

IMMIGRATION BILL 2020

SAMOA

Explanatory Memorandum

Summary:

This Bill repeals the current Immigration Act 2004 (“Act”) and replaces it with a modified and updated regulatory framework for Immigration matters. This Bill is the culmination of review work conducted with the assistance of the Pacific Immigration Development Community on the Act in 2018. The new Bill provides an updated framework that adheres to international standards for immigration process whilst at the same time provides for a system that provides protection of our borders.

Clauses:

PART 1

PRELIMINARY

- Clause 1:** - provides for the short title and commencement date of the Bill (i.e. a date to be nominated by the Minister).
- Clause 2:** - provides for the definition of terms.

PART 2
APPLICATION OF THIS ACT

- Clause 3:** - provides that this enacted Bill binds the Government.
- Clause 4:** - provides for the virtue of a citizen's right in Samoa.
- Clause 5:** - requires that a person may cooperate accordingly to the Minister's instructions.
- Clause 6:** - provides for circumstances whereby a notice is taken to have been served.

PART 3
**PERMISSIONS REQUIRED FOR ENTRY,
STAY AND DEPARTURE**

Division 1 - Visas

- Clause 7:** - provides that all entrance into Samoa of non-citizens cannot enter without a valid visa.
- Clause 8:** - provides that a person other than a citizen or exempt person may apply for a visa under this Clause and submit with a prescribed fee.
- Clause 9:** - provides that a person, or a spouse or partner (of a citizen or a holder of a permanent resident visa) is not automatically entitled to be granted a visa.
- Clause 10:** - enlists the form of visa specifies the validity, category, conditions and exemptions relating to the visa.

- Clause 11:** - provides that the Chief Executive Officer is responsible for granting a visa accordingly to the grounds set out in the Regulations.
- Clause 12:** - provides that in case of emergency situation, it is the responsibility of the Minister to impose a condition to be applied to a visa.
- Clause 13:** - expressly states that the visa expires on the commencement day after the date specified in the visa.
- Clause 14:** - provides the circumstances whereby a visa or exemption granted may be void and is of no legal effect.

Division 2 - Information Requirements

- Clause 15:** - provides that a person seeking entry, stay or departure from Samoa must complete a declaration form when required by the Minister.
- Clause 16:** - empowers the Chief Executive Officer to request further information from a person seeking to enter, remain in or departing Samoa.
- Clause 17:** - authorizes the Chief Executive Officer to require medical examination for a person, who is about to enter, has entered or is about to leave Samoa to be examined by a qualified medical practitioner.

Division 3 - Entry and exit ports

- Clause 18:** - provides that unless exempted, all persons must enter and depart Samoa through a regulated port.

- Clause 19:** - provides that unless the person has gone through the clearance zone a person has not entered or exit Samoa.

*Division 4 - Arrival and
Departure Prohibitions*

- Clause 20:** - provides that a person is prohibited from departing or attempting to depart Samoa if he or she is subject to an order by a Court, the Attorney General or an order under the Bankruptcy Act 1908.
- Clause 21:** - provides for the grounds for issuing a Court departure prohibition order, appeal process for an order issued to be provided by Regulations and the power of the Court to extend, revoke or amend the order issued.
- Clause 22:** - empowers the Attorney General to issue an Attorney General departure prohibition order and grounds for such order, power of the Attorney General to extend, revoke or amend the order issued, and the right of a person affected to appeal the order issued by the Attorney General.
- Clause 23:** - empowers the Head of State to make Regulations prescribing the grounds for which a person may be declared as a prohibited immigrant. It also empowers the Minister to declare a person to be a prohibited immigrant by Notice. It also prohibits a prohibited immigrant from being entitled to apply for or be granted an entry visa, or attempt to or enter Samoa.

- Clause 24:** - provides that the responsible Minister may keep and maintain a prohibited immigrant register, and provide information on register to anyone according to prescribed procedures.

