

SAMOA

PRISONS AND CORRECTIONS REGULATIONS 2014

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PURSUANT to sections 5(6), 6(11), 10, 14, 15, 17, 19(1), 20, and 60 of the Prisons and Corrections Act 2013 (“the Act”), **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet **MAKE** these Regulations:

DATED at Apia this 24th day of December 2014.

signed: (Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

REGULATIONS

**PART 1
PRELIMINARY**

1. Citation and commencement - These Regulations may be cited as the Prisons and Corrections Regulations 2014, and commence on the date:

- (a) they are signed by the Head of State, if the Act has commenced entirely; or
- (b) on the date of the commencement of the entire Act if they are signed before the commencement of the entire Act.

2. Interpretation - In these Regulations, unless the context otherwise requires:

- “Classification Committee” means the Committee appointed under regulation 51;
- “disciplinary breach” by a prisoner, means a breach of a requirement under regulation 45 involving the commission of a prison offence;
- “formal complaint” by a prisoner, means a complaint made pursuant to the Commissioner’s Orders;
- “Independent Prison Inspector” means the person appointed under regulation 59 as the Independent prison inspector for the purposes of section 20(5) of the Act;
- “panel” for Part 5, means a panel of sworn members;
- “permanent sworn member” means a sworn member who has served the probation period specified by regulation 10;
- “related service” means service in the Samoa Police Service or any other discipline service;
- “security rating” means the rating specified under regulation 53 to determine the classification of a prisoner under Part 6;
- “sworn member” means a sworn member of the Service;
- “Tribunal” means a tribunal appointed under regulation 39.

PART 2 EMPLOYMENT

Division 1 - Commissioner and Assistant Commissioner

3. Qualifications for holding office of Commissioner and Assistant Commissioner-(1) To be eligible for appointment as Commissioner or Assistant Commissioner, a person must:

- (a) have a record of relevant senior managerial experience; and
- (b) hold a formal qualification relevant to prisons management, or at least five (5) years of service in the Service, or a related service, including the Samoan Police Service; and
- (c) be physically and mentally fit; and
- (d) be of good character.

(2) A candidate for the office of Commissioner or the office of Assistant Commissioner must undergo a medical examination prior to appointment to the office.

(3) When determining matters of character and experience for persons being considered for appointment as Commissioner, or as Assistant Commissioner, if a candidate has been a member of the Service or the Samoa Police Service, reference must be had to the personal file held by the Service or the Samoa Police Service for that person.

4. Contracts for Commissioner and Assistant Commissioner-(1) The Commissioner and the Assistant Commissioner must be employed under a performance based written contracts of employment after being appointed under the Act.

(2) The contracts of employment must set out annual performance targets and other matters for the Commissioner and the Assistant Commissioner during the tenure in their respective offices.

(3) The salary and allowances of the Commissioner, and the Assistant Commissioners are determined under the Remuneration Tribunal Act 2003.

(4) Other terms and conditions applying to the Commissioner and Assistant Commissioners are to be stated in their contracts of appointment which has effect according to their terms, but subject to the Act.

5. Eligibility applying to sworn members-(1) The following persons are eligible to be appointed as sworn members:

- (a) citizens or permanent residents of Samoa;
- (b) former citizens of Samoa; or
- (c) descendants of former citizens.

(2) Except for the Commissioner and the Assistant Commissioner, all sworn members must:

- (a) satisfactorily complete basic training requirements relevant to their office as provided for in subregulations (3) and (4) and the Commissioner's Orders; and

- (b) have never been convicted of an offence punishable by imprisonment; and
- (c) be at least 20 years of age; and
- (d) have passed a basic physical fitness test in accordance with any requirements stipulated in the Commissioner's Orders or the Recruitment Manual for recruitment procedures and requirements for the Service, as approved by the Commissioner ("Recruitment Manual"); and
- (e) have achieved the educational and literacy requirements stipulated in the Commissioner's Orders or the Recruitment Manual; and
- (f) be found to be physically and mentally fit, determined by a medical examination undertaken in accordance with the requirements stated in the Recruitment Manual.

(3) All permanent sworn members must complete and pass a three (3) month basic recruit training course during their probation period.

(4) The basic training course must be approved by the Commissioner, and must include all elements of the course which are stated in the Commissioner's Orders or stipulated in the Training Manual for training procedures and requirements for members of the Service, as approved by the Commissioner.

(5) The Commissioner may permit the engagement of a sworn member who does not meet any requirement of this regulation within the 12 month period after the member becomes a sworn member.

6. Giving and obeying commands-(1) A sworn member must receive the lawful commands of the member's superiors with deference and respect and must promptly execute all lawful orders from superiors.

(2) A superior, when giving orders to a member of lower rank must ensure the order is lawful, and must give all orders:

- (a) in an appropriate manner; and
- (b) using language and in a manner that the order can be easily understood by the officer; and

(c) using language having due regard for the feelings and sensitivities of those under the superior's command.

(3) Subject to subregulation (4), a member must not criticise the orders or official conduct of a superior.

(4) If an officer receiving an order considers the order to be unlawful, or otherwise objects to the order or manner it was given, the officer must carry out the order as directed, and may then make a formal complaint to the Commissioner.

7. Person giving order responsible for consequences - A sworn member of the Service who gives an order to a member of lower rank is responsible for the consequences of the order, unless the order has been carried out in an improper or negligent manner, or in any way which is contrary to the order given.

Division 2 - Appointments of Members

8. General requirements for appointments-(1) All appointments to the Service must be made pursuant to a merit based appointment system.

(2) The application of a merit based appointment system requires that:

- (a) all eligible candidates for appointment to the Service must be given reasonable notice that a vacancy is to be filled; and
- (b) positions that may be filled by external applicants must be advertised on at least two (2) occasions in a newspaper circulating in Samoa; and
- (c) positions that are to be filled only from within the Service must be advertised internally for a reasonable time, and must be open to all eligible candidates; and
- (d) all applicants must be assessed against selection criteria that directly relate to the duty statement applying to the position to be filled; and

- (e) the procedures for conducting an assessment of applicants against relevant selection criteria must be in accordance with the Commissioner's Orders; and
- (f) applicants are to be ranked on a merit basis in accordance with their performance against the applicable selection criteria; and
- (g) the Commissioner must consider each appointment from a ranked list of applicants which indicates the order of their assessed merit.

9. Arrangements for non-sworn members-(1) Non-sworn members may be engaged by the Commissioner on a permanent basis, or under contract of employment for a specific term.

(2) The Minister must approve the engagement of a non-sworn member under contract for any period determined by the Minister and notified to the Commissioner in writing, or for any other service approved in writing by the Minister.

10. Probation period-(1) Subject to subregulation (2), upon first being appointed to any position, rank or office within the Service, a person is deemed to be on probation for a period of 1 year from the date of appointment.

(2) The one (1) year probation period does not apply to appointments of:

- (a) the Commissioner; or
- (b) the Assistant Commissioner; or
- (c) non-sworn members engaged under contract unless provided for under such contract.

(3) The Commissioner may give notice in writing to any member who is under probation under subregulation (1):

- (a) to end the member's period of probation and confirm the appointment; or
- (b) to extend the member's period of probation for up to six (6) months.

(4) A member who does not receive a notice under subregulation (3) is taken to have completed his or her probation period and to be confirmed in the position, when the one (1) year

probation period or any extended period of probation imposed on the member, expires.

(5) The Commissioner may terminate the appointment of a member at any time during the probation period.

11. Arrangements for temporary members-(1) The Commissioner may appoint temporary members of the Service for up to three (3) months (“period of service”).

(2) The aggregate total of the periods of service under subregulation (1) must not exceed six (6) months for all periods of service.

(3) The Minister may approve any extension or increased period of service of a temporary member if the Commissioner advises the Minister the efficiency of the Service would be enhanced by extending or increasing the period of service.

(4) An extension granted under subregulation (3) must not permit a temporary member to serve for more than six (6) months, or for an aggregate period of more than one (1) year.

Division 3 – Promotions

12. General procedures for promotions-(1) Promotions within the Service must be made pursuant to a merit based promotion system.

