

CHAPTER 270

JUDICIAL SERVICES AND COURTS

An Act to provide for the independence of the Judicial Service, the functions and powers of the Judicial Service Commission in addition to those in the Constitution, the Courts of the Republic of Vanuatu, and for related purposes.

PART 1 – PRELIMINARY

1. Definitions

(1) In this Act, unless the contrary intention appears:

“Board” means the Court Personnel Disciplinary Board established under section 59;

“chief magistrate” means the chief magistrate appointed under section 19;

“commencement” means the commencement of this Act;

“Commission” means the Judicial Service Commission referred to in Article 48 of the Constitution;

“committee” means a committee established by the Commission under section 6;

“court personnel” means:

- (a) a clerk of the Magistrates’ Court appointed under section 25; or
- (b) an employee of the Magistrates’ Court engaged under section 26; or
- (c) the registrar or any other officer of the Supreme Court appointed under section 40 or 43; or
- (d) an employee of the Supreme Court engaged under section 44; or
- (e) the registrar or any other officer of the Court of Appeal appointed under section 47;

“immediate family” of a person means the person’s spouse and any child of the person and/or the person’s spouse;

“judge” means a person appointed as a member of the judiciary under Article 47(2) of the Constitution or as an acting judge under Article 47(5) of the Constitution and includes the Chief Justice;

“judicial officer” means a judge or magistrate;

“Judicial Service” means the Judicial Service mentioned in subsection (2);

“magistrate” means a magistrate appointed under section 18, and includes:

- (a) the chief magistrate; and
- (b) any senior magistrate; and
- (c) any acting magistrate, senior magistrate or chief magistrate;

“Magistrates’ Court” means the Magistrates’ Court of Vanuatu continued in existence under section 12;

“Minister” means the Minister responsible for justice;

“registrar” means a person appointed as registrar under section 40;

“Rules of Court” means the rules made under section 66;

“salary” means basic salary;

“senior magistrate” means a magistrate appointed as a senior magistrate under section 18;

“statutory orders” means the statutory orders made under this Act;

“this Act” includes the statutory orders;

“Vanuatu Courts” means:

- (a) the Court of Appeal; and
- (b) the Supreme Court; and

- (c) the Magistrates' Court; and
 - (d) the Island Courts established under the Island Courts Act [Cap. 167]; and
 - (e) any office or service associated with any of these Courts, including translations, interpretation, libraries and archives.
- (2) The Judicial Service is constituted by:
- (a) judges; and
 - (b) magistrates; and
 - (c) other judicial officers; and
 - (d) court personnel.

PART 2 – JUDICIAL SERVICE COMMISSION

2. Constitution of the Commission

- (1) The Commission consists of:
- (a) the Minister responsible for Justice, as chairman; and
 - (b) the Chief Justice; and
 - (c) the chairman of the Public Service Commission; and
 - (d) a representative of the National Council of Chiefs appointed by the Council.
- (2) The Commission may elect one of its members to be the Deputy Chairman of the Commission. The Deputy Chairman must perform the functions of the Chairman (including those under section 7(3)) if the Chairman is:
- (a) absent from Vanuatu; or
 - (b) unable for any reason to perform the functions of the Chairman.
- (3) A vacancy in the Commission does not affect the validity of the proceedings or decisions of the Commission.

3. Objects

- (1) The objects of the Commission are:
- (a) to promote and protect the independence and the efficiency of the Judicial Service; and
 - (b) to promote the operation of the rule of law; and
 - (c) to promote and monitor generally the performance and accountability of the Judicial Service.
- (2) The Minister must not act so as to interfere with the independence of the Judicial Service in performing his or her functions:
- (a) as the Minister responsible for justice; and
 - (b) as the Chairman of the Commission

4. Functions

- (1) The Commission has the following functions:
- (a) to ensure that:
 - (i) the appointment and promotion of judicial officers and court personnel is undertaken in accordance with the relevant provisions of the Constitution and this Act; and
 - (ii) the appointment, promotion, transfer and discharge of, and disciplinary steps against, judicial officers and court personnel takes place without favour or prejudice; and
 - (iii) the law and administrative procedures that are applicable to the matters mentioned in subparagraphs (i) and (ii) are applied uniformly and correctly to judges, magistrates and court personnel, as the case requires;
 - (b) to ensure that no improper influencing or victimisation of judicial officers and court personnel takes place;

- (c) to carry out or cause to be carried out the investigations that it considers necessary for the purposes of this Act;
 - (d) to promote the training of judicial officers and court personnel;
 - (e) to compile a code of conduct for judicial officers and keep it up to date;
 - (f) to inform the Minister about:
 - (i) administrative matters which are applicable to judicial officers and court personnel, including salaries, allowances and other conditions of service; and
 - (ii) the general maintenance and upkeep of the courts in Vanuatu, including buildings, libraries, furniture and furnishings, and plant and equipment;
 - (g) to prepare a report for each year about:
 - (i) any matter that is relevant to the independence and efficiency of the administration of justice; and
 - (ii) any action needed to be taken to strengthen the operation of law; and
 - (iii) reforms that may be needed to any laws;
 - (h) *(repealed)*
 - (i) such other functions as are conferred on it by this Act or any other Act;
 - (j) to do anything else that is incidental or conducive to the performance of any of the preceding functions.
- (2) The report referred to in subsection (1)(g) must be prepared within 3 months after the end of the relevant year and the Minister must table in the Parliament a copy of the report within 5 sitting days after the commencement of the next ordinary session.
- (3) In undertaking an investigation under subsection (1)(c), the Commission must observe the rules of natural justice.
- (4) In undertaking its functions, the Commission may consult with representatives of the legal profession and any other person in its discretion.