**PART 4
DECISIONS FOR REFUSAL
OR PERMISSIONS**

- Clause 25:** - provides that the Chief Executive Officer may require certain category of visas to be obtained by a person prior travelling to Samoa.
- Clause 26:** - provides that unless exempted by the Chief Executive Officer, a visa may be refused to a person if the person does not meet the required criteria prescribed.
- Clause 27:** - provides for the required criteria under clause 26 and the process and considerations of the required criteria are to be prescribed by Regulations.
- Clause 28:** - provides that requirements for sponsorship may be prescribed under Regulations.
- Clause 29:** - provides that an employment visa may be granted to a person only when the requirements of law regulating employment in Samoa are met.

**PART 5
ARRIVALS AND DEPARTURES**

Division 1 - Passenger and Crew Responsibilities

- Clause 30:** - provides for the requirement to undergo immigration clearance in the clearance zone at places and in manner specified by Regulations.
- Clause 31:** - provides for a duty of a person to ensure to depart Samoa prior to the expiration of the visa, unless that person is exempted.
- Clause 32:** - provides that a person has not departed Samoa if the craft at which the person is on is forced to return to Samoa due to emergency purposes.

Division 2 - Operator and Carrier Responsibilities

- Clause 33:** - provides that an operator or carrier is responsible for any person travelling on their craft. It also provides that the Head of State on the advice of Cabinet may make regulation prescribing duties of operators and carriers, the process by which duties are to be met, and forms required for operators and carriers to fill.
- Clause 34:** - provides that Regulations may prescribe the location for obtaining immigration clearance for an operator or carrier.
- Clause 35:** - provides that Regulations may prescribe what an emergency situation is, and this Clause exempts an operator or carrier from complying with this Part in times of emergency situations.

- Clause 36:** - provides that an operator is responsible to remove a passenger who has been denied entry in Samoa, and the implementation process of an operator's or carrier's obligation is to be set out in Regulations.
- Clause 37:** - provides that a craft is subject to seizure where the offence involves the unlawful disembarkment of a transit passenger or prohibited immigrant in Samoa from that operator's craft.
- Clause 38:** - provides requirement for departure from Samoa at which a carrier or operator of any craft must ensure the craft departs from Samoa at a regulated port only, unless exempted by the Minister and, it must provide the Chief Executive Officer with any information or document as prescribed by Regulations. The Minister upon the advice of the Chief Executive Officer may prohibit any craft from arriving in or departing Samoa until the Minister is satisfied that the carrier or operator is complied with this Act or any other law.
- Clause 39:** - requires an operator or owner of a regulated port to comply with the requirements prescribed by Regulations. The Regulations may also set out offences for breach of these Regulations and penalties.

PART 6
CANCELLATION, REMOVAL
AND DEPORTATION

- Clause 40:** - empowers the Chief Executive Officer to cancel a visa according to prescribed requirements. It further provides that if a visa is cancelled while a person is in the clearance zone, the person may be required to leave Samoa immediately. It also requires the Chief Executive Officer to serve a notice to a person whose visa is cancelled providing reasons for cancelling the visa.
- Clause 41:** - provides that the Minister may in writing issue a removal order for a person to leave Samoa if the person is found to be unlawfully in Samoa.
- Clause 42:** - provides that the Minister on the advice of the Chief Executive Officer may sign a deportation order to deport a person from Samoa if the person is a prohibited immigrant, or the person has entered Samoa in breach of this Act or other law, convicted of a nominated offence, or remains in Samoa after the expiry or cancellation of person's visa.
- Clause 43:** - provides for the execution of a deportation order and for regulations to be made to provide for procedure or manner in which the deportation may be carried out.
- Clause 44:** - provides that a deportation order is not validated because the person subject to the order is married to a citizen, has a child with a citizen and has made an application to become a citizen. It further provides for the validity period of the order which is until the person leaves Samoa or unless it is revoked.

- Clause 45:** - provides for treatment of persons under the age of 18 who are subject to a removal or deportation order.
- Clause 46:** - authorises a Minister to designate premises used to confine a person who is subject to a deportation or removal order.
- Clause 47:** - provides for the process to be followed for transporting a removed or deported person whereby the Minister is authorised to instruct an operator or carrier to transport a deported person or removed person. The costs associated to this arrangement are to be borne by the deported/removed person or unless the Minister directs to be paid out of funds by Legislative Assembly. Other requirements are to be prescribed by regulations.
- Clause 48:** - empowers the Minister to subject a person to an exclusion prescribed period by declaration.

