



Western Australia

Supreme Court Act 1935

Compare between:

[02 Dec 2005, 07-b0-03] and [01 Jan 2006, 07-c0-03]

Western Australia

Supreme Court Act 1935

An Act to consolidate and amend the law relating to the Supreme Court.

Part I — Preliminary

1. Short title and commencement

This Act may be cited as the *Supreme Court Act 1935*, and shall come into operation on a date to be fixed by proclamation ¹.

[2. *Repealed by No. 10 of 1998 s. 76.*]

3. Repeal and savings

The Acts mentioned in the First Schedule are hereby repealed to the extent therein stated:

Provided that, subject as in this Act otherwise expressly provided, and to the provisions of section 16 of the *Interpretation Act 1918*²: —

- (a) Nothing in this repeal shall affect any proclamation published, Order in Council, rule, order or regulation made, commission issued, direction given, or thing done, under any enactment repealed by this Act; and every such proclamation, Order in Council, rule, order, regulation, commission or direction shall continue in force, and shall have effect as if published, made, issued, or given under this Act.
- (b) Any person holding office, or serving, or deemed to be serving under any Act or enactment repealed by this Act, shall continue in office or service as if he had been appointed under this Act, and nothing in this repeal shall affect the terms and conditions on and subject to which any person held office immediately before the commencement of this Act.
- (c) Save as therein otherwise expressly provided, nothing in this Act —
 - (i) shall affect the operation of any enactment which is in force at the commencement of this Act, and is not expressly repealed by this Act:

- (ii) shall be construed to take away, lessen, or impair any jurisdiction, power, or authority (judicial or ministerial) which is now vested in or capable of being exercised by the Supreme Court, or any one or more of the judges thereof;
- (iii) shall affect the operation of any rules of court in force at the commencement of this Act, or, subject to the rules of court, any practice or procedure of the Court, or any practice or usage of or connected with any of the offices of the Court, or the officers thereof, in force at the commencement of this Act.
- (d) All actions, matters and proceedings commenced under any Act or enactment repealed by this Act, and pending or in progress at the commencement of this Act may be continued, completed and enforced under this Act.

4. Interpretation

- (1) In this Act, unless the context otherwise requires: —
 - “action”** means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include any criminal proceeding;
 - “cause”** includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;
 - “Chief Justice”** means the Chief Justice of Western Australia and includes a judge appointed to act in the office of Chief Justice under section 10(3);
 - “Court”** means the Supreme Court of Western Australia;
 - “Court of Appeal”** means the division of the Supreme Court referred to in section 7(1)(b);
 - “Court of Appeal Registrar”** means the Court of Appeal Registrar appointed as described in section 155(1) and includes a duly appointed acting Court of Appeal Registrar;

s. 4

“defendant” includes any person served with any writ of summons or other process, or served with notice of, or entitled to attend any proceedings;

“inferior court” includes the Magistrates Court or any other inferior court;

“issue of fact” includes the assessment of damages in any cause;

“judge of appeal” means a judge of the Supreme Court who also holds a commission as a judge of appeal;

“judgment” includes decree;

“jurisdiction” includes all powers and authorities incident to the exercise of jurisdiction;

“legal practitioner” means a legal practitioner as defined in the *Legal Practice Act 2003*;

“master” means a master of the Supreme Court appointed under the provisions of this Act and includes a duly appointed acting master;

“matrimonial cause” means any action for dissolution of marriage, nullity of marriage, judicial separation, jactitation of marriage, or restitution of conjugal rights;

“matter” includes every proceeding in the Court, not in a cause;

~~**“oath”** includes solemn affirmation and statutory declaration;~~

“officer of Court” includes a referee;

“order” includes rule;

“owner” when used with reference to a vessel, includes any person other than the owner responsible for the fault of the vessel, as though the term “owner” included such person; and in any case where by virtue of any charter or demise, or for any other reason, the owner is not responsible for the navigation and management of the vessel, the expression “owner” shall be read as though for references to the owner there were substituted references to the charterer or other person for the time being so responsible; and when used

with reference to any cargo or property on board a vessel, means any person entitled to maintain an action against a wrongdoer in respect of any direct and immediate injury to such cargo or property; and it includes a part owner;

“party” includes every person served with notice of or attending any proceeding, although not named on the record;

“person” includes a corporation sole, and any body corporate, and any public body;

“petitioner” includes every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant;

“plaintiff” includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

“pleading” includes any petition or summons, and also includes the statements in writing of the claim or demand of the plaintiff, and of the defence of any defendant thereto, and of a counter-claim (if any) of a defendant, and of the reply of the plaintiff to any counter-claim of a defendant, and any subsequent pleading;

“prescribed” means prescribed by rules of court;

“President” means the President of the Court of Appeal;

“Principal Registrar” means the Principal Registrar of the Supreme Court appointed under the provisions of this Act, and includes a duly appointed acting Principal Registrar;

“registrar” means a registrar of the Supreme Court appointed under the provisions of this Act and includes a duly appointed acting or deputy registrar;

“rules of court” includes forms;

“statute” means any Imperial Act in force in this State and any Commonwealth Act and any Act of the Parliament of Western Australia, and includes this Act;

s. 4A

“suit” includes action.

- (2) For the purposes of this Act, **“legal experience”** is —
- (a) standing and practice in the State as a legal practitioner;
 - (b) standing and practice in another State or a Territory as a barrister or solicitor of the Supreme Court of that State or Territory;
 - (c) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
 - (d) a combination of 2 or more kinds of legal experience defined in this subsection.

[Section 4 amended by No. 21 of 1954 s. 2; No. 67 of 1979 s. 4; No. 7 of 1982 s. 3; No. 47 of 1983 s. 13; No. 37 of 1989 s. 4; No. 57 of 1997 s. 118; No. 65 of 2003 s. 69(2), 119(2), (3) and 130(2); No. 45 of 2004 s. 4; No. 59 of 2004 s. 128; [No. 24 of 2005 s. 28.](#)]

4A. Application

The provisions of this Act, including those conferring powers on the Court or a judge, apply in respect of any jurisdiction conferred on or vested in the Court, whether under a law of the State or otherwise.

[Section 4A inserted by No. 14 of 1991 s. 4.]

5. Construction of other Acts and documents

Where any Act or document refers to any enactment repealed by this Act, or any corresponding previous enactment, or to any mode of procedure or form of pleading under any such enactment, the Act or document shall be construed and shall operate as if it referred to this Act, or to the corresponding provisions of this Act and of the rules of court.

Part II — Constitution of the Supreme Court

6. Supreme Court of Western Australia

- (1) The previously established court called the Supreme Court of Western Australia continues in existence for the State of Western Australia.
- (2) The Court is a superior court of record.
- (3) The Court consists of —
 - (a) any judge holding office under an appointment made under section 7A(1);
 - (b) any acting judge holding office under an appointment made under section 11;
 - (c) any auxiliary judge holding office under an appointment made under section 11AA;
 - (d) any commissioner holding office under an appointment made under section 49;
 - (e) any master holding office under an appointment made under section 11A; and
 - (f) any acting master holding office under an appointment made or deemed to have been made under section 11D.

[Section 6 inserted by No. 45 of 2004 s. 5(1) ³.]

7. Divisions of the Court

- (1) The exercise of the Court's jurisdiction is divided between —
 - (a) the General Division; and
 - (b) the Court of Appeal.
- (2) The General Division consists of —
 - (a) the Chief Justice;
 - (b) each other judge who is not either the President or a judge of appeal;

s. 7A

- (c) any judge of appeal who under section 10C is approved to sit in the General Division;
 - (d) any acting judge holding office under an appointment made under section 11;
 - (e) any auxiliary judge holding office under an appointment made under section 11AA;
 - (f) any commissioner holding office under an appointment made under section 49;
 - (g) any master holding office under an appointment made under section 11A; and
 - (h) any acting master holding office under an appointment made or deemed to have been made under section 11D.
- (3) The Court of Appeal consists of —
 - (a) the Chief Justice;
 - (b) the President;
 - (c) each other judge of appeal; and
 - (d) any other judge, and any acting judge or auxiliary judge, who under section 10B(1) or (2) is authorised to act as a judge of appeal.
- (4) The General Division exercises all of the jurisdiction of the Supreme Court other than the jurisdiction referred to in section 58(1).
- (5) The Chief Justice is the principal judicial officer of the Supreme Court including the Court of Appeal.
- (6) Subject to the Chief Justice's directions, the President is responsible for the administration of the Court of Appeal including its sitting dates.

[Section 7 inserted by No. 45 of 2004 s. 5(1)³.]

7A. Appointment of judges, judges of appeal, Chief Justice and President

- (1) The Governor may appoint a duly qualified person to be a judge of the Supreme Court.
- (2) The Governor may appoint as many judges of the Supreme Court as are needed to deal with the workload of the Supreme Court.
- (3) The Governor may appoint a judge of the Supreme Court to be also a judge of appeal.
- (4) The Governor may appoint as many judges of appeal as are needed to deal with the workload of the Court of Appeal.
- (5) The Governor may appoint one of the judges of the Supreme Court to be also the Chief Justice of Western Australia.
- (6) The Governor may appoint one of the judges of appeal to be also the President of the Court of Appeal.
- (7) A person cannot hold both the office of Chief Justice and the office of President.
- (8) A person who does not hold the office of judge cannot be appointed to be, and cannot hold the office of, Chief Justice, President or judge of appeal.
- (9) A person may be appointed as the Chief Justice at the time of being appointed as a judge or afterwards.
- (10) A person may be appointed as the President or as a judge of appeal at the time of being appointed as a judge or afterwards.
- (11) The appointment of a judge, a judge of appeal, the Chief Justice, or the President, is to be by a commission under the Public Seal of the State issued by the Governor.

[Section 7A inserted by No. 45 of 2004 s. 5(1)³.]

s. 8

8. Qualification of judges and acting judges

- (1) A person is eligible for appointment as a judge of the Court if that person —
 - (a) is or has been a legal practitioner and has had not less than 8 years' legal experience; or
 - (b) is a practising barrister of the High Court of Australia and has had not less than 8 years' legal experience.
- (2) A person is eligible for appointment as an acting judge of the Court if that person is, or has retired as —
 - (a) a judge of the Supreme Court of another State, or Territory; or
 - (b) a judge of the Federal Court of Australia.

[Section 8 inserted by No. 3 of 1996 s. 5; amended by No. 65 of 2003 s. 119(4).]

9. Tenure of judges and oaths of office

- (1) All the judges of the Supreme Court shall hold their offices during good behaviour, subject to a power of removal by the Governor upon the address of both Houses of Parliament.
- (1a) All judges of appeal, the Chief Justice and the President shall hold their offices while they hold office as a judge, subject to section 9A(2), (3) and (4).
- (1b) A person cannot be removed from the office of judge of appeal or Chief Justice or President except by removing the person from the office of judge.

~~—(2) Every person appointed to be a judge of the Supreme Court or a judge of appeal shall, when he enters on the execution of his office, take, in the presence of the Governor, the oath of allegiance, and the judicial oath as prescribed in the Second Schedule.~~

~~[(2) repealed]~~

[Section 9 amended by No. 65 of 2003 s. 130(3); No. 45 of 2004 s. ~~6~~6; No. 24 of 2005 s. 29.]

9A. Resignation of judges

- (1) This section is in addition to and does not affect the operation of the *Judges' Retirement Act 1937*.
- (2) With the Governor's approval a person may resign from the office of Chief Justice, President, or judge of appeal, without resigning from the office of judge.
- (3) With the Governor's approval a person may resign from the office of President without resigning from the office of judge of appeal.
- (4) With the Governor's approval a person may resign from the office of Chief Justice without resigning from the office of judge of appeal.

[Section 9A inserted by No. 45 of 2004 s. 7.]

9B. Seniority

- (1) Judges in the General Division have seniority according to the following order —
 - (a) the Chief Justice;
 - (b) the other judges, excluding the judges of appeal, according to the dates of their commissions of appointment as judges.
- (2) Judges of appeal have seniority according to the following order —
 - (a) the Chief Justice;
 - (b) the President;
 - (c) the other judges of appeal according to the dates of their commissions of appointment as judges of appeal.

s. 10

- (3) Masters have seniority according to the dates of their commissions of appointment as masters.
- (4) If 2 or more persons receive commissions dated the same day, their seniority as between them is to be determined —
 - (a) according to the dates on which they begin in office; or
 - (b) if they are to begin in office on the same day, by the Governor when appointing them.
- (5) For the purposes of any other written law or any matter connected with the administration of the State, the seniority of judges is to be determined under subsections (1) and (4).

[Section 9B inserted by No. 45 of 2004 s. 7.]

10. Acting Chief Justice

- (1) During any vacancy in the office of Chief Justice, or when and so often as the Chief Justice is absent on leave or in consequence of sickness, or for any reason is temporarily unable to perform the duties of his office, then where no judge is specifically appointed by a commission issued under subsection (3) to act in the office of Chief Justice, all the duties and powers of the Chief Justice shall during such vacancy, absence, or inability devolve upon the senior judge in the General Division.
- (2) In the case of the absence or inability of the judge upon whom the powers and duties of the Chief Justice devolve under subsection (1), such powers and duties shall during such absence or inability devolve upon the judge in the General Division who is next in seniority.
- (3) Where the office of Chief Justice is vacant or the Chief Justice is, or is expected to be, absent or for any reason unable to perform the duties of his office, the Governor by commission under the Public Seal of the State may appoint a judge to act in the office of Chief Justice for such period as the Governor thinks fit and specifies in the commission.

[Section 10 inserted by No. 7 of 1982 s. 4; amended by No. 37 of 1989 s. 10; No. 45 of 2004 s. 8.]

10A. Acting President

- (1) During any vacancy in the office of President, or when and so often as the President is absent on leave or in consequence of sickness, or for any reason is temporarily unable to perform the duties of his office, all the duties and powers of the President shall during such vacancy, absence, or inability devolve upon the senior judge of appeal other than the Chief Justice.
- (2) In the case of the absence or inability of the judge of appeal upon whom the powers and duties of the President devolve under subsection (1), such powers and duties shall during such absence or inability devolve upon the judge of appeal who is next in seniority.
- (3) Where the office of President is vacant or the President is, or is expected to be, absent or for any reason unable to perform the duties of his office, the Governor by commission under the Public Seal of the State may appoint a judge of appeal to act in the office of President for such period as the Governor thinks fit and specifies in the commission.

[Section 10A inserted by No. 45 of 2004 s. 9.]

10B. Acting judges of appeal

- (1) If the Chief Justice and the President agree that the Court of Appeal needs an acting judge of appeal, the Chief Justice in writing may authorise a judge, acting judge, or auxiliary judge, who is willing to do so, to act as a judge of appeal for a period specified in the authorisation of not more than 6 months.
- (2) If —
 - (a) the Chief Justice and the President agree that a particular judge, acting judge or auxiliary judge should act as a

s. 10C

judge of appeal in a particular proceeding before the Court of Appeal; and

- (b) the particular judge, acting judge or auxiliary judge is willing to do so,

the Chief Justice in writing may authorise the judge, acting judge, or auxiliary judge to do so.

