



SAMOA

INDECENT PUBLICATIONS ORDINANCE 1960

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INDECENT PUBLICATIONS ORDINANCE 1960

1960 No. 2

AN ORDINANCE to prohibit the publication or sale of indecent literature or other matter or things of an indecent nature.

[Assent and commencement date: 7 April 1960]

1. Short title – This Ordinance may be cited as the Indecent Publications Ordinance 1960.

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

“Court” means the Supreme Court;

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“distributor” means a person who imports for sale in Samoa or sells in Samoa any printed matter published outside Samoa;

“electronic device” means any device capable of storing, transmitting, communicating or transferring data, voice, images or any other matter;

“film” means a photographic film, and includes:

- (a) a cinematograph film; and
- (b) a videotape; and
- (ba) a video clip; and
- (c) any other material record of visual images that is capable of being used for the subsequent display of those images,–

but does not include a videotape or cinematograph film in respect of which a certificate of approval is in force under this Act or under the Film Control Act 1978;

“indecent document” means any book, newspaper, picture, film, electronic device, photograph, print, or writing, and any paper or other thing of any description whatsoever, which has printed or impressed upon it, or otherwise attached thereto, or appearing, shown, or exhibited in any manner whatsoever thereon, any indecent word, statement, significant sign, or any indecent picture, illustration, or representation, or which unduly emphasises matters of sex, horror, crime, cruelty, or violence;

“impressed” includes any physical, electronic or magnetic imprint or command which is made on or in any substance;

“Minister” means the Minister responsible for the National Prosecution Office;

“periodical” means and includes any newspaper or other periodical publication which is published for the time being (whether in Samoa or elsewhere) at intervals “not exceeding 3 months, or any copy of or part of any copy of any periodical as so defined; and every document which at any time accompanies and is distributed along with any periodical is deemed to form part of the periodical;

“Principal Censor” means the censor appointed under the Film Control Act 1978 and includes an assistant censor appointed under that Act;

“public place” means any of the following:

- (a) any road;
- (b) any place of public resort open to or used by the public (whether on payment of money or otherwise);
- (c) any wharf or jetty;
- (d) a passenger ship or boat or other vessel plying for hire at a wharf or jetty or within 1 mile of the shore;
- (e) a licensed public vehicle plying for hire;
- (f) a church or other building where divine service is being publicly held;
- (g) a hall or room in which any public entertainment is being held;
- (h) a market place.

3. Offences – (1) A person commits an offence, who:

- (a) sells, or delivers by way of hire, or offers for sale or hire, or has in his or her possession for sale or hire, an indecent document; or
- (b) prints or causes to be printed an indecent document; or
- (c) causes to be inserted in a newspaper any matter or thing whereby that newspaper becomes an indecent document; or
- (d) sends or causes to be sent, or attempts to send, through the post or any other means an indecent document; or
- (e) exhibits or causes to be exhibited an indecent document to a person in consideration or expectation of any payment, or otherwise for gain, and whether such payment is made by way of gratuity or otherwise howsoever; or
- (f) publicly exhibits or causes to be publicly exhibited an indecent document in a public place, or so that the same is in view of persons in a public place; or

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- (g) delivers or offers, or causes to be delivered or offered, an indecent document to a person in a public place; or
 - (h) delivers or leaves, or causes to be delivered or left, on premises in the occupation of any other person an indecent document, knowing or having reasonable means of knowing that such document is indecent; or
 - (i) writes, draws, affixes, impresses, or exhibits, or causes to be written, drawn, affixed, impressed, or exhibited, any indecent statement, word, picture, drawing, or sign in or upon a public place, or so that the same is in view of persons in a public place; or
 - (j) delivers to a person an indecent document with intent that it should be so dealt with by that or any other person in such a manner as to constitute an offence against this section.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 1 penalty unit.
- (3) A person commits an offence who wilfully does any act mentioned in subsection (1).
- (4) A person who commits an offence against subsection (3) is liable on conviction:
- (a) for an individual, to a fine not exceeding 2 penalty units, or to imprisonment for a term not exceeding 2 years;
 - (b) for a body corporate, to a fine not exceeding 8 penalty units.
- (5) A person charged with an offence against subsection (3) may be convicted of an offence against subsection (1).
- (6) Despite subsections (1) and (3), no person shall be convicted of an offence under this section on the grounds only that the person has in his or her possession for sale or hire a videotape which is an indecent document, where the videotape has not been submitted to the censor and:
- (a) the videotape is in his or her possession in Samoa at the date of the commencement of this subsection and within 14 days after such date of commencement he or she applies to the censor for

a certificate of approval in respect of such videotape; or

- (b) after the commencement of this subsection he or she enters Samoa with the videotape in his or her possession and within 3 days of such entry he or she applies to the censor for a certificate of approval in respect of such videotape; or
- (c) after the commencement of this subsection the videotape comes into his or her possession in Samoa and within 3 days after it so has come into his or her possession he or she applies to the censor for a certificate of approval in respect of such videotape.

4. Persons deemed guilty of offence in connection with periodical being an indecent document – If any periodical printed, or published, or sold, or offered for sale, or kept for the purpose of sale in Samoa contains any matter or thing whereby it becomes an indecent document, a person who at the date of the publication of that periodical is or acts as a printer, publisher, proprietor, manager, editor or sub-editor thereof, and a person who consented to the insertion therein of that matter or thing, shall, without excluding the liability of any other person, be conclusively deemed to have caused that matter or thing to be inserted in the periodical, and severally commits an offence.

