

Queensland



SUPREME COURT OF QUEENSLAND ACT 1991

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Reprint No. 4A

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Information about this reprint

This Act is reprinted as at 10 March 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
- **editorial changes made in earlier reprints.**

Queensland



**SUPREME COURT OF QUEENSLAND
ACT 1991**

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SUPREME COURT OF QUEENSLAND ACT 1991

[as amended by all amendments that commenced on or before 10 March 1997]

An Act relating to the Supreme Court of Queensland and the Litigation Reform Commission

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Supreme Court of Queensland Act 1991*.

Definitions

2. In this Act—

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

“**ADR costs**” means—

- (a) for a mediation—
 - (i) the mediator’s fee; and
 - (ii) the venue provider’s fee for providing the venue; and
 - (iii) other costs prescribed under the rules; and
- (b) for a case appraisal—
 - (i) the case appraiser’s fee; and
 - (ii) the venue provider’s fee for providing the venue; and
 - (iii) other costs prescribed under the rules.

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

“ADR process” see section 95.

“authorised auditor” means—

- (a) the auditor-general; or
- (b) a person authorised, in writing, by the auditor-general.

“case appraisal” see section 97.

“case appraiser” means—

- (a) a case appraiser approved under section 99; or
- (b) a judge.

“Chief Justice” means the Chief Justice of Queensland.

“commission” means the Litigation Reform Commission.

“court” means the Supreme Court of Queensland.

“dispute” means—

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

“division” means a division of the court.

“Full Court” means the Full Court of the Supreme Court, and includes the Supreme Court sitting as the Court of Criminal Appeal and the court as a court consisting of 2 or more judges.

“judge” means a judge of the court.

“judge of appeal” includes the President of the Court of Appeal.

“mediation” see section 96.

“mediator” means a mediator approved under section 98.

“party” means a party to a dispute.

“precincts” means—

- (a) in relation to the Court of Appeal—any land or building, or the part of any land or building, declared under this Act to be the precincts, or a part of the precincts, of the Court of Appeal, and includes any other land or building, or the part of any other land

or building, used for the purposes of the Court of Appeal; and

- (b) in relation to the court in the Trial Division—any land or building, or the part of any land or building, declared under this Act to be the precincts, or a part of the precincts, of the court in the Trial Division, and includes any other land or building, or the part of any other land or building, used for the purposes of the court in the Trial Division.

“President” means the President of the Court of Appeal.

“proceeding” means a proceeding in a court (whether or not between parties), and includes—

- (a) an incidental proceeding in the course of, or in connection with, a proceeding; and
- (b) an appeal or stated case.

“referring order” means an order made under section 102 referring a dispute to an ADR process.

“remuneration” includes salary, pension, leave of absence (whether annual leave, long leave or leave on account of illness or otherwise) and any other allowance, benefit or entitlement in respect of judicial service, whether paid or provided to a judge or his or her spouse, widow, widower, child or estate or otherwise.

“rules” means rules of court of the court, and includes rules of court of the Court of Appeal, the Trial Division or a division of the Trial Division.

“stated case” means—

- (a) a case stated under an Act or the rules by the court in the Trial Division or a judge; or
- (b) a case stated under an Act by another court or a judge of another court, or a justice or other person, for the opinion, decision, direction or determination of the court.

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

“Supreme Court jurisdiction Act” means—

- (a) a Supreme Court Act; or
- (b) an Act mentioned in schedule 2, part 2; or

(c) a law prescribed under a regulation for this definition.

“**this Act**” includes the rules.

Words and expressions used in Supreme Court Act, pt 13

2A. Words and expressions used in the *Supreme Court Act 1995*, part 13¹ have the same respective meanings as in this Act.

Interpretation—meaning of appeal

- 3.** For the purposes of this Act, a proceeding in the court under an Act—
- (a) is an appeal if described in that Act, or in any statutory rule made under that Act, as an appeal; and
 - (b) subject to the rules, is not an appeal if not so described.

Interpretation—references to Full Court etc.

4. In an Act (other than this Act) or the rules a reference to the Full Court or Court of Criminal Appeal is a reference to the Court of Appeal.

Interpretation—control and management of precincts

5. For the purposes of this Act, a power to control and manage the precincts of a division of the court includes all necessary and incidental powers, including power to obtain, grant, prohibit or limit access to and from the precincts or part of the precincts.

The Crown

6. The Crown in all its capacities is bound by, and has the benefit of, this Act.

¹ Part 13 contains provisions relocated from the *Judicature Act 1876*.

PART 2—THE COURT

Division 1—Continuance, jurisdiction and composition

Continuance

7. The Supreme Court of Queensland, as formerly established as the superior court of record in Queensland, is continued in existence.

Jurisdiction generally

8.(1) The court has all jurisdiction that is necessary for the administration of justice in Queensland.

(2) Without limiting subsection (1), the court—

- (a) is the supreme court of general jurisdiction in and for the State; and
- (b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.

Jurisdiction of court not impaired etc.

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

Existing judges etc.

10. A person who, immediately before the commencement of this section, held office as Chief Justice, judge, acting judge or master continues to hold the office, but does so subject to this Act.

Composition of court

11. The court consists of a Chief Justice, a President of the Court of

Appeal, other judges of appeal, a Senior Judge Administrator, and such senior judges and judges as are appointed by the Governor in Council.

Appointment of judges

12. The Governor in Council may, by commission, appoint a barrister or solicitor of the court of at least 5 years standing to be a judge.

Title of Chief Justice

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

Acting judges

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

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

(3) While a person is acting as a judge—

- (a)** the person has all the powers and functions of a judge; and
- (b)** this Act and other Acts apply to the person as if the person were a judge.

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

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

to do so.

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

Jurisdiction not affected by vacancies

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

Division 2—Divisions of the court

Divisions of court etc.

16.(1) The court is divided into—

- (a) the office of the Chief Justice; and
- (b) 2 divisions, namely, the Court of Appeal and the Trial Division.

(2) The Chief Justice may sit as, and exercise the powers and perform the functions of, a judge in either division of the court subject to arrangements made with the judge responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the division.

Further divisions of Trial Division

17. The Governor in Council may make regulations further dividing the Trial Division.

Matters to be heard and determined in divisions of Trial Division

18.(1) If the Trial Division is further divided, the Governor in Council may make regulations with respect to the matters that are to be heard and determined in the various divisions of the Trial Division.

(2) Subject to any regulation made for the purposes of subsection (1), the

rules of court of the court may make provision with respect to the matters that are to be heard and determined in the various divisions of the Trial Division.

Transfer and retention

19.(1) The court in a division of the Trial Division may, on application by a party or of its own motion, order that the whole or a part of a proceeding in the division be transferred to another division of the Trial Division.

(2) A proceeding may be retained in a division of the Trial Division even though the proceeding is, under the regulations and rules, required to be heard and determined in another division of the Trial Division.

Validity of proceedings in any division of Trial Division

20. A step taken, order made, judgment given or other thing done in a proceeding in a division of the Trial Division is as valid in every way as it would be if taken, made, given or done in the division of the Trial Division in which the proceeding is, under the regulations and rules, required to be heard and determined.

Division 3—Provisions relating to judges generally

Seniority

21.(1) The Chief Justice is senior to all other judges of the court.

(2) The President of the Court of Appeal is senior to all other judges of the court apart from the Chief Justice.

(3) Subject to section 121 (Seniority of first judges of appeal), judges of appeal have seniority after the President of the Court of Appeal, and have seniority in relation to each other according to the dates of their commissions as judges of appeal.