(2) Merit based promotion requires that:

- (a) opportunities for promotion be advertised internally for a reasonable period prior to the commencement of the promotions process in every case; and
- (b) sworn members are eligible to apply for promotion to the next highest level of rank; and
- (c) no sworn member is promoted more than 1 level of rank above the rank that they are holding at the time of a promotion; and
- (d) applicants are ranked on a merit basis in accordance with their performance against the applicable selection criteria for promotion; and
- (e) the Commissioner to confirm promotions based upon a ranked list of applicants which indicates the order of their assessed merit.

(3) Commissioner Order's must make provision for all necessary aspects of the promotions process, including a statement of selection criteria for promotion to each rank.

Division 4 - Duty Statements and Records of Service

13. Duty statements-(1) Commissioner's Orders or approved conditions of employment must include duty statements in a form approved by the Commissioner for all ranks and positions within the Service.

(2) Duty statements must state the performance expectations applying to each rank and position.

(3) Reference must be made to the relevant duty statements during:

- (a) the appointment process; and
- (b) the promotion process; and
- (c) the annual review process.

(4) Processes under subregulation (3)(a) to (c) are to applied in accordance with the Act, these Regulations and applicable Commissioner's Orders and approved conditions of employment.

14. Personal files-(1) A complete record of all matters relevant to the employment and performance of each member of the Service must be maintained.

(2) Each file containing the records required under this regulation may be viewed at any time by the Prisons Inspector and, in accordance with subregulation (3), by the member to whom the file relates.

(3) A member who desires to see his or her personal file:

- (a) must apply to the Commissioner; and
- (b) must view the personal file in the presence of a superior officer; and
- (c) must not remove, alter or tamper with any document or information on the file.

Division 5 - Salaries and Allowances

15. Rates of pay and allowances - All salaries, allowances and entitlements applying to members of the Service must be reviewed each year in accordance with the procedures stated in the Commissioner's Orders.

16. Travelling allowances and expenses - When a member is required to travel in order to perform official duties, the member is entitled to receive a travel allowance or reimbursement of travel expenses assessed in accordance with the Commissioner's Orders.

17. Transfer costs-(1) When a member is transferred from one location to another to perform his or her duties and to meet the organisational requirements of the Service, reasonable costs of removing the member, the member's family and the member's property reasonably required at the new location are to be met by the Service.

(2) All claims for transfer costs must be submitted to the Commissioner, or to an officer appointed for this purpose by the Commissioner, for approval before any payment is made.

(3) Commissioner's Orders may prescribe the types and amounts of travel costs which may be approved under this regulation.

18. No final payment until property is returned - A member must not be paid his or her final entitlements upon termination from the Service for any reason until the member has returned all official property issued to or held by the member.

PART 3
SERVICE OBLIGATIONS

19. Places of service-(1) The Commission may order a sworn member to perform duties at any place within Samoa or, pursuant to this regulation, at places outside of Samoa.

(2) Service by sworn members outside of Samoa is restricted to:

- (a) regional or development programmes or roles for which Cabinet has approved the involvement of the Service as representatives of the Government; or
- (b) arrangements approved by the Commissioner for the secondment of sworn members to a prison or related Service overseas; or
- (c) transporting prisoners between Samoan prisons and overseas prisons in accordance with approved arrangements or with laws on the extradition or transfer of prisoners to or from Samoa.

20. Obligations of members-(1) In addition to the obligations, powers, protections and privileges accorded to members of the Service by the Act, the following obligations and responsibilities apply to all members:

- (a) any contravention of the Act, any regulation made under the Act or the Commissioner's Orders must be promptly reported to the immediate superior officer of the member; and
- (b) a member must not be absent from a prison during his or her hours of duty without leave from a senior officer; and
- (c) force must not be used against prisoners except as authorised by the Act or the Commissioners Orders; and
- (d) punishment or privation must not be inflicted on any prisoner except in accordance with the provisions of the Act or the Commissioners Orders; and
- (e) communication between prisoners is not permitted if a lawful restriction has been imposed; and
- (f) discussion must not be held with any prisoner concerning a member's duties, matters of discipline, prison administration arrangements or the member's private affairs; and
- (g) all communications and relations between a member and any prisoner must be such as to in no way compromise the proper and efficient functioning of the prisons; and

- (h) testimonial or reference must not be provided on behalf of a prisoner unless it is authorised by a senior officer as being in accordance with any approved rehabilitation programme or policy; and
- (i) private visitors must not be received by a member whilst on duty, unless approved by a senior officer; and
- (j) a member must not introduce or use alcoholic liquor in any form into a prison, unless authorised by a senior officer; and
- (k) a member must not enter a prisoner's cell at night unless accompanied by another member, except in cases of imperative necessity, in which case a written report must be immediately made to the member's immediate superior officer; and
- (l) any formal complaint made by any prisoner, or any indication that a prisoner is desiring to make a formal complaint must be reported as soon as possible to a senior officer; and
- (m) the proper safe custody of prisoners placed under the charge of a member is the responsibility of that member, and a count of the prisoners must be made and recorded at least four (4) times a day or any other time determined by the officer-in-charge, and also whenever receiving charge of a party of prisoners, handing over such charge or upon leaving any building or work place; and
- (n) a member placed in charge of a prisoner must not leave the prisoner unless the member is properly relieved of that charge; and
- (o) a thorough search must be conducted of all prisoners upon their return to a prison from any place outside the prison; and
- (p) a member entrusted with keys of the prison must not take them out of the prison or leave them lying about, and must when leaving a prison, deliver them to an authorised officer; and
- (q) any member placed in charge of prisoners on work parties must -

(i) conduct such counts of the prisoners as are directed by a superior officer or required by Commissioner's Order; and

(ii) conduct a count of the prisoners whenever they, or any of them, are handed over to any other member; and

(iii) be responsible for the safe custody and regular conduct of the prisoners; and

(iv) ensure that a prisoner does not straggle or become separated from the work party; and

(v) ensure that a prisoner does not communicate with any person not being a prisoner; and

(vi) ensure that a prisoner does not obtain any prohibited article while on the detail.

(2) The breach by a member of a provision of subregulation (1) constitutes a disciplinary offence.

(3) In addition to subregulation (1), a sworn member who is allocated the role of gatekeeper at a prison:

(a) must not allow any person, other than a member of the Service or person authorised by law, to enter a prison without the approval of the Commissioner; and

(b) must keep a record of all persons, other members on regular shifts, entering or leaving the prison, and must require such persons to write their names in the appropriate register and state their purpose for entering; and

(c) must not allow any person other than a member of the service to enter or pass out of a prison unless properly identified or accompanied by a member; and

(d) must ascertain the right of any person to enter a prison and when in doubt, refer the matter to a senior officer; and

(e) must notify all workers or persons entering a prison that they may not communicate with prisoners and give anything to them; and

- (f) must ensure that all contractors and workers who leave a prison were the person who entered the prison for that purpose; and
- (g) must inspect and take charge of any article, food or letter brought to a prison for a prisoner and deliver them to an authorised officer; and
- (h) must ensure that no prohibited article is brought into a prison, and that no prison property or unauthorised letter or other communication is taken out of a prison; and
- (i) may stop and search any person whom the member reasonably suspects to be carrying any unauthorised or prohibited article, property, letter or communication into or out of a prison; and
- (j) may stop and examine a vehicle entering or leaving a prison.

(4) A search of a person undertaken under subregulation (3) must be done by a sworn member of the Service of the same gender as the person being searched.

21. Wearing of uniform-(1) A sworn member must wear an approved uniform:

- (a) of the type; and
- (b) at the times; and
- (c) under the circumstances,

stated in the Commissioner's Orders, or as required by the Commissioner or the sworn member's superior officer.

(2) Sworn members may be authorised by a superior officer to undertake duties and perform responsibilities in clothes other than the approved uniform.

22. Uniform not to be worn during suspension - A member who is serving a period of suspension may not appear in public in uniform (including the media and other electronic social network media).

