



SAMOA

**MAINTENANCE AND AFFILIATION
ACT 1967**

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MAINTENANCE AND AFFILIATION ACT 1967
1967 **No.7**

AN ACT to provide for the maintenance of destitute persons, illegitimate children, deserted wives and children, and to facilitate the enforcement of local and foreign maintenance orders

[Assent and commencement date: 25 July 1967]

**PART 1
PRELIMINARY**

1. Short title –This Act may be cited as the Maintenance and Affiliation Act 1967.

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

“affiliation order” means an order made under this Act or under the Samoa Maintenance and Affiliation Order 1920 (NZ) adjudging any person to be the father of a child with whose mother such person has not inter-married;

“certified copy” in relation to an order of a Court, means a copy of the order certified by the proper officer of the Court to be a true copy.

- “child” means a child under the age of 16 years;
- “Commonwealth country” means a country that is a member of the Commonwealth of Nations; and includes every territory for whose international relations the Government of any such country is responsible, and also includes the Republic of Ireland and Samoa as if those countries were members of the Commonwealth of Nations;
- “country” includes any State, territory, province, or other part of a country;
- “Court” means, in relation to a Court in Samoa, a District Court;
- “defendant” means any person against whom a maintenance order or affiliation order (including a provisional maintenance order) has been made or is applied for under this Act;
- “destitute person” means any person unable, whether permanently or temporarily, to support himself or herself by his or her own means of labour;
- “maintenance” includes lodging, feeding, clothing, teaching, training, attendance and medical and surgical relief;
- “maintenance order” means an order made under this Act or under the Samoa Maintenance and Affiliation Order 1920 (NZ) or Part 3 of the Divorce and Matrimonial Causes Ordinance 1961 or Part XI of the Samoa Act 1921 (NZ) for the payment of money for or in respect of the past or future maintenance of any person, and includes a subsisting order for the payment by any person of money for or in respect of the maintenance of any person whom he or she is, according to the law in force in the place where the order is made, liable to maintain, and, where a maintenance order has been varied, means the order so varied and all orders by which it has been varied; and includes a maintenance order in or consequent upon an affiliation order;
- “mother” includes an unmarried mother;
- “near relative” means:
- (a) with respect to a legitimate person, his or her father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother (of the whole or

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half-blood), or sister (of the whole or half-blood);
and

- (b) with respect to an illegitimate person, his or her mother, mother's father or mother, son, daughter, grandson, or granddaughter, or any person who has been adjudged under this Act or the Samoa Maintenance and Affiliation Order 1920 (NZ) to be the father of that illegitimate person, or the father or mother of the person so adjudged.

“parent” means:

- (a) in respect of any child other than a child which has been adopted by any person under an adoption order which remains in force—
- (i) the father or mother or a legitimate child;
 - (ii) the mother of an illegitimate child;
 - (iii) the husband of the mother of any child, whether legitimate or illegitimate, if the child was born before the marriage of the mother with her husband, and whether the mother is alive or dead.
- (b) in respect of any child which has been adopted by any person under an adoption order which remains in force—
- (i) the adoptive father or the adoptive mother of the child;
 - (ii) the husband of the adoptive mother of the child, whether the child was adopted before or after the marriage of the mother to her said husband and whether the mother is alive or dead;
 - (iii) the widow of the adoptive father of the child, whether the child was adopted before or after her marriage to the said father.

(2) An illegitimate person is, for the purposes of this Act, deemed to be a near relative of all persons who are his or her near relatives under this Act.

PART 2
JURISDICTION

3. Power to make maintenance and affiliation orders— A Court presided over by a District Court Judge has the power to make maintenance and affiliation orders under this Act.

4. Discretionary power— The exercise by the Court of its jurisdiction to make a maintenance order shall in all cases be discretionary.

PART 3
MAINTENANCE OF DESTITUTE
PERSONS BY NEAR RELATIVES

5. Liability of near relatives for maintenance of destitute person—A near relative of a destitute person, if that relative is of sufficient ability, is liable for the maintenance of that destitute person in manner hereinafter provided.

6. A District Court Judge may make maintenance order against near relative – If, on application made by or on behalf of any person to a Court presided over by a District Court Judge, the Judge is satisfied that that person is a destitute person and has a near relative of sufficient ability to contribute to his or her support, the Judge may, if, having regard to all the circumstances of the case, the Judge thinks fit so to do, make a maintenance order against the near relative in favour of the destitute person.

7. Recovery by near relative from parent or husband or wife – (1) Subject to section 8, when under the compulsion of a maintenance order a near relative, other than a parent, has paid any money for the maintenance of a child, whether legitimate or illegitimate, the amount so paid shall constitute a debt due and payable to that near relative by any person who at the time when the money was so paid was the parent or one of the parents of the child, or had been theretofore adjudged under this or any other Act to be the father of the child; and where there are 2 or more persons so liable for the debt their liability shall be joint and several.

(2) Subject to section 8, when under the compulsion of a maintenance order and near relative has paid any money for the maintenance of a married woman or man, the amount so paid shall constitute a debt due and payable to that near relative by the

husband or wife of the married woman or man, as the case may be.

8. When money paid under the compulsion of a maintenance order – (1) For the purpose of section 7, no near relative is deemed to have paid any money “under the compulsion of a maintenance order” unless, prior to the making of such order, the Court making the order hears, in support of the application, sufficient evidence on oath as to the relationship between the parties and as to the financial circumstances of the persons in whose favour and against whom the order is made to enable the Court to determine the application on the basis of such evidence, and unless the court making the order issues its certificate to the effect that such order has been made on the basis of such evidence.

(2) No judgment shall be obtained by a near relative against a parent or married husband or wife, pursuant to section 7, unless a certificate issued under subsection (1) is first produced to the Registrar of the Court in which judgment is sought.

PART 4 AFFILIATION ORDERS

9. District Court Judge may make affiliation order against father of illegitimate child – (1) If, on application made by or on behalf of any person to a Court presided over by a District Court Judge, the District Court Judge is satisfied that that person is the mother of a child or who is with child and that the defendant not being the woman’s husband is the father of that child, the District Court Judge may make an order (“affiliation order”) adjudging the defendant to be the father of that child accordingly.

(2) In the case of a child already born, no affiliation order shall be so made unless the application is made before or within 6 years after the birth of the child, unless the defendant since the birth of the child and within 2 years immediately preceding the application, has contributed to or made provision of the maintenance of the child, or has cohabited with the mother as man and wife, in which case the application may be made at any time after the expiration of the said period of 6 years.

(3) If at any time the defendant has been absent from Samoa the period of his or her absence shall not be counted in computing the respective periods of 6 years or 2 years.

(4) No such application shall be made unless the child is under 16 years of age at the time of the application or has before that time died under the age of 16 years.

10. Evidence of mother – (1) The evidence of any woman who is the mother of a child or who is with child as aforesaid shall not be necessary for the making of an affiliation order or maintenance order.

(2) No person shall be adjudged to be the father of a child upon the evidence of the mother, unless her evidence is corroborated in some material particular to the satisfaction of the District Court Judge.

11. Maintenance and other payments – (1) When an affiliation order has been made under this Act, the District Court Judge may at the same time or at any time thereafter make a maintenance order in favour of the child against the person adjudged to be the father thereof, and may, in addition to or instead of such maintenance order, order such person to pay such sum as the Judge thinks fit on account of the expenses of and incidental to:

- (a) the birth of the child, whether born alive or dead;
- (b) the funeral of the child, if the child dies before the making of the order.

(2) If an order for the payment of maintenance or other sum is made pursuant to this section before the child is born, no such maintenance or sum is to be payable until the child is born.

(3) An order made pursuant to this section is subject to sections 13 and 14, and may be made by the District Court Judge who made the affiliation order, or by any other Judge, and the affiliation order, subject to sections 29 and 60, is conclusive proof of the paternity of the child.

PART 5 MAINTENANCE OF CHILDREN

12. District Court Judge may make maintenance order against parent of child – (1) If, on application made on behalf

of any child under the age of 16 years to a Court presided over by a District Court Judge, the Judge is satisfied that a parent of that child has without lawful excuse failed or intends to fail to provide the child with adequate maintenance, the Judge may make a maintenance order against the parent in favour of the child.

(2) When the parent and child are living apart from each other, and the District Court Judge is satisfied that there is reasonable cause for the child continuing so to live apart from the parent, the parent shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that he or she is ready and willing to support the child if and so long as the child lives with him or her.

12A. Power of the Court to make custody order – (1) The Court may make such orders as it considers appropriate in relation to the custody of a child.

(2) An order under subsection (1) may be made even if a maintenance order has not been made for the child who is the subject of the order.

(3) A Registrar may make such interim orders as he or she considers appropriate in relation to the custody of a child.

(4) An interim order under subsection (3) may only be for a period of no longer than 7 days.

