

Queensland



MAGISTRATES COURTS ACT 1921

**Reprinted as in force on 12 April 1996
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 2

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 12 April 1996. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use expressions consistent with current drafting practice (s 29)
- reorder definitions consistent with current drafting practice (s 30)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 37 and 39)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including table of obsolete and redundant provisions**
- **editorial changes made in earlier reprints.**

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MAGISTRATES COURTS ACT 1921

[as amended by all amendments that commenced on or before 12 April 1996]

An Act to amend the laws relating to the jurisdiction of magistrates and justices of the peace in civil matters

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Magistrates Courts Act 1921*.

Definitions

2. In this Act—

“**action**” includes an action and proceedings in replevin or interpleader and garnishee proceedings.

“**action for a small debt**” means an action—

- (a) in which the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant with or without interest which, inclusive of interest, does not exceed the sum of \$5 000 whether on a balance of account or after an admitted set off, a reduction on account of any sum paid by or credited to the defendant or an abandonment of excess or otherwise; and
- (b) which the plaintiff by his or her plaint elects to have heard and determined as an action for a small debt.

“**ADR convenor**” means a mediator or case appraiser.

“**ADR costs**” means—

- (a) for a mediation—

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- (i) the mediator's fee; and
 - (ii) the venue provider's fee for providing the venue; and
 - (iii) other costs prescribed under the rules; and
- (b) for a case appraisal—
- (i) the case appraiser's fee; and
 - (ii) the venue provider's fee for providing the venue; and
 - (iii) other costs prescribed under the rules.

“ADR dispute” means a dispute referred to an ADR process.

“ADR process” see section 22.

“case appraisal” see section 24.

“case appraiser” means—

- (a) a case appraiser approved under section 26; or
- (b) a magistrate.

“dispute” means—

- (a) a dispute in an action; or
- (b) something else about which the parties are in dispute that may be dealt with in a mediation at the same time as an ADR dispute.

“district” means a district appointed under the *Justices Act 1886* for the purposes of a Magistrates Court.

“Magistrates Courts jurisdiction Act” means—

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

“mediation” see section 23.

“mediator” means a mediator approved under section 25.

“party” means a party to a dispute.

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

“referring order” means an order made under section 28 referring a dispute to an ADR process.

“rules” means rules of court under this Act.

“Small Debts Court” see section 13(2).

Registrars

3. A clerk of the court under the *Justices Act 1886* is the registrar of each Magistrates Court held at each place for which the clerk is appointed.

PART 2—JURISDICTION

Jurisdiction of Magistrates Courts

4. Subject to this Act—

- (a) every personal action in which the amount claimed is not more than \$40 000, whether on a balance of account or after an admitted set off or otherwise; and
- (b) every action brought to recover a sum of not more than \$40 000, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will; and
- (c) every action in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than \$40 000;

may be commenced in a Magistrates Court, and all Magistrates Courts shall within their respective districts have power and authority to hear and determine in a summary way all such actions.

Abandonment of excess etc.

5. A Magistrates Court shall have jurisdiction in a personal action if the original claim is reduced to \$40 000, or less, by payment, abandonment of

excess, or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered.

Splitting debt by giving bills etc.

6. If a defendant has given 2 or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum originally exceeding \$40 000, the plaintiff may sue separately upon each of the securities not exceeding \$40 000 as forming a distinct cause of action.

Title to land etc.

7.(1) Except as by this Act provided, a Magistrates Court shall not have jurisdiction to try any case in which the title to land, or the validity of a devise, bequest, or limitation under a will or settlement, is in question.

(2) If the title to land incidentally comes in question in an action, the court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the court shall not be evidence of title between the parties or their privies in another action in that court or in any proceedings in any other court.

Infants

8. Any person under the age of 18 years to whom any wages or any other sum whatsoever, whether liquidated or unliquidated, not exceeding the amount in respect of which a Magistrates Court has jurisdiction, is due may sue for and recover such sum in the court in the same manner as if the person were of full age.

Executors etc.

9.(1) Executors and administrators may sue and are liable to be sued in a Magistrates Court.

(2) A judgment obtained by a plaintiff but not satisfied previous to the plaintiff's death and also all causes of action shall survive to the plaintiff's personal representative, who may sue out execution in his or her own name in the same way that the plaintiff, if living, might have done.

Corporations

10. Corporations and joint stock companies which have an office or place of business at which they carry on business in Queensland shall be amenable to the jurisdiction of Magistrates Courts whether they are constituted under the laws of Queensland or not.

Plaint when equitable claim

11. In an action in which a plaintiff seeks to enforce an equitable claim under this Act, the plaintiff or so much of it as relates to the equitable claim shall express that the plaintiff is suing upon equitable grounds.

