who is about to depart from Samoa to provide the Minister or a person nominated by the Minister with any document held by or in the possession of or under the control of the person concerning any matter referred to in subsection (1).

(3) Any person who:

- (a) refuses or fails to answer a question when required to do so under subsection (1); or
 - (b) provides a false or misleading or incomplete answer to a question under subsection (1); or
 - (c) refuses or fails to provide a document in accordance with subsection (2); or
 - (d) provides a false or misleading or incomplete document under subsection (2),
- commits an offence.

7. Requirement for medical examination—(1) The Minister shall seek the advice of the Minister responsible for Health and the Chief Executive Officer of the Ministry of Health in the exercise of the Minister's powers under this section and section 8.

(2) The Minister may require any person who is about to enter or who has entered Samoa or who is about to depart from Samoa to be examined by a medical practitioner nominated by the Minister.

(3) An examination by a medical practitioner under subsection (1) may include a requirement for the person to provide samples of the person's bodily tissue or other biological material.

(4) Any person who:

- (a) refuses or fails to be medically examined when required to do so under subsection (2); or
- (b) refuses or fails to comply with any reasonable direction or requirement of a medical practitioner who is conducting a medical examination under subsection (2),

commits an offence.

8. Requirement to provide medical and other certificates—

(1) The Minister may require any person who is about to enter or who has entered Samoa or who is about to depart from Samoa to provide the Minister or a person nominated by the Minister with a certificate or other document in a form approved by the Minister concerning any matter determined by the Minister by Notice.

(2) Any person who:

- (a) refuses or fails to provide a certificate or document when required to do so under subsection (1); or
- (b) provides a false or misleading or incomplete certificate or document under subsection (1),

commits an offence.

9. Duties of operator and others—

(1) The operator of every ship and aircraft about to arrive in or arriving in Samoa from some country or place outside Samoa shall:

- (a) unless exempted by the Minister, ensure that such ship or aircraft enters Samoa and lands at a Regulated Port or Airport, as the case may require;
- (b) deliver to the Officer on duty at such port or airport, as the case may require, prior to the ship or aircraft arriving at such port or airport or at such other time as the Minister may require a list of all persons on the ship or aircraft, including but not limited to the complete name, date of birth, nationality, and passport or other travel document number or details of every person on the ship or aircraft and such other information as the Minister may require in a form approved by the Minister;

- (c) provide to the Minister or person nominated by the Minister with such information as the operator may possess or which the operator may reasonably have within the operator's power or capacity to obtain and which is required by the Minister concerning any person on such ship or aircraft;
- (d) inform the Minister or person nominated by the Minister if the operator knows or has reasonable cause to suspect or believe that any person on such ship or aircraft:
 - (i) has a contagious or other disease or illness or has a health condition which poses or could pose a risk to the health of any person in Samoa; or
 - (ii) poses or could pose a risk to the safety of any person in Samoa; or
 - (iii) is a prohibited immigrant;
- (e) not permit any person on such ship or aircraft to disembark until disembarkation has been authorized by an Officer;
- (f) prevent, with such force as may be reasonably necessary in the circumstances, the disembarkation of any person:
 - (i) who has been given into the operator's custody under sections 34 or 42 or this section; or
 - (ii) in respect of whom a deportation order is in place; or
 - (iii) in respect of whom the operator has been notified by an Officer that such person is a prohibited immigrant;
- (g) make arrangements to the satisfaction of the Minister to enable Officers to inspect and examine each person on such ship or aircraft, as the case may require, and provide such accommodation and other facilities and assistance as the Minister may reasonably require to enable such Officers to perform their duties under this Act and any other law;

(h) ensure that a person is not uplifted by the operator for travel to Samoa where such person does not have the required passport and/or travel documents for such travel and the documents necessary for such person to seek entry to Samoa or to be in transit, as the case may be.

(2) Unless exempted by the Minister, the operator of any ship or aircraft shall ensure that such ship or aircraft departs from Samoa for any country or place outside Samoa only at a Regulated Port or Airport.

(3) The operator of any ship or aircraft about to depart from Samoa for any country or place outside Samoa shall provide the Minister with such information and documents as the Minister may determine by Notice in a form determined by the Minister.

(4) The Minister may prohibit any ship or aircraft from arriving in or departing from Samoa until the Minister is satisfied that the operator of such ship or aircraft has complied with the provisions of this Act or any other law.

(5) Where the Minister refuses permission for any person disembarking from a ship or aircraft to enter Samoa or any Proclaimed Area the Minister may direct the operator of such ship or aircraft to receive and retain such person on such ship or aircraft using such force as may be reasonably necessary in the circumstances and to convey such person from Samoa to such country or place as the Minister may determine.

(6) The owner and manager of every Regulated Port and Airport shall make arrangements to the satisfaction of the Minister to enable Officers to inspect and examine each person about to arrive in or arriving in or transiting Samoa on a ship or aircraft from some place outside Samoa or about to depart from Samoa for any country or place outside Samoa on a ship or aircraft, as the case may be, and provide such accommodation and other facilities and assistance as the Minister may reasonably require to enable such Officers to perform their duties under this Act and any other law.

(7) In exercising any power or function under subsections (1)(g) and (6) the Minister may determine the duties and responsibilities of operators of ships and aircraft and owners and operators of Regulated Ports and Airports including but not limited to who shall meet the costs and expenses of compliance by such persons under such subsections.

(8) Every person who being required to perform an act or function or duty under this section:

(a) refuses or fails to do so; or

(b) provides false or misleading or incomplete information or documents to the Minister or to an Officer or to a person nominated by the Minister,

commits an offence.

PART 3 ENTRY PERMITS

10. Entry to Samoa—(1) Subject to this Act, any person other than a citizen, shall not enter Samoa without an Entry Permit.

(2) In exercising any power, duty or function under this Part and Part 10, the Minister may require any person, other than a citizen, to apply for and be granted an Entry Permit or Transit Permit, as the case may require, prior to the person commencing any journey or travel to Samoa from any country or place outside Samoa.

(3) Any person who contravenes subsection (1) commits an offence.

11. Entry Permits—(1) There shall be only the following Entry Permits:

(a) Visitor Permit;

(b) Temporary Resident Permit;

(c) Permanent Resident Permit; and

(d) Ministerial Entry Permit.

(2) In addition to the Entry Permits under subsection (1) there shall be a Transit Permit granted in accordance with the provisions of Part 10.

(3) An Entry Permit:

- (a) shall be issued in a form or forms approved by the Minister; and
- (b) may include at the time of issue or at any time subsequently such terms and conditions as the Minister may determine.

(4) The terms and conditions under subsection (3) may include but are not limited to sponsorship and the provision of security by way of a bond or otherwise in forms determined by the Minister.

