



GOVERNMENT OF SAMOA



SAMOA LAW REFORM COMMISSION

Review of the Family Laws of Samoa

Final Report 25/22

**A o lenei, o tumau le fa'atuatua, ma le fa'amoemoe, ma le alofa,
o na mea e tolu; a o lē sili o na mea o le alofa lea. (1 Korinito 13:13)**

And now these three remain: faith, hope and love.

But the greatest of these is love



GOVERNMENT OF SAMOA

The Honourable Speaker
The Legislative Assembly

In accordance with Article 35 of the *Constitution of the Independent State of Samoa 1960* and section 9 (3) of the *Law Reform Commission Act 2008*, I lay before you copies of the *Final Report for the Review of the Family Laws of Samoa* for tabling before the Legislative Assembly of Samoa.

The report sets out the Commission's recommendations on the Review of the *Family Laws of Samoa* after stakeholders and public consultations and research in accordance with section 4 of the *Law Reform Commission Act 2008*.

A handwritten signature in blue ink, appearing to read 'Matamua Seumanu Vasati Sili Pulufana'.

Honorable Matamua Seumanu Vasati Sili Pulufana
MINISTER FOR THE SAMOA LAW REFORM COMMISSION



GOVERNMENT OF SAMOA

Honourable Matamua Seumanu Vasati Sili Pulufana
MINISTER FOR THE SAMOA LAW REFORM COMMISSION

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Leaumoana Salima Lasalo Salima
ACTING EXECUTIVE DIRECTOR
SAMOA LAW REFORM COMMISSION

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1. INTRODUCTION

O le tagata ma lona faasinomaga, o le tagata foi ma lona tupuaga!

- 1.1 The Samoan way of life or *Fa'a-Samoa* places the family institution or *Aiga* at the centre of the development of the life of a Samoan. It is the root of each person's identity and being.
- 1.2 The Review of the Family Laws of Samoa was initiated in 2018, after the completion of the Review of the Fabric of Laws of Samoa Project (Fabric of Laws Review) in 2017. The Commission's Fabric of Laws Review, was a review initiated to ensure that the Government Ministries and agencies are aware of their enabling and empowering laws, and the statutory duties, functions, liabilities they are required to carry out and are responsible for, under those laws. In addition, the Review was needed for an internal reason; it is crucial for the Law Reform Commission lawyers to understand the overall fabric of laws of Samoa, which the Commission is mandated to review and reform for the benefit of the people of Samoa.
- 1.3 In the Commission's Fabric of Laws Awareness consultation sessions with the Judiciary, the Judiciary lamented that the family laws are in dire need of reviewing and updating. After the completion of the Commission's Review of the Fabric of Laws project, the Commission carried out several preliminary discussions with the Ministry of Justice and Courts Administration (MJCA) with a mission to review the family laws of Samoa, to update them to the current context of Samoa.
- 1.4 The Review of the Family Laws is a review of the following six (6) family laws:
- (i) Infants Ordinance 1961;
 - (ii) Marriage Ordinance 1961;
 - (iii) Divorce and Matrimonial Causes Ordinance 1961;
 - (iv) Maintenance and Affiliation Act 1967;
 - (v) Family Safety Act 2013; and the
 - (vi) Family Court Act 2014.
- 1.5 This Review was carried out by the Commission in close collaboration with the MJCA as the instructing Ministry and administrator of these laws. Following a meeting in

July 2018, the MJCA approved that the Commission undertakes and leads the Review of the Family Laws. During the public consultations on this Review, the partners were invited to join the Commission in the active seeking of the public's views through public consultations. These were the Ministry of Women, Community and Social Development (MWCSD); the Office of the Attorney General (OAG); the Samoa Bureau of Statistics (SBS), and the Ministry of Police, Prisons and Correctional Services (MoPPCS).

1.6 This Final Report discusses the Review of the Family Laws according to the six (6) stage law reform commission process.¹ The Commission provides in *Annex 9 – Chronology for the Review of the Family Laws of Samoa 2018-2022* a Chronology of Events, highlighting the period in which each of the 6 stages was undertaken, as well as the national and unforeseen events that impacted on the timelines of the Commission's process in undertaking and completing this Family Laws of Samoa Review.

2. PART A: TERMS OF REFERENCE (STAGE 1)

2.1 The **Terms of Reference (TOR)** approved by the OAG on 2 October 2018 are as follows:

- a) To review the effectiveness of the existing family laws (x6) 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.

2.2 The Commission is mandated under section 4 of the Law Reform Commission Act 2008 (LRC Act 2008) to facilitate the review, reform and development of the laws of Samoa in order to:

- (a) promote Samoan custom and traditions; and
- (b) enhance the social, cultural, economic and commercial development of Samoa; and
- (c) ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.

¹ Section 8, Law Reform Commission Act 2008 (Procedure of the Commission) - Subject to this Act, the Commission may regulate its procedure in such manner as it thinks fit.

3. PART B: PRELIMINARY RESEARCH AND CONSULTATIONS (STAGE 2)

3.1 This Part is discussed under the following 6 headings:

- A) The 6 Legal Frameworks;
- B) Family Laws – Court Decisions;
- C) Preliminary Commentary from the Judiciary;
- D) The Public Awareness Seminars; and
- E) Corresponding overseas laws.

(A) The 6 Legal Frameworks

3.2 It is important to understand each of the 6 laws and their journeys through amendments and subsidiary legislation made under those laws.² These are set out in the Table below.

The 6 Family Laws	Date of Assent	Date of Commencement	Purpose / Long Title	Times amended	Regulations
Infants Ordinance 1961	28/09/1961	28/09/1961	To consolidate and amend certain laws relating to infants and children.	8 times	5 Regulations
Amendment Acts Infants Amendment Act 1966 Fines (Review and Amendment) Act 1998 Births, Deaths and Marriages Registration Act 2002 Infants (Adoption) Amendment Act 2005 Family Safety Act 2013 Infants Amendment Act 2015 Infants Amendment Act (No.29) 2019 Education Amendment Act 2019 Subsidiary laws Infants (Fees) Regulation 1971 Infants (Fees) Amendment Regulation 1983 Infants (Fees) Amendment Regulation 1988 Infants Ordinance 1961 (Notice to establish the Adoption Agency Code of Conduct 2006) Infants (Adoption) Regulations 2006					
Marriage Ordinance 1961	28/09/1961	28/09/1961	To consolidate and amend the law relating to marriage.	Once	3 Regulations

² Taken from the Legislative Assembly Updated List, Acts and Ordinance & Statutory Regulations, as at 31 December 2019, Office of the Clerk of the Legislative Assembly.

Amendment Act Births, Deaths and Marriage Registration Act 2002 Subsidiary laws Marriage Regulations 1971 Marriage Amendment Regulations 1983 Marriage Amendment Regulations 1988					
Divorce and Matrimonial Causes Ordinance 1961	28/12/1961	01/01/1962	To make provision for divorce and other matrimonial causes.	4 times	5 Regulations
Amendment Acts Divorce and Matrimonial Causes Amendment Act 1963 Divorce and Matrimonial Causes Amendment Act 1975 Divorce and Matrimonial Causes Amendment Act 2010 Divorce and Matrimonial Causes Amendment Act 2013 Subsidiary laws Divorce and Matrimonial Causes (Fees and Costs) Rules 1971 Divorce and Matrimonial Causes (Procedure) Rules 1980 Divorce and Matrimonial Causes (Fees and Costs) Amendment Rules 1983 Divorce and matrimonial Cause (Fees and Costs) Amendment Rules 1988 Divorce and Matrimonial Causes Amendment Rules 1990.					
Maintenance and Affiliation Act 1967	25/07/1967	25/07/1967	To provide for the maintenance of destitute persons, illegitimate children, deserted wives and children, and to facilitate the enforcement of local and foreign maintenance orders.	3 times	2 Regulations
Amendment Acts Maintenance and Affiliation Amendment Act 1975 Maintenance and Affiliation Amendment Act 1997 Maintenance and Affiliation Amendment Act 2010 Subsidiary laws Maintenance and Affiliation Regulation 1971 Maintenance and Affiliation Regulation 1988					
Family Safety Act 2013	05/04/2013	05/04/2013	To provide for greater protection of families and the handling of domestic violence and related matters.	Nil	Nil
Family Court Act 2014	26/06/2014	26/06/2014	To establish the family court as a Division of the District Court and to	Nil	Nil

Family Court Rules 2014	2014	2014	provide for the constitution, jurisdiction, powers and procedures of the Family Court, and for related purposes.		
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(B) Family Laws – Court Decisions

3.3 The Commission’s research is for the period from 1961, the earliest year of the laws (*Infants Ordinance 1961, Marriage Ordinance 1961 and Divorce and Matrimonial Ordinance 1961*), to June 2022. The court decisions discussed in this Part, (Preliminary Research and Consultations – Stage 2) is inclusive of the court decisions found in the later research (Further Research and Literature Review – Stage 5). The court decisions under review are those available from the Pacific Islands Legal Information Institute (Paclii website, paclii.org) and the Samoa Legal Information Institute, Samlii website, (samlii.org). The search on these legal databases available to the Commission³ produced a total of 94 Samoan court decisions which applied, and for which court proceedings relied on the provisions of the six (6) family laws. This number is inclusive of some case law and material provided by some of the Honourable Judges following the Commissions preliminary consultations with some members of the Judiciary.

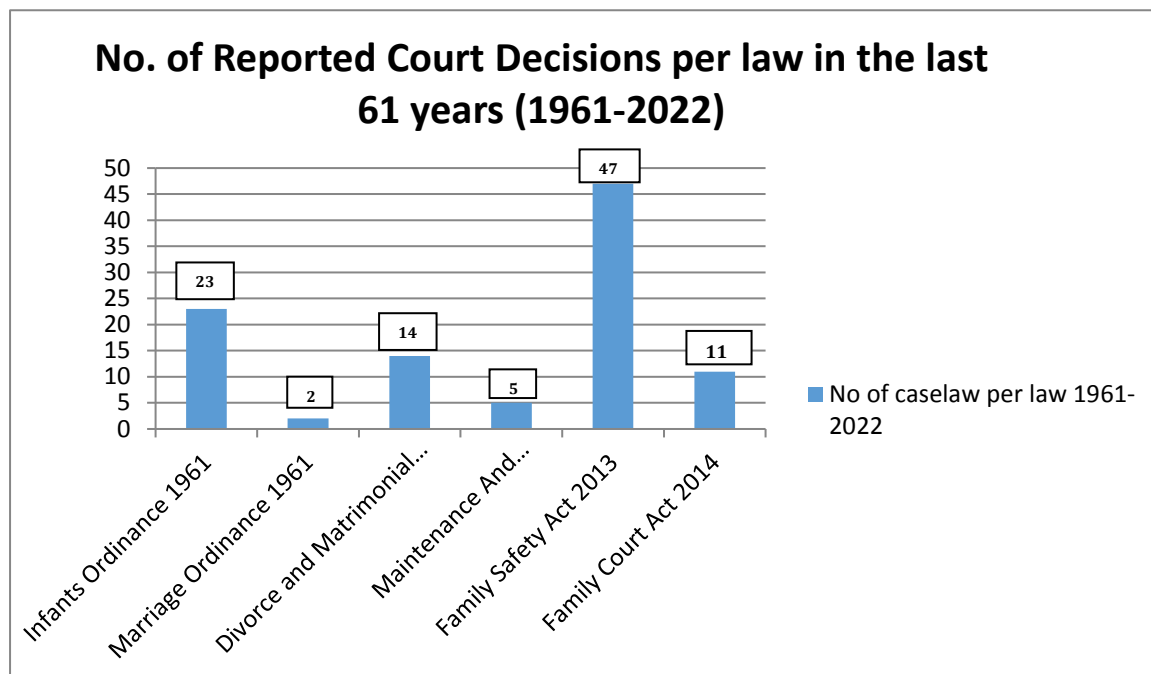
3.4 The Commission acknowledges that this number 94, is not reflective of the accurate number of family court cases that have gone through proceedings in Samoa’s Court of Appeal, Supreme Court, District Court and Family Court. Whilst the Commission was able to access and read 94 cases (reported and a few unreported decisions obtained) for analysis in this Report, the Commission makes note of the Ministry of Justice and Courts Administration’s (MJCA) Annual Reports from the Financial Year 2013/2014 up to Financial Year 2018 / 2019 which record a total of **14,351** family court matters that have been brought before Samoa’s Courts. The Commission therefore encourages the Ministry to update their system databases, to allow for easier access to upload and download court decisions for research. The Terms of Reference for the Commission requires doctrinal research, and thus the Commission will proceed on court decisions available for research. The Commission is thankful for any relevant material made available for this Review.

³ The popular used is the Pacific Islands Legal Information Institute (Paclii) website.

3.5 To gain some understanding generally, of the application of the provisions of the family laws under review in the court proceedings in Samoa, the following discussions with related diagrams and figures are provided.

(i) No. of Reported Court Decisions per Law in the Last 61 years

3.6 The number of court decisions applying or relying on each of the 6 Family Laws in the last 61 years is set out in the Columns below. In the following Column, the count is 102 court decisions, (not 94 as per count above) as 6 of the courts decisions rely/refer to more than 1 of the 6 family laws. The reference to 61 years is the count from the years of the earliest enactment of the 6 laws i.e. **1961 to June 2022**, the cut-off date of the court decisions research for this Review.



3.7 The reliance on Parliament enacted family laws as a means of dispute resolution mechanism has not been popular, for many reasons. There is little knowledge of the existence of the family laws, and this was evident in the public’s comments at the Public Awareness Seminars and the Public Consultations. There is also the issue of accessibility in terms of distance and in costs. Further, easier accessed traditional dispute resolution mechanisms within the families and village communities are easily accessible and readily available.

3.8 It is notable therefore that according to reported and a few unreported cases available to the Commission, there has been a sparse use of the family laws in the courts given the length of time between the first enactments (1961) and now. In addition, the case law review shows that a number of the case law found are focused on particular areas of a law e.g. for the Infants Ordinance 1961, there have been more case laws on the ‘adoption’ provisions rather than on the ‘protection of children’ provisions in the same law.

3.9 The data available to the Commission shows that the bulk of the sections of each law are yet to be fully utilised and the most popular used in the courts is a recent law (i.e. Family Safety Act 2013) as opposed to the earlier enacted laws (1961).⁴ Notably, the bulk of the court decisions brought under the Family Safety Act 2013 are where parties apply for ‘protection orders’ and where courts deliberate on the definition of ‘domestic relationship’ to ensure the provisions of the Family Safety Act are correctly applied in the proceedings. For the Family Court Act, 10 cases were heard in the Family Violence Court, the criminal law branch of the Family Court.

(ii) No. of Court Decisions and the Sections of the Laws in Demand

No.	The 6 family laws	No. of case law	No. of sections	No. of sections relied upon		No. of sections not relied upon	
				No.	%	No.	%
1.	Infants Ordinance 1961	23	31	11	35	20	65
2.	Marriage Ordinance 1961	2	22	2	9	20	91
3.	Divorce And Matrimonial Causes Ordinance 1961	14	48	9	19	39	81
4.	Maintenance And Affiliation Act 1967	5	95	7	7	88	93
5.	Family Safety Act 2013	47	26	8	31	18	69
6.	Family Court Act 2014	11	20	1	5	19	95

(iii) Brief Summary of the Application of the Active Provisions

3.10 The following Table gives a brief overview of the case law relying and applying particular sections of the 6 family laws; the sections of the laws applied, and an indication of the case emphasis. The content cannot be relied upon as the main argument (which for some cases it is), but the Table is to provide some idea of what provisions of the laws are heavily relied upon. It can also be seen as a useful record on which matters the public and

⁴ For more information, see **Annex 2 – Percentage of Sections of 6 Laws in Court Decisions.**

the people of Samoa have seen important to engage a lawyer for, or physically visit the MJCA and seek the assistance of the Family Law administrative staff, or seek the assistance of a police officer, in filing family related disputes for the Courts' determination.

The Application of the Provisions of the 6 Family Laws				
Laws	Section	# of cases applying each section⁵	Court matter heard	Analysis
Infants Ordinance 1961	Section 2 – Interpretation	1	District Court	1. <i>Police v Lagaaiā</i> [2017] WSDC 23 (13 October 2017) This is a sentencing matter on ‘assault’ by teachers on a 14 year old student. In discussions towards an appropriate sentence, the court made reference to section 2 which defines a child as an infant under 16 years old.
	Section 3 – Principle on which questions relating to custody, etc., of infant to be decided	9	Supreme Court (1) District Court (4) Family Court (2)	1. <i>Tuiletufuga v Tuiletufuga</i> [1979] WSLawRp 17; [1970-1979] WSLR 273 (29 August 1979) 2. <i>Wagner v Radke</i> [1997] WSSC 6; Misc 20701 (19 February 1997) 3. <i>Maintenance Officer on behalf of Fiasili v Fuimaono</i> [2003] WSDC 3 (23 August 2003) 4. <i>Samoa Victim Support Group v Inoke</i> [2-13] WSDC 4 (18 September 2013) 5. <i>VC v II [2013]</i> WSDC 6 (18 September 2013) 6. <i>BM v LG</i> [2013] WSDC 7 (21 October 2013) 7. <i>Samoa Victim Support Group v Falealili</i> [2014] WSFC 2 8. <i>MM v LK</i> [2016] WSFC 3 9. <i>Tuugamusu v Tuugamusu</i> [2017] WSDC 12 (3 March 2017) In considering a question on the custody of an infant, a child's welfare is of first and paramount importance.
	Section 4 - Application regarding custody, etc.	5	Supreme Court (1) District Court (3) Family Court (1)	1. <i>VC v II</i> [2013] WSDC 6 (18 September 2013) 2. <i>Samoa Victim Support Group v Inoke</i> [2013] WSDC 4 (18 September 2013) 3. <i>SVSG v Falealili</i> [2014] WSFC 2 4. <i>Tuugamusu v Tuugamusu</i> [2017] WSDC 12 (3 March 2017) 5. <i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)

⁵ To note - some cases refer to more than 1 section.

				When determining cases where a parent is unfit to have custody of a child, the court can (i) appoint a fit and proper person to be the child's guardian and (ii) make appropriate orders for the upbringing of the child.
Section 7- Power to make adoption order	2	Supreme Court (1) District Court (1)	1. <i>In re Application for Adoption by Solomona</i> [1999] WSDC 1 (1 January 1999) 2. <i>S & M v District Court, Apia</i> [2000] WSSC 42 (16 June 2000)	The 2 cases stem from the same proceedings (case of first instance and appeal). In this matter, the courts discussed and determined whether the District Court had jurisdiction to make an adoption order in respect of infants born outside Samoa. On appeal, the Supreme Court held the District Court had jurisdiction to make adoption orders for infants born outside of Samoa.
Section 8 – Conditions on which orders may be made	1	Supreme Court	1. <i>Craig v Banks</i> [2012] WSSC 49 (11 May 2012)	Section 8 was briefly discussed by the court that in any adoption application and further to the best interest and welfare of the child to be paramount, this section requires the applicants to be of good character. It does not focus on the character of those who provide affidavits in support of the applicants and not so much those who are supporting the applicants.
Section 10- Effect of adoption order.	3	Court of Appeal (1) Supreme Court (2)	1. <i>Stowers v Stowers and Fruean and Public Trustee</i> [2012] WSCA 11 (31 May 2012) 2. <i>Stowers v Stowers</i> [2012] WSSC 30 (7 May 2012) 3. <i>Stowers v Stowers</i> [2010] WSSC 30 (14 June 2010)	All 3 cases stem from one proceeding which reached the Court of Appeal for determination. Section 10 (<i>Effect of an adoption order</i>) was discussed in case 3 and was appealed in case 1. The court of first instance discussed section 10 to determine whether the plaintiffs' children (born out of wedlock) who were legally adopted out are entitled to interest in the land under their natural father's (deceased) estate. The court of first instance held they are not entitled as per section 10(2)(b) of the IO which provides for the effect of an adoption order, that a child gives up all legal rights and entitlement to biological parents' property.

				<p>The case was appealed on whether by virtue of Article 15 (<i>Freedom from discriminatory legislation</i>), the plaintiffs' children who are illegitimate by law (s.10), should be regarded as legitimate in law. The Court of Appeal held that as this was an issue closely linked to legitimacy; this will be referred back to the Supreme Court for determination. There is no record of this matter being pursued further, at the time of this Review.</p>
Section 11- Adoption order may be varied or discharged.	2	Supreme Court (1) District Court (1)	<p>1. <i>Infants Ordinance 1961 (Part II) v Chong</i> [1998] WSSC 9 (14 May 1998)</p> <p>2. <i>In re application of Masunu Utumapu</i> [2-4] WSDC 6 (30 November 2004)</p> <p>The courts applied this section to determine whether adoption orders granted should be discharged on the basis that it serves the best interest of the applicants.</p> <p>The courts held in each case that:</p> <p>(i) because the adoption did not serve the interest of the child, the adoption order was discharged; and</p> <p>(ii) Because the adoptee suffers medical problems, it is in the best interest of the adoptee (over the age of 21 years) that the adoption order is discharged so that the adoptee should be able to travel to New Zealand for medical conditions.</p>	
Section 12 - Punishment for ill-treatment and neglect of children	1	District Court	<p>1. <i>Police v Uarota</i> [2011] WSDC 2 (5 August 2011)</p> <p>The court discussed that the purpose of section 12 is for the prevention and punishment of cruelty to children. It held that the accused was guilty of wilfully ill-treating the children (punching, beating the children and pushing the children's heads down in the bath tub), committing an offense under section 12.</p>	
Section 14 – Right of parent, etc., to administer punishment	2	District Court	<p>1. <i>Police v Lagaia</i> [2017] WSDC 23 (13 October 2017)</p> <p>2. <i>Police v Mautofiga</i> [2020] WSDC 4 (16 July 2020)</p> <p>These are sentencing matters where the courts discussed the use of 'reasonable force' under this section as a mitigating factor, in determining the appropriate sentence of the defendants, depending on the circumstances of each case.</p>	

	Section 15- Appointment of child welfare officers.	2	District Court (1) Family Court (1)	<ol style="list-style-type: none"> 1. <i>Samoa Victim Support Group v Inoke</i> [2013] WSDC 4 (18 September 2013) 2. <i>SVSG v Falealili</i> [2014] WSFC 2 <p>Courts observation of section 15: the Court was not aware that anyone at SVSG has been designated as a welfare officer. If there was a welfare officer, it would have satisfied the requirements under s.15 for the Court to appoint a member of SVSG as a welfare officer.</p>
	Section 16 - Power of the Court and appeal.	3	District Court (2) District Court (1) Family Court (1)	<ol style="list-style-type: none"> 1. <i>VC v II</i> [2013] WSDC 6 (18 September 2013) 2. <i>Samoa Victim Support Group v Inoke</i> [2013] WSDC 4 (18 September 2013) 3. <i>SVSG v Falealili</i> [2014] WSFC 2 <p>The courts applied this section in its determination of making orders in proceedings involving children who are living in environments that are detrimental to their wellbeing, to be placed in the care of a child welfare officer.</p>
No section cited	-	2	District Court	<ol style="list-style-type: none"> 1. <i>Hadley v Hadley</i> [1997] WSMC 2 (23 December 1997) <p>In an application for custody of the children, the court discussed the actions of the parties (husband and wife) and decided that the best interest and welfare of the children would be to place the children under the custody of the mother.</p> <ol style="list-style-type: none"> 2. <i>Peseta v Siliato</i> [2016] WSDC 53 (25 November 2016) <p>In this matter, the Court did not specifically refer to any section however, it discussed the age of the first defendant being 14 years of age (infant under section 2), to determine whether the First defendant owed a duty of care to the Plaintiff and if such duty was breached. The court held although there is prima facie case of negligence, the evidence in the courts view falls short of establishing negligence on the part of the first defendant.</p>
Marriage Ordinance 1961	Section 7- Prohibited degrees of relationships void.	1	Supreme Court	<ol style="list-style-type: none"> 1. <i>Police v MI and TP</i> [2014] WSSC 105 <p>The court applied this provision as guidance for the Court when identifying marriages which are forbidden according to the First Schedule, that a man may not marry his step-daughter.</p>

	Section 15- Mode of solemnisation.	1	Supreme Court	1. <i>Skelton v Betham</i> [2018] WSSC 35 The Court applied section 15 in discussing the formalities of a marriage and referred to the definition of marriage which is defined under the BDM Act 2002 to mean a marriage solemnized under the Marriage Ordinance 1961.
Divorce and Matrimonial Causes Ordinance 1961	Section 4 - Petition for judicial separation	1	Supreme Court	1. <i>Laufofo v Croker</i> [1993] WSSC 5 (29 November 1993) In discussing a petition for a judicial separation, the Court applied this provision as guidance for when considering cruelty as a ground for a judicial separation.
	Section 7 – Grounds for divorce	2	Supreme Court	1. <i>Yiu Hing v Yiu Hing</i> [1969] WSLawRp 6 [1960-1969] WSLR 236 (15 July 1969) 2. <i>Ng Lam v Ng Lam (No 2)</i> [1972] SamoaLawRp 1; [1970-1979] WSLR 46 (17 February 1972) The court applied this provision to determine applications for decree of divorce, on the grounds of living apart and the unlikelihood of reconciliation.
	Section 16	2	Supreme Court	1. <i>Yiu Hing v Yiu Hing</i> [1969] WSLawRp 6 [1960-1969] WSLR 236 (15 July 1969) 2. <i>Tuiletufuga v Tuiletufuga</i> [1979] WSLawRp 17; [1970-1979] WSLR 273 (29 August 1979) This section was used as guidance by the Court in its discretion to grant a divorce decree based on the merits of each case.
	Section 22 – Alimony and Maintenance	5	Supreme Court	1. <i>Betham v Betham</i> [1994] WSSC 49 (26 January 1994). 2. <i>Elisara v Elisara</i> [1994] WSSC 14 (22 November 1994) 3. <i>Arp v Arp</i> [2008] WSSC 35 (13 June 2008) 4. <i>S v L</i> [2015] WSSC 178 (29 October 2015) 5. <i>Skelton v Betham</i> [2018] WSSC 35 The court applied this provision in determining applications for alimony and spousal maintenances depending on the circumstances of each case.
	Section 22A – Orders relating to alimony and maintenance	1	Family Court	1. <i>FML v LLS</i> [2015] WSFC 1 (17 April 2015) The court applied this section to make orders regarding the appropriate amount of alimony and maintenance to be awarded to the party applying for maintenance (wife).
	Section 22B –	1	Supreme Court	1. <i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)

Declaration of Interest in Property			<p>The court applied this section in determining whether the court could make orders under this Ordinance for division of matrimonial properties, if the proceedings are brought in after a decree of divorce has been granted.</p> <p>It was held that the Supreme Court did not have jurisdiction to make the orders as these proceedings falls outside the proceedings of DMCO as a divorce decree has been issued.</p>
Section 22C – Alteration of interests in property	1	Supreme Court	<p>1. <i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)</p> <p>The court applied this section in determining whether it could make orders under this Ordinance for division of matrimonial properties, if the proceedings are brought in after a decree of divorce has been granted.</p>
Section 24 – custody of children	3	Supreme Court	<p>1. <i>Elisara v Elisara</i> [1994] WSSC 14 (22 November 1994)</p> <p>2. <i>Arp v Arp</i> [2008] WSSC 35 (13 June 2008)</p> <p>3. <i>Skelton v Betham</i> [2018] WSSC 35 (22 January 2018)</p> <p>The courts applied this section in determining the custody of children in divorce proceedings. In Skelton’s case the court discussed whether it had jurisdiction to make custody order in relation to children after a divorce decree is issued.</p>
Section 36 – Appeal	1	Court Appeal	<p>1. <i>L v L</i> [1994] WSCA 3; 21 1993 (28 March 1994)</p> <p>This is an appeal of the decision by the court in <i>Laufofo v Croker</i> [1993] WSSC 5 (29 November 1993) pursuant to this section which permits a party dissatisfied by a decision made under this Ordinance to appeal. The appeal was dismissed.</p>
Section 37 - Recognition of overseas divorces	1	Supreme Court	<p>1. <i>Meleisea v Meleisea</i> [1994] WSSC 24 (24 May 1994)</p> <p>This was an application for the Supreme Court to accept a divorce order granted by the Family Court First Circuit of the State of Hawaii relying on section 37 of the DMCO. The Supreme Court found it was not satisfied on the balance of probabilities and the applicant was advised – he could adduce further evidence in the future if he wishes to do so and the court will decide that issue when it arises.</p>

	No section mentioned	1	Supreme Court	<p>1. <i>Nonu v Electric Power Corporation</i> [1997] WSSC 20; CP 139-96 (5 February 1997)</p> <p>This Ordinance is mentioned to make distinction as to the application of the provisions of the Law Reform Act 1964, to not apply to claims for damages on the ground of adultery under the DMCO 1961.</p>
Maintenance and Affiliation Act 1967	Section 12 – District Court Judge may make maintenance order against parent of child.	2	District Court	<p>1. <i>Maintenance Officer on behalf of Fiasili v Fuimaono</i> [2003] WSDC 3 (23 August 2003)</p> <p>The court applied this provision in exercising its power as to who gets custody of the children and to make appropriate custody order against parents (who have no prospect of reconciling), based on what is in the best interest of the children.</p> <p>2. <i>SV v SV [2004]</i> WSDC [2004] WSDC 11 (23 December 2004)</p> <p>The Court used this provision in making a maintenance order against a parent (father in this case), who has failed to provide maintenance for the children, after the court has awarded custody of the children to the wife and an interim order for maintenance is issued against the father.</p>
	Section 12A – Power of the Court to make custody order.	1	Family Court	<p>1. <i>M. M v L. K</i> [2016] WSFC 3 (2 September 2016)</p> <p>The court applied this provision in exercising its power to make an appropriate custody order in relation to the children, even if interim orders have been issued by a Registrar (considered appropriate in the circumstances).</p>
	Section 16 – Maintenance of wife.	1	Supreme Court	<p>1. <i>Soavele v Lili</i> [1993] WSSC 22; Misc 15431 (11 March 1993)</p> <p>The court on appeal applied this section in determining whether the interim maintenance order granted by the magistrate court was correct on the basis that the wife was a destitute person pursuant to this section. The court was not satisfied the wife was a destitute person.</p>
	Section 18	1	District Court	<p>1. <i>SV v SV</i> [2004] WSDC 11 (23 December 2004)</p> <p>The Court applied this section when considering what is reasonably sufficient for the needs of the children before the final maintenance order were made.</p>
	Section 20 – Payment of past maintenance	1	District Court	<p>1. <i>SV v SV</i> [2004] WSDC 11 (23 December 2004)</p> <p>The court only made reference to this section as it was raised by the applicant although it was not actively pursued by the applicant on the basis of statutory</p>

				maximum.
	Section 25 - Interim maintenance order	1	Supreme Court	1. <i>Soavele v Lili</i> [1993] WSSC 22; Misc 15431 (11 March 1993) In this appeal matter, the court had to consider this section as the appeal was in relation to an interim order issued by the Magistrate Court against the appellant.
	Section 28 – District Court Judge may make order as to costs	1	District Court	1. <i>SV v SV</i> [2004] WSDC 11 (23 December 2004) The Court used this provision in relation to the costs associated with the applications.
Family Safety Act 2013	Section 2 – Interpretation	30	Court of Appeal (1) Supreme Court (18) District Court (2) FVC (9)	<ol style="list-style-type: none"> 1. <i>RKS v HL</i> [2014] WSDC 6 (30 May 2014) 2. <i>MM v PP</i> [2014] WSFC 1 (15 August 2014) 3. <i>Samoa Victim Support Group v Falealili</i> [2014] WSFC 2 (18 September 2014) 4. <i>Police v MSS</i> [2016] WSFC 2 (19 February 2016) 5. <i>Police v Afoa</i> [2016] WSSC 117 (8 June 2016) 6. <i>Police v Perosi</i> [2016] WSSC 110 (11 July 2016) 7. <i>Police v Filivae</i> [2016] WSFVC 2 (9 August 2016) 8. <i>Police v Neemia</i> [2016] WSFVC 3 (9 August 2016) 9. <i>Police v Malua</i> [2016] WSSC 181 (18 August 2016) 10. <i>Police v Ataga</i> [2016] WSSC 172 (8 September 2016) 11. <i>Police v Kamuta</i> [2016] WSSC 174 (9 September 2016) 12. <i>L M T v A T</i> [2016] WSFC 4 (19 September 2016) 13. <i>L.A v S.L & T.S</i> [2016] WSFC 5 (5 October 2016) 14. <i>Police v Foaiaulima</i> [2016] WSDC 41 (7 October 2016) 15. <i>Police v Olo</i> [2017] WSSC 10 (16 February 2017) 16. <i>Tele’a v National Prosecution Office</i> [2017] WSCA 4 (31 March 2017) 17. <i>Police v Malotutoatasi</i> [2017] WSSC 64 (21 April 2017) 18. <i>Police v Tuu’u</i> [2017] WSSC 65 (25 April 2017) 19. <i>Police v Lemana</i> [2017] WSSC 67 (27 April 2017) 20. <i>Police v Leota</i> [2017] WSSC 113 (8 August 2017) 21. <i>Police v XM</i> [2017] WSSC 157 (26 October 2017) 22. <i>Police v Iakopo</i> [2017] WSSC 162 (22 November 2017) 23. <i>Police v Kobayashi</i> [2017] WSSC 159 (8 December 2017)

			<p>24. <i>Police v Mataafa</i> [2017] WSSC 166 (12 December 2017)</p> <p>25. <i>Police v Peni</i> [2018] WSSC 37 [23 February 2018]</p> <p>26. <i>Police v Sione</i> [2018] WSSC 89 (19 June 2018)</p> <p>27. <i>Police v Faanati</i> [2019] WSFVC 4 (9 March 2019)</p> <p>28. <i>Police v Kopelani</i> [2019] WSFVC 7 (9 Aug 2019)</p> <p>29. <i>Police v Sooa</i> [2019] WSSC 55 (31 Oct 2019)</p> <p>30. <i>Police v Laupua</i> [2018] WSSC 125 (18 Oct 2018)</p> <p>Thirty (30) cases relied on the definitions set out in the interpretation section, in particular the meaning of ‘domestic relationship’ and whether the relationship between the applicant and the respondent meets this definition, before determining the ‘protection order’ application before the court.</p>
Section 4 - Application for protection order.	1	District Court	<p>1. <i>Samoa Victim Support Group v Falealili</i> [2014] WSFC 2 (18 September 2014)</p> <p>The court applied this section to allow an application for a protection order to be brought on behalf of a child complainant, by any person without the written consent of the child; if below the age of 18 (in this case the child was below the age of 18).</p>
Section 5 - Interim protection orders.	3	District Court (1) Family Court (2)	<p>1. <i>MM v PP</i> [2014] WSFC 1</p> <p>2. <i>SVSG v Falealili</i> [2014] WSFC 2</p> <p>3. <i>RKS v HL</i> [2014] WSDC 6</p> <p>For these applications (interim protection orders), the courts applied this provision in determining whether the evidence submitted to satisfy the court that an interim protection order issued, is justified in each case e.g. domestic violence or physical or sexual assault has been ongoing and is of high likelihood of continuing.</p>
Section 7 - Protection orders where respondent appears on due date.	4	District Court (1) Family Court (3)	<p>1. <i>RKS v HL</i> [2014] WSDC 6</p> <p>2. <i>Samoa Victim Support Group v Falealili</i> [2014] WSFC 2 (18 September 2014)</p> <p>3. <i>LMT v AT</i> [2016] WSFC 4</p> <p>4. <i>LA v SL & TS</i> [2016] WSFC 5</p> <p>The courts applied this section in considering whether interim protection orders issued should be made final if the court is satisfied on the balance of probabilities that there are acts of domestic violence within the relationship.</p>
Section 9 - Protection orders available to	1	Family Court	<p>1. <i>Police v MSS</i> [2016] WSFC 2</p> <p>The court applied this section to determine whether or not the accused enlisted another person to help commit an act of domestic violence under this section.</p>

the Court.			
Section 11 - Breach of protection order.	1	Family Court	1. <i>Police v MSS</i> [2016] WSFC 2 In determining a breach of protection order, the court relied on this section on whether an act of removing a pipeline from the complainant's side did amount to an act of domestic violence, thus breaching a protection order. Case dismissed.
Section 17 – Sentencing	37	Court of Appeal (1) Supreme Court (30) District Court (1) Family Court (5)	<ol style="list-style-type: none"> 1. <i>Police v Lima</i> [2014] WSSC 33 (20 June 2014) 2. <i>Police v Faataape</i> [2016] WSFVC 6 (8 May 2016) 3. <i>Police v Afoa</i> [2016] WSSC 117 (8 June 2016) 4. <i>Police v Perosi</i> [2016] WSSC 110 (11 July 2016) 5. <i>Police v Filivae</i> [2016] WSFVC 2 (9 August 2016) 6. <i>Police v Neemia</i> [2016] WSFVC 3 (9 August 2016) 7. <i>Police v Malua</i> [2016] WSSC 181 (18 August 2016) 8. <i>Police v Ataga</i> [2016] WSSC 172 (8 September 2016) 9. <i>Police v Kamuta</i> [2016] WSSC 174 (9 September 2016) 10. <i>Police v Foaiaulima</i> [2016] WSDC 41 (7 October 2016) 11. <i>Police v Olo</i> [2017] WSSC 10 (16 February 2017) 12. <i>Tele'a v National Prosecution Office</i> [2017] WSCA 4 (31 March 2017) 13. <i>Police v Malotutoatasi</i> [2017] WSSC 64 (21 April 2017) 14. <i>Police v Tuu'u</i> [2017] WSSC 65 (25 April 2017) 15. <i>Police v Lemana</i> [2017] WSSC 67 (27 April 2017) 16. <i>Police v XY</i> [2017] WSSC 86 (30 May 2017) 17. <i>Police v Leota</i> [2017] WSSC 113 (8 August 2017) 18. <i>Police v XM</i> [2017] WSSC 157 (26 October 2017) 19. <i>Police v Iakopo</i> [2017] WSSC 162 (22 November 2017) 20. <i>Police v Kobayashi</i> [2017] WSSC 159 (8 December 2017) 21. <i>Police v Mataafa</i> [2017] WSSC 166 (12 December 2017) 22. <i>Police v Taumaloto</i> [2017] WSSC 160 (13 December 2017) 23. <i>Police v Peni</i> [2018] WSSC 37 [23 February 2018) 24. <i>Police v Sione</i> [2018] WSSC 89 (19 June 2018) 25. <i>Police v Laupua</i> [2018] WSSC 125 (18 October 2018) 26. <i>Police v Tufele</i> [2018] WSSC 109 (1 November 2018)

				<p>27. <i>Police v Gordlina</i> [2019] WSFVC 3 (20 Sept 2019)</p> <p>28. <i>Police v Gabriel</i> [2019] WSSC 40 (5 June 2019)</p> <p>29. <i>Police v Siliato</i> [2019] WSFVC 5 (14 June 2019)</p> <p>30. <i>Police v Tila</i> [2019] WSSC 32 (25 June 2019)</p> <p>31. <i>Police v Crichton</i> [2019] WSSC 33 (10 July 2019)</p> <p>32. <i>Police v Soma</i> [2019] WSSC 79 (17 July 2019)</p> <p>33. <i>Police v Fidow</i> [2019] WSSC 85 (23 Oct 2019)</p> <p>34. <i>Police v Tele'a</i> [2020] WSSC 100 (16 Oct 2020)</p> <p>35. <i>Police v Aiono</i> [2020] WSSC 29 (29 May 2020)</p> <p>36. <i>Police v Leota</i> [2020] WSSC 69 (23 October 2020)</p> <p>37. <i>Police v AT</i> [2021] WSSC 15 (31 March 2021)</p> <p>In sentencing, where the offence was committed within the context of a domestic relationship, the court will consider such, as an aggravating factor.</p>
	Section 19 – Evidence and procedure.	4	Supreme Court (2) Family Court (2)	<p>1. <i>Police v Lafaele</i> [2015] WSSC 114</p> <p>2. <i>LMT V AT</i> [2016] WSFC 4</p> <p>3. <i>LA v SL & TS</i> [2016] WSFC 5</p> <p>4. <i>Police v AT</i> [2021] WSSC 15 (31 March 2021)</p> <p>The courts applied this section to determine whether evidence put before them are necessary to make a decision or determination in respect of granting or refusing a protection order.</p>
Family Court Act 2014	Section 13 - Case stated to Supreme Court	1	Supreme Court	<p>1. <i>S v L</i> [2015] WSSC 178 (29 October 2015)</p> <p>The court applied this section in determining an application of a case stated from the Family Court on a question of law that is whether the Family Court is correct in that it has jurisdiction to hear and determine an application for alimony after divorce proceedings have been concluded.</p> <p>Held: Family Court does not have jurisdiction to hear and determine an application for alimony filed after divorce proceedings have been concluded.</p>
	No specific sections mentioned	10	Family Violence Court	<p>1. <i>Police v Brown</i> [2015] WSFC 1</p> <p>2. <i>Police v Fiapopo</i> [2016] WSFVC 4</p> <p>3. <i>Police v Ofoia</i> [2016] WSFC 1</p> <p>4. <i>Police v Brown</i> [2016] WSFC 5</p> <p>5. <i>Police v Menefata</i> [2016] WSFVC 7</p> <p>6. <i>Police v Tautofi</i> [2017] WSFVC 2</p> <p>7. <i>Police v Peteru</i> [2017] WSFVC 3</p> <p>8. <i>Police v Sapolu</i> [2017] WSFVC 2</p> <p>9. <i>Police v Toeoana and Afamasaga</i> [2017] WSFC 1</p> <p>10. <i>Police v Leung King</i> [2018] WSFVC 1</p>

				There were no specific sections of the Family Court Act nor any family law under review mentioned in these cases. However, it is noted that these proceedings were heard within the jurisdiction of the Family Violence Court, hence why it is noted here. The parties are either relatives through extended families or siblings etc. The offences within these proceedings are captured either under the Crimes Act 2013 or the Police Offences Ordinance 1961.
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Analysis:

3.11 The Commission’s search of case law on PACLII and on judgments received from members of the Judiciary at the time, allows for the following brief analysis.

