



REVIEW OF THE FAMILY LAWS OF SAMOA

Discussion Paper

December 2019

SAMOA LAW REFORM COMMISSION

The Samoa Law Reform Commission (**the Commission**) was established in 2008 by the *Law Reform Commission Act 2008* as an independent body corporate to undertake the review, reform and development of the laws in Samoa. Its purpose is to facilitate law reform in Samoa by providing pragmatic recommendations based on high quality research, consultation and analysis.

The Office of the Commission is at Level 1, FMFM II Building, Eleele-Fou, Apia.

Postal Address: PO Box 974, Apia, Samoa

Telephone: (+685) 28493/94

Email: commission@samoalawreform.gov.ws

Website: www.samoalawreform.gov.ws

This Paper may be cited as SLRC **[DP27]**

This Discussion Paper will be made available on the Commission's website:
www.samoalawreform.gov.ws

Table of Contents

1. INTRODUCTION	5
Background	5
Terms of Reference	5
Law Reform Process:	6
Public Seminars	6
2. THE FAMILY LAWS OF SAMOA	9
2.1 INFANTS ORDINANCE 1961	9
Background.....	9
Amendments.....	9
I. The Infants Ordinance 1961 in Detail	10
II. Judiciary’s Comments	13
III. Other Jurisdictions	16
IV. Case law analysis	19
V. Public Seminars	23
VI. Discussion Questions	24
2.2 MARRIAGE ORDINANCE 1961	25
Background.....	25
Amendments.....	25
I. The Marriage Ordinance 1961 in Detail	25
II. Judiciary’s Comments	27
III. Other Jurisdictions	28
IV. Case law analysis	31
V. Public Seminars	32
VI. Discussion Questions	33
2.3 DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961	33
Background.....	33
Amendments.....	34
I. The Divorce and Matrimonial Causes Ordinance 1961 in Detail	34
II. Judiciary’s Comments	40
III. Other Jurisdictions	42
IV. Case law analysis	44
V. Public Seminars	48
3 Discussion Questions	49
2.4 MAINTENANCE AND AFFILIATION ACT 1967	49

Background.....	49
Amendments.....	50
I. The Maintenance and Affiliation Act 1967 in Detail	50
II. Judiciary’s Comments.....	52
III. Other Jurisdictions.....	55
IV. Case law analysis	59
V. Public Seminars	62
VI. Discussion Questions.....	63
2.5 FAMILY SAFETY ACT 2013	63
Background.....	63
Amendments.....	64
I. The Family Safety Act 2013 in Detail.....	64
II. Judiciary’s Comments.....	66
III. Other Jurisdictions.....	67
IV. Case law analysis	70
V. Public Seminars	75
VI. Discussion Questions.....	75
2.6 FAMILY COURT ACT 2014	75
Background.....	75
Amendments.....	76
I. The Family Court Act 2014 in Detail	76
II. Judiciary’s Comments.....	78
III. Other Jurisdictions.....	79
IV. Case law analysis	85
V. Public Seminars	85
VI. Discussion Questions.....	86
3. CONCLUSION.....	86
DISCUSSION QUESTIONS	87
BIBILOGRAPHY	89

Submissions or comments (formal or informal) on this Discussion Paper should be received by the Commission no later than close of business on _____ (date to be advised).

Emailed submissions should be sent to:
commission@samoalawreform.gov.ws

Written submissions should be addressed and sent to:

**Executive Director
Samoa Law Reform Commission
Level 1, FMFM II Building
Eleele-Fou, Apia, Samoa**

Oral Submissions should be voiced at our Public Consultations:

The Dates, Time and Venues for public consultations will be announced on the Commission's official website, television, radio stations and newspapers for the public's information.

The Commission seeks your views, comments and feedback on the questions set out in this Discussion Paper.

The submitters are advised to focus on any of the questions provided therein. It is not expected that you will answer every question.

A Final Report and Recommendations to Government will be published in due course. [date to be advised]

1. INTRODUCTION

Background

- 1.1 In the Commission's review of the Fabric of Law of Samoa from 2017-2018, the Commission made recommendations for the Ministry of Justice and Courts Administration (MJCA) (administrator of the Family Laws of Samoa) to consider the review of the outdated family laws of Samoa, and perhaps develop a framework of the family laws consolidated into one standalone Family Law legislation like other jurisdictions, or update and modernize each single legislation and consolidate according to subject matter. Subsequently, in an Awareness Session on the Fabric of Laws project with the Judiciary in June 2018, it was strongly highlighted by the Judiciary that the Family Laws of Samoa, in particular the Infants Ordinance 1961, Marriage Ordinance 1961, Divorce and Matrimonial Causes Ordinance 1961, Maintenance and Affiliation Act 1967, are in dire need of review and updating, given their out-datedness. It was also expressed at this session with the Judiciary that there are several other laws related to 'family' that are also in need of review.
- 1.2 Following a meeting in July 2018, MJCA approved for the Commission to lead this review (Family Law Review) in close collaboration with, the Judiciary, Office of the Attorney General (OAG), Ministry of Women, Community and Social Development, and the MJCA. Consequently, the Commission proposed a Terms of Reference (TOR) by letter dated 26 September to the OAG for the review of the following 6 core Family Laws:
 - a. **Infants Ordinance 1961**
 - b. **Marriage Ordinance 1961**
 - c. **Divorce and Matrimonial Causes Ordinance 1961**
 - d. **Maintenance and Affiliation Act 1967**
 - e. **Family Safety Act 2013**
 - f. **Family Court Act 2014**

Terms of Reference

- 1.3 On 2 October 2018, OAG approved the TOR as follows:
 - a. To review the effectiveness of the existing family laws of Samoa;
 - b. To research relevant local, regional and international best principles and practices, review and consult with the stakeholders/public on the same; and
 - c. To make recommendations on an appropriate legal framework on family laws that serve the needs of Samoa.
- 1.4 In an attempt to clarify and identify the most pressing matters in the 6 Family laws requiring review, discussions took place in October 2018 with the Honorable Prime Minister and the former Chief Justice respectively to discuss priority issues to be addressed. Their views have assisted inform the work plan to guide the Commission in

this much needed review. In further discussions, it was decided that the most practical approach to take will be to review all the 6 Family laws concurrently, with each law given individual attention, research and analysis.

Law Reform Process:

Preliminary research and consultations

- 1.5 Needless to say, any review of the Family laws must examine each of the laws as they stand, what amendments have taken place since each law was enacted, the relevant case law and comparable jurisdictional analysis. This is crucial information to inform the public and stakeholders, to assist with their submissions to respond to the questions in this Discussion Paper.
- 1.6 The Commission carried out preliminary consultations with some members of the Judiciary in the months of February and March 2019. Their views have informed the questions raised in this Discussion Paper.

JUDICIARY		
1.	Former Chief Justice Sapolu	1 Nov 2018
2.	Justice Leiataualesa Daryl Clarke	25 Feb 2019
3.	Justice Tuala-Warren	26 Feb 2019
4.	Judge Talasa Saaga	5 March 2019
5.	Judge Alalatoa Papalii	19 March 2019

- 1.7 The Commission also utilized the opportunity by letter dated 16 April 2019 circulated to all members of the Samoa Law Society to seek their views on the 6 Family laws under review. To date, no submissions were received from the Society.

Public Seminars

- 1.8 The Commission was very fortunate to secure funding from the **Sisters for Change** (an Organization based in London) to fund a number of Public Awareness Seminars in both Upolu and Savaii in the months of July, September and October 2019. The purpose of these Awareness Seminars (the first of its kind) was for the Commission **to explain to the public the family laws and how they apply to the daily operations of the family institutions or aiga.** It is crucial for the public to be well informed of the 6 Family laws before providing their input when consultation commences in 2020.

1.9 The Tables below highlights the Seminars undertaken in July, September and October by the Commission:

UPOLU & SAVAII FAMILY LAW AWARENESS SEMINARS (JULY 2019)		
Date	Location & Venue	Attendance
Monday (29 July 2019)	TATTE Conventional Center, Sogi, Upolu.	198
Wednesday 31 July 2019	Apitaga o Pisaga, Salelologa, Savaii.	101

SAVAII FAMILY LAW AWARENESS SEMINARS (SEPTEMBER)		
Date	Location & Venu	Attendance
Tuesday 24 September 2019	From Neiafu to Falelima (10+ villages)	124
Wednesday 25 September 2019	From Fagafau to Taga (10+ villages)	141
Thursday 26 September 2019	From Aopo to Patamea (10+ villages)	122
Friday 27 September 2019	From Gataivai to Pu'apu'a (10+ villages)	167

UPOLU FAMILY LAW AWARENESS SEMINARS (OCTOBER)		
Date	Target area	Attendance
Tuesday 15 October 2019	<ul style="list-style-type: none"> • Falelatai agai i Apia • Falevao agai i Apia • Tiavi agai i Apia • Talafatai o Apia 	56
Wednesday 16 October 2019	<ul style="list-style-type: none"> • Lefaga, Safata ma • Siumu 	79
Thursday 17 October 2019	<ul style="list-style-type: none"> • Falealili 	71
Friday 18 October 2019	<ul style="list-style-type: none"> • Lotofaga agai Lepā ma • Aleipata 	73
Monday 21 October 2019	<ul style="list-style-type: none"> • Fagaloa 	30

1.10 Also in the month of October 2019, the Commission held Seminars with the Public Sector of Samoa. The Table below highlights the Seminars undertaken by the Commission to date:

PUBLIC SECTOR FAMILY LAW AWARENESS SEMINARS (OCTOBER 2019)		
Date	Government Ministries & Constitutional Offices	Attendance
2 October 2019	(1) Ministry of Justice and Courts Administration (2) Ministry of Police (3) Attorney General's Office (4) Ministry of Foreign Affairs and Trade (5) Ministry of Public Enterprise (6) Ministry of Communication and Information Technology (7) Ministry of Works, Transport and Infrastructure (8) Ministry of Commerce, Industry and Labour (9) Ministry of Education, Sports and Culture (10) Office of the Ombudsman (11) Samoa Fire and Emergency Services Authority (12) Public Service Commission (13) Samoa Bureau of Statistics (14) Samoa Audit Office	22
Date	Statutory Bodies & State Owned Enterprises	Attendance
3 October 2019	(1) Public Trust Office (2) Unit Trusts of Samoa (3) Samoa Airport Authority (4) Gambling Control Authority (5) Samoa Post Limited (6) Samoa Trust Estate Corporation (7) Samoa Shipping Corporation (8) Samoa Umbrella for Non-Governmental Organization (9) Samoa Agriculture Store Ltd (10) Institute of Directors (11) Samoa Sports Facilities Authority (12) Secretariat of the Pacific Regional Environment Program (13) Development Bank of Samoa (14) Electric Power Corporation (15) Office of the Regulator (16) Samoa Qualifications Authority (17) Samoa Tourism Authority (18) Accident Compensation Corporation (19) Samoa Land Corporation (20) Office of the Electoral Commissioner	27

- 1.11 The aim of this Discussion Paper is to provide a record of the findings of the Commission’s preliminary research and analysis, consultations and public seminars undertaken to date.
- 1.12 Relevant questions are also formulated to guide input from the public. Each family legislation under review is discussed under the following headings.

- a. Background
- b. Amendments
- c. The Act in detail
- d. Judiciary’s Comments
- e. Other Jurisdictions
- f. Case Law analysis
- g. Public Seminars
- h. Discussion Questions

2. THE FAMILY LAWS OF SAMOA

This review is on Samoa’s 6 core legislation providing for matters relating to the ‘family’ institution:

1. Infants Ordinance 1961
2. Marriage Ordinance 1961
3. Divorce and Matrimonial Causes Ordinance 1961
4. Maintenance and Affiliation Act 1967
5. Family Safety Act 2013
6. Family Court Act 2014

These 6 laws consist of 3 pre-independence laws and 3 post-independence laws. These laws are under the administration of the Ministry of Justice and Courts Administration (“MJCA”).

2.1 INFANTS ORDINANCE 1961

Background

- 2.1.1 The Infants Ordinance 1961 (“IO 1961”) is an Ordinance to consolidate and amend certain enactments relating to infants and children. It is 58 years old, and it commenced on 28 September 1961. It is of 7 Parts, 29 sections and is administered by the Ministry of Justice and Courts Administration

Amendments

- 2.1.2 Since commencement, the Ordinance has been amended in 7 Amendment laws times in the following manner:
- i. sections 2, 3, 5, 6, 8, 10, 15, 16, 17, 18, 19, whole of Part V, 25, 26 were amended

- by the Infants Amendment Act 1966;
- ii. sections 12 and 20 were amended by the Fines (Review and Amendment) Act 1998 by the insertion of “5 penalty units”;
- iii. section 27 was amended by the Births, Deaths and Marriages Registration Act 2002 by deleting the word “Registrar-General;” and substitute with the words “Registrar & Registrar appointed under the Births, Deaths and Marriages Registration Act 2002”;
- iv. section 2 was amended by the Infants (Adoption) Amendment Act 2005 by inserting new definitions (adoption agency, citizen, overseas adoption); a new section 7A was inserted after section 7; a new section 9A was inserted after section 9;
- v. section 12 was amended by the Family Safety Act 2013 by substituting “14” with “18
- vi. section 2 was amended by the Infants Amendments Act 2015 by the substitution of the definition of “overseas adoption”; section 7A was amended by the same Amendment Act by the insertion of a new subsection (5).
- vii. Infants Amendment Act (No.2) 2019 (passed 17 December 2019, to commence 1 January 2020).

I. The Infants Ordinance 1961 in Detail

The Infants Ordinance 1961- in Detail	
Sections of the IO 1961	Summary of provisions
Section 1	Short title: Infants Ordinance 1961
Section 2	Interpretation: defines important terms used throughout the Act
Section 3	Principle on which questions relating to custody, etc..., of infant to be decided- Where in any proceeding in any Court the custody or upbringing of a child is in question the Court in deciding that question shall regard the welfare of the child as the first and paramount importance.
Section 4	Application regarding custody, etc. - This section provides that either parent of the child may apply to the Court for an order regarding the custody and the upbringing of the child. Unless the Court sees that the parents of the child are unfit to have custody and to take care of the child then the Court may appoint some other person that the Court sees fit to be the child’s guardian
Section 5	Variation or discharge of order- A Court may at any time in its discretion on the application of any interested person vary, modify or discharge any order made under section 4 subject to such conditions as the Court thinks fit: PROVIDED THAT the District Court may not vary, modify or discharge such an order made by the Supreme Court.
Section 6	Procedure and appeal- (1) An application to any Court under this Part shall be made by way of motion. (2) Where an application under this Part is made to the District Court and that Court considers that it would be

	preferable for the Supreme Court to deal with the application, the District Court may remove the application into the Supreme Court. (3) Where, on any application under this Part not removed pursuant to subsection (2), the District Court makes or refuses to make an order, an appeal shall lie to the Supreme Court.
Section 7	Power to make adoption orders- This section provides for the powers of the Court to make an adoption order upon application made by a person (whether domiciled in Samoa or not). It also provides who an adoption order can be made for. i.e. 2 spouses jointly or either of father or mother of the infant, either alone or jointly. No person shall be adopted by more than 1 person.
Section 8	Conditions on which orders may be made- This section provides the requirements to be satisfied by an applicant before an adoption order is granted. For example, the applicant is of good repute and a fit and proper person to have the care and custody of the infant, the welfare and interest of the infant will be promoted, the infant over the age of 12 consents to the adoption. The Court may dispense with the consent of a person who is permanently absent from Samoa or is incapable of giving consent or is for any reason unfit to have custody of the infant or a parent has deserted the infant.
Section 9	Prohibition of payments in consideration of adoption- Except with the consent of the Court, it shall not be lawful for a person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption.
Section 9A	Regulation of adoption agencies- It provides for a requirement that no person in Samoa or elsewhere shall act as or call themselves or hold themselves out as an adoption agency unless the person has the prior written authorization from the Attorney General. It provides for criteria that a person must satisfy before the Attorney General provides authorization. The Attorney General may revoke an authorization if he or she is satisfied that the person has failed or likely to failed to meet the prescribed criteria. It also provides how an Adoption Agency Code of Conduct can be made and amended to regulate adoption agencies. Failure to comply with the any of the requirements commits an offence and is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 2 years, or both.
Section 10	Effect of adoption order- It provides that when an adoption order is made, the adopted parents become the official parents under law and all the rights and legal responsibilities of natural parents are terminated, except the right of the infant to take property as heir or next of kin of his or her natural parents directly or by right of representation. Whilst the adopted parents now become the legal parents of the adopted infant, his or her rights to property of the adopted parents are limited as stated in section 10(1)a, b, c.
Section 11	Adoption order may be varied or discharged- An adoption order may be varied and discharged by the Court subject to such terms and conditions as it thinks fit. When an order of adoption is being discharged with certain

	conditions named in the discharging order, the infant and his or her natural parents are taken for all purposes, to be restored to the same position inter se as existed immediately before the order of adoption was made; PROVIDED THAT the discharge of the order does not affect anything lawfully done while the order of adoption was in force.
Section 12	Punishment for ill-treatment and neglect of children- A person having the custody or control of any child under the age or apparent age of 18 years who in a manner likely to cause the child unnecessary suffering or injury to its health willfully ill-treats, neglects, abandons, or exposes the child or causes or procures the child to be ill-treated, neglected, abandoned, or exposed commits an offence and is liable to a fine not exceeding 5 penalty units or to imprisonment not exceeding 1 year.
Section 13	Save for proceedings under other enactments- Where an offence against this Part is also punishable under any other enactment, it may be prosecuted and punished under this Ordinance or such other enactment, but no person shall be punished twice for the same offence.
Section 14	Right of parent, etc., to administer punishment- Nothing in this Part takes away or affects the right of a parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to the child.
Section 15	Appointment of child welfare officers- The Ministry of Police and prisons may, by notice in the Samoa Gazette, appoint in an honorary, capacity or otherwise any fit and proper persons of either sex to be child welfare officers for Samoa as the Minister shall determine. A child welfare officer holding office as such on the coming into force of this Ordinance is taken to have been appointed under this section.
Section 16	Power of the Court and appeal- if it appears to the Court on its own motion in the course of proceedings for an offence or at any time on the application of a constable, that any child is neglected or living in a place of ill repute or under an environment unsuitable for the child, the Court may order for the committal of that child to a child welfare officer. Where the District Court makes or refuses to make an order under this section, an appeal shall lie to the Supreme Court.
Section 17	Powers of child welfare officer- The child welfare officer has the same powers and rights on the child as if he or she were the guardian of the child appointed by a Court under Part 1. Subject to the directions of the Court, the child welfare officer shall care for the child in accordance with any directions prescribed by regulations
Section 18	Court may give directions- The Court may at any time in its discretion on the application of a child welfare officer or any interested person give directions relating to the upbringing, education, employment, treatment, control, or discipline of any child in respect of whom an order of committal made under section 16 is in force
Section 19	Variation or discharge of order- A Court may vary, modify or discharge any order made under section 16 and the order shall, unless a Court otherwise orders, cease to have effect upon the child reaching the age of 16 years: PROVIDED THAT the District Court may not vary, modify or discharge an order made by the Supreme Court.
Section 20	Offences- A person commits an offence who, during the currency of an

	order of committal obstructs, interferes with, or hinders a child welfare officer in the exercise of his or her powers under this Part or, removes or attempts to remove or take away the child so committed from any place without the consent of a child welfare officer. The penalty is imprisonment for 1 year or to a fine not exceeding 5 penalty units.
Section 21	Certain contracts to be subject to jurisdiction of Court- it provides that certain contracts entered into by infants are to be subject to the jurisdiction of the Court. Subsection 1(a, b, c) provides for matters taken into account by Court to determine whether the contract is void or voidable.
Section 22	Prior to the approval of Court- Despite anything in section 21 or in any rule of law, no contract is void, voidable or unenforceable by reason of the fact that any party thereto is an infant if, before the contract is entered into by the infant, it has been approved on behalf of the infant by the District Court under this section. An application to the District Court under this section may be made by the infant on who behalf the contract is to be approved or by a parent or guardian of the infant or by any other party to the contract.
Section 23	Contract by infant Samoans - Section 366 of the Samoa Act 1921 (NZ) has no application to any contract to which section 21 of this Ordinance applies or which has been approved by the District Court pursuant to section 22 of this Ordinance.
Section 23A	Settlement of claims by infants- allows the Court to authorise the execution by or on behalf of an infant of a release of a claim.
Section 24	Legitimation by marriage of parents – Allows a person born before the marriage of his or her parents (whether before or after the IO commenced) whose parents have intermarried or intermarry to be a legitimate child of the marriage from birth.
Section 25	Rights of legitimated persons and those claiming under them – allows a person legitimated under section 24 to the same estates, rights, and interests as if he/she was born in wedlock.
Section 26	Application for legitimation order – a person may apply for a legitimation order and the Court on being satisfied in the premises, may make such order
Section 27	Copy of order to be sent to Registrar – copy of an Order under section 26 to be sent to the Registrar of births.
Section 28	Regulations – HOS may make Regulations under this IO
Section 29	Repeals and savings – lists in the Schedule the repealed laws
	Schedule - General Laws Ordinance 1931, No.3 (sections 24, 25, 26, 27 and 28); and Ordinance Amendment Ordinance 1955 No.16 (sections 6 and 7).

II. Judiciary's Comments

2.1.3 The Judiciary raised the following.

- The majority of concerns raised by the Judiciary are on adoption (Part 2 of the Infants Ordinance 1961).

- There is a general view that the current Ordinance needs to be improved and updated, and for all provisions on adoption to be developed into a standalone adoption legislation.
- In the application for adoption, some of the judges expressed concerns on the following:
 - Applicants need not have prior conviction and reference for good character must be limited to lawyers, priests or 1 member of the community.
 - To clarify in the law whether applicants in de facto relationships should be recognised. The judges have taken different interpretation on this issue.
 - To clarify in the law whether same sex couples can be ‘applicants’ as the current provision is open to interpretation.
 - The issues of multiple applications for adoption- these applicants must provide information of previous adoption before any new adoption is granted.
 - The age of a child must adhere to the CRC Convention (18 years and under) and this age should apply to adoption and signing a contract.
- In relation to overseas adoption, there have been cases where children adopted have been enslaved and abused. There is a need for the courts to have in place checks and balances before granting an adoption order to address such issues. For example, judges should be authorised to seek additional information or follow children that have been adopted. There should be guidelines in place to help judges monitor adoptions. E.g adopted parents to report back to the judge on the state and welfare of the child within a period of time.
- For customary adoption, Samoa must consider this like the adoption recognised during German times.
- In custody and guardianship, the best interest of the child must prevail and in cases where both parents are unfit, guardianship can be granted to grandparents.
- For the protection of children, the judges must do more than just relying on application and documents placed before them. The law should clarify factors for the judges to consider to ensure an adoption is in the best interest of the child.

