

Queensland



# DISTRICT COURT ACT 1967

**Reprinted as in force on 17 December 1999  
(includes amendments up to Act No. 66 of 1999)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3C**

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# Information about this reprint

This Act is reprinted as at 17 December 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



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# DISTRICT COURT ACT 1967

[as amended by all amendments that commenced on or before 17 December 1999]

## An Act to consolidate and amend the law relating to the District Court

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *District Court Act 1967*.

#### Suspension of Act's operation

2. A regulation may provide that this Act or a provision of this Act is not in force for a district.

#### Definitions

3. In this Act—

“**action**” means a civil proceeding commenced by plaintiff.

“**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 90.

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

- (a) in the case of a mediator—approval under section 93;<sup>1</sup> or
- (b) in the case of a case appraiser—approval under section 94.<sup>2</sup>

**“case appraisal”** see section 92.

**“case appraiser”** means—

- (a) a case appraiser approved under section 94; or
- (b) a judge.

**“Chief Justice”** means the Chief Justice of Queensland or the acting Chief Justice of Queensland.

**“Court”** or **“District Court”** means a court appointed under the authority of this Act.

**“dispute”** means—

- (a) a dispute in an action; 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.

**“district”** means a particular district assigned to a District Court under the provisions of this Act.

**“District Courts jurisdiction Act”** means—

- (a) the *Commercial Arbitration Act 1990*; or
- (b) the *Evidence Act 1977*; or
- (c) a law prescribed under a regulation for this definition.

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<sup>1</sup> Section 93 (Approval of mediators)

<sup>2</sup> Section 94 (Approval of case appraisers)

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“**goods**” includes money or bank notes, and cheques, bills of exchange, promissory notes, specialties, or other securities for money.

“**judge**” or “**District Court judge**” means a judge of a District Court or District Courts and includes an acting judge.

“**judgment**” includes a judgment, order, or other decision or determination of a judge.

“**judicial registrar**” means a judicial registrar of the District Court.

“**landlord**” means the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary, or tenancy in common, any 1 of the persons entitled to the reversion.

“**Magistrates Courts district**” means a district appointed under the *Justices Act 1886* for the purpose of Magistrates Courts constituted under that Act.

“**matter**” means a proceeding in the Court commenced otherwise than by plaint.

“**mediation**” see section 90.

“**mediator**” means a mediator approved under section 93 or a mediator within the meaning of the *Dispute Resolution Centres Act 1990*.

“**mentally ill person**” means a person who has been declared by the Supreme Court or a judge thereof to be mentally ill and incapable of managing the person’s estate, and any person who is otherwise a patient as defined in the *Mental Health Act 1974*, schedule 5 and any person who, on the trial of any indictment, has been acquitted on the ground of insanity, or who, on arraignment on any indictment, has been found by a jury to be insane, and who in either case is still in confinement.

“**party**”—

- (a) in part 7, means a party to a dispute; and
- (b) elsewhere (other than part 9), includes a person served with notice of or attending a proceeding, although not named in the record as a party to the dispute.

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

**“referring court”**, of a mediation or case appraisal, means the District Court that referred the action to mediation or case appraisal.

**“referring order”** means an order made under section 97 referring a dispute to an ADR process.

**“registrar”** includes a deputy registrar of the District Court, but does not include a judicial registrar.

**“rules”** means the *Uniform Civil Procedure Rules*.

## **PART 2—COURTS, JUDGES, REGISTRIES AND OFFICERS**

### *Division 1—Court*

#### **Establishment of the District Court**

**4.** The District Court is established.

#### **Members and constitution of Court**

**5.(1)** The members of the District Court are the District Court judges.

**(2)** The District Court is constituted by any one of its members.

#### **Where the Court may be held**

**6.(1)** The District Court may be constituted at any place.

**(2)** The District Court as constituted by any of its members may sit in more than 1 place at the same time.

**(3)** A regulation may declare—

- (a)** the places at which the District Court is to be held; or
- (b)** that the District Court is no longer to be held at a place.

(4) The District Court held at a place may be referred to as the District Court at the place.

*Example—*

If the District Court is held at Toowoomba, the District Court at that place may be referred to as the District Court at Toowoomba.

### **Declaration of districts**

7.(1) A regulation may declare a district for the District Court at a place.

(2) The district has the same name as the place.

*Example—*

The name of the district for the District Court at Toowoomba, is the Toowoomba District Court district.

(3) The district must consist of—

- (a) 1 Magistrates Courts district; or
- (b) 1 division of a Magistrates Courts district; or
- (c) if the District Court district would form 1 continuous area—
  - (i) 2 or more Magistrates Courts districts; or
  - (ii) 2 or more divisions of a Magistrates Courts district; or
  - (iii) 1 or more Magistrates Courts districts and 1 or more divisions of a Magistrates Courts district.

(4) If the District Court is no longer to be held at a place, a regulation may declare that all proceedings pending in the court at the place must be continued in the court at a specified place.

### **Court to be a court of record**

8. The District Court is a court of record and has civil and criminal jurisdiction as provided under this or another Act.

### **Statewide jurisdiction**

8A. The District Court has jurisdiction throughout Queensland.

**Seals of the court**

**8B.(1)** The District Court must have a seal, and may have the other seals that may be required for the business and administration of the court.

**(2)** All notices, summons, certificates, warrants and other process, issued by the registrar must be sealed with a seal mentioned in subsection (1).

***Division 2—Judges*****Appointment and qualification of judges**

**9.** The Governor in Council may, by commissions in Her Majesty's name, appoint judges of District Courts, each of whom shall be a barrister or solicitor of the Supreme Court of Queensland of not less than 5 years standing.

**Chief Judge**

**10.(1)** The Governor in Council may, by commission, appoint a judge as Chief Judge of District Courts.

**(2)** The Governor in Council may, by gazette notice, appoint a judge to act as Chief Judge during any period, or all periods, when the Chief Judge is absent from duty or the State, or is, for another reason, unable to perform the duties of office.

**Travelling expenses**

**11.** A judge shall be entitled to receive the same allowances by way of travelling expenses as are payable to a judge of the Supreme Court.

**Leave of absence**

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

**Judges not to practise or sit in Parliament**

**13.** A judge shall not practise as a barrister, solicitor or notary, or be



directly or indirectly concerned or interested in such practice, and a judge shall not be capable of being summoned or being chosen as a member of the Legislative Assembly.

### **Retirement of judges**

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

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

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

### **Removal from office**

**15.** The Governor may remove a judge for incapacity or misbehaviour on the address of the Legislative Assembly.

### **Acting judge**

**17.** The Governor in Council may appoint (by commission in Her Majesty's name) a person qualified to be appointed a District Court judge to be an acting judge—

- (a) during the absence on leave, granted by the Governor in Council, of a judge; or
- (b) if a judge be absent from any other cause or is incompetent or unable to take part in any decision or in any trial, action or proceeding or to sit at any sittings of a Court; or
- (c) if for any reason whatsoever the conduct of the business of a Court or the Courts in the opinion of the Governor in Council requires such an appointment.

### **Governor in Council may assign Courts to each judge**

**18.** The Governor in Council may, by gazette notice, assign to a judge,

either permanently or in rotation with other judges, such Courts as the Governor in Council thinks fit, but the jurisdiction of a judge shall not be deemed thereby to be limited exclusively to the Courts so assigned to the judge.

### **Judge empowered to act throughout the State**

**19.** Every judge appointed shall be appointed for the whole of the State and shall, under the judge's commission, be empowered to act in any District Court.

### **Judge to hold Court where directed, and to give notice**

**20.(1)** The Court may be constituted at any place.

**(2)** The judge to whom a Court is assigned shall attend and hold the court at the place appointed by the Governor in Council at such times as are appointed by the judge with the approval of the Attorney-General, but so that a Court is held in the place once at least in such interval as the Governor in Council directs.

**(3)** Notice of the days on which the court is appointed to be held shall be put up in a conspicuous place in the court house and in the office of the registrar, and shall be otherwise published as the judge directs.

**(4)** When, by reason of the absence of the judge, the court can not be held at the time appointed, the registrar, or, in the event of the registrar's absence, the bailiff, shall adjourn the court to such day as the registrar or the bailiff deems convenient, and shall enter in the minute-book the cause of the adjournment.

### **Adjournment within district**

**21.** Despite sections 4(1) and 20 and any other provision of this Act, when any action, matter or proceeding is pending or is being heard in a District Court in its civil or criminal jurisdiction at any place, the judge to whom the court is assigned may order that the hearing be adjourned from that place to some other place within the same district, if the judge determines that on the balance of convenience the adjournment should be ordered.

**Certain causes and matters not affected by determination of commission**

**24.** If at the determination by effluxion of time or other cause of any commission under this Act there shall be any actions or matters, civil or criminal, including any appeal, partly heard or standing for judgment by or before the holder of such commission, the commission shall only for the purpose of deciding such actions or matters (including the completion of the hearing thereof where necessary) and so far as is necessary for that purpose, remain in force until judgment shall have been delivered therein unless the holder of that commission shall be sooner removed.

**Hearing de novo when trial judge unable to continue**

**25.(1)** When after the commencement of the hearing of any action or matter, civil or criminal, including any appeal before a judge, but before judgment in the action or matter has been given, the judge dies or becomes incapable of continuing to sit or, in the case of an action or matter which has been heard but judgment wherein has not been given, of giving the judge's judgment, any party to the action or matter may, upon giving 7 days notice to the other party or parties, apply to a judge for an order that the action or matter may be heard and determined de novo.

**(2)** On an application under this section to a judge (or in the absence of a judge to a judge of the Supreme Court) that judge—

- (a)** (if this section is applicable, in the action or matter, by reason of the incapacity of a judge), may, according as the judge deems fit, either adjourn the action or matter as the judge deems necessary, in order to enable the judge before whom the hearing thereof was commenced to give judgment and, if necessary for that purpose, to complete the hearing, or order the action or matter to be heard and determined de novo; and
- (b)** in any other case shall order the action or matter to be heard and determined de novo.

**(3)** When, pursuant to this section, an action or matter is heard and determined de novo—

- (a)** the judge so hearing or determining the same may make such order as to the costs of the first hearing as the judge shall think fit;

and

- (b) the first hearing shall for all purposes, other than that set out in paragraph (a) be deemed a nullity.

### **Proof of incapacity of judge**

**26.** When proof of the incapacity of a judge is necessary for a purpose of the last preceding section, the certificate of the Chief Justice that such judge is incapable as specified in the certificate shall be prima facie evidence of that fact.

### **Judge may perform the duties of another judge**

**27.** In the case of absence or disability of a Judge, or on an emergency, another judge may, at the request in writing of the firstmentioned judge or of the Chief Justice, sit either in court or in chambers for the first mentioned judge, and may exercise all the powers and perform all the duties which that judge might have exercised or performed.

### **Removal of action only in manner provided by this Act**

**28.** A judgment given by a judge, or an action or matter brought before the judge or depending in the judge's court, shall not be removed by appeal, motion, writ of error or certiorari, or otherwise into another court, save and except in the manner and according to the provisions of this Act.

### ***Division 2A—Powers and responsibilities of Chief Judge***

#### **Arrangement of business**

**28A.(1)** The Chief Judge is responsible for the administration of District Courts and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of District Courts.

(2) Subject to any Act, the Chief Judge has power to do all things necessary or convenient to be done for the administration of District Courts and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of District Courts.

***Division 3—Prerogative writs*****When action may be removed**

**29.(1)** When any action, matter or proceeding is pending in a District Court in its civil or criminal jurisdiction or when any accused person has been committed for trial to a District Court, the Supreme Court or a judge thereof shall, upon application by the Crown, in a criminal matter or proceeding or in any action or civil proceeding in which the Crown is a party and may, if it or the judge thinks it desirable, upon the application of any interested person, direct a writ of certiorari to be issued for removing such action, matter or proceeding into the Supreme Court or a Circuit Court or recommit the accused person for trial to the Supreme Court or a Circuit Court.<sup>3</sup>

**(2)** The Supreme Court or judge may impose such terms as to payment of costs as it or the judge thinks fit and it or the judge may make such orders as to remand custody and bail and in respect of the notices to witnesses or otherwise as it or the Judge shall think fit.

