SAMOA

CRIMINAL PROCEDURE ACT 2016

Arrangement of Provisions

CRIMINAL PROCEDURE ACT 2016

AN ACT to provide a code relating to criminal procedure and rules as to the criminal jurisdiction of courts hearing criminal cases and for related purposes.

[Assent date: 9th February 2016]
[Commencement date: 1st November 2016]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Criminal Procedure Act 2016.

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

2. Interpretation-(1) In this Act, unless the context otherwise requires:

"Act" includes Ordinance;

"charging document" means the charging document in Form 5 of the Schedule filed by or on behalf of the Attorney-General pursuant to this Act;

"child" means:

(a) for a defendant, a person aged 10 years or over and under 18 years;

(b) for a complainant or victim, a person aged 16 years or under.

"corporation" includes other legal entity;

"Court" means the Supreme Court or a District Court whether presided over by a Judge or a Fa'amasino Fesoasoani;

"Court of Appeal" means the Court of Appeal of Samoa constituted under Article 73 of the Constitution;

"decision" includes a judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination;

"defendant" means a person charged with an offence, and "the defence" has a corresponding meaning;

"enactment" means a provision of any Act, Ordinance or subsidiary legislation;

"Fa'amasino Fesoasoani" means a person appointed as such under the District Courts Act 2016;

"informant" means the person by whom or on whose behalf an information is laid;

"information" includes any charge in a charging document;

"Judge" means a Judge appointed under the Judicature Act 2020 or the District Courts Act 2016;

"Judicial Service Commission" means the Judicial Service Commission constituted by Article 79 of the Constitution;

"lawyer" has the meaning in the Lawyers and Legal Practice Act 2014;

"offence" means an act or omission for which, under an enactment, a person can be punished other than by means of a civil proceeding;

"prescribed form" means a form prescribed by regulations or rules of a Court made under this Act or any other enactment;

"prison" has the meaning in the Prisons and Corrections Act 2013, and includes a police gaol;

"prosecutor" means:

(a) the Attorney-General or includes a lawyer acting under the general or special instructions of the Attorney-General; or

(b) a constable prosecuting in a District Court, acting under the general or special instructions of the Commissioner of Police,

and "prosecution" has a corresponding meaning.

"public place" includes a place to which the public are entitled or permitted to have access whether on payment or otherwise;

"Registrar" means the Registrar of a Court, and includes a Deputy Registrar;

"remanding officer" means a remanding officer mentioned in Article 6(4) of the Constitution;

"representative", for a corporation, means a person appointed by the corporation to represent it for the purpose of doing an act or thing which the representative is authorised to do under this Act;

"rules" means rules made under, or applying pursuant to section 199;

"Youth Court" means the Court established under the Young Offenders Act 2007.

(2) A statement in writing, which need not be under seal, but which purports to be signed by any person having, or being one of the persons having, the management of the affairs of a corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Act, is admissible without further proof as *prima facie* evidence that that person has been so appointed.

3. Application - (1) Subject to section 200, this Act applies to all criminal proceedings on or after the commencement of this Act.

(2) Nothing in this Act limits or affects in any way any other enactment conferring on a Court a power to pass a sentence or impose a punishment or make an order in addition to or instead of a sentence or punishment prescribed by this Act, or otherwise to deal with a defendant.

PART 2
JURISDCTION OF THE COURTS

Division 1 - Supreme Court

4. Criminal jurisdiction of Supreme Court - The Supreme Court has jurisdiction to hear and determine the following:

(a) all criminal proceedings commenced in the Supreme Court by the laying of an information;

(b) any information laid in a District Court and transferred to the Supreme Court for trial under this Act or any other Act;

(c) any information filed in the Supreme Court within the jurisdiction of a District Court, if –

(i) the Supreme Court is satisfied that it is desirable or expedient in the interest of justice to do so; or

(ii) the information is to be tried together with an information under the jurisdiction of the Supreme Court; or

(iii) the information is an alternative to the information under the jurisdiction of the Supreme Court;

(d) all criminal appeals from a District Court or the Youth Court whether brought by case stated or notice of general appeal against conviction, sentence, or acquittal;

(e) all applications for release on bail or at large in respect of any information laid in or transferred to the Supreme Court;

(f) any appeal against a bail decision from a District Court or the Youth Court.

5. Power to transfer proceedings - (1) As an exception to section 4, a Judge of the Supreme Court having heard the prosecutor and the defendant may direct that a trial that otherwise would be conducted in the Supreme Court be transferred to a District Court for trial, if:

(a) the person awaiting trial is charged under the Narcotics Act 1967; and

(b) the Judge is satisfied that despite the maximum penalty of the offence, the sentence that be imposed if the charge or charges were proved may be less than 2 years; and

(c) there are no matters of legal or factual complexity or matters arising from the public interest or the interests of justice such that the trial should remain in the Supreme Court.

(2) If the defendant is convicted of the offence or offences on any proceeding transferred under this section, the trial Judge, as an exception to subsection (1)(b), may sentence the defendant to imprisonment for more than 2 years but defendant may not be sentenced to more than 7 years imprisonment.

5A. Power to transfer proceedings to District Court for rehabilitative programme - (1) As an exception to section 4, a Judge of the Supreme Court having heard the prosecutor and the defendant may direct that the sentencing or other disposition that would otherwise be conducted in the Supreme Court be transferred to the District Court if:

(a) the defendant –

(i) has entered a plea of guilty; and

(ii) is likely to be suitable for a rehabilitative programme in the District Court; and

(b) the Judge of the Supreme Court is satisfied that, despite the maximum penalty for the offence, the sentence that would be imposed, taking into account credit for the satisfactory completion of the rehabilitative programme, would be a community-based sentence.

(2) If the defendant:

(a) successfully completes the rehabilitative programme, the District Court Judge may sentence the defendant pursuant to its sentencing power; or

(b) fails to complete the rehabilitative programme, the District Court Judge must transfer the matter back to the Supreme Court for sentencing.

(3) The Chief Justice may issue Directives to provide for criteria and procedures for rehabilitative programme.

(4) In this section, "rehabilitative programme" means the judicially monitored rehabilitative programme undertaken by the District Court for a defendant pursuant to this section.

6. Trial with or without assessors - (1) All trials in the Supreme Court are to be tried by a Judge alone.

(2) As an exception to subsection (1), a defendant charged with an offence punishable by life imprisonment is to be tried by a Judge sitting with 5 assessors.

(3) However, a defendant under subsection (2) may apply pursuant to section 125 to be tried before a Judge alone.

(4) Subsection (2) does not apply if the defendant is charged under the Narcotics Act 1967.

7. Trial without assessors for complex fraud-(1) In this section "complex fraud" includes a series of connected incidents of fraud or other complex issues which, if taken together, amount to a complex fraud.

(2) Subject to section 6(2), in any trial involving a case of complex fraud punishable by life imprisonment, a Judge, on the application of the prosecutor, may direct that the trial be heard by a Judge alone.

8. Transfer from District Courts-(1) A Judge of the Supreme Court may determine any application to transfer an information laid in the District Court to the Supreme Court for trial.

(2) The transfer of an information to the Supreme Court may be initiated by a Judge of the District Court or Supreme Court or by application by a prosecutor or defendant.

Division 2 - District Courts

9. Trial to be heard in District Courts-(1) A District Court has jurisdiction set out under the District Courts Act 1969.

(2) A District Court has jurisdiction to hear and determine any information transferred to the District Court from the Supreme Court.

10. Criminal jurisdiction of Fa'amasino Fesoasoani - A Court presided over by a Fa'amasino Fesoasoani has jurisdiction prescribed under the District Courts Act 1969.

Division 3 - Youth Court

11. Criminal jurisdiction of Youth Court - A Youth Court has jurisdiction as set out under the Young Offenders Act 2007.

12. Youth Court may transfer proceedings - (1) As an exception to the Young Offenders Act 2007, on the application of the prosecutor, a Youth Court may transfer the trial of a child to:

(a) the Supreme Court if the offence charged is punishable by imprisonment of more than 7 years; or

(b) a District Court, in any other case,

if the Youth Court is satisfied that the seriousness of the offence, or any other circumstances of the offence or the defendant make it appropriate for the matter to be tried in the Supreme Court or a District Court.

(2) A Youth Court may in any case transfer a trial to the Supreme Court or a District Court if the child is jointly charged with an adult and the interests of justice require that the trials be heard together.

PART 3
COMMENCEMENT OF PROCEEDINGS

13. Proceedings to commence by laying information - All criminal proceedings commence in the Supreme Court by laying of an information unless the proceeding is transferred to the District Court under section 5.

14. Person arrested without warrant - (1) If a person is arrested without warrant, any information charging the offence on which that person is arrested is to be filed as soon as is practicable in the Court before which the person arrested is to appear.

(2) If any information is laid in the Supreme Court, proceedings in relation to bail may be heard on that information although the Attorney-General has not filed a charging document.

15. Issue of summons - (1) When an information has been laid, a Judge, Fa'amasino Fesoasoani or Registrar may issue a summons to the defendant in Form 2 in the Schedule.

(2) A summons issued under subsection (1) must:

(a) require the person to appear at a date and time at the Court where the information has been or is to be filed; and

(b) contain the particulars of the person against whom the information has been or will be laid and the particulars of the offence or offences charged.

16. Time and place for laying information - (1) Any information for an offence the maximum penalty for which does not exceed 3 months imprisonment is to be laid within 12 months of the time that the offence is alleged to have been committed.

(2) Subsection (1) does not apply if any other period for the laying of an information is provided by an enactment.

(3) Any information for an offence within the jurisdiction of a District Court is to be filed in the District Court that is either closest by the most practicable route to the place where the offence was alleged to have been committed or to the place the person charged resides.

(4) Any information for an offence within the jurisdiction of the Supreme Court is to be filed in that Court.

17. Criminal proceedings in Supreme Court - (1) A hearing in the Supreme Court to determine an information must not commence until a charging document has been filed.

(2) Subsection (1) does not apply if:

(a) the prosecution is a private prosecution; or

(b) the Attorney General consents to the prosecution commencing.

(3) The charging document is to be filed within 21 working days (or such further time as the Court may allow on application of the prosecutor) of the first day the information filed is mentioned or called before the Supreme Court.

(4) The charging document may:

(a) have proceedings to proceed on the information already before the Supreme Court; or

(b) in addition to the information already before the Court, have proceedings also proceed on any other additional information in the charging document; or

(c) have proceedings to proceed on any substituted information in the charging sheet; or

(d) amend any information already before the Supreme Court.

(5) A person may enter a plea before the filing of a charging document and the Court is to record the plea but for guilty plea the Court may not enter a conviction unless the Attorney-General consents to the conviction being entered.

(6) As an exception to subsections (2) and (5), the hearing of any proceedings may commence without a charging document if the Court grants leave for hearing to commence on the information already before the Supreme Court.

18. Form and content of information - (1) Any information must:

(a) be in Form 1 in the Schedule; and

(b) be sworn or affirmed; and

(c) refer to the provision of an enactment creating the offence that it is alleged the defendant has committed.

(2) If the consent of a Judge or the Attorney-General is required to the laying of any information, the information is to be endorsed with the consent or accompanied by a certificate containing that consent.

(3) The endorsement or certificate is conclusive evidence of the consent.

19. Charging document - (1) The charging document must set out:

(a) the charges on which the Attorney-General intends to proceed with in the prosecution of the defendant; and

(b) if the prosecution proposes a joint trial on 2 or more defendants, the charges against all the defendants.

(2) The charging document may have the proceedings proceed on:

(a) the information already before the Court; or

(b) in addition to, or in substitution of the information, any additional charge or charges set out in the charging document.

(3) If there is more than 1 defendant, 1 charging document is to be filed with the Court.

(4) A failure to file a charging document does not invalidate the proceedings.

(5) Nothing in this section prevents the prosecution applying to amend or add any charge after a charging document has been filed.

(6) For a charging document containing more than 1 charge, each charge is treated as a separate charge.

(7) A Judge may order at any time before verdict:

(a) that the defendant be tried separately on any charge or charges in the charging document; or

(b) that the defendants be tried separately from each other,

if the Judge is satisfied that there are special circumstances likely to affect trial fairness or it is in the interest of justice.

(8) If an order is made under subsection (7) for separate trials, the prosecutor must file a charging document for each trial.

20. Information to charge one offence only - (1) Subject to any other enactment, any information is to be for 1 offence only.

(2) As an exception to subsection (1), the information may charge, in the alternative, different acts, omissions or matters if the acts, omissions or matters are stated in the alternative in the enactment under which the charge is brought.

(3) The Court may, on the application of the defendant, order that the information laid under subsection (2) be amended or divided if the Court is satisfied that the defendant's defence to any charge or charges will otherwise be prejudiced.

(4) If an order is made under subsection (3), the hearing is to continue on the information as amended or, in the case of dividing the information, as if the information had been laid in respect of each of the divided charges.

21. Two or more information be heard together - (1) Two or more charges for any offences against a defendant may be tried together.

(2) The Court may make an order for the purpose of subsection (1) if:

(a) the information arises from allegations linked sufficiently by time, place, circumstances or other factors giving rise to significant commonality of evidence; or

(b) the Court thinks it is desirable or expedient in the interests of justice to do so.

(3) The prosecutor may:

(a) notify the Court before which the proceedings are being conducted proposing that 2 or more charges to be tried together; and

(b) seek leave at any time before or during the trial, to amend that notification.

(4) If the Court before which proceedings are being conducted thinks it is in the interest of justice to do so, it may, on the application of the defendant or the prosecutor, order that a defendant be tried separately on one or more charges against the defendant.

(5) If 1 charge is to be tried before assessors, all charges may be so tried.

(6) If 1 charge is to be tried in the Supreme Court, all charges may be tried in the Supreme Court.

22. Charge may be representative - (1) A charge may be representative if:

(a) multiple offences of the same type are alleged; and

(b) the offences are alleged to have been committed in similar circumstances over a period of time; and

(c) the nature and circumstances of the offences are such that the complainant cannot reasonably be expected to particularise dates or other details of the offences.

(2) A charge may also be representative if:

(a) multiple offences of the same type are alleged; and

(b) the offences are alleged to have been committed in similar circumstances such that it is likely that the same plea would be entered by the defendant in relation to all the offences if they were charged separately; and

(c) because of the number of offences alleged, if the offences were to be charged separately but tried together it would be unduly difficult for the Court (including, in any trial with assessors, the assessors) to manage the separate charges.

(3) A representative charge must be identified as such.

(4) A representative charge must contain the following:

(a) particulars of the offences of which the charge is representative, including, without limitation, when values, amounts, or quantities are relevant, particulars of the minimum values, amounts, or quantities that the prosecution must establish in order for the charge to be proved; and

(b) the dates on or between which the offending is alleged to have occurred.

(5) The Court may, on application of any party or on its own initiative, in the interests of justice:

(a) order that any charge that is representative, be amended, or divided into 2 or more charges; or

(b) order that 2 or more charges be amalgamated into a representative charge.

23. Two or more defendants may be tried together - (1) Any number of defendants may be tried together.

(2) A Court may make an order for the purpose of subsection (1) if:

(a) the allegations against the defendants are linked sufficiently by time, place, circumstances or other factors giving rise to significant commonality of evidence; or

(b) the Court thinks it is desirable or expedient in the interests of justice to do so.

(3) The prosecutor may:

(a) notify the Court before which proceedings are being conducted proposing that the charges against 1 defendant be tried with charges against one or more other defendants; and

(b) seek leave at any time before or during the trial to amend that notification.

(4) If the Court before which proceedings are being conducted thinks it is in the interest of justice to do so, it may, on the application of the defendant or the prosecutor, order that a defendant be tried separately.

(5) If 1 defendant is to be tried before assessors on 1 charge, all charges against the defendant may be so tried.

(6) If 1 charge is to be tried in the Supreme Court, all charges against all defendants may be tried in the Supreme Court.

24. Information to contain sufficient particulars - (1) Any information or charging document must contain particulars as will fairly inform the defendant of the substance of the offence with which the defendant is charged.

(2) In addition to section 18(1)(c), the particulars of the offence:

(a) must, to the extent it is practicable or appropriate, use the words of the enactment creating the offence; and

(b) may refer to any part of that enactment.

(3) In estimating the sufficiency of the information under subsection (2), the Court must have regard to the reference to the enactment.

(4) The particulars must include the time and place of the alleged offence to the extent that may be reasonably ascertained and the person (if any) against whom, or the matter (if any) in respect of which, it was committed.

25. Application for further particulars - (1) If a defendant, who has sought further particulars of a charge from the informant or prosecutor, considers the response to be inadequate, the defendant

may apply to the Court in which the charge is to be tried for an order for specified further particulars.

(2) If the Court is satisfied that all or some of the particulars, specified in the application under subsection (1), are necessary in the interests of a fair trial, the Court may order the informant or prosecutor to supply those particulars to the defendant in writing.

26. Information may be laid by any person - (1) Subject to any other enactment and subsection (2), a person aged 21 or over may lay any information for an offence.

(2) A person under the age of 21 may do so with the leave of a Judge.

27. Proceedings on information requiring consent - (1) If a person is alleged to have committed an offence that requires the consent of another person before the information for that offence may be laid, the person alleged to have committed the offence:

(a) may be arrested; or

(b) be issued with a warrant for arrest and its execution; and

(c) may be remanded in custody or on bail,

although the consent to the laying of the information has not been obtained.

(2) When the person is remanded under subsection (1):

(a) no further proceedings are to be taken until the consent has been obtained; and

(b) the consent must be obtained within 5 working days of the order remanding the defendant in custody.

(3) In any other case, the consent must be obtained as soon as is practicable.

28. Information not to be held invalid for want of form - (1) A Court may not quash, set aside or dismiss:

(a) any information; or

(b) a charging document or a charge in the charging document; or

(c) a warrant, order or other process of court,

by reason only of the failure to comply with this Act unless the Court is satisfied that there has been a miscarriage of justice such that it would be contrary to the interests of justice to allow amendment, or any other correction available under this Act, or any other enactment, or rule of law.

(2) Subject to subsection (1), a Court may not invalidate or dismiss, on any of the following grounds, any information:

(a) that does not contain the name of any person injuriously affected;

(b) that does not state who is the owner of any property therein mentioned;

(c) that charges an intent to defraud, without naming or describing the person whom it was intended to defraud;

(d) that does not set out the words used, if words used are the subject of the charge;

(e) that does not specify the means by which the crime was committed;

(f) that does not name or describe with precision any person or thing;

(g) that was not properly sworn or affirmed.

