

South Australia

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**ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993**

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An Act to establish the Environment, Resources and Development Court; to define its jurisdiction and powers; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **2 April 2001**.*

*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.*

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**ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993**

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Environment, Resources and Development Court Act 1993  
No. 63 of 1993 [Assented to 27 May 1993]<sup>1</sup>

as amended by

Environment Protection Act 1993 No. 76 of 1993 [Assented to 27 October 1993]<sup>2</sup>

Environment, Resources and Development Court (Native Title) Amendment Act 1994 No. 93 of 1994 [Assented to 15 December 1994]<sup>3</sup>

Statutes Amendment (Courts) Act 1995 No. 84 of 1995 [Assented to 30 November 1995]<sup>4</sup>

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]<sup>5</sup>

Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]<sup>6</sup>

Statutes Amendment (Attorney-General's Portfolio) Act 1998 No. 59 of 1998 [Assented to 3 September 1998]<sup>7</sup>

Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000 No. 57 of 2000 [Assented to 20 July 2000]<sup>8</sup>

**Development (System Improvement Program) Amendment Act 2000 No. 88 of 2000 [Assented to 21 December 2000]<sup>9</sup>**

<sup>1</sup> Came into operation 6 December 1993: *Gaz.* 21 October 1993, p. 1774.

<sup>2</sup> Came into operation 1 May 1995: *Gaz.* 27 April 1995, p. 1563.

<sup>3</sup> Came into operation 17 June 1996: *Gaz.* 9 May 1996, p. 2440.

<sup>4</sup> Came into operation 21 December 1995: *Gaz.* 21 December 1995, p. 1759.

<sup>5</sup> Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

<sup>6</sup> Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.

<sup>7</sup> Part 4 (s. 8) came into operation 13 December 1998: *Gaz.* 3 December 1998, p. 1676.

<sup>8</sup> Part 10 (s. 24) came into operation 1 July 2000: s. 2(2).

<sup>9</sup> **Sched. 1 (cl. 2) came into operation 2 April 2001: *Gaz.* 29 March 2001, p. 1436.**

*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 I.*

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The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Environment, Resources and Development Court Act 1993*.

**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—

"**Chief Judge**" means the person for the time being holding, or acting in, the office of Chief Judge under the *District Court Act 1991*;

"**Court**" means the *Environment, Resources and Development Court*;

"**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;

"**native title commissioner**" means a commissioner with expertise in Aboriginal law, traditions and customs;

"**native title jurisdiction**" means the jurisdiction of the Court to hear and determine a native title question;

"**native title question**"—see Part 2 *Native Title (South Australia) Act 1994*;

"**registrar**" means the Registrar or Assistant Registrar of the Court;

"**relevant Act**" means—

- (a) an Act which confers jurisdiction on the Court; or
- (b) an Act which creates an offence in respect of which jurisdiction is conferred on the Court under this Act;

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

(2) The following are members of the Court;

- (a) any judge appointed to the Court;
- (b) any magistrate appointed to the Court;
- (c) the commissioners of the Court.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

**PART 2**  
**THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT**

**DIVISION 1—ESTABLISHMENT OF COURT**

**Establishment of Court**

4. The *Environment, Resources and Development Court* 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—JURISDICTION OF THE COURT**

**Jurisdiction**

7. (1) Subject to this section, the Court will have the jurisdiction (including the jurisdiction to try a charge of an offence) conferred on it by or under this or any other Act.

(2) The regulations may confer on the Court jurisdiction in respect of offences against a specified Act or statutory provision.

(3) The Court will deal with a charge of an offence in accordance with the procedures appropriate to a summary offence (even though the offence may in fact be an indictable offence) and the *Summary Procedure Act 1921* applies to the Court subject to any additions, exclusions or modifications prescribed by the regulations as if references to summary offences extended to offences in respect of which jurisdiction is conferred under this section and as if references to the Magistrates Court extended to the Court.

(4) Where proceedings for an indictable offence are brought in the Court—

(a) the Court cannot impose a fine that exceeds the maximum fixed by the relevant Act or twice a Division 1 fine (whichever is the lesser); and

(b) the Court cannot impose a sentence of imprisonment that exceeds the maximum fixed by the relevant Act or two years (whichever is the lesser).

(5) The conferral of jurisdiction on the Court in respect of offences does not limit the jurisdiction of any other court.

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**PART 3  
COMPOSITION OF THE COURT**

**DIVISION 1—MEMBERS OF THE COURT**

**Judges of the Court**

**8.** (1) There will be a Presiding Member of the Court.

(2) The Presiding Member must be a Judge of the District Court appointed by the Governor after consultation with the Chief Judge.