(5) Where a term or condition includes sponsorship, the sponsor shall be liable for all costs and expenses in connection with the care, maintenance and treatment of the person sponsored during such person's presence in Samoa and conveyance from Samoa and to pay to the Government any costs and expenses incurred by the Government in connection with the care, maintenance and treatment of such person during the person's presence in Samoa and conveyance from Samoa.

(6) A Visitor Permit may be applied for with or without a written application as the Minister may determine in a form approved by the Minister.

(7) A Temporary Resident Permit and a Permanent Resident Permit shall be applied for on an application form or forms approved by the Minister.

(8) A Ministerial Entry Permit may be applied for with or without a written application as the Minister may determine in a form approved by the Minister.

(9) An application for an Entry Permit, whether made in writing or otherwise, shall be accompanied by the required fee.

(10) Despite the provisions of this Act, the Minister by Notice may make provision for the grant of an Entry Permit or Transit Permit, as the case may require, for a child born in Samoa or a Proclaimed Area to the holder of an Entry Permit or Transit Permit.

(11) Subject to this Act, the Minister may grant an Entry Permit.

12. Visitor Permit—(1) For the purposes of this Act and subject to this Act, a Visitor Permit is a permit to enter Samoa once or more often (as determined by the Minister) during the currency of the permit and to remain in Samoa for a period up to a maximum of 60 days as determined by the Minister.

(2) A Visitor Permit shall be granted only to a person entering Samoa:

- (a) as a tourist; or
- (b) for religious or cultural purposes; or
- (c) for family re-union or family support purposes; or
- (d) for business purposes; or
- (e) for the purpose of accompanying a person entering Samoa under this subsection.

(3) Save where a person has been granted an Entry Permit to undertake employment in Samoa in accordance with Part 8, a person granted a Visitor Permit shall not undertake employment in Samoa during the period in which the person is in Samoa.

(4) A Visitor Permit shall only be granted to a person who is able to establish to the satisfaction of the Minister that the person:

- (a) is of good health and character; and
- (b) has met or will meet, as the case may require, any eligibility criteria determined by the Minister by Notice.

13. Temporary Resident Permit—(1) For the purposes of this Act and subject to this Act, a Temporary Resident Permit is a permit to enter Samoa and re-enter Samoa during the currency of the permit and to remain in Samoa up to a maximum of three years.

(2) A Temporary Resident Permit shall be granted only to a person entering Samoa for:

- (a) the conduct of business in Samoa;
- (b) employment in Samoa; or
- (c) study in Samoa; or
- (d) academic or scientific research in Samoa; or
- (e) a cultural or religious purpose; or
- (f) a family re-union or family support purpose; or
- (g) a purpose approved by the Minister; or
- (h) the purpose of accompanying a person entering Samoa under this subsection.

(3) Save where a person has been granted an Entry Permit to undertake employment in Samoa in accordance with Part 8, a person granted a Temporary Resident Permit shall not undertake employment in Samoa during the period in which the person is in Samoa.

(4) A Temporary Resident Permit shall be granted only to a person who is able to establish to the satisfaction of the Minister that the person:

- (a) is of good health and character; and
- (b) has met or will meet, as the case may require, any eligibility criteria determined by the Minister by Notice.

14. Permanent Resident Permit—(1) Subject to this Act and for the purposes of this Act and the Citizenship Act 2004, a Permanent Resident Permit is a permit to enter and re-enter Samoa during the currency of the permit and remain in Samoa permanently.

(2) Cabinet may by Notice determine:

- (a) the maximum number of Permanent Resident Permits which may be granted by the Minister in any year and such number shall be referred to as the quota for that year; and
- (b) subject to this Act, eligibility criteria and residency requirements for granting a Permanent Resident Permit.

(3) A Permanent Resident Permit shall:

- (a) not be granted by the Minister where to do so would exceed the quota for that year;
- (b) be granted only to a person who is able to establish to the satisfaction of the Minister that the person:
 - (i) is of good health, character and standing; and
 - (ii) has observed the laws of Samoa; and
 - (iii) has met or will meet, as the case may require, any eligibility criteria and residency requirements determined by Cabinet under subsection (2)(b).

15. Ministerial Entry Permit—(1) For the purposes of this Act and subject to this Act, a Ministerial Entry Permit is a permit to enter Samoa once or more often (as determined by the Minister) during the currency of the permit and to remain in Samoa for such period as the Minister may determine.

(2) Subject to this section, a Ministerial Entry Permit shall be granted by the Minister only to a person:

- (a) who is a Head of State or Head of Government (howsoever called) or who is a member of an official delegation or official party from a country other than Samoa during an official visit to Samoa by such person; or
- (b) who is a person duly accredited to the Government by any other country or by an international or regional organisation; or
- (c) who is a member of the immediate family of a person referred to in paragraphs (a) and (b); or
- (d) who is a member of a police service or a military force or a security service of a country declared by Cabinet to be friendly to Samoa; or
- (e) who is a passenger or member of the crew of a ship or aircraft carrying passengers or cargo for reward to and from Samoa.

(3) A Ministerial Entry Permit may be granted to a person or a class of persons and for the purpose of removal of doubt, a Ministerial Entry Permit which is granted to a class of persons shall be taken for all purposes to be a Ministerial Entry Permit for any person who is a member of such class of persons whether such person is named or not named in such permit.

(4) Save where a person has been granted an Entry Permit to undertake employment in Samoa in accordance with Part 8, a person granted a Ministerial Entry Permit shall not undertake employment in Samoa during the period in which the person is in Samoa.

16. Further grant of certain Entry Permits—(1) Subject to compliance with the terms of this Act, the Minister may grant further Visitor Permits or Temporary Resident Permits or Ministerial Entry Permits, as the case may require.

(2) The Minister may require a person seeking an Entry Permit under subsection (1) to do so by application in a form approved by the Minister.

17. Expiry of Entry Permit – Unless an Entry Permit states otherwise, such permit expires on the commencement of the next day succeeding the date of expiry of such permit.

18. Duty to depart Samoa prior to expiry of Entry Permit–
(1) Subject to this Act, the holder of an Entry Permit shall depart from Samoa prior to the expiry of such permit.

(2) Any person who contravenes subsection (1) commits an offence.

19. Limitation of rights accruing to applicants for and holders of Entry Permits – Subject to the Constitution and this Act and despite the provisions of any other law: (1) Any person who applies for or is the holder of an Entry Permit, other than the holder a Permanent Resident Permit, shall not have any right or entitlement to:

(a) the grant of an Entry Permit; or

(b) challenge or seek review or bring any other legal proceedings whatsoever, including but not limited to any prerogative writ or judicial review, in any Court concerning:

(i) the grant or denial of an Entry Permit; or

(ii) the cancellation of an Entry Permit; or

(iii) the imposition of any term or condition for any Entry Permit granted under this Act.

(2) The Court of Appeal and the Supreme Court and the District Court shall not have the power or jurisdiction to make any decision or order concerning or touching upon any matter under subsection (1)(a) or (b).