PART 4
ARREST AND SEARCH

Division 1 - Arrest

29. Arrest without warrant - (1) A person must not be arrested without a warrant except pursuant to a power to arrest without a warrant under this Act or any other enactment.

(2) A private person:

(a) may arrest without a warrant any other person whom the person finds committing an offence punishable by imprisonment for 3 years or more; and

(b) must, as soon as possible, deliver the arrested person to a constable or police station.

(3) A constable, and any other person whom the constable calls for assistance, may arrest and take into custody without a warrant:

(a) a person whom the constable finds committing, or whom the constable has good cause to suspect of having committed, an offence punishable by imprisonment for 3 months or more; or

(b) a person who, within the constable's view, commits or commences to commit an offence under the Police Offences Ordinance 1961 or the Road Traffic Ordinance 1960, and who either -

(i) fails to give his or her name and address on demand; or

(ii) after being warned by the constable to desist, persists in committing that offence; or

(c) a person whom the constable -

(i) finds committing, or has good cause to suspect of having committed, a breach of the peace; or

(ii) finds in any public place, and has good cause to think is drunk; and

(iii) has good cause to believe might cause harm to others or come to harm himself or herself as a result of the breach of the peace or drunkenness.

(4) This section is subject to any enactment imposing any limitation, restriction or condition on the exercise of any power to arrest without a warrant conferred on any constable by that enactment for an offence or class of offences.

(5) If, under any enactment other than this Act, a person, not being a constable, has power to arrest any other person without a warrant, a constable may exercise that power in the same cases and in the same manner as that person.

(6) This section does not affect Part IV of the Crimes Act 2013 on matters of justification or excuse in the arrest of any person.

30. Power to enter premises without warrant to arrest offender or prevent offence - (1) If a constable is authorised by this Act or by any other enactment to arrest a person without a warrant, the constable, and any other person whom the constable calls for assistance, may enter any premises, without a warrant and by force if necessary:

(a) to arrest that person if the constable -

(i) has found that person committing an offence punishable by imprisonment for 3 months or more and is freshly pursuing that person; or

(ii) has good cause to suspect that the person has committed the offence; or

(b) to prevent the commission of an offence that would be likely to cause immediate and serious injury to another person or property, if the constable has good

cause to suspect that the offence is about to be committed.

(2) If, in any case to which this section applies:

(a) the constable is not in uniform; and

(b) a person in actual occupation of the premises requires the constable to produce evidence of his or her authority,

the constable must, before entering or proceeding further on the premises, produce his or her badge or other evidence or an identification document that he or she is a constable.

(3) This section does not affect in any way the power of a constable to enter any premises pursuant to a warrant.

(4) A person who is arrested without warrant must be brought before a Court or remanding officer, as soon as is reasonably possible.

31. Issue and withdrawal of warrant to arrest defendant - (1) When any information has been laid and whether or not any summons has been issued or served:

(a) a Judge may, if the Judge thinks fit, issue a warrant, in the prescribed form, to arrest the defendant and bring the defendant before a court; or

(b) a Fa'amasino Fesoasoani or a Registrar may issue a warrant, in the prescribed form, to arrest the defendant and bring the defendant before a Court if the defendant is liable on conviction to imprisonment and if, in the opinion of the Fa'amasino Fesoasoani or the Registrar -

(i) a warrant is necessary to compel the attendance of the defendant; or

(ii) a warrant is desirable having regard to the gravity of the alleged offence and the circumstances of the case.

(2) The warrant of arrest:

(a) is to be directed specifically to a constable by name or generally to all constables; and

(b) may be executed by any constable.

(3) When executing a warrant under this section, the constable:

(a) may at any time enter any premises, by force if necessary, if the constable has good cause to suspect that the defendant is on the premises; and

(b) if, the constable is not in uniform and a person in actual occupation of the premises requires the constable to produce evidence that he or she is a constable, must, before entering or proceeding further on the premises, produce his or her badge or other evidence that he or she is a constable.

(4) A warrant to arrest a defendant may be withdrawn by the person who issued it at any time before it is executed.

32. Duty of persons arresting - (1) A constable or law enforcement officer, who is arresting another person must inform the person arrested on all of the following:

(a) the right not to say anything unless the arrested person wishes to do so; and

(b) the right to consult a lawyer; and

(c) the grounds of arrest and any charge against the arrested person.

(2) A person who arrests another person pursuant to any process or warrant must, if required by the arrested person:

(a) produce it to the arrested person, if the person is in possession of the process or warrant at the time of the arrest; or

(b) produce it to the arrested person as soon as practicable after the arrest, if the person is not in possession of the process or warrant at the time of the arrest.

(3) If, under any enactment, a person other than a constable has, by virtue of the person's appointment to an office, a power of arrest without a warrant, the person must (whenever the person arrests another person pursuant to that power) if required by the arrested person:

(a) produce the evidence of appointment to the arrested person, if the person has evidence of the appointment at the time of the arrest; or

(b) produce the evidence of appointment to the arrested person as soon as practicable after the arrest, if the person does not have evidence of the appointment at the time of the arrest.

(4) A failure to comply with a duty under this section does not of itself deprive the person arresting, or the person's assistants, of protection from criminal or civil liability, but may be relevant to any inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) This section does not limit or affect the provision of any enactment providing:

(a) the burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person; or

(b) a person having, by virtue of his or her office, a power of arrest without a warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of appointment to that office, or is required, in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of appointment.

(6) In this section, "law enforcement officer":

(a) means a person empowered or authorised under an enactment to arrest any other person; but

(b) does not include a private person when exercising the powers of arrest under section 29(2) or any other enactment.

Division 2 - Search

33. Search and seize warrants - (1) This section applies whether or not any information has been laid.

(2) A Judge or Registrar may issue a search and seize warrant, or a restraining order, in the prescribed form, if he or she is satisfied on the oath of any person that there is reasonable ground or good cause for believing that there is in any building, aircraft, ship, vehicle, box, receptacle, premises, or place, or on any person:

(a) anything upon or for which an offence punishable by imprisonment has been or is suspected of having been committed; or

(b) anything which, there is reasonable ground to believe, will be evidence for the offence; or

(c) anything which there is reasonable ground to believe is intended to be used for the purposes of committing the offence.

(3) A restraining order may prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property or part of or interest in it, as is specified in the order, either absolutely or except in any manner specified in the order.

(4) In this section, "Registrar" does not include a Deputy Registrar.

34. Warrant for forensic samples - (1) This section applies whether or not an information has been laid.

(2) If a Judge is satisfied on the oath of any person that there is reasonable ground or good cause to believe that there is on or in any person anything which there is reasonable ground to believe will be evidence for an offence, the Judge may issue a warrant:

(a) to examine a part of the body that requires touching of the body or removal of clothing; or

(b) to take a sample of hair; or

(c) to take a sample from or under a fingernail or toenail; or

(d) to take a sample of saliva or a sample by a swab; or

(e) to take a sample by swab or washing from any external part of the body; or

(f) to take a sample from vacuum suction, by scraping or by lifting by tape from any external part of the body; or

(g) to take a handprint, fingerprint, footprint, or toe-print; or

(h) to take a sample of blood or other bodily fluid;

(*i*) to take a dental impression;

(j) to take any other prescribed forensic samples.

(3) This section does not affect the powers of the police to take forensic samples under any other enactment.

(4) If a forensic sample is to be taken from a child or person with mental disability, the sample must be taken in the presence of a parent or a guardian of the child or person.

(5) Regulations may be made under section 198 to set out other procedures for the taking of forensic samples.

35. Disposal of things seized - (1) If a constable seizes anything under section 33, it must be retained under the custody of

a constable, except while it is being used in evidence or in the custody of a court, until it is disposed of under this section.

(2) In any proceedings for any offence relating to the thing, the Court may order, either at the trial or on a subsequent application, that the thing be:

(a) delivered to the person appearing to the Court to be entitled to it; or

(b) forfeited, defaced, or destroyed (in the case of counterfeit coin, or forged bank notes); or

(c) retained under the custody of a constable until disposed of under the Proceeds of Crime Act 2007; or

(d) disposed of in any manner, as the Court thinks fit.

(3) A constable may:

(a) at any time, unless an order has been made under subsection (2), return the thing to the person from whom it was seized; or

(b) apply to a Judge, for an order as to its disposal, who may make an order that a Court may make under subsection (2).

(4) If, upon the expiry of a period of 6 months after the date of seizure:

(a) proceedings have not been brought for an offence relating to the thing; and

(b) the thing is still in the custody of a constable,

a person claiming to be entitled to the thing may apply to a Judge for an order that it be delivered to the person; and on any such application the Judge may adjourn the same on any terms as he or she thinks fit for proceedings to be brought, or may make any order that a Court may make under subsection (2).

(5) If:

(a) a person is convicted in any proceedings for an offence relating to a thing to which this section applies; and

(b) an order is made under this section to deface or destroy the thing,

the operation of the order is suspended until -

(i) the time for appeal expires; or

(ii) if an application for leave to appeal or a notice of appeal is filed, the refusal of the application or the determination of the appeal (on the determination of an appeal, the Court

determining the appeal may annul or vary the order to deface or destroy the thing under this section).

36. Protection from responsibility - (1) A person is not criminally or civilly liable who, pursuant to this Act or any other enactment:

(a) arrests another person whether with or without a warrant, or executes any search warrant; or

(b) assists a constable to arrest any person on being called upon by a constable so to do.

(2) Subsection (1) does not apply if the person, called upon by a constable to assist in the arrest of a person whom the constable believes or suspects to have committed an offence, knows that there is no good cause for the belief or suspicion.

(3) The protection from criminal and civil liability under subsection (1) applies to the use by the person of any force as may be necessary to overcome any force used in resisting arrest, search or execution, unless the arrest, search or execution could have been made by reasonable means in a less violent manner.

(4) Except for a constable or person called upon by a constable to assist the constable, this section does not apply if the force used is intended or likely to cause death or grievous bodily harm.

PART 5
SUMMONS, SERVICE, EVIDENCE AND DISCLOSURE

Division 1 - Summons and Service

37. Issue of Summons - (1) When any information has been laid, a Judge, Fa'amasino Fesoasoani or Registrar may issue a summons to the defendant in Form 2 in the Schedule.

(2) The summons is to be issued out of the Court in which the information was laid pursuant to section 13.

38. Service of document on defendant - (1) In this section, "defendant's family" means the defendant's father, mother, wife, husband, brother, sister, half-brother, half-sister, or a son or daughter or aged 18 years or more.

(2) Any summons to a defendant or any other document that is required to be served on a defendant under this Act is to be served

by delivering it to the defendant personally, or by bringing it to his or her notice if the defendant refuses to accept it.

(3) As an exception to subsection (2), a Judge, Fa'amasino Fesoasoani or Registrar may, if satisfied that the service of any summons or document under subsection (2) is not practicable, order that the summons or document be served on the defendant by leaving it at the defendant's usual place of residence with a person appearing to be a member of the defendant's family aged 18 years or more.

39. Service in particular cases - As an exception to section 38, the service of a document may be effected as follows:

(a) if a lawyer advises that he or she is acting on behalf of a person, it is sufficient service to deliver the document to the lawyer;

(b) if a defendant is an inmate of any penal, psychiatric or mental institution, it is sufficient service to deliver the document to the superintendent or other officer apparently in charge of the institution;

(c) as an exception to the Companies Act 2001, if service is to be effected on a corporation, it is sufficient service to deliver the document -

(i) to the president, chairperson, manager or other principal officer of the corporation, or to the secretary, clerk or treasurer; or

(ii) to a person purporting to have charge of the affairs or business of the corporation at its registered or principal office or principal place of business or at the office or place of business nearest to the Court from which the document is issued; or

(iii) for a corporation incorporated outside Samoa, to a person mentioned in subparagraph (i) or (ii) at any office or place of business in Samoa.

40. Language of documents - (1) If a document is served on a person who is known to the Registrar to be able to read and understand English, the document is to be written in English; but in any other case it is to be written in Samoan or be accompanied by a translation into Samoan.

(2) As an exception to subsection (1), if a document is served on a lawyer pursuant to section 39, a document may be in Samoan or in English.

41. Who may serve documents - Any summons or any other document to a defendant required to be served on a defendant may be served by a constable, an officer of the Court or any other person or member of a class of persons authorised by a Judge or Registrar, either generally or in respect of a particular case or class of cases.

42. Proof of service - (1) The service of any document may be proved:

(a) by affidavit made by the person who served the document, showing the fact and the time, place and mode of service; or

(b) if service is affected by an officer of the Court or a constable, by an endorsement on a copy of the document showing the fact, time, place and mode of service and signed by the person who served the document; or

(c) by any person who served the document, on oath at the hearing.

(2) The statement as to service made by the person who served the document is taken to be correct unless the contrary is proved.

(3) A person who wilfully endorses a false statement of the fact, time, place or mode of service on a copy of a document commits an offence and is liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months, or to both.

Division 2 - Taking Evidence other than at Trial

43. Evidence of person intending to leave Samoa - (1) A party to a prosecution may apply to a Judge of the Supreme Court or a District Court or to a Fa'amasino Fesoasoani for an order that a person attend at a specified time and place to give oral evidence or produce any document, or both, if:

(a) the person will be a witness in a criminal trial that has been assigned a trial date, or a likely trial date is known with reasonable certainty; and

(b) the person who is to give evidence intends to leave Samoa, and will not be in Samoa when the trial is to be held; and

(c) the Court is satisfied that it is in the interests of justice that the evidence be taken pursuant to an order under this section.

(2) If an order is made under subsection (1), the person in respect of whom it is made may be examined, cross-examined and re-examined as if the person was appearing as a witness at the trial.

(3) The evidence of the person examined is to be recorded in writing and shown to the person so testifying who, if satisfied it is correct, must sign the record produced by the court.

(4) Without affecting subsection (3), the presiding Judge or Fa'amasino Fesoasoani may order that the hearing be videotaped or recorded on any other electronic means.

(5) This section applies to any future trial whether before a Judge and assessors in the Supreme Court or otherwise.

(6) If the trial is to be before a Judge sitting with assessors, the evidence must be videotaped or recorded on any other electronic means.

(7) This section does not affect the power of the Court to compel the personal attendance of a witness at the hearing.

44. Evidence of person dangerously ill - (1) A party to a prosecution may apply to a Judge or Fa'amasino Fesoasoani for an order that the statement of any person as to a person charged with a criminal offence be taken, if:

(a) a medical officer has certified that the person is dangerously ill; and

(b) the person is able to give material evidence as to the pending charge; and

(c) the person consents to the making of a statement.

(2) The statement taken under subsection (1):

(a) is to be taken, on oath or affirmation, by the Judge, Fa'amasino Fesoasoani or a Registrar; and

(b) signed by person making the statement or, if that person is unable to do so, by the Judge, Fa'amasino Fesoasoani or Registrar taking the statement; and

(c) is to be filed in the Court in which the charge is to be heard.

(3) Section 43(3) to (7) applies to the taking of statement under this section, with necessary modifications.

45. Taking evidence of witness out of Court - (1) If, on the application of a party to a prosecution, a Judge or Fa'amasino Fesoasoani is satisfied that any witness is or will be for sufficient reason unable to attend at the trial and give evidence, he or she may make an order directing the taking of evidence at any place in Samoa outside the trial court.

(2) Section 43(3) to (7) applies to the taking of evidence under this section, with necessary modifications.

(3) If the witness is overseas, the order under subsection (1) may include taking of evidence by video conference, video link or similar means at a place specified in the order.

Division 3 - Disclosure

46. Prosecutors duty to disclose statements-(1) The prosecutor must, within a reasonable time before the trial, disclose:

(a) to the Court and the defendant, copies of all statements made by witnesses proposed to be called, and by the defendant whether given orally or in writing; and

(b) to the defendant, a list of any defendant's previous convictions that are known to the prosecutor.

(2) A statement that is in a language that the defendant does not understand must be translated into a language that the defendant understands.

47. Adjourning trial for witnesses-(1) If the Court is of the opinion that the defendant is taken by surprise (in a manner likely to be prejudicial to the defendant's defence) by the calling of prosecution witness:

(a) who has not made any written statement, and of the intention to produce whom the defendant has not had sufficient notice; or

(b) who has made a written statement, but whose written statement has not been made available to the defendant in sufficient time,

the Court may, on the application of the defendant, either adjourn the further hearing of the case or, if the case requires, discharge the assessors from giving a verdict, and postpone the trial.

(2) If the Court is of the opinion that any witness who is not called for the prosecution ought to be so called, the Court may:

(a) require the prosecutor to call the witness; or

(b) if the witness is not in attendance, make an order to procure the attendance of the witness; or

(c) if it thinks proper, adjourn the hearing until the witness attends.

(3) If, in such case, the Court is sitting with assessors and is of opinion that it would be conducive to the ends of justice to do so, the Court may, on the application of the defendant, discharge the assessors and postpone the trial.

48. Prosecutor may decline to disclose information - (1) Section 46 does not require a prosecutor to disclose information which the prosecutor would, but for this section, be required to disclose if:

(a) the prosecutor is not in possession of the information requested; or

(b) the information is not recorded; or

(c) the disclosure of the information is likely to prejudice the prevention, investigation or detection of offences; or

(d) the disclosure of the information is likely to endanger the safety of any person; or

(e) the information is –

(i) material or communications prepared by the prosecutor, or communications between persons assisting in the trial of the case and the prosecutor; or

(ii) the information relates to information about undercover police officers; or

(iii) the information is subject to a pre-trial witness anonymity order or a witness anonymity order given under evidence legislation; or

(iv) the information relates to information about witnesses' addresses; or

(f) the disclosure of the information would be likely to prejudice –

(i) the security or defence of Samoa or the international relations of the Government; or

(ii) the entrusting of information to the Government on a basis of confidence by the government of any other country or any agency of that government or any international organisation; or

(g) disclosure of the information would be likely to facilitate the commission of another offence; or

(h) disclosure of the information would constitute contempt of Court or contempt of the Legislative Assembly; or

(*i*) the information could be withheld under any privilege applicable under the rules of evidence; or

(j) disclosure of the information would be contrary to the provisions of any other enactment; or

(k) the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source; or

(*l*) the information has previously been made available to the defendant; or

(m) the information does not exist or cannot be found; or

(n) the information –

(i) reflects on the credibility of a witness who is not to be called by the prosecutor to give evidence but who may be called by the defendant to give evidence; and

(ii) is not for any other reason relevant.