- A total of **94** family cases have been heard in the courts for a span of **61** years;
- The first recorded case (from the data available to the Commission) was in **1969**, with the latest being **2021** (at the time of the search);
- Prior to the enactment of the Family Safety Act 2013 (FSA), most family matters were heard in the Supreme Court, which shows why the Supreme Court has the highest number of cases, with District Court cases to follow. This is also due to the nature and the jurisdiction which the court has, in determining those matters.
- These matters include proceedings on custody of children, maintenance, matrimonial causes and sentencing matters. Matters heard in the District and Family Court includes adoption, application for protection orders, issuance of protection orders and breaches of protection orders etc.
- From the span of 52 years, **78% (73)** of these cases were heard in the last **10 years** (2011 – 2021). This perhaps is reflected in the establishment of the Family Court in Samoa, with its jurisdiction to hear and determine all family matters under the 6 laws in review, in addition to the jurisdiction of the Supreme and District Court^[1] This is reflected in *Annex 1 - Court Decisions – Use of the 6 Laws, Courts Heard*.
- Of the 73 cases heard in the last 10 years, **47 cases** were brought under the Family Safety Act, which came into force in 2013.
- 2016 saw the biggest number of court cases with 19, while 17 cases were recorded in 2017; over **65%** of those cases were brought under the FSA alone.

^[1] By virtue of section 8(2) of the Family Court Act 2014.

- The availability of judges to hear and determine matters may also be seen as a reason for the increase in cases within the Family Court and the realization by the public on the availability of a family court to hear and determine family matters.

(iv) Court Decisions – Demonstrated Differently

3.12 For a further appreciation of how the 6 laws under review have been applied (or not applied) in the courts in Samoa, the Commission offers further information in *Annex 1 – Court Decisions – Use of the 6 Laws, Courts Heard* and *Annex 2 – % Provisions Applied in Samoa’s Case Law*. This review is taken from case law obtained by the Commission for this Review.

- **The Use of the 6 Laws under Review in the Courts (Annex 1):**
 - In Annex 1, the case law are categorized according to the Court where the family matters were heard, and the provisions of the 6 laws referred to and applied by the Courts in their respective decisions.
 - This Analysis shows the most common areas of contention in family matters which most required the assistance of the courts. For instance, approximately 60% of the 52 cases (i.e. 32/52) heard in the Supreme Court were brought under the Family Safety Act 2013. These cases were in relation to the courts issuing protection orders. This may be a reflection of the rising number of domestic violence matters in Samoa. In this regard, reliance on this law is high as compared to the other family laws.
- **Percentage of case law per family law under Review (Annex 2):**
 - Annex 2 illustrates how the 94 court decisions in Annex 1 applied the 6 family laws. There are pie graphs to indicate the number of actively used provisions as compared to those that have never been put to use. There are Tables illustrating the comparative analysis, for instance, there have only been 2 sections out of the total 21 sections of the Marriage Ordinance 1961 which have been applied in Samoa’s case law.
 - While Samoa’s family laws cover an extensive range of matters, only a limited number of provisions have been applied in the courts of Samoa.

- Overall, almost half of the cases were brought under the Family Safety Act 2013; an indication of the most commonly used law being a more recent 2013 enactment.
- The areas of the laws that have not been used at all come to light. This perhaps gives support for suggestions to revisit those areas if not the full legal frameworks of especially the first 4 laws (IO, MO, DMCO, MAA) for reform, for more relevant and suitable legal frameworks.
- Finally the high number of provisions that have not been applied or relied upon at all supports further the need for public awareness programs to inform the public of the laws and how these laws may be of benefit to the public.

(C) Preliminary Commentary from the Judiciary

3.13 In the months of November 2018, February and March 2019, the Commission carried out preliminary consultations with the longest serving Chief Justice of Samoa the late Honourable Justice Patu Falefatu Sapolu, and four other members of the Judiciary.

- (i) Honourable Chief Justice Patu Falefatu Sapolu – Chief Justices Chambers, 22 November 2018.
- (ii) Justice Leiataualesa Daryl Clarke - Justice’s Chambers, 25 February 2019.
- (iii) Justice Tuala-Warren - Justice’s Chambers, 26 February 2019.
- (iv) Judge Talasa Saaga - Judge’s Chambers, 5 March 2019.
- (v) Judge Alalatoa Papalii - Judge’s Chambers, 19 March 2019.

3.14 The Table below sets out the focus of the Judiciary comments as noted.

Law	Comments / Views of the consulted members of the Judiciary
Infants Ordinance 1961	<p>Adoption</p> <ul style="list-style-type: none"> • The adoption laws need to be updated • It would be useful if the adoption framework is under a standalone adoption legislation, separate from other matters provided for under the IO 1961.
Marriage Ordinance 1961	<ul style="list-style-type: none"> (i) The minimum age of marriage for males and females must be the same, gender equality laws. (ii) There are questions on whether some of the formalities of marriage provisions are still relevant today. <p>For example:</p> <ul style="list-style-type: none"> (i) Is it still necessary to require a parent/guardian’s consent for a minor to marry? (ii) Are notices for marriages still practical?
Divorce and Matrimonial	<p>There were three main areas of concern:</p> <ul style="list-style-type: none"> (i) There is a need to clarify the Supreme Court’s jurisdiction to deal with

<p>Causes Ordinance Matrimonial Property 1961</p>	<p>matters under the DMCO. There needs to be clarifications as to who deals with which class of matters.</p> <p>(ii) Samoa has adopted the no-fault based divorce since 2010</p> <p>(iii) The Courts need clear procedure to guide cases of consensual and non-consensual divorces and distribution of matrimonial property (where required in a divorce matter).</p>
<p>Maintenance and Affiliation Act 1967</p>	<p>Maintenance matters</p> <p>There are matters that require updating in the maintenance law:</p> <p>(i) Samoa needs to consider contextualising the definition of maintenance 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.</p> <p>(ii) For Samoa to reconsider the provisions on maintenance of destitute person by near relative, given that this is already part of Samoa’s culture – do we need to still legislate for it or is it time to remove these provisions?</p> <p>(iii) To consider incorporating in law a provision on the representation of a child?</p> <p>(iv) Should imprisonment for failure to pay maintenance, remove the outstanding debt owed to the applicant?</p> <p>Affiliation orders</p> <p>(v) To update provisions relating to affiliation orders, that scientific evidence be also permitted (e.g. DNA blood test), to determine paternity and make affiliation orders as to the child.</p>
<p>Family Safety Act 2013</p>	<p>(i) Protection Orders</p> <ul style="list-style-type: none"> • The procedure must make it easy to serve orders as soon as possible. • We need to consider whether a person can apply for a protection order (for the victim) on behalf of the victim, without the victims consent. <p>(ii) There needs to be more public awareness efforts on this Act for the public to understand what this Act offers and how it works in their favour.</p>
<p>Family Court Act 2014</p>	<p>(i) The scope of the Family Court’s jurisdiction need to be determined, in relation to what family law matters are to be dealt with by the Family Court only.</p> <p>(ii) For Samoa to consider the definition of Family in the Samoan context</p> <p>(iii) To consider defining and clarifying terms used in the law and how they can assist to narrow the scope of matters that are brought before the court, considering resources and capacity of the Court.</p>

3.15 The Commission received some helpful material from the Honourable Judiciary and the Commission is grateful. This is set out in *Annex 3 – Material from the Honourable Members of the Judiciary*.

3.16 To further inform the preliminary consultation stage, by letter of **16 April 2019** the Commission informed the Samoa Law Society of the Family Law Review, and invited comments from the Society. The Commission acknowledged the busy schedules of the law

practitioners thus the Notice to invite the Society's comments was accompanied by a Table highlighting:

- (i) the core family laws under Review;
- (ii) the core matters under those laws;
- (iii) invitation to comment on any matter in paragraph (ii); and
- (iv) any other suggested revisions outside of paragraph (ii).

No comments were received from the Society.

(D) The Public Awareness Seminars

3.17 For the first time, the Commission was able to carry out public awareness seminars as part of Stage 2 – Preliminary Research and Consultations.

3.18 The Commission carried out 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 for law reform projects) 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 informed of the 6 Family laws before providing their input when consultations proper roll out later in 2020 and 2021.

(i) Public Awareness Material and Schedule

3.19 The following materials were distributed and aired to the public during the roll out of the Public Awareness Seminars – copies of the main Presentation; the Pamphlets containing a summary of the 6 laws; Banners highlighting the main features of the 6 laws. The Awareness Video Documentaries were also made available and informed the public on a brief of each of the 6 laws and also offered the public consultations schedule for districts and villages. Family Law Booklets (*containing the 6x family laws, in both the Samoan and English language*) – were also distributed to Sui o Nuu, Sui Tamaitai o Nuu and Church Ministers.

3.20 The Commission carried out a total of **13 Public Awareness Seminars** for the public in Upolu (x6) and Savaii (x5) and the Government Public Sector. A total of **34** Constitutional Offices, Ministries and State Owned Enterprises attended and took part in the discussions in the Seminars. The Table below highlights the Public Awareness Seminars undertaken by the Commission in July, September and October in 2019.

UPOLU & SAVAII FAMILY LAW PUBLIC AWARENESS SEMINARS		
Seminar Sessions	Details	Total No. of Participants
11 Public Awareness Seminars for Upolu and Savaii	Upolu x 6 = 507 Savaii x 5 = 655	1,162 participants
2 Public Awareness Seminars for the Public Sector	2 nd October 2019 = 14 Public Sector Offices (22 participants) 3 rd October 2019 = 20 Public Sector Offices (27 participants)	34 Public Sector Offices represented by 49 participants
Total = 13 x Public Awareness Seminars	Total = 1,211 participants	

3.21 The Commission's partners accompanied the Commission throughout the roll out of the Public Awareness seminars. The partners were the Ministry of Justice and Courts Administration the instructing Ministry, the Ministry of Police, Prisons and Corrections, the Office of the Attorney General, the Samoa Bureau of Statistics and the Ministry of Women, Community and Social Development. The partners assisted significantly with responding to questions from the public on the implementation of the family laws under review.

(ii) Public Awareness Seminars – Areas of interest

3.22 The public seminars conducted by the Commission raised common concerns under the 6 Family laws. The table below sets out a summary of the common concerns.

No.	Family Law	Common areas of interest
1.	Infants Ordinance 1961 (IO 1961)	<ul style="list-style-type: none"> • ADOPTION: • 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 facto relationships. • registration of children where the parents are not married.

		<ul style="list-style-type: none"> • legitimization of children and custody of children.
2.	Marriage Ordinance 1961 (MO 1961)	<ul style="list-style-type: none"> • RELATIONSHIPS: • recognition of different types of relationships which are prohibited under the MO 1961. • marriage formalities, marriage officers, marriageable age, recognition given to marriages solemnise overseas and also de-facto relationships.
3.	Divorce and Matrimonial Causes Ordinance Matrimonial Property 1961 (DMCO 1961)	<ul style="list-style-type: none"> • GROUNDS AND EFFECT OF DIVORCE • procedure for application for divorce. • alimony, maintenance and custody of the children. • related offences.
4.	Maintenance and Affiliation Act 1967 (MAA 1967)	<ul style="list-style-type: none"> • MAINTENANCE • Whether the law as it stands, assists both mothers and fathers who want to apply for maintenance. • Whether a person can apply for maintenance of the children even if unmarried. • How are maintenance orders issued overseas enforced in Samoa? • AFFILIATION • what methods or evidence the Courts rely on in adjudging a man as the father of a child.
5,	Family Safety Act 2013 (FSA 2013)	<ul style="list-style-type: none"> • There were no substantial comments or questions raised by the public on the FSA 2013 during the awareness sessions.
6.	Family Court Act 2014 (FCA 2014)	<ul style="list-style-type: none"> • There were also no substantial comments or questions raised by the public on the FCA 2014 during the awareness sessions.

(iii) Funding Assistance (Sisters for Change)

3.23 How far and how many public consultations can be undertaken depends on the budget of the Commission. For the Commission’s annual budget allocation, there is no budget provision for public awareness seminars, to take the law out to the public, to inform the public of the laws before seeking their views on those laws, and make input on possible reform. For this Family Law Review, the Public Awareness Seminars would not have been possible without the funding assistance from ‘Sisters for Change’ (SFC), a non-profit organization based in London.

3.24 The Commission was fortunate to secure financial assistance from the SFC and will be always grateful for this assistance. The Commission acknowledges the SFC’s financial assistance which allowed the roll-out of the Commission’s first ever round of Public Awareness Seminars as an additional step of its law reform process.

(E) Corresponding Overseas Laws

3.25 The Commission also researched into overseas relevant and corresponding laws. For this Review, the Commission looked at the corresponding laws of New Zealand, Australia, Fiji and Papua New Guinea. The Table below identifies the corresponding overseas laws and a brief ‘comparative analysis’ is provided (third column). A review of these corresponding overseas laws show that the legal frameworks of overseas countries are wider and more modern in objectives, scope and content, fitting in their rightful place in the more modern fabric of laws of those jurisdictions.

No.	Samoa’s Law & Corresponding laws	Comparative Analysis (Other jurisdictions)
1.	<p>Infants Ordinance 1961 (IO 1961)</p> <p>Fiji: Family Law Act 2003 Adoption Act 2020</p> <p>NZ: Care of Children Act 2004 Adoption Act 1955</p> <p>Australia: Family Law Act 1975 Adoption Act</p>	<p><u>Outdated legislation</u></p> <ul style="list-style-type: none"> This is the first time for Samoa to have a full review of 6 of its family laws including the Infants Ordinance 1961. It has only been amended (9 times) over the years through piecemeal amendments. In comparison, Fiji’s <i>Family Law Act 2003</i> and <i>Adoption Act 2020</i>, and New Zealand’s <i>Care of Children Act 2004</i>, are recently enacted laws. <p><u>Principle relating to the custody of child</u></p> <ul style="list-style-type: none"> Children’s interests are central to the operation of the family unit, hence why their interests must always be taken into account in any decision affecting them. The paramount consideration in making a custody order in Samoa uses ‘regard to the welfare of the child as the first and paramount importance’ while Fiji,⁶ NZ⁷ and Australia⁸ applies the terminology ‘the best interest of the child’ as the paramount consideration in making a parenting order. New Zealand also sets out some matters relevant in considering what amounts to the best interest of the child. Should there be consideration for a change in the terminology used for Samoa, the Court must take into account and look at the laws of Fiji, New Zealand and Australia for

⁶ Family Law Act 2003 (Fiji), section 121.

⁷ Care of Children Act 2004 (New Zealand), section 4.

⁸ Family Law Act 1975 (Australia), section 60CA.

	<p>1993</p> <p>PNG: Adoption of Children Act (Cap 275) 1986</p>	<p>guidance.</p> <p><u>Adoption law</u></p> <ul style="list-style-type: none"> Samoa’s legislation⁹ provides for matters governing custody [<i>the courts in case law have relied on sections 3 and 4 of the i.e. universal principle relating to custody of infant in applications regarding custody of a child</i>], safety as well as the adoption of a child, all in one legislation. Fiji,¹⁰ NZ¹¹ and Australia¹² on the other hand, have separate and standalone laws on adoption. No doubt there are benefits and issues in different legal frameworks. As Samoa’s legislation regulating adoption is an old law, the benefits of an ‘adoption standalone law’ may be taken into account by the Ministry of Justice Courts and Administration. <p><u>Customary adoption</u></p> <ul style="list-style-type: none"> Under Samoa’s customs and usages, (<i>recognised by Article 111 of the Constitution as forming part of the laws of Samoa if they are made part of the laws and if the Courts give customs formal recognition</i>) ‘customary adoption’ is widely accepted and practiced in Samoa since time immemorial in the absence of formal Parliament laws. Customary adoption is not recognised under the laws of New Zealand, Fiji and Australia. Should Samoa decide to consider the inclusion of customary adoption in its Parliament laws, Papua New Guinea has in place the <i>Adoption of Children Act [Cap 275] 1986</i> which may provide some guidance on developing a suitable legal framework for Samoa.
<p>2.</p>	<p>Marriage Ordinance 1961 (MO 1961)</p> <p>Fiji: Marriage Act (Cap 50) 1969</p> <p>NZ: Marriage Act</p>	<p><u>Definition of ‘marriage’</u></p> <ul style="list-style-type: none"> The term ‘marriage’ is not defined in Samoa’s <i>Marriage Ordinance 1961</i>. New Zealand on the other hand, defines ‘marriage’ as the union of two people, regardless of their sex, sexual orientation, or gender identity.¹³ Fiji’s legislation expressly provides that ‘marriage in Fiji shall be the voluntary union of one man to one woman to the exclusion of all others.’¹⁴ The definition of ‘marriage’ in Fiji’s legislation is specific on different genders as is the current practice in Samoa. Samoa may wish to adopt Fiji’s example. <p><u>Marriageable age</u></p> <ul style="list-style-type: none"> The marriageable age in Zealand is 16 years (male and female).¹⁵ In Fiji the husband must be 18 years while the wife must be 16 years.¹⁶

⁹ Infants Ordinance 1961 (Samoa).

¹⁰ Adoption of Infants Act 1944 (Fiji).

¹¹ Adoption Act 1955 (New Zealand).

¹² Adoption Act 1993 (Australia).

¹³ Marriage Act 1955 (New Zealand), section 2.

¹⁴ Marriage Act [Cap 50] 1969 (Fiji), section 15.

¹⁵ Marriage Act 1955 (New Zealand), section 17.

	<p>1955 Civil Union Act 2004</p> <p>Australia: Civil Union Act 2012</p>	<p>For Samoa, initially the marriageable age was 18 years for men and 16 years for women. However, the marriageable age was recently amended¹⁷ and reconciled to 18 years for both men and women.</p> <ul style="list-style-type: none"> In terms of the consent to the marriage of minors, New Zealand provides that if either party to an intended marriage is of age 16 or 17, the consent of a Family Court Judge must be sought.¹⁸ Fiji’s law provides that the marriage of minors under the age of 21 requires the consent of the father or mother or in the absence of both parents, a Commissioner or Magistrate.¹⁹ For Samoa, the marriage of a man or woman under the age of 21 requires the consent of the parents or the guardian of the man or woman.²⁰ Should there be consideration for Samoa to revise the provisions on marriageable age and the consent to the marriage of minors, the laws of New Zealand and Fiji may be helpful as guidance. <p><i>Solemnisation of marriage</i></p> <ul style="list-style-type: none"> The formalities of marriage such as a notice of intention of marriage, and the solemnisation of a marriage under the law of Samoa appear to be outdated, and maybe considered for revisions. For instance, it is a requirement under Samoa’s MO 1961 that marriage is to be solemnized with open doors in such manner as the marriage officer thinks fit etc. If the purpose of having open places to solemnise weddings in 1961 was to ensure no crime is committed behind closed doors (e.g. under age marriage), Samoa may consider other modern ways of advertising a marriage nowadays (e.g. social media platforms etc.).
<p>3.</p>	<p>Divorce and Matrimonial Causes Ordinance 1961 (DMCO 1961)</p> <p>Fiji: Family Law Act 2003</p>	<p><i>Judicial separation</i></p> <ul style="list-style-type: none"> Judicial separation or a separation order is still available in Samoa²¹ and New Zealand.²² Judicial separation however, no longer exists in the laws of Fiji and Australia. The benefit of a judicial separation may still be considered by Samoa with an appreciation this is no longer available overseas. <p><i>Alimony and spousal maintenance</i></p> <ul style="list-style-type: none"> Fiji,²³ New Zealand²⁴ and Australia²⁵ all have modern provisions on the ‘maintenance of spouses’ and ‘de-facto partners’ whereas Samoa still

¹⁶ Marriage Act [Cap 50] 1969 (Fiji), section 12.

¹⁷ Immigration Act 2020 (Samoa), section 72.

¹⁸ Marriage Act 1955 (New Zealand), section 18.

¹⁹ Marriage Act [Cap 50] 1969 (Fiji), section 13.

²⁰ Marriage Ordinance 1961 (Samoa), section 10.

²¹ Divorce and Matrimonial Causes Ordinance 1961 (Samoa), section 5.

²² Family Proceedings Act 1980 (New Zealand), section 20.

²³ Family Law Act 2003 (Fiji), section 155.

²⁴ Family Proceedings Act 1980 (New Zealand), section 63 to 71.

²⁵ Family Law Act 1975 (Australia), section 72.

	<p>NZ: Family Proceedings Act 1980</p> <p>Australia: Family Law Act 1975</p>	<p>refers to maintenance as ‘alimony’ for the wife (this is an outdated and archaic term).</p> <ul style="list-style-type: none"> • The laws of Fiji,²⁶ New Zealand²⁷ and Australia²⁸ expressly provide for the matters which the Court may look into when deciding spousal maintenance (e.g. the age and state of the health of each of the parties; the income, property and financial resources of each of the parties and the physical and mental capacity of each party to engage in employment etc.). Samoa provides corresponding provisions where the Court considers similar factors in deciding what orders may be appropriate in relation to the provision of alimony or maintenance of the wife. <p><i>Divorce and dissolution of marriage</i></p> <ul style="list-style-type: none"> • The laws of Samoa and Australia use the term ‘divorce’,²⁹ whereas New Zealand³⁰ and Fiji³¹ use the terminology ‘dissolution of marriage’. Should there be consideration for a change in the terminology used for Samoa, the Court must take into account and look at the laws Fiji and New Zealand. • The laws of Samoa, Fiji and New Zealand all provide the same ground for an application for an order of divorce/dissolution which is that the marriage has broken down irretrievably or irreconcilably as referenced in New Zealand’s law.³² • Unique to Samoa’s law³³ is the domestic violence exemption which empowers the Court to issue an order that a marriage has broken down irretrievably without satisfying the required period (24 months) to file application for divorce.
4.	<p>Maintenance and Affiliation Act 1967 (MAA 1967)</p> <p>Fiji: Family Law Act 2003</p>	<p><i>In-kind support and maintenance</i></p> <ul style="list-style-type: none"> • Maintenance in-kind is a form of maintenance that is not expressly recognised under the law of Samoa, as maintenance is interpreted as a payment in money.³⁴ Despite this, the courts have in some cases granted maintenance orders based on the ability of the party liable for maintenance to provide (i.e. if maintenance cannot be provided in monetary form but in kind - food, services etc.). This is an attempt by the Court to contextualise the realities of Samoa as families will not always have the financial means to meet obligations under a maintenance order.

²⁶ Family Law Act 2003 (Fiji), section 157.

²⁷ Family Proceedings Act 1980 (New Zealand), section 1980.

²⁸ Family Law Act 1975 (Australia), section 90SF.

²⁹ Family Law Act 1975 (Australia), section 48.

³⁰ Family Proceedings Act 1980 (New Zealand), section 37.

³¹ Family Law Act 2003 (Fiji), section 30.

³² Family Proceedings Act 1980 (New Zealand), section 39.

³³ Divorce and Matrimonial Causes Ordinance 1961 (Samoa), section 7.

³⁴ Maintenance and Affiliation Act 1967 (Samoa), section 2.

	<p>NZ: Family Proceedings Act 1980</p> <p>Australia: Family Law Act 1975</p>	<p><u>Affiliation order/Paternity tests</u></p> <p>Under the law of Samoa, the courts may issue an affiliation order to adjudge a defendant to be the father of a child. However, such affiliation order cannot be granted based on the evidence of the mother alone, unless such evidence is corroborated.³⁵ New Zealand on the hand has repealed this corroboration requirement.³⁶ Should Samoa decide to remove this requirement, the corresponding New Zealand provision offers guidance for consideration. Samoa may also consider the use of modern genetic practices recognised in New Zealand where the Court is empowered to order the carrying out of paternity tests.³⁷</p>
5.	<p>Family Safety Act 2013 (FSA 2013)</p> <p>Fiji: Domestic Violence Decree 2009</p> <p>NZ: Family Violence Act 2018</p> <p>Australia: Qld: Domestic Violence and Family Protection Act 2012</p>	<p><u>Who may apply for protection order</u></p> <ul style="list-style-type: none"> Under the law of Samoa, a complainant or a person acting on behalf of a complainant can apply to the Court for a protection order. However, it must have the written consent of the complainant, except in a few exceptional circumstances³⁸ (e.g. where the complainant is a child, or is a person suffering from mental illness). In Fiji³⁹ a person (including the parents, carer or guardian of a child, a police officer, a welfare officer or the Public Trustee) can make an application for a domestic violence restraining order. In New Zealand⁴⁰ a qualified constable can issue a police safety order if the constable has reasonable grounds to believe that the order is necessary to make someone safe from family violence. In Queensland Australia⁴¹ an application for a protection order can be made by an aggrieved person, an authorised person on behalf of the aggrieved person, or a police officer. The law of Samoa in comparison to the corresponding laws of Fiji, New Zealand and Queensland requires that the complainant's written consent is required before another person can apply for a protection order for the complainant. Should Samoa decide to review these provisions, the corresponding laws of overseas jurisdiction may offer some guidance. <p><u>Penalty for breach of protection order</u></p> <ul style="list-style-type: none"> For a breach of domestic violence restraining order in Fiji,⁴² a person can be liable to a fine of \$1,000 and a term of imprisonment of 12 months. In New Zealand,⁴³ a person who breaches a protection order or related property order is liable to imprisonment for a term not exceeding 3 years. In Queensland,⁴⁴ a respondent who contravenes a domestic violence order (with previous convictions for domestic

³⁵ Maintenance and Affiliation Act 1967 (Samoa), section 10.

³⁶ Family Proceedings Act 1980 (New Zealand), section 52.

³⁷ Family Proceedings Act 1980 (New Zealand), section 51.

³⁸ Family Safety Act 2013 (Samoa), section 4.

³⁹ Domestic Violence Decree 2009 (Fiji), section 19.

⁴⁰ Family Violence Act 2018 (New Zealand), section 28.

⁴¹ Domestic Violence and Family Protection Act 2012 (Queensland, Australia), section 25 and 101.

⁴² Domestic Violence Decree 2009 (Fiji), section 77.

⁴³ Family Violence Act 2018 (New Zealand), section 49.

⁴⁴ Domestic and Family Violence Protection Act 2012 (Queensland, Australia), section 177.

		<p>violence in the last 5 years) is liable to a fine of 240 penalty units or 3 years imprisonment. For Samoa,⁴⁵ a respondent who breaches a protection order under is subject to imprisonment for a term not exceeding 6 months.</p> <ul style="list-style-type: none"> • From the above comparison, it is apparent that the penalty for a breach of a protection order under the laws of overseas jurisdictions is far greater than the penalty issued under the law of Samoa. Should Samoa decide to review these provisions, consideration must be given to its cultural context as well as the resources available to the law enforcers to implement the law.
6.	<p>Family Court Act 2014 (FCA 2014)</p> <p>Fiji: Family Law Act 2003</p> <p>NZ: Family Court Act 1980</p> <p>Australia: Family Law Act 1975</p>	<ul style="list-style-type: none"> • Samoa's <i>Family Court Act 2014</i> is the most recently enacted legislation out of the 6 family laws. It reflects similar and more modern provisions to the corresponding laws of overseas jurisdictions. However, there are some notable differences which can be considered by the implementing Ministry and the Judiciary, in particular the existing legal framework on the establishment, composition and jurisdiction of the Family Court. <p><u><i>Establishment of the Family Court</i></u></p> <ul style="list-style-type: none"> • The Family Courts of Samoa⁴⁶ and New Zealand⁴⁷ are established as divisions of the District Court. • The Family Court of Fiji is established as a division of the High Court.⁴⁸ There is also a Family Division of the Magistrates' Court which is subordinate to the Family Division of the High Court.⁴⁹ • Australia's Family Court is a superior court of record.⁵⁰ The Court comprises 2 Division, namely, the Appeal Division and the General Division.⁵¹ <p><u><i>Composition of the Family Court</i></u></p> <ul style="list-style-type: none"> • For Samoa,⁵² the Head of State acting on the advice of the JSC appoints a District Court Judge to be a Family Court Judge (pursuant to section 6 of the <i>District Court Act 2016</i>). • In Fiji,⁵³ the Family Court consists of such Judges who are designated in writing by the Chief Justice. • In New Zealand, the Governor General on the advice of the Attorney General appoints a Principal Family Court Judge.⁵⁴ The Governor General, also by warrant appoints sufficient Family Court Judges to exercise the jurisdiction of the Family Court.⁵⁵

⁴⁵ Family Safety Act 2013 (Samoa), section 11.

⁴⁶ Family Court Act 2014 (Samoa), section 4.

⁴⁷ Family Court Act 1980 (New Zealand), section 4.

⁴⁸ Family Law Act 2003 (Fiji), section 15.

⁴⁹ Family Law Act 2003 (Fiji), section 20.

⁵⁰ Family Law Act 1975 (Australia), section 21.

⁵¹ Family Law Act 1975 (Australia), section 21A.

⁵² Family Court Act 2014 (Samoa), section 5.

⁵³ Family Law Act 2003 (Fiji), section 16.

⁵⁴ Family Court Act 1980 (New Zealand), section 6.

⁵⁵ Family Court Act 1980 (New Zealand), section 7.

		<ul style="list-style-type: none"> • In Australia,⁵⁶ the Family Court consists of a Chief Justice, a Deputy Chief Justice and Senior Judges and other Judges not exceeding such number as is prescribed. <p><i>Jurisdiction of the Family Court</i></p> <ul style="list-style-type: none"> • Samoa's Family Court⁵⁷ has jurisdiction to hear and determine matters or proceedings under the <i>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</i>, and any other enactment conferring jurisdiction on the Family Court or the District Court. The Act⁵⁸ further provides that a reference to the Supreme Court, District Court or other subordinate court in any enactment under above laws, is amended and to be read as a reference to the Family Court. This provision is worth highlighting as it poses some real problems in terms of its implementation. The magnitude effect of this provision requires a review of all existing laws in Samoa as well as further consultations with the implementing Ministry and the Judiciary, to ensure that the provision is implementable but more importantly achieves the true intention of Parliament. • In Fiji,⁵⁹ the Family Division of the High Court has: <ul style="list-style-type: none"> - jurisdiction in matrimonial causes and all other matters instituted or continued under the Act as well as any other matter in respect of which jurisdiction is conferred on it by a written law; - jurisdiction (subject to restrictions and conditions provided in the Regulations) in relation to persons or things outside of Fiji; - exclusive jurisdiction in relation to applications for orders for nullity of marriage and applications in relation to the Convention on the Civil Aspects of International Abduction 1980; - powers as are by law or custom granted to the High Court including hearing appeals from the Family Division of the Magistrates Court. • For NZ,⁶⁰ the Family Court hears and determines all proceedings that are to be heard and determined by the Court by virtue of the provisions of the <i>Marriage Act 1955; Adoption Act 1955; Care of Children Act 2004; Domestic Actions Act 1975; Property (Relationships) Act 1976; Family Proceedings Act 1980; Child Support Act 1991; Oranga Tamariki Act 1989; Law Reform (Testamentary Promises) Act 1949; Family Protection Act 1955; Wills Act 2007; Civil Union Act 2004</i>; and
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⁵⁶ Family Law Act 1975 (Australia), section 21.

⁵⁷ Family Court Act 2014 (Samoa), section 8.

⁵⁸ Family Court Act 2014 (Samoa), section 8(2).

⁵⁹ Family Court Act 2003 (Fiji), section 17.

⁶⁰ Family Court Act 1980 (New Zealand), section 11.

		<p>any other enactment for the time being in force.</p> <ul style="list-style-type: none"> • In Australia,⁶¹ the original jurisdiction of the Court may be exercised by one or more Judges in respect of: <ul style="list-style-type: none"> - matters arising under the <i>Family Law Act 1975</i> or under the repealed Act in respect matrimonial causes instituted or continued under this Act; - matters arising under this Act in respect of which de facto financial causes that are instituted under this Act; - matters arising under the <i>Marriage Act 1961</i> in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted or continued under that Act; - matters arising under a law of a Territory (other than the Northern Territory) concerning adoption of children, property of the parties to a marriage, rights and status of a person who is an ex-nuptial child and the relationship of such a person to his or her parents; - the jurisdiction of the Court in an appeal from a court of summary jurisdiction may be exercised by one Judge or by a full Court; - matters with respect to which proceedings may be instituted in the Family Court under this Act or any other Act.
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3.26 The Commission’s research on the corresponding laws of overseas jurisdiction allows for the following brief analysis:

- This is the first time for Samoa to have a full review of 6 of its family laws including the Infants Ordinance 1961. This is in comparison to Fiji and New Zealand which have recently enacted laws. Samoa’s legislation provides for matters governing custody, safety as well as the adoption of a child, all in one legislation, but may wish to consider having a separate and standalone law on adoption like Fiji, New Zealand and Australia. Customary adoption which is widely accepted and practiced in Samoa is absent from its formal Parliament laws. Should Samoa decide to legislate customary adoption, PNG has in place a legislative framework for customary adoption which may provide some guidance on developing a suitable legal framework for Samoa.
- The term ‘marriage’ is not defined in Samoa’s Marriage Ordinance 1961. Samoa may wish to adopt the provision of Fiji’s Marriage Act [Cap 50] 1969 which expressly provides that ‘marriage in Fiji shall be the voluntary union of one man to one woman to the exclusion of all others.’ The formalities of marriage such as the notice of intention of marriage and solemnization of a marriage under Samoa’s legislation are quite outdated and may require updating.

⁶¹ Family Law Act 1975 (Australia), section 28 and 31.

- Judicial separation is still available under Samoa's Divorce and Matrimonial Causes Ordinance 1961 and New Zealand's Family Proceedings Act 1980 but these no longer exist in the laws of Fiji and Australia. The benefit of a judicial separation may still be considered by Samoa with an appreciation this is no longer available overseas. The use of modern terminologies such as 'maintenance of spouses', 'de-facto partners', 'dissolution of marriage' may be considered to substitute the outdated terminologies used in Samoa's legislation such as 'alimony' and 'divorce'.
- Maintenance in kind is a form of maintenance that is not expressly recognized under Samoa's Maintenance and Affiliation Act 1967 but can be considered. Samoa may also consider the use of modern genetic practices recognized in New Zealand's Family Proceedings Act 1980 where the Court is empowered to order the carrying out of paternity tests.
- Samoa's Family Safety Act 2013 in comparison to the corresponding laws of Fiji, New Zealand and Queensland Australia requires the complainant's written consent before another person can apply for a protection order for the complainant. Should Samoa decide to review these provisions to remove the required consent of the complainant, the corresponding laws of Fiji, New Zealand and Australia may offer some guidance. Samoa may also consider reviewing its provisions on the penalty for the breach of a protection order as it is at the lower end when compared with the penalties for breach of protection order in overseas jurisdictions.
- Samoa's Family Court Act 2014 is the most recently enacted legislation out of the 6 family laws. It reflects similar and more modern provisions to the corresponding laws of overseas jurisdictions. However, there are some notable differences which can be considered by the implementing Ministry and the Judiciary, in particular the existing legal framework on the establishment, composition and jurisdiction of the Family Court.

3.27 It is important for this Family Laws Review of Samoa to have some appreciation of the legal frameworks of the family laws of overseas countries. The overseas legal frameworks are available for Samoa to consider and adopt should the Ministry (MJCA) as administrator of these family laws see this as appropriate for Samoa. The MJCA may then

prepare relevant amendment or wholly new laws for Parliament’s deliberation and passage.

4. PART C: DISCUSSION PAPER (STAGE 3)

4.1 This Part provides a summary of the main issues under each of the 6 Family Laws, as highlighted in the Commission’s Discussion Paper.

4.2 From its preliminary research and consultation stages, the Commission compiled issues which were discussed and highlighted in the Discussion Paper. The Discussion Paper outlined the Commission’s preliminary research and consultations including discussions with the Judiciary (in February and March of 2019), comparable jurisdiction analysis and finally questions posed for consideration, come public consultation stage. The Discussion Paper was completed and submitted to Cabinet for endorsement in December 2019, and was endorsed by Cabinet via FK (20)4 dated 5 February 2020. As the Discussion Paper has already been endorsed and is made available on the Samoa Law Reform Commission official website <https://www.samoalawreform.gov.ws>, it will be briefly mentioned here. The main issues for each law are summarised briefly below.

(A) Infants Ordinance 1961 (IO 1961)

4.3 The Commission’s review outcomes supports the concerns and issues raised by the Judiciary, in that the Infants Ordinance is outdated, requires updating and that the provisions on adoption be developed into a standalone adoption legislation. Some of the issues identified for the Infants Ordinance, include the age limit for the adoption of a child; whether the court should make additional orders after it has made an adoption order on a child where the child is not being looked after properly; clarity for the process of adoption; whether a de-facto couple can adopt a child; and whether Samoa should recognise ‘customary adoption’.

4.3.1 Amendments to the Infants Ordinance during the period of the Review

In 2019, Samoa was hit with the measles virus which sadly affected young children and new born babies. To address this, it was during the course of this Review 2018-2022 that the Infants Ordinance was amended twice in 2019, firstly through the Infants Amendment Act 2019. This amendment inserted a new section 12A for the protection of the health of children through compulsory vaccination, to protect children from infectious diseases such as measles, mumps and rubella. The second amendment was

made through the Education Amendment Act 2019, which amended section 14 of the Infants Ordinance by inserting the words “secondary school” after the word “parent”. To avoid violence and prevent bullying in school, this amendment added a ‘secondary school teacher’ to those with lawful control of a child, who may administer reasonable punishment on a child.

(B) Marriage Ordinance 1961 (MO 1961)

4.4 The Discussion Paper noted that some provisions of the Marriage Ordinance were outdated and may not still be practiced or implemented in today’s context.⁶² Some of the issues identified under the MO include whether the term ‘marriage’ should be defined in the law, to expressly state that ‘marriage’ is a union between a man and woman. In the absence of a definition in the current law, whether the prohibited list (listing out the types of marriage that are not allowed) is still relevant in the law.

4.4.1 Amendment to the Marriage Ordinance during the Review

In the course of the Review, the Immigration Act 2020 amended the Marriage Ordinance, the marriageable age for both a male and female (which was male to marry at 19 with consent required from the parents or guardian until the age of 21, and a female to be able to marry at age 16 with consent required from the parents or guardian until the age of 21) was amended to state that both a male and female may marry at the age of 18 years and the consent of parents or guardians required up to 21 years.

