

SAMOA

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2013, No. 10

AN ACT to regulate crimes in Samoa, to repeal the Crimes Ordinance 1961 and consequently amend other Acts, and for related purposes.
[5th April 2013]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Crimes Act 2013.

(2) This Act commences on a date or dates to be nominated by the Minister.

2. Interpretation - In this Act unless the contrary intention appears:

“Aircraft” means the meaning given it in the Civil Aviation Act 1998;

“Assault” means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he or she has, present ability to effect his purpose; and **to assault** has a corresponding meaning;

“building” means any building, erection or structure of any kind, whether permanent or temporary, and includes any dwelling, fale, warehouse, shop, office, store, caravan or other premises of any kind;

“constable” or “officer” or “police officer” means a sworn-member under the Police Service Act 2009;

“court” includes the Supreme Court or the District Court of Samoa;

“crime” means any offence for which a person may be proceeded against under this Act;

“crime involving dishonesty” means a crime against the rights of property under Part XIV;

“criminally responsible” means liable to punishment for an offence;

“day” means the interval between 6 o’clock in the morning of any day and 9 o’clock at night of the same day;

“enactment” includes the Constitution of Samoa and any Act, Ordinance, By-law, Regulation or Order;

“firearm” means any weapon to which the provisions of the Arms Ordinance 1960 apply;

“for a material benefit”, in relation to doing a thing, means:

(a) after having obtained a material benefit for doing the thing; or

(b) intending to obtain a material benefit for doing the thing.

“grievous bodily harm” means serious bodily harm;

“medical practitioner” has the same meaning as in the Medical Practitioners Act 2007;

“Minister” means the Minister responsible for police;

“night” means the interval between 9 o’clock at night and 6 o’clock in the following morning;

“obtain a material benefit” in relation to doing or omitting to do a thing, means obtain, directly or indirectly, any goods, money, pecuniary advantage, privilege, property, or other valuable consideration of any kind for doing the thing (or taking an action that forms part of doing the thing);

“offence” means any act of omission for which a person can be punished under this Act or under any other enactment;

“property” includes real and personal property, and any estate or interest in any real or personal property, money, electricity and any debt, and anything in action, and any other right or interest;

“prosecutor” means:

(a) the Attorney General or a prosecutor acting under the Attorney General’s direction; or

(b) a Constable prosecuting any offence; or

(c) a private prosecutor.

“ship” means every description of vessel used in navigation, however propelled; and includes any schooner, cutter, launch, yacht, boat, barge, lighter, dinghy, paopao, raft or little vessel;

“to injure” means to cause actual bodily harm but not psychological or emotional harm;

“valuable security” means any document which constitutes a title to or is evidence of title to any property or proprietary right of any kind whatever; and includes any negotiable instrument, bill of exchange or promissory note.

(2) When it is provided in this Act that a person is liable to any punishment for doing or omitting any act, the person doing or omitting that act is, subject to the provisions of this Act, commits of a crime.

PART II
JURISDICTION

3. Meaning of Samoa - Without limiting the provisions of any other enactment, “Samoa” means the islands of Upolu, Savai’i, Manono and Apolima in the South Pacific Ocean together with all other adjacent islands and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of south longitude west of Greenwich; and includes all waters within the outer limits of the territorial sea of Samoa (as defined in the Maritime Zones Act 1999) and the exclusive economic zone of Samoa (as defined in the Maritime Zones Act 1999).

4. Application-(1) This Act applies to all offences for which the offender may be proceeded against and tried in Samoa.

(2) This Act applies to all acts done or omitted in Samoa.

(3) Subject to subsection (4), no act done or omitted outside of Samoa is an offence unless it is an offence by virtue of any provision of this Act or of any other enactment.

(4) For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence shall be deemed to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

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

5. Persons not to be tried in respect of things done outside of Samoa - Subject to the provisions of section 6, no act done or omitted outside Samoa is an offence, unless it is an offence by virtue of any provision of this Act or of any other enactment.

6. Place of commission of offence - For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence,

occurs in Samoa, the offence shall be deemed to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

7. Jurisdiction in respect of crimes on ships or aircraft beyond Samoa-(1) This section applies to any act done or omitted beyond Samoa by any person:

- (a) on board any Samoan registered ship; or
- (b) on board any Samoan aircraft; or
- (c) on board any ship or aircraft, if that person arrives in Samoa on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or
- (d) being a citizen of Samoa, on board any foreign ship (not being a ship to which he or she belongs) on the high seas; or
- (e) being a Samoan citizen or a person ordinarily resident in Samoa, on board any aircraft provided that paragraph (c) does not apply where the act was done or omitted by a person, not being a citizen of Samoa, on any ship or aircraft for the time being used as a ship or aircraft of any of the armed forces of any country; or
- (f) being a Samoan citizen or a person ordinarily resident in Samoa, on board any ship or aircraft as a servant or an officer of the Government of Samoa.

(2) Where any person does or omits any act to which this section applies, and that act or omission would, if it occurred within Samoa, be a crime under this Act or under any other enactment (whether that enactment was passed before or after the commencement of this Act), then, subject to the provisions of this Act and of that other enactment, he or she shall be liable on conviction as if the act or omission had occurred in Samoa: provided that where any proceedings are taken by virtue of the jurisdiction conferred by this section it shall be a defence to

prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

(3) Where at any place beyond Samoa any person who belongs, or within three (3) months previously has belonged, to any Samoan registered ship does or omits any act, whether on shore or afloat, not being an act, or omission to which subsection (1) applies, and that act or omission would, if it occurred within Samoa, be a crime, then this section shall apply in respect of that act or omission in the same manner in all respects as if it had occurred on board a Samoan registered ship.

(4) This section shall be read subject to the provisions of section 221.

8. Extraterritorial jurisdiction for offences with transnational aspects-(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Prevention and Suppression of Terrorism Act 2002, or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:

- (a) is a Samoan citizen; or
 - (b) is ordinarily resident in Samoa; or
 - (c) has been found in Samoa and has not been extradited;
- or
- (d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:

- (a) is a Samoan citizen or an ordinary resident of Samoa; and
- (b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

9. Offences not to be punishable except under Samoan Acts - No one shall be convicted of any offence at common law, or of any offence against any Act of the Parliament of Samoa.

PROVIDED THAT nothing in this section limits or affects the power of authority of the Legislative Assembly or of any Court to punish for contempt.

10. Offence under more than one enactment-(1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

(2) Where an act or omission constitutes an offence under two (2) or more Acts other than this Act, the offender may be prosecuted and punished under any one of those Acts.

(3) Where an act or omission constitutes an offence under two (2) or more provisions of this Act or of any other Act, the offender may be prosecuted under any one of those provisions.

(4) No one shall be liable to be punished twice in respect of the same offence.

(5) Nothing in this Act shall take away or diminish any authority given by any other enactment to arrest, detain, or put any restraint on any person.

PART III

MATTERS OF JUSTIFICATION OR EXCUSE

11. General rule as to justifications-(1) All rules and principles of the common law as are consistent with the provisions of this Act and any other applicable enactment and with the customs and usages of the people of Samoa recognised and applied by the Court of Appeal, the Supreme Court or the District Court which provides a justification or excuse for any act or omission, or a defence to any crime under this Act or any other enactment shall be applicable to any charge, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part are declared to be justifications or excuses in the case of all charges to which they are applicable.

12. Infancy-(1) No person shall be convicted of an offence in relation to any act or omission done or omitted by him or her when under the age of 10 years.

(2) No person shall be convicted of an offence in relation to any act or omission done or omitted by him or her when of the age of 10 years but under the age of 12 years, unless he or she knew that the act or omission was morally wrong, or that it was contrary to law.

13. Insanity-(1) A person shall be presumed to be sane at the time of doing or omitting any act until the person proves on the balance of probabilities that he or she was not sane to the extent provided in subsection (2).

(2) A person is not criminally responsible for any act done or omitted to be done when suffering from a mental defect or mental disorder that renders the person incapable:

- (a) of knowing what he or she is doing or omitting to do;
or
- (b) of attributing to that act or omission the same moral character that members of the community generally would attribute to that act or omission.

(3) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

(4) Where upon the trial of any person that person is acquitted on account of insanity, the Judge must order that the person be examined by two (2) medical practitioners and the following provisions apply:

- (a) pending the receipt by the Judge of certificates from the medical practitioners, the person must be detained in one of the following places as the Judge thinks appropriate -
 - (i) a private or public hospital; or
 - (ii) a prison facility;

- (b) when the Court has sufficient information on the condition of a defendant acquitted on account of his or her insanity, the Court must -
 - (i) consider all the circumstances of the case; and
 - (ii) consider the evidence of the two (2) medical practitioners; and
- (c) if it is satisfied that the making of the order is necessary in the interests of the public or any person or class of persons who may be affected by the Court's decision.

(5) Despite anything in the Mental Health Act 2007 no person subject to an order made under subsection (4)(a) shall be released on leave or discharged from any institution without an order of the Court that made the order detaining that person.

14. Compulsion-(1) Except in relation to the offences listed in subsection (2), a person who commits an offence under compulsion arising from threats of immediate death or serious bodily harm from a person who is present when the offence is committed is not criminally responsible if he or she:

- (a) believes that the threat will be carried out; and
- (b) is not a party to any association or conspiracy from which the compulsion arises or was a foreseeable consequence.

(2) Nothing in subsection (1) applies where one of the following offences is committed:

- (a) treason or communicating secrets;
- (b) sabotage;
- (c) piracy;
- (d) piratical acts;
- (e) murder;
- (f) attempt to murder;
- (g) wounding with intent;
- (h) injuring with intent to cause grievous bodily harm;
- (i) abduction;
- (j) kidnapping;
- (k) robbery;
- (l) aggravated robbery;

- (m) arson;
- (n) drug trafficking;
- (o) people smuggling.

15. Ignorance of the law - No person is excused from criminal liability by reason of the fact that he or she was unaware that the act or omission constituted the offence with which the person is charged was contrary to law.

16. Consent to death - No person has a right to consent to the infliction of death upon himself or herself; and, if any person is killed, the fact that the person gave any such consent shall not affect the criminal liability or responsibility of any other person who is a party to the killing.

17. Self-defence-(1) A person unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force, if the force the person uses:

- (a) is not meant to cause death or grievous bodily harm;
and
- (b) is no more than is necessary for the purpose of self defence.

(2) A person unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force by force although in so doing the person causes death or grievous bodily harm, if:

- (a) the person causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his or her purpose; and
- (b) the person believes, on reasonable grounds, that he or she cannot otherwise preserve himself or herself from death or grievous bodily harm; and
- (c) the force the person uses is no more than is necessary for the purpose of self defence.

(3) A person who has assaulted another without justification, or has provoked an assault from that other by any blows, words or gestures, may nevertheless justify force used after the assault if:

- (a) the person used the force under reasonable apprehension of death or grievous bodily harm from the violence of the party first assaulted or provoked and in the belief, on reasonable grounds that it was necessary for his or her own preservation from death or grievous bodily harm; and
 - (b) the person did not begin the assault with intent to kill or do grievous bodily harm and did not endeavour, at any time before the necessity for preserving himself or herself arose, to kill or do grievous bodily harm; and
 - (c) before the force was used, he or she declined further conflict and quitted or retreated from it as far as was practicable; and
 - (d) the force he or she uses is no more than necessary for the purpose of self defence.
- (4) A person is justified in using force, in defence of the person or anyone under that person's protection, against an assault, if the force he or she uses:
- (a) is not meant to cause death or grievous bodily harm; and
 - (b) is no more than necessary to prevent the assault or the repetition of it.
- (5) This section shall not justify the wilful infliction of any hurt or mischief disproportionate to the assault that it was intended to prevent.
- (6) A person is justified in using force, in defence of the person or anyone under that person's protection, against an assault, although in so doing the person causes death or grievous bodily harm if:
- (a) the person causes it under reasonable apprehension that the violence with which the assault was originally made or with which the assailant pursues his or her purpose will cause death or grievous bodily harm to the person under his or her protection; and

- (b) the person believes on reasonable grounds that he or she cannot otherwise preserve the person under his or her protection from death or grievous bodily harm; and
- (c) the force the person uses is no more than is necessary to prevent the assault or repetition of it.

18. Defence of dwellinghouse - A person in a peaceable possession of a dwellinghouse, and everyone lawfully assisting that person or acting by his or her authority, is justified in using such reasonable force as is necessary to prevent the forcible breaking and entering of the dwellinghouse by any person if the person believes, on reasonable grounds, that there is no lawful justification for the breaking and entering.

19. Defence of land or building - A person in peaceable possession of any land or building, and any person lawfully assisting the person or acting by his or her authority, is justified in using reasonable force to prevent any other person from trespassing on the land or building or to remove the other person from the land or building, if he or she does not strike or do bodily harm to the other person.

20. Defence of moveable property-(1) A person in actual and unchallenged possession of any moveable property, or who has a claim of right to that property, and any person lawfully assisting that person, is justified in using reasonable force to resist the taking of that property by any other person, or to retake it.

(2) Despite subsection (1), no person is justified, or excused from criminal liability if in the defence of moveable property the person strikes or causes bodily harm to any person.

21. Excessive force - A person authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess, and any consequence of that force.

PART IV
JUSTIFICATION OR EXCUSE IN
THE ARREST OF ANY PERSON

22. Execution of warrant-(1) A person duly authorised to execute a warrant to arrest who in reliance on such a warrant, thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he or she is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

(2) A person called on to assist the person making such arrest, and believing that the person in whose arrest he or she is called on to assist is the person for whose arrest the warrant is issued, and every person who is required to receive and detain the person arrested, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

23. Arrest by a constable pursuant to statutory powers - A constable is justified in arresting any person without warrant in accordance with the provisions of this Act or in accordance with any other enactment conferring on him or her a power so to arrest.

24. Arrest by a constable of person believed to have committed an offence - Where under any enactment any constable has power to arrest without warrant any person who has committed an offence, the constable is justified in arresting without warrant any person whom he or she believes, on reasonable grounds, to have committed that offence, whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

25. Arrest by other officers or persons pursuant to statutory powers - An officer or other persons, not being a constable, who is authorised by any enactment to arrest any

person without warrant is justified in so arresting any person in accordance with the provisions of that enactment.

