

EVIDENCE BILL 2015

SAMOA

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TULAFONO TAU FAAOFI O FAAMATALAGA MOLIMAU O FAAMASINOGA 2015

SAMOA

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2015, No.

A BILL INTITULED

AN ACT to

**(a) help secure the just determination of proceedings
by -**

**(i) providing facts to be established by
the application of logical rules; and**

- 124. Faamatalaga molimau ua maua mai i faagasologa, masini ma isi masini e faatino ai galuega
- 125. O pepa aloaia ua maua mai i faagasologa, masini ma isi masini e faatino ai galuega a o faagasolo le vaitaimi faapisinisi
- 126. Faamatalaga molimau o nisi gaoioiga a loia ma tagata ua faatagaina e tausia pepa aloaia faaletulafono
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2015, Nu.

O SE TULAFONO TAU FAAOFI UA TAU

O SE TULAFONO e:

**(a) fesoasoani ai i le faamautuina o le faaiuga tonu o
taualumaga e ala i le -**

**(i) tuuina atu o mea moni e ao ona
faamautuina e ala i le faaaogāina o
tulafono faafoe ua fuafuaina lelei; ma**

(ii) promoting fairness to parties and witnesses; and

(iii) protecting rights of confidentiality and other important public interests; and

(iv) avoiding unjustifiable expense and delay; and

(v) enhancing access to the law of evidence and understanding of the law of evidence; and

(b) provide for other related purposes.

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 Evidence Act 2015.

(2) This Act commences on a date or dates nominated by the Minister.

(3) Despite subsection (2), the Minister may defer the commencement of Division 12 of Part 4 until such time the necessary facilities and equipment are available to the courts.

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

“admission”, in relation to a civil proceeding, means a statement that is:

(a) made by a person who is or becomes a party to the proceeding; and

(ii) uunaia tulaga lē faaituau i itu faamasinoga ma tagata molimau; ma

(iii) puipuia aia tatau o tulaga agatapuia ma isi manaoga taua o tagata lautele; ma

(iv) aloese mai le faaaluina o tupe e lē faamaonia ma le tulaga o le faatuai ona totogi; ma

(v) faaleleia le tulaga e avanoa i ai i tulafono o faamatalaga molimau ma le malamalama i le tulafono o faamatalaga molimau; ma

(b) aiaia ai mo isi faamoemoega e fesootai i ai.

UA FAIA e le Fono Aoaofaitulafono a Samoa i totonu o le Palemene ua potopoto e faapea:

**VAEGA 1
FAATOMUAGA**

1. Igoa puupuu ma le amataga-(1) E mafai ona taua leni Tulafono o le Tulafono o Faamatalaga Molimau o Faamasinoga 2015.

(2) O leni Tulafono e amata faamamaluina i se aso po o ni aso ua filifilia e le Minisita.

(3) E ui lava i le faafuaiupu (2), e mafai e le Minisita ona faapafala le amata faamamaluina o le Vaevaega 12 o le Vaega 4 seia oo i se taimi e maua ai e le faamasinoga mea e faaaogā ma meafaigaluega e talafeagai ai.

2. Faamatalaina o uiga o upu-(1) I totonu o leni Tulafono, ae vagana ai ua manaomia e le mataupu se isi uiga e ese ai:

“taliaina”, e faasino i se tualumaga tau le va o tagata, o lona uiga o se faamatalaga ua faapea ona:

(a) faia e se tagata o ia lea ua po o ua avea o se itu faamasinoga i le tualumaga; ma

(b) adverse to the person's interest in the outcome of the proceeding.

“child” means a person under the age of 18 years;

“child complainant”, in relation to any proceeding, means a complainant who is a child when the proceeding commences;

“communication assistance” means oral or written interpretation of a language, written assistance, technological assistance, and any other assistance that enables or facilitates communication with a person who:

(a) does not have sufficient proficiency in the Samoan or English language to -

(i) understand court proceedings conducted in Samoan or English; or

(ii) give evidence in Samoan or English;
or

(b) has a communication disability.

“conviction” means:

(a) in sections 37 to 39, a subsisting conviction entered before or after the commencement of this Act by -

(i) a court; or

(ii) a court established by the law of a country; and

(b) in sections 107 and 108, a subsisting conviction entered before or after the commencement of this Act by a Samoan or foreign court.

(b) afaina ai le aia a se tagata i le taunuuga o le taulumaga.

“tamaitiiti” o lona uiga o se tagata e i lalo ifo o le 18 tausaga le matua;

“tamaitiiti faasea” e faasino i so o se taulumaga, o lona uiga o se tagata faasea o ia lea o se tamaitiiti pe afai e amataina le taulumaga;

“fesoasoani tau fesoataiga” o lona uiga o le faamatalaina tuufofoga po o se faamatalaga tusitusia o se gagana, fesoasoani tusitusia, fesoasoani faatekonolosi ma so o se isi lava fesoasoani lea ua mafai ai po o ua faafaigofie ai fesoataiga ma se tagata o ia lea:

(a) e le o i ai se tulaga e lava atoatoa le tomai i le gagana Samoa po o le faa-Peretania e -

(i) malamalama ai i taulumaga faa-faamasinoga e faia i le gagana Samoa po o le faa-Peretania; po o

(ii) le tuuina atu o faamatalaga molimau i le gagana Samoa po o le faa-Peretania; po o

(b) e i ai se tulaga le gafatia tau fesoataiga.

“moliaga ua faamaonia faaletulafono” o lona uiga:

(a) i totonu o le fuaiupu 37 e oo i le 39, o se moliaga o lo o i ai ua faamaonia faaletulafono na faia a o lumanai ai po o i le tuanai ai o le amata faamamaluina o lenei Tulafono e -

(i) se faamasinoga; po o

(ii) se faamasinoga ua faavaeina e le tulafono a se atunuu; ma

(b) i totonu o le fuaiupu 107 ma le 108, o se moliaga o lo o i ai ua faamaonia faaletulafono na faia a o lumanai ai po o i le tuanai ai o le amata faamamaluina o lenei Tulafono e se faamaisinoga a Samoa po o se atunuu i fafo;

“copy”, in relation to a document, includes a copy of a copy and a copy that is not an exact copy of the document but is identical to the document in all relevant respects;

“country” means a country (other than Samoa) which is a member of the Pacific Islands Forum or a prescribed country and includes a State, territory, province, or other part of the country;

“court” means the Court of Appeal, the Supreme Court, a District Court, Family Court, Youth Court, or any other subordinate court established pursuant to Article 74 of the Constitution, but does not include the Land and Titles Court;

“document” means:

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes -

(i) a label, marking, or other writing which identifies or describes a thing of which it forms part, or to which it is attached;

(ii) a book, map, plan, graph, or drawing;

(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information.

“domestic violence” means:

(a) physical abuse;

(b) sexual abuse;

(c) emotional, verbal and psychological abuse;

“ata”, e faasino i se pepa aloaia, e aofia ai se ata o se ata muamua ma se ata e le o se ata sao o le pepa aloaia, ae peitai e foliga tutusa ma le pepa aloaia i ona itu uma e tatau ai;

“atunuu” o lona uiga o se atunuu (e ese na i lo Samoa) lea e avea ma sui auai o le Fono a Atumotu o le Pasefika po o se atunuu ua faatonuina ma e aofia ai se Setete, teritori, itumalo, po o se isi vaega o le atunuu;

“faamasinoga” o lona uiga o le Faamasinoga o Talosaga, o le Faamasinoga Sili, o se Faamasinoga Faaitumalo, Faamasinoga o Mataupu Tau i Aiga, Faamasinoga o Tupulaga Talavou, po o so o se tasi lava faamasinoga e lagolago ai ua faavaeina e tusa ai ma le Mataupu 74 o le Faavae, ae lē aofia ai le Faamasinoga o Fanua ma Suafa;

“pepa aloaia” o lona uiga:

(a) so o se faamatalaga taua, e tusa lava po o ua sainia pe leai foi po o ua faamaonia i se isi faiga e ese ai, lea o lo o i ai faailoga, (e aofia ai upu ma fuainumera), o ata o foliga, po o leo po o lea e mafai ona maua mai ai faailoga, o ata o foliga, po o leo, ma e aofia ai -

(i) se faailoga faapipii, faailogaina, po o nisi tusitusiga lea e faailogofie ai po o e faamatalaina ai se mea lea o avea ma sona vaega po o lea e faapipii i ai;

(ii) o se tusi, faafanua, ata, kalafi po o ata tusi;

(iii) o se ata pue, lipine pue ata, po o kopi o ata pue; ma

(b) faamatalaga ua faamauina faaeletoroni po o teuina, ma faamatalaga na maua mai lea faamatalaga.

“sauaga i aiga: o lona uiga:

(a) sauaga faaoo manua;

(b) sauaga tau faiga aiga faamalosi;

(c) sauaga e aafia ai lagona, e tautala ai, ma aafia ai le mafaufau;

- (d) intimidation;
- (e) harassment;
- (f) stalking;
- (g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

“duty” includes:

- (a) duty imposed by law or arising out under a contract;
or
- (b) duty recognised in carrying out of any business practice or of any professional duty.

“enforcement agency” means the Police or a body or organisation that has a statutory responsibility for the enforcement of an enactment;

“expert” means a person who has specialised knowledge or skill based on training, study, or experience;

“expert evidence” means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion;

“give evidence” means to give evidence in a proceeding:

- (a) in the ordinary way, as described in section 71; or
- (b) in an alternative way, as provided for by section 88;
or
- (c) in any other way provided for under this Act or any other enactment;

“Government” means the Government of Samoa;

- (d) uiga tau faafefe;
- (e) faiga faasoosa;
- (f) tuliloa faalilolilo;
- (g) so o se isi lava amioga e pulea ai po o amioga saua e faasaga i sē ua faasea, pe afai o sea amioga e afaina ai po o e mafai ona mafua ai se tulaga afaina i le saogalemu, soifua maloloina po o le tulaga sololelei o lē ua faasea.

“tiute tauave” e aofia ai se:

- (a) tiute tauave ua faaee atu e le tulafono po o ua faatulai mai i lalo o se feagaiga faakonekarate; po o
- (b) se tiute tauave ua amanaia i le faatinoina o so o se pisinisi po o so o se tiute tauave tau tomai faapitoa.

“lala e faamalasia” o lona uiga o Leoleo po o se itutino po o se faalapotopotoga lea e i ai se matafaioi faaletulafono mo le faamalasia o se tulafono;

“tagata tomai faapitoa” o lona uiga o se tagata o ia lea e i ai se iloa faapitoa po o tomai e faavae i luga o aoaoga, aoga, po o le poto masani;

“faamatalaga molimau a le tagata tomai faapitoa” o lona uiga o le faamatalaga molimau a se tagata tomai faapitoa e faavae i luga o le iloa faapitoa po o tomai o lea tagata tomai faapitoa ma e aofia ai faamatalaga molimau ua tuuina atu i le tulaga o se manatu faaalua;

“tuuina atu o faamatalaga molimau” o lona uiga ia tuuina atu faamatalaga molimau i totonu o se taualumaga:

- (a) i le auala masani, e pei ona faamatalaina i le fuaiupu 71; po o
- (b) i se isi auala, e pei ona aiaia e le fuaiupu 88; po o
- (c) i so o se isi lava auala ua aiaia i lalo o lenei Tulafono po o so o se isi lava tulafono.

“Malo” o lona uiga o le Malo o Samoa;

“harassment” means engaging in a pattern of conduct that induces the fear of harm to a complainant including:

- (a) repeatedly watching or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
- (b) repeatedly making calls or texts by telephone, mobile phone, internet (skype) or by any other technological means, or inducing another person to make calls or texts by telephone or mobile phone to the complainant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of radio messages, letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.

“hearsay rule” means the rule described in Subdivision A of Division 1 of Part 2;

“hearsay statement” means a statement that:

- (a) was made by a person other than a witness; and
- (b) is offered in evidence at the proceeding to prove the truth of its contents;

“hostile”, in relation to a witness, means that the witness:

- (a) exhibits, or appears to exhibit, a lack of veracity when giving evidence unfavourable to the party who called the witness on a matter about which the witness may reasonably be supposed to have knowledge; or

“faiga faasoesa” o lona uiga o le auai i se faasologa o amioga lea e faaososo ai le fefe i tulaga e afaina i se tagata o faasea e aofia ai:

- (a) le mataituina pea o le fealuai i fafo po o tafatafa o le fale po o le nofoaga o lo o aumau ai le tagata o faasea, galue ai, faatinoina ai le pisinisi, aoaoina ai po o se nofoaga e i ai;
- (b) le faia pea o valaau ma feau e faia i telefoni, telefoni feaveai, initaneti (skype) po o e ala i faiga faatekonolosi, po o e aofia ai se isi tagata i le faia o valaau po o feau e faia i telefoni po o telefoni feaveai i tagata o faasea, e tusa lava pe na faia mulimuli ane le talanoaga pe leai foi;
- (c) le auina atu pea, faaoo atu po o faapogai i le faaoo atu o feau faasalalau i leitio, o tusi, o feau faatelekalafi, o afifi, masini fesi, o meli faaeletoroni po o isi meafaitino i lē o faasea.

“tulafono faafoe o faamatalaga na lipoti atu e isi tagata” o lona uiga o le tulafono faafoe ua faamatalaina i le Vaevaega Laitiiti A o le Vaevaega 1 o le Vaega 2;

“faamatalaga na lipoti atu e isi tagata” o lona uiga o se faamatalaga lea:

- (a) sa faia e se tagata e ese ai i lo se tagata molimau; ma
- (b) ua tuuina atu i faamatalaga molimau i le tualumaga faa-faamasinoga e faamaonia ai le moni o ona mataupu o i ai.

“tete” e faasino i se tagata molimau, o lona uiga e faapea o le tagata molimau:

- (a) ua faailoa atu, po o ua foliga mai ua faailoa atu, le leai o se tulaga faamaoni, pe afai e tuuina atu se faamatalaga molimau e lē lagolagoina e le itu faamasinoga o ia lea na valaauina le tagata molimau, e faatatau i se mataupu lea e tatau i se tagata molimau ona i ai se malamalamaaga; po o

(b) gives evidence that is inconsistent with a statement made by that witness in a manner that exhibits, or appears to exhibit, an intention to be unhelpful to the party who called the witness; or

(c) refuses to answer questions or deliberately withholds evidence.

“incriminate” means to provide information that is reasonably likely to lead to, or increase the likelihood of, the successful prosecution of a person for a criminal offence;

“international organisation” means an organisation of States or governments of States or an organ or agency of an organisation of that kind, and includes the Commonwealth Secretariat;

“interpreter” includes a person who provides communication assistance to a defendant or a witness;

“intimidation” means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;

“Judge” includes a Fa’amasino Fesoasoani or a tribunal;

“lawyer” or “counsel” or “solicitor” means a person admitted as a Barrister and Solicitor of the Supreme Court under the Lawyers and Legal Practice Act 2014;

“leading question” means a question that directly or indirectly suggests a particular answer to the question;

“offer evidence” includes eliciting evidence by cross-examining a witness called by another party;

(b) ua tuuina atu se faamatalaga molimau lea e lē ogatasi ma se faamatalaga ua faia e lea tagata molimau i se faiga lea e faailoa atu ai, po o ua foliga mai ua faailoa atu ai, se faamoemoe e le o fesoasoani atu ai i le itu faamasinoga lea na valaauina le tagata molimau; po o

(c) ua musu e tali fesili po o ua faamoemoe e taofi le tuuina atu o faamatalaga molimau.

“tuuiaia” o lona uiga ia tuuina atu faamatalaga e ono tatau ona agai atu ai i, po o e siitia ai le ono tatau o le faia o moliaga faaletulafono o se tagata mo se soligatulafono tau solitulafono.

“faalapopotoga faava o malo” o lona uiga o se faalapopotoga o Malo po o atunuu o Malo po o se lala po o se sooupu a se faalapopotoga o lea ituaiga, ma e aofia ai le Ofisa Tutotonu o Malo o le Taupulega;

“faamatala upu” e aofia ai se tagata o ia lea ua tuuina atu le fesoasoani tau fesoataiga i se tagata ua molia po o se tagata molimau;

“uiga tau faafefe” o lona uiga o le faailoaina atu po o le tuuina atu o se faiga tau faamatau, po o le tau faamatau i lē ua faasea, lea e faaoso ai le fefe;

“Faamasino” e aofia ai se Faamasino Fesoasoani po o se komisi faamasino;

“loia” po o “faufautua” po o “loia o le faamasinoga” o lona uiga o se tagata ua faatagaina e ave a o se Loia o le Faamasinoga ma Loia Faufautua o le Faamasinoga Sili i lalo o le Tulafono o Loia ma le Faatinoga o Galuega Faa-Loia 2014;

“fesili taiala” o lona uiga o se fesili lea e manaomia ai se tali faapitoe e tuusao pe leai foi i le fesili;

“faamatalaga molimau ua ofo atu” e aofia ai faamatalaga molimau e tali atu ai e ala i le fesiligia o se tagata molimau ua valaauina e se isi itu faamasinoga.

“opinion”, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact;

“party” means a party to a proceeding;

“police officer” means a sworn member of the Police;

“previous statement” means a statement made by a witness at any time other than at the hearing at which the witness is giving evidence;

“proceeding” means:

- (a) a proceeding conducted by a court; and
- (b) any interlocutory or other application to a court connected with that proceeding, including judicial settlement conference.

“propensity rule” means the rule described in section 30;

“public document” means a document that:

- (a) forms part of the official records of the legislative, executive, or judicial branch of the Government of Samoa or of a foreign country or of a person or body holding a public office or exercising a function of a public nature under the law of Samoa or a foreign country; or
- (b) forms part of the official records of an international organisation; or
- (c) is being kept by, or on behalf of, a branch of any government, person, body, or organisation referred to in paragraph (a) or (b), for the purpose of carrying out the official functions of that government, person, body, or organisation.

“manatu faaalua” e faasino i se faamatalaga ua tuuina atu i le faamatalaga molimau, o lona uiga o se faamatalaga o se manatu faaalua lea ua faamoemoe e faamaonia ai pe lē faamaonia ai se mea moni;

“itu faamasinoga” o lona uiga o se itu faamasinoga i se taualumaga faa-faamasinoga;

“leoleo” o lona uiga o se sui faatautoina o Leoleo;

“faamatalaga na faia muamua” o lona uiga o se faamatalaga na faia e se tagata molimau i so o se taimi e ese mai lo le taimi o le suesuega lea na tuuina atu ai e le tagata molimau ia faamatalaga molimau;

“taualumaga faa-faamasinoga” o lona uiga:

- (a) o se taualumaga na faafoe e se faamasinoga; ma
- (b) so o se talanoaga po o isi talosaga i le faamasinoga e fesootai ma lea taualumaga, e aofia ai ni fonotaga faa-faamasinoga e foia ai se mataupu.

“tulafono faafoe o amioga lē manaomia” o lona uiga o le tulafono faafoe ua faamatalaina i le fuaiupu 30;

“pepa aloaia a le Malo” o lona uiga o se pepa aloaia lea e:

- (a) avea ma vaega o faamaumauga aloaia o le tulafono, pulega po o lala faa-faamasinoga a le Malo o Samoa po o se atunuu i fafo po o se tagata po o se faalapotopotoga o umia se tofi a le Malo po o faatinoina se galuega tauave o se tulaga faalauaitele i lalo o le tulafono a Samoa po o se atunuu i fafo; po o
- (b) avea ma vaega o faamaumauga aloaia a se faalapotopotoga faava o malo; po o
- (c) ua tausia e, po o i le avea ai ma sui o, se lala o so o se malo, tagata, itu tino po o faalapotopotoga o faasinomia i le parakalafa (a) po o le (b), mo le faamoemoe o le faatinoina o galuega tauave aloaia a lea Malo, tagata, itutino, po o faalapotopotoga.

“Registrar” means a Registrar of a court, and includes an Assistant Registrar;

“seal” includes a stamp;

“self-incrimination” means the provision by a person of information that could reasonably lead to, or increase the likelihood of, the prosecution of that person for a criminal offence;

“sexual case” means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for:

- (a) an offence against any of the provisions of Part VII of the Crimes Act 2013; or
- (b) any other offence against the person of a sexual nature.

“stalking” means repeatedly following, pursuing, or accosting the complainant;

“statement” means:

- (a) a spoken or written assertion, in any form or manner, (including any sketch) by a person of any matter; or
- (b) non-verbal conduct of a person that is intended by that person as an assertion of any matter.

“telephone conference” means a telephone call in which the calling party wishes to have one or more called party to listen in to the audio portion of the call;

“veracity” means the tendency of a person to refrain from lying;

“video link” means any form of technology to receive and transmit audio-video signals by users at different locations, for communication between persons;

“Resitara” o lona uiga o se Resitara o se faamasinoga, ma e aofia ai se Resitara Lagolago;

“faamaufaailoga” e aofia ai se faailoga tusi;

“tuuāia o le tagata lava ia” o lona uiga o le tuuina atu e se tagata o faamatalaga lea e ono tataua ona agai atu ai i, po o e siitia ai le ono tataua ona faia o le moliaga faaletulafono o lea tagata mo se soligatulafono tau solitulafono;

“mataupu tau faiga aiga” o lona uiga o se taualumaga tau solitulafono lea ua molia ai se tagata po o faatalia ai le faasalaga, po o tagofia i se isi faiga e ese ai mo:

- (a) se soligatulafono e faasaga i so o se aiaiga o le Vaega VII o le Tulafono o Solitulafono 2013; po o
- (b) so o se isi lava soligatulafono e faasaga i le tagata o i ai uiga i tulaga tau faiga aiga.

“tuliloa faalilolilo” o lona uiga o le taumulimuli pea, tuliloaina po o le oo atu i le nofoaga o i ai le tagata faasea;

“faamatalaga” o lona uiga:

- (a) o se faaaliga manino ua tuufofoga pe tusitusia i so o se faiga po o tulaga (e aofia ai so o se faatulagaga) ua faia e se tagata i so o se mataupu; po o
- (b) amioga e lē tau faamatalaina o se tagata lea ua faamoemoe i ai o ia e aveā o se faaaliga manino o so o se mataupu.

“fonotaga i telefoni” o lona uiga o se valaau i le telefoni lea e mana o ai se itu faamasinoga o valaau atu, ina ia i ai se tasi po o le sili atu o itu faamasinoga ua valaauina ina ia faafofoga mai i se vaega o faasalalau atu o le valaau;

“faamaoni” o lona uiga o le fuafuaga ua i se tagata e taofia ai mai le tautala pepelo;

“fesootaiga i ata vito” o lona uiga o so o se faiga faatekonolosi e maua mai ai ma faasalalau atu ai faailoilo o leo o ata vito, e i latou o faaogāina i nofoaga eseese, mo fesootaiga i le va o tagata;

“video record” means a recording on any medium from which a moving image may be produced by any means; and includes an accompanying sound track;

“visual identification evidence” means evidence that is:

- (a) an assertion by a person, based wholly or partly on what that person saw, to the effect that a defendant was present at or near a place where an act constituting direct or circumstantial evidence of the commission of an offence was done at, or about, the time the act was done; or
- (b) an account (whether oral or in writing) of an assertion of the kind described in paragraph (a).

“witness” means a person who gives evidence and is able to be cross-examined in a proceeding.

(2) A hearing commences when, at the substantive hearing of the issues that are the subject of proceedings, the party having the right to begin commences to state that party’s case or, having waived the right to make an opening address, calls that party’s first witness.

(3) Without limiting the Acts Interpretation Act 1974, this Act:

- (a) is to be interpreted in a way that promotes its purpose and principles; and
- (b) is not subject to any rule that statutes in derogation of the common law should be strictly construed; but

“faamaumauga i ata vito” o lona uiga o se faamaumauga e uiga i so o se faiga lea e mafai ona faia mai ai se ata o gaoioi e ala i so o se faiga; ma e aofia ai se elemeni e pueina ai le leo ua tuuina atu faatasi;

“faamatalaga molimau o tulaga vaaia e iloagofie ai” o lona uiga o se faamatalaga molimau lea ua avea:

- (a) o se faaaliga manino ua faia e se tagata, e faavae i le tulaga atoa po o se vaega o mea na ia iloa i le tulaga e faapea sa i ai lē ua molia i po o e latalata ane i se nofoaga lea na faia tuusao ai se gaoioiga po o faamatalaga molimau o tulaga aliae mai o le faiga o se soligatulafono sa faia i, po o e faatatau i le taimi na faia ai le gaoioiga; po o
- (b) se faamaumauga (tusa lava pe tuufofoga po o i se faiga tusitusia) o se faaaliga manino o le ituaiga ua faamatalaina i le parakalafa (a).

“tagata molimau” o lona uiga o se tagata o ia lea ua tuuina atu se faamatalaga molimau ma e mafai ona fesiligia i totonu o se taualumaga faa-faamasinoga.

(2) Ua amataina se suesuega pe afai, i se suesuega e ese ai o mataupu ia ua avea ma mataupu autu o taualumaga, o le itu faamasinoga e i ai le aia tatau e amata ai, ua amata ona faailoa atu le mataupu a lea itu faamasinoga po o i le faataatiaese ai o le aia tatau e faia ai se folasaga amata, ia valaau loa le tagata molimau muamua a lea itu.

(3) E aunoa ai ma le faatapulaaina o le Tulafono o Faamatalaga o Tulafono 1974, o lenei Tulafono:

- (a) e ao ona faamatalaina i se auala lea e uunaia ai lona faamoemoe ma taiala faavae; ma
- (b) e le o noatia i so o se tulafono faafoe lea e faatulafonoina ai tulaga e faaleagaina ai tulafono e faaaoḡā faalauaitetele ia e tatau ona manino lelei le faauigaina; ae peitai

(c) may be interpreted having regard to the common law, but only to the extent that the common law is consistent with -

- (i) its provisions; and
- (ii) the promotion of its purpose and its principles; and
- (iii) the application of the rule in section 5.

3. Application and relationship with other Acts-(1) This Act binds the Government.

(2) An enactment prevails if there is an inconsistency between the enactment and this Act, unless this Act provides otherwise.

(3) Despite subsection (2), this Act prevails if there is any inconsistency between the rules of court and this Act.

4. All relevant evidence admissible unless excluded by law or Judge-(1) Evidence that is not relevant is not admissible in a proceeding.

(2) All relevant evidence is admissible in a proceeding except evidence that is:

- (a) inadmissible under this Act or any other enactment; or
- (b) excluded under this Act or any other enactment.

(c) e mafai ona faamatalaina i le amanaia ai o le tulafono e faaaogā faalauaitele, ae peitai e na o le tulaga lava lea o lo o ogatasi ai le tulafono e faaaogā faalauaitele ma -

- (i) ona aiaiga; ma
- (ii) le uunaia o lona faamoemoe ma ana taiala faavae; ma
- (iii) le faaaogāina o tulafono faafoe i totonu o le fuaiupu 5.

3. Faaaogāina ma sootaga ma isi Tulafono-(1) O lenei Tulafono e noatia ai le Malo.

(2) E faatumauina se tulafono pe afai o lo o i ai se tulaga e lē ogatasi ai le tulafono ma lenei Tulafono, seia vagana ua aiaia ai i lenei Tulafono se isi faiga e ese ai.

(3) E ui lava i le faafuaiupu (2), e faatumauina pea lenei Tulafono pe afai o lo o i ai se tulaga e lē ogatasi ai tulafono faafoe a le faamasinoga ma lenei Tulafono.

4. O faamatalaga molimau talafeagai uma e mafai ona taliaina seia vagana ai ua lē faaaogāina e le tulafono po o e le Faamasino-(1) O faamatalaga molimau e lē talafeagai e lē taliaina lea i se taualumaga.

(2) O faamatalaga molimau talafeagai uma ua taliaina i totonu o se taulaumaga, seia vagana ai faamatalaga molimau lea ua:

- (a) lē taliaina i lalo o lenei Tulafono po o so o se isi lava tulafono; po o
- (b) e le o faaaogāina i lalo o lenei Tulafono po o so o se isi lava tulafono.

(3) Evidence is relevant in a proceeding if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceeding.

(4) In any proceeding, the Judge must exclude evidence if its probative value is outweighed by the risk that the evidence will:

- (a) have an unfairly prejudicial effect on the proceeding;
- or
- (b) needlessly prolong the proceeding.

(5) In determining whether the probative value of evidence is outweighed by the risk that the evidence will have an unfairly prejudicial effect on a criminal proceeding, the Judge must take into account the right of the defendant to offer an effective defence.

5. Acts to be liberally construed - If there is no provision in this Act or any other enactment regulating the admission of any particular evidence or the relevant provisions deal with that question only in part, decisions about the admission of that evidence must be made having regard to:

- (a) the purpose and the principles set out in the long title;
- and
- (b) the common law, to the extent that the common law is consistent with the promotion of that purpose and those principles in the long title and is relevant to the decisions to be taken.

6. Co-conspirator's rule, etc., not affected - Nothing in this Act affects the rules of the common law relating to:

(3) E talafeagai se faamatalaga molimau i totonu o se taualumaga pe afai e i ai se tulaga e faamaonia ai po o e lē faamaonia ai so o se mea lea ua taunuu i ai i le faiga o le faaiuga o le taualumaga.

(4) I totonu o so o se taualumaga, e ao i le Faamasino ona faalēaogāina se faamatalaga molimau pe afai o lona tulaga e tuuina atu ai se faamaoniga, ua sili atu ona aafia e ala i se tulaga faaletonu e faapea o le faamatalaga molimau o le a:

- (a) i ai se aafiaga lē sao o tulaga faaituau e uiga i le taualumaga; po o
- (b) e lē manaomia le faaumiumi ai o le taualumaga.

(5) I le fuafuaina pe o le tulaga e tuuina atu ai se faamaoniga o se faamatalaga molimau ua sili atu ona aafia e ala i se tulaga faaletonu e faapea o le faamatalaga molimau o le a i ai se aafiaga lē sao o tulaga faaituau e uiga i se taualumaga tau solitulafono, e ao i le Faamasino ona amanaia le aia tatau a le tagata ua molia e tuuina atu ai se tetee ua talafeagai lelei.

5. E ao ona faauigaina i le tulaga lautele Tulafono - Afai e leai se aiaiga o i totonu o lenei Tulafono po o so o se isi lava tulafono o faatonutonu faaletulafono ai le taliaina o so o se faamatalaga molimau faapitoa po o aiaiga talafeagai e faatatau i le na o se vaega o lea fesili, e ao ona faia ni faaiuga e faatatau i le taliaina o lea faamatalaga molimau i le amanaia ai:

- (a) o le faamoemoe ma taiala faavae ua faatulaga atu i totonu o le igoa umi; ma
- (b) le tulafono e faaaogā faalauaitetele i le tulaga e faapea o le tulafono e faaaogā faalauaitetele o lo o ogatasi ma le uunaia o lea faamoemoe ma ia taiala faavae o i le igoa umi ma ua talafeagai i le faiga o faaiuga.

6. E lē aafia ai tulafono faafoe o tagata e afaatasi i taupulepulega faalilolilo, ma isi faapena - E leai se mea o i totonu o lenei Tulafono e aafia ai tulafono faafoe o le tulafono e faaaogā faalauaitetele e faasino i:

- (a) the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises; or
- (b) the admissibility of a defendant's statement against a co-defendant in circumstances where the defendant's statement is accepted by the co-defendant.

7. Evidence may be provisionally admitted - If a question arises concerning the admissibility of any evidence, the Judge may admit that evidence subject to evidence being later offered which establishes its admissibility.

8. Evidence given to establish admissibility - Evidence given by a witness to prove the facts necessary for deciding whether some other evidence should be admitted in a proceeding:

- (a) is admissible in the proceeding if the evidence given by the witness is inconsistent with the witness's subsequent testimony in the proceeding (whether or not the other evidence is admitted);
- (b) is not otherwise admissible in the proceeding.

PART 2 ADMISSIBILITY

Division 1 - Admissibility

Subdivision A - Hearsay evidence

- (a) le taliaina o faamatalaga a tagata afaatasi i taupulepulega faalilolilo po o ni tagata o aafia i se solitulafono sofaatasi a ni kamupani; po o
- (b) le taliaina o se faamatalaga a se tagata ua molia e faasaga i tagata afaatasi e tetee i tulaga aliae mai pe afai ua taliaina le faamatalaga a le tagata ua molia e tagata afaatasi e tetee.

7. E mafai ona taliaina i faiga faatuutuuga le faamatalaga molimau - Afai e faatulai mai se fesili e faatatau i le taliaina o so o se faamatalaga molimau, e mafai ona taliaina e le Faamasino lea faamatalaga molimau, i le noatia ma le fai fuafua i le faamatalaga molimau na tuuina atu mulimuli ane lea e faavae ai lona taliaina.

8. Faamatalaga molimau ua tuuina atu e faavae ai le taliaina - O le faamatalaga molimau ua tuuina atu e se tagata molimau e faamaonia ai ni mea moni e talafeagai mo le iloiloga pe ua tataua ona taliaina nisi faamatalaga molimau i totonu o se taualumaga:

- (a) e taliaina i totonu o le taualumaga pe afai o le faamatalaga molimau ua tuuina atu e le tagata molimau ua ogatasi lea ma le faamatalaga tauto mulimuli ane a le tagata molimau i totonu o le taualumaga (e tusa lava pe ua taliaina pe leai foi isi faamatalaga molimau);
- (b) ua lē taliaina i se isi faiga e ese ai i totonu o le taualumaga.

VAEGA 2 TALIAINA

Vaevaega 1 - Taliaina

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

9. Definition-(1) In this Division:

“business”:

- (a) means any business, profession, trade, manufacture, occupation, or calling of any kind; and
- (b) includes the activities of a Ministry, local authority, public body, body corporate, organisation, or society.

“business record” means a document:

- (a) that is made -
 - (i) to comply with a duty; or
 - (ii) in the course of a business, and as a record or part of a record of that business; and
- (b) that is made from information supplied directly or indirectly by a person who had, or may reasonably be supposed by the court to have had, personal knowledge of the matters dealt with in the information he or she supplied.

“circumstances”, in relation to a statement by a person who is not a witness, includes:

- (a) the nature of the statement; and
- (b) the contents of the statement; and
- (c) the circumstances that relate to the making of the statement; and
- (d) any circumstances that relate to the veracity of the person; and
- (e) any circumstances that relate to the accuracy of the observation of the person.

(2) For the purpose of this Division, a person is unavailable as a witness in a proceeding if the person:

9. Faamatalaina o uiga o upu-(1) I totonu o lenei Vaeveaga:

“pisinisi”:

- (a) o lona uiga o so o se pisinisi, tomai faapitoa, fefaatauaiga, gaosiga, galuega, po o le valaauina i so o se galuega; ma
- (b) e aofia ai galuega a se Matagaluega, pulega faalotoifale, faalapotopotoga a le Malo, faalapotopotoga ua tuufaatasia faaletulafono, faalapotopotoga po o sosaiete.

“faamaumauga tau pisinisi” o lona uiga o se pepa aloaia:

- (a) lea ua faia -
 - (i) e tausisia ai se tiute tauave; po o
 - (ii) i le faagasologa o se pisinisi, ma avea ai o se faamaumauga po o se vaega o se faamaumauga o lea pisinisi; ma
- (b) ua faapea ona tuuina atu faamatalaga ua tuusao atu pe lē tuusao foi e se tagata o ia lea e i ai, po o ua talafeagai ona fuafuaina e le faamasinoga e i ai le iloa patino o mataupu o tagofia i totonu o faamatalaga na ia tuuina atu.

“tulaga aliae mai”, e faasino i se faamatalaga ua faia e se tagata o ia lea e le o se tagata molimau, e aofia ai:

- (a) le uiga o le faamatalaga; ma
- (b) mataupu o i ai i le faamatalaga; ma
- (c) tulaga aliae mai lea e faasino i le faiga o le faamatalaga; ma
- (d) so o se tulaga aliae mai lea e faasino i le tulaga faamaoni o le tagata; ma
- (e) so o se tulaga aliae mai lea e faasino i le sao atoatoa o le mataituina o le tagata.

(2) Mo le faamoemoe o lenei Vaeveaga, e lē avanoa se tagata e avea o se tagata molimau i totonu o se tualumaga pe afai o le tagata:

- (a) is dead; or
- (b) is outside Samoa and it is not reasonably practicable for the person to be a witness; or
- (c) is unfit to be a witness because of age or physical or mental condition; or
- (d) cannot with reasonable diligence be identified or found; or
- (e) is not compellable to give evidence.

(3) Subsection (2) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

(4) A hearsay statement is not admissible except:

- (a) as provided by this Division or by the provisions of any other enactment; or
- (b) in cases where -
 - (i) this Act provides that this Division does not apply; and
 - (ii) the hearsay statement is relevant and not otherwise inadmissible under this Act.

10. General rule as to admissibility of hearsay-(1) Subject to subsections (2) to (4) and section 12, a hearsay statement is admissible in any proceeding if:

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and

- (a) ua maliu; po o
- (b) o lo o i fafo atu o Samoa ma ua lē talafeagai ona faatino le aveva o le tagata ma se tagata molimau; po o
- (c) ua lē talafeagai ona aveva ma tagata molimau ona ua matua po o tulaga tau le malosi o le tino ma le mafaufau; po o
- (d) ua lē mafai i le tulaga naunautai e tatau ai ona faailoagofie pe maua mai; po o
- (e) e le o faamalasia e tuuina atu se faamatalaga molimau.

(3) E lē faaaogāina le faafuaiupu (2) i se tagata o ia lea ua manaomia lana faamatalaga e tuuina atu i totonu o faamatalaga molimau, e se itu faamasinoga, o ia lea ua faapogai ai le lē avanoa o le tagata, ina ia taofia ai o ia mai le auai atu po o le tuuina atu o le faamatalaga molimau.

(4) E lē taliaina se faamatalaga na lipoti atu e isi tagata seia vagana ai:

- (a) e pei ona aiaia e lenei Vaevaega po o e ala i aiaiga o so o se isi lava tulafono; po o
- (b) i mataupu pe afai -
 - (i) ua aiaia i lenei Tulafono e faapea e lē faaaogāina lenei Vaevaega; ma
 - (ii) ua talafeagai le faamatalaga na lipoti atu e isi tagata ma ua taliaina i se isi faiga e ese ai i lalo o lenei Tulafono.

10. Tulafono faafoe lautele e tusa ai o le taliaina o faamatalaga na lipoti atu e isi tagata-(1) I le noatia ma le fai fuafua i le faafuaiupu (2) e oo i le (4) ma le fuaiupu 12, e taliaina se faamatalaga na lipoti atu e isi tagata i totonu o so o se taualumaga pe afai:

- (a) o tulaga aliae mai e faasino i le faamatalaga ua tuuina atu ai tulaga mautinoa e tatau ai e faapea e faatuatuaaina le faamatalaga; ma

(b) either -

(i) the maker of the statement is unavailable as a witness; or

(ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) A party intending to offer hearsay evidence under this Subdivision must, within sufficient time before the hearing, provide the court and any other party with notice of the party's intention to offer the hearsay statement in evidence.

(3) In criminal proceedings, the notice under subsection (2) must:

- (a) state the name of the maker of the statement, if known, (subject to any witness anonymity order under Division 8 of Part 4);
- (b) if the hearsay statement was made in writing, be accompanied by a copy of the statement in which the statement is contained;
- (c) if the hearsay statement was made orally, state the content of the hearsay statement;
- (d) if section 10(1)(a) is relied on, state the circumstances relating to the statement that provide reasonable assurance that the statement is reliable;
- (e) if section 11 is relied on, state why the document is a business record;

(b) a lē -

(i) ua lē avanoa lē na faia le faamatalaga e avea o se tagata molimau; po o

(ii) ua manatu le Faamasino e faapea o le lē totogiina o tupe faaalu po o le tuai ona totogi, o le a avea ma mafuaaga pe afai e manaomia lē na faia le faamatalaga e avea o se tagata molimau.

(2) E ao i se itu faamasinoga ua faamoemoe e tuuina atu se faamatalaga molimau na lipoti atu e isi tagata i lalo o lenei Vaevaega laitiiti ona tuuina atu i le faamasinoga ma so o se isi lava itu faamasinoga se faasilasilaga o le faamoemoe o le itu faamasinoga e tuuina atu ai se faamatalaga na lipoti atu e isi tagata i totonu o le faamatalaga molimau i totonu o le taimi talafeagai a o lumanai le suesuega.

(3) I totonu o taualumaga tau solitulafono, o le faasilasilaga o i lalo o le faafuaiupu (2), e ao ona:

- (a) faailoa le igoa o lē na faia le faamatalaga pe afai o iloa, (i le noatia ma le fai fuafua i so o se poloaiga e lē faailoa ai se tagata molimau i lalo o le Vaevaega 8 o le Vaega 4);
- (b) e tuuina mai faatasi ma se ata o le faamatalaga o lo o i ai pe afai sa faia le faamatalaga na lipoti atu e isi tagata i se faiga tusitusia;
- (c) faailoa mataupu o i ai i le faamatalaga na lipoti atu e isi tagata pe afai o lea faamatalaga na lipoti atu e isi tagata sa faia i se faiga tuufofoga;
- (d) faailoa tulaga aliae mai e faasino i le faamatalaga lea ua tuuina ai tulaga mautinoa e tatau ai e faapea, e faatuatuaina le faamatalaga, pe afai e faaaogāina le fuaiupu 10(1)(a);
- (e) faailoa mafuaaga ua avea ai le pepa aloaia ma faamaumauga faapisinisi pe afai e faaaogāina le fuaiupu 11;

- (f) if section 10(1)(b)(i) or 11(a) is relied on, state why the person is unavailable as a witness;
- (g) if section 10(1)(b)(ii) or 11(c) is relied on, state why undue expense or delay would be caused if the person were required to be a witness.

(4) The Judge may dispense with the requirements of subsection (2) if:

- (a) having regard to the nature and contents of the hearsay statement, no party is substantially prejudiced by the failure to comply with the requirements; or
- (b) compliance was not reasonably practicable in the circumstances; or
- (c) the interests of justice so require.

11. Admissibility of hearsay in business records - Subject to sections 10(2) and 12, a hearsay statement contained in a business record is admissible if:

- (a) the person who supplied the information used for the composition of the record is unavailable as a witness; or
- (b) the Judge considers no useful purpose would be served by requiring that person to be a witness as that person cannot reasonably be expected (having regard to the time that has elapsed since the person supplied the information and to all the other circumstances of the case) to recollect the matters dealt with in the information the person supplied; or

- (f) faailoa mafuaaga ua lē avanoa ai le tagata e avea ma tagata molimau pe afai e faaaogāina le fuaiupu 10(1)(b)(i) po o le 11(a);
- (g) faailoa mafuaaga ua lē totogiina ai tupe faaalu po o le tuai ona totogi, pe afai ua manaomia le tagata e avea ma tagata molimau, pe afai e faaaogāina le fuaiupu 10(1)(b)(ii) po o le 11(c).

(4) E mafai e le Faamasino ona faalēaogāina manaoga o le faafuaiupu (2) pe afai:

- (a) i le amanaia ai o uiga ma mataupu o i ai i le faamatalaga na lipoti atu e isi tagata, e leai se itu faamasinoga e tatau ona aafia e ala i le lē tausisia o manaoga; po o
- (b) e le i faatinoina i tulaga talafeagai le tausisia ai i tulaga aliae mai; po o
- (c) le manaoga o faaiuga amiotonu ua faapea ona manaomia.

11. Taliaina o faamatalaga na lipoti atu e isi tagata i totonu o faamaumauga faapisinisi - I le noatia ma le fai fuafua i fuaiupu 10(2) ma le 12, e taliaina se faamatalaga na lipoti atu e isi tagata, o aofia ai i totonu o se faamaumauga faapisinisi pe afai:

- (a) o le tagata o ia lea na tuuina atu faamatalaga ua faaaogāina mo le tuufaatasia o faamaumauga e le o avanoa e avea ma tagata molimau; po o
- (b) ua manatu le Faamasino e leai se faamoemoe taua o le a maua mai e ala i le manaomia o lea tagata e avea ma tagata molimau, ona e ono lē mafai e lea tagata e pei ona tatau ai, (i le amanaia ai o le taimi ua mavae talu ona tuuina atu e le tagata o faamatalaga ma i isi tulaga uma e aliae mai o le mataupu) ona manatuaina mataupu o tagofia i totonu o le faamatalaga na tuuina atu e le tagata; po o

- (c) the Judge considers that undue expense or delay would be caused if that person were required to be a witness.

