

Queensland



SUPREME COURT OF QUEENSLAND ACT 1991

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Warning—see last endnote for uncommenced amendments

Reprint No. 4D

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Information about this reprint

This Act is reprinted as at 23 July 1998. 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**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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**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 23 July 1998]

An Act relating to the Supreme Court of Queensland

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.

“approval”, of a person as a mediator or case appraiser, means—

- (a) in the case of a mediator—approval under section 98;¹ or
- (b) in the case of a case appraiser—approval under section 99.²

“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.

“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 or a mediator within the meaning of the *Dispute Resolution Centres Act 1990*.

“party” means a party to a dispute.

¹ Section 98 (Approval of mediators)

² Section 99 (Appeal of case appraisers)

“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 and 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.

“Supreme Court precincts” means any land or building, or the part of any land or building, used for the purposes of the court.

“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 13³ 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.

The Crown

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

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.

³ Part 13 contains provisions relocated from the *Judicature Act 1876*.

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.

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 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.

Administrative responsibility of Chief Justice

13A.(1) Without limiting the responsibilities, functions or powers of the Chief Justice, the Chief Justice, subject to this Act, is responsible for the administration of the Supreme Court and its divisions and the orderly and

expeditious exercise of the court's jurisdiction and power.

(2) Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done to perform responsibilities under subsection (1).

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, 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 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.

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 remaining judges have seniority in relation to each other

according to the dates of their commissions.

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

(8) In subsections (6) and (7), a reference to a judge includes a judge who has ceased to be the Senior Judge Administrator.

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, or the conditions on which it is held, would be inconsistent with the proper discharge of the office of a judge.

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

(4) In this section—

“**public office**” includes—

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

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.

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) 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.

(4) 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.

(5) 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.

(6) 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 26⁴ or 39⁵ 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.

⁴ Section 26 (Temporary judicial office holders)

⁵ Section 39 (Additional judges of appeal)

(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.

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 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) Subject to section 13A, the President of the Court of Appeal is responsible for the administration of the Court of Appeal and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

(2) Subject to this Act, 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.

Annual report

32A.(1) As soon as practicable after the end of each financial year, but within 2 months after the end of the financial year, the President of the Court of Appeal must prepare and give to the Chief Justice a written report about the operation of the Court of Appeal during the year.

(2) The report must be prepared in consultation with the other judges of appeal, other than the judges of appeal who are absent from duty or otherwise unavailable.

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 Chief Justice, sit as, and exercise any of the powers of, a judge in the Trial Division.

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.

(3) To remove any doubt, it is declared that the Governor in Council may act under section 33 and this section to appoint a judge, or a person qualified to be appointed as a judge, to be the President of the Court of Appeal.

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.

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, 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) A judge who is willing to act as an additional judge of appeal for a particular period, or for the purposes of a particular proceeding, may so act if the Chief Justice directs it.

(3) 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.

(4) 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.

(5) 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.

(6) 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 about the practices and procedures of the Court of Appeal; 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 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*.

Remuneration of new judges of appeal after Courts Reform Amendment Act 1997

44A. Under section 44, the remuneration and conditions of a judge of appeal, other than the President of the Court of Appeal, appointed after the commencement of this section are to be the same as the remuneration and conditions of a judge of the Trial Division.

Appropriation

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

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.

⁶ Section 44 (Remuneration of judges of appeal)

Division 2—Senior Judge Administrator and other judges**Appointment of Senior Judge Administrator**

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

(2) The appointment of a Senior Judge Administrator may be for a term (not less than 5 years) specified in the commission.

(3) 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) Subject to section 13A, 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, 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.

Annual report

61.(1) As soon as practicable after the end of each financial year, but within 2 months after the end of the financial year, the Senior Judge Administrator must prepare and give to the Chief Justice a written report about the operation of the Trial Division during the year.

(2) The report must be prepared in consultation with the other judges of the Trial Division, other than the judges who are absent from duty or otherwise unavailable.

PART 5—REMOVAL AND REMISSION

Removal and remission

68.(1) If a proceeding is started in another court, 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 other court; 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 other court.

(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 another court—

- (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 other court; and
- (c) on an order for remission being made under paragraph (b), the proceeding must be continued and disposed of in the other court; 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 another court 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 other court 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 another court), is started in the other court—

- (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 Section 69 (Appeal in proceedings in the court)

(7) In this section—

“**another court**” means the Trial Division or a District 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 or a District Court in a proceeding remitted under section 68⁸.

(2) Subject to any other Act, a rule of court 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.

⁸ Section 68 (Removal and remission)

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 6,⁹ an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

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

⁹ 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, subject to the direction of the Chief Justice, may approve, or refuse to approve, a person as a mediator.

Approval of case appraisers

99. The Senior Judge Administrator, subject to the direction of 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 and agreed to by the Chief Justice.

(5) However, subsection (4) does not require the registrar to enter in the register the name and address of, and the other information about, a mediator under the *Dispute Resolution Centres Act 1990*.

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.

(4) If the court decides to refer the dispute to a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if the order appoints the director of a specified dispute resolution centre as mediator.

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, subject to the direction of 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—
 - (i) about an offence with which the detainee is charged, including a proceeding for the detainee’s bail or remand; or

- (ii) an appeal under the *District Courts Act 1967*, section 118¹⁰ or the Criminal Code, chapter 67¹¹ in relation to an offence of which the detainee has been convicted (“**appeal proceeding**”); 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 or an appeal proceeding 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 or an appeal proceeding, 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.

¹⁰ Section 118 (Appeal to the Court of Appeal in certain cases)

¹¹ Chapter 67 (Appeal—Pardon)

(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 8B—PROVISION FROM LEGAL PRACTITIONERS ACT 1995

Relocation

116H.(1) To remove any doubt, it is declared that the provision relocated to this part is not repealed or re-enacted by its relocation, but merely moved from the *Legal Practitioners Act 1995*.

(2) Without limiting subsection (1) and to further remove any doubt, it is also declared that the relocation to this Act of the relocated provision does

not affect the meaning or effect the relocated provision had because of the time when it was enacted.¹²

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) In this section—

“jurisdiction law” means—

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

¹² The *Legal Practitioners Act 1995*, section 40 (Revival of order for payment of costs) is relocated as section 116I by the *Civil Justice Reform Act 1998*.

Court rules are exempt from RIS requirements and automatic expiry

118B.(1) The *Statutory Instruments Act 1992*, parts 5 and 7¹³ do not apply to rules of court.

(2) However—

- (a) the following rules of court expire on 1 July 1998—
 - (i) *Repealing Rules 1900*;
 - (ii) Rules Relating to the Admission of Conveyancers; and
- (b) the following rules of court expire on 31 December 1998—
 - (i) Rules of the Supreme Court;
 - (ii) *Criminal Practice Rules 1900*;
 - (iii) *Supreme Court (Admiralty) Rules 1988*;
 - (iv) Rules under and in pursuance of the Reciprocal Enforcement of Judgments Act 1959;
 - (v) *District Court Rules 1968*;
 - (vi) *Magistrates Courts Rules 1960*.

(3) Also, to remove any doubt, it is declared that the *Uniform Civil Procedure Rules* may repeal any of the rules of court mentioned in subsection (2)(b).

(4) In this section—

“**rules of court**” see *Statutory Instruments Act 1992*, section 12.¹⁴

Rules Committee

118C.(1) The Chief Justice is to establish a Rules Committee consisting of the following members—

- (a) the Chief Justice, or a Supreme Court judge nominated by the

¹³ Parts 5 (Guidelines for regulatory impact statements) and 7 (Staged automatic expiry of subordinate legislation)

¹⁴ ‘ “**Rules of court**”, in relation to a court or tribunal, are rules made by the person or body having power to make rules regulating the practice and procedure of the court or tribunal.’

