**EXTRAORDINARY**

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GOVERNMENT OF FIJI

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# CRIMINAL PROCEDURE DECREE 2009
(DECREE NO. 43 OF 2009)

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A DECREE TO REPEAL THE CRIMINAL PROCEDURE CODE [CAP. 21] AND TO MAKE COMPREHENSIVE PROVISION IN RELATION TO THE POWERS AND PROCEDURES TO BE APPLIED IN RELATION TO THE APPREHENSION OF OFFENDERS AND THE CONDUCT OF CRIMINAL TRIALS, AND FOR RELATED MATTERS.

IN exercise of the powers conferred upon me as the Vice-President of Fiji by virtue of the Office of the Vice-President and Succession Decree 2009 (No. 8 of 2009), I hereby make the following Decree:

## PART I—PRELIMINARY

*Short title and commencement*

1.—(1) This Decree may be cited as the Criminal Procedure Decree 2009.

(2) This Decree shall come into effect on a date appointed by the Minister by notice in the *Gazette*.

*Interpretation*

2. In this Decree official notification to a person that the person is accused of committing an offence and that the person is required to appear in the designated court to answer the charge:

"complaint" means an allegation that some person known or unknown has committed an offence, or is guilty of an offence;

"de facto relationship" means the relationship between two persons who live or have lived with each other as spouses on a genuine domestic basis although not legally married to each other;

"indictable offence" means any offence stated in the Crimes Decree 2009 or any other law prescribing offences to be an indictable offence, and which shall be triable in the High Court in accordance with the provisions of this Decree and upon the filing of an information;

"indictable offence triable summarily" means any offence stated in the Crimes Decree 2009 or any other law prescribing offences to be an indictable offence triable summarily, and which shall be triable—

*(a)* in the High Court in accordance with the provisions of this Decree; or

*(b)* at the election of the accused person, in a Magistrates Court in accordance with the provisions of this Decree;

"information" means a written charge preferred by the State against an accused person for the purpose of the trial of the person in the High Court;

"juvenile" has the same meaning as in the Juveniles Act;

"locality" in relation to a Magistrates Court means—

*(a)* any area of a Magistrates Court's jurisdiction determined in accordance with any law prescribing matters relating to the jurisdiction of such courts; or

*(b)* in the absence of any statutory provision to which paragraph (a) applies, the general geographical location of a court and the area of Fiji which it serves;

"magistrate" includes any other title given to magistrates as a result of changes to any law relating to the establishment and jurisdiction of Magistrates Courts;

"Magistrates Court" includes any other title given to Magistrates Courts as a result of changes to any law relating to the establishment and jurisdiction of such courts;

"medical practitioner" means any person registered (conditionally or otherwise) under the provisions of a law regulating the practice of medicine in Fiji;

"minor offence" means any offence prescribed in the Minor Offences Act;

"police officer" means any officer of the Fiji Police Force;

"private prosecution" means a prosecution instituted and conducted by any person other than a public prosecutor or a police officer;

"public prosecutor" means any person appointed by the Director of Public Prosecutions or the Commissioner of the Fiji Independent Commission Against Corruption to be a prosecutor, or to prosecute any particular case;

"spouse" includes a person who is or has been in a de facto relationship with the other person;

"statute" means any written law;

"summary offence" means any offence stated in the Crimes Decree 2009 or any other law prescribing offences to be a summary offence, and which shall be triable in a Magistrates Court in accordance with the provisions of this Decree; and

"summary trial" means a trial held by a Magistrates Court.

*Application of other Acts or Decrees or Promulgations*

3.—(1) Nothing in this Decree shall affect the validity or derogate from the application of the provision of any law dealing with any matter of criminal procedure.

(2) The provisions of this Decree shall be subordinate to, and shall be read and applied subject to any provisions of another Act making specific provision in relation to—

*(a)* the jurisdiction of any court to hear any criminal proceeding;

*(b)* the procedures to be applied to the hearing of criminal proceedings involving juveniles;

*(c)* the appointment, powers and duties of prosecutors, and the administration of the Office of the Director of Public Prosecutions or of the Commissioner of the Fiji Independent Commission Against Corruption;

*(d)* bail for accused and convicted persons;

*(e)* the giving of evidence in criminal proceedings, and limitations on the giving of evidence or its admissibility;

*(f)* the sentencing of offenders and the imposition and enforcement of penalties applied by the courts in criminal proceedings;

*(g)* dealing with accused persons suffering any mental or other disability;

*(h)* the powers of police officers; and

*(g)* the administration of the courts, and the powers and responsibilities of court officers.

## PART II—POWERS OF COURTS

*Offences under the Crimes Decree 2009 and extension of jurisdiction*

4.—(1) Subject to the other provisions of this Decree—

*(a)* any indictable offence under the Crimes Decree 2009 shall be tried by the High Court;

*(b)* any indictable offence triable summarily under the Crimes Decree 2009 shall be tried by the High Court or a Magistrates Court, at the election of the accused person; and

*(c)* any summary offence shall be tried by a Magistrates Court.

(2) Notwithstanding the provisions of sub-section (l), a judge of the High Court may, by order under his or her hand and the seal of the High Court, in any particular case or class of cases, invest a magistrate with jurisdiction to try any offence which, in the absence of such order, would be beyond the magistrate's jurisdiction.

(3) A magistrate hearing a case in accordance with an Order made under sub-section (2) may not impose a sentence in excess of the sentencing powers of the magistrate as provided for under this Decree.

*Offences under other laws*

**5.**–(1) Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.

(2) When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.

*Sentences which the High Court may pass*

6. The High Court may pass any sentence authorised by the Sentencing and Penalties Decree 2009 and any other law, and may make any order which a magistrate is authorised to make.

*Sentences which a magistrate may pass*

**7.**—(1) A magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely—

*(a)* imprisonment for a term not exceeding 10 years; or

*(b)* fine not exceeding 150 penalty units.

(2) A magistrate may impose consecutive sentences upon a person convicted of more than one offence in a trial, but in no case shall an offender be sentenced to imprisonment for a longer period than 14 years.

(3) The sentencing limits prescribed in sub-section (1) may be further restricted in relation to magistrates of certain classes as provided for in any law dealing with the establishment and jurisdiction of the Magistrates Court.

(4) Where any magistrate of a certain class sentences an offender for more than one offence in a trial, the aggregate punishment shall not exceed twice the amount of punishment which that magistrate has jurisdiction to impose.

*Powers and jurisdiction of other statutory courts and tribunals*

8. Nothing in this Decree shall affect the powers and jurisdiction of any other court or tribunal lawfully exercising powers under law to adjudicate on offences and to impose lawful penalties.

*Sentencing powers and procedures*

9. All courts which have tried any criminal proceeding and determined that a person has committed an offence, shall proceed to consider and impose any sentence or penalty—

*(a)* in accordance with the procedures and range of sentencing options provided for in the Sentencing and Penalties Decree 2009; and

*(b)* subject to any maximum sentence or penalty stated in the law which creates the offence.

## PART III—ARREST POWERS AND PROCEDURES

### *Division 1—General Arrest Provisions*

*Procedure to make an arrest*

10.—(1) Any police officer or other person authorised by this Decree or any other law to make an arrest, shall actually touch or confine the body of the person to be arrested, unless the person submits to custody by word or action.

(2) If a person forcibly resists an arrest, or attempts to evade the arrest, all means necessary to effect the arrest may be used by the police officer or person authorised by this Decree to make the arrest.

(3) Nothing in this section justifies the use of greater force than is reasonable in the particular circumstances of the arrest, or is necessary for the apprehension of the offender.

*Power to enter and search places*

11.—(1) If any police officer or any person acting under a warrant of arrest, has reason to believe that the person to be arrested has entered into or is within any place, all persons residing in or being in charge of such a place shall—

*(a)* allow the police officer or arresting person free entry to the premises; and

*(b)* afford all reasonable facilities for a search of the premises.

(2) If entry to a place cannot be obtained under sub-section (1), it shall be lawful for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter and search the place.

(3) In order to effect entry into a place in accordance with sub-section (2), a police officer may—

*(a)* break open any outer or inner door or window of the place; or

*(b)* otherwise effect entry into the place—

if entry to the place cannot be made after notification of the person's authority and purpose, and upon making a demand to be admitted.

*Power to break out of a place entered*

12. Any police officer or other person authorised to make an arrest may break out of any house or place in order to—

*(a)* liberate himself or herself; or

*(b)* liberate any other person who having lawfully entered for the purpose of making an arrest, is detained in the house or place.

*No unnecessary restraint to be used*

13. No person arrested may be subjected to more restraint than is necessary to prevent escape.

*Search of arrested persons*

14.—(1) Whenever a person is arrested in accordance with this Decree, a police officer may search the person and search any articles in the possession of the person or under the person's control, and shall place all articles found in safe custody.

(2) In exercising powers under sub-section (1), the police officer shall ensure that the arrested person has necessary clothes to wear.

(3) Subject to any other law providing for powers of search, the right to search an arrested person does not include the right to examine his or her intimate private parts.

(4) Where any property has been taken from a person under this section, and the person is not charged with any offence, all property taken from the person shall be restored as soon as practicable after the decision has been made not to charge the person with an offence.

*Power of police officer to detain and search*

15.—(1) The powers under sub-section (2) may be exercised by a police officer who has reason to suspect that any article—

*(a)* has been stolen or unlawfully obtained; or

*(b)* is one in respect of which a criminal offence has been, is being, or is about to be, committed; and

*(c)* which is being conveyed on any person or in any vehicle or in any package, or is otherwise being conveyed; or

*(d)* which is concealed or contained in any vehicle or package, for the purpose of being conveyed; or

*(e)* which is concealed or carried on any person in a public place.

(2) On the grounds stated in sub-section (1), a police officer may, without warrant or other written authority—

*(a)* detain and search any such person, vehicle or package; and

*(b)* take possession of and detain any such article (together with the package containing it, if any) which the police officer reasonably suspects –

(i) to have been stolen or unlawfully obtained; or

(ii) in respect of which the police officer reasonably suspects that a criminal offence has been, is being, or is about to be committed; and

*(c)* detain the person conveying, concealing or carrying the article.

(3) The powers provided for in sub-section (2) shall not be exercised in the case of any article being conveyed by post, except where the posted article has been, or is suspected of having been, dishonestly appropriated during its transit as a posted item.

(4) If there is reason to suspect that there is on board any vessel or aircraft any property that has been stolen or unlawfully obtained, a police officer of or above the rank of sergeant, may –

*(a)* enter, without warrant and with or without assistants, on board such vessel;

*(b)* remain on board for such reasonable time as the officer considers necessary;

*(c)* search, with or without assistance, any part of such vessel;

*(d)* after demand and refusal of keys, break open any receptacle;

*(e)* upon discovery of any property which the officer reasonably suspects to have been stolen or unlawfully obtained, take possession of and detain the property;

*(f)* detain the person in whose possession any property detained under paragraph (e) is found; and

*(g)* pursue and detain any person who is in the act of conveying any such property away from any vessel, or after the person has landed with the property so conveyed away or found in his or her possession.

(5) A police officer may seize any articles in a public place—

*(a)* which may furnish evidence in regard to the commission of such offence; and

*(b)* where there is a possibility of the articles being removed or dealt with in such a way as to prevent their being available as evidence.

(6) All persons detained under this section shall be dealt with in accordance with the procedures applying to persons arrested without a warrant.

*Searches to be undertaken by officers of the same gender*

16. —(1) All searches of arrested persons shall be conducted only by police officers of the same gender as the arrested person.

(2) In any situation where there is no police officer of the same gender as the person to be searched available to do the search, arrangements may be made for the search to be conducted by a suitable person of the same gender.

(3) In all cases searches shall be undertaken with strict regard to decency.

*Power to seize offensive weapons*

17. Notwithstanding any other provision of this Decree, a police officer or other person making any arrest in accordance with this Decree may take from the person arrested any instruments of violence, and shall deliver all articles so taken to the police officer before whom the police officer or person making the arrest is required to produce the person arrested.

*Division 2—Arrest Without Warrant*

*Arrest by police officers*

18. Any police officer may, without an order from a magistrate and without a warrant, arrest any person—

*(a)* whom the officer suspects on reasonable grounds of having committed an indictable offence (whether or not the offence is triable summarily);

*(b)* who commits any offence in the presence of the officer;

*(c)* who obstructs a police officer while in the execution of his or her duty, or who has escaped or attempts to escape from lawful custody;

*(d)* in whose possession anything is found which may reasonably be suspected to be stolen property, or to have been used in the commission of an offence;

*(e)* whom the officer suspects upon reasonable grounds of being a deserter from the Fiji Police Force, the Fiji Military Force or the Fiji Prisons Service;

*(f)* whom the officer finds on any highway, or in any yard or other place during the night and whom he or she suspects on reasonable grounds of having committed or being about to commit an offence;

*(g)* whom the officer suspects on reasonable grounds of having been concerned in any act committed at any place outside Fiji which, if committed in Fiji, would have been punishable as an offence, and for which the offender is liable under any law to be apprehended and detained in Fiji;

*(h)* having in his or her possession any implement of housebreaking without lawful excuse (the burden of proving the excuse shall lie on such person);

*(i)* who is a released convict and who is committing a breach of any condition applying to the person's release from custody imposed under any law; and

*(j)* for whom the officer has reasonable cause to believe a warrant of arrest has been issued.

*Ascertaining name and place of residence*

19.—(1) A police officer may arrest any person who has committed an offence in the presence of the officer, or who has been accused by any person of committing an offence, and who—

*(a)* refuses on the demand of the police officer to give his or her name and place of residence; or

*(b)* gives a name or place of residence which the police officer has reason to believe is false.

(2) When the true name and place of residence of a person arrested under sub-section (1) have been ascertained the person shall be released if the person signs a bond, with or without sureties, to appear before a magistrate if so required.

(3) If a person being dealt with in accordance with sub-section (2) is not resident in Fiji the bond shall be secured by a surety or sureties who are resident in Fiji.

(4) If—

*(a)* the true name and residence of an arrested person is not ascertained within 24 hours from the time of arrest; or

*(b)* the arrested person fails to execute a bond or fail to furnish sufficient sureties as are required –

the arrested person shall be taken before the nearest magistrate having jurisdiction at the earliest sitting of the court.

*Processing arrested persons*

20. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of any law prescribing rights to bail, take or send the person arrested before a magistrate, or before an officer of or above the rank of sergeant.

*Powers of police officers conferred on other statutory office-holders*

21.—(1) The powers of police officers under this Part may be exercised by any duly appointed inspector, warden or other officer exercising powers under any law dealing with—

*(a)* the control of Fiji's borders;

*(b)* the protection of the environment in Fiji;

*(c)* any other regulatory regime in Fiji provided for by law and enforceable by the charging of offenders with criminal offences.

(2) Any person arrested under sub-section (1) shall be handed over to the police in accordance with section 23.

*Arrest by private persons*

22.— (1) Any private person may arrest any person who in his or her presence commits an indictable offence (whether or not the offence is triable summarily), or whom he or she reasonably suspects of having committed an indictable offence provided that an offence has been committed.

(2) Persons found committing any offence involving injury to property may be arrested without a warrant by—

*(a)* the owner of the property; or

*(b)* any employee of the owner of the property;

*(c)* any person authorised by the owner of the property.

*Persons arrested to be handed to the police*

23.—(1) Any private person arresting any other person without a warrant shall without unnecessary delay hand over the arrested person to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) A police officer shall re-arrest the person if there is reason to believe that the arrested person falls into a category of person for which an arrest without a warrant under this Part may be made by the officer.

(3) If there is reason believe that the arrested person has committed an offence, and the arrested person—

*(a)* refuses on the demand of a police officer to give his or her name and place of residence; or

*(b)* gives a name or place of residence which the officer has reason to believe is false—

the arrested person shall be dealt with under the provisions of section 19.

(4) If there is no sufficient reason to believe that the arrested person has committed any offence he or she shall be released as soon as this decision is made.

*Detention of persons arrested without warrant*

24.—(1) The provisions of this Part are subject to any law dealing with the grant of bail to arrested persons.

(2) When any person has been taken into custody without a warrant for an offence other than murder or treason, the police officer of or above the rank of corporal to whom such person shall have been brought—

*(a)* may in any case; and

*(b)* shall, if it does not appear practicable to bring the person before an appropriate Magistrates Court within 24 hours after the person has been taken into custody –

inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person upon entering into a recognisance, with or without sureties, for a reasonable amount to appear before a Magistrates Court at a time and place to be named in the recognisance.

(3) An officer of or above the rank of sergeant may release a person arrested on suspicion of committing any offence, when, after due police inquiry, insufficient evidence is, in the opinion of the officer, disclosed on which to proceed with the charge.

(4) Where an arrested person is retained in custody he or she shall be brought before a Magistrates Court as soon as practicable.

*Offence committed in magistrate's presence*

25. When any offence is committed in the presence of a magistrate, the magistrate may arrest or order any person to arrest the offender, and may then deal with the arrested person in accordance with the provisions of this Decree, and any law prescribing rights to bail.

*Magistrates may direct arrest*

26. A magistrate may at any time direct the arrest of any person in respect of whom the magistrate has the power to issue a warrant at that time and in those circumstances.

## *Division 3—Escape and Retaking*

*Escape and recapture of persons escaping*

27. In the event of any escape from lawful custody, the person from whose custody the person escapes may immediately pursue and arrest the person in any place in Fiji.

*Powers which may be exercised in the re-taking*

28. The powers of search, entry and release of detained person provided for in this Part shall apply to arrests under section 27, although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.

## *Division 4—Duty to Provide Assistance*

*Assistance to magistrates and police officers*

29. Every person is bound to assist a magistrate or police officer reasonably demanding assistance—

*(a)* to prevent the escape of any other person whom the magistrate or police officer is authorised to arrest;

*(b)* in the re-taking of any person who has escaped from lawful custody; and

*(c)* in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any public property.

## PART IV – PREVENTION OF OFFENCES

*Powers of courts to make orders for keeping the peace*

30.—(1) The Magistrates Court may exercise any power under the Public Order Act in relation to any person the court considers likely to commit a breach of the peace to order that person to keep the peace.

(2) All courts may make any appropriate order requiring a person charged with an offence to keep the peace if, during the course of a trial or proceeding, the court forms the view that the person charged may cause or participate in a breach of the peace.

*Powers of the police to take preventive action*

31.—(1) Every police officer—

*(a)* may take action necessary for the purpose of preventing the commission of any offence; and

*(b)* shall prevent the commission of any offence to the best of the officer's ability.

(2) Without limiting the generality of sub-section (1), police officers may exercise any of the powers of arrest and for the protection of public property as provided for in the Public Order Act.

## PART V—PLACE OF HEARING AND THE TRANSFER OF CASES

### *Division 1—Place of Proceedings and Trial*

*General authority of courts of Fiji*

32. —(1) Every court has authority to cause to be brought before it, any person who—

*(a)* is in Fiji and is charged with an offence committed within Fiji; or

*(b)* is charged with an offence which according to law may be dealt with as if it had been committed in Fiji—

and to deal with the accused person according to its jurisdiction.

(2) Issues relating to the local jurisdiction of any court to hear any criminal proceeding or trial shall be determined in accordance with the provision of this Part and any law dealing with the jurisdiction of the respective courts, but no issue relating to local jurisdiction of a court shall affect the validity of any proceedings, or the sentence lawfully imposed by any court.

*Accused person to be sent to Division where offence committed*

33. Where a person accused of having committed an offence in Fiji is removed from the Division within which the offence was committed and is found within another Division, the court within whose jurisdiction the person is found may cause the person to be brought before it and shall, unless authorised to proceed in the case—

*(a)* send the person in custody to the court within whose jurisdiction the offence is alleged to have been committed; or

*(b)* require the person to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

*Removal of accused person under warrant*

34.—(1) Where any person is to be sent in custody in pursuance of section 33, a warrant shall be issued by the court within whose jurisdiction the person is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person named in it, and to carry and deliver the person up to the court within whose jurisdiction the offence was committed or may be inquired into or tried.

(2) The. person to whom the warrant is directed shall execute it according to its terms without delay.

*Powers of the High Court*

35.—(1) The High Court may inquire into and try any offence subject to its jurisdiction at any place where it holds sittings.

(2) All criminal cases to be heard by the High Court shall be—

*(a)* instituted before a Magistrates Court in accordance with this Decree; and

*(b)* transferred to the High Court in accordance with this Decree if the offence is –

(i) an indictable offence; or

(ii) an indictable offence triable summarily, and the accused has indicated to the Magistrates Court that he or she wishes to be tried in the High Court.

*Place and date of sessions of the High Court*

36.—(1) For the exercise of its original jurisdiction in criminal matters, the High Court shall hold sittings at such places and on such days as the Court determines.

(2) General arrangements for the sittings of the High Court shall be as determined by the Chief Justice.

(3) The Chief Registrar of the High Court shall ordinarily give notice beforehand of sittings of the High Court.

*Ordinary place of proceeding and trial*

37. Subject to the provisions of section 35 and to the powers of transfer conferred by Division 2 of this Part**,** every offence shall ordinarily be tried by a court—

*(a)* within the locality in which the offence was committed; or

*(b)* within the locality that the accused—

(i) was apprehended; or

(ii) is in custody on a charge for the offence; or

(iii) has appeared in answer to a summons lawfully issued charging the offence.

*Trial at place where act done or consequence ensues*

38. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be tried by a court within the locality that any such thing has been done, or any such consequence has ensued.

*Trial where offence is connected with another offence*

39. When an act is an offence—

*(a)* by reason of its relation to any other act which is also an offence; or

*(b)* which would be an offence if the doer were capable of committing an offence –

a charge of the first-mentioned offence may be tried by a court within the locality that either act was done.