(4) Subject to section 121 (Seniority of first judges of appeal), if the commissions of 2 or more judges of appeal have the same date, the judges of appeal have seniority in relation to each other according to the seniority

assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

(5) The Senior Judge Administrator has seniority after the judges of appeal.

(6) The senior judges have seniority after the Senior Judge Administrator, and have seniority in relation to each other according to the dates of their commissions as senior judges.

(7) If the commissions of 2 or more senior judges have the same date, the senior judges have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

(8) The remaining judges have seniority in relation to each other according to the dates of their commissions.

(9) If the commissions of 2 or more judges have the same date, the judges have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

(10) In subsections (8) and (9), a reference to a judge includes a judge who has ceased to be the Senior Judge Administrator or a senior judge.

Accepting and holding of other public offices

22.(1) Subject to this section, a judge may accept and hold another public office.

(2) A judge who accepts another public office—

- (a) must immediately notify the Attorney-General in writing; and
- (b) must immediately resign the other public office if the Governor in Council determines, after consultation between the Attorney-General and the Chief Justice, that the holding of that office would be inconsistent with the proper discharge of the office of a judge.

(3) A judge may receive remuneration in relation to the acceptance or holding of another public office only with the approval of the Governor in Council.

(4) In this section—

“public office” includes—

- (a) an office or appointment granted or made by the Government of the Commonwealth, another State or a Territory; and
- (b) an office or appointment in or in relation to a university or other educational institution, a hospital or a charitable institution.

Retirement of judges

23.(1) A judge must retire on reaching 70 years of age.

(2) Despite subsection (1), a judge who, before attaining 70 years of age, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.

(3) Subsection (2) does not prevent the filling of the judge’s office from any time after the judge attains 70 years of age and, for that purpose, the judge’s office is taken to be vacant from that time.

Leave of absence

24. The Governor in Council may grant leave of absence to a judge.

Resignation

25. A judge may resign a judicial office by signed notice given to the Governor.

Temporary judicial office holders

26.(1) When—

- (a) the office of Chief Justice, President of the Court of Appeal or Senior Judge Administrator is vacant; or
- (b) the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is, for any reason, unable to discharge the person’s office;

the next most senior judge, who is willing, is to act in the office.

(2) When the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the person's office, the next most senior judge, who is willing, is to perform the functions of the office that the person is unable to perform.

(3) When—

- (a) the office of a senior judge of a division of the Trial Division is vacant; or
- (b) a senior judge is, for any reason, unable to discharge the office;

the next most senior judge, who is assigned to the division of the Trial Division and is willing, is to act in the office.

(4) When a senior judge of a division of the Trial Division is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the office, the next most senior judge, who is assigned to the division of the Trial Division and is willing, is to perform the functions of the office that the person is unable to perform.

(5) While a judge is acting in a more senior judicial office—

- (a) the judge has all the powers and functions of the office; and
- (b) this Act and other Acts apply to the judge as if the judge were the holder of the office.

(6) While a judge is performing functions of a more senior judicial office, then, to the extent necessary to enable the person to perform the functions—

- (a) the judge has all the powers and functions of the office; and
- (b) this Act and other Acts apply to the judge as if the judge were the holder of the office.

(7) The fact that a judge acts in, or performs functions of, a more senior judicial office is sufficient evidence of the judge's authority to do so.

(8) Anything done by a judge in purporting to act in, or perform functions of, a more senior judicial office is not invalid merely because the occasion for the judge to act in, or perform functions of, the office had not arisen or had ceased.

Entitlements of temporary judicial office holders

27.(1) Subject to subsection (2), a judge who acts in, or performs functions of, a more senior judicial office under section 26² or 39³ is not entitled to receive additional remuneration for doing so.

(2) The Governor in Council may determine that a judge who acts in, or performs functions of, a more senior judicial office under section 26² or 39³ is to receive specified additional remuneration (not being more than the remuneration of the office concerned) for doing so.

PART 3—THE COURT OF APPEAL*Division 1—Composition, jurisdiction and powers***Composition**

28. The Court of Appeal consists of—

- (a) the President of the Court of Appeal; and
- (b) not less than 3, nor more than 5, other judges of appeal.

Jurisdiction and powers

29.(1) Subject to this Act, the Court of Appeal has jurisdiction to hear and determine all matters that, immediately before the commencement of this section, the Full Court had jurisdiction to hear and determine.

(2) The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.

(3) The Court of Appeal may, in proceedings before it, exercise every jurisdiction or power of the court, whether at law or in equity or under any Act, Commonwealth Act or Imperial Act.

² Section 26 (Temporary judicial office holders)

³ Section 39 (Additional judges of appeal)

Way in which court may be constituted

30.(1) Subject to this Act, any 3 or more judges of appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

(2) More than 1 Court of Appeal may sit at the same time.

(3) When more than 1 Court of Appeal is sitting at the same time, each may exercise the jurisdiction and powers of the Court of Appeal.

(4) A rule of court made under section 324 may provide that the jurisdiction and powers of the Court of Appeal may, in particular kinds of proceedings, be exercised by fewer than 3 judges of appeal.

Constitution of court if 1 judge of appeal unable to continue

31.(1) If—

- (a)** after the Court of Appeal (including the court constituted under this section) has started the hearing, or further hearing, of a proceeding; and
- (b)** before the proceeding has been determined;

1 of the judges of appeal constituting the court dies, resigns as a judge or otherwise becomes unable to continue as a member of the court for the purposes of the proceeding, the hearing and determination of the proceeding may be finished by the remaining judges of appeal if at least 2 judges of appeal remain and the parties consent.

(2) The Court of Appeal constituted under this section may have regard to any evidence given or received, and arguments adduced, by or before the Court of Appeal as previously constituted.

(3) Any question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal constituted under this section has the same force and effect, as if the court were not constituted under this section.

Arrangement of business of Court of Appeal

32.(1) The President of the Court of Appeal is responsible for ensuring

⁴ Section 32 (Arrangement of business of Court of Appeal)

the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

(2) Subject to this Act and to such consultation with the Chief Justice and the judges of appeal as the President considers appropriate and practicable, the President has power to do all things necessary or convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal, including, for example—

- (a) determining the judges who are to constitute the Court of Appeal in particular proceedings; and
- (b) making rules of court with respect to the practices and procedures of the Court of Appeal; and
- (c) issuing directions with respect to the practices and procedures of the Court of Appeal.

(3) Before making a rule of court or issuing a direction under subsection (2), the President of the Court of Appeal must notify the proposed rule or direction—

- (a) to the other judges of appeal (except those judges of appeal who are absent from duty or otherwise unavailable); and
- (b) to the Minister or as the Governor in Council otherwise directs.

(4) The President of the Court of Appeal must not make the rule of court, or issue the direction, if—

- (a) a majority of the judges of appeal (including the President) are opposed; or
- (b) within 14 days after the rule or direction is notified as required by subsection (3)(b), the Minister notifies the President, in writing, that the Governor in Council objects to the rule or direction.

(5) A rule of court made under this section is subordinate legislation.

Division 2—Judges of appeal

Appointment

33.(1) The Governor in Council may, by commission, appoint a judge to

be a judge of appeal.

(2) A judge may be appointed to be a judge of appeal either at the time of the person's appointment as a judge or at any time afterwards.