26. Persons assisting constable or officer in arrest-(1) A person called upon by a constable to assist him or her in the arrest of any person believed or suspected to have committed any offence is justified in assisting unless the person knows that there is no reasonable ground for the belief or suspicion.

(2) Where in any enactment it is provided that any officer or person, not being a constable, may call upon any other person to assist him or her in arresting without warrant anyone who has committed or is found committing any offence, a person so called upon is justified in assisting unless the person knows that there is no reasonable ground for believing that the person to be arrested has committed the offence.

27. Arrest of persons found committing certain crimes - A person is justified in arresting without warrant:

- (a) any person whom the person finds committing any offence against this Act for which the offence is punishable by imprisonment; or
- (b) any person whom the person finds by night committing any offence against this Act.

28. Arrest of person believed to be committing crime by night - A person is protected from criminal responsibility for arresting without warrant any person whom he or she finds by night in circumstances affording reasonable grounds for believing that that person is committing an offence against this Act.

29. Arrest after commission of certain crimes - Where any offence against this Act has been committed, a Constable who believes, on reasonable grounds, that any person has committed that offence is protected from criminal responsibility for arresting that person without warrant, whether or not that person committed the offence.

30. Arrest during flight-(1) A person is protected from criminal responsibility for arresting without warrant any person whom he or she believes, on reasonable grounds, to have committed an offence against this Act, and to be escaping from and to be freshly pursued by any one whom he or she believes, on reasonable grounds, to have lawful authority to arrest that person for the offence.

(2) This section shall apply whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

31. Force used in executing process - Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

PROVIDED that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

32. Preventing escape or rescue-(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary:

- (a) to prevent the escape of that other person if he or she attempts to avoid arrest; or
- (b) to prevent the escape or rescue of that other person after his or her arrest,

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

PROVIDED that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.

PART V **PARTIES TO THE COMMISSION OF OFFENCES**

33. Parties to offences-(1) A person is a party to and guilty of an offence who:

- (a) actually commits the offence; or
- (b) does or omits an act for the purpose of aiding any person to commit the offence; or
- (c) abets any person in the commission of the offence; or
- (d) incites, counsels, or procures any person to commit the offence.

(2) Where two (2) or more persons form a common intention to carry into effect any unlawful purpose and to assist each other in that object, each of them is a party to every offence committed by any one of them in carrying into effect that unlawful purpose if the commission of that offence was or ought to have been known to be a probable consequence of carrying into effect that common purpose.

(3) Nothing in this section prevents the charging of a person as a party to any offence under both subsection (1) and (2) or in the alternative.

34. Party to crime outside Samoa-(1) A person who, in Samoa, aids, incites, counsels or procures the doing or omission outside Samoa of any act which, if done in Samoa would be a crime is liable to imprisonment for a term not exceeding that prescribed for the crime, or seven (7) years, whichever is the less.

(2) Despite subsection (1), where the crime alleged in relation to subsection (1) is murder, the term of imprisonment shall be life.

(3) A person charged under this section is not liable to be convicted in any case where it is proved that the act or omission to which the charge relates was not an offence in the place where it was, or was to be, done or omitted.

35. Party to offences other than that intended - A person who incites, counsels or procures another to be party to an offence is a party to every offence which that other commits in carrying into effect that which was incited, counselled or procured and which the person charged as a party pursuant to this section knew or ought to have known to be a likely consequence of that incitement counselling or procuring.

36. Accessory before the fact-(1) A person is an accessory before the fact who, without becoming a party to any offence, knowingly helps any person to commit an offence.

(2) A person is an accessory before the fact in terms of subsection (1) despite the fact that the offence was committed in a manner different from that understood by that person.

(3) A person who is an accessory before the fact commits an offence of accessory before the fact and is liable to imprisonment for a term not exceeding 10 years, if the maximum penalty for that offence is imprisonment for life, or in any other case is liable to not more than half the maximum punishment to which he or she would have been liable if he or she had committed that offence.

37. Accessory after the fact - An accessory after the fact to an offence is a person who, knowing or believing any person to have been a party to an offence:

(a) harbours or otherwise assists that person; or

(b) tampers or otherwise interferes directly or indirectly with any evidence against him or her,

for the purpose of enabling that person to avoid arrest or conviction or escape from arrest.

38. Conspiracy to commit an offence-(1) A person who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omitting in Samoa would be an offence, commits the crime of conspiracy to commit that offence and is liable to imprisonment for a term not exceeding seven (7) years, if the maximum penalty for that offence exceeds seven (7) years, or in any other case is liable to the punishment as if he or she had committed that offence.

(2) The provisions of subsection (1) as to the penalty for conspiring to commit an offence do not apply where the punishment for the conspiracy is prescribed in any other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside Samoa, it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

39. Attempt to commit or procure commission of offence-(1) A person who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum penalty for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum penalty to which he or she would have been liable if he or she had committed that offence.

(2) Everyone who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding five (5) years if such maximum penalty is imprisonment for 10 years or more; and in any other case is liable to not more than half the maximum punishment to which he or she would have been liable if he or she had committed the crime.

PART VI
CRIMES AGAINST PUBLIC ORDER

40. Treason - Every citizen of Samoa is guilty of treason, and shall upon conviction be imprisoned for life, who:

- (a) kills, wounds, imprisons, or causes grievous bodily harm to the Head of State; or
- (b) levies war or conspires to levy war against State of Samoa; or
- (c) uses force for the purpose of overthrowing the Government of Samoa; or
- (d) assists by any means whatever any public enemy at war with the State of Samoa.

41. Inciting to hostility - A person is liable to imprisonment for a term not exceeding two (2) years who with the intention of undermining the authority of the Government of Samoa, or to incite violence or hostility against the Government of Samoa, or between different classes of inhabitants of Samoa, or to change any matter affecting the laws, government, or Constitution of or any religious observance of Samoa:

- (a) uses or speaks any words; or
- (b) publishes anything,

in circumstances where there is a present risk of lawlessness, violence or disorder in Samoa.

42. Unlawful assembly-(1) Every member of an unlawful assembly is liable to imprisonment for one (1) year.

(2) An unlawful assembly is an assembly of three (3) or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled as to cause persons in the neighbourhood of such an assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will, by such assembly, needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

(3) Persons lawfully assembled may become an unlawful assembly if they, with a common purpose, conduct themselves in such a manner that their assembling would have been unlawful if they had assembled in that manner for that purpose.

(4) An assembly of three (3) or more persons for the purpose of protecting the house of any one of their numbers against persons threatening to break and enter such house in order to commit any offence therein is not unlawful.

43. Disorderly Assembly - A person is liable to imprisonment for a term not exceeding one (1) year who is one of three (3) or more persons who for any common purpose, or behave when assembled, in such a manner as to cause an ordinary person reasonably to fear that the persons so assembled will use or cause violence or engage in or cause serious disorder in the vicinity of the assembly.

44. Riot-(1) A person who takes part in a riot is liable to imprisonment for a term not exceeding two (2) years.

(2) A riot is an unlawful assembly or disorderly assembly that has begun to disturb the peace tumultuously or has begun to incite or cause serious violence, or are engaging in or causing serious disorder in the vicinity of the assembly.

45. Forcible entry - A person is liable to imprisonment for a term not exceeding six (6) months who, by force or threats of force, enters on land then in the actual and peaceful possession of another for the purpose of taking possession thereof, whether the person who so enters is entitled to the possession thereof or not.

46. Unlawful intimidation - A person commits an offence and is liable to imprisonment for a term not exceeding one (1) year or to a fine of 2 penalty units who:

- (a) imposes or attempts to impose or authorises or directs the imposition or attempted imposition upon any other person (whether in respect of a particular person or generally) of any punishment, fine, or penalty or payment in

- money or goods for having disobeyed any prohibition imposed by any person or body of persons against the doing or abstaining from doing any act which such other person has a legal right to do or abstain from doing; or
- (b) with a view to compel any other person to do or to abstain from doing any act which that person has a legal right to do or abstain from doing -
- (i) uses violence to or by words or acts intimidates such other person or damages or threatens to damage his or her property; or
 - (ii) follows such other person about from place to place or in or along any public place; or
 - (iii) watches or besets any house, shop, or other place or the approach thereto where such other person or any person whosoever resides or works or carries on business or happens to be.

47. General dishonesty against the Government - A person is guilty of an offence and is liable to imprisonment to a term not exceeding five (5) years if the person does anything with the intention of dishonestly causing a loss to the Government of Samoa.

PART VII **SEXUAL CRIMES**

48. “Sexual intercourse” defined - For the purposes of this Part, sexual intercourse is complete upon penetration of the female’s genitalia by male penis and there shall be no presumption of law that any person is by reason of his or her age incapable of such intercourse.

- 49. “Sexual violation” defined**-(1) Sexual violation is:
- (a) the act of a male who rapes a female; or
 - (b) the act of a person having unlawful sexual connection with another person.

(2) A male rapes a female if he has sexual intercourse with that female without her consent freely and voluntarily given.

(3) A person has unlawful sexual connection with another person if that person has sexual connection with the other person without the consent of that other person freely and voluntarily given.

(4) A person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that those persons were married to each other at the time of that sexual connection.

50. “Sexual connection” defined - Sexual connection means:

- (a) connection occasioned by the penetration of the genitalia or the anus of any person by -
 - (i) any part of the body of any other person; or
 - (ii) any object held or manipulated by any other person; or
- (b) connection between the mouth or tongue or any part of the body of any person and any part of the genitalia or anus of any other person;
- (c) the continuation of sexual connection as described in either subsections (1)(a) or (b)

51. Circumstances which do not in themselves amount to consent-(1) For the purposes of this Part, it is not consent:

- (a) merely because the person does not protest or physically resist the sexual connection or other sexual activity, or where;
- (b) consent is extorted by fear or bodily harm or by threats; or
- (c) consent obtained by personating the person’s spouse or partner; or
- (d) consent obtained by a false representation as to the nature and quality of the act; or
- (e) the person is asleep or unconscious; or

- (f) the person is affected by alcohol or other drug to the extent that he or she cannot choose to consent or not to consent to the sexual connection or other sexual activity; or
- (g) the person is affected by an intellectual, mental or physical condition or impairment, or physical condition of such a nature or degree that he or she cannot consent to the sexual connection or other sexual activity.

(2) The matters in subsection (1)(a) to (g) do not limit the instances in which the circumstances of sexual connection or other activity cannot give rise to evidence of consent, or reasonable belief that there is consent.

(3) It is a defence for the offence of rape that the accused honestly and reasonably believed that the consent was given.

52. Penalty for sexual violation-(1) A person who commits rape is liable to imprisonment for life.

(2) A person who commits unlawful sexual connection is liable to imprisonment for a term not exceeding 14 years.

53. Attempted sexual violation and assault with intent to commit sexual violation-(1) A person who attempts to commit sexual violation is liable to imprisonment for a term not exceeding 14 years.

(2) A person who assaults another person with intent to commit sexual violation of the other person is liable to imprisonment for a term not exceeding 14 years.

54. Sexual conduct with consent induced by threats-(1) A person who has sexual connection with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment for a term not exceeding 14 years.

(2) A person who does an indecent act on another person knowing that the other person has been induced to consent to the act by threat is liable to imprisonment for a term not exceeding seven (7) years.

(3) For the purposes of subsection (1), a person who has sexual connection with another person knows that the other person has been induced to consent to the sexual connection by threat if (and only if) the person knows that the other person has been induced to consent to the sexual connection by an express or implied threat of a kind described in subsection (5).

(4) For the purposes of subsection (2):

(a) a person who does an indecent act on another person knows that the other person has been induced to consent to the act by threat if (and only if) the person knows that the other person has been induced to consent to the act by an express or implied threat of a kind described in subsection (5); and

(b) a person is induced to consent to an indecent act whether -

(i) the person is induced to consent to the doing of an indecent act with or on him or her; or

(ii) the person is induced to consent to do an indecent act on himself or herself.

(5) The kinds of threat referred to in subsections (3) and (4)(a) are:

(a) a threat that the person making the threat or some other person will commit an offence that -

(i) is punishable by imprisonment; but

(ii) does not involve the actual or threatened application of force to any person; and

(b) a threat that the person making the threat or some other person will make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; and

- (c) a threat that the person making the threat will make improper use, to the detriment of the person consenting, of a power or authority arising out of -
- (i) an occupational or vocational position held by the person making the threat; or
 - (ii) a commercial relationship existing between the person making the threat and the person consenting.

55. Incest-(1) Sexual connection is incest if:

- (a) it is between two (2) persons whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and
 - (b) the person charged knows of the relationship.
- (2) In this section the term “child” includes an illegitimate child and an adopted child; and “grandchild” has a corresponding meaning.
- (3) A person who is or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 20 years.

56. Sexual conduct with a family member-(1) A person is liable to imprisonment for a term not exceeding 14 years who has sexual connection with a dependent family member under the age of 21 years.

(2) A person is liable to imprisonment for a term not exceeding 14 years who attempts to have sexual connection with a dependent family member under the age of 21 years.

(3) A person is liable to imprisonment for a term not exceeding 14 years who does an indecent act with or on a dependent family member under the age of 21 years.

(4) The dependent family member cannot be charged as a party to the offence.

(5) It is not a defence to a charge under this section that the dependent family member consented.

(6) Indecent act with or on a dependant family member includes indecently assaulting the dependant family member.

57. “Dependent family member” defined-(1) For the purposes of section 56, one (1) person is a dependent family member of another person:

- (a) if the other person has power or authority over him or her, and is -
 - (i) his or her parent, step-parent, foster parent, guardian, uncle, or aunt; or
 - (ii) a parent, step-parent, or foster parent of a person described in subsection (1)(a) (i);
 - (iii) a child of his or her parent or step-parent; or
 - (iv) the spouse or de facto partner of a person described in subsection (1)(a)(i), (ii) or (iii); or
- (b) if they are members of the same family or other culturally recognised family group, and the other person -
 - (i) is not a person referred to in subsection (1)(a); but
 - (ii) has a responsibility for, or significant role in, his or her care or upbringing; or
- (c) if he or she is living with the other person as a member of the other person’s family, and the other person is not a person referred to in subsection (1)(a), but has -
 - (i) power or authority over him or her; and
 - (ii) a responsibility for, or significant role in, his or her care or upbringing.

