



SAMOA

MINISTRY OF WORKS ACT 2002

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MINISTRY OF WORKS ACT 2002

2002

No. 8

AN ACT to reform the law relating to public works by re-defining the role of the Public Works Department through the transfer of certain of its functions to the private sector, and by the comprehensive statement of its functions and powers in relation to the regulation of building construction, planning, urban management and the provision and maintenance of roads, bridges, seawalls and related public assets.

[Assent and commencement date: 8 April 2002]

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 Ministry of Works Act 2002.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation – In this Act, unless the context otherwise requires:

“Business Units” means Business Units established under Part 3;

“Chief Executive Officer” means the person specified under section 5;

“commencement date” means the date on which this Act comes into force;

“Minister” means the Minister of Works;

“Ministry” means the Ministry of Works originally constituted and established as the Public Works Department under the repealed Ordinance and continued by section 3;

“National Building Code” means the National Building Code of Samoa adopted by section 29, and includes Associated Manuals, and any amendments made to the Code and the Manuals from time to time;

“public assets” means roads (including culverts and fords), road reserves, footpaths, bridges, drains and seawalls;

“public assets to which this Act applies” means any public asset vested in the Government under this Act or any other enactment the Ministry is responsible for in relation to its construction, maintenance or management;

“repealed Ordinance” means the Public Works Ordinance 1959.

PART 2 MINISTRY OF WORKS

3. Continuation of the Ministry – (1) The Public Works Department, renamed under this section, constituted and established under the repealed Ordinance, is continued, and shall be charged with the administration of this Act and any other law under which it is given responsibility, together with such other functions as may be lawfully conferred upon it.

(2) The name of the Public Works Department is changed to the Ministry of Works.

4. Principal functions – (1) The principal functions of the Ministry are:

- (a) to construct, maintain and manage the public assets to which this Act applies; and
- (b) to prepare policies relating to the management of the public assets to which this Act applies; and
- (c) to provide advice to the Minister and the Government in relation to the construction, maintenance and management of the public assets to which this Act applies; and
- (d) to exercise any of the powers relating to the public assets to which this Act applies conferred upon the Ministry or any of its officers by this Act, or by any other law; and
- (e) to establish Business Units under Part 3, and to manage, operate and support those business units to operate under the laws relating to the commercial operations of public bodies and under Government policy; and
- (f) to devolve functions to the private sector under this Act and any other applicable law; and
- (g) to regulate the construction of buildings and other structures under this Act and its Regulations, and to administer, enforce and apply the National Building Code; and
- (h) to exercise any of the powers relating to planning and urban management under Part 6.

(2) Each Government Department or agency is responsible for the construction and maintenance of its buildings, and the maintenance and furnishing of any government house determined by the Minister to be under its responsibility.

(3) Nothing in this section affects the exercise of any power or responsibility conferred by law on any other Minister, public body or authority, or on any other person.

5. Chief Executive Officer – (1) The Chief Executive Officer shall be an officer of the Public Service, and shall be the administrative head of the Ministry.

(2) The person holding the office of Director of Works under the repealed Ordinances at the commencement date shall hold the office of Chief Executive Officer and his or her contract of employment shall continue under its terms for the remainder of its duration.

6. Appointment of other officers and employees – (1)

There may be appointed as public servants (or otherwise in accordance with any law relating to the appointment of government workers), such officers and employees of the Ministry as may be necessary for the proper discharge of its functions.

(2) Subsection (1) does not affect section 16 relating to engagement of staff for any Business Unit established under Part 3.

7. Existing appointments may continue under this Act–

(1) Subject to this Act, all persons who, at the commencement date, are engineers, officers or employees of the Ministry continue to be employees of the Ministry.

(2) Nothing in subsection (1) affects the right to re-assign staff of the Ministry to reflect the changes made by this Act to its functions and operations, or the application of the provisions of Part 3 relating to the establishment of Business Units and the implementation of changes to the role and operations of the Ministry.

8. Officers to act under the direction of the Chief Executive Officer – (1)

Subject to sections 16 and 17, all engineers, officers and employees of the Ministry shall act under the direction of the Chief Executive Officer in the discharge of their lawful functions, powers and duties.

