

SAMOA

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2015, No. 47

AN ACT to

(a) help secure the just determination of proceedings by -

- (i) providing facts to be established by the application of logical rules; and**
- (ii) promoting fairness to parties and witnesses; and**
- (iii) protecting rights of confidentiality and other important public interests; and**
- (iv) avoiding unjustifiable expense and delay; and**

- (v) **enhancing access to the law of evidence and understanding of the law of evidence; and**
(b) provide for other related purposes.

[05th November 2015]

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

**PART 1
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Evidence Act 2015.

(2) This Act commences on a date or dates nominated by the Minister.

(3) Despite subsection (2), the Minister may defer the commencement of Division 12 of Part 4 until such time the necessary facilities and equipment are available to the courts.

2. Interpretation-(1) In this Act, unless the context otherwise requires:

“admission”, in relation to a civil proceeding, means a statement that is:

- (a) made by a person who is or becomes a party to the proceeding; and
 (b) adverse to the person’s interest in the outcome of the proceeding.

▲ “child” means a person under the age of 18 years;

▲ “child complainant”, in relation to any proceeding, means a complainant who is a child when the proceeding commences;

▲ “communication assistance” means oral or written interpretation of a language, written assistance, technological assistance, and any other assistance that enables or facilitates communication with a person who:

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(a) does not have sufficient proficiency in the Samoan or English language to -

(i) understand court proceedings conducted in Samoan or English; or

(ii) give evidence in Samoan or English; or

(b) has a communication disability.

“conviction” means:

(a) in sections 37 to 39, a subsisting conviction entered before or after the commencement of this Act by -

(i) a court; or

(ii) a court established by the law of a country; and

(b) in sections 107 and 108, a subsisting conviction entered before or after the commencement of this Act by a Samoan or foreign court.

“copy”, in relation to a document, includes a copy of a copy and a copy that is not an exact copy of the document but is identical to the document in all relevant respects;

“country” means a country (other than Samoa) which is a member of the Pacific Islands Forum or a prescribed country and includes a State, territory, province, or other part of the country;

“court” means the Court of Appeal, the Supreme Court, a District Court, Family Court, Youth Court, or any other subordinate court established pursuant to Article 74 of the Constitution, but does not include the Land and Titles Court;

“document” means:

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes -

(i) a label, marking, or other writing which identifies or describes a thing of which it forms part, or to which it is attached;

(ii) a book, map, plan, graph, or drawing;

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- (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information.

“domestic violence” means:

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) intimidation;

(e) harassment;

(f) stalking;

(g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

“duty” includes:

- (a) duty imposed by law or arising out under a contract; or
- (b) duty recognised in carrying out of any business practice or of any professional duty.

“enforcement agency” means the Police or a body or organisation that has a statutory responsibility for the enforcement of an enactment;

“expert” means a person who has specialised knowledge or skill based on training, study, or experience;

“expert evidence” means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion;

“give evidence” means to give evidence in a proceeding:

- (a) in the ordinary way, as described in section 71; or
- (b) in an alternative way, as provided for by section 88; or
- (c) in any other way provided for under this Act or any other enactment;

“Government” means the Government of Samoa;

“harassment” means engaging in a pattern of conduct that induces the fear of harm to a complainant including:

- (a) repeatedly watching or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;

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- (b) repeatedly making calls or texts by telephone, mobile phone, internet (skype) or by any other technological means, or inducing another person to make calls or texts by telephone or mobile phone to the complainant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of radio messages, letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.

“hearsay rule” means the rule described in Subdivision A of Division 1 of Part 2;

“hearsay statement” means a statement that:

- (a) was made by a person other than a witness; and
- (b) is offered in evidence at the proceeding to prove the truth of its contents;

“hostile”, in relation to a witness, means that the witness:

- (a) exhibits, or appears to exhibit, a lack of veracity when giving evidence unfavourable to the party who called the witness on a matter about which the witness may reasonably be supposed to have knowledge; or
- (b) gives evidence that is inconsistent with a statement made by that witness in a manner that exhibits, or appears to exhibit, an intention to be unhelpful to the party who called the witness; or
- (c) refuses to answer questions or deliberately withholds evidence.

“incriminate” means to provide information that is reasonably likely to lead to, or increase the likelihood of, the successful prosecution of a person for a criminal offence;

“international organisation” means an organisation of States or governments of States or an organ or agency of an organisation of that kind, and includes the Commonwealth Secretariat;

“interpreter” includes a person who provides communication assistance to a defendant or a witness;

“intimidation” means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;

“Judge” includes a Fa’amasino Fesoasoani or a tribunal;

“lawyer” or “counsel” or “solicitor” means a person admitted as a Barrister and Solicitor of the Supreme Court under the Lawyers and Legal Practice Act 2014;

“leading question” means a question that directly or indirectly suggests a particular answer to the question;

“offer evidence” includes eliciting evidence by cross-examining a witness called by another party;

“opinion”, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact;

▲ “party” means a party to a proceeding;

“police officer” means a sworn member of the Police;

▲ “previous statement” means a statement made by a witness at any time other than at the hearing at which the witness is giving evidence;

▲ “proceeding” means:

- (a) a proceeding conducted by a court; and
- (b) any interlocutory or other application to a court connected with that proceeding, including judicial settlement conference.

▲ “propensity rule” means the rule described in section 30;

▲ “public document” means a document that:

- (a) forms part of the official records of the legislative, executive, or judicial branch of the Government of Samoa or of a foreign country or of a person or body holding a public office or exercising a function of a public nature under the law of Samoa or a foreign country; or
- (b) forms part of the official records of an international organisation; or
- (c) is being kept by, or on behalf of, a branch of any government, person, body, or organisation referred to in paragraph (a) or (b), for the purpose of carrying out the official functions of that government, person, body, or organisation.

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- “Registrar” means a Registrar of a court, and includes an Assistant Registrar;
- “seal” includes a stamp;
- “self-incrimination” means the provision by a person of information that could reasonably lead to, or increase the likelihood of, the prosecution of that person for a criminal offence;
- “sexual case” means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for:
- (a) an offence against any of the provisions of Part VII of the Crimes Act 2013; or
 - (b) any other offence against the person of a sexual nature.
- “stalking” means repeatedly following, pursuing, or accosting the complainant;
- “statement” means:
- (a) a spoken or written assertion, in any form or manner, (including any sketch) by a person of any matter; or
 - (b) non-verbal conduct of a person that is intended by that person as an assertion of any matter.
- “telephone conference” means a telephone call in which the calling party wishes to have one or more called parties listen in to the audio portion of the call;
- “veracity” means the tendency of a person to refrain from lying;
- “video link” means any form of technology to receive and transmit audio-video signals by users at different locations, for communication between persons;
- “video record” means a recording on any medium from which a moving image may be produced by any means; and includes an accompanying sound track;
- “visual identification evidence” means evidence that is:
- (a) an assertion by a person, based wholly or partly on what that person saw, to the effect that a defendant was present at or near a place where an act constituting direct or circumstantial evidence of the commission of an offence was done at, or about, the time the act was done; or

(b) an account (whether oral or in writing) of an assertion of the kind described in paragraph (a).

“witness” means a person who gives evidence and is able to be cross-examined in a proceeding.

(2) A hearing commences when, at the substantive hearing of the issues that are the subject of proceedings, the party having the right to begin commences to state that party’s case or, having waived the right to make an opening address, calls that party’s first witness.

(3) Without limiting the Acts Interpretation Act 1974, this Act:

- (a) is to be interpreted in a way that promotes its purpose and principles; and
- (b) is not subject to any rule that statutes in derogation of the common law should be strictly construed; but
- (c) may be interpreted having regard to the common law, but only to the extent that the common law is consistent with -
 - (i) its provisions; and
 - (ii) the promotion of its purpose and its principles; and
 - (iii) the application of the rule in section 5.

3. Application and relationship with other Acts-(1) This Act binds the Government.

(2) An enactment prevails if there is an inconsistency between the enactment and this Act, unless this Act provides otherwise.

(3) Despite subsection (2), this Act prevails if there is any inconsistency between the rules of court and this Act.

4. All relevant evidence admissible unless excluded by law or Judge-(1) Evidence that is not relevant is not admissible in a proceeding.

(2) All relevant evidence is admissible in a proceeding except evidence that is:

- (a) inadmissible under this Act or any other enactment; or
- (b) excluded under this Act or any other enactment.

(3) Evidence is relevant in a proceeding if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceeding.

(4) In any proceeding, the Judge must exclude evidence if its probative value is outweighed by the risk that the evidence will:

(a) have an unfairly prejudicial effect on the proceeding;
or

(b) needlessly prolong the proceeding.

(5) In determining whether the probative value of evidence is outweighed by the risk that the evidence will have an unfairly prejudicial effect on a criminal proceeding, the Judge must take into account the right of the defendant to offer an effective defence.

5. Acts to be liberally construed - If there is no provision in this Act or any other enactment regulating the admission of any particular evidence or the relevant provisions deal with that question only in part, decisions about the admission of that evidence must be made having regard to:

(a) the purpose and the principles set out in the long title;
and

(b) the common law, to the extent that the common law is consistent with the promotion of that purpose and those principles in the long title and is relevant to the decisions to be taken.

6. Co-conspirator's rule, etc., not affected - Nothing in this Act affects the rules of the common law relating to:

(a) the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises; or

(b) the admissibility of a defendant's statement against a co-defendant in circumstances where the defendant's statement is accepted by the co-defendant.

7. Evidence may be provisionally admitted - If a question arises concerning the admissibility of any evidence, the Judge may admit that evidence subject to evidence being later offered which establishes its admissibility.

8. Evidence given to establish admissibility - Evidence given by a witness to prove the facts necessary for deciding whether some other evidence should be admitted in a proceeding:

- (a) is admissible in the proceeding if the evidence given by the witness is inconsistent with the witness's subsequent testimony in the proceeding (whether or not the other evidence is admitted);
- (b) is not otherwise admissible in the proceeding.

PART 2 ADMISSIBILITY

Division 1 - Admissibility

Subdivision A - Hearsay evidence

9. Definition-(1) In this Division:

“business”:

- (a) means any business, profession, trade, manufacture, occupation, or calling of any kind; and
- (b) includes the activities of a Ministry, local authority, public body, body corporate, organisation, or society.

“business record” means a document:

- (a) that is made -
 - (i) to comply with a duty; or
 - (ii) in the course of a business, and as a record or part of a record of that business; and
- (b) that is made from information supplied directly or indirectly by a person who had, or may reasonably be supposed by the court to have had, personal knowledge of the matters dealt with in the information he or she supplied.

“circumstances”, in relation to a statement by a person who is not a witness, includes:

- (a) the nature of the statement; and
- (b) the contents of the statement; and

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- (c) the circumstances that relate to the making of the statement; and
- (d) any circumstances that relate to the veracity of the person; and
- (e) any circumstances that relate to the accuracy of the observation of the person.

(2) For the purpose of this Division, a person is unavailable as a witness in a proceeding if the person:

- (a) is dead; or
- (b) is outside Samoa and it is not reasonably practicable for the person to be a witness; or
- (c) is unfit to be a witness because of age or physical or mental condition; or
- (d) cannot with reasonable diligence be identified or found; or
- (e) is not compellable to give evidence.

(3) Subsection (2) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

(4) A hearsay statement is not admissible except:

- (a) as provided by this Division or by the provisions of any other enactment; or
- (b) in cases where -
 - (i) this Act provides that this Division does not apply; and
 - (ii) the hearsay statement is relevant and not otherwise inadmissible under this Act.

10. General rule as to admissibility of hearsay-(1) Subject to subsections (2) to (4) and section 12, a hearsay statement is admissible in any proceeding if:

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) either -
 - (i) the maker of the statement is unavailable as a witness; or

(ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) A party intending to offer hearsay evidence under this Subdivision must, within sufficient time before the hearing, provide the court and any other party with notice of the party's intention to offer the hearsay statement in evidence.

(3) In criminal proceedings, the notice under subsection (2) must:

- (a) state the name of the maker of the statement, if known, (subject to any witness anonymity order under Division 8 of Part 4);
- (b) if the hearsay statement was made in writing, be accompanied by a copy of the statement in which the statement is contained;
- (c) if the hearsay statement was made orally, state the content of the hearsay statement;
- (d) if section 10(1)(a) is relied on, state the circumstances relating to the statement that provide reasonable assurance that the statement is reliable;
- (e) if section 11 is relied on, state why the document is a business record;
- (f) if section 10(1)(b)(i) or 11(a) is relied on, state why the person is unavailable as a witness;
- (g) if section 10(1)(b)(ii) or 11(c) is relied on, state why undue expense or delay would be caused if the person were required to be a witness.

(4) The Judge may dispense with the requirements of subsection (2) if:

- (a) having regard to the nature and contents of the hearsay statement, no party is substantially prejudiced by the failure to comply with the requirements; or
- (b) compliance was not reasonably practicable in the circumstances; or
- (c) the interests of justice so require.

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11. Admissibility of hearsay in business records - Subject to sections 10(2) and 12, a hearsay statement contained in a business record is admissible if:

- (a) the person who supplied the information used for the composition of the record is unavailable as a witness; or
- (b) the Judge considers no useful purpose would be served by requiring that person to be a witness as that person cannot reasonably be expected (having regard to the time that has elapsed since the person supplied the information and to all the other circumstances of the case) to recollect the matters dealt with in the information the person supplied; or
- (c) the Judge considers that undue expense or delay would be caused if that person were required to be a witness.