(2) In subsection (1):

“aunt”, in relation to a person, includes a half-sister of one of the person’s parents;

“foster parent” includes a former foster parent;

“guardian” includes -

- (i) a court appointed guardian; or
- (ii) a former guardian; or

(iii) a person who has by law or custom all the duties, powers, rights and responsibilities that a parent of the child has in relation to the upbringing of the child.

“step-parent” includes a former step-parent;

“uncle”, in relation to a person, includes a half-brother of one of the person’s parents.

58. Sexual conduct with child under 12-(1) A person who has sexual connection with a child is liable to imprisonment for life.

(2) A person who attempts to have sexual connection with a child is liable to imprisonment for 14 years.

(3) A person who does an indecent act with or on a child is liable to imprisonment for a term not exceeding 14 years.

(4) It is not a defence to a charge under this section that the person charged, believed that the child was of or over the age of 12 years.

(5) It is not a defence to a charge under this section that the child consented.

(6) In this section:

“child” means a person under the age of 12 years;

“doing an indecent act with or on a child” includes indecently assaulting the child.

59. Sexual conduct with young person under 16-(1) A person who has sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

(2) A person who attempts to have sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

(3) A person who does an indecent act with or on a young person is liable to imprisonment for a term not exceeding seven (7) years.

(4) No person can be convicted of a charge under this section if the person was married to the young person concerned at the time of the sexual connection or indecent act concerned.

(5) In this section:

“young person” means a person who is 12 years or over and under the age of 16 years; and

“doing an indecent act with or on a young person” includes indecently assaulting the young person.

60. Indecent assault - A person is liable to a term of imprisonment not exceeding five (5) years who indecently assaults another person.

61. Defence to charge under section 59-(1) It is a defence to a charge under section 59 if the person charged proves on the balance of probabilities that:

- (a) the person charged was under the age of 21 years at the time of the commission of the act; and
 - (b) before the time of the act concerned, person charged had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and
 - (c) at the time of the act concerned, person charged believed on reasonable grounds that the young person was of or over the age of 16 years; and
 - (d) the young person consented.
- (2) Except to the extent provided in subsection (1):
- (a) it is not a defence to a charge under section 59 that the young person concerned consented; and
 - (b) it is not a defence to a charge under section 59 that the person charged believed that the young person concerned was of or over the age of 16 years.

62. Using threats of intimidation for the purpose of sexual conduct-(1) A person commits an offence punishable by imprisonment for a term not exceeding five (5) years who, by the use of threats or intimidation, compels another to do or omit any act preparatory to and for the purpose of doing any indecent act with or involving that person, or any other person, or upon himself or herself.

(2) It is a defence to a charge under subsection (1) if the person compelled is 18 years or more, and despite the compulsion consents to any subsequent sexual conduct to which the compulsion related.

63. Sexual conduct with severely intellectually disabled person-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who has or attempts to have sexual connection with any person who is severely intellectually disabled.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who indecently assaults or attempts to indecently assault any person who is severely intellectually disabled.

(3) A person is severely intellectually disabled if the person is by reason of that condition incapable of living an independent life or of guarding himself or herself against serious exploitation or common physical dangers.

64. Voyeurism-(1) A person is liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 500 penalty units or to both, who knowingly observes a person engaged in a private act, without the consent of the person being observed for that purpose and knowing that the person being observed does not consent to being observed for that purpose.

(2) A person is liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 500 penalty units or to both, who knowingly films another person who is engaged in a private act, without the consent of the person being filmed to being filmed for that purpose.

(3) A person is liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 500 penalty units or to both, who knowingly films another person's private parts, without the consent of the person being filmed to being filmed for that purpose.

(4) A person is liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 500 penalty units or to both, who knowingly installs a device, or constructs or adapts the fabric of any building, for the purpose of facilitating the observation or filming of another person with the intention of enabling that person or any other person to commit the offences in subsections (1), (2) or (3).

(5) In this section:

“private parts” means a person’s genital area or anal area, whether bear or covered by underwear; and

“engaged in a private act” means circumstances where the person is in a state of undress, using toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity; and

“filming” means where the person causes one (1) or more image to be recorded or to be transmitted for the purpose of enabling the person or another person to observe those images.

65. Adultery by married persons - A married person who commits adultery is liable to a fine not exceeding 1 penalty unit.

66. Adultery with married person - A person who commits adultery with a person he or she knows to be married is liable to a fine not exceeding 1 penalty unit.

67. Sodomy-(1) A person who commits sodomy is liable:

(a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding seven (7) years; or

(b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding seven (7) years; or

(c) in any other case, to imprisonment for a term not exceeding five (5) years.

(2) Sodomy is complete upon penetration.

(3) It is no defence to a charge under this section that the other party consented.

68. Attempts to commit sodomy - A person is liable to imprisonment for a term not exceeding five (5) years who:

(a) attempts to commit sodomy; or

(b) assaults any person with intent to commit sodomy.

PART VIII
CRIME AGAINST PUBLIC WELFARE

69. Criminal Nuisance-(1) A person commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which the person knew would endanger the lives, safety, or health of the public, or the life, safety or health of another person.

(2) Everyone who commits criminal nuisance is liable to imprisonment for a term not exceeding one (1) year.

70. Brothel keeping-(1) In this section, the term “brothel” means any house, room, set of rooms, or place of any kind whatever used for the purposes of prostitution, whether by one (1) woman or more.

(2) A person is liable to imprisonment for a term not exceeding 10 years who:

- (a) keeps or manages, or knowingly acts or assists in the management of, any brothel; or
- (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part of the premises to be used as a brothel; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a brothel, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a brothel.

71. Keeping place of resort for homosexual acts - A person is liable to imprisonment for a term not exceeding seven (7) years who:

- (a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or

- (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.

72. Prostitution-(1) A person is liable to imprisonment for a term not exceeding three (3) years who has sexual intercourse or sexual connection, or agrees, or offers to have sexual intercourse or sexual connection with another person for gain or reward.

(2) Despite anything in subsection (1), no woman or girl shall be convicted under this section in respect of any sexual intercourse or sexual connection with her husband.

73. Solicitation-(1) A person is liable to imprisonment for a term not exceeding five (5) years who offers or agrees to pay or reward monies to another person for sexual intercourse or sexual connection.

(2) Despite anything in subsection (1), no male shall be convicted under this section in respect of any sexual intercourse or sexual connection with his wife.

74. Living on earnings of prostitution - A person is liable to imprisonment for a term not exceeding 10 years who knowingly:

- (a) lives wholly or in part on the earnings of the prostitution of another person; or
- (b) solicits for any prostitute, whether or not the person receives any payment, reward or valuable consideration for so doing.

75. Procuring sexual intercourse - Everyone is liable to imprisonment for a term not exceeding seven (7) years who, for gain or reward, procures or agrees or offers to procure any woman or girl to have sexual intercourse with any male who is not her husband.

76. Indecent act in a public place-(1) A person is liable to imprisonment for a term not exceeding two (2) years who wilfully does any indecent act in any public place, or within view of any such place.

(2) It is a defence to a charge under this section if the person charged proves that he or she had reasonable grounds for believing that he or she would not be observed.

77. Indecent act with intent to insult or offend - A person is liable to imprisonment for a term not exceeding two (2) years who, with intent to insult or offend any person, does any indecent act in any place.

78. Bigamy-(1) A person who commits bigamy is liable to imprisonment for a term not exceeding 10 years.

(2) Bigamy is:

- (a) the act of a person who, being married goes through a form of marriage in Samoa with a third person; or
- (b) the act of a person who goes through a form of marriage in Samoa with any other person whom the person knows to be married; or
- (c) the act of a Samoan citizen, or a person ordinarily resident in Samoa, who, being married, goes through a form of marriage with a third person anywhere outside Samoa; or
- (d) the act of a Samoan citizen, or a person ordinarily resident in Samoa, who goes through a form of marriage anywhere outside Samoa with any other person whom the person knows to be married.

(3) It shall not be a defence to a charge of bigamy to prove that the form of marriage was invalid by reason of any act or omission of the person charged with bigamy.

79. Feigned marriage-(1) A person is liable to imprisonment for a term not exceeding five (5) years who goes through a form of marriage with any other person, knowing that the marriage will be void for any reason other than that one of the parties is already married.

(2) However, if the Judge is satisfied that the other person knew, at the time when the offence was committed, that the marriage would be void, the offender is liable to imprisonment for a term not exceeding two (2) years.

80. Misconduct in respect of human remains - A person is liable to imprisonment for a term not exceeding two (2) years who:

- (a) neglects to perform any duty imposed on the person by law or undertaken by the person with reference to the burial or cremation of any dead human body or human remains; or
- (b) improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not.

81. Distribution or exhibition of indecent matter-(1) A person is liable to imprisonment for a term not exceeding two (2) years who, without lawful justification or excuse:

- (a) sells, expose for sale, or otherwise distributes to the public any indecent model or object; or
- (b) exhibits or presents in or within view of any place to which the public have or are permitted to have access any indecent model or object or indecent show or performance; or
- (c) exhibits or presents in the presence of any person in consideration or expectation of any payment, or otherwise for gain, any indecent show or performance.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition or presentation might in the circumstances serve the public good, and whether there is

evidence of excess beyond what the public good requires; but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

(4) It is no defence that the person charged did not know that the model, object, show or performance to which the charge relates was indecent, unless that person also satisfies the Court:

- (a) that the person had no reasonable opportunity of knowing it; and
- (b) that in the circumstances the person's ignorance was excusable.

(5) No person shall be prosecuted for an offence against this section without the leave in writing of the Attorney-General, who before giving leave may make such inquiries as the Attorney-General thinks fit.

(6) This section does not apply to any document or matter to which the Indecent Publications Ordinance 1960 relates, whether the document or matter is indecent within the meaning of that Ordinance or not.

82. Publication, distribution or exhibition of indecent material on child-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who without lawful justification who does any of the following:

- (a) sells, or delivers by way of hire, or has in his or her possession for sale or hire, or otherwise distributes in public any indecent material on a child;
- (b) exhibits or presents in or within view of any place to which the public have or are permitted to have access any indecent material on a child;
- (c) exhibits or presents in the presence of any person in consideration or expectation of any payment, or otherwise for gain, any indecent material on a child;
- (d) prints or causes to be printed any indecent material on a child;
- (e) knowingly has in possession or publishes any indecent material on a child;

- (f) creates, draws, affixes, impresses, or exhibits, or causes to be created, drawn, affixed, impressed or exhibited, any indecent material on a child;
 - (g) communicate, exhibit, send, supply or transmit any indecent material on a child to another person, whether to a particular person or not;
 - (h) make an indecent material on a child available to access to any other person, whether by a particular person or not;
 - (i) produces indecent material for the purpose of its distribution through an electronic system;
 - (j) offers or makes available indecent material through an electronic system;
 - (k) distributes or transmits indecent material through an electronic system;
 - (l) procures or obtains indecent material through an electronic system for oneself or for another person; or
 - (m) possesses indecent material in an electronic system or on a data storage medium;
 - (n) knowingly obtains access, through information and communication technologies, to indecent material.
- (2) For the purpose of this section:
- “child” means a person 16 years and under;
- “child pornography”:
- (a) means pornographic material that depicts, presents or represents -
 - (i) a child engaged in sexually explicit conduct; or
 - (ii) a person appearing to be a child engaged in sexually explicit conduct; or
 - (iii) images representing a child engaged in sexually explicit conduct; and
 - (b) includes any audio, visual or text pornographic material.
- “electronic system” has the meaning under section 205;

“indecent material” means any book, newspaper, picture, film, photograph, child pornography, print, or writing, and any paper or other thing of any description whatsoever, which has printed or impressed upon it, or otherwise attached thereto, or appearing, shown, or exhibited in any manner whatsoever thereon, any indecent picture, illustration, or representation, or which unduly emphasises matters of sex, horror, crime, cruelty, or violence;

“film” film means a photographic film, and includes:

- (a) a cinematograph film; and
- (b) a videotape; and
- (c) any other material record or visual images that is capable of being used for the subsequent display of those images, - but does not include a videotape or cinematograph film in respect of which a certificate of approval is in force under the Indecent Publications Ordinance 1960 or under the Film Control Act 1978.

(3) It is a defence to a charge of an offence under subsection (1)(i) to (n) if the person establishes that the indecent material was stored for a bona fide law enforcement purpose and if so, the indecent material must be deleted as soon as it is not legally required anymore.

(4) No one shall be prosecuted for an offence against this section without the leave in writing of the Attorney-General, who before giving leave may make such inquiries as the Attorney-General thinks fit.

(5) It is no defence that the person charged under this section did not know that the document to which the charge relates was indecent, unless that person satisfies the Court:

- (a) that the person had no reasonable opportunity of knowing it; and
- (b) that in the circumstances the person’s ignorance was excusable.

(6) This section shall not apply to any document or matter to which the Indecent Publications Ordinance 1960 relates, whether the document or matter is indecent within the meaning of that Ordinance or not.

PART IX
CRIMES AGAINST THE PERSON

Division 1
Homicide

83. Standard of care required of persons under legal duties-(1) This section applies in respect of the legal duties specified in any of sections 84 to 89.

(2) For the purposes of this Part, a person is criminally responsible for:

(a) omitting to discharge or perform a legal duty to which this section applies; or

(b) neglecting a legal duty to which this section applies, only if, in the circumstances of the particular case, the omission or neglect is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies in those circumstances.

84. Duty to provide the necessaries of life-(1) A person who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself or herself from such charge, and unable to provide himself or herself with the necessaries of life, is (whether such charge is undertaken by him or her under any contract or is imposed upon him or her by law or by reason of his or her unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his or her life is endangered or his or her health permanently injured, by such omission.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his or her charge is endangered or his or her health permanently injured by such neglect.

