

Queensland



COURTS LEGISLATION AMENDMENT BILL 1995

Queensland



**COURTS LEGISLATION AMENDMENT
BILL 1995**

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SCHEDULE 1 62**MINOR AMENDMENTS OF DISTRICT COURTS ACT 1967****SCHEDULE 2 69****MINOR AMENDMENTS OF MAGISTRATES COURTS ACT
1921**

1995

A BILL

FOR

**An Act to amend various Acts to provide for court annexed mediation
and case appraisal, and for other purposes**

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause 1. This Act may be cited as the *Courts Legislation Amendment Act 1995*.

4

Commencement

5

Clause 2. This Act commences on a day to be fixed by proclamation.

6

PART 2—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

7

8

Act amended

9

Clause 3. This part amends the *Supreme Court of Queensland Act 1991*.

10

Amendment of s 3 (Interpretation—general)

11

Clause 4. Section 3(1)—

12

insert—

13

‘**“ADR costs”** means—

14

(a) for a mediation—

15

(i) the mediator’s fee; and

16

(ii) the venue provider’s fee for providing the venue; and

17

(iii) other costs prescribed under the rules; and

18

(b) for a case appraisal—

19

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- (i) the case appraiser’s fee; and 1
- (ii) the venue provider’s fee for providing the venue; and 2
- (iii) other costs prescribed under the rules. 3

“ADR convenor” means a mediator or case appraiser. 4

“ADR dispute” means a dispute referred to an ADR process. 5

“ADR process” see section 100B. 6

“case appraisal” see section 100D. 7

“case appraiser” means— 8

- (a) a case appraiser approved under section 100F; or 9
- (b) a Judge. 10

“dispute” means— 11

- (a) a dispute in a proceeding; or 12
- (b) something else about which the parties are in dispute that may be 13
dealt with in a mediation at the same time as an ADR dispute. 14

“mediation” see section 100C. 15

“mediator” means a mediator approved under section 100E. 16

“party” means a party to a dispute. 17

“referring order” means an order made under section 100I referring a 18
dispute to an ADR process. 19

“Supreme Court Acts” see schedule 2, part 1. 20

“Supreme Court jurisdiction Act” means— 21

- (a) a Supreme Court Act; or 22
- (b) an Act mentioned in schedule 2, part 2; or 23
- (c) a law prescribed under a regulation for this definition.’. 24

Amendment of s 75 25

Clause **5.** Section 75(6)— 26

omit, insert— 27

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‘(6) Without limiting subsection (5), rules of court (other than rules under section 32) may be made under this or another Act, and a regulation may be made under this Act, only if a report and recommendation from the Commission, or a Division of the Commission, has been obtained on the matter.’.

Insertion of new pts 7A and 7B

Clause 6. After part 7—
insert—

‘PART 7A—ADR PROCESSES

‘Division 1—Preliminary

‘Objects of part

‘100A. The objects of this part are—

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

Division 2—Important terms**‘ADR process**

‘100B.(1) An “**ADR process**” is a process of mediation or case appraisal under which the parties are helped to achieve an early, inexpensive settlement or resolution of their dispute.

‘(2) In division 6¹, an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

- (a) pre-mediation and post-mediation sessions; and
- (b) a case appraisal session; and
- (c) joint sessions; and
- (d) private sessions; and
- (e) another step prescribed under the rules.

‘Mediation

‘100C. “Mediation” is a process under the rules under which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.

‘Case appraisal

‘100D.(1) “Case appraisal” is a process under the rules under which a case appraiser provisionally decides a dispute.

‘(2) A case appraiser’s decision is not binding on the parties until—

- (a) the time prescribed under the rules for filing an election to go to trial has passed; and
- (b) the Supreme Court, by order, gives effect to the decision.

¹ Confidentiality, protection and immunity

<i>Division 3—Establishment of ADR processes</i>	1
‘Approval of mediators	2
‘100E. The Senior Judge Administrator, in consultation with the Chief Justice, may approve, or refuse to approve, a person as a mediator.	3 4
‘Approval of case appraisers	5
‘100F. The Senior Judge Administrator, in consultation with the Chief Justice, may approve, or refuse to approve, a person as a case appraiser.	6 7
‘ADR register	8
‘100G.(1) The registrar must keep a register of information about ADR processes.	9 10
‘(2) The register may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.	11 12
‘(3) Without limiting subsection (2), the registrar may change the form in which a register or a part of a register is kept.	13 14
‘(4) The register must contain—	15
(a) the name and address of each mediator and each case appraiser (other than a Judge); and	16 17
(b) other information prescribed under the rules; and	18
(c) other information decided by the Senior Judge Administrator.	19
‘Parties may agree to ADR process	20
‘100H.(1) The parties to a dispute may agree to refer their dispute to an ADR process.	21 22
‘(2) If the parties agree to the referral, they must file a consent order in the form prescribed under the rules with the registrar.	23 24
‘(3) A consent order filed under this section is taken to be a referring order.	25 26

‘Court may consider and order reference to ADR process

‘100I.(1) The Supreme Court may require the parties or their representatives to attend before it to enable the court to decide whether the parties’ dispute should be referred to an ADR process.

‘(2) The court may, by order (“**referring order**”), refer the dispute for mediation or case appraisal.

‘(3) Without limiting the court’s discretion, the court may take the following matters into account when deciding whether to refer a dispute to case appraisal—

- (a) whether the costs of litigating the dispute to the end are likely to be disproportionate to the benefit gained;
- (b) the likelihood of an appraisal producing a compromise or an abandonment of a claim or defence;
- (c) other circumstances justify an appraisal.

‘Parties must attend at ADR process if Supreme Court orders

‘100J.(1) If a referring order is made, the parties—

- (a) must attend before the ADR convenor appointed to conduct the ADR process; and
- (b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order.

‘(2) If a party impedes the ADR process, the Supreme Court may impose sanctions against the party, including, for example—

- (a) by ordering that any claim for relief by the defaulting party is stayed until further order; and
- (b) by taking the party’s action into account when awarding costs in the proceeding or in another related proceeding between the parties.

‘Procedure at case appraisal	1
‘100K.(1) At a case appraisal, the case appraiser—	2
(a) must decide the procedure to be used at the case appraisal; and	3
(b) may adopt any procedure that will, in the case appraiser’s opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and	4 5 6
(c) must finish the case appraisal as quickly as possible.	7
‘(2) However, the case appraiser may, in special circumstances—	8
(a) receive evidence; and	9
(b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.	10 11
‘(3) The Supreme Court may, at any time, give directions about procedure to be used at the case appraisal.	12 13
‘(4) This section is subject to section 100L.	14
‘Subpoenas	15
‘100L.(1) A person may be subpoenaed to appear at a case appraisal only by order of the Supreme Court.	16 17
‘(2) A person may not be subpoenaed to appear at a mediation.	18
‘(3) A person subpoenaed to appear at a case appraisal must not be compelled to answer a question, or produce a document, the person could not be compelled to answer or produce before the Supreme Court.	19 20 21
<i>‘Division 4—Party unable to pay share of costs</i>	22
‘Party unable to pay share of costs	23
‘100M.(1) If, at any time, the Supreme Court is of the opinion a party to an ADR process is unable, because of the party’s financial circumstances, to pay the party’s percentage of the ADR costs, the court may make an order appropriate in the circumstances.	24 25 26 27
‘(2) Without limiting subsection (1), the order may provide—	28

-
- (a) the reference to the ADR process be cancelled; or 1
 - (b) the referring order be revoked and another referring order made. 2

Division 5—What to do when ADR process is finished 3

‘Mediated resolution agreement 4

‘100N.(1) If, at a mediation, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and by the mediator. 5
6
7

‘(2) The agreement has the same effect as any other compromise. 8

‘Mediator to file certificate 9

‘100O. As soon as practicable after a mediation has finished, the mediator must file with the registrar a certificate about the mediation in the form prescribed under the rules. 10
11
12

‘Case appraiser to file certificate and decision 13

‘100P. As soon as practicable after a case appraisal has finished, the case appraiser must file with the registrar— 14
15

(a) a certificate about the case appraisal in the form prescribed under the rules; and 16
17

(b) the case appraiser’s decision (if any). 18

‘Orders giving effect to mediation agreement 19

‘100Q.(1) A party may apply to the Supreme Court for an order giving effect to an agreement reached after mediation. 20
21

‘(2) However, a party may apply for the order only after the mediator’s certificate is filed with the registrar. 22
23

