

**EVIDENCE BILL 2015**

**SAMOA**

Explanatory Memorandum

**Introduction**

The purpose of the Bill is to help secure the just determination of proceedings by:

- (a) providing facts to be established by the application of logical rules; and
- (b) promoting fairness to parties and witnesses; and
- (c) protecting rights of confidentiality and other important public interests; and
- (d) avoiding unjustifiable expense and delay; and
- (e) enhancing access to the law of evidence and understanding of the law of evidence.

The Bill will repeal and replace the Evidence Ordinance 1961.

**TULAFONO TAU FAAOFI O FAAMATALAGA MOLIMAU O FAAMASINOGA 2015**

**SAMOA**

Faamatalaga e Faamalamalama ai

**Faatomuaga**

O le faamoemoe o le Tulafono Tau Faaofi o le fesoasoani lea ina ia faamautuina le faia o faaiuga tonu o tualumaga faa-faamasinoga e ala i le:

- (a) tuuina atu o mea moni e ao ona faamautuina e ala i le faaaogāina o tulafono faafoe talafeagai; ma
- (b) uunaia le faiga tutusa i itu faamasinoga ma tagata molimau; ma
- (c) puipuia aia tatau o tulaga agatapuia ma isi manaoga taua o tagata lautele; ma
- (d) alofia ai tupe faaalu e le i faamaonia ma tulaga o le faatuai ona totogi; ma
- (e) faaleleia tulaga e avanoa ai i le tulafono o faamatalaga molimau ma le malamalama i le tulafono o faamatalaga molimau.

O le a soloia ma suia e le Tulafono Tau Faaofi le Tulafono o Faamatalaga Molimau 1961.

**Clauses:****PART 1 - PRELIMINARY**

- Clause 1:** - states that when enacted, the Bill will be called the Evidence Act 2015, and it will commence on a date nominated by the Minister.
- Clause 2:** - provides for the definitions of terms used within the Act.
- Clause 3:** - provides for the application of the Act and its relationship with the rules of court, whereby it will prevail over the rules of court. It also states that the Act applies to proceedings commenced before the commencement of this Act.
- Clause 4:** - states that any evidence relevant to the proceeding is admissible unless it is inadmissible or excluded by an Act or a Judge.
- Clause 5:** - provides for Acts to be liberally construed when admission of particular evidence is not provided for under this Act.
- Clause 6:** - provides that the common law rule on co-conspirators is not affected by the proposed Act.
- Clause 7:** - provides that evidence may be admitted provisionally, subject to evidence later offered to establish admissibility of the evidence.

**Fuaiupu:****VAEGA 1 - FAATOMUAGA**

- Fuaiupu 1:** - ua taua ai e faapea pe afai e pasia, o le a taua loa le Tulafono Tau Faaofi o le Tulafono o Faamatalaga Molimau o Faamasinoga 2015, ma o le a amata faamamaluina i se aso e filifilia e le Minisita.
- Fuaiupu 2:** - ua aiaia ai mo le faamatalaina o fuaitau ua faaaogāina i totonu o le Tulafono.
- Fuaiupu 3:** - ua aiaia ai mo le faaaogāina o le Tulafono ma lona sootaga ma tulafono faafoe o le faamasinoga, lea o le a sili atu lona faatumauina i tulafono faafoe o le faamasinoga. Ua faapea foi ona taua ai le faaaogāina o le Tulafono i tualumaga faa-faamasinoga e amataina a o lumanai ai le amata faamamaluina o lenei Tulafono.
- Fuaiupu 4:** - ua taua ai e faapea o so o se faamatalaga molimau e talafeagai ai i tualumaga faa-faamasinoga ua taliaina, seia vagana ai ua lē taliaina po o ua lē faaaogāina e se Tulafono po o se Faamasino.
- Fuaiupu 5:** - ua aiaia ai mo Tulafono e ao ona faauigaina i lona tulaga lautele pe afai ua lē aiaia ai le taliaina o faamatalaga molimau faapitoa i lalo o lenei Tulafono.
- Fuaiupu 6:** - ua aiaia ai e faapea o tulafono faafoe o tulafono e faaaogā faalauaitete, e uiga i tagata aufaatasi i taupulepulega faalilolilo e le o aafia ai i le Tulafono ua fuafuaina.
- Fuaiupu 7:** - ua aiaia ai e faapea e mafai ona taliaina i faiga faatuutuuga ia faamatalaga molimau, i le noatia ma le fai fuafua i faamatalaga molimau na tuuina atu mulimuli ane e faamautu ai le taliaina o faamatalaga molimau.

**Clause 8:** - provides that evidence may be given to establish admissibility of evidence given to prove facts.

## **PART 2 - ADMISSIBILITY**

### *Division 1 - Admissibility*

#### *Subdivision A - Hearsay evidence*

**Clause 9:** - provides for definitions of terms used within Division 1.

**Clause 10:** - provides for the general rule relating to admissibility of a hearsay statement.

**Clause 11:** - provides for the admissibility of hearsay in business records.

**Clause 12:** - provides for hearsay statements in documents required for applications or pleadings in civil proceedings.

**Clause 13:** - provides that hearsay evidence of defendant is not admissible if the defendant does not give evidence.

#### *Subdivision B - Opinion and expert evidence*

**Clause 14:** - provides for the opinion rule.

**Fuaiupu 8:** - ua aiaia ai e faapea e mafai ona tuuina atu faamatalaga molimau e faamautu ai le taliaina o faamatalaga molimau ua tuuina atu e faamaonia ai mea moni.

## **VAEGA 2 - TALIAINA**

### *Vaevaega 1 - Taliaina*

#### *Vaevaega Laitiiti A - Faamatalaga molimau na lipoti atu i le tagata molimau e isi tagata*

**Fuaiupu 9:** - ua aiaia ai mo le faamatalaina o fuaitau ua faaogaina i totonu o le Vaevaega 1.

**Fuaiupu 10:** - ua aiaia ai mo tulafono faafoe lautele e faasino i le taliaina o se faamatalaga na lipoti atu i le tagata molimau e isi tagata.

**Fuaiupu 11:** - ua aiaia ai mo le taliaina o faamatalaga na lipoti atu i le tagata molimau e isi tagata, i totonu o faamaumauga o galuega.

**Fuaiupu 12:** - ua aiaia ai mo faamatalaga na lipoti atu i le tagata molimau e isi tagata i totonu o pepa aloaia e manaomia mo talosaga po o se faamatalaga e faasaga i se tuuaiga i totonu o tualumaga faa-faamasinoga tau i le va o tagata.

**Fuaiupu 13:** - ua aiaia ai e faapea o faamatalaga molimau na lipoti atu i le tagata molimau e nisi tagata, a le tagata ua molia e lē taliaina pe afai e le o tuuina atu e le tagata ua molia se faamatalaga molimau.

#### *Vaevaega Laitiiti B - Faamatalaga molimau o fautuaga ma faamatalaga molimau a tagata tomai faapitoa*

**Fuaiupu 14:** - ua aiaia ai mo tulafono faafoe o manatu faaalua.

- Clause 15:** - provides for the admissibility of a statement of opinion if it is necessary to understand what the witness saw, heard or perceived.
- Clause 16:** - provides for the admissibility of opinion evidence by an expert.
- Clause 17:** - provides that conduct of expert, when giving opinion evidence in civil proceeding, to be in accordance with the rules of court.

*Division 2 - Defendants' statements, improperly obtained evidence, etc.*

- Clause 18:** - provides for defendants' statements offered by prosecution in criminal proceeding is admissible only against that defendant and not against a co-defendant.
- Clause 19:** - provides for a party to edit statements of evidence given by a defendant, subject to the direction of the Judge by excluding any part that is inadmissible.
- Clause 20:** - provides for the duty of the Judge to find whether the evidence was improperly obtained if the defendant raises the issue of whether the evidence was improperly obtained.

