

Queensland



CIVIL JUSTICE REFORM ACT 1998

Act No. 20 of 1998

Queensland



CIVIL JUSTICE REFORM ACT 1998

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Queensland



Civil Justice Reform Act 1998

Act No. 20 of 1998

An Act to enable the making of uniform civil procedure rules for the Supreme Court, District Court and Magistrates Courts and for certain related reforms to the civil jurisdiction of those courts, to reform the law regulating the relationship between solicitors and clients concerning fees and costs, to establish a single Small Claims Tribunal, and for other purposes

[Assented to 1 May 1998]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Civil Justice Reform Act 1998*.

Commencement

- 2.(1) Sections 11 and 21¹ commence on the date of assent.

(2) Section 27 and schedule 2² (to the extent they amend the *District Court Act 1967*, section 118³) are taken to have commenced on 1 August 1997.

(3) The other provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF QUEENSLAND LAW SOCIETY ACT 1952

Act amended in pt 2

3. This part amends the *Queensland Law Society Act 1952*.

¹ Sections 11 (Act amended in pt 3) and 21 (Insertion of new ss 118B–118C)

² Section 27 (Acts amended in sch 2) and schedule 2 (Amendments of other Acts)

³ *District Court Act 1967*, section 118 (Appeal to the Court of Appeal in certain cases)

Amendment of s 3 (Definitions)

4.(1) Section 3, definition “**court**”—

omit.

(2) Section 3—

insert—

“**client**” includes a person who has paid, or is liable to pay, the account of a client.

“**client agreement**” means—

- (a) an agreement under section 48;⁴ or
- (b) an agreement for urgent work or for work where the maximum amount a practitioner or firm charges as fees for the work is \$750 or less.

“**costs**” includes disbursements.

“**court**” means—

- (a) in part 2A, division 6A, and parts 4A and 4B,⁵ if otherwise appropriate—
 - (i) in the context of the Supreme Court—the Supreme Court; or
 - (ii) in the context of the District Court—the District Court; or
 - (iii) in the context of the Magistrates Courts—a Magistrates Court; or
- (b) otherwise—the Supreme Court.

“**fees**”, for work of a practitioner or firm, means charges, other than costs.

“**firm**” means a firm of practitioners.’.

⁴ Section 48 (Usual client agreement)

⁵ Part 2A (Solicitors complaints tribunal), division 6A (Application for assessment of account under client agreement) and parts 4A (Client agreements) and 4B (Payment for work)

Amendment of s 6F (Tribunal rules)

5.(1) Section 6F(3)—

renumber as section 6F(4).

(2) Section 6F—

insert—

(3) Without limiting subsection (2), the tribunal may make rules about the following matters—

- (a) the qualifications required to be a costs assessor for the tribunal;
- (b) the avoidance of an actual or apparent conflict of interest in the appointment of a costs assessor;
- (c) the conduct of costs assessments and the matters to be considered by a costs assessor;
- (d) the fees allowable to a costs assessor for the tribunal if the assessor is appointed by the clerk of the tribunal;
- (e) the facilitation of mediations under this part.’

Insertion of new s 6FA

6. After section 6F—

insert—

‘Costs assessors

6FA.(1) The chairperson of the tribunal may approve as a costs assessor for the tribunal a person who has the qualifications required under the rules.

(2) The clerk of the tribunal must maintain a tribunal register of persons approved as costs assessors for the tribunal.’

Amendment of s 6K (Hearings involving allegations of overcharging)

7.(1) Section 6K(3)—

renumber as section 6K(4).

(2) Section 6K(2)—

omit, insert—

‘(2) The tribunal may engage a costs assessor from its register of costs assessors to report on the reasonableness of the practitioner’s account.

‘(3) The tribunal may—

- (a) set a reasonable fee to cover the cost of the costs assessor’s report; and
- (b) decide who must pay the fee.

Example—

The tribunal may decide it will pay the fee or the parties, or 1 of them, must pay the fee.’.

Insertion of new div 6A

8. After section 6Z—

insert—

Division 6A—Application for assessment of account under client agreement

‘Application of div 6A

‘**6ZA.(1)** This division applies if a client—

- (a) is given an account that—
 - (i) is in a form agreed to in a client agreement between the client and the practitioner or firm; or
 - (ii) clearly sets out all items of work done for the client and the amount charged for each item; and
- (b) applies to the tribunal for an appointment by the clerk of the tribunal of a costs assessor to assess the account and gives the clerk a notice of objection stating, to the best of the client’s ability, the items in the account to which the client objects and the client’s grounds for the objection.

‘(2) However, this division does not apply if—

- (a) the client agreement is for a lump sum amount only; or

- (b) the client is 1 of the following—
- (i) the Commonwealth or a State;
 - (ii) a public company, subsidiary of a public company, a foreign company or a registered Australian body (within the meaning of the Corporations Law);
 - (iii) a partnership if 1 of the partners is an entity mentioned in subparagraphs (i) or (ii);
 - (iv) a joint venture if 1 of the joint venturers is an entity mentioned in subparagraphs (i) or (ii).

‘Effect of request for appointment of assessor

‘6ZB.(1) A client who asks for the appointment of a costs assessor under this division is taken to dispute only the amount payable under the client agreement.

‘(2) The client may not subsequently challenge the validity or enforceability of the client agreement.

‘Clerk may appoint costs assessor to assess account

‘6ZC.(1) The clerk of the tribunal may appoint a costs assessor from the tribunal’s register of costs assessors to assess a practitioner’s or firm’s account.

‘(2) However—

- (a) the clerk may not appoint a costs assessor if the clerk considers the costs assessor would have an actual or apparent conflict of interest; and
- (b) a costs assessor may not undertake an assessment if the costs assessor has an actual or apparent conflict of interest.

‘Fees of costs assessor

‘6ZD.(1) A client and a practitioner or firm may agree about payment of the fee for a costs assessor appointed by the clerk of the tribunal.

‘(2) If there is no agreement and the practitioner’s or firm’s account is

reduced by the costs assessor by 15% or more, the practitioner or firm must pay all of the assessor's fee.

'(3) Otherwise, the client must pay all of the assessor's fee.

'When costs assessment binding

'6ZE.(1) A costs assessment by an assessor appointed by the clerk of the tribunal is binding on the client and practitioner or firm only if—

- (a) the client and practitioner or firm have agreed in writing that it will be; or
- (b) at the end of 30 days after the assessment, no application has been made to a court to decide the reasonableness of the fees and costs charged in the assessed account.⁶

'(2) A binding costs assessment may be enforced as a debt for the assessed amount and the parties may not subsequently challenge the amount payable.

'Application to court after assessment

'6ZF.(1) Within 30 days after a costs assessment by an assessor appointed by the clerk of the tribunal, the client or the practitioner or firm may apply to a court having jurisdiction for the amount in the account for the court to decide the reasonableness of the fees and costs charged in the account.

'(2) A court having jurisdiction for the amount in the account may extend the application time and order that, despite section 6ZE(1)(b), the costs assessment by an assessor appointed by the clerk of the tribunal is not binding.

'(3) If an application is made to a court, the court must decide the reasonableness of the fees and costs charged in the assessed account.

'(4) In deciding the reasonableness of the fees and costs, the court may—

- (a) appoint a person from the tribunal's register of costs assessors or another person to assess the account and make an order about the

⁶ Also see section 6ZF(2) (Application to court after assessment).

appointee's fee; and

- (a) receive in evidence any written costs assessment (whether by the assessor appointed by the clerk of the tribunal or by the assessor appointed by the court) and have regard to a matter contained in the assessment.

‘(5) The court may make any order it considers appropriate, including, for example, an order that a party pay an amount to another party.’.

Insertion of new pts 4A and 4B

9. After part 4—

insert—

‘PART 4A—CLIENT AGREEMENTS

‘Usual client agreement

‘48.(1) This section does not apply to urgent work or work if the maximum amount a practitioner or firm charges as fees for the work is \$750 or less.