When Magistrates Court has no jurisdiction, case to be struck out

12. When an action is brought which a Magistrates Court has not jurisdiction to try, the court shall order the action to be struck out, and shall have power to award costs to the same extent and recoverable in the same manner as if the court had had jurisdiction and the plaintiff had been nonsuited.

Actions for small debts

13.(1) An action in which a plaintiff seeks to recover a debt or liquidated demand in money payable by a defendant with or without interest which, inclusive of interest, does not exceed the sum of \$5 000 whether on a balance of account or after an admitted set off, a reduction on account of any sum paid by or credited to the defendant or an abandonment of excess or otherwise may at the election of the plaintiff be heard and determined as an action for a small debt in accordance with this Act, and a Magistrates Court, within its district and otherwise in accordance with this Act, has power and authority to hear and determine such action.

(2) A Magistrates Court when hearing and determining an action for a small debt is called a “**Small Debts Court**”.

PART 3—MAGISTRATES COURT

Magistrates Courts to be courts of record

14.(1) Each Magistrates Court shall be a court of record, and the judgment thereof may be set up as a defence in any action brought in any court of law in Queensland.

(2) The entry of the judgment on the cause list of a Magistrates Court shall be deemed to be a record of such judgment.

In what Magistrates Courts actions to be brought

15. The districts and Magistrates Courts respectively in which proceedings may be brought and heard and determined shall be as prescribed by rules of court.

Constitution of Magistrates Courts

16. Every action, including an action for a small debt, within the jurisdiction of a Magistrates Court for hearing and determination shall be heard and determined by a magistrate sitting alone provided that, where the rules permit, an action, other than an action for a small debt, may be heard and determined by a registrar, not being a police officer, who shall, subject to and in accordance with the rules, have the jurisdiction and powers a magistrate has for the purpose.

Officers of Magistrates Court

17.(1) A Magistrates Court shall from time to time appoint a bailiff or bailiffs for the service and execution of the process, judgments, and orders authorised by this Act.

(2) Such bailiff or bailiffs shall receive to their own use the prescribed fees.

PART 4—PRACTICE AND PROCEDURE

Appearance to be in person or by barrister, or solicitor, or other person allowed by the court

18.(1) Subject to the rules and the orders of the court for the orderly transaction of business, a party to an action or a barrister or solicitor retained by or on behalf of any party, or any person allowed by special leave of the court, may appear to address a Magistrates Court and examine and cross-examine the witnesses.

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

Laws of evidence

19.(1) The laws of evidence that apply in the Supreme Court apply in the trial of all questions of fact in the court.

(2) However, in an action for a small debt or any other action in which the amount sued for is not more than \$5 000, a Magistrates Court—

- (a) is not bound by laws of evidence or procedure usually applicable to court cases; and
- (b) may inform itself of the facts in any way that it considers appropriate.

Evidence

20.(1) In any legal proceedings whatsoever the books of a Magistrates Court and any entries therein, or copies of the said books or entries, under the seal of the court and purporting to be signed and certified by the registrar, shall, upon production and on proof of the identity of the parties concerned, be evidence of the contents of the books or of the judgments or other entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

(2) All process of a Magistrates Court purporting to be sealed shall be received in evidence without further proof thereof.

PART 5—ADR PROCESSES

Division 1—Preliminary

Objects of part

21. The objects of this part are—

- (a) to provide an opportunity for litigants to participate in ADR processes in order to achieve negotiated settlements and satisfactory resolutions of disputes; and
- (b) to introduce ADR processes into the court system to improve access to justice for litigants and to reduce cost and delay; and
- (c) to provide a legislative framework allowing ADR processes to be conducted as quickly, and with as little formality and technicality, as possible; and
- (d) to safeguard ADR processes—
 - (i) by ensuring they remain confidential; and
 - (ii) by extending the same protection to participants in an ADR process they would have if the dispute were before a Magistrates Court.

Division 2—Important terms

ADR process

22.(1) An “**ADR process**” is a process of mediation or case appraisal under which the parties are helped to achieve an early, inexpensive settlement or resolution of their dispute.

(2) In division 6¹, an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

- (a) pre-mediation and post-mediation sessions; and
- (b) a case appraisal session; and
- (c) joint sessions; and
- (d) private sessions; and
- (e) another step prescribed under the rules.

Mediation

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

Case appraisal

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

(2) A case appraiser’s decision is not binding on the parties until—

- (a) the time prescribed by the rules for filing an election to go to trial has passed; and
- (b) a Magistrates Court, by order, gives effect to the decision.

