

COURTS REFORM AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The main objectives of the Bill are to:

- (1) restore the authority of the Chief Justice of Queensland;
- (2) remove provisions concerning the Litigation Reform Commission;
- (3) transfer the Litigation Reform Commission's main function of reforming the legislation and rules relating to the courts to the existing Queensland Law Reform Commission;
- (4) provide that all appeals from orders of Magistrates Courts in relation to simple and indictable offences are heard and determined in the District Courts;
- (5) compel the use of video-link facilities in criminal appeal proceedings (unless the court in the interests of justice orders otherwise);
- (6) increase the jurisdictional limits of the District and Magistrates Courts;
- (7) provide for the establishment of the position of Supreme Court judge in far northern Queensland;
- (8) amend the role of the Dispute Resolution Centres Council, and facilitate the referral by the courts of disputes for mediation in dispute resolution centres established under the *Dispute Resolution Centres Act 1990*; and

- (9) validate the appointments and actions of certain acting clerks of the court from 1 January 1990, and other clerks of the court within the metropolitan district from 14 August 1992.

Reasons for the Bill

Supreme Court of Queensland Act 1991

The *Supreme Court of Queensland Act 1991*, in creating the Court of Appeal and the position of Senior Judge Administrator, diminished the role and authority of the Chief Justice of Queensland as the head of the Queensland judicial system.

Under the *Supreme Court of Queensland Act 1991*, the President of the Court of Appeal was vested with substantial powers in respect of the administration of the Court of Appeal. The Act also created the position of Senior Judge Administrator, who was given statutory responsibilities for administration of the Supreme Court, separate from and overriding any responsibility possessed by the Chief Justice.

The powers given to the President of the Court of Appeal and to the Senior Judge Administrator resulted in a significant diminution of the role, function, status and responsibilities of the Chief Justice of Queensland.

The *Supreme Court of Queensland Act 1991* also created the Litigation Reform Commission. The provisions of the Act blurred the separation of powers, and breached the principle of judicial independence, by making it mandatory for a report and recommendation to be obtained from the Commission in respect of a wide range of matters before they could be dealt with by executive government.

Court Jurisdiction

The civil jurisdiction of the District and Magistrates Courts was last increased in 1989. It is appropriate that the jurisdictional limits of both courts are increased to take into account the effects of inflation, and to maintain the balance in the number of matters commenced in the Supreme, District and Magistrates Courts respectively.

A significant part of the Court of Appeal's criminal case load has consisted of appeals from Magistrates Courts. The offences which are determined summarily by a Magistrate are generally at the less serious end of the scale.

It is appropriate that the limited resources of the Court of Appeal are confined to more serious cases, and those involving significant questions of law, and that all appeals from orders of Magistrates Courts exercising criminal jurisdiction should be dealt with in the District Court, with a further right of appeal available with the leave of the Court of Appeal.

Video link

The use of video link facilities in criminal appeals will extend the efficiencies gained by use of these facilities in bail and remand matters. The use of the facilities will also reduce the risks posed to the community in the transport of prisoners to the courts for the hearing of appeals.

Dispute Resolution Centres Act 1990

The Government has embarked on a significant restructure of the way in which it delivers alternative dispute resolution (ADR) services. One of the principal objectives of the Government's reform is to enhance the ability of the lower courts to provide ADR services both before and after legal proceedings are commenced.

The Bill includes amendments to the *Dispute Resolution Centres Act 1990* to enable Dispute Resolution Centres established under that Act to conduct mediations which are referred from the Supreme, District and Magistrates Courts under the ADR processes contained under the legislation governing the operations of the respective courts. These amendments are necessary because the *Dispute Resolution Centres Act 1990* presently provides that mediations conducted in Dispute Resolution Centres must be voluntary. This excludes court ordered mediations.

Far Northern Judge

This Bill amends the *Supreme Court Act 1995* to provide for the establishment of the position of Supreme Court judge in far northern Queensland, on the same basis as the current central judge and northern judge under that Act. The new judge will be called the far northern judge.

Validating provisions

In 1991, the Magistrates Courts were restructured administratively, and the chief administrative officer of each Magistrates Court was given the title of "registrar". Persons were appointed to a public service position of that name created under the *Public Service Management and Employment Act*

1988. The registrar's responsibilities included discharging the responsibilities of clerk of the court under the *Justices Act 1886*.

