

**SAMOA**

## Arrangement of Provisions

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**2005, No.18**

**AN ACT to amend the Infants Ordinance 1961 to provide improved arrangements for the adoption of infants and for related purposes.** *[28<sup>th</sup> June 2005]*

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

**1. Short title and commencement-**(1) This Act may be cited as the Infants (Adoption) Amendment Act 2005 and shall be read with and form part of the Infants Ordinance 1961 (the Principal Act).

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

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**2. Interpretation-** Section 2 of the Principal Act is amended by inserting the following definitions in alphabetical order:

“adoption agency” means any 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;

“citizen” means a citizen of Samoa under the Citizenship Act 2004;

“overseas adoption” means any application for adoption of an infant by any person who is not a citizen;

**3. Overseas adoption-** The Principal Act is amended by inserting the following after section 7:

**“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 any 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 and/or the overseas adoption, shall provide such information and assistance as the Attorney General may require from time to time to enable the Attorney General to discharge the Attorney General's duties and responsibilities under subsection (2).

(4) Any person who fails to provide the information or assistance required under subsection (3) commits an offence punishable by a fine not exceeding 10 penalty units."

**4. Regulation of adoption agencies-**The Principal Act is amended by inserting the following after section 9:

**"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 authorization to do so from the Attorney General.

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

- (a) is suitable qualified and experienced; and
- (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 authorization under subsection (1) if the Attorney General is of the opinion, in the Attorney General's absolute discretion, that the person so authorized 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 from time to time 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) Any adoption agency and any person who is a director, partner, manager, officer, employee or agent (howsoever such person is called or titled) of an adoption agency shall:

(a) In the case of an adoption agency, comply with any Code of Conduct established or amended under subsection (4); and

(b) In the case of any 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 such adoption agency complies with any Code of Conduct established or amended under subsection (4).

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

**5. Transitional arrangements**-The provisions of section 3 of this Act apply to any application for adoption before a Court as at the date of commencement of this Act.

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**The Infants (Adoption) Amendment 2005 is administered in the  
Ministry of Justice and Courts Administration**