12. Hearsay statements in documents required for applications or pleadings in civil proceedings-

(1) In a civil proceeding, a hearsay statement in an affidavit made to support or oppose an application is admissible for the purposes of that application if, and to the extent that, the applicable rules of court require or permit a statement of that kind to be made in the affidavit.

(2) In a civil proceeding, a hearsay statement in a document by which documents are discovered or interrogatories are answered is admissible in that proceeding if, and to the extent that, the applicable rules of court require or permit the making of a statement of that kind.

13. When defendant's hearsay statement not admissible-

(1) If a defendant in a criminal proceeding does not give evidence, the defendant may not offer his or her own hearsay statement in evidence in the proceeding.

(2) This section does not limit the previous consistent statement rule.

Subdivision B - Opinion and expert evidence

- (c) ua manatu le Faamasino e faapea o le lē totoigiina o tupe faaalua po o le tuai ona totoigi o le a avea ma mafuaaga pe afai e manaomia lea tagata e avea ma tagata molimau.

12. E manaomia faamatalaga na lipoti atu i isi tagata i totonu o pepa aloaia mo talosaga po o ni faamatalaga aloaia o se tetee i totonu o taualumaga tau le va o tagata-

(1) I totonu o se taualumaga tau le va o tagata, o se faamatalaga na lipoti atu e isi tagata i totonu o se molimau tauto ua faia e lagolago ai po o se tetee ai i se talosaga, e taliaina mo faamoemoega o lea talosaga pe afai, ma i le tulaga e faapea ua manaomia pe faatagaina e tulafono faafoe e talafeagai ai a le faamasinoga se faamatalaga o lea ituaiga i totonu o le molimau tauto.

(2) I totonu o se taualumaga tau le va o tagata, o se faamatalaga na lipoti atu e isi tagata i totonu o se pepa aloaia lea ua mauaina i pepa aloaia po o ua taliaina ai ni fesili e taliaina i totonu o lea taualumaga pe afai, ma i le tulaga e faapea ua manaomia po o ua faatagaina e tulafono faafoe e talafeagai ai a le faamasinoga ona faia se faamatalaga o lea ituaiga.

13. E lē taliaina se faamatalaga na faalogo i ai a se tagata ua molia-

(1) Afai ua lē tuuina atu e se tagata ua molia i totonu o se taualumaga tau solitulafono se faamatalaga molimau, e lē mafai e le tagata ua molia ona tuuina atu lana lava faamatalaga na faalogo i ai i totonu o faamatalaga molimau i totonu o taualumaga.

(2) O lenei fuaiupu e lē faatapulaaina ai tulafono faafoe muamua o faamatalaga e ogatasi.

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

14. Opinion rule - A statement of an opinion is not admissible in a proceeding, except as provided by section 15 and 16.

15. Admissibility of a statement of opinion - A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard, or otherwise perceived.

16. Admissibility of expert opinion evidence-(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible only because it is about an ultimate issue to be determined in a proceeding; or incidentally refers to a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on the existence of a matter or state of affairs that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that matter or state of affairs is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person's state of mind, then:

14. Tulafono faafoe o se fautuaga - E lē taliaina se faamatalaga o se manatu faaalua i totonu o se tualumaga, seia vagana ai e pei ona aiaia e le fuaiupu 15 ma le 16.

15. Taliaina o se faamatalaga o fautuaga - E mafai e se tagata molimau ona faailoa se fautuaga i totonu o se faamatalaga molimau i totonu o se tualumaga, pe afai ua talafeagai lea fautuaga ina ia mafai ai e le tagata molimau ona fesootei atu po o le sailia o le mea moni ina ia malamalama ai le tulaga na ia vaaia, faalogoina, po o le maitauina i se isi faiga e ese ai.

16. Taliaina o faamatalaga molimau o fautuaga a tagata tomai faapitoa-(1) O se fautuaga ua faia e se tagata tomai faapitoa lea ua avea ma vaega o lana faamatalaga molimau ua tuuina atu i totonu o se tualumaga e taliaina pe afai o le sailia o le mea moni e ono mafai ona maua mai ai se fesoasoani taua mai le fautuaga, i le malamalama ai i isi faamatalaga molimau i totonu o le tualumaga po o i le faamautuina ai o so o se mea moni lea ua tulai mulimuli ane i le faiga o le faaiuga o le tualumaga.

(2) E faatoa lē taliaina lava se fautuaga ua faia e se tagata tomai faapitoa, pe afai ua faatatau i se mataupu faaiu e ao ona fuafuaina le faaiuga i totonu o se tualumaga; po o e ono tulai mai e faasino i se mataupu tau le malamalamaaga lautele.

(3) I le noatia ma le fai fuafua i le faafuaiupu (4), pe afai o se fautuaga ua faia e se tagata tomai faapitoa ua faavae lea i luga o le i ai o se mataupu po o se tulaga o mataupu lea e i fafo atu o le vaega lautele o le malamalamaaga lea e aofia i le tulaga o le tomai o le tagata tomai faapitoa, e faatoa mafai lava ona faalagolago i luga o fautuaga e ala i le sailia o mea moni, pe afai o lea mataupu po o tulaga o mataupu ua po o le a faamaonia po o ua faasilasilaina faaletulafono i totonu o le tualumaga.

(4) Afai o le faamatalaga molimau a le tagata tomai faapitoa e faatatau i le tulaga faaletonu o le mafaufau o se tagata ua faavae lea i le tulaga atoa po o sona vaega i luga o se faamatalaga na faia e lea tagata i le tagata tomai faapitoa e uiga i le tulaga o lona mafaufau, o lona uiga:

- (a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and
- (b) neither the hearsay rule nor the previous consistent statement rule applies to evidence of the statement made by the person.

17. Expert's conduct in civil proceedings-(1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.

(2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.

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

18. Defendants' statements offered by prosecution-(1) Evidence offered by the prosecution in a criminal proceeding of a statement made by a defendant is admissible against that defendant, but not against a co-defendant in the proceeding.

(2) However, evidence offered under subsection (1) is not admissible against that defendant if it is excluded under section 20 or 21.

(3) Divisions 1 and 3 do not apply to evidence offered under subsection (1).

(4) This section is subject to section 6.

- (a) ua taliaina le faamatalaga a le tagata ina ia faamautu ai mea moni lea e faavae ai fautuaga o le tagata tomai faapitoa; ma
- (b) e lē faaaogāina le tulafono faafoe o faamatalaga na faalogo i ai po o tulafono faafoe o le faamatalaga muamua e ogatasi i faamatalaga molimau o le faamatalaga na faia e le tagata.

17. Faafoega a tagata tomai faapitoa i totonu o taualumaga tau le va o tagata-(1) I totonu o se taualumaga tau le va o tagata, e ao i tagata tomai faapitoa ona faafoe e i latou lava le saunia ma le tuuina atu o faamatalaga molimau tau tomai faapitoa ina ia tusa ai ma tulafono faafoe e talafeagai ai o le faamasinoga e faasino i faafoega a tagata tomai faapitoa.

(2) O le faamatalaga molimau tau tomai faapitoa a se tagata tomai faapitoa o ia lea ua lē tausisia tulafono faafoe o le faamasinoga o le ituaiga ua faamaotiina i le faafuaiupu (1) e faatoa mafai lava ona tuuina atu, i le i ai faatasi ma le faatagaga a le Faamasino.

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

18. Faamatalaga molimau ua tuuina atu a tagata ua molia e ala i moliaga faaetulafono-(1) O le faamatalaga molimau ua tuuina atu e ala i moliaga faaetulafono i totonu o se taualumaga tau solitulafono, o se faamatalaga ua faia e se tagata ua molia, ua taliaina lea e faasaga i lea tagata ua molia, ae le o faasaga i sē o afaatasi e tetee i totonu o le taualumaga.

(2) E ui i lea, ua lē taliaina le faamatalaga molimau ua tuuina atu i lalo o le faafuaiupu (1) e faasaga i lea tagata ua molia pe afai e le o faaaogāina le faamatalaga molimau i lalo o le fuaiupu 20 po o le 21.

(3) E lē faaaogāina le Vaevaega 1 ma le 3 i le faamatalaga molimau ua tuuina atu i lalo o le faafuaiupu (1).

(4) O lenei fuaiupu e noatia ma fai fuafua i le fuaiupu 6.

19. Statements maybe edited-(1) If a statement is determined by the Judge to be inadmissible in part in a proceeding, a party who wishes to use an admissible part of the statement may, subject to the direction of the Judge, edit the statement by excluding any part of it that is inadmissible.

(2) A party may not edit a statement under subsection (1) unless, in the opinion of the Judge, the inadmissible parts of the statement can be excluded without obscuring or confusing the meaning of the admissible part of the statement.

20. Improperly obtained evidence-(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer evidence if:

(a) the defendant or, if applicable, a co-defendant against whom the evidence is offered raises, on the basis of an evidential foundation, the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue; or

(b) the Judge raises the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue.

(2) The Judge must:

(a) find, on the balance of probabilities, whether or not the evidence was improperly obtained; and

19. E mafai ona toe faaupu faamatalaga-(1) Afai ua fuafuaina se faamatalaga e le Faamasino ina ia taliaina se vaega i totonu o se taualumaga, e mafai e se itu faamasinoga ua manao e faaaogā se vaega o faamatalaga ua taliaina i le noatia ma le fai fuafua i le faatonuga a le Faamasino, ona toe faaupu faamatalaga e ala i le faalēaogāina o so o sona vaega, lea ua lē taliaina.

(2) E lē mafai e se itu faamasinoga ona toe faaupu se faamatalaga i lalo o le faafuaiupu (1), seia vagana ai ua manatu le Faamasino o le vaega ua lē taliaina o le faamatalaga e mafai ona faalēaogāina e aunoa ma le lē manino ai pe lē malamalama ai i le uiga o le vaega ua taliaina o le faamatalaga.

20. Faamatalaga molimau ua maua mai tulaga e lē talafeagai-(1) O lenei fuaiupu e faaaogā i se taualumaga tau solitulafono lea ua tuuina atu ai se moliaga faaletulafono po o ua fuafua e tuuina atu ai faamatalaga molimau pe afai:

(a) o le tagata ua molia po o, pe afai e talafeagai ai, o se tagata o afaatasi e tetee e faasaga i le na tuuina atu i ai le faamatalaga molimau, ua faatulai mai ai, i luga o le tulaga faavae o se faamatalaga molimau, le mataupu e tusa ai o le faamatalaga molimau pe sa maua mai i se tulaga e lē talafeagai ai ma logoina le faia o moliaga faaletulafono e uiga i mafuaaga mo le faatulai mai o le mataupu; po o

(b) ua faatulai mai e le Faamasino le mataupu e tusa ai o le faamatalaga molimau pe sa maua mai i se tulaga e lē talafeagai ai ma logoina le faia o moliaga faaletulafono e uiga i mafuaaga mo le faatulai mai o le mataupu.

(2) E ao i le Faamasino ona:

(a) sailia, i luga o fuafuaga o mea e ono tutupu mai, pe o le faamatalaga molimau sa maua mai lea i se tulaga e lē talafeagai ai pe leai foi; ma

- (b) if the Judge finds that the evidence has been improperly obtained, determine whether or not the exclusion of the evidence is proportionate to the impropriety by means of a balancing process that gives appropriate weight to the impropriety and also takes proper account of the need for an effective and credible system of justice.

(3) For the purposes of subsection (2), the Judge may, among any other matters, have regard to the following:

- (a) the importance of any right breached by the impropriety and the seriousness of the intrusion on it;
- (b) the nature of the impropriety, in particular, whether it was deliberate, reckless, or done in bad faith;
- (c) the nature and quality of the improperly obtained evidence;
- (d) the seriousness of the offence with which the defendant is charged;
- (e) whether there were any other investigatory techniques not involving any breach of the rights that were known to be available but were not used;
- (f) whether there are alternative remedies to the exclusion of evidence which can adequately provide redress to the defendant;
- (g) whether the impropriety was necessary to avoid apprehended physical danger to the police or others;
- (h) whether the impropriety arose from circumstances of danger or urgency;
- (i) whether the impropriety arose from a genuine misunderstanding, accidental or unintentional infringement.

- (b) afai ua maua e le Faamasino e faapea sa maua mai le faamatalaga molimau i se tulaga e lē talafeagai ai, ia fuafua pe o le faalēaogāina pe leai foi o le faamatalaga molimau ua fuafua tataua lea i le tulaga lē sao e ala i se faagasologa ua fuafua lelei, lea e tuuina atu ai le mamafa ua faatatauina i le tulaga lē sao ma ia faapea foi ona faia tulaga e talafeagai ai ua manaomia mo se faiga mautu lelei ma talitonuina o le faaiuga amiotonu.

(3) Mo faamoemoega o le faafuiauupu (2), e mafai e le Faamasino, i so o se isi lava mataupu ona amanaia ai itu nei:

- (a) o le taua o so o se aia tataua ua solia e ala i le tulaga lē sao ma le matuia o le soliga o lo o i ai;
- (b) o le uiga o le tulaga lē sao, aemaise ai pe sa faia ma le mautinoa lelei, faatautala po o i se agaga lē lelei;
- (c) o le uiga ma le tulaga o le faamatalaga molimau na maua mai i se tulaga e lē talafeagai ai;
- (d) o le matuia o le soligatulafono lea ua molia ai le tagata ua molia;
- (e) pe sa i ai so o se isi lava faiga tau suesuega e le o aafia ai so o se soliga o aia tataua lea ua iloa e ao ona avanoa i ai, ae ua lē faaogāina;
- (f) pe o i ai nisi faiga e foia ai le faalēaogāina o faamatalaga molimau lea e mafai ona lava atoatoa e toe fetuunai ai manatu o le tagata ua molia;
- (g) pe ua talafeagai ai le tulaga lē sao, e alofia ai lamatiaga patino e tulai mai i leoleo po o isi tagata;
- (h) pe o tulaga lē sao na faatulai mai i tulaga aliae mai o lamatiaga po o tulaga faanatinati;
- (i) pe o tulaga lē sao ua faatulai mai i se tulaga moni o le lē femalamalamaai, soliga e ono tupu mai po o se soliga e le i faamoemoeina.

(4) The Judge must exclude any improperly obtained evidence if, in accordance with subsection (2), the Judge determines that its exclusion is proportionate to the impropriety.

(5) For the purposes of this section, evidence is improperly obtained if it is obtained:

(a) in consequence of a breach of the rights to consult a lawyer or the right to remain silent and not to make a statement; or

(b) in consequence of a statement made by a defendant that is or would be inadmissible if it were offered in evidence by the prosecution; or

(c) unfairly.

(6) For the purposes of this section, evidence is not improperly obtained if the person waived his or her right to consult a lawyer or to be informed of the right to remain silent and not to make a statement.

(7) Without limiting subsection (5)(c), in deciding whether a statement obtained by a police officer has been obtained unfairly, the Judge must take into account any directions on the subject issued under this subsection by the Chief Justice or rules of the court.

21. Exclusion of statements influenced by oppression-(1)

This section applies to a criminal proceeding in which the prosecution offers or proposes to offer a statement of a defendant if:

(a) the defendant whom the statement is offered raises, on the basis of an evidential foundation, the likelihood that the statement was influenced by

(4) E ao i le Faamasino ona faalēaogāina so o se faamatalaga molimau ua maua mai i se tulaga e lē talafeagai ai pe afai ua fuafuaina e le Faamasino e faapea o lona faalēaogāina ua faatatauina i le tulaga lē sao, e tusa ai ma le faafuaiupu (2).

(5) Mo faamoemoega o lenei fuaiupu ua lē talafeagai le mauaina mai o faamatalaga molimau pe afai ua maua mai:

(a) i le taunuuga mulimuli ane o se soliga o aia tatau e faatalatalanoa ai se loia po o ina ia logoina e uiga i le aia tatau e lē tali atu ai ma lē faia ai o se faamatalaga; po o

(b) i le taunuuga mulimuli ane ai o se faamatalaga ua faia e se tagata ua molia lea ua po o o le a lē taliaina, pe afai sa tuuina atu le faamatalaga molimau e le vaega e faia moliaga; po o

(c) se faiga e lē amiotonu.

(6) Mo faamoemoega o lenei fuaiupu, e lē faapea o mauaina mai i se tulaga lē talafeagai se faamatalaga molimau, pe afai ua tuusaunua e le tagata lana aia tatau e faatalatalanoa ai se loia po o ina ia logoina e uiga i aia tatau e lē tali atu ai ma lē faia ai se faamatalaga.

(7) E aunoa ai ma le faatapulaaina o le faafuaiupu (5)(c), i le filifiliga pe o se faamatalaga na maua mai e se leoleo, sa faapea ona maua mai i se faiga e lē amiotonu, e ao i le Faamasino ona amanaia so o se faatonuga e uiga i le mataupu ua tuuina atu i lalo o lenei faafuaiupu e le Faamasino Sili po o tulafono faafoe o le faamasinoga.

21. Faalēaogāina o faamatalaga na faia e ala i faiga e taotaomia ai-(1)

E faaaogā lenei fuaiupu i se tualumaga tau solitulafono lea e tuuina atu ai po o ua fuafua e tuuina atu ai i moliaga faaletulafono se faamatalaga a se tagata ua molia pe afai:

(a) o le tagata ua molia o ia lea ua tuuina atu i ai le faamatalaga, e faavae i luga o se faamatalaga molimau autu, le itu e ono mafai ai ona faapea sa

oppression, and informs the Judge and the prosecution of the grounds for raising the issue; or

- (b) the Judge raises the issue of whether the statement was influenced by oppression and informs the prosecution of the grounds for raising the issue.

(2) The Judge must exclude the statement (whether or not the statement is true) unless satisfied beyond reasonable doubt that the statement was not influenced by oppression.

(3) Without limiting the matters that a Judge may take into account for the purpose of applying subsection (2), the Judge must, in each case, take into account any of the following matters that are relevant to the case:

- (a) any pertinent physical condition of the defendant when the statement was made (whether apparent or not);
- (b) any pertinent characteristics of the defendant including any mental, intellectual, or physical disability to which the defendant is subject (whether apparent or not);
- (c) the nature of any threat, promise, or representation made to the defendant or any other person.

(4) In this section, “oppression” means the deliberate exercise of violence on or the inhuman or degrading treatment of the defendant by a police officer.

22. Confession after promise, threat, or other inducement

- Without limiting sections 20 and 21, a Judge may not reject a confession tendered in evidence in any criminal proceeding on

aafia le faamatalaga e ala i faiga e taotaomia ai, ma ua logoina le Faamasino ma faia moliaga faaletulafono e uiga i mafuaaga mo le faatulai mai o le mataupu; po o

- (b) ua faatulai mai ai e le Faamasino le mataupu e tusa ai o le faamatalaga pe sa aafia e ala i faiga e taotaomia ai, ma logoina le Faamasinoga e uiga i mafuaaga mo le faatulai mai o le mataupu.

(2) E ao i le Faamasino ona faalēaogāina le faamatalaga (pe moni le faamatalaga pe leai foi) seia vagana ai ua faamalieina i le leai o se tulaga e matua masalomia ai e faapea, na maua mai le faamatalaga e ala i faiga e taotaomia ai.

(3) E aunoa ma le faatapulaaina o mataupu ia e mafai e se Faamasino ona amanaia mo le faamoemoe o le faaogāina o le faafuaiupu (2), e ao i le Faamasino i mataupu taitasi o suesueina, ona amanaia so o se mataupu ua taua, lea e talafeagai i le mataupu ua suesueina:

- (a) so o se tulaga tau le malosi o le tino o le tagata ua molia i le taimi na tuuina atu ai le faamatalaga (tusa lava pe o manino lelei pe leai foi);
- (b) so o se uiga vaaia o le tagata ua molia e aofia ai le tulaga faaletonu o le mafaufau, tulaga tau le atamai ma le malosi o le tino lea e noatia ai o ia (tusa lava pe o manino lelei pe leai foi);
- (c) o le uiga o so o se faiga tau faamatau, folafolaga, po o faamatalaga ua faia i le tagata ua molia po o so o se isi lava tagata.

(4) I totonu o lenei fuaiupu “taotaomia” o lona uiga o le faatinoga faamoemoeina o sauaga i, po o faiga lē alofa po o faiga faalumuluma o le tagata ua molia e se leoleo.

22. Tautinoga i le maea ai ona faia o folafolaga, tau faamatau po o isi faiga tau faaosooso - E aunoa ma le faatapulaaina o le fuaiupu 20 ma le 21, e lē mafai e se faamasino

the ground that a promise or threat or any other inducement (not being the exercise of violence or force) has been held out to or exercised upon the person confessing, if the Judge is satisfied that the means by which the confession was obtained were not in fact likely to cause an untrue admission of guilt to be made.

23. Defendant's silence before or at trial-(1) This section applies to a criminal proceeding in which it appears that the defendant failed:

(a) to answer a question put, or respond to a statement made, to the defendant in the course of investigative questioning before the trial; or

(b) to disclose a defence before trial.

(2) If subsection (1) applies:

(a) no person may invite the fact-finder to draw an inference that the defendant is guilty from a failure of the kind described in subsection (1); and

(b) if the proceeding is with assessors, the Judge must direct them that they may not draw that inference from a failure of that kind.

(3) This section does not apply if the fact that the defendant did not answer a question put, or respond to a statement made, before the trial is a fact required to be proved in the proceeding.

(4) In a criminal proceeding, no person other than the defendant or the defendant's counsel or the Judge may comment on the fact that the defendant did not give evidence at his or her trial.

ona teena se tautinoga ua faaoo atu i faamatalaga molimau i so o se tualumaga tau solitulafono, i luga o mafuaaga e faapea, o se folafolaga po o se faiga tau faamatau po o so o se isi lava faiga tau faaososo (e le i faatinoina e ala i sauaga po o le malosi), sa taofia po o sa faatinoina i le tagata o faia le tautinoga, pe afai ua faamalieina le Faamasino e faapea o faiga na faaaogā na maua mai ai le tautinoga, e lē ono mafai ona faatulai mai ai se tautinoga pepelo o le tausalaina.

23. O le lē gagana ai o le tagata ua molia a o lumanai ai po o i le taimi o le faamasinoga-(1) O lenei fuaiupu e faaaogā i se tualumaga tau solitulafono lea e aliali mai ai e faapea ua lē mafai e le tagata ua molia ona:

(a) tali atu i se fesili pe tali atu i se faamatalaga ua faia i le tagata ua molia i le faagasologa o suesuega i fesili a o lumanai ai le faamasinoga; po o

(b) le faailoa atu o se tetee a o lumanai ai le faamasinoga.

(2) Afai e faaaogāina le faafuaiupu (1):

(a) e leai se tagata na te mafai ona valaauina sē e sailia le mea moni e faia se faaiuga e faapea ua nofosala le tagata ua molia mai le lē mafai ona tali atu e pei ona faamatalaina i le faafuaiupu (1); ma

(b) pe afai o lo o i ai faatonu i le tualumaga, e ao i le Faamasino ona faatonuina i latou ia aua nei o latou faia se faaiuga mai le lē mafai ona tali atu.

(3) O lenei fuaiupu e lē faaaogāina pe afai o le itu e faapea ua lē tali atu le tagata ua molia i se fesili na tuuina atu i ai, po o ua lē tali atu i se faamatalaga ua faia, i luma o le faamasinoga, ua o se itu lea e manaomia le faamaonia i totonu o le tualumaga.

(4) I totonu o se tualumaga tau solitulafono, e leai se tagata e ese ai na i lo le tagata ua molia po o lana loia po o le Faamasino e mafai ona faali se manatu i luga o le itu ua faapea ai ona lē tuuina atu ai e le tagata ua molia se faamatalaga molimau i lona suesuega.

24. Admissions in civil proceedings-(1) Divisions 1 and 3 do not apply to evidence of an admission offered in a civil proceeding that is:

(a) given orally by a person who saw, heard, or otherwise perceived the admission being made; or

(b) contained in a document.

(2) Evidence of an admission that is a hearsay statement may not be used in respect of the case of a third party unless:

(a) the circumstances relating to the making of the admission provide reasonable assurance that the admission is reliable; or

(b) the third party consents.

(3) In this section, “third party” means a party to the proceeding concerned, other than the party who:

(a) made the admission; or

(b) offered the evidence.

Division 3 - Previous consistent statements

25. Previous consistent statements-(1) A previous statement of a witness that is consistent with the witness’s evidence is not admissible unless subsection (2) or (3) applies to the statement.

(2) A previous statement of a witness that is consistent with the witness’s evidence is admissible to the extent that the statement is necessary to respond to a challenge to the witness’s veracity or accuracy, based on a previous inconsistent statement of the witness or on a claim of recent invention on the part of the witness.

24. Faatagaina i totonu o taualumaga tau le va o tagata-
(1) E lē faaaogāina le Vaevaega 1 ma le 3 i faamatalaga molimau o se faatagaga ua tuuina atu i totonu o taualumaga tau le va o tagata lea ua:

(a) tuufofoga atu e se tagata o ia lea na vaai, faalogo i ai, po o le mataituina o le taliaina i se isi faiga e ese ai; po o

(b) aofia ai i totonu o se pepa aloaia.

(2) O se faamatalaga molimau o se faatagaga lea e avea o se faamatalaga mai isi tagata, e lē mafai ona faaaogāina e tusa ai o le mataupu a se isi itu faamasinoga seia vagana ai:

(a) o tulaga aliae mai e faasino i le faia o le faatagaga ua aiaia ai le tulaga mautinoa e tatau ai e faapea e faatuatua le faatagaga; po o

(b) ua malie i ai le isi itu faamasinoga.

(3) I totonu o lenei fuaiupu “isi itu faamasinoga” o lona uiga o se itu faamasinoga e faatatau i se taualumaga e ese ai na i lo le itu faamasinoga o ia lea:

(a) na faia le faatagaga; pe

(b) na tuuina atu le faamatalaga molimau.

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

25. Faamatalaga na tuuina atu muamua e ogatasi-(1) O se faamatalaga na tuuina atu muamua a se tagata molimau lea e ogatasi ma lana faamatalaga molimau, e lē taliaina seia vagana ai ua faaaogāina le faafuaiupu (2) po o le (3) i lea faamatalaga.

(2) O se faamatalaga na tuuina atu muamua a se tagata molimau lea e ogatasi ma lana faamatalaga molimau e taliaina i le tulaga e faapea ua talafeagai le faamatalaga e tali atu ai i se luitau i le tulaga faamaoni po o le sao atoatoa o le tagata molimau, e faavae i luga o se faamatalaga na tuuina atu muamua e lē ogatasi a le tagata molimau po o i luga o se talosaga o itu na maua talu ai e faatatau i le itu a le tagata molimau.

(3) A previous statement of a witness that is consistent with the witness's evidence is admissible if:

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) the statement provides the court with information that the witness is unable to recall.

Division 4 - Veracity

26. Application of veracity rules-(1) This Division does not apply to evidence about a person's veracity if that veracity is an ingredient of the claim in a civil proceeding or one of the elements of the offence for which a person is being tried in a criminal proceeding.

(2) Subject to section 34, this Division does not apply so far as a proceeding relates to bail or sentencing.

27. Evidence as to veracity-(1) A party may not offer evidence in a civil or criminal proceeding about a person's veracity unless the evidence is substantially helpful in assessing that person's veracity.

(2) In a criminal proceeding, evidence about a defendant's veracity must also comply with section 28 or, as the case requires, section 29.

(3) In deciding, for the purposes of subsection (1), whether or not evidence proposed to be offered about the veracity of a person is substantially helpful, the Judge may consider, among any other

(3) O se faamatalaga na tuuina atu muamua a se tagata molimau lea e ogatasi ma lana faamatalaga molimau e taliaina pe afai:

- (a) o tulaga aliae mai e faasino i le faamatalaga ua aiaia ai tulaga mautinoa e tatau ai e faapea e faatuatuaina le faamatalaga; ma
- (b) o le faamatalaga ua maua ai e le faamasinoga faamatalaga ia sa lē mafai e le tagata molimau ona manatuaina.

Vaevaega 4 - Tulaga faamaoni

26. Faaaogāina o tulafono faafae o tulaga faamaoni-(1) E lē faaaogāina lenei Vaevaega i se faamatalaga molimau e faatatau i le tulaga faamaoni o se tagata pe afai o lea tulaga faamaoni ua avea o se vaega o le tagi i totonu o se tualumaga tau le va o tagata po o se tasi o itu taua o se soligatulafono lea o lo o suesueina ai se tagata i totonu o tualumaga tau solitulafono.

(2) I le noatia ma le fai fuafua i le fuaiupu 34, e lē faaaogāina lenei Vaevaega i sea tulaga e pei o se tualumaga e faasino i le tatalaina i tua i luga o puipuiga malu po o le faiga o faasalaga.

27. Faamatalaga molimau e tusa ai o le tulaga faamaoni-(1) E lē mafai e se itu faamasinoga ona tuuina atu se faamatalaga molimau i totonu o se tualumaga tau le va o tagata po o tualumaga tau solitulafono, 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.

(2) I totonu o se tualumaga tau solitulafono, o se faamatalaga molimau e faatatau i se tulaga faamaoni o se tagata ua molia, e ao foi ona tausisia le fuaiupu 28 po o, le fuaiupu 29 i le a lava le tulaga e manaomia ai.

(3) I le faia o se faaiuga, mo faamoemoega o le faafuiauupu (1), pe o fesoasoani tele pe leai foi le faamatalaga molimau ua fuafua e tuuina atu e faatatau i le tulaga faamaoni o se tagata,

matters, whether the proposed evidence tends to show one (1) or more of the following matters:

- (a) lack of veracity on the part of the person when under a legal obligation to tell the truth (for example, in an earlier proceeding or in a signed declaration);
- (b) that the person has been convicted of one (1) or more offences that indicate a propensity for dishonesty or lack of veracity;
- (c) any previous inconsistent statements made by the person;
- (d) bias on the part of the person;
- (e) a motive on the part of the person to be untruthful.

(4) A party who calls a witness:

- (a) may not offer evidence to challenge that witness's veracity unless the Judge determines the witness to be hostile; but
- (b) may offer evidence as to the facts in issue contrary to the evidence of that witness.

28. Evidence of a defendant's veracity-(1) A defendant in a criminal proceeding may offer evidence about his or her veracity.

(2) The prosecution in a criminal proceeding may offer evidence about a defendant's veracity only if:

e mafai e le Faamasino ona iloilo, faatasi ai ma so o se isi lava mataupu, pe o le faamatalaga molimau ua fuafua e tuuina atu ua faaalua ai le tasi (1) po o le sili atu o mataupu nei:

- (a) leai se tulaga faamaoni i le tagata pe afai ua i lalo o se noataga faletulafono e tautala ai i le mea moni (mo se faataitaiga, i totonu o se taualumaga e le o mamao atu po o i se tautinoga ua sainia);
- (b) e faapea ua faamaonia moliaga o se tagata i le tasi (1) po o le sili atu o soligatulafono lea ua faailoa ai se amioga e lē manaomia mo se faiga lē sao po o le leai o se tulaga faamaoni;
- (c) so o se faamatalaga na tuuina atu muamua e lē ogatasi, sa faia e le tagata;
- (d) faiga faaituau i le tagata;
- (e) o se lagona faaosofia i le tagata ina ia tautala pepelo ai.

(4) O se itu faamasinoga o ia lea ua valaauina se tagata molimau:

- (a) e lē mafai ona ia tuuina atu se faamatalaga molimau e luitau ai le tulaga faamaoni o le tagata molimau, seia vagana ai ua fuafuaina e le Faamasino ua tetee le tagata molimau; peitai
- (b) e mafai ona tuuina atu faamatalaga molimau e tusa ai o mea moni o i totonu o le mataupu, e feteenai ma faamatalaga molimau a lea tagata molimau

28. Faamatalaga molimau o le tulaga faamaoni o se tagata ua molia-(1) E mafai e se tagata ua molia i totonu o se taualumaga tau solitulafono ona tuuina atu se faamatalaga molimau e faatatau i lona tulaga faamaoni.

(2) E faatoa mafai lava i moliaga faaletulafono i totonu o se taualumaga tau solitulafono ona tuuina atu le faamatalaga molimau e faatatau i se tulaga faamaoni o le tagata ua molia pe afai:

(a) the defendant has offered evidence about his or her veracity or has challenged the veracity of a prosecution witness by reference to matters other than the facts in issue; and

(b) the Judge permits the prosecution to do so.

(3) In determining whether to give permission under subsection (2)(b), the Judge may take into account any of the following matters:

(a) the extent to which the defendant's veracity or the veracity of a prosecution witness has been put in issue in the defendant's evidence;

(b) the time that has elapsed since any conviction about which the prosecution seeks to give evidence;

(c) whether any evidence given by the defendant about veracity was elicited by the prosecution.

29. Evidence of a co-defendant's veracity-(1) A defendant in a criminal proceeding may offer evidence that challenges the veracity of a co-defendant only if:

(a) the evidence is relevant to a defence raised or proposed to be raised by the defendant; and

(b) the Judge permits the defendant to do so.

(a) ua tuuina atu e le tagata ua molia ia le faamatalaga molimau e faatatau i lona tulaga faamaoni po o ua ia fesiligia ai le tulaga faamaoni o se tagata molimau o moliaga faaletulafono e ala i faasinomaga i mataupu e ese ai na i lo mea moni o suesueina; ma

(b) ua faatagaina e le Faamasino le faia faapena o le moliaga faaletulafono.

(3) I le fuafuaina pe tuuina atu le faatagaga i lalo o le faafuiau (2)(b), e mafai e le Faamasino ona amanaia so o se tasi o mataupu nei:

(a) o le tulaga ua faapea ona fesiligia ai le tulaga faamaoni o le tagata ua molia po o le tulaga faamaoni o se tagata molimau o moliaga faaletulafono i totonu o faamatalaga molimau a le tagata ua molia;

(b) o le taimi ua faapea ona faaalu talu ona taumafai le moliaga faaletulafono e tuuina atu faamatalaga molimau o so o se moliaga ua faamaonia faaletulafono;

(c) pe o so o se faamatalaga molimau ua tuuina atu e le tagata ua molia e faatatau i le tulaga faamaoni sa faapea ona maua mai e ala i moliaga faaletulafono.

29. Faamatalaga molimau o le tulaga faamaoni o se tagata o afaatasi e tetee-(1) E faatoa mafai e se tagata ua molia i totonu o se taulumaga tau faamasinoga ona tuuina atu le faamatalaga molimau lea e luitauina ai le tulaga faamaoni o se tagata o afaatasi e tetee pe afai:

(a) e talafeagai le faamatalaga molimau i se tetee ua faatulai mai po o ua fuafua e faatulai mai e le tagata ua molia; ma

(b) ua faatagaina e le Faamasino le faia faapena e le tagata ua molia.

(2) A defendant in a criminal proceeding who proposes to offer evidence that challenges the veracity of a co-defendant must give notice in writing to that co-defendant, any other co-defendant and the prosecutor of the proposal to offer that evidence unless the requirement to give notice is waived by:

- (a) all the co-defendants; or
- (b) the Judge in the interests of justice.

(3) A notice must:

- (a) include the contents of the proposed evidence; and
- (b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

Division 5 - Propensity

30. Propensity rule-(1) In this Division, “propensity evidence”:

- (a) means -
 - (i) evidence that tends to show a person’s propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events, or circumstances with which a person is alleged to have been involved; or
 - (ii) evidence of a person’s acts, omissions or state of mind in circumstances from which it may reasonably be inferred

(2) O se tagata ua molia i totonu o se tualumaga tau solitulafono o ia lea ua faamoemoe e tuuina atu le faamatalaga molimau lea e fesiligia ai le tulaga faamaoni o se tagata o afaatasi e tete, e ao ona tuuina atu se faasilasilaga tusitusia i lea tagata o afaatasi e tete, i so o se isi lava tagata o afaatasi e tete ma le faafoe moliaga o le fuafuaga e tuuina atu ai lea faamatalaga molimau, seia vagana ai ua tuusaunoa le manaoga e tuuina atu ai le faasilasilaga e:

- (a) tagata uma o afaatasi e tete; po o
- (b) le Faamasino e tusa ai ma manaoga o faaiuga amiotonu.

(3) E ao i se faasilasilaga ona:

- (a) aofia ai mataupu o le faamatalaga molimau ua fuafuaina; ma
- (b) tuuina atu se taimi e lava atoatoa e tuuina atu ai i tagata uma o afaatasi e tete se avanoa lelei e tali atu ai i lea faamatalaga molimau.

Vaevaega 5 - Amioga lē manaomia

30. Tulafono faafoe o amioga lē manaomia-(1) I totonu o lenei Vaevaega, “faamatalaga molimau o amioga lē manaomia”:

- (a) o lona uiga -
 - (i) o se faamatalaga molimau lea ua faamoemoe e faaalua ai amioga lē manaomia o se tagata e galue ai i se auala faapitoa po o e i ai se tulaga faapitoa tau le mafaufau, e ave ma faamatalaga molimau o gaoioiga, o mea ua lē faia, o mea e tutupu mai, po o tulaga aliae mai lea ua tuuaia ai se tagata na aafia ai; po o
 - (ii) se faamatalaga molimau o gaoioiga a se tagata, o mea ua lē faia, po o tulaga o le mafaufau i tulaga aliae mai lea e ono mafai

that the person acted, omitted or had a state of mind as alleged as part of the proof of any offence with which that person is charged; but

(b) does not include evidence of an act or omission that is -

(i) one of the elements of the offence for which the person is being tried; or

(ii) the cause of action in the proceeding in question.

(2) A party may offer propensity evidence in a civil or criminal proceeding about any person.

(3) However, propensity evidence about:

(a) a defendant in a criminal proceeding may be offered only pursuant to section 31, 32 or 33, whichever section is applicable; and

(b) a complainant in a sexual case in relation to the complainant's sexual experience may be offered only pursuant to section 34.

(4) Evidence that is solely or mainly relevant to veracity is governed by section 26 and, accordingly, this section does not apply to evidence of that kind.

ona fuafuaina ai tulaga e tatau ai ona faapea o le tagata na faatinoina, ua lē faia po o e i ai se tulaga o le mafaufau e pei ona tuuaia ai e avea o se vaega o le faamaoniga o so o se soligatulafono lea ua molia ai lea tagata; peitai

(b) e le o aofia ai se faamatalaga molimau o se gaoioiga po o se mea ua lē faia lea ua avea:

(i) o se tasi o vaega o aofia ai i le soligatulafono lea ua suesueina ai le tagata; po o

(ii) le mafuaaga o le gaoioiga ua fesiligia i totonu o taualumaga.

(2) E mafai e se itu faamasinoga ona tuuina atu se faamatalaga molimau o amioga lē manaomia i totonu o se taualumaga tau le va o tagata po o taualumaga tau solitulafono e faatatau i so o se tagata.

(3) E ui i lea, o le faamatalaga molimau o amioga lē manaomia e faatatau:

(a) i se tagata ua molia i totonu o se taualumaga tau solitulafono e faatoa mafai lava ona tuuina atu e tusa ai ma le fuaiupu 31, 32 po o le 33, o fea lava le fuaiupu e talafeagai ai; ma

(b) o se tagata faasea i se mataupu tau faiga aiga e faasino i le iloa o le tagata faasea o tulaga tau faiga aiga e faatoa mafai ona tuuina atu e tusa ai ma le fuaiupu 34.

(4) O le faamatalaga molimau lea e faapitoa po o le talafeagai lelei i le tulaga faamaoni, ua faafoeina e le fuaiupu 26 ma, e tusa ai o lea tulaga, e lē faaaogāina lena fuaiupu i le faamatalaga molimau o lea ituaiga.

31. Propensity evidence about defendants-(1) A defendant in a criminal proceeding may offer propensity evidence about himself or herself.

(2) If a defendant offers propensity evidence about himself or herself, the prosecution or another party may, with the permission of the Judge, offer propensity evidence about that defendant.

(3) Section 33 does not apply to propensity evidence offered by the prosecution under subsection (2).

32. Propensity evidence about co-defendants-(1) A defendant in a criminal proceeding may offer propensity evidence about a co-defendant only if:

- (a) that evidence is relevant to a defence raised or proposed to be raised by the defendant; and
- (b) the Judge permits the defendant to do so.

(2) A defendant in a criminal proceeding who intends to offer propensity evidence about a co-defendant must give notice in writing to that co-defendant, every other co-defendant, and the prosecutor of the proposal to offer that evidence unless the requirement to give notice is waived:

- (a) by all the co-defendants; or
- (b) by the Judge in the interests of justice.

31. Faamatalaga molimau o amioga lē manaomia e faatatau i tagata ua molia-(1) E mafai e se tagata ua molia i totonu o se taualumaga tau solitulafono ona tuuina atu se faamatalaga molimau o amioga lē manaomia e faatatau ia te ia lava.

(2) Afai ua tuuina atu e se tagata ua molia se faamatalaga molimau o amioga lē manaomia e faatatau ia te ia lava, e mafai i le moliaga faetulafono po o se isi itu faamasinoga, faatasi ai ma le faatagaga a le Faamasino, ona tuuina atu le faamatalaga molimau o amioga lē manaomia e faatatau i lea tagata ua molia.

(3) E lē faaogāina le fuaiupu 33 i se faamatalaga molimau o tuuina atu e ala i moliaga faaetulafono o amioga lē manaomia i lalo o le faafuaiupu (2).

32. Faamatalaga molimau o amioga lē manaomia e faatatau i tagata o aufaatasi e tetee-(1) E faatoa mafai lava e se tagata ua molia i totonu o se taualumaga tau solitulafono ona tuuina atu se faamatalaga molimau o amioga lē manaomia e faatatau i se tagata o aufaatasi e tetee pe afai:

- (a) o lea faamatalaga molimau ua talafeagai lea i se tetee e faatulai mai po o fuafua e faatulai mai e le tagata ua molia; ma
- (b) ua faatagaina e le Faamasino le tagata ua molia ina ia faia faapena.

(2) O se tagata ua molia i totonu o se taualumaga tau solitulafono o ia lea ua faamoemoe e tuuina atu le faamatalaga molimau o amioga lē manaomia e faatatau i se tagata o aufaatasi e tetee, e ao ona tuuina atu se faasilasilaga tusitusia i lea tagata o aufaatasi e tetee, o isi tagata taitasi uma o aufaatasi e tetee, ma le tagata faafoe moliaga o le fuafuaga ina ia tuuina atu ai lea faamatalaga molimau seia vagana ai ua tuusaunoa le manaoga e tuuina atu ai le faasilasilaga.

- (a) e tagata uma o aufaatasi e tetee; po o
- (b) e le Faamasino e tusa ai ma manaoga o faaiuga amiotonu.

- (3) A notice must:
- (a) include the contents of the proposed evidence; and
 - (b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

33. Propensity evidence offered by prosecution-(1) The prosecution may offer propensity evidence about a defendant in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on the defendant.

(2) When assessing the probative value of propensity evidence, the Judge must take into account the nature of the issue in dispute.

(3) When assessing the probative value of propensity evidence, the Judge may consider, among other matters, the following:

- (a) the frequency with which the acts, omissions, events, or circumstances which are the subject of the evidence have occurred;
- (b) the connection in time between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried;

- (3) E ao i se faasilasilaga ona:
- (a) aofia ai mataupu o le faamatalaga molimau ua fuafuaina; ma
 - (b) ia tuuina atu se taimi e lava atoatoa ina ia maua uma ai e tagata o aufaatasi e tetee se avanoa talafeagai e tali atu ai i lea faamatalaga molimau.

