

FAMILY COURT BILL 2013

SAMOA

Explanatory Memorandum

Introduction

The Bill seeks to establish the Family Court, as a Division of the District Court, and to provide for its constitution and jurisdiction.

The Bill is divided into the following 6 parts:

- (a) Part 1: Preliminary,
- (b) Part 2: Establishment of the Family Court Division,
- (c) Part 3: Conciliation and Resolution,
- (d) Part 4: Jurisdiction of Family Court,
- (e) Part 5: Administration,
- (f) Part 6: Miscellaneous.

Clauses:

PART 1 - PRELIMINARY

- Clause 1:** - provides for the short title and commencement provisions.
- Clause 2:** - provides for the definitions of terms.
- Clause 3:** - provides that the Act binds the Government of Samoa.

PART 2 - ESTABLISHMENT OF THE FAMILY COURT

- Clause 4:** - establishes the Family Court of Samoa as a division of the District Court.
- Clause 5:** - empowers the Head of State to appoint a suitable person as a District Court Judge on the advice of the Judicial Service Commission pursuant to section 5 of the District Courts Act

1969 to be a Family Court Judge. Authorises a District Court Judge to deal with matters relating to family law and vice versa.

PART 3 - CONCILIATION AND RESOLUTION

- Clause 6:** - obligates the Court or a lawyer representing a client to the proceedings to promote conciliation.
- Clause 7:** - obligates parties to engage in alternative dispute resolution.

PART 4 - JURISDICTION OF THE FAMILY COURT

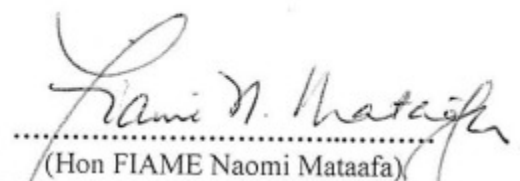
- Clause 8:** - provides for the jurisdiction of the Family Court to hear and determine matters or proceedings under the enactment listed in subclause (1).
- Clause 9:** - empowers the Senior District Court Judge to determine regular and special sittings of the Court.
- Clause 10:** - provides for persons entitled to be present at a hearing of proceedings in the Family Court.
- Clause 11:** - permits publication of reports of proceedings only if the identity of parties (including children and other vulnerable persons) are not published. Also creates an offence to publish confidential information.
- Clause 12:** - provides for Family Court proceedings to be brought and dealt with under the Family Court or District Court Rules.
- Clause 13:** - provides for case stated to Supreme Court on question of law.
- Clause 14:** - provides for complex cases to be transferred to the Supreme Court.
- Clause 15:** - provides for the application of the District Courts Act 1969. The proposed Family Court Act will prevail if there is a conflict between the two (2) Acts.

PART 5 - ADMINISTRATION

- Clause 16:** - designates the Registrar of the District Court to be the Family Court Coordinator to be responsible for the functioning of the Family Court and to delegate any of the responsibility to any of the officers or employees of the Ministry of Justice and Courts Administration.
- Clause 17:** - empowers the Family Court Coordinator to appoint counselors, subject to terms and conditions under the Family Court Rules.

PART 6 - MISCELLANEOUS

- Clause 18:** - empowers the Head of State on the advice of the Prime Minister and with agreement of the Rules Committee to make Family Court Rules.
- Clause 19:** - empowers the Head of State acting on the advice of the Cabinet to make regulations.
- Clause 20:** - deals with transitional matters relating to any proceeding commenced or pending in the Supreme Court or District Court under enactment referred to in clause 8, before the commencement of the proposed Act, to be transferred to and heard and determined in the Family Court.



