



SAMOA

## BURIALS ORDINANCE 1961

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## BURIALS ORDINANCE 1961

1961

No.4

**AN ORDINANCE** to consolidate and amend the law relating to cemeteries and the burial of human remains.

*[Assent and commencement date: 28 September 1961]*

### PART 1 PRELIMINARY

**1. Short title** – This Ordinance may be cited as the Burials Ordinance 1961.

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

“burials” includes cremations;

“cemetery” means any place set apart for the burial of the dead;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Health;

“Minister” means the Minister responsible for health;

“registered cemetery” means a cemetery or that part of a cemetery in a village:

- (a) in respect of which an approval has been given by the Chief Executive Officer and is still in force; and
- (b) which has been registered as provided in section 4(4).

## **PART 2 CEMETERIES**

**3. Provision of cemeteries** – (1) The alii and faipule of a village shall ensure that there is an adequate registered cemetery or cemeteries available for that village, to receive the bodies of such inhabitants of the village who may die.

(2) In a village where no adequate registered cemetery or cemeteries are available, such cemetery or cemeteries are to be provided within 1 year after the coming into force of this Ordinance.

**4. Approval of cemetery sites and registration** – (1) A cemetery site shall be approved by the Chief Executive Officer, and shall be fixed by survey so that it may be registered on the Village Plans in the Ministry responsible for natural resources and environment.

(2) The Chief Executive Officer may order that there shall be no further burials in any existing cemetery site if in his or her opinion the burying of further bodies in such site would be dangerous to health, or may impose conditions on any further burials in such cemetery. If as a result of any such order any village shall be deprived of adequate cemetery accommodation alternative registered cemetery accommodation shall be provided.

(3) A person who buries or is party to the burying of a body contrary to an order of the Chief Executive Officer, or to any

condition imposed by the Chief Executive Officer, commits an offence under this Ordinance.

(4) The Chief Executive Officer of the Ministry responsible for natural resources and environment shall, immediately after a cemetery site has been approved, fix by survey and place on the appropriate plans, every village cemetery and such cemetery is thereafter, subject to any order under subsection (3), taken to be a registered cemetery.

**5. Bodies to be buried in cemetery – (1)** The inhabitant of a village who dies in Samoa after a cemetery has been registered for that village shall be buried either in a registered cemetery or in a Government cemetery:

**PROVIDED THAT** until a registered cemetery is available for the inhabitants of any village as provided in sections 3 and 4, an inhabitant of that village may be buried in accordance with the provisions of the enactments repealed by this Ordinance as though such enactment were still in force.

(2) A person who is not an inhabitant of a village who dies in Samoa after the coming into force of this Ordinance shall be buried either in a Government cemetery or in a registered village cemetery.

(3) Despite anything to the contrary in this section or in section 9, the Minister may, by writing under his or her hand, permit the body of any person to be disposed of in a manner not provided in this section.

**6. Cemeteries to be enclosed and kept in repair –** A part of a cemetery shall be enclosed by walls or other fences sufficient to prevent animals having access to the cemetery:

**PROVIDED THAT** nothing in this section applies to any special burial ground in which by custom the members of any particular family are buried.

**7. Additional Government cemeteries –** The Minister may acquire by purchase out of money appropriated by the Legislative Assembly for the purpose, such suitable site or sites as may be required for Government cemeteries.

### **PART 3 GRAVES AND BURIALS**

**8. Graves – (1)** A grave shall be at least 4 feet in depth, and shall be of sufficient length and width to allow for decent burial.

**(2)** Graves may be laid with sides adjacent to each other, but no row of graves shall be longer than 30 feet, and a pathway of at least 3 feet wide shall surround each grave or row of graves.

**9. Responsibilities for proper burial and notice – (1)** The Officiating Pastor and the Sui-o-le-nu'u in the case of a burial, in a village cemetery are responsible for proper burials in that cemetery.

**(2)** For a burial in a Government cemetery, the Chief Executive Officer of the Ministry responsible for natural resources and environment may require the officiating minister, the person burying the body, or some other person willing to act to be responsible for the burial.

**(3)** A person responsible for a burial shall ensure that it is completed within 24 hours of death.

**(4)** A person responsible for a burial shall, within 3 days of such burial forward to the Registrar General appointed under the Births, Deaths and Marriages Registration Act 2002 notice of such burial, specifying the date of burial, the name of the person buried, and the place of burial:

**PROVIDED THAT** where 2 or more persons are responsible for a burial and 1 of them forwards such notice, no other person is required to carry out any of the requirements of this subsection in respect of that burial.

#### **PART 4 DISINTERNMENT**

**10. Removal of body – (1)** It is not lawful to remove from its burial place a body, or the remains of a body buried in any cemetery, burial ground, or other place of burial without permission in writing signed by the Minister and with such precautions as the Minister may prescribe as the condition of such permission in writing:

**PROVIDED THAT** in the absence of the Minister, permission in writing may be given by the Minister responsible for Police with such precautions as may be prescribed by the Chief Executive Officer.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for 3 months.

**11. Offences** – A person who contravenes any provision of this Ordinance for which no other penalty is provided commits an offence and is liable on conviction to a fine not exceeding 2 penalty units, and for a continuing offence to a further fine not exceeding 1 penalty for every day during which the offence continues.

**12. Regulation** – (1) The Head of State, acting on the advice of Cabinet, may make regulations as may in the Head of State's opinion be necessary or expedient for giving full effect to the provisions of this Ordinance and for the due administration of this Ordinance.

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

- (a) prescribing the maximum fees which may be charged for a grave in any Government cemetery;
- (b) prescribing the procedure to be followed and the precautions to be taken on the disinterment of a body;
- (c) prescribing any special procedure or precautions to be taken when any person dies who has any infectious or contagious disease.

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

**13. Repeal and savings** – (1) The enactments specified in the Schedule are repealed.

(2) As from the coming into force of this Ordinance, regulations 9 and 10 of the Samoa Village Regulations 1938 (NZ) cease to be part of the law of Samoa.

(3) Despite the repeals of the enactments specified in the Schedule to this Ordinance, all provisions of such enactments which relate to burials otherwise than in approved and registered village cemeteries shall enure in respect of burials otherwise than

in registered cemeteries and Government cemeteries until the provision of a registered village cemetery.

**SCHEDULE**  
**(Section 13)**

No.3 -1931: The General Laws Ordinance 1931, section 10. The *Western Samoa Gazette*, 29 December 1931, page 387.  
In the *Gazette* page reference in this Schedule "387" has been substituted for "288" under s.3 (f) of the Reprint of Statutes Act 1972.

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**REVISION NOTES 2008 – 2020/3 March 2021**

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 – 2020/3 March 2021 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, eg. reference to Pulenu'u changed to Sui-o-le-nu'u.
- (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"

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- (xii) Numbering for Parts changed from roman to decimal numbers.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Ordinance is administered by  
the Ministry of Health.*