

# REPRINT

## MAGISTRATES' COURTS ACT (CAP. 20)

**As in force at: 8 August 2017**

|                               |
|-------------------------------|
| <b>STATUS:</b> <b>CURRENT</b> |
|-------------------------------|

|                          |
|--------------------------|
| For details see Endnotes |
|--------------------------|

**AN ACT TO PROVIDE FOR THE CONSTITUTION OF MAGISTRATES' COURTS, FOR THE APPOINTMENT OF MAGISTRATES AND OTHER OFFICERS THEREOF AND OF JUSTICES OF THE PEACE, AND FOR THE REGULATION OF THEIR DUTIES AND JURISDICTION, AND FOR APPEALS FROM MAGISTRATES' COURTS**

## **MAGISTRATES' COURTS ACT (CAP. 20)**

### **Table of provisions**

|                 |                                                                                                         |          |
|-----------------|---------------------------------------------------------------------------------------------------------|----------|
| <b>PART I</b>   | <b>PRELIMINARY .....</b>                                                                                | <b>1</b> |
| 1               | Short title                                                                                             | 1        |
| 2               | Interpretation                                                                                          | 1        |
| <b>PART II</b>  | <b>CONSTITUTION OF THE COURTS .....</b>                                                                 | <b>2</b> |
| 3               | Establishment of Magistrates' Court                                                                     | 2        |
| 4               | Territorial limits of jurisdiction of Magistrates' Courts                                               | 3        |
| 5               | Seals                                                                                                   | 3        |
| 6               | Contempt of Court                                                                                       | 3        |
| <b>PART III</b> | <b>OFFICERS OF THE COURT .....</b>                                                                      | <b>3</b> |
| 7               | Appointment of Magistrates                                                                              | 3        |
| 8               | Transitional provisions relating to serving Magistrates                                                 | 5        |
| 9               | Jurisdiction                                                                                            | 5        |
| 10              | Procedure where Magistrate is unable to act on any cause or matter by reason of personal interest, etc. | 5        |
| 10A             | Records and returns                                                                                     | 5        |
| 11              | Powers and functions of justices of the peace                                                           | 6        |
| 12              | Clerks of Court                                                                                         | 6        |
| 13              | Duties of Clerks of Court                                                                               | 6        |
| 14              | Sheriff                                                                                                 | 7        |
| 15              | Bailiffs                                                                                                | 8        |
| 16              | Other officers                                                                                          | 8        |
| 17              | Transfer of officers                                                                                    | 8        |
| <b>PART IV</b>  | <b>JURISDICTION OF MAGISTRATES' COURTS.....</b>                                                         | <b>8</b> |
| 18              | Powers of Magistrates' Courts                                                                           | 8        |
| 19              | Civil jurisdiction                                                                                      | 8        |
| 20              | Abandonment of part of claim to give court jurisdiction                                                 | 11       |
| 21              | Division of causes of action                                                                            | 12       |
| 22              | Summary judgment                                                                                        | 12       |
| 23              | Summary judgment for part of a claim                                                                    | 13       |

|                                                           |                                                                             |           |
|-----------------------------------------------------------|-----------------------------------------------------------------------------|-----------|
| 24                                                        | Proceedings not to be set aside for want of form                            | 13        |
| 25                                                        | Law and equity                                                              | 13        |
| 26                                                        | Extension of civil jurisdiction                                             | 14        |
| 27                                                        | Criminal jurisdiction                                                       | 14        |
| 28                                                        | Special jurisdiction in certain cases                                       | 16        |
| 29                                                        | Committal of persons under the age of sixteen to care of fit person         | 16        |
| 30                                                        | General power of Magistrates                                                | 17        |
| 31                                                        | Acts of Magistrates not to be affected by error as to venue                 | 18        |
| 32                                                        | Proceedings by or against an officer of a Magistrate's Court                | 18        |
| 33                                                        | Administration of Oaths                                                     | 18        |
| 34                                                        | Jurisdiction of Judges of High Court concurrent with that of Magistrates    | 19        |
| 35                                                        | Reconciliation                                                              | 19        |
| 36                                                        | Transfer between Magistrates in the same district                           | 19        |
| 37                                                        | A cause may be reported for transfer                                        | 20        |
| 38                                                        | Transfer of cases by a judge                                                | 20        |
| 39                                                        | Effect of an order of transfer                                              | 21        |
| 40                                                        | Judgment may be entered in High Court in a judgment of a Magistrate's Court | 21        |
| <b>PART V APPEALS .....</b>                               |                                                                             | <b>22</b> |
| 41                                                        | Civil appeals                                                               | 22        |
| 42                                                        | Conditions precedent to appeal                                              | 22        |
| 43                                                        | Power to reserve question of law for the opinion of the High Court          | 22        |
| 44                                                        | Discretionary power of High Court to entertain appeals                      | 23        |
| 45                                                        | Criminal appeals                                                            | 23        |
| 45A                                                       | Pending Appeals                                                             | 23        |
| <b>PART VI REVISION OF DECISIONS OF MAGISTRATES .....</b> |                                                                             | <b>23</b> |
| 46                                                        | Monthly lists of criminal cases heard to be sent to a Judge                 | 23        |
| 47                                                        | Power of Judges to revise decisions of Magistrates                          | 24        |
| 48                                                        | Reports by Magistrates to Judges                                            | 26        |
| <b>PART VII SITTINGS OF THE COURT .....</b>               |                                                                             | <b>26</b> |
| 49                                                        | Place and time for sittings of Magistrates' Courts                          | 26        |
| 50                                                        | Districts                                                                   | 26        |
| 51                                                        | Nature of business at any sitting                                           | 27        |

|                  |                                                                                                       |           |
|------------------|-------------------------------------------------------------------------------------------------------|-----------|
| 52               | Adjournments                                                                                          | 27        |
| 53               | Adjournment over Sunday or Public Holiday                                                             | 27        |
| <b>PART VIII</b> | <b>PRACTICE AND PROCEDURE OF THE COURTS.....</b>                                                      | <b>27</b> |
| 54               | Practice and procedure                                                                                | 27        |
| 55               | Completion by Magistrate of process begun by his predecessor                                          | 28        |
| 56               | Process of Magistrate valid throughout Solomon Islands                                                | 28        |
| 57               | Issue of process                                                                                      | 28        |
| 58               | Duty of Police to obey Magistrates                                                                    | 29        |
| 59               | Language of the Magistrates' Courts and interpretation                                                | 29        |
| <b>PART IX</b>   | <b>EVIDENCE.....</b>                                                                                  | <b>29</b> |
| 60               | Summoning witnesses                                                                                   | 29        |
| 61               | Penalty for non-attendance of persons summoned                                                        | 30        |
| 62               | Refusal to be sworn or to give evidence                                                               | 30        |
| 63               | Bystander may be required to give evidence                                                            | 30        |
| 64               | Prisoners may be brought up in order to give evidence                                                 | 30        |
| 65               | Allowances to witnesses                                                                               | 31        |
| 66               | How allowances defrayed                                                                               | 31        |
| 67               | Inspection                                                                                            | 31        |
| 68               | No person entitled to inspection of the record of evidence                                            | 31        |
| 69               | Recording of oral evidence before a Magistrate's Court in writing                                     | 32        |
| 69A              | Electronic record of proceedings                                                                      | 32        |
| <b>PART X</b>    | <b>PROTECTION OF MAGISTRATES, JUSTICES OF THE PEACE AND OFFICERS OF THE MAGISTRATE'S COURT.....</b>   | <b>33</b> |
| 70               | Protection of Magistrates, justices of the peace and other officers                                   | 33        |
| <b>PART XI</b>   | <b>MISCELLANEOUS .....</b>                                                                            | <b>33</b> |
| 71               | Representation of Crown, public officers in their official capacity and departments of the Government | 33        |
| 72               | Employment of legal practitioners                                                                     | 33        |
| 73               | Fees and costs                                                                                        | 33        |
| 74               | By whom fees and costs payable                                                                        | 34        |

