



Tonga

PRISONS ACT 2010

Act No. 43 of 2010



PRISONS ACT 2010

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PRISONS ACT 2010

Act No. 43 of 2010

AN ACT TO REGULATE PRISONS AND TO REPLACE THE PRISONS ACT (CAP 36) AN ACT TO REGULATED PRISONS AND TO REPLACE THE PRISONS ACT (CAP 36)

I assent,
GEORGE TUPOU V,
1st October 2010.

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I—PRELIMINARY

1 Short title

This Act may be cited as the Prisons Act 2010.

2 Objects

The objects of this Act are to –

- (a) provide for the safety of the community; and
- (b) aid in crime prevention through the humane containment, supervision and rehabilitation of persons sentenced by the courts to a term of imprisonment.

3 Interpretation

In this Act, unless a contrary intention appears—

“commissioned officers” means persons appointed to one of the following positions —

- (a) Commissioner of Prisons;
- (b) Deputy Commissioner of Prisons;
- (c) Superintendent of Prisons;
- (d) Assistant Superintendent of Prisons;
- (e) Chief Prison Officer;
- (f) Assistant Chief Prison Officer; or
- (g) Cadet Officers;

“Commissioner” means the Commissioner of Prisons;

“Committee” means the Prisons Advisory Committee;

“detained” means to hold in lawful custody;

“discharge” means a prisoner released from lawful custody;

“health practitioner” means a person appointed under section 111;

“lawful custody”, means a person sentenced to a term of imprisonment or required by law to be detained in custody;

“leave of absence” means leave granted under section 46;

“maximum security facility” means part of a prison where prisoners are separated from all other prisoners within the prison and, within that facility, prisoners separated from other prisoners are accommodated;

“Minister” means the Minister responsible for Prisons;

“minister of religion” means a person appointed under section 113;

“next of kin” means, in order of priority, the following persons—

- (a) the spouse of the prisoner;
- (b) the common law partner of the prisoner;
- (c) a parent, guardian or step-parent of the prisoner;
- (d) a child or stepchild of the prisoner;
- (e) a brother, sister, stepbrother or stepsister of the prisoner;

“non-commissioned officers” means a person appointed to one of the following positions—

- (a) prison officer class I;
- (b) prison officer class II;
- (c) prison officer class III; or

(d) recruit prison officer;

“officer in charge” means the person appointed under section 10;

“official visitor” means a person appointed under section 114;

“period of imprisonment” means a period in which a prisoner is to serve his sentence in a prison;

“prison” means a place established under section 120;

“prison officer” means a person who holds an appointment under Part II, Division 1;

“prisoner” means a person committed, remanded or under a sentence of imprisonment imposed by a court;

“privileged mail” means mail sent to, or by—

- (a) the Minister or other Cabinet Minister;
- (b) the Commissioner;
- (c) the officer in charge;
- (d) a police officer;
- (e) an official visitor;
- (f) a prisoner’s lawyer; or
- (g) another person prescribed by regulations;

“privileges” means—

- (a) involvement in a social activity;
- (b) making or receiving telephone calls, other than telephone calls to or from the prisoner’s lawyer;
- (c) associating with other prisoners;
- (d) using a television, radio, or other electrical entertainment device;
- (e) using a musical instrument;
- (f) using the library;
- (g) receiving a visit; or
- (h) another matter prescribed by regulations;

“prohibited thing” includes any of the following—

- (a) a weapon or replica of a weapon;
- (b) ammunition or an explosive;
- (c) a flammable substance;
- (d) something that may be used to climb a fence or wall;
- (e) something that may be used to cut or spread metal bars;
- (f) something capable of opening a lock;

- (g) a knife, scissors or another cutting implement;
- (h) a power tool;
- (i) a handmade implement that could cause injury to another person or damage to property;
- (j) a drug;
- (k) a syringe or other device used for the purposes of administering a drug;
- (l) cash, a credit or debit card;
- (m) a passport;
- (n) a tattooing device;
- (o) a communication device; or
- (p) any other thing that poses a risk to the security or good order of a prison;

“separate confinement” means the separation of the prisoner from general population;

“standing orders” means the orders made under section 91; and

“strip search” means a search of a prisoner in which the prisoner removes all of his clothing during the course of the search.

PART II—ADMINISTRATION

DIVISION 1— CLASSIFICATIONS AND APPOINTMENTS OF PRISON STAFF

4 Commissioner of Prisons

- (1) There shall be a Commissioner of Prisons who shall be responsible for the Prisons Department.
- (2) The Prime Minister, with the consent of Cabinet, shall have the power to:
 - (a) appoint the Commissioner, after receiving advice from the selection panel established under subsection (3);
 - (b) dismiss the Commissioner, but only on the grounds of physical or mental incapacity, neglect of duty or misconduct.
- (3) The selection panel referred to under subsection (2)(a) shall consist of:
 - (a) the Chief Secretary and Secretary to Cabinet, who shall be the chairman of the panel;
 - (b) the Chairperson of the Public Service Commission; and
 - (c) the Solicitor General.

- (4) The Minister, with the consent of Cabinet, shall determine the terms of appointment of the Commissioner.

5 Term of Commissioner

Subject to this Act, the Commissioner holds office for a period not exceeding 3 years, and is eligible for re-appointment for one further term only.

6 Appointment of other prison officers

- (1) A Prisons Employment Committee is established under this section.
- (2) The functions of the Prisons Employment Committee shall be to decide on the following matters relating to commissioned officers:
 - (a) appointment;
 - (b) promotion;
 - (c) transfer; and
 - (d) conditions of employment;
- (3) The Prisons Employment Committee shall consist of the:
 - (a) the Commissioner; and
 - (b) two commissioned officers appointed by the Minister on the recommendation of the Commissioner.
- (4) The Prisons Employment Committee shall perform its functions in accordance with procedures set out by regulations.

7 Classification of prison officers

Prisoner officers are classified into two classes—

- (a) officers of or above the rank of cadet officer are commissioned officers; and
- (b) officers below the rank of cadet officer are non-commissioned officers.

8 Appointments of prisons officers

- (1) The Minister shall, with the consent of Cabinet appoint a Prisons Staff Appointment Committee, who shall consist of not less than three but not more than five persons.
- (2) The Prisons Staff Appointment Committee established under subsection (1) shall be responsible for the:
 - (a) appointment and determining the terms of employment of the Commissioner; and

(b) appointment, promotion and dismissal of commissioned officers.

- (3) The Prisons Department shall be the secretariat to the Prisons Staff Appointment Committee.

9 Appointments, promotions and dismissals of non-commissioned officers

- (1) The Commissioner may appoint or promote a suitably qualified person as a non-commissioned officer.
- (2) The Commissioner may dismiss a person mentioned in subsection (1) from his appointed position.
- (3) To assist the Commissioner in discharging his functions under this section, the Commissioner may consult with commissioned officers of the Prisons Department.

10 Appointing officer in charge

The Commissioner may appoint a suitably qualified prison officer as an officer in charge of a prison.

11 Oaths

A person who is appointed as a prison officer shall before exercising any powers as a prison officer:

- (a) take, before a magistrate, the oath or affirmation of allegiance set out in Schedule II; and
- (b) take, before a magistrate, the official secrets oath set out in Schedule to the Official Secrets Act.

12 Oaths of a Commissioner

A person who is appointed as Commissioner shall, before commencing to perform his duties:

- (a) take, before the Prime Minister, the oath or affirmation of allegiance set out in Schedule II; and
- (b) take, before a magistrate, the official secrets oath set out in the Schedule to the Official Secrets Act.

PART III—PRISONERS

DIVISION 1— CUSTODY AND ADMISSION OF PRISONERS

13 Where prisoners are to be detained

- (1) Subject to this section, a person sentenced to a term of imprisonment, shall be detained in a prison.
- (2) Where a prisoner's period of detention does not exceed 7 days, the prisoner may be detained in a police lock-up for all or part of that period.
- (3) Where a prisoner's period of detention is more than 7 days, the prisoner may be detained in a police lock-up until necessary arrangements may be made to take the prisoner to a prison.
- (4) This section applies subject to the provisions of this Act that allow a prisoner to be lawfully outside a prison.

14 Authority for admission to prison

- (1) A person shall not be admitted to a prison unless the officer in charge of the prison is given a warrant or other lawful order for the person's detention.
- (2) The Commissioner may order that a prisoner be taken and detained in any prison despite anything contrary contained in a warrant of commitment specifying a particular prison.

15 Prisoner's duties

- (1) On admission to a prison, a prisoner shall be informed of his duties under this Act, the Regulations, the Rules or the policies and procedures.
- (2) The officer in charge—
 - (a) shall make a copy of this Act available to all prisoners;
 - (b) shall cause to be brought to the prisoner's attention any policies and procedures relevant to a prisoner's entitlements; and
 - (c) may make a copy of other legislation available to a prisoner.

