



Queensland

# **Civil Proceedings Act 2011**

**Act No. 45 of 2011**





Queensland

# Civil Proceedings Act 2011

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## Queensland

### **Civil Proceedings Act 2011**

#### **Act No. 45 of 2011**

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**An Act to provide for various matters concerning civil proceedings and proceedings in relation to contempt of court in the Supreme Court, the District Court and the Magistrates Courts, to repeal the Supreme Court Act 1995, to amend the Associations Incorporation Act 1981, the Births, Deaths and Marriages Registration Act 2003, the Civil Liability Act 2003, the Cremations Act 2003, the Criminal Code, the District Court of Queensland Act 1967, the Electoral Act 1992, the Evidence Act 1977, the Information Privacy Act 2009, the Judges (Pensions and Long Leave) Act 1957, the Jury Act 1995, the Justices Act 1886, the Justices of the Peace and Commissioners for Declarations Act 1991, the Land Court Act 2000, the Law Reform Act 1995, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Queensland Civil and Administrative Tribunal Act 2009, the Retirement Villages Act 1999, the Right to Information Act 2009, the Succession Act 1981 and the Supreme Court of Queensland Act 1991, and to make minor and consequential amendments of the Acts mentioned in a schedule**

**[Assented to 6 December 2011]**

## The Parliament of Queensland enacts—

# Part 1 Preliminary

## 1 Short title

This Act may be cited as the *Civil Proceedings Act 2011*.

## 2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- parts 1 to 31
- part 32, divisions 2, 3, 6, and 8
- section 229
- schedules 1A and 1.

## 3 Application

Unless this Act otherwise expressly provides, this Act applies to civil proceedings and proceedings in relation to contempt of court in the following courts—

- the Supreme Court
- the District Court
- a Magistrates Court.

## 4 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

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## 5 Meaning of *court*

In this Act—

*court* means, if otherwise appropriate—

- (a) in the context of the Supreme Court—the Supreme Court; or
- (b) in the context of the District Court—the District Court; or
- (c) in the context of Magistrates Courts—a Magistrates Court.

## 6 Act binds all persons

This Act binds all persons, including the State.

# Part 2 Law and equity

## 7 Concurrent administration of law and equity

- (1) A court must exercise its jurisdiction in a proceeding to ensure, as far as possible, that—
  - (a) all matters in dispute between the parties are completely and finally decided; and
  - (b) multiplicity of legal proceedings is avoided.
- (2) A court must give the same effect as it did immediately before the commencement of this section—
  - (a) to all equitable estates, titles, rights, remedies, defences and counterclaims, and to all equitable duties and liabilities; and
  - (b) subject to the matters mentioned in paragraph (a), to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing under the

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common law or under any custom or created under any statute.

- (3) If there is a conflict or difference between the rules of equity and the rules of the common law, the rules of equity prevail.
- (4) Nothing in this Act affects a court's power to stay a proceeding if appropriate, either on its own initiative or on the application of any person, whether or not a party.
- (5) Nothing in this section limits any inherent or other power of a court to make an order for the decision by the court of a question or issue separately from another question or issue or to state a case for the opinion of the Court of Appeal.
- (6) Also, nothing in this section increases the jurisdiction given to the District Court under the *District Court of Queensland Act 1967* or to a Magistrates Court under the *Magistrates Courts Act 1921*.

## 8 Equitable damages

If a court has jurisdiction to hear an application for an injunction or specific performance, the court may award damages as well as, or instead of, an injunction or specific performance.

## 9 Injunction

- (1) If a court has jurisdiction to hear an application for an injunction, the court may, at any stage of a proceeding, by injunction, restrain a threatened or apprehended breach of contract or other wrongful conduct.
- (2) If waste or trespass is threatened or apprehended, for subsection (1), it does not matter whether—
  - (a) the person against whom the injunction is sought (the *relevant person*) is in possession under any claim of title or otherwise; or

- (b) if the relevant person is not in possession, the relevant person claims a right to do the act sought to be restrained under any claim of title; or
  - (c) the estate claimed by any party is legal or equitable.
- (3) The court may also, at any stage of a proceeding, grant an interlocutory injunction if it considers it just or convenient.

## **10 Declaratory order**

- (1) This section applies to the Supreme Court only.
- (2) The court may hear an application for a declaratory order only and may make a declaratory order without granting any relief as a result of making the order.

## **11 Order to fulfil duty**

- (1) This section applies to the Supreme Court only.
- (2) The court may order any person to fulfil any duty in the fulfilment of which the person seeking the order is personally interested.
- (3) The court may make an interlocutory order under subsection (2) if it considers it just or convenient.

## **12 Order to appoint receiver**

- (1) This section applies to the Supreme Court only.
- (2) The court may, at any stage of a proceeding, make an interlocutory order appointing a receiver if it considers it just or convenient.

## **Part 3                      Orders**

### **Division 1                      Orders generally**

#### **13                      Power to make orders**

- (1) This section applies to a court making an order under this Act.
- (2) Unless otherwise stated in this Act, the court may make the order on its own initiative or on an application made to it under this Act.

#### **14                      Power to impose appropriate conditions**

A court may impose on an order conditions it considers appropriate.

#### **15                      Power to award costs**

A court may award costs in all proceedings unless otherwise provided.

### **Division 2                      Particular orders**

#### **16                      Amendment for new cause of action or party**

- (1) This section applies to an amendment of a claim, anything written on a claim, pleadings, an application or another document in a proceeding.
- (2) The court may order an amendment to be made, or grant leave to a party to make an amendment, even though—
  - (a) the amendment will include or substitute a cause of action or add a new party; or
  - (b) the cause of action included or substituted arose after the proceeding was started; or



- (c) a relevant period of limitation, current when the proceeding was started, has ended.
- (3) Despite subsection (2), the rules of court may limit the circumstances in which amendments may be made.
- (4) This section applies despite the *Limitation of Actions Act 1974*.

## **17 Interested person may become a party and may be bound by outcome**

- (1) This section applies if the court considers—
  - (a) not all persons interested in the subject matter of a proceeding or the relief sought in a proceeding are before the court; and
  - (b) the proceeding ought not to proceed, or relief ought not to be given, without particular persons being given notice of the proceeding.
- (2) The court may—
  - (a) order that the particular persons be included as parties to the proceeding; or
  - (b) stay the proceeding until notice of the proceeding has been given, as the court may direct, to the particular persons.
- (3) If a person given notice does not elect to be included as a party to the proceeding, the person is bound by the outcome of the proceeding in relation to any subject matter or relief in which the person was interested.

## **18 Order binds persons who are represented**

- (1) This section applies to an order made in a proceeding started and continued by or against 1 or more persons (the *representative party*) who have the same interest in the proceeding as representing all of the persons who have the same interest and could have been parties to the proceeding.

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- (2) Unless the court orders otherwise, as well as binding the parties to the proceeding, the order binds the persons who have the same interest as the representative party and could have been parties to the proceeding.
- (3) The order may be enforced against a person not named as a party only with the court's leave.

## **19 Interpleader orders**

- (1) On an application for relief by way of interpleader, the court may do 1 or more of the following—
  - (a) if a proceeding is pending against the applicant—order a claimant be included as a defendant in the proceeding in addition to or in substitution for the applicant;
  - (b) order a question between the claimants be stated and tried and direct which of the claimants is to be the plaintiff and which the defendant and give any necessary directions for the trial;
  - (c) order the applicant to pay or transfer all or part of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale;
  - (d) if a claimant claims to be entitled to any of the property by way of security for a debt—make orders for the sale of all or part of the property and for the application of the proceeds of sale;
  - (e) decide in a summary way a question of law or fact arising on the application;
  - (f) make an order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.
- (2) If—
  - (a) an application for relief by way of interpleader is made; and
  - (b) several proceedings are pending in the court for or about any or all of the property in dispute; and

(c) the court makes an order in any 2 or more of the proceedings;

the order is binding on all the parties to all the proceedings to which it applies.

## 20 Set-off

- (1) If there are mutual debts between a plaintiff and a defendant in a proceeding, the defendant may, by way of defence, set off against the plaintiff's claim any debt owed by the plaintiff to the defendant that was due and payable at the time the defence of set-off was filed.
- (2) For subsection (1), it does not matter whether the mutual debts are different in nature.
- (3) This section extends to a proceeding in which 1 or more of the mutual debts is owed by or to a deceased person who is represented by a personal representative.
- (4) However, this section does not apply to the extent to which a plaintiff and a defendant have agreed that debts, whether generally, or in relation to specific debts, may not be set off against each other.
- (5) This section—
  - (a) does not affect other rights of set-off or obligation of a debtor or creditor whether arising in equity or otherwise; and
  - (b) applies subject to any express provision in another Act.
- (6) In this section—

*debt* means any liquidated claim.

## 21 Abatement of proceedings

- (1) If a party to a proceeding dies or becomes bankrupt, the proceeding does not abate because of the death or bankruptcy unless the cause of action does not survive the death or bankruptcy.

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- (2) If a proceeding abates for any reason before an order for costs made in the proceeding is satisfied—
  - (a) the order for costs remains enforceable; and
  - (b) the proceeding continues for the purpose only of enforcement of the order for costs.

## **22 Dismissal of proceedings for want of prosecution**

- (1) This section applies to the District Court and Magistrates Courts.

*Note—*

The Supreme Court has inherent power to dismiss proceedings for want of prosecution.

- (2) If 2 years have passed since the last step was taken in a proceeding, the court may dismiss the proceeding.
- (3) For this section, an application on which no order was made is taken not to be a step.

## **23 Effect of default judgment given by registrar**

A default judgment given by a registrar has effect as a judgment given by the court.

## **24 Discharge of lien or security**

- (1) This section applies to a proceeding if—
  - (a) a party (the *claimant*) claims the recovery of particular property other than land (the *relevant property*); and
  - (b) the party from whom recovery is sought—
    - (i) claims to be entitled to retain the relevant property because of a lien or as security for money; and
    - (ii) does not otherwise dispute the title of the claimant.
- (2) The court may make an order—

- (a) allowing the claimant to pay into court, to be held until the end of the proceeding—
  - (i) the amount of money in relation to which the lien or other security is claimed; and
  - (ii) any other sum for interest and costs as the court may direct; and
- (b) that, on payment into court, such judgment be given for recovery of the relevant property as the nature of the case requires.

## **Part 4                      Transfer of proceedings**

### **25            Transfer by Supreme Court—general**

- (1) The Supreme Court may order that a proceeding pending in the District Court or a Magistrates Court be transferred to the Supreme Court.
- (2) The Supreme Court may order that a proceeding pending in the Supreme Court for which the District Court, or a Magistrates Court, has jurisdiction be transferred to a court having jurisdiction.

### **26            Transfer by District Court—general**

- (1) The District Court may order that a proceeding pending in a Magistrates Court be transferred to the District Court.
- (2) The District Court may order that a proceeding pending in the District Court for which a Magistrates Court has jurisdiction be transferred to a Magistrates Court.

### **27            Transfer because of amendment**

- (1) This section applies if a plaintiff or applicant in a proceeding wants to amend the relief claimed to, or to include, relief not

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within the jurisdiction of the court in which the proceeding is pending.

- (2) The party may apply to a court that would have jurisdiction if the amendment were made (the *other court*) for—
  - (a) leave to amend; and
  - (b) an order that the proceeding be transferred to the other court.
- (3) If, apart from any jurisdictional consideration, the other court considers the amendment appropriate, the other court may give leave to amend and, if it gives leave, must order that the proceeding be transferred to it.

## **28 Transfer because claim beyond jurisdiction**

- (1) This section applies if the court in which a proceeding is pending (the *relevant court*) considers it does not have jurisdiction for the proceeding (other than because of a counterclaim).
- (2) If the relevant court considers another court has jurisdiction for the proceeding, the relevant court may, by order, transfer the proceeding to the other court.
- (3) Unless an order is made under subsection (2), the relevant court—
  - (a) must strike out the proceeding; and
  - (b) may order the party who started the proceeding to pay the costs of any other party to the proceeding.

## **29 Transfer because counterclaim beyond jurisdiction**

- (1) This section applies if a party to a proceeding in a court (the *relevant court*) files a counterclaim for relief not within the relevant court's jurisdiction.
- (2) A court having jurisdiction for the counterclaim may order that—
  - (a) all of the proceeding be transferred to that court; or

- (b) the counterclaim be transferred to that court; or
  - (c) all of the proceeding be heard and decided by the relevant court.
- (3) If an order is made under subsection (2), the registrar of the court that made the order must give a copy of it to the registrar of the relevant court.
- (4) If an order is made under subsection (2)(b)—
- (a) the relevant court must hear and decide the balance of the proceeding; and
  - (b) unless the court hearing the counterclaim orders otherwise, enforcement of any judgment in relation to the balance of the proceeding is stayed until judgment is given in relation to the counterclaim.
- (5) Despite any other Act or law, the relevant court is taken to have jurisdiction to hear and decide all of the proceeding if—
- (a) no application is made for an order under subsection (2)(a) or (b) within 14 days after the counterclaim is served on the other party or parties to the proceeding; or
  - (b) an order is made under subsection (2)(c).

### **30 Copy of order and filed documents**

- (1) If a court orders that all or part of a proceeding be transferred to or from another court, the registrar of the court must give the registrar of the other court a copy of the order.
- (2) If a proceeding in a court is transferred to another court, the registrar of the court must give to the registrar of the other court all filed documents.
- (3) If part of a proceeding in a court is transferred to another court, the registrar of the court must give to the registrar of the other court a copy of all filed documents.

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### **31 Power of court to which proceeding transferred**

The court to which a proceeding is transferred may hear and decide the proceeding as if it had been started in that court.

### **32 Limitation periods**

To remove any doubt, it is declared that for any relevant period of limitation—

- (a) a proceeding transferred to another court is taken to have been started when the proceeding was originally started; and
- (b) a counterclaim transferred to another court is taken to have been started when the counterclaim was originally started.

### **33 Costs**

- (1) This section applies if a proceeding is transferred under this part.
- (2) Unless the court orders otherwise, costs are in accordance with the scale of costs for the court in which the proceeding was pending when the costs were incurred.
- (3) A court to which all or part of a proceeding is transferred may make an order about costs before the transfer if those costs are not dealt with by an order made before the transfer.

## **Part 5 Conferences**

### **34 Definition for pt 5**

In this part—

*relevant conference* means—

- (a) a conference held at the court's direction; or



- (b) a conference required under the rules because there is a claim for damages for personal injury or death.

### **35 Resolution agreement**

- (1) If, at a relevant conference, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party.
- (2) The agreement has effect as a compromise.

### **36 Evidence from relevant conference**

- (1) Evidence of anything done or said, an admission made, or a document tendered, at a relevant conference about a dispute is admissible at the trial of the dispute or in another civil proceeding in the court or elsewhere only if—
  - (a) all the parties to the dispute agree; or
  - (b) the evidence is an agreement under section 35.
- (2) In this section—

*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, a relevant conference.

## **Part 6 ADR processes**

### **Division 1 Preliminary**

#### **37 Objects of pt 6**

The objects of this part are—

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- (a) to provide an opportunity for litigants to participate in ADR processes in order to achieve negotiated settlements and satisfactory resolution of disputes; and
- (b) to improve access to justice for litigants and to reduce cost and delay; and
- (c) to provide a legislative framework allowing ADR processes to be conducted as quickly, and with as little formality and technicality, as possible; and
- (d) to safeguard ADR processes—
  - (i) by extending the same protection to participants in an ADR process as they would have if the dispute were before a court; and
  - (ii) by ensuring they remain confidential.

### **38 Application of pt 6**

This part does not apply to a dispute that is the subject of an employment claim under the *Magistrates Courts Act 1921*.

## **Division 2 Interpretation**

### **39 ADR process**

- (1) An *ADR process* is a process of mediation or case appraisal under which the parties are helped to achieve an early, inexpensive settlement or resolution of their dispute.
- (2) In this part, an *ADR process* includes all the steps involved in an ADR process, including—
  - (a) pre-mediation and post-mediation sessions; and
  - (b) a case appraisal session; and
  - (c) joint sessions; and
  - (d) private sessions; and
  - (e) another step prescribed under the rules.

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**40 Mediation**

*Mediation* is a process under the rules in which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.

**41 Case appraisal**

- (1) *Case appraisal* is a process under the rules in which a case appraiser provisionally decides a dispute.
- (2) A case appraiser's decision is not binding on the parties until—
  - (a) the time prescribed under the rules for filing an election to go to trial has passed; and
  - (b) a court, by order, gives effect to the decision.

**Division 3 ADR process**

**42 Parties may agree to ADR process**

- (1) The parties to a dispute may agree to refer their dispute to an ADR process.
- (2) If the parties agree to the referral, they must file a consent order in the approved form.
- (3) A consent order filed under this section is taken to be a referring order.

**43 Court may refer dispute to ADR process**

- (1) A court may require the parties or their representatives to attend before it to enable it to decide whether the parties' dispute should be referred to an ADR process.
- (2) This section also applies if—
  - (a) a party applies to the court for an order referring a dispute to an ADR process; or

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- (b) the parties are otherwise before the court.
- (3) The court may, by order (*referring order*), refer the dispute to mediation or case appraisal.
- (4) Without limiting the court's discretion, the court may take the following matters into account when deciding whether to refer a dispute to case appraisal—
  - (a) whether the costs of litigating the dispute to the end are likely to be disproportionate to the benefit gained;
  - (b) the likelihood of an appraisal producing a compromise or an abandonment of a claim or defence.
- (5) If the court decides to refer the dispute to a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if it appoints the director of a stated dispute resolution centre as mediator.