33. Tuuina atu o faamatalaga molimau o amioga lē manaomia e ala i moliaga faaletulafono-(1) E faatoa mafai i se moliaga faaletulafono ona tuuina atu ai se faamatalaga molimau o amioga lē manaomia e faatatau i se tagata ua molia i totonu o se tualumaga tau solitulafono, pe afai o i ai i le faamatalaga molimau se tulaga e tuuina mai ai se faamaoniga e faasino i se mataupu o finau ai i totonu o le tualumaga lea e sili atu ona aafia ai le tulaga lamatia e faapea e mafai ona i ai i le faamatalaga molimau se tulaga lē amiotonu ma lē faaituau e uiga i le tagata ua molia.

(2) Afai e iloiloina se tulaga e tuuina atu ai se faamaoniga e le faamatalaga molimau o amioga lē manaomia e ao i le Faamasino ona amanaia le uiga o le mataupu o finau ai.

(3) Afai e iloiloina se tulaga e tuuina atu ai se faamaoniga o le faamatalaga molimau o amioga lē manaomia, e mafai e le Faamasino ona iloiloina, faatasi ai ma isi lava mataupu itu nei:

- (a) o le faatulai so o mai o tulaga ia e tulai mai ai gaoioiga, o mea ua lē faia, o mea e tutupu mai, po o tulaga aliae mai ia ua avea ma autu o le faamatalaga molimau;
- (b) o le fesootaiga i taimi o gaoioiga, o mea ua lē faia, o mea e tutupu mai po o tulaga aliae mai ia ua avea ma autu o le faamatalaga molimau ma gaoioiga, o mea ua lē faia, o mea e tutupu mai, po o tulaga aliae mai ia ua faavae ai le soligatulafono lea ua suesueina ai le tagata ua molia;

- (c) the extent of the similarity between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried;
 - (d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried;
 - (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility;
 - (f) the extent to which the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried are unusual.
- (4) When assessing the prejudicial effect of evidence on the defendant, the Judge must consider, among any other matters:
- (a) whether the evidence is likely to unfairly predispose the fact-finder against the defendant; and
 - (b) whether the fact-finder will tend to give undue weight in reaching a verdict to evidence of other acts or omissions.
- (5) Propensity evidence may be adduced from the record of an earlier trial in which the defendant was charged with an offence even if the defendant was acquitted or otherwise discharged in relation to the evidence adduced.

- (c) o le tulaga e tutusa ai gaoioiga, o mea ua lē faia, o mea e tutupu mai, po o tulaga aliae mai ia ua aveva ma autu o le faamatalaga molimau, ma gaoioiga, o mea ua lē faia, o mea e tutupu mai, po o tulaga aliae mai ia ua faavae ai le soligatulafono lea ua suesueina ai le tagata ua molia;
 - (d) o le aofaiga o tagata o faia tuuaiga e faasaga i le tagata ua molia lea ua faapea ona tutusa ma po o e foliga tutusa ma le autu o le soligatulafono lea ua suesueina ai le tagata ua molia;
 - (e) pe o tuuaiga ua faamatalaina i le parakalafa (d) e mafai ona aveva ma taunuuga o se faiga faalilolilo po o se tulaga ua fuafuaina;
 - (f) o le tulaga e lē masani ai lea ua suesueina ai le tagata ua molia i gaoioiga, o se mea ua lē faia, o mea e tutupu mai po o tulaga aliae mai ia ua aveva ma autu o le faamatalaga molimau, ma gaoioiga, o mea ua lē faia, o mea e tutupu mai po o tulaga aliae ma ia ua faavae ai le soligatulafono.
- (4) Afai e iloiloina se aafiaga o tulaga faaituau o se faamatalaga molimau e uiga i le tagata ua molia, e ao i le Faamasino ona iloilo faatasi ai ma so o se isi lava mataupu:
- (a) pe ono mafai i le faamatalaga molimau ona faailoa muamua atu ai le tulaga lē tonu o le sailia o mea moni e faasaga i le tagata ua molia; ma
 - (b) pe o le sailia o mea moni o le a fuafua e tuuina atu ai le tulaga mamafa e lē talafeagai ai i le faia o se faaiuga i se faamatalaga molimau o se isi gaoioiga po o ni mea ua lē faia.
- (5) E mafai ona faamaonia faamatalaga molimau o amioga lē manaomia mai le faamaumauga o se suesuega na faia e le i mamao atu lea sa molia ai le tagata ua molia i se soligatulafono e tusa lava pe ua tuusaunoaina le tagata ua molia po o ua faasaolotoina i se isi faiga e ese ai e faasino i le faamatalaga molimau ua faamaonia.

34. Evidence of sexual experience of complainants in trials of sexual cases-(1) In a sexual case, no evidence can be given and no question can be put to a witness relating directly or indirectly to the sexual experience of the complainant with any person other than the defendant, except with the permission of the Judge.

(2) In a sexual case, no evidence can be given and no question can be put to a witness that relates directly or indirectly to the reputation of the complainant in sexual matters.

(3) In an application for permission under subsection (1), the Judge must not grant permission unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding, or the issue of the appropriate sentence, that it would be contrary to the interests of justice to exclude it.

(4) The permission of the Judge is not required to rebut or contradict evidence given under subsection (1).

(5) In a sexual case in which the defendant is charged as a party and cannot be convicted unless it is shown that another person committed a sexual offence against the complainant, subsection (1) does not apply to any evidence given, or any question put, that relates directly or indirectly to the sexual experience of the complainant with that other person.

(6) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.

34. Faamatalaga molimau o amioga tau faiga aiga a se tagata faasea i totonu o suesuega o mataupu tau faiga aiga-(1) I totonu o se mataupu tau i faiga aiga, e lē mafai ona tuuina atu se faamatalaga molimau ma e lē mafai foi ona tuuina atu se fesili i se tagata molimau e faasino tonu pe leai foi i le amioga tau faiga aiga, a le tagata ua faasea ma so o se tagata e ese ai na i lo le tagata ua molia, seia vagana ai ua i ai le faatagaga a le Faamasino.

(2) I totonu o se mataupu tau i faiga aiga, e leai se faamatalaga molimau e mafai ona tuuina atu ma e leai foi se fesili e mafai ona faia i se tagata molimau lea e faasino tonu pe leai foi i le talaaga o le tagata faasea i mataupu tau faiga aiga.

(3) I totonu o se talosaga mo se faatagaga i lalo o le faafuaiupu (1), e lē tatau i le Faamasino ona tuuina atu se faatagaga seia vagana ai ua faamalieina o ia e faapea o le faamatalaga molimau po o le fesili ua faapea ona talafeagai tonu i mea moni ua fesiligia i totonu o le tualumaga, po o le tuuina atu o le faasalaga talafeagai o le a faapea ona ese mai ai i manaoga o faaiuga amiotonu e faalēaogāina ai.

(4) E le o manaomia le faatagaga a le Faamasino e faamaonia ai se tulaga le sao po o e feteenai ai ma le faamatalaga molimau ua tuuina atu i lalo o le faafuaiupu (1).

(5) I totonu o se mataupu tau faiga aiga lea ua molia ai se tagata ua molia e aveva o se itu faamasinoga ma ua lē mafai ona faamaonia moliaga seia vagana ai ua faaalā e faapea na faia e le isi tagata se soligatulafono tau faiga aiga e faasaga i lē ua faasea, e lē faaogāina le faafuaiupu (1) i so o se faamatalaga molimau ua tuuina atu po o so o se fesili ua faia, lea e faasino tonu pe leai foi i le amioga tau faiga aiga a lē ua faasea ma le isi lea tagata.

(6) E lē faatagaina i lenei fuaiupu le tuuina atu o le faamatalaga molimau po o le faia o so o se fesili lea e lē mafai ona tuuina atu po o le faataatiaese mai lenei fuaiupu.

Division 6 - Identification evidence

35. Admissibility of visual identification evidence-(1) If a formal procedure is followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence or there was a good reason for not following a formal procedure, that evidence of a visual identification in the procedure done before trial is admissible in a criminal proceeding.

(2) If any prescribed formal procedure is not followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence and there was no good reason for not following a formal procedure, that evidence of a visual identification in the procedure done before trial is inadmissible in a criminal proceeding unless the trial judge is satisfied on the balance of probabilities that the circumstances in which the identification was made did not produce an unreliable identification.

(3) For the purposes of this section, any formal procedure that is prescribed must be a procedure for obtaining visual identification evidence:

- (a) that is observed within a reasonable time after the alleged offence is reported to an officer of an enforcement agency; and
- (b) in which the person to be identified is compared to no fewer than three (3) other persons who are similar in appearance to the person to be identified; and

Vaevaega 6 - Faamatalaga molimau e iloagofie ai

35. Taliaina o faamatalaga molimau o meafaitino vaaia e iloagofie ai-(1) Afai ua mulimulitaia se taualumaga aloaia e tagata ofisa o se lala e faamalosia le mauaina mai o faamatalaga molimau o meafaitino vaaia e iloagofie ai a se tagata ua tuuaia i le faia o se soligatulafono, po o o lo o i ai se mafuaaga lelei mo le lē mulimulitaia o se taualumaga aloaia, o lea faamatalaga molimau o meafaitino vaaia e iloagofie ai i totonu o le taualumaga na faia a o lumanai ai le suesuega, ua taliaina i totonu o se taualumaga tau solitulafono.

(2) Afai ua lē mulimulitaia so o se taualumaga aloaia faatonuina e tagata ofisa o se lala e faamalosia le mauaina mai o faamatalaga molimau o meafaitino vaaia e iloagofie ai a se tagata ua tuuaia i le faia o se soligatulafono ma ua leai se mafuaaga lelei mo le lē mulimulitaia o se taualumaga aloaia, o lea faamatalaga molimau o meafaitino vaaia e iloagofie ai i totonu o se taualumaga na faia a o lumanai ai le suesuega, ua lē taliaina lea i totonu o se taualumaga tau solitulafono, seia vagana ai ua faamalieina le Faamasino o faia le suesuega i luga o le fuafuaina o mea e ono tutupu mai e faapea o tulaga aliae mai lea sa faia ai tulaga e faailoagofie ai e le o tuuina atu ai se tulaga lē faatuatuaina o le faailoagofieina.

(3) Mo faamoemoega o lenei fuaiupu, so o se taualumaga aloaia lea ua faatonuina e ao ona aveva ma taualumaga mo le mauaina mai o faamatalaga molimau o meafaitino vaaia e iloagofie ai:

- (a) lea ua mataituina i totonu o se taimi talafeagai i le tuana'i ai ona lipotia o se soligatulafono ua tuuaia ai, i se tagata ofisa o se lala e faamalosia; ma
- (b) le itu ua faatusatusaina i ai le tagata ua faailoagofieina, i le lē itiiti ifo i lo le toatolu (3) isi tagata o i latou ia e foliga tutusa i le tagata ua faailoa mai; ma

- (c) in which no indication is given to the person making the identification as to who among the persons in the procedure is the person to be identified; and
- (d) in which the person making the identification is informed that the person to be identified may or may not be among the persons in the procedure; and
- (e) that is the subject of a written record of the procedure actually followed that is sworn to be true and complete by the officer who conducted the procedure and provided to the Judge and the defendant (but not the assessors) at the hearing; and
- (f) that is observed by taking and keeping of photographic or other audio-visual record of the identification process.

(4) The circumstances referred to in the following paragraphs are good reasons for not following a prescribed formal procedure:

- (a) a refusal of the person to be identified to take part in the procedure (that is, by refusing to take part in a parade or other procedure, or to permit a photograph or video record to be taken, where the enforcement agency does not already have a photo or a video record that shows a true likeness of that person);
- (b) the singular appearance of the person to be identified (being of a nature that cannot be disguised so that the person is similar in appearance to those with whom the person is to be compared);

- (c) le itu ua lē tuuina atu ai se tulaga e faailoa ai, i le tagata o faia le tulaga e faailoagofie ai po o ai o i latou o i totonu o le tualumaga e ao ona faailoa mai; ma
- (d) le itu ua logoina ai le tagata o faia tulaga e faailoagofie ai e faapea o le tagata e ao ona faailoa mai e mafai ona i ai pe leai foi i tagata o i totonu o le tualumaga; ma
- (e) o le autu lea o se faamaumauga tusitusia o tualumaga e mulimuli tonu i ai, lea ua faamaonia e sao, ma ua faamaea e le tagata ofisa o ia lea na faafoeina le tualumaga ma tuuina atu i le Faamasino ma le tagata ua molia (ae le o faatonu) i le taimi o le faamasinoga; ma
- (f) ua faapea ona mataituina e ala i le faia ma le tausia o ata pue po o isi faamaumauga i masini pue leo, o le faagasologa tau le faailoagofieina.

(4) O tulaga aliae mai o faasinomia i parakalafa ua taua, o mafuaaga lelei ia mo le lē mulimulitaia o se tualumaga aloaia ua faatonuina:

- (a) o se teena o le tagata e ao ona faailoa, o lona auai i se tualumaga (o lona uiga, o le musu e auai i totonu o se faagasologa po o isi tualumaga, po o le faatagaina o le faia o se ata pue po o faamaumauga i masini vito, pe afai e le o i ai muamua i le lala e faamalosia, o se ata pue po o se faamaumauga tau vito lea e faaalua ai se foliga sao o lea tagata);
- (b) o foliga vaaia o le tagata na o ia e ao ona faailoa (e aveva o se uiga e lē mafai ai ona noatia foliga moni ina ia faapea ai e tutusa foliga vaaia o le tagata ma i latou ia o le a faatusatusaina i ai le tagata);

- (c) a substantial change in the appearance of the person to be identified after the alleged offence occurred and before it was practical to hold a formal procedure;
- (d) no officer involved in the investigation or the prosecution of the alleged offence could reasonably anticipate that identification would be an issue at the trial of the defendant;
- (e) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency soon after the offence was reported and in the course of that officer's initial investigation;
- (f) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency after a chance meeting between the person who made the identification and the person alleged to have committed the offence.

*Division 7 - Evidence of convictions
and civil judgments*

36. Application - Section 37:

(a) applies -

- (i) whether or not the person convicted is a party to the proceeding; and
- (ii) whether or not the person was convicted on a guilty plea;

- (c) o se suiga tele i foliga vaaia o le tagata e ao ona faailoa, i le tuanai ai ona tulai mai o le soligatulafono ua tuuaia ai ma a o lumanai ai le faia o se taualumaga aloaia;
- (d) e leai se tagata ofisa o aafia i le suesuega po o moliaga faaetulafono o le soligatulafono ua tuuaia ai se tagata na fuafuaina i luga o mafuaaga e faapea o le faailoagofieina o le a avea ma mataupu i le suesuega o le tagata ua molia;
- (e) afai o se tulaga e faailoagofie ai se tagata ua tuuaia i le faia o se soligatulafono, ua tuuina atu lea i se tagata ofisa o se lala e faamalosia, i se taimi vave lava i le tuanai ai o le lipotia o le soligatulafono ma i le faagasologa o lea suesuega amata a le tagata ofisa;
- (f) afai o se tulaga e faailoagofie ai se tagata ua tuuaia i le faia o se soligatulafono, ua tuuina atu lea i se tagata ofisa o se lala e faamalosia, i le tuanai ai o se feiloaiga i le va o le tagata o ia lea na faia le tulaga e faailoagofie ai ma le tagata ua tuuaia i le faia o le soligatulafono.

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

36. Faaaogāina - O le fuaiupu 37:

(a) e faaaogā -

- (i) e tusa lava po o le tagata ua faamaonia le nofosala pe leai foi ua avea o se itu faamasinoga i totonu o le taualuamga; ma
- (ii) e tusa lava po o ua faamaonia le nofosala o le tagata pe leai foi i luga o se ioeina o le nofosala;

- (b) is subject to section 38; and
- (c) does not affect a provision in any other enactment to the effect that a conviction or a finding of fact in a criminal proceeding is to constitute conclusive evidence for the purposes of any other proceeding.

37. Conviction as evidence in civil proceedings-(1)When the fact that a person has committed an offence is relevant to an issue in a civil proceeding, proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances:

- (a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and
- (b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to that subsection.

38. Conviction as evidence in defamation proceedings - In a proceeding for defamation that is based on a statement to the effect that a person has committed an offence, proof that the person has been convicted of the offence is conclusive proof that the person committed the offence if the conviction:

- (b) e noatia ma fai fuafua i le fuaiupu 38; ma
- (c) e lē aafia ai se aiaiga o i so o se isi lava tulafono i le tulaga e faapea o se moliaga ua faamaonia faaletulafono po o se sailiga o mea moni i totonu o se taualumaga tau solitulafono ua faavae ai se faamatalaga molimau maumaututu mo faamoemoega o so o se isi lava taualumaga.

37. Moliaga ua faamaonia faaletulafono e avea ma faamatalaga molimau i totonu o taualumaga tau le va o tagata-(1) Afai o le itu i se soligatulafono ua faia e se tagata ua talafeagai lea i se mataupu i totonu o taualumaga tau le va o tagata, o le faamaoniga ua faapea ona faamaonia ai le nofosala o lea tagata i lea soligatulafono, ua avea lea ma faamaoniga maumaututu o le faia e lea tagata o le soligatulafono.

(2) E ui lava i le faafuuiupu (1) pe afai o moliaga faaletulafono o se tagata ua faamaonia lea i lalo o lea faafuuiupu, e mafai e le Faamasino i tulaga faapitoa e aliae mai ona:

- (a) faataga se itu faamasinoga i le taualumaga, e tuuina atu faamatalaga molimau ua faamoemoe e faamaonia ai e faapea o le tagata ua faamaonia le nofosala e na te le i faia le soligatulafono lea ua faamaonia ai lona nofosala; ma
- (b) afai ua faamalieina e faapea ua tatau ona faia faapena, ia faatonuina le faia o le faaiuga o le mataupu e tusa ai o le tagata sa faia le soligatulafono, e aunoa ma se faasinomaga i lea faafuuiupu.

38. Moliaga ua faamaonia faaletulafono e avea ma faamatalaga molimau i totonu o taualumaga o tulaga tau faaleaga - I totonu o se taualumaga mo tulaga tau faaleaga lea e faavae i luga o se faamatalaga i le tulaga e faapea ua faia e se tagata se soligatulafono, o le faamaoniga ua faapea ona faamaonia ai le nofosala o le tagata i se soligatulafono ua o se faamaoniga maumaututu lea o le faia e le tagata o le soligatulafono pe afai o le moliaga ua faamaonia faaletulafono.

- (a) subsisted at the time that the statement was made; or
- (b) subsists at the time of the proceeding.

39. Conviction as evidence in criminal proceedings-(1)

Evidence of the fact that a person has been convicted of an offence is, if not excluded by any other provision of this Act, admissible in a criminal proceeding and proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances:

- (a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and
- (b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to subsection (1).

(3) A party to a criminal proceeding who wishes to offer evidence of the fact that a person has been convicted of an offence must first inform the Judge of the purpose for which the evidence is to be offered.

40. Civil judgment as evidence in criminal or civil proceedings-(1)

Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was

- (a) na faaaauau ona faia i le taimi na faia ai le faamatalaga; po o
- (b) le faaaauau i le taimi o le taualumaga.

39. Moliaga ua faamaonia faaletulafono e avea ma faamatalaga molimau i taualumaga tau solitulafono-(1) O le faamatalaga molimau o le itu e faapea ua faamaonia le nofosala o se tagata i se soligatulafono ua, pe afai e le o faalēaogāina e so o se tasi aiaiga o lenei Tulafono, taliaina i totonu o se taualumaga tau solitulafono ma o le faamaoniga e faapea ua faamaonia le nofosala o lea tagata i lea soligatulafono, ua o se faamaoniga maumaututu lea o le faia e le tagata o le soligatulafono.

(2) E ui lava i le faafuaiupu (1), pe afai o moliaga ua faamaonia faaletulafono o se tagata ua faamaonia lea i lalo o lea faafuaiupu, e mafai e le Faamasino i tulaga faapitoa e aliae mai ona:

- (a) faataga se itu faamasinoga i le taualumaga e tuuina atu faamatalaga molimau ua faamoemoe e faamaonia ai e faapea o le tagata ua faamaonia le nofosala, e na te le i faia le soligatulafono lea ua faamaonia ai lona nofosala; ma
- (b) afai ua faamalieina e faapea ua tataua ona faia faapena, ia faatonuina le faia o le faaiuga o le mataupu e tusa ai o le tagata sa faia le soligatulafono e aunoa ma se faasinomaga i le faafuaiupu (1).

(3) O se itu faamasinoga i se taualumaga tau solitulafono o ia lea ua manao e tuuina atu faamatalaga molimau o le itu e faapea ua faamaonia le nofosala o se tagata i se soligatulafono, e ao ona muai logoina le Faamasino e uiga i le faamoemoe lea o le a tuuina atu ai le faamatalaga molimau.

40. Faaiuga o faamasinoga tau le va o tagata e avea ma faamatalaga molimau i taualumaga tau solitulafono po o taualumaga tau le va o tagata-(1)

O le faamatalaga molimau o se faaiuga o se faamasinoga po o le mauaina mai o mea moni

in issue in the proceeding in which the judgment was given.

- (2) This section does not affect the operation of:
- (a) a judgment *in rem*; or
 - (b) the law relating to *res judicata* or issue estoppel; or
 - (c) the law relating to an action on, or the enforcement of, a judgment.

PART 3 PRIVILEGE AND CONFIDENTIALITY

Division 1 - General

41. Definition-(1) In this Part:

“legal adviser” means:

- (a) a lawyer; or
- (b) an overseas lawyer.

“overseas lawyer” means:

- (a) a person who is entitled to practise as a barrister, or a solicitor, or both, in a Commonwealth country or any other prescribed country; or
- (b) a person who is, under the laws of a prescribed country, entitled to undertake work that, in Samoa, is normally undertaken by a lawyer.

(2) A reference in this Part to a communication or to any information includes a reference to a communication or to information contained in a document.

i totonu o se taualumaga tau le va o tagata, e lē taliaina i totonu o se taualumaga tau solitulafono po o se isi lava taualumaga tau le va o tagata, e faamaonia ai le i ai o se mea moni lea sa tuuina atu i totonu o le taualumaga lea sa tuuina atu ai le faaiuga.

- (2) O lenei fuaiupu e lē aafia ai le faatinoga o:
- (a) se faaiuga *e faasaga i se mea*; po o
 - (b) le tulafono e faasino i *mataupu ua faia i ai se faaiuga a le Faamasinoga* po o se molimau faaetulafono e taofia ai; po o
 - (c) le tulafono e faasino i se gaoioiga ua faia, po o le faamalosi o, se faaiuga.

VAEGA 3 TULAGA ALOAIA MA AGATAPUIA

Vaevaega 1 - Tulaga Lautele

41. Faamatalaina o uiga o upu-(1) I totonu o lenei Vaega:

“faufautua faaetulafono” o lona uiga:

- (a) o se loia; po o
- (b) se loia mai atunuu i fafo.

“loia mai atunuu i fafo” o lona uiga:

- (a) o se tagata o ia lea ua agavaa e galue e avea o se loia o le faamasinoga, po o se loia faufautua, po o i laua uma e toalua o i totonu o se atunuu o le Taupulega po o so o se isi lava atunuu ua faatonuina; po o
- (b) se tagata o ia lea, i lalo o tulafono a se atunuu ua faatonuina, ua agavaa e faatino le galuega lea e masani ona faatinoina e se loia i totonu o Samoa.

(2) O se fuaitau o i totonu o lenei Vaega e faasino i se fesootaiga po o i so o se faamatalaga, e aofia ai se faasinomaga e faasino i se fesootaiga po o se faamatalaga o aofia ai i totonu o se pepa aloaia.

(3) Despite subsection (2), in sections 50 to 53, “information” means a statement of fact or opinion given, or to be given:

- (a) orally; or
- (b) in a document that is prepared or created -
 - (i) after and in response to a requirement to which any of those sections applies; but
 - (ii) not for the principal purpose of avoiding criminal prosecution under the laws of Samoa.

(4) A reference in this Division to a communication made or received by a person or an act carried out by a person includes a reference to a communication made or received or an act carried out by an authorised representative of that person on that person’s behalf.

(5) However, subsection (4) does not apply to section 48, 49 or 54.

42. Order for protection of privileged material, etc.-(1) A Judge may order that evidence must not be given in a proceeding of a communication, information, opinion, or document in respect of which a person has a privilege conferred by this Division and may make an order under this subsection:

- (a) on the Judge’s own initiative; or
- (b) on the application of the person who has the privilege; or
- (c) on the application of an interested person other than the person who has the privilege.

(2) A Judge may give a direction under section 57 or 59 on the Judge’s own initiative or on the application of an interested person.

(3) E ui lava i le faafuaiupu (2) i totonu o fuaiupu 50 e oo i le 53, “faamatalaga” o lona uiga o se faamatalaga o mea moni po o fautuaga ua tuuina atu po o e ao ona tuuina atu:

- (a) tuufofoga; po o
- (b) i totonu o se pepa aloaia lea ua saunia po o ua faia -
 - (i) i le tuanai ai ma i le tali atu i se manaoga lea e faaaogā i ai so o se tasi o na fuaiupu; ae peitai
 - (ii) e lē mo le faamoemoe autu o le alofiaina o moliaga tau solitulafono i lalo o tulafono a Samoa.

(4) O se fuaitau o i totonu o lenei Vaevaega e faasino i se fesootaiga ua faia po o ua mauaina e se tagata po o se gaoioiga ua faatinoina e se tagata, ua aofia ai se fuaitau e faasino i se fesootaiga ua faia po o ua mauaina po o se gaoioiga ua faia e se sui e faatagaina o lea tagata i le avea ai ma ona sui.

(5) E ui i lea, e lē faaaogāina le faafuaiupu (4) i le fuaiupu 48, 49 po o le 54.

42. Poloaiga mo puipuiga o vaega e i ai tulaga aloaia ma isi faapena-(1) E mafai e se Faamasino ona poloaia e faapea e lē tatau ona tuuina atu se faamatalaga molimau i totonu o se tualumaga e faasino i se fesootaiga, faamatalaga, fautuaga, po o se pepa aloaia e tusa ai o vaega o lo o i ai tulaga aloaia a se tagata ua faaee atu i ai e lenei Vaevaega ma e mafai ona faia se poloaiga i lalo o lenei faafuaiupu:

- (a) i luga o le fuafuaga a le Faamasino lava ia; po o
- (b) i luga o le talosaga a le tagata o ia lea e i ai tulaga aloaia; po o
- (c) i luga o le talosaga a se tagata e i ai aia e ese mai na i lo le tagata o ia lea e i ai tulaga aloaia.

(2) E mafai e se Faamasino ona tuuina atu se faatonuga i lalo o le fuaiupu 57 po o le 59 i luga o lana lava fuafuaga po o i luga o le talosaga a se tagata e i ai aia.

(3) An application under subsection (1) or (2) may be made at any time either before or after any relevant proceeding is commenced.

(4) A Judge may give any directions that are necessary to protect the confidentiality of, or limit the use which may be made of:

- (a) any privileged communication, information, opinion, or document that is disclosed to a Judge or other body or person in compliance with a judicial or administrative order; or
- (b) any communication or information that is the subject of a direction under section 57 or 59 but is disclosed to a Judge or other body or person in compliance with a judicial or administrative order.

Division 2 - Privilege

43. Effect and protection of privilege-(1) A person who has a privilege conferred by any of sections 44 to 49 in respect of a communication or any information has the right to refuse to disclose in a proceeding:

- (a) the communication; and
- (b) the information, including any information contained in the communication; and
- (c) any opinion formed by a person that is based on the communication or information.

(2) A person who has a privilege conferred by section 50 or 54 in respect of information has the right to refuse to disclose in a proceeding the information.

(3) E mafai ona faia se talosaga i lalo o le faafuaiupu (1) po o le (2), i so o se taimi, i le lumanai ai po o le tuana'i ai o le amataina o so o se tualumaga e talafeagai ai.

(4) E mafai e se Faamasino ona tuuina atu so o se faatonuga lea e talafeagai e puipuia ai tulaga agatapuia o, po o le faatapulaa o le faaogāina lea e mafai ona tuuina atu i:

- (a) so o se fesootaiga aloaia, faamatalaga, manatu faaalua, po o pepa aloaia lea ua faailoa atu i se Faamasino po o isi itu tino po o se tagata o lo o taasisia se poloaiga faa-faamasinoga po o se poloaiga tau pulega; po o
- (b) so o se fesootaiga po o faamatalaga lea ua avea ma autu o se faatonuga ua faia i lalo o le fuaiupu 57 po o le 59, ae ua faailoa atu i se Faamasino po o isi itu tino po o se tagata o lo o taasisia se poloaiga faa-faamasinoga po o se poloaiga tau pulega.

Vaevaega 2 - Tulaga Aloaia

43. Aafiaga ma puipuiga o tulaga aloaia-(1) O se tagata o ia lea e i ai se tulaga aloaia ua faaee atu i ai e so o se fuaiupu 44 e oo atu i le 49 e tusa ai o se fesootaiga po o so o se faamatalaga, e i ai le aia tatau e teena ai le faailoa atu i totonu o se tualumaga:

- (a) o le fesootaiga; ma
- (b) le faamatalaga, e aofia ai so o se faamatalaga o lo o i ai i totonu o fesootaiga; ma
- (c) so o se fautuaga ua faia e se tagata, lea e faavae i luga o fesootaiga po o faamatalaga.

(2) O se tagata o ia lea e i ai se tulaga aloaia ua faaee atu i ai e le fuaiupu 50 po o le 54 e tusa ai o faamatalaga, e i ai le aia tatau e teena ai le faailoa atu o le faamatalaga i totonu o se tualumaga.

(3) A person who has a privilege conferred by any of sections 44 to 49 and 54 in respect of a communication, information, opinion, or document may require that the communication, information, opinion, or document not be disclosed in a proceeding:

- (a) by the person to whom the communication is made or the information is given, or by whom the opinion is given or the information or document is prepared or compiled; or
- (b) by any other person who has come into possession of it with the authority of the person who has the privilege, in confidence and for purposes related to the circumstances that have given rise to the privilege.

(4) If a communication, information, opinion, or document, in respect of which a person has a privilege conferred by any of sections 44 to 49 and 54, is in the possession of a person other than a person referred to in subsection (3), a Judge may, on the Judge's own initiative or on the application of the person who has the privilege, order that the communication, information, opinion, or document not be disclosed in a proceeding.

(5) This Act does not affect the general law governing legal professional privilege, so far as it applies to the determination of claims to that privilege that are made neither in the course of, nor for the purpose of, a proceeding.

44. Privilege for communications with legal advisers - A person who obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was:

- (a) intended to be confidential; and

(3) O se tagata o ia lea e i ai se tulaga aloaia ua faaee atu i ai e so o se tasi o fuaiupu 44 e oo i le 49 ma le 54 e tusa ai o se fesootaiga, faamatalaga, fautuaga po o pepa aloaia, e mafai ona lē manaomia le faailoaina atu o le fesootaiga, faamatalaga, fautuaga po o pepa aloaia i totonu o se taualumaga:

- (a) e le tagata o ia lea na faia i ai le fesootaiga pe na tuuina atu i ai le faamatalaga, po o le tagata na tuuina atu i ai fautuaga po o le faamatalaga po o lē na saunia pe tuufaatasia pepa aloaia; po o
- (b) e so o se isi lava tagata o ia lea o lo o umiaina ia vaega i le i ai faatasi ma le pule faataga a le tagata o ia lea e i ai tulaga aloaia, mautinoa ma mo faamoemoega e fesootai i tulaga aliae mai lea ua siitia ai tulaga aloaia.

(4) Afai o se fesootaiga, faamatalaga, fautuaga po o pepa aloaia e tusa ma tulaga aloaia a se tagata, ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 49 ma le 54, o lo o umia e se tagata e ese mai na i lo se tagata o faasinomia i le faafuaiupu (3), e mafai e se Faamasino, i luga o lana lava fuafuaga po o i luga o le talosaga a le tagata o ia lea e i ai tulaga aloaia, ona poloaia e faapea o le fesootaiga, faamatalaga, fautuaga po o pepa aloaia e lē faailoaina atu i totonu o se taualumaga.

(5) O lenei Tulafono e lē aafia ai le tulafono lautele o pulea ai tulaga aloaia o tomiai faapitoa faaletulafono, i le tulaga e pei ona faaaogā ai i le faia o faaiuga o tagi i lea tulaga aloaia, lea ua lē faia i totonu o le faagasologa o, po o mo le faamoemoe, o se taualumaga.

44. Tulaga aloaia mo fesootaiga ma faufautua faaletulafono - O se tagata o ia lea ua mauaina auaunaga tau tomiai faapitoa faaletulafono mai se faufautua faaletulafono, e i ai se tulaga aloaia e tusa ai o so o se fesootaiga a le tagata ma le faufautua faaletulafono, pe afai o le fesootaiga ua:

- (a) faamoemoe ina ia agatapuia; ma

- (b) made in the course of and for the purpose of -
 - (i) the person obtaining professional legal services from the legal adviser; or
 - (ii) the legal adviser giving the professional legal services to the person.

45. Privilege and solicitors' trust accounts-(1) This section applies to documents that are books of account or accounting records kept:

- (a) by a solicitor in relation to any trust account money that is subject to the Lawyers and Legal Practice Act 2014; or
- (b) by a nominee company that -
 - (i) is subject to any practice rules made by the Council of the Law Society of Samoa; and
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.

(2) Section 44 does not prevent, limit, or affect:

- (a) the issue by a District Court or Supreme Court Judge of a search warrant under the Criminal Procedure Act 1972 in respect of a document to which this section applies; or
- (b) the execution of that warrant in respect of a document to which this section applies; or

- (b) ua faia i le faagasologa o ma mo le faamoemoe -
 - (i) o le mauaina e le tagata o auunaga tau tomai faapitoa faaletulafono mai le faufautua faaletulafono; po o
 - (ii) le tuuina atu e le faufautua faaletulafono o auunaga tau tomai faapitoa faaletulafono i le tagata.

45. Tulaga aloaia ma teugatupe tausi a loaia-(1) O lenei fuaiupu e faaaogā i pepa aloaia ua taua o tusi o teugatupe po o faamaumauga tau tupe ua tausia:

- (a) e se loaia e faasino i so o se tupe o teugatupe tausi lea e noatia ma fai fuafua i le Tulafono o Loaia ma le Faatinoga o Galuega Faa-Loia 2014; po o
- (b) e se kamupani filifilia lea -
 - (i) ua noatia i so o se tulafono faafoe o galuega faa-loia ua faia e le Fono a le Sosaiete o Loaia a Samoa; ma
 - (ii) ua faagaoioia e se loaia o le faamasinoga ma se loaia faufautua po o se kamupani loaia ua tuufaatasia faletulafono, e avea o se kamupani filifilia e tusa ai o faamalumaluga ma pepa aloaia o le pule e umia ai mo i latou o faaaogāina le auunaga.

(2) O le fuaiupu 44 e lē taofia ai, faatapulaa, pe aafia ai:

- (a) le tuuina atu e le Faamasino o le Faamasinoga Faaitumalo po o le Faamasino o le Faamasinoga Sili, o se tusi faapoloaiga e suesue ai i lalo o le Tulafono o Taulumaga Tau Solitulafono 1972 e tusa ai o se pepa aloaia lea e faaaogā i ai lenei fuaiupu; po o
- (b) le faataunuaina o lea tusi faapoloaiga e tusa ai o se pepa aloaia lea e faaaogā i ai lenei fuaiupu; po o

- (c) the admissibility, in a criminal proceeding for an offence described in the warrant, of any evidence that relates to the contents of a document obtained under the warrant.

46. Privilege for preparatory materials for proceedings-

(1) Subsection (2) applies to a communication or information only if the communication or information is made, received, compiled, or prepared for the dominant purpose of preparing for a proceeding or an apprehended proceeding (the “proceeding”).

(2) A person (the “party”) who is, or on reasonable grounds contemplates becoming, a party to the proceeding has a privilege in respect of:

- (a) a communication between the party and any other person;
- (b) a communication between the party’s legal adviser and any other person;
- (c) information compiled or prepared by the party or the party’s legal adviser;
- (d) information compiled or prepared at the request of the party, or the party’s legal adviser, by any other person.

47. Privilege for settlement negotiations or mediation-(1)

A person who is a party to, or a mediator in, a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of any communication between that person and any other person who is a party to the dispute if the communication:

- (a) was intended to be confidential; and
- (b) was made in connection with an attempt to settle or mediate the dispute between the persons.

- (c) le taliaina, i totonu o se taualumaga tau solitulafono mo se soligatulafono ua faamatalaina i le tusi faapoloaiga, o so o se faamatalaga molimau lea e faasino i mataupu o i ai i se pepa aloaia ua maua i lalo o le tusi faapoloaiga.

46. Tulaga aloaia mo vaega e saunia mo taualumaga-(1) E faatoa faaaogā lava le faafuaiupu (2) i se fesootaiga po o faamatalaga, pe afai ua faia, mauaina, tuufaatasia po o ua saunia mo faamoemoe iloga o tapenaga mo se taualumaga po o se taualumaga ua fuafuaina (o le “taualumaga”).

(2) O se tagata (o le “itu faamasinoga”) o ia lea ua, po o i luga o mafuaaga talafeagai ua faamoemoe e avea o se itu faamasinoga i le taualumaga e i ai se tulaga aloaia e tusa ai:

- (a) o se fesootaiga i le va o le itu faamasinoga ma so o se isi lava tagata;
- (b) o se fesootaiga i le va o le faufautua faaletulafono a se itu faamasinoga ma so o se isi lava tagata;
- (c) o faamatalaga ua tuufaatasia po o ua saunia e le itu faamasinoga po o lana faufautua faaletulafono;
- (d) o faamatalaga ua tuufaatasia po o ua saunia e so o se isi lava tagata e tusa ai ma le talosaga a le itu faamasinoga, po o lana faufautua faaletulafono.

47. Tulaga aloaia mo faatalatalanoaga e foia ai pe teuteu ai se finauga-(1) O se tagata o ia lea o se itu faamasinoga i, po o se e teuteuina feeseeseaiga o i totonu o se finauga o se ituaiga lea e mafai ona tuuina atu ai se faamama avega i totonu o se taualumaga tau le va o tagata, e i ai se tulaga aloaia e tusa ai o so o se fesootaiga i le va o lea tagata ma so o se isi lava tagata o ia lea o se itu faamasinoga o i le finauga pe afai o le fesootaiga:

- (a) ua faamoemoe ina ia agatapuia; ma
- (b) ua faia i le tulaga e fesootai ma se taumafaiga e foia ai po o e teuteu ai se finauga i le va o ni tagata.

(2) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of a confidential document that the person has prepared, or caused to be prepared, in connection with an attempt to mediate the dispute or to negotiate a settlement of the dispute.

(3) This section does not apply to:

- (a) the terms of an agreement settling the dispute; or
- (b) evidence necessary to prove the existence of the agreement in a proceeding in which the conclusion of the agreement is in issue; or
- (c) the use in a proceeding, solely for the purposes of an award of costs, of a written offer that -

- (i) is expressly stated to be without prejudice except as to costs; and
- (ii) relates to an issue in the proceeding.

48. Privilege for communications with ministers of religion-(1) A person has a privilege in respect of any communication between that person and a minister of religion if the communication was:

- (a) made in confidence to or by the minister in the minister's capacity as a minister of religion; and
- (b) made for the purpose of the person obtaining or receiving from the minister religious or spiritual advice, benefit, or comfort.

(2) A person is a minister of religion for the purposes of this section if the person has a status within a church or other religious or spiritual community that requires or calls for that person:

- (a) to receive confidential communications of the kind described in subsection (1); and

(2) O se tagata o ia lea o se itu faamasinoga i se finauga o se ituaiga lea e mafai ona tuuina atu ai se faamama avega i totonu o se tualumaga tau le va o tagata, e i ai se tulaga aloaia e tusa ai o se pepa aloaia e agatapuia lea sa saunia e le tagata pe sa poloaia ina ia saunia, i le tulaga e fesootai ma se taumafaiga ina ia teuteu le feeseeseaiga po o le faatalatalanoa o se faiga e foia ai le feeseeseaiga.

(3) O lenei fuaiupu e lē faaaogāina i:

- (a) tuutuuga o se maliega e foia ai se feeseeseaiga; po o
- (b) faamatalaga molimau talafeagai e faamaonia ai le i ai o le maliega i totonu o se tualumaga lea sa tuuina atu ai le faaiuga o le maliega; po o
- (c) le faaaogāina i totonu o se tualumaga, e faapitoa lava mo faamoemoea o le tuuina atu o tau, o se ofo tusitusia lea -

- (i) ua taua manino ai le leai o se tulaga faaituau, ae vagana ai ua faasino i tau; ma
- (ii) e faasino i se mataupu o i totonu o le tualumaga.

48. Tulaga aloaia mo fesootaiga ma faifeau o nuu-(1) E i ai i se tagata se tulaga aloaia e tusa ai o so o se fesootaiga i le va o lea tagata ma se faifeau o le nuu pe afai o le fesootaiga:

- (a) ua faia i tulaga agatapuia i po o e le faifeau i lona tulaga gafatia faa-faifeau o le nuu; ma
- (b) ua faia mo le faamoemoe o le tagata ua mauaina po o ua taliaina fautuaga faaleagaga, tulaga e manuia ai po o upu faamalosiua mai le faifeau.

(2) Ua avega se tagata ma faifeau o le nuu mo faamoemoea o lenei fuaiupu pe afai o i ai ia te ia se tulaga tofi i totonu o se ekalesia po o nisi faalapotopotoga faaleagaga lea e manaomia ai po o valaauina ai lea tagata:

- (a) ia mauaina fesootaiga e agatapuia o le ituaiga o faamatalaina i le faafuuiupu (1); ma

- (b) to respond with religious or spiritual advice, benefit, or comfort.

49. Privilege in criminal proceedings for information obtained by medical practitioners or clinical psychologist-(1)

This section:

- (a) applies to a person who consults or is examined by a medical practitioner or a clinical psychologist for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct; but
- (b) does not apply in the case of a person who has been required by an order of a Judge, or by other lawful authority, to submit himself or herself to the medical practitioner or a clinical psychologist for any examination, test, or for any other purpose;
- (c) except that any information arising under the examination, test or other purpose should only be used for the purposes under this paragraph unless decided otherwise by a Judge.

(2) A person has a privilege in a criminal proceeding in respect of any communication made by the person to a medical practitioner or a clinical psychologist or that the person believes is necessary to enable the medical practitioner or a clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(3) A person has a privilege in a criminal proceeding in respect of information obtained by a medical practitioner or a clinical psychologist as a result of consulting with or examining

- (b) ia tali atu i fautuaga faaleagaga, tulaga e manuia ai, po o upu faamalosiā.

49. Tulaga aloaia i totonu o taulumaga tau solitulafono mo faamatalaga ua maua mai fomai po o fomai tau le mafaufau-(1) O lenei fuaiupu e:

- (a) faaaogā i se tagata o ia lea ua faatalatalanoa po o ua suesueina e se fomai po o se fomai e suesueina tulaga o le mafaufau mo le tagofia o fualaau faasaina po o so o se isi tulaga po o amioga lea e mafai ona faaalua i totonu o amioga faasolitulafono; ae peitai
- (b) e lē faaaogāina i le tulaga o se tagata o ia lea ua manaomia e ala i se poloaiga a se Faamasino, po o e isi puleaga faaetulafono ina ia oo atu o ia i le fomai po o se fomai e suesueina tulaga o le mafaufau mo so o se iloiloga, suesuega, po o mo so o se isi lava faamoemoe;
- (c) ae vagana ai e faapea ua faatulai mai so o se faamatalaga i lalo o le iloiloga, suesuega po o se isi faamoemoe ona faatoa tataua lea ona faaaogāina mo faamoemoega i lalo o lenei parakalafa seia vagana ai ua fuafuaina e se Faamasino i se isi faiga e ese ai.

(2) E i ai i se tagata se tulaga aloaia i totonu o se taulumaga tau solitulafono e tusa ai o so o se fesootaiga ua faia e le tagata i se fomai po o se fomai e suesueina tulaga o le mafaufau po o ua faapea ona talitonu le tagata ua talafeagai ai ina ia mafai e le fomai po o se fomai e suesueina tulaga o le mafaufau ona suesue, togafitia, pe puipuia le tagata mai le tagofia o fualaau faasaina po o so o se isi lava tulaga po o amioga lea ua mafai ona faaalua i totonu o amioga faasolitulafono.

