



GOVERNMENT OF SAMOA

Samoa
Law Reform Commission
Komisi o le Toefuataiga o Tulafono a Samoa

DISTRICT COURTS ACT 1969
Final Report 12/13

30 July 2013



GOVERNMENT OF SAMOA

OFFICE OF THE PRIME MINISTER AND MINISTER FOR THE SAMOA LAW REFORM COMMISSION

The Honourable Speaker
THE LEGISLATIVE ASSEMBLY OF SAMOA

In compliance with section 9 (2) of the Law Reform Commission Act 2008, I have the honour to submit to you copies of the Report on the review of the District Court Act 1969, as referred to the Samoa Law Reform Commission for review.

This report sets out the Commission's recommendations for reform of the District Court Act 1969 after its public consultations and research on the changes to be in accordance with section 4 of the Law Reform Commission Act 2008.

(Hounourable Tuilaepa Lufesoliai Fatialofa Dr. Sailele Malielegaoi)
**PRIME MINISTER AND MINISTER FOR THE SAMOA LAW REFORM
COMMISSION**



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(Leota Theresa Potoi)
EXECUTIVE DIRECTOR
SAMOA LAW REFORM COMMISSION

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The Commission also thanks Senior District Court Judge Vaepule Vaemoa Vaai and Judge Mata Tuatagaloa who gave their time to answer questions from the Commission and have been supportive of this project from the outset.

Preface

In November 2008, the Commission received from Cabinet the reference to review and reform the District Courts Act 1969.

This reference forms part of the Commission's review of Samoa's legislation governing the courts. To date, the Commission has made final recommendations in relation to the Judicature Ordinance 1961, the Coroners Ordinance 1959 and the Criminal Procedure Act 1972. It has also disseminated an Issues Paper for consultation on the Civil Procedures Rules that apply in the Supreme Court and District Court.

This Report makes recommendations for the reform of the District Courts Act and the practices and procedures applying in both civil and criminal matters in the District Court.

The Commission was established in 2008 with the mandate to 'facilitate the review, reform and development of the laws of Samoa'.¹ The Commission receives its references from three different sources:

- the Cabinet;
- the Prime Minister; or
- the Attorney General.

Following the receipt of this reference, the Commission undertook preliminary consultations with those stakeholders directly affected by the reference. After preliminary consultations and research, the Commission published an Issues Paper in March 2012 setting out its research into the judicial systems in other jurisdictions and highlighting a number of issues relating to the operation of the District Courts Act.

Following this, the Commission consulted with a wide range of stakeholders including District Court Judges and Registrars, the Ministry of Justice and Courts Administration, the Ministry of Police and Prisons, the Samoa Law Society, representatives of the private sector, financial institutions and other stakeholders in the wider community.

The recommendations made in this Final Report are informed by the research undertaken by the Commission, consultations and written submissions by interested parties. The recommendations cover five key matters:

- the jurisdiction of the District Court;
- transfer of proceedings between the District Court and Supreme Court;
- the appointment, role and responsibilities of Judges, Registrars and court officers;
- Alternative Dispute Resolution; and
- the establishment and/or formalization of different divisions of the Court.

¹ *Law Reform Commission Act 2008* (Sām), s.4.

It is the Commission's hope that this Final Report reflects the views of those who participated in the reform process. Accordingly, the Commission hopes any resulting amendments to the District Courts Act are consistent with 'promoting Samoan custom and traditions, enhancing of the social, cultural, economic and commercial development of Samoa, and ensuring that the laws of Samoa are kept in a modern state which meets the needs of Government and the community'.²

² *Law Reform Commission Act 2008 (Sam)*, s. 4(a)-(c).

1. Introduction

- 1.1 This Report examines issues relating to the District Courts Act, and makes recommendations for its reform. The main issue considered is the overall jurisdiction and structure of the District Court including the Fa’amasino Fesoasoani.
- 1.2 The jurisdictions of the District Court and the Fa’amasino Fesoasoani Court are discussed with reference to comparable courts overseas. Although the jurisdictions of both courts were amended in 1992 to extend their jurisdiction, amendments to the Act changed the name of the ‘Magistrates Court’ to the ‘District Court’, and also changed the titles of relevant judicial officers from ‘Magistrate’ to ‘District Court Judge’, changes in the work of the Courts since 1992 necessitates re-examination of this issue.
- 1.3 The second issue considered in this Final Report deals with the transfer of proceedings, in particular proceedings that are not within the jurisdiction of the District Court to hear and determine, and how matters are transferred to the Supreme Court for trial or from the Supreme Court to the District Court.
- 1.4 Thirdly, this Report considers the roles, responsibilities and duties of Judges and court officers of the District Court and the Fa’amasino Fesoasoani Court. A particular concern is the formalization of the role of Judges and Registrars.
- 1.5 Lastly, this Report examines the divisions of the District Court, on which the Act is currently silent, and considers the jurisdiction and application of Court rules to those divisions.

Background

- 1.6 The District Courts Act created the District Court and set out its jurisdiction to hear and determine civil and criminal matters that are minor in nature as compared to matters that are heard in the Supreme Court.
- 1.7 The Act also established the Fa’amasino Fesoasoani Court and anticipates the establishment of other divisions of the District Court. While the District Court has the jurisdiction over some family matters and allows its Judges to be coroners by virtue of its office, there is no clear establishment in the Act of these divisions.

The Need to Reform the District Courts Act

- 1.8 The primary reason for the review of the District Courts Act is so that justice is readily accessible to the general public, acting alone within the court system or through legal practitioners. Those dispensing justice must also be provided with systems and rules that are simple and fair.
- 1.9 Over the years there have been many changes instigated and implemented by the Ministry of Justice and Courts Administration. However, streamlining these changes into legislation has not been as progressive. There is need to update the legal framework of the court structure of Sāmoa, including in the District Court especially in light of recent reviews of the Judicature Ordinance, Coroners Ordinance, the Criminal Procedure Act and the Crimes Ordinance.
- 1.10 The key principle guiding the recommendations for reform in this Report is access to justice, which seeks to ensure that every person in Samoa can access the courts and receive a fair hearing. The Commission considers that access to justice is served by simplifying the rules and procedures of the Courts and finding ways to allow Judges, Registrars, court officials, litigants and practitioners to fairly and efficiently perform their roles in the justice system.

2. Jurisdiction of the District Court

The meaning of ‘jurisdiction’

- 2.1 An understanding of the meaning of jurisdiction is important to determine the scope of the authority of the District Court. The concept of ‘jurisdiction’ can be interpreted narrowly or more generically. The CCH Macquarie Concise Dictionary of Modern Law defines jurisdiction as ‘the power or authority of a court to exercise judgment over some matter’.³
- 2.2 In the case of *Anisminic Ltd v Foreign Compensation Commission*,⁴ the House of Lords defined jurisdiction in its narrow sense as the power to decide in accordance with the law. On this basis any decision that is decided contrary to law is outside the jurisdiction of the Court. Jurisdiction in this sense is limited to the power to decide according to law.
- 2.3 On the other hand, the case of *Harvey v Derrick*⁵ described jurisdiction as a “general subject matter” or generic jurisdiction. In this sense, as long as there is generic jurisdiction, a Judge can hear the type of case and grant the type of remedy concerned. At the broadest level, jurisdiction can be taken to refer to a judge’s power to hear and determine disputes in general

³ CCH Macquarie, *Concise Dictionary of Modern Law* (Business ed, 1988).

⁴ *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

⁵ *Harvey v Derrick* [1995] 1 NZLR 314.

so long as it is performed in the judge's judicial capacity. This report discusses "jurisdiction" in this general sense.

2.4 The District Court consists of both the civil and criminal jurisdictions. The civil jurisdiction comprises four main areas namely:

- i) General civil jurisdiction;
- ii) Statutory civil jurisdiction;
- iii) Equity jurisdiction; and
- iv) General ancillary jurisdiction.