(2) All engineers employed by the Ministry shall act under the direction of the Chief Executive Officer and shall meet whatever requirements are determined to apply to engineers under the Professional Engineers (Registration) Act 1998.

(3) Nothing in the Professional Engineers (Registration) Act 1998 prevents employees of the Ministry from being designated as “engineering officers”, but those employees shall act under the supervision of the Chief Executive Officer or another qualified engineer when performing duties that are regulated by that Act.

9. Powers of the Minister –

For the purposes of enabling the Ministry to carry out its functions, the Minister may:

- (a) direct what Government work shall be undertaken, and the time at which such work shall be undertaken, except where authority in respect of such work is conferred by any law on some other Minister, public body, other authority or person; and
- (b) require that any Government work be carried out pursuant to a specified policy or a directive issued by Cabinet; and
- (c) appoint advisory or technical committees pursuant to section 12; and
- (d) approve arrangements for the support of former staff to become contractors under section 24; and
- (e) require that special investigations be carried out under section 55; and
- (f) exercise any other powers or make any Determinations provided for by this Act, or Regulations made under it.

10. Delegation of powers by the Minister – (1) The Minister may, by written notice, either generally or particularly, delegate to the Chief Executive Officer all or any of powers conferred by law on the Minister, including any power delegated to the Minister under any law:

PROVIDED THAT the Minister may not delegate this power of delegation or the power to consent to a delegation under section 11.

(2) Subject to any general or special conditions attached by the Minister, the Chief Executive Officer may exercise any delegated powers in the same manner and with the same effect as if they had been conferred directly by this section and not by delegation.

(3) Where the Chief Executive Officer purports to act pursuant to any delegation under this section it is presumed that the action is under the terms of the delegation, unless the contrary is proven.

(4) The delegation is revocable at will, and no delegation prevents the exercise of the power by the Minister.

(5) The delegation, unless revoked, continues to have force even if the persons holding the office of the Minister or the Chief Executive Officer may change, or that persons might be

appointed to act in their positions during periods of absence from duty.

11. Delegation of powers by the Chief Executive Officer

– (1) The Chief Executive Officer may, by written notice, either generally or particularly, delegate (“delegation”) to such engineers, officers or employees of the Ministry as the Chief Executive Officer thinks fit, all or any of the powers exercisable under this or any other law:

PROVIDED THAT the Chief Executive Officer shall not delegate this power of delegation, or any power delegated by the Minister without the written consent of the Minister, or any power delegated by any other government authority (including the Public Service Commission and the Ministry of Finance) without the written approval of that authority.

(2) Subject to any general or special directions given or conditions attached by the Chief Executive Officer, the engineer, officer or employee to whom the powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the person by this section and not by delegation.

(3) A person purporting to act pursuant to a delegation is presumed to be acting under the terms of the delegation, unless the contrary is proven.

(4) The delegation may be made to a specified engineer, officer or other employee, or to engineers, officers or employees of a specified class, or may be made to the holder for the time being of a specified office or class of officers.

(5) The delegation is revocable at will, and no delegation prevents the exercise of any powers by the Chief Executive Officer.

(6) The delegation, unless revoked, continues to have force even if the Chief Executive Officer by whom it was made may have ceased to hold office or may be absent from duty.

12. Advisory and technical committees – (1) The Minister may appoint advisory or technical committees, and define their functions.

(2) Members appointed to a committee established under subsection (1) may be paid fees, allowances and reimbursement of expenses as determined by Cabinet, if such fees and

allowances are approved by the Minister to be paid and are available to be paid out of monies appropriated to the Ministry by the Legislative Assembly for purposes consistent with such a payment.

13. Reporting and other requirements – (1) The Chief Executive Officer shall as soon as practicable after the end of each financial year provide the Minister with a report on the operations of the Ministry for that year.

(2) A copy of the report is to be laid before the Legislative Assembly within 28 days after it has been given to the Minister if the Assembly is in session, and if not, is to be laid before the Assembly within 7 days after the commencement of the next ensuing session.

(3) Financial records concerning the operations of each Business Unit shall be kept in accordance with the Public Finance Management Act 2001 and any other applicable law.

(4) The Chief Executive Officer shall prepare a written report on the progress of implementing the reforms to the Ministry at such times or intervals as the Minister or Cabinet may require.

