

CIVIL JUSTICE REFORM BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this legislation are—

- (a) to provide adequate powers and procedures for the making of uniform court rules for civil proceedings in the Supreme, District and Magistrates Courts in Queensland and to generally reform the rule making powers applicable to those courts
- (b) to make necessary consequential amendments to other legislation that will be redundant or inconsistent with uniform court rules and to provide a sufficient basis in principal legislation for the uniform rules generally, especially in relation to the enforcement of court decisions
- (c) to reform the law regulating the relationship between solicitors and their clients in relation to fees and costs
- (d) to provide for the establishment of a single Small Claims Tribunal and for certain other reforms to enhance the efficiency of that jurisdiction, including the establishment of the position of Tenancy Claims Administrator.

Reasons for the objectives and how they will be achieved

This Bill provides the necessary basis for the making of uniform court rules for the conduct of civil litigation in the Supreme, District and Magistrates Courts in Queensland. The making of such rules will allow court procedures across the State, and at all levels of the court system, to be more consistent and less complicated. Such rules will also allow for the

more efficient use of court resources and for better use to be made of modern technology. The new rules will give judges and magistrates better tools to reduce delay in the court system. The new uniform rules will be called the *Uniform Civil Procedure Rules* and will constitute the most comprehensive update of civil court procedures in almost a century.

The making of uniform court rules was a Coalition Government commitment before the last general election.

This Bill will ensure that there is sufficient power in principal legislation for the making of uniform rules and for all of the matters it is presently proposed that the rules will contain. The Bill will also ensure that there will be an appropriate level of consultation with, and concurrence by, the judiciary in relation to the *Uniform Civil Procedure Rules*.

The provisions in the Bill relating to redundant or inconsistent legislation are important to ensure that the law with respect to court procedures is as clear and consistent as possible.

The Bill also contains changes to the law regulating the relationship between solicitors and their clients about fees and costs. The present system, providing only limited protection for clients, dates from last century. It is centred on a costs assessment or auditing process, called taxation, conducted by an officer of the Supreme Court. It fails to adequately address the increased use of agreements between solicitors and their clients or the importance to consumers of fostering competition in the provision of legal services. The new scheme to be inserted by this Bill, will result in a more modern system, better suited to the needs of consumers of legal services at the end of the twentieth century.

The proposed changes to the *Small Claims Tribunals Act 1973* arose out of an examination of the operation and jurisdiction of small claims tribunals and small debts courts conducted by a working party of the Department of Justice, established by the Attorney-General and Minister for Justice in 1997. The changes recommended by that working party, which included administrative as well as legislative measures, will help improve the efficiency of the small claims jurisdiction. This will be especially so in respect of residential tenancies cases.

The recommendation of the working party in relation to small debts courts, that they be abolished and that the jurisdiction be taken up by the Magistrates Courts exercising a special “minor debt claims” jurisdiction, is

also reflected in this Bill.

Administrative cost to Government of implementation

The administrative cost of implementing the new uniform rules will be minimal, constituting a modest expenditure on internal registry staff training which, it is intended, will be met out of present departmental allocations with respect to the administration of the courts. Such training will be assisted by the fact that the new procedures will be substantially the same for the Supreme, District and Magistrates Courts.

Indeed, the new rules will require around 90 per cent fewer court forms, contain simpler and more flexible procedures and allow court registries to make better use of technology to improve efficiency. Moreover, the uniformity of the procedures contained in the new rules will permit greater staff mobility in the future.

The Bill inserts provisions into the *Supreme Court of Queensland Act 1991* and *District Court Act 1967*, creating the position of judicial registrar in each of those courts. Modelled on the Commonwealth equivalents of these positions, judicial registrars will deal with such matters as applications made to the court in the course of proceedings and case management. The introduction of such judicial officers will free the time available for judges in the Supreme and District Courts to hear trials and to prepare written reasons for their decisions, thereby allowing for a more efficient deployment of judicial resources.

The salary and allowances of the judicial registrars, and the number required, has yet to be determined. The provisions inserted by the Bill do not require these positions to be filled immediately upon commencement, allowing for further consultation with the judiciary and for a proper assessment to be made of the number of such appointments to be made, salary levels and where the judicial registrars are to be based.

Fundamental legislative principles

The Bill is consistent with the fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*.

In this context, however, it may be noted that proposed new section 134

of the *Supreme Court of Queensland Act 1991*, inserted by this Bill, states that the uniform court rules will prevail, to the extent of any inconsistency, over the *Supreme Court Act 1995*. Although the uniform court rules will be subordinate legislation and the 1995 Act is principal legislation, this delegation of power is appropriate for these reasons—

- It allows the rules to prevail over the *Supreme Court Act 1995*, but not to amend or repeal that Act.
- The rules will not prevail over any other Act.
- The subject matter of the rules themselves will be limited to essentially procedural provisions and some other related matters, like evidence. Therefore, the rules will not be capable of affecting the more fundamental provisions in the 1995 Act.
- The rules and any amendments to the rules will be subject to disallowance by the Legislative Assembly.
- The rules will have been produced as a result of an extensive consultation process and the consent of the judiciary will be required in relation to the making of, and any amendments to, the rules.
- The 1995 Act was never passed as an Act by the Parliament but was created by the *Statute Law Revision Act (No. 2) 1995*, when the *Supreme Court Act 1921* was renamed and a number of other older enactments were relocated into it. This was done without a detailed examination of the provisions of the various Acts that were relocated. It is intended that the arrangement whereby the rules may prevail over the 1995 Act is only to be a temporary one until a thorough assessment of that Act can be undertaken.
- Towards that end, the Bill provides that one of the functions of the new Rules Committee, to be chaired by the Chief Justice and to be made up of members of judiciary from the Supreme, District and Magistrates Courts, will be to examine the 1995 Act and advise the Minister about the repeal, reform or relocation of the provisions of that Act.