12. Hearsay statements in documents required for applications or pleadings in civil proceedings-(1) In a civil proceeding, a hearsay statement in an affidavit made to support or oppose an application is admissible for the purposes of that application if, and to the extent that, the applicable rules of court require or permit a statement of that kind to be made in the affidavit.

(2) In a civil proceeding, a hearsay statement in a document by which documents are discovered or interrogatories are answered is admissible in that proceeding if, and to the extent that, the applicable rules of court require or permit the making of a statement of that kind.

13. When defendant's hearsay statement not admissible-(1) If a defendant in a criminal proceeding does not give evidence, the defendant may not offer his or her own hearsay statement in evidence in the proceeding.

(2) This section does not limit the previous consistent statement rule.

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Subdivision B - Opinion and expert evidence

14. Opinion rule - A statement of an opinion is not admissible in a proceeding, except as provided by section 15 and 16.

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15. Admissibility of a statement of opinion - A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard, or otherwise perceived.

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16. Admissibility of expert opinion evidence-(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible only because it is about an ultimate issue to be determined in a proceeding; or incidentally refers to a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on the existence of a matter or state of affairs that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that matter or state of affairs is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person's state of mind, then:

- (a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and
- (b) neither the hearsay rule nor the previous consistent statement rule applies to evidence of the statement made by the person.

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17. Expert's conduct in civil proceedings-(1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.

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(2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.

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*Division 2 - Defendants' statements,
improperly obtained evidence, etc.*

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18. Defendants' statements offered by prosecution-(1) Evidence offered by the prosecution in a criminal proceeding of a statement made by a defendant is admissible against that defendant, but not against a co-defendant in the proceeding.

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(2) However, evidence offered under subsection (1) is not admissible against that defendant if it is excluded under section 20 or 21.

(3) Divisions 1 and 3 do not apply to evidence offered under subsection (1).

(4) This section is subject to section 6.

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19. Statements maybe edited-(1) If a statement is determined by the Judge to be inadmissible in part in a proceeding, a party who wishes to use an admissible part of the statement may, subject to the direction of the Judge, edit the statement by excluding any part of it that is inadmissible.

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(2) A party may not edit a statement under subsection (1) unless, in the opinion of the Judge, the inadmissible parts of the statement can be excluded without obscuring or confusing the meaning of the admissible part of the statement.

20. Improperly obtained evidence-(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer evidence if:

- (a) the defendant or, if applicable, a co-defendant against whom the evidence is offered raises, on the basis of an evidential foundation, the issue of whether the evidence was improperly obtained and informs

the prosecution of the grounds for raising the issue; or

- (b) the Judge raises the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue.

(2) The Judge must:

- (a) find, on the balance of probabilities, whether or not the evidence was improperly obtained; and
- (b) if the Judge finds that the evidence has been improperly obtained, determine whether or not the exclusion of the evidence is proportionate to the impropriety by means of a balancing process that gives appropriate weight to the impropriety and also takes proper account of the need for an effective and credible system of justice.

(3) For the purposes of subsection (2), the Judge may, among any other matters, have regard to the following:

- (a) the importance of any right breached by the impropriety and the seriousness of the intrusion on it;
- (b) the nature of the impropriety, in particular, whether it was deliberate, reckless, or done in bad faith;
- (c) the nature and quality of the improperly obtained evidence;
- (d) the seriousness of the offence with which the defendant is charged;
- (e) whether there were any other investigatory techniques not involving any breach of the rights that were known to be available but were not used;
- (f) whether there are alternative remedies to the exclusion of evidence which can adequately provide redress to the defendant;
- (g) whether the impropriety was necessary to avoid apprehended physical danger to the police or others;
- (h) whether the impropriety arose from circumstances of danger or urgency;

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- (i) whether the impropriety arose from a genuine misunderstanding, accidental or unintentional infringement.

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(4) The Judge must exclude any improperly obtained evidence if, in accordance with subsection (2), the Judge determines that its exclusion is proportionate to the impropriety.

(5) For the purposes of this section, evidence is improperly obtained if it is obtained:

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- (a) in consequence of a breach of the rights to consult a lawyer or the right to remain silent and not to make a statement; or

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- (b) in consequence of a statement made by a defendant that is or would be inadmissible if it were offered in evidence by the prosecution; or

- (c) unfairly.

(6) For the purposes of this section, evidence is not improperly obtained if the person waived his or her right to consult a lawyer or to be informed of the right to remain silent and not to make a statement.

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(7) Without limiting subsection (5)(c), in deciding whether a statement obtained by a police officer has been obtained unfairly, the Judge must take into account any directions on the subject issued under this subsection by the Chief Justice or rules of the court.

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21. Exclusion of statements influenced by oppression-(1)

This section applies to a criminal proceeding in which the prosecution offers or proposes to offer a statement of a defendant if:

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- (a) the defendant whom the statement is offered raises, on the basis of an evidential foundation, the likelihood that the statement was influenced by oppression, and informs the Judge and the prosecution of the grounds for raising the issue; or

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- (b) the Judge raises the issue of whether the statement was influenced by oppression and informs the prosecution of the grounds for raising the issue.

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(2) The Judge must exclude the statement (whether or not the statement is true) unless satisfied beyond reasonable doubt that the statement was not influenced by oppression.

(3) Without limiting the matters that a Judge may take into account for the purpose of applying subsection (2), the Judge must, in each case, take into account any of the following matters that are relevant to the case:

- (a) any pertinent physical condition of the defendant when the statement was made (whether apparent or not);
- (b) any pertinent characteristics of the defendant including any mental, intellectual, or physical disability to which the defendant is subject (whether apparent or not);
- (c) the nature of any threat, promise, or representation made to the defendant or any other person.

(4) In this section, “oppression” means the deliberate exercise of violence on or the inhuman or degrading treatment of the defendant by a police officer.

22. Confession after promise, threat, or other inducement

- Without limiting sections 20 and 21, a Judge may not reject a confession tendered in evidence in any criminal proceeding on the ground that a promise or threat or any other inducement (not being the exercise of violence or force) has been held out to or exercised upon the person confessing, if the Judge is satisfied that the means by which the confession was obtained were not in fact likely to cause an untrue admission of guilt to be made.

23. Defendant’s silence before or at trial-(1) This section applies to a criminal proceeding in which it appears that the defendant failed:

- (a) to answer a question put, or respond to a statement made, to the defendant in the course of investigative questioning before the trial; or
 - (b) to disclose a defence before trial.
- (2) If subsection (1) applies:
- (a) no person may invite the fact-finder to draw an inference that the defendant is guilty from a failure of the kind described in subsection (1); and

(b) if the proceeding is with assessors, the Judge must direct them that they may not draw that inference from a failure of that kind.

(3) This section does not apply if the fact that the defendant did not answer a question put, or respond to a statement made, before the trial is a fact required to be proved in the proceeding.

(4) In a criminal proceeding, no person other than the defendant or the defendant's counsel or the Judge may comment on the fact that the defendant did not give evidence at his or her trial.

24. Admissions in civil proceedings-(1) Divisions 1 and 3 do not apply to evidence of an admission offered in a civil proceeding that is:

(a) given orally by a person who saw, heard, or otherwise perceived the admission being made; or

(b) contained in a document.

(2) Evidence of an admission that is a hearsay statement may not be used in respect of the case of a third party unless:

(a) the circumstances relating to the making of the admission provide reasonable assurance that the admission is reliable; or

(b) the third party consents.

(3) In this section, "third party" means a party to the proceeding concerned, other than the party who:

(a) made the admission; or

(b) offered the evidence.

Division 3 - Previous consistent statements

25. Previous consistent statements-(1) A previous statement of a witness that is consistent with the witness's evidence is not admissible unless subsection (2) or (3) applies to the statement.

(2) A previous statement of a witness that is consistent with the witness's evidence is admissible to the extent that the statement is necessary to respond to a challenge to the witness's veracity or accuracy, based on a previous inconsistent statement of the witness or on a claim of recent invention on the part of the witness.

(3) A previous statement of a witness that is consistent with the witness's evidence is admissible if:

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- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) the statement provides the court with information that the witness is unable to recall.

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Division 4 - Veracity

26. Application of veracity rules-(1) This Division does not apply to evidence about a person's veracity if that veracity is an ingredient of the claim in a civil proceeding or one of the elements of the offence for which a person is being tried in a criminal proceeding.

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(2) Subject to section 34, this Division does not apply so far as a proceeding relates to bail or sentencing.

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27. Evidence as to veracity-(1) A party may not offer evidence in a civil or criminal proceeding about a person's veracity unless the evidence is substantially helpful in assessing that person's veracity.

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(2) In a criminal proceeding, evidence about a defendant's veracity must also comply with section 28 or, as the case requires, section 29.

(3) In deciding, for the purposes of subsection (1), whether or not evidence proposed to be offered about the veracity of a person is substantially helpful, the Judge may consider, among any other matters, whether the proposed evidence tends to show one (1) or more of the following matters:

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- (a) lack of veracity on the part of the person when under a legal obligation to tell the truth (for example, in an earlier proceeding or in a signed declaration);
- (b) that the person has been convicted of one (1) or more offences that indicate a propensity for dishonesty or lack of veracity;
- (c) any previous inconsistent statements made by the person;
- (d) bias on the part of the person;

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- (e) a motive on the part of the person to be untruthful.
- (4) A party who calls a witness:

- (a) may not offer evidence to challenge that witness's veracity unless the Judge determines the witness to be hostile; but
- (b) may offer evidence as to the facts in issue contrary to the evidence of that witness.

28. Evidence of a defendant's veracity-(1) A defendant in a criminal proceeding may offer evidence about his or her veracity.

(2) The prosecution in a criminal proceeding may offer evidence about a defendant's veracity only if:

- (a) the defendant has offered evidence about his or her veracity or has challenged the veracity of a prosecution witness by reference to matters other than the facts in issue; and
- (b) the Judge permits the prosecution to do so.

(3) In determining whether to give permission under subsection (2)(b), the Judge may take into account any of the following matters:

- (a) the extent to which the defendant's veracity or the veracity of a prosecution witness has been put in issue in the defendant's evidence;
- (b) the time that has elapsed since any conviction about which the prosecution seeks to give evidence;
- (c) whether any evidence given by the defendant about veracity was elicited by the prosecution.

29. Evidence of a co-defendant's veracity-(1) A defendant in a criminal proceeding may offer evidence that challenges the veracity of a co-defendant only if:

- (a) the evidence is relevant to a defence raised or proposed to be raised by the defendant; and
- (b) the Judge permits the defendant to do so.

(2) A defendant in a criminal proceeding who proposes to offer evidence that challenges the veracity of a co-defendant must give notice in writing to that co-defendant, any other co-defendant and the prosecutor of the proposal to offer that evidence unless the requirement to give notice is waived by:

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- (a) all the co-defendants; or
 - (b) the Judge in the interests of justice.
- (3) A notice must:
- (a) include the contents of the proposed evidence; and
 - (b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

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Division 5 - Propensity

30. Propensity rule-(1) In this Division, “propensity evidence”:

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(a) means -

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(i) evidence that tends to show a person’s propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events, or circumstances with which a person is alleged to have been involved; or

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(ii) evidence of a person’s acts, omissions or state of mind in circumstances from which it may reasonably be inferred that the person acted, omitted or had a state of mind as alleged as part of the proof of any offence with which that person is charged; but

(b) does not include evidence of an act or omission that is -

(i) one of the elements of the offence for which the person is being tried; or

(ii) the cause of action in the proceeding in question.

(2) A party may offer propensity evidence in a civil or criminal proceeding about any person.

(3) However, propensity evidence about:

- (a) a defendant in a criminal proceeding may be offered only pursuant to section 31, 32 or 33, whichever section is applicable; and

(b) a complainant in a sexual case in relation to the complainant's sexual experience may be offered only pursuant to section 34.

(4) Evidence that is solely or mainly relevant to veracity is governed by section 26 and, accordingly, this section does not apply to evidence of that kind.

31. Propensity evidence about defendants-(1) A defendant in a criminal proceeding may offer propensity evidence about himself or herself.

(2) If a defendant offers propensity evidence about himself or herself, the prosecution or another party may, with the permission of the Judge, offer propensity evidence about that defendant.

(3) Section 33 does not apply to propensity evidence offered by the prosecution under subsection (2).

32. Propensity evidence about co-defendants-(1) A defendant in a criminal proceeding may offer propensity evidence about a co-defendant only if:

(a) that evidence is relevant to a defence raised or proposed to be raised by the defendant; and

(b) the Judge permits the defendant to do so.

(2) A defendant in a criminal proceeding who intends to offer propensity evidence about a co-defendant must give notice in writing to that co-defendant, every other co-defendant, and the prosecutor of the proposal to offer that evidence unless the requirement to give notice is waived:

(a) by all the co-defendants; or

(b) by the Judge in the interests of justice.

(3) A notice must:

(a) include the contents of the proposed evidence; and

(b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

33. Propensity evidence offered by prosecution-(1) The prosecution may offer propensity evidence about a defendant in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs

the risk that the evidence may have an unfairly prejudicial effect on the defendant.