16 Prison labour

- (1) Any prisoner undergoing a sentence of imprisonment, unless his sentence specifies that the imprisonment is to be without hard labour, shall be employed at hard labour inside or outside the prison premises.
- (2) A prisoner, other than a sentenced prisoner, may, if the prisoner consents, perform any work or labour that can be conveniently performed in the prison.

- (3) Hard labour within the prison premises may consist of such work as may be directed by the officer in charge.
- (4) Hard labour when performed outside the prison premises shall consist of the employment of the prisoner on any work of public utility or such other work as the Commissioner thinks fit.
- (5) A prisoner shall not be employed in enforcing the discipline of the prison or in the service of any prison officer or prisoner.

17 Prisoner classifications

Prisoners shall be classified as follows –

- (a) First Class – Debtors, comprising persons confined for contempt of Court, or upon civil process, or for want of sureties to keep the peace;
- (b) Second Class – Prisoners awaiting trial or under remand; or
- (c) Third Class – Prisoners sentenced to penal servitude or imprisonment.

18 Accommodation

- (1) Prisoners of the first class shall, where practicable and suitable facilities exist, be accommodated in a separate ward.
- (2) Prisoners of the second class shall, where practicable and suitable facilities exist, be kept apart from other prisoners.
- (3) A prisoner who is under 18 years shall, where practicable and suitable facilities exist, be kept apart from other prisoners who are 18 years or older.
- (4) Female prisoners shall be kept apart from male prisoners.

DIVISION 2—MANAGEMENT OF PRISONERS

19 Directions to prisoners

- (1) A prison officer may give a prisoner a direction that the officer reasonably believes to be necessary—
 - (a) for the safe and secure custody of the prisoner or other prisoners;
 - (b) for the security and good order of the prison; or
 - (c) to stop a prisoner committing an offence against this Act or a breach of discipline.
- (2) A prison officer may give the direction verbally or in writing and such a direction may apply generally or be limited in its application.

20 Access to health practitioner

A prisoner shall, on request to the officer in charge of a prison, be given access to a health practitioner for the purposes of medical consultation and treatment.

21 Compulsory medical examination or treatment

- (1) A prisoner shall submit to a medical examination or treatment by a health practitioner if the health practitioner considers the prisoner requires the medical examination or treatment.
- (2) A prisoner shall submit to an examination by a health practitioner after being admitted to prison and shall not be allowed to associate with other prisoners who have been so examined until he has been examined by the health practitioner.
- (3) A prisoner shall submit to an examination by a health practitioner if the Commissioner or officer in charge orders the examination to determine –
 - (a) whether to transfer the prisoner to a hospital or another prison;
 - (b) the type of labour the prisoner may perform; or
 - (c) the prisoner's suitability for early release.
- (4) A prisoner shall submit to an examination or treatment by a health practitioner if the Commissioner or officer in charge considers that the prisoner's state of mind or body requires the immediate attention of a health practitioner.
- (5) Reasonable force may be applied to a prisoner by a health practitioner or anyone assisting the health practitioner to complete the examination or treatment if the prisoner does not voluntarily submit to the examination or treatment.
- (6) The officer in charge may, on the advice of the health practitioner, order that mechanical restraints be applied to the prisoner to allow the health practitioner to examine or treat the prisoner.

22 Directions of health practitioner

The Commissioner shall, as far as is reasonably practicable, comply with the directions of a health practitioner relating to the maintenance of the health of a prisoner.

23 Accommodation for sick prisoners

- (1) Where practicable, each prison shall have an infirmary or other suitable accommodation for the reception of sick prisoners.

- (2) Prisoners suspected of having infectious diseases shall be separated from other prisoners, and, as soon as practicable, be removed to the infirmary or hospital.

24 Custody of prisoner in hospital

- (1) Where a prisoner is moved to a hospital outside a prison, the Commissioner shall make arrangements with the hospital administrator to ensure the security and good order of the prisoner while the prisoner is in the hospital.
- (2) A prisoner who is in a hospital in accordance with an arrangement made under subsection (1) is deemed to be in lawful custody for the purposes of this Act.

25 Death of prisoner

- (1) If a prisoner dies, the Commissioner shall, as soon as practicable, notify the—
 - (a) health practitioner appointed to the prison;
 - (b) police officer in charge of the police station nearest to the prison where the prisoner died;
 - (c) prisoner's next of kin; and
 - (d) the Minister.
- (2) The Commissioner shall keep records, prescribed by regulations, of the prisoner's death.
- (3) An inquest shall be held into the death of any prisoner who dies whilst in lawful custody and no prison officer or prisoner shall be a juror on any such inquest.
- (4) The body of the prisoner shall be returned to the prisoner's family for burial after the requirements of this section are satisfied.

26 Registration of birth

- (1) A birth certificate made for a child whose mother or father is, or was when the child was born, a prisoner shall not state that the child's mother or father is or was a prisoner.
- (2) Where a child is born in prison, that fact shall not be stated on the child's birth certificate but the certificate is to state that the child was born in the nearest village to the prison.

27 Child of female prisoner may live in prison

- (1) If a female prisoner—

- (a) gives birth to a child during her period of imprisonment; or
- (b) is breast feeding her child,

the child may be accommodated with his mother in the prison if the prison has suitable accommodation for the child.

- (2) If, in the opinion of the committing court, the child of a prisoner is too young to be separated from his mother, it may make an order directing that the child be accommodated with his mother in prison.
- (3) An order mentioned in subsection (2) shall accompany the prisoner to the prison.
- (4) On admission to the prison, the prisoner shall be informed that she will have the responsibility for the child's care and safety, including all costs associated with that care.

28 Officer in charge may order child be removed from prison

The officer in charge of a prison may remove a child being accommodated with a prisoner from the prison if—

- (a) a court orders that the child live with another person;
- (b) the prisoner with whom the child is accommodated requests it;
- (c) the child starts school;
- (d) the female prisoner is transferred to another prison and the other prison can not accommodate the child; or
- (e) the presence of the child poses a risk to the security or good order of the prison.

29 Review of decisions about children

A female prisoner may apply to the Commissioner to review the decision of the officer in charge to remove the child from the prison.

30 Marriage

A prisoner may be married in a prison only with the Commissioner's approval.

31 Search

- (1) All prisoners shall be searched by a prison officer on admission to a prison.
- (2) The officer in charge of a prison may, at any time, order a prison officer to search a prisoner or to search a prisoner's cell or dormitory.

- (3) A prison officer may search a prisoner if the officer reasonably suspects the prisoner possesses a prohibited thing.
- (4) The officer in charge of a prison may order a prison officer to strip search a prisoner if the officer in charge is satisfied that the strip search is necessary for the—
 - (a) good order or security of the prison; or
 - (b) safe custody and security of prisoners at the prison.
- (5) A search or strip search may be carried out only by a prison officer of the same gender as the prisoner.
- (6) At least 2 prison officers of the same gender of the prisoner shall carry out a strip search on a prisoner.

32 Prisoner's money

- (1) The Commissioner shall –
 - (a) hold in safekeeping any monies belonging to a prisoner; and
 - (b) pay that money to the prisoner on the prisoner's release.
- (2) The Commissioner may permit a prisoner to spend his money held by the Commissioner during the prisoner's term of imprisonment.
- (3) The Commissioner shall keep a record of all monies belonging to individual prisoners.

33 Prisoner's property

- (1) The officer in charge may allow a prisoner or another person to bring property of or for the prisoner into the prison.
- (2) The officer in charge shall keep a record that describes the property each prisoner has in the prison.
- (3) The officer in charge shall deliver up to a prisoner when the prisoner is released the prisoner's property including all monies belonging to the prisoner.
- (4) The officer in charge is to ensure that the prisoner mentioned in subsection (3) signs a receipt for the prisoner's property or monies.

DIVISION 3 – PRISONER'S CORRESPONDENCE**34 Correspondence generally**

Subject to this Division, a prisoner may send letters to, and receive letters from, any other person.

35 Prisoner's mail to be searched

- (1) The officer in charge may cause all letters sent by or to prisoners to be opened and examined, other than privileged mail, by a prison officer.
- (2) The officer in charge of a prison may direct a prison officer to open and examine a prisoner's privileged mail, in the prisoner's presence, if the officer in charge is of the opinion that the mail contains—
 - (a) anything that may cause physical harm to the addressee; or
 - (b) a prohibited thing.
- (3) As soon as practicable after searching a prisoner's mail, the officer in charge shall cause the mail to be either—
 - (a) delivered to the prisoner; or
 - (b) posted to the person to whom the mail is addressed.
- (4) Where a letter sent by or to a prisoner contains information about the commission of a criminal offence, the officer in charge of the prison shall immediately notify the Police Commissioner of that fact and deliver to him, that letter.
- (5) The officer in charge shall keep a record of all correspondence sent to the Police Commissioner.

