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Act 1984* as at 20 February 1996

WESTERN AUSTRALIA

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**DISTRICT COURT OF WESTERN  
AUSTRALIA  
ACT 1969**

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ARRANGEMENT

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WESTERN AUSTRALIA

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# **DISTRICT COURT OF WESTERN AUSTRALIA ACT 1969**

**AN ACT to establish The District Court of Western  
Australia and for incidental purposes.**

## PART I — PRELIMINARY

### Short title

1. This Act may be cited as the *District Court of Western Australia Act 1969*<sup>1</sup>.

### Commencement

2. This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

[3. *Repealed by No. 122 of 1984 s.3.*]

### Repeal and Saving

4. (1) The *Courts of Session Act 1921*, is hereby repealed.

(2) Without affecting the application of the *Interpretation Act 1918*<sup>2</sup>, to this Act, any proceeding, action, cause or matter respectively —

- (a) commenced under the *Courts of Session Act 1921*, and pending or in progress on the date of the coming into operation of this Act, may be continued, completed and enforced as if this Act had not come into operation;
- (b) commenced under the *Supreme Court Act 1935*, or the *Local Courts Act 1904*, and pending or in progress on that date, that could have been commenced under this Act in the Court, if this Act had been in operation, may be continued, completed and enforced under and subject to the *Supreme Court Act 1935* or the *Local Courts Act 1904*, as the case requires.



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(2a) Notwithstanding subsection (2), the Chief Justice of Western Australia may make an order, at any time after hearing the parties concerned, remitting to the Court any action that —

- (a) is commenced under the *Supreme Court Act 1935*;
- (b) is pending on the date of the coming into operation of the *District Court of Western Australia Act Amendment Act 1970*<sup>1</sup>; and
- (c) could have been commenced under this Act in the Court, if this Act had been in operation when the action was so commenced,

unless a party to the action satisfies the Chief Justice of Western Australia that for good cause shown the action should not be remitted to the Court.

(2b) The Chief Justice of Western Australia may make an order, at any time after hearing the parties concerned, remitting to the Court any action that —

- (a) is commenced under the *Supreme Court Act 1935*;
- (b) is pending on the date of the coming into operation of sections 8 and 12 of the *District Court of Western Australia Act Amendment Act 1972*<sup>1</sup>; and
- (c) could have been commenced under this Act in the Court, if those sections had been in operation when the action was so commenced,

unless a party to the action satisfies the Chief Justice of Western Australia that for good cause shown the action should not be remitted to the Court.

(2c) The Chief Justice of Western Australia may make an order, at any time after hearing the parties concerned, remitting to the Court any action that —

- (a) is commenced under the *Supreme Court Act 1935*;

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- (b) is pending on the date of the coming into operation of Part I of the *Acts Amendment (Jurisdiction of Courts) Act 1976*<sup>1</sup>; and
- (c) could have been commenced under this Act in the Court, if that Part had been in operation when the action was so commenced,

unless a party to the action satisfies the Chief Justice of Western Australia that for good cause shown the action should not be remitted to the Court.

(3) Where before the date of the coming into operation of this Act, a person has been ordered to be committed to take his trial for an indictable offence before the Supreme Court or a Court of Session, if —

- (a) the trial has not commenced before that date; and
- (b) the indictable offence is one that after that date is triable in the Court,

the person shall be deemed to have been ordered to take his trial for the indictable offence before the Court sitting at the place appointed for the holding of the Supreme Court or Court of Session, before which he was ordered to take his trial.

(4) After the date of the coming into operation of this Act, the books and records of a Court of Session for a Division, shall be kept by the Registrar of the Court at the place or nearest the place where that Court of Session was held prior to that date, and that Registrar may certify for all purposes any such book or record or any copy thereof or extract therefrom, as if he were the Clerk of the Court of Session of that Division.

(4a) The books and records of a Court of Session for a Division are deemed to be court records for the purposes of Part IX.

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(5) Where, on the date of the commencement of this subsection, there is constituted for a Circuit Court a jury district, the area of which is the same as that of a jury district that was constituted for a Court of Session, the Jurors' Book for the lastmentioned jury district that was last in use before that date —

- (a) shall be the Jurors' Book for the first-mentioned jury district until a new Jurors' Book is prepared for that jury district and each person whose name appears therein is, subject to the *Juries Act 1957*, a juror qualified and liable to serve as a juror at civil and criminal trials in the Circuit Court including the Court sitting in that jury district; and
- (b) all things done before or being done on that date under Part IV of the *Juries Act 1957*, in relation to the preparation of a new Jurors' Book for the jury district for that Court of Session shall, after that date, be deemed to have been done or to be done in relation to the preparation of a new Jurors' Book for the jury district for the Circuit Court, including the Court.

[Section 4 amended by No. 14 of 1970 s.3; No. 40 of 1972 s.3; No. 69 of 1976 s.4; No. 122 of 1984 s.4.]

### **Construction and application of certain Acts**

5. (1) A reference in any other Act or in any regulation, rule, by-law or instrument made under any other Act in force after the coming into operation of this Act, to a Court of Session, the Chairman thereof, or any officer thereof, shall be read as a reference to the Court, a District Court Judge, or the corresponding officer of the Court, as the case requires.

(2) The provisions of the *Justices Act 1902*, except sections 39 and 115 and Part VIII thereof, apply with such modifications as circumstances require, to the Court as a court of criminal jurisdiction, and to the Court, a District Court Judge

and the Registrar and other officers of the Court as those provisions apply to the Supreme Court, a Judge thereof and to the corresponding officers of the Supreme Court.

(3) The Court is a court within the meaning of the term **"Court"** in the *Evidence Act 1906*, and the *Suitors' Fund Act 1964*, and the provisions thereof apply, with such modifications as circumstances require, to the Court, a District Court Judge and any officer of the Court.

(4) The Court is an inferior Court within the meaning of the term **"inferior Court"** in the *Vexatious Proceedings Restriction Act 1930*.

(5) Unless the context otherwise requires, a reference in any other Act or in any regulation, rule, by-law, notice, proclamation or other statutory instrument made, published or in force under this Act or any other Act to the Chairman, or Chairman of Judges, of the District Court shall be read and construed as a reference to the Chief Judge.

[Section 5 amended by No. 14 of 1970 s.4; No. 40 of 1972 s.4; No. 122 of 1984 s.5.]

## Definitions

6. In this Act, unless the contrary intention appears —

**"action"** means a civil proceeding commenced by writ or in such other manner as is prescribed by Rules of Court and includes suit but does not include any criminal proceeding by the Crown;

**"bailiff"** includes a deputy bailiff and person duly appointed under this Act to assist the bailiff;

**"cause"** includes any action, suit or other original proceeding between a plaintiff and a defendant and any criminal proceeding by the Crown;

**“defendant”** includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, a civil proceeding;

**“District Court Judge”** means a Judge of the Court or acting Judge of the Court;

**“Local Court”** means a Local Court established under the *Local Courts Act 1904*;

**“judgment”** includes a judgment, order or other decision or determination of the Court or a District Court Judge;

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

**“matter”** means a proceeding in the Court that is commenced otherwise than by writ;

**“party”** includes a person served with notice of, or attending a proceeding, although not named in the record;

**“plaintiff”** includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding;

**“practice and procedure”** includes matters relating to costs, the method of pleading, the institution, conduct, trial or hearing and adjudication in any proceeding, the attendance of witnesses, the custody on bail of accused or convicted persons and the enforcement and execution of judgments and all the jurisdiction and powers conferred and the matters prescribed, provided for, or regulated by the Rules of Court;

**“Registrar”** means the Principal Registrar, a Registrar, or a Deputy Registrar, appointed under section 25;

**“section”** means a section of this Act;

**“the Chief Judge”** means the District Court Judge appointed the Chief Judge and includes a District Court Judge appointed to act in the office of Chief Judge under section 18 (2a);

**“the Court”** means The District Court of Western Australia established under this Act;

*[Section 6 amended by No. 7 of 1982 s.8; No. 122 of 1984 s.6; No. 53 of 1992 s.9 (3).]*

**PART II — THE COURT**

***Division 1 — Establishment of The District Court of  
Western Australia***

**Establishment of the Court**

7. (1) There shall be in and for the State a Court to be known as The District Court of Western Australia.

(2) The Court shall be constituted in the manner provided by this Act.

**The Court to be a court of record and constitution thereof**

8. (1) The Court —

- (a) is a court of record;
- (b) shall be constituted by a District Court Judge as provided in this Act; and
- (c) has the criminal and civil jurisdiction conferred on it by this Act.

(2) The jurisdiction of the Court is exercisable by one District Court Judge, sitting in Court, or as provided in section 21, sitting in chambers.