(3) The Presiding Member is responsible for the administration of the Court.

(4) The Presiding Member is not precluded, by that office, from performing judicial functions outside the Court.

(5) The Presiding Member ceases to hold office as such on ceasing to hold office as a Judge of the District Court.

(6) Any other Judge holding office under the *District Court Act 1991* who is designated by the Governor, by instrument in writing, as a Judge of the Environment, Resources and Development Court will (while he or she continues to hold office as a judge of the District Court) be a Judge of the Court.

(7) If the Presiding Member is absent or unable to act, another Judge of the Court nominated by the Governor will act in the office of Presiding Member.

(8) The Presiding Member may delegate any power or function under this Act to another Judge of the Court.

(9) A delegation under subsection (8) is revocable at will and does not derogate from the power of the Presiding Member to act himself or herself in any matter.

**Magistrates**

**9.** (1) Any magistrate holding office under the *Magistrates Act 1985* who is designated by the Governor, by instrument in writing, as a member of the Environment, Resources and Development Court will (while he or she continues to hold office as a magistrate) be a member of the Court.

(2) A magistrate appointed under subsection (1) may also, if the Governor so determines, be appointed as a Master of the Court.

(3) A magistrate is, in relation to the performance of duties as a member of the Court, administratively responsible to the Presiding Member of the Court.

**Commissioners**

**10.** (1) The Governor may appoint any suitable person to be a commissioner of the Court.

(2) A commissioner (other than a native title commissioner) must be a person with practical knowledge of, and experience in—

(a) local government; or

(b) urban or regional planning; or

(c) architecture, civil engineering, building, building safety or building regulation; or

- (d) administration, commerce or industry; or
- (e) environmental protection or conservation; or
- (f) agricultural development; or
- (g) land care or management, housing or welfare services; or
- (h) heritage; or
- (i) resource exploration, recovery or production; or
- (j) any other field which is relevant to a jurisdiction conferred on the Court by a relevant Act.

(2a) A commissioner appointed as a native title commissioner must be a person with expertise in Aboriginal law, traditions and customs.

(2b) Before the Governor appoints a commissioner as a native title commissioner, the Minister must consult about the proposed appointment with the Commonwealth Minister designated by regulation.

(3) The Governor may, when appointing a commissioner or by subsequent notice in writing to the commissioner, specifically designate the commissioner as being a person who has expertise in a particular field.

(4) The schedule has effect in respect of commissioners.

#### **Masters**

**11.** Any Master holding office under the *District Court Act 1991* who is designated by the Governor, by instrument in writing, as an officer of the Environment, Resources and Development Court will be a Master of the Court.

#### **Saving provision**

**12.** No act or proceeding of the Court is invalid by reason of a vacancy in the office, or a defect in the appointment, of a member of the Court.

#### **Disclosure of interest by members of the Court**

**13.** If the Court is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's official functions in proceedings before the Court, the member—

- (a) must disclose the interest to the parties to the proceedings; and
- (b) must not take part in the proceedings or exercise powers affecting the proceedings—
  - (i) if the Presiding Member of the Court directs the member to withdraw from the proceedings; or
  - (ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

### **DIVISION 2—COURTS ADMINISTRATIVE AND ANCILLARY STAFF**

#### **Court's administrative and ancillary staff**



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

- (a) a Registrar (who is the Court's principal administrative officer); and
- (b) an Assistant Registrar; and
- (c) any other persons appointed to the staff of the Court.

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

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(4) A member of the Court's administrative or ancillary staff is responsible to the Presiding Member (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties under this Act.

**PART 4  
CONSTITUTION OF THE COURT**

**Constitution of Court**

**15.** (1) Subject to this section, the Presiding Member of the Court may determine, in relation to a particular matter or matters, or particular classes of matters, that the Court will be constituted of—

- (a) —
  - (i) a Judge, a magistrate and not less than one commissioner; or
  - (ii) a Judge and not less than two commissioners,  
(referred to as "a full bench"); or
- (b) a Judge, magistrate or commissioner sitting alone; or
- (c) two or more commissioners.

(1a) When sitting to exercise its native title jurisdiction the Court must consist of, or include, a legal practitioner of at least 5 years' standing.

(1b) If the Court, when sitting to exercise its native title jurisdiction is to consist of, or include, a commissioner or two or more commissioners, the commissioner or at least one-half the number of the commissioners must be native title commissioners.

(2) The Court will only be constituted of a full bench if—

- (a) the parties appearing at a conference request that the Court be constituted of a full bench; or
- (b) the Presiding Member of the Court is of the opinion that the questions to be determined by the Court are of such importance that they should be determined by a full bench of the Court.