PART 7

APPEAL AND REVIEW MEASURES

- Clause 49:** - provides for the limitation of rights for person applying for a visa or a holder of a visa to a grant of a visa or challenge, seek review or bring other legal proceeding in Court concerning granting, denial, cancellation or imposition of any term or condition for any visa granted.

- Clause 50:** - provides that the Court has no jurisdiction to make any decision or order concerning any matter under sections 23 and 49.
- Clause 51:** - provides that a person's whose visa has been cancelled by the Chief Executive Officer may appeal the decision to the Minister and the power of the Minister to cancel or confirm the said decision.
- Clause 52:** - allows a person subject to a removal or deportation order to appeal against the orders to the Minister in writing. However such appeal does not affect the application of the order on the person subject to such orders.
- Clause 53:** - provides that a person may at any time withdraw in writing an appeal made under Part 7.
- Clause 54:** - provides for Regulations to be made to prescribe a system of administrative review of any act made by any person who has acted under a delegated authority.

PART 8
RESPONSIBILITIES OF EMPLOYERS
AND EDUCATION PROVIDERS

- Clause 55:** - provides for the duties of the employers and education providers in providing and confirming the relevant requirements specified under this clause regarding the non-citizen employees (they engage for employment) and students (admitted for educational purposes).

PART 9
INFORMATION PROTECTION

- Clause 56:** - provides that any information collected or shared for the purpose of this Act must be kept confidential and may be released to required agencies on grounds of national security, national interest or public interest of Samoa. It further provides for regulations to be made to provide the manner in which information is to be released.
- Clause 57:** - duty of the Chief Executive Officer to establish a database of information collected and prohibiting any person from accessing or disclose or alter any information on the database unless authorised by the Minister.
- Clause 58:** - empowers the Minister to enter into agreements with other States for the purpose of mutual assistance in criminal matters and further provides that the Minister must consult the Attorney General before entering into agreements to ensure requirements of law regulating mutual assistance in criminal matters are complied with.

PART 10

FUNCTIONS AND POWERS

- Clause 59:** - empowers the Minister to delegate to the Chief Executive Officer or an enforcement Officer his or her duty or function except for the power to delegate. Such delegation of power remains in force until it is revoked by the Minister.
- Clause 60:** - provides that the Minister has the power to authorize in writing for enforcement officers to do certain acts such as entering using force necessary in the circumstances to arrest a non-citizen, requiring a person to produce identification evidence and requiring them to answer questions for unlawfully entering and remaining in Samoa.

This clause also empowers enforcement officers to have certain powers as listed.

- Clause 61:** - provides that the Minister may provide a signed certificate of evidence in an approved form concerning any matter in question under the Act for any Court proceeding.
- Clause 62:** - provides that the Chief Executive Officer may require biometric data to be collected from the person where there is a good cause to suspect the person has acted in contravention of the Act or is liable for turnaround, removal or deportation.
- Clause 63:** - provides that the Chief Executive Officer must under the supervision of the Minister be responsible for the implementation of the Act and any other matters prescribed by Regulations.
- Clause 64:** - provides the power of the Chief Executive Officer to delegate any duty or function except the power to delegate to an enforcement officer and may be revoked by the Chief Executive Officer.
- Clause 65:** - provides that the Chief Executive Officer may request for Police Commissioner's assistance if there is belief of a risk of harm on an enforcement officer in the carriage of their duties.

PART 11

OFFENCES AND PENALTIES

- Clause 66:** - lists out the offences and penalties with regards to the breach of the Act.

- Clause 67:** - authorises the Minister to summarily deal with minor breaches if requested by a person accused of the offence in writing. The person is not liable to be further prosecuted after being summarily dealt with.

PART 12
MISCELLANEOUS

- Clause 68:** - provides immunity any person carrying out any duty or function under the Act in good faith.
- Clause 69:** - empowers the Head of State to make regulations acting on the advice of Cabinet to give effect to or for the purpose of the Act.
- Clause 70:** - repeals the Immigration Act 2004.
- Clause 71:** - provides for transitional provisions.
- Clause 72:** - provides for consequential amendments to the Marriage Ordinance 1961 and the Passports Act 2008.

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(Hon TUILAEP Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)
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THE MINISTRY OF THE PRIME MINISTER AND CABINET