36 Telephone calls

- (1) A prisoner shall not make a telephone call without the permission of the officer in charge of the prison.
- (2) A prisoner shall not make more telephone calls in any week than the maximum number fixed by the Commissioner for the prisoner or the class of prisoners to which the prisoner belongs.
- (3) A prisoner shall not receive a telephone call from outside the prison, except with the consent of the officer in charge of the prison on the occasion of a family or other personal emergency.
- (4) The cost of a telephone call made by a prisoner is to be met by the prisoner.
- (5) Subsection (4) does not apply to:
 - (a) the first local call made in any week by a prisoner;

- (b) any call of a kind that the Commissioner directs is to be met by the Department; or
 - (c) any call whose cost is met by the receiver.
- (6) The Commissioner may decide the length and frequency of telephone calls.
- (7) A prison officer may monitor or record a telephone call to or from a prisoner other than a telephone call between a prisoner and—
- (a) the prisoner's lawyer; or
 - (b) a police officer.
- (8) A prison officer may end a telephone call if the officer reasonably suspects the nature of the call constitutes—
- (a) an offence; or
 - (b) a threat to the security or good order of the prison.
- (9) As soon as practicable after terminating a prisoner's telephone call, a prison officer shall provide a report to the officer in charge of the prison detailing the reason for terminating the telephone call.
- (10) If a telephone call reveals information about the commission of an offence, the officer in charge of the prison shall immediately give the information to the Police Commissioner.

DIVISION 4 – MAXIMUM SECURITY ORDERS

37 Maximum security orders

- (1) The Commissioner may make a maximum security order that a prisoner be placed in a maximum security facility within a prison.
- (2) The Commissioner may only make the order if the Commissioner reasonably believes, that any or all of the following apply—
- (a) there is a risk the prisoner will escape, or attempt to escape;
 - (b) there is a risk the prisoner will kill or cause serious injury to prison officers, other prisoners or another person that the prisoner may come into contact with; or
 - (c) the prisoner is a threat to the security or good order of the prison.
- (3) The term of the order shall not be longer than 7 days, unless the Commissioner otherwise directs.

38 Review of maximum security orders

- (1) If a prisoner is placed in a maximum security facility under a maximum security order for a period of more than 1 month, the official visitor shall review the order—

- (a) as close as practicable to the end of the first month; and
 - (b) then, at intervals of not more than 1 month until the period ends.
- (2) If a prisoner is placed in a maximum security facility under a maximum security order for a period of more than 3 days, the prisoner may ask the Commissioner to refer the order to an official visitor for review.
- (3) The Commissioner shall refer the order to an official visitor as soon as practicable.
- (4) The official visitor shall review the order as soon as practicable and recommend to the Commissioner whether the order should be confirmed, amended or cancelled.
- (5) On receiving the official visitor's recommendation, the Commissioner shall consider the recommendation and may either confirm, amend or cancel the order.
- (6) The Commissioner is not bound by the official visitor's recommendation.

39 Medical examination of prisoner in maximum security facility

- (1) A health practitioner shall examine a prisoner accommodated in a maximum security facility under a maximum security order, as soon as practicable after the order takes effect and at subsequent intervals that are, to the greatest practicable extent, of not more than 7 days.
- (2) A health practitioner shall examine a prisoner after the order ceases to have effect.

40 Records about maximum security orders

- (1) The Commissioner shall keep a record of every prisoner placed in a maximum security facility.
- (2) The record shall include the name of the prisoner, when the prisoner was medically examined and if an official visitor reviewed the order, the date of that review and the subsequent decision of the Commissioner.

41 Conditions for prisoners in maximum security facility

- (1) The Commissioner shall ensure, to the greatest extent practicable, that a prisoner placed in a maximum security facility—
 - (a) can access fresh water, a toilet, and shower facilities;
 - (b) is given reasonable bedding;
 - (c) is given clothing that is appropriate for the prevailing conditions; and
 - (d) is given the opportunity to exercise, in the fresh air, for at least 2 daylight hours a day.

- (2) The Commissioner may determine the privileges, if any, a prisoner may have whilst placed in a maximum security facility under a maximum security order.

42 Other matters about maximum security orders

A prisoner placed in a maximum security facility under a maximum security order is not entitled to be visited by other persons except-

- (a) the prisoner's lawyer;
- (b) a diplomatic or consular representative;
- (c) a government official on official duties; or
- (d) an official visitor.

DIVISION 5 – TRANSFER AND REMOVAL OF PRISONERS

43 Transfer to another prison or a hospital

- (1) The Commissioner may order the transfer of a prisoner from a prison to another prison or to a place for medical examination or treatment.
- (2) The prisoner shall be escorted by a prison officer or a police officer.
- (3) The prisoner may be restrained by the use of mechanical restraints whilst absent from the prison.
- (4) The prisoner may without any further order from the Commissioner, be detained in any other place for as long as is reasonably necessary to give effect to the transfer.

44 Transfer of prisoner to court

- (1) The Commissioner shall produce a prisoner at the time and place, stated in a court order.
- (2) A party to a civil proceeding who requires a prisoner to attend court shall pay the Commissioner the expenses for the prisoner's attendance.
- (3) On the determination or an adjournment of a court proceeding at which a prisoner attends under this section, the prisoner may be returned to the prison without any further process or authority.
- (4) The prisoner may be restrained by the use of mechanical restraints whilst absent from the prison.

45 Removal of prisoner for criminal investigations

- (1) The Commissioner shall, on the written request of the Police Commissioner or his delegate, release a prisoner into the custody of the Police Commissioner to enable—
 - (a) the prisoner to provide information to the police about an offence committed by a person other than the prisoner; or
 - (b) the police to question the prisoner about an offence alleged to have been committed by him.
- (2) The prisoner may be restrained by the use of mechanical restraints whilst absent from the prison.

DIVISION 6 – LEAVE OF ABSENCE**46 Leave of absence from prison**

- (1) The Commissioner may, by order in writing, grant a prisoner leave to be absent from the prison in which he is being detained for —
 - (a) medical examination, assessment or treatment;
 - (b) the prisoner to attend an educational or training course;
 - (c) the prisoner to participate in paid employment or community service;
 - (d) compassionate purposes as the Commissioner thinks fit; or
 - (e) any other purpose as the Commissioner thinks fit.
- (2) The Commissioner may impose conditions on the order that the Commissioner reasonably believes necessary for the safe custody and security of the prisoner, including, but not limited to, a condition that the prisoner remain in the custody of a prison officer whilst on the leave of absence.
- (3) Where leave of absence is granted to a prisoner for participation in paid employment, the Commissioner may impose a condition on the order requiring the prisoner to pay to the Commissioner a specified amount per week, calculated in accordance with the directions of the Minister, towards the cost of his accommodation in prison while so employed.
- (4) The Commissioner shall give the prisoner a copy of the order.

47 Prisoner's duties while on leave of absence

- (1) While on the leave of absence, the prisoner shall—
 - (a) keep the order referred to in section 46;
 - (b) when requested by a police officer or a prison officer, show the copy of the order to the officer; and
 - (c) comply with the conditions stated in the order.

- (2) If the Commissioner suspects that the prisoner has failed to comply with a condition, the Commissioner may, by further written order, revoke the leave of absence order, or vary any of the conditions of the order.
- (3) If the Commissioner varies a condition of the order, the Commissioner shall make all reasonable endeavours to bring that fact to the attention of the prisoner.
- (4) Where a prisoner is still at large after the revocation or expiry of the leave of absence, the prisoner may be apprehended without warrant by any member of the Tonga Police or any prison officer.
- (5) A prisoner who is still at large after the expiry or revocation of a leave of absence will be taken to be unlawfully at large.

48 Other matters about leave of absence

- (1) The period of time spent by a prisoner on leave of absence is taken to be time served under the prisoner's period of imprisonment.
- (2) Time spent by a prisoner while unlawfully at large does not count as time served under the prisoner's period of imprisonment.

DIVISION 7 - REMISSION

49 Eligibility for remission

- (1) Subject to subsections (2) and (3), the Commissioner may grant remission of up to one-quarter of the term of imprisonment for a male prisoner or one-third of the term of imprisonment for a female prisoner if satisfied—
 - (a) that the prisoner's release does not pose a risk to the community;
 - (b) that the prisoner has been of good conduct and industry; and
 - (c) any other matter prescribed by regulation.
- (2) A prisoner charged with an offence allegedly committed during the term of his imprisonment shall not be considered for a grant of remission until after the charge is decided.
- (3) No remission shall be granted to a prisoner who is sentenced to a total period of imprisonment of 3 months or less.