- (3) A judge, acting judge, or auxiliary judge who is authorised to act as a judge of appeal under this section has the same powers and may exercise the same jurisdiction as a judge of appeal.
- (4) An acting judge of appeal may complete any proceeding that is pending before him as an acting judge of appeal immediately before he ceases to be an acting judge of appeal.

[Section 10B inserted by No. 45 of 2004 s. 10.]

10C. Judge of appeal may sit in General Division if approved

A judge of appeal may sit in the General Division with the prior approval of the Chief Justice given after consulting the President.

[Section 10C inserted by No. 45 of 2004 s. 10.]

11. Acting judges

- (1) Where a judge is, or is expected to be, absent from duty the Governor by commission under the Public Seal of the State may appoint a person, who is qualified to be appointed a judge or an acting judge, as an acting judge for the period during which the judge is absent from duty, and the appointment of the acting judge authorises him to complete the hearing and determination of any proceedings that may be pending before him at the expiration of that period so that he holds an appointment as an acting judge during any further period while he is completing such hearing and determination.

~~(1a) Every person appointed to be an acting judge of the Supreme Court shall, when he enters on the execution of his office, take the oath of allegiance and the judicial oath prescribed in the Second Schedule, in the presence of the Governor.~~

[(1a) repealed]

- (2) When for any reason the conduct of the business of the Court requires, in the opinion of the Governor, the appointment of an acting judge or there is a vacancy in the office of a judge (other than that of the Chief Justice), the Governor by commission under the Public Seal of the State may appoint a person, who is qualified to be appointed a judge or an acting judge, to be an acting judge until the expiry of the period of that appointment or until the filling of that vacancy, as the case requires, and the appointment of the acting judge authorises him or her to complete the hearing and determination of any proceedings that may be pending before him or her at that expiry or filling so that he or she holds an appointment as an acting judge during any further period while he or she is completing that hearing and determination.
- (3) Every acting judge shall be liable to be removed from office in such manner and upon such grounds as judges of the Supreme Court are liable to be removed from office.

[Section 11 inserted by No. 57 of 1975 s. 4; amended by No. 37 of 1989 s. 6 and 10; No. 3 of 1996 s. 6; No. 23 of 1997 s. ~~21~~21; No. 24 of 2005 s. 30.]

11AA. Auxiliary judges

- (1) When for any reason the conduct of the business of the Court requires, in the opinion of the Governor, the appointment of an auxiliary judge, the Governor may by commission under the Public Seal of the State appoint a person —
- (a) who would, but for the fact that he or she has attained the age referred to in section 3 of the *Judges' Retirement*

s. 11AA

Act 1937, be qualified to be appointed a judge or an acting judge; or

- (b) who is a retired judge or a retired District Court Judge but has not yet attained that age,

to be an auxiliary judge for such period not exceeding 12 months as is specified in that commission.

- (2) The appointment of an auxiliary judge under subsection (1) authorises him or her to complete the hearing and determination of any proceedings that may be pending before him or her at the expiry of —

- (a) the period of his or her appointment; or
- (b) any period of extension referred to in subsection (3),

so that he or she holds an appointment as an auxiliary judge during any further period while he or she is completing that hearing and determination.

- (3) An appointment made under subsection (1) may be extended by the Governor by commission under the Public Seal of the State for a further period or periods, but that appointment can only be extended on any one occasion for such period not exceeding 12 months as is specified in the relevant commission.

- (4) A person appointed to be an auxiliary judge under subsection (1) —

- (a) has the same powers and may exercise the same jurisdiction as a judge; [and](#)

- ~~(b) shall, when he or she enters on the execution of his or her office, take the oath of allegiance and the judicial oath prescribed in the Second Schedule in the presence of the Governor; and~~

~~[\[\(b\) deleted\]](#)~~

- (c) is liable to be removed from office in such manner and upon the same grounds as a judge is liable to be removed from office.

- (5) In subsection (1)(b), the reference to a retired judge or a retired District Court Judge includes a reference to a person who has resigned from his or her office as —
- (a) a judge; or
 - (b) a District Court Judge.

[Section 11AA inserted by No. 23 of 1997 s. 22; amended by No. 24 of 2005 s. 31.]

11A. Masters

- (1) The Governor by commission under the Public Seal of the State may appoint one or more persons each having the necessary qualification to be a master of the Supreme Court.
- (2) The qualification of a person for appointment as a master of the Supreme Court shall be that he —
- (a) is or has been a legal practitioner and has had not less than 5 years' legal experience; or
 - (b) is a legal practitioner, and who for a period of not less than 2 years has held office as the Principal Registrar or the Court of Appeal Registrar or as a registrar or deputy registrar of the Court.
- (2a) For the purposes of subsection (2)(a), legal experience is —
- (a) standing and practice in the State as a legal practitioner;
 - (b) judicial service elsewhere in a common law jurisdiction; or
 - (c) a combination of both kinds of legal experience defined in this subsection.
- (3) Subject to the provisions of section 11B(4) and (5), a master of the Supreme Court shall hold office during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove a master from office and revoke his commission.

~~(4) Every person appointed to be a master of the Supreme Court shall, when he enters on the execution of his office, take, in the~~

s. 11B

~~presence of the Governor, the oath of allegiance, and the judicial oath as prescribed in the Second Schedule.~~

[(4) repealed]

[Section 11A inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 s. 3 and 13; No. 37 of 1989 s. 10; No. 25 of 1990 s. 3; No. 65 of 2003 s. 69(3)-(5); No. 45 of 2004 s. ~~41~~11; No. 24 of 2005 s. 32.]

11B. Master, terms of appointment

(1) A master —

- (a) subject to the provisions of this section and to the *Salaries and Allowances Act 1975*, is entitled to such conditions of service as are determined by the Governor from time to time;
- (b) may hold office as such in conjunction with any other office, appointment, duty or function which the Governor shall deem not incompatible; and
- (c) except in the performance of the functions or duties of his office or with the approval of the Governor, shall not engage in the practice of a barrister or solicitor, or be directly or indirectly concerned in such practice, or engage in any other paid employment.

(2) Where a master was, immediately before his appointment as such, an officer of the Public Service of the State —

- (a) he retains his existing and accruing rights and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938* ⁴;
- (b) for the purpose of determining those rights, his service as master shall be taken into account as if it were service in the Public Service of the State; and
- (c) he may continue to be a contributor for the purposes of, as though he were deemed to be an employee within the meaning of, the *Superannuation and Family Benefits*

*Act 1938*⁴ notwithstanding his appointment as master under section 11A.

- (3) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions and allowances, other than section 15, apply with such modifications as circumstances require, to and in respect of a master, and to and in respect of a surviving spouse, de facto partner or child of a master after the master's death, in the same manner as they apply to and in respect of a judge to whom that Act applies, and to a surviving spouse, de facto partner or child of such a judge after the judge's death.
- (3a) Where subsection (2) applies to and in respect of a person so that, under the *Superannuation and Family Benefits Act 1938*⁴, a pension is payable to and in respect of him, the payment of that pension does not affect any pension that may be payable to and in respect of him under the *Judges' Salaries and Pensions Act 1950*, but the pension otherwise payable under that Act to and in respect of him shall be reduced in accordance with the provisions of that Act by the amount of the State share of the first-mentioned pension.

[Section 11B inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 s. 4 and 13; No. 82 of 1987 s. 8; No. 37 of 1989 s. 7; No. 28 of 2003 s. 198; No. 45 of 2004 s. 12.]

[11C. Repealed by No. 74 of 2004 s. 13.]

11D. Acting masters

- (1) While —
- (a) there is no person holding or acting in the office of master;
 - (b) there is one person holding or acting in the office of master but, as a consequence of absence on leave, sickness or any other reason, that person is temporarily unable to perform the duties of his office; or

s. 11D

- (c) there are 2 or more persons holding or acting in the office of master but, as a consequence of absence on leave, sickness or any other reason, at least one of those persons is temporarily unable to perform the duties of his office,

and no other person is specifically appointed to act in the office of master by a commission issued under subsection (2), the person holding or for the time being acting in the office of Principal Registrar, if qualified to be appointed to the office of master, is deemed to be so appointed and all the duties and powers of a master devolve upon him, but are not exercisable by him in conjunction with his duties and powers as a registrar.

- (2) Where —

[(a) deleted]

- (b) a master is, or is expected to be, absent or for any reason unable to perform the duties of his office; or
- (c) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires the appointment of an acting master,

the Governor by commission under the Public Seal of the State may appoint a person, who is qualified to be appointed to the office of master, to be an acting master on such terms and conditions and for such period as the Governor thinks fit and specifies in the commission.

- (3) An appointment of a person to be an acting master pursuant to subsection (2) may be made on other than a full-time basis.
- (4) Where immediately prior to the expiration of the period of an appointment made or deemed to have been made pursuant to this section there remained proceedings pending before the acting master, the appointment of the acting master authorises him to complete the hearing and determination of those proceedings so that he holds an appointment as acting master while he is completing that hearing and determination.

[Section 11D inserted by No. 67 of 1979 s. 6; amended by No. 3 of 1982 s. 3; No. 47 of 1983 s. 5 and 13; No. 37 of 1989 s. 10; No. 23 of 1997 s. 23.]

11E. References to the master in other Acts

- (1) Subject to subsection (2), where by or under the provisions of any Act, being provisions in force immediately prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*¹, it is provided that an act of a procedural, administrative, or ministerial nature shall or may be done by, or in relation to, the master that act shall or may, as the case requires, be done by, or in relation to, the Principal Registrar.
- (2) Subsection (1) does not apply to or in relation to —
 - (a) the *Administration Act 1903*;
 - (b) the *Companies Act 1961*⁵;
 - [(c) deleted]*
 - (d) this Act; or
 - (e) any other Act which by rules of court is prescribed as an Act to which the provisions of that subsection do not apply.
- (3) Where by or under any Act it is provided that costs shall or may be taxed by the master or the taxing master of the Supreme Court, those costs shall or may, as the case requires, be taxed by the taxing officer of the Court.
- (4) Unless the context otherwise requires, a reference in any other Act or in any regulation, rule, local law, by-law, notice, proclamation or other statutory instrument made, published or in force under this Act or any other Act to the master shall be read and construed as a reference to a master.

[Section 11E inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 s. 6; No. 14 of 1996 s. 4; No. 69 of 1996 s. 89.]

s. 12

12. Judge or master may act in cases of rates etc even if a ratepayer etc

- (1) A judge or a master shall not be incapable of acting in his judicial office in any proceeding by reason of his being as one of several ratepayers or as one of any other class of persons, liable, in common with others, to contribute to or to be benefited by any rate or tax which may be increased, diminished, or in any way affected by that proceeding.
- (2) In this section the expression “**rate or tax**” means any rate, tax, duty, or assessment whether public, general or local, and also any fund formed from the proceeds of any such rate, tax, duty or assessment, or applicable to the same or like purposes to which any such rate, tax, duty or assessment might be applied.

[Section 12 amended by No. 67 of 1979 s. 7; No. 47 of 1983 s. 13.]

13. Oath of office

Before a person who is appointed to an office referred to in section 6(3), or to the office of judge of appeal, Chief Justice or President, performs any function of the office, he or she shall take before the Governor, or some person authorised for the purpose by the Governor, an oath or affirmation in the form set out in the Second Schedule.

[Section 13 inserted by No. 24 of 2005 s. 33.]

14. *Repealed by No. 35 of 1950 s. 4.]*

15. Seal of Supreme Court

- (1) The Supreme Court shall have and use, as occasion may require, a Seal bearing a device and impression of the armorial bearings of the State, with an exergue or label surrounding the same, with the inscription, “The Seal of the Supreme Court of Western Australia”, and such other seals as are recommended by the Chief Justice and approved by the Attorney General.

- (2) The judges of the Supreme Court may make rules of court providing for the custody and use of any seal referred to in subsection (1) and the purposes for or occasions on which a seal so referred to may be used.

[Section 15 amended by No. 63 of 1957 s. 2; No. 65 of 2003 s. 130(4).]

Part III — Jurisdiction and law

(1) Jurisdiction

16. General jurisdiction

- (1) Subject as otherwise provided in this Act, and to any other enactment in force in this State, the Supreme Court —
- (a) is invested with and shall exercise such and the like jurisdiction, powers, and authority within Western Australia and its dependencies as the Courts of Queen's Bench, Common Pleas, and Exchequer, or either of them, and the judges thereof, had and exercised in England at the commencement of the *Supreme Court Ordinance 1861*⁶; and
 - (b) shall be at all times a court of oyer and terminer and general gaol delivery in and for Western Australia and its dependencies; and
 - (c) is authorised, empowered, and required to take cognizance of and hold all pleas and all manner of causes, suits, actions, pleas of the Crown, prosecutions, and informations, whether civil, criminal, or mixed, with the same and as full power within Western Australia and its dependencies to hear, judge, determine, and execute therein, as the Courts of Queen's Bench, Common Pleas, and Exchequer, and as justices of oyer and terminer and general gaol delivery, had in England at the commencement of the *Supreme Court Ordinance 1861*⁶, and as shall be necessary for carrying into effect the several jurisdictions, powers, and authorities committed to the Court, and shall adjudge and determine in all and every the same matters according to the laws and statutes of the realm of England in force in Western Australia, the laws and statutes of Western Australia, and the Acts of the Commonwealth of Australia; and

- (d) shall be a court of equity, with power and authority within Western Australia and its dependencies —
- (i) to administer justice, and to do, exercise, and perform all acts, matters, and things necessary for the due execution of such equitable jurisdiction as, at the commencement of the *Supreme Court Ordinance 1861* ⁶, the Lord Chancellor of England could or lawfully might have done within the realm of England in the exercise of the jurisdiction to him belonging; and
 - (ii) to appoint guardians and committees of the persons and estates of infants, lunatics, and persons of unsound mind according to the order and course observed in England, and for that purpose to inquire into, hear, and determine by inspection of the person the subject of inquiry, or by examination on oath or otherwise of the party in whose custody or charge such person is, or of any other person or persons, or by such other ways and means by which the truth may be best discovered, and to act in all such cases as fully and amply to all intents and purposes as the said Lord Chancellor or the grantee from the Crown of the persons and estates of infants, lunatics, and persons of unsound mind might lawfully have done at such date.
- (2) There shall be vested in the Supreme Court and the judges thereof all original and appellate jurisdiction which, under and by virtue of any statute which came into force in Western Australia after the commencement of the *Supreme Court Act 1880* ⁷, and is not repealed, was immediately before the commencement of this Act vested in or capable of being exercised by the Court or a judge thereof, and such other jurisdiction as by and under this Act or any subsequent statute or otherwise is conferred on or vested in the Court and the judges thereof.

- (3) The jurisdiction vested in the Court and the judges thereof shall include all ministerial powers, duties, and authorities incident to any and every part of such jurisdiction.

[Section 16 amended by No. 73 of 1948 s. 3; No. 14 of 1991 s. 4.]

