



SAMOA

INFANTS ORDINANCE 1961

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INFANTS ORDINANCE 1961**1961****No.7**

AN ORDINANCE to consolidate and amend certain enactments relating to infants and children.

[Assent and commencement date: 28 September 1961]

1. Short title, etc. – (1) This Ordinance may be cited as the Infants Ordinance 1961.

(2) This Ordinance is divided into Parts as follows:

- PART 1** Guardianship and Custody of Infants (sections 3-6)
- PART 2** Adoption of Infants (sections 7-11)
- PART 3** Protection of Children (sections 12-14)
- PART 4** Destitute and Delinquent Children (sections 15-20)
- PART 5** Contracts and Claims of Infants (sections 21-23A)
- PART 6** Legitimation (sections 24-27)
- PART 7** Miscellaneous (sections 28-29).

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

“adopted infant” means a person concerning whom an adoption order is in force;

“adopting parent” means:

- (a) a person who adopts an infant under an adoption order; and

- (b) for an order made in favour of a husband and wife on their joint application, both the husband and wife; but
 - (c) does not include a spouse who merely consents to an adoption;
- “adoption agency” means a person or body corporate or agency and other body (whether incorporated or otherwise) which acts as or calls themselves an adoption agency or:
- (a) engages in; or
 - (b) makes arrangements for; or
 - (c) assists with; or
 - (d) facilitates; or
 - (e) holds themselves out as acting as an adoption agency or engaging in or making arrangements for or assisting with or facilitating,—
- the adoption of children in Samoa or elsewhere, whether for reward or any other reason;
- “child” means an infant under the age of 16 years;
- “citizen” means a citizen of Samoa under the Citizenship Act 2004;
- “contract” includes a bond and any other deed;
- “court” means:
- (a) the Supreme Court or the District Court presided over by a Judge in Part 1, Part 4 and sections 21 and 23A of Part 5; and
 - (b) the District Court presided over by a Judge in Part 2, sections 22 and 23 of Part 5 and Part 6;
- “infant” means a person under the age of 21 years;
- “legitimated person” means a person deemed to be legitimated under this Ordinance;
- “overseas adoption” means any application for adoption of an infant where the applicant or all the applicants are not citizens;
- “parent” includes the mother of a child born out of wedlock.

PART I

GUARDIANSHIP AND CUSTODY OF INFANTS

3. Principle on which questions relating to custody, etc., of infant to be decided – Where in any proceeding in any Court the custody or upbringing of a child is in question the Court in

deciding that question shall regard the welfare of the child as the first and paramount importance.

4. Application regarding custody, etc. – (1) Either parent of a child may apply to the Court for an order regarding the custody and upbringing of a child and the right of access thereto of either parent and the Court may make such order in the premises as to it seems just.

(2) If it appears to the Court on the application of an adult person that the parents of a child are unfit to have custody and upbringing thereof the Court may appoint some other person to be its guardian and may make such order regarding its custody and upbringing and the right of access of either parent to such child as to the Court seems fit.

5. Variation or discharge of order – A Court may at any time in its discretion on the application of any interested person vary, modify or discharge any order made under section 4 subject to such conditions as the Court thinks fit: **PROVIDED THAT** the District Court may not vary, modify or discharge such an order made by the Supreme Court.

6. Procedure and appeal – (1) An application to any Court under this Part shall be made by way of motion.

(2) Where an application under this Part is made to the District Court and that Court considers that it would be preferable for the Supreme Court to deal with the application, the District Court may remove the application into the Supreme Court.

(3) Where, on any application under this Part not removed pursuant to subsection (2), the District Court makes or refuses to make an order, an appeal shall lie to the Supreme Court.

PART 2

ADOPTION OF INFANTS

7. Power to make adoption orders – (1) Subject to the provisions of this Part, the Court may upon an application made by a person (whether domiciled in Samoa or not) make an adoption order in respect of any infant.

(2) An adoption order may be made on the application of 2 spouses jointly in respect of an infant.

(3) An adoption order may be made in respect of the adoption of an infant by the mother or father of the infant either alone or jointly with his or her spouse.

(4) Except as otherwise provided in this section, no infant shall be adopted by more than 1 person.

7A. Overseas adoption – (1) Except as provided by subsection (2), a Court shall not make an adoption order involving an overseas adoption.

(2) An adoption order involving an overseas adoption shall not be made by a Court unless the Court has received a certificate from the Attorney General certifying that:

- (a) the infant subject to the overseas adoption does not have any family or suitable family or other suitable person in Samoa who is or are willing and able to provide for the care, support and welfare of the infant in Samoa; and
- (b) that there are no other suitable arrangements available in Samoa for the care, support and welfare of the infant.