Judge of appeal continues to be judge

34. A judge of appeal continues to be a judge, and may, with the consent of the President of the Court of Appeal, sit as, and exercise any of the powers of, a judge in any other division of the court.

Judge of appeal continues in office while judge

35.(1) A judge of appeal holds office as a judge of appeal while the person holds office as a judge.

(2) A judge of appeal may resign office as a judge of appeal without resigning office as a judge.

Appointment of President

36.(1) The Governor in Council may, by commission, appoint a judge of appeal to be the President of the Court of Appeal.

(2) A judge of appeal may be appointed to the President of the Court of Appeal either at the time of the person's appointment as a judge of appeal or at any time afterwards.

President continues in office while judge of appeal

37.(1) The President of the Court of Appeal holds office as President while the person holds office as a judge of appeal.

(2) The President may resign office as President without resigning office as a judge of appeal.

Holding office as Chief Justice and President

38.(1) A person may hold office as Chief Justice and President of the Court of Appeal.

(2) A person who holds office as Chief Justice and President of the Court of Appeal may resign either of the offices without resigning the other.

Additional judges of appeal

39.(1) If a judge of appeal is on leave, or otherwise absent, or is, for any reason, unable to perform the functions of the office, the Governor in Council, after consultation between the Minister and the Chief Justice and President of the Court of Appeal, may, by commission, appoint a judge to act as an additional judge of appeal for such period (not longer than 6 months) as is specified in the commission.

(2) If the President of the Court of Appeal requests that a judge nominated by the Senior Judge Administrator act as an additional judge of appeal during a particular period and the judge is willing to act during the period, the judge may act as an additional judge of appeal during the period.

(3) If—

- (a) the President of the Court of Appeal considers, after consultation with the Senior Judge Administrator, that it is expedient that a specified judge should act as an additional judge of appeal in a specified proceeding before the Court of Appeal; and
- (b) the judge is willing to act as an additional judge of appeal in the proceeding;

the judge may act as an additional judge of appeal for the purposes of the proceeding.

(4) While a judge is acting as a judge of appeal—

- (a) the judge has all the powers and functions of a judge of appeal; and
- (b) this Act and other Acts apply to the judge as if the judge were a judge of appeal.

(5) The fact that a judge sits and otherwise acts as an additional judge of appeal is sufficient evidence of the judge's authority to do so.

(6) Anything done by or in relation to a judge while the judge is purporting to act as judge of appeal is not invalid merely because the occasion for the judge to act had not arisen or had ceased.

(7) A judge who has acted as an additional judge of appeal may attend sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, a proceeding that was heard by the Court of Appeal while the judge was acting, despite the fact that the judge is no longer a judge of appeal.

Presiding judge of appeal

40.(1) At a sitting of the Court of Appeal at which the Chief Justice is present, the Chief Justice is to preside.

(2) At a sitting of the Court of Appeal at which the Chief Justice is not present, the President of the Court of Appeal is to preside.

(3) At a sitting of the Court of Appeal at which neither the Chief Justice nor the President of the Court of Appeal is present, the senior judge of appeal present is to preside.

Decision

41.(1) The decision of the Court of Appeal is to be in accordance with the opinion of the majority of judges of appeal present at the hearing.

(2) If the judges of appeal present are equally divided in opinion, the decision of the Court of Appeal is to be in accordance with the opinion of the judge who is presiding at the hearing.

Reserved judgments

42.(1) If a proceeding is set down for judgment, it is not necessary for all or any of the judges of appeal before whom it was heard to be present in court to state their opinions on the proceeding when the judgment is obtained.

(2) The opinion of any of the judges of appeal may be reduced to writing and may be made public by any judge of appeal at a sitting of the Court of Appeal at which judgment in the proceeding is delivered.

(3) A question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal has the same effect, as if each judge of appeal whose opinion is so made public had been present in court and

declared his or her opinion in person.

(4) For the purpose of delivering judgment under this section, the Court of Appeal may be constituted by a single judge of appeal who need not have been present at the hearing.

Powers of judge of appeal

43.(1) A judge of appeal may exercise the powers of the Court of Appeal—

- (a) to give a judgment by consent or make an order by consent; and
- (b) to dismiss an appeal or other proceeding for want of prosecution or for other cause specified in an Act or a rule of court made under section 32;⁵ and
- (c) to dismiss an appeal or other proceeding on the application of the appellant, applicant or plaintiff; and
- (d) to deal with matters incidental to the matters mentioned in paragraphs (a) to (c).

(2) A judge of appeal may exercise the powers of the Court of Appeal—

- (a) to make an order or give a direction concerning the institution of an appeal or other proceeding in the Court of Appeal; or
- (b) to make an order or give a direction in an appeal or other proceeding, other than an order or direction involving the determination or decision of the appeal or other proceeding.

(3) Subsection (2) does not limit the powers that a judge of appeal may exercise under subsection (1).

(4) The Court of Appeal may discharge or vary—

- (a) a judgment given by a judge of appeal; or
- (b) an order made or direction given by a judge of appeal.

(5) Subject to subsection (4), a judgment, order or direction given or made by a judge of appeal has effect as a judgment, order or direction of the

⁵ Section 32 (Arrangement of business of Court of Appeal)

Court of Appeal, whether or not the judgment, order or direction is within the powers of the judge of appeal under this section.

Remuneration of judges of appeal

44. Subject to this Act, the salary, allowances and other remuneration of the President of the Court of Appeal and the other judges of appeal is to be determined, paid and provided in accordance with—

- (a) the *Constitution Act 1867*, section 17; and
- (b) the *Supreme Court Act 1995*, section 196; and
- (c) the *Supreme Court Act 1995*, section 227; and
- (d) the *Judges (Pensions and Long Leave) Act 1957*; and
- (e) the *Judges (Salaries and Allowances) Act 1967*.

Appropriation

45. Amounts payable in accordance with section 44⁶ are payable out of the consolidated fund, which is appropriated accordingly.

Division 3—Management of the Court of Appeal

Management of Court of Appeal

46.(1) The President of the Court of Appeal is responsible for the administration of the Court of Appeal.

(2) The President of the Court of Appeal has power to do all things that are necessary or convenient to be done for or in connection with the administration of the Court of Appeal, including, for example—

- (a) controlling and managing the precincts of the Court of Appeal; and
- (b) selecting the staff of the Court of Appeal (other than the associates of the other judges of appeal); and

⁶ Section 44 (Remuneration of judges of appeal)

- (c) engaging, on behalf of the State, consultants for the purposes of the Court of Appeal on such terms and conditions as the President determines.

Amounts appropriated for court

47. There are payable for the purposes of the Court of Appeal such amounts as are appropriated by the Parliament.

Precincts of Court of Appeal

48. The Governor in Council may, by order in council, declare any land or building, or a part of any land or building, to be the precincts, or a part of the precincts, of the Court of Appeal.

Staff of Court of Appeal

49.(1) The staff of the Court of Appeal are to be employed under the *Public Service Act 1996*.

(2) Subsection (1) does not apply to a person who is employed as an associate of a judge.

Power of President to direct staff

50. The staff of the Court of Appeal (other than the associates of the other judges of appeal) must perform their duties in accordance with any directions of the President of the Court of Appeal.

Minister and President to be kept informed

51. The Minister and President must be given the reports and information about the administration of the Court of Appeal necessary to keep the Minister and President properly informed.

Annual report

52.(1) As soon as practicable after the end of each financial year, but within 3 months after the end of the financial year, a written report about the

administration of the Court of Appeal during the year must be prepared and given to the Minister.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(3) If, when the Minister would otherwise be required to table a copy of the report in the Legislative Assembly, the Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the clerk of the Parliament.