The amendment to section 118 of the *District Court Act 1967*, contained

in schedule 2 of this Bill, operates retrospectively. This amendment is essential to clarify that section 118 of the *District Courts Act 1967*, as amended by the *Courts Reform Amendment Act 1997*, does not prevent persons from appealing to the Court of Appeal from decisions on an appeal under section 222 of the *Justices Act 1886*. Chapter 67 of the *Criminal Code* contains rights of appeal from judgements of the District Court on indictable offences.

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. This amendment to the *District Court Act 1967* does not breach this provision. The amendment is necessary to clarify that rights of appeal were not removed by the *Courts Reform Amendment Act 1997*.

Consultation

This Bill is a product of the development process for uniform court rules for the Supreme, District and Magistrates Courts in Queensland. The Bill must be seen in this context.

A draft set of uniform rules, the *Uniform Civil Procedure Rules—Consultation Draft*, was launched in October 1997 and comment from the judiciary, the legal profession and members of the public was sought, including by advertisements in major Queensland newspapers. A supplement to the consultation draft, about lawyers' costs and probate, was released in January 1998. This included draft provisions of this Bill about the relationship between solicitors and their clients about fees and costs.

As a result of this process, over 70 submissions were received, including from all levels of the judiciary, departments, agencies, professional associations, interest groups and individuals. In addition, the Department of Justice was involved in a two day seminar on the rules, conducted by the Queensland University of Technology. Leading lawyers and judicial officers were panellists. In relation to the finalisation of the rules, consultation is ongoing. This represents the most extensive consultation process ever undertaken in Queensland about the civil justice system in this State.

The consultation draft and supplement identified key legislative areas

requiring amendment and also made clear the heads of rule making power and other provisions requiring principal legislation.

In addition, the proposed uniform rules are themselves based on a draft prepared by a Supreme Court Working Committee set up in 1983 by the then Chief Justice, Sir Walter Campbell. It was chaired by the Honourable Justice Williams. The draft of this committee was finally produced in 1991. The draft uniform rules also contain provisions drawn from the work of the Litigation Reform Commission's projects that were unfinished at the time that it ceased to function.

Mr Bernard Cairns, of the University of Queensland's TC Beirne School of Law and leading Australian author in the field of civil procedure, is the principal consultant to the project.

In relation to the changes to the *Small Claims Tribunals Act 1973*, the departmental working party (called the Small Claims and Small Debts Working Party), whose recommendations led to these inclusions in this Bill, also undertook extensive public consultation. This also included calling for submissions through advertisements in major Queensland newspapers. Ultimately, over 50 submissions were received from a wide cross-section of stakeholders.

Versions of the draft of the Bill were also sent to the Chief Justice of Queensland, Chief Judge of District Courts, Chief Stipendiary Magistrate, Queensland Law Society and Bar Association of Queensland.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short Title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 sets out when certain parts of the Bill will commence. Sections 11 and 21 will commence on assent. These provisions concern the expiry of rules of court (and related matters) and the establishment of the Rules Committee, respectively. One provision, contained in schedule 2 of the Bill, commences, retrospectively, on 1 August 1997. The remaining provisions of the Bill will commence on a date to be fixed by proclamation.

**PART 2—AMENDMENT OF QUEENSLAND LAW
SOCIETY ACT 1952****Act amended in pt 2**

Clause 3 states that this part amends the *Queensland Law Society Act 1952*.

Amendment of s 3 (Definitions)

Clause 4 inserts four new definitions. A “client agreement” is defined as an agreement under new section 48. Paragraph (b) provides that it is also an agreement for work entered into in situations where the work is urgent or where the amount charged as fees is \$750 or less. Such agreements do not need to comply with section 48. The new definition of “costs” is stated to include disbursements. There is a new definition of “court” that is consistent with the way that term is used in the new provisions inserted by this Bill. The new definition of “fees” states that the term means charges for work, other than costs, of a practitioner or firm. “Firm” is defined to mean a firm of practitioners.

Amendment of s 6F (Tribunal rules)

Clause 5 amends section 6F by adding to the list of matters about which, without limiting section 6F(2), the Solicitors Complaints Tribunal may

make rules. The matters listed in new section 6F(2)(a), (b) and (c) will also help facilitate assessments to be carried out under new division 6A.

Insertion of new s 6FA

Clause 6 inserts a new section 6FA, which operates with new section 6F(3)(a) to permit the chairperson of the tribunal to approve costs assessors who have qualifications as set down by the tribunal's rules. It also requires the clerk of the tribunal to keep a list of those approved.

Amendment of s 6K (Hearings of allegations involving overcharging)

Clause 7 amends section 6K to permit the tribunal, where a costs assessor has been engaged by it, to set a fee to cover the cost of the assessor's report and to decide who must pay it.