50 Effect of remission on cumulative sentences

- (1) If a prisoner is sentenced to a term of imprisonment that is cumulative on another term of imprisonment, the first term, the cumulative term starts at the end of the first term, taking into account any remission granted in relation to the first term.

- (2) In granting remission for the first term under subsection (1) the Commissioner shall consider whether the prisoner's discharge poses a risk to the community as if—
 - (a) the first term were the only term of imprisonment the prisoner was serving; and
 - (b) the prisoner could be released if remission were granted.

51 Calculating remission – male prisoners

- (1) The amount of remission shall be determined by marks as follows –
 - (a) every day of imprisonment shall be represented by six marks, irrespective of conduct or industry;
 - (b) one additional mark shall be given for a fair day's labour;
 - (c) additional marks for steady hard work and full performance of the task allotted for the day; and
 - (d) a prisoner shall obtain a number of marks equal to six times the number of days of the term of imprisonment to which he has been sentenced.
- (2) No marks shall be allotted for mere good conduct except on Sundays, Christmas Day and Good Friday.
- (3) Any prisoner entitled to marks who conducts himself well on Sundays, Christmas Day and Good Friday is entitled to receive eight marks.
- (4) Prisoners in hospital or the infirmary, if injured on the public works or in the performance of their duty, without any fault of their own, shall be allowed eight marks per day.
- (5) If a prisoner is in hospital for a reason other than sustaining an injury whilst performing labour, he is allowed six marks per day unless recommended for an additional number of marks by the Commissioner.
- (6) Prisoners who have been certified by the health practitioner to be only capable of light labour are allowed marks in proportion to their industry on the same scale as other prisoners.
- (7) Prisoners undergoing separate confinement for breaches of prison discipline or who are subject to a maximum security order, are allowed only six marks a day during the time of such punishment or the period of the maximum security order.
- (8) For the purpose of calculating remission, one calendar month under the marks system represents 30 days.

52 Calculating remission – female prisoners

For the purpose of calculating remission for female prisoners, section 51 applies subject to the following—

- (a) every day of imprisonment shall be represented by a four instead of six marks;
- (b) full daily marks shall be six instead of eight; and
- (c) the maximum remission shall be one third instead of one quarter of the sentence.

53 Other matters about the marks system

- (1) Re-convicted holders of a licence serving remnants of former sentences may earn marks and a grant of remission.
- (2) The maximum number of marks which a prisoner may be deprived for any one offence or breach of discipline, other than an offence under section 69, by—
 - (a) the Minister – 720; and
 - (b) the Commissioner – 42.
- (3) On the conviction of escape, preparation to escape or attempted escape from lawful custody, a prisoner forfeits all marks earned by the prisoner up to and including the day on which the escape, preparation to escape or attempted escape was made.
- (4) All fines of remission of marks by the Commissioner are subject to review, by the Minister on appeal.
- (5) The officer in charge shall keep a mark book.

54 Good conduct and industry

The Commissioner shall take into account, but is not limited to take into account, the following matters in determining whether a prisoner has been of good conduct and industry—

- (a) whether the prisoner has been charged with a breach of discipline and the nature of that breach;
- (b) whether the prisoner has had a maximum security order made in his favour;
- (c) whether the prisoner has worked whilst in prison to the best of the prisoner's ability; or
- (d) anything else prescribed under a regulation.

55 Risk to community

The Commissioner, in considering whether a prisoner's discharge would pose a risk to the community, shall consider, but is not limited to, the following—

- (a) the possibility of the prisoner committing further offences;

- (b) the risk of harm to a member of the community and the degree of that risk;
- (c) the prisoner's criminal history;
- (d) whether the sentencing court made any remarks about the prisoner;
- (e) any medical reports relating to the prisoner;
- (f) any behavioural reports about the prisoner; or
- (g) anything else prescribed under a regulation.

56 Refusing remission

- (1) If the Commissioner is considering refusing to grant remission, the Commissioner shall give the prisoner a notice of that fact together with the reasons for the proposed refusal.
- (2) A prisoner has 14 days after receiving the notice mentioned in subsection (1) to make a written submission to the Commissioner outlining why the remission should not be refused.
- (3) The Commissioner shall consider the prisoner's submissions within the 14 days of receiving the prisoner's submission, if any, and inform the prisoner whether the remission is refused.
- (4) A prisoner aggrieved by the decision of the Commissioner to refuse to grant the prisoner remission may appeal that decision, in writing, to the Minister.

DIVISION 8 – DISCHARGE OR RELEASE

57 Discharge or release of prisoner

- (1) A prisoner shall be discharged, at the time determined by the Commissioner, on the day when his sentence expires or otherwise terminates.
- (2) Any prisoner, whose term of imprisonment would according to his sentence expire on Sunday, Christmas Day or Good Friday, shall be discharged on the immediate day preceding.
- (3) The Commissioner may give a prisoner help when the prisoner is discharged or released.

58 Early discharge

The Commissioner may order that the prisoner who has served at least half of the prisoner's term of imprisonment be discharged if the prisoner's period of imprisonment is—

- (a) less than 1 year, within 7 days immediately before the day on which the prisoner would otherwise be discharged; or

- (b) 1 year or more, within 14 days immediately before the day on which the prisoner would otherwise be discharged.

59 Release on licence

- (1) A prisoner who is sentenced to imprisonment for 4 years or more may be granted a release on licence after having served two-thirds of his sentence.
- (2) A prisoner who has attained the age of 60 years may be granted a release on licence.
- (3) The Cabinet may, on the recommendation of the Commissioner grant to a prisoner mentioned in subsections (1) or (2) a licence to be at large in the Kingdom.
- (4) In considering whether to recommend a prisoner to Cabinet as being suitable for release on licence, the Commissioner shall take into account the following—
 - (a) whether the prisoner's release would pose a risk to the community;
 - (b) whether the prisoner has been of good conduct and industry;
 - (c) the prisoner's demeanour and attitude towards the offence for which the prisoner was imprisoned; and
 - (d) the prisoner's attitude towards crime generally.
- (5) Section 55 lists the factors that the Commissioner shall consider, but is not limited, in determining whether the prisoner poses a risk to the community.
- (6) Before granting a prisoner a licence, the Cabinet shall consider, but is not limited to the following—
 - (a) the Commissioner's recommendation;
 - (b) any medical report as to the mental or physical condition of the prisoner; and
 - (c) the effects of imprisonment on the prisoner's mental or physical condition.
- (7) The Cabinet may revoke or alter such licence by order.
- (8) Any licence granted under this section shall be in the prescribed form set out in Schedule 1.

PART IV—BREACHES AND OFFENCES

DIVISION 1—BREACHES OF DISCIPLINE BY PRISONERS

60 Breaches of discipline

A prisoner commits a breach of discipline if the prisoner—

- (a) disobeys a direction of a prison officer;
- (b) when directed to do something does it in a careless or negligent way;
- (c) makes something without the approval of the officer in charge;
- (d) possesses something without the approval of the officer in charge;
- (e) consumes something without the approval of the officer in charge;
- (f) uses abusive, indecent, insulting, obscene, offensive or threatening language;
- (g) acts in an indecent or offensive way;
- (h) behaves in a manner contrary to the security or good order of a prison;
- (i) makes a frivolous or vexatious complaint;
- (j) gambles;
- (k) without the approval of the officer in charge or health practitioner, possesses or takes medication or gives medication to another prisoner;
- (l) without the approval of the officer in charge, takes another prisoner's property;
- (m) contravenes a requirement of the Regulations or Rules; or
- (n) attempts to do anything mentioned in paragraphs (a) to (m).

61 Prisoner not to be punished twice

- (1) A prisoner shall not be punished for doing something or failing to do something as a breach of discipline if the prisoner has been convicted or acquitted of an offence for the same act or omission.
- (2) A prisoner shall not be charged with an offence for doing something or failing to do something if the prisoner has been punished for the act or omission as a breach of discipline.

62 Commissioner to notify police

- (1) If a prisoner does or omits to do something which could be dealt with either as a criminal offence or as a breach of discipline, the Commissioner shall immediately advise the Police Commissioner of the act or omission.

- (2) Proceedings for a breach of discipline under this section are stayed until the Police Commissioner advises that no criminal charge will be brought against the prisoner for the act or omission.
- (3) The advice from the Police Commissioner shall be sent to the officer in charge of the prison where the prisoner is accommodated.