‘(3) The court may make any order it considers appropriate in the circumstances. 24
25

‘Orders giving effect to case appraiser’s decision	1
‘100R.(1) A party may apply to the Supreme Court for an order giving effect to a case appraiser’s decision after the time prescribed under the rules for electing to go to trial has passed.	2 3 4
‘(2) However, a party may apply for the order before the time mentioned in subsection (1) if all parties agree.	5 6
‘(3) The court may make any order it considers appropriate in the circumstances.	7 8
<i>‘Division 6—Confidentiality, protection and immunity</i>	9
‘ADR convenors to maintain secrecy	10
‘100S.(1) An ADR convenor must not, without reasonable excuse, disclose information coming to the convenor’s knowledge during an ADR process.	11 12 13
Maximum penalty—50 penalty units.	14
‘(2) It is a reasonable excuse to disclose information if the disclosure is made—	15 16
(a) with the agreement of all the parties to the ADR process; or	17
(b) for this part; or	18
(c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or	19 20
(d) for an inquiry or proceeding about an offence happening during the ADR process; or	21 22
(e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or	23 24
(f) under a requirement imposed under an Act.	25
‘Ordinary protection and immunity allowed	26
‘100T.(1) In performing the functions of mediator or case appraiser, an ADR convenor has the same protection and immunity as a Judge	27 28

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performing the functions of a Judge.	1
‘(2) A party appearing in an ADR dispute has the same protection and immunity the party would have if the dispute were being heard before the Supreme Court.	2 3 4
‘(3) A witness attending in an ADR dispute has the same protection and immunity as a witness attending before the Supreme Court.	5 6
‘(4) A document produced at, or used for, an ADR dispute has the same protection during the ADR dispute it would have if produced before the Supreme Court.	7 8 9
‘(5) In subsection (2)—	10
“party” includes a party’s lawyer or agent.	11
‘Admissions made to ADR convenors	12
‘100U.(1) Evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial of the dispute or in another civil proceeding before the Supreme Court or elsewhere only if all parties to the dispute agree.	13 14 15 16
‘(2) In subsection (1)—	17
“civil proceeding” does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process.	18 19 20
<i>Division 7—Miscellaneous</i>	21
‘Revocation of approval as mediator or case appraiser	22
‘100V.(1) The Senior Judge Administrator, in consultation with the Chief Justice, may revoke the approval of a person as a mediator or case appraiser.	23 24 25
‘(2) The Senior Judge Administrator must give the person a statement of reasons for the revocation.	26 27

‘Appeal against refusal to approve and revocation of approval as mediator or case appraiser 1
2

‘100W. An appeal lies to the Court of Appeal, by leave of that court, against— 3
4

- (a) a refusal to approve a person as a mediator or case appraiser; or 5
- (b) the revocation of approval of a person as a mediator or case appraiser. 6
7

‘PART 7B—RULES OF COURT 8

‘Rule making power 9

‘100X.(1) The Governor in Council, with the agreement of 2 or more Judges, may make rules of court under this Act for a jurisdiction law. 10
11

‘(2) Without limiting subsection (1), a rule may make provision about any matter that— 12
13

- (a) is required or permitted to be prescribed under a jurisdiction law; or 14
15
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to a jurisdiction law. 16
17

‘(3) Without limiting subsections (1) and (2), a rule may also make provision about— 18
19

- (a) the practices and procedures of the Supreme Court and its registries; or 20
21
- (b) another matter mentioned in schedule 1. 22

‘(4) This section does not affect section 32.² 23

‘(5) In this section— 24

² Under section 32, the President of the Court of Appeal may make rules with respect to the practices and procedures of the Court of Appeal.

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“jurisdiction law” means—

- (a) this Act; or
- (b) a Supreme Court jurisdiction Act; or
- (c) another law giving jurisdiction to the Supreme Court.

‘Existing rules of court

‘100Y.(1) A rule of court made under a jurisdiction law and in force immediately before the commencement (an **“existing rule”**)—

- (a) is of the same authority, force and effect as if it were an Act; and
- (b) must be judicially noticed; and
- (c) cannot be questioned in any legal proceeding.

‘(2) An existing rule is taken to be made under this Act.

‘(3) Subsection (1) applies to an existing rule from the commencement of the rule and subsection (2) applies to an existing rule from the commencement of this section.

‘(4) This section does not apply to a rule of court made by the President of the Court of Appeal under section 32.

‘(5) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

‘(6) This section expires 1 year after it commences.’

Insertion of new s 110

Clause **7.** After section 109—

insert—

‘Numbering and renumbering of Act

‘110. The *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions) must be used in the next reprint of this Act produced under the *Reprints Act 1992*.’

	Relocation of pt 9	1
Clause	8. Part 9—	2
	<i>relocate</i> as part 7C.	3
	Insertion of new schs 1 and 2	4
Clause	9. At the end of the Act—	5
	<i>insert</i> —	6
	‘SCHEDULE 1	7
	‘SUBJECT MATTER FOR RULES	8
	section 100X	9
	‘PART 1—GENERAL	10
	‘Jurisdiction generally	11
	‘1. Jurisdiction of the Supreme Court, including, for example, its civil, criminal and appellate jurisdiction of the court.	12 13
	‘Jurisdiction of Judge in chambers or Master	14
	‘2. Jurisdiction of a Judge in chambers or Master.	15
	‘Jurisdiction of registrars and other officers of the Supreme Court	16
	‘3. Jurisdiction of registrars and other officers of the Supreme Court.	17
	‘Appeals from registrars and other officers	18
	‘4. Appeals from registrars and other officers of the Supreme Court.	19

‘Practice and procedure in criminal jurisdiction	1
‘5. Practice and procedure in the criminal jurisdiction of the Supreme Court, other courts and justices, including, for example, the following—	2 3
(a) the form of complaint, summons, deposition, indictment, judgment, record, conviction, warrant, recognisance, or other proceeding, to be used in a court or before a justice for an offence or the way in which a form may be approved;	4 5 6 7
(b) regulating the proceedings on the trial of a person charged with an offence;	8 9
(c) the detention of an appellant in a criminal appeal and the safe custody of any property pending the appeal, or application for leave to appeal, or new trial;	10 11 12
(d) the sitting of the Court of Appeal, if necessary, during a vacation;	13
(e) the taking of shorthand notes and the making of transcripts of the notes;	14 15
(f) applications for and supplying notes of trial and reports by Judges of courts of trial.	16 17
 ‘Service of documents	 18
6. Practice and procedure of the Supreme Court in relation to the service of documents inside and outside the State, including outside Australia.	19 20
 ‘Admission of legal practitioners	 21
‘7. Admitting barristers, solicitors and conveyancers of the Supreme Court, including qualifications for and conditions of admission.	22 23
 ‘Costs	 24
‘8. Costs payable to barristers, solicitors and conveyancers in any cause or matter, including regulating (by court order, scale or otherwise) and taxing the costs.	25 26 27

‘Apportioning costs	1
‘9. Apportioning the costs of issues.	2
‘Fees	3
‘10. Fees payable to the Supreme Court, including fees worked out by reference to a percentage.	4 5
‘Pleadings	6
‘11. Pleadings, including dispensing with pleadings.	7
‘Transfer between courts	8
‘12. Transferring a cause, matter, action or proceeding between courts, including costs and procedures for the transfer.	9 10
‘Writs of inquiry	11
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‘Enlarging time	14
‘14. Enlarging time, including enlarging the number of days allowed by a jurisdiction law for the return of a writ.	15 16
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‘15. Referring a cause or matter to arbitration under the <i>Commercial Arbitration Act 1990</i> .	18 19
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‘Debts and liabilities of deceased persons	1
‘17. Debts and liabilities of deceased persons for the <i>Equity Act 1867</i> .	2
‘Proceedings against estates of deceased persons	3
‘18. Enabling a proceeding to be commenced against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) if no grant has been made.	4 5 6
‘Proceedings against persons who have died	7
‘19. Enabling a proceeding purported to be commenced against any person who has died to be treated as having been commenced against the person’s estate.	8 9 10
‘Maintenance of proceedings against estates of deceased persons	11
‘20. Enabling a proceeding commenced or treated as commenced against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) against a person appointed to represent the estate or, if a grant is made, against the personal representatives.	12 13 14 15
‘Service required etc. to be made on estate of deceased person	16
‘21. Service of a proceeding against, or any document required or permitted to be served in relation to, the estate of a deceased person, including the persons on whom service should be effected and enlarging the time for service.	17 18 19 20
‘Dispensing with rules of evidence	21
‘22. Dispensing with rules of evidence about the proof of something not genuinely in dispute or that may otherwise cause expense or delay without compensating advantage.	22 23 24