5. Powers

- (1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the powers of the Commission include the following:
- (a) subject to any other Act or law, to obtain access to information or documents (other than classified material within the meaning of the Official Secrets Act [Cap. 111]) for the purposes of an investigation;
 - (b) to require any person by notice in writing to appear before it to give evidence and to produce any document or thing;
 - (c) subject to subsection (5), to publish any finding, opinion or recommendation of the Commission.
- (3) A person who obstructs or improperly influences the Commission or a committee of the Commission in the execution of the Commission's powers under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000 or imprisonment for a term of not more than 6 months, or both.
- (4) A person who is required to appear before the Commission under subsection (2)(b) may be represented by a qualified legal practitioner.
- (5) The Commission cannot publish any information or document that is commercial in confidence and the disclosure of which could reasonably be expected to prejudice substantially the commercial interests of a person.

6. Committees

- (1) The Commission may establish committees to assist and advise the Commission on any matter relating to the administration of this Act.
- (2) A committee may, subject to the directions of the Commission, exercise any of the powers referred to in section 5(2)(a), (b) or (c).
- (3) The Commission is to determine the composition of a committee. A committee may include persons who are not members of the Commission.

7. Meetings and procedure

- (1) The Commission must meet at least 6 times each year at such times and places as the Chairman determines.
- (2) A quorum of the Commission consists of 3 members.
- (3) The Chairman of the Commission must:
 - (a) preside at a meeting of the Commission; and
 - (b) regulate the proceedings of the meeting; and
 - (c) cause minutes to be kept of the meeting.
- (4) The meetings of the Commission are to take place in private unless the Chairman of the Commission directs otherwise.
- (5) Subject to this Act and the Constitution, the Commission is to regulate its own procedures.

8. Remuneration and expenses of members

[OMITTED]

9. Secretary

[OMITTED]

10. Funding

[OMITTED]

11. Protection of proceedings and publications

[OMITTED]

PART 3 – MAGISTRATES’ COURT AND MAGISTRATES**Division 1 – Magistrates’ Court and its jurisdiction****12. Magistrates’ Courts continue in existence as a single court**

- (1) The Magistrate’s Courts established by section 1 of the Courts Act [Cap. 122] continue in existence on and after commencement as the Magistrates’ Court of Vanuatu.
- (2) The Magistrates’ Court has jurisdiction throughout the whole of Vanuatu.
- (3) The Commission may by statutory order prescribe districts and registries for the administration of the Magistrates’ Court.

13. Constitution

- (1) The Magistrates’ Court is to be presided over by a single magistrate.
- (2) A magistrate must perform the functions and exercise the powers that are conferred on him or her by or under this Act and any other law.

14. Criminal and civil jurisdiction

- (1) The Magistrates’ Court has jurisdiction to hear and determine in a summary way civil proceedings as provided for by the Magistrates’ Court (Civil Jurisdiction) Act [Cap. 130] and any other law.
- (2) Subject to the provisions of any other Act or law, the Magistrates’ Court has jurisdiction to hear and determine in a summary way criminal proceedings for an offence for which the maximum punishment does not exceed imprisonment for 2 years. A magistrate must not impose a sentence greater than imprisonment for 2 years.
- (3) The Magistrates’ Court must hear and determine criminal proceedings without a preliminary judicial inquiry.
- (4) A senior magistrate may on application or at his or her discretion hear and determine in a summary way criminal proceedings for an offence for which the maximum punishment does not exceed imprisonment for 10 years. However, a senior magistrate must not impose a sentence greater than imprisonment for 5 years.

- (5) Despite subsections (2) and (4), a magistrate may sentence consecutively an offender in respect of 2 or more offences to a term of imprisonment exceeding 2 years, but not exceeding 4 years.
- (6) The Supreme Court may, by order made under its seal, invest the Magistrates' Court with jurisdiction to try any proceeding in respect of a particular class of offence or proceeding or a particular case.

15. Orders for community service

- (1) If the Magistrates' Court sentences a person to a term of imprisonment of 6 months or less, the Court may as an alternative order the person to perform specified work for community purposes for a specified period not exceeding 100 hours subject to specified conditions.
- (2) A person undergoing community work who is absent from such community work without a lawful excuse is guilty of an offence and is punishable on conviction by a term of imprisonment not exceeding one month or a fine not exceeding VT 20,000 and the order is to continue. In the alternative, the person is to be sentenced for the original offence and the order discharged..

16. Contempt and concurrent jurisdiction

- (1) The Magistrates' Court has the power to punish summarily a person for contempt of court by imprisonment for a term not exceeding 2 months or a fine not exceeding VT 20,000.
- (2) The jurisdiction conferred on the Magistrates' Court does not in any way restrict or affect the jurisdiction of the Supreme Court.