Insertion of new div 6A

Clause 8 inserts a new division 6A in part 2A of the Act to contain the following —

section 6ZA states that the division applies if a client is given an account that complies with new section 6ZA(a)(i) or (ii) and the client applies to the tribunal for the clerk to appoint a costs assessor to assess the account. The division does not apply if the agreement is for a lump sum amount only or the client falls into one of the categories in section 6ZA(2)(b).

section 6ZB provides that if a client asks for a costs assessor to be appointed under this division, the client is taken to dispute only the amount payable and may not subsequently challenge the validity or enforceability of the agreement the client has with the solicitor or firm.

section 6ZC provides that the clerk of the tribunal may appoint a costs assessor from the list kept for that purpose by the clerk.

section 6ZD provides that the parties may agree about who must pay the costs assessor's fee. Where there is no agreement, and the account is reduced by 20% or more by the assessor, the solicitor of firm must pay all of the assessor's fee. Otherwise, in the absence of agreement, the client is to pay the fee. It is to be noted that the tribunal may make rules about the fees allowable to costs assessors under new section 6F(3)(c).

section 6ZE provides when costs assessments carried out under this division will be binding on the parties. This will occur if the client or practitioner or firm agree or if no application to a court to decide the reasonableness of the agreement under new section 6ZF has been made at the end of 30 days. If the costs assessment is binding, section 6ZE(2) provides that it may be enforced as a debt for the assessed amount and that the parties may not subsequently challenge the amount payable.

section 6ZF works in conjunction with section 6ZE and permits a client or practitioner or firm to apply to a court having jurisdiction for the amount stated in the account for that court to decide the reasonableness of the fees and costs charged by that account. The application must be made within 30 days of the costs assessment. Reference should also be had here to new section 48Q. The 30 day limitation may be extended by the court under section 6ZF(2), but not if parties have agreed that the assessment is binding under section 6ZE(1).

In deciding the reasonableness of the fees and costs, the court may appoint someone to assess them, including a tribunal costs assessor. A provision specifically states that the court may also receive in evidence written costs assessment and have regard to matters contained in them

It is provided that the court may make any order it considers appropriate, including that a party pay an amount to another party.

Insertion of new pts 4A and 4B

Clause 9 inserts a new part 4A and a new part 4B. These provisions concern client agreements and the payment of solicitors for their work. When reading these new sections, regard should be had to the new definition of “client agreement” inserted by this Bill. The following provisions are included—

section 48, the first provision in new part 4A, states the circumstances when a written client agreement under this section is required and what the agreement must contain. The section does not apply to urgent work or where the maximum amount a practitioner or firm charges as fees is \$750 or less. The agreement must be in clear plain language. Section 48(2) and (3) provide what the agreement must specify. Section 48(4) provides that the notice in the new schedule, inserted by this Bill, must be given to the client before the client signs it. The client agreement must not be

inconsistent with the notice. This information, for consumers of legal services, is not required if the client is of a category mentioned in section 48(6).

Reference should be had to new section 48F for the consequences of a failure to comply with section 48.

section 48A states that a client agreement may be enforced in a court in the same way as any other contract. This provision is based on section 101(1) of the *Legal Practice Act 1996* (Victoria).

section 48B provides expressly about the amendment of client agreements and that, if it is an agreement to which section 48 applies, the parties to it must agree to such amendment in writing.

section 48C provides that a client agreement may not include a provision preventing a civil liability (including liability for negligence) attaching to the practitioner or firm, or relieving the practitioner or firm from a responsibility the practitioner or firm would otherwise have had. This provision is based on section 27 of the *Legal Practitioners Act 1995*, formerly section 6 from the *Solicitors Act 1891*.

The provision permits the giving of advice qualified by, or conditional on, information not available, where that advice is clearly specified as qualified and conditional and the client is properly warned about acting on that advice.

section 48D prohibits provisions about contingency fees and costs as described by the section. The section does not apply to the extent that a client agreement adopts the relevant scale for the work as provided by rules or regulation and does not prevent a practitioner or firm charging a lesser amount if the outcome, such as the amount recovered in litigation, is less than that which was sought. The provision is based on section 99 of the *Legal Practice Act 1996* (Victoria).

section 48E provides that a client agreement must not include a provision by which a client's interest in a proceeding is transferred to a practitioner or firm instead of the client being required to pay fees and costs. The provision is based on section 31 of the *Legal Practitioners Act 1995*, formerly section 10 of the *Solicitors Act 1891*.

section 48F provides for the consequence of a failure to comply with section 48 and also provides that the effect of a prohibited provision under this part is that that provision is void.

section 48G provides that a practitioner must disclose client agreements, or the fees and costs payable for work done for a client, in a proceeding before a court or tribunal about the work done or payment for that work.

section 48H, the first provision in new part 4B, defines “tribunal costs assessor” for this part.

section 48I states the maximum amount of fees and costs that a practitioner or firm may charge and recover from a client for work done. Different provisions apply where there is, and where there is not, a client agreement. The provisions applying where there is no client agreement will be relevant where, for example, an agreement is void under section 48F(1). The section also provides that an “extraordinary item of work”, a defined term, must be expressly authorised by the client.

section 48J provides that a practitioner or firm may not start proceedings to recover costs and fees unless the client has been given an account that complies with section 48J(1). In addition, the practitioner or firm is required to obtain the court’s leave if it has been 1 month or less since the account was given to the client or the client has applied for an assessment by a tribunal costs assessor under new division 6A of part 2A (inserted by this Bill).

section 48K states that in proceedings to recover costs and fees, a court may appoint someone, including a tribunal costs assessor, to assess an account and may make an order about the fee of the person appointed. However, there is an exception if a tribunal costs assessor has already assessed the account and the parties are bound by it as provided by section 6ZE.

