



Civil Proceedings Act 2011

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Queensland

Civil Proceedings Act 2011

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Civil Proceedings Act 2011

An Act to provide for various matters concerning civil proceedings and proceedings in relation to contempt of court in the Supreme Court, the District Court and the Magistrates Courts

Part 1 Preliminary

1 Short title

This Act may be cited as the *Civil Proceedings Act 2011*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- parts 1 to 31
- part 32, divisions 2, 3, 6, and 8
- section 229
- schedules 1A and 1.

3 Application

Unless this Act otherwise expressly provides, this Act applies to civil proceedings and proceedings in relation to contempt of court in the following courts—

- the Supreme Court
- the District Court
- a Magistrates Court.

4 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

5 Meaning of *court*

In this Act—

court means, if otherwise appropriate—

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

6 Act binds all persons

This Act binds all persons, including the State.

Part 2 Law and equity

7 Concurrent administration of law and equity

- (1) A court must exercise its jurisdiction in a proceeding to ensure, as far as possible, that—
 - (a) all matters in dispute between the parties are completely and finally decided; and
 - (b) multiplicity of legal proceedings is avoided.
- (2) A court must give the same effect as it did immediately before the commencement of this section—

- (a) to all equitable estates, titles, rights, remedies, defences and counterclaims, and to all equitable duties and liabilities; and
 - (b) subject to the matters mentioned in paragraph (a), to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing under the common law or under any custom or created under any statute.
- (3) If there is a conflict or difference between the rules of equity and the rules of the common law, the rules of equity prevail.
 - (4) Nothing in this Act affects a court's power to stay a proceeding if appropriate, either on its own initiative or on the application of any person, whether or not a party.
 - (5) Nothing in this section limits any inherent or other power of a court to make an order for the decision by the court of a question or issue separately from another question or issue or to state a case for the opinion of the Court of Appeal.
 - (6) Also, nothing in this section increases the jurisdiction given to the District Court under the *District Court of Queensland Act 1967* or to a Magistrates Court under the *Magistrates Courts Act 1921*.

8 Equitable damages

If a court has jurisdiction to hear an application for an injunction or specific performance, the court may award damages as well as, or instead of, an injunction or specific performance.

9 Injunction

- (1) If a court has jurisdiction to hear an application for an injunction, the court may, at any stage of a proceeding, by injunction, restrain a threatened or apprehended breach of contract or other wrongful conduct.
- (2) If waste or trespass is threatened or apprehended, for subsection (1), it does not matter whether—

- (a) the person against whom the injunction is sought (the *relevant person*) is in possession under any claim of title or otherwise; or
 - (b) if the relevant person is not in possession, the relevant person claims a right to do the act sought to be restrained under any claim of title; or
 - (c) the estate claimed by any party is legal or equitable.
- (3) The court may also, at any stage of a proceeding, grant an interlocutory injunction if it considers it just or convenient.

10 Declaratory order

- (1) This section applies to the Supreme Court only.
- (2) The court may hear an application for a declaratory order only and may make a declaratory order without granting any relief as a result of making the order.

11 Order to fulfil duty

- (1) This section applies to the Supreme Court only.
- (2) The court may order any person to fulfil any duty in the fulfilment of which the person seeking the order is personally interested.
- (3) The court may make an interlocutory order under subsection (2) if it considers it just or convenient.

12 Order to appoint receiver

- (1) This section applies to the Supreme Court only.
- (2) The court may, at any stage of a proceeding, make an interlocutory order appointing a receiver if it considers it just or convenient.

Part 3 Orders

Division 1 Orders generally

13 Power to make orders

- (1) This section applies to a court making an order under this Act.
- (2) Unless otherwise stated in this Act, the court may make the order on its own initiative or on an application made to it under this Act.

14 Power to impose appropriate conditions

A court may impose on an order conditions it considers appropriate.

15 Power to award costs

A court may award costs in all proceedings unless otherwise provided.

Division 2 Particular orders

16 Amendment for new cause of action or party

- (1) This section applies to an amendment of a claim, anything written on a claim, pleadings, an application or another document in a proceeding.
- (2) The court may order an amendment to be made, or grant leave to a party to make an amendment, even though—
 - (a) the amendment will include or substitute a cause of action or add a new party; or
 - (b) the cause of action included or substituted arose after the proceeding was started; or

- (c) a relevant period of limitation, current when the proceeding was started, has ended.
- (3) Despite subsection (2), the rules of court may limit the circumstances in which amendments may be made.
- (4) This section—
 - (a) applies despite the *Limitation of Actions Act 1974*; and
 - (b) does not limit section 103H.

17 Interested person may become a party and may be bound by outcome

- (1) This section applies if the court considers—
 - (a) not all persons interested in the subject matter of a proceeding or the relief sought in a proceeding are before the court; and
 - (b) the proceeding ought not to proceed, or relief ought not to be given, without particular persons being given notice of the proceeding.
- (2) However, this section does not apply to a representative proceeding under part 13A.
- (3) The court may—
 - (a) order that the particular persons be included as parties to the proceeding; or
 - (b) stay the proceeding until notice of the proceeding has been given, as the court may direct, to the particular persons.
- (4) If a person given notice does not elect to be included as a party to the proceeding, the person is bound by the outcome of the proceeding in relation to any subject matter or relief in which the person was interested.

18 Order binds persons who are represented

- (1) This section applies to an order made in a proceeding started and continued by or against 1 or more persons (the *representative party*) who have the same interest in the proceeding as representing all of the persons who have the same interest and could have been parties to the proceeding.
- (2) However, this section does not apply to a representative proceeding under part 13A.
- (3) Unless the court orders otherwise, as well as binding the parties to the proceeding, the order binds the persons who have the same interest as the representative party and could have been parties to the proceeding.
- (4) The order may be enforced against a person not named as a party only with the court's leave.

19 Interpleader orders

- (1) On an application for relief by way of interpleader, the court may do 1 or more of the following—
 - (a) if a proceeding is pending against the applicant—order a claimant be included as a defendant in the proceeding in addition to or in substitution for the applicant;
 - (b) order a question between the claimants be stated and tried and direct which of the claimants is to be the plaintiff and which the defendant and give any necessary directions for the trial;
 - (c) order the applicant to pay or transfer all or part of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale;
 - (d) if a claimant claims to be entitled to any of the property by way of security for a debt—make orders for the sale of all or part of the property and for the application of the proceeds of sale;
 - (e) decide in a summary way a question of law or fact arising on the application;

- (f) make an order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.
- (2) If—
- (a) an application for relief by way of interpleader is made; and
 - (b) several proceedings are pending in the court for or about any or all of the property in dispute; and
 - (c) the court makes an order in any 2 or more of the proceedings;
- the order is binding on all the parties to all the proceedings to which it applies.

20 Set-off

- (1) If there are mutual debts between a plaintiff and a defendant in a proceeding, the defendant may, by way of defence, set off against the plaintiff's claim any debt owed by the plaintiff to the defendant that was due and payable at the time the defence of set-off was filed.
- (2) For subsection (1), it does not matter whether the mutual debts are different in nature.
- (3) This section extends to a proceeding in which 1 or more of the mutual debts is owed by or to a deceased person who is represented by a personal representative.
- (4) However, this section does not apply to the extent to which a plaintiff and a defendant have agreed that debts, whether generally, or in relation to specific debts, may not be set off against each other.
- (5) This section—
 - (a) does not affect other rights of set-off or obligation of a debtor or creditor whether arising in equity or otherwise; and
 - (b) applies subject to any express provision in another Act.

(6) In this section—

debt means any liquidated claim.

21 Abatement of proceedings

- (1) If a party to a proceeding dies or becomes bankrupt, the proceeding does not abate because of the death or bankruptcy unless the cause of action does not survive the death or bankruptcy.
- (2) If a proceeding abates for any reason before an order for costs made in the proceeding is satisfied—
 - (a) the order for costs remains enforceable; and
 - (b) the proceeding continues for the purpose only of enforcement of the order for costs.

22 Dismissal of proceedings for want of prosecution

- (1) This section applies to the District Court and Magistrates Courts.

Note—

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

- (2) If 2 years have passed since the last step was taken in a proceeding, the court may dismiss the proceeding.
- (3) For this section, an application on which no order was made is taken not to be a step.

23 Effect of default judgment given by registrar

A default judgment given by a registrar has effect as a judgment given by the court.

