

SAMOA

Arrangement of Provisions

TITLE	PART III
PART I	CHANGES TO THE ROLE
PRELIMINARY	AND STRUCTURE OF THE
	MINISTRY
1. Short title and commencement	14. Compliance with other laws
2. Interpretation	15. Formation of Business Units
	16. Staff of Business Units
PART II	17. Management of Business Units
MINISTRY OF WORKS	18. Operations of Business Units
3. Continuation of the Ministry	19. Sale of Business Units
4. Principal Functions	20. Restrictions on disposal of land
5. Director General of Works	21. Transfer or cessation of functions
6. Appointment of other officers and employees	22. Disposal of surplus equipment
7. Existing appointments may continue under this Act	23. Redundancy entitlements of staff
8. Officers to act under the direction of the Director General of Works	24. Support for former staff to become contractors
9. Powers of the Minister	
10. Delegation of powers by the Minister	PART IV
11. Delegation of powers by the Director General of Works	BUILDING REGULATIONS
12. Advisory and technical committees	25. Interpretation
13. Reporting and other requirements	26. This Part binds the State
	27. Adoption of Building Regulations made under other laws

- | | |
|---|---|
| <ul style="list-style-type: none"> 28. Revised Building Regulations 29. National Building Code 30. Amendment to the Building Code 31. Requirement to build and demolish in accordance with the Regulations and Building Code 32. Powers of the Director General of Works and Authorised Persons 33. Power to direct changes to buildings 34. Non-compliance with the Regulations or Building Code 35. Other Offences 36. Ministry etc. not liable for structural defects | <ul style="list-style-type: none"> 45. Compensation 46. Quarries and gravel pits 47. Repeal of former road development laws 48. Requirement to clear areas near roads 49. Construction of road crossings for access purposes 50. Powers of the Director General of Works in relation to the use of roads, road reserves, bridges etc. 51. Offences relating to interfering with road surfaces, obstructing roads and bridges etc. 52. Regulations |
|---|---|

**PART V
ROADS, ROAD RESERVES,
DRAINS, BUS STOPS,
BRIDGES AND SEAWALLS**

- 37. Interpretation
- 38. Responsibility for roads, road reserves, footpaths, bridges, drains, bus stops and seawalls
- 39. Designating public roads and road reserves
- 40. Designating other assets as public assets
- 41. Roads ceasing to be public roads
- 42. Identifying areas required for roads, drains, bridges and seawalls
- 43. Restrictions on using areas required for roads etc.
- 44. Right of entry for road and other development purposes

**PART VI
PLANNING AND URBAN
MANAGEMENT SCHEMES**

- 53. Planning and Urban Management Schemes

**PART VII
MISCELLANEOUS**

- 54. Other powers of the Director General of Works
 - 55. Power of the Minister to order special investigations
 - 56. Repeal of laws
 - 57. Savings of contracts, permits, authorizations etc.
 - 58. Regulations
 - 59. References to the Department of Works and Director of Works
- Schedules

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. [08th April 2002]

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

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Ministry of Works Act 2002.

(2) This Act shall come into force upon its assent by the Head of State.

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

“Business Units” means any business unit established in accordance with Part III:

“Director General of Works” and “Director General” mean the administrative head of the Ministry appointed under section 5 of this Act:

“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 of this Act:

“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 or any other law for which the Ministry takes responsibility in relation to its construction, maintenance or management:

“repealed Ordinance” means the Public Works Ordinance 1959.

PART II 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 from time to time be lawfully conferred upon it.

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

4. Principal Functions—(1) The principal functions of the Ministry shall be -

- (a) To construct, maintain and manage the public assets to which this Act applies;
- (b) To prepare policies relating to the management of the public assets to which this Act applies;
- (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;

- (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;
- (e) To establish Business Units as provided for by Part III of this Act, and to manage, operate and support those business units to operate in accordance with laws relating to the commercial operations of public bodies and in accordance with government policy;
- (f) To devolve functions to the private sector in accordance with this Act and any other applicable law; and
- (g) To regulate the construction of buildings and other structures in accordance with 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 as provided for by Part VI of this Act.

(2) Each Government Department and agency shall be 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 shall affect the exercise of any power or responsibility conferred by law on any other Minister, public body or authority, or on any other person.

5. The Director General of Works-(1) The Director General of Works 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 Act as at the commencement date shall hold the office of Director General and his contract of employment shall continue in accordance with its terms for the remainder of its duration.