(2) When assessing the probative value of propensity evidence, the Judge must take into account the nature of the issue in dispute.

(3) When assessing the probative value of propensity evidence, the Judge may consider, among other matters, the following:

- (a) the frequency with which the acts, omissions, events, or circumstances which are the subject of the evidence have occurred;
- (b) the connection in time between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried;
- (c) the extent of the similarity between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried;
- (d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried;
- (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility;
- (f) the extent to which the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried are unusual.

(4) When assessing the prejudicial effect of evidence on the defendant, the Judge must consider, among any other matters:

- (a) whether the evidence is likely to unfairly predispose the fact-finder against the defendant; and
- (b) whether the fact-finder will tend to give undue weight in reaching a verdict to evidence of other acts or omissions.

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(5) Propensity evidence may be adduced from the record of an earlier trial in which the defendant was charged with an offence even if the defendant was acquitted or otherwise discharged in relation to the evidence adduced.

34. Evidence of sexual experience of complainants in trials of sexual cases-(1) In a sexual case, no evidence can be given and no question can be put to a witness relating directly or indirectly to the sexual experience of the complainant with any person other than the defendant, except with the permission of the Judge.

(2) In a sexual case, no evidence can be given and no question can be put to a witness that relates directly or indirectly to the reputation of the complainant in sexual matters.

(3) In an application for permission under subsection (1), the Judge must not grant permission unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding, or the issue of the appropriate sentence, that it would be contrary to the interests of justice to exclude it.

(4) The permission of the Judge is not required to rebut or contradict evidence given under subsection (1).

(5) In a sexual case in which the defendant is charged as a party and cannot be convicted unless it is shown that another person committed a sexual offence against the complainant, subsection (1) does not apply to any evidence given, or any question put, that relates directly or indirectly to the sexual experience of the complainant with that other person.

(6) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.

Division 6 - Identification evidence

35. Admissibility of visual identification evidence-(1) If a formal procedure is followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence or there was a good reason for not following a formal procedure, that evidence of a visual

identification in the procedure done before trial is admissible in a criminal proceeding.

(2) If any prescribed formal procedure is not followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence and there was no good reason for not following a formal procedure, that evidence of a visual identification in the procedure done before trial is inadmissible in a criminal proceeding unless the trial judge is satisfied on the balance of probabilities that the circumstances in which the identification was made did not produce an unreliable identification.

(3) For the purposes of this section, any formal procedure that is prescribed must be a procedure for obtaining visual identification evidence:

- (a) that is observed within a reasonable time after the alleged offence is reported to an officer of an enforcement agency; and
- (b) in which the person to be identified is compared to no fewer than three (3) other persons who are similar in appearance to the person to be identified; and
- (c) in which no indication is given to the person making the identification as to who among the persons in the procedure is the person to be identified; and
- (d) in which the person making the identification is informed that the person to be identified may or may not be among the persons in the procedure; and
- (e) that is the subject of a written record of the procedure actually followed that is sworn to be true and complete by the officer who conducted the procedure and provided to the Judge and the defendant (but not the assessors) at the hearing; and
- (f) that is observed by taking and keeping of photographic or other audio-visual record of the identification process.

(4) The circumstances referred to in the following paragraphs are good reasons for not following a prescribed formal procedure:

- (a) a refusal of the person to be identified to take part in the procedure (that is, by refusing to take part in a parade or other procedure, or to permit a photograph or video record to be taken, where the enforcement agency does not already have a photo or a video record that shows a true likeness of that person);
- (b) the singular appearance of the person to be identified (being of a nature that cannot be disguised so that the person is similar in appearance to those with whom the person is to be compared);
- (c) a substantial change in the appearance of the person to be identified after the alleged offence occurred and before it was practical to hold a formal procedure;
- (d) no officer involved in the investigation or the prosecution of the alleged offence could reasonably anticipate that identification would be an issue at the trial of the defendant;
- (e) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency soon after the offence was reported and in the course of that officer's initial investigation;
- (f) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency after a chance meeting between the person who made the identification and the person alleged to have committed the offence.

*Division 7 - Evidence of convictions
and civil judgments*

36. Application - Section 37:

- (a) applies -
 - (i) whether or not the person convicted is a party to the proceeding; and

- (ii) whether or not the person was convicted on a guilty plea;
- (b) is subject to section 38; and
- (c) does not affect a provision in any other enactment to the effect that a conviction or a finding of fact in a criminal proceeding is to constitute conclusive evidence for the purposes of any other proceeding.

37. Conviction as evidence in civil proceedings-(1) When the fact that a person has committed an offence is relevant to an issue in a civil proceeding, proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

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(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances:

- (a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and
- (b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to that subsection.

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38. Conviction as evidence in defamation proceedings - In a proceeding for defamation that is based on a statement to the effect that a person has committed an offence, proof that the person has been convicted of the offence is conclusive proof that the person committed the offence if the conviction;

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- (a) subsisted at the time that the statement was made; or
- (b) subsists at the time of the proceeding.

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39. Conviction as evidence in criminal proceedings-(1) Evidence of the fact that a person has been convicted of an offence is, if not excluded by any other provision of this Act, admissible in a criminal proceeding and proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances:

- (a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and
- (b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to subsection (1).

(3) A party to a criminal proceeding who wishes to offer evidence of the fact that a person has been convicted of an offence must first inform the Judge of the purpose for which the evidence is to be offered.

40. Civil judgment as evidence in criminal or civil proceedings-(1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.

(2) This section does not affect the operation of:

- (a) a judgment *in rem*; or
- (b) the law relating to *res judicata* or issue estoppel; or
- (c) the law relating to an action on, or the enforcement of, a judgment.

PART 3 PRIVILEGE AND CONFIDENTIALITY

Division 1 - General

41. Definition-(1) In this Part:

“legal adviser” means:

- (a) a lawyer; or
- (b) an overseas lawyer.

“overseas lawyer” means:

- (a) a person who is entitled to practise as a barrister, or a solicitor, or both, in a Commonwealth country or any other prescribed country; or

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(b) a person who is, under the laws of a prescribed country, entitled to undertake work that, in Samoa, is normally undertaken by a lawyer.

(2) A reference in this Part to a communication or to any information includes a reference to a communication or to information contained in a document.

(3) Despite subsection (2), in sections 50 to 53, “information” means a statement of fact or opinion given, or to be given:

(a) orally; or

(b) in a document that is prepared or created -

(i) after and in response to a requirement to which any of those sections applies; but

(ii) not for the principal purpose of avoiding criminal prosecution under the laws of Samoa.

(4) A reference in this Division to a communication made or received by a person or an act carried out by a person includes a reference to a communication made or received or an act carried out by an authorised representative of that person on that person’s behalf.

(5) However, subsection (4) does not apply to section 48, 49 or 54.

42. Order for protection of privileged material, etc.-(1) A Judge may order that evidence must not be given in a proceeding of a communication, information, opinion, or document in respect of which a person has a privilege conferred by this Division and may make an order under this subsection:

(a) on the Judge’s own initiative; or

(b) on the application of the person who has the privilege;
or

(c) on the application of an interested person other than the person who has the privilege.

(2) A Judge may give a direction under section 57 or 59 on the Judge’s own initiative or on the application of an interested person.

(3) An application under subsection (1) or (2) may be made at any time either before or after any relevant proceeding is commenced.

(4) A Judge may give any directions that are necessary to protect the confidentiality of, or limit the use which may be made of:

- (a) any privileged communication, information, opinion, or document that is disclosed to a Judge or other body or person in compliance with a judicial or administrative order; or
- (b) any communication or information that is the subject of a direction under section 57 or 59 but is disclosed to a Judge or other body or person in compliance with a judicial or administrative order.

Division 2 - Privilege

43. Effect and protection of privilege-(1) A person who has a privilege conferred by any of sections 44 to 49 in respect of a communication or any information has the right to refuse to disclose in a proceeding:

- (a) the communication; and
- (b) the information, including any information contained in the communication; and
- (c) any opinion formed by a person that is based on the communication or information.

(2) A person who has a privilege conferred by section 50 or 54 in respect of information has the right to refuse to disclose in a proceeding the information.

(3) A person who has a privilege conferred by any of sections 44 to 49 and 54 in respect of a communication, information, opinion, or document may require that the communication, information, opinion, or document not be disclosed in a proceeding:

- (a) by the person to whom the communication is made or the information is given, or by whom the opinion is given or the information or document is prepared or compiled; or
- (b) by any other person who has come into possession of it with the authority of the person who has the privilege, in confidence and for purposes related to the circumstances that have given rise to the privilege.

(4) If a communication, information, opinion, or document, in respect of which a person has a privilege conferred by any of sections 44 to 49 and 54, is in the possession of a person other than a person referred to in subsection (3), a Judge may, on the Judge's own initiative or on the application of the person who has the privilege, order that the communication, information, opinion, or document not be disclosed in a proceeding.

(5) This Act does not affect the general law governing legal professional privilege, so far as it applies to the determination of claims to that privilege that are made neither in the course of, nor for the purpose of, a proceeding.

44. Privilege for communications with legal advisers - A person who obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was:

- (a) intended to be confidential; and
- (b) made in the course of and for the purpose of -
 - (i) the person obtaining professional legal services from the legal adviser; or
 - (ii) the legal adviser giving the professional legal services to the person.

45. Privilege and solicitors' trust accounts-(1) This section applies to documents that are books of account or accounting records kept:

- (a) by a solicitor in relation to any trust account money that is subject to the Lawyers and Legal Practice Act 2014; or
 - (b) by a nominee company that -
 - (i) is subject to any practice rules made by the Council of the Law Society of Samoa; and
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.
- (2) Section 44 does not prevent, limit, or affect:
- (a) the issue by a District Court or Supreme Court Judge of a search warrant under the Criminal Procedure

- Act 1972 in respect of a document to which this section applies; or
- (b) the execution of that warrant in respect of a document to which this section applies; or
 - (c) the admissibility, in a criminal proceeding for an offence described in the warrant, of any evidence that relates to the contents of a document obtained under the warrant.

46. Privilege for preparatory materials for proceedings-(1)

Subsection (2) applies to a communication or information only if the communication or information is made, received, compiled, or prepared for the dominant purpose of preparing for a proceeding or an apprehended proceeding (the “proceeding”).

(2) A person (the “party”) who is, or on reasonable grounds contemplates becoming, a party to the proceeding has a privilege in respect of:

- (a) a communication between the party and any other person;
- (b) a communication between the party’s legal adviser and any other person;
- (c) information compiled or prepared by the party or the party’s legal adviser;
- (d) information compiled or prepared at the request of the party, or the party’s legal adviser, by any other person.

47. Privilege for settlement negotiations or mediation-(1)

A person who is a party to, or a mediator in, a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of any communication between that person and any other person who is a party to the dispute if the communication:

- (a) was intended to be confidential; and
- (b) was made in connection with an attempt to settle or mediate the dispute between the persons.

(2) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of a confidential document that the person has prepared, or caused

to be prepared, in connection with an attempt to mediate the dispute or to negotiate a settlement of the dispute.

(3) This section does not apply to:

- (a) the terms of an agreement settling the dispute; or
- (b) evidence necessary to prove the existence of the agreement in a proceeding in which the conclusion of the agreement is in issue; or
- (c) the use in a proceeding, solely for the purposes of an award of costs, of a written offer that -
 - (i) is expressly stated to be without prejudice except as to costs; and
 - (ii) relates to an issue in the proceeding.

48. Privilege for communications with ministers of religion-(1) A person has a privilege in respect of any communication between that person and a minister of religion if the communication was:

- (a) made in confidence to or by the minister in the minister's capacity as a minister of religion; and
- (b) made for the purpose of the person obtaining or receiving from the minister religious or spiritual advice, benefit, or comfort.

(2) A person is a minister of religion for the purposes of this section if the person has a status within a church or other religious or spiritual community that requires or calls for that person:

- (a) to receive confidential communications of the kind described in subsection (1); and
- (b) to respond with religious or spiritual advice, benefit, or comfort.

49. Privilege in criminal proceedings for information obtained by medical practitioners or clinical psychologist-(1)

This section:

- (a) applies to a person who consults or is examined by a medical practitioner or a clinical psychologist for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct; but

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(b) does not apply in the case of a person who has been required by an order of a Judge, or by other lawful authority, to submit himself or herself to the medical practitioner or a clinical psychologist for any examination, test, or for any other purpose;

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(c) except that any information arising under the examination, test or other purpose should only be used for the purposes under this paragraph unless decided otherwise by a Judge.

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(2) A person has a privilege in a criminal proceeding in respect of any communication made by the person to a medical practitioner or a clinical psychologist or that the person believes is necessary to enable the medical practitioner or a clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

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(3) A person has a privilege in a criminal proceeding in respect of information obtained by a medical practitioner or a clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or a clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(4) A person has a privilege in a criminal proceeding in respect of information consisting of a prescription, or notes of a prescription, for treatment prescribed by a medical practitioner or a clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or a clinical psychologist to treat or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(5) A reference in this section to a communication to or information obtained by a medical practitioner or a clinical psychologist is to be taken to include a reference to a communication to or information obtained by a person acting in a professional capacity on behalf of a medical practitioner or a clinical psychologist in the course of the examination or treatment of, or care for, the person by that medical practitioner or a clinical psychologist.