(C) Divorce and Matrimonial Causes Ordinance (DMCO 1961)

4.5 The issues raised on the DMCO related to ‘judicial separation’, and whether it was still relevant in Samoa, ‘matrimonial property’, and their allocation in divorce cases. The scope of the jurisdiction of the courts on divorce and property allocation matters was also raised as a matter of importance for discussions.

(D) Maintenance and Affiliation Act 1967 (MAA 1967)

4.6 Matters of interest included the maintenance provisions for children, destitute persons, wives and husbands. The need to contextualise the definition of maintenance in the context of Samoa i.e. for maintenance orders to be paid in kind (e.g. food and other helpful material) as opposed to monetary payment. What evidence should the courts accept in determining affiliation orders e.g. should DNA blood tests be acceptable as evidence of paternity. Should imprisonment remove the debt owed under a maintenance order?

⁶²Formalities of a marriage requirements – consent of parents to marriages of minor (section 10, MO), two weeks’ notice (section 14, MO), solemnisation of marriage (Part 3, MO).

(E) Family Safety Act 2013 (FSA 2013)

4.7 The FSA 2013 is a recently enacted law compared to the other family laws under Review. The FSA 2013 has been used repeatedly in the Family Court for matters involving domestic relationships. The FSA 2013 outlines the procedures for application of protection orders in cases relating to domestic violence. The issues raised for consideration under the FSA 2013 include whether anyone can apply on behalf of the victim for a protection order without the victim's consent; the role and involvement of Sui o Nu'u and Sui Tama'ita'i in cases where protection orders are issued for a victim or perpetrator from the same villages, and whether the police can apply for protection orders on behalf of a victim, with or without a victim's consent.

(F) Family Court Act 2014 (FCA 2014)

4.8 The FCA 2014 is the most recent family law enacted by Parliament of Samoa. The FCA 2014 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 other related purposes. Issues for consideration include the need to have a separate registry for family matters from other matters brought before the court, for practical implementation. Should the term 'family' be defined given the broad definition of family in the Samoan context?

5. PART D: PUBLIC CONSULTATIONS (STAGE 4)

5.1 This Part is discussed under the following 3 headings:

- A) Public Consultation Process;
- B) Public Consultations Input; and
- C) Written Submissions Input.

(A) Public Consultations Process

i. The Call to Consult - Invitations to the Public Consultations

5.2 "Public consultation has been coined as the cornerstone of law reform."⁶³ The Public Consultation stage is crucial as this is where the input of the public is obtained. Following Cabinet approval of the Commission's Discussion Paper, on 5 February 2020, public consultations were the next in the process of the Review. It is in the interest of the Review that the consultations are taken around the country. This of course is subject to the funds

⁶³ The Law Commission of England and Wales, *The Work of the Law Commission – Incorporating the Twelfth Programme* December 2015, UK.

and resources available to the Commission. For the venues of each of the public consultations, please see *Annex 4 – Venues - Public Awareness Seminars and Public Consultations*.

5.3 Written invitations to village community participations were delivered to their respective *Sui o le Nuu* with the support of the Ministry of Women, Community and Social Development (MWCSD). Further invitations to the public to attend and make an input at the public consultations, with the public consultations programme schedule for information, were aired on the local national television and the local radio stations. A video documentary aired on the local TV1 from 19 December 2021 to 23 December 2021 provided information on the 6 laws, set out the consultations schedule and venues, and invited written submissions to be received by the Commission up to 14 January 2022. This video clip of invitations was also made available on the Commission’s official website during this time. The Commission utilised national television station, radio stations and social media to publicise invitations (as well as cancellation and rescheduling notices) of the planned Public Consultation sessions.

5.4 The public consultations took place in central locations in villages in consideration of accessibility, given the distance between the villages.

ii. The Public Consultation Participation and Material Provided

5.5 **Savaii:** For Savaii, the consultations were carried out in August 2020. The Commission carried out **six (6)** public consultation sessions over a period of five (5) days across the island. A total of **close to 800 people** attended the 6 Public Consultation sessions. (*Refer to Annex 4 - Venues - Public Awareness Seminars and Public Consultations red indicators in Savaii*).

5.6 **Upolu:** Thirteen (**13**) sessions were carried out over a period of two and a half weeks. The Commission’s registration records show a total of **1939 people** attended the Upolu Public Consultations. (*Refer to Annex 4 – Venues - Public Awareness Seminars and Public Consultations red indicators in Upolu*).

5.7 For the Consultations proper, for the information of the public during the consultations, copies of the presentation and 6 pamphlets for each of the 6 laws under Review were circulated for each participant. A questionnaire forming part of the input of the public was also given out at registration.

5.8 On 10 November 2021, the Commission completed its final round of **Public Consultations (Stage 5)** for this Review. In total, the Commission carried out **19 Public Consultations** throughout Samoa from the period of August 2020 – November 2021 (6 consultation sessions in Savai'i and 13 consultation sessions in Upolu). The Commission travelled with the Honorable Minister of Justice and Courts Administration and the Associate Minister, and the Commission's partners - the Ministry of Justice and Courts Administration, the Ministry of Police, Prisons and Corrections, the Ministry of Women, Community and Social Development and the Samoa Bureau of Statistics.

iii. Engaging with the Public

5.9 For each public consultation, all participants were required to register their attendance for the Commission's records. At registration, each participant receives a folder containing a hard copy of the power point presentation, a pamphlet of summaries of the 6 family laws, and a Questionnaire sheet to be completed by each participant, and returned to the Commission at the end of each session.

5.10 The Executive Director presented a 40-50 minute presentation on the 6 family laws. The presentation highlighted key issues, on possible areas in need of reform under each family law. This is followed by questions and answers on any of the 6 laws, or any matter of interest to the audience. The responses to questions are delivered by either the Executive Director or one of the Commission's partners, where the question is in their area of implementation and expertise.

5.11 Members of the public were then divided into 6 groups and were allocated specific questions to start discussions under each of the 6 laws. At the conclusion of group discussions, a team leader from each group (of their own choosing) presents the group's responses to the audience. At the end of each consultation, the team collects the brown paper group answers and completed questionnaires from the participants. This was the procedure observed and followed throughout the Public Consultations stage.

5.12 The Commission carried out the public consultations as best as possible given the circumstances. The target areas for the Seminars and Consultations was guided by Samoa’s population density.⁶⁴ Despite Savaii being the bigger island, it is common knowledge that majority of Samoa’s population reside in Upolu (the main island). Therefore, more Public Consultation sessions were planned and carried out for Upolu. The Commission did not in any way disregard our people in Savaii, as the 6 public consultations from Vailoa Palauli to Sagone extensively covered Savaii’s population concentration.

5.13 An important factor that also influenced the extent of coverage was the availability of additional donor fund and capacity of the Commission. All in all, the views collected were geographically and economically based, given the time, resources and capacity of staff.

iv. Sources of data and public input collected

5.14 From the above process, the Commission was able to collect the following:

SAVAII & UPOLU CONSULTATIONS				
Consultation Sessions	Q & A <i>(audio recordings & notes as taken by team)</i>	Group Presentations <i>(Brown Papers & Audio Recordings)</i>	Total No. of Questionnaires	Total No. of Participants
19 x public consultation sessions	13 x audio recordings <i>(approx. average of 45-60 mins per audio recording)</i> 6 x sets of notes by team	84 x brown papers 13 x audio recordings <i>(approx. 50 mins per recording)</i>	2,064	2,735

5.15 The data and information from the 3 sources of public input above were compiled and analyzed as set out in *Annex 5 – Public Consultations Method – Data Sources*.

Following a comprehensive review, a thematic trend of preliminary recommendations could be seen, recommending towards either legislative or non-legislative form. A re-

⁶⁴ Adapted from ‘Map 1.2 Population distribution by district 2011’ in Samoa Bureau of Statistics “Samoa’s Social-Economic Atlas 2011”, page 9 <<https://www.sbs.gov.ws/digi/Samoa%20SOCIO-ECONOMIC%20Atlas%202011.pdf>> (accessed March 24th 2022).

consideration of these preliminary findings against the data collected allowed the Commission to arrive at the public consultation outcomes set out in Part B – Public Consultation’s Input.

v. Challenges – unforeseen events

5.16 The Review of the Family Laws was approved in 2018. The Discussion Paper was completed in 2019 and endorsed by Cabinet in 2020. Due to unforeseen matters such as the change of priorities from Government (FM Report), and the endemic measles breakout in Samoa in 2019; the pandemic Covid 19 in 2019 to date, and the national events i.e. General Elections, one of the significant challenges for the Commission was the constant need to re-schedule the implementation of its Work plan. For context, reference is made to *Annex 9 - Chronology for the Review of the Family Laws of Samoa 2018-2022*.

5.17 In addition, the events requiring the advice and assistance of the Commission resulted in a lesser number of staff capacity carrying out the Public Consultations for Savaii. The already limited staff of 13 was divided into 3 teams, (3 staff traveling and assisting the Special Parliamentary Committee public consultations; 3 in office; and 7 travelling to Savaii for the Savaii Public Consultations). Despite the stretch in capacity, the Commission was able to complete the Savaii Consultations schedules.

vi. Funding Assistance (Spotlight Initiative Program)

5.18 The Commission was fortunate to secure additional funding to support its Review of the Family Laws of Samoa, under the Spotlight Initiative Fund Programme (Spotlight Initiative) through the United Nations Development Program (UNDP).

5.19 The Commission is grateful for this funding as it allowed the planning and execution of multiple Public Consultation sessions compared to the usual two (2) sessions that the Commission is able to plan and carry out under the yearly appropriated local budget.

(B) Public Consultations Input

▪ Public Consultation Input on the 6 Family Laws

5.20 Efforts are made to highlight the matters of interest raised by the public in the 19 Public Consultations and the 13 Public Awareness Seminars. As with any public

consultation, there were a variety of questions and views raised, both relevant and not so relevant to the family laws being reviewed. The Commission attempts to highlight the most prominent areas of interest from the 32 Public Awareness Seminars and Public Consultation sessions. The queries, concerns and suggestions from the public are set out first, before the Commission's considerations on the matters discussed.

INFANTS ORDINANCE 1961

Qn: Can we keep the adoption age at 21 years?

- The bulk of the discussions centred on adoption matters.
- The majority of the participants sought to retain the maximum age of adoption at 21 years of age. **(s2 Interpretation)**
- At 21 years a child is matured enough to:
 - make his/her own decisions;
 - know his/her biological parents at this age and will therefore be able to help his/her biological parents when he/she is successful (if adopted overseas);
 - know and understand his/her culture before being adopted overseas.
- There was a lesser number of those in favour of a younger age of adoption:
 - 15 or 18 years old – 21 is too old for adoption (already reached the marriageable age under the MO 1961).
 - Less than 5 months – for the benefit of the child as he/she would not know his/her biological parents at this age.

Commission's considerations

All concerns and views noted. The majority view will be reflected in the recommendations.

Qn: Who can adopt a child?

- Grandparents, a close relative (i.e. Uncle or Aunty), and only those related by blood should be able to adopt a child, so as not to lose entitlements to family genealogy and family land and titles. This will ensure the protection of a child from abuse from unrelated adoptive parents or families.
- There should be a clear process for the Court to follow to confirm who else is fit to take custody of the child.
- The applicant must be financially stable.
- If the applicants are a couple, they must be legally married.

Commission's considerations

- a) To continue the current provision (s.4) with some revisions for consideration, particularly section 4(2) relating to the appointment of another person to have custody of a child: Recommend no change as Section 4(2) is enough to cover the people as recommended below. Unless it needs to be expressed in the law.
- b) For persons 'appointed' by the Court:
 - (i) to substitute the word 'appoint';
 - (ii) to clarify a process for the Court to follow to confirm who else is fit to take custody of the child (*to confirm what process the Court currently follows, if any*)
 - (iii) to also consider providing scope of persons that the Court can consider to look after the child (*refer to options of people from responses*)

- c) Legislative matters (other Acts) for further consideration
 - (i) Cross-reference to DMCO 1961 – are these the same?
 - (ii) Custody in under section 24 of the DMCO 1961 different from custody in adoption?
 - (iii) Custody – not as a result of a divorce (identify difference between the custody orders)

Qn: What matters are to be considered in exercising the court’s power to make adoption an order?

- The scope of people who can adopt a child must be within the members of the family i.e. blood related.
- The law must expressly state that unmarried couples should not be allowed to adopt a child.
- The law must expressly state that the adoption of a child by gay couples is prohibited.
- Customary adoption in the law, with the condition that the biological parents of the child should provide consent for the adoption of their child.
- To retain this power of Court, but elaborate what conditions can be varied and whether the Court can follow up on Adoption orders that have already been granted.
- This provision may need to be updated / revised to **clarify the different applicants and any applicable conditions** that will ensure the best interest of the child is always upheld/ensured.

Commission’s considerations

- a) The best interest of the child is the deciding factor / universal principle to prevail. This provision may need to be updated / revised to clarify the different applicants and any applicable conditions that will ensure the best interest of the child is always upheld/ensured.
- b) Consider the impact of prohibiting same-sex marriages but allow gay couples to adopt a child
- c) Section 11 of the Infants Ordinance 1961 (IO) authorizes the Court to revise an order already made.
- d) Also consider if it is necessary to define spouse given the context today?

Qn - What conditions should the court consider in making an adoption order?

- Couples who are not married should not be allowed to adopt children. Children need to grow up in a family that fears God i.e. couples are already married.
- There was also the perception that an unmarried couple, would not offer a stable home environment for a child they would adopt.
- The conditions for adoption should be:
 - (i) person adopting a child is fit and proper, and can support the upbringing of the child;
 - (ii) if an applicant dies, the child should be returned to the biological parents (cultural perception that the child be returned).

Commission’s considerations

- a) Should the single or married status of an applicant be a consideration when deciding on an adoption that is granted having considered the best interest of a child?
- b) Recommend no changes as conditions in section 8 already cover the conditions below.
- c) Recommendations must be practical.

Qn – Can the court revise its own adoption orders?

- After an adoption order is made, there must always be room for the court to vary that order. A maea ona faia se “**poloaiga mo le vaetama**” e le Faamasinoga, e tatau ona iai pea se avanoa e toe Iloilo ai le poloaiga a le Faamasinoga, pe a finagalo ai le faamasinoga.

Commission's considerations

- a) Under the current section 11 (Adoption order may be varied or discharged), the Court has discretion to make any further and future orders under this provision
- b) Refer to DP and question posed by Judiciary – neglected children with evidence (breach of adoption order)
- c) The Judiciary's concerns highlighted in the Discussion Paper were in relation to overseas adoption where 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 authorized 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.
- d) Consider whether this provision needs to be amended for clarity to ensure the best interests of a child are paramount in any decision made:
 - (i) What other orders can be made by the Court?
 - (ii) What can the Court require?
 - (iii) On what grounds can an order be varied / discharged?
 - (iv) Should the law clarify whether a child can be adopted a second time from the adopted parents?
 - (v) What about the number of adoptions by one applicant(s)? Is there a limit to the number of adoptions that a person can be an applicant in in a year (or another period)?

The current laws says a person born before the marriage of his or her parents whose parents later marry is taken to have been legitimated by the marriage from birth. (Current section 24 (Legitimation by marriage). Should this stay?

- This requirement should stay to allow the child to be a biological child of the parents.
- But consider further more discussions form the public which fall under section 26 below.

Commission's considerations

- (b) The relevant authorities to assist (e.g. MJCA, SBS (BDM)), to strengthen laws of BDM for registration of births --- where there is a delay in registration, are there questions to be asked to confirm / require marriage cert or prove relation of parents.

The current law says - A person on his or her behalf may apply to the Court for a legitimation order, that the person is indeed a legitimate child of the parents, and the Court on being satisfied of such, may make such order. (26. Application for legitimation order).

Qn - Is the court order requirement necessary?

- In general this requirement should be removed, if the couple are indeed the biological parents of the child, the couple getting married should not necessitate a court order to say their child born before marriage is their legitimate child.
- If the intention is to have available this provision, for administration and rights to property matters, for example if the question before the court is a true heir of a property under Estate Laws, then it should be made available to a person to seek a court order and convince the court with any relevant material that he or she was a legitimate child of a couple.
-

Commission's considerations

- a) If a court order is necessary, to clarify in the law (section 26) when an application is required for a legitimation order.

- b) To also consider a possible process of legitimation:
- (i) where it is a clear case of a couple with their children born prior marriage (*straight forward process following s.24*); and
 - (ii) where a couple have children from previous marriages / relationships as well as children with each other prior marriage (*need process – an expansion of s.26*)... adoption required for children from previous relations + legitimation order
 - (iii) consider amending section 26 to state that upon the marriage of the parents, any children born before the marriage must be considered as children of the marriage, upon the couple providing the marriage certificate, and the child’s earlier birth certificate (if the name of the father was not included); or if there is no birth certificate, the couple to make an undertaking on oath that the child is their biological child.
- c) The paperwork for registration of births should allow for this. The record of the parents of a child or records of a person is important. Consider possible revisions to the Births, Deaths and Marriages laws and systems under SBS to address this.

To Consider: to recognize customary adoption in the laws of Samoa

- There are no provisions on customary adoption in our current laws.
- The public strongly recommended to for “customary adoption” to be recognized in formal Parliament laws.
- The majority of the participants agreed that it is time for Samoa to recognize customary adoption in the laws of Samoa, either in this legislation (Part 2 – Adoption) or in a new adoption legal framework, regulating ‘adoption’ only, both in the current western system and adoption practiced under customary laws.
- In considering the recognition of customary adoption in the adoption laws of Samoa, below are conditions suggested by the people for consideration.
 - (i) For possible legislative reforms to be considered to provide for a customary adoption process similar to the current adoption process, with additional conditions
 - (ii) Clarify a shorter / easier process
 - (iii) Require consent from parents, grandparents, aiga
 - (iv) Limitation of adoption – to blood relatives only
 - (v) There must be a signed agreement between the biological parents and adopted parents (*will customary adoption go through Court?*)
 - (vi) Witnesses – matai of the family, church minister, pulenuu, alii ma faipule of the village
 - (vii) Involvement / assistance by the relevant Government Offices (BDM, MJCA, MWCSD)
 - (viii) BDM to provide verification / details of the child and biological parents for adoption purposes
 - (ix) Condition that the child is returned to biological parents when the adopted parents pass away (*should be subject to the best interest of the child*)

Commission’s considerations

This was also raised by other inputs, including from the Judiciary. To put forward as one of the recommendations in this Report.

MARRIAGE ORDINANCE 1961 (Act No. 8 of 1961)

Definition of Marriage in laws

- To define “ulugalii faaipoipo” as a union between a man and a woman.
- Defining this term will further strengthen the prohibition of same-sex marriages being allowed

under the current general definition.

- To recommend to clarify to which extent or generation of blood relationship is captured for the purposes of this legislation.
- Disagree with the law saying the legal impact of ‘adoption orders’ is the conferment of all rights and liabilities of a child on the adopted parents, and the adopted parents are taken to have birthed the child.

Marriage Officers

- For the laws to consider church practices when issuing certificates for marriage officer
- Marriage ceremonies should be conducted by church ministers only to maintain the sacredness of marriage and marriage ceremonies
- To be cautious in the use of terminology, e.g. when referring to church ministers (omit use of the term ‘license’. Church Ministers are not associated with contracts and licences but are servants of God (s.6 Appointment of marriage officers))

The law currently provides that the marriage of persons within a prohibited degree of relationship is void. Is this list required in this law?

- Yes the list of prohibited marriages must be retained.
- To include in the list of ‘prohibited marriages’ the term ‘same sex marriage’.
- To provide clarity in the law as to what generation of blood relatives is prohibited by the list and to capture adopted children as well.
- To clarify the restrictions on a marriage between a person and their adopted relative, if this is classified as a marriage within the prohibited degree of relations.
- For the law to expressly state that marriages may take place in the open village setting. (section 7 – Prohibited degrees of marriage)

Commission’s considerations

- a) Under s. 10 (Effect of adoption order) of the IO, the adopted parents become in all respects the legal parents of the child. By virtue of that section 10, there is no need to include ‘adopted person’ in the list of prohibited marriages.

There is provision for marriages already solemnized – a transitional provision.

- To remove this provision as it is an outdated provision and has no application in current law or in the future. (Section 8 – Validation of certain marriages already solemnized)

Commission’s considerations

- a) In updating the laws, it is best to remove provisions that are no longer useful as they have been exhausted. The action they were set out to do has already been done and the provision no longer serves a purpose.

What is the age in which one may marry?

- 21 years for both male and female (Section 9 – Minimum age of marriage)

Commission’s considerations

- a) This provision has now been amended as of December 2020 and the marriageable age in this
- b) law is now the same for both men and women – 18 years. However a parent or guardian’s consent is required up to 21 years.
- c) To note the difference between the people’s suggestion and the amendment now made.
- d) There was a notable number of suggestions to retain the marriageable ages in the current law,

discussing that a lesser marriageable age for women is appropriate as they mature faster compared to men at a given age.

- e) To Note Samoa's obligations under the CRC. Government makes relevant policies according to the international Conventions Samoa is party to.

Should there still be consent to the marriage of minors?

- Consent of a parent or the guardian must still be required for a marriage of a person (male or female) under the age of 21. (Section 10. Consent to marriage of minors)

In the current law, there are requirements for a marriage. There must be at least 10 days of a Notice of a marriage ceremony from the date of the marriage ceremony. Is this to be retained?

- This Notice must be retained for everyone to know there is going to be a marriage ceremony.
- If the couple have been living together for a long time before they marry in marriage ceremony, some of the input were still in favour of a 10 days' Notice and some were not, as it is already a known fact that the couple has been living together.
- The sanctity of a marriage is of a high regard and thus the public input requiring there still be a notice even if the couple have lived together for some time.
- The practicality of this (couple who have lived together for a long time) to the church leaders who are the Marriage Officers is not realistic. Where there are many de-facto couples in a village, it is the church leaders' goal to counsel the couple to bring them to develop their spiritual growth with the church, take part in church activities and to undergo the religious wedding ceremony. A 10 days' Notice requirement will not be helpful, why give Notice of what people already know? The church leaders believe this Notice is unnecessary as the purposes is already served, the de-facto relationship is public knowledge.

Commission's considerations

- a) To consider the context now in Samoa with social media / speedier communication
- b) To consider an as an exception to the 10 days' Notice requirement the marriage of couples who have been living together for many years but have not yet married. (Section 14 – Notice of marriage)
- c) To consider any impact of the amendments to the marriageable age in this law from 16 to 18 (female - Marriage Ordinance sections 10 & 11), to section 59 of the Crimes Act 2013 (Sexual conduct with young person under 16). Does the reference to 16 years in the Crimes Act need to be 18 years for consistency? Or not? A policy decision. There are no pull / supporting factors available for this type of revision, just a consideration given the change from 16 to age years in marriage under the Marriage Ordinance.

Other matters of interest

- The bulk of questions asked by the public fall under **Part 2 of the Marriage Ordinance (Restrictions on Marriage)**.
- The questions raised issues around:
 - (i) the minimum age for a person to get married;
 - (ii) legitimacy of a marriage which is done without the consent of the parents;
 - (iii) marriages that are considered prohibited under the law (including same sex marriages); and
 - (iv) the requirement for the publication of the notice of marriage.

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

Qn - Is Judicial Separation still practical in Samoa?

- This law currently provides for what is no longer available in overseas jurisdictions. A person may petition for 'judicial separation' a specific term of separation without being divorce, and is usually a last effort to save a marriage, and should it fails, a party then moves to file for divorce.
- These provisions which still make 'judicial separation' available should be maintained, but an input from but leave up to MJCA & Judiciary who will have the expertise input on this (section 4 - Petition for judicial separation; section 5 – Decree for judicial separation, section 6 – Decree for judicial separation may be reserved).

Qn - What are the grounds for a divorce?

- The 12 months period of separation before a decree of divorce is issued should be retained.
- However, some believed there is no need for a 12months period (living separately) before a divorce is finalized – once the couple want a divorce, it must be filed and issued straight away.
- There were some suggestions that the period of separation be extended to 24 months as the 12 months may be too short and too easy for parties to apply for and have their divorce granted.
- It is important for a couple to both understand and appreciate that marriage is no longer working, and thus the importance of a divorce by agreement.
- There must be more public awareness sessions on these provisions of the laws on the grounds of divorce.

Commission's consideration

- (i) It is international best practice that there is a separation before a divorce is filed.
- (ii) No change, especially given there is an exception i.e. evidence of violence, and thus the 12 months is immaterial
- (iii) No change in the law is required, as the separation of whatever period is also a consideration towards determining a marriage that has 'broken down irretrievably'.
- (iv) To strengthen the provisions of the legislation around the immediate order for divorce where abuse or violence is involved in a relationship
- (v) The requirement for a period of separation before a divorce is easier applied to couples who have separated for many years, they may agree to divorce.
- (vi) Otherwise divorce matters are not a friendly agreeable state of affairs, especially where children and distribution of assets are concerned.
- (vii) The Court's determination on this is beneficial, for the Court to determine whether these matters meet or not meet the 'irreconcilable differences'.
- (viii) To consider legislative reforms to clarify section 7 (section 7 - Grounds for divorce)

Concern - Before a divorce is granted, there must be provisions for the children of the divorced couple.

- This is provided for under section 7D and should be retained.
- The child's views must be sought on preferences on his/her best interests (i.e. on whether the child's preference is to be with the family where the child was raised in, whether it is the mother's or the father's family).
- Who may have caused the drift and separation should be a criteria in the discussions towards a divorce (irreconcilable differences).
- The Couple's families and surrounding environment are also a consideration.

Commission's consideration

- a) Yes these concerns are addressed in the law already (Section 7D – Decree of divorce and children; also see Section 24 – custody of children)
- b) A child's views and/or preference may be addressed in section 7D(b)(i) (“*proper arrangements in all the circumstances*”)
- c) The couple's families and surrounding environment may be considered under section 7D(b).

Qn - How is a couples' matrimonial property divided?

- For division of property, the majority recommended an agreement by both parties.
- To legislate the distribution of matrimonial property, by considering the relevant factors for distribution to be applied at the discretion of the Court (depending on the circumstance of a case).
- It is important to consider the financial contributions each gave to the improvements of the home; the contribution to the welfare of the family and children of the marriage; and any special circumstances pertinent to the determination so as not to prejudice any party.

Commission's consideration

- a) The law as is already covers this. The current law (Section 22C. Alteration of interest in property) provides for these purposes, the presumption of equal contribution applies.

Qn - Ae faapefea pe afai e lei faaipoipo se ulugalii? What if the couple is defacto /not married?

- The same considerations (as to married couples) should apply, i.e. presumption of equal contribution.
- There must be an agreement to the distribution of property.
- Some views expressed suggested that if a couple is not legally married under the law, there should not be any consideration of division of property if the relationship breaks down. Rather each party must take what he or she brought into the relationship.

Commission's consideration

- a) De-facto Relationship are not recognized in Samoa's laws. But they exist.
- b) Qn - Should Samoa include unmarried (De-facto) couple in this law, for the same/similar provisions to apply to de-facto couples in distributing property?

Qn - Can a matrimonial distribution of property order be varied at all?

- There must be room for court orders to be varied because of reasons which is prejudicial for a party or parties.

Commission's consideration

- a) This is addressed under 22D. (Setting aside of orders altering property interests). The Court may revise or set aside and order if there was fraud, duress, suppression of evidence or the giving of false evidence or any other circumstance.

Qn: Apart from parents, who else can care for the child?

- There were particular concerns raised on the custody of children. Who else apart from the biological parents may care for a child?
- It was proposed that provisions should expressly be made for a child to be given to an established and approved welfare home (i.e. SVSG) for custody of a child of a divorced couple.

Commission's consideration

This is already addressed under current law, see sections 24 and 7D.

See section 24 (Custody of children), the Court can place the child under the protection of the Court.

24. Custody of children – In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court.

7D. Decree of divorce and children – A decree of divorce in relation to a marriage does not take effect unless the Court has, by order, declared that it is satisfied: (a) that there are no children of the marriage who have not attained 18 years of age; or (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that – (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.

What is the time period required to finalize a divorce?

This depends on the schedule of proceedings before the court.

Are there any legal issues in circumstances where parties who have been separated for years (20 years) decide to cohabit later on?

If the couple has not divorced, they are still a married couple, regulated under marriage couples laws. If there was a divorce and they cohabit again, the status is a de-facto relationship.

MAINTENANCE AND AFFILIATION ACT 1967

Maintenance of destitute persons

- This law provides for the maintenance of a near relative by another, the applicant must be destitute, and the near relative must have the means to provide for the destitute applicant. It is helpful for the maintenance of relatives. In this regard it is useful.
- However, there were some strong views raised against this as part of the laws of Samoa. It was contended this is against Samoa's customs and culture, and also Christian principles upon which Samoa is found. It is customary that one looks after another, in Samoa's communal setting, every person is responsible for their families and their extended families.
- The majority sought to retain the provision for maintenance of destitute persons by near relatives, to cater for those that really need to seek the court's intervention in destitute times.
- We recommend for the courts to consider legislating a mandatory condition for courts to follow up on the applicant/close relatives complying with maintenance conditions.
- Consider whether there needs to be legislation on what conditions are needed when providing maintenance to a person with disabilities.

Consider however:

- (i) Savaii and Upolu – remove this provision (no need for this in the law - culture)
- (ii) Judiciary – no need for this provision as it is already part of our way of life/culture.

Commission's consideration

- On the law itself, the use of the term “destitute” and the definition of “close relatives” in the Maintenance and Affiliation Act gives a scope for who can apply for maintenance. Thus it is

<p>not boundless and can realistically be relied upon.</p> <ul style="list-style-type: none"> • There is case law as precedent, the applicant must be destitute, and the near relative has the means.⁶⁵
<p>Is it necessary to have affiliation orders?</p> <ul style="list-style-type: none"> - The public was of the view that this provision be retained, to identify the biological father of the child and to commit fathers to take responsibility of their children. - The public also asked if blood tests can be made available as proof of paternity. <p><u>Commission's consideration</u></p> <ol style="list-style-type: none"> a) A clear process of how the court can determine a male is the father of a child (adjudge father via an affiliation order) should be clearly set out in the law for easy reference. b) Similar to overseas jurisdictions, scientific evidence for proof of paternity is worth considering for Samoa. Hopefully the relevant material and infrastructure will be available. (Judge may make affiliation order against father of illegitimate child (s9))
<p>DNA tests for proof of paternity</p> <ul style="list-style-type: none"> - The public sought a practice similar to overseas, a DNA test may be carried out to identify the father of the child (father of the child must be adjudged by the Court for the purposes of an affiliation order). (section 10 - Evidence of mother)
<p>Can the Government assist the payment of maintenance for children?</p> <ul style="list-style-type: none"> - The public sought for the Government to subsidize maintenance of children where parents cannot afford maintenance. <p><u>Commission's consideration</u></p> <ol style="list-style-type: none"> a) This is a policy call by Government depending on national priorities at a given time.
<p>Maintenance orders to be made contextual</p> <ul style="list-style-type: none"> - The laws should be amended to allow for maintenance to also be paid in kind, and not necessarily in money form. - For the laws to provide that in granting a maintenance order, the Court may consider other means appropriate for maintenance support (other than financial) as the Court thinks fit. - More specifically, the wording may be as follow. In granting a maintenance order, the Court may consider other means appropriate for maintenance support (other than financial) as the Court thinks fit, including but not limited to: <ol style="list-style-type: none"> (i) food supply; (ii) service in kind; (iii) education support; and (iv) any other support appropriate for the wellbeing of the child. - The payment of future maintenance should be complied with as ordered by the Court. (Payment of future maintenance (s19))
<p>Serving an imprisonment term for failure to pay maintenance should not remove a debt due under a maintenance order.</p> <ul style="list-style-type: none"> - It was strongly proposed (especially by the female groups) that even if a defendant has served

⁶⁵ Case law: *Soavele v Lili* [1993] WSSC 22; Misc 15431 (11 March 1993) – an appeal that was allowed, partly because the court found that the respondent was not a destitute person in line with the MAA 1967, therefore no maintenance should have been granted in the first place.

an imprisonment term for failure to pay maintenance pursuant to a court order, this cannot remove the debt owed under the maintenance order. The defendant must still be made to pay the debt and the continuing maintenance order.

- Where there is money payable under a maintenance order, the mother applicant should be able to file an action for the payment of this outstanding maintenance payment. (Section 33 – Money payable under order to constitute a debt and may be recovered by action.)

Commission’s consideration

- a) Consider similar provisions - see section 6⁶⁶ of the Judgment Summonses Act 1965.
- b) It will be helpful to review/update the fines and penalties under Samoa’s laws.

Part 5 of the Maintenance and Affiliation Act (Maintenance of Children). The questions were mainly focused on issues around:

Further Public Queries	Commission’s consideration
What is the age of the child where maintenance ceases?	Age 16, unless to defendant is asked support the child’s education after 16
Arrangement for payments for the maintenance of a child.	A matter for the Ministry of Justice and Courts Administration
Instances where payments under a maintenance order are misused by the receiving party.	The matter can be brought back to the court to disprove ‘destitute’, a re-hearing is permitted under the law, order can be suspended or cancelled (s30)
Where a parent is no longer able to provide maintenance for the children (due to insufficient income), can the Government assist with the maintenance of the child.	A government policy. Note: The Ministry of Foreign Affairs is leading the implementation of a Social Protection Policy. This may be relevant.
In circumstances of affiliation orders, what kind of evidence is required to be submitted before the Court to prove the father of the illegitimate child (if the father keeps denying).	It is recommended that the Government considers developing the right infrastructure to enable DNA scientific blood testing in Samoa (e.g. through SROS). This will assist with procedures on issues of identity.

FAMILY SAFETY ACT 2014

On whether any person can apply for a protection order for a victim without the victim’s consent? And what of a police officer – can a police officer apply for an order on behalf of another?

- The majority of the people said yes to allow for another person to apply for a protection order for the victim **without the consent** of the victim/complainant, especially where it is a serious case of violence (sauaga ogaoga).
- The majority was of the view that a police officer should be able to seek for a protection order on behalf of another person.

⁶⁶ Judgment Summonses Act 1965, s.6 (**Court may imprison for non-payment of judgment debt**) of the JSA 1965. Section 17 (**Imprisonment not to discharge debt**) of the JSA 1965 provides that no imprisonment under the JSAct operates as satisfaction of any debt, or deprives any person of any right to issue execution against lands, goods, or chattels of the person imprisoned in the same manner as if the imprisonment had not taken place.

Commission's consideration

- a) Section 4 is wide enough to address the concerns. A person other than the complainant may apply for a protection order, provided that such an application must be brought with a written consent of the complainant **except for** an application brought on behalf of a child, person with mental illness, person in a coma for more than 6hrs, or a person unable to provide required consent in the view of the Court).
- b) Thus, although consent is required by the law, there are some exceptions to this rule, especially for those victims who are unable to give consent. The court is empowered with discretion to decide whether consent is required in certain cases.
- c) The current law (section 4(3)) allows for an application to be brought on behalf of the complainant by any other person acting on behalf of the complainant and may include a legal counsel, Village Representative, Child Welfare Officer, counsellor, health service provider, social worker or teacher or any other person approved by the Court. It is up to the Court to also approve a police officer to bring an application for a protection order. Section 4(3) of the Family Safety Act is wide enough to cater for this.

Other concerns raised.

- There were concerns that allowing anyone (a third party) to apply for a protection order can be abused e.g. an application made for another without knowing all the facts.
- Where it is called for, assistance should be sought from within the family or the village or from the Church Minister to resolve the matter first before anything is taken to the Police or the courts.

Commission's consideration

- a) This is why there is a list of those who can bring an application, and the legal requirement that there must be consent, and there is also the Court's discretion to allow only a few exceptions to these rules, where the court sees fit. These are the protections against any potential abuse. An application can be made to the court to dispense of 'consent' where the victim is a victim of serious domestic violence suffering psychological trauma / serious bodily injury.
- b) Traditional dispute resolution mechanisms are available for use, however, the Police and the courts are also available where the matter is serious, or where internal 'soalaupule' in the families and in the villages do not result in a resolution.

Sui o Tamaitai and Sui o Nuu roles in the village

- There was much discussion on the involvement of the Sui o Nuu and Sui o Tamaitai in the matters in the process of seeing to matters being resolved, where the perpetrator or victim is a member of the village,
- The Village Fono should be heavily involved in the implementation of protection orders in villages.
- There should be Programs in villages where the perpetrator should be under the supervision of Alii and Faipule or the Church pastor.
- Copies of a protection order must also be served on the Sui o le Nuu or Sui tamaitai o le Nuu or both, of a perpetrator and the victim. Inclusive in these order should be copies of Protection orders where respondent does not appear on due date (section 6); Protection orders where respondent appears on due date (section 7); Courts power to impose conditions on protection order (section 10).

Commission's consideration

- (a) These are matters for the consideration of the Ministry of Women, Community and Social

Development, responsible and administering the Village Fono Act 1990 and the Internal Affairs Act 1995.

On protection orders where a respondent appears on the due date and an order is made

- The majority responded that the Sui o le Nuu & Sui Tamaitai (victim's village, and the perpetrator's village) must be informed of a protection order issued by the Court.

Commission's consideration

- a) The provision of the FSA does not require that the Sui o le Nuu & Sui Tamaitai o le Nuu must be informed of a protection order. However, the majority responses from the people suggested that it should be a requirement to inform the Sui o le Nuu and Sui o le Malo of any protection orders issued. This would be in line with their statutory duties under the Internal Affairs Act 1995.⁶⁷
- b) Furthermore, the Village Council is empowered under the Village Fono Act 1990 to make faiga fa'avae or i'ugafono for matters which include promoting social cohesion and harmony.⁶⁸
- c) These are matters for the consideration of the Ministry of Women, Community and Social Development, responsible and administering the Village Fono Act 1990 and the Internal Affairs Act 1995.

Appropriate penalties should be made available in the law for deterrence of domestic violence.

- Given the high statistics of women and girls being subject to abuse and violence, to consider imposing heavy/maximum penalties for cases of such nature.
- It would be ideal that a standalone unit/division under one of the Government Offices be responsible with issues around abuse and violence inside families.

Commission's consideration

- a) There is no research on the 'offences and penalties' in this Review. This is a matter for the Ministry of Justice and Courts Administration and the Judiciary to comment on; perhaps to consider a review of all the fees / penalties for all offences in the family laws.
- b) For a Government Unit responsible for these matters, these are for the consideration of the Ministry of Women, Community and Social Development, responsible and administering the Village Fono Act 1990 and the Internal Affairs Act 1995.

Public awareness seminars - Duty to assist and inform complainant of rights

- There was public interest in the family laws, and the high demand for public awareness seminars.

Commission's consideration

- a) The Ministry of Justice and Courts Administration and the Ministry of Police may consider reviewing and strengthening their systems and processes especially on the issuing and monitoring protection orders.
- b) The Ministry of Police carries out awareness programs and follow sessions out in the villages on addressing violence against women and girls.

What other conditions may also be included in a Protection Order?

- The Majority of responses stated the need for the involvement and assistance by Matai (Alii and Faipule) in the enforcement of a Protection Order issued.

⁶⁷ Refer to section 15(1)(a) of the Internal Affairs Act 1995.

⁶⁸ Refer to section 5(2)(d) of the Village Fono Act 1990.

- The responses elaborated on the involvement of and the assistance by Alii & Faipule, Faifeau and others in the enforcement of POs issued by the Court.
- In addition to assistance from Alii and Faipule, the people also suggested assistance from:
 - (i) Families: to resolve matters within families (soalaupulega)
 - (ii) Witnesses of violence: to require witnesses of violence to assist by providing evidence/report of a victim's application for PO
 - (iii) Komiti: a Committee can also be set up to deal with domestic violence or any cases of violence within the village

Are there other ways families can be protected without a protection order issued by the court?

- The majority proposed the involvement of Alii ma Faipule to deal with and resolve a matter of violence as an alternative to seeking Protection Orders.
- An alternative mechanism proposed by the people is the involvement of Alii & Faipule to deal with and resolve violence matters arising.
- Other responses proposed ways to further assist in the effective enforcement of the law (protection orders).
 - (i) Village Fono to work together with Police for protection from violence within village
 - (ii) Enforce village by-laws within villages
 - (iii) Alii & Faipule to assist in the enforcement
 Matter to be brought first to the Village Fono, if it not solved, take the matter to the law.