24 Discharge of lien or security

- (1) This section applies to a proceeding if—

- (a) a party (the *claimant*) claims the recovery of particular property other than land (the *relevant property*); and
 - (b) the party from whom recovery is sought—
 - (i) claims to be entitled to retain the relevant property because of a lien or as security for money; and
 - (ii) does not otherwise dispute the title of the claimant.
- (2) The court may make an order—
- (a) allowing the claimant to pay into court, to be held until the end of the proceeding—
 - (i) the amount of money in relation to which the lien or other security is claimed; and
 - (ii) any other sum for interest and costs as the court may direct; and
 - (b) that, on payment into court, such judgment be given for recovery of the relevant property as the nature of the case requires.

Part 4 Transfer of proceedings

25 Transfer by Supreme Court—general

- (1) The Supreme Court may order that a proceeding pending in the District Court or a Magistrates Court be transferred to the Supreme Court.
- (2) The Supreme Court may order that a proceeding pending in the Supreme Court for which the District Court, or a Magistrates Court, has jurisdiction be transferred to a court having jurisdiction.

26 Transfer by District Court—general

- (1) The District Court may order that a proceeding pending in a Magistrates Court be transferred to the District Court.
- (2) The District Court may order that a proceeding pending in the District Court for which a Magistrates Court has jurisdiction be transferred to a Magistrates Court.

27 Transfer because of amendment

- (1) This section applies if a plaintiff or applicant in a proceeding wants to amend the relief claimed to, or to include, relief not within the jurisdiction of the court in which the proceeding is pending.
- (2) The party may apply to a court that would have jurisdiction if the amendment were made (the *other court*) for—
 - (a) leave to amend; and
 - (b) an order that the proceeding be transferred to the other court.
- (3) If, apart from any jurisdictional consideration, the other court considers the amendment appropriate, the other court may give leave to amend and, if it gives leave, must order that the proceeding be transferred to it.

28 Transfer because claim beyond jurisdiction

- (1) This section applies if the court in which a proceeding is pending (the *relevant court*) considers it does not have jurisdiction for the proceeding (other than because of a counterclaim).
- (2) If the relevant court considers another court has jurisdiction for the proceeding, the relevant court may, by order, transfer the proceeding to the other court.
- (3) Unless an order is made under subsection (2), the relevant court—
 - (a) must strike out the proceeding; and

- (b) may order the party who started the proceeding to pay the costs of any other party to the proceeding.

29 Transfer because counterclaim beyond jurisdiction

- (1) This section applies if a party to a proceeding in a court (the *relevant court*) files a counterclaim for relief not within the relevant court's jurisdiction.
- (2) A court having jurisdiction for the counterclaim may order that—
 - (a) all of the proceeding be transferred to that court; or
 - (b) the counterclaim be transferred to that court; or
 - (c) all of the proceeding be heard and decided by the relevant court.
- (3) If an order is made under subsection (2), the registrar of the court that made the order must give a copy of it to the registrar of the relevant court.
- (4) If an order is made under subsection (2)(b)—
 - (a) the relevant court must hear and decide the balance of the proceeding; and
 - (b) unless the court hearing the counterclaim orders otherwise, enforcement of any judgment in relation to the balance of the proceeding is stayed until judgment is given in relation to the counterclaim.
- (5) Despite any other Act or law, the relevant court is taken to have jurisdiction to hear and decide all of the proceeding if—
 - (a) no application is made for an order under subsection (2)(a) or (b) within 14 days after the counterclaim is served on the other party or parties to the proceeding; or
 - (b) an order is made under subsection (2)(c).

30 Copy of order and filed documents

- (1) If a court orders that all or part of a proceeding be transferred to or from another court, the registrar of the court must give the registrar of the other court a copy of the order.
- (2) If a proceeding in a court is transferred to another court, the registrar of the court must give to the registrar of the other court all filed documents.
- (3) If part of a proceeding in a court is transferred to another court, the registrar of the court must give to the registrar of the other court a copy of all filed documents.

31 Power of court to which proceeding transferred

The court to which a proceeding is transferred may hear and decide the proceeding as if it had been started in that court.

32 Limitation periods

To remove any doubt, it is declared that for any relevant period of limitation—

- (a) a proceeding transferred to another court is taken to have been started when the proceeding was originally started; and
- (b) a counterclaim transferred to another court is taken to have been started when the counterclaim was originally started.

33 Costs

- (1) This section applies if a proceeding is transferred under this part.
- (2) Unless the court orders otherwise, costs are in accordance with the scale of costs for the court in which the proceeding was pending when the costs were incurred.

- (3) A court to which all or part of a proceeding is transferred may make an order about costs before the transfer if those costs are not dealt with by an order made before the transfer.

Part 5 Conferences

34 Definition for pt 5

In this part—

relevant conference means—

- (a) a conference held at the court's direction; or
- (b) a conference required under the rules because there is a claim for damages for personal injury or death.

35 Resolution agreement

- (1) If, at a relevant conference, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party.
- (2) The agreement has effect as a compromise.

36 Evidence from relevant conference

- (1) Evidence of anything done or said, an admission made, or a document tendered, at a relevant conference about a dispute is admissible at the trial of the dispute or in another civil proceeding in the court or elsewhere only if—
 - (a) all the parties to the dispute agree; or
 - (b) the evidence is an agreement under section 35.
- (2) In this section—

civil proceeding does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, a relevant conference.

Part 6 ADR processes

Division 1 Preliminary

37 Objects of pt 6

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 resolution of disputes; and
- (b) 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 extending the same protection to participants in an ADR process as they would have if the dispute were before a court; and
 - (ii) by ensuring they remain confidential.

38 Application of pt 6

This part does not apply to a dispute that is the subject of an employment claim under the *Magistrates Courts Act 1921*.

Division 2 Interpretation

39 **ADR process**

- (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 this part, an *ADR process* includes all the steps involved in an ADR process, including—
 - (a) pre-mediation and post-mediation sessions; and
 - (b) a case appraisal session; and
 - (c) joint sessions; and
 - (d) private sessions; and
 - (e) another step prescribed under the rules.

40 **Mediation**

Mediation is a process under the rules in which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.

41 **Case appraisal**

- (1) *Case appraisal* is a process under the rules in which a case appraiser provisionally decides a dispute.
- (2) A case appraiser's decision is not binding on the parties until—
 - (a) the time prescribed under the rules for filing an election to go to trial has passed; and
 - (b) a court, by order, gives effect to the decision.

Division 3 ADR process

42 Parties may agree to ADR process

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

43 Court may refer dispute to ADR process

- (1) A court may require the parties or their representatives to attend before it to enable it to decide whether the parties' dispute should be referred to an ADR process.
- (2) This section also applies if—
 - (a) a party applies to the court for an order referring a dispute to an ADR process; or
 - (b) the parties are otherwise before the court.
- (3) The court may, by order (*referring order*), refer the dispute to mediation or case appraisal.
- (4) 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.
- (5) If the court decides to refer the dispute to a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if it appoints the director of a stated dispute resolution centre as mediator.

44 Parties must attend at ADR process if court orders

- (1) If a referring order is made, the parties—
 - (a) must attend before the ADR convenor appointed to conduct the ADR process; and
 - (b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order.
- (2) If a party impedes the ADR process, the court may impose sanctions against the party, including—
 - (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.

45 Procedure at case appraisal

- (1) At a case appraisal, the case appraiser—
 - (a) must decide the procedure to be used at the case appraisal; and
 - (b) may adopt any procedure that will, in the case appraiser's opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and
 - (c) must finish the case appraisal as quickly as possible.
- (2) However, the case appraiser may, in special circumstances—
 - (a) receive evidence; and
 - (b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.
- (3) The court may, at any time, give directions about procedure to be used at the case appraisal.
- (4) This section is subject to section 46.

46 Subpoenas

- (1) A person may not be subpoenaed to attend a mediation.
- (2) A person may be subpoenaed to attend a case appraisal only by order of the court.
- (3) A person subpoenaed to attend a case appraisal must not be compelled to answer a question, or produce a document, the person could not be compelled to answer or produce before the court.
- (4) Sections 55 and 56 apply in relation to a failure to comply with the court's order as if the case appraiser were a person having authority to take evidence for the court.

47 Party unable to pay share of costs

- (1) If, at any time, the court is of the opinion a party to the 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 4 At end of ADR process

48 Mediated resolution agreement

- (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 effect as a compromise.