PART 4
CANCELLATION OF ENTRY PERMITS

20. Cancellation of Visitor and Temporary Resident Permits—(1) A Visitor Permit or a Temporary Resident Permit is cancelled if the person granted such permit:

- (a) fails to enter Samoa within any period specified in such permit; or
- (b) is convicted in Samoa or elsewhere of any offence nominated by the Minister by Notice and has not received a free pardon,

and such person shall, if in Samoa, depart from Samoa forthwith.

(2) A Visitor Permit and a Temporary Resident Permit may be cancelled by the Minister if the Minister is satisfied on reasonable grounds that the person granted the permit:

- (a) provided false or misleading or incomplete information as part of the person's application for such permit; or
- (b) has contravened sections 12(3) or 13(3); or
- (c) has breached any of the terms and conditions attached to such permit; or
- (d) has acted in a manner inconsistent with the person's stated purpose in being in Samoa or that the circumstances under which the permit was granted no longer apply; or
- (e) has acted in a manner which is detrimental to the peace, order or good governance of Samoa or which is detrimental to the well being of Samoa; or
- (f) is without sufficient lawful means of support for the person or any of the person's dependants; or
- (g) where the person has an Entry Permit to undertake employment, such employment has ceased.

(3) Where a permit is cancelled under this section the Minister shall cause to be served on the person a written Notice to this effect.

- (4) The Notice under subsection (3) shall:
- (a) be in Samoan or English; and
 - (b) state under which provision of this Act the Minister has acted; and
 - (c) advise the person that if the decision to cancel the permit was made by an Officer, the person may appeal the cancellation to the Minister in writing; and
 - (d) advise the person that any appeal made under paragraph (c) does not suspend the operation of the cancellation.
- (5) Upon receipt of an appeal under subsection (4)(c) the Minister shall review the decision of the Officer and may:
- (a) confirm such cancellation; or
 - (b) cancel such cancellation.
- (6) Under subsection (5) (b) the Minister may impose such terms and conditions on the permit as the Minister deems appropriate.
- (7) Upon the Minister determining an appeal under subsection (5) the Minister shall cause to be served on the person the subject of the appeal a Notice advising the Minister's decision.
- (8) If the Minister's decision under subsection (5) is to confirm the cancellation, the person shall depart from Samoa forthwith and any failure by the person to do so shall be grounds for the person's immediate deportation.

21. Cancellation of Ministerial Entry Permit—(1) The Minister may cancel a Ministerial Entry Permit on any grounds which the Minister deems fit.

(2) If the Minister cancels a permit under subsection (1) the Minister shall cause to be served on the person Notice in Samoan or English to that effect and requiring the person to depart from Samoa forthwith and advising that any failure by the person to do so shall be grounds for the person's immediate deportation.

22. Cancellation of Permanent Resident Permit—(1) A Permanent Resident Permit is cancelled if the person granted such permit is convicted in Samoa of any offence nominated by the Minister by Notice and has not received a free pardon.

- (2) Where a person granted a Permanent Resident Permit:
- (a) obtained such permit by providing the Minister with false or misleading or incomplete information; or
 - (b) has breached any term or condition attached to the permit; or
 - (c) has acted in a manner which is detrimental to the peace, order or good governance of Samoa or which is detrimental to the well-being of Samoa; or
 - (d) fails to meet any residency requirement under section 14(3)(b)(iii),

the Minister shall cause to be served on the person Notice to show cause why the Minister should not cancel the person's Permanent Resident Permit.

- (3) Notice under subsection (2) shall:
- (a) be in Samoan or English; and
 - (b) state under which provision of this Act the Minister is acting; and
 - (c) provide a summary of the information on which the Minister is relying; and
 - (d) provide advice to the effect that the person has twenty one days from the date of the Notice to provide the Minister with a written submission as to why the Minister should not cancel the person's Permanent Resident Permit.

(4) At the expiration of the 21 day period referred to in subsection (3) (d) the Minister shall, after taking into account any submission made by the person pursuant to subsection (3)(d):

- (a) cancel the person's permit; or
- (b) withdraw the Notice under subsection (2).

(5) If the Minister withdraws the Notice under subsection 4(b) the Minister may impose such terms and conditions to be attached to the permit as the Minister deems fit.

(6) The Minister shall cause to be served on the person Notice of the Minister's decision under subsection (4).

- (7) Notice under subsection (6) shall:
- (a) be in Samoan or English; and

(b) if the Minister's decision is to cancel the permit, provide reasons for that decision and advice to the effect that the person has fourteen days from the date of such Notice to appeal to the Supreme Court against the Minister's decision.

(8) A person served with Notice under subsection (7)(b) has fourteen days from the date of the Notice to appeal to the Supreme Court concerning the Minister's decision to cancel the person's Permanent Resident Permit.

(9) An appeal under subsection (8) shall only be made upon the grounds that Minister has:

- (a) not acted in accordance with the provisions of the Constitution or this Act or both; and/or
- (b) that in all of the circumstances the Minister has acted unreasonably.

(10) For the purpose of avoidance of doubt, an appeal under subsection (8) shall not include or concern or touch upon any decision of the Minister under subsection (5).

(11) If a person appeals in accordance with the provisions of subsection (8) the person's Permanent Resident Permit shall remain valid and of full force and effect until the completion of the appeal.

(12) If the person does not appeal in accordance with the provisions of subsection (8) the person's permit is cancelled as of the fifteenth day after Notice under subsection (6) has been served on the person and the person shall depart from Samoa forthwith and any failure by the person to do so shall be grounds for the person's immediate deportation.

23. Appeal to the Supreme Court—(1) Subject to Part 9, the Supreme Court shall have jurisdiction to determine an appeal brought under section 22(8).

(2) On the hearing of an appeal under section 22(8), the Supreme Court:

- (a) shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities; and

- (b) may admit such evidence as in the Court's opinion may assist the Court to deal effectively with the appeal, notwithstanding that the evidence may not otherwise be admissible in the Supreme Court; and
- (c) may determine the procedure for the conduct of the appeal.

(3) Upon hearing an appeal under subsection 22(8), the Supreme Court shall only have the power to:

- (a) confirm the Minister's decision; or
- (b) cancel the Minister's decision.

(4) In hearing an appeal under section 22(8) the Supreme Court shall not have the power or jurisdiction to make any decision or order other than a decision or order under subsection (3) and shall not make any order as to costs.

(5) Where the Supreme Court confirms the Minister's decision under subsection (3) (a) the person's Permanent Resident Permit is cancelled and the person shall depart from Samoa forthwith, and any failure by the person to do so shall be grounds for the person's immediate deportation.

PART 5 DEPARTURE PROHIBITION ORDER

24. Order prohibiting departure from Samoa—(1) Subject to this Part the following persons shall be prohibited from departing or attempting to depart from Samoa for any place outside of Samoa:

- (a) Persons subject to an Order made by a Court under section 25; and
- (b) Persons subject to an Order made by the Attorney General under section 26.