‘(2) Within a reasonable time after starting work for a client, a practitioner or firm must make a written agreement with the client expressed in clear plain language and specifying the following matters—

- (a) the work the practitioner or firm is to perform;
- (b) the fees and costs payable by the client for the work.

‘(3) The fees and costs payable by the client for work must specify—

- (a) a lump sum amount; or
- (b) the basis on which fees and costs will be calculated (whether or not including a lump sum amount).

‘(4) The notice in the schedule⁷ must be completed by the practitioner or firm and given to the client, together with a copy of any scale for the work provided under an Act, before the client signs the client agreement.

⁷ Schedule (Important notice to client)

‘(5) The client agreement must not be inconsistent with the notice in the schedule.

‘(6) Subsections (4) and (5) do not apply if the client is 1 of the following—

- (a) a public company, a subsidiary of a public company, a foreign company or a registered Australian body (within the meaning of the Corporations Law);
- (b) the Commonwealth or a State;
- (c) a partnership if 1 of the partners is an entity mentioned in paragraph (a) or (b);
- (d) a joint venture if 1 of the joint venturers is an entity mentioned in paragraph (a) or (b).

‘Enforcement of client agreement

‘48A. A client agreement may be enforced in a court of competent jurisdiction in the same way as another contract.

‘Agreement may be amended

‘48B.(1) A client and a practitioner or firm may agree to amend a client agreement at any time.

‘(2) However, an agreement to amend a client agreement under section 48⁸ must be in writing.

‘Provision protecting from liability or responsibility prohibited

‘48C.(1) A client agreement may not include a provision preventing a civil liability (including liability for negligence) attaching to a practitioner or firm or relieving a practitioner or firm from a responsibility the practitioner or firm would otherwise have as a practitioner or firm.

‘(2) However, subsection (1) does not prohibit the inclusion of a qualified advice provision in a client agreement.

⁸ Section 48 (Usual client agreement)

‘(3) In this section—

“**qualified advice provision**” means a provision to the effect that—

- (a) certain advice to be given to the client may be qualified by, or is conditional on, information not yet available or future events; and
- (b) if the client acts on a part of an advice that is clearly specified as qualified or conditional advice, the practitioner or firm is not liable in relation to the part of the advice to the extent that the information or events make the part incorrect.

‘Contingency fees and costs prohibited

‘48D.(1) A client agreement must not include a provision by which all or part of fees or costs payable for the work are calculated by reference to the amount of the award or settlement or the value of property that may be recovered in a proceeding to which the work relates.

‘(2) Subsection (1) does not apply to the extent that the client agreement adopts the scale for the work provided under an Act.

‘(3) Also, subsection (1) does not prevent a solicitor or firm accepting a lower fee if the actual outcome of the work is less than the outcome sought, for example, the amount recovered is less than the amount sought.

‘Interest in proceeding prohibited

‘48E. A client agreement must not include a provision transferring to the practitioner or firm all or part of the client’s interest in a proceeding instead of the client being required to pay the practitioner or firm all or part of fees or costs that would otherwise be payable.

‘Effect of non-compliance or prohibited provision

‘48F.(1) If a client agreement to which section 48⁹ applies does not comply with that section, the client agreement is void.

‘(2) If a provision is included in a client agreement and inclusion of the provision is prohibited by this part, the provision is void.

⁹ Section 48 (Usual client agreement)

‘Disclosure of client agreement

‘48G. In a proceeding before a court or tribunal about work done, or the fees or costs payable for work done, for a client, a practitioner or firm must disclose any client agreement for the work between the practitioner or firm and the client.

‘PART 4B—PAYMENT FOR WORK***‘Division 1—Interpretation*****‘Definition for pt 4B**

‘48H. In this part—

“tribunal costs assessor”, for an assessment, means a person from the tribunal’s register of costs assessors who is approved for the assessment by the chairperson of the tribunal.

‘Division 2—General**‘Maximum payment for work**

‘48I.(1) The maximum amount of fees and costs a practitioner or firm may charge and recover from a client for work done is—

- (a) an amount calculated in accordance with the client agreement between the practitioner or firm and the client for the work; or
- (b) if there is no client agreement and there is a scale for the work provided under an Act—an amount calculated in accordance with the scale; or
- (c) if there is no client agreement and there is no scale for the work provided under an Act—an amount assessed as a reasonable amount for the work by a tribunal costs assessor.

‘(2) However, a practitioner or firm may only charge and recover from

the client for an extraordinary item of work if the extraordinary item is expressly authorised by the client after the practitioner or firm has warned the client that the item of work may not be recoverable from another party to the action or transaction.

‘(3) Subsection (2) does not apply if there is a client agreement for the work specifying a lump sum amount only.

‘(4) In this section—

“**extraordinary item of work**” means an item of work that would not normally be incurred in doing work similar to the work done for the client.

‘Division 3—Legal proceedings

‘Prerequisite to legal proceeding to recover payment for work

‘48J.(1) A practitioner or firm may start a proceeding in a court to recover fees or costs from a client only if the practitioner or firm has given the client an account that—

- (a) is in a form agreed to in a client agreement between the practitioner or firm and the client; or
- (b) clearly sets out all items of work done for the client and the amount charged (whether by way of fees or costs) for each item.

‘(2) Further, the practitioner or firm must obtain the court’s leave to start the proceeding if—

- (a) it is 1 month or less since the account was given; or
- (b) the client has applied for an appointment by the clerk of the tribunal of a costs assessor to assess the account and the assessment has not concluded.

‘Court may appoint costs assessor to assess account

‘48K.(1) In a proceeding to recover the fees or costs, the court may—

- (a) appoint a tribunal costs assessor or another person to assess the account; and

(b) make an order about payment of the appointee’s fee.

‘(2) Subsection (1) does not apply if the client and the practitioner or firm are bound by an assessment of the fees or costs by a costs assessor appointed by the clerk of the tribunal.¹⁰

‘Court may have regard to assessor’s assessment

‘48L. In a proceeding to recover the fees or costs, the court may—

- (a) receive in evidence a written costs assessment by an assessor appointed under this Act by the clerk of the tribunal or a court; and
- (b) have regard to a matter contained in the assessment.

‘Client may change practitioner

‘48M.(1) A client may change practitioner or firm at any time.

‘(2) Subsection (1) applies despite any contrary provision in a client agreement between a practitioner or firm and the client.

‘(3) If a client has a client agreement with a practitioner or firm (the “**original practitioner or firm**”) and the client changes practitioner or firm, the original practitioner or firm may charge and recover fees and costs from the client for work done before the original practitioner or firm was given notice of the change.

‘(4) Nothing in this section affects a right a practitioner or firm may have to maintain or enforce a lien or charge for unpaid fees or costs.

‘Division 4—Other provisions about costs assessors

‘Application of div 4

‘48N. This division applies for a costs assessor appointed under this Act by the clerk of the tribunal or a court to assess a practitioner’s or firm’s account.

¹⁰ See section 6ZE (When costs assessment binding).

‘Information for costs assessor

‘48O.(1) The client, practitioner or firm must comply with all reasonable requests for information made by the assessor if the request will facilitate the assessment.

‘(2) The client, practitioner or firm may apply, to a court having jurisdiction for the amount in the account, for an order about disclosure of the requested information.

‘(3) Compliance with this section does not affect a right the practitioner or firm may have to maintain or enforce a lien or charge for unpaid fees or costs.

‘Written costs assessment

‘48P. The costs assessor must make a written assessment.

‘When costs assessment concluded

‘48Q. The costs assessment is not concluded until the costs assessor gives a copy of the assessment to the client and the practitioner or firm.

‘Protection from liability

‘48R.(1) The costs assessor is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

‘(2) If subsection (1) prevents a civil liability attaching to a costs assessor, the liability attaches instead to the State.

