



Samoa
Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa



DISTRICT COURTS ACT 1969
Issues Paper (IP/09)

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Introduction

The following Issues Paper looks into analyzing the District Court Act 1969 as a whole for the dissemination of issues regarding the development and enhancement of the Act for future purposes. This discussion paper takes into consideration comparable jurisdictions such as Western Australia, Victoria, Australia and New Zealand for the purposes of providing a guiding framework for Samoa's District Courts. The paper also takes into account various research undertaken by Samoa Law Reform Commission ("the Commission") with the relevant stakeholders to garner relevant information for the purposes of reviewing and reforming the District Court Act 1969.

Table of Contents

Introduction	2
Table of Contents	3
1. Is there a need for change?	4
2. The Jurisdiction of Samoa’s District Courts	4
Civil Jurisdiction	4
Criminal Jurisdiction	5
Comparable Jurisdictions	5
Summary Judgment	10
Discussion	10
3. Fa’amasino Fesoasoani	12
Civil jurisdiction	12
Criminal jurisdiction	12
The Concept of Small Claims/Minor Claims Tribunal	12
Comparable Jurisdiction	13
Alternative Dispute Resolution	13
Discussion	15
4. Transfer of Proceedings	16
District Court to Supreme Court:	16
Supreme Court to District Court	17
Comparable Jurisdiction	17
Discussion	19
5. Judges and Registrars	20
Appointment of Judges	20
Office Tenure	20
Registrars	21
Discussion	23
Comparable Jurisdiction	23
6. Divisions of the District Court	24
Jurisdiction	24
Comparable Jurisdiction	26
New Zealand	26
Jurisdiction	27
Rights of a young person	27
Jurisdiction	28
Discussion	28
7. Summary of Questions	30

1. Is there a need for change?

1.1 In the 42 years that the District Court Act 1969 (“the DCA”) has been in existence, there has only been one amendment to the Act. In November, 1991 a cabinet directive¹ was issued for the review and reform of the Magistrates’ Court Act 1969. Under the cabinet directive the following changes that were recommended:

- Changing the name of Magistrates Court to District Court;
- Changing the name of Magistrate to District Court Judge;
- Changing its civil jurisdiction i.e. the Fa’amasino Fesoasoani and the District Court to extend its jurisdictional claims.

1.2 Hence in 1999, the new amendments in the proposed District Court Amendment Bill 1992 came into force with the following changes:

- Jurisdiction of the District Courts has been increased (sections 23, 24, 25, 27, 28 and 29)² from \$1,000 to \$10,000 by section 6 of the 1992 Amendment Act;
- Sections 33 and 34 (Fa’amasino Fesoasoani jurisdiction) extended to \$1,000 and \$2,000 by section 7 of the Amendment Act 1992.

1.3 However, the Courts have rapidly evolved and are undergoing problems regarding basic administration within the courts procedures and processes that precedes litigation. This evolution has seen the appointment of several new judges to the bench, more responsibilities and duties afforded to these judges and a workload that increases with each coming year. Because the Act is outdated, new methods regarding court work that could be implemented to improve efficiency and effectiveness in court work have yet to be realized. This in itself creates a need for change in order to raise the standard that a court should have in order to effectively and efficiently carry out its duties.

2. The Jurisdiction of Samoa’s District Courts

Civil Jurisdiction

2.1 Although, the general civil jurisdiction of the Courts has been amended to \$10,000, Judges and Registrars alike are still experiencing problems with regards to dealing with and hearing cases within the jurisdiction of the Court.

2.2 Cases that can be brought before the District Court are actions founded on contract and tort where the judges can hear and determine claims for debt, damage, demand or the value of chattels claimed provided it is not more than \$10,000. Claims can also be heard in the Courts where money is recoverable by statute, actions for the recovery of freehold land, division of chattels and equity so long as the sum being claimed does not exceed \$10,000.³

¹ F.K (91) 44

² *District Courts Act 1969*

³ *District Courts Act 1969, s23,s24,s25,s27,s28*

2.3 One of the problems experienced by the Court is that while the jurisdiction of the District Courts has increased there is still the limitation that if a claim exceeds \$10,000 then a party would have to abandon part of the claim so that the District Court has the jurisdiction to hear and determine such a case. Cases that are within the jurisdiction of the District Courts to handle are most often transferred to the Supreme Court for hearing. This severely limits the District Court's abilities to effectively deal with cases that are within their jurisdiction and also creates a massive backlog of outstanding cases to be heard within the Supreme Court.

2.4 The civil jurisdiction of the District Courts in the DCA is also very general. It does not set out provisions looking into matters relating to Family and Youth claims as well as Coroner's Inquest hearings that take place under the District Courts.

Criminal Jurisdiction

2.5 The criminal jurisdiction of the Act is set out as information or charges relating to any offence punishable by a fine, penalty or forfeiture of any amount or a term of imprisonment not exceeding 5 years. It also has the jurisdiction to hear and determine any proceedings under the Customs Act 1977.⁴ The criminal jurisdiction is general in that any and all sorts of charges or information are laid before the Court they are to be heard in. This creates problems regarding management of cases.

2.6 Because of the general provisions in the District Court Act regarding the criminal jurisdiction, the Ministry of Police and Prisons are laying charges at the District Court with limited information on any matter deemed to be of a criminal nature thus overloading Judges and Registrars creating a backlog of cases, late sentencing, late trial hearings, and full hearings for minor cases that could be settled out of court or within an informal sitting. The backlog of outstanding cases can be from 1 year to 2 years⁵ without it ever going to a hearing or without any sign of progress.

Comparable Jurisdictions⁶

(i) Western Australia

Civil Jurisdiction

2.6 Courts in Western Australia operate in a hierarchical system. This means that there is generally an avenue of appeal to a higher court, and the lower court is bound to follow the law as pronounced in decisions of a higher court. In Western Australia, the hierarchy moves upwards from the Magistrates Court to the District Court and then to the Supreme Court which also has a Court of Appeal. The ultimate court of appeal is the High Court of Australia. The Federal Court of Australia also have

⁴ Proceedings under the Customs Act 1977 include but are not limited to the following as set out in section 213 – section 233 i.e. Personation of Customs officer, smuggling, defrauding the revenue of Customs, influencing or resisting Customs officer, Obstructing a Customs Officer etc.

⁵ Samoa Law Reform Commission secondment, Ministry of Police and Prisons: Police Prosecutions Division of Samoa (Apia, 09 January 2011)

⁶ Court Structure diagrams are attached as endnotes of the Issues Paper.

jurisdiction in Western Australia however it is in relation to laws of the Federal Parliament and not matters relating the individual State as it is.⁷

2.7 The District Court of Western Australia is an intermediate trial court placing it between the Magistrates Court and the Supreme Court in the Western Australia courts hierarchy. The District Court deals with serious criminal offences including serious assaults, sexual assault, serious fraud and commercial theft, burglary and drug offences. The District Court also determines civil claims up to \$750,000 and has unlimited jurisdiction in claims for damages for personal injury.⁸

2.8 The Magistrates Court of Western Australia deals with minor civil and criminal matters and merged the former Court of Petty Sessions, Local Court and Small Claims Tribunal into a single court dealing with civil and criminal matters and is the first tier in Western Australia's court structure⁹. The District Court of Samoa is also the first tier in its court structure and the similarities of jurisdiction and administrative duties and responsibilities between the two Courts account for the comparison of Western Australia's Magistrates Court with Samoa's District Court.

2.9 The general civil jurisdiction of Western Australia is structured in such a way that there is no confusion as to what sort of cases or applications can be heard within the jurisdiction of the Magistrates Court.

2.10 The civil jurisdiction as set out in Samoa's DCA is rather limited in that it sets out only a few actions in contract and tort that the District Courts have jurisdiction over as set out in paragraph 2.2. This is not the case for the Magistrates Courts of Western Australia where it details the kind of claims that can be brought before a hearing provided that these claims are within its jurisdictional limit of \$75,000 as set out in 2.11.

2.11 The general civil jurisdiction of the Magistrates Court of Western Australia can deal with a claim for an amount of money that is:

- A debt or damage;
- The whole or part of the unliquidated balance of a partnership account;
- The whole or part of the amount of the distributive share under an intestacy or of a legacy under a will;
- A claim that involves equitable claim or demand where the only relief claimed is the recovery of an amount of money or of damage;
- A consumer/trader claim;
- A claim to recover possession of personal property that is unlawfully detained;
- A claim to recover possession of real property;

⁷ Department of Justice, *Western Australia's Court System: Student Resource Book: Court Services Division* (2001) p9

⁸ District Court Western Australia (2012) <http://www.districtcourt.wa.gov.au/> (Accessed 12 March 2012)

⁹ Government of Western Australia: Department of the Attorney General, *Court and Tribunal Services: Magistrates Court* (2009) http://www.courts.dotag.wa.gov.au/M/magistrates_court.aspx?uid=0300-7242-1972-1430 (Accessed 12 March 2012)

- Any claims irrespective of the amount claimed or the value of the property if the party against which the claim is made consents; and
- A claim for indemnity.¹⁰

2.12 The Magistrates Court also has jurisdiction and powers relating to the declaration of partnership or the dissolution of partnership provided that this claim and the abovementioned claims are all within the jurisdictional limit of \$75,000.

Criminal Jurisdiction

2.13 The criminal jurisdiction of Western Australia is just as detailed as its civil jurisdiction. Under the Magistrates Court Act 2004 the Court has the jurisdiction:

- To hear and determine a charge of a simple offence;
- To hear and determine a charge of an indictable offence that can be dealt with summarily;
- To commit a person charged with an indictable offence that is to be dealt with on indictment to the District Court or the Supreme Court for trial or sentence;
- To commit a person charged with an indictable offence that is to be dealt with summarily to the District Court;
- To deal with any case that under a written law is to be dealt with by a court of summary jurisdiction

2.14 An indictable offence is an offence where the defendant has the right to trial by jury. There are two categories of indictable offences: major indictable offences and minor indictable offences. Major indictable offences must be heard in the District Court or the Supreme Court. Criminal trials before these courts are held before a judge and/or jury, unless the defendant chooses to have a trial by a judge without a jury.