section 48L expressly states that the court may receive in evidence a written costs assessment of a tribunal costs assessor or an assessment of someone appointed by the court, and have regard to the matters contained in it.

section 48M states that the client may change practitioner or firm at any time, despite any provision to the contrary in a client agreement. It also provides that the original firm may still recover fees and costs from a client for work done before the client gave notice of the change. The section does

not affect any rights on the part of the solicitor or firm to maintain or enforce a lien or charge for unpaid fees or costs.

section 48N, the first provision in division 4 of new part 4B, states that the provision applies to costs assessors appointed by the clerk of the Solicitors Complaints Tribunal or by a court.

section 48O is designed to facilitate assessments by costs assessors and to ensure they obtain all relevant information needed to carry out those assessments. This is achieved by requiring clients, practitioners or firms to comply with all reasonable requests for information made by a costs assessor in relation to assessments of that practitioner's or firm's account. It will be possible to apply to an appropriate court for an order about disclosure under this section. The section does not affect any rights on the part of the solicitor or firm to maintain or enforce a lien or charge for unpaid fees or costs.

section 48P requires a costs assessor to make a written assessment.

section 48Q provides that the costs assessment is not concluded until the costs assessor has given a copy of the assessment to both the client and the practitioner or firm. This is relevant, for example, for the running of the time periods under sections 6ZE and 6ZF.

section 48R protects costs assessors from civil liability arising out of functions performed by them under this Act that are performed honestly and without negligence. If a costs assessor is not liable, by operation of section 48R(1), the State is liable instead.

section 48S is based on section 208T of the *Legal Profession Act 1987* (NSW) and ensures that information gained by costs assessors as a result of their work is not disclosed other than as allowed by the section.

section 48T states that privilege, such as legal professional privilege, attaching to a document or thing is not affected by disclosure to a costs assessor.

Insertion of new s 56 and sch

Clause 10 inserts new section 56 which provides for transitional arrangements with respect to costs agreements made under the *Legal Practitioners Act 1995*. These are deemed to be client agreements.

Section 56(2), (3) and (4) provide for transitional arrangements for retainers that are not costs agreements, in force immediately before the commencement of the section. The purpose of this section is to ensure that solicitors and their clients whose relationship is governed by those retainers, enter into client agreements instead. Rights under the *Legal Practitioners Act 1995*, as it stood before amendment by this Bill, to the taxation of bills of costs under these retainers, are maintained and once the *Uniform Civil Procedure Rules* come into force, those rules will provide for the assessment of those bills. As these retainers are progressively replaced by client agreements, recourse to pre-existing taxation rights will become increasingly less common.

Also inserted by a *clause 10*, is a new schedule to the Act containing a notice to clients which must be given to clients under section 48. It is an important information statement, in plain and clear language, of some of a client's rights as a consumer of legal services. It will also help ensure that the client is supplied with sufficient details, especially in relation to what the services will cost, to make an informed decision before signing the client agreement.

PART 3—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

Act amended in pt 3

Clause 11 states that this part amends the *Supreme Court of Queensland Act 1991*.

Amendment of title

Clause 12 amends the title of the Act to more accurately reflect its contents after amendment by this Bill.

Amendment of s 2 (Definitions)

Clause 13(1) renames the definition provisions as the dictionary. *Clause 13(2)* removes the definitions of “court”, “Supreme Court Acts” and “Supreme Court jurisdiction Act”, which will no longer be required after amendment of this Act by the Bill. *Clause 13(3)* inserts a number of definitions relevant to amendments to the *Supreme Court of Queensland Act 1991*. *Clause 13(4)* relocates the dictionary to the end of the *Supreme Court of Queensland Act 1991* as a schedule.

Insertion of new s 2

Clause 14 provides for the definition of words used in the *Supreme Court of Queensland Act 1991* to be defined in the dictionary in the schedule for that purpose.

Insertion of new pt 2, div 4

Clause 15 inserts a number of provisions in part 2 dealing with the powers, qualifications and limitations for judicial registrars. In particular, it inserts the following—

section 27A(1) and (2) provide for the Governor in Council to appoint as judicial registrars, lawyers with at least five years standing. A judicial registrar may only be removed from office by the Governor in Council for proven incapacity or misbehaviour. A judicial registrar is an officer of the court. Reference should also be had to new section 73.

section 27B provides for the judicial independence of judicial registrars.

section 27C provides for the review of the decisions of a judicial registrar if a party is dissatisfied with the judicial registrar’s decision. The court as constituted by a Supreme Court judge will rehear the application, if it grants leave, if a party is dissatisfied with the judicial registrar’s decision. The court may impose conditions if it grants leave, which relate to the

rehearing. Such conditions will ensure, for example, that the entitlement to such a rehearing will not be abused.

section 27D provides for the terms of appointment of a judicial registrar and for the publication of certain matters in the gazette.

section 27E provides that a judicial registrar is to retire at 70 years of age.

section 27F provides for the continuity of entitlements and service if a judicial registrar is appointed from the public service or if a judicial registrar is appointed to an office of the public service.

Amendment of s 56 (Single judge to constitute court)

Clause 16 provides for renumbering of subsections 56(3) and (4) as subsections (4) and (5) respectively and inserts a new subsection (3) allowing the court to be constituted at any place. The new position of judicial registrar is recognised in subsection (4).

Insertion of new pt 7

Clause 17 inserts part 7 into the *Supreme Court of Queensland Act 1991*. Part 7 is an extensive part which applies to the Supreme Court, District Court and Magistrates Courts and establishes necessary provisions which will allow the introduction of uniform court rules.