(3) The Court constituted by one District Court Judge may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another District Court Judge is at the same time sitting and exercising the jurisdiction of the Court.

### **Seal of the Court**

9. (1) There shall be a seal of the Court at each place at which the Court is held under this Act.

(2) All writs, notices, summonses, certificates, warrants and other processes issued out of the Court shall be sealed or stamped with the seal of the Court.

### ***Division 2 — District Court Judges***

### **The Judges of the Court**

10. (1) The Governor may, by commission in Her Majesty's name, appoint as many persons as are needed for the due administration of this Act to be District Court Judges.

(2) A person shall not be appointed a District Court Judge unless —

- (a) he is or has been a barrister or solicitor of the Supreme Court of not less than 8 years' standing and practice; or
- (b) he is a practising barrister of the High Court of Australia, of not less than 8 years standing.

(3) A person so appointed shall be a District Court Judge for the whole of the State and under his commission is empowered to act in the Court sitting at any place in the State.

(4) The Governor may appoint one of the District Court Judges to be the Chief Judge, and may, at any time, revoke his appointment as the Chief Judge.

(4a) On the day on which section 7 of the *District Court Amendment Act 1984*<sup>1</sup> comes into operation the person who, immediately before that day, held office as, or acted in the office



of, Chairman of Judges shall be deemed to have been appointed as Chief Judge, or to act in the office of Chief Judge, as the case may be, under and subject to this Act.

(5) The District Court Judges other than the Chief Judge, have seniority among themselves according to the dates of their respective appointments as District Court Judges, but if 2 or more of them are appointed on the same day, they have seniority according to the precedence assigned to them by the Governor, at the time he makes the appointments.

*[Section 10 amended by No. 112 of 1978 s.6; No. 122 of 1984 s.7.]*

### **Tenure of office of District Court Judges and oath of office**

11. (1) The commission of each District Court Judge shall continue in force during good behaviour but Her Majesty may, upon the address of both Houses of Parliament, remove any District Court Judge from his office and revoke his commission.

(2) Each person appointed to be a District Court Judge or an acting District Court Judge shall, before proceeding to discharge the duties of his office, take before the Governor the oath or affirmation of allegiance and an oath or affirmation in accordance with the form set forth in the Schedule.

*[Section 11 amended by No. 7 of 1982 s.9.]*

### **Salaries and allowances of the District Court Judges**

12. (1) Subject to subsection (3) there shall be paid to the District Court Judges out of the Consolidated Fund, without further appropriation than this Act, salaries at the following rates —

- (a) to the Chief Judge at the rate of \$31 320 a year;

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- (b) to each of the other District Court Judges, at the rate of \$29 150 a year,

and the appropriate rate shall not be diminished during the continuance of the commission of a District Court Judge.

(2) District Court Judges are entitled to such travelling and other allowances or reimbursements as the Governor may, from time to time, approve.

(3) A District Court Judge who, at the time of his appointment as such, held the office of chairman of the Third Party Claims Tribunal, established but subsequently abolished under the *Motor Vehicle (Third Party Insurance) Act 1943*, shall be paid the same remuneration as is paid from time to time to a Puisne Judge of the Supreme Court, and shall not be paid a salary under subsection (1), but is for the purposes of section 14, deemed to be in receipt of a salary as a District Court Judge payable to the District Court Judge who holds the office of the Chief Judge.

(4) A District Court Judge who is appointed to act in the office of Chief Judge under section 18 (2a) shall be entitled, for so long as his appointment to act as Chief Judge remains in force, to be remunerated and to receive other allowances and reimbursements as if he had been appointed substantively to the office of Chief Judge under section 10 (4).

*[Section 12 amended by No. 14 of 1970 s.5; No. 100 of 1970 s.2; No. 40 of 1972 s.5; No. 91 of 1972 s.6; No. 23 of 1974 s.5; No. 45 of 1975 s.6; No. 7 of 1982 s.10; No. 122 of 1984 s.13; No. 6 of 1993 s.11.]*

### **Leave of District Court Judge**

**13.** A District Court Judge is entitled to the same leave of absence as a Judge of the Supreme Court.

### **Application of Act No. 35 of 1950 to District Court Judges**

14. (1) The provisions of the *Judges' Salaries and Pensions Act 1950*, that relate to pensions apply, with such modifications as circumstances require, to each District Court Judge and to his widow and children after his death in the same manner as they apply to and in respect of a Judge of the Supreme Court appointed as such after the coming into operation of that Act, and to his widow and children, and for the purpose the term "**Judge**" in that Act includes a District Court Judge.

[(2) *repealed*]

[*Section 14 amended by No. 82 of 1987 s.8.*]

### **Application of Act No. 34 of 1938, to a person appointed a District Court Judge**

15. (1) If a person is a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*, at the time he is appointed a District Court Judge, he may continue to be such a contributor notwithstanding his appointment as a District Court Judge.

(2) While a person to whom subsection (1) applies, continues to be a contributor under the *Superannuation and Family Benefits Act 1938*, that Act applies to the person; and if he ceases to be a contributor —

- (a) on or after he attains the age of 60 years but before he attains the age of 65 years he shall be deemed to have elected to retire; or
- (b) on attaining 65 years he shall be deemed to have retired,

under that Act on the day he so ceases to be a contributor and a pension is payable to, and in relation to, him without affecting any pension that may be payable to, and in relation to him,

under the *Judges' Salaries and Pensions Act 1950*, but the pension otherwise payable under that Act to and in relation to him, shall be reduced in accordance with the provisions of that Act by the amount of the State share of the first mentioned pension paid to and in relation to him.

[Section 15 amended by No. 100 of 1970 s.3.]

### **Application of Act No. 8 of 1937**

16. The provisions of the *Judges' Retirement Act 1937*, apply to a District Court Judge in the same manner as they apply to a Judge of the Supreme Court appointed as such after the coming into operation of that Act.

### **District Court Judge not to practise as legal practitioner**

17. (1) A District Court Judge shall not practise as a practitioner as defined by the *Legal Practitioners Act 1893*, or be directly or indirectly concerned in such practice.

[(2) *repealed*]

[Section 17 amended by No. 14 of 1970 s.6; No. 40 of 1972 s.6.]

### **Acting appointments**

18. (1) Where the Chief Judge is absent from duty or there is a vacancy in the office of Chief Judge, then where no District Court Judge is specifically appointed under subsection (2a) to act in the office of Chief Judge, all the duties and powers of the Chief Judge shall during such absence or vacancy devolve upon the senior District Court Judge.

(2) In the absence or inability of the District Court Judge upon whom the powers and duties of the Chief Judge devolve under subsection (1), those powers and duties shall devolve

during such absence or inability upon the District Court Judge who is next in seniority.

(2a) Where the Chief Judge is, or is expected to be, absent from duty or there is a vacancy in the office of Chief Judge, the Governor may appoint a District Court Judge to act in the office of Chief Judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(2b) The Governor may at any time revoke the appointment of a District Court Judge to act as Chief Judge.

(3) Where —

(a) a District Court Judge including the Chief Judge is, or is expected to be, absent from duty, the Governor may appoint a person qualified to be appointed a District Court Judge, to act as a District Court Judge during the absence from duty of the first mentioned Judge or until he completes the trial or hearing of any cause or matter that he had entered upon and not completed before that Judge returns to duty, whichever is the later; or

(b) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires such an appointment to be made, the Governor may appoint a person so qualified to act as a District Court Judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(4) A person appointed to be an acting District Court Judge under subsection (3) —

(a) has the same powers and may exercise the same jurisdiction as a District Court Judge; and

(b) is liable to be removed from office while so acting in the same manner and upon the same grounds as a District Court Judge is liable to be removed from office.

*[Section 18 amended by No. 7 of 1982 s.11; No 122 of 1984 s.13.]*

***Division 3 — Sittings of the Court***

**Sittings of the Court**

19. (1) The Court shall be held at Perth in the State and such other places in the State as the Governor may, from time to time, by proclamation determine.

(2) The Governor may, by subsequent proclamation, cancel or alter a place so determined for the holding of the Court.

(3) A District Court Judge nominated by the Chief Judge shall attend and hold the Court at any place at which the Governor so determines that the Court be held, on such days and at such times as the Chief Judge, from time to time, appoints.

(3a) There shall be a registry of the Court at each place where the Court is held and the principal registry shall be at Perth.

(4) Notice of the days on which and the times at which the Court is to be held at any place shall be published in the *Government Gazette*, and the notice shall be exhibited in a conspicuous place in the Court House and in the registry of the Court at the place where the Court is to be held, and no other notice thereof is required, unless a District Court Judge otherwise directs.

(5) The Chief Judge may, from time to time, alter the days and times for the holding of the Court at any place 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 at that place and in the registry of the Court at that place.