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(Hon FIAME Naomi Mataafa)

**MINISTER FOR JUSTICE AND
COURTS ADMINISTRATION**

FAMILY COURT BILL 2013

SAMOA

Arrangement of Provisions

PART 1 **PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act binds the Government

PART 2 **ESTABLISHMENT OF THE FAMILY COURT**

4. Family Court
5. Appointment of Family Court Judges

PART 3 **CONCILIATION AND RESOLUTION**

6. Conciliation
7. Alternative dispute resolution

PART 4 **JURISDICTION OF THE FAMILY COURT**

8. Jurisdiction
9. Court sittings
10. Attendance at hearings
11. Publication of reports of proceedings
12. Proceedings to be brought and dealt with under Family Court Rules
13. Case stated to Supreme Court
14. Transfer to Supreme Court
15. Application of District Courts Act 1969

PART 5 **ADMINISTRATION**

16. Family Court Coordinator
17. Counsellors

PART 6 **MISCELLANEOUS**

18. Family Court Rules
19. Regulations
20. Transitional and saving provisions

2013, No.

A BILL INTITULED

AN ACT to establish the Family Court as a Division of the District Court and to provide for the constitution, jurisdiction, powers and procedures of the Family Court, and for related purposes.

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 Family Court Act 2013.

(2) This Act commences on a date to be nominated by the Minister for Justice and Courts Administration.

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

“Alternative dispute resolution”:

- (a) means a process used to resolve disputes between parties which is outside the usual court-based litigation model; and
- (b) includes processes of mediation, arbitration, reconciliation and conciliation applied in accordance with the Alternative Dispute Resolution Act 2007.

“Authorised counsellor” means an organisation, association, incorporated body, person or group of persons or agency approved by the Family Court Coordinator to provide counselling services;

“Family Court” or “Court” means the Family Court established under section 4;

“Family Court Judge” means a District Court Judge exercising the jurisdiction of the Family Court;

“Family Court Rules” means the rules made under section 18;

“lawyer” means a person admitted as a barrister and solicitor of the Supreme Court.

3. Act binds the Government - This Act binds the Government.

PART 2
ESTABLISHMENT OF THE FAMILY COURT

- 4. Family Court-**(1) The Family Court is established.
(2) The Family Court shall:
(a) be a division of the District Court; and
(b) consist of Family Court Judges appointed pursuant to this Act.

5. Appointment of Family Court Judges-(1) The Head of State, acting on the advice of the Judicial Service Commission, may appoint a fit and proper person as a District Court Judge pursuant to section 5 of the District Courts Act 1969 to be a Family Court Judge.

(2) A person appointed under subsection (1) must be a suitable person to deal with matters relating to Family Law.

(3) A Family Court Judge may from time to time sit as or exercise any of the powers of a District Court Judge.

(4) A District Court Judge may from time to time sit as or exercise any of the powers of a Family Court Judge.

PART 3
CONCILIATION AND RESOLUTION

6. Conciliation-(1) In any proceedings commenced in the Family Court, the Court must, so far as possible, promote conciliation.

(2) A lawyer acting for a party in a proceeding in the Family Court must, so far as possible, promote conciliation.

7. Alternative dispute resolution - Prior to a substantive hearing in the Family Court the parties must engage in some form of alternative dispute resolution to the satisfaction of the Court, unless the Court is satisfied that there is no reasonable prospect of agreement being reached, or the circumstances of the case are such that Alternative dispute resolution is inappropriate.

PART 4
JURISDICTION OF THE FAMILY COURT

8. Jurisdiction-(1) The Family Court has jurisdiction to hear and determine a matter or proceedings under any of the following enactments:

- (a) Infants Ordinance 1961;
- (b) Family Safety Act 2013;
- (c) Maintenance and Affiliation Act 1967;
- (d) Divorce and Matrimonial Causes Ordinance 1961;
- (e) Marriage Ordinance 1961;
- (f) Births, Deaths and Marriages Registration Act 2002;
- (g) any other enactment conferring jurisdiction on the Family Court or the District Court.

(2) A reference to the Supreme Court, District Court or other subordinate court in any enactment under subsection (1) is amended and to be read as a reference to the Family Court.

9. Court sittings - The Senior District Court Judge may determine the regular and special sittings of the Family Court in any place, date and times determined by the Judge.

10. Attendance at hearings-(1) The only persons who may attend a hearing of proceedings in the Family Court are as follows:

- (a) officers of the Court; and
- (b) parties to the proceedings; and
- (c) lawyers representing parties to the proceedings; and
- (d) witnesses; and
- (e) accredited news media reporters; and
- (f) persons whom the Family Court Judge permits to be present as support persons for a party on a request by that party; and
- (g) any other persons whom the Family Court Judge permits to be present.