2.1.4 The Table below contains the comments from some members of the Judiciary during preliminary consultations.

Judiciary Comments on the Infants Ordinance 1961		
Key Themes	Judiciary Comments	Judiciary Issues Posed
Adoption	There is a need to develop a separate or standalone legislation to deal with adoption matters only. Justice Tafaoimalo Tuala-Warren submitted to toughen our adoption requirements in a proposed adoption legislation	Should there be standalone legislation dealing specifically with adoption matters?
Application	Justice Leiatualesa Darryl Clarke raised in the	Should there be a new legal

<p>for adoption</p>	<p>consultations that a person applying for adoption should not have prior convictions. With regards to adoptions by de-facto couples, Justice Tafaoimalo Tuala-Warren raised that we need to clarify Samoa’s position on de-facto adoptions in legislation. The same issue was raised by Judge Talasa Saaga and Judge Alalatoa Papalii. It was raised that perhaps Samoa needs to clarify the definition of de-facto relationship for purposes of adopting a child. With regards to adoptions by gay couples, Justice Leiataualesa Darryl Clarke raised that our law should clarify whether gay couples are allowed to adopt or not because the current law is open to interpretation. It should be clear in the legislation whether gay couples are allowed to adopt or not. Justice Leilani Warren in her own opinion does not see same-sex adoption being provided for in legislation any time soon. Judge Talasa Saaga raised the issue of multiple applications. She raised that there is a need to clarify to applicants that they require to provide information on the previous adoptions before any new adoption is granted. Justice Clarke raised that reference for good character should be limited to lawyers, priests or 1 member of the community to raise with the judges when consulted. Justice Leiataualesa Clarke also raised to reconsider the age eligible to be adopted. Currently 21 years but reconsider to be under 21 years. Justice Tafaoimalo Tuala-Warren suggested to review and amend all relevant legislations to take CRC definition of child for consistency amongst legislations. This is also supported by Judge Alalatoa Papalii, she raised to review and amend the relevant legislations to be consistent in their definitions of what is considered a child in terms of age for adoption or signing a contract.</p>	<p>framework to clarify who may apply for adoption? What documents that are needed to apply for adoption? Should we reconsider changing the age of adoption from 21 years to 18 years to be in line with the CRC?</p>
<p>Overseas Adoption</p>	<p>Former CJ Sapolu raised in the the consultations that there is a concern of enslavement and abuse of children that have been adopted overseas. He explained that there is a need for the courts to have checks in place before granting an adoption (court orders)</p>	<p>Should there be a requirement that an adoption order be made only if it is in the best interest of the child?</p>
<p>Customary Adoption</p>	<p>Former CJ Sapolu raised to consider customary adoption (i.e.) adoption during German times should be recognized?</p>	<p>Should customary adoption be recognized in a proposed new legal framework?</p>
<p>Custody/Guardianship</p>	<p>Justice Leiataualesa Darryl Clarke raised that the court must take into account what would be for the best interest of the child (i.e.) where</p>	<p>Should a wider range of persons be able to apply for a custody of the child in instances where</p>

	both parents are not fit parents, custody can be granted to other relatives such as grandparents	parents are not fit to care for their children?
Protection of Children	Justice Tafaomalō Tuala-Warren suggested to clarify and set out factors for the judges to look at/consider to determine what is in the best interest of a child to be adopted. She further explained that the judges should require to do more to determine what is in the best interest of the child than just looking at documents submitted/filed.	Should there be a requirement for judges to determine what is in the best interest of the child before granting an adoption order?
Parental Relationship	Judge Talasa Saaga raised that judges need to be authorized to ask for/require additional information to ensure the safety and wellbeing of children. In addition, legislations need to have more stringent requirements and guidelines that will help judges to monitor adoptions. This view is also supported by Judge Alalatoa Papalii. She raised that there should be a monitoring process, where adopted parents need to report back after a specified period to report on the state of the child and their welfare. If any unsatisfactory matters arise the Judges may revoke an order of adoption.	Should there be a requirement for adopted parents to report back to ensure the state of the child and their welfare?

III. Other Jurisdictions

Analysis

2.1.5 An analysis of the Table below on other jurisdictions allow for some findings below:

- Samoa, Fiji, New Zealand and Australia all have legislation governing infants or children.
- Unlike Samoa and Australia, Fiji and New Zealand have more modern legislation on children.
- The comparable analysis were done on the basis of 5 Key Themes- welfare of the child, parental responsibility, custody/guardianship, adoption and child protection. From these key themes:
 - All jurisdictions have specific parts on welfare of children (best interest of the child).
 - Unlike Fiji, New Zealand and Australia, Samoa does not have provisions on parental responsibility.
 - In relation to custody/guardianship, Samoa and Fiji have more general provisions on who can apply for custody or guardianship of the child. For example, either parent or a person concerned with the care of the child.
 - New Zealand and Australia expressly provides for other persons who can apply for custody/guardianship. For example, another member of the child's family (NZ) and grandparents (Australia).

- Whilst Samoa, Fiji and New Zealand have similar provisions on adoption, Australia is unique in that prospective parents must first express interest in adoption and then the successful applicant is chosen from the prospective adoptive parents register.
- In relation to child protection, Samoa has more detailed provisions in section 16 of the IO 1961. Fiji does not have such provisions. New Zealand and Australia have express provisions in their relevant laws.

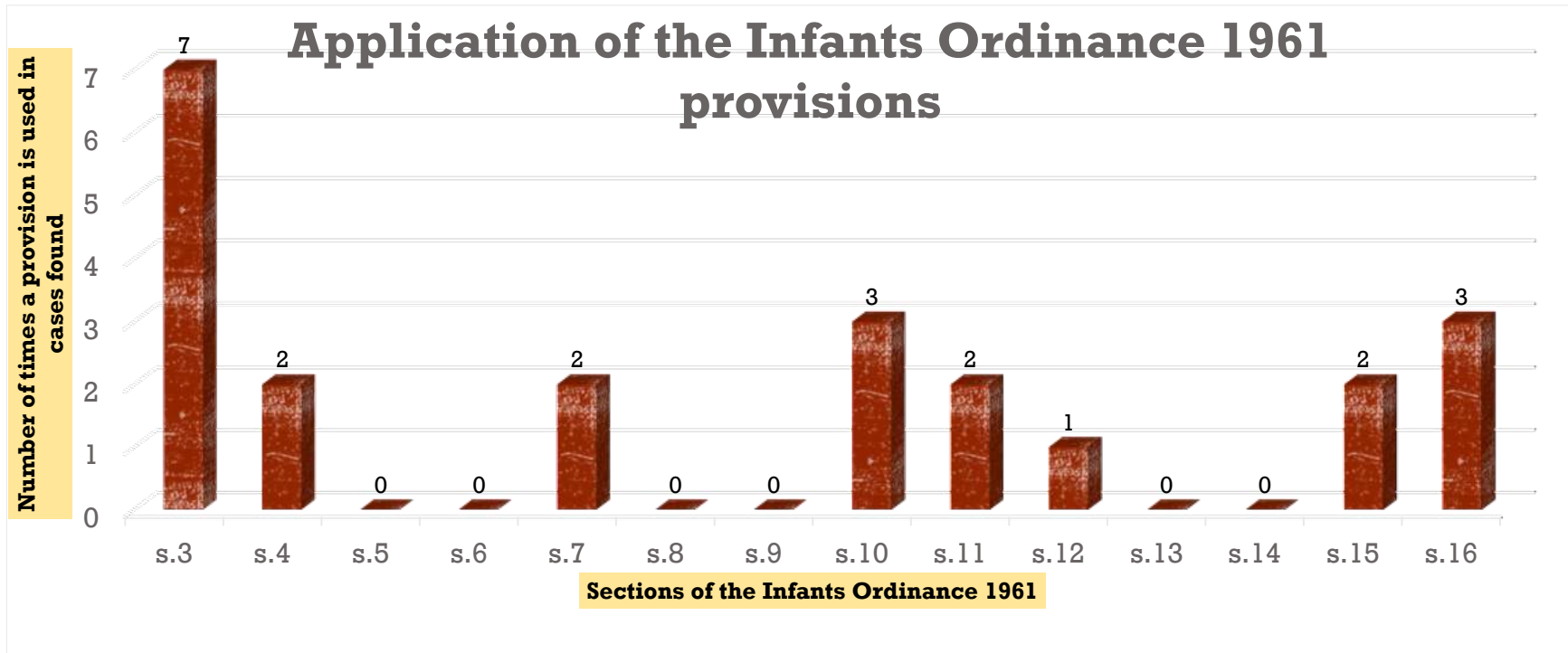
OTHER JURISDICTIONS				
Key Themes	Samoa	Fiji	New Zealand	Commonwealth (AU)
Welfare of the Child	Welfare of the child S 3 Infants Ordinance 1961	Best Interest of the Child S 121 Family Law Act 2003	Child's welfare and best interest ss 4 and 5 Care of Children Act 2004	Best interest of the child ss 60 CA-60 CC Family Law Act 1975 (Cth) (AU)
Parental Responsibility	Not a feature of the Infants Ordinance	Parental Responsibility is defined as each parent has parental responsibility for the child despite changes in the nature of the relationship of the child's parents	Guardianship is defined as the father and mother of a child are guardians jointly of the child	Parental Responsibility is defined; in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children
Custody/Guardianship	Application for custody/parenting orders; 'Either parent' of a child may apply to the Court for an order regarding the custody and upbringing of a child s 4(1) Infants Ordinance 1961 However, the Court may appoint another person to be guardian of the child if it considers that the parents are unfit to have custody. s 4(2) Infants Ordinance 1961	A parent of the child; a person representing the child; or any other person concerned with the care, welfare or development of the child. s 65 Family Law Act 2003	A parent of the child; a guardian of the child; a spouse/partner of a parent of the child; Another member of the child's family/whanau/other culturally recognised family group, and who is granted leave to apply by the court; Any other person granted leave to apply by the court. s 47 Care of Children Act 2004	A parent of the child may apply to the Court for an order or a grandparent may apply to the Court for an order and; Any other person concerned with the care, welfare or development of the child s 65 C Family Law Act 1975 (Cth) (AU)
Adoption	Persons who can apply for adoption S 7 Infants Ordinance 1961	Persons who can apply for adoption Ss 3& 21 Adoption of Infants Act Cap 58	Persons who can apply for adoption S 3 Adoption Act 1955	Persons who can apply for an adoption order - Where prospective adoptive parents must first express interest in adoption, and are then chosen from the prospective adoptive

				parents register. Parts 4, 6, 7 Adoption Act 2009 (Qld) (AU)
Child Protection	Destitute and delinquent children are children; living in a place of ill repute; neglected, indigent, or delinquent; not under proper control; and children living in an environment detrimental to physical or moral wellbeing <u>Order</u> : the Court may make an order for the committal of a child to the care of a Child Welfare Officer. s 16 Infants Ordinance 1961	Not a feature of the Family Law Act 2003	Child or young person in need of care and protection ss 67, 101, 110 Oranga Tamariki Act 1989 Children's and Young People's Well-being Act 1989 <u>Order</u> : custody /guardianship orders	Child Protect Orders Who? Child or young persons in need of protections- Orders: Appointment of guardians/custody order Dictating behaviour of parent Supervision Permanent care order ss 59, 61 Child Protection Act 1999 (Qld) (AU)

IV. Case law analysis

Analysis

2.1.6 It is accepted that the databases available to the SLRC (paclii.org mainly) does not hold **all** of Samoa’s family law court decisions. The SLRC operates on what is available for analysis. An analysis of the case law can be summed up in the Bar Graph below:



Note: In the 16 cases, some referred to more than one provision, hence the total of 22 cases reflected in the above bar graph.

- Out of the 69 family related cases found in the Commission’s preliminary research, 16 cases refer to the IO 1961.
- Of these 16 cases analysed, the majority of cases (7) have either used or applied section 3 of the IO 1961(Principle on which questions relating to custody, of infant to be decided). This section explains that in any proceeding in any Court, the welfare of the child is of the first and paramount importance.
- This is closely followed by 3 cases on section 10 (Effect of adoption order) and 3 cases on section 16 (Power of Court and appeal). The cases on section 10 were effect of an adoption order; that if an adoption order has been made, the adopting parent is for all purposes civil, criminal, or otherwise taken in law to be the parent of the adopted infant. For section 16, the cases were on the power of the court to make an order for the committal of a child to the care of a child welfare officer when a child is neglected or living in an unsafe environment.
- **Noteworthy** are the following cases:
 - 2 cases apply section 7- this section deals with the Courts jurisdiction to make adoption orders.
 - 2 cases apply section 11- this provision provides that adoption order may be varied or discharged. The provision explains that the Court may in its discretion vary or discharge an order of adoption subject to such terms and conditions as it thinks fit.
 - 1 case applies section 12- this provision states that it is an offence to mistreat, neglect, abandon or abuse children. Any person who commits such an offence is liable to a fine not exceeding 5 penalty units or to imprisonment not exceeding 1 year.
 - 2 cases apply section 15- this provision appoints a Child Welfare Officer and three cases apply s 16; this provision explains that if the Court finds in the course of a proceeding, a child has been living in a place of ill repute or is neglected, or not under proper control or is living in an environment that is unfavourable, the Court may make an order for the committal of that child to the care of a child welfare officer.

2.1.7 The following Table highlights these 16 cases and their summaries:

TABLE OF CASE LAW – SAMOA		
	Case Law	Summaries
1	<i>Wagner v Radke</i> [1997] WSSC 6; Misc 20701 (19 February 1997)	This is an international child abduction case involving an 8 year old boy and his German parents. An application by the applicant was granted by the Court Application for an order to set aside custody of the child granted by the Samoan courts.
2	<i>Infants Ordinance 1961 (Part II) v Chong</i> [1998] WSSC 9; Misc 20384 (14 May 1998)	This case is about an application made to the Court by the natural parents to discharge an adoption order. It was discovered that the application for the adoption of this child was for the purpose of facilitating an application for NZ citizenship of the adoptive guardians rather than to serve for the child’s best interests and welfare. The infant at all times had been in the custody of his natural parents and the adoptive parents have never actually had the care and custody of this child.
3	<i>In re Application for Adoption by Solomona</i>	This case is about an application for an order to adopt an infant born out of wedlock in the USA

	[1999] WSDC 1 (1 January 1999)	It was held that the court has no jurisdiction to entertain any application for the adoption of infants born outside Samoa The legislation in the judge's view prevents any child not born in Samoa from being adopted.
4	S & M v District Court, Apia [2000] WSSC 42 (16 June 2000)	Section 7 (1) of the Infants Ordinance 1961 provides that the Court may upon application made by any person (whether domiciled in Samoa or not) make an adoption orders in respect of any infant. In this case the court held that yes section 7 (1) of the Infants Ordinance 1961 deals with the Court's jurisdiction to make adoption orders. The Births and Deaths Registration Ordinance 1961 deals with the registration of births and deaths which is a different matter. Therefore the interpretation of section 7 (1) which deals with the question of jurisdiction should not be unduly influenced by the mechanical provision of the Births and Deaths Registration Ordinance 1961 which deals with the question of registration
5	In re application of Masunu Utumapu [2-4] WSDC 6 (WSDC) 6 (30 November 2004)	Application for an order to discharge the order of adoption made by the Court The judge concluded that the court has jurisdiction to entertain and deal with any application under s 11 of the Infants Ordinance 1961 for the variation or discharge of an adoption order regardless of the age of the adoptee
6	Stowers v Stowers [2010] WSSC 30 (14 June 2010)	Discussion on the issue of an adoption order The plaintiffs who are the natural children of Peter Stowers who had been legally adopted out by order of adoption dated 16 March 1993, obtained from the District Court an order discharging that order of adoption The plaintiffs have no entitlements under the estate of Peter Stowers because they had been legally adopted out
7	Police v Uarota [2011] WSDC 2 (5 August 2011)	There are two individual charges of ill-treatment and neglect of children The elements of the offence are fivefold; the accused must have custody or control of the child; the child must be under the age of 14 years; the accused must have ill-treated the child; the ill-treatment must be willful; and the ill-treatment of the child must be in a manner likely to cause the child unnecessary suffering or injury to his health. The accused was clearly in charge of looking after the children; the children were 18 months old at the time; the accused ill-treated the children by punching them on the heads, pulling the children's hair, holding their heads longer than necessary under the water when bathing them and swearing at them; the accused deliberately ill-treated the children to do what she wants them to do, the above ill-treatment caused unnecessary sufferings to the children, there were bruises on their bodies, one was limping and the other was always swearing when he was angry
8	Stowers v Stowers and Fruean and Public Trustee [2012] WSCA 11 (31 May 2012)	Appeal (by defacto wife & children against SC decision ruling only legitimate wife and child from 1st marriage is entitled to estate of late Peter Stowers. The effect of adoption order - ... the order of adoption shall thereby terminate all the rights and legal responsibilities and incidents existing between the infant and his or her natural parents <u>except the right of the infant to take property as heir or next of kin of his natural parents directly or by right of representation</u> Decision: Appeal allowed
9	Stowers v Stowers	Discussed interpretation by one of the parties of the Effect of an

	[2012] WSSC 30 (7 May 2012)	adoption order under this Ordinance Section 10 (1) provides that an order of adoption shall confer the name of the adopting parent on the adopted infant together with such proper or Christian name as the Court may fix and that the adopted infant for all purposes civil and criminal, all legal and equitable liabilities, rights, benefits and privileges of the natural relation of parent and child shall be considered in law to be the child born in lawful of the adopting parent
10	Samoa Victim Support Group v Inoke [2-13] WSDC 4 (18 September 2013)	United Nations Convention on the Rights of the Child, Article 9 (1) State parties shall ensure that a child shall not be separated from his or her parents against their will except when authorities in accordance with applicable law and procedures that such separation is necessary for the best interest of the child The court held that although SVSG has only applied for a guardianship order it is suggested that a custody is also necessary for Baby T because she needs an adult to make decisions about her care
11	VC v II [2013] WSDC 6 (18 September 2013)	This case considers guardianship custody of Baby T The father has had no involvement when Baby T was born and the mother was unable to care for the child The natural mother agreed to (I.T) a man's request whom she is not related to, to give up her baby for him to adopt to relatives in American Samoa. There was a report that the child was being abused by I. T and he was charged with actual bodily harm Section 3 provides that where in any proceeding in any Court the custody or upbringing of a child is in question the Court in deciding that question shall regard the welfare of the child as the first and paramount importance. Section 4 then goes on to provide that either parent of a child may apply to the Court for an order regarding custody of a child unless if it appears to the Court the parents are unfit to have custody of the child Baby T has been abandoned by her birth parents It is appropriate that SVSG continue to care for Baby T for now
12	BM v LG [2013] WSDC 7 (21 October 2013)	The Supreme Court dissolved the marriage between the two parties and granted to the respondent custody of the children reserving to the applicant reasonable access. The welfare of the child must be the first and paramount consideration when considering the custody, guardianship, contact with and upbringing of a child The court considered that the children must have continuing relationships with both parents and family, including grandparents
13	SVSG v Falealili [2014] WSFC 2	This case is regarding an application for a protection order against S's parents, she cannot return to their home Interim custody and guardianship of S is granted to SVSG. It is in her best interests that she remain with SVSG as there has been physical and sexual abuse, and intimidation against her by the Respondents Vaa and Sofara. Furthermore the environment within which her mother lives, is not safe for S
14	MM v LK [2016] WSFC 3	This case considers custody of child, safety and interests of child, they are of paramount importance to determine when considering granting an order
15	Tuugamusu v Tuugamusu [2017] WSDC 12 (3 March	The Applicant lodged an application in the Family Court for the custody of her two younger children Atinae Jr Maroyen Apolimatai Tuugamusu an 11 year old male infant and Novhatelmsia, a 2 years old female

	2017)	infant. She also seeks reasonable access to her eldest son Tuugamusu and does not oppose the Respondent having custody of her eldest son. The Respondent opposes the Application and seeks full custody of all 3 children on the basis that it would be in the interest of all the children if they are raised together. The Respondent has also raised the issue of the Applicant's alleged infidelity as a relevant consideration in support of his application for the custody of the children. The court held that the custody of the children to be with the respondent.
16	<i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)	The court held that under this Ordinance, application of custody and upbringing of children may also be brought without restrictions as under the DMCO. To determine the question before the Court, the primary issue is whether the Court has jurisdiction to make orders under the DMCO on an application for custody and maintenance of children, and division of matrimonial properties brought in proceedings after a decree of divorce has been granted. If no, then the claim is untenable and cannot succeed.

V. Public Seminars

Analysis

2.1.8 The public seminars conducted by the Commission to date raise common concerns provided in the Table below. An analysis of these issues allow for some common concerns.

- The most common concerns/questions asked were in relation to adoption- issues such registering newborns under different parents/grandparents without the proper adoption process, adoption by relatives, multiple adoptions, adopted child returned to natural parents due to abuse and adoption in de factor relationships.
- Other concerns raised were in relation to the registration of children where the parents are not married
- There were also concerns on the legitimation of children and custody of children.

2.1.9 The Table below provides a summary of public concerns raised in the public seminars on the IO 1961.

PUBLIC SEMINARS – ISSUES RAISED ON INFANTS ORDINANCE 1961	
Welfare of children	1. To ensure safety of children – a general comment in relation to sexual crimes with minors/children – a very serious criminal offence – death penalty/life - should not have parole
Registration of children where the parents are not married	2. Which last name will the children take? 3. Can the mother still register the children under the father's name even though they are not married? 4. What about mothers who register their children under their last name? Can that be done? 5. Need clarification on the process of registration of children – what are the required documents?

	<p>6. Can a child be registered under their grandparents where a daughter is impregnated before marriage (to fale)?</p> <p>7. How can a mother who has children from previous relationships register these children under the name of her now husband?</p>
Legitimation of children	<p>8. What is the difference between rights/entitlements of children born out of wedlock and children of marriage?</p> <p>9. Consider removing these provisions from the law – even if born before marriage – should still be referred to as legitimate children once parents marry</p>
Adoption	<p>10. Concerns raised about possible illegal adoption/registering newborns under different parent(s) especially in the villages so to avoid having to go through the adoption process – what can be done about these? How can this be addressed?</p> <p>11. What about cases of mothers who give birth then run away leaving baby behind – what does the law say about recording that baby’s information</p> <p>12. Propose that our laws should only allow for adoption to be made to relatives (prohibit adoption to non-relatives)</p> <p>13. Can an adoption order be revoked? How?</p> <p>14. If a couple are not married and are not living together but have children and the children have been raised by the mother since birth – the mother wants to adopt children overseas – does the biological father have any right to stop the adoption of these children? Does he still have a say?</p> <p>15. Can a child be adopted by relatives without having to go through the adoption process? (Do the laws of Samoa recognize customary adoption?)</p> <p>16. Need to specify and provide for criteria/requirements that need to be satisfied before an adoption is granted:</p> <p>17. How can the law help in cases where a child has been adopted but haven’t heard any information about the well-being of child?</p> <p>18. Propose to have 3-monthly reviews/follow ups in the laws to ensure the welfare of children being adopted.</p> <p>19. Also require the provision of criminal records (show credibility) and any other necessary evidence/proof of character of the adopted parents at time of application for the court’s consideration before an adoption is granted.</p> <p>20. How can parents bring back their children adopted overseas who end up facing abuse in their adopted families?</p> <p>21. Can a child be adopted a second time? (<i>For example: A adopts to B. B then adopts to C?</i>)</p>
Custody of children	<p>22. If children were taken and raised by grandparents because parents could not provide for them – the grandparents pass away – can the parents take the children back?</p>

VI. Discussion Questions

1. Please provide some thoughts on the reform of any of the following areas:
 - (i) adoption;
 - (ii) custody of infants; and
 - (iii) protection of children.
2. Should Samoa recognize customary adoption?
3. Is the procedure on the legitimation of children necessary?
4. How can the criteria/requirements for adoption (local and overseas) be set out more clearly?

2.2 MARRIAGE ORDINANCE 1961

Background

- 2.2.1 The Marriage Ordinance 1961 (MO 1961) regulates marriages in Samoa. It is a pre-independence law enacted by Parliament in 1961. It is 58 years old and comprises of 4 Parts, 22 sections and 2 Schedules.
- 2.2.2 Subsidiary legislation (Regulations) were also made under the authority of the MO 1961 in 1971 prescribing notices of intended marriages, supplementary documents to be filed and relevant fees (court documents). These were later revised in 1983.