(6) When the District Court Judge who is to hold the Court does not attend at the time appointed for any sitting thereof a Registrar thereof may open the Court and adjourn it to the following day or such other day or the next sitting of the Court as he is directed by a District Court Judge.

(7) Notwithstanding the provisions of subsections (1) to (6) inclusive, the Court and District Court Judges may sit and act at any time and at any place, for the transaction of any part of the business of the Court or a District Court Judge, or for the discharge of any duty which by any statute or otherwise is required to be discharged.

(8) Where a sitting of the Court is to be held at a place other than Perth, a Registrar of the Court at the place shall deliver or cause to be delivered to the District Court Judge on the first day of the sittings a calendar of all prisoners in custody for trial or sentence at that sitting (wherever the prisoners are confined) and shall bring up or cause to be brought up every such prisoner to the Court, there to be dealt with according to law.

*[Section 19 amended by No. 58 of 1975 s.3; No. 122 of 1984 s.13; No. 53 of 1992 s.9 (3).]*

**Power of the Chief Judge to direct where Judges to sit and to direct 2 or more Judges to sit concurrently**

**20.** The Chief Judge may direct a District Court Judge to sit at any place where sittings of the Court are held under this Act, and if it appears to the Chief Judge to be desirable for the more speedy disposal of business, that 2 or more District Court Judges should hold sittings of the Court or sit in chambers concurrently for the disposal of business at the same place, the Chief Judge may direct those Judges accordingly.

*[Section 20 amended by No. 122 of 1984 s.13.]*

**Power of District Court Judge to sit in chambers**

**21.** A District Court Judge may sit in chambers at any time and at any place and, subject to the Rules of Court, may exercise in chambers any jurisdiction of the Court except the trial of causes and the hearing of applications for new trials.

**Records to be moved on discontinuance of a place where Court is held**

22. When the holding of the Court at any place is discontinued pursuant to section 19, the Governor may, by notice published in the *Government Gazette*, direct the books and other records of the Court at that place, to be removed to such other place at which the Court is held, as is specified in the notice.

**Members of the Police Force to attend the Court**

23. Members of the Police Force of the State shall when required attend at the Court sitting at a place where those members are stationed, and shall obey and execute in all cases each lawful writ, summons, warrant, execution, order and command of a District Court Judge presiding at that Court.

***Division 4 — Commissioners*****Power to appoint Commissioners and jurisdiction of Commissioners**

24. (1) The Governor may, by general or special commission in Her Majesty's name, assign to any practitioner as defined by the *Legal Practitioners Act 1893*, of not less than 8 years standing and practice, or to a stipendiary magistrate appointed or deemed to have been appointed under the *Stipendiary Magistrates Act 1957*, the duty of hearing and determining at any place where a sitting of the Court is to be held, any causes or matters, on any questions or issues of fact or of law or partly of the one and partly of the other in any cause or matter, depending in the Court, in the exercise of any civil or criminal jurisdiction capable of being exercised by a District Court Judge.

(2) A person to whom a commission is given under this section has, while the commission is in force, all the powers, rights and privileges that are conferred on a District Court Judge



by or under this Act, and the commission has effect as if its terms as they exist from time to time were enacted in this Act.

(3) The Governor may, at any time, annul, vary or amend any commission given by him under this section.

***Division 5 — Principal Registrar, Registrars,  
Deputy Registrars and Bailiffs***

*[Heading amended by No. 53 of 1992 s.9.]*

**Power of Governor to appoint Registrar and other officers**

**25.** (1) The Governor may appoint a Principal Registrar and such Registrars, Deputy Registrars and other officers as may be required for the conduct of the business of the Court throughout the State, and all such officers shall severally hold office under and subject to, the provisions of Part 3 of the *Public Sector Management Act 1994*.

*[(2), (3), (4) repealed]*

*[Section 25 amended by No. 40 of 1972 s.7; No. 53 of 1992 s.9; No. 32 of 1994 s.3 (2).]*

**Duties of Registrar**

**26.** (1) The functions of a Registrar are as set out in this Act and in the Rules of Court.

(2) Any entry in the register or any book of the Court held at any place or a copy thereof, bearing the seal of the Court and signed and certified as a true copy by the Registrar of the Court at that place, shall be admitted in all courts and by persons acting judicially as evidence of that entry and of the proceedings referred to by that entry and of the regularity of the proceedings, without further proof and no record of any writ, summons,

verdict, judgment, order or decree other than the entry is necessary.

[Section 26 amended by No. 14 of 1970 s.7; No. 98 of 1985 s.3; No. 53 of 1992 s.9 (3).]

### **Power of Registrar to administer oaths, etc.**

27. (1) Every Registrar may take and administer affidavits, depositions, declarations, oaths and affirmations in relation to any action, cause or matter.

(2) Any affidavit to be used in the Court shall and may be sworn before a Registrar or District Court Judge or Commissioner for taking affidavits in the Supreme Court.

(3) Sections 174, 176 and 177 of the *Supreme Court Act 1935*, apply to the Court, a Judge thereof or officer of the Court as they apply to the Supreme Court, a Judge thereof or officer of that Court.

### **Appointment of bailiffs**

28. (1) For the Court there shall be a bailiff, who shall be appointed by the Governor.

(2) The bailiff, may, by instrument in writing under his hand, with the approval of the Chief Judge, appoint a sufficient number of fit persons to assist him and may in like manner, dismiss all or any of them and appoint others in their place.

(3) A person appointed under subsection (2) may be suspended by the Chief Judge.

(4) The bailiff is responsible for the acts and defaults of the persons appointed under this section to assist him.

[Section 28 amended by No. 122 of 1984 s.13.]

**Power of bailiff's assistants to act after the death or removal of the bailiff**

**29.** (1) The death or removal of the bailiff does not invalidate the acts of the persons appointed to assist him and they may continue to act until they are dismissed by the successor to the bailiff.

(2) Persons appointed to assist the bailiff shall receive for their services, while they so act after the death or removal of the bailiff, the same remuneration as they were receiving at the date of the death or removal and that remuneration shall be paid out of the salary, fees or allowances attached to the office of bailiff.

**Duty of bailiff and assistants**

**30.** (1) The bailiff or any person appointed under this Act to assist him, shall if required by a District Court Judge, attend a sitting of the Court, and shall by himself or a person so appointed serve, subject to subsection (2), all writs and summonses and execute all warrants issued out of the Court; and the bailiff and a person so appointed shall, in the execution of their duties conform to the Rules of Court, and subject thereto to the order and direction of the District Court Judge presiding at the Court.

(2) A writ, summons or other process issued out of the Court may be served by the plaintiff or his solicitor or any person employed by the plaintiff or his solicitor, or by a member of the Police Force of the State.

**Bailiff not required to hold auctioneer's licence**

**31.** A bailiff or person appointed under this Act to assist him who is duly authorized to execute a writ of *fieri facias* issued under the authority of this Act, may in doing so sell land or goods without being the holder of a licence under the *Auctioneers Act 1921*<sup>3</sup>, or any other Act.

**Salary of bailiff**

**32.** (1) The bailiff may be paid a salary on account of his general duties and is entitled to remove and receive for his own use the prescribed bailiff's fees, unless a District Court Judge in any case otherwise orders.

(2) The bailiff shall, out of those fees, provide for the performance of the duties for which the fees are allowed, and for payment of the persons appointed to assist him.

**Bailiff answerable for escape and neglect to levy execution**

**33.** (1) If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, a District Court Judge may, upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the parties concerned in the same manner in which the attendance of a witness in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained but not exceeding the sum of money for which the execution was issued.

(2) The bailiff is liable to pay the amount ordered to be paid by him under subsection (1), and if he defaults in so doing upon demand being made therefor, the payment of the amount may be enforced in the manner provided by this Act for enforcing a judgment.

**Disabilities**

**34.** A Registrar shall not act as bailiff, and a bailiff, his partner or clerk, or a person in the service or employment of a bailiff or his partner, shall not act as a Registrar, and an officer of the Court shall not, either by himself or by his partner, be directly or

indirectly concerned as solicitor or agent for a party in a proceeding in the Court.

Penalty: \$200 and in addition the offender is liable to pay full costs of action to a person who sues for them.

[Section 34 amended by No. 53 of 1992 s.9 (3).]

### **Security by bailiff**

**35.** A bailiff shall give security for such sum and in such manner as the Minister orders, for the due performance of his office, and for the due accounting for and payment of moneys received by him under this Act, or which he is liable to pay for misbehaviour in his office.

### **Indemnity to persons acting under this Act**

**36.** If an action is brought against a person for anything done under a writ or other process issued in pursuance of this Act, the production of the writ or other process under the seal of the Court in the action, is sufficient proof of the authority of the Court prior to the issuing of the writ or other process, and if the plaintiff in the action has a verdict given against him, is non suited or discontinues the action, the defendant shall be allowed full costs as between solicitor and client.