17. Court may transfer case to lower court

- (1) In this section —

“lower court” means the District Court or the Magistrates Court.

- (2) If an action or matter in the Court —

- (a) is within a lower court’s jurisdiction;
- (b) becomes within a lower court’s jurisdiction because the claim in the action or matter is reduced by a payment into court, an admitted set-off, a judgment on part of the claim, or otherwise; or
- (c) becomes within a lower court’s jurisdiction because the jurisdiction of the lower court is increased,

the Court may order that the action or matter be transferred to the lower court.

- (3) An order under subsection (2) may be made on the application of a party to the action or matter or by the Court on its own initiative.
- (4) If the Court makes an order under subsection (2) it may also make any other necessary orders including orders as to —
- (a) the registry of the lower court in which the action or matter is to be conducted;
 - (b) the payment of fees in the lower court; and
 - (c) the costs in the action or matter that relate to proceedings in the Court.

- (5) If the Court makes an order under subsection (2) the Principal Registrar is to send the Court's file to the registry of the lower court in which the action or matter is to be conducted.
- (6) The lower court to which an action or matter is transferred under an order made under subsection (2) is to deal with the action or matter as if it had been commenced in that court.

[Section 17 inserted by No. 59 of 2004 s. 126.]

18. Probate jurisdiction

The Supreme Court shall have voluntary and contentious probate jurisdiction and authority in relation to the granting or revoking of probate of wills and letters of administration of all real and personal estate whatsoever within Western Australia and its dependencies of any deceased person; and all such powers and authorities in respect of such jurisdiction as were given to the Court by the *Administration Act 1903*, and any other Act in force in Western Australia immediately before the commencement of this Act, with authority to hear and determine all questions relating to testamentary causes and matters.

[19. Repealed by No. 73 of 1948 s. 3.]

20. Appellate jurisdiction

- (1) The Supreme Court has jurisdiction to hear and determine any application, or any appeal, whether by case stated or otherwise, that the Court or a judge is empowered by a written law to hear and determine.
- (2) Any such application or appeal must be heard and determined subject to the written law concerned.

[Section 20 inserted by No. 45 of 2004 s. 15.]

21. Jurisdiction to be exercised in accordance with this Act and rules of court

- (1) Except as otherwise provided by this Act, all jurisdiction, whether original or appellate, which immediately before the commencement of this Act was vested in or capable of being exercised by the Court, or by any one or more of the judges thereof sitting in court or chambers, or elsewhere when acting as judges, or a judge, by, under, or by virtue of any Imperial Act or any Act of the Parliament of Western Australia, shall (notwithstanding that the same was conferred by an Imperial Act or an Act of the Parliament of Western Australia repealed by this Act) be exercised, so far as regards procedure and practice, in the manner provided by this Act and the rules of court; but where no provision, or no appropriate provision, as to the exercise of any such jurisdiction is contained in this Act or in the rules of court, such jurisdiction shall be exercised as nearly as may be in the same manner as the same might have been exercised if this Act had not passed, or in such manner as the Court or a judge may in each case direct.
- (2) Except as is otherwise provided by this Act, and subject to the provisions of any Commonwealth Act, all the jurisdiction whether original or appellate, which immediately before the commencement of this Act was vested in or capable of being exercised by the Court, or any one or more of the judges thereof sitting in court or chambers, or elsewhere when acting as judges, or a judge by, under, or by virtue of any Commonwealth Act, shall be exercised so far as regards procedure and practice in the manner provided by the rules of court; but where no provision as to the exercise of such jurisdiction is contained in this Act or the rules of court, such jurisdiction shall be exercised as nearly as may be in the same manner as the same might have been exercised if this Act had not passed.
- (3) Any jurisdiction, whether original or appellate, which is conferred on or vested in the Court, or any one or more of the judges thereof sitting in court or chambers, or elsewhere when

acting as judges, or a judge, after the commencement of this Act (whether by statute or otherwise), shall (except as otherwise provided by any such statute) be exercised (so far as regards procedure and practice) in the manner provided by this Act and the rules of court; or if no provision, or no appropriate provision, as to the exercise of any such jurisdiction is contained in this Act or in the rules of court, then such jurisdiction shall be exercised in such form, mode, and manner as the Court or a judge may from time to time direct.

- (4) Where any statute passed after the commencement of this Act, or any order, rule, regulation, or other instrument made under or by virtue of any such statute confers any jurisdiction, whether original or appellate, on the Court or on the Court or a judge thereof, such jurisdiction shall (except as otherwise provided by any such statute) be exercised so far as regards procedure and practice in the manner directed by subsection (3).

[Section 21 amended by No. 14 of 1991 s. 4.]

22. Saving of former procedure

- (1) Save as is otherwise provided by this Act or by the rules of court, all forms and methods of procedure which, under or by virtue of any law, custom, general order, or rules whatsoever, were formerly in force in the Supreme Court, and which are not inconsistent with this Act or with the rules of court, may continue to be used and practised in the Supreme Court in the like cases and for the like purposes, as those in and for which they would have been applicable if this Act had not been passed.
- (2) Subject to the *Criminal Procedure Act 2004* and rules of court made under that Act that apply to the Supreme Court, the practice and procedure in all criminal causes and matters whatsoever in the Supreme Court shall be the same as the practice and procedure in force at the commencement of this Act in relation to similar causes and matters.

[Section 22 amended by No. 84 of 2004 s. 72.]

23. Supreme Court authorised to perform certain acts required to be performed by courts in England

Where any Act of Parliament in force in England on 1 June 1829, and applicable to Western Australia, or any Act of Parliament adopted and directed to be applied in Western Australia, authorises and directs any proceeding, act, matter, or thing to be had, done, performed, or executed by or before Her Majesty's Courts at Westminster, or the respective judges thereof, or by or before the Lord Chancellor or any Equity Judge, in the administration of justice, every such proceeding, act, matter, and thing, subject to any express enactment to the contrary and to any rules of court for the time being in force, shall be, and the same is hereby authorised and directed to be had, done, executed, and performed by the Supreme Court and the judges thereof in like manner as if the same had been in and by such Act of Parliament expressly authorised and directed to be had, done, executed, and performed by the said Supreme Court or the judges thereof.

(2) Law and Equity

24. Law and equity to be concurrently administered

Subject to the express provisions of any other Act, in every civil cause or matter commenced in the Supreme Court, law and equity shall be administered by the Court according to the rules following: —

- (1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which before the commencement of the *Supreme Court Act 1880*⁷ could only have been given by a court of equity, the

Court, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court in its equitable jurisdiction in a suit or proceeding for the same or the like purpose properly instituted before the commencement of the said Act.

- (2) If any defendant claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the Court, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted by the Court for the same or the like purpose before the commencement of the *Supreme Court Act 1880*⁷.
- (3) The Court, and every judge thereof, shall have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him —
 - (a) all such relief against any plaintiff or petitioner as such defendant shall have properly claimed, by his pleading, and as the Court, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and
 - (b) all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person,

whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose.

Every person served with any such notice as aforesaid shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

- (4) The Court, and every judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court in its equitable jurisdiction would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of the *Supreme Court Act 1880* ⁷.
- (5) No cause or proceeding at any time pending in the Supreme Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if the *Supreme Court Act 1880* ⁷ had not been passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Provided that —

- (a) nothing in this Act shall disable the Court, if it thinks fit, from directing a stay of proceedings in any cause or matter pending before it; and

- (b) any person, whether a party or not to any such cause or matter, who would have been entitled, if the *Supreme Court Act 1880*⁷ had not been passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the Court, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.
- (6) Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity, and to the other express provisions of this Act, the Court, and every judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to if the *Supreme Court Act 1880*⁷ had not been passed in any branch of its jurisdiction, or by the Court for Divorce and Matrimonial Causes.
- (7) The Court, in the exercise of the jurisdiction vested in it by this Act, in every cause or matter pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter; so that, as far as possible, all matters so in controversy between the parties may be completely and finally

determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

(3) Miscellaneous Rules of Law

25. Rules of law upon certain points

The law to be administered as to the matters in this section mentioned shall, unless the contrary is expressly provided by some other enactment, be as follows: —

[(1)-(5) repealed]

- (6) No action shall be open to objection on the ground that a merely declaratory judgment is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

[(7) and (8) repealed]

- (9) A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the Court or a judge in all cases in which it shall appear to the Court or a judge to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court or judge shall think just; and if an injunction is asked, either before or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court or a judge shall think fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.
- (10) In all cases in which the Court entertains an application for an injunction against a breach of any covenant contract or agreement, or against the commission or

continuance of any wrongful act, or for the specific performance of any covenant contract or agreement, the Court may, if it thinks fit, award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court directs:

Provided that nothing in this subsection shall limit or affect the jurisdiction or powers which the Court has apart from this subsection.

- (11) Subject to the express provisions of any other Act, in questions relating to the custody and education of infants, the rules of equity shall prevail.
- (12) Generally (subject to the express provision of any other Act), in all matters not hereinbefore particularly mentioned, in which there was, before the passing of the *Supreme Court Act 1880*⁷, any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

[Section 25 amended by No. 32 of 1969 s. 4; No. 10 of 1982 s. 28; No. 72 of 1984 s. 10⁹; No. 20 of 2005 s. 17.]

26. Liability for damage to property due to fault of 2 or more vessels

- (1) Where by fault of 2 or more vessels, damage or loss is caused to one or more vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

- (2) Nothing in this section shall operate so as to render any vessel liable to any loss or damage to which her fault has not contributed.
- (3) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract, or by any provision of law, or as affecting the right of any person to limit his liability in manner provided by law.
- (4) For the purposes of this section the expression “**freight**” includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.
- (5) In this section, and the 3 next succeeding sections, “**vessel**” includes any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation.
- (6) Nothing in this section and the next succeeding sections shall affect the right of an owner of a vessel not itself in fault which has suffered damage or loss by reason of the fault of 2 or more other vessels, to recover his damage or loss from the owners of the vessels in fault jointly or severally.

27. Liability for loss of life etc due to fault of 2 or more vessels

- (1) Where loss of life is or personal injuries are suffered by any person on board a vessel, owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.
- (2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person

to limit his liability in cases to which this section relates in the manner provided by law.

28. Right of contribution where liability for loss of life etc due to fault of 2 or more vessels

- (1) Where loss of life is or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any vessel or vessels, and a proportion of the damage is recovered against the owner of one of the vessels which exceeds the proportion in which she was in fault, he may recover by way of contribution the amount of the excess from the owners of the other vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be recovered which could not by reason of any statutory or contractual limitation of or exemption from liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

- (2) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by subsection (1) shall, for the purposes of recovering the contributions, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

[29. Repealed by No. 20 of 2005 s. 18(1).]

30. Sections 26 to 29 subject to the Navigation Act 1912 (Cwlth)

The provisions of sections 26, 27 and 28 shall be read and construed subject to the *Navigation Act 1912*.

[Section 30 amended by No. 56 of 1974 s. 3; No. 20 of 2005 s. 19.]

31. Interest payable under contract and otherwise

- (1) Subject to the provisions of the *Credit Act 1984*, the *Consumer Credit (Western Australia) Act 1996* and the *Consumer Credit (Western Australia) Code*, there shall be no limit to the amount of interest which any person may lawfully contract to pay.
- (2) In all cases where interest for the loan of money, or upon any other contract, may be lawfully recovered or allowed in any action, suit, or other proceeding in the Supreme Court, or any other court of law or equity, but where the rate of such interest has not been previously agreed upon by or between the parties, it shall not be lawful for the party entitled to interest to recover or be allowed in any such action, suit, or other proceedings above the rate of \$6 for interest or forbearance of \$100 for a year, and so after that rate for a greater or lesser sum or for a longer or shorter time.

[Section 31 amended by No. 113 of 1965 s. 8; No. 102 of 1984 s. 17; No. 30 of 1996 s. 13.]

32. Court may order pre-judgment interest

- (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods), the Court may order that there shall be included, in the sum for which judgment is given, interest at such rate as it thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date when the judgment takes effect.
- (2) This section does not —
 - (a) authorise the giving of interest upon interest;
 - (aa) apply in relation to any general damages in respect of pain and suffering or the loss of the enjoyment or of the amenities of life awarded in relation to personal injury or the death of a person;

- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (2a) In subsection (2)(aa) “**personal injury**” includes any disease and any impairment of a person’s physical or mental condition.
- [Section 32 inserted by No. 47 of 1982 s. 3; amended by No. 50 of 1986 s. 6¹⁰; No. 59 of 2004 s. 128.]*

33. Judgments and orders, correction of

If any judgment or order of the Court contains a clerical mistake or any error arising from an accidental slip or omission, the Court may correct the judgment or order without an appeal.

[Section 33 inserted by No. 84 of 2004 s. 67.]

34. Rules of law in this Act to apply in all courts

The several rules of law enacted and declared by this Act shall be in force and take effect in all courts whatsoever in Western Australia so far as the matters to which such rules relate shall be respectively cognizable by such courts.

[35. Repealed by No. 59 of 2004 s. 128.]

36. Quo warranto

Proceedings in *quo warranto* shall be deemed civil proceedings, whether for the purposes of appeal or otherwise.

37. Costs

- (1) Subject to the provisions of this Act and to the rules of court and to the express provisions of the *Magistrates Court (Civil Proceedings) Act 2004*, or any other Act, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion

Supreme Court Act 1935

Part III Jurisdiction and law

(3) Miscellaneous Rules of Law

s. 37

of the Court or judge, and the Court or judge shall have full power to determine by whom or out of what estate, fund, or property, and to what extent such costs are to be paid.

- (2) Nothing in this section shall alter the practice in proceedings in relation to the prerogative and criminal jurisdiction of the Court.

[Section 37 amended by No. 65 of 2003 s. 130(5); No. 59 of 2004 s. 128.]

Part IV — Sittings and distribution of business

(1) Sittings and Vacations

38. Court may sit at any time and at any place

- (1) The Supreme Court and judges thereof shall have power to sit and act at any time, and at any place, for the transaction of any part of the business of the Court or a judge, or for the discharge of any duty which by any statute or otherwise is required to be discharged.
- (2) Two or more sittings of the Court may be conducted at the same time.

[Section 38 amended by No. 39 of 1971 s. 4; No. 45 of 2004 s. 16.]

39. Civil sittings in Perth

Subject to the rules of court, civil sittings for the trial of causes and issues of fact in Perth shall, so far as reasonably practicable and subject to vacations, be held from time to time throughout the year by such judge or judges as the business to be disposed of may render necessary.

40. Criminal sittings in Perth

Criminal sittings of the Court shall be held in Perth in each month.

[Section 40 inserted by No. 39 of 1971 s. 5; amended by No. 110 of 1976 s. 2.]

41. Single judge to preside unless Court of Appeal to do so

- (1) All causes and matters within the jurisdiction of the Court which are not required by this Act or the rules of court, or by any statute in force in this State, to be heard and determined by the Court of Appeal shall be heard, determined, and disposed of by a single judge in accordance with the provisions of this Act and the rules of court.