|    |                                                                                              |    |
|----|----------------------------------------------------------------------------------------------|----|
| 75 | All fees and moneys received in Magistrates' Courts to be<br>subject to foregoing provisions | 34 |
| 76 | Rules of Court                                                                               | 34 |
| 77 | Saving                                                                                       | 35 |

# MAGISTRATES' COURTS ACT (Cap. 20)

As in force at: 8 August 2017

## PART I PRELIMINARY

### 1 Short title

This Act may be cited as the *Magistrates' Courts Act*.

### 2 Interpretation

(1) In this Act, unless the context otherwise requires:

**“Bailiff”** means a person appointed to be a Bailiff pursuant to section 15 and includes any assistant Bailiff or any other person assisting a Bailiff in the performance of his duties;

**“cause”** shall include any action, suit, or other original proceeding between a plaintiff and a defendant and any criminal proceeding;

**“cause of action”** in suits founded on contract shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;

**“Clerk of Court”** and **“Clerk”** mean any person appointed to be a Clerk of Court pursuant to section 12 and includes any assistant Clerk and any other person assisting a Clerk in the performance of his duties;

**“criminal”** includes quasi-criminal, and, with reference to matters of jurisdiction, comprehends all such matters not falling within the term “civil”;

**“district”** means a district constituted in the manner prescribed in section 50;

**“English”** includes Solomon Islands pidgin;

**“judgment”** and **“decree”** shall be deemed synonymous terms;

**“legal practitioner”** means any person entitled to practise in the High Court in accordance with the provisions of any law for the time being in force;

**“Local Court”** means any court established under and by virtue of the *Local Courts Act* or any Act repealing and replacing the same;

**“matter”** includes every proceeding in a court not in a cause;

**“Police Force”** means the Solomon Islands Police Force established by the *Police Act*;

**“Principal Magistrate”** means a Principal Magistrate appointed under section 7;

**“Rules of Court”** means Rules of Court made under this Act;

**“Sheriff”** means any person for the time being acting as Sheriff of the High Court and includes any Deputy Sheriff or Under Sheriff and any person lawfully authorised to execute the process of the High Court or any Magistrate’s Court;

**“suit”** includes action, and means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by Rules of Court, and does not include a criminal proceeding.

- (2) The expressions **“Magistrate”**, **“Magistrate’s Court”** or **“Magistrates’ Courts”** shall, unless otherwise specified or the context otherwise requires, include reference to a Principal Magistrate or a Principal Magistrate’s Court, as the case may be.

## **PART II                    CONSTITUTION OF THE COURTS**

### **3                    Establishment of Magistrates’ Court**

- (1) There is hereby established a single court of summary jurisdiction, subordinate to the High Court, to be known as the Magistrates’ Court of Solomon Islands.

- (2) There shall be appointed to the Magistrates' Court, established under subsection (1), Magistrates at one of three levels of responsibility and jurisdiction to hear and determine cases. The levels of Magistrates shall be Principal Magistrate, Magistrate First Class and Magistrate Second Class.
- (3) The Chief Justice shall have overall administrative responsibility of the Magistrates' Court and may by direction published in the *Gazette* appoint the place at and the district in which the Magistrates' Court shall be held and may direct that the Magistrates' Court be organised into administrative districts.
- (4) Any power, authority, function or discretion vested in a Magistrates' Court by this or any other Act or law shall be possessed and may be exercised by a Magistrate having adequate jurisdiction.
- (5) A Magistrates' Court shall be a Court of Record.

#### **4 Territorial limits of jurisdiction of Magistrates' Courts**

- (1) Principal Magistrates, Magistrates First Class and Magistrates Second Class shall be entitled to sit and exercise jurisdiction throughout Solomon Islands.
- (2) The jurisdiction of each Magistrates' Court shall extend over all territorial waters as well as over inland waters.

#### **5 Seals**

Magistrates' Courts shall use seals of such nature and pattern as the Governor-General shall approve.

#### **6 Contempt of Court**

The power of the High Court to deal with any contempt of its authority shall extend to upholding the authority of Magistrates' Courts.

### **PART III OFFICERS OF THE COURT**

#### **7 Appointment of Magistrates**

- (1) Any person appointed pursuant to the *Constitution* to be a Magistrate may be empowered by the Chief Justice by warrant under his hand

3



and the seal of the High Court to hold a Principal Magistrates' Court or a Magistrates' Court of the First Class or of the Second Class and to exercise all the powers and jurisdiction conferred by this or any other Act upon a Principal Magistrates' Court or a Magistrates' Court of the First Class or of the Second Class, as the case may be:

Provided that the Chief Justice may, by the terms of any such warrant restrict the powers to be exercised by any such person to such extent as he may think fit, and thereupon such person shall have and exercise the powers and jurisdiction conferred by this or any other Act only to the extent authorised.

- (2) There is hereby established the office of Chief Magistrate.
- (3) The Chief Magistrate shall be appointed by the Judicial and Legal Service Commission.
- (4) Subject to any express provisions of any other Act, the Chief Magistrate shall in addition to exercising functions as a Principal Magistrate direct the distribution of business in the Magistrates' Court and may delegate this power to the Deputy Chief Magistrate in writing.
- (5) The Chief Magistrate may require specified functions of Magistrates to be exercised by specified Magistrates or Magistrates of a specified class and any Magistrate of whom a requirement is made under this subsection shall comply with the requirement.
- (6) There shall be a Deputy Chief Magistrate who shall be appointed by the Judicial and Legal Service Commission to assist the Chief Magistrate.
- (7) The Deputy Chief Magistrate shall, in addition to exercising functions as a Principal Magistrate perform such other functions as the Chief Magistrate may direct.
- (8) The Deputy Chief Magistrate shall act in the office of the Chief Magistrate during:
  - (a) the absence from duty of the Chief Magistrate or for any reason whatsoever; or

(b) where there is a vacancy in the office of the Chief Magistrate.

- (9) Any act, matter or thing done by the Deputy Chief Magistrate while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate shall be deemed to have been done by the Chief Magistrate.

## **8 Transitional provisions relating to serving Magistrates**

Notwithstanding the repeal of section 7, any person appointed pursuant to the repealed section to be a Magistrate shall hold or act in that office or the corresponding judicial office as if the holder of that office had been appointed to do so in accordance with the provisions of this section and shall be deemed to have taken any oaths required upon such appointment in accordance with the required law.