However, persons appointed to the position of registrar, particularly on a temporary basis, were not necessarily appointed as clerk of the court by the Governor in Council under section 22C of the *Justices Act 1886*. Instead, reliance was placed on the definition of "clerk of the court" to enable persons who had not been appointed by the Governor in Council under section 22C of the *Justices Act 1886* to act as clerk of the court.

The definition of "clerk of the court", in section 4 of the *Justices Act 1886*, includes "any person who for the time being occupies or performs the duties of such office".

Advice has been obtained from the Crown Solicitor that reliance should not be placed on the definition of "clerk of the court" in this manner, and that persons who simply occupy the office of clerk of the court are unlikely to be authorised by virtue of occupancy of the office to perform the duties of clerk of the court.

Consequently, it is necessary to retrospectively validate the appointments and actions of acting clerks of the court from 1 January 1990, as those persons may have held office on an incorrect assumption in relation to their authority to act in that office.

Section 11(3) of the *Decentralisation of Magistrates Courts Act 1965* provided—

(3) *For the purposes of this Act, the Chief Clerk shall—*

(a) *have, in relation to every court within the metropolitan district, all the powers and authorities of the clerk of the court and, additionally, have such other powers, authorities, functions and duties as prescribed;*

This provision was omitted by the *Justice Legislation (Miscellaneous Provisions) Act 1992*. In its place was inserted section 23G of the *Justices Act 1886* which provides that the Chief Clerk is the clerk of the court of each Magistrates Court within the metropolitan district.

The effect of section 23G was that the Chief Clerk at Brisbane became the clerk of the court for all metropolitan Magistrates Courts. The Crown Solicitor has advised that once an appointment is made as Chief Clerk there is no capacity to validly appoint other persons as clerks of the court for any of the eight metropolitan courts.

Consequently, any actions of the eight metropolitan clerks of the court since the 1992 amendment may have been invalid. It is necessary to retrospectively validate the appointments and actions of the clerks of the court at the eight metropolitan Magistrates Courts because of the unintended consequences of the *Justice Legislation (Miscellaneous Provisions) Act 1992*.

Section 301(1) of the Magistrates Courts Rules empowers persons appointed as deputy registrars to exercise the powers of the registrar, “in Brisbane, or in such other place as the Minister may appoint”. However, there is no mechanism in the *Magistrates Courts Act 1921* or the Magistrates Courts Rules for the appointment of deputy registrars.

Additionally, places have only recently been appointed by the Minister at which a deputy registrar may exercise the powers of the registrar. Advice has been obtained from the Crown Solicitor that it would be prudent to legislate to validate the appointments and actions of acting deputy registrars, and of deputy registrars at places outside Brisbane.

Ways in which the objectives will be achieved in the Bill

The objectives will be achieved by amendments to the *Supreme Court of Queensland Act 1991* that will reinstate the position of Chief Justice as the head of the Queensland judiciary. The amendments will also delete references to the Litigation Reform Commission, and transfer its main function of reviewing court practices and procedures to the Law Reform Commission.

The objective of altering the jurisdiction of the District and Magistrates Courts is achieved by amendments to the *District Courts Act 1967*, the *Magistrates Courts Act 1921* and the *Justices Act 1886*.

The objective of using video link facilities in criminal appeals will be achieved by amendments to the *District Courts Act 1967* and the *Supreme Court of Queensland Act 1991*.

The *Dispute Resolution Centres Act 1990* is being amended to enable mediators at dispute resolution centres established under the Act to conduct a mediation following a court order, and to clarify the law applying to court ordered mediation carried out by a dispute resolution centre.

The objective of correcting the potentially defective appointment of clerks of the court, and deputy registrars in Magistrates Courts, is achieved by

inserting validating clauses in the *Justices Act 1886* and the *Magistrates Courts Act 1921*.

To establish the position of Supreme Court judge at Cairns, amendments are required to the *Supreme Court Act 1995*.

Consequential amendments are made to a number of other pieces of legislation.

Estimated Administrative cost to Government of implementation

There will not be significant costs to Government in implementing these changes. The appointment of the far northern judge will entail costs normally associated with a judicial appointment.

Fundamental legislative principles

The Bill operates retrospectively in validating the appointments and actions of acting clerks of the court, metropolitan clerks of the court and acting deputy registrars. As noted above, this is essential to correct the unintended consequences brought about by potentially incorrect assumptions concerning the definition of “clerk of the court”, and the unintended consequences of the *Justice Legislation (Miscellaneous Provisions) Act 1992*.