PART 3 CHANGES TO THE ROLE AND STRUCTURE OF THE MINISTRY

14. Compliance with other laws – (1) All Business Units established under this Part shall be public bodies for the purposes of Part 13 of the Public Finance Management Act 2001.

(2) In establishing a Business Unit under this Part, the Minister may designate the Business Unit to be a public body or a public trading body or a public beneficial body for the purposes of any law relating to the performance and accountability of public bodies, or any other relevant law.

(3) If a Business Unit is designated as a public body or a public trading body or a public beneficial body under subsection (2), then the provisions of the relevant law apply to the Business Unit as if it were prescribed as such a body under that law.

15. Formation of Business Units – (1) The Minister may by written Determination, designate any section or sections of the Ministry to be a Business Unit to which this Part shall apply.

(2) In making a Determination under subsection (1), the Minister shall determine whether a particular Business Unit:

- (a) shall remain as an operational arm of the Ministry;
or
- (b) will be formed for the purpose of devolving a function or functions of the Ministry to the private sector under this Part.

16. Staff of Business Units – (1) After consultation with the Public Service Commission, the Chief Executive Officer may determine which of the staff of the Ministry is to be:

- (a) transferred to a Business Unit as its employee; or
- (b) seconded to a Business Unit for a period determined by the Chief Executive Officer.

(2) All staff of the Ministry transferred to the service of a Business Unit under subsection (1)(a) are entitled to terms and conditions of employment no less favourable than those enjoyed by them as employees of the Ministry.

(3) The management of a Business Unit may, after consulting the Chief Executive Officer and with the approval of the Minister, appoint and employ such employees as are necessary for its operations.

(4) The terms and conditions for the staff appointed under subsection (3) shall be in accordance with the approval given by the Minister under that subsection which shall be generally consistent with entitlements paid to equivalent staff in the Ministry:

PROVIDED THAT the Minister may, where appropriate, approve terms and conditions that include bonus payments based on performance, and salaries or benefits consistent with the commercial consideration applying to the position as part of the activities of the Business Unit.

(5) The staff of the Business Units shall act under the direction of the person identified by the management of the Business Unit as being responsible for the staff's direction and control.

17. Management of Business Units – (1) When establishing a Business Unit under section 15, the Minister shall determine whether its management shall be vested in:

- (a) the Chief Executive Officer; or
- (b) a Board of Directors.

(2) If a Business Unit is designated as a public trading body under section 14(2), its management is to be vested in a Board of Directors appointed by its shareholders, and shall otherwise be in accordance with the Companies Act 2001.

(3) Except in relation to a Business Unit to which subsection (2) applies, the Minister may vary a determination made under subsection (1).

18. Operations of Business Units – (1) The operations of Business Units shall:

- (a) be in accordance with any direction given by the management designated under section 17(1); and
- (b) be aimed at meeting any requirement set by Cabinet in relation to a return to Government on its investment, or any other specified commercial objective; and
- (c) be in compliance with all laws relating to the operations of public bodies, and of businesses generally; and
- (d) be aimed at promoting fair competition, and avoiding the creation of any undesirable dominance in any sector or market; and
- (e) be consistent with government policy.

(2) A Business Unit designated for sale under section 15(2)(b) is to be established and operated so as to ensure the maximum possible return to Government on its sale:

PROVIDED THAT this requirement is not regarded as paramount where it is proposed to apply section 24 to a Business Unit.

19. Sale of Business Units – (1) The disposal of a Business Unit to which section 15(2)(b) applies is to be under the Companies Act 2001 and any law relating to the performance and accountability of public bodies.

(2) Cabinet may specify any additional requirement in relation to the sale of a Business Unit.

(3) A sale of a Business Unit may be made conditional upon certain identified staff of the Ministry being employed by the purchaser for such time and upon such conditions as may be specified.

(4) A member of the staff to which subsection (3) applies who claims to have been treated in a manner that is not consistent with the conditions attached to the sale of a Business Unit, has a right of action against the purchaser of the Business Unit for breach of the condition, but has no right of action against the Ministry or the Government.

20. Restrictions on disposal of land – (1) No land belonging to the Government may be sold as part of the sale of any Business Unit without the approval of Cabinet.