Commission's consideration

The MWCSO to consider with the villages Councils of Samoa how the following may be regulated in the laws (if necessary):

- a) Village rules / faiga-faavae to provide for how the village will deal with violence arising in the village and penalties (i.e. banishment)
- b) Village by-laws to regulate the protection of families within the villages.
- c) As a non-legislative measures, to encourage Christian faith based programs and educational / awareness programs not only in village programs but also in correctional facilities (MPPCS)

Other matters

- The public was interested in what the law says about the procedures when a complainant applies to the Court for a protection order. - This was explained according to what the law says.
- There were questions around male victims- can a male victim (e.g. a father) apply for protection order? The answer is yes. Any person, male or female may seek a protection order. The law does not discriminate according to gender.

FAMILY COURT ACT 2014

To interpret 'family' in the context of the faaSamoa.

- Under this law, the public was of the view that definition of family or "aiga" be interpreted in the context of the fa'asamoa.
- As current laws are being interpreted by our courts in the context of Samoa, it is recommended that the definition of family as put forward by the people in the public consultations around the country be considered for any future reviews to the family laws of Samoa.
- Any future review to consider the following.
 'Family' means:
 - (i) **the nuclear family** – consisting of a father and mother (married) with children

living in one home; and

(ii) the extended family – comprising of family matai, grandparents, father, mother, children, aunties, uncles, cousins and others; and consists of

(iii) one’s values – God & Religion and Culture/Customary values; and inclusive of

(iv) one’s environment - The **environment** of an aiga Samoa provides safety, protection and security. It is a place of freedom (saolotoga) for the family members. There is also a specific order / structure in an aiga Samoa that everyone knows, acknowledges and respects.

Commission’s consideration

- a) There is no definition of ‘family’ in the family laws.
- b) There is no definition of ‘aiga Samoa’ in the laws of Samoa.
- c) Is it time we consider incorporating a definition of what “aiga” is in Samoa?
- d) To be considered for any near future review of the family laws of Samoa. A future consideration in contextualizing ‘family’ further in the Samoan context.

Public awareness seminars request

- The public request a continuous flow of awareness seminars in the villages on this law and all other family laws.
- This the first they have heard of these laws, and the first time they understand:
 - (i) there is a Family Law Court and that you can bring family related matters to this Court; and
 - (ii) that before this Court one can bring family law matters to the District Court.
- People seek to understand how these systems/courts work to their benefit. It is requested that the MJCA and Ministry of Police:
 - (i) raise awareness in the villages about the family laws (offences and penalties); and
 - (ii) raise awareness about the existence of a Family Court and the matters dealt there; and
 - (iii) that people be informed of the opportunity to soalaupule matters before they are brought to Court (*Part 3 – Conciliation and Resolution*).

Commission’s consideration

- a) The Commission notes this feedback from the public.
- b) The Ministry of Justice Courts and Administration and the Ministry of Police who were present at the consultations understood the requests and made note for their own appropriate responses to the requests.
- c) The Commission repeats these here in this Final Report for the record.

The request for just and fair judgments in the Family Court.

- On the last opportunity to state any improvement to this law, the majority response was to ask for fair and just decisions, for justice to be done. People emphasized the need to ensure fair and just hearings by the FCA (*ia faia le amiotonu*).
- No other suggestions were provided on improvements to the current Court procedures.

Other matters:

- Question – Can marriages be made mandatory?
Answer: No, this is a fundamental right of a person, to marry or not to marry. One cannot be forced to marry.
- Question – Are there restrictions of publicizing family court matters?
Answer – Yes the law makes provisions on the restricted reporting of court proceeding where

the interests of justice require. For example the identity of children and other vulnerable persons who are the subject of proceedings, including any matters that might lead to their identification, are not to be published (section 11 Family Court Act 2014).

5.21 The recommendations in this Final Report are also drawn from the public consultation feedback discussed above.

(C) Written Submissions Input

5.22 In the Commission’s invitations for the public to attend public consultations, the Commission also invited written submissions from the public. This Part highlights the main areas of interest and concerns from the written submissions. For more discussions on the commentary raised in the written submissions and the Commission’s considerations, please refer to *Annex 6 – Written Submissions Input on the 6 Family Laws*.

5.23 The Commission received **three (3) written submissions** at different stages of this Review as follows:

No.	Written Submission from	Date of Submission
1	Legal Division, MoF	August 2019
2	Office of the Ombudsman	February 2021
3	A member of the public ⁶⁹ (2022)	January 2022

5.24 The commentary raised from the written submissions was mainly in relation to the two laws; the Infants Ordinance 1961 and the Marriage Ordinance 1961. For the other 4 laws (*Divorce and Matrimonial Causes Ordinance 1961, Maintenance and Affiliation Act 1967, Family Safety Act 2013 and the Family Court Act 2014*), the written submissions repeat the matters of interests and concerns raised in the Public Consultations. Thus those will not be repeated here. The focus of the commentary from the written submissions is set out in a Summary table below.

(I) INFANTS ORDINANCE 1961	
<i>1) Best interest of a</i>	(a) That it would be in line with the principle of best interest of a child for the Infants Ordinance 1961 to be amended to require that children of a marriage

⁶⁹ In response to the Commission’s video documentary inviting final comments from the public – a submission by a male from the village of Faleapuna, Anoamaa.

<i>child</i>	<p>must not be separated when parents do separate unless one child is a threat to the other.</p> <p>(b) For Samoa to take appropriate action to promote the paramountcy of the principle of best interest of a child in matters relating to:</p> <ul style="list-style-type: none"> (i) the adoption of a child; (ii) young offenders; and (iii) a child's access to education.
2) Adoption of a child	<p>(a) A standalone adoption law</p> <ul style="list-style-type: none"> • The Infants Ordinance needs to be improved and updated and for the provisions on adoption to be developed into standalone legislation. Such a legislation would ensure full protection of the rights of a child adopted. <p>(b) Who can apply to adopt a child in / from Samoa?</p> <ul style="list-style-type: none"> • In efforts to monitor who can adopt a child and to reduce the risk of adopted children being abused, Samoa may consider: <ul style="list-style-type: none"> (i) including residence in Samoa as an additional requirement for applicants to adopt a child; and (ii) limiting applicants to adopt to relatives of the biological parents of the child to be adopted <p>(c) Illegal adoption process</p> <ul style="list-style-type: none"> • There were concerns raised about the risk of illegal adoptions being carried out at the birth of a child where the biological mother would enter another couple as the biological parents of the child therefore avoiding the process of adoption. <p>(d) Rights & privileges of a an adopted child vs. those of a biological child</p> <ul style="list-style-type: none"> • Some issues raised were in relation to whether an adopted child and a biological child have the same rights and interests in property of the adopted family? <p>(e) Overseas adoption</p> <ul style="list-style-type: none"> • There must be further efforts to ensure the protection of children who will be adopted overseas: <ul style="list-style-type: none"> (i) For overseas adoptions to have the same safeguards that apply to national adoption; (ii) The law also needs to clarify matters of consent to adopt a child (iii) There must be clear guidelines for the Judges when issuing an adoption order (overseas) and for the law to provide for any follow up on the status of that child adopted overseas (iv) A further protection for overseas adoption is if Samoa would sign up to and become a member of the Hague Convention on Protection of Children in respect of Inter-country Adoption

	<p>(f) Adoption of children with disabilities</p> <ul style="list-style-type: none"> • The law on adoption needs to specifically provide for adoptions of children with physical and intellectual disability to ensure their protection <p>(g) Post-adoption order (Process)</p> <ul style="list-style-type: none"> • The law needs to provide for a follow-up process and to expressly give Judges the discretion to inquire further and require additional information before an adoption order is made <p>(h) Customary adoption</p> <ul style="list-style-type: none"> • Is it time for Samoa to recognize customary adoption? • As it is already a practice in Samoa (families, particularly grandparents raising grandchildren without official / legal adoption papers), is Samoa ready to recognize customary adoption in its laws?
3) Protection of Children	There was a suggestion for Samoa to consider the removal of “corporal punishment” and “reasonable force” from the laws as they contravene Samoa’s international obligations under CRC.

(II) MARRIAGE ORDINANCE 1961	
1) Relationships	<p>(a) Recognition of de-facto relationships</p> <ul style="list-style-type: none"> • Whether these reforms would be the opportunity to recognize as ‘legitimate marriage’ the union of a male and female who have been in a stable relationship for a sufficiently long period of time? • There are some laws that define spouse as including de-factor partners, and there is no clear definition of illegitimate relationship in the current law. <p>(b) Marriages created by custom</p> <ul style="list-style-type: none"> • There was a question as to whether Samoa has customary marriages and how these could be recognized under modern law. • Related to the recognition of customary marriages was the question of passage of assets in such a union to the children (if at all) <p>(c) Gay / same sex marriages</p> <ul style="list-style-type: none"> • As western cultures grow more and more influential and imposing, Samoa needs to be more specific in its laws and its intentions in relation to the scope and type of marriage allowed and recognized in Samoa <p>(d) Marriage to adoptive relatives</p> <ul style="list-style-type: none"> • The law is silent or is unclear on the matter of marriage to adoptive relatives. The current Ordinance provides for biological, half and step relatives, but there is no reference to adoptive family members. Any

	<p>prohibitions and limitations on marriage to adoptive relatives need to be clarified in the law.</p>
<p>2) Formalities / Process of marriage</p>	<p>(a) Notice of marriage</p> <ul style="list-style-type: none"> • There needs to be clarity as to the requirement of a notice of a marriage and how it is to be complied with by the proposed couple to be married • Some matters that may need clarification/updating: <ul style="list-style-type: none"> ○ Where to display the notice? ○ What proof is required for matters to be in the Notice? i.e previous marriage ○ The current Form ○ The process of <i>Tusiga</i> and its continuation (how?) <p>(b) Monitoring and payment of fee for notice of marriage</p> <ul style="list-style-type: none"> • The process of charging and paying of the fee needs to be clarified, as well as to who such a fee is to be paid (responsible Ministry/Agency) <p>(c) A declaration / solemnization of a marriage</p> <ul style="list-style-type: none"> • As a means to regulate entry into a second marriage while a first/previous marriage is still legally valid, there needs to be clarity as to the process for the bride / groom to be to make declaration as to the absence of any such previous marriage • There must also be a process to report any who willingly and knowingly makes any false declaration to such a previous marriage • It would also assist to clarify the effect of any false declaration by a bride / groom to be <p>(d) Process of registration of marriages – recognition only when registered and a marriage cert is issued</p> <ul style="list-style-type: none"> • There was a question raised as to why a marriage is only recognized legally after it is registered? • Why can't a marriage be recognized as soon as a wedding is carried out and papers are signed? <p>(e) Marriage Officers</p> <ul style="list-style-type: none"> • For the MJCA to consider if it would assist in the performance of the marriage officers' duties to carry out trainings programmes before their licenses are issued to ensure compliance with the provisions and requirements of the law? • Does a marriage officer have a right to refuse to officiate a wedding, for what reasons?
<p>3) The law --- Marriage Ordinance 1961</p>	<p>(a) There was a general question as to whether the MO 1961 is discriminatory?</p> <p>(b) A suggestion put forth asked if it is timely to consider either repealing the MO 1961 or consolidating it with the BDMR Act 2002.</p>

(III) DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961	
1) Judicial Separation	<p>a) It is acknowledged that this is an important concept as it allows for possible reconciliation or permanent arrangements before an official divorce order is issued.</p> <ul style="list-style-type: none"> • Is it still necessary to retain this in the law?
2) Divorce	<p>Instances not requiring compliance with the 12-months separation period:</p> <p>(a). Where a couple agree to divorce without any objections from either party, such divorce may take effect immediately</p> <p>(b). Where there is domestic violence in a marriage</p>
3) Division of matrimonial property	<p>Samoa currently does expressly provide for division of matrimonial property in its laws --- Is it time for Samoa to develop its own separate legislation to provide for these matters?</p> <p>Any proposed amendments must take into account any non-financial contributions of the mother (wife) including her role as a home-maker.</p>

(IV) MAINTENANCE AND AFFILIATION ACT 1967	
1) Maintenance of destitute person by near relative	<p>Maintenance by a near relative already exists in the context of the <i>faa-Samoa</i> and it may not be necessary to legislate it. Where the current provisions are repealed, non-legislative measures may be put in place to safeguard and ensure genuine destitute persons are cared for.</p>
2) Maintenance of destitute person with disability	<p>The law does not expressly provide for the maintenance of a person with disabilities by his / her near relatives. It would be one of the considerations in these reforms, if it is timely for Samoa to expressly provide for such.</p>
3) Duty of a parent to care for the child	<p>There is no express provision on a parent's duty to care for their child. Perhaps it is time to expressly require this of parents and hold them responsible where they do not fulfil their basic responsibility as parents to care for their children.</p>

(V) FAMILY SAFETY ACT 2013	
1) Domestic violence (definition)	<p>It has been recommended that the definition of <i>domestic violence</i> be updated to include other forms of domestic violence not expressly covered: i.e. economic / financial abuse</p>
2) Duty for police officer to apply for or issue a PO	<p>Is this Review the time for Samoa's law to be amended to expressly provide for a duty for police officers to apply for <i>or</i> issue a PO?</p> <p>If the law would allow wider scope for police to exercise their functions, it may result in effective implementation of police officer's duties regarding</p>

3) <i>Other assistance in the enforcement of POs (village involvement)</i>	There is a need to empower the villages (Village Fono) through the establishment of the villages' respective <i>Family Safety Committees</i> to assist in the monitoring and enforcement of POs.
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(VI) FAMILY COURT ACT 2014	
1) <i>Protection of children and families (restrictions towards the media)</i>	It is acknowledged that the law already provides for restrictions as to the publication of information related to a case that may need to remain confidential for the protection of the privacy of the parties. <ul style="list-style-type: none"> - Is this enough protection for the identity of the parties? - Is there more or an alternative that can be done?

5.25 The recommendations in this Final Report are also drawn from the Written Submissions feedback discussed above, and in more detail in *Annex 6 – Written Submissions Input on the 6 Family Laws*.

6. PART E: FURTHER RESEARCH AND LITERATURE REVIEW (STAGE 5)

6.1 To update the research of the Commission from the laws as they were in 2018 when this Review commenced up to the current year (2022), further research, review and analysis of other relevant research material was conducted.

6.2 The other literature considered here relates to matters of interest separate and away from the village and community setting, discussed under Part 7 – Public Consultations. It is worthy for the Commission to consider them in this review due to their relevance to the laws under Review. The material reviewed and discussed here include the following:

- A) Discussion Paper – Review of the Family Laws of Samoa (December 2019);
- B) Court Decisions Updated – From Discussion Paper;
- C) Draft Child Care Protection Bill 2020 (as received by SLRC in 2021);
- D) Adoption of Children Act 1968 (PNG) - regulating ‘customary adoption’; and
- E) International Conventions - relevant to the Review of the Family Laws of Samoa.

(A) Discussion Paper - Review of the Family Laws of Samoa (December 2019)

6.3 The Commission revisited its Discussion Paper (discussed in pages 33 – 35) to identify any issues discussed that have not been addressed by available findings and data. From this assessment, there are two (2) **outstanding issues** for which comparative research of overseas jurisdictions were required:

- (a) Best interest of the child; and
- (b) Jurisdiction of the Family Court particularly on matrimonial causes.

6.4 During discussions with members of the Judiciary, there were issues raised that were not discussed nor did the public make views on during consultations. The Commission nonetheless carried out research on these matters for possible recommendations. In this particular review, the Commission looked at New Zealand, Australia and Fiji laws and how they are dealt with under their jurisdictions. The findings are elaborated further below.

(i) Outstanding Issue 1 --- Best Interest of the Child

The law should clarify factors the Judges need to take in account to ensure an adoption is in the best interest of a child.

6.5 Although not defined in the Infants Ordinance, the best interest of the child principle is the core of this legislation and on any matters relating to a child. As such, it is a consideration which must be satisfied by the Court before granting an adoption order, in accordance with section 8 of the Infants Ordinance. The best interest of the child is usually discussed parallel to the welfare of the child, in cases where the custody of a child is determined. This would be in line with section 3 of the Infants Ordinance. Although there have been discussions on such principles, from case law read and made available to the Commission through PACLII, there is no precedent to set out what factors amount to the best interest of the child in adoption cases. Suffice to say, such principle is left to the Courts to decide on a case by case basis based on the evidence and circumstances before the Court.

6.6 Australia, New Zealand and Fiji laws provide for the considerations as to the welfare and best interest of the child (to be paramount in any circumstances). The considerations are categorised in a non-exhaustive list and appear to be similar in all jurisdictions. These considerations include but are not limited to:

- (i) the conduct of the person seeking to have a role in the upbringing of a child;
- (ii) the need for the child to be protected from all forms of violence;
- (iii) the ability of the child to make decisions and give views on matters;
- (iv) the nature of the relationship of the child with parents and family members; and
- (v) the child's parents to be involved in the upbringing of the child.⁷⁰

6.7 The considerations above appear to encourage the child to have and maintain contact with his or her parents and may not be specific in the context of adoption purposes. Nonetheless the core of these principles are very relevant in determining what the best interest of a child is when the Court is determining whether or not granting an adoption order is best for the child.

6.8 Specifically in the Family Law Act 2003 (Fiji), the considerations the Courts look at in view of the best interest of the child include:

- (a) any wishes expressed by the child and any factors (look at the child's maturity or level of understanding) the court thinks relevant to the weight it should give to the child's wishes;
- (b) the nature of the relationship of a child with his or her parents and other persons;
- (c) the likely effect of any changes in the child's circumstances, including the effect on the child if he or she is separated from:
 - the parents or any person who the child has been staying with; or
 - any other child, or person, with whom the child has been living;
- (d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and contact with both parents on a regular basis;
- (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
- (f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of the child) and any other characteristics of the child that the court thinks are relevant;

⁷⁰ Ministry of Justice (NZ), Adoption in Aotearoa New Zealand: Discussion Document (June 2021) 44.

- (g) the need to protect the child from physical or psychological harm caused, or that may be caused by -
 - being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
 - being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (i) any family violence involving the child or a members of the child's family;
- (j) any family violence order that applies to a child or a member of the child's family; any other fact or circumstances that the court thinks relevant.⁷¹

6.9 The Commission's research suggests that while the child's best interests always comes first, assessing the suitability of potential adoptive parents, especially in the current context, is just as important. New Zealand and Australia's laws require that adoptive parents be suitable to adopt. While these laws do not specify the criteria needed to help the Court decide who is 'fit and proper', as a benchmark to determine who is a suitable parent, their Family Court Regulations do. In the New Zealand Family Court, these following factors (amongst many others) are considered:

- (a) The mental and physical health of the adoptive parents, as this could directly or indirectly affect their ability to care for the child;
- (b) Any criminal convictions of the adoptive parents;
- (c) The child's safety and identity. For instance, whether the adoptive parents have another adult or child in the household who may pose a risk to the child's safety (there ought to be disclosure of such information).

(ii) Outstanding Issue 2 --- Jurisdiction of Family Court

6.10 There is the issue of jurisdiction of the courts to hear family law matters, which requires some clarity. Prior to the enactment of the Family Court Act in 2014, family law court proceedings were heard and determined mostly in the District Court, while other matters of importance were heard in the Supreme Court.

⁷¹ Section 121 – Family Law Act, Fiji.

6.11 Since their respective and individual enactment, each of the 5 family laws under review (except the Family Court Act 2014), provided specifically for which court the matters are to be filed and heard in, either the District Court or the Supreme Court. An example is the Divorce and Matrimonial Causes Ordinance 1961. This Ordinance gives the Supreme Court jurisdiction to hear and determine any matters under the Ordinance. Despite the Family Court's establishment, proceedings relating to matrimonial causes were still heard in the Supreme Court due to the provisions of the DMCO. Preliminary discussions with the Judiciary revealed that this jurisdiction now falls under the Family Court.

6.12 The discussions with the Judiciary have encouraged the exercise discussed below. It is hoped the discussions provided here will assist the Judiciary and the Ministry of Justice and Courts Administration in confirming in the relevant laws, the jurisdictional powers and the scope of powers of the Family Court of Samoa and other relevant courts in hearing and completing family law proceedings brought to the courts.

6.13 Section 8 of the Family Court Act 2014 provides:

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

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

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

6.14 To demonstrate how this section may be attained in reality, the Commission carried out a pilot exercise. In compliance with subsection 8(2), the Table below identifies the sections in each of the 5 Family Laws under Review, in which the reference to 'Supreme Court' and the 'District Court' is to be replaced with 'Family Court'.

LAW	INFANTS ORDINANCE	SECTION 8(2) OF THE FAMILY COURT ACT 2014 APPLIED
Matters covered under certain jurisdictions	Matters under the Supreme Court <ol style="list-style-type: none"> 1. Application regarding custody, etc. – section 4 2. Variation or discharge of order – section 5 3. Procedure and appeal – section 6 4. Power of Court and appeal – section 16 5. Powers of child welfare officer – section 17 6. Court may give directions – section 18 7. Variation of discharge order – section 19 8. Certain contracts to be subject to jurisdiction of Court – section 21 9. Settlement of claims by infants – section 23A 	Matters now under the Family Court <ol style="list-style-type: none"> 1. Application regarding custody, etc. – section 4 2. Variation or discharge of order (appropriate) – section 5 3. Procedure and appeal – section 6 4. Power to make adoption orders – section 7 5. Overseas adoption – section 7A 6. Conditions on which orders may be made – section 8 7. Prohibition of payments in consideration of adoption – section 9 8. Effect of adoption order – section 10 9. Adoption order may be varied or discharged – section 11 10. Power of Court and appeal – section 16 11. Powers of child welfare officer – section 17 12. Variation or discharge of order – section 19 13. Certain contracts to be subject to jurisdiction of Court – section 21 14. Prior to approval of court – section 22 15. Application for legitimization child – section 26
	Matters under the District Court <ol style="list-style-type: none"> 1. Application regarding custody, etc. – section 4 2. Variation or discharge of order – section 5 3. Procedure and appeal – section 6 4. Power to make adoption orders – section 7 5. Overseas adoption – section 7A 6. Conditions on which orders may be made – section 8 7. Prohibition of payments in consideration of adoption – section 9 8. Effect of adoption order – section 10 9. Adoption order may be varied or discharged – section 11 10. Power of Court and Appeal – section 16 11. Powers of child welfare officer – section 17 12. Court may give directions – section 18 13. Variation or discharge of order – section 19 14. Certain contracts to be subject to 	

	jurisdiction of Court – section 21 15. Settlement of claims by infants – section 23A 16. Application for legitimation order – section 26	
Matters that remain under the jurisdiction of the Supreme Court: <ol style="list-style-type: none"> 1. Variation or discharge of order – section 5 2. Procedure and appeal – section 6 3. Power of the Court and appeal – section 16 4. Variation or discharge of order – section 19 5. Settlement of claims by infants – section 23A 		

6.15 **To Note:** According to current law, the proceedings brought under the Infants Ordinance 1961 are addressed in both the Supreme Court and the District Court. Except for appeal matters which remain in the jurisdiction of the Supreme Court, all other matters which were before the Supreme Court and the District Court initiated under the Infants Ordinance are now under the jurisdiction of the Family Court Act 2014.

LAW	MARRIAGE ORDINANCE 1961 (MO)	SECTION 8(2) FAMILY COURT ACT 2014 APPLIED
JURISDICTION	Matters under the Supreme Court Jurisdiction	Now in the Family Court Jurisdiction
Matters covered under certain jurisdictions	<ol style="list-style-type: none"> 1. Marriage of person within prohibited degrees of relationship void – section 7(2) 	Family Court: <ol style="list-style-type: none"> 1. Marriage of person within prohibited degrees of relationship void – section 7(2) 2. Consent to marriage of minors – section 10
	Matters under the District Court Jurisdiction	
	<ol style="list-style-type: none"> 2. Consent to marriage of minors – section 10 	

6.16 **To Note:** The proceedings brought under the Marriage Ordinance 1961 are addressed in both the Supreme Court and the District Court. The complete Marriage Ordinance is now the exclusive jurisdiction of the Family Court Act 2014.

LAW	DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961	SECTION 8(2) FAMILY COURT ACT 2014 APPLIED
JURISDICTION	Matters under the Supreme Court Jurisdiction (<i>'Court' refers to the Supreme Court (Section 2)</i>)	Now in the Family Court Jurisdiction
Matters covered under certain jurisdictions	<ol style="list-style-type: none"> 1. Petition for judicial separation – section 4 2. Decree for judicial separation – sections 5 3. Grounds for divorce – section 7 4. Nullity of marriage – section 9 5. Alimony and maintenance - section 22 6. Orders relating to alimony and maintenance – section 22A 7. Application for restraining order – section 26B 	<ol style="list-style-type: none"> 1. Petition for judicial separation – section 4 2. Decree for judicial separation – section 5 3. Grounds for divorce – section 7 4. Nullity of marriage – section 9 5. Alimony and maintenance – section 22 6. Orders relating to alimony and maintenance – section 22A 7. Application for restraining order – section 26B

6.17 **To Note:** All matters under the Divorce and Matrimonial Causes Ordinance 1961 are all addressed in the Supreme Court. The complete Divorce and Matrimonial Causes Ordinance is now the exclusive jurisdiction of the Family Court Act 2014.

LAW	MAINTENANCE AND AFFILIATION 1967	SECTION 8(2) FAMILY COURT ACT 2014 APPLIED
JURISDICTION	Matters under the District Court Jurisdiction	Now in the Family Court Jurisdiction
Matters covered under certain jurisdictions	<p>Jurisdiction (Part 2)</p> <ol style="list-style-type: none"> 1. Power to make maintenance and affiliation orders – section 3 2. Discretionary power – section 4 3. Judge may make maintenance order against near relative – section 6 4. Recovery by near relative from parent or husband or wife – section 7 5. When money paid under the compulsion of a maintenance order – section 8 6. Judge may make maintenance order against father of illegitimate child – section 9 7. District Court Judge may make maintenance order against parent of child – section 12 	<ol style="list-style-type: none"> 1. Power to make maintenance and affiliation orders – section 3 2. Discretionary power – section 4 3. Judge may make maintenance order against near relative – section 6 4. Recovery by near relative from parent or husband or wife – section 7 5. When money paid under the compulsion of a maintenance order – section 8 6. Judge may make maintenance order against father of illegitimate child – section 9 7. Family Court Judge may make maintenance order against parent of child – section 12

	8. Maintenance of wife – section 16 9. Maintenance of husband – section 17 10. Part 7 – General Provisions as to Orders - (sections 18 – 44)	8. Maintenance of wife – section 16 9. Maintenance of husband – section 17 10. Part 7 – General Provisions as to Orders - (sections 18 – 44)
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6.18 **To Note:** All matters under the Maintenance and Affiliation Act 1967 are all addressed in the District Court. The complete Maintenance and Affiliation Act is now the exclusive jurisdiction of the Family Court Act 2014.

LAW	FAMILY SAFETY ACT 2013	SECTION 8(2) FAMILY COURT ACT 2014 APPLIED
JURIS-DICTION	Matters under the District Court Jurisdiction	Now in the Family Court Jurisdiction
Matters covered under certain jurisdictions	1. Application for protection order – section 4 2. Interim protection orders – section 5 3. Protection Orders available to the Court – section 9 4. Court’s power to impose conditions on protection order – section 10 5. Variation or setting aside of protection order – section 12 6. Seizure of arms and dangerous weapons – section 13 7. Sentencing – section 17 8. Evidence and Procedure – section 19	1. Application for protection order – section 4 2. Interim protection orders – section 5 3. Protection Orders available to the Court – section 9 4. Court’s power to impose conditions on protection order – section 10 5. Variation or setting aside of protection order – section 12 6. Seizure of arms and dangerous weapons – section 13 7. Sentencing – section 17 8. Evidence and Procedure – section 19

6.19 **To Note:** All matters under the Family Safety Act are all addressed in the District Court. The complete Family Safety Act is now the exclusive jurisdiction of the Family Court Act 2014.

6.20 In summary, and in the interests of brevity, a glimpse at the impact is as follows:

- The jurisdiction to hear custody and guardianship proceedings which were determined by the Supreme or District courts are now matters under the Family Court.
- Applications for adoption (*local and overseas adoptions*) determined in the District Court will also be dealt with in the Family Court.

- Matters on the legitimation of a child, contracts involving infants which are within the jurisdictions of both the District Court and the Supreme Court, are now in the jurisdiction of the Family Court.
- Under the Marriage Ordinance, the Supreme Court deals with matters for marriage of person within prohibited degrees, while the District Court determined matters on consent to the marriage of minors. These are now matters within the jurisdiction of the Family Court.
- The Supreme Court has exclusive jurisdiction to hear all matters under the Divorce and Matrimonial Causes Ordinance 1961 i.e. judicial separation, divorce, nullity and alimony and maintenance matters. These matters are now determined in the Family Court.
- Similarly, all maintenance and affiliation matters for children, wives and husbands under the Maintenance and Affiliation Act 1967 once heard by the District Court, are to be determined in the Family Court.
- The protection and interim orders, conditions (and additional conditions) on protection orders issued by the District Court as per the Family Safety Act 2013 will now be issued by the Family Court.
- The effect of section 8(2) would be centralising all family related matters under the jurisdiction of one specialised court; that is the Family Court.

6.21 If section 8 of the Family Court Act 2014 is to be realized, part of the ongoing review on family laws is to update the family laws by:

- (i) substituting the references to ‘Supreme Court’ and ‘District Court’ as demonstrated in pages 65 – 69 above; and
- (ii) review and address all other impacts of this change, in all current laws in view of the current fabric of laws and the future implications on related laws and the fabric of laws.

6.22 It is recommended that this becomes a separate and special review in the near future.

- [Comparative Analysis of Family Courts, NZ, Australia, Fiji \(Matrimonial causes matters\)](#)

6.23 To broaden the appreciation of the need to identify what jurisdiction belongs to which court in family law matters, the Commission also carried out a comparative research and analysis of the relevant courts in New Zealand, Australia and Fiji, and their jurisdictional powers to hear and determine matrimonial causes proceedings.

COMPARATIVE ANALYSIS OF FAMILY COURTS NEW ZEALAND, AUSTRALIA, FIJI (matrimonial causes matters)		
New Zealand Family Court Act 1980 Family Proceedings Act 1980	Australia Family Law Act 1975	Fiji Family Law Act 2003
<p>Jurisdiction of the Family Court: Extends to matters or proceedings under the provisions of the Marriage Act 1955, Adoption Act 1955, Care of Children Act 2004, the Domestic Actions Act 1975, the Property (Relationships) Act 1976, the Family Proceedings Act 1980, the Child Support Act 1991, the Oranga Tamariki Act 1989, the Law Reform (Testamentary Promises) Act 1949, the Family Protection Act 1955, the Wills Act 2007, the Civil Union Act 2004.⁷²</p> <p>The Family Proceedings Act 1980 (FPA) goes further on to clarify the FC has jurisdiction to determine and make/declare the following: Separation order (section 21, FPA), Make declaration as to validity of marriage or civil union (section 28, FPA); Declare a marriage or civil union void (section 30, FPA); Make declaration as to presumption of death (Section 33, FPA); Make dissolution order in relation to marriage (Section 38, FP);⁷³ Make maintenance order for</p>	<p>Original jurisdiction of Family Court:⁷⁴ (1) Jurisdiction is conferred on the Family Court with respect to: (a) matters arising under this Act or under the repealed Act in respect of which matrimonial causes are instituted or continued under this Act; and (aa) matters arising under this Act in respect of which de facto financial causes are instituted under this Act; and (b) matters arising under the Marriage Act 1961 in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted or continued under that Act; and (c) matters arising under a law of a Territory (other than the Northern Territory) concerning: (i) the adoption of children; (iv) the property of the parties to a marriage or either of them, being matters arising between those parties</p>	<p>Jurisdiction of the Family Court:</p> <p><u>Division of High Court:</u> S15 – Family Division is a division of the HC.</p> <p><u>Appeal right:</u> S19 – An appeal from the Family Division of the Magistrates’ Court lies as of right to the Family Division of the High Court.</p> <p>S17 – FD of HC has jurisdiction in relation to (a) matrimonial causes and all other matters instituted or continued other the FLA 2003; and (b) any other matter in respect of which jurisdiction is conferred on by a written law; (c) has exclusive jurisdiction in relation to applications</p>

⁷² Section 11, Family Court Act 1980, New Zealand.

⁷³ In circumstances where dissolution cases are being defended, appeals can be made to the High Court and the High Court will then determine such proceedings (Section 42, FPA).

⁷⁴ Section 31, Family Proceedings Act 1975, Australia

<p>children as a result of dissolution of marriage (section 45, FPA); Paternity orders (section 50, FPA); Maintenance orders during marriages or civil union (section 68); Maintenance order after marriage or civil union is dissolved (Section 70, FPA); Maintenance order against natural parent (section 80; FPA) Maintenance order of children; (section 145F, FPA).</p>	<p>other than matters referred to in the definition of matrimonial cause in subsection 4(1); or (v) the rights and status of a person who is an ex-nuptial child, and the relationship of such a person to his or her parents; and (d) matters (other than matters referred to in any of the preceding paragraphs) with respect to which proceedings may be instituted in the Family Court under this Act or any other Act.</p>	<p>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)</p> <p>S20 – Family Division in the Magistrate court (subordinate to the Family Division of the HC</p> <p><u>Division of Magistrates’ Court:</u></p> <p>S21 – The Family Division of the Magistrates’ Court has jurisdiction in –</p> <p>(a) matrimonial causes and all other matters instituted or continued under this Act;</p> <p>(b) any other matter in respect of which jurisdiction is conferred on it by a written law:</p>
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6.24 For New Zealand, the Family Court is a Division of the District Court⁷⁵ and the jurisdiction to deal with matrimonial causes lies with the Family Court. However, the High Court can also hear and determine matrimonial causes by:

- (a) a matter being stated to the High Court for a question of law arising before the Family Court or transferred to the High Court;⁷⁶ or
- (b) a matter being transferred to the High Court due to any complexity of any proceedings dealt with in the Family Court.⁷⁷ Proceedings heard in the Family Court can also be appealed to the High Court and the High Court will then determine and make orders on such matters.⁷⁸

⁷⁵ Section 4, Family Court Act 1980, New Zealand.

⁷⁶ Section 13, Family Court Act 1980, New Zealand.

⁷⁷ Family Court Act 1980, New Zealand, section 14.

⁷⁸ Family Proceedings Act 1980, New Zealand, section 10.

6.25 Fiji's law provides that the Magistrate Court⁷⁹ and the High Court⁸⁰ both have Family Divisions and each Division have jurisdiction to hear matrimonial causes and all other matters instituted or continued under this Act or any matter of which jurisdiction is conferred on it by a law.⁸¹ The Magistrate Family Division is subordinate to the High Court Family Division.⁸² When a matter is appealed from the Family Division of the Magistrate Court, it is to the Family Division of the High Court.⁸³

6.26 For maintenance causes (including dissolution or nullity of marriage), proceedings can be instituted by a person either in the Family Division of the High Court or the Family Division of the Magistrate Court.⁸⁴ Proceedings in the Magistrate court can be transferred by a Judge on own motion or on application by a party to the proceedings.⁸⁵ This would appear to be similar to New Zealand's law.

6.27 Australia on the other hand has a Family Court of its own which is a superior court of record⁸⁶ and consists of its own Chief Justice, Deputy Chief Justice, senior judges and other judges.⁸⁷ Recently, the Federal Circuit and Family Court of Australia Act 2021 merged the Family Court of Australia and the Federal Circuit Court of Australia.⁸⁸ The Court comprises of 2 Divisions, where Division 1 continues the Family Court that hears and deals only with family law matters including appeals.⁸⁹ Of relevance is Division 1 of the Family Court continued and is regulated under the Family Court Act 1975. On the other hand, Division 2 (General Division) hears and determines cases in relation to application for divorce, applications for spousal maintenance, property and financial disputes, parenting orders, enforcement of orders, location and recover orders, warrants for the apprehension or detention of a child and determination of percentage.⁹⁰

⁷⁹ Family Law Act 2003, Fiji, section 21.

⁸⁰ Section 15, Family Law Act 2003, Fiji, section 15.

⁸¹ Section 17 for High Court and Section 21, Family Law Act 2003, Fiji, section 17.

⁸² Section 20, Family Law Act 2002, Fiji, section 20.

⁸³ Section 17, Family Law Act 2003, Fiji, section 17.

⁸⁴ Section 24, Family Law Act 2003, Fiji, section 24.

⁸⁵ Section 28(3), Family Law Act 2003, Fiji, section 28(3).

⁸⁶ Section 21(2), Family Law Act 1975, Australia, section 21(2).

⁸⁷ Section 21(3), Family Law Act 1975, Australia, section 21(3).

⁸⁸ Government of Western Australia, 'Court System in Western Australia', *Supreme Court of Western Australia* (Web page, last updated 24 March 2022)

https://www.supremecourt.wa.gov.au/C/court_system_in_western_australia.aspx

⁸⁹ Ibid.

⁹⁰ Federal Circuit and Family Court of Australia, 'Family Law', Commonwealth Courts Portal (Web Page, 2022) <https://www.fcfoa.gov.au/fl>.

6.28 These discussions is helpful for a potential review to place the jurisdiction of the Family Court in its rightful place, with a supporting updated more modern legal framework. From the above, New Zealand and Fiji’s Family Court hears and determines any family proceedings initiated in its family court, unless transferred to the higher court or High Court. Both jurisdictions also allow for matters to be appealed and in divorce cases, it is heard either in the Family Court (New Zealand) or the High Court depending on where the proceedings commenced (for Fiji). Another avenue available for both New Zealand and Fiji is through a case stated or for a proceeding to be transferred to the High Court depending on the nature and complexity of a case. Given the nature of Australia’s establishment of its Family Court, all matters are heard by its Family Court which has both a General Division and an Appeal Division that hears all family matters in Australia.

(B) Court Decisions Updated – From Discussion Paper

6.29 In the period between 2019 and June 2022, in updating the court decisions on the 6 family laws, the Commission reviewed 25 more court decisions. This later review (under Further Research Stage 5) has been combined and discussed in Part B Preliminary Research (Stage 2) page 3 above.

(C) Draft Child Care Protection Bill 2020 (as received by SLRC in 2021)

6.30 At the time of the Final Report for this Review, the Commission understood there was an existing Draft Child Care Protection Bill 2020 developed by the instructing Ministry, the Ministry of Women, Community and Social Development, which was now with the Office of the Attorney General. As the final review of any Draft Bill is the prerogative of the Office of the Attorney General, it may nevertheless be helpful to provide a brief review of this Draft Bill against the laws under Review by the Commission. A copy of the Draft Bill 2020 was received by the Commission from the Office of the Attorney General in early 2021. This forms the basis of the brief review following.

6.31 The Infants Ordinance 1961 covers a **wider more general scope of matters relating to infants and children** whereas the focus of the Draft CCP Bill 2020 is more focused on the **well-being and protection of children**.⁹¹ The Draft CCP Bill 2020 also appears to be part of Samoa’s efforts to translate principles of international conventions and standards, Christian principles and cultural values into its domestic laws.

⁹¹ Infants Ordinance 1961, *An Act to provide for the well-being and protection of children and to make provision for assistance to children in need of care and protection in a manner consistent with international conventions and standards, Christian and cultural values, ad for related purposes.*

6.32 In this assessment, the Commission identified that other matters in the Draft CCP Bill 2020 are also provided in a few of the other current family laws. A summary of this assessment is provided in the table below.