*Trial where place of offence is uncertain*

40. When—

*(a)* it is uncertain in which of several localities an offence was committed; or

*(b)* when an offence is committed partly in one locality and partly in another; or

*(c)* when an offence is a continuing one, and continues to be committed in more locality than one; or

*(d)* when an offence consists of several acts done in different localities -

it may be dealt with and tried by a court in any of the localities.

*Offence committed on a journey*

41. An offence committed whilst the offender is in the course of performing a journey or voyage may be tried by a court through or into the locality of which the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

*High Court to decide in cases of doubt*

42.—(1) Whenever any doubt arises as to the court by which any offence should be tried, any court entertaining such doubt may, in its discretion, report the circumstances to the High Court, and the High Court shall decide by which court the offence shall be tried.

(2) Any decision of the High Court made under sub-section (1) shall be final and conclusive, except that it shall be open to an accused person to show that no court in Fiji has jurisdiction in the case.

*Validity of proceedings not to be affected by issues of location*

43. Nothing in this Part affects the validity of any criminal proceedings lawfully instituted, or dealt with or tried by any court in accordance with this Decree, but—

*(a)* regard shall be had to the provisions of this Part whenever a decision is made as to the most appropriate locality for criminal proceedings to be instituted or dealt with; and

*(b)* any party to criminal proceedings may rely on the provisions of this Part to seek the hearing of any proceedings or trial by a court in the most appropriate locality.

*Court to be open*

44.—(1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be an open court to which the public generally may have access, so far as the premises at which the court convenes can conveniently contain them.

(2) The presiding judge or magistrate may order in the interests of justice at any stage of the proceeding or trial of any particular case that—

*(a)* the public generally; or

*(b)* any particular person—

shall not have access to, or remain in the room or building used by the court.

## *Division 2 – Transfer of Cases*

*Transfer of case where offence committed in other locality*

45.—(1) If upon the hearing of any complaint it appears that the cause of complaint arose outside the locality of the court before which the complaint has been brought, the court may, on being satisfied that it should be dealt with elsewhere, direct the case to be transferred to the most appropriate court.

(2) If the accused person—

*(a)* is in custody and the court directing a transfer thinks it expedient that the custody should be continued; or,

*(b)* is not in custody, and the court directing a transfer thinks it expedient that the accused person should be placed in custody—

the court shall direct the offender to be taken by a police officer before the court to which the case is transferred.

(3) When a court gives a direction under sub-section (2), the court shall—

*(a)* give a warrant for that purpose to the police officer; and

*(b)* deliver to the police officer the complaint and recognisances (if any) taken by the court, to be delivered to the court before whom the accused person is to be taken.

(4) The complaint and recognisances (if any) delivered under sub-section (3)*(b)* shall be treated for all purposes as if they had been taken by the court to which the case is being transferred.

(5) If the accused person is not ordered to continue in custody or placed in custody in accordance with this section, the court shall inform the accused person that it has directed the transfer of the case, and the provisions this section relating to the transmission and validity of the documents in the case shall apply.

*Transfer after commencement of trial*

46. If in the course of any trial before a magistrate the evidence indicates that the case is one which should be tried by some other magistrate, the magistrate may stay the proceedings and submit the case with a brief report on the matter to the Chief Magistrate.

*Power to change venue*

47.—(1) Whenever it is made to appear to the Chief Magistrate—

*(a)* that a fair and impartial trial cannot be had in any particular locality; or

*(b)* that some question of law of unusual difficulty is likely to arise; or

*(c)* that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the case; or

*(d)* that an order under this section will be to the general convenience of the parties or witnesses; or

*(e)* that such an order is expedient for the ends of justice or is required by any provision of this Decree—

the Chief Magistrate may order –

(i) that any offence be tried in any other locality; or

(ii) that any particular criminal case or class of cases be transferred from a locality to any other Magistrates Court of equal or superior jurisdiction; or

(iii) that an accused person be tried before the Chief Magistrate.

(2) The Chief Magistrate may act on—

*(a)* the report of the referring court; or

*(b)* on the application of a party interested; or

*(c)* on his or her own initiative.

(3) Every application by an interested party for the exercise of the power under this section shall be made by motion, which shall be supported by affidavit.

(4) Every accused person making an application under this section shall give to the Director of Public Prosecutions or Commissioner of the Independent Commission Against Corruption notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least 24 hours have elapsed between the giving of such notice and the hearing of the application.

(5) When an accused person makes an application under this section, the Chief Magistrate may direct the accused person to execute a bond (with or without sureties), conditioned that he or she will if convicted, pay the costs of the prosecution.

## PART VI—POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS, COMMISSIONER OF THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION, STATE COUNSEL AND PUBLIC PROSECUTORS

*This Part subject to any law dealing with the Office of Director of Public Prosecutions*

48. The provisions of this Part are subject to any law dealing specifically with the powers of the Director of Public Prosecutions and the administration of the Office of the Director of Public Prosecutions or a National Prosecutions Service and to any law dealing specifically with the powers of the Fiji Independent Commission Against Corruption.

*Power to enter nolle prosequi*

49. —(1) In any criminal case and at any stage of the case before conviction or judgment, the Director of Public Prosecutions or the Commissioner of the Fiji Independent Commission Against Corruption may enter a *nolle prosequi*, either by counsel instructed by him or her stating in court or by informing the court in writing that the State intends that the proceedings shall not continue.

(2) Upon the entry of a *nolle prosequi* under sub-section (1), the accused person shall be—

*(a)* at once discharged in respect of the charge for which the *nolle prosequi* is entered; and

*(b)* if the accused person has been committed to prison he or she shall be released; or

*(c)* if the accused person is on bail his or her recognisances shall be discharged.

(3) The discharge of an accused person in accordance with this section shall not operate as a bar to any subsequent proceedings against the accused person on the basis of the same facts.

(4) If the accused is before the court when a *nolle prosequi* is entered in accordance with this section, the Chief Registrar or the Clerk of such court shall cause notice in writing of the entry of such *nolle prosequi* to be given to the officer in charge of the prison in which the accused is detained.

(5) If the accused person has been committed for trial, a copy of the notice given under sub-section (4) shall also be given to the magistrate by whom the accused person was committed, and the magistrate shall cause a similar notice in writing to be given to—

*(a)* any witnesses bound over to prosecute and give evidence, and to their sureties (if any); and

*(b)* the accused person; and

*(c)* the sureties of the accused person in any case where the accused person is on bail.

*State Counsel*

50. The Director of Public Prosecutions or the Commissioner of the Fiji Independent Commission Against Corruption may by written notice authorise any lawyer to be a State Counsel and may authorise any such lawyer to exercise all or any of the functions vested in the Director of Public Prosecutions or in the Commissioner of the Fiji Independent Commission Against Corruption in accordance with law.

*Power to appoint public prosecutors and police prosecutors*

51.— (1) The Director of Public Prosecutions may appoint any lawyer to be a public prosecutor for the purposes of any case.

(2) The Director of Public Prosecutions as he thinks fit may appoint police officers to be police prosecutors for the purposes of conducting prosecutions in the Magistrates Courts. No police prosecutor may appear in the Magistrate Court without such appointment.

*Powers of public prosecutors*

52.—(1) A public prosecutor may appear before any court in which any case of which the public prosecutor has charge is under trial or on appeal.

(2) If any private person instructs a lawyer to prosecute a criminal case the Director of Public Prosecutions may direct that a public prosecutor conduct the prosecution, and the lawyer privately instructed shall act in the matter under the direction of the public prosecutor.

*Police may conduct prosecutions before Magistrates Courts*

53. In any trial before a Magistrates Court, if the proceedings have been instituted by a police officer, any police officer having lawful authority to conduct the case may appear and conduct the prosecution notwithstanding the fact that he or she is not the officer who made the complaint or charge.

*Prosecutors to be subject to directions of Director of Public Prosecutions*

54. Every police officer lawfully conducting a prosecution and every public prosecutor appointed by the Director of Public Prosecutions shall be subject to the directions of the Director of Public Prosecutions.

*Conduct of the prosecution*

55. —(1) Any person lawfully conducting a criminal prosecution may do so personally or by a lawyer.

(2) The Commissioner of Deputy Commissioner of Fiji Independent Commission Against Corruption may by written notice authorise any lawyer to conduct a Fiji Independent Commission Against Corruption prosecution in any court in Fiji. Every such lawyer shall be subject to the direction of the Commissioner of the Fiji Independent Commission Against Corruption.

(3) The Director of Public Prosecution and the Commissioner of Fiji Independent Commission Against Corruption may at any time transfer to each other the conduct of any prosecution at any time before the close of the prosecution case. In such a case the public prosecutor or Fiji Independent Commission Against Corruption prosecutor as the case may be, is deemed to have been appointed by the Director of Public Prosecution or Commissioner of Fiji Independent Commission Against Corruption to prosecute.

## PART VII—INSTITUTION OF PROCEEDINGS

### *Division 1—Proceedings by Summons or Warrant*

*Complaint and charge*

56.— (1) Criminal proceedings may be instituted by—

*(a)* the making of a complaint in accordance with this Part; or

*(b)* by bringing a person before a magistrate after the person has been arrested without warrant.

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may file a complaint with a Magistrates Court.

(3) A complaint may be made under this section orally or in writing.

(4) If a complaint is made orally it shall be reduced to writing by the Magistrates Court, and shall be signed by the complainant and the officer of the Magistrates Court authorised to receive the complaint.

(5) Where proceedings are instituted by a police officer or other officer acting in the course of a lawful duty, a formal charge duly signed by the police officer or other officer may be presented to the Magistrates Court and shall, for the purposes of this Decree, be deemed to be a complaint.

(6) Upon receiving any complaint (unless such complaint has been laid in the form of a formal charge under sub-section (5)), the Magistrates Court shall—

*(a)* draw up or cause to be drawn up a formal charge containing a statement of the offence with which the accused is charged; and

*(b)* issue the formal charge in accordance with procedures approved by the Chief Magistrate.

(7) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge.

*Issue of summons or warrant*

57.—(1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 56 the Magistrates Court shall issue either a summons or a warrant to compel the attendance of the accused person before a Magistrates Court having jurisdiction to try the offence alleged to have been committed.

(2) A warrant shall not be issued in the first instance unless—

*(a)* the complaint has been made upon oath by the complainant, or by one or more witness; and

*(b)* a magistrate has authorised the issue of the warrant.

(3) The validity of any proceedings taken in relation to a complaint or charge shall not be affected by –

*(a)* any defect in the complaint or charge; or

*(b)* the fact that a summons or warrant was issued without complaint or charge.

(4) Any summons or warrant may be issued on a Sunday.

*Division 2—Charges and Information*

*Offence to be specified in charge or information with necessary particulars*

58. Every charge or information shall contain—

*(a)* a statement of the specific offence or offences with which the accused person is charged; and

*(b)* such particulars as are necessary for giving reasonable information as to the nature of the offence charged.

*Joinder of counts in one charge or information*

59.—(1) Any offence may be charged together in the same charge or information if the offences charged are—

*(a)* founded on the same facts or form; or

*(b)* are part of a series of offences of the same or a similar nature.

(2) Where more than one offence is charged in a charge or information, a description of each offence shall be set out in a separate paragraph of the charge or information, and each paragraph shall be called a count.

(3) Where, before trial or at any stage of a trial, the court is of opinion that—

*(a)* an accused person may be prejudiced in his or her defence by reason of being charged with more than one offence in the same charge or information; or

*(b)* for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information –

the court may order a separate trial of any count or counts in the charge or information.

*Joinder of two or more accused in one charge or information*

60. The following persons may be joined in one charge or information and may be tried together—

*(a)* persons accused of the same offence committed in the course of the same transaction;

*(b)* persons accused of an offence and persons accused of –

(i) aiding or abetting the commission of the offence; or

(ii) attempting to commit the offence;

*(c)* persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character; and

*(d)* persons accused of different offences committed in the course of the same transaction.

*Mode in which offences are to be charged*

61.—(1) A count of a charge or information shall commence with a statement of the offence charged, and this shall be called the statement of offence.

(2) Each statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence.

(3) The charge shall contain a reference to the section of the law creating the offence.

(4) After the statement of the offence, particulars of the offence shall be set out in ordinary language, and the use of technical terms shall not be necessary.

(5) Where any rule of law or any Act Decree or Promulgation limits the particulars of an offence which are required to be given in a charge or information, nothing in this section shall require any more particulars to be given than those so required.

(6) The forms applying or approved under this Decree (or forms conforming to these forms as nearly as may be) shall be used in cases to which they are applicable; with the statement of offence and the particulars of offence being varied according to the circumstances of each case.

(7) Where a charge or information contains more than one count, the counts shall be numbered consecutively.

*Provisions as to statutory offences*

62.—(1) Where a statute prescribes an offence to be—

*(a)* the doing or the omission to do any one of any different acts in the alternative; or

*(b)* the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions; or

*(c)* states any part of the offence in the alternative—

the acts, omissions, capacities or intentions or other matters stated in the alternative in the statute, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary in any count charging an offence to negative any exception or exemption from, or proviso or qualification to, the operation of the statute creating the offence.

*Description of property*

63.—(1) The description of property in a charge or information shall be—

*(a)* in ordinary language; and

*(b)* such as to indicate the property referred to with reasonable clearness.

(2) It shall not be necessary to name the person to whom the property belongs or the value of the property, unless this is required for the purpose of describing an offence depending on any particular ownership of property or specific value of property.

(3) Where the property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to—

*(a)* describe the property as owned by one of those persons by name "with others"; or

*(b)* to use a collective name without naming any individual if the persons owning the property are a body of persons with a collective name, such as a company or "Inhabitants", "Trustees", "Commissioners" or "Club", or other such name.

(4) Property belonging to or provided for the use of any government or public establishment, agency, service or department may be described as the property of the State.

(5) Coin and currency notes may be described as money, and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or currency note (although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note shall not be proved).

(6) In cases of theft, embezzling or defrauding by false pretences, any allegation as to money shall be sustained by proof that the accused person dishonestly appropriated or obtained any coin or any currency note (or any portion of the value of it), although the coin or bank or currency note may have been delivered to the accused person in order that some part of the value of it should be returned to the party delivering it (or to any other person), and such part shall have been returned accordingly.

*Description of persons*

64.—(1) The description or designation in a charge or information of the accused person, or of any other person to whom reference is made, shall be such as is reasonably sufficient to identify the person, without necessarily stating the correct name, or place of residence, style, degree or occupation.

(2) If because the name of the person is not known, or for any other reason, it is impracticable to give the description or designation required under sub-section (1), a description or designation shall be given that is reasonably practicable in the circumstances, or the person may be described as "a person unknown".

(3) A court may dispense with any requirement to expressly name or identify any particular person on grounds relating to the safety of that person or public security.

*Description of documents*

65.—(1) Where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purpose of the document or instrument.

(2) It shall not be necessary to set out a copy of any document referred to in accordance with sub-section (1).

*General rule as to description*

66. Subject to any other provisions of this Division, it shall be sufficient to describe any place, time, thing, matter, act or omission to which it is necessary to refer in any charge or information in—

*(a)* ordinary language; and

*(b)* in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

*Statement of intent*

67. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the statute creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

*Mode of charging previous convictions*

68. Where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place, without stating the particulars of the offence.

*Use of figures and abbreviations*

69. Figures and abbreviations may be used for expressing anything which is commonly expressed in such a manner.

*Gross sum may be specified in certain case of stealing and sexual offences*

70.—(1) When a person is charged with any offence involving the theft or other misappropriation of property, it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular times or exact date

(2) When a person is charged with any offence involving theft, fraud, corruption, or abuse of office, and the evidence points to many separate acts involving money, property or other advantage , it shall be sufficient to specify a gross amount and the dates between which the total of the gross amount was taken or accepted.

(3) When a person is charged with any offence of a sexual nature and the evidence points to more than one separate acts of sexual misconduct, it shall be sufficient to specify the dates between which the acts occurred in one count and the prosecution must prove that between the specified dates at least one act of a sexual nature occurred. In such a case the charge must specify in the statement of offence that the count is a representative count.

*Division 3—Proceedings by Notice to Attend Court*

*Notice to attend court*

71.—(1) Notwithstanding the other requirements of this Decree, it shall be lawful for any police officer to institute criminal proceedings by a notice in the approved form—

*(a)* requiring the person to attend court in answer to the charge stated in the notice—

(i) at such place and on such date and time (not being less than 10 days from the date of the service of the notice) as shown on such notice; or

(ii) to appear by lawyer; or

(iii) to enter a written plea of guilty; and

*(b)* which is served personally on any person who is reasonably suspected of having committed any offence to which this section applies.

(2) A notice under sub-section (1) shall be served not later than 30 days from the date upon which the offence is alleged to have been committed.

(3) A notice served under sub-section (1), shall for all purposes be regarded as a summons issued under the provisions of this Decree and, in the event of a person upon whom such a notice has been served failing to comply with the requirements of the notice, a warrant for the arrest of such person may be issued notwithstanding that no complaint has been made on oath.

(4) A copy of a notice under this section shall be—

*(a)* signed by the police officer preferring the charge; and

*(b)* placed before the court by which the charge is to be heard at least 7 days before the time fixed for such hearing.

(5) This section shall apply to all offences punishable by—

*(a)* a fine alone; or

*(b)* imprisonment (with or without a fine) for a term not exceeding 3 months; or

*(c)* disqualification from holding or obtaining a driving licence; or

*(d)* endorsement on a driving licence of particulars of a conviction or disqualification.

(6) Nothing in this section shall be deemed to prevent the institution of proceedings under other provisions of this Decree for any offence to which this section applies.

*Division 4—Proceedings by Fixed Penalty Notice*

*Interpretation*

72.—(1) In this Division—

"authorised officer" includes all officers lawfully exercising powers under the Land Transport Act or any other law which authorises an officer to proceed in accordance with this Division;

"fixed penalty", in relation to a prescribed offence, means the penalty prescribed—

*(a)* in any Regulation made under this Decree;

*(b)* under the Land Transport Act; or

*(c)* under any other law which provides for the use of proceedings under this Division;

"fixed penalty notice" means a notice, in the prescribed form, that complies with section 73(2);

"police officer" includes a person who is, for the time being, a member of the Special Constabulary; and

"prescribed offence" means an offence prescribed—

*(a)* by Regulation made under this Decree;

*(b)* under the Land Transport Act; or

*(c)* under any other law which provides for the use of proceedings under this Division—

as being an offence which may be proceeded with in accordance with the provisions of this Division.

(2) For the purposes of this Division, a motor vehicle shall be taken to have been a Government vehicle at the time of the alleged commission of an offence if at the time, the registration plate or registration plates (if any)

borne by the vehicle were of the kind required by regulations under the Land Transport Act or any other law to be affixed to Government vehicles.

*Issue of fixed penalty notice*

73.—(1) Notwithstanding the other requirements of this Decree, but subject to the provisions of this section, it shall be lawful for a police officer or other authorised officer to institute proceedings in respect of the alleged commission of a prescribed offence—

*(a)* by serving personally upon the person alleged by the police officer or authorised officer to have committed the offence, a fixed penalty notice; or

*(b)* where the presence, at any time or for any period of time, of a motor vehicle in a place is evidence of the commission of the offence, by affixing a fixed penalty notice to the vehicle in a conspicuous position.

(2) A fixed penalty notice shall comply with the following requirements:—

*(a)* the notice shall require the person to whom it is addressed to attend court in answer to the charge stated in the notice at such place, and on such date and at such time (not being less than 28 days from the date of the notice), as are specified in the notice unless—

(i) not later than 21 days after the date of the notice, payment is made, as specified in the notice, of the fixed penalty applicable in relation to the offence charged; or

(ii) failing that payment, that person appears by lawyer or enters a written plea of guilty;

*(b)* if the notice is affixed to a motor vehicle in pursuance of sub-section (1)(b), it shall be addressed—

(i) where the vehicle is a Government vehicle - to the driver of the vehicle; and

(ii) in any other case - to the owner of the vehicle, that driver or owner being identified in the notice by reference to the registered number of the vehicle;

*(c)* the notice shall bear the date on which it was served on the person charged, or affixed to the motor vehicle to which the charge relates, as the case requires.

(3) A fixed penalty notice shall not be served upon a person, or affixed to a motor vehicle, more than 30 days after the day on which the offence is alleged to have been committed.

(4) The police officer or other authorised officer by whom a fixed penalty notice is issued shall cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.

(5) Nothing in this section shall be taken to prevent the institution of proceedings under any other provision of this Decree.

*Procedure after issue of fixed penalty notice*

74.—(1) Where proceedings are instituted by means of—

*(a)* the service upon a person of a fixed penalty notice (in this section referred to as "the notice"); or

*(b)* the affixing to a motor vehicle, of a fixed penalty notice—

the provisions of this section apply in relation to the charge set out in the notice (in this section referred to as "the charge").

(2) Where payment of the fixed penalty that is applicable in relation to the charge (in this section referred to as "the fixed penalty") is made in accordance with the instructions set out in the notice not later than 14 days after the date of the notice—

*(a)* the proceedings instituted by the notice shall be deemed to have been dismissed; and

*(b)* it shall not be lawful for any person to be convicted of the offence as charged in the notice.

(3) Subject to sub-section (4), where payment of the fixed penalty is not made as mentioned in sub-section (2), the notice shall be regarded for all purposes as a summons issued under the provisions of this Decree.

(4) A Court shall not proceed with the hearing of proceedings instituted by the affixing of a fixed penalty notice to a motor vehicle unless a signed copy of the notice has been served upon the owner of that motor vehicle before the date of the hearing.