(2a) The appointment of a person as a commissioner on the basis of expertise in a particular field or fields relevant to the exercise of jurisdiction under a particular Act does not prevent the commissioner being a member of a full bench hearing a matter or matters under another Act.

(3) Where the Court is, at the commencement of a hearing, constituted of a full bench and a member of the full bench dies or is for any reason unable to continue with the hearing—

- (a) if the member is the Judge—another Judge may be appointed by the Presiding Member of the Court to the full bench so that the bench may continue and complete the hearing and determination of the proceedings; or
- (b) in any other case—the remaining members of the full bench may, if the Judge so determines after consultation with the Presiding Member of the Court, continue and complete the hearing and determination of the proceedings,

but otherwise the proceedings will be reheard.

(4) Where the Court is, at the commencement of a hearing, constituted of two or more commissioners and a commissioner dies or is for any other reason unable to continue with the hearing, the remaining commissioner or commissioners may, if the Presiding Member of the Court so determines, continue and complete the hearing and determination of the proceedings, but otherwise the proceedings will be reheard.

(5) Where proceedings are reheard, the members of the Court rehearing the proceedings may, for the purposes of those proceedings, have regard to any record of the proceedings made for the purposes of the earlier proceedings (including a record of any evidence taken in those proceedings).

(6) The Court may be constituted of a Master for any purpose prescribed by a relevant Act or the rules of the Court.

(7) The Court may be constituted of a registrar—

(a) for the purpose of adjourning proceedings; or

(b) for any other purpose prescribed by the rules of the Court.

(8) The Court, when constituted of a magistrate, commissioner, Master or registrar, may refer a question of law for the decision of a Judge and, in that event, the Judge will decide that question and may, in addition—

(a) decide any other questions remaining between the parties; and

(b) make such orders as are necessary to dispose of the matter.

(9) A decision or order of a Judge pursuant to subsection (8) is a decision or order of the Court.

(10) The following provisions apply in relation to the decision-making of the Court where the Court is constituted of two or more members:

(a) where the Court is constituted as a full bench—

(i) questions of law or procedure will be determined by the Judge;

(ii) other questions will be decided by majority decision of the persons constituting the Court unless there is an equal division of opinion, in which case, the decision of the Judge will be the decision of the Court;

(b) where the Court is constituted by two or more commissioners sitting without a Judge, questions will be decided by majority decision of the commissioners constituting the Court unless there is an equal division of opinion, in which case, the matter will be determined by a Judge, or by an umpire appointed by a Judge for the purpose of resolving the matter.

(11) 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.

(12) The Court may, if it considers it appropriate to do so, organise its business and regulate proceedings before the Court in such a way that two or more proceedings in respect of the same matter are heard together.

(13) Where other provisions of this Act or the provisions of a relevant Act deal with the manner in which the Court is to be constituted for the purposes of proceedings or any other business under a relevant Act, this section applies subject to those provisions.

(14) Where the Court has jurisdiction to try a charge for any offence, the Court will be constituted of—

- (a) a Judge; or
- (b) a magistrate.

### **Conferences**

**16.** (1) A relevant Act, or the rules, may provide that proceedings of a specified class must at first instance be referred to a conference under this section.

(2) The purpose of a conference is to enable the member of the Court presiding at the conference (appointed by the Presiding Member of the Court or selected in accordance with the rules) to assist the parties to explore any possible resolution of the matters in dispute without resorting to a formal hearing.

(3) The Court may dispense with a conference if it is of the opinion that—

- (a) no useful purpose would be served by a conference between the parties prior to a hearing of the matter; or
- (b) there is some other reason that justifies dispensing with the conference.

(4) A conference may, at the discretion of the member of the Court presiding at the conference, be adjourned or reconvened from time to time.

(5) Unless otherwise determined by the member of the Court presiding at the conference, a conference will be held in private.

(6) Any settlement to which counsel or any other representative appearing on behalf of the party to the proceedings agrees at the conference is binding on the party.

(7) The member of the Court presiding at a conference may—

- (a) if that member is a magistrate or commissioner—refer any question of law to a Judge of the Court for determination;
- (b) require a party to the proceedings to furnish particulars of his or her case;
- (c) determine who, apart from the parties to the proceedings (and their representatives), may be present at the conference.
- (d) subject to subsection (9), record any settlement reached at a conference and make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to a settlement;
- (e) on his or her own initiative, close the conference at any time if, in his or her opinion, settlement cannot be reached;
- (f) advise the Court if the conference does not reach a settlement within a reasonable time;

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- (g) permit a party to withdraw from the proceedings (and make any consequential order that is appropriate in the circumstances);
- (h) give summary judgment (with costs) against any party who obstructs or delays the conference, fails to attend the conference or fails to comply with a regulation, or a rule or order of the Court;
- (i) do such other things as the rules of the Court may provide.