### **Time for bringing action**

**37.** Subject to section 47A of the *Limitation Act 1935*, an action or prosecution shall not be commenced against a person for anything done, or omitted to be done, in pursuance of, or in contravention of, this Act, unless it is commenced within 12 months after the thing was done or omitted to be done.

### **Service of process where bailiff is party to action**

**38.** When a bailiff is a party to any action or matter in the Court, all writs, summonses, warrants, orders and other processes that would in the ordinary course be directed to him, shall be directed to such disinterested person as the Court or a Judge thereof appoints; and the person so appointed may execute and return them.

## ***Division 6 — Representation in the Court***

### **Representation in the Court**

**39.** (1) A party to an action, cause or other proceeding may appear before the Court in person or by a certificated practitioner, as defined by the *Legal Practitioners Act 1893*, or by any person allowed by special leave of the presiding District Court Judge, in any case.

(2) A person who is not such a certificated practitioner is not entitled to claim or recover or receive directly or indirectly a sum of money or other remuneration for appearing or acting on behalf of another person in the Court.

### **Legal practitioners etc., to have no privilege**

**40.** No privilege shall be allowed to any legal practitioner as defined in the *Legal Practitioners Act 1893*, to exempt him from the provisions of this Act.

## ***Division 7 — Jurors***

### **Jurors**

**41.** (1) The persons qualified and liable to serve as jurors at civil and criminal trials and for the assessment of damages

respectively under the *Juries Act 1957* are the persons qualified and liable to act as jurors in the Court.

(2) Where the Court is sitting at Perth, the jury books or lists made under the *Juries Act 1957*, for the Supreme Court shall be the jury books or lists for the Court and the provisions of that Act apply to the Court as though it were the Supreme Court.

(3) Where the Court is sitting at a place other than Perth, the jury books or lists made under the *Juries Act 1957* for a Circuit Court, within the meaning of that Act, at that place shall be the jury books or lists for the Court and the provisions of that Act apply to the Court as though it were a Circuit Court.

[(4) *repealed*]

(5) Subject to this Act, the provisions of the *Juries Act 1957* apply in respect of the Court, a District Court Judge and any criminal or other trial within the meaning of that Act held in the Court as they apply in respect of the Supreme Court and a Judge thereof and any such trial held in the Supreme Court and without limiting the generality of the foregoing, the provisions of that Act relating to the constitution and procuring of juries, the summoning and challenging of jurors, the discharge of juries and the verdicts of juries, extend and apply to the constituting and procuring of juries, the summoning and challenging of jurors, the discharge of juries and the verdicts of juries in the Court.

(6) Where a sitting of the Supreme Court and of the Court coincide wholly or in part at the same place, a jury precept may be issued for summoning jurors to attend both those sittings.

[Section 41 amended by No. 14 of 1970 s.8; No. 58 of 1975 s.4; No. 53 of 1992 s.9 (3).]

## PART III — JURISDICTION OF THE COURT

### *Division 1 — Criminal Jurisdiction and Procedure*

#### **Criminal jurisdiction**

**42.** (1) Except as provided in subsection (2), the Court has all the jurisdiction and powers that the Supreme Court has in respect of any indictable offence.

(2) The Court has no jurisdiction to try an accused person charged with an indictable offence, in respect of which offence, the maximum term of imprisonment that can be imposed is imprisonment for life or strict security life imprisonment.

(2a) The Court has no jurisdiction to try an accused person charged with an offence described in Schedule 2.

(3) The jurisdiction conferred on the Court by subsection (1) does not limit or diminish the jurisdiction of the Supreme Court as a Court of criminal jurisdiction.

*[Section 42 amended by No. 118 of 1981 s.8; No. 52 of 1984 s.49; No. 74 of 1985 s.21; No. 14 of 1992 s.6 (8); No. 53 of 1992 s.10.]*

#### **Change of place of trial**

**43.** (1) The provisions of section 577 of *The Criminal Code* apply to a person committed for trial at the Court at any place and to a person against whom an indictment has been presented in the Court.

(2) The express reference in this section to the application of section 577 of *The Criminal Code* does not exclude the application of the other provisions thereof to and in relation to the Court and in particular to —

(a) the jurisdiction of the Court;



- (b) the practice and procedure of the Court;
- (c) any person against whom an indictment has been presented in the Court; and
- (d) an appeal by a person convicted on indictment, by the Court.

**Practice and procedure of the Court to be same as Supreme Court**

44. In all respects, except as expressly provided by or under this Act, the practice and procedure of the Court as a Court of criminal jurisdiction shall be the same as the practice and procedure of the Supreme Court in like matters.

**Change of trial from Supreme Court to the Court or from the Court to the Supreme Court**

45. (1) When a person has been committed for trial or sentence to the Supreme Court or an indictment has been presented against a person in that court for an offence triable in the Court, any District Court Judge, if so requested by the Chief Justice of Western Australia, may try or sentence such person, and for that purpose the District Court Judge has the same powers and may exercise the same jurisdiction as if the committal had been to, or the indictment had been presented in, the Court.

(2) A request of the Chief Justice of Western Australia made under subsection (1) may be made in respect of a particular case or cases or in respect of a specified class or classes thereof.

(3) When a person has been ordered or is deemed to have been ordered to be committed to take his trial for an indictable offence before the Court or an indictment has been presented against a person in the Court, a Judge of the Supreme Court has the same powers and may exercise the same jurisdiction to try

such person as if the committal had been to, or the indictment presented in, the Supreme Court.

### **Jury in criminal cases**

**46.** All indictable offences prosecuted in the Court shall be tried by a District Court Judge and a jury.

### **Issues of law and fact**

**47.** Issues of law and fact in a trial of a person on indictment in the Court shall be determined by the District Court Judge presiding or the jury as if the trial were a trial on indictment in the Supreme Court.

### **Power of Registrar to issue subpoenas**

**48.** (1) For the purpose of the trial of any person on indictment, the Court may issue a subpoena requiring a person to appear before the Court and give evidence or produce any document or thing specified in the subpoena.

(2) A person who disobeys a subpoena is liable to the same consequences as for disobedience to a subpoena in a civil proceeding in the Supreme Court.

*[Section 48 amended by No. 14 of 1970 s.9; No. 53 of 1992 s.9 (3).]*

### **Power of District Court Judge to reserve point of law to Full Court**

**49.** A District Court Judge may reserve any point of law arising in any trial of a person on indictment for the opinion of the Full Court sitting as a Court of criminal appeal, and defer passing judgment therein until that opinion has been given, and in such case shall pass judgment in conformity with that opinion.

***Division 2 — Civil Jurisdiction***

**Civil jurisdiction**

**50.** (1) Subject to section 51 the Court has the same jurisdiction to hear and determine and may exercise all the powers and authority that the Supreme Court has and may exercise from time to time, in relation to —

- (a) all personal actions, other than those of the kind referred to in subsection (2), where the amount, value or damages sought to be recovered is not more than \$250 000, whether on the original claim or demand or a balance after allowing payment on account, or the amount of any set off admitted by the plaintiff;
- (aa) an action brought claiming an indemnity where the action arises from or relates to another action that is before the Court or that has been heard and determined by the Court;
- (b) an action brought to recover a sum of not more than \$250 000 which is the whole or part of the unliquidated balance of a partnership account, including in any such action jurisdiction, powers and authority relating to declaration of partnership or dissolution of partnership;
- (ba) an action brought to recover a sum of not more than \$250 000 which is the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will;
- (bb) an action for specific performance of or for the rectifying, delivering up, or cancelling of any agreement whatever, where the amount in dispute or the value of the property affected is not more than \$250 000;

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- (c) an action of replevin where the value of the goods seized is not more than \$250 000;
- (d) an action of ejectment to recover possession of any land, where the value of the land does not exceed \$125 000 by the year or where the rent exclusive of ground rent, if any, payable in respect of the land does not exceed the sum of \$125 000 by the year;
- (e) any action, whether commenced in the Court or the Supreme Court, in which the amount, value or damages sought to be recovered exceeds \$250 000 in which the parties thereto agree by a memorandum signed by them or by their respective solicitors, that the Court has power to hear and determine;
- (f) all other actions or matters in respect of which jurisdiction is given to the Court by or under this or any other Act.

(1a) A sum of money referred to in subsection (1) does not include any interest which may be payable in the particular action.

(2) The Court has the same jurisdiction to hear and determine, and may exercise all the powers and authority, that the Supreme Court has and may exercise from time to time in relation to all personal actions making a claim for damages in respect of the death of or bodily injury to a person and in relation to all proceedings arising with respect to those personal actions under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947*.