- Fuaiupu 15:** - ua aiaia ai mo tulafono faafoe o manatu faaalua pe afai ua talafeagai ai ona malamalama i le tulaga na iloa, faalogo po o na maitauina e le tagata molimau.
- Fuaiupu 16:** - ua aiaia ai mo le taliaina o faamatalaga molimau o manatu faaalua o se tagata tau tomai faapitoa.
- Fuaiupu 17:** - ua aiaia ai e faapea o le faafoega a le tagata tomai faapitoa, pe afai e tuuina atu faamatalaga molimau o manatu faaalua i totonu o taualumaga faa-faamasinoga tau le va o tagata, e ao ona faia e tusa ai ma tulafono faafoe o le faamasinoga.

*Vaevaega 2 - Faamatalaga a ē ua molia, faamatalaga molimau ua maua mai e lē talafeagai, ma isi faapena*

- Fuaiupu 18:** - ua aiaia ai mo faamatalaga a tagata ua molia ua tuuina atu e ala i moliaga faaletulafono i totonu o taualumaga tau solitulafono e faatoa taliaina e faasaga, i lena tagata ua molia ae lē faasaga i se tagata o afaatasi e tetee.
- Fuaiupu 19:** - ua aiaia ai mo le itu faamasinoga e suesue ai i faamatalaga o faamatalaga molimau ua tuuina atu e se tagata ua molia i le noatia ma le fai fuafua i le faatonuga a le Faamasino e ala i le lē faaogāina o so o se vaega e le o taliaina.
- Fuaiupu 20:** - ua aiaia ai mo le tiute tauave o le Faamasino e saili ai pe sa maua mai le faamatalaga molimau i se tulaga e lē talafeagai ai, pe afai e laga e lē ua molia le mataupu e uiga i faamatalaga molimau pe na maua mai i se tulaga e lē talafeagai.

- Clause 21:** - provides for the exclusion of statements that are influenced by oppression unless the Judge is satisfied that the statement was not obtained by oppression.
- Clause 22:** - provides that confessions is not to be rejected on the ground of promise, threat or other inducement if the Judge is satisfied that the means by which the confession was made were not likely to cause an untrue admission of guilt to be made.
- Clause 23:** - provides for the right of the defendant not to give evidence at his or her trial.
- Clause 24:** - provides for evidence of admissions in civil proceedings.

*Division 3 - Previous consistent statements*

- Clause 25:** - provides that previous consistent statements are not admissible unless it is necessary to respond to a challenge to the witness's veracity, etc., or there is a reasonable assurance that the statement is reliable.

*Division 4 - Veracity*

- Clause 26:** - provides for the exclusion of the application of veracity rules if it is an element of the claim in civil proceeding or of the offence.

- Fuaiupu 21:** - ua aiaia ai mo le lē faaaogāina o faamatalaga lea ua aafia e ala i faiga saua seia vagana ai ua faamalieina le Faamasino e faapea e le i maua mai lea faamatalaga e ala i se faiga saua.
- Fuaiupu 22:** - ua aiaia ai e faapea o tautinoga e ao ona lē teena ona o mafuaaga o se folafolaga, faamatau po o nisi faiga tau faaosooso, pe afai ua faamalieina le Faamasino e faapea o ala na faia ai le tautinoga e lē ono tulai mai ai se ioega e lē moni o le nofosala e ao ona tuuina atu.
- Fuaiupu 23:** - ua aiaia ai mo le aia tatau a le tagata ua molia na te lē tuuina atu ai se faamatalaga molimau i lona suesuega.
- Fuaiupu 24:** - ua aiaia ai mo faamatalaga molimau o le taliaina i totonu o taualumaga faa-faamasinoga tau le va o tagata.

*Vaevaega 3 - Faamatalaga na tuuina atu muamua e ogatasi*

- Fuaiupu 25:** - ua aiaia ai e faapea e lē taliaina ni faamatalaga muamua e ogatasi seia vagana ua tatau ai e tali atu ai i se tetee i le tulaga faamaoni o le tagata molimau, ma isi faapena, po o lo o i ai se tulaga mautinoa ua talafeagai ai e faapea e faatuatuaina le faamatalaga.

*Vaevaega 4 - Tulaga faamaoni*

- Fuaiupu 26:** - ua aiaia ai mo le lē aofia ai o le faaaogāina o tulafono faafoe o le tulaga faamaoni pe afai o se vaega lea o le tagi o i totonu o le taualumaga faa-faamasinoga tau le va o tagata po o se soligatulafono.

**Clause 27:** - restricts the right of a party to offer evidence about a person's veracity unless the evidence is substantially helpful in assessing that person's veracity.

**Clause 28:** - provides the right of a defendant in criminal proceedings to offer evidence of veracity. But the prosecution can only offer such evidence if the defendant has offered such evidence or the defendant has challenged the veracity of a prosecution witness.

**Clause 29:** - provides for evidence of a co-defendants' veracity if evidence is relevant to a defence raised by the defendant.

*Division 5 - Propensity*

**Clause 30:** - provides for the right of a party to offer propensity evidence, that is, evidence that tends to show a person's propensity to act in a particular way or to have a particular state of mind. It provides certain restrictions for propensity evidence to be offered in criminal proceedings.

**Clause 31:** - provides for propensity evidence that a defendant may offer for himself or herself.

**Fuaiupu 27:** - ua faasaina ai le aia tatau a se itu faamasinoga e tuuina atu ai se faamatalaga molimau e faatatau i le tulaga faamaoni o se tagata, seia vagana ai ua fesoasoani tele le faamatalaga molimau i le iloiloina o le tulaga faamaoni o lea tagata.

**Fuaiupu 28:** - ua aiaia ai le aia tatau a se tagata ua molia i totonu o taualumaga tau solitulafono e tuuina atu ai faamatalaga molimau o le tulaga faamaoni. Ae peitai e faatoa mafai ona tuuina atu i moliaga faaetulafono ia faamatalaga molimau pe afai ua tuuina atu e le tagata ua molia sea faamatalaga molimau po o ua ia teena le tulaga faamaoni o se tagata molimau i le faatinoga o moliaga faaetulafono.

**Fuaiupu 29:** - ua aiaia ai mo faamatalaga molimau o le tulaga faamaoni o tagata o afaatasi e tetee atu pe afai ua talafeagai le faamatalaga molimau i se tetee ua faatulai mai e le tagata ua molia.

*Vaevaega 5 - Amioga lē manaomia*

**Fuaiupu 30:** - ua aiaia ai mo le aia tatau a se itu faamasinoga e tuuina atu ai se faamatalaga molimau o amioga lē manaomia, o lona uiga, o se faamatalaga molimau lea ua foliga e faailoa ai se amioga lē manaomia a se tagata e faatino ai i se auala faapitoa po o e i ai se tulaga faapitoa o le mafaufau. Ua aiaia ai nisi tulaga faasaina mo faamatalaga molimau o amioga lē manaomia e ao ona tuuina atu i totonu o taualumaga tau solitulafono.

**Fuaiupu 31:** - ua aiaia ai mo faamatalaga molimau o amioga lē manaomia lea e mafai e se tagata ua molia ona tuuina atu mo ia lava.

**Clause 32:** - provides for propensity evidence about co-defendants only if it is relevant to the defence of the defendant and permitted to do so by the Judge.

**Clause 33:** - provides for propensity evidence offered by the prosecution about a defendant in a criminal proceeding only if evidence has probative value to the issue in dispute.

**Clause 34:** - provides that no evidence can be given in relation to the sexual experience of complainants with any person except the defendant in trials of sexual crimes.

*Division 6 - Identification evidence*

**Clause 35:** - provides for the admissibility of visual identification evidence if formal procedure for obtaining it was followed (or if not followed, there was good reason for not following it). It also provides for the procedure by which such evidence may be obtained.

*Division 7 - Evidence of convictions  
and civil judgments*

**Clause 36:** - provides for the application of section 37.

**Fuaiupu 32:** - ua aiaia ai mo faamatalaga molimau o amioga lē manaomia e faatatau i le na o tagata o aufaatasi e tetee, pe afai ua talafeagai lea tulaga i le tetee a le tagata ua molia ma ua faatagaina ai le faia faapea e le Faamasino.

**Fuaiupu 33:** - ua aiaia ai mo faamatalaga molimau o amioga lē manaomia ua tuuina atu i le faatinoga o moliaga faaetulafono e faatatau i se tagata ua molia i totonu o se taualumaga tau solitulafono pe afai o i ai i le faamatalaga molimau se faamaoniga e aogā i le mataupu o finau ai.