- (2) Subject to the provisions of this Act and the rules of court, the trial of —
- (a) all actions and causes; and
 - (b) all issues and questions of fact (whether in a cause or a matter) tried with a jury —

which are not ordered to be tried at bar shall be held before a single judge sitting in court as a Court.

- (3) Subject to the provisions of section 58 and subsection (2) of this section, and the rules of court, all the jurisdiction of the Court which is subject to this Act may be exercised by a single judge, whether sitting in court or in chambers or, if this or another Act or the rules of court confer any of that jurisdiction on a master, by a single master, whether sitting in court or in chambers.
- (4) A single judge, whether sitting in court or in chambers, shall have and may exercise, with respect to any cause or matter properly brought before him, all the jurisdiction, powers, and authorities of the Court, as the circumstances may require to be exercised.

[Section 41 amended by No. 45 of 2004 s. 17 and 27.]

42. Civil actions, trial with or without jury

Subject as hereinafter provided, if, on the application of any party to an action made not later than such time before the trial as may be limited by the rules of court, the Court or a judge is satisfied that —

- (a) a charge of fraud against that party; or
- (b) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage,

is in issue, the action shall, subject to the provisions of the *Juries Act 1957*, be tried by a jury, unless the Court or judge is of opinion that the trial thereof requires any prolonged

examination of documents or accounts or any scientific or local examination which cannot conveniently be made with a jury; but, save as aforesaid, any action may, subject to rules of court, in the discretion of the Court or a judge, be ordered to be tried with or without a jury:

Provided that the provisions of this section shall be without prejudice to the power of the Court or a judge to order, in accordance with the rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respects questions relating to such charge or claim as aforesaid.

43. Judge may reserve case etc for Court of Appeal

- (1) Any judge, whether sitting in court or in chambers, may, in the exercise of civil or appellate jurisdiction, at any time before final judgment, and whether before or after argument, reserve any case, or any point or question in a case, for the consideration of the Court of Appeal, or may at any such time as aforesaid direct any case, point, or question to be argued before the Court of Appeal, or may give judgment in any cause or matter subject to the judgment of the Court of Appeal on any point or question arising in such cause or matter, and may reserve such point or question for such judgment, and the Court of Appeal shall thereupon hear and determine such case, point, or question.
- (2) Any judge, whether sitting in court or in chambers, may, when granting a rule nisi or order to show cause, make the same returnable before the Court of Appeal.

[Section 43 amended by No. 57 of 1975 s. 5; No. 45 of 2004 s. 27; No. 84 of 2004 s. 72.]

44. Court vacations

- (1) The Governor may, from time to time, upon any report or recommendation of the judges of the Supreme Court, make, revoke, or modify Orders in Council regulating the vacations to be observed by the Court.
- (2) Any Order in Council made pursuant to this section shall, so long as it continues in force, have effect as if enacted by this Act, and rules of court may be made accordingly for carrying the Order in Council into effect.

45. Hearings during court vacations

Provision shall be made by the rules of court for the hearing in Perth during vacation by the Court or a judge of all such applications as may require to be heard.

[Section 45 amended by No. 39 of 1971 s. 6.]

(2) Circuit Towns

46. Circuit towns, and sittings in them

- (1) The Governor may, from time to time, by proclamation declare that such places in Western Australia as he thinks fit are circuit towns.
- (2) The Governor may, by subsequent proclamation, cancel or alter circuit towns.
- (3) Sittings of the Supreme Court in a circuit town shall be held on such days and at such times as the Chief Justice, from time to time, appoints.
- (4) Notice of the days on which and the times at which a circuit court is to be held shall be published in the *Government Gazette*; and the notice shall be exhibited in a conspicuous place in the Court House of the circuit town and in the office of the registrar of the District Court at that circuit town, and no other notice thereof is required, unless a judge otherwise directs.

- (5) The Chief Justice may, from time to time, alter the days and times for the holding of a circuit court and when any such day is so altered notice of the intended alteration and the time it is to take effect shall be exhibited in a conspicuous place in the Court House in the circuit town and in the office of registrar of the District Court at that circuit town.
- (6) When a judge who is to hold a circuit court does not attend at the time appointed for any sitting thereof the registrar of the District Court at the circuit town may open the circuit court and adjourn it to the following day or such other day or the next sitting of the circuit court as he is directed by a Judge or by a master or a registrar of the Supreme Court.
- (7) Where a circuit court is to be held the registrar of the District Court at the circuit town shall deliver or cause to be delivered to the judge on the first day of the sitting a calendar of all prisoners in custody for trial or sentence at the circuit court (wherever the prisoners are confined) and shall bring up or cause to be brought up every such prisoner to the circuit court, there to be dealt with according to law.
- (8) Nothing in this section limits the powers conferred on the Supreme Court and judges thereof by section 38.
- (9) In this section —
 “District Court” means The District Court of Western Australia; and
 “registrar” has the meaning assigned to it in section 6 of the *District Court of Western Australia Act 1969*.

[Section 46 inserted by No. 57 of 1975 s. 6; amended by No. 67 of 1979 s. 8; No. 47 of 1983 s. 13.]

[47. Repealed by No. 50 of 1957 s. 2.]

48. Interpretation

The expression “**circuit court**” shall mean any sitting of the Supreme Court in a circuit town.

[Section 48 amended by No. 57 of 1975 s. 7.]

(3) Jurisdiction of a Commissioner

49. Commissioners, jurisdiction of etc

- (1) The Governor, by commission either general or special, may assign to a master, a judge of The District Court of Western Australia, any legal practitioner of at least 7 years’ standing, or to a magistrate, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law or partly of fact and partly of law in any cause or matter, depending in the Supreme Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by a judge.

~~—(1a) Every person to whom the Governor assigns, by commission, duties or the exercise of any jurisdiction under subsection (1) shall, before he commences to exercise those duties or that jurisdiction so assigned, take the oath of allegiance and judicial oath prescribed in the Second Schedule, in the presence of the Governor.~~

[(1a) repealed]

- (2) Any commission so granted shall be of the same validity as if it were enacted in the body of this Act, and any person to whom it is given is thereby authorised to complete the hearing and determination of any proceedings that may be duly pending before him at the time when the commission would normally have determined.
- (3) Any commissioner appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction so assigned to

him, perform such and the like duties, and have such and the like powers, as by this Act are imposed or conferred upon a judge in the exercise of the ordinary jurisdiction of the Court.

- (4) Subject to any restrictions or conditions imposed by rules of court, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of a judge, require the question or issue to be tried or determined by a commissioner as aforesaid, and such questions or issues shall be tried and determined accordingly.
- (5) A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.
- (6) The civil and criminal jurisdiction capable of being exercised by a judge which under this section the Governor may by commission either general or special assign to the persons mentioned in subsection (1), may include each and every jurisdiction, civil or criminal and original or appellate, which by any custom, law, or prerogative, or any statute heretofore enacted, or hereafter to be enacted, or otherwise howsoever, a judge of the Supreme Court, can now or hereafter shall be empowered to exercise; and every general or special commission by the Governor granted and issued under this section, which by its terms purports to assign any such jurisdiction as abovementioned, shall in that respect be good, valid, and effective.

[Section 49 amended by No. 39 of 1971 s. 8; No. 67 of 1979 s. 9; No. 47 of 1983 s. 7 and 13; No. 37 of 1989 s. 8; No. 65 of 2003 s. 69(6); No. 59 of 2004 s. 128; [No. 24 of 2005 s. 34.](#)]

(4) Inquiries and Trials by Referees

50. Question in civil matter may be referred to referee etc

- (1) Subject to the rules of court, and to any right to have particular cases tried by jury, the Court or a judge may refer to a master or

a registrar or to a referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding.

- (2) The report of the master, registrar or referee may be adopted wholly or partially by the Court or a judge, and, if so adopted, may be enforced as a judgment or order to the same effect.

[Section 50 amended by No. 67 of 1979 s. 10; No. 47 of 1983 s. 13; No. 65 of 2003 s. 130(6).]

51. Trial of civil matter may be referred to referee etc

- (1) In any cause or matter, other than a criminal proceeding —
- (a) if all the parties interested who are not under disability consent; or
 - (b) if the cause or matter requires any prolonged examination of documents, or any scientific or local investigation, which cannot, in the opinion of the Court or a judge, conveniently be made before a jury or conducted by the Court; or
 - (c) if the question in dispute consists wholly or in part of matters of account;

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a master, a registrar, or a special referee or arbitrator agreed on by the parties.

- (2) The Court or a judge may at any time order that any assessment of damages be tried before a master on such conditions and under such circumstances, if any, as may be specified in the order.

[Section 51 amended by No. 39 of 1971 s. 9; No. 67 of 1979 s. 11; No. 47 of 1983 s. 13; No. 65 of 2003 s. 130(7).]

52. Referee's powers and remuneration; effect of referee's report

- (1) In all cases of reference to a master, a registrar, or to a special referee or arbitrator, the master, registrar, or special referee or

arbitrator shall, subject to rules of court, have such authority, and conduct the reference in such manner, as the Court or a judge may direct, and the special referee or arbitrator shall be deemed an officer of the Court.

- (2) The report or award of the master, registrar, or special referee or arbitrator on any reference shall, unless set aside by the Court or a judge, be equivalent to the verdict of a jury.
- (3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the Court or a judge shall be determined by the Court or a judge.

[Section 52 amended by No. 67 of 1979 s. 12; No. 47 of 1983 s. 8.]

53. Court to have powers as to references by consent

The Court or a judge shall, in relation to references, have all such powers as are conferred by the *Commercial Arbitration Act 1985*, on the Court or a judge in relation to references by consent out of Court.

[Section 53 amended by No. 109 of 1985 s. 3.]

54. Referee may state case on question of law

A master, registrar, or a special referee or arbitrator may, at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

[Section 54 amended by No. 67 of 1979 s. 13; No. 47 of 1983 s. 9.]

55. Costs etc of reference

An order made under the provisions of this Part relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the Court or a judge thinks fit.

(5) Assessors

56. Trial with assessors

- (1) In any cause or matter before the Supreme Court, other than a criminal proceeding, the Court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, to try and hear the cause or matter wholly or partially with their assistance.
- (2) The remuneration, if any, to be paid to an assessor shall be determined by the Court.

[Section 56 amended by No. 65 of 2003 s. 130(8).]

(6) The Court of Appeal

[Heading amended by No. 45 of 2004 s. 18.]

57. Court of Appeal, constitution of

- (1) The Court of Appeal shall be constituted by 2 or more judges of appeal.
- (2) When hearing and determining an application or appeal under Part 3 of the *Criminal Appeals Act 2004* the Court of Appeal shall be constituted —
 - (a) if the application or appeal relates solely to a sentence imposed for an offence, by 2 or more of the judges of appeal;
 - (b) otherwise, by an uneven number of the judges of appeal being not less than 3.
- (3) If a judge of appeal's judgment or decision is the subject of an appeal to the Court of Appeal, the court shall not be constituted so as to include the judge.
- (4) When the Court of Appeal is constituted by 3 or more judges of appeal to hear and determine —

- (a) an appeal that is not under Part 3 of the *Criminal Appeals Act 2004*; or
- (b) an appeal that is under Part 3 of the *Criminal Appeals Act 2004* and relates solely to a sentence imposed for an offence,

and one or more of the judges for any reason becomes unable to continue as a member of the court for the purpose of hearing and determining the appeal, the remaining judges may continue to hear and determine the appeal if not less than 2 judges remain and all parties to the appeal consent.

- (5) When the Court of Appeal is sitting, the presiding judge of appeal is —
 - (a) if the court is constituted so as to include the Chief Justice, the Chief Justice;
 - (b) if the court is constituted so as to not include the Chief Justice but to include the President, the President;
 - (c) if the court is constituted so as to not include either the Chief Justice or the President, the senior judge of appeal.
- (6) For the purposes of delivering judgment in an appeal —
 - (a) despite subsections (1) to (4), the Court of Appeal may be constituted by any one or more judges of appeal, none of whom needs to have been a member of the court when it heard the appeal;
 - (b) the written judgment of any of the judges of appeal before whom the appeal was heard may be made public by any judge of appeal; and
 - (c) a judgment delivered in accordance with this subsection has the same effect as if each member of the Court of Appeal that heard the appeal had been present in court and delivered his judgment in person.

[Section 57 inserted by No. 45 of 2004 s. 19; amended by No. 84 of 2004 s. 72.]

58. Court of Appeal, jurisdiction

- (1) Subject as otherwise provided in this Act and to the rules of court, the Court of Appeal shall have and shall be deemed since the coming into operation of this Act always to have had jurisdiction to hear and determine —
- (a) applications for a new trial or rehearing of any cause or matter, or to set aside or vary any verdict, finding or judgment found given or made in any cause or matter tried or heard by a judge or before a judge and jury;
 - (b) appeals from a judge and from a master whether sitting in court or in chambers;
 - (c) rules nisi and orders to show cause returnable before the Court of Appeal;
 - (d) cases, points, and questions referred to or reserved by a judge for the consideration or judgment of the Court of Appeal, or directed by a judge to be argued before the Court of Appeal;
 - (e) trials at bar;
 - (f) applications and appeals under Part 3 of the *Criminal Appeals Act 2004* to the Court of Appeal;
 - (g) appeals under Part 2 of the *Criminal Appeals Act 2004* that are ordered to be dealt with by the Court of Appeal;
 - (h) applications and appeals under Part 2 of the *Criminal Appeals Act 2004* from a judge to the Court of Appeal;
 - (i) appeals to the Court of Appeal under the *Magistrates Court (Civil Proceedings) Act 2004*;
 - [(j) deleted]*
 - (k) cases of habeas corpus, in which a judge directs that the order nisi for the writ or the writ be made returnable before the Court of Appeal;
 - (l) special cases where all parties agree that the same be heard before the Court of Appeal;

- (m) all causes and matters and proceedings which —
 - (a) by any Act of this State, or the rules of court; or
 - (b) by or under any Imperial Act, or Act of the Commonwealth of Australiaare required to be heard and determined by the Court of Appeal.
- (2) Any appeal, application, cause, matter or proceedings referred to in subsection (1) shall lie or may be made to, or may be brought before, the Court of Appeal which, subject as aforesaid, shall hear and determine the same, and questions incidental thereto.

[Section 58 amended by No. 63 of 1957 s. 3; No. 3 of 1982 s. 4; No. 47 of 1983 s. 13; No. 69 of 1996 s. 90; No. 45 of 2004 s. 20 and 27; No. 59 of 2004 s. 128; No. 84 of 2004 s. 72.]