A COMPARATIVE ANALYSIS OF THE CCP BILL AGAINST 6 FAMILY LAWS UNDER REVIEW			
Current family laws	Current provisions (Samoa)	Similar provisions in the Bill	Analysis
Infants Ordinance 1961	Section 2 – Interpretation <i>“child”</i> means an infant under the age of 16 years ; <i>“infant”</i> means a person under the age of 21 years .	Clause 2 – Interpretation <i>“child”</i> means an individual under the age of 18 years .	There are a number of different terms defined under the two laws, respectively. This analysis focuses on the definitions of child and infant. <ul style="list-style-type: none"> The IO 1961 provides separate definitions for the terms <ul style="list-style-type: none"> child (<i>less than 16 years</i>) and infant (<i>less than 21 years</i>). The Bill only defines child (<i>less than 18 years</i>). Consistency in the “age” each law regulates is important.
	Part 1 – Guardianship and Custody of Infants Section 3 – Principle on which questions relating to custody, etc., of infant to be decided	Part 2 – Objects and Principles Section 8 – Guiding Principles	The IO 1961 provides that the Court <u>shall regard the welfare of the child to be of first and paramount importance</u> when deciding any matter relating to the custody or upbringing of a child. The Bill provides a more detailed list of guiding principles to be considered by the Court when it makes a decision relating to a child.
	Part 3 – Protection of Children Part 4 – Destitute and Delinquent Children	Part 4 – Prevention and Early Intervention Services Part 5 – Children in Need of Care and Protection	Although slightly different in terms of detail and scope, the parts in the IO 1961 and the Draft Bill provide for matters relating to protection of children, and measures put in place to ensure children are given the best methods and means of accessing assistance and support such as the establishment/appointment of welfare officers/offices, the involvement of the family institutions and possible intervention by Government through the relevant Government Ministries and Agencies.

	Part 4 – <i>refer above)</i> Section 20 – Offences	Part 6 – Offences	<ul style="list-style-type: none"> The IO 1961 provides for a limited number of offences and penalties. The Draft Bill provides more detailed provisions on a wider scope of matters, and for offences towards the same matters, one Part of the Bill caters for offences and penalties.
Maintenance and Affiliation Act 1967	Part 5 – Maintenance of a Child Clause 49 – Directions about maintenance of the child	Part 5 – Children in Need of Care and Protection Clause 49 – Directions about maintenance of the child	<ul style="list-style-type: none"> The MAA 1967 places upon a parent the responsibility to maintain his or her child. It is a matter initiated by an application for maintenance of a child. The Bill provides authority to the Court to direct a parent to pay maintenance for a child in cash or in kind, initiated by a Care and Protection order removing a child from the custody of his or her parents.
Family Safety Act 2013	Part 2 – Protection Orders Section 5 – Interim Protection Orders	Part 5 – Children in Need of Care and Protection Division 3 – Interim and Emergency Protection Powers Division 4 – Child Care and Protection Orders	<ul style="list-style-type: none"> The FSAct 2013 provides for Protection Orders (the process and issuance) for the protection of victims of violence. The Draft Bill also has provisions providing for <i>Interim care and protection orders</i>. <p>The processes of application and issuance differ under the two laws. It would be beneficial in the final review of the Bill to review and prevent any possible duplication.</p>
Family Court Act 2014	Part 4 – Jurisdiction of the Family Court	Part 6 – Assessment, Investigation and Court Procedures	Consistency is required with the FCA 2014 (including the Family Court Regulations, Rules and Directions).

▪ **Matters in the Infants Ordinance 1961 and not in the Draft CCP Bill 2020**

6.33 Of note, three (3) matters are currently provided in the Infants Ordinance 1961 (IO 1961) that are not in the Draft CCP Bill.

INFANTS ORDINANCE 1961	
Current matters not provided in the Draft CCP	Preliminary Analysis

Bill 2020	
1. Part 2 - Adoption of Infants	<ul style="list-style-type: none"> • The Infants Ordinance 1961 provides the Adoption of infants. This regulates: <ul style="list-style-type: none"> • the Court’s power to make an adoption order upon application; • overseas adoptions; • conditions on which orders may be made; and • the safeguards for the regulation of adoption agencies. • The CCP Bill does not make provision for matters relating to adoption. The only reference to adoption is where “<i>family</i>” for a child is defined to mean: <p style="margin-left: 40px;"><i>“...a brother, sister, aunt, uncle, niece, nephew, cousin, grandparent or great grandparent (whether through blood, marriage or adoption) of the child”</i></p>
2. Part 5 - Contracts and Claims of Infants	<ul style="list-style-type: none"> • Provisions on the validation and recognition of contracts to which an infant is a party are clearly set out in the IO 1961. There are no similar provisions in the Bill.
3. Part 6 – Legitimation	<ul style="list-style-type: none"> • The IO 1961 contains provisions on the legitimation of children born to a couple before they are married. These are not matters provided for in the Bill.

6.34 The above review on the Draft Child Care Protection Bill 2020 is to assist the Ministry of Justice and Courts Administration understand the Bill and the potential impacts to the Infants Ordinance 1961 in particular, when the Bill becomes an Act of Parliament. This review may also be helpful for the Ministry of Women, Community and Social Development and the Office of the Attorney General in finalising the Child Care Protection Bill 2020.

(D) Adoption of Children Act 1968 (PNG) – regulating ‘customary adoption’

6.35 The ‘adoption’ of children was of significant interest as evident from the questions and comments raised throughout the Public Awareness Seminars and Public Consultations Sessions. Of particular importance to the Commission was the emphasis from the people of the possibility for Samoa to consider the recognition of **customary adoption** in Samoa’s laws. Papua New Guinea (PNG) is the only known Pacific Island country that has legislated for matters relating to customary adoption. Whilst its formal law on adoption reflects a colonial past, it also acknowledges customary adoption. The Commission conducted a preliminary review on PNG’s Adoption of Children Act 1968, which regulates ‘customary adoption’ in PNG.

(a) Features of the Adoption of Children’s Act 1968, PNG (AC Act):

6.36 The AC Act 1968 has seven **(7) Parts**, seventy one **(71) sections** and one **(1) Schedule**.

Parts of the AC Act 1968 (PNG)	Summary of Parts
Part I – Preliminary	Includes interpretation of terms defined in this Act
Part II - Jurisdiction	Provides for the jurisdiction conferred upon the National Court to deal with matters instituted according to the ACA 1968, and in particular, the making of an adoption order in respect of a child under the ACA 1968.
Part III – Adoptions under this Act	Provides for the process of adoption of a person who has not attained the age of 21 years. This adoption process is that of adoption process as we know it, and as regulated in Samoa also.
Part IV – Recognition of Adoptions	Provides that an adoption in a State or Territory of Australia or another foreign country, would have the same effect as an adoption made under the ACA 1968 and no other effect, if such an adoption was made in accordance with the relevant laws in that State or Territory of Australia or other foreign country.
Part V – Offences	Provides for offences under the ACA 1968
Part VI – Adoption, Fosterage, etc., of Children by Custom	Provides for and regulates the process of adoption by custom in PNG.
Part VII – Miscellaneous	Provides for miscellaneous matters

6.37 PNG’s legal framework shows that ‘customary adoption’ is regulated alongside and within the same framework as formal adoption. It shows PNG’s efforts in regulating two systems and processes of adoption in one legal framework.

6.38 Part II of PNG’s Adoption of Children’s Act 1968 gives jurisdiction to the National Court to hear and decide proceedings on formal adoption matters.⁹² Similar to Samoa, the welfare and interest of the child is the paramount consideration which the Court must take into account in any matter concerning the child.⁹³ The Act further provides the process of adoption of a person who has attained 21 years.⁹⁴ This adoption process is similar to the adoption process observed in Samoa and many other jurisdictions (e.g. who may be adopted, who may adopt a child, Court must be satisfied that applicants are of good repute, consent of parents and guardians to the adoption etc.).

⁹² Adoption of Children’s Act 1968 (Papua New Guinea), section 2.

⁹³ Adoption of Children’s Act 1968 (Papua New Guinea), section 5.

⁹⁴ Adoption of Children’s Act 1968 (Papua New Guinea), section 6.

6.39 Part VI of the Act provides for a ‘customary adoption’ to be any adoption that was made in accordance with custom by the adoptive person or a spouse jointly.⁹⁵ The jurisdiction to hear and decide proceedings on customary adoption matters is that of the Local Court. There are no particular formalities to regulate customary adoption as compared to the formal adoption regulated under Part II of the Act. It appears that customary adoption is a matter of public knowledge and is made with the express or unstated approval of the extended family and that as long as the adopted child has been at any time in the custody of, or has been brought up, maintained and educated by the adopted person or spouse. The Local Court, upon application by a party, can either grant or vary a certificate of customary adoption.⁹⁶ Alternatively, the Local Court can declare a certificate of fosterage or guardianship if it is not satisfied that a relationship of adoption exists but is satisfied that a relationship of fosterage or guardianship by customs exists or existed.⁹⁷ It is crucial that the Local Court does not grant or refuse any application under Part VI (Adoption, Fosterage of children by Custom) unless it is satisfied that all persons interested have had a reasonable opportunity of making any representations that they wish to make on the subject of the certificate.⁹⁸

(b) PNG Case laws applying the ACA 1968

6.40 As of May 2022, preliminary searches on PACLII website returned the following results:

- In total, there are **15 case laws** referring to matters related to *customary adoption*.
- **1^[1]/15** case law, refers to an *Adoption of Children (Customary Adoptions) Ordinance 1969*. This is the oldest recorded case law from **1972**.
- **14/15** case laws refer to matters related to ‘*customary adoption*’ under the provisions of the ‘*Adoption of Children Act 1968*’ with the first case recorded being from **1976^[2]** (8 years after enactment of the ACA 1968) and the most recent case recorded being one from **2021^[3]**.

⁹⁵ Adoption of Children’s Act 1968 (Papua New Guinea), section 53.

⁹⁶ Adoption of Children’s Act 1968 (Papua New Guinea), section 54 and 55.

⁹⁷ Adoption of Children’s Act 1968 (Papua New Guinea), section 54 and 56.

⁹⁸ Adoption of Children’s Act 1968 (Papua New Guinea), section 57.

^[1] *Regina v Hamboken and Asini (re Isaac Jimmy Napkai, an infant)* [1972] PGLawRp 14; [1973] PNGLR 288 (18 August 1972).

^[2] *Adoption of an Infant, R* [1976] PGLawRp 81 (9 March 1976).

^[3] *Arigo v Arigo* [2021] PGDC 111; DC6066 (6 August 2021).

- The majority of the cases (9/15) are from the period between the years 1979 – 1988.
- One of the significant cases worth noting is the case of *Elijah v Doery [1984] PGNC 16* whereby the presiding judge discussed the history of the Adoption of Children (Customary Adoption) Bill 1969. Justice Woods stated that the Bill provided for the adoption of children in accordance with legal principles accepted throughout the world. It also ensured that the customary practices of the people of Papua New Guinea continues and receives a legal recognition when the parties wanted that done. This is referred to as adoption by custom which is the normal practice of assuming responsibility for other people’s children which can mean different things in different places and at different times. The Judge ended by stating that a customary adoption which lays down all kinds of conditions such as the length of the adoption, rights of the natural parents and any property rights, is so different from the adoption in the Western sense of the word as in a Western adoption, where no such conditions are possible and the child becomes a natural child of the family for all time.
- From the preliminary case law findings, the Adoption of Children Act 1968 has been sparsely implemented, applied and relied upon by parties (the public) in PNG, with only 2 recorded court decisions referring to the AC Act 1968 in the last 34 years (from 1989 – 2022).

6.41 There has been significant interest in this area of the laws on adoption, where the customary or the cultural way of adoption is sought to be recognized under formal law. This brings to light one of the challenges in a society with two or more legal systems. How to accommodate the principles and values of a customary system in to the principles and values of the introduced individual based legal system is an ongoing challenge for post-colonial societies. If the will of the people is to be accommodated, research must be undertaken to see how this challenge can be addressed, as society develops. Should Samoa decide to consider the inclusion of customary adoption in its laws, Papua New Guinea has in place the *Adoption of Children Act 1986* which may provide some guidance on developing a suitable legal framework for Samoa.

(E) International Conventions – relevant to the Review of the Family Laws of Samoa

6.42 The Commission acknowledges that the development and formulation of any laws requires careful consideration of a number of factors to ensure that such law is not only recognized and acknowledged internationally, but most importantly, that it is appropriate to the context of Samoa.

6.43 The Commission also acknowledges the significant influence that international bodies have on domestic law, through Samoa’s obligations under international agreements.

6.44 Most relevant to the Family Laws Review are the:

- (a) Convention on the Rights of the Child (CRC); and
- (b) Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

6.45 The Commission carried out a review on whether there were any commentaries and suggestions for reform that are against the spirit and provisions of these Conventions.

- 1) **CRC** – Save for the age limit for ‘adoption’ to be at 21 years, all suggestions for reform are in line with Samoa’s obligations under the CRC.
- 2) **CEDAW** – Save for the suggested reform to define “married couple”, Samoa’s obligations under CEDAW are not adversely affected.

7. FURTHER CONSULTATIONS (FK(22)30)

7.1 Pursuant to a Cabinet Directive (FK(22)30) of 17 August 2022, the Commission carried out further consultations from October - December 2022 with some of the Honourable Judiciary, particularly Her Honour the Senior District Court Judge and fellow District Court Judges as well as a few Government Offices (listed in table below). The Government Offices consulted were based on the specific office relevant to the recommendations identified by the Commission to require further consultations for clarifications.

	<u>Stakeholder Consulted</u>	<u>Date of consultations</u>
1.	Births, Deaths and Marriages Registration Division (BDM of SBS)	28 October 2022
2.	Ministry of Health	8 November 2022
3.	MJCA & SROS	11 November 2022

4.	Honourable Senior DC Judge and DC Judges (<i>members from MJCA were present</i>)	9 December 2022
1.	MJCA & BDM of SBS	13 December 2022

7.2 A record of the main areas and matters further discussed in these consultations is set out in the table below.

(I) INFANTS ORDINANCE	
Regulating the ‘registration of births’ to prevent the risk of illegal adoptions (<i>at stage of registration of birth</i>)	
<ul style="list-style-type: none"> • There are existing processes in place in both Offices (Ministry of Health and the Samoa Bureau of Statistics) to record the information of a mother and child for BDM’s registration purposes. • In spite of these existing processes, the two (2) Offices continue to face challenges in the implementation of registration of child process such as: <ul style="list-style-type: none"> ○ non-compliance with existing procedure --- falsified information / identity provided by a birth mother at the birth of a child which are difficult to identify in the absence of a requirement for photo IDs for mothers ○ inconsistencies and sometimes duplications of processes under the two (2) Offices (i.e MoH and SBS each have their own version of the form to be filled out at birth of a child (B10)); • Other suggestions made for consideration: <ul style="list-style-type: none"> ○ <i>Official record of a child at birth</i> <ul style="list-style-type: none"> - to consider recognition of the baby book as an official record of information of birth mother and child 	
Commission’s considerations:	
<ul style="list-style-type: none"> • The necessary actions to address the challenges are matters to be consulted, discussed and agreed between the MoH and SBS (and any other relevant stakeholder). • These discussions may include the options to: <ul style="list-style-type: none"> ○ review the BDMR Act 2002; or ○ review existing process in order to jointly develop a step-by-step registration process from a child’s birth up to registration. • The details of these discussions are matters for these two (2) Offices. 	
Customary Adoptions	
<i>Views for recognition of customary adoptions:</i>	
<ul style="list-style-type: none"> • <i>An alternative adoption process (customary adoption)</i> <ul style="list-style-type: none"> ○ to consider if an alternative adoption process could be made in place for non-controversial adoption matters <ul style="list-style-type: none"> i.e – <i>where a child is abandoned by the birth mother and a nurse (or any other person) wants to take the baby as their own, can there be a shorter and simpler alternative adoption process which won’t require going to court to cater for these instances / and any other similar ones</i> 	
<i>Views against recognition of customary adoptions:</i>	
<ul style="list-style-type: none"> • As Samoa now has legislation to provide for legal adoption process, it may not be the 	

era to go back to customary adoptions.

- Unless it is a matter of affirming an adoption from around the 1920 to recognize a customary adoption, otherwise, the people should follow the legal process of adoption
- Samoa can consider how other countries recognize customary adoption, but the focus ought to be on the current issues in Samoa and how those can be addressed.

Commission’s considerations:

- This is a matter for the Ministry (MJCA) to consider further as may be appropriate for Samoa.

Practice Directions

- It was suggested for the Commission to recommend the incorporation of the Practice Directions into the law to strengthen their enforcement

Commission’s consideration

- This would be a matter for the Ministry (MJCA) to consider in the further review of the family laws for amendments.

The Commission’s analysis of the Infants Ordinance 1961 and the Draft Child Care Protection Bill 2020 (as received by SLRC 2021)

- This is an opportunity for Samoa to address any gaps between the laws (current IO 1961 and the Draft CCP Bill)
- To consider how each piece of legislation can work together to address loopholes in current law
- The best interest of a child to be the paramount consideration in these laws being developed

Commission’s considerations

- A recommendation is made on this matter for the Ministry (MJCA) and other relevant offices to consider and take forward as appropriate for Samoa.

(II) MARRIAGE ORDINANCE 1961

Administration of the MO 1961

- There is a need to clarify the administrator of the MO 1961. The provisions of the law states that the Registrar who administers the provisions of the law is the Government Statistician while the administrator of the Act is the Ministry (MJCA).
- It was noted that the different administrators may relate to the different aspects of functions of the two Offices (MJCA and SBS) where the MJCA be the policy maker while SBS does more regulatory role as is the case in NZ.
- In terms of current practice and implementation of the law, there are no issues.

Commission’s consideration

- This is a matter to be discussed, clarified and agreed to between the MJCA and SBS

Marriage (definition of marriage to be a union between a man and a woman)

- It is important to consider Samoa's moral values and human rights
- If majority of the public consulted are supportive of Samoa retaining the traditional definition of marriage (biblical definition), is Samoa ready to make that stand and take that decision forward?

Commission's considerations

- A recommendation is made on this matter and the Commission notes that this is a matter to be considered by the Ministry, considering the position of the Government of Samoa on how to move forward with these family laws.

Updating marriage formalities for a marriage ceremony

- To retain the current notice of intention to marry and period (10 clear days) – this is still relevant in Samoa
- To clarify process of confirming history of parties to a marriage before a marriage is officiated in SBS or MJCA

Commission's considerations

- A general recommendation is made on this matter for further consideration and necessary action by the MJCA, SBS and any other relevant government agency.

Marriage Officer

- To consider clarifying the following matters:
 - i. which Ministry is mandated to prepare warrants of appointment to be referred to the HoS;
 - ii. the criteria to be appointed as a marriage officer
 - iii. setting a validity period for marriage licenses - issuing f annual marriage license with a fee so to assist with monitoring and regulating marriage officers;
 - iv. the process of issuing and revoking a marriage license (need for communication / partnership between the Ministry (MJCA) and SBS;
 - *discussions around NZ's practice where a list of current marriage officers is published if this would be a practice Samoa would consider*

Commission's considerations

- A general recommendation is made on this matter for further consideration and necessary action by the MJCA, SBS and any other relevant government agency.

Other/s

- What of marriages officiated but unregistered? For the relevant Offices to consider process of timely notification of BDM by marriage officers of marriages they have conducted.
- To consider clarifying or re-considering how the different matters are separated between Offices – i.e MJCA deals with marriage, divorces and adoptions; SBS deals with births and deaths – or clarifying the rationale behind the allocation of matters.

Commission's consideration:

- These matters are covered under the current general recommendation on the formalities of marriage and marriage officers.

(III) DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

Judicial Separation

- This is to be retained to allow couples with a hope of reconciliation to reconcile after some time apart
- Also related to this, to consider revising periods provided for judicial separation before a divorce may be issued (s. 7(2) and (4))

Commission's considerations:

- This is addressed in the final recommendations.

(IV) MAINTENANCE AND AFFILIATION ACT 1967

DNA blood testing (Paternity testing)

- It is time for Samoa to consider taking the steps towards introducing scientific evidence in affiliation matters.
- SROS is willing to provide this assistance according to what the Court would require and what would be admissible before the Court.
- The DNA testing is currently being carried out but not paternity tests yet
- The question raised at this stage gives SROS an indication of the kind of service required that they can look into as to how they may assist.
- If the purpose of the affiliation matters is to confirm the father (paternity test), the recommendation should be made specific to paternity test as DNA blood test is much broader than the specific paternity test.

Commission's considerations:

To be reflected in the recommendations the specific scientific test for affiliation matters under the Maintenance and Affiliation Act 1967.

(V) FAMILY SAFETY ACT 2013

Definition of 'domestic violence'

- To include financial and economic abuse
- To also consider other forms of abuse arising from the development and evolution of technologies today (i.e cyber bullying / abuse, stalking / harassment as forms of domestic violence?)
- If these are added as forms of domestic violence, there should also be changes to the conditions of the forms of abuse.

Commission's considerations:

- To be reflected in the final recommendation for considerations.

Guardianship / Custody of children

- To consider clarifying the process of guardianship for Samoa as in NZ – whether these would be provided for in the Act, Regulations or Rules
- Guardianship is important for children removed from their families because a child is

violated in their families.

Dealing with child complainants (representation)

- There is a need for an independent lawyer / legal counsel to represent a child in the Family Court (as available under the Youth Court)
- It was noted the absence of shelters in Samoa for children needing shelter / refuge
- The Police would also seek if there are any relatives of the child who may care for the child
- Legal aid has expanded, but a legal framework is required to provide for representation of a child

Village Council involvement (Protection Orders)

- This matter needs to be considered with caution considering the confidentiality of family matters brought before the Court
- There is a real risk of leaked information regarding a protection order matter if Sui o Nuu or Sui o Tamaitai or Village Council are involved
- There is also the risk of domestic violence matters remaining unreported to police if village council is involved.
- As our culture, the ADR or soalaupulega approach may be taken without laying charges against a perpetrator even though a victim has suffered injuries

(VI) FAMILY COURT ACT 2014

Family Court

(i) Need for Counsellors in FC (family matters)

- There is a great need for counsellors in the Family Court. These counsellors can assist to counsel parties to bring them into a state of mind where they are able to discuss issues and take into account the welfare of any child involved
- Prior considering ADR, counselling services would assist in resolving issues

(ii) Family Court Rules

- The Family Court Rules need to be considered, revised and brought into effect.
- The 2014 FC Rules have yet to come into effect

Commission's considerations:

- The incorporation of a provision for counsellors is a matter for the MJCA to consider as the administrator of these laws.
- The formulation / finalisation of the Family Court Rules is a matter for the Ministry (MJCA) to develop together with the Office of the Attorney General, Courts and the Rules Committee.

(VII) OTHER

Some inconsistencies in the laws noted

- **'Age' in the family laws and Young Offenders Act 2007**
 - It was acknowledged that this may be outside the approved TOR for this Review, but it was highlighted that there are inconsistencies as to 'age' across legislation. i.e age to be adopted, age to marry etc.

- **Terminology referring to ‘infant’, ‘child’ and juvenile**
 - Can this Review address these inconsistencies in references to a child / infant / juvenile?

Commission’s considerations:

- These matters are outside the scope of the TOR for the Review of the Family Laws of Samoa, but they are matters worth considering in future separate reviews into the relevant laws.

7.3 The matters of interest raised and discussed during the Commission’s further consultations have been considered and incorporated into the Commission’s 30 Final Recommendations.

8. FINAL LIST OF RECOMMENDATIONS (STAGE 6)

8.1 This Part sets out the Final List of Recommendations under this Review. There are 30 Final Recommendations, listed under the relevant law under review.

8.2 This Part is a combination of the Legal Research Recommendations listed in – *Annex 7 - Legal Research Recommendations*, and the Public Consultations Recommendations listed in *Annex 8 – Public Consultation Recommendations*. For information on the recommendations particular to each source before the consolidation in the Final List of Recommendations, Annexures 7 and 8 will be helpful for your purposes.

INFANTS ORDINANCE 1961	
1	<p><u>Recommendation 1</u> Best Interests of the Child (FRLR) It is recommended that the considerations listed in ‘Further Research and Literature Review from Stage 5’ (pages 62 - 64) be expressed in law (in substance or in the Adoption Directives) as a guide for the courts in determining the best interests of a child. These considerations include but are not limited to:</p> <ul style="list-style-type: none"> (c) the conduct of the person seeking to have a role in the upbringing of a child; (d) the need for the child to be protected from all forms of violence; (e) the ability of the child to make decisions and give views on matters; (f) the nature of the relationship of the child with parents and family members; and (g) the child’s parents to be involved in the upbringing of the child.
2	<p><u>Recommendation 2</u> Age for adoption It is recommended that the age of 21 and less is retained as the age to which ‘adoption’ can apply.</p>
3	<p><u>Recommendation 3</u></p>

	<p>Who can apply for an adoption order? Given the Samoan context, it is recommended:</p> <p>(1) To include express wording on who can apply for a custody order for example: An applicant or in the case of applicants, one of the applicants for an adoption order must be:</p> <ul style="list-style-type: none"> (i) a blood relative of the biological parents; and (ii) a Samoan citizen; and (iii) has been residing in Samoa for at least 3 consecutive months immediately before an application to adopt a child. <p>(2) To include in express wording who cannot apply, for example, a gay couple, or a de-facto couple, as such unions are not legally recognised in Samoa's laws.</p>
4	<p><u>Recommendation 4</u> Adoption of children with physical and intellectual disability It is recommended that in anticipation of government infrastructure and policies becoming a reality, that the law specifically provide for the adoption of children with physical and intellectual disability to ensure their protection and that they are appropriately cared for by their adopting parents, guardians or carers.</p>
5	<p><u>Recommendation 5</u> Post-adoption follow-up process The law should provide for a 'post-adoption follow-up process,' which will allow the courts to follow up on the progress of the adoption after an order has been made. It is recommended that matters such as those below be expressly included in the adoption orders:</p> <ul style="list-style-type: none"> (a) how long after an order is made, that a court can vary or discharge an order; and (b) whether conditions can be expressed in the order e.g. that the applicant (and adopted child) report back to the Family Court or MJCA e.g. after every 6 months for 5 years from the adoption order.
6	<p><u>Recommendation 6</u> Prevention of illegal adoptions It is recommended that the BDM (SBS) and the Ministry of Health consider reviewing and reconciling their processes and practices for consistency of implementation and the registration of the birth of the child. This arises from a concern relating to possible illegal adoption at the hospital at the birth of the child, and before registration of a child's birth, to avoid the legal adoption process.</p>
7	<p><u>Recommendation 7</u> Overseas adoptions</p> <ol style="list-style-type: none"> 1. Court 'adoption orders' issued must include safeguards for Samoan children adopted overseas. 2. The Infants (Overseas Adoption) Regulations 2006 must be more actively utilised and updated for more relevancy to current context. 3. Samoa must consider becoming a party to the Hague Convention on the Protection of Children in Respect of Intercountry Adoption.
8	<p><u>Recommendation 8</u></p>

	<p>Legal duty for a parent to care for child</p> <p>It is recommended that the Infants Ordinance 1961 expressly states a legal duty of a parent/s to care for his or her child, in addition to existing provisions (ss 85&86 Crimes Act 2013, s12 Infants Ordinance 1961) that it is an offence for a parent to neglect or abandon a child.</p>
9	<p><u>Recommendation 9</u></p> <p>Legitimation by marriage</p> <p>It is recommended that the ‘legitimation process’ be removed from the Infants laws. That the SBS which houses the registry of births, marriages, adoptions etc. have a clear process in the registrations of biological and adopted children, so as not to require an order from the court that a child is a legitimate child of a couple as required under this old law.</p>
10	<p><u>Recommendation 10</u></p> <p>Customary adoption</p> <p>It is recommended that Samoa considers legal recognition of ‘customary adoption’ in their adoption laws as far as is appropriate and suitable for Samoa. This review offers the following for this to be realised.</p> <ol style="list-style-type: none"> 1. Such a legal framework must adhere to and be consistent with the CRC and ensure the child’s best interests are paramount in the process. 2. The only legal framework available in the Pacific of assistance is Papua New Guinea’s <i>Adoption of Children Act 1986</i>. The Commission’s review in ‘Further Research and Literature Review from Stage 5’ (pages 77 – 80) above may be helpful.

MARRIAGE ORDINANCE 1961	
11	<p><u>Recommendation 11</u></p> <p>Marriage defined</p> <p>It is recommended that the law expresses that ‘marriage’ is a union between a man and a woman.</p>
12	<p><u>Recommendation 12</u></p> <p>List of prohibited degrees of marriages</p> <p>It is recommended that the list of prohibited degrees of marriages be maintained in Samoa’s marriage laws; and that ‘same sex marriage’ is included in the list of prohibited relationships in the Schedule of the Marriage Ordinance 1961.</p>
13	<p><u>Recommendation 13</u></p> <p>Marriage formalities</p> <p>It is recommended that the provisions of the Marriage Ordinance 1961 and the Birth Deaths and Marriages Registration Act 2002 be reconciled and clarified inclusive of:</p> <ul style="list-style-type: none"> ▪ the updating of the formalities for a marriage ceremony e.g. the 10 days’ notice of intention to marry, and those specific process/information required for registration purposes; and ▪ whether a ‘marriage officer’ function is undertaken by both offices (the Samoa Bureau of Statistics (BDM Division) and the Ministry of Justice and Courts Administration) or to be exclusively exercised by one Office; and ▪ to clarify the process of appointing marriage officers and related matters.

14	<p><u>Recommendation 14</u></p> <p>De-facto unions</p> <p>It is recommended that de-facto unions not to be recognised in the marriage laws of Samoa. Though there were some written submissions advocating otherwise, the majority view forms the basis of this Recommendation 14.</p>
15	<p><u>Recommendation 15</u></p> <p>Marriageable age</p> <p>It is recommended that the 2019 amendment to the marriageable age stays, the age for both male and female – 18 years; and for the years 18 – 21 to require the consent of parent/s or guardian/s.</p>
16	<p><u>Recommendation 16</u></p> <p>Marriage to adoptive relatives (an adoptee’s relatives via being adopted)</p> <p>It is recommended that ‘adoptive relative’ is included in the list of prohibited degrees of relationships in the Marriage Ordinance 1961. For example to prohibit a marriage between a person adopted in to the family to a first cousin.</p>

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

17	<p><u>Recommendation 17</u></p> <p>To retain ‘judicial separation’ provisions</p> <p>It is recommended that the provisions on Judicial separation are retained in the divorce laws of Samoa, to allow time for possible reconciliation.</p>
18	<p><u>Recommendation 18</u></p> <p>Time frame clarity</p> <p>It is recommended that the timeframes under section 7 (Grounds for divorce) particularly subsections (2) 12 months and (3) 24 months are confirmed. The cross referencing and additions do not match up.</p>

MAINTENANCE AND AFFILIATION ACT 1967

19	<p><u>Recommendation 19</u></p> <p>Maintenance of destitute persons with disability</p> <p>It is recommended that the law expressly permits ‘any person’ to apply for the maintenance of a person with disability who is ‘destitute’, by an ‘able’ relative.</p>
20	<p><u>Recommendation 20</u></p> <p>Paternity tests</p> <p>It is recommended that the law allows for a paternity tests to be part of the evidence for affiliation matters (adjudging a male as the father of the child), and to remove the requirement for a mother’s evidence to be corroborated.</p>
21	<p><u>Recommendation 21</u></p> <p>Maintenance in kind</p> <p>It is recommended that there be an express provision to allow the courts to make maintenance orders in kind, and not only on monetary terms, as the reality in Samoa is that not everyone has a</p>

	formal monetary income (with pay slips as proof of amount of income).
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FAMILY SAFETY ACT 2013	
22	<p><u>Recommendation 22</u></p> <p>Domestic violence in the law</p> <p>It is recommended that the definition of “domestic violence” in the Family Safety Act 2013 be revised to include economic/financial abuse. This is now common in overseas jurisdictions. Exerting financial control over a partner is a well-documented form of family violence, and its absence from the Family Safety Act means that victims of this form of abuse are currently afforded no legal protection.</p> <p>It is also recommended that Samoa considers the inclusion of online forms of abuse arising with the continuous development of technologies (i.e hacking, stalking etc).</p>
23	<p><u>Recommendation 23</u></p> <p>Involvement of village authorities</p> <p>It is recommended that for both Protection Orders and Interim Protection Orders, to consider how the village authorities could be best engaged or involved in the enforcement of these Orders. If it would be beneficial:</p> <p>(a) to be expressly stated in the FSA 2013 that the Sui o le Nuu (SN) & Sui Tamaitai o le Nuu (STN) (in the each of the perpetrator’s and the victim’s village if they are from different villages) must be informed of a protection order issued by the Court; and</p> <p>(b) to consider revisions to the Internal Affairs Act 1995 and the Village Fono Act 1990 for the SN and the STN to be actively involved in the enforcement of any such court orders.</p>
24	<p><u>Recommendation 24</u></p> <p>Duty for Police officer to apply for or issue a Protection Order (WS)</p> <p>It is recommended that the law makes it a duty upon a police officer to apply for a ‘protection order’ under the Family Safety Act 2013, for domestic violence matters, and any such matters in which domestic violence appear imminent.</p>
25	<p><u>Recommendation 25</u></p> <p>Review of relevant fees</p> <p>It is recommended that the administrating Ministry (MJCA) and the Judiciary consider a review of all the fees / penalties for all offences in the family laws, for affordability and accessibility of justice to the public, and for operational/administrative purposes for the MJCA. This review should include the assessment and removal of all outdated provisions, particularly those that have exhausted their application.</p>

FAMILY COURT ACT 2014	
26	<p><u>Recommendation 26</u></p> <p>‘Family’ defined in the Samoan context</p> <p>It is recommended that the definition of a ‘family’ be contextualised to meet the Samoan context. For example:</p> <p>“Family” includes:</p> <p>(i) the nuclear family (married couples with children); and</p> <p>(ii) the extended family (grandparents, aunties, uncles, cousins); and</p> <p>(iii) the religious and cultural values; and</p> <p>(iv) the features ensuring the safety, protection and security of a family.</p>

27	<p><u>Recommendation 27</u></p> <p>Public awareness</p> <p>It is recommended that the Ministry of Justice and Courts Administration and relevant stakeholders raise awareness in the village communities on:</p> <ol style="list-style-type: none"> 1) the family laws; and 2) the Family Court and its jurisdiction; and 3) the availability of the opportunity (at all stages of any court proceedings) to “<i>soalaupule</i>” family law matters.
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OTHERS	
28	<p><u>Recommendation 28</u></p> <p>Child Protection Bill 2020 (FRLR)</p> <p>It is recommended that the review on the ‘Child Protection Bill 2020’ above in ‘Further Research and Literature Review from Stage 5’ (pages 74 – 77 above) on this Bill be considered by the Ministry of Women, Community and Social Development, if helpful, in finalising the Child Protection Bill 2020.</p>
29	<p><u>Recommendation 29</u></p> <p>Jurisdiction of the Court on family law matters (FRLR)</p> <p>If section 8 of the Family Court Act 2014 is to be realized, part of the ongoing review on family laws is to update the family laws by substituting the references ‘Supreme Court’ and ‘District Court’ as set out in ‘Further Research and Literature Review from Stage 5’ (pages 64 – 69 above); and a review of any impacts of this change to the fabric of laws of Samoa. It is recommended that this becomes a separate and special review in the near future.</p>
30	<p><u>Recommendation 30</u></p> <p>Need to update all the 6 Family Laws - Reference to International Conventions</p> <p>It is recommended that:</p> <ol style="list-style-type: none"> (a) all the 6 laws under review are individually updated to today’s context, and that the above recommendations, and the review on the corresponding overseas laws be a starting point of this update; (b) Samoa’s obligations under international conventions are not undermined in this update or any reviews for reform. However, the context of Samoa must be taken in to account. The Commission advocates this not only in recognition of Samoa as a sovereign country, but also given the Commission’s enabling legislation (Law Reform Commission Act 2008 section 4). <ul style="list-style-type: none"> ‘The purpose of this Act is to facilitate the review, reform and development of the laws of Samoa in order to promote Samoan custom and traditions; and enhance the social, cultural, economic and commercial development of Samoa; and ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.’

9. FINAL WORDS

9.1 At the preliminary research and consultations stage, while in consultation with the Honourable Judges of Samoa's judiciary, some of the considerations on the table was to consider for recommendations:

- (a) a single legal framework to consolidate all 6 laws, influenced by Fiji's Family Act 2003;
- (b) having two or several legal frameworks by subject or stage of life, e.g. One legal framework to regulate matters from birth, to education, to marriage; one legal framework for adoption only, one legal framework for when marriage doesn't work and divorce proceedings come in to place; and
- (c) not to disturb the 6 laws, amend each law as recommended.

9.2 At this juncture, given the Final Recommendations, the Commission is of the respectful view that this Review and Final Recommendations material may be used as the basis and the ground work for:

- (a) piecemeal amendments where urgently necessary (short term); and
- (b) in consideration of the recommendations for reform, that the instructing Ministry (Ministry of Justice and Courts Administration):
 - (i) confirm and finalise the relevant Final Recommendations with the Honourable Judiciary before attending to further amendments to the relevant laws; and
 - (ii) liaise with other relevant authorities such as the Samoa Bureau of Statistics and the Ministry of Women, Community and Social Development; their input is required for the successful realisation of the relevant Final Recommendations.

9.3 We wish all the policy makers and the implementers and the administrators of these 6 laws the very best in carrying out your respective roles under the laws under this Review.

9.4 It is our hope this Final Report and the Final Recommendations are helpful in encouraging reforms that are relevant and suitable for the people of Samoa.

10. ACKNOWLEDGEMENTS

For Funding

We wish to acknowledge:

1. **Sisters for Change** – a London based NGO, for funding the Public Awareness Seminars of the SLRC around Upolu and Savaii. **Sisters for Change**, a charity that was registered with the Charity Commission for England and Wales, was set up by 2 sisters, Alison and Jane Gordon. The charity worked to combat discrimination and violence against women and girls through legal reform, advocacy, empowerment and accountability strategies. Their mission was to make justice work better for women and girls and ensure equal protection of the law. They worked with governments, stakeholders and human rights defenders. They worked in India, Indonesia, the UK and across the Commonwealth, including Samoa in the Pacific.
2. **United Nations Development Programme (UNDP) Spotlight Initiative** - for funding 13 x Public Consultation sessions around Upolu in 2021, further stakeholder consultations in 2022, and the printing of awareness materials including pull-up banners for the 6 family laws, pamphlets and brochures and especially the printing of this Final Report for tabling in Parliament. The Spotlight Initiative is a global, multi-year partnership between the European Union and the United Nations to eliminate all forms of violence against women and girls.

For the Judiciary, the Government, our partners and our people

1. We thank Samoa's Judiciary for initiating this important Review, and for their time offered at the preliminary consultations and the material provided to the Commission.
2. We are grateful for the initial funding and support from our Government, in allowing the Commission to undertake this Review.
3. We are grateful for the significant support of our partner stakeholders throughout the Public Awareness Seminars, the Public Consultations and Post-FK Further Consultations – Ministry of Justice and Courts Administration (instructing Ministry); Ministry of Police, Prisons and Corrections; Ministry of Women, Community and Social Development; the Samoa Bureau of Statistics (during public consultations and

Post-FK Further Consultations); Office of the Attorney General (during the Public Awareness Seminars and Savaii Public Consultations only); and the Scientific Research Organization of Samoa and the Ministry of Health (during post-FK Consultations only).

4. We are grateful for the people of Samoa for the support, public input, and attendance at the public consultations. **Faafetai le auai mai, faafetai mo finagalo, faafetai le lagolago!** We also are thankful for the Government ministries who attended the awareness seminars and who made an input.

FAAMANUIA LE ATUA IA SAMOA!

ANNEXURES

Annex 1 – Court Decisions – Use of the 6 Laws, Courts Heard

The following table shows a total of 94 cases used by the Commission for its family law review research. Note that six (6) cases are mentioned in more than one law and are marked with a * - they are only allocated one number (e.g. *S v L* [2015] is case no 36, although it appears twice in the table, under the DMCO 1961 and the FSA 2013). The sections of each law applied in each case are marked with a ✓. The cases which generally refer to a law without specific reference to any provision in the law, or are related to the law in some way, say 'No specific section mentioned'.