(2) If part only of the information may be withheld, the prosecutor must make the remainder of the information available if it is possible to protect the withheld information by deletion, summary, or otherwise.

(3) If the prosecutor becomes aware that there has ceased to be any justification for withholding all or part of any information that has been withheld under this Act, the prosecutor must, if the criminal proceedings have not yet been completed, disclose that information to the defendant as soon as is reasonably practicable.

49. Court to determine disclosure issues - (1) The defendant may apply to the Court for an order that a particular item of

information or type of information in the possession or control of the prosecutor be disclosed on the grounds that:

(a) the defendant is entitled to the information under section 46, and –

(i) the prosecutor failed to disclose the information despite specific request (in writing) from the defendant for the disclosure of the information; or

(ii) the prosecutor refused under section 48 to disclose the information, and none of the reasons described in that section for which information could be withheld applies to the information; or

(b) even though the information may be withheld under this Act, the interests protected by the withholding of that information are outweighed by other considerations that make it desirable, in the public interest, to disclose the information.

(2) If the Court is satisfied, on an application made under subsection (1), that:

(a) the defendant is entitled to the disclosure of any particular item of information or type of information under subsection (1); or

(b) any particular item of information or type of information should be disclosed to the defendant under subsection (1),

the Court may order that the item or type of information be disclosed to the defendant, subject to any conditions that the Court considers appropriate.

(3) When hearing both parties and determining an application under this section, only the presiding Judge may view the information before an order is made pursuant to subsection (2).

(4) An application under subsection (1) must be filed with the Court and served on the prosecutor not less than 15 working days before the date of the trial.

50. Notice of alibi - (1) If a defendant intends to call evidence in support of an alibi, the defendant must give written notice to the prosecutor of the particulars of the alibi.

(2) The written notice must be given:

(a) if the defendant is to be tried in a District Court, within 10 working days of entering a plea of not guilty;

(b) if the defendant is to be tried in the Supreme Court, within 20 working days of entering a plea of not guilty.

(3) The Court may, in the interests of justice and fair trial, dispense with the period in subsection (2).

(4) Without limiting subsection (1):

(a) the notice under subsection (1) must include the name and address of the witness or, if the name and address is not known to the defendant when the notice is given, any matter known by the defendant that might be of material assistance in finding that witness; or

(b) if the name or the address is not included in the notice, the defendant must have, before giving the notice, taken all reasonable steps, and after giving the notice continue to take all reasonable steps, to ensure that the name and address is ascertained; or

(c) if the name or the address is not included in the notice, but the defendant subsequently discovers the name or address or becomes aware of any other matter that might be of material assistance in finding the witness, the defendant must as soon as practicable give written notice of the name, address, or other information, as the case may require; or

(d) if the defendant is notified by the prosecutor that the witness has not been traced by the name or at the address given, the defendant must as soon as practicable give written notice of any other matter known to the defendant that might be of material assistance in finding that witness or, on subsequently becoming aware of any such matter, give written notice of it as soon as practicable.

51. Notice of expert evidence - (1) If a defendant proposes to call a person as an expert witness, the defendant must, at least 10 working days before the date fixed for the defendant's hearing or trial or within any further time that the Court may allow, disclose to the prosecutor:

(a) any brief of evidence to be given, or a report provided by that witness; or

(b) if that brief or the report is not then available, a summary of the evidence to be given and the conclusions of the report to be provided.

(2) If the defendant, under subsection (1)(b), provides only a summary of evidence to be given or conclusions of the report to be presented, the defendant must disclose to the prosecutor the brief of evidence to be given or the report provided by that witness as soon as possible after it becomes available.

PART 6
TRIALS

52. Place of trial - A charge is to be heard and determined in the Court in which the information has been filed, unless an order is made otherwise under this Act.

53. Transfer of trials between District Courts and Supreme Court - (1) A District Court Judge may, on the application of the prosecutor or the defendant or on the Judge's initiative, order that any information for trial in the District Court or before the Fa'amasino Fesoasoani be transferred to the Supreme Court for trial.

(2) A Judge of the Supreme Court may order that the trial of any information laid in that Court be transferred for hearing and determination in a District Court.

(3) An order may be made:

(a) under subsection (1), if the District Court Judge is satisfied –

(i) that a question of law of general or public importance has arisen or may arise; or

(ii) that otherwise in the public interest or interests of justice it is desirable that the trial be conducted in the Supreme Court; or

(b) under subsection (2), if the Judge of the Supreme Court is satisfied that –

(i) the information filed within the Supreme Court is within the District Court jurisdiction; or

(ii) the matter is within section 5.

54. Withdrawal of information with leave - (1) Any information laid in or transferred to a District Court may, with leave of that Court, be withdrawn by the informant:

(a) at any time before the information has been determined; or

(b) if the defendant has pleaded guilty, before sentence has been imposed.

(2) Any information or charging document laid in the Supreme Court may be withdrawn by the prosecutor with the leave of a Judge at any time during the hearing.

(3) The withdrawal of charges pursuant to this section does not prevent any further or other proceedings against the defendant for the same offence.

55. Amendment of charges - (1) Subject to subsections (2) to (5), if the defendant appears to answer a charge, the Court may amend the charges in any way at any time during the trial.

(2) At the trial of any person, a Judge may amend the charges pursuant to subsection (1) in a manner that brings the charge into conformity with the evidence offered by the informant or prosecutor.

(3) Amendment under subsection (1) may allow the charges to be amended by:

(a) amending any particulars; or

(b) removing or adding or substituting charges; or

(c) adding or removing the name of any defendant.

(4) If an amendment is by way of substituting another offence for that charged, then:

(a) before the trial is continued, the substituted charge is to be read to the defendant who must be asked to plead to it;

(b) the trial is to proceed as if the defendant had been charged with the substituted offence subject to any order of the Court as to the rehearing of any evidence given in relation to the original charge.

(5) If a charge is amended under subsection (1) and subsection (2) does not apply, the trial is to proceed as if the defendant had been charged on the information or charging document as amended.

(6) In any case, the Court may on the application of the defendant adjourn the hearing if satisfied that an adjournment is required to allow the defendant to meet the charge as amended.

56. Court may prohibit publication - (1) If a Court makes an order, pursuant to Article 9(1) of the Constitution, to exclude the public and representatives of news services from all or any part of any trial, the Court may, in addition to making the order or instead of the order:

(a) make an order to prohibit the publication of any report or account of the whole or any part of the trial; or

(b) make an order to prohibit the publication, in any report relating to the trial, of the name of the defendant or of any other person connected with the trial.

(2) A person must not publish the name of the victim or the alleged victim of a sexual offence in a report or account of the whole or any part of the trial unless the Court is of the opinion that the interest of justice requires publication.

(3) If the publication of a person's name is prohibited under this section, a person must not publish that person's name, or any name or particulars likely to lead to the identification of that person.

57. Offence for contravening exclusion order - (1) Without limiting the power of a Court to commit for contempt of court, a person commits an offence who:

(a) disobeys an order made under Article 9(1) of the Constitution or section 56(1); or

(b) contravenes of section 56(2) or (3).

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

58. Who may conduct proceedings - (1) At the hearing of any charge in a District Court:

(a) if any information has been laid by a constable, any other constable who is a sworn member of the Police may appear and conduct proceedings against the defendant; or

(b) if any information has been laid by an officer of a Ministry, statutory body, or corporation, any other officer of that Ministry, statutory body or corporation may appear and conduct the proceedings against the defendant.

(2) If a private information has been laid, the informant or informant's lawyer may appear and conduct the proceedings against the defendant.

(3) As an exception to subsection (1), the informant in any case may be represented by a prosecutor from the office of the Attorney-General but not otherwise.

59. Conduct of proceedings in Supreme Court - (1) The trial of any information filed in the Supreme Court by a constable or an officer of a Ministry, statutory body or government corporations is to be conducted by the Attorney-General or a prosecutor employed by the Attorney-General's Office.

(2) As an exception to subsection (1), the Attorney-General may instruct any other lawyer to conduct the trial if the Attorney-General is of the opinion that it is in the public interest or interests of justice to give the instruction.

(3) In any other case, the Attorney-General may appear and conduct the prosecution, if the Attorney-General is of the opinion that it is in the public interest to do so.

60. Presence and custody of defendant during trial - (1) A defendant is entitled to be present in Court during the whole of the defendant's trial, unless the defendant misconducts himself or herself by so interrupting the trial as to render its continuance in the defendant's presence impracticable.

(2) A defendant may defend the proceedings personally or be represented by a lawyer.

(3) When the trial of a defendant who was granted bail commences in the Supreme Court, the Court may remand the defendant into custody until the end of the hearing of the trial if:

(a) the defendant is liable on conviction to a sentence of imprisonment or the defendant has been arrested; or

(b) the defendant was late to the hearing of the trial; or

(c) the defendant has conducted himself or herself in a manner that may influence or threaten witnesses.

61. Powers of Court if defendant does not appear - (1) If any summons has been served on the defendant within a reasonable time before the trial, or the defendant has been released on bail to attend personally at the trial, and the informant but not the defendant appears at the trial, the following provisions apply:

(a) if the offence charged is one for which the maximum penalty is more than 3 months imprisonment, the Court may –

(i) issue a warrant to arrest the defendant and bring the defendant before the court; or

(ii) adjourn the trial to a time and on any conditions as the Court thinks fit, and if the defendant does not appear at the time to which the trial is adjourned, issue a warrant to arrest the defendant and bring the defendant before the court;

(b) if the offence charged is one for which the maximum penalty is a fine or not more than 3 months imprisonment, the Court may –

(i) proceed with the trial and (if the defendant is convicted) pass sentence; or

(ii) issue a warrant to arrest and bring the defendant before the court; or

(iii) adjourn the trial to a time and on any conditions as the Court thinks fit.

(2) A person arrested under a warrant issued under subsection (1) must not be released except on bail (and not otherwise) granted by a Judge after hearing from the prosecution.

62. Powers of Court if prosecutor does not appear - (1) If the defendant is in custody or has been released on bail and the prosecutor has not had adequate notice of the trial, the Court must adjourn the trial to a time and place and on any conditions as it thinks fit to enable the prosecutor to appear.

(2) In any other case, the Court may:

(a) dismiss the information for want of prosecution, if the prosecutor does not appear; or

(b) adjourn the trial to a time and place and on any conditions as the Court thinks fit.

(3) If the information is dismissed under subsection (2)(a), the Court may, upon application by the prosecution, grant leave to re-file the information if the Court is satisfied that the prosecutor has a reasonable excuse for non-appearance.

63. Powers of Court when neither party appears - (1) If both parties to the prosecution do not appear at the trial of a charge, the Court may:

(a) dismiss the information; or

(b) adjourn the trial to such time and place and on such conditions as the Court determines.

(2) If the information is dismissed under subsection (1)(a), the information may be re-filed if the Court is satisfied that there are reasonable excuse for non-appearance of the parties.

64. Dismissal of information not a bar - (1) The dismissal of any information under section 62 does not operate as a bar to any further or other proceedings.

(2) The Court may allow the re-filing of information if it is satisfied of any reasonable excuse for non-appearance by either party to the prosecution.

PART 7
PLEAS AND MENTALLY IMPAIRED DEFENDANTS

Division 1 - Pleas

65. Plea of guilty by notice to Registrar - (1) A person who is charged with an offence for which the person is not liable on conviction to a sentence of imprisonment may give written notice addressed to the Registrar that he or she pleads guilty, and the Court has same power to deal with the person as if the person had appeared before it and pleaded guilty.

(2) As soon as practicable after receiving the written notice under subsection (1), the Registrar must, in writing, notify the prosecution.

(3) This section does not prevent the issue of a warrant to arrest the defendant.

66. Plea on being charged - (1) Before a charge is gone into:

(a) the defendant must be called by name; and

(b) the charge must be read to the defendant; and

(c) when the Court is satisfied the defendant understands the charge, the defendant must be asked how the defendant's pleads.

(2) The defendant may plead:

(a) guilty or not guilty; or

(b) any special pleas under section 68.

(3) If the defendant is represented by a lawyer, before any charge is gone into:

(a) the defendant must be called by name; and

(b) the lawyer for the defendant may advise the Court that the charge is to be taken as read, and enter a plea on behalf of the defendant.

(4) If the defendant wilfully refuses to plead or will not answer directly, the Court may enter a plea of not guilty.

(5) If the defendant pleads guilty, and the Court is satisfied he or she understands the nature and consequences of his or her plea, the Court may convict the defendant or deal with the defendant in any other manner authorised by law.

(6) If a plea of guilty is not entered, the trial must be conducted pursuant to this Act.

67. Plea on behalf of corporation - (1) If any information is filed against a corporation for an offence, before the charge is gone into:

(a) the corporation must be called by name; and

(b) the charge is to be read to the representative; and

(c) when the Court is satisfied the representative understands it, the representative must be asked how the corporation pleads.

(2) If the corporation either does not appear by a representative or, though it does so appear, fails to enter any plea under subsection (1), the Court must order a plea of not guilty to be entered, and the trial to proceed as if the corporation had entered a plea of not guilty.

(3) A statement signed by a managing director of the corporation, or by any person (by whatever name the person is called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative, is admissible as evidence of the person's appointment.

(4) A representative:

(a) need not be appointed under the seal of the corporation; and

(b) is not, by virtue the appointment, qualified to act on behalf of the corporation before the Court for any other purpose.

68. Special pleas - (1) In addition to a plea of guilty or not guilty, the only other pleas permitted are any of the following pleas:

(a) pleas of previous acquittal; or

(b) pleas of previous conviction; or

(c) pleas for pardon.

(2) The special pleas:

(a) may be pleaded together; and

(b) must be disposed of before the defendant is called on to plead further; and

(c) for a trial with assessors, must be disposed of by the Judge without the assessors.

(3) If every special plea is disposed of against the defendant, the defendant must nevertheless be allowed to plead not guilty.

69. Evidence of former trial - In the trial of an issue on a plea of previous acquittal or conviction pursuant to section 70, the following is admissible in evidence to prove or disprove the identity of the charge:

(a) a copy of the entry in the Criminal Record Book;

(b) a copy of the information;

(c) a copy of any notes made by the Judge or Fa'amasino Fesoasoani presiding at the former trial, certified by the Registrar.

70. Pleas of previous acquittal and conviction - (1) On the trial of an issue on a plea of previous acquittal or conviction on any charge, Court must order that the information be dismissed, if it appears that the matter on which the defendant was formerly charged is:

(a) the same in whole or in part as that on which it is proposed to the defendant; and

(b) the defendant might on the former trial, having regard to any amendment to the charge that could then reasonably have been made, have been convicted on all of the offences that the defendant may be convicted on the information subject to the special plea.

(2) If it appears to the court, that the defendant could not have been convicted on some offence within the former information that is the subject of the special plea, the Court must order that the

defendant must not be convicted on any charge that the defendant could have been convicted of at the former trial, but that the defendant must plea to any other offence charged.

(3) Section 66(2) and (3) applies to this section.

71. Second accusation - (1) If any information charges substantially the same offence for which the defendant was formerly charged, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction bars the information.

(2) A previous acquittal or conviction on any information charging murder, manslaughter or infanticide bars any second information for the same homicide charging it as anyone of those charges.

(3) On the trial of an issue on a plea pursuant to section 70 to an information charging murder, manslaughter or infanticide the Court must direct that the defendant plead over if it appears that:

(a) the former trial was for an offence against the person alleged now to have been killed; and

(b) the death of that person is now alleged to have been caused by the offence previously charged; but

(c) the death happened after the trial on which the defendant was acquitted or convicted.

72. Application to vacate guilty plea - (1) A plea of guilty may, by leave of the Court, be vacated at any time before the defendant has been sentenced or otherwise dealt with.

(2) No guilty plea may be vacated unless the Court is satisfied that:

(a) the defendant has not really pleaded guilty; or

(b) there has been some mistake; or

(c) there was a clear defence.

(3) Subsection (2) is subject to the overriding discretion of the Court to act in the interests of justice.

Division 2 - Mentally Impaired Defendants

73. Interpretation - In this Part:

"intellectual disability" A person has an intellectual disability if the person has a permanent impairment of the mind to an extent that results:

(a) in a significantly low general intelligence; and

(b) a demonstrable inability to lead an independent life.

"specialist nurse" means a specialist nurse registered under the Nursing and Midwifery Act 2007 who specialises in the field of mental health;

"unfit to stand trial", for a defendant:

(a) means a defendant who is unable, due to mental impairment or intellectual disability, to conduct a defence, or to instruct a lawyer to do so; and

(b) includes a defendant who, due to mental impairment, is unable -

(i) to plead; and

(ii) to understand the nature, purposes or possible consequences of the proceedings to the extent necessary to conduct a defence or instruct a lawyer for that purpose.

74. When finding of unfitness to stand trial may be made - Subject to section 75, a Court may make a finding under this Part that a defendant is unfit to stand trial:

(a) before or during the taking of plea by the defendant; or

(b) at any stage after the commencement of the proceedings and until all the evidence is concluded.

75. Postponement of hearing, etc. - If the Court has sufficient information on the condition as to whether or not a defendant is fit to stand trial, the hearing, trial or other proceeding relating to the defendant is to be postponed pending the final determination as to whether or not the defendant is fit to stand trial.

76. Determining whether defendant is fit to stand trial - (1) The Court must have on record an opinion from 2 medical practitioners or 1 medical practitioner and 1 specialist nurse that the defendant is mentally impaired or has an intellectual disability before subsection (2) applies.

(2) If the Court is satisfied on the evidence given under subsection (1) that the defendant is mentally impaired, the Court must record a finding to that effect, and:

(a) give each party an opportunity to be heard and to present evidence as to whether the defendant is unfit to stand trial; and

(b) find whether or not the defendant is unfit to stand trial; and

(c) record the finding made under paragraph (b).

(3) The standard of proof required for a finding under subsection (2) is the balance of probabilities.

(4) If the Court records a finding under subsection (2) that the defendant is fit to stand trial, the Court must commence or continue the hearing or trial, or commit the defendant for trial, as the case may require.

77. Appeal to the Supreme Court - (1) If a finding has been made under section 76 for a trial to be held in a Court as to whether the defendant is unfit to stand trial, the prosecutor or the defendant may appeal against that finding to the Supreme Court.

(2) Divisions 1 to 3 of Parts 12 apply, with necessary modifications, to an appeal under subsection (1).