2.5 Its criminal jurisdiction permits the District Court to hear and determine criminal offences that carry a penalty of not more than five years imprisonment.

2.6 The Fa'amasino Fesoasoani Court may hear and determine minor claims of both civil and criminal law.

The Current Law

Civil jurisdiction of the District Court

2.7 Currently under the Act, the District Court can hear civil claims of up to \$10,000.⁶ There are three forms of civil monetary claims, namely under statute,⁷ debt⁸ or damages.⁹

2.8 Debt is defined "as a sum of money due from one person to another"¹⁰. Debt in civil matters can arise from simple contract debt, a specialty debt which is a debt due under a deed or a debt of record such as a judgment debt.¹¹

2.9 'Damages' refers to a remedy sought in civil matters such as compensation for a personal injury or unfair dismissal from employment. The basic purpose of damages is to compensate the innocent party for the loss suffered and not to punish the wrongdoer.¹²

2.10 A plaintiff may also claim restitution when a defendant is obliged by rules of natural justice and equity to refund money¹³. Damages can also be sought in the context of contributory negligence as set out in the Contributory Negligence Act 1964.¹⁴

⁶ *District Court Act 1969* (Sām), s23.

⁷ *Ibid*, s24.

⁸ *District Court Act 1969* (Sām), s23(a).

⁹ *Ibid*, s23(b).

¹⁰ CCH Macquarie, *Concise Dictionary of Modern Law* (Business ed, 1988).

¹¹ *Ibid*.

¹² Jennifer Corrin Care and Don Patterson, *Introduction to South Pacific Law* (2nd ed, 2007) p.256.

Civil jurisdiction of the Fa’amasino Fesoasoani

2.11 The civil jurisdiction of the Fa’amasino Fesoasoani Court consists of two parts. In its ordinary jurisdiction, it can hear civil claims of up to \$1,000; while in its extended jurisdiction, it can hear claims up to \$2,000.¹⁵ Its extended jurisdiction can only be exercised with written approval of the Chief Justice.

Criminal jurisdiction of the District Court

2.12 Under its criminal jurisdiction, the District Court may try any offence that is punishable by a fine, penalty or forfeiture of any amount or a term of imprisonment not exceeding five years.¹⁶ For example, the District Court can try offences such as the following:

- i) Causing the death of an unborn child (5 years imprisonment);¹⁷
- ii) Sodomy (5 years imprisonment);¹⁸
- iii) Infanticide (5 years imprisonment);¹⁹ and
- iv) Injury by reckless endangerment (5 years imprisonment).²⁰

Criminal jurisdiction of the Fa’amasino Fesoasoani

2.13 As in the civil jurisdiction, the Fa’amasino Fesoasoani has both an ordinary criminal jurisdiction and extended jurisdiction. In its ordinary jurisdiction, the Fa’amasino Fesoasoani can hear, determine and impose sentence for any offence for which the maximum penalty does not exceed one year imprisonment or a fine of \$1000.²¹

2.14 Under its extended criminal jurisdiction, the Fa’amasino Fesoasoani may add a sentence of six months imprisonment on any charge in lieu of a fine.²² Crimes that warrant a maximum penalty of six months’ imprisonment include offences such as forcible entry²³, and

¹³ *ANZ Banking Corporation Ltd v Ale* [1980-93] 2 WSLR 468.

¹⁴ Damages in this sense can also include loss of life and personal injury resulting from the fault of another person. The Contributory Negligence Act 1964 defines fault as negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would apart from the Act give rise to the defence of contributory negligence. The defence of contributory negligence is where the fault lies partly with the plaintiff and partly with the defendant as seen under section 3 of the Contributory Negligence Act 1964.

¹⁵ *District Court Act 1969* (Sāmoa), s33, ss34.

¹⁶ *District Court Act 1969* (Sāmoa), s36.

¹⁷ *Crimes Act 2013* (Sāmoa), s47.

¹⁸ *Ibid*, s67(c).

¹⁹ See No.17, s110.

²⁰ See No.17, s120.

²¹ *District Court Act 1969* (Sāmoa), s39.

²² *Ibid*, s40.

²³ *Crimes Act 2013* (Sāmoa), s45.

threatening words or behaviour towards a Member of Parliament or a government officer during the course of his or her duties²⁴.

Summary Jurisdiction

2.15 The Commission had also raised the issue of whether summary judgment should be included in the jurisdiction of the District Court as currently there is no provision that allows for summary judgment.

2.16 Summary judgment refers to matters in the civil jurisdiction that do not have to proceed to a full hearing. It is a process that allows a plaintiff to obtain judgment by filing and serving an application for summary judgment that includes an affidavit verifying the allegations in the statement of claim and a statement containing the plaintiff's belief that there is no defence and the grounds for that belief.²⁵

2.17 Summary judgment will not be granted if there is an arguable defence, there is a material issue of fact that cannot be resolved on an affidavit or the plaintiff does not satisfy his or her onus of establishing that there is no arguable defence.²⁶

2.18 However, summary judgment cannot be included as a procedure in the District Court if the current Act does not allow for summary jurisdiction. "Summary jurisdiction" refers to a Court's jurisdiction to hear a summary proceeding. It is also used to denote a Court's authority to issue a judgment or order without the necessity of a trial or other formal process.

Other Jurisdictions

Western Australia

2.19 The jurisdiction of the Magistrates' Court of Western Australia is \$75,000. Its civil jurisdiction is clearly defined in its Magistrates Court (Civil Proceeding) Act 2004, which empowers Magistrates to hear and determine matters such as:

- i) a debt or damage,
- ii) a consumer or trade claim,
- iii) a claim to recover possession of both personal and real property as well as a claim of indemnity.²⁷

²⁴ Ibid, s145.

²⁵ Ministry of Justice (New Zealand), 'The District Court Civil Process' (1998) <http://www.justice.govt.nz/publications/publications-archived/2002/equitable-fees-in-civil-courts/appendicies/the-district-court-civil-process> (Accessed July, 2012)

²⁶ Ibid.

²⁷ *Magistrates Court (Civil Proceeding) Act 2004*, s5 – s7.

2.20 Under its criminal jurisdiction, the Magistrates' Court of Western Australia can try simple offences, minor indictable offences²⁸ and any other criminal offence under legislation which may be dealt with by a court of summary jurisdiction.

Victoria, Australia

2.21 The civil jurisdiction of Victoria's Magistrates' Court is \$100,000. It can hear and determine causes of action such as damages, debt or liquidated demand as well as applications for intervention orders based on either family violence or personal safety.²⁹

2.22 However the Victoria's Magistrates' Court cannot hear and determine any cause of action seeking an extraordinary remedy or a prerogative writ for e.g. declaration, mandamus, certiorari or habeas corpus.³⁰

2.23 Under its criminal jurisdiction, Victoria's Magistrates' Court can hear and determine all summary offences. These are offences that can be heard by a Magistrate sitting alone rather than a judge and jury, and which may be heard in the absence of the defendant. This type of hearing is called an ex-parte hearing and includes offences such as road traffic offences, property damage and offensive behaviour.³¹

2.24 The Magistrates Court Act 1989 of Victoria sets out the criminal jurisdiction of \$120,000 fine and the maximum jail term of ten years or less.³²

New Zealand

2.25 The Summary Proceedings Act 1957 sets out the process and procedure for the application for summary judgment. The District Court of New Zealand has summary jurisdiction under the Summary Proceedings Act 1957 and can summarily judge criminal matters.

2.26 The criminal jurisdiction of the District Court is presided over by a District Court Judge, two or more justices or a community magistrate to conduct committal proceedings for indictable offences.³³ The maximum penalty on summary conviction for indictable offences may be imprisonment for a term not exceeding five years or a fine not exceeding the

²⁸ Indictable offences are offences where the defendant has the right to trial by a jury.

²⁹ *Magistrates' Court Act 1989* (Vic), s100(1).