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

There may from time to time 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) shall not affect the provisions of section 16 relating to engagement of staff for any Business Unit established in accordance with Part III.

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 of Works shall continue to be employees of the Ministry.

(2) Nothing in subsection (1) shall affect 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 III 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 Director General of Works-(1) Subject to the provisions of sections 16 and 17, all engineers, officers and employees of the Ministry shall act under the direction of the Director General of Works in the discharge of their lawful functions, powers and duties.

(2) All engineers employed by the Ministry shall act under the direction of the Director General of Works 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 shall prevent employees of the Ministry from being designated as “Engineering Officers”, but such employees shall act under the supervision of the Director General of Works 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;
- (b) Require that any Government work be carried out pursuant to a specified policy or a directive issued by Cabinet;
- (c) Appoint advisory or technical committees pursuant to section 12;
- (d) Approve arrangements for the support of former staff to become contractors under section 24;
- (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 from time to time, by written notice, either generally or particularly, delegate to the Director General of Works 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 Director General of Works 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 Director General of Works purports to act pursuant to any delegation under this section it shall be presumed that the action is in accordance with the terms of the delegation, unless the contrary is proven.

(4) Every delegation made under this section is revocable at will, and no delegation shall prevent the exercise of the power by the Minister.

(5) Unless and until a delegation made under this section is revoked it shall continue to have force notwithstanding that the persons holding the office of Minister or Director General of Works 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 Director General of Works-(1) The Director General of Works may from time to time, by written notice, either generally or particularly, delegate to such engineers, officers or employees of the Ministry as the Director General thinks fit, all or any of the powers exercisable under this or any other law,

PROVIDED THAT the Director General of Works 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 Treasury) without the written approval of that authority.

(2) Subject to any general or special directions given or conditions attached by the Director General of Works, 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) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation, unless the contrary is proven.

(4) Any delegation under this section 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) Every delegation under this section is revocable at will, and no delegation shall prevent the exercise of any powers by the Director General of Works.

(6) Unless and until a delegation made under this section is revoked it shall continue to have force notwithstanding that the Director General of Works 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 from time to time 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 Director General of Works shall as soon as practicable after the end of each financial year furnish to the Minister a report on the operations of the Ministry for that year.

(2) A copy of the report shall be laid before the Legislative Assembly within 28 days after it has been furnished to the Minister if the Assembly is in session, and if not, shall be laid before the Assembly within seven 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 Director General of Works 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 III
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 XIII 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 shall 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 the provisions of 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 in accordance with the provisions of this Part.

16. Staff of Business Units-(1) After consultation with the Public Service Commission, the Director General of Works may determine which of the staff of the Ministry shall be -

(a) Transferred to a Business Unit as its employee; or

(b) Seconded to a Business Unit for a period determined by the Director General of Works.

(2) All staff of the Ministry transferred to the service of a Business Unit under subsection (1)(a) shall be 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 Director General of Works 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 their 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 either -

- (a) The Director General of Works; or
- (b) A Board of Directors.

(2) If a Business Unit is deemed to be a public trading body under section 14(2) then its management shall 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);
 - (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;
 - (c) Be in compliance with all laws relating to the operations of public bodies, and of businesses generally;
 - (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) Any Business Unit designated for sale under section 15(2)(b) shall be established and operated so as to ensure the maximum possible return to government on its sale,

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

19. Sale of Business Units-(1) The disposal of any Business Unit to which section 15(2)(b) applies shall be in accordance with the provisions of 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) Any member of 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, will have a right of action against the purchaser of the Business Unit for breach of the condition, but shall have 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) Notwithstanding 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 Director General of Works shall promptly notify the Financial Secretary of any Determination made under subsection (1), and shall 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) Any 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 in accordance with subsection (2) shall be disposed of in compliance with the Public Finance Management Act 2001.

(4) The disposal of items specified in accordance with subsection (2) shall be done in accordance with 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.

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 shall be entitled to receive such 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 shall not be paid to staff who are transferred to a Business Unit or to staff who receive assistance in accordance with 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; or
 - (g) Such other appropriate form of assistance as is approved by Cabinet.
- (3) Prior to providing any assistance relating to a matter referred to in paragraphs (d) or (e) of subsection (2), the Director General of Works 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 IV 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 Director General of Works 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” and “Building Regulations” means the Building Regulations adopted by section 27, and any subsequent Regulations that replace or amend them made under section 28, and any Regulations made under section 53.