#### **44 Parties must attend at ADR process if court orders**

- (1) If a referring order is made, the parties—
  - (a) must attend before the ADR convenor appointed to conduct the ADR process; and
  - (b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order.
- (2) If a party impedes the ADR process, the court may impose sanctions against the party, including—
  - (a) by ordering that any claim for relief by the defaulting party is stayed until further order; and
  - (b) by taking the party's action into account when awarding costs in the proceeding or in another related proceeding between the parties.

#### **45 Procedure at case appraisal**

- (1) At a case appraisal, the case appraiser—

- (a) must decide the procedure to be used at the case appraisal; and
  - (b) may adopt any procedure that will, in the case appraiser's opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and
  - (c) must finish the case appraisal as quickly as possible.
- (2) However, the case appraiser may, in special circumstances—
- (a) receive evidence; and
  - (b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.
- (3) The court may, at any time, give directions about procedure to be used at the case appraisal.
- (4) This section is subject to section 46.

#### **46 Subpoenas**

- (1) A person may not be subpoenaed to attend a mediation.
- (2) A person may be subpoenaed to attend a case appraisal only by order of the court.
- (3) A person subpoenaed to attend a case appraisal must not be compelled to answer a question, or produce a document, the person could not be compelled to answer or produce before the court.
- (4) Sections 55 and 56 apply in relation to a failure to comply with the court's order as if the case appraiser were a person having authority to take evidence for the court.

#### **47 Party unable to pay share of costs**

- (1) If, at any time, the court is of the opinion a party to the ADR process is unable, because of the party's financial circumstances, to pay the party's percentage of the ADR costs, the court may make an order appropriate in the circumstances.

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- (2) Without limiting subsection (1), the order may provide—
  - (a) the reference to the ADR process be cancelled; or
  - (b) the referring order be revoked and another referring order made.

## **Division 4                    At end of ADR process**

### **48            Mediated resolution agreement**

- (1) If, at a mediation, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and by the mediator.
- (2) The agreement has effect as a compromise.

### **49            Documents to be filed**

- (1) As soon as practicable after a mediation has finished, the mediator must file a certificate about the mediation in the approved form.
- (2) As soon as practicable after a case appraisal has finished, the case appraiser must file—
  - (a) a certificate about the case appraisal in the approved form; and
  - (b) the case appraiser's decision, if any.

### **50            Orders giving effect to mediation agreement**

- (1) A party may apply to the court for an order giving effect to an agreement reached at or after a mediation.
- (2) However, a party may apply for the order only after the mediator's certificate has been filed.
- (3) The court may make any order it considers appropriate in the circumstances.

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## 51 Orders giving effect to case appraiser's decision

- (1) A party may apply to the court for an order giving effect to a case appraiser's decision after the time prescribed under the rules for electing to go to trial has passed.
- (2) However, a party may apply for the order before the time mentioned in subsection (1) has passed if all parties agree.
- (3) The court may make any order it considers appropriate in the circumstances.

## Division 5 Protection, immunity and confidentiality

### 52 Ordinary protection and immunity allowed

- (1) In performing the functions of an ADR convenor under a referring order, the ADR convenor has the same protection and immunity as a Supreme Court judge performing a judicial function.
- (2) A party attending an ADR process has the same protection and immunity the party would have if the ADR process were a proceeding being heard before the court.
- (3) A witness attending an ADR process has the same protection and immunity as a witness attending before the court.
- (4) A document produced at, or used for, an ADR process has the same protection during the ADR process it would have if produced before the court.
- (5) In subsection (2)—  
*party* includes a party's lawyer or agent.

### 53 Evidence from ADR process

- (1) Evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial of the dispute or in another civil proceeding before the court or elsewhere only if all parties to the dispute agree.

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(2) In subsection (1)—

*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process.

#### **54 Preservation of confidentiality**

(1) An ADR convenor must not, without reasonable excuse, disclose information coming to the ADR convenor's knowledge during an ADR process.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all the parties to the ADR process; or
- (b) for the purpose of giving effect to this part; or
- (c) for statistical purposes not likely to reveal the identity of a person to whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the ADR process; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or
- (f) under a requirement imposed under an Act.

## **Part 7 Compliance with subpoena etc.**

#### **55 Nonattendance of individual witness**

(1) This section applies if an individual fails to comply with a subpoena or order of a court requiring attendance to give



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evidence or produce a document or thing to the court or a person having authority to take evidence for the court.

- (2) The court may make an order for the issue of a warrant for—
  - (a) the arrest of the individual; and
  - (b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and
  - (c) the detention in custody of the individual until released by the court.
- (3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

## **56 Nonattendance of corporation**

- (1) This section applies if a corporation or an officer of the corporation fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant for—
  - (a) the arrest of the officer of the corporation to whom the subpoena or order was directed; and
  - (b) the production of the officer as required by the subpoena or order for the purpose of the proceeding; and
  - (c) the detention in custody of the officer until released by the court.
- (3) However, if the subpoena or order was directed to the ‘proper officer’ of the corporation, the court may make an order for the issue of a warrant for the arrest of a particular officer only if it is proved the officer had received the subpoena or order, or otherwise had actual knowledge of it.
- (4) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and

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expenses wasted by, or resulting from, noncompliance with the subpoena or order.

### **57 Noncompliance is contempt of court**

- (1) Failure to comply with a subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.
- (2) Nothing in section 55 or 56 affects a court's power to punish for contempt.

## **Part 8 Interest**

### **58 Interest up to judgment**

- (1) This section applies in relation to a proceeding in a court for the payment of money, including a proceeding for debt, damages or the value of goods.
- (2) This section does not apply in relation to—
  - (a) a proceeding for a cause of action arising before 21 December 1972; or
  - (b) a proceeding for the payment of money on which interest is payable as of right whether because of an agreement or otherwise.

*Editor's note—*

*The Common Law Practice Act Amendment Act 1972 commenced on 21 December 1972.*

- (3) The court may order that there be included in the amount for which judgment is given interest at the rate the court considers appropriate for all or part of the amount and for all or part of the period between the date when the cause of action arose and the date of judgment.
- (4) This section does not—

- (a) authorise the giving of interest on interest; or
- (b) affect damages recoverable for the dishonour of a bill of exchange.

## **59 Interest after money order**

- (1) This section does not apply in relation to a proceeding for a cause of action arising before 21 December 1972.
- (2) Interest is payable from the date of a money order on the money order debt unless the court otherwise orders.
- (3) The interest is payable at the rate prescribed under a practice direction made under the *Supreme Court of Queensland Act 1991* unless the court otherwise orders.
- (4) However—
  - (a) if the money order includes an amount for damages and the damages are paid within 21 days of the date of the order, interest on the damages is not payable unless the court otherwise orders; and
  - (b) if the money order includes an amount for costs and the costs are paid within 21 days after assessment, interest on the costs is not payable unless the court otherwise orders.

## **Part 9 Assessment of damages**

### **60 Income tax reduction for loss of earnings award**

- (1) This section applies to claims for damages for any of the following—
  - (a) personal injury;
  - (b) loss of dependency;
  - (c) wrongful dismissal.

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(2) Damages based on any of the following—

- (a) deprivation or impairment of earning capacity;
- (b) loss of earnings;
- (c) loss of future probable earnings;

must be reduced by the amount the court considers would have been paid on the relevant earnings as income tax had they been received.

## **61 Discount rate for lump sum award**

(1) This section applies to an award of damages for deprivation or impairment of earning capacity, or for a liability to incur expenditure in the future.

(2) However, this section does not apply to an award of damages to which the *Civil Liability Act 2003*, chapter 3 applies.

(3) When assessing an amount of damages as a lump sum for a future loss or expense, the amount must be the present value, calculated using the prescribed discount rate, of the future loss or expense.

(4) In this section—

*prescribed discount rate*, for an award, means—

- (a) the discount rate prescribed under a regulation as in force when the award is made; or
- (b) if a discount rate is not prescribed under a regulation when the award is made—5%.

# **Part 10 Wrongful death proceedings**

## **62 Definitions for pt 10**

In this part—

**child** includes a grandchild and a stepchild.

**member of the deceased's family** means—

- (a) a child of the deceased, including a child born alive after the death of the deceased; or
- (b) a person to whom the deceased acted, immediately before his or her death, in place of a parent; or
- (c) a parent of the deceased; or
- (d) a person who acted, immediately before the death of the deceased, in place of a parent to the deceased; or
- (e) a spouse of the deceased.

**parent** includes a step-parent and a grandparent.

**personal representative**, for a deceased person, means an executor or administrator of the deceased's estate.

**spouse** see section 63.

## 63 Meaning of *spouse*

- (1) For this part, the **spouse** of a deceased person includes a de facto partner of the deceased only if the deceased and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA—
  - (a) generally—
    - (i) for a continuous period of at least 2 years ending on the deceased's death; or
    - (ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long term, committed relationship; or
  - (b) if the deceased left a dependant who is a child of the relationship—immediately before the deceased's death.
- (2) In this section—

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*child of the relationship* means a child of the deceased person and the de facto partner, and includes a child born after the deceased's death.

*dependant*, of a deceased person, includes a child born after the deceased's death who would have been wholly or partially dependent on the deceased's earnings after the child's birth if the deceased had not died.

## **64 Liability for a death**

- (1) This section applies if—
  - (a) a death is caused by a wrongful act or omission, whether or not an offence; and
  - (b) the act or omission would, if death had not resulted, have entitled the deceased person to recover damages in a proceeding for personal injury.
- (2) The person who would have been liable if the death had not resulted is liable for damages despite the death and whether or not the death was caused by circumstances that were an offence.
- (3) In a proceeding under this part, a court may award to the members of the deceased person's family the damages it considers to be proportional to the damage to them resulting from the death.

## **65 One proceeding for benefit of members of deceased person's family**

- (1) Not more than 1 proceeding under this part may be brought against a person in relation to a death.
- (2) The proceeding may be brought by the personal representative of the deceased person, or by any 1 or more of the members of the deceased's family who suffered damage because of the death, for the benefit of the members of the deceased's family who suffered damage because of the death.

- (3) A notice given under an Act by a person able to bring a proceeding is taken to have been given on behalf of all members of the deceased's family who suffered damage because of the death.
- (4) A person able to bring a proceeding may apply to the Supreme Court for directions relating to the steps required to be taken to comply with a requirement under an Act or relating to a proceeding under this part before starting the proceeding.
- (5) The amount of damages awarded must, after deducting any costs not recovered from the defendant, be divided in the shares the court decides among the members of the deceased's family who suffered damage because of the death.

## **66 Surviving proceeding other than by personal representative**

If a person, other than the personal representative of the deceased person, brings a proceeding under this part, the person—

- (a) may also, on behalf of the estate of the deceased person, pursue any cause of action that survives under the *Succession Act 1981*, section 66; and
- (b) must account to the personal representative for any amount the person recovers under paragraph (a).

## **67 Damages for spouse's benefit**

- (1) This section applies if, in a proceeding under this part, a court is assessing damages in relation to financial benefits lost by a spouse of the deceased person as a result of the deceased's death.
- (2) The court must not take into account any financial benefits that the spouse may receive as a result of a new relationship that the spouse may enter into after the assessment.
- (3) Subsection (2) applies even if the spouse intends to enter into a new relationship.

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- (4) However, if the spouse has entered into a new relationship since the deceased person's death, the court may take into account any financial benefits that the spouse has received, and any financial benefits that the spouse is likely to receive, as a result of the new relationship.
- (5) Subsection (4) applies even if the new relationship ends before the assessment.
- (6) In considering what financial benefits the spouse is likely to receive as a result of the new relationship, the court must not assume—
  - (a) that the new relationship will necessarily continue; or
  - (b) that the spouse will necessarily continue to receive the same financial benefits as a result of the new relationship as the spouse has already received as a result of the new relationship.
- (7) In this section—

*financial benefits* means either or both of the following—

  - (a) monetary benefits;
  - (b) other material benefits having a monetary value, including, for example, domestic services.

*relationship* means—

  - (a) a marriage; or
  - (b) a de facto relationship within the meaning of the *Acts Interpretation Act 1954*, section 36.

## 68 Damages for child's benefit

- (1) This section applies if—
  - (a) in a proceeding under this part, a court is assessing damages in relation to financial benefits lost by a child of the deceased person as a result of the deceased's death; and
  - (b) the deceased predeceases another parent of the child (the *surviving parent*).



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- (2) If there was a relationship between the deceased person and the surviving parent immediately before the deceased's death, it is irrelevant to the assessment whether or not the relationship would have continued apart from the death.
  - (3) If there was a relationship between the deceased person and the surviving parent that ended before the deceased's death, any damages assessed must not be reduced because the relationship ended before the death.
  - (4) In assessing damages, the court must not take into account any financial benefits that the child has received, or may receive, from any person other than the deceased person, including any financial benefits that the child has received, or may receive, as a result of—
    - (a) a new relationship that the surviving parent may enter into after the assessment; or
    - (b) a new relationship entered into by the surviving parent since the death of the deceased.
  - (5) In this section—

*financial benefits* see section 67.  
*relationship* see section 67.

## **69 Transitional application of assessment provisions**

Sections 67 and 68 apply in relation to any assessment made in a proceeding under this part regardless of when the death occurred.

## **70 Amounts not to be taken into account in assessing damages**

- (1) In assessing damages in relation to liability under this part, the following must not be taken into account to reduce the damages—
  - (a) an amount paid or payable on the death of the deceased person under a contract of insurance;

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- (b) an amount paid or payable on the deceased's death under a contract, other than a contract of insurance, made with a friendly society or other benefit society, or association or trade union;
  - (c) an amount paid or payable on the deceased's death out of a superannuation, provident or similar fund;
  - (d) an amount paid or payable on the deceased's death by way of pension, benefit or allowance under a law of—
    - (i) the Commonwealth; or
    - (ii) any State; or
    - (iii) another country;
  - (e) a gratuity in whatever form received or receivable on the deceased's death.
- (2) Subsection (1) applies regardless of whether the amount is paid or payable to or the gratuity is received or receivable by the deceased person's estate or any person for whose benefit a proceeding may be brought under this part.

## Part 11 Provisions about ships

### 71 Definitions for pt 11

In this part—

*owner*, for a ship—

- (a) includes a person responsible for the fault of the ship; and
- (b) means the charterer or other person responsible for the navigation and management of the ship if the owner is not responsible for the navigation and management of the ship because of a charter or for any other reason.

*Note—*

For circumstances within the scope of the *Navigation Act 1912* (Cwlth), see section 265A of that Act.

**ship** see the *Transport Operations (Marine Safety) Act 1994*, section 10.

## **72 Damages for personal injury**

- (1) This section applies if loss of life or personal injury is suffered by a person on board a ship because of the fault of the ship and 1 or more other ships.
- (2) The liability of the owners of the ships is joint and several.
- (3) Nothing in this section—
  - (a) deprives a person of any right of defence that the person has apart from this section; or
  - (b) affects a person's right to limit the person's liability; or
  - (c) affects the operation of the *Law Reform Act 1995*, section 10.

*Notes—*

- 1 For circumstances within the scope of the *Navigation Act 1912* (Cwlth), see section 260 of that Act.
- 2 The *Law Reform Act 1995*, section 10 deals with the apportionment of liability if there was contributory negligence by the injured or deceased person.

## **73 Right of contribution**

- (1) This section applies if—
  - (a) loss of life or personal injury is suffered by a person on board a ship because of the fault of the ship and 1 or more other ships; and
  - (b) a proportion of the damages is recovered from 1 ship owner that is more than the proportion in which the ship was at fault.

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- (2) The ship owner may recover by way of contribution the amount of the excess from the owners of the other ships in proportion to the degree to which each ship was at fault.
- (3) However, an amount may not be recovered by way of contribution if, for any reason, it could not have been recovered in the first instance as damages by the person entitled to sue for them.
- (4) In addition to any other remedy provided by law and subject to this Act, a ship owner entitled to recover an amount under subsection (2) has, for the purposes of recovering the amount, the same rights and powers as the person entitled to sue for damages in the first instance.

*Note—*

For circumstances within the scope of the *Navigation Act 1912* (Cwlth), see section 261 of that Act.

## **74 Other damages**

- (1) This section applies if, because of the fault of 2 or more ships, damage or loss is caused to 1 or more ships.
- (2) The *Civil Liability Act 2003*, chapter 2, part 2 does not apply to a claim for the damage or loss.

*Note—*

The *Civil Liability Act 2003*, chapter 2, part 2 deals with proportionate liability.

- (3) Each ship is liable for the damage or loss in proportion to the degree to which it was at fault.
- (4) If it is not possible to establish different degrees of fault, each ship at fault is equally liable for the damage or loss.
- (5) Nothing in this section makes a ship liable for damage or loss to which the ship's fault has not contributed.
- (6) Also, nothing in this section—
  - (a) affects a person's liability under any contract; or
  - (b) imposes a liability on a person from which the person is exempted by any contract or law; or

- (c) affects a person's right to limit the person's liability.
- (7) For this section—
- (a) damage or loss is caused to a ship if damage or loss is caused to—
    - (i) the ship; or
    - (ii) the ship's cargo or freight, including passage money and hire; or
    - (iii) any property on board the ship; and
  - (b) damage or loss caused by the fault of a ship includes any salvage or other expenses resulting from that fault that are recoverable at law by way of damages.

*Note—*

For circumstances within the scope of the *Navigation Act 1912* (Cwlth), see section 259 of that Act.

## **75 No statutory presumption of fault**

If there is a collision, a ship is not taken to be at fault solely because it infringed any regulation for the prevention of collisions at sea made under the *Transport Operations (Marine Safety) Act 1994*.