Chief Justice;

- (b) the President or a judge of appeal nominated by the President;
- (c) 2 Supreme Court judges nominated by the Chief Justice;
- (d) the Chief Judge or a District Court judge nominated by the Chief Judge;
- (e) a District Court judge nominated by the Chief Judge;
- (f) the Chief Stipendiary Magistrate or a magistrate nominated by the Chief Stipendiary Magistrate;
- (g) a magistrate nominated by the Chief Stipendiary Magistrate.

(2) The rules committee—

- (a) must advise the Minister about the repeal, reform or relocation of the provisions of the *Supreme Court Act 1995*; and
- (b) may advise the Minister about any law giving jurisdiction to the Supreme Court, the District Court or the Magistrates Courts; and
- (c) has the other functions and powers given to it under this Act or another Act.

(3) The rules committee may conduct its business and proceedings at meetings in the way it decides.

(4) However, the chairperson of the rules committee has a deliberative vote and, in the event of an equality of votes, a casting vote.

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.

Supreme Court precincts

119A. Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done for the control and management of the Supreme Court precincts, including power to obtain, grant, prohibit or limit access to and from the precincts or part of the precincts.

Annual report

119B.(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the Chief Justice must prepare and give to the Minister a written report about the operation of the Supreme Court during the year.

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

Finances and staffing of court

119C.(1) The court is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.

(2) The staff of the court (other than the judges' associates) are to be appointed under the *Public Service Act 1996*.

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)¹⁵ 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 123¹⁶ 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.

Transitional provisions for Courts Reform Amendment Act 1997

127.(1) A rule in force immediately before the commencement of this section that was made under section 32, as in force immediately before the commencement, is taken to be made under section 117.

(2) Despite the *Legislative Standards Act 1992*, section 9A, the Parliamentary Counsel and any member of the Office of the Queensland

¹⁵ 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*.

¹⁶ Section 123 (Part heard proceedings etc.)

Parliamentary Counsel is to disclose to an officer of the department or the Law Reform Commission instructions from the Litigation Reform Commission for the drafting of court rules not completed at the time of the commission's abolition to enable the preparation of the rules of court to continue.

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 7.¹⁷

Proceedings against estates of deceased persons

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

¹⁷ 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 3.¹⁸

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.

Regulation of persons and things

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

¹⁸ Part 3 (Means of obtaining evidence), division 3 (General procedure to obtain evidence for other jurisdictions)

SCHEDULE 1 (continued)

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.

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.

SCHEDULE 1 (continued)

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.

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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 23 July 1998. 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	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman 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
4A	to Act No. 37 of 1996	10 March 1997
4B	to Act No. 38 of 1997	19 November 1997
4C	to Act No. 82 of 1997	9 December 1997

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 ss 1–2, 147 sch 2

date of assent 22 October 1996
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Queensland Law Society Legislation Amendment Act 1997 No. 13 pts 1, 4

date of assent 15 May 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 3 November 1997 (1997 SL No. 362)

Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 13

date of assent 18 July 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 August 1997 (1997 SL No. 235)

Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–3 sch

date of assent 5 December 1997
 commenced on date of assent

Civil Justice Reform Act 1998 No. 20 ss 1–2(1), (3), pt 3

date of assent 1 May 1998
 ss 1–2, 11, 21 commenced on date of assent (see s 2(1))
 s 18 commenced 1 July 1998 (1998 SL No. 122)
 remaining provisions not yet proclaimed into force

7 List of annotations

Title

amd 1997 No. 38 s 102; 1998 No. 20 s 12

Definitions

prov hdg sub 1995 No. 58 s 4 sch 1
s 2 orig s 2 om R3 (see RA s 37)
 prev 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 “**approval**” ins 1997 No. 38 s 103(2)
 def “**approved form**” ins 1998 No. 20 s 13(3)
 def “**case appraisal**” ins 1995 No. 23 s 4

def “**case appraiser**” ins 1995 No. 23 s 4
 def “**commission**” om 1997 No. 38 s 103(1)
 def “**condition**” ins 1998 No. 20 s 13(3)
 def “**court**” sub 1998 No. 20 s 13(2)–(3)
 def “**dispute**” ins 1995 No. 23 s 4
 def “**enforcement hearing**” ins 1998 No. 20 s 13(3)
 def “**enforcement officer**” ins 1998 No. 20 s 13(3)
 def “**enforcement warrant**” ins 1998 No. 20 s 13(3)
 def “**judicial registrar**” ins 1998 No. 20 s 13(3)
 def “**mediation**” ins 1995 No. 23 s 4
 def “**mediator**” ins 1995 No. 23 s 4
 amd 1997 No. 38 s 103(3)
 def “**minor claim**” ins 1998 No. 20 s 13(3)
 def “**minor debt claim**” ins 1998 No. 20 s 13(3)
 def “**money order**” ins 1998 No. 20 s 13(3)
 def “**money order debt**” ins 1998 No. 20 s 13(3)
 def “**partnership**” ins 1998 No. 20 s 13(3)
 def “**party**” ins 1995 No. 23 s 4
 def “**person under a legal incapacity**” ins 1998 No. 20 s 13(3)
 def “**person with impaired capacity**” ins 1998 No. 20 s 13(3)
 def “**practice list**” ins 1998 No. 20 s 13(3)
 def “**precincts**” om 1997 No. 38 s 103(1)
 def “**referring order**” ins 1995 No. 23 s 4
 def “**registrar**” ins 1998 No. 20 s 13(3)
 def “**rules**” amd 1997 No. 38 s 103(4)
 def “**rules committee**” ins 1998 No. 20 s 13(3)
 def “**Supreme Court Acts**” ins 1995 No. 23 s 4
 om 1998 No. 20 s 13(2)
 def “**Supreme Court jurisdiction Act**” ins 1995 No. 23 s 4
 om 1998 No. 20 s 13(2)
 def “**Supreme Court precincts**” ins 1997 No. 38 s 103(2)
 def “**trial judge**” ins 1998 No. 20 s 13(3)
 def “**young person**” ins 1998 No. 20 s 13(3)
 reloc as sch 2 1998 No. 20 s 13(4)
 pres s 2 sub 1998 No. 20 s 14

Words and expressions used in Supreme Court Act, pt 13

s 2A ins 1995 No. 58 s 4 sch 1
 amd 1997 No. 82 s 3 sch

Interpretation—control and management of precincts

s 5 om 1997 No. 38 s 104

Existing judges etc.

s 10 om 1997 No. 38 s 105

Composition of court

s 11 amd 1997 No. 38 s 106

Appointment of judges

s 12 ins 1993 No. 20 s 3

Administrative responsibility of Chief Justice

s 13A ins 1997 No. 38 s 107

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s 14 amd 1997 No. 38 s 108

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s 16 amd 1997 No. 38 s 109

Further divisions of Trial Division

s 17 om 1997 No. 38 s 110

Matters to be heard and determined in divisions of Trial Division

s 18 om 1997 No. 38 s 110

Transfer and retention

s 19 om 1997 No. 38 s 110

Validity of proceedings in any division of Trial Division

s 20 om 1997 No. 38 s 110

Seniority

s 21 amd 1997 No. 38 s 111

Accepting and holding of other public offices

s 22 amd 1997 No. 38 s 112

Retirement of judges

s 23 amd 1997 No. 38 s 113

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s 24 om 1997 No. 38 s 114

Temporary judicial office holders

s 26 amd 1997 No. 38 s 115

Division 4—Judicial registrars

div 4 (ss 27A–27F) ins 1998 No. 20 s 15

Way in which court may be constituted

s 30 amd 1995 No. 58 s 4 sch 1; 1997 No. 38 s 116

Arrangement of business of Court of Appeal

s 32 amd 1995 No. 58 s 4 sch 1; 1997 No. 38 s 117

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s 32A ins 1997 No. 38 s 118

Judge of appeal continues to be judge

s 34 amd 1997 No. 38 s 119

Appointment of President

s 36 amd 1997 No. 38 s 120

Holding office as Chief Justice and President

s 38 om 1997 No. 38 s 121

Additional judges of appeal

s 39 amd 1997 No. 38 s 122

Powers of judge of appeal

s 43 amd 1995 No. 58 s 4 sch 1; 1997 No. 38 s 123

Remuneration of new judges of appeal after Courts Reform Amendment Act 1997

s 44A ins 1997 No. 38 s 124

PART 3—THE COURT OF APPEAL**Division 3—Management of the Court of Appeal**

div hdg om 1997 No. 38 s 125

Management of Court of Appeal

s 46 amd R4 (see RA s 38)
om 1997 No. 38 s 125

Amounts appropriated for court

s 47 om 1997 No. 38 s 125

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
om 1997 No. 38 s 125

Staff of Court of Appeal

s 49 amd 1996 No. 37 s 147 sch 2
om 1997 No. 38 s 125

Power of President to direct staff

s 50 om 1997 No. 38 s 125

Minister and President to be kept informed

s 51 sub 1994 No. 24 s 3(1) sch
om 1997 No. 38 s 125

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s 52 prev s 52 om 1994 No. 24 s 3(1) sch
pres s 52 sub 1994 No. 24 s 3(1) sch
om 1997 No. 38 s 125