(5) Where the notice is a notice to which section 73(1)*(b)* and (2)*(b)* applies—

*(a)* it shall be presumed, for the purposes of the proceedings instituted by the notice, that the acts or omissions giving rise to the alleged commission of the offence charged were the acts or omissions of the person (in this sub-section referred to as "the responsible person") who, at the time of the alleged commission of that offence, was—

(i) where the notice is addressed, in accordance with section 73(2)*(b)*(i), to the driver of the vehicle, the person having immediate lawful charge of the vehicle; or

(ii) where the notice is addressed, in accordance with section 73(2)*(b)*(ii) of that paragraph, to the owner of the vehicle, the person (whether a natural person or not) registered, for the purposes of the *Land Transport Act*, as the owner of the vehicle; and

*(b)* the presumption established by paragraph *(a)* shall not be taken to be rebutted by proof that, at the time of alleged commission of the offence, the vehicle was in the charge of a person other than the responsible person unless it is also proved that the other person had charge of the vehicle at the time without the consent, express or implied, of the responsible person.

(6) Except as expressly provided by an Act passed after the date of coming into operation of this section, sub-section (5) has effect notwithstanding any provision to the contrary contained in any written law, whether made before or after that date.

(7) In any proceedings, a certificate signed by the Clerk of the Court specified in the notice that payment of the fixed penalty was, or was not, made as mentioned in sub-section (2) shall, unless the contrary is proved, be conclusive evidence of the matters stated in that certificate.

*Unauthorised removal or interference with a notice*

75. —(1) Subject to sub-section (2), a person who removes, or interferes with, a fixed penalty notice affixed to a motor vehicle in accordance with this Division is liable to a fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) It is a defence to a prosecution of a person for an offence against sub-section (1) that that person was, or was acting on behalf of, either—

*(a)* the person to whom the notice was addressed; or

*(b)* the person having immediate lawful charge of the motor vehicle.

## PART VIII—COMPELLING THE APPEARANCE OF ACCUSED PERSONS

### *Division 1—Summons*

*Form and contents of summons*

76.—(1) Every summons issued by a court under this Decree shall be—

*(a)* in writing;

*(b)* in duplicate; and

*(c)* signed by a judge or magistrate, or by such other officer of the court as the Chief Justice or the Chief Magistrate may from time to time authorise.

(2) Every summons shall be directed to the person summoned, and shall require that person to appear at a time and place to be appointed in the summons, before a court having jurisdiction to deal with the complaint or charge.

(3) Each summons shall state shortly the offence with which the person against whom it is issued is charged.

(4) A summons may also be issued to require the attendance of any other person at the hearing of a criminal proceeding, if that person—

*(a)* is the parent of a juvenile who is charged with an offence; or

*(b)* is otherwise required by any law to be in attendance at the hearing of a criminal proceeding.

*Service of summons*

77.—(1) Every summons shall, if practicable, be served personally on the person summoned by delivering or tendering to the person one of the duplicates of the summons.

(2) Every summons shall be served within 12 months of the date that it is issued.

(3) A court may extend the time for the service of any summons that is not served in accordance with sub-section (2).

*Service when person summoned cannot be found*

78. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him or her with—

*(a)* an adult member of his or her family; or

*(b)* his or her employee residing with him or her; or

*(c)* his or her employer.

*Procedure when service cannot be affected*

79. If service in the manner provided by the preceding sections cannot be effected by the exercise of due diligence, the person serving it shall affix one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides, and the summons shall then be deemed to have been duly served.

*Service on a company*

80.—(1) Subject to the provisions of any other Act Decree or Promulgation, service of a summons on an incorporated company or other body corporate may be effected either by—

*(a)* serving it personally on any officer of the corporation; or

*(b)* by sending it by registered letter addressed to the registered or other principal office of the corporation in Fiji.

(2) Subject to the provisions of any other Act Decree or Promulgation, service of a summons on a foreign company which has established a place of business within Fiji under the Companies Act may be effected by—

*(a)* serving it personally on; or

*(b)* sending it by registered letter addressed to—

any person authorised by the company for that purpose under the *Companies Act*.

(3) When service is affected under the provisions of sub-sections (1) or (2) by the sending of a registered letter, service shall be deemed to have been effected when the letter would arrive in the ordinary course of post.

*Service anywhere in the Fiji*

81. A summons may be served at any place within Fiji.

*Proof of service when serving officer not present*

82.—(1) Where—

*(a)* the person who has served a summons is not present at the hearing of the case; and

*(b)* in any case where a summons issued by a court has been served outside the locality of the court

an affidavit purporting to be made before a Magistrate or a Commissioner of Oaths that the summons has been served shall be admissible in evidence.

(2) All statements made in an affidavit made under sub-section (1) shall be deemed to be correct, unless the contrary is proved.

(3) The affidavit provided under sub-section (1) may be attached to the duplicate of the summons and returned to the court, which shall take notice of the affidavit in relation to the proof of service of the summons to which it refers.

*Power to dispense with personal attendance of accused*

83.—(1) Whenever a magistrate issues a summons in respect of a summary offence, the magistrate—

*(a)* may if the magistrate sees reason to do so; and

*(b)* shall when the offence with which the accused is charged is punishable only—

(i) by fine; or

(i) by fine and imprisonment not exceeding three months; or

(iii) by disqualification from holding or obtaining a driving licence, and by fine and imprisonment not exceeding three months.

dispense with the personal attendance of the accused, provided that he or she pleads guilty in writing or appears by a lawyer.

(2) The magistrate dealing with or trying any case may at any subsequent stage of the proceedings direct the personal attendance of the accused person, and enforce attendance in manner provided in this Part.

(3) No warrant shall be issued to enforce the attendance of an accused person under this section unless a complaint or charge has been made upon oath.

(4) Where a magistrate—

*(a)* convicts an accused person; and

*(b)* it is proved to the satisfaction of the court that not less than 7 days prior to the conviction a notice was served on the person in the prescribed form and manner specifying any alleged previous conviction of the accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged; and

*(c)* the accused is not present in person before the court—

the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

(5) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and the fine is not paid within the time prescribed for payment, the magistrate may issue a summons calling upon the accused person to show cause why he or she should not be committed to prison for such term as the magistrate may then prescribe.

(6) If an accused person does not attend upon the return of a summons issued under sub-section (5) the magistrate may, after considering any matter—

*(a)* related to an assessment having made of the means that have been available to the accused person to pay the fine; and

*(b)* indicating a refusal by the accused person to pay the fine even though he or she has had the means to do so—

issue a warrant and commit the accused person to prison for such term as the magistrate may then fix.

(7) If the summons issued under sub-section (1)—

*(a)* clearly specifies the period within which any fine which may be imposed by the court must be paid (which period shall in no case expire on a date less than 7 days later than the return date on the summons); and

*(b)* clearly warns the accused person that

(i) he or she will not receive notification from the court as to any fine which may be imposed but that it is his or her duty to make inquiry from the court; and

(ii) that upon failure to pay the fine within the time allowed or to apply to the court for an extension of time he or she will be liable without further warning to be committed to prison—

then, upon expiration of the period allowed, if the accused person shall not have paid the fine and shall not have applied to the court for an extension of time for payment, the magistrate may after considering any matter—

(iii) related to an assessment having made of the means that have been available to the accused person to pay the fine; and

(iv) indicating a refusal by the accused person to pay the fine even though he or she has had the means to do so—

issue a warrant and commit the accused person to prison for such term as the magistrate may order, without issuing a summons calling upon the accused person to show cause why he or she should not be so committed.

(8) Where the magistrate is of the opinion that it would be just to order disqualification under the provisions of any law providing for the licensing of drivers against an accused person whose personal appearance has been dispensed with under the provisions of this section, the magistrate shall order a summons to be served upon the accused calling upon him or her to show cause why such disqualification should not be imposed and, if the accused person does not attend upon the return of such summons or fails to show good cause why the disqualification should not be imposed, the magistrate may order disqualification.

(9) Whenever the attendance of an accused person has been dispensed with under this section, and the attendance of the accused person is subsequently required, the costs of any adjournment for such purpose shall be borne by the accused person.

*Division 2—Warrant of Arrest*

*Warrant after issue of summons*

84.—(1) Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused person.

(2) No warrant shall be issued under sub-section (1) before the time appointed in the summons for the appearance of the accused person unless a complaint has been made upon oath.

*Summons disobeyed*

85. If the accused person does not appear at the time and place appointed in the summons, and his personal attendance has not been dispensed with under section 83, the court may issue a warrant to apprehend the accused person and cause him or her to be brought before the court.

*Form, contents and duration of warrant of arrest*

86.—(1) Every warrant of arrest shall be under the hand of—

*(a)* the judge or magistrate issuing it; or

*(b)* an appointed court officer acting upon the specific direction of a judge or magistrate to draw up and sign the warrant.

(2) Every warrant shall—

*(a)* state shortly the offence with which the person against whom it is issued is charged; and

*(b)* name or otherwise describe the person against whom it is issued; and

*(c)* order the person or persons to whom it is directed to apprehend the person against whom it is issued and—

(i) bring that person before the court issuing the warrant; or

(ii) before some other court having jurisdiction in the case—

to answer to the charge and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

(4) An appointed court officer acting in accordance with—

*(a)* a specific direction of a judge or magistrate; or

*(b)* any general authority given by the Chief Justice or Chief Magistrate—

may effect the cancellation of any warrant that a court determines to have ceased to have effect.

*Court may direct security to be taken*

87.—(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder or treason may in its discretion direct by endorsement on the warrant that, if the person executes a bond with sufficient sureties for his or her attendance before the court—

*(a)* at a specified time; and

*(b)* thereafter until otherwise directed by the court—

the officer to whom the warrant is directed shall take the required security and shall release the person from custody.

(2) The endorsement shall state—

*(a)* the number of sureties;

*(b)* the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

*(c)* the time at which the person is to attend before the court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

*Persons who may execute warrants*

88.—(1) A warrant of arrest shall normally be directed generally to all police officers, but a court may direct the warrant to be executed by—

*(a)* any officer of the Land Transport Authority, where the offence arises under an Act that is enforced by that Authority; or

*(b)* any other officer authorised by law to enforce any provision of a law which creates a criminal offence.

(2) Any court issuing a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the warrant.

(3) When the warrant is directed to more than one officer or persons, it may be executed by all or by any one or more of them.

*Notification of substance of warrant*

89. The police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person at the time of the arrest.

*Person arrested to be brought before the court without delay*

90. A person arrested under a warrant of arrest shall (subject to the provisions of section 87 as to security) without unnecessary delay be taken before the court before which he or she is required by law to be brought.

*Execution anywhere in Fiji*

91. A warrant of arrest may be executed at any place in Fiji.

*Procedure on arrest of person outside jurisdiction*

92.—(1) When a warrant of arrest is executed outside the locality of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is nearer than the court where the arrest was made, or unless security is taken under this Part, be taken before a magistrate within the locality that the arrest was made.

(2) Subject to sub-section (2), the magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his or her removal in custody to the court which issued the warrant.

(3) If the person—

*(a)* has been arrested for an offence other than murder or treason; and

*(b)* he or she is ready and willing to give bail to the satisfaction of a magistrate; or

*(c)* if a direction has been endorsed under section 87 on the warrant and the person is ready and willing to give the security required by such direction—

the magistrate may take such bail or security, and shall forward the bond to the court which issued the warrant.

(4) Nothing in this section shall be deemed to prevent a police officer or other person executing a warrant from taking security under section 87.

*Irregularities in a warrant*

93.—(1) Any—

*(a)* irregularity or defect in the substance or form of a warrant;

*(b)* variance between it and the written complaint or information; or

*(c)* variance between either the written complaint or the information and the evidence produced on the part of the prosecution at any proceeding or trial –

shall not affect the validity of any proceedings at or subsequent to the hearing of the case.

(2) If any such variance appears to the court to be such that the accused has been deceived or misled by it, the court may at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him or her to bail.

*Division 3—Miscellaneous Provisions Regarding Processes*

*Power to take bond for appearance*

94. Where any person for whose appearance or arrest a judge or magistrate presiding in any court is empowered to issue a summons or warrant is present in the court, the person may be required to execute a bond (with or without sureties) for his or her appearance in the court.

*Arrest for breach of bond for appearance*

95. When any person who is bound by any bond taken under this Decree to appear before a court or who has made a deposit of money or Government currency notes in lieu of executing such a bond, does not so appear, the judge or magistrate presiding in the court may issue a warrant directing that such person be arrested and produced before the court.

*Power of court to order prisoner to be brought before it*

96.—(1)—Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison the court may issue an order to the officer in charge of the prison, requiring the prisoner to be brought in proper custody and at a time to be named in the order before the court.

(2) On receipt of an order under sub-section (1), the officer in charge of the prison shall act in accordance with the terms of the order, and shall provide for the safe custody of the prisoner during his or her absence from the prison in accordance with the order.

*Powers of justices of the peace*

97.—(1) The provisions contained in this Part relating to the issue, service and execution of summonses and warrants shall apply to every summons and every warrant of arrest issued under this Decree, or by a justice of the peace.

(2) Subject to the provisions of any other law, the powers of a magistrate or court in relation to the issuing of a summons or warrant may be exercised by a justice of the peace.

## PART IX—SEARCH WARRANTS

*Power to issue search warrants*

98.— (1) Where it is proved on oath to a magistrate or a justice of the peace that in fact or according to reasonable suspicion anything relevant to the commission of an offence is in any building, ship, vehicle, box, receptacle or place, the magistrate or justice of the peace may by a search warrant authorise a police officer or other person named in it to search the building, ship, carriage, box, receptacle or place named or described in the warrant.

(2) If, during the authorised search—

*(a)* anything searched for is found; or

*(b)* any other thing reasonably suspected as having been stolen or unlawfully obtained is found –

the police officer or other person authorised by the search warrant may seize it and take it to the court issuing the warrant, or some other court, to be dealt with according to law.

*Execution of search warrants*

99. Every search warrant may be issued on any day (including Sunday) and may be executed between the hours of sunrise and sunset, but the magistrate or justice of the peace may by the warrant, specifically authorise the police officer or other person to whom it is addressed to execute it at any hour.

*Persons in charge of closed place to allow access*

100.—(1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow access and free movement out of it, and afford all reasonable facilities for the search.

(2) If the access to and movement out of the building or other place cannot be obtained, the police officer or other person executing the search warrant may proceed in any lawful manner.

(3) Where any person in or about such building or place is reasonably suspected of concealing on himself or herself any article for which search should be made, the person may be searched, and the provisions of section 16 shall be observed.

*Detention of property seized*

101.—(1) When anything is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, and reasonable care shall be taken for its preservation.

(2) If any appeal is instituted, or if any person is committed for trial, the court may order property which has been detained to be further detained for the purpose of the appeal or the trial.

(3) If no appeal is instituted, or if no person is committed for trial, the court shall direct the property to be restored to the person from whom it was taken, unless the court sees fit or is authorised or required by law to otherwise dispose of it.

*Provisions applicable to search warrants*

102. The provisions of sections 86 (1) and (3) and 91 shall apply to all search warrants issued under section 98.

*Procedures for dealing with documents claimed to be privileged*

103.—(1) No claim as to privilege or confidentiality of any documents seized or to be seized under the authority of a search warrant shall be grounds for preventing such seizure or challenging the right of any person acting on the authority of the search warrant to seize the documents.

(2) Where any documents are seized under the authority of a search warrant and any person claims that the documents are subject to a lawful claim of privilege or confidentiality the person having custody of the documents in accordance with this Part shall, immediately upon becoming aware of such a claim, place the documents in a sealed bag or other receptacle and cause the documents to be delivered to the Registrar of the High Court.

(3) Any person claiming that any seized documents are subject to a lawful right of privilege or confidentiality may make an application to a Judge within 7 days of their seizure, and the Judge may inquire into the matter and—

*(a)* if satisfied that there exists a valid claim under law for the documents to be considered to be privileged or confidential - order the documents to be returned unread and in their original form to the person having such a right; or

*(b)* if satisfied that no lawful claim can be made that the documents are privileged or confidential—order that the documents be handed to the police or the Director of Public Prosecutions to be dealt with for the purposes of the investigation of the alleged offence to which they relate; or

*(c)* make any other order which the judge considers appropriate.

(4) Notice of any application made under sub-section (3) must be given to the Director of Public Prosecutions immediately after it has been filed with the High Court.

(5) If no application is made to a Judge under sub-section (3) the Registrar shall return the documents to—

*(a)* the police officer who delivered under sub-section (2); or

*(b)* the Director of Public Prosecutions, if so required by the Director.

## PART X—PROCEDURE WHERE ACCUSED PERSON HAS A DISABILITY

*Inquiry by court as to unsoundness of mind of accused*

104.—(1) When, in the course of a trial at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of—

*(a)* obtaining a medical report; and

*(b)* such other enquiries as it deems to be necessary.

(2) If the court is of opinion that the accused person is of unsound mind so that he or she is incapable of making a proper defence, it shall postpone further proceedings in the case and shall—

*(a)* act in accordance with any law dealing with mental health; or

*(b)* in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he or she will be properly taken care of and prevented from doing self injury or injury to any other person, and for his or her appearance before the court or such officer as the court appoints in that behalf.

(4) Upon consideration of the court record the President may order that the accused person may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order.

(5) Any order of the President under sub-section (4) shall be sufficient authority for the detention of such accused person until—

*(a)* the President shall make a further order in the matter; or

*(b)* the court finding him incapable of making a proper defence shall order the accused person to be brought before it again in the manner provided by sections 106 and 107.

*Defence of unsoundness of mind on trial*

105.—(1) The court shall make a special finding that an accused person is not guilty of an offence by reason of insanity if—

*(a)* any act or omission is charged against any person as an offence; and

*(b)* it is given in evidence on the trial of the person for that offence that he or she was insane so as not to be responsible for the actions at the time when the act was done or the omission was made, and

*(c)* it appears to the court that the accused person did the act or made the omission charged but was insane at the time when it was done or made.

(2) When a special finding is made under sub-section (1) the court shall report the case to the President and shall meanwhile order that the accused is—

*(a)* to be kept in custody in such place and in such manner as the court directs; and

*(b)* to be dealt with in accordance with any law dealing with mental health.

(3) The President may order the person found to be insane—

*(a)* to be confined in a mental hospital, prison or other suitable place of safe custody; and

*(b)* to be dealt with in accordance with any law dealing with mental health.

*Resumption of trial or investigation*

106.—(1) Whenever any trial is postponed the court may at any time resume the trial and require the accused person to appear or be brought before the court, and the trial shall proceed if the court considers the person to be capable of making a proper defence.

(2) If the court considers the accused person to be still incapable of making a proper defence, it shall act as if the accused were brought before it for the first time.

*Certificate of medical officer*

107. If a person is confined in a mental hospital under the provisions of this Decree and the medical officer in charge of the hospital certifies that the accused is capable of making a proper defence, the accused person shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of the medical officer shall be receivable in evidence.

*Procedure when accused does not understand proceedings*

108.—(1) In the Magistrates Court if the accused, though not insane, cannot be made to understand the proceedings the court shall proceed to hear the evidence, and—

*(a)* if at the close of the evidence for the prosecution (and if the defence has been called upon, of any evidence for the defence) the court is of opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused; or

*(b)* if the court is of opinion that the evidence which it has heard would justify a conviction it –

(i) shall order the accused to be detained in accordance with a law relating to mental health; or

(ii) in the absence of any relevant provision of such a law, the court may make any order that the court considers necessary in the circumstances.

(2) In trials before the High Court if the accused, though not insane, cannot be made to understand the proceedings the court shall proceed to hear the evidence, and—

*(a)* if at the close of the evidence for the prosecution (and if the defence has been called upon, of any evidence for the defence) the court is of opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused; or

*(b)* if the court is of opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure.

(3) A person ordered to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the President may, from time to time, by order direct, and whilst so detained shall be deemed to be in lawful custody.

(4) The President may, at any time of his or her own motion, or after receiving a report from any person or persons empowered under any applicable law, order that a person detained as provided in this section be discharged or otherwise dealt with—

*(a)* subject to such conditions as to the person remaining under supervision in any place or by any person; and

*(b)* such other conditions for ensuring the welfare of the said person and the public –

as the President shall think fit.

(5) When a person has been ordered to be detained during the President's pleasure under the provisions sub-section (1), the confirming or presiding judge shall forward to the President a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case the judge sees fit to make.

*Application of mental health laws*

109.—(1) Any power exercisable under this Part and any procedure provided for under this Part shall be exercisable in accordance with the provisions of any law dealing with mental health.

(2) A law dealing with mental health may make additional provision in relation to the powers of courts when dealing with persons found to be of unsound mind, and for the procedures to deal with such persons.

## PART XI—WITNESSES IN CRIMINAL CASES

### *Division 1—Compelling Attendance of Witnesses*

*Summons to witness*

110.—(1) If a court is satisfied that material evidence can be given by or is in the possession of any person, it shall be lawful for a court having jurisdiction in any criminal case to issue a summons to the person requiring—

*(a)* attendance of the person before the court; or

*(b)* the person to bring and produce to the court all documents and writings in his or her possession or power which are specified or otherwise sufficiently described in the summons, for the purpose of evidence in the case.

(2) A summons under sub-section (1) may be issued under the signature of a judge or magistrate, or an authorised court officer acting in accordance with an order made by a judge or magistrate.

*Warrant for witness who disobeys summons*

111.—(1) If, without sufficient excuse, a witness does not appear in obedience to a summons, the court may issue a warrant to bring the person before the court at such time and place as is specified in the warrant.

(2) Prior to issuing a warrant under sub-section (1), the court shall determine that there has been proper service of the summons a reasonable time before the date on which the witness has been required to appear.

*Warrant for witness in first instance*

112. If the court is satisfied by evidence on oath that a person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place specified in the warrant.

*Mode of dealing with witness arrested under warrant*

113.—(1) When any witness is arrested under a warrant the court may, on the furnishing of security by recognisance to the satisfaction of the court for the appearance of the person at the hearing of the case, order the person to be released from custody.

(2) If the witness fails to furnish security under sub-section (1), the court shall order the person to be detained and to be brought to the hearing.