³⁰ *Ibid*, s100(2).

³¹ *Magistrates' Court Act 1989* (Vic), s25 (1), (a), (b), (c).

³² Department of Human Services Victoria, *Structure of the Court System*, (Advice No.1329, Department of Human Services Victoria) 2007.

³³ *Summary Proceedings Act 1957* (New Zealand), s5.

maximum amount prescribed by law or if no amount is prescribed by law then an amount not exceeding \$10,000.³⁴

2.27 The summary jurisdiction of the District Court encompasses offences under the Crimes Act 1961 and Land Transport Act 1998 to name a few. Judges have the power to impose penalties on a person who is charged with an indictable offence and found guilty of any such offence. The indictable offences that the District Court may hear and determine vary depending on the legislation. Examples are criminal nuisance or feigned marriage under the Crimes Act 1961; or willful mistreatment of animals under the Animal Welfare Act 1999 or fraudulently carrying on business under the Companies Act 1955.³⁵

Consultations

2.28 The Commission in seeking the views of stakeholders asked several questions relating to:

- i) Whether the jurisdiction of the District Court including the Fa'amasino Fesoasoani should be extended;
- ii) Whether the civil and criminal jurisdiction should be set out in clear and concise provisions as to what the District Court can hear and determine;
- iii) Whether the comparable jurisdiction of Western Australia should be used as the guideline for reforming the District Courts Act; and
- iv) Whether the District Court should implement summary judgment.

2.29 The general consensus reflected in the consultations is that the jurisdiction (both civil and criminal) of the District Court should be increased and/or extended for several reasons:

- i) the case load of both the Supreme and District Court would be spread more evenly;
- ii) increasing the civil jurisdiction would mean that claims above \$5,000 would no longer be transferred to the Supreme Court which can cause more delay in proceedings;
- iii) most practitioners prefer to deal with the District Court; and
- iv) Judges in the District Court are competent and qualified.

2.30 Some stakeholders from the finance sector were of the opinion that the jurisdiction for civil matters in the District Court should be increased to make the District Court readily available for the small businesses and loaning institutions to pursue claims.

³⁴ Ibid, s7.

³⁵ *Summary Proceedings Act 1957* (NZ), Schedule 1.

- 2.31 Representatives of the Law Society indicated that specifying the jurisdiction might create a disadvantage by making the system too rigid to cater to any and all kinds of legal disputes that are initiated in the District Court. The general consensus was to keep the flexibility that the current District Courts Act provides.
- 2.32 Some private practitioners stated that while the current Act does provide the needed flexibility in terms of matters that could be initiated and prosecuted in the District Court, it is unclear as to how other matters within the District Court's jurisdiction are to proceed. In particular, the Magistrates' Courts Rules that govern the operation of the District Courts do not provide a comprehensive guide into how matters such as setting out a statement of claim should be processed and whether strike out applications are also applicable in the District Court.
- 2.33 Stakeholders expressed various views on the actual monetary limit of the civil jurisdiction, with some suggesting \$20,000, \$40,000 or \$50,000. Most stakeholders commented that a lot of the claims that are tried in the Supreme Court are cases that could be heard and determined in the District Court, but are only determined by the Supreme Court due to the amount in dispute.
- 2.34 On the contrary, some stakeholders considered that the civil jurisdiction should not be increased because the District Court Judges will be overloaded with cases. They expressed concerns that increasing the jurisdiction would make the District Court a 'dumping ground' for cases transferred from the Supreme Court.
- 2.35 Similar concerns were raised in relation to the criminal jurisdiction with the exception of cases that are transferred from the Supreme Court to the District Court. Some members of the public submitted that the kind of offences that the District Court can hear and determine should be set out clearly in the legislation to avoid any confusion. Stakeholders also considered that the Act should set out in the criminal jurisdiction of the District Court and its authority to determine narcotic cases, which comprise the majority of cases that are tried in the District Court. There was also a view that extending the criminal jurisdiction should be based on penalty rather than the type of offence.
- 2.36 In relation to the civil jurisdiction of the Fa'amasino Feasoasani Court, many stakeholders considered that there was no need for an original and an extended jurisdiction as it was found to be impractical and slowed down the hearing of minor matters. It was recommended by stakeholders that the jurisdiction of the Fa'amasino Feasoasani Court be raised to \$5,000.

Commission's Views

- 2.37 The Commission notes the call by some stakeholders to more clearly set out the kinds of matters that are within the jurisdiction of the District Court and Fa'amasino Fesoasoani Court in legislation. While doing so might provide greater clarity, this approach would however come at the expense of flexibility to add matters to the courts' jurisdiction and may create confusion, for example where parties wanted to bring a kind of claim that was not expressly covered by the legislation. For this reason, the Commission recommends that the District Courts Act continue to define the courts' jurisdiction by reference to a monetary limit (for the civil jurisdiction) and the penalty for the offence (for the criminal jurisdiction).
- 2.38 There was a general consensus that the jurisdiction of the District Court in both civil and criminal cases should be increased. In contrast with jurisdictions overseas, Samoa's jurisdiction is quite low. Further, the introduction of the Crimes Act 2013 has increased many of the penalties for criminal offences, and Samoa's growing economy means that many civil proceedings also deal with higher monetary claims.
- 2.39 The District Court is competent to deal with many kinds of matters that are not always within its current jurisdiction, and many practitioners prefer to bring matters in the District Court where possible because it is generally a quicker and simpler process than in the Supreme Court, which deals with more serious matters.
- 2.40 It is important however, that a decision to change the jurisdiction of the District Court evenly spreads the courts' caseload between the different courts in Samoa, and does not overload any one court.
- 2.41 The Commission recommends that the civil jurisdiction of the District Court remain at \$10,000 and the ordinary civil jurisdiction of the FF Court to be increased from \$1000 to \$2000. It further recommends increasing the criminal jurisdiction of the District Court to any offences punishable by a fine of any amount or a term of imprisonment not exceeding seven years.
- 2.42 The Commission considers the civil dual jurisdiction (ordinary and extended) of the Fa'amasino Fesoasoani Court, is now unnecessary. The requirement for the approval of the Chief Justice to extend the jurisdiction of the Fa'amasino Fesoasoani Court tends to unnecessarily prolong proceedings. As such, the Commission recommends that the extended jurisdiction of the Fa'amasino Fesoasoani Court be removed, particularly in light of the Commission's recommendation to increase the Fa'amasino Fesoasoani Court's ordinary civil jurisdiction.

2.43 It is also recommended that to further avoid delays in the determination of simple civil claims, the jurisdiction of the District Court should also extend to include summary jurisdiction. With summary jurisdiction, summary judgment can then be utilized where necessary on a case by case basis.

Recommendation 1: The civil jurisdiction of the District Court to remain at \$10,000.

Recommendation 2: Remove the extended civil jurisdiction of the Fa’amasino Fesoasoani court but increase its ordinary civil jurisdiction of \$1,000 to \$2,000.

Recommendation 3: Increase the criminal jurisdiction of the District Court to try any offence that is punishable by a fine, penalty or forfeiture of any amount or a term of imprisonment not exceeding seven years (an increase from the current maximum term of imprisonment of five years).

Recommendation 4: Criminal jurisdiction of the Fa’amasino Fesoasoani to remain as it is.

Recommendation 5: The District Court (including the Fa’amasino Fesoasoani) to be a court of summary jurisdiction.

3. Transfer of Proceedings

3.1 Transfer of proceedings involves a matter being transferred from one Court to another. Both civil and criminal cases may be transferred from the Supreme Court to the District Court, or vice-versa.