(2) Nothing in this section limits any other power of the Court:

- (a) to hear proceedings in private; or
- (b) to permit a McKenzie friend to be present; or
- (c) to exclude any person from the Court.

11. Publication of reports of proceedings-(1) A person may publish a report of proceedings in the Family Court if the identity of the parties, any children and other vulnerable persons who are the subject of proceedings, including any matters that might lead to their identification, are not published.

(2) This section also applies to sections 13 and 14.

(3) A person who publishes or causes to be published any confidential matter in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(4) In this section, “publish” includes to publish in any internet site (including publication on any linking mobile or portable device or similar device) that is generally accessible to the public.

12. Proceedings to be brought and dealt with under Family Court Rules - All proceedings in the Family Court must be brought and dealt with under the Family Court Rules, or District Court Rules where appropriate.

13. Case stated to Supreme Court-(1) A Family Court may, on application or on its own initiative, state a case for the opinion of the Supreme Court on any question of law arising in a matter before the Family Court.

(2) When the order for a case stated is sealed, the Registrar of the District Court must, send to the Registrar of the Supreme Court a copy of the order, all pleadings, affidavits, and other documents filed in the Family Court relating to the proceedings and any other documents as the Family Court Judge may direct.

(3) The Supreme Court may hear and determine the case stated under this section as if the proceedings had been originally commenced in the Supreme Court pursuant to the Supreme Court (Civil Procedure) Rules 1980.

14. Transfer to Supreme Court-(1) The Family Court may, on application or on its own initiative, order that the proceedings be transferred to the Supreme Court if it is satisfied that it is expedient that the proceedings be dealt with by the Supreme Court because of the complexity of the proceedings or of any question in issue in the proceedings.

(2) The Supreme Court has the same jurisdiction as the Family Court had in hearing and determining the proceedings transferred under this section.

15. Application of District Courts Act 1969-(1) Except for the matters provided in this Act, the District Courts Act 1969 applies to this Act, with any necessary modifications and adaptations, as if references to the District Court and the District Court Judges were references to the Family Court and the Family Court Judge.

(2) This Act prevails if there is a conflict between this Act and the District Courts Act 1969.

PART 5 **ADMINISTRATION**

16. Family Court Coordinator-(1) The Registrar of the District Court is the Family Court Coordinator.

(2) The Registrar of the District Court may delegate any of the functions of the Family Court Coordinator to any officer or employee of the Ministry of Justice and Courts Administration.

(3) The Family Court Coordinator must coordinate counselling and related services required for the proper functioning of the Family Court.

17. Counsellors - The Family Court Coordinator may appoint Authorised counsellors on such terms and conditions as provided for by the Family Court Rules.

PART 6 **MISCELLANEOUS**

18. Family Court Rules-(1) The Head of State, acting on the advice of the Prime Minister and with the concurrence of the Rules Committee, may make rules regulating the practice and procedure of the Family Court.

(2) Without limiting subsection (1), rules may provide for:

- (a) the form and contents of documents;
- (b) forms required under the Act and the authority to make forms;

- (c) the method for serving documents and giving notice;
- (d) the transfer of proceedings;
- (e) the keeping, searching and transfer of records;
- (f) the counselling services and procedures;
- (g) the dispute resolution mechanisms unless mediation rules for the purpose are made under the Alternative Dispute Resolution Act 2007;
- (h) any other matter necessary for regulating the practice or procedure of the Family Court.

19. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations necessary for the implementation of or for the purposes of this Act, and in particular regulations to prescribe:

- (a) fees for proceedings, or intended proceedings, in the Family Court and other matters relating to fees; and
- (b) proceedings that concern matters of genuine public interest.

20. Transitional and saving provisions - All matters and proceedings commenced or pending in the Supreme Court or District Court before the commencement of this Act under any enactment referred to in section 8 are to be transferred forthwith to be heard and determined in the Family Court.
