

Queensland



MAGISTRATES COURTS ACT 1921

**Reprinted as in force on 11 February 2000
(includes amendments up to Act No. 89 of 1999)**

Warning—see last endnote for uncommenced amendments

Reprint No. 2D

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Information about this reprint

This Act is reprinted as at 11 February 2000. 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.

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

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



MAGISTRATES COURTS ACT 1921

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Definitions	5
3	Registrars	7
PART 2—JURISDICTION		
4	Jurisdiction of Magistrates Courts	7
4A	Consent jurisdiction	8
5	Abandonment of excess etc.	8
6	Splitting debt by giving bills etc.	8
7	Title to land etc.	8
8	Infants	9
9	Executors etc.	9
10	Corporations	9
11	Plaint when equitable claim	9
PART 3—MAGISTRATES COURT		
14	Magistrates Courts to be courts of record	10
15	In what Magistrates Courts actions to be brought	10
16	Constitution of Magistrates Courts	10
17	Officers of Magistrates Court	10
PART 4—PRACTICE AND PROCEDURE		
18	Appearance to be in person or by barrister, or solicitor, or other person allowed by the court	11
19	Laws of evidence	11
20	Evidence	11

PART 5—ADR PROCESSES*Division 1—Preliminary*

21	Objects of part	12
----	-----------------------	----

Division 2—Important terms

22	ADR process	12
23	Mediation	13
24	Case appraisal	13

Division 3—Establishment of ADR processes

25	Approval of mediators	13
26	Approval of case appraisers	13
27	ADR register	14
28	Parties may agree to ADR process	14
29	Court may consider and order reference to ADR process	14
30	Parties must attend at ADR process if Magistrates Court orders	15
31	Procedure at case appraisal	15
32	Subpoenas	16

Division 4—Party unable to pay share of costs

33	Party unable to pay share of costs	16
----	--	----

Division 5—What to do when ADR process is finished

34	Mediated resolution agreement	17
35	Mediator to file certificate	17
36	Case appraiser to file certificate and decision	17
37	Orders giving effect to mediation agreement	17
38	Orders giving effect to case appraiser's decision	17

Division 6—Confidentiality, protection and immunity

39	ADR convenors to maintain secrecy	18
40	Ordinary protection and immunity allowed	18
41	Admissions made to ADR convenors	19

Division 7—Miscellaneous

42	Revocation of approval as mediator or case appraiser	19
----	--	----

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

43	Judgments to be final	20
----	-----------------------------	----

Magistrates Courts Act 1921

44	New trial	20
45	Appeal	20
45A	Limitation on appeal if minor debt claim	21
46	Special case stated	21
47	Jurisdiction of the District Court	22
49	Appeal against refusal to approve and revocation of approval as mediator or case appraiser	22

PART 7—MISCELLANEOUS

50	Contempt	22
51	Transferred proceeding	23
52	Publication of particulars of minor debt claims	23
53	Action against officers	24
54	Court fees	24
55	Fees and fines to be paid to consolidated fund	24
56	Fines, how to be enforced	24
57	Procedure of court	24

PART 9—VALIDATIONS, SAVINGS AND TRANSITIONAL

59	References to Small Debts Court	25
----	---	----

ENDNOTES

1	Index to endnotes	26
2	Date to which amendments incorporated	26
3	Key	27
4	Table of earlier reprints	27
5	Tables in earlier reprints	27
6	List of legislation	28
7	List of annotations	30
8	Table of renumbered provisions	36
9	Provisions that have not commenced and are not incorporated into reprint	37

MAGISTRATES COURTS ACT 1921

[as amended by all amendments that commenced on or before 11 February 2000]

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.

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

“**ADR costs**” means—

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

Magistrates Courts Act 1921

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

“ADR process” see section 22.

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

- (a) in the case of a mediator—approval under section 25;¹ or
- (b) in the case of a case appraiser—approval under section 26.²

“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.

“mediation” see section 23.