13. Liability to cease when child attains 16 years – Except as provided in sections 14 and 31, no maintenance order in favour of a child shall impose liability for payments first due after that child attains the age of 16 years, but this section does not affect the continuing liability of any person under the order for payments becoming due before that time.

14. Maintenance of child over the age of 16 years –(1) Despite anything in this Act, but subject to this section, a maintenance order may be made in accordance with this Act in respect of any child who at the time of the making of the order has attained the age of 16 years and has not attained the age of 19 years in any case where, apart from this section, a maintenance order could be made in respect of the child under Part 4 or this Part if the child were under the age of 16 years.

(2) No order shall be made under this section unless it appears to the Judge:

- (a) that the child is or will be engaged in a course of education or training; and
- (b) that it is expedient that payments towards the maintenance of the child should be made while the child is so engaged.

(3) An order under this section is for such period as may be specified in the order, being a period not exceeding 1 year from the date of the order and expiring not later than the date when the child attains the age of 19 years.

(4) The power of a District Court Judge, under section 30, to vary any maintenance order, or to substitute a new order therefor, is deemed to include power to extend the period specified in any order made under this section for any further period not exceeding 1 year and expiring not later than the date when the child attains the age of 19 years.

(5) Proceedings for an order under this section may be commenced in the same manner as if the child were under 16 years of age, and this Act applies, with the necessary modifications, to the proceedings and the order.

15. Parts 3 and 4 not affected by this Part– Except as expressly provide, nothing in this Part shall be so construed as to restrict or otherwise affect Part 3 or 4.

PART 6

MAINTENANCE OF WIVES AND HUSBANDS

16. Maintenance of wife – (1) If, on application made by or on behalf of a married woman, to a Court presided over by a District Court Judge, the Judge is satisfied that her husband fails or intends to fail to provide her with adequate maintenance, the Judge may make a maintenance order against the husband in favour of the wife.

(2) Unless the Judge is satisfied that the wife is a destitute person, no maintenance order shall be made against the husband if it is proved that he is not of sufficient ability to contribute to her maintenance.

(3) Where the husband and wife are living apart from one another and the wife has, in the opinion of the Judge, reasonable

cause for refusing or failing to live with her husband, the husband is not to be deemed to have provided adequate maintenance merely by reason of the fact that he is ready and willing to support her if and so long as she lives with him.

17. Maintenance of husband – (1) Subject to the provisions of this section, section 16 applies so as to entitle a married man to the benefit thereof and to make his wife subject to the provisions thereof; and for the purposes of this section all references in that section to a married woman or a wife is deemed to be references to a married man or husband, and all references in that section to a married man or husband are deemed to be references to a married woman or a wife.

(2) No maintenance order shall be made against a wife in favour of her husband unless the District Court Judge is satisfied that the husband is a destitute person, and that his wife is of sufficient ability by her own means or labour to contribute to his maintenance, and that the failure to provide adequate maintenance was wilful and without reasonable cause.

(3) Despite anything to the contrary in section 59, the burden of proof for the purposes of subsection (2) is on the husband.

PART 7 GENERAL PROVISIONS AS TO ORDERS

18. Amount and manner of payment of maintenance – (1)
A maintenance order is to be for such sum as the District Court Judge thinks reasonable in all the circumstances.

(1A) In considering under subsection (1), the sum that is reasonable for the purposes of the maintenance of a person, the Court must take into account the following matters:

- (a) the proper needs of the person having regard to—
 - (i) the age of the person; and
 - (ii) any special needs of the person; and
- (b) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to—
 - (i) the capacity of the person to earn or derive income, including any assets of, under the control of or held for the benefit of the person that

do not produce, but are capable of producing, income; and

(ii) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and

- (c) the income, earning capacity, property and financial resources of the defendant including any assets of, under the control of or held for the benefit of the defendant that do not produce, but are capable of producing, income; and
- (d) the commitments of the defendant that are necessary to enable the defendant to support himself or herself or any other person that the defendant has a duty to maintain; and
- (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(1B) A maintenance order may direct how the money payable under that order is to be paid.

(1C) Without limiting subsection (1B), the Court may direct that money payable under a maintenance order be directed for the benefit of a named child.

(2) Subject to sections 19 and 20, a maintenance order may provide for payment at such time or times and in such manner as the District Court Judge thinks fit, and the Judge may direct payment to be made to the person in whose favour the order is made or to any other person on behalf of that person or to the Registrar of any District Court specified in the order.

18A. Powers of the Court in respect of a maintenance order – (1) In making a maintenance order under this Act, the Court may in addition to any other power specified in this Act:

- (a) order payment of a lump sum, whether in 1 amount or by instalments; and
- (b) order payment of a weekly, monthly, yearly or other periodic amount; and
- (c) order that a specified transfer or settlement of property be made by way of maintenance for a person; and

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- (d) order that payment of an amount ordered to be paid be wholly or partly secured as the Court specifies; and
- (e) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order; and
- (f) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (e)) that the Court considers appropriate.

(2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Part, in relation to the maintenance of a child does not prevent the Court from making a subsequent order in relation to the maintenance of the child.

19. Payment of future maintenance—(1) *Repealed by s7 of the Maintenance and Affiliation Amendment Act 2010, No.14.*

(2) No money payable under a maintenance order shall, without the prior consent of a District Court Judge, be paid more than 1 year in advance of the due date thereof.

(3) If any money is paid in breach of subsection (2), it shall not be taken into account in any proceedings for the enforcement of the maintenance order or for the punishment of any disobedience thereto and all such proceedings may be taken in the same manner as if that money had not been paid; but no money so paid in breach of subsection (2) is recoverable by the person by whom it was paid.

20. Payment of past maintenance – (1) A maintenance order may require the person liable thereunder, in addition to or instead of making future payments, to pay such sum as the Court thinks reasonable, not exceeding \$1,000 or such higher amount as may be prescribed on account of the past maintenance of the person in whose favour the order is made.

(2) An order for past maintenance may be made although the person in whose favour the order is made is dead at the time of the application or at the time of the order.

21. Order notwithstanding residence overseas of parties – An application or order may be made under this Act whether the

applicant, or the person in whose favour or the person against whom the order is sought or made, is resident in Samoa or elsewhere:

PROVIDED THAT at the time when the application is made the person in whose favour or the person against whom the order is sought is resident or domiciled in Samoa.

22. Liability as to maintenance not affected by agreement

– No agreement shall be effective to take away or restrict any liability imposed on a person by this Act to provide or contribute to the maintenance of a person or to pay money in respect of a person, and no agreement shall affect the operation of any maintenance or affiliation order, or the right of a District Court Judge to make any such order; but a Judge may, in his or her discretion, having regard to the existence of the agreement and to all the circumstances of the case, refuse to make any such order.

23. Order re custody of child during currency of maintenance order

– (1) Whenever a District Court Judge has made under Part 4 or Part 5 an order for the maintenance of a child, whether legitimate or illegitimate, the District Court Judge may by that order, or the Judge or any other Judge may at any subsequent time by any other order, on the application of a person, made ex parte or otherwise, appoint, on such terms as the Judge thinks proper, some fit person who, with his or her own consent, shall have the custody of the child so long as the maintenance order remains in force, and the person so appointed shall have the custody of the child accordingly to the exclusion of any other person, and shall have in respect of the child the same powers, rights, duties, and liabilities as if had been appointed the guardian of the child by the Supreme Court.

(2) A District Court Judge may at any time, on the application of any person, made ex parte or otherwise, revoke the appointment and instead make any other appointment.

24. Orders against 2 or more persons in respect of the same person

– Where there are 2 or more persons liable under this Act for the maintenance of the same person, nothing in this Act shall be construed to prevent the making of distinct maintenance orders against any or all of the persons so liable, either by the same or by different Judges, and either at the same

time or at different times, and either under the same or under different provisions of this Act; and any such order may be made and enforced in the same manner in all respects as if no order against any other person was in existence.

25. Interim maintenance order – Where the hearing of an application under Part 5 or Part 6 of this Act is adjourned for any period exceeding 1 week, a District Court Judge may, if the Judge thinks fit, having regard to all the circumstances of the case, make an order directing that the defendant do pay a weekly sum towards the future maintenance of his or her wife or husband or of any of his or her children until the final determination of the case.

26. Powers of District Court Judge as to maintenance orders when divorce suit pending – (1) Subject to the provisions of this section, the Jurisdiction conferred on a District Court Judge by this Act to make an order for the maintenance by any person of that person's wife or husband or of any child of either of them is exercisable, and all the provisions of this Act, including the powers to cancel, vary, suspend, or enforce an order, shall apply to an order so made, including an order made before and in force at the passing of this Act, even if a petition is or has been presented to the Supreme Court, whether before or after the passing of this Act, by that person or by that person's wife or husband for divorce, nullity of marriage or judicial separation.

(2) Nothing in this section affects the power of the Supreme Court to make an interim or a final order for maintenance or alimony.