‘Disclosure and inspection	1
‘23. Disclosure and inspection.	2
‘Admissions	3
‘24. Admissions about questions of fact.	4
‘Recording evidence	5
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‘Regulation of persons and things	13
‘29. The regulation of persons and things in relation to any matter mentioned in items 1 to 28 or 30.	14 15
‘Functions etc. of persons	16
30. The functions, entitlements, obligations and powers of persons in relation to any matter mentioned in items 1 to 29.	17 18

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‘1. Experience and qualifications for approval as a mediator or case appraiser.	3 4
‘Staying proceedings	5
‘2. Staying proceedings, and the power of the Supreme Court to stay proceedings, until an ADR process is finished.	6 7
‘Costs	8
‘3. Persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid.	9 10
‘Jurisdiction	11
‘4. Jurisdiction of a case appraiser at a case appraisal.	12
‘Seeking independent advice or information	13
‘5. Ability of a mediator or case appraiser to seek independent advice or information.	14 15
‘Time for processes	16
‘6. Time within which an ADR process should be finished (which may be a time specified by the court).	17 18
‘Conduct of processes	19
‘7. Conduct of an ADR process.	20

‘Confidentiality	1
‘8. Confidentiality of a mediated agreement or case appraiser’s decision.	2
‘Powers, procedures etc. applying to arbitrations	3
‘9. Applying procedures and other matters similar to those applying to arbitrations under the <i>Commercial Arbitration Act 1990</i>.	4
	5
‘Penalties	6
‘10. Imposing penalties against a party who fails to cooperate in an ADR process.’.	7
	8

‘SCHEDULE 2

1

**‘SUPREME COURTS ACTS AND JURISDICTION
ACTS**

2

3

section 3 of the Act

4

‘PART 1—SUPREME COURT ACTS

5

Commercial Causes Act 1910

6

Common Law Pleading Act 1867

7

Common Law Process Act 1867

8

Costs Act 1867

9

Equity Act 1867

10

Equity Procedure Act 1873

11

Evidence And Discovery Act 1867

12

Interdict Act 1867

13

Judicature Act 1876

14

Legal Practitioners Act Amendment Act 1938

15

Legal Practitioners Act Amendment Act 1968

16

Sheriff’s Act 1875

17

Solicitors Act 1891

18

Supreme Court Act 1867

19

Supreme Court Act 1874

20

Supreme Court Act 1892

21

Supreme Court Act 1893

22

Supreme Court Act 1895

23

Supreme Court Act 1899	1
Supreme Court Act 1921	2
Supreme Court Acts Amendment Act (No. 2) 1958	3
Supreme Court Constitution Amendment Act 1861	4
Writs of Dedimus Act 1871.	5

PART 2—SUPREME COURT JURISDICTION ACTS 6

Appeal Costs Fund Act 1973	7
Charitable Funds Act 1958	8
Commercial Arbitration Act 1990	9
Common Law Practice Act 1867	10
Corporations Law	11
Court Funds Act 1973	12
Criminal Code	13
Criminal Code Act 1899	14
Crown Proceedings Act 1980	15
Evidence Act 1977	16
Judicial Review Act 1991	17
Jury Act 1929	18
Justices Act 1886	19
Penalties and Sentences Act 1992	20
Public Trustee Act 1978	21
Succession Act 1981	22
Traffic Act 1949.’	23

**PART 3—AMENDMENT OF DISTRICT COURTS ACT
1967**

		1
		2
	Act amended	3
Clause	10. This part and schedule 1 amend the <i>District Courts Act 1967</i> .	4
	Amendment of s 4 (Interpretation)	5
Clause	11.(1) Section 4, heading—	6
	<i>omit, insert—</i>	7
	‘Definitions’.	8
	(2) Section 4, definition “rules of court”—	9
	<i>omit.</i>	10
	(3) Section 4—	11
	<i>insert—</i>	12
	‘“ADR costs” means—	13
	(a) for a mediation—	14
	(i) the mediator’s fee; and	15
	(ii) the venue provider’s fee for providing the venue; and	16
	(iii) other costs prescribed under the rules; and	17
	(b) for a case appraisal—	18
	(i) the case appraiser’s fee; and	19
	(ii) the venue provider’s fee for providing the venue; and	20
	(iii) other costs prescribed under the rules.	21
	“ADR convenor” means a mediator or case appraiser.	22
	“ADR dispute” means a dispute referred to an ADR process.	23
	“ADR process” see section 91B.	24
	“case appraisal” see section 91D.	25

Courts Legislation Amendment

“case appraiser” means—	1
(a) a case appraiser approved under section 91F; or	2
(b) a Judge.	3
“dispute” means—	4
(a) a dispute in an action; or	5
(b) something else about which the parties are in dispute that may be dealt with in a mediation at the same time as an ADR dispute.	6 7
“District Courts jurisdiction Act” means—	8
(a) the <i>Commercial Arbitration Act 1990</i> ; or	9
(b) the <i>District Courts (Venue of Appeals) Act 1988</i> ; or	10
(c) a law prescribed under a regulation for this definition.	11
“mediation” see section 91C.	12
“mediator” means a mediator approved under section 91E.	13
“party” means a party to a dispute.	14
“referring court” , of a mediation or case appraisal, means the District Court that referred the action to mediation or case appraisal.	15 16
“referring order” means an order made under section 91I referring a dispute to an ADR process.	17 18
“rules” means rules of court under this Act.’.	19

	Insertion of new pt 6A	20
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Clause	12. After part 6—	21
	<i>insert—</i>	22

	‘PART 6A—ADR PROCESSES	23
--	-------------------------------	----

	<i>‘Division 1—Preliminary</i>	24
--	--------------------------------	----

‘Objects of part	1
‘91A. The objects of this part are—	2
(a) to provide an opportunity for litigants to participate in ADR processes in order to achieve negotiated settlements and satisfactory resolutions of disputes; and	3 4 5
(b) to introduce ADR processes into the court system to improve access to justice for litigants and to reduce cost and delay; and	6 7
(c) to provide a legislative framework allowing ADR processes to be conducted as quickly, and with as little formality and technicality, as possible; and	8 9 10
(d) to safeguard ADR processes—	11
(i) by ensuring they remain confidential; and	12
(ii) by extending the same protection to participants in an ADR process they would have if the dispute were before a District Court.	13 14 15
<i>‘Division 2—Important terms</i>	16
‘ADR process	17
‘91B.(1) An “ADR process” is a process of mediation or case appraisal under which the parties are helped to achieve an early, inexpensive settlement or resolution of their dispute.	18 19 20
‘(2) In division 6 ³ , an “ADR process” includes all the steps involved in an ADR process, including, for example—	21 22
(a) pre-mediation and post-mediation sessions; and	23
(b) a case appraisal session; and	24
(c) joint sessions; and	25
(d) private sessions; and	26
(e) another step prescribed under the rules.	27

³ Confidentiality, protection and immunity

‘Mediation	1
‘91C. “Mediation” is a process under the rules under which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.	2 3 4
‘Case appraisal	5
‘91D.(1) “Case appraisal” is a process under the rules under which a case appraiser provisionally decides a dispute.	6 7
‘(2) A case appraiser’s decision is not binding on the parties until—	8
(a) the time prescribed by the rules for filing an election to go to trial has passed; and	9 10
(b) a District Court, by order, gives effect to the decision.	11
<i>‘Division 3—Establishment of ADR processes</i>	12
‘Approval of mediators	13
‘91E. The Chief Judge may approve, or refuse to approve, a person as a mediator.	14 15
‘Approval of case appraisers	16
‘91F. The Chief Judge may approve, or refuse to approve, a person as a case appraiser.	17 18
‘ADR register	19
‘91G.(1) The registrar of the Supreme Court must keep a register of information about ADR processes.	20 21
‘(2) The register may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.	22 23
‘(3) Without limiting subsection (2), the registrar may change the form in which a register or a part of a register is kept.	24 25
‘(4) The register must contain—	26