(2) For the purposes of this Part, "Court" means the Court of Appeal, the Supreme Court, the District Court, any Judge of the Court of Appeal, the Supreme Court and the District Court and any Registrar or Assistant Registrar of the Supreme Court.

25. Court Departure Prohibition Order—(1) Upon application by any interested party or upon its own motion, a Court may make an order for such period of time, up to a maximum of six months, prohibiting any person from departing or attempting to depart from Samoa for any place outside Samoa on one or more of the following grounds:

- (a) that the Court is satisfied on the balance of probabilities that the person subject to the application:
 - (i) has a debt or debts in Samoa in excess of the amount determined by the Minister by Notice; and
 - (ii) is unlikely to pay such debt or debts if allowed to depart from Samoa; or
- (b) that the Court is satisfied on the balance of probabilities that:
 - (i) the person subject to the application is currently involved as a party or as a witness in a civil or criminal case which is before the Court of Appeal or the Supreme Court or the Lands and Titles Court or the District Court; and
 - (ii) it is not in the interests of justice for the person to depart from Samoa; or
- (c) that the person subject to the application is currently on bail.

(2) A Court may make an order under subsection (1) without notice to or in the absence of the person subject to the application if it believes that it is just to do so in all of the circumstances.

(3) Upon application by any interested party or upon the Judge's own motion, a Judge of the Supreme Court may extend, revoke or amend an order made under subsection (1).

(4) Where a decision is made by a Judge of the District Court or the Registrar or an Assistant Registrar of the Supreme Court under subsection (1), any interested party may appeal to a Judge of the Supreme Court against such decision and the Judge may make such order concerning the appeal as the Judge determines.

(5) Where a decision is made by a Judge of the Supreme Court concerning an application under subsection (1), any interested party may appeal to the Court of Appeal against such decision and the Court of Appeal may make such order concerning the appeal as the Court of Appeal determines.

(6) Any appeal under subsections (4) or (5) shall be made within seven (7) days of the date of the person appealing receiving notification of the decision being appealed or within such further period not exceeding one month of the date of the decision as the Judge or the Court of Appeal, as the case may be, allows in the interests of justice.

(7) Any appeal against an order made under subsection (1) shall not suspend the operation of such order.

26. Attorney General Departure Prohibition Order—(1) The Attorney General, upon the Attorney General's own motion or upon application by any interested party, in the Attorney General's absolute discretion, may make an order for such period of time, up to a maximum of three months, prohibiting any person from departing or attempting to depart from Samoa for any place outside Samoa on one or more of the following grounds:

- (a) that the Attorney General has determined that it is not in Samoa's national interest for the person to depart from Samoa; or
- (b) that the Attorney General has determined that it is not in the interests of Samoa's national security for the person to depart from Samoa; or
- (c) that the person is currently involved as a party or as a witness in a civil or criminal case which is before the Court of Appeal or the Supreme Court or the Lands and Titles Court or the District Court and it is not in the interests of justice for the person to depart from Samoa; or
- (d) that the person is currently on bail; or
- (e) that the person is required to be available in Samoa as part of an investigation of a criminal offence punishable in Samoa or elsewhere by imprisonment for two years or more.

(2) At any time the Attorney General may revoke or amend an order made under subsection (1).

(3) A person subject to an order made by the Attorney General under subsection (1) may apply to a Judge of the Supreme Court within seven (7) days of the person receiving notification of the order to have the order revoked or amended but any application under this subsection shall not suspend the operation of such order.

(4) A Judge of the Supreme Court shall only revoke or amend an order made by the Attorney General under subsection (1)(a) or (b) if the person subject to the order establishes to the satisfaction of the Judge on the balance of probabilities that the order:

- (a) where it was made on the grounds provided in subsection (1)(a), is not required in Samoa's national interest; or
- (b) where it was made on the grounds provided in subsection (1)(b), is not required in Samoa's national security.

(5) The hearing of any application made under subsection (3) or this subsection may be closed to the public upon application by the Attorney General if the presiding Judge is satisfied that disclosure of any information about or details of the hearing may put Samoa's national interest or national security at risk, and upon application by the Attorney General the presiding Judge may prohibit any person from disclosing or publishing in any form any information about or details concerning the hearing if the Judge is satisfied that such disclosure or publication may put Samoa's national interest or national security at risk.

(6) Any person who knowingly breaches an order of a Judge made under subsection (5) commits an offence.

(7) At any hearing under subsections (3) and (5) the presiding Judge shall not require the Attorney General to disclose to the person subject to an order made under subsection (1) any 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 which would put Samoa's national interest or national security at risk.

(8) Despite the provisions of any other law, the Attorney General may make an order under subsection (1) without giving

notice to or in the absence of the person and without providing the person an opportunity to be heard if the Attorney General determines, in the Attorney General's absolute discretion, that it is necessary to do so.

27. Further Departure Prohibition Orders—(1) Despite the provisions of this Part, a Judge of the Supreme Court may make further orders under section 25 and such further orders shall be subject to the same rights of appeal to the Court of Appeal as provided for under section 25(5).

(2) Despite the provisions of this Part, the Attorney General may make further orders under section 26 and such further orders shall be subject to the provisions of section 26(3), (4) and (5).

28. No order as to costs – No Court may make any order as to costs concerning any order or application made under section 26.

PART 6 PROHIBITED IMMIGRANT

29. Prohibited Immigrant—(1) Subject to this Part, the Minister may by Notice declare that a person, other than a citizen or a person holding a Permanent Resident Permit, is a Prohibited Immigrant.

(2) A declaration under subsection (1) may include the period of time during which a person is a Prohibited Immigrant.

(3) A Prohibited Immigrant shall not:

- (a) apply for or be eligible to apply for or be granted or hold an Entry Permit; and
- (b) enter or attempt to enter Samoa; and
- (c) if in Samoa, remain in Samoa.

30. Who may be declared a Prohibited Immigrant—(1) Subject to section 29(1), the Minister may declare any person a Prohibited Immigrant who:

- (a) has been deported from Samoa or any other country; or
- (b) has entered or has attempted to enter or remains in Samoa in breach of the provisions of this Act or any other law; or

- (c) has breached a term or condition of the person's Entry Permit; or
- (d) is disaffected towards Samoa; or
- (e) is likely to be a danger to the peace, order or good governance of Samoa; or
- (f) if in Samoa, would put at risk:
 - (i) any Samoan citizen; or
 - (ii) Samoa's relationship with any other country or place or any international or regional organisation; or
- (g) has been convicted in Samoa or elsewhere of any offence nominated by the Minister by Notice and has not received a free pardon; or
- (h) has supported or has been involved with the commission of an act which constitutes an offence under the Money Laundering Prevention Act 2000 or the Prevention and Suppression of Terrorism Act 2002 or like statutes; or
- (i) is without sufficient lawful means of support for the person or any of the person's dependants; or
- (j) is declared by the Minister to be a people smuggler or a person involved with people smuggling; or
- (k) is otherwise regarded by the Minister as an undesirable immigrant.