Amendments

- 2.2.3 Since its enactment, the MO 1961 has been amended once in 2002 by the Births, Deaths and Marriages Registration Act 2002 (BDMA 2002). The amendments made are as follows:
- the term Deputy Registrar General throughout the MO 1961 is substituted with the term Registrar General appointed under the BDMA 2002;
 - Part 4 dealing with the registration of marriages is repealed. Registration of marriages is now dealt with and registered under the BDMA 2002;
 - Other sections of Part 5 (sections 22 – 29) relating to the registration of marriages are repealed.

I. The Marriage Ordinance 1961 in Detail

The Marriage Ordinance 1961 – in Detail	
Sections of the MO 1961	Summary of provisions
PART 1 - Preliminary	
Provides for the preliminary matters of the Ordinance (short title and interpretation).	
Section 1	Short title: Marriage Ordinance 1961
Section 2	Interpretation: defines the important terms used throughout the Ordinance
PART 1A - Administration	
Provides for administration matters (such as application of The Ordinance, Registrar charged with the administration of the Ordinance and appointment of marriage officers under the Ordinance).	
Section 3	Application of Ordinance: provides that the Ordinance applies to marriages of persons living in Samoa and the formalities of such marriage whether the marriage was solemnized in Samoa or elsewhere.
Section 4	Registrar and Deputy Registrar: Provides that the Registrar is charged with the administration of the Ordinance and the Deputy Registrar under the control of the

	Registrar shall have all the powers, duties and functions of the Registrar.
Section 5	<i>repealed by the BDMA 2002</i>
Section 6	Appointment of marriage officers: provides the Head of State appoints (by warrant) any Minister of religion or other persons the Head of State thinks fit as marriage officers. Such license may be revoked by the Head of State.
PART 2 – Restriction on Marriage	
Regulates the provisions on restrictions on marriage such as the types of relationships that are prohibited for marriage under the Ordinance, minimum age of marriage, consent to marriage of minors, marriages that may be held void and notice of marriages.	
Section 7	Prohibited degrees of relationships void: provides that First Schedule of the Ordinance lists out the types of marriages that are forbidden under the Ordinance. Also provides the types relationships through marriage that may apply to the Supreme Court for consent to marriage provided no termination of any marriage of either party has taken place. No marriage not forbidden in the First Schedule is void on the grounds of consanguinity.
Section 8	Validation of certain marriages already solemnized: provides that all marriages solemnised before the commencement of the Ordinance that would have been valid by virtue of section 7 are taken to have been lawfully made under the provisions of the Ordinance.
Section 9	Minimum age of marriage: provides the minimum age of marriage of husband to be 18 years of age and the wife to be 16 years of age. No marriage however is invalidated by a breach of the provisions of this section.
Section 10	Consent of marriage of minors: requires a marriage officer not to solemnise or record a marriage of a man under 21 years or of any woman under the age of 19 years without the consent of the parents or guardian of either party. No marriage is invalidated by a breach of this section.
Section 11	General provision relating to consents: provides that the consents under section 10 must be made in writing and witnessed by persons with their details in the consent to be given to the marriage officer.
Section 12	Marriages without marriage officer void: provides that a marriage carried out without the presence of a marriage officer is void.
Section 13	Marriages not to be void because of defects in procedure: except section 7 and section 12, no marriage is taken to be void by reason of error or defect in notice or declaration required before solemnisation where the identity of the parties is not questioned.
Section 14	Notice of marriage: requires the marriage officer not to solemnise a marriage unless a notice of intention of parties to marry is given to the marriage officer 10 days before the day of the marriage. The form of notice may be prescribed by the Head of State and the prescribed fee to be payable to Treasury.
PART 3 – Solemnisation of Marriage	
deals with how marriages are solemnised in Samoa and the period of solemnisation.	
Section 15	Mode of solemnisation: provides the mode in which a marriage should be solemnised in Samoa i.e. between the persons named in the notice given, with open doors and in the presence of the marriage officer and 2 or more witnesses.
Section 16	Marriage to be solemnised within 3 months of notice: provides that a marriage shall not be solemnised after the expiration of 3 months from the date of the notice

	of the intended marriage.
PART 4 – Registration of Marriages (Sections 17 – 29) repealed by the BDMA 2002	
PART 5 – Miscellaneous deals with miscellaneous provisions (offence provisions)	
Section 30	Offence to solemnise marriage contrary to provisions of this Ordinance: provides that it is an offence for a marriage officer to solemnise a wedding contrary to the provisions of the Ordinance or where there is lawful impediment to the marriage. The penalty upon conviction is a fine not exceeding 6 penalty units or an imprisonment term not exceeding 5 years.
Section 31	Offence to solemnise marriage contrary to provisions of this Ordinance: provides
Section 32	Offences in connection with false statements and improper solemnisation of marriages: provides that it is an offence for a person who makes false declaration for the purpose of this Ordinance and the penalty upon conviction is a fine not exceeding 4 penalty units or an imprisonment term not exceeding 2 years.
Section 33	Offences generally: provides that a person who fails to comply or contravenes the provisions of the Ordinance commits an offence and where no specific penalty is imposed is liable upon conviction to a fine not exceeding 1 penalty unit. Also provides the time limit in which no prosecution can be commenced under this Ordinance which is after the expiration of 3 years.
Section 34	Regulations: provides for the regulation making power to be vested in the Head of State on the advice of Cabinet to make regulations to give effect to the provisions of the Ordinance and includes prescribing form of publication of notices of marriage, forms and contents of declaration required and the form of words used by parties in a marriage the marriage officer in solemnising the marriage, and fees for doing any act under the Ordinance.
Section 35	Enactments ceasing to be part of law of Samoa, and savings: provides that the enactments provided in the Second Schedule ceases to be part of the law of Samoa once the Ordinance commenced.

II. Judiciary’s Comments

Analysis

- 2.2.4 As earlier stated (under ‘Introduction’ above), preliminary consultations were carried out with some members of the Judiciary in November 2018, and February & March 2019 respectively, to gauge their views they have in the application of 6 family laws in their line of work.
- 2.2.5 Discussions with the Judiciary revealed very minimal issues relating to the MO 1961. A common view shared by the Judges interviewed is for the reconciliation of the minimum age of marriage for male and female to be the same age for both. Other comments include considering whether the requirement for parent/guardian’s consent for a minor to marry

is still necessary as it is difficult to monitor. Currently, the MO 1961 requires written consents by the parents of a minor wanting to marry to be provided to the marriage officer prior to solemnising a marriage.

2.2.6 The full discussion on the views of the Judiciary are provided in the Table immediately below.

Judiciary Comments on the Marriage Ordinance 1961	
Key Themes	Judiciary Comments
Definition of a child – General	Justice Tafaoimalo Tuala-Warren made a general comment and suggested that the definition of a child should be adopted from the Convention on the Rights of a Child for consistency throughout all the family law related legislation.
Section 9 – Minimum age of marriage	Justices Leitualalesa Daryl and Justice Tafaoimalo Tuala-Warren both stated that in relation to the minimum age for marriage, there should not be any difference for both male and female. Given the difference in the minimum age for male (18) and female (16), the law should be revised to remove the difference and reconcile the age to marry. NB: proposed amendments to reconcile the minimum age – amendments with the AGO (February 2019) now as a result of the CEDAW Compliance Review report by the Commission.
Section 10 - Consent to marriage of minors	Justice Tafaoimalo Tuala-Warren also asked if there is any use of this provision relating to the consent of parents/guardians for a minor to marry. Given that there is a need to monitor such provision and who will monitor such, is there a need for this provision to continue to exist in the current Ordinance?

III. Other Jurisdictions

Analysis

2.2.7 The Commission also carried out research on marriage legislation of other jurisdictions in particular New Zealand¹ and Fiji.² Key themes were developed in relation to the MO 1961 for the purposes of comparing with other marriage legislation. These key themes include restrictions on marriage (i.e. minimum age, consent to marriage of minors, prohibited degree of relationship), formalities of marriage, notice of marriage, caveats on marriages, definition of marriages etc.

2.2.8 In analysing the MO 1961 and other marriage legislation, it appears although there are some similarities in some provisions; the MO 1961 is out-dated and may not cover other matters in other marriage legislation.

¹ Marriage Act 1951 (New Zealand legislation)

² Marriage Act [Cap 50] 1969 (Fiji legislation)

2.2.9 Research shows there are provisions where the MO 1961 is similar to either the New Zealand or Fijian legislation as opposed to others, such as the restrictions of marriage i.e. minimum age to marry where the MO 1961 and the Fiji legislation have the same age for males at 18 years and 16 years for females. New Zealand’s legislation appears to reconcile the minimum age for both male and female at 16 or 17 years. For the consent to marriage of minors, New Zealand and Fiji have legislated the same age for both male and female (21 years for Fiji and 16 or 17 for New Zealand) as compared to the MO 1961 (21 years for male and 19 years for female). New Zealand provisions mirror the MO 1961 on the prohibited degree of relationship as listed under the First Schedule.

2.2.10 Other formalities of marriage such as a notice of intention of marriage, and the solemnisation of a marriage under the MO 1961 appear to be outdated, and perhaps may not apply to date. These provisions may also be considered for retaining or removal. As already mentioned, the MO 1961 is 58 years old thus it is timely the provisions should be updated to deal with current matters arising and to include other matters such as the definition of marriage etc.

2.2.11 The table below highlights the findings on the comparable jurisdiction.

OTHER JURISDICTIONS				
No.	Common Provisions	Samoa – Marriage Ordinance 1961	New Zealand – Marriage Act 1955	Marriage Act Fiji [Cap 50] 1969
1	Registrar and Deputy Registrar	Section 4(1) – Registrar is charged with the general administration of the Ordinance. Section 4(2) – Deputy Registrar (under the control of the Registrar) has all the powers, duties and functions of the Registrar.	Section 4(1) – Registrar – General is charged with the general administration of the Act. Section 4(2) – Deputy Registrar – General under the control of the Registrar – General has all the powers, duties and functions of the Registrar – General	Registrar not spelled out in the Marriage Act but under the <i>Births, Deaths and Marriages Registration Act [Chapter 49]</i> "Registrar" means the Registrar of Births, Deaths and Marriages who shall be the Registrar-General, and includes any person appointed by the Registrar-General by notice in the Gazette to perform on his behalf any of the functions of the Registrar under the provisions of this Act;
2	Marriage Officers	Section 6: marriage officers (Ministers of religion) or any other persons fit and proper appointed by the Head of State as licensed marriage officers.	Section 7: Registrar – General to prepare a list of marriage celebrants to be published in the Gazette. Marriage celebrants include religious bodies, from approved organisations subject to the requirements of the Act, and other persons may be marriage celebrants in accordance with the	Section 4: Registrar – General to register a minister of religion on application in the prescribed form as a marriage officer. Section 5: any person other than ministers of religion may apply to Registrar General for registration as marriage officer.

			Act (Sections 9 – 11).	
3	Restrictions on marriage	Section 7: marriage prohibited by Schedule 1 is void.	Section 7: marriage prohibited by Schedule 2 is void in accordance with the Act. Other grounds where marriage is declared void – set out in section 31 of the Family Proceedings Act 1980.	Marriage is voluntary union between one man to one woman to the exclusion of others.
4	Minimum age of marriage	Section 9: at least 18 years for husband and at least 16 years for wife.	Section 17: no marriage license to be issued nor solemnized if either persons intending to marry is under 16 years.	S12: 18 years upwards for husband and 16 years for wife.
5	Consent for marriage	S10: Marriage of minors (man under 21 years and a woman under 19 years) requires the consent of either 1 parent or guardian. District Court Judge may grant exemptions from the requirements of this section.	S18: if either party to an intended marriage is 16 or 17 years or both parties are aged 16 or 17 years, the consent of a Family Court Judge must be sought first. Parties to the intended marriage must apply to the Family Court for consent, subject to the requirements under this Part i.e. s18, 19, 20, 21.	S 13: Marriage of minors (under 21 years) requires consent of father and in the absence of the father, the mother. In the absence of both, a Commissioner or magistrate.
6	Solemnisation of marriage	S15: Marriage to be solemnized with open doors in such manner as the marriage officer thinks fit; in the presence of a marriage officer and 2 or more witnesses; (s16) marriage must be solemnised within 3 months from the date of the notice of the intended marriage.	S30: marriage to be solemnized when the marriage licence is issued and delivered to the marriage celebrant. Subject to requirements under this section	
7	Notice of marriage	S14: notice in writing of intention of parties to enter into marriage to be given to marriage officer at least 10 days before day of marriage. Marriage officer not	S23: notice of intention to marry to be submitted to a Registrar in a manner specified by the Registrar- General	S16: notice of marriage in the prescribed form to be given to the district registrar or in the case of those residing in Suva, to the Registrar General.

		to solemnize wedding without notice of marriage.		
8	Offences provisions	Part 5: Miscellaneous		Part VI: provides for offences
9	Regulations	S34: HoS to make Regulations on advice of Cabinet.	S64: Governor-General may make regulations by Order in Council	S40: made by Registrar – General subject to approval of Minister.

IV. Case law analysis

Analysis

- 2.2.12 It is accepted that the databases available to the SLRC (paclii.org mainly) does not hold **all** of Samoa’s family law court decisions. The SLRC operates on what is available for analysis. With regards to case laws available online database i.e. Pacific Islands Legal Information Institute (PACLII), there were only 2 case laws discovered that applied the provisions of the Marriage Ordinance 1961. Given this finding, a proper analysis on the application of the provisions of the Ordinance by the Courts cannot be drawn at this stage. However a read of these cases reveal the following:
- 2.2.13 **1 out of the 2** cases discussed the types of relationship prohibited under the Ordinance (and listed out in the First Schedule). This case was heard in the criminal courts concerning the defendant a father who had sexual intercourse with the victim his stepdaughter at the time she was between 16 and 17 years of age and were later married. Although this case is criminal matter, the case identified the lack of enforcement of the MO 1961, as the defendant and the victim were in a relationship forbidden under the same (section 7).
- 2.2.14 The **other case** discussed the formalities of a marriage i.e. solemnisation of marriage before a marriage officer. Again, the case was brought before the Court for divorce proceedings however the Court dealt with the issue on the interpretation of “proceedings between the parties to a marriage” as disputed by the parties.
- 2.2.15 Having said the above, it appears there are not much cases that apply the MO 1961, perhaps on the basis that there are minimal issues (if not many identified) relating to marriages in Samoa.

TABLE OF CASE LAW – SAMOA		
	Case Law	Summaries
1.	<i>Police v MI and TP</i> [2014] WSSC 105 Sentencing decision of Justice	This is a criminal case concerning the defendant (a father) and the victim (step daughter) who were engaged in sexual intercourse at the time the victim was between 16 and 17 years old, and were later married. The defendant was sentenced under the old Crimes Ordinance

	Nelson (Supreme Court)	1961 because that was the law in force as at the date of the offence. The victim is also appearing for sentence that she did between January and May 2013 have sexual intercourse with her then 19 year old half-brother and did thereby commit the crime of incest. She too is being prosecuted under the Crimes Ordinance 1961. The case identified that the defendant and victim were engaged in a forbidden relationship under the MO 1961.
2.	<i>Skelton v Betham</i> [2018] WSSC 35	The case was in relation to divorce proceedings and the Court had to deal with the issue on the interpretation of proceedings between parties to marriage as disputed by the parties. The Courts referred to the definition of marriage which is defined under the BDMA to mean a marriage solemnized under the MO 1961.

V. Public Seminars

Analysis

2.2.16 Following the Commission’s Awareness Seminars carried out in both Upolu and Savaii in July, September and October 2019, the Commission had collected some of the views the public shared based on the 6 laws that were discussed.

2.2.17 Majority of comments and questions raised by the public focus on issues that are covered under the MO 1961 including what types of relationship are prohibited under the MO 1961 given the Samoan context and experiences in the community), formalities of marriage, marriage officers, marriageable age, recognition given to marriages solemnise overseas and also de-facto relationships.

2.2.18 The comments/questions are provided in detailed in the table below.

PUBLIC SEMINARS – ISSUES RAISED ON MARRIAGE ORDINANCE 1961	
Marriages	<ol style="list-style-type: none"> 1. Is it a crime to marry a second time, without going through divorce? 2. Is there a difference between marriage officiated by a pastor/minister and a marriage officiated by a marriage officer at the court house? Which one is valid? 3. What are the criteria for a person to be licensed as a marriage officer? 4. Some raised concerns that it should just be pastors/ministers that should be licensed to officiate marriages. 5. Who issues licenses to marriage officers? Is it possible for people to obtain false licenses as marriage officers? 6. Is it a crime to have children with someone else whilst married? – Yes adultery is an offence under the Crimes Act 2013
Prohibited marriages	<ol style="list-style-type: none"> 7. What is the distance (definition of “relation”) that is prohibited to be married – looking at the Samoan context and reality? 8. Our laws should expressly provide that same-sex marriage is prohibited and to define marriage as a union between a male and female.

De-facto relationships	9. Are de-facto relationships recognized under the law?
Recognition of marriages overseas	10. Are marriages made/officiated here in Samoa recognized overseas? 11. How are overseas marriages recognized here in Samoa?
Marriageable age	12. Propose to lower the marriageable age for girls from 16 to 15. 13. On the contrary, some raised concerns that the marriageable age of 16 for girls is too low, at this age, girls cannot start families (e le mafai ona fai le fatu aiga) - needs to be increased to a higher age i.e – 18, 21, 23 14. The law needs to provide for 1 marriageable age for both men and women (gender-neutral drafting style) 15. There is a contradiction between marriageable age and age when a child can be adopted? Why the difference in age? Suggest for these ages to be made consistent?

VI. Discussion Questions

- 1) Should the minimum age for marriage be the same for both male and female?
- 2) Is the list of prohibited marriages relevant to Samoa, and does it need revision e.g. to include the prohibition of same sex marriage?
- 3) Should the formalities such as marriage ceremonies to be done with open doors; notice in a public place for a period of time etc. continue to be part of our marriage laws? Why should it (formalities) apply to couples who have been cohabiting for years (de-facto) and wish to finally (legally) marry?
- 4) Should the term “marriage” be defined in the MO 1961, e.g. to specifically say ‘marriage’ is between a man and a woman?

2.3 DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

Background

2.3.1 The Divorce and Matrimonial Causes Ordinance 1961 (“DMCO”) makes provisions for divorce and other matrimonial causes in Samoa.³ Having repealed Part XI of the Samoa Act 1921 (NZ) which provided the earlier law in Samoa for divorce, the DMCO became the first piece of legislation that was enacted specifically to provide for divorce and other matrimonial matters in Samoa.

2.3.2 According to Samoa’s Legislative Assembly’s Tables of Acts and Ordinances & Statutory Regulations (Dec 2018), since the commencement of the DMCO in 1962, there have been about five (5) Regulations made under its provisions. These are namely Divorce and Matrimonial Causes (Fees and Costs) Rules 1971, Divorce and Matrimonial Causes

³ See *Divorce and Matrimonial Causes Ordinance 1961* (Samoa), long title.

(Procedure) Rules 1980, Divorce and Matrimonial Causes (Fees and Costs) Amendment Rules 1983, Divorce and matrimonial Cause (Fees and Costs) Amendment Rules 1988 and Divorce and Matrimonial Causes Amendment Rules 1990.

Amendments

2.3.3 The DMCO is 57 years old (as of 2019) and since its commencement on 1 January 1962, it has been only been amended four times in the years 1963, 1975, 2010 and recently in 2013 by the Family Safety Act 2013.

I. The Divorce and Matrimonial Causes Ordinance 1961 in Detail

2.3.4 The DMCO is comprised of 48 sections and its key features are summed up into the following 7 parts:

The Divorce and Matrimonial Causes Ordinance 1961 - in Detail	
Parts of the DMCO 1961	Summary of Parts
Part 1 - Preliminary	provides for the preliminary matters to the Ordinance (short title, interpretation, and jurisdiction). ⁴
Part 1A - Judicial separation	provides Judicial Separation (the procedure for an application, the standing of an applicant, the ground as basis of an application, the factors the Court must be satisfied with, the effect such a Decree on the parties, and the powers of the Court to reverse such a Decree). ⁵
Part 2 - Divorce	provides for Divorce and Nullity of Marriage ⁶
Part 3 - Alimony, Maintenance, Custody etc.	Part 3 provides for Alimony, Maintenance, Custody and other Orders the Court may make in any proceedings made for a Decree under this Ordinance. ⁷
Part 3A - Restraining Orders	makes provisions for Restraining Orders that may be applied for and granted specifically for the purposes of this Ordinance. ⁸
Part 4 - Procedure	provides for the Procedural requirements that govern the proceedings initiated under this Ordinance. ⁹

⁴ See sections 1 – 3.

⁵ See sections 4 – 6.

⁶ See sections 7 – 9, 12 – 13, 15, 17, 19 – 20.

⁷ See sections 22 - 26.

⁸ See sections 26A -26E.

⁹ See sections 27 - 28, 30 – 38.

Part 5 – Repeal and savings	provides for the Repeal of the Part XI of the Samoa Act 1921 (NZ) and the savings provision for any petition for judicial separation, divorce or nullity of marriage filed before the date of coming into force of this Ordinance. ¹⁰
------------------------------------	--

THE DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961- IN DETAIL	
Section of the DMCO 1961	Summary of provisions
PART 1 – PRELIMINARY	
Section 1	Short title: Divorce and Matrimonial Causes Ordinance 1961.
Section 2	Interpretation: defines 2 terms used throughout the Act.
Section 3	Jurisdiction: provides for jurisdiction of the Supreme Court in divorce, other causes and matrimonial matters under this Ordinance and where the Ordinance provides, the powers and jurisdiction given to the Court may be also be exercised by the Registrar of the Court.
Section 4	Petition for judicial separation: provides that either the wife or the husband may present the petition to the Court that the marriage has broken down irretrievably.
Section 5	Decree for judicial separation: provides for the power of the Court, upon being satisfied of the truth of the allegations contained the petition, to award a Decree for judicial separation and what the award of such Decree will mean for the petitioner and respondent.
Section 6	Decree for judicial separation may be reserved: provides for the power of the Court to reverse a Decree of judicial separation upon application by either the husband or the wife against whom such a Decree was made. It also provides for the saving of certain rights or remedies from being affected as a result of such a reversal of a Decree of judicial separation.
PART 2 – DIVORCE	
Section 7	Grounds for divorce: provides for the grounds upon which an application for divorce under this Ordinance must be based on.
Section 7A	Meaning of separation: provides for the circumstances in relation to the parties to a marriage upon which they may be held to have separated, or live separately and apart.
Section 7B	Effect of resumption: provides for how to aggregate the periods of living separately and apart for the purposes of proceedings for a decree of divorce, where, after the parties to the marriage have separated, they continued cohabitation on 1 occasion only to separate again within the 3 months after the resumption of their cohabitation.

¹⁰ See section 39.