(8) Evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Court except by consent of all parties to the proceedings.

(9) The member of the Court presiding at a conference—

- (a) must not accept a settlement that appears to be inconsistent with a relevant Act (but he or she may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act); and
- (b) may decline to accept a settlement on the basis that the settlement may materially prejudice any person who was not represented at the conference but who has a direct or material interest in the matter.

(10) If the member of the Court presiding at a conference is unable to continue with the conference, another member of the Court may be appointed to continue and complete the conference.

(11) Unless all parties to the proceedings agree to his or her continued participation, the member of the Court who presided at the conference is disqualified from sitting as a member of the Court for the purpose of hearing and determining the matter.

**PART 5  
PARTIES AND SITTINGS**

**Parties**

**17.** (1) The Court may, by order, join a person as a party to any proceedings (other than criminal proceedings).

(2) A commissioner may not make an order under subsection (1) except—

- (a) on the application of, or with the consent of, the party to be joined; or
- (b) with the concurrence of a Judge.

(3) An order under subsection (1) may be made on an *ex parte* application.

(4) Subject to rules of the Court, the Court may, if of the opinion that it is appropriate to do so, on its own initiative or on the application of a party to the relevant proceedings—

(a) dismiss or determine any proceedings that appear—

- (i) to be frivolous or vexatious; or
- (ii) to have been instituted or prosecuted for the purpose of delay or obstruction, or for some other improper purpose;

(b) after hearing the applicant in the proceedings, find in favour of the respondent without hearing the respondent;

(c) give summary judgement against a party—

- (i) who obstructs or unnecessarily delays the proceedings; or
- (ii) who appears to be continuing to participate in the proceedings for the purpose of delay or obstruction, or for some other improper purpose; or
- (iii) who fails to attend any proceedings or fails to comply with a regulation, or a rule or order of the Court.

(4a) If the Court takes action under subsection (4), then the Court should also make an order for costs against the party against whom the action is directed unless the Court is of the opinion that there is some good reason for not making an order in the circumstances of the particular case.

(4b) The Court may, in making an order under subsection (4a), determine that the costs will be determined or settled—

- (a) as between party and party in accordance with the scale prescribed for the purpose; or
- (b) as between solicitor and client.

(5) A Minister may, if of the opinion that proceedings before the Court involve a question of public importance, intervene in those proceedings.

(6) A party to proceedings before the Court under this Act is entitled to appear personally or by counsel or other representative.

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**Time and place of sittings**

- 18.** (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 Presiding Member of the Court may direct.
- (4) Registries of the Court will be at the places determined by the Governor.

**Adjournment from time to time and place to place**

**19.** The Court may—

- (a) adjourn proceedings from time to time and from place to place;
- (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.

**Hearing in public**

**20.** (1) Subject to this Act or any relevant Act, proceedings before the Court must be heard in public.

- (2) The Court may, where it is satisfied that it is desirable to do so—
- (a) in the interests of justice; or
- (b) by reason of the confidential nature of the evidence to be given before the Court; or
- (c) in order to expedite proceedings of the Court; or
- (d) for any other reason that the Court thinks sufficient, give directions—
- (e) requiring that a hearing, or part of a hearing, be held in private; or
- (f) prohibiting or restricting the publication of evidence given before the Court or of the contents of any document produced to the Court; or
- (g) excluding any person from the hearing before the Court of any part of the proceedings.
- (3) A person must comply with a direction of the Court under subsection (2).

Penalty: Division 6 fine.

**Transfer of cases between the Court and the Supreme Court**

**20A.** (1) The Environment, Resources and Development Court may, on application by a party, or on its own initiative, refer proceedings to which this section applies to the Supreme Court for hearing and determination.

(2) The Supreme Court may, on the application by a party or on its own initiative, remove proceedings to which this section applies from the Environment, Resources and Development Court into the Supreme Court for hearing and determination.

(3) In deciding whether proceedings to which this section applies should be heard by the Supreme Court or the ERD Court, the following matters must be taken into account:

- (a) the importance of the questions involved in the proceedings; and
  - (b) the complexity of the legal and factual questions involved in the proceedings.
- (4) This section applies to—
- (a) proceedings involving a native title question<sup>1</sup>; or
  - (b) proceedings involving a question about mining, or exploration for minerals or petroleum;  
or
  - (c) proceedings related to compulsory acquisition of land; or
  - (d) proceedings of a class prescribed by regulation.