The Current Law

Transfer of civil proceedings from the District Court to the Supreme Court

3.2 Currently under the Act, a matter that is initiated in the civil jurisdiction of the District Court can be transferred to the Supreme Court if the matter exceeds \$5,000 and, as such is outside the District Court’s jurisdiction. The defendant may seek leave of the District Court to object to the matter being heard in the District Court. The Judge upon notice of such objection must order that the transfer be made to the Supreme Court.³⁶ This is the same process for counterclaims that also exceed \$5,000.³⁷

3.3 Any civil claim not exceeding \$5,000 which is commenced in the District Court may also be transferred to the Supreme Court. This is done by the defendant, with leave of the Court, giving a notice of objection to the action being tried in the District Court.³⁸

³⁶ *District Courts Act 1969* (Sam), s48.

³⁷ *Ibid*, s50.

³⁸ See No.36, s48 (2).

3.4 When such notice is given, the District Court Judge may order that the action be transferred to the Supreme Court if in the judge's own opinion some important question of law or fact is likely to arise. The order for the transfer of an action may also be subject to such conditions where the District Court Judge thinks fit or requires the defendant to give security for costs of the proceedings in the Supreme Court.³⁹

3.5 Matters will not be transferred to the Supreme Court if part of the claim is abandoned to bring the claim within jurisdiction or both parties agree by way of memorandum to have the matter tried in the District Court.⁴⁰

Transfer of civil proceedings from the Supreme Court to the District Court

3.6 A transfer of a civil matter that was commenced in the Supreme Court to the District Court can occur either because the subject matter of the proceeding is within the jurisdiction of the District Court or with the agreement of the parties⁴¹. A Supreme Court judge on the application of any party to the proceeding can order that the proceedings be transferred to the District Court.⁴²

3.7 When a civil matter is transferred from the Supreme Court to the District Court, an officer of the Supreme Court sends copies of all relevant documents directed by a Supreme Court judge pertaining to the claim to the Registrar of the District Court.⁴³

3.8 Once the transfer has been made to the District Court, all further proceedings shall be heard and determined in the District Court as if the matter had been commenced in the District Court. This means that rights of appeal to either the Supreme Court or to the Court of Appeal are not affected by the transfer.⁴⁴

3.9 There are no provisions in the current Act on whether matters can be transferred between the District Court and the Fa'amasino Fesoasoani.

³⁹ See No.36, s48 (3).

⁴⁰ See No.36, s49.

⁴¹ *District Courts Act 1969* (Sam), s30.

⁴² *Ibid*, s51.

⁴³ *District Courts Act 1969* (Sam), s52.

⁴⁴ *Ibid*, s52(2).

Comparable Courts Overseas

Victoria, Australia

3.10 Civil proceedings may be transferred from the Victorian Magistrates' Courts to the Supreme Court if it is wholly or partly beyond its jurisdictional limit. The Magistrates' Courts may deal with a transfer in three ways.

- i) amend the complaint so that it is within the court's jurisdiction; or
- ii) order that the complaint be pending in accordance to making an application under the *Courts (Case transfer) Act 1991*; or
- iii) order that the complaint be struck out and award costs as if the Court had jurisdiction and the complaint were dismissed.⁴⁵

3.11 Parties to a proceeding must be notified and given time to object to the matter being transferred⁴⁶. Once a claim has been transferred to another court, it is not capable of being transferred again to the original court where the proceeding was commenced nor may it be transferred to another court.⁴⁷

3.12 General transfer of a proceeding is usually based on the fact that the Court in which the matter was commenced is overloaded with pending proceedings and therefore cases are transferred upon approval of a Council of Judges. Individual transfers are based on the Court not having jurisdiction.

Western Australia

3.13 Western Australia requires only that an application be made by a party to the case in the Magistrates Court for an order that all or part of the case be transferred to a superior Court.⁴⁸ The superior Court upon receipt of such an application may make an order to accept the transfer if it is satisfied that all or part of the case is:

- i) Within its jurisdiction to hear and determine; and
- ii) Involves a claim or an issue that is outside the Magistrates Court's jurisdiction; or
- iii) The claim is complex in nature; or
- iv) A question of law is involved.⁴⁹

⁴⁵ *Magistrates' Court Act 1989* (Vic), s100 (ss1).

⁴⁶ *Ibid*, s18 – s19.

⁴⁷ *Courts (Case Transfer) Act 1991* (Vic), s23.

⁴⁸ *Magistrates Court (Civil Proceedings) Act 2004* (WA), s39 (ss2).

⁴⁹ *Ibid*, s39 (ss4).

Consultations

- 3.14 The Commission asked stakeholders whether provisions of the Act for transferring a proceeding from the District Court to the Supreme Court should be extended to provide more than one reason as to why a proceeding should be transferred.
- 3.15 A member of the judiciary commented that although claims are rarely transferred to the Supreme Court, it was generally preferred that there should be a way to transfer a proceeding which exceeds the jurisdiction or where a criminal matter requires an assessor trial.
- 3.16 Some stakeholders' in the private sector stated that transferring a matter from the District Court to the Supreme Court where it was \$5,000 or less wasted time and resources that most people did not have. Another issue surrounding the transfer of proceedings raised by stakeholders is related to the provision that only a defendant may upon leave of the Court give notice that he or she objects to having his/her matter tried in the District Court.
- 3.17 An example of this was put forth by one stakeholder. The stakeholder noted that there was a matter in which the claim was only for \$3,000 but was transferred to the Supreme Court because the defendant had written to the Court and the matter was allowed to be tried in the Supreme Court. This was seen as unfair and a bone of contention among most private practitioners because the matter was well within the jurisdiction of the District Court.
- 3.18 Opposing views say that there have been claims that have been less than \$5,000 that have been transferred to the Supreme Court because of the complexity of the issue in law.

Commission's View

- 3.19 As stated above, the current status of transferring a proceeding to the Supreme Court is by way of the defendant seeking leave from the Court and giving notice that he or she objects to having his or her case tried in the District Court. When the matter is beyond the jurisdiction of the District Court (ie if it exceeds \$5000) the District Court Judge must order that the case be transferred to the Supreme Court. This order is mandatory in that irrespective of the circumstances surrounding the proceeding, the judge has no discretion to decline such a notice but must give the order to transfer the matter.
- 3.20 In contrast, transferring a proceeding to the Supreme Court that is less than \$5,000 is entirely discretionary. Where notice is given by the defendant to transfer a proceeding to the Supreme Court, the District Court Judge must be satisfied that an important question of law or fact is likely to arise, before the case is transferred to the Supreme Court.

3.21 Although the District Courts Act provides limited requirements on how a matter is to be transferred to the Supreme Court, it does not detract from judges transferring a matter on a case by case basis. It is therefore the Commission's view that to transfer a proceeding from the District Court to the Supreme Court should remain a matter for the Judge's discretion when the matter does not exceed the jurisdictional limit. The jurisdiction in all transfer of proceedings sections should be increased from \$5000 to \$10,000.

Recommendation 6: The amounts in the transfer of proceedings sections to be increased from \$5000 to the current jurisdiction of \$10,000.

Recommendation 7: Transfer of proceedings to be a discretionary power of the Judges based on jurisdiction.

Recommendation 8: All parties to the proceeding to be informed in writing by the Registrar if the Judge is of the opinion that it is to be transferred either from the District Court to the Supreme Court or from the Fa'amasino Fesoasoani to the District Court.

4. Roles, Responsibilities and Duties of the Judiciary and Court Officers

The Current Law

The roles, powers and responsibilities of Judges and Fa'amasino Fesoasoani under the Act

4.1 The District Courts Act does not expressly set out the roles, powers, and responsibilities of District Court Judges except to state their secondary role as Coroners by virtue of their office. There are no provisions that set out the functions and roles of a Fa'amasino Fesoasoani. There are however provisions on the appointment and tenure of Judges and Fa'amasino Fesoasoani.