49 Documents to be filed

- (1) As soon as practicable after a mediation has finished, the mediator must file a certificate about the mediation in the approved form.
- (2) As soon as practicable after a case appraisal has finished, the case appraiser must file—
 - (a) a certificate about the case appraisal in the approved form; and
 - (b) the case appraiser's decision, if any.

50 Orders giving effect to mediation agreement

- (1) A party may apply to the court for an order giving effect to an agreement reached at or after a mediation.
- (2) However, a party may apply for the order only after the mediator's certificate has been filed.
- (3) The court may make any order it considers appropriate in the circumstances.

51 Orders giving effect to case appraiser's decision

- (1) A party may apply to the 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) has passed if all parties agree.
- (3) The court may make any order it considers appropriate in the circumstances.

Division 5 Protection, immunity and confidentiality

52 Ordinary protection and immunity allowed

- (1) In performing the functions of an ADR convenor under a referring order, the ADR convenor has the same protection and immunity as a Supreme Court judge performing a judicial function.
- (2) A party attending an ADR process has the same protection and immunity the party would have if the ADR process were a proceeding being heard before the court.
- (3) A witness attending an ADR process has the same protection and immunity as a witness attending before the court.
- (4) A document produced at, or used for, an ADR process has the same protection during the ADR process it would have if produced before the court.
- (5) In subsection (2)—
party includes a party's lawyer or agent.

53 Evidence from ADR process

- (1) Evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial of the dispute or in another civil proceeding before the 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.

54 Preservation of confidentiality

- (1) An ADR convenor must not, without reasonable excuse, disclose information coming to the ADR 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 the purpose of giving effect to this part; or
 - (c) for statistical purposes not likely to reveal the identity of a person to 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.

Part 7 Compliance with subpoena etc.

55 Non-attendance of individual witness

- (1) This section applies if an individual fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant for—
 - (a) the arrest of the individual; and
 - (b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and
 - (c) the detention in custody of the individual until released by the court.

- (3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

56 Non-attendance of corporation

- (1) This section applies if a corporation or an officer of the corporation fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant for—
 - (a) the arrest of the officer of the corporation to whom the subpoena or order was directed; and
 - (b) the production of the officer as required by the subpoena or order for the purpose of the proceeding; and
 - (c) the detention in custody of the officer until released by the court.
- (3) However, if the subpoena or order was directed to the ‘proper officer’ of the corporation, the court may make an order for the issue of a warrant for the arrest of a particular officer only if it is proved the officer had received the subpoena or order, or otherwise had actual knowledge of it.
- (4) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

57 Noncompliance is contempt of court

- (1) Failure to comply with a subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.
- (2) Nothing in section 55 or 56 affects a court’s power to punish for contempt.

Part 8 Interest

58 Interest up to judgment

- (1) This section applies in relation to a proceeding in a court for the payment of money, including a proceeding for debt, damages or the value of goods.
- (2) This section does not apply in relation to—
 - (a) a proceeding for a cause of action arising before 21 December 1972; or
 - (b) a proceeding for the payment of money on which interest is payable as of right whether because of an agreement or otherwise.

Editor's note—

The *Common Law Practice Act Amendment Act 1972* commenced on 21 December 1972.

- (3) The court may order that there be included in the amount for which judgment is given interest at the rate the court considers appropriate for all or part of the amount and for all or part of the period between the date when the cause of action arose and the date of judgment.
- (4) This section does not—
 - (a) authorise the giving of interest on interest; or
 - (b) affect damages recoverable for the dishonour of a bill of exchange.

59 Interest after money order

- (1) This section does not apply in relation to a proceeding for a cause of action arising before 21 December 1972.
- (2) Interest is payable from the date of a money order on the money order debt unless the court otherwise orders.
- (3) The interest is payable at the rate prescribed under a practice direction made under the *Supreme Court of Queensland Act 1991* unless the court otherwise orders.

- (4) However—
- (a) if the money order includes an amount for damages and the damages are paid within 21 days of the date of the order, interest on the damages is not payable unless the court otherwise orders; and
 - (b) if the money order includes an amount for costs and the costs are paid within 21 days after assessment, interest on the costs is not payable unless the court otherwise orders.

Part 9 Assessment of damages

60 Income tax reduction for loss of earnings award

- (1) This section applies to claims for damages for any of the following—
- (a) personal injury;
 - (b) loss of dependency;
 - (c) wrongful dismissal.
- (2) Damages based on any of the following—
- (a) deprivation or impairment of earning capacity;
 - (b) loss of earnings;
 - (c) loss of future probable earnings;

must be reduced by the amount the court considers would have been paid on the relevant earnings as income tax had they been received.

61 Discount rate for lump sum award

- (1) This section applies to an award of damages for deprivation or impairment of earning capacity, or for a liability to incur expenditure in the future.

- (2) However, this section does not apply to an award of damages to which the *Civil Liability Act 2003*, chapter 3 applies.
- (3) When assessing an amount of damages as a lump sum for a future loss or expense, the amount must be the present value, calculated using the prescribed discount rate, of the future loss or expense.
- (4) In this section—
prescribed discount rate, for an award, means—
 - (a) the discount rate prescribed under a regulation as in force when the award is made; or
 - (b) if a discount rate is not prescribed under a regulation when the award is made—5%.

Part 10 Wrongful death proceedings

62 Definitions for pt 10

In this part—

child includes a grandchild and a stepchild.

member of the deceased's family means—

- (a) a child of the deceased, including a child born alive after the death of the deceased; or
- (b) a person to whom the deceased acted, immediately before his or her death, in place of a parent; or
- (c) a parent of the deceased; or
- (d) a person who acted, immediately before the death of the deceased, in place of a parent to the deceased; or
- (e) a spouse of the deceased.

parent includes a step-parent and a grandparent.

personal representative, for a deceased person, means an executor or administrator of the deceased's estate.

spouse see section 63.

63 Meaning of *spouse*

(1) For this part, the *spouse* of a deceased person includes a de facto partner of the deceased only if the deceased and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA—

(a) generally—

(i) for a continuous period of at least 2 years ending on the deceased's death; or

(ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long-term, committed relationship; or

(b) if the deceased left a dependant who is a child of the relationship—immediately before the deceased's death.

(2) In this section—

child of the relationship means a child of the deceased person and the de facto partner, and includes a child born after the deceased's death.

dependant, of a deceased person, includes a child born after the deceased's death who would have been wholly or partially dependent on the deceased's earnings after the child's birth if the deceased had not died.

64 Liability for a death

(1) This section applies if—

(a) a death is caused by a wrongful act or omission, whether or not an offence; and

- (b) the act or omission would, if death had not resulted, have entitled the deceased person to recover damages in a proceeding for personal injury.
- (2) The person who would have been liable if the death had not resulted is liable for damages despite the death and whether or not the death was caused by circumstances that were an offence.
- (3) In a proceeding under this part, a court may award to the members of the deceased person's family the damages it considers to be proportional to the damage to them resulting from the death.
- (4) The amount of damages awarded to a person under a legal incapacity may include an amount for management fees relating to the amount awarded to the person.

65 One proceeding for benefit of members of deceased person's family

- (1) Not more than 1 proceeding under this part may be brought against a person in relation to a death.
- (2) The proceeding may be brought by the personal representative of the deceased person, or by any 1 or more of the members of the deceased's family who suffered damage because of the death, for the benefit of the members of the deceased's family who suffered damage because of the death.
- (3) A notice given under an Act by a person able to bring a proceeding is taken to have been given on behalf of all members of the deceased's family who suffered damage because of the death.
- (4) A person able to bring a proceeding may apply to the Supreme Court for directions relating to the steps required to be taken to comply with a requirement under an Act or relating to a proceeding under this part before starting the proceeding.
- (5) The amount of damages awarded must, after deducting any costs not recovered from the defendant, be divided in the

shares the court decides among the members of the deceased's family who suffered damage because of the death.

66 Surviving proceeding other than by personal representative

If a person, other than the personal representative of the deceased person, brings a proceeding under this part, the person—

- (a) may also, on behalf of the estate of the deceased person, pursue any cause of action that survives under the *Succession Act 1981*, section 66; and
- (b) must account to the personal representative for any amount the person recovers under paragraph (a).