(3) A maintenance order to which subsection (1) applies is taken to be suspended while there is in force an interim order of the Supreme Court for alimony or maintenance relating to the same parties, and is taken to be cancelled by a final order of the Supreme Court for maintenance or alimony relating to the same parties.

27. Dissolution of marriage not to affect maintenance order – No maintenance order made under this Act is deemed to be or to have been cancelled by reason only of the dissolution

(whether before or after the commencement of this Act) of the marriage between the husband and the wife.

28. District Court Judge may make order as to costs – On making an order or dismissing an application under this Act, the District Court Judge may order the payment of such costs including witnesses' expenses and solicitor's fees as the Judge thinks just and reasonable and an order so made as to costs is enforceable in the same manner as money ordered to be paid by a maintenance order under this Act, and all the provisions of this Act as to the recovery of such money shall apply and extend to the recovery of the costs.

Division 1 – Rehearing and Variation

29. Application for rehearing – (1) Where an order has been made on an application under this Act, a Judge may, if in his or her discretion the Judge thinks fit, on the application of the applicant or defendant, grant a rehearing of the application and may upon the rehearing cancel, vary, or confirm the order.

(2) Notice of the rehearing is to be given to such persons and in such manner as the Judge directs.

30. Power to cancel, vary, or suspend order – A Judge may at any time on application make an order cancelling, varying, or suspending a maintenance order made, whether before or after the commencement of this Act, or substituting a new maintenance order, on the ground that since the making of the order the circumstances have so changed that the order ought to be so cancelled, varied, or suspended, or that a new order ought to be substituted.

30A. Alteration of maintenance agreement – (1) Where by mutual consent a maintenance arrangement has been varied by written agreement permitting 1 party to leave Samoa, such an agreement shall be recognised by the Court as being binding on the parties to that agreement.

(2) The power conferred to cancel or vary any maintenance order includes the power to remit, wholly or in part, any arrears due under the order; and any such arrears may be remitted either on the ground mentioned in this section or, if the Judge in his

discretion thinks fit, on the ground that the defendant is not of sufficient ability to pay the same.

31. Variation of order for child so as to have effect after the age of 16 years – (1) This section applies to a maintenance order made, whether before or after the commencement of this Act, in respect of any child under the age of 16 years.

(2) The power of a Judge under section 30, to vary a maintenance order, or to substitute a new order, includes the power to make an order varying a maintenance order to which this section applies, or substituting a new order, in accordance with the provisions of this section.

(3) If in any proceedings for the variation of a maintenance order to which this section applies, or for the substitution of a new order, it appears to the Judge:

(a) that the child for whose maintenance provision is made by the maintenance order will be or is engaged in a course of education or training after attaining or having attained the age of 16 years; and

(b) that it is expedient that payments towards the maintenance of the child should be made or continue to be made after the child attains or has attained that age, –

the Judge may, in the order of variation or, as the case may be, in the substituted order, direct that payments of a reasonable sum shall be made or continue to be made, at such times and in such manner as the Judge thinks fit, towards the future maintenance of the child for such period after the child attains or has attained the age of 16 years as may be specified in the order of variation or substituted order, being a period not exceeding 1 year from the date of that order and expiring not later than the date when the child attains the age of 19 years.

(4) The period specified in an order made under this section may be extended, by a subsequent order made under this section, for a further period not exceeding 1 year and expiring not later than the date when the child attains the age of 19 years.

(5) Proceedings for an order under this section may be commenced, and such an order may be made, in respect of a maintenance order to which this section applies, despite that the maintenance order may have ceased to have effect, whether

before or after the passing of this Act, by reason of the fact that the child has attained the age of 16 years:

PROVIDED THAT in any such case the period specified in an order under this section shall be a period expiring not later than the date when the child attains the age of 19 years.

Division 2 – Security for Maintenance

32. Security for obedience to maintenance order – (1)

Whenever a maintenance order is or has been made, the District Court Judge may, if the Judge thinks fit, by the same order or on application by order made at any later time, direct the defendant to give security for his obedience to the maintenance order.

(2) Subject to subsection (5A), the security shall, as the Judge determines, be either the deposit of any sum of money as the Judge directs not exceeding 4 penalty units with the Public Trustee, or a bond to the Public Trustee, with one or more sureties approved by the Judge or by any other Judge, in a sum as the Judge requiring the security determines not exceeding \$1000 or a higher amount as may be prescribed, conditioned for due obedience to the maintenance order.

(3) The Judge requiring the security may, by warrant signed by the Judge, commit the defendant to prison until the order requiring the security is complied with; but no person shall be imprisoned under any such warrant for a longer period than 3 months.

(4) If and as often as, after any such deposit has been made by way of security, any money payable under the maintenance order is in arrear and unpaid, the Public Trustee may, on the application of the person to whom the money so in arrear is payable in pursuance of the maintenance order, pay to that person out of the deposit the sum so in arrears.

(5) If and as often as, after any such bond has been given as aforesaid by way of security, any money payable under the maintenance order is in arrear and unpaid, the person to whom the arrears are payable in pursuance of the maintenance order, or any other person authorised by a Judge from time to time in that behalf, may in his or her own name recover the amount of the arrears from any person or persons liable on the bond, by action in a District Court or in any other Court of competent jurisdiction, as if the arrears were a debt due by such person or persons to the

plaintiff; provided that no money is to be so recovered in any such action or actions in excess of the penalty of the bond.

(5A) Where a maintenance order has been made and the Court considers that the defendant intends to live outside Samoa for a period greater than 3 months, the Court may by order direct the defendant to give security for obedience to the maintenance order of such amount and in such form as the Court thinks appropriate.

(6) A Judge may, on the application of the person by whom any such deposit has been made, or of his or her executors, administrators, or assigns, and on being satisfied that the security is no longer required, make an order directing the deposit or the residue thereof to be repaid by the Public Trustee to the applicant, and the same shall be repaid accordingly.

Division 3 – Recovery of Maintenance

33. Money payable under order to constitute a debt and may be recovered by action – (1) All money payable under a maintenance order shall, so soon as it is in arrear and unpaid, constitute a debt due by the person against whom the order was made to the person to whom the money is payable in pursuance of the order, and that money may be recovered by action accordingly in any District Court or in any other Court of competent jurisdiction.

(2) On any judgment so recovered the like proceedings by way of execution or otherwise may be taken as in the case of any other judgment for a debt, but no such judgment shall effect a merger of the debt in respect of which it has been recovered, nor shall such an action or judgment so operate as to preclude, restrict, or affect any other proceedings that might have been taken under this Act in pursuance of the order if no such judgment had been obtained, but all other proceedings under this Act may be taken concurrently or successively with proceedings in respect of the said action or judgment.

(3) Money payable under a maintenance order that is in arrears and unpaid may be regarded by the Court as a judgment debt for the purposes of section 6 of the Judgment Summonses Act 1965.

34. Money due under maintenance order to constitute a debt provable in bankruptcy – (1) If a person against whom a maintenance order has been made is thereafter adjudicated a bankrupt, or files a petition to be so adjudicated, all money due and unpaid at the date of the adjudication, or of the filing of the petition, as the case may be, shall constitute a debt provable in the bankruptcy.

(2) No such bankruptcy and no discharge thereunder shall release the bankrupt from any personal liability under the order, or from any proceedings for the enforcement thereof, or for the punishment of a breach thereof, whether in respect of money due at the time of the adjudication or of the filing of the petition or accruing due thereafter, or shall affect any bond or other security for the observance of the order, or the liability of any property to be made available in satisfaction of the order, other than property which is or becomes asset in the bankruptcy.

35. Money due at the death of person liable under maintenance order may be paid out of estate – On the death of a person against whom a maintenance order has been made, any money in arrear and unpaid under the order at the time of his or her death shall constitute a debt payable out of his or her estate, but no future payments shall be recovered under the order, whether out of the estate or otherwise.

36. Appointment of officer of Court to facilitate recovery of arrears due under maintenance order – (1) There may be appointed, in connection with any District Court, an officer of the Court, hereinafter referred to as the Maintenance Officer.

(2) The office of Maintenance Officer may be held in conjunction with any other office not deemed inconsistent therewith.

(3) The Maintenance Officer may institute any proceedings, and may appear on the hearing of any proceedings, under Part 3, 4, 5 or 6.

(4) The Maintenance Officer may, on behalf of the applicant in the original proceedings or the person to whom or for whose benefit money is payable under an order under this Act, and on the written request of such person, appear in any of the following proceedings:

Maintenance and Affiliation Act 1967

- (a) an application for the rehearing, or the rehearing, of any application under Part 3, 4, 5 or 6;
- (b) proceedings for the cancellation, variation, or suspension of any order made under this Act for the payment of money in respect of the maintenance of a person.