*Note—*

For circumstances within the scope of the *Navigation Act 1912* (Cwlth), see section 263 of that Act.

*Editor's note—*

The International Regulations for Preventing Collisions at Sea have effect as if they were part of the *Transport Operations (Marine Safety) Regulation 2004* under section 125 of that regulation.

## Part 12 Assessors

### 76 Definitions for pt 12

In this part—

*assessment* means—

- (a) a costs assessment; or
- (b) an account assessment.

*assessor* means a costs assessor, or an account assessor, appointed under the rules.

*costs assessment* means assessment of a costs statement or itemised bill under the rules, chapter 17A.

### 77 Protection and immunity

- (1) In performing the functions of assessor, an assessor has the same protection and immunity as a Supreme Court judge performing a judicial function.
- (2) A party appearing in an assessment has the same protection and immunity as the party would have if the assessment were a proceeding being heard before the Supreme Court.
- (3) A witness attending in an assessment has the same protection and immunity as a witness attending before the Supreme Court.
- (4) A document produced at, or used for, an assessment has the same protection during the assessment as it would have if produced before the Supreme Court.
- (5) In this section—  
*party* includes a party's lawyer or agent.

### 78 Preservation of confidentiality

- (1) A person who gains confidential information through being an assessor must not—

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- (a) make a record of the information other than—
    - (i) for the purpose of carrying out the assessment; or
    - (ii) to discharge another function under a law; or
  - (b) disclose the information other than—
    - (i) under an order of a court or tribunal; or
    - (ii) as authorised by the person to whom the confidential information relates.
- (2) In this section—
- confidential information* includes information about a person's affairs, but does not include—
- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
  - (b) statistical information not likely to result in the identification of the person to whom the information relates.

## **79 Preservation of privilege**

Privilege continues despite disclosure to an assessor.

# **Part 13 Enforcement**

## **Division 1 Judgments**

### **80 Judgment for detention of goods**

- (1) This section applies to a proceeding for detention of goods.
- (2) Judgment for detention of goods must be that—
  - (a) the defendant return specific goods to the plaintiff; or

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- (b) the defendant return specific goods, or pay their value, to the plaintiff; or
  - (c) the defendant pay the value of the goods, whether with or without a condition that the value is not payable if specific goods are returned within a stated time.
- (3) A judgment for detention of goods may also provide for damages for detention of the goods.

### **81 Judgment for return of goods**

- (1) A judgment under section 80(2)(a) that the defendant return specific goods to the plaintiff may be enforced by an enforcement warrant to seize and deliver the goods.
- (2) If the judgment states a time within which the goods are to be returned and the goods are not returned within the stated time, the judgment may also be enforced by—
  - (a) punishment of the defendant for contempt; and
  - (b) an enforcement warrant to seize and deliver property.
- (3) If an enforcement warrant mentioned in subsection (1) can not be enforced, the plaintiff may apply to the court and the court may make any order it considers appropriate.

### **82 Judgment for return of goods or payment of their value**

- (1) This section applies if judgment is given under section 80(2)(b) that the defendant return specific goods, or pay their value, to the plaintiff.
- (2) If the value of the goods has been assessed—
  - (a) the judgment must provide for payment of the amount assessed; and
  - (b) the plaintiff may enforce the judgment as a money order for the amount assessed if the defendant does not return the goods.
- (3) If the value of the goods has not been assessed—



- (a) the judgment must provide for the value to be assessed; and
- (b) the plaintiff may have the value assessed and may enforce the judgment as a money order for the amount assessed if the defendant does not return the goods.

### **83 Effect of money order**

- (1) A money order has the effect of a judgment at law.
- (2) A money order may be enforced only under this part regardless of whether the order was made in a court's common law jurisdiction or its equitable jurisdiction.
- (3) If a court has jurisdiction to order a party to do an act, the court may make a special order for the payment of money enforceable as an order to do an act.

## **Division 2 Enforcement generally**

### **84 Demand for compliance unnecessary**

- (1) It is not necessary to demand compliance with an order before starting enforcement proceedings for the order.
- (2) If, under an Act, the rules or an order of a court, an order must be served on a person before the order may be enforced against the person, the order may be served without a demand for compliance.

### **85 Interest recoverable on enforcement**

An enforcement warrant for the enforcement of a money order authorises, without the need for any further order, the levying of interest on the amount payable at the rate applying under section 59.

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## **86 Enforcement against partnership**

- (1) An order against partners suing or sued in the name of the partnership may be enforced against any 1 or more of the following—
  - (a) partnership property;
  - (b) a partner who filed a notice of intention to defend;
  - (c) a person who has admitted being a partner;
  - (d) a person who the court has decided is a partner;
  - (e) a person who has been individually served as a partner with the originating process and who has not filed a notice of intention to defend.
- (2) This section has effect subject to the *Partnership Act 1891*, section 65.

*Editor's note—*

*Partnership Act 1891*, section 65 (Legal proceedings)

## **87 Variation of order in partnership name**

Despite section 86, the court may vary an order against a partnership in the partnership name to make it an order against the persons who were partners when the cause of action arose.

## **88 Enforcement against property of a business**

- (1) This section applies if—
  - (a) a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name (whether or not the name or style is registered under the *Business Names Act 1962*); and
  - (b) the proceeding is started in the name or style under which the person carries on business; and
  - (c) the proceeding is continued by leave of the court.

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- (2) An order in the proceeding may be enforced against any property of the person carrying on the business.

### **89 Variation of order in relation to a business name**

Despite section 88, a court may vary its order, in relation to a business, made in the name or style under which 1 or more persons carry on the business (whether or not the name or style is registered under the *Business Names Act 1962*), to make it an order against a person carrying on the business.

## **Division 3 Enforcement warrants**

### **90 Enforcement warrant**

- (1) To enforce an order (the *original order*) other than an order for the payment of money into court, a person entitled to enforce the original order may obtain an enforcement warrant from the court.
- (2) An enforcement warrant may contain any order directed to enforcing the original order, including an order authorising—
- (a) an enforcement officer to seize and sell, in satisfaction of a money order debt, all real and personal property (other than exempt property) in which an enforcement debtor has a legal or beneficial interest; or
  - (b) redirection to an enforcement creditor of particular debts, belonging to an enforcement debtor, from a third person; or
  - (c) redirection to an enforcement creditor of particular earnings, of an enforcement debtor, from a third person; or
  - (d) an enforcement officer to enter and deliver possession of land; or
  - (e) an enforcement officer to seize and deliver specific goods; or

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- (f) an enforcement officer to seize and detain property.
- (3) An enforcement warrant may contain more than 1 order directed to enforcing the original order and may be issued to enforce an original order that is a money order and a non-money order.
- (4) However, only the Supreme Court may issue an enforcement warrant containing a charging order.
- (5) In this section—  
*charging order* includes an order charging all or part of an enforcement debtor's legal or equitable interest in 1 or more of the following—
  - (a) annuities;
  - (b) debentures;
  - (c) stocks;
  - (d) bonds;
  - (e) shares;
  - (f) marketable securities;
  - (g) prescribed interests;
  - (h) units of shares, marketable securities or prescribed interests.

## **91 Period of enforcement warrant**

An enforcement warrant ends 1 year after it issues unless the warrant states that it ends at an earlier time.

## **92 Payment under enforcement warrant**

A payment under an enforcement warrant discharges the person making the payment to the extent of the payment.

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### 93      **Securities held by enforcement officer**

- (1) This section applies if an enforcement officer seizes cheques, bills of exchange, promissory notes, specialties or other securities for money (the *seized documents*) under an enforcement warrant to enforce a money order.
- (2) The enforcement officer holds the seized documents as security for the amount to be recovered under the enforcement warrant for the benefit of the enforcement creditor.
- (3) The enforcement officer may receive an amount payable under a seized document from the person liable under it.
- (4) The rules may make provision about proceedings to recover amounts under a seized document, including who may start a proceeding.

### 94      **Redirection of joint funds**

- (1) This section applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a *joint fund*).
- (2) An enforcement warrant may authorise redirection to an enforcement creditor of a joint fund to the extent of the enforcement debtor's entitlement.
- (3) It is presumed a joint fund is owned by the fund owners in equal shares unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner.

### 95      **State debts**

- (1) If the debt belonging to an enforcement debtor is from a public sector unit and payable out of the consolidated fund or money controlled by a public sector unit (a *State debt*), an application for an enforcement warrant and the enforcement warrant must name the chief executive, by title, of the public sector unit as the third person in whose hands the State debt is redirected.

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- (2) Subsection (1) applies despite the *Crown Proceedings Act 1980*, section 8.

*Editor's note—*

*Crown Proceedings Act 1980*, section 8(1)—

**'8 Mode of proceeding**

- (1) Subject to this Act and any other Act or law, a claim by or against the Crown may be made and enforced by a proceeding by or against the Crown under the title the 'State of Queensland'.

- (3) In this section—

***public sector unit*** means any of the following—

- (a) a department;
- (b) a public service office;
- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose;
- (d) a part of an entity mentioned in paragraph (a), (b) or (c).

## **96 Redirection of partnership debts**

A court may issue an enforcement warrant authorising redirection to an enforcement creditor of particular debts, belonging to an enforcement debtor, from a partnership carrying on business in Queensland even if a partner resides outside Queensland.

## **97 Account with financial institution**

- (1) An amount standing to the credit of an enforcement debtor in an account in a financial institution is, for enforcing a money order, a debt payable to the enforcement debtor, even if any of the following conditions applicable to the account have not been satisfied—
- (a) a condition requiring a demand or notice to be made before an amount is withdrawn;

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- (b) a condition requiring a personal application to be made before an amount is withdrawn;
  - (c) a condition requiring the production of a deposit book or a receipt for an amount deposited in the account before an amount is withdrawn;
  - (d) a similar condition.
- (2) Subsection (1) applies, with any changes necessary, to an amount placed to the credit of an enforcement debtor in an account in a financial institution between the date of the enforcement warrant ordering the redirection and any hearing deciding the validity of the warrant.

## **98 Enforcement against a third person**

- (1) If a third person—
- (a) does not comply with an enforcement warrant authorising redirection of a debt from the third person; and
  - (b) does not file a notice of objection; and
  - (c) fails to dispute the third person's liability to pay the debt;

the enforcement creditor has the same entitlement to enforce the debt as the enforcement debtor had.

- (2) To remove any doubt, it is declared that if the debt is a State debt under section 95, the *Crown Proceedings Act 1980*, section 11 applies.

*Editor's note—*

*Crown Proceedings Act 1980*, section 11 (Satisfaction of judgment)

## **99 Redirection of earnings—protection of employee**

An employer must not dismiss an employee, or otherwise prejudice an employee, because an enforcement warrant

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authorising redirection of the employee's earnings has been made.

Maximum penalty—100 penalty units.

## **Division 4                      Warrant for defendant's arrest**

### **100    Issue of warrant for defendant's arrest**

- (1) Despite the *District Court of Queensland Act 1967*, section 69, only the Supreme Court may issue a warrant under this section.
- (2) The court may issue a warrant for the arrest of a defendant to a claim in any court if the court is satisfied—
  - (a) the defendant has absconded or is about to abscond; and
  - (b) the absence of the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given.
- (3) The warrant must be in the approved form for the arrest of a defendant.
- (4) The court may issue the warrant at any time, for example, before the defendant has been served with a claim or before judgment.
- (5) The warrant must state—
  - (a) the name of the defendant; and
  - (b) the date, within 2 months after the warrant's issue, the warrant ends.
- (6) The court may fix an amount as security to be stated in the warrant.
- (7) On payment of the security, the defendant is entitled not to be arrested or, if arrested, to be released.
- (8) In fixing the amount, the court may have regard to any matter it considers relevant, including the following matters—
  - (a) the amount, if any, of the plaintiff's claim;



- (b) the costs of issuing the warrant;
- (c) an estimate of the costs of executing the warrant.

## **Division 5                      Enforcement officers**

### **101      Powers not impaired**

Except as provided in this Act, this Act does not take away, lessen or impair any power that was, immediately before the commencement of this section, capable of being exercised by an enforcement officer for a court.

### **102      No licence necessary for auction**

An enforcement officer for a court may, in the course of enforcement, sell property by auction without a licence.

### **103      Transfer to be executed**

- (1) This section applies if an enforcement officer for a court sells the right, title and interest of another person in relation to land.
- (2) The sheriff, registrar or clerk of the court must execute the appropriate transfer of the right, title and interest to the purchaser.
- (3) A transfer executed under subsection (2) is evidence that the enforcement officer had power to sell the right, title and interest mentioned in the transfer.

## **Part 14                              Miscellaneous provisions**

### **104      Grant of representation before proceeding**

- (1) This section applies if—

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- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
  - (b) the cause of action survives the person's death; and
  - (c) a grant of representation has been made when the originating process issues.
- (2) Unless the court orders otherwise, the proceeding is taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.

### **105 No grant of representation before proceeding**

- (1) If—
- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
  - (b) the cause of action survives the person's death; and
  - (c) a grant of representation has not been made when the originating process issues;
- the proceeding is taken to have been brought against the person's estate.
- (2) However, if a grant of representation is made after the originating process issues, then, unless the court orders otherwise, the proceeding is afterwards taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.
- (3) Even if a grant of representation has not been made when an order is made in the proceeding, the order binds the estate to the same extent as if a grant had been made and a personal representative of the deceased had been a party to the proceeding.

---

**106 No new trial because of ruling about duty**

A new trial must not be granted only because a court has ruled that—

- (a) a document or transaction is properly stamped or is not required to be stamped; or
- (b) duty has been paid or is not required to be paid on a document or transaction.

**107 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) In making a regulation prescribing a discount rate for section 61, the Governor in Council may prescribe a positive, zero or negative rate.
- (3) In recommending the making of a regulation prescribing a discount rate for section 61, the Minister must have regard to the following factors—
  - (a) the prevailing rates of inflation;
  - (b) the prevailing yields on fixed term investments;
  - (c) the prevailing yields on investments in equities;
  - (d) the other economic factors the Minister considers are relevant to prescribing an appropriate discount rate.

**Part 15 Transitional provisions for Civil Proceedings Act 2011**

**108 Reference to s 48, Supreme Court Act 1995**

A reference in any Act or document to section 48 of the *Supreme Court Act 1995* is, if the context permits, taken to be a reference to section 59 of this Act.

[s 109]

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## **109 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition of provisions of a prescribed Act after it is repealed or amended by this Act; and
  - (b) this Act or a prescribed Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences (the *commencement day*).
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 1 year after the commencement day.
- (5) In this section—

*prescribed Act* means—

  - (a) *Supreme Court Act 1995*; or
  - (b) *Supreme Court of Queensland Act 1991*; or
  - (c) *District Court of Queensland Act 1967*; or
  - (d) *Magistrates Act 1991*; or
  - (e) *Magistrates Courts Act 1921*.

## **Part 16 Amendment of Civil Liability Act 2003**

### **110 Act amended**

This part amends the *Civil Liability Act 2003*.

---

**111 Replacement of s 57 (Discount rate to be applied in calculating the present value of future loss or gratuitous services)**

Section 57—

*omit, insert—*

**‘57 Discount rate for calculating present value of future loss or gratuitous services**

‘(1) When assessing an amount of damages as a lump sum for a future loss or gratuitous services, the amount must be the present value, calculated using the prescribed discount rate, of the future loss or gratuitous services.

‘(2) In this section—

*prescribed discount rate*, for an award, see the *Civil Proceedings Act 2011*, section 61.’.

## **Part 17 Amendment of Criminal Code**

**112 Code amended**

This part amends the Criminal Code.

**113 Amendment of s 559 (Change of place of trial)**

Section 559(2), ‘or a Circuit Court’—

*omit.*

**114 Insertion of new ch 63A**

Part 8, after chapter 63—

*insert—*

## **‘Chapter 63A      Nonattendance of witness**

### **‘644B Nonattendance of individual**

- ‘(1) This section applies if an individual fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.
- ‘(2) The court may make an order for the issue of a warrant for—
  - (a) the arrest of the individual; and
  - (b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and
  - (c) the detention in custody of the individual until released by the court.
- ‘(3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

### **‘644C Nonattendance of corporation**

- ‘(1) This section applies if a corporation or an officer of the corporation fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.
- ‘(2) The court may make an order for the issue of a warrant for—
  - (a) the arrest of the officer of the corporation to whom the subpoena or order was directed; and
  - (b) the production of the officer as required by the subpoena or order for the purpose of the proceeding; and
  - (c) the detention in custody of the officer until released by the court.

- 
- ‘(3) However, if the subpoena or order was directed to the ‘proper officer’ of the corporation, the court may make an order for the issue of a warrant for the arrest of a particular officer only if it is proved the officer had received the subpoena or order, or otherwise had actual knowledge of it.
- ‘(4) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

**‘644D Noncompliance is contempt of court**

- ‘(1) Failure to comply with a subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.
- ‘(2) Nothing in section 644B or 644C affects a court’s power to punish for contempt.’.

**115 Amendment of s 662 (Taxation)**

- (1) Section 662(2)—  
*omit.*
- (2) Section 662(3)—  
*renumber* as section 662(2).

**116 Omission of s 663 (Enforcement of judgment of Circuit Court)**

Section 663—  
*omit.*

**117 Insertion of new s 696**

After section 695A—  
*insert—*

[s 118]

---

**‘696 Warrant for release of person detained in custody**

- ‘(1) This section applies if—
- (a) a person (the *accused*) is detained in custody on a charge of an indictable offence; and
  - (b) a decision has been made not to proceed with the charge.
- ‘(2) The Attorney-General may issue a warrant for the accused’s release from custody in relation to the charge.
- ‘(3) The warrant must be—
- (a) signed by the Attorney-General; and
  - (b) addressed to the person having custody of the accused.
- ‘(4) The warrant authorises the person having custody of the accused to release the accused from custody immediately in relation to the charge stated in the warrant.
- ‘(5) However, the accused must not be released from custody if the accused is otherwise lawfully detained.’.