1. See Part 3 of the *Native Title (South Australia) Act 1994*.



**PART 6  
EXERCISE OF JURISDICTION**

**DIVISION 1—PRINCIPLES GOVERNING HEARINGS**

**Principles governing hearings**

**21.** (1) On the hearing of proceedings (other than criminal or contempt proceedings) under any relevant Act (but subject to the provisions of any such Act)—

- (a) the procedure of the Court will, subject to this Act, be conducted with the minimum of formality; and
- (b) the Court is not bound by the rules of evidence and may inform itself as it thinks fit; and
- (c) the Court must act according to equity, good conscience and the substantial merits of the case and without regard to legal technicalities and forms.

(2) On an appeal from a decision or order of person or body acting under a relevant Act, the person or body must, on a request made in accordance with the rules of the Court (but subject to any qualifications specified in the rules), send to the Court any application, documents, written submissions, reports, plans, specifications or other documents lodged with, or received by, the person or body in relation to the matter, and any other relevant material, requested by the Court.

(3) The Court may—

- (a) examine anything submitted under subsection (2) and draw any conclusions of fact it considers proper;
- (b) direct the person or body to furnish a report on any aspect of the subject matter of the appeal.

(4) The Court must, to the extent or in the manner provided by the rules, ensure that the parties obtain access to any material submitted under subsection (2).

**DIVISION 2—EVIDENTIARY POWERS**

**Power to require attendance of witnesses and production of evidentiary material**

**22.** (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, or to any other person 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.

(4) The power conferred by subsection (3)(b) may only be exercised by a Judge or magistrate

of the Court.

(5) A person who is arrested under subsection (3) is eligible for release on bail under the *Bail Act 1985*.

**Power of Court to compel the giving of evidence**

**23.** (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**

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

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

(3) A person who obstructs a member of the Court, or a person authorised by the 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**

**25.** 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
- (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**

**26.** A summons or a notice under this Division may be issued on behalf of the Court by—

- (a) any member of the Court; or
- (b) a Master or registrar; or
- (c) any other officer authorised by the rules to issue such summonses.

**Expert reports**

27. (1) The Court may refer any question of a technical nature arising in any proceedings 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 (including that no costs will be borne by any party), but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

**DIVISION 3—SUPPLEMENTARY POWERS**

**Declaratory judgments**

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

**Restraining orders**

28A. (1) The Court may make an order (a "restraining order") preventing or restricting dealing with property of a respondent or defendant in proceedings before the Court if—

- (a) the proceedings appear to have been brought on reasonable grounds; and
- (b) the property may be required to satisfy an order that has been, or may be, made in the proceedings; and
- (c) there is a substantial risk that the respondent or defendant will dispose of the property before the order is made, 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 the 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 respondent or defendant, or issue a warrant to have the respondent or defendant arrested and brought before the Court, for examination on that subject.

**Mediation and conciliation**

28B. (1) If it appears to the Court at the commencement or during the course of proceedings, or to the member of the Court presiding at a conference under section 16, that there would be a reasonable likelihood of settling matters in dispute between the parties by doing so, the Court or member may, with the consent of the parties, appoint a mediator to endeavour to achieve a negotiated settlement of the matters.

(2) The Court may during the course of proceedings, if it appears that there would be a reasonable likelihood of settling matters in dispute between the parties, itself endeavour to achieve a negotiated settlement of the matters.

(3) Except with the consent of the parties, any processes of mediation or conciliation under this section will be conducted in private.

(4) Any settlement to which counsel for or any other representative of a party agrees in processes under this section is binding on the party.

(5) Subject to subsection (7), the Court may record any settlement reached under this section and make a determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to a settlement.

(6) Evidence of anything said or done in the course of processes under this section is inadmissible in proceedings before the Court except by consent of all parties to the proceedings.

(7) The Court—

(a) must not accept a settlement that appears to be inconsistent with a relevant Act (but may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act); and

(b) may decline to accept a settlement on the basis that the settlement may materially prejudice any person who was not a participant in the processes leading to the settlement but who has a direct or material interest in the matter.

(8) Where the Court appoints a mediator, or itself endeavours to achieve a settlement, under this section, the member or members comprising the Court are not disqualified from continuing to sit for the purpose of hearing and determining the proceedings.

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

**Alternative orders**

**28C.** Although a particular form of order is sought by an applicant in proceedings before the Court, the Court may make any other form of order that it considers more appropriate to the circumstances of the case.

