



SAMOA

SEX OFFENDERS REGISTRATION ACT 2017

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title and commencement
2. Purpose of this Act
3. Interpretation
4. Meaning of "contact"
5. Other reference provisions

PART 2 OFFENDERS TO WHOM THIS ACT APPLIES

6. Registrable offenders
7. Registrable offences
8. Amendments to the Schedules
9. Corresponding registrable offenders

10. Sex offender registration orders

PART 3

REPORTING OBLIGATIONS

Division 1 - Initial report

11. Time for reporting
12. Initial report by registrable offender of personal details
13. Persons required to report under corresponding Act

Division 2 - Ongoing reporting obligations

14. Registrable offender must report annually
15. Registrable offender must report changes to relevant personal details
16. Intended absence from Samoa to be reported
17. Passport and other documents to be produced

Division 3 - Provisions applying to all reporting obligations

18. Report is to be made to approved police stations
19. Reports to be made in person
20. Receipt of information to be acknowledged
21. Verification of identity to be provided
22. Power to establish identity of person making a report

23. Retention of material for certain purposes

Division 4 - Suspension and extension of reporting obligations

24. Suspension and extension of reporting obligations

Division 5 - Reporting period

25. When reporting obligations begin
26. Length of reporting period
27. Reporting period for corresponding registrable offenders

Division 6 - Suspension from reporting obligations

28. Supreme Court may suspend lifetime reporting obligations
29. Matters to be considered by the Supreme Court
30. Police Commissioner is party to application
31. Restriction on right of unsuccessful applicant to re-apply for order
32. Cessation of order

Division 7 - Offences

33. Offence of failing to comply with reporting obligations

34. Offence to provide false or misleading information

Division 8 - Notification of reporting obligations

35. Notice to be given to registrable offender
36. Courts to provide information to Police Commissioner
37. Failure to comply with procedural requirements does not affect registrable offender's obligations

PART 4

THE SEX OFFENDERS REGISTER

38. Register of sex offenders
39. Restricted access to the Register
40. Persons with access to Register not to disclose personal information from it
41. Disclosure of modified information
42. Registrable offender's rights in relation to Register
43. Ombudsman to monitor compliance

PART 5

**REGISTERED SEX OFFENDERS PROHIBITED
FROM CHILD-RELATED EMPLOYMENT**

44. Interpretation in this Part
45. Registered sex offender excluded from child-related employment

46. Offence to fail to disclose charges

PART 6

CHANGE OF NAME

47. Application of this Part
48. Interpretation in this Part
49. Applications for change of name by or on behalf of a registrable offender
50. Approval by Police Commissioner
51. Approval to be notified in writing
52. Registration of change of name
53. Registrar may correct Register

PART 7

MISCELLANEOUS

54. Offence to breach confidentiality
55. Other offences against this Act
56. Protection from liability
57. Certificate concerning evidence
58. Regulations

Schedules

SEX OFFENDERS REGISTRATION ACT 2017

2017,

No. 24

AN ACT to provide the registration of sex offenders and to prescribe requirements and controls applicable to registered sex offenders, and for related purposes.

[Assent and commencement date: 21st December 2017]

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

PART 1
PRELIMINARY

1. Short title and commencement:

- (1) This Act may be cited as the Sex Offenders Registration Act 2017.
- (2) This Act commences on the date of assent of the Head of State.

2. Purpose of this Act:

- (1) The purposes of this Act are:
 - (a) to require certain offenders who commit sexual offences to keep the police informed of their whereabouts and of other personal details for a period of time so as to reduce the likelihood that they will re-offend, and to facilitate the investigation and prosecution of any future offences that they may commit and any additional purposes;
 - (b) to prevent registered sex offenders working in child-related employment;
 - (c) to facilitate the monitoring of compliance with this Act.
- (2) To achieve the purposes stated in subsection (1), this Act does all of the following:
 - (a) provides for the establishment of a register of sex offenders;

- (b) requires certain offenders who are sentenced for registrable offences to provide specified personal details for inclusion in the register, and to keep the required details up to date;
- (c) enables the court to order offenders who commit registrable offences to comply with the reporting obligations of the Act;
- (d) imposes those reporting obligations for a period, based upon the number, severity and timing of the offences committed, and the age of the offender at the time an offence was committed;
- (e) allows for the recognition of reporting obligations imposed under laws of foreign jurisdictions;
- (f) makes it an offence for registered sex offenders to work in child-related employment;
- (g) facilitates the monitoring of compliance with this Act.

3. Interpretation:

- (1) In this Act, unless the contrary intention appears:
 - "child" means any person who is under the age of 18 years, and "children" has the corresponding meaning;
 - "Class 1 offence" means an offence listed in Schedule 1;
 - "Class 2 offence" means an offence listed in Schedule 2;

"Class 3 offence" means an offence listed in Schedule 3;

"contact" in relation to a child, has the meaning given in section 4;

"corresponding Act" means a law of a foreign jurisdiction that provides for people who have committed a corresponding registrable offence, to report in that jurisdiction information about themselves and to keep that information current for a specified period;

"corresponding registrable offence" means an offence that is a registrable offence for the purposes of a corresponding Act;

"corresponding registrable offender" has the meaning given to it in section 9;

"corresponding registrar" means the person whose duties and functions under a corresponding Act most closely corresponds to the duties and functions of the Police Commissioner under this Act;

"disability" means a congenital or permanent physical or mental impairment, including a sensory impairment, or intellectual or developmental disability, or loss or abnormality of physiological or anatomical structure or function;

"fingerscan" means fingerprints taken by means of a device to obtain a record of the fingerprints;

"foreign jurisdiction" means a jurisdiction other than Samoa;

"government custody" means:

- (a) custody in any prison or corrections facility operated by the government under the Prisons and Corrections Act 2013 or any other law;
- (b) custody under a law of a foreign jurisdiction in the nature of custody referred to in paragraph (a).

