

Civil Proceedings Bill 2011

Explanatory Notes

Title of the Bill

Civil Proceedings Bill 2011.

Introduction

Section 118C(2)(a) of the *Supreme Court of Queensland Act 1991* (the 1991 Act) requires the Rules Committee to “advise the Minister about the repeal, reform or relocation of the provisions of the *Supreme Court Act 1995*”.

The Rules Committee has with the assistance of the Office of the Queensland Parliamentary Counsel, developed and publicly consulted on a draft Civil Proceedings Bill to modernise and simplify provisions governing civil proceedings. It incorporates and modernises procedural and substantive law provisions from the *Supreme Court Act 1995* (the 1995 Act) and integrates civil procedure provisions from the 1991 Act.

The Civil Proceedings Bill 2011 (the Bill) proposes the enactment of the new Civil Proceedings Act. It also provides for a number of unrelated amendments to the following legislation:

- *Associations Incorporation Act 1981*;
- *Births, Deaths and Marriages Registration Act 2003*;
- *Cremations Act 2003*;
- *Electoral Act 1992*;
- *Information Privacy Act 2009*;
- *Justices of the Peace and Commissioners for Declarations Act 1991*;
- *Queensland Civil and Administrative Tribunal Act 2009*;
- *Retirement Villages Act 1999*; and
- *Right to Information Act 2009*.

General Policy Objectives of the Bill

The main objectives of the Bill are to:

- implement the recommendations of the Rules Committee for the repeal, reform or relocation of the provisions of the 1995 Act;
- modernise and simplify provisions governing civil proceedings;
- repeal the 1995 Act and repeal obsolete provisions of the 1991 Act;
- amend the 1991 Act so that it only contains provisions specific to the Supreme Court;
- amend the *District Court of Queensland Act 1967* and the relevant Magistrates Courts legislation to harmonise the provisions common to all three courts and to assist in the integration, consistency and effectiveness of the court registries; and
- make consequential amendments to references to the 1995 Act and repealed provisions of the 1991 Act.

The Bill also achieves the following objectives by amending:

- the *Associations Incorporation Act 1981* to allow associations to transition seamlessly to the *Commonwealth Corporations Act 2001* or *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- the *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) and *Cremations Act 2003* to clarify that section 32 of the BDMR Act requires the person in charge of a crematorium or a cemetery sexton (i.e. the person who arranges for the disposal of the body) to electronically lodge (with limited exceptions) either a cremation or burial notice; and to amend the *Cremations Act 2003* to require a person in charge of a crematorium to label ashes in accordance with the requirements prescribed under a regulation;
- the *Electoral Act 1992* to clarify the operation of a provision that allows for enrolment up to the day before polling day; and to provide for a regulation making power to specify departments and State public authorities that may receive electoral roll information and the purposes for which the information may be received;
- the *Justices of the Peace and Commissioners for Declarations Act 1991* (JP Act) to allow Justices of the Peace (JPs) and Commissioners for Declarations (C decs) to record details of identification documentation sighted in the performance of their duties;

- the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to provide that a member whose term of appointment has expired can continue to sit as a member for the purpose of finalising a proceeding;
- the *Retirement Villages Act 1999* to provide that, in relation to particular exit fees paid to a scheme operator upon a resident leaving a retirement village, the daily pro rata calculation method will be: (a) the default method for existing residence contracts where the contract does not provide an alternate method; and (b) the mandatory method for all future contracts and can not be contracted out of; and
- the *Right to Information Act 2009* and the *Information Privacy Act 2009* to: provide more flexibility for Commissioners to take leave; allow Queensland Government agencies to provide personal information to agencies of the Commonwealth and other States and Territories for law enforcement purposes; and remove an out of date reference.

Alternatives to achieve policy objectives

There is no alternative way to achieve these policy objectives.

Estimated Cost for Government Implementation

Any costs in relation to the amendments will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

In late 2010, the Rules Committee conducted public consultation on a draft Civil Proceedings Bill by posting on the Queensland Courts website:

- a consultation draft Civil Proceedings Bill;
- the Rules Committee's proposed advice to the Minister about the 1995 Act;
- an explanation of the 1995 Act provisions to be repealed;

- a mock version of the 1991 Act incorporating the proposed Civil Proceedings Bill amendments; and
- a mock version of the *District Court of Queensland Act 1967*, incorporating the proposed Civil Proceedings Bill amendments.

The Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland and members of the legal profession provided feedback on the draft Bill. Stakeholders were supportive of the Bill. Feedback from stakeholders was considered by the Rules Committee and, where appropriate, resulted in a small number of technical amendments to the Bill.

Proposed amendments to the *Associations Incorporation Act 1981* and the *Retirement Villages Act 1999* were previously included in the draft Fair Trading and Other Legislation Amendment Bill 2011, which was released for public consultation in late-2010. The comments received on the amendments to the *Associations Incorporation Act 1981* generally supported these changes. There was considerable comment received on the amendments to the *Retirement Villages Act 1999*, from stakeholder representatives for both residents and operators of retirement villages, in addition to the Queensland Law Society, and revisions were made to the amendments after taking this feedback into consideration.

Relevant stakeholders were also consulted on, and raised no significant objections in response to, the proposed amendments in relation to the proposed amendments to the BDMR Act; *Cremations Act 2003*; *Electoral Act 1992*; QCAT Act; *Right to Information Act 2009* and the *Information Privacy Act 2009*. The amendments to the JP Act responded to requests from some JPs.

Consistency with legislation in other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another state or territory is not relevant in this context.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides for particular provisions to commence on a day to be fixed by proclamation.

Clause 3 provides that this Bill applies to civil proceedings and proceedings in relation to contempt of a court in the Supreme, District and Magistrates Courts, unless this Bill otherwise expressly provides.

Clause 4 states that the dictionary in Schedule 1 defines particular words used in the Bill. Definitions included in the schedule have been relocated from the 1995 Act, or from the 1991 Act, as a result of the re-enactment or relocation of provisions from these acts.

