

South Australia

DISTRICT COURT ACT 1991

An Act to establish the District Court of South Australia; to define its jurisdiction and powers; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 June 2000**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

DISTRICT COURT ACT 1991

being

District Court Act 1991 No. 70 of 1991
[Assented to 12 December 1991]¹

as amended by

Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]²

Statutes Amendment (Courts) Act 1994 No. 43 of 1994 [Assented to 2 June 1994]³

Land Agents Act 1994 No. 90 of 1994 [Assented to 15 December 1994]⁴

Statutes Amendment (Recording of Interviews) Act 1995 No. 65 of 1995 [Assented to 10 August 1995]⁵

Statutes Amendment (Courts) Act 1995 No. 84 of 1995 [Assented to 30 November 1995]⁶

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]⁷

Building Work Contractors Act 1995 No. 87 of 1995 [Assented to 7 December 1995]⁸

Statutes Amendment (Mediation, Arbitration and Referral) Act 1996 No. 46 of 1996 [Assented to 27 June 1996]⁹

Statutes Amendment and Repeal (Justice Portfolio) Act 1999 No. 42 of 1999 [Assented to 5 August 1999]¹⁰

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]¹¹

¹ Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

² Came into operation (except s. 6) 1 July 1993: *Gaz.* 24 June 1993, p. 2047; s. 6 came into operation 28 October 1993: *Gaz.* 27 October 1993, p. 1892.

³ Came into operation 9 June 1994: *Gaz.* 9 June 1994, p. 1669.

⁴ Came into operation 1 June 1995: *Gaz.* 25 May 1995, p. 2198.

⁵ Clauses 2-4 of Sched. came into operation 21 December 1995: *Gaz.* 21 December 1995, p. 1760.

⁶ Came into operation 21 December 1995: *Gaz.* 21 December 1995, p. 1759.

⁷ Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

⁸ Came into operation 1 June 1996: *Gaz.* 23 May 1996, p. 2536.

⁹ Came into operation 30 September 1996: *Gaz.* 29 August 1996, p. 808.

¹⁰ Part 8 (ss. 46-48) came into operation 3 October 1999: *Gaz.* 23 September 1999, p. 1208.

¹¹ **Came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *District Court Act 1991*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**action**" means any civil or criminal proceedings in the Court, including proceedings for a contempt of the Court;

"**Chief Judge**" means the Chief Judge of the Court;

"**Court**" or "**District Court**" means the District Court of South Australia;

"**District Court Judge**" or "**Judge**" means any Judge of the Court (including the Chief Judge);

"**evidentiary material**" means any document, object or substance of evidentiary value in proceedings before the Court and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

"**judgment**" means a judgment, order or decision and includes an interlocutory judgment or order;

"**judicial office**" means the office of Judge or Master;

"**Master**" means a District Court Master;

"**rules**" means the rules of the Court in force under this Act.

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PART 2
DISTRICT COURT OF SOUTH AUSTRALIA
DIVISION 1—ESTABLISHMENT OF COURT

Establishment of Court

4. The *District Court of South Australia* is established.

Court is Court of record

5. The Court is a Court of record.

Seal

6. (1) The Court will have such seals as are necessary for the transaction of its business.

(2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

DIVISION 2—STRUCTURE OF COURT

Divisions of the Court

7. The Court is divided into the following Divisions:

- (a) the Civil Division;
- (b) the Criminal Division;
- (c) the Criminal Injuries Division;
- (d) the Administrative and Disciplinary Division.

DIVISION 3—JURISDICTION OF THE COURT

Civil jurisdiction

8. (1) The Court has the same civil jurisdiction (both at law and in equity) as the Supreme Court at first instance subject, however to the following qualifications:

- (a) the Court has no jurisdiction in probate or admiralty;
- (b) the Court has no supervisory jurisdiction except as expressly conferred by statute with respect to inferior courts or tribunals, or with respect to administrative acts, and has no jurisdiction to grant relief in the nature of a prerogative writ.

(2) The Court, in its Criminal Injuries Division, has the jurisdiction conferred on it by the *Criminal Injuries Compensation Act 1978*.