(4) The clerk must cause a copy of the report to be tabled in the Legislative Assembly on its next sitting day.

(5) A report given to the clerk under subsection (3) is taken, for its publication and printing, to have been tabled in the Legislative Assembly, and to have been ordered to be printed by the Assembly, when it is given to the clerk.

Delegation of powers of President

53.(1) The President of the Court of Appeal may delegate all or any of the President's powers under this division to—

- (a) any 1 or more of the judges of appeal; or
- (b) any 1 or more members of the staff of the Court of Appeal; or
- (c) the chief executive of the department.

(2) A judge of appeal may subdelegate powers delegated to the judge under subsection (1) to a member of the staff of the Court of Appeal.

(3) The chief executive may subdelegate powers delegated to the chief executive under subsection (1) to an officer or employee of the department.

Proceedings in relation to administration of court

54. A judicial or other proceeding relating to a matter arising out of this division may be instituted by or against the State, as the case requires.

PART 4—THE TRIAL DIVISION

Division 1—Jurisdiction and powers

Composition, jurisdiction and powers of Trial Division

55.(1) The Trial Division of the court consists of the judges of the court other than the Chief Justice, the President of the Court of Appeal and the other judges of appeal.

(2) The jurisdiction and powers of the court that are not required to be exercised only by the Court of Appeal may be exercised by the court in the Trial Division.

Single judge to constitute the court

56.(1) All proceedings in the Trial Division are to be heard and disposed of before a single judge.

(2) For those proceedings, the judge constitutes, and is to exercise all the jurisdiction and powers of, the court.

(3) This section does not affect the hearing and disposal of proceedings before a master or other officer of the court in accordance with an Act or the rules.

(4) This section does not affect any right to trial by jury under an Act, the rules or a practice of the court.

Division 2—Senior Judge Administrator, senior judges and other judges

Appointment of Senior Judge Administrator

57.(1) The office of Senior Puisne Judge is renamed Senior Judge Administrator.

(2) The Governor in Council may, by commission, appoint a judge to be Senior Judge Administrator.

(3) The appointment of a Senior Judge Administrator may be for a term

(not less than 5 years) specified in the commission.

(4) A judge may be appointed Senior Judge Administrator either at the time of the person's appointment as a judge or at any time afterwards.

Senior Judge Administrator continues to be judge

58. The Senior Judge Administrator continues to be a judge, and may sit as, and exercise any of the powers of, a judge.

Senior Judge Administrator continues in office while judge

59.(1) Subject to subsection (2), the Senior Judge Administrator holds office as Senior Judge Administrator while the person holds office as a judge.

(2) A person who is the Senior Judge Administrator vacates the office—

- (a) if the person is appointed as Chief Justice, President of the Court of Appeal or another judge of appeal; or
- (b) if the person was appointed as Senior Judge Administrator for a specified term—when the term ends.

(3) The Senior Judge Administrator may resign office as Senior Judge Administrator without resigning office as a judge.

Arrangement of business of Trial Division

60.(1) The Senior Judge Administrator is responsible to the Chief Justice for the administration of the court in the Trial Division and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the Trial Division.

(2) Subject to this Act and other Acts and to consultation with the Chief Justice, the Senior Judge Administrator has power to do all things necessary or convenient to be done for the administration of the court in the Trial Division and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the Trial Division, including, for example—

- (a) making arrangements as to the judges who are to constitute the

court in the Trial Division in particular matters; and

- (b) issuing directions with respect to the practices and procedures of the court in the Trial Division; and
- (c) controlling and managing the precincts of the court in the Trial Division.

(3) Regulations may be made with respect to the control and management of the precincts of the court in the Trial Division.

Assignment of judges

61.(1) If the Trial Division is further divided, the Governor in Council, after consultation between the Minister and the Chief Justice and Senior Judge Administrator, may, in the commission of appointment of a judge or, with the consent of the judge, at a later time, assign the judge to a division of the Trial Division.

(2) The assignment of a judge to a particular division of the Trial Division may be for a term specified in the commission or instrument of assignment.

(3) A judge who is not assigned to a particular division of the Trial Division may take part in the exercise of the jurisdiction of the court in any division of the Trial Division.

(4) Subject to subsection (5), a judge who is assigned to a division of the Trial Division may take part in the exercise of the jurisdiction of the court in that division of the Trial Division only.

(5) If—

- (a) the Senior Judge Administrator determines that it is expedient that a specified judge who is assigned to a particular division of the Trial Division should take part in the exercise of the jurisdiction of the court in another division; and
- (b) the senior judge of the division to which the judge is assigned and the judge consent;

the judge may take part in the exercise of the jurisdiction of the court in the other division.

Appointment of senior judges

62.(1) If the Trial Division is further divided, the Governor in Council, after consultation between the Minister and the Chief Justice and Senior Judge Administrator, may, by commission, appoint a judge to be the senior judge of a division of the Trial Division.

(2) The appointment of a senior judge may be made for a term specified in the commission.

(3) A judge may be appointed senior judge either at the time of the person's appointment as a judge or at any time afterwards.

Senior judge continues to be judge

63. A senior judge continues to be a judge, and may sit as, and exercise any of the powers of, a judge.

Senior judge continues in office while judge

64.(1) Subject to subsection (2), a senior judge holds office as senior judge while the person holds office as a judge.

(2) A person who is a senior judge vacates the office—

- (a)** if the person is appointed as Chief Justice, President of the Court of Appeal, judge of appeal or Senior Judge Administrator; or
- (b)** if the person was appointed as senior judge for a specified term—when the term ends.

(3) A senior judge may resign office as senior judge without resigning office as a judge.

Precincts of court in Trial Division

65. The Governor in Council may, by order in council, declare that any land or building, or a part of any land or building, is to be the precincts, or a part of the precincts, of the court in the Trial Division.

Senior judges to assist Senior Judge Administrator

66. If the Trial Division is further divided, the senior judges are to assist the Senior Judge Administrator in the discharge of the Senior Judge Administrator's functions.

Delegation of powers of Senior Judge Administrator

67. The Senior Judge Administrator may, after consultation with the Chief Justice, delegate all or any of the Senior Judge Administrator's powers under this Act to any 1 or more of the senior judges or, if there are no senior judges appointed, any 1 or more of the judges.

PART 5—REMOVAL AND REMISSION**Removal and remission**

68.(1) If a proceeding is started in the Trial Division, but is a proceeding that is required to be heard and determined only by the Court of Appeal—

- (a) the proceeding is taken to have been duly started when it was started in the Trial Division; and
- (b) the Court of Appeal may, on application by a party or of its own motion, order that the proceeding be removed into the Court of Appeal; and
- (c) on an order being made under paragraph (b), the proceeding must be continued and disposed of in the Court of Appeal; and
- (d) subject to any order under paragraph (b), the proceeding may be continued and disposed of in the Trial Division.

(2) If a proceeding is started in the Court of Appeal, but is a proceeding that the Court of Appeal considers could be more conveniently heard and determined in the Trial Division—

- (a) the proceeding is taken to have been duly started when it was started in the Court of Appeal; and
- (b) the Court of Appeal may, on application by a party or of its own

motion, order that the proceeding be remitted to the Trial Division; and

- (c) on an order for remission being made under paragraph (b), the proceeding must be continued and disposed of in the Trial Division; and
- (d) subject to any order under paragraph (b), the proceeding may be continued and disposed of in the Court of Appeal.