(5) The Maintenance Officer, but not without the request in writing of the original applicant or the person in whose favour a maintenance order is made, shall take all such proceedings as may be necessary under this Act or any other Act for the recovery of money payable under a maintenance order made under this Act or under a maintenance order registered under section 43 or 44, or registered or confirmed in Samoa under Part 9, or otherwise for the enforcement of such an order.

(6) The fact that the Maintenance Officer takes any proceedings under this section is conclusive evidence of his or her authority so to do; and no person shall be concerned to inquire whether or not there has been a request under the last preceding subsection to take proceedings, or shall question the authority of the Maintenance Officer on the ground that he or she may not be Maintenance Officer whose duty it is to take the proceedings.

(7) All proceedings for the recovery of maintenance money may be taken by a Maintenance Officer in his or her own name with the addition of the words acting on behalf of (name and description of person entitled) pursuant to section 36 of the Maintenance and Affiliation Act 1967.

(8) In case of the absence from duty of the Maintenance Officer appointed in connection with any District Court (from whatever cause such absence may arise) a deputy of that Maintenance Officer may be appointed to act for the Maintenance Officer while such absence may continue. A person so appointed as the deputy of a Maintenance Officer shall while so acting have all the powers, duties, and functions of the Maintenance Officer is conclusive evidence of his or her authority so to do, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorising him or her so to act.

(9) If a Maintenance Officer has not been appointed in connection with any District Court, the Registrar or Deputy Registrar of that Court may, upon written request, take any

proceedings for the recovery of money payable under a maintenance order or otherwise to enforce that order.

(10) A Maintenance Officer, or Deputy Maintenance Officer, or any duly instructed solicitor may act in proceedings in any District Court on behalf of the Maintenance Officer appointed in connection with any other Judge's Court.

(11) All money recovered by a Maintenance Officer acting under this section shall be applied:

- (a) in payment of the legal and other expenses (if any) incident to the recovery of that money; and
- (b) in payment of the balance to the person or persons entitled under the maintenance order.

37. Attachment orders – (1) When a maintenance order has been made either before or after the commencement of this Act, the District Court Judge making the same, or any other Judge, may, at the same or any subsequent time, on the application of a person, make an attachment order in pursuance of this section.

(2) The attachment order may be made against a person who is proved to the satisfaction of the Judge to be an employer of the defendant against whom the maintenance order is made.

(3) The attachment order may be made *ex parte* without notice to the defendant or his or her employer, but a duplicate thereof shall be served upon the employer either personally or by leaving the same at his or her place of abode, or at his or her place of business, or at any of his or her places of business.

(4) The attachment order may declare that the money due and payable, or at any time or from time to time to become due and payable, under the maintenance order shall, by way of periodic payments of such amount as the Judge thinks fit and specifies in the attachment order, be a charge on any salary or wages which from time to time, and at any time while the attachment order remains in force, become due and payable by the employer to the defendant.

(5) The charge so created is deemed to accrue from period to period, and on such day of the period as is specified in that behalf in the attachment order.

(6) The attachment order may be made either for a fixed period of time or so as to remain in force until cancelled in accordance with the provisions in that behalf hereinafter contained.

(7) The charge so imposed shall attach to all wages or salary which becomes due by the employer to the defendant at any time while the attachment order is in force, whether the contract of employment in respect of which the wages or salary so becomes due existed at the date of the attachment order or not.

(8) The attachment order may at any time varied, suspended, or cancelled, on the application ex parte of any person, by the Judge making the same, or by any other Judge, on good cause being shown to the satisfaction of the Judge why the order should be so varied, suspended, or cancelled; and the variation, suspension, or cancellation takes effect on notice thereof being served on the employer in manner aforesaid.

(9) The attachment order shall take effect on the service of a duplicate thereof on the employer in manner hereinbefore provided.

(10) So long as the attachment order remains in force the employers shall, so often as any money becomes due and payable by him or her to the defendant by way of salary or wages, deduct therefrom such sum as is sufficient to satisfy the charge thereon so far as the same has accrued before the day on which the said wages and salary so becomes due and payable, and shall pay the amount so deducted to the person specified in that behalf in the attachment order, who may, as the Judge thinks fit, be either the Registrar for the time being of a District Court or any other person.

(11) All sums so deducted and paid are deemed, extent thereof, to have been paid by the employer in satisfaction of the wages or salary payable by the employer to the defendant and to have been paid by the defendant in satisfaction of his or her liability under the maintenance order.

(12) If and as often the employer makes default in the payment of any money in satisfaction of such a charge, that money shall become a debt due by him or her to whom the person is payable under the terms of the attachment order, and may be recovered by that person by action in any Court of competent jurisdiction.

(13) If the person to whom that money is so payable under the terms of the attachment order is the Registrar for the time being of a District Court, he or she may, on any such default as aforesaid, assign the debt, by writing under his or her hand, with the leave of any Judge, to such other person as the Judge thinks

fit; and that person may thereupon, in his or her own name, demand, sue for, and receive the sum as if it was payable to him or her under the order.

(14) The charge created by the attachment order prevails over and have priority to an assignment made or charge created by the defendant, whether before or after the making of the attachment order against him, and the order shall have the same effect as if no such assignment or charge had been so made or created.

(15) The employer, in making a deduction or payment in pursuance of the attachment order and in accordance with the terms thereof, shall not be concerned to make inquiry as to whether any money is due and payable under the maintenance order or be affected by any notice to the contrary.

(16) The attachment order may be made on wages or salary earned by an employee of the State of Samoa and this section binds the State.

38. Charging orders – (1) When a maintenance order has been made, whether before or after the commencement of this Act, the District Court Judge making the same, or any other Judge, may, if the Judge thinks fit, at the same or at any subsequent time, order and declare that the money payable or to become payable under the maintenance order is a charge upon any real or personal property to which the defendant is entitled, and the property shall become subject to an equitable charge in favour of the person to whom that money is or becomes payable.

(2) A charging order shall specify, in such manner as to identify the same, the property on which the charge is imposed.

(3) A charging order may be at any time varied or cancelled by the District Court Judge making the same, or by any other Judge.

(4) *Worker's Compensation Ordinance 1960 is repealed by Accident Compensation Act 1978 which was later repealed by the Accident Compensation Act 1989.*

(5) When a charging order is made on the registered estate or interest of the defendant in land, a duplicate or copy of the order under the hand of a Judge, having endorsed or otherwise written thereon a direction by that Judge to register the same, may be delivered for registration to the Registrar of Land, and the Registrar of Land shall thereupon without fee register the same.

(6) An order cancelling or varying a charging order may be registered in a like manner.

(7) On the registration of a charging order in a manner set out in subsections (5) and (6), the charge constituted becomes a legal charge upon the estate or interest of which it is so registered.

39. Receiving orders – (1) When a charging order is made on in respect of any real or personal property, the District Court Judge making the same, or any other Judge, may, at the same or at any subsequent time, if any money is in arrear and unpaid under the maintenance order, make, if the Judge thinks fit, an order appointing the Public Trustee or any other person to be the receiver of the rents, profits, or income of the property so charged, or of any part of that property.

(2) A receiving order so made may be at any time thereafter varied or cancelled by the same or any other Judge, and every such order shall be so cancelled as of right on the payment by the defendant of all arrears due under the maintenance order, together with payment by him or her in advance of all money become payable under the maintenance order during the period of 1 year from the date of the cancellation of the receiving order.

40. Powers and duties of receiver – (1) The receiver so appointed is entitled to take and recover, by action or otherwise, the possession and receipt of the land or other property in respect of which he or she has been appointed, and of the rents, profits, and income thereof, so long as the receiving order remains in force.

(2) The receiver may also in his or her own name grant lease of any such land on such conditions as the receiver thinks fit, and for a term not exceeding 3 years or from year to year, or for a weekly, monthly, or other like tenancy, at the best rent that can reasonably be obtained, payable uniformly, quarterly or oftener, without taking a fine or other benefit in the nature of a fine; and the lease remains valid despite a subsequent cancellation of the charging order or receiving order.

(3) Subject to any directions that may be given by a Judge, the receiver may also pay in respect of any such land all rates, taxes, interest, insurance premiums, and other outgoings (including all instalments of principal and interest under any mortgage secured over the land) that are due at the time of his or her appointment or may fall due while the receiving order continues in force, and the cost of repairing and keeping in good

repair and condition all buildings and other improvements on any such land; but he or she shall not be bound to make any such payment or to repair or keep in good repair and condition any such buildings and improvements:

PROVIDED THAT the amount to be expended by the receiver in a year, being a year commencing from the date of his or her appointment or a subsequent year; in repairing and keeping in good repair and condition all buildings and other improvements on the land shall not exceed the sum of \$100, unless expenditure is first authorised by a Judge.

(4) All payments made by the receiver pursuant to subsection (3) shall be made from the rents, profits, and income of the land received or to be received by the receiver, except in so far as any such payments are made pursuant to subsection (5).