Section 7C	When decree of divorce takes effect: provides for when a Decree of divorce made under this Ordinance takes effect.
Section 7D	Decree of divorce and children: provides that a Decree of divorce does not take effect unless the Court has, by order, declared that it is satisfied that either there are no children of the marriage under the age of 18 years, or where there are such children, proper arrangements have been made to provide for them as stipulated under this section.
Section 7E	Possibility of reconciliation: provides for where an application under for a decree of divorce the Court has been made under this Ordinance, both the Court and a legal practitioner representing a party is to consider the possibility of the parties reconciling. Additionally, where the Court considers such a possibility, this section empowers the Court to require the parties to undergo a marriage counselling.
Section 7F	Rescission of divorce order where parties reconciled: provides the power of the Court to rescind a divorce Order on the ground that the parties have reconciled. This is provided that such Order is made before a Decree of divorce takes effect.
Section 7G	Decree of divorce where there is consent or no opposition: provides for the power of the Court, or a Registrar, to make a decree of a Divorce in cases where a respondent to an application for divorce either consents in writing to the application, or does not oppose the Decree of divorce.
Section 8	Decree of presumption of death and dissolution of marriage: provides for the process and the grounds upon which a married a person domiciled in Samoa may apply to the Court to make a Decree of presumption of death of the other party and to have the marriage dissolved.
Section 9	Nullity of marriage: this section provides for the standing of a person who may apply for the nullity of marriage and the circumstances/grounds upon which a marriage may be declared either void or voidable.
Section 10 - 11	<i>Note. Repealed by section 7 of the Divorce and Matrimonial Causes Amendment Act 1961</i>
Section 12	Court to satisfy itself as to facts: this section requires the Court, on a petition for divorce, to satisfy itself as to the facts alleged and to inquire into any counter charge that is made against the petitioner.
Section 14	<i>Note. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.</i>
Section 15	When relief may be given to the respondent: this section provides that if, in a suit or other proceedings commenced for divorce or judicial separation, the respondent must allege in his or her answer a matter entitling either spouse to a relief under this Ordinance, the Court may give that respondent in such suit, on his or her application, the same relief as he or she would have been entitled to if he or she had filed a petition seeking such relief.
Section 16	<i>Note. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.</i>

Section 17	Remarriage of divorced person: this section provides that parties to a Decree of divorce may, following the pronouncement of a Decree of divorce, may marry again as if the prior marriage had been dissolved by death.
Section 18	Note. <i>Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.</i>
Section 19	Sale to defeat petitioner may be restrained: this section empowers the Court to order the restrain of a sale, or the proceeds of a sale it had reasonable ground believe was either about to be, or was made by the respondent or co-respondent to defeat either the petitioner’s claim, a Decree or order of damages, alimony, maintenance of children or costs to be paid into Court.
Section 20	Molestation of divorced wife by her husband: this section provides that a husband commits an offence if, after a Decree for dissolution of marriage has been pronounced upon the application of the wife, he commit/does any of the acts stipulated by this section.
Section 21	Note: <i>Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.</i>
PART 3 - ALIMONY, MAINTENANCE, CUSTODY, ETC.	
Section 22	Alimony and maintenance: this section provides for the power of the Court, in proceedings for a decree of divorce or nullity of marriage, to make orders it considers appropriate to provide for alimony and maintenance.
Section 22A	Orders relating to alimony and maintenance: this section provides certain matters the Court must take into account when considering what orders may be appropriate for the provision of alimony and maintenance under section 22.
Section 22B	Declaration of interest in property: this section empowers the Court, in proceedings between parties to a marriage, to declare the title or rights a party has in respect of their property and make consequential orders to give effect to the declaration.
Section 22C.	Alteration of interest in property: this section provides for the power of the Court to make appropriate orders to alter the interests of the parties in a property, the matters the Court may take into account when considering what appropriate orders to make with respect to any property of the parties to the marriage and the initial presumption of equal contribution of the parties to the marriage to a property which applies unless it is rebutted.
Section 22D	Setting aside of orders altering property interests: this section provides that the Court is empowered, upon application of a person affected by such an order, to vary or set aside an order or make another order in substitution of such an order with respect to property upon satisfaction of the matters stipulated under this section.
Section 23	Wife left without maintenance: this section provides for the circumstances upon which a husband may be deemed under this Ordinance as having wilfully and without just cause deserted his wife if a wife regardless of whether the parties have

	separated, or continued by agreement, or by virtue of judicial decree or order or in any other manner.
Section 24	Custody of children: this section provides that in proceedings for divorce, or nullity of marriage, or judicial separation, the Court may make such provisions as it appears just with respect to the custody, maintenance, and education of the children of the marriage, or if it thinks fit, direct for proper proceedings to be taken to place children under the Court's protection.
Section 25	Court may vary order for payment of money: this section provides initially for the Court's power to make variations to an order for periodical of money made under this Ordinance pertaining to matrimonial causes, and the standing of a person who may apply for such an order of the Court.
Section 26	Fraudulent deed may be set aside: this section provides that upon the application of the petitioner, the Court may set aside a deed, conveyance or other instruments that has been executed, or made by, or on behalf of, or by direction of, or in the interest of a respondent or co-respondent to defeat the a claim or rights of the petitioner to damages, alimony, costs, or maintenance of children. It also provides for the Court's power to make other orders e.g. to protect a bona fide purchaser as it thinks just, to order the respondent and other persons who colluded with the respondent to pay the costs of the petitioner, and of a bona fide purchaser of and incidental to the execution of such deed or other instruments stipulated.
PART 3A - RESTRAINING ORDERS	
Section 26A	Interpretation: provides for the definitions of 3 terms as utilised specifically under this Part.
Section 26B	Application for a restraining order: this section empowers the Court or the Registration to make restraining orders it considers appropriate in any proceedings under this Ordinance. Furthermore, it stipulates that in deciding an application for such an order, both the Court and Register must give primary consideration to ensure that the aggrieved person, and any child with a risk of exposure to domestic violence is protected from such violence.
Section 26C	Restraining Orders: this section stipulates what a restraining order is and empowers the Court or the Registrar to stipulate conditions or restrictions to attach to such Order if it considers appropriate. Most importantly, this section outlines a number of things a restraining order may do and provides an offence and penalty for the contravention of such restraining order.
Section 26D	Duration of restraining Order: this section provides for the period within which a restraining order remains force depending on whether it was made by the Court or a Registrar.
Section 26E	Intervention by Attorney General: this section provides for the instances and under what circumstances in certain proceedings under this Ordinance whereby the Attorney General may intervene in, and contest or argue any arising question.
PART 4 - PROCEDURE	

Section 27	Affidavit: this section simply provides that an affidavit, for a person seeking any of the proceedings stipulated under this section, must be appended to the petition or other application for relief to verify the same in so far as the deponent is able to do so, and to state that there has not been any collusion between the deponent and the other party to the marriage.
Section 28	Serving petition: this section provides for a petition to be served on the other party to be affected in such a manner as the Court, either by general or special order, directs. This is provided also that the Court may dispense also with such service under the circumstances stipulated by this section.
Section 29	Note. <i>Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961</i>
Section 30	Mode of taking evidence: this section provides for the mode of taking evidence from witnesses and the parties in all proceedings before the Court.
Section 31	Adjournment: this section stipulates the court may adjourn a hearing of a petition and if it sees fit to do so, may also require further evidence thereon.
Section 32	Costs: provides subject to foregoing provisions of this Ordinance pertaining to costs, this section provides that the Court may, upon hearing of any suit, proceeding, or petition under this Ordinance, make a cost order as the Court sees just.
Section 33	Enforcement of orders and decrees: this section ensures that all decrees and orders the Court makes in any suit, proceeding or petition initiated under this Ordinance are enforced and executed in the same manner as other judgments, orders and decrees for the Court may be enforced and put in execution.
Section 34	Fees: this section provides that fees payable in proceedings filed under this Ordinance must be according to the Rules made by the Head State for that behalf.
Section 35	Proceeding may be heard in chambers: this section provides that the Court may, either at its own discretion or upon application by a party to any suit or proceedings under this Ordinance, hear and try any such proceedings in chambers and make an order to forbid the publication of any report or account of the evidence or other proceedings therein.
Section 36	Appeal: this section reserves only the right of appeal for decisions of the Court in respect of any other matter this Ordinance stipulates apart from a Decree of presumption of death, or of dissolution of marriage, or of divorce, or of nullity of marriage.
Section 37	Recognition of overseas divorces: this section outlines the conditions/circumstances by which a Decree, or Order, or legislative enactment for divorce or nullity of marriage made by a Court, or legislature of a country outside Samoa may be recognised in Samoa.
Section 38	Power to make and alter rule of procedure: This section empowers the Head of State to make, by Order, rules concerning the practice, pleading and procedures under this Ordinance, and to fix, by Order, scales of costs and fees for suits and proceedings and make rules pertaining to such costs and fees.

PART 5 – REPEAL AND SAVINGS	
Section 39	Part XI of the Samoa Act 1921 (NZ) no longer forms part of the law of Samoa: this section provides that upon the coming into force of this Ordinance, Part XI of the Samoa Act 1921 (NZ) ceases to be part of the law of Samoa with some exceptions. A petition for judicial separation, divorce or nullity of marriage that was filed before the date of the coming into force of this Ordinance will be dealt with by the Court as if the DMCO has not been passed.

II. Judiciary’s Comments

Analysis

- 2.3.5 At the Commission’s consultations with some members of the Judiciary (see above ‘Introduction’), the Judiciary expressed concerns/views on 4 aspects of the DMCO, and provided possible options for reform.
- 2.3.6 In brief, it is the area of matrimonial property and the division thereof that all the Judges made comments and suggestions on for options for review and reform.
- 2.3.7 Secondly, some conceded with the no-fault based divorce regime Samoa now adopts. Thirdly is the need to clarify the Supreme Court’s jurisdiction to deal with matters under the DMCO. Fourthly there is a need for clear procedures to guide the Court in cases of consensual and non-consensual divorces.
- 2.3.8 The following table provides the Judiciary’s commentary and their options for reform of certain provisions of the DMCO.

Judiciary Comments on the Marriage Ordinance 1961	
Key Themes – relevant provision	Judiciary Comments
Jurisdiction (s 3)	<p>Supreme Court His Honour, the former Chief Justice Sapolu discussed the jurisdiction of the Court to deal with matters under the DMCO. ¹¹ Former CJ Sapolu stated that this jurisdiction is still with the Supreme Court because of the complexity of matters to be dealt under the DMCO. As a forward, his Honourable suggested for legislation to provide the recently established Family Court jurisdiction to hear and determine a matter or proceedings under the DMCO.</p> <p>Court Registrars His Honour, the former CJ Sapolu revealed that with custody cases/ matters are dealt with in the District Court, whilst since 2014, Court Registrars deal with Family Court cases.</p>
Grounds for	No fault based Regime

Divorces (s 7)	His Honour, former CJ Sapolu and Justice Leiataualesa Daryl Clarke, conceded to the retention of the no fault based divorce regime that is already provided in the DMCO. ¹² Justice Leiataualesa further suggested for consideration to be made the Australian equivalent to model this aspect of the review of the DMCO.
Decree of divorce where there is consent or no opposition (s7G)	<p><i>Procedure</i></p> <p>Judge Talasa Sa’aga expressed the need to clarify and set out procedures for consensual divorce matters. For non-consensual cases, her Honourable discussed that they are dealt with differently with applications filed by lawyers with the Court Registrars. The underlying proposition appears to be that there is a need for clarity to be made to procedures surrounding both consensual and non-consensual divorces for clarity and application by the Court.</p>
Declaration of Interest in Property (s22B); Alteration of interest in property (s22C);	<p>Three (3) members of the Judiciary referred to the provisions of the DMCO that deals with the division of matrimonial property. All three (3) also conceded that clarity is needed to clarify the different facets of this area of law as follows:</p> <p><i>Presumption of equal sharing</i></p> <p>Both Justice Tafaoimalo Tuala-Warren and Judge Alalatoa Papali’i proposed to remove the common law principle, namely the presumption of equal contribution, and to be substituted by the presumption of equal sharing. According to Judge Alalatoa, this presumption is based on a 50/50 split to the property of the couple subject to existing extraordinary circumstances that would render the presumption unfair. (e.g. property inherited through a will). Justice Leiataualesa Daryl Clarke added that whilst the presumption of equal contribution applies, legislation should exclude property outside of marriage from this equation.</p> <p><i>De facto relationships</i></p> <p>Both Justice Leiataualesa Daryl Clarke and Judge Alalatoa Papali’i discussed de facto relationships and suggested for consideration to be made to recognise the property of those in such relationships. While Judge Alalatoa conceded that there is a need to clarify the division of matrimonial property for de facto relationships, Justice Leiataualesa Daryl Clarke further proposed that provided there is a demand in Samoa for the recognition of the property of such relationships, the approach to the division of property of de facto must be applied with caution with clarity to be made as to their property rights (e.g. more limited as opposed to married couples).</p> <p><i>Consideration: Comparative Jurisdictions</i></p> <p>Justice Leiataualesa Daryl Clarke shared his concerns with regards to any consideration the Commission might make of the NZ model/equivalent framework with regards to this aspect of the law on the division of matrimonial property. His Honourable flagged that such consideration may be ‘problematic’ given the difference in the property ownership in NZ as compared to Samoa. His Honourable further raised that he also does not support arrangements for prenuptials agreements as it is in the United States of America.</p>

III. Other Jurisdictions

Analysis

2.3.9 In the course of its preliminary research, the Commission also looked and considered the legislation equivalent to the DMCO in 3 overseas jurisdictions in New Zealand (NZ), Fiji and Australia. The relevant legislation include Family Proceedings Act 1980 (NZ), the Property (Relationships Act) 1976 (NZ), Family Law Act 2003 (Fiji) and the Family Law Act 1975 (Cth, Australia) and Child Support (Assessment) Act 1989 (Cth, Australia).

2.3.10 An analysis of some common features and differences of similar legislation in other jurisdictions is provided below as is reflected in detail in Table 2 below.

i. Title of the Act

All 3 jurisdictions have a different title to the main legislation that provides for divorce and matrimonial matters as compared to Samoa. In all jurisdictions, the term 'Family' is used in the title. Note Family Law Act 2003 (Fiji), Family Proceedings Act 1980 (NZ), Family Law Act 1975 (Cth).

ii. Judicial Separation

In both Fiji and Australia, proceedings for Judicial Review has been repealed. Like Samoa, proceedings may still be instituted in NZ for a separation order.

iii. Divorce

a. The term 'divorce'

Apart from Australia as well, the other 2 jurisdictions no longer use the term 'divorce'. The term is now 'dissolution of marriage'.

b. Provisions on Divorce

The provisions for divorce in all other jurisdictions are relatively similar to Samoa except in a few notable differences as reflected in Table 2 below. In particular, one such difference common to all jurisdictions apart from Samoa is having an express provisions in legislation as to the standing of parties who may apply for divorce.

Samoa on the other hand also has a feature which is not common to all 3 jurisdictions. This is the domestic violence exemption which exempts married couples from being required to have separated for 1 year in order to qualify them to apply for divorce. In contrast to Samoa, NZ requires a married couple to be separated for 2 years before they can be eligible to apply for divorce.

iv. Presumption of Death

Apart from Samoa, NZ is the only other jurisdiction discussed that have kept this feature except that it has 7 instead of 5 years for continual absence of the other spouse.

v. Null marriages

All jurisdictions have abolished provisions for voidable marriages that Samoa still has. Like Samoa, all jurisdictions have maintained similar grounds for void marriages and have in fact added another ground which is 'not being of marriageable age'.

vi. Matrimonial Property: Settlements

The provisions for property settlements in the other jurisdictions are also relatively similar to that of Samoa. NZ in contrast has a separate legislation dedicated especially for property settlement matters. The presumption of equal contribution on the other hand is still being applied in Fiji and NZ although in the latter jurisdiction, the legislation requires unless there are exceptional circumstances repugnant to justice, the court is to proceed more from an assumption of equal division. Australia differs in that rather than a presumption of equal contribution, there is only a duty to evaluate the contribution on a case by case basis.

OTHER JURISDICTION			
Key Topics (Samoa)	New Zealand	Fiji	Commonwealth (Australia)
<p>Refereces in table below:</p> <ul style="list-style-type: none"> • c.f – common features • d - differences 			
Judicial Separation	<p>c.f. – available but as a 'separation order'. d. – separation order maybe adduced as evidence of separation.</p>	- repealed.	- repealed
Divorce	<p>d. – (i) express provision as to who may initiate proceedings: (ii) 2 years separation: (iii) no domestic violence exemption: (iv) no rescission provision. N.B. the term 'divorce' is replaced with 'dissolution of marriage'.</p>	<p>d. – (i) express provision regarding to who may initiate proceedings: (ii) principles of divorce are expressed: (iii) no domestic violence exemption. N.B. dissolution of marriage replaces the term 'divorce'.</p>	<p>d. – (i) express provision regarding to who may initiate proceedings: (ii) principles are expressed relating to divorce: (iii) no domestic violence exemption: (iv) supplemented provisions for marriage of less than 2 years duration.</p>
Presumption of Death	<p>d. – continued absence for 7 years.</p>	- not available	- not available
	<i>Void Marriages</i>		

Nullity of Marriage	d. – (i) grounds void – not of marriageable age.	d. – (i) presumption of validity: (ii) not of the marriageable age.	d. – grounds for void – not of marriageable age.
	<i>Voidable Marriages</i>		
	d. – repealed.	d. – repealed.	d. – repealed.
Miscellaneous provisions	d. – (i) No collusion provision; No molestation of divorced wife offence.	d. – (i) No collusion provision; (ii) provision on concurrent applications for nullity and divorce; (iii) No molestation of divorced wife offence.	d. – (i) No collusion provision; (ii) Provision re concurrent applications for nullity and divorce; (iii) No molestation of divorced wife offence.
Property Settlement	d. – Proceed more from of assumption equal division unless exceptional circumstances that are repugnant to justice	d. – contains more additional relevant factors for consideration.	d. – (i) additional relevant factors; (ii) no presumption of equal contribution but a duty to evaluate contribution in each case.
Procedure	d. – Costs at discretion of Court.	d. – (i) Non-alienation provision dealing with native land; (ii) Protection of witness provisions; (iii) Starting point for costs is party bear own, unless circumstances justify otherwise	d. – (i) protection of witness provisions; (ii) starting point for costs is party bear own, unless circumstances justify otherwise.

IV. Case law analysis

Analysis

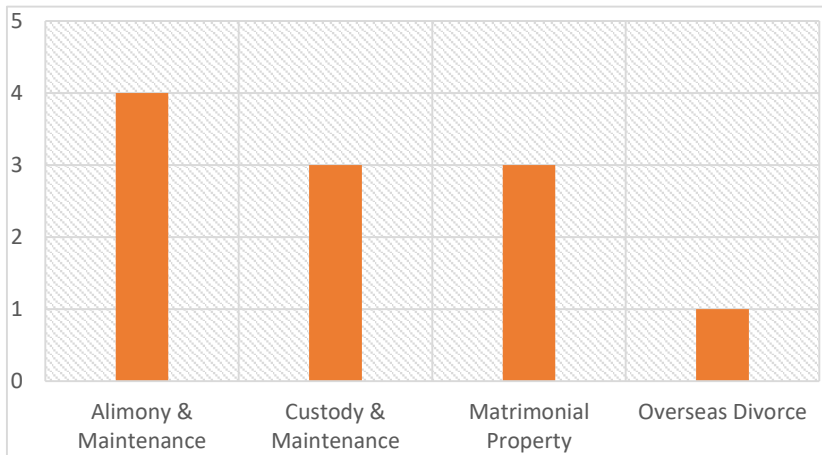
2.3.11 It is accepted that the databases available to the SLRC (paclii.org mainly) does not hold **all** of Samoa’s family law court decisions. The SLRC operates on what is available for analysis. As of September 2019, the Commission found eleven (11) cases from 1993 – 2018 in which the Courts had utilised or referred to the DMCO. This total number was obtained by utilizing search terms such as ‘divorce’, ‘judicial separation’ and ‘dissolution of marriage’. Given that the only readily accessible online database, namely Pacific Islands Legal Information Institute (Paclii), this number may not reflect all cases particularly the unreported cases that made reference to the DMCO. Thus, the number of cases as identified earlier can therefore be said to be inconclusive.

2.3.12 Nevertheless, it is hoped that this should not be the basis to restrict an analysis from what is available to it for review. Hence, the Commission provides some analysis from the eleven (11) cases discussed as follows:

(i) Petition and Decree Applied for –

The majority of cases (10/11) that have utilized the DMCO are divorce cases. Only one case (1/11) was commenced on a petition for judicial separation.¹³

(ii) Orders or Declarations sought–



(a) *Alimony and spousal maintenance*

As can be noted from the chart above, the majority of cases the Court has dealt with under the DMCO involved applications for alimony and spousal maintenance.¹⁴ Court has also dealt with applications for custody & maintenance of children of parties to a marriage.¹⁵ It should be noted

(b) *Matrimonial Property*

There have also been a number of cases where the Court had to deal with the interests of parties' to a marriage to matrimonial property.¹⁶ It should be noted however that the majority of the cases pertaining to parties to a marriage were concerning applications regarding interests in matrimonial property. However, having noted it was not until 2010 that the relevant sections of the DMCO pertaining to the property interests of married couples had commenced, it thus technically correct to say that only one (1) of cases were

¹³ See *Laufo v Croker* [1993] WSSC 5; Misc 15914 (29 November 1993).

¹⁴ See *Skelton v Betham* [2018] WSSC 35 (22 January 2018), *Betham v Betham* [1994] WSSC 49 (26 January 1994), *Arp v Arp* [2008] WSSC 35 (13 June 2008), *FML v LLS* [2015] WSFC 1.

¹⁵ See *Skelton v Betham* [2018] WSSC 35 (22 January 2018), *Elisara v Elisara* [1994] WSSC 14 (22 November 1994).

¹⁶ See *L v L* [1994] WSCA 3; 21 1993 (28 March 1994), *Skelton v Betham* [2018] WSSC 35 (22 January 2018), *Hadley v Hadley* [2010] WSSC 61 (19 March 2010), *Elisara v Elisara* [1994] WSSC 14 (22 November 1994), *Laufo v Croker* [1993] WSSC 5; Misc 15914 (29 November 1993).

brought for hearing before the Supreme Court in 2018 for under the relevant provisions of the DMCO.¹⁷

(c) *Overseas Divorce*

Of the remaining proceedings, the last case sought the Court for a case to state on an application for recognition of an overseas based divorce to be recognized in Samoa.¹⁸

2.3.13 Below is a summary of the abovementioned 11 case laws that have referred to and applied this Ordinance.

TABLE OF CASE LAW - SAMOA		
NO.	CASE NAME	SUMMARIES
1.	<i>Skelton v Betham [2018]</i>	<p>These proceedings involve a Motion by the Respondent to strike out the petitioner’s Notice of Motion for Custody, Maintenance and Division of Matrimonial Properties under the Divorce and Matrimonial Causes Ordinance 1961.</p> <p>HELD: The Court held that it is limited to make such orders during proceedings for divorce, nullity of marriage or judicial separation.</p> <p>The strike out motion was therefore successful in striking out the orders under sections 22B and 22C of the DMCO for division of matrimonial property. The Strike Out Motion in relation to the custody, maintenance and education of the children was also successful as these were sought under section 24 of the DMCO.</p>
2.	<i>S v L [2015] WSSC 178 (29 October 2015)</i>	<p>The respondent filed a claim for alimony following the dissolution of marriage earlier on 3 March 2014.</p> <p>HELD: the Family Court had no jurisdiction to make an order for alimony. The Court held that this was due to respondent’s application for alimony having been filed after divorce proceedings had terminated. Even if the application for alimony is treated as an application for maintenance, the same result will follow because of the wording of s.22 of the Divorce and Matrimonial Causes Ordinance 1961 which provides that the Court may only make an order for maintenance in terms of that section where there are “proceedings for a decree of divorce”.</p>
3.	<i>Hadley v Hadley [2010] WSSC 61 (19 March 2010)</i>	<p>This case was concerned with parties who were married in 1999 but had been estranged for some time since 2008 and was apparent to have irreconcilable difference. The respondent having refused to vacate the matrimonial home or allow its sale, the applicant thereby applied for eviction of the respondent alleging her occupation being unlawful and unjustified.</p> <p>HELD: the respondent has an interest in the matrimonial home. The application for an eviction order was therefore refused.</p>
4.	<i>FML v LLS [2015] WSFC 1</i>	<p>This case was concerning the quantum to be awarded for alimony to be paid by the respondent to the applicant. Having been initiated by an application made for alimony filed after divorce proceedings between the parties, the parties were referred to mediation which resulted to an agreement for payment of alimony</p>

¹⁷ See *Skelton v Betham* [2018] WSSC 35 (22 January 2018).