(3) Despite any other law, all persons involved with the infant and the overseas adoption, including but not limited to any parent, guardian, relative, carer or teacher of the infant, any adopting parent applicant, and any solicitor, medical practitioner, nurse social worker or other health care professional involved with the infant or the overseas adoption, shall provide such information and assistance as the Attorney General may require to discharge the Attorney General's duties and responsibilities under subsection (2).

(4) A person who fails to provide the information or assistance required under subsection (3) commits an offence and is liable to a fine not exceeding 10 penalty units.

(5) To avoid doubt, an adoption order is not treated as an overseas adoption if one of the applicants for the adoption order is a citizen.

8. Conditions on which orders may be made – Before making such order of adoption the Court shall be satisfied:

- (a) that the person proposing to adopt the infant is of good repute and a fit and proper person to have

- the care and custody thereof and sufficient ability to bring up, maintain, and educate the infant;
- (b) that the welfare and interests of the infant will be promoted by the adoption;
 - (c) that the infant if over the age of 12 years consents to the adoption; and
 - (d) that the parents or such 1 of them as is living at the date of the hearing of the application or if both are dead then the legal guardian of the infant (if any) consent to the order of adoption:

PROVIDED THAT the Court may in its discretion dispense with the consent of a person who is permanently absent from Samoa or is incapable of giving consent, or is for any reason unfit to have the custody or control of the infant or being a parent has deserted the infant.

9. Prohibition of payments in consideration of adoption –

Except with the consent of the Court, it shall not be lawful for a person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption.

9A. Regulation of adoption agencies – (1) No person in Samoa or elsewhere shall act as or call themselves or hold themselves out as an adoption agency unless the person has the prior written authorisation to do so from the Attorney General.

(2) The Attorney General may provide an authorisation under subsection (1) if the Attorney General is satisfied that the person:

- (a) is suitable, qualified and experienced;
- (b) is a fit and proper person; and
- (c) has complied, or will comply, as the case may require, with the Code of Conduct established under subsection (4).

(3) The Attorney General may revoke an authorisation under subsection (1) if the Attorney General is of the opinion, in the Attorney General's absolute discretion, that the person so authorised has failed, or is likely to fail, to meet any of the requirements under subsection (2)(a), (b) or (c).

(4) The Head of State, acting on the advice of Cabinet, may by notice establish or amend an Adoption Agency Code of

Conduct (the Code of Conduct) for the purpose of regulating the actions and conduct of adoption agencies. In advising the Head of State under this subsection, Cabinet shall consult with and take into account any advice from the Court and the Attorney General.

(5) An adoption agency and a person who is a director, partner, manager, officer, employee or agent (howsoever such person is called or titled) of an adoption agency shall:

- (a) for an adoption agency, comply with any Code of Conduct established or amended under subsection (4); and
- (b) for a person who is a director, partner, manager, officer, employee or agent (howsoever such person is called or titled) of an adoption agency, shall comply with and ensure that the adoption agency complies with any Code of Conduct established or amended under subsection (4).

(6) An adoption agency or any other person, having an obligation to comply with any requirement under this section, who fails to do so commits an offence and is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

10. Effect of adoption order – (1) Such order of adoption shall confer the name of the adopting parent on the adopted infant with such proper or Christian name as the Court may fix and the adopted infant for all purposes civil and criminal and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child is deemed in law to be the child born in lawful wedlock of the adopting parent:

PROVIDED THAT the adopted infant shall not by such adoption:

- (a) acquire any right, title, or interest in any property which would devolve on any issue of the adopting parent by virtue of any deed, will, or instrument prior to the date of such order unless it is expressly so stated in such deed, will, or instrument; nor
- (b) be entitled to take property expressly limited to the heirs of the body of the adopting parent nor

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property from the lineal or collateral kindred of such parent by right of representation; nor

- (c) acquire any property vested or to become vested in any issue of lawful wedlock of the adopting parent in the case of the intestacy of such last mentioned issue or otherwise than directly through such adopting parent.
- (2) If an order of adoption has been made:
 - (a) the adopting parent is—
 - (i) for all purposes civil, criminal, or otherwise, taken in law to be the parent of the adopted infant; and
 - (ii) subject to all liabilities affecting the infant as if the infant had been born to the adopting parents in lawful wedlock; and
 - (b) the order of adoption terminates all the rights and legal responsibilities and incidents existing between the infant and his or her natural parents except the right of the infant to take property as heir or next-of-kin of his or her natural parents directly or by right of representation.

11. Adoption order may be varied or discharged – (1) The Court may in its discretion vary or discharge an order of adoption subject to such terms and conditions as it thinks fit.

(2) Upon an order of adoption being discharged then subject to the conditions, if any, named in the discharging order the infant and its natural parents are taken, for all purposes, to be restored to the same position *inter se* as existed immediately before the order of adoption was made:

PROVIDED THAT the discharge of the order of adoption does not affect anything lawfully done or the consequences of anything unlawfully done while the order of adoption was in force.