(3) If a proceeding is pending before the Court of Appeal, the Court of Appeal may, on application by a party or of its own motion, order that the whole or a part of the proceeding be remitted to the Trial Division for the determination (by trial or otherwise) of the proceeding or any question of fact or law arising in the proceeding.

(4) Subject to section 697, the Court of Appeal may accept any determination of the Trial Division in whole or part.

(5) If a proceeding (whether by way of appeal or otherwise), or a proceeding on a stated case (other than a case stated by the Trial Division), is started in the Trial Division—

- (a) the Court of Appeal, if satisfied that special circumstances exist that make it desirable to do so, may, on application by a party or of its own motion, order that the proceeding be removed into the Court of Appeal; and
- (b) on an order being made under paragraph (a), the proceeding must be continued and disposed of in the Court of Appeal.

(6) A proceeding may be removed into the Court of Appeal under this section despite any decision or determination in the proceeding being expressed by an Act to be final or without appeal.

(7) If the Trial Division is further divided, an order for remission under this section may specify the division of the Trial Division to which the whole or part of the proceeding concerned, or the question concerned, is remitted.

⁷ Section 69 (Appeal in proceedings in the court)

PART 6—APPEALS TO COURT OF APPEAL

Appeal in proceedings in the court

69.(1) Subject to this and any other Act, an appeal lies to the Court of Appeal from—

- (a) any judgment or order of the court in the Trial Division; and
- (b) without limiting paragraph (a)—
 - (i) a judgment or order of the court in the Trial Division made under this Act; and
 - (ii) any opinion, decision, direction or determination of the court in the Trial Division on a stated case; and
 - (iii) any determination of the court in the Trial Division in a proceeding remitted under section 68⁸.

(2) Subject to any other Act, a rule of court made under section 32⁹ may provide that leave to appeal is required in proceedings specified in the rule.

Disqualification of judge of appeal

70. A judge must not sit in judgment on the hearing of an appeal from a judgment given, or an order made, by the judge.

PART 7—LITIGATION REFORM COMMISSION

Establishment of commission

71. A commission called the Litigation Reform Commission is established.

⁸ Section 68 (Removal and remission)

⁹ Section 32 (Arrangement of business of Court of Appeal)

Function

72.(1) The function of the commission is to make reports and recommendations with respect to—

- (a) the structure of the court system of Queensland; and
- (b) court practices and procedures (including the laws of evidence); and
- (c) the administration of the courts of Queensland; and
- (d) the simplification and modernisation of—
 - (i) Acts and statutory rules relating to matters mentioned in paragraphs (a) to (c); and
 - (ii) the common law; and
- (e) such other matters as are referred to it by the Minister.

(2) A report of the commission, or a division of the commission, may deal with a matter mentioned in subsection (1)(a) to (e) or any aspect of the matter.

(3) The reports of the commission and divisions of the commission are to be made to the Minister or as the Governor in Council otherwise directs.

(4) Before a report of the commission or a division of the commission is made, the chairperson of the commission must consult with the Chief Justice unless the Chief Justice is absent from duty or otherwise unavailable.

(5) Unless the Governor in Council otherwise directs by written notice given to the chairperson of the commission, a report and recommendation from the commission, or a division of the commission, is to be obtained before any other action is taken concerning any of the matters mentioned in subsection (1)(a) to (c), (d)(i) and (e).

(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.

(7) In this section—

“**court**” includes all courts and tribunals established by or under an Act that are constituted or presided over by a judge, magistrate or other judicial officer.

Powers

73.(1) The commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the commission has such powers as are conferred on it by or under this Act.

Composition of commission etc.

74.(1) Subject to subsection (2), the commission consists of the following members—

- (a) the President of the Court of Appeal and the other judges of appeal; and
- (b) such additional members as the chairperson of the commission appoints to the commission, or a particular division of the commission, for a particular period or purpose.

(2) A member of the commission may, by signed notice given to the Governor, resign as a member of the commission without resigning any other office.

Allowances of members

75. A member of the commission, or a division of the commission, is to be paid such allowances (if any) as are prescribed.

Chairperson of commission

76.(1) Subject to subsection (3), if the President of the Court of Appeal is a member of the commission, the President is to be the chairperson of the commission and each division of the commission.

(2) Subject to subsection (3), if the President of the Court of Appeal is not a member of the commission, the senior judge of appeal who is a member of the commission is to be the chairperson of the commission and each division of the commission.

(3) The chairperson of the commission may resign as chairperson and remain a member of the commission.

Acting chairperson

77.(1) When—

- (a) the office of chairperson of the commission is vacant; or
- (b) the chairperson is, for any reason, unable to discharge the office;

the next senior judge of appeal, who is a member of the commission and willing, is to act as chairperson.

(2) When the chairperson is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the chairperson's office, the next senior judge of appeal, who is a member of the commission and willing to act, is to perform the functions of the office that the chairperson is unable to perform.

(3) While a judge of appeal is acting as chairperson of the commission—

- (a) the judge of appeal has all the powers and functions of the chairperson; and
- (b) this Act and other Acts apply to the judge of appeal as if the judge of appeal were the chairperson.

(4) While a judge of appeal is performing functions of the chairperson's office, then, to the extent necessary to enable the judge of appeal to perform the functions—

- (a) the judge of appeal has all the powers and functions of the chairperson; and
- (b) this Act and other Acts apply to the judge of appeal as if the judge of appeal were the chairperson.

(5) Anything done by or in relation to the judge of appeal while the judge of appeal is purporting to act as chairperson of the commission is not

invalid merely because the occasion for the judge of appeal to act had not arisen or had ceased.

Divisions of commission

78.(1) The chairperson of the commission may divide the commission into divisions and may determine the members of the commission and other persons who are to be members of each division.

(2) Subject to the direction and control of the chairperson of the commission, each division of the commission may perform the functions and exercise the powers of the commission.

Responsibilities and powers of chairperson

79.(1) The chairperson of the commission is responsible for ensuring the effective, efficient and expeditious performance of the function and exercise of the powers of the commission.

(2) Subject to this Act and to such consultation with the other members of the commission as the chairperson of the commission considers appropriate and practical, the chairperson of the commission has power to do all things necessary and convenient to be done for ensuring the effective, efficient and expeditious performance of the function and exercise of the powers of the commission, including, for example—

- (a)** determining in what order, and at what times, matters are to be considered, and reports and recommendations are to be made, by the commission; and
- (b)** determining who is to be appointed as an additional member of the commission, or a division of the commission, and for what period or purpose.

(3) The chairperson of the commission may select the staff of the commission.

(4) The chairperson of the commission may, on behalf of the State, engage consultants for the purposes of the commission on such terms and conditions as the chairperson determines.

Times and places of meetings

80. Meetings of the commission, and of each division of the commission, are to be held at such times and places as the chairperson of the commission determines.

Presiding at meetings

81.(1) The chairperson of the commission is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, the senior judge present is to preside.

Quorum and voting at meetings

82. At a meeting of the commission or a division of the commission—

- (a) a question is to be decided by a majority of votes of the members present and voting; and
- (b) the member presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

Conduct of meetings

83.(1) The chairperson may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(2) A member who participates in a meeting under a permission under subsection (1) is taken to be present at the meeting.