(3) The Court, in its Administrative and Disciplinary Division, has the jurisdiction conferred by statute.

(4) The Court has any other civil jurisdiction conferred by statute.

(5) All proceedings before the Court, other than in its Criminal Division, are to be regarded as civil proceedings for the purposes of this Act or any other Act or law.

(6) Subsection (5) does not affect any special rule as to the conduct of proceedings for a contempt of the Court.

Criminal jurisdiction

9. (1) The Court has jurisdiction to try a charge of any offence except treason or murder, or a conspiracy or attempt to commit, or assault with intent to commit, either of those offences.

(2) The Court has jurisdiction to convict and sentence, or to sentence, a person found guilty on trial, or on his or her own admission, of such an offence.

(3) The Court's jurisdiction to try, convict or sentence for a summary offence exists only where the offence is charged in the same information as an indictable offence.

(4) The Court has any other criminal jurisdiction conferred by statute.

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**PART 3
COMPOSITION OF THE COURT**

DIVISION 1—THE COURT’S JUDICIARY

Court’s judiciary

10. (1) The Court’s judiciary consists of—

- (a) the Chief Judge; and
- (b) the other Judges; and
- (c) the Masters.

(2) A Master is, while holding that office, also a Magistrate.

Chief Judge

11. (1) The Chief Judge is the principal judicial officer of the Court.

(2) The Chief Judge is responsible for the administration of the Court.

(3) In the absence of the Chief Judge from official duties, responsibility for administration of the Court devolves on a Judge appointed by the Governor to act in the Chief Judge’s absence or, if no such appointment has been made, on the most senior of the other Judges who is available to undertake that responsibility.

DIVISION 2—JUDICIAL OFFICE

Appointment to judicial office

12. (1) Appointments to judicial office in the Court are made by the Governor.

(2) The following provisions govern eligibility for appointment to judicial office:

- (a) a person is not eligible for appointment as the Chief Judge unless that person is a legal practitioner of at least 10 years standing; and
- (b) a person is not eligible for appointment as a Judge unless that person is a legal practitioner of at least 7 years standing; and
- (c) a person is not eligible for appointment as a Master unless that person is a legal practitioner of at least 5 years standing.

(3) A person who is eligible for appointment to judicial office, or who has held but retired from judicial office, may be appointed to act in such an office (except the office of Chief Judge) for a specified term not exceeding 12 months.

(4) A member of the judiciary of another Court cannot be appointed to act in a judicial office of the Court except on the recommendation of the Chief Judge made with the concurrence of the judicial head of that other Court.

(5) For the purpose of determining whether a legal practitioner has the standing necessary for appointment to a particular judicial office, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

Judicial remuneration

13. (1) The judicial officers are entitled to the remuneration determined by the Remuneration Tribunal in relation to the respective offices.

(2) A salary determined by the Remuneration Tribunal for a judicial office cannot be reduced by subsequent determination.

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Leave

14. (1) A Judge is entitled to leave (or payment in lieu of leave) on the same basis as a Judge of the Supreme Court.

(2) A Master is entitled to leave (or payment in lieu of leave) on the same basis as a Magistrate.

Special leave

14A. (1) A Judge may apply to the Chief Judge for special leave without remuneration.

(2) The Governor may, on the recommendation of the Chief Judge, grant an application for special leave under this section.

(3) A period of special leave under this section will not be taken to be judicial service within the meaning of the *Judges' Pensions Act 1971*.

Removal of Judge or Master

15. (1) A Judge cannot be removed from office except on an address from both Houses of Parliament praying for his or her removal.

(2) A Master cannot be removed or suspended from office except on the recommendation or with the consent of the Chief Judge.

Retirement of members of judiciary

16. (1) A Judge must retire from office on reaching the age of 70 years.

(2) A Master must retire from office on reaching the age of 65 years.

(3) A person who retires from judicial office or who, having been appointed to act in a judicial office, completes the term of appointment may continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard before retirement or completion of the term.