(6) Nothing in this section affects the application of section 25B of the Narcotics Act 1967 relating to mandatory reporting of suspicion of illegal use of a narcotic or controlled precursor.

(7) This section is subject to section 172 of the Criminal Procedure Act 1972.

(8) In this section:

“clinical psychologist” means a person registered as such under the Healthcare Professions Registration and Standards Act 2007 as a practitioner of the profession of psychology who is by his or her scope of practice permitted to diagnose and treat persons suffering from mental and emotional problems;

“drug dependency” means the state of periodic or chronic intoxication produced by consumption of alcohol or the repeated consumption, smoking, or other use of a controlled drug detrimental to the user, and involving a compulsive desire to continue consuming alcohol or consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug;

“medical practitioner” means a person registered as such under the Medical Practitioners Act 2007.

50. Privilege against self-incrimination-(1) This section applies if:

(a) a person is (apart from this section) required to provide specific information -

(i) in the course of a proceeding; or

(ii) by a person exercising a statutory power or duty; or

(iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

(b) the information would, if so provided, be likely to incriminate the person under Samoan law for an offence punishable by a fine or imprisonment.

(2) The person:

(a) has a privilege in respect of the information and cannot be required to provide it; and

- (b) cannot be prosecuted or penalised for refusing or failing to provide the information, whether or not the person claimed the privilege when the person refused or failed to provide the information.
- (3) Subsection (2) has effect:
 - (a) unless an enactment removes the privilege against self-incrimination either expressly or by implication; or
 - (b) the person waives privilege against self-incrimination either expressly or by implication.
- (4) Subsection (2) does not enable a claim of privilege to be made:
 - (a) on behalf of a body corporate; or
 - (b) on behalf of any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or
 - (c) by a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.
- (5) This section is subject to section 53.

51. Discretion as to incrimination under foreign law-(1)

This section applies to any specific information:

- (a) that a person is (apart from this section) required to provide -
 - (i) in the course of a proceeding; or
 - (ii) by a person exercising a statutory power or duty; or
 - (iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and
- (b) that would, if so provided, be likely to incriminate the person under foreign law for an offence punishable by -
 - (i) capital punishment; or
 - (ii) corporal punishment or imprisonment, or both.

(2) A Judge may direct that the person cannot be required to provide the information if the Judge, after having regard to the likelihood of extradition and other relevant matters, thinks that it would be unreasonable to require the person to incriminate himself or herself by providing the information.

(3) Subsection (2) does not enable a Judge to give a direction in respect of:

- (a) a body corporate; or
- (b) any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or
- (c) a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

52. Claiming privilege against self-incrimination in court proceedings-(1) If in a court proceeding it appears to the Judge that a party or witness may have grounds to claim a privilege against self-incrimination in respect of specific information required to be provided by that person, the Judge must satisfy himself or herself that the person is aware of the privilege and its effect.

(2) A person who claims a privilege against self-incrimination in a court proceeding must offer sufficient evidence to enable the Judge to assess whether self-incrimination is reasonably likely if the person provides the required information.

53. Replacement of privilege with respect to disclosure requirements in civil proceedings-(1) This section applies to a person who is required by an order of the court made for the purposes of a civil proceeding:

- (a) to disclose information; or
- (b) to permit premises to be searched; or
- (c) to permit documents or things to be inspected, recorded, copied, or removed; or
- (d) to secure or produce documents or things.

(2) The person does not have the privilege provided for by section 50 and must comply with the terms of the order.

(3) No evidence of any information that has directly or indirectly been obtained as a result of the person's compliance with the order may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information.

54. Informers-(1) An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.

(2) A person is an informer for the purposes of this section if the person:

- (a) has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed; and
- (b) is not called as a witness by the prosecution to give evidence relating to that information.

(3) An informer may be a member of the police working undercover.

55. Waivers-(1) A person who has a privilege conferred by any of sections 44 to 50 and 54 may waive that privilege either expressly or impliedly.

(2) A person who has a privilege waives the privilege if that person, or anyone with the authority of that person, voluntarily produces or discloses, or consents to the production or disclosure of, any significant part of the privileged communication, information, opinion, or document in circumstances that are inconsistent with a claim of confidentiality.

(3) A person who has a privilege waives the privilege if the person:

- (a) acts so as to put the privileged communication, information, opinion, or document in issue in a proceeding; or
- (b) institutes a civil proceeding against a person who is in possession of the privileged communication, information, opinion, or document the effect of

which is to put the privileged matter in issue in the proceeding.

(4) A person who has a privilege in respect of a communication, information, opinion, or document that has been disclosed to another person does not waive the privilege if the disclosure occurred involuntarily or mistakenly or otherwise without the consent of the person who has the privilege.

(5) A privilege conferred by section 47 may be waived only by all the persons who have that privilege.

56. Joint and successive interests in privileged material-(1)

A person who jointly with some other person or persons has a privilege conferred by any of sections 44 to 50 and 54 in respect of a communication, information, opinion, or document:

- (a) is entitled to assert the privilege against third parties; and
- (b) is not restricted by any of sections 44 to 50 and 54 from having access or seeking access to the privileged matter; and
- (c) may, on the application of a person who has a legitimate interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

(2) If a person has a privilege conferred by any of sections 44 to 47 in respect of a communication, information, opinion, or document, the personal representative of the person or other successor in title to property of the person:

- (a) is entitled to assert the privilege against third parties; and
- (b) is not restricted by any of sections 44 to 47 from having access or seeking access to the privileged matter.

(3) However, subsection (2) applies only to the extent that a Judge is satisfied that the personal representative or other successor in title to property has a justifiable interest in maintaining the privilege in respect of the communication, information, opinion, or document.

(4) A personal representative of a deceased person who has a privilege conferred by any of sections 44 to 47 in respect of a communication, information, opinion, or document and any other successor in title to property of a person who has that privilege, may, on the application of a person who has a legitimate interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

57. Protection of information relating to a matter of State-

(1) A Judge may, in the Judge's own initiative or on application of the Attorney General, direct that a communication or information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the communication or information being disclosed in the proceeding is outweighed by the public interest in withholding the communication or information.

(2) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this Division or would, except for a limitation or restriction imposed by this Division, be privileged.

58. Powers of Judge to disallow privilege-(1) A Judge must disallow a claim of privilege conferred by any of sections 44 to 49 and 54 in respect of a communication or information if satisfied there is a *prima facie* case that the communication was made or received, or the information was compiled or prepared, for a dishonest purpose or to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.

(2) A Judge may disallow a claim of privilege conferred by any of sections 44 to 49 and 54 in respect of a communication or information if the Judge is of the opinion that evidence of the communication or information is necessary to enable the defendant in a criminal proceeding to present an effective defence.

(3) Any communication or information disclosed as the result of the disallowance of a claim of privilege under subsection (2) and any information derived from that disclosure cannot be used against the holder of the privilege in a proceeding in Samoa.

Division 3 - Confidentiality

59. Discretion to exclude information given or obtained in confidence-(1) A direction under this section is a direction that any one (1) or more of the following not be disclosed in a proceeding:

- (a) a confidential communication;
- (b) a confidential information;
- (c) an information that would or might reveal a confidential source of information.

(2) A Judge may give a direction under this section if the Judge considers that the public interest in the disclosure in the proceeding of the communication or information is outweighed by the public interest in:

- (a) preventing harm to a person by whom, about whom, or on whose behalf the confidential information was obtained, recorded, or prepared or to whom it was communicated; or
- (b) preventing harm to -
 - (i) the particular relationship in the course of which the confidential communication or confidential information was made, obtained, recorded, or prepared; or
 - (ii) relationships that are of the same kind as, or of a kind similar to, the relationship referred to in subparagraph (i); or
- (c) maintaining activities that contribute to or rely on the free flow of information.

(3) When considering whether to give a direction under this section, the Judge must have regard to:

- (a) the likely extent of harm that may result from the disclosure of the communication or information; and

- (b) the nature of the communication or information and its likely importance in the proceeding; and
- (c) the nature of the proceeding; and
- (d) the availability or possible availability of other means of obtaining evidence of the communication or information; and
- (e) the availability of means of preventing or restricting public disclosure of the evidence if the evidence is given; and
- (f) the sensitivity of the evidence, having regard to -
 - (i) the time that has elapsed since the communication was made or the information was compiled or prepared; and
 - (ii) the extent to which the information has already been disclosed to other persons; and
- (g) the society's interest in protecting the privacy of victims of offences and, in particular, victims of sexual offences.

(4) The Judge may, in addition to the matters stated in subsection (3), have regard to any other matters that the Judge considers relevant.

(5) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this Division or would, except for a limitation or restriction imposed by this Division, be privileged.

60. Evidence of parties and their husbands and wives in civil proceedings - In any civil proceeding, the parties to civil proceeding, and the persons on whose behalf the proceeding is brought or defended, and the husbands and wives of the parties or persons respectively, are competent and compellable to give evidence on behalf of either or any of the parties to the proceeding.

61. Evidence of defendants in criminal proceedings and their husbands and wives-(1) A defendant charged with an offence is a competent but (except where the contrary is expressly

provided by any enactment) not a compellable witness upon his or her trial for that offence.

(2) The wife or husband of a defendant charged with an offence is a competent witness, on the trial of that person, but is not a compellable witness upon his or her trial for that offence, except in the following cases:

- (a) when called as a witness by the defendant;
- (b) when the offence of which the defendant is charged is an offence against the wife or husband of the defendant or against a child of either the wife or the husband;
- (c) when the offence of which the defendant is charged is an offence reported to the Police by the wife or the husband of the defendant;
- (d) when the offence of which the defendant is charged is murder or manslaughter and the wife or husband witnessed the act of killing the person;
- (e) bigamy.

(3) The former wife or former husband of a defendant charged is a competent and compellable witness upon the person's trial for that offence.

(4) If a witness who under this section is competent but not compellable gives evidence on any such trial, the witness is liable to cross-examination in the same manner as if the witness was a compellable witness, whether or not the matter on which the witness is so cross-examined arises out of his or her examination-in-chief.

(5) In this section, "child" includes adopted child, foster child or child living under the care of the wife or husband.

PART 4 TRIAL PROCESS

Division 1 - General

62. Competence and compellability-(1) Subject to sections 63 to 65, in a civil or criminal proceeding:

- (a) any person is competent to give evidence; and

(b) a person who is competent to give evidence is compellable to give that evidence.

(2) A person must not be excluded from giving evidence in any proceeding on the ground that the person has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground of the person's previous conviction of any offence.

63. Competence of Judges, assessors and counsel-(1) A person who is acting as a Judge in a proceeding is not competent to give evidence in that proceeding.

(2) A person who is acting as an assessor or counsel in a proceeding is not competent to give evidence in that proceeding except with the permission of the Judge.

(3) In this section:

“counsel” includes a prosecutor.

64. Compellability of defendants and co-defendants in criminal proceedings-(1) A defendant in a criminal proceeding is not a compellable witness for the prosecution or the defence in that proceeding.

(2) A co-defendant is a competent and compellable witness to give evidence for or against a defendant in a criminal proceeding if:

(a) the co-defendant is being tried separately from the defendant; or

(b) the proceeding against the co-defendant has been determined.

(3) A proceeding has been determined for the purposes of subsection (2) if:

(a) the proceeding has been stayed, or the information against the co-defendant has been withdrawn or dismissed; or

(b) the co-defendant has been acquitted of the offence; or

(c) the co-defendant, having pleaded guilty to, or having been found guilty of, the offence, has been sentenced or otherwise dealt with for that offence.

(4) Where two (2) or more persons are jointly charged with any offence, the evidence of a person called as a witness for the prosecution or the defence under this section may be received as evidence either for or against any of the persons so charged.

(5) In this section, “co-defendant”, in relation to a defendant in a criminal proceeding, means a person who is jointly charged with the defendant.

65. Compellability of Head of State, Judges, etc., - The following persons are not compellable to give evidence:

- (a) the Head of State;
- (b) a Sovereign or Head of State of another country;
- (c) a Judge, including a Judge of the Land and Titles Court, in respect of the Judge’s conduct as a Judge.

66. Evidence of assessors deliberations-(1) A person must not give evidence about the deliberations of assessors.

(2) Subsection (1) does not prevent the giving of evidence about matters that do not form part of the deliberations of assessors including (without limitation):

- (a) the competence or capacity of an assessor; or
- (b) any conduct of, or knowledge gained by, an assessor that is believed to disqualify that assessor from holding that position.

(3) Subsection (1) does not prevent a person from giving evidence about the deliberations of assessors if the Judge is satisfied that the particular circumstances are so exceptional that there is a sufficiently compelling reason to allow that evidence to be given.

(4) In determining, under subsection (3), whether to allow evidence to be given in any proceedings, the Judge must weigh:

- (a) the public interest in protecting the confidentiality of assessors’ deliberations generally; or
- (b) the public interest in ensuring that justice is done in those proceedings.

*Division 2 - Oaths or affirmations***67. Witness to give evidence on oath or affirmation-(1)**

The evidence of all witnesses in any proceeding must be given under oath or affirmation.

(2) A witness who is or appears to be under the age of 12 years may in any proceeding be examined without oath, but the witness is required, before being examined, to make the following declaration or a declaration to the like effect:

“I promise not to tell lies, but to speak the truth, the whole truth, and nothing but the truth.”

(3) The declaration is of the same force and effect as if the witness had taken an oath.