## **9 Jurisdiction**

Subject to the terms of his appointment, every Magistrate may exercise jurisdiction throughout Solomon Islands but may subject to any direction made by the Chief Justice, be assigned by the Chief Magistrate to any particular district or districts and transferred from one district to another.

## **10 Procedure where Magistrate is unable to act on any cause or matter by reason of personal interest, etc.**

Where a Magistrate is a party to any cause or matter, or is unable, from personal interest or any other sufficient reason, to adjudicate on any cause or matter, subject to any direction made by the Chief Justice, the Chief Magistrate shall direct some other Magistrate to deal with the case.

## **10A Records and returns**

Every Magistrates' Court shall keep such written records and furnish such returns as may be provided by this Act or as the Chief Justice may from time to time direct. The Chief Magistrate shall collate the returns of each Magistrates' Court and report to the Chief Justice each year as required by the Chief Justice.

## **11 Powers and functions of justices of the peace**

Subject to the provisions of this and of any other Act, every justice of the peace shall, subject to any exceptions which may be contained in his appointment, within the area in and for which he holds such office, have:

- (a) all the powers, rights and duties of a Magistrate under this or any other Act to:
  - (i) issue summonses and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before a Court;
  - (ii) issue search warrants; and
- (b) such other powers and rights and shall perform such duties of Magistrates as may be conferred or imposed upon him by Rules of Court made under this or any other Act not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

## **12 Clerks of Court**

There shall be a Clerk of Court attached to each Magistrate's Court who shall be appointed by the Chief Justice or by a Judge and shall, subject to the general supervision and control of the Chief Justice, be under the immediate direction and control of the Magistrate for the time being exercising the jurisdiction of the Magistrate's Court to which he is attached:

Provided that in the event of the absence or incapacity of a Clerk of Court the Magistrate may appoint any person temporarily to perform the duties of Clerk of the Court or may himself perform any such duties.

## **13 Duties of Clerks of Court**

The duties of every Clerk of Court shall be:

- (a) to attend at such sittings of the Magistrate's Court as the Magistrate exercising its jurisdiction may direct;

- (b) to fill up or cause to be filled up all summonses, warrants, orders, convictions, recognisances, writs of execution, and other documents and to submit the same for the signature of such Magistrate;
- (c) to issue civil processes in accordance with the Rules of Court for the time being in force;
- (d) to make or cause to be made copies of proceedings when required to do so by such Magistrate, and to record the judgments, convictions and orders of the Magistrate's Court;
- (e) to receive or cause to be received all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the Magistrate's Court, and to keep or cause to be kept accounts of the same; and
- (f) to perform or cause to be performed such other duties as may be assigned to him by such Magistrate.

#### **14 Sheriff**

- (1) The Sheriff shall be charged with the execution of all orders and processes of the Magistrate's Court and for this purpose shall have the same powers, authority and immunities as may be conferred upon him by the law for the time being in respect of the orders and process of the High Court.
- (2) Every duty of the Sheriff in execution of any process of the Court may be performed by such officers, non-commissioned officers or constables of the Police Force, or other persons, as may be authorised by the Sheriff; and any officer, non-commissioned officer, constable or other person who is in possession of any such process shall be deemed to be duly so authorised, and shall for all purposes of such execution, and connected therewith, be an officer of the Court.
- (3) The Sheriff shall not be liable to be sued for any act or omission of any officer, non-commissioned officer, or constable, or other person, in the execution of any process which shall have been done or may have occurred, either through disobedience or neglect of the orders or instructions given by the Sheriff, or in the absence of any order or

instructions given by the Sheriff.

**15 Bailiffs**

The Bailiffs shall be appointed by the Sheriff, with the approval of the Magistrate exercising the jurisdiction of the Magistrate's Court to which they are to be attached, and may themselves or by their assistants, serve and execute any process issued out of the Magistrate's Court; and when so directed by such Magistrate they shall attend such Court and obey all the directions of the Magistrate for preserving order and decorum therein.

**16 Other officers**

The Chief Justice may from time to time, appoint such other officers as may be necessary for the efficient exercise of jurisdiction by Magistrates' Courts and may attach such officers to any Magistrate exercising judicial functions in a Court under the provisions of this Act.

**17 Transfer of officers**

The Chief Justice may transfer any officer attached to any Magistrate's Court from time to time to any other Magistrate's Court, either for temporary or permanent duty.

**PART IV JURISDICTION OF MAGISTRATES' COURTS**

**18 Powers of Magistrates' Courts**

Subject to any other provision of this Act and to the provisions of any other law for the time being in force in Solomon Islands every Magistrate's Court shall have and exercise jurisdiction in civil and criminal matters as in this Act provided.

**19 Civil jurisdiction**

- (1) In civil causes and matters a Magistrates' Court, in addition to any other jurisdiction conferred upon it by any other Act or law, shall have jurisdiction within the limits of the district within which it is situated:
  - (a) in all personal suits including counter-claim and set-off, whether

arising from contract, or from tort, or from both, where the value of the property, the debt or damage claimed, whether as balance of account or otherwise, is not more than twenty thousand dollars or, in the case of a Principal Magistrates' Court, fifty thousand dollars or up to one hundred thousand dollars or up to one hundred thousand dollars where the parties agree to a higher limit;

- (b) in all suits before a Principal Magistrate between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed the sum of fifty thousand dollars or up to one hundred thousand dollars where the parties agree to a higher limit and in all suits before a magistrate between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed the sum of five thousand dollars in the case of a Magistrates' Court of the Second Class, and the sum of twenty thousand dollars in the case of a Magistrates' Court of the First Class.
- (c) to appoint guardians of infants and to make orders for the custody of infants;
- (d) to grant in any suit instituted in the Magistrates' Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;
- (e) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree made by any Magistrate:

Provided that jurisdiction conferred by this paragraph shall not, unless the parties consent, be exercisable in respect of land or other property exceeding five thousand dollars in value in the case of a Magistrates' Court of the Second Class or, twenty thousand dollars in the case of a Magistrates' Court of the First Class or, fifty thousand dollars in the case of a Principal Magistrates' Court;

- (f) to enforce by attachment and sale or delivery any order or judgment made by the Magistrates' Court or any other

competent court;

- (g) to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or installment of any debt due from him, in pursuance of any order or judgment of the Magistrates' Court or any other competent court:

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Magistrates' Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same:

For the purposes of this paragraph, any Magistrates' Court may direct any debt due from any person, in pursuance of any order or judgment of that Court, or any other competent court, to be paid by installments, and may, from time to time vary or rescind such order.