"Minister" means the Minister responsible for the Police Service;

"personal details" means the information listed in section 12(1);

"personal information" means information about an individual whose identity is apparent or can reasonably be ascertained from the information;

"Register" means the Register of sex offenders established, or arranged to be established, under section 38;

"registrable offence" has the meaning set out in section 7;

"registrable offender" has the meaning set out in section 6;

"reporting obligations", in relation to a registrable offender, means the obligations imposed on him or her by Part 3;

"reporting period" means the period, as determined under Division 5 of Part 3, during which a registrable offender must comply with his or her reporting obligations;

"sex offender registration order" means an order made under section 10.

- (2) Where reference is made in this Act to an offence under the Crimes Act 2013, the definitions under the Crimes Act 2013 apply to those references in this Act.

4. Meaning of "contact":

For the purposes of this Act, a registrable offender has contact with a child if the offender:

- (a) resides with the child; or
- (b) stays overnight at a place of residence where the child resides or is staying overnight; or
- (c) cares for, or supervises, the child; or
- (d) provides the offender's contact details to the child or receives the child's contact details from the child; or
- (e) engages in any of the following with the child for the purpose of forming a personal relationship with the child -
 - (i) any form of actual physical contact;
 - (ii) any form of oral communication (whether face to face, by telephone or by use of the internet);
 - (iii) any form of written communication (whether electronic or otherwise).

5. Other reference provisions:

- (1) For the purposes of this Act, offences arise from the same incident only if they are committed within a single period of 24 hours and are committed against the same person.

- (2) A reference to doing a thing "in person" in this Act is a reference to doing the thing by personal attendance at a place.

PART 2

OFFENDERS TO WHOM THIS ACT APPLIES

6. Registrable offenders:

- (1) Subject to subsections (2) and (3), a registrable offender includes all of the following:
- (a) a person convicted of a registrable offence after the commencement of this Act; or
 - (b) a person convicted of a registrable offence before the commencement of this Act, and the person is in government custody; or
 - (c) a person whom a court has ordered to be a registrable offender under section 10;
 - (d) a corresponding registrable offender who enters Samoa.
- (2) Subsection (1)(a), (b) and (d) do not apply to an offender who is a child at the time of the commission of the registrable offence unless otherwise ordered by the Court.
- (3) A person ceases to be a registrable offender if:
- (a) the registrable offence for which he or she was convicted is quashed or set aside by a court; or

- (b) the sex offender registration order relating to he or she is quashed on appeal;
- (c) the sex offender registration order to which he or she is subject expires.

7. Registrable offences:

- (1) A registrable offence is:
 - (a) a Class 1 offence; or
 - (b) a Class 2 offence; or
 - (c) a Class 3 offence.
- (2) Schedule 1 lists the offences that are Class 1 offences for the purposes of this Act.
- (3) Schedule 2 lists the offences that are Class 2 offences for the purposes of this Act.
- (4) Schedule 3 lists the offences that are Class 3 offences for the purposes of this Act.

8. Amendments to the Schedules:

Regulations made under this Act may add offences to any Schedule, and may re-classify any offence in a Schedule.

9. Corresponding registrable offenders:

- (1) A corresponding registrable offender is a person who:
 - (a) has been required to report to the corresponding registrar in that jurisdiction; and
 - (b) would, if he or she were currently in that jurisdiction, still be required to report to that corresponding registrar.

- (2) A person referred to in subsection (1) is a corresponding registrable offender even if the offence in respect of which he or she is required to report in the foreign jurisdiction is not a registrable offence for the purposes of this Act.

10. Sex offender registration orders:

- (1) If a court convicts a child of a registrable offence and regards the child as being at a high risk of sexual offending, it may order the child to be deemed to be a registrable offender.
- (2) An order under subsection (1), for any period during which the person is a child, may:
 - (a) exempt the person from any particular reporting obligation; or
 - (b) modify any particular reporting obligation.
- (3) A court may only make an order under subsection (1) if, after taking into account any matter that it considers appropriate, it is satisfied, beyond reasonable doubt, that the child poses a risk to the sexual safety of one or more persons or of the community.
- (4) For the purposes of subsection (3), it is not necessary that the court be able to identify a risk to particular people, or a particular class of people.
- (5) The Police Commissioner may make application to a court for a person in Samoa to be deemed to be a registrable offender under this Act if the person was convicted of an offence outside

Samoa, the elements of which constitute a registrable offence under this Act.