Courts Legislation Amendment

(a) the name and address of each mediator and each case appraiser (other than a Judge); and	1 2
(b) other information prescribed under the rules; and	3
(c) other information decided by the Senior Judge Administrator of the Supreme Court.	4 5
‘Parties may agree to ADR process	6
‘91H.(1) The parties to a dispute may agree to refer their dispute to an ADR process.	7 8
‘(2) If the parties agree to the referral, they must file a consent order in the form prescribed under the rules with the registrar.	9 10
‘(3) A consent order filed under this section is taken to be a referring order.	11 12
‘Court may consider and order reference to ADR process	13
‘91I.(1) A District Court may require the parties or their representatives to attend before it to enable the court to decide whether the parties’ dispute should be referred to an ADR process.	14 15 16
‘(2) The court may, by order (“referring order”), refer the dispute for mediation or case appraisal.	17 18
‘(3) Without limiting the court’s discretion, the court may take the following matters into account when deciding whether to refer a dispute to case appraisal—	19 20 21
(a) whether the costs of litigating the dispute to the end are likely to be disproportionate to the benefit gained;	22 23
(b) the likelihood of an appraisal producing a compromise or an abandonment of a claim or defence;	24 25
(c) other circumstances justify an appraisal.	26
‘Parties must attend at ADR process if District Court orders	27
‘91J.(1) If a referring order is made, the parties—	28

Courts Legislation Amendment

- (a) must attend before the ADR convenor appointed to conduct the ADR process; and 1
2
- (b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order. 3
4
5
- ‘(2) If a party impedes the ADR process, a District Court may impose sanctions against the party, including, for example— 6
7
- (a) by ordering that any claim for relief by the defaulting party is stayed until further order; and 8
9
- (b) by taking the party’s action into account when awarding costs in the proceeding or in another related proceeding between the parties. 10
11
12
- ‘Procedure at case appraisal 13**
- ‘91K.(1) At a case appraisal, the case appraiser— 14
- (a) must decide the procedure to be used at the case appraisal; and 15
- (b) may adopt any procedure that will, in the case appraiser’s opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and 16
17
18
- (c) must finish the case appraisal as quickly as possible. 19
- ‘(2) However, the case appraiser may, in special circumstances— 20
- (a) receive evidence; and 21
- (b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser. 22
23
- ‘(3) A District Court may, at any time, give directions about procedure to be used at the case appraisal. 24
25
- ‘(4) This section is subject to section 91L. 26
- ‘Subpoenas 27**
- ‘91L.(1) A person may be subpoenaed to appear at a case appraisal only by order of a District Court. 28
29

Courts Legislation Amendment

‘(2) A person may not be subpoenaed to appear at a mediation. 1

‘(3) A person subpoenaed to appear at a case appraisal must not be 2
 compelled to answer a question, or produce a document, the person could 3
 not be compelled to answer or produce before a District Court. 4

‘Division 4—Party unable to pay share of costs 5

‘Party unable to pay share of costs 6

‘91M.(1) If, at any time, a District Court is of the opinion a party to an 7
 ADR process is unable, because of the party’s financial circumstances, to 8
 pay the party’s percentage of the ADR costs, the court may make an order 9
 appropriate in the circumstances. 10

‘(2) Without limiting subsection (1), the order may provide— 11

(a) the reference to the ADR process be cancelled; or 12

(b) the referring order be revoked and another referring order made. 13

‘Division 5—What to do when ADR process is finished 14

‘Mediated resolution agreement 15

‘91N.(1) If, at a mediation, the parties agree on a resolution of their 16
 dispute or part of it, the agreement must be written down and signed by or 17
 for each party and by the mediator. 18

‘(2) The agreement has the same effect as any other compromise. 19

‘Mediator to file certificate 20

‘91O. As soon as practicable after a mediation has finished, the mediator 21
 must file with the registrar of the referring court a certificate about the 22
 mediation in the form prescribed under the rules. 23

‘Case appraiser to file certificate and decision	1
‘91P. As soon as practicable after a case appraisal has finished, the case appraiser must file with the registrar of the referring court—	2 3
(a) a certificate about the case appraisal in the form prescribed under the rules; and	4 5
(b) the case appraiser’s decision (if any).	6
‘Orders giving effect to mediation agreement	7
‘91Q.(1) A party may apply to a District Court for an order giving effect to an agreement reached after mediation.	8 9
‘(2) However, a party may apply for the order only after the mediator’s certificate is filed with the registrar of the referring court.	10 11
‘(3) The court may make any order it considers appropriate in the circumstances.	12 13
‘Orders giving effect to case appraiser’s decision	14
‘91R.(1) A party may apply to a District Court for an order giving effect to a case appraiser’s decision after the time prescribed under the rules for electing to go to trial has passed.	15 16 17
‘(2) However, a party may apply for the order before the time mentioned in subsection (1) if all parties agree.	18 19
‘(3) The court may make any order it considers appropriate in the circumstances.	20 21
<i>‘Division 6—Confidentiality, protection and immunity</i>	22
‘ADR convenors to maintain secrecy	23
‘91S.(1) An ADR convenor must not, without reasonable excuse, disclose information coming to the convenor’s knowledge during an ADR process.	24 25 26
Maximum penalty—50 penalty units.	27

Courts Legislation Amendment

- ‘(2) It is a reasonable excuse to disclose information if the disclosure is made—
- (a) with the agreement of all the parties to the ADR process; or
 - (b) for this part; or
 - (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
 - (d) for an inquiry or proceeding about an offence happening during the ADR process; or
 - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or
 - (f) under a requirement imposed under an Act.

‘Ordinary protection and immunity allowed

‘91T.(1) In performing the functions of mediator or case appraiser, an ADR convenor has the same protection and immunity as a Judge performing the functions of a Judge.

‘(2) A party appearing in an ADR dispute has the same protection and immunity the party would have if the dispute were being heard before a District Court.

‘(3) A witness attending in an ADR dispute has the same protection and immunity as a witness attending before a District Court.

‘(4) A document produced at, or used for, an ADR dispute has the same protection during the ADR dispute it would have if produced before a District Court.

‘(5) In subsection (2)—
 “party” includes a party’s lawyer or agent.

‘Admissions made to ADR convenors

‘91U.(1) Evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial of the dispute or in another civil proceeding before a District Court or elsewhere only if all parties to the dispute agree.

	‘(2) In subsection (1)—	1
	“civil proceeding” does not include a civil proceeding founded on fraud	2
	alleged to be connected with, or to have happened during, the ADR	3
	process.	4
	<i>‘Division 7—Miscellaneous</i>	5
	‘Revocation of approval as mediator or case appraiser	6
	‘91V.(1) The Chief Judge may revoke the approval of a person as a	7
	mediator or case appraiser.	8
	‘(2) The Chief Judge must give the person a statement of reasons for the	9
	revocation.’.	10
	Insertion of new s 94A	11
Clause	13. After section 94, in part 7, division 1—	12
	<i>insert—</i>	13
	‘Appeal against refusal to approve and revocation of approval as	14
	mediator or case appraiser	15
	‘94A. An appeal lies to the Court of Appeal, by leave of that court,	16
	against—	17
	(a) a refusal to approve a person as a mediator or case appraiser; or	18
	(b) the revocation of approval of a person as a mediator or case	19
	appraiser.’.	20
	Replacement of s 101 (Power to make rules of court)	21
Clause	14. Section 101—	22
	<i>omit, insert—</i>	23
	‘Rule making power	24
	‘101.(1) The Governor in Council, with the agreement of the Chief Judge	25
	and 5 or more other Judges, may make rules of court under this Act for a	26

Courts Legislation Amendment

	jurisdiction law.	1
	‘(2) Without limiting subsection (1), a rule may make provision about any matter that—	2 3
	(a) is required or permitted to be prescribed under a jurisdiction law; or	4 5
	(b) is necessary or convenient to be prescribed for carrying out or giving effect to a jurisdiction law.	6 7
	‘(3) Without limiting subsections (1) and (2), a rule may also make provision about—	8 9
	(a) the practices and procedures of District Courts and their registries; or	10 11
	(b) another matter mentioned in the schedule.	12
	‘(4) In this section—	13
	“jurisdiction law” means—	14
	(a) this Act; or	15
	(b) a District Courts jurisdiction Act; or	16
	(c) another law giving jurisdiction to District Courts.’.	17
	Insertion of new ss 111 and 112	18
Clause	15. After section 110—	19
	<i>insert—</i>	20
	‘Saving of existing rules of court	21
	‘ 111.(1) In this section—	22
	“former section 101” means section 101 as in force immediately before the commencement.	23 24
	“new section 101” means section 101 as in force immediately after the commencement.	25 26
	‘(2) This section applies to a rule made under the former section 101 and in force immediately before the commencement.	27 28