17. Reservation of questions of law

- (1) A magistrate may reserve for the consideration of the Supreme Court on a case to be stated by the magistrate any question of law which may arise on the hearing of any criminal or civil proceedings.
- (2) The magistrate must not deliver judgement in the proceedings until he or she has received the opinion of the Supreme Court.
- (3) The Supreme Court has power to determine every such question after hearing argument.

Division 2 – Magistrates

18. Appointment

- (1) The President must appoint magistrates on the recommendation of the Commission which must be based on merit.
- (2) The Commission must not recommend a person for appointment as a magistrate unless the person:
 - (a) holds a degree in law from a recognised tertiary institution; or
 - (b) has suitable legal training or experience.
- (3) Each magistrate is to be appointed for the whole of Vanuatu.
- (4) The President must appoint senior magistrates on the recommendation of the Commission which must be based on merit.
- (5) The Commission must not recommend a person for appointment as a senior magistrate unless the person has at least 3 years' experience as a magistrate.
- (6) A senior magistrate may, with the written approval of the Commission, resign as a senior magistrate, but remain a magistrate.

19. Chief magistrate

- (1) The President must appoint a magistrate to be the chief magistrate on the recommendation of the Commission which must be based on merit.
- (2) The Commission must not recommend a person for appointment as the chief magistrate unless the person has at least 5 years' experience as a magistrate.
- (3) The chief magistrate holds office for a period of 5 years and is eligible for reappointment.
- (4) With the approval of the Commission, the chief magistrate may resign as chief magistrate but remain a magistrate.
- (5) The chief magistrate, subject to prior consultation with the Chief Justice and the Registrar:
 - (a) is responsible for the management of the administrative affairs of the Magistrates' Court; and

- (b) may issue directions with respect to practices and procedures of Magistrates' Court, however, such directions must not be inconsistent with the Rules of Court; and
 - (c) must identify training programmes for magistrates; and
 - (d) must bring to the notice of the Commission any matter which affects the employment of magistrates; and
 - (e) may discipline magistrates by way of counselling; and
 - (f) is responsible for the efficient management and control of court personnel of the Magistrates' Court; and
 - (g) must implement statutory orders relating to magistrates.
- (6) The chief magistrate is responsible for the orderly and expeditious exercise of the Magistrates' Court's jurisdiction and power, and must ensure that:
- (a) the business of the Magistrates' Court is undertaken in a just and fair manner at a reasonable cost; and
 - (b) all cases are listed, brought on for hearing and determined as soon as possible; and
 - (c) delays in proceedings are avoided through unnecessary adjournments and that reasonable notice is given to parties of changes to hearing dates.
- (7) For the sole purpose of managing the administrative affairs of the Magistrates' Court, the chief magistrate has power to do all things that are necessary or convenient to be done. The chief magistrate must liaise with the Chief Justice about administrative matters common to the Magistrates' Court and the Supreme Court (for example, accommodation).

20. Acting appointments

- (1) The President must appoint a person as an acting magistrate or as the acting chief magistrate if the Commission recommends that the appointment of the person is necessary for transacting the business of the Magistrates' Court, whether or not an appointment has been made to that office.
- (2) The Commission must not recommend a person for an acting appointment unless the person has the qualifications necessary for appointment on a permanent basis.
- (3) A person appointed to act must continue to act until the end of the period for which he or she is appointed unless the person:
- (a) earlier resigns his or her acting appointment; or
 - (b) is suspended or removed from office under section 23.

21. Disqualification

- (1) If:
- (a) a magistrate has a personal interest in any proceedings; or
 - (b) there is actual bias or an apprehension of bias by the magistrate in the proceedings;
- he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another magistrate.
- (2) A party to any proceedings may apply to a magistrate to disqualify himself or herself from hearing the proceedings.
- (3) If a magistrate rejects an application for disqualification, the applicant may appeal to the Supreme Court against the rejection. If an appeal is made, the magistrate must adjourn the proceedings until the appeal has been heard and determined.
- (4) A magistrate who rejects an application for disqualification must give written reasons for the rejection to the applicant.

22. Salaries, allowances and benefits

[OMITTED]

23. Vacation of office and discharge

- (1) A magistrate holds office until he or she reaches the age of 55.
- (2) A magistrate must not be suspended or removed from office except in accordance with the provisions of this section.

- (3) The President must suspend or remove a magistrate from office on the recommendation of the Commission.
 - (4) The Commission may recommend the suspension or removal of a magistrate:
 - (a) for gross misconduct; or
 - (b) on account of physical or mental incapacity to carry out his or her duties of office efficiently; or
 - (c) if the magistrate is convicted and sentenced on a criminal charge; or
 - (d) for professional incompetence.
 - (5) A magistrate who is suspended from office is to be paid his or her full salary during the period of the suspension.
 - (6) The Commission may, at the request of a magistrate, allow the magistrate to vacate his or her office:
 - (a) on account of continued ill-health; or
 - (b) for any other reason which the Commission considers sufficient.
 - (7) A request under subsection (6)(b) must be made to the Commission at least 6 months before the date on which the magistrate wishes to vacate his or her office, unless the Commission approves a shorter period in a particular case.
 - (8) If a magistrate is allowed to vacate his or her office under subsection (6)(a) or (6)(b), the magistrate is entitled to the pension and benefits prescribed by the statutory orders.
- 24. Magistrate may sit after appointment terminated and other paid work**
- (1) A magistrate whose appointment has terminated (otherwise than by reason of his or her removal from office) may sit as a magistrate for the purpose of hearing, giving judgement in or otherwise finishing any proceedings which were commenced before the termination of his or her appointment.
 - (2) A magistrate must not perform any paid work outside his or her duties of office without the consent of the Commission.