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Retrospective laws are generally passed to validate past actions, correct defects in legislation or confer benefits retrospectively. This Bill corrects a defect brought about by the *Justice Legislation (Miscellaneous Provisions) Act 1992*, and validates past actions of acting clerks of the court and acting deputy registrars. The Bill does not adversely affect rights and liberties, or impose obligations, retrospectively.

Consultation

Consultation has occurred with the Chief Justice, the President of the Court of Appeal, the Senior Judge Administrator, Chief Judge of the District Courts and the Chief Stipendiary Magistrate.

Consultation in relation to the changes to court jurisdiction occurred with the Bar Association of Queensland, the Queensland Law Society, Workcover Queensland and the Motor Accident Insurance Commission.

The proposals to divert criminal appeals from Magistrates Courts to the District Court, and to use video link facilities in criminal appeals, were raised in a Discussion Paper which was attached to the Annual Report of the President of the Court of Appeal for 1994/1995. The Discussion Paper was widely circulated and attracted a number of submissions in response to it.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision and provides that the Act commences on a day to be fixed by proclamation.

Clause 3 provides that the schedule amends the Acts mentioned in it.

PART 2—AMENDMENT OF CHILDRENS COURT ACT 1992

Clause 4 states that this part amends the *Childrens Court Act 1992*.

Clause 5 inserts a definition of “appellate court”.

Clause 6 inserts a new Part 4A, comprising new sections 21A to 21F.

Section 21A provides that this part applies to orders made under parts 6 and 7 of the *Children’s Services Act 1965*.

Section 21B sets out who may appeal from orders of the Childrens Court to an appellate court.

Section 21C outlines the procedure for starting an appeal and the requirements for the notice of appeal.

Section 21D permits the appellate court to stay the decision appealed against. A stay under this section may be given on conditions and may be time limited.

Section 21E provides that the appeal is to be determined on the evidence and proceedings before the Childrens Court, unless the appellate court orders the matter be heard afresh.

Section 21F outlines the powers of the appellate court in deciding the appeal.

Clause 7 inserts a transitional provision in relation to appeals commenced under sections 52A or 68A of the *Children's Services Act 1965*, but not finally decided on the commencement of the *Courts Reform Amendment Act 1997*. These appeals are to be dealt with as if sections 52A and 68A had not been repealed.

PART 3—AMENDMENT OF CHILDREN'S SERVICES ACT 1992

Clause 8 states that this part amends the *Children's Services Act 1965*.

Clause 9 amends section 52A to provide that appeals are to be determined under part 4A of the *Childrens Court Act 1992*.

Clause 10 amends section 68A to provide that appeals are to be determined under part 4A of the *Childrens Court Act 1992*.

Clause 11 amends section 101 to reflect amendments to part 9 of the *Justices Act 1886* by this Bill.

PART 4—AMENDMENT OF CRIMINAL CODE

Clause 12 states that this part amends the *Criminal Code*.

Clause 13 amends section 669A. It deals with the situation where a person convicted summarily of an indictable offence appeals under section 222 of the *Justices Act 1886*, and in relation to the same conviction, the Attorney-General appeals under section 669A. The convicted person's appeal is removed to the Court of Appeal, and both appeals are to be heard together.

Clause 14 omits section 673 of the *Criminal Code*, which provides that persons convicted summarily of an indictable offence may appeal against conviction and sentence on the same grounds and conditions as if convicted on indictment. In removing section 673, rights of appeal under the *Justices Act 1886* will be available in relation to such convictions.

Clause 15 inserts a transitional provision in relation to appeals commenced under section 673, but not finally decided on the commencement of the *Courts Reform Amendment Act 1997*. These appeals are to be dealt with as if section 673 had not been repealed.

PART 5—AMENDMENT OF DISPUTE RESOLUTION CENTRES ACT 1990

Clause 16 states that this part amends the *Dispute Resolution Centres Act 1990*.

Clause 17 amends section 2 by inserting new definitions of “agency” and “referring order”.

Clause 18 amends section 3 to specify that the role of the dispute resolution centres council is to advise the Minister in relation to the operation of the Act, dispute resolution generally, and the provision of mediation services under this Act, other than mediation services following referring orders.

Clause 19 omits section 4.