67 Damages for spouse's benefit

- (1) This section applies if, in a proceeding under this part, a court is assessing damages in relation to financial benefits lost by a spouse of the deceased person as a result of the deceased's death.
- (2) The court must not take into account any financial benefits that the spouse may receive as a result of a new relationship that the spouse may enter into after the assessment.
- (3) Subsection (2) applies even if the spouse intends to enter into a new relationship.
- (4) However, if the spouse has entered into a new relationship since the deceased person's death, the court may take into account any financial benefits that the spouse has received, and any financial benefits that the spouse is likely to receive, as a result of the new relationship.
- (5) Subsection (4) applies even if the new relationship ends before the assessment.
- (6) In considering what financial benefits the spouse is likely to receive as a result of the new relationship, the court must not assume—

- (a) that the new relationship will necessarily continue; or
 - (b) that the spouse will necessarily continue to receive the same financial benefits as a result of the new relationship as the spouse has already received as a result of the new relationship.
- (7) In this section—
- financial benefits* means either or both of the following—
- (a) monetary benefits;
 - (b) other material benefits having a monetary value, including, for example, domestic services.
- relationship* means—
- (a) a marriage; or
 - (b) a de facto relationship within the meaning of the *Acts Interpretation Act 1954*, schedule 1; or
 - (c) a civil partnership within the meaning of the *Acts Interpretation Act 1954*, schedule 1.

68 Damages for child's benefit

- (1) This section applies if—
- (a) in a proceeding under this part, a court is assessing damages in relation to financial benefits lost by a child of the deceased person as a result of the deceased's death; and
 - (b) the deceased predeceases another parent of the child (the *surviving parent*).
- (2) If there was a relationship between the deceased person and the surviving parent immediately before the deceased's death, it is irrelevant to the assessment whether or not the relationship would have continued apart from the death.
- (3) If there was a relationship between the deceased person and the surviving parent that ended before the deceased's death, any damages assessed must not be reduced because the relationship ended before the death.

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- (4) In assessing damages, the court must not take into account any financial benefits that the child has received, or may receive, from any person other than the deceased person, including any financial benefits that the child has received, or may receive, as a result of—
- (a) a new relationship that the surviving parent may enter into after the assessment; or
 - (b) a new relationship entered into by the surviving parent since the death of the deceased.
- (5) In this section—
- financial benefits* see section 67.
- relationship* see section 67.

69 Transitional application of assessment provisions

Sections 67 and 68 apply in relation to any assessment made in a proceeding under this part regardless of when the death occurred.

70 Amounts not to be taken into account in assessing damages

- (1) In assessing damages in relation to liability under this part, the following must not be taken into account to reduce the damages—
- (a) an amount paid or payable on the death of the deceased person under a contract of insurance;
 - (b) an amount paid or payable on the deceased's death under a contract, other than a contract of insurance, made with a friendly society or other benefit society, or association or trade union;
 - (c) an amount paid or payable on the deceased's death out of a superannuation, provident or similar fund;
 - (d) an amount paid or payable on the deceased's death by way of pension, benefit or allowance under a law of—

- (i) the Commonwealth; or
 - (ii) any State; or
 - (iii) another country;
 - (e) a gratuity in whatever form received or receivable on the deceased's death.
- (2) Subsection (1) applies regardless of whether the amount is paid or payable to or the gratuity is received or receivable by the deceased person's estate or any person for whose benefit a proceeding may be brought under this part.

Part 11 Provisions about ships

71 Definitions for pt 11

In this part—

owner, for a ship—

- (a) includes a person responsible for the fault of the ship; and
- (b) means the charterer or other person responsible for the navigation and management of the ship if the owner is not responsible for the navigation and management of the ship because of a charter or for any other reason.

ship see the *Transport Operations (Marine Safety) Act 1994*, section 10.

72 Damages for personal injury

- (1) This section applies if loss of life or personal injury is suffered by a person on board a ship because of the fault of the ship and 1 or more other ships.
- (2) The liability of the owners of the ships is joint and several.
- (3) Nothing in this section—

- (a) deprives a person of any right of defence that the person has apart from this section; or
- (b) affects a person's right to limit the person's liability; or
- (c) affects the operation of the *Law Reform Act 1995*, section 10.

Notes—

- 1 For circumstances within the scope of the *Navigation Act 2012* (Cwlth), see section 176(3)(a) of that Act.
- 2 The *Law Reform Act 1995*, section 10 deals with the apportionment of liability if there was contributory negligence by the injured or deceased person.

73 Right of contribution

- (1) This section applies if—
 - (a) loss of life or personal injury is suffered by a person on board a ship because of the fault of the ship and 1 or more other ships; and
 - (b) a proportion of the damages is recovered from 1 ship owner that is more than the proportion in which the ship was at fault.
- (2) The ship owner may recover by way of contribution the amount of the excess from the owners of the other ships in proportion to the degree to which each ship was at fault.
- (3) However, an amount may not be recovered by way of contribution if, for any reason, it could not have been recovered in the first instance as damages by the person entitled to sue for them.
- (4) In addition to any other remedy provided by law and subject to this Act, a ship owner entitled to recover an amount under subsection (2) has, for the purposes of recovering the amount, the same rights and powers as the person entitled to sue for damages in the first instance.

Note—

- For circumstances within the scope of the *Navigation Act 2012* (Cwlth), see section 176(3)(c) of that Act.

74 Other damages

- (1) This section applies if, because of the fault of 2 or more ships, damage or loss is caused to 1 or more ships.
- (2) The *Civil Liability Act 2003*, chapter 2, part 2 does not apply to a claim for the damage or loss.

Note—

The *Civil Liability Act 2003*, chapter 2, part 2 deals with proportionate liability.

- (3) Each ship is liable for the damage or loss in proportion to the degree to which it was at fault.
- (4) If it is not possible to establish different degrees of fault, each ship at fault is equally liable for the damage or loss.
- (5) Nothing in this section makes a ship liable for damage or loss to which the ship's fault has not contributed.
- (6) Also, nothing in this section—
 - (a) affects a person's liability under any contract; or
 - (b) imposes a liability on a person from which the person is exempted by any contract or law; or
 - (c) affects a person's right to limit the person's liability.
- (7) For this section—
 - (a) damage or loss is caused to a ship if damage or loss is caused to—
 - (i) the ship; or
 - (ii) the ship's cargo or freight, including passage money and hire; or
 - (iii) any property on board the ship; and
 - (b) damage or loss caused by the fault of a ship includes any salvage or other expenses resulting from that fault that are recoverable at law by way of damages.

Note—

For circumstances within the scope of the *Navigation Act 2012* (Cwlth), see section 176(3)(b) of that Act.

75 No statutory presumption of fault

If there is a collision, a ship is not taken to be at fault solely because it infringed any regulation for the prevention of collisions at sea made under the *Transport Operations (Marine Safety) Act 1994*.

Note—

For circumstances within the scope of the *Navigation Act 2012* (Cwlth), see section 179 of that Act.

Editor's note—

The International Regulations for Preventing Collisions at Sea have effect as if they were part of the *Transport Operations (Marine Safety) Regulation 2016* under section 79 of that regulation.

Part 12 Assessors and referees

Division 1 Assessors

76 Definitions for division

In this division—

assessment means—

- (a) a costs assessment; or
- (b) an account assessment.

assessor means a costs assessor, or an account assessor, appointed under the rules.

costs assessment means assessment of a costs statement or itemised bill under the rules, chapter 17A.

77 Protection and immunity

- (1) In performing the functions of assessor, an assessor has the same protection and immunity as a Supreme Court judge performing a judicial function.
- (2) A party appearing in an assessment has the same protection and immunity as the party would have if the assessment were a proceeding being heard before the Supreme Court.
- (3) A witness attending in an assessment has the same protection and immunity as a witness attending before the Supreme Court.
- (4) A document produced at, or used for, an assessment has the same protection during the assessment as it would have if produced before the Supreme Court.
- (5) In this section—
party includes a party's lawyer or agent.

78 Preservation of confidentiality

- (1) A person who gains confidential information through being an assessor must not—
 - (a) make a record of the information other than—
 - (i) for the purpose of carrying out the assessment; or
 - (ii) to discharge another function under a law; or
 - (b) disclose the information other than—
 - (i) under an order of a court or tribunal; or
 - (ii) as authorised by the person to whom the confidential information relates.
- (2) In this section—
confidential information includes information about a person's affairs, but does not include—
 - (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or

- (b) statistical information not likely to result in the identification of the person to whom the information relates.