The provisions in this part will work in conjunction with the new uniform court rules. These provisions are those parts of that scheme that it is most appropriate, in light of the fundamental legislative principles (FLPs), to reflect in principal rather than subordinate legislation.

The following provisions are inserted—

section 71 applies the new part to the Supreme Court, District Court and Magistrates Courts in respect of civil proceedings and contempt of court proceedings.

section 72 defines “court” as either the Supreme Court, District Court or

Magistrates Courts, as the context requires.

section 73 allows a judicial registrar to constitute the court to hear and decide applications prescribed by the uniform rules. This effectively allows the courts to control the jurisdiction of judicial registrars. The judicial registrar has, for the purpose of the applications he or she can deal with, all the jurisdiction and powers of the relevant court other than power to punish for contempt.

section 74(1) allows the Supreme Court to order a civil proceeding pending in the Magistrates Court to be transferred to the Supreme Court. Section 74(2) allows the Supreme Court to impose conditions on any transfer of a matter to the Supreme Court.

section 75 provides for the transfer by the Supreme Court of matters within the Magistrates Courts jurisdiction to that court to be dealt with in the same way as other matters dealt with in the Magistrates Court.

section 76 provides that, if a proceeding is transferred under this new division, costs are to be determined according to the scale of costs applicable in the court where the proceeding was pending when the costs were incurred.

section 77 provides that agreements reached at either a directions conference or conference required for claims for damages for personal injury or death, are to be treated in the same way as other compromises and the outcome is to be recorded in writing.

section 78 restricts the use of evidence or admissions obtained at conferences mentioned in section 77, unless all the parties agree to the use of the evidence or admissions or it is evidence of a resolution agreement under that section.

section 79 makes it clear that wherever a court has power to make an order or give a direction, this can be done on the application of a person or on the court's own initiative, whether or not the parties have sought an order.

section 80 makes it clear that a court, in making an order, giving a direction, granting leave or doing any other thing, may impose appropriate conditions.

section 81 empowers a court to allow an amendment whether or not it

adds a cause of action that arose after the proceedings were started. It also allows the substitution or addition of parties, even if a limitation period has expired since the proceedings were commenced. It overcomes situations such as where a company against which a proceeding has been commenced does not disclose that the proper defendant in a proceeding was a related company, until after the limitation period has expired.

section 82 provides for representative orders which can be enforced against other parties with the same interest in the proceeding if the leave of the court is obtained. Such orders bind persons outside the immediate litigation, unless the court orders otherwise.

section 83 sets out what a court may do on an application for relief by way of interpleader and the effect of such orders.

section 84 provides that a default judgment order recorded and issued by a registrar has the same effect as if it were a judgment order made by the relevant court.

section 85 supports the ability of the District Court and Magistrates Court to dismiss proceedings after two years have elapsed for want of prosecution. The Supreme Court has always had inherent jurisdiction to do this.

section 86 provides that enforcement proceedings can be commenced without the need for a demand on a party. Service of an order if required under an Act, rule or by some order of the court, is sufficient without a demand being made.

section 87 provides that the rate of interest under the *Supreme Court Act 1995*, section 48, or higher rate if agreed, is the rate of interest to be payable on a money order debt.

section 88 is designed to ensure that in proceedings against partnerships, orders of the court can be made against the those who, when they are ascertained, were partners at the time the cause of action arose.

section 89 sets out the property an order against a partnership can be enforced against.

section 90 provides for the cases where proceedings have been

commenced against a person, partnership or company that carries on business under a style or name other than his, her or its own name (whether or not registered under the *Business Names Act 1962*) and an order has been made in that other name. The court has power to vary the order from one in that other name to one in the name of the person, partners or company that carried on business under that name.

section 91 ensures that an order in proceedings against someone carrying on business in a name or style other than the person's own name, whether or not registered under the *Business Names Act 1962*, may be enforced against the property of the person carrying on the business even if the order is entitled in the business name.

section 92 brings to an end an enforcement warrant one year after its issue or an earlier time stated in the warrant.

section 93 provides that payment under an enforcement warrant is a discharge to the extent of the payment.

section 93A provides that to recover a money order, an enforcement warrant has to be obtained from the court. It then lists the orders which may be included in an enforcement warrant and that charging orders are limited to the Supreme Court.

section 93B(1) and (2) provide that the enforcement officer holds various choses in action as security for the amount to be recovered under the enforcement warrant for the benefit of the enforcement creditor and enables the enforcement officer to receive payment with respect to those choses in action. The section also deals with the recovery of amounts owed to an enforcement debtor under a seized document.

section 93C provides for an enforcement warrant to redirect an enforcement debtor's share of a joint fund of money. Such a fund is presumed to be owned in equal shares unless by decision of the court, on the application of a fund owner or enforcement creditor, a different entitlement is determined.

section 93D provides for the recovery of debts owing to an enforcement debtor from the State and the need to name the chief executive of the relevant public sector unit.

section 93E allows for redirection of debts owed to an enforcement debtor by a partnership that carries on business in Queensland, even if a

partner resides outside Queensland.

section 93F allows for the payment of money owed to an enforcement debtor from a financial institution without meeting the conditions such as completing withdrawal forms which may be required by the institution and extends to monies paid into a financial institution after the date of the enforcement warrant and before any hearing determining the validity of the warrant.

section 93G puts it beyond doubt that the enforcement creditor has the same entitlement to enforce a debt against a third party as the enforcement debtor had.

section 93H provides protection to an employee from dismissal by an employer because of an enforcement warrant authorising redirection of earnings.

section 93I provides that if a cause of action survives the death of a defendant or respondent, then, subject to an order of the court, the proceedings are taken to continue against the personal representative in the capacity of personal representative of the estate.

section 93J provides that if a cause of action survives the death of a defendant or respondent and there is no grant of representation, the proceeding is taken to be brought against the person's estate. If a grant of representation is made afterwards, then, unless the court orders otherwise, the proceeding is taken to be against the personal representative in the capacity of personal representative of the estate. Any order of the court made before the grant of representation will bind the estate.