 Court of Appeal

 Supreme Court

 District Court/ Magistrate Court

 Family Court/ Family Violence Court

Cases were heard in different courts and are colour-coded according to this KEY

APPLICATION OF ACTIVE PROVISIONS – SAMOA CASE LAW

INFANTS ORDINANCE 1961 (IO 1961)

No.	Court	Jurisdiction	Case Law	Section												
				s.2	s.3	s.4	s.7	s.8	s.10	s.11	s.12	s.14	s.15	s.16		
1.	SC	-	<i>* Tuiletufuga v Tuiletufuga</i> [1979] WSLawRp 17; [1970-1979] WSLR 273 (29 August 1979)		✓											
2.	SC	-	<i>Wagner v Radke</i> [1997] WSSC 6; Misc 20701 (19 February 1997)		✓											
3.	MC	-	<i>Hadley v Hadley</i> [1997] WSMC 2 (23 December 1997)	No specific section mentioned												
4.	SC	-	<i>Infants Ordinance 1961 (Part II) v Chong</i> [1998] WSSC 9; Misc 20384 (14 May 1998)								✓					
5.	DC	-	<i>In re Application for Adoption by Solomona</i> [1999] WSDC 1 (1 January 1999)				✓									
6.	SC	-	<i>S & M v District Court, Apia</i> [2000] WSSC 42 (16 June 2000)				✓									
7.	DC	-	<i>* Maintenance Officer on behalf of Fiasili v Fuimaono</i> [2003] WSDC 3 (23 August 2003)		✓											

8.	DC	-	In re application of Masunu Utumapu [2004] WSDC 6 (30 November 2004)								✓				
9.	SC	-	Stowers v Stowers [2010] WSSC 30 (14 June 2010)							✓					
10.	DC	Criminal	Police v Uarota [2011] WSDC 2 (5 August 2011)									✓			
11.	SC	-	Stowers v Stowers [2012] WSSC 30 (7 May 2012)							✓					
12.	SC	Civil	Craig v Banks [2012] WSSC 49 (11 May 2012)						✓						
13.	CA	Civil	Stowers v Stowers [2012] WSCA 11 (31 May 2012)							✓					
14.	DC	Family	VC v II [2013] WSDC 6 (18 September 2013)		✓	✓								✓	✓
15.	DC	Family	Samoa Victim Support Group v Inoke [2013] WSDC 4 (18 September 2013)		✓	✓								✓	✓
16.	DC	Family	BM v LG [2013] WSDC 7 (21 October 2013)		✓										
17.	FC	Family	* Samoa Victim Support Group v Falealili [2014] WSFC 2 (18 September 2014)		✓	✓									✓
18.	FC	Maintenance	* MM v L K [2016] WSFC 3 (2 September 2016)		✓										
19.	DC	Civil	Peseta v Siliato [2016] WSDC 53 (25 November 2016)	<i>No specific section mentioned</i>											
20.	DC	Family	Tuugamusu v Tuugamusu [2017] WSDC 12 (3 March 2017)		✓	✓									
21.	DC	Criminal	Police v Lagaia [2017] WSDC 23 (13 October 2017)	✓										✓	
22.	SC	Civil	* Skelton v Betham [2018] WSSC 35 (22 January 2018)			✓									
23.	DC	Criminal	Police v Mautofiga [2020] WSDC 4 (16 July 2020)											✓	
<i>Tallies – Number of cases applying each section →</i>				1	9	5	2	1	3	2	1	2	2	3	
<i>Total cases under this law (IO 1961) →</i>				23 cases											

MARRIAGE ORDINANCE

No.	Court	Jurisdiction	Case Law	Section	
				s. 7	s.15
24.	SC	Criminal	Police v MI and TP [2014] WSSC 105 (30 September 2014)	✓	
	SC	Civil	* Skelton v Betham [2018] WSSC 35 (22 January 2018)		✓
<i>Tallies – Number of cases applying each section →</i>				1	1
<i>Total cases under this law (MO 1961) →</i>				2 cases	

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE (DMCO 1961)												
No.	Court	Jurisdiction	Case Law	Section						s.36 (2)	s.37	
				s.4	s.7	s.22	s.22 A	s.22 B	s.22 C			s.24
25.	SC	-	Yiu Hing v Yiu Hing [1969] WSLawRp ; [1961-1969] WSLR 236 (15 July 1969)		✓							
26.	SC	-	Ng Lam v Ng Lam (No 2) [1972] SamoaLawRp 1 ; [1970-1979] WSLR 46 (17 February 1972)	This 1972 case made reference to section 16, which became redundant following the 2010 amendments.								
	SC	-	* Tuiletufuga v Tuiletufuga [1979] WSLawRp 17 ; [1970-1979] WSLR 273 (29 August 1979)	This 1979 case made reference to section 16, which became redundant following the 2010 amendments.								
27.	SC	-	Lauofo v Croker [1993] WSSC 5 ; Misc 15914 (29 November 1993)	✓								
28.	SC	-	Betham v Betham [1994] WSSC 49 (26 January 1994)			✓						
29.	CA	-	L v L [1994] WSCA 3 ; 21 1993 (28 March 1994)							✓		
30.	SC	-	Meleisea v Meleisea [1994] WSSC 24 (24 May 1994)									✓
31.	SC	-	Elisara v Elisara [1994] WSSC 14 (22 November 1994)			✓				✓		
32.	SC		Nonu v Electric Power Corporation [1997] WSSC 20 ; CP 139-96 (5 February 1997)	No specific section mentioned								
33.	SC	-	Arp v Arp [2008] WSSC 35 (13 June 2008)			✓				✓		
34.	SC	-	Hadley v Hadley [2010] WSSC 61 (19 March 2010)	No specific section mentioned								
35.	FC	Family	FML v LLS [2015] WSFC 1 (17 April 2015)				✓					
36.	SC	Civil	* S v L [2015] WSSC 178 (29 October 2015)			✓						
	SC	Civil	* Skelton v Betham [2018] WSSC 35 (22 January 2018)			✓		✓	✓	✓		
Tallies – Number of cases applying each section →				1	1	5	1	1	1	3	1	1
Total cases under this law (DMCO 1961) →				14 cases								

MAINTENANCE AND AFFILIATION ACT 1967 (MAA 1967)

No.	Court	Jurisdiction	Case Law	Sections						
				s.12	s.12A	s.16	s.18	s.20	s.25	s.28
37.	SC	-	Soavele v Lili [1993] WSSC 22; Misc 15431 (11 March 1993)			✓			✓	
	DC	-	* Maintenance Officer on behalf of Fiasili v Fuimaono [2003] WSDC 3 (23 August 2003)	✓						
38.	DC	-	SV v SV [2004] WSDC 11 (23 December 2004)	✓			✓	✓		✓
	FC	Maintenance	* MM v L K [2016] WSFC 3 (2 September 2016)		✓					
	SC	Civil	* Skelton v Betham [2018] WSSC 35 (22 January 2018)	<i>No specific section mentioned</i>						
<u>Tallies – Number of cases applying each section →</u>				2	1	1	1	1	1	1
<u>Total cases under this law (MAA 1967) →</u>				5 cases						

FAMILY SAFETY ACT 2013 (FSA 2013)

No.	Court	Jurisdiction	Case Law	Section							
				s.2	s.4	s.5	s.7	s.9	s.11	s.17	s.19
39.	DC	Family	RKS v HL [2014] WSDC 6 (30 May 2014)	✓		✓	✓				
40.	SC	Criminal	Police v Lima [2014] WSSC 33 (20 June 2014)								✓
41.	FC	-	MM v PP [2014] WSFC 1 (15 August 2014)	✓		✓					
	FC	Family	* Samoa Victim Support Group v Falealili [2014] WSFC 2 (18 Sep 2014)	✓	✓	✓	✓				
42.	SC	Criminal	Police v Lafaele [2015] WSSC 114 (14 March 2015)								✓
43.	FC	Criminal	Police v MSS [2016] WSFC 2 (19 February 2016)	✓				✓	✓		
44.	FVC	Criminal	Police v Faataape [2016] WSFVC 6 (8 May 2016)								✓
45.	SC	Criminal	Police v Afoa [2016] WSSC 117 (8 June 2016)	✓							✓
46.	SC	Criminal	Police v Perosi [2016] WSSC 110 (11 July 2016)	✓							✓
47.	FVC	Criminal	Police v Filivae [2016] WSFVC 2 (9 August 2016)	✓							✓
48.	FVC	Criminal	Police v Neemia [2016] WSFVC 3 (9 August 2016)	✓							✓
49.	SC	Criminal	Police v Malua [2016] WSSC 181 (18 August 2016)	✓							✓
50.	SC	Criminal	Police v Ataga [2016] WSSC 172 (8 September 2016)	✓							✓

51.	SC	Criminal	Police v Kamuta [2016] WSSC 174 (9 September 2016)	✓						✓	
52.	FC	Maintenance	L M T v A T [2016] WSFC 4 (19 September 2016)	✓			✓				✓
53.	FC	Family	L.A v S.L & T.S [2016] WSFC 5 (5 October 2016)	✓			✓				✓
54.	DC	Criminal	Police v Foaiaulima [2016] WSDC 41 (7 October 2016)	✓						✓	
55.	SC	Criminal	Police v Olo [2017] WSSC 10 (16 February 2017)	✓						✓	
56.	CA	Criminal	Tele'a v National Prosecution Office [2017] WSCA 4 (31 March 2017)	✓						✓	
57.	SC	Criminal	Police v Malotutoatasi [2017] WSSC 64 (21 April 2017)	✓						✓	
58.	SC	Criminal	Police v Tuu'u [2017] WSSC 65 (25 April 2017)	✓						✓	
59.	SC	Criminal	Police v Lemana [2017] WSSC 67 (27 April 2017)	✓						✓	
60.	SC	Criminal	Police v XY [2017] WSSC 86 (30 May 2017)							✓	
61.	SC	Criminal	Police v Leota [2017] WSSC 113 (8 August 2017)	✓						✓	
62.	SC	Criminal	Police v XM [2017] WSSC 157 (26 October 2017)	✓						✓	
63.	SC	Criminal	Police v Iakopo [2017] WSSC 162 (22 November 2017)	✓						✓	
64.	SC	Criminal	Police v Kobayashi [2017] WSSC 159 (8 December 2017)	✓						✓	
65.	SC	Criminal	Police v Mataafa [2017] WSSC 166 (12 December 2017)	✓						✓	
66.	SC	Criminal	Police v Taumaloto [2017] WSSC 160 (13 December 2017)							✓	
67.	SC	Criminal	Police v Peni [2018] WSSC 37 [23 February 2018)	✓						✓	
68.	SC	Criminal	Police v Sione [2018] WSSC 89 (19 June 2018)	✓						✓	
69.	SC	Criminal	Police v Laupua [2018] WSSC 125 (18 October 2018)	✓						✓	
70.	SC	Criminal	Police v Tufele [2018] WSSC 109 (1 November 2018)							✓	
71.	FVC	Family Violence	Police v Faanati [2019] WSFVC 4 (9 March 2019)	✓							
72.	SC	Criminal	Police v Gabriel [2019] WSSC 40 (5 June 2019)							✓	
73.	FVC	Family Violence	Police v Siliato [2019] WSFVC 5 (14 June 2019)							✓	
74.	SC	Criminal	Police v Tila [2019] WSSC 32 (25 June 2019)							✓	
75.	SC	Criminal	Police v Crichton [2019] WSSC 33 (10 July 2019)							✓	
76.	SC	Criminal	Police v Soma [2019] WSSC 79 (17 July 2019)							✓	
77.	FVC	Family Violence	Police v Kopelani [2019] WSFVC 7 (9 August 2019)	✓							
78.	FVC	Family Violence	Police v Gordlina [2019] WSFVC 3 (20 September 2019)							✓	
79.	SC	Criminal	Police v Fidow [2019] WSSC 85 (23 October 2019)							✓	
80.	SC	Criminal	Police v Sooa [2019] WSSC 55 (31 October 2019)	✓							
81.	SC	Criminal	Police v Aiono [2020] WSSC 29 (29 May 2020)							✓	

82.	SC	Criminal	Police v Tele'a [2020] WSSC 100 (16 October 2020)								✓	
83.	SC	Criminal	Police v Leota [2020] WSSC 69 (23 October 2020)								✓	
84.	SC	Criminal	Police v AT [2021] WSSC 15 (31 March 2021)								✓	✓
<u>Tallies – Number of cases applying each section→</u>				30	1	3	4	1	1	37	4	
<u>Total cases under this law (FSA 2013)→</u>				47 cases								

FAMILY COURT ACT 2014 (FCA 2014)

No.	Court	Jurisdiction	Case Law	Section	
				s.13	
	SC	Civil	* S v L [2015] WSSC 178 (29 October 2015)		✓
85.	FVC	Criminal	<i>Police v Brown</i> [2015] WSFC 1	<i>No specific section mentioned</i>	
86.	FVC	Criminal	<i>Police v Fiapopo</i> [2016] WSFVC 4	<i>No specific section mentioned</i>	
87.	FVC	Criminal	<i>Police v Ofoia</i> [2016] WSFC 1	<i>No specific section mentioned</i>	
88.	FVC	Criminal	<i>Police v Brown</i> [2016] WSFC 5	<i>No specific section mentioned</i>	
89.	FVC	Criminal	<i>Police v Menefata</i> [2016] WSFVC 7	<i>No specific section mentioned</i>	
90.	FVC	Criminal	<i>Police v Tautofi</i> [2017] WSFVC 2	<i>No specific section mentioned</i>	
91.	FVC	Criminal	<i>Police v Peteru</i> [2017] WSFVC 3	<i>No specific section mentioned</i>	
92.	FVC	Criminal	<i>Police v Sapolu</i> [2017] WSFVC 2	<i>No specific section mentioned</i>	
93.	FVC	Criminal	<i>Police v Toeoana and Afamasaga</i> [2017] WSFC 1	<i>No specific section mentioned</i>	
94.	FVC	Criminal	<i>Police v Leung King</i> [2018] WSFVC 1	<i>No specific section mentioned</i>	
<u>Tallies – Number of cases applying section 13 FCA→</u>				1	
<u>Total cases under this law (FCA 2014)→</u>				11 cases	

CASE STATISTICS

Number of cases heard per law	Court of Appeal	Supreme Court	District/Magistrate Court	Family Court/FVC
IO 1961 –	1	8	12	2
MO 1961 –	0	1	0	0
DMCO 1961	1	10	0	1
MAA 1967 –	0	1	1	0
FSA 2013 –	1	32	2	11
FCA 2014 –	0	0	0	10
Total Number of cases heard per Court	3	52	15	24
TOTAL = 94 CASES				

Earliest case law

[Yiu Hing v Yiu Hing \[1969\]](#)
[WSLawRp](#); [1961-1969]
 WSLR 236 (15 July 1969)

Latest case law

[Police v AT \[2021\]](#) WSSC 15
 (31 March 2021)

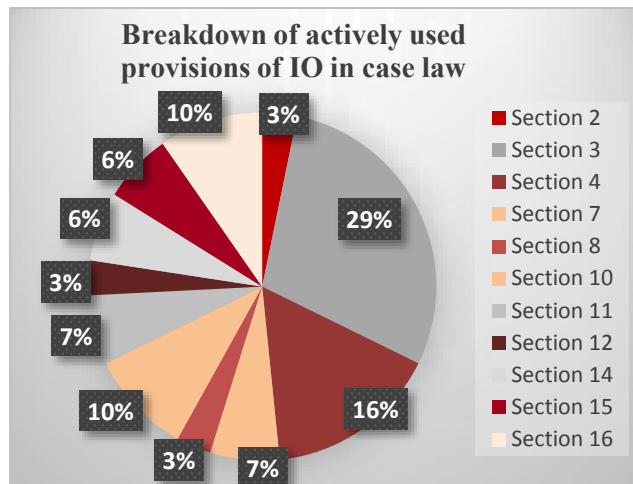
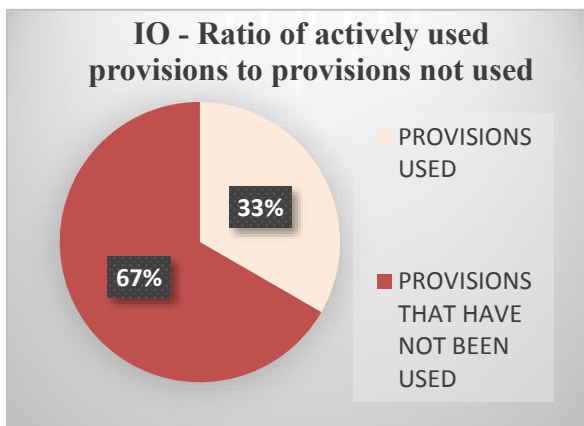
LAW	Court of Appeal	Supreme Court	District/Magistrate	Family Court/FVC	Total number of cases heard per law
IO 1961	1	8	12	2	23
MO 1961	0	2	0	0	2
DMCO 1961	1	12	0	1	14
MAA 1967	0	2	2	1	5
FSA 2013	1	32	2	12	47
FCA 2014	0	1	0	10	11

(Note this is more than 94 cases, as some cases were mentioned in more than one law) **TOTAL = 102 CASES**

Sections of the family laws used in each Court						
	Court of Appeal	Supreme Court		District Court/ Magistrate Court		Family Court/Family Violence Court
IO 1961	Section 10	Section 3 Section 4 Section 7 Section 8 Section 10 Section 11		Section 2 Section 3 Section 4 Section 7 Section 11	Section 12 Section 14 Section 15 Section 16	Section 3 Section 4 Section 16
MO 1961	-	Section 7 Section 15		-	-	-
DMCO 1961	Section 36(2)	Section 4 Section 7 Section 22 Section 22B	Section 22C Section 24 Section 37	-	-	Section 22A
MAA 1967	-	Section 16 Section 25		Section 12 Section 18 Section 20 Section 28		Section 12A
FSA 2013	Section 2 Section 17	Section 2 Section 17 Section 19		Section 2 Section 5 Section 7 Section 17		Section 2 Section 4 Section 5 Section 7 Section 9 Section 11 Section 17 Section 19
FCA 2014	-	Section 13		-		-

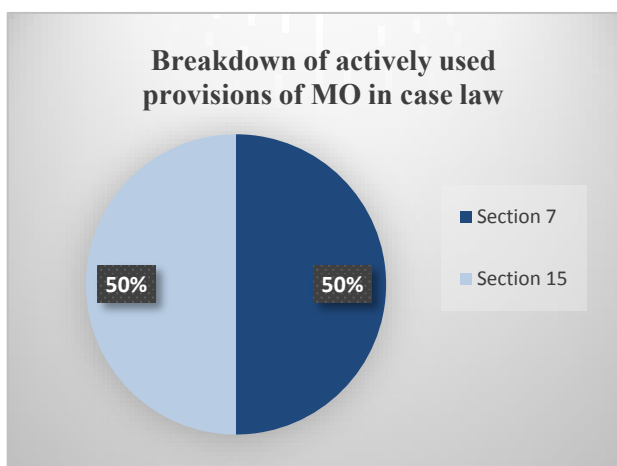
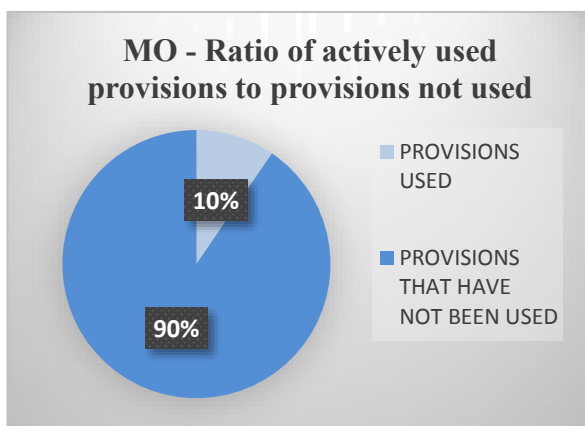
Annex 2 – % Provisions Applied in Samoa’s Case Law

1. INFANTS ORDINANCE 1961 (IO)



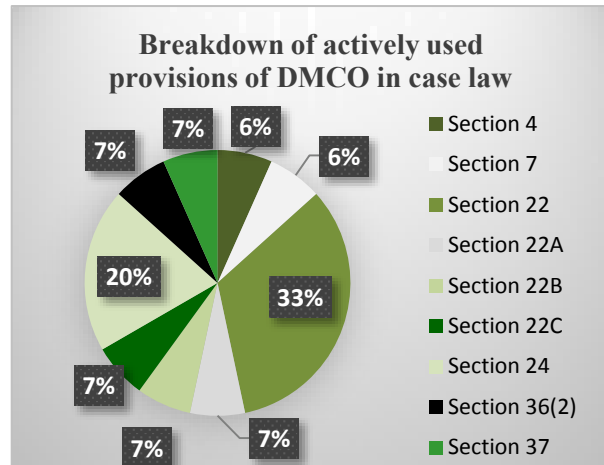
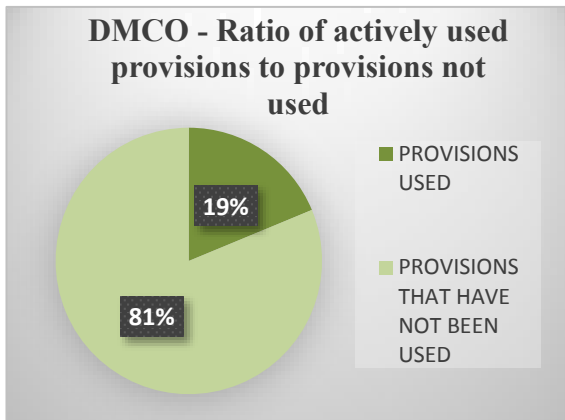
LAW	Provisions referred to in the case laws	Provisions not referred to in the case laws
Infants Ordinance 1961	11 (33%)	22 (67%)
Total provisions under IO = 33		

2. MARRIAGE ORDINANCE 1961 (MO)



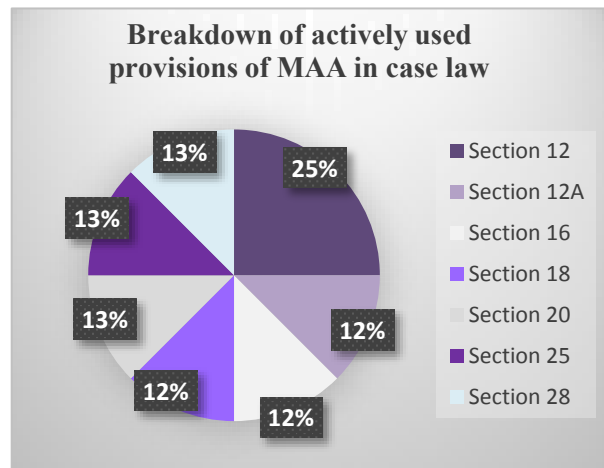
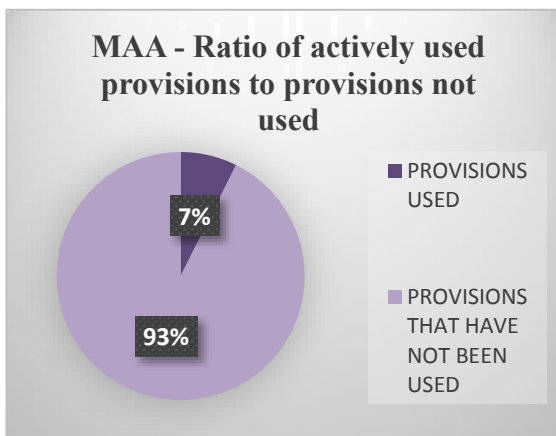
LAW	Provisions referred to in the case laws	Provisions not referred to in the case laws
Marriage Ordinance 1961	2 (10%)	19 (90%)
Total provisions under MO = 21		

3. DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961 (DMCO)



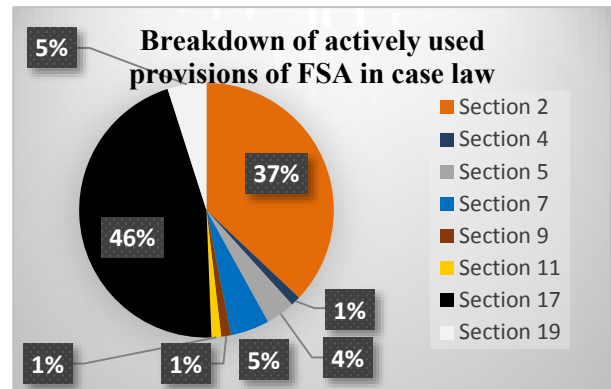
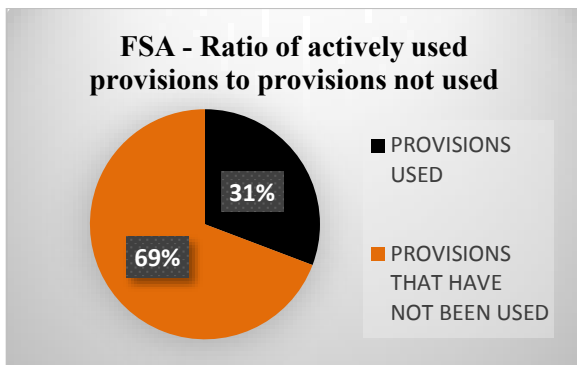
LAW	Provisions referred to in the case laws	Provisions not referred to in the case laws
Divorce and Matrimonial Causes Ordinance 1961	9 (19%)	39 (81%)
Total provisions under DMCO = 48		

4. MAINTENANCE AND AFFILIATION ACT 1967 (MAA)



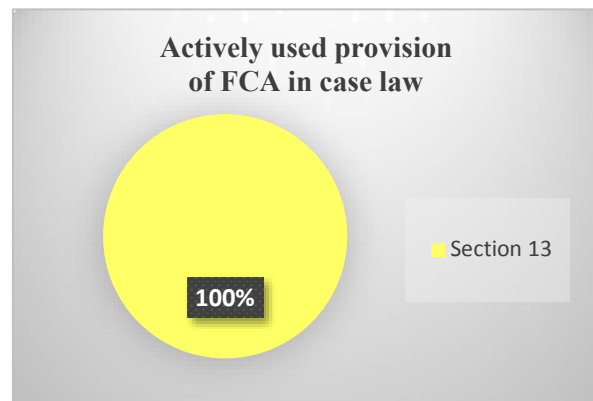
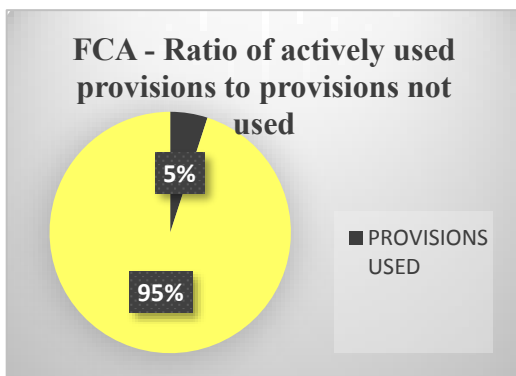
LAWS	Provisions referred to in the case laws	Provisions not referred to in the case laws
Maintenance And Affiliation Act 1967	7 (7%)	88 (93%)
Total provisions under MAA = 95		

5. FAMILY SAFETY ACT 2013 (FSA)



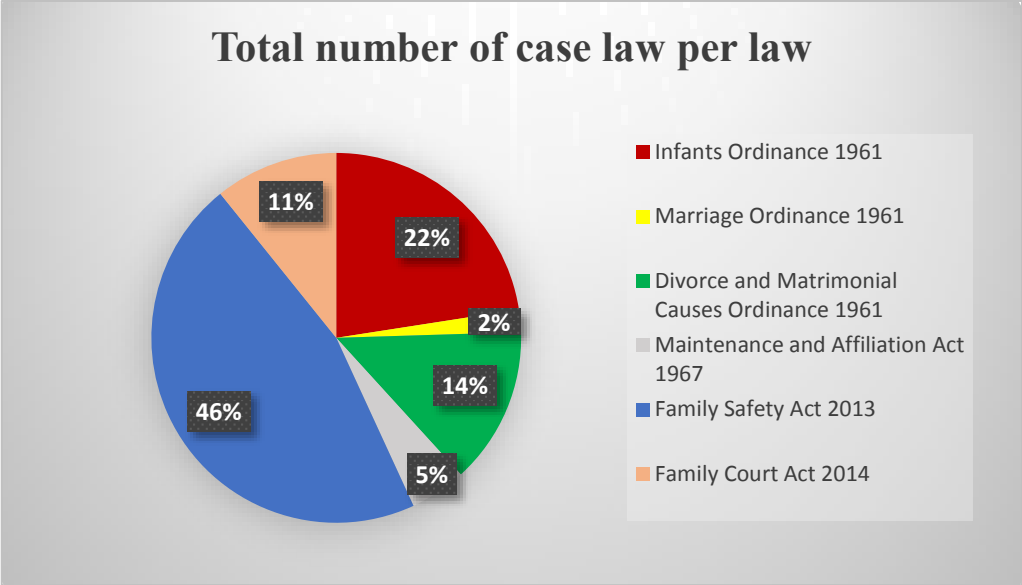
LAWS	Provisions referred to in the case laws	Provisions not referred to in the case laws
Family Safety Act 2013	8 (31%)	18 (69%)
Total provisions under FSA = 26		

6. FAMILY COURT ACT 2014 (FCA)



LAWS	Provisions referred to in the case laws	Provisions not referred to in the case laws
Family Court Act 2014	1 (5%)	19 (95%)
Total provisions under FCA = 20		

PERCENTAGE OF CASES THAT APPLIED EACH PROVISION OF THE 6 LAWS

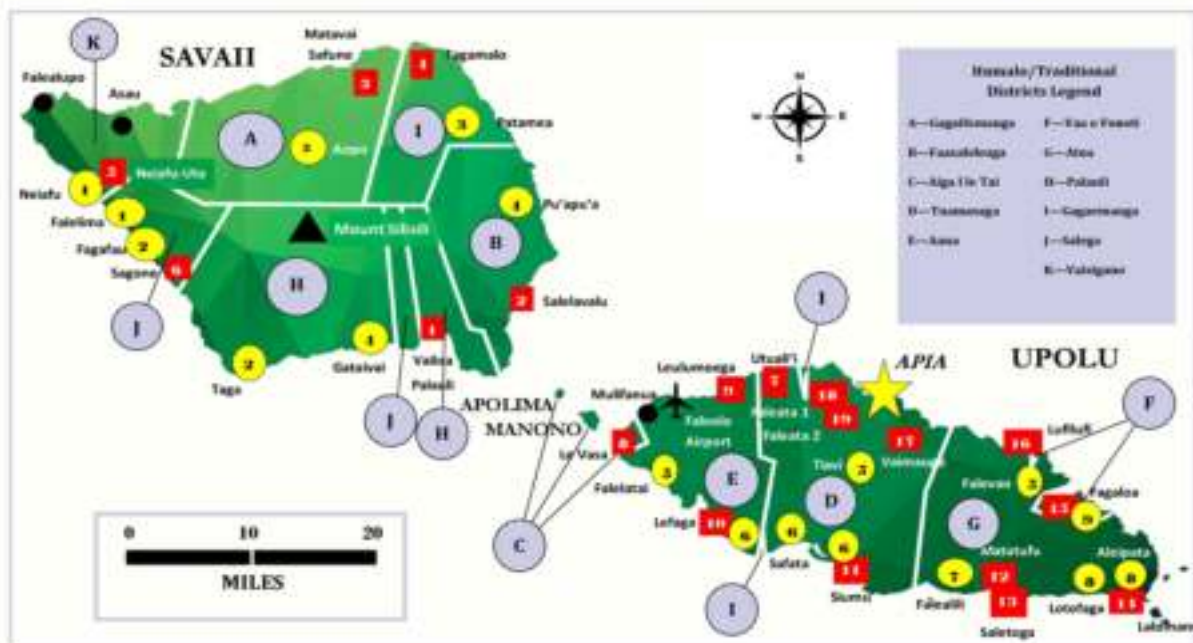


Annex 3 – Material from the Honourable Members of the Judiciary

MATERIAL FROM THE HONOURABLE JUDGES RECEIVED BY THE SLRC FOR THE FAMILY LAWS REVIEW		
<i>No.</i>	<i>Judge</i>	<i>Material received</i>
1.	<p>Hon. Judge Alalatoa Rosella Viane Papalii</p> <p><i>(Received: 26th March 2019)</i></p>	<ol style="list-style-type: none"> 1. Adoption Practice Direction No 01/2004 2. Adoption Practice Direction No 2004/02 3. Practice Direction No 04/2005: Execution of Documents by Solicitors 4. Practice Direction No 05/2005: Adoption Applications 5. Practice Direction No.03/2005: Adoption Applications 6. Practice Direction 01/2006: Adoption Applications 7. Practice Direction (12/02/2010) “Checklist for Adoption Applications”
2.	<p>Hon. Judge Talasa Atoa Saaga</p>	<ol style="list-style-type: none"> 1. Trend Report for the Family Violence Court <i>Communication with Judge Saaga on this Report launched in 2019</i>
3	<p>Hon. Justice Leiataualesa Darryl Clarke</p> <p><i>(Received: 2nd July 2019)</i></p>	<p><u>Court decisions</u></p> <ol style="list-style-type: none"> 1. <i>Tuugamusu v Tuugamusu [2016] WSFC</i> 2. <i>Maintenance Officer v Kalala [2016] WSFC</i> 3. <i>Police v Peti [2016] WDC</i> 4. <i>Police v Foaiaulima [2016] WSDC</i> 5. <i>Police v Filivave [2016] WSFVC</i> 6. <i>Police v Neemia [2016] WSDC</i> 7. <i>Police v Fiapopo [2016] WSDC</i> 8. <i>Police v Taumaloto [2017] WSSC</i>

Annex 4 - Venues – Public Awareness Seminars and Public Consultations

Figure 1—PUBLIC AWARENESS SEMINARS
& PUBLIC CONSULTATIONS



Samoa is divided into 11 *itumalo* (traditional districts). In Savaii, these include Gagaifanonga, Gagaemoaga, Faaalofoaga, Salega, Palauli and Vaitogi, and for the rest of Upolu, Aiga-i-le-Tai, Vaa o Faaoti, Aana, Aua and Tuamasaga. The illustration on the map reflects the districts the awareness seminars and the public consultations were carried out by the Commission. The intention of the Commission is to have inclusive seminars and consultation to allow the public to provide their views on the reform of the family laws.

Samoa is further divided into 51 *faipule* (political districts) which serve as electoral constituencies. Across Samoa you will find 240 *nu'u mauga* (traditional villages) and 35 non-traditional villages (new settlements and suburban areas), a total of 275 villages. *Nu'u mauga* are looked after by *Alii & Faipule* (Fono/village council) and women's committees—they form the village governance which many Samoans see as the foundation of Samoan custom and tradition.

Public Awareness Seminars

The public awareness seminars (refer to Part C of this report) took place in Savaii from 14 September to 27 September 2019, and in Upolu from 15 October to 21 October 2019. These public awareness seminars are depicted in the yellow circles on the map and are listed below in the order of days they were carried out. The division of the villages for each session was to cover all 11 traditional districts in Samoa.

SAVAII

Day 1—Neiafu → Falelima
Day 2—Fagafau → Taga
Day 3—Aopo → Patamea
Day 4—Gataival → Puapua

UPOLU

Day 5—Falelatai → Apia
Falevao → Apia
Tiavi → Apia
Talafoai o Apia
Day 6—Lefaga, Safata & Siumu
Day 7—Faleaifi
Day 8—Lotofaga → Lega & Alepata
Day 9—Fagaloa

Public Consultations

The Commission carried out public consultations in Savaii from 3 August to 7 August 2020, and in Upolu from 25 October to 10 November 2021. The areas depicted in the red squares on the map indicates where the consultations took place which the villages in those areas were invited to attend.

SAVAII

Day 1—Vailoa Palauli
Day 2—Salelavalu
Day 3—Matavai, Safune
Day 4—Fagamalo
Day 5—Neiafu-Uta
Day 6—Sagone

UPOLU

Day 7—Utuaifi
Day 8—Le Vasa
Day 9—Leulumoega
Day 10—Lefaga
Day 11—Siumu
Day 12—Matatufu
Day 13—Saletoaga
Day 14—Lalomanu
Day 15—Fagaloa
Day 16—Lufilufi
Day 17—Vaimauga
Day 18—Faleata #1
Day 19—Faleata #2

Annex 5 – Public Consultations Methods - Data Sources

The three categories of data were collected, collated and analysed using a 3-Steps Data Collection Methodology as follows:

Step 1 – Collection & Collation of Raw Data;

Step 2 – Compilation and Analysis; and

Step 3 – Final Analysis.

Step 1 - Collection & Collation of Raw Data

Post presentation Questions & Answers

For the collection and collation of raw data under Questions and Answers, the team took notes of the questions and answers at every session. The questions and answers exchange were also recorded using an audio recorder. The audio podcasts were then transferred and transcribed into individual tables by the team, noting the exchanges, the dialogue during each of the consultation sessions (19 consultations). This was noted as the raw data for questions and answers.

Brown Paper / Group Presentations

For the Brown Paper category, the team recorded all the group discussions and group presentations. Each group was allocated questions to respond to under each of the 6 family laws. Group discussions were led and guided by members of the Commission as well as the Commission's partners and stakeholders. To complement the raw data recorded (in verbatim form), the team also transcribed the audio podcasts from group discussions where the brown paper record was unclear.

Questionnaires

For the questionnaires category, the team first recorded all the responses and comments provided by members of the public in response to the 18 questions in the questionnaire that was distributed at the outset of the public consultations sessions.

Before the start of each session, a questionnaire was given to each participant upon registration. These were then collected at the end of the consultation session. It is to be noted that at the end of the consultation sessions and during this first stage of recording the raw data, it was evident that not every participant had returned a completed questionnaire at the end of each session. This was identified by comparing the number of registered participant and the number of questionnaires collected from each consultation session. A template table developed for the recording of the Savaii Consultations Questionnaires was also used and followed for the recording of Upolu Questionnaires, with modifications made as necessary.

Step 2 – Compilation and Analysis

(i) Questions & Answers

For Step 2 (Compilation and Analysis), the team narrowed down the table of analysis and arranged the raw material received from Step 1 in the following manner:

- a. arrange the questions according to the law it relates to (e.g. all adoption questions are listed under the Infants Ordinance 1961 etc.); and
- b. arrange the questions asked under the following categories:
 - i. most commonly asked questions;
 - ii. any substantial comments/recommendations/suggestion for reforms;
 - iii. any other significant matters raised.

The idea under this step is to group the questions asked by the public under the most relevant family law/legislation (i.e. group questions relating to family safety under the Family Safety Act while questions relating to divorce are grouped under the Divorce and Matrimonial Causes Ordinance).

(ii) Brown Paper / Group Presentations

For Step 2 (Compilation and Analysis), the team developed a table (template) to further bring in the data obtained from Step 1. The 6 laws were divided among 2 members of the team (3 laws each), to identify the common responses as well as any other significant suggestions proposed by the public for possible legislative reform.

(iii) Questionnaires

For Step 2 (Compilation and Analysis), the team followed the same approach taken by the Brown Paper team for the purpose of summarizing responses from Step 1. The summaries in this step were to help the team in drawing preliminary analysis from the people's responses.

The questionnaire team were divided into two teams (2 members each) for the analysis of responses. The first team focused on analysing responses to the first three laws (*Infants Ordinance 1961, Marriage Ordinance 1961 and Divorce and Matrimonial Causes 1961*) and the second team focused on analysing responses to the last three laws (*Maintenance and Affiliation Act 1967, Family Safety Act 2013 and Family Court Act 2014*). These teams were tasked to identify the common responses and any other comments and significant suggestions made by the people to be considered for recommendation for law reform.

Step 3 – Final Analysis

(i) Questions & Answers

For Step 3 (Final Analysis), the team further narrowed down the data from step 2 by identifying the following matters: the Part of the law which received most questions; the content of the questions asked; whether there were any substantial comments raised on possible legislative reforms; and any other significant matters raised by the public worth noting.

This final step identifies the exact area(s) of each of the 6 Family Laws which the public were most interested in, based on the questions which the public asked during the consultations. Also, to ascertain whether there were any specific comments from the public proposing any legislative reforms to any of the family laws/legislation.

(ii) Brown Paper / Group Presentations

For this Step, the team after going through Steps 1 and 2, provided a summary to answer the analysis of the responses and the proposed legislative reforms (if any) from the people in relation to the questions under each of the 6 family laws. The analysis guided the team's proposed preliminary recommendations on possible law reform or non-legislative measures as necessary.

(iii) Questionnaires

For this Step, the team after going through Steps 1 and 2, made further analysis in light of the people's responses to the different questions in the questionnaire. The analysis guided

the team’s proposed preliminary recommendations on possible law reform or non-legislative measures as necessary.