79 Preservation of privilege

Privilege continues despite disclosure to an assessor.

Division 2 Referees

79A Protection and immunity

- (1) In performing the functions of referee, a referee has the same protection and immunity as a Supreme Court judge performing a judicial function.
- (2) A party appearing in an inquiry before a referee has the same protection and immunity as the party would have if the inquiry were a proceeding being heard before the Supreme Court.
- (3) A witness attending an inquiry before a referee has the same protection and immunity as a witness attending before the Supreme Court.
- (4) A document produced at, or used for, an inquiry before a referee has the same protection during the inquiry as it would have if produced before the Supreme Court.
- (5) In this section—

inquiry, before a referee, means an inquiry into a question in a proceeding that is referred under the rules to the referee.

party includes a party's lawyer or agent.

referee means a referee appointed under the rules.

Part 13 Enforcement

Division 1 Judgments

80 Judgment for detention of goods

- (1) This section applies to a proceeding for detention of goods.
- (2) Judgment for detention of goods must be that—
 - (a) the defendant return specific goods to the plaintiff; or
 - (b) the defendant return specific goods, or pay their value, to the plaintiff; or
 - (c) the defendant pay the value of the goods, whether with or without a condition that the value is not payable if specific goods are returned within a stated time.
- (3) A judgment for detention of goods may also provide for damages for detention of the goods.

81 Judgment for return of goods

- (1) A judgment under section 80(2)(a) that the defendant return specific goods to the plaintiff may be enforced by an enforcement warrant to seize and deliver the goods.
- (2) If the judgment states a time within which the goods are to be returned and the goods are not returned within the stated time, the judgment may also be enforced by—
 - (a) punishment of the defendant for contempt; and
 - (b) an enforcement warrant to seize and deliver property.
- (3) If an enforcement warrant mentioned in subsection (1) can not be enforced, the plaintiff may apply to the court and the court may make any order it considers appropriate.

82 Judgment for return of goods or payment of their value

- (1) This section applies if judgment is given under section 80(2)(b) that the defendant return specific goods, or pay their value, to the plaintiff.
- (2) If the value of the goods has been assessed—
 - (a) the judgment must provide for payment of the amount assessed; and
 - (b) the plaintiff may enforce the judgment as a money order for the amount assessed if the defendant does not return the goods.
- (3) If the value of the goods has not been assessed—
 - (a) the judgment must provide for the value to be assessed; and
 - (b) the plaintiff may have the value assessed and may enforce the judgment as a money order for the amount assessed if the defendant does not return the goods.

83 Effect of money order

- (1) A money order has the effect of a judgment at law.
- (2) A money order may be enforced only under this part regardless of whether the order was made in a court's common law jurisdiction or its equitable jurisdiction.
- (3) If a court has jurisdiction to order a party to do an act, the court may make a special order for the payment of money enforceable as an order to do an act.

Division 2 Enforcement generally

84 Demand for compliance unnecessary

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

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

85 Interest recoverable on enforcement

An enforcement warrant for the enforcement of a money order authorises, without the need for any further order, the levying of interest on the amount payable at the rate applying under section 59.

86 Enforcement against partnership

- (1) An order against partners suing or sued in the name of the partnership may be enforced against any 1 or more of the following—
- (a) partnership property;
 - (b) a partner who filed a notice of intention to defend;
 - (c) a person who has admitted being a partner;
 - (d) a person who the court has decided is a partner;
 - (e) a person who has been individually served as a partner with the originating process and who has not filed a notice of intention to defend.
- (2) This section has effect subject to the *Partnership Act 1891*, section 65.

Editor's note—

Partnership Act 1891, section 65 (Legal proceedings)

87 Variation of order in partnership name

Despite section 86, the court may vary an order against a partnership in the partnership name to make it an order against the persons who were partners when the cause of action arose.

88 Enforcement against property of a business

- (1) This section applies if—
 - (a) a proceeding is brought against a person in relation to a business carried on by the person under a name other than the person's own name (whether or not the name is registered on the Business Names Register or held under business names legislation); and
 - (b) the proceeding is started in the name under which the person carries on business; and
 - (c) the proceeding is continued by leave of the court.
- (2) An order in the proceeding may be enforced against any property of the person carrying on the business.
- (3) For subsection (1)(a), a name is held under business names legislation only if it is held under—
 - (a) the *Business Names Registration Act 2011* (Cwlth), section 54; or
 - (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.

89 Variation of order in relation to a business name

- (1) Despite section 88, a court may vary its order, in relation to a business, made in the name under which 1 or more persons carry on the business (whether or not the name is registered on the Business Names Register or held under business names legislation), to make it an order against a person carrying on the business.
- (2) For subsection (1), a name is held under business names legislation only if it is held under—
 - (a) the *Business Names Registration Act 2011* (Cwlth), section 54; or
 - (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.

Division 3 Enforcement warrants

90 Enforcement warrant

- (1) To enforce an order (the *original order*) other than an order for the payment of money into court, a person entitled to enforce the original order may obtain an enforcement warrant from the court.
- (2) An enforcement warrant may contain any order directed to enforcing the original order, including an order authorising—
 - (a) an enforcement officer to seize and sell, in satisfaction of a money order debt, all real and personal property (other than exempt property) in which an enforcement debtor has a legal or beneficial interest; or
 - (b) redirection to an enforcement creditor of particular debts, belonging to an enforcement debtor, from a third person; or
 - (c) redirection to an enforcement creditor of particular earnings, of an enforcement debtor, from a third person; or
 - (d) an enforcement officer to enter and deliver possession of land; or
 - (e) an enforcement officer to seize and deliver specific goods; or
 - (f) an enforcement officer to seize and detain property.
- (3) An enforcement warrant may contain more than 1 order directed to enforcing the original order and may be issued to enforce an original order that is a money order and a non-money order.
- (4) However, only the Supreme Court may issue an enforcement warrant containing a charging order.
- (5) In this section—

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

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

91 Period of enforcement warrant

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

92 Payment under enforcement warrant

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

93 Securities held by enforcement officer

- (1) This section applies if an enforcement officer seizes cheques, bills of exchange, promissory notes, specialties or other securities for money (the *seized documents*) under an enforcement warrant to enforce a money order.
- (2) The enforcement officer holds the seized documents as security for the amount to be recovered under the enforcement warrant for the benefit of the enforcement creditor.
- (3) The enforcement officer may receive an amount payable under a seized document from the person liable under it.

- (4) The rules may make provision about proceedings to recover amounts under a seized document, including who may start a proceeding.

94 Redirection of joint funds

- (1) This section applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a *joint fund*).
- (2) An enforcement warrant may authorise redirection to an enforcement creditor of a joint fund to the extent of the enforcement debtor's entitlement.
- (3) It is presumed a joint fund is owned by the fund owners in equal shares unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner.

95 State debts

- (1) If the debt belonging to an enforcement debtor is from a public sector unit and payable out of the consolidated fund or money controlled by a public sector unit (a *State debt*), an application for an enforcement warrant and the enforcement warrant must name the chief executive, by title, of the public sector unit as the third person in whose hands the State debt is redirected.
- (2) Subsection (1) applies despite the *Crown Proceedings Act 1980*, section 8.

Editor's note—

Crown Proceedings Act 1980, section 8(1)—

'8 Mode of proceeding

- (1) Subject to this Act and any other Act or law, a claim by or against the Crown may be made and enforced by a proceeding by or against the Crown under the title the 'State of Queensland'.
- (3) In this section—
public sector unit means any of the following—

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

96 Redirection of partnership debts

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

97 Account with financial institution

- (1) An amount standing to the credit of an enforcement debtor in an account in a financial institution is, for enforcing a money order, a debt payable to the enforcement debtor, even if any of the following conditions applicable to the account have not been satisfied—
 - (a) a condition requiring a demand or notice to be made before an amount is withdrawn;
 - (b) a condition requiring a personal application to be made before an amount is withdrawn;
 - (c) a condition requiring the production of a deposit book or a receipt for an amount deposited in the account before an amount is withdrawn;
 - (d) a similar condition.
- (2) Subsection (1) applies, with any changes necessary, to an amount placed to the credit of an enforcement debtor in an account in a financial institution between the date of the enforcement warrant ordering the redirection and any hearing deciding the validity of the warrant.