¹⁸ See *Meleisea v Meleisea* [1994] WSSC 24 (24 May 1994).

		<p>leaving only the question of the quantum to be decided later on. The respondent subsequently refused to pay alimony and thereby applied to strike out the agreement. The Court dismissed the strike out motion.</p> <p>HELD: Court orders \$1000 per month.</p>
5.	<i>Arp v Arp</i> [2008] WSSC 35 (13 June 2008)	<p>The Court in this case dealt with a petition for divorce of marriage and an application for ancillary relief to remove the respondent and her partner from a property in Alafua. The respondent sought custody of the female of the marriage, maintenance of children of the marriage and alimony.</p> <p>HELD: for matrimonial home, the parties had conceded to give ownership to their two sons; motion for alimony was denied having been misconceived; and custody awarded to the mother with the right of access to the petitioner.</p>
6.	<i>Elisara v</i> <i>Elisara</i> [1994] WSSC 14 (22 November 1994)	<p>This case was concerned with a petition for divorce on the ground of adultery, division of matrimonial properties, custody of the children of the marriage and maintenance.</p> <p>HELD: (a) The respondent is to pay \$100 a week for the maintenance of the petitioner and the three children. (b) By consent the petitioner and the children are to occupy the Vaivase-uta house and the respondent is to move out, and live elsewhere. Counsel to file submissions in writing within seven (7) days as to the terms and conditions of occupation by the petitioner and her children.</p>
7.	<i>Meleisea v</i> <i>Meleisea</i> [1994] WSSC 24 (24 May 1994)	<p>The applicant applied to the Court for recognition of divorce claimed to have been obtained from the State of Hawaii.</p> <p>HELD: the Court held that as it stands, the divorce decree in this case was held to be legally ineffective. After that decision was delivered the Court considered whether the wording of its decision be modified. The Court held that upon further reflection, the Court is off the view that the Court might have been functus officio when it made decision immediately after the argument. For that reason the decision the Court made that the application be struck out and counsel for the applicant may adduce further evidence if he wishes to do so but that issue will be decided when it arises still remains.</p>
8.	<i>Betham v</i> <i>Betham</i> [1994] WSSC 49 (26 January 1994)	<p>This case was concerning an interim maintenance by respondent pending the determination of petition for divorce filed by petitioner.</p> <p>HELD: order awarded for petitioner to pay interim order \$190 weekly.</p>
9.	<i>L v L</i> [1994] WSCA 3; 21 1993 (28 March 1994)	<p>This was an appeal to decision of the Supreme Court on the appellants' application for judicial separation and an order to remove the wife from land at Alafua which is claimed by the appellants individual property.</p> <p>HELD: the appeal was dismissed.</p>
10.	<i>Lauofo v</i> <i>Croker</i> [1993] WSSC 5; Misc 15914 (29 November 1993)	<p>This case was about a petition for judicial separation and for an order to remove the respondent from the land.</p> <p>HELD: the application was dismissed but the precise terms of that order was held off to await written submissions or consent of counsel as to the question of any periodical payments the respondent made to the petitioner for her occupation of the matrimonial home as well as the question of repair and maintenance of the matrimonial home or any other relevant matter.</p>
11.	<i>Yiu Hing v Yiu</i> <i>Hing</i> [1969] WSLawRp 6;	<p>Husband petitioned for divorced under s 7(1)(j), Divorce and Matrimonial Causes Ordinance 1961.</p>

<p>[1960-1969] WSLR 236 (15 July 1969)</p>	<p>HELD: the marriage has broken down irretrievably. As to the question on maintenance, due to insufficient evidence, the court directed the pronouncement of the decree in divorce be suspended for four weeks to enable the parties to come to an agreement on maintenance. If they cannot the wife can apply to this Court under the provisions of the said Ordinance.</p>
---	---

V. Public Seminars

Analysis

2.3.14 Following the Commissions’ public awareness seminars in both Upolu and Savaii in the months of July, September and October 2019, the Commission collected, collated and made analysis of the public submissions and concerns raised.

2.3.15 In particular to the DMCO, the queries and concerns raised by members of the public that attended the Commission’s seminars were particular to about four (4) areas of the Act as follows:

- (i) Grounds & effect of divorce;
- (ii) Procedure for applications;
- (iii) Alimony, maintenance and custody of the children;
- (v) Related Offences.

2.3.16 As may be evident in table 3 below, the majority (5/7) of the queries members of the public raised in the Commission’s seminars were on the grounds, the effect and the procedure for divorce. The remaining questions (2/7) were in directed to orders of maintenance and custody of the children that can be made under the DMCO and offences relating to divorce.

<p align="center">PUBLIC SEMINARS – ISSUES RAISED ON DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961</p>	
<p>Divorce</p>	<ol style="list-style-type: none"> 1. If married, and then one of the spouses passes away. How can a divorce be made when the spouse has passed away? 2. Where a couple has separated, but have not processed divorce papers. Been separated for about 4 years. One person wants to go through with divorce, another does not want to, but said its okay for the other to go ahead and re-marry. <ul style="list-style-type: none"> • Can one of them re-marry even if divorce papers have not been done/finalised? • What happens if the other side/party to a marriage does not agree to go through a divorce? • Can the Courts dispense with the consent of the other party and issue a divorce order? Under what grounds? 3. What is the required period in order to apply for a divorce? How long does the couple need to be living apart before they can apply for divorce order? 4. If a couple have been separated for more than 2 years, should that be

	<p>enough grounds for a marriage to be seen/accepted as divorced – no need to go through divorce process?</p> <p>5. Can parents force children who are married to go through a divorce?</p> <p>6. Can the wife use the divorce order/decreed to apply for a change in last name for the children? Is it automatic?</p>
Custody of children in case of divorce	<p>7. What does the court consider in deciding who (in divorce proceedings) gets the custody of the child, the husband or wife? What can a party (husband or wife), produce as evidence to make a case as the best party who will serve the best interest, of the child better?</p>
Re-marriage before a divorce	<p>8. Is it a crime to marry a second time where the first marriage is still legally valid/recognized? It has not gone through the proper divorce process?</p>
Distribution of matrimonial property	<p>9. In relation to the use/reference of common law by the Samoan courts in dividing matrimonial property – need to identify the advantages and disadvantage of taking these respective approaches.</p>

3 Discussion Questions

- 1) Is judicial separation still relevant?
- 2) How can the divorce process be made more clear for easier understanding and implementation?
- 3) Is the time period of 12 months for an ‘irretrievably broken down marriage’ too short to be a ground for divorce?
- 4) How should matrimonial property be divided upon divorce? Should Samoa adopt/enact a separate legislation for this?

2.4 MAINTENANCE AND AFFILIATION ACT 1967

Background

2.4.1 The Maintenance and Affiliation Act 1967 (“MAA 1967”) provides for the maintenance of destitute persons, illegitimate children, deserted wives and children, and to facilitate the enforcement of local and foreign maintenance orders. It commenced on 25 July 1967, 5 years after Samoa gained Independence. It is now 52 years old. It comprises of 11 Parts, 90 sections and 1 Schedule.

2.4.2 Since the enactment of the MAA 1967, according to the Legislative Assembly’s records¹⁹ there are 2 subsidiary legislation (Regulations) made under this Act:

1. Maintenance and Affiliation Regulations 1971 – provides for procedure to be followed in maintenance related applications/matters (*for example* – appointment of time and place, proof of service of notice, issue of summons to witness etc)
2. Maintenance and Affiliation Regulations 1988 – provides for the registration of Commonwealth country orders.

Amendments

Year	Amendments made
1975	<i>A copy of this Amendment Act could not be obtained</i>
1997	Provides for how a maintenance officer may institute and may appear in any proceedings under parts III, IV, V and VI of the Act (these provisions are to do with Maintenance of Destitute Persons, Maintenance of children, wives and husbands and Affiliation Orders).
2010	Inserts new provisions: <ul style="list-style-type: none"> • sections 12A – Power of the Court to make custody order; • 18(1A), (1B) and (1C); • 18A – Powers of the Court in respect of maintenance; • 30A – Alteration of maintenance agreement; • 32(5A), 33(3); • 46A – Requirement for mediation; and • 56A – Provision of financial information.

I. The Maintenance and Affiliation Act 1967 in Detail

The Maintenance and Affiliation Act 1967 – in Detail	
Parts of the MAA 1967	Summary of Parts
Part 1 – Preliminary (sections 1 & 2)	<ul style="list-style-type: none"> • Provides for the short title of the Act and the interpretation of key terms used/referred to throughout the Act.
Part 2 – Jurisdiction (sections 3 & 4)	<ul style="list-style-type: none"> • Provides for the jurisdiction of a District Court Judge to make maintenance and affiliation orders under the Act • The exercise of the DC Judge’s jurisdiction is discretionary
Part 3 – Maintenance of Destitute Persons by Near Relative (sections 5 – 8)	<ul style="list-style-type: none"> • Provides for the liability of near relatives to maintain a destitute person, if that near relative is of sufficient ability to contribute to the destitute person’s maintenance. • Any money paid for maintenance of a child (legitimate or illegitimate) shall constitute a debt that is payable to that near relative by any person

¹⁹ Office of the Clerk of the Legislative Assembly, ‘Legislative Assembly updated List – Tables of Samoa Acts and Ordinances & Statutory Regulations’ (as at 31 December 2018).

	<p>who at the time the money was paid was the parent of one of the parents of the child, or adjudged as the father of the child.</p>
<p>Part 4 – Affiliation Orders (sections 9 – 11)</p>	<ul style="list-style-type: none"> • Provides for the authority of the DC Judge to make affiliation orders against the father of an illegitimate child. • Any evidence of the mother is required to be corroborated for it to be relied upon in adjudging a man as the father of a child. • Following the making of an affiliation order, the DC Judge may make any of the following additional orders (either or all): <ul style="list-style-type: none"> a) Maintenance order; or b) Order to pay such sum as the Judge thinks fit on account of the expenses of and incidental to: <ul style="list-style-type: none"> i. Birth of the child (whether born alive or dead); or ii. Funeral of the child (if child dies before making of the order).
<p>Part 5 – Maintenance of Children (sections 12 – 15)</p>	<ul style="list-style-type: none"> • Provides for the jurisdiction and power of the District Court Judge to make maintenance orders against a parent of a child as well as custody orders as the Court considers appropriate • Other matters provided for under this Part is the age up to which a child may be maintained - up to the age of 16. This may be extended up to when the child reaches 19 years of age IF a child is engaged in a course of education or training.
<p>Part 6 – Maintenance of Wives and Husbands (sections 16 & 17)</p>	<ul style="list-style-type: none"> • This Part provides for matters relating to the maintenance of wives and husbands • In determining whether the Court will order maintenance to be paid, the Court must first be satisfied that the wife or husband seeking/applying for maintenance is a destitute person • In addition to this, the Court must also be satisfied that the respondent (person against whom a maintenance order is issued) is of sufficient ability to contribute to the maintenance of the applicant
<p>Part 7 – General Provisions as to Orders (sections 18 – 44)</p>	<ul style="list-style-type: none"> • This Part comprises of the general provisions relating to the making of the various orders that may be made under this Act • The general provisions include the different factors to be considered and taken into account by the Court in determining what would be a reasonable sum in all circumstances to be paid. These factors include the needs of the applicant, the income and earning capacity of both applicant and defendant, commitments of the defendant etc. • The Court also has powers to rehear and vary any order made where the Court thinks fit • It also provides for the Court’s authority to order security to be paid for obedience to maintenance order • It also provides that any money payable under a maintenance order, constitute a debt that may be recovered in accordance with this Act.
<p>Part 8 – Procedure (sections 45 – 61)</p>	<ul style="list-style-type: none"> • Provides for how proceedings may be brought to Court/initiated, who may apply and the procedure to be followed when bringing a matter under this Act. For example, proceedings are commenced by filing an application, and the Court may require parties to undergo mediation as the Court may direct. • There are provisions on the authority of the Court to order/forbid the publication of any report of proceedings (restrictions on publicity of hearing).
<p>Part 9 – Overseas Maintenance</p>	<ul style="list-style-type: none"> • Provides for how overseas maintenance orders may be recognized and enforced in Samoa. These overseas maintenance orders, if they were

(sections 62 – section 76)	made or confirmed in a commonwealth country outside of Samoa, may be registered in Samoa in order for these to be enforced.
Part 10 – Offence (sections 77 – 86)	<ul style="list-style-type: none"> • Provides for the offences under this Act: <ul style="list-style-type: none"> ○ Failing to maintain wife, husband or children; ○ Failing to pay money under an order; ○ Leaving Samoa while payments are in arrears, or with intent to disobey an order, or failing to make adequate provision for maintenance of wife or husband or child ○ It is also an offence for a person against whom an affiliation order is made to leave Samoa without permission • Any person convicted of any of the above offences may be subjected to imprisonment. No imprisonment is taken to extinguish or affect the liability of the defendant under any maintenance order.
Part 11 – Miscellaneous (sections 87 – 90)	<ul style="list-style-type: none"> • Provides for other matters: <ul style="list-style-type: none"> ○ Any document required for purposes of this Act is exempt from stamp duty ○ Application of the Act to matters arising before its commencement ○ Regulation making powers ○ Repealed enactments
SCHEDULE	<ul style="list-style-type: none"> • In the schedule is a list of the enactments no longer forming part of the law of Samoa. <ul style="list-style-type: none"> ○ Samoa Maintenance and Affiliation Order 1920 (NZ Gazette May 20 1920 Vol.II No.51. Pages 1684 – 1688) ○ Samoa Maintenance and Affiliation Amendment Order 1929 (NZ Gazette December 12 1929 Vol.III, No.83, Pages 3222 – 3226) ○ Law Reform Ordinance 1948 No.6, Section 5.

II. Judiciary’s Comments

Analysis

2.4.3 An analysis of the Judiciary’s comments/concerns from the table below, raise some common views.

- The majority of the concerns raised by the Judiciary in relation to this Act are in relation to maintenance, with very minimal mention of or reference to affiliation related matters.
- This is an old law which needs to be reviewed and updated to bring Samoa’s law forward, in line with family laws of other countries. Matters raised for review to update, remove or add into our law include the following:
 - For the definition of maintenance – to be contextualized to consider the reality in Samoa in terms of earnings and income, to extend the definition to expressly allow the Judiciary to order maintenance to be paid/provided in kind.

For example – providing produce to contribute to the maintenance of a child/spouse

- Provision on maintenance of destitute person by near relative – this is already part of Samoa’s culture and may not need to be legislated/provided in a law.
- Age of child to be maintained – the judiciary also raised concerns in relation to the inconsistency of age of children used in the different family laws (to be considered and made consistent)
- Representation of a child – while other countries legislation expressly provide for a requirement for a child to be represented in family matters, Samoa’s law does not – perhaps in this review, we can include such a provision to ensure that the best interests of a child remain paramount concern in the operation of all family laws.
- Affiliation – as other countries move ahead with laws referring to modern technology, Samoa still adjudges a person as the father of a child. Perhaps it is time we update our laws to consider current technologies and methods
- Penalties – To review penalties for offences in line with the family court’s rehabilitative approach rather than sentencing offenders to imprisonment.
- One general concern raised by all the Judiciary members consulted is in relation to data collection and record keeping in the Courts – a challenge faced in different sectors of the judicial system.

Preliminary Consultations with some members of the Judiciary

Key Themes	Judiciary Comments	Recommendations
Power to make maintenance and affiliation orders	The Family Court currently hears maintenance related matters (and every other family matter except for matrimonial causes/property – Supreme Court) There is a great need for more judges to hear the various cases coming through	An administrative decision of the Ministry of Justice and Courts Administration.
Definition of maintenance	There have been cases where Judges have ordered defendants to provide food or other commodities to help in the raising of their child. It should not be limited to financial/monetary maintenance	To consider defining “maintenance” to include provision/contribution for the raising of a child financially or in kind (depending on the circumstances) ²⁰
Maintenance of Destitute Person by near relative	Justice Leilani Warren made general comment that we do not need to legislate for everything. As with maintenance of destitute persons in families, it is already part of our way of life/culture	Should we remove the provisions on maintenance of destitute persons by near relatives from our law?
Age of child to be maintained	Some Justices ²¹ consulted raised comments on the inconsistency in age used under the different family laws of Samoa. For example	To consider raising the age of child to be maintained from 16 to 18 years old.

²⁰ Justice Tafaoimalo Leilani Tuala-Warren, SLRC’s preliminary consultations (26 February 2019).

²¹ Justice Leiatuaulesa (25 february 2019), Justice Tafaoimalo Tuala-Warren (26 February 2019), SLRC preliminary consultations.

	consistent ages for adoption and marriage - to consider similarly for maintenance also - rather than 16, to raise age for maintenance to 18	
Duty to maintain a child	Unemployment of a parent / respondent, should not be an excuse from their duty to provide/support the raising of their child ²²	Whether maintenance laws need to expressly provide for the duty of parents to provide/contribute to the maintenance of their child(ren)?
Representation of a child	Representation of a child is very important to ensure the best interests of a child are voiced/represented. (There were similar comments in relation to adoption matters ²³)	To consider including provisions requiring that children up to a certain age (18) need to be duly represented in maintenance cases.
Offences /Penalty	<p>General comment by the current Family Court Judge, Honourable Talasa that the Family Court takes a rehabilitative approach in dealing with family related matters.</p> <p>Rather than referring directly to imprisonment, they refer persons to relevant programs for rehabilitation purposes. Unless it is serious matters (violence, threat) then it is dealt with criminally.</p> <p>Family Court Judge also briefly mentioned goals of introducing 3-R rehabilitation program (Realise, Rehabilitation and Reintegration)</p>	For the Ministry of Justice and Courts Administration, particularly the Family Court to consider taking forward.
Parentage tests / presumptions of parentage	The former Honourable Chief Justice Sapolu ²⁴ made a brief comment about how Samoa still “adjudges” a person to be the father of a child	To consider any other ways to order/give a decision on whether a man is the father of a child in affiliation cases?
General comment – data collection & record keeping	Honourable Judge Talasa made comment on the need to realize the importance of accurate data collection from reliable sources, as well as safe record keeping systems to be in place for the Family Court. Similar comments were raised by the other Judges/Justices consulted by the SLRC.	An administrative decision of the MJCA – to develop database and build capacity of officers recording data for consistency and reliable data records

²² Justice Tafaoimalo Tuala-Warren, SLRC preliminary consultations (26 February 2019).

²³ Judge Alalatoa Viane Papalii, SLRC preliminary consultations (19 March 2019).

²⁴ SLRC preliminary consultations on 22 November 2018 – attended by Executive Director, Telei'ai Dr. Lalotoa Mulitalo.

III. Other Jurisdictions

Analysis

- 2.4.4 Samoa, Fiji, New Zealand and Australia all have legislation providing for maintenance and affiliation matters
- 2.4.5 Out of the 4 countries, Samoa has the oldest maintenance law (55 years old) while Fiji has the most recent legislation, its Family Law Act 2003
- 2.4.6 A comparable analysis was drawn from several key themes identified from Samoa's MAA 1967:
- **Maintenance of a destitute person by near relative** – Samoa is the only country with provisions on maintenance of a destitute person by near relative. Fiji doesn't have the exact same provisions, but Fiji does legislate the maintenance of parents.
 - **Maintenance of a child** – Samoa's legislation does not expressly provide for a limitation period for an application to be made for that child's maintenance, but it does provide that an application can be made for a child under the age of 16 years. Fiji and Australia provide a 12-month limitation period for an application to be made.
 - **Age of child to be maintained** – The laws of Fiji, NZ and Australia all provide that a child can be maintained up to 18 years whereas Samoa's legislation provides for 16 years
 - **Duty to maintain a child** – Only Samoa out of the 4 countries does not express in its laws a duty of parents to maintain a child. Another matter for consideration
 - **Representation of a child** – Again, Samoa is the only country out of the 4 countries considered that does not provide for this in its law
 - **Maintenance of spouse** – Compared to Fiji, NZ and Australia, Samoa's law has more general provisions whereas the laws in these other countries are more detailed. For example – their laws provide for additional grounds of granting a maintenance order, while Samoa only relies on whether a spouse is a destitute person.
 - **Offences** – Samoa has imprisonment provisions for offences under its law. Fiji and Australia do not. NZ law does not provide for imprisonment terms, rather it provides for community work to be done, or a person is summoned to pay payment. The approach of other countries is in line with comments raised by Honourable Judge Talasa in the Commission's preliminary consultations – for the Family Court to take a Rehabilitative Approach
 - **Affiliation matters** – Samoa has similar limitation period for applying for affiliation orders as NZ (6 years). Compared to the other 3 countries, Samoa is the only country that does not provide for parentage tests (still use adjudging – needs to be updated). Samoa is also the only country out of the 3 that still requires corroboration of evidence of a mother in any affiliation case. This needs to be revised to be gender-neutral (in line with modern drafting)

OTHER JURISDICTION

Key Themes	Samoa	Fiji	NZ	Australia
Power to make maintenance and affiliation orders	District Court Judge s.3 Maintenance and Affiliation Act 1967	A court exercising jurisdiction in proceedings by virtue of the Act s.2 Family Law Act 2003	Family Court – spousal maintenance (s.68 Family Proceedings Act 1980) Section 80 FPA– Power for Family Court to make maintenance orders against natural parent. Section 50 – 51 (FPA) – Power for Family Court to make paternity orders.	Court exercising jurisdiction in proceedings by virtue of the Act s.2 / 66G of Family Act 1975 (Cth)
Maintenance of destitute person by near relative	A destitute person can be maintained by near relative Part 3 of Maintenance and Affiliation Act 1967	N/A No similar provision on maintenance of a destitute person by near relative Fiji does however have provisions on the maintenance of parents	N/A	N/A
Maintenance of a child (legitimate or illegitimate)	Section 11 of the MAA 1967 provides for maintenance for ex-nuptial/illegitimate child Section 12 – Power for District Court to make maintenance order against parent of a child under 16 years old. Section 46 - applicant	Sections 100 and 104 of the Family Law Act 2003 provides similarly (more detailed) Limitation period – within 12 months of birth of child, with exceptions (section 104)	Section 80 FPA– Power for Family Court to make maintenance orders against natural parent. Section 79 FPA - applicant	Similar provisions under section 67B – 67G of the Family Law Act 1975 Limitation period – 12 months (section 67G Family Law Act 1975)
Age of child to be maintained	Up to 16 years old (section 13 of MAA 1967) A child over 16 years may be maintained for education/training until they turn 19 (section 14)	Up to 18 years (section 92 FLA 2003) Unless continuation necessary for education / mental or physical disability (section 92 FLA 2003)	Section 5 Child Protection Act 1991 (“CSA”) – A child qualifies for child support if he/she is under the age of 18.	Up to 18 years (section 66L(1) Family Law Act 1975 (Cth)