26. This Part binds the State - This Part shall bind the State.

27. Adoption of Building Regulations made under other laws-(1) The Regulations stated in Schedule 1 shall be deemed to have been made under this Act and shall, subject to subsection (2), continue to have full force and 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 the general power conferred by 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 Director General of Works and Authorized 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 any 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 Director General 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 finalized by the Government and persons within the construction and building industry in Samoa in the year 1992 is hereby 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 Director General of Works 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 Director General of Works 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 from time to time, on the recommendation of the Director General of Works 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 Director General of Works 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 one 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 shall come 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 notwithstanding that additional approvals for such buildings or structures are required under any other laws.

32. Powers of the Director General of Works and Authorised Persons-(1) The Director General of Works 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 Director General 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 Director General of Works 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 Director General of Works.

(3) The Director General of Works -

- (a) May set and determine fees which are not otherwise prescribed by the Regulations in relation to any service provided by the Ministry or any other matter related to the regulation of building construction, alteration and demolition; and
- (b) Shall make arrangements for the receipt of all fees payable under this Act or the Regulations.

(4) The Director General of Works and Authorized Persons shall have the power to -

- (a) Exercise any power prescribed by Regulation, and any power delegated by the Building Committee;
- (b) Inspect and examine the erection, alteration or demolition of buildings;
- (c) Issue certificates and notices in accordance with the Regulations;
- (d) 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) Otherwise enforce the Regulations and Building Code as prescribed by the Act or the Regulations; and
- (f) 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 Director General of Works and any Authorized Person shall during an inspection have the authority to -

- (a) 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; and
- (b) 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 Director General of Works and any Authorized Person shall have the power to 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 where an owner or builder fails to comply with any direction or requirement made under this section the Director General of Works and any Authorized Person shall have the power to demolish, or cause to be demolished a building or part of a building which does not comply with the Regulation and Building Code.

(7) The Director General of Works may recover from an owner or builder, or both, any cost or expense incurred by the Director General of Works or an Authorized 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 Director General of Works and may be recovered pursuant to an order of the court given at the time of any prosecution taken under this Part.

33. Power to direct changes to buildings-(1) The Director General of Works and Authorized 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 in accordance with 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 Director General of Works or Authorized Person.

(3) The Director General of Works 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) The provisions of this section shall apply, 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) Every person who commits an offence under this section is liable -

(a) In the case of 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) In the case of 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) Any 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) Every 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) Every person who obstructs or impedes the Director General of Works or an Authorized 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) Every person who provides to the Director General of Works or an Authorized 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) Any person who commits an offence against this section shall be liable upon conviction -

- (a) In the case of 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) In the case of 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 etc. not liable for structural defects - The Ministry, the Director General of Works, Authorized Persons and members of the Building Committee, whether or not employed within the Ministry, shall 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 V
ROADS, ROAD RESERVES, DRAINS, BRIDGES,
BUS STOPS AND SEAWALLS

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

“assets” means any public assets as defined in section 2:

“development” includes construction, reconstruction, widening, improvement and up-grading:

“owner” includes an occupier under any tenancy, or by any customary right:

“public road” means any road designated as a public road in accordance with section 39:

“road” has the same meaning as in the Taking of Land Act 1964, and shall include fords and culverts:

“road crossing” means a crossing leading from the property of any owner across a footpath or drain to a road:

“road frontage” means the area of land between the front boundary of private property and the edge of the carriageway, but excluding any drain.

38. Responsibility for roads, road reserves, footpaths, bridges, drains, bus stops and seawalls—(1) The Ministry shall be responsible for the construction, maintenance and management of roads, road reserves, footpaths, bridges, drains, bus stops, seawalls and other public assets in accordance with this Part.

39. Designating public roads and road reserves—(1) The Director General of Works may make written Determinations designating roads to be public roads for the purposes of this Part.

(2) The effect of designating a road to be a public road under subsection (1) shall be that -

- (a) Without such a designation a road shall not be constructed or maintained by the Ministry;
- (b) Once designated, all persons shall have a right to use the roadway, subject to any restrictions imposed by this Act or any other law;
- (c) The road shall be listed on the register of public assets maintained by the Department;
- (d) Subject to subsection (3), the area along the length of the road being 11 meters on each side of the center points of the carriageway shall be deemed to be a road reserve for the purposes of this Act -

PROVIDED THAT where a surveyed boundary of privately owned land adjoining the road on either side is within the 11 meter area specified in this paragraph, the road reserve shall extend only up to the line of that boundary; and

- (e) Provision may be made for the placement of bus stops on the road or the road reserve.