DIVISION 3—COURT'S ADMINISTRATIVE AND ANCILLARY STAFF

Administrative and ancillary staff

17. (1) The Court's administrative and ancillary staff consists of—

(a) the Registrar;

(b) the Deputy Registrars;

(c) any other persons appointed to the non-judicial staff of the Court.

(2) The Court's administrative and ancillary staff will be appointed under the *Courts Administration Act 1993*.

The Registrar

18. (1) The Registrar is the Court's principal administrative officer.

(2) A person cannot be appointed to the office of Registrar of the Court, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the Chief Judge.

(3) The Registrar may, in addition to exercising the functions and duties assigned to him or her by this Act or any other Act, exercise any procedural or non-judicial powers of the Court assigned by the Chief Judge or by the rules.

Responsibilities of non-judicial staff

19. A member of the Court's administrative or ancillary staff is responsible to the Chief Judge (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

PART 4
SITTINGS AND DISTRIBUTION OF BUSINESS

The Court, how constituted

20. (1) Subject to this section, the Court, when sitting to adjudicate on any matter, may be constituted of—

- (a) a Judge; or
- (b) if the matter lies within a jurisdiction of the Court conferred by statute or the rules on Masters—a Master (but the jurisdiction of Masters is not exclusive; such a jurisdiction may also be exercised by a Judge).

(2) If a matter lies within the criminal jurisdiction of the Court and is to be tried by jury, the Court will be constituted of a Judge sitting with a jury.

* * * * *

(4) If under an Act conferring a jurisdiction on the Court in its Civil Division or its Administrative and Disciplinary Division the Court is to sit with assessors in exercising that jurisdiction, then the following provisions apply:

- (a) in any proceedings in which a party seeks the exercise of the relevant jurisdiction the Court will, subject to paragraph (ab), sit with assessors selected in accordance with the Act conferring the jurisdiction;

(ab) the Court is not required to sit with assessors—

(i) for the purposes of—

- (A) dealing with preliminary, interlocutory or procedural matters; or
- (B) dealing with questions of costs; or
- (C) entering consent orders; or

(ii) for a part of the proceedings relating only to questions of law,

and may, for that purpose or as a consequence, while sitting without assessors, make any ruling, order or judgment (including a final judgment) it considers appropriate;

(b) where the Court sits with assessors—

(i) questions of law or procedure will be determined by the Judge presiding at the proceedings; and

(ii) other questions will be determined by majority opinion.

(5) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

(6) A Judge or Master may sit in any Division of the Court.

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Time and place of sittings

- 21.** (1) The Court may sit at any time (including a Sunday).
- (2) The Court may sit at any place (either within or outside the State).
- (3) The Court will sit at such times and places as the Chief Judge may direct.
- (4) Registries of the Court will be maintained at such places as the Governor may determine.

Adjournment from time to time and place to place

- 22.** The Court may—
- (a) adjourn proceedings from time to time and from place to place; or
- (b) adjourn proceedings to a time, or a time and place, to be fixed; or
- (c) order the transfer of proceedings from place to place.

Sittings in open Court or in chambers

23. Subject to any Act or rule to the contrary, the Court's proceedings must be open to the public.

Transfer of proceedings between courts

- 24.** (1) The Supreme Court or a Judge or Master of the Supreme Court may order—
- (a) that civil or criminal proceedings in the District Court be transferred to the Supreme Court; or
- (b) that civil or criminal proceedings in the Supreme Court that lie within the jurisdiction of the District Court be transferred to the District Court.
- (2) The District Court or a Judge or Master of the District Court may order that civil or criminal proceedings in the District Court be transferred to the Supreme Court.
- (3) Where proceedings have been transferred under this section, they may be continued and completed as if steps taken in the proceedings prior to the transfer had been taken in the court to which they are transferred.

**PART 5
EVIDENTIARY POWERS**

Power to require attendance of witnesses and production of evidentiary material

25. (1) The Court may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Court at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Court, provide for production of the material to an officer of the Court nominated in the summons.

(3) If—

(a) a person fails to comply with a summons under subsection (1); or

(b) there are grounds for believing that, if such a summons were issued, a person would not comply with it,

the Court may issue a warrant to have the person arrested and brought before the Court.