[Section 50 amended by No. 14 of 1970 s.10; No. 40 of 1972 s.8; No. 69 of 1976 s.5; No. 118 of 1981 s.9; No. 122 of 1984 s.8; No. 53 of 1992 ss.11 (1) and 12.]

**Amount of verdict or judgment in excess of \$250 000**

**51.** (1) Where at a trial of any cause in the Court a verdict is returned for or a judgment is given for or the total amount that would have been recoverable if the claimant had not been at fault is found at an amount in excess of \$250 000, the Court shall find and record the amount of the verdict or judgment or, as the case may be, such total amount and the claimant is entitled to recover the full amount of the verdict or judgment, or as the case may be, of such total amount reduced in accordance with the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947*, notwithstanding that the amount claimed does not exceed \$250 000.

(2) Subsection (1) does not apply to or in relation to a trial of any personal action of the kind referred to in section 50 (2).

*[Section 51 amended by No. 40 of 1972 s.9; No. 69 of 1976 s.6; No. 118 of 1981 s.10; No. 122 of 1984 s.9; No. 53 of 1992 s.11 (2).]*

**Practice and procedure to be same as Supreme Court**

**52.** In all respects, except as expressly provided by or under this Act, the practice and procedure of the Court as a court of civil jurisdiction including the trial of certain cases with or without a jury, shall be the same as the practice and procedure of the Supreme Court in like matters.

**Powers and authorities of District Court Judge and officers of the Court**

**53.** (1) Without affecting the generality of the foregoing provisions of this Act, in all actions, matters and causes within the jurisdiction of the Court, a District Court Judge has for the purposes of this Act, in addition to the powers and authorities conferred upon him by this Act, all the powers and authorities of a Judge of the Supreme Court; and in all such actions, matters or causes, a Registrar who is or have been a practitioner as defined in the *Legal Practitioners Act 1893* has, and is deemed to have always had, for the purposes of this Act, in addition to the

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powers and authorities conferred upon him by this Act, all the powers and authorities of the Master and the Registrar of the Supreme Court; and every Registrar, bailiff or other officer of the Court shall in all such actions, matters or causes, discharge any duties that a corresponding officer of the Supreme Court has authority to discharge, either under the order of a Judge of the Supreme Court or under the practice of that Court, and all officers of the Court in discharging those duties, shall conform to the Rules of Court.

(2) If any question arises as to the amount or value under any of the sections of this Act in relation to the jurisdiction of the Court, the decision of the District Court Judge therein shall be conclusive.

*[Section 53 amended by No. 40 of 1972 s.10; No. 53 of 1992 s.9 (3).]*

**Jurisdiction of District Court Judge in relation to absconding debtors**

54. A District Court Judge may, as to any matter within his jurisdiction, exercise all the powers possessed by a Judge of the Supreme Court with respect to the arrest and holding of defendants in actions for the recovery of money or damages and the provisions of sections 63 to 68, inclusive, of the *Supreme Court Act 1935*, apply, with such modifications as circumstances require, to the Court, a District Court Judge and the officers of the Court.

**Further powers of the Court**

55. The Court or a District Court Judge has, as regards any action or matter within its or his jurisdiction for the time being, power —

- (a) to grant, and shall grant, in the action or matter such relief, redress or remedy, or combination of remedies, either absolute or conditional; and

- (b) to make any order that could be made in regard to any action or matter, and shall in each such action or matter give such and the like effect to every ground of defence or counterclaim equitable or legal,

in a full and ample manner as might and ought to be done in the like case by the Supreme Court or a Judge thereof.

### **Enforcement of judgments and interest thereon**

**56.** (1) A judgment may be enforced in the same manner and to the same extent as though it were a judgment of the Supreme Court.

(2) A judgment debt shall carry interest at such rate for every \$100 by the year as the Treasurer from time to time by notice published in the *Government Gazette* determines commencing on and from the date of entering up the judgment until the date the judgment is satisfied, and the amount of the interest may be levied under a writ of *fieri facias* on the judgment<sup>4</sup>.

[Section 56 amended by No. 40 of 1972 s.11.]

### **Certain rules of law to apply to the Court**

**57.** (1) The several rules of law and equity enacted and declared by the *Supreme Court Act 1935*, shall, unless express provision is otherwise made in this Act, be in force and take effect in the Court, as far as the matters to which those rules relate are respectively cognizable by the Court.

(2) Without affecting the generality of subsection (1), but subject to the express provisions of any other Act, in every action or matter commenced in the Court, law and equity shall be administered according to the provisions of section 25 of the *Supreme Court Act 1935* as though that section were enacted in this Act and in terms made applicable to the Court.

**Defences or counterclaims in the Court and transfers from the Court**

58. (1) Where in an action before the Court any defence or counterclaim of the defendant involves matters beyond the jurisdiction of the Court, that defence or counterclaim does not affect the competence of the Court to dispose of the whole matter in controversy, so far as it relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall, subject to section 51, be given to the defendant upon that counter claim.

(2) In any action to which subsection (1) applies a Judge of the Supreme Court may, if he thinks fit, on the application of any party, order on such terms and conditions as he thinks fit, that the whole action be transferred to the Supreme Court.

**Splitting demands abandonment of excess**

59. (1) A plaintiff shall not divide a cause of action for the purpose of bringing 2 or more actions in the Court.

(2) A plaintiff who has a cause of action for more than the amount for which a writ of summons may be issued under this Act, may abandon the excess by stating the amount abandoned in the writ.

(3) Where the plaintiff so abandons the excess he may, on proving his case, recover to an amount not exceeding the limit specified by this Act and the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action and entry of that judgment shall be made accordingly.

**Suing on separate security a separate cause of action**

60. Where a defendant has given 2 or more bills of exchange, promissory notes, bonds or other securities, for a debt or sum originally exceeding \$250 000, the plaintiff may sue separately



upon each of those securities not exceeding \$250 000, as forming a separate cause of action.

*[Section 60 amended by No. 40 of 1972 s.12; No. 69 of 1976 s.7; No. 118 of 1981 s.11; No. 122 of 1984 s.10; No. 53 of 1992 s.11 (3).]*

### **Not necessary to state facts establishing jurisdiction**

**61.** It is not necessary in any case that the facts necessary to give jurisdiction should appear by recital, averment or otherwise upon any proceeding in or issuing out of the Court.

### **Mode of enforcing orders by the Court**

**62.** The Court or a Judge thereof has and may exercise the same power and authority for compelling obedience to, and for punishing disobedience of, any judgment as the Supreme Court or any Judge thereof may exercise for compelling obedience to or punishing disobedience of any judgment or order given or made by the Supreme Court.

### **Contempt of the Court**

**63.** (1) If a person —

- (a) wilfully insults a District Court Judge, any juror, any Registrar, the bailiff, clerk or officer of the Court during his sitting or attendance in Court or any District Court Judge in going to or returning from the Court;
- (b) wilfully interrupts proceedings of the Court;
- (c) having been duly summoned to appear before the Court and having been paid or tendered a reasonable sum for travelling expenses and subsistence, refuses

or neglects without sufficient cause to appear or to produce any books, deeds, papers or writings required by a summons to be produced;

- (d) being summoned or examined as a witness in any cause or matter or being present in the Court and required to give evidence, refuses to be sworn or answer any lawful questions;
- (e) is, in the opinion of the District Court Judge before whom the person is appearing as a witness, guilty of wilful prevarication; or
- (f) misbehaves in the Court,

the District Court Judge concerned or, where any of the above acts or omissions are committed before or in respect of a Registrar, or in respect of a bailiff, clerk or officer of the Court, the Chief Judge may direct the apprehension of the person and if he thinks fit may by warrant under his hand and sealed with the seal of the Court commit the person to imprisonment for a term not exceeding 5 years, or may impose on the person a fine not exceeding \$50 000, or may so commit the person and impose such a fine, or in default of immediate payment of the fine imposed may commit the person to imprisonment —

- (a) until the fine is paid; or
- (b) for a term not exceeding 5 years,

whichever may be the shorter period.

(2) A fine or commitment under this section does not exempt a person from obeying any summons to appear before the Court or to produce therein any books, deeds, papers or writings.

*[Section 63 amended by No. 71 of 1986 s.4; No. 53 of 1992 s.13.]*

## **PART IV — COSTS**

### **Costs of action or proceeding**

64. (1) Except as hereinafter provided in this Act, the costs of any action or proceeding shall be in accordance with a determination in force under section 58W of the *Legal Practitioners Act 1893* and shall be paid by or apportioned between the parties in such manner as the District Court Judge directs and in default of such a direction shall abide the event.

(2) The costs may be recovered in like manner as a debt adjudged by the Court to be paid.

(3) Subject to this Act, a District Court Judge has the same power in relation to the payment of costs by any party as a Judge of the Supreme Court has.