Duty to maintain a child	N/A	Parents have the primary duty to maintain child (Section 86 of FLA 2003) Step-parents have duty to maintain if ordered by the court (section 87(1) of FLA 2003) <i>Chinsami v Punamma [1967] FjLawRP 25 (Supreme Court) Appellate Jurisdiction</i>	Duty to maintain child under section 4 of the Child Support Act 1991	Parenthood gives rise to primary duty to maintain child (not marriage alone) Sections 66(1)(c), 66D, 66M of the Family Law Act 1975 (Cth) Section 20 of Child Support Assessment Act 1989
Representation of child	N/A SV v SV [2004] WSDC Judge made a comment - a parent applies on behalf of child. The real applicant is the child, but are not represented in these cases (age, capacity etc)	A lawyer may be appointed to represent child if the court thinks their interests should be represented separately (section 125 of the FLA 2003)	Lawyer may be appointed to represent child if necessary (section 162 of FPA 1980)	A lawyer may be appointed to represent child if their interests should be represented separately (similar to Fiji) Section 68L of the Family Law Act 1975 (Cth)
Maintenance of Spouse	Part 6 (Maintenance of wives and husbands) Section 16 - 17 MAA 1967 - If the spouse is a destitute person Section 46 - applicant.	Sections 155 of the FLA 2003 If inability to support self arises out of specified reason <i>B v A [2011] FJMC 79 - maintenance ceases upon remarriage</i>	Section 68 (FPA) - Power for Family Court to make maintenance order in favour of either a spouse or civil union. Section 63 - to meet the reasonable needs of the other party Section 64 FPA - Maintenance after dissolution of marriage/civil union	Sections 72 - 74 of Family Law Act 1975 (Cth) If inability to support self arises out of specified reason
Overseas Maintenance orders	Section 62 of MAA 1967 Requires registration of overseas maintenance orders	<i>Section 174 FLA 2003</i>	Section 136 FPA 1980 - Requires registration in NZ by filing certified copy in the District Court in NZ.	Section 110A FLA 1975 (Cth)
Offences	Section 77 - offence for failure to provide	N/A	N/A but... Section 190 - Power	N/A

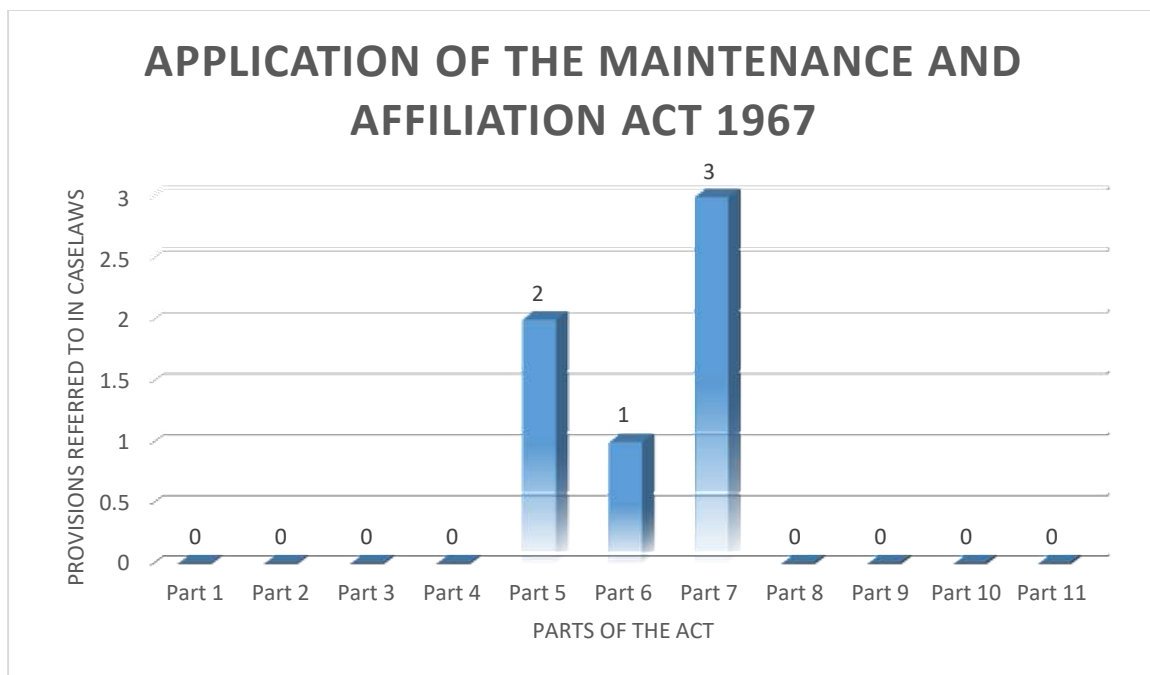
	<p>for husband, wife or children with adequate maintenance is liable to imprisonment up-to 6 months.</p> <p>Section 78 – offence for failure of payment under a maintenance order is liable to imprisonment up-to 3 months or a fine of up-to 1 penalty unit.</p> <p>Section 79 – 85 – offences in relation to leaving samoa, leaving samoa with intent to disobey maintenance order, after maintenance application, for the failure to provide adequate maintenance for husband, wife or children, it liable to imprisonment up-to 1 years.</p>		<p>for the District Court to issue summons to appear in court in respect of any person who fails to make payment of any financial support so payable.</p> <p>Section 196 – the court may order the liable person to do community work for a number of hours, not exceeding 400 hours, as the court thinks fit.</p> <p>N/A but... Section 101 FPA – Orders (made under part 6 & 8 that include spousal maintenance) are enforceable under the Child Support Act 1991 and shall apply to the manner in which orders made under Part 6 and Part 8 may be enforced on and after 1 July 1992.</p>	
Limitation period	<p>Affiliation order cannot be sought more than 6 years after birth of child Exception – father has contributed/cohabited with the mother Section 9 (MAA) provides for the:</p> <ul style="list-style-type: none"> • Power for the District Court to make affiliation orders. • Limitation Period – 6 years <p>Section 49 – applicant.</p>	N/A	<p>Section 50 – 51 (FPA) – Power for Family Court to make paternity orders.</p> <p>Similar to Samoa – cannot be sought more than 6 years after birth of child</p> <p>Exceptions:</p> <ul style="list-style-type: none"> - Father has made contributions - Cohabited with the mother 2 years before application - Expressly admit <p>Section 49 FPA 1980 Section 47 – applicant</p>	N/A

Parentage Tests Presumptions of parentage	N/A	Sections 138, 140, 131-135 of FLA 2003 provide for parentage tests and presumptions of parentage	Sections 54(1), 57(1) provides for parentage tests. However, the defendant has the right to refuse this.	Sections 69P – 69T, 69W, 69X, 69Y, 69Z and provide for parentage tests and presumptions of parentage
Corroboration of Evidence	An affiliation order in Samoa cannot be granted on uncorroborated evidence of the mother section 10 MAA 1967	N/A	NZ used to have similar provision, but has been repealed and replaced in November 1986 (no corroboration of mother's evidence necessary for the making of paternity order) Section 52(2) FPA 1980	N/A

IV. Case law analysis

Analysis

2.4.7 It is accepted that the databases available to the SLRC (pacific.org mainly) does not hold **all** of Samoa's family law court decisions. The SLRC operates on what is available for analysis. An analysis of how the provisions/parts of the MAA 1967 have been applied since enactment can be summed up in the bar graph below:



Maintenance related cases:

- Out of the **69** family related cases found in the Commission’s preliminary research, only **5 cases relate to/refer to maintenance** under the MAA 1967 (either expressly or as a general reference).
- Out of these **5** cases:
 - **3** cases expressly refer to the MAA 1967
 - **1** case make general reference to maintenance (no order was made)
 - **1** case refers to another family legislation (Divorce and Matrimonial Causes Ordinance 1961), but referred to maintenance.
- **Noteworthy:**
 - The ‘Maintenance’ area of law is complex/unclear and requires review – a procedure issue provided that there are multiple avenues to apply for maintenance order:
 1. Application for maintenance on its own (through the Maintenance Division of the MJCA); or
 2. Application for maintenance filed with an application for divorce.

Affiliation related cases:

- Out of the **69** family related cases found in the Commission’s preliminary research, there were **NO affiliation cases** found or available to the SLRC. This is unfortunate and a gap in analysis as the Commission is aware there have been many affiliation proceedings but none is available on record nor in court decisions that can be part of analysis in this review. It is hoped this situation can be changed for the better and a system of data recording and uploading of decisions are put in place at the earliest.
- According to the said 69 cases found, since the enactment of the MAA 1967, the above mentioned 5 case laws referred to/used only **6 provisions out of the 90 provisions** of the Act:
 - **section 12** – Judge may make maintenance order against parent of child
 - **section 12A** – Power of the Court to make custody order
 - **section 16** – Maintenance of wife
 - **section 20** – Payment of past maintenance
 - **section 25** – Interim maintenance order
 - **section 28** – District Court Judge may make order as to costs

2.4.8 Provided below is a table highlighting the 5 cases and their summaries:

TABLE OF CASE LAW – JUDGMENTS BY THE FAMILY COURT OF SAMOA		
	Case Law	Summaries
1.	<i>Soavele v Lili</i> [1993] WSSC 22; Misc 15431 (11 March 1993)	This was an appeal against an interim maintenance order, permanent maintenance order and disobedience order issued by the Magistrate Court against the appellant. Grounds of appeal: i. the respondent is not a destitute person in line with the MAA 1967, therefore no maintenance should have been granted in the first place (considering the income

		<p>and needs of both parties);</p> <p>ii. the permanent maintenance order was against the weight of evidence presented (there was not enough evidence to satisfy the Court whether this is so or not). In addition, the permanent maintenance order was made in the absence of the appellant's counsel (due to misinformation from Court Staff) was allowed</p> <p>Appeal was allowed, and matter referred to the Magistrate Court for rehearing.</p>
2.	<p><i>Maintenance Officer on behalf of Fiasili v Fuimaono</i> [2003] WSDC 3 (23 August 2003)</p>	<p>The case was one where there was no possibility of reconciliation in a marriage. The paramount question therefore in the case was 'which parent will have custody of the children (4)? At the time of the case, the mother had custody of the 2 daughters, while the father had the custody of the 2 sons.</p> <p>Based on presented evidence, the Court decided for the interim order (current arrangement) to continue</p> <p>There was no argument or evidence presented on maintenance, therefore the Court could not decide or make a maintenance order</p>
3.	<p><i>SV v SV</i> [2004] WSDC</p>	<p>An application for maintenance and support of the children of the marriage.</p> <p>The parties have been unable to agree on an amount for maintenance. In deciding the maintenance amount that is fair and reasonable, the Court considered which of the listed expenses were necessities and the fact that the mother was working. The applicant did not pursue past maintenance.</p> <p>Court issued maintenance order for the respondent to pay to the applicant – amount based on the Court's consideration of the various factors to reach an amount that is fair and reasonable for both parties.</p>
4.	<p><i>MM v LK</i> [2016]</p>	<p>An application for the variation of a custody order made under the MAA 1967 (general reference to MAA 1967, but not a maintenance case)</p> <p>The father of 3 children was seeking custody of his 3 children which were under the custody and care of the children's maternal aunt (late mother's sister)</p> <p>In cases for custody of children, the Court must have regard of the welfare of the children as of paramount importance. The evidence support that the children remain in the custody of their aunt – the more stable home and income to support the children.</p>

		Application to vary the custody order was varied.
5.	<i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)	This is a divorce case, but it involved applications for alimony and spousal maintenance. This case was heard and dealt with in the Supreme Court. As such, SC Justice directed that for orders for the custody, maintenance and education – these should be brought under a new application under the Infants Ordinance 1961 to the Family Court which is better placed to deal with such matters. *** just for note that in proceedings for divorce and nullity of marriage, the court can make an order for maintenance

V. Public Seminars

Analysis

2.4.9 From the public awareness seminars carried out by the Commission, various concerns and questions were raised by the public. An analysis of these issues is as follows.

- The most common concern in relation to maintenance matters, is whether the law allows or would assist both mothers and fathers who want to apply/claim maintenance. There was a misunderstanding that the law is in favour of mothers. This confusion was clarified (that it applies to both a man and a woman) at these seminars.
- Other concerns/interests raised were in relation to whether a person can apply for maintenance of the children even if unmarried.
- Some raised questions on the enforcement in Samoa of maintenance orders issued overseas, whether it is a crime to default/fail to pay maintenance.
- In relation to affiliation, there wasn't much discussion on it, but when people did ask, they were mostly interested to know what methods or evidence the Courts follow or rely on in adjudging a man as the father of a child. Whether Samoa now uses DNA tests or not, and if not, what do we use?

PUBLIC SEMINARS – ISSUES RAISED ON MAINTENANCE AND AFFILIATION ACT 1967	
Maintenance of Children	<ol style="list-style-type: none"> 1. Who can apply for maintenance? Can the father also apply or is it just mothers who can apply for maintenance? 2. Where can a father seek assistance from when applying for maintenance of his children where the wife is unfaithful/leaves? 3. If the couple are not legally married (de-facto), can one of the parents still claim/apply for maintenance of the children? 4. Father – 5. If there was a maintenance order for the maintenance of a child

	<p>overseas, will that maintenance order be recognized here in Samoa (where the person against whom that order was made now resides in Samoa?)</p> <p>6. How long can a child be maintained?</p> <p>7. If maintenance isn't paid, is that a crime? If a parent goes to jail for failure to pay maintenance, will that remove the liability to pay maintenance upon release?</p> <p>8. How can the law help to ensure that the money paid for maintenance of a child is properly used/utilized to care for the child/for purposes for which it was paid?</p>
Affiliation Order	9. Affiliation order – what are the evidence currently called/required by court? In the absence of scientific DNA tests?

VI. Discussion Questions

- 1) What revisions need to be made to the provisions on 'maintenance of persons by near relative'?
- 2) Should the Courts continue to make affiliation and adjudgment orders, and if yes, what evidential features should the courts take into account given Samoa's current infrastructure e.g. the taking of blood tests to determine paternity?
- 3) Should the courts take account of maintenance provisions by means other than monetary maintenance?
- 4) Should imprisonment for failure to pay maintenance remove the outstanding maintenance payments owed?
- 5) Are the penalties reasonable e.g. 6 months imprisonment for failure to maintain wife, husband or children; or 1 year imprisonment for leaving Samoa while failing to provide for the maintenance of a child?

2.5 FAMILY SAFETY ACT 2013

Background

- 2.5.1 The Family Safety Act 2013 specifically outlines the procedures to apply for protection orders in the cases relating to domestic violence. As stated in the long title, it is an Act to provide for the greater protection of families and the handling of domestic violence and related matters in Samoa.
- 2.5.2 This Act has 4 parts and 26 sections and is administered by the Ministry of Justice, Courts and Administrations ("MJCA"). This legislation was drafted to be in line with the 2006 Convention on the Rights of the Child and CEDAW legislative compliance reviews given the available statistics pointing to the high violent crimes committed against women and children in Samoa.

2.5.3 This Act provides for the procedures to be followed on who and how a person/complainant may apply for a protection order from the Court when facing domestic violence issues. Section 4 of the Act provides for an application for protection orders and explains who can apply for a protection order. It also provides that a person can apply on behalf of another person and that person must bring a written consent from the victim, except in cases where the victim is a child, or is suffering from mental illness, or is in a coma or a person who a Court would reasonably consider is unable to provide the required consent.

Amendments

2.5.4 To date, there have been no amendments made to this Act.

I. The Family Safety Act 2013 in Detail

2.5.5 The following table summarizes the FSA 2013:

<u>The Family Safety Act 2013 – in Detail</u>	
Sections of the FSA 2013	Summary of provisions
Section 1. Short title and commencement.	This Act is cited as the Family Safety Act 2013. It commenced on the date/s nominated by the Minister of MJCA (i.e. 1 June 2013).
Section 2. Interpretation.	Defines important terms used throughout the whole Act
Section 3. Act to bind the Government.	This Act binds the Government.
Section 4. Application for protection order.	Provides how and who can apply for a protection order. A complainant or a person acting on behalf may apply for a protection order. This also provides for the duty of the Registrar to inform the complainant or person acting on behalf of the complainant on the procedures to be followed.
Section 5. Interim protection orders.	Empowers the court to make interim protection orders where there is sufficient evidence the respondent is committing or has committed an act of domestic violence
Section 6. Protection orders where respondent does not appear on due date	When a respondent does not appear on the return date, the Court shall issue a protection Order if the Court is satisfied that (a) proper service has been effected on the respondent and (b) the application contains sufficient evidence that the respondent has committed or is committing an act of domestic violence.
Section 7. Protection orders where respondent appears on due date	If the respondent appears on the return date, the Court will proceed with the hearing of the matter and shall issue a protection Order if it finds on the balance of probabilities that the respondent is committing domestic violence.
Section 8. Court procedures for protection of	This provides for the protection of the complainants by Court during a hearing of an application. The Court if it think fits, will not allow the complainant to be cross examined by the respondent, or the respondent will provide the

complainant	questions and the Court will ask such questions to the complainant, or if the Court considered appropriate, permit a screen to be placed between the complainant and the respondent during cross examination.
Section 9. Protection orders available to the Court	The Court may in issuing a protection order under section 5, 6 or 7 prohibit the respondent from: (a) committing any act of domestic violence or enlisting the help of another person to commit such act; (b) entering a residence, or part of such residence, shared by the complainant and respondent; (c) entering the complainant's place of employment, or part of such place; (d) preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in the shared residence; or (e) committing any other act, which the Court considers appropriate in the circumstances, in order to protect the complainant.
Section 10. Court's power to impose conditions on protection order	This provides for additional conditions which the Court thinks reasonably necessary to protect and provide safety for the complainant.
Section 11. Breach of protection order	This provides for the penalties if the respondent breaches the protection order issued either by physical or sexual abuse; or any act of violence.
Section 12. Variation or setting aside of protection order	A complainant or respondent may, upon written notice to the other party apply to the Court for the variation or setting aside of a protection order issued.
Section 13. Seizure of arms and dangerous weapons	This provides that the Court shall order a Police Officer to seize any arm or dangerous weapon in the possession or in control of the respondent if there is evidence that the respondent has threatened or expressed intention to kill or that the possession of such arm or dangerous weapons is not in the best interests of the respondent.
Section 14. Attendance of proceedings and prohibition of publication of certain information.	This provides for the people that are acceptable to be present during Court proceedings. (a) officers of the Court; (b) the parties to the proceedings; (c) any person bringing an application on behalf of the complainant; (d) any legal representative representing any party to the proceedings; (e) witness; (f) any person the Court permits to be present.
Section 15. Duty to assist and inform complainant of rights.	This provides that a Police Officer that receives a report of domestic violence must render assistance at the earliest opportunity without any discrimination on any grounds whatsoever.
Section 16. Duty to prosecute.	This provides that the Police must prosecute where a report of domestic violence involve any form of physical or sexual abuse and provided there is enough evidence in proceeding with this matter.
Section 17. Sentencing.	This provides for the matters to be considered by the Court in passing sentence.
Section 18. Offences and penalties.	This provides that a person who: (a) contravenes any prohibition, condition, obligation or order imposed under this Act; (b) fails to comply with any direction under section 7(5); or (c) in an affidavit required to be provided under any provision of this Act, willfully makes a false statement – commits an offence and upon conviction liable to a fine not exceeding 20 penalty units or imprisonment not exceeding 2 years or both.
Section 19. Evidence	The Court may receive any evidence which the Court considers necessary for it

and procedure.	to make a decision, determination or direction for the granting or refusal of a protection order under the provisions of this Act.
Section 20. Police Officers to assist Registrar	This provides that all Police Officers enlisted in the relevant Police Station shall cooperate with the Registrar and assist at no cost with any task required by the Registrar.
Section 21. Application for restraining orders under the Divorce and Matrimonial Causes Ordinance 1961	This provides that if a restraining order is issued under Part 3A of the DMCO 1961, the restraining order is taken as a protection order issued under this Act.
Section 22. Forms.	The Minister may approve, amend or replace the form for any application, certificate, warrant or any other document required under this Act.
Section 23. Fees	The Minister to determine and publish by Notice in the Savali the types of fees payable, the rate at which such fees are to be calculated or the amount of such fees.
Section 24. Protection from liability.	This provides for the no liability of the Government, the Minister and the officers mentioned for any acts done in good faith in the exercise of their function conferred by the Act.
Section 25. Regulations.	The Head of State, acting on the advice of Cabinet may make regulations.
Section 26. Consequential amendments.	Consequential amendments of the Act.

II. Judiciary's Comments

Analysis

2.5.6 Preliminary consultations were conducted with some members of the Judiciary to seek their views on the 6 Family laws. The Table below provides comments by members of the Judiciary identifying matters that are working well and matters that need reviewing.

Justice/Judge	What is working	What needs improvement
Justice Tafaomalo Leilani Tuala-Warren		Family violence needs to be prioritized especially in family matters brought forward. There is a need to serve Protection Orders ("PO") as soon as possible. Sometimes the Court have to follow up with the Police if it has been served.
Justice Leiatuaalesa Darryl Clarke	The law is working really well. The Family Court's approach is, they go through rehabilitation in the first offending then imprisonment for re-offending. This resulted in a 6% - 7% re-offending rate as a result of this approach.	

	Rehabilitation works well especially for perpetrators of domestic violence. There were hard core issues but they changed around. For e.g. 200 men graduated from training on prevention of violence at Samoa Victim Support group ("SVSG").	
Judge Talasa Saaga		<p>There needs to be more awareness programs on the law. For ALL members of the community, not necessarily focused on women and girls, but for ALL. So far records show that there have only been 2 protection orders from Savaii and this is a very small number.</p> <p>The Act focuses more on intimate partner violence. Noticed also re cases brought in that protection orders are now used more as weapon rather than a shield.</p> <p>The Act focuses more on intimate partner violence</p>
Judge Alalatoa Rosella Papalii		The Family laws of Samoa are scattered i.e. Family Safety Act 2013 is not known to people perhaps would be good to bring it all under one Act

III. Other Jurisdictions

Analysis

- 2.5.7 A comparison analysis was conducted between Samoa's Family Safety Act 2013 and Fiji's Domestic Violence Decree 2009, New Zealand's Family Violence Act 2019 and Queensland Australia's Domestic Violence and Family Protection Act 2012.
- 2.5.8 As Samoa's Family Safety Act 2013 is relatively a newly enacted legislation, many of its provisions are similar to its Commonwealth counterparts: Fiji, New Zealand and Queensland Australia. However, in saying this there are some differences the Commission needs to consider when reviewing what improvement needs to be made to the Act. The following comparative analysis focuses on the key differences that can be made between the 4 legislation:
- **Definition of family/domestic violence:** Across the board the definition 'child' is anyone who is 18 years or under. This is in line with Child Convention of Rights. The definitions of 'domestic violence' are generally similar across the 4 legislation.

However, Samoa does not include ‘economic abuse’ in their domestic violence definition.

- **Who may apply for Protection Order:** Although section 4 is general enough to include a police officer, Samoa has no express provision for a police officer to apply on behalf of a complainant, nor for a police officer to issue another order on their own initiative. Fiji, New Zealand and Queensland Australia allows for police officers to either apply for a protection order, a domestic violent restraining order or Police Safety Order.
- **Grounds for issuing Protection Order:** For Samoa the complainant is usually either physically or sexually assaulted as a result of domestic violence. Fiji, New Zealand and Samoa have similar grounds for issuing a Protection Order. The focus is on the safety of the complainant.
- **Conditions of Protection Order:** Samoa does not have any extra conditions for a Protection Order. Conditions such as tenancy/furniture order which are available in Fiji, New Zealand and Queensland Australia.
- **Penalty for breach of Domestic Violence Order:** Samoa’s penalty for breach of Protection Order is relatively low compared to Fiji, New Zealand and Queensland Australia.