Appointment of District Court Judges

4.2 District Court Judges are appointed by the Head of State on the advice of the Judicial Service Commission. To be eligible for appointment, a person must:

- i) have more than five years' experience as a practising barrister or solicitor in Samoa or in an approved country; or

- ii) have been a Registrar for not less than 15 years.⁵⁰

Appointment of Fa’amasino Fesoasoani

4.3 Fa’amasino Fesoasoani are appointed by the Head of State on the advice of the Judicial Service Commission. The qualifying requirement is that a person is “fit and proper”.⁵¹

Tenure of a District Court Judge and a Fa’amasino Fesoasoani

4.4 District Court Judges and Fa’amasino Fesoasoani must retire upon reaching the age of 62. They may also be removed by the Head of State on the advice of the Judicial Service Commission due to inability or misbehavior.⁵²

Indemnity of District Court Judges and Fa’amasino Fesoasoani

4.5 The role of Judges and the responsibilities they carry means that Judges must have a form of protection against prosecution in the course of carrying out their duties. Currently under the Act, an action cannot be brought against a District Court Judge or Fa’amasino Fesoasoani for any judicial act done unless he or she acted without jurisdiction or exceeded his or her jurisdiction.⁵³

4.6 Any person bringing a claim against a District Court Judge or Fa’amasino Fesoasoani has the onus of proving the excess or want of jurisdiction. Actions against a District Court Judge cannot be commenced or prosecuted in the District Court.⁵⁴

4.7 District Court Judges and Fa’amasino Fesoasoani are also fully indemnified by the State against paying any damages or costs to any person injured as a result of any act done by a judge in excess or without jurisdiction.⁵⁵

4.8 Indemnity by the State is activated when a certificate is signed by a Judge of the Supreme Court stating that in his or her opinion the District Court judge or Fa’amasino Fesoasoani acted in good faith under the belief that he or she had jurisdiction and that in all the circumstances the District Court Judge or Fa’amasino Fesoasoani ought to be fairly and reasonably excused.⁵⁶

⁵⁰ *District Courts Act 1969* (Sam), s5.

⁵¹ *Ibid*, s6.

⁵² See No.50, s8.

⁵³ See No.50, s109.

⁵⁴ *District Court Act 1969* (Sam), s110.

⁵⁵ *Ibid*, s113 (1).

⁵⁶ *District Court Act 1969* (Sam), s113 (1).

Registrars

4.9 Registrars including Deputy Registrars are appointed through the Public Service Commission employment procedure. Registrars are responsible to the Secretary for Justice and the Minister of Justice for the administration and control of court offices. One person may be appointed as a Registrar in two or more courts and one such court may be the Supreme Court.⁵⁷

4.10 The Registrar in addition to his or her normal duties in court is also responsible for keeping a record of proceedings of each court.⁵⁸

4.11 The Commission considered the role of Registrars in criminal proceedings in its review of the Criminal Procedure Act 1972. It was recommended in the Criminal Procedure Act review that Registrars should have powers to:

- i) amend an information upon the consent of both parties to a proceeding;
- ii) exercise the powers of the Court when no defendant, informant or neither party appears;
- iii) take the defendant's plea on being charged;
- iv) take pleas on behalf of a corporation;
- v) adjourning hearings; and
- vi) remand a person in custody or release him or her on bail in certain situations.⁵⁹

4.12 The Commission is also considering specific powers of Registrars in civil proceedings in its current review of the Civil Procedure Rules.

Officers of the Court

4.13 An officer of the court is defined in the Act to include Registrars and any clerk, bailiff, usher or messenger in the service of the court and includes constables of the Police service.⁶⁰

4.14 Bailiffs are appointed through the Public Service Commission processes. Constables or any other person may be appointed by a District Court Judge to act for a particular occasion as bailiff at any court or place.⁶¹

4.15 In the service of court duties, when a summons, warrant or other process is issued under the authority of the Act to a constable for service or execution, the constable shall be deemed

⁵⁷ Ibid, s11.

⁵⁸ See No.56, s12.

⁵⁹ Samoa Law Reform Commission, Criminal Procedure Act 1972 Final Report, rec 14.

⁶⁰ *District Courts Act 1971* (Sāmoa), s2.

⁶¹ Ibid, s14(1).

to be a bailiff duly appointed under the provisions of this section.⁶² Bailiffs have the powers of a constable under the District Courts Act.

4.16 Interpreters, clerks and other administrative officers are appointed by the Public Service Commission and are responsible for any administrative duties assigned to them by the Registrar.⁶³

4.17 If an officer is charged with misconduct such as extortion, or not duly paying or accounting for any money levied or received while acting under the color or pretence of the presence of a Court, the District Court Judge shall inquire into the matter summarily.⁶⁴ Court officers are not empowered to act as solicitors for any party in a proceeding in any Court.⁶⁵

Consultations

4.18 The Commission was interested in the views of the public on the following issues:

- i) Appointment of District Court Judges, Fa'amasino Fesoasoani and Registrars;
- ii) Removal of District Court Judges and Fa'amasino Fesoasoani;
- iii) Powers and duties of a District Court Judge;
- iv) Powers and responsibilities of a Registrar;
- v) Extending or limiting the authority base of a District Court Judge, Fa'amasino Fesoasoani and Registrar; and
- vi) Court officers.

4.19 The Ministry of Justice and Courts Administration indicated that when District Court Judges are unavailable to sit, Registrars have the power to adjourn matters to another date. They can also issue and/or authorize warrants of arrest for defendants who fail to appear before the Court.

4.20 Other stakeholders considered that a Registrar should be able to hear and determine a default judgment in civil matters. Some legal practitioners said that Registrars could be given more court work, especially in mentions which deal mainly with procedural matters such as the setting of a hearing date.

4.21 The Commission also sought stakeholders' views on whether inability and/or misbehavior of a District Court Judge should be defined in the Act. Some recommended that the word 'inability' should be replaced with 'disability'. Various opinions on the definition of disability ranged from mental and physical incapacity to being generally unable to carry out work as a judge.

⁶² See No. 60, s14 (3).

⁶³ See No.60, s16.

⁶⁴ See No.60, s116 (1).

⁶⁵ See No.60, s117.

- 4.22 Some stakeholders expressed the view that there should be a code of ethics for the judiciary, which would provide guidance on the meaning of inability and/or misbehavior. These stakeholders considered that a code of ethics such as this should be more like guidelines and not strict as there are very few judges currently sitting on the bench.
- 4.23 The Commission sought views on what the powers, duties and responsibilities of a Registrar should be. Many stakeholders agreed that the Act should clarify the duties, responsibilities and powers of a Registrar. Some members of the Judiciary endorsed the recommendations made by the Commission in its Criminal Procedure Act Final Report regarding the role of Registrars in criminal matters on the premise that they be exercised before a matter or proceeding is heard and determined before a Judge.
- 4.24 Some comments were made during public consultations on the experience of judges. Some people recommended that that an additional two years should be added to the current requirement for five years experience that makes a person eligible to be appointed as a District Court Judge. On the other hand, some commented that increasing the years of experience required would create a smaller pool of eligible candidates.
- 4.25 Some stakeholders also expressed that the eligibility requirements and/or qualifications for persons seeking employment as a Registrar should be left to the Public Service Commission.

Comparable Courts Overseas

Victoria, Australia

Judges

- 4.26 The appointment of Magistrates is by the Governor in Council. The Governor may appoint as many Magistrates necessary for transacting the business of the Court. Other than the Chief Magistrate, a Magistrate may be appointed either on a full time or part time basis.⁶⁶
- 4.27 The Governor may also appoint any one Magistrate to be Chief Magistrate and two or more to be Deputy Chief Magistrates⁶⁷. When part time Magistrates are appointed, one of the statutory requirements is that he or she must not engage in legal practice during his or her term of appointment.⁶⁸
- 4.28 The eligibility of persons to be appointed as a Magistrate is based on one of three criteria:

⁶⁶ *Magistrates' Court Act 1989* (Vic), s7(1,1A).

⁶⁷ *Ibid*, s7(2).

⁶⁸ See No.66, s7(9).