‘Preservation of confidentiality

‘48S.(1) If a person gains confidential information because of being, or an opportunity given by being, a costs assessor, the person must not make a record of the information or intentionally or recklessly disclose the information other than under subsection (2).

‘(2) The person may make a record of confidential information, or disclose it to someone else—

- (a) for this Act; or

- (b) to discharge a function under another law; or
- (c) for a proceeding in a court or tribunal; or
- (d) if authorised under a regulation or another law; or
- (e) if authorised by the person to whom the information relates.

‘(3) 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 or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

‘**Preservation of privilege**

‘**48T.** Privilege attaching to a document or thing, including, for example, legal professional privilege, continues despite disclosure of the document or thing to a costs assessor.’.

Insertion of new s 56 and sch

10. After section 55—

insert—

‘**Transitional provision for costs agreements and retainers—Civil Justice Reform Act 1998**

‘**56.(1)** A agreement made under the *Legal Practitioners Act 1995*, part 4, division 3 and in force immediately before the commencement of this section is taken to be a client agreement under section 48 of this Act.¹¹

‘(2) Another retainer continues to be legally binding for work done before the commencement of this section or within 3 months after the

¹¹ *Legal Practitioners Act 1995*, part 4 (Provisions from Solicitors Act 1891), division 3 (Agreements between solicitors and their clients) and section 48 (Usual client agreement) of this Act

commencement.

‘(3) The *Uniform Civil Procedure Rules* may provide for the assessment of costs under another retainer, including by a costs assessor from the tribunal’s register of costs assessors.

‘(4) Any right that a person may have had under the *Legal Practitioners Act 1995* to taxation of costs under another retainer continues only until the commencement of the provisions of the *Uniform Civil Procedure Rules* providing for the assessment of costs under the retainer.

‘(5) In this section—

“**another retainer**” means a retainer, other than an agreement made under the *Legal Practitioners Act 1995*, part 4, division 3, that was—

- (a) in force immediately before the commencement of this section;
and
- (b) legally binding under the *Legal Practitioners Act 1995* as in force immediately before the commencement.

‘SCHEDULE**‘IMPORTANT NOTICE TO CLIENT**

section 48(4)

‘Who to contact if there are problems

‘1. You may contact the Queensland Law Society if you have a complaint about the fees and costs charged or the work performed by your solicitor or firm.

‘2. Here are the phone number and postal address for the Queensland Law Society— (*insert phone number and postal address*).

‘Client able to negotiate agreement and get legal advice

‘3. You have the right to negotiate this client agreement with your solicitor or firm before you sign it.

‘4. You may obtain independent legal advice before signing this client agreement.

‘Client able to change solicitor or firm

‘5. You may change solicitor or firm at any time even if this client agreement says otherwise.

‘6. If you change solicitor or firm, it is important for you to give your original solicitor or firm notice of the change as your original solicitor or firm may charge and recover fees and costs from you for work done before notice is given.

‘7. Your original solicitor or firm may keep your file until you pay all fees and costs or reach an agreement about paying them.

‘Agreement about who will do legal work

‘8. This client agreement must state the names and status (for example, partner/associate/employed solicitor/articled clerk/paralegal/consultant) of the people who will do legal work for you.

‘Agreement about fees and costs payable for work

‘9. This client agreement is the basis for determining how much you pay for work done by your solicitor or firm.

‘10. A client agreement may set a lump sum amount for fees and costs.

‘11. Otherwise, the client agreement must state the basis on which fees and costs will be calculated (whether or not including a lump sum) and give either—

- an estimate of the total amount of fees and costs likely to be payable for the work; or
- if it is not reasonably practicable to estimate the total amount of fees and costs likely to be payable for the work—a range of estimates of the total amount of fees and costs likely to be payable for the work and an explanation of the significant variables that will affect the calculation of the amount.

‘12. However, your solicitor or firm is not bound by the estimate or range of estimates given in this client agreement.

‘13. Extraordinary items of work not normally done for similar work must be expressly approved by you even if this client agreement says otherwise.

‘14. Clause 13 has no application if this client agreement sets a lump sum amount only for fees and costs.

‘Agreement about type and frequency of accounts

‘15. An account from your solicitor or firm must be in the form agreed to in this client agreement or must clearly set out all items of work done for you and the amount charged for each item.

‘16. If a form of account is agreed to, it must be a form resulting in the inclusion in each account of sufficient details of the work done to allow you

to decide whether the fees and costs in the account are reasonable.

‘17. This client agreement should state the intervals for giving you accounts.

‘Advice if work includes litigation

‘18. If the work involves or is likely to involve litigation, this client agreement must include an explanation and estimate of the range of costs you may recover from another party if you are successful or you may be required to pay the other party if you are not successful.

‘19. Also, if your solicitor agrees to do the work on a speculative basis, this client agreement must include the terms and conditions on which fees and costs become payable by you.

‘Agreement may be amended

‘20. This agreement may be amended if you and your solicitor or firm agree to the changes in writing.

‘Challenging the amount of an account

‘21. You may formally challenge the amount of an account by applying to the Solicitors Complaints Tribunal for the appointment of a costs assessor to assess the account.

‘22. If you do this, you can not subsequently challenge the validity or enforceability of this client agreement.

‘23. This means that before applying for the appointment of a costs assessor, you should consider, and, if necessary obtain advice about, whether there are grounds for challenging the validity or enforceability of this agreement.

‘When client may be sued for outstanding fees or costs

‘24. Generally, before your solicitor or firm may sue you for outstanding fees or costs, more than 1 month must have passed from the time you were given the account.

‘25. However, your solicitor or firm may ask the court for permission to sue before that time.

‘Can a client be sued for outstanding fees or costs if the client has applied to the Solicitors Complaints Tribunal for an assessment?’

‘26. Generally, your solicitor or firm may not sue you for an outstanding account if you have applied to the Solicitors Complaints Tribunal for the appointment of a costs assessor to assess the account and the assessment has not concluded.

‘27. However, your solicitor or firm may ask the court for permission to sue.

‘Other remedies

‘28. You may have other remedies against your solicitor or firm concerning this agreement or the work done under it.

‘29. You may obtain independent legal advice about the remedies available.’.

PART 3—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

Act amended in pt 3

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

Amendment of title

12. Title, after ‘Queensland’—

insert—

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

Amendment and relocation of s 2 (Definitions)

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

‘SCHEDULE 2**‘DICTIONARY**

section 2’.

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

omit.

(3) Section 2—

insert—

‘ **“approved form”** means a form approved by the rules committee under section 118A.¹²

“condition” includes term.

“court”—

- (a) for part 7, see section 72;¹³ and
- (b) for part 9, see section 117;¹⁴ and
- (c) otherwise, means the Supreme Court of Queensland.

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

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

¹² Section 118A (Rules committee may approve forms)

¹³ Part 7 (Provisions applying to Supreme Court, District Court and Magistrates Courts), section 72 (Definition for pt 7)

¹⁴ Part 9 (Rules of court and practice directions for the Supreme Court, the District Court and the Magistrates Courts), section 117 (Definition for pt 9)

of the court.

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

“judicial registrar” means—

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

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

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

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

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

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

“partnership” see the *Partnership Act 1891*, section 5.¹⁵

“person under a legal incapacity” means—

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

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

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

“registrar”—

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

¹⁵ *Partnership Act 1891*, section 5—

Definition of “partnership”

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

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

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

is not a partnership within the meaning of this Act.

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

“rules committee” see section 118C.¹⁶

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

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

(4) Section 2—

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

Insertion of new s 2

14. After section 1—

insert—

‘Dictionary

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

Insertion of new pt 2, div 4

15. Part 2, after section 27—

insert—

‘Division 4—Judicial registrars

‘Judicial registrars

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

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

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

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

¹⁶ Section 118C (Rules Committee)

‘Independence of judicial registrars

‘27B. A judicial registrar when constituting the court¹⁷ or otherwise exercising a judicial or quasi-judicial power is not subject to direction or control, other than as provided under this Act.¹⁸

‘Rehearing after judicial registrar’s decision

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

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

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

‘Conditions of appointment

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

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

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

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

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

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

¹⁷ See section 73 (Judicial registrar’s power to hear and decide applications).