85. Duty of parent or guardian to provide necessaries-(1)

A person who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 18 years, being a child in his or her actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his or her life is endangered or his or her health permanently injured, by such omission.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his or her health permanently injured by such neglect.

86. Abandoning child under six (6) years - A person is liable to imprisonment for a term not exceeding seven (7) years who unlawfully abandons or exposes any child under the age of six (6) years.

87. Duty of persons doing dangerous acts - A person who undertakes to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, and care in doing any such act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

88. Duty of persons in charge of dangerous things - A person who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes, operates, or maintains anything whatever, which, in the absence of precaution or care, may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

89. Duty to avoid omissions dangerous to life - A person who undertakes to do any act the omission to do which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

90. Homicide defined - Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

91. Killing of a child-(1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the umbilical cord is severed or not.

(2) The killing of such child is homicide if it dies in consequence of injuries received before, during, or after birth.

92. Culpable homicide-(1) Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person:

- (a) by an unlawful act; or
- (b) by an omission without lawful excuse to perform or observe any legal duty; or
- (c) by both (a) and (b) combined; or
- (d) by causing that person by threats or fear of violence, or by deception, to do an act which causes that person's death; or
- (e) by wilfully frightening a child under the age of 16 years or a sick person.

(3) Except as provided in section 110, culpable homicide is either murder or manslaughter.

(4) Homicide that is not culpable is not an offence.

(5) Where an act or omission constitutes an offence under the Road Traffic Ordinance 1960 or any other Act other than this Act, nothing in the Road Traffic Ordinance 1960 or any other Act prevents the prosecution and punishment of an offender under this Act for murder or manslaughter.

93. Death must occur within a year and a day-(1) No person is criminally responsible for the killing of another person unless the death takes place within a year and a day after the cause of death.

(2) The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

(3) Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased.

(4) Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

94. Killing by influence on the mind - Except by wilfully frightening a child aged under 16 years or a sick person, no person is criminally responsible:

- (a) for the killing of another person by any influence on the mind alone; or
- (b) for the killing of another person by any disorder or disease arising from such influence.

95. Acceleration of death - A person who by any act or omission causes the death of another person kills that person, although the effect to that person was merely to hasten his or her death while labouring under some disorder or disease arising from some other cause.

96. Causing death that might have been prevented - A person who by any act or omission causes the death of another person kills that person, although death from that cause might have been prevented by resorting to proper means.

97. Causing injury the treatment of which causes death - A person who causes to another person any bodily injury, in itself of a dangerous nature, from which death results,

kills that person, although the immediate cause of death is the act or omission of some other person or some other independent intervening event.

98. Indirect cause of death - A person whose act or omission results in the death of another person shall be deemed to have caused the death of that other person, although the immediate cause of death is the act or omission of some other person or some other independent intervening event.

99. Murder defined - Culpable homicide is murder in each of the following cases:

- (a) if the offender means to cause the death of the person killed;
- (b) if the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not;
- (c) if the offender -
 - (i) means to cause death; or
 - (ii) means to cause bodily injury known to the offender to be likely to cause death, and is reckless whether death ensues or not,

to one person, and by accident, mistake or otherwise kills another person, though he or she does not mean to hurt the person killed; or

- (d) if the offender for any unlawful object does an act that he or she knows to be likely to cause death, and thereby kills any person, though he or she may have desired that his or her object should be effected without hurting any person.

100. Further definition of “murder”-(1) Culpable homicide is also murder in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue:

- (a) if the offender means to cause grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2),

or facilitating the flight or avoiding the detection of the offender upon the commission or attempted commission of the offences, or for the purpose of resisting lawful apprehension in respect of any offence whatsoever, and death ensues from grievous bodily injury; or

- (b) if the offender administers any stupefying or overpowering thing for any of the purposes in paragraph (a), and death ensues from the effects thereof;
- (c) if he or she by any means wilfully stops the breath of any person for any of the purposes in paragraph (a), and death ensues from such stopping of breath.

(2) The offences referred to in subsection (1) are those specified in the following provisions of this Act, namely:

- (a) treason or communicating secrets;
- (b) sabotage;
- (c) piracy;
- (d) piratical acts;
- (e) escape or rescue from prison or lawful custody or detention;
- (f) sexual violation;
- (g) murder;
- (h) abduction;
- (i) kidnapping;
- (j) burglary;
- (k) robbery;
- (l) arson.

101. Provocation-(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) Anything done by the deceased to the person who caused death may be provocation:

- (a) if the act was sufficient to cause a person having the power of self-control of a reasonable person to be deprived of the power of self-control; and

- (b) it did in fact deprive the defendant of the power of self-control and cause him or her to kill the deceased; and
 - (c) the retaliation was reasonably proportionate to the act of provocation.
- (3) Despite subsection (2)(a) nothing done will be provocation unless the defendant:
- (a) feared serious violence from the person killed against the defendant or another identifiable person; or
 - (b) the thing done constituted circumstances of a grave nature.
- (4) The fact alone of a statement from any person as to the sexual infidelity of the person killed despite the provisions of subsection (2)(a) is not to be evidence of provocation, but otherwise whether there is any evidence of provocation is a matter of law.
- (5) Any statement or word alone is not provocation that can reduce murder to manslaughter.

102. Manslaughter - Except as provided in section 110, culpable homicide not amounting to murder is manslaughter.

103. Punishment of murder - A person who commits murder shall upon conviction be sentenced to imprisonment for life.

104. Attempt to murder - A person who attempts to commit murder is liable to imprisonment for life.

105. Counselling or attempting to procure murder - A person is liable to imprisonment for life who incites, counsels, or attempts to procure any person to murder any other person in Samoa, when that murder is not in fact committed.

106. Conspiracy to murder-(1) A person is liable to imprisonment for life who conspires or agrees with any person to murder any other person, whether the murder is to take place in Samoa or another country.

(2) In this section, the expression “to murder” includes to cause the death of another person out of Samoa in circumstances that would amount to murder if the act were committed in Samoa.

(3) A person is liable to imprisonment for life:

- (a) who counsels or procures any other person to commit suicide, if that other person actually commits suicide in consequence thereof; or
- (b) or who aids or abets any person in the commission of suicide.

107. Accessory after the fact to murder - A person is liable to imprisonment for a term not exceeding seven (7) years who is an accessory after the fact to murder.

108. Punishment of manslaughter - A person who commits manslaughter is liable to imprisonment for life.

109. Killing unborn child-(1) A person is liable to imprisonment for a term not exceeding 14 years who causes the death of any child that has not become a human being in such a manner that the person would have been guilty of murder if the child had become a human being.

(2) A person is liable to imprisonment for a term not exceeding five (5) years who causes the death of any child that has not become a human being in such a manner that the person would have been guilty of manslaughter if the child had become a human being.

(3) No person commits any crime who before or during the birth of any child causes the child’s death by means employed in good faith for the preservation of the life of the mother.

110. Infanticide-(1) A woman is guilty of infanticide, and not of murder or manslaughter, is liable to imprisonment for a term not exceeding five (5) years, if:

- (a) she causes the death of any child of hers within 12 months from the date of its birth in a manner that amounts to culpable homicide; and

(b) at the time of the offence the balance of her mind was disturbed, by reason of her not having fully recovered from the effect of giving birth to that child, or by reason of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she should not be held fully responsible.

(2) Where upon the trial of a woman for the murder or manslaughter of any child of hers under the age of 12 months there is evidence that would support a verdict of infanticide, the assessors may return a verdict of infanticide instead of a verdict of murder or manslaughter, and the accused shall be liable accordingly.

(3) Where the woman is guilty of infanticide, the Judge must order that the woman be examined by two (2) medical practitioners and the following provisions apply:

(a) pending the receipt by the Judge of certificates from the medical practitioners, the woman must be detained in a place that the Judge thinks appropriate, and that place must be one of the following -

(i) a private or public hospital or a treatment centre within the meaning of the Mental Health Act 2007; or

(ii) a prison within the meaning of the Prisons Act 1967;

(b) if each of the medical practitioners certifies that the balance of her mind is no longer disturbed and that she is in no need of care and treatment in a hospital, the Judge must order that the woman be discharged from custody immediately;

(c) where no certificate may be given under paragraph (b), in considering all the circumstances of the case and the medical evidence of the two (2) medical practitioners, the Court may make one of or a combination of the following orders -

(i) detain the person as is an “Inpatient Treatment Order” had been made under section 15 of the Mental Health Act 2007; or

(ii) release the person, as if a Community Treatment Order had been made under section 11 of the Mental Health Act 2007.

(4) Despite anything in the Mental Health Act 2007 no person subject to an order made under subsection (3) shall be released on leave or discharge from any institution without an order of the Court that made the order detaining that person.

(5) The fact that by virtue of this section any woman has not been or is not liable to be convicted of murder or manslaughter, whether or not she has been or is liable to be convicted of infanticide, shall not affect the question whether the homicide amounted to murder or manslaughter in the case of any other party to it.

Division 2 **Abortion**

111. “Miscarriage” defined - In this Division “miscarriage” means:

- (a) the destruction or death of an embryo or foetus after implantation; or
- (b) the premature expulsion or removal of an embryo or foetus after implantation, otherwise than for the purpose of inducing the birth of a foetus believed to be viable or removing a foetus that has died.

112. Procuring abortion by any means-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to procure the miscarriage of any woman or girl, whether she is pregnant or not:

- (a) unlawfully administers to or causes to be taken by her any poison or any drug or any noxious thing; or
- (b) unlawfully uses on her any instrument; or
- (c) unlawfully uses on her any means other than any means referred to in paragraph (a) or (b).

(2) The woman or girl shall not be charged as a party to an offence against this section.

113. Female procuring her own miscarriage - A woman or girl is liable to imprisonment for a term not exceeding seven (7) years who with intent to procure miscarriage, whether she is with child or not:

- (a) unlawfully administers to herself, or permits to be administered to her, any poison or any drug or any noxious thing; or
- (b) unlawfully uses on herself, or permits to be used on her, any instrument; or
- (c) unlawfully uses on herself, or permits to be used on her, any other means whatsoever.

114. Supplying means of procuring abortion - A person is liable to imprisonment for a term not exceeding seven (7) years who unlawfully supplies or procures any poison or any drug or any noxious thing, or any instrument or other thing, whether of a like nature or not, believing that it is intended to be unlawfully used to procure miscarriage.

115. Effectiveness of means used immaterial - Sections 112 to 114 shall apply whether or not the poison, drug, thing, instrument, or means administered, taken, used, supplied, or procured was in fact capable of procuring miscarriage.

116. Meaning of “unlawfully” - In sections 112 to 114, any act specified in either of those sections is done unlawfully unless, in the case of a pregnancy of not more than 20 weeks’ gestation, the person doing the act:

- (a) is a registered medical practitioner; and
- (b) believes that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl.

117. Concealing dead body of a child - A person is liable to imprisonment for a term not exceeding two (2) years who disposes of the dead body of any child in any manner with

intent to conceal the fact of its birth, whether the child died before, during, or after birth.

PART X
ASSAULTS AND INJURIES
TO THE PERSON

118. Causing serious bodily injury with intent-(1) A person is liable to imprisonment for a term not exceeding 10 years who, with intent to cause grievous bodily harm to another person, wounds, maims, disfigures, or causes grievous bodily harm to that other person.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who is assaulting another person or acting with reckless disregard for the safety of any other person causes grievous bodily harm.

119. Causing injury-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to cause actual bodily harm causes actual bodily harm to another person.

(2) A person is liable to imprisonment for a term not exceeding five (5) years who causes actual bodily harm to another person by assaulting that other person, or acting with reckless disregard for the safety of any other person.

120. Injuring by reckless endangerment - A person is liable to imprisonment for a term not exceeding five (5) years who by any act, or by omitting to perform a legal duty in circumstances reasonably likely to cause injury to any person, injures another person.

121. Injuring in the course of criminal conduct-(1) A person is liable to imprisonment for a term not exceeding 10 years who with intent:

- (a) to commit or facilitate the commission of any crime;
- or
- (b) to avoid the detection of himself or herself or of any other person in the commission of any crime; or

- (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any crime,

wounds, maims, disfigures, or causes grievous bodily harm to any person, or stupefies or renders unconscious any person, or by any violent means renders any person incapable of resistance.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who, with any such intent under subsection (1), injures any person.

122. Aggravated assault-(1) A person is liable to imprisonment for a term not exceeding five (5) years who assaults any other person with intent:

- (a) to commit or facilitate the commission of any crime;
or
- (b) to avoid the detection of himself or herself or of any other person in the commission of any crime; or
- (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any crime.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who assaults any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his duty.

123. Common assault - A person is liable to imprisonment for a term not exceeding one (1) year who assaults any other person.

124. Disabling - A person is liable to imprisonment for a term not exceeding one (1) year who, wilfully and without lawful justification or excuse, stupefies or renders unconscious any other person.

125. Setting traps-(1) A person is liable to imprisonment for a term not exceeding five (5) years who, with intent to injure, or with reckless disregard for the safety of others, sets or places or causes to be set or placed any trap or device that is likely to injure any person.

(2) A person is liable to imprisonment for a term not exceeding three (3) years who, being in occupation or possession of any place where any such trap or device has been set or placed, knowingly and wilfully permits it to remain there in such a condition that any person is likely to be injured by it.

126. Impeding rescue-(1) A person is liable to imprisonment for a term not exceeding five (5) years who, without lawful justification or excuse, prevents or impedes or attempts to prevent or impede any person who is attempting to save his own life or the life of any other person.

(2) No one is guilty of an offence against subsection (1) who does any such act under that subsection in the course of saving his own life or the life of any other person.

127. Using firearm against law enforcement officer-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who uses any firearm in any manner whatever against any police officer, or any traffic officer, or any prison officer, acting in the course of the police officer's duty knowing that, or being reckless whether or not, that person is a police or a traffic officer or a prison officer so acting.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who uses any firearm in any manner whatever with intent to resist the lawful arrest or detention of himself or herself or of any other person.

128. Using firearm in commission of crime - A person is liable to imprisonment for a term not exceeding five (5) years who:

- (a) in committing any crime, uses any firearm; or
- (b) while committing any crime, has any firearm with him or her in circumstances that prima facie show an intention to use it in connection with that crime.