Insertion of new pt 8B

Clause 18 inserts a new part 8B and facilitates the relocation of section 40 of the *Legal Practitioners Act 1995* to the *Supreme Court of Queensland Act 1991*.

Replacement of pt 9 heading (Rules of court)

Clause 19 amends the heading of part 9 to reflect the new rule making power for the Supreme Court, District Court and Magistrates Courts.

Replacement of section 117 (Rule making power)

Clause 20 replaces the current section 117 with new sections 117 and 118. Section 118 contains a new rule making power, enabling the Governor in Council to make rules for the Supreme, District and Magistrates Courts. This power enables the making of uniform court rules for the three courts. It also replaces the existing rule making powers in the *District Court Act 1967* and the *Magistrates Courts Act 1921*, which are repealed by schedule 2 of this Bill. The subject matter for these rules is set out in section 118(1) and in a new schedule to the Act, which is also inserted by this Bill. Rules can only be made with the consent of the new rules committee. Rules made other than in relation to matters referred to in section 118(3), are to be called the *Uniform Civil Procedure Rules*.

Under new section 118A, the Rules Committee may approve the forms to be used under the Act, which includes the *Uniform Civil Procedure Rules*.

Insertion of new ss 118B-118C

Clause 21 inserts a new sections 118B and 118C.

section 118B provides that certain parts of the *Statutory Instruments Act 1992* do not apply to rules of court, as defined by section 12 of that Act. In particular, part 5, which contains requirements about Regulatory Impact Statements (RISs), will not apply to rules of court. Rules govern the practices and procedures of courts and the matters and processes associated with such impact statements would inappropriately involve the judiciary in the matters and deliberations of executive government.

Similarly, rules of court are exempted generally from staged automatic expiry of legislation. An arbitrary system of automatic expiry is inappropriate for such rules. However, in relation to the items listed in section 118B(2)(b), which are matters to be subsumed in new uniform court rules, an area in need of reform for modern conditions and on which work is well advanced, an extension to 31 December 1998 only is appropriate.

section 118C provides for the establishment of a Rules Committee by the Chief Justice and for the membership of that committee. The members are from the judiciary and include the Chief Justice, President of the Court

of Appeal, Chief Judge of the District Court and Chief Stipendiary Magistrate, or their respective nominees. The consent of the committee is required for the making of rules under new section 118 and for forms. The committee is to advise the Minister about the repeal reform or relocation of the *Supreme Court Act 1995* and other laws by which these courts have jurisdiction. There are also some procedural provisions about the meetings of the committee.

Insertion of new ss 118D-118E

Clause 22 inserts the following—

section 118D expressly provides for the making of practice directions, including about case management. The section does not affect the inherent power of a court or judge to make practice directions and they are declared not to be subordinate legislation, to remove any doubt.

section 118E provides for the making of directions by courts where the conduct of a proceeding is not provided for by rules of court. In making such directions, the court may have regard to practices and procedures, including rules of court, that were in force before the *Uniform Civil Procedure Rules*.

Amendment of s 120 (Regulation-making power)

Clause 23 amends section 120 by providing some specific matters about which the Governor in Council may make regulations under the Act. These matters include, the prescription of fees and costs (to replace current schedules of fees and scales of costs contained in rules of court and elsewhere, for the Supreme Court, District Court and Magistrates Courts), certain matters relating to electronic court documents and matters that the *Supreme Court Act 1995* permits or requires to be prescribed under that Act.

An important aim of the provision is to facilitate a consolidation and simplification of such instruments.

Insertion of new ss 128-136

Clause 24 inserts the following—

section 128 removes the distinction between court and chambers for the Supreme Court, District Court and Magistrates Courts.

section 129 abolishes all types of writs in aid of enforcement in existence immediately before commencement and provides that a reference in any law to those writs is a reference to the equivalent enforcement warrant under the *Uniform Civil Procedures Rules*. The section does not affect the validity of a writ in aid of enforcement issued before commencement.

section 130 provides that a reference in any Act or document to various court documents and other things mentioned in column 1, in section 130(1) and (2), have the meanings given to them by the corresponding reference in column 2 in both those subsections.

section 131 amends the reference in any Act or document to a judgment in several contexts, is a reference to a judgment order.

section 132 provides for the exercise by judicial registrars of powers formerly given to registrars, where the uniform rules so provide.

section 133 provides that a reference in an Act or document to the taxation of costs is a reference to an assessment of costs and that a reference to a taxation on a particular basis is a reference to the equivalent basis of taxation specified under the *Uniform Civil Procedure Rules*.

section 134 provides that if a provision of the *Supreme Court of Queensland Act 1991*, including the *Uniform Civil Procedure Rules*, is inconsistent with the *Supreme Court Act of 1995*, the earlier Act is to prevail to the extent of the inconsistency, which inconsistency includes direct inconsistency and covering the field inconsistency.

section 135 provides a transitional arrangement for when the *Uniform Civil Procedure Rules* commence for applications or proceedings already commenced.

section 136 provides for transitional arrangements in relation to the abolition of Circuit Courts. This abolition is achieved by amendments in schedule 2 of the Bill to the *Supreme Court Act 1995*. Under amendments to section 56 of the *Supreme Court of Queensland Act 1991*, by *clause 16*

of the Bill, the Supreme Court can sit anywhere and be constituted at any place. Circuit Courts will therefore be unnecessary for the Supreme Court to serve regional Queensland.

section 137 provides that a rule in force under the existing provisions of the *Supreme Court of Queensland Act 1991* is taken to be made under section 118 as amended by the *Civil Justice Reform Act 1998*. However, such rules are not part of the *Uniform Civil Procedure Rules*, nor carry that name.