78. Detention of defendants found unfit to plead etc.- (1) When the Court has sufficient information on the condition of a defendant found unfit to stand trial or acquitted on account of his or her insanity, the Court must:

(a) consider all the circumstances of the case; and

(b) consider the evidence of one or more health care professionals (within the meaning under the Mental Health Act 2007), as to whether the detention of the defendant, in accordance with one of the orders specified in paragraph (c), is necessary; and

(c) if it is satisfied that the making of the order is necessary in the interests of the public or any person or class of person who may be affected by the court's decision, make an order that the defendant be – \

(i) detained as if an "Inpatient Treatment Order" had been made under Part V of the Mental Health Act 2007; or

(ii) released, as if a Community Treatment Order had been made under Part IV of the Mental Health Act 2007.

(2) As an exception to the Mental Health Act 2007, no person subject to an order made under subsection (1)(c) is to be released, on leave or discharged from any institution, without an order of the Court that made the order detaining that person.

79. Finding of insanity - (1) If, at a hearing or trial, the defendant gives evidence as to the defendant's insanity and the assessors or (if there is no assessor) the Judge finds the defendant not guilty on account of his or her insanity, the Judge must record that finding.

(2) Before or at a hearing or trial, the Judge must record a finding that the defendant is not guilty on account of his or her insanity if:

(a) the defendant indicates that he or she intends to raise the defence of insanity; and

(b) the prosecution agrees that the only reasonable verdict is not guilty on account of insanity; and

(c) the Judge is satisfied, on the basis of expert evidence, that the defendant was insane within the meaning of section 13 of the Crimes Act 2013 at the time of the commission of the offence.

(3) If, at a trial before a Judge and assessors, the defendant gives evidence as to his or her insanity and the assessors find the defendant not guilty, the Judge must ask the assessors whether or not they have acquitted the defendant on account of his or her insanity.

80. Appeal against acquittal on account of insanity - (1) A defendant who is acquitted on account of his or her insanity may appeal against the verdict or decision, and, for the purposes of the appeal:

(a) the verdict or decision is to be regarded as a conviction; and

(b) the provisions of this Act relating to appeals against conviction, so far as they are applicable and with any necessary modifications, apply to the appeal.

(2) The Court may:

(a) allow the appeal, and direct that a verdict of acquittal or a decision to dismiss the information be substituted

for the verdict or decision given at the trial or hearing;

(b) dismiss the appeal;

(c) exercise a power, whether to direct a new trial or a rehearing or otherwise, that it could have exercised if the appeal were an appeal against conviction.

(3) If the Court thinks that (except for the appellant's insanity) the proper verdict or decision would have been that the appellant was guilty of an offence other than the offence charged, the court:

(a) may not allow the appeal merely because the appellant ought to have been acquitted of the offence charged; and

(b) may direct that the other offence be substituted for the offence charged.

(4) If, on the appeal under this section, the appellate Court is satisfied that:

(a) the finding of insanity ought not to stand; and

(b) in the absence of that finding, the proper verdict or decision would have been that the appellant was guilty of an offence (whether of the offence charged or any other offence of which the appellant could have been found guilty at the trial or hearing),

the appellate court –

(i) must substitute, for the verdict or decision given, a verdict of guilty of the offence or a conviction for the offence; and

(ii) may exercise a power in relation to the appellant (such as sentencing the appellant) that is available to the Court where the verdict or decision appealed against was given.

(5) Unless the appellate Court otherwise directs, the term of any sentence of imprisonment passed by it under subsection (4) begins to run as if passed on the date on which the verdict or decision appealed against was given.

PART 8
WITNESSES

81. Summons for attendance of witnesseses - (1) The informant or defendant may, at any time, obtain from a Judge,

Fa'amasino Fesoasoani or Registrar a summons calling on any person to appear as a witness at the hearing of a charge.

(2) Any summons obtained under subsection (1):

(a) may require the person summoned to bring with him or her and to produce at the hearing any books, documents, papers, writings, maps, photographs, films and recordings, as may be mentioned in the summons; or

(b) calling on a person to appear as a witness must –

(i) be served under Division 1 of Part 5 on that person, as if references in that Part to the defendant were references to the person called upon to appear; and

(ii) be served by a constable or officer of the Court (not being a prosecutor), by a party or the party's lawyer, or by any person authorised by a party or the party's lawyer to serve the summons.

82. Warrant to arrest witness - (1) This section applies whether or not any summons has been issued or served.

(2) If a Judge or Fa'amasino Fesoasoani has sufficient grounds to believe that a person, whose evidence at the hearing is required by the informant or the defendant, will not attend to give evidence without being compelled to do so, he or she may issue a warrant for the attendance of that person at the hearing.

(3) If at the hearing of any charge, a person summonsed as a witness under this Act fails to appear and has no reasonable excuse for his or her failure, the Court may, if satisfied that the summons was duly served on the person, issue a warrant for the appearance of that person.

(4) Division 1 of Part 4 applies to any warrant issued under this section, as if references in that Division to the defendant were references to the person whose attendance or appearance is required.

83. Penalty for failing to comply with witness summons - (1) A person summonsed under this Act to appear as a witness at a hearing who refuses or neglects without just excuse to appear or to produce any books, documents, papers, writings, maps, photographs, films or recordings required by the summons to be produced commits an offence.

(2) A person convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(3) This section does not affect any power of the Court to commit for contempt of court.

84. Witness refusing to give evidence may be imprisoned - (1) Subject to Article 9(5) of the Constitution, a person present in a Court at the hearing of any charge, whether the person has been summoned to give evidence or not, may be required to give evidence.

(2) If a person, without offering any reasonable excuse:

(a) refuses to give evidence when required; or

(b) refuses to be sworn; or

(c) having been sworn, refuses to answer any questions concerning the charge as are then put to the person,

the Court may –

(i) order that, unless the person sooner consents to give evidence or to be sworn or to answer the questions put to the person, the person be detained in custody for a period not exceeding 7 consecutive days; and

(ii) issue a warrant for the person's arrest and detention pursuant to the order.

(3) If the person so detained, on being brought up at the adjourned hearing, again refuses to give evidence or to be sworn or, having been sworn, to answer the questions put to him, the court, if it thinks fit, may again direct the witness to be detained in custody for the like period, and so again from time to time until the person consents to give evidence or to be sworn or to answer the questions.

(4) Subsections (2) and (3) do not apply to a Court presided over by a Fa'amasino Fesoasoani unless that Court has an extended jurisdiction under section 18 of the District Courts Act 1969.

(5) This section does not affect any power of the Court to commit for contempt of court.

85. Witnesses may be excluded - (1) A Court may, if it thinks fit, of its own motion or at the request of any party at any time during the hearing, order all or any witnesses other than a witness who has

given or is giving his or her evidence to leave the courtroom and to remain out of hearing but within call until required to give evidence.

(2) A witness who has given evidence must not leave the courtroom except with the permission of the court.

(3) A witness who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

PART 9
CONDUCT OF TRIAL, ADJOURNMENTS AND BAIL

Division 1 - Conduct of Trial

86. Admissions - The defence may, at any time before or during trial, admit in writing or admit in Court any fact alleged against the defendant.

87. Evidence - (1) Upon the trial of the defendant:

(a) the prosecution may open the prosecution case and, after any opening, is entitled to call any witnesses as he or she thinks fit; and

(b) the defendant, whether he or she is defended by a lawyer or not, may, at the end of the case for the prosecution, open his or her case, and, after any opening, is entitled to call any witnesses as he or she thinks fit.

(2) Without limiting subsection (1), the Court may give a defendant leave to make an opening statement, after any opening by the prosecution and before any evidence is adduced, for the purposes only of identifying the issue or issues at the trial.

(3) An opening statement made under subsection (2) does not affect the rights of the defendant to raise any other issue at the trial.

(4) When all the evidence (including any evidence given on cross-examination, re-examination, or in rebuttal) is concluded:

(a) the prosecution may make a closing address to the court; and

(b) after any closing address on behalf of the prosecution, the defendant or defendant's lawyer may make a closing address, and the prosecution has no right of reply to the defence closing address,

however, if the defendant is not represented by a lawyer, the prosecution does not have any right to make a closing address except with leave of the Court.

88. Unrepresented defendant - (1) If a defendant, who is not defended by a lawyer, pleads not guilty, the Court must, before any evidence for the prosecution is heard, and when the Court is satisfied that the defendant fully understands the nature and consequence of the charge, caution the defendant, either orally or in a written statement, in a language which the defendant understands, in the following words, or in words to the like effect, that is to say:

> "*At the end of the evidence-in-chief given by each prosecution witness, you may cross-examine the witness if you wish. When all the evidence against you has been heard you will be asked whether you wish to give evidence yourself or to call witnesses. You are not obliged to give or call evidence, but, if you do, that evidence will be subject to cross-examination by the prosecution and may be used against you. You should consider in particular whether evidence which you can give is relevant and will assist you in your defence*".

(2) When the evidence for the prosecution has been heard against a defendant who is not defended by a lawyer, the Court must ask the defendant whether the defendant wishes to give or call evidence.

89. Evidence on oath or affirmation - A witness at the trial of any charge must be examined on oath or affirmation.

90. Attempt proved when crime is charged - If the commission of the crime charged is not proved, but the evidence establishes an attempt to commit the crime, the defendant may be convicted of the attempt.

91. Crime proved when attempt is charged - (1) If an attempt to commit a crime is charged, but the evidence establishes the commission of the full crime, the defendant may be convicted of the attempt.

(2) After a conviction for that attempt, the defendant is not liable to be tried again for the crime which he was charged with attempting to commit.

92. Part of charge proved - (1) A charge is deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence, the defendant may be convicted of:

(a) any offence so included which is proved, although the whole crime charged is not proved; or

(b) an attempt to commit any offence so included.

(2) On a count charging murder, the assessors may:

(a) pursuant to section 90, find the defendant guilty of an attempt to commit murder; or

(b) if the evidence proves manslaughter but does not prove murder, find the defendant guilty of manslaughter.

93. Variance and amendment - (1) If on the trial of an information there appears to be a variance between the proof and the charge in the information either as filed or as amended, or as it would have been if amended in conformity with any further particulars, the Court before which the case is tried, or the appellate court, may amend the information, or any charge in it, in accordance with the evidence.

(2) If the Court is of the opinion that the defendant has not been misled or prejudiced in the defendant's defence by the variance, the Court must make the amendment.

(3) If it appears that:

(a) the charge has been laid under an enactment other than that cited in the information; or

(b) there is in the information or in a charge in the information, any omission to state, or a defective statement of anything requisite to constitute the crime; or to negative any exception that ought to be negatived, but that the matter omitted is proved by the evidence,

the Court before which the trial takes place, or the appeal court, if of opinion that the defendant has not been misled or prejudiced in the defendant's defence by the error or omission, must amend the information or charge as may be necessary.

(4) In any such case, the trial or the appeal may then proceed in all respects as if the information or charge had been originally framed as amended.

(5) If the Court is of opinion that the defendant has been misled or prejudiced in the defendant's defence by any variance, error, omission, or defective statement as specified under this section, but that the effect of the defendant being misled or prejudiced might be removed by adjourning or postponing the trial, the Court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge any assessors and postpone the trial to the next sittings of the court, on any terms as it thinks just.

(6) If an appellate Court amends any information or charge under this section, it may in its discretion, in making the amendment:

(a) affirm the sentence; or

(b) quash the sentence passed and pass any other sentence warranted in law (whether more or less severe) in substitution for the original sentence; or

(c) vary the sentence or any part of it or any condition imposed in it; or

(d) direct a new trial; or

(e) make any order as justice requires.

(7) In determining whether the defendant has been misled or prejudiced in the defendant's defence, the Court must consider all of the evidence adduced, as well as the other circumstances of the case.

(8) The decision as to making or refusing to make an amendment is deemed a question for the court, and that decision may be reserved for the Court of Appeal, or may be brought on appeal before the Court of Appeal, in the same manner as any other decision on a point of law.

Division 2 - Adjournments

94. Power to adjourn hearing - (1) A Court may adjourn the hearing of a charge to a specified time and place.

(2) If a Court at that place by reason of its constitution has no jurisdiction to hear the charge, the Court may adjourn the hearing to a specified time and place.

95. Powers on adjournment - When:

(a) a defendant who has been arrested or detained under a law is brought before a Court or a remanding officer for the purposes of bail; or

(b) a hearing is adjourned and the defendant is liable on conviction to a sentence of imprisonment,

the defendant may be released at large or on bail or remanded in custody.

96. Power to adjourn for inquiries after conviction - (1) A Court may adjourn the hearing after the defendant has been convicted and before the defendant has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his or her case.

(2) When a hearing is adjourned under subsection (1), a Judge or Fa'amasino Fesoasoani having jurisdiction to deal with offences of the same kind (whether or not he or she is the Judge or Fa'amasino Fesoasoani before whom the charge was heard) may, after inquiry into the circumstances of the offence, sentence or otherwise deal with the defendant for the offence to which the adjournment relates.

97. Removal of trial on question of law - (1) If a question of law arises on the trial of a person in a Court presided over by a Fa'amasino Fesoasoani, the trial must (whether or not an application has been made by either party) be transferred for trial before a Judge of the District Court.

(2) If a trial is transferred under subsection (1), the proceeding must continue, except as the Judge otherwise orders, as if the information and any order made on it had been always before a Judge.

Division 3 - Bail

98. Rules as to granting bail - (1) A defendant is bailable as of right who is charged with an offence that is not punishable by imprisonment.

(2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one that relates to assault on a child, or by a male on a female.

(3) Despite anything in this section, a defendant who is charged with an offence punishable by imprisonment is not bailable as of right if the defendant has been previously convicted of an offence punishable by imprisonment.

(4) A defendant charged with an offence and is not bailable as of right is bailable at the discretion of the Court unless the Court is satisfied that there is just cause for the defendant to be remanded in custody.

99. Factors relevant to decision as to bail - In considering whether there is just cause for the defendant to be remanded in custody or for continued detention, a Court must take into account the following:

(a) whether there is a risk that the defendant may fail to appear in Court on the date to which the defendant has been remanded;

(b) whether there is a risk that the defendant may interfere with witnesses or evidence;

(c) any previous conviction on an offence of a similar nature;

(d) whether there is a risk that the defendant may offend while on bail;

(e) the seriousness of the punishment to which the defendant is liable, and the severity of the punishment that is likely to be imposed;

(f) the character and past character or behaviour, in particular proven criminal behaviour of the defendant;

(g) whether the defendant has a history of offending while on bail, or breaching Court orders including other orders imposing bail conditions;

(h) the nature of the offence with which the defendant is charged, and whether it is a grave or less serious one of its kind;

(*i*) the strength of the evidence and the probability of conviction or otherwise;

(j) the seriousness of the punishment to which the defendant is liable, and the severity of the punishment that is likely to be imposed;

(k) any other matter that is relevant in the particular circumstances.

100. Restriction on release on bail - A defendant who is charged with treason or espionage must not be released on bail other than by order of a Supreme Court Judge.

101. Restriction on bail where certain previous convictions - (1) This section applies to a defendant aged 18 years or over who:

(a) has one or more previous convictions for an offence under paragraph (b) (whether those convictions were for the same offence or for different specified offences under that paragraph); and

(b) is charged with any of the following offences under the Crimes Act 2013 –

(i) sexual violation under section 52 or 53;

(ii) murder;

(iii) attempted murder;

(iv) manslaughter;

(v) any crimes against a person under any of sections 118 to 122;

(vi) using any firearm against law enforcement officer, etc under section 127;

(vii) commission of a crime with firearm under section 130;

(viii) robbery and burglary under sections 174 to 177.

(2) A defendant to whom this section applies must not be granted bail or allowed to go at large except:

(a) by order of a Judge of the Supreme Court or of the District Court; and

(b) the defendant satisfies the Judge that bail or remand at large should be granted.

(3) Without limiting subsection (2)(b), the defendant must, in particular, satisfy the Judge on the balance of probabilities that the defendant will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person.

(4) In deciding whether or not to grant bail to a defendant to whom this section applies or allow the defendant to go at large, the Judge must take into account, as primary considerations, the need to protect:

(a) the safety of the public; or

(b) if appropriate, the safety of the victim or victims of the alleged offending.

102. Bail allowable for narcotic offending only by order - (1) A defendant who is charged with or convicted of a narcotic offence may be granted bail:

(a) if the defendant does not have a previous conviction for a narcotic offence, by order of a Registrar; or

(b) in any other case, by order of a Judge.

(2) A defendant who is charged with or convicted of a narcotic offence may be granted bail only under subsection (1).

103. Bail pending sentence - (1) If a defendant is found guilty or if a defendant pleads guilty, the Court may not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(2) The onus is on the defendant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 99, take into account the following considerations:

(a) whether the defendant is likely to receive a sentence of imprisonment;

(b) the likely length of time that will pass before the defendant is sentenced;

(c) any other consideration that the Court considers relevant.

(4) If the defendant is unlikely to receive a sentence of imprisonment, this must count against the defendant being remanded in custody.

104. Defendant may seek bail - (1) A defendant who is bailable as of right must, if the defendant so requests, be brought before a Court for the purpose of making an application for bail if:

(a) the defendant has been remanded in custody under section 95; and

(b) the defendant did not make application for bail under this Act at the time of the remand.

(2) The application may be granted as if it were an application made at the time at which the defendant was remanded.

(3) If bail is granted under this section, the particulars required to be certified by the District Court or Registrar under section 108(b) must be:

(a) certified in writing by the Court granting bail; and

(b) forwarded to the office-in-charge of the prison in which the defendant is detained under the remand warrant.

105. Evidence in bail hearing - (1) When hearing an application for bail, a Court may receive as evidence any statement, document, information, or matter that it considers relevant, whether or not it would be otherwise admissible in a court.

(2) As an exception to subsection (1), when considering the matter described in section 99:

(a) the Court may only consider a statement, document, information, or matter that would be admissible in a Court if made by the appropriate person or given or produced in proper form; but

(b) for the purpose of the bail hearing, it does not matter whether the evidence –

(i) is given or produced by the appropriate person or given or produced in sworn or unsworn form; or

(ii) is otherwise given or produced in a form in which it would be admissible in a court.

106. Conditions of bail - (1) Subject to section 109, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally:

(a) at the time and place at which the hearing is adjourned; or

(b) at the time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

(2) The Court or remand officer may impose, as a further condition of the defendant's release, a condition that the defendant report to the Police at the time or times and at the place or places that the Court or remand officer orders.