98 Enforcement against a third person

- (1) If a third person—
 - (a) does not comply with an enforcement warrant authorising redirection of a debt from the third person; and
 - (b) does not file a notice of objection; and
 - (c) fails to dispute the third person’s liability to pay the debt;

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

- (2) To remove any doubt, it is declared that if the debt is a State debt under section 95, the *Crown Proceedings Act 1980*, section 11 applies.

Editor’s note—

Crown Proceedings Act 1980, section 11 (Satisfaction of judgment)

99 Redirection of earnings—protection of employee

An employer must not dismiss an employee, or otherwise prejudice an employee, because an enforcement warrant authorising redirection of the employee’s earnings has been made.

Maximum penalty—100 penalty units.

Division 4 Warrant for defendant’s arrest

100 Issue of warrant for defendant’s arrest

- (1) Despite the *District Court of Queensland Act 1967*, section 69, only the Supreme Court may issue a warrant under this section.
- (2) The court may issue a warrant for the arrest of a defendant to a claim in any court if the court is satisfied—
 - (a) the defendant has absconded or is about to abscond; and

- (b) the absence of the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given.
- (3) The warrant must be in the approved form for the arrest of a defendant.
- (4) The court may issue the warrant at any time, for example, before the defendant has been served with a claim or before judgment.
- (5) The warrant must state—
 - (a) the name of the defendant; and
 - (b) the date, within 2 months after the warrant's issue, the warrant ends.
- (6) The court may fix an amount as security to be stated in the warrant.
- (7) On payment of the security, the defendant is entitled not to be arrested or, if arrested, to be released.
- (8) In fixing the amount, the court may have regard to any matter it considers relevant, including the following matters—
 - (a) the amount, if any, of the plaintiff's claim;
 - (b) the costs of issuing the warrant;
 - (c) an estimate of the costs of executing the warrant.

Division 5 Enforcement officers

101 Powers not impaired

Except as provided in this Act, this Act does not take away, lessen or impair any power that was, immediately before the commencement of this section, capable of being exercised by an enforcement officer for a court.

102 No licence necessary for auction

An enforcement officer for a court may, in the course of enforcement, sell property by auction without a licence.

103 Transfer to be executed

- (1) This section applies if an enforcement officer for a court sells the right, title and interest of another person in relation to land.
- (2) The sheriff, registrar or clerk of the court must execute the appropriate transfer of the right, title and interest to the purchaser.
- (3) A transfer executed under subsection (2) is evidence that the enforcement officer had power to sell the right, title and interest mentioned in the transfer.

Part 13A Representative proceedings in Supreme Court

Division 1 Preliminary

103A Definitions for pt 13A

In this part—

court means the Supreme Court.

defendant means a person against whom relief is sought in a representative proceeding.

group member means a member of a group of persons on whose behalf a representative proceeding has been started.

representative party means a person who starts a representative proceeding.

representative proceeding means a proceeding started under section 103B.

sub-group member means a person included in a sub-group established under section 103M.

sub-group representative party means a person appointed to be a sub-group representative party under section 103M.

Division 2 Conduct of representative proceedings

103B Starting proceeding

- (1) A proceeding may be started under this part if—
 - (a) 7 or more persons have claims against the same person; and
 - (b) the claims of all the persons are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) the claims of all the persons give rise to a substantial common issue of law or fact.
- (2) The proceeding may be started by 1 or more of the persons on behalf of some or all of the other persons.
- (3) The proceeding may be started—
 - (a) whether or not the relief sought—
 - (i) is, or includes, equitable relief; or
 - (ii) consists of, or includes, damages; or
 - (iii) includes claims for damages that would require individual assessment; or
 - (iv) is the same for each person represented; and
 - (b) whether or not the proceeding—
 - (i) is concerned with separate contracts or transactions between the defendant and individual group members; or

- (ii) involves separate acts or omissions of the defendant done or omitted to be done in relation to individual group members.

103C Standing

- (1) A person who has a claim as mentioned in section 103B(1)(a) has a sufficient interest to start a representative proceeding against another person (the *proposed defendant*) on behalf of other persons who also have a claim as mentioned in that section if the person has standing to start proceedings on the person's own behalf against the proposed defendant.
- (2) The person may start a representative proceeding on behalf of other persons against more than 1 defendant, whether or not each of the other persons have a claim against each of the defendants in the proceeding.
- (3) A person who has started a representative proceeding retains standing to do the following even if the person ceases to have a claim against any or all defendants—
 - (a) continue the proceeding;
 - (b) appeal against a decision in the proceeding.

103D Whether consent required to be a group member

- (1) Subject to subsection (2), the consent of a person to be a group member is not required.
- (2) Each of the following persons is a group member only if the person gives consent in writing to be a group member—
 - (a) the Commonwealth or a State;
 - (b) a Minister of the Commonwealth or a State;
 - (c) a body corporate established for a public purpose by a law of the Commonwealth or a State, other than an incorporated company or association;
 - (d) an officer of the Commonwealth or a State, in his or her capacity as an officer.

103E Persons under a legal incapacity

- (1) It is not necessary for a person under a legal incapacity to have a litigation guardian merely in order to be a group member.
- (2) A group member who is a person under a legal incapacity may only take a step in the representative proceeding or conduct part of the proceeding by the member's litigation guardian.
- (3) In this section—

person under a legal incapacity has the meaning given by the *Supreme Court of Queensland Act 1991*.

103F Originating process

- (1) The originating process for a representative proceeding, or a document filed in support of the originating process, must, in addition to any other matters required—
 - (a) describe or otherwise identify the group members to whom the proceeding relates; and
 - (b) state the nature of the claims made and relief sought on behalf of the group members; and
 - (c) state the questions of law or fact common to the claims of the group members.
- (2) For describing or otherwise identifying the group members under subsection (1)(a), it is not necessary to name or state the number of the group members.

103G Right of group member to opt out

- (1) The court must fix a date before which a group member may opt out of a representative proceeding.
- (2) A group member may opt out of the representative proceeding by giving written notice before the date fixed under subsection (1).
- (3) On the application of a group member, the representative party or the defendant, the court may fix a later date to extend

the period during which a group member may opt out of the representative proceeding under subsection (2).

- (4) Except by leave of the court, the hearing of a representative proceeding must not start earlier than the date before which a group member may opt out of the proceeding.

103H Cause of action accruing after representative proceeding started

- (1) At any stage of a representative proceeding, on the application of the representative party, the court may give leave to amend the originating process for the proceeding to change the description of the group members.
- (2) The description of the group members may be changed to include a person—
 - (a) whose cause of action accrued after the start of the representative proceeding but before the date fixed by the court when giving leave; and
 - (b) who would have been a group member or, with the consent of the person would have been a group member, if the cause of action had accrued before the proceeding was started.
- (3) The date mentioned in subsection (2)(a) may be the date on which leave is given or another date before or after that date.
- (4) If the court gives leave under subsection (1), the court may also make any other order it considers just, including an order relating to—
 - (a) the giving of notice to persons who, as a result of the amendment, will be included in the description of group members for the representative proceeding; and
 - (b) the date before which the persons may opt out of the representative proceeding.

103I Fewer than 7 group members

If, at any stage of a representative proceeding, it appears likely to the court that there are fewer than 7 group members, the court may, on the conditions it considers appropriate—

- (a) order that the proceeding be continued under this part; or
- (b) order that the proceeding no longer continue under this part.

103J Distribution costs excessive

- (1) This section applies if—
 - (a) the relief sought in a representative proceeding is or includes payment of money to group members, other than for costs; and
 - (b) on application by the defendant, the court considers it is likely that, if judgment were to be given in favour of the representative party, the cost to the defendant of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive, having regard to the likely total of those amounts.
- (2) The court may, by order—
 - (a) direct that the proceeding no longer continue under this part; or
 - (b) stay the proceeding so far as it relates to relief of the kind mentioned in subsection (1)(a).