*Power of court to order prisoner to be brought for examination*

114.—(1) In any case pending before it, a court wanting to examine as a witness any person confined in any prison may issue an order to the officer in charge of the prison requiring the prisoner to be brought in proper custody, at a time to be named in the order, before the court for examination.

(2) The officer in charge of the prison, on receipt of an order under sub-section (1), shall act in accordance with its terms, and shall provide for the safe custody of the prisoner during his or her absence from the prison.

*Penalty for non-attendance of witness*

115.—(1) Any person summoned to attend as a witness who—

*(a)* without lawful excuse, fails to attend as required by the summons; or

*(b)* having attended, departs without having obtained the permission of the court; or

*(c)* fails to attend after adjournment of the court after being ordered to attend –

shall be liable by order of the court to a fine not exceeding 10 penalty units, and to imprisonment for a term not exceeding 12 months, or both.

(2) If good cause is shown, the High Court may remit or reduce any fine imposed under this section by a Magistrates Court.

*Division 2—Examination of Witnesses*

*Power to summon material witness or examine person present*

116.—(1) At any stage of trial or other proceeding under this Decree, any court may—

*(a)* summon or call any person as a witness; or

*(b)* examine any person in attendance though not summoned as a witness; or

*(c)* recall and re-examine any person already examined –

and the court shall summon and examine, or recall and re-examine any such person if the evidence appears to the court to be essential to the just decision of the case.

(2) The prosecution or the defence shall have the right to cross-examine any person giving evidence in accordance with sub-section (1), and the court shall adjourn the case for such time (if any) as it thinks necessary to enable the cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

*Evidence to be given on oath*

117.—(1) Every witness in any criminal cause or matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation.

(2) The court may at any time, if it thinks it just and expedient, take without oath the evidence of any person—

*(a)* declaring that the taking of any oath whatsoever is according to religious belief unlawful or impermissible; or

*(b)* who by reason of immature age or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath.

(3) The court shall record the fact that evidence has been taken in accordance with sub-section (2), and the reasons for allowing the evidence to be taken without oath.

*Uncooperative witnesses*

118.—(1) Whenever any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence—

*(a)* refuses to be sworn; or

*(b)* having been sworn, refuses to answer any question put to him or her; or

*(c)* refuses or neglects to produce any document or thing which the person is required to produce; or

*(d)* refuses to sign his or her deposition -

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding 8 days, and may in the meantime commit the person to prison, unless he or she sooner consents to do what is required.

(2) If such person, upon being brought before the court at or before the adjourned hearing, again refuses to do what is required, the court may again adjourn the case and commit the person for the same period, and so again from time to time until the person consents to do what is so required.

(3) Nothing in this section shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

*Spouses may be called without the consent of the accused*

119. In any trial the spouse of the accused person shall be a competent witness for the prosecution or defence without the consent of the accused person and may be compelled to give evidence in accordance with the provisions of this Decree.

*Division 3—Commissions for the Examination of Witnesses*

*Issue of commission for examination of witness*

120.—(1) Whenever in the course of any proceeding under this Decree, a judge or magistrate is satisfied that—

*(a)* the examination of a witness is necessary for the ends of justice; and

*(b)* the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable—

the judge or magistrate may with the consent of the parties issue a commission to any magistrate, within the locality where such witness resides, to take the evidence of the witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before the court, and shall take down the evidence in the same manner, and may for this purpose may exercise the same powers as in the case of a trial.

*Parties may examine witnesses*

121.—(1) Any of the parties to any proceeding under this Decree in which a commission is issued may forward any interrogatories in writing which the judge or magistrate directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon the interrogatories.

(2) Any party may appear before such magistrate by their lawyer, or in person (if not in custody), and may examine, cross-examine and re-examine (as the case may be) the witness.

*Return of commission*

122.—(1) After any commission issued under this Division has been duly executed it shall be returned, together with the deposition of the witness examined, to the judge or to the magistrate (as the case may be), and all documents relating to the commission shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition taken under the provisions of this Division may also be received in evidence at any subsequent stage of the case before another court.

*Adjournment of trial*

123. In every case in which a commission is issued under this Division, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

*Division 4—Negative Averments*

*Negative averments*

124.—(1) Any exception, exemption, proviso, excuse or qualification—

*(a)* whether it does or does not appear in the same section as the description of the offence in the Act or Decree or Promulgation creating the offence; and

*(b)* whether or not it is specified or negatived in the charge or complaint—

is to be proved by the accused person on a balance of probabilities.

(2) No proof in relation to any relevant exception, exemption, proviso, excuse or qualification applying under any Act or Decree or Promulgation to any offence shall be required from the prosecution.

*Division 5 - Evidence for the Defence*

*Rules as to alibi*

125.—(1) On a trial before any court the accused person shall not, without the leave of the court, adduce evidence in support of an alibi unless the accused person has given notice in accordance with this section.

(2) A notice under this section shall be given—

*(a)* within 21 days of an order being made for transfer of the matter to the High Court (if such an order is made); or

*(b)* in writing to the prosecution, complainant and the court at least 21 days before the date set for the trial of the matter, in any other case.

(3) The notice given under this section, and the subsequent actions of the accused person in relation to the notice must comply with the following requirements—

*(a)* the notice must include the name and address of the witness, or, if the name or address is not known to the accused person at the time of giving notice, any information in the possession of the accused person which might be of material assistance in finding the witness;

*(b)* if the name or the address is not included in the notice, the Court must be satisfied that the offender, before giving the notice, took and then continued to take all reasonable steps to ascertain the name or address;

*(c)* if the name or the address is not included in that notice and the accused person subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, the accused person must promptly give notice of the name, address or other information, as the case may be; and

*(d)* if the accused person is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, the accused person must promptly give notice of any information which is then in the possession of the accused person or, if he or she subsequently receives any such information, the accused person must promptly give notice of it; and

*(e)* the notice must also provide a summary of the material facts that any alibi witness might be expected to give as evidence during the trial.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused person or by the lawyer of the accused person shall, unless the contrary is proved, be deemed to be given with the authority of the offender.

(6) A magistrate making an order for transfer to the High Court whether for trial or for sentence shall inform the accused person of the provisions of sub-section (1).

*Competency of accused and spouses as witnesses in criminal cases*

126.—(1) Every person charged with an offence, and the wife or husband, as the case may be, of the accused person shall be a competent witness for the defence at every stage of the proceedings, whether the accused is charged solely or jointly with any other person.

(2) A person charged shall not be called as a witness under sub-section (1) except upon his or her own application.

(3) The failure of any accused person, or of the wife or husband, as the case may be, of the accused person, to give evidence shall not be made the subject of any comment by the prosecution.

(4) Subject to the provisions of this section, the wife or husband of the accused person shall not be called as a defence witness except upon the application of the accused person.

(5) Nothing in this section shall make—

*(a)* a husband compellable to disclose any communication made to him by his wife during the marriage; or

(b) a wife compellable to disclose any communication made to her by her husband during the marriage—

but this sub-section does not operate to prevent any evidence of such communications being given by any other means.

(6) A person charged and being a witness in accordance with this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him or her as to the offence charged.

(7) A person charged and called as a witness in accordance with this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he or she has committed or been convicted of or been charged with any offence other than that with which he or she is then charged, or is of bad character, unless—

*(a)* the proof that he or she has committed or been convicted of such other offence is admissible evidence to show that he or she is guilty of the offence with which he or she is then charged; or

*(b)* he or she has personally or by his or her lawyer asked questions of the witness for the prosecution with a view to establishing his or her own good character, or has given evidence of his or her own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

*(c)* he or she has given evidence against any other person charged with the same offence.

(8) Every person called as a witness in accordance with this section shall, unless otherwise ordered by the court, give evidence from the witness box or other place from which the other witnesses have given their evidence.

(9) A person charged has no right to make an unsworn statement from the dock.

*Procedure where person charged is the only witness called*

127. Where the only witness to the facts of the case called by the defence is the person charged, he or she shall be called as a witness immediately after the close of the evidence for the prosecution.

*Right of reply*

128. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

## *Division 6—Miscellaneous Evidentiary Matters*

*No corroboration required in sexual offence cases*

129. Where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; and in any such case the judge or magistrate shall not be required to give any warning to the assessors relating to the absence of corroboration.

*No evidence of past sexual history permissible*

130.—(1) This section applies to all offences of a sexual nature for which an accused person is charged or to be sentenced for, and includes all proceedings against an accused as a principal offender or an accessory to such an offence in any capacity.

(2) In any case of a sexual nature, no evidence shall be given, and no question shall be put to a witness, relating directly or indirectly to—

*(a)* the sexual experience of the complainant with any person other than the accused; or

*(b)* the reputation of the complainant in sexual matters, except by leave of the court.

(3) A judge or magistrate shall not grant leave under sub-section (2) unless the judge or magistrate is satisfied that the evidence to be given or the question to be put is of such direct relevance to—

*(a)* facts in issue in the proceedings; or

*(b)* the issue of the appropriate sentence and—

that to exclude it would be contrary to the interests of justice.

(4) When considering any evidence or question under sub-section (3) the judge or magistrate shall not be regard the evidence or question as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.

(5) Notwithstanding sub-section (2), leave shall not be required—

*(a)* for the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question (relating directly or indirectly) to—

(i) the sexual experience of the complainant with any person other than the accused; or

(ii) the reputation of the complainant in sexual matters; or

*(b)* where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed an offence referred to in sub-section (1) against the complainant, to the giving of evidence or the putting of a question relating directly or indirectly to the sexual experience of the complainant with that other person.

(6) An application for leave under sub-section (2)—

*(a)* may be made from time to time, whether before or after the commencement of the proceeding; and

*(b)* if made in the course of a proceeding, shall be made and dealt with in chambers; and

*(c)* if the accused or the accused's counsel so requests, shall be made and dealt with in the absence of the complainant.

(7) Nothing in this section shall authorise evidence to be given or questions to be put that could not be given or put in the absence of this section.

*Division 7—Mode of Taking and Recording Evidence in Trials*

*Evidence to be taken in presence of accused*

131.—(1) Subject to any other provision of this Decree, all evidence taken in any trial under this Decree shall be taken—

*(a)* in the presence of the accused; or

*(b)* when his or her personal attendance has been dispensed with, in the presence of his or her lawyer (if any).

(2) Nothing in this section shall prevent a judge or magistrate from authorising that appropriate arrangements be made for—

*(a)* taking of evidence from a remote location; or

*(b)* the use of any other procedure or means by which evidence may be taken during, or for the purposes of the trial—

where issues of safety or the interests of justice require the use of such means.

*Manner of recording evidence before magistrates*

132.—(1) In trials before a magistrate the proceedings, including the evidence of the witnesses, are to be recorded as follows—

*(a)* if there is available the means by which the proceedings (including the evidence) can be contemporaneously recorded and reproduced in written form by a device which will provide a transcript of the proceedings as nearly contemporaneously as is possible, the proceedings are to be recorded in that manner;

*(b)* if a device as described in paragraph (a) is not available—

(i) the evidence of each witness, or so much of it as the magistrate considers material, is to be taken down in writing in English by the magistrate, or in the presence and hearing and under the personal direction and superintendence of the magistrate, and when signed by the magistrate will form part of the record;

(ii) evidence taken down by a magistrate under sub-paragraph (i) is normally to be taken down not in the form of questions and answers but in the form of a narrative, except that the magistrate may, in his or her discretion, take down or cause to be taken down any particular question and answer;

(iii) a summary of any application or submission by or on behalf of a party to the proceedings on the law, evidence and facts must be noted by the magistrate and included in the record.

(2) If a witness asks that his or her evidence be read over, the magistrate shall cause such evidence to be read over to the witness in a language which he or she understands.

*Admission of signed plan or report*

133.—(1) Any plan, report, photograph or document purporting to have been made or taken in the course of an office, appointment or profession by or under the hand of any of the persons specified in sub-section (3), may be given in evidence in any trial or other proceeding under the provisions of this Decree, unless the person shall be required to attend as a witness by—

*(a)* the court; or

*(b)* the accused person, in which case the accused person shall give notice to the prosecutor not less than 14 clear days before the trial or other proceeding.

(2) In any case in which the prosecutor intends to adduce in evidence a plan, report, photograph or document a copy of it shall be delivered to the accused not less than 21 clear days before the commencement of the trial or other proceeding.

(3) The following persons shall be the persons to whom this section shall apply—

*(a)* medical practitioners and medical officers;

*(b)* Government analysts and chemists and laboratory superintendents employed by the Government;

*(c)* registered and Government land surveyors;

*(d)* examiners of weights and measures;

*(e)* veterinary officers, livestock officers and veterinary assistants;

*(f)* the officer in charge of the Criminal Records Office;

*(g)* engineers holding a degree in any relevant engineering discipline;

*(h)* authorised examiners appointed under the provisions of the Land Transport Act;

*(i)* dental practitioners and dental officers;

*(j)* survey technical assistants employed by the Government;

*(k)* police photographers; and

*(l)* scientists holding a degree in science relevant to botany, chemistry, micro-biology or any other scientific discipline relevant to forensics.

(4) The court may presume that the signature to any plan, report or document is genuine and that the person signing it held the qualification, appointment or office which he or she professed to hold at the time when the plan, report or document was signed.

(5) The contents of any report which the prosecution intends to give as evidence under this section and about which notice has been given under sub-section (2), may be referred to and commented upon by any other expert called as a witness in any criminal trial.

*Statements in criminal proceedings*

134.—(1) In any criminal proceedings, a written statement by any person shall, if such of the conditions mentioned in sub-section (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions referred to in sub-section (1) shall be that—

*(a)* the statement purports to be signed by the person who made it;

*(b)* the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that, if it were tendered in evidence, he or she would be liable to prosecution for any statement in it which he or she knew to be false or did not believe to be true;

*(c)* at least 28 clear days before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;

*(d)* none of the other parties or their lawyers within 14 days from the service of the copy of the statement serves a notice on the party so proposing, objecting to the statement being tendered in evidence under this section.

(3) The conditions stated in sub-section (2) *(c)* and *(d)* shall not apply if the parties agree before or during the hearing that the statement shall be tendered.

(4) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

*(a)* if the statement is made by a person under the age of 21 years, it shall state the age of the person;

*(b)* if it is made by a person who cannot read it, it shall be read to the person before signature in a language he or she understands and shall be accompanied by a declaration by the person who read the statement to the effect that it was so read; and

*(c)* if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under sub-section (2)*(c)* shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy of it.

(5) Notwithstanding that a written statement made by any person may be admissible as evidence under this section—

*(a)* the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

*(b)* the court may of its own motion, and shall on the application of any party to the proceedings, require that person to attend before the court and give evidence or to submit to cross-examination.

(6) So much of any statement as is admitted in evidence under this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(8) A document required by this section to be served on any person may be served—

*(a)* by delivering it to the person or to his or her lawyer; or

*(b)* by addressing it to the person and leaving it at his or her usual or last known place of abode or place of business or by addressing it to his or her lawyer and leaving it at his or her office; or

*(c)* by sending it by registered post to the person at his or her last known place of residence or place of business, or addressed to the person's lawyer at his or her office; or

*(d)* in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by registered post addressed to the secretary or clerk of that body at that office.

(9) The provisions of this section are subject to any provisions of any law dealing with the giving and admissibility of evidence in criminal cases, and shall be read and applied subject to the provisions of such a law.

*Admission of facts*

135.—(1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—

*(a)* by the prosecutor; and

*(b)* by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.

*False evidence*

136. If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 134 wilfully makes a statement material in those proceedings which the person knows to be false or does not believe to be true, he or she shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine of 20 penalty units, or both such imprisonment and fine.

*Language of the court*

137. Subject to section 138 the language of the court in all courts shall be English.

*Translation of evidence to accused*

138.—(1) Whenever any evidence is given in a language not understood by the accused person, and he or she is present in court, it shall be translated to the accused person in open court in a language which he or she understands.

(2) Every person charged with an offence and every witness in criminal proceedings has the right to give evidence and to be questioned in a language that he or she understands.

(3) Courts shall endeavour to make appropriate use of sign language for persons who are deaf.

(4) When documents are received for the purpose of formal proof it shall be in the discretion of the court to interpret any or as much of the documents as appears to the court to be necessary.

*Conviction or commitment on evidence partly recorded by one magistrate and partly by another*

139.—(1) Subject to sub-sections (1) and (2), whenever any magistrate, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction in the case and is succeeded (whether by virtue of an order of transfer under the provisions of this Decree or otherwise), by another magistrate, the second magistrate may act on the evidence recorded by his or her predecessor, or partly recorded by the predecessor and partly by second magistrate, or the second magistrate may re-summon the witnesses and recommence the proceeding or trial.

(2) In any such trial the accused person may, when the second magistrate commences the proceedings, demand that the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the second magistrate when he or she commences the proceedings.

(3) The High Court may, on appeal, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced, and may order a new trial.

*Record of evidence in the High Court*

140. The Chief Justice may from time to time prescribe Rules relating to the manner in which evidence shall be taken down in cases before the High Court, and the judges of the High Court shall take down the evidence or the substance of it in accordance with the Rules.

## PART XII—DECISIONS IN CRIMINAL CASES

### *Division 1—Court Judgments*

*Mode of delivering judgment*

141.—(1) The judgment in every trial in any criminal case shall be pronounced (or the substance of such judgment shall be explained) in open court either immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties and their lawyers (if any).

(2) The whole judgment shall be read out by the presiding judge or magistrate if requested by the prosecution or the defence.

(3) The accused person shall, if in custody, be brought before the court, or, if not in custody, be required by the court to attend to hear judgment delivered, except—

*(a)* where the court has proceeded to the determination of the case in the absence of the accused under section 167; or

*(b)* where personal attendance of the accused person during the trial has been dispensed with; or

*(c)* the sentence is one of fine only; or

*(d)* the decision is to acquit the accused person.

(4) No judgment delivered by any court shall be deemed to be invalid by reason only of—

*(a)* the absence of any party or his or her lawyer; or

*(b)* any omission to serve notice; or

*(c)* any defect in serving the notice on the parties or their lawyers, or any of them.

*Contents of judgment*

142.—(1) Subject to sub-section (2), every such judgment shall, except as otherwise expressly provided by this Decree, be written by the judge or magistrate in English, and shall contain—

*(a)* the point or points for determination;

*(b)* the decision and the reasons for the decision; and

*(c)* shall be dated and signed by the judge or magistrate in open court at the time of pronouncing it.

(2) Where the accused person has admitted the truth of the charge and has been convicted, it shall be a sufficient compliance with the provisions of this section if the judgment contains only the finding and sentence or other final order and it is signed and dated by the judge or magistrate at the time of pronouncing it.

(3) In the case of a conviction the judgment shall specify the offence and the section of the Crimes Decree 2009 or other law under which the accused person is convicted, and the punishment to which he or she is sentenced.

(4) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he or she be set at liberty.

*Judgment in trials before the High Court*

143. In the case of trials before the High Court, the provisions of sections 141 and 142 shall be subject to the provisions of section 202.

*Copy of judgment to be given to accused on application*

144.—(1) On the application of the accused person a copy of the judgment shall be provided as soon as practicable.

(2) Copies of judgments shall be provided free of cost.

## *Division 2 - Previous Conviction or Acquittal*

*Persons convicted or acquitted not to be tried again for same offence*

145.—(1) A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of the offence shall not be liable, while such conviction or acquittal has not been reversed or set aside, to be tried again on the same facts for the same offence.

(2) Sub-section (1) does not preclude a court from proceeding with a case against a member of the Fiji Military Force, the Fiji Police Force or the Fiji Prisons Service for a criminal offence despite his or her trial and conviction or acquittal under a disciplinary law; and in when a court passes sentence in such a case it may take into account any punishment awarded against the member under the disciplinary law.

*Person may be tried again for separate offence*

146. A person convicted or acquitted of an offence may afterwards be tried for any other offence with which he or she might have been charged on the former trial.

*Consequences supervening or not known at time of former trial*

147. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which the person was convicted or acquitted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when the person was acquitted or convicted.

*Where original court was not competent to try subsequent charge*

148. Subject to any provision of any law creating any offence, a person convicted or acquitted of any offence constituted by any acts may, notwithstanding the conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he or she may have committed, if the court by which the person was first tried was not competent to try the offence with which he or she is subsequently charged.

*Proving previous convictions*

149.—(1) In any trial or other proceeding under this Decree, a previous conviction may be proved,—

*(a)* by an extract certified, under the hand of the officer having the custody of the records of the court in which the conviction was had, to be a copy of the sentence or order; or

*(b)* by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered—

together with, in each of these cases, evidence as to the identity of the accused person with the person so convicted.

(2) The mode of proving a conviction as prescribed by sub-section (1) is in addition to any other mode prescribed under this Decree, or provided by any law.

(3) A certificate in the form prescribed by the Minister given under the hand of an officer appointed by the Minister in that behalf, who shall have compared the fingerprints of an accused person with the fingerprints of a person previously convicted, shall be prima face evidence of all facts stated in the certificate, provided that it is produced by the person who took the fingerprints of the accused.

(4) A previous conviction in any place outside Fiji may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the fingerprints, or photographs of the fingerprints of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

(5) A certificate given in accordance with sub-section (3) shall be prima face evidence of all facts stated in the certificate without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

*Division 3—Costs and Compensation*

*Costs against accused or the prosecutor*

150.—(1) A judge or magistrate may order any person convicted of an offence or discharged without conviction in accordance with law, to pay to a public or private prosecutor such reasonable costs as the judge or magistrate determines, in addition to any other penalty imposed.

(2) A judge or magistrate who acquits or discharges a person accused of an offence, may order the prosecutor, whether public or private, to pay to the accused such reasonable costs as the judge or magistrate determines

(3) An order shall not be made under sub-section (2) unless the judge or magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the matter.