- (2) In subsection (1) the expression "**competent court**" shall include the High Court and any Local Court.
- (3) Notwithstanding the provisions of subsection (1) no Magistrates' Court shall have jurisdiction:
  - (a) in suits wherein the title to any right, duty, or office is in question; or
  - (b) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or
  - (c) in suits wherein the legitimacy of any person is in question; or
  - (d) in suits wherein the validity or dissolution of any marriage is in question; or
  - (e) in any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

- (4) Magistrates' Court of the Second Class shall have and exercise jurisdiction in civil cases similar in all respects to that set out in subsection (1)(a) save that such jurisdiction, in cases where the subject-matter in dispute is capable of being estimated at a money value, shall be limited to causes in which such subject-matter does not exceed five thousand dollars in amount or value.
- (5) Where in any action the debt or demand consists of a balance not exceeding the jurisdictional limit of a Magistrates' Court, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a Magistrates' Court shall have jurisdiction and power to hear and determine such action within the limits of its jurisdiction and power.
- (6) Subject to the provisions of the *Land and Titles Act*, if, in any suit or civil cause or matter before a Magistrates' Court, the title to any land is disputed, or the question of the ownership thereof arises, the Court may adjudicate thereon if all the parties interested consent; but if they do not consent the Magistrate exercising the jurisdiction of the Court shall apply to the High Court to transfer such cause or matter to itself.

## **20 Abandonment of part of claim to give court jurisdiction**

- (1) Where a plaintiff has a cause of action for more than two thousand dollars, one thousand dollars or two hundred dollars, as the case may be, in which:
  - (a) if it were not for more than two thousand dollars, a Principal Magistrate's Court would have jurisdiction;
  - (b) if it were not more than a thousand dollars, a Magistrate's Court of the First Class would have jurisdiction; and
  - (c) if it were not for more than two hundred dollars, a Magistrate's Court of the Second Class would have jurisdiction,

the plaintiff may abandon the excess, and thereupon a Principal Magistrate's Court or a Magistrate's Court of the First Class or of the Second Class, as the case may be, shall have jurisdiction to hear and determine the action so, however, that the plaintiff shall not recover in the action an amount exceeding two thousand dollars in a Principal Magistrate's Court, one thousand dollars in a Magistrate's



Court of the First Class or two hundred dollars in a Magistrate's Court of the Second Class.

- (2) Where a Magistrate's Court has jurisdiction to hear and determine an action by virtue of this section, the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be deemed to be made accordingly.

## **21 Division of causes of action**

No cause of action shall be split or divided so as to be made the ground of two or more different actions for the purpose of bringing two or more actions in any Magistrate's Court.

## **22 Summary judgment**

- (1) Where:
  - (a) any party appearing or being present in any Magistrate's Court, upon being required so to do by that Court for the purpose of framing issues, refuses without reasonable excuse to be orally examined by the Court or to produce any document then and there in his possession; or
  - (b) the defendant, in the opinion of the Court, fails, by himself or by his counsel, solicitor or other representative to disclose any reasonable ground of defence; or
  - (c) any party being required by an order made by a Magistrate's Court under Rules of Court to produce to that Court any document or to attend at any sitting of that Court, fails without reasonable excuse to obey the same,

the Court may pronounce such judgment against him and in such terms as it thinks fit or make such order and impose such terms as to costs, payment into court, giving of security or otherwise as it thinks fit.

- (2) Whenever, in the opinion of any Magistrate's Court, the issues are sufficiently established for the immediate determination of the cause, the Court may pronounce judgment forthwith in such terms as it shall

think fit.

## **23 Summary judgment for part of a claim**

Where a claim is for a debt or for liquidated damages only and the defendant:

- (a) admits a sum less than the amount claimed; or
- (b) in the opinion of the Magistrate's Court fails, by himself or by his counsel, solicitor or other representative, to disclose any reasonable ground of defence with respect to part of the claim; or
- (c) has a counterclaim and it appears to the Court that the maximum amount which could be recovered thereunder, if the counterclaim were to be upheld, is less than the amount of the claim,

the Court may, if it thinks fit, enter judgment forthwith for the sum so admitted or for the sum in respect of which no reasonable ground of defence is disclosed or for a sum representing the difference between the amount of the claim and the maximum amount which appears to be recoverable on the counterclaim, as the case may be, with or without costs, and may permit execution to be levied forthwith on such judgment, without prejudice to the hearing and determination of the matters remaining in dispute between the parties.

## **24 Proceedings not to be set aside for want of form**

No action or other proceedings in any Magistrate's Court shall be treated or considered as invalid or subject to be set aside on account of any verbal or technical error or other defect in form and any such error or defect may in any such case be corrected by the Court.

## **25 Law and equity**

- (1) In every civil cause or matter which shall be instituted in any Magistrate's Court law and equity shall be administered concurrently.
- (2) In exercise of any jurisdiction vested in him by this Act, any Magistrate shall have power to grant, and shall grant, either

absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

- (3) In all causes or matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same subject the rules of equity shall prevail.

## **26 Extension of civil jurisdiction**

The Chief Justice may, by order under his hand and the seal of the High Court, authorise an increased jurisdiction in civil causes and matters to be exercised by the Magistrate named in any such order, within the district prescribed in the order, and to the extent specified in the order. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

## **27 Criminal jurisdiction**

- (1) Subject to the provisions of any other law for the time being in force, a Principal Magistrate's Court shall have jurisdiction to try summarily any criminal offence:
- (a) for which the maximum punishment prescribed by law for such offence does not exceed:
    - (i) fourteen years' imprisonment; or
    - (ii) a fine; or
    - (iii) both such imprisonment and such fine; or
  - (b) in respect of which jurisdiction is by any law expressly conferred upon a Principal Magistrate's Court or it is expressly provided that such offence may be tried summarily:

Provided that the maximum punishment which a Principal Magistrate's Court may impose shall not exceed:

- (i) a term of imprisonment for five years; or
- (ii) a fine of 50,000 penalty units; or
- (iii) both such imprisonment and such fine.

(2) Subject to the provisions of any other law for the time being in force, a Magistrate's Court of the First Class or of the Second Class shall have jurisdiction to try summarily any criminal offence:

(a) for which the maximum punishment prescribed by law for such offence does not exceed:

- (i) imprisonment for a term of one year; or
- (ii) a fine of 10,000 penalty units; or
- (iii) both such imprisonment and such fine; or

(b) in respect of which jurisdiction is by any law expressly conferred upon a Magistrate's Court of the First Class or of the Second Class or it is expressly provided that such offence may be tried summarily; or

(c) for which any penalty is expressly provided in respect of a conviction by a Magistrate's Court of the First Class or of the Second Class.

(3) Notwithstanding the provisions of the preceding subsections, the Chief Justice in respect of a particular class of offence, or a Judge in respect of a particular case, may by order under his hand and the seal of the High Court invest a Magistrate's Court with jurisdiction to try an offence which would otherwise be beyond its jurisdiction:

Provided that in no case shall the sentence imposed exceed, in the case of a Principal Magistrate's Court, the maximum punishment specified in the proviso to subsection (1) or, in the case of any other Magistrate's Court, the maximum punishment specified in paragraph (a) of subsection (2).

- (4) In the case of consecutive sentences imposed by a Magistrate's Court in respect of two or more distinct offences arising out of the same facts it shall not be necessary for such Magistrate's Court to send the offender for trial before a Principal Magistrate's Court or the High Court, as the case may be, by reason only that the aggregate punishment for the several offences in respect of which such sentences are imposed is in excess of the punishment which it is competent to impose on conviction for a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of the punishment which such Magistrate's Court is competent to impose in respect of one offence in exercise of its ordinary jurisdiction.