129. Threats to kill or do grievous bodily harm - A person is liable to imprisonment for a term not exceeding three (3) years who sends or causes to be received, knowing the contents thereof, any letter or writing containing threats to kill or do bodily harm to any person, or who verbally makes a threat to kill or do bodily harm to any person.

130. Kidnapping - A person is liable to imprisonment for a term not exceeding 10 years who unlawfully carries off, takes or detains any other person without that other person's freely and voluntarily given consent, or with consent obtained by fraud or duress, with intent:

- (a) to cause that other person to be confined, or imprisoned; or
- (b) to hold that other person for ransom or to service.

131. Abduction of a child under 16 - A person is liable to imprisonment for a term not exceeding 10 years who, with intent to deprive any parent or guardian or other person having the lawful care of charge of any child under the age of 16 years of the possession of the child, or with intent to have sexual connection with any child under the age of 16 years old, unlawfully:

- (a) takes or entices away or detains the child; or
- (b) receives the child, knowing that the child has been so taken or enticed away or detained.

(2) It is immaterial whether or not the child consents, or is taken or goes at the child's own suggestion, or whether or not the offender believed the child to be of or over the age of 16.

(3) No person shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.

PART XI
CRIMES AGAINST THE
ADMINISTRATION OF JUSTICE

132. Interpretation - In this Part, unless the context otherwise requires:

“**bribe**” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“**corruptly**” means a person acts corruptly in relation to any bribe where he or she knows or is reckless to the fact that the bribe is intended to influence the person bribed to act or omit to act in breach of any oath of office, or otherwise than in accordance with his or her legal obligations or duties in relation to any public office;

“**judicial officer**” means a Judge of any court, or a District Court Judge, Coroner, Faamasino Fesosoani, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

“**law enforcement officer**” means any constable, or any person employed in the detection or prosecution or punishment of offenders;

“**official**” means any person in the service of the Government of Samoa (whether that service is honorary or not, and whether it is within or outside Samoa), or any member or employee of any local authority or public body.

133. Judicial corruption-(1) A judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the judicial officer in his or her judicial capacity.

(2) A judicial officer, and every Registrar or Deputy Registrar of any court, is liable to imprisonment for a term not exceeding seven (7) years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for

himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity, not being an act or omission to which subsection (1) applies.

134. Bribery of judicial officer, etc-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by a judicial officer in his or her judicial capacity.

(2) Anyone is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any court in respect of any act or omission by him or her in his official capacity, not being an act, or omission to which subsection (1) applies.

135. Corruption and bribery of a Minister of the Government of Samoa-(1) A Minister, Associate Minister or Chief Executive Officer of the Government of Samoa is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister, Associate Minister or Chief Executive Officer of the Government of Samoa in respect of any act or omission by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.

(3) No person shall be prosecuted for an offence against this section without the consent of the Attorney-General of Samoa. Notice of the intention to apply for such consent shall be given

to the person whom it is intended to prosecute, and he or she shall have an opportunity of being heard against the application.

136. Corruption and bribery of member of Parliament-(1)

A Member of Parliament is liable to imprisonment for a term not exceeding seven (7) years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a member of Parliament.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Member of Parliament in respect of any act or omission by him or her in his or her capacity as a Member of Parliament.

(3) No person shall be prosecuted for an offence against this section without the consent of the Attorney-General of Samoa. Notice of the intention to apply for such consent shall be given to the person whom it is intended to prosecute, and the person shall have an opportunity of being heard against the application.

137. Corruption and bribery of law enforcement officer-(1)

A law enforcement officer is liable to imprisonment for a term not exceeding seven (7) years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by the law enforcement officer in his or her official capacity.

138. Corruption and bribery of official-(1) An official is liable to imprisonment for a term not exceeding seven (7) years who, whether within Samoa or another country, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in

respect of any act done or omitted, or to be done or omitted, by the official in his or her official capacity.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by the official in his or her official capacity.

139. Perjury-(1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of witness's evidence upon oath or affirmation, whether such evidence is given in open court or by affidavit or otherwise, such assertion being known to the witness to be false.

(2) A proceeding is judicial within the meaning of this section which is held before any Court, or before any judicial officer or other person having power to take evidence on oath or affirmation.

(3) A person who commits perjury is liable to imprisonment for a term not exceeding five (5) years.

140. Fabricating evidence - A person is liable to imprisonment for a term not exceeding three (3) years who, with intent to mislead any Court of Justice or any judicial officer in the exercise of his or her functions as such, fabricates evidence by any means other than perjury.

141. Conspiring to defeat justice - A person is liable to imprisonment for a term not exceeding three (3) years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

142. Breaking prison - A person is liable to imprisonment for a term not exceeding five (5) years who by force or violence breaks any prison with intent to set at liberty himself, herself or any other person detained therein.

143. Escape-(1) Anyone is liable to imprisonment for a term not exceeding two (2) years who, being in lawful custody, whether in a prison or another place escapes from it.

(2) In this section and section 144 “lawful custody” means the detention of a person by due process of law, whether the person be under arrest, police or gaol escort, serving a term of imprisonment or otherwise; custody under an irregular warrant or other irregular process shall be deemed to be lawful.

144. Rescue - A person is liable to imprisonment for a term not exceeding two (2) years who rescues any person from lawful custody, whether in a prison or another place, or who assists any person to escape from such custody, or who aids, harbours, conceals, or shelters any person who has escaped from such custody, knowing that person to have so escaped.

145. Threatening words or behaviour to member of parliament or officer - A person is liable to imprisonment for a term not exceeding six (6) months or to a fine not exceeding 500 penalty units who uses any threatening, abusive or insulting words or behaviour towards or in respect of any member of parliament or any officer or employee of the Government, while he or she is performing any official duty or exercising any official power.

PART XII
ORGANISED CRIME, CORRUPTION
AND TRANSNATIONAL OFFENDING

146. Participation in organised criminal group-(1) A person commits an offence and is liable to imprisonment for a term not exceeding 10 years who participates in an organised criminal group:

- (a) knowing that three (3) or more people share any one (1) or more of the objectives (the particular objective or particular objectives) described in subsection (2)(a) - (d) (whether or not the person himself or herself shares the particular objective or particular objectives); and

- (b) either knowing that his or her conduct contributes, or being reckless as to whether his or her conduct may contribute, to the occurrence of any criminal activity; and
 - (c) either knowing that the criminal activity contributes, or being reckless as to whether the criminal activity may contribute, to achieving the particular objective or particular objectives of the organised criminal group.
- (2) For the purposes of this Act, a group is an organised criminal group if it is a group of three (3) or more people who have as their objective or one of their objectives:
- (a) obtaining material benefits from the commission of offences that are punishable by imprisonment; or
 - (b) obtaining material benefits from conduct outside Samoa that, if it occurred in Samoa, would constitute the commission of offences that are punishable by imprisonment; or
 - (c) the commission of offences punishable by imprisonment of a term of five (5) years or more; or
 - (d) conduct outside Samoa that, if it occurred in Samoa, would constitute the commission of offences that are punishable by imprisonment of a term of five (5) years or more.
- (3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not:
- (a) some of them are subordinates or employees of others; or
 - (b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or
 - (c) its membership changes from time to time.

147. Corrupt use of official information - An official is liable to imprisonment for a term not exceeding seven (7) years who, whether within Samoa or elsewhere, corruptly uses or

discloses any information, acquired by him or her in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.

148. Use or disclosure of personal information-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who:

- (a) having received personal information, being information that comes into that person's possession as a result of the commission of an offence against this Act; and
- (b) knowing that the information has been disclosed in contravention of this Act,

uses or discloses that information to obtain, directly or indirectly, an advantage or pecuniary gain for that person or any other person.

(2) It is a defence to a charge under this section if the person charged proves that the person was legally authorised to use or disclose the information.

(3) In this section, the term "personal information" means any information about an identifiable natural person, including a deceased natural person.

149. Bribery of foreign public official: definitions - For the purposes of this part of the Act:

"benefit" means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

"foreign country" includes:

- (a) a territory for whose international relations the government of a foreign country is responsible; and
- (b) an organised foreign area or entity including an autonomous territory or a separate customs territory.

"foreign government" includes all levels and subdivisions of government, such as local, regional, and national government;

“foreign public agency” means any person or body, wherever situated, that carries out a public function under the laws of a foreign country;

“foreign public enterprise” means:

(a) a company, wherever incorporated, that -

(i) a foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint one (1) or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or

(b) a person or body (other than a company), wherever situated, that -

(i) a foreign government is able to control or dominate (whether by reason of its ability to appoint the person or one (1) or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) applies.

“foreign public official” includes any of the following:

(a) a member or officer of the executive, judiciary, or legislature of a foreign country;

(b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation;

(c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation.

“public international organisation” means any of the following organisations, wherever situated:

- (a) an organisation of which two (2) or more countries or two (2) or more governments are members, or represented on the organisation;
- (b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing two (2) or more such organisations;
- (c) an organisation constituted by persons representing two (2) or more countries or two (2) or more governments;
- (d) an organisation that is part of an organisation referred to in any of paragraphs (a) to (c).

“routine government action”, in relation to the performance of any action by a foreign public official, does not include:

- (a) any decision about -
 - (i) whether to award new business; or
 - (ii) whether to continue existing business with any particular person or body; or
 - (iii) the terms of new business or existing business; or
- (b) any action that is outside the scope of the ordinary duties of that official.

150. Bribery in Samoa of foreign public official-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity, whether or not the act or omission is within the scope of the official’s authority, in order to:

- (a) obtain or retain business; or
- (b) obtain any improper advantage in the conduct of business.

- (2) This section does not apply if:
 - (a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and
 - (b) the value of the benefit is small.
- (3) This section is subject to section 146.

151. Bribery outside Samoa of foreign public official-(1) A person commits an offence who, being a person described in subsection (2), does, outside Samoa, any act that would, if done in Samoa, constitute an offence against section 150.

- (2) Subsection (1) applies to a person who is:
 - (a) a citizen of Samoa; or
 - (b) ordinarily resident in Samoa; or
 - (c) a body corporate incorporated in Samoa; or
 - (d) a corporation sole incorporated in Samoa.

(3) A person who is convicted of an offence against this section is liable to the same penalty to which the person would have been liable if the person had been convicted of an offence against section 150.

- (4) This section is subject to section 152.

152. Exception for lawful acts in country of foreign public official-(1) Sections 150 and 151 do not apply if the act that is alleged to constitute an offence under either of those sections:

- (a) was done outside Samoa; and
- (b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

(2) If a person is charged with an offence under sections 150 or section 151, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the laws of the foreign country referred to in subsection (1)(b).

PART XIII
SMUGGLING AND TRAFFICKING
IN PEOPLE

153. Terms used in this Part of the Act - In this part, unless the context otherwise requires:

“act of coercion against the person” includes:

- (a) abducting the person;
- (b) using force in respect of the person;
- (c) harming the person; or
- (d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person.

“act of deception” includes fraudulent action;

“arranges for an unauthorised migrant to be brought to another country” includes:

- (a) organises or procures the bringing to a another country;
- (b) recruits for bringing to that or other country; or
- (c) carries to that or other country.

“arranges for an unauthorised migrant to enter another country” includes:

- (a) organises or procures the entry into another country;
- (b) recruits for entry into that or other country;
- (c) carries into that or other country.

“document” includes a thing that is or is intended to be:

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document.

“harming of a person” means causing harm of any kind to the person; and (in particular) includes:

- (a) causing physical, psychological, or financial harm to the person;
- (b) sexually mistreating the person;
- (c) causing harm to the person’s reputation, status, or prospects.

“unauthorised migrant”, in relation to another country, means a person who is neither a citizen of the other country nor in possession of all the documents required by or under the law of that or other country for the person’s lawful entry into that or other country.

154. Smuggling migrants-(1) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to enter Samoa or any other country, if the person:

- (a) does so for a material benefit; and
- (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

(2) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to be brought to Samoa or any other country, if the person:

- (a) does so for a material benefit; and
- (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and

(c) either -

(i) knows that the person intends to try to enter that other country; or

(ii) is reckless as to whether the person intends to try to enter that other country.

(3) Proceedings may be brought under subsection (1) or subsection (2) even if the unauthorised migrant did not in fact enter or was not brought to the country concerned.

(4) A person is liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding 100 penalty units or to both, who knowingly facilitates the continued presence or an unauthorised person in a receiving country in order to obtain a material benefit.

155. Trafficking in people by means of coercion or deception-(1) A person is liable to imprisonment for a term not exceeding 14 years who:

- (a) arranges the entry of a person into Samoa or any other country by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both; or
 - (b) arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other country of a person, knowing that the person's entry into Samoa or that other country was arranged by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both.
- (2) Proceedings may be brought under this section even if the person coerced or deceived:
- (a) did not in fact enter the state concerned; or (as the case may be);
 - (b) was not in fact received, concealed, or harboured in the state concerned.
- (3) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the state concerned were accomplished without an act of coercion or deception.

156. Aggravating factors-(1) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 154 or 155, a court must take into account:

- (a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or to or of any other person) occurred during the commission of the offence; or
- (b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group (within the meaning of section 146); or
- (c) whether a person in respect of whom the offence was committed was subjected to inhuman or degrading treatment as a result of the commission of the offence; or

- (d) if during the proceedings concerned the person was convicted of the same offence in respect of two (2) or more people, the number of people in respect of whom the offence was committed.
- (2) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 155, a court must also take into account:
 - (a) whether a person in respect of whom the offence was committed was subjected to exploitation (for example, sexual exploitation, a requirement to undertake forced labour, or the removal of organs) as a result of the commission of the offence;
 - (b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years;
 - (c) whether the person convicted committed the offence, or took actions that were part of it, for a material benefit.
- (3) The examples in paragraph (a) of subsection (2) do not limit the generality of that paragraph.
- (4) This section does not limit the matters that a court may take into account when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 154 or section 155.

157. Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour-(1) A person is liable to imprisonment for a term not exceeding 14 years who:

- (a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of -
 - (i) the sexual exploitation of the person; or
 - (ii) the removal of body parts from the person; or

- (iii) the engagement of the person in forced labour; or
- (b) engages a person under the age of 18 years in forced labour; or
- (c) permits a person under the age of 18 years to be engaged in forced labour; or
- (d) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of -
 - (i) the sexual exploitation of the person; or
 - (ii) the removal of body parts from the person; or
 - (iii) the engagement of the person in forced labour; or
- (e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of -
 - (i) the sexual exploitation of the person; or
 - (ii) the removal of body parts from the person for a material benefit; or
 - (iii) the engagement of the person in forced labour; or
- (f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of -
 - (i) the sexual exploitation of the person; or
 - (ii) the removal of body parts from the person for a material benefit; or
 - (iii) the engagement of the person in forced labour; or
- (g) induces a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge) for the purpose of -
 - (i) the sexual exploitation of the other person; or

- (ii) the removal of body parts from the other person; or
- (iii) the engagement of the other person in forced labour; or
- (h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (g); or
- (i) agrees or offers to do an act stated in any of paragraphs (a) to (h).

(2) It is a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.

(3) For the purposes of subsection (1), sexual exploitation, in relation to a person, includes the following acts:

- (a) the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities (whether real or simulated);
- (b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus, or breasts (not being an act described in subsection (4) or subsection (5));
- (c) the person's participation in a performance or display (not being an act described in subsection (4)) that -
 - (i) is undertaken for a material benefit; and
 - (ii) involves the exposure of the person's genitalia, anus, or breasts;
- (d) the person's undertaking of an activity (such as, employment in a restaurant) that -
 - (i) is undertaken for a material benefit; and
 - (ii) involves the exposure of the person's genitalia, anus, or breasts.

(4) For the purposes of paragraphs (b) and (c) of subsection (3), sexual exploitation, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.

(5) For the purposes of subsection (3)(b), “sexual exploitation”, in relation to a person, does not include the taking or transmission of images of the person’s genitalia, anus, or breasts for the purpose of depicting a medical condition, or a surgical or medical technique, for the instruction or information of health professionals.

(6) For the purposes of subsection (3)(b), “sexual exploitation”, in relation to a person, does not include the taking or transmission of images of the person’s genitalia, anus, or breasts if the images are honestly intended:

- (a) to provide medical or health education; or
- (b) to provide information relating to medical or health matters; or
- (c) to advertise a product, instrument, or service intended to be used for medical or health purposes.

(7) The person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

(8) This section does not limit or affect the generality of section 154 and 155.

158. Attorney General’s consent to prosecutions required-

(1) Proceedings for an offence against this Part of the Act cannot be brought in a court in Samoa without the Attorney-General’s consent.

(2) A person alleged to have committed an offence against section 154, 155 or section 157 may be arrested, or a warrant for the person’s arrest may be issued and executed, and the person be remanded in custody or on bail, even though the Attorney-General’s consent to the bringing of proceedings against the person has not been obtained.

PART XIV
CRIMES AGAINST THE
RIGHTS OF PROPERTY

159. Interpretation - In this Part, unless the context otherwise requires:

“dishonestly”, in relation to an act or omission, means done or omitted without a belief that there was express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority;

“document” means a document, or part of a document, in any form; and includes, without limitation:

- (a) any paper or other material used for writing or printing that is marked with matter capable of being read; or
- (b) any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photostatic negative; or
- (c) any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored (whether temporarily or permanently), or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced; or
- (d) any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or
- (e) any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information.

“obtain”, in relation to any person, means obtain or retain for the person or for any other person.

160. Matters of ownership-(1) For the purposes of this Part, a person is to be regarded as the owner of any property that is stolen if, at the time of the theft, that person has:

- (a) possession or control of the property; or
- (b) any interest in the property; or
- (c) the right to take possession or control of the property.

(2) An owner of any property may be guilty of theft against another owner of that property.

(3) Shellfish of all types are capable of being stolen when in oyster beds, marine farms, layings, and fisheries that are the property of any person and that are sufficiently marked out or shown as such property.

(4) Electricity is property capable of being stolen; and a person commits theft who dishonestly takes, consumes or uses any electricity.

161. Theft or stealing-(1) Theft or stealing is the act of:

- (a) dishonestly taking any property with intent to deprive any owner permanently of that property or of any interest in that property; or
- (b) dishonestly, using or dealing with any property with intent to deprive any owner permanently of that property or of any interest in that property after obtaining possession of, or control over, the property in whatever manner.

(2) An intent to deprive any owner permanently of property includes an intent to deal with property in such a manner that:

- (a) the property cannot be returned to any owner in the same condition; or
- (b) any owner is likely to be permanently deprived of the property or of any interest in the property.

(3) For tangible property, theft is committed by a taking when the offender moves the property or causes it to be moved.

162. Theft by person in special relationship-(1) This section applies to any person who has received or is in possession of, or has control over, any property on terms or in circumstances that require the person:

- (a) to account to any other person for the property, or for any proceeds arising from the property; or

(b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.

(2) A person to whom subsection (1) applies commits theft who fails to account to the other person as so required or deals with the property, or any proceeds of the property, otherwise than in accordance with those requirements.

(3) This section applies whether or not the person was required to deliver over the identical property received or in the person's possession or control.

(4) For the purposes of subsection (1), it is a question of law whether the circumstances required any person to account or to act in accordance with any requirements.

163. Theft of animals - A person commits theft if he or she kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

164. Theft by spouse or partner - A person may be convicted of theft of another person's property even though those persons were married to each other at the time of the theft.

165. Punishment of theft - A person who is convicted of theft is liable as follows:

- (a) in the case of a theft by person in special relationship under section 162, to imprisonment for a term not exceeding 10 years; or
- (b) if the value of the property stolen exceeds \$1,000, to imprisonment for a term not exceeding seven (7) years; or
- (c) if the value of the property stolen exceeds \$500 but does not exceed \$1,000, to imprisonment for a term not exceeding two (2) years; or
- (d) if the value of the property stolen does not exceed \$500, to imprisonment for a term not exceeding one (1) year; or

- (e) if the property stolen is property stolen by a clerk or servant which is owned by his or her employer or is in the possession of his or her employer, to imprisonment for a term not exceeding 10 years; or
- (f) if the property stolen is property in the possession of the offender as a clerk or servant, or as an officer or employee of the Government of Samoa or of any local authority or public body, or as a constable, to imprisonment for a term not exceeding 10 years.

166. Ineffectual defences to charge of theft - Without in any way limiting the generality of the foregoing definition of theft, a person is deemed guilty of theft despite the fact:

- (a) that at the time of the theft he or she was in lawful possession of the property stolen; or
- (b) that he or she had himself or herself a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, or otherwise; or
- (c) that he or she was a trustee of the property stolen; or
- (d) that the property stolen was vested in him or her as an executor or administrator.

167. Receiving-(1) A person commits the offence of receiving who receives any property stolen or obtained by any other crime, knowing that property to have been stolen or so obtained, or being reckless as to whether or not the property had been stolen or so obtained.

(2) For the purposes of this section, property that was obtained by any act committed outside Samoa that, if it had been committed in Samoa, would have constituted a crime is, subject to subsection (5), to be regarded as having been obtained by a crime.

(3) The act of receiving any property stolen or obtained by any other crime is complete as soon as the offender has, either exclusively or jointly with the thief or any other person,

possession of, or control over, the property or helps in concealing or disposing of the property.

(4) If:

- (a) any property stolen or obtained by any other crime has been returned to the owner; or
- (b) legal title to any such property has been acquired by any person,

a subsequent receiving of it is not an offence, even though the receiver may know that the property had previously been stolen or obtained by any other crime.

(5) If a person is charged with an offence under this section and the property was obtained by an act committed outside Samoa, it is to be presumed, unless the person charged puts the matter at issue, that the doing of the act by which the property was obtained was an offence under the law of the place where the act was done.

168. Punishment of Receiving - A person who is guilty of receiving is liable as follows:

- (a) if the value of the property exceeds \$1,000, to imprisonment for a term not exceeding seven (7) years; or
- (b) if the value of the property stolen exceeds \$500 but does not exceed \$1,000, to imprisonment for a term not exceeding two (2) years; or
- (c) if the value of the property stolen does not exceed \$500, to imprisonment for a term not exceeding one (1) year; or
- (d) if the property received is property owned by the Government of Samoa or was in the possession of the Government of Samoa when it was stolen, to imprisonment for a term not exceeding 10 years.

169. Dishonestly taking or using document - A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration:

- (a) dishonestly takes or obtains any document; or
- (b) dishonestly uses or attempts to use any document.

170. Criminal breach of trust-(1) A person commits a criminal breach of trust who, as a trustee of any trust, dishonestly and contrary to the terms of that trust, converts anything to any use not authorised by the trust.

(2) A trustee who commits a criminal breach of trust is liable to imprisonment for a term not exceeding seven (7) years.

171. Taking, obtaining, or copying trade secrets-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to obtain any pecuniary advantage or to cause loss to any other person:

- (a) dishonestly takes, obtains, or copies any document or any model or other depiction of anything or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret; or
 - (b) dishonestly takes or obtains any copy of any document or any model or other depiction of anything or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret.
- (2) In this section, “trade secret” means any information that:
- (a) is, or has the potential to be, used industrially or commercially; and
 - (b) is not generally available in industrial or commercial use; and
 - (c) has economic value or potential economic value to the possessor of the information; and
 - (d) is the subject of all reasonable efforts to preserve its secrecy.

172. Obtaining by deception or causing loss by deception-(1) A person commits the offence of obtaining by deception or causing loss by deception who, by any deception:

- (a) obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or

- (b) in incurring any debt or liability, obtains credit; or
 - (c) induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or
 - (d) causes loss to any other person.
- (2) In this section, “deception” means:
- (a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and -
 - (i) knows that it is false in a material particular; or
 - (ii) is reckless as to whether it is false in a material particular; or
 - (b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or
 - (c) a fraudulent device, trick, or stratagem used with intent to deceive any person.

173. Punishment of obtaining by deception or causing loss by deception - A person who is convicted of obtaining by deception or causing loss by deception is liable as follows:

- (a) if the loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000, to imprisonment for a term not exceeding seven (7) years;
- (b) if the loss caused or the value of what is obtained or sought to be obtained exceeds \$500 but does not exceed \$1,000, to imprisonment for a term not exceeding two (2) years;
- (c) if the loss caused or the value of what is obtained or sought to be obtained does not exceed \$500, to imprisonment for a term not exceeding one (1) year.

174. Burglary-(1) A person commits burglary and is liable to imprisonment for a term not exceeding 10 years who:

- (a) enters any building or ship, or part of a building or ship, without authority and with intent to commit a crime in the building or ship; or
- (b) having entered any building or ship, remains in it without authority and with intent to commit a crime in the building or ship.

(2) In this section and in section 175, “building” means any building or structure of any description, whether permanent or temporary; and includes a tent, caravan, or houseboat; and also includes any enclosed yard or any closed cave or closed tunnel.

(3) For the purposes of this section and section 175,:

- (a) entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by that person, is within the building or ship; and
- (b) a person who gains entrance to a building or ship by any threat or artifice used for that purpose is to be treated as having entered without authority.

175. Aggravated burglary-(1) A person is liable to imprisonment for a term not exceeding 14 years who:

- (a) while committing burglary, has a weapon with him or her or uses anything as a weapon; or
- (b) having committed burglary, has a weapon with him or her, or uses anything as a weapon, while still in the building or ship.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who is armed with a weapon with intent to commit burglary.

176. Robbery-(1) Robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

(2) A person who commits robbery is liable to imprisonment for a term not exceeding 10 years.

177. Aggravated robbery - A person is liable to imprisonment for a term not exceeding 14 years who:

- (a) robs any person and, at the time of, or immediately before or immediately after, the robbery, causes grievous bodily harm to any person; or
- (b) being together with any other person or persons, robs any person; or
- (c) being armed with any offensive weapon or instrument, or anything appearing to be such a weapon or instrument, robs any other person.

178. Unlawful entry of building by night - A person is liable to imprisonment for a term not exceeding five (5) years who unlawfully enters or is in any building by night with intent to commit a criminal offence in it, or who is found by night in any building without lawful justification for the person's presence there.

179. Assault with intent to rob-(1) A person is liable to imprisonment for a term not exceeding 14 years who, with intent to rob any person,:

- (a) causes grievous bodily harm to that person or any other person; or
- (b) being armed with any offensive weapon or instrument, or anything appearing to be such a weapon or instrument, assaults that person or any other person; or
- (c) being together with any other person or persons, assaults that person or any other person.

(2) A person who assaults any other person with intent to rob that other person or any other person is liable to imprisonment for a term not exceeding 10 years.

180. Demanding with intent to steal, etc-(1) A person is liable to imprisonment for a term not exceeding 10 years who, by force or with any threat, compels any other person to execute, make, accept, endorse, alter, or destroy any document capable of conferring a pecuniary advantage with intent to obtain any benefit.

(2) Anyone is liable to imprisonment for a term not exceeding five (5) years who, with menaces or by any threat, demands any property from any persons with intent to steal it.

181. Blackmail-(1) A person commits blackmail who threatens, expressly or by implication, to make any accusation against any other person (whether living or dead), to disclose something about another person (whether living or dead), or to cause serious damage to property or endanger the safety of another person with intent:

- (a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and
- (b) to obtain any benefit or to cause loss to any other person.

(2) Anyone who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.

(3) In this section and in section 180, “benefit” means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

(4) A person who commits blackmail is liable to imprisonment for a term not exceeding seven (7) years.