“mediator” means a mediator approved under section 25 or a mediator within the meaning of the *Dispute Resolution Centres Act 1990*.

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

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

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

¹ Section 25 (Approval of mediators)

² Section 26 (Approval of case appraisers)

“**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 the *Uniform Civil Procedure Rules*.

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 \$50 000, 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 \$50 000, 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 \$50 000;

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.

Consent jurisdiction

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

(2) The agreement must—

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

Abandonment of excess etc.

5. A Magistrates Court shall have jurisdiction in a personal action if the original claim is reduced to \$50 000, 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 \$50 000, the plaintiff may sue separately upon each of the securities not exceeding \$50 000 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 plaint or so much of it as relates to the equitable claim shall express that the plaintiff is suing upon equitable grounds.

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

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 6³, an “**ADR process**” includes all the steps involved in an ADR process, including, for example—

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

³ Confidentiality, protection and immunity

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

Mediation

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.

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.

(5) However, subsection (4) does not require the registrar to enter in the register the name and address of, and the other information about, a mediator under the *Dispute Resolution Centres Act 1990*.

Parties may agree to ADR process

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.

(4) If the court decides to refer the dispute to a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if the order appoints the director of a specified dispute resolution centre as mediator.

Parties must attend at ADR process if 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

Magistrates Courts Act 1921

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.

Magistrates Courts Act 1921

(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; or

- (d) in a proceeding under the *Property Law Act 1974*, part 19, division 4, subdivision 1;⁴

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

(2) Provided that—

- (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 the District Court or a District Court judge, 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) Within the time and in the way prescribed by the rules, the appellant must give to the other party or the other party's solicitor notice of the appeal, briefly stating the grounds of the appeal.

(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 District Court judge otherwise orders.

Limitation on appeal if minor debt claim

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

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

Special case stated

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

⁴ *Property Law Act 1974*, part 19 (Property (De facto Relationships)), division 4 (Resolution of financial matters by court), subdivision 1 (Declaration of property interests)

Jurisdiction of the District Court

- 47.** On the hearing of an appeal or special case, the 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.

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**Contempt**

- 50.(1)** A person is in contempt of a Magistrates Court if the person—
- (a) wilfully insults a magistrate or a registrar, bailiff, or other court officer during the person's sitting or attendance in court, or in going to or returning from the court; or

Magistrates Courts Act 1921

- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in court; or
- (c) unlawfully obstructs or assaults someone in attendance in court; or
- (d) without lawful excuse, disobeys a lawful order or direction of the court at the hearing of any proceeding.

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

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

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

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

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

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

Transferred proceeding

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

Publication of particulars of minor debt claims

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 minor debt claims 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 proceeding;
- (d) the nature of the judgment order 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 9—VALIDATIONS, SAVINGS AND TRANSITIONAL

References to Small Debts Court

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

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	26
3 Key	27
4 Table of earlier reprints	27
5 Tables in earlier reprints	27
6 List of legislation	28
7 List of annotations	30
8 Table of renumbered provisions	36
9 Provisions that have not commenced and are not incorporated into reprint . .	37

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 11 February 2000. 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
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 39 of 1993	12 November 1993
2	to Act No. 58 of 1995	12 April 1996
2A	to Act No. 79 of 1996	3 March 1997
2B	to Act No. 38 of 1997	8 August 1997
2C	to Act No. 19 of 1999	1 October 1999

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Obsolete and redundant provisions	2
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 (automatic commencement under AIA s 15DA(2)) (see also 1995 No. 58 s 2(1) sch 1)

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 23

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 11

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 1997 (1997 SL No. 235)

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

date of assent 1 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(3))

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999 No. 66 ss 1, 2(2) pt 5

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

Property Law Amendment Act 1999 No. 89 pt 1 s 8 sch

date of assent 21 December 1999

commenced on date of assent

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 18
om 1998 No. 20 s 27 sch 2

def “**ADR convenor**” ins 1995 No. 23 s 18(2)

def “**ADR costs**” 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 “**approval**” ins 1997 No. 38 s 72(1)