(4) A judge or magistrate may make any other order as to costs as may be required in the circumstances to—

*(a)* defray the costs incurred by any party as a result of an adjournment sought by another party;

*(b)* recompense any party for any costs arising from any conduct by any other party which delays a trial or requires the expenditure of monies as a result of the conduct of that party during a trial;

*(c)* penalise a lawyer for any improper action during a trial, and in such a case the order may be that the lawyer pay the costs personally; and

*(d)* otherwise meet the interests of justice in any case.

(5) The costs awarded under this section may be awarded in addition to any compensation awarded by the court under this Decree or the Sentencing and Penalties Decree 2009.

(6) Payment of costs by the accused shall be enforceable in the same manner as a fine.

(7) In this section "private prosecutor" means any prosecutor other than a "public prosecutor.

*Appeal against order to pay costs*

151.—(1) An appeal shall lie to the High Court from any order awarding costs made by a magistrate.

(2) The appellate court shall have power to give such costs of the appeal as it determines.

*Compensation*

152. If on the dismissal of any case any court is of opinion that the charge was frivolous or vexatious, the court may order the complainant to pay to the accused person a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of the charge, in addition to the accused person's costs.

*Power of courts to award expenses or compensation out of fine, etc.*

153.—(1) Any court may order the whole or any part of any fine imposed or money found on or in the possession of a convicted person to be applied towards—

*(a)* the defraying of the costs or expenses properly incurred in the prosecution;

*(b)* the payment to any person of compensation for any loss or injury caused by the offence pursuant to an order made under the Sentencing and Penalties Decree 2009; or

*(c)* the payment to any person for any loss sustained as a consequence of any order made under the provisions of this Part for the restitution or disposal of any property or thing.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal is filed, before the decision of the appeal.

## *Division 4—Reconciliation*

*Promotion of reconciliation*

154.—(1) In the case of any charge for an offence of common assault or assault occasioning actual bodily harm or criminal trespass or damaging property the court may, in such cases which are—

*(a)* substantially of a personal or private nature; and

*(b)* not aggravated in degree—

promote reconciliation and encourage the settlement of the proceedings in an amicable way, on terms of payment of compensation or on other term approved by the court, which may involve—

(i) the giving of an apology in any appropriate manner;

(ii) the giving of a promise or undertaking not to re-offend, or to respect the rights and interests of any victim;

(iii) mandatory attendance at any counselling or other program aimed at rehabilitation; or

(iv) a promise or undertaking to alter any habits or conduct, such as the consumption of alcohol or the use of drugs.

(2) A court shall only proceed in accordance with sub-section (1) if it is satisfied that it is in the interests of any victim of crime to proceed in such a manner, and the court shall ensure that the victim of the violence does not submit to any proceedings being undertaken in accordance with this section by reason of pressure being exerted in any form.

(3) Upon proceeding in accordance with this section the court may then—

*(a)* order the proceedings to be stayed for a specified period of time upon the offender entering into any bond to comply with the terms imposed by the court under sub-section (1); or

*(b)* dismiss the proceedings.

(4) A proper record of every aspect of the outcome of the proceedings is to be made on the court files and in the records of an accused person whose case has been dealt with in accordance with the procedures specified in this section.

(5) The procedures under this section may be applied in connection with any procedure of the court which permits the involvement of traditional and community leaders in the determination of appropriate sentences.

(6) This section does not apply to offences of domestic violence, as defined by the Domestic Violence Decree 2009.

(7) Regulations made under this Decree may make provision in relation any aspect of procedures aimed at promoting reconciliation in accordance with this section, and may prescribe guidelines to be applied by the courts in such proceedings.

*Division 5—Dealing with Property*

*Preservation or disposal of property*

155.—(1) It shall be lawful for any court in any criminal proceedings to make orders for—

*(a)* the preservation or interim custody or detention of any property or thing produced in evidence or as to which questions may arise in the proceedings;

*(b)* the sale, destruction or other disposal of any such property or thing which may be of a perishable nature or liable to deteriorate, or which may be dangerous;

*(c)* the restoration or awarding of possession of any such property or thing to the person appearing to the court to be entitled to possession of it, without prejudice to any civil proceedings which may be taken in relation to it;

*(d)* the payment by any person of the expense incurred in the preservation, custody, detention, sale, destruction or other disposal of any such property or thing, or the proceeds of it;

*(e)* the application of any such property or thing, or the proceeds of it, towards satisfaction or payment of any costs or compensation which are ordered by the court to be paid by any person, or to the police or any other emergency service as compensation for the services that they have been called upon to perform as a result of the commission of the offence.

(2) Any order made under the provisions of sub-section (1)(d) may be enforced as if the order were the imposition of a fine.

(3) When an order is made under the provisions of this section in a case in which an appeal lies, the order shall not, except when the property is livestock or is liable to deterioration or decay, be carried out until the period allowed for presenting the appeal has passed or, when the appeal is presented within such period, until the appeal has been determined.

*Property stolen*

156.—(1) If any person guilty of any offence involving stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is convicted, the property shall be restored to the owner or his representative.

(2) The court before whom an offender is convicted shall have power to award from time to time writs of restitution for the said property or to order the restitution of it in a summary manner , but—

*(a)* where goods as defined in the Sale of Goods Act have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of the goods, or his or her personal representative, by reason only of the conviction of the offender; and

*(b)* nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment of it, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that it has been stolen.

(3) The operation of any order under this section shall (unless the court before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute) be suspended—

*(a)* in any case until the time for appeal has elapsed; and

*(b)* in a case where an appeal is lodged - until the determination of the appeal—

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(4) The Chief Justice may make provision by Rules for securing the safe custody of any property pending the suspension of the operation of any such order.

(5) Any person aggrieved by an order made under this section may appeal to the High Court, and upon the hearing of such appeal the court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order—

*(a)* if annulled, shall not take effect; and

*(b)* if varied, shall take effect as so varied.

*Stay of order*

157. Upon the application of any person affected by any order or interested in the property the subject of any order made under the provisions of sections 155 and 156, the High Court may direct any such order made by a subordinate court to be stayed pending consideration by the High Court, and may modify, alter or annul such order.

*Restoration of possession of real property*

158.—(1) Whenever a person is convicted of an offence involving criminal force, threat or intimidation, and it appears to the court that by such force, threat or intimidation any person has been dispossessed of any real property, the court may order possession of such property to be restored to the person so dispossessed.

(2) Any order under sub-section (1) may be enforced by warrant.

(3) No order under this section shall prejudice any right to or interest in the real property which any person may be able to establish in civil proceedings.

*Procedure by police on seizure of property*

159.—(1) A report of any property or thing which has come into the possession of any police officer in connection with any charge or offence (or suspected offence), or otherwise in the course or performance of his duty, the ownership of which property or thing is in doubt, shall be made as soon as practicable to a Magistrates Court which shall make such order as it thinks fit—

*(a)* respecting the delivery of the property to the person entitled to the possession of it; or

*(b)* if the person cannot be ascertained, relating to the custody and production of the property.

(2) If the identity of the person entitled to the property is known, the court may order the property to be delivered to that person on such conditions, if any, as the court thinks fit.

(3) The court shall, on making an order under the provisions of sub-section (2), cause a notice to be served on the person—

*(a)* informing him or her of the terms of the order; and

*(b)* requiring him or her to take delivery of the property within such period from the date of the service of the notice (not being less than 48 hours) as the court prescribes in the notice.

(4) Subject to sub-section (5), if such person is unknown or cannot be found, the court may direct that the property be detained in police custody and the Commissioner of Police shall, in such case, publish a notice in the *Gazette* specifying the articles of which the property consists and requiring any person who has a claim to it to appear and establish a claim within 6 months from the date of the notice.

(5) Where it is shown to the satisfaction of the court that the property is—

*(a)* of no appreciable value; or

*(b)* that its value is so small—

(i) as to render impracticable the sale of the property under sub-section (6); or

(ii) as to make its detention in police custody unreasonable in view of the expense or inconvenience that would be involved –

the court may order the property to be destroyed or otherwise disposed of, either on the expiration of the period after the publication of the notice as it may determine, or immediately, as it thinks fit.

(6) If, within 6 months from the publication of a notice under sub-section (5), no person has established a claim to the property and the person in whose possession the property was found is unable to show that it was legally acquired, the property may be sold on the order of the Commissioner of Police.

(7) If, within 3 months from the publication of a notice under sub-section (3), no person has taken delivery of the property, the ownership in the property or the net proceeds from its sale, shall be vested in the State.

(8) Where any property detained in police custody on the direction of a court made under sub-section (5)—

*(a)* is subject to deterioration or decay; or

*(b)* in the opinion of the Commissioner of Police, is of less value than $100; or

*(c)* where its custody involves unreasonable expense or inconvenience—

the property may be sold at any time, and the provisions of this section shall, as nearly as may be practicable, apply to the net proceeds from the sale.

(9) If the person entitled to the possession of the property is absent from Fiji and—

*(a)* the property is subject to deterioration or decay; or

*(b)* the court to which its seizure is reported is of opinion that its sale would be for the benefit of the owner; or

*(c)* the value of such property is less than $100—

the court may at any time direct it to be sold, and the provisions of sub-section (7) shall apply to the net proceeds from the sale.

(10) If the person to whom property has been ordered to be delivered under the provisions of sub-section (2) neglects or omits to take delivery of the property within the period prescribed, the court may—

*(a)* where such property is subject to deterioration or decay; or

*(b)* where, in the opinion of the court, its value is less than $100—

direct that the property be sold and the net proceeds from the sale shall, on demand, be paid over to the person entitled.

### *Division 6—Convictions for Offences other than those Charged*

*Conviction of minor offences included in offence charged*

160.—(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, the person may be convicted of the minor offence although he or she was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, the person may be convicted of the minor offence although he or she was not charged with it.

*Conviction of attempt*

161. When a person is charged with an offence, the person may be convicted of having attempted to commit that offence, although he or she was not charged with the attempt.

*Conviction for lesser or alternative offences*

162.—(1) Where a person is charged with an offence but the court is satisfied that the evidence adduced in the trial supports a conviction only for a lesser or alternative offence, the court may record a conviction made after due process for—

*(a)* the lesser offence of infanticide where the charge has been for murder of a child under the age of 12 months;

*(b)* the lesser or alternative offence of killing an unborn child where the charge has been for murder, manslaughter, infanticide or for unlawful abortion in relation to the unborn child;

*(c)* the alternative offence of unlawful abortion where the charge has been killing an unborn child;

*(d)* the lesser offence of concealment of birth where the charge has been for murder, infanticide or with killing an unborn child;

*(e)* the lesser offence of careless or dangerous driving where the charge has been for manslaughter;

*(f)* any sexual offence where the charge has been for rape;

*(g)* the alternative offence of carnal knowledge where the charge has been for incest;

*(h)* any other applicable sexual offence where the charge has been for defilement of a girl under 16 years, by however such an offence may be termed;

(i) any other applicable property related offence where the charge has been burglary or any other property related offence, including -;

(i) the alternative offence of receiving where the charge has been for theft;

(ii) the alternative offence of embezzlement where the charge has been for theft;

(iii) the alternative offence of theft where the charge has been for embezzlement;

(iv) an alternative offence of obtaining by false pretences (however such an offence may be termed)where the charge has been for theft;

(v) an alternative offence of theft where the charge has been for an offence of obtaining by false pretences (however such an offence may be termed);

(vi) an alternative offence of assault with intent to rob where the charge has been for robbery.

(2) The court may record convictions for certain offences in accordance with sub-section (1) notwithstanding that no charge has been laid for the lesser or alternative offence in accordance with the provisions of this Decree.

*Interpretation of this Division*

163.—(1) The provisions of this Division shall be construed as in addition to and not in derogation of the provisions of any other Act Decree or Promulgation and the other provisions of this Decree.

(2) Section 162 shall be construed as being without prejudice to the generality of the provisions of sections 160 and 161.

*Division 7 - Miscellaneous Provisions*

*Persons charged with jointly receiving property*

164. When any two or more persons are charged with jointly receiving any property knowing the same to have been stolen, and it is proved that one or more of those persons separately received any part of the property, either or both of the persons may be convicted if it is proved any of them have received any part of the property.

*Right of accused to be defended*

165. Any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Decree in any court, may of right be defended by a lawyer.

## PART XIII—PROCEDURE IN TRIALS BEFORE MAGISTRATES COURTS

### *Division 1—Provisions Relating to the Hearing and Determination of Cases*

*Non-appearance of complainant at hearing*

166.—(1) This section applies to any case in a Magistrates Court, where—

*(a)* the accused person—

(i) appears in obedience to the summons at the time and place appointed in the summons for the hearing of the case; or

(ii) is brought before the court under arrest; and

*(b)* the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear—

(i) in person; or

(ii) by his or her lawyer.

(2) In the circumstances stated in sub-section (1), the court shall —

*(a)* dismiss the charge; or

*(b)* adjourn the hearing of the case until some other date, upon such terms as it determines if there are reasons for not dismissing the case; and

*(c)* upon any adjournment the court shall—

(i) admit the accused to bail; or

(ii) remand the accused to prison; or

(iii) take such security for his or her appearance as the court determines.

(3) The expression "lawyer" in this section and in this Part shall in relation to a complaint include any prosecutor.

*Court may proceed with hearing in absence of accused in certain cases*

167.—(1) This section applies to any case in which an accused person is charged with any offence punishable with imprisonment for a term not exceeding 12 months and/or a fine not exceeding 10 penalty units, and where the accused person—

*(a)* does not appear at the time and place—

(i) appointed by the summons; or

(ii) by any bond for his appearance that he or she may have entered into; and

*(b)* personal attendance has not been dispensed with under section 83.

(2) Notwithstanding section 165, where the matters specified in sub-section (1) apply in any case, the court may—

*(a)* proceed to hear and determine the case in the absence of the accused; or

*(b)* adjourn the case and issue a warrant for the arrest of the accused in accordance with the provisions of section 84.

(3) A court shall only proceed in accordance sub-section (2) upon production of the bond entered into by the accused, or upon—

*(a)* it being proved that there has been proper service of the summons a reasonable time before the date fixed for the case, or on production of the relevant bond; and

*(b)* the court being satisfied that the accused was informed verbally or by the documents served upon the accused, that the case might be proceeded with if the accused did not attend the court as notified.

*Appearance of both parties*

168. The court shall proceed to hear the case if at the time appointed for its hearing—

*(a)* both the complainant by (in person or by a lawyer), and the accused person appear before the court; or

*(b)* if the complainant appears before the court and the personal attendance of the accused person has been dispensed with under section 83.

*Withdrawal of complaint*

169.—(1) The prosecutor, may with the consent of the court, withdraw a complaint at any time before a final order is made.

(2) On any withdrawal under sub-section (1)—

*(a)* where the withdrawal is made after the accused person is called upon to make his or her defence, the court shall acquit the accused;

*(b)* where the withdrawal is made before the accused person is called upon to make his or her defence, the court shall subject make one of the following orders—

(i) an order acquitting the accused;

(ii) an order discharging the accused; or

(iii) any other order permitted under this Decree which the court considers appropriate.

(3) An order discharging the accused under sub-section (2)*(b)*(ii) shall not operate as a bar to subsequent proceedings against the accused person on the basis of the same facts.

*Adjournment*

170.—(1) During the hearing of any case, the magistrate must not normally allow any adjournment other than from day to day consecutively until the trial has reached its conclusion, unless there is good cause, which is to be stated in the record.

(2) For the purpose of sub-section (1) "good cause" includes the reasonably excusable absence of a party or witness or of a party's lawyer.

(3) An adjournment under sub-section (1) must be to a time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective lawyers then present.

(4) During the adjournment of a case under sub-section (1), the magistrate may—

*(a)* permit the accused person to leave the court until the further hearing of the case; or

*(b)* commit the accused to prison; or

*(c)* release the accused upon his or her entering into a bond (with or without sureties at the discretion of the magistrate) conditioned for his or her appearance at the time and place to which the hearing or further hearing is adjourned.

(5) If the accused person has been committed to prison during an adjournment the adjournment may not be for more than 48 hours.

(6) If a case is adjourned, the magistrate may not dismiss it for want of prosecution and must allow the prosecution to call its evidence or to offer no evidence on the day fixed for the adjourned hearing, before adjudicating on the case.

(7) A case must not be adjourned to a date later than 12 months after the summons was served on the accused unless the magistrate (for good cause which is to be stated in the record) considers such an adjournment to be required in the interests of justice.

*Non-appearance of parties after adjournment*

171.—(1) If at the time or place to which the hearing or further hearing is adjourned—

*(a)* the accused person does not appear before the court which has made the order of adjournment, the court may (unless the accused person is charged with an indictable offence) proceed with the hearing or further hearing as if the accused were present; and

*(b)* if the complainant does not appear the court may dismiss the charge with or without costs.

(2) If the accused person who has not appeared is charged with an indictable offence, or if the court refrains from convicting the accused person in his or her absence, the court shall issue a warrant for the apprehension of the accused person and cause him or her to be brought before the court.

*Conviction in absence of accused may be set aside*

172. If the court convicts the accused person in his or her absence, it may set aside the conviction upon being satisfied that the absence was from causes over which he or she had no control, and that there is an arguable defence on the merits.

*Commencement of sentence passed in absence of accused*

173. Any sentence passed under sections 167 or 171 shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall endorse the date of apprehension on the back of the warrant of commitment.

*Accused to be called upon to plead*

174.—(1) The substance of the charge or complaint shall be stated to the accused person by the court, and the accused shall be asked whether he or she admits or denies the truth of the charge.

(2) If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by the accused, and the court shall convict the accused and proceed to sentence in accordance with the Sentencing and Penalties Decree 2009.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as provided in this Decree.

(4) If the accused person refuses to plead, the court shall order a plea of not guilty to be entered.

(5) When a corporation is charged with any offence before a Magistrates Court, the corporation may enter in writing by its representative a plea of guilty or not guilty; and if—

*(a)* the corporation does not appear by its representative; or

*(b)* though it does appear it fails to enter any plea—

the court shall cause a plea of not guilty to be entered.

(6) Where a charge against a corporation is one which may, with the consent of the accused, be tried by a Magistrates Court, and the corporation—

*(a)* does not appear by its representative; or

*(b)* if it does appear, consents that the offence should be so dealt with—

the Magistrates Court may proceed to try such charge summarily in accordance with the provisions of this Decree.

(7) For the purposes of this section a "representative" need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by—

*(a)* a managing director of the corporation; or

*(b)* any person (by whatsoever name called) having or being one of the persons having, the management of the affairs of the corporation—

to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as prima face evidence that that person has been so appointed.

*Procedure in case of previous convictions*

175. Where a charge contains a count charging an accused person with having been previously convicted of any offence the procedure shall be the same as the procedure prescribed for the High Court by section 216, with such alterations as may be necessary to make the procedure applicable to the mode of trial in a Magistrates Court.

*Plea of guilty to other offence*

176. Where a person is charged with any offence and can lawfully be convicted on the charge of some other offence not included in the charge, he or she may plead not guilty of the offence charged, but guilty of the other offence.

*Procedure on plea of not guilty*

177.—(1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution, and other evidence (if any).

(2) The accused person (or his or her lawyer) may put questions to each witness produced against the accused.

(3) If the accused person does not engage a lawyer, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he or she wishes to put any questions to that witness, and magistrate shall record the answer.

*Acquittal of accused person where no case to answer*

178. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.

*The defence*

179.—(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require the making of a defence, the court shall—

*(a)* again explain the substance of the charge to the accused; and

*(b)* inform the accused of the right to—

(i) give evidence on oath from the witness box, and that, if evidence is given, the accused will be liable to cross-examination; or

(ii) make a statement to the court that is not on oath; and

*(c)* ask the accused whether he or she has any witnesses to examine or other evidence to adduce in his or her defence; and

*(d)* the court shall then hear the accused and his witnesses, and other evidence (if any).

(2) If the accused person states that he or she has witnesses to call but that they are not present in court, and the court is satisfied that—

*(a)* the absence of the witnesses is not due to any fault or neglect of the accused person; and

*(b)* there is a likelihood that they could, if present, give material evidence on behalf of the accused person—

the court may adjourn the trial and issue process, or take other steps in accordance with this Decree to compel the attendance of the witnesses.

*Evidence in reply*

180. If the accused person adduces evidence introducing new matters which the prosecutor could not have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut those matters.

*Opening and closing of case for prosecution and defence*

181.—(1) The prosecutor shall be entitled to address the court at the commencement of the prosecution case, and the accused person or his or her lawyer shall be entitled to address the court at the commencement of the case for the defence.

(2) If the accused person (whether or not he or she gives evidence) does not call any other witness to give evidence, the prosecutor shall, after all the evidence has been given, have the right to address the court first and the accused person may then, either personally or by his or her lawyer, make the final address to the court, whether or not the prosecutor has exercised his right to address the court.

(3) If the accused person calls any witness other than himself or herself, the accused person shall, either personally or by his or her lawyer, after all the evidence has been given, have the right to address the court first and the prosecutor may then make the final address to the court, whether or not the right to address the court has been exercised by or on behalf of the accused person.

*Variance between charge and evidence and amendment of charge*

182.—(1) Where, at any stage of the trial before the close of the case for the prosecution, it appears to the court that the charge is defective (either in substance or in form), the court may make such order for the alteration of the charge, either by —

*(a)* amendment of the charge; or

*(b)* by the substitution or addition of a new charge—

as the court thinks necessary to meet the circumstances of the case

(2) Where a charge is altered under sub-section (1)—

*(a)* the court shall call upon the accused person to plead to the altered charge; and

*(b)* the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his lawyer and, in such last-mentioned event, the prosecution shall have the right to re-examine any witness on matters arising out of the further cross-examination.