Division 3—Establishment of ADR processes

Approval of mediators

25. The Chief Stipendiary Magistrate may approve, or refuse to approve, a person as a mediator.

¹ Confidentiality, protection and immunity

Approval of case appraisers

26. The Chief Stipendiary Magistrate may approve, or refuse to approve, a person as a case appraiser.

ADR register

27.(1) The registrar of a Magistrates Court in Brisbane nominated by the Chief Stipendiary Magistrate for the purpose must keep a register of information about ADR processes.

(2) The register may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.

(3) Without limiting subsection (2), the registrar may change the form in which a register or a part of a register is kept.

(4) The register must contain—

- (a)** the name and address of each mediator and each case appraiser (other than a magistrate); and
- (b)** other information prescribed under the rules; and
- (c)** other information decided by the Chief Stipendiary Magistrate.

Parties may agree to ADR process

28.(1) The parties to a dispute may agree to refer their dispute to an ADR process.

(2) If the parties agree to the referral, they must file a consent order in the form prescribed under the rules with the registrar.

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

Court may consider and order reference to ADR process

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

(2) The court may, by order (“**referring order**”), refer the dispute for mediation or case appraisal.

(3) Without limiting the court’s discretion, the court may take the following matters into account when deciding whether to refer a dispute to case appraisal—

- (a) whether the costs of litigating the dispute to the end are likely to be disproportionate to the benefit gained;
- (b) the likelihood of an appraisal producing a compromise or an abandonment of a claim or defence;
- (c) other circumstances justify an appraisal.

Parties must attend at ADR process if Magistrates Court orders

30.(1) If a referring order is made, the parties—

- (a) must attend before the ADR convenor appointed to conduct the ADR process; and
- (b) must not impede the ADR convenor in conducting and finishing the ADR process within the time allowed under the referring order.

(2) If a party impedes the ADR process, a Magistrates Court may impose sanctions against the party, including, for example—

- (a) by ordering that any claim for relief by the defaulting party is stayed until further order; and
- (b) by taking the party’s action into account when awarding costs in the proceeding or in another related proceeding between the parties.

Procedure at case appraisal

31.(1) At a case appraisal, the case appraiser—

- (a) must decide the procedure to be used at the case appraisal; and
- (b) may adopt any procedure that will, in the case appraiser’s opinion, enable a sound opinion of the likely outcome of the dispute to be reached; and

- (c) must finish the case appraisal as quickly as possible.
- (2) However, the case appraiser may, in special circumstances—
 - (a) receive evidence; and
 - (b) examine witnesses, and administer oaths to witnesses, who have been lawfully called before the case appraiser.
- (3) A Magistrates Court may, at any time, give directions about procedure to be used at the case appraisal.
- (4) This section is subject to section 32.

Subpoenas

- 32.(1) A person may be subpoenaed to appear at a case appraisal only by order of a Magistrates Court.
- (2) A person may not be subpoenaed to appear at a mediation.
- (3) A person subpoenaed to appear at a case appraisal must not be compelled to answer a question, or produce a document, the person could not be compelled to answer or produce before a Magistrates Court.

Division 4—Party unable to pay share of costs

Party unable to pay share of costs

- 33.(1) If, at any time, a Magistrates Court is of the opinion a party to an ADR process is unable, because of the party's financial circumstances, to pay the party's percentage of the ADR costs, the court may make an order appropriate in the circumstances.
- (2) Without limiting subsection (1), the order may provide—
 - (a) the reference to the ADR process be cancelled; or
 - (b) the referring order be revoked and another referring order made.

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

34.(1) If, at a mediation, the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and by the mediator.

(2) The agreement has the same effect as any other compromise.

Mediator to file certificate

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

Case appraiser to file certificate and decision

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

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

Orders giving effect to mediation agreement

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

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

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

Orders giving effect to case appraiser's decision

38.(1) A party may apply to a Magistrates Court for an order giving effect to a case appraiser's decision after the time prescribed under the rules

for electing to go to trial has passed.

(2) However, a party may apply for the order before the time mentioned in subsection (1) if all parties agree.

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

Division 6—Confidentiality, protection and immunity

ADR convenors to maintain secrecy

39.(1) An ADR convenor must not, without reasonable excuse, disclose information coming to the convenor's knowledge during an ADR process.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all the parties to the ADR process; or
- (b) for this part; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the ADR process; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or
- (f) under a requirement imposed under an Act.

Ordinary protection and immunity allowed

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

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

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

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

(5) In subsection (2)—

“**party**” includes a party’s lawyer or agent.

Admissions made to ADR convenors

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

(2) In subsection (1)—

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

*Division 7—Miscellaneous***Revocation of approval as mediator or case appraiser**

42.(1) The Chief Stipendiary Magistrate may revoke the approval of a person as a mediator or case appraiser.