(2) Despite any other law, a lease of Government land may be given to any purchaser of a Business Unit as part of the sale of that Business Unit on such terms as the Minister approves, after consulting with the Minister for Lands, Surveys and Environment.

21. Transfer or cessation of functions – (1) For the purpose of implementing the changes to the role and structure of the Ministry, the Minister may make written Determinations that certain functions of the Ministry have been, or are on a stated date to be, transferred or ceased.

(2) The Chief Executive Officer shall:

- (a) promptly notify the Financial Secretary of any Determination made under subsection (1); and shall
- (b) consult with the Financial Secretary in relation to the making of appropriate Treasury Instructions under section 122 of the Public Finance Management Act 2001.

(3) A Treasury Instruction made in relation to the transfer or cessation of a function shall take into account any applicable matter under section 24 of this Act relating to support for former staff of the Ministry to undertake activities relevant to that function as private contractors.

22. Disposal of surplus equipment – (1) For the purpose of effecting the changes to the role and structure of the Ministry,

the Minister may make written determinations specifying items of plant, machinery, equipment and stock owned by the Ministry and which is surplus to the needs of the Ministry.

(2) A determination made under subsection (1) may specify items of plant, machinery, equipment and stock which may relate to a matter stated under section 24 as a means of supporting former staff of the Ministry to undertake activities as private contractors.

(3) All items not specified under subsection (2) shall be disposed of under the Public Finance Management Act 2001.

(4) The disposal of items specified under subsection (2) is to be done under the procedures and upon terms approved by the Government Tenders Board under the Public Finance Management Act 2001, which shall take into account the objectives of section 24 of this Act.

23. Redundancy entitlements of staff – (1) Engineers, officers and other employees of the Ministry whose services are no longer required as a result of the changes to the role and structure of the Ministry are entitled to receive payments and benefits as are specified in a policy on redundancy approved by Cabinet for this purpose.

(2) Payments and benefits referred to in subsection (1) are not to be paid to staff who are transferred to a Business Unit or to staff who receive assistance under section 24.

24. Support for former staff to become contractors – (1) The Minister may approve arrangements to assist former staff to establish businesses relative to the former functions and activities of the Ministry.

(2) The arrangements referred to in subsection (1) may include assistance in any of the following forms:

- (a) the provision of training in relation to the management of small businesses;
- (b) the provision of computer software relating to financial systems and accounting requirements of a small business;
- (c) arranging other forms of assistance through the Small Business Enterprise Centre upon such conditions as the Centre may impose;

- (d) the payment of the fee due under the Business Licences Act 1998, and any other fee payable in respect of the establishment of the business, or its incorporation;
- (e) some preference in relation to the purchase of plant, machinery and equipment referred to in section 22(2), and appropriate arrangements relating to the payment for such items over a period of time;
- (f) some preference in relation to the contracting by the Ministry for services to be provided relating to a function or activity that has been transferred or ceased;
- (g) such other appropriate form of assistance as is approved by Cabinet.

(3) Prior to providing any assistance relating to a matter under subsection (2)(d) or (e), the Chief Executive Officer shall ensure that the appropriate approval or delegation has been given by the Government Tenders Board, and that all other requirements of any other law have been met.

PART 4 BUILDING REGULATION

25. Interpretation – In this Part, unless the context otherwise requires:

“authorised person” means any building inspector employed by the Ministry, and any person (whether employed by the Ministry or not) who is authorised by the Chief Executive Officer to review building plans, or to carry out an inspection of any building, or to exercise any power or carry out any function under this Part;

“building” means:

- (a) any structure supported by walls, pillars, posts or columns and which is covered by a roof;
- (b) any structure used for human occupation or shelter;
- (c) any building or structure for which a building permit is required under the Regulations adopted by section 27;
- (d) any building or structure that is prescribed by Regulation or referred to in the Building Code, as amended from time to time;

- (e) swimming pools, chimneys, flues and fences; – but does not include a fale built substantially of traditional Samoan building materials;
- “Building Code” means the National Building Code of Samoa adopted by section 29;
- “Building Committee” means the committee established by Regulation made under section 28 and charged with the responsibility of administering and enforcing this Part, the Regulations and the Building Code;
- “owner” in relation to a building, means the person under whose authority a building is constructed on any land, or for whose benefit a building is constructed, irrespective of whether such person owns the land on which the building is constructed;
- “Regulations” or “Building Regulations” means the Building Regulations adopted by section 27, and any subsequent Regulations that replace or amend them under section 28, and any Regulations made under section 53.