**Costs**

**29.**

\* \* \* \* \*

(2) If a party to proceedings before the Court—

(a) applies for an adjournment of the hearing of the proceedings; or

(b) by his or her conduct renders it appropriate or necessary for the Court to adjourn the hearing of the proceedings,

the Court may adjourn the proceedings on such terms as it considers just and may make an order for costs, in accordance with a scale prescribed for the purpose, against the party in favour of any other party to the proceedings.

(3) If proceedings are delayed through the neglect or incompetence of a representative, the Court may, at the conclusion of those proceedings—

(a) disallow the whole or part of the costs as between the representative and his or her client (and, where appropriate, order the representative to repay costs already paid);

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- (b) order the representative to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- (c) order the representative 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 representative under subsection (3) unless the Court has informed the representative of the nature of the order proposed and allowed the representative a reasonable opportunity to make representations, and call evidence, in relation to the matter.

(5) A commissioner may not make an order under subsection (3) except with the concurrence of a Judge.

(6) 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;
- (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.

(7) This section does not limit any other provision of this Act or a relevant Act which provides for the payment of costs in any matter.

**PART 7**  
**APPEALS AND RESERVATION OF QUESTIONS OF LAW**

**Right of appeal**

**30.** (1) Subject to this section and to any provision in a relevant Act as to appeals against a decision or order of the Court in the exercise of a jurisdiction conferred by that Act, an appeal lies—

- (a) in the case of an interlocutory order made by the Court—to the Supreme Court constituted of a single Judge;
- (b) in the case of a decision or order given or made by one or more commissioners (not being a decision or order of a full bench)—to the Supreme Court constituted of a single Judge;
- (c) in the case of a decision or order given or made by a magistrate—to the Supreme Court constituted of a single Judge;
- (d) in the case of a decision or order given or made by a Master or a registrar—to the Supreme Court constituted of a single Judge;
- (e) in any other case—to the Full Court of the Supreme Court.

(2) An appeal lies as of right on a question of law and by leave on a question of fact (but this principle may be displaced or modified by the provisions of the relevant Act under which the jurisdiction is conferred).

(3) A right of appeal conferred by this section extends to a representative or witness against whom an order for costs is made.

(4) A party to any criminal proceedings before the Court may appeal against any judgment given in those proceedings in the same way, and to the same extent, as an appeal may be instituted against a judgment given in a criminal action under the *Magistrates Court Act 1991*.

**Reservation of questions of law**

**31.** (1) A Judge may reserve any question of law arising in any proceedings for determination by the Full Court of the Supreme Court.

(2) Where a question of law is reserved, the Supreme Court may determine the question and give any consequential orders or directions appropriate to the circumstances of the case.

**Operation of decision or order may be suspended**

**32.** (1) Where a decision or order has been given or made by the Court, and the Court, or the Supreme Court, is satisfied that an appeal under this Part has been instituted, it may suspend the operation of the decision or order until the determination of the appeal.

(2) The suspension of a decision or order under subsection (1) may be terminated at anytime by the court which imposed the suspension.

**PART 8  
MISCELLANEOUS**

**General powers of the Court and the Supreme Court to cure irregularities**

**33.** (1) If, in proceedings before the Court under this or any other Act, or on an appeal to the Supreme Court from a decision or order of the Court under this Act, it appears to the relevant Court that—

- (a) there has been a failure to comply with a requirement of any Act or other law that affects the matter to which the application or appeal relates; and
- (b) it would not be unjust or inequitable to exercise the powers conferred by this subsection,

the relevant Court may excuse the failure by ordering that, subject to such conditions as may be stipulated by the relevant Court, the requirement be dispensed with to the necessary extent.

(2) If, in proceedings before the Court under this or any other Act, or on an appeal to the Supreme Court from a decision or order of the Court under this Act, it appears to the relevant Court that—

- (a) the proceedings or appeal could be resolved in a manner that is fair to all parties if certain modifications to the proceedings or appeal were made; and
- (b) it would be conducive to the expeditious administration of justice if the powers conferred by this subsection were exercised,

the relevant Court may, by order, amend the application or appeal accordingly.

**Interim injunctions, etc.**

**34.** 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 proceedings before the Court until questions arising in the proceedings have been finally determined.

**Interlocutory orders**

**35.** The Court has power, in relation to matters in which it has jurisdiction, to make interlocutory orders.

**Immunities**

**36.** (1) A Judge, magistrate, commissioner or Master 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**

**37.** A person who—

- (a) interrupts the proceedings of the Court or misbehaves before the Court;
- (b) insults a member or 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**

**38.** (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.

(3) The powers conferred by this section may only be exercised by a Judge or magistrate of the Court.