Clause 5 defines the word ‘court’ for the purposes of the Bill as referring to the Supreme Court, the District Court or a Magistrates Court, depending on the context. This definition is relocated from section 72 of the 1991 Act.

Clause 6 provides that the Bill binds all persons, including the State. This clause is based on section 6 of the 1991 Act.

Part 2 Law and equity

Clause 7 provides for concurrent administration of law and equity and is based on section 244 of the 1995 Act.

Clause 8 provides that, if a court has jurisdiction to hear an application for an injunction or specific performance, the court may award damages as well as, or instead of, an injunction or specific performance.

Clause 9 concerns the court’s power to grant an injunction and is based on sections 180 and 246 of the 1995 Act.

Clause 10 provides for the Supreme Court only to hear application for, and grant, a declaratory order and make a declaratory order without granting

any relief as a result of making the order. It is based on section 128 of the 1995 Act.

Clause 11 relates to the Supreme Court only and provides that the court may make an order requiring any person to fulfil a duty in the fulfilment of which the person seeking the order is personally interested. It is based on section 172 of the 1995 Act.

Clause 12 relates to the Supreme Court only and provides that the court may make an interlocutory order appointing a receiver. It is based on section 246 of the 1995 Act.

Part 3 Orders

Division 1 Orders generally

Clause 13 concerns the court's powers to make orders. It is based on section 79 of the 1991 Act.

Clause 14 provides for a court to impose conditions on an order. It is based on section 80 of the 1991 Act.

Clause 15 confers a general power to award costs, where no other power is provided. It is based on section 221 of the 1995 Act.

Division 2 Particular orders

Clause 16 allows for amendment of a document in a proceeding to allow for a new cause of action or party. It is based on section 81 of the 1991 Act.

Clause 17 provides for when not all persons interested in the subject matter of a proceeding or the relief sought in a proceeding are before the court. It is partially based on section 119 of the 1995 Act.

Clause 18 provides that, unless the court orders otherwise, parties who have the same interest as the representative party in proceedings and could have been parties to the proceeding will also be bound by the court's order. It is based on section 82 of the 1991 Act.

Clause 19 sets out how a court may respond to an application for relief by way of interpleader. It is based on section 83 of the 1991 Act.

Clause 20 clarifies the position in relation to set off of mutual debts.

Clause 21 provides that proceedings do not abate as a result of the death of a party unless the cause of action dies with that party. It is based on section 116I of the 1991 Act.

Clause 22 provides that the District Court and Magistrates Courts may dismiss proceedings for want of prosecution. The Supreme Court has inherent power to dismiss proceedings for want of prosecution. The provision is based on section 85 of the 1991 Act.

Clause 23 states that a default judgment given by a registrar has effect as a judgment given by the court. It is based on section 84 of the 1991 Act.

Clause 24 provides for the orders the court can make when a party from whom recovery of property, other than land, is sought claims to be entitled to retain the property because of a lien or as security for money. The provision provides a statutory basis for jurisdiction.

Part 4 Transfer of proceedings

Clause 25 provides the Supreme Court with a general power to transfer: a proceeding pending in the District Court or a Magistrates Court to the Supreme Court; and a proceeding pending in the Supreme Court for which the District Court or a Magistrates Court has jurisdiction to the court having jurisdiction. It is based on section 74(1) and section 75(1) of the 1991 Act, and sections 82 and 83 of the *District Court of Queensland Act 1967*.

Clause 26 provides a corresponding power to that in clause 25, for the District Court to transfer a proceeding from or to a Magistrates Court.

Clause 27 applies when a plaintiff or applicant wishes to amend a proceeding to claim additional or different relief, which is not within the jurisdiction of the court that the proceeding is before.

Clause 28 operates if a proceeding is commenced in a court that does not have jurisdiction, but another court does. It is based on the mechanisms

currently provided in sections 81 and 85 of the *District Court of Queensland Act 1967*.

Clause 29 applies if a party to a proceeding in a court files a counterclaim for relief not within the relevant court's jurisdiction. It is based on section 86 of the *District Court of Queensland Act 1967*.

Clause 30 specifies what is to be done with court records where a proceeding is transferred from one court to another.

Clause 31 provides that the court to which a proceeding is transferred may hear and decide the proceeding as if it had been started in that court.

Clause 32 provides that, for any relevant period of limitation, a proceeding or counterclaim transferred to another court is taken to have been started when the proceeding or counterclaim was originally started.

Clause 33 specifies which scale of costs is applicable when a transfer between courts has occurred. It also confirms that the court to which a proceeding is transferred has jurisdiction to deal with any question of costs prior to the transfer that has not been dealt with.

Part 5 Conferences

Clause 34 defines 'relevant conference'. It is based on sections 77 and 78 of the 1991 Act.

Clause 35 provides that, if the parties at a relevant conference 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 has effect as a compromise. It is based on section 77 of the 1991 Act.

Clause 36 provides for the confidentiality of evidence of things said and done at relevant conferences. It is based on section 78 of the 1991 Act.

Part 6 ADR processes

Division 1 Preliminary

Clause 37 states the objects of the part. It is based on section 94 of the 1991 Act, section 89 of the *District Court of Queensland Act 1967* and section 21 of the *Magistrates Courts Act 1921*.

Clause 38 excludes disputes subject to employment claims under the *Magistrates Courts Act 1921*.

Division 2 Interpretation

Clause 39 defines ‘ADR process’, and states that an ADR process includes all steps involved in the process, including, pre-mediation and post-mediation sessions.

Clause 40 defines ‘mediation’.

Clause 41 defines ‘case appraisal’ and provides for when a case appraiser’s decision is binding on the parties.

Division 3 ADR process

Clause 42 provides for parties to opt into an ADR process by consent.

Clause 43 provides that a Court may require the parties or their representatives to attend before it to enable the Court to decide whether the parties’ dispute should be referred to an ADR process. The Court may make a referring order referring the dispute for mediation or case appraisal. Matters the Court may take into account when deciding whether to refer a dispute to case appraisal include whether the costs of litigating the dispute are likely to be disproportionate to the benefit gained and the likelihood of a case appraisal producing a compromise or an abandonment of a claim or defence.