Delegation of powers of President

s 53 prev s 53 om 1994 No. 24 s 3(1) sch
pres s 53 amd 1992 No. 40 s 163 sch 1
om 1997 No. 38 s 125

Proceedings in relation to administration of court

s 54 om 1997 No. 38 s 125

Composition, jurisdiction and powers of Trial Division

s 55 amd 1992 No. 40 s 163 sch 1

PART 4—THE TRIAL DIVISION**Division 2—Senior Judge Administrator and other judges**

div hdg amd 1997 No. 38 s 126

Single judge to constitute the courts 56 amd 1998 No. 20 s 16**Appointment of Senior Judge Administrator**

s 57 amd 1997 No. 38 s 127

Arrangement of business of Trial Division

s 60 amd R1 (see RA s 37); 1997 No. 38 s 128

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s 61 sub 1997 No. 38 s 129

Appointment of senior judges

s 62 om 1997 No. 38 s 129

Senior judge continues to be judge

s 63 om 1997 No. 38 s 129

Senior judge continues in office while judge

s 64 om 1997 No. 38 s 129

Precincts of court in Trial Division

s 65 om 1997 No. 38 s 129

Senior judges to assist Senior Judge Administrator

s 66 om 1997 No. 38 s 129

Delegation of powers of Senior Judge Administrator

s 67 om 1997 No. 38 s 129

Removal and remission

s 68 amd 1992 No. 40 s 163 sch 1; 1997 No. 38 s 130

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s 69 amd 1995 No. 58 s 4 sch 1; 1997 No. 38 s 131

PART 7—LITIGATION REFORM COMMISSIONpt hdg prev pt 7 hdg om 1997 No. 38 s 132
pres pt 7 hdg ins 1998 No. 20 s 17**Division 1—Preliminary**div hdg ins 1998 No. 20 s 17**Establishment of commission**s 71 prev s 71 om 1997 No. 38 s 132
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pres s 72 ins 1998 No. 20 s 17**Division 2—Procedural**div hdg ins 1998 No. 20 s 17**Subdivision 1—Constitution of court by judicial registrar**sdiv hdg ins 1998 No. 20 s 17

Powers

s 73 prev s 73 om 1997 No. 38 s 132
pres s 73 ins 1998 No. 20 s 17

Subdivision 2—Removal of proceedings

sdiv hdg ins 1998 No. 20 s 17

Composition of commission etc.

s 74 prev s 74 om 1997 No. 38 s 132
pres s 74 ins 1998 No. 20 s 17

Allowances of members

s 75 prev s 75 om 1997 No. 38 s 132
pres s 75 ins 1998 No. 20 s 17

Chairperson of commission

s 76 prev s 76 om 1997 No. 38 s 132
pres s 76 ins 1998 No. 20 s 17

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div hdg ins 1998 No. 20 s 17

Acting chairperson

s 77 prev s 77 om 1997 No. 38 s 132
pres s 77 ins 1998 No. 20 s 17

Divisions of commission

s 78 prev s 78 om 1997 No. 38 s 132
pres s 78 ins 1998 No. 20 s 17

Responsibilities and powers of chairperson

s 79 prev s 79 om 1997 No. 38 s 132
pres s 79 ins 1998 No. 20 s 17

Times and places of meetings

s 80 prev s 80 om 1997 No. 38 s 132
pres s 80 ins 1998 No. 20 s 17

Presiding at meetings

s 81 prev s 81 om 1997 No. 38 s 132
pres s 81 ins 1998 No. 20 s 17

Quorum and voting at meetings

s 82 prev s 82 om 1997 No. 38 s 132
pres s 82 ins 1998 No. 20 s 17

Conduct of meetings

s 83 prev s 83 om 1997 No. 38 s 132
pres s 83 ins 1998 No. 20 s 17

Decisions without meetings

s 84 prev s 84 om 1997 No. 38 s 132
pres s 84 ins 1998 No. 20 s 17

Commission and divisions may regulate their proceedings

s 85 prev s 85 om 1997 No. 38 s 132
pres s 85 ins 1998 No. 20 s 17

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Obtaining information from public sector units

prov hdg amd 1996 No. 37 s 147 sch 2
s 86 amd 1996 No. 37 s 147 sch 2
prev s 86 om 1997 No. 38 s 132
pres s 86 ins 1998 No. 20 s 17

Premises and facilities of commission

s 87 prev s 87 om 1997 No. 38 s 132
pres s 87 ins 1998 No. 20 s 17

Amounts appropriated for commission

s 88 orig s 88 om 1992 No. 40 s 163 sch 1
prev s 88 om 1997 No. 38 s 132
pres s 88 ins 1998 No. 20 s 17

Staff of commission

s 89 amd 1996 No. 37 s 147 sch 2
prev s 89 om 1997 No. 38 s 132
pres s 89 ins 1998 No. 20 s 17

Minister to be kept informed

s 90 prev s 90 om 1997 No. 38 s 132
pres s 90 ins 1998 No. 20 s 17

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s 91 sub 1994 No. 24 s 3(1) sch
prev s 91 om 1997 No. 38 s 132
pres s 91 ins 1998 No. 20 s 17

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sdiv hdg ins 1998 No. 20 s 17

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s 92 amd 1992 No. 40 s 163 sch 1
prev s 92 om 1997 No. 38 s 132
pres s 92 ins 1998 No. 20 s 17

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s 93 orig s 93 om 1994 No. 24 s 3(1) sch
prev s 93 om 1997 No. 38 s 132
pres s 93 ins 1998 No. 20 s 17

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amd 1997 No. 38 s 133

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s 99 ins 1995 No. 23 s 6
amd 1997 No. 38 s 134

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s 100 ins 1995 No. 23 s 6
amd 1997 No. 38 s 135