Courts Legislation Amendment

‘(3) The rule continues in force after the commencement as if it were made under the new section 101. 1
2

‘(4) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies. 3
4

‘(5) This section expires 2 years after it is made. 5

‘Numbering and renumbering of Act 6

‘112. Section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used in the next reprint of this Act produced under the *Reprints Act 1992*.’ 7
8
9

Insertion of new Schedule 10

Clause 16. At the end— 11
insert— 12

‘SCHEDULE 13

‘SUBJECT MATTER FOR RULES 14

section 101 of the Act 15

‘PART 1—GENERAL 16

‘Jurisdiction of Judge in chambers 17

‘1. Jurisdiction of a Judge in chambers. 18

‘Jurisdiction of registrars and other officers 19

‘2. Jurisdiction of registrars and other officers of District Courts. 20

‘Appeals from registrars and other officers	1
‘3. Appeals from registrars and other officers of District Courts.	2
‘Keeping records by registrars	3
‘4. How books, entries and accounts (whether or not in documentary form) are to be kept by registrars.	4 5
‘Times for appearances etc.	6
‘5. Times for appearing to plaintiffs and summonses, for filing and serving notices of defence.	7 8
‘Particulars of plaint etc.	9
‘6. Particulars to be given in a plaint or defence, including set-offs and counterclaims.	10 11
‘Service of documents	12
‘7. Practice and procedure of District Courts in relation to the service of documents inside and outside the State, including outside Australia.	13 14
‘Costs	15
‘8. Costs to be allowed to barristers and solicitors, and expenses to be paid to witnesses.	16 17
‘Fees	18
‘9. Fees of court, and when, how and by whom the fees are payable.	19
‘Forms	20
‘10. Forms.	21

‘Taking notes of trial	1
‘11. The taking of the notes of the trial or hearing of any action or matter.	2
‘PART 2—ADR PROCESSES	3
‘Approval of mediator or case appraiser	4
‘1. Experience and qualifications for approval as a mediator or case appraiser.	5 6
‘Staying proceedings	7
‘2. Staying proceedings, and the power of District Courts to stay proceedings, until an ADR process is finished.	8 9
‘Costs	10
‘3. Persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid.	11 12
‘Jurisdiction	13
‘4. Jurisdiction of a case appraiser at a case appraisal.	14
‘Seeking independent advice or information	15
‘5. Ability of a mediator or case appraiser to seek independent advice or information.	16 17
‘Time for processes	18
‘6. Time within which an ADR process should be finished (which may be a time specified by the court).	19 20

‘Conduct of processes	1
‘7. Conduct of an ADR process.	2
‘Confidentiality	3
‘8. Confidentiality of a mediated agreement or case appraiser’s decision.	4
‘Powers, procedures etc. applying to arbitrations	5
‘9. Applying procedures and other matters similar to those applying to arbitrations under the <i>Commercial Arbitration Act 1990</i>.	6 7
‘Penalties	8
‘10. Imposing penalties against a party who fails to cooperate in an ADR process.’.	9 10

PART 4—AMENDMENT OF MAGISTRATES COURTS ACT 1921	11 12
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Act amended	13
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Clause	17. This part and schedule 2 amend the <i>Magistrates Courts Act 1921</i> .	14
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Amendment of s 2 (Interpretation)	15
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Clause	18.(1) Section 2, heading—	16
	<i>omit, insert—</i>	17

‘Definitions’.	18
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(2) Section 2—	19
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<i>insert—</i>	20
----------------	----

“ADR costs” means—	21
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Courts Legislation Amendment

(a) for a mediation—	1
(i) the mediator’s fee; and	2
(ii) the venue provider’s fee for providing the venue; and	3
(iii) other costs prescribed under the rules; and	4
(b) for a case appraisal—	5
(i) the case appraiser’s fee; and	6
(ii) the venue provider’s fee for providing the venue; and	7
(iii) other costs prescribed under the rules.	8
“ADR convenor” means a mediator or case appraiser.	9
“ADR dispute” means a dispute referred to an ADR process.	10
“ADR process” see section 10C.	11
“case appraisal” see section 10E.	12
“case appraiser” means—	13
(a) a case appraiser approved under section 10G; or	14
(b) a Magistrate.	15
“dispute” means—	16
(a) a dispute in an action; or	17
(b) something else about which the parties are in dispute that may be dealt with in a mediation at the same time as an ADR dispute.	18 19
“mediation” see section 10D.	20
“mediator” means a mediator approved under section 10F.	21
“party” means a party to a dispute.	22
“referring court” , of a mediation or case appraisal, means the Magistrates Court that referred the action to mediation or case appraisal.	23 24
“referring order” means an order made under section 10I referring a dispute to an ADR process.	25 26
“rules” means rules of court under this Act.	27
“Small Debts Court” see section 4I(2).’.	28

	Insertion of new pt 5	1
Clause	19. After section 10A—	2
	<i>insert—</i>	3
	‘PART 5—ADR PROCESSES	4
	<i>‘Division 1—Preliminary</i>	5
	‘Objects of part	6
	‘10B. The objects of this part are—	7
	(a) to provide an opportunity for litigants to participate in ADR processes in order to achieve negotiated settlements and satisfactory resolutions of disputes; and	8 9 10
	(b) to introduce ADR processes into the court system to improve access to justice for litigants and to reduce cost and delay; and	11 12
	(c) to provide a legislative framework allowing ADR processes to be conducted as quickly, and with as little formality and technicality, as possible; and	13 14 15
	(d) to safeguard ADR processes—	16
	(i) by ensuring they remain confidential; and	17
	(ii) by extending the same protection to participants in an ADR process they would have if the dispute were before a Magistrates Court.	18 19 20
	<i>‘Division 2—Important terms</i>	21
	‘ADR process	22
	‘10C.(1) An “ ADR process ” is a process of mediation or case appraisal under which the parties are helped to achieve an early, inexpensive settlement or resolution of their dispute.	23 24 25

Courts Legislation Amendment

‘(2) In division 6⁴, an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

- (a) pre-mediation and post-mediation sessions; and
- (b) a case appraisal session; and
- (c) joint sessions; and
- (d) private sessions; and
- (e) another step prescribed under the rules.

‘**Mediation**

‘**10D. “Mediation”** is a process under the rules under which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.

‘**Case appraisal**

‘**10E.(1) “Case appraisal”** is a process under the rules under which a case appraiser provisionally decides a dispute.

‘(2) A case appraiser’s decision is not binding on the parties until—

- (a) the time prescribed by the rules for filing an election to go to trial has passed; and
- (b) a Magistrates Court, by order, gives effect to the decision.

‘Division 3—Establishment of ADR processes

‘**Approval of mediators**

‘**10F.** The Chief Stipendiary Magistrate may approve, or refuse to approve, a person as a mediator.

⁴ Confidentiality, protection and immunity

‘Approval of case appraisers

1

‘10G. The Chief Stipendiary Magistrate may approve, or refuse to approve, a person as a case appraiser.

2

3

‘ADR register

4

‘10H.(1) The registrar of a Magistrates Court in Brisbane nominated by the Chief Stipendiary Magistrate for the purpose must keep a register of information about ADR processes.

5

6

7

‘(2) The register may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.

8

9

‘(3) Without limiting subsection (2), the registrar may change the form in which a register or a part of a register is kept.

10

11

‘(4) The register must contain—

12

(a) the name and address of each mediator and each case appraiser (other than a Magistrate); and

13

14

(b) other information prescribed under the rules; and

15

(c) other information decided by the Chief Stipendiary Magistrate.

16

‘Parties may agree to ADR process

17

‘10I.(1) The parties to a dispute may agree to refer their dispute to an ADR process.

18

19

‘(2) If the parties agree to the referral, they must file a consent order in the form prescribed under the rules with the registrar.

20

21

‘(3) A consent order filed under this section is taken to be a referring order.

22

23

‘Court may consider and order reference to ADR process

24

‘10J.(1) A Magistrates Court may require the parties or their representatives to attend before it to enable the court to decide whether the parties’ dispute should be referred to an ADR process.