(4) Evidence given by a witness to whom subsection (2) applies must be treated in the same manner as if that evidence had been given on oath.

(5) Despite subsections (1) and (2), a witness:

- (a) to whom either of those subsections apply may give evidence without taking an oath, or making an affirmation, or making a promise to tell the truth, with the permission of the Judge; and
- (b) if the Judge gives permission under paragraph (a), must be informed by the Judge of the importance of telling the truth and not telling lies, before the witness gives evidence; and
- (c) after being given the information referred to in paragraph (b), may give evidence which must be treated in the same manner as if that evidence had been given on oath.

68. Interpreter to take oath or make affirmation-(1)

A person must either take an oath or make an affirmation before acting as an interpreter in a proceeding.

(2) An officer of the court may, upon appointment, take the oath or make an affirmation under subsection (1).

*Division 3 - Support persons, communication
assistance and witness address*

69. Support persons and communication assistance-(1) A complainant in an offence, when giving evidence in a criminal proceeding, is entitled to have one (1) person, and may, with the permission of the Judge, have more than one (1) person, near him or her to give support.

(2) Any other witness, when giving evidence in any proceeding, may with the permission of the Judge, have one (1) or more support persons near him or her to give support.

(3) Despite subsections (1) and (2), the Judge may, in the interest of justice, direct that support may not be provided to a complainant or to a witness by:

- (a) any person; or
- (b) a particular person; or
- (c) a person who is required to give evidence in that criminal proceeding.

(4) A complainant or other witness who is to have a support person near him or her while giving evidence must, unless the Judge orders otherwise, disclose to all parties as soon as practicable the name of each person who is to provide that support.

(5) The following persons are entitled to communication assistance under this Act or regulations under this Act:

- (a) defendant in a criminal proceeding to -
 - (i) enable the defendant to understand the proceeding; and
 - (ii) give evidence if the defendant elects to do so;
- (b) a witness in a civil or criminal proceeding to enable the witness to give evidence.

(6) Communication assistance may be provided to:

- (a) a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge; or
- (b) a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge.

(7) A statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury under the Crimes Act 2013.

(8) Communication assistance need not be provided to:

- (a) a defendant in a criminal proceeding if the Judge considers that the defendant -
 - (i) can sufficiently understand the proceeding; and
 - (ii) if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them; or
- (b) a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.

(9) The Judge may:

- (a) give directions regulating the conduct of a person providing or receiving support under this section; or
- (b) direct what kind of communication assistance is to be provided to a defendant or a witness.

70. Witness's address may not be subject to question-(1) In any proceeding, the precise particulars of a witness's address (such as, details of the place or village) may not, without the permission of the Judge, be:

- (a) the subject of any question to a witness or included in any evidence given; or
- (b) included in any statement or remark made by a witness, lawyer, officer of the court, or any other person.

(2) The Judge must not grant permission under subsection (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission under subsection (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) In any proceeding, the Judge may order that the identity of any witness may be excluded in any written statement, where disclosure of identity may risk the safety of the witness or interference with the witness.

(5) Nothing in subsection (1) applies in a criminal proceeding if it is necessary to disclose the particulars in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

Division 4 - Questioning witnesses

71. Ordinary way of giving evidence-(1) The ordinary way for a witness to give evidence is:

- (a) in a criminal or civil proceeding, orally in a courtroom in the presence of -
 - (i) the Judge or, if there are assessors, the Judge and assessors; and
 - (ii) the parties to the proceeding and their counsel; and
 - (iii) any member of the public who wishes to be present, unless excluded by order of the Judge; or
- (b) in a criminal proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if both the prosecution and the defendant consent to the giving of evidence in this form; or
- (c) in a civil proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if -
 - (i) rules of court permit or require the giving of evidence in this form; or
 - (ii) both parties consent to the giving of evidence in this form.

(2) An affidavit or a written statement referred to in subsection (1)(b) or (c) may be given in evidence only if it:

- (a) is the personal statement of the deponent or maker; and
- (b) does not contain a statement that is otherwise inadmissible under this Act or any other enactment.

72. Examination of witnesses-(1) Unless this Act or any other enactment provides otherwise, or the Judge directs to the contrary, in any proceeding:

- (a) a witness first gives evidence-in-chief; and
- (b) after giving evidence-in-chief, the witness may be cross-examined by all parties, other than the party calling the witness, who wish to do so; and
- (c) after all parties who wish to do so have cross-examined the witness, the witness may be re-examined.

(2) If a witness gives evidence in an affidavit or by reading a written statement in a courtroom, it is to be treated for the purposes of this Act as evidence given in chief.

Division 5 - Judge may disallow questions

73. Unacceptable questions-(1) In any proceeding, the Judge may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand.

(2) Without limiting the matters that the Judge may take into account for the purposes of subsection (1), the Judge may have regard to:

- (a) the age or maturity of the witness; and
- (b) any physical, intellectual, psychological, or psychiatric impairment of the witness; and
- (c) the linguistic or cultural background or religious beliefs of the witness; and
- (d) the nature of the proceeding; and
- (e) for a hypothetical question, whether the hypothesis has been or will be proved by other evidence in the proceeding.

74. Leading questions in examination-in-chief and re-examination-(1) In any proceeding, a leading question must not be put to a witness in examination-in-chief or re-examination unless:

- (a) the question relates to introductory or undisputed matters; or
- (b) the question is put with the consent of all other parties; or
- (c) the Judge, in exercise of the Judge's discretion, allows the question.

(2) Subsection (1) does not prevent a Judge, if permitted by rules of court, from allowing a written statement or report of a witness to be tendered or treated as the evidence-in-chief of that person.

75. Use of documents in questioning witness or refreshing memory-(1) A party must not, for the purpose of questioning a witness in a proceeding, use a document that has been excluded under section 20 or 21.

(2) A witness must not consult a document that has been excluded under section 20 or 21 while giving evidence.

(3) If, when questioning a witness, a party proposes to use a document or to show a document to the witness, that document must be shown to any other party to the proceeding.

(4) If a witness proposes to consult a document while giving evidence, that document:

- (a) must be shown to any other party to the proceeding; and
- (b) may not be consulted by that witness -
 - (i) without the prior leave of the Judge or the consent of the other parties; or
 - (ii) if the purpose of consulting that document is to refresh his or her memory while giving evidence, except under subsection (5).

(5) Subject to subsection (2), for the purposes of refreshing his or her memory while giving evidence, a witness may, with the prior leave of the Judge, consult a document made or adopted at a time when his or her memory was fresh.

76. Duty to put questions in cross-examination-(1) In any proceeding, a party must cross-examine a witness on significant matters that are relevant and in issue and that contradict the evidence of the witness, if the witness could reasonably be expected to be in a position to give admissible evidence on those matters.

- (2) If a party fails to comply with this section, the Judge may:
- (a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or
 - (b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been able to explain the contradiction, was not questioned about the evidence; or
 - (c) exclude the contradictory evidence; or
 - (d) make any other order that the Judge considers just.

77. Cross-examination may be limited - If a party in any proceeding cross-examines a witness who has the same, or substantially the same, interest in the proceeding as the cross-examining party, the Judge may, in the interests of justice, limit the extent to which leading questions may be asked in that cross-examination.

78. Cross-examination as to credit - In any proceeding, the Court:

- (a) may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit; and
- (b) must refuse to permit the cross-examination which is needlessly offensive or injurious to the witness, having regard to the nature or gravity of the imputations made against him or her, to the importance of his or her evidence, and to the effect of any of the imputations on the credibility of the witness.

79. Hostile witness - In any proceeding, the party who calls a witness may, if the Judge determines that the witness is hostile and gives permission, cross-examine the witness to the extent authorised by the Judge.

80. When a party in person may not cross-examine witness-(1) Despite any other enactment or rule of law, a defendant in a criminal proceeding that is a sexual case or a proceeding concerning domestic violence is not entitled to personally cross-examine:

- (a) a complainant;
- (b) a child (other than a complainant) who is a witness, unless the Judge gives permission.

(2) However, a Judge may allow a defendant to cross-examine the complainant or child if the Judge directs that measures be put in place to ensure that the defendant does not cross-examine the complainant or child face to face.

(3) In a civil or criminal proceeding, a Judge may, on the application of a witness, or a party calling a witness, or on the Judge's own initiative, order that a party to the proceeding must not personally cross-examine the witness.

(4) An order under subsection (3) may be made on one (1) or more of the following grounds:

- (a) the age or maturity of the witness;
- (b) the physical, intellectual, psychological, or psychiatric impairment of the witness;
- (c) the linguistic or cultural background or religious beliefs of the witness;
- (d) the nature of the proceeding;
- (e) the relationship of the witness to the unrepresented party;
- (f) any other grounds likely to promote the purpose of this Act.

(5) When considering whether or not to make an order under subsection (3), the Judge must have regard to:

- (a) the need to ensure the fairness of the proceeding and, in a criminal proceeding, that the defendant has a fair trial; and

- (b) the need to minimise the stress on the complainant or witness; and
 - (c) any other factor that is relevant to the just determination of the proceeding.
- (6) A defendant or party to a proceeding who, under this section, is precluded from personally cross-examining a witness may have his or her questions put to the witness by:
- (a) a lawyer engaged by the defendant; or
 - (b) if the defendant is unrepresented and fails or refuses to engage a lawyer for the purpose within a reasonable time specified by the Judge, a person appointed by the Judge for the purpose.
- (7) In respect of each such question, the Judge may:
- (a) allow the question to be put to the witness; or
 - (b) require the question to be put to the witness in a form rephrased by the Judge; or
 - (c) refuse to allow the question to be put to the witness.

81. Cross-examination on previous statements-(1) A party who cross-examines a witness may question the witness about a previous statement made by that witness without showing it or disclosing its contents to the witness if the time, place, and other circumstances concerning the making of the statement are adequately identified to the witness.

(2) If a witness does not expressly admit making the statement and the party wishes to prove that the witness did make the statement:

- (a) the party must show the statement to the witness if it is in writing, or disclose its contents to the witness if the statement was not in writing; and
- (b) the witness must be given an opportunity to deny making the statement or to explain any inconsistency between the statement and the witness's testimony.

(3) Despite subsections (1) and (2), a party may only cross-examine a witness on a previous statement if there is inconsistency between the statement and the witness's testimony.

(4) If a document is used by a defendant for the purpose of cross-examining a witness but is not offered as evidence by that defendant, the following rights of the defendant are not affected:

- (a) the defendant's right to make a no-case application; and
- (b) the defendant's rights in relation to the order of addressing the court.

82. Re-examination-(1) On re-examination, a witness:

- (a) may be questioned about matters arising out of evidence given by the witness in cross-examination, including any qualification in cross-examination of evidence given by the witness in examination-in-chief; but
- (b) may not be questioned about any other matter, except with the permission of the Judge.

(2) If permission is given by the Judge under subsection (1), the Judge:

- (a) must allow other parties to cross-examine the witness on the additional evidence given; and
- (b) may allow further re-examination on matters arising out of that cross-examination.

83. Evidence following closure of party's case-(1) In any proceeding, a party may not offer further evidence after closing that party's case, except with the permission of the Judge.

(2) In a civil proceeding, the Judge may not grant permission under subsection (1) if any unfairness caused to any other party by the granting of permission cannot be remedied by an adjournment or an award of costs, or both.

(3) In a criminal proceeding, the Judge may grant permission to the prosecution under subsection (1) if:

- (a) the further evidence relates to a purely formal matter; or
- (b) the further evidence relates to a matter arising out of the conduct of the defence, the relevance of which could not reasonably have been foreseen; or
- (c) the further evidence was not available or admissible before the prosecution's case was closed; or

(d) for any other reason the interests of justice require the further evidence to be admitted.

(4) In a criminal proceeding, the Judge may grant permission to a defendant under subsection (1) if the interests of justice require the further evidence to be admitted.

(5) The Judge may grant permission under subsection (1):

- (a) if there are assessors, at any time until the assessors retire to consider their verdict;
- (b) in any other proceeding, at any time until judgment is delivered.

84. Judge may recall witness-(1) In any proceeding, the Judge may recall a witness who has given evidence if the Judge considers that it is in the interests of justice to do so.

(2) The Judge may recall a witness under subsection (1):

- (a) if there are assessors, at any time until the assessors retire to consider their verdict; or
- (b) in any other proceeding, at any time until judgment is delivered.

85. Questioning of witnesses by Judge-(1) In any proceeding, the Judge may ask a witness any questions that, in the opinion of the Judge, justice requires.

(2) If the Judge questions a witness:

- (a) a party, other than the party who called the witness, may cross-examine the witness on any matter raised by the Judge's questions; and
- (b) the party who called the witness may re-examine the witness.

*Division 6 - Directions as to the manner
in which evidence is given*

86. Directions as to alternative ways of giving evidence-(1)

In any proceeding, the Judge may, either on the application of a party or on the Judge's own initiative, direct that a witness is to give evidence-in-chief and be cross-examined in the ordinary way or in an alternative way as provided in section 88.

(2) An application for directions under subsection (1) must be made to the Judge as early as practicable before the proceeding is to be heard, or at any later time permitted by the court.