Clause 20 replaces section 6. It provides that the council is to consist of four members appointed by the Minister, who the Minister considers have an appropriate level of knowledge and experience in dispute resolution processes and related areas.

Clause 21 amends section 8 to omit the reference to “an appointed member of the council”, consequential to the amendment of section 6. Eligibility for reappointment of members is also removed.

Clause 22 amends section 10 to remove the reference to “an appointed member”, consequential to the amendment of section 6.

Clause 23 amends the provision concerning a quorum at council meetings, consequent to the reduced number of members.

Clause 24 omits section 18(2) because of the amended role of the council.

Clause 25 amends section 19 to vest administrative responsibility for the appointment of mediators with the chief executive.

Clause 26 amends section 23 to simplify the procedure for establishment of dispute resolution centres.

Clause 27 amends section 24(1), consequent to the amendments to section 23. Section 24(2) is amended because of the amended role of the council.

Clause 28 omits section 25.

Clause 29 amends section 27(1)(b) to provide that consent for the use of the words “dispute resolution centre” of the letters “DRC” is to be obtained from the Minister.

Clause 30 inserts a new section 27A in part 4. Section 27A provides that only the prescribed sections of part 4 apply to a dispute that is the subject of a referring order. The Act that applies to a dispute that is the subject of a referring order is the Act under which the referring order is made. For example, if a referring order is made under section 29 of the *Magistrates Courts Act 1921*, the provisions of the *Magistrates Courts Act 1921* apply to the dispute.

Clause 31 amends section 28(1) to reflect the altered role of the council, and to specify that the director is responsible for mediation services necessary to give effect to a referring order. New subsections (2A) and (2B) are inserted to specify who may conduct a mediation that follows a referring order.

Clause 32 amends section 29 to reflect the changes to the role of the council.

Clause 33 amends section 30 to reflect the changes to the role of the council.

Clause 34 amends section 31 to enable parties to mediation to agree in writing that an agreement reached at mediation may be enforceable.

Clause 35 omits section 34.

Clause 36 amends section 36 to specify that the section does not apply to a dispute that is the subject of a referring order. The Act that applies to a dispute that is the subject of a referring order is the Act under which the referring order is made.

Clause 37 amends section 37 to enable the disclosure to an agency or court, in appropriate circumstances, of the fact that a dispute resolution process has taken place, and whether an agreement was reached as a result of that process. A new subsection (7) clarifies that only subsection (1) applies in relation to a dispute that is the subject of a referring order.

Clause 38 inserts a new section 42, which provides that mediators who were accredited before the commencement of the *Courts Reform Amendment Act 1997* continue to be accredited.

PART 6—AMENDMENT OF DISTRICT COURTS ACT 1967

Clause 39 provides that this part amends the *District Courts Act 1967*.

Clause 40 inserts a definition of “approval” and “precincts”, and extends the definition of “mediator” to include mediators within the meaning of the *Dispute Resolution Centres Act 1990*.

Clause 41 inserts a new Part 2, Division 2A. New section 28A is inserted to clarify the powers of the Chief Judge in relation to the administration of District Courts.

Clause 42 omits section 49.

Clause 43 increases the monetary limit of the civil jurisdiction of the District Court from \$200,000 to \$250,000.

Clause 44 inserts a new subsection (5) in section 95 to provide that the Registrar is not required to enter details of mediators under the *Dispute*

Resolution Centres Act 1990 in the register of information about ADR processes.

Clause 45 amends section 97 to provide that if the court decides to refer the dispute to a mediator under the *Dispute Resolution Centres Act 1990*, the director of a specified dispute resolution centre may be specified as mediator.

Clause 46 amends section 110C to require the use of video link facilities when the court is dealing with appeals under section 222 of the *Justices Act 1886*, unless the court, in the interest of justice, orders otherwise.

Clause 47 replaces section 118, which specifies the rights of persons to appeal from judgments of the District Court to the Court of Appeal. This section encompasses rights of appeal in both civil and criminal proceedings, except appeals following a criminal trial on indictment. The rights of appeal following trials on indictment are contained in chapter 67 of the *Criminal Code*.

Clause 48 inserts a new section 130A which provides that the Chief Judge must give the Minister a written annual report about the operation of District Courts during the year.

Clause 49 specifies that a regulation may provide for the control and management of the precincts of District Courts.

Clause 50 inserts a transitional provision in relation to appeals commenced under section 118 of the *District Courts Act 1967*, but not finally decided on the commencement of the new section 118. These appeals are to be dealt with under section 118 as in force before commencement of the *Courts Reform Amendment Act 1997*.