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

PART 6—JUDGMENTS, NEW TRIALS, APPEALS AND RELATED MATTERS

Judgments to be final

43.(1) Subject to this Act, all judgments and orders made by a Magistrates Court shall be final and conclusive.

(2) Except as provided by this Act, or by or pursuant to any other Act now in force or hereafter to be passed a judgment given by a Magistrates Court, or an action brought before it or depending therein, shall not be removed by appeal, motion, writ of error or certiorari, or otherwise into any other court.

New trial

44.(1) Subject to this Act, any party dissatisfied with any decision of a Magistrates Court may, at any time within 7 clear days from such decision, apply to the court for a new trial.

(2) The court may grant the same upon such terms as to costs or otherwise as it thinks fit, or, in its discretion, may refuse the same with or without reasonable costs.

Appeal

45.(1) Subject to this Act, any party who is dissatisfied with the judgment or order of a Magistrates Court—

- (a) in an action in which the amount involved is more than \$5 000; or
- (b) in an action for the recovery of possession of land if—
 - (i) the value of the land is more than \$5 000; or
 - (ii) the annual rental of the land is more than \$5 000; or
- (c) in proceedings in interpleader in which the amount claimed or the value of the goods in question is more than \$5 000;

may appeal to a District Court as prescribed by the rules.

(2) Provided that—

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- (a) where in any of the cases above referred to in subsection (1) the amount is not more than \$5 000, an appeal shall lie by leave of a District Court or a judge thereof, who shall not grant such leave to appeal unless the court or judge is satisfied that some important principle of law or justice is involved;
- (b) an appeal shall not lie from the decision of the Magistrates Court if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the court shall be final.

(3) The appellant shall, within the time and in the manner prescribed, give notice of the appeal stating briefly the grounds thereof to the other party or the other party's solicitor, and shall also give security (to be approved by the registrar) for the costs of the appeal, or shall, instead of giving security, deposit in the hands of the registrar \$1 600, or such other sum as may be prescribed, to answer the costs of the appeal in the event of the appeal being dismissed.

(4) Notice of appeal shall not operate as a stay of execution upon the judgment, but the execution may proceed unless the magistrate or a judge of District Courts otherwise orders.

Special case stated

46. A Magistrates Court may state in the form of a special case for the opinion of a District Court any question of law arising in any case.

Jurisdiction of District Courts

47. On the hearing of an appeal or special case, a District Court may—

- (a) draw inferences of fact from facts found by the Magistrates Court, or from admitted facts or facts not disputed;
- (b) order a new trial on such terms as it thinks just;
- (c) order judgment to be entered for any party;
- (d) make any other order, on such terms as it thinks proper, to ensure the determination on the merits of the real questions in controversy between the parties;

- (e) as regards any special case, remit the matter to the Magistrates Court with the opinion of the District Court thereon;
- (f) make such order with respect to the costs of the appeal or special case as it thinks proper.

No appeal in action for small debt etc.

48.(1) The judgment of the Magistrates Court upon an action for a small debt shall be final and binding on all parties to the action and no appeal shall lie in respect thereof.

(2) No prerogative writ, whether certiorari, prohibition or otherwise shall issue and no declaratory judgment shall be given in respect of an action for a small debt or in respect of an order or judgment therein unless the court before which such writ or judgment is sought is satisfied that the Magistrates Court had no jurisdiction in respect of the action or that there has occurred a denial of natural justice to a party to the action.

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

49. An appeal lies to the District Court against—

- (a) a refusal to approve a person as a mediator or case appraiser; or
- (b) the revocation of approval of a person as a mediator or case appraiser.

PART 7—MISCELLANEOUS

Settlement

50. If upon the hearing of an action for a small debt it appears to a Magistrates Court that there are reasonable prospects of settling any matter in dispute by conciliation, the court may, at any stage of the proceedings, do all such things and take all such steps as may be likely to effect a settlement of the action, but if no such settlement can be reached, the court may

complete the hearing and determination of the action unless, in his or her absolute discretion, the magistrate constituting the court considers that he or she is or may be biased or likely to be biased by any statement or admission made by any party to or before the magistrate, in which case the action shall be heard and determined by the court constituted by another magistrate.

Closed hearing of actions for small debts

51. The hearing of an action for a small debt shall take place and the determination in respect thereof shall be made in a closed court or in chambers.

Publication of particulars of actions for small debts

52.(1) A registrar shall, in accordance with directions given by the Minister, cause to be published periodically in the gazette the following particulars relating to actions for small debts in the district in respect of which he or she is the registrar—

- (a) the name of the plaintiff;
- (b) the name of the defendant;
- (c) the nature of the action;
- (d) the nature of the judgment of the court.