63 Procedures for breach of discipline

- (1) A prison officer may bring a charge of a breach of discipline against a prisoner.
- (2) As soon as practicable after a prison officer brings a charge of a breach of discipline against a prisoner, the prison officer shall provide written details of that fact to a prison officer, the hearing officer, who holds a more senior office than the officer bringing the charge.
- (3) The hearing officer shall—
 - (a) inform the prisoner of any evidence that supports the allegation;
 - (b) allow the prisoner to cross-examine any witness called by the prison officer under subsection (1) and call witnesses within the prison to give evidence for the prisoner, unless the hearing officer considers the evidence may be given in writing;
 - (c) allow the prisoner a reasonable opportunity to make submissions in the prisoner's defence; and
 - (d) allow the prisoner a reasonable opportunity to make submissions in mitigation of punishment.
- (4) If the prisoner refuses to attend the breach of discipline hearing, the hearing officer may hear and determine the proceedings in the absence of the prisoner.
- (5) If the hearing officer determines that the prisoner charged does not understand the nature of the disciplinary proceedings or the alleged breach of discipline, the hearing officer may appoint a person nominated by the prisoner, or, in the absence of such nomination, someone else, to assist the prisoner at the hearing.
- (6) The hearing officer may question the prisoner and anyone else who may be able to provide relevant information.
- (7) Neither the prison officer who alleged the breach of discipline nor the prisoner is allowed any legal or other representation before the hearing officer.
- (8) The hearing officer is not bound by the rules of evidence but may, subject to any regulation, inform himself about the matter in the way the officer thinks fit.
- (9) If the hearing officer believes that the prisoner's act or omission constitutes a criminal offence, the hearing officer shall notify the Commissioner of that fact

and not proceed further with the matter until advised otherwise by the Commissioner.

64 Punishment for breach of discipline

- (1) Where a prisoner charged with a breach of discipline admits the charge, or the charge is proved beyond reasonable doubt, the hearing officer may impose one of the following punishments—
 - (a) reprimand the prisoner;
 - (b) order the prisoner to forfeit privileges for up to 14 days; or
 - (c) order the prisoner to serve a separate confinement period, not exceeding 7 days.
- (2) The hearing officer shall record the breach of discipline and the punishment in the breach of discipline register.
- (3) The hearing officer shall inform the prisoner of his right to appeal and the way in which the prisoner is to commence an appeal.
- (4) If the prisoner wishes to appeal, the prisoner shall inform the hearing officer within 7 days.
- (5) Where a prisoner appeals a decision of the hearing officer, the punishment appealed against, shall be suspended pending the determination of the appeal.

65 Referral of breach to Commissioner for determination

- (1) If the hearing officer considers that the breach of discipline is of a serious nature, the hearing officer may refer the matter to the Commissioner recommending that he may order that the prisoner forfeit up to a maximum of 42 marks.
- (2) The Commissioner may, in addition to making an order under subsection (1), impose upon the prisoner a punishment under section 64.
- (3) A decision made by the Commissioner under this section, other than a decision to forfeit marks, may not be appealed against under this Act.

66 Prohibited punishments

The following punishments are prohibited-

- (a) applying mechanical restraints on a prisoner;
- (b) subjecting a prisoner to corporal punishment, torture or cruel, inhumane or degrading treatment; or

- (c) subjecting the prisoner to any other punishment or treatment that may reasonably be expected to adversely affect the prisoner's physical or mental health.

67 Appeals

- (1) An appeal by a prisoner shall be heard as soon as practicable after the prisoner notifies the hearing officer of his intention of appealing the hearing officer's decision.
- (2) The Commissioner will hear and determine all appeals made by prisoners who are aggrieved by a punishment imposed upon him for a breach of discipline.
- (3) The appeal shall be by way of a review of the evidence taken into account at the hearing of the charge.
- (4) The Commissioner may allow the prisoner to call additional evidence that was not available at the original hearing.
- (5) The prisoner is not allowed any legal representation at the hearing.
- (6) The Commissioner may allow a prisoner to be represented by someone from the prison to assist the prisoner at the hearing of the appeal, if the prisoner does not understand the nature of the appeal proceedings, the alleged breach of discipline or the decision of the hearing officer.
- (7) The appeal is to be conducted, without formality and the Commissioner is not bound by the rules of evidence but may, subject to any regulation, inform himself about the matter in the way he thinks fit.
- (8) Where the Commissioner determines that the appeal may be determined without a hearing, he shall invite each party to tender written evidence or other material.
- (9) On determining the appeal, the Commissioner may—
 - (a) confirm the decision;
 - (b) vary the decision; or
 - (c) set the decision aside and substitute another decision for it.
- (10) The Commissioner shall provide written notice of his decision to the appellant and the officer in charge of the prison.
- (11) The decision of the Commissioner under this section shall not be subject to further appeal under this Act.

68 Separate confinement

- (1) An order that a prisoner undergo separate confinement shall contain directions about the privileges the prisoner is to receive whilst undergoing separate confinement.

- (2) A health practitioner shall examine a prisoner undergoing separate confinement as soon as practicable after the order commences and when the order ceases.

DIVISION 2—OFFENCES BY PRISONERS

69 Escape from lawful custody

- (1) Any person who escapes, prepares to escape or attempts to escape from lawful custody commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 2 years.
- (2) If at the time of the escape, the preparation to escape or attempted escape, of a prisoner serving a term of imprisonment, the imprisonment imposed for the offence shall be cumulative upon any term of imprisonment the prisoner is currently serving.
- (3) The time during which the prisoner was at large shall not be counted as part of the term of his original sentence.

70 Riot

- (1) Any prisoner who takes part in a riot commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 6 years.
- (2) Any prisoner who, during a riot,-
 - (a) takes another person hostage; or
 - (b) escapes from lawful custody, or assists another prisoner to escape from lawful custody;

commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 10 years.

71 Assault

- (1) Any prisoner who assaults a prison officer commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 2 years.
- (2) The term of imprisonment imposed shall be cumulative upon any term of imprisonment which the prisoner was serving at the time when the assault was committed.

72 Prohibited things

Any prisoner who makes, possesses, conceals or consumes a prohibited thing, without reasonable excuse commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 2 years.

73 Other offences

- (1) Any prisoner who—
 - (a) threatens to do grievous bodily harm to anyone;
 - (b) destroys, damages or removes any part of a prison or any property in the prison; or
 - (c) is unlawfully at large,commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 2 years.
- (2) Any prisoner who does not comply with the conditions of an order issued under section 46 commits an offence and shall be liable upon conviction to imprisonment for any term not exceeding 6 months.

DIVISION 3—OFFENCES BY PERSONS**74 Aiding prisoner to escape**

Any person who renders assistance of any kind or in any manner, either directly or indirectly, to a prisoner to enable such prisoner to escape from lawful custody commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding 2 years.

75 Aiding escaped prisoner or prisoner unlawfully at large

Any person who aids someone that the person knows, or ought to reasonably know, is a prisoner who has escaped from lawful custody or is unlawfully at large commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding 2 years.

76 Obstructing prison officer

Any person who obstructs a prison officer in the performance of his duties under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for any term not exceeding 12 months.

77 Refusing to leave prison when directed

- (1) A prison officer who has control of a prisoner may require a person to leave the vicinity of the prisoner or the prison, if the prison officer reasonably believes that the person poses a risk to the security—
 - (a) of the prisoner; or
 - (b) good order of the prison.

- (2) Any person who fails to comply with subsection (1), unless he has a reasonable excuse, commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for any term not exceeding 12 months.
- (3) Where a person fails to comply with subsection (1), the prison officer may use reasonable force to remove the person from the vicinity of the prisoner or prison.

78 Prohibited things

Any person who, without reasonable excuse—

- (a) takes or causes a prohibited thing to be taken into a prison; or
- (b) gives, or attempts to give, a prohibited thing to a prisoner or causes, or attempts to cause, a prohibited thing to be given to a prisoner,

commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding 2 years.

79 Taking things from prisons or prisoners

- (1) Any person who, without the Commissioner's approval, removes or causes anything to be removed from a prison commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.
- (2) Any person who, without the Commissioner's approval takes, or attempts to take, anything from a prisoner, whether inside or outside a prison commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.
- (3) This section shall not apply to a prison officer in the course of his duties.

80 Persons not to enter prison without authority

- (1) Any person who enters a prison without the officer in charge's approval commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding 2 years.
- (2) Any person who assumes a false identity so as to gain entry to a prison shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding 2 years.

81 Giving false or misleading information

Any person who, wishes to enter or has entered a prison as a visitor, gives information to a prison officer that he knows is false or misleading shall be liable upon conviction to a fine not exceeding \$1,000.