2.5.9 The Table below sets out in their themes the provisions of the key differences between the 4 laws:

OTHER JURISDICTIONS				
Key Themes	Samoa	Fiji	New Zealand	Queensland (Australia)
Definition of Family/Domestic Violence	Economic/financial abuse <u>does not</u> fall under the definition of domestic violence. s 2 <i>Family Safety Act 2013</i>	Economic/financial abuse <u>does not</u> fall under the definition of domestic violence.	Definition of domestic/family violence. s 11 <i>Family Violence Act 2018</i> ;	definition of domestic/family violence. ss 8, 12 <i>Domestic Violence and Family Protection Act 2012 (Qld)</i>
Who may apply for Protection Order	No express provision for a police officer to apply on behalf of a complainant, nor for police to issue another	A police officer may apply for a domestic violence restraining order. s 19 <i>Domestic</i>	A police officer may issue a Police Safety Order. s 28 <i>Family Violence Act 2018</i>	A police officer may apply for a protection order, and may also issue a Police

	order on their own initiative.	<i>Violence Decree 2009</i>		Protection Notice. ss 25, 101 <i>Domestic Violence and Family Protection Act 2012 (Qld)</i>
Grounds for issuing Protection Order	The complainant is likely to be either physically or sexually assaulted as a result of such domestic violence if a protection order is not issued. s 5(2) <i>Family Safety Act 2013</i>	Making of the order is necessary for the safety and wellbeing of the person s 23(1) <i>Domestic Violence Decree 2009</i>	Making of the order is necessary for the protection of the applicant/applicant's child s 79 <i>Family Violence Act 2018</i>	Order is necessary or desirable to protect the aggrieved from domestic violence s 37 <i>Domestic Violence and Family Protection Act 2012 (Qld)</i>
Conditions of Protection Order	No standard, requisite conditions The court may ... prohibit the respondent from... ' s 9 Additional conditions: <u>no</u> provision for tenancy/ occupation provision. ss 9, 10 <i>Family Safety Act 2013</i>	Standard conditions Additional conditions (including occupation/ tenancy) ss 27-37 <i>Domestic Violence Decree 2009</i>	Standard conditions Additional conditions Other orders: occupation and tenancy ss 90, 103, 115, 121 <i>Family Violence Act 2018</i>	Standard conditions Additional conditions (including ouster conditions) ss 56-67 <i>Domestic Violence and Family Protection Act 2012</i>
Penalty for breach of Domestic Violence Order	<u>Breach involving further physical or sexual abuse</u> : max 6 months imprisonment ; Breach involving <u>other act of violence</u> : punishment as court deems appropriate , including	Breach (without reasonable excuse): fine of \$1000, imprisonment of 12 months ; If <u>previous conviction</u> for breach: fine of \$2000, imprisonment of 12 months	Breach: max 3 year term of imprisonment s 112(3) <i>Family Violence Act 2018</i>	Breach (with <u>previous conviction</u> for DV in last 5 years): fine of 240 penalty units or 5 years imprisonment (max) ; Breach otherwise:

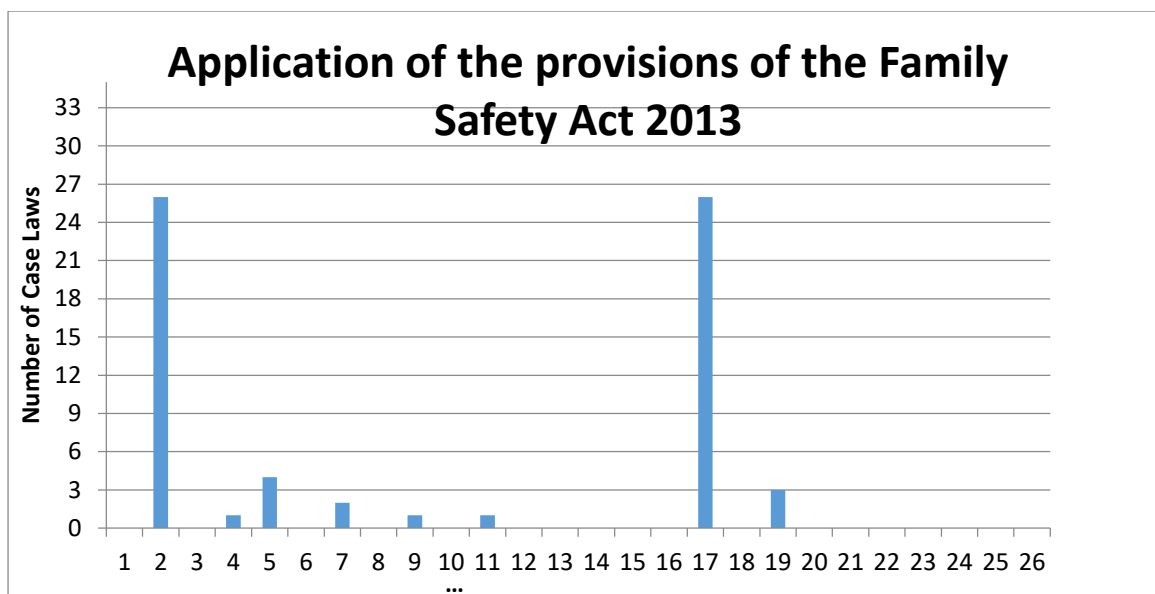
	sanctions under Community Justice Act 2008 s 11(1) <i>Family Safety Act 2013</i>	s 77(1) <i>Domestic Violence Decree 2009</i>		fine of 120 penalty units or 3 years imprisonmen t (max) s 177(2) <i>Domestic Violence and Family Protection Act 2012 (Qld)</i>
--	---	--	--	--

IV. Case law analysis

Analysis

2.5.10 It is accepted that the databases available to the SLRC (pacific.law mainly) does not hold **all** of Samoa's family law court decisions. The SLRC operates on what is available for analysis. To date, a total of 33 case laws are available on PacLII that have used the Family Safety Act 2013. Most of these cases are about an application to a protection order as a result from domestic violence.

- 1/33 used **section 4** re application for protection orders
- 4/33 cases specifically used **section 5** re Interim Protection Orders
- 2/33 used **section 7** re protection orders where respondent appears on due date
- 1/33 used **section 9** on protection orders available to the Court
- 1/33 used **section 11** on breach of protection order
- 3/33 used **section 19** on evidence and procedure
- 26/33 used **section 2** re definition of domestic relationship, and **section 17** on sentencing.



2.5.11 Below are some examples of case laws applying the Family Safety Act 2013.

Key Themes	Relevant provision(s) of the Act	Case Summaries
Definition of Domestic Relationship & Domestic Violence/Interim Protection Orders/Protection Orders where Respondent/Evidence and Procedure	S2, s5(3)(b), s7, s19	<p><u>LA v SL & TS [2016] WSFC 5</u></p> <p>Court to determine whether to finalize Interim Protection Order (“IPO”) issued on 24/6/16 against Respondent 1 (Step-father) and Respondent 1 (Mother) as a Protection Order.</p> <p>Allegations were made against Respondent 1 for carrying out acts of domestic violence on the child and Respondent 2 does not to stop these acts. Child is fearful of Respondent 1.</p> <p>Court set aside IPO against Respondent 2 and issued a Protection Order against Respondent 1 as although he showed ‘tough love’ towards child, these actions constitutes domestic violence under FSA. Respondent 1 should not have disciplined the child the way he did. However, as Resp 1 regrets his actions and his response are a result of how he was raised, Court ruled he was not an ongoing safety risk for the child.</p> <p>Court held:</p> <ul style="list-style-type: none"> - Respondent 1 is prohibited from committing any further acts of domestic violence against child - Respondent 1 is to attend parenting counseling for 4 months as directed by Probation Service - Matter before the Court on 28/10/16 to review Respondent 1 compliance to the order <p>Court in this case upheld physical discipline constitutes as an act of domestic violence. As the Respondents did not pose as an ongoing safety risk to the child the Court issued a Protection Order to Respondent 1 with the condition that he is to attend parenting</p>

		counselling and for the child to remain in their care.
	S2, s7, s19	<p><u>LMT v AT [2016] WSFC 4</u></p> <p>Application by Respondent to discharge IPO issued on 22/3/2016. Applicant (wife) alleged that Respondent (husband) has committed acts of domestic violence against her (physical, threaten, verbal). Respondent wishes to set aside IPO as he claims Applicant is lying.</p> <p>Court established Applicant and Respondent are in a domestic relationship and found the Applicant and her sister's evidence to be more credible. Court believed that Respondent did commit acts of domestic violence against Applicant, physically, verbally and emotionally. Court issued a Protection Order until set aside by Court</p>
Interim Protection Orders	S5(3)(b)	<p><u>SVSG v Falealili [2014] WSFC 2</u></p> <p>SVSG applied for an IPO on behalf of a 5 year old in the care of SF (Complainant). The IPO was against the mother, mother's partner and mother's uncle. IPO was issued. All Respondent's oppose the making of a Final PO. Uncle allegedly sexually abused child, the Mother and her partner knew of this and took no steps to prevent the abuse from happening and also counselled child not to say anything.</p> <p>Court's upheld Protection Order (final for all intents and purposes) for the benefit of the child against all 3 Respondents for the following reasons:</p> <ul style="list-style-type: none"> - Courts found child's interview with Police consistent with Respondent (Uncle) history of sexual violence. . - Courts found that although the parents did not commit an act of domestic violence but they pose as an ongoing risk to the child as they knew about the abuse and made no effort to protect her. <p>Courts upheld a Protection Order as all 3 Respondents posed an ongoing risk to the child. This case shows how the Court still acknowledges the child and her mother's relationship despite the situation. The mother was allowed supervised contact with the child.</p>
	s5(4)	<p><u>MM v PP[2014] WSFC 1</u></p> <p>Applicant (MM) filed an ex parte application for a IPO against the Respondent (PP). The Court was not satisfied the threshold had been reached for proceeding without notice.</p> <p>Court upheld that the Respondent has committed an act of domestic violence by throwing her car keys at Applicant. However, Court was not satisfied that there was sufficient evidence to show that there is ongoing risk of any domestic violence between the parties.</p> <p>The threshold seems to be that an act of domestic violence is not sufficient there must also be proof of ongoing risk for a Protection Order to be issued.</p>

Protection Orders where Respondent appears on due date	S7(2), 7(4), 5(3), 5(3)(c)	<p><u>RKS v HL [2014] WSDC 6</u></p> <p>Applicant RKS (wife) alleged that she has suffered domestic violence from Respondent HL (husband) throughout the 20 years of their marriage, and after their divorce right up until 30/4/2014. Court was to determine whether to grant a final Protection Order against the Respondent</p> <p>The Court was satisfied on a balance of probabilities that H.L has committed acts of domestic violence on R.K.S during their marriage. The IPO granted on 30 April 2014 was made a Protection Order which is final until it is set aside. Judge Tuala-Warren further commented that a Protection Order “is a shield and not a weapon. It is to provide a safe setting in which the parties can work together as parents of 3 children. The relationship will be ongoing, but this Order will help set boundaries as the parents try to re-shape their relationship.</p> <p>Other issues:</p> <ul style="list-style-type: none"> - S19 vs Retrospective effect – <ul style="list-style-type: none"> a. Counsel for Respondent argued that as the Act has no provision providing for retrospective effect, the DV acts committed prior to the enactment date of the FSA should not be considered b. Counsel for Application claimed s19 allows the Court to consider any evidence to determine whether a Protection Order should be made. <p>The Courts held it would be unsafe for the Court to proceed on a basis that it considers evidence only since enactment of the Act. This is because the Court would not have the historical evidence in order to fully consider and determine the application. The object of FSA is to provide for the protection of families, amongst other things, and the Court would not be interpreting the Act according to its true intent, meaning and spirit if it limits itself in the way which is suggested by Counsel for Respondents</p> <ul style="list-style-type: none"> - Defective service, as copy of Order not served to Respondent – however as a procedural matter, the original should be served on Respondent to avoid any defects in service.
Protection Order available to the Court – The Court may provide a PO that prohibits Respondent from committing any act of DV or enlisting the help of another person to commit such act	S9(a)	<p><u>Police v MSS [2016] WSFC 2</u></p> <p>MSS (Accused) and TS (Complainant) are sisters. They both reside on a piece of land at Faatoia, which has led to prior disputes and proceedings. There are existing Protection Orders against the several parties involved. The present proceedings are from an alleged breach on one of the PO’s, between the parties. Complainant alleges that accused instructed a 3rd party to remove a pipeline on their side of the land.</p> <p>To prove present charge Prosecution must satisfy the Court, whether:</p>
Breach of Protection	S11(1)(b)	<ul style="list-style-type: none"> - Terms of Order are clear

		<ul style="list-style-type: none"> - Accused had proper notice of the Order - Accused did not comply terms of Order <p>First two limbs is satisfied as the IPO was issued by this Court, and the Order was served to all parties. Court held removing a pipeline from accused side of boundary does not amount to an act of domestic violence. It is neither an abuse of a “physical , sexual, emotional, verbal or psychological” nature, not is it “intimidation, harassment or stalking, nor controlling or abusive behavior. Court was also not satisfied on evidence, that Accused actions did not cause any “harm or imminent harm to the complainant’s safety, health or well being.</p> <p>Court held that Prosecution had not proven the charge on the balance of probabilities. Therefore, allegations/charges were dismissed</p>
Sentencing	S17	<p><u>Police v Lima [2014] WSSC 33</u> Courts held that Domestic Violence is an aggravating factor at sentencing</p>
		<p><u>Tele’a v NPO [2017] WSCA 4</u> This case was an appeal against sentencing – Counsel for Appellant submitted Family Safety Act 2013 supported a lower sentence</p> <p>Court upheld that s17 does not intend to be a comprehensive code for the sentencing of Domestic Violence offenders and it does not abolish the maximum sentences established for particular categories of offence. Appeal dismissed – Court of Appeal Judges further commented that Appellant actually received a light sentence.</p>
Evidence and Procedure	S19	<p><u>Police v Lafaele [2015] WSSC 114</u> Mr Lafaele appeared for a sentence in respect of one charge of causing bodily harm with intent to cause bodily harm against his wife. (Starting Point Sentencing: 7 years of Imprisonment)</p> <p>Court held that a significant aggravating matter is the fact that the offending took place in the context of a domestic relationship. Section 19 of the FSA allows the Court to consider any evidence which is necessary for it to make a decision, determination or direction for the granting or refusal of a Protection Order under the provisions of this Act whether the evidence is admissible or not by law. Therefore Court significantly looked at the offence which occurred in the presence of his 10 year old son and the Victim’s Impact Report which stated the son feared him and did not from Victim Impact Report which the son stated he cannot forget what happened which has caused him to have negative feelings towards Mr Lafaele.</p> <p>Although he showed positive changes and he had reconciled with his wife, the Courts sentenced Mr Lafaele was sentenced to one year and 9 months, followed by one year probation or supervision .</p>

V. Public Seminars

2.5.12 The Act was only mentioned in the Upolu seminars held in October 2019. The Savaii seminars in November 2019 were cancelled due to the measles outbreak. As a result, there is no record of public comments on this Act. The SLRC looks forward to comments from the public at the 2020 public consultations proper.

VI. Discussion Questions

- 1) Is the definition of domestic violence sufficient? Should it include economic/financial abuse?
- 2) Should there be an expressed duty for a police officer to either apply for or issue a Protection Order?
- 3) Are the conditions a Court may attach to a Protection Order sufficient and relevant to the Samoan context?
- 4) How can the Village and Church authorities assist more in enforcing protection orders and combating domestic violence?
- 5) Is the penalty for breaching a Protection Order too low? (Contravening a protection order - a fine not exceeding 20 penalty units (\$2,000) or imprisonment not exceeding 2 years, or both).

2.6 FAMILY COURT ACT 2014

Background

2.6.1 The Family Court Act 2014 (“Act”) establishes the Family Court as a Division of the District Court and provides for the constitution, jurisdiction, powers and procedures of the Family Court, and for related purposes.²⁵ A fairly new enacted legislation, no amendments have been made to the Act nor have there been any regulations made under the authority of this Act.

2.6.2 The Family Court has jurisdiction to hear and determine proceedings under any of the following Acts:

- a. Infants Ordinance 1961;
- b. Marriage Ordinance 1961;
- c. Divorce and Matrimonial cases Ordinance 1961;
- d. Maintenance and Affiliation Act 1967;
- e. Births, Deaths and Marriage Registration Act 2992; and
- f. Family Safety Act 2013; and

²⁵ Long Title, Family Court Act 2014.

- g. Any other enactment conferring jurisdiction on the Family Court or the District Court.²⁶

2.6.3 Similar to other formal Courts, there are rules which regulate practices and procedures for the Family Court. The Act establishes the Family Court Rules under section 18. The Family Court Rules 2014 are a comprehensive set of procedure rules designed especially for Family Court proceedings.

Amendments

2.6.4 Since the enactment of the Family Court Act in 2014, there have not been any amendments to the Act.

I. The Family Court Act 2014 in Detail

2.6.5 The Family Court Act 2014 has 6 parts and 20 sections and is summarized in the Table below:

The Family Court Act 2014 – in Detail		
Part	Sections	Summary of provisions
Part 1: Preliminary	Section 1	Short Title: Family Court Act 2014
	Section 2	Interpretation: defines important terms throughout the Act
	Section 3	Act binds the Government
Part 2: Establishment of the Family Court	Section 4	Family Court: Family Court is established as a division of the District Court and consists of Family Court Judges appointed pursuant to this Act.
	Section 5	Appointment of Family Court Judges: Head of State, acting on the advice of the Judicial Service Commission, may appoint a fit and proper person to be a Family Court Judge pursuant to the requirements set out in this section.
Part 3: Conciliation and Resolution	Section 6	Conciliation: All proceedings commenced in Family Court must, as far as possible promote conciliation.
	Section 7	Alternative dispute resolution (“ADR”): Prior to a substantive hearing in the Family Court parties must engage in some form of ADR to the satisfaction of the Court, unless the Court is satisfied no possible resolution will be reached, or that ADR will be inappropriate.
Part 4: Jurisdiction of the Family Court	Section 8	Jurisdiction: The Family Court has jurisdiction to hear and determine a matter under the following enactments: <ul style="list-style-type: none"> - Infants Ordinance 1961; - Family Safety Act 2013; - Maintenance and Affiliation Act 1967; - Divorce and Matrimonial Causes Ordinance 1961; - Marriage Ordinance 1961; - Births, Deaths and Marriages Registration Act 2002; - Any other enactment conferring jurisdiction on the Family Court or the District Court. -

²⁶ S8 – Family Court Act 2013 (Samoa).

	Section 9	Court sittings: Senior District Court Judge may determine regular or special sittings of the Family Court in any place, date and times determined by the Judge.
	Section 10	Attendance at hearings: Sets out authorized persons who may attending a hearing or proceedings in the Family Court.
	Section 11	Publication of reports of proceedings: Allows for the publication of reports of proceedings except for confidential matters. A person who publishes or causes to publish confidential matters commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months, or both.
	Section 12	Proceedings to be brought and dealt with under Family Court Rules: All Family Court proceedings are brought and dealt under the Family Court Rules, or District Courts Rules where appropriate.
	Section 13	Case stated to Supreme Court: Family Court may seek for the opinion of the Supreme Court on any question of law arising in a matter before the Family Court. This provision also authorizes the Supreme Court to hear and determine as if the proceedings had been originally commenced in the Supreme Court pursuant to the Supreme Court (Civil Procedure) Rules 1980.
	Section 14	Transfer to Supreme Court: The Supreme Court may transfer any proceeding before their Court to the Supreme Court due to the complexity of the proceedings. The Supreme Court has the same jurisdiction as the Family Court had in hearing and determining the proceedings transferred under this section.
	Section 15	Application of District Courts Act 1969: District Court Acts 1969 applies to this Act, with any necessary modifications and adaptations. This Act prevails if there is a conflict between this Act and the District Courts Act 1969.
Part 5: Administration	Section 16	Family Court Coordinator: The Registrar of the District Court must coordinate counselling and related services required for the proper functioning of the Family Court.
	Section 17	Counsellors: The Registrar may appoint Authorised Counsellors on terms and conditions provided by the Family Court Rules.
Part 6: Miscellaneous	Section 18	Family Court Rules: The Head of State (acting on 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. This provisions sets out the scope which rules should provide for.
	Section 19	Regulations: The Head of State, acting on the advice of Cabinet, may make regulations necessary for the implementation of the purposes of this Act. , and in particular matters such as: <ul style="list-style-type: none"> - Fees for proceedings, or intended proceedings in Family Court and other matters relating to fees; and - Proceedings that concern matters of genuine public interest.
	Section 20	Transitional and saving provisions: All matters and proceedings commenced or pending in the Supreme or District Court before commencement of this Act under any enactment referred to in section 8 are to be transferred and determined in the Family Court.

II. Judiciary's Comments

Analysis

2.6.6 Preliminary consultations were conducted with members of Judiciary to seek their views on the 6 Family laws. The Table below provides comments by members of the Judiciary identifying matters that is working well and matters that needs reviewing.

Justices / Judge	What is working and provided for in the Act	What needs improvement
Justice Leiataualesa Daryl Clarke	Family Court therapeutic approach is working well	
Justice Tafaoimalo Tuala-Warren	Family Court should remain a closed Court to allow privacy for families. This helps families open (This is provided for in section 10 of the Act).	The Family Court needs a separate registry of family matters from other matters brought to Court. This is for ease of reference and record keeping.
	Family Violence Court does not need a separate legislation as it is the criminal branch of the Family Court. Section 5 of the Act authorizes the Family Court Judge to exercise the powers of a District Court Judge.	
Judge Talasa Saaga		There is a need to clarify definition of the term 'family'. This will help limit number of cases brought through to Court given the current broad definition of family in the Samoan context.
		There is a need to clarify interpretation and application of what constitutes as a 'dangerous weapon' when filing a matter in the Family Violence Court so as to avoid cases where a 'breadfruit' amount to a dangerous weapon.
		There is a need to look at the issue of resolving high number of assault cases which comes through to Court. The Court seems to be wasting cases where only 2 swear words were thrown between the parties. The Courts should be dealing with more serious matters such as cases of assault causing injury or theft.

III. Other Jurisdictions

2.6.7 A comparative analysis was conducted between Samoa’s Family Court Act 2014, Fiji’s Family Law Act 2003, New Zealand’s Family Court Act 1980 and Queensland Australia’s Family Law Act 1975. The purpose was to highlight any commonalities or differences with the legislation of those other Commonwealth counterparts.

2.6.8 The following analysis can be made between the 4 jurisdictions:

2.6.9 Samoa’s Family Court Act 2014 is a relatively new legislation compared to the other 3 jurisdictions, therefore it encapsulates most provisions with a little difference in the wording

- **Positions in Judicial System/Character of Judges:** Samoa’s Act provides that a Family Court judge must be a suitable person. Fiji, New Zealand and Queensland Australia specifically state further how a judge is a suitable person by reason of his/her training, experience and personality.
- **Jurisdiction:** Samoa is similar to New Zealand as it states specifically the Acts that is determined under the Family Court.
- **Attendance at hearings:** All 4 jurisdictions set out the officers that can attend the proceedings. Generally it is a closed court. However Fiji, New Zealand, Queensland (Australia) emphasizes that proceedings should be informal. Queensland (Australia) sets out principles that proceedings should be mindful on the best interest of the child.
- **Publications of reports of proceedings:** Samoa and New Zealand allows for the publication of reports. Samoa prohibits confidential matters to be published but the Act is silent on clear procedures of how the media can determine matters that they can publish. New Zealand on the other hand, specifically states that the leave of the Court must be sought for any matter that includes a child under the age of 18 or a vulnerable person.
- **Conciliation:** Only Samoa and New Zealand emphasize that it is the duty of the lawyer to promote conciliation
- **Alternative Dispute Resolution:** Only Samoa and Queensland Australia have a requirement that prior to any substantive hearing, the Court must be satisfied that there has been a prior attempt to resolve matters via arbitration.