(3) A direction under subsection (1) that a witness is to give evidence in an alternative way, may be made on one (1) or more of the following grounds:

- (a) the age or maturity of the witness;
- (b) the physical, intellectual, psychological, or psychiatric impairment of the witness;
- (c) the trauma suffered by the witness;
- (d) the witness's fear of intimidation;
- (e) the linguistic or cultural background or religious beliefs of the witness;
- (f) the nature of the proceeding;
- (g) the nature of the evidence that the witness is expected to give;
- (h) the relationship of the witness to any party to the proceeding;
- (i) the absence or likely absence of the witness from Samoa;
- (j) any other ground likely to promote the purpose of the Act.

(4) In giving directions under subsection (1), the Judge must have regard to:

- (a) the need to ensure -
 - (i) the fairness of the proceeding; and
 - (ii) in a criminal proceeding, that there is a fair trial; and
- (b) the views of the witness and -
 - (i) the need to minimise the stress on the witness; and
 - (ii) in a criminal proceeding, the need to promote the recovery of a complainant from the alleged offence; and
- (c) any other factor that is relevant to the just determination of the proceeding.

87. Chambers hearing before directions for alternative ways of giving evidence - If an application for directions is made under section 86, before giving any directions about the way in which a witness is to give evidence-in-chief and be cross-examined, the Judge:

- (a) must give each party an opportunity to be heard in chambers; and
- (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

88. Alternative ways of giving evidence-(1) A Judge may direct, under section 86, that the evidence of a witness is to be given in an alternative way so that:

- (a) the witness gives evidence -
 - (i) while in the courtroom but unable to see the defendant or some other specified person; or
 - (ii) from an appropriate place outside the courtroom, using any form of electronic communications link, either in Samoa or another country; or
 - (iii) by a video record made before the hearing of the proceeding;
- (b) any appropriate practical and technical means may be used to enable the Judge, the assessors (if any), and any lawyers to see and hear the witness giving evidence, pursuant to any regulations made under section 135;
- (c) in a criminal proceeding, the defendant is able to see and hear the witness, except where the Judge directs otherwise;
- (d) in a proceeding in which a witness anonymity order has been made, effect is given to the terms of that order.

(2) If a video record of the witness's evidence is to be shown at the hearing of the proceeding, the Judge must give directions under section 86 as to the manner in which cross-examination and re-examination of the witness is to be conducted.

(3) The Judge may admit evidence that is given substantially pursuant to the terms of a direction under section 86, despite a failure to observe strictly all of those terms.

89. Video recorded evidence-(1) A video record offered as an alternative way of giving evidence must be recorded in compliance with any regulations made under this Act.

(2) A video record that is to be offered as an alternative way of giving evidence in a proceeding must be offered for viewing by all parties or their lawyers before it is offered in evidence, unless the Judge directs otherwise.

(3) All parties must be given the opportunity to make submissions about the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence.

(4) If any party indicates that the party wishes to object to the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence, that video record must be viewed by the Judge.

(5) The Judge may order to be excised from a video record offered as evidence any material that, if the evidence were given in the ordinary way, would or could be excluded under this Act or any other enactment.

(6) The Judge may admit a video record that is recorded and offered as evidence substantially pursuant to the terms of any direction under this Division and the terms of regulations referred to in subsection (1), despite a failure to observe strictly all of those terms.

90. Directions when child complainant gives evidence-(1) In a criminal proceeding in which there is a child complainant, the prosecution must apply to the court in which the case will be tried for directions about the way in which the complainant is to give evidence-in-chief and be cross-examined.

(2) An application for directions under subsection (1) must be made to the court as early as practicable before the case is to be tried, or at any later time permitted by the court.

(3) When an application is made for directions under subsection (1), before giving any directions about the way in which the complainant is to give evidence-in-chief and be cross-examined, the Judge:

- (a) must give each party an opportunity to be heard in chambers; and
- (b) may call for and receive a report, from any persons considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way.

(4) When considering an application under subsection (1), the Judge must have regard to:

- (a) the need to ensure -
 - (i) the fairness of the proceeding; and
 - (ii) that there is a fair trial; and
- (b) the views of the complainant and -
 - (i) the need to minimise the stress on the complainant; and
 - (ii) the need to promote the recovery of the complainant from the alleged offence; and
- (c) any other factor that is relevant to the just determination of the proceeding.

Division 7 - Evidence from undercover police officers

91. Undercover police officers-(1) This section and section 92 apply if a person is being, or is to be, proceeded against:

- (a) for any offence that is punishable by imprisonment for life or for a term of at least seven (7) years; or
- (b) for any other offence under the Narcotics Act 1967; or
- (c) for conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or (b).

(2) If, in any proceeding to which this section applies, it is intended to call an undercover police officer as a witness for the prosecution, the Commissioner of Police may before the hearing,

file in the court in which the proceedings are to be held a certificate issued and signed by the Commissioner stating, in respect of that witness, the following particulars:

- (a) that during the period specified in the certificate the witness was a member of the police and acted as an undercover police officer;
- (b) that the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence, or offences, described in the certificate;
- (c) that the witness has not been found guilty of a breach of duty under the Police Service Act 2009, or (as the case may require) that the witness has not been found guilty of any breach of that kind, other than a breach described in the certificate.

(3) In this section and in section 92, “undercover police officer”, in relation to any proceeding to which this section applies, means a police officer whose identity was concealed for the purpose of any investigation relevant to the proceedings.

92. Effect of Commissioner’s certificate-(1) If, in any proceeding to which section 91 applies, the Commissioner of Police files a certificate under that section relating to any witness, the following provisions apply:

- (a) if a witness is subsequently called for the prosecution and states that, during the period specified in the certificate, he or she was a member of the police and acted as an undercover police officer under the name specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness;
- (b) it is sufficient if the witness is identified by the name by which the witness was known while acting as an undercover police officer, and, except if leave is given under paragraph (d), the witness must not be required to state his or her true name or address, or to give any particulars likely to lead to the discovery of that name or address;

- (c) except if leave is given under paragraph (d), no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or the address of the witness, or give any particulars likely to lead to the discovery of that name or address;
 - (d) no evidence may be given, and no question may be put to the witness, or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge;
 - (e) on an application for leave under paragraph (d), the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.
- (2) The Judge may not grant leave under subsection (1)(d) unless the Judge is satisfied:
- (a) that there is some evidence before the Judge that, if believed by the assessors, could call into question the credibility of the witness; and
 - (b) that it is necessary in the interests of justice that the defendant be enabled to test properly the credibility of the witness; and
 - (c) that it would be impracticable for the defendant to test properly the credibility of the witness if the defendant were not informed of the true name or the true address of the witness.
- (3) An application for leave under subsection (1)(d):
- (a) may be made from time to time and at any stage of the proceeding; and
 - (b) must, where practicable, be made and dealt with in chambers; and
 - (c) if the application is made during the trial before assessors, the application must be dealt with and determined by the Judge in the absence of the assessors.
- (4) If the Commissioner of Police gives a certificate under section 91 in respect of any witness, the Commissioner must serve a copy of the certificate on the defendant, or on any

lawyer acting for the defendant, before the witness is to give evidence.

Division 8 - Witness anonymity orders

93. Anonymity order may be made before trial-(1) This section and section 94 of this Act apply if a person is charged with an offence and is to be tried in the District Court or the Supreme Court, where the trial has been transferred under the Criminal Procedure Act 1972 or any other enactment.

(2) At any time after the person is charged, the prosecution or the defendant may apply to a Judge of the Supreme Court for an order:

- (a) excusing the applicant from disclosing to the other party prior to trial, the name, address, and occupation of any witness, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification; and
- (b) excusing the witness from stating his or her name, address, and occupation, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification.

(3) The Judge must hear and determine the application in chambers, and:

- (a) the Judge must give each party an opportunity to be heard on the application; and
- (b) neither the party supporting the application nor the witness need disclose any information that might disclose the witness's identity to any person (other than the Judge) before the application is dealt with.

(4) The Judge may make the order if he or she believes on reasonable grounds that:

- (a) the safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed before the trial; and
- (b) withholding the witness's identity until the trial would not be contrary to the interests of justice.

(5) Without limiting subsection (4), in considering the application, the Judge must have regard to:

- (a) the gravity of the offence; and
- (b) the importance of the witness's evidence to the case of the party who wishes to call the witness; and
- (c) whether it is practical for the witness to be protected prior to the trial by any other means; and
- (d) whether there is other evidence that corroborates the witness's evidence.

94. Effect of pre-trial anonymity order - If a pre-trial witness anonymity order is made under section 93:

- (a) the party who applied for the order must give the Judge the name, address, and occupation of the witness; and
- (b) a lawyer, officer of the court, or other person must not disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification; and
- (c) any formal statement filed must not disclose the name, address, or occupation of the witness or any other particulars likely to lead to the witness's identification; and
- (d) during the course of any pre-trial examination of the witness -
 - (i) no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and
 - (ii) except with leave of a Judge of the Supreme Court, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order; and
- (e) a person must not publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification.

95. Orders and directions necessary to preserve anonymity-(1) A Judge who makes an order under section 93 may, for the purposes of trial (as the case may be), also make any orders and give any directions that the Judge considers necessary to preserve the anonymity of the witness, including (without limitation) one (1) or more of the following directions:

- (a) that the court be cleared of members of the public;
- (b) that the witness be screened from the defendant;
- (c) that the witness give evidence by closed-circuit television or by video link.

(2) In considering whether to give directions concerning the mode in which the witness is to give his or her evidence at the trial, the Judge must have regard to the need to protect the witness while at the same time ensuring a fair hearing for the defendant.

(3) This section does not limit:

- (a) any statutory provision or rule of law which confers power to deal with contempt of court; or
- (b) any statutory provision or rule of law which confers power to clear the court; or
- (c) any power of the court to direct that evidence be given, or to permit evidence to be given, by a particular mode.

96. Variation or discharge of anonymity order - At any time before a witness gives evidence during a trial, a Supreme Court Judge may, on the Judge's own initiative or on the application of either party, vary or discharge a witness anonymity order made for the purposes of the proceeding under section 93.

97. Offence of breaching anonymity order-(1) A person commits an offence who, with knowledge of a pre-trial witness anonymity order made under section 93, intentionally contravenes section 94(b), (c) or (e), and is liable on conviction to imprisonment for a term not exceeding seven (7) years.

(2) If a person contravenes section 94(b), (c) or (e), and that contravention does not constitute an offence against subsection (1), the person commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 50 penalty units; and

(b) for a body corporate, to a fine not exceeding 500 penalty units.

(3) This section does not limit the power of any court to punish any contempt of court.

Division 9 - Corroboration and judicial directions

98. Corroboration generally not necessary-(1) It is not necessary in a criminal proceeding for the evidence on which the prosecution relies to be corroborated, except with respect to the offences of perjury or treason under the Crimes Act 2013.

(2) Subject to subsection (1) and section 99, if in a criminal proceeding there are assessors, the Judge must not:

- (a) warn the assessors that it is dangerous to act on uncorroborated evidence or to give a warning to the same or similar effect; or
- (b) give a direction relating to the absence of corroboration.

99. Judge may direct assessors as to reliability of evidence-

(1) If, in a criminal proceeding tried with assessors, the Judge is of the opinion that any evidence given in that proceeding that is admissible may nevertheless be unreliable, the Judge may warn the assessors of the need for caution in deciding:

- (a) whether to accept the evidence;
- (b) the weight to be given to the evidence.

(2) In a criminal proceeding tried with assessors the Judge must consider whether to give a warning under subsection (1) whenever the following evidence is given:

- (a) hearsay evidence;
- (b) evidence given by a witness who has a motive to give false evidence that is prejudicial to a defendant, if that evidence is the only evidence implicating the defendant;
- (c) evidence about the conduct of the defendant if that conduct is alleged to have occurred more than 10 years previously.

(3) In a criminal proceeding tried with assessors, a party may request the Judge to give a warning under subsection (1) but the Judge may refuse that request if the Judge is of the opinion that:

- (a) to do so might unnecessarily emphasise evidence; or
- (b) there is any other good reason.

(4) It is not necessary for a Judge to use a particular form of words in giving the warning.

(5) If there are no assessors, the Judge must bear in mind the need for caution before convicting a defendant in reliance on evidence of a kind that may be unreliable.

(6) This section does not affect any other power of the Judge to warn or inform the assessors.

100. Directions when evidence given under certain conditions-(1) The Judge must give the direction referred to in subsection (2) if, in a criminal proceeding tried with assessors:

- (a) a witness offers evidence in an alternative way under this Part; or
- (b) the defendant is not permitted to personally cross-examine a witness; or
- (c) a witness offers evidence under a witness anonymity order.

(2) The direction required by subsection (1) is a direction to the assessors that:

- (a) the law makes special provision for the manner in which evidence is to be given, or questions are to be asked, in certain circumstances; and
- (b) the assessors must not draw any adverse inference against the defendant because of that manner of giving evidence or questioning.

101. Directions as to lies told by defendant-(1) This section applies if evidence offered in a criminal proceeding suggests that a defendant has lied either before or during the proceeding.

(2) If evidence of a defendant's lie is offered in a criminal proceeding tried with assessors, the Judge is not obliged to give a specific direction as to what inference the assessors may draw from that evidence.