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 sch

def “**Justice**” om 1993 No. 39 s 3 sch

def “**Magistrates Court**” or “**Court**” amd 1964 No. 32 s 3 sch
om 1993 No. 39 s 3 sch

def “**Magistrates Courts jurisdiction Act**” ins 1995 No. 58 s 4 sch 1
om 1998 No. 20 s 27 sch 2

def “**mediation**” ins 1995 No. 23 s 18(2)

def “**mediator**” ins 1995 No. 23 s 18(2)

amd 1997 No. 38 s 72(2)

def “**Minister**” ins 1990 No. 80 s 3 sch 6

om 1993 No. 39 s 3 sch

def “**minor claim**” ins 1998 No. 20 s 27 sch 2

def “**minor debt claim**” ins 1998 No. 20 s 27 sch 2

def “**party**” ins 1995 No. 23 s 18(2)

def “**prescribed**” om 1993 No. 39 s 3 sch

def “**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)

sub 1998 No. 20 s 27 sch 2

def “**rules of court**” om 1993 No. 39 s 3 sch

def “**Small Debts Court**” ins 1995 No. 23 s 18(2)

om 1998 No. 20 s 27 sch 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; 1997 No. 38 s 73**Consent jurisdiction****s 4A** ins 1998 No. 20 s 27 sch 2**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; 1997 No. 38 s 73**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
amd 1997 No. 38 s 73**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
om 1998 No. 20 s 27 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
om 1998 No. 20 s 27 sch 2**PART 3—MAGISTRATES COURT****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 Courts****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; 1998 No. 20 s 27 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; 1998 No. 20 s 27 sch 2**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**ADR register****s 27** ins 1995 No. 23 s 19
amd 1997 No. 38 s 74**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
amd 1997 No. 38 s 75; 1999 No. 66 s 25**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**Subpoenas****s 32** ins 1995 No. 23 s 19**Division 4—Party unable to pay share of costs****div hdg** ins 1995 No. 23 s 19**Party unable to pay share of costs****s 33** ins 1995 No. 23 s 19**Division 5—What to do when ADR process is finished****div hdg** ins 1995 No. 23 s 19**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**Orders giving effect to case appraiser's decision****s 38** ins 1995 No. 23 s 19**Division 6—Confidentiality, protection and immunity****div hdg** ins 1995 No. 23 s 19**ADR convenors to maintain secrecy****s 39** ins 1995 No. 23 s 19

Ordinary protection and immunity allowed**s 40** ins 1995 No. 23 s 19**Admissions made to ADR convenors****s 41** ins 1995 No. 23 s 19**Division 7—Miscellaneous****div hdg** ins 1995 No. 23 s 19**Revocation of approval as mediator or case appraiser****s 42** ins 1995 No. 23 s 19**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 trial****s 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; 1996 No. 79 s 87; 1999 No. 19 s 3 sch; 1999 No. 89 s 8 sch**Limitation on appeal if minor debt claim****s 45A** ins 1998 No. 20 s 27 sch 2
amd 1999 No. 66 s 26**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; 1999 No. 19 s 3 sch**Jurisdiction of the District Court****prov hdg** amd 1999 No. 19 s 3 sch
s 47 (prev s 11(5)) amd 1988 No. 7 s 14(c)
renum 1993 No. 39 s 3 sch
amd 1999 No. 19 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
om 1998 No. 20 s 27 sch 2

Appeal against refusal to approve and revocation of approval 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

Contempts 50 ins 1975 No. 23 s 8
amd 1995 No. 23 s 17 sch 2
sub 1998 No. 20 s 27 sch 2
amd 1999 No. 66 s 27**Transferred proceeding**s 51 ins 1975 No. 23 s 9
sub 1998 No. 20 s 27 sch 2**Publication of particulars of minor debt claims**prov hdg amd 1998 No. 20 s 27 sch 2
s 52 ins 1975 No. 23 s 10
amd 1990 No. 80 s 3 sch 6; 1998 No. 20 s 27 sch 2; 1999 No. 66 s 28**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