**Rule or order substituted for writ of mandamus to a judge or officer**

**30.** A writ of mandamus shall not be issued to a judge or an officer of a District Court requiring the judge or officer to do any act relating to the duties of his or her office, but a party requiring the act to be done may apply

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<sup>3</sup> The *Judicial Review Act 1991*, section 41 provides—

**Certain prerogative writs not to be issued**

**41.(1)** The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the court.

**(2)** If, before the commencement of this Act, the court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the court is empowered to make under this section.

to the Supreme Court or a judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the judge or officer of the District Court, and also the party to be affected by the act, to show cause why the act should not be done, and if after the service of the rule or summons good cause is not shown, the Supreme Court or a judge thereof may, by rule or order, direct the act to be done, and the judge or officer of the District Court shall, upon being served with the rule or order, obey it under pain of attachment, and in any event the court or judge may make such order with respect to costs as to the court or judge seems fit.

### **Judge not to be served with notice of application for prohibition**

**31.(1)** When an application is made to the Supreme Court or a judge thereof for a writ of prohibition addressed to a District Court, the judge of the District Court shall not be served with notice, and shall not, except by the order of a judge of the Supreme Court, be required to appear or be heard on the application, and shall not be liable to any order for the payment of the costs thereof, but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a judge.

**(2)** Notice of the application shall be given to or served upon the same parties as in the case of an order made or refused by a judge in a matter within the judge's jurisdiction.

### **Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings**

**32.** The granting by the Supreme Court, or by a judge thereof, of a rule or summons to show cause why a writ of certiorari or of prohibition should not be issued to a District Court, shall, if the Supreme Court or a judge thereof so directs, operate as a stay of proceedings in the action to which the same relates until the determination of the rule or summons, or until such court or judge otherwise orders, and the judge of the District Court shall, from time to time, adjourn the hearing of the action to such day as the judge thinks fit, until the determination or until such order is made.

**Notice of rule or summons to be given to registrar and parties**

**33.** If a copy of the rule or summons is not served by the party who obtained it on the opposite party, and on the registrar of the District Court, at least 2 clear days before the day fixed for the hearing of the action, the judge of the District Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as the judge thinks fit, unless the Supreme Court or a judge thereof has made a different order respecting such costs.

**Notice of writ of certiorari or prohibition obtained ex parte to be given to registrar and parties**

**34.** When a writ of certiorari or of prohibition addressed to a District Court is granted by the Supreme Court or a judge thereof on an ex parte application, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has been issued, at least 2 clear days before the day fixed for hearing the action to which it relates, the judge of the District Court may order the party who obtained the writ to pay all the costs of the day, or so much thereof as the judge thinks fit, unless the Supreme Court or a judge thereof has made a different order respecting such costs.

*Division 4—Registries***Registry etc.**

**35.(1)** In this section—

**“District Court registry”** means the office of the registrar of a District Court.

**(2)** Unless or until otherwise prescribed, where a central registry or a district registry of the Supreme Court exists in a city or town where pursuant to the provisions of this Act a District Court shall be held, such central registry or district registry, as the case may be, shall be a District Court registry.

**(3)** When a central registry or district registry is also a District Court registry then subject to this Act the registrar or district registrar, deputy

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registrar, bailiff and other officers of the Supreme Court at that city or town and any persons hereafter either permanently or temporarily holding those offices shall be, without any further appointment than by this Act, officers (in their several offices) respectively of the District Court at that place for all the purposes of this Act and shall have all the powers, jurisdictions, authorities and duties conferred or imposed upon the holders of such respective offices under this Act.

(4) Unless or until otherwise prescribed where a central registry or a district registry of the Supreme Court does not exist in a city or town where pursuant to the provisions of this Act a District Court shall be held, but a Magistrates Court does exist in that city or town, then the registry of the Magistrates Court at that city or town shall be the District Court registry at that place.

(5) Subject to this Act, the registrar of the Magistrates Court in that city or town and the deputy registrar, bailiff and other officers of that court, and any persons hereafter either permanently or temporarily holding those offices, shall be, without any further appointment than by this Act, officers (in their several offices) respectively of the District Court at that place for all the purposes of this Act and shall have all the powers, jurisdictions, authorities and duties conferred or imposed upon the holders of such respective offices under this Act.

*Division 5—Officers**Subdivision 1—Judicial registrars***Judicial registrars**

**35A.(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.



**Independence of judicial registrars**

**35B.** A judicial registrar when constituting the Court or otherwise exercising a judicial or quasi-judicial power is not subject to direction or control, other than as provided under this Act.<sup>4</sup>

**Rehearing after judicial registrar's decision**

**35C.(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 District Court judge, have the application reheard by the court as constituted by a District 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**

**35D.(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.

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<sup>4</sup> For example, see division 2A (Powers and responsibilities of Chief Judge).

(6) A judicial registrar's salary and allowances may not be reduced and any change to the judicial registrar's salary, allowances or conditions must be published in the gazette.

### **Retirement of judicial registrars**

**35E.** A judicial registrar must retire on reaching 70 years of age.

### **Preservation of rights**

**35F.(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.

### *Subdivision 2—Other officers*

### **Appointment and salary of registrar and deputy registrars**

**36.** For every Court the Governor in Council may appoint a registrar and such deputy registrars and such other officers as the Governor in Council shall think fit, who shall be paid such salary as the Governor in Council may determine.

### **Duties of registrar**

**37.** The registrar shall sign and issue summonses and warrants and register the records and judgments, and keep minutes of the proceedings of the Court, and shall take charge of and keep an account of the court fees and fines payable or paid into court, and of the moneys paid into and out of court, and shall enter an account of the fees, fines and moneys, in a ledger

kept by the registrar for that purpose, and shall, when required, submit the registrar's accounts to be audited by the auditor-general or the registrar's officers.

### **Minutes of proceedings to be kept**

**39.(1)** The registrar shall cause a note of the complaints, summonses, judgments, executions and returns thereto, and of the fines and of all other proceedings of the Court, to be fairly entered from time to time in a register maintained by the court and kept at the office of the court.

### **Evidence**

**(2)** In any action or other proceeding the books, and any entries therein, or copies of the books or entries under the seal of the Court and purporting to be signed and certified by the registrar, shall upon production be prima facie evidence of the contents of the books, or of the entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

### **When a clerk of the court is registrar, the clerk's successor or deputy shall be registrar**

**40.(1)** When a clerk of the court is appointed registrar of a District Court held at the place where the person is clerk, the successor in office of the clerk, or a deputy, or a person performing the duties for the time being, shall exercise, and have the rights and powers, and shall perform the duties of the registrar of the District Court while the person is performing the duties of such clerk.

**(2)** However, the provisions of this section shall not affect the power of appointment hereinbefore vested in the Governor in Council.

**(3)** In this section—

**“clerk of the court”** has the meaning assigned to that expression by the *Justices Act 1886*.

### **Appointment of bailiffs and bailiffs' assistants**

**41.(1)** For every Court there shall be 1 or more bailiffs, who shall be appointed by the Governor in Council.

(2) A bailiff may be suspended by a judge.

(3) The bailiff may, by writing under the bailiff's hand, appoint a sufficient number of fit persons to assist the bailiff, and may dismiss all or any of them and appoint others in their stead.

(4) An officer so appointed may also be suspended by a judge or suspended or dismissed by the Attorney-General.

(5) The bailiff shall be responsible for the acts and defaults of the officers appointed to assist the bailiff.

### **Bailiffs' assistants may act after the death or removal of bailiff**

42.(1) The death or removal of a bailiff shall not invalidate the acts of the officers so appointed, but they shall continue to act until they are dismissed by the successor to the bailiff or by the Attorney-General.

(2) They shall receive for their services while they so act after the death or removal of the bailiff the same remuneration as they were receiving at the date of the death or removal, and such remuneration shall be paid out of the salary and allowances attached to the office of bailiff.

### **Duties of bailiffs**

43.(1) The bailiffs or 1 of them shall, if required by the judge, attend every sitting of the Court, and shall, by themselves or their officers, serve all plaintiffs, and summonses and execute all warrants issued out of the court, and the bailiffs and officers shall in the execution of their duties conform to the rules of court, and subject thereto to the order and direction of the judge of the court for which they are appointed.

(2) However, a plaint or a summons may be served by the plaintiff or a person employed by the plaintiff.

### **Bailiff not required to take out auctioneer's licence**

44. A bailiff or other officer duly authorised to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's licence.

**Remuneration of bailiffs**

**45.(1)** A bailiff shall be paid a salary on account of the bailiff's general duties, and shall also be entitled to receive and retain for the bailiff's own use the fees prescribed as bailiffs' fees, unless the judge in any case otherwise orders.

**(2)** The bailiff shall, out of such fees, provide for the performance of the duties for which the fees are allowed, and for the payment of the officers appointed to assist the bailiff.

**(3)** The fees received for executing warrants of execution shall be paid by the registrar to the bailiff upon the issue of the warrant of execution.

**Bailiff answerable for escape and neglect to levy execution**

**46.(1)** If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, a judge may, upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the same manner in which the attendance of witnesses in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained, not exceeding in any case the sum of money for which the execution was issued, and the bailiff shall be liable to pay the same.

**(2)** Upon demand made, and on the bailiff's refusal to pay and satisfy the damages, payment may be enforced in the manner provided by this Act.

**Police officers to attend at District Courts and execute warrants etc.**

**47.** Police officers shall when required attend at the several District Courts held at the respective places where the police officers are stationed, and shall obey and execute in all cases every lawful summons, warrant, execution, order and command of the judge presiding at any such District Court.

***Division 6—General provisions about officers*****Disabilities of registrar and bailiff**

**48.(1)** A registrar shall not act as bailiff and a bailiff, the bailiff's partner or clerk, or a person in the service or employment of a bailiff or the bailiff's partner, shall not act as registrar, and an officer of the Court shall not, either by himself or herself or by the officer's partner, be directly or indirectly concerned as solicitor or agent for a party in a proceeding in the court.

**(2)** Any person committing an offence against this section shall be liable to pay the sum of \$200 and full costs of action to any person who sues for the same.

**Remedies against and penalties on bailiffs and other officers for misconduct**

**50.(1)** If a registrar, bailiff or other officer, acting under, or under colour or pretence, of the process of the Court is charged with extortion or misconduct, or with not duly paying or accounting for money levied by the officer under the authority of this Act, a judge may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the manner provided by this Act for enforcing the attendance of witnesses, and may make such order for the repayment of the money extorted, or for the due payment of the money so levied, and for the payment of such damages and costs as the judge thinks just.

**(2)** The judge may also impose a fine upon the registrar, bailiff or other officer not exceeding \$20 for each offence, and, in default of payment of the money so ordered to be paid, payment may be enforced in the manner provided by this Act for enforcing a judgment.

**Indemnity to persons acting under this Act**

**51.** If an action is brought against a person for anything done under a warrant issued in pursuance of this Act, the production of the warrant under the seal of the Court in the action shall be deemed sufficient proof of the

authority of the court previous to the issuing of the warrant, and if the plaintiff in the action has a verdict given against the plaintiff, is nonsuited, or discontinues the action, the defendant shall be allowed costs.

### *Division 7—Barristers, solicitors and agents*

#### **Appearance to be in person or by barrister, or solicitor, or other person allowed by the judge**

**52.(1)** A party to an action or other proceeding under this Act may appear in person or by a barrister or solicitor or by any person allowed by special leave of the judge in any case.

**(2)** But a person, not being a barrister or solicitor of the Supreme Court, shall not be entitled to claim or recover, or receive directly or indirectly, a sum of money or other remuneration for appearing or acting on behalf of another person in a District Court.

## **PART 4—CRIMINAL JURISDICTION AND PROCEDURE**

### *Division 1—Criminal jurisdiction*

#### **District Courts shall have criminal jurisdiction**

**60.** A District Court shall have jurisdiction to inquire of, hear, and determine all indictable offences, wheresoever committed, save as hereinafter excepted.

#### **Exception from criminal jurisdiction**

**61.(1)** Subject to subsection (2), a District Court shall not have jurisdiction to try a person charged with any indictable offence in respect of which the maximum term of imprisonment which may be imposed exceeds 14 years.