Clause 44 provides that, if a referring order is made, the parties must attend before the ADR convenor appointed to conduct the ADR process, and not

impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order. If a party impedes an ADR process, the Court may impose sanctions against the party.

Clause 45 provides that, for a case appraisal, the case appraiser must decide the procedure to be used, and may adopt any procedure that will in the case appraiser's view enable a sound opinion of the likely outcome of the dispute to be reached, and must finish the case appraisal as quickly as possible. The case appraiser may in special circumstances receive evidence, examine witnesses and administer oaths to witnesses who have been lawfully called before the case appraiser. The court may at any time give directions about procedure to be used at the case appraisal.

Clause 46 provides that a person may not be subpoenaed to appear at a case appraisal without an order of the Court. A person may not be subpoenaed to appear at a mediation. Further, a person subpoenaed to appear at a case appraisal must not be compelled to answer a question, or produce a document that the person could not be compelled to answer or produce before the Court.

Clause 47 provides that if at any time the Court is of the opinion that a party to an ADR process is unable to pay that party's percentage of costs because of the party's financial circumstances, the Court may make an order appropriate in the circumstances, including an order that the reference to the ADR process be cancelled, or that the referring order be revoked and another referring order made.

Division 4 At end of ADR process

Clause 48 provides that if the parties agree on a resolution of their dispute or part of it at a mediation, the agreement must be written down and signed by or for each party and by the mediator, and that such an agreement has the same effect as any other compromise.

Clause 49 provides that as soon as practicable after the end of a mediation, the mediator must file a certificate in the approved form; and that as soon as practicable after the end of a case appraisal, the case appraiser must file a certificate in the approved form and the decision (if any).

Clause 50 provides that a party may apply to the Court for an order giving effect to an agreement reached after mediation; however that party may apply for the order only after the mediator's certificate is filed.

Clause 51 provides that a party may apply to the Court for an order giving effect to a case appraiser's decision after the time prescribed for electing to go to trial has passed. A party may apply before that time has passed, if all parties agree.

Division 5 Protection, immunity and confidentiality

Clause 52 provides that, in performing the functions of an ADR convener under a referring order, the ADR convener has the same protection and immunity as a Supreme Court judge performing a judicial function. It also provides for the protection and immunity of a party or a party's lawyer or agent appearing in an ADR process and a witness attending an ADR process. It further provides for the protection of a document produced at or used for an ADR process.

Clause 53 provides for when evidence of anything done or said, or an admission made, at an ADR process about the dispute is admissible at the trial or in another civil proceeding.

Clause 54 provides that an ADR convener must not without reasonable excuse disclose information coming to the convener's knowledge during an ADR process, and provides a maximum penalty of 50 penalty units. The clause lists instances of reasonable excuse to disclose the information.

Part 7 Compliance with subpoena etc.

Clause 55 provides for securing the attendance of a person who has failed to comply with a subpoena or other order requiring attendance in a civil proceeding to give evidence or produce a document or thing. The clause is based on section 93I of the 1991 Act.

Clause 56 is an equivalent provision to clause 55 where a corporation or officer of a corporation fails to comply with a subpoena or order. The clause is based on section 93J of the 1991 Act.

Clause 57 states that a failure to comply with a subpoena, without reasonable excuse, is contempt of court. This provision is based on section 93K of the 1991 Act.

Part 8 Interest

Clause 58 provides for when a court may award interest in a proceeding for the payment of money. The provision is based on section 47 of the 1995 Act.

Clause 59 provides for a money order to carry interest in the absence of an order to the contrary, unless it is satisfied within 21 days. The clause is based on section 48 of the 1995 Act.

Part 9 Assessment of damages

Clause 60 concerns claims for damages for personal injury, loss of dependency or wrongful dismissal. The clause provides that certain damages are to be reduced by the amount that the court considers would have been paid in income tax, had the damages claimed been received as earnings. The clause is based on section 15 of the 1995 Act.

Clause 61 relates to certain awards of damages for deprivation or impairment of earning capacity, or for a liability to incur expenditure in the future. The clause provides for the discounting of lump sum awards and is based on section 16 of the 1995 Act.

Part 10 Wrongful death proceedings

Clause 62 contains definitions for the part.

Clause 63 defines 'spouse' for the part.

Clause 64 provides that, if a death is caused by a wrongful act or omission, which would have otherwise entitled the deceased person to recover damages in a proceeding for personal injury, a court may award damages to the family of the deceased. This clause is based on section 17 of the 1995 Act.

Clause 65 provides that only one proceeding under the part may be brought against a person in relation to a death and for how the interests of members of the deceased person's family are to be dealt with. The clause is based on sections 18(1) and 19 of the 1995 Act.

Clause 66 provides for a proceeding brought by a person other than the personal representative of the deceased and the obligation of the plaintiff to account to the personal representative on behalf of the estate for any amount recovered.

Clause 67 concerns matters which the court may take into account when making assessment of damages for financial benefits lost by the spouse of a deceased person. The provision is based on section 23A of the 1995 Act.

Clause 68 is based on section 23B of the 1995 Act, concerning matters which the court may take into account when making assessment of damages for financial benefits lost by a child of a deceased person.

Clause 69 is a transitional provision based on section 23D of the 1995 Act.

Clause 70 provides for matters which a court is not to take into account to reduce damages when making an assessment under this part. The clause is based on section 23 of the 1995 Act.

Part 11 Provisions about ships

Clause 71 defines 'owner' and 'ship' for the part.

Clause 72 provides for loss of life or personal injury suffered by a person on board a ship because of the fault of the ship and one or more other ships.

Clause 73 provides for a right of contribution, allowing a ship owner to recover amounts in proportion to the degree that each ship was at fault.

Clause 74 provides for damage or loss caused to 1 or more ships because of the fault of 2 or more ships.