(3) E i ai i se tagata se tulaga aloaia i totonu o se taulumaga tau solitulafono e tusa ai o faamatalaga ua mauaina e se fomai po o se fomai e suesueina tulaga o le mafaufau e aveā ma taunuuga

the person to enable the medical practitioner or a clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(4) A person has a privilege in a criminal proceeding in respect of information consisting of a prescription, or notes of a prescription, for treatment prescribed by a medical practitioner or a clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or a clinical psychologist to treat or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(5) A reference in this section to a communication to or information obtained by a medical practitioner or a clinical psychologist is to be taken to include a reference to a communication to or information obtained by a person acting in a professional capacity on behalf of a medical practitioner or a clinical psychologist in the course of the examination or treatment of, or care for, the person by that medical practitioner or a clinical psychologist.

(6) Nothing in this section affects the application of section 25B of the Narcotics Act 1967 relating to mandatory reporting of suspicion of illegal use of a narcotic or controlled precursor.

(7) This section is subject to section 172 of the Criminal Procedure Act 1972.

(8) In this section:

“clinical psychologist” means a person registered as such under the Healthcare Professions Registration and Standards Act 2007 as a practitioner of the profession of psychology who is by his or her scope of practice

o le faatalanoaga ma po o le suesueina o le tagata ina ia mafai e le fomai po o se fomai e suesueina tulaga o le mafaufau ona suesue, togafitia pe puipuia le tagata mai le tagafia o fualaa faasaina po o so o se isi lava tulaga po o amioga lea ua mafai ona faaalua i totonu o amioga faasolitulafono.

(4) E i ai i se tagata se tulaga aloaia i totonu o se taualumaga tau solitulafono e tusa ai o faamatalaga o aofia ai se pepa e tala ai vailaau po o faamatalaga o se pepa e tala ai vailaau, mo togafitiga ua faatonuina e se fomai po o se fomai e suesueina tulaga o le mafaufau e avea ma taunuuga o le faatalanoaga ma po o le suesueina o le tagata ina ia mafai e le fomai po o le fomai e suesueina tulaga o le mafaufau ona togafitia pe puipuia le tagata mai le tagafia o fualaa faasaina po o so o se isi lava tulaga po o amioga lea ua mafai ona faaalua i totonu o amioga faasolitulafono.

(5) O se faasinomaga o i totonu o lenei fuaiupu e faasino i se fesootaiga i po o faamatalaga ua mauaina e se fomai po o le fomai e suesueina tulaga o le mafaufau, ua faatatauina e aofia ai se faasinomaga e faasino i se fesootaiga i po o faamatalaga ua mauaina e se tagata o galue i se tulaga tau tomiai faapitoa e avea ai ma sui o se fomai po o se fomai e suesueina tulaga o le mafaufau i le faagasologa o le suesuega po o le togafitiga o, po o le puipuiga o le tagata e lea fomai.

(6) E leai se mea o i lenei fuaiupu e aafia ai le faaogāina o le fuaiupu 25B o le Tulafono o Vailaau Nakoti `1967, e faasino i le faamalosi ona lipotia le tulaga masalomia o le faaogāina faasolitulafono o vailaau nakoti po o le tagata e faapogai ai.

(7) O lenei fuaiupu e noatia ma fai fuafua i le fuaiupu 172 o le Tulafono o Taulumaga Tau Solitulafono 1972.

(8) I totonu o lenei fuaiupu:

“tagata e suesueina tulaga o le mafaufau” o lona uiga o se tagata ua faamauiina i lalo o le Tulafono o le Faamauiina ma Tulaga Faataatitia mo Tomiai Faapitoa tau Soifua Maloloina 2007 e avea o se fomai o tomiai faapitoa

permitted to diagnose and treat persons suffering from mental and emotional problems;

“drug dependency” means the state of periodic or chronic intoxication produced by consumption of alcohol or the repeated consumption, smoking, or other use of a controlled drug detrimental to the user, and involving a compulsive desire to continue consuming alcohol or consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug;

“medical practitioner” means a person registered as such under the Medical Practitioners Act 2007.

50. Privilege against self-incrimination-(1) This section applies if:

- (a) a person is (apart from this section) required to provide specific information -
 - (i) in the course of a proceeding; or
 - (ii) by a person exercising a statutory power or duty; or
 - (iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

- (b) the information would, if so provided, be likely to incriminate the person under Samoan law for an offence punishable by a fine or imprisonment.

(2) The person:

- (a) has a privilege in respect of the information and cannot be required to provide it; and

o tulaga tau le mafaufau o ia lea i le tulaga lautele o lana auunaga, ua faatagaina ai le vaaia ma le togafitia o tagata e mafatia mai faafitauli tau le mafaufau ma ona aafiaga;

“tagofia o fualaau faasaina” o lona uiga o le tulaga o le onā i so o se taimi po o le faaauau pea o tulaga pagatia e mafua mai i le faaaogāina pea, ulaina po o nisi faaaogāina o se fualaau faasaina e faaleaga ai le tagata o faaaogāina, ma aafia ai se lagona e faamalosia ai le faaauau pea ona faaaogā, ulaina, po o le faaaogāina o le fualaau i se isi faiga e ese ai po o se tulaga e siitia ai le faaaogāina o le fualaau;

“fomai” o lona uiga o se tagata ua faamauina e pei ona i ai i lalo o le Tulafono o Fomai 2007.

50. Tulaga aloaia e faasaga i le aafia ai i se tuuaiga-(1) O lenei fuaiupu e faaaogā pe afai:

- (a) ua manaomia se tagata (e ese mai lenei fuaiupu) ina ia tuuina atu se faamatalaga faapitoa:
 - (i) i le faagasologa o le tualumaga po o
 - (ii) e se tagata o faatinoina se malosiaga po o tiute; po o
 - (iii) e se leoleo po o se isi tagata o umia se tofiga a le Malo i le faagasologa o se suesuega, i se soligatulafono tau solitulafono po o se soligatulafono tau solitulafono e tata ai; ma

- (b) o le faamatalaga e ono mafai ona aafia ai i se tuuaiga le tagata i lalo o tulafono a Samoa mo se soligatulafono e ono faasalaina ai i se sala tupe po o le nofosala i le falepuipui, pe afai ua faapena ona aiaia ai.

(2) O le tagata:

- (a) e i ai se tulaga aloaia e tusa ai o le faamatalaga ma e lē mafai ona manaomia lona tuuina atu; ma

(b) cannot be prosecuted or penalised for refusing or failing to provide the information, whether or not the person claimed the privilege when the person refused or failed to provide the information.

(3) Subsection (2) has effect:

(a) unless an enactment removes the privilege against self-incrimination either expressly or by implication; or

(b) the person waives privilege against self-incrimination either expressly or by implication.

(4) Subsection (2) does not enable a claim of privilege to be made:

(a) on behalf of a body corporate; or

(b) on behalf of any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

(c) by a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

(5) This section is subject to section 53.

51. Discretion as to incrimination under foreign law-(1)

This section applies to any specific information:

(a) that a person is (apart from this section) required to provide -

(i) in the course of a proceeding; or

(b) e lē mafai ona faia se moliaga po o se faasalaga mo le teena po o le lē mafai ona tuuina atu o le faamatalaga, e tusa lava pe na tapaina e le tagata le tulaga aloaia pe leai foi i le taimi na teena ai e le tagata po o ua lē mafai ai ona ia tuuina atu le faamatalaga.

(3) E i ai tulaga e aloaia ai le faafuaiupu (2):

(a) seia vagana ai ua aveesea e se tulafono le tulaga aloaia e faasaga i aafiaga i se tuuaiga a lē i se faaaliga manino po o e ala i se faiga faatatauina; po o

(b) ua tuusaunoaina e le tagata ia tulaga aloaia e faasaga i aafiaga i se tuuaiga a lē i se faaaliga manino po o e ala i se faiga faatatauina.

(4) E lē mafai ona faia ai i le faafuaiupu (2) se talosaga o tulaga aloaia:

(a) i luga o le aveia ai ma sui o se itutino o fuafuaga autasi; po o

(b) i luga o le aveia ai ma sui o so o se tagata e ese ai na i lo le tagata o lo o manaomia e tuuina atu le faamatalaga (seia vagana ai e ala i se faufautua faaletulafono i luga o le aveia ai ma sui o se tagata o faaaogāina le auaunaga o ia lea ua faapena ona manaomia); po o

(c) e se tagata ua molia i totonu o se tualumaga tau solitulafono pe afai e tuuina atu le faamatalaga molimau e faatatau i le mataupu lea ua suesueina ai le tagata ua molia.

(5) O lenei fuaiupu e noatia ma fai fuafua i le fuaiupu 53.

51. Pule faitalaia e tusa ai o tuuaiga i lalo o le tulafono a atunuu i fafo-(1) O lenei fuaiupu e faaaogā i so o se faamatalaga maoti:

(a) lea ua manaomia ai se tagata (e ese ai mai lenei fuaiupu) e tuuina atu -

(i) i le faagasologa o se tualumaga; po o

(ii) by a person exercising a statutory power or duty; or

(iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

(b) that would, if so provided, be likely to incriminate the person under foreign law for an offence punishable by -

(i) capital punishment; or

(ii) corporal punishment or imprisonment, or both.

(2) A Judge may direct that the person cannot be required to provide the information if the Judge, after having regard to the likelihood of extradition and other relevant matters, thinks that it would be unreasonable to require the person to incriminate himself or herself by providing the information.

(3) Subsection (2) does not enable a Judge to give a direction in respect of:

(a) a body corporate; or

(b) any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

(c) a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

(ii) e se tagata o faatinoina se malosiaga po o tiute; po o

(iii) e se leoleo po o se isi tagata o umiaina se tofiga a le Malo i le faagasologa o se suesuega i totonu o se soligatulafono tau solitulafono po o se soligatulafono tau solitulafono e tatau ai; ma

(b) o lea tulaga pe afai ua faapena ona aiaia ai, e ono mafai ona tuuaia ai le tagata i lalo o le tulafono a atunuu i fafo mo se soligatulafono e ono faasalaina ai e ala i se;

(i) faasalaga mamafa; po o

(ii) se faasalaga e faamanualia ai le tino po o le nofosala i le falepuipui, po o faasalaga uma e lua.

(2) E mafai e se Faamasino ona faatonuina e faapea e lē manaomia se tagata e tuuina atu le faamatalaga, pe afai ua manatu le faamasino, i le tuanai ai o le amanaiaina o tulaga e tatau ai o le aumaia po o le auina ese atu o le tagata solitulafono ma isi mataupu e talafeagai ai, e faapea o le a lē tatau ona manaomia le tagata e tuuaia o ia lava e ala i le tuuina atu o faamatalaga.

(3) E lē mafai e se Faamasinio i le faafuaiupu (2) ona tuuina atu se faatonuga e tusa ai:

(a) o se itutino o fuafuaga autasi; po o

(b) so o se tagata e ese ai na i lo le tagata ua manaomia e tuuina atu le faamatalaga (ae vagana ai e ala i se faufautua faaetulafono e aveva ai ma sui o se tagata o faaaogāina le auaunaga o ia lea ua faapea ona manaomia); po o

(c) se tagata ua molia i totonu o se taualumaga tau solitulafono pe afai e tuuina atu faamatalaga molimau e faatatau i le mataupu lea ua suesueina ai le tagata ua molia.

52. Claiming privilege against self-incrimination in court proceedings-(1) If in a court proceeding it appears to the Judge that a party or witness may have grounds to claim a privilege against self-incrimination in respect of specific information required to be provided by that person, the Judge must satisfy himself or herself that the person is aware of the privilege and its effect.

(2) A person who claims a privilege against self-incrimination in a court proceeding must offer sufficient evidence to enable the Judge to assess whether self-incrimination is reasonably likely if the person provides the required information.

53. Replacement of privilege with respect to disclosure requirements in civil proceedings-(1) This section applies to a person who is required by an order of the court made for the purposes of a civil proceeding:

- (a) to disclose information; or
- (b) to permit premises to be searched; or
- (c) to permit documents or things to be inspected, recorded, copied, or removed; or
- (d) to secure or produce documents or things.

(2) The person does not have the privilege provided for by section 50 and must comply with the terms of the order.

(3) No evidence of any information that has directly or indirectly been obtained as a result of the person's compliance with the order may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information.

52. Tapaina o tulaga aloaia e faasaga i se faamatalaga molimau e tuuaia ai ia lava i totonu o taualumaga a le faamasinoga-(1) Afai ua aliali mai i le Faamasino i totonu o se taualumaga a le faamasinoga e faapea e mafai ona i ai i se itu faamasinoga po o se tagata molimau ni mafuaaga e tapa ai se tulaga aloaia e faasaga i se faamatalaga molimau e tuuaia ai ia lava e tusa ai o se faamatalaga maoti ua manaomia e tuuina atu e lea tagata, e ao ona faamalieina le Faamasino e faapea ua nofouta le tagata i tulaga aloaia ma ona aafiaga.

(2) O se tagata o ia lea ua tapaina se tulaga aloaia e faasaga i se faamatalaga molimau e tuuaia ai ia lava i totonu o se taualumaga a le faamasinoga, e ao ona tuuina atu faamatalaga molimau e lava atoatoa, ina ia mafai ai e le Faamasino ona iloilo ina pe o se faamatalaga molimau e tuuaia ai ia lava ua talafeagai lea pe afai e tuuina atu e le tagata ia faamatalaga o lo o manaomia.

53. Suiga o tulaga aloaia e tusa ai o manaoga tau le faailoaina atu i totonu o taualumaga tau le va o tagata-(1) O lenei fuaiupu e faaogā i se tagata o ia lea ua manaomia e ala i se poloaiga a le faamasinoga ua faia mo faamoemoega o se taualumaga tau le va o tagata:

- (a) ia faailoa atu ai faamatalaga; po o
- (b) ia faatagaina le sueina o nofoaga ma fale; po o
- (c) ia faatagaina pepa aloaia po o mea e ao ona asiasia, faamauiina, faia o ata, po o le aveesea; po o
- (d) ia faamautuina pe tuuina atu pepa aloaia po o mea.

(2) E le i ai i se tagata le tulaga aloaia ua aiaia e le fuaiupu 50 ma e ao ona tausisia tuutuuga o le poloaiga.

(3) E leai se faamatalaga molimau o so o faamatalaga lea ua maua mai i se faiga tuusao pe leai foi, e avea o se taunuuga o le tausisia e le tagata o le poloaiga, e mafai ona faaogāina e faasaga i le tagata i totonu o so o se taualumaga tau solitulafono, ae vagana ai i totonu o se taualumaga tau solitulafono lea e faatautu i ai le tulaga sese o le faamatalaga.

54. Informers-(1) An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.

(2) A person is an informer for the purposes of this section if the person:

- (a) has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed; and
- (b) is not called as a witness by the prosecution to give evidence relating to that information.

(3) An informer may be a member of the police working undercover.

55. Waivers-(1) A person who has a privilege conferred by any of sections 44 to 50 and 54 may waive that privilege either expressly or impliedly.

(2) A person who has a privilege waives the privilege if that person, or anyone with the authority of that person, voluntarily produces or discloses, or consents to the production or disclosure of, any significant part of the privileged communication, information, opinion, or document in circumstances that are inconsistent with a claim of confidentiality.

(3) A person who has a privilege waives the privilege if the person:

- (a) acts so as to put the privileged communication, information, opinion, or document in issue in a proceeding; or

54. O tagata e logoina atu-(1) E i ai i se tagata e logoina atu se tulaga aloaia e tusa ai o le faamatalaga lea o le a faailoa atu po o e ono mafai ona faailoa ai le tulaga e iloagofie ai le tagata e logoina.

(2) Ua avea se tagata ma tagata e logoina atu mo faamoemoega o lenei fuaiupu, pe afai ua ia:

- (a) tuuina atu e aunoa ma se totogi po o se tau'i se faamatalaga i se lala e faamalosia po o i se sui o se lala e faamalosia, e faatatau i le tatau ai po o le moni o le faiga o se soligatulafono i tulaga aliae mai lea e i ai i se tagata se faamoemoega e tatau ai e faapea o lona tulaga e iloagofie ai o le a le faailoaina atu; ma
- (b) e lē valaauina e avea o se tagata molimau e ala i moliaga faaetulafono ina ia tuuina atu faamatalaga molimau e faasino i lea faamatalaga.

(3) E mafai ona avea se tagata e logoina atu e avea o se leoleo e galue faaleoleo-nana.

55. Tuueseina aloaia-(1) O se tagata o ia lea e i ai se tulaga aloaia ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 50 ma le 54, e mafai ona tuusaunoa lea tulaga aloaia i se faaaliga manino po o i se tulaga ua fuafuaina.

(2) O se tagata o ia lea e i ai se tulaga aloaia ua tuusaunoa ai le tulaga aloaia pe afai, o lea tagata, po o so o se tasi ua i ai le pule faataga a lea tagata, ua faia ma le loto i ai pe faailoa atu, po o malie i le tuuina atu po o le faailoa atu o so o se vaega taua o fesootaiga aloaia, faamatalaga, fautuaga, po o pepa aloaia i totonu o tulaga aliae mai lea e lē ogatasi ma se talosaga o tulaga agatapuia.

(3) O se tagata o ia lea ua i ai se tulaga aloaia, e tuusaunoa le tulaga aloaia pe afai ua ia:

- (a) galue ina ia faapea ona tuuina atu fesootaiga aloaia, faamatalaga, fautuaga po o pepa aloaia o fesiligia i totonu o se tualumaga; po o

(b) institutes a civil proceeding against a person who is in possession of the privileged communication, information, opinion, or document the effect of which is to put the privileged matter in issue in the proceeding.

(4) A person who has a privilege in respect of a communication, information, opinion, or document that has been disclosed to another person does not waive the privilege if the disclosure occurred involuntarily or mistakenly or otherwise without the consent of the person who has the privilege.

(5) A privilege conferred by section 47 may be waived only by all the persons who have that privilege.

56. Joint and successive interests in privileged material-

(1) A person who jointly with some other person or persons has a privilege conferred by any of sections 44 to 50 and 54 in respect of a communication, information, opinion, or document:

- (a) is entitled to assert the privilege against third parties; and
- (b) is not restricted by any of sections 44 to 50 and 54 from having access or seeking access to the privileged matter; and
- (c) may, on the application of a person who has a legitimate interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

(2) If a person has a privilege conferred by any of sections 44 to 47 in respect of a communication, information, opinion, or document, the personal representative of the person or other successor in title to property of the person:

(b) le faatuina o se taualumaga tau le va o tagata e faasaga i se tagata o ia lea o lo o umia fesootaiga aloaia, faamatalaga, fautuaga, po o pepa aloaia, o lona taunuuga o le tuuina atu o mataupu aloaia o fesiligia i totonu o le taualumaga.

(4) O se tagata o ia lea ua i ai se tulaga aloaia e tusa ai o se fesootaiga, faamatalaga, fautuaga, po o pepa aloaia lea ua faailoa atu i se isi tagata, e lē tuusaunoa ai le tulaga aloaia, pe afai e faatulai mai le faailoaina atu i se faiga e le i loto i ai, po o le ave seseina po o i se isi faiga e ese ai, e aunoa ma le maliega a le tagata o ia lea e i ai tulaga aloaia.

(5) O se tulaga aloaia ua faaee atu e le fuaiupu 47 e faatoa mafai ona tuusaunoina e tagata uma o i latou ia e i ai lea tulaga aloaia.

56. Aia soofaatasi ma aia o le soloai ane i ai i vaega e aloaia-(1) O se tagata o ia lea ua soofaatasi ma se isi tagata po o ni tagata e i ai se tulaga aloaia ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 50 ma le 54 e tusa ai o se fesootaiga, faamatalaga, fautuaga, po o pepa aloaia:

- (a) ua agavaa e faaalua manino le tulaga aloaia e faasaga i le isi vaega auai; ma
- (b) e le o faatapulaaina e so o se tasi o fuaiupu 44 e oo i le 50 ma le 54 mai le avanoa i ai po o le taumafai ia avanoa i ai i mataupu aloaia; ma
- (c) mafai, i luga o le talosaga a se tagata o ia lea e i ai se aia faaletulafono i le tausiga o tulaga aloaia (e aofia ai se isi o umia le tulaga aloaia), ona poloaia e se Faamasino ina ia aua nei faailoaina atu le mataupu aloaia i totonu o se taualumaga.

(2) Afai o i ai i se tagata se tulaga aloaia ua faaee atu i so o se tasi o fuaiupu 44 e oo i le 47 e tusa ai o se fesootaiga, faamatalaga, fautuaga, po o se pepa aloaia, o le sui patino o le tagata po o isi e soloai ane i ai, i le pule e umia ai le meatotino a le tagata:

- (a) is entitled to assert the privilege against third parties; and
- (b) is not restricted by any of sections 44 to 47 from having access or seeking access to the privileged matter.

(3) However, subsection (2) applies only to the extent that a Judge is satisfied that the personal representative or other successor in title to property has a justifiable interest in maintaining the privilege in respect of the communication, information, opinion, or document.

(4) A personal representative of a deceased person who has a privilege conferred by any of sections 44 to 47 in respect of a communication, information, opinion, or document and any other successor in title to property of a person who has that privilege, may, on the application of a person who has a legitimate interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

57. Protection of information relating to a matter of State-(1) A Judge may, in the Judge's own initiative or on application of the Attorney General, direct that a communication or information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the communication or information being disclosed in the proceeding is outweighed by the public interest in withholding the communication or information.

(2) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this Division or would, except for a limitation or restriction imposed by this Division, be privileged.

- (a) ua agavaa e faaalua manino le tulaga aloaia e faasaga i le isi vaega auai; ma
- (b) e le o faatapulaaina e so o se tasi o fuaiupu 44 e oo i le 47 mai le avanoa i ai po o le taumafai ia avanoa i ai i mataupu aloaia.

(3) E ui i lea, e faatoa faaaogā lava le faafuiaiupu (2) i le tulaga lea ua faamalieina ai se Faamasino e faapea, o le sui patino po o nisi e soloai ane i ai i le pule e umia meatotino, e i ai se aia ua faamaonia i le tausiga o le tulaga aloaia e tusa ai o le fesootaiga, faamatalaga, fautuaga, po o pepa aloaia.

(4) O se sui patino o se tagata ua maliu o ia lea e i ai se tulaga aloaia ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 47 e tusa ai o se fesootaiga, faamatalaga, fautuaga, po o pepa aloaia ma so o se tasi ua soloai ane i le pule e umia meatotino a se tagata, o ia lea e ona tulaga aloaia, e mafai, i luga o le talosaga a se tagata e i ai se aia faaletulafono i le tausiga o tulaga aloaia (e aofia ai le isi o umia tulaga aloaia), ona poloaia e se Faamasino ina ia aua nei faailoaina atu le mataupu aloaia i totonu o se taulumaga.

57. Puipuiga o faamatalaga e faasino i se mataupu a le Malo-(1) E mafai e se Faamasino, i lana lava fuafuaga po o i luga o se talosaga a le Loia Sili, ona faatonuina e faapea o se fesootaiga po o se faamatalaga lea e faasino i mataupu a le Malo, e ao ona lē faailoaina atu i totonu o se taulumaga pe afai ua manatu le Faamasino e faapea o manaoga o tagata lautele i fesootaiga po o faamatalaga ua faailoa atu i totonu o taulumaga ua sili atu ai manaoga o tagata lautele i le taofiofia o le fesootaiga po o le faamatalaga.

(2) E mafai e se Faamaisno ona tuuina atu se faatonuga i lalo o leni fuaiupu e faapea e lē faailoaina atu se fesootaiga po o se faamatalaga e tusa lava pe o le fesootaiga po o le faamatalaga ua aloaia pe leai foi e ala i se isi aiaiga o leni Vaevaega, po o le a aloaia, ae vagana ai mo se tapulaa po o tulaga e faasaina ai ua faaee atu e leni Vaevaega.

58. Powers of Judge to disallow privilege-(1) A Judge must disallow a claim of privilege conferred by any of sections 44 to 49 and 54 in respect of a communication or information if satisfied there is a *prima facie* case that the communication was made or received, or the information was compiled or prepared, for a dishonest purpose or to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.

(2) A Judge may disallow a claim of privilege conferred by any of sections 44 to 49 and 54 in respect of a communication or information if the Judge is of the opinion that evidence of the communication or information is necessary to enable the defendant in a criminal proceeding to present an effective defence.

(3) Any communication or information disclosed as the result of the disallowance of a claim of privilege under subsection (2) and any information derived from that disclosure cannot be used against the holder of the privilege in a proceeding in Samoa.

Division 3 - Confidentiality

59. Discretion to exclude information given or obtained in confidence-(1) A direction under this section is a direction that any one (1) or more of the following not be disclosed in a proceeding:

- (a) a confidential communication;
- (b) a confidential information;
- (c) an information that would or might reveal a confidential source of information.

58. Malosiaga o le Faamasino e lē faatagaina ai tulaga aloaia-(1) E ao i le Faamasino ona lē faatagaina se talosaga o tulaga aloaia ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 49 ma le 54, e tusa ai o se fesootaiga po o se faamatalaga, pe afai ua faamalieina o ia e faapea o lo o i ai se mataupu aloaia na tuuina atu muamua e faapea sa faia po o ua mauaina le fesootaiga pe sa tuufaatasia pe saunia le faamatalaga, mo se faamoemoe o tulaga lē faamaoni po o ina ia mafai ai pe fesoasoani ai i so o se tasi e faia po o fuafua e faia lea tulaga ua iloa po o e tatau ona iloa e le tagata o talosagaina le tulaga aloaia, o se soligatulafono.

(2) E mafai e se Faamasino ona lē faatagaina se talosaga o tulaga aloaia ua faaee atu e so o se tasi o fuaiupu 44 e oo i le 49 ma le 54 e tusa ai o se fesootaiga po o se faamatalaga pe afai ua manatu le Faamasino ua talafeagai faamatalaga molimau o le fesootaiga po o faamatalaga ina ia mafai ai e le tagata ua molia ona tuuina atu se tetee e tatau ai i totonu o se taulumaga tau solitulafono.

(3) So o se fesootaiga po o se faamatalaga ua faailoa atu e aveva ma taunuuga o le lē faatagaina o se talosaga o tulaga aloaia i lalo o le faafuiaiupu (2) ma so o se faamatalaga na maua mai lea faailoaina atu, e lē mafai on a faaaogāina e faasaa i lē o umia tulaga aloaia i totonu o se taulumaga i totonu o Samoa.

Vaevaega 3 - Tulaga agatapuia

59. Pule faitalia e faalēaogāina ai faamatalaga ua tuuina atu po o ua maua mai i tulaga agatapuia-(1) O se faatonuga na tuuina atu i lalo o lenei fuaiupu, o se faatonuga lea ia lē faailoaina atu ai so o se tasi (1) po o le sili atu o itu ua taua i lalo, i totonu o se taulumaga:

- (a) o se fesootaiga e agatapuia;
- (b) o se faamatalaga e agatapuia;
- (c) o se faamatalaga lea o le a faaalua ai po o e mafai ona faaalua ai se tulaga agatapuia o le faapogai o le faamatalaga.

(2) A Judge may give a direction under this section if the Judge considers that the public interest in the disclosure in the proceeding of the communication or information is outweighed by the public interest in:

- (a) preventing harm to a person by whom, about whom, or on whose behalf the confidential information was obtained, recorded, or prepared or to whom it was communicated; or
- (b) preventing harm to -
 - (i) the particular relationship in the course of which the confidential communication or confidential information was made, obtained, recorded, or prepared; or
 - (ii) relationships that are of the same kind as, or of a kind similar to, the relationship referred to in subparagraph (i); or
- (c) maintaining activities that contribute to or rely on the free flow of information.

(3) When considering whether to give a direction under this section, the Judge must have regard to:

- (a) the likely extent of harm that may result from the disclosure of the communication or information; and
- (b) the nature of the communication or information and its likely importance in the proceeding; and
- (c) the nature of the proceeding; and
- (d) the availability or possible availability of other means of obtaining evidence of the communication or information; and
- (e) the availability of means of preventing or restricting public disclosure of the evidence if the evidence is given; and

(2) E mafai e se Faamasino ona tuuina atu se faatonuga i lalo o lenei fuaiupu, pe afai ua manatu le Faamasino e faapea o le manaoga o tagata lautele i le faailoaina atu i totonu o le tualumaga o fesootaiga po o faamatalaga ua sili atu ai manaoga o tagata lautele i le:

- (a) puipuiga o tulaga e afaina ai se tagata o ia lea, ua faatatau i ai, po o le avea ma sui e mauaina mai, faamauina pe saunia faamatalaga agatapuaia po o lē na fesootai atu i ai; po o
- (b) puipuiga o tulaga e afaina ai i -
 - (i) se sootaga faapitoa i le faagasologa o tulaga sa faia ai, mauaina mai, faamauina po o le saunia o fesootaiga po o faamatalaga e agatapuaia; po o
 - (ii) sootaga o lea lava ituaiga po o se ituaiga e tutusa ma le sootaga o faasinomia i le parakalafa laititi (i); po o
- (c) le faatumauina o gaoioiga lea e i ai sao i po o e faalagolago i ai i le fesoloai saoloto o faamatalaga.

(3) Afai ua manatu e tuuina atu se faatonuga i lalo o lenei fuaiupu, e ao i le Faamasino ona amanaia itu nei:

- (a) o le tulaga e ono afaina ai lea e mafai ona tupu mai le faailoaina atu o le fesootaiga po o faamatalaga; ma
- (b) le uiga o le fesootaiga po o le faamatalaga ma lona taua i totonu o le tualumaga; ma
- (c) le uiga o le tualumaga; ma
- (d) le tulaga o le avanoa ai po o le tataua ona avanoa ai o nisi faiga e maua mai ai faamatalaga molimau o le fesootaiga po o le faamatalaga; ma
- (e) le tulaga o le avanoa ai o faiga e taofia ai po o e faasaina ai le faailoa faalauaitele o faamatalaga molimau pe afai e tuuina atu faamatalaga molimau; ma

(f) the sensitivity of the evidence, having regard to -

(i) the time that has elapsed since the communication was made or the information was compiled or prepared; and

(ii) the extent to which the information has already been disclosed to other persons; and

(g) the society's interest in protecting the privacy of victims of offences and, in particular, victims of sexual offences.

(4) The Judge may, in addition to the matters stated in subsection (3), have regard to any other matters that the Judge considers relevant.

(5) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this Division or would, except for a limitation or restriction imposed by this Division, be privileged.

60. Evidence of parties and their husbands and wives in civil proceedings - In any civil proceeding, the parties to civil proceeding, and the persons on whose behalf the proceeding is brought or defended, and the husbands and wives of the parties or persons respectively, are competent and compellable to give evidence on behalf of either or any of the parties to the proceeding.

61. Evidence of defendants in criminal proceedings and their husbands and wives-(1) A defendant charged with an offence is a competent but (except where the contrary is

(f) le tulaga e faamautinoa ai le puipuia malu o le faamatalaga molimau, i le amanaia ai -

(i) o le taimi lea ua alu talu ona faia le fesootaiga pe sa tuufaatasia pe saunia ai le faamatalaga; ma

(ii) le tulaga lea na muai faailoa atu ai le faamatalaga i isi tagata; ma

(g) manaoga o le sosaiete i le puipuga o le tulaga saoloto o tagata ua afaina i soligatulafono ma aemaise lava tagata ua afaina i soligatulafono tau faiga aiga.

(4) E mafai e le Faamasino, i le faaopoopo atu i ai i mataupu ua taua i le faafuaiupu (3), ona amanaia so o se isi lava mataupu lea ua ia manatu ua talafeagai ai.

(5) E mafai e se Faamasino ona tuuina atu se faatonuga i lalo o lenei fuaiupu e faapea, e ao ona lē faailoaina atu se fesootaiga po o se faamatalaga e tusa lava pe o le fesootaiga po o le faamatalaga ua aloaia e se isi aiaiga o lenei Vaevaega pe leai foi, po o le a aloaia, ae vagana ai mo se tulaga faatapulaaina po o e faasaina ua faaee atu e lenei Vaevaega.

60. Faamatalaga molimau a itu faamasinoga ma o latou taitoalua ma āvā i totonu o taualumaga tau le va o tagata - I totonu o so o se taualumaga tau le va o tagata, ua agavaa ma e mafai ona faamalosiā itu faamasinoga i se taualumaga tau le va o tagata, ma tagata o aveā ma sui na mafua ai le taualumaga po o tetee, ma taitoalua ma āvā a ē o i ai i itu faamasinoga po o tagata i lena faasologa, e tuuina atu faamatalaga molimau e aveā ai ma sui o itu faamasinoga po o so o se tasi o itu faamasinoga i le taualumaga.

61. Faaamatalaga molimau a tagata ua molia i totonu o taualumaga tau solitulafono, ma o latou taitoalua ma āvā-(1) O se tagata ua molia i se soligatulafono ua aveā ma tagata

expressly provided by any enactment) not a compellable witness upon his or her trial for that offence.

(2) The wife or husband of a defendant charged with an offence is a competent witness, on the trial of that person, but is not a compellable witness upon his or her trial for that offence, except in the following cases:

- (a) when called as a witness by the defendant;
- (b) when the offence of which the defendant is charged is an offence against the wife or husband of the defendant or against a child of either the wife or the husband;
- (c) when the offence of which the defendant is charged is an offence reported to the Police by the wife or the husband of the defendant;
- (d) when the offence of which the defendant is charged is murder or manslaughter and the wife or husband witnessed the act of killing the person;
- (e) bigamy.

(3) The former wife or former husband of a defendant charged is a competent and compellable witness upon the person's trial for that offence.

(4) If a witness who under this section is competent but not compellable gives evidence on any such trial, the witness is liable to cross-examination in the same manner as if the witness was a compellable witness, whether or not the matter on which the witness is so cross-examined arises out of his or her examination-in-chief.

molimau ua agavaa ae peitai e le o se tagata molimau e ono faamalasia i luga o lona suesuega mo lea soligatulafono (seia vagana ai pe afai ua aiaia manino e so o se tulafono se tulaga e ese ai).

(2) O le āvā po o le toalua o se tagata ua molia ua molia i se soligatulafono, e avea o se tagata molimau agavaa lea i luga o le suesuega o lea tagata, aepeitai e le o se tagata molimau e ono faamalasia i luga o lona suesuega mo lea soligatulafono, seia vagana ai tulaga nei:

- (a) pe afai ua valaauina e avea o se tagata molimau e lē ua molia;
- (b) pe afai o le soligatulafono lea e molia ai le tagata ua molia, ua o se soligatulafono e faasaga i le āvā po o le toalua o le tagata ua molia po o e faasaga i se tamaitiiti a se tinā po o se tamā;
- (c) pe afai o le soligatulafono lea ua molia ai le tagata ua molia ua avea o se soligatulafono ua lipotia i Leoleo e le āvā po o le toalua o le tagata ua molia;
- (d) pe afai o le soligatulafono lea ua molia ai le tagata ua molia, o le fasioti tagata faameomoeina po o le fasioti tagata e le i faamoemoeina ma sa molimauiina e le āvā po o le toalua ia gaoioiga o le fasiotia o le tagata;
- (e) nofolua (lua āvā).

(3) O le āvā muamua po o le toalua muamua o se tagata ua molia, o se tagata molimau agavaa lea ma e ono faamalasia i luga o le suesuega o le tagata mo lea soligatulafono.

(4) Afai o se tagata molimau o ia lea ua agavaa i lalo o lenei fuaiupu, ae peitai e le o faamalasia e tuuina atu se faamatalaga molimau e uiga i so o sea suesuega, e noatia le tagata molimau e fesiligia i lea lava faiga e faapei ai le tagata molimau o se tagata molimau ua faamalasia, e tusa lava pe o le mataupu lea ua fesiligia ai pe leai foi le tagata molimau, ua faatulai mai i lona suesuega autu e le vaega na valaauina.

(5) In this section, “child” includes adopted child, foster child or child living under the care of the wife or husband.

PART 4 TRIAL PROCESS

Division 1 - General

62. Competence and compellability-(1) Subject to sections 63 to 65, in a civil or criminal proceeding:

- (a) any person is competent to give evidence; and
- (b) a person who is competent to give evidence is compellable to give that evidence.

(2) A person must not be excluded from giving evidence in any proceeding on the ground that the person has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground of the person’s previous conviction of any offence.

63. Competence of Judges, assessors and counsel-(1) A person who is acting as a Judge in a proceeding is not competent to give evidence in that proceeding.

(2) A person who is acting as an assessor or counsel in a proceeding is not competent to give evidence in that proceeding except with the permission of the Judge.

(3) In this section:
“counsel” includes a prosecutor.

(5) I totonu o lenei fuaiupu, “tamaitiiti” e aofia ai le tamaitiiti ua vaetamaina, tamaitiiti fai, po o se tamaitiiti o lo o ola ae i lalo o le tausiga a le āvā po o le toalua.

VAEGA 4 FAAGASOLOGA O SUESUEGA

Vaevaega 1 - Tulaga Lautele

62. Tulaga agavaa ma faamalosia-(1) I le noatia male faifuafula i fuaiupu 63 e oo i le 65, i totonu o se taualumaga tau le va o tagata po o se taualumaga tau solitulafono:

- (a) ua agavaa so o se tagata e tuuina atu faamatalaga molimau; ma
- (b) o se tagata o ia lea ua agavaa e tuuina atu faamatalaga molimau, ua mafai ona faamalosia e tuuina atu lea faamatalaga molimau.

(2) E lē tataua ona tuueseina se tagata mai le tuuina atu o se faamatalaga molimau i totonu o so o se taualumaga, i luga o mafuaaga e faapea o lo o i ai i se tagata po o e mafai ona i ai i se tagata se aia i le mataupu o lo o suesueina, po o i le taunuuga o le taualumaga, po o i luga o le mafuaaga o le moliaga ua faamaonia faaletulafono o so o se soligatulafono, na faia muamua e le tagata.

63. Tulaga agavaa o Faamasino, o faatonu ma faufautua-(1) E lē agavaa se tagata o ia lea o lo o galue e avea o se Faamasino i totonu o se taulaumaga e tuuina atu se faamatalaga molimau i totonu o lea taualumaga.

(2) E lē agavaa se tagata o ia lea o lo o galue e avea o se faatonu po o se faufautua i totonu o se taualumaga, e tuuina atu se faamatalaga molimau i totonu o lea taualumaga seia vagana ai ua i ai le faatagaga a le Faamasino.

(3) I totonu o lenei fuaiupu:
“faufautua” e aofia ai se faafoe moliaga.

64. Compellability of defendants and co-defendants in criminal proceedings-(1) A defendant in a criminal proceeding is not a compellable witness for the prosecution or the defence in that proceeding.

(2) A co-defendant is a competent and compellable witness to give evidence for or against a defendant in a criminal proceeding if:

- (a) the co-defendant is being tried separately from the defendant; or
- (b) the proceeding against the co-defendant has been determined.

(3) A proceeding has been determined for the purposes of subsection (2) if:

- (a) the proceeding has been stayed, or the information against the co-defendant has been withdrawn or dismissed; or
- (b) the co-defendant has been acquitted of the offence; or
- (c) the co-defendant, having pleaded guilty to, or having been found guilty of, the offence, has been sentenced or otherwise dealt with for that offence.

(4) Where two (2) or more persons are jointly charged with any offence, the evidence of a person called as a witness for the prosecution or the defence under this section may be received as evidence either for or against any of the persons so charged.

(5) In this section, “co-defendant”, in relation to a defendant in a criminal proceeding, means a person who is jointly charged with the defendant.

64. Tulaga faamalosia o tagata ua molia ma tagata o aufaatasi e tetee, i totonu o tualumaga tau solitulafono-(1) O se tagata ua molia i totonu o se tualumaga tau solitulafono, e le o se tagata molimau e mafai ona faamalosia mo moliaga faaletulafono po o le tetee atu i totonu o lea tualumaga.

(2) O se tagata o aufaatasi e tetee ua avea o se tagata molimau agavaa ma e mafai ona faamalosia o ia e tuuina atu faamatalaga molimau mo po o e faasaga i se tagata ua molia i totonu o se tualumaga tau solitulafono pe afai:

- (a) ua suesueina eseese le tagata o aufaatasi e tetee mai le tagata ua molia; po o
- (b) ua fuafuaina le tualumaga e faasaga i le tagata o aufaatasi e tetee.

(3) Ua fuafuaina se tualumaga mo faamoemoega o le faafuaiupu (2) pe afai:

- (a) ua taofia le tualumaga, po o ua toe faui i tua po o ua faalēaogāina le faamatalaga e faasaga i le tagata o aufaatasi e tetee; po o
- (b) ua lē faamaonia le soligatulafono o le tagata o aufaatasi e tetee; po o
- (c) ua ioeina e le tagata o aufaatasi e tetee le nofosala i, po o ua faamaonia le nofosala i le soligatulafono, ua faasalaina po o ua tagofia i se isi faiga e ese ai lea soligatulafono.

(4) Afai ua molia faatasi le toalua (2) po o le sili atu o tagata i so o se soligatulafono, o le faamatalaga molimau a le tagata ua valaauina e avea ma tagata molimau mo le moliaga faaletulafono po o le tetee i lalo o lenei fuaiupu, e mafai ona maua mai e avea ma faamatalaga molimau mo so o se tagata po o e faasaga i so o se tagata ua faapena ona molia.

(5) I totonu o lenei fuaiupu, “tagata o aufaatasi e tetee”, e faasino i se tagata ua molia i totonu o se tualumaga tau solitulafono, o lona uiga o se tagata o ia lea e faasaga i ai se moliaga soofaatasi ma le tagata ua molia.

65. Compellability of Head of State, Judges, etc., - The following persons are not compellable to give evidence:

- (a) the Head of State;
- (b) a Sovereign or Head of State of another country;
- (c) a Judge, including a Judge of the Land and Titles Court, in respect of the Judge's conduct as a Judge.

66. Evidence of assessors deliberations-(1) A person must not give evidence about the deliberations of assessors.

(2) Subsection (1) does not prevent the giving of evidence about matters that do not form part of the deliberations of assessors including (without limitation):

- (a) the competence or capacity of an assessor; or
- (b) any conduct of, or knowledge gained by, an assessor that is believed to disqualify that assessor from holding that position.

(3) Subsection (1) does not prevent a person from giving evidence about the deliberations of assessors if the Judge is satisfied that the particular circumstances are so exceptional that there is a sufficiently compelling reason to allow that evidence to be given.

(4) In determining, under subsection (3), whether to allow evidence to be given in any proceedings, the Judge must weigh:

- (a) the public interest in protecting the confidentiality of assessors' deliberations generally; or

65. Tulaga faamalosia o Le Ao o le Malo, Faamasino, ma isi faapena - O tagata ua taua i lalo, e lē faamalosia e tuuina atu ni faamatalaga molimau:

- (a) o Le Ao o le Malo;
- (b) o se Pulega Aoao po o Le Ao o le Malo o se isi atunuu;
- (c) o se Faamasino e aofia ai se Faamasino o le Faamasinoga o Fanua ma Suafa, e tusa ai o le faafoega a le Faamasino i le avefa ai o se Faamasino.

66. Faamatalaga molimau o felafolafoaiga a faatonu-(1) E lē tataua i se tagata ona tuuina se faamatalaga molimau e faatatau i felafolafoaiga a faatonu.

(2) E lē taofia ai e le faafuuiupu (1) le tuuina atu o faamataga molimau e faatatau i mataupu lea e le o avefa ma vaega o felafolafoaiga a faatonu e aofia ai (e aunoa ma le faatapulaaina):

- (a) le tulaga agavaa po o le mafai gafatia o se faatonu; po o
- (b) so o se amioga a, po o se malamalamaaga ua maua e, se faatonu lea ua talitunuina e tau lē agavaaina ai lea faatonu mai le umiaina o lea tulaga tofi.