Division 3 – Clerks of court and employees

25. Clerks of court

- (1) The Commission may appoint one or more clerks of court to be attached to the Magistrates' Court. An appointment must be made on merit.
- (2) A clerk of court is under the direction and control of a magistrate.
- (3) A magistrate may direct a person to perform the duties of a clerk of court if an appointment has not been made or the clerk is not available for any reason.
- (4) The duties of a clerk of court are to be prescribed by the Rules of Court, and a clerk of court is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

26. Other employees

- (1) The Commission may engage on merit such other employees as the Commission considers necessary for the purposes of the Magistrates' Court.
- (2) An employee is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

PART 4 – SUPREME COURT AND JUDGES

Division 1 – The Supreme Court

27. Constitution

The Supreme Court must be constituted by a judge sitting alone:

- (a) in the exercise of its jurisdiction under Articles 6, 16(4), 39(3), 53 and 54 of the Constitution; and
- (b) in any other proceeding unless an Act or law otherwise provides.

28. Unlimited jurisdiction throughout Vanuatu

- (1) The Supreme Court has:

- (a) unlimited jurisdiction throughout Vanuatu to hear and determine any civil or criminal proceedings in Vanuatu, including matters of custom; and
- (b) all jurisdiction that is necessary for the administration of justice in Vanuatu.
- (2) Subject to the Rules of Court, a judgement of the Supreme Court has effect and may be executed in any part of Vanuatu.
- (3) To avoid doubt, subsection (2) does not limit the effect of a judgement of the Supreme Court in any other country.

29. Administration

- (1) Subject to and in accordance with this Act, the Supreme Court is to administer its own affairs and the Chief Justice is responsible for the management of the administrative affairs of the Court.
- (2) Without limiting subsection (1), the Chief Justice is responsible for the orderly and expeditious exercise of the Supreme Court's jurisdiction and power, and must ensure that:
 - (a) the business of the Court is undertaken in a just and fair manner at a reasonable cost; and
 - (b) all cases are listed, brought on for hearing and determined as soon as possible; and
 - (c) delays in proceedings are avoided through unnecessary adjournments and reasonable notice is given to parties of changes to hearing dates.
- (3) For the purpose of the management of the administrative affairs of the Supreme Court, the Chief Justice has power to do all things that are necessary or convenient to be done.
- (4) Without limiting subsection (3), the Chief Justice has the power on behalf of the State to:
 - (a) to enter into contracts; and
 - (b) to acquire, hold and dispose of personal property; and
 - (c) to take on hire, to exchange, and to accept on deposit or loan, library material, and also furnishings, equipment and goods needed for the purposes of the Supreme Court.
- (5) Subsection (4) does not authorise the Chief Justice to acquire any interest or right in land, or to enter into a contract under which the State is to pay or receive an amount exceeding VT 1,000,000 without the approval of the Commission.
- (6) The Chief Justice may appoint committees consisting of judges, or of judges and other persons, for the purpose of assisting him or her in the management of the administrative affairs of the Supreme Court.
- (7) The Chief Justice may, in writing, delegate all or any of his or her powers associated with administration of the affairs of the Supreme Court under subsection (1) to any one or more of the judges.
- (8) Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Supreme Court may be instituted by or against the State, as the case requires.
- (9) The Commission may by statutory order prescribe districts and registries for the administration of the Supreme Court.

30. Appeals from Magistrates' Court

- (1) Subject to the provisions of any other Act, the Supreme Court has jurisdiction to hear and determine appeals from judgements of the Magistrates' Court on all or any of the following:
 - (a) a question of law;
 - (b) a question of fact;
 - (c) a question of mixed law and fact.
- (2) The Supreme Court in hearing an appeal:
 - (a) is to proceed on the face of the record of the Magistrates' Court; and
 - (b) may exercise such powers as may be prescribed by or under this Act or any other law; and
 - (c) has the powers and jurisdiction of the Magistrates' Court; and

- (d) may review the procedures and the findings (whether of fact or law) of the Magistrates' Court; and
 - (e) may substitute its own judgement for the judgement of the Magistrates' Court; and
 - (f) may receive evidence.
 - (3) *(Repealed)*
 - (4) The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave.
- 31. Review of convictions and reservation of questions of law**
- (1) The Supreme Court has power at any time to review the conviction of a person by the Magistrates' Court, whether or not there has been an appeal against the conviction.
 - (2) The Supreme Court may exercise the power:
 - (a) on its own motion; or
 - (b) upon the petition of the Public Prosecutor; or
 - (c) upon the petition of the defendant or any other interested person.
 - (3) If the Supreme Court reviews a conviction and is of the opinion, by reason of new evidence or otherwise, that a miscarriage of justice has or may have occurred, the Supreme Court may do all or any of the following:
 - (a) set aside the conviction;
 - (b) order a new trial before the Magistrates' Court that made the conviction;
 - (c) make such other orders in the interest of justice and give all necessary and consequential directions.
 - (4) If the Supreme Court makes an order setting aside a conviction, the convicted person:
 - (a) if he or she is imprisoned – must be released immediately; or
 - (b) if he or she has paid a fine – must be refunded the amount paid.
 - (5) A judge may reserve for the consideration of the Court of Appeal on a case to be stated by the judge any question of law which may arise on the hearing of any criminal or civil proceedings.
 - (6) The judge must not deliver judgement in the proceedings until he or she has received the opinion of the Court of Appeal.
 - (7) The Court of Appeal has power to determine every such question after hearing argument.