**Fuaiupu 34:** - ua aiaia ai e faapea e leai se faamatalaga molimau e mafai ona tuuina atu e faasino i amioga tau faiga aiga a ē ua faasea ma so o se tasi tagata, seia vagana ai le tagata ua molia o lo o suesueina i solitulafono tau faiga aiga.

*Vaevaega 6 - Faamatalaga molimau e iloagofie ai*

**Fuaiupu 35:** - ua aiaia ai mo le taliaina o faamatalaga molimau o meafaitino vaaia e iloagofie ai pe afai sa mulimulitaia taualumaga aloaia mo le mauaina mai (po o pe afai e le i mulimulitaia, e i ai se mafuaaga lelei mo le lē mulimulitaia o lea tulaga). Ua aiaia ai foi taualumaga lea e mafai ona maua mai ai ia faamatalaga molimau.

*Vaevaega 7 - Faamatalaga molimau o moliaga  
ua faamaonia faaetulafono ma faaiuga  
o se faamasinoga tau le va o tagata*

**Fuaiupu 36:** - ua aiaia ai mo le faaaogāina o le fuaiupu 37.

**Clause 37:** - provides that proof of the defendant's conviction of an offence in civil proceedings is conclusive proof that the person committed the offence.

**Clause 38:** - provides that in a defamation proceeding based on a statement that the person has committed an offence, the proof of the person's conviction of that offence is conclusive proof of the person committing the offence.

**Clause 39:** - provides that proof in a criminal proceeding that a person has been convicted of an offence is conclusive proof that the person committed that offence.

**Clause 40:** - provides that evidence of a judgment or finding of fact in a civil proceeding is not admissible as evidence in a criminal or another civil proceeding to prove the existence of a fact that was in issue in the proceeding for that judgement.

**Fuaiupu 37:** - ua aiaia ai e faapea o le faamaoniga o moliaga faaletulafono o se tagata ua molia i se soligatulafono i totonu o taualumaga faafaamasinoga tau le va o tagata, o se faamaoniga maumaututu lea o le faia e lea tagata o le soligatulafono.

**Fuaiupu 38:** - ua aiaia ai e faapea i totonu o se taualumaga o tulaga tau faaleaga e faavae i luga o se faamatalaga e faapea ua faia e se tagata se soligatulafono, o le faamaoniga o le moliaga ua faamaonia faaletulafono o le tagata i lea soligatulafono, o le faamaoniga maumaututu lea o le faia e lea tagata o le soligatulafono.

**Fuaiupu 39:** - ua aiaia ai e faapea o le faamaoniga i totonu o se taualumaga tau solitulafono e faapea ua faamaonia faaletulafono moliaga o se tagata i se soligatulafono, o le faamaoniga maumaututu lea o le faia e lea tagata o lea soligatulafono.

**Fuaiupu 40:** - ua aiaia ai e faapea o faamatalaga molimau o se faaiuga o se faamasinoga po o le sailiiliga o mea moni i totonu o taualumaga tau le va o tagata e lē taliaina e aveā ma faamatalaga molimau i totonu o se taualumaga tau solitulafono po o se isi taualumaga tau le va o tagata, e faamaonia ai le i ai o se mea moni lea sa tuuina atu i taualumaga mo lea faaiuga o le faamasinoga.

### **PART 3 - PRIVILEGE AND CONFIDENTIALITY**

#### *Division 1 - General*

**Clause 41:** - provides for the definitions of terms used in Part 3.

### **VAEGA 3 - TULAGA ALOAIA MA AGATAPUIA**

#### *Vaevaega 1 - Tulaga Lautele*

**Fuaiupu 41:** - ua aiaia ai mo le faamatalaina o fuaitau ua faaaogāina i totonu o le Vaega 3.

**Clause 42:** - empowers a Judge to order that evidence is not to be given in relation to privilege material, etc.

*Division 2 - Privilege*

**Clause 43:** - provides for the right of a person with privilege material to refuse to disclose the privilege material in a proceeding.

**Clause 44:** - provides privilege for communications with legal advisers.

**Clause 45:** - provides for privilege and solicitors' trust accounts.

**Clause 46:** - provides privilege for communication of information prepared for the dominant purpose of preparing for a proceeding.

**Clause 47:** - provides privilege for settlement negotiations or mediation if it was intended to be confidential and made with an attempt to settle or mediate the dispute.

**Clause 48:** - provides privilege for communications with ministers of religion if the communication was made in confidence and for the purpose of the person obtaining spiritual advice.

**Clause 49:** - provides, in criminal proceedings, privilege for communication made by a person to a medical practitioner when consulting the medical practitioner for drug of dependency or medical condition that may manifest itself in a criminal conduct.

**Fuaiupu 42:** - ua tuuina atu ai malosiaga i se Faamasino e poloaia ai e faapea ia aua nei tuuina atu se faamatalaga molimau e faasino i tulaga aloaia faapitoa, ma isi faapena.

*Vaevaega 2 - Tulaga Aloaia*

**Fuaiupu 43:** - ua aiaia ai mo le aia tatau a se tagata e i ai tulaga aloaia faapitoa ina ia teena ai le faailoaina atu o tulaga aloaia faapitoa i totonu o se tualumaga faa-faamasinoga.

**Fuaiupu 44:** - ua aiaia ai tulaga aloaia mo fesootaiga ma faufautua faaletulafono.

**Fuaiupu 45:** - ua aiaia ai mo tulaga aloaia ma teugatupe tausi a loia o le faamasinoga.

**Fuaiupu 46:** - ua aiaia ai tulaga aloaia mo le fesootaiga o faamatalaga ua saunia mo faamoemoe iloga o tapenaga mo se tualumaga faa-faamasinoga.

**Fuaiupu 47:** - ua aiaia ai tulaga aloaia mo faatalanoaga e foia ai se finauga po o le teuteu ai o le feeseeseaiga, pe afai ua faamoemoe lea tulaga ina ia faia i tulaga agatapuia ma ua faia i se taumafaiga e foia pe teuteu ai le finauga.

**Fuaiupu 48:** - ua aiaia ai tulaga aloaia mo fesootaiga ma faifeau o nuu pe afai ua faia fesootaiga i tulaga agatapuia ma mo le faamoemoe ina ia maua e le tagata se fautuaga faaleagaga.

**Fuaiupu 49:** - ua aiaia ai i totonu o tualumaga tau solitulafono, tulaga aloaia mo fesootaiga ua faia e se tagata i se fomai pe afai e faatalanoaina le fomai mo le tulaga faalagolago i fualaau po o tulaga faafomai lea e mafai ona faaalua ai i totonu o se amioga tau solitulafono.

**Clause 50:** - protects certain persons from disclosing any information that may tend to incriminate them and if disclosed would make them liable under the law of Samoa for an offence punishable by a fine or imprisonment.

**Clause 51:** - protects certain persons from disclosing any information that may tend to incriminate them and if disclosed would make them liable under a foreign law for an offence punishable by capital punishment, corporal punishment or imprisonment.

**Clause 52:** - provides that a party or witness who claims privilege against self-incrimination in court proceedings must provide sufficient evidence to allow the Judge to assess whether self-incrimination is reasonably likely if the person provides the required information.

**Clause 53:** - provides that if a person is ordered by a court to disclose information, permit any premises to be searched, etc, any information obtained by the person in compliance with the order can be used against the person in any criminal proceedings except in a criminal proceedings relating to the falsity of the information.

**Fuaiupu 50:** - ua puipuia ai nisi tagata mai le faailoaina atu o so o se faamatalaga lea e mafai ona tuuaia ai i latou ma pe afai e faailoaina atu, o le a mafai ona noatia ai i latou i lalo o le tulafono a Samoa mo se soligatulafono e ono faasalaina ai i se salatupe po o le nofosala i le falepuipui.

