



*Tonga*

**MAGISTRATE'S COURT (AMENDMENT)  
ACT 2012**

**Act No. 23 of 2012**





## MAGISTRATE'S COURT (AMENDMENT) ACT 2012

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# MAGISTRATE'S COURT (AMENDMENT) ACT 2012

Act No. 23 of 2012

## AN ACT TO AMEND THE MAGISTRATE'S COURT ACT TO PROVIDE NUMEROUS AMENDMENTS TO REFORM THE LAW

I assent,  
TUPOU VI,  
21<sup>st</sup> November 2012.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

### **1 Short title, interpretation**

- (1) This Act may be cited as the Magistrate's Court (Amendment) Act 2012.
- (2) In this Act the Magistrate's Court Act is called the "Act".

### **2 Commencement**

This Act shall commence on the date so appointed by Notice made by the Minister of Justice, and different dates may be appointed for the commencement of different sections of this Act.

### **3 Section 8 amended**

- (1) Section 8(1) of the Act is amended by deleting the words "or as and when specified by Cabinet".

- (2) Section 8(m) of the Act is amended by inserting, after “Town Officer,” the words “a Justice of the Peace”.

#### **4 Section 11 repealed and replaced – Criminal Jurisdiction**

Section 11 of the Act is repealed and replaced with the following section –

##### **“11 Criminal jurisdiction**

- (1) The Magistrate’s Court has jurisdiction to hear and determine criminal cases which the Court is empowered to hear and determine by this or any other Act.
- (2) Subject to subsections (3) and (4), the Magistrate’s Court has jurisdiction to hear and determine criminal cases in which the maximum punishment provided by law does not exceed three years imprisonment or a fine of \$10,000.
- (3) The Magistrate’s Court has jurisdiction to hear and determine criminal cases which, in accordance with section 35, the Court has determined to hear summarily or which, in accordance with section 36 the Supreme Court has remitted to it for trial.
- (4) The Lord Chief Justice may by Order made under this subsection and published in the Gazette, invest any named magistrate with enhanced power, when hearing and determining criminal cases with the consent of the prosecution and the defendant in accordance with sections 35 or 36 of this Act, to inflict a maximum punishment not exceeding seven years imprisonment or a fine of \$50,000.
- (5) If an offence at common law or under statute has no maximum punishment, then the Magistrate’s Court has power to hear and determine such cases in which the Magistrate considers, either during the preliminary enquiry in accordance with section 35 or at any earlier time, that the punishment suitable for the offence in that case does not exceed the punishment specified in subsection (2) or subsection (4), as the case may be.
- (6) In exercising criminal jurisdiction a magistrate shall have the power to inflict the maximum penalties specified in subsection (2) or (4) as the case may be.
- (7) An offence within the jurisdiction of the Magistrate’s Court arising from the same facts of an offence triable in the Supreme Court may be committed and heard together in the Supreme Court.
- (8) In this section, “criminal case” includes proceedings for the recovery of fines, penalties or forfeitures.”.

**5 Section 16 amended**

Section 16 of the Act is amended to insert, after “that district” the words “or a Justice of the Peace”.

**6 Section 19 amended**

Section 19 of the Act is amended –

- (a) by numbering the current paragraph as subsection (1); and
- (b) by inserting the following subsection –

“(2) The clerk shall ensure that criminal cases against children under the age of 16 shall be listed for hearing separately:

Provided that if the Court considers that it is appropriate that cases that involve both children and adults as defendants should be heard together then such cases may be so listed for hearing together but separate from other cases involving either children or adults.”.

**7 Section 27 replaced – Enforcement Orders**

Section 27 of the Act is repealed and replaced with –

**“27 Enforcement of orders for payment**

- (1) Where any sum of money adjudged to be paid as a fine or compensation by an order remains unpaid for 14 days exclusive of Sundays from the date for payment under such order then the Magistrate may –
  - (a) imprison the defendant in default of payment; or
  - (b) as provided by section 53 hereof issue a warrant of distress for the levying of such sum.
- (2) A Magistrate may at any time on application by the offender extend the time for payment of the fine or compensation, or order payment thereof by instalments.”.

**8 Section 28 amended**

The table in section 28 is repealed and replaced with the following –

<b>“Where the amount adjudged to be paid</b>	<b>The said period shall not exceed</b>
Up to \$500	1 month
Between \$500 and \$5,000	3 months
Over \$5,000	6 months”

## 9 Section 32 replaced – Committal hearings

Section 32 of the Act is repealed and replaced with –

### “32 Committal hearings

- (1) If a person is accused of having committed an offence which is triable only in the Supreme Court (except by operation of section 35) a Magistrate shall hold a preliminary inquiry in the Magistrate’s Court without the calling of witnesses.
- (2) The Magistrate shall notify the prosecutor and the accused of the date on which the preliminary inquiry shall be held and shall require the attendance of the accused —
  - (a) by issuing a summons; or
  - (b) if it appears to the Magistrate, from evidence on oath, that the person is likely to abscond – by issuing a warrant.
- (3) For every preliminary inquiry the prosecutor shall lodge with the Magistrate, at least 5 days before the date thereof, 2 sets of documents each consisting of one copy of a fair summary of the statements of the prosecution witnesses, one copy of the list of exhibits he proposes to produce and one copy of any documentary exhibits he proposed to produce.
- (4) At the preliminary inquiry the Magistrate shall —
  - (a) cause to be handed to the accused in open Court, the accused’s set of documents consisting of one summary of the statements of the prosecution witnesses, one copy of the list of exhibits, and one copy of the documentary exhibits; and
  - (b) endorse on the remaining copy that the accused has received his set of documents; and
  - (c) if he considers that the documents disclose that a sufficient case has been made out to put the accused upon his trial before the Supreme Court, commit the accused to the Supreme Court for trial in custody or on bail as appropriate, and forward the remaining set of documents together with a record of the proceedings in Form 21 in the Schedule hereto to the Registrar of the Supreme Court; or
  - (d) if he considers that the documents do not disclose that a sufficient case has been made out to put the accused upon his trial before the Supreme Court, shall discharge him.”