## **28 Special jurisdiction in certain cases**

Where an offence over which a Magistrate's Court has jurisdiction is committed or any cause or matter arises in any vessel, such offence may be prosecuted or such cause or matter heard and determined either by the Magistrate's Court exercising jurisdiction over the place where such vessel is at the time when such offence is committed or such cause or matter arises, or by the Magistrate's Court exercising jurisdiction over any place where such vessel calls after such commission or arising.

## **29 Committal of persons under the age of sixteen to care of fit person**

- (1) Where a Magistrate's Court is of the opinion that any person is under the age of sixteen years (hereafter in this section referred to as the young person) and is in need of care, protection or control, the Court may:
- (a) make an order committing him to the care of any fit person whether a relative or not who is willing to undertake the care of him, and at the same time or at any subsequent time on the application of the person to whose care the young person has been committed, make an order that the parent or guardian (if any) of the young person make a contribution towards the maintenance of the young person of such sum as the Court, having regard to the means of such parent or guardian, thinks fit; or

- (b) order his parent or guardian to enter into a recognisance with or without sureties, in such amount as the Court thinks fit, to exercise proper care and guardianship.
- (2) Every order and every recognisance entered into pursuant to the provisions of subsection (1) shall, unless some earlier date of termination is ordered by the Court, remain in force until the young person attains the age of eighteen years.
- (3) Any fit person to whose care, protection and control any young person has been committed pursuant to the provisions of this section may at any time apply to the Court for variation or cancellation of the order, and the Court may vary or cancel the order or replace it by such order as may to the Court appear expedient.
- (4) Any young person committed to the care of a fit person pursuant to the provisions of this section who absconds therefrom may be arrested by any police officer without warrant and either brought before a Magistrate's Court or summarily returned to the care of such fit person; and in the case of any such young person who is brought before a Magistrate's Court, such Court may order that he be returned to the custody of such fit person or if, having regard to all the circumstances, it appears to such Court advisable so to do, it may order that he be committed to the care of some other fit person.
- (5) For the purpose of this section, and without prejudice to the generality of the expression, a person shall be deemed to be in need of "care, protection or control", who, in the opinion of the Court, is not receiving such care, protection or control as a good parent or guardian may be expected to give or is beyond the control of his parent or guardian; and the expression "fit person" includes any local authority, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of eighteen years.

## **30 General power of Magistrates**

Every Magistrate shall have power to issue writs of summons for the commencement of actions in a Magistrate's Court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make such decrees and orders and issue such process and exercise such judicial and

administrative powers in relation to the administration of justice as shall from time to time be prescribed by this or any other Act, or by Rules of Court, or, subject thereto, by any special order of the Chief Justice.

**31 Acts of Magistrates not to be affected by error as to venue**

- (1) Subject to the provisions of any other Act, no act done within Solomon Islands by or under the authority of any Magistrate shall be void or impeachable by reason only that such act was done, or that any act, offence or matter in respect of or in relation to which such act was done, occurred or was situated beyond the area of the jurisdiction of the Magistrate's Court exercised by him.
- (2) If the defendant in any civil cause or matter, before, but not after, the time when he is required to state his answer in such cause or matter, specially alleges that any of the grounds referred to in the preceding subsection exist, which, but for the provisions of that subsection, would be of force, the Court shall consider the same, and if there is *prima facie* proof thereof such Court shall report such cause or matter to a Judge and the Judge shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

**32 Proceedings by or against an officer of a Magistrate's Court**

Subject to the provisions of section 9 any civil proceeding by or against any Magistrate or other officer of a Magistrate's Court for any offence or matter cognisable by a Magistrate's Court may be brought in a Magistrate's Court in any other district.

**33 Administration of Oaths**

- (1) Every Magistrate and every justice of the peace is hereby authorised to administer all oaths which may require to be taken before him in exercise of the jurisdiction and powers conferred upon him by this or any other Act.
- (2) Any such oath may also be administered by any Clerk of Court or other officer of the Magistrate's Court under the direction and in the presence of a Magistrate.

- (3) Every Magistrate shall be a Commissioner for Oaths and shall have and may exercise the powers by law conferred thereon.

**34 Jurisdiction of Judges of High Court concurrent with that of Magistrates**

No jurisdiction conferred upon any Magistrate shall in any way restrict or affect the jurisdiction of the Judges of the High Court, but such Judges shall have in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the several Magistrates.

**35 Reconciliation**

- (1) In criminal cases a Magistrate's Court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by such Court, and may thereupon order the proceedings to be stayed or terminated.
- (2) In civil causes a Magistrate's Court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.
- (3) Where a civil suit or proceeding is pending, a Magistrate's Court and the officers thereof may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

**36 Transfer between Magistrates in the same district**

Where the Chief Justice appoints two or more Magistrates to any district, any such Magistrate within such district may, at any stage of the proceedings before final judgment, transfer, within the limits of such district, any cause or matter before him to any other such Magistrate and such cause or matter shall be commenced *de novo*, inquired into, tried and disposed of, by any Magistrate of competent jurisdiction to whom it has been transferred as if it had been instituted before him:



Provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular Magistrate shall again be transferred without leave of a Judge.

**37            A cause may be reported for transfer**

A Magistrate's Court may of its own motion, or on the application of any person concerned, report to the High Court the pendency of any cause or matter which in the opinion of the Magistrate exercising jurisdiction in such Magistrate's Court ought to be transferred from it to any other Magistrate's Court or to the High Court. The High Court shall direct in what mode and where the cause or matter shall be heard and determined.

**38            Transfer of cases by a judge**

- (1) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter before a Magistrates' Court to any other Magistrates' Court or to the High Court, and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.
- (2) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter before the High Court to any Magistrates' Court and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein if any of the following circumstances apply:
  - (a) the case is not already commenced or part-heard before the High Court;
  - (b) the parties involved consent; or
  - (c) the court considers that it is in the interest of justice to so order.
- (3) The power of transfer shall be exercised by means of an order under the hand of a Judge and the seal of the High Court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such

as may at the time of making such order be in dependence.

- (4) The High Court may at all times cancel, alter, add to or amend any order under the proceeding subsection.
- (5) The High Court may, if it appears expedient, in the first instance cause the contents of any such order to be electronically conveyed and until receipt of the order the electronic communication shall have the same validity and effect as if it were the order.
- (6) Wherever a civil case is transferred in accordance with this section, the pleadings filed to that point shall be taken to be validly filed in the court to which the matter is transferred.

### **39           Effect of an order of transfer**

- (1) Every order of transfer shall operate as a stay of proceedings in the Magistrate's Court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of such Court relative thereto, shall be transmitted to the Court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such Court as if the cause or matter had been commenced therein.
- (2) Any order given under sections 37 or 38 shall not be subject to appeal.