Power of Court to compel the giving of evidence

26. (1) A person who is called to give evidence or to produce evidentiary material before a Court and—

(a) refuses or fails to make an oath or affirmation when required to do so by the Court;

(b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence;

(c) refuses or fails without reasonable excuse to produce evidentiary material that that person is required by the Court to produce,

commits a contempt of the Court.

(2) This section applies whether the person was summoned before the Court, brought before the Court on a warrant, or came to the Court of his or her own volition.

Entry and inspection of property

27. (1) A Court may enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(2) A Court may authorise an officer of the Court to enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(3) A person who obstructs a Court, or a person authorised by a Court, in the exercise of a power of entry or inspection under this section commits a contempt of the Court.

Production of persons held in custody

28. If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—

(a) issue a summons or a notice requiring the custodian to produce that person before the Court at a nominated time and place; or

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- (b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring him or her before the Court.

Issue of evidentiary summonses

29. A summons or a notice under this Part may be issued on behalf of the Court by—

- (a) a Judge or Master; or
- (b) the Registrar; or
- (c) any other officer authorised by the rules to issue such summonses.

PART 6
SPECIAL PROVISIONS AS TO THE COURT'S CIVIL JURISDICTION

DIVISION 1—GENERAL

Interim injunctions, etc.

30. The Court may, on such terms as appear just, grant an injunction or make any other order that may be necessary to preserve the subject-matter of an action intact until the questions arising in the action have been finally determined.

Restraining orders

31. (1) A Court may make an order (a "restraining order") preventing or restricting dealing with property of a defendant to an action if—

- (a) the action appears to have been brought on reasonable grounds; and
- (b) the property may be required to satisfy a judgment that has been, or may be, given in the action; and
- (c) there is a substantial risk that the defendant will dispose of the property before judgment is given, or before it can be enforced.

(2) A restraining order must be served as directed by the Court.

(3) A person who deals with property subject to a restraining order except as permitted by the order commits a contempt of Court.

(4) The Court may vary or revoke a restraining order at any time.

(5) If it appears to a Court that grounds for making a restraining order exist but the Court requires further evidence to identify property in relation to which the order could be effectively made, the Court may summons the defendant, or issue a warrant to have the defendant arrested and brought before the Court, for examination on that subject.

Mediation and conciliation

32. (1) Subject to and in accordance with the rules, the Court constituted of a Judge (whether sitting with assessors or not) may, with or without the consent of the parties, and a Master or the Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.

(2) A mediator appointed under this section has the privileges and immunities of a Judge and such of the powers of the Court as the Court may delegate.

(2a) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(2b) The Court may itself endeavour to achieve a negotiated settlement of an action or resolution of any issues arising in an action.

(2c) A Judge or Master who attempts to settle an action or to resolve any issues arising in an action is not disqualified from taking further part in those proceedings but will be so disqualified if he or she is appointed as a mediator in relation to those proceedings.

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(3) Evidence of anything said or done in an attempt to settle an action by mediation under this section is not subsequently admissible in the proceedings or in related proceedings.

* * * * *

(5) Where a case is settled under this section, the terms of the settlement may be embodied in a judgment.

Trial of issues by arbitrator

33. (1) The Court may refer an action or any issues arising in an action for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the action or by the Court.

(3) The arbitrator becomes for the purposes of the reference an officer of the Court and may exercise such of the powers of the Court as the Court delegates to the arbitrator.

(4) The Court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

Expert reports

34. (1) The Court may refer any question arising in an action for investigation and report by an expert in the relevant field.

(2) A person to whom a question is referred under this section becomes for the purposes of the investigation an officer of the Court and may exercise such of the powers of the Court as the Court delegates.

(3) The Court may adopt a report obtained under this section in whole or part.

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

Merger of law and equity

35. (1) Legal and equitable claims and defences may be included (without discrimination between them) in the same action.

(2) If there is a conflict between the rules of common law and equity as they apply to a particular action, the rules of equity prevail.