PART V—SEIZURE OF PROPERTY

82 Seizing property

- (1) The officer in charge of a prison may seize anything in a prisoner's privileged mail if it could cause physical harm to the person to whom it is addressed or if the thing is a prohibited thing.
- (2) A prison officer may seize anything found in a prison, whether or not in a person's possession, that the officer reasonably suspects will jeopardise or is likely to jeopardise the—
 - (a) security or good order of the prison; or
 - (b) safety of persons in the prison.
- (3) A prison officer may seize a prohibited thing found on a prisoner or in a prisoner's possessions, unless the prisoner has the Commissioner's written consent to possess the thing.
- (4) A prison officer who seizes any thing under this section shall give the thing to the officer in charge of the prison.

83 Dealing with seized things

- (1) The officer in charge may order that any item seized under this Act which is of a perishable, unhygienic, dangerous or undesirable nature is to be—
 - (a) destroyed;
 - (b) sent out of the prison to a person nominated by the prisoner from whom the thing was seized; or
 - (c) put with the property of the prisoner and only given to the prisoner on his discharge.
- (2) The prisoner is liable to pay the cost of sending out the property under subsection (1)(b).

84 Appeal to Commissioner on decision about seized thing

- (1) A person who claims ownership of a seized thing may appeal, in writing, the decision of the officer in charge to the Commissioner.
- (2) The Commissioner shall, after considering the reasons—
 - (a) confirm the decision; or
 - (b) cancel the decision and substitute another decision.

PART VI—VISITS TO PRISONS

85 Visits

- (1) A prisoner may receive a visit from a relative, a person who has a personal relationship with the prisoner or the prisoner's legal advisor once a week.
- (2) The officer in charge of a prison may allow the prisoner to receive extra visits.
- (3) The officer in charge may allow, where practicable, the prisoner to be visited by more than one visitor at the same time.

86 Behaviour during visits

- (1) A visitor shall not—
 - (a) engage in sexual activity with a prisoner; or
 - (b) behave in a disorderly, indecent, offensive, riotous or violent manner.
- (2) A prison officer may direct a visitor to leave the prison if the visitor conducts himself in a way referred to in subsection (1).

87 Items not to be transferred between prisoner and visitor

- (1) A prisoner or a visitor shall not give to the other any document or other thing, during a visit without the prior approval of the officer in charge.
- (2) The officer in charge may terminate the visit and seize the document or other thing if the prisoner or the visitor fails to comply with subsection (1).

88 Procedure for visits

- (1) A visitor shall arrange the time of the visit with the officer in charge of the prison.
- (2) The officer in charge may allow the visitor to visit the prisoner if the officer in charge is satisfied that the visitor does not pose a risk to the security or good order of the prison.
- (3) Persons of known bad character shall not be admitted as visitors, except as authorised by the officer in charge.
- (4) Any person who is refused access to a prison to visit a prisoner may appeal the decision refusing his access, to the Commissioner.
- (5) On determining the appeal, the Commissioner may—
 - (a) confirm the decision;
 - (b) vary the decision; or

- (c) set the decision aside and substitute another decision for it.
- (6) The prisoner shall consent to being visited by the visitor.
- (7) All visitors, other than children, shall sign the visitors' book.
- (8) The length of a visit is to be determined by the officer in charge.
- (9) The officer in charge may require a person to be searched by a prison officer of the same gender before entering the prison.
- (10) The officer in charge may at any time, with or without warning to the prisoner or his visitor, cancel the visit where the prisoner or visitor infringes a provision of this Act, the Rules or Regulations.
- (11) The officer in charge shall keep a register of all persons who enters the prison to visit prisoners.
- (12) The officer in charge shall keep a register of all persons who have been refused entry into a prison and the reasons for such refusal.

89 Supervising visits

- (1) All visits to prisoners shall be supervised by a prison officer.
- (2) The officer in charge may direct that a conversation between a visitor and a prisoner be monitored or recorded other than a visit by—
 - (a) a member of the Tonga Police;
 - (b) the prisoner's legal advisor; or
 - (c) an official visitor.

90 Visits by Minister

The following persons may visit a prisoner or any part of a prison at any reasonable time in the discharge of that person's office or position—

- (a) the Minister or a member of his staff;
- (b) another Cabinet Minister;
- (c) a judge or magistrate;
- (d) a prison officer;
- (e) a person appointed under this Act; or
- (f) a member of the Tonga Police.

PART VII – ADMINISTRATION OF THE PRISONS

DIVISION 1 – POWERS AND DUTIES OF PRISON STAFF

91 Powers and duties of Commissioner

- (1) The Commissioner is responsible to the Minister for the security and management of all prisons and the safe custody and welfare of all prisoners.
- (2) The Commissioner has the power to do all things necessary to be done in connection with the performance of the Commissioner's duties.
- (3) The Commissioner has the powers of—
 - (a) an officer in charge of a prison; and
 - (b) a prison officer.
- (4) The Commissioner may make policies and procedures, not inconsistent with the Act, Regulations or Rules, for the management and security of prisons and for the welfare, protection and discipline of prisoners.
- (5) The Commissioner may make codes of conduct for the professional and ethical behaviour of all prison officers.
- (6) The Commissioner may make standing orders about the duties and responsibilities of prison officers.
- (7) In the exercise of the powers and duties referred to in this section, the Commissioner is subject to the direction and control of the Minister.

92 Delegation

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this or any other Act other than this power of delegation.
- (2) A delegation under this section may be made subject to conditions and may be amended or revoked by the Commissioner.

93 Powers and duties of officers in charge

- (1) The officer in charge of a prison is responsible to the Commissioner and the Minister for the security and good order of the prison and the safe custody and welfare of prisoners in the prison.
- (2) The officer in charge has the power to do all things necessary to be done in connection with the performance of his duties.
- (3) The officer in charge has the powers of a prison officer.
- (4) The officer in charge may delegate his powers, other than the power of delegation, to a suitably qualified person.

- (5) A delegation under this section may be made subject to conditions and may be amended or revoked by the officer in charge.
- (6) In the exercise of the powers and duties referred to in this section, the officer in charge is subject to the direction and control of the Commissioner.

94 Powers of prison officers

- (1) A prison officer has the powers given under this Act.
- (2) The powers of a prison officer may be limited by a regulation, rule, conditions of appointment or by order of the Commissioner.
- (3) The Commissioner may give directions to a prison officer about the exercise of the prison officer's powers.

95 Duties of prison officers

Any prison officer shall—

- (a) observe the provisions of this Act, the regulations and codes of conduct made under this Act relating to the professional and ethical behaviour of prison officers;
- (b) ensure the security of the prison whilst on duty and report to the officer in charge any matter which may jeopardise the security of the prison or the welfare of prisoners;
- (c) when the Commissioner directs, furnish such returns and reports to the Commissioner; and
- (d) comply with any other matter relating to a prison officer's duties under this Act or as prescribed by the regulations, the rules or standing orders.

96 Prison officer deemed to be police officer

Any prison officer shall, while employed as a prison officer, be deemed by virtue of his appointment to be a police constable and to have all the powers and privileges of a constable and shall be provided with a staff similar to that carried by the police.

97 Authority to use force

- (1) A prison officer may use reasonable force to—
 - (a) make a prisoner comply with an order made against the prisoner under this Act;
 - (b) stop a prisoner from committing or attempting to commit an offence against this or another Act or a breach of discipline;
 - (c) stop a prisoner from harming or attempting to harm himself; or

- (d) make a person who has been lawfully ordered to leave a prison and who refuses to do so, to leave the prison.
- (2) A prison officer may, for the purposes of subsections (1)(a) to (c) and in accordance with any standing orders, apply mechanical restraints to a prisoner.

98 Prison officer to return equipment on resignation or dismissal

- (1) Any prison officer who, resigns or is dismissed from office, and does not immediately return to the Commissioner, all equipment and accoutrements supplied to him at public expense shall be liable upon conviction to a fine not exceeding \$1,000.
- (2) A Magistrate in convicting the offender for an offence against subsection (1) shall, in addition, issue a warrant to search for and seize on behalf of the Government such equipment or accoutrements wheresoever they may be found.

DIVISION 2 – DISCIPLINE OF PRISON OFFICERS

99 Breaches of discipline

A prison officer who –

- (a) commits a breach of any duty or responsibility imposed on him by this Act, regulations, rules, standing orders or a code of conduct;
 - (b) refuses to obey or ignores any lawful order made or given by a more senior officer;
 - (c) performs his duties negligently; or
 - (d) acts in an unprofessional or discreditable manner whilst on duty;
- is guilty of a disciplinary offence.

100 Criminal offences by prison officers

- (1) The Commissioner shall immediately inform the Police Commissioner of any instance where a prison officer is alleged to have committed a criminal offence.
- (2) Proceedings against a prison officer alleged to have committed a criminal offence shall be instituted by the police.