(5) A Judge may, on application by the receiver, authorise the receiver:

- (a) to make the whole or any part of any such payments as aforesaid from any capital money which may be held by the receiver pursuant to the receiving order; or
- (b) to borrow money, in the name and on behalf of the defendant, upon the security of any such land, to enable the whole or any part of any such payments as aforesaid to be made. Repayment of money so borrowed, and interest thereon, may be secured by mortgage or charge over the land, with or without a power of sale, and subject to such covenants, provisions, and agreements as may be agreed upon between the receiver and the lender; and every such mortgage or charge shall have the same operation and effect in all respects as if executed or given by the defendant personally, and shall remain valid and effectual notwithstanding any subsequent cancellation of the charging order or receiving order.

(6) Where the receiver is the Public Trustee and he or she is authorised pursuant to subsection (5) to borrow money, he or she may instead advance such money in accordance with section 32 of the Public Trust Office Act 1975 as if the land were property to the credit of an estate under that section, and all the provisions

of that section shall, as far as they are applicable and with the necessary modifications, apply to any such advance.

(7) Subject to subsections (1) to (6), all money received by the receiver in the exercise of his or her powers shall, after payment thereof of all expenses incurred by him, and of such remuneration (if any) as may be allowed by a Judge for his or her services in that behalf, be held by the receiver in trust:

- (a) to pay and satisfy thereout all money from time to time accruing due under the maintenance order;
- (b) to pay the residue of the money so received by him or her to the person who would be entitled to that money if no such charging order or receiving order was in force:

PROVIDED THAT where the receiver is the Public Trustee his or her remuneration is as fixed under the regulations under the Public Trust Office Act 1975.

(8) Subject to this Act, the appointment of a receiver by a Judge under this Act shall have the same effect and the receiver shall have the same powers, duties, and liabilities, as if the receiver had been appointed by the Supreme Court in the exercise of its jurisdiction in that behalf, and a Judge may give to the receiver any directions, and confer upon the receiver any powers, which the Supreme Court could give to or confer upon any receiver so appointed by him or her.

41. Mode of application for charging or receiving orders—

The jurisdiction of a District Court Judge to make, cancel, or vary a charging or receiving order under this Act may be exercised on the application of any person made ex parte or otherwise, but the Judge may on any such application direct that notice of the application shall be given to such persons as the Judge thinks fit.

42. Proceedings may be concurrent – All proceedings authorised by this Act to be taken in enforcement or execution of any order, or otherwise in pursuance of any order, may be taken concurrently or successively with any other proceedings so authorised.

43. Orders for maintenance made by the Supreme Court in divorce or other matrimonial proceedings – (1) Where the Supreme Court in the exercise of its jurisdiction in divorce or other causes and matters matrimonial has, whether before or after the passing of this Act, made an order for the periodic payment of an amount to or for the benefit of any wife, husband, or any child or children, such order may be registered in the District Court most convenient for the enforcement of the order by entering the terms of such order in the Civil Record Book of such Court.

(2) Subject to the provisions of this section, the provisions of this Act apply with respect to every such order as if it were a maintenance order of a Judge made under this Act:

PROVIDED THAT nothing in this section is deemed to take away or affect the jurisdiction of the Supreme Court in relation to an order of that Court.

(3) No application shall be made under this Act for the cancellation, variation, or suspension of an order to which this section applies, or for the substitution of a new order therefor, in any case where the Supreme Court has ordered security to be given for the performance of the order, or while any proceedings for the cancellation, variation, or suspension of the order are pending or in progress in the Supreme Court.

(4) A copy of an order made by a Judge cancelling, varying, or suspending any order to which this section applies, or substituting a new order therefor, shall be forwarded by the Registrar of the Court in which the order is made to the Registrar of the Supreme Court and shall be recorded by that Registrar.

(5) Where an order to which this section applies is varied or otherwise affected by a subsequent order of the Supreme Court, the subsequent order shall be registered in the District Court in which the earlier order of the Supreme Court is registered by entering the terms of such order in the Civil Record Book of such District Court.

44. Registration and enforcement of maintenance agreements–(1) Where an agreement has been entered into in writing, whether before or after the commencement of this Act, and the agreement provides for the periodical payment by one party of sums of money towards the maintenance of another party or of a child to whom Part 5 applies, and on an application under

this Act the Court would have had jurisdiction to make an order in similar terms, either or any party may register the agreement or a copy thereof in the office of a District Court.

(2) Where an agreement or copy thereof is registered under subsection (1), the provisions of the agreement relating to maintenance shall, while it continues in force, have the same force and effect as if the agreement were a maintenance order made under this Act on the date of the registration, and the provisions of this Act relating to maintenance orders apply accordingly, with the necessary modifications:

PROVIDED THAT where a person makes an application under section 30 for the registered agreement on the ground set out in section 30(1), the application is to be dealt with as if the agreement were a maintenance order made under this Act on the date when the agreement was entered into.

(3) Where a Judge is satisfied that a registered agreement was not in force on the date of registration of the agreement or copy under this section, the Judge may make an order cancelling the registration.

(4) This section applies to any agreement under this section whether or not the agreement provides for the separation of the parties or the custody of a child.

PART 8 PROCEDURE

45. Proceedings to be by way of application – All proceedings brought under this Act except proceedings alleging an offence is commenced by filing an application.

46. Who may apply – An application to the Court under this Act may, except where otherwise expressly provided, be made either by a person in whose favour the order is sought or has been made or by any other person on behalf of that person.

46A. Requirement for mediation – Before exercising a power under this Act, the Court may require the parties to the proceeding to undergo such mediation as the Court may direct.

47. Application may comprise more than one matter – An application under this Act may comprise more than one matter of application against the same person whether under the same or

different Parts of this Act; and an order, summons, warrant, or other process in respect of such application may relate to more than one matter accordingly.

48. Issue of summons – When an application is filed, the Judge, Fa’amasinoFesoasoani or Registrar may issue a summons to the defendant.

49. Issue of warrant of arrest – When an application has been made and whether or not a summons has been issued or served:

(a) aJudge may, if the Judge thinks fit, issue a warrant to arrest the defendant and have him or her brought before the Court; or

(b) aFa’amasinoFesoasoani or Registrar may issue a warrant to arrest the defendant and have him or her brought before Court if, –

in the opinion of the Fa’amasinoFesoasoani or Registrar after hearingevidence substantiated on oath, a warrant is necessary to compel the attendance of the defendant at Court.

50. Application to be treated as information for an offence

– An application under this Act isto be received by the Court and isto be proceeded with in all respects as if it were an information laid against the defendant for an offence and as if the ground of the application were the alleged offence, and all proceedings under this Act are subject to the provisions of the law for the being relating to the filing, issuing and executing of information, summonses and warrants so far as those provisions are consistent with this Act.

51. Service of summons where person against whom order sought is of unsound mind – (1) When a person against whom an order is sought under this Act is a person of unsound mind, of whose estate a committee has been appointed, or whose estate is administered by the Public Trustee in the exercise of his powers over the estates of persons of unsound mind, the summons on any application under this Act shall be served on the committee or on the Public Trustee, as the case may be, instead of on the person of unsound mind; and the committee or Public Trustee shall represent and act for the person of unsound mind in all proceedings thereunder, and the like proceedings may be taken and the like

order made as if that person were of unsound mind and had been duly served with the summons.

(2) All money payable under an order so made shall be paid by the committee or Public Trustee out of the estate of the person of unsound mind according to the tenor of the order, subject, however, to all other debts and liabilities of the person of unsound mind so far as the committee or Public Trustee has notice thereof.

52. Order where defendant is absent from Samoa or cannot be found – (1) Where an application is made under this Act, not being an application under Part 3 or 4, and it is proved to the satisfaction of a Judge that the defendant is absent from Samoa or cannot be found, the Judge may, in his or her discretion, either hear and determine the application *ex parte* and make an order accordingly, or deal with the application under subsections (2) and (4) or (3) and (4), as the case may be, as it were an application under Part 3 or 4.

(2) Where an application is made under Part 3 or 4, and it is proved to the satisfaction of a Judge that the defendant is absent from Samoa but that his or her whereabouts is known, the Judge may order that notice of the proceedings be served on the defendant.

(3) Where an application is made under Part 3 or 4, and it is proved to the satisfaction of a Judge that the defendant cannot be found, the Judge, whether the defendant is believed to be in Samoa or elsewhere, may order any steps to be taken to bring the proceedings to the notice of the defendant, and may amend such order. An order under this subsection may direct that notice of the proceedings be given by advertisement in a newspaper, or by the service of a notice on a solicitor or agent of the defendant or on any other person, or in any manner whatsoever.

(4) Where a Judge is satisfied that an order made under subsection (2) or (3) has been complied with and that a reasonable time has elapsed since the steps directed by the order were taken, the District Court Judge may, if the Judge thinks fit, hear and determine the application *ex parte* and make an order accordingly.