PART 7— AMENDMENT OF JUDGES (SALARIES AND ALLOWANCES) ACT 1967

Clause 51 provides that this part amends the *Judges (Salaries and Allowances) Act 1967*.

Clause 52 omits a reference to senior judges from section 2.

Clause 53 omits a reference to senior judges from section 12.

PART 8—AMENDMENT OF JUDICIAL REVIEW ACT 1991

Clause 54 states that this part amends the *Judicial Review Act 1991*.

Clause 55 omits schedule 1 to the *Judicial Review Act* and replaces a new schedule 1. Part 1 of schedule 1 is extended to include section 28 of the *District Courts Act 1967* and sections 43, 48(1) and 50 of the *Magistrates Courts Act 1921*.

Existing references to the *Industrial Relations Act 1990* have been replaced with references to the *Workplace Relations Act 1997*. Section 225 of the *Justices Act 1886* has been added to Part 2 of schedule 1.

The addition of the provisions concerning decisions of the District and Magistrates Courts is necessary to exclude decisions made by District Court judges and stipendiary magistrates from the scope of the *Judicial Review Act 1991*. In *Stubberfield v. Webster and Another*, (No.371/1995, Supreme Court, Brisbane, 15 August 1995, unreported) the Supreme Court of Queensland held that the exclusion of the relevant provisions of the *District Courts Act 1967* and the *Magistrate Courts Act 1921* from schedule 1 of the *Judicial Review Act 1991* meant that an application for an order under the *Judicial Review Act 1991* could be made in respect of decisions of District and Magistrates Courts.

PART 9—AMENDMENT OF JUSTICES ACT 1886

Clause 56 provides that this part amends the *Justices Act 1886*.

Clause 57 amends section 23 to enable police officers who are appointed as clerks of the court for particular places to request a Magistrate to require another, appropriately qualified police officer, to perform the duties of clerk of the court during the absence of the appointed clerk.

Clause 58 omits sections 23F and 23G.

Clause 59 replaces section 158A(5) so that it refers to an appeal against the costs order under section 222.

Clause 60 inserts a new section 158B. This section provides that in deciding the level of the costs to be paid, costs must be limited to the amount allowed under the prescribed scale. A higher amount is allowed if the justice considers it just and reasonable, having regard to the nature of the case.

Clause 61 omits Division 1 from Part 9 of the Act, and renumbers Divisions 2 and 3 as Divisions 1 and 2.

Clause 62 amends section 222 to provide that the determination of a District Court judge on an appeal from an order of a justice is not final. A further right of appeal to the Court of Appeal is available under section 118 of the *District Courts Act 1967*.

New section 222(1A) provides that if the order appealed from is an order of justices dealing summarily with an indictable offence the complainant may only appeal against sentence or costs.

New section 222(2C) provides for service of a notice of appeal on the commissioner of the police service, or the chief executive of a department, where the complainant was a police officer or departmental officer.

New section 222(2D) provides that if an appellant is in custody following the order of a justice in relation to an indictable offence, the appellant must apply for release from custody under the provisions of the *Bail Act 1980*. Section 222(2)(d) is also amended by this clause to provide that entry into a recognisance is not sufficient to secure such a person's release from custody.

Clause 63 replaces section 223. New section 223 is based on section 5AA(3) and 5AA(3A) of the *Criminal Appeal Act 1912 (New South Wales)*. New section 223 provides that an appeal is by way of rehearing, unless the District Court gives leave to adduce new evidence. It provides that fresh evidence may be received on the appeal without the need for a completely new hearing.

Clause 64 inserts new section 224A, providing for the right of an appellant to be present on the hearing of the appeal, unless the appeal concerns a question of law only.

Clause 65 amends section 232 to provide that no costs order may be made on the hearing or determination of an appeal in relation to an indictable offence dealt with summarily by justices or incidental proceedings.

Clause 66 inserts new section 232A, which provides that in deciding

costs that are just in relation to appeals from justices, a District Court judge may only award costs allowed under the prescribed scale. However, higher amounts may be allowed having regard to the difficulty, complexity or importance of the appeal.

Clause 67 inserts a new heading in the *Justices Act 1886*.

Clause 68 inserts new sections 273 to 275.

Section 273 is a transitional provision concerning appeals under section 209 which have not been determined on the commencement of this Act.