**Fuaiupu 51:** - ua puipuia ai nisi tagata mai le faailoaina atu o so o se faamatalaga lea e mafai ona tuuaia ai i latou ma pe afai e faailoaina atu, o le a mafai ona noatia ai i latou i lalo o le tulafono a se atunuu i fafo mo se soligatulafono e ono faasalaina ai i se faasalaga mamafa, faasalaga e faatigaina ai le tino, po o le nofosala i le falepuipui.

**Fuaiupu 52:** - ua aiaia ai e faapea o se itu faamasinoga po o se tagata molimau o ia lea ua tapaina tulaga aloaia e faasaga i lona tuuaiga i totonu o taualumaga a le faamasinoga e ao ona tuuina atu faamatalaga molimau e lava atoatoa ina ia avanoa ai le Faamasino e iloilo pe ono talafeagai le tuuaiga o ia pe afai ua tuuina atu e le tagata o faamatalaga manaomia.

**Fuaiupu 53:** - ua aiaia ai e faapea afai ua poloaia se tagata e se faamasinoga ina ia faailoa atu faamatalaga, faatagaina so o se nofoaga ma fale ina ia suesueina, ma isi faapena, o so o se faamatalaga ua maua mai e le tagata i le tausisia ai o le poloaiga e mafai ona faaaogāina e faasaga i le tagata i totonu o so o se taualumaga tau solitulafono, ae vagana ai i totonu o se taualumaga tau solitulafono e faasino i le tulaga sese o le faamatalaga.

**Clause 54:** - provides privilege for information that may result in disclosing the identity of an informer.

**Clause 55:** - provides the right of persons who have privileges under clauses 44 to 50 and 54 to expressly or impliedly waive those privileges.

**Clause 56:** - provides that persons with joint interests in privileged material can assert the privilege against third parties and are not restricted by clauses 44 to 50 and 54 but may be ordered by a Judge not to disclose the privilege matter in a proceeding.

**Clause 57:** - protection of matters of State.

**Clause 58:** - obligates and empowers a Judge to disallow privileges under clauses 44 to 49 and 54.

*Division 3 - Confidentiality*

**Clause 59:** - provides for discretion to exclude information.

**Clause 60:** - provides that the plaintiffs and defendants in civil proceedings and their husbands and wives are eligible and compellable to give evidence in the proceedings.

**Clause 61:** - provides that a person charged (including the wife or husband) with an offence is eligible but not compellable to give evidence in the person's own trial.

**Fuaiupu 54:** - ua aiaia ai tulaga aloaia mo faamatalaga lea e mafai ona taunuu atu ai i le faailoaina atu o tulaga e iloagofie ai se na faia le faamatalaga.

**Fuaiupu 55:** - ua aiaia ai le aia tataua tagata o i latou ia e i ai tulaga aloaia i lalo o le fuaiupu 44 e oo i le 50 ma le 54 ina ia faailoaina manino pe tuusaunoa i se faiga ua fuafuaina ia tulaga aloaia.

**Fuaiupu 56:** - ua aiaia ai e faapea o tagata e i ai aia sofofaatasi i tulaga aloaia faapitoa e mafai ona faaalua manino tulaga aloaia e faasaga i le isi itu faamasinoga ma e le o faasaina e fuaiupu 44 e oo i le 50 ma le 54, ae peitai e mafai ona poloaia e se Faamasino ina ia aua nei faailoaina atu mataupu tau i tulaga aloaia i totonu o se tualumaga faa-faamasinoga.

**Fuaiupu 57:** - puipuiga o mataupu a le Malo.

**Fuaiupu 58:** - e noatia ma tuuina atu ai malosiaga i se Faamasino e lē faatagaina ai ni tulaga aloaia i lalo o fuaiupu 44 e oo i le 49 ma le 54.

*Vaevaega 3 - Tulaga agatapuia*

**Fuaiupu 59:** - ua aiaia ai mo le pule faitalia e lē faaaogāina ai se faamatalaga.

**Fuaiupu 60:** - ua aiaia ai e faapea ua agavaa ma faamalosiaga tagata ua tagi, ma tagata ua molia i totonu o tualumaga faa-faamasinoga tau le va o tagata, ma o latou taitoalua ma āvā, e tuuina atu faamatalaga molimau i totonu o tualumaga faa-faamasinoga.

**Fuaiupu 61:** - ua aiaia ai e faapea o se tagata ua molia (e aofia ai le āvā po o le toalua) i se soligatulafono ua agavaa ae lē faamalosiaga e tuuina atu se faamatalaga molimau i le suesuega o lea lava tagata.

## PART 4 - TRIAL PROCESS

### *Division 1 - General*

- Clause 62:** - provides for the general rule about competency and compellability of persons giving evidence in civil and criminal proceedings, even if they have interest in the matter or result of the proceedings or that the person has a previous conviction of an offence.
- Clause 63:** - provides that a Judge in a proceeding cannot give evidence in that proceeding. An assessor or lawyer in a proceeding cannot give evidence in that proceeding except with the permission of the Judge.
- Clause 64:** - provides that defendants in criminal proceedings are not compellable witnesses for the prosecution or defence. Co-defendants are competent and compellable witness for and against defendants in criminal proceedings if co-defendants are tried separately or proceedings against them have been determined.

## VAEGA 4 - FAAGASOLOGA O SUESUEGA

### *Vaevaega 1 - Tulaga Lautele*

- Fuaiupu 62:** - ua aiaia ai mo tulafono faafoe lautele e faatatau i tulaga agavaa ma le faamalosia o tagata e tuuina atu faamatalaga molimau i totonu o tualumaga tau le va o tagata ma tualumaga tau solitulafono, e ui lava o lo o i ai a latou aia i le mataupu po o le taunuuga o tualumaga po o le faapea sa i ai se moliaga muamua ua faamaonia faaletulafono o le tagata i se soligatulafono.
- Fuaiupu 63:** - ua aiaia ai e faapea e lē mafai e se Faamasino i totonu o se tualumaga faa-faamasinoga ona tuuina atu se faamatalaga molimau i totonu o lea tualumaga. E lē mafai e se faatonu o faamasinoga po o se loia i totonu o se tualumaga faa-faamasinoga ona tuuina atu se faamatalaga molimau i totonu o lea tualumaga, seia vagana ai ua i ai le faatagaga a le Faamasino.
- Fuaiupu 64:** - ua aiaia ai e faapea o tagata ua molia i totonu o tualumaga tau solitulafono e le o ni tagata molimau e ono faamalosia mo le faatinoga o moliaga faaletulafono po o se tetee. O tagata o aufaatasi e tetee o tagata molimau ia e agavaa ma faamalosia mo ma e faasaga i tagata ua molia i totonu o tualumaga tau solitulafono pe afai e suesueina eseese ia tagata o aufaatasi e tetee po o ua fuafuaina ni tualumaga e faasaga ia i latou.

**Clause 65:** - provides that Heads of State and judges (for their conduct as judges), and a Sovereign Head of State of another country are not compellable to give evidence.

**Clause 66:** - provides that persons must not give evidence about deliberations of assessors.

*Division 2 - Oaths or affirmations*

**Clause 67:** - provides for evidence of witnesses to be given on oath or affirmation.

**Clause 68:** - provides for interpreter to take oath or make affirmation before acting as an interpreter.

*Division 3 - Support persons, communication assistance and witness address*

**Clause 69:** - provides that a complainant is entitled to have one person (or more than one (1) if permitted by the Judge) near him or her to give support when giving evidence in a criminal proceeding. It also provides a list of persons who are entitled to have communication assistance.

**Clause 70:** - provides that the precise particulars of a witness' address such as details of place or village may not be the subject to any question to a witness, without the permission of Judge.

**Fuaiupu 65:** - ua aiaia ai e faapea o Faauluuluga o Malo ma faamasino (mo a latou faafoega e avea ai ma faamasino) ma se Puleaga Aoao o Malo o se isi atunuu e lē faamalosia e tuuina atu se faamatalaga molimau.

**Fuaiupu 66:** - ua aiaia ai e faapea e lē tatau ona tuuina atu e ni tagata se faamatalaga molimau e faatatau i felafolafoaiga a faatonu o le faamasinoga.