(2) A District Court shall have jurisdiction to try a person charged with committing or counselling or procuring the commission of any offence defined in the Criminal Code, sections 208, 213, 215, 216, 219, 222, 229B, 315 to 317, 337, 347, 398, 409, 411, 412, 415, 419, 421, 461 and 469 including any such offence in respect of which 1 or more than 1 circumstance of aggravation provided for under that code is alleged to exist, whether or not the maximum term of imprisonment which may be imposed in respect thereof exceeds 14 years.

### **Withdrawal of criminal jurisdiction**

62. A regulation may withdraw from a District Court its criminal jurisdiction, either absolutely or for a stated limited time.

## *Division 2—Procedure*

### **Change of venue**

63.(1) When an accused person is committed for trial to a District Court, not being the court of the district within which the offence is alleged to have been committed, a judge of the Supreme Court or of a District Court, may order the trial to be held in the court of that district, and may make all such orders for the remand and custody of the accused person, and for the enlargement of the accused person's bail or the notices to witnesses, as may be necessary.

(2) In any other case the venue may be changed by order of a judge of the Supreme Court, or of a District Court, who may make the like orders for the purposes aforesaid.

(3) The judge of a District Court may, at any stage of a criminal trial pending in the judge's court, order that the trial take place at another District Court, subject to such conditions as the judge thinks fit, and may remand the accused in custody or on bail to that court.

### **Change of trial from Supreme Court to District Court**

64.(1) When a person has been committed for trial or sentence to the Supreme Court or a Circuit Court or has been indicted in any such court for



an offence triable in a District Court any District Court judge if so requested by the Chief Justice may try or sentence such person and for that purpose shall have the same powers and jurisdiction as if the committal had been to or the indictment had been presented in a District Court.

(2) The request of the Chief Justice may be made in respect of a particular case or cases or in respect of specified categories of cases.

(3) When a person has been committed for trial to a District Court or has been indicted in a District Court any judge of the Supreme Court shall have the same powers and jurisdiction to try such person as if the committal had been to or the indictment presented in the Supreme Court or Circuit Court.

### **Jury in criminal trials**

**65.(1)** All indictable offences prosecuted in the Court must be tried by a judge and jury.

(2) The *Jury Act 1995* states the law about the following—

- (a) the obligation to perform jury service;
- (b) organisation of juries generally;
- (c) the selection of a jury;
- (d) arrangements for a jury during a trial;
- (e) juror's remuneration and allowances.

(3) Subsection (1) is subject to an Act that allows or requires an indictable offence prosecuted in the Court to be tried in another way.

### **Issues of law and fact**

**66.** Issues of law and fact shall be determined by the judge or jury as if the trial were a trial on indictment in the Supreme Court.

### **Registrar may issue subpoenas**

**67.(1)** The registrar may issue subpoenas in criminal cases for the attendance of witnesses at the trial of a person committed for trial to the Court of which he or she is registrar, or to another Court, whether an information or indictment has been presented against such person or not.

(2) A person disobeying a subpoena shall be liable to the same consequences as for disobedience to a subpoena issued in a civil proceeding under the authority of this Act.

## **PART 5—CIVIL JURISDICTION**

### *Division 1—Civil jurisdiction*

#### **District Courts' civil jurisdiction**

**68.(1)** A District Court shall have jurisdiction to hear and determine—

- (a) all personal actions, where the amount, value or damage sought to be recovered does not exceed the monetary limit including—
  - (i) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated;
  - (ii) any claim for detention of chattels;
  - (iii) any claim for rent or mesne profits;
  - (iv) any claim for any debt, damages or compensation arising under any Act; and
- (b) actions and matters—
  - (i) for enforcing by delivery of possession any mortgage, encumbrance, charge or lien, where the amount owing in respect thereof does not exceed the monetary limit;
  - (ii) for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the monetary limit;
  - (iii) for specific performance of an agreement for the sale or other disposition of land or an interest in land or of any other property, where the value of the land or interest or property

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does not exceed the monetary limit, or in lieu of or in addition to specific performance, damages not exceeding the monetary limit;

- (iv) for rectifying, delivering up or cancelling any agreement, where the amount in dispute or the value of the property affected does not exceed the monetary limit;
- (v) for a declaration of partnership or dissolution or winding up of, or otherwise relating to, any partnership, where the property of the partnership does not exceed in amount or value the monetary limit;
- (vi) for the sale or partition or division of property pursuant to the *Property Law Act 1974*, section 38 or 41<sup>5</sup>, where the property does not exceed in amount or value the monetary limit;
- (vii) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the monetary limit;
- (viii) for the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the monetary limit;
- (ix) relating to the custody, maintenance or advancement of an infant including the appointment of a guardian to the property or person of an infant but not so as to authorise any order under this provision affecting assets or property of an infant exceeding in amount or value the monetary limit;
- (x) for family provision pursuant to the *Succession Act 1981*, sections 40 to 43<sup>6</sup>, but so that any provision resulting from an order made by the court shall not exceed in amount or value the monetary limit;

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<sup>5</sup> *Property Law Act 1974*, sections 38 (Statutory trusts for sale or partition of property held in co-ownership) and 41 (Sale or division of chattels)

<sup>6</sup> *Succession Act 1981*, sections 40 (Definitions for pt 4), 40A (Meaning of “stepchild”), 41 (Estate of deceased person liable for maintenance), 42 (Court may vary order), 43 (Manner of computing duty on estate)

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- (xi) to recover possession of any land, where the value of the land does not exceed the monetary limit;
- (xii) to restrain, whether by injunction or otherwise, any actual, threatened or apprehended trespass or nuisance to land, where the value of that land does not exceed the monetary limit, or, in lieu of or in addition to such an injunction, damages not exceeding the monetary limit;
- (xiii) for the determination of any question of construction arising under a deed, will or other written instrument, and for a declaration of the rights of the persons interested where the sum or the property in respect of which the declaration is sought does not exceed in amount or value the monetary limit;
- (xiv) for the appointment under the *Public Trustee Act 1978*, section 104<sup>7</sup> of the public trustee as administrator of any unclaimed property, where the gross value of the property does not exceed in amount or value the monetary limit.

(2) In this section—

**“monetary limit”** means \$250 000.

(3) For the purpose of determining whether or not a District Court has jurisdiction under this part—

- (a) in the case of proceedings falling within subsection (1)(a)(ii)—the amount claimed for detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods;
- (b) in the case of proceedings falling within subsection (1)(b)(iii), (xi) or (xii)—the value of land shall be the most recent valuation, current at the time of instituting the proceedings, made by the chief executive (of the department within which the *Valuation of Land Act 1944* is administered) under the *Valuation of Land Act*

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<sup>7</sup> *Public Trustee Act 1978*, section 104 (Manner in which public trustee may become administrator)

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1944, or, if there is no such valuation in respect of the land, the current market value at that time of the land exclusive of improvements thereto;

- (c) in any case where it is necessary to determine whether the monetary limit is exceeded—no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount.

(4) Where any question arises as to the amount or value for the purpose of jurisdiction under this part the decision of the District Court or judge thereof shall be conclusive as to that matter.

**Powers of District Court**

**69.(1)** Subject to this Act and to the rules of court, a District Court and any judge thereof has, for the purposes of exercising the jurisdiction conferred by this part, all the powers and authorities of the Supreme Court and any judge thereof, and may in any proceeding in like manner and to like extent—

- (a) grant such relief or remedy; and
- (b) make any order, including an order for attachment or committal in consequence of disobedience to an order; and
- (c) give effect to every ground of defence or matter of set-off whether equitable or legal;

as may and ought to be done in like cases by a judge of the Supreme Court.

(2) Without affecting the generality of subsection (1), a District Court and any judge thereof shall, in any proceedings in which jurisdiction is conferred under this part, have power to grant relief—

- (a) by way of a declaration of rights of the parties;
- (b) by way of injunction, whether interim, interlocutory or final, in the proceedings;
- (c) by staying the proceedings or part thereof;
- (d) by appointing a receiver including an interim receiver.

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(2A) To remove any doubt, it is declared that the District Court may grant a Mareva injunction or Anton Piller order in proceedings in which jurisdiction is conferred under this part.

(3) Subject to this Act and the rules of court, the practice and procedure of a District Court or a judge thereof—

- (a) in exercising the jurisdiction conferred by this part; and
- (b) in enforcing any judgment or order made in the exercise of that jurisdiction;

shall so far as practicable be the same as the practice and procedure of the Supreme Court or a judge thereof in like matters.

(4) Without affecting the generality of subsection (3), the appropriate officer of the District Court shall, in addition to any duties otherwise imposed on the officer, discharge—

- (a) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances;
- (b) any duty imposed on the officer by any order of the court.

(5) For the purposes of subsection (4) the appropriate officer of the District Court shall have the powers of the relevant officer of the Supreme Court.

### **Relief against proceedings to recover land**

70. In relation to proceedings instituted or threatened to be instituted pursuant to section 68(1)(b)(xi), the District Court or a judge thereof may exercise all or any of the powers and authorities of the Supreme Court or a judge thereof under the *Property Law Act 1974*, sections 124, 125 and 127<sup>8</sup>.

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<sup>8</sup> *Property Law Act 1974*, sections 124 (Restriction on and relief against forfeiture), 125 (Power of court to protect under-lessee on forfeiture of superior leases) and 127 (Relief against notice to effect decorative repairs)

**Reference to arbitration**

**71.** The judge may in any action or matter, at any time before judgment, order the action or matter or any question arising thereon, with or without other matters within the jurisdiction of the Court in dispute between the parties, to be referred to arbitration, to such person or persons and in such manner and on such terms as the judge thinks reasonable.

**Consent jurisdiction**

**72.(1)** If both parties agree, by a memorandum signed by them or by their solicitors, that any specified District Court shall have jurisdiction to try any action which might be brought or any counterclaim which might be made in the Supreme Court, that District Court shall have jurisdiction to try the action or counterclaim, or both.

**(2)** The memorandum shall state that the parties signing it know that the action or as the occasion shall require, the counterclaim, is not within the jurisdiction of the District Court without such consent, and shall be filed with the registrar in the case of an action at the time when the plaint is entered and in the case of a counterclaim, at the time the defence and counterclaim is filed or at such later time as a Judge on application made in that behalf, may allow.

**Splitting demands—abandonment of excess**

**73.** A plaintiff shall not divide a cause of action for the purpose of bringing 2 or more actions in a District Court, but a plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated in the plaint), and thereupon the plaintiff may, on proving the plaintiff's case, recover to an amount not exceeding the limit specified by this Act and the judgment of the court shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment of the court shall be made accordingly.

**Splitting debt by giving bills**

**74.** If a defendant has given 2 or more bills of exchange, promissory notes, bonds or other securities, for a debt or sum originally exceeding the

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amount specified in section 68(2) the plaintiff may sue separately upon each of the securities not exceeding such amount as forming a distinct cause action.

*Division 2—Trial by jury***When a jury may be summoned**

**75.** Any party may require a jury to be summoned in any of the following cases—

- (a) in any action or matter in which the amount claimed exceeds \$10 000;
- (b) in any action for the recovery of possession of land of which the value exceeds \$10 000;
- (c) in proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds \$10 000;
- (d) in an action or matter which before the commencement of the *District Courts Act and Other Acts Amendment Act 1989* might have been commenced only in the Supreme Court unless the parties agreed to it being heard and determined in another jurisdiction;

unless the action or matter is one which if brought in the Supreme Court would be required to be heard and determined by a judge without a jury.

*Division 3—Evidence***Rules of evidence**

**76.** The rules of evidence observed in the Supreme Court shall be applicable to and observed upon the trial of questions of fact in a District Court.