Section 274 validates the performance of functions or the exercise of powers or jurisdictions by acting clerks of the court since 1 January 1990.

Section 275 validates the actions of clerks of the court in the Brisbane Metropolitan District, following amendments to the *Decentralisation of Magistrates Courts Act 1965* made by the *Justice Legislation (Miscellaneous Provisions) Act 1992*.

PART 10—AMENDMENT OF LAW REFORM COMMISSION ACT 1968

Clause 69 provides that this Part amends the *Law Reform Commission Act 1968*.

Clause 70 clarifies that the law applicable to the State includes both substantive and procedural law. This removes any doubt about the capacity of the Law Reform Commission to carry out the work previously carried out by the Litigation Reform Commission in relation to procedural matters.

PART 11—AMENDMENT OF MAGISTRATES COURTS ACT 1921

Clause 71 states that this part amends the *Magistrates Courts Act 1921*.

Clause 72 inserts a definition of “approval” in relation to mediators and case appraisers. It also amends the definition of “mediator” to include mediators within the meaning of the *Dispute Resolution Centres Act 1990*.

Clause 73 amends section 4 of the Act to increase the jurisdiction of Magistrates Courts from \$40,000 to \$50,000, and amends section 5 and 6 to reflect the increased jurisdiction.

Clause 74 provides that the registrar is not required to maintain in the register the details of the persons who are mediators under the *Dispute Resolution Centres Act 1990*.

Clause 75 provides that if the court refers a dispute to mediation it is sufficient for the referring order to appoint the director of a specified dispute resolution centre as mediator.

Clause 76 inserts a new heading in Part 9.

Clause 77 inserts new sections 61 and 62. Section 61 validates the actions of deputy registrars at places outside Brisbane that had not been appointed by the Minister under section 301(1) of the *Magistrate Courts Rules 1960*.

Section 62 validates the performance of functions and the exercise of powers and jurisdiction by persons appointed as Deputy Registrar under the authority of an administrative or other arrangement of the State or a department of the State.

PART 12—AMENDMENT OF SUPREME COURT ACT 1995

Clause 78 provides that the *Supreme Court Act 1995* is amended by this part.

Clause 79 omits section 215.

Clause 80 removes the requirement for bailiffs to give security.

Clause 81 amends section 238 by omitting subsections (2), (3) and (4). These provisions form the basis of new s 273A. Section 238(5) is amended to include a reference to sheriffs appointed under section 273, as it will be amended. There will also be a new heading.

Clause 82 inserts new definitions. The “Far Northern Court” is defined as the Supreme Court as held within the new far northern district. The

present definitions of “Central Court” and “Northern Court” are replaced to adopt the modern language used in the new definition of the Far Northern Court.

Clause 83 inserts a new section 266A, which refers to the boundaries of the central, northern and far northern districts of the Supreme Court.

Clause 84 amends section 267 by inserting references to the new far northern district, Far Northern Court and to Cairns at appropriate places in the provision. A new heading is also provided for.

Clause 85 amends section 268 by inserting references to the new far northern district and Far Northern Court at appropriate places in the provision. A new heading is also provided for.

Clause 86 replaces the present section 269 with one that uses modern language and includes a reference to the new far northern judge. Provision is also made for the northern judge or another judge to act as the far northern judge until the appointment of the far northern judge. There will be a new heading.

Clause 87 amends section 270 by extending its provisions so that the new far northern judge may be appointed as the northern judge or central judge in the event of a vacancy or transferred, with the consent of the judge to be transferred, to the Supreme Court at Brisbane. In a similar way, the central or northern judges or a judge at Brisbane may be appointed as the far northern judge.

Clause 88 omits section 271. This section is unnecessary because of section 269.

Clause 89 amends section 272 by inserting references to the new far northern district and far northern judge at appropriate places in the provision. A new heading is also provided for.

Clause 90 amends section 273 by inserting references to the new far northern district and Far Northern Court at appropriate places. Section 273(3) is replaced. It currently provides that section 238 should apply to the northern and central sheriff appointed under part 16. The function of that provision will now be performed by a new section 273A. New section 273(3) defines a person as a sheriff for a particular court by reference to the name of that court. For example, the person appointed the sheriff for the Far Northern Court will be called the far northern sheriff.