### **40           Judgment may be entered in High Court in a judgment of a Magistrate's Court**

- (1) A Judge, if satisfied that a person whether resident in Solomon Islands or not, against whom judgment for an amount exceeding forty dollars has been obtained (whether by way of claim or counterclaim or costs or otherwise) in a Magistrate's Court, has not goods or chattels within Solomon Islands which can be seized conveniently to satisfy the judgment, may, if he thinks fit, and upon such terms as to costs as he may direct, by order under his hand and the seal of the High Court, remove the judgment into the High Court.
- (2) Upon the removal of a judgment into the High Court in pursuance of this section no further proceedings shall be had or taken thereon in

the Magistrate's Court and the judgment shall be entered in the High Court for the amount due and payable under the judgment of the Magistrate's Court together with the costs as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the High Court.

- (3) This section applies to orders obtained in a Magistrate's Court as it applies to judgments there obtained.

## **PART V            APPEALS**

### **41            Civil appeals**

- (1) Subject to the provisions of this Act, an appeal shall lie to the High Court:
- (a) from all final judgments and decisions of any Magistrate's Court in any suit or matter before it; and
  - (b) from all interlocutory orders and decisions of any Magistrate's Court made in the course of any suit or matter before it.
- (2) Notwithstanding the provisions of the preceding subsection, no appeal shall lie, except by special leave of the Magistrate's Court, or of the High Court, from any order or decision made by consent, *ex parte* or as to costs only.

### **42            Conditions precedent to appeal**

Subject to the provisions of section 44, the High Court shall not entertain any appeal arising from any suit or matter unless the appellant has fulfilled all the conditions of appeal imposed by the Magistrate's Court, or the High Court, or as prescribed by Rules of Court.

### **43            Power to reserve question of law for the opinion of the High Court**

In addition to, and without prejudice to, the right of appeal conferred by this Act, a Magistrate may reserve for the consideration of the High Court on a case to be stated by him any question of law which

may arise on the trial of any suit or matter, and may give any judgment or decision subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

**44 Discretionary power of High Court to entertain appeals**

Notwithstanding anything hereinbefore contained, the High Court may entertain any appeal from a Magistrate's Court, on any terms which it thinks just.

**45 Criminal appeals**

Appeals in criminal causes shall lie to the High Court from any Magistrate's Court in accordance with any other Act for the time being in force relating to criminal procedure and of any Rules of Court made under the provisions of section 90 of the *Constitution*.

**45A Pending Appeals**

All appeals commenced or pending under the provisions of this Part, prior to the commencement of this Act, shall continue on and after that day, subject to such qualifications, modifications and adaptations as may be necessary to bring them into conformity with the provisions of sections 3, 4, 7, 8, 9 and 10A.

**PART VI REVISION OF DECISIONS OF MAGISTRATES**

**46 Monthly lists of criminal cases heard to be sent to a Judge**

At the end of every month, every Magistrate shall send to the Chief Justice, or to such Judge as the Chief Justice shall from time to time designate for such purpose, either generally or in respect of any particular district, in such form as the Chief Justice shall from time to time direct, a complete list of all criminal cases decided by or brought before such Magistrate during that month, setting out the names, sex, and age of each defendant, the offence with which he was charged, such defendant's plea thereto and, if convicted, the date of the conviction, and the sentence or order in full, and a complete list of all civil cases, setting out the names of the parties and the substance of the claim or remedy sought and of the decision or order.

## **47 Power of Judges to revise decisions of Magistrates**

- (1) Upon receipt of the list of criminal cases referred to in the preceding section the Judge receiving the same may, if he thinks fit, call for a copy of the record of any case included therein and, either without seeing such record or after seeing such record, as he may determine, and either without hearing argument or after hearing argument, as he may determine, may:
- (a) subject to any enactment specifying any penalty, impose, reduce, enhance or alter the nature of any sentence:

Provided that:

- (i) no sentence shall be imposed which the Magistrate's Court could not have imposed; and
- (ii) no order shall be made under this paragraph to the prejudice of any person unless he has had an opportunity of being heard either personally or by counsel or solicitor in his defence;
- (b) subject to any enactment requiring a particular order to be made, make, set aside or modify an order in such form as he thinks fit; or
- (c) set aside the conviction, in which case the person convicted if under detention shall be forthwith set at liberty, or in the case of a fine such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or
- (d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted and sentence him accordingly; or
- (e) set aside the conviction and substitute a special finding to the effect that the person convicted was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be confined, until Her Majesty's

pleasure shall be known, in a mental hospital, prison or other suitable place of custody; or

- (f) set aside the conviction and order a new trial or a preliminary enquiry before the Magistrate who made the conviction in question or before any other Magistrate; or
- (g) order further evidence to be taken either generally or on some particular point by the Magistrate who passed the sentence or by any other Magistrate, and order in the meantime any person who shall have been convicted and imprisoned to be liberated on bail or on his own recognisance; and
- (h) make such other order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof, or shall have applied for a case to be stated by the Magistrate under the provisions in that behalf contained in any other Act for the time being in force relating to criminal procedure and of any Rules of Court made under the provisions of section 90 of the *Constitution*, the Judge shall not exercise the powers conferred by this section.

- (2) Upon receipt of the list of civil cases referred to in the preceding section the Judge receiving the same may, if he thinks fit, call for a copy of the record of any case included therein, and, either without seeing such record or after seeing such record, as he may determine, and either without hearing argument or after hearing argument, as he may determine, may alter or set aside the order of the Magistrate's Court, and may vary such order as justice may require and give all necessary and consequential directions.
- (3) When action upon a list as prescribed in the preceding subsections of this section is complete or if the Judge shall decide to take no such action, the Judge shall direct that the list be filed; but such direction shall not have the effect of preventing him or his successor from subsequently taking any action prescribed in that subsection if he shall think fit:

Provided that three months after the last day of the month to which such list relates the Judge shall become *functus officio* in respect of

all cases upon the list in respect of which he shall not up till then have taken any action.

- (4) Proceedings under this section may be taken by the Judge of his own motion or on the petition of any person interested praying for the exercise of the revisional powers of the High Court and such powers may be exercised notwithstanding that the relevant monthly list shall not have been transmitted to or received by the Judge.
- (5) In respect of any monthly list, the Chief Justice shall have and exercise similar powers to those conferred on any Judge or Judges notwithstanding any designation made under section 46.
- (6) Nothing in this section contained shall be deemed to authorise the conversion of a finding of acquittal into one of conviction.

#### **48 Reports by Magistrates to Judges**

Any Judge may, whenever he shall so think fit to do, require any Magistrate to render to him, in such form as he shall direct, a report of any case civil or criminal which may be brought before him and such report shall be rendered accordingly.

### **PART VII SITTINGS OF THE COURT**

#### **49 Place and time for sittings of Magistrates' Courts**

- (1) Magistrates' Courts shall ordinarily be held at such places as the Chief Justice may direct, but should necessity arise they may also be held at any other places within the limits of their jurisdiction. In the absence of any such directions Magistrates' Courts shall continue to be held at such places as existing courts of like character have been held.
- (2) Subject to the directions, if any, of the Chief Justice, each Magistrate's Court shall be held at such time as the Magistrate exercising the jurisdiction of such Court shall deem most expedient for the despatch of the business thereof.

#### **50 Districts**

The Chief Justice may from time to time by orders provide for the

formation of districts and may in like manner revoke, alter, or amend any of such orders.

**51 Nature of business at any sitting**

At any sitting of any Magistrate's Court both civil and criminal causes and matters may be heard, determined, and dealt with, or either one or the other.