(5) This section applies whether a summons or warrant has been issued on the application or not.

53. Service of order not necessary – It is not necessary that an order made under this Act, or any minute thereof, be served upon the person against whom the order is made.

54. Restrictions on publicity of hearing – (1) Where in a proceeding under this Act the Court is of opinion that the interests of public morality require that all or any persons should be excluded from the Court it may exclude such persons therefrom accordingly:

PROVIDED THAT such powers shall not be exercised for the purpose of excluding the applicant or defendant, or any counsel or solicitor, or any constable, or any accredited newspaper reporter.

(2) The Court in any such case may also, by order, forbid the publication of any report of the proceedings or any account of the evidence therein, either as to the whole or any portion thereof; and the breach of such an order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

55. Who may be witnesses in applications under Act – In all applications under this Act, whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the applicant and defendant, and the husband or wife of the applicant or defendant, are admissible and compellable witnesses, and no such witness is excused from answering any question on the ground that the answer thereto may tend to criminate the witness, or the husband or wife of the witness, in respect of any offence against this Act.

56. Evidence receivable in proceedings need not be strictly legal evidence – In all proceedings under this Act, whether by way of information, application, or otherwise, and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Judge or Court may receive any evidence that the Judge or the Court thinks fit, whether the same is otherwise admissible in a Court of law or not.

56A. Provision of financial information – (1) In considering an application for a maintenance order, the Court may direct the defendant or the applicant to provide such further information as the Court considers necessary.

(2) Without limiting subsection (1), the Court may request the defendant or applicant to provide documentary evidence relating to:

- (a) the income, earning capacity of the defendant or applicant including—
 - (i) bank statements; and
 - (ii) employment records; and
- (b) the property, financial resources and other assets of the defendant or applicant; and
- (c) the commitments of the defendant or applicant that are necessary to enable the defendant or applicant to support himself or herself or any other person that they have a duty to maintain.

57. Evidence of maintenance order – In all proceedings under this Act, whether by way of information, application, or otherwise, and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, a document purporting to be an order, or a copy or duplicate of an order, made under this Act or under the Samoa Maintenance and Affiliation Order 1920 (NZ) and purporting to be signed by any Judge or District Court Judge or to be certified as a true copy by the Registrar of any District Court or the Supreme Court or by any Judge or District Court Judge, shall be received as sufficient evidence of the existence, validity, and purport of that order, unless the contrary is proved.

58. Affiliation and maintenance orders made outside Samoa may be used in evidence – (1) Where an order has been made out of Samoa, whether before or after the commencement of this Act, by any Court or by any Judge, District Court Judge, Justice of the Peace or other judicial officer, by which any person is adjudged to be the father of an illegitimate child, or by which any person is ordered to pay any sum of money towards or in respect of the maintenance of the husband, wife, child, or other near relative of that person, the order so made shall, on an application under this Act whereby an affiliation or maintenance order is sought against that person, be sufficient evidence, unless the contrary is proved to the satisfaction of the Judge, of the following facts so far as they are alleged in the order or appear by necessary or reasonable implication therefrom:

- (a) the paternity, maternity, and age of a child, whether legitimate or illegitimate;
- (b) the fact that the person against whom the order has been made is the husband or wife of any other person;
- (c) the relationship existing, whether by birth or adoption, and whether legitimate or illegitimate, between the person against whom the order has been made and any other person;
- (d) the ability of the person against whom the order has been made to contribute to the maintenance of any other person;
- (e) the fact that any person is a destitute person, or has been deserted or left without adequate means of support by the person against whom the order has made.

(2) An order under subsection (1) may be sufficiently proved by the production of a document purporting to be a copy thereof under the seal of the Court by which the order was made, or under the hand of a Judge, District Court Judge, Justice of the Peace, or other judicial officer by whom or by whose Court the order was made, or under the hand of a Registrar, Clerk, or other officer of that Court; and on the making or hearing of an application under this Act the Judge by whom the same is taken or heard may take judicial notice of the seal or signature.

59. Proof – (1) In all proceedings under this Act, whether by way of application or prosecution for an offence, the defendant has burden of proving, so far as that proof is material, that:

- (a) the defendant is not the near relative, or husband, or wife, or parent of any person, as alleged in the application or information; or
- (b) that the defendant is not of sufficient ability to contribute to the maintenance of any person or
- (c) that the defendant had reasonable cause to make default in the payment of any money payable under a maintenance order, or had reasonable cause for failing to provide any person with adequate maintenance:

PROVIDED THAT nothing in this subsection applies to any proceedings under Part 4, or to the proof that any person is or is not,

or has or has not been adjudged to be, the father of an illegitimate child.

(2) In any prosecution for an offence against this Act:

- (a) the fact that the defendant has at any time within 3 years after leaving Samoa habitually made default in obeying an order of maintenance or in providing his wife or her husband or his or her child with adequate maintenance is sufficient evidence, unless the contrary is proved, that the defendant left Samoa with intent so to make default;
- (b) a person is taken to attempt to leave Samoa within the meaning of this Act who does any act with intent to leave Samoa;
- (c) the defendant has the burden of proving that the permission in writing of a Judge was given to the defendant to leave Samoa.

60. Dismissal of application no bar to further application being made – The dismissal of an application for a maintenance order or affiliation order or the refusal of a Judge to make such an order or any other order under this Act is not a bar to the making of a further application in the same matter against the same defendant by the same applicant.

61. Appeal from decision of Judge – (1) When:

- (a) an order has been made on an application under this Act; or
- (b) the application has been dismissed; or
- (c) a Judge has refused to make an order on an such application; or
- (d) any other order has been made or refused under this Act by a Judge, –

the applicant or defendant, or any other person prejudicially affected, may appeal to the Supreme Court against such order, dismissal, or refusal in the same manner as if the appeal was from a conviction in the District Court for an offence.

(2) The operation of an order made under this Act is not suspended by the appeal, and the order may be enforced in the same manner in all respects as if no such appeal was pending.

**PART 9
OVERSEAS MAINTENANCE**

Division 1 – Enforcement of Orders in Samoa

62. Registration of Commonwealth country orders–

Where:

- (a) a maintenance order has been made against a person by a Court in a Commonwealth country outside Samoa; or
- (b) a maintenance order (other than an order in an affiliation order) made provisionally only against a person by a such Court has been confirmed in a Commonwealth country outside Samoa, –

the maintenance order may, in either case, whether the order was made or confirmed before or after the commencement of this Act, be registered in Samoa by filing a certified copy thereof in the office of a Court in Samoa in the prescribed manner.

63. Registration of order may be set aside – (1) The registration of an order under section 62 shall be set aside if the Court in which the order has been registered, whether before or after the commencement of this Act, is satisfied, on application by the defendant, that the order is not an order to which section 62 applies.

(2) In the case of an order made in or consequent upon an affiliation order, that registration may also be set aside if that Court is satisfied, on application by the defendant, that the defendant neither appeared in the proceedings in which the affiliation order was made nor was duly served with a summons to appear in those proceedings.

64. Confirmation of provisional Commonwealth country orders – (1) This section applies:

- (a) to a maintenance order (other than an order in an affiliation order); and
- (b) to an order varying a maintenance order where that maintenance order has, whether before or after the commencement of this Act, been either registered or confirmed in Samoa, –

in any case where the maintenance order or the order varying the

maintenance order, as the case may be, has been made provisionally only by a Court in a Commonwealth country outside Samoa and has no effect unless and until confirmed elsewhere.

(2) Where a certified copy of an order to which this section applies, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Chief Executive Officer of the Ministry of Justice and Courts Administration, those documents shall be sent to a Court for the hearing of proceedings for confirmation of the order.

(3) On receipt of such documents as aforesaid by a Court:

- (a) a Judge or a Registrar may issue a summons to the defendant;
- (b) a Judge may issue a warrant to arrest the defendant and bring the defendant before a Court in a case where the defendant's address is unknown or where a summons has been issued but cannot be served because the defendant cannot be found.

(4) At the hearing:

- (a) it shall be open for the defendant to raise a defence which the defendant might have raised in the original proceedings had he or she been present, but no other defence; and
- (b) the statement from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed is conclusive evidence that those grounds are grounds and the only grounds on which objection may be taken:

PROVIDED THAT where the provisional order is consequent upon an affiliation order it is a defence that the defendant neither appeared in the proceedings in which the affiliation order was made nor was duly served with a summons to appear in those proceedings.

(5) If the defendant appears at the hearing and it appears to the Court to be necessary for the purpose of any defence to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

(6) If at the hearing (whether following an adjournment or otherwise) the defendant does not appear, or on appearing fails to

satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modification as it deems just. An order which has been confirmed with modifications shall for all the purposes of this Act have effect in the form in which it is confirmed.