¹⁸ For example, see section 13A (Administrative responsibility of Chief Justice).

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

'Retirement of judicial registrars

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

'Preservation of rights

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

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

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

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

16.(1) Section 56(3) and (4)—

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

(2) Section 56—

insert—

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

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

insert—

',' judicial registrar, registrar'.

Insertion of new pt 7

17. After section 70—

insert—

‘PART 7—PROVISIONS APPLYING TO SUPREME COURT, DISTRICT COURT AND MAGISTRATES COURTS

‘Division 1—Preliminary

‘Application of pt 7

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

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

‘Definition for pt 7

‘72. In this part—

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

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

‘Division 2—Procedural

‘Subdivision 1—Constitution of court by judicial registrar

‘Judicial registrar’s power to hear and decide applications

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

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

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

‘Subdivision 2—Removal of proceedings

‘Removal to Supreme Court

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

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

‘Removal to Magistrates Court

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

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

‘Costs

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

‘Division 3—Conferences

‘Resolution agreement

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

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

‘(3) In this section—

“**relevant conference**” means—

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

‘**Confidentiality**

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

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

‘(2) In subsection (1)—

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

“**relevant conference**” means—

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

‘*Division 4—Orders*

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

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

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

‘Court able to impose appropriate conditions

‘80. If a court has power to make an order, give a direction or leave, or do another thing, the court may make the order, give the direction or leave, or do the other thing on the conditions¹⁹ the court considers appropriate.

‘Amendment for new cause of action or party

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

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

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

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

‘Order binds persons who are represented

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

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

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

¹⁹ “**Condition**” includes term—schedule 2 (Dictionary).

‘Interpleader orders

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

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

(2) If—

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

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

‘Effect of default judgment order

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

‘Dismissal of proceedings for want of prosecution

‘**85.(1)** This section applies to the District Court and Magistrates Courts.²⁰

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

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

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

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

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

‘Interest recoverable on enforcement

‘**87.** The rate of interest payable on a money order debt is the rate set under the *Supreme Court Act 1995*, section 48,²¹ or, if the parties agree to a higher rate of interest, the higher rate.

‘Variation of order in partnership name

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

²⁰ The Supreme Court has inherent power to dismiss proceedings for want of prosecution.

²¹ Section 48 (Interest on debt under judgment or order)

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

‘Enforcement against partnership

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

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

‘**(2)** This section has effect subject to the *Partnership (Limited Liability) Act 1988*, section 21.²²

‘Variation of order in business name

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

²² *Partnership (Limited Liability) Act 1988*, section 21—

‘Legal proceedings

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

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

‘Enforcement against property of a business

‘91.(1) This section applies if—

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

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

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

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

‘Payment under enforcement warrant

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

‘Enforcement warrant

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

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

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

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

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

‘(4) In this section—

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

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

‘Securities held by enforcement officer

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

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

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

‘Redirection of joint funds

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

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

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

‘State debts

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

‘(2) Subsection (1) applies despite the *Crown Proceedings Act 1980*, section 8²³.

‘(3) In this section—

“**public accounts**” see *Financial Administration and Audit Act 1977*, section 10.²⁴

“**public sector unit**” means any of the following—

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

²³ The *Crown Proceedings Act 1980*, section 8(1)—

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

²⁴ The *Financial Administration and Audit Act 1977*, section 10(1)—

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

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

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

‘Redirection of partnership debts

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

‘Account with financial institution

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

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

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

‘Enforcement against the third person

‘93G.(1) If a third person—

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

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

‘(2) To remove any doubt, it is declared that if the debt is a State debt under section 93D,²⁵ the *Crown Proceedings Act 1980*, section 11 applies.²⁶

‘*Subdivision 3—Offences*

‘**Employment protection if enforcement warrant for redirection of earnings**

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

Maximum penalty—100 penalty units.

‘*Division 6—Miscellaneous*

‘**Proceeding if grant of representation when originating process issues**

‘**93I.** If—

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

then, unless the court orders otherwise, the proceeding is taken to be against

²⁵ Section 93D (State debts)

²⁶ Section 11 (Satisfaction of judgment)

the person's personal representative in the personal representative's capacity as personal representative of the person's estate.

'Proceeding if no grant of representation when originating process issues

'93J.(1) If—

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

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

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

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

Insertion of new pt 8B

18. After section 116G—

insert—

**'PART 8B—PROVISION FROM LEGAL
PRACTITIONERS ACT 1995**

'Relocation

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

‘(2) Without limiting subsection (1) and to further remove any doubt, it is also declared that the relocation to this Act of the relocated provision does not affect the meaning or effect the relocated provision had because of the time when it was enacted.²⁷’.

Replacement of pt 9 heading (Rules of court)

19. Part 9 heading—

omit, insert—

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

Replacement of s 117 (Rule making power)

20. Section 117—

omit, insert—

‘Definition for pt 9

‘117. In this part—

“court” means, if otherwise appropriate—

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

‘Rule-making power

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

- (a) the practices and procedures of the Supreme Court, the District

²⁷ The *Legal Practitioners Act 1995*, section 40 (Revival of order for payment of costs) is relocated as section 116I by the *Civil Justice Reform Act 1998*.

Court or the Magistrates Courts or their registries or another matter mentioned in schedule 1;²⁸ or

- (b) the admission of barristers or solicitors; or
- (c) appeals from the Mental Health Tribunal; or
- (d) any law giving jurisdiction to the Supreme Court, the District Court or the Magistrates Courts, including a law of the Commonwealth.

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

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

‘Rules committee may approve forms

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

Insertion of new ss 118B–118C

21. Part 9, after section 117—

insert—

‘Court rules are exempt from RIS requirements and automatic expiry

‘118B.(1) The *Statutory Instruments Act 1992*, parts 5 and 7²⁹ do not apply to rules of court.

‘(2) However—

- (a) the following rules of court expire on 1 July 1998—
 - (i) *Repealing Rules 1900*;
 - (ii) Rules Relating to the Admission of Conveyancers; and
- (b) the following rules of court expire on 31 December 1998—

²⁸ Schedule 1 (Subject matter for rules)

²⁹ Parts 5 (Guidelines for regulatory impact statements) and 7 (Staged automatic expiry of subordinate legislation)

- (i) Rules of the Supreme Court;
- (ii) *Criminal Practice Rules 1900*;
- (iii) *Supreme Court (Admiralty) Rules 1988*;
- (iv) Rules under and in pursuance of the Reciprocal Enforcement of Judgments Act 1959;
- (v) *District Court Rules 1968*;
- (vi) *Magistrates Courts Rules 1960*.

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

‘(4) In this section—

“**rules of court**” see *Statutory Instruments Act 1992*, section 12.³⁰

‘Rules Committee

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

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

‘(2) The rules committee—

³⁰ ‘“**Rules of court**”, in relation to a court or tribunal, are rules made by the person or body having power to make rules regulating the practice and procedure of the court or tribunal.’

