

Customs Recognition Act 2000

SOLOMON ISLANDS

CUSTOMS RECOGNITION ACT 2000

(No 7 of 2000)

ARRANGEMENT OF SECTIONS

SECTION:

1. Short title
2. Interpretation
3. Existence and nature of customary law matters
4. Facts may be relevant when customary right, usage or practice in question
5. Proof of custom
6. Recognition of custom
7. Criminal cases
8. Civil cases
9. Guardianship, etc.
10. Conflict of custom

CUSTOMS RECOGNITION ACT 2000

(No 7 of 2000)

1. Short title

This Act may be cited as the *Customs Recognition Act, 2000*, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation

In this Act, unless the context otherwise requires-

"Court" means any Court of Solomon Islands of competent jurisdiction; and
"customary law" has the meaning assigned thereto in the *Constitution*.

3. Existence and nature of customary law matters

Subject to the provisions of section 5, questions as to the existence of any customary law and the nature of such customary law in relation to a matter, and its application in or relevance to any particular circumstances, shall be ascertained as though they were matters of fact.

4. Facts may be relevant when customary right, usage or practice in question

Where the question is as to the existence of any customary law, the following facts are relevant-

- (a) any transaction, practice or usage by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or inconsistent with its existence; and
- (b) particular instances in which the right or custom was claimed, recognised, or exercised or in which its exercise was disputed, asserted or departed from.

5. Proof of custom

(1) In considering a question referred to in section 3 a Court-

- (a) is not bound to observe strict legal procedure or apply technical rules of evidence; and
- (b) shall-
 - (i) admit and consider such relevant evidence as is available (including hearsay evidence and expressions or opinion); and
 - (ii) otherwise inform itself as it thinks proper.

(2) For the purposes of deciding on a question referred to in section 3 a Court may-

- (a) refer to books, treatises, reports or other works of reference, or statements by Provincial Governments or chiefs (whether published or not);
- (b) accept any matter or thing stated in such works as evidence on the question; and
- (c) of its own motion, call such evidence or require the opinions of such persons as it thinks fit,

so, however, that this subsection shall not limit in any way the discretion of the Court in obtaining evidence or informing itself on the question.

(3) Notwithstanding the provisions of section 3, where an appeal is made from a decision of a Court, the Court that hears the appeal may consider *de novo* a question referred to in that section that arises in the appeal.

6. Recognition of custom

Subject to the provisions of this Act, custom shall be recognised and enforced by, and may be pleaded in, all Courts except so far as in a particular case or in a particular context-

- (a) its recognition or enforcement would result, in the opinion of the Court in an injustice or would not be in the public interest; or
- (b) be inconsistent with the provisions of the *Constitution* or an Act of Parliament.

7. Criminal cases

Subject to the provisions of this Act, the law of evidence and to any other law, custom may be taken into account in a criminal case only for the purposes of-

- (a) ascertaining the existence or otherwise of a state of mind of a person;
- (b) deciding the reasonableness or otherwise of an act, default or omission by a person;
- (c) deciding the reasonableness or otherwise of an excuse;
- (d) deciding, in accordance with any other law whether to proceed to the conviction of a guilty party;
- (e) determining the penalty (if any) to be imposed on a guilty party; or
- (f) taking the custom into account in order to avoid any injustice that may be done to a person.

8. Civil cases

Subject to provisions of this Act, the *High Court (Civil Procedure) Rules*, 1964, and to any other law, custom may be taken into account in a case other than a criminal case only in relation to-

- (a) the ownership by custom of rights in, over or in connection with customary land of-
 - (i) anything in or on customary land; or
 - (ii) the produce of customary land, including rights of hunting or gathering;
- (b) the ownership by custom of rights in, over or in connection with the sea or a reef, or in or on the bed of the sea or of a river or lake, including rights of fishing;
- (c) the ownership by custom of water, or of rights in, or over water;
- (d) the devolution of customary land or of rights in, over or in connection with customary land, whether-
 - (i) on the death or on the birth of a person;
 - (ii) on the happening of a certain event;
- (e) trespass by animals;
- (f) marriage, divorce or the right to the custody or guardianship of infants, in cases arising out of or in connection with a marriage entered into in accordance with custom;
- (g) a transaction that-
 - (i) the parties intended should be; or
 - (ii) justice requires should be,
 regulated wholly or partly by custom and not by law;
- (h) the reasonableness or otherwise of an act, default or omission by a person;
- (i) the existence of a state of mind of a person; or
- (j) taking the custom into account in order to avoid any injustice that may be done to a person.

9. Guardianship, etc.

Notwithstanding anything in any other law, custom shall be taken into account in deciding questions relating to guardianship and custody of infants and adoption.

10. Conflict of custom

Subject to this section, and to any other law, where-

- (a) in a matter before a Court a question arises as to which of two or more systems of custom should prevail; and
- (b) the Court is not satisfied on the evidence before it as to that question,

the Court shall consider all the circumstances and may adopt the system that it is satisfied the justice of the case requires.