(3) The commission may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Decisions without meetings

84.(1) If a majority of members of the commission, or a division of the commission, sign a document containing a statement that they are in favour of a decision in terms set out in the document, a decision in those terms is taken to have been made at a meeting of the commission or division, as the case may be, held on the day on which it is signed or, if the members do not sign on the same day, on the day on which the majority of members have signed the document.

(2) If a decision is, under subsection (1), taken to have been made at a meeting of the commission or a division of the commission, each member must be advised of the matter and given a copy of the terms of the decision.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, is taken to constitute 1 document.

Commission and divisions may regulate their proceedings

85. Subject to this Act, the commission and the divisions of the commission may regulate their proceedings as they consider appropriate.

Obtaining information from public sector units

86.(1) The commission or a division of the commission may, by written notice given to a public sector unit, require the unit—

- (a) to give to it, within the time and in the way specified in the notice, information and reports on specified matters; and
- (b) to give to it, at the times and in the way specified in the notice, periodic reports on specified matters.

(2) For the purposes of subsection (1), a specified matter is a matter that—

- (a) relates to a matter or an aspect of a matter mentioned in section 72(1);¹⁰ or

¹⁰ Section 72 (Function)

- (b) in the chairperson's opinion, may be relevant to such a matter or an aspect of such a matter.

Premises and facilities of commission

87. The President of the Court of Appeal may permit the premises, facilities and equipment of the Court of Appeal to be used for the purposes of the commission.

Amounts appropriated for commission

88. There are payable for the purposes of the commission such amounts as are appropriated by the Parliament.

Staff of commission

89.(1) The staff of the commission are to be employed under the *Public Service Act 1996*.

(2) Unless the President of the Court of Appeal otherwise directs, all members of the staff of the Court of Appeal are also members of the staff of the commission.

(3) The staff of the commission (other than the associates of the judges of appeal) must perform their functions in relation to the commission in accordance with any directions of the chairperson of the commission.

(4) The reference in subsection (3) to the judges of appeal does not include the President of the Court of Appeal.

Minister to be kept informed

90. The Minister must be given such reports and information relating to operations of the commission as are required to keep the Minister properly informed.

Annual report

91.(1) As soon as practicable after the end of each financial year, but within 3 months after the end of the financial year, a written report about the

operations of the commission during the year must be prepared and given to the Minister.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(3) If, when the Minister would otherwise be required to table a copy of the report in the Legislative Assembly, the Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the clerk of the Parliament.

(4) The clerk must cause a copy of the report to be tabled in the Legislative Assembly on its next sitting day.

(5) A report given to the clerk under subsection (3) is taken, for its publication and printing, to have been tabled in the Legislative Assembly, and to have been ordered to be printed by the Assembly, when it is given to the clerk.

Delegation of powers of chairperson

92.(1) The chairperson of the commission may delegate all or any of the chairperson's powers to—

- (a) any 1 or more of the members of the commission; or
- (b) any 1 or more members of the staff of the commission; or
- (c) the chief executive of the department.

(2) A member of the commission may subdelegate powers delegated to the member under subsection (1) to a member of the staff of the commission.

(3) The chief executive may subdelegate powers delegated to the chief executive under subsection (1) to an officer or employee of the department.

Proceedings in relation to administration of commission

93. A judicial or other proceeding relating to a matter arising out of this part may be instituted by or against the State, as the case requires.

PART 8—ADR PROCESSES

Division 1—Preliminary

Objects of part

94. 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

95.(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 6,¹¹ an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

- (a) pre-mediation and post-mediation sessions; and

¹¹ Division 6 (Confidentiality, protection and immunity)

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

Mediation

96. “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

97.(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.

Division 3—Establishment of ADR processes

Approval of mediators

98. The Senior Judge Administrator, in consultation with the Chief Justice, may approve, or refuse to approve, a person as a mediator.

Approval of case appraisers

99. The Senior Judge Administrator, in consultation with the Chief Justice, may approve, or refuse to approve, a person as a case appraiser.

ADR register

100.(1) The registrar must keep a register of information about ADR processes.

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

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

(4) The register must contain—

- (a) the name and address of each mediator and each case appraiser (other than a judge); and
- (b) other information prescribed under the rules; and
- (c) other information decided by the Senior Judge Administrator.

Parties may agree to ADR process

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

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

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

Court may consider and order reference to ADR process

102.(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

103.(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

104.(1) At a case appraisal, the case appraiser—

- (a) must decide the procedure to be used at the case appraisal; and
- (b) may adopt any procedure that will, in the case appraiser's opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and
- (c) must finish the case appraisal as quickly as possible.

(2) However, the case appraiser may, in special circumstances—

- (a) receive evidence; and
- (b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.

(3) The Supreme Court may, at any time, give directions about procedure to be used at the case appraisal.

(4) This section is subject to section 105.

Subpoenas

105.(1) A person may be subpoenaed to appear at a case appraisal only by order of the Supreme Court.

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

(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.

Division 4—Party unable to pay share of costs

Party unable to pay share of costs

106.(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.

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

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

Division 5—What to do when ADR process is finished

Mediated resolution agreement

107.(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

108. 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.

Case appraiser to file certificate and decision

109. As soon as practicable after a case appraisal has finished, the case appraiser must file with the registrar—

- (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

110.(1) A party may apply to the Supreme 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.

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

Orders giving effect to case appraiser's decision

111.(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) 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**

112.(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

113.(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 the Supreme Court.

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

(5) In subsection (2)—

“**party**” includes a party’s lawyer or agent.

Admissions made to ADR convenors

114.(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.

(2) In subsection (1)—

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

Division 7—Miscellaneous

Revocation of approval as mediator or case appraiser

115.(1) The Senior Judge Administrator, in consultation with the Chief Justice, may revoke the approval of a person as a mediator or case appraiser.

(2) The Senior Judge Administrator must give the person a statement of reasons for the revocation.

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

116. An appeal lies to the Court of Appeal, by leave of that 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.

PART 8A—USE OF VIDEO LINK FACILITIES

Purpose of part

116A. The purpose of this part is to provide for the use of video link facilities for certain proceedings before the Supreme Court.

Definitions for part

116B. In this part—

“**detainee**” means—

- (a) for section 116C(1)—someone who is in custody at a correctional institution; and
- (b) otherwise, someone who is—
 - (i) in custody at a correctional institution; and
 - (ii) a party to a proceeding.

“**proceeding**”, for a provision of this part, other than section 116C(1), means a proceeding to which section 116C(1) applies.

Use of video link facilities in proceedings

116C.(1) This section applies to a proceeding if—

- (a) a detainee is entitled or required to be present before the Supreme Court for the proceeding; and
- (b) the proceeding is about an offence with which the detainee is charged, including a proceeding for the detainee’s bail or remand; and
- (c) video link facilities are available linking the correctional institution where the detainee is in custody and the court.

(2) A proceeding for the detainee’s bail or remand must be conducted using the video link facilities, unless the court, in the interests of justice, otherwise orders.

(3) In a proceeding, other than a proceeding for the detainee’s bail or remand, the court may order the proceeding be conducted using video link

facilities only if all parties consent.

(4) The video link facilities may only be used to link the proceeding before the court at the place the court is sitting with the detainee, or the detainee and the detainee's representative, at the correctional institution.

Detainee taken to be before the court

116D.(1) A person present at the part of the correctional institution used for the conduct of a proceeding, when the proceeding is being conducted, is taken to be in the presence of the Supreme Court for all purposes.

(2) The part of the correctional institution used for the proceeding is taken to be part of the court for the conduct of the proceeding.