59. New trial etc, application for and ordering

- (1) In any cause or matter in which a verdict has been found by a jury, or by a judge without a jury, or by referees, or by a master, or by a judge sitting with assessors, the Court of Appeal may order a new trial or reference, or vary or set aside such verdict, or reduce the damages awarded.
- (2) Subject to the provisions of this Act, any application for a new trial may be made on any ground on which a new trial could be ordered in an action at law immediately before the commencement of this Act.
- (3) A new trial may be ordered as to part only of any matter in controversy or as to some or one only of the parties, or as to any question or issue without disturbing any finding or decision as to any other part of the controversy or any other party, or on any question or issue, and final judgment may be given as to any such other part or party or on any such other question or issue.
- (4) On the hearing of any such application the Court of Appeal shall have and may exercise all such powers as are exercisable by it

upon the hearing of an appeal and may, if it is satisfied that it has before it all the materials necessary for finally determining the question in dispute or any of them, or for awarding any remedy or relief sought, give judgment accordingly, and for that purpose shall have and may exercise all the jurisdiction, powers, and duties of the Court, whether as to amendment or otherwise, and may draw any inference of fact not inconsistent with the findings of the jury, if any, or may, if it is of the opinion that it has not sufficient materials before it to enable it to give judgment, direct the application to stand over for further consideration, and may direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit, or may direct judgment to be entered in accordance with the finding or determination of any issue or question directed to be tried or determined, or may give judgment, in any of the modes authorised by this Act or the rules of court.

- (5) Notwithstanding anything contained in subsection (4), the Court of Appeal on the hearing of any application for a new trial in any case in which a verdict has been found by a jury, if it is satisfied —

- (a) that it has before it all the facts, and that no further material evidence could be produced at another trial; and
- (b) that the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find —

may enter judgment for the party for whom the verdict should have been given at the trial, and for that purpose may exercise any of its powers under subsection (4).

- (6) Except as may be otherwise provided by the rules of court every application —
- (i) for a new trial; or
 - (ii) to set aside a verdict, finding, or judgment,

in any cause or matter where there has been a trial by a judge sitting without a jury, shall be made by way of appeal to a Court of Appeal in accordance with the rules of court.

[Section 59 amended by No. 3 of 1982 s. 5; No. 47 of 1983 s. 13; No. 45 of 2004 s. 21 and 27.]

60. Restriction on appeals

- (1) No appeal shall lie to the Court of Appeal —
- (a) from an order of a judge or a master allowing an extension of time for appealing from a judgment or order;
 - (b) from an order of a judge or a master giving unconditional leave to defend an action;
 - (c) from a decision of a judge or a master where it is provided by any Act that such decision is to be final;
 - (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal to the Court of Appeal from the decree nisi on which such order is founded has not appealed therefrom;
 - (e) without the leave of the judge or the master making the order, from the order of a judge or a master made with the consent of the parties, or as to costs only which by law are left to the discretion of the judge or the master;
 - (f) without the leave of the judge or the master or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a judge or a master, except in the following cases, namely —
 - (i) where the liberty of the subject or the custody of infants is concerned;
 - (ii) where an injunction or the appointment of a receiver is granted or refused; and
 - [(iii)-(v) deleted]*

- (vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court in the nature of final decisions.

- (2) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.
- (3) An application for leave to appeal may be made ex parte, unless the judge or the master or the Court of Appeal otherwise directs.

[Section 60 amended by No. 3 of 1982 s. 6; No. 47 of 1983 s. 10 and 13; No. 20 of 2003 s. 49; No. 45 of 2004 s. 22 and 27.]

61. Powers of single judge of appeal and master

- (1) In relation to an appeal or application before the Court of Appeal, a single judge of appeal may exercise any jurisdiction or powers of the Court of Appeal that are conferred on a single judge of appeal by rules of court.
- (2) In relation to an appeal or application before the Court of Appeal, a master may exercise any jurisdiction or powers of the Court of Appeal that are conferred on a master by rules of court.
- (3) A person who is dissatisfied with a decision or order made by a single judge of appeal or a master may apply to the Court of Appeal to set aside or vary the decision or order.
- (4) Any decision or order made by a single judge of appeal or a master may be set aside or varied by the Court of Appeal.

[Section 61 inserted by No. 45 of 2004 s. 23.]

62. Divided decisions, effect of

- (1) If the judges of appeal constituting the Court of Appeal are divided on the decision to be given on a question, the question shall be decided according to the decision of the majority, if there is a majority.

- (2) If the Court of Appeal is constituted by more than 3 judges of appeal and they are equally divided on the decision to be given on a question, the question shall be decided according to the decision of the presiding judge of appeal.
- (3) If the Court of Appeal is constituted by 2 judges of appeal and they are divided on the decision to be given on a question —
 - (a) any party to the appeal may, within one month after the date the judgments are delivered, serve the Court of Appeal Registrar and each other party with a written notice requiring the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal;
 - (b) if the appeal is against a judgment or order of a court other than the Supreme Court, either or both of the 2 judges of appeal may, of their own motion, order the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal.
- (4) If a party gives notice under subsection (3)(a) or an order is made under subsection (3)(b) the appeal shall be reheard by the Court of Appeal constituted by 3 or more judges of appeal.
- (5) If no party gives notice under subsection (3)(a) or if no order is made under subsection (3)(b), the appeal shall not be reheard and the judgment or order against which the appeal was taken shall remain unaltered.

[Section 62 inserted by No. 45 of 2004 s. 24.]

Part V — Arrest in pending actions

63. Defendant about to leave jurisdiction, arrest of

- (1) All actions in the Supreme Court shall be commenced by writ of summons, or in such other manner as may be prescribed by rules of court, and not by arrest of the person.
- (2) Where the plaintiff in any action in the Supreme Court proves at any time before final judgment by the affidavit of himself or some other person, to the satisfaction of a judge —
 - (a) that such plaintiff has a cause of action against the defendant to the amount of \$100 or upwards, or has sustained damage to that amount, and
 - (b) that there is probable cause for believing that the defendant is about to remove out of the jurisdiction of the Court unless he is apprehended, and
 - (c) that the absence of the defendant will materially prejudice the plaintiff in the prosecution of his action,

the judge may order such defendant to be arrested and imprisoned until further order of the Court or a judge, unless and until he has sooner given security not exceeding the amount claimed in the action that he will not remove out of the jurisdiction of the Court without the leave of the Court or a judge:

Provided that the plaintiff claiming such order of arrest shall prosecute his action with reasonable diligence, otherwise a judge may discharge the defendant from custody:

Provided also that where the action is for a penalty or sum in the nature of a penalty other than a penalty in the nature of any contract, it shall not be necessary to prove that the absence of the defendant will materially prejudice the plaintiff in the prosecution of the action; and the security given shall be to the effect that any sum recovered against the defendant in the action shall be paid.

- (3) The order to arrest (which shall be in the prescribed form, with such variations as the circumstances may require), may be made on affidavit and ex parte, but the defendant may at any time apply to the Court or a judge to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just.
- (4) An order to arrest shall, before delivery to the sheriff, be indorsed with the address for service of the plaintiff, and of his solicitor (if any), as required by rules of court in relation to writs of summons.

[Section 63 amended by No. 113 of 1965 s. 8.]

64. Security by defendant

- (1) The security to be given by a defendant may be a deposit in Court of the amount mentioned in the order not exceeding the amount claimed in the action, or a bond to the plaintiff by the defendant and 2 sufficient sureties (or with the leave of a judge, one surety), or with the plaintiff's consent any other form of security.
- (2) The plaintiff may, after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections.
- (3) In such case the sufficiency of the security shall be determined by a master or a registrar, who shall have power to award costs to either party, and such order may be enforced as if it were an order of a judge.
- (4) It shall be the duty of the plaintiff to obtain an appointment for the purpose of determining the sufficiency of the security, and unless he does so within 4 days after giving notice of objection, the security shall be deemed sufficient.

[Section 64 amended by No. 67 of 1979 s. 15; No. 47 of 1983 s. 13.]

65. Security etc to be subject to the Court

The money deposited and the security and all proceedings thereon shall be subject to the order and control of the Court or a judge.

66. Costs

Unless otherwise ordered, the costs of and incidental to an order for arrest shall be costs in the cause, and in all proceedings under this Part the Court or judge may make such orders as to costs as it or he thinks fit.

67. Discharge of defendant from custody

- (1) Upon payment into Court of the amount mentioned in the order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed by the plaintiff's solicitor if he has one, or by the plaintiff, if he sues in person.
- (2) The delivery of such receipt or certificate to the sheriff or officer executing the order shall, on payment of the sheriff's fees and allowances, entitle the defendant to be discharged out of custody.

68. Sheriff etc to indorse date of arrest

The sheriff or other officer named in the order shall, within 2 days after the arrest, indorse on the order the true date of such arrest.

Part VI — Mediation

[Heading inserted by No. 27 of 2000 s. 18.]

69. Interpretation

In this Part, unless the contrary intention appears —

“mediation under direction” means mediation carried out by a mediator under a direction of the Court under and subject to the rules of court;

“mediator” means —

- (a) a registrar appointed by the Chief Justice to be a mediation registrar under the rules of court;
- (b) a person approved by the Chief Justice to be a mediator under the rules of court; or
- (c) a person agreed by the parties.

[Section 69 inserted by No. 27 of 2000 s. 18.]

70. Protection of mediator

A mediator carrying out mediation under direction has the same privileges and immunities as a judge of the Court has in the performance of judicial duties as a judge.

[Section 70 inserted by No. 27 of 2000 s. 18.]

71. Privilege

- (1) Subject to subsection (3), evidence of —

- (a) anything said or done;
- (b) any communication, whether oral or in writing; or
- (c) any admission made,

in the course of or for the purposes of an attempt to settle a proceeding by mediation under direction is to be taken to be in confidence and is not admissible in any proceedings before any court, tribunal or body.

s. 71

(2) Subject to subsection (3) —

- (a) any document prepared in the course of or for the purposes of an attempt to settle a proceeding by mediation under direction;
- (b) any copy of such a document; or
- (c) evidence of any such document,

is to be taken to be subject to a duty of confidence and is not admissible in any proceedings before any court, tribunal or body.

(3) Subsections (1) and (2) do not affect the admissibility of any evidence or document in proceedings if —

- (a) the parties to the mediation consent to the admission of the evidence or document in the proceedings;
- (b) there is a dispute in the proceedings as to whether or not the parties to the mediation entered into a binding agreement settling all or any of their differences and the evidence or document is relevant to that issue;
- (c) the proceedings relate to a costs application and, under the rules of court, the evidence or document is admissible for the purposes of determining any question of costs; or
- (d) the proceedings relate to any act or omission in connection with which a disclosure has been made under section 72(2)(c).

(4) A mediator cannot be compelled to give evidence of anything referred to in subsection (1) or (2) or to produce a document or a copy of a document referred to in subsection (2) except —

- (a) in proceedings referred to in subsection (3)(d); or
- (b) in proceedings relating to a costs application where there is a dispute as to a fact stated or a conclusion reached in a mediator's report prepared under the rules of court on

the failure of a party to cooperate in the mediation and the evidence or document is relevant to that issue.

- (5) In subsections (3) and (4) —

“costs application” means an application for the costs of the mediation or of the proceedings to which mediation relates.

[Section 71 inserted by No. 27 of 2000 s. 18.]

72. Confidentiality

- (1) Subject to subsection (2), a mediator must not disclose any information obtained in the course of or for the purpose of carrying out mediation under direction.
- (2) Subsection (1) does not apply if —
- (a) the disclosure is made for the purpose of reporting under the rules of court on any failure of a party to cooperate in a mediation;
 - (b) the disclosure is made with the consent of the parties;
 - (c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to any person or damage to any property; or
 - (d) the disclosure is authorised by law or the disclosure is required by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

[Section 72 inserted by No. 27 of 2000 s. 18.]

[73-116. Repealed by No. 73 of 1948 s. 3.]

[Part VII (s. 117-146) repealed by No. 59 of 2004 s. 128.]

[Part VIII (s. 147-153) repealed by No. 12 of 1963 s. 4.]

Part IX — Officers and offices

154. Attorney General

- (1) The Attorney General shall be a legal practitioner, to be appointed from time to time by the Governor, and to hold office during the Governor's pleasure.
- (2) The Attorney General shall be the legal representative of the Crown in the Supreme Court, and shall have, exercise, and enjoy all the powers, authorities, and privileges usually appertaining and belonging to the like office in England.
- (3) During any vacancy in the office of Attorney General and during any period for which the Attorney General is, by reason of his absence from the State, illness, incapacity or other sufficient cause, unable to discharge the functions of his office, the Minister for Justice or, if there is no Minister for Justice, such other Minister of the State as is designated by the Governor by Order in Council, may exercise all or any of the powers that would be exercisable by the Attorney General, whether by statute or otherwise.
- (4) Where under any statute or otherwise any act is required or permitted to be done by, to, or with reference to the Attorney General, then, during any vacancy in the office of Attorney General and during any period for which the Attorney General is, by reason of his absence from the State, illness, incapacity or other sufficient cause, unable to discharge the functions of his office, the act may be done by, to, or with reference to the Minister for Justice or if there is no Minister for Justice, such other Minister of the State as is designated by the Governor by Order in Council.
- (5) Notwithstanding subsections (3) and (4), the Governor may, by Order in Council —
 - (a) delegate to the Minister for Justice or such other Minister as he specifies in the Order in Council any

power, function or duty vested or imposed by any other law of the State in or on the Attorney General; and

- (b) from time to time vary or revoke any delegation made under paragraph (a),

and while any delegation so made remains in force the Minister for Justice or other Minister of the State, as the case requires, may exercise and perform the powers, functions and duties specified in the delegation as validly and effectively as if he were the Attorney General.

- (5a) Notwithstanding subsections (3) and (4), if in relation to any criminal proceeding in the Supreme Court or any other court any act is required or permitted to be done by, to, or with reference to the Attorney General, then, during any vacancy in the office of Attorney General and during any period for which the Attorney General is, by reason of his absence from the State, illness, incapacity or other sufficient cause, unable to discharge the functions of his office, the act may be done by, to, or with reference to such of the Solicitor-General or the State Solicitor as the Governor may designate by Order in Council.
- (6) Nothing in this section shall be deemed to give any Minister of the State not being the Attorney General the right of audience in any court of law.

[Section 154 amended by No. 20 of 1976 s. 2; No. 65 of 2003 s. 69(7), 130(10), (11); No. 84 of 2004 s. 68 and 72.]

155. Registrars and other officers

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, a Principal Registrar, a Court of Appeal Registrar, and such registrars and other officers as may be necessary for the administration of justice and the execution of all the powers and authorities of the Court.

s. 155A

- (2) The registrars shall be the taxing officers of the Court, and shall perform such other duties as may be conferred upon them by or under this or any other Act.
- (3) In relation to appeals, applications, causes, matters or proceedings within the jurisdiction of the Court of Appeal —
 - (a) the Court of Appeal Registrar shall have all the duties, including the taxation of costs, that are conferred on registrars under this or any other Act or on the Court of Appeal Registrar by rules of court; and
 - (b) a reference to the Principal Registrar or a registrar is to be taken to be a reference to the Court of Appeal Registrar, unless the context requires otherwise.

[Section 155 inserted by No. 67 of 1979 s. 16; amended by No. 3 of 1982 s. 7; No. 32 of 1994 s. 3(2); No. 27 of 2000 s. 19; No. 45 of 2004 s. 25.]