Replacement of schs 1-2

Clause 25 replaces schedules 1 and 2 with a new schedule. This new schedule, lists matters about which rules of court may be made under new section 118. The scope of the rule making power under that section is not limited by the matters listed in the schedule.

PART 4—MISCELLANEOUS

Amendments dealing with small claims—sch 1

Clause 26 states that schedule 1 of the Bill amends the *Small Claims Tribunals Act 1973*.

Acts amended in sch 2

Clause 27 states that schedule 2 of the Bill amends the Acts mentioned in it.

SCHEDULE 1

AMENDMENTS TO SMALL CLAIMS TRIBUNALS ACT 1973

The majority of amendments contained in schedule 1 replace references to small claims tribunals with references to the single Small Claims Tribunal established by this Bill. Those amendments are not specifically referred to herein. The schedule includes the following other sections—

Schedule 1, clause 3 omits a commencement provision which is unnecessary.

Schedule 1, clause 4 flags in the interpretation provision of the Act, a reference to the “central registry”, which is defined in new section 13(2).

Schedule 1, clause 6 increases the “prescribed amount” from \$5 000 to \$7 500.

Schedule 1, clause 11 omits the definition of “small claims tribunal”.

Schedule 1, clause 13 inserts a new definition of “tribunal”.

Schedule 1, clause 14 omits part 2, division 1, the division 2 heading and sections 11 and 12. These are replaced by the following new provisions establishing the Small Claims Tribunal—

section 5 establishes the small claims tribunal.

section 6 provides that members of the small claims tribunal are magistrates or other persons appointed as referees under the *Small Claims Tribunal Act 1973*. Section 6(2) provides that the tribunal can be constituted by a referee sitting as the tribunal in its tenancy division or its general division.

section 7 provides that the tribunal can be constituted at any place and can sit in more than one place at the same time.

section 8 provides for the appointment of a Tenancy Claims Administrator, who must be a magistrate appointed as the tenancy claims administrator by the Governor in Council. The person may be appointed both magistrate and administrator at the same time. The tenancy claims administrator continues to hold office as a magistrate during the person’s appointment as administrator. Section 8(5) provides that the Governor in Council may revoke the administrator’s appointment as tenancy claims administrator. However, section 8(6) provides that the revocation of appointment as administrator does not affect the person’s tenure as a magistrate. Section 8(7) provides that the remuneration and conditions of the administrator are identical to those of a magistrate.

section 9 provides that the tribunal is divided into a tenancy division and a general division.

section 10 provides that the tribunal's tenancy division is to be administered by the tenancy claims administrator. Section 10(2) sets out the responsibilities of the tenancy claims administrator in relation to the tenancy division.

section 11 provides that the general division of the small claims tribunal is to be administered as decided by the Chief Stipendiary Magistrate.

section 12 provides that each magistrate is a referee. Section 12(2) provides that the chief executive may appoint other persons as referees if it is necessary to appoint such persons to enable the tribunal to function properly. Referees who are not magistrates are employed under the *Public Service Act 1996*.

section 12A provides that the function of a referee constituting the small claims tribunal is to decide the issue in dispute in a proceeding in a way that is fair and equitable. Section 12A(2) provides that the referee may also refer the issue for mediation under the *Dispute Resolution Centres Act 1990* or mediate the dispute personally.

Schedule 1, clause 15 amends section 13(2) and provides that there is to be a central registry for the small claims tribunal in the metropolitan district.

Schedule 1, clause 20 inserts section 14(2)(e) to include as records of the small claims tribunal, other documents filed in the registry in relation to the claim.

Schedule 1, clause 22 provides that the records of the small claims tribunal shall also be open for inspection by the chief executive officer of the Residential Tenancies Authority and the Minister.

Schedule 1, clause 23 amends section 15 by providing for the appointment of a registrar and other officers necessary to administer the tribunal and the central registry.

Schedule 1, clause 30 amends section 18 by providing that settlements or orders made by the small claims tribunal are final and binding on the parties subject to section 18(2) and section 19, which is amended by this Act to provide for enlarged rights of review.

Schedule 1, clause 33 amends the reference to writs of certiorari in section 19 with a reference to relief or remedy in the nature of writs of

certiorari because this type of relief only is now available under the *Judicial Review Act 1991*.

Schedule 1, clause 35 amends section 19 by providing for an application to a District Court for an order in relation to the tribunal's order on the grounds of error of law (if written reasons have been supplied), denial of natural justice or lack of jurisdiction. This application has to be made within 28 days of the making of the tribunal's order.

Schedule 1, clause 43 amends section 22A to facilitate the giving of reasons for orders in all matters decided by the tribunal that fall within the terms of section 22A(1)(b).