2.15 Minor criminal offences known as 'simple offences' are dealt with in the Magistrates Court. More serious offences i.e. indictable offences begin in the Magistrates Court. While some of these serious offences (known as 'either way offences') may be dealt with in the Magistrates Court, the most serious offences must be sent on to be heard in the District or Supreme Courts¹¹. Under its criminal jurisdiction the Magistrates Courts of Western Australia is a court of summary jurisdiction¹².

2.16 There is no list of simple offences provided for in the Criminal Code¹³ of Western Australia however section 67 of Western Australia's Interpretation Act 1984 defines simple and indictable offences:

¹⁰ *Magistrates Court (Civil Proceeding) Act 2004, s6*

¹¹ Magistrates Court of Western Australia, *Criminal Matters* http://www.magistratescourt.wa.gov.au/C/criminal_matters.aspx?uid=2643-5409-2996-4234 (Accessed 12 March 2012)

¹² *Criminal Code Act Compilation Act 1913* (Western Australia) s1, ss1

¹³ *Criminal Code Act Compilation Act 1913* (Western Australia)

(1) Offences are of 2 kinds: indictable offences and simple offences.

(1a) An offence designated as a crime or as a misdemeanor is an indictable offence.

(2) An offence not otherwise designated is a simple offence.

(ii) Victoria

2.17 Victoria's court system has a hierarchy of courts and tribunals and is structured to have the Supreme Court as its superior court that hears and determines substantial criminal and civil matters. The County Court is an intermediate trial Court, its civil and criminal jurisdictions is higher than the Magistrates Court and lower than the Supreme Court in the Victorian courts hierarchy. The County Court can hear matters at first instance and in some circumstances on appeal. Then there is the Magistrates' Court which hears:

- criminal and civil matters;
- Civil disputes arising from claims for damages, debt and other monetary demands up to \$100,000 and applications for intervention orders.

Civil Jurisdiction

2.18 The jurisdictional limit of Victoria's civil jurisdiction is \$100,000. Part 5 – Civil Proceedings of the Act¹⁴ sets out section 100 which states the extent of the civil jurisdiction of Victoria's magistrates courts in the Magistrates' Court Act 1989 as set out below:

(1) The Court has jurisdiction subject to subsection (2) –

- a. *To hear and determine any cause of action for damages or a debt or a liquidated demand if the amount claimed is within the jurisdictional limit; and*
- b. *To hear and determine any claim for equitable relief if the value of the relief sought is within the jurisdictional limit; and*
- c. *To hear and determine with the consent in writing of the parties –*
 - i. *Any cause of action for damages or a debt or a liquidated demand irrespective of the amount claimed; and*
 - ii. *Any claim for equitable relief irrespective of the value of the relief sought; and*
- d. *To hear and determine any other cause of action of the Court is given jurisdiction to do so by or under any Act other than this Act.*

(2) The Court does not have jurisdiction in any cause of action –

- a. *In which the effect of, or the validity or invalidity of any act, matter or thing done or omitted to be done by any person or body whatsoever in the exercise or purported exercise of any power or duty conferred or imposed on that person or body or purportedly conferred or imposed on that person or body by or under –*
 - i. *Any royal prerogative; or*
 - ii. *Any statute –*

¹⁴ *Magistrates' Court Act 1989 (Victoria, Australia)*

- Is sought to be determined or declared; or*
- b. In the nature of a proceeding for a prerogative writ; or*
 - c. Brought on a judgment of the Supreme Court or the County Court.*

(3) For the purpose of determining in a proceeding involving property whether the amount claimed or the value of the relief sought is within the jurisdictional limit, a certificate which purports to have been used by a valuer and which purports to state the value of the property as at a particular date is admissible in evidence is proof of the value of the property as at that date.

(4) The Court does not cease to have jurisdiction in respect of a cause of action because –

- a. Part of the cause of action arose outside Victoria – if a material part of it arose in Victoria; or*
- b. The whole cause of action arose outside Victoria – if the defendant resided within Victoria at the time of being served with the complaint.*

(5) A minor may bring a proceeding in the Court for the recovery of money payable to the minor under a contract of service or a contract for services as if the minor were of full age.

Criminal Jurisdiction

2.19 The extent of the criminal jurisdiction in Victoria as set out in section 25 of the Magistrates' Court Act 1989 is as follows:

- (1) The Court has jurisdiction to –
- a. To hear and determine all summary offences¹⁵; and*
 - b. To hear and determine all indictable offences which may be heard and determined summarily; and*
 - c.*
 - d. To conduct committal proceedings into indictable offences and either –*
 - i. Direct the accused to be tried and order that the accused be remanded in custody until trial or grant bail; or*
 - ii. Discharge the accused; and*
 - e. To make orders to enforce the payment of all fines which are by any Act directed to be recovered in the Court or for the recovery of which no provision is made.*

2.20 The Magistrates Court Act 1989 also states that the Court can hear any offences for which the maximum fine is \$120,000 or the maximum jail term is 10 years or less.¹⁶

¹⁵ A summary offence is an offence that can be heard by a magistrate sitting alone, rather than a judge and jury. It can also be heard in the absence of the defendant. This type of hearing is called an ex-parte hearing. Summary offences include road traffic offences e.g. careless driving, drink driving and unlicensed driving, minor assaults, property damage and offensive behavior.

¹⁶ Department of Human Services – Victoria, 'Structure of the Court System' (Advice No.1329, Department of Human Services – Victoria, 2007)

Summary Judgment

2.21 In 1992, summary judgment was introduced into the District Courts of New Zealand with the revision of its rules. Summary judgment allows successful plaintiffs to obtain judgment without the need for a full defended hearing and the interlocutory process and procedures that a full hearing often entails. In order to obtain summary judgment, a plaintiff must file and serve an application for summary judgment with a statement of claim and notice of proceedings.

2.22 In addition an affidavit must be filed which verifies the allegations in the statement of claim as well as containing a statement of the plaintiff's belief that there is no defence and the grounds for that belief.¹⁷ A summary judgment application may be dismissed if the court ascertains that there is a possible defence. In other words, the court will not grant a summary judgment application when:

- i. *an arguable defence is raised; or*
- ii. *where it is unable to resolve material issues of fact on an affidavit; or*
- iii. *Where the plaintiff does not satisfy his or her onus of establishing that there is no arguable defence.*¹⁸

2.23 A summary judgment application will only be refused when a notice of opposition has been filed. If there is no notice of opposition filed but the Judge is nevertheless not satisfied that summary judgment is appropriate, the proceeding will be set down for hearing by way of formal proof.¹⁹

Discussion

2.24 The setting out of the Magistrates' Court jurisdiction of Victoria is quite clear but general in its arrangement. Western Australia on the other hand, lists or specifies in detail the matters within the jurisdiction of the Magistrates Court. Victoria and Western Australia also operate on the fact that summary judgment is a well established process as indicated by the abovementioned provisions of each respective jurisdiction.

2.25 The disadvantage of detailed provisions is that it creates rigidity in hearing and determining proceedings that Courts may be unable to adhere to with regards to unique and or special circumstances surrounding court proceedings. Generality on the other hand may not provide a clear and concise direction by which judges may confer upon when hearing or determining proceedings.

2.26 The DCA of Samoa sets out actions or claims where some kind of debt, demand, value of chattels or money is recoverable. It does not set out other actions of a different nature such as

¹⁷ Extract from: Janet Lewin, "Small Civil Claims in the District Court: A discussion paper" Department for Courts, New Zealand (1998) pp 16-21

¹⁸ See above, No.17

¹⁹ See above, no 9

consumer or trader claims²⁰, indemnity claims or actions where the whole or part of the amount of a distributive share under an intestacy or legacy under a will is claimed as seen in the provisions of the Magistrates Court (Civil Proceeding) Act 2004 of Western Australia.

2.27 The jurisdiction of Victoria as mentioned above not only sets out the jurisdiction of its Magistrates Court but it also sets out its jurisdictional limits. Victoria's Magistrates Court does not have the jurisdiction to process and hear and determine causes of action that seek remedies such as prerogative writs or extraordinary remedies i.e. mandamus, prohibitions, injunctions, habeas corpus or certiorari.²¹

2.28 This is not the case in the DCA of Samoa where it is completely silent. The lack of clear instructions in the DCA allows for the assumption that if it is not provided for in the DCA then the District Court does not have the jurisdiction to hear such claims. Although prerogative writs are primarily dealt with in the Supreme Court of Samoa, one stakeholder has expressed whether the process of a prerogative writ can be introduced into the jurisdiction of the District Court especially in regards to writs such as mandamus and whether the District Court could mandamus a Lands and Titles Court decision.

2.29 The DCA states that the civil jurisdiction of the District Court is \$10,000. The jurisdiction of Victoria's Magistrates' Court is \$100,000 and Western Australia has a jurisdiction limit of \$75,000. Stakeholders during preliminary consultations of the DCA have raised the possibility of increasing the jurisdiction of the District Court. A few stakeholders have ascertained that the jurisdiction of the DCA should be up to \$50,000 while one stakeholder has opted to raise the jurisdiction to \$20,000 or \$40,000 on the premise that the bulk of civil litigation in Samoa is worth between \$20,000 and \$100,000. While it is an idea worth considering raising the jurisdiction of the District Court, it should not be raised to such an amount that it will result in too many cases being tried in the District Court.