- i) he or she has been a Judge or Magistrate of the High Court of Australia or a Court created by the federal Parliament; **or**
- ii) he or she has been a Judge or Magistrate of a Court of Victoria, or another Australian State or Territory; **or**
- iii) he or she is an Australian lawyer⁶⁹ of at least five years standing.⁷⁰

4.29 A person ceases to be a Magistrate when he or she has attained the age of 70 years or the office has been abolished by an Act. A Magistrate may be removed from office by the Governor in Council if an investigative committee proves that the Magistrate is guilty of misbehavior or incapacity and by way of an Address from both Houses of Parliament.⁷¹ Such a resolution however, is void, if the investigative committee that was appointed for such a task has not concluded that facts exist to substantiate proved misbehavior or incapacity.⁷²

Registrars

4.30 The Magistrates' Court of Victoria appoints two types of Registrars:- Judicial Registrars and Officers of the Court. Judicial registrars are appointed by the Governor in Council based on the recommendation of the Chief Magistrate to the Attorney General.⁷³ A person is not eligible to be appointed as a Judicial Registrar unless he or she is enrolled as a lawyer in Australia.⁷⁴

4.31 A Judicial Registrar is the equivalent of a Fa'amasi Fesoasoani and may be appointed on a full or part time basis and is eligible for re-appointment. Unlike officers of the Court, Judicial Registrars are not governed by the Public Administration Act 2004 of Victoria.⁷⁵

4.32 Except with the approval of the Attorney General, Judicial Registrars must not engage in any legal practice, undertake paid employment or conduct a business, trade or profession of any kind.⁷⁶

4.33 A Judicial Registrar in the performance of his or her duty has the same protection and immunity as a Judge of the Supreme Court of Sāmoa has in the performance of his or her duties as a Judge and is also not subject to the direction or control of any person or body.⁷⁷

⁶⁹An Australian lawyer is a person who is admitted to the legal profession under the Legal Profession Act 2004 (Victoria).Section 1.2.2.

⁷⁰ See No.66, s7(3).

⁷¹ *Magistrates' Court Act 1989* (Vic), s12.

⁷² *Ibid*, s87AAB(2).

⁷³ See No. 71, s16C (1).

⁷⁴ *Magistrates' Court Act 1989* (Vic), s16C (4).

⁷⁵ *Ibid*, s16C (5-8).

⁷⁶ See No. 74, s16D (2).

⁷⁷ *Magistrates' Court Act 1989* (Vic), s16J (2-3).

4.34 If a Judicial Registrar in the course of his or her duties considers that it is inappropriate for him or her to continue to hear and determine a proceeding in his or her Court, then all appropriate arrangements must be made for the matter to be heard and determined by the Court constituted by a Magistrate.⁷⁸

4.35 The powers of a Judicial Registrar **do not** include the power to:

- i) impose a sentence of imprisonment or detention in a youth justice centre or youth residential centre;
- ii) make extensive corrections order;
- iii) make a drug treatment order;
- iv) make a hospital security order; or
- v) hear and determine an appeal made to the Court.⁷⁹

4.36 Officers of the Court include the Principal Registrars, Registrars and Deputy Registrars employed under the Public Administration Act 2004 of Victoria to assist in the administration of the Court. The employment of Registrars may be subject to requirements put forth by the Chief Magistrate specifically in terms of qualifications (including training, skill and experience) or examinations in specified subjects required to be passed by any person seeking employment as a Registrar.⁸⁰

4.37 The powers of a Registrar in addition to those conferred on him or her by the Magistrates' Court Act 1989 and any other Act or rules include the power to:

- i) issue any process out of the Court;
- ii) administer an oath;
- iii) extend the bail of a person attending on a day on which criminal proceedings is listed before the Court;
- iv) endorse a warrant of arrest;
- v) sign any license or certificate which the Court is authorized to issue; and
- vi) hear and determine any application and exercise any power or authority of the Court (section 58, 59 and 60 of the Supreme Court Act 1986).⁸¹

4.38 In the performance of their duties in good faith, Registrars are also entitled to the same protection and immunity as a Magistrate has in the performance of his or her duties.⁸²

⁷⁸ Ibid, s16J (1).

⁷⁹ See No. 77, s161 (b).

⁸⁰ See No. 77, s17.

⁸¹ *Magistrates' Court Act 1989* (Vic), s21.

⁸² Ibid, s24.

Western Australia

Judges

4.39 The appointment of Magistrates is by the Governor and requires a person to have had at least five years' legal experience and be under 65 years of age.⁸³ A person ceases to be a Magistrate when he or she reaches the age of 65 years, resigns or when a Magistrate is no longer of good behaviour.⁸⁴

4.40 A Magistrate may also be suspended or terminated if in the opinion of the Attorney General the Magistrate is incapable of performing satisfactorily his or her official functions due to physical or mental incapacity other than a temporary illness.⁸⁵

4.41 The Attorney General must establish a committee consisting of the Chief Justice of Western Australia or a Judge nominated by the Chief Justice and two persons who are registered medical professions to:

- i) inquire into and report to the Attorney General on whether the Magistrate is mentally or physically incapable of satisfactorily carrying out his/her duties; and
- ii) make recommendations to the Attorney General about the matter.⁸⁶

4.42 If a Magistrate's appointment is terminated on this ground, it is deemed to be retirement on the grounds of total and permanent disablement.⁸⁷

4.43 A Magistrate may also be suspended due to substandard performance. Proper reasons for suspending a magistrate exists if the Magistrate –

- i) has shown incompetence or neglect in the performance of his or her duties; or
- ii) has misbehaved or engaged in conduct that renders him or her unfit whether or not the conduct relates to those functions; or
- iii) has shown non-compliance to directions issued by the Chief Magistrate or Attorney General; or
- iv) is bankrupt.⁸⁸

4.44 A Magistrate may perform any function of a Registrar. A Magistrate with the appropriate approval may also hold concurrently another public or judicial office or appointment and may perform other public functions concurrently with those of a Magistrate.⁸⁹

⁸³ *Magistrates Court Act 2004* (WA), Schedule 1 (s2).

⁸⁴ *Ibid*, s11 – s12.

⁸⁵ See No. 83, Schedule 1, s13.

⁸⁶ See No.83, Schedule 1, s13(3).

⁸⁷ *Magistrates Court Act 2004* (WA), Schedule 1, s13(8).

⁸⁸ *Ibid*, Schedule 1, s14.

4.45 The Chief Magistrate is the principal judicial officer of the Court. As such, the Chief Magistrate is responsible for directing the professional development and training of Magistrates and Registrars.⁹⁰ The Chief Magistrate may also assign duties to Magistrates by directions whether it is administrative in nature and/or case specific to hear and determine.⁹¹

Registrars

4.46 Principal Registrars, Registrars and Deputy Registrars are the court's administrative staff and may be appointed by the Minister. A person however is not eligible to be appointed a Principal Registrar unless he or she is appointed under the Public Sector Management Act 1994 of Western Australia. A Deputy Registrar may also be appointed from the Police Force by the Minister whereby the appointment is to be held contemporaneously with that person's office in the Police Force.⁹²

4.47 Registrars under the Magistrates Court Act 2004 of Western Australia have the powers and responsibilities to:

- i) refuse to accept and lodge documents if it appears that it is an abuse of court process or is frivolous or vexatious;⁹³
- ii) administer an oath or affirmation for any proceedings in the court;⁹⁴ and
- iii) adjourn a case where it is not practicable for the Court to hear and determine it.⁹⁵

4.48 The Court may also delegate to Registrars any or all of the Court's jurisdiction and powers other than the power:

- i) to find a person guilty or not guilty of an offence and commit a person for trial or sentence to another court in the exercise of the Court's criminal jurisdiction;
- ii) to enter a final judgment on a case after trial in the exercise of the Court's civil jurisdiction; or
- iii) to find a person guilty of contempt of Court.⁹⁶

Commission's View

4.49 Currently, the District Courts Act sets out procedures for the appointment and removal of District Court Judges, Fa'amasino Fesoasoani and Registrars. It does not include provisions

⁸⁹ See No.87, s6, ss2-3.