PART 3 REPORTING OBLIGATIONS

Division 1 - Initial report

11. Time for reporting:

A registrable offender or corresponding registrable offender of a kind referred to in column 1 of the Table must report his or her personal details to the Police Commissioner within the period specified in relation to him or her in column 2 of the Table:

<i>Column 1 Registrable Offender</i>	<i>Column 2 Period for Initial Report</i>
A registrable offender in government custody in Samoa as a consequence of a registrable offence.	Within seven (7) days before he or she ceases to be in government custody.
A person who is convicted of an offence before the commencement of this Act and such offence is a registrable offence under this Act and who is in government custody in Samoa for that offence.	Within seven (7) days before he or she ceases to be in government custody.
A corresponding registrable offender who is in Samoa, and who is in government custody	Within seven (7) days before he or she ceases to be in government

(whether or not the offence was committed before or after commencement of this Act).	custody.
A corresponding registrable offender who is in Samoa, and who is not in government custody (whether or not the offence was committed before or after commencement of this Act).	Within 45 days after the commencement of this Act if the conviction was before the commencement of this Act, or within seven (7) days of entering Samoa if the offence was committed at any other time.
A person who is convicted of an offence in a foreign jurisdiction (before or after the commencement of this Act) and was not required to report in that jurisdiction, but such offence is equivalent to a registrable offence under this Act and he or she is in government custody in Samoa.	Within seven (7) days before he or she ceases to be in government custody.
A person who is convicted of an offence in a foreign jurisdiction (before or after the commencement of this Act) and was not required to report in that jurisdiction, but such offence is equivalent to a registrable	Within 45 days after the commencement of this Act if the conviction was before the commencement of this Act, or within seven (7) days of entering Samoa if

offence under this Act and he or she is not in government custody.	the offence was committed at any other time.
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12. Initial report by registrable offender of personal details:

- (1) A registrable offender must provide information in relation to all matters specified in the form approved for this purpose by the Police Commissioner, which may require information in relation to all or any of the following matters:
- (a) details of the offender's identity, including date and place of birth, passport details, any names by which the offender has ever been known, and details of tattoos or distinguishing marks or features;
 - (b) places at which the offender generally resides;
 - (c) contact details, including telephone numbers, email addresses, internet service providers;
 - (d) details of any children with whom the offender has contact, and details of where, when and how such contact occurs;
 - (e) employment details, including places where the offender is generally employed;
 - (f) details of previous convictions and of terms spent in government custody;

- (g) details of motor vehicles owned or used by the offender;
 - (h) details of clubs or associations of which the offender is a member;
 - (i) any other details required by the Police Commissioner to achieve the purposes of this Act.
- (2) For the purposes of this section:
- (a) a registrable offender does not generally reside at any particular premises unless he or she resides at those premises for at least seven (7) days (whether consecutive or not) in any period of 12 months; and
 - (b) a registrable offender is not generally employed at any particular premises unless he or she is employed at those premises for at least 14 days (whether consecutive or not) in any period of 12 months.
- (3) For the purposes of this section, a person is employed if he or she:
- (a) carries out work under a contract of employment; or
 - (b) carries out work as a self-employed person or as a sub-contractor; or
 - (c) carries out work as a volunteer for an organisation; or
 - (d) undertakes practical training as part of an educational or vocational course; or
 - (e) carries out work in any capacity for a religious organisation.

13. Persons required to report under corresponding Act:

- (1) A corresponding registrable offender must provide all information which is required to be provided by a registrable offender under section 12, and the Police Commissioner may require that any additional information relevant to the corresponding registrable offender, or to the reporting requirements under the corresponding Act, be provided.
- (2) Regulations made under this Act may provide for requirements and processes applicable to persons who have been required to report to a corresponding registrar, irrespective of whether he or she is a registrable offender for the purposes of this Act.

Division 2 - Ongoing reporting obligations

14. Registrable offender must report annually:

- (1) A registrable offender must report his or her personal details to the Police Commissioner each year.
- (2) The registrable offender must make the report by the end of the calendar month in which the anniversary of the date on which he or she first reported in accordance with this Act.
- (3) If the registrable offender has been in government custody since the time of the last report under this section, the offender must report details of when and where that custody occurred, and the relevant offence.

15. Registrable offender must report changes to relevant personal details:

A registrable offender must report to the Police Commissioner any change in his or her personal details within seven (7) days after that change occurs.

16. Intended absence from Samoa to be reported:

- (1) This section applies if a registrable offender intends to leave Samoa to travel to any other country.
- (2) At least seven (7) days before leaving Samoa, the registrable offender must report the intended travel to the Police Commissioner, and must provide details of all of the following:
 - (a) each country to which he or she intends to go while out of Samoa;
 - (b) the approximate dates during which he or she intends to be in each of those countries;
 - (c) each address or location within each country at which he or she intends to reside (to the extent that they are known) and the approximate dates during which he or she intends to reside at those addresses or locations;
 - (d) if he or she intends to return to Samoa, the approximate date on which he or she intends to return;
 - (e) if he or she does not intend to return to Samoa, a statement of that intention.

- (3) If circumstances arise making it impracticable for a registrable offender to make the report seven (7) days before the date of departure, it is sufficient compliance with subsection (2) if the registrable offender reports the required information to the Police Commissioner at least 24 hours before leaving Samoa.
- (4) A registrable offender who is out of Samoa and who decides to change any details given to the Police Commissioner under this section must report the changed details to the Police Commissioner as soon as practicable, and must make the report:
 - (a) by writing sent by post or transmitted electronically to the Police Commissioner; or
 - (b) in any other prescribed manner.
- (5) A registrable offender to whom this section applies must report his or her return to Samoa to the Police Commissioner as soon as practicable.
- (6) If the registrable offender decides not to leave Samoa, he or she must report his or her change of intention to the Police Commissioner within seven (7) days after deciding not to leave.