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

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

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

Insertion of new ss 118D–118E

22. Part 9, after section 118C—

insert—

‘Practice directions

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

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

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

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

‘(4) In this section—

“**appropriate person**”, of a court, means—

- (a) for the Supreme Court—the Chief Justice; or

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

‘Directions or orders about a proceeding

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

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

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

Amendment of s 120 (Regulation-making power)

23. Section 120—

insert—

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

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

Insertion of new ss 128–137

24. After section 127—

insert—

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

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

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

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

‘Abolition of old enforcement processes

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

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

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

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

‘(5) In this section—

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

‘Outdated references

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

TABLE

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

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

TABLE

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

‘References to judgment

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

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

‘132. If—

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

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

‘References to taxation of costs

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

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

‘Act to prevail over Supreme Court Act 1995

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

‘(2) In this section—

“inconsistency” includes—

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

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

‘Application of Uniform Civil Procedure Rules

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

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

‘Transitional—abolition of Circuit Courts

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

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

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

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

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

‘137. A rule in force immediately before the commencement of this section that was made under section 117,³¹ as in force immediately before the commencement—

- (a) is taken to be made under section 118,³² as inserted by the *Civil*

³¹ Section 117 (Rule making power)

³² Section 118 (Rule-making power)

Justice Reform Act 1998;³³ and

(b) is not part of the *Uniform Civil Procedure Rules*.³⁴.

Replacement of schs 1–2

25. Schedules 1 and 2—

omit, insert—

‘SCHEDULE 1

‘SUBJECT MATTER FOR RULES

section 118

‘PART 1—GENERAL

‘Jurisdiction generally

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

³³ This includes the following rules—

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

³⁴ See also section 118B (Court rules are exempt from RIS requirements and automatic expiry), particularly subsection (2).

‘PART 2—CIVIL PROCEEDINGS

‘Starting civil proceedings

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

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

‘Parties and proceedings

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

- (a) several causes of action and parties in a civil proceeding, including reconstitution of proceedings and representative parties;
- (b) multiple civil proceedings;
- (c) interpleader orders;
- (d) civil proceedings by or against a business or person under a legal incapacity;
- (e) third party procedure.

‘Notices of intention to defend

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

‘Service of documents

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

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

‘Pleadings

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

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

‘Disclosure

‘7. In civil proceedings—

- (a) disclosure by parties, including disclosure and inspection of documents and interrogatories; or
- (b) non-party disclosure; or
- (c) admissions; or
- (d) disclosure of experts’ reports and other material to which legal professional privilege may attach, including by direction or order of the court.

‘Preservation of rights and property

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

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

‘Ending proceedings early

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

- (a) ending proceedings because of default;
- (b) summary decisions;
- (c) discontinuance and withdrawal;
- (d) alternative dispute resolution processes, including, for example, the following—
 - (i) experience and qualifications for approval as a mediator or case appraiser;
 - (ii) persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid;
 - (iii) jurisdiction of a case appraiser at a case appraisal;
 - (iv) ability of a mediator or case appraiser to seek independent advice or information;
 - (v) time within which an ADR process should be finished (which may be a time specified by the court);
 - (vi) conduct of an ADR process;
 - (vii) confidentiality of a mediated agreement or case appraiser's decision;
 - (viii) applying procedures and other matters similar to those applying to arbitrations under the *Commercial Arbitration Act 1990*;
 - (ix) imposing penalties against a party who fails to cooperate in an ADR process;
- (e) offers to settle and payments by defendants;
- (f) the referral of cases to arbitration.

‘Court supervision

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

- (a) directions about the conduct of proceedings;
- (b) consequences of failing to comply with rules, directions or court orders;

- (c) amendments, both with and without leave;
- (d) continuation of proceedings after delay.

‘Evidence

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

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

‘Jurisdiction of judicial registrars and registrars

‘12. Jurisdiction of judicial registrars and registrars.

‘Trials and other hearings

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

- (a) practice lists;
- (b) listing applications for hearing and setting trial dates;
- (c) the conduct of trials;
- (d) decisions without pleadings or without hearings;
- (e) separate decisions on questions;
- (f) assessors and special referees;

- (g) assessment of damages;
- (h) simplified procedures for minor debt claims and other claims.

‘Particular proceedings

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

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

‘Probate

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

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

‘Contempt of court

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

‘Trusts

‘17. For the Supreme Court, trusts.

‘Costs

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

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

‘Appeals, applications and cases stated to Court of Appeal

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

‘Enforcement of money orders

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

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

‘Reciprocal enforcement of foreign judgments

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

‘Corporations

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

‘Miscellaneous matters

‘23. The following matters—

- (a) documents filed in the registries;
- (b) filing, receipt, service, issue or transmission electronically of approved forms and other documents and material for use in, or in connection with, proceedings, including, electronic representations or equivalents of seals, stamps and signatures and their validity;
- (c) the functions of the registries generally;
- (d) the rules applicable to solicitors acting for parties in proceedings in the court;
- (e) transitional arrangements.

‘PART 3—CRIMINAL PROCEEDINGS**‘Practice and procedure in criminal jurisdiction**

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

- (a) forms for proceedings;
- (b) applications;

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

PART 4—MISCELLANEOUS

Small Claims Tribunals Act 1973 amended in sch 1

26. Schedule 1 amends the *Small Claims Tribunals Act 1973*.

Acts amended in sch 2

27. Schedule 2 amends the Acts mentioned in it.

SCHEDULE 1**AMENDMENTS OF SMALL CLAIMS TRIBUNALS
ACT 1973**

section 26

- 1. Title, ‘small claims tribunals’ to ‘those tribunals’—**
omit, insert—
‘the small claims tribunal, to define the jurisdiction of the tribunal’.

- 2. Section 1, ‘Tribunals’—**
omit, insert—
‘Tribunal’.

- 3. Section 2—**
omit.

- 4. Section 4(1)—**
insert—
‘“central registry” see section 13(2).’.

- 5. Section 4(1), definition “claimant”, ‘a small claims tribunal’—**
omit, insert—
‘the small claims tribunal’.

SCHEDULE 1 (continued)

6. Section 4(1), definition “prescribed amount”, ‘\$5 000’—*omit, insert—*

‘\$7 500’.

7. Section 4(1), definition “referee”, ‘small claims tribunals pursuant to’—*omit, insert—*

‘the small claims tribunal under’.

8. Section 4(1), definition “registrar”, ‘small claims tribunals’—*omit, insert—*

‘the small claims tribunal’.

9. Section 4(1), definition “registry”, from ‘small’—*omit, insert—*

‘the small claims tribunal.’.

10. Section 4(1), definition “respondent”, ‘a small claims tribunal’—*omit, insert—*

‘the small claims tribunal’.

11. Section 4(1), definition “small claims tribunal”—*omit.***12. Section 4(1), definition “tenancy application”, ‘a small’—***omit, insert—*

‘the small’.

SCHEDULE 1 (continued)

13. Section 4(1)—*insert—*

‘**“tribunal”** means the small claims tribunal.’.

14. Part 2 heading, division 1, division 2 heading and sections 11 and 12—*omit, insert—***‘PART 2—SMALL CLAIMS TRIBUNAL***‘Division 1—The tribunal***‘Establishment of the small claims tribunal**

‘**5.** The small claims tribunal is established.

‘Members and constitution of tribunal

‘**6.(1)** The members of the small claims tribunal are magistrates and other persons who are appointed as referees under this Act.

‘**(2)** The tribunal is constituted by a referee sitting as a referee in its tenancy division or its general division.³⁵

‘Where the tribunal may be held

‘**7.(1)** The tribunal may be constituted at any place.

‘**(2)** The tribunal may sit in more than 1 place at the same time.

³⁵ See section 9 (Divisions of the tribunal).

SCHEDULE 1 (continued)

*‘Division 1A—Tenancy claims administrator***‘Tenancy claims administrator**

‘8.(1) There is to be a tenancy claims administrator.

‘(2) The tenancy claims administrator must be a magistrate and must be appointed as the administrator by the Governor in Council.

‘(3) A person qualified to be appointed as a magistrate may be appointed as the tenancy claims administrator at the time of the person’s appointment as a magistrate.

‘(4) To avoid any doubt, the tenancy claims administrator continues to hold office as a magistrate during the administrator’s term of appointment.

‘(5) The Governor in Council may revoke the administrator’s appointment at any time.

‘(6) Revocation of the administrator’s appointment under subsection (5) does not affect the person’s appointment as a magistrate.