26. This Part binds the State – This Part binds the State.

27. Adoption of Building Regulations made under other laws – (1) The Regulations stated in Schedule 1 are deemed to have been made under this Act and, subject to subsection (2), continue to have effect.

(2) The Regulations referred to in subsection (1) may be amended or repealed by any regulation made under section 28.

28. Revised Building Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations concerning the construction, alteration and demolition of buildings and other structures.

(2) Without limiting subsection (1), regulations may be made for any of the following purposes:

- (a) to establish a Building Committee (by whatever title), and to prescribe its powers and functions in relation to building regulation;
- (b) to prescribe the procedures to be followed by the Building Committee, including the delegation of any of its powers;

- (c) to prescribe the obligations of members of the Building Committee, and to grant to them appropriate immunities in relation to the discharge of their powers and responsibilities;
- (d) to prescribe any particular structure to be a building for the purposes of this Part;
- (e) to prescribe additional requirements relating to buildings including matters relating to—
 - (i) the provision and location of car parking areas;
 - (ii) the height and appearance of buildings;
 - (iii) the provision of landscaping and other beautification as befits the particular location of the building;
 - (iv) access to and the provision of essential services to the building;
 - (v) the preservation of heritage or cultural matters associated with the building or the site on which it is, or is to be located;
 - (vi) the impact that the building may have on the provision of public transport to the site; and
 - (vii) any other matter that may affect the amenity of the building, its occupants, the members of the public likely to be affected by its presence and the environment in which it is, or is to be, located;
- (f) to prescribe additional powers for the Chief Executive Officer and authorised persons in relation to the enforcement of the Regulations and the National Building Code;
- (g) to make provision in relation to the form and fees for applications, approvals, permits, certificates and any other documents required by the Act or the Regulations;
- (h) to prescribe any additional requirement in relation to an application for building approval, including the provision of a certificate or the proof of any approval given by another government Department or agency;

- (i) to make provision in relation to Certificates of Occupancy; and
 - (j) to prescribe offences and to impose fines not exceeding 100 penalty units for any breach, and an appropriate default penalty.
- (3) The regulations made under subsection (2) shall make appropriate provision in relation to requirements for:
- (a) the Chief Executive Officer of the Ministry of Health to certify building plans as to compliance concerning—
 - (i) the number and location of toilets within or near the building;
 - (ii) the disposal of waste waters;
 - (iii) any specific requirements concerning premises where it is proposed to carry on an offensive trade; and
 - (iv) any other relevant provisions or requirements made under the Health Ordinance 1959;
 - (b) the Director of Lands, Surveys and Environment to certify building plans as to compliance with any requirement relating to building alignments and land ownership.

29. National Building Code – (1) The National Building Code for Samoa (including its Associated Manuals) developed and finalised by the Government and persons within the construction and building industry in Samoa in the year 1992 is adopted as the National Building Code of Samoa.

(2) All Courts shall take judicial notice of any copy of the Building Code that is certified by the Chief Executive Officer to be a true copy of the Building Code.

(3) A copy of the Building Code may be inspected at the offices of the Ministry.

(4) The Chief Executive Officer may make arrangements for the sale of copies of the Building Code or for photocopies of parts of it to be taken, and may fix the charge to be paid in relation to the purchase of a copy of the Building Code or the photocopying of parts of it.

30. Amendment to the Building Code – (1) The Minister may, on the recommendation of the Chief Executive Officer or the Building Committee, amend the Building Code if the Minister is satisfied that the requirements of subsection (2) have been complied with.

(2) If a recommendation is to be made under subsection (1), the Chief Executive Officer or the Building Committee, as the case may be, shall:

- (a) publish a notice of the intention to amend the Building Code, and identify the nature of the amendment proposed to be made, in the *Savali* and 1 other newspaper circulating throughout Samoa;
- (b) give interested persons a reasonable time, which shall be stated in the notice, to make submissions on the proposed amendment; and
- (c) consult with such persons and representative groups as is considered appropriate.