32. Contempt

The Supreme Court has power to punish summarily a person for contempt of court by imprisonment for a term not exceeding one year or a fine not exceeding VT 100,000.

Division 2 – Judges

33. Appointment of Chief Justice and judges

- (1) The Chief Justice must be appointed in accordance with Articles 47 and 49 of the Constitution.
- (2) A judge must be appointed in accordance with Articles 47(2) and 49(4) of the Constitution.
- (3) In preparing advice in relation to the appointment of a judge under Article 47(2) of the Constitution, the Commission may have regard to the following:
 - (a) whether the person has sufficient experience and ability to fulfil the duties of a judge;
 - (b) whether the person has public confidence and standing in the community in which he or she usually resides, and is a person of good character;
 - (c) in the case of a person from outside Vanuatu – is or was a judge of a superior court in another jurisdiction.
- (4) A judge is to be appointed for the whole of Vanuatu.
- (5) The judges, other than the Chief Justice, have seniority according to the dates of their appointment unless the Commission otherwise directs.

34. Acting Chief Justice

- (1) If:

(a) the Chief Justice is absent from Vanuatu or is unable or unavailable to perform the duties of his or her office; or

(b) there is a vacancy in the office of Chief Justice;

the next senior judge who is able and willing to do so must perform the duties of the Chief Justice. That judge may exercise the powers of the Chief Justice and is to be designated Acting Chief Justice.

(2) *(Repealed)*

(3) *(Repealed)*

35. Acting judges

(1) The President must appoint a person as an acting judge if the Commission recommends the appointment of the person is necessary for transacting the business of the Supreme Court.

(2) A person must not be appointed as an acting judge unless he or she is qualified for appointment in accordance with Article 49(4) of the Constitution.

(3) In recommending a person for appointment, the Commission must have regard to the matters in section 33(3).

(4) A person appointed to act must continue to act until the end of the period for which he or she is appointed, unless the person:

(a) resigns from his or her acting appointment; or

(b) is removed under Article 47(3) of the Constitution.

(5) *(Repealed)*

(6) *(Repealed)*

36. Vacation of office and discharge

(1) A judge holds office until he or she reaches the age of 65.

(1A) Notwithstanding subsection (1), a person who is not a citizen of Vanuatu and is over the age of 65 years may be appointed as a judge of the Supreme Court for a specified term and will only cease to hold office:

(a) at the expiration of that term; or

(b) in accordance with article 47 (3) (a) or (b) of the Constitution.

(1B) Nothing done by a judge of the Supreme Court is invalid by the only reason that he or she has attained the age at which he or she is required by this section to vacate his or her office.

(2) A judge must not be removed from office except in accordance with Article 47(3)(a) or (b) of the Constitution.

(3) The Commission may, at the request of a judge, allow the judge to vacate his or her office:

(a) on account of continued ill-health; or

(b) for any other reason which the Commission considers sufficient.

(4) A request under subsection (3)(b) must be made to the Commission in writing at least 6 months before the date on which the judge wishes to vacate his or her office, unless the Commission approves a shorter period in a particular case.

(5) If a judge is allowed to vacate his or her office under subsection (3)(a) or (3)(b), the judge is entitled to the pension and benefits prescribed by the statutory orders.

37. Salaries, benefits and allowances

[OMITTED]

38. Disqualification

(1) If:

(a) a judge has a personal interest in any proceedings; or

(b) there is actual bias or an apprehension of bias by the judge in the proceedings;

he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another judge.

- (2) A party to any proceedings may apply to a judge to disqualify himself or herself from hearing the proceedings.
- (3) If a judge rejects an application for disqualification, the applicant may appeal to the Court of Appeal against the rejection. If an appeal is made, the judge must adjourn the proceedings until the appeal has been heard and determined.
- (4) A judge who rejects an application for disqualification must give written reasons for the rejection to the applicant.

39. Judge may sit after appointment terminated and other paid work

- (1) A judge whose appointment has terminated (otherwise than by reason of his or her removal from office) may sit as a judge for the purpose of hearing, giving judgement in or otherwise finishing any proceedings that were commenced before the termination of his or her appointment.
- (2) A judge must not perform any paid work outside his or her duties of office without the consent of the Commission.