(2) The Minister may by Notice declare that a person is no longer a Prohibited Immigrant.

(3) The Minister may cause to be kept and maintained a register of Prohibited Immigrants and may provide to such persons as the Minister may determine information from such register.

(4) Save for such rights as are conferred by Article 4 of the Constitution no person shall have any right or entitlement to challenge or seek review or bring any other legal proceedings whatsoever, including but not limited to any proceedings by way of prerogative writ or judicial review, in any Court concerning any decision, act or omission by the Minister under this Part.

31. Offences and liability concerning a Prohibited Immigrant—(1) Any person who being a Prohibited Immigrant:

- (a) applies for or attempts to apply for an Entry Permit; or

(b) enters or attempts to enter Samoa; or
(c) if in Samoa, remains in Samoa,
commits an offence.

(2) Any person who knowingly:

(a) brings or attempts to bring a Prohibited Immigrant into Samoa; or
(b) assists or attempts to assist a Prohibited Immigrant to enter or remain in Samoa,
commits an offence.

(3) The operator of any ship or aircraft from which a Prohibited Immigrant disembarks in Samoa shall be jointly and severally liable to convey such Prohibited Immigrant from Samoa and to pay to the Government all costs and expenses incurred by the Government in connection with the care, maintenance and treatment of such Prohibited Immigrant and the Prohibited Immigrant's conveyance from Samoa.

(4) The amount of any costs and expenses referred to in subsection (3) shall:

- (a) be recoverable as a debt due to the Government in any Court of competent jurisdiction; and
- (b) in the case of such costs and expenses concerning conveyance from Samoa, not exceed the costs and expenses of conveying the Prohibited Immigrant to the place from which the Prohibited Immigrant was brought to Samoa by the ship or aircraft concerned.

(5) The Minister may, in the Minister's discretion, direct that the whole or part of the costs and expenses referred to in subsection (3) shall be paid out of money appropriated for that purpose by the Legislative Assembly.

PART 7 DEPORTATION

32. Deportation—(1) The Minister may order the deportation from Samoa of a person, other than a citizen, who:

- (a) is a Prohibited Immigrant; or
- (b) has entered Samoa in breach of this Act or any other law; or

(c) has been convicted in Samoa or elsewhere of any offence nominated by the Minister by Notice and has not received a free pardon; or

(d) remains in Samoa after expiry or cancellation of the person's Entry Permit or Transit Permit.

(2) A Deportation Order shall be in a form approved by the Minister.

(3) Despite any other law, the Minister may issue travel and identity documents to a person to enable such person to depart or be removed or be deported from a Proclaimed Area or Samoa.

33. Procedure for Deportation—(1) No person shall be deported from Samoa without a Deportation Order signed by the Minister.

(2) A Deportation Order shall not be signed by the Minister until the Minister has received written advice from an Officer that the person proposed to be deported is not a citizen but is a person who:

(a) is a Prohibited Immigrant; or

(b) has entered Samoa in breach of this Act or any other law; or

(c) has been convicted in Samoa or elsewhere of any offence nominated by the Minister by Notice and has not received a free pardon, or

(d) remains in Samoa after expiry or cancellation of the person's Entry Permit or Transit Permit.

(3) Prior to a person being deported from Samoa the Minister shall cause to be served on the person a copy of the Deportation Order.

(4) The Minister may, in the Minister's discretion, direct that a person subject to a Deportation Order be deported from Samoa:

(a) using any means of transportation; and

(b) to the country or place from whence the person had come to Samoa or to the person's country of origin or residence (as evidenced by the person's passport or other travel document) or to such country or place as the Minister may determine.

(5) Despite any other law, a person subject to a Deportation Order may be arrested by an Officer authorised in writing by the Minister or any member of the Police Service using such force as may be reasonably necessary in the circumstances and held in custody at a place or places nominated by the Minister until the person is deported from Samoa.

(6) Despite any other law, the Minister may authorise in writing any Officer or any member of the Police Service to enter, using such force as may be reasonably necessary in the circumstances, any land or place or building or dwelling house or ship or aircraft or vehicle or structure and search for and arrest any person who is a person subject to a Deportation Order.

(7) If a person is arrested and held in custody under subsection (5) the Minister shall cause the person to be deported from Samoa as soon as possible.

34. Transportation of Deported Person and certain others from Samoa

(1) The Minister may, in the Minister's discretion, direct the operator of any ship or aircraft about to leave Samoa to receive and retain a person subject to removal from a Proclaimed Area or Samoa or a Deportation Order using such force as may be reasonably necessary in the circumstances and to receive the person's escort (if any) and the person's dependants (if any) on board the ship or aircraft, as the case may be, and afford the person, the escort and any of the person's dependants passage to the country or place to which the person is being deported and provide proper accommodation and maintenance for such persons during the journey.

(2) Except as provided by section 31(3) the cost of such passage, accommodation and maintenance referred to in subsection (1) shall be paid by the person subject to removal or a Deportation Order, as the case may be, or if the Minister so directs out of money appropriated for that purpose by the Legislative Assembly.

(3) Where the cost of such passage, accommodation and maintenance referred to in subsection (1) is paid out of money appropriated for that purpose by the Legislative Assembly the Minister may recover such cost:

(a) from the person subject to removal or being deported, as the case may be, as a debt due to the Government in any Court of competent jurisdiction; or

(b) by seizing any real or personal property or money or other asset owned by or held by or in the possession or control of such person and selling or otherwise realizing the value of such property or money or other asset in such manner as the Minister may determine.

(4) Despite any other law, no action or legal proceedings shall be brought or civil or criminal or professional penalty shall be imposed on the Minister whilst acting in good faith under subsection (3) and on any person who in good faith:

(a) assists the Minister under subsection 3(b); or

(b) gives or transfers to the Minister any property or money or other asset referred to in subsection (3)(b).

(5) If the operator of any ship or aircraft about to leave Samoa fails or refuses without lawful excuse to receive and retain on board the ship or aircraft, as the case may be, any person subject to removal or a Deportation Order and the person's escort (if any) and the person's dependants (if any) and afford such persons passage to the country or place to which the person is being deported and to provide proper accommodation and maintenance for such persons during the journey when directed to do so by the Minister under subsection (1), the operator of that ship or aircraft commits an offence.

PART 8 EMPLOYMENT IN SAMOA

35. Employment in Samoa—(1) Save for a citizen and a person holding a Permanent Resident Permit, no person shall undertake employment in Samoa unless the person's Entry Permit permits such employment.

(2) Any person who undertakes employment in breach of subsection (1) commits an offence.