17. Passport and other documents to be produced:

When making a report under section 16, a registrable offender must produce to the Police Commissioner:

- (a) the registrable offender's passport; and
- (b) any other documents required by the Police Commissioner to verify or support the details in the report.

*Division 3 - Provisions applying
to all reporting obligations*

18. Report is to be made to approved police stations:

A report under this Part must be made at a police station or other place approved by the Police Commissioner.

19. Reports to be made in person:

- (1) Subject to subsection (4), a registrable offender must make all reports under this Part in person.
- (2) Only a police officer approved for this purpose by the Police Commissioner may receive a report.
- (3) A police officer may arrange for an interpreter to be present when a person is making a report under this Part, and may otherwise make arrangements which are necessary for a registrable offender to make a report as required by this Part.
- (4) If a registrable offender attending in person is a child or has a disability that renders it impossible or impracticable for the report to be made in person, then the report may be made by a person approved for that purpose by the Police Commissioner.

20. Receipt of information to be acknowledged:

- (1) As soon as is practicable after receiving a report under this Part, the police officer must acknowledge the making of the report.

- (2) The acknowledgment must be in writing and must be given to the person who made the report, and must include all of the following:
 - (a) the name and signature of the police officer or other person who received the report;
 - (b) the date and time when, and the place where, the report was received;
 - (c) a copy of the information that was reported.
- (3) The Police Commissioner must ensure that a copy of every acknowledgment is retained.

21. Verification of identity to be provided:

When a report is made under this Part, the person making the report must provide verification of the person's identity in a form required by the police officer to whom the report is made.

22. Power to establish identity of person making a report:

- (1) A police officer receiving a report under this Part may take, or arrange to have taken, the fingerprints or a fingerscan of the registrable offender if the police officer is not satisfied as to the identity of the registrable offender.
- (2) A police officer may only require the fingerprints or a fingerscan of a child to be taken under subsection (1) if the child is accompanied by his or her parent or guardian or, if neither a parent or guardian is available, by an independent person.

- (3) A police officer receiving a report made under this Part may also require the registrable offender:
 - (a) to be photographed; and
 - (b) to show any tattoos or permanent distinguishing marks.

23. Retention of material for certain purposes:

The Police Commissioner may retain for law enforcement, crime prevention or child protection purposes any, of the following taken under this Division from, or in relation to, a registrable offender:

- (a) copies of any documents;
- (b) any fingerprints or fingerscans;
- (c) any photographs.

Division 4 - Suspension and extension of reporting obligations

24. Suspension and extension of reporting obligations:

- (1) Any obligation imposed on a registrable offender by this Part is suspended for any period during which he or she:
 - (a) is in government custody; or
 - (b) is outside Samoa, unless the obligation is under section 16; or
 - (c) is the subject of an order under Division 6 (or an equivalent order made under the laws of a foreign jurisdiction).

- (2) The period for which a registrable offender's reporting obligations continue is extended by any length of time for which those obligations are suspended under subsection (1)(a).

Division 5 - Reporting period

25. When reporting obligations begin:

For the purposes of this Division, a registrable offender's reporting obligations in respect of a registrable offence begin:

- (a) when the registrable offender is sentenced for the offence; or
- (b) when the registrable offender ceases to be in government custody in relation to the offence, whichever is the later.

26. Length of reporting period:

- (1) A registrable offender must continue to comply with the reporting obligations imposed by this Part for:
- (a) 15 years, if he or she -
- (i) has been found guilty of a single Class 1 offence; or
- (ii) has ever been found guilty of two Class 2 offences; or
- (iii) has ever been found guilty of one Class 2 offence and one or more Class 3 offences; or

- (b) 10 years, if he or she has only ever been found guilty of a single Class 2 offence, or has ever only been found guilty of two Class 3 offences; or
 - (c) five (5) years, if he or she has only ever been found guilty of a single Class 3 offence; or
 - (d) the remainder of his or her life, if he or she -
 - (i) has ever been found guilty of two or more Class 1 offences; or
 - (ii) has ever been found guilty of a Class 1 offence and one or more Class 2 or Class 3 offences; or
 - (iii) has ever been found guilty of three or more Class 2 offences or Class 3 offences.
- (2) A reference in subsection (1) to an offence extends to an offence committed before the commencement of this Act.
- (3) For the purposes of this section:
- (a) two (2) or more offences arising from the same incident within a 24 hour period are to be treated as a single offence; and
 - (b) two (2) or more offences arising from the same incident within a 24 hour period are to be treated as a single Class 1 offence if at least one of those offences is a Class 1 offence.

27. Reporting period for corresponding registrable offenders:

- (1) A corresponding registrable offender must continue to comply with the reporting obligations imposed by this Part until he or she would not be required, if he or she were in a foreign jurisdiction, to report to the corresponding registrar of that foreign jurisdiction.
- (2) For the purposes of this section, if a corresponding registrable offender is a corresponding registrable offender under the laws of more than one jurisdiction, the period for which he or she must continue to comply with the reporting obligations imposed by this Part is the longest period for which he or she would be required to report to the corresponding registrar of a foreign jurisdiction.