(2) The Minister may give directions to every such registrar concerning times when such particulars are to be published, and such directions may be given to registrars generally or to any particular registrar.

Action against officers

53. If an action is brought against a person for anything done under a warrant or judgment or a certified copy thereof issued or made under this Act, the production of the warrant or judgment or a certified copy thereof under the seal of a Magistrates Court shall be sufficient proof of the authority of the court, and such person is hereby indemnified for whatsoever is done by the person in obedience thereto.

Court fees

54. There shall be payable in respect of every proceeding in a Magistrates Court the prescribed fees.

Fees and fines to be paid to consolidated fund

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

Fines, how to be enforced

56. Payment of any fine imposed by a Magistrates Court under the authority of this Act may be enforced upon the order of the court in like manner as payment of any debt adjudged in the court.

Procedure of court

57. The procedure for appeal to a Magistrates Court is, in the absence of relevant rules, as directed by a magistrate.

PART 8—RULES OF COURT**Rule making power**

58.(1) The Governor in Council may make rules of court under this Act for a jurisdiction law.

(2) Without limiting subsection (1), a rule may make provision about any matter that—

- (a) is required or permitted to be prescribed under a jurisdiction law;
or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to a jurisdiction law.

(3) Without limiting subsections (1) and (2), a rule may also make provision about—

- (a) the practices and procedures of Magistrates Courts and their registries; or
- (b) another matter mentioned in the schedule.

(4) In this section—

“jurisdiction law” means—

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

PART 9—TRANSITIONAL AND SAVINGS

References to Small Debts Court

59. A reference in another Act to a Small Debts Court is a reference to a Magistrates Court.

Saving of existing rules of court

60.(1) In this section—

“former section 14” means section 14 as in force immediately before the commencement.

“new section 14” means section 14² as in force immediately after the commencement.

(2) This section applies to—

- (a) a rule made under the former section 14 and in force immediately before the commencement; and

² Section 14 has been renumbered as section 58. See table of renumbered provisions.

Magistrates Courts Act 1921

(b) any other rule of court contained in an order in council made under this Act and in force immediately before the commencement.

(3) The rule continues in force after the commencement as if it were made under the new section 14.

(4) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(5) This section expires 2 years after it is made.

SCHEDULE**SUBJECT MATTER FOR RULES**

section 58

PART 1—GENERAL**Jurisdiction with consent**

1. Jurisdiction, with the consent of the parties to the action, to try an action that might be brought in the Supreme Court, and regulating the exercise of the consent jurisdiction.

Jurisdiction for recovery of possession of land

2. Jurisdiction, to the extent of the jurisdiction of District Courts, for the recovery of possession of land (with or without rent or mesne profits) by landlords from tenants and other persons.

Powers etc of registrars and other officers

3. The powers, duties, and authorities of officers of Magistrates Courts.

Sittings of Magistrates Courts

4. Sittings of Magistrates Courts.

Starting, and transferring, proceedings

5. Districts and courts in which proceedings must be started, and transfer of proceedings from a district to another district.

SCHEDULE (continued)

Summonses

6. Summonses for, and the attendance and examination of, witnesses before a Magistrates Court, in arbitration proceedings or otherwise.

New trials, appeals and evidence

7. New trials and appeals, including the evidence to be used at the new trial or appeal and the admission of further evidence in exceptional cases and special cases.

Proceedings after death or insolvency

8. Abatement or continuance of action if a plaintiff dies or becomes insolvent.

Keeping records by registrars

9. How books, entries and accounts (whether or not in documentary form) are to be kept by registrars.

Referral to arbitration

10. Referring, with or without consent of parties, an action to arbitration under the *Commercial Arbitration Act 1990*, and enforcing arbitration awards.

Service of documents

11. Practice and procedure of Magistrates Courts in relation to the service of documents inside and outside the State, including outside Australia.

Costs

12. Costs to be allowed to barristers and solicitors, and expenses to be paid to witnesses.

SCHEDULE (continued)

Fees

13. Fees of court, and when, how and by whom the fees are payable.

Forms

14. Forms.

Contempt

15. Imposing, or authorising a Magistrates Court of its own initiative, to impose fines or other punishment for contempt of court by any person (including officers of the Supreme Court), or for misconduct or neglect by any officer.

PART 2—ADR PROCESSES**Approval of mediator or case appraiser**

1. Experience and qualifications for approval as a mediator or case appraiser.

Staying proceedings

2. Staying proceedings, and the power of Magistrates Courts to stay proceedings, until an ADR process is finished.

Costs

3. Persons who must pay ADR costs and the way, and time within which, ADR costs are to be paid.

SCHEDULE (continued)

Jurisdiction

4. Jurisdiction of a case appraiser at a case appraisal.

Seeking independent advice or information

5. Ability of a mediator or case appraiser to seek independent advice or information.

Time for processes

6. Time within which an ADR process should be finished (which may be a time specified by the court).

Conduct of processes

7. Conduct of an ADR process.

Confidentiality

8. Confidentiality of a mediated agreement or case appraiser's decision.

Powers, procedures etc. applying to arbitrations

9. Applying procedures and other matters similar to those applying to arbitrations under the *Commercial Arbitration Act 1990*.

