

# GENEVA CONVENTIONS BILL 2015

## SAMOA

### Explanatory Memorandum

#### **Introduction**

The Geneva Conventions Bill 2015 (Bill) seeks to domesticate and give effect to certain Conventions made in Geneva on 12 of August 1949 and its 2 Additional Protocols of 1977. Samoa acceded and became a party to the 4 Geneva Conventions and its Protocols on the 23 August 1984. The Conventions have a retrospective effect whereby it takes effect from 1 January 1962, whereas the Protocols took effect on 23 August 1984. The aim of the Conventions and its Protocols is to protect those who are not involved in the hostility of wars (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as the wounded, sick and shipwrecked soldiers and prisoners of war. The Bill also provides for the protection of certain protected emblems and items such as the “Red Cross” designation and emblem. Finally, the Bill makes consequential amendments to the Samoa Red Cross Act 1993.

#### **Clauses:**

### **PART 1 PRELIMINARY**

- Clause 1:** - provides for the short title of the Bill which will be called the “Geneva Conventions Act 2015” once it is passed. The Act is to commence on the date it is assented to by the Head of State.
- Clause 2:** - provides for the definitions of certain terms and phrases used in the Bill.
- Clause 3:** - provides for the meaning and description of certain protected emblems and items that are protected under the Bill.
- Clause 4:** - provides that any reservation or declaration made by Samoa during its ratification of a Convention or Protocol, such Convention or Protocol is subject to that reservation or declaration.

**PART 2**  
**BREACH OF THE CONVENTIONS OR PROTOCOLS**

- Clause 5:** - provides for the offence and penalty for the breach of the Conventions or Protocols. Any grave breach that occurs outside Samoa may be prosecuted as if the offence was committed in Samoa.
- Clause 6:** - provides the meaning of a grave breach.
- Clause 7:** - provides that the Court cannot proceed with a trial of a person charged under section 5 unless the person is represented by a lawyer.
- Clause 8:** - provides that for a proceeding for an offence under section 5, there should be a certificate of the Minister specifying that the Conventions or Protocols apply.

**PART 3**  
**LEGAL PROCEEDINGS FOR PROTECTED PERSONS**

- Clause 9:** - provides that Part 3 applies to a protected prisoner of war and protected internee that is brought up for trial for an offence.
- Clause 10:** - provides that the Court cannot proceed with a trial of a protected prisoner of war unless he/she is represented by a lawyer.
- Clause 11:** - provides that a notice of trial must be served by the prosecution on the defendant at least three (3) weeks before the trial.
- Clause 12:** - explains that this section only applies if at the time of conviction or sentence of the protected person, there is a protecting power for him/her and that the protecting power must be notified if the sentence is more than two (2) years imprisonment.
- Clause 13:** - provides that the Court may give direction to deduct the time a protected person was remanded in custody from his/her sentence upon their conviction.

**PART 4  
PROTECTED EMBLEMS**

- Clause 14:** - provides that consent from the Ministry of Foreign Affairs and Trade is required for the use of any of the protected emblems and items. The only exception is the Samoa Red Cross in relation to the use or display of the red cross emblem and the designation “Red Cross”.
- Clause 15:** - creates an offence for the use or display of a protected emblem or item without the consent of the Ministry of Foreign Affairs and Trade.
- Clause 16:** - provides that the court may make a forfeiture order in relation to an offence committed under section 15(1).

**PART 5  
MISCELLANEOUS**

- Clause 17:** - provides for the Head of State’s power to make regulations on the advice of Cabinet.
- Clause 18:** - provides for consequential amendments made to the Samoa Red Cross Act 1993.
- Schedule:** - provides the list of the Geneva Conventions and its Protocols which apply to this Act.

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(Hon TUILAEPFA Fatialofa Lupesoliai Aiono Neioti Sailele Malielegaoi)

**PRIME MINISTER AND MINISTER RESPONSIBLE  
FOR FOREIGN AFFAIRS AND TRADE**