2.30 Discussion of increasing the jurisdiction of the District Court has also led to the issue of judges' capacity to hear and determine claims should the jurisdiction be raised. It was raised during preliminary consultations that if the jurisdiction of the District Court is to be raised, then judges of the District Court should also be increased to manage what would be an increased work load.

Question:	<ol style="list-style-type: none">1. <i>Should the jurisdiction of the main District Courts be increased from \$10,000 to \$50,000 or any other amount?</i>2. <i>Should the civil jurisdiction of the District Court Act 1969 be reformed to reflect clear and concise instructions on the hearing and determination of cases?</i>
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²⁰ Section 7, ss3 of the Magistrates Court (Civil Proceedings) Act 2004 defines consumer/trader claims as claims that (a) arises out of a contract between a consumer and a trader for the supply of goods or the provisions of services; and (b) made by the consumer or the trader against the other; and (c) claims one or more of the following – performance of work or the provision of services of a value that is not more than the jurisdictional limit; the payment or relief from payment of an amount that is not more than the jurisdictional limit; the return or replacement of goods of a value that is not more than the jurisdictional limit.

²¹ *Magistrates' Court Act 1989* (Victoria, Australia) s100,ss2.

	<p>3. <i>Should the District Court general civil jurisdiction use Western Australia or Victoria as a guideline to structure our own jurisdiction?</i></p> <p>4. <i>Should the criminal jurisdiction reflect in detail the offences that the District Court can hear and determine?</i></p> <p>5. <i>Should the penalty of 5 years imprisonment under the criminal jurisdiction of the District Court be extended to 7 years²²?</i></p> <p>6. <i>Should the District Courts implement summary judgment?</i></p>
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3. Fa’amasino Fesoasoani

Civil jurisdiction

3.1 The Fa’amasino Fesoasoani Court (“the FF Court”) on the other hand deals with minor contractual or tort action where the debt, demand, damage or value of the chattels does not exceed the sum of \$1,000. It can also hear and determine actions for the recovery of any penalty, expense, contribution or other like demand that can be recoverable so long as the claim does not exceed the sum of \$1,000.

Criminal jurisdiction

3.2 The criminal jurisdiction of the FF Court is similar to the general criminal jurisdiction in its generality. It is any offence that does not exceed the penalty of 1 year imprisonment or a fine of 10 penalty units or both. For the charge of theft, the value of the property stolen should not exceed \$1,000.

3.3 Although the jurisdictional limit of the FF Court has been extended, the majority of the cases tried are minor to be afforded a full penalty and there are concerns from the Registrars and the Police Prosecutors as to whether it is necessary to try these minor cases in a formal setting irrespective of whether a judge from the Lands and Titles Court is sitting. The brief mention on the FF Court criminal jurisdiction is due to the lack of access that the Commission has had in gaining relevant information such as case law as well the busy schedules of the Registrars.

The Concept of Small Claims/Minor Claims Tribunal

3.4 Small claims tribunals are usually catered towards civil disputes. A small claims or minor claims tribunal would provide the average person with a quick, inexpensive, informal and private way to help resolve a wide range of civil disputes. Disputes Tribunals as defined by the Ministry of Justice of New Zealand are not like the formal courts. There are no lawyers or judges. A referee will encourage both parties to discuss the dispute and may suggest ways to settle it. If an agreement is not reached, the referee will make a decision. Referees are required to give either oral or written reasons for their decisions.

²² Stakeholders views in preliminary consultations conducted by the Commission

Comparable Jurisdiction

(i) New Zealand

3.5 The Disputes Tribunal (“the Tribunal”) as it is called in New Zealand hears claims for less than \$15,000 or \$20,000 provided that both parties to the dispute have consented to process the matter in the Tribunal.. A claim must be disputed before it can be heard in the Tribunal. This means that a person cannot bring a debt recovery claim to the Tribunal. The Tribunal can encourage both parties to discuss the dispute and may suggest ways to settle it. If an agreement is not reached, the referee will make a decision.

3.6 Referees are required to give either oral or written reasons for their decisions. Both agreements and decisions are binding and can be enforced in the same way as a District Court order. Examples of orders that a referee can make are:

- ✦ That one person pay a sum of money to another person;
- ✦ That one person is not liable to pay money to another person;
- ✦ That work be done for example to repair faulty goods or correct poor workmanship;
- ✦ That an agreement be altered or cancelled;
- ✦ That certain goods be handed over to one of the parties or that money be paid for those goods;
- ✦ That the claim be dismissed.

3.7 There are situations in the Tribunal when a referee must make his/her own determination. The referee’s determination only occurs if he or she deems it is not appropriate to help the parties to negotiate a settlement; if the parties cannot reach a settlement or if the Tribunal does not approve a settlement reached by the parties. When one of these situations occurs, the Tribunal makes a judgment according to the merits and justice of the case and any relevant laws.

3.8 The Disputes Tribunal also has the capacity for rehearings and appeals. Applying for a rehearing requires good grounds where the applicant must provide reasons and evidence to support their application that should be made within 28 days of the Tribunal’s order. The rehearing will be dealt with by the referee who heard the original case. However, if an applicant feels that the referee was unfair and prejudiced the case, an appeal can be filed against an order of the Tribunal. This should be filed at the Disputes Tribunal in the District Court within 28 days of the Tribunal order being made. A judge in the District Court decides whether or not there are grounds for appeal.

Alternative Dispute Resolution

3.9 The Alternative Dispute Resolution Act 2007 (“the ADR Act”) provides for the Courts’ authority (Supreme Court or District Court) to refer parties to mediation provided that:

- ✦ there is a possibility of a settlement, or
- ✦ the parties or party may not be able to meet the costs of the proceedings; or

- Both parties have agreed voluntarily to mediation.²³
- The ADR Act also sets out the authority of the Courts' to refer matters to arbitration under the Arbitration Act 1976 if it thinks fit to do so²⁴ as well as promoting reconciliation or conciliation in cases which: are substantially of a personal or private nature; and
- Not aggravated in degree.²⁵

3.10 Reconciliation is only referred to by the Courts provided that the complainant has consented to do so.²⁶

3.11 Another alternative available can be found under the Community Justice Act 2008 section 11 which sets out the concept of diversion. Diversion as defined by the New Zealand Police is a scheme that allows for some offenders who have been charged to be dealt with in an 'out of Court' way. If the offender completes agreed conditions, the Prosecutor can seek to have the charge withdrawn and a conviction will not be recorded. The purpose of diversion is to:

- address eligible offenders in a proactive way;
- balance the needs of victims, the offender and their communities;
- give offenders an opportunity to avoid a conviction;
- Reduce re-offending.²⁷

3.12 Section 11 of Samoa's Community Justice Act 2008 sets out the specifics regarding diversion and provides that where a person appearing before a Court (a) does not have a previous conviction and (b) intimates a plea of guilty may upon the discretion of the Court refer the person charged to be considered for diversion.

3.13 Only Judges can impose Diversion. The case is deferred for the offender to undertake reconciliation or a reparative process. In all cases where Diversion is considered, the Judge will require the Probation and Parole Service to prepare a Diversion agreement, monitor compliance with the Diversion agreement and report back to the Court on whether the Diversion agreement has been completed or not.²⁸

3.14 Diversion may involve victim reconciliation or it may be an agreement that involves the offender undertaking tasks or activities that benefit their village or some other community organization. If diversion is successfully completed, the charge is withdrawn.²⁹

²³ *Alternative Dispute Resolution Act (Samoa)*, s7,ss2

²⁴ *Ibid*, s14

²⁵ See above, No.23, s15,ss1

²⁶ See above, No.23, s15, ss1

²⁷ New Zealand Police, *Police Adult Diversion Scheme*, New Zealand (2007)

²⁸ Ministry of Justice and Courts Administration, *Diversions Manual*, Apia Samoa (2007)

²⁹ See above, No 23

Discussion

- 3.15 Section 61(1) of the DCA provides the power of a District Court Judge to refer to arbitration any civil proceedings provided that the consent of the parties are sought irrespective of whether there are other matters within the jurisdiction of the Court in dispute between the parties. Under this section a reference by a District Court Judge to arbitration cannot be revoked by any party except with the Judge's consent.³⁰
- 3.16 If in a month's time of the date of the order of reference for arbitration that arbitration has not settled the matter, either party to the arbitration process may apply to the Court to revoke the order of reference.³¹ Awards entered as judgments by arbitrator/s are binding and effectual as if given by the District Court Judge.³²
- 3.17 While the Alternative Dispute Resolution Act 2007 gives authority to Supreme and District Court judges to refer matters to alternative dispute resolution, it is not so clear however whether Fa'amasino Fesoasoani judges can also do the same. The District Court Act 1969 itself is also silent in this aspect with regards to both Fa'amasino Fesoasoani judges and even District Court judges.
- 3.18 The FF Court was set up to assist case management within the District Courts by hearing and determining matters that are minor in nature. However, it seems that even the FF Court is experiencing an overload of minor cases that end up being transferred to the District Courts or taken off the register only to be put back on in order to determine whether it should be heard or dismissed. With regards to the Community Justice Act 2008, it is applicable to any court in Samoa. However, because of the generality of the jurisdiction of the Community Justice Act 2008 and the apparent silence of the District Court Act 1969 towards ADR or Diversion there is also no clear indication if the Fa'amasino Fesoasoani can actually utilize Alternative dispute resolution or diversion.
- 3.19 Matters heard in the FF Court as discussed above are of a minor nature. Research undertaken by the Commission has brought forth the issue of whether the FF Court could be restructured into a minor claims/disputes tribunal for a more effective and efficient system within the Ministry of Justice. Arguments for the creation of a minor dispute/claims tribunal as aforementioned is that it is quick, inexpensive and an informal and private method of resolving disputes without the hassle of time consuming court procedures. On the other hand it could be an inadequate way of resolving disputes due to the lack of confidence by affected parties in the Tribunal to effectively resolve a dispute, lack of resources to properly enforce a Tribunal decision. The informality of the Tribunal could also be construed as a negative in that parties would not take the process and subsequent decision seriously.