## 10 Repeal of section 34 and 37-43

Sections 34, 37, 38, 39, 40, 41, 42 and 43 of the Act are repealed.

**11 Sections 35 and 36 replaced**

Sections 35 and 36 of the Act are repealed and replaced with –

**“35 Election of summary trial**

- (1) If at any time during the preliminary inquiry into the offence it appears to the Magistrate, on his own initiative or having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature and circumstances of the case, that the punishment that the Magistrate has power to inflict under this Act would be adequate, the Magistrate may, with the consent of the prosecutor and the accused and subject to the provisions of subsections (2) hereof, proceed to deal with the case summarily in the manner provided by section 24.
- (2) For the purpose of proceeding as aforesaid, the Magistrate shall tell the accused that he may, if he consents be tried summarily instead of being tried by a Judge of the Supreme Court or by a jury if he were so to elect and the Magistrate shall explain to him what is meant by being tried summarily.

**36 Remission to Magistrate**

- (1) It shall be lawful for a judge of the Supreme Court, on his own initiative or on application in Chambers by the prosecutor and the accused or either of them to remit for trial in the Magistrate's Court, to any Magistrate or to a Magistrate whose sentencing power has been enhanced in accordance with section 11(4), as the case may be, any case committed to the Supreme Court for trial, provided always that he shall not make such an order without the consent of all parties.
- (2) Upon any case being so remitted under subsection (1) hereof, the Magistrate shall proceed to deal with such case summarily in the manner provided in section 24.
- (3) A Magistrate who hears a case remitted to him under this section is not empowered to order any punishment greater than that specified in section 11(2) or (4) as the case may be.

**12 Section 51 amended – Search warrants**

Section 51 of the Act is amended by inserting the following subsection –

- “(4) The powers and duties of a Magistrate under this section may, if no Magistrate is reasonably available for that purpose, be exercised by a Justice of the Peace.”.

**13 Section 59 amended – Civil jurisdiction**

Section 59 of the Act is amended by repealing and replacing subsections (1) and (2) with –

- “(1) The Magistrate’s Court has jurisdiction to hear and determine civil actions in which the amount claimed does not exceed \$10,000.
- (2) Civil actions shall be tried in the Magistrate’s Court without a jury.”

**14 Section 60 amended**

Section 60 of the Act is amended by replacing “\$1,000” with “\$10,000”.

**15 Section 61 amended**

Section 61 of the Act is amended to insert, after “that district” the words “or a Justice of the Peace”.

**16 Section 67 amended**

Section 67 of the Act is amended by repealing the words “exclusive of Sundays from the date thereof” and replacing them with “or such other date as is specified in the order of the Court”.

**17 Section 68 amended**

Section 68(1) of the Act is amended to insert, after “Magistrate” the words “or a Justice of the Peace”.

**18 Section 69 amended**

Section 69 of the Act is amended by replacing “\$2” with “\$200”.

**19 Section 74 amended**

Section 74(1) of the Act is amended by repealing “triable summarily”.

**20 Section 94A inserted – Justices of the Peace**

The Act is amended by inserting the following section –

**“94A Justices of the Peace**

- (1) The King, on the recommendation of the Lord Chief Justice, may by Royal Warrant appoint suitable persons to be Justices of the Peace.

- (2) There shall be no more than 20 Justices of the Peace currently appointed, and they shall be appointed for terms of one year and be eligible for re-appointment.
- (3) Justices of the Peace may also hold other offices of emolument under the Crown.
- (4) Justices of the Peace shall have the powers specified in their warrants of appointment, which may include the power –
  - (a) to witness documents and take oaths, and the powers of Commissioners of Oaths to take affidavits and declarations;
  - (b) grant bail;
  - (c) issue search warrants;
  - (d) issue subpoenas; and
  - (e) such other powers that are assigned to them by any Act or by regulations made under subsection (5).
- (5) The Lord Chief Justice may make regulations to better define and regulate the powers of Justices of the Peace.”.

## **21 Section 95 amended**

Section 95 of the Act is amended by replacing “Prime Minister with the consent of the Cabinet” with “Public Service Commission”.

## **22 Forms amended**

Forms 2, 5, 6, 7 and 8 in the Schedule to the Act is amended by inserting after “above mentioned district” the words “or Justice of the Peace”.

## **23 Schedule amended – Forms**

Forms 14, 15, 19 and 20 in the Schedule to the Act are repealed.

## **24 Form 21 repealed and replaced**

Form 21 in the Schedule to the Act is repealed and replaced with –

“FORM 21

**RECORD OF COMMITTAL PROCEEDINGS**

(Section 32)

1. On the ..... day of ..... 20  
..... the accused ..... appeared before me,  
charged with the offence of .....
2. I told the accused of the offence with which he is charged.
3. I caused him to be given a set of documents comprising a summary of  
the prosecution witnesses’ statements, a list of exhibits and a copy of  
any documentary exhibits.
4. I committed the accused in custody (or on bail of \$ .....  
with ..... sureties of \$ ..... each).
5. One set of documents as described in paragraph 3 is forwarded  
herewith.

Dated this ..... day of ..... 20 .....

.....MAGISTRATE

..... DISTRICT”.

Passed by the Legislative Assembly this 15<sup>th</sup> day of October 2012.