Division 3 – Officers and employees

40. Registrar

- (1) The Commission must appoint on merit a registrar of the Supreme Court.
- (2) The registrar:
 - (a) is to assist the Chief Justice in the management of the administrative affairs of the Supreme Court and the Court of Appeal, and the chief magistrate in the management of the administrative affairs of the Magistrates' Court; and
 - (b) is to assist the Chief Justice and the chief magistrate in ensuring the orderly and expeditious exercise of the jurisdiction of those courts; and
 - (c) may act on behalf of the Chief Justice and the chief magistrate for the purposes of paragraphs (a) and (b); and
 - (d) has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice and the chief magistrate under paragraphs (a) and (b); and
 - (e) is to assist the Chief Justice in undertaking his or her duties under section 52; and
 - (f) is responsible for the efficient operation of the Supreme Court registry; and
 - (g) must discharge such other duties as may be prescribed by the statutory orders or the Rules of Court.
- (3) The Commission may appoint a person to be an acting registrar. An acting registrar, during the time for which he or she is appointed, must perform the duties of the registrar.
- (4) A person holding the office of registrar or acting as the registrar is entitled to the salary, allowances and benefits applicable to that office as set out in the table in Part 2 of the Schedule. The benefits are described in detail in Part 3 of the Schedule.
- (5) A person appointed to act as the registrar must continue to act until the end of the period for which he or she is appointed unless the person:
 - (a) resigns from his or her acting appointment; or
 - (b) is suspended or removed under Part 7.

41. Functions of the registrar relating to court personnel

- (1) The registrar of the Supreme Court:
 - (a) is responsible for the efficient management and control of court personnel; and
 - (b) must advise the Chief Justice on the salaries and salary scales of court personnel; and
 - (c) must identify, after consultation with the Chief Justice, training programs for court personnel; and
 - (d) must bring to the notice of the Chief Justice any matter which affects the employment of court personnel; and
 - (e) must implement statutory orders relating to court personnel.
- (2) *(Repealed)*

42. Master and deputy masters

- (1) The Commission must appoint on merit a master and such deputy masters of the Supreme Court.
- (2) A person must not be appointed as the master or a deputy master unless the person:
 - (a) is admitted as a barrister or solicitor of the Supreme Court or a similar court in another jurisdiction or is sitting as a Senior Magistrate for a period of 3 years; and
 - (b) has sufficient experience and ability to fulfil the duties of the master or a deputy master.
- (3) The master or a deputy master:
 - (a) may hear and determine all or any of the following matters:
 - (i) application for directions relating to matters of procedure;
 - (ii) taxation of bills of costs;
 - (iii) applications for probate;
 - (iv) preliminary matters in relation to applications for adoption;
 - (b) may exercise such of the powers, functions and jurisdiction of the Supreme Court as may be prescribed by the Rules of Court.
- (4) A person may appeal to a judge of the Supreme Court against a decision of the master or a deputy master made under paragraphs (3)(a) and (b). The appeal is to proceed by way of a hearing de novo and the judge's decision on appeal is final.
- (5) The Commission may appoint a person who satisfies paragraphs 42(2)(a) and (b) to be an acting master, if:
 - (a) there is a vacancy in the office of the master; or
 - (b) the master is absent from Vanuatu or is for any reason unable to perform his or her duties.
- (6) A person appointed as an acting master, has the jurisdiction, functions and powers of the master.
- (7) A person holding the office of master or acting master is entitled to the salary and allowances applicable to that office as set out in the table in Part 1 of the Schedule and the benefits as are described in detail in Part 3 of the Schedule.
- (8) The Commission is to determine the salary and allowances applicable to the office of deputy master.
- (9) A person appointed to be an acting master must continue to act in that office until the end of the period for which he or she is appointed, unless the person:
 - (a) resigns from his or her acting appointment; or
 - (b) is suspended or removed from the acting position.
- (10) Section 21 and subsections 23(2) to (5) apply to the master or a deputy master as if a reference in that section and those subsections to a magistrate were a reference to the master or a deputy master.
- (11) The master or a deputy master has, in exercising his or her functions under section 42, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.

42A. Mediation

- (1) Subject to the Rules of Court, the Supreme Court may by order refer the proceedings in that Court, or any part of them or any matter arising out of them, to the master or a deputy master or a mediator for mediation in accordance with the Rules of Court.

- (2) Referrals under subsection (1) to the master, a deputy master or a mediator may be made with or without the consent of the parties to the proceedings.
- (3) In seeking such resolution under subsection (1):
- (a) the master, deputy master or a mediator may require the attendance of the parties before him or her; and
 - (b) the parties may make suggestions and concessions without prejudice to their claims and position in the proceedings; and
 - (c) the master, deputy master or a mediator may make suggestions for the resolution of disputes without prejudice to any hearing before the Supreme Court; and
 - (d) if a settlement is reached, it must then be signed and dated by the master, deputy master or mediator; and
 - (e) any settlement recorded under paragraph (d) is enforceable as an order of the Supreme Court; and
 - (f) evidence of anything said, or of any admission made, at a conference conducted by the master, a deputy master or a mediator in the course of mediating anything referred to under this section is not admissible in any Court.
- (4) A mediator has, in mediating anything referred to under this section, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.
- (5) In this section, **mediator** means a person who is appointed as a mediator under the Rules of Court.

42B. Arbitration

- (1) Subject to the Rules of Court, the Supreme Court may by order refer the proceedings in that Court, or any part of them or any matter arising out of them, to an arbitrator for arbitration in accordance with the Rules of Court.
- (2) Referrals under subsection (1) to an arbitrator may be made only with the consent of the parties.
- (3) The Rules of Court may make provision for the registration of awards made in an arbitration carried out pursuant to an order made under subsection (1).