101 Procedure for disciplinary action

- (1) All charges of a breach of discipline by a prison officer shall be in writing, containing the particulars of the alleged offence, be signed by the officer in charge and given to the prison officer charged.
- (2) The prisoner officer shall, within 2 days of being given the charge, inform the officer in charge whether the prison officer admits or denies the charge.
- (3) Where the prison officer denies the charge, the officer in charge shall hold an inquiry into the charge.

102 Procedure for inquiries

- (1) An inquiry into a disciplinary charge shall be held within 7 days after the prison officer has denied the charge or has refused to enter a plea to the charge.
- (2) The officer in charge shall not be bound by the rules of evidence but may, subject to any regulation, inform himself about the matter in the way the officer thinks fit.
- (3) The officer in charge shall—
 - (a) inform the prison officer of any evidence that supports the allegation;
 - (b) allow the prison officer to cross-examine any witnesses called and call witnesses within the prison to give evidence for the prison officer, unless the officer in charge considers the evidence may be given in writing;
 - (c) allow the prison officer a reasonable opportunity to make submissions in his defence; and
 - (d) allow the prison officer a reasonable opportunity to make submissions in mitigation of punishment.
- (4) The prison officer charged with a disciplinary offence is not allowed any legal representation, but the prison officer charged may nominate another prison officer, to represent him during the inquiry.

103 Penalties imposed by officer in charge

- (1) Where the prison officer admits the charge or the officer in charge finds the charge proved, the officer in charge may impose one of the following penalties a—
 - (a) caution;
 - (b) reprimand; or
 - (c) fine not exceeding \$500.

- (2) The officer in charge shall immediately notify the Commissioner the particulars of every disciplinary charge heard and determined and the penalty imposed under this section.

104 Appeal to Commissioner

- (1) A prison officer may appeal the decision of the officer in charge under section 103, to the Commissioner.
- (2) The appeal shall be in writing, stating the grounds of appeal, and given to the Commissioner within 14 days from when the aggrieved prison officer was given notice of the officer in charge's decision.

105 Determination of appeal

- (1) On determining the appeal, the Commissioner may—
 - (a) confirm the decision;
 - (b) vary the decision; or
 - (c) set the decision aside and substitute another decision for it.
- (2) The Commissioner shall as soon as practicable, inform the appellant and the officer in charge of the Commissioner's decision.

106 Officer in charge may refer charge to Commissioner

If the officer in charge considers that the breach of discipline is of a serious nature, and that the charge cannot be adequately dealt with by him under section 103, the officer may refer the matter to the Commissioner for determination.

107 Commissioner to determine charge

- (1) On receiving a charge of a disciplinary offence against a prison officer referred to in section 104, the Commissioner shall hold an inquiry into the charge in accordance with section 102.
- (2) The Commissioner shall hear every charge of a breach of discipline alleged to have been committed by an officer in charge of a prison.
- (3) If the prison officer referred to in subsection (1) or the officer in charge referred to in subsection (2) admits to the charge or the Commissioner finds the charge proved, the Commissioner may impose one of the following penalties—
 - (a) a caution;
 - (b) a reprimand;
 - (c) a fine not exceeding \$500;

- (d) suspension from duty without pay or other entitlements for a period not exceeding 10 working days;
- (e) demotion;
- (f) dismissal of a non-commissioned officer; or
- (g) recommend to the Minister the dismissal of a commissioned officer.

108 Appeal to Appeals Tribunal

- (1) The Minister may appoint a magistrate and two other suitably qualified persons as members of the Appeals Tribunal to hear and determine appeals made by prison officers against decisions made by the Commissioner under section 109.
- (2) The members of the Appeals Tribunal are entitled to such allowances as determined by Government policy.
- (3) A prison officer who is aggrieved by a decision of the Commissioner under section 109 may appeal in writing, stating the grounds of the appeal, to the Tribunal within 14 days of being given the Commissioner's decision.

109 Determination of appeal by Appeals Tribunal

- (1) On determining the appeal, the Appeals Tribunal may—
 - (a) confirm the decision;
 - (b) vary the decision; or
 - (c) set the decision aside and substitute another decision for it.
- (2) The Appeals Tribunal shall as soon as practicable, inform the appellant and the Commissioner of its decision.

110 Suspension of penalty pending appeal

- (1) Where a prison officer appeals to the Commissioner or the Appeals Tribunal against a disciplinary decision, any penalty imposed upon the prison officer for the breach of discipline is suspended until determination of the appeal.
- (2) A fine imposed upon a prison officer for a breach of discipline may be deducted from the salary of such officer.

DIVISION 3 – HEALTH PRACTITIONERS AND MINISTERS OF RELIGION

111 Appointment of health practitioners

The Minister may appoint a health practitioner to a prison to attend to the medical needs of prisoners.

112 Health Practitioner's duties

- (1) A health practitioner for a prison shall, examine and treat prisoners in the prison and maintain a record of those examinations and treatments.
- (2) The health practitioner for a prison shall inspect the prison to which the health practitioner is appointed at least once a month and make a record of the results of the inspection including the—
 - (a) cleanliness of the prison;
 - (b) drainage, warmth and ventilation of prisoners' accommodation;
 - (c) sufficiency of prisoners' clothing and bedding; and
 - (d) quantity of the prisoners' provisions, including the quantity or quality of drinking water.
- (3) The health practitioner shall report to the Commissioner on any matter that, in his opinion, constitutes a risk to the health of prison officers or prisoners.
- (4) The health practitioner is to examine, when required, all candidates for employment as prison officers and shall report to the Commissioner whether the candidates are physically capable of performing their duties as prison officers.
- (5) The health practitioner shall perform any other duties he is required by the Minister or Commissioner to perform.

113 Appointment of ministers of religion

- (1) The Commissioner may appoint a minister of religion to a prison.
- (2) A minister of religion may visit the prison to which he is appointed and minister to the prisoners at such times and under such conditions as the Commissioner permits.

DIVISION 4—OFFICIAL VISITORS**114 Appointment of official visitors**

- (1) The Commissioner may appoint a suitably qualified person as an official visitor for a prison.
- (2) The Commissioner may dismiss a person referred to in subsection (1) if the person—
 - (a) is convicted of a criminal offence;
 - (b) fails to perform his duties under this Act; or
 - (c) does anything else that the Commissioner believes on reasonable grounds warrants dismissal.

- (3) The Commissioner shall not appoint a public service employee as an official visitor.
- (4) An official visitor is entitled to the remuneration, allowances and expenses approved by the Commissioner.

115 Seeing an official visitor

- (1) If a prisoner requests to see an official visitor, the officer in charge shall—
 - (a) record that fact in an official visitor's register; and
 - (b) advise the official visitor.
- (2) The officer in charge or any prison officer shall not ask the prisoner why he wants to see the official visitor.

116 Official visitor's duties

- (1) An official visitor shall visit a prison each month or when required to do so by the Commissioner or officer in charge.
- (2) An official visitor may only investigate a complaint made by a prisoner about the actions of the Commissioner, the officer in charge or a prison officer that relate to the prisoner.
- (3) If the matter of complaint relates to a criminal offence committed by the Commissioner, the officer in charge or a prison officer, the official visitor shall—
 - (a) stop investigating the complaint; and
 - (b) refer the matter immediately to the Police Commissioner.
- (4) An official visitor may discontinue investigating a prisoner's complaint if the official visitor considers the complaint is vexatious or frivolous.
- (5) An official visitor shall provide a report to the Commissioner on the findings of the investigation and any recommendations that the official visitor considers necessary.
- (6) On the completion of an investigation, the official visitor shall advise the prisoner as to whether a recommendation was made and, without disclosing confidential information, the general terms of that recommendation.
- (7) The Commissioner, officer in charge or a prison officer shall provide the official visitor with reasonable help to assist the official visitor in discharging his duties under this Act.

117 Recommendations of official visitor

- (1) The Commissioner shall consider, but is not bound by, the recommendations of an official visitor's report.

- (2) The Commissioner may implement all, any or none of the official visitor's recommendations.

PART VIII— MISCELLANEOUS

118 Protection from liability

The Minister, the Commissioner or another person appointed under this Act does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

119 Evidentiary certificates

In any proceeding under this or another Act, a certificate issued by the Commissioner stating that on a particular date or during a particular period a—

- (a) person's appointment under this Act or a repealed Act was, or was not, in force on a stated day or during a stated period;
 - (b) person is, or was on a stated day or during a stated period, a prisoner;
 - (c) person is, or was on a stated day or during a stated period, in lawful custody; and
 - (d) stated place is, or was on a stated day or during a stated period, a prison,
- is admissible in any legal proceedings and is evidence of the facts stated therein.