³⁰ *District Court Act 1969 (Samoa)* s61,ss2

³¹ *Ibid*, s61,ss3

³² See above, No.30,s61 ss4

3.20 The jurisdiction of the FF Court is administered not by Judges with legal backgrounds but by members of the Lands and Titles Court Magistrates'.³³ The nature of a small claims or disputes tribunal is that it is refereed by experienced and competent peers. Since the FF Court Judges do not hold any legal qualifications it may be more efficient and effective if the FF Court is restructured as a small claims or disputes tribunal within the District Court. The possible direction for the FF Court would in effect establish the need to create a separate jurisdiction that deals primarily in minor matters without the affected parties having to go through a more formal process of dispute resolution.

Question:	<p>7. <i>Should the jurisdiction of the FF Courts be extended?</i></p> <p>8. <i>Should the FF Court be established and restructured within the District Courts as a minor claims tribunal division?</i></p> <p>9. <i>Should the District Court Act 1969 reflect or contain provisions authorizing District Court Judges and FF Court Judges to promote and/or refer civil and criminal cases to alternative dispute resolution if it thinks fit?</i></p> <p>10. <i>Should the District Court Act 1969, also contain specific provisions for FF Court Judges to utilize Diversion if relevant?</i></p>
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4. Transfer of Proceedings

District Court to Supreme Court:

4.1 Section 48 among other sections of the DCA sets out the rule or provision where an action or claim within the District Court's jurisdiction may be transferred from the District Court to be heard and determined in the Supreme Court. The claim or issue must exceed \$5,000 and the defendant by leave of the District Court judge should give notice that he/she objects to the matter being tried in the District Courts.

4.2 The Judge upon his or her own motion shall order that the action be transferred to the Supreme Court. However, should the District Court Judge be of the opinion that some important question of law or fact is likely to arise; he/she may transfer the action to the Supreme Court. This transfer of proceedings also refers to counterclaims of the same value i.e. claim has to exceed \$5,000.

4.3 Section 49 which refers to transfer of proceedings beyond jurisdiction states as follows –

'where any civil proceedings are commenced in a District Court in which the Court has no jurisdiction the Court may, unless it is given jurisdiction by abandonment or agreement under

³³ Samoa Law Reform Commission secondment with the Ministry of Justice and Courts Administration

provisions of sections 29³⁴, 30³⁵ or 35³⁶ of this Act, order that the proceedings be transferred to the Supreme Court or to such other Court or a District Court judge as appears to the District Court to have jurisdiction.'

4.4 Provided that where it appears to the Court that the plaintiff or one of the plaintiff's knew or ought to have known that the Court had no jurisdiction in the proceedings, the Court may if it thinks fit instead of ordering that the proceedings be transferred as aforesaid order that they be struck out and in such event may award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim had not been established.³⁷

Supreme Court to District Court

4.5 Section 51 of the DCA provides for the transference of a proceeding commenced in the Supreme Court to the District Court where the Supreme Court or a Judge of that Court may on application of any party to the proceedings order that the proceedings be transferred to a District Court by way of an agreement made under section 35 of the DCA that a District Court shall jurisdiction or the subject matter of the proceedings is within the jurisdiction of the District Courts.

Comparable Jurisdiction

(i) Victoria

4.6 Under the civil jurisdiction of Victoria's Magistrates' Courts, if a civil proceeding is wholly or partly beyond the jurisdiction of the Court, the Court may³⁸ –

- a) *Amend the complaint for the purpose of bringing the proceeding within jurisdiction;*
or
- b) *Order that the proceeding be stayed pending the making of an application under Part 3 of the Courts (Case Transfer) Act 1991; or*
- c) *Order that the complaint be struck out and award costs as if the Court had jurisdiction and the complaint were dismissed.*

4.7 The Courts (Case Transfer) Act 1991 of Victoria sets out a criterion where a proceeding can be transferred to another court³⁹. There are two transfers that can take place within the Magistrates'

³⁴ Section 29 of the DCA provides for the abandonment of part of a claim to give the Court jurisdiction and where the plaintiff has abandoned part of his or her claim, shall not recover an amount exceeding \$10,000 together with costs

³⁵ Section 30 of DCA sets out the extension of the Court's jurisdiction to preside over a matter provided that the parties to the proceeding have by memorandum signed by them or their solicitors agreed that the matter is to be presided over by a District Court Judge and shall have the jurisdiction to hear and determine the proceeding.

³⁶ Section 35 refers to the abandonment of part of a claim or by agreement of the plaintiff within the jurisdiction of the FF Court.

³⁷ *District Courts Act 1969 (Samoa) s49*

³⁸ *Magistrates' Courts Act 1989 (Victoria) s100, ss1*

³⁹ Court as defined by section 3 of the Courts (Case Transfer) Act 1991 means the Supreme Court, County Court or Magistrates' Court.

Courts of Victoria. The first is by way of a general transfer where a senior judicial officer⁴⁰ is of the motion that one court is overloaded with pending proceedings relative to the other court and that there should be a transfer of an agreed number of proceedings.⁴¹ The agreement to transfer a proceeding is of no effect unless it has been approved by the Council of Judges or Magistrates of both Courts as the case may require.⁴²

4.8 The second method of transfer is by way of an individual transfer where a proceeding may be individually transferred from one court to another if the Court in which it is pending so orders under section 21⁴³ after it has been referred to the designated judicial officers⁴⁴ of the two Courts concerned.⁴⁵ Under the method of individual transfer, the designated judicial officer may only transfer the proceeding if –

- a) *The transferor court does not have exclusive jurisdiction to hear and determine it; and*
- b) *The transferee court has the appropriate skill, experience and authority to hear and determine it having regard to its gravity, difficulty and importance; and*
- c) *It is just and convenient that it be transferred.*⁴⁶

4.9 Parties to a proceeding must be notified and given time to object to the transfer of proceeding by the designated judicial officers⁴⁷. Once a proceeding has been transferred to another Court, it is not capable of being transferred to the original court where the proceeding was commenced nor may it be transferred to another court.⁴⁸

(ii) Western Australia

4.10 Transfer of proceedings from the Magistrates Court to a superior court i.e. the District Court or the Supreme Court of Western Australia is done by way of an application of a party to a case in the Magistrates Court for an order that all or a party of the case be transferred to the superior court⁴⁹.

⁴⁰ Senior Judicial Officer as defined by s3 of the Courts (Case Transfer) Act 1991 means in relation to the Supreme Court – the Chief Justice, in relation to the County Court – the Chief Judge and in relation to the Magistrates' Court – the Chief Magistrate.

⁴¹ *Courts (Case Transfer) Act 1991*, s6, ss1

⁴² See above, No.35, s6, ss2

⁴³ Section 21 refers to a transfer order where if no objections is filed or the senior judicial officers determine that a proceeding should be transferred following the filing of an objection, the transferor court (constituted by its designated judicial officer) must as soon as is practicable make an order transferring the proceeding to the transferee court.

⁴⁴ Section 3 of the Courts (Case Transfer) Act 1991 defines designated judicial officer to mean in relation to the Supreme Court – an Associate Judge designated by the Chief Justice, in relation to the County Court – a Judge or an Associate Judge designated by the Chief Judge and in relation to the Magistrates' Court – a Magistrate designated by the Chief Magistrate for the purposes of this Act.

⁴⁵ See above, No.30, s15

⁴⁶ See above, No.30, s16, ss1

⁴⁷ See above, No.30, s18 – s19

⁴⁸ *Courts (Case Transfer) Act 1991 (Victoria)*, s23

⁴⁹ *Magistrates Court (Civil Proceedings) Act 2004 (Western Australia)*, s39, ss2

The superior court upon receipt of such application may make an order if it is satisfied that all or a part of the case is within its jurisdiction and –

- a) *Involves a claim by the claimant or another party, or an issue that is outside the Magistrates Court's jurisdiction; or*
- b) *Should be dealt with by the superior court because of its complexity or because of a question of law involved.*⁵⁰

4.11 The superior court can also make other necessary orders within its jurisdiction regarding the transferred proceeding as to the registry of the superior court in which the case is to be conducted, the payment of fees and the costs in the case in relation to proceedings in the Magistrates Court.⁵¹

Discussion

4.15 Transfer of proceedings within the District Court as set out in the DCA is done by the following means:

1. *If the claim exceeds \$5000 then the defendant in the action may by leave of Court give notice of objection to have the case determined in the District Court; or*
2. *If the claim does not exceed \$5000 then the defendant may by leave of Court give notice of objection to hear and determine the case in the District Court; or*
3. *If the District Court has no jurisdiction to hear and determine a proceeding, the Court may order that the proceeding be transferred to the Supreme Court.*

4.16 Transference of a proceeding takes place as indicated by the DCA if the Court is of the opinion that it is a matter of some important question of law or fact if the claim does not exceed \$5000. However, other means of transferring a proceeding is due to either the defendant in a claim exceeding \$5000 objecting or if the District Court is simply beyond its jurisdictional limit.

4.17 The Magistrates Court of Victoria on the other hand transfers general proceedings if a senior judicial officer is of the opinion that there is an overload of pending proceedings within the Court and therefore orders a certain number of proceedings be transferred to another court for expediency. A general transfer of proceeding will only take place if the Council of Judges is all in agreement to undertake such a course. In contrast, an individual transfer of proceedings takes place when a designated judicial officer is of the motion that a claim is outside of the jurisdiction of the Magistrates Court and that the superior court has the skill, experience and authority to hear and determine the proceeding. It will also transfer a proceeding on the gravity or difficulty and importance of a case and that it is just and convenient to do so.