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s 101 ins 1995 No. 23 s 6

Court may consider and order reference to ADR process

s 102 ins 1995 No. 23 s 6
amd 1997 No. 38 s 136

Parties must attend at ADR process if Supreme Court orders

s 103 ins 1995 No. 23 s 6

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Subpoenas

s 105 ins 1995 No. 23 s 6

Division 4—Party unable to pay share of costs

div hdg ins 1995 No. 23 s 6

Party unable to pay share of costs

s 106 prev s 106 om R1 (see RA s 38)
pres s 106 ins 1995 No. 23 s 6

Division 5—What to do when ADR process is finished

div hdg ins 1995 No. 23 s 6

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s 107 ins 1995 No. 23 s 6

Mediator to file certificate

s 108 ins 1995 No. 23 s 6

Case appraiser to file certificate and decision

s 109 ins 1995 No. 23 s 6

Orders giving effect to mediation agreement

s 110 ins 1995 No. 23 s 6

Orders giving effect to case appraiser's decision

s 111 prev s 111 om R1 (see RA s 40)
pres s 111 ins 1995 No. 23 s 6

Division 6—Confidentiality, protection and immunity

div hdg ins 1995 No. 23 s 6

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s 112 ins 1995 No. 23 s 6

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s 113 ins 1995 No. 23 s 6

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s 114 ins 1995 No. 23 s 6

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div hdg ins 1995 No. 23 s 6

Revocation of approval as mediator or case appraiser

s 115 ins 1995 No. 23 s 6
amd 1997 No. 38 s 137

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s 116 ins 1995 No. 23 s 6

PART 8A—USE OF VIDEO LINK FACILITIES

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Purpose of part

s 116A ins 1996 No. 4 s 4

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s 116B ins 1996 No. 4 s 4

Use of video link facilities in proceedings

s 116C ins 1996 No. 4 s 4
amd 1997 No. 38 s 138

Detainee taken to be before the court

s 116D ins 1996 No. 4 s 4

Way video link facilities must be operated

s 116E ins 1996 No. 4 s 4

Facilities for private communication

s 116F ins 1996 No. 4 s 4

Variation or revocation of order

s 116G ins 1996 No. 4 s 4

PART 8B—PROVISION FROM LEGAL PRACTITIONERS ACT 1995

pt hdg ins 1998 No. 20 s 18

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s 116H ins 1998 No. 20 s 18

PART 9—RULES OF COURT

pt hdg prev pt hdg ins 1995 No. 23 s 6
pres pt hdg sub 1998 No. 20 s 19

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s 117 ins 1995 No. 23 s 6
 amd 1995 No. 58 s 4 sch 1; 1997 No. 38 s 139
sub 1998 No. 20 s 20

Existing rules of court

s 118 ins 1995 No. 23 s 6
 amd 1995 No. 58 s 4 sch 1
 exp 30 May 1996 (see s 118(5))
 AIA s 20A applies (see s 118(4))
 prev s 118 om R4 (see RA s 37)
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s 118A ins 1998 No. 20 s 20

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s 118B ins 1998 No. 20 s 21

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s 119B ins 1997 No. 38 s 140

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s 119C ins 1997 No. 38 s 140

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s 120 sub 1994 No. 76 s 24
amd 1998 No. 20 s 23

Judicial entitlements of first judges of appeal

s 122 amd 1994 No. 76 s 23

References to Senior Puisne Judge

s 124 sub 1995 No. 58 s 4 sch 1

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s 127 om R1 (see RA s 40)
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exp 7 December 1996 (see s 127(3))
 AIA s 20A applies (see s 127(2))
 pres s 127 ins 1997 No. 38 s 141

**No distinction between court and chambers for Supreme Court, District Court
 and Magistrates Courts**

s 128 ins 1998 No. 20 s 24

Abolition of old enforcement processes

s 129 ins 1998 No. 20 s 24

Outdated references

s 130 ins 1998 No. 20 s 24

References to judgment

s 131 ins 1998 No. 20 s 24

**Judicial registrar may exercise certain judicial or quasi-judicial power of
 registrar**

s 132 ins 1998 No. 20 s 24

References to taxation of costs

s 133 ins 1998 No. 20 s 24

Act to prevail over Supreme Court Act 1995

s 134 ins 1998 No. 20 s 24

Application of Uniform Civil Procedure Rules

s 135 ins 1998 No. 20 s 24

Transitional—abolition of Circuit Courts

s 136 ins 1998 No. 20 s 24

Saving of former court rules—Civil Justice Reform Act 1998

s 137 ins 1998 No. 20 s 24

SCHEDULE 1—SUBJECT MATTER FOR RULES

prev sch 1 om R1 (see RA s 40)
 pres sch 1 ins 1995 No. 23 s 9
 amd 1995 No. 58 s 4 sch 1; 1997 No. 13 s 17
sub 1998 No. 20 s 25

SCHEDULE 2—SUPREME COURTS ACTS AND JURISDICTION ACTS

prev sch 2 om R1 (see RA s 40)
 pres sch 2 ins 1995 No. 23 s 9
 amd 1995 No. 58 s 4 sch 1; 1997 No. 82 s 3 sch
reloc (prev s 2) 1998 No. 20 s 25

8 Table of renumbered provisions

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9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Civil Justice Reform Act 1998 No. 20 ss 12–17, 19–20 and 22–25, read as follows—

Amendment of title

12. Title, after ‘Queensland’—

insert—

‘and, for certain matters including enforcement of money orders and rules of court, relating to that court, the District Court and the Magistrates Courts’.

Amendment and relocation of s 2 (Definitions)

13.(1) Section 2, heading to ‘In this Act—’—
omit, insert—

‘SCHEDULE 2**‘DICTIONARY**

section 2’.

(2) Section 2, definitions **“court”**, **“Supreme Court Acts”** and **“Supreme Court jurisdiction Act”**—

omit.

(3) Section 2—

insert—

‘ **“approved form”** means a form approved by the rules committee under section 118A.¹⁹

“condition” includes term.

“court”—

- (a) for part 7, see section 72;²⁰ and
- (b) for part 9, see section 117;²¹ and
- (c) otherwise, means the Supreme Court of Queensland.

“enforcement hearing” means a hearing to obtain information to facilitate the enforcement of a money order.

“enforcement officer”, for a court, means a sheriff, deputy sheriff or bailiff

¹⁹ Section 118A (Rules committee may approve forms)

²⁰ Part 7 (Provisions applying to Supreme Court, District Court and Magistrates Courts), section 72 (Definition for pt 7)

²¹ Part 9 (Rules of court and practice directions for the Supreme Court, the District Court and the Magistrates Courts), section 117 (Definition for pt 9)

of the court.

“enforcement warrant” means a warrant to enforce a money order (but not an order for the payment of an amount into court).

“judicial registrar” means—

- (a) for the Supreme Court—a judicial registrar of the Supreme Court;
or
- (b) for the District Court—a judicial registrar of the District Court.

“minor claim” means a claim for an amount, including interest, of not more than \$7 500, whether as a balance or after an admitted set off, reduction by any amount paid by or credited to the defendant, abandonment of any excess, or otherwise.

“minor debt claim” means a minor claim in which the plaintiff—

- (a) claims to recover against a defendant a debt or liquidated demand in money, with or without interest; and
- (b) elects in the claim to have it heard and decided in a Magistrates Court under the simplified procedures in the *Uniform Civil Procedure Rules*.

“money order” means an order for the payment of an amount, whether or not the amount includes an amount for interest or costs and whether or not the order provides for another form of relief.

“money order debt” means the amount payable under a money order.

“partnership” see the *Partnership Act 1891*, section 5.²²

“person under a legal incapacity” means—

- (a) a person with impaired capacity; or
- (b) a young person.

“person with impaired capacity” means a person who is not capable of making the decisions required of a litigant for conducting proceedings or who is deemed by an Act to be incapable of conducting proceedings.

“practice list” means a list to which originating or other applications are assigned for hearing or another purpose, including, for example, case management.

“registrar”—

- (a) includes—
 - (i) for the Supreme Court—a deputy registrar of the Supreme Court; or
 - (ii) for the District Court—a deputy registrar of the District Court; and
- (b) does not include a judicial registrar.

²² *Partnership Act 1891*, section 5—

‘Definition of “partnership”

‘5.(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

‘(2) But the relation between members of any company or association which is—

- (a) registered as a company under the *Companies Act 1863* or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or
- (b) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;

is not a partnership within the meaning of this Act.

‘(3) A limited partnership formed under the *Mercantile Act 1867* or the *Partnership (Limited Liability) Act 1988* is a partnership within the meaning of this Act...’.

“rules committee” see section 118C.²³

“trial judge”, for a trial, means the judge before whom the trial takes place.

“young person” means an individual who is under 18 years.’.

(4) Section 2—

relocate to after schedule 1 (as inserted by this Act).

Insertion of new s 2

14. After section 1—

insert—

‘Dictionary

‘2. The dictionary in schedule 2 defines particular words used in this Act.’.