155A. Employment of personal staff for judges and masters

- (1) On the recommendation of the Chief Justice, the Attorney General may employ, under contracts of service, people to be associates, orderlies and other assistants to the judges and masters.
- (2) The *Public Sector Management Act 1994* does not apply to or in respect of the employment of a person under subsection (1).
- (3) An arrangement under section 66 of the *Public Sector Management Act 1994* may be entered into between an employing authority and the Attorney General under which a public service officer performs the functions, services or duties of an associate, orderly, or other assistant to a judge or master.

[Section 155A inserted by No. 27 of 2000 s. 20.]

156. Sheriff

- (1) The sheriff shall be an officer of the Supreme Court, and shall be charged with the service and execution of all writs, applications, summonses, rules, orders, warrants, precepts,

process and commands of the Court which are directed to him, and shall make such return of the same to the Court together with the manner of the execution thereof as he is thereby required, and shall take, receive, and detain all persons who are committed to his custody by the Court, and shall discharge all such persons when thereunto directed by the Court or the law.

- (2) The sheriff is also an officer of the District Court and the Magistrates Court and has the same functions in respect of those courts as in respect of the Supreme Court, including those under subsection (1).

[Section 156 amended by No. 59 of 2004 s. 128.]

[157. Repealed by No. 59 of 2004 s. 128.]

158. Sheriff may appoint deputies

- (1) The sheriff may, from time to time, by writing under his hand, appoint a deputy or several deputies for whose acts and deeds the sheriff shall be held responsible and accountable, and the sheriff may from time to time revoke any such appointment.
- (2) Every such deputy may execute any writ, summons, rule, order, warrant, precept, process or command directed to the sheriff, and make return of the same together with the manner of execution thereof, and receive and detain in prison all such persons as are committed to the custody of the sheriff, and do and perform all such other acts as the sheriff would be bound to do or perform.

[159, 160. Repealed by No. 59 of 2004 s. 128.]

[161. Repealed by No. 39 of 1971 s. 16.]

[162-164. Repealed by No. 59 of 2004 s. 128.]

165. Saving of sheriff's common law rights etc

- (1) Except as expressly provided nothing in this Part shall affect any such power, right, privilege, obligation, liability, or duty of

s. 166

the sheriff, or officers of the sheriff, as exists by common law at the commencement of this Act.

[(2) repealed]

[Section 165 amended by No. 59 of 2004 s. 128.]

166. Central Office

- (1) There shall be a Central Office of the Supreme Court comprising all such offices as were immediately before the commencement of this Act comprised in the Central Office as then constituted, together with such other offices as may from time to time, by Order in Council, be amalgamated with or transferred to the Central Office of the Supreme Court.
- (2) The Central Office shall be under the control and superintendence of the senior master of the Supreme Court.

[Section 166 amended by No. 47 of 1983 s. 11.]

Part X — Rules of court

[Heading amended by No. 84 of 2004 s. 69.]

167. Rules of court, content

- (1) Rules of court may be made under this Act, by the judges of the Supreme Court, for the following purposes: —
 - (a) For regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Supreme Court in all causes and matters whatsoever in or with respect to which the Court has for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications or appeals which under this or any other Act are to be made to the Court shall be made.
 - (b) For regulating the sittings of the Supreme Court, and of the judges whether sitting in Court or in chambers.
 - (ba) For conferring on a single judge of appeal, either generally or in particular cases and under such circumstances and on such conditions as are prescribed, such of the jurisdiction and powers of the Court of Appeal as the rules specify.
 - (bb) For conferring on a master or the Court of Appeal Registrar, either generally or in particular cases and under such circumstances and on such conditions as are prescribed, such of the jurisdiction and powers of the Court of Appeal as the rules specify.
 - (c) For conferring on a master, Principal Registrar, registrar or any other officer of the Court either generally or in particular cases and under such circumstances and on such conditions as are prescribed, power to do such

things, to transact such business and to exercise such authority and jurisdiction as a judge may by virtue of a statute, custom or rule or practice of the Court, do, transact or exercise.

- (d) For regulating any matters relating to the costs of proceedings fixed by legal costs determination (as defined in the *Legal Practice Act 2003*).
- (da) For prescribing or regulating any matters relating to the costs of proceedings, where those costs are not fixed by legal costs determination (as defined in the *Legal Practice Act 2003*).
- (e) For regulating and prescribing the procedure and practice to be followed in cases in which the procedure or practice is regulated by enactments in force immediately before the commencement of this Act, or by any provisions of this Act re-enacting any such enactments, or in relation to the master by any other Act in force prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*¹, and for prescribing the Acts to which section 11E(1) does not apply.
- (f) For prescribing, subject to the provisions of this Act, in what cases trials in the Supreme Court are to be with a jury, and in what cases they are to be without a jury.
- (g) For regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings.
- (h) For regulating and directing the means by which and the mode in which an account may be taken and vouched, and for providing that the Court or a judge may give special directions or make special orders in relation thereto.

- (i) For enabling and regulating service out of the jurisdiction of the Court of a writ of summons or other process, or notice thereof.
- (ia) For allowing the Court of Appeal to review any decision made by a single judge of appeal or the Court of Appeal Registrar.
- (j) For regulating the procedure and practice to be followed on appeals.
- (k) Relating to funds in Court, and for the investment by the Public Trustee of any money under the control, or subject to any order of the Court.
- (l) For regulating or making provision with respect to any matters or proceedings which were regulated, or with respect to which provision was made by the rules of the Supreme Court in force at the commencement of this Act, or by any rules or regulations so in force with respect to the practice and procedure in matrimonial causes and matters, or with respect to applications and proceedings relating to legitimacy declarations, and with respect to non-contentious or common form probate business.
- (m) For the custody, preservation or disposal of all or any exhibits in the custody of the Court which are not claimed by the owner thereof within the period prescribed and of all or any records of the Court or of its proceedings or of any division or special jurisdiction of the Court, including records relating to the exercise of any federal jurisdiction or any jurisdiction conferred by any Act enacted by the Parliament of the Commonwealth, or for the custody, preservation or disposal of any portion of those records and of any documents filed or deposited in connection therewith, or under any statute or law of the State or the Commonwealth, and whether the person to be entrusted for the time being and from time to time with the

custody of those records or documents is an officer in the Public Service of the Commonwealth or the State or otherwise.

[(n) deleted]

- (o) For prescribing matters relating to evidence, including rules —
 - (i) requiring the disclosure (by the furnishing of copies of statements, reports, plans, photographs, models, or otherwise) of the nature and substance of evidence to be given; and
 - (ii) that depart from the law of evidence and provide for the admission as evidence, and the exclusion from evidence, of any matter the disclosure of which is required by a rule made pursuant to subparagraph (i).
- (oa) For regulating and prescribing the procedure and the practice to be followed in respect of —
 - (i) access to;
 - (ii) inspection, copying, preservation, or observing, of; and
 - (iii) taking samples of or from,
any document or property in or formerly in the possession, custody or power of any person (whether or not that person is a party to the cause or matter).
- (ob) For regulating and prescribing the procedure and the practice to be followed in respect of the making of applications by any person prior to the commencement by that person of any cause.
- (oc) For prescribing the manner in which rules of court made under paragraphs (oa) and (ob) may be enforced.
- (p) For prescribing the manner in which referees may conduct proceedings and the manner in which evidence

may be received by referees, including rules that depart from the law of evidence.

- (q) For enabling and regulating the mediation of any of the differences between any parties to a proceeding generally and, in particular, providing for —
 - (i) the reference of a proceeding or any part of a proceeding to a mediator with or without the consent of any party to the proceeding;
 - (ii) the conduct of the mediator and of the parties;
 - (iii) the terms and conditions upon which the mediation conference is to be held; and
 - (iv) the admissibility of evidence in relation to a mediation for the purpose of determining the costs of the mediation or the costs of the proceedings between the parties to the mediation.
- (r) For regulating the practice and procedure in relation to applications under the *Vexatious Proceedings Restriction Act 2002*.

The power given by the preceding paragraphs shall extend and apply to all matters with respect to which rules of procedure might have been made under any enactment repealed by this Act.

- (2) No rule of the Supreme Court which may involve the public revenue or expenditure out of the public funds, or the manner of dealing with trust funds, shall be made without the concurrence of the Treasurer, but the validity of a rule shall not in any proceeding in any Court be called in question either by the Court or by any party to the proceedings on the ground only that it was a rule to which the concurrence of the Treasurer was necessary, and that the Treasurer did not concur, or is not expressed to have concurred, in the making thereof.
- (3) Nothing in the rules of court made under subsection (1)(oa) or (1)(ob) shall affect any ground of privilege.

s. 168

[Section 167 amended by No. 63 of 1957 s. 4; No. 39 of 1971 s. 17; No. 56 of 1974 s. 5; No. 111 of 1976 s. 5; No. 67 of 1979 s. 17; No. 47 of 1983 s. 13; No. 65 of 1987 s. 22; No. 14 of 1991 s. 5; No. 3 of 1993 s. 3; No. 3 of 1996 s. 10; No. 31 of 1998 s. 3; No. 27 of 2000 s. 22; No. 23 of 2002 s. 13; No. 65 of 2003 s. 69(8); No. 45 of 2004 s. 26; No. 59 of 2004 s. 128.]

168. Rules of court, making

Whenever by this or any other Act it is provided expressly or in effect that the Supreme Court or the judges of the Court may make rules, such power may be exercised at any time and from time to time, and may be exercised by a majority of the judges at a meeting for that purpose, and shall be deemed to include the power to alter, annul, or add rules, and to prescribe, alter, annul, or add forms.

[169. Repealed by No. 27 of 2000 s. 23.]

170. Rules of court to be laid before Parliament, disallowance

- (1) All rules of court, made in pursuance of this Act, shall be laid before both Houses of Parliament within 14 days next after the same are made, if Parliament is in session, and if not then within 14 days after the commencement of the next session of Parliament.
- (2) If either House of Parliament passes a resolution disallowing any such rule, of which resolution notice has been given at any time within 14 sitting days of such House after such rule has been laid before it, such rule shall thereupon cease to have effect, but without affecting the validity of any proceeding taken or of anything done thereunder in the meantime.

This subsection shall apply notwithstanding the said 14 sitting days, or some of them, do not occur in the same session of Parliament, or during the same Parliament as that in which the rule is laid before such House.

- (3) Where a resolution has been passed as mentioned in subsection (2), notice of such resolution shall be published in the *Gazette*.

[Section 170 amended by No. 27 of 2000 s. 24.]

171. Fees, regulations may prescribe

- (1) The Governor may make regulations providing for or prescribing the fees to be paid —
- (a) when commencing a cause or matter;
 - (b) when entering a cause or matter for trial or at any other stage of proceedings in a cause or matter;
 - (c) when lodging a document with the Court;
 - (d) for the issue of any document by the Court;
 - (e) for the service of any document;
 - (f) in respect of the conduct of the business of any office of or connected with the Court; and
 - (g) for the carrying out of any order or warrant of the Court.
- (2) Without limiting subsection (1), regulations may prescribe the fees and expenses to be paid to mediators and experts.
- (3) If a question arises as to the fee payable or applicable in a particular case, the question is to be decided by the Principal Registrar.
- (4) A person affected by a decision of the Principal Registrar made under subsection (3) may have it reviewed by the Court in a summary way.
- (5) All fees received by the Court are to be credited to the Consolidated Fund.

[Section 171 inserted by No. 59 of 2004 s. 127.]

Part XI — Miscellaneous

[Heading inserted by No. 84 of 2004 s. 70.]

172. Foreign law question to be decided by judge

Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court by a judge with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

173. Consent order for judgment to be filed

Where a judge's order made by consent given by a defendant in an action for a liquidated demand in money, whereby the plaintiff is authorised forthwith or at a future time to sign or enter up judgment, or to issue or take out execution, whether such order is made subject to any defeasance or condition or not, the order shall, together with an affidavit of the time of such consent being given and a description of the residence and occupation of the defendant, be filed in the Bills of Sale Department of the Central Office within 21 days after the making of the order, otherwise the said order and any judgment signed or entered up thereon, and any execution issued or taken on such judgment, shall be void against the defendant's creditors, but not against the defendant himself.

174. Officers etc may be authorised to administer oaths

Every person who, being an officer of the Supreme Court, is for the time being so authorised by a judge, or a master, or by any rule of court, and every commissioner, referee, or other person directed to take an examination or to whom any question or issue of fact is referred, in any cause or matter in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

[Section 174 amended by No. 67 of 1979 s. 18; No. 47 of 1983 s. 13.]

~~[175. — Commissioners to take affidavits, etc~~

- ~~— (1) — The Chief Justice may, by commission under the seal of the Supreme Court, appoint and empower as many persons as he thinks fit and necessary, in places either within or beyond the jurisdiction of the Court, to administer oaths, and take and receive such affidavits as any person may be willing and desirous to make before a person so appointed in or concerning any cause or matter depending in the said Court or in anywise concerning any of the proceedings in the said Court.~~
- ~~— (2) — All affidavits taken or made by any commissioner appointed as aforesaid may be read and made use of in the Supreme Court, to all intents and purposes as such affidavits taken or made in the said Court now are, or by the practice of the Court at any time hereafter may be.~~

~~— *[Section 175 amended*~~ *177. Repealed* ~~*by No. 2824 of 20032005 s. 127(2) and (3).]*~~

~~176. — Affidavits may be sworn before commissioner or JP~~

- ~~— Any affidavit required for use in any cause or matter depending in or before the Court or before any judge or officer of the Court, and any bond or recognizance required to be filed in the Court, may be sworn or executed within the State before a commissioner, appointed under section 175, a justice of the peace, or such other person as may be prescribed by rules of court.~~

~~— *[Section 176 inserted by No. 39 of 1971 s. 18; amended by No. 59 of 2004 s. 128.]*~~

~~177. — Affidavits taken out of Western Australia~~

- ~~— (1) — Affidavits for use in the Court or in any other court, or for any purpose or in any way authorised by law, may be sworn and~~

~~taken in any place out of the State in accordance with rules of court.~~

~~—[(2)-(4) repealed]~~

~~—(5) Where by or under any Act any person or persons is or are named, specified, or indicated as the person or persons before whom such affidavit shall or may be sworn or taken, all courts and persons acting judicially or officially shall take judicial and official notice of the seal or signature of any such person attached to any such affidavit.~~

~~—(6) In this and the 3 last preceding sections —~~

~~—“affidavit” includes affirmation, statutory or other declaration, acknowledgment, examination, and attestation;~~

~~—“oath” includes affirmation and declaration;~~

~~—“swear” includes affirm and declare.~~

~~—[Section 177 amended by No. 39 of 1971 s. 19³⁴.]~~

178. Habeas corpus proceedings

- (1) If a person who is in custody pursuant to a warrant issued by another court is brought before the Supreme Court on a writ of habeas corpus, the Supreme Court must not order the release of the person on the ground of a defect or error in the warrant unless —
 - (a) it has received from the other court certified copies of the warrant and any court records that relate to the conviction or order in respect of which the warrant was issued; or
 - (b) if it has not received such copies, a reasonable time has elapsed since it requested the other court to supply the copies.
- (2) If the Supreme Court receives such documents and is satisfied —

- (a) that the conviction or order in respect of which the warrant was issued appears to be justified; and
- (b) that any defect or error in the warrant is one of form only and does not affect the substantial merits of the conviction or order,

the Supreme Court may order the warrant to be amended to rectify any defect or error and the person to be returned to custody.