PART 3 PROTECTION OF CHILDREN

12. Punishment for ill-treatment and neglect of children

– A person having the custody or control of any child under the age or apparent age of 18 years who in a manner likely to cause the child unnecessary suffering or injury to its health wilfully

ill-treats, neglects, abandons, or exposes the child or causes or procures the child to be ill-treated, neglected, abandoned, or exposed commits an offence and is liable to a fine not exceeding 5 penalty units or to imprisonment not exceeding 1 year.

13. Saving for proceedings under other enactments –

Where an offence against this Part is also punishable under any other enactment, it may be prosecuted and punished under this Ordinance or such other enactment, but no person shall be punished twice for the same offence.

14. Right of parent, etc., to administer punishment –

Nothing in this Part takes away or affects the right of a parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to the child.

**PART 4
DESTITUTE AND DELINQUENT
CHILDREN**

15. Appointment of child welfare officers – (1)

The Minister of Police and Prisons may, by notice in the *Samoa Gazette*, appoint in an honorary capacity or otherwise any fit and proper persons of either sex to be child welfare officers for Samoa as the Minister shall determine.

(2) A child welfare officer holding office as such on the coming into force of this Ordinance is taken to have been appointed under this section.

16. Power of Court and appeal – (1)

If it appears to a Court on its own motion in the course of any proceedings for an offence, or at any time on the application of a constable, that any child is living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a child welfare officer.

(2) Where the District Court makes or refuses to make an order under this section, an appeal shall lie to the Supreme Court.

17. Powers of child welfare officer – Upon such order being made by the Court:

- (a) the child welfare officer has and may exercise, to the exclusion of all other persons, the same powers and rights in respect of the child committed to the officer's care as if he or she were the guardian of that child appointed by a Court under Part I; and
- (b) subject to the directions of the Court in any particular case a child welfare officer shall care for and control the upbringing of a child committed to the officer's care in accordance with and subject to any conditions as may be prescribed by regulations made under this section.

18. Court may give directions – The Court may at any time in its discretion on the application of a child welfare officer or any interested person give directions relating to the upbringing, education, employment, treatment, control, or discipline of any child in respect of whom an order of committal made under section 16 is in force.

19. Variation or discharge of order – A Court may vary, modify or discharge any order made under section 16 and the order shall, unless a Court otherwise orders, cease to have effect upon the child reaching the age of 16 years:

PROVIDED THAT the District Court may not vary, modify or discharge an order made by the Supreme Court.

20. Offences – A person commits an offence and is liable to imprisonment for 1 year or to a fine not exceeding 5 penalty units who, during the currency of an order of committal:

- (a) obstructs, interferes with, or hinders a child welfare officer in the exercise of his or her powers under this Part in respect of the child so committed; or
- (b) removes or attempts to remove or take away the child so committed from any place without the consent of a child welfare officer.

PART 5

CONTRACTS AND CLAIMS OF INFANTS**21. Certain contracts to be subject to jurisdiction of Court**

– (1) Subject to the provisions of this section, no contract is void or voidable by reason of the fact that any party thereto is an infant.

(2) Subject to section 22, a contract which by virtue of any enactment or rule of law would but for this section be void or voidable by reason of the fact that a party thereto is an infant shall be enforceable only to the extent and in the manner that a Court having jurisdiction to hear the proceedings considers it ought to be enforced in equity and good conscience, having regard to:

- (a) the age, appearance, financial resources, and business competence of the infant at the time of entering into the contract;
- (b) the extent of any steps taken by any other party prior to the contract to satisfy himself or herself as to the age, financial resources, and business competence of the infant;
- (c) the fairness of the terms of the contract;
- (d) the extent and nature of the benefit accruing to the infant under the contract; and
- (e) any other circumstances which the Court considers material.

(3) In any action to enforce a contract to which subsection (2) applies, a Court having jurisdiction to hear the proceedings may give judgment between the parties charging the infant to the extent and in the manner that the Court considers the contract ought to be enforced pursuant to that subsection, or the Court may refuse to give any judgment or make any order.

(4) An action brought to enforce against a person a promise or contract made after the person attains the age of 21 years to pay any debt or meet any obligation contracted during infancy, and an action upon any ratification made after the age of 21 years of any promise or contract made during infancy, whether or not there is any new consideration for such promise, contract or ratification after the age of 21 years, shall be subject to the provisions of this section.

22. Prior to approval of Court – (1) Despite anything in section 21 or in any rule of law, no contract is void, voidable or

unenforceable by reason of the fact that any party thereto is an infant if, before the contract is entered into by the infant, it has been approved on behalf of the infant by the District Court under this section.

(2) An application to the District Court under this section may be made by the infant on whose behalf the contract is to be approved or by a parent or guardian of the infant or by any other party to the contract.