**52 Adjournments**

- (1) Any Magistrate exercising the jurisdiction of a Magistrate's Court may adjourn such Court from day to day or to any convenient day.
- (2) If a Magistrate is not present at the time and place appointed for any sitting of a Magistrate's Court, any officer of such Court or other person authorised in that behalf by the Magistrate, may, by public notice, written or oral, adjourn the sitting until such time and to such place as may have been communicated to him by the Magistrate, and, in the absence of any such communication, to such time and place as may be convenient; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.

**53 Adjournment over Sunday or Public Holiday**

When any day appointed for the sitting or any adjourned sitting of a Magistrate's Court falls on a Sunday or a Public Holiday, the sitting shall not take place on such day, and the Magistrate shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or Public Holiday) next after the day appointed for such sitting.

**PART VIII PRACTICE AND PROCEDURE OF THE COURTS**

**54 Practice and procedure**

Subject to the provisions of any other law for the time being in force, the jurisdiction vested in Magistrates' Courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Act or by any other Act for the time being in force relating to criminal



or civil procedure, or by Rules of Court, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in county courts, police courts and courts of summary jurisdiction.

**55 Completion by Magistrate of process begun by his predecessor**

Where a Magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding or matter whether civil or criminal, under any authority however conferred, and subsequently ceases to act as such Magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the Magistrate who issued the summons or warrant had not ceased to act as such Magistrate and any successor of such Magistrate, or any person acting for such Magistrate, may hear, determine, execute, enforce, and carry to completion any proceeding or matter so commenced as aforesaid save that, except where otherwise provided by any other Act for the time being in force relating to criminal or civil procedure, such Magistrate shall commence the trial of any such cause or matter *ab initio*.

**56 Process of Magistrate valid throughout Solomon Islands**

Subject to the provisions of any other Act for the time being in force relating to criminal or civil procedure, all summonses, warrants, orders, judgments, writs of execution, or other process or proceedings, whether civil or criminal, issued or taken by or by the authority of any Magistrate respecting any cause or matter within his jurisdiction shall have force and effect, and may be served or executed anywhere within Solomon Islands by the Sheriff, Bailiff or by the member of the Police Force to whom the same are directed or by any other member of the Police Force.

**57 Issue of process**

All summonses, warrants, orders, convictions and recognisances, and all other process, whether civil or criminal, shall be issued or made under the hand of a Magistrate or, where so authorised by or under this or any other Act, under the hand of a justice of the peace:

Provided that where expressly authorised by Rules of Court, writs of summons and other civil process may be issued under the hand of a Clerk of the Court.

**58      Duty of Police to obey Magistrates**

All members of the Police Force are hereby authorised and required to obey the warrants, orders and directions of a Magistrate in the exercise of his criminal jurisdiction, and, in so far as such obedience may be authorised and required by any Act in that behalf, of his civil jurisdiction.

**59      Language of the Magistrates' Courts and interpretation**

- (1) The language of the Magistrates' Courts shall be English.
- (2) In any proceedings in any Magistrate's Court in which the language spoken by any witness or party requires to be interpreted into English, the Magistrate having jurisdiction in the proceedings may appoint suitable persons as interpreters.

**PART IX            EVIDENCE**

**60      Summoning witnesses**

- (1) In any cause or matter, and at any stage thereof, a Magistrate may, either of his own motion or on the application of any party, summon any person within Solomon Islands to attend to give evidence, or to produce any document in his possession or power, and may examine such person as a witness, and require him to produce any document in his possession or power subject to just exceptions.
- (2) Subject to the provisions of any other Act for the time being in force relating to criminal procedure, in a criminal case a Magistrate, in addition to the powers conferred by subsection (1), if satisfied by evidence on oath that any person can give material evidence and will not attend unless compelled to do so, may forthwith issue a warrant for the arrest and production of such witness before a Magistrate's Court at a time and place to be therein stated.
- (3) When any witness is arrested under a warrant issued under the provisions of subsection (2), a Magistrate may, upon the witness

furnishing security for his appearance at the hearing of the case, with or without a surety or sureties, to the satisfaction of the Magistrate, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained until the date of the hearing at which he is required to give evidence.

**61      Penalty for non-attendance of persons summoned**

If any person summoned as provided in section 60, having reasonable notice of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from the Magistrate's Court, fails to attend accordingly, and does not excuse such failure to the satisfaction of the Court, he shall, independently of any other liability, be guilty of a contempt of court, and may be proceeded against by warrant to compel his attendance.

**62      Refusal to be sworn or to give evidence**

If, in any civil suit or matter, any person, whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath, or to answer any question lawfully put to him, or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of the court, he shall, independently of any other liability, be guilty of a contempt of court.

**63      Bystander may be required to give evidence**

Any person present in court, whether a party or not in a cause or matter, may be compelled by any Magistrate's Court to give evidence, or produce any document in his possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the Court.

**64      Prisoners may be brought up in order to give evidence**

A Magistrate may issue an order under his hand to bring up any person confined as a prisoner under any sentence or otherwise to be examined as a witness in any suit or matter depending in any Magistrate's Court, and the gaoler, or person in whose custody such

prisoner shall be, shall obey such order and shall provide for the safe custody of the prisoner during his absence from prison for the purpose aforesaid.

**65 Allowances to witnesses**

Subject to the provisions of this or any other Act and to any Rules of Court for the time being in force, a Magistrate may, in civil or criminal proceedings, order and allow to all persons required to attend or be examined as witnesses, such sum or sums of money as shall seem fit, as well for defraying the reasonable expenses of such witnesses as for allowing them a reasonable compensation for their trouble and loss of time, but it shall not be lawful, in any criminal proceeding, for any person to refuse to attend as a witness or to give evidence, when so required by process of the Court, on the ground that his expenses have not been first paid or provided for.

**66 How allowances defrayed**

All sums of money allowed under the provisions of the preceding section shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of the suit, if the Magistrate shall so order, and, in criminal proceedings, they shall, where not ordered to be paid by the party convicted or prosecuted, be paid out of the Consolidated Fund.

**67 Inspection**

In any cause or matter, a Magistrate may make such order for inspection by the Court, parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the Court may seem fit.

**68 No person entitled to inspection of the record of evidence**

No person shall be entitled, as of right, at any time or for any purpose, to inspection of the record of evidence given in any case before any Magistrate's Court, or to a copy of the notes of such Court, save as may be expressly provided by any Rules of Court, or, in the absence of any such Rules, unless the leave of a Magistrate to make such inspection or receive such copy, has been first had and obtained.

**69            Recording of oral evidence before a Magistrate's Court in writing**

- (1) Subject to section 69A and to the provisions of any other Act, in every case heard before a Magistrate's Court, and at every stage thereof, the Magistrate hearing such case shall, save as hereinafter provided, take down in writing the oral evidence given before the Court or so much thereof as he deems material:

Provided that, should such Magistrate, in any case, find himself temporarily incapacitated from taking down such evidence, he may direct that such evidence shall be taken down by the Clerk of the Court or other officer performing the duties of the Clerk of the Court.