Insertion of new pt 2, div 4

15. Part 2, after section 27—

insert—

‘Division 4—Judicial registrars

‘Judicial registrars

‘27A.(1) The Governor in Council may appoint judicial registrars.

‘(2) A person may be appointed as a judicial registrar only if the person is a lawyer of at least 5 years standing.

‘(3) A judicial registrar may be removed from office only by the Governor in Council for proven incapacity or misbehaviour.

‘(4) A judicial registrar is an officer of the court.

²³ Section 118C (Rules Committee)

‘Independence of judicial registrars

‘27B. A judicial registrar when constituting the court²⁴ or otherwise exercising a judicial or quasi-judicial power is not subject to direction or control, other than as provided under this Act.²⁵

‘Rehearing after judicial registrar’s decision

‘27C.(1) A party to an application who is dissatisfied with a judicial registrar’s decision on the application may, with the leave of the court as constituted by a Supreme Court judge, have the application reheard by the court as constituted by a Supreme Court judge.

‘(2) If the court grants leave, it may do so on condition, including, for example, a condition about—

- (a) the evidence to be adduced; or
- (b) the submissions to be presented; or
- (c) the nature of the rehearing.

‘Conditions of appointment

‘27D.(1) A judicial registrar is to be appointed under this Act and not under the *Public Service Act 1996*.

‘(2) A judicial registrar is to be paid the salary and allowances decided by the Governor in Council.

‘(3) A judicial registrar holds office on the conditions not provided for by this Act decided by the Governor in Council.

‘(4) The office of judicial registrar is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.

‘(5) When a judicial registrar is appointed, the judicial registrar’s salary, allowances and conditions are to be published in the gazette.

‘(6) A judicial registrar’s salary and allowances may not be reduced and

²⁴ See section 73 (Judicial registrar’s power to hear and decide applications).

²⁵ For example, see section 13A (Administrative responsibility of Chief Justice).

any change to the judicial registrar's salary, allowances or conditions must be published in the gazette.

'Retirement of judicial registrars

'27E. A judicial registrar must retire on reaching 70 years of age.

'Preservation of rights

'27F.(1) This section applies if a public service officer is appointed as a judicial registrar.

'(2) The person retains all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as a judicial registrar were a continuation of service as a public service officer.

'(3) If the person stops being a judicial registrar on being appointed to an office of the public service, the person's service as judicial registrar is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.'

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

16.(1) Section 56(3) and (4)—

renumber as section 56(4) and (5).

(2) Section 56—

insert—

'(3) The court, including the court as constituted by a master or judicial registrar, may be constituted at any place.'

(3) Section 56(4), as renumbered, after 'master'—

insert—

',' judicial registrar, registrar'.

Insertion of new pt 7

17. After section 70—

insert—

‘PART 7—PROVISIONS APPLYING TO SUPREME COURT, DISTRICT COURT AND MAGISTRATES COURTS***‘Division 1—Preliminary*****‘Application of pt 7**

‘71.(1) Unless this Act otherwise expressly provides, this part applies to the Supreme Court, District Court and Magistrates Courts.

‘(2) This part applies to civil proceedings and proceedings in relation to contempt of court.

‘Definition for pt 7

‘72. In this part—

“**court**” means, if otherwise appropriate—

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

‘Division 2—Procedural***‘Subdivision 1—Constitution of court by judicial registrar*****‘Judicial registrar’s power to hear and decide applications**

‘73.(1) A judicial registrar may hear and decide an application prescribed under the *Uniform Civil Procedure Rules* for this section.

‘(2) For those applications, the judicial registrar constitutes, and may exercise all the jurisdiction and powers of, the court.

‘(3) However, a judicial registrar may not exercise any power of the court to punish for contempt.

‘Subdivision 2—Removal of proceedings

‘Removal to Supreme Court

‘74.(1) The Supreme Court may order a proceeding pending in a Magistrates Court be transferred to the Supreme Court.

‘(2) A transfer under subsection (1) may be subject to conditions.

‘Removal to Magistrates Court

‘75.(1) The Supreme Court may transfer to a Magistrates Court a proceeding pending in the Supreme Court that is within the jurisdiction of a Magistrates Court.

‘(2) If a proceeding is transferred to a Magistrates Court, that court has the jurisdiction to make an order (including a judgment order) within its competence and the order is enforceable in the same way as another order made by a Magistrates Court.

‘Costs

‘76. Unless the court orders otherwise, if a proceeding is transferred under this division, costs are in accordance with the scale of costs for the court in which the proceeding was pending when the costs were incurred.

‘Division 3—Conferences

‘Resolution agreement

‘77.(1) If, at a relevant conference, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and the court.

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

‘(3) In this section—

“**relevant conference**” means—

- (a) a directions conference; or
- (b) a conference required under the *Uniform Civil Procedure Rules* because there is a claim for damages for personal injury or death.

‘**Confidentiality**

‘78.(1) Evidence of anything done or said, an admission made, or a document tendered, at a relevant conference about a dispute is admissible at the trial of the dispute or before another civil proceeding in the court or elsewhere only if—

- (a) all the parties to the dispute agree; or
- (b) the evidence is a resolution agreement under section 77.

‘(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 directions conference.

“**relevant conference**” means—

- (a) a directions conference; or
- (b) a conference required under the *Uniform Civil Procedure Rules* because there is a claim for damages for personal injury or death.

‘*Division 4—Orders*

‘**Court’s power to make orders or give directions**

‘79.(1) This section applies to a court in making an order or giving a direction under this Act.

‘(2) Unless otherwise stated in this Act, the court may make the order or give the direction on its own initiative or on an application made to it under this Act.

‘Court able to impose appropriate conditions

‘80. If a court has power to make an order, give a direction or leave, or do another thing, the court may make the order, give the direction or leave, or do the other thing on the conditions²⁶ the court considers appropriate.

‘Amendment for new cause of action or party

‘81.(1) This section applies to an amendment of a claim, anything written on a claim, pleadings, an application or another document in a proceeding.

‘(2) The court may order an amendment to be made, or grant leave to a party to make an amendment, even though—

- (a) the amendment will include or substitute a cause of action or add a new party; or
- (b) the cause of action included or substituted arose after the proceeding was started; or
- (c) a relevant period of limitation, current when the proceeding was started, has ended.

‘(3) This section applies despite the *Limitation of Actions Act 1974*.

‘Order binds persons who are represented

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

‘(2) Unless the court orders otherwise, in addition to binding the parties to the proceeding, the order binds the persons who have the same interest as the representative party and could have been parties in the proceeding.

‘(3) The order may be enforced against a person not named as a party only with the court’s leave.

²⁶ “**Condition**” includes term—schedule 2 (Dictionary).

‘Interpleader orders

‘83.(1) On an application for relief by way of interpleader, the court may do 1 or more of the following—

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

(2) If—

- (a) an application for relief by way of interpleader is made; and
- (b) several proceedings are pending in the court for or about any or all of the property in dispute; and
- (c) the court makes an order in any 2 or more of the proceedings;

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

‘Effect of default judgment order

‘84. A default judgment order recorded and issued by a registrar has the same effect as if it were a judgment order made by the court.

‘Dismissal of proceedings for want of prosecution

‘85.(1) This section applies to the District Court and Magistrates Courts.²⁷

‘(2) If 2 years have passed since the last step was taken in a proceeding, the court may dismiss the proceeding.

‘(3) For this section, an application on which no order was made is taken not to be a step.

‘Division 5—Enforcement***‘Subdivision 1—Enforcement generally*****‘Demand for compliance unnecessary**

‘86.(1) It is not necessary to demand compliance with an order before starting enforcement proceedings for the order.

‘(2) If, under an Act, the rules or an order of the court, an order must be served on an enforcement debtor before the order may be enforced against the enforcement debtor, the order may be served without a demand for compliance.

‘Interest recoverable on enforcement

‘87. The rate of interest payable on a money order debt is the rate set under the *Supreme Court Act 1995*, section 48,²⁸ or, if the parties agree to a higher rate of interest, the higher rate.