***Division 4—Removal of actions*****Removal of proceedings from Supreme Court to District Court**

**77.(1)** If proceedings are pending in the Supreme Court that in the absence of a memorandum signed under section 72—

- (a) might have been brought in a District Court within its jurisdiction under this part; or
- (b) in a case where an Act amending the jurisdiction of District Courts comes into operation while the proceedings are pending in the Supreme Court—might have been brought in a District Court within its jurisdiction under this part if the Act had come into operation before the proceedings were brought in the Supreme Court;

a party to the proceedings may at any time apply to the Supreme Court or a judge thereof for an order remitting the proceedings to a District Court, or the Supreme Court or a judge thereof may of its or the judge's own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

**(2)** If the Supreme Court or a judge thereof makes an order under subsection (1) on its or the judge's own motion, the registrar shall give notice of the order to the party in question and in accordance with the rules of the Supreme Court.

**(3)** In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the Supreme Court or the judge—

- (a) that unnecessary delay would be caused by a trial in a District Court; or
- (b) that either by reason of the probable cost of trial in a District Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial can not be had in a District Court, the case ought to be tried in the Supreme Court;

it or the judge may order the proceedings pending in the Supreme Court to be remitted to a District Court.

(4) Where the Supreme Court or a judge thereof makes an order under subsection (3) remitting proceedings to a District Court, the registrar of the Supreme Court shall transmit to the registrar of that District Court a copy of the order and a copy of the writ, pleadings or other documents filed by the parties in the registry of the Supreme Court in relation to the proceedings.

(5) Proceedings remitted to a District Court shall be heard and determined and judgment therein shall be entered as if the proceedings had been commenced in that District Court.

(6) The costs of the parties in respect of proceedings remitted to a District Court by an order made under subsection (3)—

- (a) incurred subsequently to the order shall be allowed according to the scale prescribed in District Courts;
- (b) incurred before the order—
  - (i) in the case of proceedings referred to in subsection (1)(a) shall be in the discretion of the Supreme Court or a judge thereof; and
  - (ii) in the case of proceedings referred to in subsection (1)(b) shall be allowed according to the scale prescribed in the Supreme Court.

### **Removal of proceedings from a District Court to a Magistrates Court**

**78.(1)** If proceedings are pending in a District Court within its jurisdiction under this part that without the consent of all parties—

- (a) might have been brought in a Magistrates Court; or
- (b) in a case where an Act amending the jurisdiction of Magistrates Courts comes into operation while the proceedings are pending in the District Court—might have been brought in a Magistrates Court if the Act had come into operation before the proceedings were brought in the District Court;

a party to the proceedings may at any time apply to the District Court or a judge thereof for an order remitting the proceedings to a Magistrates Court, or the District Court or a judge thereof may of its or the judge's own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

*District Court Act 1967*

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(2) If a District Court or a judge thereof makes an order under subsection (1) on its or the judge's own motion, the registrar shall give notice of the order to the party in question and in accordance with the rules of court.

(3) In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the District Court or the judge—

- (a) that unnecessary delay would be caused by a trial in a Magistrates Court; or
- (b) that either by reason of the probable cost of trial in a Magistrates Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial can not be had in a Magistrates Court, the case ought to be tried in the District Court;

it or the judge may order the proceedings pending in the District Court to be remitted to a Magistrates Court.

(4) Where a District Court or a judge thereof makes an order under subsection (3) remitting proceedings to a Magistrates Court, the registrar of that District Court shall transmit to the registrar of the Magistrates Court to which the proceedings are remitted a copy of the order and a copy of the plaint, pleadings or other documents filed by the parties in the registry of the District Court in relation to the proceedings.

(5) Proceedings remitted to a Magistrates Court shall be heard and determined and judgment therein shall be entered as if the proceedings had been commenced in that Magistrates Court.

(6) The costs of the parties in respect of proceedings remitted to a Magistrates Court by an order made under subsection (3)—

- (a) incurred subsequently to the order shall be allowed according to the scale prescribed in Magistrates Courts;
- (b) incurred before the order—
  - (i) in the case of proceedings referred to in subsection (1)(a)—shall be in the discretion of the District Court or a judge thereof; and

- (ii) in the case of proceedings referred to in subsection (1)(b)—shall be allowed according to the scale prescribed in the District Courts.

### **Plaintiff's right to transfer action from Magistrates Court to District Court**

**79.(1)** Where there is now or hereafter pending in a Magistrates Court an action, the plaintiff may at any time apply to a District Court or a judge thereof for an order to transfer the action to a District Court on the ground that there is reasonable ground for supposing that the relief or remedy sought (which would be available if the action were transferred to the District Court) is not available in the Magistrates Court.

**(2)** If, on any such application the judge is satisfied that there is reasonable ground as aforesaid, the judge shall make an order that the action be transferred to a District Court.

### **Transfer of certain actions from Magistrates Court to District Court at defendant's instance**

**80.(1)** Where there is now or hereafter pending in a Magistrates Court any action wherein the relief or remedy sought is one which would also be available if the action were transferred to a District Court, the defendant may make application to a District Court or a judge thereof to transfer the action to a District Court.

**(2)** The judge shall not grant the application unless the judge is satisfied that some important question of law or fact is likely to arise.

### **Procedure where proceedings beyond jurisdiction are commenced in Magistrates Court**

**81.(1)** Where any proceedings are now or hereafter pending in a Magistrates Court in which a Magistrates Court has no jurisdiction, that Magistrates Court shall, unless it is given jurisdiction by an agreement made under the provisions of the rules under the *Magistrates Courts Act 1921* order that the proceedings (save proceedings which are not within the jurisdiction of a District Court) be transferred to a District Court.

(2) However, where, on the application of any defendant, it appears to the Magistrates Court that the plaintiff or 1 of the plaintiffs knew or ought to have known that a Magistrates Court had no jurisdiction in the proceedings, the Magistrates Court may, if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out.

### **Plaintiff's right to transfer action from District Court to Supreme Court**

**82.(1)** Where there is now or hereafter pending in a District Court an action, the plaintiff may at any time apply to the Supreme Court or a judge thereof for an order to transfer the action to the Supreme Court, on the ground that there is reasonable ground for supposing that the relief or remedy sought is not available in the District Court.

(2) If, on any such application, the Court or judge is satisfied that there is reasonable ground as aforesaid, it or the judge shall make an order that the action be transferred to the Supreme Court.

### **Transfer of certain actions from District Court to Supreme Court at defendant's instance**

**83.(1)** Where there is now or hereafter pending in a District Court any action, the defendant may make application to the Supreme Court or a judge thereof to transfer the action to the Supreme Court.

(2) The Court or judge shall not grant the application unless it or the judge is satisfied some important question of law or fact is likely to arise.

### **Costs**

**84.** When an order is granted for the removal of an action or matter from a District Court, or for the issuing of a writ of certiorari for such removal, and provision is not made with respect to the costs of the proceedings in the District Court, the costs of the proceedings shall be costs in the action or matter.

**Procedure where proceedings beyond jurisdiction are commenced in District Court**

**85.(1)** Where any proceedings are now or hereafter pending in a District Court in which a District Court has no jurisdiction, that court shall, unless it is given jurisdiction by an agreement made under the provisions of section 72, order that the proceedings be transferred to the Supreme Court.

**(2)** However, where, on the application of any defendant, it appears to a District Court that the plaintiff or 1 of the plaintiffs knew or ought to have known that a District Court had no jurisdiction in the proceedings, a District Court may, if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out.

**Jurisdiction as to counterclaims**

**86.(1)** Where, in any action now or hereafter pending in a District Court, any counterclaim or set-off and counterclaim which involves matter beyond the jurisdiction of a District Court has been filed by any defendant, any party to the action may, within 14 days after the filing of the said counterclaim or set-off and counterclaim, apply to a judge of the Supreme Court for an order that the whole proceedings, or the proceedings on the said counterclaim or set-off and counterclaim be transferred to the Supreme Court.

**(2)** On any such application the judge of the Supreme Court may, as the judge thinks fit, order either—

- (a) that the whole proceedings be transferred to the Supreme Court; or
- (b) that the whole proceedings be heard and determined in a District Court; or
- (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be heard and determined in a District Court.

**(3)** However, where an order is made under subsection(2)(c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the Supreme Court or a judge thereof at any time otherwise orders,

be stayed until the proceedings transferred to the Supreme Court have been determined.

(4) Where the Supreme Court makes any order under the provisions of this section, the registrar shall forward to the registrar of the District Court a copy of the order so made.

(5) If no application is made under this section within the time prescribed, or if on such an application it is ordered that the whole proceedings be heard and determined in a District Court, the District Court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.

### **Application of statutes of limitations**

**87.** Any action, matter or proceeding which has been or may be—

- (a) remitted or transferred from the Supreme Court or another court to a District Court; or
- (b) removed or remitted or transferred from a District Court to the Supreme Court or another court;

is taken, for the *Limitations of Action Act 1974* or another Act prescribing a period of limitation within which an action, matter or proceeding may be brought, to have been brought in the court to which it has been removed, remitted or transferred on the day the action, matter or proceeding was originally brought whether in the Supreme Court, a District Court or any other court.

## **PART 6—RECOVERY OF POSSESSION OF LAND**

### **Warrant empowers bailiff to enter on land**

**88.** A warrant to a bailiff to give possession of land empowers the bailiff named in the warrant to enter on the land with such assistance as the bailiff determines and to give possession accordingly.

## **PART 7—ADR PROCESSES**

### *Division 1—Preliminary*

#### **Objects of part**

**89.** 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 a District Court.

### *Division 2—Important terms*

#### **ADR process**

**90.(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,<sup>9</sup> an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

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

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<sup>9</sup> 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**

**91. “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**

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

- (2)** A case appraiser’s decision is not binding on the parties until—
- (a) the time prescribed by the rules for filing an election to go to trial has passed; and
  - (b) a District Court, by order, gives effect to the decision.

### *Division 3—Establishment of ADR processes*

#### **Approval of mediators**

**93.** The Chief Judge may approve, or refuse to approve, a person as a mediator.

#### **Approval of case appraisers**

**94.** The Chief Judge may approve, or refuse to approve, a person as a case appraiser.

**ADR register**

**95.(1)** The registrar of the Supreme Court 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 of the Supreme Court.

**(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**

**96.(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**

**97.(1)** A District Court may require the parties or their representatives to attend before it to enable the court to decide whether the parties' dispute should be referred to an ADR process.

**(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 District Court orders**

**98.(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, a District 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**

**99.(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) A District Court may, at any time, give directions about procedure to be used at the case appraisal.
- (4) This section is subject to section 100.

### **Subpoenas**

- 100.(1) A person may be subpoenaed to appear at a case appraisal only by order of a District 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 a District Court.

### *Division 4—Party unable to pay share of costs*

#### **Party unable to pay share of costs**

- 101.(1) If, at any time, a District 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**

**102.(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**

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

**Case appraiser to file certificate and decision**

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

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

**Orders giving effect to mediation agreement**

**105.(1)** A party may apply to a District Court for an order giving effect to an agreement reached after mediation.

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

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

**Orders giving effect to case appraiser's decision**

**106.(1)** A party may apply to a District Court for an order giving effect to a case appraiser's decision after the time prescribed under the rules for electing to go to trial has passed.

(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**

**107.(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**

**108.(1)** In performing the functions of mediator or case appraiser, an ADR convenor has the same protection and immunity as a judge performing the functions of a judge.

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

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

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

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

### **Admissions made to ADR convenors**

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

(2) In subsection (1)—  
“**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**

**110.(1)** The Chief Judge may revoke the approval of a person as a mediator or case appraiser.

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

## **PART 7A—USE OF VIDEO LINK FACILITIES**

### **Purpose of part**

**110A.** The purpose of this part is to provide for the use of video link facilities for certain proceedings before a District Court.

### **Definitions for part**

**110B.** In this part—

**“detainee”** means—

- (a) for section 110C(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 110C(1), means a proceeding to which section 110C(1) applies.

### **Use of video link facilities in proceedings**

**110C.(1)** This section applies to a proceeding if—

- (a) a detainee is entitled or required to be present before a District 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 *Justices Act 1886*, section 222<sup>10</sup> in relation to an offence of which the detainee has been convicted (**“appeal proceeding”**); and

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<sup>10</sup> Section 222 (Appeal to a single judge)



(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**

**110D.(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 District 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**

**110E.(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 District Court.

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

### **Facilities for private communication**

**110F.(1)** The District 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 between the detainee and the detainee's representative while in each other's presence.