*Vaevaega 2 - Tautoga po o faamaoniga aloaia*

**Fuaiupu 67:** - ua aiaia ai mo faamatalaga molimau a tagata molimau ina ia tuuina atu i luga o se tautoga po o se faamaoniga aloaia.

**Fuaiupu 68:** - ua aiaia ai mo le faamatalaupu ina ia faia le tautoga po o le faia o se faamaoniga aloaia a o lumanai ai le galue e avea o se faamatalaupu.

*Vaevaega 3 - Tagata lagolago, fesoasoani tau fesootaiga, ma tuatusi o tagata molimau*

**Fuaiupu 69:** - ua aiaia ai e faapea ua agavaa se tagata faasea ina ia i ai se tagata e toatasi (po o le sili atu i le toatasi (1) pe afai e faatagaina e le Faamasino) i ona tafatafa e tuuina atu le lagolago pe afai e tuuina atu faamatalaga molimau i totonu o se taualumaga tau solitulafono. Ua faapea foi ona aiaia ai se lisi o tagata o i latou ia ua agavaa e fesoasoani i fesootaiga.

**Fuaiupu 70:** - ua aiaia ai e faapea o auiliiliga faapitoa o se tuatusi o se tagata molimau e pei o faamatalaga auiliili o le nofoaga po o le nuu, e lē mafai ona avea ma mataupu autu i so o se fesili e tuuina atu i se tagata molimau, e aunoa ma le faatagaga a le Faamasino.

*Division 4 - Questioning witnesses*

- Clause 71:** - provides for the ordinary way of giving evidence.
- Clause 72:** - provides for the procedures for examination of witnesses.

*Division 5 - Judge may disallow questions*

- Clause 73:** - empowers the Judge to disallow questions or direct a witness not to answer a question taking to account matters such as age, impairment, belief, etc., of the witness.
- Clause 74:** - prohibits asking of leading questions and provides for cases in which leading questions may be allowed.
- Clause 75:** - provides for the use of documents in questioning a witness or refreshing a witness' memory.
- Clause 76:** - provides the duty, in cross-examination, to put questions that are relevant and in issue and that contradicts the evidence of the witness.
- Clause 77:** - provides that the Judge may, in the interests of justice, limit the extent to which questions in cross-examination may be asked.

*Vaevaega 4 - Fesiligia o tagata molimau*

- Fuaiupu 71:** - ua aiaia ai mo le auala masani e tuuina atu ai faamatalaga molimau
- Fuaiupu 72:** - ua aiaia ai mo tualumaga mo le suesueina o tagata molimau.

*Vaevaega 5 - E mafai ona lē faatagaina e le Faamasino ni fesili*

- Fuaiupu 73:** - ua tuuina atu ai malosiaga i le Faamasino e lē faatagaina ai ni fesili po o le faatonuina o se tagata molimau ia aua nei tali atu i se fesili i le amanaia ai o mataupu e pei o le matua, lē lava le malosi, talitonuga faalelotu, ma isi tulaga faapena, o le tagata molimau.
- Fuaiupu 74:** - ua faasaina ai le faia o ni fesili taiala ma aiaia ai mo mataupu tau faamasinoga lea e mafai ona faatagaina ai fesili taiala.
- Fuaiupu 75:** - ua aiaia ai mo le faaaogāina o pepa aloaia i le fesiligiaina o se tagata molimau po o le toe faatupu manatu i le tagata molimau.
- Fuaiupu 76:** - ua aiaia ai le tiute tauave, i le fesiligiaina o tagata molimau, ina ia tuuina atu fesili ua faapea ona talafeagai ma aogā ma ua faapea ona feteenai ai ma faamatalaga molimau a le tagata molimau.
- Fuaiupu 77:** - ua aiaia ai e faapea e mafai e le Faamasino, i totonu o manaoga o faaiuga amiotonu ona faatapulaa le tulaga e mafai ai ona faia ni fesili i le fesiligiaina o tagata molimau.

- Clause 78:** - provides that Judge may limit cross-examination of a witness as to credit and must disallow any cross-examination that is offensive or injurious to the witness.
- Clause 79:** - provides for the questioning of a hostile witness.
- Clause 80:** - provides that a defendant, in a sexual case, or a case concerning domestic violence, or harassment, may not personally cross-examine a complainant or a child unless the Judge allows it if there are measures put in place so that the defendant does not see the complainant or child face to face.
- Clause 81:** - provides for cross-examination of witness on previous statements if the time, place and other circumstances for the making of the statement are identified to the witness.
- Clause 82:** - provides for the rules for re-examination of a witness.
- Clause 83:** - provides that after the close of a party's case, a party cannot offer further evidence except with permission of Judge.
- Clause 84:** - empowers a Judge, in the interests of justice, to recall a witness who has given evidence.

- Fuaiupu 78:** - ua aiaia ai e faapea e mafai e le Faamasino ona faatapulaa le fesiligiaina o se tagata molimau e tusa ai o le lelei o lana faamatalaga ma e ao ona lē faatagaina so o se tulaga e fesiliga ai lea e faatupu le fiafia pe faamanualia ai le tagata molimau.
- Fuaiupu 79:** - ua aiaia ai mo le fesiligiaina o se tagata molimau e tetee.
- Fuaiupu 80:** - ua aiaia ai e faapea o se tagata ua molia, i se mataupu tau faiga aiga, po o se mataupu e faatatau i sauaga i totonu o aiga, po o faiga faatupu faalavelave, e lē mafai ona ia fesiligia patino se tagata faasea po o se tamaititi seia vagana ai ua faatagaina e le Faamasino lea tulaga pe afai o lo o i ni faiga ua faataoto ina ia faapea ai ona lē toe fevaaiai le tagata ua molia ma le tagata ua faasea po o le tamaitiiti.
- Fuaiupu 81:** - ua aiaia ai mo le fesiligia o se tagata molimau e uiga i faamatalaga na faia muamua pe afai ua faailoagofieina i le tagata molimau, o le taimi, nofoaga ma isi tulaga aliae mai mo le faiga o le faamatalaga.
- Fuaiupu 82:** - ua aiaia ai tulafono faafoe mo le toe suesueina o se tagata molimau.
- Fuaiupu 83:** - ua aiaia ai e faapea o le tuanai ai ona tapunia o se mataupu a se itu faamasinoga, e lē toe mafai ai e se itu faamasinoga ona tuuina atu nisi faamatalaga molimau, seia vagana ai ua i ai le faatagaga a le Faamasino.
- Fuaiupu 84:** - ua tuuina atu ai malosiaiga i se Faamasino, i totonu o manaoga o faaiuga amiotonu, e toe valaauina ai se tagata molimau o ia lea sa tuuina atu le faamatalaga molimau.

**Clause 85:** - empowers a Judge, where justice requires, to ask a witness any question, subject to the right of the party to cross-examine or re-examine the witness on the matter raised by the Judge's question.

*Division 6 - Directions as to the manner  
in which evidence is given*

**Clause 86:** - provides that the Judge may, upon application or on the Judge's own initiative, direct a witness to give examination-in-chief and be cross-examined in the ordinary way or an alternative way provided by section 88.

**Clause 87:** - provides for Chambers hearing before directions are given under section 86.

**Clause 88:** - provides for alternative ways of giving evidence, such as from a place outside the courtroom using electronic communication link or video recording made before hearing.

**Clause 89:** - provides for giving of evidence using video recorded.

**Clause 90:** - provides the duty of the prosecution to apply to the trial court for directions in relation to giving of evidence by a child complainant.

**Fuaiupu 85:** - ua tuuina atu ai malosiaga i se Faamasino, pe afai e manaomia faaiuga amiotonu, e fesiligia ai se tagata molimau i so o se fesili, i le noatia ma le fai fuafua i le aia tatau a le itu faamasinoga e fesiligia pe toe suesue ai le tagata molimau e uiga i le mataupu ua faatulai mai i le fesili a le Faamasino.

*Vaevaega 6 - Faatonuga e tusa ai o le faiga  
e tuuina atu ai faamatalaga molimau*

**Fuaiupu 86:** - ua aiaia ai e faapea e mafai e le Faamasino, i luga o se talosaga po o i luga o fuafuaga a le Faamasino lava ia, ona faatonu se tagata molimau e tuuina atu i ai se suesuega faapitoa ma ia fesiligia i le auala masani po o se isi auala ua aiaia e le fuaiupu 88.