⁹⁰ *Magistrates Court Act 2004* (WA), s24(4).

⁹¹ *Ibid*, s25.

⁹² See No.90 s26.

⁹³ See No. 90, s17(2).

⁹⁴ *Magistrates Court Act 2004* (WA), s18(1).

⁹⁵ *Ibid*, s28(2).

⁹⁶ See No. 94, s28(1).

setting out the powers, duties and responsibilities of a District Court judge, Fa'amasino Fesoasoani and Registrars.

- 4.50 The United Nations Basic Principles on the Independence of the Judiciary sets out that persons selected for judicial office should be individuals with integrity and ability with appropriate training or qualifications in law. Moreover, the principals set the standard for hearing a complaint against a Judge. Should a charge or complaint be made against a Judge in his or her judicial and professional capacity, it shall be processed expeditiously and fairly under an appropriate procedure and that Judge shall have the right to a fair hearing.
- 4.51 It is the Commission's view that the Act should clearly set out provisions encompassing the appointment, tenure and removal of District Court Judges (including Fa'amasino Fesoasoani). In relation to appointment, the Commission recommends changing the eligibility requirements for District Court Judges on the basis that a lawyer be a barrister and solicitor of the Supreme Court of Sāmoa for at least 8 years. The Commission also recommends that when appointing Registrars, the Ministry of Justice and Courts Administration should consider whether the candidate has the legal qualifications necessary for the role of Registrar.
- 4.52 The Commission further recommends that the District Courts Act establish a position of Chief District Court Judge. As the District Court has grown, it is important that a judicial office be appointed to lead the Court and be responsible for the organization of its staff and workload.
- 4.53 In relation to tenure, the Commission sees no reason why there should be a different retirement age for Judges of the Supreme Court and District Court. As such the Commission recommends that the retirement age for District Court Judges be increased to 68 years.
- 4.54 Finally, the District Courts Act should be extended to include matters such as how a Judge or Fa'amasino Fesoasoani can be removed other than retirement and inability or misbehavior and the relevant procedures for the Judicial Services Commission to follow in such circumstances. Suspension should also be included as another option. These processes should be in line with international standards on the independency of the judiciary.
- 4.55 The Commission is also of the view that to some extent the Act should also clarify and set out provisions concerning the functions of a Chief District Court Judge, District Court Judges and Registrars. The Act should also clarify and codify the duties and powers of Registrars as well as the limitations to be placed on such powers.

Recommendation 9: Change provision on who can be eligible to be appointed as a District Court Judge. To be eligible a person must be:

- A barrister and solicitor of the Supreme Court of Sāmoa for at least eight years.

Recommendation 10: Eligibility for Fa’amasino Fesoasoani to remain as it is.

Recommendation 11: The Ministry of Justice and Courts Administration to consider legal qualifications when appointing Registrars.

Recommendation 12: The District Courts Act should provide for the office of Chief District Court Judge.

Recommendation 13: The Chief District Court Judge should be responsible for delegating any function, duty or responsibility to a District Court Judge or Fa’amasino Fesoasoani and ensuring the professional development of District Court Judges and Fa’amasino Fesoasoani are in line with guidelines provided by any appropriate Committee of the Judiciary which deals with professional development.

Recommendation 14: A District Court Judge or Fa’amasino Fesoasoani can be removed if the Sāmoa Judicial Service Commission finds;

- a. Professional misconduct; or
- b. Mental incapacity or physical incapacity and is no longer fit to carry out their duties

Recommendation 15: A Judge removed on the ground of Recommendation 13(b) is entitled to any and all retirement packages.

Recommendation 16: The retirement age for District Court Judges should be increased from 62 years to 68 years.

Recommendation 17: The District Courts Act should set out the current and existing powers, duties and responsibilities of District Courts Judges, Fa’amasino Fesoasoani and Registrars.

Recommendation 18: The District Courts Act should specify powers of Principal Registrars in the Act to;

- i. adjourn hearings if District Court Judge is unable to attend the sitting;
- ii. issue any process out of Court but subject to be recalled and cancelled by a District Court Judge;
- iii. administer an oath;
- iv. endorse a warrant of arrest on the following conditions –
 - a. bail is mandatory after 24 hours and date of bail is set out in warrant; and/or
 - b. amount of money to be paid by person bailing out the arrested before release; and
- v. extend the bail of a person if that person has been granted bail to attend the day on which the proceeding has been listed before the Court (a criminal proceeding)

Recommendation 19: Registrars to be afforded immunity from prosecution in the performance of their duties.

Recommendation 20: Interpretation section of the Act to contain the following definitions:

- | |
|---|
| <ol style="list-style-type: none">i. Judges include Chief District Court Judge and District Court Judge;ii. Fa’amasino Fesoasoani; andiii. Court Officers to include Registrars and administrative officers such as members of the police force, clerks, interpreters and any other relevant person needed to deal with the workload of the Court |
|---|

5. The different divisions of the District Courts

The Current Law

5.1 There are currently three divisions of the District Court:

- i) Youth matters;
- ii) Family matters; and
- iii) Coronial inquests apart from its general jurisdiction.

5.2 However, these divisions are not formally set out in the District Courts Act. Rather, the Youth Court is established by the Young Offenders Act 2007 as a division of the District Court; family matters are brought under the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967; while the Coroners Ordinance 1959 establishes the functions and powers of coroners. Section 9 of the District Courts Act refers to District Court Judges as coroners.

5.3 The Young Offenders Act 2007 sets out the jurisdiction of the Youth Court which are proceedings of a criminal nature. The District Courts Act also contains provisions that refer to matters such as guardianship, custody of infants and destitute and delinquent children.

Consultations

5.4 The Commission raised several issues relating to the different divisions of the District Court, including whether:

- i) the Fa’amasino Fesoasoani should be established as a small claims tribunal; and
- ii) the District Courts Act should establish the existing different divisions/courts of the District Court.

5.5 One member of the judiciary raised the question of whether Samoa should adopt a small claims tribunal to deal with civil matters between \$2000 and \$3000, thereby modifying the jurisdiction of the Fa’amasino Fesoasoani Court.

5.6 Many stakeholders expressed the view that the current structure of the Fa’amasino Fesoasoani Court was fine as it is, but suggested that the other divisions of the District Court should be reflected in the District Courts Act.

5.7 A question arose during the consultation as to the effect on the Supreme Court if we distinguish the different divisions or courts under the District Court. Stakeholders and the general public also questioned whether there are human and financial resources to effectively separate the different divisions under the District Court.

Comparable Courts Overseas

Victoria, Australia

5.8 The Magistrates' Court Act 1989 of Victoria contains provisions that establish and set up different divisions. The Magistrates' Court of Victoria has the following courts:

- iii) Drug Court Division;
- iv) Koori Court Division;
- v) Family Violence Court Division; and
- vi) Neighbourhood Justice Division.

5.9 The Drug Court division is constituted by a Magistrate who has been assigned to it by the Chief Magistrate and has such powers of the Court as are necessary to enable it to exercise its jurisdiction. The Court may adjourn a criminal proceeding before the taking of a formal plea if it is of the opinion that the accused might be eligible for a drug treatment order and consequently refer the proceeding to the Drug Court division.⁹⁷

5.10 The Koori Court division hears and determines matters involving the indigenous population of Victoria. Like the Drug Court division it is also constituted only by a Magistrate and has flexible jurisdiction so that it is sensitive to the cultural background of persons who are committed to this court division.⁹⁸

5.11 The Family Violence Court division can hear and determine matters arising from or including allegations of family violence.⁹⁹

New Zealand

5.12 The District Court Act 1947 of New Zealand contains a provision that sets up a Disputes Tribunal which hears claims that are less than \$20,000. In the Disputes Tribunal, claims that are heard and determined must be disputed first before they can be heard. A referee oversees the settlement of disputes in the Tribunal.