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

### **Variation or revocation of order**

**110G.** The District Court may, at any time, vary or revoke an order made under section 110C.

## **PART 8—APPEALS TO DISTRICT COURTS**

### **Definitions for pt 8**

**111.** In this part—

“**appeal**” includes a special case or other case stated for the opinion of a District Court.

“**central district**” means the central district of the Supreme Court.

“**decision**” includes a conviction, determination, judgment and order recorded or made by a court.

“**far northern district**” means the far northern district of the Supreme Court.

“**northern district**” means the northern district of the Supreme Court.

“**party**” includes a prospective party to a proposed appeal.

**No appeal lies from Magistrates Court to Supreme Court**

**112.** An appeal may not be made from a Magistrates Court to the Supreme Court.

**Power of District Court on appeal from Magistrates Court**

**113.** A District Court has, for an appeal from a Magistrates Court, the same powers as the Supreme Court had for the same type of appeal immediately before the commencement of the *District Courts Act 1958*, including for an application for leave to appeal.

**Other appeals**

**114.(1)** This section applies if, under an Act, provision is made for an appeal—

- (a) to a court of general or quarter sessions; or
- (b) to a judge of the Supreme Court on circuit; or
- (c) from a decision of justices and no other court of appeal is mentioned.

**(2)** The appeal lies to a District Court.

**District Court's jurisdiction**

**115.(1)** If, under an Act, an appeal may be made to a District Court, jurisdiction to hear and decide the appeal may be exercised by any District Court.

**(2)** Subsection (1) is subject to sections 116 and 117.<sup>11</sup>

**Venue of appeals**

**116.(1)** An appeal to a District Court about a decision of or a matter before a court must be heard and decided in the district in which the court exercised or is exercising jurisdiction.

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<sup>11</sup> Section 116 (Venue of appeals)  
Section 117 (Transfer of appeal hearings)

(2) However, the parties to the proceeding may agree to the appeal being heard and decided at a particular place, including a place outside the district.

(3) This section is subject to a provision of another Act that provides for the place where an appeal to a District Court must or may be heard.

(4) In this section—

**“district”** means—

- (a) the far northern district; or
- (b) the northern district; or
- (c) the central district; or
- (d) the southern district.<sup>12</sup>

**“southern district”** means the part of the State not included in the central, northern or far northern district.

### **Transfer of appeal hearings**

**117.(1)** A judge may order that an appeal is to be transferred to a District Court at another place, if it appears to the judge—

- (a) that it is in the interests of justice that the appeal be heard at the other place; or
- (b) that the appeal may be more conveniently heard at the other place and no party to the proceeding objects.

(2) The order may be made on the application of a party to the proceeding, or, if the judge is the judge hearing the appeal, on the judge’s own initiative.

(3) The officer that has the appeal record must give the record and all appropriate exhibits to the appropriate officer at the place where the appeal is to be heard.

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<sup>12</sup> The far northern, northern and central districts of the Supreme Court are declared under the *Supreme Court Act 1995*, section 266A.

- (4) In this section—
- “heard” includes—
- (a) heard and decided; and
  - (b) continued and decided.

## **PART 9—APPEALS FROM DISTRICT COURTS TO COURT OF APPEAL**

### **Appeal to the Court of Appeal in certain cases**

**118.(1)** This section—

- (a) does not apply to an appeal from a judgment of the District Court in the exercise of its criminal jurisdiction under part 4;<sup>13</sup> but
- (b) does apply to an appeal from other judgments of the District Court in the exercise of its criminal jurisdiction, including on an appeal brought before the court under the *Justices Act 1886*, section 222.<sup>14</sup>

(2) A party who is dissatisfied with a final judgment of a District Court in its original jurisdiction may appeal to the Court of Appeal if the judgment—

- (a) is given—
  - (i) for an amount equal to or more than the Magistrates Courts jurisdictional limit; or
  - (ii) in relation to a matter at issue with a value equal to or more than the Magistrates Courts jurisdictional limit; or
- (b) involves directly or indirectly any claim, demand or question in relation to any property or right with a value equal to or more than the Magistrates Courts jurisdictional limit.

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<sup>13</sup> Part 4 (Criminal jurisdiction and procedure)

<sup>14</sup> Section 222 (Appeal to a single judge)

*District Court Act 1967*

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(3) A party who is dissatisfied with any other judgment of a District Court, whether in the court's original or appellate jurisdiction, may appeal to the Court of Appeal with the leave of that court.

(4) In deciding whether there is a right of appeal under this section, the Court of Appeal may—

- (a) inform itself in any way it considers appropriate, including by reference to the appeal record; and
- (b) decide the question summarily without hearing evidence.

(5) If it is reasonably arguable that a right of appeal under this section exists, the Court of Appeal may treat that circumstance as a ground for granting leave to appeal.

(6) If the Court of Appeal grants leave under subsection (3), it may grant it on the conditions it considers appropriate.

(7) A single judge of the Court of Appeal may—

- (a) grant (with or without condition) or refuse leave mentioned in subsection (3); or
- (b) make the decision mentioned in subsection (4)(b).

(8) The *Supreme Court Act 1995*, section 254,<sup>15</sup> does not apply to an order of a single judge of the Court of Appeal under this section.

(9) An appeal from a District Court in its original jurisdiction is by way of rehearing.

(10) In this section—

**“final judgment”**, of a District Court, includes a judgment that grants leave to enter a judgment mentioned in subsection (2).

**“Magistrates Courts jurisdictional limit”** means the amount of the jurisdictional limit of Magistrates Courts for personal actions stated in the *Magistrates Courts Act 1921*, section 4(a).<sup>16</sup>

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<sup>15</sup> Section 254 (As to appeals from orders made by single judge)

<sup>16</sup> Section 4 (Jurisdiction of Magistrates Courts)

### **Jurisdiction of Court of Appeal**

**119.(1)** On the hearing of an appeal the Court of Appeal shall have power to draw inferences of fact from facts found by the judge or jury, or from admitted facts or facts not disputed provided that where the appeal is not by way of rehearing such inferences shall not be inconsistent with the findings of the judge or jury.

**(2)** On the hearing of any appeal the Court of Appeal—

- (a) may order a new trial on such terms as the court thinks just; and
- (b) may order judgment to be entered for any party, or may make any other order, on such terms as the Court of Appeal thinks proper, to ensure the determination on the merits of the real questions in controversy between the parties; and
- (c) may make such order with respect to the costs of the appeal as it thinks proper;

and every such order shall be final.

### **Parties may agree not to appeal**

**120.** An appeal shall not lie from the decision of a judge if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the judge shall be final.

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

**121.** 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.

### **Special case**

**122.** A Magistrates Court may not state in the form of a special case for the opinion of the Supreme Court any question of law arising in any case,

but in lieu thereof may state in the form of a special case for the opinion of a District Court any such question of law, and the District Court shall have the same powers, authorities and duties as the Supreme Court had in respect of such a special case prior to the coming into force of the *District Courts Act Amendment Act 1960*.

## **PART 10—ENFORCEMENT OF JUDGMENTS**

### **Action on judgment**

**123.** An action may be brought in the Supreme Court upon a judgment in a District Court, but the plaintiff shall not recover any costs in such an action up to judgment unless the defendant appears and unsuccessfully defends the action.

### **Judgment to survive death**

**124.** A judgment obtained by a plaintiff but not satisfied previous to the plaintiff's death and also all causes of action shall survive to the plaintiff's personal representative who may issue out execution in the representative's own name in the same way in which the plaintiff might have done.

## **PART 11—GENERAL PROVISIONS**

### *Division 2—Fees and fines*

#### **Fees and fines to be paid to the consolidated fund**

**128.** All fees payable in respect of any proceedings to the registrar, except such of them as the bailiff is entitled to receive and retain for the bailiff's own use, and all fines imposed under this Act and received by the registrar, shall be paid into the consolidated fund.



***Division 3—Offences*****Contempt of court**

**129.(1)** If any person—

- (a) wilfully insults a judge or a juror or a registrar, bailiff, or other officer of a Court, during the person's sitting or attendance in court, or in going to or returning from the Court; or
- (b) wilfully interrupts the proceedings of the Court or otherwise misbehaves himself or herself in court; or
- (c) unlawfully obstructs or assaults any person in attendance in court; or
- (d) without lawful excuse disobeys any lawful order or direction of the Court at the hearing of any proceeding;

the person shall be guilty of an offence and may be excluded from the room or other place in which the Court is sitting by order of the court, and may, whether the person is so excluded or not, be dealt with as provided hereinafter by this section.

(2) A bailiff or other officer may, with or without the assistance of any other persons, by order of the Court, take an offender against subsection (1)(a), (b) or (c) into custody and detain the offender until the rising of the court.

(3) If any person shall do any other act or thing which is a contempt of a District Court the person shall be guilty of an offence under this section.

(4) The court may order an offender under this section, whether the offender is excluded from the room or place in which the court is sitting or not or whether the offender is taken into custody or not, to be committed to prison for any period not exceeding 12 months, or may impose on the offender a fine not exceeding 84 penalty units, and in the latter event may also order that in default of payment the offender shall be committed to prison for any period not exceeding 12 months unless the fine is sooner paid.

(5) In imprisoning or fining an offender under subsection (4), there shall be no need to take any evidence on oath or issue any summons, but at any time before the rising of the court, the offender shall be called upon to show cause why the offender should not be punished.

#### *Division 4—General*

##### **Executors**

**130.** An executor or administrator may sue and be sued in a District Court in the same manner in which a person may sue or be sued in the person's own right, and in any such case judgment may be given and execution issued against the same persons against whom, and in the same manner in which, judgment would be given or execution issued in the Supreme Court.

##### **Annual report**

**130A.(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 Judge must prepare and give to the Minister a written report about the operation of District Courts 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.

##### **Regulation making power**

**131.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may make provision for the control and management of the precincts of District Courts.

## **PART 12—TRANSITIONAL PROVISIONS**

### **References to District Courts**

**132.(1)** In another Act, a reference to a District Court is a reference to a District Court within the meaning of this Act.

**(2)** For an Act passed before the commencement of this Act, subsection (1) has effect even though the reference is expressed to relate to a District Court within the meaning of another Act.

### **References to District Courts Act 1958**

**133.** In an Act or document, a reference to the *District Courts Act 1958* may, if the context permits, be taken to be a reference to this Act.

### **References to District Courts (Venue of Appeals) Act 1988**

**134.** In an Act or document, a reference to the *District Courts (Venue of Appeals) Act 1988* may, if the context permits, be taken to be a reference to this Act.

### **Transitional references to chairperson etc.**

**135.** A reference in another Act to the chairperson of District Courts or a deputy chairperson of District Courts is, for anything done, or proposed to be done, after 3 June 1993, taken to be a reference to the Chief Judge of District Courts or a senior judge of District Courts.

### **Continued use of title of senior judge**

**137.(1)** A person holding office as a senior judge immediately before the commencement of the *District Courts Legislation Amendment Act 1996* may continue to use the title senior judge while the person continues to hold office as a judge.

**(2)** This section expires on 31 December 2012.

**Transitional—provision for Courts Reform Amendment Act 1997**

**138.(1)** *This section applies if, before the commencement of the Courts Reform Amendment Act 1997, section 47<sup>17</sup>—*

- (a) *a party dissatisfied with a judgment of a District Court started an appeal, or applied for leave to appeal, under section 118 as in force immediately before the commencement; and*
- (b) *the appeal or application has not been finally decided.*

**(2)** *The appeal or application, and any appeal allowed on the application, may be dealt with as if the Courts Reform Amendment Act 1997, section 47 had not been enacted.*

**(3)** *This section expires 2 years after it commences.<sup>18</sup>*

**Transitional—establishment of the District Court**

**139.(1)** On the commencement of part 2, division 1—

- (a) the District Courts in existence on the commencement (the “**previous District Courts**”) are amalgamated into the District Court; and
- (b) the places at which the previous District Courts were held are the places at which the District Court is to be held; and
- (c) the district assigned to a previous District Court held at a place is the district for the District Court to be held at the place; and
- (d) any jurisdiction or power of the previous District Courts or a judge of a previous District Court or the previous District Courts becomes jurisdiction or power of the District Court or a judge of the District Court; and
- (e) anything else done or existing in relation to a previous District Court continues, and is taken to be done or existing in relation to

<sup>17</sup> Section 47 (Replacement of s 118 (Appeal to the Court of Appeal in certain cases))

<sup>18</sup> This provision has expired and is included for informational purposes only. It will be omitted in the next reprint.