(3) The Head of State, acting on the advice of Cabinet, may make Regulations for the following purposes -

- (a) To vary the dimensions of the road reserves recognized by subsection (2)(d), either generally or in relation to any specific road;
- (b) To classify roads, and to vary the area of a road reserve applying to any category of road;
- (c) To prescribe the uses which may be made of road reserves;
- (d) Otherwise regulating the use of road reserves; and
- (e) To prescribe means by which disputes over the existence of road reserves, or by competing users of road reserves, may be resolved.

40. Designating other assets as public assets - The Director General of Works may make written Determinations designating other assets to which this Act applies as public assets for the purposes of this Act and may specify the consequences of such a designation.

41. Roads ceasing to be public roads-(1) The Minister may by written Determination declare that any public road shall cease to be a public road as from the date of the Determination, or from any other specified date.

(2) In a case where the Minister determines that a road has become a danger to the public the Determination made under subsection (1) shall be sufficient to deem the road as having been closed.

(3) In any other case, the Director General of Works shall notify the Director of Lands, Surveys and Environment of any Determination made under subsection (1) and action may then be taken, if appropriate, under Part IV of the Taking of Land Act 1964 for the road to be close.

42. Identifying areas required for roads, drains, bridges and seawalls-(1) The Minister may make written Determinations specifying areas of land required for road development or for the construction or development of other public assets to which this Act applies.

(2) The Director General of Works shall promptly notify the Director of Lands, Surveys and Environment of any Determination made under subsection (1) so that any required action can be taken under the Taking of Land Act 1964.

(3) Sections 14, 14A, 15 and 15A of the Taking of Land Act 1964 (insofar as they relate to objections) shall not apply to any land to which subsection (1) applies.

43. Restrictions on using areas required for roads etc-

(1) No person, without the prior written consent of the Minister, may erect, alter or extend any building or structure of any description on land to which section 42(1) applies, or otherwise undertake any development of such an area.

(2) In granting a consent under subsection (1), the Minister may impose such conditions as the Minister considers appropriate.

(3) No compensation shall be payable in respect of any building or structure of any description or any development erected on an area to which section 42(1) applies after the commencement date, or in respect of any alteration or extension made after the commencement date.

44. Right of entry for road or other development purposes-

(1) Notwithstanding that any action under section 42(2) remains incomplete, the Minister or the Director General of Works may at any time authorize any person to enter upon land to which section 42(1) applies for the purpose of carrying out any development work, or for any related purpose.

(2) Any person who obstructs any person authorized under subsection (1) shall be guilty of an offence, and shall be liable upon conviction to a fine not exceeding 20 penalty units, and to a further fine not exceeding 10 penalty units for each day during which the obstruction continues.

45. Compensation-(1) The Head of State, acting on the advice of Cabinet, may make Regulations concerning the payment or assessment of compensation to be paid as a result of

any land being acquired for the purposes of this Part, or in respect of any right to compensation that might otherwise arise as a result of the operation of any provision of this Part.

(2) Regulations made under subsection (1) shall relate specifically to the compensation implications of road development or the development of other public assets to which this Act applies, and shall apply in that regard notwithstanding that they may conflict with any provision of Part III of the Taking of Land Act 1964.

(3) The Minister may, after consultation with the Minister responsible for Agriculture and the Minister responsible for Internal Affairs, approve a scale of compensation to be paid in relation to the destruction of any plants or crops caused due to road development or the development of other public assets to which this Act applies.

(4) No action may be maintained in any court for compensation relating to the destruction or removal of plants and crops which exceeds the amount prescribed in the scale of compensation approved under subsection (3), as it applies at the relevant time.

46. Quarries and gravel pits-(1) Where the Ministry undertakes the development of roads or other public assets to which this Act applies and there is a need to extract gravel or stone for that purpose, the Director General of Works shall notify the Director of Lands, Surveys and Environment of the need to take action under the Taking of Land Act 1964 for this purpose.

(2) Once notification has been given under subsection (1), the Director General of Works may exercise the powers given to the Minister in section 11(1) of the Taking of Land Act 1964.

(3) The powers exercisable by the Director General of Works under subsection (2) shall be subject to the same restrictions and rights to compensation as those applying to the powers of the Minister under section 11 of the Taking of Land Act 1964.