(3) Whether or not the Court or remand officer imposes a condition under subsection (2), the Court or remand officer may impose any other condition that the Court or remand officer considers reasonably necessary to ensure that the defendant:

(a) appears in Court on the date to which the defendant has been remanded; and

(b) does not interfere with any witness or any evidence against the defendant; and

(c) does not commit any offence while on bail; and

(d) for the protection of the community.

(4) The Court or remand officer may require, as a further condition of the defendant's release, the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee, or surety, whether by the defendant or any other person.

107. Calling up of bail-bond, guarantee or surety-(1) A person who has obtained an order requiring any other person to enter into a bond, guarantee, or surety under this section may apply to the Court for an order calling up the bond, guarantee or surety on the ground that the defendant has failed to keep the condition of his or her release.

(2) When an application is filed under subsection (1), the Registrar must:

(a) fix a time and place for hearing of the application; and

(b) not less than 5 working days before the time fixed, cause to be served on any person bound by the bond, surety or guarantee a notice of the time and place so fixed.

(3) If on the hearing of any application made under subsection (1), it is proved to the satisfaction of the Court that the condition of the release has not been kept, the Court may make an order to call up the bond, surety or guarantee to such an amount as it thinks fit.

(4) Any amount ordered under this section is recoverable as if it were a fine.

108. Warrant for detention - If the defendant is released on bail under section 95, a Court or Registrar may, and must if the defendant is not released within the period specified in section 109(3)(a):

(a) issue a warrant for the detention of the defendant in custody for the period of the adjournment; and

(b) certify on the back of the warrant the fact that the Court or Registrar has granted the defendant bail, and the condition or conditions imposed.

Division 4 - Procedure following Grant of Bail

109. Release of defendant granted bail - (1) If a defendant is granted bail, the Registrar must prepare a notice of bail setting out the conditions of bail imposed by or under section 106.

(2) The Registrar must:

(a) give the notice of bail to the defendant; and

(b) be satisfied that the defendant understands the conditions of bail; and

(c) require the defendant to sign the notice of bail.

(3) If a defendant is granted bail, the Court or Registrar may direct that the defendant be detained in the custody of the court:

(a) for such time, not exceeding 2 hours, as may be necessary to enable the notice of bail to be prepared and signed; and

(b) if, within the period of 2 hours, the defendant is not released (whether by reason of having refused to sign the notice of bail or for any other reason), for such time as may be necessary to enable a warrant for detention to be issued under section 108.

(4) If bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in respect of the remand, the defendant must be released from custody as soon as is reasonably practicable after the defendant has signed the notice of bail.

(5) A copy of the notice of bail must be given to the defendant on his or her release or as soon as practicable after that.

110. Warrant of deliverance - (1) Subject to subsection (3), if a warrant for detention has been issued under section 108, a warrant of deliverance must be issued and sent to the prison officer-in-charge of the prison in which the defendant is detained.

(2) The warrant of deliverance may be issued by a Judge or Registrar on being satisfied that the defendant is entitled to be released and that the requirements of section 109 have been met.

(3) No warrant of deliverance need be issued if the Registrar before whom the defendant signs the notice of bail endorses on the remand a certificate that the defendant has signed the notice of bail, and that the defendant is accordingly entitled to be released.

111. Variation of conditions of bail - (1) If the defendant has been granted bail, the Court may, on the application of the defendant or the informant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

(2) A Registrar may exercise the power conferred by subsection (1) to make an order if:

(a) the informant does not object; and

(b) the offence with which the defendant has been charged –

(i) is not punishable by imprisonment; or

(ii) is punishable by a term of imprisonment of not more than 7 years.

(3) If a Court or remand officer has, in granting bail to any defendant, imposed the condition that the defendant report to the Police at such time or times and at such place or places as the Court or Registrar orders, any Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report.

(4) If a Court or remand officer varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the Registrar must:

(a) as soon as is reasonably practicable prepare a new notice of bail setting out the conditions of bail as amended (if any); and

(b) be satisfied that the defendant understands the conditions of bail; and

(c) require the defendant to sign the notice of bail.

(5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to sign a fresh notice of bail, a Judge or Registrar may issue a warrant for the arrest of the defendant.

(6) If a bail-bond has been entered into that requires sureties, the bond continues in force and the order does not take effect until the sureties to the bail-bond have consented in writing to the order or a new bail-bond is entered into complying with the order.

112. Defendant on bail may be arrested without warrant in certain circumstances - (1) A constable may arrest without warrant a defendant who has been released on bail if the constable believes on reasonable grounds that:

(a) the defendant has absconded or is about to abscond for the purpose of evading justice; or

(b) the defendant has contravened or failed to comply with any condition of bail.

(2) A defendant who is arrested under subsection (1) must be brought before the Court as soon as possible.

(3) In any such case, the Court must reconsider the question of bail, if it is satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail.

(4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right.

(5) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 113.

113. Warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail - (1) The Court or a Registrar may issue a warrant for the arrest of a defendant if:

(a) the Court or Registrar is satisfied by evidence on oath that –

(i) the defendant has absconded or is about to abscond for the purpose of evading justice; or

(ii) the defendant has contravened or failed to comply with any condition of bail; or

(b) the defendant –

(i) does not attend personally at the time and place specified in the notice of bail or, as the case may be, the bail bond; or

(ii) does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

(2) A warrant to arrest a defendant under this section:

(a) must be directed to a constable by name or generally to all constables; and

(b) may be executed by any constable.

(3) For the purpose of executing a warrant issued under this section, the constable executing it may at any time enter on to any premises, by force if necessary, if the constable has reasonable grounds to believe that the defendant against whom it is issued is on those premises.

(4) The constable executing the warrant must:

(a) have the warrant with him or her; and

(b) produce it on initial entry and, if requested, at any subsequent time; and

(c) if the constable is not in uniform, produce evidence that he or she is a constable.

(5) If a defendant is arrested under a warrant issued under this section, section 112(2) to (4) applies as if the defendant had been arrested under section 112(1).

114. Failure to answer bail-(1) A defendant commits an offence if the defendant, having been released on bail:

(a) fails without reasonable excuse to attend personally at the time and the Court specified in the notice of bail; or

(b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned; or

(c) fails to comply with any of the conditions of bail.

(2) A defendant convicted for an offence under subsection (1) is liable to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 12 months, or both.

Division 5 - Bail relating to Appeals

115. Bail pending appeal - (1) If a person is in custody under a conviction and is appealing the conviction or sentence, or both, the Court or appellate Court must not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(2) The onus is on the appellant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1) the Court or appellate Court may, instead of the considerations in section 99, take into account the following considerations:

(a) the apparent strength of the grounds of appeal;

(b) the length of the sentence that has been imposed on the appellant;

(c) the likely length of time that will pass before the appeal is heard;

(d) any other consideration that the Court considers relevant.

(4) The time during which an appellant is released on bail pending the determination of the appeal is not counted as part of any term of detention under the appellant's sentence, whether it is the sentence passed by the Court from which the appeal is brought or the sentence passed or varied by the Court of Appeal.

(5) If a case is stated to the Court of Appeal, this section applies to a person for whose conviction the case is stated as it applies to an appellant.

116. Appeals from decision of District Courts relating to bail - (1) If a District Court Judge, Fa'amasino Fesoasoani or remand officer refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the Supreme Court against that refusal.

(2) If a District Court Judge, Fa'amasino Fesoasoani or remand officer grants bail to a defendant (whether before or after conviction), the informant may appeal to the Supreme Court against that decision.

(3) If, for any grant of bail to a defendant (whether before or after conviction):

(a) a District Court Judge, Fa'amasino Fesoasoani or a remand officer has imposed any condition of bail, or has refused to impose any condition of bail, or any particular condition of bail; or

(b) a District Court Judge, Fa'amasino Fesoasoani or remand officer has, on an application made under section 111, made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail, or has refused to make the variation or revocation order,

the defendant or the informant may appeal to the Supreme Court against the imposition of that condition of bail or, as the case may be, against that refusal or against the decision in respect of that application.

(4) For the purposes of an appeal under this section, the failure of a District Court Judge or Fa'amasino Fesoasoani or Remand Officer to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is treated to be a refusal to impose the condition.

(5) An appeal under this section is by way of rehearing.

117. Execution of Supreme Court bail decisions - (1) If, on an appeal under section 116, the Supreme Court determines that bail should not be granted or should not be continued, a warrant for the detention of the defendant in custody must be issued out of the Supreme Court and signed by a Judge.

(2) The person who executes the warrant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

(3) If, on an appeal for any condition of bail, the Supreme Court varies or revokes the condition of bail or substitutes or imposes any other condition of bail, the following provisions apply:

(a) if the defendant is present at the Supreme Court, the Registrar of the Supreme Court must –

(i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and

(ii) be satisfied that the defendant understands the conditions of bail; and

(iii) require the defendant to sign the notice of bail; and

(b) if the defendant is not present at the Supreme Court, the Registrar of the District Court appealed from must send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions (if any) required to give effect to the Supreme Court's decision.

(4) If, in any case to which subsection (3) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail, the Registrar of the District Court appealed from must refer the matter to a District Court Judge who may issue a warrant for the arrest of the defendant.

118. Hearing and granting of bail to appellant and custody pending appeal - (1) The bail application of an appellant must be heard and determined by the Judge who presided at the trial in the Court below or if the presiding Judge is not available, by another Judge.

(2) If an appellant is granted bail, the appellant must, if the appellant is in custody only under the conviction to which the appeal relates, be released from custody on entering into a bond before a remanding officer in any sum and with or without a surety or sureties as the Judge directs, subject to the condition that the appellant attend personally at the Supreme Court or Court of Appeal on the day on which the appeal is to be heard and on any day to which the hearing may be from time to time adjourned.

(3) The time during which an appellant is on bail is not included as part of the appellant's term of imprisonment.

(4) If a case is stated under this Part, this section applies to a person for whose conviction the case is stated as it applies to an appellant.

(5) For the purposes of this Part, an appellant:

(a) is treated not to be in custody only under the conviction to which the appeal relates if a direction has been given that another sentence or term of imprisonment is to follow the sentence imposed on that conviction; and

(b) has not appealed against the conviction for which that other sentence or term was imposed.

119. Warrant to arrest appellant who has absconded or is about to abscond while on bail - (1) If:

(a) an appellant is released on bail; and

(b) a remanding officer is satisfied on the oath of the respondent or of any surety or on the oath of some person on behalf of the respondent or any surety, that the appellant –

(i) has absconded; or

(ii) is about to abscond for the purpose of evading justice,

the remanding officer may issue a warrant to arrest and bring the appellant before a Judge.

(2) When the appellant is arrested pursuant to the warrant, a Judge, on being satisfied that the appellant had absconded or was

about to abscond, may commit the appellant to a prison until the hearing.

120. Surrender of appellant released on bail and discharge of surety - (1) An appellant who has been released from custody on bail pending the hearing of the appellant's appeal may:

(a) surrender himself or herself; and

(b) apply to a Judge for the discharge of the bail-bond.

(2) A surety for an appellant released under subsection (1) may apply to a Judge to be discharged from the surety's obligation under the bail-bond.

(3) For subsection (1) or (2), the Judge may, if the appellant has not surrendered, issue a warrant to arrest and commit the appellant to a prison for the unexpired term of the sentence originally imposed.

(4) When the appellant is arrested under this section, the appellant's sureties are discharged from their obligations under the bail-bond.

(5) Division 3 of this Part applies to this Division with necessary modifications.

121. Appeal from decision of Judge relating to bail - (1) Subject to subsection (4), this section applies to a decision made by a Judge whereby:

(a) a person is granted or refused bail; or

(b) a condition of bail is imposed, substituted, revoked or varied; or

(c) the imposition of a condition of bail, or a condition of bail, is refused; or

(d) the variation or revocation of a condition of bail is refused.

(2) The Attorney-General or the person to whom the decision relates may appeal to the Court of Appeal against a decision to which this section applies.

(3) For the purposes of this section, the failure of a Judge to impose a condition of bail, or a particular condition of bail, on any occasion on which the condition could lawfully have been imposed is treated to be a refusal to impose the condition.

(4) This section does not apply to a decision made by a Judge of the Supreme Court if the decision was made on appeal from a decision of a District Court Judge or a Fa'amasino Fesoasoani.

122. Procedural provisions relating to appeal on question of bail - (1) A person wishing to appeal under section 121 must file notice of that person's intention to appeal with the Registrar of the Court of Appeal within 10 working days from the date of the decision to be appealed against.

(2) An appeal under section 121 that is not heard before the date on which the decision appealed against ceases to be of any effect lapses on that date, and is treated to have been dismissed by the Court of Appeal for non-prosecution.

(3) A decision of a Judge appealed against under section 121 must not be suspended only by reason of the fact that notice of that appeal has been given.

(4) On any appeal under section 121, the Court of Appeal may:

(a) confirm the decision appealed against, or vary it; or

(b) set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

123. Decision of Court of Appeal - (1) If, on any appeal under section 121 against a refusal to grant bail to any person, the Court of Appeal determines that bail be granted, the Court of Appeal must order that the person be released on bail, subject to any conditions, as the Court of Appeal thinks fit.

(2) If, on an appeal under section 121 on any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the person bailed and to any surety requiring them to attend at a specified time and place for the execution of a fresh bail-bond containing any conditions required to give effect to the Court of Appeal's decision.

(3) If, in any case to which subsection (2) applies, the person bailed fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail-bond as aforesaid, the Registrar must refer the matter to a Judge, who may issue a warrant for the arrest of the person bailed.

(4) If, on an appeal under section 121 against a grant of bail, the Court of Appeal determines that bail not to be granted or should not be continued, a warrant for the detention in custody of the person to whom the determination relates must be issued out of the Court of

Appeal and signed by a Judge; and the person who executes that warrant must ensure that a copy of the notice of the result of the appeal is given to the person arrested when the warrant is executed or as soon as practicable after the warrant is executed.

(5) A person to whom subsection (4) applies and who is not in custody may be arrested without warrant by a constable.

PART 10
TRIAL IN THE SUPREME COURT

Division 1 - General

124. Independence of prosecutor - In relation to the exercise of any authority, power or duty of the Attorney-General or a prosecutor for the commencement or conduct of any trial in the Supreme Court, a decision on the authority, power or duty is not to be challenged or called in question in any manner by the informant.

125. Defendant's notice to be tried with Judge alone - (1) For the purposes of section 6(2), the defendant may, within 28 days before the date on which the defendant is to be tried, give written notice to the Registrar of the Supreme Court of the defendant's wish to be tried before a Judge sitting alone.

(2) When the Registrar receives the notice under subsection (1), the Registrar must forthwith give a copy of the notice to the prosecutor.

(3) If the defendant, within the period under subsection (1), gives notice under that subsection of the defendant's desire to be tried before a Judge sitting alone, the Registrar must refer the matter to a Judge of the Supreme Court (who may or may not be the Judge before whom the trial is to be held).

(4) The Judge to whom any matter is referred under subsection (3) must order that the defendant be tried before a Judge sitting alone unless, having regard to the interests of justice, the Judge considers that the defendant should be tried before a Judge with assessors, in which case the Judge must make the order accordingly.

(5) If 2 or more defendants are to be tried together, they are to be tried before a Judge with assessors unless all of them apply to be tried by a Judge alone.

(6) A notice purporting to be given under this section on behalf of the defendant by the defendant's lawyer is, unless the contrary is proved, to be treated to be given with the authority of the defendant.

(7) As an exception to subsection (1), a defendant may give notice under that subsection before or immediately after the person is committed for trial.

126. Prosecutor's application for trial by Judge alone - (1) If a defendant has given a notice under section 125, the Judge may, on application by the prosecutor and served on the defendant before the defendant is given in charge to the assessors, order that the defendant be tried before a Judge alone.

(2) The Judge may make an order under subsection (1) if the Judge is satisfied:

(a) that any reasonable procedural orders, and any other reasonable arrangements, to facilitate the shortening of the trial, have been made, but the duration of the trial still seems likely to exceed 5 working days; and

(b) that, in the circumstances of the case, the defendant's right to trial by assessors is outweighed by the likelihood that potential assessors will not be able to perform their duties effectively.

(3) For the purposes of subsection (2)(b), the Judge must take into account the following matters when considering the circumstances of the case:

(a) the number and nature of the offences with which the defendant is charged;

(b) the nature of the issues likely to be involved;

(c) the volume of evidence likely to be presented;

(d) the imposition on potential assessors of sitting for the likely duration of the trial;

(e) any other matters the Judge considers relevant.

(4) If the defendant is one of 2 or more persons to be tried together, and each of them are to be tried with assessors, all of them must be tried before a Judge with assessors unless an order is made under subsection (1) for all of them to be tried by a Judge alone.

Division 2 - Assessors

127. Qualifications - Except for a person with a previous conviction or awaiting trial on a criminal charge, any citizen of

Samoa aged between 25 years and 68 years and who has no convictions may be appointed to the List of Assessors if in the opinion of the Judicial Service Commission that person is qualified to carry out the role of an assessor.

128. Term - A person appointed as an assessor must serve in that role for 5 years but is eligible for re-appointment after a lapse of 5 years.

129. List of Assessors-(1) The Registrar of the Supreme Court must keep and maintain the List of Assessors.

(2) In January of every year, the Registrar of the Supreme Court must:

(a) review the List of Assessors; and

(b) recommend to the Judicial Service Commission -

(i) the deletion of persons who have died or who have become unable or unfit to sit as assessors; and

(ii) the addition of persons qualified as assessors to the List of Assessors.

(3) There must always be at least 250 eligible assessors on the List of Assessors, together with their addresses and occupation.

(4) The Judicial Service Commission may at any time, other than during any trial on which the assessor is sitting, with sufficient cause direct that an assessor be removed from the List of Assessors.

(5) Any irregularity in the appointment of an assessor pursuant to or non-compliance with section 127, 128 or this section does not invalidate the verdict of the assessors.

130. Choice and summonsing of assessors - (1) The Judge who is to preside at the trial must direct the Registrar to summon 5 assessors as chosen by that Judge to sit.

(2) The summons must:

(a) be directed to the assessor at that person's listed place of residence; and

(b) set out the date, time and place of trial.

(3) An assessor may, when receiving the summons, seek to be excused from attendance at the trial and the Judge may grant the excusal for sufficient cause.

131. Failure of assessor to attend trial - An assessor who has been summonsed under section 130 and who does not, without just cause, attend at trial or otherwise fulfil the duties as an assessor until discharged is guilty of contempt of Court and is punishable accordingly.