Annex 6 – Written Submissions Input on the 6 Family Laws

Efforts are made to highlight the matters of interest raised in the three (3) written submissions received by the Commission. Two out of three (2/3) written submissions were received from Government Bodies (the Ministry of Finance and the Office of the Ombudsman) with one (1/3) received from a member of the public. The Commission attempts to highlight only the most prominent areas of interest from these submissions.

INFANTS ORDINANCE 1961

The principle of the ‘Best interest of a child’

- To consider amending the relevant law to require - where parents are separated the children of the marriage must not be separated, unless there is a threat to the other child.
- For Samoa to take appropriate action to promote the paramountcy of the principle of best interest of a child in matters relating to adoption; young offenders; and access to education.

Commission’s consideration

- The decision on whether or not to separate children would be of course taken account of by the courts in applying the principle of the best interest of the child. It is available in the laws for the Courts to decide on, on a case by case basis.
- The promotion of the paramountcy of this principle in ways outside of the current laws is a matter for the MJCA and the Courts to consider taking forward in collaboration with the relevant agencies (i.e Office of the Ombudsman). Otherwise, the law already provides for this and the courts have applied these as shown in court decisions to date.

Applicants for an adoption order.

- An applicant must be both a Samoan citizen and has been residing in Samoa for at least 3 consecutive months immediately before an application to adopt a child (similar to the approach in Fiji).⁹⁹
- To allow adoption to relatives of the biological parents only, to minimize the risk of exposing the child to sexual abuse.

Commission’s considerations

This may be included in the recommendations for the review of the Ministry of Justice and Courts Administration (MJCA), the Courts and the Office of the Attorney General (OAG):

- Also see other jurisdictions e.g. see NSW Australia’s approach.
- For *section 7 – Power to make adoption orders* to be similar to the approach in Australia.¹⁰⁰

Comment - How can the adoption law be strengthened to ensure the safety of the children adopted overseas?

- Further efforts must be made to ensure that Samoan children adopted overseas are protected by the same safeguards and standards applied to national adoptions.
- The law must clarify matters relating to consent to adopt a child
- There must be clear guidelines for the judges when issuing adoption orders.
- As further protection for overseas adoptions, Samoa must consider becoming a party to the Hague Convention on the Protection of Children in Respect of Intercountry Adoption.

Commission’s considerations

- These are useful for the MJCA and Courts consideration and thus will be included in the

⁹⁹ see section 9 (Who can adopt) of the Adoption Act 2020, Fiji.

¹⁰⁰ see s. 26 (Who can adopt), s.27 (Adoption by one person), s.28 (Adoption by couple), s.29 (Adoption by couple), s.30 (Adoption by step parent), s.31 (Adoption of non-citizen child) of the Adoption Act 2000, No.75 (NSW, Australia).

recommendations. For overseas adoptions, we make further note as follows.

- Overseas adoptions are governed by stricter safeguards compared to national adoptions. The Infants Ordinance 1961 and the Infants (Adoption) Regulations 2006 provide for additional conditions to be satisfied in order to be granted an overseas adoption order.
- Section 8 (Conditions on which orders may be made) addresses the matter of consent by (i) a child to be adopted and (ii) the parents or legal guardian.
- The guidelines for judges can be provided for under (i) Adoption Practice Directives or (ii) Rules developed in accordance with IO 1961. In the absence of either one of the two, the Court has discretion to exercise its jurisdiction in accordance with the provisions of the IO 1961.
- The decision on whether Samoa ratifies the Hague Convention is a Government decision.
- Samoa may also consider legislating for the principles that the Courts have relied upon in past case law, and aim towards ratifying the Hague Convention at a later time after a thorough review of all international obligations that this Convention entails for Samoa.

Effect of an adoption order

- Do an adopted child and a biological child have the same rights and interests in the property of an adopted family's property?

Commission's considerations

- Section 10 (Effects of Adoption Order) of the IO 1961 provides to some extent an adopted child's rights and interests and the limitation of the same to the property of the adopting parents.
- Any reforms to clarify the extent of rights and privileges of an adopted child will be guided by the MJCA and the Courts and any other relevant agencies (i.e PTO).
- These discussions may be guided by the approaches of overseas jurisdiction (i.e Fiji or Australia) who have legislated for an adopted child's rights to property
 - **NSW (Aust.)** provides in its Succession Act 2006 that an adopted child is regarded as a child of the adoptive parents for purposes of distribution on intestacy.
- Other laws that may be of interest would be the:
 - *Adoption Act 2020 (Fiji); and*
 - *Adoption Act 2000 (NSW, Aust),*

which have similar provisions on the protection of an adopted child's rights to property, if those rights were vested in the child before the date of the final adoption order.

Should the duty of a parent to care for his/her child be legislated?

- The duty of a parent to care for his or her child is a matter that must be clearly set out and required in the law.

Commission's considerations

- The Infants Ordinance does not expressly provide for a duty of the parent to care for his/her child, no words to this effect.
- However, the IO 1961 provides in section 12 (Punishment for ill-treatment and neglect of children) that it is an offence to neglect, abandon or expose a child to danger / ill-treatment.
- The Crimes Act 2013 provides that a person who is a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 18 years, being a child in his or her actual custody; and is one is criminally liable for noncompliance without lawful excuse.¹⁰¹ It also provides liability for a person who unlawfully abandons or exposes any child under the age of 6 years.¹⁰²
- Samoa can consider expressly providing in its law a parent's duty to care for his/her child (if necessary and would add value to implementation of this law). This can be added in to the

¹⁰¹ See section 85 (Duty of parent or guardian to provide necessaries), Crimes Act 2013, Samoa.

¹⁰² See section 86 (Abandoning child under 6 years), Crimes Act 2013, Samoa.

recommendations.

Protection of children – reasonable punishment

- Reference was made to s.14 (Right of parent, etc., to administer punishment) which provides for the right of a parent, secondary school teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to the child.
- Reference was also made to Article 19 of the CRC, which obligates Samoa to ensure that all appropriate measures are taken by the country to protect child from all forms of violence and abuse from parents or any other person who has the care of the child.
- It is unclear in the law what constitutes reasonable force, how it is to be determined and when it is applicable.
- A view was expressed that the use of corporal punishment and the concept of reasonable force have no place in the law as they contravene Samoa's international obligations under CRC.

Commission's consideration

- This particular provision (section 14) has been the subject of discussions for some years now, in the government sector and particularly in the education sector.
- Section 14 has existed since 1961, (over 60 years now) from the date of enactment of the Infants Ordinance. It provides:
14. Right of parent, etc., to administer punishment – Nothing in this Part takes away or affects the right of a parent, secondary school teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to the child.
- In 2019, the Infants Ordinance was amended to limit the scope of 'teachers' in this section to 'secondary school teachers'.¹⁰³ What amounts to 'reasonable punishment' is determined by the courts on a case by case basis.¹⁰⁴
- This was Samoa's response to ensure a safe and harmonious environment, administered by the parents and secondary school teachers, within a limited scope of authority.
- As there is a recent amendment to the law (2019), inclusive of discussions and an appreciation of the CRC principles; and in respect of Samoa's international obligations; it is best this is put as a recommendation for continuous discussions between the relevant Ministries, the Ministry of Women Community Social Development, the Ministry of Education (see in particular the definition of 'corporal punishment' in section 23 Education Act 2009), the Ministry of Justice and Courts Administration and the Courts, as Samoa aspires to develop and support better, safe and harmonious environments at home and in schools for Samoa's children.

Matters not in the IO 1961 raised in the written submissions:

An illegal adoption process

- There is a risk of illegal adoptions being carried out at the hospital at the birth of a child where a biological mother would provide information of another person/couple as the biological parents. This practice avoids the proper adoption process in the process.

Commission's considerations

- The process of ensuring the accuracy of records at child's birth is a matter regulated by the MoH in their daily provision of relevant services
- In addition to these regulatory, it may assist further to have some public awareness material to inform people of the illegality of any adoption practices other than that provided for in the law.
- The Births, Deaths and Marriages Registration Act 2002 (BDMR Act 2002) is the relevant law providing for the recording of information of a new born child.¹⁰⁵

¹⁰³ By the Education Amendment Act 2019, No 5 (commenced on 1 July 2019).

¹⁰⁴ See *Police v Paleaee* 2015 WSSC 203; *Police v Panapa* [2016] WSDC 14; *Police v Lagaia* [2017] WSDC 23; and *Police v Mautofiga* [2020] WSDC 4 (16 July 2020).

¹⁰⁵ **Births, Deaths and Marriages Registration Act 2002 – section 87. False representation** – A person who, knowing it to be false or misleading, makes, or causes to be made, a false or misleading representation in any form,

- This will be added in to the recommendations towards the BDMR Act for the review of the relevant Office, the Samoa Bureau of Statistics which administers this law.

Adoption of children with physical and intellectual disability:

- The law must specifically provide for adoptions of children with physical and intellectual disability to ensure their protection and that they are appropriately cared for by their adopting parents.

Commission's considerations

- This principle of 'best interest of a child' is the paramount and determining factor in the issuing of an adoption order, and thus the status of a child, with or without a disability, are all to be addressed under this principle. The court considers the adoption application taking this in to account, on a case by case basis.
- The law does not need to expressly require appropriate care for adopted children with disabilities as an adoption order is understood to be made with the understanding that the adopted child will be appropriately care for, whether or not a child has disabilities.
- This may included in to the recommendations for the MJCA and the Courts to consider, whether the law as it is, is sufficient to address this.

Post-adoption follow-up process

- There should be checks and balances for post-adoption phase
- The law should provide for a 'post-adoption follow-up process,' which will allow the Judges to follow up on progress of the adoption after an order has been made.
- The Judges must be given the discretion to inquire further and require additional information (i.e police clearances from adoptive parents before issuing an order)

Commission's considerations

- There is provision that allows a court to vary an adoption order. Infants Ordinance section 11(1) says - Adoption order may be varied or discharged – The Court may in its discretion vary or discharge an order of adoption subject to such terms and conditions as it thinks fit.
- However there is no express provision for a post-adoption process for the Court to follow-up and assess an adoption made
- There is also no express provision for the Court to require additional information, but s.7A (Overseas adoption) allows the AG to require information from other persons involved with the infant to assist with the AG's discharge of his/her functions.
- This may be included in the recommendations for the MJCA and the Courts consideration.

To Consider: Customary Adoption

- If traditional forms of adoption (or customary adoptions) are recognized, any proposed legal framework to govern such adoptions must adhere to and be consistent with CRC and ensure the child's best interests are paramount in the process.
- Any person affected by a customary adoption must have the right to legal status and recognition
- A question was posed as to whether Samoa is ready to accept customary adoption.

Commission's considerations

- This has been strongly recommended by the public in the Commission's Public Consultations around Samoa.
- As a matter of public interest, Samoa may consider further research into how Samoa could legislate for customary adoption.

application, request, certificate, statement, notice, or other document provided to the Registrar General under this Act, commits an offence and on conviction is liable a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 2 years, or both.

- Any customary adoption law to be developed will be designed to suit Samoa's context, to be beneficial to the people of Samoa and must take into account Samoa's international obligations.
- Any such further research would consider how Samoa would legislate for customary adoption and comply with its international obligations.
- Samoa can draw from the experiences of PNG in the development and implementation of its Adoption of Children Act 1968 which recognizes both the formal adoption and customary adoption.
- This commentary will be included in the recommendations on the way forward for Samoa's adoption laws.

MARRIAGE ORDINANCE 1961 (Act No. 8 of 1961)

Relationships

(a) Recognition of marriage:

- Why is a marriage not legally recognized until it is registered and a Marriage Cert. is issued by BDM Office?
- Why is the document issued by the licensed marriage officer at the time of/after the wedding not recognized as a formal document of marriage?

Commission's consideration

- s.55 (Marriages in Samoa must be registered) of the Births, Deaths and Marriages Registration Act 2022 requires the registration of any marriage solemnized in Samoa under this Part of the BDMR Act, unless it is registered under a former/other law.
- Compared to previous case of marriage by custom where the Court heard evidence to prove the existence of a marriage under customs,¹⁰⁶ the requirement to register a marriage before it is legally recognized ensures that there is a record of such a marriage for purposes of any future matters relating to that marriage.
- This is a matter for MJCA and SBS to discuss the process of registration of marriages and clarify directions of any reforms to address this.

(b) Recognition of de-facto relationships:

- To consider recognition as "legitimate marriage" the union of a male and female who have been together for a sufficiently long period and in a stable relationship (de-facto) even without the usual formalities.
 - Definition of spouse in some laws now includes de-facto partners
 - NZ quota schemes consider a long-time partner/spouse as a valid union
 - Current Ordinance does not recognize illegitimate relationships / No definition of illegitimate relationship

Commission's considerations

- This will be included in the recommendations, for the MJCA and the Courts to consider and decide if the recognition of de-facto relationships would be beneficial and practical for Samoa moving forward.
- The Labour and Employment Relations Act 2013, section 46 (Paternity leave) defines spouse to mean a female who is not the legally registered wife of a male employee and has co-habited with the male employee in de-facto relationship for at least 9 months
- There was reference to NZ laws recognizing de-facto relationships – the direction that other neighbouring countries take should not determine the direction of Samoa's laws.
- Also to consider – whether other laws can recognize de-facto for their specific purposes (as in entitlements to paternity leave under LERA 2013), but **NOT** when it comes to the question of recognizing such relationship as a marriage in general? Considerations here will assist with a decision on recognizing 'de-facto' relationships in family laws.

¹⁰⁶ Samoan Public Trustee v Collins [1933] WSLawRp 1; [1930-1949] WSLR 70 (23 June 1933).

(c) Marriages created by customs

- How do we recognize these in modern law?
- The children and assets of these marriages would have been by custom – are these still valid under the formal law?

Commission’s considerations

Does Samoa recognize marriages created by custom?

- The current law recognizes only marriages that comply with the Marriage Ordinance 1961 and such marriages solemnized must be registered under the Births, Deaths and Marriages Registration Act 2002. There is no express provision clarifying whether the registration includes the registration of a union or marriage created by customs (if at all).
- The Commission’s research shows that the only case law on marriage created by custom in Samoa was one from 1933¹⁰⁷ heard by the High Court of Samoa and referred as a case stated to the Supreme Court of NZ (heard in 1961).¹⁰⁸ The court recognized a union of a couple as a marriage made pursuant to customary practices in the early 1900s.

(d) Gay marriage / relationships:

- Given the culture today regarding same-sex marriage, for the avoidance of doubt, Samoa may need to be more specific on the intention of its laws – to further clarify/explain the types of relationships allowed/not allowed.

Commission’s considerations

- As widely raised in the Commission’s Public Consultations, Samoa can consider clarifying the types of relationships allowed and not allowed in the marriage law.
- Particular to gay marriages/relationships, given the wide public demand, it is recommended that express provisions providing for its prohibition must be made clear and for gay marriage to be listed in the list of prohibited relationships in the Schedule of the MO 1961.

(e) Marriage to adoptive relatives

- This is not clearly provided for in Samoa’s current laws.
- The current Ordinance provides for prohibition of marriages to biological relatives, half-relatives and step relatives, but there is no reference to prohibition of marriages to adoptive family/relatives.

Commission’s considerations

- s.10 (Effect of adoption order) of the IO 1961 acknowledges that an adoption order deems an adopted child in law to be the child **born** in lawful wedlock of the adopting parent. This places the adopted child in the same category as the adopting parents’ biological children in relation to the family (nuclear or extended).
- For these discussions, it is recommendable for a ‘marriage to an adoptive relative’ to be listed as a prohibited degree of relationships in the Marriage Ordinance, for example a person cannot marry his adopted cousin.

Formalities

a. Marriage Officers - awareness and compliance with legal requirements

- Could marriage officers (including Ministers of Religion) be compelled to undergo some training/awareness of the legal requirements and compliance regarding marriages --- clarity on

¹⁰⁷ Samoan Public Trustee v Collins [1933] WSLawRp 1; [1930-1949] WSLR 70 (23 June 1933).

¹⁰⁸ Samoan Public Trustee v Collins [1961] SamoaLawRp 2; [1960-1969] WSLR 52 (13 December 1961).

mandatory and **non-mandatory** requirements *i.e* ---- *the venue for a wedding (church or another)*

- What does ‘open door’ mean?

Commission’s considerations

- The Marriage laws need to be updated. A useful recommendation would be for the MJCA and the Courts, and the Samoa Bureau of Statistics to review the marriage requirements and make amendments as they see fit.
- In this regard, the discussions below are provided as initial considerations.
- s.15 (Mode of solemnization) of the MO 1961 requires that a marriage be solemnized with open doors in such manner the marriage officer thinks fit
- For MJCA to consider how this would be best addressed.
- Possible legislative reforms may opt to clearly set out in the law where a marriage may be conducted or officiated (a non-exclusive explanation of venues/locations other than the usual church or court house).
- This may also include clarification of “open doors” or removal of this reference for clarity.
- What of the use of the term ‘Solemnize’ – to update the terminology of the laws
- The reforms to this portion may also address other concerns relating to the definition of what is “marriage” in Samoa.

- **Marriage Officer - refusing to officiate a marriage:**

- Does a marriage officer have the right to refuse to officiate a wedding?

Commission’s considerations

- A marriage officer has the right to refuse to officiate a wedding where the Marriage laws are not complied with e.g. where one party to a marriage is still married to another person.
- There is a strong contention that the marriage laws and the officiating of marriage laws are outdated. There is non-compliance of the Marriage Ordinance requirements as they are not practical to date, or the public is not aware of them.
- The Marriage laws need to be updated. A useful recommendation would be for the MJCA and the Courts, and the Samoa Bureau of Statistics to review the marriage requirements and make amendments as they see fit.

- **Notice of intention to marry**

- Where this Notice should be displayed?
- It is unclear where the notice should be.
- Reference to “public notice” implies a requirement to publicize to the general public.
- How practical is the fee required to be paid for the notice of intention to marry?
- How is the payment of this fee monitored?
- The law still makes reference to the payment of the prescribed fee to the Treasury when the practice has changed
- Proof of what is required in the Notice of Intention to marry
- the information required in the notice must be verified first
- the current form also needs to be updated as it still makes reference to year starting with “19”

From the 1 submission from a member of the public

- **Tusiga**
- E tatau ona faamalosiā le faia o tusiga o soo se faaipoi-poga ma faapipi ile faitotoa (2-weeks’ notice requirement to continue and it must be complied with).

- How can the law regulate people getting married a second time without getting a divorce?
- Do marriage officers (*ministers and others licensed*) have the same resources / follow the same guidelines? i.e questions to ask the bride and groom etc?

An alternative process from officiating divorce before second marriage was suggested:

- Afai ile fesiligia ai e le fai faaipoipoga ma iloa ai sa faia se faaipoipoga muamua, o se auala e uia – e tatau ona tapena mai se tusi mai le toalua muamua e faamaonia ai ua ioe e tete'a, ma ioe foi ile faaipoipoga lona lua a le tasi itu faaipoipo o le a faaipoipo.

“Where a party to a marriage was previously married, this party’s former spouse must first provide his/her consent in writing (letter) that he/she has no objections to the second marriage of their former spouse (a party to the marriage to be officiated)”

Commission’s considerations

- The Marriage laws need to be updated. This is a recommendation to be put forward. In thi regard, the following will be useful considerations.
- The Marriage Regulations 1971 does not specify where a notice of intended marriage should be displayed. These Regulations are also silent as to the process (from pre-marriage until registration of a marriage). These may be provided for in guidelines or manuals for marriage officers (if it is considered by MJCA / SBS / the Courts to be practical)
- For **fee** – the law refers to payments being made to the Treasury must be amended and updated to reflect the current process (this is a matter for further discussions and agreement between the MJCA and SBS).

Note - the current Marriage Regulations provides that there is **no fee for notice of intended marriage** (Second Schedule of the Marriage Regulations 1971). It would be a matter to confirm whether a fee is to be prescribed for this or whether to remove reference to a fee altogether.

- For **declaration** - the MO 1961 (s.14(4)) provides that if Regulations are made requiring a declaration to be made, then a marriage officer shall not solemnize a marriage unless a declaration is made.
- The Marriage Regulations 1971 does require the making of a declaration by those intending to marry that there is no restriction on the marriage. This is where proof can be provided under oath.
- There are two options of way forward to address this matter (subject to confirmation of the implementers (MJCA, SBS):
 - express provisions in the marriage law to require verification of all information in the Notice of marriage; **or**
 - express provision requiring the parties to a marriage to make declaration under the Oaths, Affidavits and Declarations Act 1963¹⁰⁹ (an extension of current s.14(4)) --- that there are no marriage restrictions existing *i.e no current valid marriage*.
- Marriage officers must be made aware of this requirement, to ensure compliance before solemnization of any marriage.
- The Forms must be updated not only in the year, but also in content to accurately reflect requirements in the current laws

b. False declaration / solemnization of marriage

- What is the process to report a bride-to-be / groom-to-be who made a false declaration?
- What is the process to report a marriage officer who has solemnized the marriage knowing a declaration to be false?
- Is it an offence to know and not report such incidents?
- Does a false declaration or solemnizing of a marriage knowing the declaration to be false invalidate the marriage?

¹⁰⁹ Declarations are to be made under Part 4 (Declarations) of the Oaths, Affidavits and Declarations Act 1963, in the Form prescribed in the Third Schedule.

Commission's considerations

- The Marriage laws need to be updated. This is a recommendation to be put forward. In thi regard, the following will be useful considerations.
- Section 14 (Notice of Marriage) provides another safeguard to marriage by stating that regulations may be made requiring a declaration to be made that no restriction on any marriage exists
- Sections 30¹¹⁰ and 31¹¹¹ provide offences relating to the solemnization of a marriage contrary to the Ordinance.

For (i), (ii) & (iii) A reporting process may be provided for in a guideline or manual to be developed by the MJCA or the Courts (if not already in place).

- For a **reporting process**, the MJCA would be in a better position to explain a process of reporting any false declarations made or any solemnization of a marriage made with the knowledge of the false declarations made (if any process).
- This may be a matter for MJCA to consider:
 - if there is no process, to set out a process in possible amendments to the MO 1961 or new marriage law **or**
 - if there is a process, to raise awareness of it and strengthen enforcement.
- It may also assist for the MJCA to raise awareness and enforce compliance with the requirement to make a declaration contemporaneously with the notice of marriage It is a matter for the MJCA or the Courts to consider and instruct the inclusion of an offence covering persons who are aware of false declarations but do not report, if this is the direction they want to take forward.
- In regards to the **making of declarations**, the Marriage Regulations 1971 (*r.2 – Notice of marriage and declaration supplementary thereto*) states that a party to an intended marriage shall also make and give a declaration that no restriction on such marriage exists.
- Any such declaration made must be made according to the *Oaths, Affidavits and Declarations Act 1963* (OAD Act 1963) and any false declarations will be dealt with under s.23 (Offence and penalty) of the OAD Act 1963
- This may be a matter for MJCA to consider:
 - raise awareness and enforce compliance with the requirement to make a declaration contemporaneously with the notice of marriage; and
 - to update the forms in the Regulations to accurately reflect requirements in current laws (*i.e age to marry in the form in the Regulations still refers to 21 and 19*)
- For a **person who knows of a false declaration** but **fails to report**, the MO 1961 provides that it is an offence to make or cause to be made any false declaration for the purpose of the Ordinance. However, it is unclear if such offence covers a person who has knowledge of a false declaration but does not report.
- For MJCA:
 - If there had been similar cases, how did MJCA deal with these cases in the absence of an express provision / offence in the law?
 - If there is already a practice, to consider incorporating that practice in amendments to be made or new law.

(iv) Effect of a false declaration on a marriage solemnised

- Any possible amendments to address this must consider the effect of the falsely declared information as basis to determine whether a marriage is invalidated or not.
- for such matters to be considered based on what information was falsely declared and their effect

For example –

¹¹⁰ Marriage Ordinance 1961 - s.30 (Offence to solemnize marriage contrary to provisions of the Ordinance).

¹¹¹ Marriage Ordinance 1961 – s.31 (Offences in connection with false statements and improper solemnization of marriages).

- if the false information is in relation to an existing valid marriage, that would be ground to void the second marriage; or
- if the false information declared is the village of one of the parties, this may not be ground to void a marriage, but would be dealt with as the offence of providing false information.

Is the Marriage Ordinance discriminatory?

- With same-sex marriage/relationships being excluded, it appears that the law is discriminatory.
- As per the Constitution, everyone has the right to be treated equally under the law and not be discriminated on the basis of sexual orientation, etc.
- Will this Review consider changing the law to remove any restrictions on the privileges on the basis of a person's sex, et (in this case, restriction on same sex marriages)?

Commission's considerations

- The Marriage laws need to be updated. This is a recommendation to be put forward. In this regard, the following will be useful considerations.
- Law reform Samoa's way is guided by the views and the context of the people of Samoa.
- The Commission considers that based on popular views and responses voiced throughout Consultations and seminars, it was widely supported that the term 'marriage' should be defined to clarify that it refers to a 'union between a male and female.'
- The exclusion of same-sex marriage / relationships in the law is not discriminatory in the context of Samoa.

General comment – To Repeal or Replace the Marriage Ordinance 1961

- Could the MO 1961 and BDM Act 2002 be consolidated into one law?

Commission's considerations

- To modernize the laws and for the practicality purposes, a recommendation may be made for the relevant authorities to update these laws (MJCA and SBS)
- Consider whether the officiating of marriages --- is shared between the offices (MJCA and SBS) or exclusively exercised by one Office.

NOTE: the provisions on the registration of marriages were removed from the MO 1961 and incorporated in 2002 in the BDMR Act 2002.

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

Judicial Separation – Is this still relevant?

- It is acknowledged that this is important to allow for possible reconciliation or permanent arrangements before an official divorce order is issued
- Iloilo lelei pe aisea ua malilie ai le ulugalii e toe tatala le la faaipoipoga – ave se avanoa pe 3 vaiaso po o se masina.
- Where a couple both agree for their divorce to take immediate effect without waiting for two years, the court should grant such rights to the couple.
- Reiteration of importance of the exception to the period where there is violence, to retain such provisions

Commission's considerations

- From the public consultations, the public strongly advocated for the 'judicial separation' provision to stay in Samoa's laws, to allow a period for possible reconciliation.
- To retain the provisions of judicial separation but to consider clarifying the differences between 'judicial separation' and 'divorce' provisions to avoid confusion.
- Retain the exception to allow for the issuance of divorce orders where violence is involved for the protection of the victims.

- To make consistent the periods in section 7 (Grounds for divorce) sub(2) and sub(3).

Divorce

- A suggestion is made to consider where a couple both agree for their divorce to take immediate effect, for the Court to grant such divorce without having to wait for provided period of separation (2 years) --- (SLRC [correction below](#))
- The law must retain the exception that where there is domestic violence, the separation period of 12 months prior divorce **does not apply**.

Commission’s considerations

- Section 7(2) DMCO – the separation referred to is 12 months and not 2 years. Perhaps the commentary wouldn’t have been made if the author was not mistaken.
- However, if the request to allow a divorce within 12 months, is taken forward, MJCA and the Court may also consider providing for safeguards and restrictions in the use of automatic divorce provisions, by setting a timeframe after such divorce is granted before a couple may re-marry (if this would be a beneficial approach).
- It is recommended that the current exception to allow for the issuance of a divorce order in a case where there is violence involved for the protection of the victim(s), stays.

Division of matrimonial property – should Samoa adopt / enact a separate legislation for this?

- To consider if Samoa should adopt or enact a separate legislation for this?
- Any proposed amendments should take into account any non-financial contributions of the woman including her role as home-maker.

Commission’s considerations

- Note that the DMCO was only amended in 2010 to address matrimonial property. It already provides for the court to take account of the parties’ contributions, inclusive of the “financial or other contribution made directly or indirectly by or on behalf of a party to the acquisition or improvement of any of the property of the parties to the marriage (section 22C DMCO).”
- The use of these provisions to date is useful for a recommendation on any future reforms.
- It is noted also that in Samoa, most couples reside on extended families’ customary land with little to no personal property that can be divided where there is a divorce.
- With only some 4% being freehold land in Samoa, and 81% of land property are communally (not individually) owned, a standalone law would not be ideal.

MAINTENANCE AND AFFILIATION ACT 1967

Maintenance of destitute person by near relative

- Maintenance by near relatives is important to guarantee that care will be provided
- However, these arrangements already exist in the context of the *fa’asamoa* therefore there is **no need** for express legislation to this effect.
- If these provisions are repealed, then suggest that non-legislative measures are put in place as a safeguard to ensure destitute persons are cared for.
- These changes may not be an immediate priority, but it would be for consideration for the future.

Commission’s considerations

- These commentaries are noted.
- To retain provision for maintenance of destitute persons by near relatives

Maintenance of destitute persons with disability

- To consider a provision for the maintenance of a person with disabilities by near relative in the

event that he or she is unable to care for himself/herself due to disability.

Commission's considerations

- The law allows for an application by any person – thus, any person with or without disability. The court is to be satisfied the person is 'destitute', and the party requested for maintenance is able to provide that maintenance.
- A recommendation will be included to the above effect.
- To consider separate provisions about maintenance of a destitute person with a disability.

FAMILY SAFETY ACT 2013

Domestic violence in the law

- To review the definition of "domestic violence" to include economic/financial abuse.
- Exerting financial control over a partner is a well-documented form of family violence, and its omission from the FSA means that victims of this form of abuse are currently afforded no legal protection.
- Makes reference to other jurisdiction who recognize economic abuse in their laws such as some states of Australia and the Republic of Nauru.

Commission's considerations

- The FSA 2013 already provides a definition of 'domestic violence' in section 2.
- Economic or financial abuses are not expressly stated in the definition of *domestic violence*. The current definition of domestic violence does refer to 'any other form of controlling behavior towards a complainant,' which is wide enough to include financial or economic abuse. However, the definition of 'domestic violence' can be amended to list forms of domestic violence as necessary for effective implementation.
- This will be included in the recommendations for the review of the MJCA and the Courts.

Duty for Police officer to apply for or issue a Protection Order

- To include an express duty for a police officer to apply for or issue a PO. This approach allows a police officer to take a proactive and pre-emptive approach to the issue of domestic violence
- Such a duty for police fills a gap by providing protection to victims by placing protective measures in the immediate aftermath of a domestic violence incident where there is obvious violence, but insufficient evidence to immediately charge a perpetrator.
- Reference is made to **police safety orders (PSO)** in NZ which allows police to make a person leave premises for up to 5 days if there are reasonable grounds to believe that family violence has occurred. No consent is required from the person at risk at this stage. During the period of the PSO, the person served the order cannot assault, harass, threaten, stalk or intimidate the protected person.
- Samoa should consider a similar duty for police where domestic violence is suspected or believed to have occurred.

Commission's considerations

- This was also raised in many discussions throughout the public consultations. It will be included in the recommendations. For this recommendation, it is useful to note the following.
- There is no duty of power for police in Samoa to immediately issue any form of protection order for a victim of a domestic violence.
- The FSA 2013 makes available an interim protection order (IPO),¹¹² but it is also required that an application be made to the Court before an IPO is issued.
- For Samoa to consider similar provisions as those used and applied in NZ. This may be a matter requiring further consultations and discussions amongst **MJCA, MOP, OAG** and the **Courts** to ensure any extent and scope of any legislated power of police is practical and can be implemented

¹¹² Family Safety Act 2013, s.5 (Interim protection orders).

for effective protection of victims of domestic violence.

- If such a power is provided for police, there must be safeguards in place to ensure that such a power is not abused and that the duty is carried out without favor or bias towards the perpetrator.

Qn: How can the village and church authorities assist more in enforcing protection orders and combatting domestic violence?

- The Village can assist in this area through the establishment of *Village Safety Committees* to assist in monitoring and enforcing protection orders in relation to domestic violence matters.
- This practice empowers the Village Fono to step in when assistance is needed for enforcement of POs.

Commission's considerations

The above commentaries are noted. These were also discussed at length at the Public Consultations There are two (2) possible approaches to take.

(i) Non legislative approach:

- No amendments to the FSA 2013
- For the Village Fono to use its general power in the Village Fono Act 1990 to respond to and address domestic violence as they see fit within their own village.

(ii) Legislative amendments approach:

- To amend the FSA 2013 (or to include in a new law to be developed after this Review) to expressly provide for the involvement of a Village Fono in the monitoring of PO issued against or to protect any person within their village.
- In addition, amendments may also be made to the Village Fono Act 1990 to add a power of the Village Fono specific to addressing and combatting domestic violence within village, which would include assisting with monitoring and enforcing any PO issued that would involve a member of the village.
- A recommendation may be made for the MWCSO to consider revisions to the Internal Affairs Act 1995 and the Village Fono Act, for the Sui o le Nuu and Sui Tamaitai o le Nuu's roles to include active involvement in seeing to the protection orders (issued by a the courts against a defendant villager or for a victim villager) are appropriately enforced.

FAMILY COURT ACT 2014

Protection of children and families - Are the current restrictions towards media sufficient to protect the privacy of families?

- It would be beneficial for Samoa to adopt similar provision to those in NZ where it specifically states that the leave of the Court must be sought for any matter that includes a child under 18. Allowing children opportunity to be heard in judicial proceeding as in the FCA is consistent with the CRC (Art.12).
- As important as it is to publish family court reports to raise awareness on issues within public interest, it is important to ensure that any publication promotes the best interest of a child involved. Name suppression in a small country like Samoa may not be enough to protect the identity of parties to a family case. This may deter victims of family violence from coming forward for fear of embarrassment.

Commission's considerations

- In order to be satisfied the best interests of a child is served, the courts may hear the child in any matter that concerns a child. This is also raised in the Further Research review (page 63) where what amounts to the best interests of the child must be expressed in the law for example, for the child to be given an opportunity to be heard.

- There are also specific provisions in the case of ‘adoptions’. The Infants Ordinance in section 8 (*Conditions on which orders may be made*) of the IO 1961 provides a list of matters that the Court must be satisfied with before issuing an adoption order, which includes the requirement that ‘an infant if over the age of 12 years consents to the adoption.’
- The FCA 2014 section 11 also provides for the protection of the identities of parties from publication. The identity of the parties, any children and other vulnerable persons who are subject of proceedings, including any matters that might lead to their identification, are prohibited from publication.
- Also see Article 9(1) of the Constitution- “... the public and representatives of news service may be excluded from all or part of the trial in the interests of morals, public order or national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice.”

Annex 7 – Legal Research Recommendations

This Annexure sets out the Legal Research Recommendations. These recommendations are drawn from commentaries, suggestions, concerns raised outside and separate from the input by the public in the Public Consultations. Included also are recommendations taken from the ‘Further Research and Literature Review (Stage 5) discussed in the Final Report.

INFANTS ORDINANCE 1961	
(a)	<p>Best Interests of the Child (FRLR)</p> <p>It is recommended that the considerations listed in ‘Further Research and Literature Review from Stage 5’ (pages 62-64) be expressed in law (in substance or in the Adoption Directives) as a guide for the courts in determining the best interests of a child.</p>
(b)	<p>Who may apply for an adoption order (WS)</p> <p>An applicant or in the case of applicants, one of the applicants for an adoption order must be:</p> <ul style="list-style-type: none"> (iv) a blood relative of the biological parents; and (v) a Samoan citizen; and (vi) has been residing in Samoa for at least 3 consecutive months immediately before an application to adopt a child.
(c)	<p>Adoption of children with physical and intellectual disability (WS)</p> <p>It is recommended that in anticipation of government infrastructure and policies becoming a reality, that the law specifically provide for the adoption of children with physical and intellectual disability to ensure their protection and that they are appropriately cared for by their adopting parents, guardians or carers.</p>
(d)	<p>Prevention of illegal adoptions (WS)</p> <p>It is recommended that the BDMR Act 2002 (by the administration office Samoa Bureau of Statistics) is reviewed for consistency with the implementation practices of both the Ministry of Health (information at birth) and the registration of the birth of the child. This arises from a concern relating to possible illegal adoption at the hospital at the birth of the child, and before registration of a child’s birth, to avoid the legal adoption process.</p>
(e)	<p>Post-adoption follow-up process (WS)</p> <p>The law should provide for a ‘post-adoption follow-up process,’ which will allow the courts to follow up on the progress of the adoption after an order has been made.</p>
(f)	<p>Overseas adoptions (FRLR)</p> <ol style="list-style-type: none"> 1. Court ‘adoption orders’ issued must include safeguards for Samoan children adopted overseas. 2. The Infants (Overseas Adoption) Regulations must be more actively utilised and updated for more relevancy to current context. 3. Samoa must consider becoming a party to the Hague Convention on the Protection of Children in Respect of Intercountry Adoption.
(g)	<p>Legal duty for a parent to care for child (WS)</p> <p>It is not enough there are provisions (ss 85&86 Crimes Act 2013, s12 Infants Ordinance 1961) making it an offence for a parent to neglect or abandon a child, it must be stated in the law that it</p>

	is the legal duty of a parent/s to care for his or her child.
(h)	<p>Customary adoption in Samoa (WS & FRLR)</p> <ol style="list-style-type: none"> 1. If the traditional forms of adoption (or customary adoptions) are recognized, any proposed legal framework to govern such adoptions must adhere to and be consistent with CRC and ensure the child’s best interests are paramount in the process. 2. Should Samoa decide to consider the inclusion of customary adoption in its laws, Papua New Guinea has in place the <i>Adoption of Children Act 1986</i> which may provide some guidance on developing a suitable legal framework for Samoa. The Commission’s review in ‘Further Research and Literature Review from Stage 5’ (page 77-80) above may be of assistance.
MARRIAGE ORDINANCE 1961	
(i)	<p>Marriage formalities (WS)</p> <p>It is recommended that the provisions of the Marriage Ordinance 1961 and the Birth Deaths and Marriages Registration Act 2002 be reconciled in one updated consolidated legal framework to clarify matters inclusive of:</p> <ul style="list-style-type: none"> ▪ the formalities for a marriage ceremony to be complied with and those specific process/information required for registration purposes; and ▪ whether an ‘officiating officer’ is shared between the offices (MJCA and SBS) or exclusively exercised by one Office.
(j)	<p>Same sex marriages (WS)</p> <p>It is recommended that:</p> <ul style="list-style-type: none"> ▪ the law expresses that ‘marriage’ is a union between a man and a woman; and ▪ that ‘same sex marriage’ is included in the list of prohibited relationships in the Schedule of the Marriage Ordinance 1961. <p>Note: This was a strong recommendation from the public consultations also.</p>
(k)	<p>De-facto marriages (WS)</p> <p>To consider recognition as “legitimate marriage” a ‘de-facto’ union of a male and female who have been together for a sufficiently long period and in a stable relationship. Countries overseas now recognise ‘spouse’ as inclusive of one in a de-facto relationship.</p> <p>Note: This was strongly argued against by the church leaders in villages. The Church leaders asked for a law for all unions to undergo a mandatory ‘marriage ceremony’ otherwise it must be made an offence. However, this will encroach on one’s constitutional rights to personal liberty (Art 6), and movement (Art 13).</p>
(l)	<p>Marriage to adoptive relatives (an adoptee’s relatives via being adopted) (WS)</p> <p>It is recommended that ‘adoptive relative’ is included in the list of prohibited degrees of relationships in the Marriage Ordinance 1961. For example to prohibit a marriage between a person adopted in to the family to a first cousin.</p>
MAINTENANCE AND AFFITIONAL ACT 1967	
(m)	<p>Maintenance of destitute persons with disability (WS)</p> <p>It is recommended that the law expressly permits ‘any person’ to apply for the maintenance of a person with disability who is ‘destitute’, by an ‘able’ relative.</p>

FAMILY SAFETY ACT 2013	
(n)	<p>Domestic violence in the law (WS)</p> <p>It is recommended that the definition of “domestic violence” in the Family Safety Act 2013 be expressly stated to include economic/financial abuse. This is now common in overseas jurisdictions. Exerting financial control over a partner is a well-documented form of family violence, and its absence from the Family Safety Act means that victims of this form of abuse are currently afforded no legal protection.</p>
(o)	<p>Duty for Police officer to apply for or issue a Protection Order (WS)</p> <p>It is recommended that the law makes is a duty upon a police officer to apply for a ‘protection order’ under the Family Safety Act 2013. This is to allow a police officer to take a proactive and pre-emptive approach to the occurrence of domestic violence.</p>
(p)	<p>Village and community working together to combat domestic violence (WS)</p> <p>It is recommended that the MWCSO considers revisions to the Internal Affairs Act 1995 and the Village Fono Act 1990, for the Sui o le Nuu and Sui Tamaitai o le Nuu’s to be actively involved in seeing to the protection orders (issued by a the courts against a ‘perpetrator villager’ or for a ‘victim villager’) are appropriately enforced.</p> <p>Note: This was also strongly recommended by the public at public consultations.</p>
OTHERS	
(q)	<p>Child Protection Bill 2020 (FRLR)</p> <p>It is recommended that the review on the ‘Child Protection Bill 2020’ above in ‘Further Research and Literature Review from Stage 5’ (page 74 - 77 above) on this Bill be considered by the Ministry of Women, Community and Social Development and the Office of the Attorney General, if helpful, in finalising the Child Protection Bill 2020.</p>
(r)	<p>Jurisdiction of the Court on family law matters (FRLR)</p> <p>If section 8 of the Family Court Act 2014 is to be realized, part of the ongoing review on family laws is to update the family laws by substituting the references ‘Supreme Court’ and ‘District Court’ as set out in ‘Further Research and Literature Review from Stage 5’ (page 64 – 69 above); and a review of any impacts of this change to the fabric of laws of Samoa. It is recommended that this becomes a separate and special review in the near future.</p>
(s)	<p>International Conventions (FRLR)</p> <p>It is recommended that Samoa’s obligations under international conventions are not undermined in these reviews for law reform. However, the context of Samoa must be taken in to account. The Commission advocates this not only in recognition of Samoa as a sovereign country, but also given the Commission’s enabling legislation (Law Reform Commission Act 2008 section 4). The purpose of this Act is to facilitate the review, reform and development of the laws of Samoa in order to promote Samoan custom and traditions; and enhance the social, cultural, economic and commercial development of Samoa; and ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.</p>

Annex 8 – Public Consultations Recommendations

This Annexure sets out the Public Consultation Recommendations. These recommendations are drawn from the public input and feedback carried out as discussed in **Part D** (Public Consultations) in the Final Report.