120 Establishing prisons

- (1) The buildings and premises in Hu'atolitoi in Tongatapu, Sainai in 'Eua, Fale'one in Ha'apai, Ha'alefo in Vava'u and Hihifo in Niuatoputapu which have been used as prisons shall continue to be so under this Act.
- (2) The Cabinet may permanently or temporarily close any prison or may appoint other buildings and premises to be used as prisons either in addition to or in substitution for any existing prison.

121 Minister has control of prisons

The Minister is vested, subject to the orders of the Cabinet, with the general control and superintendence of all prisons within the Kingdom.

122 Prisons Advisory Committee

- (1) The Minister with the approval of Cabinet may appoint a Committee of not more than 3 members to advise and assist him in connection with –
 - (a) the treatment of prisoners;
 - (b) the review of long-term prison sentences; and
 - (c) any other matter relating to prisons and prisoners on which the Minister may require the advice of the Committee.
- (2) The Committee shall perform its functions in accordance with the regulations and the directions of the Minister.
- (3) A member of the Committee shall be paid such fees in accordance with Government policy.

123 References in warrant

In a warrant committing a person to a prison, or requiring a prisoner to be produced to the gaoler or superintendent of a prison, such reference is taken to be a reference to the Commissioner.

124 Confidentiality

- (1) In this section –

“**confidential information**” means information–

 - (a) given to an official visitor as an official visitor;
 - (b) about the personal affairs of a prisoner;
 - (c) about the security measures of a prison; or
 - (d) about a criminal investigation concerning a prisoner or a prison officer.
- (2) Any person who, except to the extent necessary in the performance of the person’s duties under this Act, discloses or makes use of confidential information, without reasonable excuse shall be liable upon conviction to a fine not exceeding \$1,000.
- (3) A person has a reasonable excuse if he—
 - (a) gives the confidential information to a court in the course of criminal proceedings or proceedings under this Act;
 - (b) discloses or communicates the confidential information in accordance with the written authority of the Minister or the person to whom the information relates; or
 - (c) discloses the information in accordance with the requirements of another Act or by law.

125 Photographs and fingerprints of prisoners

The officer in charge may direct a prison officer to photograph and take a prisoner's fingerprints, palm prints or foot prints for the purposes of identifying a prisoner.

126 Arrest of escaped prisoners

- (1) Where a prisoner is unlawfully at large or has escaped from lawful custody, a prison officer or police officer may—
 - (a) arrest the prisoner without a warrant; or
 - (b) apply in writing to a Magistrate for the issue of a warrant for the prisoner's arrest.
- (2) A prisoner arrested under subsection (1) shall be returned to prison.

127 Prisoners under sentence of death

- (1) A prisoner under warrant or order for execution shall be confined in a cell apart from all other prisoners, and shall be supervised by a prison officer.
- (2) Subject to subsection (3), no person shall have access to a prisoner under warrant or order for execution.
- (3) A prison officer, an official visitor, a minister of the religious denomination to which the prisoner belongs or a person approved to visit the prisoner by the Minister, are entitled to have free access to the prisoner.
- (4) All visits to a prisoner under warrant or order for execution shall be supervised by a prison officer.
- (5) If any prisoner under sentence of death wishes to make a statement whether by way of petition to His Majesty in Council or otherwise shall be permitted to do so.
- (6) The statement mentioned in subsection (5) shall be—
 - (a) made in writing in the presence of the officer in charge;
 - (b) read by the officer in charge;
 - (c) signed by the prisoner and the officer in charge; and
 - (d) immediately sent to the Minister.

128 Royal Pardon unaffected

Nothing in this Act is to be construed so as to limit or affect in any way the exercise in relation to a prisoner of the Royal Pardon.

129 Regulations

The Minister may with the consent of Cabinet, make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

130 Rules

The Minister may, with the consent of the Cabinet make, alter or revoke rules relating to the administration of prisons, the conduct of prison officers and the safety and security of prisoners.

PART IX—SAVINGS, TRANSITIONALS AND REPEAL**131 Savings and transitional**

- (1) A person who was, immediately before the commencement of this Act, a prison officer or a health practitioner to a prison under the repealed Act immediately before the commencement of this Act, is deemed to be an officer appointed under this Act or a health practitioner appointed to that prison under this Act, as the case may be.
- (2) A person who immediately before the commencement of this section was a member of the Prisons Advisory Committee under a provision of the repealed Act continues to be a member of the Committee under this Act.
- (3) Any remission of sentence earned by a prisoner under a provision of the repealed Act or Rules before the commencement of this Act is taken to have been granted under this Act and may be lost or reduced in accordance with this Act.
- (4) A direction or order for the removal of a prisoner under a provision of the repealed Act or Rules before the commencement of this Act is taken to have been made under this Act.
- (5) Any proceeding including an action for a breach of discipline against a prisoner or prison officer commenced under a provision of the repealed Act or Rules and not determined under the repealed Act or Rules may be continued in accordance with the provisions of this Act.
- (6) A licence granted to a prisoner under a provision of the repealed Act authorising the prisoner to be at large within the Kingdom before the commencement of this Act continues in force under this Act.
- (7) A person who was a prisoner in lawful custody under the repealed Act or Rules immediately before the commencement of this section and has not been

discharged or released under a provision of the repealed Act or Rules remains a prisoner in lawful custody under this Act.

- (8) A person who immediately before the commencement of this section was the Superintendent of the Prisons under a provision of the repealed Act is taken to be the Commissioner under this Act.
- (9) Appointments continued under this Part continue until the end of the term of appointment, if any, and on the conditions of the appointment that are not inconsistent with this Act.

Passed by the Legislative Assembly on 22nd day of September 2010.

SCHEDULE I

(Section 59)

ORDER OF LICENCE TO A PRISONER

The Cabinet is pleased to grant to.....who was convicted of.....at the.....for the.....on the.....

day of....., and was then and there sentenced to imprisonment with hard labour (or to be kept at penal servitude) for the term of.....and is now confined in theprison, his licence to be at large from the day of his liberation under this order during the remaining portion of his said term of imprisonment or penal servitude unless the said.....shall, before the expiration of the said term be convicted of some indictable offence within the Kingdom, in which case such licence will be immediately forfeited, or unless it shall please the Cabinet to revoke or alter such licence.

This licence is given subject to the conditions endorsed upon the same, upon the breach of any of which it shall be liable to be revoked, whether such breach is followed by conviction or not; and the Cabinet hereby orders that the said.....be set at liberty within 30 days from the date of this order.

.....

Given under my hand and seal

(Minister for Prisons)

(The following to be printed on the back of the licence.)

This licence is subject to forfeiture if the holder does not observe the following conditions.

1. He shall preserve his licence and produce it when called upon to do so by a Magistrate or Police Officer.
2. He shall abstain from any violation of the law.
3. He shall not habitually associate with notoriously bad characters.
4. He shall not lead an idle life, without visible means of obtaining an honest livelihood.

5. He shall, within 48 hours of his arrival in the district, personally notify the place of his residence to the Chief Officer of Police of the district in which he is, and whenever he changes his residence, shall notify such change of residence to the said Chief Officer of Police of the district, and also if he is changing his residence from one district to another, to the Chief Officer of Police of the district in which he is going to reside; and he shall, once in every 3 months report himself personally, at such time as may be ordered by the Chief Officer of Police of the district in which he resides, to such Chief Officer of Police or to a person appointed by him.

The Chief Officer of Police of the district may, after the lapse of some months from the granting of the licence, during which the conduct of the holder shall have been satisfactory, permit the report to be made in writing.

If the holder of a licence fails to report himself, or if he fails to comply with any of the above requisitions, he will be liable to be arrested by any constable and to have his licence revoked, and if he shall be convicted of any offence committed during the period in which he shall have been at large under such licence, and shall be sentenced to any term of imprisonment or penal servitude, he shall after undergoing such term, further undergo a term of imprisonment or penal servitude equal to the portion of his term of imprisonment or penal servitude that remained unexpired at the time of his licence being granted.

SCHEDULE II

PRISON OFFICER’S OATH

(Sections 11 and 12)

I.....solemnly swear before God that I will be truly loyal to his Majesty King George Tupou V the rightful King of Tonga and I will keep righteously and perfectly the Constitution of Tonga and all Laws and Regulations which are currently or to be enforced in the future as matter of prisons and conduct to the Prisons Department and I swear/affirm that I will not resign from the Prisons Department unless in accordance with governing Laws and Regulations thereof.

.....
Witness

.....
Signature

Sworn/Affirmed before me on the.....day of the month of.....20.....

.....
Prime Minister/Magistrate