132. Registrar to notify prosecution and defence - (1) At least 5 working days before the commencement of the trial, the Registrar of the Supreme Court must notify the prosecution and the defendant (personally or by the defendant's lawyer) of the names of the 5 assessors chosen to sit, including their occupation and villages.

(2) The prosecutor or defendant must, after receiving the notice under subsection (1), give written notice to the Registrar of any challenge or objection to any assessor.

(3) The prosecutor and the defendant, each have 1 right of objection without any grounds or cause, to any assessor except that any other objection must be with cause or grounds to be determined by the Judge under section 133.

133. Challenge to assessor - (1) At any time before an assessor is sworn:

(a) the prosecutor or the defendant may challenge the assessor for cause; or

(b) the presiding Judge may, on the Judge's own initiative, remove the assessor.

(2) The Judge must not allow a challenge or removal under subsection (1) unless the Judge is satisfied that there is some reasonable and sufficient objection to the assessor.

(3) If the Judge is satisfied as specified under subsection (2), the Judge must remove the assessor and substitute another.

134. Oath or affirmation - An assessor must, before commences to act as such, in open Court and in the presence of the defendant, be sworn on oath or make an affirmation to act well and truly as an assessor and to decide in accordance with the evidence and the law.

135. Discharge of assessor - (1) If at any time after the commencement of a trial and before a verdict, the presiding Judge is of the opinion that, owing to the happening of any emergency or casualty or to the misconduct or disqualification of any assessor or

the assessor's death or inability to continue to perform the assessor's duty, or to any other sufficient cause, it is necessary in the interests of justice to do so, the Judge may adjourn the trial or discharge the assessors and order a new trial.

(2) If the presiding Judge becomes incapable of trying the case or of acting pursuant to subsection (1), the Registrar must discharge the assessors.

(3) The exercise by the Judge of the discretion under this section is not reviewable by a court.

Division 3 - Verdict of Assessors

136. Concurrence of assessors - (1) On a trial before a Judge and assessors, a defendant is not to be convicted of any offence unless the conviction is concurred by at least 4 assessors.

(2) If the assessors cannot reach a verdict on a matter charged within what is in the opinion of the trial Judge a reasonable time (which may not be less than 5 hours) the Judge must enquire of the assessors as to the likelihood of their reaching a verdict.

(3) If the Judge is of the opinion that there is no reasonable prospect of a verdict, the assessors must be discharged upon which the Judge may order a new trial.

(4) If the presiding Judge is of the opinion that the assessors verdict is unreasonable or cannot be supported having regard to the evidence, the presiding Judge may:

(a) acquit the defendant if the verdict is guilty; or

(b) order a new trial if the verdict is not guilty.

137. Assessors to be kept together - (1) From the time when the defendant is given in charge to the assessors, the trial must proceed continuously, subject to the power of the Supreme Court to adjourn it.

(2) Upon any adjournment, the Supreme Court may, if it thinks fit, direct that:

(a) during the adjournment, the assessors are to be kept together; and

(b) proper provision be made to prevent the assessors from holding communication with anyone on the subject of the trial,

but if the direction is not given, the assessors may be separated.

PART 11
APPEALS

Division 1 - Appeals from the District Courts to the Supreme Court

138. Reserving question of law before determination of information - (1) A District Court Judge may:

(a) reserve for determination by the Supreme Court any question of law which arises on the trial of a defendant, or on any of the proceedings preliminary, subsequent or incidental to the trial; and

(b) give any decision subject to the determination by the Supreme Court of that question,

and the Supreme Court has the power to consider and determine that question.

(2) The prosecutor or the defendant may during the trial apply to the presiding Judge presiding to reserve any question, and the Judge, if the Judge refuses so to do, must take a note of the application.

(3) If the result of the trial is acquittal, the defendant is to be discharged, subject to being again arrested if the Supreme Court orders a new trial.

(4) If the result of the trial is conviction, the Judge:

(a) may postpone sentence, or respite the execution of the sentence until the question reserved has been determined; and

(b) in either case in paragraph (a), must, in the Judge's discretion, either remand the defendant in custody or grant bail on any terms and subject to any conditions as the Judge thinks fit.

(5) If the Judge decides to reserve a question under this section, the Judge must state a case for the determination of the Supreme Court.

(6) If the Judge decides to reserve a question under this section on an application made under subsection (2), the applicant must:

(a) within 15 working days after being notified of that decision or within any further time as the Judge may allow, submit a draft of the case stated, through the Registrar of the District Court, to the Judge; and

(b) deliver or post a copy of the draft to the respondent or the respondent's lawyer; and thereupon section 140(4) to (7) applies.

(7) If the respondent is the Police or a government Ministry or agency the appellant or applicant must serve a copy of the case stated to the Attorney-General.

139. Appeal if District Court Judge refuses to reserve question - (1) If the prosecutor or the defendant applies to a District Court Judge under section 138 to reserve a question of law for the determination of the Supreme Court, and the District Court Judge refuses so to do, the party applying may within 15 working days of the refusal, appeal to the Supreme Court against the refusal by:

(a) filing a prescribed notice of appeal in the office of the District Court; and

(b) lodging a copy of the notice in the office of the Supreme Court; and

(c) serving a copy of the notice on the respondent or respondent's lawyer.

(2) The Registrar of the District Court must send all papers relating to the trial in which the question arose to the Registrar of the Supreme Court who must:

(a) set the appeal down for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held; and

(b) notify the parties to the appeal of the time and place appointed for the hearing.

(3) The Supreme Court may, after hearing the parties, and considering any evidence as it thinks fit to require or admit, allow or refuse the appeal.

(4) If the appeal is allowed:

(a) a case is to be stated for the determination of the Supreme Court by the District Court Judge as if the question had been reserved; and

(b) sections 138(6) and 140(4) to (7) apply with necessary adaptations.

(5) If the respondent is the Police, the notice of appeal is to be served on the Attorney-General.

140. Appeal on question of law only by way of case stated - (1) If any information has been determined by a District

Court Judge, either party may, if dissatisfied with the decision as being wrong on a question of law, appeal to the Supreme Court by way of case stated for the determination of the Supreme Court on a question of law only.

(2) An appellant under this section must:

(a) within 15 working days after the decision, file in the office of that District Court a prescribed notice of appeal; and

(b) lodge a copy of the notice of appeal in the office of the Supreme Court; and

(c) serve a copy of the notice of appeal on the respondent or respondent's lawyer.

(3) The appellant must:

(a) within 15 working days after the filing of the notice of appeal, or within any further time as the District Court Judge may allow, submit a draft of the case stated (setting out the facts and the grounds of the decision and specifying the question of law on which the appeal is made), through the Registrar of the District Court to the District Court Judge; and

(b) deliver or post a copy of the draft to the respondent or the respondent's lawyer.

(4) As soon as may be practicable after receiving the draft case stated, the District Court Judge must, after hearing the parties if the Judge considers it necessary to do so, settle the case, sign it, and send it to the Registrar. The settling and the signing of the case are treated for the purposes of this Part to be the statement of the case by the District Court.

(5) If District Court Judge has, since the date of the Judge's decision ceased to hold that office or died or left Samoa, or is incapable for any other reason of acting as such, another District Court Judge may:

(a) extend the time for submission of a draft case stated; and

(b) settle and sign the case.

(6) The Registrar must:

(a) send to the Supreme Court office nearest to the District Court the case signed by the District Court Judge, together with any bail-bond entered into by the appellant; and

(b) make a copy of the case available to each party.

(7) When the Registrar of the Supreme Court receives the case stated, the Registrar must:

(a) set it down for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held; and

(b) notify the parties to the appeal of the time and place appointed for the hearing.

(8) If an appeal under this section relates to a conviction, the notice of appeal is not to be filed until after the defendant has been sentenced or otherwise dealt with.

(9) If the respondent is the Police or a government Ministry or agency, the appellant must serve a copy of the notice of appeal to the Attorney-General.

141. District Court Judge may refuse a case if appeal frivolous - (1) If the District Court Judge, whether before or after having had a draft of the case stated submitted to him or her, is of the opinion that the appeal is frivolous, or concerns the admissibility of evidence which if admitted or excluded could not affect the Judge's decision, but not otherwise, the Judge:

(a) may refuse to state a case; and

(b) must, on the request of the applicant for the case, sign and deliver to the applicant a certificate of that refusal.

(2) If the District Court Judge refuses to state a case under section 138, the appellant:

(a) may within 15 working days of such refusal, apply to the Supreme Court for an order requiring the District Court Judge to state a case; and

(b) serve a copy of the application on the District Court Judge and on the other party, and the District Court Judge and that other party is entitled to appear and be heard.

(3) The Supreme Court may, if it thinks fit, make an order requiring the District Court Judge to state a case, and the District Court Judge on being served with the order must state a case accordingly.

(4) On the making and service of such an order, section 140(3) to (7) applies with the substitution of service of the order for the filing of the notice of appeal.

(5) If the informant is the Police, the applicant must serve a copy of the application under this section to the Attorney-General.

142. Certifying that a case stated has not been prosecuted - (1) If, within 15 working days allowed under section 138, 139, 140 or 141 for the submission by the applicant or appellant of a draft of a case stated or within any further time as may be allowed, no such action is taken, a District Court Judge may certify that the application or appeal has not been prosecuted.

(2) When the certificate of non-prosecution is lodged in the Supreme Court, a Judge may dismiss the matter for want of prosecution, or make any other order that the Court thinks fit.

143. Case may be sent back for amendment - (1) The Supreme Court may cause a case stated under this Part to be sent back to the District Court Judge to amend the case accordingly and return it to the Supreme Court.

(2) As an exception to subsection (1), the Court may with the consent of the parties re-state any question of law referred to bring that question into conformity with the evidence and issue at trial.

144. Supreme Court to determine the questions on case stated - The Supreme Court must hear and determine any question of law arising on any case stated under this Part, and may do one or more of the following:

(a) remit the matter to the District Court with the determination of the Supreme Court thereon and any consequential directions; or

(b) on an appeal, reverse, confirm or amend the decision for which the case has been stated; or

(c) exercise any power conferred by section 154.

145. Defendant appealing by way of case stated may not appeal otherwise - A defendant who appeals by way of case stated against a decision is not entitled to appeal to the Supreme Court against the same decision under this Part, unless the Supreme Court grants leave to the defendant to withdraw the appeal by way of case stated, and if necessary extends the time within which a notice of appeal may be filed under this Part.

Division 2 - General Appeals

146. Defendant's general right of appeal to Supreme Court - (1) Subject to any other provision of this Act or to any other enactment, if a defendant is convicted on any information heard in a District Court or any order is made for the forfeiture or calling up of a bond or any order is made other than for the payment of costs on the dismissal of the information, the person convicted or against whom the order is made may appeal to the Supreme Court.

(2) For appeal against conviction, the appeal may be:

(a) against the conviction and the sentence passed on the conviction; or

(b) against the conviction only; or

(c) against the sentence only.

(3) For appeal against an order for the payment of money, the appeal may be:

(a) against the order and the amount of the sum ordered to be paid; or

(b) only against the amount of the sum ordered to be paid.

(4) An appeal against conviction must not be brought until the person convicted has been sentenced or otherwise dealt with.

147. Right of Attorney-General to appeal to Supreme Court - (1) The Attorney-General may appeal to the Supreme Court:

(a) against the decision of a District Court dismissing any information; or

(b) against acquittal; or

(c) against the sentence passed on any person, unless the sentence is one fixed by law.

(2) No appeal under subsection (1) lapses against a sentence of imprisonment that is unheard before the date on which the person convicted has completed serving that sentence, and if the Supreme Court upholds the appeal and imposes an increased sentence the convicted person is to be recalled to serve the additional period of imprisonment so imposed.

148. Notice of appeal - (1) If**:**

(a) a convicted person intends to appeal to the Supreme Court against conviction or sentence; or

(b) the Attorney-General intends to appeal against the sentence passed on the conviction of a person, or to appeal against an acquittal,

the person or the Attorney-General must, in the prescribed form, give notice of appeal, including the grounds of appeal, by filing in the office of the Court whose decision is appealed against within 14 working days after the date of the sentence, conviction or acquittal.

(2) The Registrar receiving the notice must forthwith deliver or post 1 copy to all of the following:

(a) respondent or respondent's lawyer;

(b) the District Court Judge or Fa'amasino Fesoasoani whose decision is appealed against;

(c) to the Supreme Court office.

(3) The Supreme Court may, on application, extend the 14 working days specified under subsection (1) if that Court is satisfied that there were reasonable grounds for the delay and that in the interests of justice the extension ought to be granted.

149. Transmission of documents to Supreme Court - The Registrar of the District Court must send to the Supreme Court office, with the copy of the notice of appeal, or as soon as possible thereafter:

(a) any bail-bond entered into by the appellant;

(b) the information or charge sheet;

(c) any certified copy of the entry in the Criminal Record Book containing the conviction, sentence or order;

(d) a copy of the transcript of evidence given before a District Court Judge or Fa'amasino Fesoasoani (and if there was no recording of the hearing, copies of the notes of the Judge or Fa'amasino Fesoasoani) at or for the purposes of the hearing and of any questions of law raised at the hearing and of any submissions made by either party;

(e) if the defendant pleaded guilty, a summary of the facts stated by the informant;

(f) a copy of a written judgment which the District Court Judge or Fa'amasino Fesoasoani may have delivered; and

(g) any exhibits tendered as evidence in the District Court.

150. Copies of documents to be supplied to the appellant on request - The Registrar of the District Court must, upon request, supply to the appellant a copy of the documents listed under section 149 to enable the appellant to prepare the record of appeal.

151. Appellant to lodge documents with the Registrar- (1) The appellant must, within 6 weeks following the filing of the notice of appeal or of the order granting leave to appeal, lodge with the Registrar and serve on the respondent a copy of the appeal record.

(2) If the respondent is the Police, the appellant must serve on the Attorney-General a copy of the appeal record.

152. Setting down appeal for hearing - The Registrar must, after receiving the documents referred to in section 149:

(a) set the appeal down for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held; and

(b) notify the parties to the appeal of the time and place appointed for the hearing.

153. Procedure on appeal - (1) If a question of fact is involved in an appeal, the evidence taken in the District Court bearing on the question must, unless the Supreme Court otherwise directs, be brought before the Supreme Court by production of the documents specified in section 149, any exhibits which are in the custody of either party, and any other materials as the Supreme Court considers expedient.

(2) As an exception to subsection (1), the Supreme Court:

(a) may rehear the whole or any part of the evidence; and

(b) must rehear the evidence of any witness,

if the Supreme Court has reason to believe that any note of the evidence of that witness made by the District Court Judge or Fa'amasino Fesoasoani is or may be incomplete in any material particular.

(3) For subsection (2), the Supreme Court has the same jurisdiction and authority as the District Court, including powers as to amend, and to hear or receive further evidence, if that further evidence is new evidence pursuant to section 157.

154. Supreme Court to hear and determine appeal - (1) The Supreme Court may:

(a) hear and determine any general appeal; and

(b) make an order on the appeal, as the Supreme Court thinks fit.

(2) Without limiting subsection (1), the Supreme Court may:

(a) for any appeal against conviction –

(i) confirm the conviction; or

(ii) set the conviction aside and direct either an entry of acquittal or a new trial; or

(iii) amend the conviction and, if the Supreme Court thinks fit, quash the sentence imposed and either impose any sentence (whether more or less severe) that the convicting Court could have imposed on the conviction as so amended, or deal with the defendant in any other way that the convicting Court could have dealt with the defendant on the conviction as so amended; and

(b) for any appeal against an acquittal –

(i) dismiss the appeal; or

(ii) uphold the appeal and direct a new trial; or

(iii) uphold the appeal and convict the respondent on the charge for which the appeal is made; or

(iv) if it is satisfied that the acquittal should not be set aside but that the respondent ought to have been convicted of some other offence and that the District Court had jurisdiction to convict the respondent of that other offence, instead of dismissing the appeal, convict the appellant of that other offence; and

(c) for an appeal against sentence –

(i) confirm the sentence; or

(ii) if the sentence (either in whole or in part) is one which the Court imposing it had no jurisdiction to impose, or is one which is clearly excessive or inadequate or inappropriate:

(A) quash the sentence and either substitute any other sentence warranted in law (whether more or less severe); or

(B) quash any invalid part of the sentence that is severable; or

(C) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it; and

(d) for an appeal against an order –

(i) confirm the order; or

(ii) set it aside; or

(iii) quash it and substitute any other order warranted in law (whether more or less severe); or

(iv) vary, within the limits warranted in law, the order or any part of it or any condition imposed in it; and

(e) for an appeal against the amount of any sum ordered to be paid, confirm the amount or increase or reduce it within the limits warranted in law.

(3) If the Supreme Court convicts a respondent pursuant to subsection (2)(b), it may:

(a) refer the matter back to the District Court instance for sentence; or

(b) itself, sentence the respondent.

(4) In any case, the Supreme Court may exercise any power that the Court whose decision is appealed against might have exercised.

155. Power to forbid report of proceedings etc. - On any general appeal, the Supreme Court has the same powers as a trial Court has under sections 56 and 57.

Division 3 - Provisions relating to all Appeals

156. Powers of Judge as to extension of time - (1) A Judge of the Supreme Court may, on the application at any time of the appellant or intending appellant, extend any time prescribed or allowed under this Part for the filing of any notice or the submission of a draft of any case stated or the doing of any other thing in respect of any appeal or proposed appeal to the Supreme Court.

(2) An appellant or intending appellant may at any time apply to a Judge of the Supreme Court to review any decision of a District Court Judge refusing an extension of time for the submission of a draft of any case stated under this Part.

(3) The Judge may confirm the decision, or reverse it and allow the extension of time as the Judge thinks fit.

157. Fresh evidence on appeal - (1) The appellate court may, on the hearing of an application to admit fresh evidence in the appeal, admit fresh evidence if:

(a) the fresh evidence could not reasonably have been given at the trial; and

(b) the fresh evidence must be such that when viewed in combination with the evidence given at trial it can be said that the Judge or assessors acting reasonably would have acquitted or convicted the defendant; and

(c) the fresh evidence is credible in the sense that it is capable of belief.

(2) If the fresh evidence is suspicious and unreliable the appellate court may reject the fresh evidence.

(3) An appellant who intends to adduce fresh evidence on appeal must:

(a) give the respondent 20 working days' notice of the appellant's intention to do so; and

(b) provide the respondent with the fresh evidence within 10 working days of the giving of the notice.