4.18 Western Australia will transfer a proceeding from the Magistrates Court to a superior court when a party to the proceeding applies for it. The superior court will only hear and determine the

⁵⁰ See above, No.49, s39, ss4

⁵¹ See above, No.41, s39, ss5

proceeding if it is satisfied that the claim or issue is outside of the exclusive jurisdiction of the lower court or it is a complex proceeding or question of law.

4.19 The transfer of proceedings in the DCA is primarily based on the jurisdictional limit of the District Court and whether it is a question of law or fact if the claim exceeds \$5000. In comparison, Victoria and Western Australia transfers a proceeding for the most part on:

- ✦ The overloading of its Courts;
- ✦ It is just and convenient;
- ✦ It is a question of law;
- ✦ The matter is complex and difficult;
- ✦ The importance of the claim;
- ✦ The skills, experience and authority of the Judges.

Question:	11. <i>Should transfer of proceedings from one court to another be available for the following reasons: overloading, skills, experience and authority of Judges, importance of the claim, complexity and difficulty of the claim or question of law?</i>
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5. Judges and Registrars

Appointment of Judges

5.1 Appointment of District Court judges are by way of warrant by the Head of State on the advice of the Judicial Service Commission. To be eligible for such an appointment, a person has to have been practising or in practice as a barrister and solicitor in Samoa or in an approved country for not less than 5 years. A person can also be appointed to be a District Court judge if he or she has been a Registrar for not less than 15 years.⁵² Fa'amasino Fesoasoani is also appointed by the Head of State acting on the advice of the Judicial Service Commission by way of warrant published in the Gazette and the Savali. The requirement is however that he or she must be fit and proper persons to be a Fa'amasino Fesoasoani.⁵³

Office Tenure

5.2 There are two ways that a Judge may discontinue to hold office as a District Court Judge. One is by way of retirement upon reaching the age of 62 years. The period of office of a District Court judge or Fa'amasino Fesoasoani can also be extended by the Head of State on the advice of the Judicial Service Commission for a judge who has reached the retirement age. The other is removal by the

⁵² *District Court Act 1969*, (Samoa) s5, ss1,2

⁵³ *Ibid*, s6

Head of State on the advice of the Judicial Service Commission for inability or misbehavior.⁵⁴ *Discussion*

5.3 The Commission’s Final Report on the Judicature Ordinance sets out the overall views of the Judges regarding both the retirement age and the appointment of judges i.e. that the retirement age should be amended to be in line with the retirement age as set out in the Constitution of Samoa and for the appointment of judges to remain as it is. Therefore it will be a recommendation of the Commission’s DCA Final Report that District Court Judges retirement age also be 68 years.

5.4 In terms of the appointment of judges, the qualifications set out in the Commission’s Final Report on the Judicature Ordinance indicated the overall view of stakeholders that the current qualifications are sufficient however a change should be made as to the years of practical experience for a person to be eligible to be appointed a Judge. Practical experience for a person eligible to be appointed as a Supreme Court Judge is 8 years. The recommendation is that the number of years of experience be extended by another 2 years so that the years of practical experience are 10 years.

5.5 In accordance with the Commission’s Judicature Ordinance Final Report, it has been recommended by the Commission to also extend the years of practical experience of District Court Judges from 5 years to 7 years.

5.6 The discontinuance or removal of a District Court Judge by the Head of State on the advice of the Judicial Service Commission for inability or misbehavior has brought up the issue of whether inability and/or misbehavior should be defined in detail so as to further promote judicial independence. The removal of a Judge by way of inability and/or misbehavior is a serious measure undertaken by the Judicial Service Commission necessitating in the Commission’s view that this area of the DCA is an issue to be discussed by all relevant stakeholders.

Question:	<p>12. <i>Should the years of experience of an applicant remain as it is regarding the appointment of judges? OR should it reflect the additional 2 years as recommended in the Commission’s Judicature Ordinance 1961 Final Report?</i></p> <p>13. <i>Should the District Court Act 1969 define the ground of removal of a Judge i.e. “inability” and/or “misbehavior”?</i></p>
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Registrars

5.7 The appointments of Registrars are done by the Public Service Commission (“PSC”). Appointed Registrars are responsible to the Secretary for Justice and the Minister for the administration and control of the Court offices. Registrars may be appointed for 2 or more Courts including the Supreme Court.

5.8 Deputy Registrars for any District Court are also appointed by PSC and are subject to the control of the Registrar. They have the same:

⁵⁴ *District Court Act 1969,(Samoa) s8, ss1,2*

- Powers;
- Privileges; and
- Duties.

5.9 They are subject to the same provisions and penalties as if he or she were the Registrar. The DCA only states that Registrars are to keep records of proceedings. It does not go into detail about the exact powers, privileges and duties of a Registrar.

5.10 Preliminary consultations with stakeholders⁵⁵ expressed a general interest in whether the powers and responsibilities of the Registrars should be extended to not only cater for the increasing case load of the Courts but also as a means to effect better case management both for the Judges and for the administration of all court cases.

5.11 On the other hand, the Ministry of Police and Prisons also raised a concern of whether Registrars had too much power and/or discretion to deal with cases brought in for processing.⁵⁶ This concern however can be checked and balanced by section 81(1) of the Act where a District Court Judge may set aside a judgment or order of a Registrar. This provision is basically set out as follows:

“Except where all parties have consented to the judgment or order of a Registrar, any such judgment or order and any execution thereon may on application of party to be set aside by a District Court Judge who may give such judgment or make such order in substitution therefore as the District Court Judge thinks fit, or may grant a rehearing[sic]”⁵⁷

5.12 The lack of provisions in the DCA towards defining the authority of Registrars has raised concerns among stakeholders and has generated interest into whether setting out and/or extending the powers and responsibilities of the Registrars should be included in the DCA.

5.13 The Commission’s review and reform of the Criminal Procedure Act 1972⁵⁸ has taken into account the possibility of extending Registrars powers and responsibilities especially in terms of the courts’ criminal jurisdiction. The recommendations as proposed by the Commission include the following i.e.:

- The power to amend information upon the consent of both parties;
- Exercising the powers of the Court when no defendant, informant or neither party appears;
- Taking the defendant’s plea on being charged;
- Taking pleas on behalf of a corporation;
- Adjourning hearings; and
- Making decisions when a defendant may be remanded in custody or released on bail.

⁵⁵ Samoa Law Reform Commission, *Stakeholders Preliminary Consultations “Rules” Report* (05 October, 2010)

⁵⁶ *Ibid*, pg3

⁵⁷ *District Court Act 1969* (Samoa) s81,ss1

⁵⁸ Law Reform of Samoa, *Criminal Procedure Act 1972*, Report 07 (2012)

5.14 These new proposed changes also include the recommendation that the Registrars newly proposed powers may only be exercised before a proceeding is heard before a Judge.⁵⁹

Discussion

5.15 The DCA on the other hand, does not contain any provisions specifically towards the powers, duties and responsibilities of the Registrars within the civil jurisdiction. It also does not contain any general provisions that indicate the duties of a Registrar regarding procedures before a case is heard within a court of law.

Comparable Jurisdiction

(i) Victoria

5.16 Section 21 of the Magistrates' Court Act 1989 of Victoria, sets out powers of a registrar where:

(1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act or the Rules –

- a. *Power to issue any process out of the Court;*
- b. *Power to administer an oath;*
- c. *If a person has been granted bail in relation to a criminal proceeding, power to extend the bail of the person attending on a day on which the criminal proceeding is listed before the Court;*
- d. *Power to endorse a warrant to arrest in accordance with section 62⁶⁰;*
- e. *Power to sign any license or certificate which the Court is authorized to issue;*
- f. *Power to hear and determine any application and exercise any power or authority of the Court under section 58, 59 or 60 of the Supreme Court Act 1986⁶¹.*

(2) Subsection (1) (c) does not empower a registrar to vary the amount or conditions of bail.

5.17 The Victoria Act also includes a provision where the principal registrar has the duty of keeping a register of all the orders the Court and of such other matters as directed by its Act or the Rules. This register is accessible to persons or parties' to a proceeding or under such orders as applicable subject to the payment of a fee.

5.18 Another area that the Act is silent on is the qualifications that a person should hold in order to be eligible to be appointed as a Registrar. The jurisdiction of Victoria, Australia provides a clear example of how and what qualifications are desirable or essential in the appointment of a Registrar. Part 3 of the Magistrate's Court Act 1989 outlines sections that pertain to officers of the Court⁶². Under these sections the Chief Magistrate may by notice given to the Secretary, specify

⁵⁹ See above, No.58.

⁶⁰ Section 62 refers to endorsing a warrant for bail.

⁶¹ Section 58, 59 and 60 of the Supreme Court Act 1986 of Victoria refers to interest to be allowed when debts or sums certain recovered, damages in nature of interest and interest in proceedings for debt or damages.

⁶² Section 117 of the DCA sets out provisions regarding Registrars not to act as Solicitors in any Court proceedings unless the DCA or the Magistrates Court Rules say otherwise.

qualifications (including training, skill and experience) required to be held or examinations in specified subjects required to be passed by any person seeking to be employed under Part 3 of the Public Administration Act 2004 as a registrar or deputy registrar.⁶³

5.19 Interest has been expressed regarding qualifications of Registrars especially in light of various interests by stakeholders in extending their powers and responsibilities when dealing with Court procedures and processes.