(3) Variance between the charge and the evidence produced in support of it with respect to—

*(a)* the date or time at which the alleged offence was committed; or

*(b)* the description, value or ownership of any property or thing the subject of the charge—

is not material and the charge need not be amended for such variation—

(4) Where the variation is with respect to the date or time at which the alleged offence was committed the court shall determine that the proceedings have in fact been instituted within the time (if any) limited by law for their institution, and shall make any appropriate order to enforce the applicable time limits.

(5) Where an alteration of a charge is made under sub-section (1) or there is a variance between the charge and the evidence as described in sub-section (3), the court shall, if it is of the opinion that the accused has been misled or deceived, adjourn the trial for such period as may be reasonably necessary.

*The decision*

183. The court having heard both the prosecutor and the accused person and their witnesses and evidence, shall either—

*(a)* find the accused guilty and pass sentence or make an order according to law; or

*(b)* acquit the accused; or

*(c)* make an order under the provisions of Part IX of the Sentencing and Penalties Decree 2009.

*Consideration of other offences admitted by accused*

184.—(1) Upon a person being convicted of any offence, the court may, with the consent of the accused and the prosecutor, take into consideration in deciding the sentence to be imposed, any other untried offence of a like character which the accused admits in writing to have committed.

(2) Where it is proposed to proceed under the provisions of sub-section (1), particulars of untried offences, within the jurisdiction of the court, shall be set out in writing and tendered to the court.

(3) The court may then sentence the accused person taking into consideration any admitted offences, and –

*(a)* the accused person shall not be tried in respect of them; and

*(b)* the admissions shall be an absolute bar to any criminal proceedings in respect of them.

*Drawing up of conviction or order*

185. The conviction or order shall, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the clerk or other authorised officer of the court.

*Order of acquittal bar to further procedure*

186. The production of a copy of the order of acquittal, certified by the clerk or other authorised officer of the court, shall without other proof, be a bar to any subsequent information or complaint for the same matter against the same accused person.

*Division 2—Limitations and Exceptions Relating to Trials Before Magistrates Courts*

*Limitation of time for summary trials in certain cases*

187.—(1) This section applies to all offences the maximum punishment for which does not exceed imprisonment for 12 months or a fine of 10 penalty units unless a longer time is allowed by any law for the laying of any charge for an offence under that law.

(2) No offence shall be triable by a Magistrates Court, unless the charge or complaint relating to it is laid within 12 months from the time when the matter of the charge or complaint arose.

(3) The court shall order the dismissal of any proceedings which are in breach of this section.

*Power to stop summary trial and transfer to High Court*

188.—(1) If before or during the course of a trial before a Magistrates Court it appears to the magistrate that the case is one which ought to be tried by the High Court the magistrate may transfer the case to the High Court under Division 3 of this Part.

(2) Before the calling of evidence at trial, an application may be made by a public prosecutor or police prosecutor that the case is one which should be tried by the High Court, and upon such an application the magistrate shall—

*(a)* hear and consider the reasons for the application;

*(b)* hear and consider any submissions made on behalf of the accused person as to the most appropriate court to hear and determine the charges; and

*(c)* otherwise determine matters relevant to the grounds for the application –

and may continue to hear the case (unless the charges are of a nature that may be tried only by the High Court) or transfer the case to the High Court under Division 3 of this Part.

*Special procedure in minor cases*

189.—(1) Notwithstanding any of the other provisions of this Decree, a magistrate may—

*(a)* try any offence of which the maximum penalty does not exceed a fine of 1 penalty unit or imprisonment for 6 months, or both such fine and imprisonment;

*(b)* try any offence under the provisions of the Land Transport Act, in which the endorsement of, or disqualification from holding a driving licence may be ordered, either with or without a fine not exceeding 2 penalty units or imprisonment not exceeding 6 months, or both such fine and imprisonment;

*(c)* hear any proceedings under the provisions of the Public Order Act dealing with the keeping of the peace;

*(d)* try any offence of common assault;

*(e)* try any offence which involves the theft of or damage to property of a value being less than $100;

*(f)* try any offence under the provisions of the Minor Offences Act;

*(g)* try any other offence which may be prescribed for the purposes of this section by Regulations made under this Decree—

in the manner provided in this section.

(2) No person may be tried under sub-section (1) if in the opinion of the court the person is under the age of eighteen years.

(3) Upon the trial or hearing of any offence or proceedings to which the provisions of this section apply, the provisions of this Decree shall be modified as provided by this section.

(4) It shall be sufficient for the purposes of section 132 relating to the manner of recording evidence if the magistrate records the names of the witnesses and such notes, if any, on the evidence as the magistrate considers desirable.

(5) Where the accused makes a statement admitting the truth of the charge, the magistrate may, instead of recording the accused's statement in full, enter in the record a plea of guilty.

(6) It shall be sufficient compliance with the provisions of section 142 relating to the contents of the judgment if the magistrate's judgment consists only of the finding and sentence or other final order, but that the magistrate may be required by a judge of the High Court to state in writing the reasons for the decision.

(7) The magistrate shall if requested by the accused or his or her lawyer or by the prosecutor record a sufficient note of any question of law and of any relevant evidence relating to the question of law, which may arise during the trial or hearing of any offence or proceedings under the provisions of this section.

(8) The maximum penalty which may be imposed on the trial of an offence under the provisions of this section shall be a fine of 1 penalty unit or 3 month's imprisonment, or both such fine and imprisonment.

(9) A magistrate trying any offence under the provisions of this section shall have power to—

*(a)* order the endorsement of a driving licence; or

*(b)* make an order relating to the keeping of the peace under the Public Order Act, or any other relevant law—

in any case where such an order could have been made if the case had been heard otherwise than under the provisions of this section.

*Transfer to High Court for sentence*

190.—(1) Where –

*(a)* a person over the age of 18 years is convicted by a magistrate for an offence; and

*(b)* the magistrate is of the opinion (whether by reason of the nature of the offence, the circumstances surrounding its commission or the previous history of the accused person) that the circumstances of the case are such that greater punishment should be imposed in respect of the offence than the magistrate has power to impose—

the magistrate may, by order, transfer the person to the High Court for sentencing.

(2) If the person is transferred under sub-section (1) to the High Court, a copy of the order for transfer and of the charge in respect of which the person was convicted shall be sent to the Chief Registrar of the High Court.

(3) The High Court shall enquire into the circumstances of the case and may deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court.

(4) A person transferred to the High Court under this section has the same right of appeal to the Court of Appeal as if the person had been convicted and sentenced by the High Court.

(5) The High Court, after hearing submissions by the prosecutor, may remit the person transferred for sentence in custody or on bail to the Magistrates Court which originally transferred the person to the High Court and the person shall then be dealt with by the Magistrates Court, and the person has the same right of appeal as if no transfer to the High Court had occurred.

*Division 3—Transfer of Accused Persons to the High Court*

*Power to transfer to the High Court*

191. A magistrate may transfer any charges or proceedings to the High Court.

*No preliminary enquiry and committal proceedings*

192. An accused person shall not be subject to a preliminary enquiry or to committal proceedings prior to transfer to the High Court for trial.

*Guilty plea to offence triable in the High Court*

193.—(1) A magistrate has jurisdiction to accept a guilty plea for any offence (including an indictable offence) before a case is transferred to the High Court.

(2) When accepting a guilty plea under sub-section (1) the magistrate shall not proceed to conviction, but this shall be reserved for the High Court after the transfer of the case.

(3) Notwithstanding sub-section (1), a person who has been charged with an offence only triable by the High Court, or who has elected trial by the High Court in respect of an indictable offence summarily, may reserve his plea until arraignment by the High Court.

*Transfer to the High Court following plea*

194. If an accused person has—

*(a)* entered a plea of guilty to an indictable offence and the plea has been recorded by the Magistrates Court; or

*(b)* pleaded not guilty to an indictable offence in respect of which the accused has elected trial in the High Court; or

*(c)* has been charged with an offence triable only in the High Court—

the magistrate shall order the transfer of the charges or proceedings to the High Court for sentencing or for trial.

*Particulars of order for transfer*

195. If a magistrate makes an order for transfer of a matter to the High Court—

*(a)* a copy of the order for transfer shall be sent by the officer-in-charge of a Magistrates Court to the Chief Registrar of the High Court, and the Director of Public Prosecutions;

*(b)* the accused person shall be remanded, either on bail or in custody, to appear in the High Court on a fixed date not exceeding 28 days from the date of the order for transfer;

*(c)* in the case of an order for transfer made following a plea of guilty under section 194, a copy of the order of transfer and of the charge in respect of which a conviction has been entered by the magistrate shall be sent to the Chief Registrar of the High Court.

*First appearance of accused person at High Court*

196.—(1) An accused person whose charge or proceedings has been transferred to the High Court under section 194 shall be brought before the High Court not later than 28 days from the date the order of transfer was made.

(2) Upon first appearance before the High Court of an accused person who has pleaded guilty in the Magistrates Court, the High Court shall proceed to sentence (with or without conviction under the Sentencing and Penalties Decree 2009).

(3) Upon first appearance before the High Court of an accused person who has pleaded not guilty under or has reserved his or her plea, the High Court shall proceed to arraignment.

*Taking statement from dangerously ill persons*

197.—(1) Whenever it appears to a magistrate that a person dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence to be tried in the High Court, the magistrate—

*(a)* may, in writing, take the statement on oath of the person;

*(b)* shall certify it accurately contains the whole of the statement made by the person;

*(c)* shall state the reasons for taking the evidence; and

*(d)* shall state the date and place where the evidence was taken.

(2) If the statement relates or is expected to relate to an offence for which a person has been charged—

*(a)* reasonable notice of the intention to take the statement shall be served on the prosecutor and the accused person; and

*(b)* if the accused person is in custody, the magistrate shall order the accused person to be brought to the place where the statement is to be taken.

(3) If the statement relates to an offence for which any person is then or subsequently transferred for trial or sentence, the magistrate who took the statement shall transmit the statement to the Chief Registrar of the High Court and the Director of Public Prosecutions.

(4) A statement taken in accordance with this section may afterwards be used in evidence on the trial of the person accused of an offence to which the statement relates, if—

*(a)* the person who made the statement later dies; or

*(b)* the court is satisfied that for any sufficient cause the attendance of the person cannot be procured; and

*(c)* reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and

*(d)* the person had chosen to be present, the person had or might have had full opportunity of cross-examining the person making the statement.

*Filing of an information*

198. —(1) An information charging an accused person and drawn up in accordance with section 202 shall be filed by the Director of Public Prosecutions or by the Commissioner or Deputy Commissioner of the Fiji Independent Commission Against Corruption with the Chief Registrar of the High Court within 21 days of the order for transfer except that the High Court may grant leave to extend the 21 days. The power of the Director of Public Prosecutions to file information may be delegated by him to a public prosecutor in writing.

(2) In the information, the Director of Public Prosecutions or Commissioner of the Independent Commission Against Corruption may charge the accused person with any offence, either in addition to or in substitution for the offence in respect of which the accused person has been transferred to the High Court for trial.

*Service of information*

199.—(1) A copy of the information filed under section 198 shall be served on the accused person or his or her lawyer as soon as possible, but at least upon the first appearance of the accused.

(2) The High Court has power to extend the period of service.

*Form of information*

200. Any information filed under section 198 shall be in the name of and (subject to section 50) signed by or on behalf of the Director of Public Prosecutions or by or on behalf of the Commissioner or Deputy Commissioner of Fiji Independent Commission Against Corruption.

(2) Every information shall bear the date of the day when it is signed and with such modifications as shall be necessary to adapt in to the circumstances of each case may commence in the following form—

"THE STATE *v.* A.B.
IN THE HIGH COURT OF FIJI AT [SUVA]
INFORMATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS OR COMMISSIONER
OF THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

A.B is charged with the following offence (s)…"

*Reports of order of transfer*

201.—(1) No person shall publish a written report or broadcast in Fiji a report of any proceedings preparatory to an order for transfer to the High Court containing any matter other than that permitted by sub-section (3).

(2) Notwithstanding sub-section (1), no person may publish or broadcast a report of transfer proceedings containing any matter other than that permitted by sub-section (3) until after the conclusion of the trial in respect of which the transfer was ordered.

(3) The following matters may be contained in a report of transfer proceedings—

*(a)* the identity of the court and the name of the magistrate;

*(b)* the name, age and occupation of the accused person;

*(c)* a summary of the offence with which the accused person has been charged;

*(d)* a summary of the offence in respect of which an order for transfer to the High Court was made;

*(e)* the name of the lawyer representing the accused person; and

*(f)* whether the accused person, whose charges or proceedings has been ordered for transfer, was remanded in custody or on bail.

(4) If a report is published or broadcast in contravention of sub-section (1)—

*(a)* in the case of a publication of a written report as part of a newspaper or periodical -any proprietor, editor or publisher of the newspaper or periodical;

*(b)* in the case of publication of a written report otherwise than as part of a newspaper or periodical but including publication on the internet - the original publisher;

*(c)* in the case of a broadcast of a report by radio or television - any body corporate which transmits or provides the programmes in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical—

commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

(5) Proceedings for an offence under this section shall not be instituted except with the consent of the Director of Public Prosecutions.

## PART XIV—PROCEDURE IN TRIALS BEFORE THE HIGH COURT

### *Division 1—General*

*Practice of High Court in its criminal jurisdiction*

202.—(1) The practice of the High Court shall be applied as determined by a judge hearing any criminal proceeding or trial, and shall be as is—

*(a)* prescribed by the provisions of this Decree, and any Regulations made under this Decree;;

*(b)* prescribed by the provisions of any Act Decree or Promulgation relating to the administration and jurisdiction of the High Court;

*(c)* provided for in any Practice Direction issued from time to time by the Chief Justice.

(2) Subject to sub-section (1), the practice of the High Court in its criminal jurisdiction shall be as nearly as circumstances will admit to the practice of High Court of Justice in England, and the inherent powers of the High Court of Justice shall be deemed to be the inherent powers exercisable by the judges of the High Court in Fiji.

*Trials before High Court to be with assessors*

203. – (1) Trials before the High Court shall be by a judge sitting with assessors as provided in this Part.

(2) The number of assessors for any trial shall be not less than 2.

*Division 2—Lists of Assessors*

*Preparation of Lists of Assessors*

204.—(1) The Chief Justice shall designate a magistrate at each place at which sessions of the High Court are ordinarily held who shall at intervals of 2 years (or at such other times as the Chief Justice may direct)—

*(a)* prepare a list of persons ordinarily resident within 10 miles of the court house who are liable to serve as assessors setting out the name and surname and the occupation and place of abode of each person; and

*(b)* shall cause a copy to be posted on the court house for a period of not less than 3 weeks, and to be published in the *Gazette*.

(2) After the posting and publication of the list referred to in sub-section (1), the magistrate shall send the list to the Chief Justice or to such other judge as the Chief Justice may direct who shall revise the list and shall, upon any evidence which may be adduced to the judge or from the judge's own knowledge, information and belief, strike out from the list the name of any person who is not liable to serve, or add to the list the name of any person who is liable to serve, as an assessor.

(3) The revision of the lists shall take place on a date determined by the Chief Justice, and any person may appear at the revision either personally or by his or her lawyer and claim that his or her name should be added to, or excluded from a list.

(4) Each list when revised shall be—

*(a)* signed by the Chief Justice or other judge referred to in sub-section (2); and

*(b)* published in the *Gazette*; and

*(c)* be used as the list of assessors for the purposes of any trial by the High Court at the place in respect of which it was prepared from the date of such publication until the date of publication of the next list for such place.

(5) A judge of the High Court may at any time on being satisfied that any person on the list is not liable to serve as an assessor cause the name of such person to be removed from the List of Assessors.

(6) In the event of a session of the High Court being held at any place where such sessions are not ordinarily held, the Chief Justice shall give such directions for the preparation and publication of a list of persons liable to serve as assessors for the purpose of the sessions.

(7) A list prepared in accordance with this section is to be known and referred to as a List of Assessors.

*Liability to service*

205.—(1) Subject to the exemptions and disqualifications stated in this section every person—

*(a)* male or female;

*(b)* between the ages of 21 years and 60 years;

*(c)* being a citizen of Fiji; and

*(d)* having a competent knowledge of the English language—

shall be liable to serve as an assessor at any trial held by the High Court within Fiji.

(2) The Chief Justice may from time to time make rules regulating the area within which a person may be summoned to serve as an assessor.

*Exempted persons*

206. The following persons shall be exempted from liability to serve as assessors—

*(a)* the President;

*(b)* the Chief Justice and the Judges of the High Court, Court of Appeal and Supreme Court;

*(c)* the Speaker of the House of Representatives and the President of the Senate;

*(d)* the Prime Minister, Ministers and members of the House of Representatives and the Senate;

*(e)* the Secretary to the Cabinet and the Clerks to the House of Representatives and the Senate;

*(f)* members of all Statutory Commissions;

*(g)* the mayor of any city or town;

*(h)* persons exempted under the provisions of any other written law;

*(i)* magistrates, all officers and staff of the Judicial Department, the Director of Public Prosecutions and the State Law Office of the Government of Fiji;

*(j)* persons registered in any register kept under the provisions of the Medical and Dental Practitioners Act, or any Act amending or replacing the that Act;

*(k)* any veterinary surgeon registered under the provisions of the Veterinary Surgeons Act or any Act amending or replacing that Act;

*(l)* lawyers in actual practice, and their clerks;

*(m)* members of the disciplined services;

*(n)* members and civilian staff of the Fiji Police Force, the Prisons Service and the Aerodromes Fire Service; and

*(o)* such other persons as may be exempted by the Minister by notice in the *Gazette*.

*Grounds for disqualification*

207. Each of the following persons shall be disqualified from serving as an assessor—

*(a)* persons disabled by mental infirmity; and

*(b)* persons who have been convicted of any offence punishable with imprisonment for more than 5 years and who have not received a free pardon.

*Division 3 – Attendance of Assessors*

*Summoning of assessors*

208. —(1) The Chief Registrar of the High Court shall ordinarily at least 7 days before the trial of any criminal case by the High Court, or before the first trial of two or more cases to be tried consecutively, summon from among the persons whose names appear on the List of Assessors for the place at which the trial or trials are to be held as many persons as may be necessary to sit as assessors.

(2) Persons shall, subject to the directions of the Chief Justice, be summoned in rotation in the order in which their names appear in the list.

(3) Upon every assessor summons served upon a woman there shall appear a notice that she may apply to the Chief Registrar of the High Court for exemption from attendance as an assessor on account of pregnancy or other feminine condition or ailment.

(4) An application under sub-section (3) must be received by the Chief Registrar within 3 days of the receipt of the assessor summons by the applicant.

*Form of summons*

209.—(1) Every summons to an assessor shall be in writing, and shall require his or her attendance as an assessor at a time and place to be specified in the summons.

(2) A judge or the Chief Registrar of the High Court may exempt from attendance any woman who has been summoned to serve as an assessor, if satisfied by a medical certificate or otherwise that on account of pregnancy or some other feminine condition or ailment she is unfit to serve as an assessor.

*Excuses*

210—(1) A judge or the Chief Registrar of the High Court may for reasonable cause excuse any assessor from attendance at any particular sessions.

(2) At the conclusion of any trial a judge may direct that the assessors who have served at such trial shall not be summoned to serve again as assessors for a period of 12 months or for such longer period as the court determines.

*List of assessors attending*

211. —(1) At each session the High Court shall cause to be made a list of the names of those who have attended as assessors at the session, and the list shall be kept with the list of the assessors as revised under this Part.

(2) A reference shall be made in the margin of the revised list to each of the names which are mentioned in the list prepared under this section.

*Penalty for non-attendance of assessor*

212.—(1) Any person summoned to attend as an assessor who—

*(a)* without lawful excuse, fails to attend as required by the summons; or

*(b)* having attended the court, departs without having obtained the permission of the High Court; or

*(c)* fails to attend after adjournment of the court after being ordered to attend—

shall be liable by order of a judge to a fine not exceeding 5 penalty units.

(2) The High Court may remit or reduce any fine imposed under sub-section (2).

## *Division 4—Arraignment*

*Pleading to information*

213.—(1) An accused person to be tried before the High Court upon an information shall be—

*(a)* placed at the bar unfettered, unless the court orders otherwise;

*(b)* read the information;

*(c)* explained the information if the accused person requests an explanation (or have interpreted by the interpreter of the court, if necessary); and

*(d)* required to plead to the information as soon as it has been read, explained and interpreted, as required.

(2) The court may excuse the accused person from pleading to the information under sub-section (1) if the accused person has been entitled to service of a copy of the information and the court finds, on the objection of the accused person, that service on the accused person has not been effected.

(3) In the event of a finding under sub-section (2) the court shall make such orders as are necessary to effect service of the information on the accused person.

(4) In the case of a corporation, the corporation may by its representative enter a plea in writing, and if—

*(a)* the corporation does not appear by representative; or

*(b)* though it does appear it fails to enter any plea—

the court shall cause a plea of not guilty to be entered.

(5) A "representative" for the purposes of this section need not be appointed under the seal of the corporation, and a written statement to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, purporting to be signed by—

*(a)* a managing director of the corporation; or

*(b)* any one or more persons (by whatever name called) having the management of the affairs of the corporation

shall be admissible without further proof as prima face evidence that that person has been so appointed.

*Orders for amendment of information, separate trial and postponement of trial*

214.—(1) Every objection to any information for any formal defect on the face of it shall be taken immediately after the information has been read over to the accused person, and not at a later time.

(2) Where, before a trial upon information (or at any stage of such trial), it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless the required amendments cannot be made without injustice, having regard to the merits of the case.

(3) All amendments made under this section shall be made upon such terms as the court determines.

(4) Where an information is amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings as having been filed in the amended form.

(5) Where, before a trial upon information or at any stage of such trial, the court is of opinion that—

*(a)* the accused may be prejudiced or embarrassed in his or her defence by reason of being charged with more than one offence in the same information; or

*(b)* for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information—

the court may order a separate trial of any count or counts of the information.