23. Obligation to cooperate - When carrying out his or her duties, a member must:

- (a) co-operate with other members; and

- (b) give all information and assistance within the knowledge or power of the member, to other members.

24. Loss or damage to property - A member who, through fault or neglect, causes official property to be lost or damaged, is liable to pay the value of the property and is also liable to any punishment which is lawfully imposed as result to the loss or damage.

25. Use and care of motor vehicles-(1) The motor vehicles of the Service are to be used only for official duties and other purposes of the Service approved by the Commissioner, or any member authorised by the Commissioner to give such approval.

(2) Members who, with the approval of the Commissioner, use their own vehicles to carry out their duties, are to be paid an allowance as fixed by the Commissioner.

26. Notifying death of a member - The death of any member of the Service must be notified to the Commissioner as soon as is practicable by deceased member's immediate supervisor.

27. Making complaints - Commissioner's Orders must provide for a fair and impartial system for hearing, determining and acting upon the complaints and grievances of members.

28. Confidentiality of information-(1) A member must treat all facts and documents which come to their knowledge or possession in the course of their duties or arising from the business of the Service as confidential.

(2) A member must not communicate or divulge to any person who is not a member of the Service, any information, fact or document (or the content of any document) which has come to the member's knowledge or possession in the course of their duties or arising from the business of the Service.

(3) The obligations under this regulation do not apply if the member:

- (a) is obliged to make any communication or to divulge any information in accordance with the member's duties; or
- (b) is authorised to do so by the Commissioner.

(4) A member must not make any communication that may not be made under subregulation (2) to a member of the Service if:

- (a) ordered by a superior officer to keep the information or document confidential; or
- (b) if a member is under investigation or suspicion of being in breach of duty, and for that reason the information or document should not be divulged to that member.

29. Records etc., to be kept confidential-(1) A member must observe strict confidentiality for all records kept by the Service, and all reports prepared by members of the Service in the discharge of their duties.

(2) Any information concerning records and reports held by the Service or prepared for the Service must not be divulged by a member having access to them to any person, unless authorised or required under these Regulations, Commissioner's Orders or by the Commissioner.

30. Information as to character etc., not to be divulged-(1) A member must not provide information or details relating to the criminal history, respectability, character, reputation or financial position of any person that is known to the Service, or believed by the Service to apply to any person.

(2) This regulation does not apply if:

- (a) the Commissioner authorises the release of the information or details; or
- (b) the information or details are provided by a member of the Service to another member, or to a public official having responsibilities relating to the administration of justice; or
- (c) the information is required by the independent prison inspector.

PART 4
MEMBERS DISCIPLINARY PROCEDURES

Division 1 - Disciplinary offences

31. Misconduct and breach of duty-(1) A member commits a disciplinary offence if the member:

- (a) disobeys any requirements of the Act, these Regulations or the Commissioner's Orders, or any lawful order given to the member by a superior; or
- (b) behaves disrespectfully towards a superior, speaks or otherwise communicates disrespectfully of or to a superior; or
- (c) commits any act of insubordinate conduct by word or act; or
- (d) fails to deal with a complaint in a timely manner, if the member is responsible for dealing with the complaint; or
- (e) commits an act of oppressive conduct toward another member of lower rank or office; or
- (f) is drunk, intoxicated or takes or consumes any alcohol, drugs or any other substance which affects the capacity of the member to perform his or her duties, whilst on duty or on prison property or in a vehicle used by the Service; or
- (g) brings into or keeps intoxicating liquor in any barracks, offices or other premises of the Service without the permission of the Commissioner and otherwise than in the performance of a duty; or
- (h) purchases, consumes or possesses liquor or illegal drugs, substances or goods whilst in uniform and without lawful excuse; or
- (i) treats any person or prisoner cruelly or harshly, or with unnecessary force or violence; or
- (j) knowingly makes any false return, report, affidavit, declaration or statement, or signs any false certificate; or

- (k) makes any unauthorised alteration or erasure in any public document, or in any official book, record or report of the Service with an improper motive; or
- (l) wilfully makes any false entry in any official document, record or information recorded or stored by electronic means; or
- (m) wilfully or negligently fails or omits to make any entry in any official document, book or record of the Service (or which is recorded or stored by electronic means) as to any matter which ought to be entered in the performance of the member's duty; or
- (n) suppresses, destroys, damages or tampers with any official correspondence, report, record or other document or thing, or holds or conceals any such thing with an improper motive; or
- (o) evades any court or inquiry, or fails or refuses to appear at and cooperate with a court or inquiry, when required to do so; or
- (p) solicits a gratuity, payment, bribe or inducement of any kind, or retains any gratuity without the Commissioner's approval; or
- (q) fails to make a true, accurate and prompt return of all money or property received for which account is required, or unduly holds or improperly uses any money or property belonging to any person (or to persons unknown) or to the Government; or
- (r) refuses or fails, without reasonable cause, to pay any lawful debt owed by the member; or
- (s) borrows money (directly or indirectly) from or lends money to any other member; or
- (t) borrows money from, or being under any obligation of any kind to, any person involved in the sale or supply of liquor; or
- (u) participates in gambling of any description on premises used by the Service or while in uniform, or while on duty; or

- (v) wears, while in uniform, any medal or badge of any kind without the approval of the Commissioner, or in accordance with Commissioner's Orders; or
- (w) wears any political emblem or badge, or takes part in any political procession or meeting, or otherwise manifests allegiance to any political party; or
- (x) communicates (either directly or indirectly) without authority to the media, or to any unauthorised person, any matter or thing concerning the Service, or concerning any matter as to which the Service or member of the Service has or has had any duty to perform; or
- (y) divulges any matter or thing which it is the member's duty to keep secret or treat with confidentiality, or improperly divulges any information given to the member in an official capacity; or
- (z) uses indecent, obscene, profane, abusive or threatening language in or on premises used by the Service, or whilst on duty; or
- (za) commits any disgraceful conduct, or conduct tending to bring discredit on the Service, or conduct which may lessen the confidence of the community in the Service; or
- (zb) is convicted of any offence by any court; or
- (zc) fails to promptly report anything which the member knows concerning an offence or an offender, or to disclose any evidence which the member or any other person can give for or against any person charged, or to be charged, with an offence; or
- (zd) fails to take necessary and prompt measures for the arrest of any offender, or the investigation of any reported offence; or
- (ze) wilfully and negligently allows any prisoner to escape, or to breach any requirement lawfully applying to the prisoner; or
- (zf) sleeps whilst on duty, or sits or lies down without proper cause whilst on patrol or on duty; or
- (zg) is absent from any post or patrol without leave;

- (zh) is absent without leave, or is absent from or late for any parade, court proceeding or any other duty which the member is obliged to attend, unless the member has a reasonable excuse; or
- (zi) is improperly dressed, or allows the member's uniform or work clothes to be dirty or untidy whilst on duty; or
- (zj) communicates (either directly or indirectly) with any person outside of the Service for the purpose of influencing any decision, instruction or arrangement regarding discipline, promotion or transfer within the Service, or any other matter affecting the Service; or
- (zk) writes, or makes or causes to be written or made to the Head of State or to the Commissioner or to any person, any anonymous communication relating to any member or to any matter concerning the Service; or
- (zl) improperly uses the member's position as a member of the Service for the personal advantage of the member, or any relative or friend of the member; or
- (zm) feigns or exaggerates any sickness or injury for the purpose of evading the member's duty in any way; or
- (zn) signs or distributes any petition or statement relating to any matter concerning the Service, except through proper and authorised channels of communication; or
- (zo) uses offensive or inappropriate language in any official document or in any communication made whilst on duty; or
- (zp) makes any improper use of, or improperly retains any money or property belonging to any person or to the Government; or
- (zq) consumes alcohol within eight (8) hours of commencing normal or rostered duties;

- (zr) wilfully breaches any requirement under the Act, these Regulations, Commissioner's Order, or any lawful order or direction issued or given to the member; or
- (zs) commits, does or causes any act, conduct, disorder or neglect of duty to the prejudice of the good order, morality or discipline of the Service, even if such an act does not amount to a breach of the Act, these Regulations or the Commissioner's Orders, or any order or direction issued or given to the member.