23. Contracts by infant Samoans – Section 366 of the Samoa Act 1921 (NZ) has no application to any contract to which section 21 of this Ordinance applies or which has been approved by the District Court pursuant to section 22 of this Ordinance.

23A. Settlement of claims by infants – (1) Where the payment of a sum of money has been agreed upon by way of compromise or settlement of a claim for money or damages made by or on behalf of an infant and the claim is not the subject of proceedings in any Court in Samoa, then, upon application to a Court having jurisdiction to hear proceedings to enforce the claim, that Court may authorise the execution by or on behalf of the infant of a release of the claim.

(2) A release executed pursuant to authority given under this section shall be valid and binding in all respects.

(3) The Court, in its discretion, may refuse any application under this section or may grant the application either unconditionally or upon or subject to such conditions as it thinks fit, whether as to the terms of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid or to be paid, or otherwise.

PART 6 LEGITIMATION

24. Legitimation by marriage of parents – (1) A person born before the marriage of his or her parents (whether before or after the coming into operation of this Ordinance) whose parents have intermarried or hereafter intermarry is taken to have been legitimated by the marriage from birth.

(2) This section applies whether or not the legitimated person was living at the date of the marriage.

25. Rights of legitimated persons and those claiming under them – (1) Subject to the provisions of this section, a legitimated person, and a person claiming through or under a legitimated person or by virtue of being or having been married or related to a legitimated person, is entitled to the same estates, rights, and interests as if the legitimated person had been born in wedlock.

(2) Nothing in subsection (1) affects any estate, right, or interest in any real or personal property to which a person has become absolutely entitled, whether beneficially or otherwise, before the passing of this Ordinance or before the marriage of the parents of the legitimated person, whichever last happens.

26. Application for legitimation order – (1) A person who claims to be legitimated by the provisions of this Part, or the parents of the person, or either of them, or a person on his or her behalf may apply to the Court for a legitimation order, and the Court on being satisfied in the premises, may make such order.

(2) No legitimation order prejudices the applicant or any other person in any subsequent proceedings in a Court in which the correctness of the order is disputed.

27. Copy of order to be sent to Registrar – The Registrar of the Court shall, immediately after a legitimation order under the section 26 has been made, transmit a copy thereof under the seal of the Court to the Registrar appointed under the Births, Deaths and Marriages Registration Act 2002 to be retained by him or her as an official record.

PART 7 MISCELLANEOUS

28. Regulations – (1) The Head of State, acting by and with the advice of Cabinet, may make regulations for any purpose for which regulations are contemplated by this Ordinance and for the due administration thereof.

(2) In particular, and without prejudice to subsection (1), such regulations may provide for the following matters:

- (a) prescribing the duties of a Child Welfare Officer, and the treatment, control, and discipline for children committed to his or her care;

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- (b) providing and regulating the power of a Child Welfare Officer to board out or to find employment for children committed to his or her care;
- (c) providing for the writing or stamping of any existing entry of the birth of any legitimated person of a memorial of any registration; and
- (d) prescribing the fees payable in respect of any matter provided for in this Ordinance.

(3) The Minister of Police and Prisons shall lay all regulations made under this section before the Legislative Assembly within 28 days after the making thereof if the Assembly is then in session; and, if not, to lay them before the Assembly within 28 days after the commencement of the next ensuing session.

29. Repeals and savings – (1) The enactments specified in the Schedule to this Ordinance are repealed.

(2) On the date of the coming into force of this Ordinance, section 299 of the Samoa Act 1921 (NZ) ceases to be part of the law of Samoa.

(3) Without limiting the provisions of the Acts Interpretation Act 1974, the repeal of any provision by this Ordinance does not affect any application, order, appointment, document, or thing made or done under the provision so repealed, and an application, order, appointment, document, or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Ordinance, shall continue and have effect as if it had been made or done under the corresponding provision of this Ordinance, and as if that provision had then been in force.

SCHEDULE

ENACTMENTS REPEALED

1931, No. 3	-	General Laws Ordinance, sections 24, 25, 26, 27 and 28.
1955, No.16	-	Ordinances Amendment Ordinance 1955, sections 6 and 7.

REVISION NOTES 2008 – 2017

This is the official version of this Ordinance as at 31 December 2017.

This Ordinance has been revised by the Legislative Drafting Division from 2008 to 2017 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 numbers.

Since the publication of the *Consolidated and Revised Statutes of Samoa 2007*, this Act has been amended:

By the Family Safety Act 2013 (No. 8) in:

Section 12 by deleting “14” substituting “18”.

By the Infants Amendment Act 2015, No. 39, commenced on 4 September 2015:

Section 2 substituted definition of “overseas adoption”

Section 7A new subsection (5) inserted.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

This Ordinance is administered by