(6) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Decree, the court shall make such order as to the postponement of the trial as appears necessary.

(7) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

*(a)* if such order is made during a trial the court may order that the assessors are to be discharged from giving opinions on the count or counts the trial of which is postponed, or on the information, as the case may be; and

*(b)* the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the assessors, if any, have been discharged) as if the trial had not commenced; and

*(c)* the court may make such order as to admitting the accused person to bail, and as to the enlargement of recognisances and otherwise as the court thinks fit.

(8) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

(9) The Court may, upon application by the prosecution, grant leave to amend an information, whether by way of substitution or addition of charges or otherwise.

(10) In deciding whether or not to grant leave, the Court may consider whether the amendment might embarrass the accused in his defence and whether such embarrassment might be appropriately mitigated by way of adjournment of trial.

*Quashing of information*

215. —(1) If any information does not state, and cannot by any amendment authorised by section 214 be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads, or on a motion made in arrest of judgment.

(2) A written statement of every such motion shall be delivered to the Chief Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

*Procedure in case of previous convictions*

216.—(1) Where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows—

*(a)* the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he or she has either pleaded guilty to or been convicted of the subsequent offence;

*(b)* if the accused person pleads guilty to or is convicted of the subsequent offence, he or she shall then be asked whether he has been previously convicted as alleged in the information;

*(c)* if the accused person answers that he or she has been so previously convicted, the judge may proceed to pass sentence accordingly; but if he or she denies that the previous conviction, or refuses to or does not answer such question, the court and the assessors shall then hear evidence concerning the previous conviction.

(2) If upon the trial of any person for any such subsequent offence the person gives evidence of his or her own good character, it shall be lawful for the prosecutor, in answer to the evidence, to give evidence of the conviction of the person for the previous offence or offences before a verdict is returned, and the court and assessors, shall inquire concerning the previous conviction or convictions at the same time that they inquire concerning the subsequent offence.

*Plea of not guilty*

217. Every accused person, by entering a plea of not guilty upon being arraigned on any information laid under this Decree, may be proceeded against by trial without the need for any other formality.

*Plea of guilty to other offence*

218. Where a prisoner is arraigned on an information for any offence, and can lawfully be convicted on the information of some other offence not charged in the information, he or she may plead not guilty of the offence charged in the information, but guilty to the other offence.

*Plea of autrefois acquit and autrefois convict*

219. —(1) Any accused person against whom an information is filed may plead—

*(a)* that he or she has been previously convicted or acquitted (as the case may be) of the same offence; or

*(b)* that he or she has obtained the President's pardon for his or her offence.

(2) If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(3) No plea may be made under sub-section (1) by a member of the Fiji Military Force, the Fiji Police Force or the Fiji Prisons Service when that member is charged with a criminal offence and he or she has previously been tried and convicted for that matter under a disciplinary law.

(4) If the court holds that the facts alleged by the accused do not support the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.

*Refusal to plead*

220. —(1) If any accused person being arraigned upon any information refuses or fails to enter a plea, the court shall order that a plea of "not guilty" be entered.

(2) The court shall then proceed to determine whether the accused person is of sound or unsound mind, and if the accused person is found to be of sound mind the courts shall proceed with the trial.

(3) If the accused person is found to be of unsound mind, and consequently incapable of making a proper defence the court shall order the trial to be postponed and the accused person shall be dealt with in accordance with the provisions of Part X.

*Plea of guilty*

221. If the accused pleads guilty, the plea shall be recorded and the court may proceed to convict the accused person.

*Proceedings after plea of not guilty*

222. If the accused pleads not guilty, or if a plea of not guilty is otherwise entered in accordance with the provisions of this Decree, the court shall proceed to choose assessors and to try the case.

*Power to postpone or adjourn proceedings*

223.—(1) If the court considers it necessary or advisable to postpone the commencement of the trial or to adjourn the trial by reason of the absence of witnesses or any other reasonable cause (which shall be recorded in the proceedings), the court may—

*(a)* from time to time postpone or adjourn it on such terms as it thinks fit and for such time as it considers reasonable; and

*(b)* may by warrant remand the accused to some prison or other place of security.

(2) During a remand the court may at any time order the accused to be brought before it.

(3) The court may grant bail to the accused person while he or she is remanded under this section.

## *Division 5—Assessors*

*Selection of assessors*

224.—(1) For each trial before the High Court, two or more assessors shall be selected from the list of those summoned to serve as assessors for the sessions.

(2) Prior to the commencement of the trial to the judge shall—

*(a)* ask the prosecutor and the accused person, either personally or through his or her lawyer, if they object to any of the selected assessors serving on that case; and

*(b)* ascertain and consider the grounds upon which any objection is made under paragraph *(a)*.

(3) The court shall decline to permit an assessor to serve on a case if the judge is satisfied that the grounds for the objection are properly based upon—

*(a)* the relationship, by whatever means, between the assessor and the accused person, or any other person associated with the trial of the matter;

*(b)* the knowledge that the assessor has before the commencement of the trial, of—

(i) the case;

(ii) the accused person; or

(iii) any other person associated with the trial of the matter;

*(c)* any proven or possible propensity for the assessor to favour either party for whatever reason; or

*(d)* any other matter which the court is satisfied in the interests of justice, should disqualify the assessor.

(4) In the event that a person is excused or disqualified from serving as an assessor in accordance with this section, the judge shall arrange for an alternate assessor, and shall apply the provisions of this section to determine the suitability of that person to act in the capacity of an assessor.

*Absence of an assessor*

225. —(1) Subject to sub-section (2), if at any time before the finding, any assessor is prevented from attending throughout the trial, or is absent, and it is not practicable immediately to enforce his or her attendance, the trial shall proceed with the aid of the other assessors.

(2) The proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors unless at least two assessors remain in attendance after an assessor is absent or has been prevented from attending, or has for any reason been discharged by the court.

*Assessors to attend at adjourned sittings*

226. If the trial is adjourned, the assessors shall be required to attend at the adjourned sitting, and at any subsequent sitting until the conclusion of the trial.

## *Division 6—Case for the Prosecution*

*Opening the case for the prosecution*

227. When the assessors have been chosen and sworn, the prosecutor shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

*Additional witnesses for the prosecution*

228.—(1) No witness whose evidence has not been included in the briefs of evidence provided by the prosecution to the defence before the trial shall be called by the prosecution at any trial, unless the accused person has received reasonable notice in writing of the intention to call the witness.

(2) The notice under sub-section (1) must state the witness's name and address and the substance of the evidence which the witness intends to give.

(3) The court shall determine what notice is reasonable, having regard to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence, and determined to call the witness.

*Cross-examination of witnesses for the prosecution*

229. The witnesses called for the prosecution shall be subject to cross- examination by the accused person or his or her lawyer, and to re- examination by the prosecutor.

*Statement of medical witness may be read as evidence*

230.—(1) A sworn statement of a Government analyst or of a medical practitioner, taken and attested by a magistrate in the presence of the accused person, may with the consent of the accused person or his or her lawyer, be read as evidence although the deponent is not called as a witness—

(2) A court may summon and examine the person who has made any statement under sub-section (1) in relation to any matter arising from the statement.

*Close of case for the prosecution*

231.—(1) When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court shall, if it considers that there is evidence that the accused person (or any one or more of several accused persons) committed the offence, inform each such accused person of their right—

*(a)* to address the court, either personally or by his or her lawyer (if any); and

*(b)* to give evidence on his or her own behalf; or

*(c)* to make an unsworn statement; and

*(d)* to call witnesses in his or her defence.

(3) In all cases the court shall require the accused person, or his or her lawyer (if any), to state whether it is intended to call any witnesses as to fact other than the accused person, and upon being informed of this the judge shall record the response to the question.

(4) If an accused person says that he or she does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the prosecutor may sum up the case against the accused person.

(5) If an accused person states that he or she intends to give evidence or make an unsworn statement or to adduce evidence, the court shall call upon the accused person to commence his or her defence.

*Division 7—Case for the Defence*

*The defence*

232.—(1) The accused person (or his or her lawyer) may open the defence case by stating the facts or law on which it is intended to rely, and making such comments on the evidence for the prosecution as he or she intends to address or rebut.

(2) The accused person may then give evidence on his or her own behalf, and then—

*(a)* any defence witnesses may be examined, cross-examined and re-examined; and

*(b)* the defence case shall be summed up.

*Additional witnesses for the defence*

233.—(1) The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial if the witness is in attendance.

(2) If the accused person believes that any witness will not attend the trial voluntarily, he or she shall be entitled to apply for the issue of process to compel such witness's attendance in accordance with the provisions of Part XI.

(3) No accused person shall be entitled to any adjournment to secure the attendance of any witness unless it is shown that he or she could not by reasonable diligence have taken earlier steps to obtain the presence of the witness.

*Evidence in reply*

234. If the accused person adduces evidence introducing a new matter which the prosecutor could not have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the matters raised by the defence.

*Prosecutor's reply*

235. If the accused person, or any of several accused persons, adduces any evidence, the prosecutor shall, subject to the provisions of section 128, be entitled to reply.

*Where accused adduces no evidence*

236. If the accused person indicates no intention to give or adduce evidence and the court considers that there is evidence that the accused person committed the offence, the prosecutor shall then, subject to the provisions of section 128, sum up the case against the accused person and the court shall then call on the accused person personally or by his or her lawyer to address the court.

*Delivery of opinions by assessors*

237.—(1) When the case for the prosecution and the defence is closed, the judge shall sum up and shall then require each of the assessors to state their opinion orally, and shall record each opinion.

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) Notwithstanding the provisions of section 142(1) and subject to sub-section (2), where the judge's summing up of the evidence under the provisions of subsection (1) is on record, it shall not be necessary for any judgment (other than the decision of the court which shall be written down) to be given, or for any such judgment (if given)—

*(a)* to be written down; or

*(b)* to follow any of the procedure laid down in section 141; or

*(c)* to contain or include any of the matters prescribed by section 142.

(4) When the judge does not agree with the majority opinion of the assessors, the judge shall give reasons for differing with the majority opinion, which shall be—

*(a)* written down; and

*(b)* pronounced in open court.

(5) In every such case the judge's summing up and the decision of the court together with (where appropriate) the judge's reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for the all purposes.

(6) If the accused person is convicted, the judge shall proceed to pass sentence according to law.

(7) Nothing in this section shall be read as prohibiting the assessors, or any of them, from—

*(a)* retiring to consider their opinions if they wish: or

*(b)* from consultation with one another during any retirement or at any time during the trial.

*Division 8—Passing Sentence*

*Calling upon the accused*

238. If the judge convicts the accused person, or if the accused person pleads guilty, the accused person shall be asked whether he or she has anything to say why sentence should not be passed according to law, but the omission so to ask shall have no effect on the validity of the proceedings.

*Motion in arrest of judgment*

239.—(1) The accused person may, at any time before sentence, whether on a plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing of it to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused he or she shall be discharged from that information.

*Sentence*

240.—(1) If no motion in arrest of judgment is made, or if the court decides against the accused person upon such a motion, the court may sentence the accused person at any time during the session.

(2) Any sentence which a court may impose shall be consistent with provisions of the Sentencing and Penalties Decree 2009.

*Power to reserve decision on question raised at trial*

241. The court before which any person is tried for an offence may reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of trial.

*Power to reserve decision on questions arising in the course of trial*

242. —(1) When any person has been convicted of an offence in a trial before the High Court, the judge may reserve for further consideration any question—

*(a)* which has arisen in the course of the trial; and

*(b)* the determination of which would affect the outcome of the trial.

(2) If the judge reserves any such question, the person convicted shall be remanded to prison or be admitted to bail pending the decision

(3) Upon further consideration of a question reserved the judge may affirm or quash the conviction.

*Objections cured by verdict*

243. No judgment shall be stayed or reserved on the ground of—

*(a)* any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court; or

*(b)* of any error committed in summoning or swearing the assessors or any of them; or

*(c)* any person who has served as an assessor not being qualified to sit as an assessor; or

*(d)* any objection which might have been stated as a ground of challenge of any of the assessors; or

*(e)* any informality in swearing the witnesses, or any of them.

*Evidence for arriving at proper sentence*

244. Before passing sentence the court may receive such evidence as it thinks fit, in order to inform itself as to the appropriate sentence to be passed in accordance with the sentencing guidelines and sentencing options provided for in the Sentencing and Penalties Decree 2009.

*Consideration of other offence admitted by accused*

245. Upon a person being convicted of any offence the court may, with his or her consent and the consent of the prosecutor, take into consideration in deciding the sentence to be imposed any other untried offence of a like character which the accused admits to having committed.

## PART XV—APPEALS FROM MAGISTRATES COURTS

### *Division 1—Appeals*

*Appeal to High Court*

246.—(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.

(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption..

(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.

(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.

(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrates court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.

*Limitation of appeal on plea of guilty and in petty cases*

247. No appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by a Magistrates Court, except as to the extent, appropriateness or legality of the sentence.

*Appeal to be by way of petition*

248.—(1) Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant's lawyer, and within 28 days of the date of the decision appealed against—

*(a)* it shall be presented to the Magistrates Court from the decision of which the appeal is lodged;

*(b)* a copy of the petition shall be filed at the Registry of the High Court; and

*(c)* a copy shall be served on the Director of Public Prosecutions or on the Commissioner of the Fiji Independent Commission Against Corruption..

(2) The Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.

(3) For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include—

*(a)* a case where the appellant's lawyer was not present at the hearing before the Magistrates Court, and for that reason requires further time for the preparation of the petition;

*(b)* any case in which a question of law of unusual difficulty is involved;

*(c)* a case in which the sanction of the Director of Public Prosecutions or of the commissioner of the Fiji Independent Commission Against Corruption is required by any law;

*(d)* the inability of the appellant or the appellant's lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.

*Form and contents of petition*

249.—(1) Every petition shall contain a concise statement of the grounds upon which it is alleged that the decision of the Magistrates Court has erred on the facts of the case or the applicable law.

(2) If the appellant is not represented by a lawyer the petition may be prepared by or under the directions of a court.

(3) If the appellant is in prison and is not represented by a lawyer the petition may be prepared by the officer in charge of the prison, and forwarded to the court.

(4) Additional grounds of appeal may be filed by leave of the High Court at any time not later than 3 days before the date fixed for the hearing of the appeal.

(5) Where two or more persons have been jointly tried and convicted and their interests do not conflict, one petition of appeal may be presented on behalf of all of them, but in such a case the High Court may hear the appeals separately or together, as the circumstances warrant.

(6) Except by leave of the High Court, it shall not be lawful for the appellant on the hearing of the appeal to allege or give evidence on any ground of appeal not included in the petition, or in the additional grounds filed under subsection (4).

(7) If the case is one which requires the leave of the High Court under any law, the application for leave to appeal shall be endorsed on the petition.

(8) For the purpose of considering or preparing a petition of appeal, a person entitled to appeal or the person's lawyer or an officer in charge of a prison shall be entitled to peruse the original record of the proceedings at such time as the Chief Registrar or the Magistrates Court may allow.

*Record of proceedings to be forwarded to the High Court*

250.—(1) Upon receiving a petition of appeal, the magistrate against whose order, sentence, ruling or decision the appeal is brought must ensure that the petition of appeal the record of the proceedings in the magistrates court is forwarded to the Chief Registrar of the High Court within 28 days.

(2) A judge or the Chief Registrar may give directions for transmission of the records mentioned in sub-section (1), even if there has been a failure to comply with that sub-section.

*Summary dismissal of appeal*

251. —(1) When the High Court has received the petition of appeal and the record of proceedings, a judge shall consider the petition.

(2) Where an appeal is brought on the grounds that —

*(a)* the decision is unreasonable; or

*(b)* the decision cannot be supported having regard to the evidence; or

*(c)* the sentence is excessive—

and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead to the opinion that the sentence ought to be reduced, the appeal may be summarily dismissed by an order of the judge certifying that the judge has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily dismissed, notice of the dismissal shall be given by the Chief Registrar of the High Court to the appellant or the appellant's lawyer.

*Notice of hearing*

252. If the High Court does not dismiss the appeal summarily the Chief Registrar shall—

*(a)* enter the appeal for hearing;

*(b)* serve a notice of hearing on the parties;

*(c)* supply the respondent with a copy of the petition and a copy of the judgment or order appealed against;

*(d)* except when the appeal is against sentence only, supply the respondent with a copy of the proceedings;

*(e)* where additional grounds of appeal are filed by the appellant under the provisions of section 249(4), serve notice on the respondent of such filing and supply the respondent with a copy of the document containing such additional grounds of appeal.

*Admission to bail or suspension of sentence pending appeal*

253.—(1) Where a convicted person presents or indicates an intention of presenting a petition of appeal, the High Court or the court which convicted the person, may release the person on bail, with or without sureties.

(2) If the person is not released on bail, the High Court or the court convicting the person, shall at the request of the person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal.

(3) Any order under this section which is made before the petition of appeal is presented and where no petition is presented within the time allowed, the order for bail or suspension shall be immediately cancelled.

(4) Where the appellant is released on bail or the sentence is suspended, the time during which the appellant is at large after being so released or during which the sentence has been suspended, shall be excluded in computing the term of any sentence to which he or she is for the time being subject.

(5) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial.

*Fees and Costs*

254.—(1) The fees applying to any appeal shall be fixed by Regulations made under this Decree, but any accused person who was represented at the trial by the Legal Aid Commission shall be exempt from any such fees.

(2) The High Court may make such order as to the costs to be paid by either party to an appeal as may seem just.

*Discontinuance of appeal*

255.—(1) An appellant may by giving notice in writing to the Chief Registrar discontinue the appeal at any time before the date of hearing.

(2) Upon the giving of a notice under sub-section (1) no further steps shall be taken in the appeal, and the Magistrates Court may proceed to enforce the decision appealed from.

(3) Nothing in this section shall affect the power of the High Court to make an order for costs upon the discontinuance of an appeal.

(4) The Chief Registrar shall send to the respondent a copy of the notice of discontinuance.

*Powers of High Court*

256. —(1) At the hearing of an appeal, the High Court shall hear—

*(a)* the appellant or the appellant's lawyer; and

*(b)* the respondent or the respondent's lawyer (if the respondent appears); and

*(c)* the Director of Public Prosecutions or the Director's representative (if there is an appearance by or for the Director)—

(2) The High Court may—

*(a)* confirm, reverse or vary the decision of the Magistrates Court; or

*(b)* remit the matter with the opinion of the High Court to the Magistrates Court; or

*(c)* order a new trial; or

*(d)* order trial by a court of competent jurisdiction; or

*(e)* make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

*(f)* the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed.

*Further evidence*

257.—(1) In dealing with an appeal from a Magistrates Court the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a Magistrates Court.

(2) When the additional evidence is taken by a Magistrates Court, such court shall certify the evidence to the High Court, which shall then proceed to determine the appeal.

(3) Evidence taken under this section shall be taken as if it were evidence taken at a trial before a Magistrates Court.

*Order of the High Court to be certified to lower court*

258.—(1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the court by which the judgment, sentence or order appealed against was recorded or passed.

(2) The court to which the High Court certifies its judgment or order shall make orders in accordance with the judgment or order of the High Court, and shall take such steps as may be necessary to enforce the judgment or order.

*Right of appellant to be present*

259. An appellant, notwithstanding that he or she is in custody, shall be entitled to be present at the hearing of the appeal.

*Division 2—Revision by the High Court*

*Power of High Court to call for records*

260.—(1) The High Court may call for and examine the record of any criminal proceedings before any Magistrates Court for the purpose of satisfying itself as to—

*(a)* the correctness, legality or propriety of any finding, sentence or order recorded or passed; and

*(b)* the regularity of any proceedings of any Magistrates Court.

(2) The High Court shall take action under sub-section (1) upon the receipt of a report under the hand of the Chief Justice which requests that such action be taken.

*Power of magistrates to call for records of inferior courts and to report to the High Court*

261.—(1) Any magistrate may call for and examine the record of any criminal proceedings before a court of a class inferior to the court which the magistrate is empowered to hold, and which is situate within the same locality as the more senior magistrate, for the purpose of being satisfied as to—

*(a)* the correctness, legality or propriety of any finding, sentence or order recorded or passed; and

*(b)* the regularity of any proceedings of the inferior Magistrates Court.

(2) If any magistrate acting under sub-section (1) considers that any finding, sentence or order of an inferior Magistrates Court is illegal or improper, or that any such proceedings are irregular, the more senior magistrate shall forward the record, with such remarks as the magistrate thinks fit, to the High Court.

*Power of High Court on revision*

262.—(1) In the case of any proceedings in a Magistrates Court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

*(a)* in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 256 and 257; and

*(b)* in the case of any order other than an order of acquittal, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by a lawyer in his or her defence.

(3) The High Court shall not impose a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been imposed by the court which imposed the original sentence.

(4) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

*Discretion of court as to hearing parties*

263. No party has any right to be heard either personally or by lawyer before the High Court when exercising its powers of revision, but the High Court may when exercising such powers, hear any party either personally or by lawyer.

*Number of judges in revision*

264.—(1) All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order in the proceedings may be made or passed by one judge, or more than one judge sitting together.

(2) When a court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the Magistrates Court shall be upheld.

*High Court order to be certified to lower court*

265.—(1) When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed.

(2) The court to which the decision or order is so certified shall then make orders to give effect to the decision so certified, and shall take such steps as may be necessary to enforce the decision or order.

*Division 3—Case Stated to High Court*

*Case stated by Magistrates Court*

266.—(1) After the hearing and determination by any Magistrates Court of any summons, charge or complaint, if either party to the proceedings is dissatisfied with the determination as being—

*(a)* erroneous in point of law; or

*(b)* in excess of jurisdiction, or

the party may make written application to the Magistrates Court within 1 month from the date of the determination, for the Magistrates Court to state and sign a special case setting forth the facts and the grounds of such determination for the opinion on the matter of the High Court.