(3) No person shall offer employment to or employ a person, other than a citizen or a person holding a Permanent Resident Permit or a person holding an Entry Permit which permits such employment.

(4) Any person who offers employment to or employs a person in breach of subsection (3) commits an offence.

36. Application to be employed in Samoa—(1) Where a person, other than a citizen or a person holding a Permanent Resident Permit, seeks to undertake employment in Samoa, such person shall, in conjunction with the person's application for an Entry Permit or at any other time approved by the Minister, apply to do so to the Minister in a form approved by the Minister.

(2) An applicant under subsection (1) shall provide any additional information which the Minister may require.

(3) Upon receipt of an application under subsection (1) the Minister shall forthwith cause a copy of the application to be provided to the Chief Executive Officer of the Ministry of Commerce, Industry and Labour.

(4) Upon receipt of a copy of an application under subsection (1) and any additional information under subsection (2) the Chief Executive Officer of the Ministry of Commerce, Industry and Labour shall assess the application having regard to:

- (a) the nature of the proposed employment and any technical or professional requirements involved in the performance of the proposed employment; and
- (b) the likelihood of a citizen or person holding a Permanent Resident Permit having the requisite technical or professional requirements being available for such employment; and
- (c) the interests of Samoa generally; and
- (d) any other matter that may be prescribed or otherwise determined by the Minister of Commerce, Industry and Labour as relevant to protecting:
 - (i) the employment opportunities in Samoa of citizens and persons holding a Permanent Resident Permit; and
 - (ii) the interests of Samoa.

(5) Within 14 days of receipt of a copy of an application under subsection (3) the Chief Executive Officer of the Ministry of Commerce, Industry and Labour shall provide a written report on such application to the Minister and such report shall approve or reject such application.

(6) Where the Minister receives a report in accordance with subsection (5) which approves an application under subsection (1) the Minister may, in the Minister's discretion, grant an Entry Permit to the person for the person to undertake employment in Samoa on such terms and conditions as the Minister may determine.

(7) Where the Minister receives a report in accordance with subsection (5) which rejects an application under subsection (1) the Minister shall not grant an Entry Permit to the person for the person to undertake employment in Samoa.

(8) Where the Minister does not receive a report in accordance with subsection (5) the Minister may, after taking into account the matters referred to in subsection (4) (a), (b), (c) and (d), grant an Entry Permit for the person to undertake employment in Samoa on such terms and conditions as the Minister may determine or decline to grant such Entry Permit.

(9) Without limiting the discretion and powers of the Minister under this Part, the grant of an Entry Permit for a person to undertake employment in Samoa may include a requirement for the person and the person's employer (if any) to employ and train a citizen or a person holding a Permanent Resident Permit.

(10) Where the Minister grants an Entry Permit for a person to undertake employment in Samoa, the Minister shall cause a copy of and details concerning such Entry Permit to be provided to the Chief Executive Officer of the Ministry of Commerce, Industry and Labour.

37. Register of Entry Permits to undertake employment –
The Minister shall cause to be kept and maintained a register of Entry Permits for persons to undertake employment in Samoa and the register shall be open for inspection upon payment of the required fee.

PART 9
DUTY AND JURISDICTION OF COURTS

38. Duty of Court to inform the Minister—(1) Where the Court of Appeal or the Supreme Court or the District Court convicts a person, other than a citizen, of any offence determined by the Minister by Notice the Registrar of such Court shall, within seven (7) days of the date of conviction, provide the Minister with a certificate of such conviction in a form approved by the Minister.

(2) A certificate under subsection (1) shall for all purposes, including but not limited to any decision or determination or action or proceedings under this Act, be sufficient evidence of the matters stated therein unless the contrary is proved and such certificate purported to be signed by the Registrar of such Court shall be presumed to be so signed unless the contrary is proved.

39. Jurisdiction of Courts – Despite any other law and subject only to the jurisdiction conferred on the Court of Appeal and the Supreme Court under Articles 4, 80 and 81 of the Constitution, the Court of Appeal and the Supreme Court and the District Court shall have only such original, appellate and revisional jurisdiction in relation to and concerning this Act as provided explicitly by this Act.

PART 10
TRANSIT PASSENGER PROVISIONS

40. Transit Permit—(1) For the purposes of this Act, a “Transit Permit” is a permit granted to a Transit Passenger to enter a Proclaimed Area and remain in such area for such period of time as the Minister may determine as part of the person’s journey from a country or place outside Samoa to another country or place outside Samoa.

(2) The Minister may grant a Transit Passenger a Transit Permit on such terms and conditions and for such period as the Minister may determine on receipt of an application for such permit in a form (if any) determined by the Minister by Notice and upon payment of the required fee.

(3) The Minister may, in the Minister's absolute discretion, cancel a Transit Permit.

(4) Where the Minister has cancelled a Transit Permit under subsection (3) the Minister shall cause the Transit Passenger to be advised (orally or in writing):

- (a) of such cancellation; and
- (b) that the Transit Passenger is required not to enter Samoa and to depart forthwith from a Proclaimed Area on the next available ship or aircraft departing from Samoa; and
- (c) that any failure by the Transit Passenger to comply with the provisions of paragraph (b) constitutes an offence under this Act and shall be grounds for the person's immediate deportation.

(5) Any Transit Passenger who:

- (i) attempts to or enters Samoa; or
- (ii) prior to the expiry or after cancellation of the passenger's Transit Permit fails to depart forthwith from a Proclaimed Area on the next available ship or aircraft,

commits an offence.

41. Transit Passenger provisions—(1) The Minister may require any Transit Passenger to:

- (a) enter and remain in a Proclaimed Area; and
- (b) transfer from one Proclaimed Area to another Proclaimed Area; and
- (c) obey any reasonable and lawful directions whilst such passenger is in transit; and
- (d) comply with the requirements of sections 5, 6, 7 and 8.

(2) Any Transit Passenger who attempts to breach or breaches any provision of subsection (1) commits an offence.

(3) Any person who aids and abets a Transit Passenger to attempt to breach or breach any of the provisions of subsection (1) or section 40(5) commits an offence.

(4) Any person who enters or remains in a Proclaimed Area without a Transit Permit or other authority of the Minister commits an offence.

42. Transportation of Transit Passenger—(1) The operator of any ship or aircraft from which a Transit Passenger disembarks into a Proclaimed Area or elsewhere shall be jointly and severally liable to convey such passenger from a Proclaimed Area or elsewhere or Samoa as the case may require, and pay to the Government any costs and expenses incurred by the Government in connection with the care, maintenance and treatment of such passenger and the passenger's removal from a Proclaimed Area or elsewhere or deportation from Samoa, as the case may be, and conveyance from a Proclaimed Area or elsewhere or Samoa on any ship or aircraft or other means of transportation.

(2) The amount of any costs and expenses referred to in subsection (1) shall be recoverable as a debt due to the Government in any Court of competent jurisdiction.