Fines, how to be enforceds 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

PART 8—RULES OF COURTpt hdg ins 1995 No. 23 s 17 sch 2
om 1998 No. 20 s 27 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
om 1998 No. 20 s 27 sch 2**PART 9—VALIDATIONS, SAVINGS AND TRANSITIONAL**pt hdg ins 1995 No. 23 s 17 sch 2
sub 1997 No. 38 s 76**References to Small Debts Court**

s 59 ins 1993 No. 39 s 3 sch

Saving of existing rules of courts 60 ins 1993 No. 39 s 3 sch
sub 1995 No. 23 s 23

exp 12 April 1998 (see s 60(5))
 AIA s 20A applies (see s 60(4))
 om 1998 No. 20 s 27 sch 2

Validation—exercise of registrar’s duties by deputy registrars at certain places
s 61 ins 1997 No. 38 s 77
 exp 2 August 1997 (see s 61(3))

Validation—acting deputy registrars
s 62 ins 1997 No. 38 s 77
 exp 2 August 1997 (see s 62(3))

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
 om 1998 No. 20 s 27 sch 2

Registration and enforcement of adjudicators’ orders
s 16 ins 1997 No. 28 s 295 sch 3
 om 1998 No. 20 s 27 sch 2

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS
 under the Reprints Act 1992 s 43

Previous	Renumbered as
4A	5
4B	6
4C	7
4D	8
4E	9
4F	10
4G	11
4H	12
4I	13
5	14
6	15
7	16
8	17
9	18
10	19
10A	20
10B	21
10C	22

10D	23
10E	24
10F	25
10G	26
10H	27
10I	28
10J	29
10K	30
10L	31
10M	32
10N	33
10O	34
10P	35
10Q	36
10R	37
10S	38
10T	39
10U	40
10V	41
10W	42
11	43
11AA	44
11AB	45
11AC	46
11AD	47
11AE	48
11AF	49
11A	50
11B	51
11C	52
12	53
13	54
13A	55
13B	56
13C	57
14	58
15	59
16	60

9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999 No. 66 ss 25–28 read as follows—

Amendment of s 29 (Court may consider and order reference to ADR process)

25.(1) Section 29(2) to (4)—

renumber as section 29(3) to (5).

(2) Section 29—

insert—

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

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

Amendment of s 45A (Limitation on appeal if minor debt claim)

26. Section 45A(1) and (2), ‘order made’—

omit.

Amendment of s 50 (Contempt)

27.(1) Section 50(1)(a) to (d)—

renumber as section 50(1)(b) to (e).

(2) Section 50(1)—

insert—

- ‘(a) without lawful excuse, fails to comply with an order of the court, other than an order mentioned in paragraph (e), or an undertaking given to the court; or’.

(3) Section 50(1)—

insert—

- ‘(f) commits any other contempt of the court.’.

(4) Section 50(1), penalty—

omit.

(5) Section 50(3) to (5)—

renumber as section 50(5) to (7)

(6) Section 50(7), as renumbered, ‘(4)(a)’—

omit, insert—

‘(6)(a)’.

(7) Section 50(2)—

omit, insert—

‘(2) A contempt under subsection (1) must be dealt with in the way prescribed under the Uniform Civil Procedure Rules.

‘(3) However—

- (a) a contempt mentioned in subsection (1)(a) may be punished by a maximum penalty of 200 penalty units or 3 years imprisonment; and
- (b) a contempt mentioned in subsection (1)(b) to (f) may be punished by a maximum penalty of 84 penalty units or 1 year’s imprisonment.

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

Amendment of s 52 (Publication of particulars of minor debt claims)

28. Section 52(1)(d), ‘order’—

omit.