(4) If fresh evidence has been provided to the respondent under subsection (3)(b), the appellate court may, on application, adjourn the hearing of the appeal to another date to allow reasonable time to respond.

158. Issue of warrant pending appeal - If, under a decision against which the defendant appeals, the defendant has been sentenced to imprisonment, the warrant of commitment to execute the sentence must be issued, even though the notice of appeal has been given.

159. Abandonment of appeal - An appellant may, at any time after the appellant has given notice of appeal, or after the appellant has applied for an extension of time for the notice of appeal, abandon the appeal by giving the Registrar of the Supreme

Court and the respondent a prescribed notice to abandon the appeal, and upon the giving of the notice, the appeal is treated to have been dismissed by the Supreme Court for non-prosecution.

160. Presentation of case by party in custody - (1) A party to an appeal who is in custody is entitled to present the party's case and argument in writing instead of by oral argument if the party so desires, which must be considered by the Supreme Court.

(2) On the hearing of any general appeal against a conviction and the sentence passed on the conviction or against the conviction only, the appellant, if he or she is in custody, whether or not he or she is represented by a lawyer, is entitled to be present, and the officer-in-charge of the prison in which the appellant is detained must, without further authority than this subsection, cause the appellant to be taken to the Supreme Court for the hearing.

(3) On the hearing of a general appeal against sentence only or of any appeal by way of case stated on a question of law only, a party to the appeal who is in custody, whether or not the party is represented by a lawyer, is not entitled to be present except with the leave of the Supreme Court, which may be given on the application in writing of that party.

(4) If leave of the Supreme Court is given for a party to an appeal who is in custody to be present at the hearing of the appeal, the Registrar of that Court must notify the officer-in-charge of the prison in which that party is detained, and the officer must, without further authority than this subsection and that notification, cause the party to be taken to the Supreme Court for the hearing.

(5) A party to an appeal who is taken to the Supreme Court under subsection (2) or (4) must, unless the party's release is ordered by the Supreme Court, and except while the party is in the custody of that Court, remain in the custody of the escorting officer until returned to the prison in which the party is to be detained.

161. Power of Supreme Court to direct retrial - (1) On an appeal, the Supreme Court may remit the decision appealed against to the District Court with a direction that the information to which it relates be retried.

(2) If the decision is remitted under subsection (1), the Registrar of the Supreme Court must send a certificate to that effect to the Registrar of the District Court whose decision was appealed against,

together with in the case of a general appeal the documents and exhibits referred to in section 150.

(3) The case remitted under this section is to be dealt with as if a new trial as to the whole matter had been granted under section 154.

(4) Sections 118 and 158 apply, with necessary modifications, to this section.

162. Amendment of conviction by substituting one offence for another - (1) If, on any appeal against a conviction for any offence (whether or not the appeal is against the sentence also), it appears to the Supreme Court that:

(a) the evidence is insufficient to support a conviction for that offence, but is sufficient to support a conviction for some other offence of a similar character within the jurisdiction of the convicting court; and

(b) the defendant has not been prejudiced in his or her defence,

the Supreme Court may, on any terms as to costs and otherwise as it thinks fit –

(i) amend the conviction by substituting that some other offence for the offence mentioned in the conviction, and, if it thinks fit, quash the sentence imposed and either impose any sentence that the convicting Court could have imposed (whether more or less severe), or deal with the defendant in any other way that the convicting Court could have dealt with the defendant, on the conviction as amended; or

(ii) remit the conviction to the District Court with a direction that it be amended accordingly.

(2) If a conviction is remitted under subsection (1), the Registrar of the Supreme Court must send a certificate to that effect to the Registrar of the District Court whose decision was appealed against, and the District Court must:

(a) amend the conviction and, if it thinks fit, quash the sentence imposed, and impose any sentence which it has jurisdiction to impose (whether more or less severe); or

(b) deal with the defendant in any other way that it has power to deal with the defendant, in respect of the conviction as amended.

163. Dismissal of appeal for non-prosecution - (1) The Supreme Court may dismiss the appeal for non-prosecution, if:

(a) an appellant does not appear at the hearing of the appeal and, if the appellant is in custody, has not presented a case or argument in writing as provided in section 160; or

(b) an appellant, having appeared at the hearing, does not prosecute his or her appeal.

(2) If the Supreme Court dismisses any appeal for non-prosecution, the Registrar of that Court must send a certificate to that effect to the Registrar of the District Court whose decision was appealed against.

164. Registrar to certify determination on appeal - After the determination by the Supreme Court of an appeal, the Registrar of the Supreme Court must:

(a) send a certificate of the determination to the Registrar of the District Court whose decision was appealed against; and

(b) send a copy of the certificate to any party to the appeal who is in custody and was not present when the determination was made.

165. Determination of Supreme Court - (1) If, on any appeal, the Supreme Court confirms any conviction, sentence, order or amount of any sum to be paid, or if the appeal is dismissed for non-prosecution, or if a certificate has been given under section 142 that the appeal has not been prosecuted, the decision of the District Court must be enforced.

(2) If, on an appeal, the Supreme Court:

(a) sets aside or reverses any conviction, order, or other decision; or

(b) amends any conviction or other decision; or

(c) quashes or varies any sentence or order; or

(d) increases or reduces the amount of any sum ordered to be paid,

the Registrar of the District Court must make a note of the determination of the Supreme Court in the entry in the Criminal Record Book relating to the decision appealed against.

(3) In any case to which subsection (2) applies, the determination of the Supreme Court or the decision of the District Court as amended or varied by the Supreme Court, takes effect as if it were the decision of the District Court.

(4) If the Supreme Court imposes a sentence of imprisonment, the warrant to be issued must be issued out of the Supreme Court and be signed by a Judge.

(5) If the Supreme Court varies a sentence of imprisonment imposed by the District Court, it is not necessary to issue a fresh warrant of commitment for the sentence as so varied.

(6) If the appellant has paid a fine pursuant to a sentence of the District Court and on the determination of the appeal:

(a) the appellant's conviction is set aside; or

(b) the sentence is quashed and any other sentence imposed is not for the payment of a fine or is for the payment of a smaller fine; or

(c) the sentence is varied by a reduction in the amount of the fine imposed,

the appellant is entitled, subject to the order of the Supreme Court, to a return of the sum paid or part thereof, as the case may be.

(7) In subsection (6), "fine" includes any costs or other money ordered by the Court to be paid on the conviction of the appellant.

166. Custody of person after determination of appeal - (1) If:

(a) the determination of the Supreme Court on any appeal has been given; or

(b) an appeal has been dismissed for non-prosecution or a certificate has been given under section 142 that an appeal has not been prosecuted,

any person who is liable under that determination or the decision appealed from to serve a sentence of imprisonment and who is not in custody may be arrested without warrant by a constable.

(2) If the Supreme Court, in giving the determination, quashes a sentence of imprisonment imposed by the District Court and does not impose another sentence of imprisonment, the Registrar of the Supreme Court at the place where the determination is given must

send to the officer-in-charge of the prison in which the appellant is detained or from which the appellant was released on bail a certificate setting out the result of the appeal, and, if the appellant is in prison and is not in prison for any other matter, the appellant must be released.

(3) If the Supreme Court in giving the determination:

(a) varies a sentence of imprisonment imposed by a District Court; or

(b) amends the conviction for which a sentence of imprisonment was imposed by a District Court,

the Registrar of the Supreme Court at the place where the determination is given must send to the officer-in-charge of prison a certificate of determination, and the warrant issued in execution of the sentence of the District Court has effect as if it were amended in accordance with the certificate.

(4) If under section 142 a District Court Judge has certified that an appeal has not been prosecuted, the Registrar of the District Court must send that certificate to the officer-in-charge of the prison in which the appellant is detained.

(5) If an appeal has been dismissed for non-prosecution, the Registrar of the Supreme Court must send a certificate to that effect to the officer-in-charge of the prison.

167. Resumption of probation on determination of appeal - If under any determination for which the defendant appeals a District Court having jurisdiction has released the defendant on probation, and:

(a) when the appeal is determined neither the decision to release the defendant on probation nor the conviction on which it was made is set aside; or

(b) the appeal is not prosecuted or is dismissed for non-prosecution,

the term of probation as specified by a District Court or as varied by the Supreme Court must be resumed as from the day –

(i) the appeal is determined; or

(ii) the District Court Judge or Fa'amasino Fesoasoani, having jurisdiction under any enactment conferring power to release a defendant on probation, certifies that the appeal has not been prosecuted; or

(iii) the Registrar of the Supreme Court certifies that it has been dismissed for non-prosecution.

168. Party not prosecuting appeal may be ordered to pay costs - (1) If a notice of appeal is given but the appeal is dismissed for non-prosecution or a certificate is given under section 142 that the appeal has not been prosecuted, the Supreme Court may allow the respondent costs as it thinks fit.

(2) No costs incurred after notice has been given by the appellant abandoning the appeal are to be allowed.

169. Enforcement of order as to costs - If, on the determination of any appeal, either party is ordered to pay costs, the order as to costs are:

(a) to be included in the certificate of the determination sent under section 164; and

(b) enforceable as if it were a fine imposed by the District Court.

170. No Court fees payable on appeal by person sentenced to imprisonment - If an appellant has been sentenced to imprisonment under the conviction to which the appellant's appeal relates, no Court fees are to payable for the appeal either in a District Court or in the Supreme Court.

Division 4 - Appeals from Supreme Court to Court of Appeal

171. Interpretation - In this Part:

"appellant" includes a person who has been convicted and intends to appeal under this Part;

"Court of Appeal Rules" means rules relating to the practice and procedure of the Court of Appeal made under this Act or any other enactment;

"Judge" means a Judge of the Supreme Court of Samoa;

"sentence" includes:

(a) an order of the Supreme Court made on conviction; and

(b) a discharge without conviction pursuant to this Act or any other enactment; and

(c) for power of the Court of Appeal to pass a sentence, a power to make an order or to direct a discharge under this Act or any other enactment.

172. Right of appeal on certain matters arising before trial - (1) At any time before the trial, the Attorney-General or the defendant, may appeal to the Court of Appeal against the making of an order or the refusal to make an order on any of the following matters:

(a) the severance or joinder of charges;
(b) directing separate trials of persons jointly charged;
(c) the admissibility or inadmissibility of evidence;
(d) the amendment of charges;
(e) the quashing or amendment of an information on the grounds that the information does not state in substance a crime or offence.

(2) At any time before the trial, the defendant, with the leave of the Court of Appeal, may appeal to the Court of Appeal against a refusal to make an order for further particulars of any matter which is the subject of any information.

(3) On any appeal under this section, the Court of Appeal may:
(a) confirm the decision of the Supreme Court or Judge; or
(b) vary it, or set it aside and make any other order, as the Court of Appeal thinks ought to have been made in the first place.

(4) If a person intends to obtain the leave of the Court of Appeal to appeal to that Court under this section, the person must give notice of the application for leave to appeal, in such manner

as may be directed by the Court of Appeal Rules, within 10 working days after the decision of the Supreme Court or Judge is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter, or otherwise perfect the decision are necessary or are afterwards taken.

(5) The Court of Appeal may, at any time, extend the time within which notice of an application for leave to appeal under this section may be given.

(6) Even if an application for leave to appeal under this section has been made, the Supreme Court may, if it is satisfied that it is in the interests of justice to do so, proceed with the trial without awaiting the determination of the application.

173. Reserving question of law - (1) The Court before which a defendant is tried may, during or after the trial, reserve pursuant to this section for the opinion of the Court of Appeal a question of law arising either on or incidental to the trial.

(2) If the decision of the question may in the opinion of the Supreme Court depend on any questions of fact, the Judge may when the Judge is sitting with assessors, ask the assessors questions as to the facts separately, and the Supreme Court must make a note of those questions and the findings on those questions.

(3) The Attorney-General or the defendant may during the trial apply to the Court to reserve the question of law, and the Court, if it refuses to reserve it, must nevertheless take a note of the application, unless it considers the application to be frivolous.

(4) If the result of the trial is acquittal, the defendant must be discharged, subject to being again arrested if the Court of Appeal orders a new trial.

(5) If the result of the trial is conviction, the Supreme Court:

(a) may respite the execution of the sentence until the question reserved has been decided; and

(b) must either commit the defendant to prison, or grant the defendant bail on any terms and conditions as the Supreme Court thinks fit.

(6) If the question is reserved, a case must be stated for the opinion of the Court of Appeal, to be approved and signed by the Judge who presided at the trial.

(7) If the question is reserved on application, the case must be stated by the party who applied for the question to be reserved, and if the question is reserved by the Judge on own initiative, the case must be stated by that Judge.

174. Appeal on question of law question not reserved - (1) If the Supreme Court refuses to reserve a question, the party applying may move the Court of Appeal for leave to appeal against that refusal.

(2) The Court of Appeal may upon the motion, and upon considering any evidence as it thinks fit to require, grant or refuse leave to appeal.

(3) If leave to appeal is granted, a case must be stated for the opinion of the Court of Appeal as if the question had been reserved.

175. Powers of Court of Appeal for appeal on question of law - (1) The Court of Appeal may, on own initiative, restate a case.

(2) Upon the hearing of any appeal on a question of law against conviction, sentence or acquittal under this Part, the Court of Appeal may:

(a) confirm the ruling appealed from; or

(b) if it is of the opinion that the ruling was erroneous, and that there has been a mistrial in consequence, direct a new trial; or

(c) if it is of the opinion, if the defendant has been convicted, that the ruling was erroneous, and that the defendant thereby was bound to have been acquitted, order that the conviction be set aside, which order is treated to be an acquittal; or

(d) make any other order as justice requires.

(3) Unless subsection (2)(c) applies, a conviction or acquittal must not be set aside, or a new trial must not be directed, even if the question of law is decided in favour of the appellant, unless, in the opinion of the Court of Appeal, the trial error caused a substantial wrong or miscarriage of justice.

(4) If it appears to the Court of Appeal that a wrong or miscarriage of justice did not affect all of the charges, the Court of Appeal may:

(a) give separate directions as to each charge, and pass sentence on any charge that stands good and unaffected by the wrong or miscarriage of justice; or

(b) remit the case to the Court below with a direction to pass a sentence as justice requires.

(5) The order or direction of the Court of Appeal are to be certified and signed by the presiding Judge to the Registrar of the Court before which the case was tried, and the order or direction must be carried into effect.

176. Right of appeal against conviction or sentence-(1) A person convicted in the Supreme Court, except on appeal from a decision of the District Court, may appeal to the Court of Appeal:

(a) against the conviction and the sentence passed on the conviction; or

(b) against the conviction only; or

(c) against the sentence only, unless the sentence is one fixed by law.

(2) A person convicted or sentenced in the Supreme Court on appeal from the District Court may, with leave of the Court of Appeal, appeal to the Court of Appeal:

(a) against the conviction and the sentence passed on the conviction; or

(b) against the conviction only; or

(c) against the sentence only, unless the sentence is one fixed by law.

177. Right of Attorney-General to appeal against sentence or acquittal - (1) The Attorney-General may appeal to the Court of Appeal against the sentence passed on any person, unless the sentence is one fixed by law.

(2) No appeal under subsection (1) against a sentence of imprisonment that is unheard before the date on which the person convicted has completed serving that sentence lapses, and if the Court of Appeal upholds the appeal and imposes an increased sentence, the convicted person must be recalled to serve the additional period of imprisonment so imposed.

(3) If, on the trial of a person on a charge before a Judge alone, the person is acquitted of that charge, the Attorney-General may appeal to the Court of Appeal against that acquittal.

(4) If, on the trial of a person on a charge before a Judge sitting with assessors, the person is acquitted of that charge, the Attorney-General may, on the grounds that an error of law has occurred, appeal to the Court of Appeal against that acquittal.

(5) Error of law includes, but is not limited to, the following:

(a) the question of admissibility of evidence;

(b) a ruling on a no case to answer application;

(c) directions of the trial judge to the assessors as to the law;

(d) the correct construction of a statute;

(e) the question as to the legal consequences of uncontroverted fact;

(f) whether a particular defence is available to the assessors to consider;

(g) whether a positive actual finding was unsupported by any evidence;

(h) the verdict of the assessors is unreasonable or cannot be supported having regard to the evidence.

(6) Upon the hearing of an appeal under subsection (3) or subsection (4) the Court of Appeal may:

(a) dismiss the appeal; or

(b) uphold the appeal and direct a new trial.

178. Appeal against decision of Supreme Court on appeal from District Court - The Attorney-General may with leave of the Supreme Court, appeal to the Court of Appeal against a decision of the Supreme Court on appeal from the District Court.

179. Right of appeal against sentence or conviction for contempt of Court - (1) A person who is found guilty in the Supreme Court of a criminal contempt of that Court or of any other court, may appeal to the Court of Appeal:

(a) against the finding; or

(b) against any sentence imposed for the contempt; or

(c) against both the finding and the sentence.

(2) This Part applies to this section as if the finding were a conviction.

180. Determination of appeals in ordinary cases - (1) On any appeal against conviction, the Court of Appeal may allow the appeal if that Court is of the opinion:

(a) that the verdict of the assessors should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or

(b) that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law; or

(c) that on any ground there was a miscarriage of justice; or

(d) that the trial was a nullity.

(2) In any other case, the Court of Appeal must dismiss the appeal.

(3) The Court of Appeal may, even though it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the Court of Appeal considers that no substantial miscarriage of justice has actually occurred.

(4) Subject to the special provisions of this Part, the Court of Appeal must, if it allows an appeal against conviction, quash the conviction, and direct a verdict of acquittal to be entered, or direct a new trial, or make any other order as justice requires.

(5) On any appeal against sentence, the Court of Appeal, if it thinks that a different sentence should have been passed, must:

(a) quash the sentence passed and pass any other sentence warranted in law (whether more or less severe) in substitution for the original sentence; or

(b) vary the sentence or any part of it or any condition imposed in it; and

(c) in any other case, dismiss the appeal.

181. Powers of Court of Appeal in special cases - (1) If, on an appeal under section 176, it appears to the Court of Appeal that an appellant, though not properly convicted on some charge, has been properly convicted on some other charge, that Court may:

(a) affirm the sentence passed on the appellant; or

(b) pass a sentence in substitution for the original sentence, as it thinks proper and as may be warranted in law by the verdict on the charge on which the Court of Appeal considers that the appellant has been properly convicted.