(3) Any entitlement of, or requirement for, the detainee under any law or court order to be present before the court in the proceeding is taken to be satisfied by the detainee's use of video link facilities for the proceeding.

Way video link facilities must be operated

116E.(1) Video link facilities, when used for a proceeding, are to be operated in a way that ensures two-way audio and visual communication between the detainee and the Supreme Court.

(2) If video link facilities fail during a proceeding, the court may adjourn the proceeding or make another appropriate order, as if the detainee were still in the presence of the court.

Facilities for private communication

116F.(1) The Supreme Court and the correctional institution must make facilities available for private communication between the detainee and the detainee's representative in a proceeding if the representative is at the place where the court is sitting.

(2) A communication between the detainee and the detainee's representative is as confidential and as inadmissible in any proceeding as it would be if it took place while the detainee and the detainee's representative were in each other's presence.

(3) Subsection (2) does not limit any other protection applying to the communication.

Variation or revocation of order

116G. The Supreme Court may, at any time, vary or revoke an order made under section 116C.

PART 9—RULES OF COURT

Rule making power

117.(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.

(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 the Supreme Court and its registries; or
- (b) another matter mentioned in schedule 1.

(4) However, a rule of court may not be made under this section about the practices or procedures of the Court of Appeal.¹²

(5) In this section—

“jurisdiction law” means—

¹² 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.

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

PART 10—MISCELLANEOUS

Order etc. on terms

119. The court may make an order, give a direction or leave or do anything else that it is authorised to do on such terms and conditions (if any) as the court considers appropriate.

Regulation-making power

120. The Governor in Council may make regulations under this Act.

PART 11—TRANSITIONAL PROVISIONS

Seniority of first judges of appeal

121.(1) If all or some of the judges of appeal (other than the President of the Court of Appeal) appointed before 31 December 1991 consent to the application of this section to them before being sworn in, the Governor in Council may assign them equal seniority in relation to each other.

(2) For the purposes of the application of this Act in relation to a particular matter that is to be determined by seniority, the seniority of those judges of appeal in relation to each other is to be determined by agreement between them or, failing agreement, by the President of the Court of Appeal.

Judicial entitlements of first judges of appeal

122.(1) The Governor in Council is to determine, at or before the time of their appointment, the remuneration to be paid and provided in respect of the judicial service of the President of the Court of Appeal and the other judges of appeal.

(2) The rate of salary, and the allowances and the rate of allowances, payable to the President of the Court of Appeal and to the other judges of appeal on and after 1 July 1992 are to be fixed from time to time by determinations made by the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*.

(3) In making its determinations, the tribunal is to give effect to determinations of the Governor in Council under subsection (1).

(4) However, subsection (3) does not prevent the making of a determination by the tribunal amalgamating the salary, general allowance and jurisprudential allowance of a judge of appeal if—

- (a) the tribunal also makes a determination amalgamating the salary, general allowance and jurisprudential allowance of the other judges of the court; and
- (b) the amalgamation for the judge of appeal is to the same proportional extent as the amalgamation for the other judges of the court.

(5) The remuneration in respect of the judicial service of the President of the Court of Appeal and the other judges of appeal determined in accordance with this section is to be paid and provided and is not to be reduced.

(6) Amounts payable in accordance with this section are payable out of the consolidated fund, which is appropriated accordingly.

(7) This section applies only to a judge of appeal appointed on or before 30 June 1992.

Part heard proceedings etc.

123.(1) Subject to this Act, and unless the Court of Appeal otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act do not affect, a proceeding heard, in whole or part, in the Full

Court before the commencement of this section.

(2) Without limiting subsection (1), if a proceeding has been heard, in whole or part, in the Full Court before the commencement of this section, then, subject to this Act, and unless the Court of Appeal otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act to do not affect—

- (a) the completion after the commencement of this section of any step in the proceeding taken before the commencement of this section; or
- (b) the taking and completion after the commencement of this section of any step in the proceeding.

(3) The Court of Appeal may make orders under this section on application by a party or of its own motion.

(4) In this section—

“**judgment**” includes any rule, decree or order.

“**step**” includes—

- (a) the entry or other perfecting of a judgment; and
- (b) anything done or to be done in consequence of an appeal to the High Court;

whether before or after the final judgment.

References to Senior Puisne Judge

124. In an Act or document, a reference to the Senior Puisne Judge may, if the context permits, be taken to be a reference to the Senior Judge Administrator.

Leave granted to appeal

125.(1) Leave granted before the commencement of this section to appeal to the Full Court has effect, after that commencement, as if it were leave granted to appeal to the Court of Appeal.

(2) Without limiting subsection (1), leave granted under the *District*

Courts Act 1967, section 92(2)¹³ before the commencement of this section has effect, after that commencement, as if it were leave granted under that section as amended by this Act.

(3) This section does not apply to a proceeding to which section 123¹⁴ applies.

Court may resolve difficulties

126.(1) If a difficulty arises in—

- (a) the application of this Act to a particular matter; or
- (b) the application, to a particular matter, of another Act because of the operation of this Act;

the Court of Appeal or the court in the Trial Division may, on application by a party or of its own motion, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this Act or another Act in force immediately before the commencement of this section.

¹³ Section 92(2) (Appeal to Court of Appeal in certain cases) was renumbered as section 118(2) in reprint 2 of the *District Courts Act 1967*.

¹⁴ Section 123 (Part heard proceedings etc.)

SCHEDULE 1

SUBJECT MATTER FOR RULES

section 117

PART 1—GENERAL

Jurisdiction generally

1. Jurisdiction of the Supreme Court, including, for example, its civil, criminal and appellate jurisdiction of the court.

Jurisdiction of judge in chambers or master

2. Jurisdiction of a judge in chambers or master.

Jurisdiction of registrars and other officers of the Supreme Court

3. Jurisdiction of registrars and other officers of the Supreme Court.

Appeals from registrars and other officers

4. Appeals from registrars and other officers of the Supreme Court.

Practice and procedure in criminal jurisdiction

5. Practice and procedure in the criminal jurisdiction of the Supreme Court, other courts and justices, including, for example, the following—

- (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;
- (b) regulating the proceedings on the trial of a person charged with an offence;

SCHEDULE 1 (continued)

- (c) the taking of shorthand notes and the making of transcripts of the notes;
- (d) applications for and supplying notes of trial and reports by judges of courts of trial.

Service of documents

6. Practice and procedure of the Supreme Court in relation to the service of documents inside and outside the State, including outside Australia.

Admission of legal practitioners

7. Admitting barristers, solicitors and conveyancers of the Supreme Court, including qualifications for and conditions of admission.

Costs

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.

Apportioning costs

9. Apportioning the costs of issues.

Fees

10. Fees payable to the Supreme Court, including fees worked out by reference to a percentage.

Pleadings

11. Pleadings, including dispensing with pleadings.

SCHEDULE 1 (continued)

Transfer between courts

12. Transferring a cause, matter, action or proceeding between courts, including costs and procedures for the transfer.

Writs of inquiry

13. Writs of inquiry to have issues of fact tried in a Magistrates Court or by a judge or registrar.

Enlarging time

14. Enlarging time, including enlarging the number of days allowed by a jurisdiction law for the return of a writ.

Referral to arbitration

15. Referring a cause or matter to arbitration under the *Commercial Arbitration Act 1990*.

Commissions and requests for arbitrations

16. Issuing commissions or requests for the examination of witnesses outside Queensland (including outside Australia) for an arbitration under the *Commercial Arbitration Act 1990*.