**Costs where contempt proved**

**38A.** Where a person is found guilty of contempt arising from non-compliance with an order, direction, summons or other process of the Court, the Court may make such orders as to costs as it thinks fit.

**Power to require security for costs, etc.**

**39.** (1) The Court may order a party to proceedings before the Court to give security for the payment of costs or to give an undertaking as to the payment of other monetary amounts that may be awarded against the party.

(2) The security referred to in subsection (1) will be of such amount, and given at such time and in such manner and form, as the Court directs.

(3) The Court may reduce or increase the amount of security ordered under subsection (1) to be given and may vary the time at which, or the manner or form in which, the security is to be given.

(4) If security, or further security, or an undertaking, is not given in accordance with an order under this section, the Court may order that the proceedings be dismissed, or that judgment (with costs) be given against the party.

(5) The provisions of this section relating to security, or the giving of an undertaking, do not affect the operation of any provision made by or under a relevant Act or by the rules for or in relation to the furnishing of security, or the giving of an undertaking.

(6) A commissioner may not make an order under this section except with the concurrence of a Judge.

(7) This section does not apply to proceedings in respect of an offence.

**Interest payable on money order to be paid**

**40.** (1) If an order is made by the Court for the payment of money, interest is payable at the prescribed rate from the date the order takes effect on so much of the money as is from time to time unpaid, unless the Court otherwise orders.

(2) This section does not apply in the case of money ordered to be paid as a penalty.

**Miscellaneous provisions relating to legal process**

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



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

**Proof of decisions and orders of the Court**

42. An apparently genuine document purporting to be a copy of a decision or order of the Court and to be certified as such by a registrar will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a decision or order of the Court.

**Enforcement of judgments and orders**

43. (1) Where a judgment or order is made by the Court, a registrar must, on application by a party to the proceedings in which the order was made, or a person claiming through or under such a party, issue a certified copy of the judgment or order.

(2) Where—

(a) a certified copy of a judgment or order is lodged with the District Court; and

(b) the fee (if any) payable on lodgment is paid,

the Registrar of the District Court must register it and proceedings may then be taken on it, or any other action taken, as if it were a judgment or order of the District Court.

**Legal costs**

44. (1) The rules may prescribe scales of costs for the purposes of this section.

(2) Subject to any express provision in the rules or a relevant Act, a legal practitioner must not, without the agreement in writing of his or her client, charge or seek to recover in respect of any proceedings in respect of which such scales apply an amount by way of costs in excess of the amount that is, after deduction of the GST payable in respect of it, equivalent to the amount allowable under the scales.

(3) In this section—

"GST" means the tax payable under the GST law;

"GST law" means—

(a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and

(b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

**Court fees**

45. (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.

(3) If a registrar lodges with the District Court a certificate of court fees payable under this Act, the Registrar of the District Court must register it and proceedings may then be taken on it, or any other action taken, as if it were a judgment or order of the District Court.

(4) A registrar must not lodge a certificate with the District Court under subsection (3) unless—

- (a) a notice has been served by certified mail on the person by whom outstanding court fees are payable, demanding payment of the fees by a specified date (being not less than 14 days after the date of service); and
- (b) the fees remain outstanding after the date specified in the notice under paragraph (a).

**Entitlement of witness to be assisted by an interpreter**

**46.** (1) Where—

- (a) the native language of a person who is to give oral evidence in any proceedings before the Court is not English; and
- (b) the witness is not reasonably fluent in English,

the person is entitled to give that evidence through an interpreter.

(2) A person may present written evidence to the Court in a language other than English if that written evidence has annexed to it—

- (a) a translation of the evidence into English; and
- (b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original evidence.

**Accessibility of evidence**

**47.** (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) any decision or order given or made by the Court;
- (d) any other material of a prescribed kind.

(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) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
- (e) material of a class prescribed by the regulations.

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(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.

**Rules**

**48.** (1) Rules of court may be made under this Act to regulate the practice and procedure of the Court and to provide for any other matter necessary or expedient for the effective and efficient operation of the Court.

(2) The power to make rules under this section includes the power to make rules in respect of any jurisdiction conferred on the Court by a relevant Act.

(3) Rules of the Court may be made by the Presiding Member and one other Judge.

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

(5) The rules must not be inconsistent with the regulations, or with any relevant Act.

**Regulations**

**49.** (1) The Governor may make such regulations as are contemplated by this Act or any other act conferring jurisdiction on the Court, or as are necessary or expedient for the purposes of this Act or any other Act conferring jurisdiction on the Court.

(2) The regulations may, for example, prescribe matters relevant to the practice and procedure of the Court.