*District Court Act 1967*

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the District Court or the corresponding district of the District Court; and

- (f) a proceeding pending in a previous District Court is to be continued in the District Court at the place at which it would have continued if part 2, division 1 had not been enacted; and
- (g) each judge of a previous District Court or the previous District Courts becomes a judge of the District Court; and
- (h) the Chief Judge of District Courts becomes the Chief Judge of the District Court.

**(2)** Part 2, division 1 does not affect—

- (a) any appointment, subject to the name changes mentioned in subsection (1)(g) and (h); or
- (b) the seniority of a judge; or
- (c) any principle or rule of law or equity; or
- (d) any right, privilege or liability.

**(3)** In an Act or document, if the context permits—

- (a) a reference to the *District Courts Act 1967* is taken to be a reference to the *District Court Act 1967*; and
- (b) a reference to the *District Courts Rules 1968* is taken to be a reference to the *District Court Rules 1968*; and
- (c) a reference to a District Court or the District Courts is taken to be a reference to the District Court; and
- (d) a reference to a District Court held at a place is a reference to the District Court held at the place; and
- (e) a reference to a judge of a District Court or to a judge of District Courts is taken to be a reference to a judge of the District Court; and
- (f) a reference to the Chief Judge of District Courts is a reference to the Chief Judge of the District Court.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 17 December 1999. Future amendments of the District Court Act 1967 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. 76 of 1993	25 February 1994
2	to Act No. 58 of 1995	12 April 1996
2A	to Act No. 4 of 1996	15 August 1996
2B	to Act No. 32 of 1996	13 November 1996
2C	to Act No. 79 of 1996	3 March 1997
3	to Act No. 38 of 1997	5 September 1997
3A	to Act No. 82 of 1997	5 January 1998
3B	to Act No. 20 of 1998	14 May 1998

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	2
Changed titles	1
Comparative legislation	1
Corrected minor errors	1, 2
Obsolete and redundant provisions	2
Renumbered provisions	1, 2, 3

## 6 List of legislation

### **District Court Act 1967 No. 42 (prev District Courts Act 1967)**

date of assent 14 December 1967

commenced 21 December 1967 (proc pubd gaz 21 December 1967 p 1469)

**Note**—This Act contains provisions that were relocated from the District Courts (Venue of Appeals) Act 1988.

A list of legislation for the relocated Act appears below.

as amended by—

### **District Courts Act Amendment Act 1969 No. 16**

date of assent 16 December 1969

commenced on date of assent

### **District Courts Act Amendment Act 1972 No. 7**

date of assent 14 December 1972

commenced on date of assent

### **Jury Act Amendment Act 1972 No. 35 s 24**

date of assent 21 December 1972

commenced 1 March 1993 (proc pubd gaz 24 February 1973 p 821)

### **Court Funds Act 1973 No. 73 s 3(2)**

date of assent 19 December 1973

commenced 17 June 1974 (proc pubd gaz 8 June 1974 p 846)

### **Limitation of Actions Act 1974 No. 75 s 4 sch**

date of assent 1 November 1974

commenced 1 July 1975 (see s 2)

### **District Courts' and Magistrates Courts' Jurisdiction Act 1976 No. 19 pt 2 (as amd 1976 No. 53)**

date of assent 15 April 1976

commenced 14 June 1977 (proc pubd gaz 4 June 1977 p 866)



**Jury Act and other Acts Amendment Act 1976 No. 39 pt 3**

date of assent 5 May 1976

commenced 30 August 1976 (proc pubd gaz 24 July 1976 p 1718)

**Public Trustee Act 1978 No. 73 s 5(4) sch 1**

date of assent 8 December 1978

commenced 1 January 1979 (proc pubd gaz 23 December 1978 p 1970)

**Crown Proceedings Act 1980 No. 2 s 4(2) sch**

date of assent 31 March 1980

commenced 1 July 1980 (proc pubd gaz 28 June 1980 p 1634)

**Bail Act 1980 No. 35 s 4(1) sch 1**

date of assent 14 May 1980

commenced 1 July 1980 (proc pubd gaz 28 June 1980 p 1634)

**District and Magistrates Courts Acts and Property Law Act Amendment Act 1982 No. 51 pt 2**

date of assent 22 October 1982

commenced 23 May 1983 (proc pubd gaz 14 May 1983 p 393)

**District Courts Act Amendment Act 1985 No. 53**

date of assent 20 September 1985

commenced on date of assent

**District Courts (Venue of Appeals) Act 1988 No. 7 pt 5**

date of assent 7 April 1988

ss 1, 2(1) commenced on date of assent

remaining provisions commenced 1 August 1988 (proc pubd gaz 16 July 1988 p 2876)

**District Courts Act and Other Acts Amendment Act 1989 No. 40 pt 2**

date of assent 5 May 1989

ss 1, 2(1) commenced on date of assent

remaining provisions commenced 1 November 1989 (proc pubd gaz 21 October 1989 p 1249)

**Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch**

date of assent 6 December 1990

commenced on date of assent

**Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42 s 3 sch**

date of assent 5 August 1991

commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

ss 1–2 commenced on date of assent

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

**Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 sch 1**

date of assent 17 December 1991

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 sch 1**

date of assent 3 June 1993  
 commenced on date of assent

**Justice and Attorney-General Legislation (Miscellaneous Provisions) Act 1993 No. 68 pt 2**

date of assent 23 November 1993  
 commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1**

date of assent 14 December 1993  
 commenced on date of assent

**Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 24 April 1994 (1994 SL No. 132)

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2**

date of assent 1 December 1994  
 commenced on date of assent

**Courts Legislation Amendment Act 1995 No. 23 pts 1, 3 s 10 sch 1 (as amd 1995 No. 58 ss 1–2, 4 sch 1 (as from 28 November 1995 (see s 2(1) sch 1)))**

date of assent 11 April 1995  
 ss 1–2 commenced on date of assent  
 s 10 sch 1 amdts 4–7, 9–10, 12–17, 19–22, 24–29, 31–33, 35–36, 38–39 and 41–43 never proclaimed into force and rep 1995 No. 58 s 4 sch 1  
 remaining provisions commenced 12 April 1996 (automatic commencement under AIA s 15DA(2))

**Jury Act 1995 No. 42 ss 1–2, 76 sch 2**

date of assent 9 November 1995  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 17 February 1997 (1997 SL No. 13)

**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

**List of legislation to District Courts (Venue of Appeals) Act 1988—before relocation of ss 4–8 to District Courts Act 1967****District Courts (Venue of Appeals) Act 1988 No. 7**

date of assent 7 April 1988  
 ss 1–2 commenced on date of assent (see s 2(1))  
 remaining provisions commenced 1 August 1988 (proc pubd gaz 16 July 1988 p 2876)

as amended by—

**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

**Amending legislation to District Courts Act 1967—after relocation of District Courts (Venue of Appeal) Act 1988 No. 7 ss 4–8****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, 3**

date of assent 9 May 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 7 June 1996 (1996 SL No. 118)

**District Courts Legislation Amendment Act 1996 No. 32 pts 1–2**

date of assent 18 September 1996  
commenced on date of assent

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 10**

date of assent 12 December 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2**

date of assent 3 April 1997  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 1997 (1997 SL No. 152)

**Courts Reform Amendment Act 1997 No. 38 pts 1, 6 sch**

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 1–2 pt 10**

date of assent 5 December 1997  
commenced on date of assent

**Civil Justice Reform Act 1998 No. 20 ss 1, 2(2)–(3), 27 sch 2**

date of assent 1 May 1998  
ss 1–2 commenced on date of assent  
s 27 sch 2 amdt 8 commenced on 1 August 1997 (see s 2(2))  
remaining provisions commenced 1 July 1999 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(3)))

**Justice Legislation (Miscellaneous Provisions) Act (No. 2) Act 1999 No. 66 ss 1, 2(2) pt 4**

date of assent 6 December 1999  
ss 1–2 commenced on date of assent  
remaining provisions not yet proclaimed into force

## 7 List of annotations

### Long title

amd 1997 No. 82 s 30

### Short title

s 1 amd 1995 No. 23 s 10 sch 1; 1997 No. 82 s 31

### Suspension of Act's operation

s 2 prev s 2 amd 1989 No. 40 s 4  
om 1991 No. 68 s 111 sch 2  
pres s 2 ins 1995 No. 23 s 10 sch 1

### Definitions

**prov hdg** sub 1995 No. 23 s 11(1)

s 3 prev s 3 amd 1991 No. 68 s 111 sch 2  
om 1995 No. 23 s 10 sch 1  
def "**ADR convenor**" ins 1995 No. 23 s 11(3)  
def "**ADR costs**" ins 1995 No. 23 s 11(3)  
def "**ADR dispute**" ins 1995 No. 23 s 11(3)  
def "**ADR process**" ins 1995 No. 23 s 11(3)  
def "**approval**" ins 1997 No. 38 s 40(1)  
def "**case appraisal**" ins 1995 No. 23 s 11(3)  
def "**case appraiser**" ins 1995 No. 23 s 11(3)  
def "**dispute**" ins 1995 No. 23 s 11(3)  
def "**District Courts jurisdiction Act**" ins 1995 No. 23 s 11(3) (as amd 1995 No. 58 s 4 sch 1)  
def "**judicial registrar**" ins 1998 No. 20 s 27 sch 2  
def "**Magistrates Court**" om 1995 No. 23 s 11(2) (as amd 1995 No. 58 s 4 sch 1)  
def "**mediation**" ins 1995 No. 23 s 11(3)  
def "**mediator**" ins 1995 No. 23 s 11(3)  
amd 1997 No. 38 s 40(2)  
def "**party**" om 1995 No. 23 s 11(2)  
ins 1995 No. 23 s 11(3) (as amd 1995 No. 58 s 4 sch 1)  
def "**precincts**" ins 1997 No. 38 s 40(1)  
def "**referring court**" ins 1995 No. 23 s 11(3)  
def "**referring order**" ins 1995 No. 23 s 11(3)  
def "**registrar**" sub 1998 No. 20 s 27 sch 2  
def "**rules**" ins 1995 No. 23 s 11(3)  
sub 1998 No. 20 s 27 sch 2  
def "**rules of court**" om 1995 No. 23 s 11(2) (as amd 1995 No. 58 s 4 sch 1)

### Courts

**hdg prec** prev s 5 om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

### PART 2—COURT, JUDGES, REGISTRIES AND OFFICERS

**pt hdg** sub 1997 No. 82 s 32

**Division 1—Court**

**div hdg** ins 1994 No. 87 s 3 sch 2  
sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1); 1997 No. 82 s 32

**Establishment of the District Court**

**prov hdg** sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**s 4** amd 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1); 1995 No. 58 s 4 sch 1  
(2)–(3) renum as s 5(1)–(2) 1995 No. 58 s 4 sch 1  
sub 1997 No. 82 s 32

**Members and constitution of Court**

**s 5** pres s 5 (prev s 4(2)–(3)) renum 1995 No. 58 s 4 sch 1  
amd 1995 No. 58 s 4 sch 1  
sub 1997 No. 82 s 32

**Where the Court may be held**

**s 6** (2) renum as s 7 1995 No. 23 s 10 sch 1  
sub 1997 No. 82 s 32

**Declaration of districts**

**s 7** prev s 7 om 1990 No. 88 s 3 sch  
pres s 7 (prev s 6(2)) renum 1995 No. 23 s 10 sch 1  
sub 1997 No. 82 s 32

**Seal of the Court**

**s 8** sub 1997 No. 82 s 32

**Statewide jurisdiction**

**s 8A** ins 1997 No. 82 s 32

**Seals of the court**

**s 8B** ins 1997 No. 82 s 32

**Judges**

**hdg prec s 9** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 2—Judges**

**div hdg** ins 1994 No. 87 s 3 sch 2  
sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Appointment and qualification of Judges**