(3) To give effect to any amendment under this section, the Minister may sign the proposed amendment and cause notice of it to be published in the *Savali*.

(4) The proposed amendment comes into force upon the publication of the notice under subsection (3).

31. Requirement to build and demolish in accordance with the Regulations and the Building Code – (1) The owner of a building and the builder appointed to construct the building, shall each ensure that it is constructed or altered, as the case may be, in accordance with the requirements of the Regulations and the Building Code.

(2) In the event of a breach of the Regulations or the Building Code, both the owner and the builder are liable for prosecution.

(3) The owner of a building to be demolished, and any person who demolishes a building, shall ensure that it is demolished in accordance with the requirements of the Regulations and the Building Code.

(4) This section applies to all buildings and structures even if additional approvals for the buildings or structures are required under any other laws.

32. Powers of the Chief Executive Officer and authorised persons – (1) The Chief Executive Officer may impose requirements in respect of a building or structure that are in addition to any requirement of the Regulations or the Building Code, if:

- (a) there is a unique feature of the building or structure which in the opinion of the Chief Executive Officer warrants the additional requirement, but that otherwise there is no purpose to be served by amending the Building Code in accordance with section 30; and
- (b) the Chief Executive Officer is of the opinion that the additional requirement is necessary in the interests of public safety.

(2) No approval may be validly given in respect a building or structure to which subsection (1) applies unless it is made conditional upon meeting the requirements specified by the Chief Executive Officer.

(2A) The Chief Executive Officer must impose requirements in respect of a building or structure that are in addition to any requirement of the Regulations or the Building Code if the Commissioner for Fire and Emergency Service has made such a recommendation in a report under section 32A.

(3) *repealed.*

(4) The Chief Executive Officer and authorised persons have the following powers:

- (a) to exercise any power prescribed by Regulation, and any power delegated by the Building Committee;
- (b) to inspect and examine the erection, alteration or demolition of buildings;
- (c) to issue certificates and notices in accordance with the Regulations;
- (d) to suspend or revoke any building permit in relation to a building that is not being built, altered or demolished in accordance with the Regulations or the Building Code;
- (e) to enforce the Regulations and Building Code as prescribed by the Act or the Regulations;
- (f) to enter any land on which any building to which this Part applies is being built, altered or

demolished, or on which is situated a building in respect of which there is a reasonable suspicion that changes have been made that are in breach of the Regulations or the Building Code, or which may otherwise pose a danger to the health or safety of the public or the building's occupants.

(5) The Chief Executive Officer and any authorised person shall during an inspection have the following authorities

- (a) to question any person on the building site in relation to the construction, alteration or demolition of the building, and any matter relevant to the Regulations and Building Code as they relate to the building;
- (b) to do any act, or require the owner and the builder, or any other appropriate person, to do any act necessary to ensure that the building is constructed, altered or demolished, as the case may be, in accordance with the Regulations and the Buildings Code.

(6) Under subsection (5), the Chief Executive Officer and an authorised person may:

- (a) require the owner and the builder, or any other appropriate person, to demolish any building or part of a building which does not comply with the Regulations and the Building Code; and
- (b) where an owner or builder fails to comply with any direction or requirement made under this section, demolish, or cause to be demolished a building or part of a building which does not comply with the Regulations and Building Code.

(7) The Chief Executive Officer may recover from an owner or builder, or both, any cost or expense incurred by the Chief Executive Officer or an authorised person arising from the exercise of any power under this section.

(8) The cost and expenses referred to in subsection (7) shall be the costs and expenses fixed by the Chief Executive Officer and may be recovered pursuant to an order of the court given at the time of any prosecution taken under this Part.

32A. Building permits – (1) The consent of the Commissioner for Fire and Emergency Service is required for any application for a building permit for a residential building over 2 storeys in height.

(2) In determining whether to provide consent, the Commissioner for Fire and Emergency Services must assess whether the building has in place adequate fire prevention and suppression measures based on the ability of the Samoa Fire and Emergency Services Authority to respond and protect life and property in the building.

(3) The Commissioner for Fire and Emergency Services may report on any additional works, measures or services to be installed or provided in the building to the Chief Executive Officer and the reason for those measures.