**Fuaiupu 87:** - ua aiaia ai mo le suesueina i Potu Faamasino a o lumanai ai le tuuina atu o faatonuga i lalo o le fuaiupu 86.

**Fuaiupu 88:** - ua aiaia ai nisi auala e tuuina atu ai faamatalaga molimau, e pei o nofoaga i fafo atu o le potu faamasino e faaaogāina ai fesootaiga faaeletoroni po o ata pue i vito ua faia a o lumanai ai le suesuega.

**Fuaiupu 89:** - ua aiaia ai mo le tuuina atu o faamatalaga molimau e faaaogāina ai ata pue i vito.

**Fuaiupu 90:** - ua aiaia ai le tiute tauave o le faatinoga o moliaga faaletulafono ina ia talosaga i le faamasinoga e faia suesuega mo faatonuga e faasino i le tuuina atu o faamatalaga molimau e se tamaitiiti o faasea.

*Division 7 - Evidence from undercover police officers*

- Clause 91:** - provides for calling of undercover police officers as witnesses for offences punishable for at least seven (7) years or for offences under the Narcotics Act 1967. This clause also requires the Commissioner of Police to file a certificate signed by the Commissioner, stating that the undercover police officer was a member of the police and acted as an undercover police officer.
- Clause 92:** - provides for the effect of the Commissioner's certificate, including protection of the identity of the undercover police officer.

*Division 8 - Witness anonymity orders*

- Clause 93:** - provides for the right of the parties to criminal proceedings to apply to a Judge of the Supreme Court for an anonymity order relating to the identity of a witness.
- Clause 94:** - provides for the effect of pre-trial anonymity order and for the duty not to disclose the identity and address of a witness.
- Clause 95:** - empowers the Judge to make orders and give directions necessary to preserve anonymity of witness.
- Clause 96:** - empowers the Judge to, upon application by a party or Judge's own motion, vary or discharge an anonymity order.

*Vaevaega 7 - Faamatalaga molimau mai leoleo nana*

- Fuaiupu 91:** - ua aiaia ai mo le valaauina o leoleo nana e avea ma tagata molimau mo soligatulafono e ono faasalaina ai a itiiti mai e fitu (7) tausaga po o mo soligatulafono i lalo o le Tulafono o Nakoti 1967. Ua manaomia foi i lenei fuaiupu le Komesina o Leoleo ina ia faaooina atu se tusi faamaonia ua ia sainia, o taua ai e faapea o le leoleo-nana o ia o se sui o leoleo ma o lo o galue e avea o se leoleo-nana
- Fuaiupu 92:** - ua aiaia ai mo le tulaga aloaia o le tusi faamaonia a le Komesina, e aofia ai le puiipuiga o tulaga e iloagofie ai le leoleo-nana.

*Vaevaega 8 - Poloaiga ina ia lē faailoaina le tagata molimau*

- Fuaiupu 93:** - ua aiaia ai mo le aia tatau a itu faamasinoga i tualumaga tau solitulafono e talosaga ai i se Faamasino o le Faamasinoga Sili mo se poloaiga e lē faailoaina ai tulaga e iloagofie ai se tagata molimau.
- Fuaiupu 94:** - ua aiaia ai mo le tulaga aloaia o se poloaiga e lē faailoaina ai se suesuega e faia muamua ma mo le tiute tauave ia aua nei faailoaina atu le tulaga e iloagofie ai ma le tuatusi o se tagata molimau.
- Fuaiupu 95:** - ua tuuina atu ai malosiaga i le Faamasino e faia ai poloaiga ma tuuina atu faatonuga talafeagai e puipuia ai le tulaga lē faailoaina o se tagata molimau.
- Fuaiupu 96:** - ua tuuina atu ai malosiaga i le Faamasino e fetuunai pe faamatuu ese ai se poloaiga e lē faailoaina ai, i luga o se talosaga a se itu faamasinoga po o se fuafuaga a le Faamasino lava ia.

**Clause 97:** - creates an offence for breaching of anonymity order, without affecting the power of the court to punish any contempt of court.

*Division 9 - Corroboration and judicial directions*

**Clause 98:** - provides that any evidence relied upon by the prosecution in relation to any offence need not necessarily be corroborated except for offence of perjury or treason.

**Clause 99:** - empowers the Judge to direct assessors that an admissible evidence may be unreliable and the Judge to warn assessors in deciding whether to accept or give weight to the evidence.

**Clause 100:** - empowers the Judge to give directions to assessors about evidence that are given under certain conditions.

**Clause 101:** - provides for Judge's directions and warnings to assessors as to whether the defendant has lied before or during the proceeding.

**Clause 102:** - provides that the Judge must not warn assessors about the need to corroborate evidence given by a child in a criminal proceeding.

**Fuaiupu 97:** - ua faia ai se soligatulafono mo le solia o se poloaiga e lē faailoaina ai, e aunoa ma le aafia ai o malosiaga o le faamasinoga e faasalaina ai so o se tasi e faalēmigao i le faamasinoga.

*Vaevaega 9 - Faatonuga i tulaga tau faamatalaga molimau e faamaonia ai mafaamasinoga*

**Fuaiupu 98:** - ua aiaia ai e faapea o so o se faamatalaga molimau e faalagolago i luga o moliaga faaetutulafono e faasino i so o se soligatulafono e lē tatau ona manaomia se faamaoniga e ala i faamatalaga molimau ae vagana ai mo se soligatulafono o le molimau pepelo po o se faiga fouvale.

**Fuaiupu 99:** - ua tuuina atu ai malosiaga i le Faamasino e faatonu ai faatonu o le faamasinoga e faapea e mafai ona lē faatuatuaina se faamatalaga molimau ua taliaina, ma ia lapataia e le Faamasino ia faatonu i le faia o se faaiuga pe taliaina po o le tuuina atu o le faataua i le faamatalaga molimau.

**Fuaiupu 100:** - ua tuuina atu ai malosiaga i le Faamasino e tuuina atu ai faatonuga i faatonu e faatatau i faamatalaga molimau lea ua tuuina atu i lalo o nisi tuutuuga.

**Fuaiupu 101:** - ua aiaia ai mo faatonuga ma lapataiga a le Faamasino i faatonu e tusa ai o le tulaga pepelo o le tagata ua molia a o lumanai ai po o ao faagasolo le tualumaga faa-faamasinoga.

**Fuaiupu 102:** - ua aiaia ai e faapea e ao i le Faamasino ona aua nei lapataia faatonu e faatatau i le manaoga o faamaoniga e ala i faamatalaga molimau ua tuuina atu e se tamaitiiti i totonu o tualumaga tau solitulafono.

**Clause 103:** - obligates the Judge to tell the assessors that there can be good reason why the victim of a sexual case delays making or fails to make a complaint if the delay or failure is raised in evidence or a question or comment is made about it.

*Division 10 - Uncontroverted facts  
and reliable public documents*

**Clause 104:** - empowers the Judge or assessors to take notice of facts known and accepted in the locality without question.

**Clause 105:** - empowers the Judge to admit as evidence any published documents that Judge considers to be from a reliable source of information, such as matters of public history, literature, science, or art, etc.

**Clause 106:** - provides that authentic public documents may be offered as evidence to prove the truth of its contents.

**Clause 107:** - provides that evidence of acquittals, convictions and judicial proceedings may be given by a certificate signed by a Judge, a Registrar, or other officer having custody of the relevant court records.

**Fuaiupu 103:** - ua noatia ai le Faamasino e faailoa atu i faatonu e faapea e mafai ona i ai ni mafuaaga lelei na ala ai ona faatuai le faia e lē ua afaina i se mataupu tau faiga aiga po o ua lē mafai ona faia se faasea, pe afai o le faatuai po o le lē mafai ona faia ua faatulai mai i totonu o le faamatalaga molimau po o se fesili po o se fautuaga e faatatau i lea itu.