PART XV
CRIMES INVOLVING DAMAGE OR
DANGER TO PROPERTY OR TRANSPORT

182. Arson-(1) A person commits arson and is liable to imprisonment for a term not exceeding 14 years who:

- (a) intentionally or recklessly damages by fire or by means of any explosive any property if the person knows or ought to know that danger to life is likely to ensue; or
- (b) intentionally or recklessly, damages by fire or by means of any explosive any immovable property, or any vehicle, ship, or aircraft; or

- (c) intentionally damages by fire or by means of any explosive any immovable property, or any vehicle, ship or aircraft, with intent to obtain any benefit, or to cause loss to any other person.
- (2) A person commits arson and is liable to imprisonment for a term not exceeding seven (7) years who:
- (a) intentionally or recklessly, damages by fire or by means of any explosive any property (other than property referred to in subsection (1)); or
 - (b) intentionally or recklessly damages by fire or by means of any explosive any property (other than property referred to in subsection (1)) with intent to obtain any benefit, or with intent to cause loss to any other person.
- (3) A person is liable to imprisonment for a term not exceeding 10 years who intentionally damages by fire or by means of any explosive any property with reckless disregard for the safety of any other property.
- (4) In this section “benefit” means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

183. Attempted arson - A person is liable to imprisonment for a term not exceeding 10 years who attempts to commit arson in respect of any immovable property or any vehicle, ship, or aircraft.

184. Intentional damage-(1) A person is liable to imprisonment for a term not exceeding 14 years who intentionally or recklessly destroys or damages any property if the person knows or ought to know that danger to life is likely to result.

- (2) A person is liable to imprisonment for a term not exceeding seven (7) years who:
- (a) intentionally or recklessly, destroys or damages any property; or
 - (b) intentionally or recklessly, destroys or damages any property with intent to obtain any benefit, or with intent to cause loss to any other person.

(3) A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally destroys or damages any property with reckless disregard for the safety of any other property.

185. Endangering transport-(1) A person is liable to imprisonment for a term not exceeding 14 years who, with intent to cause danger to persons or property or with reckless disregard for the safety of persons or property:

- (a) interferes with any transport facility; or
- (b) does anything to any transport facility that is likely to cause danger to persons or property.

(2) For the purposes of this section, “transport facility” means any vehicle, ship, or aircraft, and any property used in connection with the transportation of persons or goods; and includes equipment of any kind used in navigation or for the guidance of any vehicle, ship, or aircraft.

186. Causing disease or sickness in animals-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, without lawful justification or reasonable excuse, directly or indirectly causes or produces in an animal a disease or sickness that causes a situation of a kind described in subsection (2) to occur, either:

- (a) intending a situation of that kind to occur; or
- (b) being reckless as to whether a situation of that kind occurs.

(2) A situation of a kind referred to in subsection (1) is a situation that:

- (a) constitutes a serious risk to the health or safety of an animal population; and
- (b) is likely, directly or indirectly, to cause major damage to the national economy of Samoa.

187. Contaminating food, crops, water, or other products
- A person is liable to imprisonment for a term not exceeding seven (7) years who contaminates food, crops, water, or any other products, without lawful justification or reasonable

excuse, and either knowing or being reckless as to whether the food, crops, water, or products are intended for human consumption, and:

- (a) intending to harm a person or reckless as to whether any person is harmed; or
- (b) intending to cause major economic loss to a person or reckless as to whether major economic loss is caused to any person; or
- (c) intending to cause major damage to the national economy of Samoa or reckless as to whether major damage is caused to the national economy of Samoa.

PART XVI
THREATENING HARM TO
PERSONS OR PROPERTY

188. Threatening to kill or do grievous bodily harm - A person is liable to imprisonment for a term not exceeding five (5) years who:

- (a) threatens to kill or do grievous bodily harm to any person; or
- (b) sends or causes to be received, knowing the contents thereof, any letter or writing containing any threat to kill or do grievous bodily harm to any person.

189. Threatening to destroy property-(1) A person is liable to imprisonment for a term not exceeding three (3) years who sends or causes to be received, knowing the contents thereof, any letter or writing threatening to destroy or damage any property, or to destroy or injure any animal.

(2) Nothing shall be an offence against subsection (1) unless it is done without lawful justification or excuse, and without claim of right.

190. Threats of harm to people or property-(1) A person is liable to imprisonment for a term not exceeding five (5) years if, without lawful justification or reasonable excuse, and

intending to achieve the effect stated in subsection (2), the person:

- (a) threatens to do an act likely to have one (1) or more of the results described in subsection (3); or
 - (b) communicates information -
 - (i) that purports to be about an act likely to have one (1) or more of the results described in subsection (3); and
 - (ii) that the person believes to be false.
- (2) The effect is causing a significant disruption of one (1) or more of the following things:
- (a) the activities of the civilian population of Samoa;
 - (b) something that is or forms part of an infrastructure facility in Samoa;
 - (c) civil administration in Samoa (whether administration undertaken by the Government of Samoa or by institutions such as local authorities); or
 - (d) commercial activity in Samoa (whether commercial activity in general or commercial activity of a particular kind).
- (3) The results are:
- (a) creating a risk to the health of one (1) or more people;
 - (b) causing major property damage;
 - (c) causing major economic loss to one (1) or more persons; or
 - (d) causing major damage to the national economy of Samoa.
- (4) The fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that a person has committed an offence against subsection (1).

191. Threatening acts - A person is liable to imprisonment for a term not exceeding three (3) years who, with intent to intimidate or annoy any other person,:

- (a) breaks or damages or threatens to break or damage any dwellinghouse; or

- (b) by the discharge of firearms, alarms or attempts to alarm any person in any dwellinghouse.

192. Conspiring to prevent collection of rates or taxes - Any person is liable to imprisonment for a term not exceeding two (2) years who conspires with any other person by force or intimidation to prevent the collection of any rates or taxes the levying and collection of which is authorised by law.

PART XVII
FORGERY AND FALSE DOCUMENTS

193. Interpretation - For the purposes of this Part:

“bank note” means any negotiable instrument used or intended for use as currency and issued by the Central Bank of Samoa, or by any bank in any country other than Samoa, or by the government of any such country, or by any other authority in Samoa or another country authorised by law to issue notes;

“false document” means a document:

- (a) of which the whole or any material part purports to be made by any person who did not make it, or by a fictitious person; or
- (b) of which the whole or any material part purports to be made by or on behalf of any person who did not authorise its making, or on behalf of a fictitious person; or
- (c) of which the whole or any material part has been altered, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise, and that purports to have been altered by or on behalf of a person who did not alter it or authorise its alteration, or by or on behalf of a fictitious person; or
- (d) that is, in whole or in part, a reproduction of any other document, and that purports to have been made by or on behalf of a person who did not make it or authorise its making, or by or on behalf of a fictitious person; or

- (e) that is made in the name of a person, either by that person or by that person's authority, with the intention that it should pass as being made by some other person who did not make it, or by a fictitious person.

194. Forgery-(1) A person is liable to imprisonment for a term not exceeding 10 years who makes a false document with the intention of using it to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration.

(2) A person is liable to imprisonment for a term not exceeding 10 years who makes a false document, knowing it to be false, with the intent that it in any way be used or acted upon, whether in Samoa or another country, as genuine.

(3) Forgery is complete as soon as the document is made with the intent described in subsection (1) or with the knowledge and intent described in subsection (2).

(4) Forgery is complete even though the false document may be incomplete, or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted upon as genuine.

195. Using forged documents-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, knowing a document to be forged:

- (a) uses the document to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
- (b) uses, deals with, or acts upon the document as if it were genuine; or
- (c) causes any other person to use, deal with, or act upon it as if it were genuine.

(2) For the purposes of this section, a document made or altered outside Samoa in a manner that would have amounted to forgery if the making or alteration had been done in Samoa is to be regarded as a forged document.

196. Altering, concealing, destroying, or reproducing documents with intent to deceive-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person:

- (a) alters, conceals, or destroys any document, or causes any document to be altered, concealed, or destroyed; or
- (b) makes a document or causes a document to be made that is, in whole or in part, a reproduction of any other document.

(2) An offence against subsection (1) is complete as soon as the alteration or document is made with the intent referred to in that subsection, although the offender may not have intended that any particular person should:

- (a) use or act upon the document altered or made; or
- (b) act on the basis of the absence of the document concealed or destroyed; or
- (c) be induced to do or refrain from doing anything.

197. Using altered or reproduced documents with intent to deceive-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, knowing any document to have been made or altered in the manner and with the intent referred to in section 196, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person:

- (a) uses, or deals with, or acts upon, the document; or
- (b) causes any person to use or deal with, or act upon, the document.

(2) For the purposes of this section, it does not matter that the document was altered or made outside Samoa.

198. False accounting - A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to deceive or cause loss to any other person:

- (a) makes or causes to be made, or concurs in the making of, any false entry in any book or account or other document required or used for accounting purposes; or
- (b) omits or causes to be on-fitted, or concurs in the omission of, any material particular from any such book or account or other document; or
- (c) makes any transfer of any interest in a stock, debenture, or debt in the name of any person other than the owner of that interest.

199. Counterfeiting public seals - A person is liable to imprisonment for a term not exceeding seven (7) years who:

- (a) unlawfully makes or counterfeits -
 - (i) any public seal in use at any time in Samoa or any other country; or
 - (ii) any seal or stamp used in Samoa or any other country by any court, local authority, public body, or public officer; or
 - (iii) the impression of any such seal or stamp; or
- (b) uses any such seal, stamp, or impression, knowing it to be counterfeit.

200. Counterfeiting corporate seals - A person is liable to imprisonment for a term not exceeding five (5) years who:

- (a) unlawfully makes or counterfeits -
 - (i) any seal or stamp used in Samoa or any other country by any company or other corporate body (not being a body to which section 199 applies), or by any other person; or
 - (ii) the impression of the seal or stamp; or
- (b) uses the seal, stamp, or impression, knowing it to be counterfeit.

201. Possessing forged bank notes - A person is liable to imprisonment for a term not exceeding five (5) years who, without lawful authority or excuse (the proof of the lawful

authority or excuse lying on the person), purchases or receives from any other person, or has in his or her possession or under his or her control, any forged bank note, whether complete or not, knowing it to be forged.

202. Paper or implements for forgery - A person is liable to imprisonment for a term not exceeding five (5) years who, without lawful authority or excuse, has in his or her possession or under his or her control anything capable of being used to forge any document with intent to use it for such a purpose.

203. Imitating authorised or customary marks-(1) A person is liable to imprisonment for a term not exceeding five (5) years who dishonestly counterfeits or imitates any mark, word, or description that is:

- (a) impressed or otherwise made, or written upon, or affixed to, any chattel, or upon or to any thing containing or connected with any chattel; and
- (b) a mark, word, or description that is by recognised practice understood to denote that the thing upon or to which it is impressed, made, written, or affixed has been examined and certified to be of a particular quality by any particular officer or other person.

(2) Subsection (1) applies whether the officer or other person referred to in subsection (1)(b) is or is not expressly authorised by law to so certify.

204. Offences involving coinage-(1) In this section:

“**counterfeit coin**” includes any coin that has been altered in any manner so as to resemble any other coin;

“**current coin**” means coin of any substance lawfully current in Samoa or in any other country.

(2) In this section:

- (a) a thing is treated as being in the possession of any person if that person has it in his or her personal custody or possession, or if that person knowingly has it in the actual custody or possession of any other person, or in some place

- (whether or not that person occupies the place), for the use or benefit of himself or herself or any other person;
- (b) a coin is deemed to be made or counterfeited even though the making or counterfeiting has not been finished or perfected.
- (3) A person is liable to imprisonment for a term not exceeding five (5) years who:
- (a) makes or counterfeits any coin resembling any current coin with the intention that it be acted upon as genuine; or
- (b) without lawful authority or excuse, has in his or her possession or under his or her control any thing intended to be used to make or counterfeit any coin resembling any current coin, with intent to use it for such a purpose.
- (4) A person is liable to imprisonment for a term not exceeding five (5) years who, without lawful authority or excuse:
- (a) buys, sells, or receives, or offers to buy, sell, or receive, any counterfeit coin resembling any current coin at or for a lower rate or value than the counterfeit coin purports to be; or
- (b) imports or receives into Samoa any counterfeit coin resembling any current coin, knowing it to be counterfeit; or
- (c) exports from Samoa, or puts on board any ship or aircraft for the purpose of being exported, any counterfeit coin resembling any current coin, knowing it to be counterfeit.
- (5) A person is liable to imprisonment for a term not exceeding five (5) years who:
- (a) passes or attempts to pass any counterfeit coin knowing it to be counterfeit; or
- (b) passes or attempts to pass as current coin any coin that is not current coin or any piece of metal or other substance, knowing that it is not current coin.

(6) A person is liable to imprisonment for a term not exceeding five (5) years who has in his or her possession or under his or her control any counterfeit coin, knowing it to be counterfeit and intending to pass it as genuine.

PART XVIII
CRIMES INVOLVING
ELECTRONIC SYSTEMS

205. Interpretation - Unless the context otherwise requires, for the purpose of this Part:

“access”, in relation to an electronic system, means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the electronic system;

“device” includes the following:

- (a) components of electronic systems such as computer, mobile phones, graphic cards, memory, chips;
- (b) storage components such as hard drives, memory cards, compact discs, tapes;
- (c) input devices such as keyboards, mouse, track pad, scanner, digital cameras;
- (d) output devices such as printer, screens.

“electronic data” means any representation of facts, concepts, information (either texts, sounds or images), or machine-readable code or instructions, in a form suitable for processing in an electronic system, including a program suitable to cause an electronic system to perform a function;

“electronic system” includes the following and any part of the following:

- (a) a device or a group of inter-connected or related devices one (1) or more of which, pursuant to a program, performs automatic processing of data or any other function;
- (b) a computer;
- (c) two (2) or more interconnected electronic systems;
- (d) any communication links between electronic systems or to remote terminals or another device;

- (e) two (2) or more interconnected electronic systems combined with any communication links between computers or to remote terminals or any other device.

“hinder”, in relation to an electronic system, includes the following:

- (a) cutting the electricity supply to an electronic system;
- (b) causing electromagnetic interference to an electronic system;
- (c) corrupting an electronic system by any means; and
- (d) inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing electronic data.

“intercept” includes to acquire, view and capture any electronic data or communication whether by wire, wireless, electronic, optical, magnetic, oral, or other means, during transmission through the use of any technical device.

206. Accessing electronic system without authorisation-(1)

A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally accesses, directly or indirectly, an electronic system without authorisation, or being reckless as to whether he or she is authorised to access the electronic system.