Clause 75 provides that in the event of a collision, a ship is not taken to be at fault solely for contravention of a regulation made under the *Transport Operations (Marine Safety) Act 1994*.

Part 12 Assessors

Clause 76 defines ‘assessment’, ‘assessor’ and ‘costs assessment’ for the part.

Clause 77 provides that, in performing the functions of an assessor, an assessor has the same protection and immunity as a Supreme Court judge performing a judicial function. It also provides for the protection and immunity of a party or a party’s lawyer or agent appearing in an assessment and a witness attending an assessment. It also provides for the protection of a document produced at or used for an assessment. The clause is based on section 93LA of the 1991 Act.

Clause 78 preserves the confidentiality of information provided to an assessor. It is based on section 93LB of the 1991 Act.

Clause 79 preserves privilege notwithstanding disclosure to an assessor. The provision is based on section 93LC of the 1991 Act.

Part 13 Enforcement

Division 1 Judgments

Clause 80 provides for the different judgments available in an action for detention of goods. The clause is based on sections 24 and 25 of the 1995 Act.

Clause 81 provides for how a judgment requiring a defendant to return specific goods to the plaintiff is to be enforceable.

Clause 82 provides for what a judgment given for a defendant to return specific goods or pay their value must provide and how the judgment is to be enforced.

Clause 83 makes it clear that the effect of a money order is the same as a traditional judgment at law, and that it can be enforced only in the way provided under the Bill for enforcing a money order.

Division 2 Enforcement generally

Clause 84 provides that it is not necessary to demand compliance with an order before starting enforcement proceedings for the order. It is based on section 86 of the 1991 Act.

Clause 85 provides for interest to be payable on a money order until it is satisfied. It authorises such interest to be recovered without the need for any further order. The clause supersedes section 87 of the 1991 Act, and complements the proposed new provision in clause 59.

Clause 86 provides for enforcement against partnerships and is based on section 89 of the 1991 Act.

Clause 87 allows a court to vary an order against a partnership to make it an order against the persons who were partners when the cause of action arose. It is based on section 88 of the 1991 Act.

Clause 88 provides for enforcement against property of a business. The clause is based on section 91 of the 1991 Act.

Clause 89 concerns variation of an order in relation to a business name. It is based on section 90 of the 1991 Act.

Division 3 Enforcement warrants

Clause 90 provides that a person entitled to enforce the original order may obtain an enforcement warrant and further provides what the enforcement warrant may contain. The clause is based on section 93A of the 1991 Act.

Clause 91 provides for the period for which an enforcement warrant is active. It is based on section 92 of the 1991 Act.

Clause 92 provides that payment under an enforcement warrant discharges the person from the warrant. It is based on section 93 of the 1991 Act.

Clause 93 provides for an enforcement officer seizing securities to enforce a money order. The provision is based on section 93B of the 1991 Act.

Clause 94 provides for redirection of a joint fund to an enforcement creditor to the extent of the enforcement debtor's entitlement. It is based on section 93C of the 1991 Act.

Clause 95 provides for enforcement where a State debt is payable. The clause is based on section 93D of the 1991 Act.

Clause 96 concerns redirection to an enforcement creditor of partnership debts owing to an enforcement debtor. It is based on section 93E of the 1991 Act.

Clause 97 states that an amount in a financial institution to the credit of an enforcement debtor is a debt payable to an enforcement debtor for the purposes of enforcing a money order. It is based on section 93F of the 1991 Act.

Clause 98 provides for enforcement against a third person in stated circumstances where the third person does not comply with an enforcement warrant for redirection of a debt from the third person. The clause is based on 93G of the 1991 Act.

Clause 99 states that an employer must not dismiss or otherwise prejudice an employee because of an enforcement warrant requiring the redirection of the employee's earnings. It is based on section 93H of the 1991 Act.

Division 4 Warrant for defendant's arrest

Clause 100 confers a power on the Supreme Court only to issue a warrant for the arrest of a defendant to a claim. The clause is based on section 93L of the 1991 Act.

Division 5 Enforcement officers

Clause 101 is a saving provision to ensure that this Bill does not remove or impair any existing power of an enforcement officer.

Clause 102 removes any necessity for an enforcement officer to have a licence in order to sell property by auction. It is based on section 216 of the 1995 Act.

Clause 103 provides for the sheriff, registrar or clerk of the court to execute the appropriate transfer of the right, title and interest to the purchaser and for that transfer to be evidence that the enforcement officer had power to sell the right, title and interest. The clause is based on section 100 of the 1995 Act.

Part 14 Miscellaneous provisions

Clause 104 applies where a defendant or respondent is deceased when process issues, and the cause of action survives the person's death. If a grant of representation has been made, the cause of action is taken to be against the personal representative of the deceased person's estate. It is based on section 93M of the 1991 Act.

Clause 105 provides for when a defendant or respondent is deceased when process issues, the cause of action survives the person's death and a grant of representation has not been made. The clause is based on section 93N of the 1991 Act.

Clause 106 provides that a new trial cannot be brought simply on the ground of a ruling about duty. It is based on section 36 of the 1995 Act.

Clause 107 provides for a regulation-making power.

Part 15 Transitional provision for Civil Proceedings Act 2011

Clause 108 provides that a reference to section 48 of the 1995 Act is to be taken as a reference to section 59 of the Act proposed by this Bill.

Part 16 **Amendment of Civil Liability Act 2003**

Clause 109 provides that this part amends the *Civil Liability Act 2003*.

Clause 110 replaces the current section 57 of the *Civil Liability Act 2003* to remove reference to an actuarial multiplier and to provide that the discount rate under section 57 will be the same as the discount rate applicable under clause 61.

Part 17 **Amendment of Criminal Code**

Clause 111 provides that this part amends the Criminal Code.

Clause 112 omits a redundant reference.

Clause 113 inserts into the Criminal Code three sections which will be the equivalent for the purposes of the criminal jurisdiction of clauses 55, 56 and 57 of this Bill.