**Part 18 Amendment of District Court of Queensland Act 1967**

**118 Act amended**

This part amends the *District Court of Queensland Act 1967*.

**119 Amendment of s 3 (Definitions)**

- (1) Section 3, definitions *ADR convenor*, *ADR costs*, *ADR dispute*, *ADR process*, *case appraisal*, *case appraiser*, *dispute*, *judicial registrar*, *mediation*, *mediator*, *party*, *referring court*, *referring order* and *registrar*—
- omit.*



(2) Section 3—

*insert—*

*‘deputy sheriff’* means a deputy sheriff appointed under the *Supreme Court of Queensland Act 1991*.

*enforcement warrant* means an enforcement warrant under the *Civil Proceedings Act 2011*, section 90.

*registrar* includes the principal registrar appointed under section 36.

*sheriff* means the Sheriff of Queensland appointed under the *Supreme Court of Queensland Act 1991*.’.

**120 Amendment of pt 2 hdg (Court, judges, registries and officers)**

Part 2, heading, ‘registries’—

*omit, insert—*

‘registry’.

**121 Replacement of s 8B (Seals of the court)**

Section 8B—

*omit, insert—*

**‘8B Court seal**

‘(1) The court is to have and use a seal with the words ‘District Court of Queensland’.

‘(2) The court may have other seals required for the business and administration of the court.’.

**122 Replacement of s 25 (Hearing de novo when trial judge unable to continue)**

Section 25—

*omit, insert—*

[s 122]

---

## **‘25 Application if original judge unable to continue**

- ‘(1) This section applies if—
- (a) a judge (the *original judge*) starts the hearing of a civil or criminal proceeding (including an appeal); and
  - (b) before the proceeding has been determined, the original judge dies or resigns as a judge, or is certified as incapable of sitting.
- ‘(2) For subsection (1), a judge is certified as incapable of sitting if the Chief Judge or the Judge Administrator has issued a certificate (an *incapacity certificate*) stating the judge is incapable of sitting, whether temporarily or otherwise.
- ‘(3) A party to the proceeding may apply to the court for directions as to the determination of the proceeding.
- ‘(4) On its own initiative or on an application under this section, the court may—
- (a) if there is an incapacity certificate stating the original judge is temporarily incapable of sitting—
    - (i) adjourn the proceeding to enable the original judge to complete the hearing and determination of the proceeding; or
    - (ii) order that the proceeding be heard and determined afresh; or
  - (b) in any other case—
    - (i) order that the proceeding be heard and determined afresh; or
    - (ii) make any other order it considers appropriate.
- ‘(5) If the court orders that a proceeding be heard and determined afresh, the court may make an order it considers appropriate to facilitate the hearing and determination.
- ‘(6) Without limiting the orders that may be made under subsection (5), the court may make an order that any order, ruling or finding made by the original judge be set aside.

- 
- ‘(7) The court hearing and determining a proceeding afresh because of an order under this section may make the order it considers appropriate about the costs of the first hearing.’.

## **123 Replacement of pt 2, div 4 (Registries)**

Part 2, division 4—

*omit, insert—*

### **‘Division 4 Registry**

#### **‘35 Registry**

- ‘(1) There is to be a District Court Registry.
- ‘(2) The District Court Registry is to have an office at each place at which the District Court is to be held.

#### **‘35A Process returnable in office where issued but effective throughout State**

- ‘(1) A process issued out of any office of the District Court Registry is returnable in that office.
- ‘(2) However, each process has effect, and may be enforced, at any place within the State.

#### **‘35B Control**

‘The District Court Registry is under the control of the principal registrar.’.

## **124 Omission of pt 2, div 5, sdiv 1 (Judicial registrars)**

Part 2, division 5, subdivision 1—

*omit.*

[s 125]

---

**125 Omission of pt 2, div 5, sdiv 2 hdg (Other officers)**

Part 2, division 5, subdivision 2, heading—  
*omit.*

**126 Replacement of ss 36 and 36A**

Sections 36 and 36A—  
*omit, insert—*

**‘36 Principal registrar, other registrars and officers**

- ‘(1) The Governor in Council may appoint a principal registrar.
- ‘(2) The chief executive may appoint registrars (other than the principal registrar) and other officers the chief executive considers appropriate.
- ‘(3) A person appointed under this section is employed under the *Public Service Act 2008*.

**‘36A Delegation by registrar**

- ‘(1) A registrar may delegate the registrar’s functions to an appropriately qualified person who is a public service employee in the District Court Registry.
- ‘(2) In this section—  
*appropriately qualified*, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Example of standing—*

a person’s classification level in the public service

*functions* includes powers.

---

**‘36B Directions**

‘The principal registrar may give directions to the registrars and other officers employed in any office of the District Court Registry.

**‘36C Supreme Court and Magistrates Court officers**

- ‘(1) This section applies if the District Court is to sit at a place where an office of the District Court Registry does not exist.
- ‘(2) If a regional office or a district office of the Supreme Court Registry exists at the place, that office is taken to be an office of the District Court Registry at the place and the registrar, bailiff and other officers of the Supreme Court at the place are taken to be the corresponding officers of the District Court at the place.

*Example—*

The registrar of the Supreme Court at the place is taken to be the registrar of the District Court at the place.

- ‘(3) If subsection (2) does not apply and a Magistrates Court Registry exists at the place, that registry is taken to be an office of the District Court Registry at the place and the registrar, bailiff and other officers of the Magistrates Court at the place are taken to be the corresponding officers of the District Court at the place.

*Example—*

A bailiff of the Magistrates Court at the place is taken to be a bailiff of the District Court at the place.

- ‘(4) Without limiting subsections (2) and (3), an officer taken to be a corresponding officer of the District Court at a place has the functions, powers and jurisdiction of the officer of the District Court.

**‘36D Associates**

- ‘(1) The Chief Judge may appoint a person nominated by a judge as an associate to the judge.

[s 127]

---

- '(2) An associate is appointed under this Act and not under the *Public Service Act 2008*.
- '(3) The Governor in Council is to decide the salary and conditions of appointment for an associate appointed under subsection (1).'

**127 Amendment of s 40 (When a clerk of the court is registrar, the clerk's successor or deputy shall be registrar)**

Section 40(2), 'section 36A'—

*omit, insert—*

'section 36(2).'

**128 Replacement of s 41 (Appointment of bailiffs and bailiffs' assistants)**

Section 41—

*omit, insert—*

**'41 Appointment of bailiffs**

- '(1) The chief executive may appoint bailiffs.
- '(2) A person appointed under this section is employed under the *Public Service Act 2008*.'

**129 Replacement of ss 42 and 43**

Sections 42 and 43—

*omit, insert—*

**'42 Power of bailiffs**

- '(1) A bailiff is an officer of the sheriff.
- '(2) A bailiff is appointed for the State.
- '(3) The sheriff, or a deputy sheriff, may delegate any of the sheriff's functions, or deputy sheriff's functions, to a bailiff.
- '(4) Subject to the terms of the delegation, a bailiff may perform a function throughout the State.

- ‘(5) In this section—  
*functions* includes powers.  
*perform*, a function, includes exercise a power.’

**‘43 Functions of bailiffs**

- ‘The functions of a bailiff include the following—  
(a) acting as an orderly during sittings of the court;  
(b) serving documents for a proceeding in the court;  
(c) enforcing enforcement warrants of the court.’.

**130 Amendment of s 44 (Bailiff not required to take out auctioneer’s licence)**

Section 44, ‘execute a warrant of execution issued under the authority of this Act’—

*omit, insert*—

‘enforce an enforcement warrant’.

**131 Amendment of s 45 (Remuneration of bailiffs)**

- (1) Section 45(2), ‘, and for the payment of the officers appointed to assist the bailiff’—

*omit*.

- (2) Section 45(3)—

*omit, insert*—

- ‘(3) The fees received for enforcing an enforcement warrant must be paid by the registrar to the bailiff on the issue of the enforcement warrant.’.

**132 Insertion of new s 47**

Part 2, division 5—

*insert*—

[s 133]

---

**‘47 Bailiff’s protection from liability**

- ‘(1) A proceeding in relation to a bailiff acting in that capacity must be started against ‘The Sheriff of Queensland’ and not against the bailiff.
- ‘(2) If a money order is made against The Sheriff of Queensland in a proceeding mentioned in subsection (1)—
- (a) the money order debt must be paid by the Treasurer out of the consolidated fund; and
  - (b) the State may recover the money order debt from the relevant bailiff unless the liability resulting in the money order was for an act done, or omission made, honestly and without negligence when acting as a bailiff.
- ‘(3) In this section—

*money order* means an order, or part of an order, for the payment of money, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

*money order debt* means the amount of money payable under a money order.’.

**133 Omission of s 48 (Disabilities of registrar and bailiff)**

Section 48—

*omit.*

**134 Replacement of pt 2, div 7 (Lawyers and agents)**

Part 2, division 7—

*omit, insert—*

**‘Division 7 Court appearance**

**‘52 Court appearance**

- ‘(1) In a proceeding, a party may appear in person or by—
- (a) a lawyer; or



(b) with the leave of the court, another person.

‘(2) In this section—

*party* includes a person served with notice of or attending a proceeding although not named in the record.’.

### **135 Omission of ss 66 and 67**

Sections 66 and 67—

*omit.*

### **136 Replacement of pt 5, div 4 (Removal of actions)**

Part 5, division 4—

*omit, insert—*

## **‘Division 4 Commercial and other lists**

### **‘77 Court may maintain lists**

‘In exercising its power to control its own process, the court may maintain lists of particular proceedings by reference to subject matter, including a commercial list.

### **‘78 No appeal from entry on a list**

‘There is no appeal from an order entering a proceeding on a list of particular proceedings.

### **‘79 Commercial list proceeding**

‘(1) This section applies to a proceeding on the commercial list.

‘(2) If the parties to the proceeding agree, the judgment of the court is final and not subject to appeal.

‘(3) The court may order that the proceeding be tried without a jury.’.

[s 137]

---

**137 Omission of pt 7 (ADR processes)**

Part 7—

*omit.*

**138 Omission of s 116 (Venue of appeals)**

Section 116—

*omit.*

**139 Amendment of s 118 (Appeal to the Court of Appeal in certain cases)**

(1) Section 118(3), ‘A party’—

*omit, insert—*

‘Subject to sections 118A and 118B, a party’.

(2) Section 118(8)—

*omit.*

(3) Section 118(9) and (10)—

*renumber* as section 118(8) and (9).

**140 Insertion of new ss 118A and 118B**

After section 118—

*insert—*

**‘118A Leave of District Court required to appeal from consent order**

‘An appeal lies to the Court of Appeal from a judgment or order of the District Court given or made by consent only by leave of the judge who gave the judgment or made the order, or, if that judge is not available, another District Court judge.

---

**‘118B Leave of District Court required to appeal in relation to costs**

- ‘(1) An appeal only in relation to costs lies to the Court of Appeal from a judgment or order of the District Court only by leave of the judge who gave the judgment or made the order, or, if that judge is not available, another District Court judge.
- ‘(2) However, if, after an appeal to the Court of Appeal is properly started, the appeal becomes an appeal only in relation to the costs of the original proceeding—
  - (a) subsection (1) does not apply; and
  - (b) the appeal may be heard and determined only by leave of the Court of Appeal.’.

**141 Insertion of new pt 11, div 1**

Part 11—

*insert—*

**‘Division 1 Court**

**‘125 Practice directions**

- ‘(1) The Chief Judge may make practice directions for the District Court.
- ‘(2) Subsection (1) does not affect any inherent or other power to make practice directions.
- ‘(3) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

**‘126 Business of court**

- ‘(1) The business of the court—
  - (a) is taken to be conducted in court wherever it is conducted; and
  - (b) is to be conducted in open court.

[s 142]

---

‘(2) However, subject to any Act, the court may, if the public interest or the interests of justice require, by order limit the extent to which the business of the court is open to the public.’.

#### **142 Insertion of new s 130B**

After section 130A—

*insert—*

#### **‘130B Finance**

‘The court is part of the department for the purposes of the *Financial Accountability Act 2009*.’.

#### **143 Amendment of s 131 (Regulation-making power)**

Section 131(2), after ‘Court’—

*insert—*

‘other than precincts that are Supreme Court precincts under the *Supreme Court of Queensland Act 1991*’.

#### **144 Insertion of new ss 148 and 149**

After section 147—

*insert—*

#### **‘148 Transitional provision for Civil Proceedings Act 2011—bailiff’s assistants**

‘For the purposes of section 47, a reference to a bailiff includes a reference to a bailiff’s assistant appointed under section 41 as in force immediately before the commencement of the *Civil Proceedings Act 2011*, section 128.

#### **‘149 Outdated references**

‘In an Act or document, in the context of the District Court and if otherwise appropriate, a reference to a thing mentioned in column 1 of the following table is taken to be a reference to the corresponding thing in column 2 of the table—

---

## Table

column 1	column 2
plaint or plaint and summons	claim
chambers	court
action	proceeding
District Court Rules 1968	Uniform Civil Procedure Rules 1999
taxation	assessment of costs
party and party costs	costs on the standard basis
solicitor and client costs	costs on the indemnity basis’.

## Part 19                      Amendment of Evidence Act 1977

### 145    Act amended

This part amends the *Evidence Act 1977*.

### 146    Insertion of new ss 129A and 129B

Part 8, before section 130—

*insert—*

#### ‘129A Order that evidence may be given in a different way

‘(1) This section applies in a proceeding that is not a criminal proceeding if either—

- (a) the fact in issue is any of the following—
  - (i) the proof of handwriting;
  - (ii) the proof of documents;
  - (iii) the proof of the identity of parties;

[s 146]

---

- (iv) the proof of authority; or
- (b) a court considers—
  - (i) a fact in issue is not seriously in dispute; or
  - (ii) strict proof of a fact in issue might cause unnecessary or unreasonable expense, delay or inconvenience in a proceeding.
- ‘(2) The court may order that evidence of the fact may be given at the trial, or any other stage of the proceeding, in any way the court directs.
- ‘(3) Without limiting subsection (2), the court may order that evidence of a fact be given by—
  - (a) a statement on oath of information and belief; or
  - (b) the production of documents or entries in records; or
  - (c) the production of copies of documents or copies of entries in records.
- ‘(4) The court may at any time vary or revoke an order made under this section.

**‘129B Person may be examined without subpoena or other process**

- ‘(1) A court may order a person who is present at the hearing of a proceeding and compellable to give evidence in the proceeding to give evidence or to produce a document or thing even if a subpoena or other process requiring the person to attend for that purpose has not been duly served on the person.
- ‘(2) If ordered to give evidence or to produce a document or thing, the person is subject to the same penalties and liabilities as if the person had been duly served with a subpoena or other process.’.

---

## **Part 20**                      **Amendment of Judges (Pensions and Long Leave) Act 1957**

### **147 Act amended**

This part amends the *Judges (Pensions and Long Leave) Act 1957*.

### **148 Replacement of s 2A (Length of service if previously an acting judge in Queensland)**

Section 2A—

*omit, insert—*

### **‘2A Length of service if previously an acting judge or master in Queensland**

‘For this Act, in deciding the length of service as a judge, service as any of the following is to be counted as service as a judge—

- (a) an acting Supreme Court judge;
- (b) an acting District Court judge;
- (c) a master.’.

## **Part 21**                      **Amendment of Jury Act 1995**

### **149 Act amended**

This part amends the *Jury Act 1995*.

### **150 Amendment of s 8 (Assignment of responsibility for jury districts to other sheriffs and persons)**

- (1) Section 8(1)(a) and (b)—

[s 151]

---

*omit.*

- (2) Section 8(1)(c) and (d)—  
*renumber* as section 8(1)(a) and (b).
- (3) Section 8(2)(b), ‘sheriff’—  
*omit, insert—*  
‘person’.

## **151 Insertion of new pt 6, div 1A**

Part 6, after division 1—

*insert—*

### **‘Division 1A Duty of judge and jury in civil cases**

#### **‘51A Duty of judge and jury**

‘In a civil trial—

- (a) it is the jury’s duty to answer any question of fact that is left to the jury by the presiding judge; and
- (b) it is the presiding judge’s duty to instruct the jury about the law applicable to the proceeding, with the observations on the evidence the judge considers appropriate to make.’.

## **152 Insertion of new s 65A**

Part 8, before section 66—

*insert—*

### **‘65A Civil trial without a jury**

‘A court may order a civil trial without a jury if the trial—

- (a) requires a prolonged examination of records; or
- (b) involves any technical, scientific or other issue that can not be conveniently considered and resolved by a jury.’.



---

## Part 22                      Amendment of Justices Act 1886

### 153    Act amended

This part amends the *Justices Act 1886*.

### 154    Amendment of s 22 (Continuance of Magistrates Courts)

Section 22(2)—

*omit, insert—*

‘(2) Each Magistrates Court is to have and use a seal with the words ‘Magistrates Court of Queensland’.

‘(3) Each Magistrates Court may have other seals required for the business and administration of the court.’.

### 155    Amendment of s 126 (Transmission of depositions)

(1) Section 126(1)(a)—

*omit, insert—*

‘(a) if the committal is to a court to be held within the Northern Region or Far Northern Region—to a crown prosecutor stationed in that region; or’.