*[Section 64 amended by No. 65 of 1987 s.24.]*

### **Costs where the Court has no jurisdiction**

65. Where an action or matter is brought in the Court over which the Court has no jurisdiction, the District Court Judge shall order the action or matter to be struck out, and the Court has power to award costs to the same extent, and recoverable in the same manner, as if the Court had jurisdiction therein and the plaintiff had not appeared in Court or had so appeared and failed to prove his demand or claim.

### **Fees to legal practitioners**

66. The fees to be allowed to legal practitioners as defined in the *Legal Practitioners Act 1893*, for appearing or acting on behalf of a party to an action or other proceeding shall be according to a determination in force under section 58W of the *Legal Practitioners Act 1893*, and the expenses to be paid to

witnesses shall be according to the scale, for the time being in force, in the Supreme Court.

*[Section 66 amended by No. 65 of 1987 s.25.]*

**Costs between parties to be on Supreme Court scale**

**67.** (1) Except as hereinafter provided in this Act and subject to the Rules of Court, all costs and charges as between the parties shall be taxed by a Registrar at Perth or at the place where the action or matter to which they relate was tried or heard, but the taxation by a Registrar may be reviewed by a District Court Judge on the application of either party.

(2) No costs or charges shall be allowed that are not sanctioned by the scale of costs in force, for the time being, in the Supreme Court.

*[Section 67 amended by No. 40 of 1972 s.13; No. 53 of 1992 s.9 (3).]*

**Costs and charges to be fixed**

**68.** Costs and charges of proceedings as between solicitor and client may be taxed by the taxing officer of the Supreme Court.

**PART V — COMMENCEMENT OF ACTION**

**Place for commencement of action**

**69.** (1) The Court has jurisdiction throughout the State.

(2) An action shall be commenced in the Court sitting at the place nearest to where —

- (a) the defendant or one of 2 or more defendants, as the case may be, resides or carries on business;
- (b) the cause of action or claim arose either wholly or in some material part; or
- (c) a debt or sum of money is made payable under an engagement or promise in writing given by the defendant.

**Objector to commencement of action in the Court sitting at a certain place**

**70.** (1) If a person served with a writ of summons in an action fails to duly file a defence or fails to file together with the defence a notice that he claims that the action was not commenced in the Court sitting at the place prescribed in accordance with section 69, the action shall be deemed to have commenced in the Court at the place so prescribed.

(2) Where a notice referred to in subsection (1) is so filed, a District Court Judge may upon application in chambers determine whether the action was commenced as prescribed in that subsection.

(3) On the hearing of the application the District Court Judge may make such order as he thinks fit.

**PART VI — REMITTING AND TRANSFERRING ACTIONS  
AND MATTERS****Transfer of actions and matters**

**71.** Where an action or matter is commenced in the Court sitting at a place that should have been commenced in the Court sitting at another place, the Court or a District Court Judge may order its removal to be tried or heard by the Court sitting at that other place, or may so order that the action or matter be tried or heard in the Court sitting at the place in which it has been commenced.

**Power of District Court Judge to change venue**

**72.** Where a District Court Judge is satisfied that an action which is listed to be heard in the Court sitting at a place can be more conveniently or fairly tried in the Court sitting at another place, he may order, on such terms and conditions as he thinks fit, the action to be sent for trial to the Court sitting at that other place.

**Remitting action to the Court**

**73.** (1) When an action or matter is brought in the Supreme Court that might have been brought in the Court without the consent of the defendant —

- (a) the defendant may, at any time, apply to the Supreme Court or a Judge thereof for an order remitting the action or matter to the Court sitting at such place as the order specifies, and the Supreme Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case it is advisable that the action or matter should be tried in the Supreme Court; or

- (b) the Supreme Court or a Judge thereof, without any such application, may make such an order, if it or he thinks fit.

(2) When, in an action or matter brought in the Supreme Court —

- (a) the claim, though it originally exceeded \$250 000, is reduced by payment into Court, an admitted set-off, or otherwise, to a sum not exceeding \$250 000;
- (b) in which the claim exceeds \$250 000, the plaintiff obtains judgment on part of the claim and the remainder of the claim does not exceed \$250 000; or
- (c) there is an interlocutory judgment for damages to be assessed and the action or matter or a question or issue therein is otherwise within the jurisdiction of the District Court,

any of the parties to the action or matter may, at any time, apply to the Supreme Court or a Judge thereof for an order remitting the action or matter, or question or issue, as the case may be, to the Court sitting at such place as the order specifies, and the Supreme Court or Judge thereof shall make an order accordingly unless it or he considers that under the circumstances of the case it is advisable that the action, matter, question or issue should be tried in the Supreme Court.

(3) A sum of money referred to in subsection (2) does not include any interest which may be payable in the particular action.

(4) The Supreme Court or a Judge thereof may make an order referred to in subsection (2), if it or he thinks fit, without an application from any of the parties.

(5) The Chief Justice of Western Australia may make an order, at any time after hearing the parties concerned, remitting to the Court any action or matter that —

- (a) is commenced under the *Supreme Court Act 1935*;

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- (b) is pending on the date of the coming into operation of any written law amending the jurisdiction of the Court; and
- (c) could have been commenced under this Act if the written law referred to in paragraph (b) had been in operation when the action was so commenced,

unless the Chief Justice of Western Australia considers that under the circumstances of the case it is advisable that the action or matter should be tried in the Supreme Court.

*[Section 73 amended by No. 122 of 1984 s.11; No. 53 of 1992 s.11 (4).]*

**Remitting of action to Local Court**

**74.** (1) When an action is brought in the Court that might have been brought in a Local Court without the consent of the defendant —

- (a) the defendant may, at any time, apply to the Court or a Judge thereof, for an order remitting the action to the appropriate Local Court sitting at such place as is specified in the order, and the Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case, it is advisable that the action should be tried in the Court, or
- (b) the Court or a Judge thereof may, without any such application, make such an order if it or he thinks fit.

(2) Notwithstanding section 78 (c) so far as it relates to costs, when an action is brought in the Court that might have been brought in a Local Court without the consent of the defendant, the plaintiff is not entitled to recover a greater sum by way of costs than he could have recovered had the action been



brought in a Local Court, unless the District Court Judge hearing the action certifies —

- (a) in the case of an action founded in tort, that in his opinion it was proper to bring the action in the Court instead of the Local Court; and
- (b) in any other case, that by reason of some important principle of law being involved, or of the complexity of the issues, or of the facts, the action was, in his opinion, properly brought in the Court.

### **Remitting of action from Local Court**

**75.** When an action is brought in a Local Court that might have been brought in the Court, or where any defence or counterclaim of the defendant in an action brought in a Local Court involves matter beyond the jurisdiction of that Court but such matter is within the jurisdiction of the Court, the defendant may, at any time, apply to the Court or a Judge thereof for an order remitting the action to the Court sitting at such place as is specified in the order and the Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case, it is advisable that the action should be tried in the Local Court.

### **Remitting action or matter to Supreme Court**

**76.** A Judge of the Supreme Court may, upon the application of any of the parties to an action or matter brought in the Court, if he thinks fit, order that the action or matter be tried or heard in the Supreme Court sitting at such place as is specified in the order.

**Remitting of certain actions or matters to Supreme Court**

77. Where it appears to a District Court Judge that any action or matter brought before the Court ought from its nature, or magnitude, or by reason of the question of law involved to be heard and determined by the Supreme Court, he may make an order, remitting the action or matter to the Supreme Court.

**Proceedings after order to remit**

78. Upon an order being made under this Act remitting any action or matter from one court to another court —

- (a) the action or matter shall be carried on, heard and taken in the court to which the action or matter is so remitted, at the place specified in the order, and as if the action or matter had been originally brought in that court;
- (b) the appropriate officer of the court from which the action or matter is remitted shall transmit to the appropriate officer of the court to which the action or matter is remitted, a copy of the order together with a copy of the writ or other document by which the matter was commenced and of the pleadings and all other documents filed in the firstmentioned court in the action or matter;
- (c) the order may include such terms and conditions, including the payment of costs by any party, as the court or the Judge making the order, thinks fit.

**PART VII — APPEALS, *CERTIORARI*, PROHIBITION  
AND *MANDAMUS***

**Appeals to the Full Court from judgment of the Court**

**79.** (1) A party to an action or matter who is dissatisfied with —

- (a) a final judgment, may appeal from that judgment to the Full Court constituted under the *Supreme Court Act 1935*;
- (b) a judgment that is not a final judgment or an order remitting any action or matter from one court to another, may by leave of the Supreme Court or a Judge thereof, appeal to such Full Court,

notwithstanding that the action or matter to which the final judgment or judgment relates may have been brought in the Court by consent as provided in this Act.