Clause 114 omits section 662(2) in relation to taxation.

Clause 115 omits section 663 in relation to enforcement of a judgment of Circuit Court.

Clause 116 provides a mechanism for the Attorney-General to issue a warrant for the release of a person who is detained in custody on a charge of an indictable offence if a decision has been made not to proceed with the charge. It is based on section 205 of the 1995 Act.

Part 18 **Amendment of District Court of Queensland Act 1967**

Clause 117 provides that this part amends the *District Court of Queensland Act 1967*.

Clause 118 removes a number of definitions that are no longer required and amends the definition of ‘registrar’ to delete the reference to deputy registrars.

Clause 119 is a minor technical amendment as a consequence of clause 122.

Clause 120 replaces section 8B of the *District Court of Queensland Act 1967*, inserting a standard provision concerning seals of that Court.

Clause 121 replaces section 25 of the *District Court of Queensland Act 1967* providing for the case when, after the commencement of the hearing of any matter before a judge, the judge dies or becomes otherwise incapable of continuing to sit before the matter has been finalised. This substituted clause corresponds with that for other courts.

Clause 122 amends the title of Part 2, division 4 of the *District Court of Queensland Act 1967* to reflect the change from a separate registry for each district to a single registry. It also replaces section 35 of the *District Court of Queensland Act 1967* with a provision to establish a single registry for the District Court, having an office at each place at which the District Court is to be held. New section 35A provides that process issued out of any office of the District Court registry is returnable to that office and may be enforced at any place within the State. New section 35B provides that the District Court Registry is under the control of the principal registrar.

Clause 123 omits Part 2, division 5, subdivision 1 in relation to the appointment of judicial registrars.

Clause 124 removes a subdivision heading which is unnecessary.

Clause 125 replaces sections 36 and 36A of the *District Court of Queensland Act 1967* with: new section 36 concerning appointment of registrars; section 36A concerning delegation by registrars; section 36B concerning directions given by the principal registrar; section 36C providing for Supreme Court and Magistrates Court officers in the same way as current section 35, reflecting the change from multiple to single registries; and section 36D concerning appointment of associates.

Clause 126 makes a consequential amendment to section 40 of the *District Court of Queensland Act 1967*.

Clause 127 replaces section 41 of the *District Court of Queensland Act 1967* to provide for the appointment of bailiffs by the chief executive as persons employed under the *Public Service Act 2008*. It removes provision for the appointment of bailiffs’ assistants.

Clause 128 replaces current sections 42 and 43 of the *District Court of Queensland Act 1967*, providing for the powers and functions of bailiffs.

Clause 129 is a minor technical amendment to section 44 of the *District Court of Queensland Act 1967* which provides that a bailiff is not required to take out an auctioneer's licence.

Clause 130 amends section 45 of the *District Court of Queensland Act 1967* regarding remuneration of bailiffs to remove a reference to bailiffs' assistants.

Clause 131 inserts a new section 47 of the *District Court of Queensland Act 1967* concerning the liability of bailiffs. This is in the same terms as a provision proposed for insertion at section 81 of the 1991 Act to be inserted by clause 194 of the Bill.

Clause 132 omits section 48 of the *District Court of Queensland Act 1967* which is a historical provision that is now obsolete.

Clause 133 replaces the current Part 2 division 7 section 52 of the *District Court of Queensland Act 1967*. As at present, a party may appear in court in person or by a lawyer, or with the leave of the court by another person.

Clause 134 omits section 66 (Issues of fact and law) and section 67 (Registrar may issue subpoenas) of the *District Court of Queensland Act 1967*, which are no longer necessary.

Clause 135 repeals Part 5, division 4 of the *District Court of Queensland Act 1967*, dealing with removal of actions. These provisions have been superseded by Part 4 of this Bill. In the place of the omitted provisions, the clause inserts three provisions providing for commercial and other lists in the District Court. These provisions provide the same legislative basis for a District Court commercial list as is proposed for the Supreme Court commercial list under clause 190.

Clause 136 repeals Part 7 of the *District Court of Queensland Act 1967*, dealing with ADR processes. These provisions have been superseded by provisions contained in Part 6 of this Bill.

Clause 137 omits section 116 of *District Court of Queensland Act 1967*, which provides for venue of appeals.

Clause 138 makes consequential amendments.

Clause 139 inserts sections 118A and 118B to provide restrictions on appeal in relation to costs or from an order made by the consent of the parties.

Clause 140 inserts new section 125 which provides for the Chief Judge to make practice directions, and section 126 which provides for the court to sit in open court unless limited by order.

Clause 141 inserts a new section 130B stating that the District Court is part of the department for the purposes of the *Financial Accountability Act 2009*.

Clause 142 amends current section 131 of the *District Court of Queensland Act 1967* to clarify that the regulation-making power concerns precincts of the District Court other than those that are Supreme Court precincts under the 1991 Act.

Clause 143 inserts new sections 148 and 149 providing for transitional arrangements in relation to bailiffs' assistants and the use of outdated references concerning the District Court, previously located in sections 130 and 133 of the 1991 Act.

Part 19 Amendment of Evidence Act 1977

Clause 144 provides that this part amends the *Evidence Act 1977*.

Clause 145 inserts into the *Evidence Act 1977* the substance of rule 394 of the *Uniform Civil Procedure Rules 1999*, which permits a court to dispense with strict proof of a fact not seriously in dispute, or where such strict proof may cause unnecessary or unreasonable expense, delay or inconvenience. The clause also inserts a new section 129B, based on section 49 of the 1995 Act, providing that a person may be examined without a subpoena or other process.

Part 20 Amendment of Judges (Pensions and Long Leave) Act 1957

Clause 146 provides that this part amends the *Judges (Pensions and Long Leave) Act 1957*.

Clause 147 amends the *Judges (Pensions and Long Leave) Act 1957* to allow service in the position of ‘master’ to be recognised for the purposes of the Act. This allows for section 211 of the 1995 Act to be repealed, given that it is not proposed that future appointments to the position of ‘master’ will be made.