25

26

27

‘(2) The court may, by order (“ referring order ”), refer the dispute for mediation or case appraisal.	1 2
‘(3) Without limiting the court’s discretion, the court may take the following matters into account when deciding whether to refer a dispute to case appraisal—	3 4 5
(a) whether the costs of litigating the dispute to the end are likely to be disproportionate to the benefit gained;	6 7
(b) the likelihood of an appraisal producing a compromise or an abandonment of a claim or defence;	8 9
(c) other circumstances justify an appraisal.	10
‘Parties must attend at ADR process if Magistrates Court orders	11
‘10K.(1) If a referring order is made, the parties—	12
(a) must attend before the ADR convenor appointed to conduct the ADR process; and	13 14
(b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order.	15 16 17
‘(2) If a party impedes the ADR process, a Magistrates Court may impose sanctions against the party, including, for example—	18 19
(a) by ordering that any claim for relief by the defaulting party is stayed until further order; and	20 21
(b) by taking the party’s action into account when awarding costs in the proceeding or in another related proceeding between the parties.	22 23 24
‘Procedure at case appraisal	25
‘10L.(1) At a case appraisal, the case appraiser—	26
(a) must decide the procedure to be used at the case appraisal; and	27
(b) may adopt any procedure that will, in the case appraiser’s opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and	28 29 30

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(c) must finish the case appraisal as quickly as possible.	1
‘(2) However, the case appraiser may, in special circumstances—	2
(a) receive evidence; and	3
(b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.	4 5
‘(3) A Magistrates Court may, at any time, give directions about procedure to be used at the case appraisal.	6 7
‘(4) This section is subject to section 10M.	8
‘Subpoenas	9
‘10M.(1) A person may be subpoenaed to appear at a case appraisal only by order of a Magistrates Court.	10 11
‘(2) A person may not be subpoenaed to appear at a mediation.	12
‘(3) A person subpoenaed to appear at a case appraisal must not be compelled to answer a question, or produce a document, the person could not be compelled to answer or produce before a Magistrates Court.	13 14 15
<i>‘Division 4—Party unable to pay share of costs</i>	16
‘Party unable to pay share of costs	17
‘10N.(1) If, at any time, a Magistrates Court is of the opinion a party to an ADR process is unable, because of the party’s financial circumstances, to pay the party’s percentage of the ADR costs, the court may make an order appropriate in the circumstances.	18 19 20 21
‘(2) Without limiting subsection (1), the order may provide—	22
(a) the reference to the ADR process be cancelled; or	23
(b) the referring order be revoked and another referring order made.	24

*Division 5—What to do when ADR process is finished***‘Mediated resolution agreement**

‘10O.(1) If, at a mediation, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and by the mediator.

‘(2) The agreement has the same effect as any other compromise.

‘Mediator to file certificate

‘10P. As soon as practicable after a mediation has finished, the mediator must file with the registrar of the referring court a certificate about the mediation in the form prescribed under the rules.

‘Case appraiser to file certificate and decision

‘10Q. As soon as practicable after a case appraisal has finished, the case appraiser must file with the registrar of the referring court—

- (a) a certificate about the case appraisal in the form prescribed under the rules; and
- (b) the case appraiser’s decision (if any).

‘Orders giving effect to mediation agreement

‘10R.(1) A party may apply to a Magistrates Court for an order giving effect to an agreement reached after mediation.

‘(2) However, a party may apply for the order only after the mediator’s certificate is filed with the registrar of the referring court.

‘(3) The Court may make any order it considers appropriate in the circumstances.

‘Orders giving effect to case appraiser’s decision

‘10S.(1) A party may apply to a Magistrates Court for an order giving effect to a case appraiser’s decision after the time prescribed under the rules

for electing to go to trial has passed.

‘(2) However, a party may apply for the order before the time mentioned in subsection (1) if all parties agree.

‘(3) The court may make any order it considers appropriate in the circumstances.

‘Division 6—Confidentiality, protection and immunity

‘ADR convenors to maintain secrecy

‘10T.(1) An ADR convenor must not, without reasonable excuse, disclose information coming to the convenor’s knowledge during an ADR process.

Maximum penalty—50 penalty units.

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

- (a) with the agreement of all the parties to the ADR process; or
- (b) for this part; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the ADR process; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or
- (f) under a requirement imposed under an Act.

‘Ordinary protection and immunity allowed

‘10U.(1) In performing the functions of mediator or case appraiser, an ADR convenor has the same protection and immunity as a Magistrate performing the functions of a Magistrate.

‘(2) A party appearing in an ADR dispute has the same protection and immunity the party would have if the dispute were being heard before a

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Magistrates Court.	1
‘(3) A witness attending in an ADR dispute has the same protection and immunity as a witness attending before a Magistrates Court.	2 3
‘(4) A document produced at, or used for, an ADR dispute has the same protection during the ADR dispute it would have if produced before a Magistrates Court.	4 5 6
‘(5) In subsection (2)—	7
“party” includes a party’s lawyer or agent.	8
‘Admissions made to ADR convenors	9
‘10V.(1) Evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial of the dispute or before another civil proceeding in a Magistrates Court or elsewhere only if all the parties to the dispute agree.	10 11 12 13
‘(2) In subsection (1)—	14
“civil proceeding” does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process.	15 16 17
<i>Division 7—Miscellaneous</i>	18
‘Revocation of approval as mediator or case appraiser	19
‘10W.(1) The Chief Stipendiary Magistrate may revoke the approval of a person as a mediator or case appraiser.	20 21
‘(2) The Chief Stipendiary Magistrate must give the person a statement of reasons for the revocation.’.	22 23
Insertion of new s 11AF	24
Clause 20. After section 11AE, in part 6—	25
<i>insert—</i>	26

‘Appeal against refusal to approve and revocation of approval as mediator or case appraiser

‘11AF. An appeal lies to the District Court against—

- (a) a refusal to approve a person as a mediator or case appraiser; or
- (b) the revocation of approval of a person as a mediator or case appraiser.’.

Insertion of new s 13C

Clause **21.** After section 13B, in part 7—

insert—

‘Procedure of court

‘13C. The procedure for appeal to a Magistrates Court is, in the absence of relevant rules, as directed by a Magistrate.’.

Replacement of s 14 (Power to make rules of court)

Clause **22.** Section 14—

omit, insert—

‘Rule making power

‘14.(1) The Governor in Council may make rules of court under this Act for a jurisdiction law.

‘(2) Without limiting subsection (1), a rule may make provision about any matter that—

- (a) is required or permitted to be prescribed under a jurisdiction law; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to a jurisdiction law.

‘(3) Without limiting subsections (1) and (2), a rule may also make provision about—

- (a) the practices and procedures of Magistrates Courts and their registries; or

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	(b) another matter mentioned in the schedule.	1
	‘(4) In this section—	2
	“jurisdiction law” means—	3
	(a) this Act; or	4
	(b) another law giving jurisdiction to Magistrates Courts.’.	5
	Replacement of s 16 (Existing rules of court)	6
Clause	23. Section 16—	7
	<i>omit, insert—</i>	8
	‘Saving of existing rules of court	9
	‘ 16.(1) In this section—	10
	“former section 14” means section 14 as in force immediately before the commencement.	11 12
	“new section 14” means section 14 as in force immediately after the commencement.	13 14
	‘(2) This section applies to—	15
	(a) a rule made under the former section 14 and in force immediately before the commencement; and	16 17
	(b) any other rule of court contained in an order in council made under this Act and in force immediately before the commencement.	18 19 20
	‘(3) The rule continues in force after the commencement as if it were made under the new section 14.	21 22
	‘(4) This section is a law to which the <i>Acts Interpretation Act 1954</i> , section 20A applies.	23 24
	‘(5) This section expires 2 years after it is made.’.	25
	Insertion of new s 17	26
Clause	24. After section 16—	27
	<i>insert—</i>	28

‘Numbering and renumbering of Act 1

‘17. Section 43 (Numbering and renumbering of provisions) of the 2
Reprints Act 1992 must be used in the next reprint of this Act produced 3
 under the *Reprints Act 1992*.’ 4

Insertion of new schedule 5

Clause **25.** At the end— 6
insert— 7

‘SCHEDULE 8

‘SUBJECT MATTER FOR RULES 9

section 14 of the Act 10

‘PART 1—GENERAL 11

‘Jurisdiction with consent 12

‘1. Jurisdiction, with the consent of the parties to the action, to try an 13
 action that might be brought in the Supreme Court, and regulating the 14
 exercise of the consent jurisdiction. 15

‘Jurisdiction for recovery of possession of land 16

‘2. Jurisdiction, to the extent of the jurisdiction of District Courts, for the 17
 recovery of possession of land (with or without rent or mesne profits) by 18
 landlords from tenants and other persons. 19