(4) The Chief Executive Officer must consider a report made under subsection (3) before issuing a building permit.

33. Power to direct changes to buildings – (1) The Chief Executive Officer and authorised persons have the authority to require construction changes to a building which is under construction or alteration where it is discovered that the building, or part of it, is not being built under the Regulations or the Building Code.

(2) The builder and the owner shall carry out the construction changes as directed under subsection (1) within such time as directed by the Chief Executive Officer or authorised person.

(3) The Chief Executive Officer may revoke the building permit issued in respect of the building if the owner or builder fails to comply with a direction given under this section within the specified time.

(4) This section applies, as appropriate, to any demolition of a building to which the Building Code applies.

34. Non-compliance with the Regulations or Building Code – (1) An owner or builder commits an offence where he or she fails to comply with the Regulations or the Building Code.

(2) An owner or builder commits an offence where he or she causes or permits any act or omission that is an offence under subsection (1).

(3) A person who is convicted of an offence under this section is liable:

- (a) for an individual, to a fine not exceeding 100 penalty units, and a further fine of 10 penalty units for each day that the offence continues;
- (b) for a company, to a fine not exceeding 200 penalty units, and a further fine of 20 penalty units for each day that the offence continues.

(4) The offences and penalties provided for under this section are in addition to any other offences against any other law that may have been committed by the owner or builder in connection with the construction, alteration or demolition of the building.

35. Other Offences – (1) A person who enters into or occupies a building, or who applies the building to any use, without a Certificate of Occupancy, or any other certificate or approval required in this regard by the Regulations or Building Code commits an offence.

(2) An owner or builder who, without reasonable excuse, fails to comply with any direction to make changes to a building given under section 33 commits an offence.

(3) A person who obstructs or impedes the Chief Executive Officer or an authorised person during an inspection of a building, or when exercising any function, duty or powers conferred by this Act or by the Regulations, commits an offence.

(4) A person who provides to the Chief Executive Officer or an authorised person any information relating to the construction, alteration or demolition of a building knowing that information to be false, or being reckless as to whether it is true or false, commits an offence.

(5) A person who is convicted of an offence against this section is liable upon conviction:

- (a) for an individual, to a fine not exceeding 100 penalty units, and to a further fine not exceeding 10 penalty units for every day that the offence continues; or
- (b) for a corporation, to a fine not exceeding 200 penalty units, and to a further fine not exceeding

20 penalty units for each day that the offence continues.

36. Ministry, Chief Executive Officer, authorised persons and members of Building Committee not liable for structural defects – The Ministry, the Chief Executive Officer, authorised persons and members of the Building Committee, whether or not employed within the Ministry, are not be liable for any structural defects of any building arising during or after the construction, alteration or demolition, whether or not such defects result in loss of life, injuries to person or any damage whatsoever.

PART 5

(Sections 37 – 52)

Repealed by section 59 of the Land Transport Authority Act 2007

PART 6

(Section 53)

Repealed by section 7 of the Miscellaneous (Ministerial Assignment) Amendment Act 2019

PART 7

MISCELLANEOUS

54. Other powers of the Chief Executive Officer – (1) In addition to the powers conferred by this Act, the Chief Executive Officer may exercise powers conferred under any other Act, including powers relating to section 3 of the Police Offences Ordinance 1961 to give approvals in respect of the following:

- (a) the opening of drains;
- (b) the removal of surfaces of any public footpath or public place;
- (c) the blasting of any rock, stone or timber in or near a public place.

(2) Section 3 of the Police Offences Ordinance 1961 is amended as follows:

- (a) by deleting the words “or sewer” from paragraph (f);
- (b) by inserting the words “Opens any sewer or” at the start of paragraph (j);

- (c) by deleting the words “Director of Works” from paragraph (j), and replacing them with the words “General Manager of the Samoa Water Authority”; and
 - (d) by deleting the words “Director of Works” from paragraph (s), and replacing them with the words “Director of Lands, Surveys and Environment”.
- (3) For the purposes of subsection (1), the Chief Executive Officer may:
- (a) approve the form of any application for an approval which the Chief Executive Officer is empowered to give; and
 - (b) *repealed*
 - (c) impose such conditions as the Chief Executive Officer of the Ministry responsible for Works sees fit in relation to the grant of any approval.