Part 21 Amendment of Jury Act 1995

Clause 148 provides that this part amends the *Jury Act 1995*.

Clause 149 provides a consequential amendment to section 8 of the *Jury Act 1995* upon the proposed abolition of the offices of central sheriff and northern sheriff.

Clause 150 inserts new Part 6, division 1A and section 51A concerning civil trials into the *Jury Act 1995*, based on section 259 of the 1995 Act, concerning the duty of a judge and jury in a civil trial.

Clause 151 inserts a new provision 65A into the *Jury Act 1995* providing that a court may order a civil trial without a jury if the trial requires prolonged examination of records; or technical, scientific or other issue that cannot conveniently be considered and resolved by a jury.

Part 22 Amendment of Justices Act 1886

Clause 152 provides that this part amends the *Justices Act 1886*.

Clause 153 amends section 22 of the *Justices Act 1886* inserting a standard provision concerning seals of the Magistrates Courts.

Clause 154 amends section 126 of the *Justices Act 1886* to reflect changes in terminology from ‘district’ to ‘region’ effected by clause 190 of this Bill.

Clause 155 amends section 222 of the of the *Justices Act 1886* concerning appeal to a single judge, as appropriate because of the repeal of section 116 of the *District Court of Queensland Act 1967* by clause 137.

Part 23 **Amendment of Land Court Act 2000**

Clause 156 provides for amendment of the *Land Court Act 2000*.

Clause 157 provides for the ADR provisions under the Act proposed by this Bill to apply to the specified proceedings started under the *Land Court Act 2000*.

Clause 158 amends section 62 of the *Land Court Act 2000* to reflect a change in terminology from the respective regions effected by clause 190 of the Bill.

Part 24 **Amendment of Law Reform Act 1995**

Clause 159 provides for amendment of the *Law Reform Act 1995*.

Clause 160 provides for consequential amendment to replace a reference to the 1995 Act in the *Law Reform Act 1995*.

Clause 161 provides a minor consequential amendment to definitions in section 6 of the *Law Reform Act 1995*.

Clause 162 omits definitions not required following the consequential amendment made by clause 161.

Clause 163 provides a minor consequential amendment to replace a reference to the 1995 Act in the *Law Reform Act 1995*.

Part 25 **Amendment of Magistrates Act 1991**

Clause 164 provides for amendment of the *Magistrates Act 1991*.

Clause 165 inserts a new section 49A into the *Magistrates Act 1991* dealing with the situation where, after the commencement of the hearing of

any matter before a magistrate, the magistrate dies or becomes otherwise incapable of continuing to sit before the matter has been finalised. Comparable provisions will apply in relation to each court.

Part 26 **Amendment of Magistrates Courts Act 1921**

Clause 166 provides for amendment of the *Magistrates Courts Act 1921*.

Clause 167 provides for the omission of a number of definitions that will become unnecessary as a result of the removal of various provisions.

Clause 168 inserts a new section 3B into the *Magistrates Courts Act 1921* conferring on a registrar a power to delegate functions to an appropriate person in the registry.

Clause 169 omits a provision superseded by provision for transfer of proceedings between courts in Part 4 of this Bill.

Clause 170 inserts two new sections into the *Magistrates Courts Act 1921*. New section 14A provides that the business of the court is conducted in the court, which is to be open to the public unless there is an order to the contrary; and new section 14B provides that process is returnable to the registry of issue, but has effect and may be enforced throughout the State.

Clause 171 relocates the provision for appointing bailiffs within the *Magistrates Courts Act 1921*.

Clause 172 replaces the existing provision allowing a party to appear by a lawyer or another person with leave of the court with a new provision to the same effect.

Clause 173 omits the existing provisions dealing with ADR processes which are to be superseded by provisions in Part 6 of the Bill.

Clause 174 introduces a provision as for clause 141.

Clause 175 inserts a new section 61 into the *Magistrates Courts Act 1921* providing for outdated references concerning the Magistrates Court that were previously located in sections 130 and 133 of the 1991 Act.

Part 27 Amendment of Succession Act 1981

Clause 176 provides that this part amends the *Succession Act 1981*.

Clause 177 provides for a consequential amendment to update a reference in section 66 to the part of the 1995 Act dealing with wrongful death proceedings. These provisions are now proposed under Part 10 of this Bill.

Part 28 Amendment of Supreme Court of Queensland Act 1991

Clause 178 provides that the part amends the 1991 Act.

Clause 179 omits sections 2A to 6 from the 1991 Act. The sections have been identified as obsolete. The clause also inserts a provision stating that the 1991 Act binds all persons, including the State. The clause is based on section 6 of the 1991 Act.

Clause 180 replaces existing Part 2 of the 1991 Act with a new Part 2 containing sections 4 to 27. The new Part 2 sets out the composition and jurisdiction of the court, the office of Chief Justice and provisions relating to judges generally.

Clause 181 makes a minor drafting change to the wording of section 28 concerning the number of judges to sit on the court of appeal.

Clause 182 proposes a minor amendment to current section 31(1A) to clarify that the provision applies where a judge who has been part of the Court of Appeal is certified as incapable of sitting, whether the incapacity is temporary or otherwise.

Clause 183 makes a consequential amendment to section 32 of the 1991 Act to reflect renumbering of current section 13A.

Clause 184 corrects minor grammatical errors.

Clause 185 improves the terminology used in section 42.

Clause 186 omits sections 44 and 45.

Clause 187 removes a reference to a ‘master’.

Clause 188 replaces section 297 of the 1995 Act dealing with the situation where, after the commencement of the hearing of any matter before a judge, that judge dies or becomes otherwise incapable of continuing to sit before the matter has been finalised. This substituted clause will allow for essentially the same provision to apply in relation to each court.

Clause 189 provides for a consequential amendment due to renumbering.