Clause 91 inserts a new section 273A in part 16, after section 273. Section 273A(1), (2) and (3) are taken, with necessary modification, from section 238(2), (3) and (4), which have been omitted. This approach preserves the function of present sections 238 and 273(3) while extending their application to the far northern sheriff and district.

Clause 92 amends section 274 by inserting references to the new Far Northern Court at appropriate places in the provision.

Clause 93 amends section 275 by inserting references to the Far Northern Court and to Cairns at appropriate places in the provision. References to Bowen have also been removed as these are now redundant.

Clause 94 amends section 276 to extend the section to the Far Northern Court. Subsection (4) is to be omitted as redundant.

Clause 95 amends section 277 by inserting references to the new far northern district and Far Northern Court at appropriate places in the provision.

Clause 96 inserts a new section 277A in part 16, after section 277. This is a general transitional provision that applies to things required or permitted to be done in the northern district or Northern Court under Acts in force at the time these amendments commence. After the commencement of these amendments, that thing may be done in the new far northern district or Far Northern Court if that is more appropriate, having regard to the place where the thing happens or some other relevant factor. The new far northern district will be within the boundaries of what is presently the northern district.

Clause 97 omits part 17. This part contains only section 278. This provision, from the *Supreme Court Act 1899*, is now of limited application and no longer appropriate or necessary.

Clause 98 amends section 287(3) by inserting references to the new far northern judge and far northern district at appropriate places in the provision. Section 287(5) is amended by inserting references to the far northern district and far northern sheriff in the definition of “sheriff” for this section.

Clause 99 amends schedule 2 by inserting, at the end of that schedule a statement that after the commencement of the appropriate provision, the northern district does not include any part of the State comprised within the boundaries of the far northern district.

Clause 100 inserts a new schedule 3 after schedule 2. The new schedule defines the far northern district as the part of the State within the boundaries of the Supreme Court district containing Cairns as this is constituted from time to time under part 19 of *Supreme Court Act 1995*.

PART 13—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

Clause 101 provides that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 102 deletes the words ‘and the Litigation Reform Commission’ from the title of the Act because of the abolition of this body.

Clause 103 amends section 2 and omits unnecessary definitions. A new definition of “approval” in relation to mediators and case appraisers is inserted, as is a definition of “Supreme Court precincts”.

The definition of “mediator” is extended to include mediators within the meaning of the *Dispute Resolution Centres Act 1990*.

Clauses 104 and 105 omit sections 5 and 10.

Clause 106 amends section 11 by deleting references to senior judges, offices which have not been filled.

Clause 107 inserts a new section 13A, which reinstates the overall administrative responsibility of the Chief Justice.

Section 13A makes clear that responsibility for administration of the Supreme Court rests with the Chief Justice.

Clause 108 amends section 14 to ensure that the Chief Justice is the judicial officer consulted in relation to acting appointments.

Clause 109 amends section 16(2) by ensuring the right of the Chief Justice to sit in either the Trial Division or the Court of Appeal, without seeking approval from other judicial officers.

Clause 110 deletes sections 17 to 20, which are not necessary because further Divisions of the Trial Division are not intended.

Clause 111 deletes all references to senior judges from section 21.

Clause 112 adds another factor to be considered by the Governor in Council in determining whether the holding of another public office is inconsistent with the proper discharge of the office of a judge.

Clause 113 omits section 23(3), an unnecessary section relating to the filling of judicial office following the retirement of a judge on reaching 70 years of age.

Clause 114 omits section 24.

Clause 115 deletes provisions relating to the office of senior judge.

Clause 116 deletes a reference to rules being made under section 32, because that rule-making power is repealed by this Act.

Clause 117 amends section 32 by ensuring that the responsibility of the President is subject to the Chief Justice's overall responsibility for the Supreme Court.

The clause removes the specific rule-making power for the Court of Appeal.

Clause 118 inserts a new section 32A, which provides for an annual report to be given by the President to the Chief Justice in a certain period. The section also governs its manner of preparation.

Clause 119 amends section 34 by providing that the Chief Justice may permit a judge of appeal to sit in the Trial Division.

Clause 120 inserts a new subsection 36(3) to remove any doubt that a person may be simultaneously appointed as President and as a Judge of Appeal.

Clause 121 omits section 38, which allowed the one person to be Chief Justice and President. It is considered that such a dual appointment is undesirable and may cause administrative uncertainty.

Clause 122 amends section 39 to provide, consistent with the Chief Justice's overall responsibility, that the Chief Justice is responsible for decisions as to questions of additional judges of appeal.