[Section 178 inserted by No. 84 of 2004 s. 71.]

First Schedule

[Section 3]

Enactments repealed

Session and Number	Title or Short Title	Extent of Repeal
2 Will. IV., No. 3	An Act for regulating the constitution of juries and the office of sheriff	The whole.
3 and 4 Will. IV., c. 42 (adopted by 6 Will. IV., No. 4)	An Act for the further amendment of the law, and the better advancement of justice	The whole except sections 2 to 7, and sections 31, 37 and 38.
6 Will. IV., No. 3	An Act for attaching debts, money goods, or effects in the hands of third parties	The whole.
1 and 2 Vict., c. 110 (adopted by 31 Vict., No. 8)	An Act for abolishing arrest on mesne process in civil actions, etc. (<i>The Judgments Act 1838</i>)	The whole except sections 9, 10, 13, and 19.
3 and 4 Vict., c. 82 (adopted by 31 Vict., No. 8)	An Act for further amending the Act for abolishing arrest on mesne process in civil actions	Section 1.
6 Vict., No. 4	An Act to facilitate actions against persons absent from the colony, and against persons sued as joint contractors	The whole.
6 Vict., No. 15	An Act to extend the remedies of creditors against the property of debtors	The whole.

Session and Number	Title or Short Title	Extent of Repeal
8 Vict., No. 10	An Act to extend the remedies of creditors against debtors about to leave the colony	The whole.
10 Vict., No. 4	An Act to make the Act 6 Vict., No. 4, perpetual	The whole.
19 Vict., No. 13	An Ordinance for the Relief of Creditors against persons removing from one Australasian colony to another	The whole.
21 and 22 Vict., c. 93 (adopted by 31 Vict., No. 8)	<i>Legitimacy Declaration Act 1858</i>	The whole.
24 Vict., No. 15	<i>The Supreme Court Ordinance 1861</i>	The whole.
25 Vict., No. 8	An Ordinance to facilitate the recovery of debts	Section 2.
27 Vict., No. 19	An Ordinance to regulate divorce and matrimonial causes	The whole except section 13.
30 Vict., No. 1	An Ordinance to prevent doubts as to the application of the statutes of usury, etc.	The whole.
34 Vict., No. 7	An Act to amend the procedure and powers of the Court in divorce and matrimonial causes	The whole.
34 Vict., No. 21	<i>The Debtors Act 1871</i>	Sections 4, 21.
35 Vict., No. 3	An Act to empower the Chief Justice to grant commissions for taking affidavits, etc.	The whole.

Session and Number	Title or Short Title	Extent of Repeal
43 Vict., No. 9	An Act to amend the Ordinance to regulate divorce and matrimonial causes	The whole.
44 Vict., No. 10	<i>The Supreme Court Act 1880</i>	The whole.
50 Vict., No. 28	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
53 Vict., No. 15	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
55 Vict., No. 11	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
55 Vict., No. 32	<i>Bankruptcy Act 1892</i>	Sections 43, 46, 129 and 130.
57 Vict., No. 8	An Act to amend the Law relating to appeals in criminal cases	The whole.
59 Vict., No. 13	<i>Arbitration Act 1895</i>	Sections 16 to 19, and so far as may refer to references under an order of the Supreme Court, sections 20, 21 and 24.
60 Vict., No. 24	<i>The Judges' Pensions Act 1898</i>	The whole.
61 Vict., No. 28	<i>Circuit Courts Act 1897</i>	The whole.
63 Vict., No. 7	An Act for the more speedy trial of accused persons	The whole.
64 Vict., No. 27	An Act to amend the Act of the Sixth Year of Her Majesty numbered fifteen, as to interest on judgments	The whole.

Session and Number	Title or Short Title	Extent of Repeal
1 and 2 Edw. VII., No. 16	An Act to apply out of the consolidated revenue the annual sum of fourteen hundred pounds for the salary of an additional Judge of the Supreme Court	The whole.
2 Edw. VII., No. 37	<i>Judges' Salaries Act 1902</i>	The whole.
No. 10 of 1903	<i>Supreme Court Act Amendment Act 1903</i>	The whole.
No. 4 of 1912	<i>Appellate Jurisdiction Act 1911</i>	The whole.
No. 7 of 1912	<i>Divorce Amendment Act 1911</i>	The whole.
No. 33 of 1919	<i>Divorce Amendment Act 1919</i>	The whole.
No. 52 of 1920	<i>Divorce Act Amendment Act 1920</i>	The whole.
No. 20 of 1921	<i>Reciprocal Enforcement of Judgments Act 1921</i>	The whole.
No. 24 of 1922	<i>Attorney General (Vacancy in Office) Act 1922</i>	The whole.
No. 23 of 1925	<i>Divorce Amendment Act 1925</i>	The whole.
No. 4 of 1927	<i>Judges' Salaries Act Amendment Act 1927</i>	The whole.
No. 7 of 1929	<i>Divorce Act Amendment Act 1929</i>	The whole.

Second Schedule — Oath and affirmation of office

[~~Section 9~~ s. 13]

~~Judicial~~ [Heading inserted by No. 24 of 2005 s. 36.]

I, [name], [insert an oath

I, _____, ~~do swear~~ or affirmation according to the
Oaths, Affidavits and Statutory Declarations Act 2005] that I will ~~well~~
~~and truly faithfully~~ serve the people and the State of Western
Australia, ~~according to law,~~ in the office of ~~the Chief Justice of~~
~~Western Australia [or a judge~~ [title of office] of the Supreme Court of
Western Australia ~~or a commissioner of the Supreme Court of~~
~~Western Australia or a master of the Supreme Court of Western~~
~~Australia], and~~ and I will do right to all manner of people ~~after the~~
~~laws and usages of this State,~~ according to law, without fear or
favour, affection, or ~~illwill~~ — ~~So help me God!~~ ill will.

*[Second Schedule ~~amended by No. 67 of 1979 s. 19; inserted by~~
~~No. 47~~ 24 of ~~1983 s. 12; No. 37 of 1989~~ 2005 s. 9; ~~No. 65 of 2003~~
~~s. 130(12).~~ 36.]*

Notes

- ¹ This is a compilation of the *Supreme Court Act 1935* and includes the amendments made by the other written laws referred to in the following table ^{1a, 2420}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Supreme Court Act 1935</i>	36 of 1935	3 Mar 1936	1 May 1936 (see s. 1 and <i>Gazette</i> 9 Apr 1936 p. 527). Reserved for Royal Assent 7 Jan 1936. Assented: 3 Mar 1936 (see <i>Gazette</i> 3 Apr 1936 p. 484)
<i>Judges' Retirement Act 1937</i>	8 of 1937	8 Dec 1937	8 Dec 1937
<i>Supreme Court Act Amendment Act 1945</i>	10 of 1945	13 Dec 1945	13 Dec 1945
<i>Supreme Court Act Amendment Act 1945</i> ¹¹	35 of 1945	27 Mar 1946	17 May 1946 (see <i>Gazette</i> 17 May 1946 p. 491). Reserved for Royal Assent 30 Jan 1946. Assented: 27 Mar 1946 (see <i>Gazette</i> 17 May 1946 p. 491)
<i>Supreme Court Act Amendment Act 1946</i>	50 of 1946	24 Jan 1947	24 Jan 1947
<i>Supreme Court Act Amendment Act 1947</i>	9 of 1947	10 Oct 1947	10 Oct 1947
<i>Matrimonial Causes and Personal Status Code 1948</i> s. 3(1)	73 of 1948	4 Mar 1949	1 Jan 1950 (see s. 1 and <i>Gazette</i> 19 Oct 1949 p. 2499)
<i>Acts Amendment (Increase in number of Judges of the Supreme Court) Act 1949</i> s. 2	17 of 1949 (as amended by No. 35 of 1950 s. 4)	24 Sep 1949	24 Sep 1949 ¹² (see s. 1 and No. 35 of 1950 s. 4)
<i>Judges' Salaries and Pensions Act 1950</i> s. 4	35 of 1950	16 Dec 1950	16 Dec 1950
<i>Supreme Court Act Amendment Act 1954</i>	21 of 1954	7 Oct 1954	7 Oct 1954

Short title	Number and year	Assent	Commencement
<i>Limitation Act 1935</i> s. 48A(1)	35 of 1935 (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendment (see s. 48A and Second Sch. ¹³) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Supreme Court Act Amendment Act 1957</i>	63 of 1957	6 Dec 1957	6 Dec 1957
<i>Juries Act 1957</i> s. 2	50 of 1957	9 Dec 1957	1 Jul 1960 (see s. 1(2) and <i>Gazette</i> 6 Mar 1959 p. 539)
Reprint of the <i>Supreme Court Act 1935</i> approved 30 Sep 1958 in Vol. 13 of Reprinted Acts (includes amendments listed above)			
<i>Supreme Court Act Amendment Act 1960</i>	5 of 1960	6 Oct 1960	6 Oct 1960
<i>Foreign Judgments (Reciprocal Enforcement) Act 1963</i> s. 4	12 of 1963	5 Nov 1963	1 Sep 1969 (see s. 2 and <i>Gazette</i> 22 Aug 1969 p. 2379)
<i>Supreme Court Act Amendment Act 1964</i>	39 of 1964	12 Nov 1964	12 Nov 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Property Law Act 1969</i> s. 4	32 of 1969	19 May 1969	1 Aug 1969 (see s. 2 and <i>Gazette</i> 27 Jun 1969 p. 1873)
<i>Supreme Court Act Amendment Act 1971</i>	39 of 1971	10 Dec 1971	10 Dec 1971
<i>Supreme Court Act Amendment Act 1974</i>	56 of 1974	3 Dec 1974	1 Mar 1975 (see s. 2 and <i>Gazette</i> 14 Feb 1975 p. 505)
<i>Supreme Court Act Amendment Act 1975</i>	57 of 1975	24 Oct 1975	Act other than s. 6 and 7: 24 Oct 1975 (see s. 2(1)); s. 6 and 7: 1 Jan 1976 (see s. 2(2) and <i>Gazette</i> 7 Nov 1975 p. 4123)
<i>Supreme Court Act Amendment Act 1976</i>	20 of 1976	3 Jun 1976	3 Jun 1976
<i>Supreme Court Act Amendment Act (No. 2) 1976</i>	110 of 1976	25 Nov 1976	25 Nov 1976

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Expert Evidence) Act 1976 Pt. II</i>	111 of 1976	25 Nov 1976	25 Nov 1976
<i>Acts Amendment (Supreme Court and District Court) Act 1978 Pt. II</i>	112 of 1978	12 Dec 1978	1 Apr 1970 (see s. 2)
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. I</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and Gazette 8 Feb 1980 p. 383)
Reprint of the Supreme Court Act 1935 approved 12 May 1980 (includes amendments listed above)			
<i>Supreme Court Amendment Act 1982</i>	3 of 1982	6 May 1982	6 May 1982
<i>Acts Amendment (Judicial Appointments) Act 1982 Pt. I</i>	7 of 1982	6 May 1982	6 May 1982
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and Gazette 25 Jun 1982 p. 2079)
<i>Supreme Court Amendment Act (No. 2) 1982</i>	47 of 1982	6 Sep 1982	20 Jun 1983 (see s. 2 and Gazette 3 Jun 1983 p. 1675)
<i>Supreme Court Amendment Act 1983</i>	47 of 1983	1 Dec 1983	1 Dec 1983
<i>Supreme Court Amendment Act 1984</i>	9 of 1984	18 May 1984	18 May 1984
<i>Acts Amendment (Insolvent Estates) Act 1984 Pt. IV⁹</i>	72 of 1984	26 Nov 1984	24 Dec 1984
<i>Acts Amendment and Repeal (Credit) Act 1984 Pt. VIII</i>	102 of 1984	19 Dec 1984	31 Mar 1985 (see s. 2 and Gazette 8 Mar 1985 p. 867)
<i>Commercial Arbitration Act 1985 s. 3(1)</i>	109 of 1985	7 Jan 1986	1 Apr 1986 (see s. 2 and Gazette 28 Feb 1986 p. 605)
<i>Supreme Court Amendment Act 1986</i>	22 of 1986	25 Jul 1986	1 Sep 1986 (see s. 2 and Gazette 29 Aug 1986 p. 3161)
Reprint of the Supreme Court Act 1935 as at 25 Jul 1986 (includes amendments listed above except those in the <i>Supreme Court Amendment Act 1986</i>)			
<i>Acts Amendment (Actions for Damages) Act 1986 Pt. III¹⁰</i>	50 of 1986	4 Aug 1986	18 Aug 1986 (see s. 2 and Gazette 15 Aug 1986 p. 2925)

Supreme Court Act 1935

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. III</i>	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Judges' Salaries and Pensions Amendment Act 1987 s. 8</i>	82 of 1987	1 Dec 1987	1 Dec 1987 (see s. 2)
<i>Supreme Court Amendment Act 1988</i>	14 of 1988	6 Sep 1988	6 Sep 1988 (see s. 2)
<i>Supreme and Family Courts (Miscellaneous Amendments) Act 1989 Pt. 2</i>	37 of 1989	21 Dec 1989	21 Dec 1989 (see s. 2)
<i>Supreme Court Amendment Act 1990</i>	25 of 1990	18 Sep 1990	18 Sep 1990 (see s. 2)
<i>Supreme and District Courts (Miscellaneous Amendments) Act 1991 Pt. 2</i>	14 of 1991	21 Jun 1991	21 Jun 1991 (see s. 2)
<i>Supreme Court Amendment Act 1993</i>	3 of 1993	18 Aug 1993	18 Aug 1993 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
Reprint of the Supreme Court Act 1935 as at 23 Nov 1995 (includes amendments listed above)			
<i>Supreme Court Amendment Act 1996</i>	3 of 1996	24 May 1996	31 Aug 1996 (see s. 2 and <i>Gazette</i> 30 Aug 1996 p. 4315)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Consumer Credit (Western Australia) Act 1996 s. 13</i>	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 20</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<i>Acts Amendment (Auxiliary Judges) Act 1997 Pt. 10</i>	23 of 1997	18 Sep 1997	18 Sep 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 118</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Supreme Court Amendment Act 1998</i>	31 of 1998	3 Jul 1998	3 Jul 1998 (see s. 2)
Reprint of the Supreme Court Act 1935 as at 23 Jul 1999 (includes amendments listed above)			
<i>Courts Legislation Amendment Act 2000 Pt. 5 (s. 17-25)</i> ¹⁴	27 of 2000	6 Jul 2000	s. 17-20: 6 Jul 2000 (see s. 2(1)); s. 21-25: 28 Jul 2001 (see s. 2(2) and <i>Gazette</i> 27 Jul 2001 p. 3797)
Reprint of the Supreme Court Act 1935 as at 9 Feb 2001 (includes amendments listed above except those in the <i>Courts Legislation Amendment Act 2000</i> s. 21-25)			
<i>Vexatious Proceedings Restriction Act 2002 s. 13</i>	23 of 2002	18 Sep 2002	28 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4877)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 24</i>	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003 s. 127 and Pt. 57</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 69, 119 and 130</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 144(3)</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Acts Amendment (Court of Appeal) Act 2004</i> Pt. 2 ³	45 of 2004	9 Nov 2004	Pt. 2 other than s. 14, 20(c) and (d) and Pt. 5: 1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163); s. 20(c) and (d): 2 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> Pt. 18 ^{15, 16}	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 14	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 7: The Supreme Court Act 1935 as at 19 Aug 2005 (includes amendments listed above)			
<i>Limitation Legislation Amendment and Repeal Act 2005</i> Pt. 8 ¹⁹	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> Pt. 9	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 68 ¹⁷	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 14 ¹⁸	45 of 2004	9 Nov 2004	To be proclaimed (see s. 2)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> Pt. 9²⁰	24 of 2005	2 Dec 2005	To be proclaimed (see s. 2)

² Repealed by the *Interpretation Act 1984* s. 77(1).