Clause 190 provides that existing central district, northern district, and far northern districts of the Supreme Court, provided for under Part 16 of the 1995 Act be renamed as those respective ‘regions’. The clause also provides for the court to maintain commercial and other lists by re-enacting relevant provisions from Part 18 of the 1995 Act.

Clause 191 makes minor amendments to section 69 to reflect the change to a single District Court.

Clause 192 inserts new sections 69A and 69B to provide restrictions on appeal in relation to costs or from an order made by the consent of the parties, in line with current restrictions on appeals under section 253 of the 1995 Act.

Clause 193 relocates section 70.

Clause 194 repeals current Parts 7 and 8 as provisions under these parts dealing with civil proceedings generally, or ADR processes, have now been transferred to, or superseded by provisions relating to all courts under this Bill. The clause inserts modernised provisions concerning the registry; return of process at the office it was issued, though providing that each process has effect throughout the State; and providing for court officers.

Clause 195 omits current Part 8B, concerning provision from the *Legal Practitioners Act 1995*.

Clause 196 makes a consequential amendment to the heading of Part 9.

Clause 197 omits current section 117 which contains a definition of the term ‘court’ which is no longer appropriate.

Clause 198 omits section 118(1)(c) which provides for rules of court to be made for appeals from the Mental Health Court. It has been identified that no special rules are required for such appeals.

Clause 199 inserts a new section 118AA into the *Supreme Court of Queensland Act 1991* providing that the Chief Justice may issue guidelines

about a matter prescribed under the admission rules. The clause also states that such a guideline is a statutory instrument, and prescribes matters concerning the notification and availability of guidelines.

Clause 200 makes an amendment to provide for the Rules Committee to make forms under the Act proposed by this Bill.

Clause 201 removes obsolete provisions providing for the expiry of former rules of court.

Clause 202 removes references to the review of the 1995 Act and to the word 'Stipendiary', reflecting a change already made by other legislation.

Clause 203 repeals sections 118D and 118E.

Clause 204 repeals sections 119, 119A, 119B, 119C, 119D as these provisions are superseded by provisions of the Bill, and inserts new sections 119-119A.

Clause 205 removes a regulation-making power which will become obsolete on repeal of the 1995 Act.

Clause 206 repeals current transitional provisions that have fulfilled their functions and are no longer required. The clause provides a new Part 11 for necessary transitional provisions.

Clause 207 amends the list of subject matter for rules in Schedule 1 of the 1991 Act.

Clause 208 inserts the schedules from the 1995 Act, defining regions of court. It also provides a list for renumbering of other Acts.

Clause 209 amends the dictionary in Schedule 2 by removing definitions no longer required, inserting a new definition of 'registrar', amending the definition of 'enforcement officer' and making minor changes to another definition for clarity.

Part 29 Repeal of Supreme Court Act 1995

Clause 210 provides for the repeal of the 1995 Act.

Part 30 Amendment of this Act

Clause 211 provides that this Part amends this Act.

Clause 212 amends the long title of this Act.

Clause 213 amends section 88 of the proposed *Civil Proceedings Act 2011* as a consequence of the new national business names system to be administered by the Australian Government. This amendment proposes to allow proceedings to be 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 is registered on the new Commonwealth Business Names Register or held under business names legislation).

The new Commonwealth Business Names Register is a register to be established under the proposed Commonwealth *Business Names Registration Act 2011*. This proposed Act relies in part on the referral of legislative power by at least one State Parliament for its passage.

Holding a business name under business name legislation may only take place in accordance with section 54 of the proposed Commonwealth *Business Names Registration Act 2011* or schedule 1, item 5 of the Commonwealth *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

Clause 214 proposes to amend section 89 of the of the proposed Civil Proceedings Act 2011 to allow a court, despite proposed section 88, to vary its 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 is registered on the new Commonwealth Business Names Register or held under business names legislation), to make it an order against a person carrying on the business.

Clause 215 amends the Dictionary contained in Schedule 1 of the proposed *Civil Proceedings Act 2011* to provide a definition of the proposed Commonwealth Business Names Register.

Part 31 Consequential amendments of other legislation

Clause 216 makes minor and consequential amendments to the legislation as mentioned in Schedule 1A.

Part 32 Other amendments

Division 1 Amendment of Associations Incorporation Act 1981

Clause 217 states that this division amends the *Associations Incorporation Act 1981*.

Clause 218 renumbers section 64(2)(d) and (e) of the Act as section 64(2)(c) and (d) in order to correct a previous drafting error.

Clause 219 corrects a drafting error by amending section 91(3)(f) and (i) of the Act to replace ‘registrar’ with ‘chief executive.’

Clause 220 provides for insertion of new Part 11A (Voluntary Transfer of Incorporation). Division 1 contains new provisions with respect to incorporated associations. Division 2 contains new provisions with respect to *Religious, Educational and Charitable Institutions Act 1861* (RECI Act) corporations.

Clause 221 amends section 109(1) to clarify the right to apply to the chief executive for a review of a decision does not apply to a decision by the Minister to refuse the application under section 106K.

Clause 222 amends the schedule (Dictionary) to provide definitions for Part 11A.

Division 2 Amendment of BDMR Act

Clause 223 provides that this division amends the BDMR Act.

Clause 224 amends section 32(2) by providing that certain persons must give the registrar notice, in the approved form, within 7 days after the disposal of a human body. The persons who must give notice are the persons who arrange the disposal of the body (for example, a funeral director) and the person in charge of the cemetery or crematorium in which the disposal occurs. Failure to provide the notice is subject to a maximum penalty of 20 penalty units. The clause also provides that, if the cemetery or crematorium where the disposal occurs is in Queensland, the person in charge of the cemetery or crematorium must lodge the notice electronically unless the registrar reasonably considers it would be impractical to do so because the location of the cemetery or crematorium or other exceptional circumstances do not allow for electronic lodgement.

Division 3 Amendment of Cremations Act 2003

Clause 225 provides that this division amends the *Cremations Act 2003*.

Clause 226 amends section 11 by providing that after a cremation the person in charge of a crematorium must label the ashes in accordance with requirements that are to be prescribed under a regulation. Failure to comply is subject to a maximum penalty of 80 penalty units.