Schedule 1, clause 49 amends section 23A(3)(c)(i) to permit examinations to be taken at a tribunal registry at or near the place which the person required by the order to pay money ordinarily resides, carries on business or has a principal place of business.

Schedule 1, clause 52 amends section 23A(5) by omitting a reference to the *Magistrates Courts Rules 1960* and inserting a reference to rules of court applicable to Magistrates Courts.

Schedule 1, clause 54 inserts section 24(1B) to provide that applications in the metropolitan district must be filed in the central registry.

Schedule 1, clause 55 inserts new subsections (3), (4) and (5) in section 24 to facilitate the making of cross-claims by respondents arising out of the same transaction or event or series of transactions or events as the claimant's claim. Both claims will be dealt with together unless the tribunal otherwise orders.

Schedule 1, clause 60 inserts a new section 26A requiring respondents to advise the registrar if the respondent intends to appear at the hearing of the claim.

Schedule 1, clause 68 omits section 33(1) which provides that every proceeding before the tribunal other than a tenancy application must be held in private.

Schedule 1, clause 69 amends section 33(1A) to provide that a proceeding must be held in private if it is a tenancy application that requires the tribunal to consider domestic violence issues under the *Residential Tenancies Act 1994*, or the tribunal otherwise orders.

Schedule 1, clause 70 inserts a new section 33(1B) to facilitate the giving

of directions about persons who may be present at a hearing held in private.

Schedule 1, clause 72 amends section 33(2)(b) to provide that evidence may be given on oath. The *Acts Interpretation Act 1954*, section 36, defines “oath” to include affirmation, declaration and promise.

Schedule 1, clause 74 and 76 amend section 34 to provide that subject to this section, and without limiting section 34A, the tribunal may resolve the proceeding on the evidence presented to it, in circumstances where the case of any party is not presented to the tribunal.

Schedule 1, clause 77 inserts a new section 34A which enables the registrar to make orders where a respondent has failed to notify the registrar of an intention to appear at a hearing. The registrar is able to resolve the issue in dispute in the proceedings on the evidence available and make any order the tribunal can make.

Schedule 1, clause 79 amends section 35(2) to enable the tribunal to order the respondent to pay amounts other than the prescribed fees that are allowed under a regulation. This would in future allow, for example, for certain costs associated with the issue and service of subpoenas, which may now be provided for by regulation after this Bill (see *Schedule 1*, clause 97), to be recovered.

Schedule 1, clause 80 inserts a new section 35A to provide for rehearing of decisions of the registrars by the tribunal.

Schedule 1, clauses 95 to 98 amend the current regulation making power.

Schedule 1, clause 99 inserts transitional provisions that continue the effect of orders made by small claims tribunals and provide that matters pending in small claims tribunals are to be continued in the small claims tribunal. The appointments of referees are also continued.

SCHEDULE 2

AMENDMENTS OF OTHER ACTS

DISTRICT COURT ACT 1967

The *District Court Act 1967* is amended by inserting provisions required by the amendments to the *Supreme Court of Queensland Act 1991* made by this Bill. Provisions dealing with the appointment of judicial registrars that are in identical terms to the provisions of the *Supreme Court of Queensland Act 1991*, are also inserted in the *District Court Act 1967*.

An amendment is made to section 118 of the *District Court Act 1967*. A new application provision for section 118 which clarifies that the section does not apply to an appeal from a judgment of the District Court in the exercise of its criminal jurisdiction under part 4 of the *District Court Act 1967*, is inserted.

The rule making provision under this Act is also repealed, as it will be replaced by the new uniform rule making provision under the *Supreme Court of Queensland Act 1991*.

JUSTICES LEGISLATION (MISCELLANEOUS PROVISIONS) ACT 1996

Part 22 of this Act is omitted. This part provided for the taxation by the Clerk of the Court of solicitor and client bills of costs for work in certain cases. This scheme is being omitted because it is inconsistent with the provisions for the assessment of solicitor and client costs contained in this Bill.

LAND ACT 1994 AND LAND TITLE ACT 1994

These Acts are amended by inserting definitions of “enforcement warrant” and “writ of execution” that are consistent with the provisions of the *Supreme Court of Queensland Act 1991*.

LEGAL PRACTITIONERS ACT 1995

Amendments are made to this Act that are complementary to the amendments contained in part 2 of this Bill.

MAGISTRATES COURTS ACT 1921

These amendments remove the definitions of action for a “small debt”, “Magistrates Courts jurisdiction Act” and “Small Debts Court”. Definitions of “minor claim” and “minor debt claim” are also inserted.

Provision is made for limitations on appeals in proceedings for minor debt claims. This is consistent with present section 48, with respect to small debt actions. That section is omitted.

A provisions allows Magistrates Courts to hear cases which they would otherwise have been unable to hear because the amount involved would have placed the matter outside jurisdiction of those courts. The provision is similar to section 72 of the *District Court Act 1967*.

New provisions dealing with the contempt of court are included to replace those currently contained in the *Magistrates Courts Rules 1960*, which will be replaced by the *Uniform Civil Procedures Rules*. The new provisions are taken from the present *District Court Act 1967*.

Section 12 is omitted to overcome an inconsistency with section 81 of the *District Court Act 1967*.

The rule making provision under this Act is also repealed, as it will be replaced by the new uniform rule making provision under the *Supreme Court of Queensland Act 1991*.

SUPREME COURT ACT 1995

These amendments remove redundant provisions in section 210 and also abolish Circuit Courts.