INFANTS ORDINANCE 1961	
a)	It is recommended that the age of 21 is retained as the age to which ‘adoption’ can apply.
b)	The best interests of the child prevail. In addition, given the Samoan context, it is recommended to also add in express wording on who can apply for a custody order e.g. a close relative; a grandparent etc.
c)	It is recommended that the best interest of the child continues to prevail. If the law prohibits gay couples, it must follow that a gay couple cannot petition the court for an adoption order. It is recommended there must be express provisions to this effect.
d)	It is recommended that the best interest of the child continues to prevail. The law cannot force one to marry. In the Samoan context, it is in the interests of the child if the child is looked after by both parents. It is recommended that adoption petitions by married couples are more favourably treated than those by unmarried couples.
e)	After an adoption order is made, there must always be room for the court to vary that order. Section 11 allow for this. It is recommended that matters such as those below be expressly included in the orders: (c) how long after an order is made, that a court can vary or discharge an order; and (d) whether conditions can be expressed in the order e.g. that the applicant (and adopted child) report back to the Family Court or MJCA e.g. half yearly up to 5 years after the adoption order.
f)	It is recommended that the ‘legitimation process’ be removed from the Infants laws. That the SBS which houses the registry of births, marriages, adoptions etc. have a clear process in the registrations of biological and adopted children, so as not to require an order from the court that a child is a legitimate child of a couple as required under this old law.
g)	It is recommended that section 26 of the IO is amended to state that upon the marriage of the parents, any children born before the marriage should be considered as children of the marriage. It suffices that the parents are married (marriage certificate) and that they agree a child born before their marriage is their biological child and therefore a child of the marriage also. Both parents’ names must be on the birth certificate of the child.
h)	It is recommended that Samoa considers legal recognition of ‘customary adoption’ in their adoption laws. A precedent that can be considered for adoption in terms of a legal framework is PNG and its Customary Adoption laws.

MARRIAGE ORDINANCE 1961

i)	<p>Section 3 – Interpretation It is recommended that the word “marriage” be expressly defined as “a union or a marriage between a man and a woman”.</p>
j)	<p>Section 6. Appointment of marriage officers It is recommended that the provision relating to marriage officers and solemnization of marriages consider current (and modern) church practices. The Samoa Bureau of Statistics may wish to lead this under the BDM Act 2002.</p>
k)	<p>Section 7. Marriage of persons within prohibited degrees of relationship void It is recommended that the list of prohibited degrees of marriages be maintained in Samoa’s marriage laws.</p>
l)	<p>It is recommended that “same sex marriage” is included in the list of “prohibited degrees of marriage.”</p>
m)	<p>Section 8. Validation of certain marriages already solemnized It is recommended that this provision be omitted, its (outdated) purposes has been served.</p>
n)	<p>Sections 9 Minimum age of marriage & Section 10. Consent to marriage of minors It is recommended that this 2019 amendment stays - the marriageable age is now the same for both men and women – 18 years. For both a boy and a girl, a marriage in the years 18 – 21 require the consent of parents.</p>
o)	<p>Section 14. Notice of marriage (<i>Re: 2 weeks-Notice requirement</i>) It is recommended that the requirement for a 2 weeks’ notice of marriage to be published, is retained, even with the context now in Samoa with social media / quick communication.</p>

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

p)	<p>Sections 4, 5, 6 Section 4 – Petition for judicial separation Section 5 – Decree for judicial separation Section 6 – Decree for judicial separation may be reserved</p> <p>It is recommended that the provisions on Judicial separation are retained in the divorce laws of Samoa.</p>
	<p>Section 7 – Grounds for divorce It is recommended that the timeframes under section 7 (Grounds for divorce) particularly subsections (2) 12 months and (3) 24 months are confirmed. The cross referencing and additions do not match up.</p>

MAINTENANCE AND AFFILIATION ACT 1967

q)	<p>Section 5. Liability of near relatives for maintenance of destitute person</p> <p>It is recommended that:</p> <ul style="list-style-type: none"> (a) MJCA considers a provision for the parties to report to the Registrar of Courts periodically on compliance; and (b) For the MJCA to consider if the law is sufficient for people with disabilities or special needs.
r)	<p>Section 9. Judge may make affiliation order against father of illegitimate child (s9)</p> <p>It is recommended that for affiliation orders against the father:</p> <ul style="list-style-type: none"> (a) clear provisions are made for the <i>process</i> of making an affiliation order (i.e. application, evidence, etc.); and (b) to allow for a DNA test to be part of the evidence or the evidence of the identity of the father of the child.
s)	<p>Section 10. Evidence of mother (s10)</p> <p>It is recommended that in line with international best practices, to remove the requirement for a mother's evidence to be corroborated, in affiliation proceedings adjudging a man as the father of a child (proof of paternity).</p>
t)	<p>Section 18A. Powers of the Court in respect of maintenance</p> <p>It is recommended that there be an express provision to allow the courts to make maintenance orders in kind, and not only on monetary terms, as the reality in Samoa is that not everyone has a formal monetary income (with pays lips as proof of amount of income).</p>

FAMILY SAFETY ACT 2013

u)	<p>Section 7. Protection orders where respondent appears on due date (s7)</p> <p>It is recommended that:</p> <ul style="list-style-type: none"> (c) it is to be expressly stated in the FSA 2013 that the Sui o le Nuu & Sui Tamaitai (victim's village) must be informed of a protection order issued by the Court; and (d) as a consequence, consequential amendments to other relevant laws need to be addressed (<i>Provisions to consider amending</i>) <ul style="list-style-type: none"> (i) s.4 – SN/STN can apply (ii) s.7(3) – SN/STN to be provided a copy of the PO/IPO (iii) Consider whether both the SN and STN need to be provided a copy or would provision to would suffice. (iv) Consider revisions to the Internal Affairs Act 1990 to have an additional duty of SN/STN in the enforcement of any Court Orders in the village
v)	<p>Section 7 continued</p> <p>1. It is recommended that:</p> <ul style="list-style-type: none"> (a) it is expressly stated in the FSA 2013 that the Sui o le Nuu & Sui Tamaitai (perpetrator's village) must be informed of a protection order issued by the Court; and

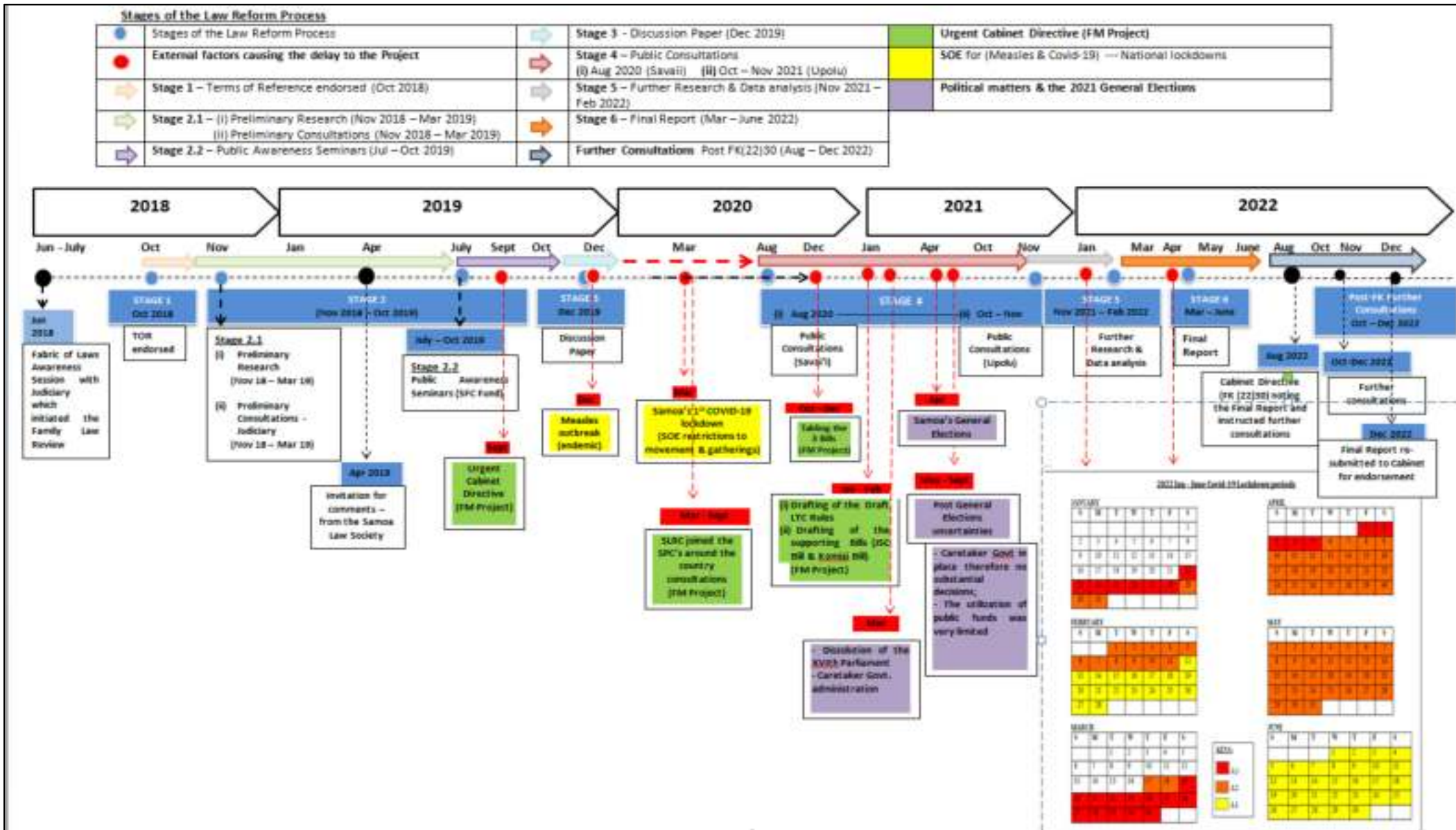
	(b) to consider revisions to the Internal Affairs Act 1990 to have an additional duty of SN/STN in the enforcement of any Court Orders in the village.
	Related to s15 and 16 (Part III – Duties of Police Officers)
w)	To add a specific duty for police officers to initiate an application for a protection order. Also consider consultations with MOP before such reforms are made.
x)	<p>Part III – Protection Orders</p> <p>It is recommended that the following be made available in the law.</p> <p><i>(A) Other assistance:</i></p> <p>i) <i>Alii and Faipule</i> - Pulega a Alii & Faipule must be involved in the enforcement of protection orders</p> <p>ii) <i>Faifeau</i> - the church minister may provide a report (relating to person(s) involved or incident) to assist the Court in its decision</p> <p><i>(B) People to inform/be served with copy of PO:</i></p> <p>i) Sui o le Malo / Sui o Tamaitai – may enable better enforcement of POs in the village</p> <p>ii) consider service to family (place of residence) – <i>consider how practical this will be in the Samoan context</i></p>
y)	<p>Section 18. Offences and Penalties (s18)</p> <p>It is recommended that the administrating Ministry (MJCA) and the Judiciary consider a review of all the fees / penalties for all offences in the family laws, for affordability and accessibility of justice to the public, and for operational/administrative purposes for the MJCA.</p>

FAMILY COURT ACT 2014

	Section 2 - Interpretation
z)	<p>No legislative reforms suggested.</p> <p>Non legislative recommendations</p> <p>As current laws are being interpreted by our courts in the context of Samoa, it is recommended that the definition of family as put forward by the people in the public consultations around the country be considered for any future reviews to the family laws of Samoa.</p> <p>Define ‘family’.</p> <p>“Family” can be summarized by N.E.V.E. (nuclear family, extended family, values, environment) or in any order.</p> <p>1) Your nuclear family – consisting of a father and mother (married) with children living in one home</p> <p>2) Your extended family – comprising of family matai, grandparents, father, mother, children, aunties, uncles, cousins etc.</p> <p>3) Values – God & Religion and Culture/Customary values</p> <p>4) Your environment - The environment of an aiga Samoa provides safety, protection and security. It is a place of freedom (saolotoga) for the family members. There is also a specific order / structure in an aiga Samoa that everyone knows, acknowledges and respects</p>

	<p>TO NOTE: There is no definition of “aiga Samoa” in the laws of Samoa. Is it time we consider incorporating a definition of what “aiga” is in Samoa? A future consideration in contextualising ‘family’ further in the Samoan context.</p>
<p>aa)</p>	<p>Section 6 – Conciliation</p> <p>No legislative reforms suggested.</p> <p>Non legislative recommendations</p> <p>However, it is recommended that the MJCA and the Family Court:</p> <ol style="list-style-type: none"> 1) Raise awareness in the villages about the family laws (what amounts to an offence and the resulting penalties) 2) Raise awareness about the existence of a FCA and its benefits as a dispute resolution mechanism 3) People to also be informed of the availability of the opportunity (at all stages of any court proceedings) to “<i>soalaupule</i>” family law matters (<i>Part 3 – Conciliation and Resolution</i>)

Annex 9 – Chronology for the Review of the Family Laws of Samoa 2018-2022



BIBLIOGRAPHY

A. Legislation

I. Samoa

1. *Constitution of the Independent State of Samoa 1960*
2. *Births, Deaths and Marriages Registration Act 2002*
3. *Divorce and Matrimonial Causes Amendment Act 1963*
4. *Divorce and Matrimonial Causes Amendment Act 1975*
5. *Divorce and Matrimonial Causes Amendment Act 2010*
6. *Divorce and Matrimonial Causes Amendment Act 2013*
7. *Divorce and Matrimonial Causes Ordinance 1961*
8. *Education Act 2009*
9. *Education Amendment Act 2019*
10. *Family Safety Act 2013*
11. *Family Court Act 2014*
12. *Infants Amendment Act 1966*
13. *Infants Fines (Review and Amendment) Act 1998*
14. *Infants (Adoption) Amendment Act 2005*
15. *Infants Amendment Act 2015*
16. *Infants Amendment Act 2019*
17. *Infants Ordinance 1961*
18. *Labour and Employment Relations Act 2013*
19. *Law Reform Commission Act 2008*
20. *Marriage Ordinance 1961*
21. *Maintenance and Affiliation Act 1967*
22. *Maintenance and Affiliation Amendment Act 1975*
23. *Maintenance and Affiliation Amendment Act 1997*
24. *Maintenance and Affiliation Amendment Act 2010*
25. *Village Fono Act 1990*
26. *Young Offenders Act 2007*

Other jurisdictions

II. Australia

1. *Adoption Act 2000* (NSW, Australia)
2. *Adoption Act 2009* (Qld, Australia)
3. *Child Support (Assessment) Act 1989*
4. *Child Protection Act 1999* (Qld, Australia)
5. *Civil Marriages Act (S.C. 2005, c. 33)* (Canada)
6. *Civil Unions Act 2012* (repealed by the Marriage Equality (Same Sex) Act 2013 – also repealed)
7. *Divorce Act (R.S.C., 1985, c. 3 (2nd Supp.))* (Canada)
8. *Domestic Violence and Family Protection Act 2012* (Qld, Australia)
9. *Family Law Act 1975* (Cth, Australia)
10. *Marriage Act 1961* (Cth, Australia)
11. *Succession Act 2006* (NSW, Australia)

III. Canada

1. *Child, Youth and Family Services Act, SO 2017, c 14*
2. *Children's Law Reform Act (R.S.O. 1990, c. C. 12) (Ontario)*
3. *Civil Marriages Act (S.C. 2005, c. 33)*
4. *Intercountry Adoption Act, SO 1998, c 29*
5. *Family Law Act, R.S.O. 1990, c. F.3 (Ontario) Marriage Act, R.S.O. 1990, c. M.3 (Ontario)*
6. *Marriage (Prohibited Degrees) Act (S.C. 1990, c. 46) (Canada)*

IV. Fiji

1. *Adoption Act 2020 (Fiji)*
2. *Adoption of Infants Act Cap 58*
3. *Births, Deaths and Marriages Registration Act [Chapter 49]*
4. *Domestic Violence Decree 2009*
5. *Family Law Act 2003*
6. *Marriage Act [Cap 50] 1969*

V. New Zealand

1. *Adoption Act 1955*
2. *Adoption (Intercountry) Act 1997*
1. *Care of Children Act 2004*
2. *Child Support Act 1991*
3. *Children Act 2004*
4. *Civil Union Act 2004*
5. *Domestic Actions Act 1975*
6. *Family Court Act 1980*
7. *Family Proceedings Act 1980*
8. *Family Protection Act 1955*
9. *Family Violence Act 2018*
10. *Law Reform (Testamentary Promises) Act 1949*
11. *Marriage Act 1955*
12. *Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989*
13. *Property (Relationships) Act 1976*
14. *Wills Act 2007*

VI. Papua New Guinea

1. *Adoption of Children Act 1968*
2. *Customs Recognition Act 1963 (ch 19)*
3. *Local Court (Repeal) Act 2000*

VII Vanuatu

1. *Matrimonial Causes Act No. 13 1986*

B. Subsidiary Legislation

I. Samoa

Bills

1. Draft Child Care Protection Bill 2020

Rules

1. Divorce and Matrimonial Causes (Fees and Costs) Rules 1971
2. Divorce and Matrimonial Causes (Procedure) Rules 1980
3. Divorce and Matrimonial Causes (Fees and Costs) Amendment Rules 1983
4. Divorce and matrimonial Cause (Fees and Costs) Amendment Rules 1988
5. Divorce and Matrimonial Causes Amendment Rules 1990
6. Family Court Rules 2014

Regulations

1. Infants (Fees) Regulations 1971
2. Infants (Fees) Amendment Regulations 1983
3. Infants (Fees) Amendment Regulations 1988
4. Infants Ordinance 1961 (Notice to establish the Adoption Agency Code of Conduct 2006),
5. Infants Ordinance 1961 – Infants (Adoption) Regulations 2006
6. Marriage Regulations 1971
7. Marriage Amendment Regulations 1983
8. Maintenance and Affiliation Regulations 1971
9. Maintenance and Affiliation Regulations 1988

Judge's Directions – Adoption Directions

1. Adoption Practice Direction No: 01- 2004
2. Adoption Practice Direction No: 2001/02
3. Adoption Practice Direction NO.04/2005: Execution of Documents by Solicitors
4. Practice Direction NO: 05/2005: Adoption Applications
5. Practice Direction NO: 03/2005: Adoption Applications
6. Practice Direction: 01/2006: Adoption Applications
7. Practice Direction – 12/02/2010 “Checklist for Adoption Applications”

Other Jurisdictions

II. *Canada*

1. Criminal Code, RSC 1985, c C-46
2. O. Reg. 391/97: Child Support Guidelines (Ontario)

III. *Fiji*

1. Domestic Violence Decree 2009
2. Marriage (Amendment) Decree 2009
3. Marriage (Amendment) Decree 2010

IV. *New Zealand*

1. Vulnerable Children’s Bill 2013

V. *Papua New Guinea*

1. Adoption of Children Regulation 1969

VI. *Solomon Islands*

1. Native Marriage King's Regulation 1945

C. *Case Law*

I. *Samoa*

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. *Craig v Banks* [2012] WSSC 30 (7 May 2012)
5. *Devoe v AG & Public Trustee* [2007] WSSC 13 (2 March 2007) – Samoa customary adoption case law
6. *Elisara v Elisara* [1994] WSSC 14 (22 November 1994)
7. *FML v LLS* [2015] WSFC 1 (17 April 2015)
8. *Hadley v Hadley* [1997] WSMC 2 (23 December 1997)
9. *Hadley v Hadley* [2010] WSSC 61 (19 March 2010)
10. *In re Application for Adoption by Solomona* [1999] WSDC 1 (1 January 1999)
11. *In re application of Masunu Utumapu* [2004] [2-4] WSDC 6 (WSDC)
12. *Infants Ordinance 1961 (Part II) v Chong* [1998] WSSC 9; Misc 20384 (14 May 1998)
13. *L v L* [1994] WSCA 3; 21 1993 (28 March 1994)
14. *LA v SL & TS* [2016] WSFC 5 (5 October 2016)
15. *Laufofo v Croker* [1993] WSSC 5; Misc 15914 (29 November 1993)
16. *LMT v AT* [2016] WSFC 4 (19 September 2016)
17. *Maintenance Officer v Kalala* [2016] WSFC (court decision received from 2nd July 2019, from Hon. Justice Leiataualesa Darryl Clarke)
18. *Maintenance Officer on behalf of Fiasili v Fuimaono* [2003] WSDC 3 (23 August 2003)
19. *Meleisea v Meleisea* [1994] WSSC 24 (24 May 1994)
20. *MM v LK* [2016] WSFC 3 (2 September 2016)
21. *MM v PP* [2014] WSFC 1 (15 August 2014)
22. *Ng Lam v Ng Lam (No 2)* [1972] SamoaLawRp 1; [1970-1979] WSLR 46 (17 February 1972)
23. *Nonu v Electric Power Corporation* [1997] WSSC 20; CP 139-96 (5 February 1997)
24. *Peseta v Siliato* [2016] WSDC 53 (25 November 2016)
25. *Police v Fiapopo* [2016] WSFVC 4 (19 August 2016)
26. *Police v Ataga* [2016] WSSC 172 (8 September 2016)
27. *Police v Afoa* [2016] WSSC 117 (8 June 2016)
28. *Police v Lima* [2014] WSSC 33 (20 June 2014)
29. *Police v Brown* [2015] WSFC 1 (10 April 2015)
30. *Police v Brown* [2016] WSFC 5 (25 August 2016)
31. *Police v Foaiaulima* [2016] WSDC 41 (7 October 2016)
32. *Police v Peti* [2016] WSDC (court decision received from 2nd July 2019, from Hon. Justice Leiataualesa Darryl Clarke)
33. *Police Lagaiaia* [2017] WSDC 23 (13 Oct 2017)
34. *Police v Lafaele* [2015] WSSC 114
35. *Police v MSS* [2016] WSFC 2
36. *Police v MI and TP* [2014] WSSC 105
37. *Police v Uarota* [2011] WSDC 2 (5 August 2011)

38. *Police v Ofoia* [2016] WSFC 1 (5 August 2016)
39. *Police v Faataape* [2016] WSFVC 4
40. *Police v Filivae* [2016] WSFVC 2
41. *Police v Malua* [2016] WSSC 181 (18 August 2016)
42. *Police v Menefata* [2016] WSFVC 7
43. *Police v Neemia* [2016] WSFVC 3
44. *Police v Kamuta* [2016] WSSC 174 (9 September 2016)
45. *Police v Perosi* [2016] WSSC 110 (11 July 2016)
46. *Police v Toeoaana and Afamasaga* [2016] WSFC 1
47. *Police v Taumaloto* [2017] WSSC 160 (13 December 2017)
48. *Police v Mataafa* [2017] WSSC 166 (12 December 2017)
49. *Police v Leota* [2017] WSSC 113 (8 August 2017)
50. *Police v Kobayashi* [2017] WSSC 159 (8 December 2017)
51. *Police v Iakopo* [2017] WSSC 162 (22 November 2017)
52. *Police v XM* [2017] WSSC 157 (26 October 2017)
53. *Police v XY* [2017] WSSC 86 (30 May 2017)
54. *Police v Lemana* [2017] WSSC 67 (27 April 2017)³⁴
55. *Police v Tuu'u* [2017] WSSC 65 (25 April 2017)
56. *Police v Malotutoatasi* [2017] WSSC 64 (21 April 2017)
57. *Police v Olo* [2017] WSSC 10 (16 February 2017)
58. *Police v Peteru* [2017] WSFVC 3
59. *Police v Sapolu* [2017] WSFVC 2
60. *Police v Tautofi* [2017] WSFVC 2
61. *Police v Tufele* [2018] WSSC 109 (1 November 2018)
62. *Police v Sione* [2018] WSSC 89 (19 June 2018)
63. *Police v Peni* [2018] WSSC 37 (23 February 2018)
64. *Police v King* [2018] WSFVC 1 (18 April 2018)
65. *Police v Laupua* [2018] WSSC 125 (18 October 2018)
66. *Police v Faanati* [2019] WSFVC 4 (9 March 2019)
67. *Police v Gabriel* [2019] WSSC 40 (5 June 2019)
68. *Police v Siliato* [2019] WSFVC 5 (14 June 2019)
69. *Police v Tila* [2019] WSSC 32 (25 June 2019)
70. *Police v Crichton* [2019] WSSC 33 (10 July 2019)
71. *Police v Soma* [2019] WSSC 79 (17 July 2019)
72. *Police v Kopelani* [2019] WSFVC 7 (9 August 2019)
73. *Police v Gordlina* [2019] WSFVC 3 (20 September 2019)
74. *Police v Fidow* [2019] WSSC 85 (23 October 2019)
75. *Police v Sooa* [2019] WSSC 55 (31 October 2019)
76. *Police v Aiono* [2020] WSSC 29 (29 May 2020)
77. *Police v Tele'a* [2020] WSSC 100 (16 October 2020)
78. *Police v Leota* [2020] WSSC 69 (23 October 2020)
79. *Police v AT* [2021] WSSC 15 (31 March 2021)
80. *KS v HL* [2014] WSDC 6
81. *R.K.S v H.L* [2014] WSDC 6 (30 May 2014)
82. *S & M v District Court, Apia* [2000] WSSC 42
83. *S v L* [2015] WSSC 178 (29 October 2015)
84. *Samoa Victim Support Group v Inoke* [2-13] WSDC 4 (18 September 2013)

85. *Skelton v Betham* [2018] WSSC 35 (22 January 2018)
86. *Soavele v Lili* [1993] WSSC 22
87. *Stowers v Stowers* [2010] WSSC 30 (14 June 2010)
88. *Stowers v Stowers and Fruean and Public Trustee* [2012] WSCA 11 (31 May 2012)
89. *Stowers v Stowers* [2012] WSSC 30 (7 May 2012)
90. *SV v SV* [2004] WSDC
91. *SVSG v Falealili* [2014] WSFC 2
92. *Telea v NPO* [2017] WSCA 4
93. *Tuiletufuga v Tuiletufuga* [1979] WSLawRp 17; [1970-1979] WSLR 273 (29 August 1979)
94. *Tuugamusu v Tuugamusu* [2017] WSDC 12 (3 March 2017)
95. *VC v II* [2013] WSDC 6 (18 September 2013)
96. *Wagner v Radke* [1997] WSSC 6
97. *Yiu Hing v Yiu Hing* [1969] WSLawRp 6; [1960-1969] WSLR 236 (15 July 1969)

Other Jurisdictions

II. Fiji

1. *Chinsami v Punamma* [1967] FjLawRP 25 (Supreme Court) Appellate Jurisdiction
2. *B v A* [2011] FJMC 79 – maintenance ceases upon remarriage
3. *JC v ML* [2014] FJMC 182 – Maintenance of spouse/cancellation of order – insufficient funds to provide maintenance
4. *LR v KT* [2015] FJMC 150 (Family Division, Suva) – Maintenance for children over 18
5. *LT v ITV* [2015] FJMC 148 (Family Division, Suva) – Maintenance of Child
6. *RS v RL* [2017] FJMC 117: Maintenance 0531 of 2014 (27 June 2017)

III. Papua New Guinea

1. *Regina v Hamboken and Asini (re Isaac Jimmy Napkai, an infant)* [1972] PGLawRp 14; [1973] PNGLR 288 (18 August 1972)
2. *Adoption of an Infant, R* [1976] PGLawRp 81 (9 March 1976)
3. *Kais, The State v* [1978] PGLawRp 241 (6 July 1978)
4. *Wauta v The State* [1978] PGLawRp 326 (8 September 1978)
5. *K, Re* [1979] PGLaw Rp 520 (21 Sept 1979)
6. *Adoption of Children Act 1968 and an Appeal by The Secretary for Justice against an Order made in respect of N, a female child* [1980] PGLawRp 582; [1980] PNGLR 64 (5 May 1980)
7. *Re Adoption of Children Act 1968; Re Application for Access to Welfare Reports* [1980] PGNC 6; N221 (23 May 1980)
8. *G, Re Application to adopt a Child* [1980] PGLawRp 495 (28 Nov 1980)
9. *H and H v Director of Child Welfare* [1980] PGSC 10; [1980] PNGLR 89 (30 May 1980)
10. *K and K v Director of Child Welfare* [1981] PGSC 12; [1981] PNGLR 333 (28 Aug 1981)
11. *Elijah v Doery* [1984] PGNC 16; N491 (2 November 1984)
12. *E and D, Re* [1984] PGLawRp 278 (2 Nov 1984)
13. *Re Application for the Adoption of a Child, AX* [1986] PGNC 4; N276 (30 May 1986)
14. *Puri v Puri* [1993] PGNC 94; [1993] PNGLR 451 (6 August 1993)
15. *Arigo v Arigo* [2021] PGDC 111; DC6066 (6 Aug 2021)

D. Preliminary 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

E. Written submissions

1. Legal Division, Ministry of Finance (August 2019)
2. Office of the Ombudsman (February 2021)
3. A member of the public [male, from Faleapuna, Anoamaa] (January 2022)

F. Literature

I Books and Chapters in Books

1. Jennifer Corrin and Lalotoa Mulitalo, *Adoption and 'Vae Tama' in Samoa* in Bill Atkin (ed), *The International Survey of Family Law* (Jordon Publishing Limited, Bristol 2011) 313-334.
2. Jennifer Corrin and Teleiai Lalotoa Mulitalo, *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.
3. John Caldwell, *Maintenance – Time for a Clean Break?* in Jessica Palmer et al (eds) *Law and Policy in Modern Family Finance: Property Division in the 21st Century* (Intersentia, 2017) 393-414. DOI: <https://doi.org/10.1017/9781780686288.019>.
4. Lalotoa Mulitalo and Jennifer Corrin, *Reform of Maintenance and Divorce Laws in Samoa: Appropriate for the 'Aiga'?* in Professor Bill Atkin (ed), *The International Survey of Family Law* (Jordon Publishing Limited, Bristol 2012) 283-298.
5. Meleisea, Leasiolagi M et al, *Political Representation and Women's Empowerment in Samoa* (Centre for Samoan Studies, National University of Samoa, Le Papaigalagala, Apia, Samoa 2015).
6. 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 (With emphasis 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).
7. Pacific Regional Rights Resource Team, Secretariat of the Pacific Community, *Supplement to LAW FOR PACIFIC WOMEN: A legal rights handbook*. (United Nations Trust Fund to Eliminate Violence Against Women & Australian AID, 2013).
8. United Nations, *Child Adoption: Trends and Policies* (United Nations, Department of Economic and Social Affairs, New York, 2009).

II Journal Articles

1. Don Paterson, 'Mariango v Nalau [2007] VUCA 15: Compensation for Contributions to Property by De Facto Partners' (2008) 12(1) *Journal of South Pacific Law*, 150-153.

2. Jennifer Corrin & Lalotoa Mulitalo, 'Not 'mere window dressing': children's rights and adoption in Samoa' (2015) 47(2) *Journal of Legal Pluralism and Unofficial Law*, 208-225, DOI: <https://doi.org/10.1080/07329113.2015.1085767>.
3. Patrick Parkinson, 'Forty Years of Family Law: A Retrospective' (2015) 46(3) *Victoria University of Wellington Law Review*, 611.
4. P.F.A. Woodhouse, 'Family Law in Society' [1969] 1(2) *Auckland University Law Review* 44.
5. Ross Mackay, 'The Impact of Family Structure and Family Change on Child Outcomes: A Personal Reading of the Research Literature' (2005) 24 *Social Policy Journal of New Zealand*, 111-134.
6. Sue Farran, 'Family Law and French Law in Vanuatu: An Opportunity Missed?' (2004) 35 *Victoria University of Wellington Law Review*, 367-383.
7. Sue Farran, 'Goodhew v Goodhew [2007] SBHC 140: Towards a South Pacific Jurisprudence?' (2008) 12(1) *Journal of South Pacific Law*, 120-127.
8. Sue Farran, 'What is the Matrimonial Property Regime in Vanuatu?' (2001) 5:1, *Journal of South Pacific*.

III Law Reform Commission Publications

1. Australian Law Reform Commission, Review of the Family Law System (Discussion Paper, November 2018).
2. New Zealand Law Commission, Adoption: Options for Reform (Preliminary Paper 38, October 1999).
3. New Zealand Law Commission, Family Court Dispute Resolution: A Discussion Paper (Preliminary Paper 47, 2002).
4. New Zealand Law Commission, New Issues in Legal Parenthood (Report 88, April 2005).
5. Samoa Law Reform Commission, Review of the Family Laws of Samoa (Discussion Paper 27, December 2015).
6. The Law Commission (United Kingdom), Corroboration of Evidence in Criminal Trials (Working Paper No. 115, 1990).
7. The Law Commission (United Kingdom), The Work of the Law Commission: Incorporating the Twelfth Programme (December 2015).

IV Other Reports and Publications

1. Afamasaga Toleafoa Fa'amatala for the Ministry of Women, Community and Social Development: Division for Women, Men Against Violence Advocacy Group (MAVA): Men Take Aim at Domestic Violence – An International Women's Day Initiative (2010).
2. Bernadette Alexander for the Research Material Series No 96, Probation as a Community-Based Rehabilitation Programme (Singapore) (United Nations Asia and Far East Institute: For the Prevention of Crime and the Treatment of Offenders, September 2015).
3. ICAAD (under ICAAD's Clinton Global Initiative Commitment to Action), An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence Cases in the Pacific Island Region (2015).
4. Kaleidoscope Australia – Human Rights Foundation, Sexual Rights Initiative and LGBTI persons in Samoa, Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Samoa (for the 25th session of the Universal Periodic Review, April-May 2016).

5. Ministry of Justice (NZ), *Adoption in Aotearoa New Zealand: Discussion Document 44* (June 2021).
6. Ministry of Justice (NZ), *Family Violence Risk Assessment and Management Framework: A common approach to screening, assessing and managing risk* (2017).
7. Ministry of Women, Community and Social Development (Samoa), *Child Protection Baseline Report for Samoa* (2013).
8. Ministry of Women, Community and Social Development (Samoa), *Child Vendors Pilot Survey* (2005).
9. Ministry of Women, Community and Social Development (Samoa), *Country Report on the Status on the Rights of the Child in Samoa* (2013).
10. Ministry of Women, Community and Social Development (Samoa), *Report on the activities implemented to celebrate the Prevention of Child Abuse, Neglect and Exploitation* (2015).
11. Ministry of Women, Community and Social Development (Samoa), *Report on the Status of the Rights of the Child in Samoa: Initial Report on the Implementation of the Convention on the Rights of the Child* (2005).
12. Ministry of Women, Community and Social Development (Samoa), *Samoa National Childcare and Protection Policy 2020-2030* (2020).
13. Ministry of Women, Community and Social Development (Samoa), *Sixth Periodic Report on the Convention on the Elimination of All Forms of Discrimination against Women* (2017).
14. P R H Webb, *Further Aspects of Maintenance Law* (paper presented at Auckland Law Faculty Seminar Series 1981 at University of Auckland, 20th August 1981 for Legal Research Foundation Inc.).
15. Rachel Birnbaum for the Department of Justice (Canada), *The Voice of the Child in Separation/Divorce Mediation and Other Alternative Dispute Resolution Processes: A Literature Review* (June 2009).
16. Samoa National Human Rights Institution, *Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Samoa (for the 25th session of the Universal Periodic Review, September 2015)*.
17. United Nations Human Rights - Office of the High Commissioner, *International Human Rights Law and Sexual Orientation & Gender Identity* (as at 2019).

V *International Conventions*

1. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979
2. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989,
3. Hague Convention on the Civil Aspects of International Child Abduction 1980
4. Hague Conference on Private International Law, *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993

VI *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)
2. Samoa Bureau of Statistics, '*Map 1.2 Population distribution by district 2011*' in Samoa Bureau of Statistics "*Samoa's Social Economic Atlas 2011*"; 9.

<https://www.sbs.gov.ws/digi/Samoa%20SOCIO-ECONOMIC%20Atlas%202011.pdf>
(Accessed March 24th 2022).

VII *Internet Materials*

1. Community Law NZ, *Divorce: Getting a Dissolution Order. What are the grounds for dissolving a marriage or civil union?* Community Law, NZ (6th April 2019).
2. Community Law NZ, *The dissolution order: How it gets made and when it takes effect* (2019) Community Law < <https://communitylaw.org.nz/> >
3. *Federal Circuit and Family Court of Australia*, Family Law (21 March 2022) <<https://www.fcfoa.gov.au/fl>>
4. Kris Faafoi, *Adoption Laws under Review* (18 June 2021) Beehive – Government of New Zealand, < <https://www.beehive.govt.nz/release/adoption-laws-under-review#:~:text=New%20Zealand's%2066%2Dyear%2Dold,largely%20the%20same%20since%201955>>
5. New Zealand Ministry of Justice, *Separation & Divorce* (25 May 2020) < <https://www.justice.govt.nz/family/separation-divorce/> > (accessed 31 January 2019).
6. Supreme Court in Western Australia, *Court System in Western Australia* (21 March 2022) <https://www.supremecourt.wa.gov.au/C/court_system_in_western_australia.aspx>

VIII *News Articles*

1. Beth Tribolet, Teri Whitcraft and Scott Michels, 'Four Sentences in Scheme to 'Adopt' Samoa Kids', *ABC News* (25 February 2009).
2. Clive Coleman, 'Divorce law: Reforms to end 'blame game' between couples. Analysis: Old system was not letting couples move on'. *BBC* (9 April 2019).
3. Jeremy Sutton, 'Why NZ's divorce laws need to change'. *NZ Herald* (4 November 2018).
4. Lisette Reymer, 'Family of murdered woman Kim Richmond fight for law reform'. *Newshub*, (3 June 2019).
5. Lucy Warwick-Ching, 'Divorcees face lower legal bills under law reform: Introduction to no-fault divorce will reduce tension in many cases'. *Financial Times* (12 April 2019).
6. Ofisa o le Sooupu (Fofoga Samoa), 'Toe silasila le malo I le Tulafono o le vaetamaina o fanau I atunuu mamao', *Fofoga Samoa*, no date.
7. Perraudin F. and Penna D. 'No-fault divorce reform will allow families to function, says lawyers'. *The Guardian*, (9 April 2019).