47. Repeal of former road development laws-(1) The Main Roads Development Act 1972 and the Faleolo Airport Road Act 1969 are repealed.

(2) All actions relating to road development previously taken under the laws repealed by subsection (1) shall remain in full force and shall be deemed to have been taken in accordance with the provisions of sections 42 – 44 of this Act.

48. Requirement to clear areas near roads-(1) Every owner of land having frontage to a public road shall -

- (a) Keep the grass on his or her road frontage cut short;
- (b) Keep all plants, foliage, bushes and trees on his or her road frontage in a manner as directed by the Director General of Works; and
- (c) Keep his or her road frontage clear of weeds.

(2) The Director of Works may cause notice to be served on any owner of land requiring that subsection (1) be complied with within the time specified in the notice.

(3) Notice may be served for the purposes of this section by -

- (a) Delivering it to the person named in it, or to any adult person residing on the land to which it relates; or
- (b) Affixing it in a conspicuous place on the land to which it relates.

(4) Every owner of land who fails to comply with a notice given under this section commits an offence and is liable upon conviction to a fine not exceeding five penalty units.

(5) If an owner fails to comply with a notice given under this section, the Director General of Works may arrange for the road frontage to be dealt with or maintained as detailed in the notice, and all costs incurred in so doing shall be recoverable from the owner, or any co-owner.

(6) The costs referred to in subsection (5) shall be the costs fixed by the Director General of Works and may be recovered pursuant to an order of the court given at the time of any prosecution taken under subsection (4).

49. Construction of road crossings for access purposes-

(1) Every owner of land where a public road adjoins a boundary of the land shall construct and maintain, at his or her cost, all road crossings leading from the land to the public road.

(2) All road crossings shall be constructed in permanent materials and shall be maintained to the satisfaction of the Director General of Works, whose prior approval as to design and construction shall be obtained before any road crossing is constructed or reconstructed.

(3) The Director General of Works may cause notice to be served on any owner of land requiring that a road crossing be repaired or reconstructed -

- (a) Within the time specified in the notice; and
- (b) In accordance with the design or construction requirements determined by the Director General of Works.

(4) Notice may be served for the purposes of this section by -

- (a) Delivering it to the person named in it, or to any adult person residing on the land to which it relates; or
- (b) Affixing it in a conspicuous place on the land to which it relates.

(5) The Director General of Works may cause any road crossing to be demolished if it is constructed in a manner that does not comply with this section or if it is allowed to deteriorate to a state that is not acceptable to the Director General of Works.

(6) The Director General of Works, or any engineer, officer or appointed agent of the Ministry, may at all reasonable times after the giving of at least three days prior notice, enter upon any land for the purpose of making an inspection of any road crossing, or to demolish any road crossing in accordance with subsection (5).

(7) Any person who -

- (a) Fails to construct or maintain a road crossing in accordance with this section; or

- (b) Constructs or reconstructs a road crossing without the approval of the Director General of Works, or in a manner that is not consistent with the approval given; or
 - (c) Fails to comply with a notice given under subsection (3), or any requirement of the notice; or
 - (d) Obstructs the Director General of Works, or any engineer, officer or appointed agent of the Ministry when inspecting a road crossing or demolishing a road crossing in accordance with subsection (5); or
 - (e) Wilfully destroys or damages a road crossing, otherwise than as required by this section -
- commits an offence, and shall be liable upon conviction to a fine not exceeding 10 penalty units.

50. Powers of the Director General of Works in relation to the use of roads, road reserves, bridges etc.-(1) Notwithstanding the provision of any other law, the Director General of Works may -

- (a) Restrict or prohibit the use by any vehicle or class of vehicle on any road under construction or repair;
- (b) Place restrictions on the speed that any vehicle may travel in any designated area where a road is under construction or repair;
- (c) Place any other restrictions relating to an area of road under construction or repair that may be necessary to ensure the safety of road users or persons involved with the construction or repair of the road;
- (d) Place restrictions on vehicle access from private lands on to roads at points where access, either generally or at specific times, may adversely affect the flow of traffic on the road or create any danger to any person;
- (e) Place restrictions on the use of a road reserve;

- (f) Approve the use of any road reserve, including for the provision of utility services, subject to any conditions;
- (g) After consultation with the body responsible for land transport control, restrict the siting of any sign or advertisement on a road reserve;
- (h) Limit the weight of any vehicle passing over a bridge;
- (i) Limit the speed of any vehicle approaching or passing over a bridge; or
- (j) Prohibit vehicles from standing or passing on a bridge.