(3) E lē taofia ai e le faafuuiupu (1) se tagata mai le tuuina atu o se faamatalaga molimau e faatatau i felafolafoaiga a faatonu pe afai ua faamalieina le Faamasino e faapea o tulaga faapitoa e aliaie mai ua faapena ona tuusaunoaina ai e faapea o lo o i ai se mafuaaga atoatoa e mafai ona faamalosia ai le faatagaina o le tuuina atu o lea faamatalaga molimau.

(4) I le fuafuaina, i lalo o le faafuuiupu (3) pe a faatagaina faamatalaga molimau ina ia tuuina atu i totonu o so o se tualumaga, e ao i le Faamasino ona faataua:

- (a) le manaoga o tagata lautele i le puipuiga o tulaga agatapuia o felafolafoaiga a faatonu i lona tulaga lautele; po o

- (b) the public interest in ensuring that justice is done in those proceedings.

Division 2 - Oaths or affirmations

67. Witness to give evidence on oath or affirmation-(1)

The evidence of all witnesses in any proceeding must be given under oath or affirmation.

(2) A witness who is or appears to be under the age of 12 years may in any proceeding be examined without oath, but the witness is required, before being examined, to make the following declaration or a declaration to the like effect:

“I promise not to tell lies, but to speak the truth, the whole truth, and nothing but the truth.”

(3) The declaration is of the same force and effect as if the witness had taken an oath.

(4) Evidence given by a witness to whom subsection (2) applies must be treated in the same manner as if that evidence had been given on oath.

(5) Despite subsections (1) and (2), a witness:

- (a) to whom either of those subsections apply may give evidence without taking an oath, or making an affirmation, or making a promise to tell the truth, with the permission of the Judge; and

- (b) le manaoga o tagata lautele i le faamautinoaina ua faapea ona faia le amiotonu i totonu o na taualumaga.

Vaevaega 2 - Tautoga po o faamaoniga aloaia

67. Ia tuuina atu e tagata molimau ia faamatalaga molimau i luga o tautoga po o faamaoniga aloaia-(1) E ao ona tuuina atu faamatalaga molimau a tagata molimau uma i totonu o so o se taualumaga, i lalo o se tautoga po o se faamaoniga aloaia.

(2) O se tagata molimau o ia lea ua po o ua aliali mai e i lalo ifo o le 12 tausaga le matua, e mafai na suesueina i totonu o so o se taualumaga, e aunoa ma se tautoga, ae peitai, e manaomia le tagata molimau a o lumanai ai le suesuega, ina ia faia le tautinoga ua taua po o se tautinoga ua faapena ona aloaia.

“Ou te tautino atu o le a ou lē faia se tala pepelo, ae o le a ou tala i le faamaoni, o le faamaoni ua atoatoa, ma e leai se isi mea na o le faamaoni lava.”

(3) E tutusa lelei lava le faamamaluina ma le aloaia o le tautinoga e faapei o se tautoga ua faia e le tagata molimau.

(4) O le faamatalaga molimau ua tuuina atu e se tagata molimau o ia lea o faaaogā i ai le faafuaiupu (2) e ao ona faatatauina i lea lava faiga e faapei ai o lea faamatalaga molimau sa tuuina atu i luga o se tautoga.

(5) E ui lava i le faafuaiupu (1) ma le (2), o se tagata molimau:

- (a) o ia lea ua faaaogā i ai se tasi o ia faafuaiupu, e mafai ona tuuina atu se faamatalaga molimau e aunoa ma le faia o se tautoga, po o le faia o se faamaoniga aloaia, po o le faia o se folafolaga e faailoa ai le faamaoni, i le i ai o le faatagaga a le Faamasino; ma

- (b) if the Judge gives permission under paragraph (a), must be informed by the Judge of the importance of telling the truth and not telling lies, before the witness gives evidence; and
- (c) after being given the information referred to in paragraph (b), may give evidence which must be treated in the same manner as if that evidence had been given on oath.

68. Interpreter to take oath or make affirmation-(1) A person must either take an oath or make an affirmation before acting as an interpreter in a proceeding.

(2) An officer of the court may, upon appointment, take the oath or make an affirmation under subsection (1).

Division 3 - Support persons, communication assistance and witness address

69. Supportpersons and communication assistance-(1) A complainant in an offence, when giving evidence in a criminal proceeding, is entitled to have one (1) person, and may, with the permission of the Judge, have more than one (1) person, near him or her to give support.

(2) Any other witness, when giving evidence in any proceeding, may with the permission of the Judge, have one (1) or more support persons near him or her to give support.

(3) Despite subsections (1) and (2), the Judge may, in the interest of justice, direct that support may not be provided to a complainant or to a witness by:

- (b) afai ua tuuina atu e le Faamasino le faatagaga i lalo o le parakalafa (a), e ao ona logoina e le Faamasino le tagata molimau e uiga i le taua o le tautala i le faamaoni ae le o le tautala pepelo, a o lumanai ai lona tuuina atu o le faamatalaga molimau; ma
- (c) i le tuanai ai ona tuuina atu o le faamatalaga o faasinomia i le parakalafa (b), e mafai ona tuuina atu faamatalaga molimau ia e ao ona faatatauina i lea lava faiga e faapei ai o lea faamatalaga sa tuuina atu i luga o se tautoga.

68. Ia faia e faamatala upu ia tautoga ma faamaoniga aloaia-(1) E ao i se tagata ona faia se tautoga po o se faamaoniga aloaia a o le i galue e avea o se faamatala upu i totonu o se taualumaga.

(2) E mafai e se tagata ofisa o le faamasinoga, i luga o tofiga, ona faia se tautoga po o se faamaoniga aloaia i lalo o le faafuaiupu (1).

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

69. Tagata lagolago ma fesoasoani tau fesoataiga-(1) O se tagata faasea i se soligatulafono, pe afai e tuuina atu se faamatalaga molimau i totonu o se taualumaga tau solitulafono, ua agavaa ia i ai le tagata e toatasi (1), ma e mafai, i le i ai o le faatagaga a le Faamasino, ona sili atu i le toatasi (1) le tagata, i ona tafatafa e tuuina atu le lagolago.

(2) So o se isi lava tagata molimau, pe afai e tuuina atu se faamatalaga molimau i totonu o so o se taualumaga, e mafai i le i ai o le faatagaga a le Faamasino, ona i ai le toatasi (1) po o se sili atu o tagata lagolago i ona tafatafa e tuuina atu le lagolago.

(3) E ui lava i le faafuaiupu (1) ma le (2), e mafai e le Faamasino, e tusa ai ma manaoga o faaiuga amiotonu ona faatonuina e faapea e lē mafai ona tuuina atu le lagolago i se tagata faasea po o i se tagata molimau e:

- (a) any person; or
- (b) a particular person; or
- (c) a person who is required to give evidence in that criminal proceeding.

(4) A complainant or other witness who is to have a support person near him or her while giving evidence must, unless the Judge orders otherwise, disclose to all parties as soon as practicable the name of each person who is to provide that support.

(5) The following persons are entitled to communication assistance under this Act or regulations under this Act:

- (a) defendant in a criminal proceeding to -
 - (i) enable the defendant to understand the proceeding; and
 - (ii) give evidence if the defendant elects to do so;
- (b) a witness in a civil or criminal proceeding to enable the witness to give evidence.

(6) Communication assistance may be provided to:

- (a) a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge; or
- (b) a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge.

- (a) so o se tagata; po o
- (b) se tagata faapitoa; po o
- (c) se tagata o ia lea ua manaomia e tuuina atu faamatalaga molimau i totonu o lea tualumaga tau solitulafono.

(4) O se tagata faasea po o se tagata molimau o ia lea ua i ai se tagata lagolago i ona tafatafa ao tuuina atu le faamatalaga molimau, e ao ona faailoa atu i itu faamasinoga uma i se taimi vave lava e mafai ai ona faatino le igoa o tagata taitoatasi o i latou ia e ao ona tuuina atu lea lagolago, seia vagana ai ua poloaia e le Faamasino i se isi faiga e ese ai.

(5) O tagata ua taua ua agavaa i fesoasoani tau fesootaiga i lalo o lenei Tulafono po o tulafono faatonutonu i lalo o lenei Tulafono:

- (a) o se tagata ua molia i totonu o se tualumaga tau solitulafono ina ia:
 - (i) mafai ai e le tagata ua molia ona malamalama i tualumaga; ma
 - (ii) tuuina atu faamatalaga molimau pe afai ua filifili le tagata ua molia ia faapena ona faia;
- (b) o se tagata molimau i totonu o se tualumaga tau le va o tagata po o le tau solitulafono ina ia mafai ai e le tagata molimau ona tuuina atu faamatalaga molimau.

(6) E mafai ona tuuina atu le fesoasoani tau fesootaiga i:

- (a) se tagata ua molia i totonu o se tualumaga tau solitulafono i luga o le talosaga a le tagata ua molia i totonu o le tualumaga po o i luga o le fuafuaga a le Faamasino; po o
- (b) se tagata molimau i luga o le talosaga a le tagata molimau po o so o se itu faamasinoga o i le tualumaga po o i luga o le fuafuaga a le Faamasino.

(7) A statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury under the Crimes Act 2013.

(8) Communication assistance need not be provided to:

(a) a defendant in a criminal proceeding if the Judge considers that the defendant -

(i) can sufficiently understand the proceeding; and

(ii) if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them; or

(b) a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.

(9) The Judge may:

(a) give directions regulating the conduct of a person providing or receiving support under this section; or

(b) direct what kind of communication assistance is to be provided to a defendant or a witness.

70. Witness's address may not be subject to question-(1)

In any proceeding, the precise particulars of a witness's address (such as, details of the place or village) may not, without the permission of the Judge, be:

(7) O se faamatalaga ua faia i totonu o le faamasinoga i se Faamasino po o se tagata molimau e se tagata o tuuina atu le fesoasoani tau fesoataiga e ao ona faatatauina ua tauto pepelo i lalo o le Tulafono o Solitulafono 2013, pe afai ua iloa e le tagata na faia lea faamatalaga e sese ma ua faamoemoe lea tagata ina ia tau faasese ai.

(8) E lē manaomia le tuuina atu o le fesoasoani tau fesoataiga i:

(a) se tagata ua molia i totonu o se tualumaga tau solitulafono pe afai ua manatu le Faamasino o lea tagata ua molia -

(i) ua mafai ona lava atoatoa le malamalama i le tualumaga; ma

(ii) afai ua filifili le tagata ua molia e tuuina atu le faamatalaga molimau, ua mafai ona malamalama atoatoa i fesili ua tuufofoga atu ma mafai ona tali sao atu i ai; po o

(b) se tagata molimau i totonu o se tualumaga tau le va o tagata po o se tualumaga tau solitulafono pe afai ua manatu le Faamasino e faapea e mafai e le tagata molimau ona malamalama atoatoa i fesili ua tuufofoga atu ma mafai ona tali sao atu i ai.

(9) E mafai e le Faamasino ona:

(a) tuuina atu faatonuga e faatonutonu faaetulafono ai le amio a se tagata e tuuina atu pe taliaina le lagolago i lalo o lenei fuaiupu; pe

(b) faatonu le ituaiga fesoasoani tau fesoataiga e ao ona tuuina atu i se tagata ua molia po o se tagata molimau.

70. E lē mafai ona noatia le fesiligia o le tuatusi o le tagata molimau-(1) I totonu o so o se tualumaga o faamatalaga auiliili moni o le tuatusi o se tagata molimau (e pei o le auiliiliga o le nofoaga po o le nuu) e lē mafai, e aunoa ma le faatagaga a le Faamasino, ona ave ma:

- (a) the subject of any question to a witness or included in any evidence given; or
- (b) included in any statement or remark made by a witness, lawyer, officer of the court, or any other person.

(2) The Judge must not grant permission under subsection (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission under subsection (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) In any proceeding, the Judge may order that the identity of any witness may be excluded in any written statement, where disclosure of identity may risk the safety of the witness or interference with the witness.

(5) Nothing in subsection (1) applies in a criminal proceeding if it is necessary to disclose the particulars in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

Division 4 - Questioning witnesses

71. Ordinary way of giving evidence-(1) The ordinary way for a witness to give evidence is:

- (a) in a criminal or civil proceeding, orally in a courtroom in the presence of -

- (a) autu o so o se fesili i se tagata molimau pe aofia ai i so o se faamatalaga molimau ua tuuina atu; pe
- (b) aofia ai i so o se faamatalaga po o se manatu faaalua ua faia e se tagata molimau, loia, tagata ofisa o le faamasinoga, po o so o se isi lava tagata.

(2) E ao i le Faamasino ona lē faamatuuina atu se faatagaga i lalo o le faafuaiupu (1), seia vagana ai ua faamalieina o ia e faapea o le fesili o le a faia, o le faamatalaga molimau o le a tuuina atu, po o le faamatalaga po o le manatu faaalua ua faia, ua talafeagai atoatoa lea i mea moni ua tuuina atu lea e faapea ai o lona lē faaaogāina o le a feteenai ai ma manaoga o faaiuga amiotonu.

(3) E mafai ona faia se talosaga mo se faatagaga i lalo o le faafuaiupu (1), a o lumanai ai po o le tuanai ai o le amataga o so o se suesuega, ma e ao ona faia ma tagofiaina i totonu o potu faamasino, pe afai e talafeagai ai.

(4) I totonu o so o se taualumaga, e mafai e le Faamasino ona poloaia e faapea o le tulaga e iloagofie ai so o se tagata molimau e mafai ona lē aofia ai i totonu o so o se faamatalaga tusitusia, pe afai o le faailoaina atu o le tulaga e iloagofie ai o le a mafai ona lamatia ai le saogalemu o le tagata molimau pe faalavelaveina ai o ia.

(5) E leai se mea o i le faafuaiupu (1) e faaaogāina i totonu o se taualumaga tau solitulafono, pe afai ua talafeagai ai le faailoa atu o faamatalaga auiliili i totonu o le moliaga ina ia faamautinoa ai ua faapea ona logoina atoatoa ma sao le tagata ua molia e uiga i le moliaga.

Vaevaega 4 - Fesiliga o tagata molimau

71. Auala masani e tuuina atu ai faamatalaga molimau-(1) O le auala masani mo se tagata molimau e tuuina atu ai le faamatalaga molimau o:

- (a) totonu o se taualumaga tau solitulafono po o le tau le va o tagata, i se faiga tuufofoga i totonu o se potu faamasino o lo o auai ai -

(i) the Judge or, if there are assessors, the Judge and assessors; and

(ii) the parties to the proceeding and their counsel; and

(iii) any member of the public who wishes to be present, unless excluded by order of the Judge; or

(b) in a criminal proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if both the prosecution and the defendant consent to the giving of evidence in this form; or

(c) in a civil proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if -

(i) rules of court permit or require the giving of evidence in this form; or

(ii) both parties consent to the giving of evidence in this form.

(2) An affidavit or a written statement referred to in subsection (1)(b) or (c) may be given in evidence only if it:

(a) is the personal statement of the deponent or maker; and

(b) does not contain a statement that is otherwise inadmissible under this Act or any other enactment.

(i) le Faamasino po o, pe afai o lo o i ai ni faatonu, o le Faamasino ma faatonu; ma

(ii) itu faamasinoga o auai i le tualumaga ma o latou faufautua faaetulafono; ma

(iii) so o se sui auai o tagata lautele o ia lea ua manao e auai, seia vagana ai ua lē taliaina e ala i se poloaiga a le Faamasino; po o

(b) i totonu o se tualumaga tau solitulafono, i totonu o se molimau tauto ua faaoo atu i totonu o le faamasinoga po o e ala i le faitauina o se faamatalaga tusitusia i totonu o se potu faamasino, pe afai ua malilie i ai le faia moliaga ma le tagata ua molia e tuuina atu faamatalaga molimau i lenei faiga; po o

(c) i totonu o se tualumaga tau le va o tagata, i totonu o se molimau tauto ua faaoo atu i totonu o le faamasinoga po o e ala i le faitauina o se faamatalaga tusitusia i totonu o se potu faamasino, pe afai

(i) ua faataga e tulafono faafoe o le faamasinoga po o manaomia le tuuina atu o faamatalaga molimau i lenei faiga; po o

(ii) ua malilie i ai itu faamasinoga e lua i le tuuina atu o faamatalaga molimau i lenei faiga.

(2) O se molimau tauto po o se faamatalaga tusitusia o faasinomia i le faafuaiupu (1)(b) po o le (c) e faatoa mafai lava ona tuuina atu i totonu o faamatalaga molimau pe afai:

(a) o le faamatalaga patino a le tagata na molimau tauto po o le na faia; ma

(b) e le o i ai se faamatalaga lea e lē taliaina i se isi faiga e ese ai i lalo o lenei Tulafono po o so o se isi lava tulafono.

72. Examination of witnesses-(1) Unless this Act or any other enactment provides otherwise, or the Judge directs to the contrary, in any proceeding:

- (a) a witness first gives evidence-in-chief; and
- (b) after giving evidence-in-chief, the witness may be cross-examined by all parties, other than the party calling the witness, who wish to do so; and
- (c) after all parties who wish to do so have cross-examined the witness, the witness may be re-examined.

(2) If a witness gives evidence in an affidavit or by reading a written statement in a courtroom, it is to be treated for the purposes of this Act as evidence given in chief.

Division 5 - Judge may disallow questions

73. Unacceptable questions-(1) In any proceeding, the Judge may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand.

(2) Without limiting the matters that the Judge may take into account for the purposes of subsection (1), the Judge may have regard to:

- (a) the age or maturity of the witness; and
- (b) any physical, intellectual, psychological, or psychiatric impairment of the witness; and

72. Suesueina o tagata molimau-(1) Ae vagana ai ua aiaia i lenei Tulafono po o so o se isi lava tulafono i se isi faiga e ese ai, po o ua faatonuina e le Faamasino i se isi tulaga e ese ai, i totonu o so o se tualumaga:

- (a) se tagata molimau e tuuina atu muamua faamatalaga molimau autu; ma
- (b) i le tuanai ai o le tuuina atu o faamatalaga molimau autu, e mafai ona fesiligia le tagata molimau e itu faamasinoga uma ia sa mananao ia faia faapena, e ese ai na i lo le itu faamasinoga na valaauina le tagata molimau; ma
- (c) e mafai ona toe suesueina le tagata molimau i le tuanai ai ona fesiligia o ia e itu faamasinoga uma ia sa mananao ia faia faapena.

(2) Afai ua tuuina atu e se tagata molimau se faamatalaga molimau i totonu o se molimau tauto po o e ala i le faitauina o se faamatalaga tusitusia i totonu o se potu faamasino ua ao ona faatatauina lea itu e avea ma faamatalaga molimau autu mo faamoemoega o lenei Tulafono.

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

73. Fesili e lē taliaina-(1) I totonu o so o se tualumaga, e mafai e le Faamasino ona lē faatagaina, pe faatonuina e faapea e lē faamalosa se tagata molimau e tali atu i so o se fesili lea ua manatu le Faamasino e lē talafeagai, e lē sao, tau faasese, le talafeagai ona taua so o, po o le faaalua manino i se gagana lea e faigata mo le tagata molimau ona malamalama i ai.

(2) I le aunoa ai ma le faatapulaaina o mataupu lea e mafai e le Faamasino ona amanaiaina mo faamoemoega o le faafuuiupu (1), e mafai e le Faamasino ona amanaia itu nei:

- (a) o tausaga po o le matua o le tagata molimau; ma
- (b) so o se tulaga faaletonu o le tino, tulaga tau le malamalama tulaga o le mafaufau, po o le faaletonu o le mafaufau o le tagata molimau; ma

- (c) the linguistic or cultural background or religious beliefs of the witness; and
- (d) the nature of the proceeding; and
- (e) for a hypothetical question, whether the hypothesis has been or will be proved by other evidence in the proceeding.

74. Leading questions in examination-in-chief and re-examination-(1) In any proceeding, a leading question must not be put to a witness in examination-in-chief or re-examination unless:

- (a) the question relates to introductory or undisputed matters; or
- (b) the question is put with the consent of all other parties; or
- (c) the Judge, in exercise of the Judge's discretion, allows the question.

(2) Subsection (1) does not prevent a Judge, if permitted by rules of court, from allowing a written statement or report of a witness to be tendered or treated as the evidence-in-chief of that person.

75. Use of documents in questioning witness or refreshing memory-(1) A party must not, for the purpose of questioning a witness in a proceeding, use a document that has been excluded under section 20 or 21.

(2) A witness must not consult a document that has been excluded under section 20 or 21 while giving evidence.

- (c) le tulaga o le gagana tautala po o le iloa o tu ma aganuu po o talitonuga faa-kerisiano o le tagata molimau; ma
- (d) le uiga o le tualumaga; ma
- (e) mo se fesili i se gaoioiga ua taliaina ae leai se faamaoniga, e tusa lava pe ua faamaonia le taliaina ae leai se faamaoniga po o le faamaonia e ala i nisi faamatalaga molimau i totonu o le tualumaga.

74. Fesili taiala i totonu o suesuega autu a le vaega na valaauiina ma le toe suesueina-(1) I totonu o so o se tualumaga, e lē tatau ona tuuina atu i se tagata molimau se fesili taiala i totonu o le suesuega autu a le vaega na valaauiina po o le toe suesueina, seia vagana ai:

- (a) ua faasino le fesili i mataupu amata po o mataupu ua lē mafai ona finauina; po o
- (b) ua tuuina atu le fesili faatasi ai ma le maliega a isi itu famasinoga uma; po o
- (c) ua faatagaina e le Faamasino le fesili, i le faatinoga o lana lava pule faitalia.

(2) E lē taofia e le faafuuiupu (1) se Faamasino, mai le faatagaina o se faamatalaga tusitusia po o se lipoti a se tagata molimau e ao ona faaoo atu po o ua faatatauina e avea ma faamatalaga molimau autu a lea tagata, pe afai ua faatagaina e tulafono faafoe o le faamasinoga.

75. Faaaogāina o pepa aloaia i le fesiligaiaina o tagata molimau po o le toe faatupu manatu-(1) E ao i se itu faamasinoga ona lē toe faaaogāina se pepa aloaia lea ua faalēaogāina i lalo o le fuaiupu 20 po o le 21, mo le faamoemoe o le fesiligaiaina o se tagata molimau i totonu o se tualumaga.

(2) E ao i se tagata molimau ona lē toe taua se pepa aloaia lea ua faalēaogāina i lalo o le fuaiupu 20 po o le 21, a o tuuina atu faamatalaga molimau.

(3) If, when questioning a witness, a party proposes to use a document or to show a document to the witness, that document must be shown to any other party to the proceeding.

(4) If a witness proposes to consult a document while giving evidence, that document:

(a) must be shown to any other party to the proceeding;
and

(b) may not be consulted by that witness -

(i) without the prior leave of the Judge or the consent of the other parties; or

(ii) if the purpose of consulting that document is to refresh his or her memory while giving evidence, except under subsection (5).

(5) Subject to subsection (2), for the purposes of refreshing his or her memory while giving evidence, a witness may, with the prior leave of the Judge, consult a document made or adopted at a time when his or her memory was fresh.

76. Duty to put questions in cross-examination-(1) In any proceeding, a party must cross-examine a witness on significant matters that are relevant and in issue and that contradict the evidence of the witness, if the witness could reasonably be expected to be in a position to give admissible evidence on those matters.

(2) If a party fails to comply with this section, the Judge may:

(a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or

(3) Afai ua fuafua se itu faamasinoga e faaaogā se pepa aloaia po o e faaali atu se pepa aloaia i le tagata molimau, e ao foi ona faaali atu lea pepa aloaia i so o se isi lava itu faamasinoga o i le tualumaga, pe a oo ina fesiligia se tagata molimau.

(4) Afai ua fuafua se tagata molimau e toe taua se pepa aloaia ao tuuina atu le faamatalaga molimau, o lea pepa aloaia:

(a) e ao ona faaali atu i so o se isi lava itu faamasinoga o i le tualumaga; ma

(b) e mafai ona lē toe taua e lea tagata molimau -

(i) e aunoa ma le faatagaga muamua a le Faamasino po o le maliega a isi itu faamasinoga; po o

(ii) pe afai o le faamoemoe o le faatalanoaina o lea pepa aloaia o le toe faatupu manatu lea ia te ia, ao tuuina atu faamatalaga molimau, ae vagana ai i lalo o le faafuaiupu (5).

(5) I le noatia ma le fai fuafua i le faafuaiupu (2), mo faamoemoe ma le faatupu manatu ia te ia, a o tuuina atu ai faamatalaga molimau e mafai e se tagata molimau, i le i ai o le faatagaga muamua a le Faamasino, ona faatalanoa se pepa aloaia ua faia po o ua faaaogāina i le taimi na ia toe maua ai manatu fou.

76. Tiute e tuuina atu ai fesili i totonu o suesuega-(1) I totonu o so o se tualumaga, e ao i se itu faamasinoga ona fesiligia se tagata molimau i luga o mataupu taua lea e talafeagai ai ma o lo o fesiligia ma ua faapea ai ona feteenai ma le faamatalaga molimau a le tagata molimau, pe afai ua faamoemoe le tagata molimau ua tataua ona i ai i se tulaga e tuuina atu ai faamatalaga molimau e mafai ona taliaina e uiga i ia mataupu.

(2) Afai ua lē tausisia e se itu faamasinoga lena fuaiupu, e mafai e le Faamasino ona:

(a) faamatuu atu le faatagaga mo le tagata molimau ina ia toe valaauina ai ma fesiligia e faatatau i faamatalaga molimau e feteenai; po o

- (b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been able to explain the contradiction, was not questioned about the evidence; or
- (c) exclude the contradictory evidence; or
- (d) make any other order that the Judge considers just.

77. Cross-examination may be limited - If a party in any proceeding cross-examines a witness who has the same, or substantially the same, interest in the proceeding as the cross-examining party, the Judge may, in the interests of justice, limit the extent to which leading questions may be asked in that cross-examination.

78. Cross-examination as to credit - In any proceeding, the Court:

- (a) may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit; and
- (b) must refuse to permit the cross-examination which is needlessly offensive or injurious to the witness, having regard to the nature or gravity of the imputations made against him or her, to the importance of his or her evidence, and to the effect of any of the imputations on the credibility of the witness.

- (b) le taliaina o le faamatalaga molimau e feteenai i luga o le tulaga e faapea o le faamamafa e ao ona tuuina atu i ai e mafai ona aafia ai, e ala i le itu e faapea o le tagata molimau, o ia lea e mafai ona faamalamalamaina le feteenaiga, sa le i fesiligia e faatatau i le faamatalaga molimau; po o
- (c) le faalēaogāina o le faamatalaga molimau e feteenai; po o
- (d) le faia o so o se isi lava poloaiga lea ua manatu le Faamasino e amiotonu.

77. E mafai ona faatapulaa le fesiligiaina - Afai ua fesiligia e se itu faamasinoga i totonu o so o se taualumaga se tagata molimau, o ia lea e i ai le aia tutusa po o aia e tutusa le taua, i totonu o le taualumaga, e avea o se itu faamasinoga e fesiligia, e mafai e le Faamasino e tusa ai ma manaoga o faaiuga amiotonu, ona faatapulaa le tulaga e mafai ona fesili ai i fesili taiala i totonu o lea suesuega.

78. Fesiligiaina o le tagata e le isi itu faamasinoga e tusa ai o le lelei o lana faamatalaga - I totonu o so o se taualumaga, o le Faamasinoga e:

- (a) mafai ona faatapulaa i so o se faiga ma i so o se tulaga ua ia manatu ua tatau ai, le fesiligia o so o se tagata molimau e tusa ai o le lelei o lana faamatalaga; ma
- (b) e ao ona ia teena le taliaina o le suesuega lea ua tino mai ai se tulaga le fiafia po o e tuga i le lagona o le tagata molimau, i le amanaia ai o uiga po o le mafatiaga ona o le tau faaleaga ua faia faasaga ia te ia, i le tulaga o le taua o lana faamatalaga molimau, ma le tulaga foi o le tau faaleaga ua faia e faafeagai ma le tulaga lelei o le tagata molimau.

79. Hostile witness - In any proceeding, the party who calls a witness may, if the Judge determines that the witness is hostile and gives permission, cross-examine the witness to the extent authorised by the Judge.

80. When a party in person may not cross-examine witness-(1) Despite any other enactment or rule of law, a defendant in a criminal proceeding that is a sexual case or a proceeding concerning domestic violence is not entitled to personally cross-examine:

- (a) a complainant;
- (b) a child (other than a complainant) who is a witness, unless the Judge gives permission.

(2) However, a Judge may allow a defendant to cross-examine the complainant or child if the Judge directs that measures be put in place to ensure that the defendant does not cross-examine the complainant or child face to face.

(3) In a civil or criminal proceeding, a Judge may, on the application of a witness, or a party calling a witness, or on the Judge's own initiative, order that a party to the proceeding must not personally cross-examine the witness.

(4) An order under subsection (3) may be made on one (1) or more of the following grounds:

- (a) the age or maturity of the witness;
- (b) the physical, intellectual, psychological, or psychiatric impairment of the witness;
- (c) the linguistic or cultural background or religious beliefs of the witness;

79. Tagata molimau e i ai uiga tetee - I totonu o so o se taualumaga, e mafai e se itu faamasinoga o ia lea na valaauina se tagata molimau, pe afai ua manatu le Faamasino e faapea, o le tagata molimau, e i ai ona uiga tetee ma ua tuuina atu i ai le faatagaga, ia fesiligia le tagata molimau i le tulaga ua faatagaina e le Faamasino:

80. E lē mafai ona fesiligia le tagata molimau e se itu faamasino patino-(1) E ui lava i so o se isi tulafono po o se pulega o tulafono, e lē agavaa se tagata ua molia i totonu o se taualumaga tau solitulafono i se mataupu tau faiga aiga po o i se taualumaga e faatatau i sauaga i aiga, e fesiligia ai e ia lava:

- (a) se tagata faasea;
- (b) se tamaitiiti (e ese ai na i lo le tagata faasea) o ia lea ua avea ma tagata molimau, seia vagana ai ua tuuina atu le faatagaga e le Faamasino.

(2) E ui i lea, e mafai e se Faamasino ona faatagaina se tagata ua molia e fesiligia le tagata faasea po o se tamaitiiti pe afai ua faatonuina e le Faamasino lea faiga ina ia faia e faamautinoa ai ua faapea ona lē fesiligia e le tagata ua molia le tagata faasea po o se tamaitiiti i se faiga faafesagai.

(3) I totonu o se taualumaga tau le va o tagata po o se taualumaga tau solitulafono, e mafai e se Faamasino i luga o le talosaga a se tagata molimau po o se itu faamasinoga ona valaauina se tagata molimau, po o i luga o le fuafuaga a le Faamasino lava ia, ona poloaia e faapea e ao i se itu faamasinoga o i le taualumaga ona lē fesiligia e ia lava se tagata molimau.

(4) E mafai ona faia se poloaiga i lalo o le faafuauipu (3) i luga o le tasi (1) po o le sili atu o mafuaaga nei:

- (a) o tausaga po o le matua o le tagata molimau;
- (b) o le tulaga faaletonu o le tino, tulaga tau le malamalama, tulaga o le mafaufau, po o le faaletonu o le mafaufau o le tagata molimau;
- (c) o le tulaga o le gagana tautala po o le iloa o tu ma aganuu po o talitonuga faakerisiano o le tagata molimau;

- (d) the nature of the proceeding;
- (e) the relationship of the witness to the unrepresented party;
- (f) any other grounds likely to promote the purpose of this Act.

(5) When considering whether or not to make an order under subsection (3), the Judge must have regard to:

- (a) the need to ensure the fairness of the proceeding and, in a criminal proceeding, that the defendant has a fair trial; and
- (b) the need to minimise the stress on the complainant or witness; and
- (c) any other factor that is relevant to the just determination of the proceeding.

(6) A defendant or party to a proceeding who, under this section, is precluded from personally cross-examining a witness may have his or her questions put to the witness by:

- (a) a lawyer engaged by the defendant; or
- (b) if the defendant is unrepresented and fails or refuses to engage a lawyer for the purpose within a reasonable time specified by the Judge, a person appointed by the Judge for the purpose.

(7) In respect of each such question, the Judge may:

- (a) allow the question to be put to the witness; or
- (b) require the question to be put to the witness in a form rephrased by the Judge; or
- (c) refuse to allow the question to be put to the witness.

- (d) o le uiga o le taualumaga;
- (e) o le sootaga o le tagata molimau i le itu faamasinoga e le o i ai sona sui;
- (f) so o se isi lava mafuaaga e ono mafai ona uunaia ai le faamoemoe o lenei Tulafono.

(5) E ao i le Faamasino ona amanaia itu nei, pe afai e iloiloina le faia po o le leai foi, o se poloaiga i lalo o le faafuaiupu (3):

- (a) o le manaoga ina ia faamautinoa le tulaga sagatonu o le taualumaga ma ia faapea ona i ai se suesuega tonu o le tagata ua molia, i totonu o se taualumaga tau solitulafono; ma
- (b) le manaoga ina ia faaitiitia le tulaga popole o le tagata faasea po o le tagata molimau; ma
- (c) so o se isi lava itu lea ua talafeagai i le faiga o le faaiuga amiotonu o le taualumaga.

(6) O se tagata ua molia po o se itu faamasinoga o i se taualumaga, o ia lea, i lalo o lenei fuaiupu, ua lē aofia ai mai le fesiligia e ia lava o se tagata molimau, e mafai ona tuuina atu lana fesili i se tagata molimau e:

- (a) se loia o faaaogāina e le tagata ua molia; po o
- (b) se tagata ua tofia e le Faamasino mo le faamoemoe, pe afai e le o i ai sē o aveā ma sui o le tagata ua molia ma ua lē mafai po o ua musu e faaaogā se loia mo le faamoemoe i totonu o se taimi e tatau ai ua faamaotiina e le Faamasino.

(7) E mafai e le Faamasino e tusa ai o ia fesili taitasi ona:

- (a) faatagaina le fesili e tuuina atu i le tagata molimau; po o
- (b) e manaomia le fesili ina ia tuuina atu i le tagata molimau e se faiga e toe faaupuina ai e le Faamasino; po o
- (c) le teena ona faatagaina le tuuina atu o le fesili i le tagata molimau.

81. Cross-examination on previous statements-(1) A party who cross-examines a witness may question the witness about a previous statement made by that witness without showing it or disclosing its contents to the witness if the time, place, and other circumstances concerning the making of the statement are adequately identified to the witness.

(2) If a witness does not expressly admit making the statement and the party wishes to prove that the witness did make the statement:

(a) the party must show the statement to the witness if it is in writing, or disclose its contents to the witness if the statement was not in writing; and

(b) the witness must be given an opportunity to deny making the statement or to explain any inconsistency between the statement and the witness's testimony.

(3) Despite subsections (1) and (2), a party may only cross-examine a witness on a previous statement if there is inconsistency between the statement and the witness's testimony.

(4) If a document is used by a defendant for the purpose of cross-examining a witness but is not offered as evidence by that defendant, the following rights of the defendant are not affected:

(a) the defendant's right to make a no-case application; and

(b) the defendant's rights in relation to the order of addressing the court.

81. Fesiligia i luga o faamatalaga na faia muamua-(1) E mafai e se itu faamasinoga o ia lea ua fesiligia se tagata molimau, ona fesiligia le tagata molimau e faatatau i se faamatalaga muamua na faia e lea tagata molimau, e aunoa ma le faaalli atu po o le faailoa atu o ona mataupu o i ai i le tagata molimau pe afai o le taimi, nofoaga, ma isi tulaga aliae mai e faatatau i le faiga o le faamatalaga ua sao atoatoa ona faailoagofie atu i le tagata molimau.

(2) Afai ua lē tautino manino e le tagata molimau le faia o le faamatalaga ma ua mana'o le itu faamasinoga ia faamaonia e faapea na faia lava e le tagata molimau le faamatalaga:

(a) e ao i le itu faamasinoga ona faaali atu le faamatalaga i le tagata molimau pe afai sa faia i se faiga tusitusia, po o le faailoa atu o ona mataupu i le tagata molimau pe afai e le o i se faiga tusitusia le faamatalaga; ma

(b) e ao ona tuuina atu se avanoa i le tagata molimau e teena ai le faiga o se faamatalaga po o e faamalamalama ai so o se tulaga e lē ogatasi ai le faamatalaga ma le faamatalaga molimau a le tagata molimau.

(3) E ui lava i le faafu'aiupu (1) ma le (2), e faatoa mafai lava e se itu faamasinoga ona fesiligia se tagata molimau e uiga i se faamatalaga na faia muamua pe afai o lo o i ai se tulaga e lē ogatasi ai le faamatalaga ma le faamatalaga molimau a le tagata molimau.

(4) Afai ua faaaogāina se pepa aloaia e se tagata ua molia mo le faamoemoe o le fesiligiaina o se tagata molimau, ae peitai e le i tuuina atu e le tagata ua molia e ave'a ma faamatalaga molimau, e lē aafia ai aia tatau o le a taua a le tagata ua molia:

(a) o le aia tatau a le tagata ua molia e faia ai se talosaga e teena ai le mataupu; ma

(b) aia tatau a le tagata ua molia e faasino i le poloaiga e talosagaina ai e le faamasinoga.

82. Re-examination-(1) On re-examination, a witness:

(a) may be questioned about matters arising out of evidence given by the witness in cross-examination, including any qualification in cross-examination of evidence given by the witness in examination-in-chief; but

(b) may not be questioned about any other matter, except with the permission of the Judge.

(2) If permission is given by the Judge under subsection (1), the Judge:

(a) must allow other parties to cross-examine the witness on the additional evidence given; and

(b) may allow further re-examination on matters arising out of that cross-examination.

83. Evidence following closure of party's case-(1) In any proceeding, a party may not offer further evidence after closing that party's case, except with the permission of the Judge.

(2) In a civil proceeding, the Judge may not grant permission under subsection (1) if any unfairness caused to any other party by the granting of permission cannot be remedied by an adjournment or an award of costs, or both.

(3) In a criminal proceeding, the Judge may grant permission to the prosecution under subsection (1) if:

82. Toe suesueina-(1) I le toe suesueina o le mataupu, e mafai i se tagata molimau:

(a) ona fesiligia e uiga i mataupu ua faatulai mai i faamatalaga molimau ua tuuina atu e le tagata molimau i le taimi a o fesiligia o ia, e aofia ai so o se tulaga agavaa na maua i le fesiligiaina o faamatalaga molimau na ia tuuina atu i le taimi o lona suesuega autu e le vaega na valaauina o ia; ae peitai

(b) e lē mafai ona fesiligia o ia i so o se isi lava mataupu, seia vagana ua i ai le faatagaga a le Faamasino.

(2) Afai ua tuuina atu e le Faamasino le faatagaga i lalo o le faafuuiupu (1) e mafai e le Faamasino:

(a) ona faatagaina isi itu faamasinoga e fesiligia le tagata molimau e uiga i faamatalaga molimau faaopoopo ua tuuina atu; ma

(b) e mafai ona faatagaina se isi suesuega ina ia toe faia i mataupu ua faatulai mai i lea suesuega.

83. Tuuina atu o faamatalaga molimau i le maea ai ona tapunia o le mataupu a se itu faamasinoga-(1) I so o se tualumaga, e lē mafai e se itu faamasinoga ona tuuina atu nisi faamatalaga molimau i le maea ai ona tapunia o se mataupu a sea itu faamasinoga, seia vagana ai ua i ai le faatagaga a le Faamasino.

(2) I se tualumaga i le va o tagata, e lē tataui i se Faamasino ona faamatuuina atu se faatagaga i lalo o le faafuuiupu (1), pe afai ua lē mafai ona foia so o se tulaga lē sagatonu ua faia i so o se isi itu faamasinoga e ala i le faamatuuina atu o le faatagaga, e ala i se faiga ua tolopoina ai, po o le tuuina atu o tau; po o faiga uma e lua.

(3) I se tualumaga tau solitulafono e mafai e le Faamasino ona faamatuuina atu le faatagaga i le taimi e faia ai moliaga faaetulafono i lalo o le faafuuiupu (1) pe afai:

- (a) the further evidence relates to a purely formal matter;
or
- (b) the further evidence relates to a matter arising out of the conduct of the defence, the relevance of which could not reasonably have been foreseen;
or
- (c) the further evidence was not available or admissible before the prosecution's case was closed; or
- (d) for any other reason the interests of justice require the further evidence to be admitted.

(4) In a criminal proceeding, the Judge may grant permission to a defendant under subsection (1) if the interests of justice require the further evidence to be admitted.

(5) The Judge may grant permission under subsection (1):

- (a) if there are assessors, at any time until the assessors retire to consider their verdict;
- (b) in any other proceeding, at any time until judgment is delivered.

84. Judge may recall witness-(1) In any proceeding, the Judge may recall a witness who has given evidence if the Judge considers that it is in the interests of justice to do so.

(2) The Judge may recall a witness under subsection (1):

- (a) if there are assessors, at any time until the assessors retire to consider their verdict; or
- (b) in any other proceeding, at any time until judgment is delivered.

- (a) o nisi faamatalaga molimau e fesootai i se mataupu e aloaia atoatoa; po o
- (b) nisi faamatalaga molimau e faasino i se mataupu na faatulai mai i le amioga a le tagata tetee, lea sa le i mafai ona iloa muamua ona itu taua; po o
- (c) e le i mafai ona avanoa i ai pe taliaina isi faamatalaga molimau a o le i tapunia mataupu o moliaga faaletulafono; po o
- (d) mo so o se isi lava mafuaaga ua manaomia ai i manaoga o le faaiuga amiotonu le tuuina atu o nisi faamatalaga molimau.

(4) I se taualumaga tau solitulafono, e mafai e le Faamasino ona faamatuuina atu le faatagaga i se tagata ua molia i lalo o le faafuaiupu (1) pe afai e manaomia le tuuina atu o nisi faamatalaga molimau mo manaoga o le faaiuga amiotonu.

(5) E mafai e le Faamasino ona faamatuu atu le faatagaga i lalo o le faafuaiupu (1):

- (a) pe afai o auai ai faatonu o le faamasinoga, i so o se taimi lava seia oo ina faasee atu faatonu o le faamasinoga e iloilo ina la latou faaiuga;
- (b) i so o se isi lava taualumaga, i so o se taimi seia oo ina tuuina atu la latou faaiuga.

84. E mafai e le Faamasino ona toe valaauina se tagata molimau-(1) I so o se taualumaga, e mafai e le Faamasino ona toe valaauina se tagata molimau, o ia lea na tuuina atu faamatalaga molimau, pe afai ua manatu le Faamasino o le faatinoina o lea tulaga, ua tusa ma manaoga o faaiuga amiotonu.

(2) E mafai e le Faamasino ona toe valaauina se tagata molimau i lalo o le faafuaiupu (1):

- (a) pe afai o auai ai faatonu o le faamasinoga, i so o se taimi seia oo ina faasee atu faatonu o le faamasinoga e iloilo ina la latou faaiuga; po o
- (b) i so o se isi lava taualumaga, i so o se taimi seia oo ina tuuina atu la latou faaiuga.

85. Questioning of witnesses by Judge-(1) In any proceeding, the Judge may ask a witness any questions that, in the opinion of the Judge, justice requires.

(2) If the Judge questions a witness:

(a) a party, other than the party who called the witness, may cross-examine the witness on any matter raised by the Judge's questions; and

(b) the party who called the witness may re-examine the witness.

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

86. Directions as to alternative ways of giving evidence-(1)

In any proceeding, the Judge may, either on the application of a party or on the Judge's own initiative, direct that a witness is to give evidence-in-chief and be cross-examined in the ordinary way or in an alternative way as provided in section 88.

(2) An application for directions under subsection (1) must be made to the Judge as early as practicable before the proceeding is to be heard, or at any later time permitted by the court.

(3) A direction under subsection (1) that a witness is to give evidence in an alternative way, may be made on one (1) or more of the following grounds:

(a) the age or maturity of the witness;

(b) the physical, intellectual, psychological, or psychiatric impairment of the witness;

85. Fesiligiaina o tagata molimau e le Faamasino-(1) I so o se taulumaga, e mafai e le Faamasino ona fesiligia se tagata molimau i so o se fesili ua faapea ona manatu le Faamasino ua manaomia e faatino ai le amiotonu a le faamasinoga.