(2) This section does not apply if:

- (a) a person who is authorised to access an electronic system accesses the electronic system for a purpose other than the one for which that person was given access; and
- (b) access to an electronic system is gained by a law enforcement agency -
 - (i) under a warrant; or
 - (ii) under the authority of any Act or rule of the common law.

207. Accessing electronic system for dishonest purpose-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who, directly or indirectly:

- (a) accesses an electronic system and in so doing, dishonestly or by deception -
 - (i) obtains any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
 - (ii) causes loss to any other person; or
 - (b) attempts to access an electronic system, dishonestly or by deception -
 - (i) to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
 - (ii) to cause loss to any other person.
- (2) In this section, “deception” has the same meaning as in section 172(2).
- (3) This section does not apply if:
- (a) a person who is authorised to access an electronic system accesses the electronic system for a purpose other than the one for which that person was given access; and
 - (b) access to an electronic system is gained by a law enforcement agency -
 - (i) under a warrant; or
 - (ii) under the authority of any Act or rule of the common law.

208. Illegal remaining in an electronic system-(1) A person is liable to imprisonment for a period not exceeding seven (7) years who intentionally, without lawful excuse or justification or in excess of a lawful excuse or justification:

- (a) logs into and remains logged in an electronic system; or
 - (b) accesses and continues to remain in access to an electronic system.
- (2) This section does not apply if:
- (a) a person who is authorised to access an electronic system accesses the electronic system for a purpose other than the one for which that person was given access; and

- (b) access to an electronic system is gained by a law enforcement agency -
 - (i) under a warrant; or
 - (ii) under the authority of any Act or rule of the common law.

209. Illegal interception - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally, without right and with dishonest or otherwise unlawful intent, intercept or attempt to intercept:

- (a) a transmission not intended for public reception of electronic data to, from or within an electronic system; or
- (b) electromagnetic emissions from an electronic system.

210. Damaging or interfering with electronic data - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally or recklessly and without authorisation, or being reckless as to whether or not he or she is authorised:

- (a) damages or deteriorates electronic data; or
- (b) deletes electronic data; or
- (c) alters electronic data; or
- (d) renders electronic data meaningless, useless or ineffective; or
- (e) obstructs, interrupts or interferes with the lawful use of electronic data; or
- (f) obstructs, interrupts or interferes with any person in the lawful use of electronic data; or
- (g) denies access to electronic data to any person authorised to access it.

211. Illegal acquisition of electronic data - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally and without authorisation, obtains for himself, herself or for another, electronic data which are not meant for him or her and which are specially protected against unauthorised access.

212. Illegal system interference-(1) A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally and without authorisation hinders or interferes:

- (a) with the functioning of an electronic system if he or she knows or ought to know that danger to life is likely to result; or
- (b) with a person who is lawfully using or operating an electronic system if he or she knows or ought to know that danger to life is likely to result; or
- (c) with an electronic system that is exclusively for the use of critical infrastructure operations, or in the case in which such is not exclusively for the use of critical infrastructure operations, but it is used in critical infrastructure operations and such conduct affects that use or impacts the operations of critical infrastructure.

(2) For the purpose of subsection (1)(c), “critical infrastructure” means electronic systems, devices, networks, electronic programs, and electronic data, that are so vital to the country that the incapacity or destruction of or interference with such systems and assets would have a debilitating impact on security, national or economic security, national public health and safety, or any combination of those matters.

213. Illegal devices - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally and without authorisation produces, sells, procures for use, imports, distributes or otherwise makes available, or attempts to use, possess, produce, sell, procure for use, import, distribute or otherwise make available:

- (a) a device, including an electronic program, that is designed or adapted for the purpose of committing an offence; or
- (b) a password, access code or similar data by which the whole or any part of an electronic system is capable of being accessed with the intent that it be used by the person or another person for the purpose of committing an offence.

214. Making, selling, distributing or possessing software for committing a crime-

(1) A person is liable to imprisonment for a term not exceeding seven (7) years who does any of the following with the sole or principal use of which the person knows to be the commission of a crime, knowing or being reckless as to whether it will be used for the commission of a crime:

- (a) invites another person to acquire from the person any software or other electronic information that would enable the other person to access an electronic system without authorisation;
- (b) offers or exposes for sale or supply to another person any software or other electronic information that would enable the other person to access an electronic system without authorisation;
- (c) agrees to sell or supply to another person any software or other electronic information that would enable the other person to access an electronic system without authorisation;
- (d) sells or supplies to another person any software or other electronic information that would enable the other person to access an electronic system without authorisation;
- (e) has in his or her possession for the purpose of sale or supply to another person any software or other electronic information that would enable the other person to access an electronic system without authorisation.

(2) A person is liable to imprisonment for a term not exceeding seven (7) years who:

- (a) has in his or her possession any software or other electronic information that would enable him or her to access an electronic system without authorisation; and
- (b) intends to use that software or other electronic information to commit a crime.

215. Identity fraud-(1) A person commits an offence and is liable to imprisonment for a term not exceeding five (5) years who knowingly obtains, transfers or possesses another person's identity information in circumstances giving rise to a reasonable inference that the information is intended to be used to commit an offence that includes fraud, deceit, or falsehood as an element of the offence.

(2) A person commits an offence and is liable to imprisonment for a term not exceeding 10 years who dishonestly or fraudulently personates another person, living or dead:

- (a) with intent to gain advantage for himself, herself or another person; or
- (b) with intent to obtain any property or an interest in any property; or
- (c) with intent to cause disadvantage to the person being personated or another person; or
- (d) with intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

(3) A person is liable to imprisonment for a period not exceeding seven (7) years who, intentionally without lawful excuse or justification or in excess of a lawful excuse or justification, by using an electronic system in any stage of the offence, transfers, possesses, or uses a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a crime.

(4) A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally, without authorisation and with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person, causes a loss of property to another person by:

- (a) any input, alteration, deletion or suppression of electronic data; or
- (b) any interference with the functioning of an electronic system.

216. Forgery of electronic data - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally and without authorisation, inputs, alters, deletes, or suppresses electronic data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the data is directly readable and intelligible.

217. SPAM-(1) A person is liable to imprisonment for a term not exceeding five (5) years or to a fine of not more than 100 penalty units, or both, who intentionally:

- (a) initiates the transmission of multiple electronic messages from or through an electronic system with the intent to deceive or mislead users, or any electronic mail or Internet service provider, as to the origin of the messages; or
- (b) uses a protected electronic system to relay or retransmit multiple electronic messages, with the intent to deceive or mislead users, or any electronic mail or Internet service provider, as to the origin of such messages; or
- (c) materially falsifies header information in multiple electronic messages and intentionally initiates the transmission of such messages.

(2) For the purpose of this section, “multiple electronic message” means an electronic mail message including E-Mail and instant messaging sent to more than 1,000 recipients.

218. Solicitation of children - A person is liable to imprisonment for a term not exceeding seven (7) years who intentionally, through the use of information and communication technology, proposes to a child to meet him or her, with the intent of committing an offence and where such proposal has been followed by material acts leading to such meeting.

219. Harassment utilising means of electronic communication - A person is liable to imprisonment for a term not exceeding five (5) years who intentionally initiates any

electronic communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using an electronic system to support severe, repeated, and hostile behaviour.

220. Consequential amendments to the Telecommunications Act 2005 - In section 74(1) of the Telecommunications Act 2005:

- (a) in the section heading, omit “and Computer”;
- (b) in paragraph (b), omit “or computer system” and “or computer”;
- (c) in paragraph (c), for “or computer date” substitute “data”, and for “a computer system” substitute “an electronic system”;
- (d) in paragraph (d), for “or computer date” substitute “data”;
- (e) in paragraph (e), omit “or computer system” and “or computer”;
- (f) in paragraph (g), omit -
 - (i) “computer” before the term “password”; and
 - (ii) “or computer system”.

PART XIX **MISCELLANEOUS PROVISIONS**

221. Consent of Attorney-General to prosecutions-(1) No information shall, by virtue only of the provisions of this Act, be laid against any person who:

- (a) whether or not the person is a Samoan citizen or a person ordinarily resident in Samoa, is alleged to have committed outside Samoa an offence on board or by means of any ship or aircraft which is not a Samoan ship or a Samoan aircraft, or an offence to which section 7(3) applies; or
- (b) whether or not he or she is a Samoan citizen or a person ordinarily resident in Samoa, is alleged to have committed, anywhere within Samoa or in the space above Samoa, an offence on board or

by means of any ship or aircraft which belongs to the government of any country other than Samoa or is held by any person on behalf or for the benefit of that government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the armed forces of that country,

except with the consent of the Attorney-General and on the Attorney General's certificate that it is expedient that the proceedings should be instituted; and where the proceedings would be instituted only by virtue of the jurisdiction conferred by paragraph (c) of section 7(1).

(2) For the purposes of subsection (1) a person alleged to have committed any such offence may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

222. Contempt of Court-(1) If any person:

- (a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any assessor, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or
- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings,

any constable or officer of the court, with or without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain the person until the rising of the court.

(2) In any such case as aforesaid, the Judge, if he or she thinks fit, may sentence the offender to imprisonment for any period not exceeding three (3) months, or sentence him or her to

pay a fine not exceeding 10 penalty units for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding three (3) months, unless the fine is sooner paid.

(3) Nothing in this section shall limit or affect any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

223. Regulations-(1) The Head of State, acting on the advice of Cabinet may make regulations not inconsistent with this Act to provide for such matters as are required or contemplated by this Act or are necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Without limiting the general power to make regulations conferred by this section, regulations may be made under this section:

- (a) prescribing forms to be used in respect of any proceedings to which this Act applies;
- (b) prescribing fees to be paid in respect of any proceedings to which this Act applies;
- (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies; and
- (d) prescribing the costs and charges payable by parties in proceedings to which this Act applies.

224. Repeal of the Crimes Ordinance 1961 - The Crimes Ordinance 1961 is repealed (“repealed Ordinance”).

225. Proceedings pursuant to the repealed Ordinance - Section 226 applies if:

- (a) an enactment that forms a part of this Act and that creates an offence is repealed and is replaced by, or is consolidated in, a new enactment, whether in the same or a different form; and -

- (i) proceedings are commenced for an offence contrary to the repealed Ordinance in reliance on section 20A of the Acts Interpretation Act 1974; or
 - (ii) proceedings are commenced for an offence contrary to the new enactment; or
 - (iii) proceedings are commenced for an offence contrary to the repealed Ordinance in reliance on section 20A of the Acts Interpretation Act 1974 and, in the alternative, for an offence contrary to the new enactment; and
- (b) the date of the act or omission by the defendant constituting the alleged offence cannot be established with sufficient certainty to determine whether it occurred before the repeal of the repealed Ordinance or after the commencement of the new Act.

226. Repealed Ordinance continue to have effect-(1) The repealed Ordinance referred to in section 225 continues to have effect for the purposes of the proceedings.

(2) The defendant may be found guilty or convicted of the offence created by the repealed Ordinance if the defendant's act or omission:

- (a) would have constituted an offence under both the repealed Ordinance and the new enactment referred to in section 225(a); and
- (b) occurred on a date that cannot be established with certainty but that is established to have occurred either after the commencement of the repealed Ordinance and before its repeal or after the commencement of the new enactment and before its repeal.

(3) If subsection (1) applies, the defendant is entitled to raise any defence to the repealed Ordinance that the defendant would be entitled to raise under the new enactment, if that defence is relevant to the repealed Ordinance.

(4) A defendant found guilty or convicted, in accordance with this section, of an offence created by the repealed Ordinance is liable to a maximum penalty which is the lesser of that prescribed for the offence of which the defendant is found guilty or convicted and that prescribed for the corresponding offence created under the new enactment.

227. Consequential amendments-(1) The Acts Interpretation Act 1974 is amended by inserting after section 20 the following:

“20A. Effect of repeal on prior offences and breaches of enactments-(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of:

- (a) investigating the offence or breach; or
- (b) commencing or completing proceedings for the offence or breach; or
- (c) imposing a penalty for the offence or breach.”.

(2) Section 87 of the Criminal Procedure Act 1972 is repealed and substituted with:

“87. Supreme Court with assessors-(1) Subject to subsection (2) or (3), the Supreme Court shall sit with assessors on the trial of any person for an offence punishable by imprisonment for more than 10 years if he or she pleads “not guilty”.

(2) Any person charged with an offence, for which the punishment is other than imprisonment for life, shall be entitled before the charge is gone into but not afterwards, to be tried by a Judge of the Supreme Court sitting alone.

(3) Any person charged under the Narcotics Act 1967 for which the punishment is imprisonment for a term not exceeding 14 years shall be tried by a Judge of the Supreme Court sitting alone.”.

(3) The Indecent Publication Ordinance 1960 is amended:

(a) in section 2 -

(i) in the definition of “indecent document” by inserting “electronic device” after “film”;

(ii) by inserting the following new definition:

“electronic device” means any device capable of storing, transmitting, communicating or transferring data, voice, images or any other matter;” and

(iii) in the definition of “film” by adding the following new paragraph:

“(ba) a video clip;” and

(b) in section 3 -

(i) in subsection (1), by adding “or any other means” after “post”;

(ii) in subsection (4)(a), by deleting “3 months” and substituting “2 years”.

228. Savings and transitional provisions-(1) The repealed enactments referred to in section 224 continue to have effect for the purpose of the proceedings.

(2) The defendant may be found guilty or convicted of the offence created by the repealed enactment if the defendant’s act or omission:

(a) would have constituted an offence under both the repealed enactment referred to in section 224 and the new enactment; and

(b) occurred on a date that cannot be established with certainty but that is established to have occurred either after the commencement of the repealed enactment and before its repeal or after the commencement of the new enactment and before its repeal.

(3) If subsection (1) applies, the defendant is entitled to raise any defence to the repealed enactment that the defendant would be entitled to raise under the new enactment, if that defence is relevant to the repealed enactment.

(4) A defendant found guilty or convicted, in accordance with this section, of an offence created by the repealed enactment is liable to a maximum penalty which is the lesser of that prescribed for the offence of which the defendant is found guilty or convicted and that prescribed for the corresponding offence created under the new enactment.

**The Crimes Act 2013 is administered
by the Ministry of Police and Prisons.**

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