(7) The Court confirming a maintenance order to which subsection (1)(a) applies may also, in its discretion, if it is satisfied that the defendant is of sufficient ability, at the same time order the defendant to pay, at such time or times and in such manner as the Court thinks fit, a sum not exceeding \$100 on account of the maintenance of the person or persons in whose favour the provisional order was made between the date of the making of that order and its confirmation. An order made under this subsection is a maintenance order for the purposes of this Act.

65. Confirmation of provisional orders affecting Samoa maintenance orders—(1) This section applies to an order that has been made provisionally only by a Court in any Commonwealth country outside Samoa and has no effect unless confirmed in Samoa, cancelling, varying, or suspending a maintenance order made in Samoa and registered or confirmed in that Commonwealth country.

(2) Where a certified copy of any order to which this section applies, together with the depositions of witnesses, has been transmitted to the Secretary for Justice, those documents shall be sent to a Court for the hearing of proceeding for confirmation of the order.

(3) On receipt of those documents as aforesaid by a Court summonses shall be issued to such persons as the Judge directs.

(4) If a person summoned under subsection (3) appears at the hearing and it appears to the Court to be necessary to remit the case to the Court which made the provisional order the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

(5) Subject to subsection (6), if at the hearing (whether following an adjournment or otherwise) none of the persons summoned under subsection (3) appear, or if those who do appear fail to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modification as it deems just. An order which has been

confirmed with modification shall for all the purposes of this Act have effect in the form in which it is confirmed.

(6) No order is confirmed under subsection (5) unless the Court is satisfied that an order similar to the order as confirmed could have been made in Samoa under this Act.

(7) An order is confirmed under subsection (5) and shall have effect for all the purposes of Samoa law as if it had been made under this Act.

66. Rehearing and appeal in respect of confirmation of order—Sections 29 and 61 (which relate to re-hearings and appeals) apply to the confirmation of an order or the refusal to confirm an order under section 64 or 65 as if the confirmation or the refusal were an order made on an application under this Act or the dismissal of such an application respectively.

67. Effect of registration or confirmation of overseas order in Samoa – (1) An order which has been registered in Samoa, and an order (including an order of variation) which has been confirmed in Samoa (other than an order confirmed under section 65) shall remain an order of the Court of the country in which the order was made.

(2) Despite subsection (1), the order while it remains in force is enforceable as if made under this Act and Part 10 applies to the defendant under the order.

68. Variation in Samoa of order registered or confirmed here –(1) Where a maintenance order has been either registered or confirmed in Samoa, whether before or after the commencement of this Act, a Court may at any time, on the application of a person, make an order under section 30 or 31 cancelling, varying, or suspending the operation of the maintenance order for the purposes of Samoa law; or for the purposes of Samoa law remitting, wholly or in part, any arrears due under the maintenance order:

PROVIDED THAT where it appears to the Court that the order it proposes to make is one which, if made provisionally, may be confirmed under the law of the country in which the maintenance order was made, the Court may, instead of making the proposed order, make a provisional order that shall have no effect until confirmed by competent Court in that country and section 73(4) to (8) applies, except that, instead of being accompanied by a

statement of the grounds on which the order might have been opposed, the certified copy of the order is accompanied by a statement of the grounds on which the provisional order has been made.

(2) Where a person makes an application under subsection (1), in respect of a maintenance order registered in Samoa, on the ground set out in section 30(1), the application shall be dealt with as if the maintenance order had been made under this Act on the date when it was made outside Samoa.

(3) Where on the hearing of an application under subsection (1) it appears to the Court to be necessary to remit the case to the Court which made the maintenance order for the purpose of taking any further evidence the Court may so remit the case and adjourn the proceedings for the purpose.

(4) For the purposes of the hearing of an application under subsection (1) the evidence of a person beyond Samoa may be taken on commission in accordance with regulations made under this Act.

(5) Where a maintenance order has been either registered or confirmed in Samoa, whether before or after the commencement of this Act, and at any time thereafter the person in whose favour the order was made and the defendant are resident in Samoa a Court may, on the application of a person, make an order under section 30 substituting a new order for the registered or confirmed order.

(6) An order under subsection (5) may be made in a case where the Court considers it just, whether or not there would be jurisdiction to make an order on the ground set out in section 30(1).

(7) On an application under this section a summons shall be issued to such persons as the Court directs.

69. Proof of documents signed by officers of Court – (1) For the purposes of this Part, a document purporting to be signed by a Judge, District Court Judge, or officer of a Court in any Commonwealth country outside Samoa is, until the contrary is proved, taken to have been signed without proof of the signature or judicial or official character of the person appearing to have signed it; and the officer of a Court by whom a document purports to be signed is, until the contrary is proved, taken to have been the proper officer of the Court to sign the document.

(2) A document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) shall be admitted in

evidence in proceedings under this Part if it appears to be relevant to those proceedings.

70. Depositions to be evidence – Depositions taken for the purposes of this Part in a Court in a Commonwealth country outside Samoa may be received in evidence in proceedings under this Part.

71. Extension of application of certain provisions of Act– The Head of State, acting on the advice of Cabinet, may by Order, declare that sections 62 to 70, or any of the provisions of those sections, apply to orders made, whether before or after the commencement of this Act, in any country specified in the Order as if they were orders made in a Commonwealth country.

Division 2 - Provision for Enforcement of Foreign Orders

72. Registration of foreign orders – (1) In this section, “maintenance order” does not include an order in or consequent upon an affiliation order.

(2) The Head of State, acting on the advice of Cabinet, may, by Order, apply this section to maintenance orders made in a country (not being a Commonwealth country) specified in the Order.

(3) Where a maintenance order to which this section applies has been made against a person by a Court or judicial officer, whether before or after the commencement of this Act, it may be registered in Samoa by filing a certified copy thereof in the office of a Court in Samoa in the prescribed manner.

(4) Where a maintenance order is registered under this section the Registrar of the Court in which it is registered shall cause notice of the registration in the prescribed form to be served on the defendant.

(5) The Court in which the order is registered shall, on application by the defendant, set aside the registration if the Court is satisfied:

- (a) that the order is not an order to which this section applies; or
- (b) that if the parties were domiciled and resident in Samoa at the time when the application is heard the Court would not make an order requiring the defendant to contribute to the maintenance of the person in whose favour the order was made

(whether or not such an order might have been made at the date when the registered order was made).

(6) An order which has been registered in Samoa under this section is enforceable as if made under this Act, and Part 10 applies to the defendant under the order.

(7) For the purposes of this section, sections 68 (except subsection (3)) and 69 apply to maintenance orders and documents which originated in a country specified in an order made under subsection (2) as if they were maintenance orders and documents which originated in a Commonwealth Country.

(8) In any proceedings taken under this section (including proceedings for the cancellation, variation, or suspension of any order, or for the remission of arrears), the evidence of a person beyond Samoa may be taken on commission in accordance with regulations made under this Act.

(9) Where an Order under subsection (2) is revoked the Head of State may provide in the order by which it is revoked that all maintenance orders then registered under this section pursuant to the revoked Order are deemed to be registered under section 62 so long as an Order which applies to orders made in the country in which they were made is in force under section 71, and that all matters and proceedings commenced while the Order under subsection (2) was in force and pending or in progress at the time of its revocation may be continued, completed, and enforced under section 63 and sections 67 to 70 so long as an Order which applies to orders made in that country is in force under section 71.

Division 3 – Samoan Orders for Enforcement Overseas

73. Provisional orders for confirmation overseas – (1) On an application in Samoa for a maintenance order (other than an order in an affiliation order) against a person who is proved to be resident in a country outside Samoa or who is proved to have left Samoa with the intention of residing in a country outside Samoa, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the truth of the allegations in the application, make a provisional order which shall have no effect until confirmed by a competent Court in a place outside Samoa.

(2) Where a Court in Samoa has notice that a maintenance order made in Samoa has been registered in a country outside Samoa and

it appears that the defendant is not resident in Samoa, the Court may, in any case where it has ground to make an order varying the maintenance order, make instead a provisional order which shall have no effect until confirmed by a competent Court in a place outside Samoa.

(3) No provisional order shall be made under this section unless:

- (a) it appears to the Court that the order is one which may be confirmed under the law of the country in which the defendant resides or intends to reside; and
- (b) the order could have been made as a final order if a summons had been duly served on the defendant and he or she had failed to appear at the hearing.

(4) Despite that an agreement has been registered under section 44, a provisional order may be made under this section, unless it appears to the Court that there is provision in the country in which the defendant resides to enable the agreement to be enforced as an order. Where any such provisional order is confirmed the registration of the agreement under the said section 44 is deemed to be cancelled.

(5) The evidence of a witness who is examined on any application under this section shall be put into writing, and the deposition shall be read over to and signed by the witness.