32. Meaning of "drunkenness"-(1) A member is considered to be drunk or intoxicated if the member's actions, words or behaviour indicate that by reason of alcohol, drugs or intoxication the member:

- (a) is unable to effectively perform his or her duties; or
- (b) is unable to effectively exercise any powers vested in the member; or
- (c) is otherwise behaving in a manner that is not consistent with the standard of behaviour expected of a member while on duty.

(2) A member may be considered to be drunk or intoxicated if:

- (a) the member is unable to communicate clearly or uses slurred or incoherent speech; or
- (b) the member breath indicates recent consumption of alcohol.

(3) A member may be required to undertake a test or medical examination for the purpose of this regulation.

Division 2 - Disciplinary Proceedings

33. Disciplinary procedures to be applied-(1) This Part is to be applied:

- (a) when disciplinary action is taken against a member for breach of duty involving a disciplinary offence; or
- (b) by a Tribunal hearing any disciplinary proceedings taken against a member under this Part.

(2) A failure to follow a procedural requirement specified in this Part does not invalidate any disciplinary proceeding, but if the failure arises the Tribunal must:

- (a) ensure that the member's defence of the charge is not affected by the failure; and
- (b) ensure that the member is given an adequate opportunity to prepare his or her defence.

(3) When an officer is alleged to have committed a breach of duty or a disciplinary offence, the Commissioner may appoint one or more senior officers to investigate and prosecute the breach of disciplinary offence before the Tribunal.

34. Members to be informed of alleged offence or breach-

(1) A member who is accused of any breach of duty must be informed as soon as is practicable of the nature of the report that is to be made against the member.

(2) A report made against a member involving an alleged offence or breach of duty must be prepared and delivered to the member without delay.

35. Caution or reprimand-(1) If the Commissioner, or an officer authorised for this purpose by the Commissioner, is of the opinion that a disciplinary matter reported against a member is such that it can be adequately dealt with by a caution or reprimand to the member, the member may be cautioned or reprimanded without further proceedings being taken.

(2) A report of all cautions and reprimands issued under this regulation must be placed on the personal file of the member who has been so dealt with.

36. Written copy of a charge to be served on member-(1)

When any member is charged with a disciplinary offence, the charge must be in writing and must clearly set out all of the breaches alleged against the member, with sufficient details to permit the member to know of the matters alleged and to prepare any defence in relation to them.

(2) A copy of the written charge must be served on the member personally as soon as is practicable after its preparation.

(3) The member served with a written charge is required to make a response in writing to the charge within seven (7) days of receiving the charge, and the response is taken to be a plea of guilty or of not guilty as indicated in the response.

(4) Any charged member who fails to respond to a charge within the time specified in the written charge given to the member is taken to have admitted the charge, and the charge must be referred to a sitting Tribunal to impose a penalty under regulation 39(5).

37. Limitation of time for making charge-(1) Subject to subregulation (3), a member must not be charged under these Regulations if the offence or breach alleged against the member arose more than 12 months before the laying of a charge in relation to it.

(2) Subregulation (1) does not prevent the issuing of a charge, or the hearing of a matter alleged against a member, if it is shown to the satisfaction of the Tribunal that circumstances existed which prevented the issuing of a charge within 12 months.

(3) This regulation does not prevent the laying of charges against a member who is accused of continuing breaches of duty over an extended period of time.

38. Suspension of members for breach of duty-(1) When a charge has been made against a member, other than the Commissioner or the Assistant Commissioner, for a breach of duty or an offence punishable by imprisonment, the Commissioner may suspend the member (“suspended member”) with full or part pay or without pay until:

- (a) the charge has been inquired into and determined; or
- (b) if the suspended member is charged for a criminal offence, the charge has been dismissed or withdrawn or the suspended member has been acquitted.

(2) The suspension must not continue for longer than 1 month unless:

- (a) an information has been filed in a Court charging the suspended member with the offence; or

- (b) any delay in holding or concluding the hearing of the charge occurs through any circumstances beyond the control of the Commissioner.
- (3) A suspended member:
 - (a) may be reinstated to his or her old or other position; and
 - (b) is entitled to receive his or her basic salary that was not paid during the suspension.

39. Disciplinary Tribunals-(1) If a member is charged with a breach of duty or disciplinary offence, and if the member makes a written denial of the charge, the Commissioner may appoint a Tribunal to hear the matter under this Part.

- (2) A Tribunal comprises the following members:
 - (a) a senior officer or any other person appointed by the Commissioner, if the member charged is not a senior officer; and
 - (b) three (3) persons appointed by the Commissioner, of whom two (2) must be members of the Service of equal or senior rank to the charged member and one (1) person who is not a member of the Service, if the member charged is a senior officer.
- (3) A Tribunal may:
 - (a) inquire into the charge made against a member by the Commissioner; and
 - (b) to report on the matter to the Commissioner by submitting a written account of -
 - (i) the Tribunal's findings; and
 - (ii) any punishment under subregulation (5) recommended by the Tribunal, if it finds that the charges are proved.
- (4) The proceedings of a Tribunal are to be conducted in the manner set out by these Regulations.
- (5) The Commissioner may, upon considering the report and any recommendation of a Tribunal:
 - (a) impose no punishment against the charged member; or
 - (b) dismiss the charge; or
 - (c) reduce the member's rank or pay, or both; or

- (d) impose a penalty not exceeding 2 penalty units, payable to the Treasury Fund; or
- (e) dismiss the member from the Service.

(6) The Commissioner is not bound by a recommendation made by a Tribunal, but must state reasons for departing from any recommendations made by a Tribunal.

(7) If a charged member admits the charge in writing the Commissioner may impose any of the penalties provided for in subregulation (5).

(8) If a member is convicted by a Court for any offence which is punishable by imprisonment, the Commissioner may, in addition to any penalty imposed by the Court, impose any penalty under subregulation (5), as if the member had been charged under this regulation and the charge had been proved.

(9) The Commissioner must ensure that the member is given written notice of the Tribunal's recommendation and the Commissioner's decision.

40. Notice of tribunal hearing-(1) Notice of the date, time and place of the commencement of a hearing of a Tribunal must be given to the member charged at least 14 days before the date of commencement.

(2) A notice given under subregulation (1) must be in writing and must require the attendance of the member charged at the time and place specified for the hearing to take place.

41. Hearings to be closed-(1) A person, other than members or persons with direct interest in a Tribunal hearing, is not entitled to attend a hearing of a Tribunal.

(2) The Tribunal may allow any member or person to attend a hearing.

42. Procedures at hearings-(1) A Tribunal may determine its own procedures, but the proceedings of any Tribunal hearing must conform as far as is possible to the procedures of the District Court.

(2) All evidence given to a Tribunal must be given on oath, and a record of the administration of the oath and of the evidence must be taken.

(3) The record of evidence is to be read over to the witness who will be required to sign it if the witness agrees that it is a true and accurate account of the evidence given.

(4) After hearing all of the evidence and submissions the Tribunal will close the hearing and prepare a report on its findings and recommendations.

(5) All reports and decisions must be forwarded to the Commissioner and the Minister, together with the record of evidence given at the hearing.

(6) The Tribunal must include in its report or decision, any order that it recommends in relation to the payment of the whole or any part of the costs of the hearing.

43. Representations in mitigation - A member who pleads guilty to a charge, or who is found guilty of a charge must be given an opportunity to make a plea by way of explanation and mitigation.

44. Copy of record of evidence to be given to member - A written summary of evidence taken at a Tribunal hearing must be supplied to the member charged if the member requests that it be so recorded and supplied.

PART 5 DISCIPLINING PRISONERS

45. Disciplinary breaches-(1) It is a disciplinary breach involving the commission of a prison offence (“prison offence”) if a prisoner breaches:

- (a) any provision of the Act, any regulation made under the Act or the Commissioner’s Orders; or
- (b) any lawful direction given to the prisoner by a member.