Penalties

10. Imposing penalties against a party who fails to cooperate in an ADR process.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 April 1996. Future amendments of the Magistrates Courts Act 1921 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Reprint date
1	12 November 1993	Act No. 39 of 1993

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Renumbered provisions	1

6 List of legislation

Magistrates Courts Act 1921 12 Geo 5 No. 22

date of assent 11 November 1921

s 14 commenced 11 November 1921 (see s 14(3))

remaining provisions commenced 3 April 1922 (proc pubd gaz 30 March 1922 p 999)

as amended by—

Magistrates Courts Acts Amendment Act 1954 3 Eliz 2 No. 32

date of assent 28 October 1954

commenced on date of assent

Justices Acts Amendment Act 1964 No. 32 s 3 sch

date of assent 14 April 1964

commenced 1 January 1965 (proc pubd gaz 7 November 1964 p 827)

Age of Majority Act 1974 No. 57 s 8 sch

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

Limitation of Actions Act 1974 No. 75 s 4 sch

date of assent 1 November 1974

commenced 1 July 1975 (see s 2)

Magistrates Courts Act Amendment Act 1975 No. 23

date of assent 15 May 1975

commenced 1 July 1975 (proc pubd gaz 14 June 1975 p 934)

District Courts' and Magistrates Courts' Jurisdiction Act 1976 No. 19 pt 3

date of assent 15 April 1976

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

District and Magistrates Courts Acts and Property Law Act Amendment Act 1982 No. 51 pt 3

date of assent 22 October 1982

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

District Courts (Venue of Appeals) Act 1988 No. 7 pt 4

date of assent 7 April 1988

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

District Courts Act and Other Acts Amendment Act 1989 No. 40 pt 3

date of assent 5 May 1989

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

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 6

date of assent 14 November 1990

commenced on date of assent

Magistrates Courts Jurisdiction Amendment Act 1993 No. 39 pts 1–2 s 3 sch

date of assent 7 September 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1993 (1993 SL No. 384)

Courts Legislation Amendment Act 1995 No. 23 pts 1, 4 s 17 sch 2

date of assent 11 April 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 12 April 1996 (automatic commencement under AIA s 15DA(2))

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 12 April 1996 (see s 2(1) sch 1)

7 List of annotations**PART 1—PRELIMINARY****pt hdg** ins 1995 No. 23 s 17 sch 2**Short title****s 1** ins 1995 No. 23 s 17 sch 2**Definitions****prov hdg** sub 1995 No. 23 s 18(1)**s 2** def “**action for a small debt**” ins 1975 No. 23 s 3
amd 1982 No. 51 s 7; 1989 No. 40 s 18def “**ADR costs**” ins 1995 No. 23 s 18(2)def “**ADR convenor**” ins 1995 No. 23 s 18(2)def “**ADR dispute**” ins 1995 No. 23 s 18(2)def “**ADR process**” ins 1995 No. 23 s 18(2)def “**case appraisal**” ins 1995 No. 23 s 18(2)def “**case appraiser**” ins 1995 No. 23 s 18(2)def “**dispute**” ins 1995 No. 23 s 18(2)def “**district**” sub 1964 No. 32 s 3 sch; 1993 No. 39 s 3 schdef “**Justice**” om 1993 No. 39 s 3 schdef “**Magistrates Court**” or “**Court**” amd 1964 No. 32 s 3 sch
om 1993 No. 39 s 3 schdef “**Magistrates Courts jurisdiction Act**” ins 1995 No. 58 s 4 sch 1def “**mediation**” ins 1995 No. 23 s 18(2)def “**mediator**” ins 1995 No. 23 s 18(2)def “**Minister**” ins 1990 No. 80 s 3 sch 6

om 1993 No. 39 s 3 sch

def “**party**” ins 1995 No. 23 s 18(2)def “**prescribed**” om 1993 No. 39 s 3 schdef “**referring court**” ins 1995 No. 23 s 18(2)def “**referring order**” ins 1995 No. 23 s 18(2)def “**registrar**” sub 1964 No. 32 s 3 sch

om 1993 No. 39 s 3 sch

def “**rules**” ins 1995 No. 23 s 18(2)
 def “**rules of court**” om 1993 No. 39 s 3 sch
 def “**Small Debts Court**” ins 1995 No. 23 s 18(2)
 def “**this Act**” om 1993 No. 39 s 3 sch