2.6.10 The Table below categorize in common key themes the provisions between the jurisdictions.

OTHER JURISDICTIONS				
Key Themes	Samoa	Fiji	New Zealand	Queensland (Australia)
Position in judicial system	The Family Court is established as a division of the District Court and consists of Family	The Family Court is established as a division of the High Court, and consists of such judges as the	<u>Division of District Court:</u> The Family Court is a division of the District Court: s 4	The Family Court of Australia is a superior court of record and is, and is taken to always have been, a court of

	<p>Court judges: s 4</p> <p>A person appointed under subsection (1) must be a suitable person to deal with matters relating to Family Law: s5</p>	<p>Chief Justice determines: s 15 Family Law Act 2003</p> <p>A Family Division of the Magistrates' Court is established which is subordinate to the Family Division of the High Court: s 20 Family Law Act 2003</p> <p>Character of judges/magistrates: A person designated by the Chief Justice as a judge of the Division or a resident magistrate of the division must be, by reason of training, experience and personality, a suitable person to deal with matters of family law: ss 16(1), (2), 20(1), (3) Family Law Act 2003</p>	<p>Family Court Act 1980</p> <p><u>Character of judges:</u> A person shall not be appointed to be a Family Court Judge unless he is, by reason of his training, experience, and personality, a suitable person to deal with matters of family law: s 5(2) Family Court Act 1980</p>	<p>law and equity: s 21 Family Law Act 1975 (Cth)</p> <p>The Court comprises the Appeal Division and the General Division: s 21A Family Law Act 1975 (Cth)</p> <p><u>Character of judges:</u> A person shall not be appointed as a judge unless by reason of training, experience and personality, the person is a suitable person to deal with matters of family law: s 22(2) Family Law Act 1975 (Cth)</p>
Jurisdiction	<p>The Family Court has jurisdiction to determine a matter under the following Acts:</p> <p>(a) <i>Infants Ordinance 1961</i>; (b) <i>Family Safety Act 2013</i>; (c) <i>Maintenance and Affiliation Act 1967</i>; (d) <i>Divorce and Matrimonial Causes Ordinance 1961</i>; (e) <i>Marriage Ordinance 1961</i>; (f) <i>Births, Deaths and Marriages</i></p>	<p><u>Division of High Court:</u> The Family Division of the High Court has jurisdiction in –</p> <p>(a) matrimonial causes and all other matters instituted or continued under the Family Law Act 2003; (b) any other matter in respect of which jurisdiction is conferred on it by a written law.</p> <p>Subject to any restrictions contained in the</p>	<p><u>Jurisdiction of Family Court:</u> The Family Court must hear and determine all the proceedings that are to be heard and determined by the court under or by virtue of any of the provisions of –</p> <p>(a) the Marriage Act 1955; (b) the Adoption Act 1955; (c) the Care of Children Act 2004; (d) the Domestic Actions Act 1975; (e) the Property</p>	<p><u>Original jurisdiction:</u> Conferred on the Family Court with respect to:</p> <p>(a) matters arising under the FLA in respect of which matrimonial causes are instituted; and (b) matters arising under the FLA in respect of which de facto financial causes are instituted; and (c) matters arising under the <i>Marriage Act 1961</i> in respect of which proceedings (other than proceedings under</p>

	<p><i>Registration Act 2002;</i> (g) any other enactment conferring jurisdiction on the Family Court or the District Court: s 8</p>	<p>regulations, the jurisdiction of the FD of the HC may be exercised in relation to persons or things outside the Fiji Islands.</p> <p>The FD of the HC has exclusive jurisdiction in relation to applications for orders of nullity of marriage and to applications under s 200 in relation to the Convention on the Civil Aspects of International Child Abduction (1980) s 17 Family Law Act 2003</p> <p><u>Division of Magistrates' Court: The Family Division of the Magistrates' Court has jurisdiction in –</u> (a) <u>matrimonial causes and all other matters instituted or continued under this Act;</u> (b) <u>any other matter in respect of which jurisdiction is conferred on it by a written law: s 21 Family Law Act 2003</u></p>	<p>(Relationships) Act 1976; (f) the Family Proceedings Act 1980; (g) the Child Support Act 1991; (h) the Oranga Tamariki Act 1989; (i) the Law Reform (Testamentary Promises) Act 1949; (j) the Family Protection Act 1955; (k) the Wills Act 2007; (l) the Civil Union Act 2004; (m) any other enactment for the time being in force: s 11(1) Family Court Act 1980</p>	<p>Part VII of that Act) are instituted; (d) matters (other than those in the preceding paragraphs) with respect to which proceedings may be instituted in the Family Court under the FLA or any other Act: s 31(1)</p> <p>Subject to any restrictions in s 111AA, the regulations or the standard Rules of Court, the jurisdiction of the Family Court may be exercised in relation to persons or things outside Australia and the Territories. s 31(2) Family Law Act 1975 (Cth)</p>
<p>Attendance at hearings/ conduct of proceedings</p>	<p><u>Attendance at hearing:</u> The only persons who may attend a hearing of proceedings in the Family Court are as follows: (a) officers of the Court; (b) parties to the</p>	<p><u>Proceeding without undue formality:</u> In proceedings under this Act, the court must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted: s 185(4)</p>	<p><u>Avoidance of unnecessary formality:</u> Family Court proceedings shall be conducted in such a way as to avoid unnecessary formality: s 10 Family Court Act 1980</p>	<p><u>Principles for conducting child-related proceedings:</u> In any child-relating proceeding (s 69ZM) a court must give effect to the following principles in performing duties and exercising powers in relation to</p>

	<p>proceedings; (c) lawyers representing parties to the proceedings; (d) witnesses; (e) accredited news media reporters; and (f) persons whom the Family Court Judge permits to be present: s 10(1) Nothing in s 10 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: s 10</p>	<p>Family Law Act 2003</p>	<p><u>Attendance at hearings:</u> Unless the Act under which proceedings are brought provides otherwise, the only persons who may attend a hearing of proceedings in the Family Court are as follows: (a) officers of the court; (b) parties to the proceedings; (c) lawyers representing parties to the proceedings; (d) witnesses; (e) accredited news media reporters; (f) persons whom the Family Court Judge permits to be present as support persons for a party on request by that party (the judge must grant such request unless there is a good reason why such person should not be present); (g) any other persons whom the Family Court Judge permits to be present: s 11A(1), (2) Family Court Act 1980</p> <p>Nothing in s 10 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</p>	<p>such proceedings and in making other decisions about the conduct of such proceedings: <i>Principle 1:</i> the court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings; <i>Principle 2:</i> the court is to actively direct, control and manage the conduct of the proceedings; <i>Principle 3:</i> the proceedings are to be conducted in a way that will safeguard: (a) the child concerned from being subjected to, or exposed to, abuse, neglect or family violence; and (b) the parties to the proceedings against family violence; <i>Principle 4:</i> the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties; <i>Principle 5:</i> the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible: s 69ZN Family Law Act 1975 (Cth)</p>
--	--	--	--	---

			Court: s 10 Family Court Act 1980	
Publication of reports of proceedings	<p>Publication of a report of proceedings in the Family Court is permitted 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: s 11(1)</p> <p>It is an offence to publish in contravention of the above restriction: s 11(3)</p> <p>In s 11, '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: s 11(4)</p>		<p>Any person may publish a report of proceedings in the Family Court, however, leave of the Court must be sought to publish a report that includes identifying information where a person under the age of 18 or a vulnerable person is the subject of the proceedings, a party to the proceedings or an applicant in the proceedings, and in the case of a person under 18 years, if they are referred to in the proceedings: s 11B(1)-(3) Family Court Act 1980</p>	
Conciliation	<p><u>Duty to promote conciliation:</u> In any proceedings commenced in the Family Court, the Court, and any lawyer acting for a party in the proceeding must, as far as possible,</p>		<p><u>Duty of lawyers to promote conciliation:</u> A lawyer acting for a party in any proceeding in the Family Court must, so far as possible, promote conciliation: s 9A Family Court Act</p>	

	promote conciliation: s 6		1980	
Alternative dispute resolution	Prior to a substantive hearing in the Family Court the parties must engage in some form of ADR 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 ADR is inappropriate: s 7			<p><u>Court's powers in relation to court and non-court based family services:</u></p> <p>The objects of Part IIIB of the Family Law Act 1975 are, amongst other things:</p> <p>(a) to encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and</p> <p>(b) to encourage people to use, in appropriate circumstances, arbitration to resolve matters in which a court order might otherwise be made, and to provide ways of facilitating that use; and</p> <p>(c) to give the court the power to require parties to proceedings under this Act to make use of court or non-court based family services appropriate to the needs of the parties: s 13A Family Law Act 1975 (Cth)</p> <p>Requirement for family dispute resolution before commencement of proceedings: Subject to s 60I(9), a</p>

				<p>court must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner: s 60I(7) Family Law Act 1975 (Cth)</p>
--	--	--	--	--

IV. Case law analysis

Analysis

2.6.11 It is accepted that the databases available to the SLRC (paclii.org mainly) does not hold **all** of Samoa’s family law court decisions. The SLRC operates on what is available for analysis. To date, there is only one case on Paclii that applied the provisions of the Family Court Act 2014. As we are only privy to cases on Paclii there is an assumption that perhaps there is only one case as the Act is a newly enacted legislation.

2.6.12 In the case of **S v L** [2015] WSSC 178 (29 October 2015) this matter was brought before the Supreme Court to determine whether the Family Court had jurisdiction to hear and determine an application for alimony after divorce proceedings were concluded. **The Court held that there was no jurisdiction of the Family Court to make an order for alimony whether interim or permanent.** Even if the application for alimony is treated as an application for maintenance, the same result will follow due to section 22 of the Divorce and Matrimonial Causes Ordinance 1961 which provides that the Court may only make an order for maintenance in terms of that section where there are “proceedings for a decree of divorce”.

V. Public Seminars

2.6.14 The Act was discussed in the Upolu seminars held in October 2019. The Savaii seminars in November 2019 were cancelled due to the measles outbreak. As a result, there is no record to discuss under this heading. The Commission looks forward to public input on this law at public consultations proper in 2020.

VI. Discussion Questions

- 1) Should the term 'family' be defined in the Act?
- 2) Should the Act specifically define a 'suitable person' for the purposes of a Family Court Judge appointment?
- 3) Are the court procedures in the Family Court user friendly for the public to understand and rely upon?
- 4) Is the Family Court legal framework clear on the scope of jurisdictions to be exercised by family court judges in relation to civil or criminal proceedings?
- 5) For the protection of children and families, are the restrictions towards the media sufficient?

3. CONCLUSION

- 3.1 As discussed at the outset of this Discussion Paper, the aim of this Paper is to provide a record of the findings of the Commission's preliminary research and analysis, consultations and public seminars undertaken to inform relevant questions to be asked at the public consultations. Each of the family laws under review has been discussed under the following topics.
 - a. Background
 - b. Amendments
 - c. The Act in detail
 - d. Judiciary's Comments
 - e. Other Jurisdictions
 - f. Case Law analysis
 - g. Public Seminars
- 3.2 It is the hope of the Commission that the above discussions have provided sufficient background and support for the Commission's response to the Terms of Reference and the dire need for the review of the outdated family laws of Samoa.
- 3.3 The relevant questions to initiate discussions at public consultations proper are as follows.

DISCUSSION QUESTIONS

Infants Ordinance 1961

1. Please provide some thoughts on the reform of any of the following areas:
 - (i) Adoption;
 - (ii) custody of infants; and
 - (iii) protection of children.
2. Should Samoa recognize customary adoption?
3. Is the procedure on the legitimation of children necessary?
4. How can the criteria/requirements for adoption (local and overseas) be set out more clearly?

Marriage Ordinance 1961

- 1) Should the minimum age for marriage be the same for both male and female?
- 2) Is the list of prohibited marriages relevant to Samoa, and does it need revision e.g. to include the prohibition of same sex marriage?
- 3) Should the formalities such as marriage ceremonies to be done with open doors; notice in a public place for a period of time etc. continue to be part of our marriage laws? Why should it (formalities) apply to couples who have been cohabiting for years (defacto) and wish to finally (legally) marry?
- 4) Should the term “marriage” be defined in the MO 1961, e.g. to specifically say ‘marriage’ is between a man and a woman?

Divorce and Matrimonial Causes Ordinance 1961

- 1) Is judicial separation still relevant?
- 2) How can the divorce process be made more clear for easier understanding and implementation?
- 3) Is the time period of 12 months for an ‘irretrievably broken down marriage’ too short to be a ground for divorce?
- 4) How should matrimonial property be divided upon divorce? Should Samoa adopt/enact a separate legislation for this?

Maintenance and Affiliation Act 1967

- 1) What revisions need to be made to the provisions on ‘maintenance of persons by near relative’?
- 2) Should the Courts continue to make affiliation and adjudgment orders, and if yes, what evidential features should the courts take into account given Samoa’s current infrastructure e.g. the taking of blood tests to determine paternity?
- 3) Should the courts take account of maintenance provisions by means other than monetary maintenance?
- 4) Should imprisonment for failure to pay maintenance remove the outstanding maintenance payments owed?

- 5) Are the penalties reasonable e.g. 6 months imprisonment for failure to maintain wife, husband or children; or 1 year imprisonment for leaving Samoa while failing to provide for the maintenance of a child?

Family Safety Act 2013

- (1) Is the definition of domestic violence sufficient? Should it include economic/financial abuse?
- (2) Should there be an expressed duty for a police officer to either apply for or issue a Protection Order?
- (3) Are the conditions a Court may attach to a Protection Order sufficient and relevant to the Samoan context?
- (4) How can the Village and Church authorities assist more in enforcing protection orders and combating domestic violence?
- (5) Is the penalty for breaching a Protection Order too low? (Contravening a protection order - a fine not exceeding 20 penalty units (\$2,000) or imprisonment not exceeding 2 years, or both).

Family Court Act 2014

- 1) Should the term 'family' be defined in the Act?
- 2) Should the Act specifically define a 'suitable person' for the purposes of a Family Court Judge appointment?
- 3) Are the court procedures in the Family Court user friendly for the public to understand and rely upon?
- 4) Is the Family Court legal framework clear on the scope of jurisdictions to be exercised by family court judges in relation to civil or criminal proceedings?
- 5) For the protection of children and families, are the restrictions towards the media sufficient?

BIBLIOGRAPHY

LEGISLATION

Samoa

1. *Births, Deaths and Marriages Registration Act 2002*
2. *Divorce and Matrimonial Causes Ordinance 1961*
3. *Family Safety Act 2013*
4. *Family Court Act 2014*
5. *Infants Ordinance 1961*
6. *Marriage Ordinance 1961*
7. *Maintenance and Affiliation Act 1967*

8. *Marriage Regulations 1971*
9. *Marriage Amendment Regulations 1983*
10. *Maintenance and Affiliation Regulations 1971*
11. *Maintenance and Affiliation Regulations 1988*

Other jurisdictions

1. *Adoption of Infants Act Cap 58 (Fiji)*
2. *Adoption Act 1955 (NZ)*
3. *Adoption Act 2009 (Qld, Australia)*
4. *Births, Deaths and Marriages Registration Act [Chapter 49] (Fiji)*
5. *Child Support (Assessment) Act 1989 (Australia)*
6. *Child Support Act 1991 (NZ)*
7. *Child Protection Act 1999 (Qld, Australia)*
8. *Children's Law Reform Act (R.S.O. 1990, c. C. 12) (Ontario)*
9. *Children Act 2004 (NZ)*
10. *Civil Marriages Act (S.C. 2005, c. 33) (Canada)*
11. *Divorce Act (R.S.C., 1985, c. 3 (2nd Supp.)) (Canada)*
12. *Domestic Violence and Family Protection Act 2012 (Qld, Australia)*
13. *Domestic Violence Decree 2009*
14. *Family Law Act 2003 (Fiji)*
15. *Family Law Act 1975 (Cth, Australia)*
16. *Family Law Act, R.S.O. 1990, c. F.3 (Ontario)*
17. *Family Proceedings Act 1980 (NZ)*
18. *Family Violence Act 2018 (NZ)*
19. *Marriage Act [Cap 50] 1969 (Fiji)*
20. *Marriage Act 1955 (NZ)*
21. *Marriage Act 1961 (Australia)*
22. *Marriage (Prohibited Degrees) Act (S.C. 1990, c. 46) (Canada)*
23. *Marriage Act, R.S.O. 1990, c. M.3 (Ontario)*
24. *Marriage Act [Cap 50] 1969 (Fiji)*
25. *Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989 (NZ)*
26. *Property (Relationships) Act 1976 (NZ)*

Subsidiary legislation

25. *Marriage (Amendment) Decree 2009 (Fiji)*
26. *Marriage (Amendment) Decree 2010 (Fiji)*

CASE LAW

1. *Arp v Arp* [2008] WSSC 35 (13 June 2008)
2. *Betham v Betham* [1994] WSSC 49 (26 January 1994)
3. *BM v LG* [2013] WSDC 7 (21 October 2013)
4. *Elisara v Elisara* [1994] WSSC 14 (22 November 1994)
5. *FML v LLS* [2015] WSFC 1
6. *Hadley v Hadley* [2010] WSSC 61 (19 March 2010)
7. *In re Application for Adoption by Solomona* [1999] WSDC 1
8. *In re application of Masunu Utumapu* [2-4] WSDC 6 (WSDC)
9. *Infants Ordinance 1961 (Part II) v Chong* [1998] WSSC 9
10. *L v L* [1994] WSCA 3; 21 1993 (28 March 1994)
11. *LA v SL & TS* [2016] WSFC
12. *Laufofo v Croker* [1993] WSSC 5; Misc 15914 (29 November 1993)
13. *LMT v AT* [2016] WSFC 4
14. *Maintenance Officer on behalf of Fiasili v Fuimaono* [2003] WSDC 3 (23 August 2003)
15. *Meleisea v Meleisea* [1994] WSSC 24 (24 May 1994)
16. *MM v LK* [2016] WSFC 3
17. *MM v PP* [2014] WSFC 1
18. *Police v Ataga* [2016] WSSC 172 (8 September 2016)
19. *Police v Afoa* [2016] WSSC 117 (8 June 2016)
20. *Police v Lima* [2014] WSSC 33
21. *Police v Brown* [2015] WSFC 1 (10 April 2015)
22. *Police v Brown* [2016] WSFC 5
23. *Police v Lafaele* [2015] WSSC 114
24. *Police v MSS* [2016] WSFC 2
25. *Police v MI and TP* [2014] WSSC 105
26. *Police v Uarota* [2011] WSDC 2 (5 August 2011)
27. *Police v Ofoia* [2016] WSFC 1 (5 August 2016)
28. *Police v Faataape* [2016] WSFVC 4
29. *Police v Filivae* [2016] WSFVC 2
30. *Police v Malua* [2016] WSSC 181 (18 August 2016)
31. *Police v Menefata* [2016] WSFVC 7
32. *Police v Neemia* [2016] WSFVC 3
33. *Police v Kamuta* [2016] WSSC 174 (9 September 2016)
34. *Police v Perosi* [2016] WSSC 110 (11 July 2016)
35. *Police v Toeoaana and Afamasaga* [2016] WSFC 1
36. *Police v Taumaloto* [2017] WSSC 160 (13 December 2017)
37. *Police v Mataafa* [2017] WSSC 166 (12 December 2017)
38. *Police v Leota* [2017] WSSC 113 (8 August 2017)
39. *Police v Kobayashi* [2017] WSSC 159 (8 December 2017)
40. *Police v Iakopo* [2017] WSSC 162 (22 November 2017)
41. *Police v XM* [2017] WSSC 157 (26 October 2017)
42. *Police v XY* [2017] WSSC 86 (30 May 2017)
43. *Police v Lemana* [2017] WSSC 67 (27 April 2017)34
44. *Police v Tuu'u* [2017] WSSC 65 (25 April 2017)
45. *Police v Malotutoatasi* [2017] WSSC 64 (21 April 2017)
46. *Police v Olo* [2017] WSSC 10 (16 February 2017)
47. *Police v Peteru* [2017] WSFVC 3
48. *Police v Sapolu* [2017] WSFVC 2
49. *Police v Tautofi* [2017] WSFVC 2
50. *Police v Tufele* [2018] WSSC 109 (1 November 2018)
51. *Police v Sione* [2018] WSSC 89 (19 June 2018)
52. *Police v Peni* [2018] WSSC 37 (23 February 2018)

53. *KS v HL* [2014] WSDC 6
54. *R.K.S v H.L* [2014] WSDC 6 (30 May 2014)
55. *S & M v District Court, Apia* [2000] WSSC 42
56. *S v L* [2015] WSSC 178 (29 October 2015)
57. *Samoa Victim Support Group v Inoke* [2-13] WSDC 4 (18 September 2013)
58. *Skelton v Betham* [2018] WSSC 35 (22 January 2018)
59. *Soavele v Lili* [1993] WSSC 22
60. *Stowers v Stowers* [2010] WSSC 30 (14 June 2010)
61. *Stowers v Stowers and Fruean and Public Trustee* [2012] WSCA 11 (31 May 2012)
62. *Stowers v Stowers* [2012] WSSC 30 (7 May 2012)
63. *SV v SV* [2004] WSDC
64. *SVSG v Falealili* [2014] WSFC 2
65. *Telea v NPO* [2017] WSCA 4
66. *Tuugamusu v Tuugamusu* [2017] WSDC 12 (3 March 2017)
67. *VC v II* [2013] WSDC 6 (18 September 2013)
68. *Wagner v Radke* [1997] WSSC 6
69. *Yiu Hing v Yiu Hing* [1969] WSLawRp 6; [1960-1969] WSLR 236 (15 July 1969)

Other Jurisdiction

1. *Chinsami v Punamma* [1967] FjLawRP 25 (Supreme Court) Appellate Jurisdiction (Fiji)
2. *B v A* [2011] FJMC 79 – maintenance ceases upon remarriage (Fiji)

CONSULTATIONS

1. Former Chief Justice Sapolu, SLRC preliminary consultations (1 November 2018)
2. Justice Leiataualesa Daryl Clarke (25 february 2019)
3. Justice Tafaoimalo Leilani Tuala-Warren, SLRC's preliminary consultations (26 February 2019)
4. Judge Talasa Saaga, SLRC preliminary consultations (5 March 2019)
5. Judge Alalatoa Viane Papalii, SLRC preliminary consultations (19 March 2019)
6. SLRC preliminary consultations on 22 November 2018 – attended by Executive Director, Telei'ai Dr. Lalotoa Mulitalo

LITERATURE

1. J Corrin, L Mulitalo, '*Adoption and 'Vae Tama' in Samoa*' in Professor Bill Atkin (ed), *The International Survey of Family Law* (Jordan Publishing Limited, Bristol 2011) 313-334
2. Jennifer Corrin & Lalotoa Mulitalo (2015) Not 'mere window dressing': children's rights and adoption in Samoa, *The Journal of Legal Pluralism and Unofficial Law*, 47:2, 208-225, DOI: [10.1080/07329113.2015.1085767](https://doi.org/10.1080/07329113.2015.1085767)
3. L Mulitalo, J. Corrin, '*Reform of Maintenance and Divorce Laws in Samoa: Appropriate for the 'Aiga'?*' in Professor Bill Atkin (ed), *The International Survey of Family Law* (Jordan Publishing Limited, Bristol 2012) 283-298.
4. Teleiai Lalotoa MS and Jennifer Corrin, 'Plural Procedures for Adoption and 'Vae Tama' in Samoa' in *The Plural Practice of Adoption in Pacific Island State*, Corrin J and Farran S (eds); Switzerland, 2019; 87
5. Narawa-Daurewa Unaisi Q; '*The Family Law Act of Fiji, 2003: A Brief Review of Some Provisions in the Act; Their Impact On The Family (Withemphasis On Women's Access To Justice)*'; USP, 2010. (A supervised research project submitted in fulfillment of the requirements for the degree of Master of Laws)

INTERNATIONAL CONVENTIONS

1. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989,
2. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979
3. Hague Conference on Private International Law, *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993

OTHER RELEVANT AUTHORITIES

1. Office of the Clerk of the Legislative Assembly, 'Legislative Assembly updated List – Tables of Samoa Acts and Ordinances & Statutory Regulations' (as at 31 December 2018)