(2) Afai e fesiligia e le Faamasino se tagata molimau:

(a) e mafai e se itu faamasinoga, e ese mai i le itu faamasinoga, lea na latou valaauina le tagata molimau, ona fesiligia le tagata molimau e uiga i so o se mataupu na faatulai mai e ala i fesili a le Faamasino; ma

(b) e mafai ona toe suesueina le tagata molimau e le itu faamasinoga, lea na valaauina o ia.

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

86. Faatonuga mo nisi auala e tuuina atu ai faamatalaga

molimau-(1) I so o se taulumaga, e mafai e le Faamasino ona faia i luga o le talosaga a se itu faamasinoga, po o i luga o ana lava fuafuaga, ona faatonuina e faapea e ao i se tagata molimau ona tuuina atu faamatalaga molimau autu ma ia toe fesiligia i le faiga masani po o i se isi faiga e pei ona aiaia i le fuaiupu 88.

(2) E ao ona faia i le Faamasino se talosaga mo faatonuga i lalo o le faafuaiupu (1) i se faiga vave lava e mafai ai a o lumanai ai le tolaulauina o taulumaga, po o i so o se taimi mulimuli ane e faatagaina e le faamasinoga.

(3) O se faatonuga i lalo o le faafuaiupu (1) e faapea e ao i se tagata molimau ona tuuina atu faamatalaga molimau i se isi auala, e mafai ona faia i se tasi (1) po o le sili atu o mafuaaga o le a taua:

(a) o tausaga po o le matua o le soifua o se tagata molimau;

(b) faaletonu i tulaga o le tino, atamai, maloloina o le mafaufau, po o le tulaga le atoatoa o le mafaufau o le tagata molimau;

- (c) the trauma suffered by the witness;
- (d) the witness's fear of intimidation;
- (e) the linguistic or cultural background or religious beliefs of the witness;
- (f) the nature of the proceeding;
- (g) the nature of the evidence that the witness is expected to give;
- (h) the relationship of the witness to any party to the proceeding;
- (i) the absence or likely absence of the witness from Samoa;
- (j) any other ground likely to promote the purpose of the Act.

(4) In giving directions under subsection (1), the Judge must have regard to:

- (a) the need to ensure -
 - (i) the fairness of the proceeding; and
 - (ii) in a criminal proceeding, that there is a fair trial; and
- (b) the views of the witness and -
 - (i) the need to minimise the stress on the witness; and
 - (ii) in a criminal proceeding, the need to promote the recovery of a complainant from the alleged offence; and
- (c) any other factor that is relevant to the just determination of the proceeding.

87. Chambers hearing before directions for alternative waysof giving evidence - If an application for directions is made under section 86, before giving any directions about the

- (c) manuaga tugā i le tino ma le mafaufau na aafia ai le tagata molimau;
- (d) lagona o le fefe o le tagata molimau ona o ni faiga tau faamatau;
- (e) o le gagana po o le talaaga o tu ma aga, po o talitonuga faale-lotu o le tagata molimau;
- (f) le uiga o le tualumaga;
- (g) le uiga o le faamatalaga molimau, lea ua faamoemoe le tagata molimau e tuuina atu;
- (h) o le sootaga o le tagata molimau i so o se itu faamasinoga o aafia i tualumaga;
- (i) o le lē auai ai po o le ono lē auai ai o le tagata molimau mai Samoa;
- (j) so o se isi lava mafuaaga e mafai ona uunaia ai le faamoemoe o le Tulafono.

(4) E ao i le Faamasino, pe a tuuina atu faatonuga i lalo o le faafuaiupu (1), ona amanaia tulaga nei:

- (a) manaoga ina ia faamautinoa ai ua faapea ona -
 - (i) sagatonu faagasologa o tualumaga; ma
 - (ii) i se tualumaga tau solitulafono, ia faapea ona faia se suesuega amiotonu; ma
- (b) manatu o le tagata molimau ma -
 - (i) le manaoga ina ia faaitiitia le popole o le tagata molimau; ma
 - (ii) i se taumaulumaga tau solitulafono, o le manaoga ina ia uunaia le toe faafoisia o le malosi i lē na tagi mai le soligatulafono ua taua; ma
- (c) so o se isi lava tulaga ua faapea ona talafeagai i le faia ai o le faaiuga amiotonu o le tualumaga.

87. Fofogaina i totonu o potu faamasino a o lumanai ai faatonuga mo nisi auala e tuuina atu ai faamatalaga molimau - Afai ua faia se talosaga mo faatonuga i lalo o le fuaiupu 86, a o

way in which a witness is to give evidence-in-chief and be cross-examined, the Judge:

- (a) must give each party an opportunity to be heard in chambers; and
- (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

88. Alternative ways of giving evidence-(1) A Judge may direct, under section 86, that the evidence of a witness is to be given in an alternative way so that:

- (a) the witness gives evidence -
 - (i) while in the courtroom but unable to see the defendant or some other specified person; or
 - (ii) from an appropriate place outside the courtroom, using any form of electronic communications link, either in Samoa or another country; or
 - (iii) by a video record made before the hearing of the proceeding;
- (b) any appropriate practical and technical means may be used to enable the Judge, the assessors (if any), and any lawyers to see and hear the witness giving evidence, pursuant to any regulations made under section 135;

lumanai ai le tuuina atu o so o se faatonuga e faatatau i auala e tuuina atu ai e se tagata molimau lana faamatalaga molimau autu ma le toe fesiligia, e ao i le Faamasino ona:

- (a) tuuina atu i itu faamasinoga taitasi se avanoa e suesueina ai i totonu o potu faamasino; ma
- (b) mafai ona valaauina mo ma taulimaina se lipoti, mai so o se tagata ua manatu le Faamasino ua agavaa e fautuaina, i le aafiaga o le a i ai mo le tagata molimau i le tuuina atu o faamatalaga molimau i le faiga masani po o so o se isi faiga.

88. O nisi auala e tuuina atu ai faamatalaga molimau-(1) E mafai e se Faamasino ona faatonuina, i lalo o le fuaiupu 86, o faamatalaga molimau a se tagata o molimau, ina ia tuuina atu i se isi faiga ia faapea ai ona:

- (a) tuuina atu e le tagata molimau lana faamatalaga molimau -
 - (i) a o i totonu o le potu faamasino e aunoa ma lona iloa atu o lē ua molia po o se isi lava tagata maoti; po o
 - (ii) ua tuuina mai i se nofoaga talafeagai i fafo atu o le potu faamasino, ua faaaogāina ai so o se ituaiga sootaga i fesootaiga faaeletoroni, i Samoa po o se isi atunuu; po o
 - (iii) e ala i le pueina i se masini vito na faia a o lumanai ai le tolaulauina o tualumaga;
- (b) mafai ona faaaogāina so o se auala tau faatinoga ma tomā faapitoa talafeagai ia mafai ai e le Faamasino, faatonu o le faamasinoga (pe afai e i ai), ma so o se loia ona iloa ma lagona atu le tagata molimau o lo o tuuina atu faamatalaga molimau, e tusa ai ma so o se tulafono faatonutonu ua faia i lalo o le fuaiupu 135;

(c) in a criminal proceeding, the defendant is able to see and hear the witness, except where the Judge directs otherwise;

(d) in a proceeding in which a witness anonymity order has been made, effect is given to the terms of that order.

(2) If a video record of the witness's evidence is to be shown at the hearing of the proceeding, the Judge must give directions under section 86 as to the manner in which cross-examination and re-examination of the witness is to be conducted.

(3) The Judge may admit evidence that is given substantially pursuant to the terms of a direction under section 86, despite a failure to observe strictly all of those terms.

89. Video recorded evidence-(1) A video record offered as an alternative way of giving evidence must be recorded in compliance with any regulations made under this Act.

(2) A video record that is to be offered as an alternative way of giving evidence in a proceeding must be offered for viewing by all parties or their lawyers before it is offered in evidence, unless the Judge directs otherwise.

(3) All parties must be given the opportunity to make submissions about the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence.

(4) If any party indicates that the party wishes to object to the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence, that video record must be viewed by the Judge.

(c) mafai e le tagata ua molia, i se taualumaga tau solitulafono, ona iloa ma lagona atu le tagata molimau, seia vagana ua faatonuina e le Faamasino i se isi faiga e ese ai;

(d) tuuina atu tulaga aloaia i tuutuuga o lea poloaiga, i se taualumaga, lea ua faia ai poloaiga, e lē faailoa ai se tagata molimau.

(2) Afai o le a faalia se faamaumauga i se ata vito o le faamatalaga molimau a le tagata molimau i le taualumaga, e ao i le Faamasino ona tuuina atu faatonuga i lalo o le fuaiupu 86, e faatatau i le faiga o le a faatino ai le fesiligaiaina ma le toe suesueina o le tagata molimau.

(3) E mafai e le Faamasino ona taliaina faamatalaga molimau e sili ona taua, e tusa ai ma tuutuuga o se faatonuga ua faia i lalo o le fuaiupu 86, e ui i se faaletonu o le mataituina lelei o tuutuuga uma ia.

89. Faamatalaga molimau ua faamauina i ata vito - E ao ona faamauina ina ia ogatasi ma tulafono faatonutonu ua faia i lalo o lenei Tulafono se faamaumauga tau ata vito ua tuuina atu e avea ma se isi auala o le tuuina atu o faamatalaga molimau.

(2) E ao ona tuuina atu mo le silasila i ai o itu faamasinoga uma po o a latou loa se faamaumauga tau ata vito o le a faapea ona tuuina atu e avea o se isi faiga e tuuina atu ai faamatalaga molimau i se taualumaga a o lumanai ai le tuuina atu i faamatalaga molimau, seia vagana ua faatonuina e le Faamasinoga i se isi faiga e ese ai.

(3) E tatau ona tuuina atu i itu faamasinoga uma le avanoa e faia ai talosaga tusitusia e uiga i le taliaina o faamaumauga uma tau ata vito po o so o se vaega o le a ofoina atu e avea o se isi faiga e tuuina atu ai faamatalaga molimau.

(4) Afai e faailoa mai e so o se itu faamasinoga e faapea o le a faamoemoe lea itu faamasinoga e teena le taliaina o faamaumauga uma tau ata vito po o so o se vaega o le a ofoina atu e avea o se isi faiga e tuuina atu ai faamatalaga molimau, e tatau ona iloiloaina lea faamaumauga tau ata vito e le Faamasino.

(5) The Judge may order to be excised from a video record offered as evidence any material that, if the evidence were given in the ordinary way, would or could be excluded under this Act or any other enactment.

(6) The Judge may admit a video record that is recorded and offered as evidence substantially pursuant to the terms of any direction under this Division and the terms of regulations referred to in subsection (1), despite a failure to observe strictly all of those terms.

90. Directions when child complainant gives evidence-(1)

In a criminal proceeding in which there is a child complainant, the prosecution must apply to the court in which the case will be tried for directions about the way in which the complainant is to give evidence-in-chief and be cross-examined.

(2) An application for directions under subsection (1) must be made to the court as early as practicable before the case is to be tried, or at any later time permitted by the court.

(3) When an application is made for directions under subsection (1), before giving any directions about the way in which the complainant is to give evidence-in-chief and be cross-examined, the Judge:

- (a) must give each party an opportunity to be heard in chambers; and
- (b) may call for and receive a report, from any persons considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way.

(4) When considering an application under subsection (1), the Judge must have regard to:

(5) E mafai e le Faamasino ona poloaia le aveesea o se vaega mai se ata vito ua ofoina atu e avea o se faamatalaga molimau, pe afai na tuuina atu lea faamatalaga molimau i se faiga e masani ai, ma e mafai po o e ono mafai ona le aofia ai i lalo o lenei Tulafono po o so o se isi lava tulafono.

(6) E mafai e se Faamasino ona taliaina se ata vito na pueina ma tuuina atu e avea ma faamatalaga molimau taua e tusa ai ma tuutuuga o so o se faatonuga ua faia i lalo o lenei Vaevaega ma tuutuuga o tulafono faatonutonu ua taua i le faafuaiupu (1), e ui i se faaletonu na tulai mai i le lē mataituina lelei lea o ia tuutuuga uma.

90. Faatonuga pe a tuuina atu faamatalaga molimau e se tamaitiiti faasea-(1)

I se taualumaga lea e i ai se tamaitiiti faasea, e ao i ē o lo o faafoeina moliaga ona talosaga i le faamasinoga, lea o le a suesueina ai le mataupu mo faatonuga i le auala o le a tuuina atu ai faamatalaga molimau autu e le tagata faasea ma ia fesiligia.

(2) o ao ona faatoai atu i le faamasinoga se talosaga mo faatonuga i lalo o le faafuaiupu (1) i se taimi vave lava e mafai ai ona faatino a o lumanai ai le suesueina o le mataupu, po o i so o se taimi mulimuli ane ua faatagaina mai e le faamasinoga.

(3) Pe afai e faia se talosaga mo faatonuga i lalo o le faafuaiupu (1), a o lumanai ai le tuuina atu o so o se faatonuga e faatatau i le faiga o le a tuuina atu ai e le tagata faasea faamatalaga molimau autu ma fesiligiaina, e ao i le Faamasino:

- (a) ona tuuina atu i itu faamasinoga taitasi se avanoa e suesueina ai i totonu o potu faamasino; ma
- (b) e mafai ona valaau mo, ma taulimaina se lipoti, mai so o se tagata ua iloiloaina e le Faamasino ua agavaa o ia e fautuaina, i tulaga e aafia ai lē ua faasea i le tuuina atu o faamatalaga molimau i le faiga masani po o so o se isi faiga.

(4) I le taimi e iloiloaina ai se talosaga i lalo o le faafuaiupu (1), e ao i le Faamasino o amanaia tulaga nei:

- (a) the need to ensure -
 - (i) the fairness of the proceeding; and
 - (ii) that there is a fair trial; and
- (b) the views of the complainant and -
 - (i) the need to minimise the stress on the complainant; and
 - (ii) the need to promote the recovery of the complainant from the alleged offence; and
- (c) any other factor that is relevant to the just determination of the proceeding.

Division 7 - Evidence from undercover police officers

91. Undercover police officers-(1) This section and section 92 apply if a person is being, or is to be, proceeded against:

- (a) for any offence that is punishable by imprisonment for life or for a term of at least seven (7) years; or
- (b) for any other offence under the Narcotics Act 1967; or
- (c) for conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or (b).

(2) If, in any proceeding to which this section applies, it is intended to call an undercover police officer as a witness for the prosecution, the Commissioner of Police may before the hearing, file in the court in which the proceedings are to be held a certificate issued and signed by the Commissioner stating, in respect of that witness, the following particulars:

- (a) that during the period specified in the certificate the witness was a member of the police and acted as an undercover police officer;

- (a) o le manaoga e faamautinoa ai -
 - (i) le sagatonu o taualumaga; ma
 - (ii) le faia o se suesuega talafeagai; ma
- (b) manatu o lē ua faasea ma -
 - (i) le manaoga ina ia faaitiitia le popolega o le tagata faasea; ma
 - (ii) le manaoga ina ia uunaia le toe faafoisia o le malosia i le tagata ua faasea mai le solitulafono na aafia ai; ma
- (c) so o se isi lava tulaga ua faapea ona talafeagai i le faia o le faaiuga amiotonu o le taualumaga.

Vaevaega 7 - Faamatalaga molimau mai leoleo nana

91. Leoleo nana-(1) E faaogā lenei fuaiupu ma le fuaiupu 92 pe afai ua, pe o le a faagasolo suesuega e faasaga i se tagata:

- (a) mo so o se soligatulafono lea e mafai ona faasalaina ai e ala i le nofosala i le falepuipui mo le olaga atoa po o e mo se vaitaimi a itiiti mai e fitu (7) tausaga; po o
- (b) mo so o se isi lava soligatulafono i lalo o le Tulafono o Nakoti 1967; po o
- (c) mo taupulepulega faa-alatua ua faia, po o mo le taumafai ina ia faia se soligatulafono ua faamatalaina i le parakalafa (a) po o le (b).

(2) Afai, i so o se taualumaga, lea e faasino i ai lenei fuaiupu, ae o i ai le fuafuaga e valaauina se alii leoleo nana e avea ma tagata molimau mo le taimi e faafoe ai moliga faaletulafono, e mafai e le Komesina o Leoleo, a o lumanai ai le suesuega, ona faatoai atu i le faamasinoga lea o le a faatino ai le faafoeina o moliaga se tusi faamaonia e tuuina atu ma sainia e le Komesina, e tusa ai o lea tagata molimau ua taua ai faamatalaga auiliili nei:

- (a) e faapea o le vaitaimi ua faamaotiina i totonu o le tusi faamaonia a le tagata molimau sa avea ai ma leoleo ma sa galue o ia o se leoleo nana;

(b) that the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence, or offences, described in the certificate;

(c) that the witness has not been found guilty of a breach of duty under the Police Service Act 2009, or (as the case may require) that the witness has not been found guilty of any breach of that kind, other than a breach described in the certificate.

(3) In this section and in section 92, “undercover police officer”, in relation to any proceeding to which this section applies, means a police officer whose identity was concealed for the purpose of any investigation relevant to the proceedings.

92. Effect of Commissioner’s certificate-(1) If, in any proceeding to which section 91 applies, the Commissioner of Police files a certificate under that section relating to any witness, the following provisions apply:

(a) if a witness is subsequently called for the prosecution and states that, during the period specified in the certificate, he or she was a member of the police and acted as an undercover police officer under the name specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness;

(b) e faapea o le tagata molimau e le i faamaonia se moliaga o so o se solitulafono (i le a lava le tulaga e manaomia ai) e faapea e le i faamaonia moliaga o le tagata molimau i so o se soligatulafono e ese mai i le soligatulafono lea, po o ni soligatulafono ua faamatalaina i totonu o le tusi faamaonia;

(c) e faapea e le i faamaonia le nofosala a le tagata molimau i soliga o se tiute i lalo o le Tulafono o Galuega tau Leoleo 2009, po o (i le a lava le tulaga e manaomia ai) e faapea e le i tausalaina le tagata molimau i so o se soliga o lea ituaiga, e ese mai i lo le soliga ua faamatalaina mai i totonu o le tusi faamaonia.

(3) I lenei fuaiupu ma i totonu o le fuaiupu 92, o le upu “leoleo nana”, e faasino i so o se tualumaga lea e faaaogā i ai lenei fuaiupu, o lona uiga o se leoleo ua faapea ona lē faailoaina le tulaga e iloagofie ai o ia mo le faamoemoe o so o se suesuega talafeagai i tualumaga.

92. Aloaia o le tusi faamaonia a le Komesina-(1) Afai, i so o se tualumaga lea e faaaogā i ai le fuaiupu 91, ua faatoai atu e le Komesina o Leoleo se tusi faamaonia i lalo o lea fuaiupu e faasino i so o se tagata molimau, e faaaogāina aiaiga nei:

(a) afai e valaau mulimuli ane ai se tagata molimau mo le faia o moliaga faaletulafono ma faaali mai e faapea, a o faagasolo le taimi ua faamaotiina i totonu o le tusi faamaonia, o ia sa avea ma leoleo ma galue o se leoleo nana i lalo o le igoa ua faamaotiina i totonu o le tusi faamaonia, e ao ona faatautuina e faapea, ua tuuina atu le tusi faamaonia e tusa ai o lea tagata molimau e aunoa ma se faamaoniga e teena ai;

- (b) it is sufficient if the witness is identified by the name by which the witness was known while acting as an undercover police officer, and, except if leave is given under paragraph (d), the witness must not be required to state his or her true name or address, or to give any particulars likely to lead to the discovery of that name or address;
 - (c) except if leave is given under paragraph (d), no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or the address of the witness, or give any particulars likely to lead to the discovery of that name or address;
 - (d) no evidence may be given, and no question may be put to the witness, or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge;
 - (e) on an application for leave under paragraph (d), the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.
- (2) The Judge may not grant leave under subsection (1)(d) unless the Judge is satisfied:
- (a) that there is some evidence before the Judge that, if believed by the assessors, could call into question the credibility of the witness; and

- (b) ua lava atoatoa pe afai ua faailoaina le tagata molimau e ala i lona igoa lea e iloa ai o ia a o galue e avea ma leoleo nana, ma ae vagana ai ua tuuina atu se faatagaga i lalo o le parakalafa (d), e lē manaomia le faailoaina o le igoa ma le tuatusi moni o le tagata molilmau, pe tuuina atu so o se faamatalaga auiliili e ono mafai ai ona faailoa lona igoa ma le tuatusi;
 - (c) ae vagana ai ua tuuina atu le faatagaga i lalo o le parakalafa (d), e leai se loia, tagata ofisa o le faamasinoga po o se isi tagata ua aafia i le tualumaga e mafai ona faailoa atu i le faamasinoga le igoa sao po o le tuatusi o le tagata molimau, pe tuuina atu so o se faamatalaga auiliili e ono mafai ona faailoa ai lea igoa po o le tuatusi;
 - (d) e lē mafai ona tuuina atu se faamatalaga molimau, ma e leai foi se fesili e ono tuuina atu i le tagata molimau, po o se isi lava tagata molimau, e faasino tonu pe leai foi i le igoa sao po o le tuatusi o le tagata molimau, ae vagana ai e ala i le faatagaga a le Faamasino;
 - (e) i luga o se talosaga mo se faatagaga i lalo o le parakalafa (d), o le tusi faamaonia ua lava atoatoa lea e avea ma faamatalaga molimau o faamatalaga auiliili o taua ai, e aunoa ai ma faamatalaga molimau e ese ai.
- (2) E lē mafai e le Faamasino ona faamatuu atu le faatagaga i lalo o le faafuuiupu (1)(d) seia vagana ua faamalieina le Faamasino:
- (a) e faapea o lo o i ai ni faamatalaga molimau i luma o le Faamasino, ma afai ae talitonuina e faatonu o le faamasinoga, e mafai ona valaauina ina ia fesiligia le tulaga faamaoni o le tagata molimau; ma

(b) that it is necessary in the interests of justice that the defendant be enabled to test properly the credibility of the witness; and

(c) that it would be impracticable for the defendant to test properly the credibility of the witness if the defendant were not informed of the true name or the true address of the witness.

(3) An application for leave under subsection (1)(d):

(a) may be made from time to time and at any stage of the proceeding; and

(b) must, where practicable, be made and dealt with in chambers; and

(c) if the application is made during the trial before assessors, the application must be dealt with and determined by the Judge in the absence of the assessors.

(4) If the Commissioner of Police gives a certificate under section 91 in respect of any witness, the Commissioner must serve a copy of the certificate on the defendant, or on any lawyer acting for the defendant, before the witness is to give evidence.

Division 8 - Witness anonymity orders

93. Anonymity order may be made before trial-(1) This section and section 94 of this Act apply if a person is charged with an offence and is to be tried in the District Court or the Supreme Court, where the trial has been transferred under the Criminal Procedure Act 1972 or any other enactment.

(b) ua faapea ona talafeagai ai ma manaoga o le faaiuga amiotonu lea e mafai e le tagata ua molia ona suesue lelei le tulaga faamaoni o le tagata molimau; ma

(c) e faapea o le a lē mafai e le tagata ua molia ona suesue lelei le tulaga faamaoni o le tagata molimau pe afai e le i logoina le tagata ua molia e uiga i le igoa sao po o le tuatusi sao o le tagata molimau.

(3) O se talosaga mo se faatagaga ua faia i lalo o le faafuaiupu (1)(d) e faapea:

(a) e mafai ona faia mai i lea taimi i lea taimi ma i so o se laasaga lava o taualumaga; ma

(b) e ao ona faia ma tagofia le mataupu i totonu o potu faamasino pe afai e talafeagai ai; ma

(c) afai na faia le talosaga a o faagasolo le faamasinoga i luma o faatonu o faamasinoga, e ao ona tagofia ma fuafuaina e le Faamasino le talosaga i le taimi ua faapea ona lē mafai ona auai ai faatonu o faamasinoga.

(4) Afai ua tuuina atu e le Komesina o Leoleo se tusi faamaonia i lalo o le fauiupu 91 e tusa ai o so o se tagata molimau, e ao ona faaoo atu e le Komesina se ata o le tusi faamaonia i le tagata ua molia, po o so o se loia ua avea ma sui mo lē o molia, a o lumanai ai le tuuina atu o le faamatalaga molimau a le tagata molimau.

Vaevaega 8 - Poloaiga ina ia lē faailoaina le tagata molimau

93. E mafai ona faia le poloaiga e lē faailoaina ai le tagata molimau a o lumanai ai le faamasinoga-(1) O lenei fuaiupu ma le fuaiupu 94 o le Tulafono lenei, e faaaogā lea i se tagata ua molia i se soligatulafono ma o le a suesueina i le Faamasinoga Faaitumalo po o le Faamasinoga Sili, lea ua faasee atu i ai le faamasinoga i lalo o le Tulafono o Taulumaga Tau Solitulafono 1972 po o so o se isi lava tulafono.

(2) At any time after the person is charged, the prosecution or the defendant may apply to a Judge of the Supreme Court for an order:

- (a) excusing the applicant from disclosing to the other party prior to trial, the name, address, and occupation of any witness, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification; and
- (b) excusing the witness from stating his or her name, address, and occupation, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification.

(3) The Judge must hear and determine the application in chambers, and:

- (a) the Judge must give each party an opportunity to be heard on the application; and
- (b) neither the party supporting the application nor the witness need disclose any information that might disclose the witness's identity to any person (other than the Judge) before the application is dealt with.

(4) The Judge may make the order if he or she believes on reasonable grounds that:

- (a) the safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed before the trial; and
- (b) withholding the witness's identity until the trial would not be contrary to the interests of justice.

(2) I so o se taimi lava i le tuanai ai ona molia o se tagata, e mafai e le vaega o lo o faafoeina moliaga po o lē o molia ona talosaga i se Faamasino o le Faamasinoga Sili mo se poloaiga:

- (a) e tuusaunoa ai le tagata talosaga mai le faailoaina i le isi itu faamasinoga a o lumanai ai le faatinoina o le faamasinoga, le igoa, tuatusi, ma le galuega a so o se tagata molimau, ma (seia vagana ua i ai le faatagaga a le Faamasino) so o se isi lava faamatalaga auiliili o le a ono faailoa ai le tulaga e iloagofie ai le tagata molimau; ma
- (b) tuusaunoa ai le tagata molimau mai le faailoaina o lona igoa, tuatusi, ma le galuega, ma (seia vagana ua i ai le faatagaga a le Faamasino) so o se isi lava faamatalaga auiliili o le a ono faailoa ai le tulaga e iloagofie ai le tagata moliamu.

(3) E ao i le Faamasino ona faafofoga ma iloiloaina le talosaga i totonu o le potu faamasino, ma:

- (a) e ao i le Faamasino ona tuuina atu i itu faamasinoga taitasi se avanoa e faafofogaina ai le talosaga; ma
- (b) e lē na o le itu faamasinoga o lagolagoaina le talosaga po o le tagata molimau e manaomia le faailoa atu o so o se faamatalaga lea e ono faailoaina ai le tulaga e iloagofie ai le tagata molimau i so o se tagata (e ese mai i lo le Faamasino) a o lumanai ai le tagofiaina o le talosaga.

(4) E mafai e le Faamasino ona faia le poloaiga pe afai ua talitonu i luga o mafuaaga talafeagai e faapea:

- (a) e ono lamatia le saogalemu o le tagata molimau po o so o se isi lava tagata, po o e ono faaleagaina i se tulaga tuga meatotino, pe afai ua faailoa le tulaga e iloagofie ai le tagata molimau a o lumanai ai le faamasinoga; ma
- (b) o le taofiofia ai o le tulaga e iloagofie ai le tagata molimau seia vagana ua lē feteenai le suesuega ma manaoga o le faaiuga amiotonu.

(5) Without limiting subsection (4), in considering the application, the Judge must have regard to:

- (a) the gravity of the offence; and
- (b) the importance of the witness's evidence to the case of the party who wishes to call the witness; and
- (c) whether it is practical for the witness to be protected prior to the trial by any other means; and
- (d) whether there is other evidence that corroborates the witness's evidence.

94. Effect of pre-trial anonymity order - If a pre-trial witness anonymity order is made under section 93:

- (a) the party who applied for the order must give the Judge the name, address, and occupation of the witness; and
- (b) a lawyer, officer of the court, or other person must not disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification; and
- (c) any formal statement filed must not disclose the name, address, or occupation of the witness or any other particulars likely to lead to the witness's identification; and
- (d) during the course of any pre-trial examination of the witness -

(5) E aunoa ai ma le faatapulaaina o le faafuaiupu (4), i le iloiloaina o le talosaga e ao i le Faamasino ona amanaia tulaga nei:

- (a) le matuia o le soligatulafono; ma
- (b) le taua o le faamatalaga molimau a le tagata o lo o molimau i le mataupu a le itu faamasinoga na vaalauina o ia; ma
- (c) pe tatau ona faatinoina se puipuiga mo le tagata molimau a o lumanai ai le suesueina e ala i so o se isi lava faiga; ma
- (d) pe o i ai nisi faamatalaga molimau e lagolagoina le moni o faamatalaga molimau a lē o lo o molimau.

94. Aloaia o poloaiga ina ia lē faailoaina le tulaga e iloagofie ai le tagata molimau a o lumanai ai le suesuega - Afai e faia se poloaiga ina ia lē faailoaina le tulaga e iloagofie ai le tagata molimau a o lumanai ai le faatinoina o le faamasinoga i lalo o le fuaiupu 93:

- (a) e ao i le itu faamasinoga, lea na talosaga mo le poloaiga ona tuuina atu i le Faamasino, le igoa, tuatusi ma le galuega a le tagata molimau; ma
- (b) e lē tatau foi i se loia, tagata ofisa o le faamasinoga, po o se isi lava tagata ona faailoa le igoa, tuatusi, po o le galuega a le tagata molimau po o so o se isi lava faamatalaga auiliili e mafai ona faailoa ai tulaga e iloagofie ai le tagata molimau; ma
- (c) e lē tatau i so o se faamatalaga aloaia ua faatoai atu ona faailoa ai le igoa, tuatusi, po o le galuega a le tagata molimau po o so o se isi lava faamatalaga auiliili e mafai ona faailoa ai le tulaga e iloa gofie ai le tagata molimau; ma
- (d) a o faagasolo le faiga o so o se suesuega o le tagata molimau a o lumanai ai le faatinoina o se faamasinoga -

(i) no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and

(ii) except with leave of a Judge of the Supreme Court, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order; and

(e) a person must not publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification.

95. Orders and directions necessary to preserve anonymity-(1) A Judge who makes an order under section 93 may, for the purposes of trial (as the case may be), also make any orders and give any directions that the Judge considers necessary to preserve the anonymity of the witness, including (without limitation) one (1) or more of the following directions:

- (a) that the court be cleared of members of the public;
- (b) that the witness be screened from the defendant;

(i) e leai se faamatalaga molimau tuufogaina e mafai ona tuuina atu, ma e leai se fesili e mafai ona faia i so o se tagata molimau, pe afai e fesootai le faamatalaga molimau po o le fesili i le igoa, tuatusi, po o le galuega a le tagata molimau, o ia lea ua noatia i le poloaiga; ma

(ii) ae vagana ai ua i ai se faatagaga a le Faamasino o le Faamasinoga Sili, e leai se faamatalaga molimau tuufoga e mafai ona tuuina atu, ma e leai se fesili e mafai ona faia i so o se tagata molimau pe afai e fesootai le faamatalaga molimau po o le fesili i so o se isi lava faamatalaga auiliili lea e ono mafai ona faailoagofie ai le tagata molimau, o ia lea ua noatia i le poloaiga; ma

(e) e lē tatau i se tagata ona lomina faasalalau, i totonu o so o se lipoti po o faamatalaga e faasino i tualumaga, le igoa, tuatusi, po o le galuega a le tagata molimau, po o so o se isi lava faamatalaga auiliili e ono mafai ona faailoagofie ai le tagata molimau.

95. Poloaiga ma faatonuga ua talafeagai e puipuia ai tulaga e lē faailoaina ai-(1) E mafai e se Faamasino o ia lea ua faia se poloaiga i lalo o le fuaiupu 93, ona, mo le faamoemoe o se faamasinoga (i le a lava le tulaga o i ai), e faia foi so o se poloaiga ma tuuina atu so o se faatonuga lea ua ia manatu e talafeagai ai, mo le puipuia o le tulaga e lē faailoaina ai le tagata molimau e aofia ai (ae lē faatapulaaaina ai) le tasi (1) po o le sili atu o faatonuga nei:

- (a) ia faapea ona faaavanoa le potu faamasino mai le auai ai o tagata lautele;
- (b) ia faapea ona puipuia le tagata molimau mai le tagata ua molia;

(c) that the witness give evidence by closed-circuit television or by video link.

(2) In considering whether to give directions concerning the mode in which the witness is to give his or her evidence at the trial, the Judge must have regard to the need to protect the witness while at the same time ensuring a fair hearing for the defendant.

(3) This section does not limit:

(a) any statutory provision or rule of law which confers power to deal with contempt of court; or

(b) any statutory provision or rule of law which confers power to clear the court; or

(c) any power of the court to direct that evidence be given, or to permit evidence to be given, by a particular mode.

96. Variation or discharge of anonymity order - At any time before a witness gives evidence during a trial, a Supreme Court Judge may, on the Judge's own initiative or on the application of either party, vary or discharge a witness anonymity order made for the purposes of the proceeding under section 93.

97. Offence of breaching anonymity order-(1) A person commits an offence who, with knowledge of a pre-trial witness anonymity order made under section 93, intentionally

(c) ia faapea ona tuuina atu e le tagata molimau faamatalaga molimau e ala i se televise e le faasalalauina mo tagata lautele po o e ala i fesootaiga tau ata vito.

(2) I le fuafuaina pe tuuina atu faatonuga e faataata i le faiga o le a faapea ona tuuina atu ai e le tagata molimau lana faamatalaga molimau i le faamasinoga, e ao i le Faamasino ona ia amanaia le naunautaiga ina ia puipuia le tagata molimau a o lo o faapea foi ona faamautinoaina, i lea lava taimi se suesuega talafeagai mo lē o molia.

(3) E lē faatapulaaina lena fuaiupu:

(a) so o se aiaiga faaletulafono po o tulafono faafoe o le tulafono lea e faaee atu ai le malosiaga e tagofia ai le faalēmigao i le faamasinoga; po o

(b) so o se aiaiga faaletulafono po o se tulafono faafoe o tulafono lea ua faaee atu ai le malosiaga e faaavanoa le potu faamasino; po o

(c) so o se malosiaga o le faamasinoga e faatonuina ai ina ia tuuina atu faamatalaga molimau, po o ia faatagaina le tuuina atu o faamatalaga molimau, i se faiga faapitoa.

96. Fetuunaiga po o le faamatuu atu o le poloaiga e lē faailoaina ai le tagata molimau - I so o se taimi lava a o lumanai ai le tuuina atu e se tagata molimau faamatalaga molimau a o faagasolo se suesuega, e mafai e le Faamasino o le Faamasinoga Sili ona, i luga o lana lava fuafuaga po o i luga o talosaga a se tasi o itu faamasinoga, ona fetuunai pe faamatuu atu se poloaiga ua faia e lē faailoa ai se tagata molimau mo faamoemoega o le taulumaga i lalo o le fuaiupu 93.

97. Soligatulafono o le solia o le poloaiga e lē faailoaina ai (1) Ua faia e se tagata se soligatulafono, o ia lea, ua ia iloa le poloaiga e lē faailoaina ai le tagata molimau a o lumanai ai le

contravenes section 940, (c) or (e), and is liable on conviction to imprisonment for a term not exceeding seven (7) years.

(2) If a person contravenes section 94(b), (c) or (e), and that contravention does not constitute an offence against subsection (1), the person commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 50 penalty units; and
- (b) for a body corporate, to a fine not exceeding 500 penalty units.

(3) This section does not limit the power of any court to punish any contempt of court.

Division 9 - Corroboration and judicial directions

98. Corroboration generally not necessary-(1) It is not necessary in a criminal proceeding for the evidence on which the prosecution relies to be corroborated, except with respect to the offences of perjury or treason under the Crimes Act 2013.

(2) Subject to subsection (1) and section 99, if in a criminal proceeding there are assessors, the Judge must not:

- (a) warn the assessors that it is dangerous to act on uncorroborated evidence or to give a warning to the same or similar effect; or
- (b) give a direction relating to the absence of corroboration.

suesuega, sa faia i lalo o le fuaiupu 93, ua ia solia ma le faamoemoe le fuaiupu 94(b), (c) po o le (e), ma ua noatia i luga o moliaga ua faamaonia faaletulafono i le nofosala i le falepuipui mo se vaitaimi e lē silia le fitu (7) tausaga.

(2) Afai ua solia e se tagata le fuaiupu 94(b), (c) po o le (e) ma o lea soliga e le o faavae ai se soligatulafono ua faasaga i le faafuiau (1), ua faia e ia se soligatulafono ma ua noatia i luga o moliaga ua faamaonia:

- (a) mo se tagata e toatasi, i se sala tupe e lē silia le 50 iunite tau faasalaga; ma
- (b) mo se faalapotopotoga, i se sala tupe e lē silia le 500 iunite tau faasalaga.

(3) E lē faatapulaaina e lena fuaiupu le malosiaga o so o se faamasinoga e faasalaina ai so o se tulaga faalēmigao i le faamasinoga.

Vaevaega 9 - Faatonuga i tulaga tau faamatalaga molimau e faamaonia ai ma faamasinoga

98. E lē manaomia faamatalaga molimau e faamaonia ai i le tulaga lautele-(1) E lē talafeagai i totonu o se tualumaga tau solitulafono, mo faamatalaga molimau, lea e faalagolago i ai le faafoeina o moliaga faasolitulafono e avea ma faamatalaga e faamaonia ai, seia vagana ua tusa ai ma soligatulafono o le tauto pepelo po o fouvalega i lalo o le Tulafono o Soitulafono 2013.

(2) I le noatia ma le fai fuafua i le faafuiau (1) ma le fuaiupu 99, afai o i ai i totonu o se tualumaga tau solitulafono ni faatonu o le faamasinoga, e lē tataua i se Faamasino ona:

- (a) lapataia faatonu o le faamasinoga e faapea, o se tulaga lamatia le faia o gaoioiga i luga o faamatalaga molimau e le o faamaoniaina po o le tuuina atu o se lapataiga i lea lava faiga po o se tulaga e tutusa; po o
- (b) tuuina atu se faatonuga e faasino i le leai o se faamatalaga molimau e faamaonia ai.

99. Judge may direct assessors as to reliability of evidence-(1) If, in a criminal proceeding tried with assessors, the Judge is of the opinion that any evidence given in that proceeding that is admissible may nevertheless be unreliable, the Judge may warn the assessors of the need for caution in deciding:

- (a) whether to accept the evidence;
- (b) the weight to be given to the evidence.

(2) In a criminal proceeding tried with assessors the Judge must consider whether to give a warning under subsection (1) whenever the following evidence is given:

- (a) hearsay evidence;
- (b) evidence given by a witness who has a motive to give false evidence that is prejudicial to a defendant, if that evidence is the only evidence implicating the defendant;
- (c) evidence about the conduct of the defendant if that conduct is alleged to have occurred more than 10 years previously.

(3) In a criminal proceeding tried with assessors, a party may request the Judge to give a warning under subsection (1) but the Judge may refuse that request if the Judge is of the opinion that:

- (a) to do so might unnecessarily emphasise evidence; or
- (b) there is any other good reason.

99. E ao i Faamasino ona faatonuina faatonu o le faamasinoga e tusa ai ma le faatuatuaina o faamatalaga molimau-(1) Afai i se tualumaga tau solitulafono ua faamasino ai faatonu o le faamasinoga, ua faapea ona manatu le Faamasino, so o se faamatalaga molimau ua tuuina atu i lea tualumaga lea ua taliaina, e ono lē mafai ona faatuatuaina, e mafai e le Faamasino ona lapatai faatonu o le faamasinoga i le manaoga mo le faia ma le faaeteete o le iloiloga:

- (a) pe taliaina le faamatalaga molimau;
- (b) o tulaga faatau e ao ona tuuina atu mo le faamatalaga molimau.

(2) I se tualumaga tau solitulafono o lo o suesueina ma faatonu o le faamasinoga, e ao i se Faamasino ona iloiloina pe tuuina atu se lapataiga i lalo o le faafuaiupu (1) i so o se taimi e tuuina atu ai faamatalaga molimau ua taua:

- (a) faamatalaga molimau na faalogo ai mai isi;
- (b) faamatalaga molimau ua tuuina atu e se tagata molimau, o ia lea o i ai se lagona e tuuina ai se faamatalaga molimau sese, ua faapea ona faaituau ai i se tagata ua molia, pe afai o lea faamatalaga molimau, na o le pau lea o le faamatalaga molimau o lo o faailoa ai le tagata ua molia;
- (c) o faamatalaga molimau e uiga i le amioga a le tagata ua molia pe afai o lea amioga ua tuuaia ai, na faatinoina i le 10 tausaga talu ai.

(3) I se tualumaga tau solitulafono ua faamasino ai faatonu o le faamasinoga, e mafai e se itu faamasinoga ona talosaga i le Faamasino ina ia tuuina atu se lapataiga i lalo o le faafuaiupu (1), peitai, e mafai e le Faamasino ona teena le talosaga pe afai ua ia manatu e faapea:

- (a) o le faia o lea tulaga, o le a ono faatauaina ai faamatalaga molimau i se tulaga lē talafeagai; po o
- (b) ua i ai se isi mafuaaga lelei.

(4) It is not necessary for a Judge to use a particular form of words in giving the warning.

(5) If there are no assessors, the Judge must bear in mind the need for caution before convicting a defendant in reliance on evidence of a kind that may be unreliable.

(6) This section does not affect any other power of the Judge to warn or inform the assessors.

100. Directions when evidence given under certain conditions-(1) The Judge must give the direction referred to in subsection (2) if, in a criminal proceeding tried with assessors:

- (a) a witness offers evidence in an alternative way under this Part; or
- (b) the defendant is not permitted to personally cross-examine a witness; or
- (c) a witness offers evidence under a witness anonymity order.

(2) The direction required by subsection (1) is a direction to the assessors that:

- (a) the law makes special provision for the manner in which evidence is to be given, or questions are to be asked, in certain circumstances; and
- (b) the assessors must not draw any adverse inference against the defendant because of that manner of giving evidence or questioning.

101. Directions as to lies told by defendant-(1) This section applies if evidence offered in a criminal proceeding suggests that a defendant has lied either before or during the proceeding.

(4) E lē talafeagai i se Faamasino ona faaaogāina se tulaga faapitoa o upu i le tuuina atu o le lapataiga.

(5) Afai e le o i ai ni faatonu o le faamasinoga, e ao i le Faamasino ona manatua le manaoga o le faia ma le faaeteete o le iloiloga, a o lumanai ai le faamaoniga o moliaga o se tagata ua molia, i le faalagolago i luga o ni faamatalaga molimau o lea ituaiga e lē faatuatuaina.

(6) O lenei fuaiupu e lē aafia ai so o se isi lava malosia o le Faamasino e lapatai pe logoina ai faatonu o le faamasinoga.

100. Faatonuga e tuuina atu ai faamatalaga molimau i lalo o nisi o tuutuuga-(1) E ao i le Faamasino ona tuuina atu faatonuga ua faasinomia i totonu o le faafuaiupu (2), pe afai o i ai i totonu o se taualumaga tau solitulafono ua faatinoina e faatonu:

- (a) se tagata molimau ua tuuina atu faamatalaga molimau i se isi faiga i lalo o lenei Vaega; po o
- (b) e lē faatagaina lē ua molia ina ia fesiligia patino se tagata o molimau; po o
- (c) ua tuuina atu e le tagata molimau faamatalaga molimau i lalo o se poloaiga e lē faailoaina ai le tagata molimau.