(3) The Minister may, in the Minister's discretion, direct that the whole or part of the costs and expenses referred to in subsection (1) shall be paid out of money appropriated for that purpose by the Legislative Assembly.

(4) The Minister may, in the Minister's discretion, direct any operator of a ship or aircraft about to leave Samoa to receive and retain a Transit Passenger using such force as may be reasonably necessary in the circumstances and to receive such passenger's escort (if any) and such passenger's dependants (if any) on board such ship or aircraft, as the case may be, and afford the passenger, the escort and any of the person's dependants passage to the country or place designated by the Minister and provide proper accommodation and maintenance for such persons during the journey.

(5) If such operator fails to comply with a direction by the Minister under subsection 4, the operator commits an offence.

PART 11 MISCELLANEOUS

43. Powers – The Government, Cabinet, the Minister, the Minister of Finance, the Minister of Commerce, Industry and Labour, the Chief Executive Officer of the Ministry of Commerce,

Industry and Labour, an Officer, a member of the Police Service, a Court, any Judge of a Court and a Registrar and Assistant Registrar of a Court and any person or body or authority acting under authority of this Act shall have such powers as necessary to exercise any power, function authority, duty or other act of authority conferred on such person or body or authority under this Act.

44. Delegation by Minister—(1) The Minister may, from time to time by writing under the Minister's hand, either generally or specially, and subject to any restrictions or conditions which the Minister thinks fit to impose, authorize any person, including any person outside Samoa, to exercise all or any powers and functions of the Minister under this Act, save for this power of delegation, and in every such case the provisions of this Act, so far as they are applicable, and with any necessary modifications, apply accordingly.

(2) In the exercise of any power and function delegated under subsection (1) the person to whom such power and function are delegated shall act in accordance with any restrictions or conditions imposed by the Minister.

(3) Any delegation under this section may be given to a specified person or to persons of a specified class or may be given to the holder or holders for the time being of a specified office or appointment or class of offices or appointments.

(4) Every delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power or function by the Minister.

(5) Every delegation under this section shall, until revoked, continue in force according to its tenor, notwithstanding that the Minister by whom it was made has ceased to hold office and shall continue to have effect as if made by the successor in office of that Minister.

45. Delegation by Chief Executive Officer of the Ministry of Commerce, Industry and Labour—(1) The Chief Executive Officer of the Ministry of Commerce, Industry and Labour may delegate

any of the Chief Executive Officer's power and function under Part 8 to any officer of the Ministry of Commerce, Industry and Labour.

(2) Every delegation under subsection (1) shall be revocable at will and no such delegation shall prevent the exercise of any power or function by the Chief Executive Officer.

(3) Every delegation under subsection (1) shall, until revoked, continue in force notwithstanding that the Chief Executive Officer by whom it was made has ceased to hold office and shall continue to have effect as if made by the successor in office of that Chief Executive Officer.

46. Duty to co-operate – The Chief Executive Officers (howsoever called) and the officers and members of all Ministries and Agencies of the Government, including but not limited to the Police Service, Customs, Quarantine, Samoa Ports Authority, Samoa Airports Authority and the Ministry of Health, shall co-operate with and provide mutual support and assistance to the Minister and any person acting under the authority of the Minister concerning any matter under this Act.

47. Evidence by Certificate–(1) In any proceedings under or concerning this Act, the Minister may provide a Court or other lawful authority with a Certificate of Evidence, in a form approved by the Minister, concerning:

- (a) any application for an Entry Permit and any Entry Permit;
- (b) any passport or other travel document;
- (c) citizenship of Samoa or any other country or place;
- (d) any cancellation of an Entry Permit;
- (e) any Deportation Order;
- (f) any Departure Prohibition Order;
- (g) any Prohibited Immigrant;
- (h) any Transit Permit; and
- (i) any other matter determined by the Minister by Notice.

(2) A Certificate of Evidence under subsection (1) signed by the Minister shall be sufficient evidence of the matters stated in the Certificate unless the contrary is proved, and such certificate purported to be signed by the Minister shall be presumed to be so signed unless the contrary is proved.

48. Minister to determine fees and charges—(1) The Minister may by Notice determine fees and charges concerning:

- (a) any application made under this Act;
- (b) the issue of any Entry Permit and Transit Permit;
- (c) the issue of any document under this Act; and
- (d) the provision of any service or facility to the operator of any ship or aircraft arriving in or departing from Samoa; and
- (e) the exercise of any power or function under this Act.

(2) Any fee or charge under subsection (1) shall be non-refundable unless the Minister determines otherwise.

49. Offences and Penalties—(1) Any person who attempts to act or acts in contravention of or fails to comply with any of the provisions of this Act or any of the conditions lawfully imposed in pursuance of the provisions of this Act or any lawful order or requirement of the Minister or person acting under the authority of the Minister or a Court, or aids or abets in any such contravention, or harbours any person whom the person knows, or has reasonable grounds to believe has acted in contravention of this Act, commits an offence.

(2) Any person 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 Entry Permit or Transit Permit or Departure Prohibition Order; or
- (c) alters any Entry Permit or Transit Permit or Departure Prohibition Order or copy of an Entry Permit or Transit Permit or Departure Prohibition Order issued under this Act; or

- (d) wilfully obstructs the Minister or any 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 forged passport, other travel document, Entry Permit, Transit Permit, Departure Prohibition Order, certificate or other document, or any passport or document on which any visa or Entry Permit or Transit Permit or endorsement has been forged, or any passport, other travel document, Entry Permit, Transit Permit, Departure Prohibition Order, certificate or other document which has been altered without lawful authority,

commits an offence.

(3) Notwithstanding any other law and this Act, if any person admits in writing that the person has committed any offence under this Act and requests that the offence be dealt with summarily by the Minister, the Minister may, at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding 50 penalty units, as the Minister thinks just in the circumstances of the case, in full satisfaction of any fine or other penalty to which that person would otherwise be liable under this Act.

(4) Any sum accepted by the Minister under subsection (3) shall be paid into such fund or account as the Minister of Finance may determine by Notice.

(5) If the Minister accepts such sum pursuant to subsection (3) the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

(6) The penalties for offences under this Act shall be as stated in Schedule I and may be amended by regulation.

50. Seizure of ship and aircraft—(1) Where any Prohibited Immigrant or Transit Passenger disembarks in a Proclaimed Area or elsewhere or in Samoa from any ship or aircraft and the operator

of that ship or aircraft is convicted of an offence under this Act, then, in addition to any other penalty, that ship or aircraft may, by order of the Court, be detained until provision has been made by the operator, to the satisfaction of the Minister for the conveyance of the Prohibited Immigrant or Transit Passenger out of the Proclaimed Area or elsewhere or Samoa, as the case may be.