Division 6 - Suspension from reporting obligations

28. Supreme Court may suspend lifetime reporting obligations:

- (1) This section applies to a registrable offender who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life.
- (2) A registrable offender may apply to the Supreme Court using an approved form for an order suspending his or her reporting obligations if a period of 15 years has passed

(ignoring any period during which the registrable offender was in government custody) since he or she was last sentenced or released from government custody in respect of a registrable offence or a corresponding registrable offence.

- (3) On the application under subsection (2), the Supreme Court may make an order suspending the registrable offender's reporting obligations.

29. Matters to be considered by the Supreme Court:

- (1) The Supreme Court must not make an order under sections 28 unless it is satisfied that the registrable offender does not pose a risk to the sexual safety of one or more persons or of the community.
- (2) In deciding whether to make an order under this section, the Supreme Court must take all of the following into account:
- (a) the seriousness of the registrable offender's registrable offences and corresponding registrable offences;
 - (b) the period of time since those offences were committed;
 - (c) the age of the registrable offender, the age of the victims of those offences and the difference in age between the registrable offender and the victims of those offences, as at the time those offences were committed;
 - (d) the registrable offender's present age;

- (e) the registrable offender's total criminal record;
 - (f) any other matter the Court considers appropriate.
- (3) In deciding whether to make an order under sections 28, the Court must also take into account any submissions made by the Police Commissioner, and any evidence presented by the Police Commissioner as to the risk that the registrable offender presents to the safety of one or more persons or the community.

30. Police Commissioner is party to application:

The Police Commissioner is a party to an application under section 28(2).

31. Restriction on right of unsuccessful applicant to re-apply for order:

A registrable offender in respect of whom the Supreme Court refuses to make an order under section 28(3) is not entitled to make a further application to the Court until five (5) years have elapsed from the date of the refusal, unless the Court otherwise orders at the time of the refusal.

32. Cessation of suspension order:

An order made under this Division ceases to have effect if, at any time after the making of the order, the registrable offender:

- (a) is made subject to a sex offender registration order; or

- (b) is found guilty of a registrable offence; or
- (c) becomes a corresponding registrable offender who must under section 27 continue to comply with the reporting obligations imposed by this Part for any period.

Division 7 - Offences

33. Offence of failing to comply with reporting obligations:

- (1) A registrable offender who without reasonable excuse fails to comply with any of the registrable offender's reporting obligations commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment for up to five (5) years, or both.
- (2) In determining whether a person had a reasonable excuse for failing to comply with his or her reporting obligations, the court is to have regard to all of the following matters:
 - (a) the person's age;
 - (b) whether the person has a disability that affects the person's ability to understand, or to comply with, those obligations;
 - (c) whether the form of notification given to the registrable offender as to his or her obligations was adequate to inform him or her of those obligations, having regard to the offender's circumstances;
 - (d) any other matter the court considers appropriate.

- (3) It is a defence to proceedings for an offence of failing to comply with a reporting obligation if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received notice under section 35, and was otherwise unaware of the obligation.

34. Offence to provide false or misleading information:

A registrable offender who in purported compliance with this Part provides details that the registrable offender knows to be false or misleading in a material particular commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment for up to five (5) years, or both.

Division 8 - Notification of reporting obligations

35. Notice to be given to registrable offender:

- (1) The Police Commissioner must give to a registrable offender written notice of:
- (a) his or her reporting obligations; and
 - (b) the consequences that may arise if he or she fails to comply with those obligations.
- (2) A registrable offender is to be given a notice under this section as soon as practicable after any of the following events happens:

- (a) he or she is sentenced for a registrable offence;
 - (b) he or she is released from government custody (whether in government custody for a registrable offence or not);
 - (c) he or she enters Samoa if he or she has not previously been given notice of his or her reporting obligations in Samoa;
 - (d) he or she becomes a corresponding registrable offender, if he or she is in Samoa at that time.
- (3) Where a court in Samoa:
- (a) makes any order that has the effect of making a person a registrable offender for the purposes of this Act; or
 - (b) convicts a person of a registrable offence, the Police Commissioner must ensure that the person is, at the time the order is made or person is convicted, given a written notice specifying the reporting period that applies to him or her.
- (4) In addition to subsection (2), the Police Commissioner may at any other time, cause written notice to be given to a registrable offender of:
- (a) his or her reporting obligations; and
 - (b) the consequences that may arise if he or she fails to comply with those obligations.

36. Courts to provide information to Police Commissioner:

- (1) This section applies if a court in Samoa:
 - (a) makes any order that has the effect of making a person a registrable offender for the purposes of this Act; or
 - (b) convicts a person of a registrable offence; or
 - (c) determines an appeal made to it by a registrable offender in respect of a registrable offence or against the making of a sex offender registration order in respect of an offence; or
 - (d) makes any order in relation to a registrable offender that has the effect of removing the person from the ambit of this Act.
- (2) The court must ensure that details of the order, conviction or determination of appeal are provided to the Police Commissioner as soon as is practicable after the making or imposition of the order or conviction or the determination of the appeal (as the case requires).