³ The *Acts Amendment (Court of Appeal) Act 2004* s. 5(2) and Pt. 5 read as follows:

“

5. Sections 6 and 7 replaced by sections 6, 7 and 7A, and transitional provision

- (2) A person who holds any of the offices of which the Court consists immediately before the coming into operation of subsection (1) continues to hold the corresponding office in the General Division when subsection (1) comes into operation.

Part 5 — Transitional provisions

38. Appeals pending before Full Court or Court of Criminal Appeal

- (1) If on the commencement of this Act an appeal or an application for leave to appeal is pending before —
- (a) the Full Court of the Supreme Court; or
 - (b) the Court of Criminal Appeal,
- the appeal or application is to be taken to have been commenced or made and to be pending before the Court of Appeal.
- (2) Despite subsection (1), if on the commencement of this Act an appeal or an application for leave to appeal is part heard by —
- (a) the Full Court of the Supreme Court; or
 - (b) the Court of Criminal Appeal,
- then the hearing and determination of the appeal or application may be completed by the Full Court or the Court of Criminal Appeal, as the case requires, as if this Act had not commenced.

39. References to “Full Court” or “Court of Criminal Appeal” to be read as references to “Court of Appeal”

- (1) A reference in a written law or book, document or writing to the Full Court of the Supreme Court (whether those or some other words are used) is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Court of Appeal.
- (2) A reference in a written law or book, document or writing to the Court of Criminal Appeal is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Court of Appeal.

”.

⁴ The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

⁵ The *Companies Act 1961* was superseded by the *Companies (Western Australia) Code*, see section 18 of the *Companies (Application of Laws) Act 1981*. The *Companies (Western Australia) Code* was superseded by the Corporations Law which, on 15 July 2001, was superseded by the *Corporations Act 2001* of the Commonwealth. See Part 13 Division 2 of the *Corporations (Western Australia) Act 1990* and Part 2 of the *Corporations (Ancillary Provisions) Act 2001* respectively.

⁶ *Supreme Court Ordinance 1861* commenced on 18 June 1861. It was repealed by this Act, s. 3.

⁷ *Supreme Court Act 1880* commenced on 1 August 1881. It was repealed by this Act, s. 3.

⁸ Repealed by the *Trustees Act 1962* s. 4(1). But see *Limitation Act 1935* s. 47.

⁹ The *Acts Amendment (Insolvent Estates) Act 1984* s. 11 contains a transitional provision about persons who died before that Act commenced

¹⁰ The *Acts Amendment (Actions for Damages) Act 1986* s. 6(2) contains a transitional provision about causes of action in which a court had given judgment before that section commenced.

¹¹ Repealed by the *Statute Law Revision Act 1967*.

¹² The commencement date was amended by the *Judges’ Salaries and Pensions Act 1950* s. 4.

¹³ Section 48A and the Second Schedule were inserted by the *Limitation Act Amendment Act 1954* s. 8.

¹⁴ The *Courts Legislation Amendment Act 2000* Pt. 6 reads as follows:

“

Part 6 — Validation

26. Validation

To the extent that, before the coming into operation of section 22, provisions of the *Rules of the Supreme Court 1971* related or purported to relate to mediation —

- (a) those provisions are to be regarded as having been validly and lawfully made and published under and within the authority of the *Supreme Court Act 1935* and to have always had effect according to their terms; and
- (b) anything done under or purportedly done under those provisions is to be regarded as having been validly done and, to have always been, effectual in all respects.

”.

¹⁵ The *Courts Legislation Amendment and Repeal Act 2004* Pt. 22 contains transitional provisions about enforcing judgments given before that Part commenced. Part 22 and the *Civil Judgments Enforcement Act 2004* commenced on 1 May 2005. Part 22 reads as follows:

“

Part 22 — Transitional provisions

Division 1 — Provisions about enforcing judgments

143. Interpretation

- (1) In this Part —
 - “**commencement**” means the commencement of this Part;
 - “**court fee**”, for an application, does not include any fee payable in connection with serving the application to the Sheriff or any other person;
 - “**enforcement process**” means any writ, warrant, order, or other process, issued by a court for or in connection with enforcing a judgment or order of the court.
- (2) This Part does not limit the operation of the *Interpretation Act 1984* Part V.

144. Judgments not satisfied before commencement

If immediately before commencement a judgment of the Supreme Court, District Court or Local Court is unsatisfied, then on commencement —

- (a) if proceedings to enforce the judgment are pending or any process for the enforcement of the judgment is in force, section 145 applies;
- (b) otherwise, the judgment may be enforced under and subject to the *Civil Judgments Enforcement Act 2004*.

145. Pending proceedings to enforce a judgment

- (1) If immediately before commencement proceedings for or in connection with enforcing a judgment are pending in a court, then on commencement either —
 - (a) the proceedings may be continued under the law in force immediately before commencement, despite the enactment of the *Civil Judgments Enforcement Act 2004*; or
 - (b) the person entitled to the benefit of the judgment may discontinue the proceedings and commence proceedings under the *Civil Judgments Enforcement Act 2004* to enforce the judgment.
- (2) If proceedings are continued under subsection (1)(a) —
 - (a) no enforcement process may be issued under the law in force immediately before commencement for or in connection with enforcing the judgment; but
 - (b) subject to the *Civil Judgments Enforcement Act 2004*, the court may make any order under that Act that substantially corresponds with any order that the court could have made in the proceedings under the law in force immediately before commencement.
- (3) If proceedings under the *Supreme Court Act 1935* section 126(2) or the *Local Courts Act 1904* section 130 are continued under subsection (1)(a), they are to be taken to be a means inquiry held under the *Civil Judgments Enforcement Act 2004* for the purposes of subsection (2)(b).
- (4) Subsection (2)(a) does not prevent the issue of any warrant or writ in connection with conducting any proceedings that are continued under subsection (1)(a).
- (5) No court fee shall be payable for commencing proceedings as permitted by subsection (1)(b) by a person who has discontinued proceedings as permitted by that subsection.

146. Pending process to enforce a judgment

- (1) If immediately before commencement any enforcement process is in force, then on commencement the process continues in force under the law in force immediately before commencement until —
 - (a) the process ceases to be in force under that law;
 - (b) the process ceases to be in force under subsection (6)(a); or
 - (c) the expiry of 12 months after commencement,whichever happens first, and may be served, dealt with, or executed, under the law in force immediately before commencement which continues to apply to and in respect of the process.
- (2) If —
 - (a) on commencement a copy of a writ of *fiери facias* is in the Register maintained under the *Transfer of Land Act 1893*, having been served on the Registrar and entered in that Register under section 133 of that Act; or
 - (b) after commencement a copy of a writ of *fiери facias* is entered in that Register under section 133 of that Act, having been served on the Registrar under that section,then —
 - (c) despite subsection (1) the *Transfer of Land Act 1893* section 133 (as inserted by this Act) applies to and in respect of the writ as if the writ were a property (seizure and sale) order that had been —
 - (i) issued under the *Civil Judgments Enforcement Act 2004*; and
 - (ii) registered under the *Transfer of Land Act 1893* section 133 (as inserted by this Act) at the time when the copy of the writ was so served;
 - (d) if the sale period referred to in the *Transfer of Land Act 1893* section 133 (as inserted by this Act) in respect of the writ expires at a time after the writ ceases to be in force under the law in force immediately before commencement, the writ is to be taken to remain in force until the sale period expires, despite that law; and
 - (e) subject to paragraphs (c) and (d), subsection (1) applies to and in respect of the writ.
- (3) In subsection (2), a reference to a writ of *fiери facias* includes a reference to a warrant of execution issued out of a Local Court under the *Local Courts Act 1904*.

- (4) If immediately before commencement any enforcement process is in force but unexecuted, the person for whose benefit the process was issued may apply for an order under the *Civil Judgments Enforcement Act 2004* to enforce the judgment or order.
- (5) No court fee shall be payable on making an application under subsection (4) for an order under the *Civil Judgments Enforcement Act 2004*.
- (6) If on an application made under subsection (4) an order is made under the *Civil Judgments Enforcement Act 2004* —
 - (a) the unexecuted process referred to in subsection (4) ceases to be in force; and
 - (b) the order made under the *Civil Judgments Enforcement Act 2004* has the same priority as the unexecuted process referred to in subsection (4) has immediately before it ceases to be in force under paragraph (a).

147. Existing bailiffs and their assistants, termination of appointment etc.

- (1) On commencement the following offices are abolished and the persons holding them cease to do so —
 - (a) a bailiff appointed under the *District Court of Western Australia Act 1969* section 28(1);
 - (b) a person appointed under the *District Court of Western Australia Act 1969* section 28(2) by a bailiff to assist the bailiff;
 - (c) a bailiff appointed under the *Local Courts Act 1904* section 16;
 - (d) a person appointed under the *Local Courts Act 1904* section 16 by a bailiff to assist the bailiff.
- (2) If immediately before commencement a person who is not a police officer is a bailiff appointed under the *Local Courts Act 1904* section 16, then on commencement the person is entitled to be appointed as a bailiff under the *Civil Judgments Enforcement Act 2004* section 107 for a term of 5 years as from commencement.
- (3) If immediately before commencement a person who is a police officer is —
 - (a) a bailiff appointed under the *District Court of Western Australia Act 1969* section 28(1); or
 - (b) a bailiff appointed under the *Local Courts Act 1904* section 16,

then on commencement the person is taken to have been appointed as a bailiff under the *Civil Judgments Enforcement Act 2004* section 107.

Division 2 — General

148. Transitional regulations

- (1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the repeal or amendment of any Act by this Act and the coming into operation of any of the Acts referred to in section 3, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.
- (2) Regulations made under subsection (1) may be expressed to have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a provision of regulations made under subsection (1) has effect before the day on which it is published in the *Gazette*, it does not —
 - (a) affect in a manner prejudicial to any person (other than the State or an agency of the State) the rights of that person existing before the day of publication; or
 - (b) impose liabilities on any person (other than the State or an agency of the State) in respect of anything done or omitted to be done before the day of publication.

”.

¹⁶ The amendment in the *Courts Legislation Amendment and Repeal Act 2004* s. 128 to s. 20 could not be made because s. 20 had been replaced by the *Acts Amendment (Court of Appeal) Act 2004* s. 15.

¹⁷ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 68 had not come into operation. It reads as follows:

“

68. *Supreme Court Act 1935* amended

Section 11B of the *Supreme Court Act 1935* is amended as follows:

- (a) by repealing subsection (2) and inserting the following subsection instead —

“

- (2) Where a Master was, immediately before his appointment as such, an officer of the Public Service

of the State he retains his existing and accruing rights and for the purpose of determining those rights, his service as Master shall be taken into account as if it were service in the Public Service of the State.

”.

(b) by repealing subsection (3a).

”.

¹⁸ On the date as at which this compilation was prepared the *Acts Amendment (Court of Appeal) Act 2004* s. 14 had not come into operation. It reads as follows:

“

14. Section 13 amended

Section 13 is amended by deleting “be a Judge, an acting Judge, an auxiliary Judge, a Master, an acting Master, or a commissioner, of the Court,” and inserting instead —

“

an office referred to in section 6(3) or to the office of judge of appeal, Chief Justice or President,

”.

”.

¹⁹ The *Limitation Legislation Amendment and Repeal Act 2005* s. 18(2) reads as follows:

“

18. Section 29 repealed and a savings provision

- (2) The *Supreme Court Act 1935* section 29, as it was immediately before commencement day, continues to apply to causes of action that accrued before commencement day as if subsection (1) had not been enacted.

”.

²⁰ ~~On the date as at which this compilation was prepared, the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* Pt. 9 had not come into operation. It reads as follows:~~

“

~~**Part 9 — Supreme Court Act 1935 amended**~~

~~**27. The Act amended in this Part**~~

~~The amendments in this Part are to the *Supreme Court Act 1935*.~~

28. ~~Section 4 amended~~

~~Section 4(1) is amended by deleting the definition of “Oath”.~~

29. ~~Section 9 amended~~

~~Section 9(2) is repealed.~~

30. ~~Section 11 amended~~

~~Section 11(1a) is repealed.~~

31. ~~Section 11AA amended~~

~~Section 11AA(4) is amended as follows:~~

~~(a) by inserting after paragraph (a) —~~

~~“ and ”;~~

~~(b) by deleting paragraph (b) and “and” after it.~~

32. ~~Section 11A amended~~

~~Section 11A(4) is repealed.~~

33. ~~Section 13 inserted~~

~~After section 12 the following section is inserted —~~

~~“~~

13. ~~Oath of office~~

~~Before a person who is appointed to an office referred to in section 6(3), or to the office of judge of appeal, Chief Justice or President, performs any function of the office, he or she shall take before the Governor, or some person authorised for the purpose by the Governor, an oath or affirmation in the form set out in the Second Schedule.~~

~~”.~~

34. ~~Section 49 amended~~

~~Section 49(1a) is repealed.~~

35. ~~Sections 175, 176 and 177 repealed~~

~~Sections 175, 176 and 177 are repealed.~~

36. ~~Second Schedule replaced~~

~~The Second Schedule is repealed and the following schedule is inserted instead —~~

~~“~~

~~Second Schedule — Oath and affirmation of office~~

~~[s. 13]~~

~~I, [name], [insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005] that I will faithfully serve the people and the State of Western Australia in the office of [title of office] of the Supreme Court of Western Australia and I will do right to all manner of people, according to law, without fear or favour, affection or ill will.~~

~~”~~

~~”~~

²⁴[20](#)

This Act has a retrospective amendment effective from 1 May 2005 see the *Acts Amendment (Justice) Act 2008* s. 24. The effect of this retrospective amendment has not been included in this document. To see the provision as amended by the retrospective amendment see the document as at 31 Mar 2008.