Alternative forms of relief

36. (1) Although a particular form of relief is sought by a party to an action, the Court may grant any other form of relief that it considers more appropriate to the circumstances of the case.

(2) In particular—

(a) where a party seeks relief by way of injunction or specific performance, the Court may award damages in addition to or in substitution for such relief;

- (b) where a party seeks foreclosure of the equity of redemption in mortgaged property, the Court may, instead of ordering foreclosure—
 - (i) direct the sale of the mortgaged property; or
 - (ii) direct a transfer of the mortgage debt and security to a person who agrees to assume the debt.

(This subsection is not exhaustive.)

Declaratory judgments

37. The Court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

Interim awards of damages

38. (1) In an action for damages, the Court may give a declaratory judgment finally determining the question of liability between the parties, but leaving the quantum of damages to be determined subsequently.

(2) The Court may, at the time of giving declaratory judgment or subsequently, order the defendant—

- (a) to make such interim payments as the Court thinks fit on account of the damages that are yet to be finally assessed (but such payments should not include any allowance for non-economic loss unless the Court is satisfied that there is good reason for including such an allowance);
- (b) to give such security as the Court thinks fit for the payment of damages yet to be assessed.

(3) If—

- (a) declaratory judgment is given in a case of personal injury; and
- (b) the injured person is incapacitated (wholly or partially) for employment; and
- (c) it appears to the Court that the injured person is not making adequate efforts towards rehabilitation for employment,

a component of an interim payment attributable to loss of earnings must not exceed 75% of the loss of earnings over the period to which the interim payment relates.

(4) A party to an action in which declaratory judgment has been given may at any time apply to the Court for a final assessment of damages.

(5) If an application is made under subsection (4) and—

- (a) the action arises from personal injury and the medical condition of the injured person appears to have stabilised; or
- (b) four years or more have elapsed since the date of the declaratory judgment,

the application should not be refused except in exceptional circumstances.

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(6) If a party in whose favour a declaratory judgment has been given dies before the final assessment of damages—

- (a) the administrator of the deceased's estate may continue the action for the benefit of the estate (in which case the deceased's damages will be finally assessed to the date of death and further allowance may be made for damages allowable under the *Survival of Causes of Action Act 1940*); or
- (b) if the deceased's death was caused or accelerated by the circumstances out of which the action arose—the administrator may convert the action into one on behalf of dependants under the *Wrongs Act 1936*.

(7) If the administrator converts the action into one on behalf of dependants, the Court will, in assessing damages on behalf of the dependants, make a proper allowance for damages paid to the deceased.

Pre-judgment interest

39. (1) Unless good reason is shown to the contrary, the Court will, on the application of a party in whose favour a monetary judgment has been, or is to be, given include in the judgment an award of interest in accordance with this section.

(2) The interest—

- (a) will be calculated at a rate fixed by the Court; and
- (b) will be calculated in respect of a period fixed by the Court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the Court otherwise determines); and
- (c) is, in accordance with the Court's determination, payable in respect of the whole or part of the amount for which judgment is given.

(3) The Court may, without proceeding to calculate interest under subsection (2), award a lump sum instead of interest.

(4) This section does not—

- (a) authorise the award of interest on interest;
- (b) authorise the award of interest on exemplary or punitive damages;
- (c) affect damages for dishonour of a negotiable instrument;
- (d) authorise the award of interest (except by consent) on a sum for which judgment is given by consent;
- (e) limit or affect the operation of any other enactment or rule of law providing for the award of interest.

Interest on judgment debts

40. (1) A judgment debt bears interest at a rate prescribed by the rules.

- (2) Subject to any direction by the Court to the contrary, the interest runs—
 - (a) in the case of taxed costs—from the date the costs are taxed or an earlier date fixed by the taxing officer;
 - (b) in the case of any other monetary sum—from the date of the judgment.

Payment to child

41. (1) Although a party to an action is a child, the Court may order the payment of money to that party.

(2) Where such an order is made, a receipt given by the child is a valid discharge for the person to whom it is given.

Costs

42. (1) Subject to subsection (2) and the rules, costs in any proceedings in the Civil Division will be in the discretion of the Court and may be awarded against any person (whether a party to or a witness in the proceedings or not).