(2) Section 126(2)—

*omit, insert—*

‘(2) In this section—

***Far Northern Region*** means the Far Northern Region of the Supreme Court.

***Northern Region*** means the Northern Region of the Supreme Court.

*Editor’s note—*

The Far Northern Region and the Northern Region are declared under the *Supreme Court of Queensland Act 1991*.’.

[s 156]

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**156 Amendment of s 222 (Appeal to a single judge)**

(1) Section 222(3), after ‘notice of appeal’—

*omit, insert—*

‘in the District Court registry.’

(2) Section 222(9)—

*omit, insert—*

‘(9) If the appellant is in custody, the notice of appeal must be filed in the District Court district where the appellant is in custody.’

## **Part 23 Amendment of Land Court Act 2000**

**157 Act amended**

This part amends the *Land Court Act 2000*.

**158 Replacement of s 37 (ADR process applies to proceedings started under this part)**

Section 37—

*omit, insert—*

**‘37 ADR process applies to proceedings started under this part**

‘(1) The *Civil Proceedings Act 2011*, part 6 (the *ADR provisions*) applies to proceedings started under this Act.

‘(2) However, to the extent the cost provisions of the ADR provisions do not provide for a matter, section 34 applies.

‘(3) In applying the ADR provisions to a proceeding under this Act—

- (a) a reference to a court is taken to be a reference to the Land Court; and
- (b) definitions and other interpretative provisions of the *Civil Proceedings Act 2011* relevant to the ADR provisions apply.’.

**159 Amendment of s 62 (Nomination of Supreme Court judge to be member of Land Appeal Court)**

- (1) Section 62(2)(a) to (c)—

*omit, insert—*

- ‘(a) for the Central Region of the Supreme Court—the Central Judge, within the meaning of the *Supreme Court of Queensland Act 1991*; and
- (b) for the Northern Region of the Supreme Court—the Northern Judge, within the meaning of the *Supreme Court of Queensland Act 1991*; and
- (c) for the Far Northern Region of the Supreme Court—the Far Northern Judge, within the meaning of the *Supreme Court of Queensland Act 1991*.

*Note—*

See the *Supreme Court of Queensland Act 1991*, part 4, division 3.’.

- (2) Section 62(3), ‘district’—

*omit, insert—*

‘region’.

**Part 24 Amendment of Law Reform Act 1995**

**160 Act amended**

This part amends the *Law Reform Act 1995*.

[s 161]

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**161 Amendment of s 5 (Definitions for pt 3)**

Section 5, definition *dependant*, ‘*Supreme Court Act 1995*, section 17’—

*omit, insert*—

‘*Civil Proceedings Act 2011*, part 10’.

**162 Amendment of s 6 (Proceedings against, and contribution between, joint and several tortfeasors)**

Section 6(b), ‘spouse, parent, or child’—

*omit, insert*—

‘dependants’.

**163 Amendment of s 8 (Additional definitions for div 2)**

Section 8, definitions *child, parent* and *spouse*—

*omit*.

**164 Amendment of s 10 (Apportionment of liability in case of contributory negligence)**

(1) Section 10(5), ‘*Supreme Court Act 1995*, section 17 shall’—

*omit, insert*—

‘*Civil Proceedings Act 2011*, part 10 must’.

(2) Section 10(5)—

*insert*—

‘*Editor’s note*—

*Civil Proceedings Act 2011*, part 10 (Wrongful death proceedings)’.

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## Part 25                      Amendment of Magistrates Act 1991

### 165    Act amended

This part amends the *Magistrates Act 1991*.

### 166    Insertion of new s 49A

After section 49—

*insert—*

#### **‘49A    Application if original magistrate unable to continue**

- ‘(1) This section applies if—
- (a) a magistrate (the *original magistrate*) starts the hearing of a civil or criminal proceeding (including an appeal); and
  - (b) before the proceeding has been determined, the original magistrate dies or resigns as a magistrate, or is certified as incapable of sitting.
- ‘(2) For subsection (1), a magistrate is certified as incapable of sitting if the Chief Magistrate or the Deputy Chief Magistrate has issued a certificate (an *incapacity certificate*) stating the magistrate is incapable of sitting, whether temporarily or otherwise.
- ‘(3) A party to the proceeding may apply to the court for directions as to the determination of the proceeding.
- ‘(4) On its own initiative or on an application under this section, the court may—
- (a) if there is an incapacity certificate stating the original magistrate is temporarily incapable of sitting—
    - (i) adjourn the proceeding to enable the original magistrate to complete the hearing and determination of the proceeding; or

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- (ii) order that the proceeding be heard and determined afresh; or
- (b) in any other case—
  - (i) order that the proceeding be heard and determined afresh; or
  - (ii) make any other order it considers appropriate.
- ‘(5) If the court orders that a proceeding be heard and determined afresh, the court may make an order it considers appropriate to facilitate the hearing and determination.
- ‘(6) Without limiting the orders that may be made under subsection (5), the court may make an order that any order, or ruling or finding made by the original magistrate, be set aside.
- ‘(7) The court hearing and determining a proceeding afresh because of an order under this section may make the order it considers appropriate about the costs of the first hearing.’.

## **Part 26** **Amendment of Magistrates Courts Act 1921**

### **167 Act amended**

This part amends the *Magistrates Courts Act 1921*.

### **168 Amendment of s 2 (Definitions)**

- (1) Section 2, definitions *ADR convenor*, *ADR costs*, *ADR dispute*, *ADR process*, *case appraisal*, *case appraiser*, *dispute*, *mediation*, *mediator*, *referring court* of a mediation or case appraisal, and *referring order*—  
*omit.*
- (2) Section 2—  
*insert—*

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‘*dispute*, for part 5A, means a dispute that is the subject of an employment claim.’.

**169 Insertion of new s 3B**

Part 1, after section 3A—

*insert—*

**‘3B Delegation by registrar**

‘(1) A registrar of a Magistrates Court may delegate the registrar’s functions to an appropriately qualified person who is a public service employee in a Magistrates Court registry.

‘(2) In this section—

*appropriately qualified*, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Example of standing—*

a person’s classification level in the public service

*functions* includes powers.’.

**170 Omission of s 5A (Proceeding started in wrong court)**

Section 5A—

*omit.*

**171 Insertion of new ss 14A and 14B**

After section 14—

*insert—*

**‘14A Business of Magistrates Court**

‘(1) The business of a Magistrates Court—

(a) is taken to be conducted in court wherever it is conducted; and

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(b) is to be conducted in open court.

‘(2) However, subject to any Act, a Magistrates Court may, if the public interest or the interests of justice require, by order limit the extent to which the business of the court is open to the public.

**‘14B Process returnable in registry where issued but effective throughout State**

‘(1) A process issued out of the registry of any Magistrates Court is returnable in that registry.

‘(2) However, each process has effect, and may be enforced, at any place within the State.’.

**172 Amendment and relocation of s 17 (Officers of Magistrates Court)**

(1) Section 17, heading—

*omit, insert—*

**‘17 Appointment of bailiffs and bailiff’s assistants’.**

(2) Section 17—

*insert—*

‘(5) A registrar of a Magistrates Court may give directions to a bailiff or bailiff’s assistant appointed under this section about the discharge of the functions of the bailiff.’.

(3) Section 17—

*relocate* to part 1 as section 3C.

**173 Replacement of s 18 (Appearance to be in person or by lawyer, or other person allowed by the court)**

Section 18—

*omit, insert—*



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**‘18 Court appearance**

‘(1) In a proceeding, a party may appear in person or by—

- (a) a lawyer; or
- (b) with the leave of the court, another person.

‘(2) In this section—

*party* includes a person served with notice of or attending a proceeding although not named in the record.’.

**174 Omission of pt 5 (ADR processes)**

Part 5—

*omit.*

**175 Insertion of new s 57B**

After section 57A—

*insert—*

**‘57B Finance**

‘The Magistrates Courts are part of the department for the purposes of the *Financial Accountability Act 2009*.’.

**176 Insertion of new s 61**

After section 60—

*insert—*

**‘61 Outdated references**

‘In an Act or document, in the context of a Magistrates Court and if otherwise appropriate, a reference to a thing mentioned in column 1 of the following table is taken to be a reference to the corresponding thing in column 2 of the table—

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## Table

<b>column 1</b>	<b>column 2</b>
plaint or plaint and summons	claim
chambers	court
action	proceeding
Magistrates Courts Rules 1960	Uniform Civil Procedure Rules 1999
taxation	assessment of costs
party and party costs	costs on the standard basis
solicitor and client costs	costs on the indemnity basis’.

## Part 27                      Amendment of Succession Act 1981

### 177    Act amended

This part amends the *Succession Act 1981*.

### 178    Amendment of s 66 (Survival of actions)

Section 66(4), ‘provisions of the *Supreme Court Act 1995*, part 4’—

*omit, insert—*

‘*Civil Proceedings Act 2011*, part 10’.

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## **Part 28**                      **Amendment of Supreme Court of Queensland Act 1991**

### **179 Act amended**

This part amends the *Supreme Court of Queensland Act 1991*.

### **180 Replacement of ss 2A–6**

Sections 2A to 6—

*omit, insert—*

### **‘3 Act binds all persons**

‘This Act binds all persons, including the State.’.

### **181 Replacement of pt 2 (The court)**

Part 2—

*omit, insert—*

## **‘Part 2                      The court**

### **‘Division 1                      Composition and jurisdiction**

#### **‘4 Composition of the court**

‘The court consists of a Chief Justice, a President of the Court of Appeal, other judges of appeal, a Senior Judge Administrator, and the other judges appointed by the Governor in Council.

#### **‘5 Divisions of the court**

‘(1) The court is divided into—

(a) the office of the Chief Justice; and

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(b) 2 divisions, namely, the Court of Appeal and the Trial Division.

‘(2) The Chief Justice may sit as, and exercise the powers and perform the functions of, a judge in either division of the court.

## ‘6 **Acting judges**

‘(1) If a judge is or will be on leave, or otherwise absent, or is or will be, for any reason, unable to perform the functions of the office, the Governor in Council, after consultation between the Minister and the Chief Justice, may, by commission, appoint a person who is qualified to be appointed as a judge to act as a judge for the period (not longer than 6 months) stated in the commission.

‘(2) If the Chief Justice certifies that it is desirable that 1 or more persons be appointed to act as a judge to assist in ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the Trial Division, the Governor in Council may, by commission, appoint 1 or more persons, who is or are qualified to be appointed as a judge to act as a judge for the period (not longer than 6 months) stated in the commission or commissions.

‘(3) The Governor in Council may, by commission, appoint either of the following persons to act as a judge for up to 1 year—

- (a) a person who is, or has been, a judge of the Supreme Court of another State or Territory;
- (b) a person who is, or has been, a judge of the Federal Court of Australia.

‘(4) The Governor in Council may decide the remuneration to be paid and provided in relation to a person who acts as a judge (not being less than the remuneration paid and provided to a judge).

‘(5) The fact that a person who holds a commission to act as a judge sits and otherwise acts as a judge is sufficient evidence of the person’s authority to do so.

- ‘(6) A person who has acted as a judge may attend sittings of the court for the purpose of giving judgment in, or otherwise completing, a proceeding that was heard by the person while the person was acting as a judge, despite the fact that the person is no longer acting as a judge.

**‘7 Jurisdiction not affected by vacancies**

‘The jurisdiction of the court, or of a division of the court, is not affected by a vacancy in any office in the court.

**‘8 Business of the court**

- ‘(1) The business of the court—
- (a) is taken to be conducted in court wherever it is conducted; and
  - (b) is to be conducted in open court.
- ‘(2) However, subject to any Act, the court may, if the public interest or the interests of justice require, by order limit the extent to which the business of the court is open to the public.

**‘9 Court seal**

- ‘(1) The court is to have and use a seal with the words ‘Supreme Court of Queensland’.
- ‘(2) The court may have other seals required for the business and administration of the court.

**‘10 Jurisdiction of the court not impaired etc.**

‘Except as provided in this Act, this Act does not take away, lessen or impair any jurisdiction or power that was, immediately before the commencement of this section, vested in or capable of being exercised by the court or 1 or more judges.

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## **‘11 Effect of repeal of Supreme Court Act 1995**

- ‘(1) The repeal of the *Supreme Court Act 1995* (the **1995 Act**) does not affect the jurisdiction of the Supreme Court that may have been derived from the 1995 Act or any of the Acts referred to in the 1995 Act and the Supreme Court retains all the jurisdiction and power that may have been derived from the 1995 Act or any of the Acts referred to in the 1995 Act.
- ‘(2) The repeal of the 1995 Act does not affect anything done or suffered under the provisions of the 1995 Act before the repeal.
- ‘(3) The repeal of the 1995 Act does not affect the validity or consequences of anything done or suffered, or any right, title, obligation or liability already acquired, accrued or any remedy or proceeding in relation to the thing, right, title, obligation or liability.
- ‘(4) The repeal of the 1995 Act does not affect any principle or rule of law or equity or revive jurisdiction.
- ‘(5) This section does not limit the operation of the *Acts Interpretation Act 1954*, section 20.

## **‘Division 2 Office of Chief Justice**

### **‘12 Appointment of Chief Justice**

- ‘(1) The Governor in Council may, by commission, appoint a judge to be Chief Justice.

*Note—*

See the *Constitution of Queensland 2001*, section 59 (Appointment of judges) for the oath or affirmation requirement.

- ‘(2) A judge may be appointed as Chief Justice either at the time of the person’s appointment as a judge or at any time afterwards.

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**‘13 Chief Justice continues in office while judge**

- ‘(1) The Chief Justice holds office as Chief Justice while the person holds office as a judge.
- ‘(2) The Chief Justice may resign office as Chief Justice without resigning office as a judge.

**‘14 Title of Chief Justice**

‘The Chief Justice is called the Chief Justice of Queensland.

**‘15 Administrative responsibility of Chief Justice**

- ‘(1) Without limiting the responsibilities, functions or powers of the Chief Justice, the Chief Justice, subject to this Act, is responsible for the administration of the Supreme Court and its divisions and the orderly and expeditious exercise of the court’s jurisdiction and power.
- ‘(2) Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done to perform responsibilities under subsection (1).

**‘16 Sittings**

‘The Chief Justice is to decide—

- (a) when and where the Supreme Court is to sit; and
- (b) the way notice of when and where the Supreme Court is to sit may be given.

**‘17 Practice directions**

- ‘(1) The Chief Justice may make practice directions for the Supreme Court.
- ‘(2) Subsection (1) does not affect any inherent or other power to make practice directions.
- ‘(3) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

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### **‘18 Supreme Court precincts**

- ‘(1) Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done for the control and management of the Supreme Court precincts, including power to obtain, grant, prohibit or limit access to and from the precincts or part of the precincts.
- ‘(2) For subsection (1), a reference to the Supreme Court precincts includes a reference to court precincts part of which are occupied by the Supreme Court.

### **‘19 Annual report**

- ‘(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the Chief Justice must prepare and give to the Minister a written report about the operation of the Supreme Court during the year.
- ‘(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

## **‘Division 3 Provisions relating to judges generally**

### **‘20 Power to act throughout State**

‘A judge has power to act in any part of the State.

### **‘21 Retirement of judges**

- ‘(1) A judge must retire on reaching 70 years of age.
- ‘(2) Despite subsection (1), a judge who, before retiring, whether or not because of subsection (1), starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.



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**‘22 Accepting and holding other public offices**

- ‘(1) Subject to this section, a judge may accept and hold another public office.
- ‘(2) A judge who accepts another public office—
- (a) must immediately notify the Attorney-General in writing; and
  - (b) must immediately resign the other public office if the Governor in Council decides, after consultation between the Attorney-General and the Chief Justice, that the holding of that office, or the conditions on which it is held, would be inconsistent with the proper discharge of the office of a judge.
- ‘(3) A judge may receive remuneration in relation to the acceptance or holding of another public office only with the approval of the Governor in Council.
- ‘(4) In this section—
- public office* includes—
- (a) an office or appointment granted or made by the Government of the Commonwealth, another State or a Territory; and
  - (b) an office or appointment in or in relation to a university or other educational institution, a hospital or a charitable institution.

**‘23 Judicial office subject to Constitution of Queensland 2001**

‘A provision of this Act that provides for a judge or judge of appeal to hold another judicial office while the person holds office as a judge or judge of appeal is subject to the *Constitution of Queensland 2001*, section 61.

*Editor’s note—*

*Constitution of Queensland 2001*, section 61 (Removal from office for misbehaviour or incapacity)

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## **‘24 Seniority**

- ‘(1) The Chief Justice is senior to all other judges of the court.
- ‘(2) The President of the Court of Appeal is senior to all other judges of the court apart from the Chief Justice.
- ‘(3) Judges of appeal have seniority after the President of the Court of Appeal, and have seniority in relation to each other according to the dates of their commissions as judges of appeal.
- ‘(4) If the commissions of 2 or more judges of appeal have the same date, the judges of appeal have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.
- ‘(5) The Senior Judge Administrator has seniority after the judges of appeal.
- ‘(6) The remaining judges have seniority in relation to each other according to the dates of their commissions.
- ‘(7) If the commissions of 2 or more judges have the same date, the judges have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.
- ‘(8) In subsections (6) and (7), a reference to a judge includes a judge who has ceased to be the Senior Judge Administrator.

## **‘25 Temporary judicial office holders**

- ‘(1) When—
  - (a) the office of Chief Justice, President of the Court of Appeal or Senior Judge Administrator is vacant; or
  - (b) the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is, for any reason, unable to discharge the person’s office;the next most senior judge, who is willing, is to act in the office.

- 
- ‘(2) When the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the person’s office, the next most senior judge, who is willing, is to perform the functions of the office that the person is unable to perform.
- ‘(3) While a judge is performing functions of a more senior judicial office, then, to the extent necessary—
- (a) the judge has all the powers and functions of the office; and
  - (b) this Act and other Acts apply to the judge as if the judge were the holder of the office.