(2) If:

(a) an appellant has been convicted of an offence; and

(b) the Judge or the assessors could, on the charge or charges, have found the appellant guilty of some other offence; and

(c) on the finding of the Judge or assessors, it appears to the Court of Appeal that the Judge or assessors must have been satisfied on facts that proved the appellant guilty of that other offence,

the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the Judge or assessors a verdict of guilty of that other offence, and pass any sentence in substitution for the sentence passed as may be warranted in law for that other offence.

(3) If, on an appeal under section 176, it appears to the Court of Appeal that the appellant was insane at the time of the commission of the offence and should have been acquitted on account of the appellant's insanity, the Court of Appeal may quash the conviction.

(4) The Mental Health Act 2007 applies to the appellant if the conviction is quashed under subsection (3), so far as that Act is applicable, as if the appellant had been so acquitted and as if

references in that Act to the Court or a Judge were references to the Court of Appeal.

182. Re-vesting and restitution of property on conviction - (1) The operation of an order for the restitution of any property to a person made on a conviction, and the operation, in case of the conviction, of the provisions of section 24(1) of the Sale of Goods Act 1975 as to the re-vesting of the property in stolen goods on conviction, are (unless the Court before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) suspended:

(a) if the notice of appeal or leave to appeal is given, within 14 working days after the date of conviction, until the determination of the appeal; and

(b) in any other case, until the expiry of 14 working days after the date of the conviction.

(2) For the purpose of subsection (1), if the operation of the order or a provision of Sale of Goods Act 1975 is suspended until the determination of the appeal, the order or provision does not take effect as to the property in question if the conviction is quashed on appeal.

(3) Rules may provide for securing the safe custody of any property, pending the suspension of the operation of the order or provision.

(4) The Court of Appeal may, by order, annul or vary any order made on a trial for the restitution of any property to any person, even though the conviction is not quashed; and the order, if annulled, does not take effect, and, if varied, takes effect as so varied.

183. Supplemental powers of Court of Appeal - (1) For the purposes of an appeal or application for leave to appeal against conviction or sentence, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, do any or all of the following:

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to that Court to be necessary for the determination of the case;

(b) order a witness who would have been compellable witnesses at the trial to attend and be examined before the Court of Appeal, whether they were or

were not called at the trial, or order the examination of the witness to be conducted in the manner prescribed by the Court of Appeal Rules before a Judge or officer of that Court, Judge or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before that Court;

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness;

(d) if a question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court of Appeal conveniently be conducted before that Court, order the reference of the question in manner prescribed by the Court of Appeal Rules for inquiry and report to a special commissioner appointed by that Court, and act upon the report of any such commissioner so far as the Court of Appeal thinks fit to adopt it;

(e) appoint a person with special expert knowledge to act as adviser to the Court of Appeal if it appears to that Court that special expert knowledge is required for the proper determination of the case.

(2) In any proceedings, the Court of Appeal may exercise in relation to the proceedings any other powers that may for the time being be exercised by the Court of Appeal on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of that Court.

(3) The Court must not increase a sentence by reason of or in consideration of any evidence that was not given at the trial.

184. Duties of Registrar with respect to notices of appeal, etc. - (1) The Registrar of the Court of Appeal must:

(a) take all necessary steps for obtaining a hearing of any appeal or application for leave to appeal of which notice is given; and

(b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things connected with the proceedings in the Court whose decision is

appealed against, which appear necessary for the proper determination of the appeal or application.

(2) Any documents, exhibits, or other things connected with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal against conviction or sentence must be kept:

(a) in the custody of the Supreme Court; or

(b) in the custody of the Court of Appeal,

pursuant to Rules made for the purpose, for such time as may be provided by those Rules, and subject to any power as may be given by those Rules for the conditional release of the documents, exhibits or things from that custody.

(3) The Registrar must give the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands them, officers of the court, officers-in-charge of a prison, and any other offices or persons as the Registrar thinks fit.

(4) The officer-in-charge of a prison must cause:

(a) the forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make an application under this Part; and

(b) any notice given by a prisoner in that institution to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar must report to the Court of Appeal or a Judge of that Court any case in which it appears to the Registrar that, although no application has been made for the purpose, legal aid ought to be granted to an appellant.

185. Evidence for Court of Appeal - (1) On any appeal or application for leave to appeal under this Act, the Court before which the appellant was convicted must, if it thinks necessary or if the Court of Appeal so desires, send to the Court of Appeal in addition to any documents referred to in section 184 or in any Rules, a copy of the whole or of any part as is material of any notes taken by the Judge presiding at the trial.

(2) The Court of Appeal may, if it considers the notes defective, refer to any other evidence of what took place at the trial as it thinks fit.

186. Right of appellant to be represented - (1) On the hearing of an appeal or on any proceedings preliminary or incidental

to an appeal, the appellant is entitled to be present at the hearing (whether or not the appellant is represented by a lawyer) if the appellant is in custody.

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised even though the appellant is for any reason not present.

187. Power to forbid report of proceedings, etc. - The Court of Appeal has the same powers as the Supreme Court has under sections 55 and 56, and those sections apply, with necessary modifications, to proceedings before the Court of Appeal.

PART 12
MISCELLANEOUS

188. Costs - (1) If the Court convicts a defendant, it may order the defendant to pay to the informant costs as the Court thinks just and reasonable for Court fees, witnesses' and interpreters' expenses, and lawyers' fees.

(2) If an information is withdrawn or dismissed, the Court may only order the informant to pay to the defendant costs, as the Court thinks just and reasonable, for fees for the defendant's lawyer and expert witnesses if there was no evidence to support the information and no evidence to cause a reasonable person to suspect the defendant, and not otherwise.

(3) The Court must not order costs against the informant or prosecution if the defendant was granted legal aid.

(4) Costs allowed under this section must not exceed the amount provided for in any scale prescribed by regulations or rules made under this Act or any other enactment.

(5) Any costs allowed under this section:

(a) must be specified in the conviction or order for dismissal; and

(b) may be recovered in the same manner as a fine.

(6) The defendant or the Attorney-General may appeal against any order for costs.

(7) No order for costs is be made in favour of the defendant if the defendant by his or her conduct after the alleged offence had brought the prosecution upon himself or herself.

189. Witnesses' expenses - (1) The Court may order a party at whose instance a witness appears at the Court to pay the costs and expenses of that witness, not exceeding the amount provided for in any scale prescribed by regulations or rules made under this Act or any other enactment.

(2) The order may be enforced in the same manner as a fine.

190. Acts not generally to be done on Sunday - (1) The following must not be done on a Sunday:

(a) issuing or execution of a warrant; or

(b) issuing or serving of summons or other document; or

(c) any other act to be done or proceeding to be taken, on a matter to which this Act applies.

(2) As an exception to subsection (1), the following acts may be done and proceedings taken as effectually on a Sunday as on any other day:

(a) a warrant to arrest a defendant or appellant may be issued and may be executed;

(b) a warrant to arrest, or for the appearance of, any person required to give evidence may be issued and may be executed;

(c) a search warrant may be issued and may be executed;

(d) any information may be laid or any step taken if it is necessary to enable the issue of any warrant referred to in paragraph (a), (b) or (c);

(e) a warrant of commitment (except for non-payment of a sum of money) may be executed;

(f) any arrest authorised to be made without warrant may be made, and any person authorised to be taken into custody without warrant may be taken into custody;

(g) any person may be granted bail or released on bail;

(h) any statement may be taken.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding 1 penalty unit.

(4) An act done on a Sunday in breach of subsection (1) is not to be invalidated solely on the ground that it was done on a Sunday.

191. Proceedings not to be questioned for want of form - No information, complaint, summons, conviction, sentence, order, bond, warrant, or other document, and no process or proceeding is to be quashed, set aside, or held invalid by a Court by reason only

of any defect, irregularity, omission, or want of form unless the Court is satisfied that there has been a miscarriage of justice.

192. Consent of Attorney-General to proceedings in certain cases for offences on ships or aircraft - (1) Proceedings for the trial and punishment of a person who:

(a) whether or not the person is a citizen of Samoa or a person ordinarily resident in Samoa, is charged with having committed beyond Samoa an offence on board or by means of any ship or aircraft which is not a Samoa ship or a Samoa aircraft; or

(b) whether or not the person is a citizen of Samoa or a person ordinarily resident in Samoa, is charged with having committed, anywhere within Samoa or in the space above Samoa, an offence on board or by means of any ship or aircraft which belongs to the government of another country other than Samoa or is held by a person on behalf or for the benefit of that government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the armed forces of that country,

must not, by virtue only of the provisions of this Act, be instituted in a Court except with the consent of the Attorney-General.

(2) If:

(a) the Attorney-General's consent under subsection (1) certifies that it is expedient that the proceedings should be instituted; and

(b) the proceedings would be instituted only by virtue of the jurisdiction conferred by Part II of the Crimes Act 2013,

the Attorney-General must not give consent unless satisfied that the government of that country to which the ship or aircraft belongs has consented to the institution of the proceedings in Samoa.

(3) As an exception to subsection (1), a person charged with the offence mentioned in subsection (1) may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even if the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings are to be taken until that consent has been obtained.

193. Civil remedy not suspended - No civil remedy for any act or omission is to be suspended by reason that the act or omission amounts to an offence.

194. Contempt of Court - (1) If a person, in any criminal or civil proceeding:

(a) assaults, threatens, intimidates, or wilfully insults a Judge, District Court Judge, Fa'amasino Fesoasoani or any Registrar, or any officer of the court, or any assessor, or any witness, or any constable during his or her sitting or attendance in court, or in going to or returning from the court; or

(b) wilfully interrupts or obstructs the proceedings of the Court or otherwise misbehaves in court; or

(c) wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings; or

(d) wilfully aids, abets, counsels, procures, or incites any other person to do any of the things described in paragraphs (a) to (c),

a constable or officer of the court, with or without the assistance of any other person, may, by order of the court, take the person into custody and detain the person until the rising of the court.

(2) In any such case in subsection (1), the Court (excluding, however, a Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the

District Courts Act 1969), if it convicts the person after giving the person a reasonable opportunity of being heard in his or her defence, may, for each such offence, sentence the person:

(a) to pay a fine not exceeding 100 penalty units; or

(b) to imprisonment for a term not exceeding 12 months imprisonment,

and in default of payment of the fine, may direct that the defendant be imprisoned for a term not exceeding 12 months, unless the fine is sooner paid.

(3) Nothing in this section affects any power or authority of a Court to punish a person for contempt of Court in any case to which this section does not apply.

195. Felonies, misdemeanours and mode of trial - (1) There is no distinction between offences formerly known as felonies

and misdemeanours, or between offences punishable on a charging document or information laid by the Attorney-General and by way of summary conviction; and, so far as may be necessary for the purpose of any rule of the common law or of any enactment in force in Samoa, all offences are either summary offences or crimes.

(2) A reference in any enactment to the trial of an offence by way of indictment or by way of summary proceedings is to be construed as a reference to the trial of the offence by a Court in the ordinary course of its criminal jurisdiction and procedure.

196. Proceedings against parties to offences, accessories, and receivers - (1) This section applies to a person charged:

(a) as a party to an offence (not being the person who actually committed it); or

(b) with being an accessory after the fact to any offence; or

(c) with receiving property knowing it to have been dishonestly obtained.

(2) A person to whom subsection (1) applies may be proceeded against and convicted for an offence whether or not the principal offender or any other party to the offence or the person by whom the property was obtained has been proceeded against or convicted.

(3) A person to whom subsection (1) applies may be proceeded against and convicted:

(a) alone as for a substantive officer; or

(b) jointly with the principal or other offender or person by whom the property was dishonestly obtained.

(4) If any property has been dishonestly obtained, any number of receivers at different times of that property, or of any part or parts of it, may be charged with substantive offences, and may be tried together.

197. Production of document, etc., held by Ministry, etc. - (1) If a document, record, information or thing required for the purpose of any investigation or prosecution of an offence is in the possession or control of a Ministry, government agency or public body, the Ministry, government agency or public body must, upon request in writing by the Attorney-General, provide the document, information or thing to the prosecutor.

(2) A document, record or information must be provided under subsection (1) even if it is confidential or privileged or is prohibited under an enactment to be disclosed.

198. Regulations - (1) The Head of State may, acting on the advice of Cabinet, make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make the following regulations:

(a) to prescribe forms to be used in respect of any proceedings to which this Act applies;

(b) to prescribe the lawyers' fees payable by parties in proceedings to which this Act applies;

(c) to prescribe the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies;

(d) to prescribe the costs and charges payable by parties in proceedings to which this Act applies;

(e) to prescribe the procedure for the taking of the evidence of witnesses under sections 43 to 45, including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents;

(f) to providing for or prescribe any other matter in respect of which regulations are contemplated or required under this Act.

(2) Any warrant or summons required under this Act is to be in the prescribed form.

(3) The Schedule may be amended, replaced or repealed by regulations made under this section.

199. Rules of Court - (1) The Head of State may, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee constituted under section 40(2) of the Judicature Ordinance 1961, make, amend, replace or revoke rules regulating the practice and procedure and forms of proceedings of the District Courts and the Supreme Court and the Court of Appeal under this Act.

(2) Rules are subject to and must not be inconsistent with any provision of this Act or any other enactment.

(3) The power to make rules under this section includes:

(a) prescribing the forms of notice of appeal and case stated and any other forms to be used in respect of appeals to which this Act applies;

(b) fixing scales of fees and costs payable in respect of proceedings to which this Act applies;

(c) prescribing the duties of Registrars in respect of appeals, including the preparation of the record, setting down the time for hearing and the notification of the determination; and

(d) prescribing any other matters of practice or procedure of the courts for the purposes of this Act.

(4) Parts I, II and IV of the Court of Appeal Rules 1961, and the Schedules to those Rules apply to Part VIIA of those Rules as if they were Rules made under this Act.

200. Repeal, amendment, transitional and saving - (1) The Criminal Procedure Act 1972 is repealed ("repealed Act").

(2) For section 5(3) of the Young Offenders Act 2007 substitute:

"(3) A charge of an offence for which the maximum penalty is life imprisonment is to be laid with the Supreme Court and dealt with by the Supreme Court.".

(3) At the commencement of this Act:

(a) all pending actions, matters and proceedings commenced under the repealed Act continue as if they were commenced under this Act;

(b) all actions, matters and proceedings commenced under the repealed Act and pending or in progress at the commencement of this Act may be continued, completed and enforced under this Act;

(c) all powers, jurisdictions, officers, appointments, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority which originated under the repealed Act, and subsist or in force at the commencement of this Act, continue for the purposes of this Act as if they had been made under this Act;

(d) a defendant may be found guilty or convicted of the offence created by the repealed Act if the defendant's act or omission -

(i) would have constituted an offence under both the repealed Act and this Act; and

(ii) occurred on a date that cannot be established with certainty but that is established

to have occurred either after the commencement of the repealed Act and before its repeal or after the commencement of this Act.

(4) Regulations may be made pursuant to section 198 to deal with any other transitional matter.

SCHEDULE

(sections 2, 15, 18, 37 and 198)

FORMS

FORM 1 - INFORMATION

I, [*full name*], of [*address, occupation*], say on oath that I have reasonable cause to suspect, and do suspect, that at ....on ..... [*full name*], of [*address, occupation*], [*here set out the nature of the offence*] [*here add section and statute applicable*]

.....
Signature of applicant
Sworn before me at.....this .....day of.....2….
.....
(Deputy) Registrar

FORM 2 - SUMMONS TO THE DEFENDANT

IN THE [*SUPREME/DISTRICT***] COURT OF SAMOA**

HELD AT …
BETWEEN: .....
(Informant)
AND: .....
(Defendant)
WHEREAS an information has been laid against you by the abovenamed informant that on the ..... day of

..... 20…..... at .....you did .....
You are therefore summoned to appear before this Court at Court Room No. ... on the ..... day of 20....., at .....o'clock in the forenoon, at the Court house at ....., there to answer the charge so made against you.

Dated at ..... this ..... day of ..... 20 ....
Judge/ Faamasino Fesoasoani/Registrar
To the above-named Defendant

FORM 3 - BAIL BOND NOTICE

To:.....("the Defendant")
And .....("the sureties")
Take notice that if the Defendant fails to perform the condition(s) following or any of them, namely
.....
Then you, the defendant will forfeit the sum of .....and you the surety(ies), will forfeit the sum of .....(each).
Dated at ..... this ..... day of..... 20
(defendant signature)
(surety(ies) signature)

.....
Registrar

FORM 4 - ORDER TO CALL UP BOND

I ORDER that the within bond (or the bond) .....(*here describe the bond*) ..... be called up to the amount of $.....in respect of the Defendant and to the amount of $.....in respect of (each of) the sureties or.....(a surety).

Dated at ..... this ..... day of ..... 20.....
.....
Judge

FORM 5 – CHARGING DOCUMENT

IN THE SUPREME COURT OF SAMOA
HELD AT:
IN THE MATTER OF: (***INFORMANT***) v. ……..
I .....the [*Attorney-General of Samoa/Prosecutor of the Office of Attorney-General*] proceed [*and/or charge the defendant*] on the:

(a) information number(s) (if any).....; and/or

(b) charge the defendant on the additional charges (if any); and/or

[that the defendant is charged that at ..... on ..... [*full name*], of [*address, occupation*], [*here set out the nature of the offence*] [*here add section and statute applicable*]

(c) the information number(s) as substituted by the following charge(s); and/or

[that the defendant is charged that at ..... on ..... [*full name*], of [*address, occupation*], [*here set out the nature of the offence*] [*here add section and statute applicable*]

(d) information number(s) as hereby amended as follows: (*the amendments to the information*)

DATED this …..... day of ….....… 20….....

(*signature*)
(*Attorney-General/Prosecutor of the Office of Attorney-General*)

REVISION NOTES 2018 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2018 - 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008.*

The following general revisions and amendments have been made to this Act since its enactment:

(a) insertion of the date of assent and commencement date;
(b) substituted references to the "Director of Public Prosecutions" with "Attorney General" as amended by the *Constitution Amendment Act (No. 1) 2017, No. 8*.

By the *Constitution Amendment Act (No. 1) 2017, No. 8:*

Section 14 - omit "Director of Public Prosecutions" and substitute "Attorney General"

Section 171 - omit "Director of Public Prosecutions" and substitute "Attorney General"

Savalenoa Mareva Betham-Annandale
Attorney General of Samoa

This Act is administered
by the Ministry of Justice and Courts Administration.