‘(7) The remuneration and conditions of the tenancy claims administrator are to be the same as the remuneration and conditions of a magistrate.

*‘Division 1B—Divisions of the tribunal***‘Divisions of the tribunal**

‘9. The tribunal is divided into 2 divisions, namely, the tenancy division and the general division.

‘Administration of tenancy division

‘10.(1) The tribunal’s tenancy division is to be administered by the tenancy claims administrator.

‘(2) In particular, the tenancy claims administrator is responsible for—

- (a) ensuring the orderly and expeditious exercise of the tribunal’s jurisdiction and power in the division; and

SCHEDULE 1 (continued)

- (b) in consultation with the Chief Stipendiary Magistrate, assigning referees to sittings of the tribunal in its tenancy division throughout the State; and
- (c) the making of practice directions about the conduct of proceedings in the tenancy division, including case management guidelines for the conduct of proceedings in the division; and
- (d) the development and delivery of legal education programs about tenancy law for referees; and
- (e) supervising the work, to the extent the work relates to the administration of the division, of—
 - (i) referees, other than referees who are magistrates; and
 - (ii) the registrar and staff of the central registry; and
- (f) monitoring the operation of registries in relation to the division throughout the State; and
- (g) reporting annually to the Chief Stipendiary Magistrate on the operation of the division.

‘Administration of general division

‘11. The tribunal’s general division is to be administered in the way decided by the Chief Stipendiary Magistrate.

‘Division 1C—Referees**‘Referees**

‘12.(1) Each magistrate is a referee.

‘(2) The chief executive may appoint as referees the other persons the chief executive considers necessary to appoint for the proper functioning of the tribunal.

‘(3) Persons appointed under subsection (2) are to be employed under the *Public Service Act 1996*.

SCHEDULE 1 (continued)

‘Functions of referees

‘**12A.(1)** The function of a referee constituting the small claims tribunal is to decide the issue in dispute in a proceeding in a way that is fair and equitable.

‘**(2)** However, a referee may mediate the issue in dispute or refer the issue to a mediator under the *Dispute Resolution Centres Act 1990* if the referee considers it appropriate to do so in the special circumstances of the case.

‘Division 2—The registry’.**15. Section 13(2)—**

omit, insert—

‘**(2)** There is to be a central registry in the metropolitan district.’

16. Section 13(3), ‘a small’—

omit, insert—

‘the small’.

17. Section 14, heading, ‘tribunals’—

omit, insert—

‘tribunal’.

18. Section 14(1), ‘a small’—

omit, insert—

‘the small’.

SCHEDULE 1 (continued)

19. Section 14(2), ‘a small claims’—

omit, insert—

‘the’.

20. Section 14(2)—

insert—

‘(e) all other documents filed in the registry in relation to the claim.’.

21. Section 14(3), ‘a small claims’—

omit, insert—

‘the’.

22. After section 14(3)(b)—

insert—

‘(c) the chief executive officer of the residential tenancies authority;
and

(d) the Minister;’.

23. Section 15(2) and (5)—

omit, insert—

‘(2) A registrar and the other officers necessary for the administration of the tribunal are to be employed in the central registry.

‘(3) The persons mentioned in subsection (2) are to be employed under the *Public Service Act 1996*.’.

24. Part 2, division 3, heading, ‘tribunals’—

omit, insert—

‘*tribunal*’.

SCHEDULE 1 (continued)

25. Section 16(1), ‘a small claims tribunal’—

omit, insert—

‘the small claims tribunal’.

26. Section 17(1), ‘a small’ (first mention)—

omit, insert—

‘the small’.

27. Section 17(1)(a), (b) and (c), ‘a small claims’—

omit, insert—

‘the’.

28. Section 17(2), ‘a small claims’—

omit, insert—

‘the’.

29. Section 18, heading, ‘tribunals’—

omit, insert—

‘tribunal’.

30. Section 18(1), after ‘(2)’—

insert—

‘and section 19’.

31. Section 18(1) and (2), ‘a small’—

omit, insert—

‘the small’.

SCHEDULE 1 (continued)

32. Section 19, heading—

omit, insert—

‘Limited right of review’.

33. Section 19, ‘No writ of certiorari’—

omit, insert—

‘No order, the relief or remedy under which is in the nature of, and to the same effect as, a writ of certiorari’.

34. Section 19, ‘a small’—

omit, insert—

‘the small’.

35. Section 19, from ‘therein’ (first mention)—

omit, insert—

‘by the tribunal.

‘(2) However, a party to a dispute in a proceeding may apply to the District Court for an order in relation to an order made by the tribunal in the proceeding if—

- (a) if the tribunal has given written reasons for the making of the order—the tribunal has made an error of law; or
- (b) there has been a denial of natural justice in the proceeding; or
- (c) the tribunal had or has no jurisdiction, or has exceeded its jurisdiction, in the hearing or in making the order.

‘(3) The application must be made within 28 days after the making of the tribunal’s order.

‘(4) The application does not stay the tribunal’s order unless the tribunal or the court orders the order to be stayed to secure the effectiveness of the application.

SCHEDULE 1 (continued)

‘(5) The court must not rehear the proceeding.

‘(6) The court may direct 1 or more of the parties to attend before it for the review.

‘(7) The court may make any of the following orders—

(a) dismiss the application;

(b) set aside the tribunal’s order and remit the proceeding to the tribunal, as constituted by the same or a different referee, for rehearing.’.

36. Section 20, heading, ‘tribunals’—

omit, insert—

‘tribunal’.

37. Section 20(1), ‘a small’—

omit, insert—

‘the small’.

38. Section 20(2) and (3), ‘a small claims tribunal’—

omit, insert—

‘the tribunal’.

39. Section 21, heading, ‘tribunals’—

omit, insert—

‘tribunal’s’.

40. Section 21(1), ‘a small’—

omit, insert—

‘the small’.

SCHEDULE 1 (continued)

41. Section 22(1) and (5), ‘a small’—*omit, insert—*

‘the small’.

42. Section 22(3)(a), ‘registry of small claims tribunals’—*omit, insert—*

‘tribunal registry’.

43. Section 22A(1)(a)—*omit, insert—*

‘(a) the small claims tribunal makes an order; and’.

44. Section 23(1), ‘a small’—*omit, insert—*

‘the small’.

45. Section 23(2), ‘a small claims’—*omit, insert—*

‘the’.

46. Section 23A(1), ‘a small’ (first mention)—*omit, insert—*

‘the small’.

47. Section 23A(1), ‘a small claims’ (second mention)—*omit, insert—*

‘the’.

SCHEDULE 1 (continued)

48. Section 23A(2), ‘small claims tribunal to which application is made under subsection (1)’—

omit, insert—

‘tribunal’.

49. Section 23A(3)(c)(i), ‘place where small claims tribunals are ordinarily constituted’—

omit, insert—

‘registry’.

50. Section 23A(3)(g) and (h), (4) and (5), ‘a small claims’—

omit, insert—

‘the’.

51. Section 23A(3)(h)(ii), ‘the small claims’—

omit, insert—

‘the’.

52. Section 23A(5), ‘the Magistrates Courts Rules 1960’—

omit, insert—

‘rules of court applicable to Magistrates Courts’.

53. Section 24(1), ‘a small’—

omit, insert—

‘the small’.

SCHEDULE 1 (continued)

54. Section 24—

insert—

‘**(1B)** However, if the Magistrates Court district for subsection (1A)(a) or (b) is the metropolitan district of the Magistrates Court, the registry in which the form must be filed is the central registry.’.

55. Section 24—

insert—

‘**(3)** A respondent to a claim (“**claimant’s claim**”) referred to the tribunal under this section who seeks to refer to the tribunal a claim arising out of the same transaction or event or series of transactions or events as the claimant’s claim may—

- (a) complete the prescribed form; and
- (b) on payment of the fee prescribed under the regulations, file the form in the registry in which the claimant’s claim was filed.