(3) Despite subsection (2), if, in a criminal proceeding tried with assessors, the Judge is of the opinion that the assessors may place undue weight on evidence of a defendant's lie, or if the defendant so requests, the Judge must warn the assessors that:

- (a) the assessors must be satisfied before using the evidence that the defendant did lie; and
- (b) the assessors should not necessarily conclude that, just because the defendant lied, the defendant is guilty of the offence for which the defendant is being tried.

(4) In a criminal proceeding tried without assessors, the Judge must have regard to the matters set out in subsection (3) before placing any weight on evidence of a defendant's lie.

102. Directions as to evidence given by a child and judicial warning about identification evidence-(1) In a criminal

proceeding tried with assessors in which the complainant is a child at the time when the proceeding commences, the Judge must not give any warning to the assessors about the absence of corroboration of the evidence of the complainant if the Judge would not have given that kind of a warning had the complainant been an adult.

(2) In a proceeding tried with assessors in which a witness is a child, the Judge must not, unless expert evidence is given in that proceeding supporting the giving of the following direction or the making of the following comment:

- (a) instruct the assessors that there is a need to scrutinise the evidence of children generally with special care; or
- (b) suggest to the assessors that children generally have tendencies to invent or distort.

(3) In a criminal proceeding tried with assessors in which the case against the defendant depends wholly or substantially on the correctness of visual identification of the defendant or any other person, the Judge must warn the assessors of the special need for caution before finding the defendant guilty in reliance on the correctness of any of the identifications.

- (4) The warning need not be in any particular words but must:
- (a) warn the assessors that a mistaken identification can result in a serious miscarriage of justice; and
 - (b) alert the assessors to the possibility that a mistaken witness may be convincing; and
 - (c) where there is more than one (1) identification witness, refer to the possibility that all of them may be mistaken.

103. Failure or delay in complaining in sexual cases-(1) Subsection (2) applies if, in a sexual case tried with assessors, evidence is given or a question is asked or a comment is made that tends to suggest that the person against whom the offence is alleged to have been committed either delayed making or failed to make a complaint in respect of the offence.

(2) If this subsection applies, the Judge must tell the assessors that there can be good reasons for the victim of an offence of that kind to delay making or fail to make a complaint in respect of the offence.

*Division 10 - Uncontroverted facts
and reliable public documents*

104. Asserted fact may be accepted without evidence-(1) A Judge or the assessors may take notice of facts so known and accepted either generally or in the locality in which the proceeding is being held that they cannot reasonably be questioned.

(2) A Judge may:

- (a) acquire knowledge mentioned in subsection (1) in any way the Judge thinks fit; and
- (b) take notice of facts capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned and, if the proceedings are with assessors, may direct the assessors in relation to the matter.

105. Admission of reliable published documents-(1) A Judge may, in matters of public history, literature, science, or art, admit as evidence any published documents that the Judge

considers to be reliable sources of information on the subjects to which they respectively relate.

(2) Division 1 of Part 2 does not apply to evidence referred to under subsection (1).

106. Authenticity of public documents-(1) Subsection (2) applies to a document that purports to be a public document, or a copy of or an extract from or a summary of a public document, and to have been:

- (a) sealed with the seal of a person or a body that might reasonably be supposed to have the custody of that public document; or
- (b) certified to be such a copy, extract, or summary by a person who might reasonably be supposed to have the custody of that public document.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be a public document or a copy of the public document or an extract from or summary of the public document and may be offered in evidence to prove the truth of its contents.

(3) If an officer entrusted with the custody of a public document is required by a Judge to produce the public document, it is sufficient compliance with the requirement for the officer to produce a copy of, or extract from, the public document if it purports to be signed and certified by the officer as a true copy or extract.

(4) It is sufficient production of a copy or extract for subsection (3) if the officer sends it by prepaid post, or delivers it, to:

- (a) the Registrar of the court in which it is to be produced;
or
- (b) the Judge before whom it is to be produced.

(5) The Judge before whom a copy or extract is produced under subsection (3) may direct the officer to produce the original public document.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

107. Evidence of convictions, acquittals and proceedings-

(1) Evidence of the following facts, if admissible, may be given by a certificate purporting to be signed by a Judge, a Registrar, or other officer having custody of the relevant court records:

- (a) the conviction or acquittal of a person charged with an offence and the particulars of the offence charged and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate);
- (b) the sentencing by a court of a person to any penalty or other disposition of the case following a plea or finding of guilt, and the particulars of the offence for which that person was sentenced or otherwise dealt with and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate);
- (c) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates;
- (d) the existence of a criminal or civil proceeding, whether or not the proceeding has been concluded, and the nature of the proceeding.

(2) A certificate under this section is sufficient evidence of the facts stated in it without proof of the signature or office of the person appearing to have signed the certificate.

(3) The manner of proving the facts referred to in subsection (1) authorised by this section is in addition to any other manner of proving any of those facts authorised by law.

(4) Subsection (5) applies if:

- (a) a certificate under this section is offered in evidence in a proceeding for the purpose of proving the conviction or acquittal of a person, or the sentence by a court of a person to a penalty, or an order made by a court concerning a person; and

(b) the name of the person stated in the certificate is substantially similar to the name of the person concerning whom the evidence is offered.

(5) If this subsection applies, it is presumed, in the absence of evidence to the contrary, that the person whose name is stated in the certificate is the person concerning whom the evidence is offered.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

108. Proof of conviction from fingerprints-(1) A certificate is admissible in evidence to prove the identity of a person alleged to have been convicted in a country of an offence if:

(a) the certificate purports to be signed by a fingerprint examiner; and

(b) copies of the fingerprints of the person are exhibited or shown on the certificate; and

(c) the certificate certifies that those copies are copies of the fingerprints of a person who was convicted in the fingerprint examiner's country of the offence of which particulars are given.

(2) Subsection (3) applies to a certificate that:

(a) purports to be signed by a fingerprint examiner; and

(b) certifies that the copies of the fingerprints that are exhibited or shown on the certificate made under subsection (1) and the fingerprints of the person in respect of whom a conviction is sought to be proved (a copy of which is exhibited or shown on the certificate made under this subsection) are the fingerprints of the same person.

(3) A certificate to which subsection (2) applies is, unless the Judge decides otherwise, evidence that the person in respect of whom the conviction is sought to be proved was convicted of the offence of which particulars were given in the certificate made under subsection (1).

(4) The manner of proving a conviction authorised by this section is in addition to any other manner of proving the conviction authorised by law.

(5) In this section, “fingerprint examiner” means a fingerprint examiner who is:

- (a) a member or employee of the Samoa Police Service; or
- (b) a member or employee of a police force in an overseas country.

(6) Division 1 of Part 2 does not apply to evidence offered under this section.

109. Samoan and foreign official documents-(1) Subsection

(2) applies to a document that purports:

- (a) to have been printed in the *Savali* or *Gazette*; or
- (b) to have been printed or published by authority of the Government; or
- (c) to have been printed or published by order of or under the authority of the Legislative Assembly.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be what it purports to be and to have been so printed and published and to have been published on the date on which it purports to have been published.

(3) Subsection (4) applies to a document that purports:

- (a) to have been printed or published in a government or official gazette (by whatever name called) of a foreign country; or
- (b) to have been printed or published by the government or official printer of a foreign country; or
- (c) to have been printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country; or
- (d) to have been printed or published by an international organisation.

(4) If this subsection applies, the document is presumed, unless the contrary is proved, to be what it purports to be and to have been printed or published in the manner provided in subsection (3) and to have been published on the date on which it purports to have been published.

(5) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

110. Evidence of foreign law-(1) A party may offer as evidence of a statute or other written law, proclamation, treaty, or act of State, of a foreign country:

- (a) evidence given by an expert; or
- (b) a copy of the statute or other written law, proclamation, treaty, or act of State that is certified as a true copy by a person who might reasonably be supposed to have the custody of the statute or other written law, proclamation, treaty, or act of State; or
- (c) any document containing the statute or other written law, proclamation, treaty, or act of State that purports to have been issued by the government or official printer of the country or by authority of the government or administration of the country; or
- (d) any document containing the statute or other written law, proclamation, treaty, or act of State that appears to the Judge to be a reliable source of information.

(2) In addition, or as an alternative, to the evidence of an expert, a party may offer as evidence of the unwritten or common law of a foreign country, or as evidence of the interpretation of a statute or other written law or a proclamation of a foreign country, a document:

- (a) containing reports of judgments of the courts of the country; and
- (b) that appears to the Judge to be a reliable source of information about the law of that country.

(3) A party may offer as evidence of a statute or other written law of a foreign country, or of the unwritten or common law of a foreign country, any publication:

- (a) that describes or explains the law of that country; and
- (b) that appears to the Judge to be a reliable source of information about the law of that country.

(4) A Judge is not bound to accept or act on a statement in any document as evidence of the law of a foreign country.

(5) In this section, “statute of a foreign country” includes any regulation, rule, bylaw, or other instrument of subordinate legislation of the country.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

111. Notification in official document of doing any act-(1)

Subsection (2) applies if the doing of an act by the Head of State or Cabinet, or Legislative Assembly, or by a person authorised to do the act by the law of Samoa, is notified or published in:

- (a) the *Savali* or *Gazette*; or
- (b) a document that was printed or published by the authority of the Government; or
- (c) a document that was printed or published by order of or under the authority of the Legislative Assembly.

(2) If this subsection applies, it is presumed, unless the Judge decides otherwise, that the act was done and that it was done on the date (if any) that appears in the *Savali*, *Gazette* or document.

(3) Subsection (4) applies if the doing of an act by a foreign legislature or a person authorised to do the act by the law of a foreign country is notified or published in:

- (a) a government or official gazette (by whatever name called) of a foreign country; or
- (b) a document that was printed or published by the government or official printer of a foreign country; or
- (c) a document that was printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country.

(4) If this subsection applies, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the government or official gazette (however described) or other document.

(5) If the doing of an act by an international organisation is notified or published in a document that was printed or published by the international organisation, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the document.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

*Division 11 - Evidence taken in Samoa for
use in overseas criminal proceeding*

112. Definition - In this Division:

“Judge” means a Judge of the Supreme Court;

“overseas court” means a court or tribunal exercising jurisdiction in another country;

“overseas representative:

- (a) means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, *Chargé d’Affaires*, Head of Mission, Consular Officer, or Pro-consul of another country exercising jurisdiction in Samoa; and

(b) includes -

(i) any person lawfully acting for any of those officers; or

(ii) any Diplomatic Secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, *Chargé d’Affaires*, or Head of Mission.

“Supreme Court” means the Supreme Court of Samoa.

113. Examination of witness at request of overseas court-

(1) If any criminal proceedings (not being criminal proceedings of a political character) are pending before any country’s court of competent jurisdiction, and that court wishes to obtain the evidence of any witness in Samoa for the purposes of those proceedings, the Supreme Court or a Judge may order the examination of the witness on oath, by interrogatories, or otherwise, before any person named in the order.

(2) An order under subsection (1) may be made on the application of the parties to the proceeding before the overseas court or on the application of the Attorney-General.

(3) Despite subsection (2):

- (a) an application for an order under subsection (1) must be made pursuant to any prescribed requirements; and

(b) the right of the Attorney-General to make an application of that kind is subject to any prescribed restrictions.

(4) An order made under subsection (1) may be enforced in the same manner as if it were an order made by the Supreme Court or the Judge in proceedings pending in the Supreme Court or before the Judge.

114. Powers may be exercised by Registrar-(1) A Judge may authorise a Registrar of the Supreme Court to exercise the powers of the Supreme Court or the Judge under section 113, either:

- (a) generally; or
- (b) in respect of a particular case or class of cases.

(2) An authorisation under subsection (1) may be revoked at any time by any Judge.

(3) If, in the opinion of the Registrar, any matter that he or she has jurisdiction to deal with under an authorisation under subsection (1) is of special difficulty, the Registrar may refer the matter to a Judge who may:

- (a) dispose of it; or
- (b) refer it back to the Registrar with any directions that the Judge considers appropriate.

(4) Nothing in this section prevents the exercise by the Supreme Court or any Judge of any powers conferred on a Registrar under this section.

(5) In this section, "Registrar" does not include an Assistant Registrar of the Supreme Court.

115. Evidence in support of application-(1) Evidence that any criminal proceedings are pending in an overseas court and that the court wishes to obtain the evidence of the witness to whom the application relates for the purposes of those proceedings, may be given by:

- (a) Letter of Request; or
- (b) another document issued by that court; or
- (c) the certificate of an overseas representative given under subsection (3); or

(d) other process that the Supreme Court or a Judge may accept.

(2) Any Letter of Request or other document purporting to be sealed with the seal of any overseas court or signed by a judge or other judicial officer or by a Registrar or other officer of the overseas court must for the purpose of this section and section 113 be received in evidence without proof of:

- (a) the seal of the overseas court; or
- (b) the signature of the Judge or other person; or
- (c) the judicial or official character of the judge or other person.

(3) A certificate purporting to be signed by an overseas representative to the effect that any matter in relation to which an application is made under section 113 is a criminal proceeding pending in a court having jurisdiction in the proceeding in the country of which he or she is a representative and that the court having that jurisdiction wishes to obtain the testimony of the witness to whom the application relates, is sufficient evidence of the matters set out in the certificate.

(4) A certificate given under subsection (3) must be received in evidence without proof of:

- (a) the signature of the person who signed the certificate; and
- (b) the official character of that person.