(2) Without limiting subregulation (1), a prisoner commits a prison offence if the prisoner:

- (a) participates in any mutiny or riot by prisoners, or incites any prisoner to mutiny or riot, or to commit acts of passive resistance or protest; or

- (b) commits any assault or act of violence to any prisoner, member, visitor to a prison or other person within a prison; or
- (c) escapes, conspires to escape or assists with or procures the escape by any prisoner from lawful custody; or
- (d) possesses any instrument or other thing for the purpose of procuring any escape; or
- (e) fails or refuses to assist any member of the Service to prevent an escape; or
- (f) quarrels with any prisoner, or uses offensive or insulting language to a prisoner; or
- (g) malingers or wilfully injures himself or herself; or
- (h) makes any communication with a prisoner in disobedience of any regulation, order or direction; or
- (i) does any act calculated to create any unnecessary alarm among prisoners or members; or
- (j) fails or refuses to wear the issued clothing; or
- (k) exchanges, loses, discards, damages, alters or defaces any issued clothing or other issued property; or
- (l) commits any nuisance within any part of the prison or while on work detail; or
- (m) shows disrespect to a member, or any person authorised to visit the prison, or any person employed in connection with the prison; or
- (n) is idle, careless, negligent at work or refuses to work; or
- (o) leaves the allocated cell, ward or place of work or any other place where the prisoner is directed to be, without permission; or
- (p) receives or has in his or her possession any prohibited article, or attempts to obtain any prohibited article; or
- (q) disfigures, damages, steals or interferes with any part of a prison or any prison property, or any property not belonging to the prisoner; or
- (r) behaves in an immoral, disorderly or indecent manner; or

- (s) uses any abusive, threatening, insolent, indecent or other inappropriate language; or
- (t) makes any false accusation against a member or other prisoner; or
- (u) commits any act of gross misconduct or insubordination; or
- (v) breaches any condition applying to his or her early or short term release, or fails to return to prison immediately upon the expiration of any term of short term release; or
- (w) attempts to commit, or aids or abets the commission of any disciplinary breach; or
- (x) is guilty of any other act, conduct, disorder or neglect to the prejudice of good order and discipline within the prison.

(3) Notice of prison offences, written in the Samoan and English languages, must be prominently displayed in a prison.

46. Proceedings for disciplinary breaches-(1) A disciplinary breach that comes to the notice of a member must be reported without delay to a senior officer, who must commence to investigate the report within 24 hours.

(2) Failure to comply with subregulation (1) does not affect the right to commence proceedings for the breach, or to hear and determine any allegation of breach.

(3) The following procedures apply to the taking of proceedings for a commission of a disciplinary breach:

- (a) a prisoner charged with any disciplinary breach must be supplied with a copy of the charge prior to the hearing of the matter; and
- (b) documentary evidence must not be used in any proceeding unless the prisoner has been given access to it prior to the hearing of the matter; and
- (c) the evidence of any witness given during any proceedings must be recorded in writing in the presence of the prisoner, however the evidence taken in any proceedings need not be taken down

in full, but the substance and material points are to be recorded in writing and read over to the prisoner; and

- (d) the prisoner has the right to cross-examine each witness giving evidence against the prisoner, and must be asked if the prisoner wants to exercise that right after each witness has given evidence; and
- (e) the prisoner must be asked if the prisoner desires to give evidence and to call witnesses, and if so, the prisoner must be given a reasonable opportunity to exercise that right.

47. Determining disciplinary breaches-(1) A senior officer or a panel of senior officers appointed by the Commissioner may hear any reported disciplinary breaches, and make recommendations concerning appropriate punishments to the Commissioner.

(2) At the request of the Commissioner, a Visiting Justice may inquire into a disciplinary breach, and may impose any punishment which can be imposed by regulation 48.

(3) Despite any other provisions of this regulation, a Court may hear any disciplinary breach involving an allegation against a prisoner of:

- (a) mutiny; or
- (b) incitement to mutiny or riot; or
- (c) assault, on a member or another prisoner, causing any bodily harm.

(4) The Court may impose any penalty provided for the offence under an enactment and any penalty the Commissioner may impose under these Regulations.

(5) The Commissioner may determine, either for a specific case or by written determination applying to any class of disciplinary breach, whether a proceeding is to be heard by a senior officer or a panel.

48. Penalties for disciplinary breaches-(1) The Commissioner may impose any of the following penalties, or any combination of them, in relation to any disciplinary breach which has been heard and reported upon in accordance with this Part:

- (a) forfeiture of remission of sentence not exceeding three (3) months; or
 - (b) deprivation of earnings, or any part of an entitlement to earnings, for a period not exceeding three (3) months; or
 - (c) forfeiture of privileges, including the right to have any food additional to the minimum rations prescribed in the Commissioners Orders, for any period not exceeding 14 days; or
 - (d) withdrawal of any right to early release or short term release; or
 - (e) separation from other prisoners for a term not exceeding 14 days; or
 - (f) forfeiture of remission of sentence not exceeding one (1) month;
 - (g) deprivation of earnings, or any part of an entitlement to earnings, for a period not exceeding six (6) weeks;
 - (h) forfeiture of privileges, including the right to have any rationed food additional to the minimum rations prescribed in the Commissioners Orders, for any period not exceeding six (6) weeks;
 - (i) withdrawal of any rights to early release or short term release;
 - (j) separation from other prisoners for a term not exceeding seven (7) days.
- (2) The separation of any prisoner as a punishment imposed under these Regulations:
- (a) must strictly comply with the Commissioner's Orders; and
 - (b) must not be continuous for a period of more than seven (7) days, and an interval of seven (7) days must elapse before the next period is served.

49. Review-(1) The Commissioner may, before the Commissioner imposes any penalty under regulation 48, appoint a panel of senior officers to review the proceedings on disciplinary breach of a prisoner (including the recommendations) heard by a senior officer or panel.

(2) The panel may make recommendations to the Commissioner to:

- (a) quash a finding; or
- (b) alter a finding and find the prisoner guilty of another offence; or
- (c) with or without altering the finding -
 - (i) reduce or increase the punishment; or
 - (ii) with or without such reduction or increase, alter the nature of the punishment; or
 - (iii) remit the proceedings back to the senior officer or panel who heard the proceedings, or to another senior officer or panel, for re-hearing.

(3) The panel must not increase the penalty under this regulation unless the prisoner is given an opportunity to be heard.

50. Solitary confinement-(1) If it appears desirable, for the maintenance of good order and discipline or in the prisoner's own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Commissioner may arrange for the prisoner's removal from association accordingly:

- (a) for young prisoners, for up to 10 days; and
- (b) for other prisoners, for up to 21 days.

(2) A prisoner who is subject to solitary confinement must be confined in an area of prison ("solitary area") that is isolated from the general area where other prisoners are kept.

(3) A cell in a solitary area must comply with the following:

- (a) at least 9 square metres;
- (b) well ventilated;
- (c) contain a toilet and wash basin, and if possible a shower;
- (d) any other reasonable facility considered by the Commissioner to be necessary to ensure the mental or physical well-being of the prisoner as a consequence of solitary confinement.

(4) A prisoner kept in solitary confinement for more than two (2) days is entitled to the following:

- (a) one (1) hour exercise a day within the confinement area or in an area within prison determined by the officer-in-charge;
 - (b) visit by the prison chaplain, prison inspector, Visiting Medical Officer, Visiting Justice, a family member or any other person approved by the Commissioner;
 - (c) reading materials;
 - (d) any other entitlement approved by the Commissioner.
- (5) The use of dark cell in a solitary area is prohibited.

PART 6

CLASSIFICATION OF PRISONERS

51. Classification Committee-(1) The Commissioner must appoint a Classification Committee comprising the prison chaplain and sworn and non-sworn members representing both the Custody and the Programmes branches of the Service.

(2) A medical officer may also be appointed to the Classification Committee.