(2) Upon receiving an application under sub-section (1), the magistrate shall promptly draw up the special case and transmit it to the Chief Registrar of the High Court together with a certified copy of the conviction, order or judgment appealed from and all documents referred to in the special case and the provisions of section 253 shall apply.

(3) If the Magistrates Court of its own motion wishes to refer any determination by it to the High Court on a point of law, the Magistrate may, within 1 month from the date of such determination, state and sign a special case setting forth the point of law for the opinion of the High Court,

(4) Where a Magistrate decides to act under sub-section (3), the Magistrate shall promptly transmit the special case to the Chief Registrar of the High Court together with a certified copy of the conviction, order or judgment appealed from and all documents referred to in the special case and the provisions of section 253 shall apply.

*Appellant entitled to copy of stated case*

267.—(1) The parties shall be entitled upon payment of such fee as may be determined by the Chief Justice to obtain from the Chief Registrar of the High Court a copy of the stated case.

(2) No charge shall be made for a copy of the stated case supplied to the Director of Public Prosecutions or the Legal Aid Commission under this section.

*Notice of time and place of hearing*

268. Upon receipt of the stated case the Chief Registrar of the High Court shall—

*(a)* set down the case for hearing; and

*(b)* cause notice to be given to the appellant (or his or her lawyer), and to the respondent (or his or her lawyer), of the time and place at which the appeal will be heard; and

*(c)* furnish the respondent or his lawyer with a copy of the stated case.

*Refusal of frivolous application*

269.—(1) If the magistrate is of opinion that the application is merely frivolous the magistrate may refuse to state a case, and shall, on the request of the appellant, sign and deliver to the appellant a certificate of the refusal.

(2) The magistrate shall not refuse to state a case when the application for that purpose is made by or under the direction of the Director of Public Prosecutions, who may require a case to be stated with reference to proceedings to which the Director was not a party.

*Procedure on refusal of magistrate to state case*

270.—(1) When a magistrate has refused to state a case it shall be lawful for the appellant to apply to the High Court within 1 month of the refusal, upon an affidavit of the facts, for a ruling calling upon the magistrate and the respondent to show cause why the case should not be stated.

(2) The High Court may make its ruling under sub-section (1) absolute or may discharge it, with or without payment of costs, and the magistrate, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognisance a provided by this section.

*High Court to finally determine the questions on the case*

271.—(1) The High Court shall (subject to the provisions of section 272) hear and determine the question or questions of law arising on the case stated, and may—

*(a)* reverse, affirm or amend the determination in respect of which the case has been stated; or

*(b)* remit the matter to the Magistrates Court with the opinion of the High Court; or

*(c)* make such other order in relation to the matter as to the court may seem fit; and

*(d)* may make an order as to costs as determined by the court.

(2) All orders made under sub-section (1) shall be final and conclusive on all parties.

(3) No magistrate who states and delivers a case in accordance with this Part, or who refuses to state a case, shall be liable to any costs in respect of an appeal against the determination or refusal.

*Case may be sent back for amendment or rehearing*

272. The High Court shall have power —

*(a)* to cause the case to be sent back for amendment or restatement, and if this is ordered the case shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;

*(b)* to remit the case to the Magistrates Court for rehearing and determination with such directions as it may deem necessary.

*Orders of the High Court to be certified to lower court*

273.—(1) When a stated case is decided by the High Court it shall certify its judgment or order to the court in relation to whose determination the case has been stated.

(2) The court to which the High Court certifies its judgment or order shall make orders to give effect the judgment or order of the High Court, and shall take such steps as may be necessary to comply with or enforce the judgment or order.

*Appellant may not proceed both by case stated and by appeal*

274. No person who has appealed under section 246 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 246

*Contents of case stated*

275. A case stated by a magistrate shall set out—

*(a)* the charge, summons, information or complaint;

*(b)* the facts found by the Magistrates Court to be admitted or proved, or where the question or one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the Magistrates Court could come to its decision, a sufficient statement of the evidence;

*(c)* any submission of law made by or on behalf of the complainant during the trial or proceeding;

*(d)* any submission of law made by or on behalf of the accused during the trial or proceeding;

*(e)* the finding and, in the case of conviction, the sentence of the Magistrates Court;

*(f)* any question or questions of law which the magistrate or any of the parties may desire to be submitted for the opinion of the High Court;

(g) any question of law which the Director of Public Prosecutions may require to be submitted for the opinion of the High Court.

*Constitution of court hearing case stated*

276. A case stated for the opinion of the High Court shall be heard by one judge unless the Chief Justice directs otherwise.

*High Court may enlarge time*

277. The High Court may enlarge any period of time prescribed in the provisions of this Part.

## PART XVI—SUPPLEMENTARY PROVISIONS

*Proceedings in wrong place*

278. No finding, sentence or order of any court hearing a criminal case shall be set aside merely on the ground that the trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

*No appeal on point of form or matter of variance*

279.—(1) Subject to sub-section (2), no finding, sentence or order passed by a Magistrates Court of competent jurisdiction shall be reserved or altered on appeal or revision on account of any objection to any information, complaint, summons or warrant for any alleged defect of substance or form or for any variance between such information, complaint, summons or warrant and the evidence, unless it is found that—

*(a)* such objection was raised before the Magistrates Court whose decision is appealed from; and

*(b)* the Magistrates Court refused to adjourn the hearing of the case to a future day notwithstanding that it was shown to the Magistrates Court that by such variance the appellant had been deceived or misled.

(2) If the appellant was not represented by a lawyer at the hearing before the Magistrates Court, the High Court may allow any such objection to be raised.

*Power to issue directions of the nature of habeas corpus*

280.—(1) The High Court may direct—

*(a)* that any person within the limits of Fiji be brought up before the court to be dealt with according to law;

*(b)* that any person illegally or improperly detained in public or private custody be set at liberty;

*(c)* that any prisoner detained in any prison be brought before the court to be examined as a witness in any matter before the court;

*(d)* that any prisoner detained be brought before a court-martial or any commissioners acting under the authority of any commission from the President for trial or to be examined on any matter pending before the court-martial or commissioners;

*(e)* that any prisoner be removed from one custody to another for the purpose of trial; and

*(f)* that the body of a defendant be brought in on a return of cepi corpus to writ of attachment.

(2) The Chief Justice may from time to time make rules to regulate the procedure in cases under this section.

*Power of the High Court to issue writs*

281.—(1) The High Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Justice in England.

(2) The Chief Justice may from time to time make Rules to—

*(a)* clarify the nature of any such writ;

*(b)* prescribe the circumstances in which any such writ may be sought or granted; and

*(c)* otherwise regulate the procedures in cases taken under this section.

## PART XVII—MISCELLANEOUS PROVISIONS

*Persons before whom affidavits may be sworn*

282. Affidavits and affirmations to be used before the High Court may be sworn and affirmed before—

*(a)* a judge of the High Court;

*(b)* any magistrate;

*(c)* the Chief Registrar or Deputy Registrar of the High Court; or

*(d)* any Commissioner for Oaths.

*Shorthand notes and typewritten records of proceedings*

283.—(1) Shorthand notes may be taken of the proceedings at the trial of any person before the High Court, or the proceedings may be recorded by means of a typewriter in court, and a transcript of such shorthand notes shall be made if the court so directs.

(2) The transcript of shorthand notes or typewritten record shall for all purposes be deemed to be the official record of the proceedings of the trial, but—

*(a)* where the trial judge has taken a verbatim note of any part of the proceedings, and the judge's note conflicts with or is not included in the transcript or typewritten record, the judge's note shall to that extent be deemed to be the official record; and

*(b)* when the trial judge has taken a note other than a verbatim note and there is any material conflict between the judge's note and the transcript or typewritten record, the judge's note shall prevail in respect of the matter as to which there is conflict.

*Copies of proceedings*

284.—(1) If any person affected by any judgment or order passed in any proceedings under this Decree desires to have a copy of the judgment or order or any deposition or other part of the record, the person shall be given a copy on application.

(2) The person seeking a copy under sub-section (1) shall pay for the copy, unless the court determines that it shall be provided free of charge.

*Other means of recording proceedings*

285.—(1) Nothing in section 283 affects the power of any court to—

*(a)* approve the use of any other appropriate means to record the proceedings of any trial or hearing by any judge or magistrate; and

*(b)* recognise any written or recorded record of the proceedings as the official court record of them.

(2) Any party to a criminal proceeding may apply to the court for permission to record the proceedings at the cost of that party, but all records produced during such an approved recording must be made available at no charge to the court and to all other parties, at the time that it becomes available to the party making such a recording.

*Forms*

286.—(1) Such forms as the Chief Justice may from time to time prescribe by rules (which shall not be inconsistent with any forms prescribed by Regulations made under this Decree) with such variation as the circumstances of each case may require, may be used for the purposes identified in the form, and if used shall be sufficient compliance with this Decree.

(2) In this absence of rules under sub-section (1), the forms in use at the commencement of this Decree may continue to be used until other provision is made.

*Expenses of assessors, witnesses, etc.*

287. Subject to any rules which may be made by the Chief Justice, any court may order payment from a public fund of the reasonable expenses of any assessor, complainant or witness attending before the court for the purposes of any trial or other proceeding under this Decree. Such expenses may exceed the gazetted fee prescribed by the Chief Registrar under any other law if the interests of justice so require.

*Voir Dires may be held in all courts*

288. When necessary to determine any issue during the course of a trial in any court, a judge or magistrate may proceed to determine the issue by a voir dire. A voir dire may be conducted prior to the swearing in of the assessors but after the accused person has pleaded to the information.

## PART XVIII – PRE-TRIAL ORDERS, HEARINGS AND CONFERENCES

*Objectives of this Part*

289. The objectives of this Part are to—

*(a)* improve case management in the courts exercising criminal jurisdiction;

*(b)* apply procedures at an appropriate stage before the trial of a criminal case, which aim to—

(i) clarify the triable issues in each criminal proceeding;

(ii) confirm the charges that are to proceed to trial;

(iii) ascertain the intention of the accused person to plead guilty to the charge against him or her, or to any other appropriate charge;

(iv) determine the length of the trial, and explore means by which its hearing may be facilitated by the application of any appropriate procedure.

*(c)* otherwise enhance the efficiency of the courts in determining criminal proceedings in any just manner.

*Pre-trial orders*

290.—(1) Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to—

*(a)* any determination as to the most appropriate locality of the court at which the trial should take place, and the transfer of the proceedings to the most appropriate court;

*(b)* compelling the attendance of any witness or the production of any evidence at the trial;

*(c)* compelling the provision by the prosecution to the defence of any briefs of evidence, copies of documents or any other matter which should fairly be provided to enable a proper preparation of the defence case;

*(d)* a challenge to the use of any report or other evidence that may unfairly prejudice the defence case;

*(e)* a challenge to the validity of the charge, complaint or information as disclosing no offence under the law;

*(f)* a challenge to the proceedings on the grounds of the breach of any fundamental human right of the accused person, or any applicable human rights issue; and

*(g)* any matter concerning the giving of an alibi notice and the information to be provided in such a notice.

*(h).* the signing of agreed facts under section 135 (1) of this Decree.

(2) A court may hear and adjudicate upon an application made under this section at any time that the court determines, or the court may defer the hearing of it until the next pre-trial conference for that matter to be held under the provisions of this Part.

(3) Upon hearing any application under this section the court may make any necessary order to protect the rights of any party to the proceedings, or to facilitate a fair and timely hearing of the proceedings to which the application relates.

*Prescribed procedures and powers*

291.—(1) Regulations made under this Decree may prescribe procedures and powers for courts to conduct pre-trial conferences in criminal proceedings to meet the objectives stated in section 289.

(2) The Regulations made under sub-section (1) may make provision for—

*(a)* the courts in which pre-trial conference may or shall be conducted;

*(b)* the powers of court officers to conduct pre-trial conferences, or to perform any role or power in relation to them;

*(c)* the stage at which pre-trial conferences may or shall be conducted;

*(d)* the requirement for parties to attend, and the powers of the court to enforce the attendance of the parties;

*(e)* any aspect of the procedure to be applied during pre-trial conferencing; and

*(f)* any other matter related to pre-trial conferences which are consistent with the objectives of this Part.

*Powers of courts in the absence of Regulations*

292. —(1) Nothing in section 291 shall prevent a court from adopting and applying procedures for pre-trial conferences as a court sees fit.

(2) Any processes adopted under sub-section (1) must be aimed at facilitating the attainment of the objectives stated in section 289, and must be modified to meet the requirements of any applicable Regulations made under this Part when they take effect.

## PART XIX—RULES OF CRIMINAL PROCEDURE

*Chief Justice may make rules of criminal procedure*

293.—(1) The Chief Justice may make rules of criminal procedure, and may issue Practice Directions in relation to any matter of criminal procedure, not inconsistent with the provisions of this Decree, to be applied in all proceedings and trials in any court.

(2) The power of the Chief Justice under sub-section (1) is in addition to and not in derogation from any power to make rules under any other Decree.

*Chief Magistrate may make rules for the procedures of the Magistrates Courts*

294.—(1) The Chief Magistrate may make rules applying to the procedures of the Magistrates Courts in criminal proceedings and trials, and in relation to the listing and management of cases in the Magistrates Courts.

(2) Rules made by the Chief Magistrate under sub-section (1) must be consistent with—

*(a)* the provisions of this Decree; and

*(b)* any rules of procedure made by the Chief Justice under this Part.

## PART XX—PROTECTING VULNERABLE WITNESSES

*Directions as to mode by which a vulnerable witness's evidence is to be given*

295.—(1) Before the commencement of any trial, a prosecutor may apply to a judge or magistrate for directions as to the procedures by which the evidence of a vulnerable complainant or witness is to be given at the trial.

(2) The judge or magistrate shall hear and determine an application made under sub-section (1) in chambers, and shall give each party an opportunity to be heard in respect of the application.

(3) The judge or magistrate may call for and receive any reports from any persons whom the judge or magistrate considers to be qualified to advise on the effect on the complainant or the vulnerable witness of giving evidence in person in the ordinary way or in any particular mode provided for in section 296.

(4) In considering what directions (if any) to give under section 296 the judge or magistrate shall have regard to the need to minimise stress on the complainant or the vulnerable witness, while at the same time ensuring a fair trial for the accused.

(5) A judge or magistrate may hear and consider an application by either party made during the course of any trial for an order prescribing the procedures by which the evidence of a vulnerable complainant or witness is to be given in the trial.

*Modes in which evidence may be given by vulnerable complainants or witnesses*

296.—(1) On an application under section 295, the judge or magistrate may give any of the following directions in respect of the mode in which the evidence of a vulnerable complainant or witness is to be given at the trial—

*(a)* where a videotape of the evidence was shown at a preliminary hearing, a direction that the evidence be admitted in the form of that videotape, with such exclusions (if any) as the judge or magistrate may order under sub-section (2):

*(b)* where the judge or magistrate is satisfied that the necessary facilities and equipment are available, a direction that the complainant or vulnerable witness shall give his or her evidence outside the courtroom but within a Court precinct, or from some other suitable location, the evidence being transmitted to the courtroom by means of closed circuit television or such similar quality secure audio visual electronic means;

*(c)* a direction that, while the complainant or vulnerable witness is giving evidence or is being examined in respect of his or her evidence, a screen, or one-way glass, be so placed in relation to the complainant or vulnerable witness that—

(i) he or she cannot see the accused; but

(ii) the judge or magistrate, the assessors, and counsel for the accused can see the person;

*(d)* where the judge or magistrate is satisfied that the necessary facilities and equipment are available, a direction that, while the complainant or the vulnerable witness is giving evidence or is being examined in respect of his or her evidence, he or she be placed behind a wall or partition, constructed in such a manner and of such materials as to enable those in the courtroom to see the complainant or witness while preventing the complainant or witness from seeing them, the evidence of the complainant or witness being given through an appropriate audio link;

*(e)* where the Judge or magistrate is satisfied that the necessary facilities and equipment are available, a direction that—

(i) the complainant or vulnerable witness gives his or her evidence at a location outside the Court precincts; and

(ii) that those present while the complainant or vulnerable witness is giving evidence include the judge or magistrate, the accused, counsel, and such other persons as the judge or magistrate thinks fit; and

(iii) that the giving of evidence by the complainant or vulnerable witness be recorded and that the complainant's evidence be admitted in the form of that recording with such excisions (if any) as the Judge or magistrate may order under sub-section (2).

(2) Where a recording of the complainant's or vulnerable witness's evidence is to be shown at the trial, the judge or magistrate shall view the recording before it is shown, and may order excised from the recording any matters that, if the evidence were to be given in person in the ordinary way, would be excluded either—

*(a)* in accordance with any rule of law relating to the admissibility of evidence; or

*(b)* pursuant to any discretion of a judge or magistrate to order the exclusion of any evidence.

(3) Where a recording of any evidence is to be shown at the trial, the judge or magistrate shall give such directions under this section as the judge or magistrate may think fit relating to the manner in which any cross-examination or re-examination of the witness is to be conducted.

(4) Where the witness is to give his or her evidence in the mode provided for in sub-section (1)(b) or (d), the judge or magistrate may direct that any questions to be put to them shall be given through an appropriate link to a person, approved by the judge or magistrate, placed next to the witness, who shall repeat the question to them.

(5) Where the witness is to give his or her evidence at a location outside the Court precincts, the judge or magistrate may also give any directions under sub-section (1)(c) and (d) that the judge or magistrate thinks fit.

(6) Where a direction is given under this section, the evidence of the witness shall be given substantially in accordance with the terms of the direction; but no such evidence shall be challenged in any proceedings on the ground of any failure to observe strictly all the terms of the direction.

## PART XXI—IMPLEMENTING INTERNATIONAL TREATIES AND CONVENTIONS

*Procedures for implementing international arrangements*

297.—(1) Regulations made under this Decree may provide for the—

*(a)* procedures to be applied in the courts of Fiji where any criminal proceedings is undertaken in accordance with the obligations arising under international treaty or convention to which Fiji is a party;

*(b)* any other matter of criminal procedures that is required in Fiji to give effect to any obligations that arises under any international treaty or convention to which Fiji is party.

(2) The provisions of any regulation made under sub-section (1) and which is stated to be a regulation for the purposes stated in sub-section (1), shall be applied in any process or proceeding involving an obligation under such a treaty or convention notwithstanding that the process or procedure may vary from any that is provided for under provisions of this Decree.

## PART XXII – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

*Repeal of the Criminal Procedure Code [Cap. 21] and the Electable Offences Decree*

298. The Criminal Procedure Code [Cap. 21] and the Electable Offences Decree are repealed.

*Savings provisions*

299.—(1) Nothing in this Decree affects the validity of any court proceedings commenced or conducted prior to the commencement of this Decree.

(2) Nothing in this Decree affects the validity of any sentence of any court made prior to the commencement of this Decree, and all such sentences shall be carried out in accordance with the laws applying at the time that they were made.

(3) No aspect of a court proceeding and no procedure used to enforce any sentence under this Decree shall be invalid by reason of the use of forms and processes applying to the proceedings or the enforcement of sentences prior to the commencement of this Decree, unless a Regulation or Rule made under this Decree requires the use of other forms or processes.

*Savings of forms and fees*

300.—(1) All fees applying under the repealed Criminal Procedure Code at the date of commencement of this Decree shall be deemed to be the fees payable under this Decree until regulations are made to prescribe fees in accordance with section 302.

(2) The forms prescribed in the Schedules to the repealed Criminal Procedure Code shall continue to be the forms to be used under this Decree, until regulations are made to prescribe forms in accordance with section 302, or the Chief Justice exercises the powers under section 286.

(3) The Chief Justice and the Chief Magistrate may approve any necessary modification to the forms saved under sub-section (2) to reflect the provisions of this Decree.

*Transitional provisions*

301.—(1) A court hearing any proceeding for an offence which was commenced prior to the commencement of this Decree may apply the provisions of this Decree if no judgment has been made in the case and no sentence has been imposed on the offender prior to the commencement of this Decree.

(2) On the hearing of any appeal against a conviction or sentence imposed by a court prior to the commencement of this Decree, the court hearing the appeal shall, as far as is practicable in the circumstances, give effect to the provisions of this Decree..

*Regulations*

302.—(1) The Minister may make regulations for the any purpose related to the implementation of this Decree, other than any matter for which Rules may be made by the Chief Justice in accordance with this Decree or any other law.

(2) Without limiting the generality of sub-section (1), regulations made under this section may prescribe—

*(a)* forms, fees and procedures to be applied to any matter provided for under this Decree;

*(b)* forms for any other purpose associated with the exercise of a power under this Decree;

*(c)* forms and procedures for the enforcement of any orders, determinations, rulings or sentences permissible under this Decree;

*(d)* powers and roles of court officers to perform any functions provided for under this Decree, and to issue warrants and give notices in relation to any matter provided for under this Decree;

*(e)* procedures for the proving of prior convictions of any person;

*(f)* additional procedures for the taking of evidence in criminal proceedings from vulnerable complainants and witnesses that are consistent with Part XX;

*(g)* procedures for the recording or court proceedings;

*(h)* procedures for considering pre-trial applications and the orders that a court may make in relation to such applications;

*(i)* the powers and procedures of the court in relation to requiring that legal aid be provided to an accused person;

*(j)* the procedures to be applied in the courts of Fiji in relation to the implementation of any international treaty or convention to which Fiji is a party and which involves any aspect of criminal procedure;

*Application of this Decree to Rotuma*

303. This Decree shall, in its application to Rotuma, be subject to the provisions of the Rotuma Act.

GIVEN under my hand this 4th day of November 2009.

EPELI NAILATIKAU
Vice-President of the Republic of Fiji

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