116. Protection of witness-(1) A person may not be compelled by an order under section 113 to give evidence which the person could not be compelled to give in criminal proceedings in Samoa.

(2) A person may not be compelled by an order under section 113 to give any evidence if the giving of that evidence would:

- (a) infringe the jurisdiction of Samoa; or
- (b) otherwise be prejudicial to the security or sovereignty of Samoa; or
- (c) be likely to be prejudicial to the trading, commercial, or economic interests of Samoa; and,

a certificate signed by the Attorney-General to the effect that it would be or, as the case requires, is likely to be so prejudicial for that person to do so is conclusive evidence of that fact.

- (3) In this section “giving evidence” includes:
- (a) answering any question; or
 - (b) producing any document.

117. Requesting authority may be asked to pay expenses -

A witness required to attend for examination by an order made under section 113 is entitled to a sum for allowances and travelling expenses applicable to witnesses in the Supreme Court.

Division 12 - Evidence by video link

118. Evidence and submissions by video link and telephone conference from another country-

(1) On the application of a party to a proceeding before a court, the court may, if it is satisfied that the necessary facilities and equipment are available, or can reasonably be made available, and that evidence or submissions in the proceeding could more conveniently be given or made from another country, direct that evidence be given from that other country, or submissions be made from that other country, by video link or telephone conference.

(2) Unless the court otherwise orders, the costs incurred in giving evidence or making submissions by video link or telephone conference and transmitting the evidence or submissions, pursuant to a direction given under subsection (1), must be paid by the applicant.

(3) The court may make an order specifying the amount payable by a party under subsection (2), and requiring the party to pay that amount.

119. Powers of courts-(1) For the purposes of the taking of evidence or the receiving of submissions by video link or telephone conference from another country under section 118, the court in Samoa may exercise in that other country all its powers which it is permitted to exercise in that other country under the laws of that other country.

(2) For the purposes of taking evidence from a witness in Samoa or hearing submissions from a person in Samoa, a court of another country may exercise in Samoa any of its powers, except its powers to:

- (a) punish for contempt; and
- (b) enforce or execute its judgments or process.

(3) Subject to subsection (2), the laws of that other country that apply to the proceeding in that other country also apply to the practice and procedure of the court of that other country in taking evidence or receiving submissions from a person in Samoa.

120. Evidence and submissions by video link - Evidence must not be given or submissions made by video link from another country unless the courtroom or other place where the court is sitting in Samoa and the place where the evidence is to be given or the submissions are to be made in Samoa are equipped with video facilities that:

- (a) enable persons present at the place where the court is sitting in Samoa to see and hear the person giving evidence or making the submissions in that other country; and
- (b) enable persons present at the place where the evidence is given or the submissions are made in that other country to see and hear persons at the place where the court is sitting in Samoa.

121. Evidence and submissions by telephone - Evidence must not be given or submissions must not be made by telephone conference from another country unless the courtroom or other place where the court is sitting in Samoa and the place where the evidence is to be given or the submissions are to be made in that other country are equipped with telephone conference facilities that:

- (a) enable persons present at the place where the court is sitting in Samoa to hear the person giving evidence or making the submissions in that country; and
- (b) enable persons present at the place where the evidence is given or the submissions are made in that country to hear persons at the place where the court is sitting in Samoa.

PART 5
JUDICIAL NOTICE AND DOCUMENTARY
EVIDENCE

122. Judicial notice of enactments and court judgments-(1)

Proof is not required about:

- (a) the provisions and coming into operation (all or in part) of -
 - (i) the Constitution; or
 - (ii) an Act or Ordinance; or
 - (iii) a regulation, rule, order, determination, notice or by-law made, or purporting to be made, under an Act or Ordinance mentioned in paragraph (a); or
 - (iv) an instrument of a legislative character made, or purporting to be made, under an Act or Ordinance mentioned in paragraph (a), that is an instrument whether or not required by or under a law to be published, or the making of which is required by or under a law to be notified, in the *Gazette* or *Savali* or other publication; or
- (b) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates.

(2) A Judge may inform himself or herself about those matters in any way the judge thinks fit.

(3) In this section “Act” includes any Act revised and consolidated pursuant to the Revision and Publication of Laws Act 2008.

123. Certificates for international affairs - This Part includes the application of the principles and rules of common law and equity relating to the effect of a certificate given by or on behalf of Samoa in relation to a matter of international affairs.

124. Evidence produced by processes, machines and other devices-(1)This section applies to a document or thing:

- (a) that is produced completely or partly by a device or process; and

(b) that is tendered by a party who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily produces that outcome, it is presumed (unless the contrary is proved) that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

125. Documents produced by processes, machines and other devices in the course of business-(1) This section applies to a document:

(a) that is produced completely or partly by a device or process; and

(b) that is tendered by a party who asserts that, in producing the document, the device or process has produced a particular outcome.

(2) If:

(a) the document is, or was at the time it was produced, part of the records of, or kept for the purposes of, a business (whether or not the business is still in existence); and

(b) the device or process is or was at that time used for the purposes of the business,

it is presumed (unless the contrary is proved) that, in producing the document on the occasion in question, the device or process produced that outcome.

(3) Subsection (2) does not apply to the contents of a document that was produced:

(a) for the purpose of conducting, or for or in contemplation of or in connection with, a Samoan or overseas proceeding; or

(b) in connection with an investigation relating or leading to a criminal proceeding.

126. Evidence of certain acts of lawyers and notaries public - It is presumed, unless the contrary is proved, that a document was attested or verified by, or signed or acknowledged before, a lawyer or notary public, if:

- (a) a law of Samoa requires, authorises or permits it to be attested, verified, signed or acknowledged by the lawyer or notary public; and
- (b) it purports to have been attested, verified, signed or acknowledged in that way.

127. Attestation of documents - It is not necessary to present the evidence of an attesting witness to a document (other than a testamentary document) to prove that the document was signed or attested as it purports to have been signed or attested.

128. Seals and signatures-(1) If the imprint of a seal appears on a document and purports to be the imprint of:

- (a) the Public Seal of Samoa; or
- (b) any other seal of Samoa or the Government; or
- (c) a seal of a foreign country; or
- (d) the seal of a body (including a court or a tribunal), or a body corporate, established by the law of Samoa or of a foreign country,

it is presumed, unless the contrary is proved, that the imprint is the imprint of the seal, and the document was sealed as it purports to have been sealed.

(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that:

- (a) the imprint is the imprint of the seal; and
- (b) the document was sealed by the office holder acting in the office holder's official capacity; and
- (c) the office holder held the relevant office when the document was sealed.

(3) If a document purports to have been signed by an office holder in the office holder's official capacity, it is presumed, unless the contrary is proved, that:

- (a) the document was signed by the office holder acting in that capacity; and
- (b) the office holder held the relevant office when the document was signed.

(4) This section applies to documents sealed, and documents signed, before the commencement of this section.

(5) In this section, “office holder” means:

- (a) the Head of State; or
- (b) a person holding any other office under the law of Samoa or of a foreign country.

129. Documents 20 years old produced from proper custody - If a document that is or purports to be more than 20 years old is produced from proper custody, it is *prima facie* evidence of the document, unless the contrary is proved.

130. Evidence of official records-(1) Evidence of record or public document of the Government may be presented by producing a document that:

- (a) purports to be the record or document and to be signed or sealed by -
 - (i) a Minister; or
 - (ii) a person who might reasonably be supposed to have custody of the record or document; or
- (b) purports to be a copy of or extract from the record or document that is certified to be a true copy or extract by -
 - (i) a Minister; or
 - (ii) a person who might reasonably be supposed to have custody of the record or document.

(2) If the document is produced, it is presumed (unless the contrary is proved) that:

- (a) the document is the record, public document, copy or extract that it purports to be; and
- (b) the Minister or person -
 - (i) signed or sealed the record; or
 - (ii) certified the copy or extract as a true copy or extract.

131. Evidence of certain public documents-(1) If:

- (a) a public document, or a certified copy of a public document, is admissible; and

(b) it purports to be sealed, or signed and sealed, or signed alone, as directed by the law of Samoa, it is admissible in evidence to the same extent and for that purpose in all courts of Samoa:

(c) without proof of -

(i) the seal or signature; or

(ii) the official character of the person appearing to have signed it; and

(d) without further proof in every case in which the original document could have been received in evidence.

(2) A public document that is admissible in evidence without proof of:

(a) the seal or signature authenticating the document; or

(b) the judicial or official character of the person appearing to have signed the document,

is admissible in evidence to the same extent and for any purpose in all courts of Samoa without that proof.

(3) This section only applies to documents that are public records of the Government.

(4) A document to which this section applies is admissible unless the contrary is proved.

132. Official statistics - A document that purports:

(a) to be published by the Government Statistician; and

(b) to contain statistics or abstracts compiled and analysed by the Government Statistician under the Statistics Act 2015,

is evidence that the statistics or abstracts were compiled and analysed by the Government Statistician under that Act.

133. Documents may be impounded - The court may direct that a document that has been tendered or produced before the court (whether or not it is admitted in evidence) must be impounded and kept in the custody of an officer of the court or another person for the period, and subject to the conditions, that the court thinks fit.

PART 6
MISCELLANEOUS

134. Rules-(1) In the case of the Supreme Court and the Court of Appeal, rules may be made for the purposes of this Act under section 40 of the Judicature Ordinance 1961 that make provision for, relate to, or authorise Rules in relation to:

- (a) the issuing of summonses to witness or to produce documents and the service of those summonses;
- (b) the hearing or disposal of applications for orders under any specified provisions in this Act;
- (c) the lodging of documents or things with the court of another country in compliance with a Samoan summons that requires only the production of documents or things by a witness;
- (d) the transmission of documents or things lodged with a Samoan court in compliance with another country's summons to the court that issued the summons;
- (e) the giving of evidence and the making of submissions by video link or telephone conference in connection with proceedings before a Samoan court or a court of another country;
- (f) the receiving of facsimiles (or other electronic transmission) of documents or things;
- (g) the form of Samoan summonses and other documents;
- (h) such other matters as are contemplated by or necessary for giving full effect to the matters in this section.

(2) For other courts, rules or, as the case may be, regulations may be made under the authority of any enactment that provides for the making of rules or regulations governing the practice and procedure of the court that make provision for or relate to any of the matters referred to in subsection (1).

135. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make regulations:

- (a) fixing, and requiring the payment of, fees and expenses for or incurred in taking evidence under this Part;
- (b) prescribing the matters in respect of which fees are payable under this Part and the amounts of those fees;
- (c) regulating the payment of expenses in respect of expenses incurred in complying with Samoan summons;
- (d) prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made where a person's evidence is to be video recorded;
- (e) providing for the approval of interviewers, or class of interviewers, for child complainants, and providing for the approvals to be proved by production of certificates in the prescribed form;
- (f) regulating the way in which evidence of a witness may be given in an alternative way;
- (g) prescribing the form of certificate by which an interviewer is to formally identify a video record;
- (h) regulating the video recording of evidence;
- (i) providing for the consent of persons to be video recorded and specifying who may give consent on behalf of children who are to be video recorded;
- (j) prescribing the uses to which any video records may be put and prohibiting their use for other purposes;
- (k) providing for the safe custody of video records intended to be offered as evidence;
- (l) providing for the preparation of transcripts of video records and for their uses and safe custody;
- (m) regulating the provision of communication assistance to defendants and witnesses;
- (n) providing for requirements, in addition to those set out in section 35, for formal procedures that are held to obtain visual identification evidence;
- (o) regulating the form of warnings or information that can be given by a Judge in relation to evidence given by children under the age of six (6) years in a proceeding tried by assessors;

(p) regulating the translation of documents into English or Samoan;

(q) providing matters required to be prescribed by this Act.

(2) Any fee and expenses prescribed under this Act is subject to the prior approval of the National Revenue Board established under the Public Finance Management Act 2001.

136. Repeal, transitional and saving provisions-(1) The Evidence Ordinance 1961 is repealed.

(2) A witness, or a party calling a witness, may apply under section 80(3), before the commencement of that provision, for an order under that provision, restricting any cross-examination that is to take place after the commencement of that provision.

(3) A party may make an application for directions under section 86, before the commencement of that provision, for the purpose of ensuring that the application for directions permitted under that provision in respect of the giving of evidence-in-chief by a witness and his or her cross-examination after the commencement of that provision in any proceedings, is made as early as practicable before the proceeding is to be heard.

(4) The prosecution may make an application for directions under section 90 before the commencement of that provision, for the purpose of ensuring that the application required under that section in respect of the giving of evidence-in-chief by the child complainant and his or her cross-examination after the commencement of that provision, is made as early as practicable before the case is to be tried.

(5) If, under this section, any person has the right to apply to a Judge under any provision before its commencement for any order or directions, the Judge also has power, before the commencement of the provision, to exercise any of the powers conferred by that provision on a Judge.

(6) This Act applies to any criminal or civil proceeding (instituted before commencement of this Act), which has not commenced its substantive hearing or trial at the commencement of this Act.

(7) The Evidence Ordinance 1961 (despite its repeal) continues to apply to any criminal or civil proceeding (instituted before commencement of this Act) that has commenced its substantive hearing or trial at the commencement of this Act, including hearing and determination of appeal or review relating to that proceeding.

**The Evidence Act 2015 is administered by the
Ministry of Justice and Courts Administration.**

**Printed by the Clerk of the Legislative Assembly,
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