Clause 123 amends section 43(1)(b) to delete reference to rules made under section 32, that power having been deleted.

Clause 124 inserts a new section 44A ensuring that new judges of appeal, other than the President, receive the same remuneration and conditions as Trial Division judges.

Clause 125 deletes provisions concerning the management of the Court of Appeal, which will be administered in the same manner as the rest of the court.

Clause 126 deletes a reference to “senior judges” in the heading. That office is abolished by this Act.

Clause 127 deletes an unnecessary provision about the renaming of the office of Senior Puisne Judge.

Clause 128 amends section 60 to ensure that the performance of the Senior Judge Administrator’s functions is subject to the overall responsibilities of the Chief Justice.

Clause 129 deletes obsolete provisions relating to the further division of the trial division, senior judges and court precincts. The clause inserts a new section 61 requiring the preparation of an annual report by the Senior Judge Administrator.

Clause 130 amends section 68 to allow remission of matters to the District Court, from the Court of Appeal, and removal of appropriate matters from the District Court to the Court of Appeal.

Clause 131 makes minor amendments to section 69, consequential upon the changes to section 68 and the repeal of the specific rule-making power under section 32.

Clause 132 omits the part dealing with the Litigation Reform Commission, the functions of which are to be performed by the Law Reform Commission.

Clause 133 amends section 98 to ensure that the Chief Justice has a power of direction in relation to the appointment of mediators.

Clause 134 amends section 99 to ensure that the Chief Justice has a power of direction in relation to the appointment of case appraisers.

Clause 135 amends section 100 to ensure that the information required by the Senior Judge Administrator must be approved by the Chief Justice. It also amends that section to ensure that separate registration of mediators under the *Dispute Resolution Centres Act 1990* is not required.

Clause 136 amends section 102 to allow reference to the director of a specified dispute resolution centre, as opposed to a specific mediator under the *Dispute Resolution Centres Act 1990*.

Clause 137 amends section 115 to give the Chief Justice a power of direction in relation to the revocation of a person's approval as a mediator or case appraiser.

Clause 138 amends section 116C to require the use of video link facilities when the court is dealing with criminal appeals under section 118 of the *District Courts Act 1967* or under chapter 67 of the *Criminal Code*, unless the court, in the interest of justice, orders otherwise.

Clause 139 amends section 117 in relation to the making of rules of court for the Court of Appeal.

Clause 140 inserts new sections 119A to 119C, dealing with the precincts, annual report and finances, and staffing of the court.

Clause 141 inserts a new section 127, giving continuing effect to rules made under the repealed section 32 rule-making power and allowing disclosure for limited purposes of drafting instructions from the Litigation Reform Commission.

PART 14—AMENDMENT OF CRIMINAL LAW AMENDMENT ACT 1997

Clause 142 provides that this part amends the *Criminal Law Amendment Act 1997*.

Clause 143 amends schedule 2 to reinstate section 147A of the *Justices Act 1886*. The clause amends section 147A to provide that it does not apply to proceedings which may be reopened under section 188 of the *Penalties and Sentences Act 1988*.

This clause also reinstates section 98 of the *Juvenile Justice Act 1992*.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

This schedule makes complementary amendments to other Acts which refer to the northern district or Northern Court established under the present provisions of the *Supreme Court Act 1995*. A new far northern district will be established within the boundaries of what is presently the northern district and a new Far Northern Court will also be established. These amendments will insert appropriate references to this new far northern district and Far Northern Court. In particular, in the—

- *Bills of Sale and Other Instruments Act 1955* definitions of southern, central and northern districts and of the “office of the registrar” under that Act have been simplified and updated. Appropriate references to a far northern district and Cairns have been added.
- *Charitable Funds Act 1958* appropriate references to a far northern district and Cairns have been added and definitions have also been inserted for the central and northern districts, simplifying references in the Act to those districts.
- *District Courts Act 1967* a definition for, and reference to, the far northern district will be inserted in provisions about the venue of appeals to District Courts.
- *Justices Act 1886* a definition for, and reference to, the far northern district will be inserted in provisions about the transmission of depositions and other documents to prosecutors and the definition for the northern district will be updated.
- *Liens on Crops of Sugar Cane Act 1931* definitions of southern, central and northern districts under that Act have been simplified and updated. Appropriate references to a far northern district and Cairns have been added.