(1a) Notwithstanding anything in this section, an appeal to the Full Court constituted under the *Supreme Court Act 1935* in respect of a judgment, order or determination in proceedings in the Court under the *Commercial Arbitration Act 1985*<sup>1</sup> may be made only by leave of the Supreme Court, or a Judge thereof.

(2) An appeal under this section shall be made in the same way as an appeal from a judgment or order of the Supreme Court or a Judge thereof, may be made to the Full Court, and in all respects the practice and procedure of the Full Court in the appeal shall be the same as though the appeal were an appeal to the Full Court from a judgment or order of the Supreme Court or a Judge thereof.

(3) The Full Court has jurisdiction to hear and determine the appeal accordingly.

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(4) Nothing in this section authorizes a party to appeal to the Full Court against a decision of the Court —

- (a) given upon a question as to the value of any real or personal property for the purpose of determining the jurisdiction of the Court under this Act; or
- (b) on the ground that the proceedings might or should have been taken at any other place where the Court was sitting.

[Section 79 amended by No. 109 of 1985 s.3.]

**Removal of action only in manner provided by this Act**

**80.** No judgment or order of a District Court Judge, nor any proceedings brought before him or pending in the Court, shall be removed by appeal, motion, *certiorari* or otherwise into any other court, except in the manner and according to the provisions of this Act.

***Certiorari* when granted**

**81.** (1) The Supreme Court, or a Judge thereof, may order the removal into the Supreme Court, by writ of *certiorari*, of any cause, matter or proceeding pending in the Court, if the Supreme Court or a Judge thereof thinks it desirable that the cause, matter or proceeding should be tried in the Supreme Court.

(2) When any cause, matter or proceeding is so removed into the Supreme Court, the provisions of section 78 apply, as if the cause had been remitted to the Supreme Court under section 76.

**Proceedings in the Court to be stayed**

**82.** (1) The granting by the Supreme Court, or a Judge thereof, of a rule or summons to show cause why a writ of *certiorari* or of prohibition should not issue to the Court shall, if

the Supreme Court or a Judge thereof so directs, operate as a stay of proceedings in the cause or matter to which such writ relates, until —

- (a) the determination of the rule or summons; or
- (b) the Supreme Court or the Judge thereof otherwise orders,

and the Judge of the Court concerned shall from time to time adjourn the hearing of the cause or matter to such day as he thinks fit, until the determination or such order is made.

(2) Where a copy of the rule or summons referred to in subsection (1) is not served by the party who obtained it on the other party or parties to the cause or matter and on the appropriate Registrar of the District Court, at least 3 days before the date fixed for the hearing of the cause or matter, the Judge of the District Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some other order respecting the costs.

## **Prohibition**

**83.** (1) When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a District Court Judge or the Court, the District Court Judge —

- (a) shall not be served with notice;
- (b) shall not, except by order of a Judge of the Supreme Court, be required to appear or be heard on the application; and
- (c) shall not be liable to any order for the payment of costs thereof,

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but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a District Court Judge.

(2) Notice of the application referred to in subsection (1) shall be given to or served upon the same parties as in the case of an appeal against a judgment or an order made or refused by a District Court Judge in a matter within his jurisdiction.

**Rule or summons to take place of *mandamus***

84. (1) No writ of *mandamus* shall issue to a District Court Judge or any officer of the Court for refusing to do any act relating to the duties of his office; but a party requiring the act to be done may apply to the Supreme Court or a Judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the District Court Judge or officer of the Court, and also the party to be affected by the act, to show cause why the act should not be done.

(2) If after the service of the rule or summons referred to in subsection (1), good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the District Court Judge or the officer of the District Court, upon being served with the rule or order, shall obey it under pain of attachment.

(3) In any event the Supreme Court or a Judge thereof may make such order with respect to costs as the Supreme Court or a Judge thereof thinks fit.

**Notice to be given of writ of *certiorari* or prohibition on *ex parte* application**

85. When a writ of *certiorari* or of prohibition addressed to the Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the appropriate Registrar of the Court, and give notice to

the other party or parties to the cause or matter to which the writ relates that it has been issued, at least 3 days before the date fixed for the hearing of the cause or matter to which the writ relates, a District Court Judge or the Court may order the party who obtained the writ to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some other order respecting the costs.

**PART VIII — PRACTICE AND PROCEDURE AND  
RULES OF COURT****Power to deal with action or matter at another place**

**86.** When any action or matter has been heard at a sitting of the Court held at any place the Court may pronounce judgment or give further hearing or consideration to the action or matter at a sitting of the Court held at another place being a place at which the Court is empowered to sit.

**Priority of Supreme Court, the Court and Local Courts  
executions**

**86A.** (1) When a writ of execution against the land or goods of any person has issued out of the Supreme Court, and a writ or warrant of execution against the land or goods of the same person has issued out of the Court and out of a Local Court, or has issued out of either of those Courts, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court to the Sheriff to be executed, or the time of the application to a Registrar or the Clerk for the issue from the Court or the Local Court, of the writ or warrant of execution, whichever is the earlier or earliest as the case may be.

(2) For the purposes of determining the priority referred to in subsection (1), the Sheriff, the Principal Registrar and the Clerk of the Local Court shall, on request the one to the other, give information to the one requesting it, as to the precise time of the delivery of the writ so issued out of the Supreme Court or the precise time of the application to the Registrar or the Clerk for the issue from the Court or the Local Court of the writ or warrant of execution, as the case may be.

*[Section 86A inserted by No. 14 of 1970 s.11; amended  
by No. 53 of 1992 s.9 (3).]*



## **Procedure and practice**

87. (1) Subject to this Act, the practice and procedure of the Court shall be governed by the Rules of Court, and until provision is made by Rules of Court or where no special provision is contained in the Rules of Court, the Rules of Court of the Supreme Court for the time being in force, so far as applicable, apply to the Court.

(2) A reference in any other provision of this Act to Rules of Court shall, unless the context otherwise requires, be read as including a reference to the Rules of the Supreme Court as applied by this section.

## **Rules of Court**

88. (1) The District Court Judges, for the time being, or a majority of them, may make rules, not inconsistent with this Act —

- (a) regulating and prescribing the practice and procedure, including the method of pleading, to be followed in the Court (including the practice and procedure to be followed in the offices of the Court);
- (b) regulating and prescribing all matters and things incidental or relating to any such practice and procedure (including the manner in which and the time within which, any applications that under this Act or any other Act are to be made to the Court, shall be made) or necessary or convenient to be prescribed for the conduct of any business of the Court; and
- (c) 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).

(2) In particular the Rules of Court may provide —

- (a) for regulating the sittings of the Court, and of the Judges thereof whether sitting in Court or in chambers;
- (b) for regulating any matters relating to the costs of proceedings in the Court fixed by determinations under section 58W of the *Legal Practitioners Act 1893*;
- (c) 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;
- (d) for the service and execution of the process of the Court including the manner in which and the extent to which the process of the Court may be served out of the jurisdiction of the Court;
- (e) for the execution of the judgments of the Court;
- (f) with the concurrence of the Treasurer, for the fees and percentages to be taken in the Court, or in any office connected with the Court, or in which any business connected with the Court is conducted, or by any officer attached to the Court, including the fees and poundages to be demanded, taken and received by the bailiff and his officers in the execution of any process delivered to the bailiff;

- (g) for a Registrar or any particular Registrar to have power, either generally or in particular cases and under such conditions as are prescribed, to do such things, to transact such business, and to exercise such authority and jurisdiction as a Judge of the Court sitting in chambers may, by virtue of a statute, custom, or rule or practice of the Court, do, transact, or exercise, and to tax costs;
- (h) for requiring and regulating pre-trial conferences in actions.

(3) Subject to section 32 the fees and percentages referred to in subsection (2) (f) shall be paid into the Treasury, and carried to the Consolidated Fund.

*[Section 88 amended by No. 40 of 1972 s.14; No. 111 of 1976 s.7; No. 65 of 1987 s.26; No. 14 of 1991 s.7; No. 53 of 1992 s.9 (3); No. 6 of 1993 s.11.]*

### **Rules to be published and laid before Parliament**

**89.** (1) Rules of Court made under this Act —

- (a) shall be published in the *Gazette*;
- (b) take effect from the date of publication or from a later date to be specified in the rules;
- (c) shall be laid before each House of Parliament within 6 sitting days of such House next following the publication thereof.

(2) If either House of Parliament passes a resolution, of which notice has been given at any time within 6 sitting days after the rules have been laid before it, disallowing any rule or part thereof, that rule or part thereof thereupon ceases to have effect, but without affecting the validity of any proceeding taken or of anything done thereunder in the meantime.

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(3) Where a resolution to which subsection (2) refers has been passed, notice of the resolution shall be forthwith published in the *Gazette*.