*Note—*

The same applies if a judge is acting in a more senior judicial office—*Acts Interpretation Act 1954*, section 24B(8).

- ‘(4) The fact that a judge acts in, or performs functions of, a more senior judicial office is sufficient evidence of the judge’s authority to do so.
- ‘(5) Anything done by a judge in purporting to act in, or perform functions of, a more senior judicial office is not invalid merely because the occasion for the judge to act in, or perform functions of, the office had not arisen or had ceased.

## **‘26 Entitlements of temporary judicial office holders**

- ‘(1) Subject to subsection (2), a judge who acts in, or performs functions of, a more senior judicial office under section 25 or 39 is not entitled to receive additional remuneration for doing so.
- ‘(2) The Governor in Council may decide that a judge who acts in, or performs functions of, a more senior judicial office under section 25 or 39 is to receive specific additional remuneration (not being more than the remuneration of the office concerned) for doing so.

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**‘27 Protection for administrative acts**

‘A judge has, in the performance or exercise of an administrative function or power conferred on the judge under an Act, the same protection and immunity as a judge has in a judicial proceeding in the court.’.

**182 Amendment of s 28 (Composition)**

Section 28(b), ‘not less than 3, nor’—  
*omit, insert*—  
‘at least 3, but no’.

**183 Amendment of s 31 (Constitution of court if 1 judge of appeal unable to continue)**

Section 31(1A) ‘sitting.’—  
*omit, insert*—  
‘sitting whether temporarily or otherwise.’.

**184 Amendment of s 32 (Arrangement of business of Court of Appeal)**

Section 32(1), ‘section 13A’—  
*omit, insert*—  
‘section 15’.

**185 Amendment of s 36 (Appointment of President)**

- (1) Section 36(2), ‘to’—  
*omit, insert*—  
‘as’.
- (2) Section 36(3), ‘to be the’—  
*omit, insert*—  
‘as the’.

---

**186 Amendment of s 42 (Reserved judgements)**

- (1) Section 42(1), from ‘to state’ to ‘obtained’—  
*omit, insert—*  
‘when the judgment is pronounced’.
- (2) Section 42(2), ‘delivered’—  
*omit, insert—*  
‘pronounced’.
- (3) Section 42(4), ‘delivering’—  
*omit, insert—*  
‘pronouncing’.

**187 Omission of ss 44 and 45**

Sections 44 and 45—  
*omit.*

**188 Amendment of s 56 (Single judge to constitute the court)**

- (1) Section 56(3), ‘, including the court as constituted by a master,’—  
*omit.*
- (2) Section 56(4), ‘master,’—  
*omit.*

**189 Insertion of new s 56A**

Part 4, division 1—  
*insert—*

**‘56A Application if original judge unable to continue**

- ‘(1) This section applies if—
  - (a) a judge (the *original judge*) starts the hearing of a civil or criminal proceeding; and

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- (b) before the proceeding has been determined, the original judge dies or resigns as a judge, or is certified as incapable of sitting.

*Note—*

For the Court of Appeal, see section 31 (Constitution of court if 1 judge of appeal unable to continue).

- ‘(2) For subsection (1), a judge is certified as incapable of sitting if the Chief Justice or Senior Judge Administrator has issued a certificate (an *incapacity certificate*) stating the judge is incapable of sitting, whether temporarily or otherwise.
- ‘(3) A party to the proceeding may apply to the court for directions as to the determination of the proceeding.
- ‘(4) On its own initiative or on an application under this section, the court may—
- (a) if there is an incapacity certificate stating the original judge is temporarily incapable of sitting—
- (i) adjourn the proceeding to enable the original judge to complete the hearing and determination of the proceeding; or
- (ii) order that the proceeding be heard and determined afresh; or
- (b) in any other case—
- (i) order that the proceeding be heard and determined afresh; or
- (ii) make any other order it considers appropriate.
- ‘(5) If the court orders that a proceeding be heard and determined afresh, the court may make an order it considers appropriate to facilitate the hearing and determination.
- ‘(6) Without limiting the orders that may be made under subsection (5), the court may make an order that any order, or ruling or finding made by the original judge, be set aside.
- ‘(7) The court hearing and determining a proceeding afresh because of an order under this section may make the order it considers appropriate about the costs of the first hearing.’.

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**190 Amendment of s 60 (Arrangement of business of Trial Division)**

Section 60(1), ‘section 13A’—

*omit, insert—*

‘section 15’.

**191 Insertion of new pt 4, divs 3 and 4**

After section 61—

*insert—*

**‘Division 3                   Regions and districts**

**‘61A   Regions**

- ‘(1) There are to be 4 regions of the court.
- ‘(2) The regions are to be called the Southern Region, the Central Region, the Northern Region and the Far Northern Region.
- ‘(3) The Southern Region is the area of the State other than the Central Region, Northern Region or Far Northern Region.
- ‘(4) The Central Region is the area described in schedule 1A.
- ‘(5) The Northern Region is the area described in schedule 1B other than the Far Northern Region.
- ‘(6) The Far Northern Region is the area of the State that is the Supreme Court district containing Cairns.

**‘61B   Central Region**

- ‘(1) One of the judges of the court must be called the Central Judge.
- ‘(2) The Governor in Council may, by commission, appoint a judge of the Trial Division to be the Central Judge.

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- ‘(3) A judge may be appointed as the Central Judge when appointed as a judge or at any time afterwards.
- ‘(4) The Central Judge must reside in the Central Region.
- ‘(5) Sittings of the Trial Division must be held within the Central Region.
- ‘(6) Subject to sections 15 and 60, the Central Judge is responsible for the orderly and expeditious exercise within the Central Region of the jurisdiction of the court in the Trial Division.

*Editor’s note—*

sections 15 (Administrative responsibility of Chief Justice) and 60 (Arrangement of business of Trial Division)

- ‘(7) To the extent necessary or convenient for the exercise of the court’s jurisdiction in the Central Region, a reference to Brisbane in any Act relating to the court, including a reference to a thing being done at Brisbane, is taken, if otherwise appropriate, to be a reference to Rockhampton.

### **‘61C Northern Region**

- ‘(1) One of the judges of the court must be called the Northern Judge.
- ‘(2) The Governor in Council may, by commission, appoint a judge of the Trial Division to be the Northern Judge.
- ‘(3) A judge may be appointed as the Northern Judge when appointed as a judge or at any time afterwards.
- ‘(4) The Northern Judge must reside in the Northern Region.
- ‘(5) Sittings of the Trial Division must be held within the Northern Region.
- ‘(6) Subject to sections 15 and 60, the Northern Judge is responsible for the orderly and expeditious exercise within the Northern Region of the jurisdiction of the court in the Trial Division.
- ‘(7) To the extent necessary or convenient for the exercise of the court’s jurisdiction in the Northern Region, a reference to



Brisbane in any Act relating to the court, including a reference to a thing being done at Brisbane, is taken, if otherwise appropriate, to be a reference to Townsville.

#### **'61D Far Northern Region**

- '(1) One of the judges of the court must be called the Far Northern Judge.
- '(2) The Governor in Council may, by commission, appoint a judge of the Trial Division to be the Far Northern Judge.
- '(3) A judge of the Trial Division may be appointed as the Far Northern Judge when appointed as a judge or at any time afterwards.
- '(4) The Far Northern Judge must reside in the Far Northern Region.
- '(5) Sittings of the Trial Division must be held within the Far Northern Region.
- '(6) Subject to sections 15 and 60, the Far Northern Judge is responsible for the orderly and expeditious exercise within the Far Northern Region of the jurisdiction of the court in the Trial Division.
- '(7) To the extent necessary or convenient for the exercise of the court's jurisdiction in the Far Northern Region, a reference to Brisbane in any Act relating to the court, including a reference to a thing being done at Brisbane, is taken, if otherwise appropriate, to be a reference to Cairns.

#### **'61E Districts**

- '(1) There are to be districts of the court.
- '(2) Each district is to consist of the Magistrates Court districts prescribed under a regulation.
- '(3) Each district is to take its name from the place where the court ordinarily sits in that district.

## **‘Division 4                      Commercial and other lists**

### **‘62      Court may maintain lists**

‘In exercising its power to control its own process, the court may maintain lists of particular proceedings by reference to subject matter, including a commercial list.

### **‘62A    No appeal from entry on a list**

‘There is no appeal from an order entering a proceeding on a list of particular proceedings.

### **‘62B    Commercial list proceeding**

- ‘(1) This section applies to a proceeding on the commercial list.
- ‘(2) If the parties to the proceeding agree, the judgment of the court is final and not subject to appeal.
- ‘(3) The court may order that the proceeding be tried without a jury.’.

## **192    Amendment of s 69 (Appeal in proceedings in the court)**

- (1) Section 69(1)(b)(iii), ‘a District Court’—

*omit, insert—*

‘the District Court’.

- (2) Section 69(2), ‘any other Act’—

*omit, insert—*

‘an Act’.

## **193    Insertion of new ss 69A and 69B**

After section 69—

*insert—*

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**‘69A Leave required to appeal from consent order**

‘An appeal lies to the Court of Appeal from a judgment or order of the court in the Trial Division given or made by consent only by leave of the judge who gave the judgment or made the order, or, if that judge is not available, another judge of the court in the Trial Division.

**‘69B Leave required to appeal in relation to costs**

- ‘(1) An appeal only in relation to costs lies to the Court of Appeal from a judgment or order of the court in the Trial Division only by leave of the judge who gave the judgment or made the order, or, if that judge is not available, another judge of the court in the Trial Division.
- ‘(2) However, if, after an appeal to the Court of Appeal is properly started, the appeal becomes an appeal only in relation to the costs of the original proceeding—
- (a) subsection (1) does not apply; and
  - (b) the appeal may be heard and determined only by leave of the Court of Appeal.’.

**194 Relocation of s 70 (Disqualification of judge of appeal)**

Section 70—

*relocate* as section 39A.

**195 Replacement of pts 7 and 8**

Parts 7 and 8—

*omit, insert*—

**‘Part 7 Registry**

**‘70 Registry**

- ‘(1) There is to be a Supreme Court Registry.

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‘(2) The Supreme Court Registry is to have regional offices (each a *regional registry*) at Brisbane, Rockhampton, Townsville and Cairns.

‘(3) The Supreme Court Registry is to have a district office (*district registry*) at each place from which a Supreme Court district takes its name.

**‘71 Process returnable in office where issued but effective throughout State**

‘(1) A process issued out of any office of the Supreme Court Registry is returnable in that office.

‘(2) However, each process has effect, and may be enforced, at any place within the State.

**‘72 Control**

‘The Supreme Court Registry is under the control of the principal registrar.

**‘73 Registration of Acts**

‘Acts of the Queensland Parliament may be registered in the Brisbane Supreme Court Registry.

## **‘Part 8 Court officers**

**‘74 Principal registrar, other registrars and officers**

‘(1) The Governor in Council may appoint a principal registrar.

‘(2) The chief executive may appoint registrars (other than the principal registrar) and other officers the chief executive considers appropriate.

- 
- ‘(3) A person appointed under this section is employed under the *Public Service Act 2008*.

**‘75 Delegation by registrar**

- ‘(1) A registrar may delegate the registrar’s functions to an appropriately qualified person who is a public service employee in the Supreme Court Registry.

- ‘(2) In this section—

*appropriately qualified*, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Example of standing—*

a person’s classification level in the public service

*functions* includes powers.

**‘76 Directions**

‘The principal registrar may give directions to the registrars and other officers employed in any office of the Supreme Court Registry.

**‘77 Registrar of Magistrates Court**

- ‘(1) The registrar of the Magistrates Court for the Magistrates Court district in which the Supreme Court sits may perform the functions and exercise the powers of a registrar, and a deputy sheriff, of the Supreme Court for the Supreme Court district constituted under section 61E that is or includes the Magistrates Court district.

- ‘(2) Subsection (1) applies whether or not a registrar or deputy sheriff of the Supreme Court for the Supreme Court district constituted under section 61E has been appointed.

[s 195]

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**‘78 Sheriff of Queensland, deputy sheriffs and bailiffs**

- ‘(1) The chief executive may appoint a Sheriff of Queensland.
- ‘(2) The chief executive may also appoint deputy sheriffs and bailiffs.
- ‘(3) A person appointed under this section is employed under the *Public Service Act 2008*.

**‘79 Powers of sheriff**

- ‘(1) The sheriff or a deputy sheriff has the powers given under an Act and may exercise the powers throughout the State.
- ‘(2) Any power given to the sheriff under an Act may be exercised by a deputy sheriff.

**‘80 Power of bailiffs**

- ‘(1) A bailiff is an officer of the sheriff.
- ‘(2) A bailiff is appointed for the State.
- ‘(3) The sheriff, or a deputy sheriff, may delegate any of the sheriff’s functions, or deputy sheriff’s functions, to a bailiff.
- ‘(4) Subject to the terms of the delegation, a bailiff may perform a function throughout the State.
- ‘(5) In this section—  
*functions* includes powers.  
*perform*, a function, includes exercise a power.

**‘81 Enforcement officer’s protection from liability**

- ‘(1) A proceeding in relation to an enforcement officer acting in that capacity must be started against ‘The Sheriff of Queensland’ and not against the enforcement officer.
- ‘(2) If a money order is made against The Sheriff of Queensland in a proceeding mentioned in subsection (1)—

- 
- (a) the money order debt must be paid by the Treasurer out of the consolidated fund; and
  - (b) the State may recover the money order debt from the relevant enforcement officer unless the liability resulting in the money order was for an act done, or omission made, honestly and without negligence when acting as an enforcement officer.

**'82 Associates**

- '(1) The Chief Justice may appoint a person nominated by a judge as an associate to the judge.
- '(2) An associate is appointed under this Act and not under the *Public Service Act 2008*.
- '(3) The Governor in Council is to decide the salary and conditions of appointment for an associate appointed under subsection (1).'

**196 Omission of pt 8B (Provision from Legal Practitioners Act 1995)**

Part 8B—  
*omit.*

**197 Amendment of pt 9 hdg (Rules of court and practice directions for the Supreme Court, the District Court and the Magistrates Courts)**

Part 9, heading, 'and practice directions'—  
*omit.*

**198 Omission of s 117 (Definition for pt 9)**

Section 117—  
*omit.*

[s 199]

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## **199 Amendment of s 118 (Rule-making power)**

- (1) Section 118(1)(c)—  
*omit.*
- (2) Section 118(1)(ba)—  
*renumber* as section 118(1)(c).
- (3) Section 118(3), ‘or (1)(c)’—  
*omit.*

## **200 Insertion of new s 118AA**

After section 118—

*insert—*

### **‘118AA Admission guidelines**

- ‘(1) The admission rules may provide that the Chief Justice may issue guidelines about a matter prescribed under the admission rules.
- ‘(2) A guideline—
  - (a) is a statutory instrument but not subordinate legislation; and
  - (b) has no effect unless the Minister notifies in the gazette the issuing of the guideline.
- ‘(3) The notice is subordinate legislation.
- ‘(4) The registrar must ensure that a copy of any current guideline is available, without charge, for public inspection—
  - (a) at the regional registries at Brisbane, Rockhampton, Townsville and Cairns; and
  - (b) on the court’s internet website.
- ‘(5) In this section—

*admission rules* means rules of court made under this Act for the admission of persons to the legal profession under the *Legal Profession Act 2007*.



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*court's internet website* means the internet website administered by the Supreme Court Library for the court and other courts.

*Editor's note—*

The website may be viewed at <www.courts.qld.gov.au>.

**201 Amendment of s 118A (Rules committee may approve forms)**

Section 118A, after 'this Act'—

*insert—*

'or the *Civil Proceedings Act 2011*'.

**202 Amendment of s 118B (Court rules are exempt from RIS requirements and automatic expiry)**

(1) Section 118B(2) and (3)—

*omit.*

(2) Section 118B(4)—

*renumber* as section 118B(2).

**203 Amendment of s 118C (Rules Committee)**

(1) Section 118C(1)(f) and (g), 'Stipendiary'—

*omit.*

(2) Section 118C(2)(a)—

*omit.*

(3) Section 118C(2)(b) and (c)—

*renumber* as section 118C(2)(a) and (b).

**204 Omission of ss 118D and 118E**

Sections 118D and 118E—

*omit.*

[s 205]

---

## **205 Replacement of ss 119–119D**

Sections 119 to 119D—

*omit, insert—*

### **‘119 Court appearance**

‘(1) In a proceeding, a party may appear in person or by—

(a) a lawyer; or

(b) with the leave of the court, another person.

‘(2) In this section—

*party* includes a person served with notice of or attending a proceeding although not named in the record.

### **‘119A Finance**

‘The court is part of the department for the purposes of the *Financial Accountability Act 2009*.’.

## **206 Amendment of s 120 (Regulation-making power)**

Section 120(2)(d)—

*omit.*

## **207 Replacement of pt 11 (Transitional provisions)**

Part 11—

*omit, insert—*

## **‘Part 11 Transitional provisions**

### **‘121 Outdated references**

‘In an Act or document, in the context of the Supreme Court and if otherwise appropriate, a reference to a thing mentioned in column 1 of the following table is taken to be a reference to the corresponding thing in column 2 of the table—

---

## Table

<b>column 1</b>	<b>column 2</b>
writ of summons	claim
notice of motion, motion, petition or originating summons	application
entry of appearance	notice of intention to defend
chambers	court
action, cause or matter	proceeding
rules of the Supreme Court or Rules of the Supreme Court	Uniform Civil Procedure Rules 1999
Central District	Central Region
Northern District	Northern Region
Far Northern District	Far Northern Region
taxation	assessment of costs
party and party costs	costs on the standard basis
solicitor and client costs	costs on the indemnity basis

### **‘121A Transitional—abolition of Circuit Courts**

- ‘(1) On the commencement of this section—
- (a) an order made by a Circuit Court continues to have effect as an order of the Supreme Court; and
  - (b) anything done or existing in relation to a previous Circuit Court continues, and is taken to be done or existing in relation to the Supreme Court; and
  - (c) a process pending in a previous Circuit Court is to be continued in the Supreme Court.
- ‘(2) In an Act, or another document, if the context permits, a reference to Circuit Courts or a Circuit Court is taken to be a reference to the Supreme Court.