5. Considerations determining whether or not document is indecent – (1) In determining whether any document or other matter is indecent within the meaning of this Ordinance the Court shall take into consideration the following:

- (a) the nature of the document or matter;
- (b) the nature and circumstances of the act done by the defendant with respect to it, and the purpose for which the act was done;
- (c) the literary or artistic merit or medical, legal, political, or scientific character or importance of the document or matter;
- (d) the persons, classes of persons, or age groups to or amongst whom the document or matter was or was intended or was likely to be published, distributed, sold, exhibited, given, sent, or

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delivered, and the tendency of the matter or thing to deprave or corrupt any such persons, class of persons, or age groups (despite that persons in other classes or age groups may not be similarly affected by it).

(2) No document or matter shall be held to be indecent unless, having regard to subsection (1) and all other relevant considerations, the Court is of opinion that the act of the defendant was of an immoral or mischievous tendency.

6. Servant and employer, and agent and principal, each guilty of offence committed by one of them – When an indecent document is sold, or delivered by way of hire, or offered for sale or hire, by a servant or agent in the course of his or her employment or agency, whether with or without the authority of his or her employer or principal, the document shall, for the purposes of this Ordinance, be conclusively deemed to have been so sold, delivered, or offered, as the case may be, both by the servant or agent and by his or her employer or principal, and each of those persons severally commits an offence.

7. Absence of guilty knowledge no defence – Except as is otherwise provided in section 3(1)(h), it is not a defence in a prosecution for any offence against that subsection that the defendant had no knowledge that the document, matter or thing to which the prosecution relates was of an indecent nature.

8. Printed matter to be marked with name of publisher or distributor – (1) Except as provided in subsection (2):

- (a) no person shall publish any printed matter published in Samoa, unless each separate article is printed or stamped with his or her name and address;
- (b) no distributor shall sell or distribute any printed matter published elsewhere than in Samoa unless each separate article so sold or distributed is printed or stamped with his or her name and address.

(2) The Minister may, by notice in the *Gazette*, grant exemption from compliance with the provisions of this section in respect of any printed matter or class of printed matter specified or described

in the notice, and may in like manner amend or revoke any such notice.

9. Evidence of printing, publishing, or sale, of document by defendant – When, in the case of any prosecution for an offence against this Ordinance, the indecent document which is the subject of the prosecution contains a statement that the document was printed, published, or sold by the defendant, the statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

10. No prosecution to be commenced without leave of the Attorney General – No prosecution for an offence against this Ordinance shall be commenced except with the leave of the Attorney General.

11. Voluntary referral of videotape to censor – (1) A person who owns or has in his or her possession any videotape and who wishes to ascertain whether the same is an indecent document within the meaning of this Act may apply to the censor for a certificate of approval in respect of such videotape and may apply for a renewal of such certificate.

(2) Subject to subsections (6) and (12) of this section, sections 16 and 17 of the Film Control Act 1978 apply to an application under this section:

PROVIDED THAT no fee is payable on any application for renewal of a certificate of approval.

(3) When an application is made under this section the censor shall consider the same and either:

- (a) grant a certificate of approval; or
- (b) refuse a certificate of approval, either unconditionally or until such alterations or excisions as he or she may specify have been made to the videotape:

PROVIDED THAT the censor shall not refuse to grant a certificate of approval to a videotape without the videotape having first been exhibited to him or her under subsection (2).

(4) A certificate of approval under this section is not granted with respect to any videotape or any part of a videotape which in the opinion of the censor constitutes an indecent document or

which is contrary to public order or the sale or hire of which would for any other reason be undesirable in the public interest.

(5) A certificate of approval if granted under this section shall be issued by the censor in such form as may be prescribed pursuant to this section, and shall apply to all copies or duplicates of the videotape to which it relates.

(6) Subject to subsection (7), a certificate of approval is valid for such period of time as the censor may in that certificate specify and if no period of time is specified shall be of indefinite duration.

(7) Despite subsection (6), the censor may, by notice to be served on the holder of any certificate of approval issued under this section, revoke such certificate if he or she is satisfied that such certificate ought not to have been issued in the first instance or that any condition subject to which such certificate was issued has not been complied with.

(8) Section 25 of the Film Control Act 1978 applies with any necessary modifications to any application or decision under this section as if the words “film or advertisement” wherever they appear in that section were omitted and the word “videotape” substituted.

(9) The censor shall keep a register of videotapes in which he or she shall record the particulars of all applications made under this section together with the particulars of every decision made by him or her.

(10) For the purposes of this section and despite the provisions of the Film Control Act 1978, “prescribed” means prescribed by regulations made under this section.

(11) Despite anything contained in the Film Control Act 1978, where any form is to be used or fee paid in respect of any matter to which this section applies the form or fee shall be that prescribed under this section.

(12) The Head of State, acting on the advice of Cabinet, may make regulations as may be necessary or convenient for giving effect to the provisions of this section.

(Section 138 of the Samoa Act 1921 (N.Z.) dealing with indecent documents is no longer in force in Samoa.)

REVISION NOTES 2008 – 2020/3 March 2021

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

This Ordinance 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;
- (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) rearrange definition for “film” in alphabetical order.

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

By the Crimes Act 2013:

- Section 2**
- inserted “film” into the definition of “indecent Document”;
 - inserted new definition “electronic device”;
 - added new paragraph “(ba)” into definition of “film”.

By the National Prosecution Office Act 2015 (commences 1 January 2016)

- Section 10**
- replaced “Attorney General” with “Director of Public Prosecutions”

By the Constitution Amendment Act (No. 1) 2017, No. 8:

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Section 10

- replaced “Director of Public Prosecutions” with “Attorney General”.

*This Ordinance is administered by
the Ministry of Justice and Courts Administration*