(2) O le faatonuga o lo o manaomia e le faafuaiupu (1) o se faatonuga mo faatonu o le faamasinoga e faapea:

- (a) ua faia e le tulafono aiaiga faapitoa mo le faiga o le a faapea ona tuuina atu ai faamatalaga molimau, po o le a fesiligia ai, i nisi o tulaga aliae mai; ma
- (b) e lē tatau i faatonu o le faamasinoga ona faia se faaiuga matuia e faasaga i le tagata ua molia ona o lea faiga ua tuuina atu ai faamatalaga molimau po o fesili.

101. Faatonuga e uiga i ni pepelo ua faia e lē ua molia-(1) O lenei fuaiupu e faaaogā pe afai o se faamatalaga molimau ua tuuina atu i se taualumaga tau soligatulafono ua faailoa mai ai le pepelo o lē ua molia a o lumanai ai po o le faagasologa o taualumaga.

(2) If evidence of a defendant's lie is offered in a criminal proceeding tried with assessors, the Judge is not obliged to give a specific direction as to what inference the assessors may draw from that evidence.

(3) Despite subsection (2), if, in a criminal proceeding tried with assessors, the Judge is of the opinion that the assessors may place undue weight on evidence of a defendant's lie, or if the defendant so requests, the Judge must warn the assessors that:

- (a) the assessors must be satisfied before using the evidence that the defendant did lie; and
- (b) the assessors should not necessarily conclude that, just because the defendant lied, the defendant is guilty of the offence for which the defendant is being tried.

(4) In a criminal proceeding tried without assessors, the Judge must have regard to the matters set out in subsection (3) before placing any weight on evidence of a defendant's lie.

102. Directions as to evidence given by a child and judicial warning about identification evidence-(1) In a criminal proceeding tried with assessors in which the complainant is a child at the time when the proceeding commences, the Judge must not give any warning to the assessors about the absence of

(2) Afai ua tuuina mai faamatalaga molimau o se faamatalaga pepelo ua faia e lē ua molia i se taualumaga tau solitulafono o lo o auai faatasi ai faatonu o le faamasinoga i le suesuega, e lē noatia le Faamasino e tuuina atu se faatonuga ua faamaotiina e tusa ai o se faaiuga e mafai ona faia e faatonu mai lea faamatalaga molimau.

(3) E ui lava i le faafuaiupu (2), afai, i se taualumaga tau solitulafono o lo o auai faatasi ai faatonu o le faamasinoga i le suesuega, ae ua manatu le Faamasino e faapea e ono mafai e faatonu ona tuuina atu se tulaga faatauaina e lē talafeagai i faamatalaga molimau o se faamatalaga pepelo a lē ua molia, po o pe afai ua faapea ona talosagaina e lē ua molia, e ao i le Faamasino ona lapataia faatonu o le faamasinoga e faapea:

- (a) e ao ona faamalieina faatonu o le faamasinoga a o lumanai ai le faaaogāina o faamatalaga molimau lea ua faapea ai e moni lava na pepelo lē o lo o tete; ma
- (b) e lē talafeagai i faatonu o le faamasinoga ona faia se faaiuga e faapea ona ua pepelo lē ua molia, ua tausalaina ai le tagata ua molia i le soligatulafono, lea na suesueina ai o ia.

(4) I se taualumaga tau solitulafono e le o auai ai faatonu o le faamasinoga i le suesueina o le mataupu, e ao i le Faamasino ona amanaia mataupu ua faatulagaina mai i totonu o le faafuaiupu (3) a o lumanai ai le tuuina atu o so o se tulaga faatau o le faamatalaga molimau o le pepelo ua faia e lē o tete.

102. Faatonuga e tusa ai o faamatalaga molimau ua tuuina atu e se tamaitiiti ma lapataiga tau faamasinoga e uiga i faamatalaga molimau o tulaga e iloagofie ai-(1) I se taualumaga tau solitulafono ua auai faatasi ai faatonu o le faamasinoga, lea o lo o i ai se tamaitiiti faasea i le taimi na

corroboration of the evidence of the complainant if the Judge would not have given that kind of a warning had the complainant been an adult.

(2) In a proceeding tried with assessors in which a witness is a child, the Judge must not, unless expert evidence is given in that proceeding supporting the giving of the following direction or the making of the following comment:

- (a) instruct the assessors that there is a need to scrutinise the evidence of children generally with special care; or
- (b) suggest to the assessors that children generally have tendencies to invent or distort.

(3) In a criminal proceeding tried with assessors in which the case against the defendant depends wholly or substantially on the correctness of visual identification of the defendant or any other person, the Judge must warn the assessors of the special need for caution before finding the defendant guilty in reliance on the correctness of any of the identifications.

(4) The warning need not be in any particular words but must:

- (a) warn the assessors that a mistaken identification can result in a serious miscarriage of justice; and
- (b) alert the assessors to the possibility that a mistaken witness may be convincing; and
- (c) where there is more than one (1) identification witness, refer to the possibility that all of them may be mistaken.

amataina ai faagasologa, e lē tatau i le Faamasino ona tuuina atu so o se lapataiga i faatonu o le faamasinoga e uiga i le leai ai o se faamatalaga e faamaonia ai faamatalaga molimau a lē ua faasea pe afai e le i tuuina atu e le Faamasino lea ituaiga lapataiga pe ana faapea o lē ua faasea o se tagata matua.

(2) I se tualumaga ua auai ai faatonu o le faamasinoga i le suesuega, lea ua faapea ai o se tagata molimau o se tamaitiiti, e lē tatau i le Faamasino, seia vagana ua tuuina atu ni faamatalaga molimau tau tomai faapitoa i lea tualumaga e lagolagoina ai le tuuina atu o faatonuga o le a taua po o le faia o fautuaga nei:

- (a) faatonuina faatonu o le faamasinoga e faapea, o lo o ai se manaoga mo le mataituina o le faamatalaga molimau o tamaiti e masani ona i lalo o se vaaiga faapitoa; po o
- (b) fautuaina faatonu o le faamasinoga e faapea, o tamaiti e masani ona i ai o latou uiga e faia ai ni tala fatu po o ni tala sese.

(3) I se tualumaga tau solitulafono o auai ai faatonu i se mataupu e faasaga i le tagata ua molia, ua faalagolago tele po o i se tulaga maoae i le sao atoatoa o tulaga vaaia e iloagofie ai le tagata ua molia po o so o se isi lava tagata, e ao i le Faamasino ona lapataia faatonu e tusa ai o manaoga faapitoa, mo se faaeteetega a o le i faamaonia le nofosala a le tagata ua molia i le faalagolago i le sao atoatoa i so o se tulaga e iloagofie ai.

(4) O le lapataiga e lē manaomia ona faaaogāina ni upu faapitoa peitai e ao ona:

- (a) lapataia faatonu o le faamasinoga e faapea o se tulaga tau faasese i le faailoaina o tulaga e iloagofie ai se tagata, o le a tulai mai ai i se tulaga ogaoga le lē faia o le amiotonu; ma
- (b) logoina faatonu o le faamasinoga i se tulaga e ono tulai mai e faapea, e mafai ona talitonuina se tagata molimau tau faasese; ma
- (c) pe afai e sili atu i le tasi (1) le tagata molimau ua faailoagofieina, ia vaai i le tulaga e mafai ai ona faapea e tau faasese uma i latou.

103. Failure or delay in complaining in sexual cases-(1)

Subsection (2) applies if, in a sexual case tried with assessors, evidence is given or a question is asked or a comment is made that tends to suggest that the person against whom the offence is alleged to have been committed either delayed making or failed to make a complaint in respect of the offence.

(2) If this subsection applies, the Judge must tell the assessors that there can be good reasons for the victim of an offence of that kind to delay making or fail to make a complaint in respect of the offence.

*Division 10 - Uncontroverted facts
and reliable public documents*

104. Asserted fact may be accepted without evidence-(1)

A Judge or the assessors may take notice of facts so known and accepted either generally or in the locality in which the proceeding is being held that they cannot reasonably be questioned.

(2) A Judge may:

- (a) acquire knowledge mentioned in subsection (1) in any way the Judge thinks fit; and
- (b) take notice of facts capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned and, if the proceedings are with assessors, may direct the assessors in relation to the matter.

103. O le lē mafai po o le faatuai o le faasea i mataupu tau faiga aiga-(1)

E faaogāina le faafuaiupu (2) pe afai, i se mataupu tau faiga aiga ua i ai faatasi faatonu o le faamasinoga i lona suesueina, ua tuuina atu ai faamatalaga molimau, po o ua fesiligia ai, po o ua faia se faamatalaga ua mafuli i le tulaga e faapea o le tagata, o ia lea na faia agai i ai le soligatulafono ua taua, ua faatuai ona faia po o ua lē faia se faasea e tusa ai o le soligatulafono.

(2) Afai e faaogāina le faafuaiupu leni, e ao i Faamasino ona tau atu i faatonu o le faamasinoga e faapea, e mafai ona i ai ni mafuaaga lelei mo le tagata ua afaina i se soligatulafono o lea ituaiga ua faatuai ai po o ua lē mafai ai ona faia se faasea e tusa ai o le soligatulafono.

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

104. E mafai ona taliaina e aunoa ma faamatalaga molimau mea moni ua faaalua manino-(1)

E mafai e se Faamasino po o faatonu o le faamasinoga ona mataituina mea moni ua faapea ona faaalua ma talia i se faiga lautele po o o lo o i le nofoaga lea o lo o faataunuina ai le faafoeina o moliaga tau solitulafono e faapea e lē mafai i luga o ni mafuaaga ona fesiligia.

(2) E mafai e le Faamasino ona:

- (a) mauaina le malamalamaaga ua taua i le faafuaiupu (1) i so o se faiga ua finagalo le Faamasino ua talafeagai ai; ma
- (b) mataituina mea moni e mafai ona faia ai se faaiuga sao ma atoatoa e faasino i mafuaaga e lē toe fesiligia lona atoatoa ma, afai o le faafoeina o moliaga tau solitulafono ua tuuina atu lea i faatonu o le faamasinoga, e mafai ona faatonuina ai faatonu o le faamasinoga e faasino i le mataupu.

105. Admission of reliable published documents-(1) A Judge may, in matters of public history, literature, science, or art, admit as evidence any published documents that the Judge considers to be reliable sources of information on the subjects to which they respectively relate.

(2) Division 1 of Part 2 does not apply to evidence referred to under subsection (1).

106. Authenticity of public documents-(1) Subsection (2) applies to a document that purports to be a public document, or a copy of or an extract from or a summary of a public document, and to have been:

- (a) sealed with the seal of a person or a body that might reasonably be supposed to have the custody of that public document; or
- (b) certified to be such a copy, extract, or summary by a person who might reasonably be supposed to have the custody of that public document.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be a public document or a copy of the public document or an extract from or summary of the public document and may be offered in evidence to prove the truth of its contents.

(3) If an officer entrusted with the custody of a public document is required by a Judge to produce the public document, it is sufficient compliance with the requirement for the officer to produce a copy of, or extract from, the public document if it purports to be signed and certified by the officer as a true copy or extract.

105. Taliaina o pepa aloaia faatuatuaina ua lomía faasalalau-(1) E mafai e se Faamasino, i mataupu tau talaaga o tagata lautele, tusitusiga, saienisi, po o le faatufugaga, taliaina e avea ma faamatalaga molimau so o se pepa aloaia ua lomía faasalalau ua manatu le Faamasino o ni punaoa faatuatuaina o faamatalaga e faatatau i mataupu lea ua fesootai i ai i lena faasologa.

(2) E lē faaaogāina le Vaevaega 1 o le Vaega 2 i faamatalaga molimau ua tuuina atu i lalo o le faafuuiupu (1).

106. Faamaonia o pepa aloaia a le Malo-(1) E faaaogāina le faafuuiupu (2) i se pepa aloaia, lea ua faamoemoe e avea o se pepa aloaia a le Malo, po o se ata o, po o se faamatalaga ootooto mai, po o se ootootoga o se pepa aloaia a le Malo, ma ua faapea ona:

- (a) faamauina i le faamaufaailoga a se tagata po o se faalapotopotoga e ono mafai ona talitonuina ua i ai le puipugamalu o lea pepa aloaia a le Malo; po o
- (b) ua faamaonia e avea o se ata, faamatalaga ootooto, po o se ootootoga ua faia e se tagata o ia lea e ono mafai ona faatuatuaina e faapea ua ia te ia le puipugamalu o lea pepa aloaia a le Malo.

(2) Afai e faaaogāina lena faafuuiupu, ua avea le pepa aloaia e faapea, ae vagana ai ua filifilia e le Faamasino se isi faiga e ese ai, e avea o se pepa aloaia a le Malo po o se ata o le pepa aloaia a le Malo, po o se faamatalaga ootooto mai po o se ootootoga o le pepa aloaia a le Malo ma e mafai ona tuuina atu e avea ma faamatalaga molimau e faamaonia ai le moni o mataupu o lo o i totonu.

(3) Afai e manaomia e le Faamasino se tagata ofisa faatuatuaina e vaia ai se pepa aloaia a le Malo e tuuina atu lea pepa aloaia, ua atoatoa lea mo le usitaia ai o manaoga mo le tagata ofisa na te tuuina atu ai le ata o, po o se ootootoga mai i, pepa aloaia a le Malo pe afai ua fuafua e sainia ma faamaonia e le tagata ofisa e avea o se ata moni po o se faamatalaga ootooto.

(4) It is sufficient production of a copy or extract for subsection (3) if the officer sends it by prepaid post, or delivers it, to:

(a) the Registrar of the court in which it is to be produced;
or

(b) the Judge before whom it is to be produced.

(5) The Judge before whom a copy or extract is produced under subsection (3) may direct the officer to produce the original public document.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

107. Evidence of convictions, acquittals and proceedings-

(1) Evidence of the following facts, if admissible, may be given by a certificate purporting to be signed by a Judge, a Registrar, or other officer having custody of the relevant court records:

(a) the conviction or acquittal of a person charged with an offence and the particulars of the offence charged and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate);

(b) the sentencing by a court of a person to any penalty or other disposition of the case following a plea or finding of guilt, and the particulars of the offence for which that person was sentenced or otherwise dealt with and of the person (including the name and date of birth of the person if the person is an

(4) Ua atoatoa le tuuina atu o se ata po o se ootoga mo le faafuaiupu (3) pe afai ua lafoina e le tagata ofisa e ala i se meli e totogiina muamua, po o le faaoo atu i:

(a) i le Resitara o le faamasinoga lea o le a tuuina atu ai;
po o

(b) i luma o le Faamasino o ia lea e ao ona tuuina atu i ai.

(5) E mafai e le Faamasino, o ia lea na tuuina atu i ona luma se ata po o se ootoga i lalo o le faafuaiupu (3), ona faatonu le tagata ofisa e tuuina atu uluai pepa aloaia a le Malo.

(6) E lē faaogāina le Vaevaega Laitiiti A o le Vaevaega 1 o le Vaega 2 i faamatalaga molimau ua tuuina atu i lalo o leni fuaiupu.

107. O faamatalaga molimau o le faamaonia o moliaga, lē tausaina ma tualumaga faa-faamasinoga-

(1) E mafai ona tuuina atu faamatalaga molimau o mea moni o le a taua, pe afai ae taliaina e ala i se tusi faamaonia ua avea e faapea ua sainia e se Faamasino, se Resitara, po o isi tagata ofisa ua i ai le puipuigamalu o faamaumauga talafeagai a le faamasinoga:

(a) o le faamaonia faaletulafono o moliaga po o le lē faamaonia o le solitulafono a se tagata ua molia i se soligatulafono ma faamatalaga auiliili o le soligatulafono ua molia ai ma le tagata (e aofia ai le igoa ma le aso fanau o le tagata pe afai o lea tagata o se tagata e toatasi, ma le igoa, aso ma le nofoaga na auai ai lea tagata i se faalapotopotoga pe afai o lea tagata o se faalapotopotoga ua tuufaatasia faaletulafono);

(b) o le faasalaina e se faamasinoga o se tagata i so o se faasalaga po o isi tulaga o le mataupu ua sosoo atu ma se talosaga po o le faamaonia o le solitulafono, ma faamatalaga auiliili o le soligatulafono lea na faasalaina ai lea tagata po o

individual, and the name and date and place of incorporation of the person if the person is a body corporate);

- (c) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates;
- (d) the existence of a criminal or civil proceeding, whether or not the proceeding has been concluded, and the nature of the proceeding.

(2) A certificate under this section is sufficient evidence of the facts stated in it without proof of the signature or office of the person appearing to have signed the certificate.

(3) The manner of proving the facts referred to in subsection (1) authorised by this section is in addition to any other manner of proving any of those facts authorised by law.

(4) Subsection (5) applies if:

- (a) a certificate under this section is offered in evidence in a proceeding for the purpose of proving the conviction or acquittal of a person, or the sentence by a court of a person to a penalty, or an order made by a court concerning a person; and
- (b) the name of the person stated in the certificate is substantially similar to the name of the person concerning whom the evidence is offered.

le tagofia i se isi faiga e ese ai ma o lea tagata (e aofia ai le igoa ma le aso fanau o le tagata pe afai e na o ia, ma le igoa, aso ma le nofoaga na faatasi atu ai o ia e aveia ma tagata o se faalapotopotoga pe afai o le tagata o se faalapotopotoga);

- (c) o se poloaiga mo se faaiuga a se faamasinoga ma le uiga, itu faamasinoga, ma faamatalaga auiliili o le tualumaga lea e faasino i ai le poloaiga po o le faaiuga;
- (d) o le tumau pea ona i ai tualumaga faasolitulafono po o tau va o tagata tusa lava pe ua faaiuina tualumaga pe leai foi ma le uiga o le tualumaga.

(2) O se tusi faamaonia i lalo o lenei fuaiupu, o se faamatalaga molimau atoatoa lea o mea moni ua taua ai, e aunoa ma se faamaoniga o le saina po o le tofiga o le tagata, lea ua foliga mai na ia saina le tusi faamaonia.

(3) O le faiga o lo o faamaonia ai mea moni ua taua i le faafuiau (1) ua faatagaina e ala i lenei fuaiupu, ua faaopoopo atu lea i luga o so o se isi lava faiga o lo o faamaonia ai so o se tasi lava o ia mea moni ua faatagaina e le tulafono.

(4) E faaogaina le faafuiau (5) pe afai:

- (a) ua tuuina atu se tusi faamaonia i lalo o lenei fuaiupu e aveia o se faamatalaga molimau i se tualumaga mo le faamoemoe o le faamaoniaina o le moliaga faasolitulafono po o le lē tausalaina o se tagata, po o le faasalaina e se faamasinoga o se tagata i se faasalaga, po o se poloaiga ua faia e se faamasinoga e faatatau i se tagata; ma
- (b) le igoa o le tagata ua faaalia i le tusi faamaonia e mafuli ina tutusa i le igoa o le tagata ua faatatau i ai faamatalaga molimau ua tuuina atu, o ia lea ua tuuina atu i ai le faamatalaga molimau.

(5) If this subsection applies, it is presumed, in the absence of evidence to the contrary, that the person whose name is stated in the certificate is the person concerning whom the evidence is offered.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

108. Proof of conviction from fingerprints-(1) 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:

- (a) the certificate purports to be signed by a fingerprint examiner; and
- (b) copies of the fingerprints of the person are exhibited or shown on the certificate; and
- (c) the certificate certifies that those copies are copies of the fingerprints of a person who was convicted in the fingerprint examiner's country of the offence of which particulars are given.

(2) Subsection (3) applies to a certificate that:

- (a) purports to be signed by a fingerprint examiner; and
- (b) certifies that the copies of the fingerprints that are exhibited or shown on the certificate made under subsection (1) and the fingerprints of the person in respect of whom a conviction is sought to be proved (a copy of which is exhibited or shown on the certificate made under this subsection) are the fingerprints of the same person.

(5) Afai e faaaogāina lenei faafuaiupu, ua faatatauina e faapea, e aunoa ma se faamatalaga molimau e ese ai o le tagata o lona igoa o lo o taua i le tusi faamaonia, o le tagata lea ua faatatau i ai faamatalaga molimau ua tuuina atu.

(6) E lē faaaogāina le Vaevaega Laitiiti A o le Vaevaega 1 o le Vaega 2 i faamatalaga molimau ua tuuina atu i lalo o lenei fuaiupu.

108. Faamaoniga o moliaga faaletulafono mai tulaga-lima-

(1) E taliaina e aveva ma faamatalaga molimau se tusi faamaonia e faamaonia ai le tulaga e ilogofie ai le tagata ua tuuaia, sa faapea ona faamaonia lona moliaga i se atunuu i se soligatulafono pe afai:

- (a) ua faamoemoe ina ia sainia le tusi faamaonia e se tagata e suesueina tulaga-lima; ma
- (b) ua faalauiloa po o ua faalia ata o tulaga-lima o le tagata i luga o le tusi faamaonia; ma
- (c) ua faamaonia i le tusi faamaonia e faapea, o ia ata po o ata o tulaga-lima o se tagata o ia lea ua faamaonia moliaga i le atunuu na suesueina ai tulaga-lima e uiga i le soligatulafono lea na tuuina atu ai faamatalaga auiliili.

(2) E faaaogāina le faafuaiupu (3) i se tusi faamaonia lea:

- (a) ua faamoemoe o le a sainia e se tagata e suesueina tulaga-lima; ma
- (b) ua faamaonia mai e faapea o ata o tulaga-lima ua faapea ona faalauiloaina ma faalia i le tusi faamaonia ua faia i lalo o le faafuaiupu (1) ma o tulaga-lima o le tagata e tusa ai o se tagata o ia lea o lo o suesueina ina ia faamaonia lona moliaga faaletulafono (se ata lea o lo o faalauiloa po o faalia i le tusi faamaonia ua faia i lalo o lenei faafuaiupu) o tulaga-lima lava o le tagata lea e tasi.

(3) A certificate to which subsection (2) applies is, unless the Judge decides otherwise, evidence that the person in respect of whom the conviction is sought to be proved was convicted of the offence of which particulars were given in the certificate made under subsection (1).

(4) The manner of proving a conviction authorised by this section is in addition to any other manner of proving the conviction authorised by law.

(5) In this section, “fingerprint examiner” means a fingerprint examiner who is:

- (a) a member or employee of the Samoa Police Service; or
- (b) a member or employee of a police force in an overseas country.

(6) Division 1 of Part 2 does not apply to evidence offered under this section.

109. Samoan and foreign official documents-(1)
Subsection (2) applies to a document that purports:

- (a) to have been printed in the Savali or *Gazette*; or
- (b) to have been printed or published by authority of the Government; or
- (c) to have been printed or published by order of or under the authority of the Legislative Assembly.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be what it purports to be and to have been so printed and published and to have been published on the date on which it purports to have been published.

(3) Subsection (4) applies to a document that purports:

(3) O se tusi faamaonia, lea e faaaogā i ai le faafuaiupu (2), ae vagana ai ua manatu le Faamasino i se isi faiga e ese ai, ua avea ma faamatalaga molimau e faapea o le tagata o ia lea o lo o suesueina pe faamaonia moliaga faaletulafono, ua faamaonia lana soligatulafono lea na tuuina atu ai faamatalaga auiliili i le tusi faamaonia ua faia i lalo o le faafuaiupu (1).

(4) O le faiga ua faamaonia ai se moliaga faaletulafono ua faatagaina e lenei fuaiupu e faaopoopo atu lea i so o se isi lava faiga o lo o faamaonia ai moliaga faaletulafono ua faatagaina e le tulafono.

(5) I lenei fuaiupu, “o le tagata e suesueina tulaga-lima” o lona uiga o le tagata o lo o ia suesueina tulaga-lima, o ia lea:

- (a) o se sui po o se tagata faigaluega o le Galuega Tau Leoleo a Samoa; po o
- (b) o se sui po o se tagata faigaluega a se vaega o leoleo i atunuu i fafo.

(6) E lē faaaogāina le Vaevaega 1 o le Vaega 2, i faamatalaga molimau ua tuuina atu i lalo o lenei fuaiupu.

109. O pepa aloaia faaletulafono a Samoa ma atunuu i fafo-(1) E faaaogāina le faafuaiupu (2) i se pepa aloaia lea ua faamoemoe:

- (a) na lomina i le Savali po o le *Kaseti*; po o
- (b) na lomina pe na lomina faasalalau e ala i se pule faataga a le Malo; po o
- (c) na lomina pe na lomina faasalalau e ala i se poloaiga a, po o i lalo o le pule faataga a le Fono Aoao Faitulafono.

(2) Afai e faaaogāina lenei faafuaiupu, ua faatatauina le pepa aloaia e faapea, ae vagana ai ua manatu le Faamasino i se isi faiga e ese ai, ina ia i ai i le tulaga lea ua faamoemoe ia i ai ma ia faapena ona lomina ma ia lomina faasalalau i le aso lea ua fuafua e lomina faasalalau ai.

(3) E faaaogāina le faafuaiupu (4) i se pepa aloaia ua faamoemoe:

- (a) to have been printed or published in a government or official gazette (by whatever name called) of a foreign country; or
- (b) to have been printed or published by the government or official printer of a foreign country; or
- (c) to have been printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country; or
- (d) to have been printed or published by an international organisation.

(4) If this subsection applies, the document is presumed, unless the contrary is proved, to be what it purports to be and to have been printed or published in the manner provided in subsection (3) and to have been published on the date on which it purports to have been published.

(5) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

110. Evidence of foreign law-(1) A party may offer as evidence of a statute or other written law, proclamation, treaty, or act of State, of a foreign country:

- (a) evidence given by an expert; or
- (b) a copy of the statute or other written law, proclamation, treaty, or act of State that is certified as a true copy by a person who might reasonably be supposed to have the custody of the statute or other written law, proclamation, treaty, or act of State; or

- (a) na lomia po o na lomia faasalalau i se kaseti a le Malo po o se kaseti aloaia (e ala i so o se igoa ua taua ai) o se atunuu i fafo; po o
- (b) na faapea ona lomia po o na lomia faasalalau e le Malo po o se lomitusi aloaia a se atunuu i fafo; po o
- (c) na lomia po o na lomia faasalalau e le pule faataga a le tulafono, pulega faatonu, po o se vaega o faamasinoga o le Malo o se atunuu i fafo; po o
- (d) na lomia pe lomia faasalalau e se faalapopotoga faava o malo.

(4) Afai e faaogāina lenei faafuaiupu, ua faatatauina le pepa aloaia, ae vagana ai ua faamaonia se isi faiga e ese ai, ua ile tulaga ua faamoemoe e tatau ona i ai ma na lomia po o na lomia faasalalau i le faiga ua tuuina atu i totonu o le faafuaiupu (3) ma na lomia faasalalau i le aso lea na faamoemoe e lomia faasalalau ai.

(5) E lē faaogāina le Vaevaega Laitiiti A o le Vaevaega 1 o le Vaega 2 i faamatalaga molimau ua tuuina atu i lalo o lenei fuaiupu.

110. Faamatalaga molimau o tulafono a atunuu i fafo-(1) E mafai e se itu faamasinoga ona tuuina atu e avea ma faamatalaga molimau o se tulafono po o isi tulafono tusitusia, faaaliga faasalalau, feagaiga po o se tulafono a le Malo, a se atunuu i fafo; po o

- (a) faamatalaga molimau ua tuuina atu e se tagata tomai faapitoa; po o
- (b) se ata o le tulafono po o isi lava tulafono tusitusia, faaaliga faasalalau, feagaiga, po o se tulafono a le Malo, lea ua faamaonia e avea o se ata moni e se tagata o ia lea e mafai, i luga o mafuaaga talafeagai ona avea e faapea ua ia te ia le puipuiamalu o le tulafono po o isi lava tulafono tusitusia, faaaliga faasalalau, feagaiga po o tulafono a le Malo; po o

- (c) any document containing the statute or other written law, proclamation, treaty, or act of State that purports to have been issued by the government or official printer of the country or by authority of the government or administration of the country; or
- (d) any document containing the statute or other written law, proclamation, treaty, or act of State that appears to the Judge to be a reliable source of information.

(2) In addition, or as an alternative, to the evidence of an expert, a party may offer as evidence of the unwritten or common law of a foreign country, or as evidence of the interpretation of a statute or other written law or a proclamation of a foreign country, a document:

- (a) containing reports of judgments of the courts of the country; and
- (b) that appears to the Judge to be a reliable source of information about the law of that country.

(3) A party may offer as evidence of a statute or other written law of a foreign country, or of the unwritten or common law of a foreign country, any publication:

- (a) that describes or explains the law of that country; and
- (b) that appears to the Judge to be a reliable source of information about the law of that country.

(4) A Judge is not bound to accept or act on a statement in any document as evidence of the law of a foreign country.

- (c) so o se pepa aloaia ua aofia ai tulafono po o isi lava tulafono tusitusia, faaaliga faasalalau, feagaiga po o tulafono a le Malo lea ua avea e faapea na faamatuu atu e le Malo po o le lomitusi aloaia a le atunuu po o se pule faataga a le Malo po o le pulega a le atunuu; po o

- (d) so o se pepa aloaia ua aofia ai le tulafono po o isi tulafono tusitusia, faaaliga faasalalau, feagaiga, po o tulafono a le Malo, lea e aliali mai i le Faamasino o se punaoa faatuatuaina o faamatalaga.

(2) E faaopoopo atu i ai, po o e avea ai o se isi pepa aloaia i le faamatalaga molimau a se tagata agavaa faapitoa, e mafai e se itu faamasinoga ona tuuina atu se faamatalaga molimau o le tulafono e le o tusia po o se tulafono e faaaogā faalauaitele a se atunuu i fafo, po o e avea o se faamatalaga molimau o le faamatalaina o se tulafono po o isi tulafono tusitusia po o se faaaliga faasalalau a se atunuu i fafo, se pepa aloaia:

- (a) ua aofia ai lipoti o faaiuga a le faamasinoga a le atunuu; ma
- (b) ua foliga i le Faamasino o se punaoa faatuatuaina o faamatalaga e uiga i tulafono a lea atunuu.

(3) E mafai e se itu faamasinoga ona tuuina atu e avea o se faamatalaga molimau o se tulafono po o isi tulafono tusitusia a se atunuu i fafo, po o le tulafono e le o tusia, po o tulafono e faaaogā faalauaitele o se atunuu i fafo, so o se lomiga faasalalau:

- (a) lea e faamatalaina ai pe faamalamalama ai le tulafono a lea atunuu; ma
- (b) ua foliga mai i le Faamasino o se punaoa faatuatuaina o faamatalaga e faatatau i le tulafono a lea atunuu.

(4) E lē noatia i se Faamasino e talia po o e faia se gaioiga i luga o se faamatalaga i so o se pepa aloaia e avea ma faamatalaga molimau o le tulafono a se atunuu i fafo.

(5) In this section, “statute of a foreign country” includes any regulation, rule, bylaw, or other instrument of subordinate legislation of the country.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

111. Notification in official document of doing any act-(1)

Subsection (2) applies if the doing of an act by the Head of State or Cabinet, or Legislative Assembly, or by a person authorised to do the act by the law of Samoa, is notified or published in:

- (a) the Savali or *Gazette*; or
- (b) a document that was printed or published by the authority of the Government; or
- (c) a document that was printed or published by order of or under the authority of the Legislative Assembly.

(2) If this subsection applies, it is presumed, unless the Judge decides otherwise, that the act was done and that it was done on the date (if any) that appears in the Savali, *Gazette* or document.

(3) Subsection (4) applies if the doing of an act by a foreign legislature or a person authorised to do the act by the law of a foreign country is notified or published in:

- (a) a government or official gazette (by whatever name called) of a foreign country; or
- (b) a document that was printed or published by the government or official printer of a foreign country; or
- (c) a document that was printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country.

(5) I totonu o lenei fuaiupu, “tulafono a se atunuu i fafo” e aofia ai so o se tulafono faatonutonu, tulafono faafoe, tulafono laitiiti, po o isi pepa faaetutulafono o tulafono laiti a le atunuu.

(6) E lē faaaogāina le Vaevaega Laitiiti A o le Vaevaega 1 o le Vaega 2 i faamatalaga molimau ua tuuina atu i lalo o lenei fuaiupu.

111. Faasilasilaga i totonu o pepa aloaia faaetutulafono i le faia o so o se gaoioiga-(1)

E faaaogāina le faafuaiupu (2) pe afai e faia se gaoioiga e Le Ao o le Malo, po o le Kapeneta, po o le Fono Aoao Faitulafono, po o e se tagata ua faatagaina e faia le gaoioiga e ala i le tulafono a Samoa, e faasilasilaina po o e lomía faasalalau i totonu o le:

- (a) Savali po o le *Kaseti*; po o
- (b) se pepa aloaia ua faapea ona lomía po o ua lomía faasalalau e le pulega a le Malo; po o
- (c) se pepa aloaia ua faapea ona lomía po o ua lomía faasalalau e ala i se poloaiga po o i lalo o se pule faataga a le Fono Aoao Faitulafono.

(2) Afai e faaaogāina lenei faafuaiupu, ua faatatauina e faapea, ae vagana ai ua manatu le Faamasino i se isi faiga e ese ai e faapea na faia le gaoioiga ma sa faapea ona faia i le aso (pe afai e i ai) na lomía ai i le Savali, *Kaseti* po o le pepa aloaia.

(3) E faaaogāina le faafuaiupu (4) pe afai o le faia o se gaoioiga e ala i se tulafono a se atunuu i fafo po o se tagata ua faatagaina e faia le gaoioiga e ala i le tulafono a se atunuu i fafo, ua faasilasilaina pe lomía faasalalau i totonu o:

- (a) se kaseti a le Malo po o se kaseti aloaia (e ala i so o se igoa ua taua ai) o se atunuu i fafo; po o
- (b) se pepa aloaia ua faapea ona lomía po o ua lomía faasalalau e le Malo po o le lomitusi aloaia a se atunuu i fafo; po o
- (c) se pepa aloaia ua faapea ona lomía po o ua lomía faasalalau e le pule faataga a le tulafono, pulega faatonu, po o vaega o le faamasinoga a le Malo o se atunuu i fafo.

(4) If this subsection applies, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the government or official gazette (however described) or other document.

(5) If the doing of an act by an international organisation is notified or published in a document that was printed or published by the international organisation, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the document.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

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

112. Definition - In this Division:

“Judge” means a Judge of the Supreme Court;

“overseas court” means a court or tribunal exercising jurisdiction in another country;

“overseas representative:

(a) means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, *Chargé d’Affaires*, Head of Mission, Consular Officer, or Pro-consul of another country exercising jurisdiction in Samoa; and

(b) includes -

(i) any person lawfully acting for any of those officers; or

(4) Afai e faaaogāina lenei faafuaiupu, ua faatatauina e faapea, ae vagana ai ua faamaonia se isi tulaga e ese ai, o le gaoioiga ua maea ona faia ma e faapea na faia i le aso (pe afai e i ai) lea na i ai i totonu o le kaseti a le Malo po o le kaseti aloaia (po o le a lava le tulaga o lo o faamatalaina ai) po o isi pepa aloaia.

(5) Afai o le faiga o se gaoioiga e le faalapotopotoga faava o malo ua faasilasila po o ua lomía faasalalau i se pepa aloaia na lomía po o ua lomía faasalalau e le faalapotopotoga faava o malo, ua faatatauina, ae vagana ai ua faamaonia se isi tulaga e ese ai, e faapea na faia le gaoioiga ma sa faapea ona faia i le aso (pe afai e i ai) lea na faaalía ai i totonu o le pepa aloaia.

(6) E lē faaaogāina le Vaevaega Latiiti A o le Vaevaega 1 o le Vaega 2 i faamatalaga ua tuuina atu i lalo o lenei fuaiupu.

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

112. Faamatalaina o uiga o upu - I totonu o lenei Vaevaega:

“Faamasino” o lona uiga o se Faamasino o le Faamasinoga Sili;

“faamasinoga a atunuu i fafo” o lona uiga o se faamasinoga po o le komisi faamasino ua faatinoina le puleaga faa-faamasinoga i se isi atunuu;

“tagata o aveá ma sui o atunuu i fafo:

(a) o lona uiga so o se Amepasa, Komesina Sili, Komesina, Minisita, Konesula, *Sui Amepasa*, Faauluuluga o le Galuega, Tagata Ofisa o le Ofisa o le Konesula, po o le Sui Konesula o se isi atunuu, atunuu o lo o faatinoina lana puleaga faa-faamasinoga i Samoa; ma

(b) ua aofia ai -

(i) so o se tagata ua galue e tusa ai ma le tulafono mo so o se tasi o ia tagata ofisa; po o

(ii) any Diplomatic Secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, *Chargé d’Affaires*, or Head of Mission.

“Supreme Court” means the Supreme Court of Samoa.

113. Examination of witness at request of overseas court-

(1) If any criminal proceedings (not being criminal proceedings of a political character) are pending before any country’s court of competent jurisdiction, and that court wishes to obtain the evidence of any witness in Samoa for the purposes of those proceedings, the Supreme Court or a Judge may order the examination of the witness on oath, by interrogatories, or otherwise, before any person named in the order.

(2) An order under subsection (1) may be made on the application of the parties to the proceeding before the overseas court or on the application of the Attorney-General.

(3) Despite subsection (2):

- (a) an application for an order under subsection (1) must be made pursuant to any prescribed requirements; and
- (b) the right of the Attorney-General to make an application of that kind is subject to any prescribed restrictions.

(4) An order made under subsection (1) may be enforced in the same manner as if it were an order made by the Supreme Court or the Judge in proceedings pending in the Supreme Court or before the Judge.

(ii) so o se Failautusi o Mataupu Tau le Va o Malo o se afaigaluega a so o se Amepasa, Komesina Sili, Komesina, Minisita, Faufautua, *Sui Amepasa*, po o le Faauluuluga o le Galuega.

“Faamasinoga Sili” o lona uiga o le Faamasinoga Sili a Samoa.

113. Suesueina o tagata molimau i se talosaga mai a le faamasinoga i atunuu i fafo-(1) A o talia le faaiuga o so o se tualumaga tau solitulafono (e le o se tualumaga tau solitulafono o se tulaga faaupufai) i luma o so o se faamasinoga a se atunuu e malosi lana puleaga faa-faamasinoga, ma o lea faamasinoga ua manaomia le mauaina o faamatalaga molimau mai so o se tagata molimau i Samoa mo faamoemoega o ia tualumaga, e ao i le Faamasinoga Sili po o se Faamasino ona poloaia le suesuega o le tagata molimau i luga o se tautoga, e ala i fesili tusitusia, po o i se isi faiga e ese ai, i luma o so o se tagata ua taua lona igoa i le poloaiga.

(2) E mafai ona faia se poloaiga i lalo o le faafuaiupu (1) i luga o talosaga a itu faamasinoga o aafia i tualumaga i luma o le faamasinoga a atunuu i fafo po o i luga o le talosaga a le Loia Sili.

(3) E ui lava i le faafuaiupu (2):

- (a) o se talosaga mo se poloaiga i lalo o le faafuaiupu (1), e ao ona faia e tusa ai ma so o se manaoga ua faatonuina; ma
- (b) o le aia tatau a le Loia Sili e faia ai se talosaga o lea ituaiga e noatia i so o se tulaga faasaoia faatonuina.

(4) E mafai ona faamalosi se poloaiga ua faia i lalo o le faafuaiupu (1) i le faiga lava lea e tasi e faapei ai o se poloaiga na faia e le Faamasinoga Sili po o le Faamasino i tualumaga o talia i le Faamasinoga Sili po o i luma o le Faamasino.

114. Powers may be exercised by Registrar-(1) A Judge may authorise a Registrar of the Supreme Court to exercise the powers of the Supreme Court or the Judge under section 113, either:

- (a) generally; or
- (b) in respect of a particular case or class of cases.

(2) An authorisation under subsection (1) may be revoked at any time by any Judge.

(3) If, in the opinion of the Registrar, any matter that he or she has jurisdiction to deal with under an authorisation under subsection (1) is of special difficulty, the Registrar may refer the matter to a Judge who may:

- (a) dispose of it; or
- (b) refer it back to the Registrar with any directions that the Judge considers appropriate.

(4) Nothing in this section prevents the exercise by the Supreme Court or any Judge of any powers conferred on a Registrar under this section.

(5) In this section, “Registrar” does not include an Assistant Registrar of the Supreme Court.

115. Evidence in support of application-(1) Evidence that any criminal proceedings are pending in an overseas court and that the court wishes to obtain the evidence of the witness to whom the application relates for the purposes of those proceedings, may be given by:

- (a) Letter of Request; or
- (b) another document issued by that court; or

114. E mafai ona faatinoina malosiaga e le Resitara-(1) E mafai e se Faamasino ona faatagaina se Resitara o le Faamasinoga Sili e faatinoina malosiaga o le Faamasinoga Sili po o le Faamasino i lalo o le fuaiupu 113, i se tasi o vaega o le a taua:

- (a) i lona tulaga lautele; po o
- (b) e tusa ai o se mataupu faapitoa po o vasega o mataupu.

(2) E mafai ona faalēaogāina se faatagaga i lalo o le faafuaiupu (1) i so o se taimi e so o se Faamasino.

(3) Afai, i le manatu o le Resitara, so o se mataupu lea e i ai lana puleaga faa-faamasinoga e tagofia ai i lalo o se faatagaga i lalo o le faafuaiupu (1) ua sili ona faigata, e mafai e le Resitara ona faasee atu le mataupu i se Faamasino, o ia lea e mafai ona:

- (a) faalēaogāina le mataupu; po o
- (b) toe faasee atu i le Resitara faatasi ai ma so o se faatonuga ua faapea ona manatu le Faamasino ua talafeagai ai.

(4) E leai se mea i totonu o lenei fuaiupu e taofia ai le faatinoina e le Faamasinoga Sili po o so o se Faamasino o so o se malosiaga ua faaee atu i se Resitara i lalo o lenei fuaiupu.

(5) I totonu o lenei fuaiupu, “Resitara” e lē aofia ai se Resitara Lagolago o le Faamasinoga Sili.

115. Faamatalaga molimau e lagolago ai le talosaga-(1) O faamatalaga molimau lea o lo o talia o so o se taulumaga tau solitulafono i se Faamasinoga i atunuu i fafo ma ua manao le faamasinoga e mauaina mai faamatalaga molimau a le tagata molimau, o ia lea e faasino i ai le talosaga mo faamoemoega o ia taulumaga, e mafai ona tuuina atu e ala i se:

- (a) Tusi Talosaga; po o
- (b) o se isi pepa aloaia ua tuuina atu e lea faamasinoga; po o

(c) the certificate of an overseas representative given under subsection (3); or

(d) other process that the Supreme Court or a Judge may accept.

(2) Any Letter of Request or other document purporting to be sealed with the seal of any overseas court or signed by a judge or other judicial officer or by a Registrar or other officer of the overseas court must for the purpose of this section and section 113 be received in evidence without proof of:

(a) the seal of the overseas court; or

(b) the signature of the Judge or other person; or

(c) the judicial or official character of the judge or other person.

(3) A certificate purporting to be signed by an overseas representative to the effect that any matter in relation to which an application is made under section 113 is a criminal proceeding pending in a court having jurisdiction in the proceeding in the country of which he or she is a representative and that the court having that jurisdiction wishes to obtain the testimony of the witness to whom the application relates, is sufficient evidence of the matters set out in the certificate.

(4) A certificate given under subsection (3) must be received in evidence without proof of:

(a) the signature of the person who signed the certificate; and

(b) the official character of that person.

(c) se tusi faamaonia e se sui o se atunuu i fafo ua tuuina atu i lalo o lenei faafuaiupu (3); po o

(d) isi faagasologa lea e mafai ona talia e le Faamasinoga Sili po o se Faamasino.

(2) So o se Tusi Talosaga po o isi pepa aloaia ua faamoemoe ina ia faamauina i le faamau faailoga a so o se faamasinoga i atunuu i fafo pe sainia e se faamasino po o isi tagata ofisa tau faamasinoga po o e se Resitara po o isi tagata ofisa o faamasinoga i atunuu i fafo e ao ona taliaina i faamatalaga molimau mo le faamoemoe o lenei fuaiupu ma le fuaiupu 113 e aunoa ma se faamaonia o:

(a) le faamaufaailoga a le faamasinoga i atunuu i fafo; po o

(b) le saina a le Faamasino po o le isi tagata; po o

(c) uiga faa-faamasinoga po o uiga aloaia o le faamasino po o le isi tagata.