**s 9** amd 1969 No. 16 s 2; 1972 No. 7 s 2

**Chief Judge**

**s 10** sub 1985 No. 53 s 3; 1993 No. 32 s 3 sch 1; 1996 No. 32 s 3

**Leave of absence**

**s 12** ins 1993 No. 68 s 3

**Retirement of judges**

**s 14** ins 1991 No. 68 s 111 sch 2

**Removal from office**

**s 15** prev s 15 om 1991 No. 68 s 111 sch 2  
pres s 15 sub 1996 No. 32 s 4

**Retirement of judge**

**s 16** amd 1991 No. 68 s 111 sch 2  
om 1997 No. 82 s 33

**Acting judge**

**s 17** amd 1972 No. 7 s 3; 1996 No. 32 s 5

**Governor in Council may assign Courts to each Judge**

**s 18** amd 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1); 1995 No. 58 s 4 sch 1

**Judge to hold Court where directed, and to give notice**

**s 20** amd 1995 No. 23 s 10 sch 1; 1998 No. 20 s 27 sch 2

**Adjournment within district**

**s 21** ins 1991 No. 42 s 3 sch

**Judge may sit in chambers**

**s 22** om 1998 No. 20 s 27 sch 2

**Jurisdiction in chambers**

**s 23** om 1998 No. 20 s 27 sch 2

**Two Judges may sit at same place**

**s 26** prev s 26 om 1993 No. 76 s 3 sch 1

**Protection for administrative acts**

**s 28AA** ins 1999 No. 66 s 18

**Division 2A—Powers and responsibilities of Chief Judge**

**div hdg** ins 1997 No. 38 s 41

**Arrangement of business**

**s 28A** ins 1997 No. 38 s 41

**Certiorari**

**hdg prec s 29** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 3—Prerogative writs**

**div hdg** ins 1994 No. 87 s 3 sch 2  
sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**When action may be removed**

**s 29** amd 1980 No. 35 s 4(1) sch 1; 1996 No. 79 s 31

**Order in lieu of mandamus**

**hdg prec s 30** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Prohibition**

**hdg prec s 31** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Practice in such cases**

**hdg prec s 32** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings**

**s 32** amd 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)  
(2) renum as s 33 1995 No. 58 s 4 sch 1

**Notice of rule or summons to be given to registrar and parties**

**s 33** pres s 33 (prev s 32(2)) renum 1995 No. 58 s 4 sch 1

**Registries**

**hdg prec s 35** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 4—Registries**

**div hdg** ins 1994 No. 87 s 3 sch 2  
sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Officers**

**hdg prec s 36** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 5—Officers**

**div hdg** ins 1994 No. 87 s 3 sch 2  
sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Subdivision 1—Judicial registrars**

**sdiv hdg** ins 1998 No. 20 s 27 sch 2

**Judicial registrars**

**s 35A** ins 1998 No. 20 s 27 sch 2

**Independence of judicial registrars**

**s 35B** ins 1998 No. 20 s 27 sch 2

**Rehearing after judicial registrar's decision**

**s 35C** ins 1998 No. 20 s 27 sch 2

**Conditions of appointment**

**s 35D** ins 1998 No. 20 s 27 sch 2

**Retirement of judicial registrars**

**s 35E** ins 1998 No. 20 s 27 sch 2

**Preservation of rights**

**s 35F** ins 1998 No. 20 s 27 sch 2

**Subdivision 2—Other officers****sdiv hdg** ins 1998 No. 20 s 27 sch 2**Registrar to act as deputy sheriff****s 38** amd 1995 No. 23 s 10 sch 1  
om 1995 No. 42 s 76 sch 2**Minutes of proceedings to be kept****s 39** amd 1988 No. 7 s 16; 1995 No. 23 s 10 sch 1 (never proclaimed into force  
and om 1995 No. 58 s 4 sch 1)**General provision relating to officers****hdg prec s 48** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed  
into force and om 1995 No. 58 s 4 sch 1)**Division 6—General provisions about officers****div hdg** ins 1994 No. 87 s 3 sch 2**Baliff to give security****s 49** om 1997 No. 38 s 42**Remedies against and penalties on bailiffs and other officers for misconduct****s 50** prev s 50 om 1974 No. 75 s 4 sch**Barristers, solicitors and agents****hdg prec s 52** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed  
into force and om 1995 No. 58 s 4 sch 1)**Division 6—Barristers, solicitors and agents****div hdg** ins 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995  
No. 58 s 4 sch 1)**Division 7—Barristers, solicitors and agents****div hdg** ins 1994 No. 87 s 3 sch 2**PART 3—JURORS****pt hdg** om 1995 No. 42 s 76 sch 2**Who shall be jurors****s 53** amd 1976 No. 39 s 34  
om 1995 No. 42 s 76 sch 2**Jury list for new districts****prov hdg** amd 1995 No. 58 s 4 sch 1  
**s 54** amd 1976 No. 39 s 35; 1995 No. 23 s 10 sch 1 (never proclaimed into  
force and om 1995 No. 58 s 4 sch 1); 1995 No. 58 s 4 sch 1  
om 1995 No. 42 s 76 sch 2**Provisions of the Jury Act 1929 to apply****s 55** om 1995 No. 42 s 76 sch 2



**Precept or order**

**prov hdg** amd 1976 No. 39 s 36(a)(i)  
**s 56** amd 1972 No. 35 s 24(1); 1976 No. 39 s 36(a)(ii)–(c); 1995 No. 23 s 10  
 sch 1  
 (3) renum as s 57 1995 No. 23 s 10 sch 1  
 om 1995 No. 42 s 76 sch 2

**Number to be empanelled**

**s 57** pres s 57 (prev s 56(3)) 1995 No. 23 s 10 sch 1  
 om 1995 No. 42 s 76 sch 2

**Attendance of jurors**

**s 58** om 1995 No. 42 s 76 sch 2

**Payments to jurors**

**s 59** om 1995 No. 42 s 76 sch 2

**PART 4—CRIMINAL JURISDICTION AND PROCEDURE****Division 1—Criminal jurisdiction**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 ins 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995  
 No. 58 s 4 sch 1)

**Exception from criminal jurisdiction**

**s 61** sub 1989 No. 40 s 5  
 amd 1990 No. 88 s 3 sch; 1997 No. 3 s 122 sch 2  
sub 1999 No. 66 s 19

**Withdrawal of criminal jurisdiction**

**s 62** amd 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No.  
 58 s 4 sch 1)  
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**Procedure**

**hdg prec s 63** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed  
 into force and om 1995 No. 58 s 4 sch 1)

**Division 2—Procedure**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995  
 No. 58 s 4 sch 1)

**Change of venue**

**s 63** amd 1980 No. 35 s 4(1) sch 1

**Jury in criminal trials**

**s 65** sub 1995 No. 42 s 76 sch 2

**PART 5—CIVIL JURISDICTION****Division 1—Civil jurisdiction**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995  
 No. 58 s 4 sch 1)

**District Courts' civil jurisdiction**

**s 68** amd 1976 No. 19 s 5; 1982 No. 51 s 5  
 sub 1989 No. 40 s 6  
 amd 1997 No. 38 s 43

**Powers of District Court**

**s 69** prev s 69 om 1989 No. 40 s 6  
 pres s 69 amd 1976 No. 19 s 6  
 sub 1989 No. 40 s 6  
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**Relief against proceedings to recover land**

**s 70** prev s 70 amd 1976 No. 19 s 8  
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**Amendment of 31 Vic. No. 16**

**s 72** prev s 72 om 1976 No. 19 s 9

**Splitting demands—abandonment of excess**

**s 73** amd 1976 No. 19 s 10  
 (2) renum as s 74 1995 No. 23 s 10 sch 1

**Splitting debt by giving bills**

**s 74** pres s 74 (prev s 73(2)) renum 1995 No. 23 s 10 sch 1

**Trial by jury**

**hdg prec s 75** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 2—Trial by jury**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**When a jury may be summoned**

**s 75** amd 1976 No. 19 s 11; 1982 No. 51 s 5; 1989 No. 40 s 7

**Evidence**

**hdg prec s 76** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 3—Evidence**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Removal of actions**

**hdg prec s 77** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 4—Removal of actions**

**div hdg** ins 1994 No. 87 s 3 sch 2  
 sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995  
 No. 58 s 4 sch 1)

**Removal of proceedings from Supreme Court to District Court**

**s 77** sub 1989 No. 40 s 8  
 amd 1995 No. 58 s 4 sch 1; 1999 No. 66 s 20

**Removal of proceedings from a District Court to a Magistrates Court**

**s 78** sub 1989 No. 40 s 8  
 amd 1995 No. 58 s 4 sch 1; 1999 No. 66 s 21

**Plaintiff's right to transfer action from Magistrates Court to District Court**

**prov hdg** amd 1989 No. 40 s 9(a)  
**s 79** amd 1989 No. 40 s 9(b)–(c)

**Transfer of certain actions from Magistrates Court to District Court at defendant's instance**

**prov hdg** amd 1989 No. 40 s 10(a)  
**s 80** amd 1989 No. 40 s 10(b); 1996 No. 79 s 32

**Plaintiff's right to transfer action from District Court to Supreme Court**

**prov hdg** sub 1989 No. 40 s 12(a)(i)  
**s 82** prev s 82 om 1989 No. 40 s 11  
 pres s 82 amd 1989 No. 40 s 12(a)(ii)–(iii), (b)(i) 1995 No. 23 s 10 sch 1  
 (2)–(3) renum as s 83(1)–(2) 1995 No. 23 s 10 sch 1

**Transfer of certain actions from District Court to Supreme Court at defendant's instance**

**s 83** pres s 83 (prev s 82(2)–(3)) renum 1995 No. 23 s 10 sch 1  
 amd 1996 No. 79 s 33

**Application of statutes of limitations**

**s 87** amd 1995 No. 58 s 4 sch 1

**Warrant empowers bailiff to enter on land**

**s 88** prev s 88 amd 1976 No. 19 s 12 (as amd 1976 No. 53 s 3)  
 om 1989 No. 40 s 13  
 pres s 88 sub 1991 No. 97 s 3 sch 1

**PART 7—ADR PROCESSES**

**pt hdg** ins 1995 No. 23 s 12

**Division 1—Preliminary**

**div hdg** ins 1995 No. 23 s 12

**Objects of part**

**s 89** prev s 89 amd 1976 No. 19 s 13  
 om 1989 No. 40 s 13  
 pres s 89 ins 1995 No. 23 s 12

**Division 2—Important terms**

**div hdg** ins 1995 No. 23 s 12

**ADR process**

**s 90** prev s 90 amd 1976 No. 19 s 14 (as amd 1976 No. 53 s 4); 1982 No. 51 s 5  
om 1989 No. 40 s 13  
pres s 90 ins 1995 No. 23 s 12

**Mediation**

**s 91** ins 1995 No. 23 s 12

**Case appraisal**

**s 92** ins 1995 No. 23 s 12

**Division 3—Establishment of ADR processes**

**div hdg** ins 1995 No. 23 s 12

**Approval of mediators**

**s 93** ins 1995 No. 23 s 12

**Approval of case appraisers**

**s 94** ins 1995 No. 23 s 12

**ADR register**

**s 95** prev s 95 reloc to pt 8 1995 No. 58 s 4 sch 1  
pres s 95 ins 1995 No. 23 s 12  
amd 1997 No. 38 s 44

**Parties may agree to ADR process**

**s 96** prev s 96 reloc to pt 8 1995 No. 58 s 4 sch 1  
pres s 96 ins 1995 No. 23 s 12

**Court may consider and order reference to ADR process**

**s 97** ins 1995 No. 23 s 12  
amd 1997 No. 38 s 45; 1999 No. 66 s 22

**Parties must attend at ADR process if District Court orders**

**s 98** ins 1995 No. 23 s 12

**Procedure at case appraisal**

**s 99** prev s 99 amd 1994 No. 11 s 194 sch 2  
om 1995 No. 23 s 10 sch 1  
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**Subpoenas**