37. Failure to comply with procedural requirements does not affect registrable offender's obligations:

A failure by any person other than a registrable offender to comply with any procedural requirement imposed on the person by this Part or Regulations made under this Act does not, of itself, affect a registrable offender's reporting obligations.

PART 4
THE SEX OFFENDERS REGISTER

38. Register of sex offenders:

- (1) The Police Commissioner is responsible for establishing and maintaining the Register of Sex Offenders, and has all necessary authority in relation to matters associated with the establishment and management of the Register in accordance with this Part.
- (2) The Register must contain all of the following information in respect of each registrable offender (to the extent that it is known by the Police Commissioner):
 - (a) the registrable offender's name and other identifying particulars;
 - (b) details of each registrable offence of which the registrable offender has been found guilty, or with which he or she has been charged;
 - (c) the date on which the registrable offender was sentenced for any registrable offence;
 - (d) the date on which the registrable offender ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during his or her reporting period;

- (e) any information reported in respect of the registrable offender under Part 3;
- (f) any other information that the Police Commissioner considers appropriate to include in the Register.

39. Restricted access to the Register:

- (1) Nothing in this Part prevents:
 - (a) a court from ordering that any information relating to a registrable offender is to be published or otherwise made available to the public; or
 - (b) Regulations made under this Act from authorising the publication of information held on the Register, and the processes for such publication to be made.
- (2) Subject to subsection (1), the Police Commissioner must ensure:
 - (a) that the Register, or any part of the Register, is only accessed by a person, or a class of persons, who is authorised to do so by the Police Commissioner, or by this Act or Regulations made under this Act; and
 - (b) that personal information in the Register is only disclosed in accordance with this Act or Regulations made under this Act.
- (3) The Police Commissioner must develop guidelines in relation to the accessing and disclosure of personal information in the

Register that ensure that access to the personal information in the Register is restricted to the greatest extent that is possible without interfering with the purpose of this Act.

- (4) This section has effect despite any other Act or law to the contrary.

40. Persons with access to Register not to disclose personal information from it:

- (1) A person who is authorised to have access to the Register or any part of the Register and who discloses any information in the Register to any person without lawful authority, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment of up to three (3) months, or both.
- (2) Despite subsection (1), the Police Commissioner or a person authorised to have access to the Register or any part of the Register may disclose information in the Register to a government department, public statutory authority, foreign law enforcement or supervisory authority or court:
- (a) for the purpose of law enforcement or judicial functions or activities; or
 - (b) as authorised or required by or under any Act or law; or
 - (c) if the Police Commissioner or a person authorised to have access to the Register believes on reasonable grounds that to do so is necessary to enable the proper administration of this Act.

41. Disclosure of modified information:

- (1) The Police Commissioner may provide to any person information in the Register about an individual whose identity cannot reasonably be ascertained from the information provided.
- (2) The Police Commissioner may impose any restriction or condition that the Police Commissioner thinks fit on the use of the information disclosed under subsection (1).
- (3) A person to whom information is disclosed under subsection (1) and who fails to comply with any restriction or condition on its use that is imposed by the Police Commissioner, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment of up to three (3) months, or both.

42. Registrable offender's rights in relation to Register:

- (1) A registrable offender may make a written request to the Police Commissioner for a copy of all the reportable information that is held in the Register in relation to the registrable offender.
- (2) A registrable offender may ask the Police Commissioner to amend any reportable information held in the Register in relation to the registrable offender that is incorrect.
- (3) In this section, reportable information means any information supplied to the Police Commissioner by, or on behalf of, the registrable

offender that the registrable offender is required to report to the Police Commissioner and that is still held in the Register.

43. Ombudsman to monitor compliance:

- (1) The Ombudsman has authority to monitor compliance with this Part by the Police Commissioner and other persons authorised by the Police Commissioner to have access to the Register or any part of the Register.
- (2) The Police Commissioner must ensure that police officers and other persons authorised to have access to the Register or any part of that Register, provides assistance to the Ombudsman to facilitate the performance of the Ombudsman's functions and powers under this section.
- (3) The Ombudsman may at any time give the Minister a written report on compliance with this Part by the Police Commissioner and other persons authorised by the Police Commissioner to have access to the Register.

PART 5

**REGISTERED SEX OFFENDERS PROHIBITED
FROM CHILD-RELATED EMPLOYMENT**

44. Interpretation in this Part:

- (1) In this Part:
"child-related employment" means employment involving contact with a child in connection with:

- (a) child protection, child care and other support services for children;
- (b) education, counselling services, coaching or private tuition services for children;
- (c) paediatric wards of hospitals;
- (d) clubs or associations directed at children or whose membership is mainly comprised of children;
- (e) providing, on a commercial or voluntary basis, a transport service specifically for children;
- (f) providing, on a commercial basis and not merely incidentally to or in support of other business activities services specifically for children.

"education services" does not include a university or an adult education institution even if that university, college or institution has a student under 18 years of age;

"employment" includes:

- (a) performance of work -
 - (i) under a contract of employment or a contract for services (whether written or unwritten); or
 - (ii) for gain or reward other than under a contract of employment or contract for services; or
 - (iii) as part of the duties of a religious vocation; or

- (b) undertaking practical training as part of an educational or vocational course associated with a person's employment; or
- (c) performance of work as a volunteer.