(3) O se tusi faamaonia na faamoemoe e sainia e se sui o atunuu i fafo i le tulaga e faapea so o se mataupu e faasino i se talosaga na faia i lalo o le fuaiupu 113, o se taualumaga tau solitulafono o lo o talia i se faamasinoga, ua i ai le puleaga faa-faamasinoga, i taualumaga i le atunuu o avea ai o ia ma sui ma e faapea o lo o manao lea faamasinoga, lea e i ai le puleaga faa-faamasinoga ia mauaina mai faamatalaga molimau a le tagata molimau o ia lea e faasino i ai le talosaga, ua avea ma faamatalaga atoatoa o mataupu ua faatulagaina i totonu o le tusi faamaonia.

(4) O se tusi faamaonia ua tuuina atu i lalo o le faafuaiupu (3) e ao ona taliaina e avea o molimau e aunoa ma le faamaonia o:

(a) le saina a le tagata o ia lea na sainia le tusi faamaonia; ma

(b) tulaga aloaia o lea tagata.

116. Protection of witness-(1) A person may not be compelled by an order under section 113 to give evidence which the person could not be compelled to give in criminal proceedings in Samoa.

(2) A person may not be compelled by an order under section 113 to give any evidence if the giving of that evidence would:

- (a) infringe the jurisdiction of Samoa; or
- (b) otherwise be prejudicial to the security or sovereignty of Samoa; or
- (c) be likely to be prejudicial to the trading, commercial, or economic interests of Samoa; and,

a certificate signed by the Attorney-General to the effect that it would be or, as the case requires, is likely to be so prejudicial for that person to do so is conclusive evidence of that fact.

(3) In this section “giving evidence” includes:

- (a) answering any question; or
- (b) producing any document.

117. Requesting authority may be asked to pay expenses - A witness required to attend for examination by an order made under section 113 is entitled to a sum for allowances and travelling expenses applicable to witnesses in the Supreme Court.

Division 12 - Evidence by video link

116. Puipuiga o tagata molimau-(1) E lē mafai ona faamalosia se tagata e ala i se poloaiga i lalo o le fuaiupu 113 e tuuina atu faamatalaga molimau lea e lē mafai ona faamalosia ai le tagata e tuuina atu i taualumaga tau solitulafono i totonu o Samoa.

(2) E lē mafai ona faamalosia se tagata e ala i se poloaiga i lalo o le fuaiupu 113 e tuuina atu so o se faamatalaga molimau, pe afai, o le tuuina atu o lea faamatalaga molimau o le a faapea ona:

- (a) solia ai le pulega faa-faamasinoga a Samoa; po o
- (b) i se isi faiga e ese ai, o le a lamatia ai le malupuipua po o le pule mamalu a Samoa; po o
- (c) e ono tulai mai i se tulaga o le a lepetia ai tulaga tau fefaatauaiga, tulaga faapisinisi, po o manaoga tau tamaoaiga a Samoa; ma,

o se tusi faamaonia ua sainia e le Loia Sili i le tulaga lea o le a, po o e pei ona manaomia e le mataupu, o le a mafai ona tele ai le aafiaga mo lea tagata pe afai na te faatinoina lea tulaga, o se faamatalaga molimau mautu lea ua faapea ona faamaonia ai le mea moni.

(3) I totonu o lenei fuaiupu “tuuina atu o faamatalaga molimau” e aofia ai:

- (a) le taliina o so o se fesili; po o
- (b) tuuina atu o so o se pepa aloaia.

117. E mafai ona talosagaina pulega o talosaga e totogi tupe faaalu - O se tagata molimau ua manaomia le auai ai mo suesuega e ala i se poloaiga ua faia i lalo o le fuaiupu 113, e agavaa o ia i alauni ma tupe malaga ua talafeagai mo tagata molimau i le Faamasinoga Sili.

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

118. Evidence and submissions by video link and telephone conference from another country-(1)

On the application of a party to a proceeding before a court, the court may, if it is satisfied that the necessary facilities and equipment are available, or can reasonably be made available, and that evidence or submissions in the proceeding could more conveniently be given or made from another country, direct that evidence be given from that other country, or submissions be made from that other country, by video link or telephone conference.

(2) Unless the court otherwise orders, the costs incurred in giving evidence or making submissions by video link or telephone conference and transmitting the evidence or submissions, pursuant to a direction given under subsection (1), must be paid by the applicant.

(3) The court may make an order specifying the amount payable by a party under subsection (2), and requiring the party to pay that amount.

119. Powers of courts-(1) For the purposes of the taking of evidence or the receiving of submissions by video link or telephone conference from another country under section 118, the court in Samoa may exercise in that other country all its powers which it is permitted to exercise in that other country under the laws of that other country.

(2) For the purposes of taking evidence from a witness in Samoa or hearing submissions from a person in Samoa, a court of another country may exercise in Samoa any of its powers, except its powers to:

118. Faamatalaga molimau ma talosaga e ala i fesootaiga i ata vito ma fonotaga i luga o telefoni mai se isi atunuu-(1)

I luga o se talosaga a se itu faamasinoga o se tualumaga i luma o se faamasinoga, e mafai i se faamasinoga ona, pe afai ua faamalieina e faapea o lo o avanoa mea e faafaigofie ai ma meafaigaluega talafeagai, po o e mafai i luga o mafuaaga talafeagai ona faaavanoa, ma e faapea o faamatalaga molimau po o talosaga tusitusia i tualumaga o le a faigofie ona tuuina atu pe faia mai se isi atunuu, ia faatonuina e faapea, ia tuuina atu faamatalaga molimau mai le isi lea atunuu, pe faia talosaga tusitusia mai le isi atunuu lea, e ala i fesootaiga i ata vito po o fonotaga i telefoni.

(2) Ae vagana ai ua poloaia e le faamasinoga i se isi faiga e ese ai, o tau ua faatupulaia i le tuuina atu ai faamatalaga molimau po o le faia o talosaga tusitusia e ala i fesootaiga i ata vito, po o fonotaga i luga o telefoni ma faasalalau atu faamatalaga molimau po o talosaga tusitusia, e tusa ai o se faatonuga ua tuuina atu i lalo o le faafuaiupu (1), e ao ona totogiina e le tagata o lo o talosaga.

(3) E mafai e le faamasinoga ona faia se poloaiga e faamaotiina ai le aofaiga e tataua ona totogiina e se itu faamasinoga i lalo o le faafuaiupu (2) ma manaomia ai le itu faamasinoga ina ia totogiina lea aofaiga.

119. Malosiaga o faamasinoga-(1) Mo faamoemoega mo le faaogaina o faamatalaga molimau, po o le taulimaina o talosaga e ala i fesootaiga i ata vito po o fonotaga i luga o telefoni mai le isi atunuu i lalo o le fuaiupu 118, e mafai e le faamasinoga i Samoa ona faatino i le isi lea atunuu ona malosiaga uma, lea ua faatagaina lona faatinoina i le isi lea atunuu, i lalo o tulafono a lea atunuu.

(2) Mo faamoemoega o le mauaina mai o faamatalaga molimau mai se tagata molimau o lo o i Samoa, po o le faafogaina o talosaga tusitusia mai se tagata o i Samoa, e mafai e se faamasinoga a isi atunuu ona faatino i Samoa so o se tasi o ona malosiaga, ae vagana ai ona malosiaga ia e:

- (a) punish for contempt; and
- (b) enforce or execute its judgments or process.

(3) Subject to subsection (2), the laws of that other country that apply to the proceeding in that other country also apply to the practice and procedure of the court of that other country in taking evidence or receiving submissions from a person in Samoa.

120. Evidence and submissions by video link - Evidence must not be given or submissions made by video link from another country unless the courtroom or other place where the court is sitting in Samoa and the place where the evidence is to be given or the submissions are to be made in Samoa are equipped with video facilities that:

- (a) enable persons present at the place where the court is sitting in Samoa to see and hear the person giving evidence or making the submissions in that other country; and
- (b) enable persons present at the place where the evidence is given or the submissions are made in that other country to see and hear persons at the place where the court is sitting in Samoa.

121. Evidence and submissions by telephone - Evidence must not be given or submissions must not be made by telephone conference from another country unless the courtroom or other place where the court is sitting in Samoa and the place where the evidence is to be given or the submissions are to be made in that other country are equipped with telephone conference facilities that:

- (a) faasalaina ai mo le lē migao; ma
- (b) faamallosia pe faataunuuina ana faaiuga po o faagasologa.

(3) I le noatia ma le fai fuafua i le faafuaiupu (2), o tulafono a le isi atunuu lea e faaaogāina i taualumaga le isi atunuu lea, e mafai foi ona faaaogāina i faiga masani ma taualumaga a le faamasinoga a le isi atunuu lea i le faaaogāina o faamatalaga molimau, po o le taliaina o talosaga tusitusia mai se tagata i Samoa.

120. Tuuina atu o faamatalaga molimau ma talosaga tusitusia e ala i fesootaiga i ata vito - E lē tatau ona tuuina atu faamatalaga molimau pe faia talosaga tusitusia e ala i fesootaiga i ata vito mai isi atunuu seia vagana ai ua faatotogaina mea e faaaogā i tulaga tau vito i potu faamasino po o isi nofoaga lea e faia ai faamasinoga i Samoa ma le nofoaga lea e ao ona tuuina atu ai le faamatalaga molimau po o talosaga tusitusia ua faia i Samoa i mea e faaaogā i vito ua faapea ona:

- (a) mafai ai e tagata o auai ai i le nofoaga lea e faia ai le faamasinoga i Samoa ona iloa atu ma faafogaina le tagata o tuuina atu faamatalaga molimau pe o faia talosaga i isi lea atunuu; ma
- (b) mafai ai e tagata o auai ai i le nofoaga lea e tuuina atu ai faamatalaga molimau pe o faia ai talosaga i le isi atunuu lea e mafai ai ona iloa atu ma faafogaina tagata o lo o auai ai i le nofoaga lea e faia ai le faamasinoga i Samoa.

121. Faamatalaga molimau ma talosaga tusitusia e tuuina atu i telefoni - E lē tatau ona tuuina atu faamatalaga molimau pe faia talosaga tusitusia e ala i fonotaga i telefoni mai le isi atunuu seia vagana ai e faapea, o le potu faamasino po o isi nofoaga lea e faia ai faamasinoga i Samoa, ma le nofoaga lea e tuuina atu ai faamatalaga molimau po o le a faia ai talosaga tusitusia i le isi lea atunuu, ua faatotogaina i mea e faaaogā i fonotaga i telefoni, lea ua faapea ona:

- (a) enable persons present at the place where the court is sitting in Samoa to hear the person giving evidence or making the submissions in that country; and
- (b) enable persons present at the place where the evidence is given or the submissions are made in that country to hear persons at the place where the court is sitting in Samoa.

**PART 5
JUDICIAL NOTICE AND DOCUMENTARY
EVIDENCE**

122. Judicial notice of enactments and court judgments-

- (1) Proof is not required about:
 - (a) the provisions and coming into operation (all or in part) of -
 - (i) the Constitution; or
 - (ii) an Act or Ordinance; or
 - (iii) a regulation, rule, order, determination, notice or by-law made, or purporting to be made, under an Act or Ordinance mentioned in paragraph (a); or
 - (iv) an instrument of a legislative character made, or purporting to be made, under an Act or Ordinance mentioned in paragraph (a), that is an instrument whether or not required by or under a law to be published, or the making of which is required

- (a) mafai ai e tagata ua auai ai i le nofoaga lea e faia ai le faamasinoga i Samoa e faafogaina le tagata o lo o tuuina atu faamatalaga molimau po o ua faia talosaga tusitusia i lea atunuu; ma
- (b) mafai ai e tagata o auai ai i le nofoaga lea e tuuina atu ai faamatalaga molimau pe faia ai talosaga tusitusia i lea atunuu ona faafogaina tagata o i lea nofoaga lea o le a faatinoina ai le faamasinoga i totonu o Samoa.

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

122. Faasilasilaga faa-faamasinoga o tulafono ma faaiuga a le faamasinoga-(1) E lē manaomia faamaoniga e faatatau i:

- (a) aiaiga ma le amata faatinoina (o vaega uma po o na o se vaega) o -
 - (i) le Faavae; po o
 - (ii) se Tulafono po o le Tulafono ua pasia a o lumanai ai le Tutoatasi; po o
 - (iii) se tulafono faatonutonu, tulafono faafoe, poloaiga, faaiuga, faasilasilaga po o tulafono laitiiti ua faia, po o ua faatatauina ua faia, i lalo o se Tulafono po o le Tulafono ua pasia a o lumanai ai le Tutoatasi ua taua i parakalafa (a); po o
 - (iv) se pepa faaletulafono o se tulafono ua faia, po o ua faatatauina ua faia, i lalo o le Tulafono po o le Tulafono ua pasia a o lumanai ai le Tutoatasi, ua taua i le parakalafa (a) lea ua avea o se pepa faaletulafono tusa lava po o manaomia pe

by or under a law to be notified, in the *Gazette* or *Savali* or other publication; or

- (b) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates.

(2) A Judge may inform himself or herself about those matters in any way the judge thinks fit.

(3) In this section “Act” includes any Act revised and consolidated pursuant to the Revision and Publication of Laws Act 2008.

123. Certificates for international affairs - This Part includes the application of the principles and rules of common law and equity relating to the effect of a certificate given by or on behalf of Samoa in relation to a matter of international affairs.

124. Evidence produced by processes, machines and other devices-(1)This section applies to a document or thing:

- (a) that is produced completely or partly by a device or process; and
 (b) that is tendered by a party who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

lei foi e, po o i lalo o se tulafono o le a lomia faasalalau, po o le faiga, lea ua manaomia e, po o i lalo o se tulafono o le a faasilasilaina, i le *Kaseti* po o le *Savali*, po o isi lomiga faasalalau; po o

- (b) se poloaiga po o se faaiuga a se faamasinoga ma le faiga masani, itu faamasinoga, ma faamatalaga auiliili o faagasologa lea e faasino i ai le poloaiga po o le faaiuga.

(2) E ao ona logoina se Faamasino e faatatau i ia mataupu i so o se tulaga ua manatu o ia ua talafeagai ai.

(3) I totonu o lenei fuaiupu “Tulafono” e aofia ai so o se Tulafono ua toe teuteu ma faamautuina e tusa ai ma le Tulafono o Fetuunaiga ma Lomiga Faasalalau o Tulafono 2008.

123. Tusi faamaonia mo mataupu faava o malo - O lenei Vaega e aofia ai le faaaogāina o taiala faataatitia ma tulafono faafoe o tulafono e faaaogā faalauaitetele ma faiga sagatonu e faasino i le tulaga aloaia o se tusi faamaonia ua tuuina atu e, po o e avea ai ma sui o Samoa e faasino i se mataupu o mataupu faava o malo.

124. Faamatalaga molimau ua maua mai i faagasologa, masini ma isi masini e faatino ai galuega-(1) O lenei fuaiupu e faasino i se pepa aloaia po o se mea:

- (a) ua faia i lona atoaga po o i se vaega e se masini e faatino ai galuega po o se faagasologa; ma
 (b) ua tuuina atu e se itu faamasinoga, o ia lea ua faamautinoa mai e faapea, i le faia ai o le pepa aloaia po o le mea, ua tuuina mai ai e le masini e faatino ai galuega po o faagasologa se taunuuga faapitoa.

(2) If it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily produces that outcome, it is presumed (unless the contrary is proved) that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

125. Documents produced by processes, machines and other devices in the course of business-(1) This section applies to a document:

- (a) that is produced completely or partly by a device or process; and
- (b) that is tendered by a party who asserts that, in producing the document, the device or process has produced a particular outcome.

(2) If:

- (a) the document is, or was at the time it was produced, part of the records of, or kept for the purposes of, a business (whether or not the business is still in existence); and
- (b) the device or process is or was at that time used for the purposes of the business,

it is presumed (unless the contrary is proved) that, in producing the document on the occasion in question, the device or process produced that outcome.

(3) Subsection (2) does not apply to the contents of a document that was produced:

- (a) for the purpose of conducting, or for or in contemplation of or in connection with, a Samoan or overseas proceeding; or

(2) Afai e talafeagai le mauaina o faamatalaga e faapea, o le masini e faatino ai galuega po o faagasologa, o se tasi lea po o i se ituaiga lea, pe afai e faaaogāina ma le tatau, o le a tuuina mai ai se taunuuga, ua faatatauina e faapea (ae vagana ai ua faamaonia se isi faiga e ese ai) na tuuina mai lava e le masini po o faagasologa lea taunuuga i le faiga o le pepa aloaia po o se mea e tusa ai ma le mataupu ua fesiligia.

125. O pepa aloaia ua maua mai i faagasologa, masini ma isi masini e faatino ai galuega a o faagasolo le vaitaimi faapisinisi-(1) O leni fuaiupu e faaaogā i se pepa aloaia:

- (a) ua faapea ona faia atoatoa po o i se vaega e se masini po o se faagasologa; ma
- (b) ua faapea ona tuuina atu e se itu faamasinoga, o ia lea ua faamautinoa mai e faapea, sa faia lava e le masini po o faagasologa se taunuuga faapitoa i le faiga o le pepa aloaia.

(2) Afai:

- (a) o le pepa aloaia ua, po o i le taimi na faia ai, sa avea o se vaega o faamaumauga o, po o ua tausia mo faamoemoega o, se pisinisi (tusa lava pe o i ai, pe le o toe i ai foi le pisinisi); ma
- (b) o le masini e faatino ai galuega po o faagasologa, ua, po o sa faaaogāina i le taimi na faaaogā ai mo faamoemoega o le pisinisi,

ua faatatauina (seia vagana ai ua faamaonia i se isi faiga e ese ai), e faapea i le faia ai o le pepa aloaia i le tulaga o lo o fesiligia sa mauaina mai e le masini e faatino ai galuega po o faagasologa lea taunuuga.

(3) E lē faaaogāina le faafuaiupu (2) i mataupu o se pepa aloaia lea sa faia:

- (a) mo le faamoemoe e faafoeina ai, po o mo po o le fuafuaina o po o e fesootai ai ma, se taulumaga i Samoa po o atunuu i fafo; po o

- (b) in connection with an investigation relating or leading to a criminal proceeding.

126. Evidence of certain acts of lawyers and notaries public - It is presumed, unless the contrary is proved, that a document was attested or verified by, or signed or acknowledged before, a lawyer or notary public, if:

- (a) a law of Samoa requires, authorises or permits it to be attested, verified, signed or acknowledged by the lawyer or notary public; and
- (b) it purports to have been attested, verified, signed or acknowledged in that way.

127. Attestation of documents - It is not necessary to present the evidence of an attesting witness to a document (other than a testamentary document) to prove that the document was signed or attested as it purports to have been signed or attested.

128. Seals and signatures-(1) If the imprint of a seal appears on a document and purports to be the imprint of:

- (a) the Public Seal of Samoa; or
- (b) any other seal of Samoa or the Government; or
- (c) a seal of a foreign country; or
- (d) the seal of a body (including a court or a tribunal), or a body corporate, established by the law of Samoa or of a foreign country,

- (b) le fesootai ai ma se suesuega e faasino po o e taunuu atu ai i se tualumaga tau solitulafono.

126. Faamatalaga molimau o nisi gaoioiga a loia ma tagata ua faatagaina e tausia pepa aloaia faaetulafono - Ua faatatauina seia vagana ai ua faamaonia i se isi faiga e ese ai, e faapea na molimauina pe na faamaonia e, po o ua sainia po o na aloaia i luma o se loia po o le tagata ua faatagaina e tausia pepa aloaia faaetulafono, pe afai:

- (a) e manaomia, faamaonia pe faatagaina e le tulafono a Samoa ina ia molimauina, faamaonia, sainia pe aloaia e le loia po o le tagata ua faatagaina e tausia pepa aloaia faaetulafono; ma
- (b) ua avefa e faapea ua molimauina, faamaonia po o ua aloaia i lea tulaga.

127. Molimauina o pepa aloaia - E lē talafeagai le tuuina atu o faamatalaga molimau a se tagata molimau e molimauina i pepa aloaia (e ese mai i lo se pepa aloaia o se feagaiga) e faamaonia ai e faapea o le pepa aloaia na sainia po o na molimauina e pei ona faatatauina na sainia pe na molimauina.

128. Faamaufaaailoga ma saina-(1) Afai ua aliali mai se faailoga oomi o se faamaufaaailoga i luga o se pepa aloaia ma ua faatatauina o se faailoga oomi o:

- (a) le Faamaufaaailoga Aloaia a le Malo o Samoa; po o
- (b) so o se isi lava faamaufaaailoga a Samoa po o le Malo; po o
- (c) se faamaufaaailoga a se atunuu i fafo; po o
- (d) le faamaufaaailoga a se faalapotopotoga (e aofia ai se faamasinoga po o se komisi faamasino), po o se faalapotopotoga ua tuufaatasia, ua faavaeina e le tulafono a Samoa po o se atunuu i fafo,

it is presumed, unless the contrary is proved, that the imprint is the imprint of the seal, and the document was sealed as it purports to have been sealed.

(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that:

- (a) the imprint is the imprint of the seal; and
- (b) the document was sealed by the office holder acting in the office holder's official capacity; and
- (c) the office holder held the relevant office when the document was sealed.

(3) If a document purports to have been signed by an office holder in the office holder's official capacity, it is presumed, unless the contrary is proved, that:

- (a) the document was signed by the office holder acting in that capacity; and
- (b) the office holder held the relevant office when the document was signed.

(4) This section applies to documents sealed, and documents signed, before the commencement of this section.

(5) In this section, "office holder" means:

- (a) the Head of State; or
- (b) a person holding any other office under the law of Samoa or of a foreign country.

ua faatatauina, ae vagana ai ua faamaonia i se isi faiga e ese ai, e faapea o le faailoga oomi o le faailoga oomi lea o le faamaufaailoga, ma ua faamaufaailogaina le pepa aloaia e pei ona faatatauina ia faamaufaailogaina.

(2) Afai o le faailoga oomi o se faamaufaailoga ua aliali mai i luga o se pepa aloaia, ma ua faatatauina o se faailoga oomi o le faamaufaailoga a se tagata o umia se tofiga, ua faatatauina, ae vagana ai ua faamaonia i se isi faiga e ese ai, e faapea:

- (a) o le faailoga oomi o le faailoga oomi lea o le faamaufaailoga; ma
- (b) o le pepa aloaia na faamaufaailogaina e le tagata ua aveva ma sui i le tulaga aloaia o le tagata e umia le tofi; ma
- (c) o le tagata o lo o umia le tofiga ua ia te ia le tofiga talafeagai i le taimi na faamaufaailogaina ai le pepa aloaia.

(3) Afai ua aveva se pepa aloaia e faapea ua maea ona sainia e se tagata o lo o umia le tofiga i le tulaga aloaia o le tagata o umia le tofiga, ua faatatauina, seia vagana ua faamaonia i se isi faiga e ese ai, e faapea:

- (a) na sainia le pepa aloaia e lē o umia le tofiga, lea o lo o galue e aveva ma sui i lea tulaga; ma
- (b) na umia e le tagata o umia le tofi le tofiga talafeagai i le taimi na saini ai le pepa aloaia.

(4) E faaaogāina lenei fuaiupu i pepa aloaia ua faamaufaailogaina, ma pepa aloaia ua sainia a o lumanai ai le amata faamamaluina o lenei fuaiupu.

(5) I totonu o lenei fuaiupu, "lē o lo o umia le tofiga" o lona uiga:

- (a) o Le Ao o le Malo; po o
- (b) o se tagata o lo o umia so o se isi lava tofi i lalo o le tulafono a Samoa po o se atunuu i fafo.

129. Documents 20 years old produced from proper custody - If a document that is or purports to be more than 20 years old is produced from proper custody, it is *prima facie* evidence of the document, unless the contrary is proved.

130. Evidence of official records-(1) Evidence of record or public document of the Government may be presented by producing a document that:

(a) purports to be the record or document and to be signed or sealed by -

(i) a Minister; or

(ii) a person who might reasonably be supposed to have custody of the record or document; or

(b) purports to be a copy of or extract from the record or document that is certified to be a true copy or extract by -

(i) a Minister; or

(ii) a person who might reasonably be supposed to have custody of the record or document.

(2) If the document is produced, it is presumed (unless the contrary is proved) that:

(a) the document is the record, public document, copy or extract that it purports to be; and

(b) the Minister or person -

(i) signed or sealed the record; or

(ii) certified the copy or extract as a true copy or extract.

129. O pepa aloaia ua 20 tausaga na tuuina mai se puipuigamalu - Afai o se pepa aloaia lea ua po o ua faapea ona sili atu i le 20 tausaga, na faia mai i pepa aloaia na tausia lelei, o se molimau aloaia lea na tuuina atu muamua o le pepa aloaia, seia vagana ai ua faamaonia i se isi faiga e ese ai.

130. Faamatalaga molimau o faamaumauga aloaia-(1) O le faamatalaga molimau o faamaumauga po o pepa aloaia faalauaitele a le Malo e mafai ona tuuina atu e ala i le faia o se pepa aloaia lea:

(a) ua faamoemoe e avea o se faamaumauga po o se pepa aloaia ma e ao ona sainia po o le faamaufaailogaina e -

(i) se Minisita; po o

(ii) se tagata o ia lea ua mafai ona fuafuaina sa faapea ona puipuia lelei faamaumauga po o pepa aloaia; po o

(b) ua faamoemoe e avea o se ata o po o se oototoga mai faamaumauga po o le pepa aloaia ua faapea ona faamaonia e avea ma ata moni po o oototoga e -

(i) se Minisita; po o

(ii) se tagata o ia lea ua mafai ona fuafuaina sa faapea ona puipuia ia lelei faamaumauga po o pepa aloaia.

(2) Afai ua tuuina atu le pepa aloaia, ua faatatauina (seia vagana ai ua faamaonia i se isi faiga e ese ai) e faapea:

(a) o le pepa aloaia o le faamaumauga lea, o le pepa aloaia a le Malo, ata po o oototoga lava ia e pei ona fuafuaina; ma

(b) o le Minisita po o le tagata, ua faapea ona ia -

(i) sainia po o ua faamaufaailogaina le faamaumauga; po o

(ii) faamaonia le ata po o oototoga e avea o se ata moni po o oototoga moni.

131. Evidence of certain public documents-(1) If:

- (a) a public document, or a certified copy of a public document, is admissible; and
- (b) it purports to be sealed, or signed and sealed, or signed alone, as directed by the law of Samoa,

it is admissible in evidence to the same extent and for that purpose in all courts of Samoa:

- (c) without proof of -
 - (i) the seal or signature; or
 - (ii) the official character of the person appearing to have signed it; and
- (d) without further proof in every case in which the original document could have been received in evidence.

(2) A public document that is admissible in evidence without proof of:

- (a) the seal or signature authenticating the document; or

(b) the judicial or official character of the person appearing to have signed the document, is admissible in evidence to the same extent and for any purpose in all courts of Samoa without that proof.

(3) This section only applies to documents that are public records of the Government.

(4) A document to which this section applies is admissible unless the contrary is proved.

132. Official statistics - A document that purports:

- (a) to be published by the Government Statistician; and

131. Faamatalaga o nisi pepa aloaia a le Malo-(1) Afai:

- (a) o se pepa aloaia a le Malo, po o se ata ua faamaonia o se pepa aloaia a le Malo, e taliaina; ma
- (b) ua avea e faapea ua faamaufaailogaina, po o ua sainia ma faamaufaailogaina, po o ua sainia e se tagata e na o ia lava, e pei ona faatonuina e le tulafono a Samoa,

e mafai ona taliaina e avea ma faamatalaga molimau i lea lava tulaga ma e mo lea faamoemoe i faamasinoga uma i totonu o Samoa:

- (c) e aunoa ma le faamaoniga o -
 - (i) le faamaufaailogaga po o le saina; po o
 - (ii) le tulaga aloaia o le tagata lea ua foliga mai ua ia sainia; ma
- (d) e aunoa ma se isi faamaoniga e manaomia i so o se mataupu lea e mafai ona taliaina ai le uluai pepa aloaia i totonu o faamatalaga molimau.

(2) O se pepa aloaia a le Malo lea ua taliaina i totonu o faamatalaga molimau e aunoa ma se faamaoniga:

- (a) o le faamaufaailogaga po o le saina e faamaonia aloaia ai le pepa aloaia; po o

(b) tulaga tau faamasinoga po o tulaga aloaia o le tagata ua aliiali mai na sainia le pepa aloaia, ua taliaina i totonu o faamatalaga molimau i lea lava tulaga ma mo so o se tasi faamoemoe i totonu o faamasinoga uma a Samoa e aunoa ma lea faamaoniga.

(3) E faatoa faaaogā lenei fuaiupu i pepa aloaia ia ua avea ma faamaumauga faalauaitetele a le Malo.

(4) Ua taliaina se pepa aloaia lea e faaaogā i ai lenei fuaiupu, seia vagana ai ua faamaonia se tulaga e ese ai.

132. Fuainumera faamauina aloaia - O se pepa aloaia lea ua faamoemoe:

- (a) ina ia lomina faasalalau e le Alii Ofisa o Fuainumera Faamauina o le Malo; ma

- (b) to contain statistics or abstracts compiled and analysed by the Government Statistician under the Statistics Act 2015,

is evidence that the statistics or abstracts were compiled and analysed by the Government Statistician under that Act.

133. Documents may be impounded - The court may direct that a document that has been tendered or produced before the court (whether or not it is admitted in evidence) must be impounded and kept in the custody of an officer of the court or another person for the period, and subject to the conditions, that the court thinks fit.

PART 6 MISCELLANEOUS

134. Rules-(1) In the case of the Supreme Court and the Court of Appeal, rules may be made for the purposes of this Act under section 40 of the Judicature Ordinance 1961 that make provision for, relate to, or authorise Rules in relation to:

- (a) the issuing of summonses to witness or to produce documents and the service of those summonses;
- (b) the hearing or disposal of applications for orders under any specified provisions in this Act;
- (c) the lodging of documents or things with the court of another country in compliance with a Samoan summons that requires only the production of documents or things by a witness;

- (b) e aofia ai fuainumera faamauina ma ootoga ua tuufaatasia ma auiliiliina e le Alii Ofisa o Fuainumera Faamauina o le Malo i lalo o le Tulafono o Fuainumera Faamauina 2015,

ua faapea ona avea ma faamatalaga molimau o fuainumera faamauina ma ootoga ua tuufaatasia ma auiliiliina e le Alii Ofisa o Fuainumera Faamauina o le Malo i lalo o lea Tulafono.

133. E mafai ona malupuipua pepa aloaia - E mafai e le faamasinoga ona faatonuina e faapea o se pepa aloaia ua faapea ona faaoo atu pe tuuina atu i luma o le faamasinoga (tusa lava po o ua faatagaina pe leai foi i totonu o le faamatalaga molimau) e ao ona malupuipua ma tausia i le vaaiga a se tagata ofisa o le faamasinoga po o se isi tagata mo lea vaitaimi, ma e noatia ma fai fuafua i tuutuuga ia ua manatu le faamasinoga ua talafeagai ai.

VAEGA 6 AIAIGA ESEESE

134. Tulafono faafoe-(1) I totonu o mataupu a le Faamasinoga Sili ma le Faamasinoga o Talosaga Toe Iloilo, e mafai ona faia ai tulafono faafoe mo faamoemoega o lenei Tulafono i lalo o le fuaiupu 40 o le Tulafono o Faamasinoga 1961 lea o lo o faia ai aiaiga mo, e faasino i, po o le faatagaina o Tulafono Faafoe e faasino i:

- (a) le tuuina atu o tusi samania i le tagata molimau e tuuina atu ai pepa aloaia ma le faaooina atu o ia tusi samania;
- (b) le faafogaina po o le tuueseina o talosaga mo poloaiga i lalo o so o se aiaiga ua faamaotiina i lenei Tulafono;
- (c) le faatoai atu o pepa aloaia po o ni mea i le faamasinoga a se isi atunuu e tausisia ai tusi samania a Samoa lea e manaomia ai na o le tuuina atu o pepa aloaia po o nisi mea e se tagata molimau;

- (d) the transmission of documents or things lodged with a Samoan court in compliance with another country's summons to the court that issued the summons;
- (e) the giving of evidence and the making of submissions by video link or telephone conference in connection with proceedings before a Samoan court or a court of another country;
- (f) the receiving of facsimiles (or other electronic transmission) of documents or things;
- (g) the form of Samoan summonses and other documents;
- (h) such other matters as are contemplated by or necessary for giving full effect to the matters in this section.

(2) For other courts, rules or, as the case may be, regulations may be made under the authority of any enactment that provides for the making of rules or regulations governing the practice and procedure of the court that make provision for or relate to any of the matters referred to in subsection (1).

135. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make regulations:

- (a) fixing, and requiring the payment of, fees and expenses for or incurred in taking evidence under this Part;
- (b) prescribing the matters in respect of which fees are payable under this Part and the amounts of those fees;

- (d) le faaoo atu o pepa aloaia po o ni mea ua faatoai atu i se faamasinoga a Samoa e tausisia ai tusi samania a se isi atunuu i le faamasinoga lea na tuuina mai ai tusi samania;
- (e) le tuuina atu o le faamatalaga molimau ma le faia o talosaga tusitusia e ala i fesootaiga i masini vito po o fonotaga i telefoni e fesootai ma tualumaga i luma o se faamasinoga a Samoa po o se faamasinoga a se isi atunuu;
- (f) le mauaina o faamatalaga mai masini fesi (po o isi faasalalauga faaeletoroni) o pepa aloaia po o ni mea;
- (g) le pepa faatumu o tusi samania a Samoa ma isi pepa aloaia;
- (h) i nisi lava mataupu e pei ona fuafuaina e po o e tatau mo le tuuina atu atoatoa o tulaga aloaia i mataupu o i lenei fuaiupu.

(2) Mo isi faamasinoga, o tulafono faafoe po o, i le a lava le tulaga e mafai ai, e mafai ona faia tulafono faatonutonu i lalo o le pule faataga a so o se tulafono, lea e aiaia ai mo le faia o tulafono faafoe po o tulafono faatonutonu e puleaina faiga masani ma tualumaga a le faamasinoga lea e faia aiaiga mo po o e faasino i so o se tasi o mataupu o faasinomia i le faafuiauupu (1).

135. Tulafono Faatonutonu-(1) E mafai e Le Ao o le Malo, i le faia i luga o le fautuaga a le Kapeneta, ona faia tulafono faatonutonu e aloaia ai aiaiga po o mo faamoemoega o lenei Tulafono, ma aemaise ai lava e mafai ona faia tulafono faatonutonu e:

- (a) faatulaga ai, ma manaomia ai le totagiina o tupe, o totogifuapauina ma tupe faaalu mo po o ua faatupulaia i le faiga o faamatalaga molimau i lalo o lenei Vaega;
- (b) faatonuina ai mataupu e tusa ai o ia totogifuapauina e tatau ona totagi i lalo o lenei Vaega ma le aofaiga o ia totogifuapauina;

- (c) regulating the payment of expenses in respect of expenses incurred in complying with Samoan summons;
 - (d) prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made where a person's evidence is to be video recorded;
 - (e) providing for the approval of interviewers, or class of interviewers, for child complainants, and providing for the approvals to be proved by production of certificates in the prescribed form;
 - (f) regulating the way in which evidence of a witness may be given in an alternative way;
 - (g) prescribing the form of certificate by which an interviewer is to formally identify a video record;
 - (h) regulating the video recording of evidence;
 - (i) providing for the consent of persons to be video recorded and specifying who may give consent on behalf of children who are to be video recorded;
 - (j) prescribing the uses to which any video records may be put and prohibiting their use for other purposes;
 - (k) providing for the safe custody of video records intended to be offered as evidence;
 - (l) providing for the preparation of transcripts of video records and for their uses and safe custody;
- (c) faatonutonu faaletulafono ai tupe totogi o tupe faaalu e tusa ai o tupe faaalu ua faatupulaia i le tausisia ai o tusi samania a Samoa;
 - (d) faatonuina ai tualumaga e ao ona muliulitaia, le ituaiga meafaigaluega e ao ona faaaogā, ma le faatulagaga e ao ona faia pe afai e ao ona pueina i se masini vito se faamatalaga molimau a se tagata;
 - (e) aiaia ai mo le faamaoniga o tagata e suesueina, po o le vasega o tagata e suesueina, mo se tamaitiiti faasea, ma aiaia ai mo le faamaoniga ina ia faamaonia e ala i le tuuina atu o tusi faamaonia i totonu o se pepa faatumu faatonuina;
 - (f) faatonutonu faaletulafono ai se isi faiga lea e mafai ona tuuina atu ai le faamatalaga molimau a se tagata molimau;
 - (g) faatonuina ai le pepa faatumu o le tusi faamaonia lea e faailoagofie aloaia ai i se tagata e suesueina se faamaumauga i masini vito;
 - (h) faatonutonu faaletulafono ai le pueina o faamatalaga molimau i masini vito;
 - (i) aiaia ai mo le maliega a tagata ina ia pueina i masini vito ma faamaoti ai le e mafai ona tuuina atu le maliega i le avefa ai ma sui o tamaiti ia e ao ona pueina i masini vito;
 - (j) faatonuina ai le faaaogāina o so o se faamaumauga i masini vito lea e mafai ona tuuina atu ma faasaina ai lo latou faaaogāina mo nisi faamoemoega;
 - (k) aiaia ai mo le malupuipua lelei o faamaumauga i masini vito ia ua faamoemoe e tuuina atu e avefa ma faamatalaga molimau;
 - (l) aiaia ai mo le saunia o ata faamauina o faamaumauga i masini vito ma lo latou faaaogāina ma le malupuipua lelei;

- (m) regulating the provision of communication assistance to defendants and witnesses;
- (n) providing for requirements, in addition to those set out in section 35, for formal procedures that are held to obtain visual identification evidence;
- (o) regulating the form of warnings or information that can be given by a Judge in relation to evidence given by children under the age of six (6) years in a proceeding tried by assessors;
- (p) regulating the translation of documents into English or Samoan;
- (q) providing matters required to be prescribed by this Act.

(2) Any fee and expenses prescribed under this Act is subject to the prior approval of the National Revenue Board established under the Public Finance Management Act 2001.

136. Repeal, transitional and saving provisions-(1) The Evidence Ordinance 1961 is repealed.

(2) A witness, or a party calling a witness, may apply under section 80(3), before the commencement of that provision, for an order under that provision, restricting any cross-examination that is to take place after the commencement of that provision.

(3) A party may make an application for directions under section 86, before the commencement of that provision, for the purpose of ensuring that the application for directions permitted under that provision in respect of the giving of

- (m) faatonutonu faaletulafono ai aiaiga o fesoasoani tau fesootaiga i tagata ua molia ma tagata molimau;
- (n) aiaia ai mo manaoga, e faaopoopo atu i ia ua faatulaga mai i le fuaiupu 35, mo taualumaga aloaia ia ua faia ina ia maua mai faamatalaga molimau o tulaga vaaia e iloagofie ai;
- (o) faatonutonu faaletulafono ai le pepa faatumu o lapataiga po o faamatalaga lea e mafai ona tuuina atu e se Faamasino e faasino i se faamatalaga molimau ua tuuina atu e tamaiti e i lalo ifo o le ono (6) tausaga le matua, i totonu o se taualumaga o suesueina ai e ni faatonu;
- (p) faatonutonu faaletulafono ai le faaliliuga o pepa aloaia i le gagana faa-Peretania po o le gagana Samoa;
- (q) aiaia ai mataupu e manaomia ona faatonuina e lenei Tulafono.

(2) So o se totagifuapauina ma tupe faaalu ua faatonuina i lalo o lenei Tulafono, e noatia ma fai fuafua i le faamaoniga muamua a le Komiti Faatino o Tupe Maua a le Atunuu ua faavaeina i lalo o le Tulafono o Pulega o Tupe a le Malo 2001.

136. Soloia, aiaiga tau soloaiga ma aiaiga faasaoina-(1) Ua soloia le Tulafono o Faamatalaga Molimau 1961.

(2) E mafai e se tagata molimau, po o se itu faamasinoga o valaauina se tagata molimau, ona talosaga i lalo o le fuaiupu 80(3), a o lumanai ai le amata faamamaluina o lea aiaiga, mo se poloaiga i lalo o lea aiaiga, e faasaina ai so o se fesiligiaina lea o le a faia i le tuanai ai ona amata faamamaluina lea aiaiga.

(3) E mafai e se itu faamasinoga ona faia se talosaga mo faatonuga i lalo o le fuaiupu 86, a o lumanai ai le amata faamamaluina o lea aiaiga, mo le faamoemoe e faamautinoa ai e faapea o le talosaga mo faatonuga ua faatagaina i lalo o lea aiaiga

evidence-in-chief by a witness and his or her cross-examination after the commencement of that provision in any proceedings, is made as early as practicable before the proceeding is to be heard.

(4) The prosecution may make an application for directions under section 90 before the commencement of that provision, for the purpose of ensuring that the application required under that section in respect of the giving of evidence-in-chief by the child complainant and his or her cross-examination after the commencement of that provision, is made as early as practicable before the case is to be tried.

(5) If, under this section, any person has the right to apply to a Judge under any provision before its commencement for any order or directions, the Judge also has power, before the commencement of the provision, to exercise any of the powers conferred by that provision on a Judge.

(6) This Act applies to any criminal or civil proceeding (instituted before commencement of this Act), which has not commenced its substantive hearing or trial at the commencement of this Act.

(7) The Evidence Ordinance 1961 (despite its repeal) continues to apply to any criminal or civil proceeding (instituted before commencement of this Act) that has commenced its substantive hearing or trial at the commencement of this Act, including hearing and determination of appeal or review relating to that proceeding.

e tusa ai o le tuuina atu o faamatalaga molimau autu e se tagata molimau ma lona fesiligaina i le tuana'i ai ona amata faamamaluina lea aiaiga i totonu o so o se taualumaga, ua vave ona faia i se tulaga e mafai ai ona faatino, a o lumanai ai le fofogaina i le taualumaga.

(4) E mafai i moliaga faaletulafono ona faia ai se talosaga mo faatonuga i lalo o le fuaiupu 90 a o lumanai ai le amata faamamaluina o lea aiaiga, mo faamoemoega o le faamautinoaina e faapea o le talosaga sa manaomia i lalo o lea fuaiupu e tusa ai o le tuuina atu o faamatalaga molimau autu e le tamaitiiti faasea ma lona fesiligaina i le tuana'i ai ona amata faamamaluina lea aiaiga, ua vave ona faia i se tulaga e mafai ai ona faatino a o lumanai ai le suesueina o le mataupu.

(5) Afai, i lalo o lenei fuaiupu, e i ai i so o se tagata le aia tatau e talosaga ai i se Faamasino i lalo o so o se aiaiga a o lumanai ai lona amata faamamaluina mo so o se poloaiga po o faatonuga, e i ai foi i le Faamasino le malosiaga, e faatino ai so o se malosiaga ua faaee atu e lea aiaiga i se Faamasino, a o lumanai ai le amata faamamaluina o lea aiaiga.

(6) E faaaogā lenei Tulafono i so o se taualumaga tau solitulafono po o se taualumaga tau le va o tagata (na faia a o lumanai ai le amata faamamaluina o lenei Tulafono) lea e le i amataina lona fofogaina eseese po o le suesuega i le taimi na amata faamamaluina ai o lenei Tulafono.

(7) E faaaauu pea ona faaaogā le Tulafono o Faamatalaga Molimau 1961, (e ui lava ua soloia) i so o se taualumaga tau solitulafono po o taualumaga tau le va o tagata (na faia a o lumanai ai le amata faamamaluina o lenei Tulafono) lea sa amata lona fofogaina eseese po o le suesuega i le taimi na amata faamamaluina ai lenei Tulafono, e aofia ai le fofogaina ma le faiga o le faaiuga o le talosaga tetee po o le iloiloga e faasino i lea taualumaga.