‘Variation of order in partnership name

‘88. Despite section 89, the court may vary an order against a partnership

²⁷ The Supreme Court has inherent power to dismiss proceedings for want of prosecution.

²⁸ Section 48 (Interest on debt under judgment or order)

in the partnership name to make it an order against the persons who were partners when the cause of action arose.

‘Enforcement against partnership

‘**89.(1)** An order against partners suing or sued in the name of the partnership may be enforced against any 1 or more of the following—

- (a) partnership property;
- (b) a partner who filed a notice of intention to defend;
- (c) a person who has admitted being a partner;
- (d) a person who the court has decided is a partner;
- (e) a person who has been individually served as a partner with the originating process and who has not filed a notice of intention to defend.

‘**(2)** This section has effect subject to the *Partnership (Limited Liability) Act 1988*, section 21.²⁹

‘Variation of order in business name

‘**90.** Despite section 91, the court may vary an order, in relation to a business, made in the name or style under which 1 or more persons carry on the business (whether or not the name or style is registered under the *Business Names Act 1962*), to make it an order against a person carrying on the business.

²⁹ *Partnership (Limited Liability) Act 1988*, section 21—

‘Legal proceedings

‘**21.(1)** Legal proceedings other than proceedings in relation to an offence may be brought by or against the partners in a limited partnership in the firm name in which the partnership is registered under this Act.

‘**(2)** Action by way of execution under or enforcement of a judgment obtained in an action against a limited partnership sued in its firm name shall not be taken against the property or person of a limited partner in the partnership except with the prior leave of the Supreme Court.’

‘Enforcement against property of a business

‘91.(1) This section applies if—

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

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

‘Subdivision 2—Enforcement warrants**‘Period of enforcement warrant**

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

‘Payment under enforcement warrant

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

‘Enforcement warrant

‘93A.(1) To enforce a money order (but not an order for the payment of money into court), an enforcement creditor must obtain a warrant from the court.

‘(2) An enforcement warrant may contain any order directed to enforcing a money order including an order authorising—

- (a) an enforcement officer to seize and sell in satisfaction of the money order debt all real and personal property (other than property exempted under the *Uniform Civil Procedure Rules*) in which an enforcement debtor has a legal or beneficial interest; or

- (b) redirection to an enforcement creditor of certain debts, belonging to an enforcement debtor, from a third person; or
- (c) redirection to an enforcement creditor of particular earnings, of an enforcement debtor, from a third person; or
- (d) satisfaction of the money order debt by instalment payments by an enforcement debtor.

‘(3) However, only the Supreme Court may issue an enforcement warrant containing a charging order.

‘(4) In this section—

“**charging order**” includes an order charging all or part of an enforcement debtor’s legal or equitable interest in 1 or more of the following—

- (a) annuities;
- (b) debentures;
- (c) stocks;
- (d) bonds;
- (e) shares;
- (f) marketable securities;
- (g) prescribed interests;
- (h) units of shares, marketable securities or prescribed interests.

‘**Securities held by enforcement officer**

‘**93B.(1)** An enforcement officer holds seized cheques, bills of exchange, promissory notes, specialties or other securities for money (“**seized documents**”) as security for the amount to be recovered under the enforcement warrant, for the benefit of the enforcement creditor.

‘(2) The enforcement officer may receive an amount payable under a seized document from the person liable under it.

‘(3) The *Uniform Civil Procedure Rules* may make provision about proceedings to recover amounts under a seized document, including who may start a proceeding.

‘Redirection of joint funds

‘**93C.(1)** This section applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a **“joint fund”**).

‘**(2)** An enforcement warrant may authorise redirection to an enforcement creditor of a joint fund to the extent of the enforcement debtor’s entitlement.

‘**(3)** Unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner, it is presumed a joint fund is owned by the fund owners in equal shares.

‘State debts

‘**93D.(1)** If the debt belonging to an enforcement debtor is from a public sector unit and payable out of public accounts (a **“State debt”**), an application for an enforcement warrant and the enforcement warrant must name the chief executive, by title, of the public sector unit as the third person in whose hands the State debt is redirected.

‘**(2)** Subsection (1) applies despite the *Crown Proceedings Act 1980*, section 8³⁰.

‘**(3)** In this section—

“public accounts” see *Financial Administration and Audit Act 1977*, section 10.³¹

“public sector unit” means any of the following—

- (a) a department or part of a department;

³⁰ The *Crown Proceedings Act 1980*, section 8(1)—

‘Subject to this Act and any other Act or law, a claim by or against the Crown may be made and enforced by a proceeding by or against the Crown under the title the ‘State of Queensland’.’.

³¹ The *Financial Administration and Audit Act 1977*, section 10(1)—

‘The public accounts are to be kept by the Treasurer and are to consist of—

- (a) the consolidated fund;
- (b) the trust and special funds.’.

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

‘Redirection of partnership debts

‘93E. A court may issue an enforcement warrant authorising redirection to an enforcement creditor of certain debts, belonging to an enforcement debtor, from a partnership carrying on business in Queensland even if a partner resides outside Queensland.

‘Account with financial institution

‘93F.(1) An amount standing to the credit of an enforcement debtor in an account in a financial institution is, for enforcing a money order, a debt payable to the enforcement debtor, even if any of the following conditions applicable to the account have not been satisfied—

- (a) a condition requiring a demand or notice to be made before an amount is withdrawn;
- (b) a condition requiring a personal application to be made before an amount is withdrawn;
- (c) a condition requiring the production of a deposit book or a receipt for an amount deposited in the account before an amount is withdrawn;
- (d) a similar condition.

‘(2) Subsection (1) applies, with any changes necessary, to an amount that is placed to the credit of an enforcement debtor in an account in a financial institution between the date of the enforcement warrant ordering the redirection and any hearing deciding the validity of the warrant.

‘Enforcement against the third person

‘93G.(1) If a third person—

- (a) does not comply with an enforcement warrant authorising redirection of a debt from the third person; and
- (b) does not file a notice of objection; and
- (c) fails to dispute his or her liability to pay the debt;

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

‘(2) To remove any doubt, it is declared that if the debt is a State debt under section 93D,³² the *Crown Proceedings Act 1980*, section 11 applies.³³

‘Subdivision 3—Offences

‘Employment protection if enforcement warrant for redirection of earnings

‘93H. An employer must not dismiss an employee, or otherwise prejudice an employee in his or her employment, because an enforcement warrant authorising redirection of the employee’s earnings has been made.

Maximum penalty—100 penalty units.

‘Division 6—Miscellaneous

‘Proceeding if grant of representation when originating process issues

‘93I. If—

- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
- (b) the cause of action survives the person’s death; and
- (c) a grant of representation had been made when the originating process issues;

³² Section 93D (State debts)

³³ Section 11 (Satisfaction of judgment)

then, unless the court orders otherwise, the proceeding is taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.

'Proceeding if no grant of representation when originating process issues

'93J.(1) If—

- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
- (b) the cause of action survives the person's death; and
- (c) a grant of representation has not been made when the originating process issues;

the proceeding is taken to have been brought against the person's estate.

'(2) However, if a grant of representation is made after the originating process issues, then, unless the court orders otherwise, the proceeding is afterwards taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.

'(3) Even if a grant of representation has not been made when an order is made in the proceeding, the order binds the estate to the same extent as if a grant had been made and a personal representative of the deceased had been a party to the proceeding.'

Replacement of pt 9 heading (Rules of court)

19. Part 9 heading—

omit, insert—

**'PART 9—RULES OF COURT AND PRACTICE
DIRECTIONS FOR THE SUPREME COURT, THE
DISTRICT COURT AND THE MAGISTRATES
COURTS'.**

Replacement of s 117 (Rule making power)

20. Section 117—

omit, insert—

‘Definition for pt 9

‘117. In this part—

“court” means, if otherwise appropriate—

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

‘Rule-making power

‘118.(1) The Governor in Council may make rules of court under this Act for—

- (a) the practices and procedures of the Supreme Court, the District Court or the Magistrates Courts or their registries or another matter mentioned in schedule 1;³⁴ or
- (b) the admission of barristers or solicitors; or
- (c) appeals from the Mental Health Tribunal; or
- (d) any law giving jurisdiction to the Supreme Court, the District Court or the Magistrates Courts, including a law of the Commonwealth.