42C. Power of arbitrator to refer question of law to the Supreme Court

- (1) If:
- (a) any proceedings in the Supreme Court, or any part of them or any matter arising out of them, has been referred under subsection 42B(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has not made an award in respect of the arbitration; and
 - (c) a party to the arbitration has requested the arbitrator to apply to the Supreme Court for leave to refer that Court to a question of law arising in the arbitration,
- the arbitrator may apply to the Supreme Court for leave to refer the question to that Court.
- (2) The Supreme Court must not grant leave unless it is satisfied that the determination of the question of law by that Court might result in substantial savings in costs to the parties to the arbitration.

42D. Application to the Supreme Court for review of award on a question of law or for costs to be taxed

- (1) Subsections (2) to (5) apply if:
- (a) any proceedings in the Supreme Court, or any part of them or any matter arising out of them, has been referred under subsection 42B(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has made an award in respect of the arbitration; and
 - (c) the award has been registered with the Supreme Court under the Rules of Court.
- (2) A party to the award may apply to the Supreme Court for a review, on a question of law, of the award.

- (3) On a review of an award on a question of law, the Supreme Court may:
 - (a) determine the question of law; and
 - (b) make such orders as it thinks appropriate, including:
 - (i) an order affirming the award; or
 - (ii) an order varying the award; or
 - (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Supreme Court; or
 - (iv) an order setting aside the award and determining the matter to which the award related.
- (4) A party to the award may apply to the Supreme Court for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.
- (5) The person who has made an application under subsection (4) is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made pursuant to subsection (4).

42E. Protection of arbitrators

An arbitrator has, in arbitrating anything referred under section 42A, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.

42F. Arbitration awards

- (1) The Supreme Court may, upon application by a party to an award made in arbitration (whether carried out under an order made under section 42B(1) or otherwise) in relation to a matter, in which that Court has original jurisdiction, make an order in accordance with the terms of the award.
- (2) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 42B (1) unless the award has been registered with the Supreme Court under the Rules of Court.
- (3) Subject to subsection (4), an order made under subsection (1), is enforceable in the same manner as if it has been made in an action in the Supreme Court.
- (4) A writ of attachment must not be issued to enforce payment of moneys under an order made in accordance with this section."

43. Other officers

- (1) The Commission may appoint on merit such assistant registrars, sheriffs and other officers of the Supreme Court as the Commission considers necessary for the efficient operation of the Court.
- (2) An assistant registrar, sheriff or other officer must discharge such duties as may be prescribed by the statutory orders or the Rules of Court, or as a judge of the Court or the registrar may direct.
- (3) The Commission may appoint a person to act as an assistant registrar or other officer of the Court.
- (4) An officer appointed under this section or a person acting as an officer is entitled to the salary, benefits and allowances prescribed by the statutory orders.
- (5) The sheriff is responsible for the service and execution of all writs, summonses, rules, orders, warrants and processes of the Supreme Court directed to the sheriff.
- (6) The sheriff is also responsible for:
 - (a) taking, receiving and detaining all persons committed to his or her custody by the Supreme Court; and
 - (b) discharging such persons when so directed by the Court or otherwise required by law.
- (7) An officer appointed under this section may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

44. Other employees

- (1) The Commission may engage on merit such other employees as the Commission considers necessary for the purposes of the Supreme Court.
- (2) An employee is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

PART 5 – THE COURT OF APPEAL**45. Appointment of Supreme Court judges and disqualification**

- (1) A judge of the Supreme Court may sit as a judge of the Court of Appeal in accordance with Article 50 of the Constitution.
- (2) A judge so acting is entitled to the allowances and benefits as set out in the table in Part 1 of the Schedule. The benefits are described in detail in Part 3 of the Schedule.
- (3) A judge of the Supreme Court whose judgement is under consideration in any proceeding before the Court of Appeal must not sit as a member of the Court of Appeal in that proceeding.

46. Administration

- (1) The Chief Justice is responsible for the administration of the Court of Appeal and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.
- (2) Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

47. Registrar and other officers

- (1) The Commission may appoint on merit a registrar and such other officers as are necessary to administer the Court of Appeal.
- (2) A person holding the office of registrar is entitled to the salary, allowances and benefits applicable to that office as set out in the table in Part 2 of the Schedule, unless he or she also holds the office of the registrar of the Supreme Court. The benefits are described in detail in Part 3 of the Schedule.
- (3) The Commission may appoint any officer of the Supreme Court to undertake similar duties in the Court of Appeal.
- (4) The registry of the Court of Appeal established under section 24 of the Courts Act [Cap. 122] continues in existence on and after commencement as if that Act had not been repealed.

48. Appellate jurisdiction

- (1) Subject to the provisions of this Act and any other Act, the Court of Appeal has jurisdiction to hear and determine appeals from judgements of the Supreme Court.
- (2) The Chief Justice must, in consultation with the other judges of the Supreme Court, decide the composition of the Court of Appeal for the hearing of proceedings before the Court.
- (3) For the purpose of hearing and determining an appeal from the Supreme Court, the Court of Appeal:
 - (a) may exercise such powers as may be prescribed by or under this Act or any other law; and
 - (b) has the powers and jurisdiction of the Supreme Court; and
 - (c) may review the procedure and the findings (whether of fact or law) of the Supreme Court; and
 - (d) may substitute its own judgement for the judgement of the Supreme Court.
- (4) The Court of Appeal may deal with the appeal on the notes of evidence that were recorded in the Supreme Court without hearing the evidence again. However, the Court of Appeal may receive further evidence.
- (5) In the exercise of the appellate jurisdiction of the Court of Appeal, any judgement of the Court of Appeal has full force and effect, and may be executed and enforced, as if it were an original judgement of the Supreme Court.