Registrars

s 3 amd 1964 No. 32 s 3 sch
 sub 1993 No. 39 s 3 sch

PART 2—JURISDICTION

pt hdg ins 1995 No. 23 s 17 sch 2

Jurisdiction of Magistrates Courts

s 4 amd 1954 3 Eliz 2 No. 32 s 2; 1964 No. 32 s 3 sch; 1976 No. 19 s 17; 1982
 No. 51 s 7; 1989 No. 40 s 19; 1993 No. 39 s 4

Abandonment of excess etc.

s 5 (prev s 4(2)) amd 1954 3 Eliz 2 No. 32 s 2(a); 1976 No. 19 s 17(a); 1982
 No. 51 s 7; 1989 No. 40 s 19; 1993 No. 39 s 4
 renum 1993 No. 39 s 3 sch
 amd 1995 No. 23 s 17 sch 2

Splitting debt by giving bills etc.

s 6 (prev s 4(3)) amd 1954 3 Eliz 2 No. 32 s 2(a); 1976 No. 19 s 17(a); 1982
 No. 51 s 7; 1989 No. 40 s 19; 1993 No. 39 s 4
 renum 1993 No. 39 s 3 sch

Title to land etc.

s 7 (prev s 4(4)) renum 1993 No. 39 s 3 sch
 amd 1995 No. 23 s 17 sch 2

Infants

s 8 (prev s 4(5)) amd 1974 No. 57 s 8 sch
 renum 1993 No. 39 s 3 sch
 amd 1995 No. 23 s 17 sch 2

Executors etc.

s 9 (prev s 4(6)) renum 1993 No. 39 s 3 sch
 amd 1995 No. 23 s 17 sch 2

Corporations

s 10 (prev s 4(7)) renum 1993 No. 39 s 3 sch

Plaint when equitable claim

s 11 (prev s 4(8)) renum 1993 No. 39 s 3 sch

When Magistrates Court has no jurisdiction, case to be struck out

prov hdg amd 1995 No. 23 s 17 sch 2

s 12 (prev s 4(9)) renum 1993 No. 39 s 3 sch
 amd 1995 No. 23 s 17 sch 2

Actions for small debts

s 13 (prev s 7A) ins 1975 No. 23 s 5
 amd 1982 No. 51 s 7; 1989 No. 40 s 20; 1995 No. 23 s 17 sch 2
 renum 1995 No. 23 s 17 sch 2

PART 3—MAGISTRATES COURTS**pt hdg** ins 1995 No. 23 s 17 sch 2**Magistrates Courts to be courts of record****s 14 prov hdg** amd 1995 No. 23 s 17 sch 2**In what Magistrates Courts actions to be brought****prov hdg** amd 1995 No. 23 s 17 sch 2**s 15** amd 1995 No. 23 s 17 sch 2**Constitution of Magistrates Court****prov hdg** amd 1995 No. 23 s 17 sch 2**s 16** amd 1954 3 Eliz 2 No. 32 s 3; 1964 No. 32 s 3 sch

sub 1975 No. 23 s 4

amd 1995 No. 23 s 17 sch 2

Actions for small debts**s 7A** prev s 7A renum and reloc as s 13 1995 No. 23 s 17 sch 2**Officers of Magistrates Court****prov hdg** amd 1995 No. 23 s 17 sch 2**s 17** amd 1964 No. 32 s 3 sch; 1995 No. 23 s 17 sch 2**PART 4—PRACTICE AND PROCEDURE****pt hdg** ins 1995 No. 23 s 17 sch 2**Appearance to be in person or by barrister, or solicitor, or other person allowed by the court****s 18** amd 1995 No. 23 s 17 sch 2**Laws of evidence****prov hdg** sub 1995 No. 23 s 17 sch 2**s 19** amd 1954 3 Eliz 2 No. 32 s 4; 1975 No. 23 s 6; 1982 No. 51 s 7; 1989 No. 40 s 21; 1993 No. 39 s 5**Evidence****s 20** (prev s 10(2)) renum 1993 No. 39 s 3 sch
amd 1995 No. 23 s 17 sch 2**PART 5—ADR PROCESSES****pt hdg** ins 1995 No. 23 s 19**Division 1—Preliminary****div hdg** ins 1995 No. 23 s 19**Objects of part****s 21** ins 1995 No. 23 s 19**Division 2—Important terms****div hdg** ins 1995 No. 23 s 19**ADR process****s 22** ins 1995 No. 23 s 19**Mediation****s 23** ins 1995 No. 23 s 19