(2) Where any fine is imposed under the provisions of this Act upon any operator of any ship or aircraft that ship or aircraft may by order of the Court which imposed such fine be detained until the fine has been paid and it shall be lawful for the Court, after imposing any such fine, to order execution against that ship or aircraft in satisfaction of such fine.

51. Powers of Officers – (1) Despite any other law, in addition to any other powers which Officers have under this Act the Minister may authorise in writing Officers and members of the Police Service to:

- (a) enter, using such force as may be reasonably necessary in the circumstances, any land or place or building or dwelling house or ship or aircraft or vehicle or structure and search for and arrest any person, other than a citizen, who has entered or remains in Samoa in breach of this Act or any other law;
- (b) require any person to produce evidence of the person's identity and the person's authority for being in Samoa;
- (c) require any person to answer any question concerning any matter under or concerning this Act.

(2) Any person who being required to perform an act or function or duty under this section:

- (a) refuses or fails to do so without lawful excuse; or
- (b) provides false or misleading or incomplete information or documents to any Officer or member of the Police Service without lawful excuse,

commits an offence.

52. Administrative Review – Despite the provisions of this Act, the Minister by Notice may provide a system of administrative review of any determination, act or omission by any Officer or other person acting under the authority of the Minister under this Act.

53. Establishment, maintenance and protection of registers and other data–(1) The Minister may by Notice establish and cause to be maintained such registers, information systems and data bases, in such form or forms as the Minister may determine, including but not limited to computer – based and electronic forms, for the purposes of this Act.

(2) No person shall:

- (a) attempt to access or access such registers, information systems and data bases; or
- (b) attempt to disclose or alter or disclose or alter any information held in such registers, information systems and data bases,

without the authority of the Minister.

(3) Any person who breaches any of the provisions of subsection (2) commits an offence.

54. Service of notices–(1) Where under this Act a notice or other document is required or permitted to be served on any person it may be served:

- (a) by delivering it personally to the person; or
- (b) by leaving it at the address in Samoa nominated by the person in any application made to the Minister with a person apparently over the age of 16 years; or
- (c) by sending it by pre-paid post addressed to the person at the postal address in Samoa nominated by the person in any application made to the Minister.

(2) Any notice or other document served on a person in accordance with subsection (1)(b) and (c) shall be deemed to have come to the attention of the person three days after service.

55. Regulations–(1) The Head of State, acting on the advice of Cabinet, may make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1), regulations may be made for all or any of the following purposes:

- (a) providing for the inspection of ships and aircraft, their passengers, crews and papers in order to enforce the provisions and prevent evasions of this Act;
- (b) the creation of offences and the setting of penalties for breaches of such offences, including imprisonment for a term not exceeding 12 months or a fine not exceeding 200 penalty units, or both;
- (c) co-operation, including but not limited to the exchange of information, with any country and international or regional organization; and
- (d) the control and regulation of agents acting upon behalf of any person making an application under this Act.

56. Savings and transitional arrangements-(1) Every document and act of authority so far as they are subsisting or in force at the time of the repeal of the Immigration Act 1966 shall continue and have effect under the corresponding provisions of this Act until such time as they are altered or amended or cancelled, as the case may require, under the provisions of this Act.

(2) Every Departure Prohibition Order made under the Permits and Passports Act 1978 so far as it is subsisting or in force at the time of the repeal of section 3 of such Act shall continue and have effect under the corresponding provisions of this Act until such time as they are altered or amended or cancelled, as the case may require, under the provisions of this Act.

(3) Every work permit made under the Labour and Employment Act 1972 so far as it is subsisting or in force at the time of the deletion of Part VIA and section 42(2)(j) of such Act shall continue and have effect under the corresponding provisions of this Act until it is altered or amended or cancelled, as the case may require, under the provisions of this Act.

(4) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of the Immigration Act 1966 and section 3 of the Permits and Passports Act 1978 and Part VIA of the Labour and Employment Act 1972 which are not

determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine.

(5) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Immigration Act 1966 and section 3 of the Permits and Passports Act 1978 and Part VI of the Labour and Employment Act 1972 to this Act, the Minister by Notice may make such provisions as the Minister deems necessary in order for all matters under or concerning the Immigration Act 1966 and section 3 of the Permits and Passports Act 1978 and Part VIA of the Labour and Employment Act 1972 and this Act to be properly and effectively determined or otherwise dealt with.

57. Repeal and Consequential amendments—(1) The Acts, Regulations and other Acts of Authority in Schedule II are repealed or amended in accordance with the provisions of the Schedule.

(2) Any reference to any provision or matter under or concerning the Immigration Act 1966 in any enactment, other than the enactments referred to in Schedule II, shall be taken for all purposes as a reference to the corresponding provision or matter in this Act, unless the Minister by Notice determines otherwise.

SCHEDULE I [section 49 (6)]**Penalties****Offence****Penalty**

* A fine or term of imprisonment
or both up to a maximum of :

1.	Section 4 (1)	100 penalty units
2.	Section 4 (2)	100 penalty units
3.	Section 5 (2)	100 penalty units
4.	Section 6 (3)	100 penalty units
5.	Section 7 (4)	100 penalty units
6.	Section 8 (2)	100 penalty units
7.	Section 9 (8)	200 penalty units or 12 months imprisonment or both
8.	Section 10 (3)	100 penalty units
9.	Section 18 (2)	200 penalty units or 12 months imprisonment or both
10.	Section 26 (6)	100 penalty units or 6 months imprisonment or both
11.	Section 31 (1)	200 penalty units or 12 months imprisonment or both
12.	Section 31 (2)	200 penalty units or 12 months imprisonment or both
13.	Section 34 (5)	200 penalty units or 12 months imprisonment or both
14.	Section 35 (2)	100 penalty units or 6 months imprisonment or both
15.	Section 35 (4)	100 penalty units or 6 months imprisonment or both
16.	Section 40 (5)	100 penalty units
17.	Section 41 (2)	100 penalty units
18.	Section 41 (3)	100 penalty units
19.	Section 41 (4)	100 penalty units
20.	Section 42 (5)	200 penalty units or 12 months imprisonment or both

21.	Section 49 (1)	200 penalty units or 12 months imprisonment or both
22.	Section 49 (2)	200 penalty units or 12 months imprisonment or both
23.	Section 51 (2)	100 penalty units
24.	Section 53(3)	100 penalty units

* Note: As at the commencement of this Act a penalty unit is \$100.
(This note does not form part of Schedule I).

SCHEDULE II [section 57 (1)]

<u>Enactment</u>	<u>Extent of Amendment or Repeal</u>
Immigration Act 1966	By repealing the whole enactment
Labour and Employment Act 1972	By deleting Part VIA and section 42(2)(j)
Permits and Passports Act 1978	By deleting sections 3, 5 and 13(1)(a) By amending section 13(1)(c) by deleting the words “order made under either subsection (3) or subsection (10) of section 3”

**The Immigration Act 2004 is administered
in the Ministry of the Prime Minister**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**