‘Powers etc of registrars and other officers 20

‘3. The powers, duties, and authorities of officers of Magistrates Courts. 21

‘Sittings of Magistrates Courts	1
‘4. Sittings of Magistrates Courts.	2
‘Starting, and transferring, proceedings	3
‘5. Districts and courts in which proceedings must be started, and transfer of proceedings from a district to another district.	4 5
‘Summonses	6
‘6. Summonses for, and the attendance and examination of, witnesses before a Magistrates Court, in arbitration proceedings or otherwise.	7 8
‘New trials, appeals and evidence	9
‘7. New trials and appeals, including the evidence to be used at the new trial or appeal and the admission of further evidence in exceptional cases and special cases.	10 11 12
‘Proceedings after death or insolvency	13
‘8. Abatement or continuance of action if a plaintiff dies or becomes insolvent.	14 15
‘Keeping records by registrars	16
‘9. How books, entries and accounts (whether or not in documentary form) are to be kept by registrars.	17 18
‘Referral to arbitration	19
‘10. Referring, with or without consent of parties, an action to arbitration under the <i>Commercial Arbitration Act 1990</i>, and enforcing arbitration awards.	20 21 22

‘Service of documents	1
‘11. Practice and procedure of Magistrates Courts in relation to the service of documents inside and outside the State, including outside Australia.	2 3 4
‘Costs	5
‘12. Costs to be allowed to barristers and solicitors, and expenses to be paid to witnesses.	6 7
‘Fees	8
‘13. Fees of court, and when, how and by whom the fees are payable.	9
‘Forms	10
‘14. Forms.	11
‘Contempt	12
‘15. Imposing, or authorising a Magistrates Court of its own initiative, to impose fines or other punishment for contempt of court by any person (including officers of the Supreme Court), or for misconduct or neglect by any officer.	13 14 15 16
‘PART 2—ADR PROCESSES	17
‘Approval of mediator or case appraiser	18
‘1. Experience and qualifications for approval as a mediator or case appraiser.	19 20

‘Staying proceedings	1
‘2. Staying proceedings, and the power of Magistrates Courts to stay proceedings, until an ADR process is finished.	2 3
‘Costs	4
‘3. Persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid.	5 6
‘Jurisdiction	7
‘4. Jurisdiction of a case appraiser at a case appraisal.	8
‘Seeking independent advice or information	9
‘5. Ability of a mediator or case appraiser to seek independent advice or information.	10 11
‘Time for processes	12
‘6. Time within which an ADR process should be finished (which may be a time specified by the court).	13 14
‘Conduct of processes	15
‘7. Conduct of an ADR process.	16
‘Confidentiality	17
‘8. Confidentiality of a mediated agreement or case appraiser’s decision.	18
‘Powers, procedures etc. applying to arbitrations	19
‘9. Applying procedures and other matters similar to those applying to arbitrations under the <i>Commercial Arbitration Act 1990</i> .	20 21

	‘Penalties	1
	‘10. Imposing penalties against a party who fails to cooperate in an ADR process.’.	2 3
	 PART 5—AMENDMENT OF JUDICIAL REVIEW ACT 1991	 4 5
	Act amended	6
Clause	26. This part amends the <i>Judicial Review Act 1991</i> .	7
	 Amendment of s 3 (Definitions)	 8
Clause	27.(1) Section 3, definitions “GOC” and “rules of court”— <i>omit.</i>	9 10
	(2) Section 3— <i>insert—</i>	11 12
	‘“ rules of court ” mean the rules of court of the Supreme Court.’.	13
	 Replacement of s 18 (Act to operate despite existing laws)	 14
Clause	28. Section 18— <i>omit, insert—</i>	15 16
	‘Operation of other laws	17
	‘ 18.(1) This Act has effect despite any law in force at its commencement.	18
	‘ (2) However, this Act does not—	19
	(a) affect the operation of an enactment mentioned in schedule 1, part 1; or	20 21
	(b) apply to decisions made, proposed to be made, or required to be made, under an enactment mentioned in schedule 1, part 2.’.	22 23

	Omission of s 55 (Rules may provide for service etc.)	1
Clause	29. Section 55—	2
	<i>omit.</i>	3
	Omission of pt 7 (Amendments)	4
Clause	30. Part 7—	5
	<i>omit.</i>	6
	Amendment of sch 1	7
Clause	31.(1) Schedule 1, heading—	8
	<i>omit, insert—</i>	9
	‘SCHEDULE 1	10
	‘OPERATION OF OTHER LAWS	11
	section 18 of the Act	12
	‘PART 1—ENACTMENTS THAT PROVIDE FOR	13
	NON-REVIEW OR LIMITED REVIEW OF	14
	DECISIONS’.	15
	(2) Schedule 1, item 3—	16
	<i>omit, insert—</i>	17
	‘3. <i>Industrial Relations Act 1990</i> , sections 13 and 93’.	18
	(3) Schedule 1, item 5—	19
	<i>omit, insert—</i>	20
	‘5. <i>Retail Shop Leases Act 1994</i> , section 88’.	21
	(4) Schedule 1, at the end—	22
	<i>insert—</i>	23

**‘PART 2—ENACTMENTS TO WHICH THIS ACT
DOES NOT APPLY**

- | | |
|---|---|
| | 1 |
| | 2 |
| 1. <i>District Courts Act 1967</i> , sections 91E, 91F and 91V(1) | 3 |
| 2. <i>Magistrates Courts Act 1921</i> , sections 10F, 10G and 10W(1) | 4 |
| 3. <i>Supreme Court of Queensland Act 1991</i> , sections 100E, 100F and 100V(1). | 5 |
| | 6 |
| | 7 |

SCHEDULE 1	1
MINOR AMENDMENTS OF DISTRICT COURTS ACT 1967	2 3
section 10 of the Act	4
1. Section 1(2) and heading—	5
<i>omit.</i>	6
2. Section 1(3) and (4) and heading to section 1(3)—	7
<i>omit, insert—</i>	8
‘Suspension of Act’s operation	9
‘1A. A regulation may provide that this Act or a provision of this Act is not in force for a district.’	10 11
3. Section 3(3) and heading—	12
<i>omit.</i>	13
4. Heading before section—	14
<i>omit, insert—</i>	15
<i>‘Division 1—Courts’.</i>	16
5. Section 5(1), heading—	17
<i>omit, insert—</i>	18
‘Appointment of District Courts and assignment of districts’.	19

SCHEDULE 1 (continued)

6. Section 5, ‘proclamation’—	1
<i>omit, insert—</i>	2
‘regulation’.	3
7. Section 5(2), heading—	4
<i>omit.</i>	5
8. Section 6(2)—	6
<i>renumber</i> as section 6A.	7
9. Heading before section 9—	8
<i>omit, insert—</i>	9
‘ <i>Division 2—Judges</i> ’.	10
10. Section 17, ‘, by order in council,’—	11
<i>omit.</i>	12
11. Section 19(1) ‘by proclamation’—	13
<i>omit.</i>	14
12. Heading before section 28—	15
<i>omit, insert—</i>	16
‘ <i>Division 3—Certiorari, mandamus and prohibition</i> ’.	17
13. Headings before sections 29, 30 and 31—	18
<i>omit.</i>	19

SCHEDULE 1 (continued)

14. Section 31(1), ‘to be a stay of proceedings’—	1
<i>omit.</i>	2
15. Section 31(2), heading—	3
<i>omit.</i>	4
16. Heading before section 33—	5
<i>omit, insert—</i>	6
‘ <i>Division 4—Registries</i> ’.	7
17. Heading before section 34—	8
<i>omit, insert—</i>	9
‘ <i>Division 5—Officers</i> ’.	10
18. Section 36, ‘those Acts’—	11
<i>omit, insert—</i>	12
‘that Act’.	13
19. Section 37(2), heading—	14
<i>omit.</i>	15
20. Heading before section 46—	16
<i>omit.</i>	17
21. Heading before section 51—	18
<i>omit, insert—</i>	19
‘ <i>Division 6—Barristers, solicitors and agents</i> ’.	20

SCHEDULE 1 (continued)

