

# RETURNING OFFENDERS BILL 2019

## SAMOA

### Explanatory Memorandum

#### Object and reasons:

- 1.1 The Bill seeks to provide for the management and exchange of information for Returning offenders and Returning prisoners, and to provide for requirements to monitor returning offenders from overseas, and for related purposes.
- 1.2 The object of the Bill: is to monitor the arrival of Returning Offenders and Returning prisoners.

#### Clauses:

### PART 1 PRELIMINARY

- Clause 1: - provides for the short title and commencement of the Bill.
- Clause 2: - provides for the interpretation and definition of certain terms used throughout the Bill.
- Clause 3: - provides that the Samoa Police Service is to administer the Act and lists out other government Ministries that are to work in collaboration with the Samoa Police Service in the administration of the Act.

- Clause 4:** - provides that the Act applies to Returning Offenders and Returning Prisoners.

**PART 2  
RETURNING OFFENDERS  
MANAGEMENT AND INFORMATION**

*Division 1 - Returning Offenders*

- Clause 5:** - defines the term Returning Offender. A Returning Offender is:
- (a) a person who was convicted overseas for an offence punishable by imprisonment in Samoa; and
  - (b) is liable to be deported or removed to Samoa while on parole; or
  - (c) is a person that is subject to parole conditions overseas but is already in Samoa for a period not exceeding 24 months; or
  - (d) or is a returning prisoner.
- Clause 6:** - sets out the requirement for a Police officer to request information of a returning offender from a competent authority of the foreign country of a returning offender and to request information from a returning offender upon entering Samoa.
- Clause 7:** - empowers a police officer to detain a returning offender for the purpose of obtaining information from him or her.
- Clause 8:** - provides that the police officer must act in a manner reasonable in the circumstance and use reasonable force if necessary in obtaining information.

- Clause 9:** - provides for the recording of the information and safe keeping of the information by the Samoa Police Service.

*Division 2 - Returning prisoner*

- Clause 10:** - provides that a Returning Prisoner is to be determined by the Commissioner in accordance with the criteria set out in section 11.

- Clause 11:** - sets out the criteria that determines that a person is a returning prisoner.

- Clause 12:** - sets out the timeframe in which the Commissioner has to determine if a person is a returning prisoner.

- Clause 13:** - provides that a determination notice is to be served on the returning prisoner upon his return to Samoa as soon as practicable and no later than six (6) months after arrival in Samoa.

- Clause 14:** - provides for the content of the determination notice.

- Clause 15:** - enables the Commissioner to apply to the courts to issue a warrant to enter any premises or place where a returning prisoner is residing for the purpose of serve a determination notice or to avoid being served with a determination.

- Clause 16:** - enables a returning prisoner to apply to the Commissioner to have the determination notice reviewed.

- Clause 17:** - provides that a returning offender is subject to standard release conditions once he or she is issued with a determination notice. This provision sets out the standard release conditions and provides for the period in which a returning prisoner is subject to the standard release conditions.

- Clause 18:** - provides that a returning prisoner must comply with standard release conditions.

- Clause 19:** - provides that the returning offender must comply with the special conditions imposed by the court.
- Clause 20:** - enables the Commissioner to apply for necessary interim special conditions and sets out grounds whereby such an application can be made.
- Clause 21:** - empowers the Court to vary or discharge release conditions.
- Clause 22:** - provides for circumstances whereby release conditions expires.
- Clause 23:** - provides that it is an offence if a returning prisoner breaches without reasonable excuse a release condition.

*Division 3 - Returning offender who returns to Samoa  
more than six (6) months after release from custody*

- Clause 24:** - provides for the application of this division. This division only applies to a returning offender who meets the criteria provided under section 11 if he or she is returning or has returned to Samoa more than six (6) months after his or her release from custody and immediately before his or her return to Samoa has been subject to monitoring and supervision or other conditions.
- Clause 25:** - empowers the Court to impose any conditions on a returning offender in which this division applies if the Court is satisfied that such conditions are necessary for the rehabilitation and reintegration of the returning offender and to reduce risk of reoffending.

**Clause 26:** - provides that sections 18 to 23 also apply to returning offenders in which this division applies.

**PART 3  
MISCELLANEOUS**

**Clause 27:** - empowers the Head of State make Regulations for the implementation of this Act.

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(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele  
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)  
**PRIME MINISTER AND MINISTER RESPONSIBLE**  
**FOR SAMOA POLICE SERVICE**