Debts and liabilities of deceased persons

17. Debts and liabilities of deceased persons for the *Supreme Court Act 1995*, part 7.¹⁵

Proceedings against estates of deceased persons

18. Enabling a proceeding to be commenced against the estate of a

¹⁵ Part 7 (Provisions from Equity Act 1867)

SCHEDULE 1 (continued)

deceased person (whether by the appointment of a person to represent the estate or otherwise) if no grant has been made.

Proceedings against persons who have died

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.

Maintenance of proceedings against estates of deceased persons

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.

Service required etc. to be made on estate of deceased person

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.

Dispensing with rules of evidence

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.

Disclosure and inspection

23. Disclosure and inspection.

Admissions

24. Admissions about questions of fact.

SCHEDULE 1 (continued)

Evidence of special witnesses

25.(1) Regulating practice and procedure about the making of determinations or orders under the *Evidence Act 1977*, section 21A.

(2) Carrying out orders mentioned in subitem (1).

Obtaining evidence for other jurisdictions

26. The obtaining of evidence under the *Evidence Act 1977*, part 3, division 3.¹⁶

Recording evidence

27. Recording evidence.

Payment into and out of court etc.

28. Paying amounts and transferring things into and out of court.

Investments of amounts

29. Investing amounts paid into court.

Execution and enforcement

30. Executing and enforcing court orders.

Statutory committee of the Queensland Law Society

31. The statutory committee of the Queensland Law Society Incorporated, including, for example, the following—

- (a) the practice and proceedings of the committee, including the awarding of costs by the committee, the taxation of costs by the

¹⁶ Part 3 (Means of obtaining evidence), division 3 (General procedure to obtain evidence for other jurisdictions)

SCHEDULE 1 (continued)

taxing officer of the Supreme Court, and the recovery of costs by execution or otherwise;

- (b) the conferral of additional powers on the statutory committee.

Regulation of persons and things

32. The regulation of persons and things in relation to another matter mentioned in this part.

Functions etc. of persons

33. The functions, entitlements, obligations and powers of persons in relation to another matter mentioned in this part.

PART 2—ADR PROCESSES**Approval of mediator or case appraiser**

1. Experience and qualifications for approval as a mediator or case appraiser.

Staying proceedings

2. Staying proceedings, and the power of the Supreme Court to stay proceedings, until an ADR process is finished.

Costs

3. Persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid.

SCHEDULE 1 (continued)

Jurisdiction

4. Jurisdiction of a case appraiser at a case appraisal.

Seeking independent advice or information

5. Ability of a mediator or case appraiser to seek independent advice or information.

Time for processes

6. Time within which an ADR process should be finished (which may be a time specified by the court).

Conduct of processes

7. Conduct of an ADR process.

Confidentiality

8. Confidentiality of a mediated agreement or case appraiser's decision.

Powers, procedures etc. applying to arbitrations

9. Applying procedures and other matters similar to those applying to arbitrations under the *Commercial Arbitration Act 1990*.

Penalties

10. Imposing penalties against a party who fails to cooperate in an ADR process.

SCHEDULE 2**SUPREME COURTS ACTS AND JURISDICTION
ACTS**

section 2

PART 1—SUPREME COURT ACTS

Evidence And Discovery Act 1867

Legal Practitioners Act 1995

Queensland Law Society Act 1952

Supreme Court Act 1995.

PART 2—SUPREME COURT JURISDICTION ACTS

Appeal Costs Fund Act 1973

Charitable Funds Act 1958

Commercial Arbitration Act 1990

Corporations Law

Court Funds Act 1973

Criminal Code

Criminal Code Act 1899

Crown Proceedings Act 1980

Evidence Act 1977

Judicial Review Act 1991

SCHEDULE 2 (continued)

Jury Act 1929

Justices Act 1886

Penalties and Sentences Act 1992

Public Trustee Act 1978

Succession Act 1981

Traffic Act 1949.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 10 March 1997. Future amendments of the Supreme Court of Queensland Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R	=	Reprint No.
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 40 of 1992	1 October 1992
2	to Act No. 24 of 1994	31 May 1994
3	to Act No. 24 of 1995	29 May 1995
4	to Act No. 4 of 1996	7 June 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	4
Corrected minor errors	1, 4
Renumbered provisions	3, 4

6 List of legislation

Supreme Court of Queensland Act 1991 No. 68

date of assent 24 October 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 14 December 1991 (1991 SL No. 173)

as amended by—

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 pt 1, s 163 sch 1

date of assent 14 August 1992

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 2

date of assent 7 December 1992

commenced on date of assent

Supreme Court Legislation (Miscellaneous Provisions) Act 1993 No. 20 pts 1–2

date of assent 28 May 1993

commenced on date of assent

Justice and Attorney-General (Miscellaneous Provisions) Act 1994 No. 24 ss 1–3(1) sch

date of assent 10 May 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 30 May 1994 (1994 SL No. 168)

Judicial Legislation Amendment Act 1994 No. 76 pts 1, 6

date of assent 1 December 1994

commenced on date of assent

Courts Legislation Amendment Act 1995 No. 23 pts 1–2

date of assent 11 April 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 29 May 1995 (1995 SL No. 131)

Justice and Attorney-General (Miscellaneous Provisions) Act 1995 No. 24 pts 1, 12

date of assent 11 April 1995

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Courts (Video Link) Amendment Act 1996 No. 4 pts 1–2

date of assent 9 May 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 7 June 1996 (1996 SL No. 118)

Public Service Act 1996 No. 37

date of assent 22 October 1996 ss 1–2, 147 sch 2

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

7 List of annotations

Definitions

- prov hdg** sub 1995 No. 58 s 4 sch 1
- s 2** prev s 2 om R3 (see RA s 37)
 pres s 2 amd 1995 No. 58 s 4 sch 1
 def “**ADR convenor**” ins 1995 No. 23 s 4
 def “**ADR costs**” ins 1995 No. 23 s 4
 def “**ADR dispute**” ins 1995 No. 23 s 4
 def “**ADR process**” ins 1995 No. 23 s 4
 def “**case appraisal**” ins 1995 No. 23 s 4
 def “**case appraiser**” ins 1995 No. 23 s 4
 def “**dispute**” ins 1995 No. 23 s 4
 def “**mediation**” ins 1995 No. 23 s 4
 def “**mediator**” ins 1995 No. 23 s 4
 def “**party**” ins 1995 No. 23 s 4
 def “**referring order**” ins 1995 No. 23 s 4
 def “**Supreme Court Acts**” ins 1995 No. 23 s 4
 def “**Supreme Court jurisdiction Act**” ins 1995 No. 23 s 4

Words and expressions used in Supreme Court (Consolidated Provisions) Act, pt 13

- s 2A** ins 1995 No. 58 s 4 sch 1

Appointment of judges

- s 12** ins 1993 No. 20 s 3

Way in which court may be constituted

- s 30** amd 1995 No. 58 s 4 sch 1

Arrangement of business of Court of Appeal

- s 32** amd 1995 No. 58 s 4 sch 1

Powers of judge of appeal

- s 43** amd 1995 No. 58 s 4 sch 1

Management of Court of Appeal

- s 46** amd R4 (see RA s 38)

Precincts of Court of Appeal

- s 48** prev s 48 om 1994 No. 24 s 3(1) sch
 pres s 48 (prev s 49) renum 1995 No. 23 s 7

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