"registered sex offender" means a registrable offender or a person subject to a sex offender registration order.

- (2) For the purposes of this Act, a person is engaged in child-related employment if he or she is:
 - (a) an officer of a body corporate that is engaged in child-related employment; or
 - (b) a member of the committee of management of an unincorporated body or association that is engaged in child-related employment; or
 - (c) a member of a partnership that is engaged in child-related employment.

45. Registered sex offender excluded from child-related employment:

A registered sex offender who applies for, or who is in any way engaged in, employment that is child-related employment, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment of up to two (2) years, or both.

46. Offence to fail to disclose charges:

- (1) A person engaged in child-related employment who is charged with a registrable offence and

who fails to disclose the charge to his or her employer within seven (7) days after the commencement of the proceedings commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

- (2) A person who applies for child-related employment and who fails to disclose the fact of a pending charge of a registrable offence to his or her prospective employer at the time of making the application, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.
- (3) A person who has (whether before or after the commencement of this subsection) applied for child-related employment and who:
 - (a) while the application is still current, is charged with a registrable offence; and
 - (b) fails to disclose the charge to his or her prospective employer within seven (7) days after the commencement of the proceedings,commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

PART 6

CHANGE OF NAME

47. Application of this Part:

This Part applies despite anything to the contrary in the Births, Deaths and Marriages Registration Act 2002.

48. Interpretation in this Part:

In this Part:

"change of name application" means an application by or on behalf of a registrable offender for registration of a change of the offender's name for which approval is required under section 50;

"Registrar" means the Registrar of Births, Deaths and Marriages under the Births, Deaths and Marriages Registration Act 2002.

49. Applications for change of name by or on behalf of a registrable offender:

- (1) A registrable offender must not apply to the Registrar to register a change of his or her name under the Births, Deaths and Marriages Registration Act 2002 without having first obtained the written approval of the Police Commissioner.
- (2) A person must not, on behalf of a registrable offender apply to the Registrar to register a change of his or her name under the Births, Deaths and Marriages Registration Act 2002 without having first obtained the written approval of the Police Commissioner.
- (3) A registrable offender who makes an application to change his or her name under the Births, Deaths and Marriages Registration Act 2002, or a person who makes such an application on behalf of a registrable offender, must inform the Registrar that the application is being made by or on behalf of a registrable offender.

- (4) A registrable offender or other person who breaches this section commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units.
- 50. Approval by Police Commissioner:**
- (1) Subject to subsection (2), the Police Commissioner may only approve a change of name application if the Police Commissioner is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The Police Commissioner must not approve a change of name application if the Police Commissioner is satisfied that the change of name would, if registered, be reasonably likely to frustrate the administration of this Act in respect of the registrable offender.
- 51. Approval to be notified in writing:**
- If the Police Commissioner approves a change of name application, the Police Commissioner must:
- (a) as soon as practicable, give written notice of the approval to the person who made the application; and
- (b) if the registrable offender consents, give a copy of the written notice of approval to the Registrar.
- 52. Registration of change of name:**
- (1) The Registrar must not register a change of name under the Births, Deaths and Marriages

Registration Act 2002 if the Registrar has not received a copy of the notice of approval of the Police Commissioner under section 51.

- (2) If the Registrar does not register a change of name because of subsection (1), the Registrar must give written notice of the application to the Police Commissioner.
- (3) A registrable offender who registers a change of name under the Births, Deaths and Marriages Registration Act 2002, without the approval of the Police Commissioner under section 50, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

53. Registrar may correct Register:

The Registrar may correct the Register if:

- (a) the name of a registrable offender on the Register has been changed; and
- (b) the Police Commissioner has approved that change under this Part.

PART 7

MISCELLANEOUS

54. Offence to breach confidentiality:

- (1) A person who gives information acquired under this Act to any person who is not authorised to receive such information, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply to the giving of information:
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law; or
 - (d) to a legal practitioner for the purpose of obtaining legal advice or representation relating to a matter under this Act; or
 - (e) in good faith for the purposes of this Act; or
 - (f) as required or authorised by or under any other Act.
- 55. Other offences against this Act:**
A person who breaches a requirement applying to that person under this Act, for which no other offence or penalty is prescribed, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.
- 56. Protection from liability:**
An act or omission that a person does or omits to do in good faith in the administration or execution of this Act does not subject the person personally to any action, liability, claim or demand.

57. Certificate concerning evidence:

- (1) In proceedings under this Act, a certificate signed by the Police Commissioner, or a police officer holding a position designated in writing by the Police Commissioner for the purposes of this section, certifying that the Register:
 - (a) at any particular date contained information specified in the certificate; or
 - (b) indicated that, during any particular period, a specified person failed to notify information as required by this Act,is evidence, and in the absence of evidence to the contrary is proof, of the details specified in the certificate.
- (2) For the purposes of this Act, a certificate that would be evidence under a corresponding Act that at a specified time, or during a specified period, a person was required to report to a corresponding registrar under that Act is evidence, and in the absence of evidence to the contrary is proof, of the facts stated in the certificate.