55. Power of the Minister to order special investigations

– (1) The Minister may cause an investigation to be made into any matter connected with the functions of the Ministry, or the implementation of the reforms to the role and structure of the Ministry.

(2) For the purposes of an investigation made under subsection (1), the Minister may require the production of any papers, books or documents relevant to the matter under inquiry, and may require any person to state matters that are within his or her knowledge that are relevant to the investigation.

(3) A person who fails to comply with a requirement made under subsection (2) commits an offence, and is liable on conviction to a fine not exceeding 5 penalty units or to a term of imprisonment not exceeding 3 months, or both.

(4) All information obtained by the Minister pursuant to subsection (2) shall be treated as confidential except for the purpose of addressing any need to rectify any matter of administration within the Ministry.

56. Repeal of laws – The Acts stated in Schedule 2 are repealed.

57. Savings of contracts, permits, authorisations and approvals – (1) Nothing in this Act affects the validity of any contract made by the Ministry under the repealed Ordinance.

(2) All permits, authorisations and approvals given under any Act repealed by section 56 continue to have effect and where appropriate are deemed to have been given under the equivalent provision of this Act.

(3) All legal proceedings commenced under any Act repealed by section 56 continue as if the relevant Act had not been repealed, or may be deemed by a court to have been taken under the equivalent provision of this Act.

58. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations for any purpose related to role, functions, powers, operations, management and reform of the Ministry.

(2) Without limiting subsection (1), the regulations may:

- (a) further define, add to or delete any of the principal functions of the Ministry;
- (b) add to or delete from the definition of “public assets” in section 2;
- (c) make further provision in relation to the appointment, responsibilities and powers of any technical or advisory committee established under section 12;
- (d) prescribe matters in relation to the formation, operations and management of Business Units;
- (e) prescribe matters related to the transfer of functions to or from the Ministry or prescribe matters required to be prescribed under this Act (including fees and charges required for the purposes of this Act); and
- (f) prescribe any other matter to facilitate the performance by the Ministry of any of its principal functions under this Act, or the discharge by the Chief Executive Officer of his or her powers and responsibilities.

(3) Any fee or charge prescribed under subsection (2)(e):

- (a) shall be proposed by the Ministry; and

(b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

59. References to the Department of Works and Director of Works – Where in any Act, Regulation, Statutory Instrument or other document a reference is made to the Department of Works and Director of Works, unless the context and circumstances require otherwise, such reference shall be read as the Ministry of Works and Chief Executive Officer respectively.

SCHEDULE 1
(Section 27(1))

BUILDING REGULATIONS ADOPTED UNDER THIS ACT

1. Board of Health (Building, Drainage and Privies) Regulations No.6 1923
2. Board of Health (Building, Drainage and Sanitation) Regulations No.8 1929
3. Board of Health (Concrete Buildings) Regulations No.116 1947 (insofar as these Regulations relate to the erection of buildings).

SCHEDULE 2
(Section 56)

LAWS REPEALED BY THIS ACT

1. Road Clearing Ordinance 1950
2. Road Crossing Ordinance 1952
3. Special Projects Development Corporation Act 1972
4. Public Works Ordinance 1959

and by reason of section 47 -

5. Main Roads Development Act 1972
 6. Faleolo Airport Road Act 1969
-

REVISION NOTES 2008 – 2019

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

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

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a”;
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”;
 - (iii) “shall have” changed to “has”;
 - (iv) “shall be guilty” changed to “commits”;
 - (v) “notwithstanding” changed to “despite”;
 - (vi) “pursuant to” changed to “under”;
 - (vii) “it shall be lawful” changed to “may”;
 - (viii) “it shall be the duty” changed to “shall”;
 - (ix) Numbers in words changed to figures;
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed;
 - (xi) “under the hand of” changed to “signed by”;
 - (xii) Roman numerals changed to decimal.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13:

Amendments made to this Act reflect that fees charged under this Act are to be prescribed by Regulations. Amendments are made to sections 32, 54 and 58.

By the Miscellaneous (Ministerial Assignment) Amendment Act 2019, No. 32 (commenced on 1 July 2019):

Part 6 - repealed.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Works, Transport and Infrastructure.*