Division 4 Amendment of Electoral Act 1992

Clause 227 provides that this division amends the *Electoral Act 1992*.

Clause 228 inserts a new entry into the table setting out the persons or organisations to whom information in relation to electoral rolls may be provided on a discretionary basis. The clause provides that information may be provided to an entity prescribed under a regulation that is a department or State public authority for the purpose prescribed under a regulation.

Clause 229 is an amendment to provide clarity that section 106(1)(d)(i) applies to persons not enrolled for any district. The clause also adjusts the time under section 106(1)(d)(ii) from 5p.m. to 6p.m. as the latest time that a person may provide a notice to the electoral registrar for the purposes of section 106(1)(d).

Division 5 Amendment of Information Privacy Act 2009

Clause 230 provides that this division amends the *Information Privacy Act 2009*.

Clause 231 amends section 29 to update a reference to the definition of law enforcement agency, consequent on changes made in clause 233.

Clause 232 provides that the information commissioner may approve a leave of absence for the privacy commissioner in accordance with the privacy commissioner's existing entitlements. It replaces section 148, which provides that the Minister may grant leave to the privacy commissioner. The privacy commissioner is a deputy to the information commissioner. This clause provides a more practical arrangement for granting leave, avoiding the need for the Minister to personally approve individual applications. Rigorous measures to ensure accountability will be implemented within the Office of the Information Commissioner. This clause does not otherwise affect the privacy commissioner's leave entitlements.

Clause 233 amends the definition of 'law enforcement agency' for the purposes of Information Privacy Principle (IPP)11(1)(e) in Schedule 3 of the Act. IPP 11 provides that agencies must not disclose personal information to another entity unless one of a number of specified exceptions applies. IPP 11(1)(e) is one such exception, permitting agencies to disclose information if they are satisfied, on reasonable grounds, that disclosure of the information is necessary for certain functions and purposes conducted by or for a law enforcement agency. Current provisions define 'law enforcement agency' restrictively, so that only Queensland agencies fit within the definition. The effect of the current provisions is that agencies providing personal information to law enforcement agencies of the Commonwealth (for example, the Australian Federal Police) or other States or Territories may breach the Act. While some interstate agencies may obtain the information using compulsory powers, this option is not available to all relevant agencies with law enforcement functions.

Division 6 Amendment of JP Act

Clause 234 provides that this division amends the JP Act.

Clause 235 inserts a new section 35A in the JP Act to provide that JPs and C decs may sight proof of identity documents and record information in proof of identity documents for the purpose of taking an affidavit or attesting an instrument or document. The new section will oblige JPs and C decs, when they do record this information, not to disclose it except in accordance with their functions or as required by law and provide that JPs and C decs must take reasonable steps to ensure that this information is kept in a secure way.

Division 7 Amendment of QCAT Act

Clause 236 provides that this division amends the QCAT Act.

Clause 237 inserts a new Chapter 4, Part 3, division 5, which contains new section 194A, which applies if the period of office of a member ends, to allow that member to continue to be taken as a member for the purposes of finalising a proceeding. The clause also inserts a new section 194B, which applies if a member resigns, to allow that member to continue to be taken as a member for the purposes of finalising a proceeding.

Division 8 Amendment of Retirement Villages Act 1999

Clause 238 provides that this division amends the *Retirement Villages Act 1999*.

Clause 239 inserts two new notes into the existing section 15, to clarify the meaning of existing subsection 15(2) and also provide a reference to the new section 53A about how to calculate particular exit fees for a residence contract. In particular, the first note clarifies subsection 15(2) only states the day at which the exit fee is to be calculated and does not require exit fees to be calculated on a daily or other basis.

Clause 240 inserts a new section 53A that applies to an exit fee which is to be calculated having regard to the length of time the resident has resided in their accommodation unit. Subsection 53A(2) provides that for an existing residence contract, the exit fee must be calculated on a daily basis unless the contract expressly provides an alternate method of calculation. Subsection 53A(3) then provides that for a future residence contract, the exit fee must be calculated on a daily basis and this can not be contracted out of.

An example of the calculation of an exit fee on a daily basis is also provided under subsection 53A(2).

Division 9 Amendment of Right to Information Act 2009

Clause 241 provides that this division amends the *Right to Information Act 2009*.

Clause 242 provides that the information commissioner is entitled to leave of absence decided by the Governor in Council. This provision is modelled on the section 62(3) of the *Ombudsman Act 2001*. It replaces section 138, which provides that the Minister may grant leave to the information commissioner. This clause does not otherwise affect the information commissioner's leave entitlements.

Clause 243 provides that the information commissioner may approve leave of absence for the right to information commissioner in accordance with the right to information commissioner's existing entitlements. It replaces section 154, which provides that the Minister may grant leave to the right to information commissioner. The right to information commissioner is a deputy to the information commissioner. The clause provides a more practical arrangement for granting leave, avoiding the need for the Minister to personally approve applications for even short term leave. Rigorous measures to ensure accountability will be implemented within the Office of the Information Commissioner. This clause does not otherwise affect the right to information commissioner's leave entitlements.

Clause 244 removes an obsolete reference. Schedule 2, Part 2 of the Act currently provides that the functions of Government Owned Corporation (GOC) generators, together with their subsidiaries, are exempt from the operation of the Act, other than in relation to their community service

obligations. Following a restructure which took effect from 1 July 2011, three GOC Generators (CS Energy Limited, Stanwell Corporation Limited and Tarong Energy Corporation Limited) were integrated into two entities. Tarong Energy has had its GOC status revoked by regulation and has become a wholly-owned subsidiary of Stanwell Corporation. There is therefore no need to retain the separate reference to Tarong Energy. This clause does not affect the exempt status of any GOC.

Schedule 1A Minor and Consequential amendments

Schedule 1A provides for amendments of a minor and consequential nature.

Schedule 1

Schedule 1 is the dictionary.