**Saving**

**90.** (1) Nothing in this Act and, subject to subsection (2) nothing in the Rules of Court affects the mode of giving evidence by the oral examination of a witness in a trial with a jury, or the rules of evidence, or the law relating to jurors or juries.

(2) Nothing in this section —

- (a) shall prejudice the operation of any Rules of Court made in pursuance of the power conferred by sections 88 (1) (c) and (2) (c); or
- (b) shall affect the powers of the Court for special reasons to allow depositions or affidavits to be read.

*[Section 90 amended by No. 14 of 1991 s.8.]*

**PART IX — MAINTENANCE AND  
DESTRUCTION OF COURT RECORDS**

*[Heading inserted by No. 122 of 1984 s.12.]*

**Interpretation**

**91.** In this Part —

**“court record”** means official record of any proceedings in the Court and includes any document filed in the Court, or in the custody of the Court, in relation to the proceedings;

**“document”, “negative” and “reproduction”** have the same respective meanings as they have in and for the purposes of sections 73A to 73V of the *Evidence Act 1906*;

**“official record”** includes —

- (a) any document, book, plan, paper, photograph, or parchment; or
- (b) any other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them,

made or received by the Court or a person acting judicially under this Act.

*[Section 91 inserted by No. 122 of 1984 s.12.]*

### **Application of Part IX**

**92.** This Part shall not be construed so as to derogate in any way from section 8 (1) (a) or from the *Library Board of Western Australia Act 1951*.

*[Section 92 inserted by No.122 of 1984 s.12.]*

### **Negative of court record**

**93.** A negative of a court record may be made at any time to be held by or on behalf of the Court.

*[Section 93 inserted by No.122 of 1984 s.12.]*

### **Destruction of court records generally**

**94.** Subject to sections 92, 95 and 96, a court record —

- (a) of a criminal proceeding may be destroyed after the expiration of 53 years; or
- (b) of a civil proceeding may be destroyed, after the expiration or 25 years,

from the time when it became such a court record.

*[Section 94 inserted by No. 122 of 1984 s.12.]*

### **Destruction of court records when negatives held**

**95.** Subject to sections 92 and 96 a court record may, if a negative of it is held by or on behalf of the Court, be destroyed at any time after the expiration of 3 years from the time when it became a court record, but in that case the negatives shall be so held until —

- (a) in the case of the negative of a court record of a criminal proceeding, the expiration of 53 years; or

- (b) in the case of a negative of a court record of a civil proceeding, the expiration of 25 years,

from the time when the court record became a court record.

*[Section 95 inserted by No. 122 of 1984 s.12.]*

### **Preservation orders**

**96.** (1) The Principal Registrar may, of his own motion or on the application of any person interested in any proceeding in the Court, which proceeding has not yet been completed —

- (a) order in writing that all or any of the court records relating to that proceeding be preserved from destruction for a period of one year; and
- (b) from time to time renew in writing for a period of one year an order made under this subsection.

(2) A person shall not destroy a court record to which an order made or renewed under subsection (1) relates while that order is in force.

Penalty: \$100.

*[Section 96 inserted by No. 122 of 1984 s.12; amended by No. 53 of 1992 s.9 (3).]*

### **Evidentiary provision**

**97.** For the purposes of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the Court, the negative is deemed to be the court record and shall be treated as such by any other court, without any inquiry as to whether or not the court record has been destroyed.

*[Section 97 inserted by No. 122 of 1984 s.12.]*

**SCHEDULE 1**

[s.11 (2)]

**OATH**

*[Heading amended by No. 53 of 1992 s.10.]*

I,                      do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second Her Heirs and Successors, according to law in the office of a Judge of The District Court of Western Australia, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill. So help me God!

**AFFIRMATION**

I,                      do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second Her Heirs and Successors according to law in the office of a Judge of The District Court of Western Australia, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill.



**SCHEDULE 2**

[s.42 (2a)]

**OFFENCES NOT TRIABLE BY THE COURT**

<i>Enactment</i>	<i>Description of offence or circumstances of commission of offence</i>
<i>The Criminal Code</i>	
s.186 (1) (b)	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge; committed in circumstances which make the offender liable to imprisonment for 20 years
Chapter XXXI	Any offence under the Chapter for which the offender is liable to imprisonment for 20 years, or committed in circumstances which make the offender liable to imprisonment for 20 years
s.398	Attempts at extortion by threats; committed in circumstances which make the offender liable to imprisonment for 20 years

[Schedule 2 added by No. 53 of 1992 s.10.]

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**NOTES**

<sup>1.</sup> This reprint is a compilation as at 20 February 1996 of the *District Court of Western Australia Act 1969* and includes the amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>District Court of Western Australia Act 1969</i>	84 of 1969	17 November 1969	1 April 1970 (see section 2 and <i>Gazette</i> 26 March 1970 p.903)	Section 4: repeal and saving; Section 90: saving
<i>District Court of Western Australia Act Amendment Act 1970</i>	14 of 1970	29 April 1970	Section 3 (b): 18 May 1970 (see <i>Gazette</i> 18 May 1970 p.1331); balance on assent	
<i>District Court of Western Australia Act Amendment Act (No. 2) 1970</i>	100 of 1970	8 December 1970	8 December 1970	
<i>District Court of Western Australia Act Amendment Act 1972</i>	40 of 1972	16 June 1972	Sections 3-6, 8, 9 and 12: 13 July 1972 (see section 2 (2) and <i>Gazette</i> 30 June 1972 p.2098); section 11: 13 July 1972 (see section 2 (3) and <i>Gazette</i> 30 June 1972 p.2098); balance on assent	
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1972, Part II</i>	91 of 1972	4 December 1972	1 January 1973 (see section 2)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1974, Part II</i>	23 of 1974	23 October 1974	Deemed operative 1 July 1974 (see section 2)	
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1975, Part II</i>	45 of 1975	18 September 1975	Deemed operative 8 August 1975 (see section 2)	
<i>District Court of Western Australia Act Amendment Act 1975</i>	58 of 1975	24 October 1975	1 January 1976 (see section 2 and <i>Gazette</i> 7 November 1975 p.4125)	
<i>Acts Amendment (Jurisdiction of Courts) Act 1976, Part I</i>	69 of 1976	6 October 1976	1 January 1977 (see <i>Gazette</i> 24 December 1976 p.5028)	
<i>Acts Amendment (Expert Evidence) Act 1976, Part III</i>	111 of 1976	25 November 1976	25 November 1976	
<i>Acts Amendment (Supreme Court and District Court) Act 1978, Part III</i>	112 of 1978	12 December 1978	Deemed operative 1 April 1970 (see section 2)	
<i>Acts Amendment (Jurisdiction of Courts) Act 1981, Part II</i>	118 of 1981	14 December 1981	1 February 1982 (see section 2 and <i>Gazette</i> 22 January 1982 p.175)	
<i>Acts Amendment (Judicial Appointments) Act 1982, Part III</i>	7 of 1982	6 May 1982	6 May 1982	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part VIII</i>	52 of 1984	5 September 1984	3 October 1984	
<i>District Court of Western Australia Amendment Act 1984</i>	122 of 1984	27 December 1984	Sections 1-7, 12 and 13: 24 January 1985 (see section 2 (1)); sections 8-11: 1 March 1985 (see section 2 (2) and <i>Gazette</i> 1 March 1985 p.777)	
<i>Acts Amendment (Sexual Assaults) Act 1985, Part V</i>	74 of 1985	20 November 1985	1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	
<i>Commercial Arbitration Act 1985, section 3</i>	109 of 1985	7 January 1986	1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	
<i>Acts Amendment (Penalties for Contempt of Court) Act 1986, Part II</i>	71 of 1986	4 December 1986	4 December 1986	
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987, Part IV</i>	65 of 1987	1 December 1987	12 February 1988 (see section 2 (2) and <i>Gazette</i> 12 February 1988 p.397)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Judges' Salaries and Pensions Amendment Act 1987, section 8</i>	82 of 1987	1 December 1987	1 December 1987	
<i>Supreme and District Courts (Miscellaneous Amendments) Act 1991, Part 3</i>	14 of 1991	21 June 1991	21 June 1991	
<i>Acts Amendment (Sexual Offences) Act 1992, section 6 (8)</i>	14 of 1992	17 June 1992	1 August 1992 (see section 2 and <i>Gazette</i> 28 July 1992 p.3671)	
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992, Part 3</i>	53 of 1992	9 December 1992	1 March 1993 (see section 2 and <i>Gazette</i> 26 January 1993 p.823)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3 (2)</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	

<sup>2</sup> Now the *Interpretation Act 1984*.

<sup>3</sup> Now the *Auction Sales Act 1973*.

<sup>4</sup> Rate of interest 13% see *Gazette* 4 December 1987 p.4326.