‘(2) A rule may only be made with the consent of the rules committee.

‘(3) Rules of court (other than rules for a matter mentioned in subsection (1)(b) or (1)(c) or a matter relevant to criminal jurisdiction or criminal proceedings, other than proceedings in relation to contempt of court) are to be called the *Uniform Civil Procedure Rules*.

³⁴ Schedule 1 (Subject matter for rules)

‘Rules committee may approve forms

‘**118A.** The rules committee may approve forms for use under this Act.’.

Insertion of new ss 118D–118E

22. Part 9, after section 118C—

insert—

‘Practice directions

‘**118D.(1)** To remove any doubt, it is declared that a practice direction is not subordinate legislation.

‘**(2)** The appropriate person of a court may make practice directions for the court about—

- (a) case management; or
- (b) for the Supreme Court or District Court—applications exempted from the rules of court dealing with decisions made by the court on written material and submissions without the parties attending.

‘**(3)** Subsection (2) does not limit any inherent or other power of a court or judge to make practice directions.

‘**(4)** In this section—

“appropriate person”, of a court, means—

- (a) for the Supreme Court—the Chief Justice; or
- (b) for the District Court—the Chief Judge; or
- (c) for the Magistrates Courts—the Chief Stipendiary Magistrate.

‘Directions or orders about a proceeding

‘**118E.(1)** To the extent that the conduct of a proceeding is not provided for by rules of court or practice directions, the court may make the orders and give the directions it considers appropriate for the conduct of the proceeding.

‘**(2)** In making an order or giving a direction, the court may have regard to practices and procedures of the court, including rules of the court, in force before the commencement of the *Uniform Civil Procedure Rules*.

‘(3) This section does not limit any inherent or other power of a court or judge to control proceedings.’.

Amendment of s 120 (Regulation-making power)

23. Section 120—

insert—

‘(2) Without limiting subsection (1), the Governor in Council may make regulations under this Act for the following matters—

- (a) to prescribe fees and costs for the Supreme Court, District Court or Magistrates Courts (the “**courts**”);
- (b) to provide how fees, costs and fines are to be received and dealt with in the courts;
- (c) to provide for electronic representations or equivalents of seals, stamps and signatures for the courts;
- (d) a matter that the *Supreme Court Act 1995* states may be prescribed.’.

Insertion of new ss 128–137

24. After section 127—

insert—

‘No distinction between court and chambers for Supreme Court, District Court and Magistrates Courts

‘**128.(1)** This section applies to the Supreme Court, District Court and Magistrates Courts.

‘(2) The distinction between court and chambers is abolished.

‘(3) The business of the court, wherever it is conducted, is taken to be conducted in court.

‘Abolition of old enforcement processes

‘**129.(1)** All writs in aid of enforcement are abolished.

‘(2) For a law in force immediately before the commencement of this section that expressly or impliedly refers to a writ in aid of enforcement, the reference is taken to be a reference to the equivalent enforcement warrant under the *Uniform Civil Procedure Rules* if the context permits.

‘(3) For a law in force immediately before commencement that expressly or impliedly refers to a third person order nisi, third person order absolute or instalment order or an order subsequent to those orders, the reference is taken to be a reference to the equivalent enforcement warrant within the meaning of the *Uniform Civil Procedure Rules* if the context permits.

‘(4) This section does not affect the validity of a writ in aid of enforcement issued before commencement.

‘(5) In this section—

“**writ in aid of enforcement**” includes a writ of *capias ad respondendum*, writ of *capias ad satisfaciendum*, writ of *elegit*, writ or warrant of execution, writ of *fieri facias*, writ of *ne exeat colonia* or a writ subsequent to those writs as a procedure of enforcement.

‘Outdated references

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

TABLE

Column 1	Column 2
writ of summons	claim
notice of motion, motion, petition or originating summons	application
entry of appearance	notice of intention to defend
chambers	court
action, cause or matter	proceeding
rules of the Supreme Court or Rules of the Supreme Court	Uniform Civil Procedure Rules

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

TABLE

Column 1	Column 2
plaint or plaint and summons	claim
chambers	court
action	proceeding
District Court Rules 1968	Uniform Civil Procedure Rules
Magistrates Courts Rules 1960	Uniform Civil Procedure Rules

‘References to judgment

‘131. In an Act or document, in the context of a court’s civil jurisdiction and if otherwise appropriate, a reference to a judgment, giving judgment or entering judgment is taken to be a reference to a judgment order, making a judgment order or the recording and issuing of a judgment order by the court’s registry.

‘Judicial registrar may exercise certain judicial or quasi-judicial power of registrar

‘132. If—

- (a) a provision of an Act provides for the exercise of a judicial or quasi-judicial power by a registrar of the Supreme Court or District Court; and
- (b) the *Uniform Civil Procedure Rules* provide that the power may be exercised by a judicial registrar of the court;

the power may be exercised by the registrar or the judicial registrar.

‘References to taxation of costs

‘133. In an Act or document, in the context of a court and if otherwise

appropriate—

- (a) a reference to taxation of costs by the Supreme Court taxing officer or an officer of another court may be taken to be a reference to assessment of costs by a registrar of the court approved, under the *Uniform Civil Procedure Rules*, to assess costs; and
- (b) a reference to a particular basis of taxation, for example, taxation on a party and party basis, may be taken to be a reference to the basis of taxation specified under the *Uniform Civil Procedure Rules* as the equivalent basis of taxation.

‘Act to prevail over Supreme Court Act 1995

‘134.(1) If a provision of the *Supreme Court Act 1995* is inconsistent with this Act, this Act prevails to the extent of the inconsistency.

‘(2) In this section—

“inconsistency” includes—

- (a) direct inconsistency; and
- (b) covering the field inconsistency.

“this Act” includes the *Uniform Civil Procedure Rules* made under this Act.

‘Application of Uniform Civil Procedure Rules

‘135.(1) On the commencement of the *Uniform Civil Procedure Rules*, those rules apply to the next step or application in a proceeding pending in the Supreme Court, District Court or a Magistrates Court that can reasonably be taken in compliance with those rules.

‘(2) If a difficulty arises in the application of subsection (1) to a particular proceeding in a court, the court may, on application by a party or on its own initiative, make an order it considers appropriate to resolve the difficulty.

‘Transitional—abolition of Circuit Courts

‘136.(1) On the commencement of this section—

- (a) an order made by a Circuit Court continues to have effect as an order of the Supreme Court; and
- (b) anything done or existing in relation to a previous Circuit Court continues, and is taken to be done or existing in relation to the Supreme Court; and
- (c) a process pending in a previous Circuit Court is to be continued in the Supreme Court.

‘(2) In an Act, other than the *Supreme Court Act 1995*, or another document, if the context permits, a reference to Circuit Courts or a Circuit Court is taken to be a reference to the Supreme Court.

‘(3) However, this section does not apply if its application would limit the jurisdiction or power of the Supreme Court in any way.

‘Saving of former court rules—Civil Justice Reform Act 1998

‘137. A rule in force immediately before the commencement of this section that was made under section 117,³⁵ as in force immediately before the commencement—

- (a) is taken to be made under section 118,³⁶ as inserted by the *Civil Justice Reform Act 1998*;³⁷ and
- (b) is not part of the *Uniform Civil Procedure Rules*.³⁸’.

³⁵ Section 117 (Rule making power)

³⁶ Section 118 (Rule-making power)

³⁷ This includes the following rules—

- *Criminal Practice Rules 1900*
- *Solicitors’ Admission Rules 1968*
- *Barristers’ Admission Rules 1975*
- *General (Appeals Against Decisions of the Mental Health Tribunal) Rules 1986*

³⁸ See also section 118B (Court rules are exempt from RIS requirements and automatic expiry), particularly subsection (2).