PART 6 – FUNDING, PROTECTION AND ACCOUNTABILITY OF THE JUDICIAL SERVICE AND THE COURTS

[OMITTED]

PART 7 – DISCIPLINE OF COURT PERSONNEL

[OMITTED]

PART 8 – MISCELLANEOUS

64. Seals

The Magistrates' Court, the Supreme Court and the Court of Appeal must each have an official seal and must use the seal as required. The Commission must approve the design of the seal of each Court.

65. Inherent powers of Supreme Court and Court of Appeal, and custom

- (1) The Supreme Court and the Court of Appeal have such inherent powers as are necessary to carry out their functions. The powers are subject to:
 - (a) the Constitution; and
 - (b) any other written law; and
 - (a) the limitations of each Court's jurisdiction.
- (2) For the purpose of facilitating the application of custom, a provision of any Act or law may provide that it may be construed by the Court of Appeal, the Supreme Court or the Magistrates' Court with such alterations and adaptations as may be necessary.
- (3) The Supreme Court and the Court of Appeal have the inherent and incidental powers as may be reasonably required in order to apply custom.
- (4) The Magistrates' Court has the incidental powers as may reasonably be required in order to apply custom.

66. Judicial Committee and Rules of Court

- (1) The Judicial Committee established by section 30 of the Courts Act [Cap. 122], as in force immediately before commencement, continues in existence on and after commencement as if that Act had not been repealed.
- (2) However, the Committee is to consist of the following 5 members:
 - (a) the Chief Justice as chairperson;
 - (b) a judge of the Supreme Court as deputy chairperson;
 - (c) the Attorney General;
 - (d) the Public Prosecutor;
 - (e) a legal practitioner appointed by the Minister on the recommendation of the private legal profession.
- (3) The Judicial Committee may make Rules of Court, not inconsistent with this Act or the statutory orders, for or in relation to the following:
 - (a) the practice and procedure of the Magistrates' Court, the Supreme Court and the Court of Appeal;
 - (b) the criminal and civil jurisdiction of such Courts, including the procedure for the making and hearing of appeals to the Supreme Court and the Court of Appeal;
 - (c) the fees to be paid in respect of proceedings in the Magistrates' Court, the Supreme Court and the Court of Appeal;
 - (d) all matters and things incidental to such practice, procedure, jurisdiction and fees;
 - (e) all matters and things necessary or convenient to be prescribed for the conduct of any business of the Magistrates' Court, the Supreme Court and the Court of Appeal.
- (4) Rules prescribing or affecting the amount of any fees or their recovery do not come into operation unless approved by the Commission.
- (5) The Judicial Committee is to regulate its own procedures, however, a quorum consists of 3 members. A member of the Judicial Committee is entitled to the allowances prescribed by the statutory orders.

- (6) All rules made by the Judicial Committee that were in force immediately before commencement are to continue in force on and after commencement.

67. Review of salaries and benefits

[OMITTED]

68. Oath or affirmation of office

[OMITTED]

69. Continuous service for public servants

[OMITTED]

70. Statutory orders

[OMITTED]

71.

[OMITTED]

PART 9 – REPEAL AND TRANSITIONAL PROVISIONS

72. Repeal of Courts Act

- (1) The Courts Act [Cap. 122] is repealed.
- (2) To the extent that it is possible, all references in any other Act or law to the Courts Act [Cap. 122] on and after commencement is taken to be a reference to this Act.
- (3) All references in any other Act or law to a provision of the Courts Act [Cap. 122] on and after commencement is taken to be a reference to the corresponding provision (if any) of this Act.

73. Judges – Transitional and savings provision

[OMITTED]

74. Magistrates – Transitional and savings provision

[OMITTED]

75. Court personnel – Transitional and savings provision

[OMITTED]

76. Saving of orders, acting appointments and Rules of Court

- (1) An Order made under section 1(2) of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (2) An Order made under section 5(2) or (3) of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (3) An Order made under section 13 of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (4) If an appointment made under section 20(1) of the Courts Act [Cap. 122] was in force immediately before commencement, the appointment continues in force, on and after commencement, as if it had been made under this Act.
- (5) Any Rules of Court made under section 30 of the Courts Act [Cap. 122] that were in force immediately before commencement, continue in force, on and after commencement, as if they had been made under this Act.
- (6) If an appointment made under section 30(2) of the Courts Act [Cap. 122] was in force immediately before commencement, the appointment continues in force, on and after commencement, as if it had been made under this Act.

77. Existing proceedings saved

- (1) This section applies to any proceedings in the Magistrate's courts, the Supreme Court or the Court of Appeal that had not been finally disposed of immediately before commencement.
- (2) The proceedings continue, on and after commencement, as if the Courts Act [Cap. 122] had not been repealed.

78. Act does not take away or limit jurisdiction

Except as is provided for by this Act, this Act does not take, lessen or impair any jurisdiction or power that was, immediately before commencement, vested in or capable of being exercised by:

- (a) the Court of Appeal or one or more judges of that Court; or
- (b) the Supreme Court or one or more judges of that Court; or
- (c) the Magistrate's courts or one or more magistrates.

SCHEDULE

[OMITTED]