103K Discontinuance of proceeding in particular circumstances

- (1) The court may, on application by the defendant or on its own initiative, order that a proceeding no longer continue under this part if it considers it is in the interests of justice to do so because—

[s 103L]

- (a) the costs that would be incurred if the proceeding were to continue under this part are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; or
 - (b) all the relief sought can be obtained by way of a proceeding other than a proceeding under this part; or
 - (c) the proceeding will not provide an efficient and effective way of dealing with the claims of the group members; or
 - (d) a representative party is not able to adequately represent the interests of the group members; or
 - (e) it is otherwise inappropriate that the claims be pursued by way of a proceeding under this part.
- (2) For subsection (1)(e), it is not inappropriate for claims to be pursued by way of a proceeding under this part merely because the persons identified as group members for the proceeding—
- (a) do not include all persons on whose behalf the proceeding might have been brought; or
 - (b) are aggregated together for a particular purpose including, for example, a litigation funding arrangement.
- (3) If the court dismisses an application under this section for a proceeding under this part, the court may order that no further application under this section be made by the defendant in the proceeding except with the leave of the court.
- (4) For subsection (3), leave may be granted subject to the conditions about costs the court considers just.

103L Effect of discontinuance order under this part

If the court makes an order under section 103I, 103J or 103K that a proceeding no longer continue under this part—

- (a) the proceeding may be continued as a proceeding by the representative party on the party's own behalf against the defendant; and

- (b) on the application of a person who was a group member for the proceeding, the court may order that the person be joined as an applicant or plaintiff in the continued proceeding.

103M Where not all issues are common

- (1) If it appears to the court that deciding the issue or issues common to all group members will not finally decide the claims of all group members, the court may give directions in relation to deciding the remaining issues.
- (2) If an issue is common to the claims of some only of the group members, the directions given by the court may include directions—
 - (a) establishing a sub-group consisting of those group members; and
 - (b) appointing a person to be the sub-group representative party for the sub-group members.
- (3) If the court appoints a person other than the representative party to be a sub-group representative party, that person, and not the representative party, is liable for costs associated with deciding the issue or issues common to the sub-group members.

103N Individual issues

- (1) In giving directions under section 103M, the court may allow an individual group member to appear in the proceeding for the purpose of deciding an issue that relates only to the claims of that member.
- (2) If an individual group member is allowed to appear under subsection (1), the individual group member, and not the representative party, is liable for costs associated with deciding the issue.

103O Directions for further proceedings

If an issue can not properly or conveniently be dealt with by the court under section 103M or 103N, the court may give directions for the starting and conduct of other proceedings, whether or not the other proceedings are representative proceedings.

103P Adequacy of representation

- (1) If, on application by a group member, the court considers that a representative party is not able adequately to represent the interests of the group members, the court may—
 - (a) substitute another group member as the representative party; and
 - (b) make any other orders in relation to the substitution it considers appropriate.
- (2) If, on application by a sub-group member, the court considers that the sub-group representative party is not able adequately to represent the interests of the sub-group members, the court may—
 - (a) substitute another person as the sub-group representative party; and
 - (b) make any other orders in relation to the substitution it considers appropriate.

103Q Stay of execution in particular circumstances

If a defendant starts a proceeding in the court against a group member, the court may order a stay of execution for any relief awarded to the group member in the representative proceeding until the other proceeding is decided.

103R Settlement and discontinuance

- (1) A representative proceeding may not be settled or discontinued without the approval of the court.

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- (2) If the court gives approval under subsection (1), it may make any orders it considers just for the distribution of money paid under a settlement or paid into the court.

103S Settlement of individual claim of representative party

- (1) A representative party may, with the leave of the court, settle the party's individual claim in whole or part at any stage of the representative proceeding.
- (2) A representative party seeking leave to settle, or who has settled, the party's individual claim may, with leave of the court, withdraw as the representative party.
- (3) If a representative party seeks leave to withdraw under subsection (2), the court may, on the application of a group member, make—
- (a) an order for the substitution of a group member as the representative party; and
 - (b) any other orders in relation to the substitution it considers appropriate.
- (4) Before a representative party may be granted leave to withdraw under subsection (2)—
- (a) the court must be satisfied that notice of the application has been given to group members under section 103T in sufficient time for a group member to apply under subsection (3) to have someone substituted as the representative party; and
 - (b) any application for the substitution of a group member as representative party must have been decided.

Division 3

Notices

103T When notice must be given

- (1) Notice must be given to group members of the following matters in relation to a representative proceeding—

[s 103U]

- (a) the starting of the proceeding and the right of the group members to opt out of the proceeding before the date fixed by the court under section 103G;
 - (b) an application by the defendant for the dismissal of the proceeding on the ground of want of prosecution;
 - (c) an application by a representative party seeking leave to withdraw under section 103S as representative party.
- (2) The court may dispense with a requirement of subsection (1) if the relief sought in the representative proceeding does not include a claim for damages.
 - (3) If the court orders, notice must be given to group members of the payment into court of money in answer to a cause of action on which a claim in the representative proceeding is based.
 - (4) Unless the court considers it just, an application for approval of a settlement under section 103R must not be decided unless notice has been given to group members in the representative proceeding.
 - (5) The court may, at any stage, order that notice of any matter be given to a group member or group members.
 - (6) Notice under this section must be given as soon as practicable after the happening of the event to which it relates.

103U Notice requirements

- (1) The form and content of a notice under section 103T must be approved by the court.
- (2) The court must, by order, state—
 - (a) who must give the notice; and
 - (b) the way in which the notice must be given.
- (3) The order may also—
 - (a) direct a party to provide information relevant to the giving of the notice; and
 - (b) provide for the costs of giving notice.

- (4) An order under subsection (2) may require notice to be given by way of press advertisement, radio or television broadcast, or any other means.
- (5) The court must not order that notice be given personally to each group member unless it considers it is reasonably practicable and not unduly expensive to do so.
- (6) A notice about a matter for which the court's leave or approval is required must state the period within which a group member or other person may apply to the court, or take some other step, in relation to the matter.
- (7) A notice that includes or is about conditions must state the conditions and period, if any, for compliance.
- (8) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given in the representative proceeding.

Division 4 Powers of the court

103V Judgment

- (1) The court may do any 1 or more of the following in deciding a matter in a representative proceeding—
 - (a) decide an issue of law;
 - (b) decide an issue of fact;
 - (c) make a declaration of liability;
 - (d) grant equitable relief;
 - (e) make an award of damages for group members, sub-group members or individual group members, consisting of stated amounts or amounts worked out in a stated way;
 - (f) award damages in an aggregate amount without stating amounts awarded in respect of individual group members;

- (g) make any other order the court considers just.
- (2) In making an order for an award of damages, the court must provide for the payment or distribution of the money to the group members entitled.
- (3) Other than as provided under section 103R, the court must not make an award of damages as mentioned in subsection (1)(f) unless a reasonably accurate assessment can be made of the total amount to which group members are entitled under the judgment.
- (4) If the court makes an order for the award of damages, the court may give any directions it considers just in relation to the way in which—
 - (a) a group member must establish the member's entitlement to share in the damages; and
 - (b) any dispute regarding the entitlement of a group member to share in the damages must be decided.

103W Constitution etc. of fund

- (1) Without limiting section 103V(2), in providing for the distribution of money to group members, the court may provide for—
 - (a) the constitution and administration of a fund consisting of the money to be distributed; and
 - (b) either—
 - (i) the payment by the defendant of a fixed sum of money into the fund; or
 - (ii) the payment by the defendant into the fund of instalments, on the conditions the court considers appropriate, to meet the claims of group members; and
 - (c) entitlements to interest earned on the money in the fund.
- (2) The costs of administering the fund are to be borne by the fund or the defendant, as the court directs.

- (3) If the court orders the constitution of a fund under subsection (1), the order must—
 - (a) require notice to be given to group members in the way stated in the order; and
 - (b) state the way in which a group member must make a claim for payment from the fund and establish the member's entitlement to the payment; and
 - (c) state a date, at least 6 months after the date on which the order is made, before which the group members must make a claim for payment from the fund; and
 - (d) provide for the date before which the fund must be distributed to group members who have established an entitlement to be paid from the fund.
- (4) The court may, if it considers it just, allow a group member to make a claim after the date stated under subsection (3)(c) if the fund has not been fully distributed.
- (5) On application by the defendant after the date provided for under subsection (3)(d), the court may make the orders it considers just for the payment from the fund to the defendant of the money remaining in the fund.

103X Effect of judgment

A judgment given in a representative proceeding—

- (a) must describe or otherwise identify the group members affected by it; and
- (b) binds the group members described, other than a person who has opted out of the proceeding under section 103G.