(3) A regulation may not be made for the purposes of section 7(2) in a form such that jurisdiction in respect of offences under more than one Act are conferred on the Court by the same regulation.

**SCHEDULE**  
*Commissioners*

1. (1) A commissioner will be appointed either on a full-time or part-time basis.
- (2) Subject to this section, a commissioner holds office on terms and conditions determined by the Governor.
- (3) The following provisions apply in respect of full-time or permanent part-time commissioner:
  - (a) the commissioner is not subject to Part 3 of the *Government Management and Employment Act 1985*, but the rights of the commissioner to long service leave, recreation leave, sick leave and other forms of leave will be determined in accordance with the provisions of that Act and the regulations under that Act; and
  - (b) the commissioner may retire at or after the age of 55 years and must retire on attaining the age of 65 years; and
  - (c) the commissioner may, after retiring, complete the hearing and determination of an appeal or matter part heard by the commissioner at the time of his or her retirement (and will, for that purpose, be taken to continue as a commissioner); and
  - (d) the commissioner is an "**employee**" within the meaning of the *Superannuation Act 1974*; and
  - (e) the commissioner is entitled to the remuneration determined by the Remuneration Tribunal.
- (4) A part-time commissioner (not being a permanent part-time commissioner) will be appointed for a term of office (not exceeding five years) determined by the Governor and will, at the expiration of a term of office, be eligible for reappointment.
- (5) The office of a commissioner becomes vacant if the commissioner—
  - (a) dies; or
  - (b) being a full-time or permanent part-time commissioner—attains the age of 65 years or retires before attaining that age; or
  - (c) being a part-time commissioner (other than a permanent part-time commissioner)—completes a term of office and is not reappointed; or
  - (d) resigns by notice in writing addressed to the Minister; or
  - (e) is removed from office by the Governor on the ground of—
    - (i) physical or mental incapacity to carry out official duties satisfactorily; or
    - (ii) incompetence; or
    - (iii) misconduct.

**Environment, Resources and Development Court Act 1993****APPENDIX 1****LEGISLATIVE HISTORY****Transitional Provisions**

*(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(1):	definitions of "native title commissioner", "native title jurisdiction" and "native title question" inserted by 93, 1994, s. 3
Section 10(2):	amended by 93, 1994, s. 4(a)
Section 10(2a) and (2b):	inserted by 93, 1994, s. 4(b)
<b>Section 10(3):</b>	<b>substituted by 88, 2000, Sched. 1 cl. 2(a)</b>
Section 13:	substituted by 93, 1994, s. 5
Section 14(2):	amended by 85, 1995, s. 11(a)
Section 14(3):	repealed by 85, 1995, s. 11(b)
Section 15(1a) and (1b):	inserted by 93, 1994, s. 6(a)
<b>Section 15(2a):</b>	<b>inserted by 88, 2000, Sched. 1 cl. 2(b)</b>
Section 15(10):	amended by 93, 1994, s. 6(b)
<b>Section 17(4):</b>	<b>amended by 88, 2000, Sched. 1 cl. 2(c), (d)</b>
<b>Section 17(4a) and (4b):</b>	<b>inserted by 88, 2000, Sched. 1 cl. 2(e)</b>
Section 18(4):	substituted by 93, 1994, s. 7
Section 20A:	inserted by 93, 1994, s. 8
Sections 28A - 28C:	inserted by 76, 1993, Sched. 2 cl. 3(a)
<b>Section 29(1):</b>	<b>repealed by 88, 2000, Sched. 1 cl. 2(f)</b>
<b>Section 29(2):</b>	<b>substituted by 88, 2000, Sched. 1 cl. 2(f)</b>
<b>Section 29(7):</b>	<b>amended by 88, 2000, Sched. 1 cl. 2(g)</b>
Section 38A:	inserted by 67, 1996, s. 20
Section 39(1):	amended by 76, 1993, Sched. 2 cl. 3(b)
Section 39(4):	amended by 76, 1993, Sched. 2 cl. 3(c)
Section 39(5):	amended by 76, 1993, Sched. 2 cl. 3(d)
Section 41(1):	amended by 84, 1995, s. 8
Section 44(2):	amended by 57, 2000, s. 24(a)
Section 44(3):	inserted by 57, 2000, s. 24(b)
Section 45(3) and (4):	inserted by 59, 1998, s. 8
Section 47(1):	amended by 84, 1995, s. 9(a)
Section 47(2) and (3):	substituted by 84, 1995, s. 9(b)
Section 47(4) and (5):	inserted by 84, 1995, s. 9(b)

**APPENDIX 2**

**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*