‘**(4)** A claim filed by a respondent under subsection (3)—

- (a) must be heard with the claimant’s claim, unless the tribunal otherwise orders; and
- (b) is not affected by the withdrawal of the claimant’s claim.

‘**(5)** Section 26A³⁶ does not apply to a respondent who files a claim under subsection (3) or the person who is the respondent to that claim.’.

56. Section 25(1)(b), ‘a small’—

omit, insert—

‘the small’.

³⁶ Section 26A (Respondent to notify registrar of intention to appear at hearing)

SCHEDULE 1 (continued)

57. Section 25(3), ‘a small claims tribunal to which a claim has been referred’—*omit, insert—*

‘the tribunal’.

58. Section 25(3), ‘small claims’ (second mention)—*omit.***59. Section 26, ‘a small’—***omit, insert—*

‘the small’.

60. After section 26—*insert—***‘Respondent to notify registrar of intention to appear at hearing**

‘**26A.(1)** A respondent to whom notice of a claim is given under section 25³⁷ must advise the registrar giving the notice in the way and within the time that may be prescribed under a regulation whether the respondent intends to appear at the hearing.

‘**(2)** If the respondent fails to comply with subsection (1), the tribunal may refer the proceeding to which the claim relates to a registrar to be dealt with under section 34A.³⁸’.

61. Section 27, ‘a small’—*omit, insert—*

‘the small’.

³⁷ Section 25 (Notice of claim and proceeding)

³⁸ Section 34A (Registrar may make orders in certain cases)

SCHEDULE 1 (continued)

62. Section 28—

omit.

63. Section 29(1), ‘A’—

omit, insert—

‘The’.

64. Section 29(2), ‘a tribunal’—

omit, insert—

‘the tribunal as’.

65. Section 30, ‘A’—

omit, insert—

‘The’.

66. Section 31(1), ‘A’—

omit, insert—

‘The’.

67. Section 32(1), (2), (3) and (4), ‘a tribunal’—

omit, insert—

‘the tribunal’.

68. Section 33(1)—

omit.

SCHEDULE 1 (continued)

69. Section 33(1A), ‘However, a proceeding about a tenancy application’—

omit, insert—

‘A proceeding’.

70. Section 33—

insert—

‘(1B) The tribunal may give directions about the persons who may be present at a hearing held in private.’.

71. Section 33(2), ‘a tribunal’—

omit, insert—

‘the tribunal’.

72. Section 33(2)(b)—

omit, insert—

‘(b) may be given on oath.’.

73. Section 33(3), ‘A’—

omit, insert—

‘The’.

74. Section 34(1), ‘the provisions of this section’—

omit, insert—

‘this section and without limiting section 34A³⁹’.

³⁹ Section 34A (Registrar may make orders in certain cases)

SCHEDULE 1 (continued)

75. Section 34(1), ‘a tribunal’—

omit, insert—

‘the tribunal’.

76. Section 34(1), ‘shall be resolved’—

omit, insert—

‘may be resolved’.

77. After section 34—

insert—

‘Registrar may make orders in certain cases

‘**34A.(1)** A registrar may act under this section if the respondent to a proceeding has failed to notify the registrar of the respondent’s intention to appear at the hearing under section 26A.⁴⁰

‘**(2)**The registrar may resolve the issue in dispute in the proceeding on the evidence before him or her and make any order the tribunal is empowered to make.

‘**(3)** An order made by a registrar under subsection (2) has effect, subject to section 34(2), as if it were an order made by the tribunal.’.

78. Section 35(1) and (2), ‘a small claims’—

omit, insert—

‘the’.

⁴⁰ Section 26A (Respondent to notify registrar of intention to appear at hearing)

SCHEDULE 1 (continued)

79. Section 35(2), after ‘claimant’s claim’—

insert—

‘or another amount allowed under a regulation’.

80. Part 2, after section 35—

insert—

‘Division 6—Review of certain orders of registrar

‘Review of certain orders of registrar

‘**35A.(1)** This section applies if a registrar is empowered under an Act, other than this Act, to make an order in a proceeding.

‘**(2)** A party to the proceeding who is dissatisfied with an order made by the registrar may apply to the tribunal to have the proceeding reheard before the tribunal.

‘**(3)** The application must be made in the prescribed form and filed in the registry within 14 days, or the longer period the tribunal allows, after the registrar’s order is made.

‘**(4)** The proceeding must be referred to the tribunal as constituted by a referee.

‘**(5)** The application does not stay the registrar’s order unless the tribunal orders the registrar’s order to be stayed to secure the effectiveness of the application.

‘**(6)** In this section—

“**registry**” means the registry to which the registrar was attached when the decision was made.’.

81. Section 36, heading, ‘Tribunals’—

omit, insert—

‘**Tribunal**’.

SCHEDULE 1 (continued)

82. Section 36, ‘Small claims tribunals’—*omit, insert—*

‘The small claims tribunal’.

83. Section 37, ‘small claims tribunals’—*omit, insert—*

‘the small claims tribunal’.

84. Section 37, ‘every’—*omit, insert—*

‘the’.

85. Section 38(1), ‘a small’—*omit, insert—*

‘the small’.

86. Section 38(1), as a penalty—*insert—*

‘Maximum penalty—10 penalty units or 14 days imprisonment.’.

87. Section 38(2)—*omit.***88. Section 38(3)(b), (d) and (e), ‘concerned’—***omit.*

SCHEDULE 1 (continued)

89. Section 38(3)(e), ‘tribunal’s own view’—

omit, insert—

‘view of the referee constituting the tribunal at the time of the alleged contempt’.

90. Section 38(4), ‘A’—

omit, insert—

‘The’.

91. Section 39, ‘a small’—

omit, insert—

‘the small’.

92. Section 40, ‘a small claims tribunal’—

omit, insert—

‘the small claims tribunal’.

93. Section 42(3)(a) and (4)(a), ‘a small’—

omit, insert—

‘the small’.

94. Section 42(3)(c)(ii) and (4)(c)(ii), ‘tribunals’—

omit, insert—

‘the tribunal’.

SCHEDULE 1 (continued)

95. Section 44, heading—*omit, insert—***‘Regulation-making power’.****96. Section 44(c), ‘small claims tribunals’—***omit, insert—***‘the small claims tribunal’.****97. Section 44(e) and (f)—***omit, insert—***‘(e) the issue of, and limiting the issue of, subpoenas by the registrar.’.****98. Section 44, ‘The Governor in Council’ to ‘with respect to—’—***omit, insert—***‘(1) The Governor in Council may make regulations under this Act.****‘(2) Without limiting subsection (1), a regulation may be made about the following—’.****99. After section 44—***insert—***‘PART 4—TRANSITIONAL PROVISIONS****‘Transitional—establishment of the small claims tribunal****‘45.(1) On the commencement of this section—**

- (a) an order made by a small claims tribunal continues to have effect as an order of the small claims tribunal; and

SCHEDULE 1 (continued)

- (b) anything done or existing in relation to a previous small claims tribunal continues, and is taken to be done or existing in relation to the small claims tribunal; and
 - (c) a proceeding pending in a previous small claims tribunal is to be continued in the small claims tribunal; and
 - (d) a person who is a referee of small claims tribunals immediately before the commencement of this section continues to be a referee of the small claims tribunal on the commencement.
- ‘(2) In an Act or document, if the context permits—
- (a) a reference to the *Small Claims Tribunals Act 1973* is taken to be a reference to the *Small Claims Tribunal Act 1973*; and
 - (b) a reference to the *Small Claims Tribunals Regulation 1993* is taken to be a reference to the *Small Claims Tribunal Regulation 1993*; and
 - (c) a reference to small claims tribunals is taken to be a reference to the small claims tribunal; and
 - (d) a reference to a referee of a small claims tribunal is taken to be a reference to a referee of the small claims tribunal; and
 - (e) a reference to a registry of small claims tribunals or a small claims tribunal is taken to be a reference to a registry of the small claims tribunal.’