Division 5 Appeals

103Y Appeals

- (1) An appeal from a judgment of the court under this part may be brought as a representative proceeding.
- (2) The parties to the appeal are—
 - (a) for an appeal by a representative party in respect of the judgment to the extent it relates to issues common to the claims of the group members—the representative party, as the representative of the group members, and the defendant; or
 - (b) for an appeal by a sub-group representative party in respect of the judgment to the extent it relates to issues common to the claims of the sub-group members—the sub-group representative party, as the representative of the sub-group members, and the defendant; or
 - (c) for an appeal by an individual group member in respect of the judgment to the extent it relates to an issue relating only to the claim of the group member—the group member and the defendant; or
 - (d) for an appeal by the defendant in respect of the judgment generally—the defendant and the representative party as the representative of the group members; or
 - (e) for an appeal by the defendant in respect of the judgment to the extent it relates to issues common to the claims of sub-group members—the defendant and the sub-group representative party as the representative of the sub-group members; or
 - (f) for an appeal by the defendant in respect of the judgment to the extent it relates to an issue relating only to the claim of an individual group member—the defendant and the group member.
- (3) If a representative party or sub-group representative party does not start an appeal within the time for starting the appeal,

another member of the group or sub-group may, within a further 21 days, start an appeal on behalf of the group members or sub-group members.

- (4) If an appeal from the judgment of the court in a representative proceeding is started, the Court of Appeal may direct that notice of the appeal be given to the person or persons, and in the way, the Court of Appeal considers appropriate.
- (5) This part, other than section 103G, applies to an appeal started under this section despite any other Act or law.
- (6) The notice of appeal for an appeal relating to issues that are common to the claims of group members or sub-group members must describe or otherwise identify the group members or sub-group members, but need not name or state the number of the members.

Division 6 Miscellaneous

103Z Suspension of limitation periods

- (1) On the starting of a representative proceeding, the running of any limitation period applying to the claim of a group member to which the proceeding relates is suspended.
- (2) The limitation period does not start running again unless—
 - (a) the member opts out of the representative proceeding under section 103G; or
 - (b) the representative proceeding, and any appeal from the proceeding, is decided without finally disposing of the member's claim.
- (3) This section applies despite anything in the *Limitation of Actions Act 1974* or any other law or rule of law.

103ZA General power of court to make orders

In any proceeding, including an appeal, conducted under this part, the court may, on its own initiative or on application by a

party or group member, make any order the court considers appropriate or necessary to ensure justice is done in the proceeding.

103ZB Costs

In a representative proceeding, the court—

- (a) may order a party to pay costs; but
- (b) may not order a group member who is not a representative party to pay costs, other than under section 103M or 103N.

103ZC Reimbursement of representative party's costs

- (1) If the court makes an award of damages in a representative proceeding, any person who is or was a representative party or a sub-group representative party in the proceeding may apply to the court for an order under this section.
- (2) If, on an application under this section, the court is satisfied the costs reasonably incurred in relation to the representative proceeding by the applicant are likely to exceed the costs recoverable by the applicant from the defendant, the court may order an amount equal to the whole or part of the excess be paid to the applicant out of the damages awarded.
- (3) On an application under this section, the court may also make any other order it considers just.

Part 14 Miscellaneous provisions

104 Grant of representation before proceeding

- (1) This section applies if—

- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
 - (b) the cause of action survives the person's death; and
 - (c) a grant of representation has been made when the originating process issues.
- (2) Unless the court orders otherwise, the proceeding is taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.

105 No grant of representation before proceeding

- (1) If—
- (a) an originating process names as a defendant or respondent a person who is dead when the originating process issues; and
 - (b) the cause of action survives the person's death; and
 - (c) a grant of representation has not been made when the originating process issues;
- the proceeding is taken to have been brought against the person's estate.
- (2) However, if a grant of representation is made after the originating process issues, then, unless the court orders otherwise, the proceeding is afterwards taken to be against the person's personal representative in the personal representative's capacity as personal representative of the person's estate.
- (3) Even if a grant of representation has not been made when an order is made in the proceeding, the order binds the estate to the same extent as if a grant had been made and a personal representative of the deceased had been a party to the proceeding.

106 No new trial because of ruling about duty

A new trial must not be granted only because a court has ruled that—

- (a) a document or transaction is properly stamped or is not required to be stamped; or
- (b) duty has been paid or is not required to be paid on a document or transaction.

107 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) In making a regulation prescribing a discount rate for section 61, the Governor in Council may prescribe a positive, zero or negative rate.
- (3) In recommending the making of a regulation prescribing a discount rate for section 61, the Minister must have regard to the following factors—
 - (a) the prevailing rates of inflation;
 - (b) the prevailing yields on fixed term investments;
 - (c) the prevailing yields on investments in equities;
 - (d) the other economic factors the Minister considers are relevant to prescribing an appropriate discount rate.

Part 15 **Saving and transitional provisions for Civil Proceedings Act 2011**

Division 1 **Transitional provisions**

108 **Reference to s 48, Supreme Court Act 1995**

A reference in any Act or document to section 48 of the *Supreme Court Act 1995* is, if the context permits, taken to be a reference to section 59 of this Act.

Division 2 **Saving provision relating to section 109**

110 **Saving of operation of transitional regulation**

- (1) A transitional regulation made under section 109 is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.
- (2) Subsection (1) applies to a transitional regulation made before or after the commencement of this section.

Part 16 **Transitional provision for Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016**

111 **Application of pt 13A**

- (1) Part 13A applies only to a proceeding started after the commencement.
- (2) The proceeding may be started even if the cause of action the subject of the proceeding arose before the commencement.

Part 17 **Transitional provision for Civil Liability and Other Legislation Amendment Act 2019**

112 **Application of amended s 64**

- (1) Section 64, as amended by the 2019 amendment, applies to an award of damages in a proceeding whether the proceeding was started before or after the commencement of the 2019 amendment.

- (2) In this section—

2019 amendment means the *Civil Liability and Other Legislation Amendment Act 2019*, section 8.

Part 29 **Repeal of Supreme Court Act 1995**

211 **Repeal of Supreme Court Act 1995**

- (1) The Supreme Court Act 1995 is repealed.
- (2) The *Supreme Court Act 1995*, sections 300 and 303 are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.

Schedule 1 Dictionary

section 4

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 process see section 39.

approved form means a form approved under the *Supreme Court of Queensland Act 1991*.

assessment, for part 12, division 1, see section 76.

assessor, for part 12, division 1, see section 76.

Business Names Register means the register established and maintained under the *Business Names Registration Act 2011* (Cwlth), section 22.

case appraisal see section 41.

case appraiser means a person appointed as a case appraiser under a referring order.

child, for part 10, see section 62.

costs assessment, for part 12, division 1, see section 76.

court—

(a) for part 13A—see section 103A; and

(b) otherwise—see section 5.

defendant, for part 13A, see section 103A.

dispute, for part 6, means—

(a) a dispute in a proceeding; or

(b) something else about which the parties are in dispute that may be dealt with in a mediation at the same time.

enforcement creditor means—

(a) a person entitled to enforce an order for the payment of money; or

(b) a person to whom the benefit of part of the order has passed by way of assignment or in another way.

enforcement debtor means a person required to pay money under an order.

enforcement officer, for a court, means the sheriff, a deputy sheriff or a bailiff of the court.

enforcement warrant means a warrant to enforce an order other than an order for the payment of an amount into court.

exempt property means property that is not divisible among the creditors of a bankrupt under the bankruptcy law.

group member, for part 13A, see section 103A.

mediation see section 40.

mediator means a person appointed as a mediator under a referring order.

member of the deceased's family, for part 10, see section 62.

money order means an order of the court, or part of an order of the court, for the payment of money, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

money order debt means the amount of money payable under a money order.

non-money order means an order of the court, or part of an order of the court, for a form of relief other than the payment of money.

order includes a judgment, direction, decree, decision or determination of a court whether final or otherwise.

owner, for part 11, see section 71.

parent, for part 10, see section 62.

personal representative, for part 10, see section 62.

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

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

referring order, for part 6, see section 43(3).

relevant conference, for part 5, see section 34.

representative party, for part 13A, see section 103A.

representative proceeding, for part 13A, see section 103A.

rules means the *Uniform Civil Procedure Rules 1999*.

sheriff means the Sheriff of Queensland appointed under the *Supreme Court of Queensland Act 1991*.

ship, for part 11, see section 71.

spouse, for part 10, see section 63.

sub-group member, for part 13A, see section 103A.

sub-group representative party, for part 13A, see section 103A.