Replacement of schs 1–2

25. Schedules 1 and 2—

omit, insert—

‘SCHEDULE 1**‘SUBJECT MATTER FOR RULES**

section 118

‘PART 1—GENERAL**‘Jurisdiction generally**

‘1. Jurisdiction of the courts, including civil, criminal and any appellate jurisdiction.

‘PART 2—CIVIL PROCEEDINGS**‘Starting civil proceedings**

‘2. Starting civil proceedings in the courts, including, for example, the following—

- (a) originating process;
- (b) where to start proceedings;
- (c) for the Supreme Court—cross-vesting of jurisdiction.

‘Parties and proceedings

‘3. Parties and proceedings, including, for example, the following—

- (a) several causes of action and parties in a civil proceeding, including reconstitution of proceedings and representative parties;

- (b) multiple civil proceedings;
- (c) interpleader orders;
- (d) civil proceedings by or against a business or person under a legal incapacity;
- (e) third party procedure.

‘Notices of intention to defend

‘4. Notices of intention to defend in civil proceedings.

‘Service of documents

‘5. Service of documents for civil proceedings, including, for example, the following—

- (a) the various types of service, including personal service and ordinary service;
- (b) service outside Australia and service of foreign legal process in Queensland.

‘Pleadings

‘6. Pleadings, including, for example, the following—

- (a) matters in pleadings and particulars;
- (b) progress of pleadings;
- (c) particular pleadings, including statements of claim and counterclaims.

‘Disclosure

‘7. In civil proceedings—

- (a) disclosure by parties, including disclosure and inspection of documents and interrogatories; or
- (b) non-party disclosure; or
- (c) admissions; or

- (d) disclosure of experts' reports and other material to which legal professional privilege may attach, including by direction or order of the court.

'Preservation of rights and property

'8. Preservation of rights and property in civil proceedings, including, for example, the following—

- (a) inspection, detention and preservation of property;
- (b) for the Supreme Court and the District Court—
 - (i) injunctions, including Mareva injunctions and Anton Piller orders; or
 - (ii) receivers; or
 - (iii) sales by court order.

'Ending proceedings early

'9. Ending civil proceedings early, including, for example, the following—

- (a) ending proceedings because of default;
- (b) summary decisions;
- (c) discontinuance and withdrawal;
- (d) alternative dispute resolution processes, including, for example, the following—
 - (i) experience and qualifications for approval as a mediator or case appraiser;
 - (ii) persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid;
 - (iii) jurisdiction of a case appraiser at a case appraisal;
 - (iv) ability of a mediator or case appraiser to seek independent advice or information;
 - (v) time within which an ADR process should be finished (which may be a time specified by the court);

- (vi) conduct of an ADR process;
- (vii) confidentiality of a mediated agreement or case appraiser's decision;
- (viii) applying procedures and other matters similar to those applying to arbitrations under the *Commercial Arbitration Act 1990*;
- (ix) imposing penalties against a party who fails to cooperate in an ADR process;
- (e) offers to settle and payments by defendants;
- (f) the referral of cases to arbitration.

‘Court supervision

‘10. Court supervision of civil proceedings, including, for example, the following—

- (a) directions about the conduct of proceedings;
- (b) consequences of failing to comply with rules, directions or court orders;
- (c) amendments, both with and without leave;
- (d) continuation of proceedings after delay.

‘Evidence

‘11. The taking of evidence generally, including, for example, the following—

- (a) the way evidence may be given;
- (b) dispensing with the rules of evidence;
- (c) taking evidence out of court;
- (d) taking evidence for future claims;
- (e) subpoenas;
- (f) expert evidence, including court experts;
- (g) affidavits and the exchange of correspondence instead of affidavit

evidence;

- (h) the obtaining of evidence by the court, including, for example, the calling of witnesses.

‘Jurisdiction of judicial registrars and registrars

‘12. Jurisdiction of judicial registrars and registrars.

‘Trials and other hearings

‘13. Trials and other hearings of civil proceedings, including, for example, the following—

- (a) practice lists;
- (b) listing applications for hearing and setting trial dates;
- (c) the conduct of trials;
- (d) decisions without pleadings or without hearings;
- (e) separate decisions on questions;
- (f) assessors and special referees;
- (g) assessment of damages;
- (h) simplified procedures for minor debt claims and other claims.

‘Particular proceedings

‘14. Particular civil proceedings, including, for example, the following—

- (a) the taking of accounts;
- (b) proceedings for damages for personal injury or death;
- (c) the payment of amounts into court;
- (d) for the Supreme Court—
 - (i) judicial review proceedings; or
 - (ii) proceedings for the issue of a writ of habeas corpus.

‘Probate

‘15. For the Supreme Court, probate, including, for example, the following—

- (a) applications for grants of probate or letters of administration and the documents required;
- (b) resealing grants;
- (c) proceedings under the *Public Trustee Act 1978*;
- (d) caveats objecting to grants, orders to administer or resealing of grants;
- (e) contested proceedings.

‘Contempt of court

‘16. Contempt of court, including contempt of the court as constituted by a judicial registrar, and proceedings for failure to comply with an order, other than an order for the payment of an amount.

‘Trusts

‘17. For the Supreme Court, trusts.

‘Costs

‘18. Costs in civil proceedings, including, for example, the following—

- (a) security for costs;
- (b) entitlement to recover costs of a proceeding;
- (c) costs of a party in a proceeding;
- (d) assessment of costs, including—
 - (i) powers of registrars to assess costs; or
 - (ii) procedures; or
 - (iii) review of assessments.

‘Appeals, applications and cases stated to Court of Appeal

‘19. Appeals, applications and cases stated to the Court of Appeal.

‘Enforcement of money orders

‘20. Enforcement of money orders, including, for example, the following—

- (a) enforcement hearings;
- (b) enforcement warrants, including—
 - (i) enforcement warrants for seizure and sale of property; or
 - (ii) enforcement warrants for redirection of debts or earnings; or
 - (iii) enforcement warrants for payment of the money order debt by instalments; or
 - (iv) for the Supreme Court—enforcement warrants for charging orders and stop orders;
- (c) powers of enforcement officers.

‘Reciprocal enforcement of foreign judgments

‘21. The reciprocal enforcement of foreign judgments, including under a Commonwealth law.

‘Corporations

‘22. Any law, including a Commonwealth law, under which the Supreme Court exercises jurisdiction in relation to corporations or similar entities.

‘Miscellaneous matters

‘23. The following matters—

- (a) documents filed in the registries;
- (b) filing, receipt, service, issue or transmission electronically of approved forms and other documents and material for use in, or

in connection with, proceedings, including, electronic representations or equivalents of seals, stamps and signatures and their validity;

- (c) the functions of the registries generally;
- (d) the rules applicable to solicitors acting for parties in proceedings in the court;
- (e) transitional arrangements.

‘PART 3—CRIMINAL PROCEEDINGS

‘Practice and procedure in criminal jurisdiction

‘24. Practice and procedure in the courts’ criminal jurisdiction (including any appellate jurisdiction) generally, including, for example, the following—

- (a) forms for proceedings;
- (b) applications;
- (c) practitioners’ and court’s duties;
- (d) pre-trial matters, including, for example, subpoenas and pre-trial directions and rulings;
- (e) regulating trial proceedings;
- (g) evidence;
- (h) the custody and inspection of exhibits;
- (i) the recording of proceedings and access to the records;
- (j) appeals, including, appeals to the Court of Appeal and the District Court;
- (k) listing trials, sentences, applications and appeals for hearing, and setting hearing dates;
- (l) filing, receipt, service, issue or transmission electronically of forms and other documents and material for use in, or in

connection with, proceedings, including, electronic representations or equivalents of seals, stamps and signatures and their validity.’