Question:	<p>14. <i>Should the District Court Act 1969 provide for the eligibility and/or qualifications of a person seeking employment as a Registrar?</i></p> <p>15. <i>Should the District Court Act 1969 contain provisions regarding the powers, privileges and duties of a Registrar?</i></p> <p>16. <i>What powers, privileges and duties of a Registrar should be set out in the District Court Act 1969?</i></p>
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6. Divisions of the District Court

(a) Youth Court

Jurisdiction

6.1 The Youth Court is established under the Young Offenders Act 2007 as a division of the District Court that is presided over by District Court Judges⁶⁴. The jurisdiction of the Youth Court as set out in the Youth Offenders Act 2007 only pertains to the criminal jurisdiction.

6.2 Any young person who is between the age of 10 and 17 years charged with criminal conduct shall be laid in the Youth Court and the hearing of each charge⁶⁵ will be subject to the provisions of the Act. No person under the age of 10 years can be charged with any criminal offence.⁶⁶ A charge of murder against a young person however is tried before the Supreme Court⁶⁷

6.3 The Youth Court applies the criminal standard of proof but may otherwise determine its own procedure provided however that in defended hearings the Court shall adopt the rules of criminal procedure.

⁶³ *Magistrates' Court Act 1989 (Victoria, Australia)* s17,ss1A

⁶⁴ *Young Offenders Act 2007 (Samoa)*, s4

⁶⁵ Section 2 of the Youth Offenders Act 2007 defines charge as any information, indictment, warrant or other form of criminal offence brought against a person.

⁶⁶ *Youth Offenders Act 2007 (Samoa)* s3.

⁶⁷ *Ibid*, s5,ss3

Rights of a young person

6.4 Under the Youth Offender's Act 2007 a young person is entitled to the following rights⁶⁸:

- a. Receive independent legal advice; and
- b. The attendance of his/her parent and/or caregiver or any member of his or her family at the hearing or proceedings where it is practical to do so; and
- c. Apply for legal aid.

6.5 The Youth Court utilizes pre-sentence meetings and the Samoan custom of fa'aleleiga or reconciliation. Pre-sentence meetings are conducted in accordance to Samoan customs and traditions. The purpose of the pre-sentence meetings is to:

- ✦ Discuss the circumstances of the offending; and
- ✦ Seek the views of those in attendance; and
- ✦ Consider whether a reconciliation or other outcome may be arrived at by the parties affected⁶⁹

6.6 The outcome of a pre-sentence meeting may include payment to any victims for reparation of;

- ✦ property loss;
- ✦ medical expenses incurred; or
- ✦ Any other reasonable loss suffered by the victim as a result of the young person's actions.

6.7 Any matter relating to the Youth court is closed to the media and the general public. Unless the Court of its own motion determines that public interest in a Youth Court matter is essential. Publishing information or details on a young person tried in the Youth Court is an offence and is liable to a penalty.

(b) Family Division

6.8 Establishing the authority and the jurisdictional basis of the family court is complex as compared to the Youth Court. This is because there are two Acts that establish the jurisdiction of the family division within the District Court i.e. the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967.

6.9 Section 2 of the Infants Ordinance 1961, interprets Court to mean the Supreme Court or the District Court presided over by a judge in:

- ✦ Part I,
- ✦ Part IV and
- ✦ Sections 21 and 23A of Part V.

⁶⁸ See above, No.64, s9

⁶⁹ See above No.64, s12,ss1

6.10 It also means that the District Court presided over by a Judge can specifically hear and determine matters as set out in:

- Part II,
- sections 22 and 23 of Part V and
- Part VI of the Infants Ordinance.

6.11 In other words, the jurisdiction of the Family Division within the District Courts encompasses:

- Part I of the Infants Ordinance 1961 which deals with Guardianship and Custody of Infants,
- Part II which deals with Adoption of infants,
- Part IV which deals with Destitute and Delinquent Children,
- Part V which is Contracts and Claims of infants; and
- Part VI Legitimation.

6.12 Section 3 of the Maintenance and Affiliation Act 1967 gives power to the District Court to make maintenance and affiliation orders. The exercise by the Court of its jurisdiction to make maintenance and affiliation orders is discretionary in nature.⁷⁰ Matters encompassing maintenance orders include:

- Lodging, feeding, clothing,
- Teaching, training and attendance
- Medical and surgical relief.

6.13 Affiliation orders⁷¹ on the other hand refer to the Court determining the parentage of a child specifically proving the father of a child whose mother is not married.

Comparable Jurisdiction

New Zealand

6.14 There are 138 permanent Judges of the District Courts of New Zealand who have the authority to exercise the summary criminal and civil jurisdiction of the District Court. Forty three Judges exercise the jurisdiction of the Family Court and are known as Family Court Judges. The Family Court is a division of the District Courts. Most of the remaining Judges i.e. the ninety five Judges that do not exercise the jurisdiction of the Family Court, have jury trial jurisdiction in the Youth Court.

6.15 The Chief Judge of the District Court is the Head of all the District Court Benches but the day to day leadership of the Judges of the Family Court is the responsibility of the Principal Family Court Judge and in the Youth Court likewise, the Principal Youth Court Judge.

⁷⁰ *Maintenance and Affiliation Act 1967* (Samoa), s4

⁷¹ *Ibid*, s2

(a) Youth Court

Jurisdiction

6.16 In 1989, New Zealand enacted the Children, Young Persons and Their Families Act 1989 which enshrined new objectives for youth justice and established⁷² the Youth Court. The Youth Court is a specialist division of the District Court. For the Youth Court to hear and determine a case, the child or young person must be over 10 years' old or under 17 years old when a charge was laid. A young person of 18 years is tried in the adult court even if he/she was under 17 when the offence took place.⁷³

6.17 The Youth Court also has special rules for children 13 years old or younger i.e.:

- No one under the age of 10 can be charged with a criminal offence.
- A child who is 10 or 11 years old can only be charged with murder or manslaughter; all other crimes are dealt with outside the courts.
- A child who is between 12 and 13 years old can only be charged if the offence (if proved) can be punished by at least 14 years in prison.
- A child between 12 and 13 who has already been found to have committed serious crimes and is accused of committing a crime can be punished by at least 10 years in prison.⁷⁴

6.18 Where a young person is charged with a summary offence or an indictable offence the Youth Court shall hear and determine the information unless:

- a. The offence is punishable by imprisonment for a term exceeding 3 months and the young person elects a trial by jury; or
- b. The Court discharges the information.

Rights of a young person

6.19 Under the Children, Young Persons and Their Families Act 1989, a young person/s brought before the Youth Court or charged with an offence is entitled to the following rights:

- To be informed of rights before questioning by an enforcement officer⁷⁵.
- To receive an explanation for their rights in a manner and language appropriate to their age and level of understanding⁷⁶.
- Entitled to consult with a barrister or solicitor⁷⁷.
- To have their parent/s or guardians informed as soon as practicable⁷⁸.

⁷² *Children, Young Persons, and their Families Act 1989* (New Zealand), s433 where it states that every District Court shall have a division to be known as a Youth Court.

⁷³ Ministry of Justice of New Zealand, 'Youth Court: Inside a courtroom' (2012) <http://www.justice.govt.nz/courts/youth/about-the-youth-court/inside-a-courtroom>. (Accessed 09 March, 2012)

⁷⁴ See above, No.71

⁷⁵ *Children, Young Persons and Their Families Act 1989* (New Zealand), s215

⁷⁶ *Ibid*, s218

⁷⁷ See above, No.73, s227

(b) Family Court

6.20 The Family Court was established by the Family Courts Act 1980⁷⁹ with a jurisdiction that is largely outlined in section 11 of that Act in conjunction with a number of other statutes that confer jurisdiction on the Court

Jurisdiction

6.21 Under section 11 of the Family Courts Act 1980, the Family Court in the District Courts shall hear and determine proceedings heard and determined by such a court under or by virtue of the following legislations:

- a. The Marriage Act 1955;
- b. The Adoption Act 1955;
- c. The Care of Children Act 2004;
- d. The Domestic Actions Act 1975;
- e. The Property (Relationships) Act 1976;
- f. The Family Proceedings Act 1980;
- g. The Child Support Act 1991;
- h. The Children, Young Persons, and their Families Act 1989;
- i. The Law Reform (Testamentary Promises) Act 1949;
- j. The Family Protection Act 1955;
- k. The Wills Act 2007;
- l. The Civil Union Act 2004;
- m. Any other enactment for the time being in force.

Discussion

6.22 The Children, Young Persons, and their Families Act 1989 establishes the Youth Court as a division of every District Court in New Zealand⁸⁰. In comparison to the District Court of Samoa, the establishment of its Youth Court is provided for in section 4 of the Young Offenders Act 2007.

6.23 In the Young Offenders Act 2007 of Samoa any young person between the age of 10 and 17 charged with a criminal conduct is to be laid in the Youth Court and young persons under the age of 10 cannot be charged with a criminal offence. By comparison, the Youth Courts of New Zealand, by virtue of the Children, Young Persons, and their Families Act 1989, also charges a young person over the age of 10 or under 17. Young persons' under the age of 10 cannot be charged with a criminal offence and young persons' the age of 18 years are tried in a adult court regardless of whether he/she committed an offence at the age of 17. The Youth Courts of New Zealand has also developed special rules when a young person is charged with a criminal offence.

6.24 These special rules as aforementioned provide that a young person:

⁷⁸ See above, No.73, s229

⁷⁹ Section 4 of New Zealand's Family Courts Act 1980 provides that every District Court shall have a division to be known as the Family Court.

⁸⁰ *Children, Young Persons, and their Families Act 1989* (New Zealand), s433

- Aged 10 or 11 can only be charged with the more serious offences of murder or manslaughter. All other minor offences are dealt with outside of Court.
- Aged 12 and 13 can only be charged if the offence once proved is punishable by at least 14 years in prison.
- Aged between 12 and 13 who has a previous conviction or found to have committed serious crime and is accused of committing another crime can then be charged if the penalty of crime committed is at least 10 years in prison.