- (2) If—
 - (a) an action for the recovery of damages or any other monetary sum is brought in the Court; and
 - (b) the action might have been brought in the Magistrates Court; and
 - (c) the plaintiff recovers less than an amount fixed by the rules for the purposes of this paragraph,

no order for costs will be made in favour of the plaintiff unless the Court is of the opinion that it is just in the circumstances of the case that the plaintiff should recover the whole or part of the costs of action.

(3) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—

- (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
- (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- (c) order the legal practitioner to pay to the Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(4) The Court may not make an order against a legal practitioner under subsection (3) unless the Court has informed the practitioner of the nature of the order proposed and allowed the practitioner a reasonable opportunity to make representations, and call evidence, in relation to the matter.

(5) If a person who is summoned to appear as a witness in any proceedings fails, without reasonable excuse, to appear in obedience to the summons, the Court may order that person—

- (a) to indemnify the parties to the proceedings for costs resulting from failure to obey the summons;

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- (b) to pay to the Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the witness's failure to obey the summons.

DIVISION 2—ADMINISTRATIVE AND DISCIPLINARY DIVISION

SUBDIVISION 1—PRELIMINARY

Interpretation

42A. In this Division—

"**Court**" means the Court sitting in its Administrative and Disciplinary Division.

SUBDIVISION 2—ADMINISTRATIVE APPEALS

Application of Subdivision and interpretation

42B. (1) This Subdivision applies in relation to the appellate jurisdiction conferred on the Court by another Act (**the special Act**) subject to the provisions of the special Act.

(2) In this Subdivision—

"**decision**" includes an act (such as the giving or making of a notice, direction, determination, requirement or order) and a failure or refusal to make a decision or act;

"**original decision-maker**", in relation to an appeal, means the person or body whose decision is appealed against, and includes, if that person or body made the decision on an appeal against, or review of, a decision made by some other person or body, that other person or body.

Extension of time to appeal

42C. The Court may, in its discretion, extend the time fixed by the special Act for instituting an appeal, even if the time for instituting the appeal has ended.

Stay of operation of decision appealed against

42D. (1) The making of an appeal against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) However, on the making of an appeal, the Court or the original decision-maker may, on application or at its own initiative, make an order staying or varying the operation or implementation of the whole or a part of a decision appealed against pending the determination of the appeal if the Court, or the original decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.

(3) An order by the Court, or the original decision-maker, under this section—

(a) is subject to such conditions as are specified in the order; and

(b) may be varied or revoked—

(i) in any case—by further order by the Court; or

(ii) if the order was made by the original decision-maker—by further order by the original decision-maker or the Court.

Conduct of appeal

42E. (1) The Court must, on an appeal, examine the decision of the original decision-maker on the evidence or material before the original decision-maker but the Court may, as it thinks fit, allow further evidence or material to be presented to it.

(2) The Court, on an appeal—

- (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(3) The Court must, on an appeal, give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.

Decision on appeal

42F. The Court may, on an appeal—

- (a) affirm the decision appealed against;
- (b) rescind the decision and substitute a decision that the Court considers appropriate;
- (c) remit matters to the original decision-maker for consideration or further consideration in accordance with any directions or recommendations of the Court.

Costs and ancillary orders, etc., on appeals

42G. (1) The Court may, on an appeal, make any ancillary or consequential order that the Court considers appropriate.

(2) However, no order for costs is to be made unless the Court considers such an order to be necessary in the interests of justice.

SUBDIVISION 3—OTHER PROCEEDINGS

Costs and ancillary orders, etc., in other proceedings

42H. (1) The Court may, in proceedings other than proceedings to which Subdivision 2 applies, make any ancillary or consequential order that the Court considers appropriate.

(2) However, no order for costs is to be made unless the Court considers such an order to be necessary in the interests of justice.

PART 7
APPEALS AND RESERVATION OF QUESTIONS OF LAW

Right of appeal

43. (1) A party to an action may, in accordance with the rules of the appellate court, appeal against any judgment given in the action.