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### **‘121B Transitional provision for Forensic Disability Act 2011**

The amendment of the *Criminal Practice Rules 1999* by the *Forensic Disability Act 2011* does not affect the power of the Governor in Council to further amend the rules or to repeal them.

### **‘122 Renumbering of Act**

‘(1) On the commencement, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

‘(2) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in legislation mentioned in schedule 1C to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.

‘(3) This section and schedule 1C expire on the day after the commencement.

‘(4) In this section—

*commencement* means the commencement of the *Civil Proceedings Act 2011*, section 207.’.

### **208 Amendment of sch 1 (Subject matter for rules)**

(1) Schedule 1, item 3—

*insert—*

‘(f) removal and transfer of proceedings.’.

(2) Schedule 1, item 8(b)(i)—

*omit, insert—*

‘(i) freezing orders, search orders or injunctions; or’.

(3) Schedule 1, after item 8—

*insert—*

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**‘8A Set off**

‘How set offs are to be treated in proceedings and by the court.’.

- (4) Schedule 1, item 11(1)—

*insert—*

‘(i) interpreters and translators.’.

- (5) Schedule 1, item 12—

*omit, insert—*

**‘12 Registrars**

‘Jurisdiction of registrars.’.

- (6) Schedule 1, after item 14—

*insert—*

**‘14A Assessment of accounts**

‘Assessment of accounts, including—

- (a) the appointment and removal of persons to assess accounts; or
- (b) powers of account assessors; or
- (c) procedures; or
- (d) review of assessments.’.

- (7) Schedule 1, item 16—

*omit, insert—*

**‘16 Contempt of court**

‘Contempt of court and proceedings for failure to comply with an order, other than an order for the payment of money.’.

- (8) Schedule 1, item 20(b)(vi)—

*omit.*

- (9) Schedule 1, item 20(c)—

*omit, insert—*

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- ‘(c) payment of a money order debt by instalments;
- (d) powers of enforcement officers.’.

## **209 Insertion of new schs 1A–1C**

After schedule 1—

*insert—*

### **‘Schedule 1A Central Region**

section 61A

Commencing on the east coast at the mouth of the Kolan River, and bounded from there on the south by the northern watershed of that river westerly to Dawes Range; by that range and the range forming the northern and western watersheds of the Rawbelle River and its tributaries westerly and southerly to their junction with the southern watershed of Ross and Cracow Creeks; by that watershed westerly to the Dawson River; by that river downwards to Bigge’s Range; by that range westerly to Carnarvon Range; by that range westerly to the Great Dividing Range; by that range westerly to the Warrego Range; by that range westerly to the Cheviot Range; by that range north-westerly and westerly to the confluence of the Thomson and Barcoo Rivers; by a line due west to the western boundary of the State; on the west by that boundary north to the 24th parallel of south latitude; on the north by that parallel easterly to its intersection with the east boundary of Ingledoun no. 3 block; by part of the east boundary of that block; by the northern boundaries of Ingledoun no. 1 and Walla Munda; by parts of the west and the north boundaries of Diamantina Lakes no. 3; by part of the west and the south boundaries of Diamantina Lakes no. 2; by the south boundary of Diamantina Plains; by the south and part of the east boundaries of Mayne Downs no. 4 to the 24th parallel of latitude; again by that parallel easterly to the range forming the eastern watershed of the Diamantina River

and its tributaries; by that range northerly to the ranges forming the southern watershed of the Flinders River and its tributaries; by that range north-easterly to the 21st parallel of latitude; by that parallel easterly to the Great Dividing Range; by that range southerly to its junction with the southern watershed of the Cape River; by that watershed easterly to the confluence of the Belyando and Suttor Rivers; from there by the Suttor River upwards to its head in the Leichhardt Range; from there by that range and the northern watershed of Funnel Creek and its tributaries easterly and southerly to a spur forming the watershed separating the waters of Marion and Rocky Dam Creeks; from there by that watershed north-easterly to Cape Palmerston on the east coast of the State; from there by a line eastward to the eastern boundary of the State; from there on the east by that boundary southerly to Sandy Cape; and again on the south by a line westerly to the point of commencement; and including all adjacent islands south of the latitude of Cape Palmerston and north of the latitude of Sandy Cape.

## **‘Schedule 1B Northern Region**

### section 61A

Commencing on the east coast at Cape Palmerston, and bounded from there on the south by a line east to the eastern boundary of the State; from there on the east, north-east, north, and west by that boundary to the 24th parallel of south latitude; on the south by that parallel easterly to its intersection with the east boundary of Ingledoun no. 3 block; by part of the east boundary of that block; by the northern boundary of Ingledoun no. 1 and Walla Munda; by parts of the west and north boundaries of Diamantina Lakes no. 3; by part of the west and the south boundaries of Diamantina Lakes no. 2; by the south boundary of Diamantina Plains; by the

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south and part of the east boundaries of Mayne Downs no. 4 to the 24th parallel of latitude; again by that parallel easterly to the range forming the eastern watershed of the Diamantina River and its tributaries; by that range northerly to the range forming the southern watershed of the Flinders River and its tributaries; by that range north-easterly to the 21st parallel of latitude; by that parallel easterly to the Great Dividing Range; by that range southerly to its junction with the southern watershed of the Cape River; by that watershed easterly to the confluence of the Belyando and Suttor Rivers; by the Suttor River upwards to its head in the Leichhardt Range; from there by that range and the northern watershed of Funnel Creek and its tributaries easterly and southerly to its junction with a spur forming the watershed separating the waters of Marion and Rocky Dam Creeks; and from there by that watershed north-easterly to the point of commencement; and including all adjacent islands north of the latitude of Cape Palmerston.

However, the Northern Region does not include any part of the State comprised within the boundaries of the Far Northern Region.

## **‘Schedule 1C Renumbered cross-references**

section 122

### **Bail Act 1980**

- 1 Section 20(10), definition *practical legal training*



## **Corporations (Ancillary Provisions) Act 2001**

- 1 Section 11(2), definition *corporation rules of court*
- 2 Section 24(1)

## **Criminal Law (Rehabilitation of Offenders) Act 1986**

- 1 Section 9A(1), table, column 1, item 20

## **Criminal Proceeds Confiscation Act 2002**

- 1 Schedule 6, definition *money order*

## **Judicial Remuneration Act 2007**

- 1 Schedule 2, definitions *Chief Justice, judge of appeal* and *President of the Court of Appeal*

## **Legal Profession Act 2007**

- 1 Section 29, definition *admission rules*
- 2 Section 714(2)(a)

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- 3 Schedule 2, definitions *registrar* and *Uniform Civil Procedure Rules*

## Terrorism (Preventative Detention) Act 2005

- 1 Section 73(7) and note
- 2 Section 74(1)(b)
- 3 Section 77(3)'.

### 210 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *ADR convenor*, *ADR costs*, *ADR dispute*, *ADR process*, *authorised auditor*, *case appraisal*, *case appraiser*, *costs assessment*, *court*, *dispute*, *exempt property*, *judicial registrar*, *mediation*, *mediator*, *non-money order*, *partnership*, *referring order*, *registrar*, *this Act* and *trial judge*—  
*omit.*
- (2) Schedule 2—  
*insert*—  
'*registrar* includes the principal registrar.'
- (3) Schedule 2, definition *enforcement officer*, 'a sheriff, deputy sheriff or bailiff of the court'—  
*omit, insert*—  
'the sheriff, a deputy sheriff or a bailiff of the court'.
- (4) Schedule 2, definition *money order*, 'an amount', first mention—  
*omit, insert*—  
'money'.

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## **Part 29**                      **Repeal of Supreme Court Act 1995**

### **211**    **Repeal of Supreme Court Act 1995**

- (1) The Supreme Court Act 1995 is repealed.
- (2) The *Supreme Court Act 1995*, sections 300 and 303 are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.

## **Part 30**                      **Amendment of this Act**

### **212**    **Act amended**

This part amends this Act.

### **213**    **Amendment of long title**

Long title, from ‘, to repeal’—  
*omit.*

### **214**    **Amendment of s 88 (Enforcement against property of a business)**

- (1) Section 88(1)(a), ‘(whether or not the name or style is registered under the *Business Names Act 1962*)’—  
*omit, insert—*  
‘(whether or not the name is registered on the Business Names Register or held under business names legislation)’.
- (2) Section 88—  
*insert—*

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- ‘(3) For subsection (1)(a), a name is held under business names legislation only if it is held under—
- (a) the *Business Names Registration Act 2011* (Cwlth), section 54; or
  - (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.’.

**215 Amendment of s 89 (Variation of order in relation to a business name)**

- (1) Section 89, ‘(whether or not the name or style is registered under the *Business Names Act 1962*)’—

*omit, insert—*

‘(whether or not the name is registered on the Business Names Register or held under business names legislation).’.

- (2) Section 89—

*insert—*

- ‘(2) For subsection (1), a name is held under business names legislation only if it is held under—

- (a) the *Business Names Registration Act 2011* (Cwlth), section 54; or
- (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.’.

**216 Amendment of sch 1 (Dictionary)**

Schedule 1—

*insert—*

‘***Business Names Register*** means the register established and maintained under the *Business Names Registration Act 2011* (Cwlth), section 22.’.

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## **Part 31**                      **Consequential amendments of other legislation**

### **217**    **Legislation amended**

Schedule 1A amends the legislation it mentions.

## **Part 32**                      **Other amendments**

### **Division 1**                      **Amendment of Associations Incorporation Act 1981**

#### **218**    **Act amended**

This division amends the *Associations Incorporation Act 1981*.

#### **219**    **Amendment of s 64 (Tenure of members of management committee)**

Section 64(2)(d) and (e)—  
*renumber* as section 64(2)(c) and (d).

#### **220**    **Amendment of s 91 (Declaration of applied Corporations legislation)**

Section 91(3)(f) and (i), ‘registrar’—  
*omit, insert*—  
‘chief executive’.

#### **221**    **Insertion of new pt 11A**

After section 106—

*insert—*

## **‘Part 11A                    Voluntary transfer of incorporation**

### **‘Division 1                Incorporated associations**

#### **‘106A Application for authority to transfer incorporation**

‘An incorporated association may apply to the chief executive for authority to transfer the association’s incorporation to—

- (a) a company limited by guarantee under the Corporations Act, part 5B.1 (*CLG corporation*); or
- (b) an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), part 2-3 (*CATSI Act corporation*).

*Note—*

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

#### **‘106B Requirements for application**

- ‘(1) The application must—
  - (a) be in the approved form; and
  - (b) be signed by 3 members of the association’s management committee, 1 of whom must be the president, authorised to make the application (the *authorised members*); and
  - (c) be accompanied by the following—
    - (i) either—
      - (A) the association’s certificate of incorporation under this Act; or

- (B) if the certificate has been lost, stolen or destroyed—a statutory declaration by a person authorised by the association to make the declaration for the association, stating it has been lost, stolen or destroyed;
  - (ii) a copy of a special resolution of the association stating—
    - (A) that the application under this division is approved; and
    - (B) that the authorised members have authority to sign the application form; and
    - (C) the proposed name under which the association is to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
  - (iii) a statutory declaration by the association’s president that—
    - (A) the matters stated in the application form are true; and
    - (B) this Act and the association’s rules have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
    - (C) any consent required under the association’s rules to be obtained before passing the special resolution has been obtained.
- ‘(2) If the application is withdrawn or the chief executive refuses to grant the application, the chief executive must return the association’s certificate of incorporation to the association.

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**‘106C Further information or documents for application**

‘The chief executive may require the applicant to give the chief executive, within a stated reasonable period of at least 28 days, any further information or documents the chief executive reasonably requires to decide the application.

**‘106D Refusal to grant application**

‘The chief executive may refuse to grant the application if the chief executive is not satisfied the applicant has complied with—

- (a) section 106B; or
- (b) a requirement under section 106C.

**‘106E Chief executive to give notice of authority to transfer incorporation**

‘If the chief executive decides to authorise the transfer of incorporation, the chief executive must give the applicant written notice that the proposed transfer of the association’s incorporation is authorised.

**‘106F Effect of a transfer of incorporation authorised under this division**

‘On the transfer of the incorporation of an incorporated association, as authorised under this division—

- (a) the association stops being an incorporated association; and
- (b) the association’s name is taken to be removed from the register from the day of the transfer.

*Note—*

For other effects of the transfer, including whether a new entity is created and the effect on existing property, rights and obligations see the Corporations Act, section 601BM and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 42-3.



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**‘106G New body to give chief executive copy of new certificate of registration**

- ‘(1) This section applies if an incorporated association becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.
- ‘(2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the chief executive.

Maximum penalty—10 penalty units.

**‘Division 2 RECI Act corporations**

**‘106H Application for authority to transfer incorporation**

‘A RECI Act corporation may apply to the Minister for authority to transfer the RECI Act corporation’s incorporation to—

- (a) a CLG corporation; or
- (b) a CATSI Act corporation.

*Note—*

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

**‘106I Requirements for application**

- ‘(1) The application must—
  - (a) be in the approved form; and
  - (b) be signed by a member of the governing body of the RECI Act corporation authorised to make the application (the *authorised member*); and
  - (c) be accompanied by the following—
    - (i) either—

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- (A) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861*; or
  - (B) if the letters patent have been lost, stolen or destroyed—a statutory declaration by a person authorised by the RECI Act corporation to make the declaration for the RECI Act corporation, stating they have been lost, stolen or destroyed;
- (ii) a copy of a special resolution of the RECI Act corporation, in relation to which the required notice has been given, stating—
- (A) that the application under this division is approved; and
  - (B) that the authorised member has authority to sign the application form; and
  - (C) the proposed name under which the RECI Act corporation is to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
- (iii) a statutory declaration by the authorised member that—
- (A) the matters stated in the application form are true; and
  - (B) this Act and the RECI Act corporation’s constitution have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
  - (C) any consent required under the RECI Act corporation’s constitution to be obtained before passing the special resolution has been obtained.

‘(2) If the application is withdrawn or the Minister refuses to grant the application, the Minister must return the letters patent to the RECI Act corporation.

‘(3) In this section—

*required notice* means written notice of the proposed special resolution, and of the time and place of the general meeting at which it is proposed to move the resolution, given before the general meeting to each member of the RECI Act corporation who has a right to vote on the resolution.

*special resolution*, of the RECI Act corporation, means a resolution passed at a general meeting of the RECI Act corporation by the votes of  $\frac{3}{4}$  of its members who are present and entitled to vote on the resolution.

#### ‘106J Further information or documents for application

‘The Minister may require the applicant to give the Minister, within a stated reasonable period of at least 28 days, any further information or documents the Minister reasonably requires to decide the application.

#### ‘106K Refusal to grant application

‘(1) The Minister may refuse to grant the application if the Minister is not satisfied the applicant has complied with—

- (a) section 106I; or
- (b) a requirement under section 106J.

‘(2) If the Minister decides to refuse to grant the application—

- (a) the Minister must give the RECI Act corporation a QCAT information notice for the decision; and
- (b) the RECI Act corporation may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

‘(3) In this section—

*QCAT information notice* means a written notice complying with the QCAT Act, section 157(2).

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**‘106L Minister to give notice of authority to transfer incorporation**

‘If the Minister decides to authorise the transfer of incorporation, the Minister must give the applicant written notice that the proposed transfer of the RECI Act corporation’s incorporation is authorised.

**‘106M Effect of a transfer of incorporation authorised under this division**

‘On the transfer of the incorporation of a RECI Act corporation, as authorised under this division—

- (a) the RECI Act corporation stops being incorporated as a RECI Act corporation; and
- (b) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be cancelled from the day of the transfer.

*Note—*

For other effects of the transfer, including whether a new entity is created and the effect on existing property, rights and obligations see the Corporations Act, section 601BM and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 42-3.

**‘106N New body to give Minister copy of new certificate of registration**

- ‘(1) This section applies if a RECI Act corporation becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.
- ‘(2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the Minister.

Maximum penalty—10 penalty units.

- ‘(3) On receipt of the copy of the new certificate of registration, the Minister must give notice by gazette notice—

- 
- (a) that the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be cancelled, under section 106M(b), from the day of the transfer; and
- (b) of the day of the transfer.’.

**222 Amendment of s 109 (Affected person may apply for review)**

Section 109(1), after ‘Act’—

*insert—*

‘, other than under section 106K’.

**223 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

‘*CATSI Act corporation* see section 106A.

*CLG corporation* see section 106A.

*RECI Act corporation* means a corporation incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861*.’.

**Division 2 Amendment of Births, Deaths and Marriages Registration Act 2003**

**224 Act amended**

This division amends the *Births, Deaths and Marriages Registration Act 2003*.

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**225 Amendment of s 32 (Notifying about disposal of a deceased person's body)**

(1) Section 32(2)—

*omit, insert—*

‘(2) Each of the following persons must give the registrar notice, in the approved form, within 7 days after the disposal of a human body—

(a) the person who arranges the disposal of the body;

*Example for paragraph (a)—*

a funeral director

(b) the person in charge of a cemetery or crematorium in which the disposal of the body occurs.