6.25 The Family Court of New Zealand is also established by legislation i.e. section 4 of the Family Courts Act 1989. By contrast, Samoa does not have legislation that establishes a Family Court. Rather proceedings of a family nature are referred to the District Courts by the Maintenance and Affiliation Act 1967 and the Infants Ordinance 1961. The Family Court Act 1980 also sets out the Family Court jurisdiction of New Zealand by listing the relevant legislations dealing in matters of a family nature.

6.26 The Coroner’s Ordinance 1959 underwent the Commission’s review in 2010. Under this review SLRC touches upon the importance of separating the coronial system in Samoa from the judiciary for an efficient and effective operation⁸¹. The separation of the coronial system as mentioned in the Coroner’s Ordinance review is in reference to extending the appointment of coroner’s to include medical experts and those with a legal background.

6.27 The review of the Coroner’s Ordinance is mentioned briefly in this Issues Paper limited as it is covered quite extensively under the Coroner’s Ordinance 1959 review. However, in reference to the different courts of the District jurisdiction, the Commission is of the opinion as evidenced by recommendations in the Coroner’s Ordinance review that the Coroner’s division should be separated from the District Court.

Question:	<p>17. <i>Should the District Court be divided into distinctive divisions or Courts i.e. Family Court, Youth Court and Coroner’s Court?</i></p> <p>18. <i>Should there be special judiciary appointments specifically for the different Courts i.e. Family Court, Youth Court and Coroner’s Court?</i></p> <p>19. <i>Should New Zealand District Court structure be used as a model to structure the divisions within the District Courts?</i></p> <p>20. <i>Should the DCA contain provisions setting out jurisdictional authority and functions of the Youth and Family Courts?</i></p> <p>21. <i>Do we have the resources to initiate a separation of courts?</i></p>
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⁸¹ Law Reform of Samoa, *Coroner’s Ordinance 1959*, Report 02 (2011)

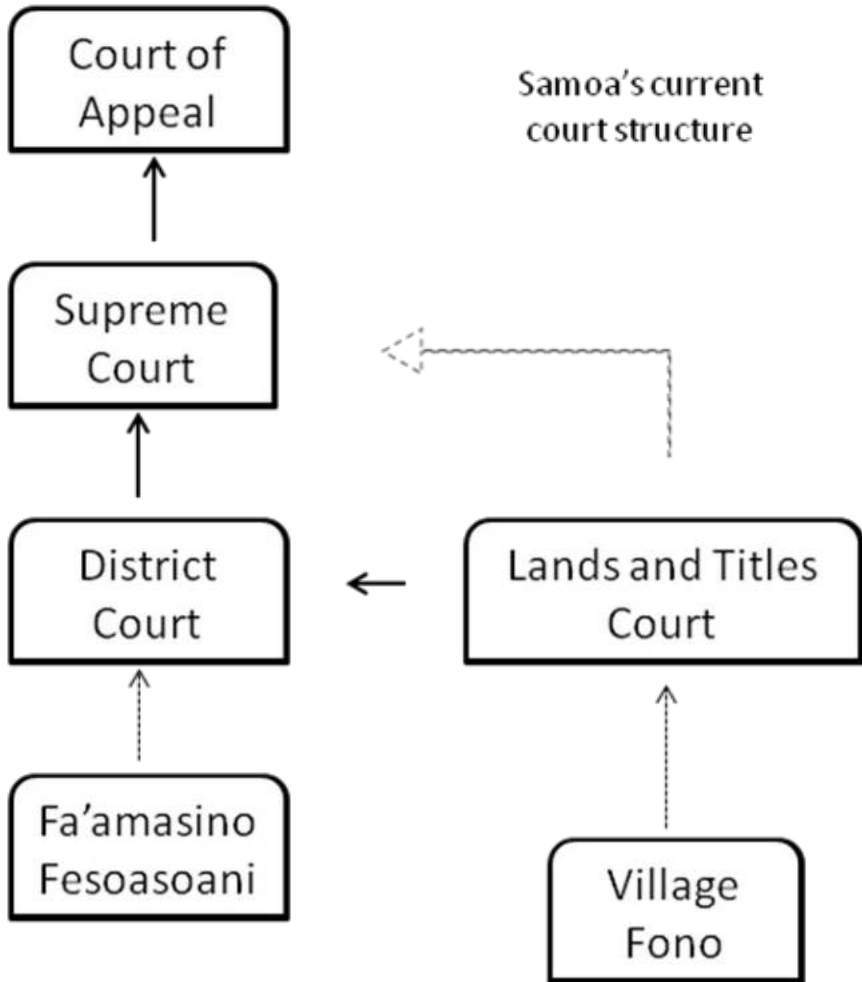
7. Summary of Questions

- 1) *Should the jurisdiction of the main District Courts be increased from \$10,000 to \$50,000 or any other amount?*
- 2) *Should the civil jurisdiction of the District Court Act 1969 be reformed to reflect clear and concise instructions on the hearing and determination of cases?*
- 3) *Should the District Court general civil jurisdiction use Western Australia or Victoria as a guideline to structure our own jurisdiction?*
- 4) *Should the criminal jurisdiction reflect in detail the offences that the District Court can hear and determine?*
- 5) *Should the penalty of 5 years imprisonment under the criminal jurisdiction of the District Court be extended to 7 years⁸²?*
- 6) *Should the District Courts implement summary judgment?*
- 7) *Should the jurisdiction of the FF Courts be extended?*
- 8) *Should the FF Court be established and restructured within the District Courts as a minor claims tribunal division?*
- 9) *Should the District Court Act 1969 reflect or contain provisions authorizing District Court Judges and FF Court Judges to promote and/or refer civil and criminal cases to alternative dispute resolution if it thinks fit?*
- 10) *Should the District Court Act 1969, also contain specific provisions for FF Court Judges to utilize Diversion if relevant?*
- 11) *Should transfer of proceedings from one court to another be available for the following reasons: overloading, skills, experience and authority of Judges, importance of the claim, complexity and difficulty of the claim or question of law?*
- 12) *Should the years of experience of an applicant remain as it is regarding the appointment of judges? **OR** should it reflect the additional 2 years as recommended in the Commission's Judicature Ordinance 1961 Final Report?*
- 13) *Should the District Court Act 1969 define the ground of removal of a Judge i.e. "inability" and /or "misbehavior"?*

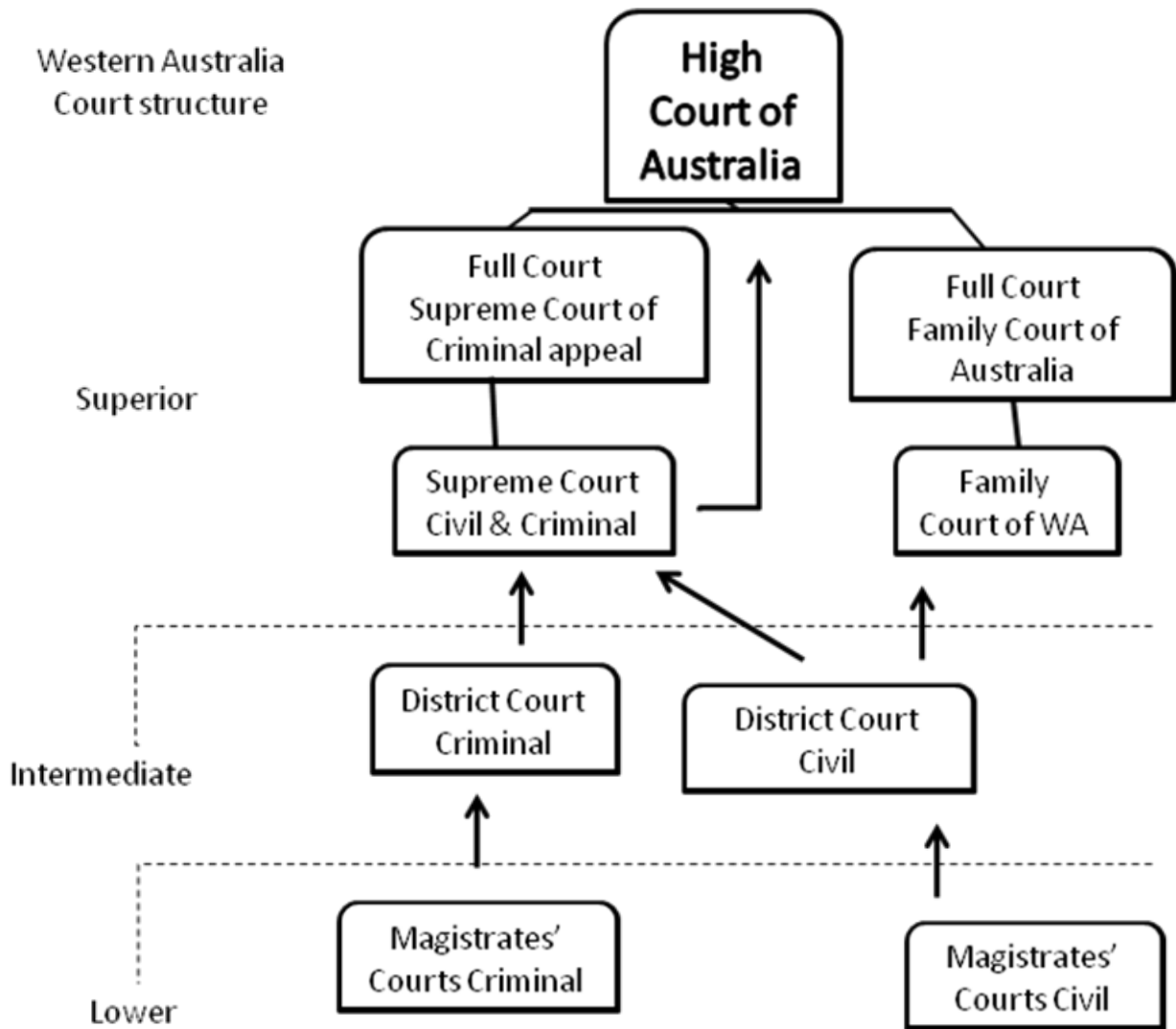
⁸² Stakeholders views in preliminary consultations conducted by the Commission