(6) Where an order is made under this section, the Court shall send to the Chief Executive Officer of the Ministry of Justice and Courts Administration, for transmission to the country in which the defendant resides:

- (a) the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the defendant had been duly served with a summons and had appeared at the hearing; and
- (b) also any information as the Court possesses for facilitating the identification of the defendant and ascertaining his whereabouts.

(7) Where an order under this section has been remitted by the Court before which it has come for confirmation to the Court which made the order for the purpose of taking further evidence, the last-mentioned Court or any other Court may proceed to take the

evidence in the same manner and subject to the same conditions as the evidence in support of the original application was taken.

(8) If on the hearing of such evidence it appears to the Court that the provisional order ought not to have been made or that a different provisional order should have been made, the Court may rescind the provisional order or may discharge the provisional order and make a fresh provisional order in its stead respectively. Except where the Court rescinds the order, the depositions shall be dealt with in the same manner as the original depositions.

(9) Section 61 (which relates to appeals) applies to the refusal to make a provisional order under this section or the rescission of such an order under subsection (8).

(10) Nothing in this section restricts the authority of a Judge to make an order under section 52 in any case where the defendant is absent from Samoa.

74. Effect in Samoa of confirmation overseas of provisional order – (1) On the confirmation of an order made under section 73, the order shall, in the form in which it is confirmed, for all the purposes of Samoa law, become an order of the Court which made the provisional order as if the order had been made under this Act.

(2) An order of variation made in Samoa relating to any such confirmed maintenance order is provisional only and of no effect unless confirmed in the same manner as the original order:

PROVIDED that this subsection does not apply:

- (a) where the defendant is residing in Samoa at the time of the variation; or
- (b) where the order of variation is only an order remitting arrears.

(3) Section 73(5) to (9) applies to a provisional order of variation made in Samoa.

(4) A certified copy of an order cancelling or suspending the original order or varying it, where the only variation is the remission of arrears, shall be sent by the Court to the Secretary for Justice for transmission to the country in which the original order was confirmed.

75. Certificate of Registrar or like officer – In any proceedings under or for the purposes of this Part of this Act a certificate purporting to be signed by the Registrar of a Court or any like officer of a country in which a maintenance order is being

enforced stating that a specified amount has been paid into Court or to that Registrar or officer under a maintenance order is evidence, until the contrary is proved, of the facts therein.

76. Conversion of currency – (1)Where the sum or sums ordered to be paid under a maintenance order which is registered or confirmed in Samoa under this Part are expressed in a currency other than the currency of Samoa, the Order shall be registered or confirmed, as the case may require, as if it were an order for the payment of such sum or sums in the currency of Samoa as, on the basis of rates of exchange prevailing at the date of the original order, is equivalent to the sum or sums so ordered to be paid.

(2) For the purposes of this section, a written certificate purporting to be signed by an officer of a bank in Samoa that a specified rate of exchange prevailed between currencies on a specified day and that at such rate a specified sum in one currency is equivalent to a specified sum in terms of the currency of Samoa is sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currencies.

PART 10 OFFENCES

77. Failing to maintain wife, husband or children –(1) A person who, without reasonable cause, fails to provide his wife or her husband with adequate maintenance and a parent who, without reasonable cause, fails to provide his or her child with adequate maintenance, commits offence and is liable on conviction to imprisonment for a term not exceeding 6 months.

(2) If, on the hearing of any application under Part 5 or 6 alleging that the defendant has failed to make adequate provision for the maintenance of his wife or her husband or his or her child, it is proved to the satisfaction of the Judge (whether the defendant is present before him or her or not) that the defendant has so failed and in respect of such failure has committed an offence against this section, the Judge may, if the Judge thinks fit in the exercise of his or her discretion, and either in addition to or in lieu of making a maintenance order against the defendant, convict the defendant of that offence in the same manner as if the hearing of the application was the hearing of an information for that offence.

(3) Save where the defendant has been so convicted, no such application shall be any bar to a prosecution by way of information for the same offence.

78. Failing to pay money under order – A person who without reasonable cause makes default for 14 days in the payment of any money payable by him or her under a maintenance order is guilty of an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 1 penalty unit or to both.

79. Leaving Samoa while payments under maintenance order are in arrears – A person against whom a maintenance order has been made, either before or after the commencement of this Act, while any money payable under the order is in arrear and unpaid, leaves or attempts to leave Samoa without the permission in writing of a Judge commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

80. Leaving Samoa with intent to disobey a maintenance order – A person against whom a maintenance order has been made, either before or after the commencement of this Act, and who at any time thereafter leaves or attempts to leave Samoa with intent to make default in obeying that order, commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

81. Leaving Samoa after application but before maintenance order made – A person:

- (a) against whom any application has been made under this Act; and
- (b) who has been served with a summons issued in pursuance of the application, or knows that an application has been so made against him or her; and
- (c) who, thereafter and before the application has been heard and determined, leaves or attempts to leave Samoa, with intent to make default in obeying any order that may thereafter be made against the person in respect of the matter of the application, –

commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

82. Leaving Samoa while failing to make adequate provision for maintenance of wife or husband – A person who:

- (a) without reasonable cause fails to provide his wife or her husband with adequate maintenance; and
- (b) at any time while failing so to do, leaves or attempts to leave Samoa without the permission in writing of a District Court Judge, –

commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

83. Leaving Samoa while failing to provide for maintenance of child – A parent of a child who:

- (a) without reasonable cause fails to provide that child with adequate maintenance; and
- (b) at any time while failing so to do, leaves or attempts to leave Samoa without the permission in writing of a Judge, –

commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

84. Leaving Samoa without making provision for maintenance of wife, husband or child during absence – A spouse or the parent of any child and who leaves or attempts to leave Samoa with the intention of failing without reasonable cause to make adequate provision for the maintenance of his or her spouse or child during his or her absence, commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

85. Person against whom affiliation order made leaving Samoa without permission – A person against whom an affiliation order is made prior to the birth of the child, and who leaves or attempts to leave Samoa without the permission in writing of a Judge at any time within 12 months after the making of the order, commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year.

86. General provisions as to imprisonment – (1) A warrant of commitment to prison issued to give effect to any sentences of imprisonment under this Act may be suspended on such terms as the Judge thinks proper.

(2) When a person has been sentenced to imprisonment under this Act the Judge by whom he or she has been sentenced may if the Judge thinks fit at the time of sentence or the same or any other Judge may at any time thereafter, even if a direction may already have been made under this subsection fixing a larger sum, by warrant under his or her hand, direct that the prisoner shall be released on payment of the fine (if any) and of such sum (if any) as the Judge thinks fit on account of the arrears due by him or her under the maintenance order on the date of his or her release and the expenses of conveying the prisoner to and from the place of the hearing of the information and in any such case the prisoner shall, on payment of the amount so stated in the warrant, be released accordingly.

(3) No imprisonment for an offence under this Act operates so as to extinguish or affect the liability of the defendant under any maintenance order.

PART 11 MISCELLANEOUS

87. Exemption from stamp duty – No stamp duty is chargeable on a document required for the purposes of this Act.

88. This Act to apply to application in respect of matters arising before its commencement – This Act applies to all applications made after the commencement of this Act, whether the matter of the application arose before or after the commencement of this Act.

89. Regulations – The Head of State, acting on the advice of Cabinet, may, make regulations as may be required for the purposes of giving full effect to the provisions of this Act and for the due administration thereof.

90. Repeals – The enactments specified in the Schedule to this Act are repealed and revoked as part of the law of Samoa.

SCHEDULE
(Section 90)

**ENACTMENTS NO LONGER FORMING PART OF
THE LAW OF SAMOA**

Samoa Maintenance and Affiliation Order 1920 (NZ Gazette May 20 1920 Vol.II No.51. Pages 1684-1688)

Samoa Maintenance and Affiliation Amendment Order 1929 (NZ Gazette December 12, 1929 Vol.III, No.83, Pages 3222-3226).

Law Reform Ordinance 1948 No.6, Section 5.

REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 – 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Parts numbers changed from Roman to Decimal numbers

This Act has been amended by the *Maintenance and Affiliation Amendment Act 2010 No. 14* (commenced 16th August 2010) as follows:

- Section 2** - omitted definition for “Adequate maintenance”.
- Section 12A** - new section inserted.
- Section 18** - new subsections (1A) – (1C) inserted.
- Section 18A** - new section inserted.
- Section 19** - subsection (1) repealed.
- Section 20** - substituted reference to “\$100” with “\$1000”.
- Section 30A** - new section inserted.
- Section 32** - as follows:
 - in subsection (2) substituted “Every such security shall” with “Subject to subsection (5A), every such security shall”;
 - in subsection (2) substituted “\$400”, wherever occurring with “\$1000 or such higher amount as may be prescribed”;
 - inserted new subsection (5).
- Section 33** - inserted new subsection (3).
- Section 46A** - inserted new section.
- Section 56A** - inserted new section.

*This Act is administered by
the Ministry of Justice and Courts Administration.*