22. Section 53(1), ‘, by proclamation,’—	1
<i>omit.</i>	2
23. Section 55(3)—	3
<i>renumber</i> as section 55A.	4
24. Before section 58, in part 4—	5
<i>insert—</i>	6
‘ <i>Division 1—Criminal jurisdiction</i> ’.	7
25. Section 60, ‘by proclamation’—	8
<i>omit, insert—</i>	9
‘by regulation’.	10
26. Section 60, ‘the proclamation’ (first and third mentions)—	11
<i>omit, insert—</i>	12
‘the regulation’.	13
27. Section 60, ‘publication of the proclamation in the Gazette’—	14
<i>omit, insert—</i>	15
‘notification of the regulation’.	16
28. Heading before section 61—	17
<i>omit, insert—</i>	18
‘ <i>Division 2—Procedure</i> ’.	19

SCHEDULE 1 (continued)

29. Before section 66, in part 5—	1
<i>insert—</i>	2
‘ <i>Division 1—Court’s civil jurisdiction and powers</i> ’.	3
30. Section 74(2)—	4
<i>renumber</i> as section 74A.	5
31. Heading before section 75—	6
<i>omit, insert—</i>	7
‘ <i>Division 2—Trial by jury</i> ’.	8
32. Heading before section 76—	9
<i>omit, insert—</i>	10
‘ <i>Division 3—Evidence</i> ’.	11
33. Heading before section 77—	12
<i>omit, insert—</i>	13
‘ <i>Division 4—Removal of actions</i> ’.	14
34. Section 83(2) and (3)—	15
<i>renumber</i> as section 83A(1) and (2) respectively.	16
35. Heading before section 92—	17
<i>omit, insert—</i>	18
‘ <i>Division 1—Appeals to Court of Appeal</i> ’.	19

SCHEDULE 1 (continued)

36. Before section 95—	1
<i>insert—</i>	2
‘ <i>Division 2—Appeals and special cases from Magistrates Courts</i> ’.	3
37. Section 95(3)—	4
<i>renumber</i> as section 95A.	5
38. Before section 96—	6
<i>insert—</i>	7
‘ <i>Division 3—Other appeals to District Courts</i> ’.	8
39. Heading before section 97—	9
<i>omit.</i>	10
40. Section 99—	11
<i>omit.</i>	12
41. Part 9, heading and heading before section 101—	13
<i>omit, insert—</i>	14
‘ PART 9—MISCELLANEOUS ’.	15
42. Headings before sections 102 and 103—	16
<i>omit.</i>	17
43. Section 102(1), ‘The Governor in Council may from time to time by order in council determine’—	18
<i>omit, insert—</i>	19
	20

 SCHEDULE 1 (continued)

‘A regulation may fix’.	1
44. Sections 108 and 109—	2
<i>omit, insert—</i>	3
‘Regulation making power	4
‘108. The Governor in Council may make regulations under this Act.	5
‘PART 10—TRANSITIONAL PROVISIONS	6
‘References to District Courts	7
‘109.(1) In another Act, a reference to a District Court is a reference to a District Court within the meaning of this Act.	8 9
‘(2) For an Act passed before the commencement of this Act, subsection (1) has effect even though the reference is expressed to relate to a District Court within the meaning of another Act.’.	10 11 12 13

SCHEDULE 2	1
MINOR AMENDMENTS OF MAGISTRATES COURTS ACT 1921	2 3
section 17 of the Act	4
1. Before section 1—	5
insert—	6
‘PART 1—PRELIMINARY’.	7
2. Section 1—	8
<i>omit, insert—</i>	9
‘Short title	10
‘1. This Act may be cited as the <i>Magistrates Courts Act 1921</i> .’	11
3. Before section 4—	12
<i>insert—</i>	13
‘PART 2—JURISDICTION’.	14
4. Section 4A, ‘The Court’—	15
<i>omit, insert—</i>	16
‘A Magistrates Court’.	17
5. Section 4C(2), ‘another Court’—	18
<i>omit, insert—</i>	19
‘any other court’.	20

SCHEDULE 2 (continued)

6. Section 4D, ‘the Court’ (first mention)—	1
<i>omit, insert—</i>	2
‘a Magistrates Court’.	3
7. Section 4E, ‘the Court’—	4
<i>omit, insert—</i>	5
‘a Magistrates Court’.	6
8. Section 4H, heading, ‘Court’—	7
<i>omit, insert—</i>	8
‘Magistrates Court’.	9
9. Section 4H, ‘the Court’ (first mention)—	10
<i>omit, insert—</i>	11
‘a Magistrates Court’.	12
10. Before section 5—	13
<i>insert—</i>	14
‘PART 3—MAGISTRATES COURTS’.	15
11. Section 5, heading, ‘Courts’—	16
<i>omit, insert—</i>	17
‘Magistrates Courts’.	18
12. Section 6, heading, ‘Court’—	19
<i>omit, insert—</i>	20
‘Magistrates Courts’.	21

SCHEDULE 2 (continued)

13. Section 6, ‘Courts’—	1
<i>omit, insert—</i>	2
‘Magistrates Courts’.	3
14. Section 7, heading, ‘Court’—	4
<i>omit, insert—</i>	5
‘Magistrates Courts’.	6
15. Section 7, ‘the Court’—	7
<i>omit, insert—</i>	8
‘a Magistrates Court’.	9
16. Section 7, ‘rules of court’—	10
<i>omit, insert—</i>	11
‘rules’.	12
17. Section 7A(1), ‘Court’—	13
<i>omit, insert—</i>	14
‘Magistrates Court’.	15
18. Section 7A(2), ‘The Court’—	16
<i>omit, insert—</i>	17
‘A Magistrates Court’.	18
19. Section 7A, as amended—	19
<i>renumber</i> as section 4I and <i>relocate</i> in part 2.	20

SCHEDULE 2 (continued)

20. Section 8, heading, ‘Court’—	1
<i>omit, insert—</i>	2
‘Magistrates Court’.	3
21. Section 8(1), ‘The Court’—	4
<i>omit, insert—</i>	5
‘A Magistrates Court’.	6
22. Before section 9—	7
<i>insert—</i>	8
‘PART 4—PRACTICE AND PROCEDURE’.	9
23. Section 9(1), ‘rules of court’—	10
<i>omit, insert—</i>	11
‘rules’.	12
24. Section 9(1), ‘address the Court’—	13
<i>omit, insert—</i>	14
‘address a Magistrates Court’.	15
25. Section 10, heading—	16
<i>omit, insert—</i>	17
‘Laws of evidence’.	18
26. Section 10A(1) (first mention) and (2), ‘the Court’—	19
<i>omit, insert—</i>	20
‘a Magistrates Court’.	21

SCHEDULE 2 (continued)

27. Before section 11—	1
<i>insert—</i>	2
‘PART 6—JUDGMENTS, NEW TRIALS, APPEALS AND RELATED MATTERS’.	3 4
28. Section 11(1), ‘the Court’—	5
<i>omit, insert—</i>	6
‘a Magistrates Court’.	7
29. Section 11(2), ‘a Court’—	8
<i>omit, insert—</i>	9
‘a Magistrates Court’.	10
30. Section 11(2), ‘another Court’—	11
<i>omit, insert—</i>	12
‘any other court’.	13
31. Section 11AA(1), ‘the Court’ (first mention)—	14
<i>omit, insert—</i>	15
‘a Magistrates Court’.	16
32. Section 11AA(2), ‘hearing the application’—	17
<i>omit.</i>	18
33. Section 11AB(1), ‘the Court’ (first mention)—	19
<i>omit, insert—</i>	20
‘a Magistrates Court’.	21

SCHEDULE 2 (continued)

34. Section 11AB(1) ‘rules of court’—	1
<i>omit, insert—</i>	2
‘the rules’.	3
35. Section 11AC, heading, ‘by Court’—	4
<i>omit.</i>	5
36. Section 11AC, ‘The Court’—	6
<i>omit, insert—</i>	7
‘A Magistrates Court’.	8
37. Before section 11A—	9
<i>insert—</i>	10
‘PART 7—MISCELLANEOUS’.	11
38. Section 11A, ‘the Court’ (first mention)—	12
<i>omit, insert—</i>	13
‘a Magistrates Court’.	14
39. Section 12, ‘the Court’ (first mention)—	15
<i>omit, insert—</i>	16
‘a Magistrates Court’.	17
40. Section 13B, ‘the Court’ (first mention)—	18
<i>omit, insert—</i>	19
‘a Magistrates Court’.	20

 SCHEDULE 2 (continued)

41. Before section 14—	1
<i>insert—</i>	2
‘PART 8—RULES OF COURT’.	3
42. Before section 15—	4
<i>insert—</i>	5
‘PART 9—TRANSITIONAL AND SAVINGS’.	6
	7