(2) The appeal lies—

(a) in the case of a judgment given by a Master or the Court constituted of a Master—to the Court constituted of a Judge;

(b) in the case of an interlocutory judgment given by a Judge—to the Supreme Court constituted of a single Judge;

(c) in any other case—to the Full Court of the Supreme Court.

(3) In the case of a judgment of the Court in its Administrative and Disciplinary Division, an appeal lies as of right on a question of law and by leave of the Supreme Court on a question of fact (but this principle may be displaced or modified by the provisions of the special Act under which the jurisdiction is conferred).

(4) A right of appeal conferred by this section extends to a legal practitioner, witness or other person against whom an order under section 42 is made.

Reservation of questions of law

44. (1) A Master may reserve a question of law arising in an action for determination by a Judge.

(2) A Judge may reserve any question of law arising in an action for determination by the Full Court of the Supreme Court.

(3) Where a question of law is reserved, the court to which the question is referred may determine the question and give any consequential orders or directions appropriate to the circumstances of the case.

Non-application to criminal proceedings

45. This Part does not apply in respect of appeals and reservations of questions of law in criminal proceedings to which Part 11 of the *Criminal Law Consolidation Act 1935* is applicable.

**PART 8
MISCELLANEOUS**

Immunities

46. (1) A Judge, Master or assessor has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

(2) A non-judicial officer of the Court incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

Contempt in face of Court

47. A person who—

- (a) interrupts the proceedings of the Court or misbehaves before the Court;
- (b) insults a Judge, Master, assessor or other officer of the Court who is acting in the exercise of official functions;
- (c) refuses, in the face of the Court, to obey a lawful direction of the Court,

is guilty of a contempt of the Court.

Punishment of contempts

48. (1) The Court may punish a contempt as follows:

- (a) it may impose a fine; or
- (b) it may commit to prison for a specified term or until the contempt is purged.

(2) This section applies both to contempts committed in the face of the Court and contempts arising from non-compliance with an order, direction, summons or other process of the Court.

Custody of litigant's funds and securities

49. (1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.

(2) The Treasurer guarantees the safe keeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.

(3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).

(4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.

(5) Any money in the Court's custody that has remained unclaimed for six years or more may be dealt with under the *Unclaimed Moneys Act 1891*.

Miscellaneous provisions relating to legal process

50. (1) Any process of the Court may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

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Service

50A. (1) If it is not practicable to serve any process, notice or other document relating to civil or criminal proceedings in the manner otherwise prescribed or contemplated by law, the Court may, by order—

- (a) provide for service by post; or
- (b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

Rules of Court

51. (1) Rules of the Court may be made—

- (a) regulating the business of the Court and the duties of the various officers of the Court; and
- (b) authorising the Masters to exercise any part of the jurisdiction of the Court; and
- (c) regulating the practice and procedure of the Court; and
- (ca) imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial; and
- (cb) regulating the referral of an action or issues arising in an action to mediation or arbitration, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert; and
- (d) regulating the form in which evidence may be taken; and
- (e) giving law clerks limited rights of appearance before the Court; and
- (f) regulating costs; and
- (g) dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.

(2) Rules of the Court may be made by the Chief Judge and any two or more other Judges.

(3) The rules take effect as from the date of publication in the *Gazette* or a later date specified in the rules.

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Court fees

53. (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Court.

(2) The Court may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.

Accessibility of evidence, etc.

54. (1) Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

- (aa) any process relating to proceedings and forming part of the Court's records;
- (a) a transcript of evidence taken by the Court in any proceedings;
- (b) any documentary material admitted into evidence in any proceedings;
- (c) a transcript of submissions by counsel;
- (d) a transcript of the judge's summing up or directions to the jury, in a trial by jury;
- (e) a transcript of reasons for judgment (including remarks made by the Court on passing sentence);
- (f) a judgment or order given or made by the Court.