(3) The Classification Committee has the following functions:

- (a) to classify all prisoners after their admission and determine the security rating in accordance with this Part, and any other classification status or process stated in Commissioner's Orders;
- (b) to make recommendations concerning a prisoner's suitability for a particular security rating, accommodation location, work and education programs and approved release programmes;
- (c) to conduct a review of prisoners' classifications, in accordance with any specified procedure in the Commissioner's Orders, and recommend changes to security ratings and classifications of all convicted prisoners in -
 - (i) every four (4) month period, for prisoners serving less than five (5) years; and
 - (ii) every six (6) month period, for prisoners serving more than five (5) years and

- (iii) every 12 month period, for inmates serving life sentences for the first three (3) years of sentence, and six (6) months after the period of three (3) years;
- (d) to make recommendations with respect to leave of absence programmes for the purposes of education, employment, re-integration or compassionate grounds;
- (e) to interview prisoners and members when required;
- (f) to consider all reports and documentation submitted to the Committee for classification of a prisoner;
- (g) to interview prisoners who, due to inappropriate behaviour have been returned to a secure compound or cell;
- (h) to ensure that all prisoners who are undergoing classification or review are made fully aware of the classification process and in particular their obligations and responsibilities;
- (i) to monitor prison numbers and facilitate the transfer of prisoners to ensure that accommodation requirements appropriate to security ratings are met;
- (j) to monitor early release programs and weekend and short term release to ensure compliance with the Act and Regulations and Commissioner's Orders;
- (k) to ensure that the classification, status and treatment of young prisoners and female prisoners accords with the requirements of the Act;
- (l) to report to the Commissioner as required.

(4) Meetings of the Classification Committee must be convened every period of 14 days, or as otherwise required.

(5) The most senior officer present must chair a meeting of the Classification Committee.

(6) Minutes of each meeting must be recorded and must be provided to the Commissioner, and the minutes must state all particulars relating to the classification of each prisoner to reflect each approved Prisoner Classification Report.

52. Issues affecting security ratings and classifications-(1)

The Classification Committees must be aware of and take into account the following criteria when considering the security rating and other classification status of a prisoner:

- (a) the type of offence and the length of sentence;
- (b) the circumstances of the offence, and any aggravating features of the offence or the prisoner's behaviour during its commission;
- (c) the criminal history of the prisoner, and any history of violence or wilful disobedience, and of escapes or attempts to escape;
- (d) any protection requirements applying to the prisoner, including any request by a prisoner to be protected from other prisoners;
- (e) expressions of remorse level, or the lack of remorse for the prisoner's conduct and its effect on victims; and
- (f) the location of co-offenders within prisons or corrections facilities;
- (g) known or suspected alliances with other prisoners which may affect the behaviour of the prisoner whilst in custody;
- (h) the prisoner's behaviour in prison and his or her record of discipline, during current and previous sentences;
- (i) reasons for transfer from other prisons (if applicable);
- (j) the prisoner's family situation, and any circumstance which involve conflict or situations which may cause anxiety, or possible illness or death;
- (k) whether or not prisoner receives visits, and from whom;
- (l) the prisoner's physical and mental health and physical fitness in relation to particular work;
- (m) the need to attend education and the potential benefit of awareness programmes to prevent further crime;
- (n) the prisoner's commitment to rehabilitation programmes, including work, education or release programmes;

- (o) previous demonstrated work skills and vocational training aptitudes;
- (p) the prisoner's age and capacity to undertake specific work, education or release programmes;
- (q) any other matter or consideration consistent with any applicable case management plan, or as stated in Commissioner's Orders for other approved classification criteria or processes.

53. Security ratings-(1) When determining a security rating during classification under this Part, one of the following security ratings must be applied to each prisoner who has been classified:

- (a) a "Maximum Security rating", which means that strict security is required for a prisoner who -
 - (i) is considered a high escape risk; or
 - (ii) has threatened or is likely to threaten the good order, security and management of the prison; or
 - (iii) poses a high risk to the community should he or she escape; or
 - (iv) requires constant active supervision and who should be employed only inside the cell block; or
- (b) a "Medium Security rating", which means that a prisoner is considered a lesser security risk, however still requires effective supervision and should not be employed outside prison gate; or
- (c) a "Low Security rating", which means that limited supervision of the prisoner is warranted on the grounds that the prisoner has proved to be trustworthy and can be employed outside the prison gate without active supervision.

(2) Prisoners classified with a maximum security rating:

- (a) must remain in maximum security accommodation; and
- (b) must not be permitted to be outside the secure area, except under close escort for specific approved purposes.

(3) A medium security prisoner must be supervised outside a secure area for work purposes.

(4) Low security prisoners:

- (a) are permitted to work outside secure areas within the prison and to participate in community work and other approved programmes;
- (b) can be assigned to undertake general and specific work duties; and
- (c) may be considered for low security accommodation areas, where there is an emphasis on trust, self-care and responsibility and where less restrictive routines apply.

54. The Classification Process-(1) In this regulation:

“long term prisoners” means convicted prisoners serving sentences of nine (9) months or longer;

“short term prisoners” means convicted prisoners serving sentences of less than nine (9) months.

(2) Convicted prisoners who are 18 years and over and must be classified under these Regulations and the relevant Commissioner’s Orders.

(3) Prisoners held on remand and civil prisoners, are excluded from the classification process.

(4) The Classification Committee must classify all long term prisoners.

(5) A written or verbal assessment of a long term prisoner to whom the classification process is being applied must be provided by a sworn member working in the prison where the prisoner is housed, which must include a recommendation regarding an appropriate security rating for the long term prisoner.

(6) Classification of long term prisoners must occur within two (2) weeks after admission, and must take account of the matters stated in regulation 52.

(7) The classification process for short term prisoners may be undertaken by a sub-committee of the Classification Committee nominated by the Commissioner, and such prisoners do not need to be security classified other than for placement and work purposes.

(8) Classification of short term prisoners must:

- (a) take account of the matters stated in regulation 52; and
- (b) be aimed at ensuring their stability and assessing their suitability to participate in work and education programmes.

(9) Recommendations made by the Classification Committee or a sub-committee, must be summarised in the Minutes of each meeting, and must be verified at the next scheduled full meeting of the Committee.

(10) Classification recommendations must be recorded on the Prisoner Classification Report and submitted to the Commissioner for consideration.

(11) The Commissioner's decision regarding a prisoner's classification and security rating is to be recorded on the prisoner's file, together with a summary of the key reasons for the decision.

(12) A prisoner must be advised of his or her classification and security rating within 24 hours of it being made.

55. Classification reviews-(1) Long term classified prisoners must be reviewed by the Classification Committee pursuant to regulation 51(3)(c).

(2) A change to the circumstances of a prisoner and to the recommended security rating of that prisoner must be documented on the revised Prisoner Classification Report.

(3) The revised Prisoner Classification Report must be submitted to the Commissioner, and the Commissioner's decision regarding a change in the prisoner's security rating must be recorded on the revised Prisoner Classification Report, together with the reason for the decision.

(4) A prisoner must be advised within 24 hours of a change in his or her classification and security rating if applicable.

56. Applying escape criteria-(1) Prisoners who have an escape or attempted escape recorded during a current sentence:

- (a) must be automatically accorded maximum security status; and

- (b) must not be considered as eligible for low security status until one-half of the accumulated sentence (comprising the current sentence at the time of the escape plus the sentence received for the escape and any additional sentence for an offence committed whilst at large) has been served.

(2) If an accumulated sentence applied under this regulation exceeds a period of five (5) years, the prisoner is only eligible for a low security rating after having served five (5) years, during which no escapes were made or attempted by the prisoner.

PART 7 TRANSFER OF PRISONERS

57. Purposes for prisoner transfer-(1) The transfer of prisoners may be undertaken for any of the following purposes:

- (a) to attend court; or
- (b) to attend a hospital or other medical facility; or
- (c) for permanent or temporary transfer to another prison or corrections facility for any reason, at the direction of the Commissioner; or
- (d) for temporary transfer to another prison or corrections facility for medical or compassionate reasons as approved by the Commissioner; or
- (e) to ensure that women and young prisoners are kept separate as required by the Act, and that they are accorded the rights given to them by the Act; or
- (f) for temporary transfer for Police interview; or
- (g) for temporary transfer for weekend day leave; or
- (h) for temporary transfer for external work party; or
- (i) when a prisoner is part of the prisoners choir and due to perform at a government, church or youth function;
or
- (j) for temporary transfer for escorts to local exchange money outlets for withdrawing of remittances; or
- (k) for obtaining medication from private pharmacies that is unavailable at the local hospital pharmacy; or
- (l) for attending external approved educational programmes; or

- (m) for temporary transfer to visit any sick family member admitted at hospital, upon prior submission of a medical certificate of the family member; or
- (n) for temporary transfer to attend funeral services of a family member, upon prior submission of a death certificate or confirmation letter from a funeral parlour or a doctor;
- (o) for temporary transfer to attend the wedding of a family member, upon prior submission of a confirmation letter from the church Minister to conduct the wedding or the Registrar or a marriage officer under the Births, Deaths and Marriages Registration Act 2002; or
- (p) for temporary transfer for maternity leave.

