

Queensland



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 42 of 1973

An Act to make further provisions for appeals from the Supreme Court to Her Majesty in Council and for the making of special references by Her Majesty to the Judicial Committee of Her Majesty's Privy Council at the request of the Governor in Council or otherwise, and to make provision for the making of special references by the Governor in Council to the Supreme Court

[ASSENTED TO 6TH AUGUST, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Citation. This Act may be cited as the *Appeals and Special Reference Act 1973*.

2. Appeals to Her Majesty in Council. (1) Subject to the provisions of this section, and without prejudice to sections 4 and 5, an appeal to Her Majesty in Council shall lie—

- (a) as of right, from any final judgment of the Court, where the matter in dispute in the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of £500 sterling or upwards; and

(b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision.

(2) No appeal shall lie by virtue of subsection (1) from any judgment of the Court in the exercise of federal jurisdiction with which the Court has been invested under section 77 of the Constitution of the Commonwealth.

(3) In this section, "judgment" includes decree, order, sentence or decision.

**3. References to Judicial Committee.** (1) It shall be lawful for Her Majesty to refer to the Judicial Committee for hearing and consideration any question or matter to which this section relates, and the Judicial Committee may thereupon hear and consider the same and advise Her Majesty thereon.

(2) The questions and matters to which this section relates are questions or matters which, whether as part of any cause or otherwise, and whether in the course of any proceedings in any court in Queensland or otherwise, arise under or concern any law in force in Queensland (including the prerogatives of Her Majesty in right of Queensland) or which otherwise substantially relate to the peace, welfare and good government of Queensland.

**4. References to Judicial Committee on Certificate of Court.** (1) The Attorney-General may at any time apply to the Court for an order granting a certificate that any question or matter specified by the Attorney-General is a question or matter to which this section relates, and is one which, by reason of its great general or public importance, or otherwise, ought to be referred to the Judicial Committee, under the provisions of this Act or of the *Judicial Committee Act 1833* (3 & 4 William IV, c. 41) or of any other enactment or instrument enabling Her Majesty in that behalf, for hearing and consideration and advice thereon.

(2) The questions and matters to which this section relates are questions or matters which, whether as part of any cause or otherwise, and whether in the course of any proceedings in any court in Queensland or otherwise, arise under or concern any law in force in Queensland (including the prerogatives of Her Majesty in right of Queensland) or which otherwise substantially relate to the peace, welfare and good government of Queensland.

(3) On any application under subsection (1) the Court shall by order either grant the certificate, in the terms specified by the Attorney-General or with amendments, or refuse the grant of such a certificate.

(4) Where the Court by order refuses the grant of such a certificate or grants the certificate on amended terms, the Attorney-General may appeal to Her Majesty in Council against that order and, where the appeal is upheld, the Court shall make an order granting the certificate.

(5) Where the Court by order—

(a) grants the certificate; or

(b) grants the certificate on amended terms and the Attorney-General does not, within thirty days after the date of the order, petition Her Majesty in Council for leave to appeal against the order,

the Governor in Council shall request Her Majesty to refer the question or matter so certified to the Judicial Committee under the provisions of this Act or of the *Judicial Committee Act 1833* (3 & 4 William IV, c. 41) or of any other enactment or instrument enabling Her Majesty in that behalf, for hearing and consideration and advice thereon.

(6) Nothing in this section shall affect any right of the Governor in Council or of any other person to tender any request or petition to Her Majesty at any time.

**5. Reference to Court.** (1) The Governor in Council may refer to the Court for hearing and consideration any question or matter whatsoever which he thinks fit to refer and the Court shall thereupon hear and consider the same.

(2) The Court may direct that any person interested or, where there is a class of persons interested, any one or more persons as representatives of the class, be notified of the hearing, and persons so notified shall be entitled to appear or be represented at the hearing.

(3) The Court may request any counsel to argue the question or matter as to any interest which in the opinion of the Court is affected and as to which counsel does not appear; and the reasonable expenses thereby occasioned shall be paid out of moneys to be appropriated by the Parliament.

(4) The Court shall certify to the Governor in Council its opinion on the question or matter referred to it, together with a statement of the reasons therefor, and any Judge who differs from that opinion may in like manner certify his opinion and his reasons.

(5) An appeal shall lie to Her Majesty in Council as of right from any opinion of the Court certified to the Governor in Council under this section to the extent that the questions or matters to which that opinion relates arise under or concern any law in force in Queensland (including the prerogatives of Her Majesty in right of Queensland) or otherwise substantially relate to the peace, welfare and good government of Queensland.

(6) Application to the Court or to Her Majesty in Council for leave to appeal under subsection (5) may be made by the Attorney-General or by any person who appeared or was represented at the hearing.

(7) The power to make rules of the Supreme Court includes power to make rules of court providing and regulating practice and procedure in respect of applications, references and proceedings under section 4 and this section and until such rules are made, or so far as such rules do not extend, the Court hearing any such application, reference or

proceeding may in the particular case give such directions as it deems fit, and such directions shall according to their tenor have the force and effect of rules made pursuant to this subsection.

**6. Disposition of Appeals.** (1) Any appeal which, by virtue of this Act or of any Act of the Parliament of the United Kingdom or of any other law, statute or custom (including any prerogative of Her Majesty) may be brought before Her Majesty or Her Majesty in Council from or in respect of any decision of the Court, shall be instituted, admitted and prosecuted, and any decision which Her Majesty in Council may pronounce thereon shall be, according to its tenor, carried into effect in and in relation to Queensland, in all respects in such manner as is at the commencement of this Act provided for by any Act of the Parliament of the United Kingdom and as is for the time being provided for by any Order in Council, in so far as any such Act of the Parliament of the United Kingdom or Order in Council regulates the duties, powers or procedure of the Court or the composition, powers or procedure of the Judicial Committee in relation to any appeal from the Court or in any other respect provides for the institution, admission or prosecution of any such appeal or for the carrying into effect of the decision of Her Majesty in Council on any such appeal: Provided that this subsection shall be in addition to, and not in substitution for or derogation of sections 4 and 5 of this Act or any Act of the Parliament of Queensland or any Order or Rule made thereunder.

(2) In this section, "decision" includes determination, judgment, decree, sentence, order or opinion.

**7. Savings.** Nothing in this Act shall abridge any rights or powers arising under any Order in Council which applies to or in relation to the subject-matters of this Act or interfere with any right or power of Her Majesty to grant special leave to appeal to Her Majesty in Council from a decision of the Court or in any other way diminish Her Majesty's prerogative.

**8. Act to be construed subject to legislative powers of the Parliament.** This Act shall be read and construed so as not to exceed the legislative powers of the Parliament of Queensland to the intent that, where any provision hereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid provision to the extent to which it is not in excess of those powers.

**9. Interpretation.** In this Act, unless the context otherwise requires—

"Act of the Parliament of the United Kingdom" includes any provisions of any Act of the Parliament of the United Kingdom which apply to or in relation to the subject-matters of this Act whether or not those provisions extend otherwise than by virtue of this Act to Queensland as part of the law of Queensland;

"the Court" means either the Full Court or a single Judge of the Supreme Court of Queensland exercising the powers of the Full Court;

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“Judicial Committee” means the Judicial Committee of Her Majesty’s Privy Council as is at the commencement of this Act provided for by any Act of the Parliament of the United Kingdom, and as is for the time being provided for by any Order in Council or other instrument constituting or enabling the Judicial Committee for purposes connected with appeals or other questions or matters arising in or in relation to Queensland.