5.13 When a referee makes a decision regarding a dispute, he or she is required to either give oral or written reasons for his or her decision. Matters that are mostly referred to the Disputes Tribunal are small and are strictly civil in nature.

⁹⁷ *Magistrates' Court Act 1989 (Vic)*, s20.

⁹⁸ *Ibid*, s22 – s23.

⁹⁹ See No.103, s26 – s27.

Commission's View

5.14 It is the Commission's view that the District Courts Act should establish the Family Court and clearly define its jurisdiction. The recent passing of the Family Safety Act 2013 further creates the need for the District Courts Act to formally establish the Family Court under its auspices. The Family Court will deal with cases of maintenance, adoption, divorce and matrimonial causes as well as protection orders under the Family Safety Act 2013.

5.15 The Youth Court is well established by the Young Offenders Act 2007. However, the Commission considers there is merit in recognizing the Youth Court as a Division of the District Court in the District Courts Act.

5.16 The Commission sees merit in establishing a further division of the District Court called the Drugs and Alcohol Court. In the UK, there is a Family Drug and Alcohol Court. In New South Wales, Australia, there is a Youth Drug and Alcohol Court. A five year pilot Alcohol and Other Drug Treatment Court (AODT Court) was opened in Auckland, New Zealand in 2012, the first of its type for the country.

5.17 The AODT Court is a pilot designed to supervise offenders whose offending is driven by their alcohol or other drug (AOD) dependency. The AODT Court focuses on treating a defendant's AOD dependency to help prevent them from committing further crime, It aims to;

- reduce reoffending
- reduce alcohol and other drug use and dependency
- reduce the use of imprisonment
- positively impact on the defendant's health and wellbeing, and
- be cost-effective.

5.18 People who are selected for the AODT Court and agree to take part will have their case put on hold prior to sentencing to allow them to enter an intensive treatment programme for their AOD dependency (or moderate to severe addiction). This is not an easy option – the programme takes commitment and the defendant will still be sentenced for their crime. If their participation in the addiction treatment programme is successful, this can be taken into account when they are sentenced.

5.19 The AODT Court Pilot will sit weekly in both Waitakere and Auckland District Courts and will cater for around 100 participants per year (50 in each court).

5.20 The court is aimed at defendants who suffer from an AOD addiction or dependency and their offending has been driven by this. It provides selected defendants the opportunity to participate in an AOD treatment programme prior to sentencing. The court will focus on

treating the cause of the offending rather than the offending itself and aims to reduce reoffending as result. Alcohol and drugs present a major problem to Samoa's court and to Samoan society. Therefore it is important that the Courts take a proactive stance towards reducing reoffending as a result of alcohol and drugs.

5.21 However, the Commission does not recommend that the Coroners Court be recognized as a division of the District Court. The Commission's Final Report on the review and reform of the Coroners Ordinance 1959 recommended that the appointment of coroners should be separate from the judiciary to ensure that persons appointed as Coroners have the required skills and expertise. The ultimate aim of this recommendation is the separation of the Coroners Court from the Judiciary. It is therefore, the Commission's view that the appointment of Coroners should be separate from the judiciary as recommended in the Coroners Ordinance 1959 Final Report 02/11.

5.22 The Commission is of the view that establishing a small claims tribunal is not warranted at this time. It considers that increasing the civil jurisdiction of the Fa'amasino Fesoasoani will be sufficient to deal with minor matters rather than establishing a new separate small claims tribunal.

Recommendation 21: The District Courts Act should establish and formally recognize the Family Court, Youth Court and Alcohol and Drugs Court as divisions of the District Court.

Recommendation 22: Jurisdiction and procedures for the Youth Court, Family Court and the Alcohol and Drugs Court to be established and included in the District Courts Act.

Recommendation 23: Fa'amasino Fesoasoani Court to remain as part of the District Court and to have the following matters set out:

- i. Jurisdiction of the FF court;
- ii. Procedures of the FF court;
- iii. Limitations on what the FF court can hear and determine.

Recommendation 24: To endorse the appointment of coroners to be separate from the judiciary and the Coroners' Court to be separate from the judiciary as recommended in the Commission's Coroners Ordinance 1959 Final Report 02/11.

List of Recommendations

Recommendation 1: The civil jurisdiction of the District Court to remain at \$10,000.

Recommendation 2: Remove the extended jurisdiction of the Fa’amasino Fesoasoani court but increase its ordinary civil jurisdiction of \$1,000 to \$2,000.

Recommendation 3: Increase the criminal jurisdiction of the District Court to try any offence that is punishable by a fine, penalty or forfeiture of any amount or a term of imprisonment not exceeding seven years (an increase from the current maximum term of imprisonment of five years).

Recommendation 4: Criminal jurisdiction of the Fa’amasino Fesoasoani to remain as it is.

Recommendation 5: The District Court (including the Fa’amasino Fesoasoani) to be a court of summary jurisdiction.

Recommendation 6: The amounts in the transfer of proceedings sections to be increased from \$5000 to the current jurisdiction of \$10,000.

Recommendation 7: Transfer of proceedings to be a discretionary power of the Judges based on jurisdiction.

Recommendation 8: All parties to the proceeding to be informed in writing by the Registrar if the Judge is of the opinion that it is to be transferred either from the District Court to the Supreme Court or from the Fa’amasino Fesoasoani to the District Court.

Recommendation 9: Change provision on who can be eligible to be appointed as a District Court Judge. To be eligible a person must be:

- A barrister and solicitor of the Supreme Court of Sāmoa for at least eight years.

Recommendation 10: Eligibility for Fa’amasino Fesoasoani to remain as it is.

Recommendation 11: The Ministry of Justice and Courts Administration to consider legal qualifications when appointing Registrars.

Recommendation 12: The District Courts Act should provide for the office of Chief District Court Judge.

Recommendation 13: The Chief District Court Judge should be responsible for delegating any function, duty or responsibility to a District Court Judge or Fa’amasino Fesoasoani and ensuring the professional development of District Court Judges and Fa’amasino Fesoasoani are in line with guidelines provided by any appropriate Committee of the Judiciary which deals with professional development.

Recommendation 14: A District Court Judge or Fa’amasino Fesoasoani can be removed if the Sāmoa Judicial Service Commission finds;

- c. Professional misconduct; or
- d. Mental incapacity or physical incapacity and is no longer fit to carry out their duties

Recommendation 15: A Judge removed on the ground of Recommendation 13(b) is entitled to any and all retirement packages.

Recommendation 16: The retirement age for District Court Judges should be increased from 62 years to 68 years.

Recommendation 17: The District Courts Act should set out the current and existing powers, duties and responsibilities of District Courts Judges, Fa’amasino Fesoasoani and Registrars.

Recommendation 18: The District Courts Act should specify powers of Principal Registrars in the Act to;

- i. adjourn hearings if District Court Judge is unable to attend the sitting;
- ii. issue any process out of Court but subject to be recalled and cancelled by a District Court Judge;
- iii. administer an oath;
- iv. endorse a warrant of arrest on the following conditions –
 - a. bail is mandatory after 24 hours and date of bail is set out in warrant; and/or
 - b. amount of money to be paid by person bailing out the arrested before release; and
- v. extend the bail of a person if that person has been granted bail to attend the day on which the proceeding has been listed before the Court (a criminal proceeding)

Recommendation 19: Registrars to be afforded immunity from prosecution in the performance of their duties.

Recommendation 20: Interpretation section of the Act to contain the following definitions:

- i. Judges include Chief District Court Judge and District Court Judge;
- ii. Fa’amasino Fesoasoani; and

- iii. Court Officers to include Registrars and administrative officers such as members of the police force, clerks, interpreters and any other relevant person needed to deal with the workload of the Court

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