*Vaevaega 10 - O mea moni e lē fesiligia ma  
pepa aloaia faatuatuaina a le Malo*

**Fuaiupu 104:** - ua tuuina atu ai malosiaga i le Faamasino po o faatonu ina ia amanaia ai mea moni ua faailoa mai ma talia i lona tulaga o i ai e aunoa ma le fesiligia.

**Fuaiupu 105:** - ua tuuina atu ai malosiaga i le Faamasino e talia ai e ave a ma faamatalaga molimau so o se pepa aloaia ua lomua lea ua manatu le Faamasino ua maua mai i se punaoa faatuatuaina o faamatalaga, e pei o mataupu tau talaaga o tagata lautele, tusitusiga, faasaaienisi, po o tomai tau faatufugaga, ma isi faapena.

**Fuaiupu 106:** - ua aiaia ai e faapea e mafai ona tuuina atu pepa aloaia ua faamaonia a le Malo e ave a ma faamatalaga molimau e faamaonia ai le faamaoni o ona mataupu o i ai.

**Fuaiupu 107:** - ua aiaia ai e faapea o faamatalaga molimau o le lē tausalaina, o moliaga ua faamaonia faaletulafono ma taualumaga tau faamasinoga e mafai ona tuuina atu e ala i se tusi faamaonia ua sainia e se Faamasino, o se Resitara, po o isi tagata ofisa o puipuia malu faamaumauga talafeagai a le faamasinoga.

**Clause 108:** - provides that a certificate is admissible in evidence to prove the identity of a person alleged to have been convicted in a country of an offence if the certificate is signed by a fingerprint examiner with the copy of the fingerprints shown and certified on the certificate to be that of the convicted person.

**Clause 109:** - provides for the presumption that any Samoan and foreign official documents are printed and published on the date it is published.

**Clause 110:** - provides for evidence of foreign laws.

**Clause 111:** - provides that any act done by the Head of State, Cabinet, Legislative Assembly or other person authorised by law and is published in the Savali, *Gazette* or other document is presumed to have been done on the date it appeared in the Savali, *Gazette* or document.

*Division 11 - Evidence taken in Samoa for use in overseas criminal proceeding*

**Clause 112:** - defines terms for use in Division 11.

**Fuaiupu 108:** - ua aiaia ai e faapea e taliaina se tusi faamaonia i totonu o faamatalaga molimau ina ia faamaonia ai le tulaga e iloagofie ai se tagata ua tuuaia i moliaga ua faamaonia i totonu o se atunuu na faia ai se soligatulafono pe afai ua sainia le tusi faamaonia e se tagata suesue o tulagalima faatasi ai ma se ata o tulagalima ua faaalua ma faamauina i luga o le tusi faamaonia ua faapea ona faasino i lea tagata ua faamaonia le nofosala.

**Fuaiupu 109:** - ua aiaia ai mo manatu taulagi e faapea o so o se pepa aloaia faapitoa a Samoa ma atunuu i fafo e lolomiina ma faasalalau i le aso ua lomua faasalalau ai.

**Fuaiupu 110:** - ua aiaia ai mo faamatalaga molimau o tulafono a atunuu i fafo.

**Fuaiupu 111:** - ua aiaia ai e faapea o so o se gaoioiga ua faia e Le Ao o le Malo, Kapeneta, Fono Aoao Faitulafono, po o so o se isi tagata ua faatagaina e le tulafono ma ua lomua faasalalau i totonu o le Savali, *Kaseti* po o isi pepa aloaia, ua faatatauina lava sa faia i le aso na aliali mai ai i totonu o le Savali, *Kaseti* po o pepa aloaia.

*Vaevaega 11 - Faamatalaga molimau na faamauina i Samoa mo le faaaogāina i taulumaga faasolitulafono i atunuu i fafo*

**Fuaiupu 112:** - ua faamatala ai fuaitau mo le faaaogāina i totonu o le Vaevaega 11.

**Clause 113:** - empowers the Supreme Court or a Judge of a foreign court to order a person to take the evidence of witnesses in Samoa for use in any proceedings in an overseas court.

**Clause 114:** - empowers a Judge to authorise the Registrar to exercise the powers of the Supreme Court under clause 113.

**Clause 115:** - provides that evidence that criminal proceedings are pending in an overseas court and that court wishes to obtain evidence of the witness, the evidence may be given by Letter of Request, another document issued by the court, certificate of an overseas representatives or other process accepted by the Supreme Court or Judge.

**Clause 116:** - provides that a person may not be compelled to give evidence under an order under clause 113 if the person is not a compellable witness in a criminal proceeding in Samoa.

**Clause 117:** - provides for the witness's allowance and travelling expenses for attending an examination pursuant to an order under clause 113.

*Division 12 - Evidence by video link*

**Fuaiupu 113:** - ua tuuina atu ai malosiaga i le Faamasinoga Sili po o se Faamasino o se faamasinoga i atunuu i fafo e poloaia ai se tagata ina ia ave faamatalaga molimau a tagata molimau o i totonu o Samoa mo le faaogāina i so o se tualumaga i totonu o se faamasinoga i atunuu i fafo.

**Fuaiupu 114:** - ua tuuina atu ai malosiaga i se Faamasino e faataga ai le Resitara e faatino malosiaga o le Faamasinoga Sili i lalo o le fuaiupu 113.

**Fuaiupu 115:** - ua aiaia ai e faapea o faamatalaga molimau lea o lo o talia i tualumaga tau solitulafono i totonu o se faamasinoga i atunuu i fafo ma ua faapea ona manaomia e lea faamasinoga ina ia maua mai faamatalaga molimau a le tagata molimau, e mafai ona tuuina atu faamatalaga molimau e ala i se Tusi e Talosaga ai, o se isi pepa aloaia ua tuuina atu e le faamasinoga, o se tusi faamaonia o se sui o se atunuu i fafo po o nisi tualumaga ua taliaina e le Faamasinoga Sili po o se Faamasino.

**Fuaiupu 116:** - ua aiaia ai e faapea e lē mafai ona faamalasia se tagata e tuuina atu se faamatalaga molimau i lalo o se poloaiga i lalo o le fuaiupu 113, pe afai o le tagata e le o se tagata molimau o faamalasia i totonu o se tualumaga tau solitulafono i totonu o Samoa.

**Fuaiupu 117:** - ua aiaia ai mo alauni ma tupe malaga a tagata molimau mo le auai ai i se suesuega e tusa ai o se poloaiga i lalo o le fuaiupu 113.

*Vaevaega 12 - Faamatalaga molimau  
e ala i fesootaiga i ata vito*

**Clause 118:** - empowers the court to direct that evidence be given from another country by video link or telephone conference if the Court is satisfied that equipment for use of video link or telephone conference is or can reasonably be made available.

**Clause 119:** - empowers the court in Samoa to exercise the laws of that other country when taking evidence under clause 118.

**Clause 120:** - provides that evidence and submissions by video link must not be given from another country unless the Court in Samoa has similar facilities to enabling the taking of evidence or submission.

**Clause 121:** - provides that evidence and submissions by telephone conference must not be given or submissions must not be made by telephone conference from another country unless the Court in Samoa has similar facilities to enabling the taking of evidence or submission.

#### **PART 5 - JUDICIAL NOTICE AND DOCUMENTARY EVIDENCE**

**Clause 122:** - provides the Courts to take judicial notice of enactments and court judgments.

**Fuaiupu 118:** - ua tuuina atu ai malosiaga i le faamasinoga e faatonuina ai e faapea e ao ona tuuina atu faamatalaga molimau mai se isi atunuu e ala i fesootaiga i vito po o fonotaga i telefoni pe afai ua faamalieina le Faamasinoga e faapea o masini mo le faaaogāina o fesootaiga i masini vito po o fonotaga i telefoni ua po o e mafai ona faia ia talafeagai ona avanoa i ai.

**Fuaiupu 119:** - ua tuuina atu ai malosiaga i le faamasinoga i totonu o Samoa e faatino ai tulafono a le isi lea atunuu pe afai e aveina atu faamatalaga molimau i lalo o le fuaiupu 118.