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

- (a) material that was not taken or received in open court;
- (b) material that the Court has suppressed from publication;
- (c) material placed before the Court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);
- (d) documentary material filed in connection with a preliminary examination;
- (e) a transcript of any oral evidence taken at a preliminary examination;
- (f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
- (g) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

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APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provisions from Statutes Repeal and Amendment Courts) Act 1991, ss. 19 and 23)

19. (1) On the commencement of the *District Courts Act 1991*—

- (a) the Senior District Judge becomes Chief Judge of the Court;
- (b) the Judges and Masters holding office under the repealed *Local and District Criminal Courts Act 1926* become Judges and Masters of the Court;
- (c) the Registrar and non-judicial staff of local courts of full jurisdiction and district criminal courts are transferred to corresponding positions on the staff of the District Court.

(2) Any proceedings commenced before a local court of full jurisdiction or a district criminal court may be continued and completed before the District Court.

23. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

- (a) a reference to a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to the District Court;
- (b) a reference to a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to the Magistrates Court;
- (c) a reference to an officer of a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the District Court;
- (d) a reference to an officer of a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Magistrates Court.

(Transitional provision from Land Agents Act 1994, Sched. 3 cl. (2))

(2) A reference in any Act or instrument to the Administrative Appeals Court or to the Administrative Appeals Division of the District Court, is so far as the context permits, to be taken to be a reference to the Administrative and Disciplinary Division of the District Court.

(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(2):	repealed by 90, 1994, Sched. 3 cl. (1)(a)
Section 7:	amended by 90, 1994, Sched. 3 cl. (1)(b)
Section 8(3):	substituted by 90, 1994, Sched. 3 cl. (1)(c)
Section 8(5) and (6):	inserted by 4, 2000, s. 3
Section 13(1):	amended by 42, 1999, s. 46(a)

Section 13(3):	repealed by 42, 1999, s. 46(b)
Section 14A:	inserted by 43, 1994, s. 13
Section 17(2):	amended by 85, 1995, s. 10
Section 18(3):	inserted by 84, 1995, s. 4
Section 20(3):	amended by 90, 1994, Sched. 3 cl. (1)(d); repealed by 4, 2000, s. 4(a)
Section 20(4):	amended by 90, 1994, Sched. 3 cl. (1)(d); 87, 1995, Sched. 4 cl. 1; 4, 2000, s. 4(b)-(d)
Section 24(1):	amended by 43, 1994, s. 14(a)
Section 24(2):	amended by 43, 1994, s. 14(b)
Part 6 Division 1 heading:	inserted by 4, 2000, s. 5
Section 32(1):	substituted by 46, 1996, s. 4(a)
Section 32(2a) - (2c):	inserted by 46, 1996, s. 4(b)
Section 32(3):	amended by 46, 1996, s. 4(c)
Section 32(4):	repealed by 46, 1996, s. 4(d)
Section 34(1):	amended by 46, 1996, s. 5
Section 39(2):	substituted by 62, 1993, s. 6
Section 42(1):	amended by 42, 1999, s. 47(a); 4, 2000, s. 6
Section 42(3):	amended by 42, 1999, s. 47(b)

Division 2 of Part 6 comprising ss. 42A - 42H and headings inserted by 4, 2000, s. 7

Section 43(2):	amended by 43, 1994, s. 15
Section 43(3):	amended by 90, 1994, Sched. 3 cl. (1)(e)
Section 43(4):	amended by 42, 1999, s. 48
Section 50(1):	amended by 84, 1995, s. 5
Section 50A:	inserted by 62, 1993, s. 7
Section 50A(1):	amended by 84, 1995, s. 6
Section 51(1):	amended by 62, 1993, s. 8; 46, 1996, s. 6
Section 52:	amended by 90, 1994, Sched. 3 cl. (1)(f), (g); repealed by 4, 2000, s. 8
Section 54(1):	amended by 62, 1993, s. 9; 84, 1995, s. 7(a)
Section 54(2):	substituted by 84, 1995, s. 7(b)
Section 54(3):	amended by 65, 1995, Sched. cl. 3(a); substituted by 84, 1995, s. 7(b)
Section 54(4) and (5):	inserted by 65, 1995, Sched. cl. 3(b); substituted by 84, 1995, s. 7(b)