- 14) *Should the District Court Act 1969 provide for the eligibility and/or qualifications of a person seeking employment as a Registrar?*
- 15) *Should the District Court Act 1969 contain provisions regarding the powers, privileges and duties of a Registrar?*
- 16) *What powers, privileges and duties of a Registrar should be set out in the District Court Act 1969?*
- 17) *Should the District Court be divided into distinctive divisions or Courts i.e. Family Court, Youth Court and Coroner's Court?*
- 18) *Should there be special judiciary appointments specifically for the different Courts i.e. Family Court, Youth Court and Coroner's Court?*
- 19) *Should New Zealand District Court structure be used as a model to structure the divisions within the District Courts?*
- 20) *Should the DCA contain provisions setting out jurisdictional authority and functions of the Youth and Family Courts?*
- 21) *Do we have the resources to initiate a separation of courts?*

APPENDICES: COURT STRUCTURE DIAGRAMS



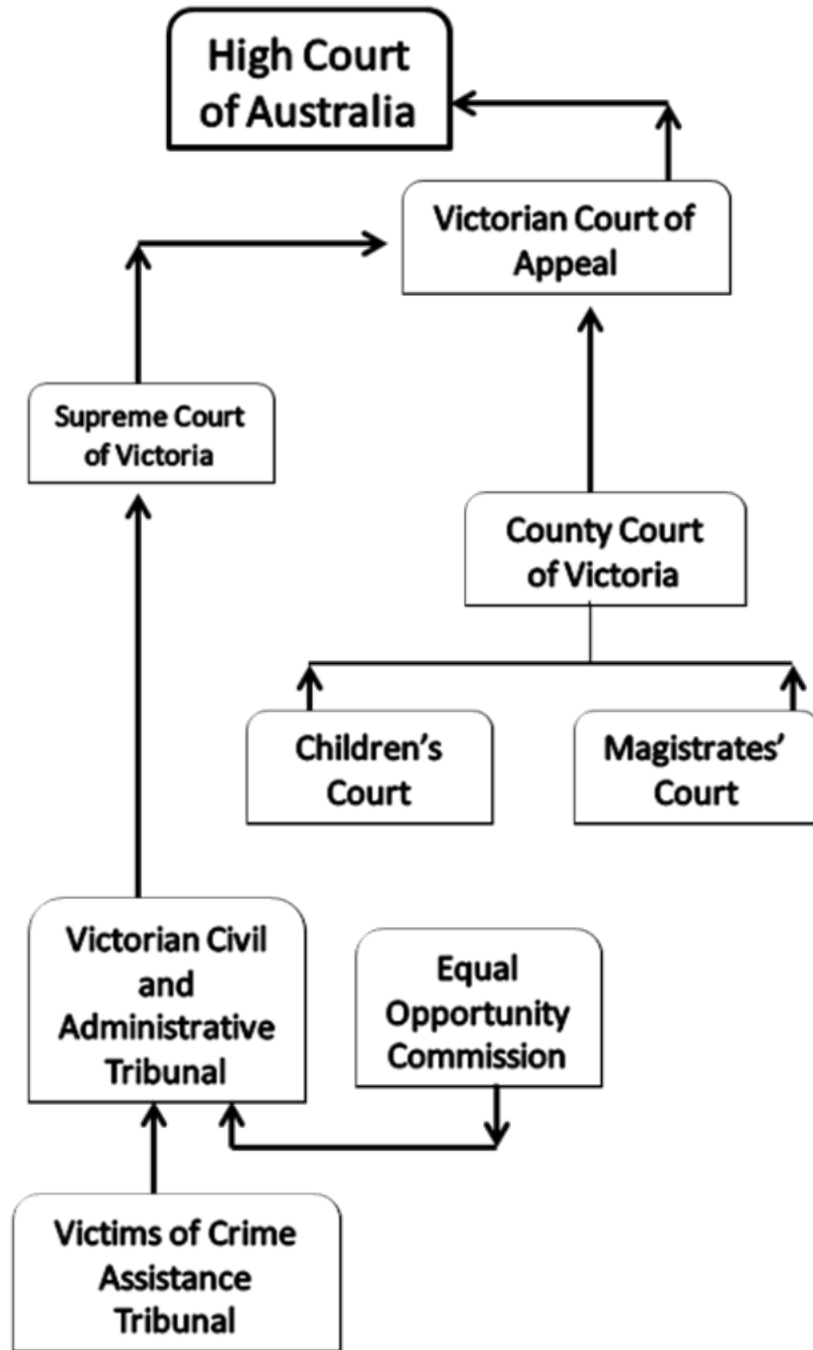
Western Australia
Court structure



83

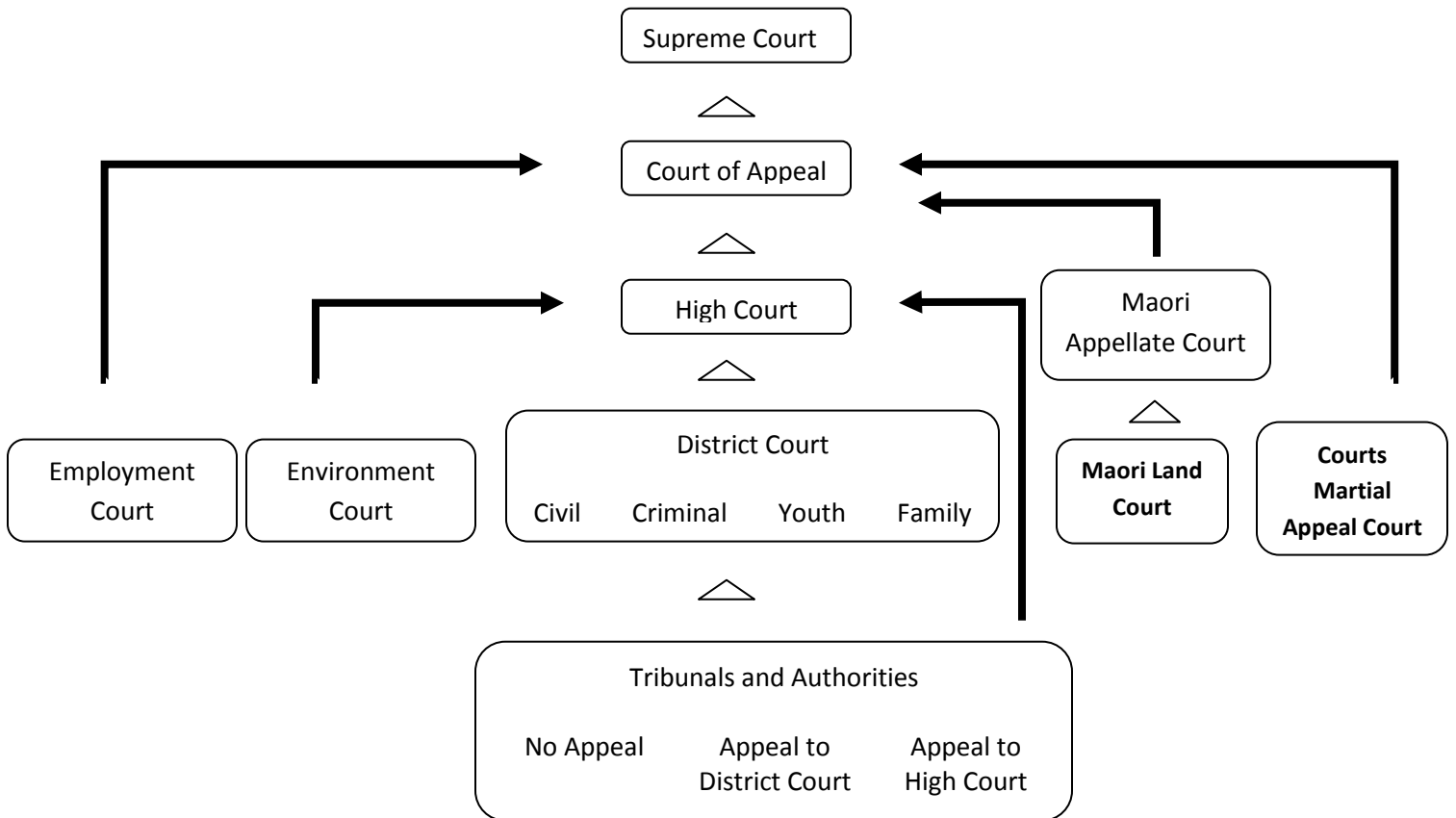
⁸³ Department of Justice, *Western Australia's Court System: Student Resource Book* (2001) p8

Victoria Court Structure



⁸⁴ Fitzroy Legal Service Inc, *The Law Handbook: Your Practical Guide to the law in Victoria* (2012) http://www.lawhandbook.org.au/fact_sheets/ch01.php (Accessed 12 March 2012)

This diagram shows the structure of the Courts of New Zealand⁸⁵:



⁸⁵ Courts of New Zealand <http://www.courtsofnz.govt.nz/about/system/structure/diagram> (Accessed 12 March 2012)