(2) In this regulation, “family members” means the spouse or a child or a parent of the prisoner.

58. Procedures to be followed when prisoners are transferred-(1) The following procedures must be applied when a prisoner is transferred for a purpose stated in regulation 57:

- (a) prisoners being transferred to another prison for any reason must be notified of the date of and reason for the scheduled transfer;
- (b) the officer-in-charge of the originating prison must advise the officer-in-charge of the receiving prison of the pending transfer;
- (c) the prisoner may notify his or her next-of-kin of a transfer or proposed transfer to another place;
- (d) upon receiving advice concerning the transfer of a prisoner to another prison, the officer-in-charge of the originating prison must ensure that -
 - (i) the prisoner is notified of the intended transfer; and
 - (ii) the officer-in-charge of the receiving prison is given proper notification in order to make arrangements for the admission of the prisoner; and
 - (iii) the prisoner is permitted to notify his or her next-of-kin;

- (e) the officer-in-charge of the originating prison must ensure that -
 - (i) the transfer authority is in order and correct; and
 - (ii) the prisoner is properly identified; and
 - (iii) the personal property of the prisoner is accounted for; and
 - (iv) all documentation pertaining to the prisoner is ready for transfer; and
 - (v) all prison equipment and property is returned or recorded as being transferred with the prisoner;
 - (f) all documentation and prisoner property must be transferred with the prisoner;
 - (g) when all of the above is certified correct, the officer-in-charge will hand over the prisoner to the escorting officer.
- (2) An escorting officer appointed by the officer-in-charge of the originating prison must:
- (a) search the prisoner immediately prior to leaving the prison; and
 - (b) receive and check property in the presence of the prisoner; and
 - (c) check the prisoner's identity and personal particulars as against those stated in the transfer authority; and
 - (d) identify the prisoner's security classification in order to apply appropriate restraint and escort as follows -
 - (i) maximum security, hand cuffs and two (2) escorting officers; or
 - (ii) medium security, handcuffs and one (1) escorting officer; or
 - (iii) low security, no handcuffs and one (1) escorting officer (unless the Commissioner determines otherwise); and
 - (e) ensure constant supervision and arrange comfort breaks whenever required; and

- (f) ensure arrangements are made for a secure area to hold the prisoner on transit to any final destination; and
- (g) ensure that the prisoner is handcuffed (if appropriate) and kept under observation at all times in accordance with this regulation; and
- (h) hand over the prisoner, all documentation and personal property to a duly authorised receiving officer; and
- (i) ensure that the receiving officer certifies and signs for the prisoner.

(3) The following requirements apply to the escorting of prisoners while being transferred:

- (a) two (2) or more prisoners of any security rating must be accompanied by at least two (2) escorting officers;
- (b) two (2) prisoners may be handcuffed together with one (1) pair of handcuffs if it is appropriate to their security ratings.

(4) The officer-in-charge of the receiving prison must ensure that the transfer documentation is receipted and returned to the officer-in-charge of the originating prison.

(5) Prisoners being transferred from another prison must be received between the hours of 9.00am and 4.00pm from Monday to Friday unless special arrangements have been made with the officer-in-charge of the receiving prison.

(6) Escort arrangements under this regulation applies to prisoners transported to a Court, hospital or medical facility.

PART 8 PRISON INSPECTIONS

59. Appointment of independent prison inspector-(1) The Minister may appoint a person, qualified as the Commissioner or as the Assistant Commissioner, as an independent prison inspector within the Service.

(2) The Minister must appoint the independent prison inspector from a list of three (3) qualified candidates recommended and submitted by the Commissioner.

(3) The Minister may appoint the independent prison inspector for a period of up to three (3) years.

(4) Regulation 4 applies to the independent prison inspector.

60. Powers of the independent prison inspector-(1) The Independent prison inspector may:

- (a) enter and inspect any prison or corrections facility for the purpose of undertaking inspections and reviews; or
- (b) require the production of, and inspect, any file or document kept by the Service; or
- (c) require any member of the Service to provide any information or answer questions concerning any aspect of the management of the Service and the administration of any prison or corrections facility; or
- (d) interview any prisoner or former prisoner, whether as a result of a complaint or otherwise; or
- (e) interview any staff or former staff employed by the Service for the purpose of obtaining information relevant to the functions and duties stated in regulation 61; or
- (f) submit any report to the Minister on any aspect of the management of the Service or the administration of a prison or corrections facility, including the treatment of prisoners; or
- (g) make recommendations to the Commissioner and the Minister concerning any matter related to the management of the Service or the administration of a prison or corrections facility;
- (h) specifically recommend the establishment of a formal inquiry if any matter raised in a report is not satisfactorily addressed by the Service; or
- (i) conduct an independent inquiry into -
 - (i) a death of a prisoner arising from unnatural causes; or
 - (ii) allegations of serious misconduct committed by members; or

- (iii) allegations of serious assault on prisoners; or
- (iv) incidents involving mass disruption by prisoners, breakout escapes, hostage taking and serious assault on staff by prisoners; or
- (j) conduct periodic audit reviews of operational policies and procedures to ensure compliance with, and the effectiveness of the requirements of the Act, Regulations and Commissioner's Orders.

(2) The independent prison inspector has no authority to issue orders to any member of the Service, other than in accordance with a power stated in subregulation (1).

(3) The Independent prison inspector must otherwise keep any information concerning the management of the Service or the administration of a prison or corrections facility confidential, and may not publish any report or information or disseminate it to the media without the written approval of the Minister.

61. Functions and duties of the Independent prison inspector-(1) In the exercise of the powers provided for in this Part, the independent prison inspector is required to:

- (a) ensure that women young prisoners are kept separately as required by the Act, and are given the rights provided for by the Act; and
- (b) confirm that all sick and separated prisoners, and all prisoners undergoing any form of punishment, are being treated in accordance with the requirements of the Act and the Commissioners Orders; and
- (c) inspect the state of sanitation, the health of prisoners and the adequacy and proper preparation and cooking of food provided to prisoners, including dietary and basic nutritional requirements ; and
- (d) report any incident of possible infectious disease to a medical officer and the Ministry of Health as soon as practicable, and review action taken to deal with any such disease; and

- (e) inspect food and other provisions provided for prisoners, and confirm that these are consistent with the Commissioners Orders and applicable minimum standards; and
 - (f) ascertain whether any complaints made by prisoners in relation to the issued rations have substance, and if so recommend that proper remedial action be taken; and
 - (g) investigate any complaint or application made by a prisoner, and recommend any appropriate action to be taken in relation to any complaint or application to ensure that the prisoner's entitlements are not infringed; and
 - (h) investigate incidences involving injury to any prisoner, and the death of a prisoner in custody under these Regulations and the Commissioners Orders; and
 - (i) review the arrangements and programmes for the rehabilitation of prisoners and the enhancement of their opportunities to re-enter the community as useful, productive and law-abiding members; and
 - (j) review all programmes for prison labour and prison enterprises, and schemes and programmes for early release and pre-release, to ensure that they are being implemented fairly, equitably and efficiently, and in accordance with the Act and the Commissioner's Orders; and
 - (k) undertake any task and make any report and recommendation requested by the Minister or the Commissioner; and
 - (l) otherwise carry out such inspections and investigations to ensure that the Service is managed, and the prisons and corrections facilities are administered, in accordance with the Act, these Regulations and the Commissioner's Orders.
- (2) The independent prison inspector must keep records of all prison inspections recording all pertinent matters noted during an inspection, and in particular any actual or possible breach of any lawful requirement.