Case appraisal

s 24 ins 1995 No. 23 s 19

Division 3—Establishment of ADR processes

div hdg ins 1995 No. 23 s 19

Approval of mediators

s 25 ins 1995 No. 23 s 19

Approval of case appraisers

s 26 ins 1995 No. 23 s 19

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s 27 ins 1995 No. 23 s 19

Parties may agree to ADR process

s 28 ins 1995 No. 23 s 19

Court may consider and order reference to ADR process

s 29 ins 1995 No. 23 s 19

Parties must attend at ADR process if Magistrates Court orders

s 30 ins 1995 No. 23 s 19

Procedure at case appraisal

s 31 ins 1995 No. 23 s 19

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Division 4—Party unable to pay share of costs

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Division 5—What to do when ADR process is finished

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Mediated resolution agreement

s 34 ins 1995 No. 23 s 19

Mediator to file certificate

s 35 ins 1995 No. 23 s 19

Case appraiser to file certificate and decision

s 36 ins 1995 No. 23 s 19

Orders giving effect to mediation agreement

s 37 ins 1995 No. 23 s 19

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Division 6—Confidentiality, protection and immunity

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s 39 ins 1995 No. 23 s 19

Ordinary protection and immunity allowed

s 40 ins 1995 No. 23 s 19

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Revocation of approval as mediator or case appraiser

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PART 6—JUDGMENTS, NEW TRIALS, APPEALS AND RELATED MATTERS

pt hdg ins 1995 No. 23 s 17 sch 2

Judgments to be final

s 43 amd 1976 No. 19 s 18; 1989 No. 40 s 22; 1993 No. 39 s 6; 1995 No. 23 s 17 sch 2

New trials 44 (prev s 11(2)) renum 1993 No. 39 s 3 sch
amd 1995 No. 23 s 17 sch 2**Appeal**s 45 (prev s 11(3)) amd 1954 3 Eliz 2 No. 32 s 5; 1982 No. 51 s 7; 1988 No. 7 s 14(a)
renum 1993 No. 39 s 3 sch
amd 1995 No. 23 s 17 sch 2**Special case stated**prov hdg amd 1995 No. 23 s 17 sch 2
s 46 (prev s 11(4)) amd 1988 No. 7 s 14(b)
renum 1993 No. 39 s 3 sch
amd 1995 No. 23 s 17 sch 2**Jurisdiction of District Courts**s 47 (prev s 11(5)) amd 1988 No. 7 s 14(c)
renum 1993 No. 39 s 3 sch**No appeal in action for small debt etc.**prov hdg ins 1993 No. 39 s 3 sch
s 48 (prev s 11(6)) ins 1975 No. 23 s 7
renum 1993 No. 39 s 3 sch**Appeal against refusal to approve and revocation of appeal as mediator or case appraiser**

s 49 ins 1995 No. 23 s 20

PART 7—MISCELLANEOUS

pt hdg ins 1995 No. 23 s 17 sch 2

Settlement

s 50 ins 1975 No. 23 s 8
amd 1995 No. 23 s 17 sch 2

Closed hearing of actions for small debts

s 51 ins 1975 No. 23 s 9

Publication of particulars of actions for small debts

s 52 ins 1975 No. 23 s 10
amd 1990 No. 80 s 3 sch 6

Action against officers

s 53 amd 1974 No. 75 s 4 sch; 1995 No. 23 s 17 sch 2

Fees and fines to be paid to consolidated fund

s 55 (prev s 13(2) 1st sentence) renum 1993 No. 39 s 3 sch

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s 56 (prev s 13(2) 2nd sentence) renum 1993 No. 39 s 3 sch
amd 1995 No. 23 s 17 sch 2

Procedure of court

s 57 ins 1995 No. 23 s 21

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pt hdg ins 1995 No. 23 s 17 sch 2

Rule making power

s 58 amd 1989 No. 40 s 23; 1993 No. 39 s 3 sch
sub 1995 No. 23 s 22
amd 1995 No. 58 s 4 sch 1

PART 9—TRANSITIONAL AND SAVINGS

pt hdg ins 1995 No. 23 s 17 sch 2

References to Small Debts Court

s 59 ins 1993 No. 39 s 3 sch

Saving of existing rules of court

s 60 ins 1993 No. 39 s 3 sch
sub 1995 No. 23 s 23
exp 2 years after it is made (see s 16(5))
AIA s 20A applies (see s 16(4))

Numbering and renumbering of Act

s 17 ins 1995 No. 23 s 24
om R2 (see RA s 37)

SCHEDULE—SUBJECT MATTER FOR RULES

ins 1995 No. 23 s 25

8 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to stipendiary magistrate	Acts Interpretation Act 1954 s 36 def “magistrate”

9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

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