58. Regulations:

- (1) The Head of State, acting on the advice of the Cabinet, may make regulations for all or any of the following purposes:
 - (a) matters incidental to the making of reports under Part 3 including -
 - (i) the manner and form in which a report must be made; and

- (ii) the nature of any verifying documentation or evidence to be produced in support of a report; and
 - (iii) requiring that a report contain additional information to that required by that Part;
- (b) the form of, or the information to be included in, any notice or other document that is required by this Act to be given to registrable offenders;
- (c) the manner and form in which the Register is to be established and maintained, including the manner and form in which information is to be entered in the Register;
- (d) requiring or permitting the Police Commissioner to remove specified information, or information of a specified class, from the Register;
- (e) the notification of reporting obligations to registrable offenders, including -
 - (i) the manner and form in which the information is to be given to registrable offenders;
 - (ii) permitting the person notifying a registrable offender to ask the registrable offender to acknowledge being given the notice;

- (iii) making special provision for the notification of registrable offenders who are children or who have disabilities or other special needs;
- (iv) permitting or requiring a person or body to be notified of a registrable offender's status as a child or person who has a disability or other special need to facilitate notification and reporting;
- (v) providing for the notification to be given to a carer of, or a person nominated by, a registrable offender who may be unable to understand his or her reporting obligations or the consequences of failing to comply with those obligations;
- (vi) requiring that a registrable offender be given additional information to that required by this Act;
- (vii) requiring a person or body to provide specified information to registrable offenders concerning their reporting obligations;
- (viii) requiring a person or body to give the Police Commissioner any acknowledgment by a registrable offender of the receipt of a notice

- or any other specified information that is held by the person or body;
- (f) empowering the Police Commissioner to give directions as to which police stations are to be used as a venue for the making of reports;
 - (g) requiring a person or body to create records for the purposes of this Act and to retain those records for a specified period or an unlimited period;
 - (h) prescribing a person included in a specified class of persons as a corresponding registrable offender for the purposes of this Act;
 - (i) stating that a specified class of order made under a specified corresponding Act is a corresponding sex offender registration order for the purposes of this Act;
 - (j) prescribing arrangements, requirements or exemptions for registrable offenders in witness protection programs approved by the Police Commissioner;
 - (k) prescribing any other matter required or permitted by this Act to be prescribed or that it is necessary or convenient to give effect to this Act, or to facilitate its implementation or enforcement.
- (2) Regulations made under this Act:
- (a) may be of general or of specially limited application; and

- (b) may differ according to differences in time, place or circumstance; and
- (c) may require a matter affected by Regulations made under this Act to be -
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
- (d) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (e) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of Regulations made under this Act, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
- (f) may impose a penalty not exceeding 100 penalty units or imprisonment of up to three (3) months for a breach of the Regulations.

SCHEDULES**SCHEDULE 1****CLASS 1 OFFENCES**

1. Any offender who has committed any of the following offences under the Crimes Act 2013 is deemed to have committed a Class 1 offence:
 - (a) section 52(1) - Sexual violation;
 - (b) section 55 – Incest;
 - (c) section 58(1) - Sexual connection with a child under 12.
2. Any repeat offender who is convicted of a Class 2 or Class 3 offence against a child or a severely intellectually disabled person is deemed to have committed a Class 1 offence.

SCHEDULE 2**CLASS 2 OFFENCES**

Any offender who has committed any of the following offences under the Crimes Act 2013 is deemed to have committed a Class 2 offence:

- (a) section 52(2) - Unlawful sexual connection;
- (b) section 53(1) - Attempted sexual violation;
- (c) section 53(2) - Assault with intent to commit sexual violation;
- (d) section 54(1) - Sexual connection with consent induced by threats;

- (e) section 56(1) - Sexual connection with a dependent family member under 21 years;
- (f) section 56(2) - Attempted sexual connection with a dependent family member under 21 years;
- (g) section 56(3) - Commits indecent act with or on a person who is a dependent family member under 21 years;
- (h) section 58(2) - Attempted sexual connection with a child;
- (i) section 58(3) - Commits indecent act with or on a child;
- (j) section 59(1) - Sexual conduct with person under 16;
- (k) section 59(2) - Attempts to have sexual connection with a young person;
- (l) section 131 - Abduction of a child under 16 with intent to have sexual connection;
- (m) section 157 - Dealing in people under 18 for sexual exploitation.

SCHEDULE 3

CLASS 3 OFFENCES

Any offender who has committed any of the following offences under the Crimes Act 2013 is deemed to have committed a Class 3 offence:

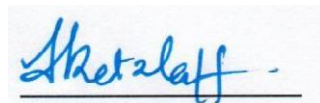
- (a) section 54(2) - Indecent acts on another person with consent induced by threats;
- (b) section 59(3) - Commits an indecent act with or on a young person;

- (c) section 60 - Indecent Assault;
- (d) section 62(1) - Using threats of intimidation for the purpose of sexual conduct;
- (e) section 63(1) - Commits or attempts to have sexual connection with severely intellectually disabled person;
- (f) section 63(2) - Indecently assaults or attempts to indecently assault a severely intellectually disabled person;
- (g) section 73 - Solicitation (if the victim is a child);
- (h) section 82(1) - Publication, distribution or exhibition of indecent material on child;
- (i) section 218 - Solicitation of children.

REVISION NOTES 2017 - 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division in 2017 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*The Sex Offenders Registration Act 2017
is administered by the Ministry of Police.*