SCHEDULE 2**AMENDMENTS OF OTHER ACTS**

section 27

DISTRICT COURT ACT 1967**1. Section 3, definitions “registrar” and “rules”—***omit.***2. Section 3—***insert—*

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

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

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

3. Section 20(1)–(3)—*renumber* as section 20(2) to (4).**4. Section 20—***insert—*

‘(1) The court may be constituted at any place.’.

5. Sections 22 and 23—*omit.*

SCHEDULE 2 (continued)

6. Part 2, division 5, before section 36—*insert—****‘Subdivision 1—Judicial registrars*****‘Judicial registrars**

‘35A.(1) The Governor in Council may appoint judicial registrars.

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

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

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

‘Independence of judicial registrars

‘35B. A judicial registrar when constituting the court or otherwise exercising a judicial or quasi-judicial power is not subject to direction or control, other than as provided under this Act.⁴¹

‘Rehearing after judicial registrar’s decision

‘35C.(1) A party to an application who is dissatisfied with a judicial registrar’s decision on the application may, with the leave of the court as constituted by a District Court judge, have the application reheard by the court as constituted by a District Court judge.

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

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

⁴¹ For example, see division 2A (Powers and responsibilities of Chief Judge).

SCHEDULE 2 (continued)

‘Conditions of appointment

‘**35D.(1)** A judicial registrar is to be appointed under this Act and not under the *Public Service Act 1996*.

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

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

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

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

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

‘Retirement of judicial registrars

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

‘Preservation of rights

‘**35F.(1)** This section applies if a public service officer is appointed as a judicial registrar.

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

‘(3) If the person stops being a judicial registrar on being appointed to an office of the public service, the person’s service as judicial registrar is to be

SCHEDULE 2 (continued)

regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

'Subdivision 2—Other officers'.

7. After section 69(2)—

insert—

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

8. Section 118(1)—

omit, insert—

'118.(1) This section—

- (a) does not apply to an appeal from a judgment of the District Court in the exercise of its criminal jurisdiction under part 4;⁴² but
- (b) does apply to an appeal from other judgments of the District Court in the exercise of its criminal jurisdiction, including on an appeal brought before the court under the *Justices Act 1886*, section 222.⁴³

9. Section 125—

omit.

⁴² Part 4 (Criminal jurisdiction and procedure)

⁴³ Section 222 (Appeal to a single judge)

SCHEDULE 2 (continued)

10. Part 11, division 1—

*omit.*⁴⁴

11. Section 127—

omit.

12. Section 136—

omit.

13. Schedule—

omit.

**JUSTICE LEGISLATION (MISCELLANEOUS
PROVISIONS) ACT 1996****1. Part 22—**

omit.

LAND ACT 1994**1. Schedule 6—**

insert—

‘**“enforcement warrant”**’ see the *Supreme Court of Queensland Act 1991*,

⁴⁴ The rule-making power is now located in the *Supreme Court of Queensland Act 1991*, section 118. For the saving of rules made under the repealed provision, see the *Supreme Court of Queensland Act 1991*, section 137 (Saving of former court rules—*Civil Justice Reform Act 1998*).

SCHEDULE 2 (continued)

section 93A.⁴⁵

“writ of execution” means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant.⁴⁶.

LAND TITLE ACT 1994**1. Schedule 2, definition “writ of execution”, after ‘court’—**

insert—

‘, and includes an enforcement warrant.⁴⁷’.

2. Schedule 2—

insert—

‘**“enforcement warrant”** see the *Supreme Court of Queensland Act 1991*, section 93A.⁴⁸’.

LEGAL PRACTITIONERS ACT 1995**1. Section 2(1), first and fourth dot points—**

omit.

⁴⁵ Section 93A (Enforcement warrant)

⁴⁶ See *Supreme Court of Queensland Act 1991*, section 129 (Abolition of old enforcement processes).

⁴⁷ See *Supreme Court of Queensland Act 1991*, section 129 (Abolition of old enforcement processes).

⁴⁸ Section 93A (Enforcement warrant)

SCHEDULE 2 (continued)

2. Part 2—

omit.

3. Section 40—

relocate to the *Supreme Court of Queensland Act 1991*, part 8B as section 116I.

4. Part 4—

omit.

MAGISTRATES COURTS ACT 1921**1. Section 2, definitions “action for a small debt”, “Magistrates Courts jurisdiction Act”, “rules” and “Small Debts Court”—**

omit.

2. Section 2—

insert—

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

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

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

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

SCHEDULE 2 (continued)

3. After section 4—

insert—

‘Consent jurisdiction

‘**4A.(1)** If the parties to a proceeding in relation to an amount for which the Supreme Court or District Court has jurisdiction agree that a Magistrates Court may have jurisdiction in relation to the amount, the Magistrates Court has jurisdiction for the proceeding.

‘**(2)** The agreement must—

- (a) be written; and
- (b) be signed by each of the parties or their solicitors; and
- (c) include a statement that the parties know that the proceeding is not otherwise within the jurisdiction of a Magistrates Court; and
- (d) be filed in accordance with the rules.’.

4. Sections 12 and 13—

omit.

5. Section 16, ‘, including an action for a small debt,’ and ‘, other than an action for a small debt,’—

omit.

6. Section 19(1), ‘(1)’—

omit.

7. Section 19(2)—

omit.

SCHEDULE 2 (continued)

8. After section 45—

insert—

‘Limitation on appeal if minor debt claim

‘**45A.(1)** No appeal lies from a judgment order made in a proceeding for a minor debt claim.

‘**(2)** Also, if the parties agree in writing, no appeal lies from a judgment order made in a proceeding to which any of the simplified procedures prescribed by the rules apply.’.

9. Section 48—

omit.

10. Sections 50–51—

omit, insert—

‘Contempt

‘**50.(1)** A person is in contempt of a Magistrates Court if the person—

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

Maximum penalty—84 penalty units or 1 year’s imprisonment.

‘**(2)** Without limiting the court’s power to punish for the contempt, the court may order the person be excluded from the room or other place in which the court is sitting.

SCHEDULE 2 (continued)

‘(3) A bailiff or other court officer acting under the court’s order may, using necessary and reasonable help and force, take the person into custody and detain the person until the court rises.

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

(a) ask the person to explain why the person should not be punished;
or

(b) adjourn the matter to be dealt with on a stated date.

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

‘Transferred proceeding

‘51. A court to which a proceeding is transferred has jurisdiction to hear and decide the proceeding and enforce any decision given in the proceeding as if the proceeding had been started in the court.’

11. Section 52, heading and subsection (1), ‘actions for small debts’—

omit, insert—

‘minor debt claims’.

12. Section 52(1)(c), ‘action’—

omit, insert—

‘proceeding’.

13. Section 52(1)(d), after ‘judgment’—

insert—

‘order’.

SCHEDULE 2 (continued)

14. Part 8—

*omit.*⁴⁹

15. Section 60—

omit.

16. Schedule—

omit.

SUPREME COURT ACT 1995**1. Part 9, division 7**

omit.

2. Section 210(1)—

omit.

3. Section 210(2), ‘And the’—

omit, insert—

‘The’.

⁴⁹ The rule-making power is now located in the *Supreme Court of Queensland Act 1991*, section 118. For the saving of rules made under the repealed provision, see the *Supreme Court of Queensland Act 1991*, section 137 (Saving of former court rules—*Civil Justice Reform Act 1998*).

SCHEDULE 2 (continued)

4. Section 210(2), ‘also have a prothonotary and’—*omit, insert—*

‘have a’.

5. Section 210(3), ‘master prothonotary and’—*omit.***6. Section 210(4), ‘and shall be by commission’—***omit.***7. Part 15—***omit.*