Maximum penalty—20 penalty units.’.

(2) Section 32—

*insert—*

‘(5A) For subsection (2)(b), if the cemetery or crematorium is in Queensland, the person must give the registrar notice by way of electronic communication unless the registrar reasonably considers it would be impractical to do so for any of the following reasons—

(a) the crematorium or cemetery is located in an area that does not allow for giving notice by way of electronic communication;

(b) other exceptional circumstances do not allow for giving notice by way of electronic communication.’.

(3) Section 32(5A) to (7)—

*renumber* as section 32(6) to (8).

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## **Division 3                      Amendment of Cremations Act 2003**

### **226    Act amended**

This division amends the *Cremations Act 2003*.

### **227    Amendment of s 11 (Dealing with ashes)**

Section 11(1)—

*omit, insert—*

- ‘(1) After a cremation, the person in charge of a crematorium—
- (a) must label the ashes in accordance with the requirements prescribed under a regulation; and
  - (b) must not dispose of the ashes except in accordance with any reasonable written instructions of the applicant.

Maximum penalty—80 penalty units.’

## **Division 4                      Amendment of Electoral Act 1992**

### **228    Act amended**

This division amends the *Electoral Act 1992*.

### **229    Amendment of s 61 (Information on electoral rolls to be provided to particular people and organisations)**

- (1) Section 61(2), item 1, column 2—

*omit, insert—*

‘an entity prescribed under a regulation that is a department or State public authority’.

- (2) Section 61(2), item 1, column 4—

*insert—*

‘(c) for a purpose prescribed under a regulation’.

**230 Amendment of s 65 (Enrolment and transfer of enrolment)**

Section 65—

*insert—*

- ‘(7) Subsection (8) applies if—
- (a) a person is required to give notice under subsection (2) or (3); and
  - (b) the person gives notice—
    - (i) after the cut-off day for electoral rolls for an election or referendum and no later than 6p.m. on the day before the polling day for the election or referendum; and
    - (ii) to the commission but otherwise in compliance with subsection (2) or (3).
- ‘(8) The person is taken to have given notice to the electoral registrar in compliance with subsection (2) or (3).’.

**231 Amendment of s 106 (Who may vote)**

- (1) Section 106(1)(d)(i)—

*omit, insert—*

‘(i) are not enrolled on the electoral roll for any district but are entitled to be enrolled on the electoral roll for the district; and’.

- (2) Section 106(1)(d)(ii), from ‘5p.m.’ to ‘to’—

*omit, insert—*

‘6p.m. on the day before the polling day, have given a notice to the commission or’.



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## **Division 5                      Amendment of Information Privacy Act 2009**

### **232      Act amended**

This division amends the *Information Privacy Act 2009*.

### **233      Amendment of s 29 (Special provision for law enforcement agencies)**

Section 29(1)(d), ‘paragraph (d)’—

*omit, insert—*

‘paragraph (b)(iv)’.

### **234      Replacement of s 148 (Leave of absence)**

Section 148—

*omit, insert—*

### **‘148      Leave of absence**

‘The information commissioner may approve a leave of absence for the privacy commissioner in accordance with entitlements available to the privacy commissioner under the privacy commissioner’s conditions of office.’.

### **235      Amendment of sch 5 (Dictionary)**

Schedule 5, definition *law enforcement agency*—

*omit, insert—*

‘*law enforcement agency* means—

- (a) for the purposes of IPP 11(1)(e)—an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth) or any entity mentioned in paragraph (b); or
- (b) otherwise—

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- (i) the Queensland Police Service under the *Police Service Administration Act 1990*; or
- (ii) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*; or
- (iii) the community safety department; or
- (iv) any other agency, to the extent it has responsibility for—
  - (A) the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of offences and other breaches of laws for which penalties or sanctions may be imposed; or
  - (B) the management of property seized or restrained under a law relating to the confiscation of the proceeds of crime; or
  - (C) the enforcement of a law, or of an order made under a law, relating to the confiscation of the proceeds of crime; or
  - (D) the execution or implementation of an order or decision made by a court or tribunal.’.

## Division 6

## Amendment of Justices of the Peace and Commissioners for Declarations Act 1991

### 236 Act amended

This division amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### 237 Insertion of new s 35A

After section 35—

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*insert—*

**‘35A Proof of identity documents**

- ‘(1) A justice of the peace or commissioner for declarations may sight a proof of identity document and record information in the document, including by taking a copy of the document, for the purpose of taking an affidavit or attesting an instrument or document.
- ‘(2) However, a justice of the peace or commissioner for declarations must not disclose information recorded under this section other than in the performance of the office of justice of the peace or commissioner for declarations or as otherwise required by law.
- ‘(3) A justice of the peace or commissioner for declarations who records information under this section must take reasonable steps to ensure the information is kept in a secure way.’

**Division 7                      Amendment of Queensland Civil  
and Administrative Tribunal Act  
2009**

**238 Act amended**

This division amends the *Queensland Civil and Administrative Tribunal Act 2009*.

**239 Insertion of new ch 4, pt 3, div 5**

Chapter 4, part 3—

*insert—*

**‘Division 5                      Miscellaneous**

**‘194A Period of office ends—finishing proceedings**

- ‘(1) This section applies if the period of office for a member ends and the member is not appointed for a further period.

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- ‘(2) If the member starts the hearing of a proceeding before the period of office ends, the member is taken to be a member after the period of office for the purposes of finishing the proceeding.’

**‘194B Member resigns—finishing proceedings**

- ‘(1) This section applies if a member resigns under this part.  
(2) If the member starts the hearing of a proceeding before the member resigns, the member is taken to be a member after the resignation for the purposes of finishing the proceeding.’

**240 Insertion of new ch 11**

After chapter 10—

*insert—*

**‘Chapter 11 Transitional provision for  
Civil Proceedings Act 2011**

**‘284 Application of Civil Proceedings Act 2011**

‘The *Civil Proceedings Act 2011*, section 239 applies, and is taken on and from 30 November 2011 to have applied, to the hearing of a proceeding that was started but not finished before 30 November 2011.’

**Division 8 Amendment of Retirement Villages  
Act 1999**

**241 Act amended**

This division amends the *Retirement Villages Act 1999*.

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## 242 Amendment of s 15 (What is an *exit fee*)

Section 15(2)—

*insert—*

*‘Notes—*

- 1 Subsection (2) states the day at which the exit fee for a residence contract is to be worked out, and not the method of working out the exit fee.
- 2 Section 53A states how to work out the exit fee for a residence contract that is worked out under the contract having regard to the length of time the resident has resided in the unit.’.

## 243 Insertion of new s 53A

After section 53—

*insert—*

### ‘53A How to work out particular exit fee for a residence contract

- ‘(1) This section applies to an exit fee for a residence contract that is worked out under the contract having regard to the length of time the resident has resided in the accommodation unit to which the contract relates.

*Example—*

This section applies if the exit fee is 5% of the ingoing contribution payable under the contract after 1 year’s residence in the unit and 6% of the ingoing contribution payable under the contract after 2 years residence in the unit.

- ‘(2) If the contract was entered into before the commencement of this section, the exit fee must be worked out on a daily basis unless the contract provides a way of working out the exit fee that is not on a daily basis.

*Example of how to work out the exit fee for a residence contract on a daily basis—*

*If—*

- (a) the exit fee is 5% of the ingoing contribution payable under the contract after 1 year’s residence in the unit and 6% of the ingoing

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contribution payable under the contract after 2 years residence in the unit; and

- (b) the resident resides in the unit for 1 year and 14 days, but not during a leap year;

the exit fee is 5% of the ingoing contribution payable under the contract for the first year of residence plus  $\frac{14}{365}$  of 1% of the ingoing contribution payable under the contract for the 14 days of the second year of residence.

- ‘(3) If the contract is entered into after the commencement of this section, the exit fee must be worked out on a daily basis.’.

## **Division 9                      Amendment of Right to Information Act 2009**

### **244    Act amended**

This division amends the *Right to Information Act 2009*.

### **245    Replacement of s 138 (Leave of absence)**

Section 138—

*omit, insert—*

#### **‘138    Leave of absence**

‘The information commissioner is entitled to the leave of absence decided by the Governor in Council.’.

### **246    Replacement of s 154 (Leave of absence)**

Section 154—

*omit, insert—*

#### **‘154    Leave of absence**

‘The information commissioner may approve a leave of absence for the RTI commissioner in accordance with entitlements available to the RTI commissioner under the RTI commissioner’s conditions of office.’.

**247 Amendment of sch 2 (Entities to which this Act does not apply)**

Schedule 2, part 2, item 20—

*omit.*

## **Schedule 1A    Minor and consequential amendments**

section 217

### **Building and Construction Industry Payments Act 2004**

**1        Section 15(2)(a), from ‘*Supreme*’—**

*omit, insert—*

‘*Civil Proceedings Act 2011*, section 59(3) for a money order debt;’.

### **Building Units and Group Titles Act 1980**

**1        Section 126(2), ‘Subject to the *Supreme Court Act 1995*, the’—**

*omit, insert—*

‘The’.

### **Charitable Funds Act 1958**

**1        Section 2, definition *central district*—**

*omit, insert—*

‘*Central Region* means the Central Region of the Supreme Court.’



*Note—*

The Central Region is declared under the *Supreme Court of Queensland Act 1991*.

**2 Section 2, definition ‘*far northern district*’—**

*omit, insert—*

‘***Far Northern Region*** means the Far Northern Region of the Supreme Court.

*Note—*

The Far Northern Region is declared under the *Supreme Court of Queensland Act 1991*.

**3 Section 2, definition ‘*northern district*’—**

*omit, insert—*

‘***Northern Region*** means the Northern Region of the Supreme Court.

*Note—*

The Northern Region is declared under the *Supreme Court of Queensland Act 1991*.

**4 Section 8(3), ‘*central, northern or far northern district*’—**

*omit, insert—*

‘Central Region, Northern Region or Far Northern Region’.

**5 Section 27—**

*omit.*

## **Dispute Resolution Centres Act 1990**

### **1 Section 2(1), definition *referring order*—**

*omit, insert—*

*'referring order* means an order referring a dispute for mediation made by—

- (a) the Supreme Court, the District Court or a Magistrates Court under the *Civil Proceedings Act 2011*, section 43(3); or
- (b) QCAT, or the QCAT principal registrar, under the QCAT Act, section 75.'

## **Forestry Act 1959**

### **1 Section 61SU, definition *enforcement warrant*, '*Supreme Court Act of Queensland 1991*, section 93A'—**

*omit, insert—*

*'Civil Proceedings Act 2011*, section 90'.

### **2 Section 61SW(b)(ii), '*Supreme Court of Queensland Act 1991*, section 93A'—**

*omit, insert—*

*'Civil Proceedings Act 2011*, section 90'.

## **Land Act 1994**

- 1**     **Schedule 6, definition *enforcement warrant*, ‘*Supreme Court of Queensland Act 1991*, section 93A’—**

*omit, insert—*

*‘Civil Proceedings Act 2011, section 90’.*

- 2**     **Schedule 6, definition *writ of execution*, footnote—**

*omit.*

## **Legal Aid Queensland Act 1997**

- 1**     **Section 38(2)(b), from ‘*Supreme*’ to ‘*record*’—**

*omit, insert—*

*‘Civil Proceedings Act 2011, section 59(3) for a money order debt’.*

## **Maintenance Act 1965**

- 1**     **Section 45(7)—**

*omit.*

## **Marine Parks Act 2004**

### **1 Section 117(2)—**

*omit, insert—*

- ‘(2) Without limiting subsection (1)(b), a regulation may provide for the use of mediators.’.

## **Oaths Act 1867**

### **1 Section 2, ‘circuit court or’—**

*omit.*

## **Powers of Attorney Act 1998**

### **1 Schedule 3, definition *paid carer*, paragraph (b)(ii), editor’s note—**

*omit, insert—*

*‘Note—*

This principle was established in *Griffiths v Kerkemeyer* (1977) 139 CLR 161—see Queensland Law Reform Commission Report No. 45, ‘The assessment of damages in personal injury and wrongful death litigation, *Griffiths v Kerkemeyer*, Section 15C Common Law Practice Act 1867’, October 1993.’.

## Property Agents and Motor Dealers Act 2000

**1 Section 5(3), definition *bailiff*, ‘Supreme Court Act 1995, part 12’—**

*omit, insert—*

*‘Supreme Court of Queensland Act 1991’.*

## Public Health Act 2005

**1 Section 144(3), ‘section 128’—**

*omit, insert—*

*‘section 8, the District Court of Queensland Act 1967, section 126 or the Magistrates Courts Act 1921, section 14A’.*

## Public Officers Superannuation Benefits Recovery Act 1988

**1 Section 4(1), definition *interest*, ‘Supreme Court Act 1995, section 48(1)’—**

*omit, insert—*

*‘Civil Proceedings Act 2011, section 59(3)’.*

**2 Section 9(4), ‘Supreme Court Act 1995, sections 47 and 48’—**

*omit, insert—*

*‘Civil Proceedings Act 2011, sections 58 and 59’.*

## **Residential Tenancies and Rooming Accommodation Act 2008**

**1 Schedule 2, definition *enforcement warrant*, ‘*Supreme Court of Queensland Act 1991*’—**

*omit, insert—*

‘*Civil Proceedings Act 2011*’.

## **South Bank Corporation Act 1989**

**1 Schedule 4, section 126(2), ‘Subject to the *Supreme Court Act 1921*, the’—**

*omit, insert—*

‘The’.

## **State Penalties Enforcement Act 1999**

**1 Section 63(8)—**

*omit, insert—*

‘(8) In this section—

***exempt property*** see the *Civil Proceedings Act 2011*, schedule 1.’.

**2 Section 110(3), ‘*Supreme Court Act 1995*, part 4, division 20’—**

*omit, insert—*

‘*Civil Proceedings Act 2011*, section 59(3)’.

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## Sustainable Planning Act 2009

### 1 Section 491—

*omit, insert—*

#### ‘491 ADR process applies to proceedings started under this part

- ‘(1) The *Civil Proceedings Act 2011*, part 6 (the *ADR provisions*) applies to proceedings started under this part.
- ‘(2) To the extent there is any inconsistency between the cost provisions of the ADR provisions and the cost provisions of this Act, the cost provisions of the ADR provisions prevail.
- ‘(3) If a dispute in a proceeding under this part is referred to a dispute resolution process under the ADR provisions—
  - (a) the proceeding is not stayed unless the court orders otherwise; and
  - (b) the court must not decide the proceeding until the dispute resolution process under the ADR provisions has been finalised.
- ‘(4) In applying the ADR provisions to a proceeding under this part—
  - (a) a reference to a court is taken to be a reference to the Planning and Environment Court; and
  - (b) definitions and other interpretative provisions of the *Civil Proceedings Act 2011* relevant to the ADR provisions apply.’.

## Transport Operations (Road Use Management) Act 1995

### 1 Section 91, ‘, Circuit,’—

*omit.*

**2 Section 130(1)(b)(i), ‘, Circuit Court,’—**  
*omit.*



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## Schedule 1      Dictionary

### section 4

***ADR convenor*** means a mediator or case appraiser.

***ADR costs*** means—

- (a) for a mediation—
  - (i) the mediator’s fee; and
  - (ii) the venue provider’s fee for providing the venue; and
  - (iii) other costs prescribed under the rules; and
- (b) for a case appraisal—
  - (i) the case appraiser’s fee; and
  - (ii) the venue provider’s fee for providing the venue; and
  - (iii) other costs prescribed under the rules.

***ADR process*** see section 39.

***approved form*** means a form approved under the *Supreme Court of Queensland Act 1991*.

***case appraisal*** see section 41.

***case appraiser*** means a person appointed as a case appraiser under a referring order.

***child***, for part 10, see section 62.

***court*** see section 5.

***dispute***, for part 6, means—

- (a) a dispute in a proceeding; or
- (b) something else about which the parties are in dispute that may be dealt with in a mediation at the same time.

***enforcement creditor*** means—

- (a) a person entitled to enforce an order for the payment of money; or
- (b) a person to whom the benefit of part of the order has passed by way of assignment or in another way.

***enforcement debtor*** means a person required to pay money under an order.

***enforcement officer***, for a court, means the sheriff, a deputy sheriff or a bailiff of the court.

***enforcement warrant*** means a warrant to enforce an order other than an order for the payment of an amount into court.

***exempt property*** means property that is not divisible among the creditors of a bankrupt under the bankruptcy law.

***mediation*** see section 40.

***mediator*** means a person appointed as a mediator under a referring order.

***member of the deceased's family***, for part 10, see section 62.

***money order*** means an order of the court, or part of an order of the court, for the payment of money, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

***money order debt*** means the amount of money payable under a money order.

***non-money order*** means an order of the court, or part of an order of the court, for a form of relief other than the payment of money.

***order*** includes a judgment, direction, decree, decision or determination of a court whether final or otherwise.

***owner***, for part 11, see section 71.

***parent***, for part 10, see section 62.

***personal representative***, for part 10, see section 62.

***proceeding*** means a proceeding in a court (whether or not between parties), and includes—

(a) an incidental proceeding in the course of, or in connection with, a proceeding; and

(b) an appeal or stated case.

***referring order***, for part 6, see section 43(3).

***relevant conference***, for part 5, see section 34.

***rules*** means the *Uniform Civil Procedure Rules 1999*.

***sheriff*** means the Sheriff of Queensland appointed under the *Supreme Court of Queensland Act 1991*.

***ship***, for part 11, see section 71.

***spouse***, for part 10, see section 63.

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