**s 100** ins 1995 No. 23 s 12

**Division 4—Party unable to pay share of costs**

**div hdg** ins 1995 No. 23 s 12

**Party unable to pay share of costs**

**s 101** ins 1995 No. 23 s 12

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

**div hdg** ins 1995 No. 23 s 12

**Mediated resolution agreement**

**s 102** ins 1995 No. 23 s 12

**Mediator to file certificate**

**s 103** ins 1995 No. 23 s 12

**Unclaimed Money in Court**

**hdg prec prev s 104** om 1973 No. 73 s 3(2)

**Case appraiser to file certificate and decision**

**s 104** prev s 104 om 1973 No. 73 s 3(2)  
pres s 104 ins 1995 No. 23 s 12

**Offences**

**hdg prec prev s 105** om 1994 No. 87 s 3 sch 2

**Orders giving effect to mediation agreement**

**s 105** ins 1995 No. 23 s 12

**Orders giving effect to case appraiser's decision**

**s 106** prev s 106 om 1978 No. 73 s 5(4) sch 1  
pres s 106 ins 1995 No. 23 s 12

**Division 6—Confidentiality, protection and immunity**

**div hdg** ins 1995 No. 23 s 12

**ADR convenors to maintain secrecy**

**s 107** ins 1995 No. 23 s 12

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**s 108** ins 1995 No. 23 s 12

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**s 109** ins 1995 No. 23 s 12

**Division 7—Miscellaneous**

**div hdg** ins 1995 No. 23 s 12

**Revocation of approval as mediator or case appraiser**

**s 110** ins 1995 No. 23 s 12

**PART 7A—USE OF VIDEO LINK FACILITIES**

**pt hdg** ins 1996 No. 4 s 7

**Purpose of part**

**s 110A** ins 1996 No. 4 s 7

**Definitions for part**

**s 110B** ins 1996 No. 4 s 7

**Use of video link facilities in proceedings**

**s 110C** ins 1996 No. 4 s 7  
amd 1997 No. 38 s 46

**Detainee taken to be before the court**

**s 110D** ins 1996 No. 4 s 7

**Way video link facilities must be operated**

**110E** ins 1996 No. 4 s 7

**Facilities for private communication**

**s 110F** ins 1996 No. 4 s 7

**Variation or revocation of order**

**s 110G** ins 1996 No. 4 s 7

**PART 8—APPEALS TO DISTRICT COURTS**

**pt hdg** ins 1995 No. 58 s 4 sch 1  
sub 1996 No. 32 s 6

**Definitions for pt 8**

**s 111** amd 1988 No. 7 s 17; 1995 No. 23 s 10 sch 1  
(3) renum as s 122 1995 No. 23 s 10 sch 1  
reloc 1995 No. 58 s 4 sch 1  
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**No appeal lies from Magistrates Court to Supreme Court**

**s 112** prev s 112 ins 1995 No. 23 s 5  
om R2 (see RA s 37)  
pres s 112 amd 1988 No. 7 s 18  
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**Power of District Court on appeal from Magistrates Court**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 113** (prev 1988 No. 7 s 4)  
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**Other appeals**

**s 114** (prev 1988 No. 7 s 5)  
amd 1995 No. 58 s 4 sch 1  
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**s 115** (prev 1988 No. 7 s 6)  
reloc 1995 No. 58 s 4 sch 1  
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**s 116** (prev 1988 No. 7 s 7)  
amd 1995 No. 58 s 4 sch 1  
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**Transfer of appeal hearings**

**s 117** (prev 1988 No. 7 s 8)  
reloc 1995 No. 58 s 4 sch 1  
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**PART 9—APPEALS FROM DISTRICT COURTS TO COURT OF APPEAL****pt hdg** sub 1995 No. 58 s 4 sch 1**Appeal from a District Court to the Court of Appeal****hdg prec s 118** amd 1991 No. 68 s 111 sch 2

om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 3 sch 1)

**Division 1—Appeals to Court of Appeal****div hdg** ins 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)**Appeal to the Court of Appeal in certain cases****prov hdg** amd 1991 No. 68 s 111 sch 2**s 118** amd 1976 No. 19 s 15; 1982 No. 51 s 5; 1989 No. 40 s 14; 1991 No. 68 s 111 sch 2; 1996 No. 79 s 34

sub 1997 No. 38 s 47

amd 1998 No. 20 s 27 sch 2

**Jurisdiction of Court of Appeal****prov hdg** amd 1991 No. 68 s 111 sch 2**s 119** amd 1991 No. 68 s 111 sch 2**Appeal against refusal to approve and revocation of approval as mediator or case appraiser****s 121** ins 1995 No. 23 s 13**Division 2—Appeals and special cases from Magistrates Court****div hdg** ins 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)**Special case****s 122** pres s 122 (prev s 111) renum 1995 No. 23 s 10 sch 1**Division 3—Other appeals to District Courts****div hdg** ins 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)**Action on judgment****hdg prec s 123** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)**Entry of Magistrates Court judgment****s 125** om 1998 No. 20 s 27 sch 2**PART 11—MISCELLANEOUS****pt hdg** sub 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)**Rules of court****hdg prec s 126** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 1—Rules of court**

**div hdg** ins 1994 No. 87 s 3 sch 2  
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**Rule making power**

**s 126** amd 1993 No. 32 s 3 sch 1  
sub 1995 No. 23 s 14  
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**Fees and fines**

**hdg prec s 127** om 1994 No. 87 s 3 sch 2; 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1)

**Division 2—Fees and fines**

**div hdg** ins 1994 No. 87 s 3 sch 2

**Amount of court fees**

**s 127** amd 1995 No. 23 s 10 sch 1 (never proclaimed into force and om 1995 No. 58 s 4 sch 1); 1995 No. 58 s 4 sch 1  
om 1998 No. 20 s 27 sch 2

**Division 3—Offences**

**div hdg** ins 1994 No. 87 s 3 sch 2

**Contempt of court**

**s 129** amd 1989 No. 40 s 15  
sub 1999 No. 66 s 23

**Division 4—General**

**div hdg** ins 1994 No. 87 s 3 sch 2

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**s 130A** ins 1997 No. 38 s 48

**Regulation making power**

**s 131** sub 1989 No. 40 s 16; 1995 No. 23 s 10 sch 1  
amd 1997 No. 38 s 49

**PART 12—TRANSITIONAL PROVISIONS**

**pt hdg** ins 1995 No. 23 s 10 sch 1

**References to District Courts**

**s 132** ins 1989 No. 40 s 16  
sub 1995 No. 23 s 10 sch 1

**References to District Courts Act 1958**

**s 133** ins 1995 No. 58 s 4 sch 1

**References to District Courts (Venue of Appeals) Act 1988**

**s 134** ins 1995 No. 58 s 4 sch 1

**Transitional references to chairperson etc.**

**s 135** ins 1993 No. 76 s 3 sch 1



**Saving of existing rules of court**

**s 136** ins 1995 No. 23 s 15  
 exp 12 April 1998 (see s 136(5))  
 AIA s 20A applies (see s 136(4))  
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**Continued use of title of senior judge**

**s 137** prev s 137 ins 1996 No. 4 s 8  
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 pres s 137 ins 1996 No. 32 s 7  
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**Transitional—provision for Courts Reform Amendment Act 1997**

**s 138** ins 1997 No. 38 s 50  
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**Transitional—establishment of the District Court**

**s 139** ins 1997 No. 82 s 34

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**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)).

**Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999 No. 66 ss 18–23 read as follows—**

### **Insertion of new s 28AA**

**18.** Part 2, division 2, after section 28—

*insert—*

#### **‘Protection for administrative acts**

**‘28AA.** A judge has, in the performance or exercise of an administrative function or power conferred on the judge under an Act, the same protection and immunity as a judge in a judicial proceeding in the court.’.

### **Replacement of s 61 (Exception from criminal jurisdiction)**

**19.** Section 61—

*omit, insert—*

#### **‘Limited criminal jurisdiction if maximum penalty more than 14 years**

**‘61.(1)** The District Court does not generally have jurisdiction to try a person charged with an indictable offence if the maximum penalty for the offence is more than 14 years.

**‘(2)** However, the District Court has jurisdiction to try a person charged with committing or counselling or procuring the commission of any of the following offences even if the maximum penalty for the offence is more than 14 years—

- (a) an offence against the *Corrective Services Act 1988*, section 92(3)(b);<sup>19</sup>

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<sup>19</sup> *Corrective Services Act 1988*, section 92 (Unlawful assembly, riot and mutiny)

- (b) an offence under the Criminal Code, section 64, 65, 208, 213, 215, 216, 219, 222, 229B, 315, 316, 317, 317A, 318, 319, 319A, 337, 347, 398, 409, 411, 412, 415, 419, 421, 461 or 469.<sup>20</sup>

‘(3) Subsection (2) applies to an offence mentioned in subsection (2)(b) even if 1 or more circumstances of aggravation under the Criminal Code are alleged to exist in relation to the offence.’

### **Amendment of s 77 (Removal of proceedings from Supreme Court to District Court)**

**20.** Section 77(6)(b)(i), from ‘shall’—

*omit, insert—*

‘, must be assessed on the basis the proceedings had been started in the Supreme Court if the Supreme Court orders, or, in the absence of an order, as if the proceedings had been started in the District Court; and’.

### **Amendment of s 78 (Removal of proceedings from a District Court to a Magistrates Court)**

**21.** Section 78(6)(b)(i), from ‘shall’—

*omit, insert—*

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<sup>20</sup> Criminal Code, section 64 (Rioters remaining after proclamation ordering them to disperse), 65 (Rioters demolishing buildings etc.), 208 (Unlawful sodomy), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge of girls under 16), 216 (Abuse of intellectually impaired persons), 219 (Taking child for immoral purposes), 222 (Incest), 229B (Maintaining a sexual relationship with a child), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 317A (Carrying or sending dangerous goods in a vehicle), 318 (Obstructing rescue or escape from unsafe premises), 319 (Intentionally endangering safety of persons travelling by railway), 319A (Endangering safety of persons travelling by aircraft), 337 (Sexual assaults), 347 (Rape), 398 (Punishment of stealing), 409 (Definition of “robbery”), 411 (Punishment of robbery), 412 (Attempted robbery), 415 (Demanding property, benefit or performance of services with threats), 419 (Burglary), 421 (Entering or being in premises and committing indictable offences), 461 (Arson) or 469 (Wilful damage)

‘must be assessed on the basis the proceedings had been started in the District Court if the District Court orders, or, in the absence of an order, as if the proceedings had been started in a Magistrates Court; and’.

### **Amendment of s 97 (Court may consider and order reference to ADR process)**

**22.(1)** Section 97(2) to (4)—

*renumber* as section 97(3) to (5).

**(2)** Section 97—

*insert*—

‘**(2)** This section also applies if—

- (a) a party applies to the District Court for an order referring a dispute to an ADR process; or
- (b) the parties are otherwise before the District Court.’

### **Replacement of s 129 (Contempt of court)**

**23.** Section 129—

*omit, insert*—

#### **‘Contempt**

‘**129.(1)** A person is in contempt of the District Court if the person—

- (a) without lawful excuse, fails to comply with an order of the court (other than an order mentioned in paragraph (e)), or an undertaking given to the court; or
- (b) wilfully insults a judge or juror, or a registrar, bailiff, or other court officer during the person’s sitting or attendance in court, or in going to or returning from the court; or
- (c) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in court; or
- (d) unlawfully obstructs or assaults someone in attendance in court; or

- (e) without lawful excuse, disobeys a lawful order or direction of the court at the hearing of any proceeding; or
- (f) commits any other contempt of the court.

‘**(2)** A District Court judge has the same power to punish for a contempt mentioned in subsection (1) as a Supreme Court judge would have if the contempt were a contempt of the Supreme Court.

‘**(3)** If the contempt is in the face of the court, a bailiff or other court officer acting under the court’s order may, using necessary and reasonable help and force, take the person committing the contempt into custody and detain the person until the court rises.

‘**(4)** Before the court rises, the court may—

- (a) ask the person to explain why the person should not be punished;  
or
- (b) adjourn the matter to be dealt with on a stated date.

‘**(5)** If the court acts under subsection (4)(a), the court may deal with the person immediately.’.