- (2) The Clerk of the Court or other officer referred to in the preceding subsection shall take down in writing the oral evidence in manner as aforesaid, under the supervision and control of the Magistrate presiding.
- (3) The Magistrate may, at any time before appending his signature to such writing, amend anything therein which he may consider requires amendment and shall peruse and examine such writing, and satisfy himself that it is, in substance, an accurate and faithful record of the oral evidence given.

**69A          Electronic record of proceedings**

- (1) The requirements for recording the evidence in every case heard before a Magistrate's Court may be satisfied by the Clerk of the Court or other officer performing the duties of the Clerk of the Court, recording the evidence using a suitable recording device.
- (2) As soon as practicable after the conclusion of a case, the Magistrate must cause the recording to be transcribed into writing and shall peruse and examine such writing, and certify that it is an accurate and faithful record of the oral evidence given.

## **PART X                    PROTECTION OF MAGISTRATES, JUSTICES OF THE PEACE AND OFFICERS OF THE MAGISTRATE’S COURT**

### **70                    Protection of Magistrates, justices of the peace and other officers**

No Magistrate, justice of the peace or other person acting judicially, shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction provided that he, at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Magistrate, justice of the peace or other person acting judicially, shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

## **PART XI                   MISCELLANEOUS**

### **71                    Representation of Crown, public officers in their official capacity and departments of the Government**

In any suit or matter in which the Crown or any public officer in his official capacity or any department of the Government is a party or in any suit or matter affecting the revenues of Solomon Islands, the Crown, or that officer or department, may be represented by a law officer, crown counsel, legal practitioner or other person duly authorised in that behalf by the Attorney-General or by the public officer or the officer in charge of the department concerned.

### **72                    Employment of legal practitioners**

The employment of legal practitioners shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before any Magistrate’s Court.

### **73                    Fees and costs**

The fees and costs set forth in the Rules of Court made under this Act or any other Act for the time being in force relating to criminal or

33

civil procedure may be demanded and received by the Clerks of Court or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned:

Provided that in the absence of the Clerk of the Court from any Magistrate's Court or in the event of there being no such Clerk or other person appointed to receive such fees and costs in any such Court, the Magistrate exercising the jurisdiction thereof may demand and receive such fees and costs.

**74 By whom fees and costs payable**

All fees and costs payable under or by virtue of this Act shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Provided that no fees shall be payable by any public officer or public department in any case instituted by any public officer when acting in his official capacity or in any case in which the Magistrate endorses on the plaint, information or complaint, as the case may be that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the Magistrate, be recoverable from the other party, if the decision be given against him.

**75 All fees and moneys received in Magistrates' Courts to be subject to foregoing provisions**

Sections 73 and 74 shall apply to all moneys received by a Clerk of Court or other person appointed to receive fees and costs in any Magistrate's Court under the provisions of this or any other Act, whether the same be fees, costs, fines, forfeitures, penalties or money paid into court for any purpose, or received or recovered under or by virtue of any process of execution or distress.

**76 Rules of Court**

The Chief Justice may make Rules of Court under this Act for all or any of the following purposes:

- (a) for regulating the practice and procedure of Magistrates' Courts

in matters not specifically provided for in this or any other Act;

- (b) for regulating the forms to be used and all matters connected therewith;
- (c) for regulating the receipt of moneys paid into a Magistrate's Court, or received or recovered under or by virtue of any process of execution or distress;
- (d) for regulating the payment of moneys out of a Magistrate's Court to persons entitled thereto;
- (e) for prescribing the books and forms of account to be kept or used in Magistrates' Courts;
- (f) for prescribing fees, costs and amounts for service of process which may be demanded and received by Clerks of Court and others in connection with the practice and procedure of the Magistrates' Courts;
- (g) for prescribing for the acceptance, retention and disposal of fees and costs;
- (h) for fixing tables of fees and costs recoverable by legal practitioners for their services on taxation and providing for the taxation of the same;
- (i) for the better carrying into effect of the provisions and objects and intentions of this Act.

## **77        Saving**

- (1) Nothing in this Act contained shall affect the jurisdiction of any court established under the *Local Courts Act*.
- (2) Nothing in this Act contained shall deprive any Magistrate's Court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any law or custom of Islanders, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any Act or other law for the time being in force in Solomon Islands.





## ENDNOTES

### 1

#### KEY

|                       |                               |
|-----------------------|-------------------------------|
| amd = amended         | Pt = Part                     |
| Ch = Chapter          | rem = remainder               |
| Div = Division        | renum = renumbered            |
| exp = expires/expired | rep = repealed                |
| GN = Gazette Notice   | Sch = Schedule                |
| hdg = heading         | Sdiv = Subdivision            |
| ins = inserted        | SIG = Solomon Islands Gazette |
| lt = long title       | st = short title              |
| LN = Legal Notice     | sub = substituted             |
| nc = not commenced    |                               |

#### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 20 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act since that date.

### 2

#### LIST OF LEGISLATION

##### ***Magistrates' Courts Act (Cap. 20)***

|                                 |                                    |
|---------------------------------|------------------------------------|
| <i>Constituent legislation:</i> | 11 of 1961 (Commenced 1 June 1962) |
|                                 | 12 of 1963                         |
|                                 | 8 of 1965                          |
|                                 | 4 of 1968                          |
|                                 | 4 of 1969                          |
|                                 | 8 of 1971                          |
|                                 | 16 of 1976                         |
|                                 | LN 46A of 1978                     |
|                                 | LN 88 of 1978                      |
|                                 | 6 of 1979                          |
|                                 | 4 of 1981                          |

##### ***Magistrates' Courts (Amendment) Act 2007 (No. 6 of 2007)***

|             |                 |
|-------------|-----------------|
| Assent date | 27 August 2007  |
| Gazetted    | 31 August 2007  |
| Commenced   | 22 October 2007 |

##### ***Criminal Procedure Code (Amendment) Act 2009 (No. 18 of 2009)***

|             |                  |
|-------------|------------------|
| Assent date | 28 August 2009   |
| Gazetted    | 2 September 2009 |
| Commenced   | 1 October 2009   |

***Magistrates' Courts (Amendment) Act 2014 (No. 1 of 2014)***

|             |               |
|-------------|---------------|
| Assent date | 14 May 2014   |
| Gazetted    | 20 May 2014   |
| Commenced   | 8 August 2017 |

**3 LIST OF AMENDMENTS**

|       |                           |
|-------|---------------------------|
| s 3   | sub by Act No. 6 of 2007  |
| s 4   | sub by Act No. 6 of 2007  |
| s 7   | sub by Act No. 6 of 2007  |
| s 8   | sub by Act No. 6 of 2007  |
| s 9   | sub by Act No. 6 of 2007  |
| s 10  | sub by Act No. 6 of 2007  |
| s 10A | ins by Act No. 6 of 2007  |
| s 19  | sub by Act No. 6 of 2007  |
| s 27  | amd by Act No. 18 of 2009 |
| s 38  | sub by Act No. 6 of 2007  |
| s 45A | ins by Act No. 6 of 2007  |
| s 69  | sub by Act No. 1 of 2014  |
| s 69A | ins by Act No. 1 of 2014  |