**Fuaiupu 120:** - ua aiaia ai e faapea o faamatalaga molimau ma talosaga tusitusia e ala i fesootaiga i masini vito e lē tatau ona tuuina mai se isi lava atunuu, seia vagana ai ua i ai i le Faamasinoga i totonu o Samoa masini tutusa e faaaogā ina ia mafai ai ona aveina atu faamatalaga molimau po o talosaga tusitusia.

**Fuaiupu 121:** - ua aiaia ai e faapea o faamatalaga molimau ma talosaga tusitusia e lē tatau ona tuuina atu e ala i fonotaga i telefoni po o e lē tatau ona faia ni talosaga tusitusia e ala i fonotaga i telefoni mai se isi atunuu, seia vagana ai ua i ai i le Faamasinoga i totonu o Samoa masini tutusa e faaaogā, ina ia mafai ai ona aveina atu faamatalaga molimau po o talosaga tusitusia.

#### **VAEGA 5 - FAASILASILAGA FAA-FAAMASINOGA MA FAAMATALAGA MOLIMAU UA FAAMAUINA ALOAIA**

**Fuaiupu 122:** - ua aiaia ai Faamasinoga ina ia faia faasilasilaga faale-faamasinoga o tulafono ma faaiuga a le faamasinoga.

**Clause 123:** - provides that Part 5 does not exclude the principles and rules of common law and equity in relation to the effect of certificates given by Samoa for any matter of international affairs.

**Clause 124:** - provides that if a process, machine or device produces an outcome, it is presumed, unless contrary is proved, that the process, machine or device has produced that outcome.

**Clause 125:** - provides that if a document part of a business record is produced by a device or process and the process or device has produced a particular outcome, it is presumed, unless contrary is proved, that in producing the document the device or process has produced that outcome.

**Clause 126:** - provides that any document attested, verified, etc., by a lawyer or notary public is presumed to be so attested, verified, etc., if the law of Samoa authorises its attestation, verification, etc.

**Clause 127:** - provides that it is not necessary to prove that an attesting witness witnesses the signing of a document.

**Fuaiupu 123:** - ua aiaia ai e faapea e le o faalēaogāina i le Vaega 5 taiala faavae ma tulafono faafoe o tulafono e faaaogā faalauaitete ma tulaga tutusa e faasino i le tulaga aloaia o tusi faamaonia ua tuuina atu e Samoa mo so o se tasi o mataupu, o mataupu faava o malo.

**Fuaiupu 124:** - ua aiaia ai e faapea afai ua maua mai se tali i se faagasologa, masini po o meafaigaluega o faaaogā, ua faatatauina lava o lea tali sa maua mai i se faagasologa, masini po o meafaigaluega o faaaogā, seia vagana ai ua faamaonia se isi faiga e ese ai.

**Fuaiupu 125:** - ua aiaia ai e faapea afai ua maua mai se vaega o pepa aloaia o faamaumauga o se pisinisi, e se masini po o se faagasologa, ma ua tuuina mai ai i le faagasologa po o le masini se tali faapitoa, ua faatatauina lava e faapea o le maua mai o se pepa aloaia, o le tali lava lea sa tuuina mai e le masini po o le faagasologa, seia vagana ai ua faamaonia se isi faiga e ese ai.

**Fuaiupu 126:** - ua aiaia ai e faapea o so o se pepa aloaia ua molimauina, faamaonia, ma isi tulaga faapena, e se loia po o se tagata faatagaina e faatino nisi mataupu faaletulafono, ua faatatauina ua faapena ona molimauina, faamaonia, ma isi tulaga faapena, pe afai ua faamaonia i le tulafono a Samoa lona molimauina, faamaoniga, ma isi tulaga faapena.

**Fuaiupu 127:** - ua aiaia ai e faapea e lē talafeagai ona faamaonia le tulaga e faapea sa molimauina e se tagata molimau ua faamaonia le sainia o se pepa aloaia.

**Clause 128:** - provides an imprint of official seals of Samoa or a foreign country in a document is presumed, unless the contrary is proved, to be the imprint of the seal and the document is sealed as it purports to have been sealed.

**Clause 129:** - provides for documents that are 20 years old produced from proper custody is *prima facie* evidence of the document unless the contrary is proved.

**Clause 130:** - provides that evidence of records or document of the Government may be presented by producing a document that purports to be the record or document signed or sealed by the Minister or person in custody of it or a copy or extract of it.

**Clause 131:** - provides that certain public documents are admissible in any Court in Samoa without proof of the seal or signature.

**Clause 132:** - provides for official statistics published or compiled by the Government Statistician under the *Statistics Act 2015* is evidence of the statistics or abstract were compiled and analysed by the Government Statistician under that Act.

**Fuaiupu 128:** - ua aiaia ai se ata lomia o faamaufaailoga aloaia a Samoa po o se atunuu i fafo i totonu o se pepa aloaia, ua faatatauina e avea o se ata lomia o le faamaufaailoga ma ua faamaufaailogaina ai le pepa aloaia e pei ona faamoemoe e faamaufaailogaina ai, seia vagana ai ua faamaonia se isi faiga e ese ai.

**Fuaiupu 129:** - ua aiaia ai mo pepa aloaia ia ua 20 tausaga talu ona i ai mai se pui-puigamalu lelei, lea ua avea ma uluai faamatalaga molimau o pepa aloaia, seia vagana ai ua faamaonia se isi faiga e ese ai.

**Fuaiupu 130:** - ua aiaia ai e faapea o faamatalaga molimau o faamaumauga po o pepa aloaia a le Malo e mafai ona tuuina atu e ala i le faia o se pepa aloaia lea ua faamoemoe e avea ma faamaumauga po o se pepa aloaia ua sainia pe faamaufaailogaina e le Minisita po o se tagata o lo o puiupuia malu le pepa aloaia po o sona ata po o sona vaega.

**Fuaiupu 131:** - ua aiaia ai e faapea o nisi pepa aloaia a le Malo e mafai ona taliaina i totonu o so o se Faamasinoga i totonu o Samoa e aunoa ma se faamaoniga o le faamaufaailoga po o le sainia o le igoa.

**Fuaiupu 132:** - ua aiaia ai mo fuainumera faamauina aloaia ua lomia faasalalau po o ua tuufaatasia e le Tagata Ofisa o Fuainumera Faamauina a le Malo i lalo o le *Tulafono o Fuainumera Faamauina 2015*, ua avea ma faamatalaga molimau o fuainumera faamauina po o ootoga ua tuufaatasia ma auiliili e le Tagata Ofisa o Fuainumera Faamauina a le Malo i lalo o lea Tulafono.

**Clause 133:** - empowers the court to direct a document produced before it to be impounded and kept in custody of an officer of the court or another person.

**PART 6 - MISCELLANEOUS**

**Clause 134:** - provides for making of rules that may be used by the Supreme Court and the Court of Appeal in relation to evidence.

**Clause 135:** - empowers the Head of State to make regulations acting on the advice of the Cabinet.

**Clause 136:** - repeals the Evidence Ordinance 1961 and provides for transitional and saving provisions.

.....  
(Hon FIAME Naomi Mataafa)  
**MINISTER FOR JUSTICE AND  
COURTS ADMINISTRATION**

**Fuaiupu 133:-** ua tuuina atu ai malosiaga i le faamasinoga e faatonuina ai se pepa aloaia ua tuuina atu i ona luma, ina ia puipuia ma tausia i se puipuigamalu a se tagata ofisa o le faamasinoga po o se isi tagata.

**VAEGA 6 - AIAIGA ESEESE**

**Fuaiupu 134:-** ua aiaia ai mo le faia o tulafono faafoe ia e mafai ona faaaogāina e le Faamasinoga Sili ma le Faamasinoga o Talosaga e faasino i faamatalaga molimau.

**Fuaiupu 135:-** ua tuuina atu ai malosiaga i Le Ao o le Malo e faia ai tulafono faatonutonu i le faia i luga o le fautuaga a le Kapeneta.

**Fuaiupu 136:-** ua soloia ai le Tulafono o Faamatalaga Molimau 1961 ma aiaia ai mo aiaiga tau soloaiga ma aiaiga faasaoina.

.....  
(Hon FIAME Naomi Mataafa)  
**MINISITA MO FAAMASINOVA MA  
PULEGA TAU FAAMASINOVA**