(2) For any purpose related to subsection (1), the Director General of Works may cause to be placed an appropriate sign on a road way or an approach to a bridge, or cause to be published, as the Director sees fit, a notice specifying the power that has been exercised under subsection (1).

51. Offences relating to interfering with road surfaces, obstructing roads and bridges etc. – Any person who -

- (a) Fails to comply with any restriction, limitation or prohibition imposed under section 50(1);
- (b) Wilfully obstructs any road, road reserve or bridge;
- (c) Fails to remove an obstruction placed by that person or over which that person has control, to any road, road reserve or bridge when required to do so by the Director of Works;
- (d) Uses any road reserve for any purpose that is not authorized by the Director of Works;
- (e) Fails to comply with any condition imposed by the Director of Works in relation to any approval to use a road reserve; or
- (f) Interferes with the surface of any road or the structure of any bridge without the approval of the Director of Works -

commits an offence, and shall be liable upon conviction to a fine not exceeding 25 penalty units.

52. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make Regulations for any purpose relating to the construction, maintenance or management of roads (or any particular road) or to any other public asset to which this Act applies.

(2) Without limiting the generality of subsection (1), Regulations made under that subsection may -

- (a) Prescribe other implications of designating a road to be a public road under section 39;
- (b) Prescribe any other requirement relating to the clearing of road sides or the construction of access crossings from private land to public roads;
- (c) Give to the Director General of Works any other power relating to the regulation and or use of roads, road reserves, bridges and other public assets to which this Act applies;
- (d) Prescribe requirements (including the payment of fees or charges), restrictions or prohibitions applying to any road user or class of road user, including the use of heavy vehicles or any other vehicle or thing which may adversely affect a road, road reserve or bridge, or which may interfere with any other road user;
- (e) Prescribe any other offences related to a matter to which this Part applies; and
- (f) Prescribe penalties for the breach of this Part of any Regulation, being fines not exceeding 20 penalty units.

PART VI

PLANNING AND URBAN MANAGEMENT SCHEMES

53. Planning and Urban Management Schemes-(1) The Head of State, acting on the advice of Cabinet, may make Regulations providing for Planning and Urban Management Schemes for Samoa or parts of Samoa.

- (2) Regulations made under this Part may include -
- (a) The designation and control of land use including conditions and restrictions on the use of any land;
 - (b) The location of buildings, structures and developments;
 - (c) The provision of systems and schemes to provide for applications and permits for land use;
 - (d) The provision of incentives payments, fees and penalties concerning land use applications and permits;
 - (e) The administration of Planning and Urban Management Schemes by the Minister, the Ministry and the Director General of Works;
 - (f) Controls concerning the location and development of facilities and utilities including but not restricted to transport, electricity, water communications, other public utilities, recreation, education and all public purposes as defined under sections 2 and 3 of the Taking of Land Act 1964; and
 - (g) The provision of offences related to any matter to which this Part applies.

PART VII MISCELLANEOUS

54. Other powers of the Director General of Works-(1)

In addition to the powers conferred by this Act, the Director General of Works 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 -

- (a) The opening of drains;
 - (b) The removal of surfaces of any public footpath or public place; and
 - (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 Director General of Works may -
- (a) Approve the form of any application for an approval which the Director General is empowered to give;
 - (b) Fix any fee or charge to be paid in relation to an application for an approval, or for any approval; and
 - (c) Impose such conditions as the Director General of 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 knowledge that are relevant to the investigation.

(3) Any person who fails to comply with a requirement made under subsection (2) commits an offence, and shall upon conviction be liable to a fine not exceeding five penalty units, or to a term of imprisonment not exceeding three 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, authorizations etc.-

(1) Nothing in this Act shall affect the validity of any contract made by the Ministry under the repealed Ordinance.

(2) All permits, authorizations and approvals given under any Act repealed by section 55 shall continue to have full force and effect and where appropriate shall be deemed to have been given under the equivalent provision of this Act.

(3) All legal proceedings commenced under any Act repealed by section 56 shall 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 the generality of the power conferred by 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; 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 Director General of Works of his or her powers and responsibilities.

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 the Director of Works, unless the context and circumstances require otherwise, such reference shall be read as the Ministry of Works and Director General of Works 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 55

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

**The Ministry of Works Act is administered in the
Ministry of Works**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**