(3) The independent prison inspector must, when requested by the Minister or the Commissioner, provide the requested records and reports kept under subregulation (2).

(4) The primary duty of the independent prison inspector is to ensure that all legal requirements applying to the management of the Service and the administration of the prisons are complied with, and that this is achieved by working closely and cooperatively with the Commissioner and the senior officers.

62. Duties and powers of Visiting Medical Officers-(1) In addition to the duties under section 21 of the Act, a Visiting Medical Officer has the following functions:

- (a) as soon as is practicable, to examine all prisoners after their admission;
- (b) to examine prisoners ordered to be separated from other prisoners under the Commissioner's Orders;
- (c) to visit sick prisoners and render necessary medical treatment to prisoners;
- (d) to report to the officer-in-charge any medical condition affecting a prisoner of which the officer-in-charge should be aware, and to give directions in relation to dealing with the prisoner's condition;
- (e) to direct such modification of the labour and diet of a prisoner which is considered necessary in any case;
- (f) to keep accurate records of any treatment given to a prisoner, and of any order or direction given in relation to a prisoner;
- (g) to give such directions and make such arrangements as are necessary to ensure that a prisoner's health records are kept confidential;
- (h) after each examination of a prisoner, to note on the prisoners file whether or not the prisoner is fit for normal labour, or whether any restrictions or conditions are to be applied to the prisoner's work; and
- (i) to record in the Medical Officers Day Book and the prisoner's file, the following details in relation to each prisoner reporting sick -
 - (i) the prisoner's name;

- (ii) the illness, disease or medical condition;
 - (iii) the treatment applied and medication prescribed,
- and the records must be made available to the officer-in-charge;
- (j) to report to the officer-in-charge any possible mental disorder considered to be suffered by any prisoner, and to give appropriate directions for dealing with the prisoner's condition;
 - (k) to report to the Commissioner any opinion that the medical officer has that -
 - (i) a prisoner's life is endangered for any reason;
 - (ii) a sick prisoner will not survive the sentence;
 - (iii) a prisoner is totally and permanently unfit for prison discipline; or
 - (iv) a prisoner is unfit to work;
 - (l) to inspect any part of a prison at least once a month, paying special attention to the state of sanitation, the health of prisoners and the adequacy and proper preparation and cooking of food provided to prisoners;
 - (m) to keep records of all prison inspections;
 - (n) to report any incident of infectious disease to the Ministry of Health and implement action required to deal with any such disease;
 - (o) to deal with incidences of the death of a prisoner in custody pursuant to these Regulations and the Commissioner's Orders;
 - (p) to regularly inspect prison medical facilities and supplies, and report any irregularities to the officer-in-charge;
 - (q) to be familiar with the provisions of these Regulations and of the Commissioner's Orders related to the sanitation of prisons, the health of prisoners and the obligations of Visiting Medical Officers.

(2) A Visiting Medical Officer may enter a prison at any time of day or night to perform any duty under the Act, these Regulations, Commissioner's Orders or any other enactment.

(3) A Visiting Medical Officer may issue a direction to the Commissioner that a prisoner be transferred to a public hospital for admission or treatment.

63. Duties and powers of Visiting Justices-(1) On a visit to a prison, a Visiting Justice may:

- (a) hear and inquire into any complaint made by any prisoner; or
- (b) have particular regard to separated prisoners and prisoners receiving medical treatment; or
- (c) consider all reports concerning the mind or body of any prisoner likely to suffer injury or illness arising from prison discipline, and make reports where necessary to the Commissioner; or
- (d) ensure that any abuses or breaches of these Regulations or the Commissioner's Orders relating to the proper management of the prison and the treatment of prisoners are reported to the Commissioner; or
- (e) furnish information in relation to such abuses and breaches if requested by the Minister; or
- (f) inquire into any matter referred by the Minister or the Commissioner; or
- (g) discharge any other prescribed or delegated function or responsibility; or
- (h) keep records of all visits, and of observations, suggestions and recommendations made during a visit.

(2) A Visiting Justice visiting a prison may:

- (a) call for any books, papers, records, returns and registers related to the management of the prison and inspect those records and documents; or
- (b) visit every part of a prison; or
- (c) converse with any prisoner or prison officer; or
- (d) inspect the quality and quantity of food and drink provided to prisoners; or

- (e) ascertain the compliance or breach of any legal requirements applying to the management of the prison; or
- (f) inquire into any complaint made by a prisoner as the Visiting Justice thinks fit; or
- (g) inquire into the state of the prison buildings and facilities and make appropriate reports to the Commissioner.

(3) On the completion of a visit, a Visiting Justice must enter into the Official Visitors Book any remarks, suggestions and recommendation as the Justice considers appropriate, and any follow up action or resolution of the issue must be recorded by the Visiting Justice at a subsequent visit.

(4) A copy of the entry made by a Visiting Justice under subregulation (3), together with any comments made by the officer-in-charge, must be forwarded to the Commissioner immediately after the inspection has taken place.

PART 9 DEATH OF PRISONERS

64. Dealing with deaths in custody-(1) Immediately upon the death of any prisoner whilst in custody, the officer-in-charge must:

- (a) report the death to the Police and the Coroner; and
- (b) take action under Commissioner's Orders.

(2) In addition to any police investigation, the Commissioner must cause an administrative enquiry to be conducted into all deaths in custody and provide a report to the Minister.

(3) The next-of-kin of the deceased prisoner must be promptly notified of the death.

(4) On the death of a prisoner, the Visiting Medical Officer must record the following particulars, so far as they can be ascertained in relation to the deceased prisoner:

- (a) the day on which the prisoner first complained of the illness or was observed to be ill or injured;
- (b) the labour, if any, that the prisoner was engaged in on the day of death;

- (c) any details of the prisoner's diet at the time;
- (d) the date of admission to hospital;
- (e) the date that the medical officer was first informed of the illness or injury;
- (f) the nature of the illness or injury;
- (g) the date of last being seen by a medical officer prior to death, and any observations made at the time;
- (h) the date and time of death and any details about the prisoner's appearance or other matters of significance or relevance;
- (i) any prior referral of the prisoner for medical treatment, or for counselling in the case of a death by suicide;
- (j) the opinion of the medical officer as to the cause of death.

(5) All other matters relating to dealing with a death of a prisoner whilst in custody must be set out in Commissioner's Orders.

PART 10

ASSOCIATION OF SWORN MEMBERS

65. Sworn members may form an association-(1) Sworn members are entitled to form an association under the Incorporated Societies Ordinance 1952 or any other enactment.

(2) The rules of an association formed under this regulation must not purport to vest a role for the association that is inconsistent with any obligation applying to a sworn member under the Act, these Regulations or Commissioner's Orders.

(3) The permissible functions and purposes of an association established under this regulation include the following:

- (a) representing the interests of members in any lawful manner;
- (b) providing for the welfare and financial support of members, and their families and dependants;
- (c) providing facilities and programmes for the education and recreation of members;
- (d) providing for the representation of members on boards and committees;

(e) doing any other lawful act which promotes the interests and welfare of members.

PART 11
MISCELLANEOUS

66. Conflict of Regulations, Orders, etc.-(1) If there is an inconsistency with the Regulations and the Commissioner's Order, the Regulations prevail.

(2) If there is an inconsistency with the Manual and the Commissioners Order, the Commissioners Order prevails.

(3) If there is an inconsistency between the Manual, other documents and the Regulations, the Regulations prevail.

67. Revocation - The Prisons Regulations 1954 are revoked and replaced by these Regulations.

Issued under the authority of the Regulations Ordinance 1953.

Date of Commencement: The Prisons and Corrections Regulations 2014 commences on the commencement date of the Prisons and Corrections Act 2013.

These Regulations are administered by the Samoa Prisons and Corrections Services.

**Copies of these Regulations can be purchased from
the Office of the Clerk of the Legislative Assembly.**

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